

# No to Charter Change

## A Position Paper submitted by the UST Law Debate Team

Speaker Sonny Belmonte has just filed a resolution seeking for the complete liberalization of the Philippine economy thru Constitutional change. Belmonte wants to change the economic provisions of the 1987 Constitution, specifically, the 60-40% ownership of private property. He also wants to further allow foreign firms to own even public utilities. Speaker Belmonte's resolution would pave the way for the passage of new laws that would allow foreign investors to develop the country's natural resources, own lands or mass media companies, and get franchises to operate public utilities. The resolution would not amend the constitution to expressly allow foreign ownership of lands and businesses. Instead, it would insert the phrase "*unless otherwise provided by law*" after the charter's economic provisions that limit foreign investors' participation in economic activities.

We oppose this charter change proposal.

Firstly, the Constitution is not the problem that causes poverty but corruption, wrong economic policies and lack of accountability for those that wield economic and political power. Therefore amending the Constitution cannot be the solution but in fact will only worsen the problem and increase poverty.

Secondly, the economic premise of those proposing to take out constitutional restrictions is completely untrue because many of the economic miracles they cite are countries that also have restrictive or protectionist provisions. The proposal to give aliens 100% ownership to land, public utilities, and natural resources among others will result in extremely high prices and more poverty because even the supposed economically booming countries do not allow the same liberalization. Thailand requires 51% Thai ownership of its public utilities such as electricity and energy; Australia requires 65% Australian ownership of its telecommunication; Brazil requires 49% Brazilian ownership of its lands. In fact aliens are totally prohibited from owning land in China, and yet China has registered the fastest rate of economic growth at an average of 10% over the last ten years. On the other hand, countries like Nepal, Mongolia and Cambodia which allows unrestricted foreign ownership remains poor.

Thirdly, their proposed charter change by simply inserting the phrase "*unless otherwise provided by law*" after the charter's economic provisions is very dangerous and opens the Constitution to the whims of Congress. The proposed

charter change will render the Constitution subordinate to laws enacted by Congress. This cannot be countenanced.

The Constitution is the highest law of the land. It is "the basic and paramount law to which all other laws must conform and to which all persons, including the highest officials of the land, must defer. No act shall be valid, however noble its intentions, if it conflicts with the Constitution."<sup>1</sup>

Yes, we need foreign capital but up to a certain point. What we need is a vibrant economy. That would happen if the consumer market feels strong confidence on our economy and strong purchasing power. Local capital is enough to sustain growth.

Look at the landscape and we have hundreds even thousands of successful Filipino entrepreneurs who are actually conquering not just here but regional markets. If we allow more foreign capitalists here, we will be allowing more competition and possibly more chances of killing local capitalists. This constitutional provision actually protects local entrepreneurs, and gives them an advantage. Without this provision, how then will they compete with foreign capitalists who have more monies than them?

Poverty can be eradicated through efficient use of our resources. How can we efficiently manage our resources if we allow foreign ownership and management of these? Likewise, if we sell utilities and other things, how then can we develop industries? Complete liberalization of the economy is simply not necessary at this point because the state does not have a modern and fully developed infrastructure. We will be completely overwhelmed and over run by foreign capital should we allow full liberalization at this point in time.

The proponents seek to amend the Constitution to supposedly spur economic growth. But at what cost? At the cost of selling the Filipino people to become slaves to foreign masters, of rendering the majority of the Filipino people mere tenants in what would then be foreign-owned Filipino lands, and of leaving our lands exploited and barren of supposedly Filipino-owned resources; all these, so that, at the end of the day, these foreign masters can enrich their own states.

We believe that changing the charter is not the answer. The key to our country's development is already found in our present Constitution; it's just a matter of implementation.

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<sup>1</sup> Cruz, Constitutional Law, 2003, p. 4.

Article II, Section 19 of the 1987 Constitution provides: “The State shall develop a self-reliant and independent national economy effectively controlled by Filipinos.” In promoting the Philippine economy, the Constitution mandates the State to promote the preferential use of labor, domestic materials and locally produced goods, and adopt measures that help make them competitive.<sup>2</sup> The State is further mandated to promote the sustained development of a reservoir of national talents consisting of Filipino scientists, entrepreneurs, professionals, managers, high-level technical manpower and skilled workers and craftsmen in all fields.<sup>3</sup> Clearly, the present Constitution espouses State-support to the Filipino people and Filipino-owned businesses. That is precisely what we need.

Our country is fortunate enough to have all ingredients necessary for economic development. We have abundant resources, labor and capital; we just fail to recognize it, and even if we recognize it, we fail to make good use of it.

First, we have abundant mineral resources. But who benefits from these resources? While we have limited the exploration and exploitation of our countries resources to Filipinos, countries like China and South Korea, for instance, are the end users of these resources. Our country could have used these resources to benefit the majority of the Filipinos. Case in point, our abundant coal supply which could be used to generate cheaper energy for Filipinos are being sold to other countries in exchange for very little monetary benefits which do not even trickle down to the majority of the Filipinos.

Second, our country’s abundance in labor resources is undeniable. The State, however, has forced the diaspora of our labor force because it fails to provide enough employment opportunities in the country.

Finally, believe it or not, we have sufficient capital to jump start our economic development. Filipino capital, while in the hands of a few individuals, is, nonetheless, Filipino-owned capital which can supply the country’s needed investments for our country’s development. Capital, which could generate employment in our country.

Amending the Constitution with the end goal of attracting foreign investments in our country is not the solution to this diversion of Filipino capital to other states. Instead, such a move will only scare off our own capitalists away, together with all hopes of a self-reliant and independent economy controlled by Filipinos.

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<sup>2</sup> 1987 Constitution, Article XII, Section 12.

<sup>3</sup> Id., Article XII, Section 14.

What we really need is to make our country more conducive for investments so that Filipino-owned capital would remain in the Philippines to jump start our development without having to depend on foreign investment. If our State is able to provide incentives to foreign investors, more so should our State provide incentives to its own capitalists to encourage them to help in developing our economy instead of diverting Filipino-capital to other countries. This does not entail an amendment of the Constitution. This only takes an implementation of the already in place State policy of developing “a self-reliant and independent national economy effectively controlled by Filipinos.”<sup>4</sup>

In any attempt to change the Constitution, we have to understand that fundamental laws are not only legal documents; they are first and foremost products of political struggle about competing goals.

The attempts to revise the 1987 Constitution have its merits and demerits. The important thing is that all proposals and the manner of amending the basic law must be shared with the people.

The present proposal for charter change, however, is simply not necessary, not beneficial, and not practicable.

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<sup>4</sup> Id., Article II, Section 19.