

## On Federalism

Galing Pook Forum

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Since it was approved by a majority vote of 76% in a national plebiscite in 1987, there have been six previous attempts to change the present Constitution. The articulated purpose of all of them is the same – to improve the lives of the poor. They all failed – two were stopped by the Supreme Court on the ground of unconstitutionality – a people’s initiative cannot revise the Constitution. The other four were withdrawn for lack of support. The articulated purpose of these attempts was perceived as mere smokescreen to serve personal agendas – more power and/or more money for themselves.

We are discussing today another proposed revision of the Constitution, this time by President Duterte, and its articulated purpose is the same – to improve the lives of the poor. At this point, because the changes are being proposed when only 27% of our people know the Constitution, may I ask your indulgence to say something about that Constitution.

The 1987 Constitution is about the promise of EDSA, a historic spontaneous moment of national solidarity. To the poor, EDSA was more than the changing of the guard, it was the promise of a new social order.

When we as a people wrote a new Constitution in 1987, it was the first time that we spoke to the world as a truly independent and democratic Filipino nation. It is a document that had not been imposed on us by any colonial power or by a dictatorship

That Constitution reflects our history and our dreams of the future. We could have completely overhauled our system and form of government but the people, in our national consultations, overwhelmingly preferred the stability of familiar structures – a democratic representative, presidential system, with checks and balances and separation of powers and overwhelmingly they wanted the power to directly elect their president..

But the Constitution also innovated with three central themes, **firstly**, the heart of the Constitution is social justice with the poor as the center of our development. **secondly**, never again to any authoritarian government. Hence, the strict limitations and conditions for declaring martial law and new provisions, including in the Bill of Rights, to protect citizens against abuses by the State; and **thirdly**, the national

destiny must firmly and safely rest on Filipinos themselves. Never again amendments similar to the 1935 Constitution that gave Americans equal rights to our patrimony, foreign military bases, and economic policies where even our exchange rate after independence could not be changed without the approval of the U.S. President.

We also cut the umbilical cord of the 1935 and 1973 constitutions to the United States constitution, which gives primacy to civil and political rights because it is a country of immigrants who all started from the same position and only wanted to be free from autocracy. Hence, its emphasis on individual rights and a market system.

Our Constitution gives social and economic rights equal primacy with civil and political rights because we are a country of inequalities from the colonial days to the present where the starting positions of the rich and the poor are not equal. Social justice is about the adjustment of these starting positions.

The primacy of social justice is based on the right to human dignity which precedes and supercedes constitutions, as encapsulated in what I consider the most important phrase in the entire document – **“equitably diffusing wealth and political power for the common good”** (Art. XIII, Sec. 1). To fulfill that vision, the State can use its police powers to implement the reforms, such as; income distribution programs (primarily quality education and quality health care) and asset distribution programs (agrarian reform, urban land reform and housing, ancestral domain and fisheries reform ). This is the Constitution that President Duterte wants to overhaul.

A foreign observer describes the last elections as the first time that the periphery occupied the center. We might add that the high plurality vote for President Duterte represents the three challenges to his administration during the election campaign.

First are the everyday concerns of ordinary people namely, – criminality, the drug problem, the traffic problem, the red tape in delivering public services, corruption;

The second challenge is peace in Bangsamoro and with the National Democratic Front.

The third challenge is development.

The question: is federalism necessary to successfully address these challenges?

A shift from a unitary to a federal system is a major surgical revision of the Constitution. So we better make sure there are no complications. We are all familiar with the saying about knife-happy surgeons that the operation was successful but, unfortunately, the patient died.

On the everyday concerns, the President is perceived as hitting the ground running in addressing the drug and criminality problems. His high approval rating spills over to the issue of extra-judicial killings where more people appear willing to give him the benefit of the doubt, as they did of Marcos at the start of martial law. But ultimately, the issue is whether the vigilante killings are perceived as state policy. And more than 4000 killings “under investigation” without a single solved case, as far as I know, is bad news. However, there is also good news. the PNP acted quickly on the recent murder of our farmer leader in Coron, Palawan and our requests for police protection of farmers from harassments. There are other examples. How this all plays out is to be watched because the administration of justice is the most serious problem in our country and the frontliners in the justice system are the police.

What is clear is that these everyday concerns can be addressed with the powers of a central government under the present Constitution. In fact, there is no better example than Davao City where, we are told, all it took was a strong leader with political will to get the job done. Those who voted for President Duterte expect him to do at a national scale what he accomplished in Davao City, and appear willing to forgive “unintended consequences” as the father of the young couple who were killed by vigilantes recently told media.

The second challenge is peace. Do we need federalism to pass a new Bangsamoro Basic Bill ? Or to forge a peace agreement with the National Democratic Front? I don't think so.

The Constitution already provides for the creation of the ARMM and the NDF has not taken a hard line on charter change. The President is right that a new BBL takes precedence to federalism and should be a template for others. Since the President is familiar with the political terrain at the ground and personally knows the key figures both in Bangsamoro and the NDF, and he has a supermajority in the Congress, he will likely succeed on achieving peace on both fronts.

That leaves us with the challenge of development.

The biggest problems in our country today are mass poverty and inequality. Thirty years after EDSA and the promise of a new social order, we still have mass poverty and the highest inequality among our peers in our part of the world. The social reform programs are underperforming and the social divides have not changed.

This is a failure of development, which is defined as a sustained high growth rate plus equitable distribution. In other words, we have so far failed in human development which is “the process that widens the range of people’s choices to lead a long and healthy life, to be educated and knowledgeable and to enjoy a decent standard of living. It includes political freedom, guaranteed human rights and self-respect”. (UNDP 1990:10). Our worst failure of development is Muslim Mindanao.

We are, in fact, told that a number of factors account for our laggardness, but foremost are flawed policies and weak institutions that are rooted in a feudalistic system that has been impervious to change for generations and, of course, its companion evil -- corruption. There is some good news: from 2010-2015 our average annual growth rate has increased to 6.2% and poverty incidence has been reduced from about 24% to about 19%, without constitutional changes. But we have a long way to go to get out from the bottom of the pile.

President Duterte says that our problems are mainly caused by “imperial Manila” with its central control of powers and resources that have stood in the way of development of the rest of the country, to the detriment of the poor. Hence, federalism.

I beg to disagree, I submit that we have failed not because of the Constitution, but because we have not fully implemented it, especially the provisions on social justice, and on local autonomy. The Constitution is not the problem, it is part of the solution.

We don't have much information on the features of the federalism that the President wants. But in responding to his call, we can start by saying, and I hope you agree, that there is unanimity among us that federal countries around the world reflect the characteristics of their context and thus every country system is a hybrid of some kind. The Philippines is also considered a hybrid in international comparisons since the 1987 Constitution provided for a unitary system with 2 autonomous regions and autonomy for local governments.

From the advocates for Philippine federalism and the statements of the President we can relate their characteristics with the experience of countries as described by experts both domestic (like Prof. Rosario Manasan and Prof. Glen Lacza Pilapil) and international:

first, the recommendation for existing unitary governments is to reform rather than overhaul the system.

second, a clear understanding and acceptance of federalism is a necessary feature. That is not our case today, where 73% of our people do not know anything about our Constitution, much more about federalism. Yet our proposed process is a decision from above (a constituent assembly) when experience suggests that a process that is voluntary and incremental from the ground has better chances of success, like Spain. Incidentally such a process is provided in our Constitution (Art. X, Sec. 13).

third, since federalism reflects the history, socio-political, economic and cultural characteristics of its context and there are existing inequalities, it tends to serve the interest of existing dominant groups in the federated states.

fourth a federalized state need not be democratic, an interesting insight;

fifth, the process of federalization is complex, needs a long transition period and is essentially asymmetric. The Duterte proposal seems to envisage an immediate symmetrical structural change regardless of local conditions and capabilities, with the hope that an “equalization fund” from the wealthier regions would help the poor regions until they are competitive. That may be a heroic assumption. Why will rich areas share their surplus indefinitely with the poor regions rather than with their own people who created it? In which case, the poorer areas may become more marginalized;

sixth, federalization may not lead just to unifying communities but to their unraveling because self-determination has its domino effect, such as the existence of minorities within a minority.

seventh, a redistribution of powers works best when flexible to changing circumstances. But a constitution that not only devolves but also shares sovereignty with the federated regions means that it cannot be changed solely by popular vote and makes the shift virtually irreversible.

eight, this “federal entrenchment” is a risky proposition since experts say that there is no established evidence on the superiority of the federal to a unitary form of government, particularly on long-term outcomes. Long after President Duterte is gone.

ninth: on accountability, there are also big differences among our regions on the existence of a strong civil society, especially in poor areas, which can stand up to the political dynasties, landed elites and warlords with the power and money to dominate not only the politics but also the economy and the media of these areas. Hence, the absence as well of strong opposition political parties in these areas.

Federalism invokes the principle of subsidiarity – that power must be devolved to as close to the people as possible, which:

- (a) empowers and motivates local communities;
- (b) generates more accountability of local officials;
- (c) hastens development with competition among the regions.

The problem with the subsidiarity argument is its inductive reasoning. – it is based on the probabilities of a good result at each stage of the chain of reasoning that will lead to the desirable ultimate objective.

In our case, there are LGUs dominated by political dynasties, landed elites or warlords. It does not necessarily follow that the greater powers given to the LGUs will end up with an empowered people. On the contrary, it can result in a misuse or hijacking of the powers and resources by the existing power holders.

The Local Government Code (LGC) although considered a landmark legislation, has turned out to be inadequate on devolution and many of its provisions are not being implemented fully or correctly.

In this regard, there are acknowledged fiscal experts such as Prof. Rosario Manasan and former Finance Usec. Milwida Guevara with instructive insights on the amendments to the LGC and other laws and reforms to give real powers to administratively capable LGUs, whether on education, health, infrastructure, raising their own funds, and resources etc, and will enable them to achieve meaningful self-determination, without need of federalization. Prof. Manasan has already shared with us her mastery of the fiscal and governance aspects of decentralization.

Former Finance USEC Milwida Guevara has a study on the fiscal capability of regions. Based on the 2014 regional GDPs and an estimated minimum expenditure of P91b, only three (3) regions are financially viable, namely, National Capital Region (NCR), Central Luzon and Calabarzon.

On education, she says that inequitable access to quality education can be addressed immediately by two reforms:

1. Amend Sec. 98 of the Local Government Code on the creation, composition of Local School Boards to broaden the membership of Boards to include CSOs, business sector, religious groups, among others; and, to broaden the functions of the Local School Board to include policy formulation on students' welfare, finance of activities which the locality needs, institution of a performance incentive scheme for schools, among others.
2. She points out that 37% of schools have no School Governing Councils; 46% have organized their SGCs but are not functional, and, less than one percent involves their SGCs in planning and program implementation. Thus, parents and communities have little knowledge of the schools' performance and have no ownership of school programs. RA 9155, Governance of Basic Education Act of 2001, should be amended to mandate the establishment of School Governing Councils with powers to formulate and implement policies and programs on students' welfare and school improvement programs.

With regard to economic zones which are expected to proliferate in the regions to jumpstart their development, the Philippine Human Development Report 2012/2013 points out that human development is about the welfare of people, not the development of places. The nature of economic development is uneven. It is not about bringing jobs to people but closing the distance between the people and the jobs by giving people the capability and mobility to choose where to go. But the principle is different when it comes to quality education and quality health care. Breaking the vicious cycle of poverty of the young means bringing these services to wherever they are regardless of the cost. That is what human development is about.

There are many experts with ideas like these which are consistent with inclusive sustainable development without need of federalization but they appear to be outside the radar screen of the government.

To summarize, I believe that the shift to a federal system is a leap of faith that it will somehow work. That means that we will be taking a big risk that federalism will strengthen the political dynasties, landed elites and warlords and, given that 70%-80% of the House are from dynastic families with special interests, it is likely that the first casualty are the provisions on social justice and human development, which are precisely the provisions needed to address poverty and inequality.

What if their assumptions are wrong about the inevitability of a good version of federalism? What if federalism results instead in regional political fiefdoms?

Federalism is a slippery-slope and is virtually irreversible. Instead, why don't we take the path of a purposive implementation of the Constitution to address poverty and inequality? And the demands of good governance. Given the depth of these problems, studies show that the social reforms and re-distribution programs should remain in a strong central government because of the need for massive funding that the poor LGUs cannot afford and the need for uniformity. Otherwise, there might be major differences among LGUs to the detriment of the poor. But there can be full decentralization of functions and devolution of powers and resources on the delivery of government services and for local development, which is consistent with the mandate of local autonomy in the Constitution. This can be done simply by amending the Local Government Code and other laws like the mining and education laws and enacting corrective legislation. (Should not the LGUs be given a major share of the revenues from mining which extracts and exhausts the natural resources in their areas?)

In closing, may I say that I believe President Duterte's heart is for the poor and he is good at addressing the everyday concerns of the people. The farmers and other marginalized groups I represent idolize him for his policy directions on agrarian reform and the environment. But he is not exactly in his elements on critical thinking on strategies, policies and programs for human development. Yet he is in a hurry to shift to federalism and he is also talking about shifting to a parliamentary system, about the need of martial powers to address lawlessness and about changing the limitations on foreign ownership. These are far-reaching structural changes in the Constitution for which he would exploit his high approval ratings by asking the people to trust him totally on their urgency and scope – the full range of which he has not even disclosed. This is dangerous demagoguery. I hope that federalism is not a trojan horse for other agenda, even if the President is well-meaning in helping the poor. He is also 71 years old and his choice of a successor leaves much to be desired. We may have another fight in our hands to defend our freedoms.