
CONSTITUTIONAL DEBATES IN THE PHILIPPINES

From Presidentialism to Parliamentarianism?

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=====

Abstract

The ouster of President Joseph Estrada initiated a new constitutional debate in the Philippines. In view of the fixed term of office, which allows for removal of a malperforming president only by way of an impeachment, political analysts are demanding a shift from the existing presidential to a parliamentary system of government. This article argues that such a shift does not necessarily solve the problems blamed on the 1987 Constitution, such as the rigidities of the presidential term, executive-legislative gridlock, presidential concentration of power, political instability, a weak party system, populism, and patronage. It proposes incremental reforms by amending the 1987 Constitution where needed, without scrapping the presidential system of government.

While the Third Wave of democratization¹ is rolling out, many new democracies are exhibiting the difficulties of consolidating the democratic process. Although full-fledged authoritarian reversals have been

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1. Samuel P. Huntington, *The Third Wave: Democratization in the Late Twentieth Century* (Norman, Okla.: Oklahoma University Press, 1991).

rare, the categorization of many Third Wave democracies as illiberal,² defective,³ or delegative democracies⁴ is testimony of their institutional weakness.

The political transitions in many parts of the world have revived political scientists' interest in institutions. While the old institutionalism treated institutions from a mainly historical and descriptive perspective, neoinstitutionalists believe that institutions, far from being only a function of socioeconomic structure or the result of actors' choices, in their own right determine the performance of a political system. Or, put differently: institutions are not only treated as dependent, but also as independent variables, with the ability to change the behavior of political actors. Accordingly, institutionalists believe that political change is manageable and may be best attained through institutional engineering.⁵

Not surprisingly, therefore, charter change has been a persistent theme in the Philippines ever since the country's redemocratization following the ouster of former strongman Ferdinand E. Marcos by a peaceful display of "people's power" in February 1986. Since then the Philippines, like other Third Wave democracies, has been struggling with democratic consolidation. While the country seemed to have gone a long way toward this goal under the presidency of Fidel V. Ramos (1992–98), the abortive impeachment trial and subsequent removal from office of President Joseph E. Estrada in January 2001 through people's power has reignited the constitutional debate with unprecedented vigor. Among political scientists, constitutional lawyers, journalists, and politicians, the clamor for major constitutional amendments and

2. Fareed Zakaria, "The Rise of Illiberal Democracy," *Foreign Affairs* 76:6 (1997), pp. 22–44; Larry Diamond, "Is the Third Wave Over?" *Journal of Democracy* 10:1 (1999), pp. 20–37; and Aurel Croissant and Peter Thiery, "Von defekten und anderen Demokratien" [On defective and other democracies], in *WeltTrends* [World Trends], no. 29 (Winter 2000/2001), pp. 9–32.

3. Aurel Croissant, *Von der Transformation zur defekten Demokratie: Demokratische Entwicklung in den Philippinen, Südkorea und Thailand* [From transformation to defective democracy: Democratic development in the Philippines, South Korea and Thailand] (Opladen, Germany: Westdeutscher Verlag, 2002).

4. Guillermo O'Donnell, "Delegative Democracy," *Journal of Democracy* 5:1 (1994), pp. 55–70.

5. For representatives of the institutional approach, see Juan J. Linz, "The Perils of Presidentialism," *Journal of Democracy* 1:1 (January 1990), pp. 51–69; Arend Lijphart, *Democracies: Patterns of Majoritarian and Consensus Government in Twenty-One Countries* (New Haven: Yale University Press, 1984); Giovanni Sartori, *Constitutional Engineering: An Inquiry into Structures, Incentives and Outcomes* (New York: New York University Press, 1994); and Scott Mainwaring and Matthew Soberg Shugart, eds., *Presidentialism and Democracy in Latin America* (Cambridge: Cambridge University Press, 1997).

even a complete rewriting of the Constitution has been rapidly growing.⁶ The desire for major changes includes a widely shared understanding that the country's time-honored presidential system should be replaced by a parliamentary form of government.⁷

Many of the arguments exchanged in the present constitutional discourse echo the Latin American presidentialism-parliamentarianism debate initiated by Juan J. Linz in the late 1980s. The following sections scrutinize these arguments against the background of other Southeast Asian experiences, most notably Thailand's, and the earlier Latin American debate. To this end, the article starts with a short contextualization of the Philippines debate, before examining the arguments raised against presidentialism and in favor of parliamentarianism. The article concludes with a note of caution about radical changes and a plea for a more pragmatic approach based on amendments of the existing presidential system.

Philippine Presidentialism under the 1987 Constitution

The present political system of the Philippines is framed by the 1987 Constitution. The latter replaced the provisional Freedom Constitution promulgated by President Corazon C. Aquino shortly after the collapse of the Marcos dictatorship. Vesting the president with far-reaching executive and legislative powers, the interim charter lacked democratic credentials. It served chiefly as a presidential device to dismantle the remnants of the Marcos regime.

In March 1986, as one of her steps to restore the democratic order, President Aquino appointed 50 members of a Constitutional Commission. In less than six months, the Commission drafted a new constitution. The draft was widely discussed in public hearings all over the country, and subsequently was ratified by the electorate in a referendum with a three-fourths' majority in February 1987.

After the Malolos Constitution (1899), the 1935 Commonwealth Constitution, and the authoritarian Constitution of 1973, the 1987 Constitution is the fourth major charter of the country. It revived the presidential system of the 1935 Constitution, which lasted until the declaration of martial law by President Marcos in September 1972. Key features of this presidential order, which, due to its colonial origin was mainly patterned along the American political system, were a directly elected president, an executive-legislative

6. For a compilation of voices calling for a parliamentary form of government, see Camilo L. Sabio, "A Clamor That Could Not Be Ignored," speech at the Manila Bay Breakfast Club, July 20, 2001 (mimeographed paper).

7. Jose V. Abueva et al., eds., *Towards a Federal Republic of the Philippines* (Marikina City, Metro Manila: Center for Social Policy and Governance, Kalayaan College, 2002).

relationship characterized by personal incompatibility and functional checks and balances, a bicameral Congress, and, deviating from the American model, a unitary state.

Typical for a political transition, the 1987 Constitution was drafted in great haste. The power vacuum left by the ancien regime had to be filled before the latter could regroup and challenge the new order. A compounding factor was the legitimacy gap of the Aquino administration which, deprived of an electoral victory by the incumbent Marcos regime's massive cheating in the 1986 snap presidential elections, rode to power on the coattails of people's power. The referendum on the constitution was thus also a plebiscite on the Aquino regime.⁸

While the hasty drafting was responsible for errors, and left major articles to be specified by congressional legislation,⁹ the widespread belief by democratic reformers that detailed constitutional regulations would prevent authoritarian reversals produced a lengthy document, albeit—in the view of its critics—one full of inconsistencies and ambiguities. This explains why the constitutional debate did not end with the ratification of the 1987 Constitution. Critics targeted in particular the inefficiencies and costs of lawmaking, caused by what they saw as a lack of coordination and cooperation between the Lower and Upper House. The ensuing calls for abolition of the Senate also targeted the latter's limited size, its perceived lack of representativeness, and its role as a playground for grandstanding presidential pretenders.¹⁰ Critics of the Senate often recollected the fact that in the Constitutional Commission, bicameralists prevailed over unicameralists by one vote.¹¹

Others went even further and called for a government system based on parliamentary principles, although they occasionally confused a parliamentary form of government with a French-type premier-presidential form of government. Twice, in 1991 and in 1993, the House of Representatives adopted a resolution endorsing the shift to parliamentary government.¹² Also in 1991, a group of constitutional scholars submitted a draft constitution providing for a purely parliamentary system. Yet, such initiatives evaporated

8. James Putzel, "Survival of an Imperfect Democracy in the Philippines," *Democratization* 6:1 (Spring 1999), p. 212.

9. Joel Rocamora, *The Constitutional Amendment Debate: Reforming Political Institutions, Reshaping Political Culture* (Manila: Institute of Popular Democracy, Occasional Paper, no. 4, 1997), p. 6.

10. For a detailed analysis of the arguments raised against the Senate, see Emil P. Bolongaita, "Presidential versus Parliamentary Democracy," in *Philippine Studies* 43:1 (1995), pp. 105–23.

11. Joaquin G. Bernas, *A Living Constitution: The Cory Aquino Presidency* (Pasig City, Luzon, Philippines: Anvil Publishing, 2000), p. 52.

12. Jose de Venecia, Jr., "The Stalemate of Democracy and the Two-Stage Parliamentary Process," keynote speech, in *Summary of Conference Proceedings: Second National Conference on Parliamentary Government* (Manila, December 13–14, 1993), p. 9.

without much impact for two reasons: first, they were not acceptable to the Senate and, second, in the eyes of the Philippine public, a parliamentary system was still discredited by the “bogus parliamentarianism” of the 1973 Constitution. The 1973 Constitution, passed after the imposition of martial law in September 1972, included transitory provisions (Article XVIII) vesting in President Marcos the power and prerogatives under the 1935 Constitution as well as the powers of the president and the prime minister of the 1973 Constitution, thereby effectively suspending any division of powers.¹³

The constitutional issue resurfaced during the Ramos presidency (1992–98). The election platform of Ramos’s Lakas ng Sambayanan (Strength of People’s Power)-National Union of Christian Democrats party (Lakas-NUCD) advocated a parliamentary form of government. In his inaugural speech, Ramos repeated his preference for parliamentarianism. Another draft constitution, allegedly commissioned by the National Security Council (NSC) in 1995, at least rhetorically opted for a shift to a parliamentary system.¹⁴ Finally, in 1995, a nongovernmental group called the Association for Government Reforms for Advancement (AGORA) proposed far-reaching amendments to the Philippine Constitution.¹⁵ Publicly supported by members of the prestigious Philippine Constitutional Association (Philconsa),¹⁶ AGORA likewise advocated a shift to a parliamentary system. Yet, in the light of Ramos’s predilections for a strong state, his erstwhile association with the Marcos regime, and the conspicuous lack of a no-confidence provision in the draft, such proposals nurtured suspicions that Ramos was set to reinstall a more authoritarian political system. In early 1997, angered by Supreme Court rulings threatening to derail his economic deregulation program, Ramos called for constitutional amendments curtailing the powers of what he said was an “imperial” and “intrusive” judiciary.¹⁷

13. Jose V. Abueva, “Philippine Democratization and the Consolidation of Democracy Since the 1986 Revolution: An Overview of the Main Issues, Trends and Prospects,” in *Democratization: Philippine Perspectives*, ed. Felipe B. Miranda (Quezon City: University of the Philippines Press, 1997), p. 57.

14. For a critique of the NSC draft, see Rocamora, *Constitutional Amendment Debate*, 1997, p. 4.

15. AGORA, *Proposed Amendments to the Philippine Constitution* (Manila, Philippines 1995).

16. See the joint conference resolution of AGORA and Philconsa, published in Konrad Adenauer Foundation and Local Government Development Foundation (eds.), *Summary of Proceedings. National Conference on the Philippine Constitution*, Manila Hotel, July 12–13, 1995, pp. 64–65.

17. Alexander R. Magno, “Between Populism and Reform: Facing the Test of May 1998,” *Southeast Asian Affairs 1998* (Singapore: Institute of Southeast Asian Studies, 1998), p. 205, and *Business Day*, Manila, February 17, 1997, p. 2.

The calls for a parliamentary system as well as the economic motives for reopening the constitutional debate were soon overshadowed by moves of the People's Initiative for Reform, Modernization and Action (PIRMA), a citizens' group close to Ramos, and by presidential supporters, to abolish the term limits imposed on elected officials by the 1987 Constitution.¹⁸ It was thus easy for the opponents of amendments to discredit the campaign for a parliamentary system as a thinly veiled strategy to provide Ramos with a second term. Mass protests endorsed, if not orchestrated, by the archbishop of Manila, Jaime Cardinal Sin, and former President Aquino, forced Ramos to abandon the drive for constitutional amendments. His successor, Estrada, who launched another initiative for charter changes for the sake of economic liberalization, was likewise blocked by a powerful coalition of forces representing a cross-section of Philippine society that opposed any tampering with the Constitution.

The turning point in the debate came with the ouster of Estrada. Estrada had been accused in early October 2000 by a provincial governor of accepting bribes and kickbacks in connection with illegal gambling operations.¹⁹ However, the subsequent impeachment trial collapsed in mid-January 2001 after eleven senators blocked a move by House prosecutors to open an envelope allegedly containing information on a bank account incriminating Estrada. In the ensuing mass protests, which became known as EDSA II,²⁰ the military eventually withdrew its support from Estrada, and Chief Justice Hilario Davide declared Vice President Gloria Macapagal-Arroyo president of the Philippines. Yet, the military's role in the ouster of Estrada and the justification of his move by the legal doctrine "*salus populi est suprema lex*" (the welfare of the people is the supreme law) raised questions about the constitutionality of this replacement of an incumbent president.²¹ Since then, criticism of presidentialism and calls for a parliamentary system have been mounting.

18. Magno, "Between Populism and Reform," p. 209.

19. Mel C. Labrador, "The Philippines in 2000: In Search of a Silver Lining," *Asian Survey* 41:1 (January/February 2001), p. 223.

20. EDSA is the acronym for Epifanio de los Santos Avenue. In February 1986, EDSA was the scene of a standoff between demonstrators and pro-Marcos troops. Since then, EDSA has become a symbol for the democratic aspirations of the Filipino people. Unsurprisingly, therefore, the anti-Estrada protest capitalized on this symbolism and also gathered on EDSA.

21. Carl H. Landé, "The Return of 'People Power' in the Philippines," *Journal of Democracy* 12:2 (April 2001), p. 95. However, a subsequent Supreme Court ruling declared the ouster of Estrada constitutional. I am indebted for this information to Jose V. Abueva and Camilo L. Sabio, March 2003.

Perils of Presidentialism?

The turbulence surrounding the Estrada ouster directed the Philippine constitutional debate toward a key problem of presidential systems: the president's fixed term of office. Since in a presidential system, the chief executive is not responsible to the parliament and thus cannot be replaced by a vote of no-confidence, how is it possible to replace a weak, inept, or corrupt president?

The only avenue for removing a nonperforming president is through impeachment. However, the rules for an impeachment trial are strictly circumscribed. It cannot be initiated merely for political expediency when a president seems to have lost public support. An impeachment is a means of last resort designed to remove an incompetent or criminal president.

The Estrada case has also demonstrated that an impeachment is not without political risks. It is a lengthy process, subject to the political maneuverings in both houses of the legislature. From this it follows that even if there is overwhelming evidence, there is no certainty that a malperforming president can be removed from office.

If impeachment fails, the available constitutional means are exhausted. In such cases, only two choices remain: first, to accept that the incumbent will continue in office, although the debts of gratitude incurred for the political support, and the embarrassment associated with an impeachment trial, will almost certainly limit him or her to a lame duck role for the rest of the term. If, as in the Philippines, this coincides with a long presidential term of office (six years), the costs resulting from a lack of adequate political leadership are prohibitively high for a modernizing society in need of inspired leadership. The unwillingness of major sections of society to bear such costs constitutes the second choice: to overthrow the incumbent by resorting to extraconstitutional means. As this option will almost inevitably involve the armed forces, it sets dangerous precedents. It will strengthen the political influence of the military, and may thus pave the way for a seizure of power in a future crisis. Moreover, as illustrated by the congressional elections in May 2001, the Estrada ouster divided society deeply. In fact, the Philippines case, and similarly the impeachment of Indonesian President Abdurrahman Wahid a few months later, seemed to confirm Juan J. Linz's warning that in a presidential system²² a government crisis, almost by definition, becomes a regime crisis.²³

22. It is certainly debatable to classify the evolving post-Suharto Indonesian system as presidential. While the government system devised by the 1945 Constitution may be considered presidential, the de facto strengthening of parliament in the Reform Era has created a hybrid system somewhere between presidentialism and parliamentarianism. Yet, the August 2002 constitutional changes have definitely reemphasized the presidential features.

23. See Linz, "The Perils of Presidentialism," p. 55.

While the fixed term of office is indeed the Achilles' heel of presidential systems, other arguments mustered against Philippine presidentialism are less cogent. One of them concerns the great concentration of executive power in a single person, the president. His or her elevated political role is usually attributed to the executive control over the budgetary process, which vests the president with superior patronage power. Presidential control over the pork barrel is related to the "turncoatism" phenomenon, a local term for change of party affiliation after elections and bandwagoning on the party of the president. Joel Rocamora, a noted Filipino political scientist, therefore concludes that "Filipino presidents are more powerful than even the American president."²⁴

Yet, leaving aside the debate on the relative strength of American presidents,²⁵ presidential power depends very much on the office holder's personality and leadership style. Ironically, many who are complaining vocally about a seemingly all-powerful presidency had previously criticized President Aquino for failing to utilize her almost-dictatorial powers under the Freedom Constitution to push through urgent socioeconomic reforms. Her successor Ramos, while exerting strong leadership, is known to have closely consulted, and in the process, shared powers with his Cabinet. Estrada's personalistic, and in the end, highly erratic style of government is thus by no means the rule when it comes to presidential behavior in the post-Marcos era.

Institutional barriers also place restrictions on presidential power. Far from being free to select the Cabinet members, the president must at least take into consideration the regional, linguistic, ethnic, and religious divisions of the country. Philippine cabinets thus habitually include representatives from Luzon, the Visayas, and Mindanao as well as from the major religious communities, i.e., apart from the Catholic majority, also Protestants and Muslims. Even more importantly, appointments to the Cabinet must be ratified by a powerful bicameral Congressional Commission on Appointments. This check is however a double-edged sword, because the Commission has a record of subjecting reform-minded nominees to a grueling examination. The eventual rejection of two of President Aquino's nominees for secretary of agrarian reform, Florencio Abad and Miriam Defensor-Santiago, are cases in point.²⁶

24. Rocamora, *Constitutional Amendment Debate*, 1997, p. 14.

25. See Fred W. Riggs, "Presidentialism: A Problematic Constitutional System," in *Conquering Politico-Administrative Frontiers. Essay in Honor of Raul P. de Guzman*, ed. Leditina V. Carino (Quezon City: University of the Philippines College of Public Administration and the University of the Philippines Press, 1995), p. 545.

26. See Olivia C. Caoili, "Assessment of the Performance of the Philippine Congress: 1988-1992," in *The Post-EDSA Vice Presidency, Congress & Judiciary: Self-Assessments and*

The vice presidential post elected on a split ticket may also help curb presidential power, especially if coming from an opposition party. Again, however, the vice presidential checks are often more of an obstructive nature. Viewing the post as a springboard to the presidency, vice presidents have a tendency to fall out with their presidents, as illustrated by the tense relationship between Corazon Aquino and Salvador Laurel or, more recently, between Joseph Estrada and Gloria Macapagal-Arroyo.

Finally, as far as the budgetary argument is concerned, even in parliamentary systems, the budget is prepared by the executive. Although parliament scrutinizes the draft budget and acts on it, owing to the fusion of government and parliamentary majority, active budgetary oversight in parliamentary systems is restricted to the opposition and—as a result of time constraints and lack of expertise—is hardly less superficial and random than in presidential systems.²⁷

Compared to other presidential systems, in the Philippines, presidents can hardly be considered overly powerful. As a legacy of the Marcos regime, the presidential position has been weakened considerably. Compared to the 1935 Constitution, Philippine presidents are restricted to only one term and their emergency powers are subjected to tight legislative supervision. Moreover, unlike some of their Latin American and Central Asian counterparts, they do not have decree-making powers.²⁸

While even a critic of presidentialism such as Arend Lijphart concedes that the separation of powers between executive and legislature may endow presidential democracies with a consensual element,²⁹ Philippine critics deplore the fact that lawmaking may be paralyzed under such an institutional arrangement.³⁰ Their main concern in this respect is the presidential power to veto congressional legislation. As Emil Bolongaita points out, since 1935, such a veto has never been overridden by a legislature.³¹ Yet, despite vesting the

External Views and Assessments, eds. Jose V. Abueva and Emerlinda R. Roman (Quezon City: University of the Philippines Press, 1998), p. 107.

27. See Hans-Peter Foth, *Der Kongress der Philippinen: Ein Beitrag zum Parlamentarismus in der Dritten Welt* [The Philippine Congress: A study on parliamentarianism in the third world] (Hamburg: Mitteilungen des Instituts für Asienkunde, nos. 199, 1991), p. 88. For India, see Surya A. Prakash, *What Ails Indian Parliament. An Exhaustive Diagnosis* (New Delhi: Indus, 1995), p. 189.

28. Aurel Croissant, "Delegative Demokratie und Präsidialismus in Südkorea und auf den Philippinen" [Delegative democracy in South Korea and the Philippines], *WeltTrends* [World Trends], no. 29 (Winter 2000/2001), pp. 115–42.

29. Lijphart, *Democracies*, p. 78.

30. For an example among many similar statements in the public discourse, see the newspaper advertisement signed by the presidents of the three local government leagues and the Coalition for Constitutional Change Now in *The Philippine Star*, January 26, 2003, p. 17.

31. Emil P. Bolongaita, Jr., "The Philippines in 1999: Balancing Restive Democracy and Recovering Economy," *Asian Survey* 40:1 (January/February 2000), p. 71. However, more empiri-

president with the power of a line-item veto (in budgetary matters), empirical evidence suggests that after 1986, Philippine presidents have not used their veto powers excessively.³² Other scholars, like Rocamora, accordingly downplay the veto, but deplore the inevitable horse-trading between president and legislature that waters down most reformist initiatives.³³ Again, such reasoning overlooks the fact that—as far as the dilution of reformist legislation is concerned—there is hardly any difference to parliamentary processes of law-making. Multiparty coalition governments such as in Thailand before 1997, or currently in India, also necessitate intense bargaining and compromises on the basis of the smallest common denominator.

In the Philippines, gridlock in the legislative process is a structural problem primarily caused by the bicameral nature of Congress. The effects of gridlock, however, are frequently exaggerated. At the bottom of the problem lies the symmetrical nature of powers of the House and the Senate. This results in a duplication of legislation, since a bill must pass both houses. Complicating the process is the tendency of both houses frequently to file their own bills on the same policy matter.³⁴ The Senate, especially, which owing to its nationwide constituency is considered a training ground for future presidents, has a reputation of pursuing its own agenda—at times at variance with that of the House majority and with presidential policies.³⁵ Different versions of a bill must then be reconciled in lengthy bargaining in the Joint Conference Committee, considered by some as the “Third House.”³⁶ Yet, few—albeit usually important—bills are submitted to bicameral conference committees, because the sponsors normally seek to avoid this. In order to find compromises for controversial issues, they tend to consult informally

cal research is needed for ascertaining as to what extent such sweeping assessments can be upheld. Salonga, for instance, reports that at least in one case, the case of a Joint Legislative-Executive Council on the Foreign Debt Problem, the Senate has rejected the presidential veto of a Senate resolution. Jovito R. Salonga, “The Senate That Said No: A Four-Year Record of the First Post-EDSA Senate (July 27, 1987, to December 31, 1991),” in Jose V. Abueva and Emerlinda R. Roman, eds., *The Post-EDSA Vice Presidency, Congress & Judiciary: Self-Assessments and External Views and Assessments*, p. 64.

32. Based on data provided by the House of Representatives, the number of vetoes was 3.7% in the 8th Congress (1987–92), 7.4% in the 9th Congress (1992–95), 3.1% in the 10th Congress (1995–98), and 4.6% in the 11th Congress (1998–2001).

33. Rocamora, *Constitutional Amendment Debate*, 1997, p. 17.

34. Done except for appropriation, revenue, or tariff bills, bills authorizing public debt, bills of local application, and private bills, which shall originate exclusively in the House of Representatives. See The Constitution of the Republic of the Philippines, 1987, Section 24.

35. Armando Doronila, “The Senate Is a Monster, Ungovernable, Conservative, Parochial,” *The Post-EDSA Vice Presidency, Congress & Judiciary: Self-Assessments and External Views and Assessments*, p. 128.

36. David J. Vogler, *The Third House: Conference Committees in the United States Congress* (Evanston, Ill.: Northwestern University Press, 1971).

with the members of the committee responsible for the proposed legislation in the other House already at an early stage of the legislative process.³⁷

If gridlock is taken as an argument to support a shift toward a parliamentary system of government, it should not be overlooked that bicameral parliamentary systems may also be prone to paralysis. A good example is Germany, where in recent years the second chamber, the *Bundesrat*, has blocked labor and tax reforms. Gridlock can be mitigated, if not entirely eliminated, through skillful coordination between the executive and the two legislative chambers. Gridlock problems notably haunted the Aquino presidency due to the fact that the president sought to stay above politics, and rarely involved herself in legislative matters.³⁸ The creation of a Presidential Legislative Liaison Office (PLLO), and shortly thereafter a Legislative Liaison System (LLS), failed to engage the political key players and thus failed to solve the problem.³⁹ More successful was the Legislative-Executive Development Advisory Committee (LEDAC) established by President Ramos in December 1992. LEDAC was composed of key members of the executive plus the House speaker and Senate president, and the minority leaders of both houses, as well as prominent party stalwarts. Run masterfully by Ramos's close associate, House Speaker José de Venecia, LEDAC served as a forum for exchange of information on important legislation and a venue to work out compromise versions of major bills so that they would pass Congress. Under Estrada, LEDAC was only rarely activated, but Arroyo, again with de Venecia as House speaker, revived the mechanism, which, mainly due to her weakening leadership, seems less effective than it was under Ramos.

Another powerful argument aired against presidential systems is that they are more prone to collapse than parliamentary systems. According to this viewpoint, a nonsupportive legislature tempts presidents to resort to dubious or even illegitimate actions in the pursuance of their agenda. This stance appears to support the conclusion that there is a built-in authoritarian tendency in presidentialism. The resultant political polarization and the frequent blockades in the legislative process may provoke coups, and eventually, the overthrow of the democratic order. Marcos's declaration of martial law in 1972 is frequently cited as an example for such a scenario.

Yet, the empirical evidence for the presumed instability of presidential systems is ambiguous. As pointed out by Nohlen and Thibaut, much depends on

37. Interview, House of Representatives, Manila, February 3, 2003.

38. Jovito R. Salonga, "The Senate That Said No," p. 64.

39. Romulo B. Linauig, "Executive-Legislative Relations," in *The Ramos Presidency and Administration: Record and Legacy (1992-1998)*, eds. Jose V. Abueva/Ma. Concepcion P. Alfiler/Ma. Piva Z. Domingo/Eleanor E. Nicolas (Quezon City: University of the Philippines Press, 1998), p. 60.

the timing of the analysis.⁴⁰ If Stepan's and Skach's 1993 study, on which the instability argument is based, had appeared 10 years later, a different picture with more stable presidential systems would emerge.⁴¹ The case for the stability of parliamentary systems is also weakened by the fact that many of the stable parliamentary democracies are found in Western Europe or in small island states. A closer look at the developing world and Southeast Asia in particular hardly supports the argument of the greater stability of parliamentary systems. The region's parliamentary systems have a record of frequent collapse, as demonstrated by the cases of Indonesia (1957); Burma (1958, 1962); Thailand (1947, 1971, 1976, 1992); Malaysia (1969); and Cambodia (1997). In the end, the argument of unstable presidential democracies mainly rests on Latin American evidence. One may follow Mainwaring and Shugart when they argue that the unfavorable conditions for democracy that caused the collapse of presidential democracies in Latin America may have caused the breakdown of parliamentary democracies there too.⁴²

Philippine presidentialism is also held responsible for its inability to create a strong party system. Jungug Choi, for instance, sees a causation between presidentialism and a weak party system when he argues that the fluid multi-party system that emerged after 1986 is linked to the curbing of a second presidential term enacted in the 1987 Constitution.⁴³ Choi's analysis, however, overlooks the fact that the roots of the multiparty system date back to the Marcos years. In order to create a parliamentary facade for his authoritarian rule, Marcos needed a fragmented party system that would provide him with, on the one hand, an overwhelming parliamentary majority and also, on the other hand, a token opposition. For this purpose Marcos allowed the formation of parties that were accredited only in certain regions of the country: Lakas ng Bayan (Laban) (Metro Manila); Bicol Saro (Region V); PUSYON BISAYA (Region VII); the Mindanao Alliance (Regions X, XI, and XII); and the Concerned Citizens' Aggrupation (CCA) (Region IX) were examples of such regional parties fielding candidates in the 1980 local and the 1984 parliamentary elections in their respective regions. Moreover, many studies of political transition have shown that owing to their one-issue nature—for ex-

40. Dieter Nohlen, "Lateinamerika zwischen Präsidialismus und Parlamentarismus" [Latin America between presidentialism and parliamentarianism], in *Lateinamerika Jahrbuch 1992* [Latin America yearbook], ed. Albrecht von Gleich (Frankfurt am Main: Vervuert, 1992), pp. 86–99, and Bernhard Thibaut, *Präsidialismus und Demokratie in Lateinamerika* [Presidentialism and Democracy in Latin America] (Opladen, Germany: Leske und Budrich, 1996).

41. Alfred Stepan and Cindy Skach, "Constitutional Frameworks and Democratic Consolidation: Parliamentarianism versus Presidentialism," *World Politics* 46:3 (October 1993), pp. 1–22.

42. Mainwaring and Shugart, *Presidentialism and Democracy*, p. 20.

43. Jungug Choi, "Philippine Democracies Old and New: Elections, Term Limits, and Party Systems," *Asian Survey* 41:3 (May/June 2001), pp. 488–501.

ample, the overthrow of an authoritarian regime—anti-regime movements tend to collapse, and parties split into factions, after regime change.

A more frequent explanation for the assumed correlation between presidentialism and a weak party system is the reasoning that in presidential systems the president cannot be voted out of office by the legislature. From this is deduced that there is no incentive for the emergence of cohesive political parties, as chief executives may survive politically even if they lack parliamentary support.⁴⁴ Yet, the assumed causal relationship between presidentialism and weak party systems does not rest on strong empirical evidence. More recent research on Latin America, for instance, has demonstrated that presidentialism in Chile, Costa Rica, and Uruguay has not been an obstacle to the evolution of strong party systems.⁴⁵ The parliamentary systems of Thailand and India, vice versa, have failed to create strong parties. There is much plausibility in the argument that the form of government is not even a necessary, much less a sufficient, condition for the formation of a strong party system. Other factors shaping party systems are the electoral system and, perhaps even more important, the way societal cleavages are translated into an institutionalized arena.

Societal cleavages definitely exist in the Philippines. However, they have not found institutional expression, thus preserving the elitist, one-dimensional, and nonprogrammatic party system. There are at least three factors explaining this. First, in the colonial era, societal conflicts were subordinated to the overriding goal of national independence. These aspirations were captured by the Nacionalista Party that dominated pre-independence Filipino politics as an umbrella party.⁴⁶ Parties targeting social injustice, such as the Socialist Party, the Sakdalista Party, and the Philippine Communist Party (PKP), were outlawed.⁴⁷ Second, after independence, Cold War anticommunism permitted the regime to squelch lower-class representation. In the absence of legalized labor and peasant parties, class conflict has been relegated to the extraparliamentary sphere, illustrated by the Hukbalahap Rebel-

44. Arend Lijphart, "Presidentialism and Majoritarian Democracy: Theoretical Observations," in *The Failure of Presidential Democracy: Comparative Perspectives*, eds. Juan J. Linz and Arturo Valenzuela (Baltimore: Johns Hopkins University Press, 1994), p. 98.

45. Ingrid Wehr, "Lipset und Rokkan 'a la latina': Einige Überlegungen anhand des chilenischen Parteiensystems" [Lipset and Rokkan 'a la latina': Some reflections on the Chilean party system], in Ulrich Eith and Gerd Mielke, eds., *Gesellschaftliche Konflikte und Parteiensysteme* [Social conflicts and party systems] (Opladen, Germany: Westdeutscher Verlag, 2001), pp. 203–20.

46. Carl C. Landé, *Post-Marcos Politics: A Geographical and Statistical Analysis of the 1992 Presidential Election* (Singapore: Institute of Southeast Asian Studies, 1996), p. 119.

47. Luzviminda G. Tancanco, "The Electoral System and Political Parties in the Philippines," in *Government and Politics of the Philippines*, eds. Raul P. de Guzman and Mila A. Reforma (New York: Oxford University Press 1988), p. 90.

lion (1947–55) and, after 1968, the revolutionary struggle of the Communist Party of the Philippines (CPP) and its military arm, the New People's Army (NPA). And, third, there is—as in other Southeast Asian societies—the cultural dimension of a distinct aversion to institutionalization. The norms of personalism, pragmatism, flexibility, and localism serve as major impediments to the institutional integration of societal interests in durable party organizations. Yet, these cultural explanations are more ambiguous. They can be easily challenged on the grounds that weakly institutionalized and personalistic political parties, far from being exceptional for the Philippines, are a phenomenon of many developing countries, and thus reflect a more general feature of late modernization.

Finally, Philippine critics also deplore the populist nature of presidential democracies. Electoral contests—especially for the highest office—are personal plebiscites. Again, such an assessment exaggerates the Estrada experience, with his contradictory and hollow “pro-poor, pro-market” campaign slogan. Moreover, the fact that show business and media personalities such as Estrada himself, Freddy Webb, Robert Jaworski, and Noli de Castro have been elected to the Senate is by no means a specific trait of a presidential system. The parliamentary systems of Thailand and India have also seen the rise of such personalities in politics. The electoral campaign of Thai Prime Minister Thaksin Shinawatra, with his promise to distribute one million baht to every village, his 30-baht medicare scheme, and his debt moratorium for farmers, is definitely at par with the Estrada campaign—though with the difference that Thaksin soon moved to deliver on his campaign promises. In Europe, the phenomena of Jörg Haider in Austria, Silvio Berlusconi in Italy, and the late Pim Fortuyn in the Netherlands likewise prove that parliamentary systems are in no way immune to populism. Populism is less related to the political system than to profound changes in the media world and to novel campaign strategies in the era of mass democracy.

Virtues of Parliamentarianism?

While the preceding paragraph has shown that the deficiencies of Philippine presidentialism may be less serious than claimed by its detractors, the following section puts some of the frequently cited virtues of parliamentarianism into proper perspective. One of the most powerful arguments for parliamentary systems is their seemingly greater flexibility, which is attributed to the fact that a nonperforming prime minister can easily be dislodged by a no-confidence vote. Yet, a closer look at reality suggests that this argument is more persuasive in theory than in practice. Usually a weak governmental performance is ingrained more deeply in a country's political culture, rather than being merely a matter of political leadership. Replacing the chief executive is thus tantamount to curing the symptoms. Moreover, removing a prime

minister from office is sometimes easier said than done. As a consequence, stalemated parliamentary systems have in East and Southeast Asia more than once provoked the military to intervene. Thailand, where the military took over weak parliamentary democracies in 1947, 1971, 1976, and 1991, is a particularly illustrative case. But Burma (1958, 1962); Indonesia (1957); Cambodia (1997); and South Korea (1961) may also be cited as examples.

While the admirers of parliamentarianism praise the no-confidence motion as a powerful institutional incentive for governments to perform well, the disciplining effects of this lever depend strongly on responsible use. Unfortunately, however, as the Thai case suggests, a no-confidence vote that is not constructive, is open to abuse. In Thailand, prior to the 1997 Constitution, the no-confidence vote was persistently used against individual ministers and the chief executive as a means to erode the inherently weak cohesion of multi-party coalitions. In the mercantile Thai political system, which shares with the Philippine presidential system endemic vote buying, opposition parties have a supreme interest in toppling the government soon as a means of opening avenues for entering the ruling coalition. Only in government will they be able to recoup their campaign investments. Opposition parties have been frequently joined by disgruntled elements of the government coalition who have been bypassed in the distribution of the electoral spoils. The consequence of such behavior has been a notoriously unstable government, evidenced by the fact that prior to 1997, Thai cabinets were reshuffled every few months.

A second major argument in favor of a parliamentary system frequently bruited in the Philippine debate is the expectation that it would generate a strong party system. As parliamentary governments can easily be brought down through a vote of no confidence, it is argued, party discipline is needed to stay in power. Conversely, with his right to dissolve parliament, the prime minister also wields a powerful stick to keep the party in line. Again, empirical evidence suggests that there is no iron law that parliamentary government produces strong party systems. The failed Southeast Asian parliamentary systems mentioned earlier have been marked by highly personalistic, factionalized, and weak, though not necessarily always nonprogrammatic, party systems. In all these cases, political parties have been personality-based power centers, run by political entrepreneurs who view them primarily as a vehicle to get access to government positions and state resources. Parliamentarians switch "identical parties"⁴⁸ at will for opportunistic reasons—in the case of Thailand, many lawmakers did so more than four times during their political

48. Carl H. Landé, *Leaders, Factions and Parties: The Structure of the Philippines* (New Haven: Yale University, Southeast Asia Studies Monograph Series, no. 6, Southeast Asia Studies, 1965).

career—before the 1997 Constitution made defections much more difficult. Moreover, there is no reason why such a device discouraging legislators from party switching may not be introduced into a presidential system as well. One may therefore share Sartori's reservations about the learning effects toward disciplined parties emanating from a parliamentary system.⁴⁹

Moreover, in parliamentary systems, political parties do not necessarily represent major societal cleavages. The capital-labor cleavage, creating deep divisions in developing countries, is rarely reflected in the party system. Leftist parties or parties representing labor or peasant interests are virtually absent in Thailand, where they have been persistently suppressed in the wake of a staunchly anticommunist national security doctrine and efforts to create a favorable investment climate. This, of course, does not mean that lower-class interests are entirely excluded from the political process. They are taken up by organizations of the civil society such as NGOs, labor unions, and peasant associations, but, pushed to the margins of political institutions, many representatives of these organizations and movements have adopted a rather critical view of all forms of representative democracy and are more in favor of plebiscitary forms of democracy.

Another argument in the Philippine debate, stated, for example, by Pablo Tangco, maintains that parliamentary governments are more successful in promoting economic development. To prove their point, adherents refer to the high development levels in parliamentary democracies in Europe and Asia. As Asian examples, they cite Japan, Singapore, and Malaysia.⁵⁰ Yet, the last two cases, at least, may be better categorized as hybrid systems located somewhere between authoritarianism and democracy.⁵¹ In the case of India, with its low per capita gross domestic product (GDP), the causal relationship between parliamentarianism and development, which in fact reverses a dogma of modernization theory, is even more spurious.

Other arguments highlight the greater bureaucratic continuity of parliamentary systems as an explanation for their allegedly better developmental performance.⁵² Indeed, it is undeniable that excessive patronage and corrup-

49. Sartori, *Constitutional Engineering*, p. 95.

50. Pablo Tangco, "Government and Politics," in *Summary of Conference Proceedings: First National Conference on Parliamentary Government* (Manila, December 4–5, 1991), p. 17, and interview by author, Manila, September 20, 2001.

51. Freedom House rates Malaysia and Singapore in the category of "partly free," while Steven Levitsky and Lucan A. Way categorize them as "competitive" and "electoral authoritarianism." Steven Levitsky and Lucan A. Way: "The Rise of Competitive Authoritarianism," *Journal of Democracy* 13:2 (April 2002), pp. 52, 54.

52. Cited in Marit Stinus-Remonde, "Parliamentary System Can't Address Our Real Problems," *Manila Times*, February 11, 2003, p. 6; Jarius Bondoc, "Blueprint to Federal Parliamentary Form," *Philippine Star*, January 23, 2003, p. 9; and Rocamora, *Constitutional Amendment*, p. 18.

tion are trademarks of Philippine presidentialism. The frequent rotation of personnel, attributed to the need of the president to dispense favors in exchange for political support, undermines administrative continuity, discourages competent officialdom, and impedes institutional learning. But parliamentary systems too struggle with similar problems. The short life cycle of Thai governments prior to 1997, for instance, also facilitated bureaucratic infighting and high turnover rates of high-ranking officials. Even under the reformist 1997 Constitution, vote buying is still rampant, and the electoral process is controlled by provincial businessmen and occasionally even mafia-type godfathers (*chao phor*) who exert pervasive influence on all levels of the bureaucracy.⁵³ In fact, in a recent article, Paul Hutchcroft has persuasively demonstrated how Thailand's previously patrimonial administrative state increasingly resembles the Philippine patrimonial oligarchic state.⁵⁴ This supports the conclusion that in a political culture where clientelism is deeply ingrained and where there is no major change in the political personnel, the effects of institutional engineering are limited.

Likewise problematic are occasional proposals to introduce a semi-presidential type of government modeled after the French Fifth Republic. Although Sartori seems to believe that semi-presidentialism is more flexible than pure presidential and pure parliamentary systems,⁵⁵ many of the much-maligned features of presidentialism remain in place. It is even more difficult to see how such a system, with a dual power center, would meet the litmus test of cohabitation in the Philippines.⁵⁶

An Agenda for Constitutional Reform

One can hardly escape the impression that the ongoing Philippine constitutional debate is characterized by worst-case thinking on presidentialism and best-case scenarios for parliamentarianism. However, through the comparative perspectives introduced in the preceding discussion, it should have become clear that parliamentarianism is not a panacea for the weaknesses of the Philippine political system. Without clairvoyance, one may predict that many of the country's well-known political problems would persist even

53. In opposition to the mainstream literature, Nelson downplays the influence of *chao phor* on electoral politics and political decision-making in general. See Michael H. Nelson, "Business and Politics in Provincial Thailand: Aspects of Political Change," in *Thailand's New Politics: KPI Yearbook 2001*, ed. Michael H. Nelson (Bangkok: King Prajadhipok's Institute & White Lotus, 2002), pp. 469–91.

54. Paul Hutchcroft, "After the Fall: Prospects for Political and Institutional Reform in Post-Crisis Thailand and the Philippines," in *Government and Opposition* 34:4 (1999), pp. 473–97.

55. Sartori, *Constitutional Engineering*, p. 136.

56. Wolfgang Merkel, *Systemtransformation* [System transformation] (Opladen, Germany: Leske & Budrich, 1999), p. 154.

under a parliamentary system of government. Moreover, so fundamental a shift as replacing a presidential system with a parliamentary one would create enormous transition problems. Fred Riggs, despite his reservations on presidentialism, maintains that such a change has rarely succeeded, when attempted.⁵⁷ Contrary to the opinion of *cha-cha* (charter change) proponents that “constitutions are by no means sacred,”⁵⁸ it is argued here that a permanent, ongoing constitutional debate, or—even worse—frequent rewriting of the constitution, should be avoided. As a constitution acquires legitimacy with age, frequent amendments undermine the trust of the people in the highest law of the land. Constitutional debates and amendments may then be seen merely as part of a power struggle among elites with the sole purpose of tailoring the rules of the political game for short-term political gain. If, however, the rules of the game are not held legitimate, a democracy will hardly develop the civic culture that democracy theory has identified as a major prerequisite for democratic consolidation.⁵⁹

The present Philippine Constitution is barely 16 years old, a relatively short period compared to the constitutional life cycle of established democracies. Owing to its hasty drafting, it certainly has shortcomings that need to be remedied. Yet, one may question whether these flaws justify full-fledged change of a political system that has gained at least a modicum of legitimacy in the Philippines. From this, it follows that rather than taking the risks of fundamental constitutional changes, the 1987 Constitution should be given a fair chance, and a pragmatic approach should be taken to address its flaws. Formulated differently: the alternative to a full-scale change of the government system is to maintain the existing presidential system while optimizing it through gradual amendment wherever weaknesses are obvious and institutional engineering promises tangible results. Moreover, as will be shown below, many of these deficiencies are procedural, and in some cases can be eliminated even without amending the Constitution.

Although Lijphart seems to hold presidential democracies less inclusive than consensual parliamentary systems,⁶⁰ it is argued here that even presidential democracies may develop elements of consensus democracy. Constitutional reforms should thus be guided by the objective of making the Philippine polity more inclusive and consensual. The subsequent sections of this article provide suggestions on how this could be achieved.

Undoubtedly, one of the most serious shortcomings of the presidential system is the fixed term of office of the president. It is also the issue most difficult to remedy without entirely changing the system of government. The

57. Riggs, “Presidentialism,” p. 541.

58. Interview with anonymous scholar, Manila, September 17, 2001.

59. Merkel, *Systemtransformation*, pp. 164–70.

60. Lijphart, “Presidentialism and Majoritarian Democracy,” pp. 91–105.

proposal made here to shorten the presidential term to four years and allow for one re-election may thus not be fully satisfactory.⁶¹ Yet, although the proposal marks a return to the provisions of the 1935 Constitution, it has the advantage that a nonperforming president can be voted out of office earlier, while giving capable leaders more time to implement their political agenda through a second term.

Such a change must go hand in hand with electoral reforms. Without them, nonperforming incumbents could more easily instrumentalize the government machinery illicitly to engineer their reelection. In fact, electoral reform is one of the most urgent tasks in moving toward a consolidated Philippine democracy. The fraudulent and—as the 2001 elections showed—still violent Philippine electoral process is one of the greatest drains of legitimacy for Philippine democracy.

More importantly, electoral reforms do not require constitutional amendments. Most, such as scouring from voter lists all bogus voters and phantom precincts, or computerization of the voting process, are technical in nature. Unfortunately, so far, while the required laws (Republic Act 8189) are in place, the political class has moved only slowly to implement them.

Lijphart has argued that especially in divided societies, majority voting systems have exclusive effects. Conversely, versions of proportional representation stand for greater inclusiveness.⁶² Framers of the 1987 Constitution responded to such arguments by introducing a hybrid electoral system for the House of Representatives. Republic Act 7941 complements the majority vote by a party-list system based on proportional representation that has been designed to give disadvantaged groups such as workers, peasants, poor fishermen, disabled persons, and women a voice in Congress.

Nonetheless, since only up to 20% of Congress members are elected on the basis of party lists, the electoral system preserves its majoritarian character. Apart from the fact that it took Congress eight years to pass the Party-List Law, the enacted version dilutes the intentions of the drafters of the Constitution.⁶³ The law gives voters the option to choose one party from a list of accredited parties. For a parliamentary seat, a party must win at least 2% of the total votes cast under the party-list system. However, the fact that a party can only win a maximum of three seats clearly indicates that the political class sought to prevent the rise of a reformist party that could effectively challenge vested interests. A party representing lower-class interests that

61. Similarly, for Latin American presidential systems, see Mainwaring and Shugart, *Presidentialism and Democracy*.

62. Lijphart, *Democracies*, p. 21.

63. For a detailed legal critique, see Alberto C. Agra, *The Philippine Party List System: A Legal Critique* (Manila: Ateneo de Manila University, College of Law, 1997).

won 30 or more seats would certainly be a force to be reckoned with.⁶⁴ To make things worse, until a Supreme Court ruling⁶⁵ specified the criteria for parties running under the party-list system, many bogus parties were registered by traditional politicians who would, if elected, even strengthen their position in Congress. Moreover, the three-seat ceiling exacerbates an already fragmented landscape of parties. In 1998, 122 parties were accredited for the polls, and 154 in 2001. The Commission on Elections (COMELEC)—usually aligned with the powers that be—did little to educate the voters about the party list system.⁶⁶ As a result, out of a total of 34 million registered voters, only 9.1 million voters, or 31.3%, cast their votes for party lists in the 1998 elections.⁶⁷ In the end, only few parties passed the 2% hurdle, and only 14 of the 52 seats were filled.⁶⁸

A remedy for weakening the majoritarian character of the electoral system could be the expansion of the party-list system to cover one-half of the House seats.⁶⁹ A built-in 5% threshold should provide a check on party fragmentation. At the same time, the ceiling of three seats must fall. Only then can parties with a reformist agenda hope to enter Parliament and thereby better represent existing societal cleavages in the country. As majoritarian electoral systems are essentially based on the idea of representing local interests,⁷⁰ the nationwide scope of the party list system could possibly also serve as a counterweight to the localist effects of the majoritarian component of the Philippine electoral system. But even then, the road to a truly cohesive party system will be long, as it is doubtful whether inequitable structural conditions allow reformist parties to detach themselves from the country's prevailing personalistic political culture, which in virtually all areas of societal organization has produced fragmentation.

64. Foth, *Der Kongress der Philippinen*, p. 105; Emil P. Bolongaita, "The Philippines: Consolidating Democracy in Difficult Times," *Southeast Asian Affairs 1999* (Singapore: Institute of Southeast Asian Studies, 1999), p. 244.

65. "Bayan Muna versus Commission on Elections," *Lawyers' Review* 15:7 (July 31, 2001), pp. 50–58.

66. Interview by author, Manila, September 6, 2000.

67. However, voter turnout for party lists almost doubled in the 2001 elections. Christof Hartmann, Graham Hassell, Soliman M. Santos, "Philippines," in *Elections in Asia and the Pacific—A Data Handbook, Vol. II, South East Asia, East Asia and the South Pacific*, eds. Dieter Nohlen, Florian Grotz, and Christof Hartmann (New York: Oxford University Press, 2001), p. 215.

68. Gabriella R. Montinola, "The Philippines in 1998: Opportunity amid Crisis," *Asian Survey* 39:1 (January/February 1999), p. 67.

69. For such a proposal, see also AGORA, p. 25, and Rocamora, *Constitutional Amendment Debate*, p. 26.

70. Aurel Croissant, "Das südkoreanische Wahlsystem und seine Reform" [The Korean election system and its reform], *ASIEN [Asia]*, no. 78 (January 2001), p. 73.

The frequently criticized gridlock problem could also be lessened by changes of the House and Senate rules. One such improvement is the provision of a fixed period for the deliberation of bills in the Senate and the Joint Conference Committee, similar to the one in the House of Representatives. In the House, a bill must pass the committee phase within 30 session days. The fact that the Senate and the Joint Conference Committee lack such limitations is a major reason why the Senate is usually behind the House in deliberation of bills, and why gridlock emerges.⁷¹

Another urgent task is declogging the legislative process. In the Philippines, bills are categorized into national and local bills. Local bills constitute the overwhelming majority, 85–90% of the legislation introduced into the House. Each parliamentary period, thousands of them are filed by congress members, irrespective of another several hundred resolutions. Most of these bills deal with peripheral and merely symbolic matters such as the naming or renaming of municipalities, streets, schools, and the creation of new *barangays*.⁷² Such matters may be better decided at the local government level. Their elimination from the legislative agenda would probably speed up more important legislation and imbue legislators with a greater sense for national priorities.

Declogging the legislative agenda could also be paralleled by streamlining congressional organization. The House, for instance, consists of 51 standing committees and the Senate, 43. Congress members belong, on average, to up to six committees and senators, even more. Multiple committee memberships and, more important, committee chairmanships, are a matter of prestige, but they are also an avenue to influence decisions with an impact on the representatives' constituency in as many policy areas as possible. However, multi-membership in committees works against specialization and professionalization of the legislature, which needs capacity-building as policy matters grow in sophistication and complexity owing to the modernization process. Moreover, as committee meetings frequently overlap, legislators are hardly able to participate in each with the same intensity. Frequently, they send their staff to participate, while the legislators themselves may only attend for a short while before hurrying to the next meeting. Such "committee hopping" tends to produce sub-optimal legislative results.⁷³

Perhaps the most important mechanism to mitigate the effects of gridlock has been the Legislative-Executive Development Advisory Committee, intro-

71. Foth, *Der Kongress der Philippinen*, p. 59, and interviews in the House of Representatives, September 20, 2001.

72. Josie H. de Leon, "The Philippine Legislature after Marcos," in Renato Velasco and Sylvano Mahiwo, eds., *The Philippine Legislature Reader* (Quezon City: Great Books Publishers, 1989), p. 97.

73. *Ibid.*, p. 100

duced during the Ramos presidency. The mechanism certainly needs further fine-tuning, but it may help foster a political culture of coordination, concerted action, and compromise.

If the gridlock problem is to be remedied, a change of the status of the Senate must also be considered. Since the failed impeachment trial of Estrada, the Philippine Senate has again come under attack. The critical view of the Senate by some segments of the public has been compounded by the elections to Congress in 2001 of controversial personalities such as former coup leader Gregorio Honasan and Estrada's Police Chief Panfilio Lacson. However, despite the strong sentiment in the present Philippine debate over unicameralism, the Senate should not be abolished. A bicameral parliament is, as argued by Lijphart, an important element of consensual democracy,⁷⁴ provided that the membership is not congruent with that of the first chamber.⁷⁵ This is, however, precisely the case in the Philippines. The Senate gives special representation neither to minorities or groups excluded from governmental decision-making nor to the interests of the local government units. Although it is elected on a different basis than the Lower House, its members come from the same social class as the members of Congress. In fact, many of them shuttle back and forth between the two Houses.

A reformed Senate should not have the same legislative powers as the House of Representatives. Instead of reduplicating the legislative process, the Senate should be reduced to a supervisory function with a suspensive veto. Although such asymmetrical bicameralism may weaken the consensus element, this disadvantage is compensated for by the fact that a weaker Senate would reduce the gridlock problem. Also, ethnic, religious, and linguistic diversity in the Philippines is modest, compared to that in other Asian countries such as Indonesia or India. If the Senate is to be popularly elected, the national constituency should be replaced by regional constituencies. In the more recent past, Luzon has been clearly overrepresented, while the Visayas and Mindanao were underrepresented.⁷⁶ If direct elections to the Senate were to be abolished, it could be composed of representatives of local governments. While this would add another element of representation, the inclusiveness of such a move would only be modest, since local governments are controlled by the same oligarchies that also control national politics.

74. On the functions of second chambers, see also Gisela Riescher, Sabine Ruß, and Christoph Haas, eds., *Zweite Kammern* [Second chambers] (München and Wien: R. Oldenbourg Verlag, 2000).

75. Lijphart, *Democracies*, p. 92.

76. Eleven of the 13 senators elected in May 2001 come from Luzon, two from the Visayas, and none from Mindanao. See Willibold Frehner, "Philippinen: Wahlen in turbulenter Zeit" [The Philippines: Elections in troubled times], in *KAS Auslandsinformationen* (Konrad Adenauer Foundation Information on Foreign Affairs), no. 7 (2001), p. 54.

An additional important issue in the present debate is the transformation of the Philippine unitary state into a federal system. It is believed that such a move would have a cushioning effect on the Muslim rebellion in the South.⁷⁷ It would provide the Moro population with the degree of political and cultural autonomy they seek. Attractive as such a constitutional amendment sounds, the difficulties should be carefully considered. The first tricky issue concerns the number of states in a federation. Current proposals run from four to 11 states, including Metro Manila as the federal administrative center. Even more difficult is the demarcation of the new units. If federalism is to be accepted by the population, and the resulting states are not to be artificial entities, units must be created that rest on a modicum of regional identities. The most difficult problems of demarcation will occur in the South, where, owing to Christian immigration, Muslims and Christians live interspersed in many parts of Mindanao, and Muslims have a majority in only a few provinces. Similarly complicated is the issue of resources. What sort of revenues will be allocated to the new states and how does this affect the resource base of both the central government and the local governments? And what will be the fate of ongoing decentralization under the Local Government Code of 1991? It is not possible here to discuss the consequences of federalization in greater detail. It is quite clear, however, that implementation entails risks that should be approached with care.

A final point in the Philippine debate is the way the constitutional amendments are enacted. The Constitution provides three avenues toward this objective: through Congress convening into a constituent assembly, through a constitutional convention, or directly through a people's initiative. In all cases, amendments must be ratified through a plebiscite.⁷⁸

Many voices in the present discourse tend to opt for a full-fledged constitutional convention. They argue that none of the Philippine constitutions has so far been drafted in an impeccably democratic way.⁷⁹ The Malolos Constitution was a revolutionary constitution; the Commonwealth Constitution of 1935, a colonial constitution; the 1973 Constitution was devised under the auspices of martial law; and the 1987 Constitution was drafted by a group of arbitrarily appointed persons. Therefore, a nonpartisan constitutional convention of freely elected delegates should draft a new constitution that would

77. Interview with Senator Aquilino Pimentel, Jr., September 18, 2001, Manila.

78. For details, see Article XVII, 1987 Constitution. In 1997, the Supreme Court ruled that the enabling law for a people's initiative was inadequate. Magno, "Between Populism and Reform," p. 209.

79. Rocamora, *Constitutional Amendment Debate*, 1997, pp. 14, 27, and author's interview with Philconsa president, Camilo L. Sabio, September 19, 2001, in Manila.

have to be ratified by the people through a referendum.⁸⁰ Against this reasoning, it could be argued that even proven constitutions have not gone the purist democratic way. The German Basic Law (*Grundgesetz*) is a striking example. It was drafted by a Parliamentary Council (*Parlamentarischer Rat*) composed of representatives of the (elected) state legislatures and the draft was not submitted to a plebiscite. Drafting a constitution is one thing, interpreting and implementing it quite another. Furthermore, if it is the declared objective for drafting a new constitution to prevent vested interests from controlling Congress, there is no certainty that persons elected to a constitutional convention would be more democratic than the elected legislators in both Houses. The Philippine oligarchy has a track record of great ingenuity in adapting to changing political circumstances, and would certainly manage to get members of its clans—or proxies—elected to a constitutional convention. Moreover, elected constitutional conventions have an ambiguous record in Southeast Asia. The Indonesian *Konstituante* (1955–59) and the Philippine Constitutional Convention (1971–73) dragged on inconclusively for years with their deliberations and were, in the end, disbanded or hijacked by authoritarian rulers. The drafting process in an elected constitutional convention will most likely turn into a divisive process and will produce in the end, if at all, a document based on the smallest common denominator that satisfies nobody. In order to circumvent these obstacles, Congress should first declare itself a constituent assembly. Then, it should appoint a constitutional drafting committee composed of constitutional experts and a broad spectrum of societal representatives. In order to prevent Congress from diluting the constitutional reforms proposed by the drafting committee, Congress should get a chance only to adopt or reject the entire draft. In the light of strong pressures by a vibrant civil society, Congress then would be less likely to reject the draft.

80. Camilo L. Sabio, *Why a Movement for a Non-Partisan Constitutional Convention of Freely Elected Delegated?* (mimeographed paper, 2001).