

## **PUBLIC LIVES**

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### **Reclaiming the Constitution**

Charter change is in the news again. No one is sure who or what is driving it. But, definitely, the writing of a new constitution is being projected as something that is both timely and urgent.

Timely, because having just assumed the reins of government, the Aquino administration cannot be accused of plotting to rewrite the Constitution in order to prolong its stay in power. Urgent, because global changes are occurring so fast that no country can hope to secure its future without reconfiguring the way it governs itself and conducts its affairs with the rest of the world.

Critics of charter change have raised the specter of Gloria Macapagal Arroyo's return as head of state under a parliamentary system if the constitution is amended at this time. This is not farfetched, considering how insatiable her thirst for power has been, and how often she tried to ram charter change through when she was president. Yet, it is irrational and self-defeating for a nation to be held hostage by a fear like this.

The question we should be discussing is: Do we need a new constitution? Legal scholars like Fr. Joaquin Bernas have repeatedly said that Congress has the power to propose amendments at any time by a vote of three-fourths of its members. Congress is therefore a continuing constituent assembly. There is nothing in the present constitution that limits the kinds of amendments that may be proposed in this manner. Congressional action however tends to be associated more with piecemeal amendments than with major revisions.

Major revisions almost always entail rewriting the whole charter. And for

this purpose, a body that is charged with reviewing the entire basic law is convened. This typically takes the form of an appointed commission – like the 1986 Constitutional Commission created by President Cory Aquino -- that drafted the 1987 Constitution. Or, it could be an elected assembly like the 1971 Constitutional Convention, whose work Marcos hijacked when he declared martial law in 1972.

The 1987 Constitution provides that amendments may be proposed by Congress, or by a constitutional convention, or by a so-called “people’s initiative.” It has no provision for an appointed constitutional commission in the present constitution. The traditionally preferred route, when major revisions are at stake, is the calling of a constitutional convention. Examples of such revisions would be a change in the form of government, a re-definition of the role of the State, a redistribution of executive, legislative and judicial powers, or a re-conceptualization of citizens’ rights.

Whichever method is used, it is well to remember that any amendment -- whether proposed by Congress, or by a constitutional convention, or by a “people’s initiative” -- takes effect only after ratification by the people through a plebiscite. The philosophy that underlies this cannot be overstated.

A constitution belongs to the people. It is a document that formally constitutes them as a political entity. Here they express their understanding of who they are as a people, articulate their beliefs and aspirations, define their basic rights and obligations as citizens, and lay down the framework by which they seek to govern themselves. The State is their tool for attaining collective goals. But, recognizing that the State can often be so encompassing in its reach as to engulf their entire being, the people seek protection from the excessive powers of government. A constitution is the supreme guarantee of that protection. This is the logic behind the bill of rights.

One of the most basic realities of any political system, however, is that the structures established by the people themselves acquire, over time, a life

of their own. Government looms as a distant and fearsome entity which ordinary citizens have a hard time imagining as their own. The experience of estrangement from their own powers makes them indifferent and resentful. In contrast, the powerful and the prosperous have no problem conceiving of the government as if it was purposely invented to serve their particular interests. Their myopia conceals from them the complex realities in which their own survival is entangled. And so they expect the rest of society to merely follow their lead.

Constitutional talk remains the province of politicians, legal experts, and political analysts. But a renewal of interest in the constitution as the framework for a given social order can bring our people to a realization of what we all need to do so that we can speak of our society as a shared heritage and responsibility. This will not happen by merely talking of the need to change some provisions in the charter. If we want our people to be able to imagine themselves as the “owners” of the constitution, we have to engage them as active participants in the debate.

This means patiently listening to how they understand their own problems and how they are trying to solve them, and to connect their views with the agenda and promise of charter change. The mass media and academe can play a vital role in situating charter change within the broader context of societal reform by asking the basic questions: How will charter change help put an end to mass poverty? How will it make our society more equal? What changes do we need to do to make government more legitimate, less corrupt, and truly responsive in the eyes of our people? What kind of constitution do we need to help us survive and grow in a complex and globalized world?

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