



‘Implications of culture for constitution-making: The case of the Philippines’

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How did constitutional culture affect the processes chosen for constitution building? How were those choices made?

The 1987 *Constitution of the Philippines* is a product of the people power (EDSA) revolution of 1986 which ousted the authoritarian regime of President Marcos. In the post-EDSA era, the primary consideration of the administration of President Corazon Aquino was to restore democracy and to rebuild democratic institutions. This objective underpinned the process for making the 1987 *Constitution*.

Democratic values were at the core of the constitutional culture of the 1987 *Constitution*. The constitutional process was designed to foster the restoration of democratic rule. On 25 March 1986, President Aquino, in the exercise of revolutionary powers issued Proclamation No 3 which abrogated the 1973 *Constitution* of the Marcos period. Referred as the ‘freedom constitution’, Proclamation No 3 served as the interim constitution which abolished the unicameral legislature, the office of the Prime Minister, and the power of the President to legislate. It called for the adoption of the new Constitution:

ARTICLE V. ADOPTION OF A NEW CONSTITUTION

Section 1. Within sixty (60) days from date of this Proclamation, a Commission shall be appointed by the President to draft a New Constitution. The Commission shall be composed of not less than thirty (30) nor more than fifty (50) natural born citizens of the Philippines, of recognized probity, known for their independence, nationalism and patriotism. They shall be chosen by the President after consultation with various sectors of society.

Section 2. The Commission shall complete its work within as short a period as may be consistent with the need both to hasten the return of normal constitutional government and to draft a document truly reflective of the ideals and aspirations of the Filipino people.

Section 3. The Commission shall conduct public hearings to ensure that the people will have adequate participation in the formulation of the New Constitution.

Section 4. The plenary sessions of the Commission shall be public and fully recorded.

Section 5. The New Constitution shall be presented by the Commission to the President who shall fix the date for the holding of a plebiscite. It shall become valid and effective upon ratification by a majority of the votes cast in such plebiscite which shall be held within a period of sixty (60) days following its submission to the President.

There were observations, made then and now, that it is ironic that President Aquino, as a champion of democracy, opted to appoint the framers of the constitution, instead of constituting a duly elected body. President Aquino at the opening of the session of the appointed Constitutional Commission said:

You must define and protect our individual freedoms and rights; you must decide how our different institutions of state will relate to each other. Do not be distracted by political debates and matters of policy that do not belong within your constitution-making exercise. You are here appointed, by the people's wish, to write a constitution; you are not here as elected politicians.

The mandate of the Commission to design a 'democratic' and 'freedom and rights-based' constitution is unmistakable. The reference to members of the commission not being elected politicians but appointed by the people's wish, reflected the trajectory of the constitutional process, which sought to institutionalize the ends and means of the people power revolution. Indeed, most of those appointed to the Commission, while representative of various sectors, were known democrats who had fought against the authoritarian regime. The central role of the Catholic Church in Philippine society, and in particular in the people power revolution, was integral to the constitutional culture that underpinned the 1987 *Constitution*. Members of the Commission included a Catholic bishop, a priest-lawyer-constitutionalist, and a leader of the conservative Catholic movement Opus Dei.

The constitutional culture that emerged around anti-authoritarianism and the restoration of democracy appeared to have been embraced by Filipinos with 77% of the electorate ratifying the 1987 *Constitution* in the plebiscite.

Whether the western democratic values that were part of the constitutional culture of the Philippine constitution are ingrained in Filipino culture is an open question. While the Philippines is a democracy, politics and governance at all levels of government continue to be elite or centre-driven, personalistic and oligarchical. This has meant that the people power revolution was perceived, not by a few, as a battle between the Marcos and Aquino clans than a process for real reform.

The current initiative to amend the 1987 *Constitution* was initiated by President Duterte who was elected on a platform of law and order, and on the promise of shifting the country's political system from a unitary to federal system. In the first two years of his six-year term, President Duterte ruled as a strongman who publicly demonstrated his aversion to human rights and international norms and systems by waging a bloody war against illegal drugs. President Duterte continues to be popular as a leader who can instill discipline and order, even though this is at the expense of some democratic values. This raises questions about the commitment of Filipinos to democracy, human rights and the rule of law. President Duterte appointed a consultative commission to recommend changes to the 1987 *Constitution*. In response to the President's wishes, the Commission recommended a shift to a federal system and the redefinition of the concept of bill of rights from that of a limitation on the police powers of the state towards a more expansive concept that also secures the rights of state actors.

How did constitutional culture affect choices about the substantive changes to be made?

In dismantling the dictatorship and in restoring democratic institutions, the 1987 *Constitution* provided that civilian authority is at all times supreme over the military. It also provided that the Armed Forces of the Philippines is the protector of the people and the state. The *Constitution* substantially limits the President's power to exercise martial law, to cases of actual rebellion and invasion and for not more than 60 days unless Congress, which has review powers over martial law, decrees to extend it. The Supreme Court also has power to review the factual basis for the declaration of martial law. Even under martial law, courts and Congress remain operational.

The 1987 *Constitution* as a product of the people power revolution is reflected in the preamble, which recognises the Filipino people as sovereign the government as embodying the people's aspirations, and the ideal to promote the common good and to secure the blessings of independence and democracy. The influence of Christian religion is reflected in the words of the preamble which implore the aid of Almighty God and call for the establishment of a 'regime of love' in the Philippines. It is also reflected in the pro-life provision that life begins from the 'conception of the child'.

People power is institutionalised in the provision for a system of initiative and referendum, 'whereby the people can directly propose and enact laws or approve or reject any act or law or part thereof passed by the Congress or local legislative body after the registration of a petition therefor signed by at least ten *per centum* of the total number of registered voters, of which every legislative district must be represented by at least three *per centum* of the registered voters thereof'.

While democratic and pro-people principles and institutions are entrenched in the 1987 *Constitution*, the Filipino culture of deferring to a supreme leader in whom they repose their trust influenced the process and substance of the 1987 *Constitution*. Notwithstanding the rhetoric of democracy and people power, the 1987 *Constitution* retains the unitary-presidential system where actual power is exercised by the national government in Manila under a powerful President. The proposal for a parliamentary system for the Philippines in the Constitutional Commission was defeated on the grounds that the parliamentary system is arguably not in line with the Filipino culture, which values the direct election of the leader by the people.

The same argument against the parliamentary system also defeated the proposal to shift to a parliamentary system in the current initiative for constitutional change.

Where constitutional culture had implications for constitution building, what were the sources or origins of this culture? Was it simply assumed? Was it contested?

Western liberal democracy was entrenched in Philippine law as a result of American colonisation of the Philippines. The debate is whether or not this brand of democracy is in line with the Filipino culture. In any case, what really is Filipino identity and culture is highly contested given the various external influences in the evolution of the Filipino culture. Thus, while the Philippine *Constitution* articulates principles of liberal democracy, many constitutional practices and structures remain feudal and oligarchical.

The current initiative to change the *Constitution* attempts to bridge this gap by proposing a cooperative federal system around '*bayanihan*' or cooperative endeavour in Filipino culture. Powers of government guided by '*bayanihan*' are divided where, in the words of Justice Puno, the head of the Consultative Commission, 'both the federated regions and the federal government govern the people less in competition but more in cooperation with one another and aligned with the maxim that the welfare of the people is the Supreme Law'.

What advantages or disadvantages followed from accommodating or not accommodating existing constitutional culture?

It is advantageous to accommodate constitutional culture when identity and culture is clear and uncontested. It may be disadvantageous when culture is contested and highly influenced by external

factors. The extent to which national identity and culture are settled will determine the degree to which external influences clash, complement, or enrich constitutional culture.

What lessons might be learnt from these experiences by other states, embarking on a constitution building project?

1. Understand and acknowledge how constitutional culture is rooted in the nation's culture or cultures and in people's sense of identity or identities. Culture is evolving and is influenced by external factors that contribute to the shaping of cultures and identities. Constitutional culture may be shaped by political upheavals, as occurred in the Philippines. It is critical that the vision, structures and processes enshrined in the constitution embody the aspirations of citizens.
2. Openness to accommodate various narratives, identities and cultures in the constitution. Structures and processes in the constitution must reflect this diversity. Legal pluralism may be explored in cases where identities and cultures are contested.
3. While the crafting of a constitution is an elite process, the participation of the people, not only in ratifying it but in shaping the final draft, is critical. Real consultation, and not just advocacy, must be a part of the process.

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