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## Introduction

A constitution, no matter how gifted its framers are, is not likely to prove adequate for all time. Economic, social and political conditions are never static, thus, the fundamental law of the land must be freed from the constraint of rigidity to meet such changes not readily foreseen. The same is true with all legislation.

The 1935 and 1973 Constitutions contained provisions on how the amendment of the constitution should take place. However, both did not provide for means by which the people could directly propose changes to the constitution or propose laws or amendments thereto. The 1987 Constitution has provided for the amendment of the basic law of the land on direct proposal by the people through initiative. Legislation may now also be passed through the same method.

While there is no doubt that in a republican form of government such as ours, where power emanates from the people and this, being the basis of the system of initiative, it worth asking: Is the system of initiative democratic in theory as well as in practice? Does it produce good legislation?

## The System of Initiative: Its Important Features

The 1987 Constitution provides in Article XVII:

“Sec. 2. Amendments to this Constitution may likewise be directly proposed by the people through initiative upon a petition of at least twelve *per centum* of the total number of registered voters, of which every legislative district must be represented by at least three *per centum* of the registered voters therein. No amendment under this section shall be authorized within five years following the ratification of this Constitution nor oftener than once every five years thereafter.

The Congress shall provide for the implementation of the exercise of this right.”

“Sec. 4. x x x Any amendment under Section 2 hereby shall be valid when ratified by a majority of the votes cast in a plebiscite which shall be held not earlier than sixty days nor later than ninety after the certification by the Commission on Elections of the sufficiency of the petition.”

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In Article VI it is provided:

“Sec. 32. The Congress shall, as early as possible provide for a system of initiative and referendum, and the exceptions there from whereby the people can directly propose and enact laws or approve or reject any act or law or part thereof passed by the Congress or local legislative body after the registration of a petition therefor signed by at least ten *per centum* of the total number of registered voters, of which every legislative district must be represented by at least three *per centum* of the registered voters thereof.”

The system of initiative is limited only to the right of proposing amendments to the Constitution. In the case of legislation the people can directly propose, enact, approve or reject any act or law or part thereof passed by the Congress or local legislative body. In both cases it is necessary that the Congress pass a law for the implementation of the system.

A higher percentage of votes is required for the system of initiative than in the initiation of legislation. Thus, the process of amendment by initiative is rendered more difficult but will ensure that the Constitution will be more enduring and stable.<sup>1</sup> Furthermore, the percentage requirement of votes for initiating amendments is equitably distributed among the various legislative district in order to prevent the dominance of regions which are more enfranchised than others.

The list of registered voters for the purpose of percentage requirements refers to the list existing at the time of the submission of the proposal and not from the date of the last election or plebiscite as the case may be.<sup>2</sup>

Any proposed amendment would have to be ratified by a majority of the votes cast in a plebiscite. In the event that two inconsistent amendments to the Constitution each get the required percentage, the determination of which will prevail could be done through the plebiscite.<sup>3</sup>

## Arguments Pro and Con

In many provisions of the 1987 Constitution, it can be gleaned that its framers sought to constitutionalize the so-called “People’s Power.” The system of initiative is one such vehicle.

The drafters of the Constitution advanced the argument that the system of initiative “provides a mechanism which is very responsive to the sentiments of the people. It acts as a safety valve or provides a third avenue to ensure that the people could initiate an amendment to the Constitution in case the Congress is acting under the thumb of the President or refuses to heed the call or demand of the people.”<sup>4</sup>

<sup>1</sup>Record on the Constitutional Commission, July 9, 1966.

<sup>2</sup>Supra.

<sup>3</sup>Joaquin G. Bernas, *Annotated Philippine Constitution* (1987), p. 119.

<sup>4</sup>Record on the Constitutional Commission, July 8, 1986.

On the other hand, it was feared that the system of initiative would result in frequent amendments to the Constitution which require expenditure of public funds which might result in the impoverishment of the Government.<sup>5</sup>

It is also believed that the provisions of the Constitution are already satisfactory, hence there is no need for the system of initiative. Other members of the Constitutional Commission even went further to say that "the exercise of the right of initiative is impractical and an exercise in futility. It will just clutter the Constitution with provisions that are untried and novel which any way will not be used."<sup>6</sup>

### The American Experience

According to John Whiteclay Chambers II,<sup>7</sup> in a number of states in the US, the system of initiative is used to initiate a law or a constitutional amendment and secure its adoption upon ratification at the polls. Usually between 10 to 25 percent of the electorate is required to initiate such action. Ratification is made by a simple or two-thirds majority. Of the states which authorized initiatives, most provided for direct initiatives as against indirect initiatives. The latter gave the legislature the option of enacting the initiative; it was passed on to the electorate only if the lawmakers failed to adopt it. Initiatives, while not subject to executive veto, are not exempt from judicial review for being violative of the constitution.

Research on the origins of the initiative and public referendum shows that the primary advocates of direct legislation were organized groups seeking to achieve specific goals such as single taxpayers and organized labor. These groups were normally viewed with suspicion, if not outright hostility, by moderate and conservative progressives. Conservatives like William Howard Taft believed that "unbridled democracy" would be a threat to private property, economic growth and orderly government. Others, viewed direct democracy merely as a means by which various groups sought a larger share in the increase in national wealth produced by industrialization.

Direct democracy has not produced frivolous legislation, as early opponents had feared, but instead worked as a safety valve. It has been used as the last rather than the first resort — "a legislative battering ram", as the California Supreme Court has noted — to obtain measures that the legislature would not enact.

### Conclusion

If we were to go by the maxim *vox populi suprema lex est*, all doubts regarding the need and importance of the system of initiative would be negated.

<sup>5</sup> Supra, July 9, 1986.

<sup>6</sup> Supra.

<sup>7</sup> "Referendum, Initiative and Recall," *Encyclopedia of American Political History — Studies of Principal Movements and Ideas*, The Johns Hopkins University (1984).

Philippine political experience has generally been that those who get elected to public office are men and women with vast financial resources. Some have been viewed as having individual or sectoral interests rather than those of their constituents and the public. A case in point is the divisive issue of land reform pending before the Congress. To some, it would seem that the reason for the delay in the passage of a land reform law is the fact that some of those who stand to be adversely affected are themselves members of the Congress. The system of initiative could be the means for the legislature to avoid responsibility for any controversial measure.

A number of important public issues have not found their way into the agenda of the Congress. Among these are health care, preservation of our forests and the environment, consumer protection, effective means of taxation. These are issues that affect a larger segment of the citizenry and should have but have not been addressed by the Congress.

In any political system, the contest for political power and influence is always present. There is also always the possibility that those in public office are not only abusive but protective of each other as well. This situation of mutual protection and non-intrusion has in many instances operated to leave urgent public needs and concerns unattended to. The system of initiative would provide a mechanism for getting around such a pernicious state of affairs.

Direct democracy would provide the means for future reform of governmental institutions, when the only vehicles readily available for proposing and approving changes, whether in the Constitution or legislation, are in need of reform themselves.

Any opposition to the concept of legislation by initiative appears to be premised on the assumption that only legislators are capable of producing good legislation. As ample experience has shown, however, legislators are capable of producing good as well as bad laws. There can be no denying that in an imperfect world the system of initiative may produce bad legislative results. Considering, however, that there has to be an alternative to the situation where the legislature does not live up to popular expectation, the system of legislation by initiative deserves and should receive, acceptance, as the people's remedy against legislators who do not perform as expected. If the people's voice which is said to be supreme cannot be given due course by their representatives, then it should be given due course directly by the people seeking to safeguard and enhance their interests through the system of initiative. A democracy must have the means to defend and protect itself. This defense should refer not only to aggression from outsiders, it should also refer to those who, by ignoring the will and needs of the populace, place the democracy in danger.

