

Changing The Constitution

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introduction



MALOLOS CONSTITUTION

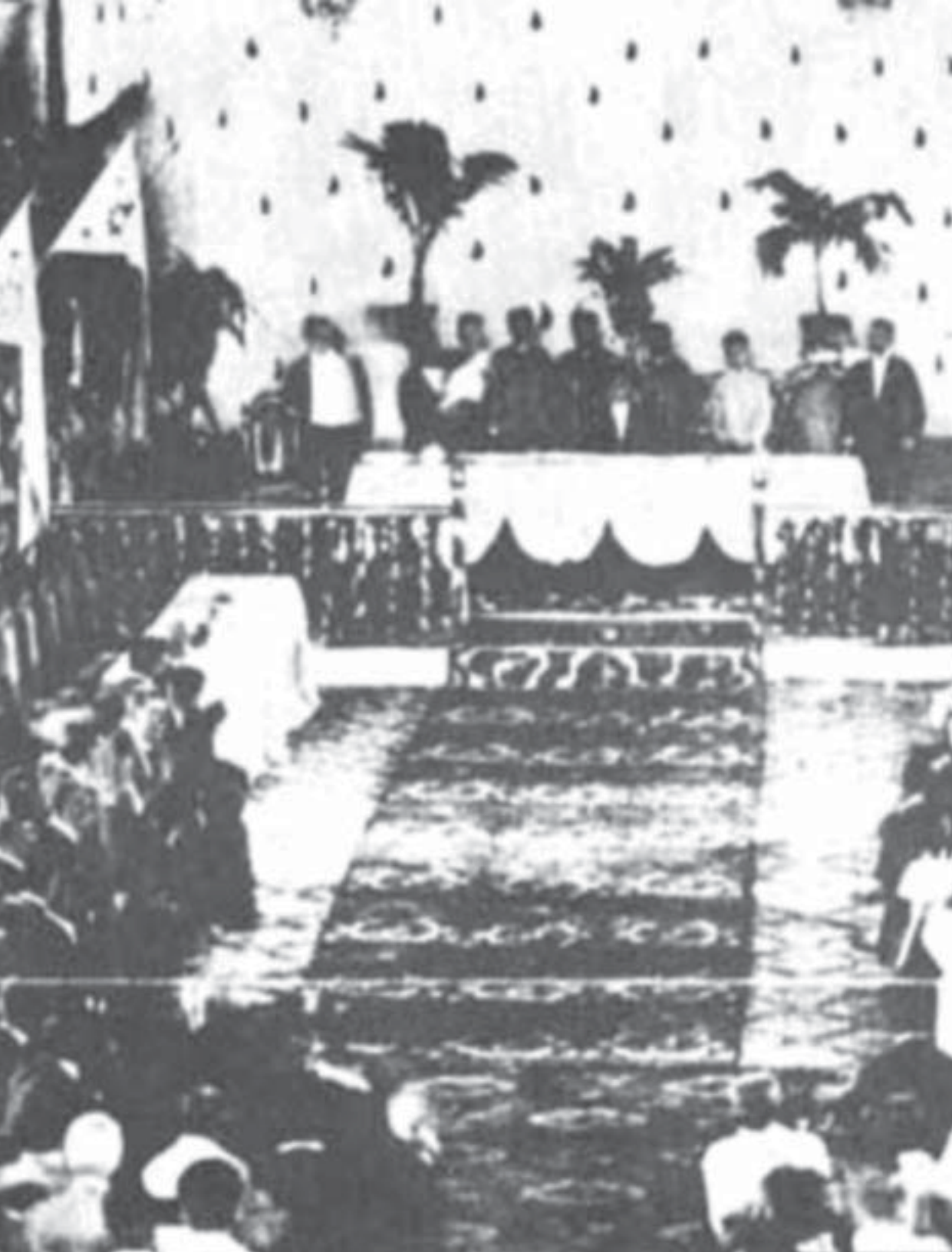
1935 CONSTITUTION

1973 CONSTITUTION

1987 CONSTITUTION

part

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introduction

A constitution is like a social contract between the ruler and the ruled. In a democratic republic like the Philippines, it is the consent of the people to the responsibility given to the public officials, they elected.

The present 1987 Constitution is such a document. At the time it was ratified, it contained the common agreement of the Filipino body politic on how the post-Marcos government should conduct itself. It is both a rejection of the Marcos dictatorship and a “yes” to Philippine democracy and should have contained the vision and aspirations of the people in the 1986 EDSA people power revolution.

It seems strange therefore that there are widespread talks at present about changing constitution. After all, the people rejected “Cha-cha” two times in the past 10 years—once during President Ramos’ term and again during President Estrada’s term.

So—are the people really against constitutional change—including—reform of the constitution? Why then, all the talk today of changing the constitution?



The Malolos Congress
Barasoain Church
September 15, 1898



Taking a longer view, we can assume that Filipinos are not really against constitutional reform. Since the Malolos Constitution of the First Philippine Republic, there have been four constitutions in our history. This does not include the constitution of the Japanese-appointed Laurel government and the constitution of the revolutionary Aquino government in 1986.

These four constitutions have the benefit of being accepted by the people or their representatives. They are the Malolos Constitution, the 1935 Constitution, the 1973 Constitution and the present 1987 Constitution.



Malolos Constitution

The first Constitution of the Philippines was the Malolos Constitution; it was a result of the proclamation of Philippine Independence in Kawit, Cavite on June 12, 1898 and was because of the efforts of twenty years of revolutionary struggle launched by Dr. Jose Rizal, Andres Bonifacio, Apolinario Mabini and Generals Emilio Aguinaldo and Antonio Luna.



The Commonwealth Constitution was approved in 1935

The Malolos Constitution created a parliamentary form of government but with a president. This Constitution was patterned after those of Belgium, France and some South American Republics.

The 1935 Constitution

Claro M. Recto, an expert in Constitutional law headed the Convention that drafted the 1935 Charter. The Tydings-Mc Duffie Act allowed the drafting of this Constitution. The 1935 Constitution created the Philippine Commonwealth and was the direct cause of the independent Philippine government from 1946 to 1973 and therefore was called the Commonwealth Constitution. During the drafting of the Commonwealth Constitution, the delegates were not given much freedom to draft whatever they wanted. Franklin D. Roosevelt, the United States President at that time had to approve whatever the Convention drafted. As a result, the 1935 Constitution strongly resembles the United States charter. The only difference between the two was that the government was unitary rather than federal, local governments being subject to general supervision by the president, and the president being able to declare an emergency and temporarily exercise near-dictatorial power.

1973 Constitution

Although the 1935 Constitution served during twenty-five years of stable government, during the latter part of 1960s, many Filipinos felt it only served the elite in society. This thinking of Filipinos led to the call for a Constitutional Convention. They wanted to preserve its democratic nature and remove the remnants of the colonial past. The convention was not able to finish its work because Marcos proclaimed martial law inserting a provision that would legitimize his one-man rule.

Marcos brought in the 1973 Constitution that replaced the Congress with a National Assembly (Batasang Pambansa) and extended the term of the president to six years with no limit on the number of terms.



1987 Constitution

A Constitutional Commission was appointed by the President on May 25 1986. Forty-four names were selected from the hundreds recommended by President Aquino's cabinet and the public. The appointed delegates were prohibited from running for office for one year after the ratification of the Constitution. Most of the delegates were wealthy and educated and represented a wide range including lawyers, nationalists, leftists, a nun, a priest and the like.



The 1987 Constitution provided for a two-chamber (bicameral) legislature.

The Commission disposed of the Marcos' parliamentary form of government as well as the one chamber (unicameral) legislature. This Constitution was ratified on February 2, 1987 and proclaimed on February 11, 1987.

Of the four, two were never changed. The Malolos Constitution was short-lived while proposed changes to the 1987 constitution found stiff resistance from the people.

The 1935 Constitution, on the other hand, was amended twice. First, when the one house National Assembly was replaced by a two house (bicameral) legislature in 1940. Second, when the Parity Amendment was ratified in 1946.

The 1973 Constitution was amended by then dictator Marcos himself before it was put forward for ratification. He introduced several amendments, particularly in the

temporary provisions, giving him an excuse to not immediately convene the constitutionally-mandated National Assembly and postpone elections.

The Ramos administration attempted to change the current 1987 Constitution twice. The first attempt was in 1995, when then Secretary of National Security Council Jose Almonte drafted a constitution. Before they could succeed in their effort, a group of non-government organizations—including IPER—exposed to the media the intentions of changing the constitution. They found that an important provision that protects the interest of the people, particularly the bill of rights, had been changed in this draft constitution.

The second effort during the Ramos term happened in 1997, when the Pedrosa couple formed a group called PIRMA hoping to gather signatures from the voters to change the charter through a people's initiative. This attempt did not succeed because many groups protested the initiative including former Senator Miriam Santiago who brought the issue to court. She won the case because the Supreme Court judged that a people's initiative cannot push through without an enabling law.

A few months after the inauguration of former President Estrada, a study commission was formed to conduct a study on the issues of charter change focusing on the economic and judiciary provisions of the constitution. This effort was blocked



by different organizations which saw through the personal interest of the initiators. The public itself was alarmed because of the reports that provisions protecting their rights would be watered down. The attempt to change the 1987 Constitution did not succeed.

During the term of President Arroyo, Speaker Jose de Venecia endorsed constitutional change through Constituent Assembly. A number of discussions and forums sponsored by different organizations supporting charter change but through a constitutional convention were held. Many oppose charter change through constituent assembly because they felt it important for the different sectors to participate in changing the constitution. Aside from the different organizations, the Senate itself did not agree with the House of Representatives on the manner of changing the constitution. In the end, the de Venecia initiative died with the end of the 12th Congress.

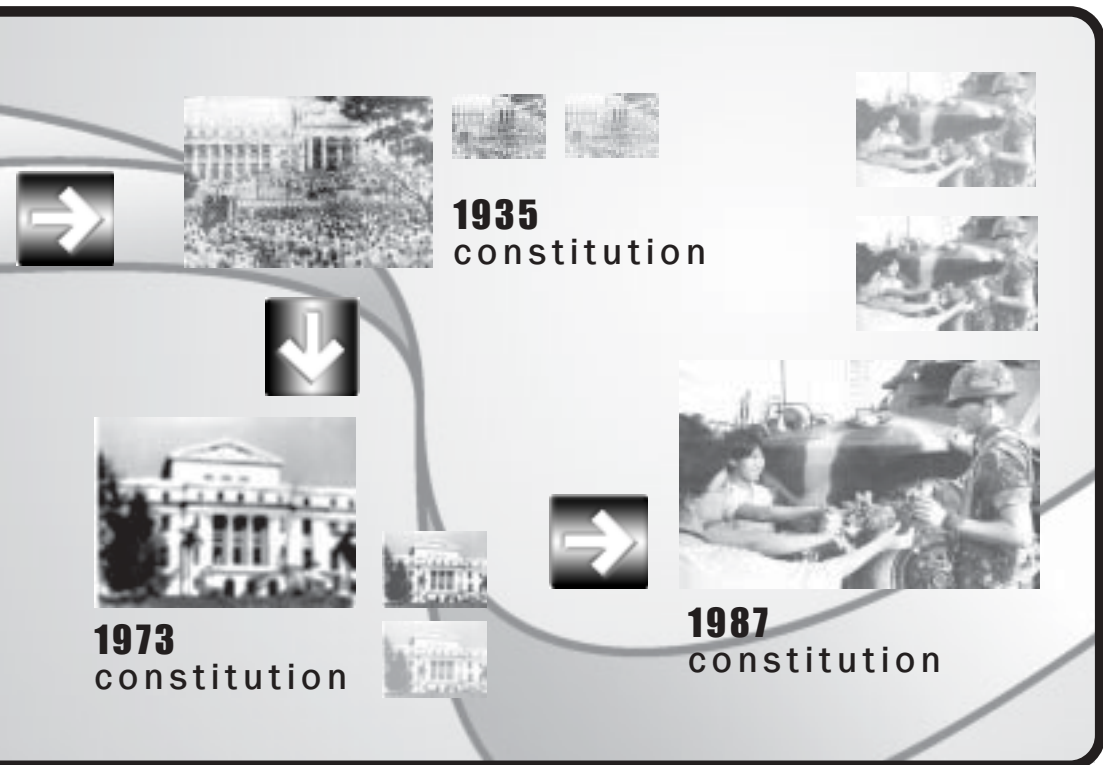
One should not conclude however, that constitutional reform has no chance in the post-Marcos era. The crisis of the rebuilt democratic political institutions continues from the days of the numerous military-inspired coup attempts in 1987.

Institutions such as the Philippine Congress, the political parties, the presidency, the executive departments, the courts, the military and police, and local governments all have weaknesses. Generally, these institutions have not prevented the pro-Marcos forces from maintaining their hold on economic and political power—and have allowed the return of the elite.

1898**malolos constitution**

Of course, this elite class, both the old and the new, continues to pay homage to formal democracy but has been reluctant to share this democracy with the masses even with the clear mandate given by the 1987 Constitution for a broadened participation of the people in the democratic process. Many of the provisions in the 1987 Constitution for this purpose have yet to be put into law and implemented.

Reform of the constitution is therefore seen by an increasing number of those who fought in the two EDSAs as a basic requirement to fulfill the promises for democracy and good governance made at EDSA. This is the reason why many initially proposed at the start of the Estrada administration the passage of a bill mandating constitutional reform through a constitutional convention. The only reason why they later



changed their mind and opposed Estrada's constitutional change agenda was when it became clear the changes would further strengthen the exclusive elite hold on power.

During the present Macapagal-Arroyo's administration, calls for constitutional change have gone back to political reforms, particularly regarding the shift to a one body parliamentary system. This major reform is one that is supported by virtually all major political parties and groups in civil society.

This time, the controversy revolves around the way to change: whether through an act of Congress meeting as a constituent assembly or through delegates directly elected by the people meeting in a constitutional convention.

Unfortunately, the House of Representatives stubbornly stood by its

resolution for a constituent assembly even in the face of an overwhelming opposition in the Senate and in civil society at large. This led to a stand-off that lasted until January 2004 when Speaker Jose de Venecia announced that the House was open to the holding of a constitutional convention. By then, it was too late to do anything about electing delegates during the 2004 elections.

The incoming 13th Congress will have the responsibility of once again deciding on the question of constitutional reforms. More than any other time during the post-Marcos period, there exists the possibility for a positive decision this time.

The one fundamental question remains: are the people agreeable to constitutional change at present? This research on people's views on constitutional change will hopefully help to answer this important question