

## **Politization, the compact and recovery**

By : RAFAEL HERNANDEZ COLON

Volume: 37 | No: 37

Page : 21

Issued : 09/17/2009

Politization bears heavily on this island. It is a disposition of the mind that filters reality through a partisan or ideological prism prioritizing political goals and distorting objectivity. When reality can't be perceived, and people function in the surreal world of their ideological preferences or prejudices, finding the answers to complex problems such as those that beset Puerto Rico becomes virtually impossible.

In developing government policy, the starting point is the rule of law. What law? It is the legal order that stems from the constitutional relationship structured between the people of Puerto Rico and the U.S. Congress in 1952. The terms of this relationship were arrived at to provide us with self-government, to promote development of our economy, to foster social justice and maintain our culture within the context of federal relations suitable to that end.

These terms were embodied in a compact that is clearly established in Congressional Laws 600 of 1950 and 447 of 1952, in our Constitution and in the Federal Relations Act. You can't lift our Commonwealth from the morass it finds itself if you deny the validity or the existence of the legal order under which it exists, if you are unwilling to use the tools it provides or, much less, if you are at war with it and take every opportunity to torpedo its legitimacy.

Politization has led some in the New Progressive Party leadership to claim the compact is a big lie. This is the height of politicization. The accusation isn't that Muñoz Marín, myself or others lied to the people of Puerto Rico about the compact. It is that the compact itself is a big lie. If this is so, then who are the liars? Congressional laws 600 of 1950 and 447 of 1952 proposing and ratifying the compact, the ballots of the people of Puerto Rico accepting the compact by approving Law 600 and our Constitution? Resolution 748 of the General Assembly of the United Nations recognizing the compact as ushering in self-government for Puerto Rico? Or was it President Truman? Or President Eisenhower? These were the parties who established the compact and proclaimed its legitimacy before the society of nations. Were they all liars? Is the U.S. Supreme Court also a liar when it says the Commonwealth is like a state of the union, sovereign over matters not ruled by the U.S. Constitution?

Let us look more closely at some recent arguments advanced to prove the compact is a lie.

That the laws of Congress apply to Puerto Rico; this is argument No. 1. It ascribes to the compact the proposition that the laws of Congress don't apply to Puerto Rico and, given that premise, it points to their application as proving the compact is a big lie. This is a typical politicized concoction. It has no basis in reality. The Federal Relations Act, which is part of the compact approved by the people of Puerto Rico in referenda, expressly provides in Section 9 that federal laws will apply in Puerto Rico. So, the fact they

apply, instead of proving the compact is a lie, proves the contrary, that the compact is real and the laws apply because the compact so provides.

The second argument advanced to prove the compact is a big lie is that we don't enjoy tax autonomy because Congress did away with Section 936 and can do away with Section 901. This argument engages in the same misconception of reality as the previous one.

The Federal Relations Act exempts the residents of Puerto Rico from federal taxation. This includes individuals and corporations. So, if we grant tax exemption to a U.S. corporation's subsidiary chartered under the laws of the Commonwealth, this subsidiary won't pay federal taxes on its income from its operations in Puerto Rico while its profits remain in Puerto Rico. This is the extent of our tax autonomy under the compact.

Sections 936 and 901 are provisions of the Federal Tax Code. They aren't provisions of the Federal Relations Act. They attend to federal taxation of the repatriation of profits of U.S. corporations doing business outside the U.S. They aren't part of the compact. Section 936 didn't even exist when the compact was entered into. It was an important tool of economic development for the Commonwealth, constitutionally unavailable if Puerto Rico were a state, but it wasn't anchored in the compact. Its demise handicapped Commonwealth, but wasn't an infringement of the compact.

The third proposition, that Puerto Rico had full authority to control minimum wages and the federal minimum wages couldn't be put into effect in Puerto Rico without our express consent is another false representation of reality. No Commonwealth leader has ever made this claim. The true historical fact is that from the beginnings of Commonwealth, the Congress regulated minimum wages in Puerto Rico. It didn't do so by applying the same minimum wage as it did in the States because the average wage in Puerto Rico is much lower than that of the States. It exercised its authority to fix the minimum wage in interstate operations by using special committees, called industry committees, with the participation of labor. These committees studied the different sectors of our economy and fixed the highest possible wages for the particular sectors. Commonwealth leaders favored this method but never denied the authority of Congress to fix the minimum wage in interstate transactions. In their quest to eliminate differential treatment to Puerto Rico, the statehooders managed to eliminate this system tailored to the needs of our economy and brought in the stateside minimum. While this benefited many working Puerto Ricans, it contributed significantly to our unemployment rate and to our abysmally low rate of participation in the labor force by making a good number of industries not viable on the island.

The fourth proposition is that the compact is a lie because we are neither a state, nor free, nor associated with the U.S., that what we are is a territory. To sustain this argument, the statehood leaders have to ignore a whole line of decisions by the U.S. Supreme Court beginning with *Calero Toledo v. Pearson Yacht* back in the 1970s. They cling to *Harris a per curiam*, decided in 1980, which focused on the flexibility of congressional power to tailor specific policies to the Commonwealth, but didn't go into the binding nature of the compact nor the constitutional nature of Commonwealth.

The flexibility of congressional power in the federal sphere of action is precisely what allowed Congress to exempt Puerto Rico from federal taxation in the compact. The cases decided by the court after Harris, such as *Rodríguez v. Popular Party* decided in 1982, clearly bear out that the sovereign, and not territorial, nature of the Commonwealth is the law of the land.

The fifth proposition to prove the compact is a lie is a statement presumably attributed to Commonwealth leaders that says if we want to be a state, we will no longer be allowed to use Spanish as an official language. Whether this will be true someday remains to be seen. But that isn't the point now.

The point is that the first four arguments advanced to prove the compact is a big lie, although based on misconceptions of the truth, at least bear some sort of relationship with the proposition. The fifth argument, however, is way out in left field. How in the world is the question of language and statehood related to the compact? How does this prove the compact is a lie? This is beyond my comprehension.

The politicized mind rewrites history to suit its purposes, refuses to accept what is written in the law and distorts reality to give comfort to its convictions. There is no need for this. Statehood doesn't have to be promoted on concocted arguments or Commonwealth bashing. We are all losers through this approach.

Commonwealth is our reality; demeaning it or denying its possibilities leaves us with fewer tools with which to confront our situation. Minds imprisoned by the prism of politization won't be the makers of policies to get this country moving again.