

OCCASIONAL PAPER

FEBRUARY 2018
ISSUE 11.2

THE CASE FOR CONSTITUTIONAL REFORM



THE CASE FOR CONSTITUTIONAL REFORM

THE CASE

This paper has four parts. First, I outline the case for changing the 1987 constitution and why tinkering with the Local Government Code (LGC) and budget reforms is not adequate. Second, I outline and justify the PDP Laban Model of Federalism and constitutional reforms. Third, I reflect on the criticisms against constitutional reforms. Finally, I conclude with the potential benefits and risks of reforms.

THE FOUR MAIN PROBLEMS

We are confronted today with four major problems that require constitutional reforms: 1) the problem in Muslim Mindanao; 2) imperial Manila and inefficient governance; 3) unitary presidential system and its problems; and 4) the problem with protectionist economic provisions. Changing the Local Government Code (LGC) alone is not enough to solve these problems.

MUSLIM MINDANAO

The 1987 Constitution has failed to provide the flexibility to achieve a permanent, long-term solution to the problem of Muslim Mindanao. We have had five agreements with Moro National Liberation Front (MNLF)

and Moro Islamic Liberation Front (MILF) in the years 1976, 1986, 1996, 2008 and 2015 but there is still no permanent peace in sight. The agreements reached by the MILF and Presidents Arroyo in 2008 and Aquino in 2015, after a long process of negotiations, were both regarded as unconstitutional. The current draft of the Bangsamoro Basic Law (BBL) is also unconstitutional under the 1987 Constitution, according to constitutional law Professor Antonio La Viña and former Chief Justice Reynato Puno.

Understandably, frustration within MILF has been mounting and this is feeding into the narratives of extremists such as the Islamic State, Maute group and Abu Sayyaf, thereby raising the prospects of many more incidents similar to what happened in Marawi. Worst of all, the national government in all likelihood would permanently lose all of its credibility in dealing with the MILF for its inability to keep its many promises.

Image Credit: [rappler.com/nation/180528-youth-mindanao-unemployment-discrimination](https://www.rappler.com/nation/180528-youth-mindanao-unemployment-discrimination)

* THE VIEWS AND OPINIONS EXPRESSED IN THIS PAPER ARE THOSE OF THE AUTHOR AND DO NOT NECESSARILY REFLECT THOSE OF THE INSTITUTE.

More than 120,000, and counting, have already died in the war in Mindanao, including the 44 police officers in Mamasapano and over 200 soldiers and civilians in Marawi (CMFR, DND, 2017). Some 2.3 million refugees have been displaced since 1970s, including at least 300,000 in Marawi. Altogether, the war has already cost at least PHP 770 billion since 1970, including the estimated PHP 23 billion in Marawi (CMFR, 2015; DND, 2017; DBM, 2017; PCIJ, 2016). In the absence of peace, Muslim Mindanao remains the poorest region in the country, with the highest rate of poverty incidence at 40% and with 80% of the country's warlords.

We need an urgent, comprehensive and flexible solution that can accommodate the demands of the MILF, MNLF and other groups. President Duterte has proposed a formula – one country, two systems – as a lasting solution to this problem. This formula requires a change in the constitution.

IMPERIAL MANILA AND INEFFICIENT GOVERNANCE

The second – and very important - reason for changing the Constitution is the problem with imperial Manila and its inefficient governance. Imperial Manila is a colloquial term for the central government, which controls about 83% of public expenditure and 92% of revenues (DBM, 2009 to 2015; Dr. Jun Miral, 2017). About 63% of Gross Domestic Product (GDP) comes from Metro Manila, Regions 3 and 4 (PSA, 2017). Metro Manila is a dying city. By 2030, its population, along with adjacent provinces, will reach 29.3

million (EIU, 2016). Traffic in Metro Manila is one of the worst in the world (Waze, 2016) and costs us PHP 2.4 billion a day (NEDA, 2013). A major earthquake (dubbed as “the big one”) could also cripple the region. The concentration of political, administrative and economic power in Metro Manila is not a tenable proposition in the long run. The regions would have to be developed.

The centralization of powers in Metro Manila comes at a cost of highly inefficient governance. Take a few examples. Bicol region - one of the poorest regions in the country - has already lost six years of income and jobs from international tourism due to delays in the construction of its international airport, thanks to the red tape in Manila. Metro Cebu has been waiting for four years now for Congress to allow it to create its own Metro Cebu Authority to better fix their urban problems. It would take more than 50 signatures to set up a solar power project in Negros. Mindanao has lost decades worth of income and jobs due to delays by Manila in the creation of agribusiness special economic zones. It has also been waiting for 30 years for its much-needed railways. In the last fifteen years, imperial Manila has withheld almost a trillion pesos in the share of local governments from national taxes. Budgets for health and social services should have been transferred to local governments 20 years ago, but they remain controlled by imperial Manila. The share of local governments in natural resource taxes are routinely held up in Manila. Local governments have lodged two cases against the national government in the Supreme Court to compel it to automatically release their internal revenue allocation, which is supposed to be constitutionally mandated. Moreover, the internal revenue share of local governments is pegged to

revenues collected three years ago while the national government's share is current. The national budget has become a patronage tool of national politicians to buy political support. The Priority Development Assistance Fund (PDAF) budget even has an allocation for agriculture services in Metro Manila!

The solution to the problem of imperial Manila and inefficient centralized governance is to permanently create strong regional governments as political and administrative units. These units will be vested with significant powers and budgets to carry out their mandates of regional economic development. I discuss this in more depth in the next section. Creating a permanent regional government requires changing the constitution because the current Constitution recognizes only the national and local government as political units and recognizes only two autonomous regions, namely: Autonomous Region of Muslim Mindanao (ARMM) and the Cordillera Administrative Region.

UNITARY PRESIDENTIAL SYSTEM AND ITS PROBLEMS

The third major reason for changing the constitution is our problematic unitary presidential system. First of all, it is not compatible with giving more powers and budgets to the regions and local governments. Second, it perpetuates a culture of political patronage and entrenches political dynasties. There are better alternatives to the unitary presidential system. Let us examine these problems in more depth.

Our unitary presidential system is not compatible with federalism and regional decentralization because of its inherent tendency to centralize powers. This is clearly evident from our 25 years of experience with the LGC and 21 years of the ARMM. Five examples will illustrate this. First, ARMM's budget and selection of governor remains controlled by the central government. It is autonomous only on paper. Second, it has been 25 years since the LGC was passed. The Code says it has to be reviewed every five years but this has never happened because the central government does not have any incentives for it to share more budget and powers to local governments. Congressmen have little incentives to give more powers to governors and mayors who are their potential political opponents.

Third, the share of local governments in public expenditure in the last 25 years remains at 17%, while the national government's share is at 83%. Fourth, Senator Ralph Recto was quoted as saying that "local governments stand to lose PHP 121.5 billion this year (2018) due to the longstanding faulty interpretation of the rule on how the Internal Revenue Allotment shall be computed." Moreover, the Department of Budget and Management routinely holds up the local government's internal revenue allocation and share in natural resource wealth. Finally, local governments collect and keep only 8% of total revenues and therefore remain dependent on the central government.

The experiences of both Mexico and Nigeria – both Presidential Federal Systems – are also instructive. Both countries are plagued with entrenched political patronage, political corruption, fiscal commons, and weak regions. Clearly, a unitary presidential system, with its inherent tendencies to centralize and maintain its system of patronage, is not compatible with the transfer of more powers and budgets to the regions. Changing the LGC to increase the budgets of local governments is a band-aid solution to this systemic problem.

Moreover, giving more budgets to local officials without regulating political dynasties, introducing electoral reforms and without increasing oversight could lead to more corruption. Records from the Office of the Ombudsman show that in 2016, local governments account for 38% of all corruption cases filed. Changing the LGC alone will lead to more problems without systemic reforms.

Another problem with our unitary presidential system is that the centralization of immense political, coercive and economic powers makes it attractive to be captured by groups with vested interests. These groups – from business, media and political dynasties - invest significant resources to influence the outcomes of elections in order to advance or protect their interests.

The cost of running for presidency, for instance, varies between PHP 3 billion to PHP 5 billion, while the top ten senators in the 2016 election spent an average of PHP 128 million each, 96% of which came from donations (COMELEC, 2016). A candidate needs at least PHP 30 million to run as congressman. At some point, these investments would have to be recovered in terms of favors which then only perpetuates a corrupt political system. The result is that politicians and their financiers try to outbid each other and drive up the cost of elections limiting the competition among elites.

Moreover, a unitary presidential system also helps perpetuate political dynasties. In the absence of political parties, local political dynasties have emerged to provide the machinery, and consequently, secure the votes for candidates in national elections. In return, they get rewarded through pork barrel and special projects in their provinces or cities and become among the 12,000 presidential appointees.

One of my mentors, Prof. Douglass North (1991 Nobel Prize Winner in economics) calls this type of political economy arrangement a natural state. He argues that it appears to be the natural way that human societies are organized in the last 10,000 years of recorded history, even in most of the contemporary world. In this natural state, North says, elites in society develop exclusive or “limited access social orders that were able to control violence, provide order, and allow greater production through specialization and exchange. Limited access orders provide order by using the political system to limit economic entry to create rents, and then using the rents to stabilize the political system and limit violence.” (North, Wallis and Weingast, 2008). The Philippines is one good example of a natural state with its limited access social order. The most successful countries in the world are those that have allowed “creative destruction” as a result of political and economic competition or an open access social order.

Some would argue that political dynasties per se is not a problem because at the end of the day, sovereignty resides with the people. Moreover, not all political dynasties are the same. Some are motivated by public service and have performed well. This may well be true. However, the entrenchment of political dynasties is not necessarily the best outcome for the country. The country would still be better off with more competition in politics and giving more choices to voters. Studies have shown that in some of the poorest provinces in the country, political dynasties account for an average of 50% of local government positions, while 30% of local government positions are controlled by so-called fat dynasties (i.e., those with large extended families) (Mendoza, 2016).

PROTECTIONIST ECONOMIC PROVISIONS

Finally, we also need to amend the protectionist economic provisions of the constitution. First, we have the lowest share of foreign direct investments among countries of the Association of Southeast Asian Nations (ASEAN) (2010-2016), that is, 4% as compared to 8% in Vietnam, 15% in Indonesia, 11% in Malaysia, 8% in Thailand and 54% in Singapore. Second, we have the most expensive broadband in ASEAN. It costs USD 15.7 monthly in the Philippines to pay for fixed broadband as compared to USD 2.39 in Singapore, USD 1.84 in Vietnam, USD 4.8 in Malaysia, and USD 5.26 in Thailand. Because of the telecommunications (telco) duopoly, according to a World Bank (2005) report, residents in Marawi pay 23 times more compared to residents of Makati, while Davaoños pay 1.5 to 2 times more. According to cable TV operators, Mindanawons pay 3 times more compared to those in Luzon because of the telco duopoly and lack of competition due to the protectionist economic provisions.

Third, we have the lowest tourism arrivals in ASEAN. The Philippines attracted only 4.9% of the 108 million tourist arrivals in ASEAN (2015) as compared to 27% in Thailand, 14% in Singapore and 23% in Malaysia (ASEAN Secretariat, 2017). Our tourism infrastructure remains underdeveloped due to lack of investments. Local governments are too small to develop them and the national government is too slow. The Bicol International Airport, for instance, has been under construction in the last 12 years and has foregone tourism revenues and tens of thousands of jobs. In contrast, the international airports of Phnom Penh in Cambodia and Yangon in

Myanmar were built in less than four years, both with capital and technology from foreign investors.

More generally, these protectionist provisions are just the mirror image of a limited access political order that creates rents and protects incumbent players from competition. After 30 years, it is high time to lift the constitutional restrictions on foreign investors. Doing so would bring in more capital, technology, management expertise and help open up markets for our goods and thus help sustain our growth momentum in the long run.

THE PDP LABAN MODEL

Having laid out the case for federalism (or the creation of strong regional governments) and the need for constitutional reforms, I now lay out the PDP Laban Model of Federalism 1.0 and its benefits. I emphasize 1.0 as it is subject to further debates and refinements. By way of disclosure, I am part of the PDP Laban Institute Study Group on Federalism.

In the PDP Laban Model, federalism and constitutional change refers to a package of mutually reinforcing structural reforms comprising political, administrative, economic and fiscal reforms. It is anything but a band-aid solution (Table 1).

Of the four major problems and proposed solutions, the solution to the problems of the Bangsamoro and the protectionist economic provisions are the least controversial ones. I will therefore focus on two (more controversial) proposals – the creation and financing of regional governments and the shift to semi-parliamentary system of government from the current unitary presidential system. Constitutional provisions on fundamental rights and the constitutional bodies will not be amended. Provisions on judicial system will be strengthened.

CREATION AND FINANCING OF REGIONAL GOVERNMENTS

The core of the PDP Laban’s proposal for federalism is the creation of regional or middle governments as political and administrative units. Powers and budgets between the national and regional governments will be rationalized and constitutionally defined on the principle that the national government will be responsible for national

public goods (defense, foreign policy, trade, etc.) and regional governments will be responsible for regional public goods and some powers will be shared. Sovereignty, however, will remain with the national government. There will be one Constitution, one currency, one defense and foreign policy and one republic. Existing regional line agencies will form the core of the regional government, which will be led by a regional governor. This will avoid another layer of government. This requires constitutional amendments because the current Constitution recognizes only the national and local governments.

Why do we need a regional government? The short answer is that local governments are too small and fragmented as drivers of regional economic development. For example, we have 149 first-tier subnational governments as compared to 76 in Thailand, 32 in Indonesia, 32 in China and 24 Cambodia (World Bank, 2005). In particular, our local governments are too small and fragmented to produce and finance large scale, strategic infrastructure such as

TABLE 1: THE PDP LABAN PROPOSED SOLUTIONS TO PROBLEMS

Problems	Proposed Constitutional Solutions
Unconstitutional Bangsamoro Basic Law	One country, two systems solution
Imperial Manila and inefficient governance	Creation of regional governments with powers over 60% of public expenditure, of which 60% will be from its own source revenues
Unitary presidential system and its problems	Shift to semi-parliamentary system of government with provisions for strengthening political parties and regulating political dynasties
Protectionist economic provisions	Constitutional restriction to be lifted; instead it will be defined by Congress

airports, power plants, irrigation systems, major highways, and to manage major regional hospitals, special economic zones, etc., which are necessary to catalyze regional economic development. The national government, on the other hand, is too centralized, unaccountable and unresponsive to the needs of the regions.

What we need is a more efficient, cost-effective and rational way of distributing budgets and responsibilities between the national government and the regional or local governments. In the PDP

Model, the national government will be responsible for national public goods such as defense, foreign affairs, monetary policy, trade, regulation, national standards and regulation, national infrastructure (those that benefit several regions), etc. Regional and local governments will be responsible for regional and local public goods like education, health care, social services, and infrastructure such as power, water supply, irrigation. Certain responsibilities will be shared between the national and regional governments.

EXPENDITURE ALLOCATION

A key principle for federalism to succeed is the principle of fiscal equivalence. This means that the budget should follow the assignment of responsibilities. Following this principle, our preliminary estimates suggest that about 60% of total expenditure will be transferred under the control of regional and local governments, as compared to the current 17%. The national government will retain the remaining 40%, net of debt servicing and other sovereign commitments.

TABLE 2. COMPARISON OF THE ESTIMATED SHARE IN TOTAL GOVERNMENT EXPENDITURES AND REVENUES, BY LEVELS OF GOVERNMENT, FY 2015

Government Expenditure Excluding Debt Service			Government Revenues		
Particulars	Million Pesos	Percent Share		Million Pesos	Percent Share
National Government	904,190	39.7	National Government	1,433,591	62.8
Exclusive Functions	564,926	24.8	o.w. trans to RG	250,218	
Shared Functions	339,264	14.9	IRA to LGU	323,633	
Regional Governments	925,583	40.6	Regional Governments	675,364	29.6
Local Governments (PCMB)	447,940	19.7	Local Governments (PCMB)	172,341	7.6
Total	2,277,713	100.0	Total	2,281,296	100.0

SOURCE: DR. JUN MIRAL, DIRECTOR GENERAL CONGRESSIONAL PLANNING AND BUDGET MANAGEMENT OFFICE, CONGRESS AND MEMBER, PDP LABAN FEDERALISM INSTITUTE STUDY GROUP.

If 60% of expenditures will be transferred to regional and local governments, it follows that they should also be able to collect and retain 60% of revenues according to the principle of fiscal equivalence. The remaining 40% would have to come from transfers from the national government. The question then is whether this is possible given our budget? The short answer is yes.

Using data from 2015, we can do a modelling of how this principle of fiscal equivalence will play out. Table 2 summarizes the results of the modelling.

Table 2 shows that the national government’s (NG) expenditure under the PDP Laban Model of division of responsibilities between the NG and regional / local governments would amount to PHP 904.19 billion or 39.7% of government expenditure, net of debt servicing. Of this, PHP 564.9 billion or 24.8% would fund the exclusive functions of the national government such as defense, police, foreign affairs, etc. while PHP 339.2 billion (14.9%) will fund shared functions with the regional/local governments.

Meanwhile, the regional governments will get a share of PHP 925.5 billion (40.6%) to fund their exclusive and shared responsibilities under the PDP Model. Local governments (provinces, cities, municipalities and barangays) would get PHP 444.9 billion (19.7%). Altogether, regional and local governments would now effectively control 60.3% of total government expenditures compared to the current 17% or a 43% increase. This mechanism of budget allocation lies at the heart of the PDP Laban Model of Federalism.

TAX ALLOCATION

What about the allocation of revenue-making powers between the national and regional or local governments? There are four widely practiced principles of tax allocation that can help guide how to allocate taxation powers between national and regional/local governments. These principles are: 1) efficiency of the internal market; 2) national equity; 3) administrative cost; and 4) fiscal need.

The efficiency principle suggests that our domestic market will function more efficiently if all resources, that is, labor, capital, goods and services are free to move from one region to another without distortions imposed by policy; for example, from uncoordinated taxes by regions. Moreover, regions would end up with “beggar their neighbor policy” (offer very low taxes) in order to attract these resources to their regions. If all regions employ such policies, we end up with inefficiently low taxes (or high subsidies) on labor, capital and tradeable goods.

The equity principle suggests that the national government should be vested with the responsibility to ensure that all citizens are treated fairly because regional or local governments would treat people differently, for example, migrants from another region can be discriminated against. Conversely, some regions would prefer to attract only high net worth people and will not welcome poorer ones.

The principle of administrative cost implies that the decentralization of tax collection and compliance would likely increase the cost of tax administration. Decentralized tax collection will increase the likelihood of tax evasion and avoidance especially where the tax base is mobile (capital, labor), or where the tax base straddles more than one jurisdiction (tradeable goods). Finally, the principle of fiscal need suggests that to ensure accountability, revenue means should be matched as closely as possible to revenue needs.

Following these four principles of tax assignment, the following taxes should be exclusively assigned to the national or federal government (Miral, 2017): 1) all taxes, duties and fees collected by the Bureau of Customs (because these are mobile goods); 2) value-added tax or sales tax (mobile goods); and 3) excise taxes and immigration tax (mobile goods). The following non-tax revenues should also be exclusively assigned to the national or federal government because they are national in character: 1) collection by exclusive national government offices; 2) interest income from the Bangko Sentral ng Pilipinas (BSP); 3) interest on advances to Government Owned and Controlled Corporations (GOCCs); and 4) privatization proceeds from national government assets.

TABLE 3: DISTRIBUTION OF TAX AND NON-TAX REVENUES
(FY 2015)

Particulars	Million Pesos	Regional Governments	National Government
Total	2,108,955	675,364	1,433,591
Tax Revenues	1,815,474	637,593	1,177,881
Bureau of Internal Revenue	1,433,301		
Net Income and Profits (JS)	846,201	507,721	338,480
Excise Taxes (NG)	158,319	0	158,319
Sales Tax and Licenses 1/ (NG)	287,231	0	287,231
Property Transfer Tax (RG)	5,636	5,636	0
Selective Taxes on Services	58,378	35,027	23,351
Franchise Taxes (JS)	613	368	245
Documentary Stamp Tax (RG)	72,073	72,073	0
Other Taxes (JS)	4,850	2,910	1,940
Bureau of Customs	367,534		
Import Duties and Taxes (NG)	57,139	0	57,139
VAT on Imports (NG)	274,695	0	274,695
Other Collections (NG)	35,700	0	35,700
Other Offices	14,639		
LTO-Motor Vehicle Fees (RG)	11,300	11,300	0
BFP-Fire Code Tax (RG)	1,369	1,369	0
BI-Immigration Tax (NG)	72	0	72
DENR-Forest Charges (RG)	128	128	0
CHED/NCCA (RG)	1,770	1,062	708
Non-tax Revenues	293,481	37,771	255,710
Collection from other Offices	224,518	37,771	186,747
Exclusive NG Offices	161,566	0	161,566
Shared NG-RG Offices	62,952	37,771	25,181
Foreign Grants	164	0	164
Interest Income from BSP 2/**	5,906	0	5,906
Interest on Advances to GOCCs**	110	0	110
Privatization Proceeds	62,783	0	62,783

SOURCE: DR. JUN MIRAL, CONGRESSIONAL PLANNING AND BUDGET MANAGEMENT OFFICE (2017); JS REFERS TO JOINT SHARING; NG REFERS TO NATIONAL GOVERNMENT AND RG TO REGIONAL GOVERNMENT; BSP REFERS TO CENTRAL BANK; GOCC REFERS TO GOVERNMENT OWNED AND CONTROLLED CORPORATIONS

On the other hand, the following taxes have to be assigned exclusively to the regional governments following the principle of efficiency of internal markets and fiscal needs: 1) property transfer tax; 2) documentary stamp tax; 3) motor vehicle fees; 4) fire code tax; and 5) forest charges. Finally, on grounds of efficiency, national equity and administrative cost, the national and regional or local governments shall jointly share the following taxes: 1) income tax from individuals and corporations; 2) selective taxes on services; 3) franchise taxes; and 4) taxes and fees from the Commission on Higher Education (CHED) and other government offices performing shared national-regional functions.

Following these principles of tax allocation, the revenue allocation between the national and regional or local governments will be distributed in accordance with Table 3.

In summary, of the PHP 1,373 billion of expenditure responsibilities that will be transferred under the effective control of regional and local governments under the PDP Laban Model, 61% would be covered by their own source revenues (PHP 847 billion) (Table 2). The 39% balance would come from the constitutionally-guaranteed automatic transfers from the national government. This will make the regions less dependent on the patronage of the national government. Under the PDP Model, a National Finance Commission and an Equalization Fund will be created to replace the current Internal Revenue Allocation formula. Furthermore, borrowing lessons from Latin America, we need to impose hard budget constraints on both the national and regional or local governments to ensure their fiscal discipline.

Under this formula, the national government should be able to pay for all its responsibilities plus debt servicing and all sovereign guarantees, including implicit ones for public-private partnership projects and contingent liabilities. If it continues with its fiscal discipline and good credit rating, it should be able to have a comfortable fiscal space for contingencies and provide support to the regions for big-ticket infrastructure projects as well as cover contingent obligations such as funding for disaster relief and rehabilitation.



www.adrinstitute.org

TABLE 4: COMPARISON OF PRESIDENTIAL, PARLIAMENTARY AND SEMI-PRESIDENTIAL SYSTEMS

Presidential		Parliamentary		Semi-Presidential	
Main Features	<input type="checkbox"/> Executive is elected by voters / constitutionally separate from congress	<input type="checkbox"/> Govt. is selected / removed by parliament	<input type="checkbox"/> No term limits	<input type="checkbox"/> President elected by voters / head of State / fixed term of office	<input type="checkbox"/> Prime Minister (head of government) / Cabinet appointed by parliament / no term limits
	<input type="checkbox"/> Fixed term of office	<input type="checkbox"/> Prime Minister can dissolve parliament		<input type="checkbox"/> President and PM can dissolve parliament under certain conditions	
	<input type="checkbox"/> Removed through impeachment and recall				
Strengths	<input type="checkbox"/> Decisiveness (president directly elected / less veto on the president)	<input type="checkbox"/> Swift accountability (vote of no confidence)	<input type="checkbox"/> Efficiency (executive/ legislative are the same)	<input type="checkbox"/> Combine strengths of both systems (decisiveness, stability, accountability, efficiency) and address their weaknesses	<input type="checkbox"/> Collective leadership (President; PM / Cabinet; regional governors)
	<input type="checkbox"/> Stability (from fixed term, direct election)	<input type="checkbox"/> Helps develop political maturity; voters chose political parties based on their platforms and credibility to deliver not just personalities;	<input type="checkbox"/> Most federal republics are parliamentary systems	<input type="checkbox"/> Decisive / stable president needed for transition to federalism and parliament and in dealing with geopolitics, national security and drug war;	
	<input type="checkbox"/> Familiarity to Filipinos				
	<input type="checkbox"/> Checks and balances				

Presidential		Parliamentary		Semi-Presidential	
Weaknesses or Risks	<input type="checkbox"/> Potential minority president / unstable	<input type="checkbox"/> Instability in early years (French 4 th republic had 20 govts in 10 years); in most countries, lasted at most 15 years	<input type="checkbox"/> Depends on discipline/cohesion of political parties	<input type="checkbox"/> Risk of conflict between president and prime minister	<input type="checkbox"/> PM / Cabinet vulnerable to populism / issue cycle
	<input type="checkbox"/> Difficulty of removing incompetent president	<input type="checkbox"/> Sustain a vulnerable to populism / issue cycle	<input type="checkbox"/> Depends on discipline / cohesion of political parties; requires broad middle class		
	<input type="checkbox"/> Sustains a patronage system given vast powers of presidency	<input type="checkbox"/> Less checks & balances (executive & legislative are the fused)			
	<input type="checkbox"/> Driven by personal popularity / hinders development of political maturity				
Examples	<input type="checkbox"/> US, Mexico, Latin America, Philippines, S. Korea, Indonesia (30% of 115 democratic countries)	<input type="checkbox"/> Western Europe (Germany, Italy, Netherlands, Sweden) Australia, Canada, Malaysia (48% of 115 democratic countries)	<input type="checkbox"/> Russia, France, Taiwan, Kazakhstan, Ukraine (22% of 115 democratic countries)		
	<input type="checkbox"/> Colonial legacy	<input type="checkbox"/> Colonial legacy (Commonwealth)	<input type="checkbox"/> Legacy of strong leaders / need for strong leadership in crisis situations / tradition of military rule / Francophone / Soviet legacy		
Why countries chose this system	<input type="checkbox"/> Crisis situations / need for strong leadership	<input type="checkbox"/> Democratic representation			
	<input type="checkbox"/> Tradition of military rule	<input type="checkbox"/> Borrow from role models (Thailand, Japan)			
	<input type="checkbox"/> Big countries				

Considering the strengths and weaknesses or risks of presidential and parliamentary systems and considering our political context and what is needed for a successful shift to federalism, I conclude that the best system for the Philippines is a semi-presidential form of government, at least in the transition period of 15 to 20 years. This transition period is important. All successful federal parliamentary systems take time to develop and they take root and succeed along with a broader middle class.

First, the transition to federalism will be challenging and ironically, it would need a strong political leadership to make it work and for it to take root. There will be inherent resistance from national government agencies who will lose their powers and budgets. There is a need to strengthen the capacities of the regions – especially regional civil service - to assume these powers. There will be many implementation issues to be sorted out. A decisive and focused president is needed to ensure a successful transition to federalism. If we chose to have a pure parliamentary system, there is a high risk of instability in the initial years of transition. The experience of early adopters of parliamentary systems in the early 19th century showed the difficulties of adjustment. Most early parliamentary systems lasted no longer than 15 years before they were overtaken by military rule or shifted to presidential systems.

Second, the French 5th Republic (1958 to present) provides a good example of a semi-presidential system. France struggled with parliamentary system in their 4th Republic (1946-1958) when they had 20 governments in 10 years. The instability was the result of gridlock between the executive and legislative branches

over contentious policy issues. Today, the 5th French Republic – a semi-presidential government – is now relatively stable. They have adopted several mechanisms to make the system stable: the president as head of state plays a steering, arbitration and stabilizing roles while the prime minister and cabinet initiates major economic and social policies and legislation.

Third, a semi-presidential system in a federal set up allows for collective leadership where responsibilities are divided amongst the president, prime minister, the cabinet, regional governors and local governments. Collective but cohesive leadership - with more horses pulling the wagon together – is a superior alternative to the current highly-centralized presidential system.

Fourth, a decisive, stable and collective leadership is needed to deal with many outstanding national security issues that the country is facing and will continue to face in the years ahead - the war on drugs, terrorism, US-China relations, economic competitiveness, not to mention the transition to federalism. Stability is critical. As the experience of many parliamentary countries have shown, there is no certainty that a prime minister can provide decisive and stable leadership in the early years of transition. A semi-presidential form of government provides a balance between decisiveness of a presidency and accountability in a parliamentary system.

None of these suggest that President Duterte should remain in office beyond his current term until 2021. He has already repeatedly vowed to step down at the end of his term of office, otherwise, the military can step in to remove him. If the new Constitution is passed

in 2019, he can finish off the remainder of his current term until 2022 to oversee the transition to the new government.

CRITICISMS OF CONSTITUTIONAL REFORM

What about the criticisms of federalism and constitutional reform? There are two types of criticisms, one is due to misunderstanding and misapprehensions and the other from suspicion of ulterior motives. These criticisms are expected and should be welcomed and if need be, rebutted and clarified. An open and well-informed public debate is in the country's best interest.

A common misunderstanding stems from the fact that critics talk about different models of federalism and as a result, they end up comparing apples and oranges. Some have made conclusions in the absence of any model. Many criticisms are selective - they point only to the weaknesses but not the strengths of federalism. Some criticisms do not systematically compare the costs and benefits with the status quo. Some make claims that are not supported by facts. For example, some would argue that the regions are not yet ready even after 25 years of implementation of the LGC and many outstanding local government leaders.

Many criticisms are due to suspicions about the ulterior motives of proponents of federalism. For example, some prominent critics claim that the 10-year transitory provisions in the PDP Model is intended to extend the tenure of local officials when in fact it is a transitory provision for the passing of regional organic acts. Critics also argue that the semi-presidential model of PDP Laban is designed to keep President Duterte in power

when it was actually designed to ensure the success of the transition to regional governments.

Some criticisms are rather emotional than factual, referring the shift to federalism as a leap to hell, ignoring the fact that many countries have also shifted from unitary presidential to parliamentary systems. Other criticisms beg the question, why not just implement the 1987 Constitution? There is good a reason why it was not implemented in the last 30 years. A unitary presidential system and the current structure of congress have no incentives to do so, not in the last 30 years, nor in the next 30. Why would Congress review the LGC and give more budgets to governors and mayors who are their political opponents? Why would they vote against political dynasties? Why would Manila give up its effective tool of patronage? From our experience and those from other countries, the unitary presidential system has an inherent tendency to centralize. The push for constitutional reform in fact provides an opportunity to make these changes happen, especially with a President determined to push for structural reforms.

Many Senators argue that what is needed is simply to change the LGC and give more powers to the regions and to amend the economic provisions of the Constitution. However, giving more powers to the regions without the attendant political, electoral and administrative reforms and mechanisms of accountability is a risky proposition. Simply amending the economic provisions of the Constitution without regional decentralization would lead to more concentration of wealth in Metro Manila and adjacent regions. Our experience in the implementation of ARMM offers a lot of important lessons on why the creation of autonomous regions is incompatible with the current

unitary presidential system (see for example Miral et.al., 2017).

Then there are concerns that federalism would lead to the country breaking apart. This is possible if you surrender sovereignty and powers over defense and security to the regions, but this is not the PDP Laban Model which proposes only one sovereign republic, one currency and one national defense and security. Moreover, poorer regions have no incentives to break away. Richer regions (like Catalan of Spain) broke away not for economic reasons, but because they want a national identity distinct from the rest of the country. In contrast, Metro Manila is a melting pot of many regional identities. It is also very much dependent for economic development from the rest of the country. It has little incentives to secede. Besides, we can always include a self-enforcing provision in the new constitution against secession. Instead of a divisive federalism, we can promote the principle of cooperative or 'bayanihan' federalism.

We also hear the argument that the economy is already doing well and therefore there is no need for reforms. The answer to this is that: 1) the economy could still be made much better off with these reforms; and 2) the issue is not just about growth but more importantly, about redistribution of the benefits of growth to the regions.

There are also criticisms that President Duterte, as a minority President, has no mandate to pursue constitutional reforms. This is a question that can easily be answered in a series of surveys by reputable polling firms. There are also criticisms that this is not the right time to pursue constitutional reforms because President Duterte cannot be trusted. This is probably the crux of

the opposition to constitutional reform. These criticisms, however, ignore the fact that President Duterte has more than 70% net approval rating in the latest (2018) Pulse Asia Survey.

There are valid criticisms too. For example, Ed Garcia (1986 Constitutional Commission Member) argues that the government should pay more attention to the problems of poverty and job creation. Poverty alleviation and constitutional reforms are not mutually exclusive. In fact, the 2018 budget for social services is 60% more than that in 2014, while the budget for infrastructure and economic services is 95% more than that in 2014. Now you have free college tuition, irrigation and hospitalization for the poor. In addition, the new tax law (popularly known as TRAIN) requires that 27% of new revenues from the law will be used for poverty alleviation and social services.

Then there is the real concern about federalism strengthening political dynasties. Not all dynasties, even fat-tailed dynasties, are bad. There are six possible solutions to this problem: 1) define and regulate dynasties; 2) the bulk of budget transfers should be given to the regions where there are no dynasties and the competition for regional governors will cancel out the effects of provincial or city dynasties - dynasties would then have incentives to compete on the basis of performance; 3) allow Overseas Filipino Workers and voters from independent cities to vote in regional elections (middle class votes); 4) there should be conditional transfers to regions for national priorities like poverty alleviation and education; 5) there should be proportional representation of voting so that voters will select political parties based on platforms and not just family names; and 6) strengthen the Commission on Audit and Ombudsman and Sandigan Bayan in the regions. As to the problem of warlords, 80% of them are in ARMM and Central

Mindanao. The control of the national police and defense would remain with the national government.

Finally, and perhaps most importantly for critics of federalism, there are real concerns about the process of amending the Constitution. In particular, the method of constitutional assembly lends itself to real conflicts of interest. A hybrid constitutional convention and presidential appointees, as proposed by former Chief Justice Reynato Puno, would probably be the best method. It solves the problem of cost-effectiveness as well as the perception of conflict of interest that would otherwise exist in a constitutional assembly.

CONCLUSIONS

In conclusion, what are the benefits and risks of these reforms? Or put differently, what are the opportunity costs if we do not pursue these reforms and keep with the status quo?

In the last 30 years alone, the opportunity cost of our current system of governance – centralized, inefficient, inequitable, unresponsive and corrupt system - could easily run into trillions of pesos in terms of forgone jobs, revenues, investments in health care, education and infrastructure, not to mention the costs of a corrupt system of patronage. Add to this, the huge opportunity cost of insecurity in Muslim Mindanao. The Liguasan marsh in central Mindanao has vast oil and gas reserves – estimated at USD 560 billion (or 1.83 times our 2016 GDP) that cannot be developed, due to the absence of a peace deal with MILF. In the next ten years, the USD 25 billion in revenues from business process outsourcing would be threatened by artificial intelligence. We need alternative drivers of growth in the long run.

Empowering the regions, having a more efficient and responsive governance, peace in Mindanao and more foreign investments would eventually help drive and redistribute growth.

Finally, it is important to point out the risks attendant in these reforms. First, the BBL and one country, two systems formula will help reduce but not totally eliminate the risks of armed extremism in Muslim Mindanao. Second, the ability of regional governments to facilitate regional economic development depends on the kind of leadership that would emerge. The regional civil service would have to be strengthened as all successful federal parliamentary systems in the world depend on a highly capable civil service. Small scale, continuous governance reforms would have to go along with constitutional reforms. Third, a successful shift to a semi-parliamentary system would take some time, that is, several election cycles, before political parties could adjust. Transitioning from a patronage-based system to political maturity will take a long time. Additional reforms would have to be in place such as banning of “balimbings” and public subsidies to political parties.

Fourth, the entry of more foreign investors, especially in the regions, does not just depend on the liberalization of ownership requirements. They are also looking for competitive and highly-skilled workforce, reliable infrastructure and low cost of doing business, among others. The hope is that the regions will be empowered and energized enough in the same way that local governments were at the onset of decentralization in the 1990s. Finally, the legitimacy of the process matters as much as the substance of reforms. The Constitution needs to be amended but it has to be done right.

REFERENCES

ABS CBN News, Retrieved from <http://news.abs-cbn.com/news/01/26/18/bbl-is-top-of-mind-in-charter-change-review-ex-cj-puno>

Araral, E. (2018). Why we need a semi-presidential form of government - The Manila Times Online. Retrieved from <http://www.manilatimes.net/need-semi-presidential-form-government/358706/>

Araral, E. et al. (2017). Cloud Computing to Grow in ASEAN: PH cloud to grow with security and data privacy. Retrieved from <https://news.microsoft.com/en-ph/2017/10/16/cloud-computing-grow-asean-ph-cloud-grow-security-data-privacy/>

ASEAN Foreign Direct Investments Statistics. Retrieved from http://asean.org/?static_post=foreign-direct-investment-statistics

ASEAN Tourism Statistics 2016. Retrieved from http://asean.org/?static_post=tourism-statistics

Businessmirror. (2018). Manila's population could expand to 29.3M by 2030 due to urban migration–EIU report. Retrieved from <https://businessmirror.com.ph/manilas-population-could-expand-to-29-3m-by-2030-due-to-urban-migration-eiu-report/>

Davide, J. (May 2017), Personal Conversation.

Hearing before the Committee on Constitutional Amendments, Senate, 17th Congress, 2nd Session (January 17, 2018) (Testimony of Cavite Governor Boying Remulla). Retrieved from https://www.youtube.com/watch?v=px_d7l8lSxk

Hearing before the Committee on Constitutional Amendments, Senate, 17th Congress, 2nd Session (January 17, 2018) (Testimony of Former Laguna Governor Joey Lina). Retrieved from https://www.youtube.com/watch?v=px_d7l8lSxk

Lucena, K. (2017). Metro Manila ‘dying’- Palafox. The Manila Times. Retrieved from <http://www.manilatimes.net/metro-manila-dying-palafox/367568/>

Malaya, J. (2017). The PDP Laban Model of Federalism. Retrieved from <http://www.iag.org.ph/index.php/blog/1503-the-pdp-laban-model-of-ph-federalism-an-executive-summary>

Mendoza, R. et al. (2016). Political dynasties and poverty. Oxford Development Studies 44, Issue 2. Retrieved from <http://www.tandfonline.com/doi/abs/10.1080/13600818.2016.1169264?journalCode=cods20>

Miral, E. et.al (2017). Case Study on the Autonomous Region of Muslim Mindanao. Retrieved from http://cpbrd.congress.gov.ph/images/PDF%20Attachments/Special%20Publications/CSP-08_ARMM_FINAL_NOV_29_2017.pdf

Miral, F. (2017). Federalism Prospects in the Philippines. PIDS Occasional Paper Series 2017-29. Retrieved from <https://pids.gov.ph/press-releases/294>

Miral, F. (2017). Notes on Fiscal Federalism. Paper submitted to the House Committee on Constitutional Amendments.

North, D., Wallis, J and Weingast, B. (2009). A Conceptual Framework for Interpreting Recorded Human History. NBER Working Paper No. 12795. Retrieved from <http://www.nber.org/papers/w12795>

OECD (2014). Fundamental Principles of Taxation. Retrieved from http://www.oecd-ilibrary.org/taxation/addressing-the-tax-challenges-of-the-digital-economy/fundamental-principles-of-taxation_9789264218789-5-en

Office of the Ombudsman. Annual Report 2016. Retrieved from <https://www.ombudsman.gov.ph/index.php?home=1&navId=Ng==&subNavId=NDg=>

Philippines Statistics Authority. (2017). Gross regional domestic product. Retrieved from <https://psa.gov.ph/grdp>

World Bank. (2005). Philippines: Meeting Infrastructure Challenges. Retrieved from <http://documents.worldbank.org/curated/en/714851468294107526/pdf/317820PH0rev0P1ank0Infra1401PUBLIC1.pdf>

Ploughshares. (2018). Philippines-Mindanao (1971 - first combat deaths. Retrieved from http://ploughshares.ca/pl_armedconflict/philippines-mindanao-1971-first-combat-deaths/#Deaths

Rappler. (2018). Metro Manila has ‘worst traffic on Earth’ – Waze. Retrieved from <https://www.rappler.com/corruption/107719-manila-worst-traffic-waze>

Rappler. (2018). The cost of traffic in Metro Manila. Retrieved from <https://www.rappler.com/video/reports/52131-the-cost-of-traffic-in-metro-manila>

Simbulan, R. (2013). Modern Warlordism in the Philippines: Historical Evolution and Analysis. YONIP. Retrieved from <http://www.yonip.com/modern-warlordism-in-the-philippines-historical-evolution-and-analysis-by-professor-roland-g-simbulan/>

The Manila Times. (2018). Mindanao war cost P2T in 31 years – study - The Manila Times Online. Retrieved from <http://www.manilatimes.net/mindanao-war-cost-p2t-in-31-years-study/173423/>

The Summit Express. (2018). Mindanao has 11 of 20 Poorest Provinces in the Philippines. Retrieved from <http://www.thesummitexpress.com/2016/03/mindanao-has-11-of-20-poorest-provinces-philippines-2016.html>

Valente, C. (2018). Duterte eyes ‘hybrid’ state if Cha-cha fails - The Manila Times Online. Retrieved from <http://www.manilatimes.net/duterte-eyes-hybrid-state-cha-cha-fails/377895/>

Wikipedia. (2018). French Fourth Republic. Retrieved from https://en.wikipedia.org/wiki/French_Fourth_Republic

World Bank. (2005). Philippines. Meeting the Infrastructure Challenge. Retrieved from <http://documents.worldbank.org/curated/en/714851468294107526/pdf/317820PH0rev0P1ank0Infra1401PUBLIC1.pdf>



ABOUT

Dr. Eduardo Araral, Jr.

is a tenured Associate Professor at the Lee Kuan Yew School of Public Policy, National University of Singapore where he teaches graduate courses in politics, economics, public administration and public finance. He is a member of the PDP Laban Federalism Institute Study Group and the University of the Philippines College of Law Project on Constitutional Review.



STRATBASE ADR INSTITUTE

is an independent international and strategic research organization with the principal goal of addressing the issues affecting the Philippines and East Asia

9F 6780 Ayala Avenue, Makati City
Philippines 1200

V 8921751
F 8921754

www.stratbase.ph