

MBC FORUM

No. 5 Series 2017

MBC FEDERALISM SERIES

SHIFT TO FEDERALISM: A LETHAL EXPERIMENT

HON. HILARIO G. DAVIDE JR.

Former Chief Justice, Supreme Court of the Philippines

THE MUCH PUBLICIZED AND PROPAGANDIZED TOPIC: the shift from the unitary to the Federal system of government in our country; and, for that purpose, to amend the Constitution via the shortest mode – a Constituent Assembly. This shortest mode is expected to submit for ratification the proposed Constitution of the Federal Republic of the Philippines in May of 2018 so that the first elections under the Federal system can be held on the second Monday of May 2019, the date of our next regular national synchronized elections.

Why the unusual haste in this move to the Federal system? Your honest guess is as good as mine. The fact remains that early in his term the President, who is openly for the Federal system, wanted a Constitutional Convention. But he later agreed with Speaker Alvarez of the Lower House to have, instead, a Constitutional Assembly to save on expenses and to expedite the process. The President even issued in December of last year an Executive Order creating a sort of Preparatory Commission which shall be tasked to draft the proposed new Constitution for the Federal Republic of the Philippines to be thereafter submitted to the Constituent Assembly. It appears, however, that the Lower House cannot wait for that. Through its Committee on Constitutional Amendments, it is now rushing the drafting of the proposed Constitution for the Federal Republic of the Philippines by a



MBC IMAGES

Speech delivered by former Chief Justice Hilario G. Davide, Jr. on 21 November 2017, at the Joint Membership Meeting of the Makati Business Club (MBC), Philippine Chamber of Commerce and Industry (PCCI), Management Association of the Philippines (MAP), and the Employees Confederation of the Philippines (ECOP) in Makati City.

Constituent Assembly with three proposals at hand serving as its working drafts. The first proposal, in sixty-three (63) pages, is Senate Resolution No. 10 filed by then Senator Nene Pimentel during the Fourteenth Congress; the second is Resolution No. 08, in eighty-three (83) pages, introduced lately in the Lower House by Representatives Aurelio Gonzales and Eugene Michael de Vera; and the third is the proposal, in sixty-seven (67) pages, submitted by the PDP-Laban Federalism Institute. Each of these proposals can produce the longest Constitution the Philippines will ever have.

The principal reason adduced in these proposals and also by other known proponents for the shift to Federalism is that our present unitary system is highly centralized and has created an "Imperial Manila" – not imperial Makati – which nurtures and perpetuates a tremendous imbalance in its favor and against the present political subdivisions or local government units – the autonomous regions, provinces, cities, municipalities and barangays – in the exercise of governmental powers and in the distribution and allocation of government resources, funds, and projects as well as in development, growth, progress, prosperity, and stability. To remove that imbalance there must be put up between the highly centralized authority and these local government units a strong autonomous sovereign governmental authority or seat of power which shall share with the authority and power of the central government to the end that the local government units will truly enjoy the blessings of genuine autonomy.

THE BEST CONSTITUTION IN THE WORLD

I would forthwith assert that a shift to federalism or amendments to our present Constitution to accomplish the goals and objectives of the proponents of Federalism is totally unnecessary. The reasons adduced to support it are deceptively misleading and unfounded. All such goals and objectives can adequately and sufficiently be accomplished, and the reasons disproven, by merely, but effectively and efficiently, implementing the relevant provisions of our present 1987 Constitution for strong local autonomy and decentralization. One whole Article of this Constitution – Article X – is devoted to Local Government. It provides for the infrastructure guaranteeing this local autonomy and decentralization. This Article orders Congress to enact a Local Government Code which shall, among other things, provide for more responsive and accountable local government structures instituted through a system of decentralization, allocate among the different local government units their power, responsibilities, and resources (Sec. 3). The first Congress convened under our present Constitution enacted in 1991 the Local Government Code.

This Article X likewise provides that local governments shall be entitled to an equitable share in the proceeds

of the utilization and development of the natural wealth within their respective areas, in the manner provided by law, including the sharing in the same with the inhabitants therein (Sec. 7). It provides for the creation of metropolitan subdivisions (Sec. 11), and grants local government units power to group themselves, consolidate, or contribute their efforts, services, and resources for purposes commonly beneficial to them in accordance with law (Sec. 13).

The same Article X directs the President to provide for regional development councils for purposes of administrative decentralization to strengthen the autonomy of the units therein and to accelerate the economic and social growth and development of the units in the region (Sec. 14).

In brief, effective decentralization or power sharing between the central government and the political subdivisions are already assured and mandated – not denied or impeded – by the Constitution. On the contrary, they are hampered or impeded by the failure to implement the Constitution.

If more are still needed, Congress needs only to amend the 1991 Local Government Code.

Our 1987 Constitution of the Philippines, which was drafted by the 1986 Constitutional Commission is the best Constitution of the world. It is the only which is PRO-God, PRO-Filipino, PRO-people, as well as PRO (spelled P-R-O) in all of these: life, marriage, family, poor, social justice and human rights, women, youth, environment, among many others. It is the only Constitution that institutionalizes the doctrine that a public office is a public trust, meaning that all public officers and employees are servants of the people (Section 1, Article XI), thereby enshrining the "servant leadership" principle that Jesus Christ Himself proclaimed. It contains sufficient provisions against abuse of powers and guarantees people's active participation in governance, including the use of people power. I know this Constitution very well because I was, together with our good friend, Ricardo Romulo, among the Commissioners of the 1986 Constitutional Commission who drafted it. When we voted on its final draft on 12 October 1986, I ended the explanation of my affirmative vote with these words: "This is the Constitution I am willing to die for."

Thanks to the Supreme Court, two previous attempts to amend this 30-year old Constitution failed. The first was to lift the term limits of elected officials especially that of the President to allow the then incumbent President to run for re-election; the second was to adapt the parliamentary system so that the then incumbent President who cannot run for re-election can run for Congress and be elected Prime Minister.

Sad to say, however, a recent survey disclosed that only about 27% of our people know about the Constitution. Upon the other hand, a great majority of its provisions, especially on social justice, have not been implemented. A number of provisions require enabling statutes or laws to give life to them. The



commands for Congress or the Government to do so are prescribed about 150 times in the Constitution through such phrases as "The State shall"; "Congress shall"; or "as provided by law". Similarly, the public trust character of public office remains wantonly disregarded by our public servants.

Shall we now entice or lure our people to amend or revise a Constitution which only 27% of them know? Or, worse yet, a Constitution that is not fully implemented and given life primarily because Congress has been sleeping on its solemn duty to pass laws to implement its mandates?

Needless to stress, all public servants who propose to amend the Constitution, especially that of adapting the Federal system, must first meticulously examine and understand the Constitution and honestly ask themselves: Have we done enough to be true and faithful public servants elected or appointed under the Constitution? They must remind themselves that upon assumption of office, each took a solemn oath to, among others, "uphold and defend the Constitution" (Sec. 1, Chapter 10, Book I, Administrative Code of the Philippines). By express mandate of the Constitution (Sec. 5, Article VII), the President, Vice President, and Acting President shall take a solemn oath to, among others, "preserve and defend the Constitution."

A LETHAL EXPERIMENT

What our country and our people need today is not a change of that Constitution by adapting the Federal system. What are needed are first, authentic and genuine change in the hearts and minds and values of our leaders to the end that they truly be genuine, authentic public servants or servant-leaders; second, that same kind or virtue of change in our people that they be at all times vigilant and assertive as the true and responsible masters of these public servants, and always unyielding to the whims and caprices of false or fake public servants, especially in these times of false news, fake news, post truths.

A shift to Federalism is a lethal experiment. A fatal leap. A plunge to death. A leap to hell. To paraphrase the book of Sirach (Chapter 2, verse 3) concerning sin, federalism is "a two-edged sword: when it cuts, there can be no healing."

The Federal system of government is definitely not suited for our country and our people of our generation and even those of the succeeding generations. It cannot fit into our history, culture, character, traditions, beliefs, hopes, aspirations and longings, and even our idiosyncrasies and peculiarities. The best fitted for these is the unitary system, which has proven itself to be so.

Federalism cannot fit into our training and experiences in the art of politics, government, and governance. Only very few of our people have experienced how the Federal system works. They are the very few who have lived or worked in federal states, like the US or Canada, or who are assiduous political scientists or sociologists who have studied in theory the workings of Federalism.

Untried and untested in our country and by our people since we attained our independence on 12 June 1898 or 119 years ago - or even before that - Federalism would be a foreign invader or a stranger that would come not on its own conquering will and without gifts of gold, frankincense and myrrh. It would come at our reckless and imprudent instance, instigated only by a few.

For the Philippines, the Federal system proposed in the three versions would be evolved by dividing, breaking up, splitting and fragmenting the country into various separate parts known as States or Regions. This is an anomalous procedure because it is an anomalous deviation from the historical and traditional mode of forming Federal States or governments. Under this mode, existing sovereign states would unite or agree to subordinate their governmental power to that of the central authority in specified common affairs; or, a federal government is a league or compact between two or more states, to become united under one central government. Thus the original separate sovereign states would become component states of the federal government.

How would the unitary Philippines be divided, broken up, split or fragmented? Let us examine the main features of the three proposals

In the Nene Pimentel version, the Philippines, to be known as the Federal Republic of the Philippines, would be divided into eleven (11) States [namely: the states of Northern Luzon, Central Luzon, Southern Tagalog, Bicol, Minparom (Mindoro Oriental, Mindoro Occidental, Palawan, Romblon, and Marinduque), Eastern Visayas, Central Visayas, Western Visayas, Northern Mindanao, Southern Mindanao, and Bangsamoro]; and one Federal Administrative Region composed of Metro Manila. The Federal State would be governed by a Federal Constitution, and would have Federal Executive, Legislative, and Judicial Departments. The Federal Legislative Department would be vested in the Federal Congress composed of the Senate of 75 members [with each State represented by six elected at large] and nine elected by overseas Filipino citizens; and the House of Representatives of not more than 350

members [elected from the various legislative districts in the various States].

The Federal Executive Department shall be headed by the President, with a Vice President, both of whom shall be elected as a team. A vote for the President shall be also counted for the Vice President.

Each of the eleven States composing the Federal State shall have an Executive Department, headed by the State Governor, with a Vice Governor, and a unicameral Legislative Department composed of three representatives from each province and each city located within the territorial boundaries of the States [elected by the Members of the Sangguniang Panlalawigan and Sangguniang Panlungsod from among their members], plus three representatives from the sectors of the farmers, fisherfolk, and the senior citizens.

In the Gonzales Proposal, the Federal State would be composed of Eighteen (18) Regions [namely, the National Capital Region, Ilocos, Cordillera, Cagayan Valley, Central Luzon, Calabarzon, Mimaropa, Bicol, Western Visayas, Central Visayas, Eastern Visayas, Zamboanga Peninsula, Northern Mindanao, Davao, Soccsargen, Caraga, Bangsamoro]. Each Region is autonomous, equal, and sovereign [except to the extent that their sovereignty is limited by the Constitution and federal laws]. It shall have its own basic and organic law – meaning a Constitution.

The Federal Legislative Power is vested in a Congress composed of the Senate with a minimum of two and a maximum of six Senators from each Region; and the House of Representatives composed of one elective District Representative for each of the Legislative Districts apportioned by law among the provinces, cities, urbanized independent component cities and municipalities; and of party-list representatives to the extent of 20% of the total number of Representatives including those of the party-list.

The Federal Executive Department is vested in the President of the Federal Republic. There is a provision for Vice President.

As to the Eighteen (18) Regions comprising the Federal State, the Executive Power is vested in the Regional Governor elected by direct vote of the people in the Region. There is a Regional Vice-Governor. The Governor has the power to grant reprieves, commutation of sentence, and pardon.

The Regional Legislative Power is vested in the Regional Assembly composed of three Assembly Members from each province, from the highly urbanized independent city or municipality within the Region, plus sectoral members appointed by the Regional Governor for sectors representing labor, peasant farming, fisheries, and senior citizens.

Under the PDP-Laban Proposal, a parliamentary form of government is set up under a Federal system. The number of Regions or States to compose the Federal State is still undetermined; it is still under study. However, Regions or States are to be created by way



of a plebiscite in the proposed Region, and until they are formally established, the Federal Government will exercise power over them.

The Federal Legislative Power is vested in the Parliament of the Federal Republic, which shall be composed of two Houses – the Federal Assembly as the National Legislative Department and the Senate. The Assembly shall be composed of not more than 400 Members [60% of whom shall be elected by plurality vote from each Legislative Electoral District and 40% by proportional representation by region for a political party with closed list of nominees]. The Senate shall be composed of three Senators from each Region. The Assembly shall elect a Speaker, and the Senate, its President.

The Executive Power is vested in the Prime Minister and his Cabinet. The Prime Minister is elected by the Assembly. He may be removed by a vote of no confidence by the Assembly. Upon the other hand, the Prime Minister may advise the President to dissolve the Assembly.

The President shall be the Head of State to be elected by direct vote of the people upon being nominated by at least 20% of all the Members of the Assembly who are members of a registered political party. He shall have a term of five years and may run for another term.

The President is even authorized to dissolve the Assembly for failure of Parliament to pass a budget for two successive plenary votes or for two successive majority votes of no confidence on the Prime Minister.

As to the Regional Government, there should first be an Organic Act. Below the Regional Governments would be local governments to be governed by the 1991 Local Government Code until the enactment of the Regional and Local Government Code.

The Judiciary is not even spared in this Federalization. While basically the Judicial Power as embodied in Article VIII of the present Constitution, substantive changes are proposed. In the Nene Pimentel version the Court of Appeals is abolished to be replaced by the Intermediate Appellate Court to be distributed to

the various States. Divisions of the Sandiganbayan will be assigned to the component States. In the Gonzales version, the Court of Appeals is abolished and in its stead Regional Court of Appeals will be put up.

Eventually, there would be massive reorganizations of the Judiciary through laws defining and apportioning the jurisdiction of the various courts taking into account the needs of the component States or Regions resulting in the establishment of State or Regional lower courts.

Both the Pimentel and the Gonzales versions abolish the Judicial and Bar Council (JBC). Appointments by the President of the Members of the Judiciary shall be taken from a list of at least three nominees prepared by the Integrated Bar of the Philippines approved by the Commission on Appointments in the Pimentel version and by the Federal Senate in the Gonzales version.

Similarly, the Constitutional Commissions would become Federal Constitutional Commissions (Audit, Civil Service, Elections). What would follow would be the establishment of States or Regional offices.

By the way, the three proposals retain the existing political subdivisions or local government units – autonomous regions, provinces, cities, municipalities and barangays.

This dividing, breaking up, splitting, fragmenting, and disconfiguring of the Philippines will not build a just and humane society and will not bring a harvest of harmony, development, progress, prosperity, peace, and stability. On the contrary, it would build and bring the opposite.

All these cannot be done if we are unable to collaborate and work together. Sustainable growth happens only when there is a strong convergence between the private and the government sector.

Let us therefore build these models of convergence that could serve as valuable evidence that can shape the more enabling laws and policies in the future. Let us listen to each other and learn from each other. But more importantly let us listen to our people. Let our shared motivation be centered on how we can truly include the millions of our countrymen who have long been left behind.

18 ILL EFFECTS OF FEDERALISM

What then will happen and what shall we have under a



Federal system? So many. But, let me just enumerate a few – just eighteen, so far.

First, Federalism would divide our people and cultivate in them forced double loyalties: to the central federal government and to the States or Regional governments which shall have its own basic law or constitution, and ultimately own flag and anthem. In all government buildings we will have two flags. At flag ceremonies we will sing two anthems.

Second, Federalism would create a horrible enlarged and bloated bureaucracy. From hereon I shall refer to this as the Federal Bureaucracy. This would be due to the establishments of new layers or strata of governmental authority or seats of power – the Federal or central government, the various component States or Regions and the existing political subdivisions, and the reorganizations of the Judiciary as well as the Constitutional Commissions.

Third, under this Federal Bureaucracy, the poor would become poorer. Inevitably and unavoidably, the people would be burdened with more taxes of all kinds to support and maintain the Federal Bureaucracy. Some of you who had worked in some Federal republics know that a huge part of your income went to Federal and to State taxes.

Fourth, this Federal Bureaucracy carries with it the creation of more juicy elective positions which could guarantee fortune, fame, and power to shrewd politicians and their families. We shall have more political dynasties at the different strata.

Fifth, I heard it before, and this keeps on ringing in my ears, that what would come if Federalism is erected is not actually Federalism but FEUDALISM. Indeed, the proliferation of political dynasties would increase the number of feudal States or Regions. My good friend and colleague in the 1986 Constitutional Commission, Christian Monsod, has already described most of Philippine society as “still feudalistic dominated by a ruling class that rotates among themselves the levers of power through changes in administration... The fact is that 1% of the families make the laws, dispense justice, implement programs, and control media.”

Sixth, because Federalism breeds political dynasties and creates feudal societies, democracy would be at risk. In his latest book, *Understanding Philippine Society, Culture and Politics*, the noted sociologist Professor Randy David said: “The reign of a few political dynasties, even if legitimized by elections, goes against the idea of democracy...viewed against the exigencies of today's complex societies, political succession on the basis of lineage has got to be one of the biggest sources of societal dysfunction.”

Seventh, the Federal bureaucracy with feudalism and political dynasties provide the greatest temptation to keep and maintain private armies to ensure perpetuation of power. Warlordism would be a necessary evil.

Eighth, this Federal Bureaucracy would necessarily involve the creation of thousands of new non-elective positions or offices which will be filled up by thousands of

warm bodies whose main credentials would be loyalty to politicians. A huge part of the government's resources and income would be wasted for their salaries.

Ninth, this horrible enlarged and bloated bureaucracy would further widen the grounds and opportunities for massive graft and corruption because new offices vulnerable to graft and corruption would sprout, such as those for public works and infrastructure projects and the issuances of permits and licenses.

Tenth, in this Federal bureaucracy controlled by feudal lords and political dynasties, the conduct of free, honest, orderly, peaceful and credible elections would be a nightmare. Yet it would be very expensive.

Eleventh, in reality, contrary to the claim of its proponents, under the Federal system there can be no equal or equitable distribution of natural wealth or natural resources among the component States or Regions because the natural wealth and resources of our country are not evenly geographically distributed. Some States or Regions would be impoverished from the start as against the others.

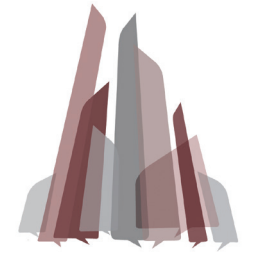
Twelfth, this federal bureaucracy would be a fertile ground for the enemies of the State – the communists and the terrorists – to spread their wings and control. They can either enter the mainstream of society by the election of their comrades, or hold hostage political leaders or even political dynasties in some States or Regions.

Thirteenth, the rule of law will suffer a lot in this federal bureaucracy in the hands of the feudal lords and political dynasties.

Fourteenth, the Federal system proposed both in the Nene Pimentel and PDP-Laban versions would weaken the Judiciary because of the return of political interferences and pressures in the appointments of Members of the Judiciary. As I earlier stated, in both, the Judicial and Bar Council is abolished. The JBC was precisely established in the present Constitution to insulate the Judiciary from partisan political interferences and pressures. There is much politics too in the IBP.

Fifteenth, under a Federal system, the criminal justice system in the country would be put in disarray as a consequence of the unavoidable classification of crimes and offenses into federal and state crimes and offenses.

Sixteenth, a constitutional amendment to adapt the Federal system would more likely be a red herring. As the process for that begins, the door would open for other amendments because the Constituent Assembly is free to do anything. These other major amendments could include the adoption of the parliamentary form of government, which is now proposed in the PDP-Laban version; the removal of Filipino citizenship requirements in the national patrimony and economic provisions; and even removing the restrictions on the President's power to declare Martial Law or suspend the privilege of the writ of habeas corpus. Removing the citizenship requirements would be an outright



MBC

MAKATI BUSINESS CLUB
THE FORUM FOR CONSTRUCTIVE IDEAS

The Makati Business Club invites guest speakers to its General Membership Meetings and MBC Briefings to discuss public issues and trends, whether local or global, that have an impact on Philippine development. MBC Forum highlights the speeches and discussions at these gatherings. The full text of speeches and other presentations may also be found at the MBC website, www.mbc.com.ph.

surrender of the Philippines to foreigners, at no cost to them. This is treason.

Seventeenth, if adapted, the transition to the Federal system would be a slow, complicated, difficult, even confused and chaotic. Uncertainty, insecurity, instability would be its first harvests.

Eighteenth, this is the last so far, and this affects the business sector – you the business leaders. The horrible enlarged and bloated bureaucracy under the Federal system, with the proliferation of political dynasties, would make life for you more difficult. In doing business, you will have to deal with several layers or strata of sovereign authority I earlier mentioned. You will pay more taxes. You can be victims of more graft and corruption. Worse yet, more shady politicians and more political dynasties can hound and harass you no end during all seasons. They and their families and cohorts, dummies or nominees can put up their own business empires. For survival businessmen may dance the music with them. That would be costly. They may even be compelled to abandon values, virtues and principles they cherish and hold dear.

Let us all pray that our pro-Federalism Senators and Representatives and other leaders will hearken to their conscience. Conscience, according to Mencken, is "the inner voice which warns us that someone may be looking" or, according to Polybius who lived before Christ: "There is no witness so dreadful, no accuser so terrible as the conscience that dwells in the heart of every man."

To repeat what I said earlier, such a shift would be a lethal experiment, a fatal leap, a plunge to death, and a leap to hell. ■

Excerpts edited by
PATRICK ANTHONY DP. CHUA



Q&A: B.B.L. before federalism

What are the deficiencies in the Local Government Code that prompts local governments to say that they need more autonomy? Is it a matter of Congress passing new laws increasing their powers?

We have enough in the Local Government Code of 1991. By the way, it was drafted by the Committee on Local Government of the 1st Congress under the new Constitution headed no less by former Senator Nene Pimentel. What the leaders in the local units would do would be simply to read and to implement them. They have all the authority.

In the talk of former Chief Justice Reynato Puno on why he favors federalism, the message was unless we shift to the federalism system of government, the problems in Mindanao will never be resolved. Would you agree with that evaluation?

That should not be a pre-condition. During the last year of President Noyoy Aquino, you have the Bangsamoro Basic Law which basically seeks to put up a federal system for the Autonomous Region of Mindanao. I was a member of the committee that was constituted, and I fully supported BBL. Meaning, if at all we have to start our federalization, let us have a pilot area first. We should begin with Mindanao that is the most logical. Soon we will be able to find out afterwards whether it would really work for the entire country.

I am representing the Bangsamoro Federal Business Council. I think this is the first business organization to call themselves as federal. Actually, we agree with you that the country should adopt first the BBL. That is, as Muslims, the dream we hope would come true. It seemed that is taking too long that is why Muslims think it is better to shift to federalism. Do you think that the BBL now would be the most viable or ideal for us?

I was quite familiar with the original BBL draft, and even the Rufus Rodriguez report. I fully supported it because there is a need really to make up peace, prosperity and unity in Muslim Mindanao, and BBL is the correct political solution. However, as I said that should be a pilot area only. Meaning federalism should not be brought all throughout the island. Let us first observe what will happen with the federal government in Mindanao. If it would prove to be good for all of us, then we could spread it out to the entire country. I understand that the President is giving priority to the BBL. I would suppose that the President would want the BBL to be approved, and perhaps later the federalization of the entire Philippines. I hope BBL would come to pass so that there would be peace, progress and unity in Mindanao.



We value the trust you place in us.

That's why we work hard every day to give you the kind of financial advice that helps you provide for your loved ones and yourself, and meet your life goals.

This is how we've been doing it for 166 years, for the corporations, institutions, entrepreneurs, families, professionals, and employees that have come to rely on us.

When you come to us, we know you look for advice built on expertise and experience; knowledge of the markets and financial products; and an understanding of your needs and objectives.

Trusted advice. It's the currency we deal in.

Make the best happen.  **BPI**