

EVOLVING FEDERALISM FOR THE PHILIPPINES

HON. RENATO PUNO

Former Chief Justice, Supreme Court of the Philippines

THERE IS NOTHING INHERENTLY WRONG WITH A UNITARY FORM OF GOVERNMENT founded on the bedrock of democratic principles. Indeed, I concede that the unitary government upon which we established our 1935 Constitution has served us well as a nation. Be that as it may, time does not stand still – socio-economic and political changes from within and outside the Philippines demand that we restructure our form of government to a federal type, but one that is tailored to our needs. We are faced with a multitude of pressing problems that cannot be effectively addressed by a unitary government. Foremost of these are the secessionist movement of the Muslims in Mindanao, the communist rebellion in our countryside, worsening poverty of the people, reign of political dynasties, proliferation of corruption, rise of criminal syndicates especially drug lords, etc. There is a converging idea that the primary cause of these problems is the undue centralization of powers in the national government which is the essence of a unitary government. I join this school of thought, and I espouse evolving Federalism for the Philippines.

CHALLENGES OF EVOLVING FEDERALISM

I wish to stress that it is not easy to shift to Federalism. There are more problems to be encountered if the shift to Federalism is from a unitary state



MBC IMAGES

Chief Justice Renato Puno (Ret.) was the guest of honor and keynote speaker at a special joint membership meeting of the Makati Business Club (MBC), the Management Association of the Philippines (MAP), the Employers' Confederation of the Philippines (ECOP), and the Philippine Chamber of Commerce and Industry (PCCI) held on 24 April 2017 at the Rizal Ballroom, Makati Shangri-La, Makati City.

like the Philippines. In this kind of transformation, the unitary state has to be disaggregated and then aggregated to give rise to a new federation and its constituent new states. The process is full of slippery slopes.

THE FIRST SLOPE. We need to restructure with care and circumspection the architecture of our government. Currently, we have a Senate but our senators are popularly selected nationwide. An obvious defect of this system is the failure of some of the more significant stakeholders in our democratic system, especially the minorities like the Muslims and the indigenous people, to be represented. Indeed, this continuing lack of representation is one reason why the MILF, the MNLF, and other more belligerent Muslim groups are rebelling against the government. Hopefully, a Senate where all States shall be equally represented will break this armed rebellion.

This change in the composition of the Senate should, however, be accompanied by reforms in our electoral system that will assure clean and honest elections. The reform should further reduce the participation of political dynasties.

THE SECOND SLOPE. Federalism requires a central government vested with the power to act

decisively on issues that threaten the integrity of the union. This is an important policy issue which should be resolved if we adopt Federalism, i.e., whether the central government will be accorded powers more than the constituent States. The general rule is that when you break up a unitary State and migrate to Federalism, you need a strong central government to keep the new States together. Indeed, the United States underwent a sad experience when it gave more powers to the States when it shifted to Federalism. It led to a civil war whose subliminal effects are still felt by Americans today. It took the US Supreme Court and ultimately a constitutional amendment to restore the proper equilibrium of power between the federal government and the States. Later developments around the world also validate the necessity of a strong central government to accomplish the objectives of Federalism. Among these are the unending wars, including religious and economic warfares, rise of terrorism, manufacture of weapons of mass destruction, technological revolution, climate change, and unregulated globalization that has further widened the gap between the wealthy and poor nations. Needless to say, a world growing

in diversity and irreconcilable antagonism needs a strong central government to protect its people. The challenge is how to build a strong central government that will not trample on the sovereignty of its States even as it protects them against themselves and against others.

THE THIRD SLOPE. The shift to Federalism demands a truly independent Judiciary. The need is more acute in a federal government where there will be more clashes due to overlap of powers between the central government and the States, and among the constituent States themselves. In numerous federal governments, Constitutional Courts have been created as the ultimate interpreter of the Constitution. This needs to be studied given our unfamiliarity with the concept.

THE FOURTH SLOPE. Federalism will require that we deftly divide the powers of government between the central government and the constituent States. Federation is a system of exclusive rule, shared rule and self-rule between the central government and the States. This division of sovereign powers between the central government and the States distinguishes a federal government from a unitary government. In a unitary government, the national government has a monopoly of powers. At its behest, it can delegate some of its powers to the local governments. Delegated powers, however, can be withdrawn or diminished by the central government.

The correct allocation of powers in Federalism requires unerring foresight. Locating the exact balance will determine the success of Federalism in promoting unity despite diversity within the union. If the balance sways too much in favour of the central government, the constituent States can be weak and will be no more than appendages of the central government. On the other hand, if the balance

ABOUT THE SPEAKER

CHIEF JUSTICE RENATO S. PUNO

Chief Justice Renato S. Puno (Ret.) served as the Chief Justice of Philippine Supreme Court from December 2006 to May 2010. Prior to his appointment as Chief Magistrate, CJ Puno served as Associate Justice of the Supreme Court, Associate Justice of the Court of Appeals, Appellate Justice of the Intermediate Appellate Court, Assistant Solicitor General, City Judge of Quezon City, and Deputy Minister of Justice. He has also been bestowed the country's most prestigious awards and recognitions. CJ Puno also held key positions in business and acted as Independent Director on many of the country's largest conglomerates. Currently, he shares his expertise as member of the Board of Regents of the University of the Philippines System. ■

swings too much in favour of the constituent States, the federal government may be forced to rely on the States for its strength and sustenance. Historically, the central government is exclusively given the following powers: national defense and security, foreign affairs, control of currency, immigration, conduct of external trade, citizenship, determination of economic policies, construction of major infrastructure projects and the authority to impose customs and excise taxes. On the other hand, the powers exclusively given to constituent States are: the maintenance of primary and secondary education, health care, local governments, licensing of public utilities, housing and social security and regional finance. Both the central government and the constituent States usually share the following powers: court system, police, social welfare, cultural development, tourism, natural resources, environment, roads and highways and the right to impose corporate and personal income taxes. The powers of government are unlimited and cannot be completely enumerated. Hence, there is what is known as reserve powers which can be tapped when necessary. Reserve power is normally given to the central government when the policy is to have a strong center; contrariwise, it is accorded to the constituent States. Its contours are unmarked and undefined and its invocation often invites unending arguments that can cause instabilities. To preclude resort to reserve powers, current federal constitutions give to the central government the so-called power to override. With this, the central government may intervene in areas of governance given to a State when the cohesion of the union is threatened. Drawing the parameters of this power is a delicate task.

THE FIFTH SLOPE. The need to form constituent States which must be politically and economically viable is essential in building a strong Federal government. The

standards used in forming States are: fiscal capacity, physical contiguity and ethnic, language or cultural affinities. The formation of constituent States calls for extreme caution and prudence. They cannot be formed based on contiguity alone. The chosen States must be able to survive taking into consideration their human and natural resources and potentialities. To judge the ability to survive of these states requires the most meticulous examination, among others, of their economic and fiscal data, human development indexes, labor productivity, and their ethno-cultural peculiarities. Current data of our regions reveal we can only form about three to four states that can stand as independent states. This means we will have full states and half states to start our federal union. Any failure in allocating powers to them can mean the disintegration of the union. Weak states will separate if their lot cannot be improved. Similarly, wealthy states may walk away from a union of which they have no use.

This problem has plagued federalist governments at their incipience, including the United States, Switzerland, Germany, Canada and Australia. These federations started with an aggrupation of poor and wealthy states but that did not hinder them from proceeding with their union. They were able to devise various techniques that helped the weak states attain a decent level of existence and assured the strong states they will not be playing the permanent role of Good Samaritans in helping the poor states. Among these established techniques are: fiscal transfers, extension of grants that may be conditional or unconditional and revenue sharing. We need a thorough knowledge of these levelling techniques for as aforesated, a rapid assessment of the capability of our regions will reveal that most of them may not qualify as full states. It appears

that only the NCR, Central Luzon (Region III), CALABARZON (Region IV-A), Western Visayas (Region VI) and Central Visayas (Region VII), can qualify as full-fledged states. We cannot fast-track with recklessness the development of our regions into full states. Social and economic progress is subject to the vagaries of internal and external circumstances often beyond control.

THE SIXTH SLOPE. The need to configure the asymmetrical treatment that will be extended to our minorities, especially the Muslims and indigenous people, is also crucial in ensuring a successful Federal Philippines. Rightly observed, the three most divisive forces to a nation are ethnic (race, language and culture), religion, and political ideology. In our particular setting, religious diversity has not threatened division given our strong practice of freedom of religion. Similarly, disparities in political ideology have not posed any serious schism given our long grounding on democracy. It is our polyethnic composition that threatens the integrity of our polity. The need for a different social, economic treatment of the Moros and various indigenous people is now beyond debate. No power or principality has successfully forced ethnic homogeneity even by the use of such execrable exercises such as genocide, and forcible assimilation.

ESPOUSING RIGHT TO SELF-RULE

There is a congruent view that our Muslim problem in the South is a ticking time bomb. Indeed, the Muslims have been demanding their own territory and the right of self-rule for many years. Presidents Ramos, Arroyo and Aquino tried to accommodate their demands but all failed. The reason is evident --- a unitary government can only grant the Moros and the IPs regional autonomy but not the right of self-rule which can only be given to sovereign states in a federal setup of government. The Moros and the IPs have reiterated their demand

for self-rule and President Duterte has committed himself to change our unitary government to federal to accommodate this longstanding issue.

A NEED FOR PARADIGM SHIFT

Federalism is not a magic bullet that will put to rest all our problems as a people. Be that as it may, I reiterate my submission that it is a better vehicle to achieve our aspirations as a people. By all means, we should do away with the principle of centralization of powers which is the essence of a unitary government. This principle has resulted in the decadence of our democracy. Thus, our democracy has consistently been characterized as a failure for good reasons. For one, political control of government has been captured by family dynasties. For another, greater part of the wealth of our nation has been cornered by a small elite. For still another, the legitimate demands of our minorities, the Muslims and the IPs for self-determination have not been addressed and consequently, we have the spectre of separation by a significant sector of our society. On the other hand, the principle of non-centralization of powers is the guiding spirit of Federalism. By this principle, the powers of government will be shared or divided between the central government and the states. By diffusing these powers, the states will be given sovereign powers –not just delegated powers –to govern themselves, get greater share of revenues and resources, spur faster growth of regions outside Metro Manila, and serve their local constituencies more effectively and be more accountable to the electorate. Last but not the least, only a federal government can satisfy the demands of the Muslims and IPs, stop their secession, and prevent the disintegration of our republic.

MESSAGE TO THE BUSINESS SECTOR

I pray that we continue to discuss the pros and cons of Unitarianism and Federalism with more concern not only for what is better but what is best for our people, and with love of country as a common denominator. ■

Excerpts edited by
MAANE CAUTON
Programs Officer



PRIVATE SECTOR PANEL

CORAZON BERNARDO-DELA PAZ
Trustee, Makati Business Club (MBC)

The proposed shift to Federalism has been discussed widely in public fora and discussion papers but very few really understand the specific elements of having independent states and how it would impact rules governing businesses, trade and investment. Filipinos need to completely understand how a federal Philippines would work. Deliberations must be thorough and participatory.

While sovereignty is constitutionally reserved for the national government, some powers and responsibilities are decentralized to local government units (LGUs). Let us ensure first that all provisions of the 1991 Local Government Code (LGC) have been exhausted and supposed benefits of full implementation been maximized so that the next stage is to move to a full federal setup.

CJ Puno mentioned that, at present, only 5 regions are qualified to be full-fledged states, but we understand that one of the major reasons raised by the supporters of Federalism is to grant our Moro brothers and the IPs regional autonomy and the right to self-rule and self-determination. This is promising but I hope the government would create parameters to assure that armed conflicts and secessionist aspirations will stop under a federal system.

Lastly, please ensure that this major political shift won't disrupt our current economic development efforts and distract us from achieving our goals in the next 5 years.

VICTOR ANDRES C. MANHIT

Founder and Managing Director of the Stratbase Group and President of the Albert del Rosario Institute Institute for Strategic and International Studies (ADRI)

We've seen global trends toward Federalism of some nations primarily due to the growth of diversity inside these different nation states. We've seen also a lot of arguments for Federalism focused on identifying flaws of a unitary system. To wit, huge imbalance in economic development due to uneven allocation and distribution of tool and resources was experienced and is continuously felt by various regions of the Philippines. Over-centralization of power in "imperial Manila" eroded government accountability because government seems to be so far away from where the people are.

On the contrary and some will argue as its positive side, Federalism is envisioned to provide more equitable sharing of macro-political and economic powers. Some will claim that it is more suitable to the realities of Philippine society, given our history and geographical, archipelagic nature. Some will further espouse that a federal government could create a more responsive government by increasing citizen participation to actual governance affairs and efficiency in dealing with regional and local issues.

I am not against Federalism but we need to carefully identify and set parameters on separating nation states from central government and classifying shared and concurrent powers of federal regional states. More so, end goal should be the creation of a government system where public officials' genuine accountability and integrity is guaranteed.

Lastly, we have to be cautious about jumping too fast, too soon in accepting possible threats and risks of Federalism that we are forgetting the most important desire of the Filipino people-- to have jobs and employment. A desire that can be realized through another constitutional amendment which is opening up the economy to more foreign investments.

PERRY L. PE

Governor, Management Association of the Philippines (MAP)

I am a solid supporter of Federalism. From my point of view, it is really because I want to devolve business revenues and foreign developments to the countryside. Allow me to share two cases where, I believe, Federalism could be the key.

In 1990s, the National Power Corporation (NPC) entered into an agreement with Mirant Pagbilao Corporation. The Energy Conversion Agreement (ECA) specifically provides that it is NPC's obligation to pay all taxes that the government may impose to Mirant. However, the municipality of Pagbilao, Quezon assessed Mirant's real property taxes in the total amount of PHP 1.5 billion. The NPC objected to the assessment against Mirant and claimed that it is entitled to tax exemptions provided in Section 234 of the Local Government Code. The Supreme Court (SC) decision clearly stipulated that NPC has no right to contractually assume taxes then turn around and say that no taxes should be collected because of its nature as GOCC. By virtue of existing jurisprudence, the SC ruled that only Mirant as the contractual obligor can assume real estate tax liability to the LGU.

Another case, the law provides a 60-40 revenue sharing between the national government and Malampaya in Palawan, but Palawan's claim was disputed in court and the national government maintained that Malampaya is outside Palawan's administrative jurisdiction and thus not entitled to proceeds from the sale of offshore gas deposit. The disagreement between the national and provincial governments is the subject of a case now pending before the Supreme Court.

These examples concretize my point that Federalism can be the crucial yet missing pillar to finally spur and even sustain rural development. ■

SEEING POTENTIAL

While others see challenges, we see potential in markets that are not being served well and become the drivers for their transformation. It is in our DNA to challenge convention, and in doing so, we unlock the potential within.

MAKING BUSINESSES BETTER

We believe that success in business requires constant work, and the work lies in its people doing things the right way to generate trust. This trust allows businesses to further develop and create a bigger impact that brings about greater change.

IMPROVING LIVES

We are fueled by the hopes and dreams of others, and are committed to giving people the opportunity to lead improved lives. By making good business that doesn't just focus on returns, we contribute to the communities that we serve, and ultimately to the country as a whole.



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