

Rethinking Federalism In The Philippines

Abstract

The Philippines has been on a continuing decentralisation project since independence in 1946. The country's 1987 Constitution has a local autonomy prescription which sets the standard of "maximum decentralization, short of federalization". However, the present decentralisation system established by the Local Government Code (LGC) of 1991 has failed to meet this constitutional benchmark. Proposals to shift to a federal system remain a part of this ongoing decentralisation mission, but its perceived connection to constitutional change has effectively stymied the federalism advocacy because Filipinos do not support constitutional reform. Nevertheless, the goal to deepen decentralisation in the Philippines still stands. Hence, amending or replacing the LGC to reflect the constitutional standard of "maximum decentralization, short of federalization" must still be pursued. The rethinking of federalism as being part of a menu of decentralisation arrangements is an alternative approach to consider. Corollary to this, a deliberate resort to federalism studies can significantly assist legislative efforts to reach the "maximum decentralization" standard.

Introduction

The Philippines has been a unitary presidential nation-state since independence from American colonial rule on 4 July 1946. However, it has since been on a decentralisation path with only a devastating interruption of [autocratic rule](#) from 1971 to 1985 under Ferdinand Marcos.

The decentralisation project has always been driven by criticism over the concentration of political and administrative powers in the central government. The prevailing belief is that this centralised system of government has caused economic prosperity to be contained within the capital region and the peripheral areas. De-centralising government is thus seen as the means to correct this unequal distribution of economic gains in the country.

The decentralisation trajectory of the country resumed upon the restoration of constitutional democracy with the ousting of Marcos via direct citizen action in February 1986. The country's 1987 Constitution explicitly mandates the state to "ensure the autonomy of local governments" (Article II, Section 25) and dedicates an entire article (Article X) outlining how to do this. The Philippine constitution created a multi-level government structure with provinces, cities, municipalities, barangays and the two autonomous regions in Muslim Mindanao and the Cordillera as the subnational or local level of government (Article X, Section 1). Moreover, it mandated the legislature to enact "a local government code which shall provide for a more responsive and accountable local government structure instituted through a system of decentralization with effective mechanisms of recall, initiative, and referendum, allocate among the different local government units their powers, responsibilities, and resources, and provide for the qualifications, election, appointment and removal, term, salaries, powers and functions and duties of local officials, and all other matters relating to the organization and operation of the local units." (Section 3)

The [Local Government Code of 1991](#) (LGC) currently provides the legal framework for decentralisation in the Philippines. Two provisions of this statute speak to the purpose and scope of the decentralised system it established:

Section 2. (a) - It is hereby declared the policy of the State that the territorial and political subdivisions of the State shall enjoy genuine and meaningful local autonomy to enable them to attain their fullest development as self-reliant communities and make them more effective partners in the attainment of national goals. Toward this end, the State shall provide for a more responsive and accountable local government structure instituted through a system of decentralization whereby local government units shall be given more powers, authority, responsibilities, and resources. The process of decentralization shall proceed from the national government to the local government units.

Section 3. (m) - The national government shall ensure that decentralization contributes to the continuing improvement of the performance of local government units and the quality of community life.

According to the Supreme Court, under this decentralisation arrangement, the national government has not completely relinquished all its powers over local governments, and indeed only administrative powers over local affairs are delegated to political subdivisions ([Pimentel vs. Aguirre](#), G.R. No. 132988, July 19, 2000). The impact of the LGC has been the subject of volumes of studies. Some show that a number of provinces and cities, specifically those with [progressive and capable leaders](#), have benefited immensely from the LGC. But by and large, governance is still the domain of the central government, which really indicates that the constitutional prescription of local autonomy has not been completely fulfilled. Thus, decentralisation in the Philippines has so far been, "neither a notable success nor a disappointing failure" (Balisacan, et al, 2008).

Maximum Decentralisation

As previously mentioned, the 1987 Constitution guarantees the autonomy of local governments. According to the framers of the constitution, local autonomy in the text means "a kind of maximum decentralization, short of federalization" (Record of the Constitutional Commission, Volume 3, August 11, 1986, p178-179). This original understanding of local autonomy in the

national charter signifies that the country's decentralisation framework can approximate a federal setup. In fact, the broad framework outlined in Article X already features mechanisms traditionally associated with federal systems.

For instance, these provisions mandate the fiscal autonomy of local governments:

SECTION 5. Each local government unit shall have the power to create its own sources of revenues and to levy taxes, fees, and charges subject to such guidelines and limitations as the Congress may provide, consistent with the basic policy of local autonomy. Such taxes, fees, and charges shall accrue exclusively to the local governments.

SECTION 6. Local government units shall have a just share, as determined by law, in the national taxes which shall be automatically released to them.

SECTION 7. Local governments shall be entitled to an equitable share in the proceeds of the utilization and development of the national wealth within their respective areas, in the manner provided by law, including sharing the same with the inhabitants by way of direct benefits.

Whereas these provisions prescribe mechanisms to facilitate intergovernmental relations between the two levels of government as well as amongst local governments:

SECTION 13. Local government units may group themselves, consolidate or coordinate their efforts, services, and resources for purposes commonly beneficial to them in accordance with law.

SECTION 14. The President shall provide for regional development councils or other similar bodies composed of local government officials, regional heads of departments and other government offices, and representatives from non-governmental organizations within the regions for purposes of administrative decentralization to strengthen the autonomy of the units therein and to accelerate the economic and social growth and development of the units in the region.

These provisions in the 1987 Constitution give credence to the view that the Philippines is "federalized in all but name" (Tigno, 2017). Nevertheless, proposals to shift to a federal system remain a part of this continuing decentralisation project. It must be noted though that the federalism advocacy in the Philippines is not a monolithic reform movement. Most advocates are fuelled by dissatisfaction with the LGC to spur economic development beyond the capital region, while some are convinced a federal structure is the right fit for a highly diverse state like the Philippines. But what makes the federalism campaign exceptional is the fact that proponents have linked the reform effort to constitutional change. This has proven to be detrimental to the federalism cause itself because Filipinos are averse to constitutional reform.

The Philippine constitution has not been amended at all because any move toward this end has always been viewed as an underhanded scheme to extend the term of a sitting president. This national scepticism resulted directly from how Marcos manoeuvred the constitutional reform process in 1971 to make sure he stayed in office indefinitely. The country's [1973 Constitution](#) provided legal colour to his dictatorial regime.

This deep public mistrust is reflected in the results of two nationwide surveys conducted in 2018 by the two most respected polling firms in the Philippines. One was from [Pulse Asia Research](#) showing that 64 per cent of respondents are not in favour of amending the 1987 Constitution. The other was from [Social Weather Station](#) showing only 37 per cent of Filipinos support a radical revision of the charter to facilitate the shift to a federal system of government.

Clearly, unless public sentiment changes drastically, any federalism initiative riding on a proposal to amend the 1987 Constitution will not prosper. But deepening decentralisation in the Philippines need not be stalled by this impasse. The pursuit for "maximum decentralization, short of federalization" as envisioned by the framers of the constitution should still carry on because the existing legal autonomy framework does not meet this standard. Remarkably, a rethinking of federalism may move this reform endeavour forward with more success

Decentralization as a Spectrum and Federalism as a Toolkit

Advocates in the Philippines must reconsider their conceptualisation of federalism as a final and indivisible idea whose institutionalisation can only be realised in a new constitution. First of all, this rigid view is fundamentally inconsistent with

the original conception of local autonomy in the 1987 Constitution. As previously argued, the legal framework of decentralisation in the country can feature federal mechanisms.

More critically, federalism is not a fixed and finite concept in relation to statecraft, particularly in de-centralising government. Indeed, it is but one of four types of decentralisation arrangements which also includes delegation, devolution and regional autonomy. Saunders (2018) defines these arrangements as follows:

Delegation: Allocation of power by the centre to other levels of government in what remains essentially a unitary state, in which the centre retains authority to withdraw the delegated power or to direct its use. Typically, the power delegated is executive or administrative power, or minor law-making power.

Devolution: Conferral of legislative and executive (and sometimes judicial) power on other levels of government in a manner that gives them substantial autonomy, without the complete surrender of, formal control by the centre.

Regional autonomy: Conferral on one or more regions of a greater degree of self-governing authority than is conferred on other parts of the state.

Federation: Division of governing authority between the centre and one or more other orders of government in a way that gives each of them final autonomy in their own areas of responsibility.

Notably, these arrangements can be treated as units on a spectrum with delegation as the weakest and federation as the deepest autonomy regime. And each arrangement is not totally distinct, but they can actually shade into one another. As demonstrated above, the LGC is a blend of delegation and devolution. Moreover, the recently enacted and ratified [Bangsamoro Organic Law](#) which created the Bangsamoro Autonomous Region in Muslim Mindanao is an example of regional autonomy. Indeed, this conceptualisation of federalism as part of a navigable spectrum is more in sync with the framer's vision of "maximum decentralization, short of federalization".

It must be pointed out at this juncture that the constitutional parameters for the local government code prescribed by Section 3 actually allow for the creation of a decentralisation framework that can approximate a federal structure. In other words, the Philippines can navigate close to the federation end of the decentralisation arrangement spectrum by enacting a local autonomy law that features federal mechanisms. Again, a rethinking of federalism becomes utterly valuable here.

Decentralisation reform advocates, not just federalism proponents, in the Philippines should likewise retreat from looking at federalism as just a type of government system to contrast with the unitary system presently existing in the country. Federal theory is rich in scope and highly nuanced and can be an excellent resource to help the effort to deepen decentralisation in the Philippines.

For example, one of the criticisms to the response of the current government headed by President Rodrigo Duterte to the COVID-19 pandemic is the lack of coordination and cooperation between the central government and local governments. Hence, amending the LGC to institute a governance structure that is genuinely anchored on intergovernmental cooperation and collaboration would certainly be a reform initiative worth considering. As previously mentioned, smooth and productive intergovernmental relations is already a prescription in the 1987 Constitution.

The concept of Intergovernmental Relations or IGR is explained in academic literature as "the processes and institutions through which governments within a political system interact." (Phillimore, 2013) IGR mechanisms "seek the achievement of common goals through alignment and cohesion across all levels of government" (Vincent and Nzewi, 2018). IGR is traditionally associated with federal systems. IGR processes have been described as the "lifeblood of federalism in practice". But IGR mechanisms can and do play a key role in unitary systems as well, particularly those with embedded decentralisation arrangements.

Guidance from academic and empirical analysis of IGR is vital to institutionalising this federal mechanism in the Philippines now. A review of the relevant literature on this matter shows that to be effective, the IGR mechanism to be instituted must have these core elements. The first one is that there should be mutual respect between the different levels of government. There must be an unequivocal recognition of each side's authority and accountability. Second, there must be an ethos of interdependence. Each side must see the need to cooperate and collaborate to achieve the intended goal. Third, the IGR mechanism must be a platform for civic participation. Hence, there must be space for civil society organizations to engage in

the policy-making process as well as in the implementation phase of any development program.

This is just one example of how federalism studies can help deepen decentralisation in the Philippines. Obviously, the rich discourse on federal fiscal autonomy can also be influential in refining the allocation of powers, responsibilities and resources in the LGC. Needless to say, designing or reforming decentralised arrangements is a difficult and complex process. A whole array of issues needs to be addressed both by lawmakers who have political considerations to deal with and their legal and technical experts tasked to ensure the reforms or change are genuinely understood by the public. Nonetheless, a concerted resort to federal theory as a law reform toolkit could bring local autonomy in the Philippines closer to the “maximum decentralization” standard prescribed by the 1987 Constitution.

Conclusion

The Philippines has been on a continuing decentralisation project since independence in 1946. Pertinently, its current constitution has a local autonomy prescription which sets the standard of “maximum decentralization, short of federalization” for its Congress to meet. The present decentralisation legislation however has failed to meet this constitutional benchmark.

Proposals to shift to a federal system remain a part of this ongoing decentralisation mission. But its perceived connection to constitution change has effectively stymied the federalism advocacy because Filipinos do not support constitutional reform. While constitutional change continues to be a non-viable option for reforming the present local autonomy framework, amending or replacing the LGC to reflect the constitutional standard of “maximum decentralization, short of federalization” must still be pursued. And this can be facilitated by a rethinking of federalism as being part of a menu of decentralisation arrangements. That as such, federalism studies can significantly inform legislative efforts to deepen decentralisation in the Philippines.

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