

*Reflections from Scholars and Practitioners*

## **Against Federalism: Why It Will Fail and Bring Us to the Brink**

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*The proposed shift to a federal form of government is unlikely to succeed and may lead instead to the dismemberment of the Philippines. Given the dominant Pimentel model of the proposal, federalization will critically weaken the central government by sharing its sovereign powers, devolving most of its functions, and substantially more of its resources with the new component states. Rather than promote equitable development, federalization, according to this model, will promote interstate competition and thus enable the better-endowed regions to develop farther ahead of the others. The central government will be too emaciated to equip weaker states to catch up, aggravating their laggard conditions and may further fuel secessionist sentiments. While one possible effect of federalization may be to inhibit centrifugal tendencies, it also risks sufficiently arming defection-prone states to secede and leads to the breakup of the nation-state. This article argues that, for all its faults, the existing unitary system is better because it can do at least one thing a federal government can no longer do, that is, redress imbalances in favor of lagging regions and retrieve devolved power if it is misused. Moreover, the parliamentary system that the proponents put on top of their federal structure may be able to do far fewer things faster and will be less democratic than the central as well as areal division of powers embodied in the existing unitary system of the Philippine government.*

**Keywords:** *federalism in the Philippines, federal vs. unitary, government systems, Pimentel model*

### **Introduction**

The federalism proposal had been advocated since at least the turn of the millennium. Concrete constitutional proposals were made in the first decade with prominent leaders like Senator Aquilino Pimentel, Jr. sustaining the movement. Even some in the National College of Public

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Administration and Governance (NCPAG) seemed sold on the idea; the only task remaining was to shine a light on the experience just past and on the way forward. The federalist proposal was stalled with the defeat of the whole constitutional reform project back then. But it hardly killed federalism, which today has found new life and vigor with the Duterte administration.

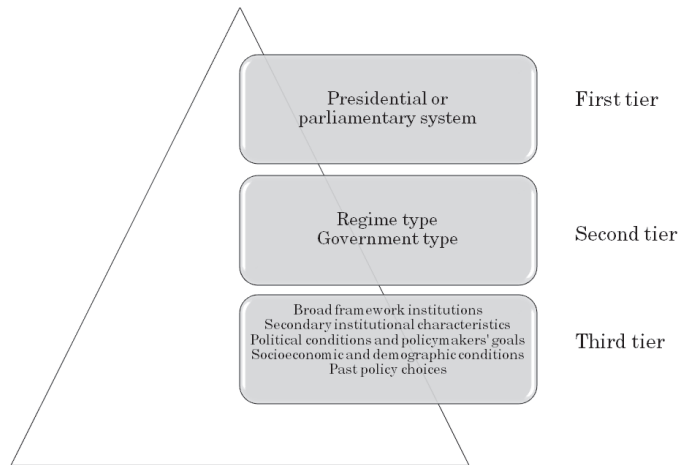
Dissenting opinions about federalism have also been revived (Doronila, 2016; Cruz, 2016). However, the Duterte administration seems hell-bent on pushing federalism and constitutional change, in the expectation that it will enable the different regions, particularly the lagging regions of Mindanao, to pursue their economic and social aspirations more freely than has been achievable under the present unitary system and the much-maligned central government of “imperial Manila.” The federalism proponents’ enthusiasm is such that the President himself promises to retire from his office before his term ends in 2022, as soon as the shift is adopted, with the constitutional change now poised to get underway.

With all due respect to the well-meaning proponents of federalism, I present my reasons for thinking it is probably a bad idea. Based on what I call the “Pimentel model,”<sup>1</sup> I outline the big changes proposed in the basic structure of the Philippine government, and the drastic differences and consequences that they are likely to produce, including the risk of secession and dismemberment of the Philippine nation-state. Aside from my own prognostication, I rely on some scholarly works abroad that cite evidence of this risk and help the case for retaining the existing unitary form of government. In the concluding section, I also argue that the idea of superimposing a parliamentary central government atop a federal system is inappropriate.

### **The Shift is Radical and Hard to Undo**

A central objection to federalism (i.e., federalization) is that it is unlikely to accomplish its goals. The movement for it reflects a strong faith in the ability of structural change in the institutions of government to effect economic, social, and cultural progress. However, there are many other complex factors that can shape or influence government’s capability and impact on the nation, including the people who operate the institutions involved and their surrounding cultures. A glance at a chart showing this complexity in governmental institutions should suffice to suggest that belief in structural change alone is unwarranted (Figure 1).

**Figure 1. Tiers of Explanations of Differences in Government Capabilities<sup>2</sup>**



Adapted from Weaver & Rockman (1993), p.10

Nevertheless, shifting to a federal government system from a unitary one is truly a game changer, a radical move that goes well beyond tinkering with the existing system, with management improvement, administrative reorganization, or even with the decentralization undertaken through the Local Government Code of 1991. Going federal means changing the basic rules of the governance game, determining who will be the new players and rule-makers, and how these rules will be made. The shift will be even more radical with the superimposition of a parliamentary form of government to replace the existing presidential system at the national government level, a feature that President Rodrigo Duterte (not Senator Pimentel) wants.

Shifting to a federal form will be difficult to achieve. For one thing, it will require constitutional change, which has proved impossible to pull off due to suspicions that it might have a hidden agenda, particularly the intention to re-elect a sitting President. Our experience tends to confirm reform scholars' observation that "[b]ecause constitutional change faces such enormous obstacles, whatever its potential payoffs, this route to reform is least likely to succeed" (Weaver & Rockman, 1993, p. 462). Even if constitutional reform is possible, it will be very difficult to undo, although that has not deterred recurring proposals abroad to convert unitary to federal systems—and for federal systems to go unitary.

The present administration, however, seems to be confident that constitutional change can be pushed through, given the strong grip of Duterte's party on most members of the bicameral Congress (at least in the House of Representatives). It has already taken the first big step by pivoting from the elective constitutional convention mode of reform that President Duterte originally preferred, to the assembly-of-incumbent-legislators mode that he now favors. However, some federalism advocates and adherents may still change their minds if they are open to reasonable arguments about the cons, as well as the pros, of federalism and parliamentarism.

### **A Radical and Irreversible Change**

To repeat, federalization entails no ordinary reallocation of powers and resources, but a subdivision and redistribution of fundamental, sovereign, or supreme state powers and corresponding functions and resources (Føllesdal, 2016; Philpott, 2016). Designing federalism is hard enough: the federal system must be conceived holistically, and yet, it must immediately grapple with issues about the number and boundaries of the new states. Implementing it is even harder in an environment of incrementalist pressures from regional interests. Once locked in with the ratification of its constitutional framework, the federal system may well be irreversible. Turning back can no longer be done unilaterally by the central government, i.e., without the consent of the states created (Føllesdal, 2016), since they have "veto power" with their share of sovereignty over policy decisions of the central government (although this is not explicit in the Philippine proposal described in the next section). Finally, keeping a federal system intact despite secessionist movements may take a costly civil war to resolve, such as what the United States experienced to remain a union.

By design, the federalization process favors the states created at the expense of the national government, in substantial and extensive ways. Just how big a difference it will make in the Philippines is not yet clear. No concrete proposals have been crystallized and presented under the current administration. The leading proponents in the administration still seem to be groping with amorphous ideas.

For example, both the President and the Speaker of the House have alluded to a French model in their visions. This may apply to its combined parliamentary-presidential form that they want for the central government, but certainly not to any federalist features in the larger structure, for the French government is the apotheosis of unitarism and

centralism, where the mere mention of “regionalism” would raise political hackles during certain periods (Schmidt, 1990).

### **The Pimentel Model**

From a perusal of leading proposals made in the recent past, however, we gather that the structural changes will be huge. The advocate still in the best position to influence current charter drafters is former Senator Aquilino Pimentel, Jr., principal author of the 1991 Local Government Code, founder of the PDP Laban political party, which worked for President Duterte’s presidential campaign in 2016, and father of the present Senate President, Aquilino “Koko” Pimentel III. In 2008, former Senator Pimentel filed Senate Joint Resolution No. 10 for a Philippine Federal Republic, “meant to accomplish two major things”: cause the speedy development of the entire country by unleashing the forces of competitiveness among the states; and dissipate the causes of rebellion in the country and particularly in Mindanao (Pimentel, 2008, p. 440). Before analyzing the meaning and implications of these goals, let us first describe the other important provisions of Senate Joint Resolution No. 10.

#### **Reallocation of Functions<sup>3</sup>**

The Senate Joint Resolution proposed the assignment of 38 functions or responsibilities to the “exclusive [legislative] jurisdiction” of 11 states and left 20 others to the Federal Congress. The jurisdictions, however, will not be all mutually exclusive. A number of the functions to be retained by the federal government will be shared or will overlap with some of those assigned to the states. This is implied by the functions preceded by the word “federal,” and is explicitly stated in the case of foreign trade, in which the states may engage. Moreover, there are at least nine state functions, which, in my view, can be concurrently undertaken with the federal government, and one in which state legislation will take precedence over federal legislation (Table 1).

What will be mutually exclusive are a dozen legislative jurisdictions allocated to the federal government and twice this number listed for the 11 states. While national security and defense, foreign relations, the armed forces, and others will stay at the federal level, the exclusive remit of the states will include economic and social planning (Table 1, No. 25), labor and employment (30), science and technology (31), free basic education and subsidized tertiary schools (32), social security, pension plans, social relief for displaced persons and victims of calamities (26), natural and environmental resources (22, 23, and 24), fisheries, aqua-

maritime culture, swamps and marshlands (6), public corporations (8), and others that one might expect will be retained or at least shared by the federal government.

**Table 1. Federal, Shared, and State Legislative Jurisdictions**

| <i>Federal Congress</i>  | <i>Shared</i>   | <i>State Legislatures</i>  |
|--|---|--|
| F1 – National security and defense<br>F2 – Declaration of war<br>F3 – Foreign relations, treaty ratification<br>F5 – Customs and quarantine<br>F7 – Immigration, emigration, extradition<br>F8 – Interstate commerce and trade<br>F12 – Intellectual property and copyright<br>F14 – Grants-in-aid to States<br>F18 – Cloning, genetic research, and engineering | F4 – Foreign trade (S9, S10)<br>F6 – Federal currency, fiscal and monetary, system, taxation, budget and audit (S5)<br>F9 – Federal public works and infrastructure (S7)<br>F11 – Federal air, sea and land transportation (S7)<br>F13 – Meteorology and standards of weights and measures (S28)<br>F20 – Offenses defined in the Penal Code (S17)<br>S1 – Public health, sanitation, hospitals, facilities (except those established by Congress)<br>S14 – State’s share of the national public debt<br>S15 - Courts for indigenous populations<br>S23 – Mines, minerals, gas (except those covered by acts of Congress)<br>S38 – General welfare of the states’ people only to Constitution’s prohibitions and existing laws passed by Congress | S4 – Cadastral or land surveys<br>S6 – Fisheries, aqua-or-marine culture, and swamps or marshlands<br>S8 – State public corporations and quasi-public corporations<br>S11 – Bankruptcy and insolvency<br>S12 – Trust and trustees<br>S13 – Compelling attendance of state and LGU officials in state proceedings<br>S16 – Salaries and allowances of all State officials and employees<br>S18 – Police over offenses within states<br>S21 – Interstate transfer of accused and convicted persons<br>S22 – Wild animals, birds, endangered species, and flora and fauna<br>S24 – Water, water supplies, etc.<br>S25 – Economic and social planning<br>S26 – Social security, pensions, and disaster relief and rehabilitation<br>S27 – Cooperatives, microfinance, etc.<br>S29 – Price control<br>S30 – Labor and employment<br>S31 – Science and technology<br>S32 – Free education from pre-school, subsidized colleges, and universities<br>S33 – Libraries, museums, and records other than those covered by existing laws<br>S34 – Charities, charitable institutions<br>S36 – Pilgrimages outside the Republic<br>S37 – Banning or regulating tobacco, alcoholic drinks, including labels |

Source: *Senate Joint Resolution No. 10*, as cited in Brillantes et al. (2009, pp.131, 148-152)

Note: See Annex 1 of this article for the original list. The letters “F” and “S” preceding the numbers indicate whether the function identified was listed under the “federal congress” or “state legislatures.” The author of this article rearranged the listing based on his reading whether the functions are shared or truly exclusively assigned to the federal congress or the state legislatures.

One notable feature of the exclusive reallocation proposed is that what used to be national government functions that have been regionalized, if not partially devolved, to the local government units (LGUs), such as economic and social planning, are dropped to the state level without any federal counterpart remaining. Moreover, while the federal government will retain certain interregional linking or complementing functions, such as interstate commerce and trade, and federal communications and transportation (5, 10, and 11), the Joint Resolution does not have any provisions for interstate cooperation<sup>4</sup>, unlike the Local Government Code of 1991, which provides for inter-LGU cooperative associations.

A few of the functional statements even hint at the possibility that state legislation can harden the state boundaries (e.g., prohibited transfer or movements across boundaries (13 and 21); the reference to internally displaced persons to be served by disaster relief (26); and the exclusionary prohibition or regulation of the production, transport, and sale of “sin” commodities like tobacco and alcoholic products (37). The build-the-border-walls implications of these provisions would be consistent with the federalism proposal’s aim of “unleashing the forces of competitiveness among the states,” as former Senator Pimentel said in his introduction to Senate Joint Resolution No. 10.

President Duterte reinforced this sense of state exclusivity by saying, before a Mindanao audience, that there will be a reconfiguration of territorial boundaries in Mindanao and that “*Kung ano ang territory, inyong lahat. Kung ano ang inyo, inyong lahat niyan diyan* [Your territory will be yours. Whatever is yours will all be yours],” but he hastened to add, “except that we have to maintain the Republic because to secede is not ... *hindi pwede ‘yan* [it is not allowed]” (Kabiling, 2016). This statement is, of course, ambiguous—it quickly pivots—but its basic thrust is clear enough.

### **Fiscal Federalism**

Former Senator Pimentel and the Senate Joint Resolution, in its fiscal-financial provision, made clear just how big the change will be. In his introduction, Pimentel wrote that the Resolution contained a formula for budget allocation: 20% will go to the federal government and 80% to the states. Of the 80% accruing to the states, 30% will go to the state governments and 70% to the provinces, cities, municipalities, and barangays. (Pimentel, 2008, p. 440).

This is the portion of “[a]ll revenues and taxes collected” by the LGUs or by the national government agencies according to the Local Government Code of 1991, where the taxes mentioned “shall include all revenues and taxes imposed or collected by the federal government” (Rev. No. 6, Art. XII, *Senate Joint Resolution No.10*, as cited in Brillantes et al., 2009, p. 159). Given that the existing division is said to be roughly 60%–40% of the internal revenue allotment (IRA) alone (60% for the national government), the proposal will, then, make a very big cut back for the federal government<sup>5</sup>. Moreover, the federal government is likely to find it difficult to sustain itself financially due to the removal of its more direct access to tax and operating revenue sources below the states.

The Pimentel proposal to relocate the legislative branch to the Visayas and the judicial branch to Mindanao will further weaken the national government physically, leaving the executive branch in the “Federal Administrative Region of Metro Manila.” This will stretch the separation of powers and functions physically, and make their sharing more difficult, perhaps in a more adversarial than coordinative manner. Modern means of communication may moderate this effect, but political leaders will have to do more shuttling by air to maintain personal contacts across the divide for consultations and negotiations. Even top government and business leaders find face-to-face transactions and “shuttle diplomacy” often necessary to address effectively the critical jurisdictional issues. The centripetal forces behind urban agglomerations would tend to counteract the institutional transfer of power centers proposed by the Pimentel model.

### **The Difference Federalism Would Make**

What difference would the proposed organizational and fiscal changes under federalism make? I think that the following advantages of the existing unitary system will be drastically curtailed, if not entirely lost, for the national-federal government, the proposed states, and the LGUs themselves, not to mention their constituencies:

- 1) The economies of scale and scope of having a strong national government that can transcend the limitations of the state and LGU boundaries, functionally and financially;
- 2) Having an adequately fiscally endowed, and legally strong-enough central government to establish and maintain interregional transportation, communication, trade linkages, and transactions;



- 3) Having a central government that can enhance comparative advantages and complementarities that may exist among the different regions and effectively resolve any conflicts between them;
- 4) Having the central institutional capacity to plan and implement policies and programs that call for national scale, perspectives, and resources to be able to promote common, national values and standards of well-being while respecting and nurturing the country's cultural and natural diversity; and
- 5) Having a central-national government that can draw on the foregoing sources of constitutional, functional, and economic strengths to be able to perform its tasks of defending the whole country, being respected abroad and at home, and maintaining the country's integrity against centrifugal forces.

Consequently, the twin objectives of the Pimentel model of accelerating the country's economic development and dissipating rebellion will very likely fail. Only the part about "unleashing the forces of competitiveness" will succeed, and it may succeed very well as cutthroat competition among states. With their newfound wealth, power, and functions, those states already well poised at the new starting line are likely to surge even faster and farther ahead, economically, politically and, perhaps, even militarily. Pimentel's proposal will allow the states to have their counterpart police, but it stops short in terms of the military armed forces. President Duterte has also wisely resisted demands or suggestions to allow the states to have their own armed forces as part of the federalization bargain. Yet, with the civilian resources and organization conferred by federalization in the form of state governments, secessionist forces may easily use these facilities for their own ends. They can easily recover any military capabilities they may be asked to give up as part of the federalization bargain, especially with imminent foreign invasion.

One thing that the central government can do if it wishes to now but can no longer do under a federalist framework is to redress the spatial development imbalances to which our diverse, archipelagic country has been vulnerable. The federal government would be too weak fiscally, financially, and functionally to undertake any reverse discrimination or re/distributive policies and programs in favor of the lagging regions. Greater competition trumps any possible cooperation among the states, and the dire economic and social conditions resulting from uneven development may fester and fuel rebellious and secessionist sentiments in the disadvantaged regions.

### A Scholarly Cautionary Prognosis

A scholar cautions against hastening to a grim scenario of eventual secession and break up resulting from federalization. According to Hechter (2000), a sociologist at the University of Washington who studied the possibility of containing nationalist<sup>6</sup> regional demands for independence, federalism may serve to calm down and mute such agitation. Nonetheless, there is also the equal risk that extreme decentralization through special regional autonomy or wholesale federalization can facilitate secession by equipping its drivers and movers with the resources and institutional means of the new state governments, with or without federal permission, for them to acquire military assets.

Hechter cites case evidence of efforts to mute nationalist conflict in the UK's offer of regional devolution to Scotland and Wales, then moves towards federation in unitary Spain and Belgium, France's devolution of authority to Corsica, India's federalist palliative for the Sikh independence movement in the Punjab, and in the Swiss and US federations (since the American Civil War in the latter case). On the other hand, he also cites the same US Civil War as a violent though failed attempt to break up the American Union. Other examples of the failure of devolutionary or federalist arrangements are Pakistan's loss of Bangladesh, the Soviet Union's dissolution in favor of a weaker federation, and the continued agitation for independence in Canada's Quebec province and Spain's Catalonia<sup>7</sup>. Russia's forcible annexation of the Crimean region and efforts to rope Ukraine back in show what it takes and costs to recover from a breakup.<sup>8</sup>

Hechter states that decentralization may provide greater resources for a rise in protest events but "may erode the demand for sovereignty." However, rebellion, as distinguished by Hechter from protest, is more likely from groups "concentrated in territories that already have their own governance structures" (Hechter, 2000, pp.146-147). He also presents data showing that "centralization is strongly associated with nationalist rebellion," a consistent pattern observed in the 1980s in less developed countries like Uganda, Indonesia, and the Philippines.

However, one case raises doubts in Hechter's mind about the robustness of the statistical relationship: Yugoslavia's breakup into five and, eventually, six states. Yugoslavia was the most decentralized federation in Hechter's sample, and thus seemed the "most immune to nationalist rebellion. Yet in the very next decade the country was plunged into a severe and prolonged civil war, and the term 'ethnic cleansing' entered the English vocabulary" (Hechter, 2000, p. 149).

Hechter (2000) disputes the implicit premise in other studies that the key dynamics of dissolution like Yugoslavia's are internal; "time and again nationalism has been strongly affected by exogenous forces... [a] country that decentralizes as a means of containing nationalist violence is at risk of fragmenting when its cent[er] declines due to exogenous shocks such as military defeat or fiscal crisis" (pp. 149-151). We argue here that federalism in the Philippines will be primarily an internal, self-inflicted injury, but that the external factor is worth keeping in mind: mainland China has planted its bully boots on our territory, and our central government has met it with a rather docile foreign policy despite our having won the international arbitration case for our maritime claims in the West Philippine Sea. While President Duterte may be making gains playing off the superpowers against one another at another level, China is now so close geographically, with its forward military facilities in our territory, and it can easily sow unrest, rebellion, and secession in our most vulnerable regions by, for example, smuggling arms to dissident parties there. For the moment, though, civilian Chinese invaders, in the guise of drug dealers and gambling operators, are now doing this subversive work.

Aside from the more violent possibilities, federal nation-states, such as the US, have encountered difficulties in keeping their system decentralized and in making creative federalism work in the relatively newer policy area of environmental protection (See Annex 2 on "Environmental Federalism").

### **Theoretical and Empirical Evidence for Unitary Government**

We hope that our dismal scenario will not actually transpire, and that we can hold off exogenous aggression long enough to build up the internal strengths of our country. This seems to be an uncertain prospect under our present unitary government, and it will be even more unlikely under a federal system. At least, with the existing unitary form, we can claim to have a better system with the capabilities to perform the integrative functions described earlier. Aside from our inferences from the premises supplied by the Pimentel federalist model, there are also theoretical and empirical grounds for believing that a unitary system is better than a federal one.

Professors Gerring, Thacker, and Moreno, faculty members of Boston University specializing in political science, international relations, and economics, have done research and statistical analysis to prove that a "centripetal democratic government," which combines unitary and parliamentary forms, is better in achieving its policy objectives than a

decentralized one combining federalism and a bicameral legislature. Their theoretical arguments first pit the usual federalist vs. unitarian arguments, as summarized in Box 1. We have covered some of the issues addressed therein, so we need not linger on them all.

**Box 1. Federalist Arguments – Pros and Cons**

- a) *Competition.* Federalists argue that federalism would induce healthy competition among states to improve their services, which would induce local residents to “vote with their feet” and move into better performing local units. Gerring et al. counter that the local government theory (Tiebout, 1956) will face limits as many other push-pull factors motivate migration. Capital can cross borders more easily than humans can, and capital competition could be a “race to the bottom” as excessive local incentives to outside investors reduce the local tax base and degrade the quality of governance (Gerring et al., 2007, pp. 5-6).
- b) *Fiscal federalism.* Subnational public goods and services can be better suited to regional and local circumstances through decentralization. However, such adaptation can be easier to achieve with administrative processes rather than a constitutional change. A federal system is more rigid and not necessarily more adaptive than a unitary one. Fixed state boundaries, often historically and culturally determined, may not adjust with current realities and changing circumstances. They may inhibit interstate actions to deal with externalities produced by a state. Central intervention and assistance needed in such instances can be hamstrung in a federal system (Gerring et al., 2007, pp. 6-8) (See Annex 2).
- c) *Veto power.* The veto points added by federalism make it harder to change central policies and therefore enhance “credible commitment” and citizen and investor confidence in the continuity of national policies. However, this federalist argument assumes that the status quo is favorable to policy continuity, but if it is not (e.g., if the existing policies and institutions are corrupt, inefficient, or poorly devised), the multiple veto points “will only serve to institutionalize a low-equilibrium trap.” An increase in veto points may drive out bad ideas, but “it may also drive out good ones” (Gerring et al., 2007, pp. 9-10).
- d) *Accountability.* Federalists argue that federalism enhances political accountability by bringing decision making closer to the people, where politicians are more attuned to local concerns. However, whether federalism strengthens local accountability is doubtful, since there may be discrepancies between the origins and impacts of policies and local perception of their benefit and cost incidence. Subnational economic policies may have national or external outcomes that local voters may not readily understand and properly attribute (Gerring et al., 2007, pp. 10-11).
- e) *Size of the federal government.* Federalists contend that the central government should be smaller and impose fewer regulatory burdens on the market and civil society. Federalism may constrain government size in terms of aggregate revenue and expenditure. Unitarians, on the other hand, doubt whether a small government is necessarily “a sign of good governance.... Big government has both advantages and disadvantages” (Gerring et al., 2007, p .12).

Among other things, Gerring et al. (2005) contend that there is no *a priori* reason to suppose that it would be easier for a federal government to undertake or implement the difficult task of actually reallocating functions, because regionally ensconced politicians are likely to have competing agendas; a central government in a unitary system can assign functions in a more flexible and rational fashion. With respect to accountability, subnational governments are more vulnerable to capture by special interests and cannot have the diverse civil associations to serve as “counterweights to official malfeasance.” Federalism also tends to fragment political party organization and competition, enhancing “localistic political allegiances, leading to weaker, more fissiparous national parties” (Gerring et al., 2005, pp. 8, 11).

The results Gerring et al. presented in a later (2007) paper show that the unitary form is “associated with higher levels of political development but the relationship is not robust across all dependent variables” (Gerring et al., 2007, p. 20). Unitarism is correlated with lower levels of corruption in one statistical format but not significantly in another format. It is strongly related to bureaucratic quality in the *full* model test, which covers all five dependent variables or outcomes of governance, but not in the *reduced-form* model test, which mainly covers variables that are statistically significant. Unitarism likewise correlates negatively with political stability. However, Gerring et al. (2007) admittedly found that “[r]esults for government effectiveness and rule of law are inconclusive” (p. 20).

Nonetheless, the analytical results favoring unitarism are much stronger for indicators of economic development (e.g., better telecom infrastructure), investment rating, and human development (e.g., lower infant mortality and illiteracy rates). Gerring et al. (2007) conclude “there are theoretical grounds for doubting the federalist argument, and strong empirical evidence supporting unitarism” (p. 23). Federalism may be useful as an expedient, temporary way station to unitarism, as in Iraq or the European Union, but in the long run, “most polities will be better off if they are able to form ... unitary constitutional arrangements” (Gerring et al., 2007, p. 20).

### **On Parliamentary/Federal vs. Presidential/Unitary Form**

I concur with Gerring et al., but disagree with respect to their combining a unitary system with a parliamentary form. Former Senator Pimentel himself did not propose a parliamentary central government on top of his federalist model, but the leadership of the Duterte administration seems strongly inclined toward such a combination, perhaps to counteract federalist infirmities. For my part, I think that this would be going in the

opposite, less democratic direction. Parliamentary governments merge the legislative and executive functions, and members of parliament, rather than popular election, choose their leader (except where a President is popularly elected to head a parliamentary government, as in France). Since they do not have fixed tenure, parliamentary governments have usually been unstable, because of parliamentary votes of non-confidence—hence, the term “government of the day.” Putting such an unstable central authority on top of a shaky federal set-up is doubly enfeebling for the entire structure of government.

Another reason I doubt the feasibility of a parliamentary form for the Philippines, apart from the experiment with the parliamentary-presidential form under the Marcos dictatorship, is that we have not developed the political *delicadeza* to make such a system function so responsively to popular sentiment. No heads have rolled from the most embarrassing events, like the assassination of a national leader or, more recently, the deaths of thousands of drug suspects at the hands of the police and vigilantes who may also be police officers. Incumbent elective leaders often cling to power even after being voted out of office. Besides, we have not developed a political party system that can firmly support a consistent and coherent pattern of interest aggregation in policymaking. Instead, we have instituted a multiparty system that has been even more fragmented and brittle, with members quickly changing colors after every presidential election. These deserve more attention for reform than the wholesale revamp of the governmental system.

For all its faults in both design and practice, the present presidential system is still better in its fundamentals and in fitting into the existing unitary framework. First, the unitary government itself was conceived to firmly encompass a naturally and culturally diverse set of communities in this archipelago of more than 7,000 islands. The unitary form was implicitly assumed in the 1935 Constitution to be the suitable one for the Philippines. It occasioned no serious debate or question at that time.<sup>9</sup> A Federalista Party was organized not to advocate a federal alternative for the Philippine government but to obtain statehood for the Islands in the United States, a project that failed (Hayden, 1955, pp. 53-54).

The Philippines has grown into a bigger nation-state now with more than 100 million people, and with scale comes greater complexity. While it may argue for a more adaptive decentralization, this development should not cross the constitutional line to federalism. Instead, it should reinforce the imperative of a unitary framework to keep the country together, in view of its persisting diversity and the centrifugal forces threatening its integrity from inside and outside.

Federalists usually equate unitarism with centralism, often ignoring the measures taken toward decentralization and the country's population distribution, economic development, and the natural diversity that underpins the distribution of public and private investments. Metro Manila may usually get the lion's share of national government benefits, but it also has a disproportionate share of the nation's economic output *and* the social and functional problems due to rapid population growth, immigration, and urban primacy.

Institutionally, the unitarist arrangement in the Philippines is complemented by the American-style *central division of powers* (CDP) and roles with presidential government. This ensures a diffusion of powers through the separation of legislative and executive powers and branches in the national government, an independent judiciary and other constitutional offices, a bill of rights, and freedom of religion, expression, assembly, and non-governmental organization. Moreover, the Congress is bicameral, with different national, district, and sectoral (partylist) constituencies, and with some specialization of functions between the two Houses. The legislative power is structurally divided but functionally shared with the President through his veto, certification, planning, and budgetary powers. The CDP serves as a foil, as well as a complement to the unitary framework, and provides additional points of access to power for citizens, due process, deliberation in policymaking, and greater public information, transparency and accountability. Together with the areal division of powers (ADP) represented by the local governments (the provinces, cities, municipalities, and barangays), the CDP ensures that the whole system is basically democratic, liberal, and welfare-oriented (Ylvisaker, 1959).

To its credit, the parliamentary form of central government may have the advantage of making and changing policies faster, assuming that it is not dragged down by the veto points added by federalism. However, parliamentarism may be as brittle as our present party system, and, given the severe weakening inflicted by federalization, a parliamentary government may be able to do much less faster—in a fragile framework endangered by runaway competition, uneven development, and dissolution of the Republic.

### Conclusion

As I said earlier, I hope that what I fear will happen with federalism on a model as radical as Senator Pimentel's will not actually materialize. My prognosis is a contingent one. Reasonable people in our government

can either change their basic position on the issue or do something to counteract or moderate federalism's centrifugal tendencies. If the federalist project will push through anyway, my advice to today's framers would be to amend the Pimentel model (or others like it) in favor of a much stronger federal government that can more effectively redress regional disparities, restrain secessionist movements and, together with loyal states, resist external aggression.

### Endnotes

<sup>1</sup> After former Senator Aquilino "Nene" Pimentel, Jr., author of the federalism bill, examined in this article. For background and discussions, see Brillantes, Ilago, and Montes (2009).

<sup>2</sup> Federalism is one of the "broad framework institutions" in this conceptual scheme, with judicial review and bureaucratic strength and autonomy being the others (Weaver & Rockman, 1993, pp. 31-32). The secondary characteristics include unicameral or bicameral legislative organization and electoral voting rules (recorded or secret, simple or super-majorities). *Regime* and *government* types pertain to whether single- or multi-parties dominate, simple, "party government" or coalition government prevails, etc.

<sup>3</sup> We assume that with each function come some corresponding authority and resources. Specific provisions of the revised Constitution could qualify this correlation. For more on functional reallocations, see Rev.11, Art. 10, Senate Joint Resolution No. 10, as cited in Brillantes et al. (2009, pp. 148-152).

<sup>4</sup> The only possible venue for interstate and intergovernmental cooperation is the provision for a federal equalization fund to be governed by a council with 13 state representatives and four federal government representatives. This is to be created with an initial Php100-billion appropriation by Congress, for allocation among qualified states, and autonomous or federal administrative regions, as aid for their basic government services (Brillantes et al., 2009, p.180). Nothing was said about the comparative-relative social and economic conditions of the different states as a qualification criterion, e.g., whether lagging ones would be favored.

<sup>5</sup> The 30% – 70% division would actually mean 21% for the 11 states and 49% for the LGUs. However, the new layer of states will still be the prime beneficiaries and the central government the biggest loser. As noted by my faculty colleague, Professor Jose P. Tabbada, 21% will be a very great additional expenditure for the new layer of state governments. Moreover, they will likely seek to augment their share at the expense of their local governments as well as that of the federal government.

<sup>6</sup> By "nation," the author refers to subnation-state groups or communities located within geographic regions (like the Basque in Spain and the Bangsamoro in the Philippines).

<sup>7</sup> On 27 October 2017, the Parliament of Catalonia declared independence from Spain amid a constitutional crisis over the Catalan independence referendum. In response, the Spanish Senate enforced Article 155 of the Spanish Constitution, granting the Spanish government power to suspend Catalanian independence. In the days that followed, most of the officials of the proposed Catalan state were deposed and charged with rebellion, sedition, and misuse of public funds. At the time of this writing, the Spanish government has temporarily taken direct control over Catalonia.



<sup>8</sup> Ambassador Hermenegildo Cruz, former Philippine envoy to Canada, the US, the USSR, and Chile, also makes this point. He recounts these countries' struggles and costs in making their federal systems work and keeping them intact: The US Civil War killed 630,000 of its 33 million people, and more recent conflicts in Nigeria-Biafra and Yugoslavia likewise cost human lives. "If our own federal experiment fails," he writes, "and we fight a civil war ... to preserve our nation, there will be two million casualties out of our present population of 106 million" (Cruz, 2016).

<sup>9</sup> Another comment by another former colleague, Jimmy Rañeses, was that, before the American colonial takeover, some Filipino leaders had contemplated a federal alternative for the Philippines. However, their idea did not surface in Hayden's account.

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### Annex 1. Division of “Exclusive” Federal and State Jurisdictions Proposed in the Pimentel Federalism Model

| <i>Federal Congress</i>  | <i>State Legislatures</i>   |
|--|---|
| 1. National security and defense   | 1. Public health, sanitation, hospitals, drug rehabilitation, other health facilities except those established by Congress  |
| 2. “The sole power to declare war...”  | 2. Agriculture, agricultural lands, except those under the Comprehensive Agrarian Reform Program, those previously proclaimed as reservations under existing laws   |
| 3. Foreign relations including treaty ratification                                   | 3. Land use and development, including urban land reform, except land previously proclaimed as reservations   |
| 4. “Foreign trade but states may enter into trade relations with other countries...” | 4. Cadastral or land surveys of any kind  |
| 5. Customs and quarantine  | 5. Taxes and duties—except those reserved to the Federal Congress—agricultural income, business of all types, electricity generation, consumption, and distribution, oil, gas and other energy products, entertainments and amusements.   |
| 6. “The federal currency, fiscal and monetary system, taxation, budget and audit”    | 6. Fisheries, aqua-or-marine culture, swamps or marshlands except areas within the 15-km from shore lines under LGU jurisdiction by existing law  |
| 7. Immigration, emigration, and extradition  | 7. Public works and infrastructures, airports, shop ports, wharves, levees, drainage systems and the like, except those initiated by the federal government; roads, bridges, municipal tramways, inland waterways, ferries, and other means of travel or transportation and vehicles that use the infrastructure built by any state within its boundaries.  |
| 8. Interstate commerce and trade   | 8. State public corporations and quasi-public corporations  |
| 9. Federal public works and infrastructure   | 9. Trade, industry, and tourism   |
| 10. Federal postal and telecommunications  | 10. “The trade relations that states may establish with other countries shall not include ... armaments ... of any type ... any war material, toxic, noxious or poisonous materials or resources ... declared non-commercial and may not be brought from or traded with other nations”  |
| 11. Federal air, sea and land transportation   | 11. Bankruptcy and insolvency   |
| 12. Intellectual property and copyright  | 12. Trust and trustees  |
| 13. Meteorology and standards of weights and measures                                | 13. Compelling the attendance of any state, LGU officials, or persons doing business in the state or testifying or producing documents for the state legislature or any of its committees. The person/s summoned cannot be prevented by any federal or state executive department officials “including the officers and members of the Armed Forces or the Police.” [See p. 178 on federal and state police.] |
| 14. Grants-in-aid to states  | 14. Payment of the state’s share of the national public debt used for national development  |
| 15. Federal census and statistics  | 15. “Courts for the governance of indigenous populations including those in the Cordilleras and the Bangsamoro State. State legislation on this matter shall take precedence over federal legislation”  |
| 16. (Federal) Loans to or from the Republic  |   |
| 17. Federal penal system   |   |
| 18. Cloning, genetic research and engineering  |   |
| 19. Settlement of territorial and other disputes among states, and                   |   |
| 20. Offenses defined in the Penal Code and other laws passed by Congress             |   |

Source: Senate Joint Resolution No. 10, as cited in Brillantes et al. (2009, pp. 131, 148-152)

**Annex 1, continued**

| <i>Federal Congress</i> | <i>State Legislatures</i>  |
|-------------------------|--|
|                         | <ol style="list-style-type: none"> <li>16. The salaries, emoluments, allowances, and the like of all officials and employees of the states</li> <li>17. Penalizing offenses against matters lodged in the state jurisdictions.</li> <li>18. Police with jurisdiction over crimes or offenses committed within the boundaries of the individual states.</li> <li>19. Total ban or regulation of gambling activities. Federal or state governments, "including members of the Armed Forces, their state officials or employees including members of the Police ... may not in any manner engage ... in any gambling activities"</li> <li>20. "Local prisons, reformatories, Borstal institutions and the like ..."</li> <li>21. Transfer from one state to another of persons under investigation. Accused of crimes, or convicted prisoners</li> <li>22. Wild animals, birds and other endangered species, state flora and fauna</li> <li>23. Mines, mineral resources, gas, gas-works except those within ancestral domains and those covered by acts of Congress</li> <li>24. Water, water supplies, irrigation and canals and water power arising from and used within the boundaries of a state</li> <li>25. Economic and social planning</li> <li>26. Social security and social insurance, employment and unemployment, pension plans, social welfare including relief and rehabilitation of internally displaced persons and places affected by natural or manmade calamities.</li> <li>27. Cooperatives, microfinances or micro-credit and money-lending activities</li> <li>28. Weights and measures</li> <li>29. Price control</li> <li>30. Labor and employment</li> <li>31. Science and technology</li> <li>32. Free education from pre-school up to secondary schools, and subsidized colleges and universities. The dominant language of the communities may be used as instruction medium from the first to the third grade.</li> <li>33. Libraries, museums and like institutions, ancient and historical monuments, and records other those covered by existing legislation</li> <li>34. Charities and charitable institutions</li> <li>35. Registration of marriages, births and deaths, certified true copies of which shall be furnished monthly to the National Statistics Office.</li> <li>36. Pilgrimages to places outside the Republic.</li> <li>37. "Totally prohibiting or regulating the production, manufacture, transport and sale of tobacco, cigarettes or other tobacco products, beer, wine or alcoholic beverages or intoxicating liquor including labels thereof."</li> <li>38. "The general welfare of the people of the states subject only to the prohibitions provided for under the constitution or by existing laws passed by Congress</li> </ol> |

Source: Senate Joint Resolution No. 10, as cited in Brillantes et al. (2009, pp. 131, 148-152)

## **Annex 2. “Rethinking Environmental Federalism” in the U.S.**

In the earlier postwar period, the US federal government enacted a number of landmark legislations on environmental protection while the states and local governments showed a capacity for initiative and innovation in this new policy area. However, the ideas of “constructive sharing of authority” close to the heart of federalism scholars eventually proved “difficult to translate into... actual policy, particularly in the area of environmental policy” (Rabe, 2013, p. 46).

According to Rabe (2013), three additional developments are likely to shape the future role of states in environmental policy. First, the states’ likely insufficient fiscal resources to maintain core environmental protection functions and to continue considering new initiatives; second, the dominance of Republicans in most states since 2010 and the departure of governors who had championed environmental policy innovations meant increased hostility toward and reduced state resources for environmental measures; and third, uncertainty about which state innovations would be scrapped by federal preemption in view of the many congressional proposals for new federal legislation on climate change, air quality, chemical regulation, and energy diversification.

Rabe (2013) notes, “a more discerning environmental federalism might... begin by concentrating federal regulatory energies on problems that are clearly national in character” (p. 53). For example, many air and water pollution problems are cross-boundary concerns, relative to indoor air quality and cleanup of abandoned hazardous waste dumps. Rabe also suggests federal fees on long-distance waste shipments and on greenhouse gas emissions, more federal-state partnerships, sharing of policy ideas and environmental data, and federal encouragement of greater interstate cooperation especially on common boundary problems.

Source: Rabe, B. G. (2013). Racing to the top, the bottom, or the middle of the pack? In N. J. Vig & M. E. Kraft (Eds.), *Environmental policy: New directions for the 21<sup>st</sup> century* (8<sup>th</sup> edition) (30-53). Los Angeles, California: Sage/CoPress.