

Imperatives for Constitutional Reforms
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Constitutional change remains a sensitive topic for most Filipinos. Two presidents have attempted to do it but were forced to retreat in the face of public opposition. At present, initiatives from Congress have again risen up to titillate us with possible constitutional change.

Is there really an absolute opposition by the people against constitutional change? Or is it conditioned on their negative perception of the substantive provisions to be changed and of the motives of those who advocate for change?

The major controversy lies in the substance of constitutional change. What to change? Is it the land ownership policy? Or, is it the term of elective office? Proposed changes to these two constitutional provisions have sparked off the intense outcry against the Estrada and Ramos “Cha-cha” initiatives.

These last two attempts showed that the imperative for constitutional change lies heavily in convincing the people on the merits of the basic reforms being proposed.

Secondary controversies revolve around the manner and timing of constitutional change. Change through a constitutional convention? Or, change through a constituent assembly? Or, untested as yet, a change through people’s initiative?

There are existing proposals for the plebiscite on possible constitutional reforms in 2004, 2007 or even after 10 years. Before these, there are the proposals for a referendum on whether the people really want constitutional change.

In consideration of the above controversies, this paper will attempt to present its case for recommending constitutional reforms through a constitutional convention.

This paper will also draw from its recently-conducted but not-yet-published research study on people’s perception on constitutional change. The research was conducted from 1999 to 2001 and done through a national survey and focus group discussions. The survey covered 17 municipalities in 17 provinces with 1,577 respondents. Leaders belonging to organized groups in the 17 areas cited participated in the FGDs.

The Imperatives for Constitutional Reforms

Our present constitution was written in 1987, a direct product of the downfall of the Marcos dictatorship and the manifest desire of the people, expressed through People Power, for the reestablishment of a democratic republic in our land. The government of President Corazon Aquino appointed the 50-member Constitutional Commission to draft what later came to be the 1987 constitution.

One of the longest constitutions in the world, the 1987 constitution covered a broad range of policy areas. Delegates to the 1986 Constitutional Convention readily admit that it is a compromise document. However detailed it was, it suffers from a common infirmity arising from compromise. Many of these compromises resulted in more than 50 of its provisions, including major ones, requiring enabling laws by Congress before they can be implemented.

Fifteen years after, some of these enabling laws have not yet been enacted. In the electoral field, for example, provisions for absentee voting, for a people's initiative, and for the banning of political dynasties have not yet been passed by Congress. In a sense, there is some merit to the position that the 1987 constitution still needs to be fully implemented and, therefore, should not be changed.

Anti-cha-cha proponents have often cited the danger of a possible loss of hard-won gains in the 1987 constitution if the latter is to be subjected to another process of revision or amendment. They cite examples such as the ban on death penalty, land reform, restrictions on martial law powers, and nationalist provisions.

Worse, they said, constitutional change can only serve the selfish personal interests of incumbent politicians who want a longer stay in office, or ownership of lands for their foreign friends. It would only make the rich richer, and the poor, poorer.

They further aver that, granting possible flaws and loopholes in the present constitution, a constitutional change may lead to even bigger flaws and loopholes. Thus, they would argue that constitutional reforms should be done in the far future, when the people would have reached "maturity" and the political system reached a certain level of stability.

All these arguments rest on the bedrock of an almost total distrust of traditional politicians and an almost total lack of confidence in the people. Of course, this has some basis in the current state of our politics where votes can be bought and movie stars can easily become presidents.

Ironically, these arguments turn their back on the fundamental lesson of EDSA—that an awakened people can overthrow even a dictatorship and reshape the political landscape. The 1987 constitution only reflected what is already the palpable sentiment of the people at the time.

This time around, another EDSA had just happened. That it had to happen at all underscore the weaknesses of the present constitutional set-up. This constitutional system produced a presidency that was rejected by EDSA II.

Together, both EDSA I and EDSA II signify the far-reaching aspirations of the people for democracy and good governance. While EDSA I emphasized the democratic content of this aspiration, EDSA II clearly delineated the good governance content. These are the two covenants forged at EDSA between the people and their leaders.

The Aquino government is credited with restoring democracy in the aftermath of the demise of the Marcos dictatorship. However, Aquino took this to mean the return of the pre-martial law elite democracy, albeit with concessions to the grassroots-based civil society component of the anti-dictatorship struggle. The democratic space after EDSA I was filled with the uneasy hybrid of traditional politicians (mainly in governmental positions) and the nongovernmental organizations (NGOs) and people's organizations (mainly in the grassroots).

The need to eradicate all vestiges of dictatorship was not well understood by the government under then president Aquino. She compromised with the military in order to achieve stability. The military establishment inordinately gained a share of political power through pressures arising from a series of coup d'états and its claims of participation in EDSA I. She failed to completely erase the vestiges of martial rule and give justice to the Marcos victims. In a sense, EDSA II became almost a necessity because of the unfinished business of EDSA I.

Fifteen years have already passed since the 1987 constitution. The Philippines has gone through several economic crises related to and stirred by its integration into a global economy. It still has to learn

well how to swim in the ocean of globalization. Lingering rebellions also plague the body politic, retarding development and heightening the sense of national crisis. Poverty—and all the social ills it implies—remains a pervasive destiny for many of our countrymen. The political system continues to deny access to the vast marginalized and underrepresented sectors.

The 1987 constitution addressed some of the issues but failed to present a decisive solution to the fundamental problems of our people. This failure has led, almost from the day it was ratified, to various initiatives for amendment or revision. However, the unreasoning fear of a conservative backlash—or even a return to martial rule—prevented the fruition of these efforts. Unfortunately, it also prevented even the intelligent public discussion so necessary in ascertaining the real constitutional changes to be made.

EDSA I and II are within the category of extra-constitutional measures. They happen when constitutional means fail to address a crisis of the body politic: the first, the Marcos dictatorship and its cheating in the 1986 snap election; and the second, the excesses of the Estrada presidency and the failure of the impeachment process. They are essentially an exercise of the people's right to rebel against a government that betrayed their trust.

Even the so-called “EDSA III” can be interpreted in its underscoring of the failure of government to address the poverty situation of its constituency. Beyond the danger it implies to the democratic processes, it should be seen as a wake-up call for urgent measures, starting with constitutional reforms, to bring into the political mainstream all hitherto marginalized and underrepresented sectors.

The imperatives for constitutional reform lie in bringing forward the country to the modern age, broadening the people's participation in democratic governance, and solving the economic, political and social obstacles to the common progress of our people.

The various proposals for constitutional reforms have their own arguments for adoption. Inevitably, they must be judged from the perspective of the people's interests.

Among the provisions of the 1987 constitution that need amending, IPER sees the following as the more important ones:

1. On the National Territory – to conform with the country's commitments under various international conventions, especially that of the UN Convention on the Law of the Sea; its stand on the Treaty of Paris; and on whether the archipelagic doctrine or alternatives will be adopted insofar as territorial delimitation and baseline determination are concerned.

2. On the Form of Government – to decide on a parliamentary system to ensure full representation of the grassroots in legislature through their organizations or parties, eradicate patronage and personalist politics and streamline political institutions.

3. On state policy on Peace – to decide on a comprehensive, just and lasting peace as a framework for nation-building.

4. On Constitutional Bodies – to strengthen and enhance the independence of the Commission on Human Rights and the Commission on Elections, by giving them adjudicatory and prosecutorial powers to after human rights violators and perpetrators of electoral fraud, respectively.

5. On the phrase “as may be provided by law” – its removal from various sections of the constitution and instead the emplacement of decisive state policy, such as the one banning political dynasties.

6. On the renunciation of the Death Penalty – the removal of the exception on heinous crimes.

On the other hand, IPER rejects any attempt to weaken the current progressive provisions of the 1987 constitution, to wit:

1. Bill of Rights – There should be no revision or amendment containing imposition of duties, obligations or responsibilities on the citizenry for this would go against the very essence of the constitution as a delegation of the sovereign power of the people to the State.

2. National Economy and Patrimony – There should be no provision diluting the economic sovereignty of Filipinos and their exclusive utilization of the country's natural resources, even as there is a recognition of the requirements for the country's development in a global setting.

3. Social Justice and Human Rights- There should be no amendment or revision that weakens the guarantees on social justice and human rights of the citizenry.

The fears of a conservative backlash or the imposition of personal or sectional political ambitions in the constitution should be laid to rest. EDSA I and II are the best proof of our people's vigilance.

The IPER study on the voter's attitude on charter change basically supported the view that the people are not in favor of changing the 1987 constitution. A full 69 percent has this position.

However, the same study showed that the majority of those who oppose charter change do so from their lack of confidence in the process. In turn, this lack of confidence arises from their sheer lack of knowledge about the process and of the provisions to be changed.

It is interesting to note that, among both the pro- and anti-cha-cha proponents, the idea of a charter change is premised on knowing what is to be changed and if the people agree with such changes. It suggests that the people, as a whole, are receptive to charter change provided they have the necessary information for mature judgment.

On the Process of Constitutional Change

The formal process for constitutional change starts with the filing of congressional resolutions or bills on the matter.¹ Then the Congress decides, within its normal processes of passing laws, to initiate charter change. Then, the designated body, whether a constitutional convention or a constituent assembly, is convened. After the latter decides on the revision or amendment, as the case may be, the people vote to either ratify or reject the changes.

The past two attempts by the Ramos and the Estrada administrations got only as far as the filing of the requisite bills in Congress. The subsequent public storm against their initiatives effectively put an end to the matter.

In both cases, the issue was the perceived personal or sectional interest being served by the proposed amendments. The Ramos initiative foundered on the rocks of public opposition to extending the term of office of the president. The Estrada initiative was scuttled due to widespread opposition to the proposal to open land ownership to foreign entities.

¹ The alternative method of a people's initiative is still being discussed in Congress after the Supreme Court decided that the existing law, RA 6735, is insufficient as an enabling act.

The opposition to charter change expectedly came from political forces identified with EDSA I—the urban middle class, workers, the Catholic church, youth and students, and the Left. They were also the ones who worked later for the removal of president Estrada in EDSA II.

The IPER study showed that the very idea of charter change is preferred by most respondents to be subjected to a national discussion on the substance of proposed changes—only then will they decide on whether or not to support charter change. The study also suggests that the people want to be direct participants in the process of constitution-making, not only through their representatives. The constitutional convention, constituent assembly or direct referendum is seen only as the culmination of a national consultation process with the people. Finally, the results of the study support the view of a national referendum on charter change.

The sentiment for people's participation in constitution-making is backed-up by the fact that 89% of the people are aware of the Constitution; that 69% knows it is the fundamental law of the land; and that at least 53% knows it contains provisions regarding the workings of the government.

This sentiment tend to favor the proposal for a constitutional convention, which has the advantage of having people directly elect delegates whose sole purpose is to change the constitution.

It has been argued that there is no need to revise the constitution, and that only amendments are needed. Hence, there is no need for a constitutional convention—the constituent assembly will suffice.

While there is merit in this argument, it cannot be sustained in the current political climate of distrust for traditional politicians. Secondly, it can be shown that the changes required may go beyond mere amendments. A review of the 1987 constitution is more in order at this time.

It has also been argued that the constitutional convention would be an expensive proposition, and that, in this time of an economic crisis, the country cannot afford it.

This argument has no merit. First, assuming there is a national consensus for charter change, prioritizing it (and thereby allocating sufficient funds for it) will negate the funding problem. Second, most calculations peg the expenses at more or less one billion pesos—a miniscule amount in a national yearly budget of more than P700 billion.

Of course, measures can be taken to minimize costs, such as timing the election of delegates along with the regular elections. At any rate, the manner of the constitutional change will have to be decided through the same process of national consultation, if it has to gain acceptance by the people.

Convincing the People for Constitutional Change

The key to any constitutional change at this time is in convincing the people, particularly those who have opposed the last two initiatives for constitutional change in the past. There is a chance that it can be done this time.

The most important factor here is EDSA II and the political mandate it brings. EDSA II underscored the fragility of the political system constructed under the 1987 constitution. The old political order has to change. No less than President Gloria Macapagal-Arroyo recognized this when, in her inaugural speech on January 20, 2001, she pointed out as one of her four priorities to *“change the character of our politics, in order to create fertile ground for true reforms. Our politics of personality and patronage must give way to a new politics of party programs and process of dialogue with the people.”*²

² PGMA's Inaugural Speech as the 14th President of the Republic of the Philippines, EDSA Shrine, Ortigas Avenue, Jan. 20, 2001.

EDSA II reflects the full-blown development of civil society participation in governance. This was only in germinal stage in EDSA I. It is bringing a new wind of change in the political landscape hitherto dominated by traditional politics. It is a political wind being sustained from below and fanned by unremitting media exposure of malgovernance and corruption in high places. Of course, it is still in its maturing stage and its full potential has not yet been realized. However, it cannot anymore be ignored and succeeding electoral exercises will increasingly reflect its influence as the EDSA II generation enters the political stage, either as voters or as candidates.

The advent of mass democratization of mainstream politics opens the door for ending of the existing internal conflicts and the participation of armed opposition in the electoral arena. The Left in Philippine politics is expected to be the beneficiary of this development. In fact, it is noteworthy that virtually all the Left groups are participating in the 2001 party-list elections.

New, grassroots-based politics face formidable odds from traditional politics in the latter's command of resources, electoral machinery, military connections, and network of ward leaders. However, these are obstacles that have been demonstrated time and again to be surmountable. EDSA II has blown wide open the door for the further democratization of Philippine society and politics. A window of opportunity for modernizing Philippine politics to be attuned to the challenges of globalization is now open.

Constitutional reforms promise to bridge the gap between the mandate of EDSA II and actual reforms in society. It will do so by strengthening the progressive provisions in the constitution and plugging loopholes brought about by compromises in 1987.

The people must be convinced of constitutional change from their own perspective. A national debate and discussion on issues of national policy and direction is therefore in order. This national consensus-building should cover all significant political forces and sectors. The results can then be funneled into a national constitutional agenda that will be the basis for the work of a constitutional convention.

According to the result of the IPER study, the people want to participate at every stage of the constitution-making process. A parallel process of consultation should therefore be a part of the work of the constitutional convention.

Without people's participation and agreement, any initiative for constitutional change is doomed to failure. On the other hand, without constitutional reforms, our current democracy will remain fragile and may not be able to withstand the pressures of the modern world.

The great constitutionalist Claro Mayo Recto once said, "*...the Constitution is not, and should not be, an idol under strict taboos. It is not, and should not be, a strait-jacket for the growing and developing nation which it was made to serve. The Constitution itself outlines the procedure for its own amendment, and it thus expressly devoted to the principle that it is neither inviolable nor permanent, but a working instrument to secure the general welfare of the people.*"