

FEDERATION AS OUR OPTION

By Datu Michael O. Mastura

[Presented at the Roundtable Discussions on "Federalism as an Alternative to Autonomy at Zamboanga City on March 26-27, 2001 under the auspices of the UP Institute of Islamic Studies, Kusog Mindanao, in cooperation with Konrad Adenauer Foundation]

Let us not be in a mood for denial. The movement for federalism is not a new idea. That it is an old idea, whose time has come – *first, with a question mark ? now, with an exclamation point !* – makes it symbolic of our progression from doubts to advocacies. Indeed, those visible diacritical marks did not come so easily as a consensus. At our many Kusog Mindanao forums, they were not justified without debate. Our experience tells us that movements do not come from the minds of any one person or few people such as ourselves, but out of interactions. That is why we are with you today to interact particularly in resolving your scepticism ? and firming up our collective advocacy for federalism ! in Zamboanga City.

On my suggestion, the Kusog Mindanao Forum then tasked us to convene in Davao City, in early March 2001, an expert's meeting to draft the constitution of the Federal Republic of the Philippines. We have completed our broad outline that is now available for distribution. The task assigned to me was to conceptualise the constitutional arrangement in regard to federal restructuring of the executive-legislative-judicial framework. Simply put, federalism is the advocacy of a multi-tiered government.

General Considerations

The initial formulated quizzers illustrate the asymmetry of the relationships of the federation to the member units. The shape of ideas can be formulated into actual provisions in the course of our consultations. The five broad principles I discussed before the Senate hearing on June 14, 2000 are substantially embodied in this presentation.

Namely: (1) Recognition of the legitimate aspiration of the Bangsamoro People, their basic rights, and state rights to ensure responsible citizenship and participation in good governance. (2) Retention of the Presidency as the head of state and a Prime Minister as the chief executive but empowering the governorship of a State or Region as a smaller presidency under the principles of subsidiarity. (3) Restoration of Congress/Parliament as a representative of the sovereign will of the people with political party seats to act as controlling forces

in the democratic system. (4) Establishment of the principles of separation of authority and vesting the Supreme Court/Constitutional court with the power of judicial review on the constitutionality of acts. (5) Making provisions for the exploitations or utilization of the physical resources of regions return to these areas in terms of economic development under the principles of subsidiarity.

Questions and Answers

Q. On what basis is the constitutional arrangement formulated?

A. Constitutional democracy fundamentally describes the principle of political justice of the basic structure for governance. Its premise assumes an initial situation of equality in which each person or individual is represented.

The principle of representation translated this idea from the original position (situation) to the Constitutional (form) as the highest order system of social rules for *rules making*. The constitutional delegates or constituent body will assemble, then, to represent the sovereign people in the charter amendment.

The argument based on peoples right to self-rule (determination) support the federal restructuring for regularity of representation (parliament or congress) to exercise control over their political destiny.

Q. What limits the scope of the principle of participation?

A. The traditional devises of a constitution are generally:

- Legislative body (unicameral or bicameral);
- Separation of powers mixed with checks and balances;
- (presidential or parliamentary);
- Bill of rights with judicial review;
- (supreme or separate constitutional court)

Discussion Points No. 1

Here it is easy to confuse representative democracy with that of a republican state. The fundamental institutions of political life are the **state**, **government**, and **citizenship**. The image of the state can be visualized as *body politic*. There is a use of nation as synonymous with state, hence *nation-state*. The government of the day or administration is an alter ego sustaining a civic order to be enjoyed. One basic concept is that groups (read: people) occupy broader political spaces and those who see themselves as *a-forming* a distinct political community may constitute majorities in borders. In this characterization, political *community* is seen as an organizing idea wider than the state, *din wa daulat*.

Questions and Answers

Q. What is the essence of a republican (state) system?

A. Simply, it is the regularity of change through election process. And it is a form of expression of a rule of majority. That it is why citizenship is not just voting and paying taxes only. The cardinal value of representation is best expressed in the concept that taxation without representation is unjust.

Q. Who personifies the unity of the nation into a duly constituted body politic?

A. The Head of State who symbolizes the sovereignty of the people is the moral leader of the country to be known as the *Federal* republic of the Philippines.

The Head of State to be called the President represents the Federation in its international relations to include:

- Concluding treaties;
- Receiving envoys;
- Appointing first the prime minister;
- Appointing judges and civil servants;
- Granting pardons of individuals.

Q. How can the public moral leadership of the country be presented in the public life?

A. Upon election (options direct or indirect), the President *ipso facto* ceases to be a member of any political party and desist from engaging or participating in any partisan activity. The oath to uphold the constitution and with it normative values in a way resembles the *bay'ah* given after the nomination of the *khalifa* and his acceptance.

Discussion points No. 2

Here it is crucial to decide the manner of election of the President of the Federation. Dr. Jose V. Abueva argues that the people's experience in democratic governance in which they vote direct for the President will be a force unifying the nation. On the contrary, the chance for rotation of the presidency may further promote unity and diversity of the Federal Union. Succession to the presidency depends on whether to retain or not a vice president under the presidential system. In case a shift is made to the parliamentary system, in the event that the Federal President is unable to perform the duties of the Office, the Upper chamber of Parliament exercises the powers. In the *Shift*, Dr. Pablo Tangco proposes the retention of the unitary system, under his group's

constitutional draft of a parliamentary form of government dovetails with the non-partisan nature of the presidency.

Question and Answers

Q. Who constitute the Federal Government? How does the Head of the State differ from the Head of the Government?

A. The Federal Government consists of the Prime Minister and the Federal Ministers who together make up the Cabinet. The Prime Minister acts as parliamentary leader and presides over the Cabinet (also known as Government of the day). It is the Prime Minister who is responsible for the general policy guidelines.

Q. How is the Government constituted? What long will its duration or term?

A. The Federal President appoints the first the Prime Minister from a member of a lower house (House of Representative) who can command the confidence of the majority of its members. Federal ministers are appointed and dismissed by the President on the recommendation of the Prime Minister, who can also appoints a minister as his or her Deputy Prime Minister.

The President of the Federation dissolves Parliament upon proposal of the Prime Minister. The term of office of the Prime Minister and the Ministers ends when a newly elected lower house (chamber) assembles. Normally, a shadow Cabinet is formed composed of the opposition party to prepare to take the reigns of government.

Q. What is the composition of the Parliament (legislative organ) of the Federal Republic?

A. The bicameral parliament consists of an upper house, the Senate, and the lower house, the House of Representatives.

The senate is composed of members elected by the State governments. Its basic function is to protect the interest of the constituent states or regions particularly on concurring or vetoing legislation. It elects a president and makes decision by a majority vote.

The House of Representatives is composed of members elected directly by district and party list system for a certain term of office. After every election, the Parliament elects a speaker of the house along with other officer and determines its own rules of procedure.

Q. How are the bills introduced in the Philippines?

A. As a rule, the Federal Government (Cabinet) will introduce parliamentary bills, or members of either house may initiate. The draft budget law is transmitted simultaneously to the House of Representatives and to the Senate.

After the lower house adopts a measure, the Speaker submits it to the upper house, and it becomes a law if the Senate consents to it. After enactment, it is countersigned by the Prime Minister or appropriate minister and then signed by the Federal President.

Discussions Points No. 3

The Senate proposals differ in that the John Osmeña version calls for presidential system retaining direct voting, whereas, the Aquilino Pimentel, Jr. version favors indirect election of the President by a Conference of "Presidents" (or State/Regional Governors). The Pimentel version resembles the formula of Conference of Rulers or Electoral College models. The province as a true expression of civic freedom lies in township: the municipality. The functional key point: "Who runs the government is better than who governs?"

Certainly a need to redraw the boundaries of the constituent units to coincide better with the location of linguistic and ethnic groups must afford intra-regional minorities protection against possible oppression by regional majority. The approach to recognize variations precisely makes it possible for accommodating the Ruler (Sultanate) of the Muslim Regions (Bangsamoro States) and feasible to define its relationship to the State/Regional Governor. The pivotal issue: consolidation of the seventy-eight (78) provinces into more economically viable political units. Dr. Abueva's study recommends Ten Regions. The Pag-bago study reviewed three options: the Historic Division, Five Regions, Eight Regions, Twelve Regions, or Fifteen Regions. The old draft of PHILCONSA proposed five regions but our CONCON committee draft expanded it to fourteen regions.

Questions and Answers

Q. Are the features of the Federal System of Government compatible with a presidential or parliamentary democracy?

A. Yes. In the proposed Federal Republic, the State/Regional powers are divided between the central Government and the constituents states/regions of the Federation. In a parliamentary democracy, the Government (Cabinet) is accountable to Parliament as a body elected by and representing the people.

Q. Is the conventional separation of powers recognized in the proposed Federal Republic?

A. Unlike the present unitary presidential form, the separation of the executive, legislative, and judicial branches of government will not be clearly delineated with respect to Parliament and the Cabinet.

Q. Explain how is the division of powers divided between the federal and state governments worked out in the Constitutions?

A. Constitutional power is appropriated by means of enumeration of respective exclusive and concrete areas of jurisdiction, each having both executive and legislative powers. There are three types of legislative power:

- Matters within the exclusive legislative power of the Federation, such as foreign affairs, defense, currency and monetary matters;
- Matters listed in the Constitution concerning which the Federation has the right to legislative but the constituent states or regions may exercise concurrent legislation such as public welfare, prevention of abuse of economic power, civil law and criminal law, registration of births, deaths, and marriages;
- And, in some matters of intense regional planning or regulatory measures and distribution of financial burdens.

Q. What is meant by the doctrine of state rights or residuary power?

A. Insofar as the Federal Constitution does not confer legislative power on the Federation, the constituents states or regions retain the right to legislate. This is referred to as the states rights theory or doctrine of residuary power.

Discussion Points No. 4

Constitutional asymmetry has to specify the differences in the status or legislative and executive powers assigned by the constitution to the different regional units. The better approach in the case of the Philippines is in view of its current highly centralized structure increase from the norm regional authority. This has been applied as the concessions made to the Borneo states of Sabah and Sarawak such as indigenous customary (adat) laws, communications, shipping and fisheries were made exclusive or concurrent jurisdictions. Abolition of the existing provinces much depends on the intergovernmental relations and accommodation of varying pressures of regional autonomy.

Questions and Answers

Q. What can one say about the fear of shifting to the federal structure? Is it well founded that another tier would entail heavy financial costs?

A. A recent report states that it costs P8.6M to create a Barangay, P64M for a town and P225M for a province. No computation yet has been made as to how much it would cost to create a regional, except in reference to ARMM current operational budget of P15.4M. The average public investment in other regions is P15.0B while ARMM gets a meager share of P4.37B only.

At bottom, the assumption in the various computations does take into consideration savings from the consolidation of provinces. The multi-level-tier argument overlooks that recent years saw a proliferation of provinces and cities which will reverse, once federalization starts.

Q. Are the constituent States or Regions permitted to have their own Organic Acts or States Constitutions?

A. Yes. There is an option, however. Each of the constituent geographic units may draw up their own State Constitution. Or a State/Region can merely rely on the Federal constitutional provisions and relevant expanded devolution codes.

The constitutional order in the constituent states or regions may require conformity to the principles of republican, democratic government based on the rule of law within the meaning the Federal Constitution.

Q. What is the basic political philosophy behind the design and operation of federation? Does federalism safeguard indigenous rights?

A. The current debate on democratic legitimacy for pluralistic society lies in understanding a concept based on individual rights and procedural mechanisms. The principle of equality in federalism extends the framework of the debate to "third generation rights" issue, specifically into how social development impinge or influence the organization of power.

On this important point, federalism offers certain corrective measures for the lapses and gaps during the formative years of government institution building. The primary aim of indigenous people is to receive political recognition.

Q. On what principles will the constitutional structure of the Bangsamoro State be built around? Can it be accommodated in the republican system of governance?

A. Yes. The declaration of basic principles of shari'a-based norm integrating the essential features into contemporary form are summed up as follows:

- *Khalifa* or trusteeship of man
- *Adl* or justice tempered with mercy
- **Shura** or consultation as a method of governance
- *Ijama* or consensus as means of acquiring power

Shared space for political Islam and international Islam through the structure of power-sharing arrangements and sub-national (read: community) form of sovereignty compatible with federalism.

[Note: The principle of separation of church and state should not be interpreted as a denial of the supremacy of the Almighty over the State. This is conceded in the old draft constitution of PHILCONSA. Our early religious dialogue was conducted between delegates Salvador Araneta, Raul Manglapus, Jose Feria and Bonifacio Gellego (including some members of CSM or Christian Social Movement) and delegates Ahmad Domocao Alonto, Michael O. Mastura, Tocod Macaraya, and Sandiale Sambalawan (including some members of the Ansar el Islam). In this breakthrough, we issued the Manlapus-Mastura Manifesto of 1972 but martial intervened]

Discussion Points No. 5

The recognition of the supremacy of the federal constitution will be retained. The legitimation of the Islamic state (and possibly the institutionalisation of the ulama's position in it) involves adjudicatory system. This is hardly within the contemplation of church-state separation. A novel constitutional approach is "the double-tier" separation of powers that only be possible under the federal structure. Thus in compliance with the requirement of distribution of powers the Sultan or Ruler of the Bangsamoro State is accountable to a Constitutional Court (as guardian of the constitution) and State/Regional Assembly.

The role of judicial review is a major issue for Muslim in the Philippines considering the demand for full implementation of shari'a-based law. In some jurisdictions, there is a separated constitutional court, specializing in constitutional interpretation. The Constitutional Court in which the *ulamah* will be represented is clothed with authority to produce shar'a norm on matters or issues affecting the Muslim *ummah* (community). This results into rule by judges (jurists). In later case, the nuances of the shari'a-based ruling will help separate the "politically mind from a-political ulama."

Question and Answers

Q. Explain how the Federal Constitutional Court's role in judicial review?

A. One approach is the Constitutional Court stands at the apex of the court system. The power of the constitutional reviews is explicitly provided where the validity of a law or statute is in question. Specific examples are the compatibility

of both federal and state laws, the constitution, the rights and duties of the federal and state governments, shari'a-based questions.

Q. How does this differ from the present power of judicial reviews of the Supreme Court?

A. The other approach retains the Federal Supreme Court's power of judicial review (in parallel to the constitutional court, if we opt for it). The Supreme Court stands at the apex of the court system. But there will be Supreme Courts also at the State level. The Constitutional Court can decide, too, complaints by individuals of unconstitutionality, and complaints by the constituent States of constitutional infringement of the right of self-determination.

Q. Who exercises the power of impeachment the President?

A. The House of Representatives or the Senate may impeach the Federal President before the Constitutional Court for willful violations (other grounds may be provided) of the constitution.

The ConCon Records

The first complete PHILCONSA study (1968-1971) led by the late Dr. Salvador Araneta touched on a very important principle of Federal system: the principle of subsidiarity. Under its draft constitution of the Federal Republic of the Philippines proposed at that time, Art. 6 states two broad provisions:

"In conformity with the principle of subsidiarity, functions that may be well-performed by an individual or a family shall not be entrusted the government; in general functions that may be well-performed by a lower level of government shall not be vested in a higher level. X x x

"In interpreting conflicts of jurisdiction, the principle of subsidiarity will carry weight if the wording of the law does not provide for an interpretation."

We were the early proponents of Federalism during the 1971 Constitutional Convention. The Jesuit Francisco Araneta was strong supporter of federalism outside members of the ConCon. It makes interesting comment to say that now Governor Nur Misuari ran on the platform of federal state for the MINSUPALA region. My aide memoire has listed down former senator Domocao Alonto among the Muslim delegates who was very enthused, and so we prepared separate formal position papers. A most significant fact to recall is that our

Islamic scholars from Cairo headed by Chair Salamat Hashim sent a Message dated December 12, 1971.

They defined the duties and obligations of a Muslim vis-à-vis the Constitution Convention. In part, the document reads:

“It is our duty and obligation to demand the following which equally conforms to Islam and relevant to our democratic form of government. That the Republic of the Philippines must adopt a Federal form of Government and that the state where the Muslim populace are consolidated be founded on the Islamic tenets.”

The message ends with an “earnest and full-hearted appeal to the Muslim delegates to exhaust all their utmost efforts, energy and capability to fight for a Federal system in the Convention.” It finally appeals to all Muslim leaders, Ulama, Muslim organizations, associations, and fraternities, and Muslim students “to play your role and unselfishly volunteer assistance in any manner.”

Our group of elected Constitutional Convention delegates included current PHILCONSA president Emilio Sabio. Also, federalism got the support of the Manobo delegate from Agusan Vicente De Guzman and those from the Cordillera (Mountain Provinces). More, we found now Senate President Aquilino Pimentel among those delegates who consistently lend support. The report on Federal Structure of Government was calendared for sponsorship on July 30, 1972. Although I was on the sponsorship council, we agreed that a very prominent delegate Antonio De las Alas would allay fears of secession. Muslim delegates would be reserved for the rebuttal period.

Since no new argument has been presented as anticipated two questions were raised: First, a query was made if it would be possible for the proposed states to declare their own independence. Second, a query was posed if the choice between the federal and the unitary system of government should be voted upon simultaneously with the parliamentary, presidential and mixed forms of government. On the first issue delegate replied in the negative, stating that the proposal would perpetually ban any secessionist move. The second point was answered affirmatively with the explanation that these were not incompatible.

Meeting the Obstacles

There are a number of obstacles to be overcome. The resistance to charter change is promoted itself by those who wrote the 1987 without direct mandate from the people. But a realistic assessment is what a constitutionalist

author Jesuit Joaquin G. Bernas refers to as “the arithmetic of federalism.” The two Houses voting separately must reach a two-thirds or majority vote. To meet as a constituent assembly to propose amendments a vote of three-fourths of all the members is required.

Dr. Jose V. Abueva also raised the reluctance on the part of the President Gloria Macapagal-Arroyo to call a ConCon with election of delegates taking place before the end of her term in May 2004. True, by past experience, it took the 1971-72 ConCon almost a year and a half before it could come out with a final document.

There is no substitute to wholesale federalization. We find the Organic Act of ARMM too problematic (almost a failed autonomy set up) perhaps because it is tied to the 1996 Peace Agreement timeframe. Phase I (1996-1997) to repeal R.6734 has already lapsed. SPCPD is just a monitoring mechanism, not an additional tier to the units of governments. The national infrastructure budget/program implemented by line agencies excludes ARMM. To sum up, this situation far from being an argument against a federative solution illustrates the logic of an excessive centralizing authority.

Strategy for Coordination

As a background, we have recognized recent past, current and parallel initiatives of various groups, including personalities and advocates of federalism through the movement known as Lihok-Pideral Mindnanaw (LPM). It has kept its own version of federalism advocacy since 1991. Balay Mindanaw, which is based at Cagayan de Oro, coordinates for LPM in that part of the region. Kusog Mindanaw convenors, principally Rey Teves and Lito Monico Lorenzana have gathered background materials to keep running the occasional papers on federalism.

The Sultan Kudarat Islamic Academy (SKIA)’s Foundation College proposes to coordinate for the Autonomous Region in cooperation with the UP Institute of Islamic Studies in Diliman, Quezon City and other interested parties.

Without firm understanding of the idea of federalism we cannot market it to the other parts of the country. Cebu and Bacolod are natural allies because they already have the right attitude toward federalism, if not predisposition to open political bargaining. The focus on “what is provincial” proactively promotes the very idea of federalism. Its seminal seed is the strategy of reliance in competition against burgeoning Manila-centric growth areas. To lead a political life away from central government crutches makes a lot of sense simply because it no common sense. The same thing can be said of the northern part of Luzon.

Those regions and provinces close to the Metro Manila hub of development are still not aware of the shared “benefits and burdens” (BAB) recognized as “systematic mutual reliance” (SMR) in being less dependent on the Capital Region. How can we reach out to the social sectors or civil society in imperial Manila is of strategic importance?

Summary Argument

It pains both learned Muslim and Christians to see that vanguards of those who want to deny us the principle of subsidiarity are the staunch supporters of the unitary status quo. The principle of subsidiarity was first enunciated in *Quadragesimo Anno* (which we know was initially met with polite derision.) Can there be correspondence of ideas between *subsidiarity and rubuyiyah* (‘unselfconscious’ argument) put in practice? It is one that invites our ulama and Islamist activists to make use of the discipline in *da’wah bil hal*. Can we recognize in it the principle of *maslaha wal mursala*, i.e. of the ‘common good’?

At the root of federalism is democracy and organization of economic life along functional representation. One used to hear the argument: If this country wants democracy, we must have two things. First, we must have social organization and second, we must link this with political decision-making. Thus the social organization has to be linked to the political structure--organic units accommodating sectors. Today we must talk much about civil society or social sector but we forgot all about the organic structure of federalism. Let us mind ourself that short sightedness comes from short memory.