

SOME DEVELOPMENTS IN CONSTITUTIONAL REFORM

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The Republic has operated under four constitutions since its rebirth in 1946. The 1935 Constitution was largely influenced by American constitutional principles as the Philippines was to undergo a transition to independence as a commonwealth in the last ten years of American “colonial democracy.” The second constitution, the 1973 Constitution, was brought about by a popular desire for the Filipinos to make their own post-colonial constitution at a time of serious political discontent and ideological ferment. However, the 1973 Constitution was completed under martial law. Not ratified in a plebiscite according to the 1935 Constitution but through managed constitutional assemblies, the 1973 Constitution was used as the legitimating framework for authoritarian rule. Thus the dictator called his regime “constitutional authoritarianism.”

Following the overthrow of authoritarian rule in the “people power” EDSA revolution, the third constitution, the 1986 Freedom Constitution, was promulgated by the revolutionary government of President Corazon Aquino as a transitory organic law until the present 1987 Constitution could be framed and then ratified by the people. The present Constitution was designed for the restoration of democracy, partly in reaction to authoritarianism, and for the fulfillment of goals engendered by various national and international movements. The latter include peace and nuclear disarmament, participatory democracy, human rights, gender equality, the rights of women and children and indigenous peoples, environmentalism, people’s participation, self-determination, and regional and local autonomy. Recall that in all four historical moments, the country was under extraordinary stresses that made constitutional change compelling.

As we remember, from the sixth year after our present Constitution came into force proposals have been made each year to amend it. The more serious moves were those initiated under President Ramos and under President Estrada. But none of these prospered because concerned leaders and citizens deemed constitutional change untimely, and they did not trust Congress to propose the amendments that appeared self-serving, for example the lifting of term limits on elected officers serving their final term, including President Ramos himself.

Significantly, however, for the first time in the nation's constitutional history, many concerned and committed citizens have decided to work together in various groups and projects to propose changes in the constitution, way ahead and independently of any initiatives by political leaders. For example, the Citizens' Movement for a Federal Philippines, which began in Mindanao, is one of several groups and alliances working for constitutional reform, to prod political leaders and the government to initiate the formal processes of constitutional change. The Citizens' Movement produced a little book with a draft constitution for a Federal Republic of the Philippines with a Parliamentary Government. One thousand copies of the book were used by many different groups and institutions that found its innovative ideas challenging.

Another thousand copies of the book were printed by the Study Group for Constitutional Reform, an active consortium of several advocates of constitutional change that is also proposing the revision of the 1987 Constitution. The draft constitution of our Citizens' Movement was used as a major resource in the revision and key members of our Citizens' Movement were involved in the work of the Study Group which will come up in December 2002 with its own draft constitution for a parliamentary system with other innovations.

Meanwhile, our gathering Citizens' Movement has pushed on with its regional consultations on federalism and parliamentary government in the Visayas and Luzon. We have also joined a broad alliance of constitutional reform advocates to push for the election of delegates to a constitutional convention during the general elections in 2004, as had been agreed upon in the political summit of political parties held in May 2002 at the Manila Hotel.

Our own Philippine Political Science Association formed its Committee on Constitutional Continuity and Change (CCCC) some three years ago. Committee members helped to discuss and improve the draft constitution of the Citizens' Movement for a Federal Philippines. Committee members and other political scientists from De LaSalle, U.P.,

U.S.T., Ateneo; think tanks like the Institute for Popular Democracy and the Institute for Political and Electoral Reform; and the PHILCONSA have been active proponents and discussants of constitutional reform. Like many politically conscious Filipino, all of us sense the deepening political and economic crises and we believe that the country must change its framework of laws and institutions. We know for a fact, as revealed by social surveys, that more Filipinos are dissatisfied than are satisfied with how our democracy works. For once we can change the constitution unfettered by foreign interference or by martial law, or motivated by just the fear of the resurgence of authoritarianism.

President Macapagal-Arroyo has opposed constitutional change as untimely, distracting and divisive, but a few of her advisers, presumably with her consent, are quietly supporting studies in constitutional reform. As she says, she prefers to focus on reducing poverty, fighting criminality and terrorism, and reviving the economy in her vision of “a strong Republic, surely with an eye to the presidential election in 2004. Focused on policy and policy change and practicing a vigorous, populist public management, she is not leading the nation in proposing institutional or systemic reform as a basic approach or solution to the nation’s aggravating problems.

In contrast, a number of legislators in the House and the Senate have been actively promoting constitutional amendments while conducting hearings in Metro Manila and in the provinces. Among the most prominent advocates of constitutional reform are Speaker de Jose Venecia, Senator Aquilino Pimentel, and Congressmen Antonio Nachura and Constantino Jaraula. Again, last May the political summit of political parties in the ruling coalition endorsed the election of delegates to a constitutional convention during the 2004 general elections.

But how about the people at large? How much popular interest is there for constitutional change, which some media trivialize as “Cha-Cha?” SWS and Pulse Asia have monitored public opinion on the subject. Pulse Asia reported rising popular interest in changing the constitution, from just 39 percent in September 1999, to a slight majority of 52 percent in December 2001, to a high of 55 percent in April 2002, and then it fell to only 36 percent in July 2002. A majority of 64 percent said it was not right to amend the constitution.

In this year's second quarter national survey of the SWS, Mahar Mangahas deliberately did not ask respondents whether they were for or against amending the constitution, on the premise that such a general question eliciting a "Yes" or "No" response would not be meaningful. As it turned out, 76 percent of the respondents admitted to having little or no knowledge of the Constitution. They need to be better informed about the Constitution. Mangahas concluded that "those who favor constitutional reform do not help their cause by being silent or vague about what changes they have in mind."

In response to the specific questions of SWS interviewers, the SWS survey found that:

1. the public leans towards Yes to the idea of *creating regional government to replace the provincial ones*;
2. the public is divided on the idea of *federating such regional governments*;
3. the public is also divided on the parliamentary idea of *having the legislature control the government*; and
4. the public, by a majority of 74 percent, prefer a constitutional convention over Congress to draft constitutional amendments.

To the idea of regional governments which would tilt the balance of power away from the national government and towards local governments, or some future states, the SWS survey found a favorable plurality of 42 percent, an unfavorable minority of 22 percent, and the balance of 36 percent undecided.

The federalist idea was probed in this way: *Question: In case there would be regional governments throughout the country, do you Strongly Agree, somewhat agree, Feel Undecided, Somewhat Disagree, or Strongly Disagree that the system of government in the Philippines should be made Federal, or don't you know enough about the federal system?*

To this Federalist idea, opinions were 20 percent favorable (Strongly Agree 6 percent + Somewhat Agree 14 percent) and 20 percent unfavorable (Somewhat Disagree 7 percent + Strongly Disagree 13 percent). The Undecided were 20 percent, and 40 percent said

they did not know enough about the federal system. Mangahas concludes that the people are more open-minded about federalism now than two years earlier.

The third idea was about the parliamentary principle that the majority political party in the legislature should automatically have control over the executive:

Question: At present, a bill needs to be approved by the Senate, the House of Representatives, and the President. If the party controlling the Senate, the party controlling the House, and the party of the President are different, many arguments come about that might block the programs of the administration. Some propose that the legislature have only one house, and that the head of the party controlling the legislature should also be the head of the government; they call this a PARLIAMENTARY system. Do you Strongly Agree, etc. with their proposal?

On this issue the SWS survey found support of 30 percent (Strongly Agree 8 percent + Somewhat Agree 22 percent) and opposition of 33% (Somewhat Disagree 17 percent + Strongly Disagree 16 percent), with 37 percent Undecided, implying a Net Agreement of -3 percent which is hardly significant.

Mangahas concludes that this new finding of a division of opinion on parliamentary control over the executive contrasts sharply with the consistent finding in previous SWS polls of strong public rejection of the proposal to replace the present direct election of the President with a system where the leader of the majority political party in the Parliament automatically becomes the chief executive.

It demonstrates, in Mangahas view, that the public can disagree with one feature of a typical Parliamentary system, i.e., indirect election of the chief executive, and at the same time agree with another feature, namely the coordination of legislative and executive decision-making.

I would say that if most of the legislators and the local government leaders are determined to initiate constitutional reform, they can swing public opinion in their direction. Therefore, with the strong support of civil society and academics, a groundswell for amending or revising the 1987 Constitution can be generated.

The more vexing issue, however, is how the Constitution should be changed. Apparently, the House and the Senate are divided on whether Congress should propose the amendments as a constituent assembly, or a constitutional convention should be the one to do it. Most civil society leaders and organizations and academics favor a constitutional convention. Although most legislators are for amendment by Congress as a constituent assembly, they cannot be too open about it because of the probability of a strong backlash as in 1996 and 1998.

And time is running out for Congress itself to propose the amendments. By early 2003, legislators will have to begin campaigning in earnest for reelection in mid-2004. Under the circumstances, the only way for Congress to act as a constituent assembly, if the people will allow it, is for Congress to first propose a single amendment to suspend the 2004 elections and allow the incumbent President, Vice-President, legislators and local leaders to extend their terms until, say, 2007, when an amended or revised constitution can take effect. If this sounds fanciful and audacious, if not also outrageous and repugnant, such idea is actually being proposed by some legislators.

The arguments advanced in favor of charter change by Congress are that it will be less expensive and more expeditious, and a new constitution can therefore be put into effect earlier than 2010. Moreover, Congress will assure the people that it will make public its particular agenda for: (1) the retention and continuity of several specified provisions in the 1987 Constitution; and (2) the probable changes in other provisions, such as the form of government, the nature of the vertical structure of the State (unitary system vs. federal system), certain economic reforms, etc. Extensive consultations with scholars and experts and interested groups will be made. As background, it should be recalled that the 1935 Constitution was amended twice by the legislature, in 1939 and 1946. The American Constitution that dates back to 1789 has been amended 27 times by the U.S. Congress acting as a constituent assembly. However, critics are saying that self-serving legislators will not support change that will reduce their power. For example, would the senators agree to the abolition of the Senate or a unicameral legislature?

The arguments offered in favor of a constitutional convention are that the people are likely to trust it much more than Congress and therefore people will prefer it. A constitutional convention will enable more “independents” or non-traditional leaders, or non-politicians and non-relatives of politicians to be elected. Moreover, Congress can allow, say, 100 seats in the constitutional convention to be filled by appointed delegates to be chosen for their known expertise and special qualifications. If delegates are elected during the 2004 general elections, it will be less expensive and the constitutional convention can be given a deadline for completing its work so that the preparation and adjustments for the transition to the new political system can begin earlier. Charter revision by a constitutional convention will allow more intensive and extensive consultations and therefore involve more concerned citizens.

We can say that the proposed constitutional changes are being driven by the objective of effecting social and political change through structural and institutional change. This is a good reason for a sovereign people to work for constitutional change in pursuit of desired social and political goals for the common good and the national interest.

Our Citizens’ Movement for a Federal Philippines is coming out next week with a new, 360-page book entitled: *Toward a Federal Republic of the Philippines with a Parliamentary Government: A Reader*, which we produced with the support of the Konrad Adenauer Foundation of the Federal Republic of Germany. The *Reader* reflects current thinking on proposed constitutional change in this troubled time in our nation's history with some comparative material for reference. Several of the 29 articles in the *Reader*, including the draft constitution, are introduced by an abstract plus key concepts addressed by the authors.

To sum up, the main assessments and proposals for constitutional reform in this *Reader* tell us that there are serious structural problems in the relations and functioning of the executive department and the legislative department in our compartmentalized presidential system that is prone to conflict and gridlock between the President and the

Congress and its Senate and House of Representatives. There are also serious problems in the relations and workings of the national government vis-a-vis the local governments in our centralized and bureaucratic unitary system, given our far-flung archipelago in which travel and communication are difficult, time-consuming and increasingly expensive.

In both instances, the mediation between the State and society, between the government and the people, is seriously weakened by the absence of cohesive and functional political parties, of an informed and politically organized citizenry, and the fragmentation of civil society.

To deal with our serious structural and systemic problems in governance, we are proposing major changes in our 1987 Constitution:

1. A vertical restructuring of our political system, from the present highly centralized unitary system to a decentralized federal system. In the proposed Federal Republic, the federal or national government will perform only the necessary functions of national defense and security, foreign affairs, the monetary system, immigration, appellate courts, and a few other national functions usually assigned to the federal government. Most other governmental functions having to do with social, economic, and cultural development; agriculture, fisheries and industry; infrastructure, environment and natural resources; peace and order and regional and local courts, and the like will be transferred to the States or regional governments and their local governments. Some concurrent functions will be shared or jointly performed by the federal government and the States. The federal government will provide the necessary support to the less developed States as in all federal systems.
2. A horizontal restructuring of our political system, from the present presidential government with its separation of powers between the executive and legislative to a parliamentary government that would unify and coordinate those two powers and functions in the Parliament. The majority party or the majority coalition of political parties in the Parliament will elect the Prime Minister or Head of Government who will form the Cabinet and the ruling Government which will be directly responsible to the Parliament. Unlike in our presidential system where the President is both Head of Government and Chief of State directly elected by the people, the President in the parliamentary system will be only the Chief of State elected by the members of Parliament and the State Assemblies. The President will perform largely ceremonial functions as

the symbol of the sovereignty of the people and the solidarity and unity of the nation, as in India, Singapore, and the Federal Republic of Germany.

3. Structural and functional reforms affecting the political party system and the electoral system to make them more representative, effective, responsible, and accountable. Thus we are providing an article on political parties in our proposed constitution which is absent in all our previous constitutions.
4. Structural and functional reforms in the constitutional commissions concerned with the civil service, election administration, and auditing to make them more functional, and to prevent them from obstructing the desired performance of the institutions and agencies of the federal government and the States and local governments.
5. Structural and functional reforms in the federal and state bureaucracies to make them more responsive, efficient, effective, transparent, and accountable to the people and the elected representatives.

We believe that these structural and systemic reforms will induce certain desired changes in the values, attitudes and conduct of our political leaders and citizens and in the performance of the affected governmental institutions, as well as the political parties. However, we cannot overemphasize the continuing need for our families, schools and colleges, private business, the church and religious organizations, civil society organizations, the media, and cultural institutions to do much more to help the people improve their overall well-being and welfare, to develop a collective sense of national community and the common good, and to participate effectively in the democratic political process. We need to develop a civic culture that values responsible leaders and responsible citizens.

Certainly, the constitutional reforms we are advocating are not offered as a panacea or cure-all for our many and complex problems of governance and development. There are no such miracle remedies. But we believe that the proposed structural reform of our political system will progressively, and in a sustained way: (1) improve governance, (2) empower our people, (3) hasten the country's development, and (4) enhance our democracy.

Our Citizens' Movement is pleased to offer the nation the *Reader* as our contribution to the enlightened public study and discussion of proposals for constitutional reform by various groups and institutions. In doing so, we thank many of you here who helped in producing the draft constitution and the book itself. We hope to gain many more members and supporters to help realize the dream of a Federal Republic of the Philippines with a parliamentary government for the reasons that we have stated.