

**A RIGHT, A DREAM AND A VISION:  
A DISCOURSE ON THE DEVELOPMENT OF PEOPLE'S INITIATIVE  
ON THE CONSTITUTION IN THE PHILIPPINE MILIEU**

**EDITA BRITO\***

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WRITING FINIS



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*“Every single voice that speaks with a real sense of commitment and allegiance to the Constitution, to the principles of self-government, to the sovereignty of the people under the sovereignty of God – every such voice in our time today may be the voice that will save this republic from the destruction toward which it is certainly headed as we speak.”*

– Alan Keyes<sup>1</sup>  
*Idaho Rally for Bill Sali*  
 May 19, 2006

*“The Philippines is a democratic and republican State. Sovereignty resides in the people and all government authority emanates from them.”*<sup>2</sup> This declaration in the State Principles and State Policies under the 1987 Constitution is the foremost provision wherein the framers of the Constitution recognized the role of the Filipino people in the historic 1986 EDSA People Power Revolution.<sup>3</sup>

To demonstrate such recognition, the framers of the Constitution included provisions which confirm their intent to empower the Filipino people. Provisions outlawing political dynasties,<sup>4</sup> giving *locus standi* to any citizen to question the factual bases for a suspension of the privilege

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<sup>1</sup> Keyes has a PhD in Government obtained from Harvard University. He was one of the representatives of United States to the United Nations during the Ronald Reagan administration. In the 1990's, he became known as an outspoken champion for conservative causes via his radio talk program, *The Alan Keyes Show*.

<sup>2</sup> CONST., art. II, § 1. (Emphasis supplied)

<sup>3</sup> The EDSA Revolution also referred to as the People Power Revolution and the Philippine Philippine Revolution of 1986, was mostly non-violent mass demonstration in the Philippines. Four days of peaceful action by millions of Filipinos in Metro Manila led to the downfall of the authoritarian regime of President Ferdinand Marcos and the installation of President Corazon Aquino as President of the Republic. EDSA stands for Epifanio de los Santos Avenue, a main highway in Metro Manila and the main site of the demonstration. This display of unity among Filipinos toppled down Marcos' dictatorship which made the rest of the world admire Philippine democracy. ([http://en.wikipedia.org/wiki/EDSA\\_Revolution](http://en.wikipedia.org/wiki/EDSA_Revolution) [visited on January 29, 2007]).

<sup>4</sup> CONST., art. II, § 26.

This provision of the Constitution is not self-executory, which means a law has to be passed to make it operative. Unfortunately, up to the present, no law prohibiting political dynasties has been enacted by the Philippine Congress.

of the writ of habeas corpus and declaration of martial law, at the same time giving power to the Supreme Court to inquire into the same,<sup>5</sup> bestowing legal standing to any citizen to file impeachment complaints,<sup>6</sup> the expanded power of the Supreme Court,<sup>7</sup> and introducing the party list system scoring on the importance of the marginalized and under-represented sector to be represented<sup>8</sup> are just some of the vital aspects of the Constitution that highlight the people power. The 1987 Constitution also accentuated the term limits for elective officials,<sup>9</sup> the right of the public to information relating to health of the Chief Executive of the country,<sup>10</sup> and the need for political transparency.<sup>11</sup>

Amidst the innovations made under the 1987 Constitution, one facet of the fundamental law stands out among the rest, and this is the right given to the people in the amendatory process of the Constitution through people's initiative.<sup>12</sup> Through this power given to the people, the sovereign can propose changes in the fundamental law itself, an exercise of which bring out major developments in the political, social, and economic affairs of the country.

Unfortunately, this significant aspect of the Constitution has been overlooked, if not at all forgotten. Almost twenty years have passed since the ratification of the 1987 Constitution<sup>13</sup> and yet people's initiative in the Philippines has not fulfilled the vision of the framers of the Constitution to serve as a reflection of the empowerment of the people's participation in the political arena. This disheartening reality casts doubts on the efficacy of the people empowerment provisions regarding the same.

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<sup>5</sup> CONST., art. VII, § 18, par. 3.

<sup>6</sup> CONST., art. XI, § 3, par. 2.

<sup>7</sup> CONST., art. VIII, § 1.

<sup>8</sup> CONST., art. VI, § 5, pars. 1-2.

<sup>9</sup> CONST., art. VII, § 4, par. 1; art. VI., § 4, par. 2, art. X, § 8.

<sup>10</sup> CONST., art. VII, § 12.

<sup>11</sup> CONST., art. II, § 24, § 28; art. III, § 7.

<sup>12</sup> CONST., art. XVII, § 2; art. VI, § 1.

<sup>13</sup> The 1987 Constitution took effect on February 2, 1987, when majority of the voters approved the Constitution in a plebiscite called for the purpose. ([http://en.wikipedia.org/wiki/Constitution\\_of\\_the\\_Philippines](http://en.wikipedia.org/wiki/Constitution_of_the_Philippines) [visited on January 29, 2007]).

The issue of charter change through people's initiative is no longer new in the Philippines. The country's political history has experienced this clamor in 1997 when many Filipinos felt that they had a stake in the continuation of President Fidel V. Ramos<sup>14</sup> administration with its successful policies and programs. President Ramos' partisans tried to translate this into a movement to amend the Constitution to allow a second presidential term. Two major approaches were explored to initiate amendments, namely, mobilization of a people's initiative and conversion of the Congress into constituent assembly. The whole effort to change the Constitution was said to derive much of its steam from elitist abhorrence to the prospect of Vice-President Joseph Estrada<sup>15</sup> becoming the next President of the Philippine Republic.<sup>16</sup>

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<sup>14</sup> Fidel V. Ramos is the 12th President of the Republic of the Philippines whose term was from 1992 to 1998. ([http://en.wikipedia.org/wiki/Fidel\\_Ramos](http://en.wikipedia.org/wiki/Fidel_Ramos) [visited on January 29, 2007]).

<sup>15</sup> Joseph E. Estrada became the 13th President of the Republic of the Philippines from June 30, 1998 to January 20, 2001.

The Estrada's presidency was soon dogged by charges of plunder and corruption. He was reported by his Chief of Staff Aprodicio Laquian to have allegedly spent long hours drinking with shady characters as well as "midnight drinking session" with some of his Cabinet members. In October 2000, an acknowledged gambling racketeer, Luis "Chavit" Singson, governor of the province of Ilocos Sur, alleged that he had personally given Mr. Estrada the sum of 400,000,000 pesos as payoff from illegal gambling profits as well as 180,000,000 from the government price subsidy for the tobacco farmers' marketing cooperative. Singson's allegation caused an uproar across the nation, which culminated in Mr. Estrada's impeachment by the House of Representatives in November 13, 2000. He was the first Philippine President to be impeached. On January 16, 2001, the impeachment court, whose majority were political allies of Estrada voted not to open an envelop that was said to contain incriminating evidence against the president. The prosecution walked out of the impeachment court in protest of this vote.

That night, anti-Estrada protesters gathered on the historical EDSA highway at the site of the 1986 EDSA Revolution that overthrew Ferdinand Marcos. A political turmoil ensued in the clamor for Mr. Estrada's resignation became stronger then ever. In the following days, the number of protesters grew to the hundreds of thousand. Later on, the Armed Forces of the Philippine withdrew their support on President Estrada. January 22, 2001, the Supreme Court declared the presidency vacant and the Chief Justice swore in the constitutional successor—Gloria Macapagal-Arroyo as President of the Philippines. ([http://en.wikipedia.org/wiki/Joseph\\_Estrada](http://en.wikipedia.org/wiki/Joseph_Estrada) [visited on January 29, 2007]).

<sup>16</sup> S. Romero, *The Philippines in 1997, Weathering Political and Economic Turmoil*, Asian Survey, A Survey of Asia in 1997: Part II, Vol. XXXVIII, No. 2, 196 (1998).

However, two influential leaders of the country, the late Archbishop Jaime Cardinal Sin<sup>17</sup> and former President Corazon C. Aquino<sup>18</sup> opposed the charter-change using “people power” techniques. They mobilized a mammoth prayer rally in Luneta that delivered a strong message to Ramos saying tampering with the Constitution was a political suicide. Not only could he lose the charter-change campaign, he could also lose the prestige he had so far attained as a leader. A few days after the rally, the Supreme Court ruled that the signature campaign of the People’s Initiative for Reform, Modernization, and Action (PIRMA) could not legally lead to a call for constitutional amendments. Ramos then abandoned moves to extend his term, thus consequent the failure to change the Constitution.<sup>19</sup>

Many events have transpired since the first attempt to change the Constitution through people’s initiative. Two presidential elections have been conducted.<sup>20</sup> Three Chief Justices have been appointed.<sup>21</sup> Another peaceful EDSA revolution had transpired.<sup>22</sup> Other than these, dozens of scandals and issues in the political arena, such as the “Hello Garci”

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<sup>17</sup> Jaime Cardinal Sin was the Archbishop of Manila from March 19, 1974 to September 15, 2003. He played a major role in the first People Power Revolution and was still an influential Church leader until his death on June 21, 2005 at the age of 76. He was succeeded by Gaudencio Cardinal Borbon Rosales. ([http://en.wikipedia.org/wiki/Jaime\\_Cardinal\\_Sin](http://en.wikipedia.org/wiki/Jaime_Cardinal_Sin) [visited on January 29, 2007]).

<sup>18</sup> Corazon C. Aquino was the 11th President of the Republic of the Philippines. Her term was from 1986 to 1992. She was Asia’s first female President. She is the widow of the popular opposition senator, Benigno Aquino, Jr., and when he was assassinated at the Manila International Airport on his return from exile on August 21, 1983, she became the focus of the opposition to the autocratic rule of President Marcos. ([http://en.wikipedia.org/wiki/Corazon\\_Aquino](http://en.wikipedia.org/wiki/Corazon_Aquino) [visited on January 29, 2007]).

<sup>19</sup> *Id.*, at 197.

<sup>20</sup> There were two presidential elections conducted since the attempt to change the Constitution was abandoned by then President Ramos. These elections were held in years 1998 and 2004.

<sup>21</sup> Chief Justice Hilario G. Davide, Jr., 20<sup>th</sup> Chief Justice of Supreme Court of the Philippines, from November 30, 1998 to December 20, 2005. ([http://en.wikipedia.org/wiki/Hilario\\_Davide](http://en.wikipedia.org/wiki/Hilario_Davide), visited on January 29, 2007). Chief Justice Artemio V. Panganiban, 21<sup>th</sup> Chief Justice of Supreme Court of the Philippines from December 20, 2005 to December 7, 2006. ([http://en.wikipedia.org/wiki/Artemio\\_Panganiban](http://en.wikipedia.org/wiki/Artemio_Panganiban), visited on January 29, 2007). Chief Justice Reynato S. Puno, 22<sup>th</sup> Chief Justice of Supreme Court of the Philippines, from December 7, 2006 to present. ([http://en.wikipedia.org/wiki/Reynato\\_Puno](http://en.wikipedia.org/wiki/Reynato_Puno) [visited on January 29, 2007]).

<sup>22</sup> Fifteen years after EDSA Revolution, in January 2001, EDSA II (EDSA Dos) occurred. Thousands of citizens converged at the EDSA Shrine to protest against President Estrada, following his aborted impeachment trial at the Senate of the Philippines. Mr. Estrada was a former movie actor who was popular with the masses, but was reviled by the upper and elite classes for his alleged corruption. EDSA II resulted in the downfall of

controversy, fertilizer fund scam, illegal arrests of media personalities and politicians, and moves in Congress to impeach President Gloria Macapagal-Arroyo also transpired. But all of these did not end there.

The political camp of President Arroyo<sup>23</sup> has been trying to eliminate every obstruction that may hold back her goal of attaining a strong republic and a possible extension of her term as President. All the allies of President Arroyo, from the local government units to the House of Representatives of Congress, have been assiduously trying to persuade the Filipino people in supporting the call for charter change through people's initiative. The Arroyo administration has launched its campaign to undertake a fundamental revision of the 1987 Constitution through people's initiative, whipping up straightway a political storm over its dubious legality and the methods used to galvanize grass-roots signatures to support the initiative.<sup>24</sup> It is pushing for a shift to a unicameral parliamentary government and to lift the Charter's restrictive economic provisions that hamper the entry of foreign capital. It is also seeking to implement judicial and electoral reforms through constitutional amendments.<sup>25</sup> Caravans, television and radio commercials, internet websites, print advertisements and flyers have been resorted to all over the Philippines to increase the people's awareness of the government's plans for reforms.

All of these led to the second clamor to change the 1987 Constitution. In 2006, after almost a decade since the Supreme Court ruled in *Santiago v. Commission on Election*<sup>26</sup> that Republic Act 6735<sup>27</sup> is inadequate

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the Estrada administration, the extreme polarization of Philippine society, and the dilution of the concept "People Power." Foreign commentators criticized Mr. Estada's ouster as "mob rule" and a "defeat for due process." ([http://en.wikipedia.org/wiki/EDSA\\_Revolution](http://en.wikipedia.org/wiki/EDSA_Revolution) [visited on January 29, 2007]).

<sup>23</sup> Gloriam Macapagal-Arroyo became the 14<sup>th</sup> and the current president of the Philippines. She is the country's second female president after Corazon Aquino. She is the daughter of former President Diosdado Macapagal. She was launched into presidency in 2001 by EDSA II that ousted President Joseph Ejercito-Estrada from power amidst accusations of widespread corruption. Mrs. Arroyo was elected a six-year term in 2004, defeating actor Fernando Poe, Jr. ([http://en.wikipedia.org/wiki/Gloria\\_Macapagal-Arroyo](http://en.wikipedia.org/wiki/Gloria_Macapagal-Arroyo) [visited on January 29, 2007])

<sup>24</sup> A. Doronilla, Marcosian Ploy Seen in 'People's Initiative', *Philippine Daily Inquirer*, March 27, 2006 at A1.

<sup>25</sup> *Philippine Star*, August 26, 2006, at 8.

<sup>26</sup> Hereinafter to be referred to as COMELEC.

<sup>27</sup> An Act Providing for System of Initiative and Referendum and Appropriating Funds Therefor. This law was enacted in 1989.

to implement people's initiative as a mode to amend the Constitution, the same controversy was hurled to the same court in the case of *Lambino v. COMELEC*. Although the Supreme Court decided to dismiss the petition for the petitioner's failure to comply with the basic requirements provided under the Section 2, Article XVII of the Constitution on direct proposal by the people, a question remains to be answered—is the people power provision on people's initiative to amend or revise the Constitution effective or is it simply present to make the Filipino people a Tantalus<sup>28</sup> forever hungry for change?

Surely, the framers of the 1987 Constitution intended that the people empowerment provision on amendment be effected. What has gone wrong? Why, despite the fact of existence of these provisions, it has remained futile and its exercise, vain? All these queries necessitate a visit of the aforementioned provisions, its history, development and evolution, after which, perhaps, a conclusion will be reached whether or not the people's initiative is a futile exercise.

### BACKTRACKING PEOPLE'S INITIATIVE

In political science, the initiative provides a means by which a petition signed by a certain minimum number of registered voters can force a public vote on proposed statute, constitutional amendment, charter amendment or ordinance. It is a form of direct democracy.<sup>29</sup>

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<sup>28</sup> In Greek mythology, Tantalus is king who was condemned to stand in water under a fruit tree. Whenever he tried to drink or eat, the water or fruit receded beyond his reach. (Microsoft® Encarta® 2006. © 1993-2005 Microsoft Corporation. All rights reserved.)

<sup>29</sup> <http://en.wikipedia.org/wiki/initiative> (visited on January 26, 2007).

A *democracy* (a word from the Greek language, meaning rule by the people) is a kind of government where the people living in a community or country choose who they want to be the ruler, and who will decide the laws. In a democracy, there are elections every few years where the people can vote and choose who they want to lead them, or choose the laws. The decision is made based on the number of votes. The side with the most votes wins.

There are two kinds of democracy. *First*, **Direct Democracy**, where everyone has the right to make laws together, are not use to run countries because it is hard to get millions of people to get together all the time to make laws and other decisions. The *second* kind is **Indirect or Representative Democracy**, where people choose representatives to make laws for them. Large communities like cities and countries use this method, but it may not be needed for a small group. (<http://en.wikipedia.org/wiki/Democracy> [visited on January 26, 2007]). (Emphases supplied).

The initiative may either be direct or indirect initiative. Notable differences exist between the two. Under the direct initiative, a measure is placed directly to a vote after being submitted through a petition while under the indirect initiative, a measure is first referred to the legislature, and then a popular vote undertaken, if not enacted by the legislature.<sup>30</sup>

### ***Where It All Began: The Origin of People Initiative***

The initiative is only available in a certain minority of jurisdictions. It has long been widely used in Switzerland, both at federal and cantonal level.<sup>31</sup> Swiss citizens are subject to three legal jurisdictions: the commune, canton and federal levels. Since the entry into force of the 1848 federal constitution, Switzerland features a people's rights system of government, in which its people are able to challenge a law. Switzerland is the first and only country to implement people's rights system of government also known as direct democracy. This is sometimes called half-direct democracy since it is complemented by the more commonplace institutions of a parliamentary democracy. The instruments of Swiss direct democracy at the federal level are the constitutional initiative and the referendum, also called people's rights.<sup>32</sup> Provision for the initiative was included in the 1922 constitution of the Irish Free State, but was hastily abolished when republicans organized a drive to instigate a vote that would abolish the Oath of Allegiance. The initiative also formed part of the 1920 Constitution of Estonia.<sup>33</sup>

### ***Initiative in the United States: The Model for Philippine People's Initiative***

In 1877, millions of American farmers began banding together to break the post-Civil War small-farmer enslaving crop-lien system with cooperative economics. When they were bested by corrupt and abusive practices of the national financial sector, they attempted to improve their circumstances by forming the People's Party and engaging in populist

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<sup>30</sup> *Ibid.*

<sup>31</sup> *Ibid.*

<sup>32</sup> [http://en.wikipedia.org/wiki/Switzerland#Direct\\_Democracy](http://en.wikipedia.org/wiki/Switzerland#Direct_Democracy) (visited on January 26, 2007).

<sup>33</sup> <http://en.wikipedia.org/wiki/initiative> (visited on January 26, 2007).

politics. Again they were bested, this time by the country's mainstream two-party system. However, the Progressive Era<sup>34</sup> had just begun. Before it ended, it would become one of the greatest democracy movements in recorded history.<sup>35</sup>

Fired by efforts of millions of farmers, exposés written by investigative journalists, also known as the famous muckcrakers, and correlations between special interests' abuses of farmers and that of the urban workers, the Progressives formed a nationally-connected citizen organizations to extend this democracy movement. From 1898 to 1918, the Progressives, supported by tens of millions of citizens, forced direct democracy petition components into constitutions of twenty-six states.<sup>36</sup>

The constitutional placement of direct democracy petition components was seen by the majority of the citizens as a necessity. Given the obvious corruption in the state government's lack of sovereign, public control over the output of the state legislatures was seen as "the fundamental defect" in the nation's legislative machinery. Advocates insisted that the only way to make the founding fathers' vision work was to take the "misrepresentation" out of representative government with the sovereign people's direct legislation.<sup>37</sup>

Initiative and referendum citizen-lawmaking, spread across the United States because state legislature were unresponsive in creating laws that the people needed to protect themselves from special interests, *laissez-faire* economics, and the era's robber barons. Additionally, while legislatures were quick to pass laws benefitting special interests, both legislatures and the courts were inflexible in their refusals to amend, repeal or adjudicate those laws in ways that would eliminate special interest advantages and end abuses of the majority.<sup>38</sup>

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<sup>34</sup> In the United States, the term progressive was first applied to politics in the Progressive Era of the early 20th Century, at which time politicians of both the Democratic and Republican parties began to pursue social, environmental, political, and economic reforms. Chief among these aims was the pursuit of trustbusting, support for labor unions, public health programs, decreased corruption in politics, and environmental conservation. ([http://en.wikipedia.org/wiki/Progressivism\\_in\\_the\\_United\\_States](http://en.wikipedia.org/wiki/Progressivism_in_the_United_States), [visited on January 26, 2007]).

<sup>35</sup> [http://en.wikipedia.org/wiki/Direct\\_democracy\\_%28history\\_in\\_the\\_United\\_States%29](http://en.wikipedia.org/wiki/Direct_democracy_%28history_in_the_United_States%29) (visited on December 20, 2006).

<sup>36</sup> *Ibid.*

<sup>37</sup> *Ibid.*

<sup>38</sup> *Ibid.*

Now, initiative is in use at the level of state government in 24 states and is likewise commonly used at the local and city government level. It has been recognized in the United States since at least 1777 when provision was made for it by the Constitution of Georgia. The modern United States system of initiative and referendum, however, originated in the state of Oregon in 1902 when the state's legislators adopted it by an overwhelming majority. The "Oregon System", as it was at first known, subsequently spread to many states. Well-known United States initiatives include various measures adopted by voters in states such as Washington, Oregon, California, Massachusetts and Alaska.<sup>39</sup>

### *The Philippine Version of People's Initiative and Its Development under the 1987 Constitution*

The mode of amending the Constitution through people's initiative was introduced for the first time in the 1987 Constitution. The introduction of this provision is an attempt to constitutionalize the significance of the direct action of the people as dramatically exemplified in the February 1986 event. It is an application of the "democratic" concept embodied in Article II, Section 1.<sup>40</sup>

Article XV of the 1935 Constitution provided for the manner of proposing, submitting, and ratifying amendments to the Constitution, but it was silent about revisions. Article XVI of the 1973 Constitution provided for the manner of proposing, submitting, and ratifying both amendments to and revisions of the Constitutions. The 1987 Constitution contains the same provisions. Under both the 1935 and 1973 Constitutions, however, the procedure for both amending and revising the Constitution was the same. Hence, the distinction between amendment and revision was not very important.<sup>41</sup> The inclusion of the mode of amendment through people's initiative under the present Constitution created an important distinction between the two, for only amendment is allowed through the direct action of the people and not revision. This was clear in the minds of the Commissioners who drafted the provision:

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<sup>39</sup> <http://en.wikipedia.org/wiki/initiative> (visited on January 26, 2007).

<sup>40</sup> Part 1, J. Bernas, *Constitutional Structure and Powers of the Government Notes and Cases* (1997) at 967.

<sup>41</sup> J. Bernas, *The 1987 Constitution of the Republic of the Philippines: A Commentary*, (2003) at 1294.

... This proposal was suggested on the theory that this matter of initiative, which came about because of the extraordinary developments this year, has to be separated from the traditional modes of amending the Constitution as embodied in Section 1. The committee members felt that this system of initiative should be limited to amendments to the Constitution and should not extend to the revision of the entire Constitution, so we removed it from the operation of Section 1 of the proposed Article on Amendment or Revision...<sup>42</sup>

Article XVII of the 1987 Constitution provides three methods of amending or revising the Constitution, to wit:

SECTION 1. Any amendment to, or revision of, this Constitution may be proposed by:

- 1) The Congress, upon a vote of three-fourths of all its members;
- or
- 2) A constitutional convention.

SECTION 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 the Constitution nor oftener than once every five years thereafter.

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

SECTION 3. The Congress may, by a vote of two-thirds of all its Members, call a constitutional convention, or majority vote of all its Members, submit to the electorate the question of calling such a convention.

Under Section 1 of Article XVII, the Congress acting as a constituent assembly or a constitutional convention can propose amendments or revisions to the Constitution. These deliberative bodies are capable of crafting and perfecting what should be proposed for ratification by the people in an organized manner. The deliberative character of Congress and of the constitutional convention gives the initial assurance that what will be presented to the people is already the fruit of the give-and-take

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<sup>42</sup> *Id.*, at 1300.

of debates. In other words, the proposed changes will be “democratic and republican” but not “harebrained.” The people gave the Congress and the constitutional convention the authority to perform this preliminary task.<sup>43</sup>

Section 2, on the other hand, was fruit of a compromise. For reasons of practicality, there was strong objection to empowering the people directly to propose constitutional change, not because they are unintelligent but because they are not organized to deliberate. In the end, the people were allowed to directly propose isolated changes whose formulation would require debate on their meanings and to possible effects they can have on other provisions of the Constitution. The word used to describe this kind of change was “amendment.” Anything more complicated than that would be considered “revision.”<sup>44</sup>

### *What's in a Word: AMENDMENT v. REVISION*

Among the modes stated above of amending or revising the Constitution or any of its provisions, Section 2 of Article XVII has been the subject of many debates caused by the various definitions of the terms amendment and revision. To appreciate completely the significance of this innovation in the present Constitution, it is best to settle the definition of the terms amendment and revision.

Black's Law Dictionary defines amendment as a formal revision or addition proposed or made to a statute, constitution, or other instrument, whereas revision is defined as re-examination or careful review or correction or improvement.<sup>45</sup> From these definitions, it can be inferred that amendment and revision are synonymous to each other.

However, in the Philippine jurisdiction, amendment is defined as an isolated or piecemeal change of the provisions of the Constitution. Revision, on the other hand, is defined as a revamp or rewriting of the whole Constitution.<sup>46</sup> These definitions are anchored in the introductory

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<sup>43</sup> Fr. Joaquin G. Bernas, S.J. Of initiative, revision and sovereignty, *Philippine Daily Inquirer* ([http://opinion.inquirer.net/inquireropinion/columns/views\\_article.php?article\\_id=32166](http://opinion.inquirer.net/inquireropinion/columns/views_article.php?article_id=32166) [visited on November 13, 2006]).

<sup>44</sup> *Ibid.*

<sup>45</sup> Black's Law Dictionary, 7th ed., (1999) at pp. 81 and 1321.

<sup>46</sup> I. Cruz, *Philippine Political Law* (2001) at 373.

remarks of Commissioner Jose E. Suarez during the 1986 Constitutional Convention.<sup>47</sup>

The other matter that was taken up before the Committee was the distinction between the word “revision” and “amendment.” Proposals were submitted that only the word “amendment” should be used just like in the 1973 Constitution. In our proposal, this Article has been captioned “AMENDMENT or REVISION.”

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We mentioned the possible use of only one term and that is, “amendment.” However, the Committee finally agreed to use the terms – “amendment” or “revision” when our attention was called by the honorable Vice-President to the substantial difference in the connotation and significance between the said terms. As a result of our research, we came up with the observations made in the famous –or notorious– Javellana doctrine, particularly the decision rendered by Honorable Justice Makasiar, wherein he made the following distinction between “amendment” and “revision” of an existing Constitution: **“Revision” may involve the rewriting of the whole Constitution. On the other hand, the act amending a constitution envisages a change in the specific provisions only. The intention of an act to amend is not the change of the entire Constitution, but only the improvement of specific parts or the addition of provisions deemed essential as a consequence of new conditions or the elimination of parts already considered obsolete or unresponsive to the needs of the times.**

The 1973 Constitution is not a mere amendment of the 1935 Constitution. It is completely new fundamental Chapter embodying new political, social and economic concepts.

So, the Committee finally came up with the proposal that these two terms should be employed in the formulation of the Article governing amendments or revisions to the new Constitution.

Equally, Commissioner Suarez further explained:<sup>48</sup>

\*\*\* The committee members felt that this system of initiative should be limited to amendments to the Constitution and should not extend to the revision of the entire Constitution, so we removed it from the operation of Section 1 of the proposed Article on Amendment

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<sup>47</sup> I RECORD 372-373, cited in J. Bernas, *The Intent of the 1986 Constitutional Writers*, pp. 1192-1193, (1995) (Emphasis Supplied).

<sup>48</sup> *Id.*, at 1197.

or Revision. Also this power could be susceptible to abuse to such extent that it could very well happen that the initiative method of amendment could be exercised, say, twice or thrice in a matter of one year; thus, a necessity for putting limitations to its exercise. \*\*\*

This point was later emphasized by Commissioners Maambong and Davide:<sup>49</sup>

MR. MAAMBONG: My first question: Commissioner Davide's proposed amendment on line 1 refers to "amendments." Does it not cover the word "revision" as defined by Commissioner Padilla when he made the discussion between the words "amendments" and "revision?"

MR. DAVIDE: No, it does not, because "amendments" and "revision" should be covered by Section 1. So insofar as initiative is concerned, it can only relate to "amendments" not "revision."

Thus, an amendment envisages an alteration of one or a few specific and separable provisions. The guiding original intention of an amendment is to improve specific parts or to add new provisions deemed necessary to meet new conditions or to suppress specific portions that may have become obsolete or that are judged to be dangerous. In revision, however, the guiding original intention and plan contemplates a re-examination of the entire document, or of provisions of the document which have over-all implications for the entire document, to determine how and to what extent they should be altered. Thus, for instance, a switch from the presidential system to a parliamentary system would be a revision because the same would have an over-all impact on the entire constitutional structure. The switch from a bicameral system to a unicameral system would likewise be a revision because of its effect on other important provisions of the Constitution. Similarly, an abandonment of term limits would be a radical departure from the philosophical intent of the 1987 Constitution which seeks to disperse political power.<sup>50</sup>

Thus, there was mere amendment of the Constitution of 1935 when the term of office of the President of the Philippines was changed

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<sup>49</sup> *Id.*, at 1198.

<sup>50</sup> Part 1, J. Bernas, *Constitutional Structure and Powers of the Government Notes and Cases*, p. 964, second ed., (1997).

from six to four years. But there was a revision when the Constitutional Convention of 1971 rewrote the entire document and produced the Constitution of 1973.<sup>51</sup>

Every proposal which affects a change in a Constitution or adds or takes away from it is an “amendment” and there is a “revision” when there is a re-examination and statement of the Constitution, or some part of it, in a corrected or improved form. Amendment and revision of constitution are separate procedures, each having substantial field of application, not mere alternative procedure in the same field.<sup>52</sup> It is thus clear that what distinguishes revision from amendment is not the quantum of the change in the document. Rather, it is the fundamental qualitative alteration that effects revision.<sup>53</sup>

This has been the consistent ruling of the state supreme courts in the United States. In *McFadden v. Jordan*,<sup>54</sup> the Supreme Court of California ruled:

**The initiative power reserved by the people by amendment to the Constitution \*\*\* applies only to the proposing and the adopting or rejecting of laws and amendments to the Constitution and does not purport to extend to constitutional revision.**

\*\*\* It is thus clear that a revision of the Constitution may be accomplished only through ratification by the people of a revised constitution proposed by a convention called for that purpose as outlined hereinabove. Consequently, if the scope of the proposed initiative measure (hereinafter termed “the measure”) now before us is so broad that if such measure became law a substantial revision of our present state Constitution would be effected, then the measure may not properly be submitted to the electorate until and unless it is first agreed upon by constitutional convention, and the writ sought by petitioner should issue. \*\*\* (Emphasis supplied)

Likewise, the Supreme Court of Oregon ruled in *Holmes v. Appling*:<sup>55</sup>

<sup>51</sup> I. Cruz, *Philippine Political Law* (2001) at 373.

<sup>52</sup> *Javellana v. Executive Secretary*, 50 SCRA 30 (1973), at 637 citing *McFadden v. Jordan*, 196 P.2d, 787, 797 32 Cal. 2d 330.

<sup>53</sup> Part 1, J. Bernas, *Constitutional Structure and Powers of the Government Notes and Cases*, p. 967, second ed., (1997).

<sup>54</sup> 196 P.2d 787, 790 (1948), cited in *Lambino v. COMELEC*, G.R. No. 174153, October 25, 2006.

<sup>55</sup> 392 P.2d638 (1964), cited in *Lambino v. COMELEC*, G.R. No. 174153, October 25, 2006.

It is well established that when a constitution specifies the manner in which it may be amended or revised, it can be altered by those who favor amendments, revision, or other change only through the use of one of the specified means. The constitution itself recognized that there is a difference between an amendment and a revision; and it is obvious from the examination of the measure here in question that it is not an amendment as that term is generally understood and as it is used in Article IV, Section 1. The second document appears to be based in large part on the revision of the constitution drafted by the 'Commission for Constitutional Revision' authorized by the 1961 Legislative Assembly. It failed to receive in the Assembly the two-third's majority vote of both houses required by Article XVII, Section 2, and hence failed of adoption \* \* \*

While differing from that document in material respects, the measure sponsored by plaintiff is, nevertheless, a thorough overhauling of the present constitution \* \* \* .

To call it an amendment is a misnomer.

Whether it be a revision or a new constitution, it is not such a measure as can be submitted to the people through initiative. If revision, it is subject to the requirements of Article XVII, Section 2 (1); if a new constitution, it can only be proposed at a convention called in the manner provided in Article XVII, Section 1.

#### **BREATHING LIFE TO THE PEOPLE'S INITIATIVE:**

##### ***The Initiative and Referendum Law***

For purposes of practicality, the Constitutional Commission chose to pass off the details of carrying out amendment by initiative to Congress, thus the second paragraph of Section 2, Article XVII of the 1987 Constitution which states that: "The Congress shall provide for the implementation of this right." Without implementing legislation, amendment through people's initiative cannot be had. Consequently, although this mode of amending the Constitution bypasses congressional action by being explicitly provided for in the Constitution, in the last analysis, it still depends on Congressional action.<sup>56</sup>

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<sup>56</sup> I RECORD at 967.

Hence, Republic Act No. 6735, otherwise known as the Initiative and Referendum Law.<sup>57</sup> This Act is the consolidated version of House Bill No. 21505 and Senate Bill No. 17. The former was prepared by Committee on Suffrage and Electoral Reforms of the House of Representatives on the basis of two House Bills referred to it—House Bill No. 497,<sup>58</sup> and House Bill No. 988.<sup>59</sup> Senate Bill No. 17<sup>60</sup> solely dealt with initiative and referendum concerning ordinances or resolutions of the local government units. The Bicameral Conference Committee consolidated Senate Bill No. 17 and House Bill No. 21505 into a draft bill, which was subsequently approved on 8 June 1989 by the Senate<sup>61</sup> and by the House of Representatives.<sup>62</sup> This law was approved on August 4, 1989 and took effect fifteen (15) days after its publication in a newspaper of general circulation.

R.A. 6735 defines “initiative” as the power of the people to propose amendments to the Constitution or to propose and enact legislation through an election called for the purpose.<sup>63</sup> It provides three (3) systems of initiative, namely:<sup>64</sup>

- (a) Initiative on the Constitution, which refers to a petition proposing amendments to the Constitution;

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<sup>57</sup> Hereinafter referred to as R.A. 6735.

<sup>58</sup> This house bill was entitled “Initiative and Referendum Act of 1987.” This was introduced by then Congressmen Raul Roco, Raul del Mar and Narciso Monfort, which dealt with initiative and referendum mentioned in Sections 1 and 32 of Article VI of the Constitution. (*Santiago v. COMELEC*, 270 SCRA 106 [1997] at 145).

<sup>59</sup> *Ibid.*

The second house bill was entitled “An Act Implementing the Constitutional Provisions on Initiative and Referendum and for Other Purposes.” This was introduced by Congressman Salvador Escudero, which dealt with the subject matter of House Bill No. 497, as well as with the initiative and referendum under Section 3 of Article X and initiative provided for in Section 2 of Article XVII of the Constitution.

<sup>60</sup> *Ibid.*

Senate Bill No. 17 was entitled “An Act Providing for a System of Initiative and Referendum, and the Exceptions Therefrom, Whereby People in Local Government Units Can Directly Propose and Enact Resolutions and Ordinances or Approve or Reject Any Ordinance or Resolution Passed By the Local Legislative Body,” This was introduced by Senators Neptali G. Gonzales, Alberto A. Romulo, Aquilino Q. Pimentel, Jr., and Jose D. Lina, Jr. (*Santiago v. COMELEC*, 270 SCRA 106 [1997] at 145).

<sup>61</sup> IV Record of the Senate, No. 143, at 1509-1510.

<sup>62</sup> VIII Journal and Record of the House of Representatives, at 957-961.

<sup>63</sup> § 3 (a) of R.A. 6735.

<sup>64</sup> § 3 (a.1), (a.2) and (a.3) of R.A. 6735.

- (b) Initiative on statutes, which refers to a petition proposing to enact a national legislation; and
- (c) Initiative on local legislation, which refers to a petition proposing to enact a regional, provincial, city, municipal or barangay law, resolution or ordinance.

However, even after the enactment of R.A. 6735, the realization of the people empowerment provision on amendments to the Constitution remains to be a vision without realization. Several attempts have been made to exercise this reserved power of the people but to no avail. This was due to the insufficiency of R.A. 6735 with regard to the people's initiative on Constitution as can be seen in the jurisprudential history of the Initiative and Referendum Law.

#### SUFFICIENT OR INSUFFICIENT?

##### *An Account of Supreme Court Decisions on R.A. 6735*

The validity and sufficiency of R.A. 6735 with regard to people's initiative on the Constitution was first challenged in the landmark case *Santiago v. COMELEC*.<sup>65</sup>

On December 6, 1996, Atty. Jesus Delfin<sup>66</sup> filed with COMELEC a petition to amend the Constitution aiming to lift the term limits of elective officials by way of people's initiative. He claimed that he and the members of the movement and other volunteers intend to exercise the power to directly propose amendments to the Constitution granted under Section 2 of Article XVII. This was thwarted by filing of special civil action for prohibition with the Supreme Court by Senator Miriam Defensor Santiago, Alexander Padilla, and Maria Isabel Ongpin. The petitioners argued that there was no law implementing people's initiative on Constitution. Several Motions for Intervention and Petitions in Intervention were also filed before the Supreme Court.<sup>67</sup>

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<sup>65</sup> 270 SCRA 106 (1997).

<sup>66</sup> *Ibid.*

Atty. Jesus Delfin is a founding member of the Movement for People's Initiative, later identified as the People's Initiative for Reforms, Modernization and Action (PIRMA).

<sup>67</sup> *Ibid.*

Demokrasya-Ipagtangol and Konstitusyon (DIK), Movement of Attorneys for Brotherhood Integrity and Nationalism Inc. (MABINI), Integrated Bar of the Philippines (IBP), Laban ng Demokratikong Pilipino (LABAN), and Senator Raul Roco filed Motions for Intervention.

Accordingly, the High Court, through Justice Davide, Jr.,<sup>68</sup> declared that R.A.6735 intended to include the system of initiative on amendments to the Constitution, but is, unfortunately, inadequate to cover the system. The Supreme Court set out the following reasons:

First. \* \* \* Section 2<sup>69</sup> of the Act does not suggest an initiative on amendments to the Constitution. The inclusion of the word "Constitution" therein was a delayed afterthought. The word is neither germane nor relevant to said section, which exclusively relates to initiative and referendum on national laws and local laws, ordinances, and resolutions. The section is silent as to amendments on the Constitution. As pointed out earlier, initiative on the Constitution is confined only to proposals to AMEND. The people are not accorded the power to "*directly propose, enact, approve, or reject, in whole or in part, the Constitution*" through the system of initiative. They can only do so with respect to "laws, ordinances, or resolutions."

The foregoing conclusion is further buttressed by the fact that this section was lifted from Section 1 of Senate Bill No. 17, which solely referred to a statement of policy on local initiative and referendum and appropriately used the phrases "propose and enact," "approve or reject" and "in whole or in part."

Second. \* \* \* It is true that Section 3 (Definition of Terms) of the Act defines initiative on amendments to the Constitution and mentions it as one of the three systems of initiative, and that Section 5 (Requirements) restates the constitutional requirements as to the percentage of the registered voters who must submit the proposal. But unlike in the case of the other systems of initiative, the Act does not provide for the contents of a petition for initiative on the Constitution. Section 5, paragraph (c)<sup>70</sup> requires, among

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<sup>68</sup> Mr. Hilario G. Davide, Jr later became Chief Justice of Supreme Court of the Philippines. He retired on December 20, 2006 and was succeeded by former Chief Justice Artemio V. Panganiban. ([http://en.wikipedia.org/wiki/Hilario\\_Davide](http://en.wikipedia.org/wiki/Hilario_Davide), [visited on January 29, 2007]).

<sup>69</sup> "*Statement of Policy* – The power of the people under a system of initiative and referendum to directly propose, enact, approve or reject, in whole or in part, the *Constitution*, laws, ordinances, or resolutions passed by any legislative body upon compliance with the requirements of this Act is hereby affirmed, recognized and guaranteed." (Italics supplied)

<sup>70</sup> (c) The petition shall state the following:

- "c.1 contents or text of the proposed law sought to be enacted, approved or rejected, "amended or repealed, as the case may be;
- "c.2 the proposition;
- "c.3 the reason or reasons therefor;
- "c.4 that it is not one of the exceptions provided therein;
- "c.5 signatures of the petitioners or registered voters; and

other things, statement of the *proposed law sought to be enacted, approved or rejected, amended or repealed, as the case may be*. It does not include, as among the contents of the petition, the provisions of the Constitution sought to be amended, in the case of initiative on the Constitution.

\* \* \*

Third. While the Act provides subtitles for National Initiative and Referendum (Subtitle II) and for Local Initiative and Referendum (Subtitle III), no subtitle is provided for initiative on the Constitution. This conspicuous silence as to the latter simply means that the main thrust of the Act is initiative and referendum on national and local laws. If Congress intended R.A. No. 6735 to fully provide for the implementation of the initiative on amendments to the Constitution, it could have provided for a subtitle therefor, considering that in the order of things, the primacy of interest, or hierarchy of values, the right of the people to directly propose amendments to the Constitution is far more important than the initiative on national and local laws.

The Supreme Court concluded that:

We cannot accept the argument that the initiative on amendments to the Constitution is subsumed under the subtitle on National Initiative and Referendum because it is national in scope. Our reading of Subtitle II (National Initiative and Referendum) and Subtitle III (Local Initiative and Referendum) leaves no room for doubt that the classification is not based on the scope of the initiative involved, but on its nature and character. It is “national initiative,” if what is proposed to be adopted or enacted is a *national law*, or a law which only Congress can pass. It is “local initiative” if what is proposed to be adopted or enacted is a *law, ordinance, or resolution* which only the legislative bodies of the governments of the autonomous regions, provinces, cities, municipalities, and barangays can pass which was based on Section 3<sup>71</sup> of the Act.

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“c.6 an abstract or summary proposition is not more than one hundred (100) words which shall be legibly written or printed at the top of every page of the petition.” (Emphasis supplied).

<sup>71</sup> “SEC. 3. *Definition of terms* – There are three (3) systems of initiative, namely:

“a.1 Initiative on the Constitution which refers to a petition proposing amendments to the Constitution;

“a.2 Initiative on Statutes which refers to a petition proposing to enact a national legislation; and

Hence, to complete the classification under subtitles there should have been a subtitle on initiative on amendments to the Constitution.

\* \* \*

Curiously, too, while R.A. No. 6735 exerted utmost diligence and care in providing for the details in the implementation of initiative and referendum on national and local legislation thereby giving them special attention, it failed, rather intentionally, to do so on the system of initiative amendments to the Constitution.

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Upon the other hand, as to initiative on amendments to the Constitution, R.A. No. 6735, in all of its twenty-three sections, merely (a) mentions, the word "Constitution" in Section 2; (b) defines "initiative on the Constitution" and includes it in the enumeration of the three systems of initiative in Section 3; (c) speaks of "plebiscite" as the process by which the proposition in an initiative on the Constitution may be approved or rejected by the people; (d) reiterates the constitutional requirements as to the number of voters who should sign the petition; and (e) provides for the date of effectivity of the approved proposition.

There was, therefore, an obvious downgrading of the more important or the paramount system of initiative. R.A. No. 6735 thus delivered a humiliating blow to the system of initiative on amendments to the Constitution by merely paying it a reluctant lip service.

The foregoing brings us to the conclusion that **R.A. No. 6735 is incomplete, inadequate, or wanting in essential terms and conditions insofar as initiative on amendments to the Constitution is concerned.** (Emphasis supplied)

\* \* \*

In *Santiago*, the Supreme Court ruled that R.A. 6735, without specific provisions on initiative on the Constitution, is insufficient to make amendments in the country's fundamental law through people's initiative. After this declaration by the High Court, no subsequent law was enacted by the Philippine Congress to make the initiative on the Constitution effective. Yet, the people cannot be denied of this people empowerment provision of the Constitution. Nine years after the *Santiago* ruling, the sufficiency of the people's initiative on the Constitution was again challenged, giving the Supreme Court an opportunity to decide another

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"a.3 Initiative on local legislation which refers to a petition proposing to enact a regional, provincial, city, municipal, or barangay law, resolution or ordinance." (Underscoring supplied).

landmark case and pronounce new jurisprudence. This opportunity came in the case of *Lambino v. COMELEC*.<sup>72</sup>

On 15 February 2006, Raul L. Lambino and Enrico B. Aumentado, together with Sigaw ng Bayan and Union of Local Authorities of the Philippines and individuals, commenced gathering signatures for an initiative petition to change the 1987 Constitution. They subsequently filed a petition with the COMELEC to hold a plebiscite that will ratify their initiative petition under Section 5(b) and Section 7 of Republic Act No. 6735. The petition changes the 1987 Constitution by modifying Sections 1 to 7 of Article VI<sup>73</sup> and Sections 1 to 4 of Article VII<sup>74</sup> and by adding Article XVIII entitled "Transitory Provisions." These proposed changes in the 1987 Constitution sought to shift the present Bicameral-Presidential system to a Unicameral-Parliamentary form of government.

The COMELEC issued a Resolution<sup>75</sup> denying their petition for lack of enabling law governing initiative petitions to amend the Constitution. COMELEC anchored their Resolution in the aforementioned ruling of the Supreme Court on the inadequacy of R.A. 6735 to implement proposals to amend the Constitution set out in *Santiago v. COMELEC*. The electoral body also invoked the permanent injunction ordered by the Supreme Court, prohibiting it from entertaining or taking cognizance of any petition for initiative on amendments to the Constitution until a sufficient law shall have been validly enacted to provide for the implementation of the system.

The petitioners filed of a petition for the issuance of *writs of certiorari* and *mandamus* to set aside the aforementioned COMELEC Resolution, contending that COMELEC committed grave abuse of discretion in denying their petition since the *Santiago* ruling is not a binding precedent. Petitioners alternatively claimed that the *Santiago* ruling binds only the parties to that case, and their petition deserves cognizance as an expression of the "will of the people."

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<sup>72</sup> G.R. No. 174153, October 25, 2006.

<sup>73</sup> Article VI of the 1987 Constitution contains provisions on the Legislative Department of the Philippine Government.

<sup>74</sup> Article VII of the 1987 Constitution holds provisions on the Executive Department.

<sup>75</sup> This COMELEC Resolution was issued on August 31, 2006. (*Lambino v COMELEC*, G.R. No. 174153, October 25, 2006).

With a split vote, the Supreme Court in a decision penned by Justice Antonio T. Carpio found no merit and dismissed the petition.<sup>76</sup> The High Court's majority decision set out two main reasons why the petition should be dismissed.

First, the petition does comply with Section 2, Article XVII of the Constitution on direct proposal by the people. The Court held that the *framers of the Constitution intended that the draft of the proposed constitutional amendment should be ready and shown to the people before they sign such proposal*. The framers also envisioned that the people should sign on the proposal itself because the proponents must prepare that proposal and pass it around for signature.

The essence of amendments directly proposed by the people through initiative upon a petition is that the entire proposal on its face is a petition by the people. This means two (2) essential elements must be present. First, the people must author and sign the entire proposal. No agent or representative can sign on their behalf. Second, as an initiative upon a petition, the proposal must be embodied in a petition. These essential elements are present only if the full text of the proposed amendments is first shown to the people who express their assent by signing such complete proposal in a petition. *Thus, an amendment is directly proposed by the people through initiative upon a petition only if the people sign on a petition that contains the full text of the proposed amendments*.

The Supreme Court added that an *initiative signer must be informed at the time of signing of the nature and effect of that which is proposed and failure to do so is deceptive and misleading which renders the initiative void*.<sup>77</sup> This is precisely what Lambino's petition failed to comply. There is not a single word, phrase, or sentence of the text of Lambino Group petition proposed changes in the signature sheet sub-

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<sup>76</sup> The Decision was arrived at a vote of 8-7 in favor of dismissing the petition. The eight (8) magistrates include the ponente, Chief Justice Artemio V. Panganiban, Justices Consuelo Ynares-Santiago, Angelina Sandoval-Gutierrez, Ma. Alicia Austria-Martinez, Conchita Carpio-Morales, Romeo J. Callejo, Sr., and Adolfo S. Azcuna. While the seven (7) magistrates who dissented were Senior Associate Justice Renato S. Puno (Now Chief Justice), Justices Leonardo A. Quisumbing, Renato C. Corona, Dante O. Tinga, Minita Chico-Nazario, Cancio C. Garcia and Presbiterio J. Velasco, Jr.

<sup>77</sup> *Stumpfy v. Law*, 839 P.2d 120, 124 (1992), cited in *Lambino v. COMELEC*, G.R. No. 174153, October 25, 2006.

mitted to the Court. Neither does the signature sheet stated that the text of the proposed changes is attached. The signature sheet merely asked a question whether the people approve a shift from the Bicameral-Presidential to the Unicameral-Parliamentary system of government. The signature sheet did not show to the people the draft of the proposed changes before they were asked to sign the signature sheet. Clearly, the signature sheet was not the “petition” that the framers of the Constitution envisioned when they formulated the initiative clause in Section 2, Article XVII of the Constitution.

The Lambino’s Group initiative is not directly proposed by the people mainly because the people do not even know the nature and effect of the proposed changes. The High Court also pronounced that an initiative that gathers signatures from the people without first showing to the people the full text of the proposed amendments is most likely a deception, and can operate as a gigantic fraud on the people.

The second reason given by the Court in dismissing the petition is the Lambino’s Group violation of Section 2, Article XVII of the Constitution disallowing revision through initiative. In *Lambino*, the Supreme Court had the opportunity to elucidate the difference between amendment and revision and their effects in the fundamental law.

In California where the initiative clause allows amendments but not revisions to the constitution just like in our Constitution, courts have developed a two-part test: the quantitative test and the qualitative test. The quantitative test asks whether the proposed change is “so extensive in its provisions as to change directly the ‘substantial entirety’ of the constitution by the deletion or alteration of numerous existing provisions.”<sup>78</sup>

The court examines only the number of provisions affected and does not consider the degree of the change. The qualitative test inquires into the qualitative effects of the proposed change in the constitution. The main inquiry is whether the change will “accomplish such far reaching changes in the nature of our basic governmental plan as to amount to a revision.”<sup>79</sup> Whether there is an alteration in the structure of government is a proper subject of inquiry. Thus, “a change in the nature of [the] basic

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<sup>78</sup> *Amador Valley Joint High School District v. State Board of Equalization*, 583 P2d 1281, 1286 (1978), cited in *Lambino v. COMELEC*, G.R. No. 174153, October 25, 2006.

<sup>79</sup> *Ibid.*

governmental plan” includes “change in its fundamental framework or the fundamental powers of its Branches.”<sup>80</sup>

A change in the nature of the basic governmental plan also includes changes that “jeopardize the traditional form of government and the system of check and balances.”<sup>81</sup> Under both the quantitative and qualitative tests, the Lambino Group’s initiative is a revision and not merely an amendment. Quantitatively, the Lambino’s Group proposed changes overhaul two articles—Article VI on the Legislature and Article VII on the Executive—affecting a total of 105 provisions in the entire Constitution.<sup>82</sup> Qualitatively, the proposed changes alter substantially the basic plan of government, from presidential to parliamentary, and from a bicameral to a unicameral legislature.

Applying the *qualitative* and *quantitative tests*, it is apparent that the proposed changes of the Lambino group is not an amendment but a revision of the Constitution, as it changes the entire structure of government. Under the proposed changes, the three great co-equal branches of the government in the present constitution are reduced into two, which alters the separation of powers provided for in the Constitution. A shift from the present Bicameral-Presidential to a Unicameral-Parliamentary system requires harmonizing several provisions in many articles of the Constitution. Revision of the Constitution through people’s initiative will only result in gross absurdities in the Constitution. Moreover, there are more than 100 provisions of the Constitution that will be affected by the proposed changes of the Lambino Group. This can hardly be considered an amendment, thus it is more of a revision.

Finally, the Supreme Court ruled that revisiting *Santiago v. COMELEC* ruling is not crucial in deciding the *Lambino* case. Settled is the rule that courts will not pass upon the constitutionality of a statute if the case can be resolved on some other grounds.<sup>83</sup> Moreover, the affirmation or reversal

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<sup>80</sup> *Legislature of State of California v. EU*, 54 Cal.3d 492, 509 (1991), cited in *Lambino v. COMELEC*, G.R. No. 174153, October 25, 2006.

<sup>81</sup> *California Association of Retail Tobacconist v. State*, 109 Cal.App.4th 792, 836 (2003), cited in *Lambino v. COMELEC*, G.R. No. 174153, October 25, 2006.

<sup>82</sup> As stated by Associate Justice Romeo J. Callejo during the oral argument on September 26, 2006.

<sup>83</sup> *Spouses Mirasol v. Court of Appeals*, 403 Phil. 760 (2001); *Intia Jr. v. COA*, 266 Phil. 273 (1999).

of *Santiago* case would not change the outcome of the petition. Thus, a revisit to *Santiago* was not necessary.

**CONSTRUING AMBIGUITY:  
*Supreme Court's Resolution on the Motion for  
Reconsideration of the Lambino Group***

The *Lambino* ruling should have served as the epilogue to the raging debate on the sufficiency of R.A. 6735 to implement changes on the Constitution. Unfortunately, the end of the road for people's initiative on the Constitution is still much long and winding.

Petitioner Lambino and others subsequently filed a Motion for Reconsideration of the October 25, 2006 *Lambino* decision. The Supreme Court on November 21, 2006 issued a *Minute Resolution denying with finality the motion for reconsideration filed by the petitioners*. It could have been as simple as that – the fight has ended. R.A. 6735 cannot be used to amend the Constitution through people's initiative. The same *Resolution*, however, also stated:

Ten (10) Members<sup>84</sup> of the Court reiterate their position, as shown by their various opinions already given when the Decision herein was promulgated, that Republic Act No. 6735 is sufficient and adequate to amend the Constitution through people's initiative.

Thus, instead of shedding light on the status of people's initiative on Constitution under R.A. 6735, the people are left baffled. Is a *Minute Resolution* by the Supreme Court a binding decision? Does it abandon the *Santiago* ruling? Or does it merely stress the justices' scattered opinions that do not constitute a binding decision of the whole?<sup>85</sup>

True, no one vetoed to grant the Lambino prayer to reverse the COMELEC and immediately submit the proposed constitutional changes to a plebiscite, as the Supreme Court's press release stated. There was unanimity on that score. This simply means that should an attempt be made, in the future, by Sigaw ng Bayan and the company, to propose

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<sup>84</sup> Then Chief Justice Artemio V. Panganiban, Justices Consuelo Ynares-Santiago, Adolfo S. Azcuna, Now Chief Justice Reynato S. Puno, Justices Leonardo A. Quisumbing, Renato C. Corona, Dante O. Tinga, Minita V. Chico-Nazario, Cancio C. Garcia and Presbiterio J. Velasco, Jr, in their separate opinions, maintained their positions that R.A. 6735 is sufficient to implement changes to the Constitution through people's initiative.

<sup>85</sup> *Philippine Daily Inquirer*, November 24, 2006 at A14.

amendments to the Constitution, it can be both questioned in court or before the COMELEC. The COMELEC cannot presume—or be asked by petitioners—to view its work as merely ministerial.<sup>86</sup> But this is not where the real controversy lies.

The real controversy is whether the people are now truly empowered to exercise the right given to them by the 1987 Constitution—that is to directly propose amendments to the fundamental law of the land. It must be remembered that the provisions in the Constitution granting the same is the recognition of the people's vital role and influence in shaping the country's history. If, in effect, there is still no enabling law for the people's initiative exercise, would it not deprive the people of a right which they are duly entitled? Would it not, in effect, defeat the intent of the framers of the Constitution? If, on the other hand, there already exists an enabling law, such as R.A. 6735, for the exercise of people's initiative, should the Supreme Court not officially recognize the same and declare it sufficient, regardless of the political status of the country?

It is submitted that the *Minute Resolution* issued by the Supreme Court on November 21, 2006 does not have the effect of overturning the *Santiago case*. It is elementary rule in statutory construction that implied repeal is looked upon with disfavor. Unless there is an express repeal or clear inconsistency between the first law and second law, the former remains. *Mutatis mutandis*, this construction can also be applied in an implied reversal of a decision. Thus, until and unless there is an express and clear pronouncement reversing a former decision, the decision remains, lest confusion as to what precedent will be adhered to.

Nevertheless, this submission is a mere opinion. It does not have the effect of altering the *Lambino case* and the *Minute Resolution* issued pursuant to the Motion for Reconsideration filed by the petitioners. Neither does it have the effect of elucidating the perplexity created by the *Minute Resolution*. Ultimately, it will still be up to the Supreme Court to clear the path for people's initiative on the Constitution through expressly deciding whether or not R.A. 6735 is sufficient to implement the same. Alternatively and more importantly, it will be up to the Philippine Congress to perform their constitutionally mandated duty to enact a law enabling people's initiative on the Constitution or simply to amend or

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<sup>86</sup> *Ibid.*

revise the vague provisions under R.A. 6735, such as the term “people”, whether or not it may be initiated by the government or public officials.

Until another opportunity comes before the Supreme Court to decide on the sufficiency of R.A. 6735, or until by spark of light, the Congress will be guided to play its role in the Constitution, the people’s right to initiate changes to the Constitution would remain a dream and a vision, and the Filipino people would be a mere Tantalus, looking at this right but never actually exercising it.

### CRITICISMS AND EXPECTATIONS:

#### *The Future of People’s Initiative*

The question stands: Is the right to people’s initiative a futile exercise? The power to participate in the amendatory process of the Constitution granted to the Filipino people through direct action seems to be only a vision.

As can be gleaned from Section 2 of Article XVII, the petition for initiative must be represented by at least twelve (12) percent of the total number of registered voters, of which every legislative district must be represented by at least three (3) percent of the registered voters therein. This imports a situation where such number of people must be the very ones who will lobby to get the necessary support and go to court to file their petitions to amend the Constitution.

It would be difficult for a big number of people to convene and fully discuss the amendments they want to introduce, much more, to explain to everyone the rationale and consequences of their proposal without chaos. These undertakings require much effort and considerable amount of money in order to get things started. These constraints limit the exercise of the people’s right to amend the Constitution through initiative. They impede the quintessence of people empowerment as intended by the framers of the 1987 Constitution.

Two attempts have been made to make this exercise effective, but they were both futile. The process of people’s initiative itself has many critics. Conservatives often state that it undermines the entire concept of representative government; namely that the voters are to elect representatives to make laws on their behalf and not to do so directly themselves. Other criticisms say it results in provisions being added to constitutions that would be better subjects for more flexible statutory law, which can

be more easily revised to fit changing circumstances, and that it clutters constitutions, which are supposed to be basic frameworks of the government and not excessively detailed plans, with minutiae, making them unwieldy. Many from both sides of the political spectrum further feel that the law-making is best left to the legislators, who presumably have deeper interest in and more than a passing familiarity with issues and are best equipped to deal with them.<sup>87</sup>

Initiative is not an adoption of revolutionary rule as part of the normal life of the nation. It is a mere vehicle for the expression of the popular sovereignty but cribbed and cabined within the constraints set by Article XVII which expresses the abiding will of the people who ratified the Constitution. Until those constraints are removed by the people themselves through constitutional change, the people must respect the constraints they have imposed upon themselves—unless what they want is to exercise their right of revolution in defiance of the Constitution.<sup>88</sup>

Some might say that in a society like the Philippines with political power and wealth in the hands of the few, a spontaneous people's initiative is not possible. It requires funds and organization as any election. A political and economic oligarchy protects the status quo. The idea of a people's initiative acting on its own steam as legacy of EDSA I is a farce.<sup>89</sup> But then again, this is not the only reality.

The other reality is that the 1987 Constitution is still young. Stumbling blocks are positive signs of improvements. These should not be seen negatively, but they should be embraced instead. The Filipino people can work together and stand united to achieve unanimity in the exercise of people's initiative. This can be accomplished by maintaining a sense of awareness in the issues involving the country's political, social and economic status, by taking part in discussions, forums or debates to widen the knowledge on the issues, by airing out their opinions responsibly, by forgetting about promotion of self-interest, by practicing discipline, by building up courage to speak only the truth, by taking actions rather

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<sup>87</sup> [http://en.wikipedia.org/wiki/initiative\\_and\\_referendum](http://en.wikipedia.org/wiki/initiative_and_referendum) (visited on December 20, 2006).

<sup>88</sup> Fr. Joaquin G. Bernas, S.J., Of initiative, revision and sovereignty, ([http://opinion.inquirer.net/inquireropinion/columns/view\\_article.php?article\\_id=32166](http://opinion.inquirer.net/inquireropinion/columns/view_article.php?article_id=32166), [visited on November 13, 2006]).

<sup>89</sup> C. Pedrosa, Local Authority as a mediating force, *Philippine Star*, August 27, 2006, at 13.

than complain, by recognizing that change must start from oneself, and by wholeheartedly living out the sense of Filipino nationalism.

### WRITING FINIS

Indeed, the mode proposed to change the provisions of the Constitution is one of the biggest controversies of 2006. Politicians, businessmen, religious leaders and religious groups, students, and the masses were all involved in the debates and discussions regarding people's initiative. It was not an issue of whether the Constitution should be changed, for the notable legal luminary, Father Joaquin Bernas said, "Although I was one of the 48 women and men chosen to draft the present Constitution, I myself would like some of its provisions changed. And I do not know any member of the 1986 Constitutional Commission who would fight tooth and nail to retain every provision of the current document. But if it is to be changed at all, let us do it honorably."<sup>90</sup>

Incantations of "people's voice," "people's sovereign will," or "let the people decide" cannot override the specific modes of changing the Constitution as prescribed in the Constitution itself. Otherwise, the Constitution—the very fundamental covenant that provides enduring stability to our society—becomes easily susceptible to manipulative changes by political groups gathering signatures through false promises. Then the Constitution ceases to be the bedrock of nation's stability.<sup>91</sup>

The People's initiative is not at all a futile exercise. It only requires that the initiative should really come from the people themselves and not from any other segment or sector, which seeks to promote their interest. The government's role should not also be forgotten. An enabling law is required before this initiative can be exercised, or an official declaration as to its sufficiency is still a necessity. While it is unbelievable and inconceivable that the initiative rests merely on the statute books, much more remains for the exercise of this prerogative... And with the cooperation of the Filipino people and the Philippine government, the vision of the framers of the Constitution to empower the people through initiative would no longer be a dream, but a live, real, and actual right exercised by the citizenry who justly deserves the same.

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<sup>90</sup> Fr. Joaquin G. Bernas, More on Charter Change, *Philippine Daily Inquirer*, April 10, 2006 at A15.

<sup>91</sup> *Lambino v. COMELEC*, G.R. No. 174153, October 25, 2006.