

A bounty hunter's republic¹

Mr. President:

Introduction

The Ayes, by now we all know, have it with regards to the bill before this chamber. But the Nays must say it: the administration may have force of numbers, but it lacks force of ideals. We are called upon to vote on this measure, this soon-to-be law; and in doing so, we are entitled to explain our vote. This, Mr. President, I intend to do.

We are faced with sober –and sobering- truths, Mr. President. The truths are, that the coffers of the state aren't being filled as they should. The reasons revenue collections fall short may be attributed to an ailing national economy as much as to corruption run rife in the Bureaus of Internal Revenue and of Customs. This bill aims to solve specific shortcomings pertaining to these Bureaus.

On the part of the Bureau of Internal Revenue, these shortcomings are due to the unauthorized condoning of due taxes in lieu of bribe money, that is, as favors; or the underassessment of, or consenting to the wrong declaration of taxes due the state in exchange for bribes – the end result is the same: no revenues accrue to the government.

On the part of the Bureau of Customs, these shortcomings are due to agents permitting smuggling per se – acts by which no taxes are collected at all, or through smuggling by means of the wrong declaration, or under-assessment, of

¹ Explanation of Vote to the “Lateral Attrition Bill”

the proper taxes due – whereby some taxes are actually collected, but the collections are way below that which should have been collected.

Those are the evils this bill purportedly seeks to eliminate. But this bill, Mr. President, in trying to solve a problem, creates problems of its own. It may be said to be an evil even greater than those it attempts to address.

What, in truth, is this bill, Mr. President? It is popularly known as the “Lateral Attrition Bill.” It is really a bill that aims to award bounties to petty crooks, in a desperate attempt to cover up for the shortcomings of even bigger crooks. In so doing, it threatens to create even more crooks.

Mr. President, the administration hopes to squeeze water from stone, or blood from turnips, thereby slightly improving the fiscal condition of a government whose plunging popularity is partly attributable to its failure to control the soaring deficits. This bill, Mr. President, aims to facilitate the squeezing by awarding bounties to government agencies notorious for their inefficiency and corruption, so that the unsatisfactory performance of these agencies might be made slightly acceptable.

What are these bounties, Mr. President?

Why, they are the very reason for being of this bill about to become law. The majority, in its wisdom, or perhaps it is better to say, in its desire to daintily disguise the true nature of this law beneath a gossamer veil of euphemistic legalisms, calls these bounties “incentives.” These “incentives,” in reality, are rewards in exchange for something: in the case of this bill, rewards for increased tax collections; and so, simply put, they are bounties.

If this bill suffers from intellectual dishonesty, it is a small crime when compared to the manifest injustice of its provisions.

First of all, is it just, Mr. President, for a chamber that prides itself on its thoroughness, to pass a bill into law when the government clearly lacks the data to set accurate revenue targets? How can revenues be properly targeted, if the data and the studies aren't there? This bill is similar to the bill on sin taxes, lamentably passed into law, in that it depends on guesses and estimates derived from guesses, in the absence of appropriate studies conducted to show that this measure would actually improve revenue collections or tax efficiency.

This lack of study and data, Mr. President, actually produces an image that is contrary to whatever positive image the administration think it will project to the international community by rushing this bill into law, as it merely reflects hastiness, recklessness, impropriety, immorality and want of proper values and principles

And is it just, Mr. President, for a chamber tasked with the interests of the whole, including the well-being of the entire civil service, to approve a bill that will breed discontent and inefficiency among other executive departments and offices? If these bureaus already suffer from public odium, as they obviously do, why is Congress poised to make them the **Chosen People** of our state? The officials and employees of the Bureaus of Internal Revenue and Customs already enjoy better compensation through a system of allowances that Congress has already granted; and yet, in effect this bill will remove them from the purview of the Salary Standardization Law that all other government employees are subjected to.

Consider further, Mr. President, the fact that despite getting better remuneration, these two offices still do not effectively carry out their duties. And this bill aims to reward disappointing performance with incentives? Incentives that are being

granted to them while those in other agencies, who have been effectively fulfilled their duties, are ignored, or not given due recognition? Where is the justice in that?

Administrative/Organizational Considerations

Can it be just, Mr. President, that at a time when the citizenry is revolted by the inefficiency of a bloated bureaucracy, for this bill to ignore the public's feelings? And yet this bill aims to establish another layer in the bureaucracy. The so-called ***Revenue Performance Evaluation Board for Special Incentives and Rewards*** this bill provides for, will be yet another office with positions to fill, and an unquenchable thirst for office supplies, meals, allowances, office space, vehicles and petty cash to quench. The proven voraciousness when it comes to government funds of even the most well-meaning government office can be expected to be matched by those who head the board. The members of the board, composed of 12 and 10 members respectively, will be entitled to an additional per diem in their capacity as members of the Board. *Is it just, Mr. President, at a time when the public has been nauseated by revelations of lavish per diems enjoyed by officials, for the government to create additional officials entitled to yet another series of per diems?*

The legal arguments against the bill

And is it just, Mr. President, to grant this Board an exceedingly wide latitude in setting revenue targets? Granting such a breadth of discretion guarantees a litany of complaints assailing this Body from the first day it sits. The proponents of this bill have given the proposed Board so much rope it can't help but hang itself. Under what standards are revenue targets set? Revenue targets must be based on realistic projections or formulas that Congress should provide for in the law. Failure to provide for such standards, puts any such law in peril of being declared unconstitutional.

After all, Mr. President, pursuant to the legal principle on ***Non-Delegability of Legislative Powers***, for a law that vests an executive officer, or body, such as the Board provided for in this bill, with the responsibility, or power, to “fill in” certain parts of the law passed by Congress, the law must pass certain tests to be considered constitutional. My learned colleagues know these to be the *tests of Completeness and of Standard*. Completeness requires a law to be otherwise whole in its provisions, except for what has been delegated; more importantly, the law must provide for Standards, that is, parameters that limit the so-called delegate’s power: this is an essential safeguard against the arbitrary and tyrannical implementation of the law.

Is it just, Mr. President, to pass a bill into law that contains the seeds for the destruction of what it aims to achieve? Mr. President, I do not think it is just to pass a law that by its imperfections and overgenerous granting of latitude and discretion, will issue an open invitation for a swarm of fixers and influence peddlers to use the law against itself. The bill unjustly allows opportunities for the corrupt to use the Board to lower revenue targets to let underperforming bureaus off the hook, or to raise quotas so unreasonably high, as to provide a pretext for the elimination of certain individuals from the civil service.

This bill also provides for sanctions against those that who would not have met their revenue targets. Sanctions that amount to at least 10% of their uncollected targets. But closer perusal of the bill would show that such “sanctions” are already penalties fully within the powers of the existing commissioners of Internal Revenue and Customs to impose. However, this bill actually makes punishment more difficult.

While the bill ostensibly provides for sanctions, Mr. President. Though such “sanctions” may be imposed only on those employees of the Bureaus of Internal

Revenue or Customs only upon their failure to meet their set targets. It cuckoons civil servants in protective layers of the bureaucracy. This bill says that the termination of a staff member's employment for whatever reason, Mr. President, may only be done by the board, and only after a: (1) careful and proper review thereof has been conducted; and (2) the determination of whether there existed economic difficulties brought about by the factors enumerated in the law.

Furthermore, the bill states – that when it comes to Commissioners, their sanctions shall be determined by the President in a manner that “*consistent with the National Interest.*” What is the “*national interest?*” The bill fails to define it, leaving it to the discretion of the President of the Philippines. A discretion which time and again has been demonstrated to err on the side of giving appointed officials *carte blanche*.

In addition, this bill creates exceptions: take note, Mr. President, that though civil servants in the bureaus are subject to sanctions, they remain completely eligible for the rewards. It would therefore allow a particular employee to underperform for two years unless terminated for non-work reasons. And the law makes it exceedingly difficult to be punished, much less, fired.

We are tasked with deliberating on, and passing laws, Mr. President, subject to the basic law, our Constitution. Is it just, Mr. President, to ask members of this chamber to vote for a bill that contravenes the basic law of the land? For this bill, Mr. President, defies our country's Charter.

It violates the equal protection of the law under **section 1, Article III, 1987 Constitution**. The equal protection clause is a specific constitutional guarantee of the equality of persons before the law. Under it, each individual is dealt with as an equal person in the eyes of the law, which does not treat a person differently because of what he or she is, or what he or she possesses. By limiting the system of rewards and penalties to a specific group of individuals, those only in the Bureau of Customs and the Bureau of Internal Revenue, we are tolerating legislation based on an unreasonable classification, one favoring only a particular class of public servants – What makes an employee from the Bureau of Customs, or Bureau of Internal Revenue, Mr. President, different from the Land Transportation Office worker, or employees from Government Owned and Controlled Corporations, or for that matter, the lowly paid teacher?

This bill violates **Section 5, Article IX, of the Constitution** which requires of Congress the standardization of compensation for government officials and employees. Merely designating that the bill would be granting as a “reward” or “incentive” is but a ploy to circumvent the law. The ultimate effect of this bill, Mr. President, once made law, is to grant wages above that of other government employees to those in the two favored Bureaus. By favoring a privileged few in the public service, we are sending the wrong message: the standardization of government compensation will become the exception rather than the general rule. To avoid disturbing the equality of compensation between the two bureaus and all the other agencies, Mr. President, would require Congress granting such “benefits” to all fee-collecting agencies of our government.

This bill, Mr. President, also violates **Section 8, Article IX**, of the Constitution which prohibits appointive and elective officers or employees from receiving additional, double, or indirect compensation. .. In the case of ***Peralta vs. Mathay, 38 Supreme Court Reports Annotated (SCRA) 256***, the Supreme Court ruled that, public office is a public trust. A civil servant is there to render public service that should be viewed not merely as an occupation but rather, an honor granted.

Though the civil servant must be compensated for the performance of the functions entrusted to him, and perhaps even rewarded, financial considerations should not be the overriding consideration governing the public work, so as to promote nationalism and patriotism. Is it just to exchange our idealism for a system of selfish bounties?

Conclusion

And where is the justice, Mr. President, in giving up on three generations of efforts to instill a culture of honesty in these bureaus, only to seize upon the supposed bright idea of offering “incentives” to tax collectors? Where is the justice in the undeniable assumption of this bill that if civil servants can’t be expected to want to be honest, they can, through these splendid “incentives,” be inspired to remit more, because the more they remit, the larger their “incentives”?

In truth, Mr. President, the entire strategy that governs this bill is nothing new, it was used under imperial Rome, and during the Middle Ages, and even as late as the eve of the French Revolution. Tax collectors in those days, were called tax farmers. They were given specific territories, operated under tight quotas, and were allowed, even encouraged, to profit from their efforts by keeping anything over their quotas as commissions or bounties.

But the days of tax farmers, bounties, and commissions, Mr. President, were under emperors like Nero, kings like Herod, and rulers by divine right like the guillotined Louis XVI of France. Today, of course, we are wiser, brighter, and more democratic. So what we have are Bureaus instead of free agents called tax farmers, and we have “incentives,” rather than bounties or commissions. I marvel at the mind-numbing wonders legal jargon can achieve, Mr. President, but I must wonder if history’s workings cease when the Congressional magic wand is waved. For I recall, as many of my colleagues surely recall, that the system of tax farmers and bounties resulted, over the ages, in revolt after revolt.

These “incentives,” and the system implementing them, Mr. President, ignore a cardinal precept of leadership, which my learned colleagues in this chamber know has been eloquently enunciated by students of leadership dating back to Niccolo Machiavelli. In *The Prince* he suggested that while it is well for a ruler to be feared and loved, if the ruler must be one or the other, it is better for a leader to be feared, rather than loved. This bill, Mr. President, tries to make underperforming civil servants both love and fear the state they serve, and it will achieve neither. Why? Because in setting up a means for “incentives,” it aims to inspire civil servants in the Bureau of Internal Revenue and Customs collect more. But mark my words, Mr. President, in truth this bill makes avarice, or the love of money, the policy of the state; in promoting a negative, selfish love –that for selfish gain- it will sap the already weakened moral health of the civil service. It may result in some short term increases in collections, but it will condemn the civil service to an even feeble dedication to the already ignored ethics that should govern public service.

In addition, Mr. President, while this bill aims to inspire fear in civil servants, by setting up a Revenue Performance Evaluation Board that will impose quotas and mete out punishments to delinquent tax and customs collectors, in reality, this bill only creates a bureaucracy to monitor a bureaucracy. I cannot see how the majority seems to think our civil servants will either love or fear this Republic,

when in passing laws it seems to suffer from an elementary sort of lack of logic: the kind that thinks adding negative one to negative one might result in a whole number.

You cannot squeeze blood from turnips, or water from stones. You cannot inspire dedication by promoting avarice, expect improved public service by promoting favoritism, you cannot improve our economy through a system of bounties. Most of all, you cannot attempt to achieve the public good, by passing a defective and deficient law, Mr. President. You cannot improve the fiscal health of our country by sapping its moral reserves; you cannot do good by means of an unjust law.

This bill is unjust Mr. President. This bill, when it becomes law, will foment injustice; it will inspire unease; it will promote disquiet; it will eventually result in the even greater disrepute of the state. For these reasons, I vote "No." Public servants should never be bounty hunters.

I thank you.