

**DECENTRALIZATION IN THE PHILIPPINES :
LESSONS FROM MALAYSIA AND NEPAL'S EXPERIENCES
WITH FEDERALISM**

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ABSTRACT

In the last few decades, federalism has been regarded as a solution to certain problems arising from a multicultural country, and many consider federalism to be the answer to decentralizing state power, to diffusing tensions arising out of ethnic or diversity issues, or to distributing government funds. However, Malaysia and Nepal's experiences with federalism show that federalism is not always the solution that it is thought to be. Now that the Philippines is geared to address the people's call for decentralization, the President has turned to federalism as the key to addressing the needs of the people outside of Manila, particularly those in southern Mindanao. Strangely, the President suggested France, a famously unitary state, as a model for federalism in the Philippines. This paper will discuss the Philippine's embattled relationship with federalism and examine the different models of federalism in various jurisdictions. France will also be examined to see if it is appropriate for the context of decentralization in the Philippines, but the focus will be mainly on Malaysia and Nepal's background and history with federalism, in order to learn from their experiences. Finally, this paper will discuss the feasibility of federalism in the Philippines, and will make recommendations for its implementation.

DECENTRALIZATION IN THE PHILIPPINES : LESSONS FROM MALAYSIA AND NEPAL'S EXPERIENCES WITH FEDERALISM

“Decentralization has, not only an administrative value, but also a civic dimension, since it increases the opportunities for citizens to take interest in public affairs; it makes them get accustomed to using freedom. And from the accumulation of these local, active, persnickety freedoms, is born the most efficient counterweight against the claims of the central government, even if it were supported by an impersonal, collective will.”

-A. DE TOCQUEVILLE

I. INTRODUCTION

The Philippines is an archipelagic country consisting of 7,107 islands, divided into 3 main islands—Luzon, Visayas, and Mindanao, and divided further into 17 regions. While it is a predominantly Christian country, with 86% of the population being Roman Catholic, there are Muslim Filipinos in the southern island region of Mindanao who make up roughly 4% of the population,¹ whose cultures, laws, and beliefs differ from the rest of the country. Historically, it has been shown that in countries or territories where religiously diverse people share a common area, friction and conflict appears “between the demands of law and the provinces of religion”²; thus, accommodations must be made in favor of those in the minority to respect and address their particular needs. The Constitution of the Philippines which took effect in 1987 recognizes and acknowledges the religious and cultural contrast of this Muslim region, and provides that “there shall be created autonomous regions in Muslim Mindanao and in the Cordilleras consisting of

¹Jack Miller, Religion in the Philippines, Global Center for Education. <http://asiasociety.org/education/religion-philippines> accessed on 5 October 2017

² W. Cole Durham, Jr. and Brett G. Scharffs, Law and Religion: National, International and Comparative Perspectives,” Aspen/Wolters Kluwer, 2010, page 3

provinces, cities, municipalities, and geographical areas sharing common and distinctive historical and cultural heritage, economic and social structures, and other relevant characteristics...”³ Pursuant to this provision, the Philippine congress enacted Republic Act No. 6734 on 1 August 1989, which created the Autonomous Region of Muslim Mindanao (ARMM). Still, Muslim extremist groups, such as the Moro-Islamic Liberation Front (MILF), Moro-National Democratic Front (MNLF), and the Abu-Sayyaf, have resorted to violence and terrorist acts to gain more autonomy from the central government. In an attempt to manage the conflict in the south, past administrations have negotiated numerous peace talks with the region’s leaders, without much success. In 2012, the Philippine government under Benigno Aquino III’s administration, established the “Bangsamoro Autonomous Region”, which was intended to replace the ARMM.

However, under the current administration of President Rodrigo R. Duterte, there are stronger and more persistent initiatives to shift the Philippine structure of government to a federal system, which will ostensibly give the Muslim region the autonomy that it seeks. But is it really that simple? Is federalism the “secret formula” that will automatically solve the conflicts arising from the religious and cultural diversity in the Philippines? This paper aims to examine the historical, cultural, and constitutional basis for federalism in the Philippines, and whether or not it can provide Muslim Mindanao, as well as other provinces seeking more power, with the sufficient autonomy that it demands, while still preserving the principle of unity that the country wants to maintain.

³ 1987 Constitution of the Republic of the Philippines, Art. X, Sec. 15

The research question is especially relevant now in light of the fact that the Philippine government is currently bracing itself for the major move to shift the Philippines' centuries-old unitary government system into a federalist one. The President has already appointed members of the committee to draft the constitutional amendments, with the directive for them to "copy" the French system which has a strong president as a model.⁴ But this mandate leads to more confusion, considering that France is a unitary state. The committee, as of this writing, has not yet submitted a draft of the intended constitutional amendments but has announced to the media that its proposal is for the Philippines to adopt a presidential-federal form of government.⁵ Thus, this thesis will look at other countries that deal with conflicts arising from cultural and ethnic diversity, and how these jurisdictions have utilized federalism in an attempt to control or manage these conflicts.

The study will first look at France, a famously unitary state, and how it has managed the demands of its ethnically and culturally diverse former colonies for more autonomy. While France does not have a federal system, lessons may still be learned from it regarding the pursuit of decentralization. The study will then compare the impact of the shift to federalism adopted by other countries in the Southeast Asian region, mainly Malaysia and Nepal, and its effects on

⁴ Pres. Duterte's 2016 State of the Nation Address, 25 July 2016, where he said: "You know my advice to you is maintain a federal system, a parliament, but be sure to have a president. *Huwag... Hindi na ako niyan* (Don't... It won't be me). [applause] I'm disqualified and by that time I would longer be here. But, I can commit today to the Republic of the Philippines and its people: If you hurry up the federal system of government and you can submit it to the Filipino people by the fourth, fifth year, *proseso 'yan e* (It's a process). You call for a referendum and after that call for a presidential election, I will go. *Sibat na ako* (I'll be gone). But you just have a president. **You copy the France (sic) system.**" <http://www.philstar.com/headlines/2016/07/25/1606702/full-text-dutertes-2016-state-nation-address> accessed on 8 December 2017

⁵ Jodesz Gavilan (2018) 'What You Need to Know about Charter Change' (*Rappler*) 16 January 2018 <<http://www.rappler.com/newsbreak/iq/193718-charter-change-explainer-philippine-constitution>> accessed 5 April 2018.

these likewise culturally diverse nations. Malaysia has been a federation since 1963, and is composed of 13 States. However, two States—Sabah and Sarawak—have more powers than the other eleven states, making it an asymmetrical model of federalism.⁶ It has been dubbed by some as “plausibly the only Asian example of a successful federation”⁷ but some critics have pointed out that because the federal government retains most of the executive and legislative powers, as well as control over the main sources of revenue, it is actually a “highly-centralized” system of federalism.⁸ This paper will examine the federal system of Malaysia, and what has led to its perceived success as a federation in an ethnically and culturally diverse nation. Will the system adopted by Malaysia be applicable to the intended shift to federalism in the Philippines?

Nepal, on the other hand, adopted a federal system of government in 2015, in the hopes that doing away with their traditional unitary system of government will be the solution to the country’s “deeply rooted cultural, racial and economic problems.”⁹ Unfortunately, the federal system adopted by the new Constitution has not exactly been successful in achieving peace and goodwill in Nepal; rather, the federal structure and design has made different ethnic groups unhappy, and violence has erupted in some areas.¹⁰ This paper will study the system of federalism adopted by Nepal, and how it has attempted to manage diversity and address

⁶ Andrew J. Harding, James Chin, 50 Years of Malaysia: Federalism Revisited, 2014 Marshall Cavendish International (Asia) Private Limited, page 20

⁷ *ibid*, page 12

⁸ Chin Huat Wong (25 July 2007). “Weakened federalism in the new federation”. The Malaysian Bar, http://www.malaysianbar.org.my/echoes_of_the_past/weakened_federalism_in_the_new_federation.html accessed on 8 December 2017

⁹ Thaneshwar Bhusal, Nepal’s slow shift to federalism: Why it’s taking so long to shape, 17 August 2016, <https://www.policyforum.net/nepals-slow-shift-to-federalism/> accessed on 8 December 2017

¹⁰ Kundan Kumar Jha, Federalism History and Challenges in Nepal, 30 May 2017, <http://www.madhesiyouth.com/analysis/federalism-history-challenges-nepal/> accessed on 8 December 2017

dissatisfaction from minority groups. For the purposes of this study, it would be helpful for the Philippines to observe Nepal's shift to federalism, and to learn from its experiences, perhaps to avoid making the same mistakes committed by Nepal.

This paper is based on a comparative desk research focusing on the different models of federalism and other constitutional methods of managing diversity, and its practical application to the Philippine setting. To do so, it will briefly discuss comparative perspectives from different jurisdictions with the federal system of government, but the comparative constitutional analysis will focus mainly on Malaysia and Nepal because of its similarity with the Philippines in terms of cultural and ethnic diversity as well as its geographic proximity. This paper aims to give recommendations as to the applicability of federalism for the Philippines and to the model best suited for its needs, as well as to provide conclusions based on the experiences and lessons garnered from the relevant jurisdictions.

II. THE CURRENT CONCEPT OF TERRITORIAL AUTONOMY IN THE PHILIPPINES AND THE PROBLEMS WITH A CENTRALIZED GOVERNMENT

2.1 History

Contrary to what is commonly believed, federalism is not a novel concept in the Philippines. Before Spain colonized the Philippines in 1521, the local population was already divided into different tribes according to culture, language, and traditions.¹¹ However, the Spanish colonizers, in order to control and keep the locals from uprising, created a central government in Manila and quickly relocated local inhabitants to settlements under the control of Spanish provincial governors.¹²

During the revolution against Spain, the leaders of the revolution discussed the best system of government to put in place once the Philippines was liberated. Dr. Jose P. Rizal, author and later declared as the country's national hero, advocated in one of his essays that the Philippines should be a federal republic once it was independent from Spain.¹³ However, the Malolos Congress, the first legislative body formed by the new Philippine government in 1898, decided that it was important to appear as a strong and united country in light of its recent independence.¹⁴ Unfortunately, the Philippines was quickly colonized again by the United States as part of its settlement with Spain to end the Spanish-American War, wherein the Philippines

¹¹ Jes B. Tirol, "Federalism: Part I. Historical Perspective"; Bohol Chronicle, 7 August 2016, <http://www.boholchronicle.com.ph/2016/08/07/federalism-part-i-historical-perspective/>, last accessed on 8 February 2018

¹² Abinales, P. N.; Amoroso, Donna J. (2005), *State and Society in the Philippines*, Rowman & Littlefield, ISBN 978-0-7425-1024-1, page 55

¹³ Jose P. Rizal, "Las Filipinas Dentro de Cien Anos (The Philippines a Century Hence)", published in *La Solidaridad* in 1889-1890

¹⁴ *ibid*

was sold by Spain to the United States for only US\$ 20 Million.¹⁵ With the United States at the helm, the American Governors consistently rejected proposals for a federal system for the Philippines because they knew that a centralized government would be much easier to control.¹⁶ Since then, every Philippine constitution adopted has been patterned after the one that the United States created in 1898, which calls for a strong central government based in Manila.

It is clear then that Federalism is not a completely novel or unusual proposal for the Philippines. In fact, the country's heroes and leaders of the revolution had predicted that it would be the best model for the Philippines, considering its varying languages, cultures, and religions.

2.2 The 1987 Philippine Constitution and its Judicial Interpretation

The Philippine Constitution, in its Declaration of Principles and State Policies¹⁷, states that it will “ensure the autonomy of local governments”¹⁸, thereby promising a movement towards a devolution of powers from the central government. The Constitution further provides that the Local Government Units (LGUs) consisting of the provinces, cities, municipalities and barangays “shall enjoy local autonomy”¹⁹, and directs Congress to “enact a local government code which shall provide for a more responsive and accountable local government structure instituted through a system of decentralization...”²⁰ However, general supervision over these

¹⁵ *ibid*

¹⁶ Rita Linda Jimeno, “The historical basis of federalism”; 22 August 2016, Manila Standard Today, <http://manilastandard.net/opinion/columns/out-of-the-box-by-rita-linda-v-jimeno/213976/the-historical-basis-of-federalism.html>; last accessed on 8 February 2018

¹⁷ Art. II of the 1987 Philippine Constitution

¹⁸ Art. II, Sec. 25 of the 1987 Philippine Constitution

¹⁹ Art. X, Sec. 2 of the 1987 Philippine Constitution

²⁰ Art. X, Sec. 3 of the 1987 Philippine Constitution

LGUs still remain with the President²¹, and it is still up to Congress to decide how much each LGU will receive annually as its “just share” from the national taxes.²²

Despite these apparent measures towards granting more independent to the LGUs, the Supreme Court of the Philippines has emphasized time and again that the real decision-making powers still remain with the central government, to wit:

“The Court held in *Ganzon v. Court of Appeals* that while it is through a system of decentralization that the State shall promote a more responsive and accountable local government structure, the concept of local autonomy does not imply the conversion of local government units into ‘mini-states.’ We explained that, with local autonomy, the Constitution did nothing more than ‘to break up the monopoly of the national government over the affairs of the local government’ and, thus, did not intend to sever ‘the relation of partnership and interdependence between the central administration and local government units.’ In *Pimentel v. Aguirre*, the Court defined the extent of the local government’s autonomy in terms of its partnership with the national government in the pursuit of common national goals, referring to such key concepts as integration and coordination. Thus:

‘Under the Philippine concept of local autonomy, the national government has not completely relinquished all its powers over local governments, including autonomous regions. Only administrative powers over local affairs are delegated to political subdivisions. The purpose of the delegation is to make governance more directly responsive and effective at the local levels. In turn, economic, political and social development at the smaller political units are expected to propel social and economic growth and development. But to enable the country to develop as a whole, the programs and policies effected locally must be integrated and coordinated towards a common national goal. Thus, policy-setting for the entire country still lies in the President and Congress.’

Certainly, to yield unreserved power of governance to the local government unit as to preclude any and all involvement by the national government in programs

²¹ Art. X, Sec. 4 of the 1987 Philippine Constitution

²² Art. X, Sec. 6 of the 1987 Philippine Constitution

implemented in the local level would be to shift the tide of monopolistic power to the other extreme, which would amount to a decentralization of power...”²³

This interpretation given by the Supreme Court to the Constitution’s intention to grant more autonomy to the LGUs clearly limits its right of self-determination, since it confined their exercise of powers to purely administrative matters, with policy-making still in the hands of the central government.

The Constitution also specifically provides for the creation of “autonomous regions in Muslim Mindanao and in the Cordilleras consisting of provinces, cities, municipalities, and geographical areas sharing common and distinctive historical and cultural heritage, economic and social structures, and other relevant characteristics”²⁴ The Constitution then directs Congress to create an organic act which will “define the basic structure of government for the region consisting of the executive department and legislative assembly” and the formation of “special courts with personal, family, and property law jurisdiction *consistent with the provisions of this Constitution and national laws.*” As part of its detachment from the central government, these autonomous regions are granted legislative powers over the following matters: “Administrative organization; Creation of sources of revenues; Ancestral domain and natural resources; Personal, family, and property relations; Regional urban and rural planning development; Economic, social, and tourism development; Educational policies; Preservation and development of the cultural heritage; and such other matters as may be authorized by law for the promotion of the

²³ Aquilino Pimentel, Jr., Sergio Tadeo, and Nelson Alcantara vs. Executive Secretary Paquito N. Ochoa and Secretary Corazon Juliano-Soliman of the Department of Social Welfare and Development (DSWD), G.R. No. 195770, July 17, 2012

²⁴ Art. X, Sec. 15 of the 1987 Philippine Constitution

general welfare of the people of the region.”²⁵ In 1989, Congress passed Republic Act 6734, providing for an organic act for the Autonomous Region in Muslim Mindanao, and in February 1990, the first Regional Governor and Vice-Governor for the ARMM were elected. However, due to frequent revisions to the law made by Congress, subsequent elections were delayed for months and sometimes even years, causing instability and disenfranchisement in the ARMM.²⁶

In 2005, the Government of the Republic of the Philippines and the MILF, through the Chairpersons of their respective peace negotiating panels, engaged in a series of negotiations to bring an end to the violence and conflict arising out of Muslim Mindanao’s pursuit of more independence. Finally, on August 25, 2008, the parties were scheduled to sign a final draft of the Memorandum of Agreement on the Ancestral Domain (MOA-AD) Aspect of the GRP-MILF Tripoli Agreement on Peace of 2001. However, this Agreement was never signed because the Supreme Court of the Philippines issued a Temporary Restraining Order upon the application for prohibition filed by several cities and provinces of Mindanao, as well as by public figures and private citizens, claiming that the MOA-AD was unconstitutional, because it created the Bangsamoro Juridical Entity (BJE) as a separate state, or as a new juridical, territorial or political subdivision. On October 14, 2008, the Supreme Court rendered its controversial decision which held that the MOA-AD was unconstitutional, saying:

No province, city, or municipality, not even the ARMM, is recognized under our laws as having an ‘associative’ relationship with the national government. Indeed, the concept implies powers that go beyond anything ever granted by the Constitution to any local or regional government. It also implies the recognition of the *associated entity* as a state. The Constitution, however, does not contemplate any state in this

²⁵ Art. X, Sec. 20 of the 1987 Philippine Constitution

²⁶ <https://armm.gov.ph/discover-armm/history/> accessed on 8 December 2017

jurisdiction other than the Philippine State, much less does it provide for a transitory status that aims to prepare any part of Philippine territory for independence.

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It is not merely an expanded version of the ARMM, the status of its relationship with the national government being fundamentally different from that of the ARMM. Indeed, **BJE is a state in all but name as it meets the criteria of a state laid down in the Montevideo Convention**, namely, a permanent population, a defined territory, a government, and a capacity to enter into relations with other states.

Even assuming *arguendo* that the MOA-AD would not necessarily sever any portion of Philippine territory, **the spirit animating it** - which has betrayed itself by its use of the concept of association - **runs counter to the national sovereignty and territorial integrity of the Republic**.

The defining concept underlying the relationship between the national government and the BJE being itself contrary to the present Constitution, it is not surprising that many of the specific provisions of the MOA-AD on the formation and powers of the BJE are in conflict with the Constitution and the laws.

Article X, Section 18 of the Constitution provides that '[t]he creation of the autonomous region shall be effective when approved by a majority of the votes cast by the constituent units in a plebiscite called for the purpose, provided that **only provinces, cities, and geographic areas voting favorably in such plebiscite shall be included in the autonomous region.**' (Emphasis supplied)

As reflected above, the BJE is more of a state than an autonomous region. But even assuming that it is covered by the term 'autonomous region' in the constitutional provision just quoted, the MOA-AD would still be in conflict with it.²⁷

This decision effectively invalidated three years of negotiations with the MILF, setting back the ARMM's movement towards more autonomy. It appears based on these Supreme Court decisions that the restrictive provisions of the Constitution itself are what most stand in the way of true autonomy of the local governments, and that a constitutional change is necessary in order

²⁷ The Province of North Cotabato vs. the Government of the Republic of the Philippines Peace Panel on Ancestral Domain, G.R. No. 183591, October 14, 2008; consolidated with G.R. Nos. 183752, 183893, 183951, and 183962

for any progress to be made in terms of more independence for the LGUs and the autonomous regions.

2.3 Issues with a Centralized System of Government

“Imperial Manila” and the Forgotten Provinces

In the Visayas, the second largest grouping of islands in the Philippines, there is a saying that goes, “*Wa y dahong mahulog sa atong nasud nga di mananghid sa Malacañang*” (Not a leaf can fall in our country without Malacañang’s permission). Malacañang Palace is located in the heart of Manila, and being the seat of the national government and residence of the Philippine President, it appears that the Visayan saying alludes to the central government’s far-reaching powers. Nick Joaquin, the Philippines’ National Artist, also once wrote, “When Manila sneezes, the Philippines catches a cold.”²⁸ These statements demonstrate the reach and power of Manila over the rest of country, and how its every action has a consequence on the population.

In the Philippines, the center of power is in the capital, the city of Manila. Even though there are local governments in place, the decisions on legislation and budgeting that affect every region still emanates from the central government in Manila. This has led to resentments from the far-regions who argue that Manila is out of touch with the culture and needs of the rest of the country. Critics also point out that the central government does not adequately represent the entire nation, since the whole island of Mindanao is represented by only two senators out of the twenty-four seats, while Visayas only has three.²⁹ Thus, most policies and laws that are created by Congress

²⁸ Nick Joaquin (1990). “Manila, My Manila: A History for the Young.” City of Manila: Anvil Publishing, Inc. ISBN 978-9715693134.

²⁹ Gideon Lasco; “Imperial Manila”, Philippine Daily Inquirer, 28 December 2015, <http://opinion.inquirer.net/91545/imperial-manila>, accessed on 9 February 2018

are mostly those that just benefit Manila, even though it is just a small part of the country. Furthermore, the wealth distribution is largely unequal, with former Senatorial candidate Winnie Monsod pointing out that, “Metro Manilans are the favored offspring” because most of the budget distribution and economic programs are concentrated in the capital city.³⁰

Thus, the idea of “Imperial Manila” was born. It is not known exactly who coined the name, but it is considered as a derogatory term used by non-Manileños to express their discontent and the belief that all Philippine affairs are decided by the City of Manila, “largely because of centralized government and urbanite snobbery.”³¹ Also, the Moro-Islamic Liberation Front has placed the blame on Imperial Manila for its poverty, saying that Manila’s neo-colonialist practices have deprived the Muslim people of Minadanao of the opportunity and freedom to run themselves as they see fit.³²

The biggest complaint with the current centralized system of government is that despite the constitutional mandate of giving more autonomy to the local governments, the reality is that the powers given to the local governments are so limited that it is practically impossible for them to function as self-sufficient bodies. And more importantly, no matter how much revenue a local government unit generates, the finances still flow to the central government for redistribution, and local government virtually has no say on how to redistribute it. Currently, local governments

³⁰ *ibid*

³¹ David Martinez (2004). *A Country of Our Own: Partitioning the Philippines*. Los Angeles, California: Bisaya Books. p. 202. ISBN 978-0-9760613-0-4.

³² “'Imperial Manila' blamed for poverty in ARMM”. *GMA News.tv*. 10 March 2008; <http://www.gmanetwork.com/news/news/regions/83995/imperial-manila-blamed-for-poverty-in-armm/story/>, last accessed on 9 February 2018

receive an internal revenue allotment or IRA only from internal revenue taxes, excluding taxes from customs duties, tariff and excise taxes. The ratio is fixed at 60-40 percent in favor of the central government.³³

2.4 The Movement Towards Decentralization

While countries usually adopt a centralized form of government in order to promote and emphasize national unity,³⁴ a centralized government can unfortunately sometimes make the mistake of making “one size fits all” systems and laws which apply government policies to a country as a whole, without taking into account the needs and preferences of certain ethnic, religious, or cultural groups. Problems then arise when a minority population in a region begin to see themselves as different, disregarded, or even mistreated. Thus, the fight for decentralization was mostly started by regions and states with their own ethnic, historical, cultural, or linguistic identity. This can be seen in the cases of Catalonia in Spain, Scotland in the United Kingdom, and even Tibet in China, states which have used their ethnic, cultural, or historical diversity as reasons to support their claims for more autonomy.³⁵ Likewise, the great disparity in the economic development among regions in unitary countries, compared with the greater economic efficiency witnessed in decentralized countries, is a strong argument in

³³ Vicente V. Mendoza, “Why federalism is not the answer”, 10 October 2016, <https://www.rappler.com/thought-leaders/148718-federalism-not-the-answer> accessed on 9 February 2018

³⁴ A History of Decentralization, https://www.ciesin.columbia.edu/decentralization/English/General/history_fao.html accessed on 8 December 2017

³⁵ Andres Rodriguez-Pose and Nicholas Gill (2003), Department of Geography and Environment, London School of Economics, Houghton Street, London WC2A 2AE, England, Environment and Planning C: Government and Policy 2003, volume 21, pages 333 ^ 351, DOI:10.1068/c0235, page 337

favor of decentralization.³⁶ Thus, decentralization appears to be an ideal option for countries to use.

It has been said that among the most important reasons for granting more powers to local authorities are: (1) more efficiency and higher accountability of local governments, (2) the better protection of freedoms and rights that grassroots governance has on the population, and (3) the greater capacity to safeguard the culture and values of minorities.³⁷ Thus, decentralization should not be viewed as the “taking away of powers from the central government” but rather as a distribution of authority to those who are in a better position and are more capable of exercising it, which leads to a better country and more satisfied citizens in the end. It therefore helps if changes through decentralization are seen not as a struggle between local and central government, “but rather as a way to mutually benefit both levels of government and the citizens simultaneously.”³⁸

More recently, countries that are characterized by diverse cultures or multi-ethnic features have been looking for means to give more self-determination to minority groups and to ease identity conflicts among its peoples. Some countries have turned to converting from a unitary state to a federal system through charter changes and government restructuring, while there are those who test the waters of decentralization by simply giving diverse regions

³⁶ *ibid*

³⁷ Kalin, Walter, “Decentralization—Why and How?”, Contributor: Swiss Agency for Development Cooperation (SDC), pages 48 and 49

³⁸ *ibid*

asymmetrical autonomy.³⁹ Whatever the method chosen, however, it would seem that decentralization is the inevitable direction for countries that want more stability among a diverse population. In fact, international aid groups like the World Bank and the United Nations Development Program (UNDP) have been some of the main advocates of decentralization in developing countries, based on the premise that it encourages greater political participation and economic efficiency.⁴⁰

III. FEDERALISM: AN OVERVIEW

“In the federal arrangement, the constitution guarantees territorial self-rule and a form of shared rule between the central and territorial governments.”⁴¹ In other words, federalism refers to a system of government wherein powers are exercised separately between a central government and regional states, with each state having the authority of self-determination.⁴² It is distinct from a unitary system in that in a unitary system, the governing powers come from the central authority, and some powers are merely delegated to local government units. But in a federation, the central government and the states are wholly independent from each other, and is free from each other’s interference.⁴³ Ideally, the object of federalism is to give each state the power to regulate its own citizens and to govern itself the best way it sees fit. Some argue that it

³⁹ Asnake Kefale (2014) Ethnic Decentralization and the Challenges of Inclusive Governance in Multiethnic Cities: The Case of Dire Dawa, Ethiopia, *Regional & Federal Studies*, 24:5, 589-605, DOI: 10.1080/13597566.2014.971772, page 591

⁴⁰ *ibid*

⁴¹ András Sajó and Renáta Uitz (2017). The constitution of freedom: an introduction to legal constitutionalism, First Proof, 31/7/2017, Oxford University Press, page 170

⁴² Erin Ryan (2011), *Federalism and the Tug of War Within*, Oxford University Press 2011. Published 2011 by Oxford University Press, Print publication date: 2011, Print ISBN-13: 9780199737987, Published to Oxford Scholarship Online: January 2012, DOI:10.1093/acprof:oso/9780199737987.003.0001, page 7

⁴³ S.P. Aiyar (1961), “Federalism and Social Change: A Study in Quasi-Federalism.” Asia Publishing House, New York, Printed in India, page 3.

is the most democratic system of government, because it gives the power of self-determination back to the people and away from the ruling elite sitting in central government.

3.1 Advantages and Disadvantages of Federalism

a. Advantages

The nature of a federal system is to unify separate states, although each one maintains its own autonomy and individual identity. Neither the federal government nor the state is superior or inferior to the other, and they exist side by side in a partnership of sorts, while operating in their own spheres.⁴⁴ Because of this system, it poses certain advantages. Among those are: (1) it serves as a deterrent against corruption, tyranny, and authoritarianism, because powers are devolved and are not too concentrated in one body; (2) it increases citizen participation by giving power to those that are more in tune with the needs of the local population, giving them the authority to create laws that are more uniquely structured for their constituents; (3) it lessens dependence on the central government, so it is a more efficient way of distributing resources, and whatever is earned by a certain state is largely retained by it, thereby raising economic development and well-being; (4) conflicts are handled locally, and those that adjudicate have a better grasp of the cultural identities and issues, leading to fairer decisions. This is especially helpful in regions where different beliefs and traditions are practiced; and (5) it encourages regions and states to pursue laws and policies that are distinct and which reflect their own cultures.⁴⁵ Federalism also fosters healthy competition among the different states, driving them

⁴⁴ *ibid*

⁴⁵ Pia Ranada and Nico Villarete (2016) 'Will Federalism Address PH Woes? Pros and Cons of Making the Shift' (*Rappler*) 31 January 2016 <<https://www.rappler.com/nation/politics/elections/2016/120166-federalism-pros-cons-explainer>> accessed 5 December 2017.

to perform better.

b. Disadvantages

But of course, federalism, despite all its apparent virtues, also has drawbacks. First, there is the possibility that it will cause or even worsen the divisiveness among the different regions.⁴⁶ The competition that is encouraged in federalism can also lead to unhealthy rivalries among states—leading to an “us versus them” mentality, rather than looking towards the common good. Next, some regions may be left behind in terms of economic development due to a lack of resources, manpower, or know how.⁴⁷ It cannot be discounted that some areas are richer in natural resources than others, while there are also those who are geographically fortunate in terms of locations, giving them better access to facilities and infrastructure. Also, regions who have better governments will progress faster, while those with ineffective leaders will just continue to suffer because central government will be unable to intervene.⁴⁸ Fourth, new issues regarding jurisdictions will arise, especially if neighboring regions have differing laws and policies. Lastly, federalism alone might not satisfy the demands of separatists in Mindanao who long for greater autonomy.⁴⁹

However, caution must be used against employing federalism specifically as a method of conflict management, especially when it comes to ethnic divides.⁵⁰ Sometimes, this type of ethnic federalism can reinforce regionally or culturally based ethnic differences, thereby creating

⁴⁶ *ibid*

⁴⁷ *ibid*

⁴⁸ *ibid*

⁴⁹ *ibid*

⁵⁰ Asnake Kefale (2014) Ethnic Decentralization and the Challenges of Inclusive Governance in Multiethnic Cities: The Case of Dire Dawa, Ethiopia, *Regional & Federal Studies*, 24:5, 589-605, DOI: 10.1080/13597566.2014.971772, page 592

more conflict through discriminatory laws and policies.⁵¹ It can also cause leaders of these ethnic or religious groups to engage in divisive politics, pitting one group against the other for selfish or political motives.⁵² In some cases, the creation of new boundaries and regional territories through ethnic federalism only creates new minorities and new ruling elites.⁵³ Some authors even note that a federal system designed to peacefully manage diversity could lead to more division and even disintegration,⁵⁴ causing more problems.

3.2 Models of Federalism

Still, federalism is becoming more and more seen as the most appropriate form of state structure for ethnically and culturally diverse countries,⁵⁵ because it allows each state to self-govern as is appropriate for its needs. More often than not, historically excluded minority groups prefer federalism as a system of government precisely because it grants them the autonomy they need.⁵⁶ But one of the things that needs to be considered is which model of federalism is to be applied? Every federal country is unique in its own way, and just because one model is appropriate for one does not mean that it will be for the other. Thus, each country's historical and cultural backgrounds, as well the reasons behind the federalization, must be taken into consideration before the federal system is to be adopted.

⁵¹ Matthias Basedau (2011), Managing Ethnic Conflict: The Menu of Institutional Engineering, GiGA Working Paper 171, 2011, pp. 4-23, page 11

⁵² *supra* note 50

⁵³ *ibid*

⁵⁴ Erk, J. and Anderson, L. (2011), The Paradox of Federalism: Does Self-Rule Accommodate or Exacerbate Ethnic Divisions?, *Regional and Federal Studies*, Vol.19, No.2, pp.191–202.

⁵⁵ Michael G. Breen (2017), The Origins of Holding-Together Federalism: Nepal, Myanmar, and Sri Lanka, Article in *Publius the Journal of Federalism*, January 2017, DOI: 10.1093, page 26

⁵⁶ *id*, page 27

a. The United States, Germany, and Canada: A Brief Look at Their Systems

While many countries have a federal system of government, the United States is what immediately comes to mind when federalism is brought up, especially for Filipinos. In the United States, the “dual-federalist” model is adopted, as shown by the 10th Amendment to the Constitution, which states: “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people”⁵⁷ thereby ensuring that each State shall be independent from the federal government, and that there are no concurrent powers. The goal of this “clear demarcation of powers”;⁵⁸ is to make sure that the States operate independently from each other and from the federal government, and to “avoid conflicts.”⁵⁹ The US model of federalism attempts to keep the federal and the state government apart as much as possible, with each level trying to operate within its own “spheres of power.”⁶⁰ However, there is more to federalism than just the system adopted by the United States, and it is not necessary nor beneficial for the Philippines to adopt the United States model, especially because of the vastly different historical and cultural backgrounds between the two countries. Thus, other countries and other models of federalism should be examined.

The German model of federalism is “cooperative federalism”⁶¹, wherein the states are expected “to consider each other’s interests in exercising their authority”⁶² and where the federal government cooperates with the independent states to execute its rules.⁶³ This is in contrast with

⁵⁷ 10th Amendment to the US 1789 Constitution

⁵⁸ supra note 41, page 190

⁵⁹ id

⁶⁰ id

⁶¹ supra note 41 page 194

⁶² supra note 46, par. 2

⁶³ supra note 41, page 196

the US model where the independent States are expected to compete with each other⁶⁴ and where the federal government aims to operate separately from the states as much as possible. The Former Chief Justice of the Philippine Supreme Court, Reynato Puno, who heads the nineteen-member consultative committee appointed by President Duterte to study draft proposals for amending the Constitution, stated that they are looking at cooperative federalism as the most likely system of federalism to be adopted by the Philippines: “Given the permutations of their predicament (referring to weaker regions), and the clear picture of the coming together of strong and weak states, rich and poor regions, it ought to be self-evident that the regime that should govern their relationship is what is known as cooperative federalism as opposed to competitive federalism.”⁶⁵

In Canada, the federalism model is asymmetrical, wherein “some federal units have greater self-governing powers than others.”⁶⁶ While Quebec is a province equal to the others, and has not been granted a “special status”, it is still treated differently by the Canadian Constitution, to reflect its unique character and principles.⁶⁷ This asymmetrical model of federalism has become fairly popular in the recent years, because in federations where regions are occupied by a minority group that are distinct from the rest of the country, these regions often

⁶⁴ *supra*, note 47

⁶⁵ Julie M Aurelio, ‘Puno Calls for “Balance of Power,” Cooperative Federalism’ (20 February 2018) <<http://newsinfo.inquirer.net/969968/puno-calls-for-balance-of-power-cooperative-federalism>> accessed 5 April 2018.

⁶⁶ Kymlicka, Will, “Asymmetric Federalism”, *Politics in the Vernacular: Minority Nationalism and Multination Federalism*, 2001, page 91

⁶⁷ Simeon, Richard and Turgeon, Luc, “Seeking autonomy in a decentralised federation: the Case of Quebec.”, *International Journal of Law in Context, Practicing Self-Government: a Comparative Study of Autonomous Regions*, edited by Yash Ghai and Sophia Woodman, Cambridge University Press, 2013, page 54

demand to have more control over aspects that are usually under the control of the federal government.⁶⁸ When these powers are indeed relinquished to the minority state, the reasons are usually practical—that is, “the distinct identity and needs of the minority province's population requires that it be able to set its own policy in a given domain.”⁶⁹ Likewise, this asymmetrical division of powers is a way of recognizing and emphasizing that particular region’s distinct identity from the central government and the other states.⁷⁰

b. “Coming-Together” versus “Holding-Together” Federalism

As previously discussed, the reasons behind the adoption of the federal system is also relevant when considering the model of federalism to be used. “Coming-Together” Federalism demonstrates the commonly understood concept of federalization; that is, it is the result of the understanding of previously sovereign or semi-sovereign states to unify in order to pool together their resources, for security, economic advantages, or other practical reasons.⁷¹ In this model, there is a balance of bargaining competencies between the states, and they are all accorded the same level of powers, thus maintaining their own independence while being a part of the whole federation.

“Holding-Together” Federalism, by contrast, is usually adopted to prevent the breakup of a country, particularly where one region threatens to secede.⁷² In cases like these, political

⁶⁸ Wayne J. Norman (2006), “Negotiating Nationalism: Nation-building, Federalism, and Secession in the Multinational State”, Oxford University Press, ISBN: 978-0-19-829335-4, Oxford Scholarship Online (Political Science), 4.2.2

⁶⁹ *ibid*

⁷⁰ *ibid*

⁷¹ *ibid*

⁷² *supra* note 55

leaders usually come to the conclusion that the only remaining way “to hold their countries together in a democracy would be to devolve power constitutionally and turn their threatened polities into federations.”⁷³ The equal levels of sovereignty and bargaining powers do not exist in holding-together federalism; thus, the creation of the federation will not come from an agreement among sovereign states, but by an act of the central government.⁷⁴ In this regard, holding-together federalism is used as a democratic transition to devolve more powers to the minority regions who seek autonomy.

Given the power dynamics as well as the historical context of the Philippines’ government’s relationship with Mindanao, it would appear that a holding-together form of federalism is in order. But because of the Philippines’ apparent reluctance in the past to allocate powers to the local government units, it is perhaps helpful to look at other jurisdictions and how they have managed to achieve decentralization.

⁷³ Alfred C. Stepan (1999). Federalism and democracy: beyond the US model. *Journal of Democracy* 10 (4): 19–34, page 22

⁷⁴ *supra* note 55, page 43

IV. IS FRANCE APPLICABLE?

While President Rodrigo R. Duterte did not propose the United States's system as a blueprint for the Philippines' shift to federalism, he did propose that the Philippines "copy the France (sic) system", which is, as earlier pointed out, not exactly a better suggestion considering that France is not a federal country. However, does this mean that France should be ruled out completely as a model for devolution of powers?

4.1 The French Constitution and its Principles

Article 1 of the Constitution of France provides the important principle that it "shall be an indivisible, secular, democratic and social Republic."⁷⁵ While France has decidedly been a "model of unitary states"⁷⁶, the 2003 amendments to its constitution shows its conversion towards decentralization, especially with regard to the autonomy of its overseas territories.⁷⁷ But even before that, France has demonstrated its willingness to let go of some centralized powers, in order to give its overseas territories more powers of self-determination.

4.2 Overseas French Territories: The Case of French Polynesia

As part of the colonial empire that France began building in the 16th century,⁷⁸ it sent French missionaries to the Pacific Islands, with the first ones arriving in Tahiti in 1834.⁷⁹ Tahiti

⁷⁵ 1958 Constitution of France, Art. 1

⁷⁶ David Marrani, Principle of indivisibility of the French Republic and the people's right to self-determination, in David Marrani, Dynamics in the French Constitution (Abingdon, Routledge, 2013), page 89

⁷⁷ *ibid*

⁷⁸ Robert Aldrich (1996), "Greater France: A History of French Overseas Expansion." Published by Palgrave Macmillan 15 September 1996, ISBN-10 0312160003, page 304

⁷⁹ 'WHKMLA : Timelines : French Polynesia'

<<http://www.zum.de/whkmla/region/pacific/tlfrpolynesia.html>> accessed 4 April 2018.

and Tahuata were declared protectorates of France in 1842, but it was not until 1889 that the Polynesian Islands as a whole became united as one territory when it was annexed by France as a protectorate.⁸⁰ It became an overseas collectivity of France in 2003,⁸¹ and Organic Law no. 2004-192 of 27 February 2004 regarding the autonomy of French Polynesia has since given it the distinct title of “overseas country inside the Republic”, because of its higher level of autonomy.

Leading up to this higher degree of autonomy enjoyed by French Polynesia, the *Conseil Constitutionnel* (or Constitutional Council) has consistently ruled on the constitutionality of several institutional acts concerning the territory of French Polynesia, specifically in the following cases:

In Article 2 of Decision 84-177 DC of 30 August 1984, the Constitutional Council held Act 84-820 of 6 September 1984 laying down rules governing the status of the territory of French Polynesia to be constitutional; by Decision 94-340 DC of 14 June 1994 it held Institutional Act of 21 June 1994 concerning the transfer to the State of the powers of the territory of French Polynesia in penitentiary matters to be constitutional; by Decision 94-349 DC of 20 December 1994, it held Institutional Act of 27 December 1994 concerning certain legislative provisions of Books I and II of the Code of Financial Courts to be constitutional; by Decision 95-364 DC of 8 February 1995 it held Institutional Act of 20 February 1995 amending Act of 9 November 1988 on statutory provisions to prepare New Caledonia for self-determination in 1998 and miscellaneous provisions concerning the overseas territories to be constitutional.⁸²

⁸⁰ ‘The World Factbook — Central Intelligence Agency’ <<https://www.cia.gov/library/publications/the-world-factbook/geos/fp.html>> accessed 4 April 2018.

⁸¹ French Polynesia: New Law on the Functioning of Governing Institutions, 16 August 2011, <http://www.loc.gov/law/foreign-news/article/french-polynesia-new-law-on-the-functioning-of-governing-institutions/> accessed on 28 October 2017

⁸² DECISION 96-373 DC OF 9 APRIL 1996 Institutional Act laying down rules governing the autonomous status of French Polynesia, par. 4

It is apparent from these decisions that France was willing to hand over more powers over to its overseas territories.

The 1958 Constitution of France identifies French Polynesia as an “overseas territorial community” under Articles 73 and 74. Article 73 provides that French statutes and regulations are automatically applicable, but “they may be adapted in the light of the specific characteristics and constraints of such communities.” Article 73 also grants these territories more autonomy by stating “in order to take account of their specific features, communities to which this article applies may be empowered by statute or by regulation, whichever is the case, to determine themselves the rules applicable in their territory in a limited number of matters...” Thus, despite the very unitary principle enshrined in its Constitution, France does in fact make exceptions for some of its territories because of their “specific features.”

In *DECISION 96-373 DC OF 9 APRIL 1996*, the Council ruled on the constitutionality of the Institutional Act laying down rules governing the autonomous status of French Polynesia. In the present case, the Council upheld the constitutionality of powers granted to the President of the Government of the territory of French Polynesia, such as the power to negotiate and sign the following: agreements on matters within the scope of the State’s or territory’s power⁸³, certain agreements concerning matters within the jurisdiction of the State and the territory and to represent the authorities of the Republic within the regional bodies⁸⁴, “administrative agreements” conforming to treaty obligations on matters within the scope of the territory’s

⁸³ id, par. 11

⁸⁴ id, par. 12

powers with the administrations of States or regional organisations in the Pacific⁸⁵, and decentralized cooperation agreements on matters within the scope of the territory's powers with one or more French or foreign territorial units and associations thereof as well as public establishments.⁸⁶ Other provisions giving French Polynesia jurisdiction over control of aliens, defence and strategic raw materials, the civil service and audio-visual communication⁸⁷, communication, currency, credit, exchange and Treasury, law and order, local authorities, higher education and scientific research⁸⁸, and others. In this case, the Council upheld a majority of the powers conferred upon the State of French Polynesia.

However, the Council observed that Section 6(7) of the Institutional Act grants powers to the State over “fundamental guarantees as to public liberties.”⁸⁹ As regards this matter, the Council said that the legislation acted in excess of its powers⁹⁰ when it gave the State the authority to determine fundamental guarantees as to public liberties, since giving that power to the territorial units might result in varying standards and applications in the different parts of France.⁹¹ Thus, this particular provision was declared unconstitutional. Despite the fact that the Council declared some provisions of this Institutional Act unconstitutional, the latitude given to French Polynesia under this decision, and under similar decisions before it, paved the way for its transition towards greater autonomy.

⁸⁵ id, par. 13

⁸⁶ id, par. 14

⁸⁷ id, par. 16

⁸⁸ id, par. 17

⁸⁹ id, par. 24

⁹⁰ id, par. 26

⁹¹ id, par. 25

To repeat, French Polynesia has become a *collectivité* under the constitutional reform of March 28, 2003⁹², and then Organic Law no. 2004-192 of 27 February 2004 on the statute of autonomy of French Polynesia gave it the particular title of “overseas country inside the Republic” (*pays d'outre-mer au sein de la République*).⁹³ While it has its own government and legislative assembly, matters such as justice, military, currency, and defense are still provided by the Government of France.⁹⁴ Residents of French Polynesia, as well as those of the other Pacific Territories—Wallis and Futuna and New Caledonia—are considered full citizens of both France and the European Union, and they are eligible to participate in the elections for both.⁹⁵ Their Chief of State is still the President of France, but they are free to elect their own President of French Polynesia as the head of government.⁹⁶ French Polynesia also has its own unicameral assembly, and they have two representatives in the French Senate to represent its interests in mainland France.⁹⁷ Thus, French Polynesia has its own government and is largely free to govern itself, while still remaining its unity with France.

In 2013, the United Nations returned French Polynesia to its List of “Non-Self-Governing Territories”, which are subject to the decolonization process for gaining full independence as its own state.⁹⁸ However, the people of French Polynesia have made it clear that they wish to remain

⁹² French Polynesia: New Law on the Functioning of Governing Institutions, 16 August 2011, <http://www.loc.gov/law/foreign-news/article/french-polynesia-new-law-on-the-functioning-of-governing-institutions/> accessed on 28 October 2017

⁹³ <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000435515> accessed on 28 October 2017

⁹⁴ *supra*, note 92

⁹⁵ Kerry Baker, ‘France – The 2017 Presidential Election in the French Pacific Territories’ <<https://presidential-power.com/?p=6269>> accessed 16 March 2018.

⁹⁶ ‘The World Factbook — Central Intelligence Agency’ (n 80).

⁹⁷ *ibid.*

⁹⁸ ‘French Polynesia 2015 Profile_15 Dec 2015.Pdf’

a part of France, as shown by the results of the participation of French Polynesians in the past French elections.⁹⁹ In fact, during the C24 Regional Seminar held by the United Nations in 2016, the representative from French Polynesia called for its removal from the list, and categorically declared before the Special Committee on Decolonization and the Members of the United Nations that “France is not a colonial state, and French Polynesia is definitely not a colony that needs to be decolonised.”¹⁰⁰

4.3 Applicability to the Philippines

French Polynesia shows that decentralization and a high degree of autonomy given to a territory is possible, even in a highly unitary country such as France. The only difference is that France made some amendments to their Constitution in 2003, which opened the gates for some level of decentralization to enter. What pushed the level of autonomy even further for French Polynesia, however, is the *Conseil Constitutionnel*'s willingness to grant more rights of self-determination to it, recognizing its special cultural and ethnic features, setting it apart from the rest of France. The Philippine Supreme Court, on the other hand, seems far too reluctant to hand over self-governing powers to the local government units, making it more difficult to achieve decentralization of powers.

<http://www.un.org/en/decolonization/pdf/French%20Polynesia%202015%20Profile_15%20Dec%202015.pdf> accessed 4 April 2018.

⁹⁹ Supra, note 95

¹⁰⁰ Presentation by the Representative of French Polynesia during the Caribbean Regional Seminar on the implementation of the third international decade for the Eradication of Colonialism, 16 to 18 May 2017, page 6

V. A COMPARATIVE ANALYSIS OF FEDERALISM IN SIMILAR CULTURALLY DIVERSE COUNTRIES

5.1 Federalism in Malaysia : “Asia’s only successful federation”

a. The Creation of Federalism in Malaysia

The Federation of Malaysia was formed through a treaty in 1963 called the Malaysia Agreement of 1963, created between the United Kingdom, the then Federation of Malaya, and the other United Kingdom colonies of Singapore, North Borneo (or Sabah), and Sarawak.¹⁰¹ Hoping to create a unified nation among the former British colonies, the Federation was established by Malaysia to keep up with the other rising economic powers in Southeast Asia, such as Indonesia.¹⁰² However, due to growing tensions between Singapore and the Malays, then Prime Minister Tunku Abdul Raman of the Federation of Malaysia advised the Parliament that expelling Singapore from the Federation was the only viable solution left to prevent further conflict and bloodshed.¹⁰³ Thus, on 9 August 1965, the Malaysian Parliament voted to expel Singapore from the Federation in a 126-0 vote.¹⁰⁴

After Singapore’s expulsion, the current Federation of Malaysia is now composed of Penang and Malacca (the Straits Settlements); the Federated and Unfederated Malay States of

¹⁰¹ Dr Andrew J Harding and Dr James Chin, 50 Years of Malaysia: Federalism Revisited (Marshall Cavendish International Asia Pte Ltd 2014). Page 13

¹⁰² id, page 20

¹⁰³ ‘Merger Outline’ (13 October 2013)

<<https://web.archive.org/web/20131013002423/http://ourstory.asia1.com.sg/merger/merger.html>> accessed 3 April 2018.

¹⁰⁴ Heng Chee Chan (1971). Singapore: The Politics of Survival, 1965–1967. Singapore; Kuala Lumpur: Oxford University Press. OCLC 462273878, page 33

Selangor, Negri Sembilan, Pahang, Perak, Johor, Kedah, Kelantan, Perlis and Terengganu; and the two Borneo states of Sabah and Sarawak;¹⁰⁵ all of which were either former British colonies or protectorates. The Borneo States are now called East Malaysia, and the rest are referred to Peninsular Malaysia.¹⁰⁶ The Federation also includes three Federal Territories: the capital city of Kuala Lumpur, the administrative capital of Putrajaya, and the small island of Labuan located near the coast of Sabah.¹⁰⁷ But before Sabah and Sarawak agreed to join the Federation, Sabah gave a list of conditions, known as the “Twenty Points”, while Sarawak likewise gave its own set of demands, known as the “Eighteen Points”, to the Malaysian Government.¹⁰⁸ These conditions, or points, were made in the interest of safeguarding their identity and culture, and focused mainly on the conservation of their religion, language, education, administration, immigration, and economy.¹⁰⁹ Because Sabah and Sarawak were able to negotiate for more rights before they joined the Federation, they are not treated equally as the other states. In fact, Malaysia’s complete process of federalization has been characterized as “two-tiered”, the first tier being the Federation of Malaya which brought together the eleven original states, and the second tier being the process of acquiring Sabah and Sarawak in the Federation of Malaysia;¹¹⁰ so this is perhaps what gives Malaysia’s federal system a unique character.

¹⁰⁵ Hean Leng Ang and Amanda Whiting (2014), Federalism and Legal Unification in Malaysia. In: Halberstam D., Reimann M. (eds) Federalism and Legal Unification. Ius Gentium: Comparative Perspectives on Law and Justice, vol 28. Springer, Dordrecht, chapter 12.1

¹⁰⁶ *ibid*

¹⁰⁷ *ibid*

¹⁰⁸ James F. Ongkili “A History of the Development of Federalism in Southeast Asia: The Malaysian Case, 1985-1990.” *Asian Perspective*, vol. 16, no. 2, 1992, pp. 155–179. *JSTOR*, [JSTOR](http://www.jstor.org/stable/42703999), www.jstor.org/stable/42703999, page 156

¹⁰⁹ *ibid*

¹¹⁰ B.H. Shafruddin, The Federal Factor in Government and Politics of Peninsular Malaysia (1987), *The Journal of Asian Studies* 48(1):235, DOI: 10.2307/2057760, February 1989, page 38

However, the Federation of Malaysia has had to deal with federal-state friction, especially with regard to Sabah, who objected to the “Malaysianization” of the state, which included emphasis on the use of the Malay as a language and Islam as a religion for the country.¹¹¹ Sabah also resented the central government’s interference with matters of administration and appointment of officials, taxation, and immigration, which led Sabah’s leader, Datuk Donald Stephens, to raise the threat of secession in 1965.¹¹² This was quickly quelled by Prime Minister Tunku Abdul Raman, who stated that Sabah and Sarawak will “stay in Malaysia forever” and that anyone who threatened or intended to secede will be “regarded as rebels and traitors and will be dealt with as such.”¹¹³ When a subsequent Sabah leader again brought up the topic of secession in the 1970’s, federal government removed him from office.¹¹⁴

Race, ethnicity, and religious differences are constant factors in Malaysian politics, and tension also exists between the Malay community and the wealthier Chinese population.¹¹⁵ To address this apparent tension, the government enacted some affirmative action policies which enforced Malay quotas with regard to business licences, educational institutions, scholarship grants, and civil service positions.¹¹⁶ This racial preference for ethnic Malays in various sectors only served to increase the exclusion of the ethnic minorities, intensifying the friction among the diverse population.

¹¹¹ supra note 108, page 159

¹¹² Cheah Boon Keng (2002), *Malaysia: The Making of a Nation, Volume 1 of History of nation-building series*, Institute of Southeast Asian Studies, 2002, ISBN 9812301755, 9789812301758, page 65

¹¹³ ibid

¹¹⁴ ibid

¹¹⁵ supra note 105

¹¹⁶ ibid

b. A “Centralized Federalism”

The essence of federalism lies in its intent to remove powers from the central government and to distribute it to the different states. In most federal countries, power, revenue and resources are shared between the central government and the different states, but in Malaysia, the states have relatively limited access to the same.¹¹⁷ Notably, Malaysia’s central government retains control over most political powers, leading some to say that it is “not a true federation but rather a quasi-federation.”¹¹⁸

Just looking at the structure of Malaysia’s 1957 Constitution shows the strong powers given to the central government as opposed to those given to the states. As set forth in the Ninth Schedule of the Constitution, the federal government has control over the following legislative powers and responsibilities: foreign affairs, defense, internal security, law and order, trade, commerce and industry, physical development such as communication and transport, and human development such as education and health.¹¹⁹ By contrast, the state’s powers are limited only to control over lands and mines, Muslim affairs and customs, native laws and customs, agriculture and forestry, local government and public services, burial grounds, and the licensing of cinemas and theatres,¹²⁰ while both the federal and state governments have concurrent powers over social welfare, scholarships, town and country planning, drainage and irrigation, housing, culture and sports, and public health.¹²¹ As regards taxation powers, the Tenth Schedule of the

¹¹⁷ Francis Kok Wah Loh (2010), *Restructuring Federal–State Relations in Malaysia: From Centralised to Co-operative Federalism?*, *The Round Table* Vol. 99, No. 407, 131–140, April 2010, page 132

¹¹⁸ *supra* note 101

¹¹⁹ *supra* note 117

¹²⁰ *ibid*

¹²¹ *ibid*

Federal Constitution provides that revenue from income taxes, property and capital gains taxes, international trade taxes, as well as production and consumption taxes are all collected by the federal government.¹²² What is left for the state governments are revenue from natural resource-related taxes, such as revenue from lands and mines, as well as from forests.¹²³

Outside of the Constitution, the economic development process pursued by Malaysia also contributed to the central government's increase of powers. The New Economic Policy enforced by the federal government created new law-making and administrative bodies to promote the government's commercial and industrial interests.¹²⁴ Because of the New Economic Policy, certain powers, such as the licensing of public transportation vehicles such as taxis and buses, as well as their routes, were moved to the control of federal government.¹²⁵

Historically, the federal government has shown its strong control over the state governments in Malaysia, even in matters of legislation set out in the Constitution. For example, even if the Ninth Schedule of the Constitution provides the coverage of federal government's laws and responsibilities, still federal government may still legislate on matters belonging to the state, if it is for the purpose of promoting uniformity of the laws of two or more component States, or if so requested by the State legislatures.¹²⁶ At other times, the federal government has on its own stepped in and taken over during situations when it felt that

¹²² *ibid*

¹²³ *ibid*

¹²⁴ *ibid*

¹²⁵ *ibid*

¹²⁶ *supra* note 105, chapter 12.3

it was in a better than the state to handle it.¹²⁷ In the case of the handling of water supplies, Parliament amended the Constitution to remove it from the responsibility of the states, excluding Sabah and Sarawak, and to add it to the list of concurrent powers.¹²⁸ As for sewage services, Parliament removed it from the concurrent list, and made it a strictly federal matter.¹²⁹ While this kind of exercise of power by the central government contradicts the very principle of federalism and the decentralization of powers, Malaysia's federal government has been able to get away with it thus far because of its strong political control over a majority of the state governments.¹³⁰

Still, despite Malaysia's so-called "quasi-federalist" or "centralized federalism" nature, much can be said about its ability to survive as a federation thus far. Based on Malaysia's historical and cultural background, it can be seen that the central government is still reluctant to fully let go of its powers over the states; yet, it does not hesitate to give more autonomy to Sabah and Sarawak in recognition of those regions diverse cultural identity. It is this flexibility that exhibits the dynamics of Malaysia's federalism, and allows them to respond and change to the fluctuating needs of the different racial, religious, and ethnic communities.¹³¹ Federalism is not a self-acting concept that can be left to work by itself once it is created. Not only does it need to be formulated very carefully, but it also has to be carefully enforced and maintained through a process of continual dialogue,¹³² so the fact that Malaysia has survived as

¹²⁷ *ibid*

¹²⁸ *ibid*

¹²⁹ *ibid*

¹³⁰ *ibid*

¹³¹ *supra* note 101, page 263

¹³² *id*, page 44

a federation for more than fifty years, despite some major challenges that it faced, is significant.¹³³

c. Applicability to the Philippines

Malaysia's system of federalism is unique in that it was born out of a decolonization process from the United Kingdom, and appears to have the "coming-together" nature of different sovereignties joining to form a new state. But because of Sabah and Sarawak's special treatment, they are in a relatively more powerful position relative to the central government than the other states.¹³⁴ Malaysia's federalism cannot be categorized as simply just one form or model of federalism which the Philippines can adopt; rather, its system of federalism has evolved through the years, adapting to whatever situation it is currently facing, while still maintaining unity.

Perhaps what the Philippines can learn from Malaysia is that the Constitution needs to be regarded as a "living document"¹³⁵ that must be interpreted according to the needs and demands of the current situations. If amendments and concessions must be made in the interest of giving more autonomy to the states, then the country must be more open to it.

¹³³ *ibid*

¹³⁴ *supra* note 105

¹³⁵ *Missouri v. Holland*, 252 U.S. 416 (1920)

5.2 Federalism in Nepal : Did it cause more problems than it solved?

a. Federalism in Nepal: Causes and Effects

Nepal's constitutional history is an eventful one, spanning over six decades before the country made the controversial decision to adopt a federal system. The first Constitution was created in 1948 by then Prime Minister Junga Bahadur Rana, to prevent the democratic aspirations of the Nepalese people.¹³⁶ The next one, the 1959 Constitution or the “democratic Constitution” only lasted for a year, while the one that lasted the longest, for twenty-eight years, was that of the autocratic *Panchayati* constitution of 1962.¹³⁷ In 1990, another democratic constitution was created, and it significantly brought the monarchy within the constitutional purview, and it permitted the free and competitive participation of the people in the political affairs of the country.¹³⁸ But in 1996, the Maoist rebels of the Communist Party of Nepal began a war against the government that would last for ten years, demanding that the government create and adopt a new constitution providing for a federal republic.¹³⁹ Perhaps because of this, the 1990 democratic constitution only survived for seventeen years, and in 2007, the Interim Constitution of Nepal was instituted, which was to govern until a new constitution was created.¹⁴⁰

¹³⁶ Surendra Bhandari (2014), *Self-Determination and Constitution Making in Nepal*, Springer Singapore Heidelberg New York Dordrecht London, ISBN 978-981-287-004-9, page 1

¹³⁷ *ibid*

¹³⁸ *ibid*

¹³⁹ Julia Strasheim and Subindra Bogati (2016), *Nepal's quest for federalism: a driver of new violence*; a working paper, to be published by DEU Hamburg, GIGA German Institute of Global and Area Studies - Leibniz-Institut für Globale und Regionale Studien, <http://nbn-resolving.de/urn:nbn:de:0168-ssoar-46908-6> accessed on 5 April 2018

¹⁴⁰ *ibid*

During the constitution-building process in Nepal, federalism was at the forefront of the discussions, and many believed that it would be the solution to the problems brought about by the geographic, administrative, cultural, and ethnic factors of the population. But in 2006 to 2007, the Madheshi minority groups from Nepal's Terai plain, an ethnic community that has long claimed that the state had systemically neglected and discriminated against them, started an uprising, demanding federalism and threatening to secede from Nepal.¹⁴¹ The Madheshi leader declared during the rebellion their wish for more autonomy, saying, “We would like to govern ourselves now ... [but] if the government does not respect our demands, we will be forced to divide the Terai region from Nepal.”¹⁴² This caused Nepal to take federalism as an option seriously, primarily because (1) the Madheshi region certainly had distinct cultural features which would make secession plausible, (2) almost 50 percent of the country's population lived in the Terai region, and (3) the Madheshi group had tacit support of India, who shared a border with Terai.¹⁴³

During the discussions, however, the Nepalese people's opinions were divided on whether the federal states should be created and delineated according to identity or geography.¹⁴⁴ Geographical and existing administrative divisions seemed to be the more decision, but in August 2015, the Tharu and Madheshi minority groups from Nepal's southern Terai plains protested against the intended division of federal states according to geographical locations.¹⁴⁵ These groups argued that the federal state divisions proposed in the new constitution would result

¹⁴¹ *supra* note 55, page 39

¹⁴² *ibid*

¹⁴³ *ibid*

¹⁴⁴ *supra* note 139

¹⁴⁵ *ibid*

in unequal resource distribution and would thereby further cause their marginalization, and they demanded that the federal states must be identity-based.¹⁴⁶ However, Nepal's history has shown that this kind of ethnic identity-based divisions had placed most of the negotiating power and resources in the hands of a single ethnic group, who only used them to gain more power,¹⁴⁷ thus the Constituent Assembly tasked with drafting a new constitution was hesitant to agree. Also, some elite majority groups believed that identity based federalism would create "ethnic ghettos", and that granting the Madheshis more autonomy would lead to the complete disintegration of Nepal.¹⁴⁸

A major catalyst for Nepal's adoption of the constitution providing for a federal system were the April and 2015 earthquakes, which killed almost 9,000 people and injured 22,000.¹⁴⁹ The natural disaster spurred the adoption of the new Constitution on 20 September 2015, because of the urgent need for national unity and reconstruction. Immediately thereafter, the United Democratic Madhesi Front (UDMF), in protest of the new constitution, blockaded checkpoints at the Nepal–India border, thus stalling the arrival of petroleum, medicine, food, and other earthquake relief goods from India.¹⁵⁰ Aside from dealing with the aftermath of the earthquake, the Nepal government suddenly had to address the consequences of the blockade, which by November 2015, had resulted in a lack of food and medicine meant that three million Nepalese children were at risk of death or illness.¹⁵¹ After the government and the Madheshi groups met

¹⁴⁶ *ibid*

¹⁴⁷ *supra* note 55, page 34

¹⁴⁸ *supra* note 139

¹⁴⁹ "Incident Report of Earthquake 2015". Nepal Disaster Risk Reduction Portal. drrportal.gov.np, accessed on 5 April 2018

¹⁵⁰ *supra* note 139

¹⁵¹ *ibid*

for several negotiations, the government on 23 January 2016 amended the constitutional draft to give more seats to the Madheshi in government offices through proportional representation; unfortunately, the UDMF still protested the amendment, saying that it still did not address their biggest demand, that is, the division of federal states according to cultural identities.¹⁵² Still, the UDMF decided to end the blockade, while declaring that it will continue to protest until its demands are met, and the Tharus and Madheshis are granted separate autonomous states.¹⁵³

Until now, more than two years after the Constitution has been adopted, the delineations of the states in Nepal are not yet final. Protests over the state boundaries continue, some resulting in deaths during police response on the demonstrations.¹⁵⁴ As a boycott of the Constitution and its federal boundaries, Madhesbased parties have refused to hold elections until it is revised.¹⁵⁵ On 29 November 2016, the government proposed a constitutional amendment to separate certain districts from Province Number 5 and joining them with Province Number 4 in order to convert Province 5 into a completely Tarai province, but rather than appease its residents, this proposal resulted in objections from the districts that had been removed from Province 5.¹⁵⁶ Clearly, Nepal's current constitution and federal model is unable to address the problems that the country has faced in the past.

¹⁵² *ibid*

¹⁵³ *ibid*

¹⁵⁴ Deepak Thapa (2017), Mapping Federalism in Nepal, Accord issue: Issue 26, <http://www.c-r.org/accord/nepal/mapping-federalism-nepal> accessed on 3 April 2018

¹⁵⁵ *ibid*

¹⁵⁶ *ibid*

b. What was the problem with Nepal's process of federalism?

In analyzing the pitfalls of Nepal's federalism, certain things become apparent. Nepal's history has shown that its constitutions that were created through undemocratic or semi-democratic means were the ones that survived longer;¹⁵⁷ this could be an indication that Nepal's democratic leaders are not yet prepared or equipped to create a democratic constitution. Or more likely, these leaders are reluctant to put the needs of the people first, concentrating more on personal interests for themselves or the groups that they represent. Due to this, political parties are not motivated to reformulate their policies and practices to accommodate federalism, partly because this will lead to less exercise of powers for them, and partly due to the complicated process of restructuring their methods.¹⁵⁸

Another probable reason behind Nepal's difficulty in implementing the federal system is that the country is still relatively fresh from autocratic rule which was heavily centralized. Nepal as a country has always had a unitary system of government, and any attempts made by regions to gain autonomy were settled through deals that only conferred a minimal arrangement of autonomy for these regions in the form of land tenure.¹⁵⁹ Even the Panchayat, a "system of bottom-up representation on the basis of what were argued to be genuinely Nepali village-level councils"¹⁶⁰ ultimately just served to strengthen centralization by because it led to a better

¹⁵⁷ *supra* note 136, page 4

¹⁵⁸ Thaneshwar Bhusal (2016), Nepal's Slow Shift to Federalism-Policy Forum, Policy Forum, 17 August 2016, <https://www.policyforum.net/nepals-slow-shift-to-federalism/> accessed on 5 April 2018

¹⁵⁹ André Lecours; The Question of Federalism in Nepal, *Publius: The Journal of Federalism*, Volume 44, Issue 4, 1 October 2014, Pages 609–632, <https://doi.org/10.1093/publius/pjt030>

¹⁶⁰ David Gellner (2008), *Resistance and the state. Nepalese experiences*, New Dehli, India, Social Science Press, page 10

government control of rural areas.¹⁶¹ Because the Nepalese government and people are so used to depending on the central government, it will be difficult to suddenly adjust to a federal state.

Also, Nepal's background of being controlled by the Brahmins and Chhetris, a "minority group" which composes only "31 per cent of the population, but overwhelmingly dominate(s) the state, politics, economy and society"¹⁶² means that a majority of the population, for the most, has long been underrepresented in politics and public participation. This historical exclusion and underrepresentation contradicts federalism's goals of combining unity and diversity.¹⁶³

Public administrators are also used to the centralized system of government, and they fear losing their authority and positions in a federal system.¹⁶⁴ These government employees, composed of civil service workers, the police, and the military are necessary in the smooth transition to federalism, and any resistance from them will only make the change more difficult for Nepal.

Fifth, Nepal will first have to address the political vacuum at the lower levels of government, because districts, municipalities or villages have not had local elections since 1997.¹⁶⁵ This will certainly affect Nepal's system of federalism, since no one is there to implement it at the state level.

¹⁶¹ *supra* note 159

¹⁶² Mahendra Lawoti (2007), *Contentious politics and democratization in Nepal*, London Sage, page 23

¹⁶³ *supra* note 159

¹⁶⁴ *supra* note 158

¹⁶⁵ *ibid*

It is also worth pointing out that Nepal's current Constitution still provides for a very centralized system of finances and tax collection. Under the Constitution, the central government controls all major sources of revenue, such as individual and corporate income taxes, and VAT; the states' sources of revenue, however, are limited to low-yielding revenue sources, such as property and vehicle taxes.¹⁶⁶ This could be an indication that the drafters of the constitution still wanted the central government to retain more control over the country.

And lastly, Nepal's constant change in constitutions and government systems over the last sixty years has fostered political instability and distrust, because there is no sense of permanence in the government. In a country where a constitution has had a lifespan of only a year, it is hard to believe that the complex and revolutionary system of federalism would be able to endure.

c. Lessons from Nepal's experiences

Nepal's experience with federalism demonstrates that merely deciding to federalize is not enough. It needs to be supported by a sincere desire to follow through, and most importantly, a real and general consensus must exist for it work. For example, the Nepalese people were largely unanimous in their desire to convert to a federal state, and even the major political parties all agreed that federalism was the best way to manage the country's diversity.¹⁶⁷ Yet the government still showed some aversion to the change, largely because it would mean less powers for them. Also, the government and some minority groups clashed over the ways that the states would be

¹⁶⁶ Iain Payne and Binayak Basnyat, Nepal's Federalism is in Jeopardy, 28 July 2017, <https://thediplomat.com/2017/07/nepals-federalism-is-in-jeopardy/> accessed on 4 April 2018

¹⁶⁷ *supra* note 158

formed—the drafters wanted to rely on geographical and administrative boundaries, while the Madheshi and other ethnic minority groups wanted an identity-based federalism. This ongoing disagreement and the minority group’s dissatisfaction with the current state identities will only lead to further complications down the road.

VI. FEDERALISM IN THE PHILIPPINES

Decentralization in some form is likely necessary for the Philippines in the near future. The current highly centralized system of government is only fostering corruption and political dynasties, and is further alienating Southern Mindanao, as well as other provinces, from the rest of the country. Fortunately, it appears that the Philippines is now prepared to take that step towards decentralization, and a shift to federalism is now being seriously considered in the country. As of now, the resistance to adopting federalism in the Philippines mostly stems from people focusing exclusively on the model offered by the United States, the oldest and probably one of the most successful federal democracies.¹⁶⁸ Hopefully, public opinion will change once people begin to realize that the Philippines does not have to limit itself to the United States’ model of federalism, and see that based on Malaysia’s experience, it is possible to have a working federation in a culturally diverse nation.

Also, any fear that Filipinos may have about federalism further dividing the country may be addressed by the concept of a “Holding-Together” Federalism, which is often employed as a means to actually prevent the disintegration of a country, especially where a region that has been

¹⁶⁸ Alfred C. Stepan (1999). Federalism and democracy: beyond the US model. *Journal of Democracy* 10 (4): 19–34.

historically excluded threatens to secede. Verily, any solution to keep country whole, even if it means shifting to a federal system, is a better option than seeing Mindanao separate from the Philippines.

Federalism, nevertheless, is not a simple and self-executing concept, and many factors, such as the model to be adopted, the boundaries and structures of the states, distribution of powers, need to be taken into consideration. Not only that, the system of federalism must take into account the Philippines' history and background, geographical layout, and its diverse cultural, ethnic, and religious features. And as demonstrated by Nepal's almost-decade long shift to federalism, ten years is not enough to sufficiently address deep-seated cultural and historical issues that affect good governance. The process of federalization is not something to be done haphazardly, and the current administration's rush to "achieve federalism" within President Duterte's term, with four years remaining, is problematic.

5.1 Is Federalism the only Answer?

Decentralization takes many shapes and forms, and it is not necessary for a country to have a federal system in order to recognize a region's autonomy. As mentioned previously, the constitution of France provides that it "shall be an indivisible, secular, democratic and social Republic"¹⁶⁹, but the 2003 amendments to its constitution shows its conversion towards decentralization, especially with regard to the autonomy of its overseas territories.¹⁷⁰ France has consistently shown that it is capable of letting go of some centralized powers, in order to give its

¹⁶⁹ 1958 Constitution of France, Art. 1

¹⁷⁰ Constitutional Law No. 2003-276 of 28 March 2003 on the decentralized organization of the Republic, LegiFrance, 28 March 2003

overseas territories the power of self-determination. Their constitution provides that French statutes and regulations are automatically applicable to these territories, but “they may be adapted in the light of the specific characteristics and constraints of such communities.” The current success of France’s model of decentralization is shown by French Polynesia’s declaration to the United Nations that it wants to remain as France’s territory.

In order for the French model to work in the Philippines, the central government and the courts have to be more open to relinquishing powers, and interpreting the constitution in a way that will give meaning to its provisions in light of current circumstances. Under the current constitution which provides that “there shall be created autonomous regions in Muslim Mindanao and in the Cordilleras consisting of provinces, cities, municipalities, and geographical areas sharing common and distinctive historical and cultural heritage, economic and social structures, and other relevant characteristics...”¹⁷¹, Muslim Mindanao may already achieve the autonomy it craves so long as the “autonomy” provided in the Constitution is interpreted and enforced more broadly, rather than in the strict and narrow-minded way that it is being used today. Decentralization does not have to be achieved through federalism alone, and it can occur in either unitary or federal countries.

¹⁷¹ 1987 Constitution of the Republic of the Philippines, Art. X, Sec. 15

VII. RECOMMENDATIONS

Federalism has long been perceived as the last hope for progressing the Philippines into a more democratic state, and as a way of managing the cultural diversity of the people. This method of decentralization will empower the lower levels of government to create policies and address local issues without having to wait for action from the central government. But not all federal systems are created equal, and using the observations from Malaysia and Nepal's experiences, the following recommendations are made in light of the Philippines' current efforts to federalize.

First, the shift to federalism cannot be rushed, especially in the Philippines. Because of the country's century-old unitary system, most of the wealth and infrastructure are concentrated in Manila, the nation's capital. A sudden and abrupt shift to federalism will be severely detrimental to the neglected regions, because it will be difficult to sustain their viability as an autonomous state when it is suddenly stripped of access to the country's services and finances, and left to fend for itself. In this regard, considerations must be made for these regions, and they may continue to receive their Internal Revenue Allocation from an equalization fund, where a portion of tax from wealthier states shall be given to the states who need support before they can become self-sustaining. Also, the states and the administrative offices must be given time to prepare and adjust for a shift to the federal system of government.

The process of shifting to federalism can be done gradually, and it does not have to be an "all or nothing" proposition, wherein all the regions are simultaneously converted to an autonomous state. The Philippines can have a system where the regions and provinces can decide for themselves if they are ready to become autonomous, and the boundaries for each state can be

determined by a system of negotiations among the regions, taking into consideration the proximity of their geographical locations, their shared resources, and any cultural or religious similarities. Once state boundaries are agreed upon, the region can hold a plebiscite to approve the request for autonomy, and only a majority vote will give them the status of an autonomous state. Unlike in Nepal, the Philippine government cannot unilaterally impose the state divisions, because this will only create conflict and dissatisfaction among the people.

Ultimately, the process of federalization must be achieved hand in hand with the people of the Philippines; it cannot be done by the government alone. For any system of federalism to take hold in the Philippines, “any assessment of appropriateness is most legitimately made by the informed and reflective citizenry themselves.”¹⁷²

VIII. CONCLUSION

Certainly, the concept of shifting the Philippines to a federal system, or at least granting more autonomy to Muslim Mindanao and other interested regions, is promising. Decentralization is the current global trend, and it is perceived to come hand in hand with democracy, which is certainly welcome. However, before the Philippines completely amends its Constitution in order to create a federation, one very important thing must be done: public trust must be regained, particularly with regard to constitutional amendments. Before the current Constitution which took effect in 1987, the last charter change was instigated by then Philippine President and Dictator, Ferdinand E. Marcos, in order to prolong his term as president and to ultimately declare

¹⁷² Andreas Føllesdal (2011), Federalism, Ethnicity and Human Rights in Nepal. Or: Althusius meets Acharya. International journal on minority and group rights Volume: 18 Issue 3 (2011) ISSN: 1385-4879, page 336

martial law. Thus, the Filipino people are inherently suspicious whenever charter change is broached. Not surprisingly, all attempts made by the past Philippine Presidents since then have failed. As explained by Retired Supreme Court Justice Vicente Mendoza, “The reason the many attempts of Congress or groups to change the 1987 Constitution failed is not by reason of intrinsic merit. It is because the attempts were viewed as nothing but veiled attempts to extend the term of office of the President. That is the simple reason.”¹⁷³ Therefore, until and unless the current administration of President Duterte is able to gain the people’s confidence and trust that he will be stepping down when his term is over, then it is most likely that this attempt at constitutional change will again fail.

The Philippines has been toying with the idea of decentralization for the last few decades, but any attempts to follow through often fail or are abandoned. For it to succeed this time, it needs the sincere support and loyalty of not only the administration, but of the people themselves. Even if a constitution is perfectly written, it will not be effective if there is no commitment from the nation on its proper implementation.

¹⁷³ Sofia Tomacruz (2018) ‘LOOK BACK: Past Charter Change Attempts and Why They Failed’ (*Rappler*) 17 January 2018 <<http://www.rappler.com/newsbreak/flashback/193825-past-attempts-charter-change-philippines-failed>> accessed 5 April 2018.

BIBLIOGRAPHY

- The 1987 Constitution of the Republic of the Philippines
The Federal Constitution of Malaysia (revised in 2007)
The 2015 Constitution of Nepal
The 1958 Constitution of France (revised in 2008)
Bernas, Joaquin, SJ. The 1987 Constitution of the Philippines: A Commentary (2009)
Abinales, P. N.; Amoroso, Donna J. (2005), *State and Society in the Philippines*, Rowman & Littlefield, ISBN 978-0-7425-1024-1
András Sajó and Renáta Uitz (2017). *The constitution of freedom: an introduction to legal constitutionalism*, First Proof, 31/7/2017, Oxford University Press
Asnake Kefale (2014) *Ethnic Decentralization and the Challenges of Inclusive Governance in Multiethnic Cities: The Case of Dire Dawa, Ethiopia*, *Regional & Federal Studies*, 24:5, 589-605, DOI: 10.1080/13597566.2014.971772
A History of Decentralization,
https://www.ciesin.columbia.edu/decentralization/English/General/history_fao.html
Alfred C. Stepan (1999). *Federalism and democracy: beyond the US model*. *Journal of Democracy* 10 (4): 19–34
André Lecours; *The Question of Federalism in Nepal*, *Publius: The Journal of Federalism*, Volume 44, Issue 4, 1 October 2014, Pages 609–632, <https://doi.org/10.1093/publius/pjt030>
Andreas Føllesdal (2011), *Federalism, Ethnicity and Human Rights in Nepal. Or: Althusius meets Acharya*. *International journal on minority and group rights* Volume: 18 Issue 3 (2011) ISSN: 1385-4879
Andres Rodriguez-Pose and Nicholas Gill (2003), *Department of Geography and Environment, London School of Economics, Houghton Street, London WC2A 2AE, England, Environment and Planning C: Government and Policy* 2003, volume 21, pages 333 ^ 351, DOI:10.1068/c0235
Andrew J. Harding, James Chin, *50 Years of Malaysia: Federalism Revisited*, 2014 Marshall Cavendish International (Asia) Private Limited
Aquilino Pimentel, Jr., Sergio Tadeo, and Nelson Alcantara vs. Executive Secretary Paquito N. Ochoa and Secretary Corazon Juliano-Soliman of the Department of Social Welfare and Development (DSWD), G.R. No. 195770, July 17, 2012
B.H. Shafruddin, *The Federal Factor in Government and Politics of Peninsular Malaysia* (1987), *The Journal of Asian Studies* 48(1):235, DOI: 10.2307/2057760
Chin Huat Wong (25 July 2007). “Weakened federalism in the new federation”. *The Malaysian Bar*, http://www.malaysianbar.org.my/echoes_of_the_past/weakened_federalism_in_the_new_federation.html
Cheah Boon Keng (2002), *Malaysia: The Making of a Nation*, Volume 1 of *History of nation-building series*, Institute of Southeast Asian Studies, 2002, ISBN 9812301755, 9789812301758
David Gellner (2008), *Resistance and the state. Nepalese experiences*, New Dehli, India, Social Science Press
David Martinez (2004). *A Country of Our Own: Partitioning the Philippines*. Los Angeles, California: Bisaya Books. ISBN 978-0-9760613-0-4

Deepak Thapa (2017), Mapping Federalism in Nepal, Accord issue: Issue 26, <http://www.c-r.org/accord/nepal/mapping-federalism-nepal>

Erk, J. and Anderson, L. (2011), The Paradox of Federalism: Does Self-Rule Accommodate or Exacerbate Ethnic Divisions?, *Regional and Federal Studies*, Vol.19, No.2, pp.191–202

Erin Ryan (2011), *Federalism and the Tug of War Within*, Oxford University Press 2011. Published 2011 by Oxford University Press, Print publication date: 2011, Print ISBN-13: 9780199737987, Published to Oxford Scholarship Online: January 2012, DOI:10.1093/acprof:oso/9780199737987.003.0001

Francis Kok Wah Loh (2010), Restructuring Federal–State Relations in Malaysia: From Centralised to Co-operative Federalism?, *The Round Table* Vol. 99, No. 407, 131–140, April 2010

French Polynesia: New Law on the Functioning of Governing Institutions, 16 August 2011, <http://www.loc.gov/law/foreign-news/article/french-polynesia-new-law-on-the-functioning-of-governing-institutions/>

Ghai, Y. & Woodman, S. (Eds.) (2013) *Practising Self-Government - A Comparative Study of Autonomous Regions (Law in Context)*, Cambridge: Cambridge University Press. doi: 10.1017/CBO9781139088206

Gideon Lasco; “Imperial Manila”, *Philippine Daily Inquirer*, 28 December 2015, <http://opinion.inquirer.net/91545/imperial-manila>
“‘Imperial Manila’ blamed for poverty in ARMM”. *GMA News.tv*. 10 March 2008; <http://www.gmanetwork.com/news/news/regions/83995/imperial-manila-blamed-for-poverty-in-armm/story/>

Hean Leng Ang and Amanda Whiting (2014), *Federalism and Legal Unification in Malaysia*. In: Halberstam D., Reimann M. (eds) *Federalism and Legal Unification*. *Ius Gentium: Comparative Perspectives on Law and Justice*, vol 28. Springer, Dordrecht

Heng Chee Chan (1971). *Singapore: The Politics of Survival, 1965–1967*. Singapore; Kuala Lumpur: Oxford University Press. OCLC 462273878

Horowitz, Donald L. *The Many Uses of Federalism* (2007)

Iain Payne and Binayak Basnyat, *Nepal’s Federalism is in Jeopardy*, 28 July 2017, <https://thediplomat.com/2017/07/nepals-federalism-is-in-jeopardy>

“Incident Report of Earthquake 2015”. *Nepal Disaster Risk Reduction Portal*. drportal.gov.np

Jack Miller, *Religion in the Philippines*, Global Center for Education. <http://asiasociety.org/education/religion-philippines>

James F. Ongkili “A History of the Development of Federalism in Southeast Asia: The Malaysian Case, 1985-1990.” *Asian Perspective*, vol. 16, no. 2, 1992, pp. 155–179. JSTOR, www.jstor.org/stable/42703999

Jes B. Tirol, “Federalism: Part I. Historical Perspective”; *Bohol Chronicle*, 7 August 2016, <http://www.boholchronicle.com.ph/2016/08/07/federalism-part-i-historical-perspective>

Jodesz Gavilan (2018) ‘What You Need to Know about Charter Change’ (*Rappler*) 16 January 2018 <<http://www.rappler.com/newsbreak/iq/193718-charter-change-explainer-philippine-constitution>>.

Jose P. Rizal, ““Las Filipinas Dentro de Cien Anos (The Philippines a Century Hence)”, published in *La Solidaridad* in 1889-1890

Julia Strasheim and Subindra Bogati (2016), Nepal's quest for federalism: a driver of new violence; a working paper, to be published by DEU Hamburg, GIGA German Institute of Global and Area Studies - Leibniz-Institut für Globale und Regionale Studien, <http://nbn-resolving.de/urn:nbn:de:0168-ssoar-46908-6>

Julie M Aurelio, 'Puno Calls for "Balance of Power," Cooperative Federalism' (20 February 2018) <<http://newsinfo.inquirer.net/969968/puno-calls-for-balance-of-power-cooperative-federalism>>.

Kerryn Baker, 'France – The 2017 Presidential Election in the French Pacific Territories' <<https://presidential-power.com/?p=6269>>

Kundan Kumar Jha, Federalism History and Challenges in Nepal, 30 May 2017, <http://www.madhesiyouth.com/analysis/federalism-history-challenges-nepal/>

Kymlicka, Will, "Asymmetric Federalism", Politics in the Vernacular: Minority Nationalism and Multination Federalism, 2001

Pia Ranada and Nico Villarete (2016) 'Will Federalism Address PH Woes? Pros and Cons of Making the Shift' (Rappler) 31 January 2016 <<https://www.rappler.com/nation/politics/elections/2016/120166-federalism-pros-cons-explainer>>.

Presentation by the Representative of French Polynesia during the Caribbean Regional Seminar on the implementation of the third international decade for the Eradication of Colonialism, 16 to 18 May 2017

Matthias Basedau (2011), Managing Ethnic Conflict: The Menu of Institutional Engineering, GiGA Working Paper 171, 2011

Mahendra Lawoti (2007), Contentious politics and democratization in Nepal, London Sage

Michael G. Breen (2017), The Origins of Holding-Together Federalism: Nepal, Myanmar, and Sri Lanka, Article in Publius the Journal of Federalism, January 2017, DOI: 10.1093

Nick Joaquin (1990). "Manila, My Manila: A History for the Young." City of Manila: Anvil Publishing, Inc. ISBN 978-9715693134.

The Province of North Cotabato vs. the Government of the Republic of the Philippines Peace Panel on Ancestral Domain, G.R. No. 183591, October 14, 2008; consolidated with G.R. Nos. 183752, 183893, 183951, and 183962

Rita Linda Jimeno, "The historical basis of federalism"; 22 August 2016, Manila Standard Today, <http://manilastandard.net/opinion/columns/out-of-the-box-by-rita-linda-v-jimeno/213976/the-historical-basis-of-federalism.html>

Robert Aldrich (1996), "Greater France: A History of French Overseas Expansion." Published by Palgrave Macmillan 15 September 1996, ISBN-10 0312160003

Simeon, Richard and Turgeon, Luc, "Seeking autonomy in a decentralised federation: the Case of Quebec.", International Journal of Law in Context, Practicing Self-Government: a Comparative Study of Autonomous Regions, edited by Yash Ghai and Sophia Woodman, Cambridge University Press, 2013

Sofia Tomacruz (2018) 'LOOK BACK: Past Charter Change Attempts and Why They Failed' (Rappler) 17 January 2018 <<http://www.rappler.com/newsbreak/flashback/193825-past-attempts-charter-change-philippines-failed>> accessed 5 April 2018.

S.P. Aiyar (1961), "Federalism and Social Change: A Study in Quasi-Federalism." Asia Publishing House, New York, Printed in India

Surendra Bhandari (2014), *Self-Determination and Constitution Making in Nepal*, Springer Singapore Heidelberg New York Dordrecht London, ISBN 978-981-287-004-9

Thaneshwar Bhusal, *Nepal's slow shift to federalism: Why it's taking so long to shape*, 17 August 2016, <https://www.policyforum.net/nepals-slow-shift-to-federalism/>

The World Factbook — Central Intelligence Agency' <<https://www.cia.gov/library/publications/the-world-factbook/geos/fp.html>>

Vicente V. Mendoza, "Why federalism is not the answer", 10 October 2016, <https://www.rappler.com/thought-leaders/148718-federalism-not-the-answer>

Walter Kalin, "Decentralization—Why and How?", Contributor: Swiss Agency for Development Cooperation (SDC)W. Cole Durham, Jr. and Brett G. Scharffs, *Law and Religion: National, International and Comparative Perspectives*, Aspen/Wolters Kluwer, 2010

Wayne J. Norman (2006), "Negotiating Nationalism: Nation-building, Federalism, and Secession in the Multinational State", Oxford University Press, ISBN: 978-0-19-829335-4, Oxford Scholarship Online (Political Science)