Commonwealth and the U.S. Constitution (II)

By : RAFAEL HERNANDEZ COLON
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This is the second of a series of columns wherein I will demonstrate that the basic premise of the Fortuño bill excluding commonwealth as a permanent solution to the status of Puerto Rico is fundamentally flawed.

In my first column, I established that territorial status is the result of Congressional exercise of the powers vested under Art. IV, Sec. 3 of the Constitution by organizing a government through a federal organic act for land belonging to the United States. This isn't the case of the commonwealth, because our government was organized by the people of Puerto Rico who ordained our constitution under the compact with Congress. Thus, the question at issue is whether another Congress can undo the compact because it is said that one Congress can't bind another.

But, this isn't an absolute proposition. The Supreme Court has held in no uncertain terms that one Congress may bind another Congress.

Let us examine the case of Perry v. United States, 294 U.S. 330 (1934). In that case, pursuant to the act of Sept. 24, 1917, the U.S. issued to a certain John M. Perry an obligation which provided that principal and interest were payable in gold coin of the then standard of value. By joint resolution of June 5, 1933, Congress caused the obligations of Mr. Perry to be payable at a lower standard of value than that prevailing in Sept. 24, 1917.

Regarding the matter here at issue, the Supreme Court held: "The argument in favor of the joint resolution, as applied to government bonds, is in substance that the Government can't by contract restrict the exercise of a sovereign power. But the right to make binding obligations is a competence attaching to sovereignty. In the U.S., sovereignty resides in the people, who act through the organs established by the Constitution...The Congress as the instrumentality of sovereignty is endowed with certain powers to be exerted on behalf of the people in the manner and with the effect the Constitution ordains. The Congress can't invoke the sovereign power of the people to override their will as thus expressed...

"We conclude that the joint resolution of Congress, 1933, insofar as it attempted to override the obligation created by the bond in suit, went beyond the congressional power."

This doctrine found its precedent in the Sinking Fund cases where Chief Justice Waite had stated: "The United States are as much bound by their contracts as are individuals. If they repudiate their obligations, it is as much repudiation, with all the wrong and reproach that term implies, as it would be if the repudiation had been a state or a municipality or a citizen...All this is indisputable."

Other cases have recognized this doctrine. However, these decisions aren't a definite answer to the constitutional question previously raised. Though there is nothing in the Constitution that says one Congress may not bind another, there have been cases where a subsequent Congress was held not to be bound by the acts of a previous Congress; to wit: Lynch v. United States, 292 U.S. 571, 579 (1934); North American Co. v. United States, 171 U.S. 110, 137 (1898) and United Shoe Machinery Co. v. United States, 258 U.S. 451, 463 (1921).

The conclusion to be drawn is that in the exercise of certain powers the Supreme Court has recognized that one Congress may bind another Congress, and in the exercise of other powers one Congress has been held not to have bound future Congresses.

The real question before us is then reduced to whether one Congress may bind another Congress through an exercise of the power to govern territory. The answer again is "Yes." When one Congress grants that power away by giving independence, all future Congresses are bound. Also when that power is granted away in part by granting statehood, all future Congresses are bound. Furthermore, when that power is partially restricted by incorporating a territory and thus extending the Constitution to the same, all future Congresses are bound. Therefore, the question is reduced even further to whether one Congress may bind another by granting part of the power away to an unincorporated territory and entering into a compact for governing the same.

To determine whether the territorial power under article IV, section 3 may be exercised by entering upon a binding compact, the construction put on the Constitution by the legislation enacted immediately following the adoption of the Constitution is entitled to great weight. In the case of Myers v. United States, 272 U.S. 52 (1926), the Supreme Court expressed itself as follows: "This Court has repeatedly laid down the principle that a contemporaneous legislative exposition of the Constitution when the founders of our government and framers of our Constitution were actively participating in public affairs, acquiesced in for a long term of years, fixes the construction to be given its provisions."

Many of the framers of the Constitution were also members of the Continental Congress. The Constitutional Convention began its work on the 25th of May 1787 and ended the 17th of September of the same year. While that Convention was in session, on July 13, 1787, the Continental Congress passed the Northwest Ordinance. Many of the framers of the Constitution were among the components of the first Congress to convene after the Constitution was ratified, and again these men re-enacted the Northwest Ordinance.

That ordinance contained a binding compact executed in the exercise of precisely the territorial power.

Section 14 of the ordinance stipulated: "It is hereby ordained and declared, by the authority aforesaid, that the following articles shall be considered as articles of compact, between the original States and the people and States in the said territory, and forever remain unalterable, unless by common consent."

In 1833, Joseph Story, who wrote the first treatise on the U. S. Constitution, expressed that the Ordinance of 1787 restrained the powers of Congress: "The power of Congress over the public territory is clearly exclusive and universal; and their legislation is subject to no control, but is absolute and unlimited, unless so far as it is affected by stipulations in the cessions, or by the ordinance of 1787, under which any part of it has been settled." 2 Story "On the Constitution," paragraph 1328 (1891 ed., p. 206).

Justice Baldwin concurring in the case of Pollard's Heirs, 14 Pet. 353, 417, 10 Law Ed. 490, 521 (1840), stated the ordinance as a compact, forever inviolable unless by common consent, "the most solemn of all engagements," became a part of the Constitution of the United States under the sixth article of the Constitution.

Under Justice Baldwin's opinion to argue that a binding compact affecting the territorial power of Congress is unconstitutional, is to argue that the Constitution itself is unconstitutional.

In another contemporary reading of the U.S. Constitution, Justice Catron, concurring in the case of Mayor of the City of Mobile v. Eslava, 16 Peters 234, (1842), expressed himself thus: "Whilst territories, the people inhabiting the countries now composing the new States were subject to the will of Congress, unrestrained further than restrictions were imposed by the federal Constitution and by compact, where the lands had been ceded by an original State, or by treaty, when acquired from a foreign nation..."

These precedents from the formative years of the United States bear out conclusively and beyond doubt that the power granted to Congress to govern territories under Article IV, Section 3 of the U.S. Constitution may be limited and retrained under a compact with the people of a territory. The people of the United States exercised their sovereign will through Congress by vesting the powers of self-government to the people of Puerto Rico under the compact by which commonwealth was established. This act of sovereignty is irrevocable and can't be undone because all future Congresses were bound by this disposition just as they are when new states are admitted to the Union or independence is given to a territory.