

TESTIMONY OF THE HONORABLE RAFAEL HERNANDEZ COLON  
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BEFORE THE AD HOC ADVISORY GROUP ON PUERTO RICO

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The appointment of this Ad Hoc Advisory Group by President Nixon and myself is the latest in a series of steps towards the development of Commonwealth status initiated by President Kennedy and Governor Muñoz Marín in an exchange of letters which took place on July 25, 1962. That exchange which opened the question of further developing Commonwealth led to the creation of the Status Commission by Congress. The Commission recommended that a plebiscite should be held in Puerto Rico to determine whether the Puerto Rican people favored statehood, independence or developing the Commonwealth status. The people of Puerto Rico chose the latter, and thereupon the report of the Status Commission recommended that the President of the United States and the Governor of Puerto Rico appoint an Ad Hoc Advisory group or groups to study and recommend to the Congress of the United States and to the Legislature of Puerto Rico specific areas for Commonwealth development.

The Charter of this Committee directs it to examine the question of the application of federal laws to Puerto Rico. Involving, as it does, the fundamental issue of distribution of power, authority, and responsibility between the United States and Puerto Rico, this agenda goes to the very core of the question of Commonwealth development.

THE MEANING AND MODEL OF COMMONWEALTH

Before entering into my specific proposals for reforms, I would like to try to put the Commonwealth experience shared by Puerto Rico and the United States in its broadest possible perspective.

We are passing through a moment of history when many international institutions and relations are being severely strained, when even great nations are wondering how they can solve their complex, inter-related problems. Looking at this world-wide disarray, and the search for new formulas, I believe we can now see that our unique Commonwealth experience in interdependence was many decades ahead of its time when it was launched in 1952. Shortly thereafter, Chief Justice Earl Warren described it as, "perhaps the most notable of American political experiments of our lifetime." Today, this experiment and its subsequent success have become highly relevant to the larger canvas of world affairs.

The entire concept of interdependence now has an urgent reality for the world as a whole. Until a year ago, interdependence was largely a principle to which nations paid lip service, but to which they devoted little concrete action. It has taken the recent world-wide energy crisis to bring home dramatically to all nations that interdependence is now a transcendent fact, which they can ignore in the future only at their peril.

Despite the growing awareness of most nations, however, their attitudes and mechanisms for coping with this major new fact of history still lag far behind the needs and the realities.

A notable exception to this has been the relationship between the United States and Puerto Rico. In a world-wide context, it is now increasingly clear that our Commonwealth relationship has been fully as important and as advanced as the pioneering of the European Common Market. The basic principle of interdependence underlies both. And while the European Economic Community is the example of how highly developed, sophisticated nations of approximately equal weight can contribute to their own well-being through interdependence, the United States and Puerto Rico have shown that it is equally possible to evolve successful interdependence between a great, wealthy continental power and a small island community -- interdependence in which the self-determination, the interests, and the dignity of both partners are observed.

A well-known Spanish scholar Julián Marías, recently looked at the Puerto Rico-U. S. experience from the outside in a broad, international perspective, and concluded:

" Puerto Rico has created, in the reality and doctrine of the Commonwealth, one of the most original and fruitful social-political formulas of our epoch. . . Who would suspect that in a tiny island in the Caribbean has been hammered out a concept of universal range and of the greatest contemporaneousness? "

On the economic side, the success of the Commonwealth has been dramatic, and the mutual economic benefit has proved to be enormous. Puerto Rico's per capita income has soared from \$373 in 1952 to \$1,834 in 1973. And the United States, on its side, has seen its sales to Puerto Rico rise to over \$2.5 billion yearly --an amount greater than its exports to all but four major countries: Canada, Japan, Great Britain and West Germany. These are large, populous and prosperous countries. But close behind West Germany's 60 million people and Great Britain's 56 million, the 2,800,000 people of Puerto Rico are the next most important customers in the world for U. S. products. We buy notably more from the United States than the 52 million people of France, the 55 million of Italy, or the 100 million of Brazil. In other words, the economic benefits of Commonwealth have by no means been a one-way street --both partners have benefited.

How did this come about?

It came about at the end of World War II, when it was clear that all colonial relationships were outmoded, and that the principle of self-determination had to be the measure of all existing political relationships among the peoples of the world. Almost all the former colonies made the plunge directly from colonial dependence to separate nationhood, casting off both the good and the bad of relations with their former colonial masters, often in disregard of important mutual interests built up over many decades or even centuries.

Puerto Rico took a different course, though it felt equally strongly about the need for self-determination, it felt it could best find freedom through a new form of association. Commonwealth sprouted as an experiment in structuring this form of freedom.

Since the time when the Commonwealth "experiment" began, we have had two decades of pragmatic experience, two decades of much struggle and considerable success, two decades of trial and error to achieve that success, and two decades in which to detect empirically those parts of our mutual relationship which are still insufficient, or are inappropriate or self-contradictory, or require modification.

This Committee was chartered to make recommendations to implement the desires of the people of Puerto Rico and to review their existing relationship with the United States, so that they may exercise a maximum of self-government within the Commonwealth concept.

#### BASIC PREMISES

For the work of this Committee to be fruitful there are certain basic premises that must guide its deliberations. It is fundamental that this Committee should recognize clearly:

- 1) That, although citizens of the United States, the Puerto Ricans collectively are a people recognized as such by the United States.
- 2) That the people of Puerto Rico have, and the United States recognizes that they have, the right to self-determination.

- 3) That the Puerto Rican people in the exercise of their right of free determination have expressed their wish to be permanently associated with the United States as a Commonwealth.
- 4) That in the further exercise of this right the Puerto Rican people have expressed their desire for a maximum of self-government.
- 5) That maximum self-government may be achieved both by expanding the powers of the government of Puerto Rico and granting participation in those powers to be exercised by the federal government.
- 6) That the Commonwealth relationship is a fresh and creative concept within American constitutional law and there are few constitutional limitations on its development to maximum self-government.
- 7) That Commonwealth relationship is premised by Congress and Puerto Rico on the principle of consent of the governed.
- 8) That commitment to the principle of government by the consent of the governed demands that authority be exercised with the participation of the governed.
- 9) That Puerto Rico does not aspire to be a state and therefore it can not ever be granted such participation through electing senators or representatives.

10) That Puerto Rico does not aspire to be independent and, therefore, federal authority over certain parts of Puerto Rican life will always exist.

11) That to answer the needs of the people of Puerto Rico for greater self-government, a new and creative manner must be structured whereby the people of Puerto Rico may fully determine or adequately participate in the decisions affecting their lives, their well-being and their dignity.

Self-determination, self-government, and government by the consent of the governed are democratic values inspired by the basic principle of political freedom. They lie at the basis of Commonwealth, a political creation addressed to the problems of colonialism, which is the negation of the liberty of man.

In the development of a new political institution these concepts were planted as seeds some years ago. They have sprouted and grown, and the flowers are budding. The people of Puerto Rico have given us a mandate to bring the flower of self-government into full bloom. That is our task, and we must meet it with creativity as well as maturity.

Perhaps, the basic problem which some members of Congress and others have had from time to time in wrestling with Commonwealth is the unique character of this concept. To understand the unfamiliar --Commonwealth-- they sometimes tend to resort to the familiar --Statehood. Any such comparison hinders understanding and limits creativity.



Commonwealth is a political relationship between Puerto Rico and the United States which is unique in its constitutional features and very different from Statehood. The federation of States responds to the needs of government of a country which is close-knit, and culturally homogeneous, however vast. Commonwealth responds to the needs of government of two peoples with profound cultural diversity, but with common basic values and fundamental objectives.

It is most critical to the work of this Committee that these basic and deep conceptual differences be kept constantly in mind.

#### PERMANENT UNION AND MAXIMUM SELF-GOVERNMENT

Commonwealth status is the combination of permanent union with maximum self-government.

I discussed this subject at length in my Constitution Day speech on July 25th of last year, and I would like to share with you some of the thoughts I expressed on that day.

I then pointed out that "permanent union" is not simply an abstract legal or political concept. Rather, it is the living, pulsating reality of our daily existence. Our union is made up of: the tight bonds that have been woven between the two peoples over almost eight decades of political association; the countless commercial and financial transactions that comprise the huge U. S. - P. R. commerce, and dealings occurring every day between the Island and the mainland; the participation and earned rights of Puerto Ricans in national programs such as social security and veteran programs; the reality of the almost two million Puerto Ricans who make their home in the continental United States, and the constant and growing circular movement of

hundreds of Puerto Ricans going daily to the United States and returning to the Island; the thousands of continental Americans who have settled and married in Puerto Rico and the hundreds of thousands who periodically visit our shores; the discharge of citizenship obligations to the federal government by fighting with distinction in every war in which the United States has participated in this century; the basing of operations of the different armed services to suit strategic requirements of the United States; the shared beliefs, values and ideals, in particular our mutual fight for liberty, the essential equality and dignity of human beings and our common dedication to political democracy.

Of all the ties between Puerto Rico and the United States, the deepest and most fundamental is our common citizenship. With great farsightedness it was conceived when granted as the basis on which a solid union could be achieved between the people of Puerto Rico and the United States untrammelled, by the structures inherent in the federal union devised by the Constitution. Historically, this was the policy pursued by the Federal government when citizenship was first recommended for Puerto Rico. From the very beginning in 1898, the relationship was a new departure in the creative American system -- and it has been kept so both before and after citizenship.

President Taft initiated the proposal to grant citizenship to Puerto Ricans **I**n his Annual Message to Congress of December 6, 1912.

The relevant part

reads as follows:

"The failure thus far to grant American citizenship continues to be the only ground of dissatisfaction. The bill conferring such citizenship has passed the House of Representatives and is now awaiting the action of the Senate. I am heartily in favor of the passage of this bill. I believe that the demand for citizenship is just, and that it is amply earned by sustained loyalty on the part of the inhabitants of the island. But it should be remembered that the demand must be, and in the minds of most Porto Ricans is, entirely desassociated from any thought of statehood. I believe that no substantial approved public opinion in the United States or in Porto Rico contemplates statehood for the island as the ultimate form of relations between us. I believe that the aim to be striven for is the fullest possible allowance of legal and fiscal self-government, with American citizenship as the bond between us; in other words, a relation analogous to the present relation between Great Britain and such self-governing colonies as Canada and Australia. This would conduce to the fullest and most self-sustaining development of Porto Rico, while at the same time it would grant her the economic and political benefits of being under the American flag. \*

\*The House of Representatives Report (62nd Congress, 2nd Session, Report 341 accompanying H. R. 20048) dated February 20, 1912, recommending the citizenship bill for Puerto Rico which the House passed, quoted extensively from the then last Annual Report from the Secretary of War (The Department of War then had responsibility for Puerto Rican affairs.) The following passages are of particular interest. Said Secretary Stimson:

"I think the time is arriving, if it has not already arrived, when it is the part of honest and farsighted statesmanship frankly to declare our position as to the ultimate interrelation between the United States and Porto Rico so far as it is possible to do so without unduly hampering the future in wisely dealing with this problem. The connection between Porto Rico and the United States is permanent and has been from the beginning regarded as permanent. There is every reason, therefore, why the thought and habits of the people of both countries should as soon as possible begin to shape themselves toward the assumption of their final civil relationship. I am of the opinion that the aim to be striven for is the fullest possible allowance of local and fiscal self-government, with American citizenship as the bond between us, in other words, a relationship analogous to the present relation between England and her over-seas self-governing territory".

Citizenship, which has constitutional permanency, since granted in 1917, has been the strongest among the many threads in the fabric which links the United States and Puerto Rico. And it is precisely the strength and resilience of this vital fabric which makes possible the further development of local, self-government in Puerto Rico with no jeopardy whatsoever to the permanence and solidity of association between Puerto Rico and the United States.

In other words, there is no threat to our union from the realization of the desires of the people of Puerto Rico for a greater share of governmental power, as expressed through free and open democratic processes.

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Secretary Stimson's legal adviser on these matters (i. e. The Law Officer of the Bureau of Insular Affairs of the Department of War) was a young chap out of Harvard Law School named Felix Frankfurter. In a memorandum to Stimson in 1914, he described the then-proposed grant of citizenship as a means of recognizing the permanence of the relationship between the United States and Puerto Rico, which would remove, "the great source of political unrest on the Island", and give Puerto Ricans, "a securer technical international standing".

There are those who hold that permanent union means the degree of authority which the federal government exercises over Puerto Rico. According to them, the more authority the federal government has, and the less self-government Puerto Rico has, the more permanent is the union.

The fallacy of this theory is obvious. Modern world history could not demonstrate more clearly that permanent political relations cannot be based on domination of one side over the other.

On the other hand, the Puerto Rican experience shows that the willingness of the United States over the years to listen and respond to the legitimate aspirations of the people of Puerto Rico for expanding self-government has produced a strong and enduring union. As I stated on Constitution Day last year, our history demonstrates that as the people of Puerto Rico have acquired greater self-government and greater freedom to direct their own affairs, their union with the United States of America has gained greater strength. The truth is that the union is stronger today than ever before.

Permanent union is not at issue, and we can therefore concentrate on the development of Commonwealth without any worry on this score.

Now to some specifics.

#### FEDERAL REGULATORY LAWS: THE NEED FOR REFORM

Literally thousands upon thousands of federal statutes and regulations are in-force in the United States today, and almost all of this vast body of federal law applies to the Commonwealth of

Puerto Rico in the same manner as it applies to the States.

The exceptions, which are few in number, are those specific exemptions contained in the Puerto Rico Federal Relations Act and a handful of federal laws which, by their own terms, are not extended to the Island or apply here differently than in the States.

This situation is consistent with the Commonwealth status as it has developed until now. In accepting Public Law 81-600, the people of Puerto Rico agreed to Section 9 of the Federal Relations Act, which provides that, "The statutory laws of the United States not locally inapplicable . . . shall have the same force and effect in Puerto Rico as in the United States. . ." They also accepted Section 58 which ratified existing federal laws not inconsistent with the creation of the Commonwealth.

Nevertheless, actual experience over the past two decades has led to a growing discontent with the reach and impact of federal laws and with the processes by which they are extended to the Island. The reasons for this discontent are real and substantial.

First, for reasons of basic principle, a society which strongly believes in democracy, as does Puerto Rico, must have meaningful participation in the basic decisions which affect it.

Second, many years of pragmatic experience have shown that this lack of adequate participation in Congressional decisions frequently produces federal policies which, while beneficial to the mainland, are inadvertently detrimental to the best interests of the people of Puerto Rico. Congress will occasionally take into account

the necessity for variances in its policies to deal with the special circumstances of Puerto Rico, as in the case of the special wage committee for Puerto Rico authorized by the Fair Labor Standards Act. Ordinarily, however, Congress does not focus on the question of whether its laws will work well in Puerto Rico, and with its multiple responsibilities, this is quite understandable. As a result, we often find ourselves limited in our ability to resolve the many serious social and economic problems of Puerto Rico, because of federal policies which respond to the quite different social and economic realities of the continent.

Third, the mandate of the people of Puerto Rico expressed in the plebiscite vote of 1967 is to develop Commonwealth to a maximum of self-government within the framework of our permanent association with the United States. The difficulty in carrying out this mandate lies in securing agreement on what particular activities are properly a matter of sole Commonwealth concern, which activities are solely of federal concern, and which areas are suitable for joint responsibility.

The evolution of United States constitutional doctrine during this century has weighed heavily in favor of Federal power vis-a-vis State authority. In its regulatory activities, where the United States Congress can point to any connection with interstate commerce, however remote, its legislation will be judicially upheld.

Under its sweeping Commerce Clause powers Congress has erected a vast network of Federal laws which have been automatically extended to Puerto Rico without an independent examination of the question whether, with respect to geographically remote Puerto Rico, there is a substantial federal interest in extending the particular federal law to the Island.

We maintain, however, that our claims for autonomy must be judged within the context of the Commonwealth-United States relationship, and not within the context and principles of the Federal-State relationship. One great merit of Commonwealth is that there is no constitutional compulsion on Congress to legislate for Puerto Rico as it does for the States, and that in its determination of the interstate effects of the particular activity being regulated, Congress is free to exercise an independent judgment with respect to Puerto Rico.

Development of the central political concept on which Commonwealth is based --autonomy, the power and right to govern ourselves in matters which are of principal concern only to us-- will depend in large part on our success in asserting local control over matters fundamentally local in nature.

I would like to offer some examples of specific federal laws to illustrate this important point:

There are numerous federal statutes which have been enacted by Congress under its Commerce Clause powers and extended to Puerto Rico without an adequate examination as to whether the activities regulated in Puerto Rico have more than a minimal impact in



the continental United States.

The federal environmental laws, such as the Clean Air and the Water Pollution Control Acts, are a good example. I firmly support the goals of these laws; and the agencies implementing them are doing a fine job, but, in fact, we in Puerto Rico have legislated in the environmental field almost as extensively as the federal government. I fail to see the substantial impact which the air and water of Puerto Rico can possibly have in the continental United States. The need for federal intervention in the States is clear, given the interstate nature of environmental problems. In Puerto Rico, however, separated from the United States by a thousand miles of ocean, there is no clear federal interest in exerting jurisdiction.

Before proceeding to other examples, I would like to stress, as emphatically as possible, that our request for exclusive jurisdiction in fields such as environmental protection is not based on any desire, on our part, to slacken the attack on pollutants. Within the necessities of continued economic development and the constraints of limited financial and technological resources, we are as committed to the preservation and enhancement of our environment as is the federal government. The important point is that the redistribution of jurisdiction between the United States and Puerto Rico cannot and should not be based on the abilities of the two jurisdictions to do a particular job. Rather, it should be built on the distribution of power and authority between two political bodies based on agreed-

upon principles of association. Once it is determined that a particular area is properly a matter of Commonwealth concern with insubstantial impact in the continental United States, the kind of activity taking place in Puerto Rico should cease to be a matter of concern to the latter jurisdiction.

Another example involves the field of communications. Of what interest is it to the people residing in the continental United States that television, radio, and radio-phone in Puerto Rico be regulated by the Federal Communications Commission? I suggest that FCC jurisdiction in Puerto Rico, apart from international communications, is presently inconsistent with the Commonwealth status of Puerto Rico.

In the category of federal laws which run counter to the concept of Commonwealth autonomy I would also place by way of example the various federal plant and animal protection safety laws, such as the Wholesome Meat Act, the Wholesome Poultry Products Act, the Egg Products Inspection Act, the Environmental Pesticide Control Act, and the extension of the Occupational Safety and Health Act to Puerto Rico in 1972.

There are, however, federal laws in areas where there is clear justification for federal jurisdiction because of the economic and social inter-relationship of the Island and the United States. Nevertheless, either because Puerto Rico has not adequately participated in the formulation of these laws, or because it is felt that these laws have particularly harmful effects on the Island,

or because these federal activities are believed to duplicate, confuse, or conflict with the activities of Commonwealth agencies in the same field, it is felt by large segments of our people that they are unjust or unwise.

I refer to the following laws, all of which are on your work agenda: federal labor laws, such as the Taft-Hartley Act and the Fair Labor Standards Act; the Immigration and Nationality Act; the various federal shipping laws; and federal trade and tariff enactments.

I will not attempt to specify the adverse impact of these laws, nor offer specific solutions with respect to each of them. You will hear the testimony today of the heads of Commonwealth agencies concerning the problems posed for Puerto Rico by these and the other laws to which I have referred. They may have specific suggestions as to desirable solutions.

However, I would like to impress upon this Ad Hoc Advisory Group the desirability of exploring, in each case, the full range of special arrangements possible under our unique Commonwealth status. These include the following possible solutions:

1. Conferral of exclusive jurisdiction to Puerto Rico.
2. Incorporation of special extension agreements between Congress and Puerto Rico in the compact.
3. Delegation of rule-making and/or administrative responsibilities to Puerto Rico subject to the federal standards contained in the law.

4. Provision of special participation or consultation with Puerto Rico in the federal executive branch implementation of the law, such as participation on trade and tariff committees or consultation on matters of defense.
5. Modifications of the laws to make them work better and more justly in Puerto Rico.
6. Establishment of joint bodies and commissions, as in the case of the wage review committees.

#### THE GENERAL PRINCIPLES OF APPLICABILITY OF FEDERAL LAW

Now comes the more difficult job of formulating general principles and adequate procedures for prospective application of federal laws in general to Puerto Rico.

I first propose to the Committee that it recommend a total revision of Section 9 of the Federal Relations Act, so as to establish new basic principles governing the extension of federal laws to the Island.

The reformulated Section 9 should contain as clear a statement as possible of the fundamental policies on the applicability of federal laws.

The presumption presently in Section 9 that the statutory laws of the United States extend automatically to Puerto Rico should be reversed. The presumption should be that unless Congress expressly extends a law to the Island, by specifically extending its applicability to Puerto Rico, it is understood that Puerto Rico is not covered. This

will avoid inadvertent inclusion of Puerto Rico in legislation which should not be applicable according to the principles of association. It may also induce Congress to focus, to a greater extent than it presently does, on the question of whether a particular law should apply to Puerto Rico, and, if so, whether special modifications for Puerto Rico are advisable.

#### PARTICIPATION IN FEDERAL DECISION-MAKING

The establishment of basic principles of association concerning the applicability of federal laws will be a useless gesture, unless accompanied by adequate procedures to insure their consistent application to specific pieces of federal legislation, and to insure a meaningful participation by the people of Puerto Rico in the law-making process.

The matter of participation raises both a question of principle and a practical question. The principle is, of course, the right of people to have an effective voice in decisions affecting their lives. The practical question is how to devise procedures which are functionally feasible given the volume and complexities of congressional operations.

I have previously suggested several alternatives for practical participation in specific legislative or executive matters. But a general catch-all mechanism is necessary as a complement to fully satisfy the principle of government by specific consent.

It may be that representation via a Resident Commissioner is the only viable solution to deal with general participation. His is a very difficult job, however. For one man and one staff to deal with the tens of thousands of legislative proposals introduced in each

session of Congress is a monumental task. Yet, to achieve unity of purpose in representing Puerto Rico, there should be only one Resident Commissioner.

A clear charter of basic agreements between the Federal government and Puerto Rico concerning the principles of applicability of federal law to the Island, such as I have recommended, would be a necessary first step to make representation by the Commissioner more effective. Federal laws specifically applied to Puerto Rico would continue to apply as legislated by Congress except those laws subject to the previously suggested special participatory mechanisms.

However, the principle of government by the consent of the governed requires an additional means whereby real power is vested in the people of Puerto Rico in order to make effective their opposition to a particular bill which the Congress has extended to Puerto Rico.

Given the fact that we are dealing with a question of principle, rather than one of practicality, the mechanism to provide this participation should be one that would be used only in the most serious and gravest of situations. I submit to you that a plebiscite on Puerto Rican initiative, where the people themselves may directly voice their position, would be the proper instrument to be recommended by this Committee. This mechanism would solve the problem of principle required by the consent of the governed. The practicalities and mutual deferences of our relationship are such, however, that I would never expect the people of Puerto Rico to be put in such a position by Congress that

they would have to directly oppose a bill addressed specifically to them.

FEDERAL GRANTS-IN-AID

I would like now to turn to another area of critical importance to United States-Commonwealth relations, the participation of Puerto Rico in federal assistance programs.

It is fair to say that there is, at present, no consistent congressional policy with respect to federal financing of social and economic programs in the Commonwealth of Puerto Rico. This is only natural, since the hundreds of existing federal aid programs have themselves evolved in an ad hoc, piecemeal fashion. In most of these programs, Puerto Rico is treated as a state with the same eligibility and benefit standards. It is also subject to the same federal controls on the expenditure of these funds. In several of the largest assistance programs, however, Puerto Rico does not receive its equitable share.

The following table sets forth these programs, with their anticipated fiscal year 1975 expenditure level nationally and in Puerto Rico:

<u>Program</u>	<u>F. Y. Expenditure (Millions)</u>	
	<u>U. S.</u>	<u>P. R.</u>
Aid to Families with Dependent Children/Aid to Aged, Blind, Disabled.....	3,936	24
Supplemental Security Income Program.....	3,871	0
Medicaid.....	5,256	30
Social Services.....	2,000	2

<u>Program</u>	<u>F. Y. Expenditure (Millions)</u>	
	<u>U. S.</u>	<u>P. R.</u>
Educationally Deprived Children .....	1,900	27
Interstate Highways....	3,000	0
General Revenue-Sharing	<u>6,000</u>	<u>0</u>
Total:	25,963	83

The seven listed programs make up almost 50% of the total federal aid to state and local governments expected for the coming fiscal year. As can be seen from the table, Puerto Rico's participation in them is limited, by law, to .32% of the total. In other words, for every \$100 expended throughout the United States for these activities, thirty-two cents is spent in Puerto Rico. If the Island were to receive a share of these funds based only on its share of the total United States population (1.2%), its yearly assistance level for these seven programs would jump from \$83 million to \$311 million. Equal treatment for Puerto Rico, however, would mean considerably more, since all but one (Interstate Highways) of the listed programs provide proportionately greater assistance to the poorest and neediest states.

These differentials in federal financial treatment of Puerto Rico as compared to the states are usually justified by the fact that the Commonwealth is not covered by the federal internal revenue laws.

Without denying that the economic value of freedom from federal taxation should be taken into consideration in extending federal aid programs to Puerto Rico, I submit that it is wrong to draw a simple



equation between the payment or non-payment of federal taxes and the receipt of federal subsidies. Neither in theory nor in practice does such an equation exist. It is an elementary principle of public finance that one's payment of general taxes does not entitle one to any particular governmental benefits in return and, conversely, that the absence of payment of taxes does not disqualify one from governmental aid. Further, on a functional level the programs we are discussing make no attempt to equate State grants with federal revenues raised in that State. Through the federal tax system and the fund allocation procedures in these federal social programs, resources are deliberately shifted from the richer areas of the country to the poorer areas. This is true even with respect to the so-called "General Revenue-Sharing Program" which is not revenue-sharing at all, but rather federal block grants based, in part, on the relative needs of the participating states.

Thus, it would be wrong to say that because residents of Puerto Rico do not pay federal taxes they should not be entitled to receive federal financial assistance, whether you are talking generally or about a specific program.

However, the people of Puerto Rico, I am confident, have no desire to receive more than their fair share of federal financial aid.

In light of the above considerations, I would like to offer to the Advisory Group some new concepts as alternatives which it may wish to consider in its deliberations on the financial aspects of the United-States-Commonwealth statutory relations.

Approximately one fourth of the Commonwealth budget represents federal grants-in-aid. Most of these federal funds are earmarked for certain categorical purposes and are highly controlled by specific conditions in the federal law and regulations. In many cases, we have found that the federal priorities for these funds are not in accord with Commonwealth government priorities. The mainland needs to which these funds respond are not always the Island's most pressing needs. Since we can rarely, as a practical matter, refuse to accept these grants, and must usually match them with local funds, the end result, from our point of view, is a dislocation with regard to Commonwealth priorities. Also, the numerous conditions and controls placed upon the receipt of these funds often work against their most effective utilization in Puerto Rico.

There are dozens of such cases, but for now let me pose just one example to illustrate the nature of the problem. Puerto Rico has available to it some \$80 million in federal matching grants for the construction of waste water treatment facilities. Although a substantial proportion of the Island's population is not yet served by even primary sewage facilities, most of these federal dollars (and the 25% Commonwealth matching share) must be spent on secondary and tertiary treatment because that is the need in the continental United States. Also, less expensive treatments of waste waters, such as ocean outfalls, are not permissible, since these solutions are not feasible for the majority of the states; and the Federal Water Pollution Act, as presently drafted, offers no flexibility on the matter. Thus, we may find ourselves building overly expensive sewage facilities

in parts of the Island, where the degree of need is less, because the federal authorizing legislation, drafted against mainland needs and realities, does not offer planning and programming flexibility to the grant recipient.

We would, therefore, like to have considerably greater leeway in the expenditure of the funds we do receive. Our feeling is that we can make more effective use of this federal contribution if we are able to plan these funds locally, rather than having their priority-setting and planning done in advance in Washington.

This, then, is one of the alternatives which I propose. It would not be technically difficult to negotiate yearly a total federal grant to the Commonwealth and municipal governments, taking into account factors such as the economic value of freedom from federal taxation, the Commonwealth's optimum matching capabilities, past federal expenditures, Commonwealth tax efforts, economic growth in Puerto Rico, and socio-economic needs on the Island. The grants would then be made to the Commonwealth in block form, perhaps broken down into several general categories such as economic development, social welfare, education, health, etc. General plans would be submitted for each category with minimum federal review and monitoring. Similarly, yearly reports on progress achieved in each category could be rendered to the federal government as a basis for the negotiation of the subsequent year's grant.

I believe that such a system would make good sense both

for the federal government and for the Commonwealth. There is a growing realization that the federal grant-in-aid system needs a structural overhaul to make it workable. This realization is embodied in the principles of the "New Federalism," which aims to move greater decision-making power to those levels of government closest to the people. What I am proposing is simply the application of these new concepts to the Commonwealth of Puerto Rico, where they make even greater sense in view of the unique constitutional status of the Island and its equally unique cultural, economic and social characteristics.

Another approach, more modest in nature, toward rationalizing federal assistance payments to the Commonwealth government, would be to impose higher matching share burdens on the Commonwealth government as a trade-off for the greater Commonwealth taxing ability made possible by the inapplicability of federal internal revenue laws. As Puerto Rico makes progress in its economic base, its relative taxing ability becomes that much greater since income, profits and products in Puerto Rico are not subject to federal taxation, and we are increasingly more able to contribute to federal programs.

This proposal would make little sense, however, if the higher matching burden were to be combined with absolute limits on federal payments to Puerto Rico which do not apply to the states, as is the case in some of the major federal programs. Higher matching payment burdens for Puerto Rico, however, would provide a more equitable ceiling consisting of our budgetary constraints.

This approach would lead to more equitable levels of federal financing of certain Federal-Commonwealth programs and would eliminate budgetary and priority distortions which occur because of absolute and arbitrary ceilings on federal matching payments. It would not, however, offer the Commonwealth flexibility in the shaping of adequate programs for the Island. Nevertheless, the federal grant-in-aid system is moving rapidly toward greater flexibility for state and local governments in the planning and programming of federal dollars, and this national reform effort may eventually produce the desired solution.

I should make clear that my suggestions refer only to federal assistance programs that operate by means of subsidies to state and local governments. In those programs where the federal government's relationship with citizens is direct, such as Social Security and the new Supplemental Security Income Program, I believe the residents of Puerto Rico have every right to treatment equal to that of American citizens residing elsewhere. This is particularly true when benefits are based on prior contributions to the system; as is the case of the OASDI program.

#### THE INTERNATIONAL ROLE OF PUERTO RICO

I have already pointed out that interdependence is at the heart of the principle of free association which governs the relationship between Puerto Rico and the United States. Because we are conscious of our special relationship with the United States and also of our place in the community of Hispanic American peoples, we cannot afford to be

isolated from the rest of the world. We cannot stand aside from contemporary world currents and events, particularly where we can make a real contribution. We can, and should, contribute to multilateral efforts to promote understanding and friendship among peoples, especially in our own region and hemisphere. We have much to teach, and also a great deal to learn, about economic development.

Geographically, Puerto Rico belongs to the Caribbean. Culturally, it is a part of the community of Hispanic American peoples. Politically and economically, it is intimately associated with the United States. These three points of reference --and especially a political status of free association-- are the points of departure for defining Puerto Rico's place in the world and its relationships with other countries and with international organizations.

While under the Commonwealth relationship the broad range of foreign affairs is a matter of federal concern, nonetheless, there is ample room for Commonwealth initiative.

Puerto Rico has a role to play in the Caribbean and a need to enter into government-to-government relationships with other countries such as Venezuela, in order to resolve effectively its needs, such as its energy requirements.

We have already had considerable experience in the international arena, and we are well prepared to make substantial contributions to international cooperation and solidarity. Since 1950, Puerto Rico has been the meeting place of more than 30,000 persons from developing countries, most of whom visited our island in order to observe and

study our social and economic development programs. Most of those visitors came from Latin America and the Caribbean region, but large numbers also arrived from Africa, Asia and Oceania. In this manner, we have been able to communicate our experiences, our successes and our problems to representatives of other areas of the world striving for social justice and political democracy. During the 1960's, the Commonwealth of Puerto Rico actively participated in matters of special concern to the peoples of the Caribbean region. Puerto Rico was a founding member, and San Juan was the headquarters, of the Caribbean Organization. This now-dissolved organization contributed greatly to the idea and practice of regional collaboration and promoted the movement for the economic integration of our region. The Commonwealth subsequently created its own specialized agency with regional concerns, the Corporación de Desarrollo Económico del Caribe, in an effort to foster regional cooperation. Our economic and regional interests have prompted the Commonwealth government to establish an active program of trade missions, whereby Puerto Rico seeks to promote trade with other areas, especially with the Caribbean and the nations of the Western Hemisphere. Our industrial promotion efforts have led the Commonwealth government to open facilities in

Europe and Tokyo for the purpose of attracting investment to the Island. By bilateral agreement, Puerto Rico and the Dominican Republic, in 1967, created the Joint Dominican-Puerto Rican Commission for the purpose of developing a program of economic, cultural and technical collaboration. Puerto Rican cultural missions to different countries of the Hemisphere have been sponsored for more than two decades by our Institute of Culture, Department of State and Department of Education. For many years, Puerto Rico has collaborated with different international organizations in a wide array of exchange programs and technical assistance projects. In addition to these official contacts, private entities in different fields have made positive contributions to the flow of information and peoples between Puerto Rico and other countries. We have accumulated valuable experience in our relations with other countries and with international organizations. Our experience is a good point of departure for future Puerto Rican roles in international matters in a manner consistent with our association with the United States.

Various courses of action are already open to the Governments of the United States and Puerto Rico which require no substantial or prolonged constitutional or legislative action, based on the long-standing recognition by the United States and the United Nations of Puerto Rico's status as an autonomous political entity. Other possibilities may require more complex procedures. An exhaustive and incisive analysis of the desirability of greater participation by



Puerto Rico in international affairs and appropriate international institutions was prepared recently by Professor W. M. Reisman of Yale Law School for a conference of the United States' leading lawyers, held at the Carnegie Endowment for International Peace in New York.

With the Committee's permission, I would like to submit a typescript of Professor Reisman's study for the record, as an appendix to my statement. I will not elaborate on the constitutional and international law questions treated at length by Professor Reisman, in view of my basic agreement with the recommendations he offers. However, I would draw your particular attention to Professor Reisman's recognition of the very real advantages to both our peoples, and the practical possibilities of Puerto Rico's participation in numerous specialized international organizations -- especially those dealing with education, health, culture and commerce. These offer an effective and additional dimension for greater rapport with and support to developing countries which can be a valuable supplement to U. S. policies and programs.

#### CONCLUSION

This Committee is charged with the historic responsibility of shaping a response to the desires of the people of Puerto Rico in the exercise of their right to free determination. This task is not made easier by the fact that the substance of Commonwealth has been widely misunderstood both to the south and to the north of Puerto Rico. In Latin America there prevails a suspicion that this concept masks the reality of a colonial relationship. In some less informed circles in the

United States there is the opposite impression that we are pursuing privileges, but not responsibilities.

Both erroneous conceptions are an affront to the dignity of the Puerto Rican people. It is your task that they should not continue to bear this burden, a burden born of misunderstandings of the essence of our relationship.

I ask you on behalf of my people to shape with vision, creativity, and purpose the new Articles of Association between Puerto Rico and the United States, and to formulate in a document that will stand the test of time and invidious misinterpretations, the cherished principles upon which we shall face together the destiny of mankind.

But the challenge to this Committee is even broader in scope. You have the opportunity to frame a model of Articles of Association which will constitute a new breakthrough in the interdependent era into which the world is entering. The United States and Puerto Rico have already given the world an example of how such a relation can grow and prosper. Now our joint task is to build on our experience of 21 years, with vision and care, so that future generations will point to this as a watershed event in the inevitable transition to an interdependent world.

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