

LEGAL TRANSFERS AS COLONIZATION: INITIAL THOUGHTS ON DECOLONIALITY AND THE CONSTITUTION*

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I. MANGYANS AND MADONNA

I first encountered indigenous peoples in the summer of 1988. As part of the College of Law’s Paralegal Volunteers’ Organization, we set out to meet the Hanunóo Mangyans of Mindoro. Most of the day was spent travelling to their reservation; we arrived late in the evening. Our hosts were gathered around a bonfire, evoking stereotypic images—fed by movies of my childhood—of Indians dancing in rituals. As we approached the gathering and drew closer to the Mangyans, however, the music from the event began to sound familiar. I realized they were dancing to Madonna’s “Papa Don’t Preach.”¹

Witnessing Mangyans dancing to Madonna was a stark illustration of how indigenous peoples are straddling two spaces or identities. They adapt to new cultural influences even as they preserve their own. The struggle to preserve their identities created a divide between indigenous and assimilated Filipinos. This divide led to the alienation of indigenous peoples and has received extensive treatment so I will not dwell on it here.² I will focus on another divide which caught my attention, one that became evident in 2016 when Filipinos elected Rodrigo Duterte President of the Philippines.

In 2016, President Rodrigo Duterte fulfilled a campaign promise to crack down on the illegal drug trade. Thousands of deaths have been reported

* Cite as Dante Gatmaytan, *Legal Transfers as Colonization: Initial Thoughts on Decoloniality and the Constitution*, 93 PHIL. L.J. 276, [page cited] (2020). Opening remarks delivered at Law and Liminality: A Roundtable Discussion on Decolonizing Law, sponsored by the UP Center for Integrated Development Studies’ Decolonial Studies Program, held at the ILC Diliman Conference Room, Sept. 6, 2019

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¹ MADONNA, *Papa Don’t Preach* on TRUE BLUE (Sire Records 1986).

² See Hanayo Hirai, *Indigenous Communities in the Philippines: A Situation Analysis* (2015), available at <https://www.scribd.com/document/402813868/HanayoIndigenousCommunityYuchengcoCenter2015-pdf>

as a result of this “war on drugs” without observing the tenets of due process.³ Yet the President and his war continues to enjoy public support.⁴ I find the idea of Duterte and his war on drugs antithetical to constitutionalism, and yet he enjoys support from all but the poorest sectors of society. I coined the phrase “constitutional deconsecration”⁵ to explain this phenomenon wherein I argued that a colony cannot understand liberal constitutionalism in the same manner as its colonizer. As a consequence, Filipinos can applaud blatant human rights violations of or disrespect for constitutional values, because these were not learned, but imposed values.⁶

I make an argument that straddling two worlds is a nationwide phenomenon affecting the entire population. It is not only those who struggle to maintain indigenous ways of life who adopt Western culture; it is also true for those of us who are assimilated and act as though we have been converted to Western ideals.

We do not see ourselves as liminal people. We think of ourselves as transformed, or we accept the hybrid version of ourselves our colonizers

³ According to the Philippine Drug Enforcement Agency, 4,948 suspected drug users and dealers died during police operations from July 1, 2016 to Sept. 30, 2018. But this does not include the thousands of others killed by unidentified gunmen. According to the Philippine National Police, 22,983 such deaths since the “war on drugs” began are classified as “homicides under investigation.” Human Rights Watch, *World Report 2019*, HUMAN RIGHTS WATCH WEBSITE, at <https://www.hrw.org/world-report/2019/country-chapters/philippines#1ff4dc>. Within three years of Duterte’s election, thousands of people are said to have violently lost their lives. Duterte’s government systematically tries to silence anybody who criticizes it. In the process, important successes in democratization and the establishment of constitutionality that had been painstakingly achieved by the Philippines after the end of the Marcos dictatorship have been wiped out at a rapid pace. “All of this happened with the open, or at least tacit, support of the majority of the Philippine population.” Aktionsbündnis Menschenrechte–Philippinen, Human Rights in the Philippines Under Duterte, at 7 (2019) at https://www.asienhaus.de/archiv/china/user_upload/amp_Bericht_englisch_2019_E.pdf

⁴ Regine Cabato, *Thousands dead. Police accused of criminal acts. Yet Duterte’s drug war is wildly popular*, WASHINGTON POST, Oct. 23, 2019, available at https://www.washingtonpost.com/world/asia_pacific/thousands-dead-police-accused-of-criminal-acts-yet-dutertes-drug-war-is-wildly-popular/2019/10/23/4fdb542a-f494-11e9-b2d2-1f37c9d82dbb_story.html

⁵ Dante Gatmaytan, *Constitutional Deconsecration: Enforcing an Imposed Constitution in Duterte’s Philippines*, 62 ATENEO L.J. 311-356 (2017).

⁶ My argument is that the formal introduction of these concepts was dissimilar to U.S. experience, not that we do not share these values. It is possible that we articulate the same values in different ways.

created. We straddle two worlds as well: one rooted in reliance on a strong leader⁷ and a western system that tempers this power.

Despite the Philippines' professed commitment to democracy, the country's powerful presidency and the familiar populist expedient of manufactured "crises" are driving a gradual constitutional retrogression through legal means such as impeachment and far-reaching constitutional revisions. The Duterte administration's trajectory is directed at electoral authoritarianism.⁸

The Philippines' rule of law ranking has been dropping since Duterte became president. In the recently released World Justice Project Rule of Law Index 2020, the Philippines ranked 91st out of 128 countries in the overall score for "rule of law," a steady decline in ranking since 2015, when it ranked No. 51.⁹ While the country's ranking declines, Filipinos continue to applaud the President's violent drug war. These are two different worlds yet Filipinos seem oblivious to its own liminality today, perhaps because we think ourselves completely molded into our colonizers' image.

II. LEGAL TRANSFERS

Most global legal developments come from legal transplants because the majority of changes in legal systems are the result of borrowing. The quality of legal rules is of little significance to the success of a transplant as the rules are not peculiarly designed for particular societies. Rather, the act of transplanting the rule is what really matters.¹⁰

There is no standard measurement to assess the success of transplants, but the motivation behind the transplant determines its success to a great extent. The adoption of any legal rule must have certain purposes. Transplantation is successful if it actually fulfills its intended purposes in the host jurisdiction. Legal practitioners should help elucidate the considerations

⁷ See Julio C. Teehankee & Mark R. Thompson, *Electing a Strongman*, 27 J. DEMOCRACY 125-134 (2016) (suggesting that Filipinos may be willing to give up democratic principles because they are ineffective).

⁸ Björn Dressel & Cristina Regina Bonoan, *Southeast Asia's Troubling Elections: Duterte Versus the Rule of Law*, 30 J. DEMOCRACY 134-148 (2019).

⁹ Lian Buan, *PH rule of law ranking under Duterte continues to plummet*, RAPPLER, Mar. 13, 2020, at <https://www.rappler.com/nation/254428-philippines-ranking-rule-of-law-world-justice-project-2020>

¹⁰ Ahmad A. Alshorbagy, *On the Failure of a Legal Transplant: The Case of Egyptian Takeover Law*, 22 IND. INT'L & COMP. L. REV. 237 (2012).

that should prevail among the competing interests to determine the main purposes of the transplanted rules. Other factors contribute to the success of a legal transplant, the most important of which is the legal environment where the rule is transplanted. In particular, the success of transplantation depends on its compatibility with the receiving country's preexisting legal and institutional infrastructure.¹¹

Legal transfers have failed, despite having benign intentions, mostly because they fail to consider perceptions of the recipient state's stakeholders.

Popular support for the President and his war on drugs may be a function of the failure to transmit the constitutional values we assume are embedded not only in our institutions, but inscribed onto the souls of every Filipino. These are simply not true. Duterte's support from Congress and the Supreme Court¹² shows that we do not understand the concept of checks and balances the way it is understood by our colonizer. Because legal transfers are failures, the subjects of colonization also find themselves a liminal people.

This experiment continues today in attempts at legal reform including "rule of law" projects for failed states. Success of legal transfers must refer in some way to changing legal behavior in the recipient country. Otherwise, there is no transplant, only an indigenous law with foreign provisions or an institution with a foreign name. Furthermore, legal imports may appear useful for one social group but useless for another. By challenging established patterns of behavior, imported laws have the capacity to create winners and losers. Thus, "[f]or Western foreign investors in developing East Asia, rights-based legal transfers may appear authentic and useful, but for domestic entrepreneurs the same laws may seem inauthentic and imposed."¹³

Rule of Law reformers now acknowledge it is not about institutions but "about the relationship between the state and society...[p]ower and culture, not laws and institutions."¹⁴ "Borrowing ideas from other legal

¹¹ *Id.* at 240.

¹² Dante Gatmaytan, *Duterte, Judicial Deference, and Democratic Decay in the Philippines*, 28 (4) ZEITSCHRIFT FÜR POLITIKWISSENSCHAFT 553-563 (2018).

¹³ John Gillespie, *Towards a Discursive Analysis of Legal Transfers into Developing East Asia*, 40 N.Y.U. J. INT'L L. & POL. 657, 688 (2008).

¹⁴ David Pimentel, *Rule of Law Reform in Transnational States: Bringing Method to the Madness – A Review of Advancing the Rule of Law Abroad: Next Generation Reform* by Rachel Kleinfeld, 13 SANTA CLARA J. INT'L L. 467, 475-476 (2015). There are many suggestions on how to tweak aid efforts to ensure success in transmitting the rule of law which are beyond the scope of this paper. See e.g., Jane Stromseth, *Post-conflict Rule of Law Building: The Need for a Multi-Layered*,

systems can be effective, but those ideas have to be tailored to the local system, adapted to it, and adopted by it: they cannot be simply incorporated wholesale.”¹⁵

It is possible for a system of law to be well-adapted by its country of origin, but not adapted to places where it is transplanted. Law becomes dictatorial when transplanted to poorer countries. Legal systems that might give substantial power to governments may work well in countries where there are powerful institutions protecting against corruption and government exploitation, but may be subverted in countries without such protections.¹⁶

The underdeveloped institutions of the Philippines,¹⁷ I argue, cannot contain the powers of the Executive. The other branches of government align with the Executive to support the President instead of existing in a system of consistent tension, where each branch not only defends its own prerogatives, but also guards against the expansion of powers from the other branches of government.

III. DISCUSSION

A dominant narrative of globalization claiming the modern constitutional style—although always geared towards and entangled in a specific local and historical context—has proliferated worldwide, with liberal constitutionalism as a model.¹⁸ This view has been criticized by those who claim that mainstream comparativists pursued an “overwhelmingly western, unitary project by confirming their belief in a cross-culturally coherent body of constitutional law, downplaying differences, claiming there is a significant

Synergistic Approach, 49 WM. & MARY L. REV. 1443, 1447-1454 (2008); David M. Mednicoff, *Can Legalism be Exported? U.S. Rule of Law Work in Arab Societies and Authoritarian Politics*, 11 ILSA J. INT'L & COMP. L. 343 (2005) (outlining possible changes for more successful attempts in introducing reforms in Arab States); and Ronald J. Daniels & Michael Trebilcock, *The Political Economy of Rule of Law Reform in Developing Countries*, 26 MICH. J. INT'L L. 99, 128-133 (2004) (discussing among others, the need to devise creative measures that will mitigate the resistance of vested interest groups against rule of law reform).

¹⁵ Nadia E. Nedzel, *The Rule of Law: Its History and Meaning in Common Law, Civil Law, and Latin American Judicial Systems*, 10 RICH. J. GLOBAL L. & BUS. 57, 93 (2010).

¹⁶ Paul H. Rubin, *Legal Systems as Frameworks for Market Exchanges*, in HANDBOOK OF NEW INSTITUTIONAL ECONOMICS, 205, 223 (Claude Menard & Mary M. Shirley eds., 2005).

¹⁷ Dante Gatmaytan, *Tradition, Contestation, and Democratization: Law and the Challenge of Philippine “Folk Democracy,”* 76(1) PHIL. L.J. 77-121 (2001).

¹⁸ Günter Frankenberg, *Constitutions as Commodities: Notes on a Theory of Transfer, in ORDER FROM TRANSFER: COMPARATIVE CONSTITUTIONAL DESIGN AND LEGAL CULTURE* 1, 2 (Günter Frankenberg ed., 2013).

degree of congruence between social problems and their constitutional solutions.”¹⁹ They argue the areas of agreement and overlap and outweigh significant contextual and functional varieties.²⁰ Comparativists look for “common cores” and assume the transplant of constitutional items has happened, is possible, and does not create significant theoretical or practical problems.²¹ Experience shows otherwise.

As colonizers departed, they left their colonies with constitutions based on their own legal systems, with the assumption that the colonies aspired to Western legal systems.²² However, former colonies have less than perfect experiences with their new constitutions. In the case of Malaysia, for example, there is now a disagreement on whether Islam was intended to be a state religion.²³ The tension comes from the view held by many Muslims that secularism is the anti-thesis of Islam because the latter is a complete way of life into which religion is integrated.²⁴

The drafting of Thailand’s 1997 Constitution featured the inclusion of activists, academics, and marginalized groups, and they produced a “People’s Constitution” that contained a Bill of Rights, provisions that mandate public participation in matters that affect the community and the environment, and independent courts, among others. Observers praised the 1997 Constitution as a framework that would finally root democracy in Thailand.²⁵ More than a decade later, this prognosis seemed unattainable after the country elected a corrupt autocrat and experienced another military coup in 2006, making the rule of law more tenuous.²⁶

We can say the same for the Philippines. In 1986, a Commission drafted a constitution that empowered the judiciary, strengthened the Bill of

¹⁹ *Id.*

²⁰ *Id.* at 3.

²¹ *Id.* Even in the post-war regime that replaced the age of empires, the American-led order had two international components. The first was a commitment to spreading market-based capitalist democracy and its correlate, liberal constitutionalism, through American bilateral and multilateral foreign policy. See Ash Bâli & Aziz Rana, *Constitutionalism and the American Imperial Imagination*, 85 U. CHI. L. REV. 257, 258 (2018).

²² Elsa Satkunasingam, *Discordant Voices on the Status of Islam under the Malaysian Constitution*, in LAW AND DEVELOPMENT AND THE GLOBAL DISCOURSE OF LEGAL TRANSFERS 333 (John Gillespie & Pip Nicholson eds., 2012).

²³ *Id.* at 354.

²⁴ *Id.* at 355.

²⁵ Frank Munger, *Constructing Law from Development: Cause Lawyers, Generational Narratives, and the Rule of Law in Thailand*, in LAW AND DEVELOPMENT AND THE GLOBAL DISCOURSE OF LEGAL TRANSFERS 237-238 (John Gillespie & Pip Nicholson eds., 2012).

²⁶ *Id.* at 238.

Rights, and generally guarded against the concentration of power in one person. Yet in 2016, Filipinos opted for a candidate who showed no respect for the Constitution, the Rule of Law, or human rights.

Duterte has complained about the restraints of the Constitution. On one occasion, he said, “[I]f I use the contemporary rules, [the] Constitution, I really can’t do it. Because you want to kill them all [but] you will not have enough time.”²⁷ Consistently with this theme, he has been quoted as saying, “I don’t give a shit about human rights.”

Duterte has demonstrated other shocking qualities not expected from a Chief Executive. For example, he demonstrates misogynistic attitudes,²⁸ or capitulates to Chinese interests by allowing the Chinese to work in the Philippines,²⁹ or defends China’s exercise of sovereignty over the West Philippine Sea.³⁰ He also openly supports the Marcos family,³¹ and called God “stupid.”³² Duterte praised Hitler, insulted the Pope, joked about rape, and bragged about personally killing people.³³

Despite the litany of offensive statements, public support for Duterte has scarcely changed, despite the largely Roman Catholic and western-trained composition of the Filipino polity.

²⁷ Janvic Mateo & Christina Mendez, *Duterte: So many to kill, so little time*, PHIL. STAR, Nov. 12, 2016, available at <http://www.philstar.com/headlines/2016/11/12/1642968/duterte-so-many-kill-so-little-time>

²⁸ See e.g. Jason Gutierrez, *Philippine president says he sexually abused housemaid as a teenager*, NEW YORK TIMES, Dec. 31, 2018, available at <https://www.nytimes.com/2018/12/31/world/asia/philippines-rodrigo-duterte-sexual-abuse.html>, and Emily Rauhala, *Rodrigo Duterte tells soldiers to shoot female rebels in the vagina*, THE INDEPENDENT (U.K.), Feb. 12, 2018, available at <https://www.independent.co.uk/news/world/asia/rodrigo-duterte-soldiers-shoot-female-rebels-vagina-philippines-drugs-war-a8206501.html>

²⁹ *Duterte: Let the Chinese work here*, CNN PHIL., Feb. 23, 2019, at <https://cnnphilippines.com/news/2019/02/23/duterte-china-workers-immigration.html>

³⁰ Nestor Corrales, *Duterte: China can fish in Philippines’ EEZ*, PHIL. DAILY INQUIRER, June 26, 2019, available at <https://globalnation.inquirer.net/177040/duterte-china-can-fish-in-philippines-eez>

³¹ Darryl John Esguerra, *Duterte asks public to ‘find another Marcos,’* PHIL. DAILY INQUIRER, June 17, 2019, available at <https://newsinfo.inquirer.net/1131265/duterte-asks-public-to-find-another-marcos#ixzz6C9SfTZLi>. He made the call as he admitted that he cannot fight corruption solely on the powers vested in him by the Constitution.

³² *Philippine President calls God, ‘stupid,’* BBC NEWS (U.K.), June 26, 2018, at <https://www.bbc.com/news/world-asia-44610872>

³³ Jesse Chase-Lubitz, *Duterte’s war on terror also looks like a war on civilians*, FOREIGN POLICY (U.S.A.), June 9, 2017, available at <https://foreignpolicy.com/2017/06/09/dutertes-war-on-terror-also-looks-like-a-war-on-civilians>

IV. THE PHILIPPINE CASE³⁴

In 1934, American colonizers required the Philippines to adopt an American-type Constitution. Under the Tydings-McDuffie Act,³⁵ the Philippines would attain independence after a 10-year commonwealth status. A Constitutional Convention was elected under the terms of the Act,³⁶ which sat from early October until the latter part of February, when it adopted a draft submitted to President Roosevelt for his approval. A preliminary draft was prepared by a sub-committee of nine between October 9 and 20, and was ultimately adopted by the Convention without substantial change. Its contents were derived, both in substance and in form, principally from the federal and state constitutions of the United States.³⁷

Once the Constitution was signed by President Roosevelt, the statutory steps to nationhood followed. Filipinos ratified the Constitution in a national plebiscite, elections were held, and on November 15, 1935, the Commonwealth of the Philippines was inaugurated with Manuel Quezon as the elected President.³⁸

The votes cast in favor of the adoption of the Constitution were 1,213,934 (96.6%); 42,690 (3.4%) votes were cast against it.³⁹ The number of votes cast in the plebiscite is telling; it is less than 50% of those who were

³⁴ This section draws heavily from Dante Gatmaytan, *Constitutional Change as Suspect Projects: The Philippines*, 14(1) J. COMP. L. 139-156 (2019).

³⁵ Tydings-McDuffie Act, Pub. L. No. 73-127, 48 Stat. 456 (1934).

³⁶ § 1. "The Philippine Legislature is hereby authorized to provide for the election of delegates to a constitutional convention, which shall meet in the hall of the house of representatives in the capital of the Philippine Islands, at such time as the Philippine Legislature may fix, but not later than October 1, 1934, to formulate and draft a constitution for the government of the Commonwealth of the Philippine Islands, subject to the conditions and qualifications prescribed in this Act, which shall exercise jurisdiction over all the territory ceded to the United States by the treaty of peace concluded between the United States and Spain on the 10th day of December 1898, the boundaries of which are set forth in article, III of said treaty, together with those islands embraced in the treaty between Spain and the United States concluded at Washington on the 7th day of November 1900. The Philippine Legislature shall provide for the necessary expenses of such convention."

³⁷ § 3. The constitutional convention was required to submit the draft constitution to the President of the United States, who will determine whether it conforms with the limitations of the Tydings-McDuffie Act. If the President finds that the constitution does not conform with the provisions of the Act, he shall so advise the Governor General of the Philippine Islands and submit provisions which in his judgment would address his concerns. The Governor General would submit such message to the constitutional convention for further action until the President and the constitutional convention are in agreement.

³⁸ Gerald E. Wheeler, *The Movement to Reverse Philippine Independence*, 33(2) PAC. HIST. REV. 167, 168 (1964).

³⁹ Conrado Benitez, *The New Philippine Constitution*, 8 PAC. AFFAIRS 428-432 (1935).

qualified to vote and suggests that the political exercise did not capture the interest or imagination of the voters.⁴⁰

The drafting and adoption of the 1935 Constitution was hastily done. The Convention began in July 1934 and had a final draft by February 1935.⁴¹ There was also a low voter turnout, which makes one wonder how aware or involved the voters were regarding this matter. Moreover, the “Constitution of the Philippines” drew its authority from the American Republic, not the Filipino people acting as agents in the exercise of their sovereign prerogatives.⁴² The Convention was kept within the framework of the terms of the Tydings-McDuffie Law, bound by the wishes of the American people and government.⁴³

The drafting of the Constitution was done quickly—in a matter of months—and it introduced a legal system that was completely different from Spain’s civil law system that was operating in the Philippines for three and a half centuries.

Perhaps the reason why Philippine society does not seem concerned about straying from the constitutional path is because we never really set foot on that path in the first place. Our version of separation of powers differs from the U.S. model. The Philippine President exercises powers with weak restraints, and virtually has no equal in terms of aggregate executive power. The 1987 Constitution placed restraints in the exercise of emergency powers and provided for a single 6-year term, but the Office has remained strong.⁴⁴

⁴⁰ J. S. Reeves, *The Constitution of the Philippines*, 29(3) AM. J. INT’L L. 476 (1935).

⁴¹ On July 10, 1934, 202 delegates were elected by the qualified voters to become part of the Constitutional Convention. The Convention opened on July 30 and Senator Claro M. Recto was elected as President. It proceeded with organization of committees and the general discussion of constitutional trends and problems. On Oct. 9, a special committee of seven was appointed to draft a Constitution. The final draft was submitted on Oct. 20. On Jan. 31, 1935, the Convention approved the draft as amended in open sessions; a special committee on style completed the revision, and on Feb. 8 the Convention approved the final draft, which was signed by the members on Feb. 19. *See id.*

⁴² Emmanuel Pelaez, *Law Reform and the Rule of Law*, 1 PHIL. INT’L L.J. 441, 444 (1962).

⁴³ *Id.*

⁴⁴ Mark R. Thompson, *The Presidency: A Relational Approach*, in ROUTLEDGE HANDBOOK OF THE CONTEMPORARY PHILIPPINES 118, 119 (Mark R. Thompson & Eric Vincent C. Batalla eds., 2018).

Congress, despite the constitutional grant of vast oversight powers, is “less interested in oversight than patronage.”⁴⁵ Members of Congress were primarily interested in “accommodation with the president, the chief dispenser of what is locally termed pork.”⁴⁶ The importance of patronage “subordinates Congress to the presidency.”⁴⁷

The judiciary, lacking financial resources, relies on the executive and legislative branches, international agencies, and the private sector “to augment and expand its personnel, infrastructure, and programs,” thereby weakening its autonomy and independence from the other branches of government.⁴⁸

This failure has repeated itself time and time again. The United States has invaded and occupied many countries over the past two centuries. Yet, relatively few of these countries resemble miniature Americas in terms of economic and political institutions.⁴⁹

Why is the transmission of constitutional norms difficult? National legal systems have certain “layered narratives” which tell the stories of constitutional as well as legal practice. More than a simple law, constitutions have a symbolic function which is harder to transfer than a legal principle. Attempts at constitutional transfer run the risk of transferring only words.⁵⁰ The receiving system evaluates and processes information and selects one possible way of understanding these.⁵¹ Constitutions work to provide political stability if they reflect the enculturated notions of those they govern, but not otherwise.⁵² The crisis conditions that often lead to constitution-making are incompatible with the kind of deliberation necessary for the creation of a constitution consistent with the needs of its polity to be successful.⁵³ While

⁴⁵ Diana J. Mendoza & Mark R. Thompson, *Congress: Separate but Not Equal*, in ROUTLEDGE HANDBOOK OF THE CONTEMPORARY PHILIPPINES 107 (Mark R. Thompson & Eric Vincent C. Batalla eds., 2018).

⁴⁶ *Id.*

⁴⁷ *Id.* at 116.

⁴⁸ Eric Vincent C. Batalla, et al., *The Judiciary Under Threat*, in ROUTLEDGE HANDBOOK OF THE CONTEMPORARY PHILIPPINES 130, 141 (Mark R. Thompson & Eric Vincent C. Batalla eds., 2018).

⁴⁹ NIALL FERGUSON, *COLOSSUS: THE RISE AND FALL OF THE AMERICAN EMPIRE* 287 (2005).

⁵⁰ Margrit Seckelmann, *Clotted History and Chemical Reactions—on the Possibility of Constitutional Transfer*, in *ORDER FROM TRANSFER: COMPARATIVE CONSTITUTIONAL DESIGN AND LEGAL CULTURE* 36, 52-53 (Günter Frankenberg ed., 2013).

⁵¹ *Id.* at 53.

⁵² Paul D. Carrington, *Writing Other Peoples' Constitutions*, 33 N.C. J. INT'L L. & COM. REG. 167, 169 (2007).

⁵³ Vicki C. Jackson, *What's in a Name?: Reflections on Timing, Naming, and Constitution-Making*, 49 WM. & MARY L. REV. 1249 (2008).

post-conflict situations trigger constitution-writing, it is unlikely that the process can produce a durable constitution.⁵⁴

Other factors informed constitution-writing in the Philippines, which might explain the differences in the way we view these Western values.

Constitution-writing in the Philippines was mired in the tension between democratic ideals and the coercive nature of colonization.⁵⁵ In colonial situations, it is argued that colonial policy was formally inclusive in that it invited participation in colonial state-building, where the colonizer recognizes the subjects' capacities for discipline, political rationality, and self-government. This was qualified by creating two kinds of subjects: the backward masses and an exploitative elite. Both would be transformed over time through "calibrating colonialism in which Filipinos would be progressively granted power in the state as Americans recognized their developing 'capacity' for self-government."⁵⁶

Unfortunately, the nation-building process was co-opted by caciques,⁵⁷ showing the history of nation-building yields to the surrounding context. In the Philippines, American administrators conceded to the elites they intended to replace and deferred to the societies they meant to transform.⁵⁸

Generally ignored in colonization scholarship, some strands have focused on the role of "culture" in colonialism.⁵⁹ Culture was used to define subordinated peoples, places, and spaces. These categories were more than justifications for intervention; they enabled colonizers to name and identify what it was they were penetrating.⁶⁰ Other studies showed how colonizers

⁵⁴ *Id.*

⁵⁵ Anna Leah Fidelis T. Castaneda, *Spanish Structure, American Theory: The Legal Foundations of a Tropical New Deal in the Philippine Islands, 1898-1935*, in COLONIAL CRUCIBLE: EMPIRE IN THE MAKING OF THE MODERN AMERICAN STATE 365-366 (Alfred W. McCoy & Francisco A. Scarano eds., 2010).

⁵⁶ Paul A. Kramer, *Race, Empire, and Transnational History*, in COLONIAL CRUCIBLE: EMPIRE IN THE MAKING OF THE MODERN AMERICAN STATE 205-206 (Alfred W. McCoy & Francisco A. Scarano eds., 2010).

⁵⁷ Jason Brownlee, Review, *Can America Nation-Build?*, 59 WORLD POLITICS 314, 321(2007).

⁵⁸ *Id.* at 336.

⁵⁹ JULIAN GO, AMERICAN EMPIRE AND THE POLITICS OF MEANING: ELITE POLITICAL CULTURES IN THE PHILIPPINES AND PUERTO RICO DURING U.S. COLONIALISM 4-5 (2008).

⁶⁰ *Id.* at 5.

control, manage, or transform local cultural systems.⁶¹ Under tutelary colonialism, American officials employed signs to win hearts and minds while striving to manage, manipulate, and marginalize meanings they did not prefer. The elite domesticated these signs to reproduce their pre-existing cultural system.⁶²

This fusion of colonization and culture has created what various authors unflatteringly refer to as an “elite democracy,” a “cacique democracy,” a “weak state,” an “oligarchic democracy,” a “low intensity democracy,” a “patrimonial oligarchic state,” and a “clientelist electoral regime” in the Philippines.⁶³ These descriptions point to a diminished subtype of democracy—a “defective democracy.”⁶⁴

So while it seemed that American colonizers successfully propagated belief in a government of laws which operated impartially to administer justice, “ancient beliefs in the primacy of family over the larger community still survived, corruption was widespread and a universalistic facade concealed a jungle of particularistic interests.”⁶⁵

V. DECOLONIALITY

In a process sometimes called “decolonizing” the curriculum, neglected perspectives are incorporated in order to ensure that students have a full view of history’s actors who represent the voices of all of those whose existence has shaped and formed the world, while at the same time providing an essential means of protection against fascist myths.⁶⁶ This process of “decolonizing universities” is not about completely eliminating white men from the curriculum. It is about challenging long-standing biases and omissions which limit how we understand politics and society. Advocates of decolonization want to interrogate its assumptions and broaden our intellectual vision to include a wider range of perspectives. While decolonizing

⁶¹ *Id.*

⁶² *Id.* at 273.

⁶³ NATHAN GILBERT QUIMPO, *CONTESTED DEMOCRACY AND THE LEFT IN THE PHILIPPINES AFTER MARCOS* 21-22 (2012).

⁶⁴ Julio C. Teehankee & Cleo Ann A. Calimbahin, *Mapping the Philippines’ Defective Democracy*, 47 *ASIAN AFFAIRS: AN AM. REV.* 97 (2020).

⁶⁵ Chester L. Hunt, *Philippine Values and Martial Law*, 11 *J. SE. ASIAN STUD.* 110, 112 (1980).

⁶⁶ JASON STANLEY, *HOW FASCISM WORKS: THE POLITICS OF US AND THEM* 47-48 (2018).

the curriculum can mean different things, it includes a fundamental reconsideration of who is teaching, what the subject matter is, and how it is being taught.⁶⁷

Decoloniality undoes, disobeys, and delinks from this matrix, constructing paths and praxis toward alternative ways of thinking, sensing, believing, doing, and living. Modernity and coloniality are intimately, intricately, explicitly, and complicity entwined. The end of modernity would imply the end of coloniality, and therefore, decoloniality would no longer be an issue.⁶⁸ Challenging the universal project of colonial and capitalist modernity has been a long-term aspiration of intellectuals and activists, and an ongoing motivation for the everyday struggles of many indigenous and Afro-descendent peoples in the world.⁶⁹

Social movements are absent from the constitutional literature because social movements call into question assumptions that constitutionalism is inherently institutional, Western in origin, and normatively positive.⁷⁰ While such assumptions are emblematic of liberal constitutional theory, the extent to which they inform sociologically-grounded accounts of the relation between globalization and constitutionalism is indicated by the difficulties encountered by the latter in accommodating a social movement perspective. The tension between adhering to these assumptions and seeking to rework constitutional theory to remain relevant in the global age means the issue of social movements can no longer be avoided.⁷¹

⁶⁷ James Muldoon, *Academics: it's time to get behind decolonising the curriculum*, THE GUARDIAN, Mar. 20, 2019, available at <https://www.theguardian.com/education/2019/mar/20/academics-its-time-to-get-behind-decolonising-the-curriculum>

⁶⁸ WALTER D. MIGNOLO & CATHERINE E. WALSH, ON DECOLONIALITY: CONCEPTS, ANALYTICS, PRAXIS 4 (2018). Decoloniality does not mean a rejection or negation of Western thought. Western thought is part of the pluriversal. Western thought and Western civilization permeates many legal systems but this does not mean a blind acceptance, or surrendering to North Atlantic fictions. Within Western thought itself, there have always been internal critiques, Eurocentric critiques of Eurocentrism. According to Mignolo et al., “While not accepting could be termed resistance, our interest and proposition here (in this book and series) are, more crucially, with re-existence, understood as ‘the redefining and re-signifying of life in conditions of dignity. It is the resurgence and insurgence of re-existence today that open and engage venues and paths of decolonial conviviality, venues and paths that take us beyond, while at the same time undoing, the singularity and linearity of the West.’” *Id.* at 3.

⁶⁹ Cristina Rojas, *Contesting the Colonial Logics of the International: Towards a Relational Politics for the Pluriverse*, 10 INT'L POL. SOCIOLOGY 369, 373 (2016).

⁷⁰ Gavin W. Anderson, *Societal Constitutionalism, Social Movements, and Constitutionalism from Below*, 20 IND. J. GLOBAL LEGAL STUD. 881, 884 (2013).

⁷¹ *Id.*

VI. DECOLONIZING CONSTITUTIONS

A central theme of colonization is the belief that modern reason is superior to pre-modern Western knowledge, as well as knowledge of the non-Western.⁷² The dominant view is that Western understandings of the modern liberal constitutional order and rule of law have been transmitted along with colonial political power, and used to justify the prevalence and continued advancement of these ideas. During the Cold War, the “global West” claimed its political structures were legitimized by constitutional and rule-of-law norms which subsequently served as vehicles for advancing hegemonic ideology. Wars are justified by claims regarding the constitutional and legal features of America, and the assertion that these fundamental norms would form the basis for a new government.⁷³

The decoloniality project is a challenge to colonization, and this project implicates a challenge to constitutions. This is because constitutional democracy, Tully argues, plays three main roles in imperialism:

1. Low intensity constitutional democratization has been imposed on non-western peoples without their consent or democratic participation;
2. These colonies and post-colonial replicas are subject to a cluster of regimes of transnational and international laws over which they have little or no control; and
3. These regimes in turn are governed by the most powerful constitutive sovereign states through global institutions and military networks in which the governed have little or no say, even though they are the vast majority of the world's population.⁷⁴

Constitutional democracy can be de-imperialized by allowing the governed to participate by making the laws open to criticism, negotiation, and modification.⁷⁵

A cursory look at the process of constitutional change shows states may drift away from, or lean towards western liberal values. The first approach

⁷² Cristina Rojas, *supra* note 69, at 372.

⁷³ Jonathan Havercroft et al., Editorial, *Decolonising Global Constitutionalism*, 9 GLOBAL CONSTITUTIONALISM 1, 5 (2020).

⁷⁴ James Tully, *Modern Constitutional Democracy and Imperialism*, 46 OSGOODE HALL L.J. 461, 488 (2008).

⁷⁵ *Id.*

is illustrated by Bolivia when it adopted a constitution in 2009. The second approach, wherein countries drift towards liberal values, is illustrated by the cases of China and Vietnam. A third approach is demonstrated by the Philippines. In the Philippine case, the predominantly western constitution adopted in 1987 after the ouster of Ferdinand Marcos similarly reverted to liberal democratic values, but provided for greater autonomy for Muslim minorities and indigenous peoples. Under the present legal scaffolding, indigenous peoples' rights are recognized and indigenous laws are practiced to a limited extent.

A. Bolivia

On January 25, 2009, the Bolivian people approved in a referendum a new constitution which 61% of the voters voted in favor for. The constitution emerged from the indigenous movement that had grown in the country during the previous decades.⁷⁶

Indigenous people, along with others in popular movements, joined to protest neoliberal policies and, in particular, to demand that the government reassert control over the country's natural resources. They periodically paralyzed the country, drove two presidents out of office, and then won the election of their own candidate, Evo Morales. He won with 54% of the vote, the first time in recent history that a president had won an outright majority.⁷⁷

Morales spoke of "refounding" the country through the adoption of a new constitution, which has been a longstanding demand of the indigenous movement. Bolivia has had many constitutions which are usually scrapped and rewritten in response to a change in power holders without fundamental structural alteration. But this time, the movement hoped that political developments foreshadowed a real change. One of Morales's first acts as president was to submit to the Congress a bill calling for the election of a Constituent Assembly, which was held on July 2, 2006.

One study shows the new Bolivian Constitution is the outcome of a revolutionary democracy and that its main consequence is the emergence of a constitution that can be named a post-colonial discourse.⁷⁸ They looked into

⁷⁶ John L. Hammond, *Indigenous Community Justice in the Bolivian Constitution of 2009*, 33 HUM. RTS. Q. 649 (2011).

⁷⁷ *Id.* at 651.

⁷⁸ José María Monzón, *The Constitution as a Post-Colonial Discourse: An Insight Into the Constitution of Bolivia*, 12(3) SEATTLE J. SOCIAL JUSTICE 821, available at <http://digitalcommons.law.seattleu.edu/sjsj/vol12/iss3/4>

constitutional reform to transform the cultural system and consequently, the legal system. These movements rely on the Latin American philosophy—or maybe the theology—of liberation, the main argument of which is the quest for emancipation from the internal state of dominance. This new version of the Marxist theories was transplanted to Latin America by political thinkers like Peruvian Marxist politician and agitator José Carlos Mariátegui, the key author of what has been called the indigenous Marxism.⁷⁹

Bolivia had been ruled by oligarchic regimes and by military dictatorships. When indigenous movements began to fight for their rights and their lands, their struggle challenged the inherited political and legal culture whose sources (like the Philippines' experience) were mainly European: the Napoleon Code, Spanish legal thought and institutions, Roman law, and later towards the end of the twentieth century (again like the Philippines' experience), American legal thought, along with the proposed legal reforms developed by the World Bank in Latin America.⁸⁰

The Bolivian Constitution brings back pre-colonial religions and ways of perceiving the world, with nature as the main concern. It contains constitutional principles that promote the defense of human, economic, social, cultural, and environmental rights, and reject all forms of racism and discrimination, as the constitutional clauses state.⁸¹

B. China and Vietnam

China and Vietnam have been engaged in “restoration constitutionalism,” which is understood as “a process under which, as part of the liberalizing agenda, the transitional society is sought to be returned to the constitutional order that prevailed before the eclipse or collapse of democracy and/or the rule of law, rather than being faced with the prospect of fashioning a new constitutional order.”⁸²

Constitutional change through restoration constitutionalism is part of a broader picture of transitional constitutionalism. Restoration constitutionalism is a project of peaceful political change, presents constitutional continuity, and evades the dilemma of constitutional beginnings. To the extent that such transitional constitutions are restorative,

⁷⁹ *Id.* at 833-4.

⁸⁰ *Id.* at 836.

⁸¹ *Id.* at 841-2.

⁸² Bui Ngoc Son, *Restoration Constitutionalism and Socialist Asia*, 37 *LOY. L.A. INT'L & COMP. L. REV.* 67 (2015).

there are seemingly no constitutional beginnings, only returns. Such constitutionalism eliminates the tensions inherent in constitutionalism in periods of political change.⁸³

Liberal democratic values were introduced to China in the late 19th century.⁸⁴ These ideas took root in the 1911 Revolution when Dr. Sun Yat-sen put an end to the Qing dynasty, and the Republic of China was established in 1912. In the first one and a half decades of the Republican era, “several constitutions—mainly Western-style and liberal democratic in orientation—were promulgated or drafted by successive governments in Beijing.” However, these constitutional documents were not effective due to complications caused by warlords and civil strife.⁸⁵

The People’s Republic of China remains to be a state ruled by one party. However, beginning in the late 1970s, China had begun to move a long way from a totalitarian communist system, in which the party-state controlled all social and economic domains and all aspects of citizens’ lives. It is becoming an authoritarian political system that has committed itself to certain standards of legality. The liberalization of the economy has resulted in corresponding institutional and constitutional changes in more liberal directions, such as the constitutional commitments to the promotion of the rule of state law and the protection of individual rights.⁸⁶

Vietnam is another country that may be reverting to liberal democratic values introduced in its first constitution—Hô Chí Minh’s 1946 Constitution. Contemporary Vietnam is witnessing a return of the liberal values of the 1946 Constitution in the discourse on constitutional reform.⁸⁷ Although the 1946 Constitution was adopted after a communist revolution, it was drafted, deliberated, and adopted by a pluralist national assembly—a constituent assembly. The public deliberation reflected the views and the

⁸³ *Id.* at 71-72.

⁸⁴ *Id.* at 74.

⁸⁵ *Id.* at 75.

⁸⁶ *Id.* at 77. See the discussion on China’s return to liberal democratic ideals in *id.* at 77-82.

⁸⁷ *Id.* at 82. Hô Chí Minh is known as the founder of the Communist Party of Vietnam. He adopted several ideas of communism such as violent revolution, a revolutionary party, and international connection of the communist community as a means to gain the independence for the nation. In order to envisage a government in an independent Vietnam, he adopted several political schools of thought such as classical Confucianism and Western modern constitutionalism. *Id.* at 84.

choices of political forces other than communism, which advocated more Western-style liberal and democratic values. The communists constituted only 36% of members of the National Assembly.⁸⁸

C. Philippines

The third approach, by grafting indigenous and minority, has been happening right here in the Philippines. After the ouster of Ferdinand Marcos in 1986, Filipinos adopted a new constitution that contained provisions on autonomy for Muslim Mindanao and the Cordillera region. Both regions have resisted assimilation for decades, sometimes through violence. The Cordillera region has so far declined to establish a regional government, but the Muslims in Mindanao have already had a history of autonomous government.

The first organic charter of the Autonomous Region for Muslim Mindanao (ARMM) was established under Republic Act No. 6374, later amended by Republic Act No. 9054.

President Gloria-Macapagal Arroyo made her own attempt at crafting a new organic act, but the Supreme Court ended the effort at an early stage of the process.⁸⁹

President Benigno Aquino III called the ARMM “a failed experiment”⁹⁰ and his administration set out to write a new organic act to govern Muslim Mindanao.⁹¹ Rebels-turned-leaders of the ARMM failed to maintain their legitimacy and sustain their authority because they failed to deal with the resilience of clan leaders who ignored the political institutions, preferring instead to navigate multiple and rival institutions.⁹² The ARMM was undermined by poor governance, perceptions of widespread corruption, and a lack of financial support from the central government. These challenges

⁸⁸ *Id.* at 92.

⁸⁹ *Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain*, G.R. No. 183591, Oct. 14, 2008.

⁹⁰ President Aquino claimed many of the people continue to feel alienated by the system, and those who feel that there is no way out “will continue to articulate their grievances through the barrel of a gun.” President Benigno S. Aquino III, Speech delivered on the Framework Agreement with the MILF, Malacañang Palace (Oct. 7, 2012), *available at* <http://www.officialgazette.gov.ph/2012/10/07/speech-of-president-aquino-the-framework-agreement-with-the-milf-october-7-2012-full-english>

⁹¹ For a summary of these efforts, see Miriam Coronel Ferrer, *Forging a Peace Settlement for the Bansamoro: Compromises and Challenges*, in *MINDANAO: THE LONG JOURNEY TO PEACE AND PROSPERITY* 99-131 (Paul D. Hutchcroft ed., 2016).

⁹² FRANCISCO J. LARA, JR., *INSURGENTS, CLANS, AND STATES: POLITICAL LEGITIMACY AND RESURGENT CONFLICT IN MUSLIM MINDANAO, PHILIPPINES* (2014).

discredited the Moro National Liberation Front (MNLF), leading to a new round of insurgency by the Moro Islamic Liberation Front (MILF) which, since 1976, has adopted a more overtly Islamic position.⁹³

Aquino's efforts with the MILF were proceeding well when, unfortunately, an incident between the 55th Special Action Company and the MILF in Mamasapano, Maguindanao led to the death of many soldiers, and this eroded support for the project.⁹⁴ Prior to the Mamasapano incident, in a survey conducted in June 2014, only 27% of Filipinos were against the proposed Bangsamoro Basic Law. At that time, 44% of Filipinos were for the approval of the proposal.⁹⁵ After the incident in Mamasapano, however, the survey showed 48% of Filipinos were against the approval of the draft Bangsamoro Basic Law, while only 23% wanted the draft law to be approved. As a result, the *ad hoc* committee tackling the bill suspended deliberations "indefinitely" to give way to the House probe into the clash in Mamasapano.⁹⁶

In contrast, the Duterte administration's own drive for a new organic act was successful. Provinces under the ARMM, except Sulu, voted to ratify Republic Act No. 11054. The official tabulation revealed 1,540,017 residents approved the Bangsamoro Organic Law (BOL), while 198,750 residents rejected it.⁹⁷

The creation of the autonomous region in Mindanao, however imperfect, was not because of Manila's generosity. It was a response to the assertion of Muslim identity. In the 1950s, government-sponsored migration of Christian Filipinos from Luzon and the Visayas to Mindanao increased pressure on Muslims' land ownership. By the 1970s, tensions erupted into armed conflict. Since the 1950s, more and more Muslim Filipinos traveled to the Middle East to make the Hajj and to pursue an education in centers of Islamic learning in Egypt, Saudi Arabia, and Pakistan. Meanwhile, Islamic societies in the Middle East have sent money and missionaries in support of

⁹³ Ashley South & Christopher M. Joll, *From Rebels to Rulers: The Challenges of Transition for Non-state Armed Groups in Mindanao and Myanmar*, 48 *CRITICAL ASIAN STUD.* 168–174 (2016).

⁹⁴ Edilberto C. de Jesus & Melinda Quintos de Jesus, *The Mamasapano Detour*, in *MINDANAO: THE LONG JOURNEY TO PEACE AND PROSPERITY* 159, 159 (Paul D. Hutchcroft ed., 2016).

⁹⁵ ABS-CBN NEWS, *How Mamasapano tragedy affected BBL*, May 15, 2015, available at <https://news.abs-cbn.com/nation/05/15/15/how-mamasapano-tragedy-affected-bbl>

⁹⁶ Angela Casauay, *Mamasapano clash delays passage of Bangsamoro law*, *RAPPLER*, Feb. 9, 2015, available at <https://www.rappler.com/nation/special-coverage/peacetalks/83444-mamasapano-clash-delays-passage-of-bangsamoro-law>

⁹⁷ *Comelec announces ratification of Bangsamoro law*, *CNN PHIL.*, Jan. 25, 2019, at <http://cnnphilippines.com/news/2019/01/25/Bangsamoro-Organic-Law-ratified-ARMM.html>

their beleaguered Muslim brethren in the Philippines. Ultimately, a result of these occurrences was the emergence of the Islamic identity as a profoundly important factor in Philippine society, politics, and education.⁹⁸ It had thus become impossible to ignore Muslims when the 1987 Constitution was being crafted.

Apart from provisions for regional autonomy, the 1987 Constitution contains provisions that recognize indigenous laws. Article II, Section 22 thereof provides:

The State recognizes and promotes the rights of indigenous cultural communities within the framework of national unity and development.

Meanwhile, Article XII, Section 5 provides:

The State, subject to the provisions of this Constitution and national development policies and programs, shall protect the rights of indigenous cultural communities to their ancestral lands to ensure their economic, social, and cultural well-being.

The Congress may provide for the applicability of customary laws governing property rights or relations in determining the ownership and extent of ancestral domain.

Lastly, Article XIV, Section 17 provides that:

The State shall recognize, respect, and protect the rights of indigenous cultural communities to preserve and develop their cultures, traditions, and institutions. It shall consider these rights in the formulation of national plans and policies.

In 1997, Congress enacted the Indigenous Peoples' Right Act (IPRA)⁹⁹ to address many issues troubling the Philippines' indigenous populations (IPs). Among other things, the law implemented constitutional provisions for the recognition of their right over their ancestral domains.

The Act also provides that indigenous peoples have the right to resolve land conflicts in accordance with customary laws of the area where the land is located, and only in default thereof should the complaints be

⁹⁸ Jeffrey Ayala Milligan, *Teaching between the Cross and the Crescent Moon: Islamic Identity, Postcoloniality, and Public Education in the Southern Philippines*, 47 COMP. EDUC. REV. 468 (2003).

⁹⁹ Rep. Act No. 8371 (1997).

submitted to amicable settlement and to the courts of justice whenever necessary.¹⁰⁰ The Supreme Court also retains jurisdiction over conflicts involving claims and disputes involving the rights of indigenous peoples. The application of both tribal and Islamic law, therefore, does not preclude the operation of the national judicial system over ancestral domains or the ARMM. The opinions expressed by tribal or Shari'a courts are not binding on the Supreme Court.

The recognition of indigenous peoples' rights has not been implemented smoothly.¹⁰¹ But my point is that the colonizers' laws can be changed to accommodate the views of marginalized groups.

The Constitution also attempts to break elite control of the political process by introducing three other innovations: absentee voting,¹⁰² the party-list system,¹⁰³ and sectoral representation in local governments,¹⁰⁴ although the last one has not been implemented.¹⁰⁵ In the Philippines, the 1987 Constitution yielded to pressure from the Third Wave of Democracy, forcing the drafters of the post-Marcos Constitution to include provisions that are more inclusive and participatory. These innovations notwithstanding, the Western concepts of rule of law and separation of powers still remain alien to both politicians and the public. These concepts should be learned so political behavior can change.

VII. CONCLUSION

Husa may have an explanation for Filipino complicity in the "war on drugs" and the Duterte administration's failure to abide by the rule of law. In his view, the proper application of the rule of law largely depends on legal culture. In turn, the nature of legal culture depends much on legal history. Accordingly, the success of transplanting is defined by "the legal evolution of a legal culture." He explains that deeply embedded belief systems and

¹⁰⁰ See § 7 (h).

¹⁰¹ See, generally, June Prill-Brett, *Contested Domains: The Indigenous Peoples Rights Act (IPRA) and Legal Pluralism in the Northern Philippines*, 55 J. LEGAL PLURALISM & UNOFFICIAL L. 11 (2007).

¹⁰² CONST. art. V, § 2. This constitutional provision is implemented through Rep. Act No. 9189 (2003) as amended by Rep. Act No. 10590 (2013).

¹⁰³ Art. VI, § 5. This constitutional provision is implemented through Rep. Act No. 7941 (1995).

¹⁰⁴ Art. X, § 10.

¹⁰⁵ For an account of why this constitutional reform has not been implemented, see Quimpo, *supra* note 63 at 219-220.

established patterns of law-related behavior are difficult to transform if and when they are locked into a critical legal cultural juncture that took place during a longer period.¹⁰⁶

Legal transfers inaccurately transposed the western understanding of rule of law in the Philippines because centuries of Philippine history crafted a different legal culture. This explains, in my view, the public's continued support for President Duterte—the antithesis of the rule of law.

There are many ways of responding to Western constitutional values; Bolivia seems to have rejected them completely, China and Vietnam seem to gravitate towards them. The Philippines may have set a good example of decolonizing its constitution by allowing its people to alter the balance of power by providing space for the reception of minority voices. The provisions on autonomy and the recognition of indigenous peoples' rights, although limited in scope, allows other voices to be heard.

Perhaps every opportunity to rewrite a constitution should be an opportunity to listen to other voices so constitutions can slowly reflect values that can govern a people. This is not to say that Western constitutional values do not have a place in another constitution. As I explained earlier, the decoloniality project merely challenges “undoing, the singularity and linearity of the West.”¹⁰⁷ Constitution-writing does not have to privilege Western values, but not all Western values should be shunned. I argue that some are worth importing and adopting.

Constitution-making alone will not resolve the support for the drug war. Legal transfers will work if it triggers a change of behavior from host countries. As experience in decoloniality shows, for the rule of law to function in Philippine society, Filipinos themselves must adapt to these changes over time.

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¹⁰⁶ Jaako Husa, *Developing Legal System, Legal Transplants, and Path Dependence: Reflections on the Rule of Law*, 6 CHINESE J. COMP. L. 129, 149 (2018).

¹⁰⁷ Mignolo & Walsh, *supra* note 69.