



MICRONESIAN SEMINAR
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FSM Amnesty Bill

Pushing Out to Sea "Creating a New FSM Economy"



Island Topic: #38
Running Time: 22:56

For years the FSM economy has depended on US aid. This documentary examines what may be needed to get the island economy off the beach and out to sea during Compact 2.

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Francis X. Hezel, SJ

C.B. No. 13-76 A BILL FOR AN ACT

To grant amnesty to certain classes of people who are now being accused, or yet to be accused, or who have been prosecuted of certain types of crimes against the sovereignty of the Federated States of Micronesia but yet convicted, and for other purposes.

Congressional Bill 13-76, affording amnesty to “certain classes who are being accused, or yet to be accused, or who have been prosecuted of certain types of crimes,” has created a firestorm since its introduction into the FSM Congress a few days ago.

The bill, alleging that the national government has “singled out certain classes of people for investigation and prosecution,” proposes that amnesty be offered to any citizens of FSM, whether government officials or not, charged with the misuse or misappropriation of any government funds over the last 17 years. Any persons already charged with such crimes would have these charges dismissed and all doors for entering further charges against citizens on grounds of misuse of government funds during this period would be “forever closed and sealed.”

Barely two months ago, 14 people were named in an indictment for the theft of \$1.2 million in government funds. A year earlier, another congressman was charged with the misappropriation of a much smaller sum of money. Inasmuch as four former or present FSM congressmen are among those charged for misuse of public funds, it was inevitable that the bill would raise a public furor.

The outcry was instantaneous and vigorous. Indignant phone calls poured in, and the bill became the talk of the sakau stone...and the betelnut bench...and whatever serves a similar purpose in Kosrae. Here we go again, people seemed to be saying. Congress is not satisfied with accumulating power and prerogatives, not satisfied with their lifetime seats and the endless flow of pork barrel funds to assure their re-election, not satisfied with their salary and representation fund, not satisfied



Chuuk and the rest of FSM. If Chuukese congressmen or private citizens are judged guilty of misconduct, then they should be held accountable for what they have done. FSM does no favor to Chuuk, which seems to have a serious accountability problem of its own, by excusing misuse of funds on the grounds that this practice is so widespread that it ought to be disregarded. In-

deed, FSM may be called on to help Chuuk develop the standards and the machinery to enforce the standards the state so badly needs. FSM, further, does no favor to either Chuuk or itself by dismissing this as nothing more than “local politics,” since the introduction of such a bill in Congress *ipso facto* escalates it to a national issue.

On the other hand, the implicit contention of the authors of the bill that misuse of public funds is pervasive should also be seriously considered. If this is true, then systemic reforms are needed if the FSM is ever to grow in the accountability and transparency of government that are watchwords in the world community these days. It’s hard to see how Congress will ever be able to assist in this if it is poised to declare war on the other two branches of government. Perhaps this is the time for Congress to initiate joint discussions with the executive and judicial branches on how to go about resolving a problem that it should have laid to rest years ago.

At some point Congress is going to have to refuse to stand pat on its privileged position and give proof of its intention to change its image. Given the uproar that this amnesty bill has generated, no time would be more opportune than the present.

Francis X. Hezel, SJ

more successful?



A third option is to adopt the method that Palau has used for the past year or two: hire a special prosecutor from the outside who is beyond the influence of Congress and whose job is to keep Congress honest. This individual would have the staff needed to scrutinize accounts and the necessary power to demand restitution from each congressman for any question-

able expenditures of public money. In case of clear cut misuse of money, he would have the authority to fine the offending official. The advantage of this approach is that it could be done expeditiously and cheaply, without long public trials. In the end, the money taken for personal use is returned to the government fund.

Palau's experience, incidentally, supports the contention of the authors of the amnesty bill that those guilty of misuse of public funds are numerous. All members of the Palau Legislature except one or two have been charged with misuse of funds—whether travel money, office expense allotments, or representation money. Photos of all offenders are shown in the newspaper along with a statement on how they misused funds. The fines they receive are proportional to the sums misspent.

Whatever course FSM takes, the primary goal must be to reform the system. Business as usual—as practiced in the past—can not be an option at this stage of FSM's nationhood. This may be the opportune but long-overdue moment for Congress to reconsider the wisdom of the allocations for public projects popularly known as pork. Whatever benefits these might have brought to members of Congress and their constituents in the past, they are clearly a major source of problems today. Failure by Congress to make needed changes will only further erode its authority and damage the respect in which it is held by the international community.

As misguided as this bill might have been, one can only hope that it does not become a new and deeper wedge between

with their public prominence. On top of all this they now want immunity from prosecution for their misdeeds.

For those who have believed all along that Congress, ever encroaching on the property lines dividing the legislative from the executive and judicial branches, has accumulated far too much power, this bill offered compelling evidence for their position. The FSM President, who is chosen from Congress, has always been beholden to his former colleagues for his position and so is all the more susceptible to their influence. Now Congress wants to hold the court system captive, at least where its own conduct is concerned.

All this is making FSM look like a banana republic.

It's difficult to avoid the conclusion that all this is making FSM look like a banana republic. Many

Micronesians, sensitive to their public image, might find this bad enough, but their resentment is bound to deepen when they recall the group of dedicated men, many of whom are now dead, who struggled to create this small nation. Now we're squandering with silly and self-serving legislation the political capital they have gained with so much effort.

It is public knowledge that elected political officials have been using public funds to advance their own careers. Pork barrel allotments to constituents have been standard practice for years, whether in the form of boats, docks, paving projects, public buildings, or family structures. This has continued unabated, over the protest of the hard-pressed state governments and many private citizens, even as US aid dollars were being reduced sharply during the late 1990s. Congressmen would protest that, even if the projects they funded did not jibe with the priorities set by the local governments, the people at least benefited from this money. There is undeniably some truth in this, even if the flow of such funds insured that congressmen got re-elected.

The most recent indictments, however, have moved a step or two beyond this. Just a few months ago elected officials were charged with enriching themselves through the use of such

BE IT ENACTED BY THE CONGRESS OF THE FEDERATED STATES OF MICRONESIA:

Section 1. **Findings.** The Congress of the Federated States of Micronesia hereby finds that the national government has constitutionally impermissibly singled out certain classes of people for investigation and prosecution, based on the exercise of their political right, like what happened in Chuuk State now, and leaving other classes of people who are similarly situated not investigated and prosecuted. The Congress further finds that, if convicted, those people who are singled out for investigation and prosecution are deemed political prisoners. The Congress further finds that these selective prosecutions to trammel the free exercise of one's political right have no place in a civilized democratic society like the Federated States of Micronesia. Such selective prosecutions violate the FSM Constitution and at the same time offend the basic foundation of Micronesia. Lastly the Congress further finds that granting of an amnesty under these sets of facts to those people who are being invidiously singled out for investigation or for prosecution for their fearless exercise of their political rights is deemed more expedient for the healthy growth of democracy in this Nation and for the preservation of the culture and tradition of the citizens thereof than prosecution and punishment.

Section 2. **Definition.** Unless the context requires a different construction, "Amnesty" is hereby defined as an act of the sovereign granting oblivion to any class or classes of the citizens of the Federated States of Micronesia or to all citizens of the Federated States of Micronesia who are subject to investigation or prosecution, or both, but who have not yet been convicted for past offense or offenses. Amnesty is an act of state. It addresses itself to crimes against the state, that is, to political offenses, and is exercisable by the sovereign through either the President of the Federated States of Micronesia by the proclamation or by the Congress of the Federated States of Micronesia through legislation.

Section 3. **Amnesty.** An amnesty is hereby granted to and in favor of the classes of citizens of the Federated States of

for a minor infraction if the highest legislative body declared itself immune from prosecution for felonies?

Even more frightening than what the bill proposes is the assumption on which it rests—that misuse of public funds is so widespread that a large percentage of high officials would be implicated if the government decided to prosecute all wrongdoers. "Everybody's doing it, so let's forget about the past and do something about the future," the bill seems to be telling us. Of course, future passage of this bill in Congress might be an indication that the assumption is correct. Why else would a congressman vote in favor of a piece of legislation that has generated such a negative reaction at every level?

All that said, there is something in the bill that deserves serious consideration. If it is true that a endless string of indictments could ensue from a serious effort to crack down on misuse of public funds, is that what we want? What purpose would be served by jailing offenders or even dismissing them from government office, especially if there was a good chance their replacements might succumb to the same temptations? What is the most important thing the nation can do right now to restore public confidence in the government while guarding against a recurrence of the same practices in the future? If it came to a choice, should FSM emphasize punishment or reform?

Everybody's doing it, so let's forget about the past...

The government has a number of options at present. It can continue to prosecute those who have abused the public trust. Those who are convicted of the charges against them will be punished by the law and perhaps removed from their official positions. The hope, of course, is that this will discourage others from doing the same in the future.

Another option is to tighten the structures of accountability, either by enacting new legislation or by better enforcing that already on the books. Congress has attempted to do this in the past, but its efforts seem to have proven only partially successful. Is there any reason to believe that future attempts will be any

Clearly the Chuukese authors of this bill hold the third position. Their challenge, not quite spelled out in the bill, is that if the Justice Department looked hard enough, it would find plenty of grounds for future indictments against members from other states as well. Two other resolutions proposed just two days after the bill was introduced take it a bit further. CR 13-80 would create a special congressional committee to investigate corruption in the executive branch of the government, presumably beginning with the president and vice-president, both of whom were once members of Congress. Just to make sure the point isn't missed, CR 13-73 requests the president to order an investigation into the purchase of the land parcel for the COM Chuuk campus ten years ago. The intended object of the investigation would be the Vice-President, of course, since he was the one from whom the land was purchased.

The amnesty bill, in conjunction with these two resolutions, may be interpreted as conceding that wrongdoing did in fact take place. It seems to argue that the misuse of funds in Congress, whether special appropriations or each member's representation allowance of \$25,000 a year, was so pervasive that hardly anyone would remain unindicted if even-handed justice were dispensed. It suggests that not only congressmen were involved, but officials at the state and municipal level in many, if not all, of the states. So, it proposes, rather than dig up all these graves, we would do better to leave the bodies undisturbed. If justice is to be done, let's reset the clock and begin dispensing this justice now.

Such a proposal is repugnant to many in the FSM and, we might guess, to most outside observers. Standards of justice only have meaning if they are enforced, if all citizens, beginning with elected officials, are held strictly to these standards. What signals would be sent to the country's citizens and to the outside world if the FSM, by congressional fiat, simply rescinded these standards over the entire life span of the nation? By what right would a



may hereafter be, subject to investigation, prosecutions, but not yet convicted, of or for any alleged misuse, misappropriation, failure to make the required disposition of, fraudulent use or fraudulent appropriation of any government fund, or of any and all alleged criminals acts, or omissions, that arise out of, in connection with, or relating to the use of government fund, or relating to any derivative use of any such government fund, that are now known, or yet to be known in the future, which acts, or omissions, allegedly took place during the period from November 3, 1986 through November 3, 2003.

Section 4. Automatic Oblivion. *The approval of this act by the President of the Federated States of Micronesia or its becoming law without such approval shall by its own force and effect operate automatically to:*

(a) forthwith dismiss any and all criminal cases that are pending in the Trial Division of the Supreme Court of the Federated States of Micronesia against the class or classes of people who are forgiven by the amnesty granted under section 3 of this act;

(b) forthwith close any and all criminal investigations currently undertaken by the Government of the Federated States of Micronesia against the class or classes of people who are granted amnesty under section 3 of this act and to forever seal any and reports relating to, connected with, or resulting from any of such investigations; and

(c) forthwith forever close and seal once and for all any and all criminal investigations or inquiries into any of the types of offenses for which the amnesty is granted under section 3 hereof arising out of acts, or omissions, which allegedly took place during the period of time set forth under the same section 3 hereof.

Section 5. *This act shall become law upon approval by the President of the Federated States of Micronesia or upon its becoming law without such approval.*

by: Henry C. Asugar

Date: Jan. 20, 2004



funds. Last November three congressmen were charged with filing fraudulent invoices, in complicity with local business owners, for expenses that were never made. The assumption is that the money—over \$1.2 million of public funds—went into the pockets of these officials and their accomplices.

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malfeasance.

Now, in the wake of these indictments, Congress has introduced a bill that would protect itself from any punishment for all wrongdoing. To the FSM public and the outside world, the bill is yet another instance of Congress misusing its authority, this time to shield its own members and any who collaborated with them from suffering the consequences of their

The introduction of this bill, so soon after the US signed off on funding for the next twenty years of the Compact, is not calculated to warm the hearts of Washington well-wishers. It is not designed to inspire the confidence of potential foreign investors. It is not a measure that will reassure other Pacific nations that FSM is moving steadily toward an appreciation of the rule of law. It has drawn a sharp and angry reaction from some of the governments with which FSM has important diplomatic ties. The bill has managed to put FSM under a deep, dark cloud, at least from where the international community stands. Some congressmen, of course, will thump themselves on the chest and take pride in their defiance of foreign opinion as another victory for national sovereignty. But one might think that the bruises received during the Compact negotiations over the past three years as the FSM team encountered the brutal realities of power on the international scene would have forever moved them beyond such jejune posturing.

Even worse, however, was the tension the amnesty bill caused in FSM. Yap State government reportedly weighed in with a strong protest, with one high official warning the Congress



that approval of this bill could cause Yap to seriously consider secession from FSM. Pohnpei State immediately took up the bill on the floor of its legislature, while the governor considered summoning the traditional chiefs to discuss how to respond. National unity, which is justly described as fragile in the best of times, is being severely tested by this congressional bill. To compound the problem, the bill threatens to provoke a constitutional crisis. The legislature is, in effect, declaring itself immune from prosecution initiated by the executive branch and carried out by the judiciary. In other words, Congress appears to want to position itself beyond the reach of the other two branches. The bill is certain to be challenged by the Attorney General.

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If the effect of the bill created such an upheaval, then what was to be gained by trying to legislate a blanket amnesty for any and all who misused public funds? Why not try a more subtle means of avoiding punishment? Plea bargaining perhaps? Or an

appeal for presidential pardon?

The amnesty bill was, at bottom, a complaint and a challenge. The “certain classes of people singled out for investigation and prosecution” did not refer to congressmen, but to Chuukese. Indeed, all the persons indicted thus far for misuse and misappropriation of funds have been citizens of Chuuk, some of them congressmen and some simply private citizens. Add to this the charges raised against the Mayor of Udot and the Mayor of Fefan, and you have a clean sweep. All the parties indicted by the FSM Justice Department have been from this one state. Is this because targets for investigation are far more plentiful there because, as many people maintain, “things are so much worse in Chuuk than anywhere else?” Is this a deliberate attempt by the national government to clean up the biggest messes first? Or does this reflect, as the amnesty bill suggests, the Justice Department’s blindness as to what is happening elsewhere in the nation?