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Federal vs decentralized

COMMENTARY

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An exchange in the 1986 Constitutional Commission between Commissioners Blas Ople and Ricardo Romulo on the nature and depth of local autonomy is relevant today:

"MR. OPLE. I think what we want to establish is a kind of maximum decentralization, short of federalization, at this moment in history.

"MR. ROMULO. That sounds like someone being half pregnant.

"MR. OPLE. No, that is what local autonomy ought to mean.

"MR. ROMULO. That is what I am trying to say. Is the gentleman talking of local autonomy or is he talking of federalism?

"MR. OPLE. Local autonomy, Madam President." (Record of the Constitutional Commission, Vol. 3, Aug. 11, 1986, pp 178-179)

The phrase "a kind of maximum decentralization, short of federalization" is how local autonomy under the 1987 Constitution must be understood. This means the current local autonomy framework established in Art. X already has federal features. I am referring to the revenue-raising power sections (5, 6 and 7) and the "consolidation of efforts" sections (13 and 14).

But the nonfederalist aspect of these provisions is represented by the fact that these prescriptions are not immediately enforceable. To be implemented, they need either an enabling law or the initiative of the president.

Indeed, Sec. 3 states that "Congress shall enact a local government code which shall provide for a more responsive and accountable local government structure instituted through a system of decentralization."

Pertinently, according to the Supreme Court, "Autonomy, in the constitutional sense, is subject to the guiding star, though not control, of the legislature, albeit the legislative responsibility under the Constitution and as the 'supervision clause' itself suggests, is to wean local government units from overdependence on the central government."

The sad fact is Congress has failed to meet this mandate. Local governments are still utterly dependent on Malacañang despite the Local Government Code of 1991.

The provision that requires a local government code to establish a system of decentralization is the very reason our local autonomy framework is not federal.

Says the Australian constitutionalist Nicholas Aroney: "The basic idea—sometimes stated explicitly and at other times simply assumed—is that a federation is a political system in which governmental power is divided between two territorially-defined levels of government, guaranteed by a written constitution and arbitrated by an institution independent of the two spheres of government, usually a court of final jurisdiction."

Of course, this definition of federalism cannot be treated as absolute because the reality is no two federal systems in the world are alike. But the vital element here is that the division of powers between the different tiers of the government is "guaranteed by a written constitution." Meaning, the federal structure itself is established by constitutional fiat and not by mere legislation.

The critical difference between federal and decentralized systems, therefore, is that in the former, the local autonomy framework is self-evident in the national charter itself. Moreover, the realization of meaningful local autonomy does not need an enabling law.

Correspondingly, a federal system can only be changed by the people through constitutional revision whereas a decentralized system, such as we currently have, can be modified by the legislature whenever it deems fit.

Recognizing the difference between federal and decentralized is very critical for Filipinos. For the past 27 years we have been under a decentralized system which has not produced the outcomes we desire.

Hence, we must remember that if the goal of Charter change is to establish a federal system, then the new charter must not be a substantial carbon copy of the 1987 Constitution. Meaning, the operationalization of the division of powers between the different levels of the government must not be dependent on the enactment of another regional or local government code.

Constitutional reform must result in the improvement of the current system. If the same ill-designed institutions and mechanism are retained, then the entire process would be all for nothing.

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FEDERALISM