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The Philippines is well-acquainted with structural change. Its history is plagued with paradigm shifts, primarily evidenced by at least three major constitutional reforms which resulted in the 1935, the 1973, and the 1987 Constitutions. With the rise to power of President Rodrigo R. Duterte, yet another restructuring looms over the country, as the Duterte administration attempts to birth the Philippine Federal State. Various proposals from several sources have surfaced as workable drafts for the new Constitution. These drafts commit to different ideas and suggestions — all in the form of a federalist project, but in varying depths and intensities.

In proposing and deciding government structural changes, some key factors must be incorporated. These factors constitute the areas in Philippine society which cannot be divorced from any experience of constitutional change. The federalist project must necessarily reckon with the economic, political, and socio-cultural contexts of the Filipinos. There are gaps in the transition to a new government and the implementation of the federalist project which need to be addressed. As much as the 1987 Constitution was a reaction to the Marcos regime, and the desire of the masses to reinstate democracy and the rule of law, the shift to a federalist State must also rise from the enduring hopes and needs of the Filipino people today.

The re-imagination of the Republic necessarily stretches out the fabric of the 1987 Constitution. Will it be able to withstand federalism — the ultimate test of the Constitution?

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Minding the Gaps: Philippine-Style Federalism

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I. RESPONDING TO GLOBALIZATION AND THE DIGITAL AGE

The inevitability and irreversibility of globalization was best expressed by Kofi Annan, former United Nations Secretary-General, when he said, “[A]rguing against globalization is like arguing against the laws of gravity.”¹ Globalization’s potential towards becoming an integrating force in the global community springs from its very definition as “the increasing flow of goods, services, capital, technology, information, ideas[,] and labor at the global

1. The Globalist, Kofi Annan on Global Futures, *available at* <https://www.theglobalist.com/kofi-annan-on-global-futures> (last accessed Feb. 13, 2018).

level, driven by liberalization policies and technological change.”² In the political sphere, the spread and globalization of decentralized structures of government is perceived as the norm.³ The challenge, however, is how the State will keep up with this fast-paced development. The complementary phenomena of digitization, globalization, and lightning-speed transfer of data — the “new oil”⁴ — and data interpretation’s crucial role in the market are transformatory elements that demand not only greater interaction among private users, but also greater connectivity and governance (or guidance) through legal frameworks of the State.⁵

Globalization in Philippine law is fairly embedded in the supreme law of the land. The 1987 Philippine Constitution’s incorporation of globalization is found in the structures that relate to the remaking of public management and the distribution of political power once unduly concentrated in a handful of people during the Marcos regime. Thus, in the Constitution, sovereignty resides in the people,⁶ and authority is dispersed in the Executive, the Legislature, and the Judiciary — accompanied by a rigid system of checks and balances. In the promotion of local governance, the philosophy of globalization is expressed in “administrative and managerial improvement”⁷ as applied in government structures. The Constitution has

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2. Kofi Annan, Secretary-General, United Nations, *Cause of ‘Inclusive’ Globalization*, Address at Yale University (Oct. 2, 2002) (transcript available at <http://www.un.org/press/en/2002/SGSM8412.doc.htm> (last accessed Feb. 13, 2018)).
 3. See Francois Venter, *Globalization of Constitutional Law through comparative Constitution-making*, 41 L. & POL. AFRICA, ASIA & LATIN AMERICA 16, 22 (2008). Francois Venter said that “[a]lthough globalized constitution-making has not reached a point where a composite form of [S]tate can be seen as a universal structural standard, indications are that contemporary constitutionalism strongly [favors] decentralization.” *Id.* at 22.
 4. Yasar Jarrar, What is the role of government in the digital age?, available at <https://www.weforum.org/agenda/2017/02/role-of-government-digital-age-data> (last accessed Feb. 13, 2018).
 5. *Id.*
 6. PHIL. CONST. pmb1.
 7. Mirshariff Tillah, Globalization, Redemocratization and the Philippine Bureaucracy (Paper from the Philippine Institute for Development Studies Discussion Paper Series) at 12, available at <https://dirp3.pids.gov.ph/ris/dps/pidsdps0509.pdf> (last accessed Feb. 13, 2018) (citing LAURENCE LYNN, JR. & SYDNEY STEIN, JR., GLOBALIZATION AND ADMINISTRATIVE REFORM: WHAT IS HAPPENING IN THEORY? (2000)).

embraced decentralization and devolution, made more nuanced through the Local Government Code of 1991 (LGC).⁸ The LGC was meant to solidify “the dispersal of power and authority from the center to [lower level] institutions” to allow more access to government institutions,⁹ as well as “to debureaucratiz[e] [by] harness[ing] the energies of the private sector to participate in local governance primarily through privatization and non-governmental organizations (NGOs).”¹⁰ Distinctively, this “horizontal distribution of government authority,”¹¹ mirrors the horizontal development of technology, specifically digital knowledge,¹² among constituents and private players. It is also both “empowering and spontaneous.”¹³ But globalization demands more than an intra-State response and the application of principles. With the “denationalization of clusters of political, economic[,] and social activities[,]”¹⁴ the global community comes into play and has led to “the search for the best means of developing national, regional, and world economies”¹⁵ and the creation of a “supra-national organization on a regional scale.”¹⁶ There is, therefore, a demand for a more competent national legal framework that will pave the way not only towards the development and decentralization of internal structures, but also towards a globalized economy, political integration, and multiculturalism.

In relation to this, there is, today, an ongoing debate regarding the seemingly protectionist provisions of the Constitution. Sections 2 to 3 and

8. Local Government Code of 1991 [LOCAL GOV'T. CODE], Republic Act No. 7160 (1991).

9. Alex B. Brillantes, Jr., Essay on the Local Government Code of 1991 and NGOs (Paper from the University of Baguio — Cordillera Studies Center Issue Paper Series) at 2, available at <http://csc.upb.edu.ph/downloads/pdf/csc%20issue%20papers/CSC%20Issue%20Paper%20no.%2001.pdf> (last accessed Feb. 13, 2018).

10. *Id.*

11. Venter, *supra* note 3, at 21.

12. See Jarrar, *supra* note 4.

13. Jarrar, *supra* note 4.

14. James M. Boyers, *Globalization and the United States Constitution: How Much Can it Accommodate*, 5 IND. J. GLOBAL LEGAL STUD. 583, 583 (1998) (citing Jost Delbrück, *Globalization of Law, Politics, and Markets-Implications for Domestic Law-A European Perspective*, 1 IND. J. GLOBAL LEGAL STUD. 9, 11 (1993)).

15. Boyers, *supra* note 14, at 583.

16. *Id.*

10 to 11 of Article XII on National Economy and Patrimony,¹⁷ among others, have been argued to have stunted economic growth by prohibiting key international players from injecting capital into the Philippines.¹⁸ In 2016, Resolution of Both Houses No. 2,¹⁹ introduced by Representative Feliciano R. Belmonte, Jr., and Senate Joint Resolution No. 1,²⁰ introduced by Senator Richard J. Gordon, proposed to amend several provisions in Articles XII, XIV, and XVI. Such constitutional amendments allow for Congress to change, by law, ownership and citizenship requirements for the utilization of natural resources, land holdings, operation of public utilities, and ownership and management of educational institutions and mass media.²¹ This call has also been embodied in several proposed Constitutional Revisions such as in the Partido Demokratikong Pilipino–Lakas ng Bayan (PDP-Laban) version, and the version contained in the Annex to the Resolution of Both Houses No. 8 of the 17th Congress of the Philippines.²² While the Citizen’s Movement for a Federal Philippines (CFMP) version has yet to form its article on National Patrimony, its article on principles and policies has replaced terms relating to an “independent national economy effectively controlled by Filipinos.”²³

17. PHIL. CONST. art. XII, §§ 2–3 & 10–11.

18. See, e.g., Dindo Manhit, *A constitution for economic freedom*, PHIL. DAILY INQ., Oct. 9, 2017, available at <http://opinion.inquirer.net/107738/constitution-economic-freedom> (last accessed Feb. 13, 2018) & Jovee Marie de la Cruz, *Lawmakers keen on easing economic restrictions in Constitution via Con-ass*, BUS. MIRROR, Jan. 8, 2018, available at <https://businessmirror.com.ph/lawmakers-keen-on-easing-economic-restrictions-in-constitution-via-con-ass> (last accessed Feb. 13, 2018).

19. Resolution of Both Houses Proposing Amendments to Certain Economic Provisions of the 1987 Constitution of the Republic of the Philippines Particularly on Articles XII, XIV & XVI, H. Res. No. 02, 17th Cong., 1st Reg. Sess. (2016).

20. Joint Resolution to Propose Amendments to or Revisions of the Economic Provisions of the Constitution, S. Res. No. 1, 17th Cong., 1st Reg. Sess. (2016).

21. *Id.* para. 4.

22. Resolution of Both Houses Constituting the Senate and the House of Representatives, Seventeenth Congress, into a Constituent Assembly to Propose Revisions of the 1987 Constitution by Adopting a Federal Form of Government and for Other Purposes, H. Res. No. 8, 17th Cong., 1st Reg. Sess. (2016).

23. PHIL. CONST. art. II, § 19.

Augmenting these developments is the Philippines' own experience. Economic, political, and cultural issues pervade the road to globalization. Annan's vision was an inclusive globalization,²⁴ but is the 1987 Constitution still responsive to these types of changes? The 1987 Constitution predates both globalization and the digital age. Its framers, while foreseeing increasing internationalization, could not have responded to the intricate aspects of this age. The starkest example, again, is the growing debate regarding the conduciveness of a restrictive investment climate and the distrust of the trickle-down effect of economic benefits from "Imperial Manila" to the provinces. These, among other issues that will be discussed later, are the roots of the call for the shift to a federalist form of government — perceived to be the solution to the unresponsiveness of the 1987 Constitution to the changing needs of the Filipino people.

This Article will first delve into a discussion of the general principles of federalism, using a comparative analysis of the different models of federalism in several jurisdictions. More than a cursory analysis, this Section will look at how the distinct features of the forms of federalism have emerged in a specific jurisdiction, borne out of its particular historical, cultural, and economic contexts. Next, it looks at federalist initiatives in the Philippines, from the beginnings of the Philippine Republic to the present calls for the shift by President Rodrigo R. Duterte's administration presently. The Article then gives an overview of the available proposals and discusses the features of the three versions of the constitutional revision. After looking at the proposals, a survey of key factors that give nuance to the federalist project will be undertaken, and gaps left by the same will be filled. Structural change does not exist nor originate from a void. The country's economic, political, and socio-cultural contexts are transitory elements that will shape the federalist project according to the hopes and needs of the Filipino people.

II. FEDERALISM AROUND THE GLOBE

A. Defining Federalism

A potential shift to a new form of government is necessarily a comparative exercise. "Constitutions designed for unique situations may be expected to be produced for as long as State sovereignty retains its foundational importance. Nevertheless, comparative constitution-making has become an essential characteristic of the process of the drafting (and revision) of

24. Annan, *supra* note 2.

legitimate contemporary constitutions.”²⁵ While federalism consists of several basic and identifying principles, it is nevertheless “customizable,”²⁶ and could be made to fit the “peculiarities of a country [that] would define the different features of its own brand of federalism.”²⁷

While the term has been argued to elude exact definition,²⁸ essentially, federalism is a form of government consisting of a sovereign State as distinguished from other States “solely by the fact that its central government incorporates regional units in its decision[-making] procedure on some constitutionally entrenched bas[e]s.”²⁹ In this form of government, states exercise a level of autonomy.³⁰ It features a division and sharing of powers between the federal government and federal states where

member states divide power in such a way as to prevent either the federal or state governments from eroding each other’s powers. Thus, powers may be shared (concurrent powers), or exercised solely by either the federal or state government (exclusive powers). Often, exclusive powers of a particular level of government are enumerated, whereas those not listed belong to other levels of government.³¹

The division of powers and the type of relationship between the federal government and states, however, remain to be determined by an organic law.³²

This is contradistinguished from a unitary form of government where local governments form parts of a whole and are “intra-sovereign subdivisions of one sovereign nation.”³³ The sovereign State acts as a central government where power is concentrated, but several functions may be

25. Venter, *supra* note 3, at 31.

26. Michael Henry Ll. Yusingco, *Federalism: a deeper look*, PHIL. DAILY INQ., June 18, 2016, available at <http://opinion.inquirer.net/95262/federalism-a-deeper-look> (last accessed Feb. 13, 2018).

27. *Id.*

28. See John Law, *How Can We Define Federalism?*, PERSPECTIVES FEDERALISM, Volume No. 5, Issue No. 3, at 90.

29. Alberto C. Agra, *Current Issues and Emerging Policy Trends in Local Autonomy*, 46 ATENEO L.J. 1, 3 (2001) (citing MICHAEL BURGESS, *FEDERALISM AND EUROPEAN UNION: THE BUILDING OF EUROPE, 1950-2000* 25 (2000)).

30. *Id.*

31. *Id.*

32. *Id.*

33. *Id.* at 2.

decentralized and devolved to the local governments and administrative agencies.³⁴

While there have been several types of federalist governments throughout history as described and categorized by political theorists, this Article will not dwell so much on them. The discussion here does not focus on categorizing the Philippine structure among those available since the proposals have yet to be revised, finalized, and submitted to the people. Furthermore, it resolves to look at federalist governments of select countries, more so because each jurisdiction will provide a unique set of characteristics to their own version of the structure. Since the topic involves proposals and originary studies, a discussion of the process of the emergence of federal countries is more proper.

The evolutionary pattern of federalist governments affects how such structure will be designed and operated.³⁵ Federal governments can be created first, by, “the aggregation of formerly independent states,” such as the United States (US), Switzerland, and Australia; second, by the “devolution of formerly unitary regimes,” as in Austria, Belgium, Germany, Nigeria, Ethiopia, South Africa, and Spain; and, third, by “a combination of these two processes,” as in Canada, India, and Malaysia.³⁶ The Philippines will fall under the second process whereby a unitary form of government will be devolved and decentralized. According to Alain-G. Gagnon and Soeren Keil, the second type of formation became more prominent in the 20th century.³⁷

B. General Advantages and Disadvantages

A good analysis of the pros and cons of a federated Philippines was discussed by Artemio D. Palongpalong in his article, *The Pro and Con Arguments on Federalism*.³⁸ As applied, unique characteristics of the Philippines may make it conducive to the proposed shift. These include:

34. See Agra, *supra* note 29, at 1-3.

35. See Ronald L. Watts, *Comparing Federal Political Systems*, in UNDERSTANDING FEDERALISM AND FEDERATION 24 (Alain-G. Gagnon, et al. eds., 2015).

36. Watts, *supra* note 35, at 24.

37. *Id.*

38. Artemio D. Palongpalong, *The Pro and Con Arguments on Federalism*, 30 J. ASIAN STUD. 1 (1992).

- (1) “[D]iverse ethnolinguistic elements[,] which may or may not coincide with geographic differences;”³⁹
- (2) “[A]rchipelagic characteristics that do not allow for immediate government responses to social problems and, hence, a unitary government does not make for effective and economical actions considering time and budget constraints;”⁴⁰ and
- (3) “[A] pre-Hispanic political situation whereby scattered barangay units plus the sultanates of Sulu and Maguindanao existed side by side.”⁴¹

On the other hand, some disadvantages discussed are the following:

- (1) Weakening an already weak Philippine State;⁴²
- (2) [E]ffectivity of the unitary system and timeliness of the alteration;⁴³ and
- (3) Uneven distribution of human and natural resources among provinces, which may also cause inequality in development, the elimination of which is the original goal of the federal setup.⁴⁴

In general, because federalism in the Philippines will necessarily involve the introduction of new political concepts and structures, a foolproof transition is the only means to a successful end. In this position of existing advantages and disadvantages, the challenge is how to respond to the perceived disadvantages, and at the same time build a structure that will optimize the contextual advantages already in place.

The advantages and disadvantages also refer to the structures already present. There are different schools of thought that relate to the successes and failures of the present local government system. On the one hand, decentralization through the creation of local governments has become so successful that the next logical step to take is to decentralize more through a

39. *Id.* at 3.

40. *Id.*

41. *Id.*

42. *Id.* at 4.

43. *Id.*

44. Palongpalong, *supra* note 38, at 5.

federalist form of government. Its “time has come.”⁴⁵ This shift will assist local governments in the development of local economies needed to financially support basic services delivered to its constituents.⁴⁶ On the other hand, the failure and shortcomings of the local government system to provide genuine local autonomy have also been used to argue for the shift.⁴⁷ In this school of thought, the national government has devolved the provision of basic services to local governments in a way that exceeds their capacities and stifles revenue generation by preempting taxes.⁴⁸

C. *Survey of Federalist Governments of Certain Jurisdictions*

In looking at the forms of federalism in different jurisdictions through a comparative lens, Retired Chief Justice Artemio V. Panganiban’s words serve as a guide, to wit — “The forms and structures of governments, whether central or federal, presidential or parliamentary, democratic or socialist, are born out of the experience and history of peoples and nations. They are not imported from foreign soils and implanted automatically in the homeland.”⁴⁹ In the following analysis, the Authors look at how federalist structures have developed in the US, Germany, Switzerland, Australia, Venezuela, and Malaysia throughout history, and how they are still evolving today.

I. United States

The establishment of a federalist government in the US emerged from the need of small government units to form a central government, “which could undertake programs and discharge functions beyond the local or ‘state’ domains and thus weld together the diverse territories.”⁵⁰ The structure remains presidential and democratic similar to the Philippines. It has also

45. Aquilino Q. Pimentel, Jr., *Federalization: An Idea Whose Time Has Come*, in 2 DECENTRALIZATION & POWER SHIFT: AN IMPERATIVE FOR GOOD GOVERNANCE 557 (Alex B. Brillantes, et al. eds., 2003).

46. *Id.* at 558.

47. Jose V. Abueva, *Towards a Federal Republic of the Philippines with a Parliamentary Government by 2010*, in 2 DECENTRALIZATION & POWER SHIFT: AN IMPERATIVE FOR GOOD GOVERNANCE, *supra* note 45, at 557.

48. *Id.*

49. Artemio V. Panganiban, *Federalism 101*, PHIL. DAILY INQ., June 5, 2016, available at <http://opinion.inquirer.net/95060/federalism-101> (last accessed Feb. 13, 2018).

50. Palongpalong, *supra* note 38, at 2.

been described as dual and cooperative.⁵¹ Federalism proved advantageous because of the large expanse of land comprising the US — it facilitated political decision-making back when travel and communication were difficult.⁵² But the development of the structure was far from a smooth transition. The Civil War US Supreme Court’s constant reinterpretation of the constitutional power-sharing continually redefined federalism and the nature of the relationship between the government and states.⁵³

Power is shared between the federal government and the states, with certain overlaps in some areas, whereby, in what is also termed as dual federalism, both entities are “more or less equals.”⁵⁴ According to the Tenth Amendment to the US Constitution, powers not reserved to the federal government are reserved to the states.⁵⁵ The national government exercises expressed, implied, and inherent powers.⁵⁶ Expressed powers are those enumerated in the Constitution, while implied powers come from the constitutional provision allowing Congress to pass laws that are necessary and proper for the execution of the expressed powers.⁵⁷ Inherent powers are those implicit in every sovereign nation and necessary for its survival.⁵⁸ Powers of the states include everything not enumerated or given to the federal government.⁵⁹ Lastly, concurrent powers are those exercised concurrently by the federal government and states.⁶⁰

The relationship among the states has been described as horizontal federalism because of the constant commercial and social interactions between them.⁶¹ It is also described as a cooperative federalism, which implies cooperation between the federal government and the states.⁶² In the US, this was borne out of the Great Depression in 1929, and the necessity of

51. Edward I. Sidlow, et al., *Federalism*, in 10 GOVT: PRINCIPLES OF AMERICAN GOVERNMENT 58–60 (Edward I. Sidlow & Beth Henschen eds., 2016).

52. *Id.* at 51.

53. *Id.* at 55.

54. *Id.* at 58.

55. *Id.* at 50.

56. *Id.* at 53.

57. Sidlow, et al., *supra* note 51, at 53.

58. *Id.*

59. *Id.* at 54.

60. *Id.* at 55.

61. *Id.* at 54.

62. *Id.* at 60.

the welfare system to provide basic services in the 1960s and 1970s.⁶³ Another feature of the US federal government is its process of fiscal federalism.⁶⁴ This is composed of the categorical grant, which is the grant of money conditioned upon certain policy developments in a state, and the block grant, which gives states a more discretionary use of the grant given for broad areas.⁶⁵

Evidently, US federalism is evolving and keeping up with the times. The relationship between the states and federal government is constantly being redefined by the US courts. It is a debate between centralists and decentralists, arguing whether the US Constitution is a mere interstate compact or a supreme law governing all peoples, which has continued up to this day.⁶⁶

2. Germany

The federal system of Germany emerged from a tradition of a federative constitution that dates back to the early Middle Ages.⁶⁷ This makes it one of the oldest federalist governments in the world. The composition of Germany today began in a group of tribes in the north-central Europe area.⁶⁸ Its composition was further shaped by religion and by holy wars, which also produced “negative effects on the economic, cultural, and political development of Germany.”⁶⁹ While the first German federal government had weak central powers, the Bismarck Empire gradually developed stronger confederative structures.⁷⁰

63. Sidlow, et al., *supra* note 51, at 60.

64. *Id.* at 65.

65. *Id.* at 65-66.

66. See DAVID B. MAGLEBY, ET AL., GOVERNMENT BY THE PEOPLE 74-76 (2012 ed.).

67. Hans-Peter Schneider, *The Federal Republic of Germany*, in DISTRIBUTION OF POWERS AND RESPONSIBILITIES IN FEDERAL COUNTRIES 126 (Akhtar Majeed, et al. eds., 2005).

68. ARTHUR B. GUNLICKS, THE LÄNDER AND GERMAN FEDERALISM 7 (Charlie Jeffery & Charles Lees eds., 2003).

69. *Id.*

70. Schneider, *supra* note 67, at 126.

The states of the Federal Republic of Germany are called *Land*.⁷¹ There exists a strict separation of powers between the federal government and the *Länder*.⁷² However, these powers are not entirely distinct and separate —

[T]he German system is like an unbalanced scale or a seesaw, with a concentration of legislative functions at the federal level and of administrative powers at the state level. This is so because the *Länder* implement not only their own statutes but also a large part of federal law. The judiciary is also organized hierarchically: the lower and middle courts are the jurisdiction of the *Länder*, the higher courts of the federal government.⁷³

In the framing of the German Constitution, the goal was to distribute political power evenly between the federal government and the *Länder*, in pursuance of democracy and counteracting overcentralized power that might threaten peace and security.⁷⁴ Similar to the US, residual powers are given to the member-states, not to the federal government.⁷⁵

Today, the German Constitution places primacy upon basic rights of citizens, but “does not recognize the rights of interest or pressure groups or of other collective identities, beyond assuring their members of their individual rights as citizens.”⁷⁶ This also means non-inclusion of any official language or preferential treatment of a culture or religion. “[I]t expressly stipulates that the state is to behave with neutrality and indifference when it comes to cultural and religious points of view.”⁷⁷ This becomes more of an issue now as multiculturalism begins to develop in Germany.

3. Switzerland

Considered as one of the classical federations along with the US and Canada, Switzerland’s distinct federalist structure is tri-level and highly

71. *Id.* at 124.

72. *Id.*

73. *Id.*

74. *Id.* at 126.

75. Eric P. Polten & Peter Glezl, *Federalism in Canada and Germany: Overview and Comparison* (Article from the Polten & Associates Law Office) at 16, available at <http://ruby.fgcu.edu/courses/twimberley/EVR2861/fedcanadager.pdf> (last accessed Feb. 13, 2018).

76. Schneider, *supra* note 67, at 126.

77. *Id.*

decentralized.⁷⁸ Historically, federalism has helped preserve the states' — or cantons' — diverse cultures, protect regional and linguistic minorities, and achieve political stability. “Federalism was one of the instruments of political integration. To a large extent, Swiss society is a product of its political institutions[.]”⁷⁹ It originated from three regions and a number of cities declaring themselves as independent from the Habsburg regime.⁸⁰ Several cantons established within themselves a treaty guaranteeing mutual assistance through collective security, eventually forming a central government.⁸¹ At the outset, it is important to take note that Switzerland's rich multiculturalism, in language and religion, has inevitably shaped how federalism was organized and defined, and, vice versa, how federalism has helped preserve multiculturalism and local identities.⁸²

The three levels of the structure include the federation, the cantons, and the communes.⁸³ The latter two are the sub-national units with their own constitutions consistent with the federal constitution.⁸⁴ Powers and duties were sharply delineated in the early stages, with national concerns given to the federation, and other powers given to the cantons and communes, but an “intensive” cooperative system has emerged.⁸⁵

High non-centralization is supported by a rigid process of the transfer of powers to the federation — it can only be done by constitutional amendment subject to a popular vote.⁸⁶ However, to state again, their structure has been transformed into a cooperative federalism similar to that of the US, where, in this case, the federation legislates and the cantons implement.⁸⁷ A unique kind of cooperative system has also emerged — a

78. Wolf Linder, Federalism: The case of Switzerland (Paper prepared for the International Conference “Federalism in pluralistic developing societies: learning experiences of Europe” held at the University of Karachi) at 1, available at <https://pdfs.semanticscholar.org/d163/60df9a8c29ca0aa106f63940edf24e2cefb1.pdf> (last accessed Feb. 13, 2018).

79. *Id.* at 12.

80. *Id.* at 3.

81. *Id.*

82. *Id.* at 1.

83. *Id.*

84. Linder, *supra* note 78, at 5.

85. *Id.* at 6.

86. *Id.* at 8.

87. *Id.* at 6.

contractual one formed through inter-canton relationships.⁸⁸ This goes back to the principle of decentralization, as the main goal of these inter-canton treaties is to allow each canton to “defen[d] their own competencies and [] [prevent] central government regulation.”⁸⁹ Historically, the farmers’ society’s high distrust of political power resulted to the preference of smaller governments where they can be heard.⁹⁰ However, this does not mean that they want to get rid of the federal government.⁹¹ On the contrary, cooperation is necessary in dealing with “the complexities of modern infrastructure, economic intervention[,] and social policies[.]”⁹²

Wolf Linder’s article on federalism in Switzerland provides for an insightful conclusion regarding the emergence and development of the federalist structure —

Its effects depend on the combination with other institutional devices, and federalism can have different effects in different cultural or historical contexts. Moreover, federalism is not only a structure[,] but also a process and a political culture[.] Finally, the development of Swiss federalism depended on many particularities of history and economy and can therefore not be copied as a model. Even though, its functioning may be instructive from a comparative perspective.⁹³

4. Australia

The Australian federal design is marked with its malleability. It has been termed as a “changing federal system”⁹⁴ while its federal constitution has been called “incomplete contract.”⁹⁵ What started with the unification of several Australian colonies into the Federal Commonwealth in the 1900s has

88. *Id.* at 11.

89. *Id.*

90. Linder, *supra* note 78, at 12.

91. *Id.*

92. *Id.* at 10.

93. *Id.* at 13.

94. Bhajan Grewal & Peter Sheehan, The Evolution of Constitutional Federalism in Australia: An Incomplete Contracts Approach (A Centre for Strategic Economic Studies Working Paper No. 22) at 2, available at <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.127.8290&rep=rep1&type=pdf> (last accessed Feb. 13, 2018).

95. *Id.* at 13.

greatly developed historically over time.⁹⁶ The motivating purpose for the unification was economic gain, but with no intention of surrendering the independence of the individual states.⁹⁷ State independence was intended to stay “perfectly preserved.”⁹⁸ Its framers, however, foreseeing that the system would have to adjust over time, created a flexible constitution “responsive to change[,]” and time.⁹⁹ This was backed by adaptive decisions of the High Court of Australia that responded to necessity — granting power to the state and then back to the Commonwealth through constant reinterpretation of the Constitution.¹⁰⁰ While there has been a large shift from the intent of the framers to reserve strict independence to states, the Commonwealth’s gain of power over public sector functions has resulted to legislative competence.¹⁰¹ The ongoing trend is towards greater centralization, without the need for constitutional change, through fiscal centralization — with states becoming highly dependent on the Commonwealth government for funding.¹⁰²

Finally, an article on Australia’s federalism, which studies the causes of centralization, theorizes that this was caused by the “incomplete contract” character of the Constitution that allowed leeway for the Commonwealth and the High Court of Australia. A constitution as an incomplete contract has been described as one

between the state and the people of a country, according to which specific powers to make laws are assigned between national and sub[-]national governments ... [The] legislative domain of neither national nor sub[-]national governments is fixed forever and there is always room for disputation over the meaning and intent of some clauses, and for future amendments. Within this incomplete contractual framework, numerous intergovernmental grants and agreements are conducted under separate incomplete and implicit contracts between national and sub[-]national governments. This incompleteness of the constitutional contract adds a

96. George Williams, *Australia’s Federal Future* (Paper from Griffith University) at 1, available at <http://app.griffith.edu.au/news/wp-content/uploads/2013/10/Australias-Federal-Future.pdf> (last accessed Feb. 13, 2018).

97. *Id.* at 1.

98. *Id.*

99. *Id.*

100. *Id.*

101. Grewal & Sheehan, *supra* note 94, at 1.

102. *Id.* at 3.

new dimension to the objective functions of governments in a federation.¹⁰³

The Australian Commonwealth did not fail to make use of this “incompleteness” to further centralization, with the help of the High Court of Australia. The latter is guided by a sense of “indivisible sovereignty” rather than coordinate federalism.¹⁰⁴

5. Venezuela

The constitutional crisis in Venezuela has caused instability in its federal form of government. The constant push for centralization has undermined the democratization process embedded in its constitution,¹⁰⁵ leading scholars to term its federalism as a “very contradictory form of government.”¹⁰⁶ Having been influenced by US federalism, Venezuela chose to adopt a federal form of government — the only choice available to them then — “to put together the seven [c]olonial [p]rovinces that formed the [S]tate, which had never been together in [c]olonial times.”¹⁰⁷ It was also the only form of government then that was different from the monarchical system.¹⁰⁸ In the beginning, the federal system was marked by conflict because of the struggles between the states and the national government, as the latter pushed for greater centralization. By the time the 1961 Venezuelan Constitution was adopted, the federal system was maintained, “but with []

103. *Id.* at 11.

104. *Id.* at 15–16.

105. Allan R. Brewer-Carías, Centralized Federalism in Venezuela (Paper submitted to the seminar entitled “Federalism in the Americas ... and Beyond” held in Duquesne University) at 5, available at [http://allanbrewercarias.net/Content/449725d9-f1cb-474b-8ab2-41efb849fea8/Content/II,%204,%20481.%20Brewerv\[1\].1Centralized%20federalism%20Venezuela%2005-05_.pdf](http://allanbrewercarias.net/Content/449725d9-f1cb-474b-8ab2-41efb849fea8/Content/II,%204,%20481.%20Brewerv[1].1Centralized%20federalism%20Venezuela%2005-05_.pdf) (last accessed Feb. 13, 2018) [hereinafter Brewer-Carías, Centralized Federalism in Venezuela].

106. *Id.* at 1.

107. Allan R. Brewer-Carías, Some Problems of the Centralized Federation and Sub-National Constitutionalism in Venezuela (Paper presented to the Conference on Federalism and Sub-National Constitutions: Design and Reform Conducted by the Center for State Constitutional Studies, Rutgers University-Camden in Italy) at 1, available at <http://statecon.camden.rutgers.edu/sites/statecon/files/subpapers/brewer.pdf> (last accessed Feb. 13, 2018) [hereinafter Brewer-Carías, Some Problems of the Centralized Federation].

108. Brewer-Carías, Centralized Federalism in Venezuela, *supra* note 105, at 4.

highly centralized national [authorities]”¹⁰⁹ caused by an authoritarian form of government. However, the same constitution prescribed decentralization, embedded in the democratization process, such that national powers and services were slowly transferred from the national government to the states.¹¹⁰

Successive calls to amend its constitution, and repeated violation of the safeguards and processes in place in its basic law, finally gave birth to the present 1999 Venezuelan Constitution.¹¹¹ This constitution, however, did not contain the “necessary provisions in order to undertake the democratic changes that were most needed, namely[,] the effective political decentralization of the Federation and the reinforcement of [s]tates and municipal political powers.”¹¹² Venezuela’s federalism was “postponed” and its democracy “weakened.”¹¹³ While states were given the power to enact their own sub-national constitutions, this power has not been fully utilized as provisions, specifically pertaining to civil and human rights and the functions of state branches of government, simply repeat that of the national’s.¹¹⁴ This, however, is not fully the states’ fault as the constitution itself leaves little room for innovation and additional regulation for the states.¹¹⁵ High centralization is also expressed in the financial provisions of the 1999 constitution as tax powers of the states were “basically eliminated” compared to the previous constitution.¹¹⁶

6. Malaysia

It is important to look at Malaysia because “both Filipinos and Malays have sprung from roughly the same racial and cultural origins,”¹¹⁷ but with the caveat that Malaysia was converted to Islam and had a different colonial

109. Brewer-Carías, *Some Problems of the Centralized Federation*, *supra* note 107, at 2.

110. *Id.*

111. *Id.*

112. *Id.* at 7-8.

113. *Id.* at 8.

114. *Id.* at 11-12.

115. Brewer-Carías, *Some Problems of the Centralized Federation*, *supra* note 107, at 5.

116. *Id.* at 9.

117. Palongpalong, *supra* note 38, at 2.

experience.¹¹⁸ The differences in colonial history will shed light on how the political structures of both the Philippines and Malaysia came into place. The Philippines was taken over by the Spanish colonizers, whose government was characterized by a strong monarch, and whose structure, headed by the Governor-General, was eventually transposed in its colony and carried over until today under its unitary and presidential system.¹¹⁹ This represented a strong central government.¹²⁰

Malaysia's federalism, on the other hand, is rooted from its history under the British colonial administration, which imposed federalism as the form of government.¹²¹ What started as small, but powerful, sultanates scattered in the area of Malaysia became the seeds of the political units comprising the early colonial system of government, and eventually, the federal states. "The British experimentation on three politico-administrative systems of governance — Straits Settlements, Federated Malay States [], and the Unfederated Malay States [] — became, in reality, the forerunner of the current Malaysian federal system."¹²² The states were formed primarily from the abovementioned sultanates.¹²³ The mix of cultures and races also became a basis for the states to some degree, as Islam and Thai cultures, and the Chinese and Malay races, were taken into consideration.¹²⁴ Geographical location was also an element, especially for islands with unique locations.¹²⁵

Socio-economic progress and political stability are evidence that federalism has, so far, worked as the system of government for Malaysia. "The general progress can be taken as a result of effectively functioning institutions [that] came about despite the problem of 'ethnic balance' whereby Chinese, Malays[,] and Indians have to work together regardless of some imbalances and perhaps cross-purposes[.]"¹²⁶

118. *Id.*

119. *Id.* at 4.

120. *Id.*

121. *Id.* at 2.

122. *Id.*

123. Palongpalong, *supra* note 38, at 2.

124. *Id.* at 2-3.

125. *Id.* at 3.

126. *Id.*

III. THE PHILIPPINE FEDERALIST PROJECT

A. A Timeline of Federalism Initiatives in the Philippines

Having examined some forms of federalism, a discussion of the federalism initiatives in the Philippines will show that such are also borne by historical events and necessity. The issue, however, is whether these initiatives were brought up at opportune moments in Philippine history, similar to those of the other jurisdictions. The non-consummation of any attempt shows that both opportunity and political will are necessary to push for structural changes.

Initiatives to shift to a federalist government, through different political platforms, have been traced by authors Elyzabeth F. Cureg and Jennifer F. Matunding to as early as 1898 during the Malolos Convention platforms.¹²⁷ In 1899, both Apolinario M. Mabini and Emilio F. Aguinaldo proposed to establish three federal states constituting the three major islands of the Philippines.¹²⁸ However, this proposal had to give way to two more urgent issues — the unification of the Philippines to represent a united front with “power firmly held at the center,” and the impending threat of American colonization.¹²⁹ More attempts to federalize the early Philippine Republic continued, such as the historically documented formation of the provisional and revolutionary Federal Republic of Visayas, as well as initiatives during the American period, but to no avail.¹³⁰

Come the subsequent Constitutional Conventions of 1934, and the Constitutional Commissions of 1971 and 1986, federalism remained on the table. The 1935 Constitution was almost, in all respects, a duplicate of the US Constitution, excepting the federal form of government.¹³¹ While some form of autonomy was established through the local governments, they were still under the supervision of the President and “simply preserved the concentration of authority in the central government.”¹³² During the

127. Elyzabeth F. Cureg & Jennifer F. Matunding, *Federalism Initiatives in the Philippines*, in *FEDERALISM AND MULTICULTURALISM* 177 (Simeon Agustin Ilago & Raphael Montes, Jr. eds., 2006).

128. *Id.* at 178.

129. *Id.*

130. *Id.* at 178-79.

131. *Id.* at 179.

132. *Id.* (citing Alex B. Brillantes, Jr. & Donna Lou Moscare, *Decentralization and Federalism in the Philippines: Lessons from Global Community* (Discussion paper presented at the International Conference of the East West Center, Kuala

drafting of the 1973 Constitution, local autonomy of local governments was expanded through broader taxing powers and, eventually, through the legislation of the first Local Government Code, Batas Pambansa Blg. 337.¹³³ A significant contribution of the same convention was the Bayanikasan Constitution, a draft prepared by Salvador Z. Araneta, which proposed a federal structure divided into five states.¹³⁴ There was, however, little support for a shift to federalism during the 1986 Constitutional Commission, where delegates had agreed to adopt the provisions of the 1935 Constitution.¹³⁵ The only advocate was the CFMP, which conducted public hearings in Davao, but generated no strong support then.¹³⁶

Two other modes of initiating structural change were identified by Cureg and Matunding,¹³⁷ apart from constitutional change: “political campaign platforms and [] advocacy through the formation of an alliance for a federalist movement.”¹³⁸ These modes have been resorted to because of the difficulty of garnering support for such change in the form of constitution-making.¹³⁹

Parties at the forefront of federalism as political campaign platforms are PDP-Laban and Probinsya Muna Development Initiative (PROMDI), most prominently during the 2004 elections.¹⁴⁰ While PDP-Laban is the most relevant party to look at in terms of advocating for federalism at present, its beginnings can be traced back to 2002 when its founder Former Senator Aquilino Q. Pimentel, Jr. “started pushing ... federal states” with a program of power-sharing.¹⁴¹ This platform, along with others, was proposed to then presidential candidate Fernando Poe, Jr., but was left unheeded.¹⁴²

Lumpur, Malaysia) at 3, *available at* <http://unpan1.un.org/intradoc/groups/public/documents/eropa/unpano32065.pdf> (last accessed Feb. 13, 2018).

133. Cureg & Matunding, *supra* note 127, at 179 (citing An Act Enacting a Local Government Code [LOCAL GOV'T. CODE], Batas Pambansa Blg. 337 (1983) (repealed 1991)).

134. Cureg & Matunding, *supra* note 127, at 180.

135. *Id.*

136. *Id.*

137. *Id.* at 178.

138. *Id.*

139. *Id.*

140. Cureg & Matunding, *supra* note 127, at 180.

141. *Id.* at 181.

142. *Id.*

PROMDI, on the other hand, grounds its ideals on “redefin[ing] the center of power, moving it from the current capital — Metro Manila — to the less congested locations in the provinces.”¹⁴³ It will be noted that this sentiment is still echoed today by PDP-Laban’s initiatives. PROMDI’s plan, initiated by party chairman Emilio Mario Osmeña, was to create an autonomous Republic of Cebu following the economic development in the said region.¹⁴⁴

One of the federalist movements is led by the CMFP.¹⁴⁵ Their advocacy is rooted on the “resurgence of the federal question brought about by the Mindanao conflict.”¹⁴⁶ As a movement, its efforts include expanding its base to regions in the country “to further the advocacy.”¹⁴⁷ During President Gloria Macapagal-Arroyo’s administration, other proposals were pushed by two other major groups apart from proposals originating from the Senate and the House of Representatives. The CMFP, whose advisory body is chaired by Dr. Jose V. Abueva, and the Coalition for Charter Change Now! led by Former House Speaker Jose de Venecia, contributed their own proposals to the charter change movement, both of which includes a shift to federalism intimately tied to a parliamentary form of government.¹⁴⁸

At present, Duterte’s administration is as aggressive for a shift as it was during his campaign period. In March 2017, Duterte announced that Congress must act fast in initiating the shift to federalism as a six-year term is a “small window” of opportunity to allow for such. He said, “[There is a] small window to work on it. So, let it be known to all the people that the Senate President is equally as interested [as] the [the Speaker and I] that we [] start the federalism movement, whatever [] the mechanism [is], this year[.]”¹⁴⁹ It would seem that the debates have already begun, and it is only a matter of time and tenacity before the process of amendment or revision of the Constitution takes place.

B. An Overview of the Three Proposals and the Main Propositions

143. *Id.*

144. *Id.* at 181-82.

145. *Id.*

146. Cureg & Matunding, *supra* note 127, at 182.

147. *Id.*

148. *Id.* at 186.

149. Dharel Placido, Duterte wants move to shift to federal to start this year, *available at* <http://news.abs-cbn.com/news/03/13/17/duterte-wants-move-to-shift-to-federal-to-start-this-year> (last accessed Feb. 13, 2018).

In this Article, three prominent versions of the proposals of the federalist setup will be examined through the lens of the pressing needs and concerns of Philippine society. The questions are whether these proposals are responsive to what the country's condition presently calls for, and whether the shape of federalism they envision is a form that will best suit not only the Philippine context, but also the feasibility of transition.

1. The CMFP Draft Constitution

The CMFP Draft Constitution, entitled “The 1987 Constitution as Revised” was drafted for the CMFP.¹⁵⁰ It was edited by Jose Abueva, University of the Philippines (UP) Professor Emeritus and Chairman of the CFMP Advisory Board.¹⁵¹ He also served as Chair of the 2005 Consultative Commission on Charter Change.¹⁵² Having introduced several reforms in the UP system of education, he sought to introduce changes to the Philippine structure of government, saying, “I had long been an advocate of political reforms — including structural and institutional reforms involving amendments to our 1987 Constitution to help bring about an effective and inclusive democracy and a just and humane society.”¹⁵³ The CMFP Draft Constitution includes contributions from the Federalism Project of Kalayaan College, co-founded by Abueva, Convenors of Lihuk Pideral Mindanao, and some participants from the academia and civil society.¹⁵⁴ In an explanatory note to the draft, Abueva explains the failings of the 1987 Constitution —

Despite its many positive features that are worth preserving, [it] has not enabled us to rebuild our various institutions for good governance. We continued with our counter-productive unitary system with its powers, authority[,] and resources centralized in the national government at the

150. Jose V. Abueva, *Some Advantages of Federalism and Parliamentary Government for the Philippines* at 5, available at <http://pcij.org/blog/wp-docs/Abueva-Federalism.pdf> (last accessed Feb. 13, 2018).

151. *Id.* at 1.

152. Susan Claire Agbayani, *Former UP president Abueva joins a political party at age 85*, PHIL. DAILY INQ., May 19, 2013, available at <http://lifestyle.inquirer.net/104107/former-up-president-abueva-joins-a-political-party-at-age-85> (last accessed Feb. 13, 2018).

153. *Id.*

154. Citizen's Movement for a Federal Philippines, *CMFP Draft Constitution for a Federal Republic of the Philippines with a Parliamentary Government* at 2, available at http://www.kas.de/wf/doc/kas_6315-544-2-30.pdf (last accessed Feb. 13, 2018) [hereinafter CMFP Draft Constitution].

expense of local governments, leaders, citizens, and entrepreneurs and country-wide development.¹⁵⁵

The proposal is an extension of the 1987 Constitution's restoration of democracy. However, fundamental changes and revisions include the shift to the federal and parliamentary form of government, and the introduction of a Bill of Duties and Obligations.¹⁵⁶ It proposes the institution of 10 autonomous states.¹⁵⁷ The tone of the proposal proceeds from the theme of the restoration of democracy when the 1987 Constitution was drafted. Its main thrust is making democracy more meaningful by transforming electoral democracy to substantive democracy, considered as "true democracy."¹⁵⁸

According to Cureg and Matunding,¹⁵⁹ Abueva's proposal, which was approved by the majority of the Constitutional Commission Commissioners, was dissented to by the minority report of the consultative commission during Arroyo's administration on three main points:

- (1) The proposed amendments should be 'reasonable and logical responses' to problems and concerns that are attributable to deficiencies in the current system;¹⁶⁰
- (2) The changes should 'logically and reasonably accelerate the pace of economic development, improve standard of living, and promote the general good[;]'¹⁶¹ and
- (3) They must be based on full understanding of real problems that the reforms seek to solve with an honest effort to conduct genuine consultations with as many sectors of society.¹⁶²

2. The PDP-Laban Model of Philippine Federalism

This draft was developed by the PDP-Laban Federalism Institute, the political think tank of the party, through the convening of a study group composed of political scientists, lawyers, politicians, and practitioners, led by

155. Abueva, *supra* note 150, at 1.

156. CMFP Draft Constitution, *supra* note 154, at 2.

157. *Id.* at 5.

158. Abueva, *supra* note 150, at 15.

159. Cureg & Matunding, *supra* note 127, at 185.

160. *Id.*

161. *Id.*

162. *Id.*

Senate President Aquilino Pimentel, III.¹⁶³ The proposal comes from a context of the “Imperial Manila” rhetoric where huge economic development and political imbalance have resulted in the concentration of wealth to Metro Manila instead of being enjoyed by all regions, even after the legislation and implementation of the LGC.¹⁶⁴ This inequality is aggravated further by the conflicts in Muslim Mindanao, and the inefficiency and impracticality of the system of pooling resources at the center and then allocating it back to the provinces.¹⁶⁵

Similar to the CMFP Draft Constitution, the PDP-Laban proposal gathers provisions mostly from the 1987 Constitution, merely altering relevant provisions, and using a “surgical” approach to concentrate on those provisions that will “enshrine federalism into the Constitution and strengthen our public institutions, among others.”¹⁶⁶ The text also adopts some of Abueva’s proposals.¹⁶⁷ Moreover, reminiscent of Abueva’s proposals, the Executive Summary to the PDP-Laban Model of Philippine Federalism states —

It is essential that we continue to strengthen our democracy not by supplanting or doing away entirely with the 1987 Constitution[,] but by improving the current Constitution, the charter that allowed us to abandon Marcos authoritarianism and move forward. In doing so, we [are] ensur[ing] [c]onstitutional continuity and stability while[,] at the same time[,] mak[ing] adjustments in our charter to address the needs of the present and the future.¹⁶⁸

In line with this, several proposals, such as transitory mechanisms and fiscal, political, and electoral reforms, were designed to guide such continuity and transition. These include gradual devolution of funds, functions, and responsibilities, and the holding of a plebiscite to segregate the regions instead of the Constitution dictating such.¹⁶⁹ Unlike the CMFP Draft, the PDP-Laban Model has already provided for transitory provisions

163. Jonathan E. Malaya, The PDP Laban Model of PH Federalism: An Executive Summary, *available at* <http://www.iag.org.ph/index.php/blog/1503-the-pdp-laban-model-of-ph-federalism-an-executive-summary> (last accessed Feb. 13, 2018).

164. *Id.*

165. *Id.*

166. *Id.*

167. *Id.*

168. *Id.*

169. Malaya, *supra* note 163.

that aim to guide the application of a federalist structure during the transition period.¹⁷⁰ Transition mechanisms mostly focus on the regional level. These pertain to the Regional and Local Government Code and the eventual submission of a Regional Organic Act within five to 10 years.¹⁷¹ Unlike the CMFP Draft, power allocation is not found in the Draft Constitution; instead, the Legislature is tasked with allocating such powers through government codes.¹⁷² Moreover, the creation of regional governments, composing of incumbent governors and mayors in the interim, is proposed to “save on government resources and do away with the need for new elections for [r]egional positions.”¹⁷³

3. Resolution of Both Houses No. 08 — Constituting the Senate and the House of Representatives, Seventeenth Congress, into a Constituent Assembly to Propose Revisions of the 1987 Constitution by Adopting a Federal Form of Government and for Other Purposes

Congress, under the leadership of Representative Aurelio D. Gonzales, Jr. and Representative Eugene Michael B. De Vera who introduced the Resolution, is pushing for constitutional amendment through a Constituent Assembly, citing mainly budgetary concerns.¹⁷⁴ In their Resolution to Constitute the 17th Congress as a Constituent Assembly, they attached their own working draft. This is only one of the many resolutions referred to the House Committee on Constitutional Amendments.¹⁷⁵

170. *Id.*

171. *Id.*

172. *Id.*

173. *Id.*

174. Press Release by the Press and Public Affairs Bureau, *Government exists for the people — Speaker Alvarez* (Sep. 6, 2016) (transcript available at <http://www.congress.gov.ph/press/details.php?pressid=9765> (last accessed Feb. 13, 2018)).

175. *Id.*

4. A Comparative Table of the Provisions¹⁷⁶

	<i>CMFP Draft Constitution</i>	<i>PDP-Laban Model of Philippine Federalism</i>	<i>Congressional Version</i>
<i>Preamble</i>	Emphasis on a “thriving national economy.”	Same as the 1987 Constitution.	Emphasis on a “more perfect society.”
<i>National Territory</i>	Same as the 1987 Constitution.	Inclusion of the United Nations Convention on the Law of the Sea (UNCLOS) and other rules of international law as bases.	Inclusion of the UNCLOS and other rules of international law as bases.
<i>Principles and State Policies</i>	The Federal Republic of the Philippines shall be composed of 10 <i>Estados</i> . It shall be a democratic and federal republic with a parliamentary government.	The Philippines shall be a democratic federal republic.	The Philippines shall be an indivisible, democratic, republican, and federal state.
<i>Bill of Rights</i>	Same as the 1987	Same as the 1987 Constitution.	Same as the 1987 Constitution.

176. Compare PHIL. CONST. with CMFP Draft Constitution, *supra* note 154; Federalism Study Group of the PDP Laban Federalism Institute, Proposed Amendments to the 1987 Constitution of the Philippines: The Constitution of the Federal Republic of the Philippines art. I, available at <http://ateneo.edu/sites/default/files/downloadable-files/PDF%207.1%20Proposed%20Constitution%20of%20the%20Federal%20Republic.pdf> (last accessed Feb. 13, 2018) [hereinafter PDP-Laban Model]; & H. Res. No. 8.

	<p>Constitution.</p> <p>A Bill of Duties and Obligations is added as Article IV.</p>		
<i>Citizenship</i>	<p>Same as the 1987 Constitution.</p>	<p>Same as the 1987 Constitution.</p>	<p>Same as the 1987 Constitution.</p>
<i>Suffrage</i>	<p>Same as the 1987 Constitution.</p> <p>Article IX, covering Political Parties, has been added to promote the stability of parliament and a competitive, effective, and accountable party system.</p>	<p>Similar to the 1987 Constitution.</p>	<p>Same as the 1987 Constitution.</p>
<i>Legislative</i>	<p>The executive and legislative powers of government shall be vested in the bicameral parliament, composed of the <i>Balay Sambayanan</i> and <i>Balay Estados</i>.</p> <p>The Members of the <i>Balay Sambayanan</i> shall be elected by</p>	<p>Legislative power shall be vested in the bicameral parliament composed of the Federal Assembly and the Senate. The Members of the Federal Assembly shall be composed of district representatives and party-list representatives.</p>	<p>Similar to the 1987 Constitution.</p> <p>Provides for a Bicameral Federal Congress.</p> <p>Two to six senators per region based on a region's population.</p> <p>House of Representatives composed of District Representatives and</p>

	<p>parliamentary districts and from party-lists.</p> <p>The <i>Balay Estados</i> shall be composed of two or three senators from each State, elected by State Assemblies.</p> <p>The Speaker of Parliament shall be appointed by the Prime Minister.</p> <p>There shall be an Electoral Tribunal for Parliament, composed of nine members, three of whom are Justices of the Supreme Court.</p>	<p>There shall be three senators per region.</p> <p>There shall be one Electoral Tribunal composed of three members per House and five Court of Appeals Justices.</p> <p>Every bill shall be initiated and passed by the Federal Assembly and concurred in by the Senate.</p>	<p>Party-list Representatives.</p> <p>Electoral Tribunals and Commission on Appointments same as the 1987 Constitution.</p>
<i>Executive</i>	<p>The President is the Head of State. He or she shall be elected by the Members of Parliament and State Assemblies, voting jointly. The President may act only upon the advice of the Prime</p>	<p>The President shall be the Head of State. He or she shall be nominated by at least 20% of all the Members of the Federal Assembly.</p> <p>The Executive power shall be exercised by the Prime Minister.</p>	<p>Similar to the 1987 Constitution.</p> <p>Executive power is vested in the President of the Federal Republic of the Philippines.</p> <p>Executive clemency may also be exercised by Regional</p>

	<p>Minister.</p> <p>The Prime Minister is the Head of Government. He or she shall be elected by the Parliament and appointed by the President.</p>	<p>He or she shall be elected by the Federal Assembly and appointed by the President.</p>	<p>Governors.</p>
<i>Judiciary</i>	<p>Judicial power shall be vested in the Supreme Court, the Constitutional Tribunal, and other Federal Courts.</p> <p>Each State shall have its own High Court.</p>	<p>Similar to the 1987 Constitution.</p> <p>The list of nominees shall be prepared by the Integrated Bar of the Philippines after public hearing and concurred in by the Senate.</p>	<p>Similar to the 1987 Constitution.</p> <p>Judicial power is vested in the Federal Supreme Court, Regional Court of Appeals, the Sandiganbayan, and other lower courts.</p>
<i>Constitutional Commissions</i>	<p>Same as the 1987 Constitution.</p>	<p>Same as the 1987 Constitution.</p>	<p>Similar to the 1987 Constitution.</p> <p>Emphasis on the independence of the Constitutional Commissions.</p> <p>Commission on Human Rights recognized as a Constitutional Commission.</p> <p>Increase in the number of Commissioners.</p>

<p><i>Federal States</i></p>	<p>The jurisdictions of the Federal Parliament and the States are well-defined.</p> <p>The State Governor shall form the State Government. He or she shall be elected by the State Assembly.</p> <p>The executive and legislative powers shall be vested in the State Assembly, whose members shall be elected by the State Assembly Districts.</p> <p>Internal Revenue Allotment (IRA) adopted from the 1987 Constitution.</p>	<p>Sufficiency of territories, inhabitants, and resources as bases of creation.</p> <p>The powers and functions of regional governments shall depend on competence, capacity, and resources.</p> <p>Each region shall have its own organic act, and provide for the exercise of executive power by the Chief Minister.</p> <p>IRA of regional government to be determined.</p> <p>National taxes collected within the region shall accrue to the regional government.</p> <p>Equitable sharing and equalization between regions shall be determined by law.</p> <p>Creation of Finance Commission to</p>	<p>Composed of regions which may be changed by law. Regions are based on “regional, historical, and cultural ties[;] economic efficiency[;] and the requirements of regional and local planning.”</p> <p>The President shall exercise general supervision over regions.</p> <p>Regional executive power exercised by the Regional Governor and regional legislative power vested in the Regional Assemblies composed of three Assembly Members from each province, and from city or independent municipality.</p> <p>Assembly Members shall be nominated by local legislative assemblies from among themselves and appointed by the Regional Governor. Such manner of choosing Assembly Members</p>
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		<p>manage the Equalization Fund.</p> <p>Regional governments are entitled to 50% of the proceeds of the utilization and development of national wealth. The sharing thereof among constituent units shall be determined by law.</p>	<p>may be changed by law. There shall also be three sectoral Assembly Members to be appointed by the Regional Governor.</p> <p>20% of revenues collected by Local Government Units (LGUs) or the federal government shall accrue to the federal government; 80% shall accrue to the regions. 30% of the share accruing to regions shall pertain to the region, and 70% shall be apportioned among the constituent units. Sharing may be changed by law.</p>
<i>Local Government</i>	Generally adopted from the LGC.	Local governments shall enjoy administrative autonomy.	The regional governments shall exercise general supervision over their component units, remitting to the local units their share of the regional and federal budgets.
<i>Accountability of Public Officers</i>		Similar to the 1987 Constitution.	<p>Similar to the 1987 Constitution.</p> <p>The Ombudsman shall be known as</p>

			the Tanodbayan.
<i>National Economy and Patrimony</i>		<p>Emphasis on sound environmental policies.</p> <p>Provision for the protection of indigenous cultural communities or indigenous peoples rights.</p> <p>No limitations on foreign investment, except that such shall be pursued in accordance with national goals and priorities, in order to enhance competitiveness and serve the public interest.</p>	<p>Lease of alienable lands by private corporations or associations may be provided for by regional law; otherwise, it shall be for 25 years, and renewable for 25 years.</p> <p>Conveyance of private lands may be provided for by regional law.</p> <p>Grant of rights, privileges, concessions, franchise, and certificates or authorizations to operate public utility may be provided for by law; otherwise, they are reserved to Filipinos or corporations with 60% Filipino shareholding. Participation of foreign investors may be provided for by law.</p>
<i>Social Justice and Human Rights</i>		Similar to the 1987 Constitution.	<p>Similar to the 1987 Constitution.</p> <p>Consolidated under one article.</p>

<i>Education, Science and Technology, Arts, Culture and Sports</i>		Similar to the 1987 Constitution.	Similar to the 1987 Constitution. Consolidated under one article.
<i>The Family</i>		Similar to the 1987 Constitution.	Similar to the 1987 Constitution. Consolidated under one article.
<i>General Provisions</i>		Same as the 1987 Constitution.	Same as the 1987 Constitution.
<i>Amendments or Revisions</i>		Same as the 1987 Constitution.	Same as the 1987 Constitution.
<i>Transitory Provisions</i>			Similar to the 1987 Constitution. Concentration on pays and salaries of affected officials.

IV. CRITICAL AREAS TO CONSIDER

A. Economic Aspect: Poverty

The Philippines remains one of the poorest countries in the world.¹⁷⁷ While the country has experienced great economic growth, there has been no equivalent poverty reduction commensurate to such development.¹⁷⁸ Added to this is the fact that poverty incidence varies greatly per region, with the Autonomous Region in Muslim Mindanao (ARMM), Caraga Region, Region IV-B, Region V, and Region IX topping the list of regions with high poverty levels.¹⁷⁹ While poverty is greatly a rural phenomenon, urban poverty, especially in the informal settlers' communities, is rapidly rising.

177. ASIAN DEVELOPMENT BANK, *POVERTY IN THE PHILIPPINES: CAUSES, CONSTRAINTS, AND OPPORTUNITIES* 3 (2009).

178. *Id.*

179. *Id.*

The Asian Development Bank has pinned the causes of high poverty incidence on governance and institutional constraints, and weak capacity of local governments to implement poverty reduction programs.¹⁸⁰

Of course, poverty reduction has been one of the priorities under the 1987 Constitution. Under Section 9 of Article II, “[t]he State shall promote a just and dynamic social order that will ensure the prosperity and independence of the nation and free the people from poverty through policies that provide adequate social services, promote full employment, a rising standard of living, and an improved quality of life for all.”¹⁸¹ What is available now to provide these basic social services is the local government system, which exercises autonomy and delivers basic services devolved upon them.

Under the Constitution, through the Article on Local Autonomy, and the LGC, what is available now is devolution and decentralization. Article X of the Constitution provides for important provisions pointing to greater decentralization compared to the previous constitutions:

- (1) Creation of autonomous regions in Muslim Mindanao[;]
- (2) Granting to LGUs the power to create their own sources of revenue and to levy taxes, fees, and charges[;]
- (3) Providing local governments with a just share of the national taxes[,]
which shall be automatically released to them[;]
- (4) Entitling local governments to an equitable share in the proceeds of the utilization and development of the national wealth within their respective areas[; and]
- (5) Providing for regional development councils or other similar bodies composed of local government officials, regional heads of departments and other government offices, and representatives from NGOs within the region for purposes of administrative decentralization to strengthen the autonomy of the units thereon and to accelerate the economic and social growth and development of the units in the region.¹⁸²

The LGC, moreover, is the vehicle by which such devolution and decentralization are to take place. It encourages LGUs to be more independent from the national government, without the latter losing its

180. *Id.*

181. PHIL. CONST. art. 2, § 9.

182. Maria Ela L. Atienza, *Local Governments and Devolution in the Philippines*, in PHILIPPINE POLITICS AND GOVERNANCE: AN INTRODUCTION 425 (Teresa S. Encarnacion Tadem & Noel Morada eds., 2006).

power of general supervision over the former exercised through the President and the Department of the Interior and Local Government.¹⁸³ Five features of the LGC make it revolutionary for its time:

- (1) “[T]he Code devolves or transfers the responsibility for the delivery of various aspects of basic services to local governments[,] ... includ[ing] health, agriculture, environment and natural resources, social services, and public works[;]”¹⁸⁴
- (2) “[T]he Code transfers certain regulatory and licensing powers to local governments[;]”¹⁸⁵
- (3) Proceeding from the Constitution, “it increases the financial resources available to the LGUs by broadening their taxing powers, providing them with a specific share from the national wealth exploited in their area ..., and increasing their automatic share from national taxes[;]”¹⁸⁶
- (4) “[I]t lays down the policy framework for direct involvement of civil society, most especially [NGOs] and people’s organizations [], in the process of local governance [or] some degree of debureaucratization[,] ... promot[ing] ... popular representation[,] local accountability[,] and transparency[;]”¹⁸⁷ and
- (5) “[T]he Code encourages LGUs to be more entrepreneurial by providing them with opportunities to enter into joint ventures with the private sector, engage in buil[d]-operate-transfer [] arrangements, float bonds, obtain loans from local private institutions, and the like.”¹⁸⁸

In an article¹⁸⁹ about healthcare under a devolved system, its author argued that, while devolution delegated more responsibilities to LGUs, specifically in terms of health, neither corresponding increase in budget nor

183. *Id.*

184. *Id.* at 427.

185. *Id.*

186. *Id.*

187. *Id.* at 427 & 429.

188. Atienza, *supra* note 182, at 436.

189. Ryan Torres, *Why Federalism means improved Healthcare*, MANILA BULL., Jan. 15, 2017, available at <https://newsbits.mb.com.ph/2017/01/15/why-federalism-means-improved-healthcare> (last accessed Feb. 13, 2018).

freedom in developing their area was given.¹⁹⁰ In one of the many articles by Michael Henry Ll. Yusingco on federalism, he states —

According to the Philippine Development Plan 2011-2016 which guided the previous administration, the majority of LGUs still lack the will to raise adequate local revenues and are unduly dependent on the IRA. Obviously, this assessment does not convey the picture of local leaders demonstrating an autonomous governance mindset, and thus does not exactly inspire expanding fiscal autonomy even further.

On the other hand, ‘the work of the [*Galing Pook*] Foundation also proves that the decentralization of government functions can produce good outcomes. Its website is replete with real-life examples demonstrating that the proper use of the LGC can bring socio[-]economic benefits to local communities.’¹⁹¹

Contrary to the earlier discussion of the successes of local autonomy necessitating the logical advance to federalism, Yusingco states that the paradox is that local autonomy has neither been a success nor a failure.¹⁹² Whatever proposal for a federalist structure must be a response to this stagnation in development. In a study conducted by the Department of Budget and Management, it looked at the conditions necessary for effective fiscal decentralization —

The LGUs’ accountabilities for managing public resources — through expenditure responsibilities, allocation of sources of revenue, inter-governmental transfers, and borrowings — must be clearly defined. ‘Without appropriate fiscal empowerment, the autonomy of sub-national governments cannot be substantiated and, in this way, the full potential of decentralization cannot be realized.’¹⁹³ Likewise, the LGUs must have ample capacity to fulfil their devolved fiscal management roles: from the effective collection of local revenues to the efficient utilization of funds for

190. *Id.*

191. Michael Henry Ll. Yusingco, *Federalism and the IRA*, PHIL. DAILY INQ., Aug. 27, 2016, available at <http://opinion.inquirer.net/96833/federalism-and-the-ira> (last accessed Feb. 13, 2018).

192. *Id.*

193. Department of Budget and Management of the Philippines, Meaningful Devolution at 43, available at <http://www.dbm.gov.ph/wp-content/uploads/Executive%20Summary/2016/A2.%20Meaningful%20Devolution%20updated.pdf> (last accessed Feb. 13, 2018) (citing Niccolletta Feruglio, Fiscal Decentralisation: An Overview, available at <http://siteresources.worldbank.org/PSGLP/Resources/FeruglioandAndersononviewoffiscaldecentralization.pdf> (last accessed Feb. 13, 2018)).

the delivery of services, and accurate accounting and reporting of their financial transactions.

Therefore, in order to become effective agents of development in their respective jurisdictions, the LGUs must have sufficient resources to deliver tailor-fit services to their constituents and must have the capacity in effectively deploying such resources.¹⁹⁴

Another issue of uneven economic development is the unequal distribution of public funds to different regions. Many of the models propose diverse responses to this problem of inequality. The concern is how can such mechanisms address inequalities already existing among the provinces and regions, with the argument of “Imperial Manila,” without, first, promoting overdependence of poor regions on the central government, and second, leaving the central government with little to no funds to spend for national concerns, such as national security.

1. CMFP Draft Constitution Proposal: “Thriving National Economy”

The CFMP Draft’s response to this is two-fold. One is by promoting competition among the states,¹⁹⁵ and second, by allowing for cooperative mechanisms among the poorest states.¹⁹⁶ But, at the outset, a shift to federalism is necessitated by the goal of economic development.¹⁹⁷ According to the Editor’s Note to Article II of the CMFP Draft Constitution, the shift to a parliamentary system needs a corresponding shift to a federal structure as well.¹⁹⁸ This is because, in a lone shift to a parliamentary system, the leaders will continue enjoying the centralized governmental power found in the former unitary system — “The [u]nitary [s]ystem is certain to perpetuate the stagnation of our economy and society, the impoverishment of many of our people who live in the countryside, and our backwardness in relation to our neighbors in Asia.”¹⁹⁹

In the enumeration of the advantages of federalism, the Editor’s Note further states that, in relation to the development of the economy, there are two advantages to the shift. First, with the release from stifling control of the

194. Department of Budget and Management of the Philippines, *supra* note 193, at 43.

195. Abueva, *supra* note 151, at 3.

196. *Id.* at 9.

197. *Id.* at 4.

198. *Id.* at 2.

199. CMFP Draft Constitution, *supra* note 154, at 4.

central government, there will be an improvement on governance through empowerment of state and local leaders and entrepreneurs in the country.²⁰⁰ The greater responsibility placed upon leaders to deliver services and the decrease in dependence upon the national government is met by the people's involvement and subsequent demand for better performance and greater accountability from their leaders.²⁰¹ Because of this, they will be more willing to pay their taxes as they receive better benefits.²⁰²

Second, federalism is seen to hasten development as economy will be stimulated by competition, to wit — “There will be inter-state and regional competition in attracting domestic and foreign investments and industries, professionals and skilled workers, good teachers and scholars, artists, and tourists.”²⁰³ There is, on the one hand, a perceived resurgence of regional cultures and languages in the states.²⁰⁴ On the other hand, the federal government, by helping support the less endowed and least developed regions, will promote equitable development.²⁰⁵

Whether such structure will eventually lead to these advantages is not an absolute guarantee, however. The question is always how to get from one point to another. What mechanisms have each proposed version of the Constitution set up to deal with preconditions already existing and not just perpetuate inequality blamed on a unitary system of government?

In the CMFP Draft Constitution, the answer lies in the Parliament. The Parliament, under Section 26 of Article III, is tasked to create partnership program aid with states in support of development programs and basic needs of poor and needy constituents.²⁰⁶ To the extent of what programs these will be is up to legislation. There is no constitutional provision on federal government support of weak states, only that progressive devolution of powers and functions through the 1987 Constitution and the LGC was necessary before the proposed constitutional change and in preparation for federalization.²⁰⁷ We may recall the cooperative federalism system of the US

200. *Id.* at 5.

201. *Id.*

202. *Id.*

203. *Id.*

204. *Id.* at 4.

205. CMFP Draft Constitution, *supra* note 154, at 5.

206. *Id.* art. III, § 26.

207. *Id.* at 29.

at this point, where an actual welfare system exists in order to aid their least developed states.

Another aspect of revitalizing national economy is found in one of the state policies implying the opening up to foreign investors. Under Section 24, comparing such provision to its equivalent in the 1987 Constitution, “effective control” of Filipinos is replaced with the “best interests” of Filipinos; “independent national” replaced with “productive and competitive.”²⁰⁸ However, while the State and regions are encouraged to compete for foreign investments and industries, Section 6 of Article XIII still provides for limitations for states against taxation of foreign goods and contracting of foreign debts, which are generally reserved for the federal government.

Finally, an innovation introduced by the CMFP Draft Constitution is the option of merger and amalgamation of the different local governments

Section 4. Merger and amalgamation. Local governments may[,] on their own[,] decide to merge with other local governments after the conduct of a plebiscite among the affected citizens. Mergers and amalgamations may be carried out if the local governments are not viable and do not have the capacity for self-governance in terms of income, population[,] and resources. A local government that spends as much as [40%] of its income on salaries and wages for five consecutive years shall be amalgamated with the larger contiguous local government.²⁰⁹

This is a response to the fact that the retention of the same levels of governments from the LGC will certainly leave poverty-stricken regions behind. As can be seen from the provision, there is an optional merger, as expressed by the word “may,” and it requires one when the LGU spends 40% or more of its income on salaries and wages for five consecutive years, as expressed by the word “shall.”²¹⁰ The effect of this provision is yet to be observed, but an acknowledgment of the fact that there will be local governments whose current conditions will not allow them to develop at the same pace as other local governments is a step towards the right direction. Measures, however, must be put in place as the same provision allows for a huge leeway for already developed units to merge with one another, and potentially promote even greater inequality.

208. *Id.* art. III, § 21.

209. *Id.* art. XVI, § 4.

210. *Id.*

2. Fiscal Reforms as the Heart of the Shift

Jonathan E. Malaya, Executive Director of the PDP-Laban Federalism Institute, expresses the policy of the party in relation to fiscal reforms in its federalism agenda, blaming “unequal distribution of public funds to the regions [a]s one of the major causes of underdevelopment in the country.”²¹¹ According to him, fiscal reforms are the heart of the shift in the system of government, specifically the changes in the allocation of funds to the different regions.²¹² Similar to the policy of a productive and competitive economy that suits the best interests of Filipinos in the CMFP Draft, the PDP-Laban Model subscribes to a more competitive model of economy, espousing an equitable distribution of wealth.

While no exact percentage of IRA has been provided in the Constitution yet (this has been left blank), this will be decided upon in the final draft of the Constitution or legislated upon and replaced by the creation of an Equalization Fund contained in the Regional and Local Government Code.²¹³ The Equalization Fund or Grant is a system to be established by the Parliament —

The Parliament shall, by law, institute a fair and equitable system of sharing and equalization between the regions, provided that the share of regional governments shall be adjusted in needs and capacity of a region.²¹⁴

The share of local governments shall be separate from the share of the regional governments in Section 12 of this Article. The Parliament shall, by law, institute a fair and equitable system of sharing and equalization between the local governments, provided that the share of local governments shall be adjusted in accordance with the needs and capacity of local governments.²¹⁵

The Regional and Local Government Code shall provide for an [E]qualization [F]und and the creation of a National Finance Commission. The [F]und shall comprise of an unconditional, general purpose block as well as a conditional and matching grants as an incentive for regional governments to pursue federal priorities.²¹⁶

211. Malaya, *supra* note 163.

212. *Id.*

213. PDP-Laban Model, *supra* note **Error! Bookmark not defined.**, art. X, § 14.

214. *Id.* art. X, § 12.

215. *Id.* art. X, § 38.

216. *Id.* art. X, § 14.

This is very reminiscent of the US system of fiscal federalism composed of categorical and block grants. Constitutionally provided, however, is the 50% share of regional governments, which is in addition to the Equalization Fund, in the proceeds of the utilization of the national wealth leased within their areas.²¹⁷ One of the main concerns regarding being categorical on prescribing a high and sturdy share in national wealth is the federal government's necessity for resources to support states in need. The CMFP Draft, in fact, has not prescribed a similar percentage, and relegated such prescription to Codes which will provide revenue-sharing schemes based on different criteria. This especially rings true in the model of the Equalization Fund suggested by PDP-Laban. Another criticism, as earlier discussed, are "possible cases of continued dependence of poorer states on development funds from the central government."²¹⁸ So far, what the PDP-Laban Model has suggested, through the Constitution, are conditional grants given merely as incentives instead of possible performance-based incentives which may be offered to increase local incomes and equitable development.²¹⁹

3. The Two-Tier Proposal

If the CMFP Draft's innovation is in the allowance for merger and amalgamation in response to unequal levels of development of different regions, this Model, in turn, introduces a two-tier proposal whereby federalism can be set up so that there are two tiers in the classification of regions.²²⁰ On one hand, state status will be granted to those regions economically and financially self-sufficient, with a corresponding higher degree of autonomy, facilitated by a ceremonial Governor.²²¹ On the other hand, federal territory status will be granted in the meantime for those not yet capable of being self-sufficient.²²² They will be placed under authority of central government (under the National Economic and Development Authority), and facilitated by a Chief Minister instead of a Governor.²²³

217. *Id.* art. X, § 15.

218. Maria Ela L. Atienza, *Promises and perils of federalism*, PHIL. DAILY INQ., Sep. 4, 2016, available at <http://opinion.inquirer.net/97037/promises-and-perils-of-federalism> (last accessed Feb. 13, 2018).

219. *Id.*

220. Malaya, *supra* note 163.

221. *Id.*

222. *Id.*

223. *Id.*

Ultimately, the national budget is an instrument of federalism.²²⁴ Many of the proposals take advantage of the allocation of the IRA and the budget to further devolution and independence of the states. One must not lose sight of the fact, however, that as much as the control of the economic processes is an instrument of furthering federalism, federalism in itself must be an instrument to resolve economic inequality and poverty in the provinces.

B. Political Culture

In this section of the Article, the Authors examine the political culture of the Philippines and how receptive this climate is to a change of structure to a federal form. Three dimensions will be explored: first, the effect of the population's understanding of politics and appreciation of such a shift to a federal form of government to federalism's development; second, the workings of political dynasties that pervade Philippine politics and what responses in the form of structural mechanisms are appropriate to address such; and lastly, the culture of elitism and patronage politics vis-à-vis roles in the failure and success of the shift.

The last two aspects may be discussed together, as the same elite who sit in power belong to the same set of political families for decades. According to an article by Ann Lan K. Candelaria,²²⁵ which discusses the possibility of the shift to federalism and the appropriate discussions of issues surrounding such debate,

we need to articulate the elephant in the room — that federalism is also shaped by the political needs of those responsible for its design, the policy elites. The fact of the matter is that we are governed by only a few families for most of our democratic life as a nation state. It is common to have uncontested local candidates, or an entire province held by only one family. Whether thin or fat, political dynasties must be kept at bay if we want to maximize federalism's advantages.²²⁶

Her opinion is not one in isolation, as even the drafters themselves have acknowledged the need to address such issues through different provisions in the proposed constitutions, as will be discussed later.

224. MAGLEBY, ET AL., *supra* note 66.

225. Ann Lan K. Candelaria, *On Federalism and Multilevel Politics*, BUSINESSWORLD, Apr. 4, 2017, available at <http://www.bworldonline.com/content.php?section=Opinion&title=on-federalism-and-multilevel-politics&id=143237> (last accessed Feb. 13, 2018).

226. *Id.*

I. Significance of the Population's Appreciation of a Shift to Federalism

In a July 2016 Pulse Asia Nationwide Survey on Charter Change, a sample of Filipinos were asked regarding having heard, read, or watched something in relation to proposals to amend the current constitution, and “less than half of Filipinos (41%) report awareness of [the] proposal to amend the 1987 Philippine Constitution[.]” In another item in the survey, it reported that “most [] [Filipinos] (73%) admit knowing little [or] nothing at all about the 1987 Philippine Constitution.”²²⁷ As of the same period, 44% of Filipinos oppose charter change. That same percentage is almost the same percentage as those who have knowledge of the 1987 Constitution. However, high percentages of agreement to charter change are recorded in Mindanao and the National Capital Region (NCR).²²⁸ As to what form of government should the current form shift to, there are no decisive results.

In another survey conducted by Publicus Asia, this time focusing on the shift to federalism, the same results were recorded, i.e., low awareness and knowledge of the subject of amendments nationwide, yet recording strong support from Mindanao — “49% of Mindanaoans were aware of the proposal. Among those aware of it, 43% understand discussions about it, while only 14% [do not].”²²⁹

The results of the surveys resonate with the fact that federalism is not within the political consciousness of the people as much as its advocates would hope. This becomes an important consideration because any final draft must still be submitted to a plebiscite before any structural change can take place. Apart from the issue of popularity, former Solicitor General Florin T. Hilbay has articulated the more challenging questions in relation to the people's appreciation of the shift —

[W]hile federalism may be able to offer theoretical advantages, that certainly is only half the picture. How the text of the new constitution will interact with Philippine society is the other half. Will the paper change

227. Pulse Asia Research Inc., July 2016 Nationwide Survey on Charter Change, *available at* <http://www.pulseasia.ph/july-2016-nationwide-survey-on-charter-change-2/> (last accessed Feb. 13, 2018).

228. Rappler, 44% of Filipinos oppose charter change — survey, *available at* <https://www.rappler.com/nation/141564-july-2016-pulse-asia-charter-change-survey-philippines> (last accessed Feb. 13, 2018).

229. Michael Bueza, Federalism gets strong support in Mindanao, survey shows, *available at* <https://www.rappler.com/nation/180515-federalism-gets-strong-support-mindanao-pahayag-survey> (last accessed Feb. 13, 2018).

result in a transformation of political culture and governance? The interaction between law and culture is an entirely separate challenge.²³⁰

This interaction of federalism with Philippine society is the heart of any change, and this interaction, specifically with Filipinos' political culture today, will shape any success or failure of the system.

Political culture is "a systematically related set of mental and concrete constructions. It includes[,] but is not limited to[,] beliefs, feelings, group-accepted practices, language[,] and paraphernalia shared by large groups of Filipinos as they produce, allocate[,] and use political powers within, outside, and in interaction with the state."²³¹ Specifically, the Filipino political culture was studied extensively by Cristina Jayme Montiel in the context of President Joseph Ejercito Estrada's administration.²³² While her study was focused more on elections, campaign, and voting patterns, similar items of political culture may still be observable. Certain subjective and objective components of Filipino political culture she outlines still resonate today. She enumerated five subjective components of Filipino political culture that pertain to the psychological aspects of interacting groups:

(1) Ideology-Inspired Shared Interpretations of Political Events

As an example, Montiel indicated how the Visiting Forces Agreement was viewed, during the debates against it, as a new form of colonial intervention.²³³ A more relevant example today is how Manila is viewed as imperialistic, reminiscent of the centralist forms of government imposed by the Spanish and American colonizers.

(2) Shared Mental Scripts

The mental script of "volunteer" campaigners pertaining to the reward they get, in the form of jobs or government contracts, when they help with a

230. Florin T. Hilbay, *Federalism, for what?*, PHIL. DAILY INQ., Aug. 8, 2016, <http://opinion.inquirer.net/96331/federalism-for-what> (last accessed Feb. 13, 2018).

231. Cristina Jayme Montiel, *Philippine Political Culture and Governance at 1*, available at <http://www.ombudsman.gov.ph/UNDP4/wp-content/uploads/2012/12/Philippine-Political-Culture-and-Governance.pdf> (last accessed Feb. 13, 2018).

232. *Id.*

233. *Id.*

candidate's campaign,²³⁴ is still relevant today. This is exacerbated by the Filipino's sense of *utang na loob* or debt of gratitude.²³⁵

(3) Negative Emotions Toward Outgroup Members

During Estrada's administration, a striking example of this is how "[m]embers of one faction in Malacañang Palace carry in their mind (sometimes exaggerated) narratives of what the rival camp is scheming and plotting against them[.]"²³⁶ The same sense of negative emotions against an outgroup pervades today, aggravated by social media and online interactions, against the "yellows" composing not only of a certain rival camp in Malacañang or in Congress. In the House of Representative and in the Senate, these members of the outgroup are also more likely the ones to oppose the calls for the shift to federalism.

(4) Collective Memories

In Montiel's example, the collective memories of anti-Marcos groups make it difficult to push for constitutional changes because it may be used to rationalize martial law declaration.²³⁷ The effectivity of the use of these sentiments and memories today is questionable, with all the developments in the Marcos narrative. There seems to be a dissonance in collective memory as Marcos' remains have recently been transferred to the *Libingan ng mga Bayani*,²³⁸ and as ongoing negotiations regarding a compromise agreement are taking place.²³⁹ The narrative of redemocratization through People Power and the drafting of the 1987 Constitution is slowly corroding, with Duterte today aggravating its growing unpopularity by blaming such Constitution for its inability to provide accountability measures against

234. *Id.*

235. *Id.* at 17.

236. *Id.* at 1.

237. Montiel, *supra* note 338, at 2.

238. Leila B. Salaverria & Tetch Torres-Tupas, *Marcos to remain buried at Libingan, SC rules with finality*, PHIL. DAILY INQ., Aug. 8, 2017, available at <http://newsinfo.inquirer.net/921212/marcos-to-remain-buried-at-libingan-sc-rules-with-finality> (last accessed Feb. 13, 2018).

239. Marc Jayson Cayabyab, *House to study move authorizing Duterte on retrieving Marcos wealth*, PHIL. DAILY INQ., Sep. 5, 2017, available at <http://newsinfo.inquirer.net/928083/house-speaker-alvarez-rodrigo-duterte-marcos-wealth-hidden-wealth-family-ill-gotten> (last accessed Feb. 13, 2018).

rampant corruption.²⁴⁰ Such reuniting of collective memories may pave the way for the shift to federalism.

(5) Religious Beliefs

Religious faith has always been part of Philippine politics — in campaigning, in policy-making, and the like. Relevant today is the notion of “truth” and labelling of fake news. With Duterte announcing that he believes in God, but not in religion,²⁴¹ and the Catholic Bishops’ Conference of the Philippines denouncing some of his policies,²⁴² the play of religious belief in relation to politics continues to evolve.

As for the objective components, they are those that are directly observable, containing symbolic meanings and cultural information.²⁴³ They are harder to describe because of multiple levels of manifest and latent meanings.

Other objects of Filipino culture that spill over to Philippine politics are important considerations as well:

- (1) Personalistic Politics;²⁴⁴
- (2) “The Ties That Bind;”²⁴⁵
- (3) The Personal Approach to Politics;²⁴⁶
- (4) Lack of Professionalism: *Personalan* and *Tampuhan*;²⁴⁷
- (5) Perceived Political Utility of Shame: *Hiya* and *Delicadeza*;²⁴⁸

240. Dharel Placido, Duterte: 1987 Constitution allows corrupt to escape accountability, *available at* <http://news.abs-cbn.com/news/11/28/17/duterte-1987-constitution-allows-corrupt-to-escape-accountability> (last accessed Feb. 13, 2018).

241. GMA News Online, Duterte: I believe in God, but not in religion, *available at* <http://www.gmanetwork.com/news/news/nation/566934/duterte-i-believe-in-god-but-not-in-religion/story/> (last accessed Feb. 13, 2018).

242. Rappler, CBCP denounces ‘reign of terror’ in Duterte drug war, *available at* <https://www.rappler.com/nation/160503-cbcp-statement-killings-duterte-drug-war> (last accessed Feb. 13, 2018).

243. Montiel, *supra* note 231, at 2.

244. *Id.* at 30.

245. *Id.*

246. *Id.* at 31.

247. *Id.* at 32.

- (6) How *Pakikisama* Operates Within the Halls of Power;²⁴⁹
- (7) *Utang na Loob* in the Climb to Power;²⁵⁰
- (8) The Power of Informal Personal Connections;²⁵¹
- (9) Machismo;²⁵² and
- (10) A Culture of Dependence.²⁵³

But in all of these meanings, it is equally important to note that political culture exists in a context — they are “time-sensitive, peer-bound, and structure-embedded.”²⁵⁴ During the first People Power Revolution, telephone brigades, prints, and video-tapes were relied upon to disseminate information.²⁵⁵ An evolution took place during the second People Power Revolution, where e-mail and text messaging were the rampant means of communication.²⁵⁶ It is interesting to note that, as early as the campaign period in 2015, social media and the Internet were already at the forefront of campaign tactics. The “social media warriors” of today existed even then. The Internet has become a battleground between several key players, but President Duterte continues to dominate the field.²⁵⁷

2. Incorporating Political Culture in the Drafts

In Abueva’s version, a preliminary response to the need to consider the populace’s appreciation of the changes is found in the proposed Constitution’s title.²⁵⁸ The CMFP Draft proposes to preserve the title, to still use “1987 Constitution,” and to just add “as revised” to give a sense of continuity with the old constitutional democracy and to counter the notion

248. *Id.* at 33.

249. Montiel, *supra* note 231, at 3.

250. *Id.*

251. *Id.* at 34.

252. *Id.* at 35.

253. *Id.*

254. *Id.* at 2.

255. Montiel, *supra* note 231, at 2.

256. *Id.*

257. Paige Occeñola, Social media in the time of Duterte, *available at* <https://www.rappler.com/rappler-blogs/174447-social-media-duterte-year-one> (last accessed Feb. 13, 2018).

258. CMFP Draft Constitution, *supra* note 154, at 1.

of political instability, given the fact that the Philippines has already had five constitutions since 1935 — the 1935 Constitution, the 1943 Constitution under the Japanese occupation, the 1973 Constitution, the 1986 Freedom Constitution, and the 1987 Constitution.²⁵⁹ The aim was to echo the ideals of the People Power Revolution with the people. Its effectivity, however, is now unclear given the backlash received by both of the Aquino governments today.

Other aspects to look at are those that draw from the provisions of the Constitution itself. First, with a crowd unversed in structural change, the father/mother figure of the nation in the person of the President is retained. This is highlighted more in the PDP-Laban Model, which draft incorporates a charismatic President figure. This father figure as the Head of State resonates with the Filipinos' highly religious and culturally-shaped appreciation of politics and perception of a leader. It is interesting to consider how the population will respond to the character of a Prime Minister, whose functions are separate and distinct from the President's, and how the federalism propaganda will try to make the foreign concept more relational, taking into account that the only past experience with a Prime Minister involves the Marcos dictatorship.

Second, the drafters claim that the new division of powers and functions between federal and state governments will raise political awareness and participation.²⁶⁰ To achieve this point, drafters rely on the fact that greater decentralization brings decision-making, and the government itself, closer to the constituents.²⁶¹ With greater accessibility and visibility, people become "aware of the importance of electing good leaders. Corruption will be easier to detect[,] expose[,] and punish."²⁶² This is a clear attempt to advocate for progressive new politics, "where people support candidates because of their principles and the issues they carry. Money and personal relations are not the primary consideration but the politician's ability to address social issues that concern all constituents."²⁶³ The proposal attempts not merely to take advantage of the Filipinos' appreciation of politics, but also to create a system of governance that elevates knowledge and participation. It is worthy to note that in the PDP-Laban Model, the 10% requirement for an initiative

259. *Id.*

260. Abueva, *supra* note 151, at 9.

261. *Id.*

262. *Id.*

263. Montiel, *supra* note 231, at 36.

and referendum petition was lowered to 2.5%, as the 10% requirement in the 1987 Constitution was deemed too steep to bring about real effect.²⁶⁴

3. Political Dynasties and Turncoat Political Party System

Filipino political culture reveals itself in the kind of leaders we have today. There is no question that there is a need to break the chain of the country's "dysfunctional political party system and government[,] [which] sustains our politics of personality, patronage, cronyism, corruption, and lack of transparency and accountability."²⁶⁵ One solution looks at expanding the role of the Ombudsman and the Sandiganbayan,²⁶⁶ both creations of the 1987 Constitution, by similarly decentralizing their functions to the proposed states.

As to the issue of political dynasties, various voices with different opinions are heard. With the culture of personalistic politics, ties, connections, debt of gratitude, *pakikisama*, and of course, the primacy of family and kinship, it has been inevitable that a steady growth of political families come into, and stay, in power. Yusingco is of the opinion that political dynasties have killed meritocracy in the Philippine system of democracy. With the small dictatorships present in every local government, simultaneous reforms are necessary.²⁶⁷ Local politicians are the most resistant to change, and, while political dynasties are rampant throughout the country, they are more pronounced in the Bangsamoro region.²⁶⁸ Change in the form of assigning more power and autonomy to states must be evaluated as this might hand more power to provincial warlords and dynastic families because, as of date, roughly 70% of all leaders belong to such.²⁶⁹ This

264. PDP-Laban Model, *supra* note 176, art. VI, § 33.

265. Abueva, *supra* note 151, at 1.

266. Jesse Angelo L. Altez, *Decentralization and local capacities*, PHIL. DAILY INQ., Aug. 5, 2016, available at <http://opinion.inquirer.net/96251/decentralization-and-local-capacities> (last accessed Feb. 13, 2018).

267. Michael Henry Ll. Yusingco, *Remember: federal, not feudal!*, PHIL. DAILY INQ., Mar. 4, 2017, available at <http://opinion.inquirer.net/102139/remember-federal-not-feudal> (last accessed Feb. 13, 2018).

268. Michael Henry Ll. Yusingco, *Sure way to break up PH political dynasties*, PHIL. DAILY INQ., Apr. 11, 2015, available at <http://opinion.inquirer.net/83992/sure-way-to-break-up-ph-political-dynasties> (last accessed Feb. 13, 2018).

269. See Joel Ruiz Butuyan, *Federalism is warlordism in disguise*, PHIL. DAILY INQ., Aug. 7, 2017, available at <http://opinion.inquirer.net/106146/federalism-warlordism-disguise> (last accessed Feb. 13, 2018).

becomes more relevant in the context of structural change as these circumstances will persist, and will not disappear with the mere switch to another form of government. As Hilbay has pronounced, “[c]onvincing the people to ratify a new constitution is easier than making them change their ways. There are simply no models that can predict the impact of a new constitution on individual consciousness and institutional practices.”²⁷⁰

At the other side of the spectrum are those who are more optimistic about the structural reform’s hand in combatting the dire effects of political families in power. In any system of government, it is not the nature of such government that causes it to fail, but the people who operate such system.²⁷¹ The problem with political dynasties is not the relationship among the family members, but the corruption that comes with it²⁷² — and federalism can help mitigate corruption because accountability, as also asserted by Abueva, is easier assessed in a federal setup.²⁷³

The usual answer to the issue of political dynasties is the creation of strong political parties.²⁷⁴ But, as this head of a problem is cut down, a few others grow back — strong political parties can only be achieved, again, through the reform of the system because the current system has created weak political parties and party turncoat-ism. Instability in the Parliament will be imminent because of weak political parties. This problem calls for a nuanced approach; it must incorporate prohibitions on political dynasties and a credible political party framework.

Abueva has acknowledged that political parties today are ineffective, and that they are mostly personal organizations for elections generally producing no loyalty.²⁷⁵ The effect is that they produce no meaning to citizens who vote for them. Worse, citizens may not take them seriously and eventually become cynical about them. The CMFP Draft proposes structural and functional reforms for political parties where they will become more

270. Hilbay, *supra* note 230.

271. Butuyan, *supra* note 269.

272. Calen Legaspi, *Problem Solved*, MANILA BULL., Jan. 15, 2017, <https://newsbits.mb.com.ph/2017/01/15/problem-solved/> (last accessed Feb. 13, 2018).

273. *Id.* at 8.

274. Madison Dominguez, *My Dream Government*, MANILA BULL., Jan. 15, 2017, available at <https://newsbits.mb.com.ph/2017/01/15/my-dream-government> (last accessed Feb. 13, 2018).

275. Abueva, *supra* note 151, at 11.

program-oriented.²⁷⁶ In this system, voting will be for specific political parties to encourage competition; and additional seats will be allotted in Parliament or in State Congress on the basis of proportional representation. Financial assistance will be provided by the Parliament in proportion to share in votes.²⁷⁷ But, how exactly will this solve the problem of ineffectiveness? The Draft proposes the enactment of several pieces of transitory legislation designed to improve the political party system, such as the Political Party Development Act, the Campaign the Finance Reform Act, the Election Management and Reform Code, and the Political Education Act. The potential area of conflict here is that those who will enact such laws are the same political parties already sitting in power. Any legislation, if without any safeguards or prohibitions on its application, will likely be tainted by their personal interests in subsequent elections.

In the PDP-Laban version, proposals to manage distrust of political parties include provisions on prohibition of party switching within a period of one year after the ratification of the Constitution, and the prohibition of switching during one's term of office.²⁷⁸ A similar prohibition on political dynasties is proposed.²⁷⁹ Moreover, as a response to a potentially unstable Parliament during transition, a strong President figure to balance the weak political parties is at the head of the PDP-Laban Model.²⁸⁰ This President is a stronger figure with more powers, especially during times of emergency, and may exercise control and supervision over the police. This is largely different from Abueva's Presidential figure who is purely symbolic as powers become shared with the Prime Minister. During President Duterte's first State of the Nation Address (SONA) where he discussed his campaign promise of shifting to a federal-parliamentary form of government, he proposed to take inspiration from the French system, which is described by many writers as "hyper-presidential."²⁸¹ This is because of the strong political power the President holds when his or her party has control over the Parliament — yet another Hydra head growing back.

²⁷⁶. *Id.*

²⁷⁷. *Id.* at 13.

²⁷⁸. Malaya, *supra* note 163.

²⁷⁹. *Id.*

²⁸⁰. *Id.*

²⁸¹. The Wallace Business Forum, Prospects for a federal Philippines (Article from Philippine Analyst prepared by The Wallace Business Forum Monthly) at 21, available at <http://www.wallacebusinessforum.com/wp-content/uploads/2016/06/E-JUNPOL16.pdf> (last accessed Feb. 13, 2018).

With a weak party system and unstable parliamentary, the Prime Minister becomes a Prime Minister not of the people, but of the Parliament. While the goal is to reduce costs of election campaign and prevent being indebtedness to campaign supporters, the Prime Minister will, however, be beholden to the Parliament whose favor he or she must get in order to stay in power. While this may not ring true for other jurisdictions with the same form of government, how will this fit into our current system where a transition to progressive culture of politics is still underway?

4. On Elitism: Initiating the Process of the Shift

In Hilbay's article on federalism, he puts forward the question of who gets to sit in transition.²⁸² This is because it is likely that the credibility of the final proposals will depend on who gets to propose them.²⁸³ The experience of the impacts of exclusivity and elitism on constitution-making is not new. Specifically, the three central aspects of the 1987 Constitution — economic protectionism, the unitary system, and the presidential system — are argued to be elitist and exclusivist.²⁸⁴ This is relevant because the inclusivity of institutions determines whether a country succeeds or fails.²⁸⁵

The idea of the inclusivity of institutions comes from the book *Why Nations Fail: The Origins of Power, Prosperity, and Poverty* by Daron Acemoglu and James A. Robinson.²⁸⁶ The thesis is simple — “nations fail because their extractive economic institutions do not create the incentives needed for people to save, invest, and innovate.”²⁸⁷ As opposed to inclusive institutions described in the latter part of the thesis as the creation of incentives, exclusive institutions are those far removed from the population as they are imposed and run by elite groups for the purpose of extracting resources of the country, leaving little to the rest.²⁸⁸ In the Philippines, the unitary State

282. Hilbay, *supra* note 230.

283. *Id.*

284. Kristian Ligsay Jensen, *What the Philippines can learn from Denmark*, MANILA BULL., Jan. 15, 2017, available at <https://newsbits.mb.com.ph/2017/01/15/what-the-philippines-can-learn-from-denmark> (last accessed Feb. 13, 2018).

285. *Id.* (citing DARON ACEMOGLU & JAMES A. ROBINSON, *WHY NATIONS FAIL: THE ORIGINS OF POWER, PROSPERITY, AND POVERTY* (2012)).

286. ACEMOGLU & ROBINSON, *supra* note 285.

287. *Id.* at 372.

288. See Deniz Kellecioglu, *Why Nations fail — the origins of power, prosperity and poverty* (A Book Review) at 118, available at

was described as an extractive institution.²⁸⁹ Entrenched in the three colonial governments, it has been institutionalized even after gaining independence — “the unitary [S]tate institutionalized the logic of extraction to serve the ruling elite and their colonial masters.”²⁹⁰ The same system imposed the “one-nation, one-state” concept with the effect of overlooking the Philippines’ cultural and linguistic diversity.²⁹¹

Manila has been the symbol of State and elite power.²⁹² Expanding to the NCR in the 1970s, power was distributed to the immediate areas around Manila. Government institutions, such as the Malacañang, were established in the cities of Manila, Pasay, and Quezon City.²⁹³ When former President Corazon Aquino was elected, with the strong support of business and popular sectors, she took her oath in the elite Club Filipino in Mandaluyong.²⁹⁴ Even the staging of the resistance against different administrations are centralized in Manila.²⁹⁵ However, Dr. Emma E. Porio, renowned sociologist, also notes that globalization and decentralization have posed serious challenges against the hegemony of Manila as the national capital.²⁹⁶ As growth and congestion plague Manila, civil society politics and labor are scattered all over the globe because of migration; export processing zones and business process outsourcing distribute investments outside the national capital; and national government functions are distributed to LGUs, the continuing dominance and desirability of the NCR is questioned.²⁹⁷

Other than Manila as the spatial and institutional representation of elitism, the persons behind the continuity of such system also deserve analysis. Here, the leadership gap becomes more prominent. In PDP-Laban’s transitional regional government, the issue of elitism and inequality comes

<http://wer.worldeconomicssociation.org/files/WEA-WER2-Kellecioglu.pdf> (last accessed Feb. 13, 2018).

289. Julio C. Teehankee, *Rationale and Features of Federalism*, in *DEBATE OF FEDERAL PHILIPPINES: A CITIZEN’S HANDBOOK 11* (2017).

290. *Id.*

291. *Id.*

292. Emma E. Porio, *Shifting Spaces of Power in Metro Manila*, 13 *CITY 110*, 110 (2009).

293. *Id.* at 114.

294. *Id.* at 113.

295. *Id.* at 114.

296. *Id.* at 118.

297. *Id.*

into play in the composition of the transitional government. The regional commission will be composed of incumbent governors and mayors as interim regional government with executive and legislative powers, and such other functions and powers as may be given by law.²⁹⁸ Current conversations point to extensions and hold-over powers of incumbent national elected officials pending constitutional convention. Inasmuch as the substance (the proposed provisions in the amendment of the Constitution) is an exercise of answering to the necessity of the times, the procedure (as to who gets to sit during the transition) is an important consideration as well. The leadership gap is wide, and it can only be addressed by leaders who are truly representative of their constituents.

C. Historical and Socio-Cultural Perspective/Properties of the Constitution

History and culture provide us with a lens by which structural change may be assessed. Historical attempts to federalize and cultural backgrounds show how and why past efforts have failed. A review of these circumstances provides hindsight and rich learning experiences that may serve as guideposts for today's attempts to federalize.

All throughout history, from Spanish and American colonial rule up to the present, our government has always been paternalistic, unitary, and centralized, apart from the fact that our colonizers were not able to completely subdue Muslim Mindanao and the Cordilleras.²⁹⁹ During the Philippines' struggle against the colonizers, Jose P. Rizal predicted that the Philippines would become a federalist nation.³⁰⁰ During this time, there were feuds among provinces and different ethnic groups. However, unity among tribes in the attempt to defy Spanish occupation engendered unity and support among different islands.³⁰¹ According to Rizal's writings, because there was no "dominant" race or ethnic group, the Philippines would have adopted the "freest government" —

the absence of any great preponderance of one race over the others will free their imagination from all bad ambitions of domination, and as the

298. Malaya, *supra* note 163.

299. Artemio V. Panganiban, *National ID System; Federalism 102*, PHIL. DAILY INQ., June 12, 2016, available at <http://opinion.inquirer.net/95163/national-id-system-federalism-102> (last accessed Feb. 13, 2018).

300. See Erwin S. Fernandez, *Rizal and Federalism*, MANILA BULL., Jan. 15, 2017, available at <https://newsbits.mb.com.ph/2017/01/15/rizal-and-federalism> (last accessed Feb. 13, 2018).

301. *Id.*

tendency of countries that have been tyrannized over, when they once shake off the yoke, is to adopt the freest government, like a boy leaving school, like the beat of the pendulum, by a law of reaction, the [I]slands will probably declare themselves a federal republic.³⁰²

Of course, this declaration never came into fruition. As discussed earlier, the successive entrance into the Philippine Islands of its different colonizers ultimately resulted in the retention of a unitary system for easier supervision of the archipelago. This unitary and overcentralized government is one of the remnants of the colonial era.³⁰³ Thus, even after the declaration of independence, and the establishment of the 1935 and 1987 Constitutions, this form was deeply ingrained and institutionalized.

The inadvertent effect, then, is the difficulty of shifting from a unitary mindset to a federalist mindset. An abrupt shift is difficult because, again, of the history of colonialism that supposedly has made Filipinos subservient and dependent.³⁰⁴ Subservience is the effect of suppressing cultural roots and superimposition of a foreign culture in order to better take control of the colony and impose the new order.³⁰⁵ Cultural memory is erased.³⁰⁶ While the Philippines boasts of a rich heritage, our history shows that this richness cannot be fully realized because homogenization of cultures, discrimination of some cultures as inferior, and the implementation of policies do not account for the needs of the country as a whole are the norm.³⁰⁷ Even when these are made with good intentions, or even unintentionally, policymakers fail to realize the consequences.³⁰⁸ Some examples cited by Karl Aguilar is the appropriation of the *Ati-atihan* festival and the reference to other Filipino languages as dialects.³⁰⁹ As a result, even if decentralization is the preferred policy, high centralization for the longest time and unchecked laws will not make a smooth transition to federalism.

302. *Id.*

303. Teehankee, *supra* note 289, at 11.

304. Yusingco, *supra* note 26.

305. Felipe M. de Leon, Jr., In Focus: Culture in Development Planning, available at <http://ncca.gov.ph/about-culture-and-arts/in-focus/culture-in-development-planning> (last accessed Feb. 13, 2018).

306. *Id.*

307. Karl Aguilar, *We are the sum of our parts*, MANILA BULL., Jan. 15, 2017, available at <https://newsbits.mb.com.ph/2017/01/15/we-are-the-sum-of-our-parts> (last accessed Feb. 13, 2018).

308. *Id.*

309. *Id.*

In large part, according to Abueva, high centralization and Manila-centric decision-making (Manila being the place where the President and Congress are based) justify the shift to federalism and the division into several States. The different drafts have their own methods of dividing the Philippines into states. The CMFP Draft proposes the separation into 11 constitutionally-determined States on the basis of “a combination of geographic contiguity of their component areas[;] their ethnic, linguistic[,] and other cultural aspects[;] and their socio-economic potential and viability.”³¹⁰ The PDP-Laban Model, in the meantime, does not propose any specific set of states, but determines in the draft Constitution that such regions shall be formed considering

geographical areas with sufficient territories, inhabitants, and resources necessary to sustain and promote a stable and efficient regional government, sharing common and distinctive historical and cultural heritage, economic and social structures, or other relevant characteristics within the framework of this Constitution, national sovereignty, as well as territorial integrity of the [f]ederal [r]epublic.³¹¹

The Congress version, in turn, proposes 18 regions, loosely based on the current regional divisions, which may be revised in accordance to size, capacity, and with “due regard to regional, historical[,] and cultural ties[;] economic efficiency[;] and the requirements of regional and local planning.”³¹²

While territorial size, population, and number of constituent units will determine the need to federalize and the political dynamics of the federation,³¹³ it is apparent in the proposals, however, that in post-colonial and multi-ethnic countries like the Philippines, both historical and cultural ties play important roles in the determination of these states or regions. In addition, the appreciation of cultures in decision-making works both ways. More than the ability of the structure of government to consider cultural identities, as discussed by Abueva, such appreciation may, in fact, support citizen participation in the introduction of a new system of government. “In order to involve people as active participants, development must be consistent with their fundamental socio-cultural traits, world view and

310. CMFP Draft Constitution, *supra* note 154, art. II, § 2.

311. PDP-Laban Model, *supra* note 176, art. 10, § 6.

312. H. Res. No. 8, art. 10, § 7.

313. Watts, *supra* note 35, at 14.

values, and cultural principles. Only then can the enthusiasm and creative potential of the people be mobilized.”³¹⁴

The foreseen advantage, in relation to ethnic, religious, and cultural diversity, of Abueva’s proposed form of federalism, especially in connection with the Bangsamoro problem, is the renaissance of regional languages and cultures and the instillation of a deeper sense of both regional and national identities. The challenge, however, is showing how federalism will arrive to such state. Various scholars have noted the influence of cultural diversity in the “creation, distinctive structure[,] and subsequent operation of federations.”³¹⁵ The Philippines’ possible federalization experience will be aligned with that of Belgium, India, Spain, and Switzerland, among others, where “internal linguistic, religious, ethnic[,] and even national regional differences have given prominence to insistent and powerful pressures both for maintaining regional distinctiveness and autonomy and for the inclusion of representatives of these groups in the operation of their federative institution.”³¹⁶ Today, are the proposed states, so deeply entrenched in the unitary form of government, capable of identity-building similar to the Cordilleras and the ARMM? More importantly, what strategies in the federal system are to be adopted in order to deal with “deep regional cleavages[?]”³¹⁷

A strategy proposed is the accommodation of the various cultural groups “by establishing regional units within which they may form a majority with the power to protect and promote their distinctiveness through a measure of self-government.”³¹⁸ In this model, there is a sense of security in the capability of the regions to protect their identities. However, in the Philippine experience, even with the establishment of autonomous regions in the 1987 Constitution, the failure of the present democratic process to preserve the country’s multiple cultures and ethnicities is still most evident in the conflicts present in Mindanao. During the first SONA, federalism was billed as the “‘*lasting solution*’ to peace in Mindanao.”³¹⁹ However, the politics behind the question of whether the Bangsamoro region should be in the same basket as all other proposed regions/states in the Philippines is much more complicated. This is an important question to consider when

314. De Leon, Jr., *supra* note 305.

315. *Id.* at 19.

316. *Id.* at 20.

317. *Id.*

318. *Id.*

319. The Wallace Business Forum, *supra* note 281, at 21.

incorporating provisions giving a special form of government to regions, such as the Cordilleras and the ARMM, because both of these groups, especially the Bangsamoro, have experienced historical injustice and neglect not necessarily present in all other regions in the Philippines.³²⁰ A nuanced approach is necessary in order not to underplay the struggle of the Moros.³²¹

Bangsamoro identity is inescapably linked to territorial and land issues. “In the modern system of nation-states, most, if not all, large human cultural groups base part of their claim to an integrated identity on residence in a territorially-defined home and a culturally-delineated nation.”³²² Writings on the agreeability of the Moros to a shift to federalism vary greatly. While due consideration to their preferences is an immediate concern, right now, there are conflicting opinions on whether or not the Bangsamoro are accepting of federalism. One side argues that Moro representatives supported the project;³²³ others, however, belie this claim.³²⁴ This is reflective of the necessary consolidation of views within the other side of the peace talks, that is, the Moros themselves and the tribal divide that historically exists among them —

Moro identity is not as consistent as it seems, seen from the national prism of antagonism. Centuries-old clan and ethnic structures strongly persist beneath this overarching identity vision and surface from time to time. Asking Muslims about their identity, a clear and surprisingly consistent hierarchy appears: [t]he most important level of identification is that of *clan* affiliation or kinship ties[;] [s]econd is *ethnic* group (being a Maguindanaoan, a Maranao[,] or a Tausug)[;] third is *religious* identity (being a Muslim)[;] fourth, closely interwoven with third, is being a Moro, based on *political* activity as a Muslim[;] and in fifth place finally comes being a *Filipino*, resulting from the historical process of attempts to integrate

320. Macabangkit Lanto, *A hard sell to Moros*, PHIL. DAILY INQ., Sep. 22, 2016, available at <http://opinion.inquirer.net/97542/a-hard-sell-to-moros> (last accessed Feb. 13, 2018).

321. *Id.*

322. John Borneman, *State Territory, and Identity Formation in the Postwar Berlins, 1945-1989*, CULTURAL ANTHROPOLOGY, Volume No. 7, Issue No. 1, at 45.

323. Malaya, *supra* note 163.

324. Lanto, *supra* note 320 & Miriam Coronel Ferrer, *Why the MILF prefers BBL over federalism*, PHIL. DAILY INQ., June 28, 2017, available at <http://opinion.inquirer.net/105182/milf-prefers-bbl-federalism> (last accessed Feb. 13, 2018).

and assimilate Muslims into national political bodies. Filipino identity is seen as a by-product of alien domination.³²⁵

As much as local identities must not only be preserved but also made necessary elements to federalization, these local identities must be able to forge national identities as well. Meanwhile,

[t]he need to strengthen national consciousness and unity, however, should not be used as an excuse to weaken local cultures. The [S]tate should rather allow local communities to define and govern themselves and to develop separately while at the same time to see themselves as part of a larger developing entity.³²⁶

V. MINDING THE GAPS

The question that must ultimately be answered is whether the Philippine State is ripe for constitutional change. Philippine history is wrought with attempts at changing this form of government, but these remain in their embryonic stages, stuck in the limbo of collective consciousness.³²⁷ Yet, here we stand, in the threshold of a historic moment — we have an administration keen on effecting constitutional change into a federal form of government;³²⁸ there are people on the ground campaigning for federalism and engaging the masses;³²⁹ intellectuals are circling the debate.³³⁰ The current socio-cultural climate seems to be ripe for the birth of a new constitution, but do we take the plunge? This Article has endeavored to

325. Hannah Neumann, *Identity-building and Democracy in the Philippines: National Failure and Local Responses in Mindanao*, 29 J. CURRENT SOUTHEAST ASIAN AFFAIRS 61, 68 (2010) (citing Wahab Guilal, *Perceptions of Democracy and Citizenship in Muslim Mindanao*, in DEMOCRACY AND CITIZENSHIP IN FILIPINO POLITICAL CULTURE: PHILIPPINE DEMOCRACY AGENDA (Maria S. Diokno ed., 1998)).

326. De Leon, Jr., *supra* note 305.

327. See Cureg & Matunding, *supra* note 127, 177-80.

328. See Erwin Colcol, Duterte's first SONA, one year later: The federalism information campaign, available at <http://www.gmanetwork.com/news/news/specialreports/618310/duterte-s-first-sona-one-year-later-the-federalism-information-campaign/story/?tag=sona2017> (last accessed Feb. 13, 2018).

329. See Miriam Grace A. Go, DILG mobilizes 42,000 barangays for federalism campaign, available at <https://www.rappler.com/nation/165139-dilg-march-25-barangay-assemblies-support-federalism> (last accessed Feb. 13, 2018).

330. See Philippine Institute for Development Studies, Experts Gather to Discuss Issues on Federalism, available at <https://www.pids.gov.ph/press-releases/294> (last accessed Feb. 13, 2018).

problematize pertinent aspects of societal relations vis-à-vis proposals to change the organic law, not only in segments, but right down to its core, i.e., proposing an entirely new system of government. In this Section, we look at the gaps outlined in earlier parts of the Article and understand the impacts thereof in the recreation of the Philippine State using the lens of social and legal theories.

The first Section looks at the gaps in the proposals anent to economic growth and development and dissects it under Neo-Marxist and Social Contract rhetoric in State development, as well as balancing the scales of power in international and domestic trade relations. The second Section analyzes how the proposals address political culture in the Philippines, specifically, how the proposals remake and/or unmake elite democracy, and how these address questions of transition. In the final analysis, we hark back to classical theories of State creation in order to understand further the struggle of a federal Philippines' genesis. The third Section looks into latent cultural characteristics and how the proposals address the issues of State creation. It also problematizes parallel debates in the creation of autonomous regions, specifically contradistinguishing the Cordilleran and Moro experience under the 1987 Constitution, and reflecting on the current Bangsamoro project as a post- or ante-federalist undertaking. Finally, the Article will end with a question for the common Filipino — Are they ready for this change? The answer to this question, as will be shown in later discussions, is important in the birth of a new State, not only to address challenges of legitimacy, but also to serve as an important rubric for mythmaking, which is absolutely essential in identity-building.

A. Economic Growth and Development — The Poster Child of Change

Economics, for many theorists, is the seed of State creation. Resource-management is at the heart of State function; its absence or an improper management thereof renders the State a useless entity.³³¹ Because economic management addresses the most basic of human needs, it is seen as an axis of State creation and viability.³³² In that sense, once the State fails to address the economic needs of its constituents, it must, perforce, be dismantled and

331. See Jason Brown, *The Role of the State in Economic Development: Theory, the East Asian Experience, and the Malaysian Case* (Economic staff paper published by Asian Development Bank) at 1 available at <https://www.adb.org/sites/default/files/publication/28148/es52.pdf> (last accessed Feb. 13, 2018).

332. See PANAGIOTIS E. PETRAKIS, *CULTURE, GROWTH, AND ECONOMIC POLICY* 9-17 (2014).

recreated in order to serve its function.³³³ This is a historical reality. Under the Marxist lens, the State must address human needs and wants, in order for the populace to labor, which labor becomes the undiluted lifeblood of the State — it is a cycle.³³⁴

In the Philippine experience, the 1986 People Power Revolution was the unmaking of a non-viable state entity. The 1973 Constitution, as amended under the Marcos regime, was no longer seen as the proper vehicle to deliver the needs and wants of the Filipino people. When speaking of needs and wants, it goes into both material and psychological needs. Indeed, the Marcosian State failed in developing the national economy, put the Philippines under the control of international lending corporations, and struggled to maintain peace in the minds of the Filipino people.³³⁵ A breaking point was reached when the people hungered, not only for economic stability, but more so, for democracy and freedom.³³⁶

The conclusion wrung from the above exposition is that economic management is part of the general welfare clause of the social contract between the State and its people.³³⁷ It is a key to State survival and is the most palpable weight of change. Because the economic framework embodied in the organic law sets the tone for future legislation, and the interpretation of previous ones, understanding how the proposals address economic issues gives us a glimpse into State viability and vitality after charter change. However, it is error to presume that economic growth and development are contained in a neat box within a constitution. These are neither stagnant nor docile. Economic growth and development arise, not only from individual constitutional mechanisms, but also from the discursive relations of all its provisions.

333. See, e.g., Clarence L. Ver Steeg, *The American Revolution Considered as an Economic Movement*, 20 HUNTINGTON LIBR. Q. 361, 363 (1957) & François R. Vede & David R. Weir, *The Financial Market and Government Debt Policy in France, 1746-1793*, 52 J. ECON. HIST. 36-37 (1992).

334. Andrew Vincent, *Marx and Law*, 20 J. L. & SOC. 371 (1993).

335. Ronald U. Mendoza, Ferdinand Marcos' Economic Disaster, available at <https://www.rappler.com/thought-leaders/123773-marcos-economic-disaster> (last accessed Feb. 13, 2018).

336. LISANDRO E. CLAUDIO, TAMING PEOPLE'S POWER: THE EDSA REVOLUTION AND THEIR CONTRADICTIONS 27-38 (2013).

337. See generally CHRISTOPHER W. MORRIS, THE SOCIAL CONTRACT THEORISTS: CRITICAL ESSAYS ON HOBBS, LOCKE, AND ROUSSEAU (1999).

International trade and foreign investment, as well as domestic trade and resource allocation are among the salient economic issues for States in the global community. As earlier intimated in this Article, globalization is a force to be reckoned with, but not at the expense of domestic growth and development. Both goals feed off of each other, and must be seen as dialectal in achieving the ultimate goal of empowering the mass base.

First, we discuss international trade and foreign investment. In all the proposals, the Head of State is given the power to enter into treaties and trade agreements, and procure loans subject to some mechanism of check and balance, i.e., legislative concurrence, approval of government budget and finance executive, constitutional limit on the scope of a treaty and international agreement, and regional deference in implementation. This mirrors similar mechanisms of international relations under previous and current constitutional setups.

The divergence between the unitary and federal constitutions is pronounced on the platform of foreign investment. Under the current Constitution, the exploration, development, and utilization of the State's resources are reserved to Filipino citizens or juridical entities with 60% Filipino capitalization.³³⁸ In earlier discussions, this setup is criticized as protectionist and one that has stagnated growth and development primarily due to the lack of competitiveness in the Filipino market. Thus, striking a balance between free trade and nationalist protectionism is at the forefront of the discussion for most proposals. The common denominator of the proposals in relation to foreign investment in the development of national wealth is to make it a political question, and, therefore, a function of temporal and societal needs and conditions. Unlike previous constitutions that clearly delineate the limit of foreign investments, the proposals are more trusting of the political arm of government, subject to checks and balances in other branches of government, as well as to limitations presented by regional or state powers. The advantage to this grant of power is that our foreign investment policy is flexible and accommodating of rapid changes. The downside, however, is the fact that the political arm of government is rarely unselfish. Certain interests pervade the Legislative chambers, which are, at times, incongruent with the necessities of the people.

Second, we go into domestic trade relations and resource allocation. The current state of resource-distribution is reversed and equalized in varying ways in the proposals discussed. However, the sustainability of such measures, as well as the susceptibility thereof to political whims, remains

338. PHIL. CONST. art. XII, § 2.

unaddressed. The Philippine experience shows that dole-out mechanisms, no matter how secure on paper, are destabilized by political culture.

On a more objective level of analysis, economic fruits from titanic changes are rarely immediate, and trickle down, if at all, very slowly. The rhetoric of the federal project in the Philippines has focused on many things, among them the promise of economic growth and development in rural areas, and the dispersal of wealth from the capital to the regions. But the same poster child had already been worn down by the many constitutional changes throughout history, the latest effort being the grant of local autonomy. The counter-argument, of course, is that previous constitutional projects advocated for a unitary form of government, which is a world away from a federal form of government. And yet, other jurisdictions that have attempted a similar change, and which have similar historical and cultural experiences as the Philippines, could not seem to reap the supposed rewards of the federal change. Whether this difficulty is a result of one factor or the other, it does little to ease the mind considering that there is truly no specific model upon which a State can base its overhaul of the fundamental law.

On the contrary, a bottom-up approach to economic growth and development is also present; more specifically, a transitional mechanism for the grant of statehood is premised on economic capacity. Another mechanism is the grant of power to LGUs to amalgamate. These are laudable efforts in envisioning a new Philippines. Foremost, it empowers regional and local units to choose for themselves the path they will take in relation to becoming an independent unit of the federal state. Next, it fosters competitiveness in developing local and regional economy. However, the question posed earlier regarding the trickling down of growth and development remains, albeit at a smaller scale. Further, such mechanism weakens the economic base of the federal state and amputates the power of the federal government to pursue nationwide economic policies, thus hampering its negotiating power on the international sphere. It also begs the question of development post-grant of statehood. In the current experience of local autonomy, stagnation has become a prevalent narrative in LGUs that were granted cityhood. Finally, this bottom-up approach still poses the danger of entering the playbook of the *padrino* system. Regional strongmen will find ways to tap this new source of power, unless mitigated by some safeguard.

Perhaps asking for a trickle-down mechanism to be outlined in the organic law comes at the expense of over-exhaustion. However, to say that the federal project is the be-all-end-all of state resource management and development of wealth is likewise misguided. A different set of problems pervade a bottom-up approach to development. In either development

models, continuity becomes the base of economic structure — how the proposals address this concern is yet to be seen. The lifeblood mnemonic of developmental economics in State structure must be shown to flow naturally — from the international community, to the State government, to the people, and vice versa. An unsound or understated development model, or both, will spell disaster for the new Republic.

B. In Search of a Philosopher King

Historical reckoning underscores how political culture is spun by an elite few.³³⁹ In that spirit, the question of who gets to draft the new constitution becomes embroiled in other political realities, especially when juxtaposed to collective memory-making and national imagines.³⁴⁰ Memorializing a constitutional moment as a function of State viability and stability is the root of legitimacy of the organic law.³⁴¹ The sanctity of the organic law becomes unstable, unless supported by the myth of representation, which myth is a labyrinth for anyone, considering that a single voice may echo various others, and those silenced may carry with them the hope of the new Republic. The frustration of constitutional reform in the Philippines manifests itself in having to choose between two evils — authoritarian rule or the rise of oligarchs. The proposals must push their assumptions to logical ends, whether they advocate for a strong Presidency and regional executives, or the dilution of power bases in relation to these political realities.

First, the question of who gets to write the organic law must be tackled as a precondition of diversity and legitimacy. If the drafters are appointed, the means of appointing them is put to the fore, as well as inquiries into the legitimacy and mandate of the appointees. If Congress constitutes itself as a Constituent Assembly, voices of those not in the majority party tend to be overpowered by the ruling coalition. In that sense, the Constituent Assembly may well be the voice box of a single think tank. If the change is ushered by a Constitutional Convention, the election of delegates will be subject to the heated power play that has pervaded the Philippine

339. See generally Benedict Anderson, *Cacique Democracy in the Philippines: Origins and Dreams*, NEW LEFT REV., May-June 1988.

340. See CLAUDIO, *supra* note 336, at 15-17.

341. Dante B. Gatmaytan, *Constitutional Deconsecration: Enforcing an Imposed Constitution in Duterte's Philippines*, 62 ATENEO L.J. 312, 334 (2017) (citing Eben Moglen, *The Incomplete Burkean: Bruce Ackerman's Foundation for Constitutional History*, 5 YALE L.J. & HUMAN. 531, 532 (2013)).

democratic process. The voices heard on the floor of the constitutional body are the voices that will ring for generations to come.

Another problem area lies in the fact that, in the Philippines, political power is a vested right, treated less as a service, and more of an inheritance.³⁴² A criticism of post-People Power Philippines is the return of pre-authoritarian oligarchs in power.³⁴³ Therefore, who will sit in transition must continue to be a frequently asked question in the forum of constitutional change. The proposals present dramatic overhauls of positions of power, eliminating some and strengthening others. On the part of leaders who will be butted out of the government structure, will they be ready to let go? The same question is posed to those who will sit in transition — will they be able to make the ultimate sacrifice when the transition is complete?

Eons after Plato introduced the world to the philosopher king, the Philippine State is confronted by his absence in the rebirth of a new Republic. In Plato's thesis, a just society is ruled by one whose hunger is for knowledge and not power, one willing to make the ultimate sacrifice for the rise of a stronger state, and whose hold on the throne is loose. This is the *eidos* of the ruler of the great Kallipolis. Is the current leadership ready to endure the birth pains of the new Philippines? Will they be willing victims of change?

C. A Quagmire of Strategic Socio-Cultural and Political Considerations

The success of the ARMM is the jumping board of the Bangsamoro initiative, which debate is tangential to the discussion of federalism. It has been argued that it is the next logical step to sustain the Autonomous Region.³⁴⁴ However, the Duterte administration has made the federalist agenda a caveat to the Bangsamoro initiative, asserting that the Bangsamoro Basic Law cannot be passed without opposition unless a similar platform is

342. See Teresa S. Encarnacion Tadem & Eduardo C. Tadem, *Political dynasties in the Philippines: Persistent patterns, perennial problems*, 24 S.E. ASIA RES. 329 (2016).

343. See Richard Javad Heydarian, *Philippines' Incomplete Revolution: Elite Democracy and Autocratic Nostalgia*, available at https://www.huffingtonpost.com/richard-javad-heydarian/philippines-incomplete-re_b_9323770.html (last accessed Feb. 13, 2018).

344. See Delon Porcalla, *Next Step: Bangsamoro Law*, PHIL. STAR, Jan. 27, 2014, available at <http://beta.philstar.com/headlines/2014/01/27/1283430/next-step-bangsamoro-law> (last accessed Feb. 13, 2018).

granted to other regional units.³⁴⁵ On the other hand, the advocates of the Bangsamoro initiative have made the argument that the passing of the Bangsamoro Basic Law is a necessary precondition for them to accept federalist change.³⁴⁶ How the national leadership will handle the issue of which policy consideration goes first will either strengthen or snuff out the fruits of decades-long efforts in the peace process. Disturbing the status quo is never easy. The peace process is at the heart of the current push for federalism. Whether it is continued or not, peace negotiations, as well as its temporal locale, are key factors in reimagining the new Philippines.

A counterpoint to the success of the ARMM is the failure to create the Cordillera Autonomous Regions, not only once but thrice.³⁴⁷ It is the very same cultural diversity used to campaign for a federal Philippines that caused the failure of the Autonomous Cordillera project.³⁴⁸ While a single Islamic tradition binds its diverse interpretations in Muslim Mindanao, no similar base is present among Cordillerans. The mountain cultures, though similar, rarely share the same collective memories, or cultural rationalizations.³⁴⁹ Furthermore, Cordilleran identity has been reinterpreted in various urban settings, which reinterpretations have, in some cases, been alienated from its source.³⁵⁰ The gradients in Igorot identity presented major problems in unifying the area. The same gradients exist in other cultural communities — there are, for example, various groups within the Ilocano cultural community, which groups have clashed in the past. There are also various

345. See Pia Ranada, Duterte's pitch for federalism: Centralized system holds back PH, *available at* <https://www.rappler.com/nation/politics/elections/2016/124423-duterte-federalism-central-system-holding-regions-back> (last accessed Feb. 13, 2018).

346. See Carmela Fonbuena, Federalism? Bangsamoro law first, MILF tells Duterte, *available at* <https://www.rappler.com/nation/149619-federalism-bangsamoro-moro-islamic-liberation-front> (last accessed Feb. 13, 2018).

347. The Manila Times, *House fails on Cordillera Autonomy Bill*, MANILA TIMES, Feb. 7, 2016, *available at* <http://www.manilatimes.net/house-fails-on-cordillera-autonomy-bill/243605> (last accessed Feb. 13, 2018).

348. Teodoro Baguilat, Jr., *Do Cordillerans really want autonomy*, PHIL. DAILY INQ., July 16, 2013, *available at* <http://newsinfo.inquirer.net/446367/do-cordillerans-really-want-autonomy> (last accessed Feb. 13, 2018).

349. JUNE PRILL-BRETT, CORDILLERA STUDIES CENTER WORKING PAPER 10: INDIGENOUS EXPERIENCE OF AUTONOMY IN THE CORDILLERA (1989).

350. Toh Goda, *Formation of Igorot Village in Cainta, Rizal Province, Philippines*, in URBANIZATION AND FORMATION OF ETHNICITY IN SOUTHEAST ASIA 22-48 (Toh Goda ed., 2009).

iterations of the Bisaya culture groups, with each one claiming independence from the other. The proposals all advocate the creation of federal regions or states based on cultural affiliations, among others, but these affiliations are imagined by the center, and may or may not exist on the ground. The challenge for the federalist project is mythmaking on the cultural plain — convincing culture groups that they are part of one region or another.

D. A People of Faith

With the debates on the federalist project put in public, and people on the ground gaining awareness thereof, is the tipping point just around the corner? Experimentation always comes with uncertainties as outlined by this Article. The gaps in determining who, how, and when the new Republic will be born are all determinants of what it will look like and how it will be given life by generations to come. Highlighting these gaps allows the Filipinos to make an informed choice. The questions raised challenge them to reassess what has been said and done in relation to the federalist project and to understand the risk of allowing these events to unfold.

The call is not to choose one proposal over another, but to take a step back and imagine ourselves, both as groups and individuals, as active participants in ushering a new organic law. The call is also a reminder to remain conscious of the provenance and kinds of changes that will happen, as well as their consistency with the Filipino people's needs and wants, and our realities in the realms of politics and culture. Filipinos must understand that the Constitution is the idealization of themselves, and the fissures in the current proposals, if left unaddressed, will pain the economy, their politics, and their identity as a people for generations. In the ultimate analysis, we ask — do we take the leap of faith?

VI. CONCLUSION

The present Authors are convinced that there is wisdom in reviewing the existing Constitution on account of the historical background which shaped its content. A scanning of events which preceded the adoption of the 1987 Constitution clearly characterized it as “reactionary.” On another note, 30 years of constitutional experience has shown the need to fine-tune some of its parts to make it relevant to new developments, domestically and internationally.

This modest survey of the proposed constitutional changes leaves us with the impression that structures of government and fundamental principles of governance are a function of the extent that the sovereign people will repose their trust upon the architects of a new fundamental law.

It is critical to build an informed constituency who can keep pace with the speed that the proponents for constitutional change are now moving.

A tragic disservice to future generations of Filipinos will be passed on unless a concerted effort is undertaken to fully understand the consequences of the present political exercise. No amount of “distractors” should turn our attention away from the process in Congress. The Filipino public must define its own destiny.