

The fruit of the poisonous tree

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When the White House Report on the Status of Puerto Rico came out, I wrote in these pages a column titled “A report that will live in infamy.” In that column I denounced the report as “so partisan, biased, superficial and ill-founded that it does a grave disservice to the United States and Puerto Rico.” The purpose of the report sought from the Republican White House by our Republican Resident Commissioner Luis Fortuño was to disqualify Commonwealth as a legitimate alternative for Puerto Rico’s political destiny.

It went about doing this by exposing the specious partisan argument of the Puerto Rican statehood and independence leadership, that Commonwealth is a colony because we are under the plenary powers of the Congress under the territorial clause. I pointed out in that column that this argument flies in the face of decisions of the Supreme Court of the United States that clearly state that Commonwealth is a sovereign entity just as the States of the union are sovereign entities. *Calero-Toledo v. Pearson Yacht Leasing*, 416 U.S. 663 (1974); *Examining Bd. of Engineers, Architects & Surveyors v. Flores de Otero*, 426 U.S. 572 (1976); *Rodríguez v. Popular Democratic Party*, 457 U.S. 1 (1982).

The difference between the Commonwealth and the States is that our compact of union is the Federal Relations Act while in the case of the States the compact of union is the Constitution of the United States. While this difference accounts for the fact that we have no federal taxation and thus no representation at the federal level, this does not detract from the quantum of sovereignty allotted to the government of Puerto Rico by our Constitution. Time and again, it has been decided that this sovereignty is equal to that of the States of the union.

When the infamous White House Report states Congress can do away with the government of the Commonwealth because we are under the plenary power of Congress, it blatantly ignores normative expressions such as that made by the U.S. Supreme Court in *Examining Bd. of Engineers*, supra, where the court stated, “Congress relinquished its control over the organization of the local affairs of the island and granted Puerto Rico a measure of autonomy comparable to that of the States.”

To relinquish is “to renounce or surrender a possession or right.” This is what the Supreme Court has said Congress did with its plenary power over Puerto Rico when Congress entered into the compact with Puerto Rico. But relinquishing the plenary power does not mean all powers over Puerto Rico were renounced. This is made quite clear in the compact, for Section 9 of the Federal Relations Act, which states federal laws will continue to apply to Puerto Rico but they apply in the same manner as they do in the States of the union not in the plenary fashion as they did when, under the Jones Act, Puerto Rico was under the plenary powers of Congress.

Relinquishing Congress' plenary power over Puerto Rico was essential so the people of Puerto Rico could exercise their natural right to govern themselves under their own constitution. In order for us to exercise our right to govern ourselves, Congress had to renounce its rights to govern us to the extent that we were to govern ourselves. This is how the new political relationship, which the United Nations approved as noncolonial came to be. But, although the Commonwealth had sufficient attributes to make it a noncolonial relationship according to the U.N., the compact had a democratic deficit because federal laws apply to us without our being represented in the U.S. government that approves them.

Attending to this democratic deficit through the transfer of some federal powers to the Commonwealth and devising some creative way to validate the exercise of the remaining powers in the federal government to attain a more perfect union, is what the development of Commonwealth is about.

There is nothing in the U.S. Constitution that prohibits Congress from responding to the desires of the people of Puerto Rico to bring about a more perfect union in this manner. This is why the political report, which our resident commissioner secured from the White House, is so offensive. The offense is to the dignity of the people of Puerto Rico who entered into the compact with Congress before the eyes of the whole world and sanctioned by the United Nations. The people have a right through a majority vote to propose modifications to that compact to make Commonwealth their definitive political status.

The infamous report wants Congress to deny the people of Puerto Rico the right to choose for their future Commonwealth as the Supreme Court of the U.S. says it is. Following this report, the House Committee on Resources, with jurisdiction over insular affairs, approved two weeks ago, H.R. 900, a bill presented by Fortuño. This bill would do exactly what the report wants with regard to disqualifying Commonwealth from a future plebiscite in Puerto Rico. This bill is the fruit of the poisonous tree.

It tramples upon our right to vote by requiring us to choose between these two options:

1. Puerto Rico should continue to have its present form of territorial status and relationship with the U.S. If you agree, mark here _____.
2. Puerto Rico should pursue a constitutionally viable, permanent, nonterritorial status. If you agree, mark here _____.

Since those of us who favor Commonwealth believe that under our Constitution and, through our compact, our present form of government is not a form of territorial status, we have no place to vote on this ballot. This means that about half the people of Puerto Rico will not be able to vote in the referendum; that the alternative of pursuing a constitutionally viable permanent nonterritorial status will win and that since Commonwealth does not qualify as such a status, statehood will win in a future plebiscite.

Now, this bill is going nowhere in Congress and everybody knows that. But the very fact that the approval of the bill was an exercise in futility is in itself offensive and a sign of disrespect by Fortuño and the committee to the Puerto Rican people. The bill was approved by the committee not really to set policy in a

serious way but rather to appease one of its members, Fortuño, who needed to show some status results from Congress in his primary battle with former Gov. Pedro Rosselló.

The disrespect for the people of Puerto Rico inherent in this crude political play is profound. Congress is fully aware of the pervasive interest on the island with regard to our political status and to the exercise of our right to self-determination. This is an issue that pertains to the dignity of our people, to our self-esteem and to the esteem in which we are held before the American people and before all peoples of the world. It is not an issue to play politics with in Congress. Our people deserve greater respect than that shown to us by Fortuño and his colleagues in the committee two weeks ago.

The Republican White House planted the poisonous tree and now we are reaping its fruits.

