

# Cost Analysis of the Philippine Legislative Process

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## Abstract

As the elections in 2010 approaches, issues involving charter change are hitting the headlines. In the main, all sides agree on the need of instituting changes in the Constitution. The only point of significant disagreement has to do with the timing and the mode by which such changes may be effected. The disagreement is borne by the fear of the opposition that changing the Constitution may be used as the Trojan horse by the administration to perpetuate President Arroyo in power.

Partisanship aside, this paper joins in the discourse with a clear agenda. It argues for charter change from the standpoint of economy and simplicity. The present congressional set-up for legislation is redundant, cumbersome and circuitous. Also, it is very costly to maintain.

*Keywords:* Bicameralism, Unicameralism, Presidentialism, Parliamentarism, Federalism, Centralism, Bill, Senate, House of Representatives, Bicameral Conference Committee, Veto, Constituent Assembly, Constitutional Convention, People's Initiative, Legislative Deadlock.

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### Introduction

That the Philippine Constitution needs to be amended to march with the cadence of the times is no longer an issue. The Filipino people have already given it their imprimatur. The Pulse Asia in a national survey in December 2001 observed that, for the first time in a decade, a slim majority of the people (52%) favoured changing the Constitution (Abueva, 2002). Moreover, and even much earlier, Father Joaquin G. Bernas, S.J., a respected Constitutional law expert and a former member of the 1986 Constitutional Commission, threw his weight for such an eventuality. This was not unexpected. He knew firsthand that during the drafting of the 1987 Constitution, the fundamental structure of government was not thoroughly thought out. He readily admits that in 1986 when the present Constitution was drafted, "emotions were high and the major pre-occupation was how to ensure in the speediest way possible the restoration of the democratic processes...[it] was not the best time to engage in protracted debates, especially about the fundamental government structure" (Bernas, 1993).

The House of Representatives likewise expressed its sentiments along this same line when they passed House Resolution No. 24 on October 4, 1993. It called for the convening of Congress into a Constituent Assembly to purposely address such issues and make the necessary amendments to the Constitution. The Filipino people however, were then, not yet receptive to the idea of changing the charter. But times have changed. The most recent survey conducted last May 2006 by the University of Santo Tomas-based Proberz Poll indicated that 64 % of Filipinos favor charter change (Jurado, 2006). Indeed, the time has come to commence the search for an alternative mode of governance in our country.

### Arguments for Change

Every action requires a reason for its justification. In the effort to change the charter, these justifications abound. For one, Rev. Father Joaquin G. Bernas S.J., (1993) noted that because of the euphoria surrounding the drafting of the 1987 Constitution, the "fundamental



government structure" was not given its appropriate hearing in the deliberations of the Constitutional Commission. Also, if brevity is a virtue, our Constitution suffers from being "one of the longest in the world...[with] infirmity arising from compromises that resulted in more than fifty of its provisions, including major ones, requiring enabling laws by Congress before they can be implemented" (Casiple, 2002). Indeed, a cursory perusal of the Constitution will reveal the redundancy of the phrase "as may be provided by law". This phrase subjects the Constitution to the prevailing political equation in the legislative department.

The impetus to find an alternative modality in governmental structure is perhaps given further boost by the fact that in the 1986 Constitutional Commission, those who argued for a parliamentary set up lost to those who argued for a presidential structure by only one vote (Abueva, 2002). Also on the same vein, the 1986 Commission, again, by a margin of one vote, decided to restore the Senate whose members are elected at large and thereby to return to bicameralism in law-making (Nolledo, 1987).

Thus, by a very painful margin of a single vote, the horizontal structure of the Philippine government hangs on balance. It is not surprising therefore, that among the major arguments for changing the charter hinges on the horizontal shift from presidential to parliamentary and vertical structural shift from unitary to federal set up. This trend, viewed from a larger perspective, notes one writer, is simply in keeping with the over all tide of democratization that has swept the world since the collapse of the former Soviet Union. In this rapid modernizing time where democratization is a common feature, only two forms of government are relevant: Presidentialism and Parliamentarism (Sosmeña, 2001).

Towards this dichotomy, political scientists contributed their insights on the matter to serve as road maps and early warning devices. Dr. Jose V. Abueva (2002) of the University of the Philippines summed it all when he said: "Political Scientists have concluded that democracies with a parliamentary system are more stable and productive". For their part, Juan Linz and Anuro Valenzuela (1994) in a book *The Failures of the Presidential Democracy*, observed that South America, which is the continent of presidentialism, rarely, if ever, produced lasting political democracy. Linz and Valenzuela further noted that the most stable democracies of Europe have been parliamentary regimes while most

countries with presidential constitutions have been unstable democracies or authoritarian regimes. Professor Fred Riggs of the University of Hawaii also joined the discourse by arguing and corroborating the observation that the presidential system has not succeeded anywhere except the United States (Sosmeña, 2001).

Corroborating all these generalizations about the failures of the presidential system, the economic performance of Southeast Asian countries are also very telling. The table below is indicative of the correlation between governmental type and economic performance. Fast growing Asian economies noticeably have parliamentary governments while the slow performing economies have presidential governments.

**Table 1. 30 Year Average GDP Growth Rates of Selected Asian Countries and their Form of Government**

COUNTRY	RATE	FORM OF GOVERNMENT
KOREA	6.4 %	PARLIAMENTARY
SINGAPORE	6.3%	PARLIAMENTARY
MALAYSIA	5.9%	PARLIAMENTARY
THAILAND	5.7%	PARLIAMENTARY
INDONESIA	5.3 %	PRESIDENTIAL
PHILIPPINES	3.1%	PRESIDENTIAL

The Philippine rate of growth is half the rate of other Asian countries.  
The Wallace Report (2004). <http://www.dataphil.com/wallacereport.htm>

While the above table shows the link between economic growth and political structures, the table that follows shows the proneness to corruption of certain political structures. It does not come as a surprise to see that the presidential political set up has failed to bring economic growth in countries that has adopted it because it is also the political system that has brought forth the most number of very corrupt leaders in the world.



**Table 2. Top Ten Corrupt Leaders**

1. MOHAMED SUHARTO	PRESIDENT, INDONESIA 1967-1998	\$15-35 BILLION
2. FERDINAND MARCOS	PRESIDENT, PHILIPPINES 1965-1986	\$ 5-10 BILLION
3. MOBUTU SESE SEKO	PRESIDENT, ZAIRE 1965-1997	\$ 5 BILLION
4. SANI ABACHA	PRESIDENT, NIGERIA 1993-1998	\$2-3 BILLION
5. SLOBODAN MILOSEVIC	PRESIDENT, SERBIA 1989-2000	\$1 BILLION
6. JEAN DUVALIER	PRESIDENT, HAITI 1971-1986	\$300-800 MILLION
7. ALBERTO FUJIMORI	PRESIDENT, PERU 1990-2000	\$600 MILLION
8. PAVLO LAZARENKO	PRIME MINISTER, UKRAINE 1996-1997	\$114-200 MILLION
9. ARNOLDO ALEMAN	PRESIDENT, NICARAGUA 1997-2002	\$100 MILLION
10. JOSEPH ESTRADA	PRESIDENT, PHILIPPINES 1998-2001	\$78-80 MILLION
No other country in Asia can boast of having two of its leaders in the top ten corrupt leaders. Global Corruption Report 2004. <a href="http://www.dataphil.com/wallacereport.htm">http://www.dataphil.com/wallacereport.htm</a>		

Contributory to this proneness to corruption is the manner by which the president in the presidential system gets elected. Unlike his counterpart in the parliamentary system who gets elected by members of the parliament, a presidential candidate needs to campaign all over because he is elected at large. And this is no mean feat. In 1998 for instance, a serious presidential candidate was expected to spend at least Php 2 billion for his election that was to land him a job that would pay him Php 693,000 per year or Php 4,158,000.00 for his full term of six years. Two billion pesos are certainly a large sum of money. It is the equivalent of the salaries of the office for 2,886 years! (Enrile, 2002)

If these tabulated statistics is to tell us something, former Prime Minister Lee Kuan Yew of Singapore has become its spokesman. He said: "The Philippines has chosen the most difficult political system to operate, with its checks and balances and gridlocks between the executive and the legislature. If this were the system chosen by South Korea, Hong Kong, Taiwan, or we ourselves, we would not have attained the status that we have now" (Enrile, 2002).

Indeed, if a lesson is to be learned here, it is the fact that globally, the presidential system has failed to stand and deliver. To change it has now become the order of the day.

### *Effecting Changes in the Constitution*

The Constitution itself provides for the ways by which changes may be effected. In this respect, the operative portion is Article XVII. It provides that amendments or revisions may be made through the following:

1. By the Congress itself, upon a vote of  $\frac{3}{4}$  of all its members. In this mode, the Congress converts itself into a Constituent Assembly to amend the constitution.
2. By a Constitutional Convention, either called by  $\frac{2}{3}$  votes of all members of Congress, or approved by the electorate when the question of calling such a Convention is submitted to the people by a majority vote of all the members of Congress.
3. By the people through the system of initiative, upon a petition of at least 12 percent of the total number of registered voters, of which every legislative district must be represented by 3 per cent of the registered voters therein.

All changes made possible by any of the above methods are subject to the final approval by the people in a plebiscite that must be called for the purpose.

Based on the experiences of mature democracies, legislative action through a Constituent Assembly of both houses of the legislature is the most efficient and expeditious way to change the Constitution. The Constitution of the United States for instance, has been amended 27



times but it has endured for more than 230 years. Amendments were proposed by 2/3 of each house of the US Congress and ratified by the states. Of the 33 proposed amendments, 27 were ratified (Villacorta, 2002).

### What is to be changed?

Countless groups and individuals of diverse political orientations and motivations have joined in the discourse on charter change. My goal is to bring the discussion to a level where everyone, regardless of background or convictions, may be able to relate and connect. I will argue for economy and simplicity. This approach will surely strike a responsive chord if one looks at Table 3 below. Note that in the 12<sup>th</sup> Congress (2001-2004) every bill that was passed cost a staggering Php 147,787,921.05! A country like ours with perennial budget deficit cannot and should not maintain a very costly system of legislation.

**Table 3. Cost of Legislation Budget of 1<sup>st</sup> to 12<sup>th</sup> Congress**

Congress	Session Year	Bills Passed	Congress Budget (pesos)	Budget /Bills Passed (pesos)
1 <sup>st</sup>	1946-1949	428	15, 106, 160.00.	35, 294.77
2 <sup>nd</sup>	1949-1953	543	24, 825, 219.68	45, 718.64
3 <sup>rd</sup>	1953-1957	1078	30, 122, 930.00	27, 943.35
4 <sup>th</sup>	1957-1961	1401	50, 616, 263.00	36, 342.80
5 <sup>th</sup>	1961-1965	1192	150, 318, 700.00	126, 106.29
6 <sup>th</sup>	1965-1969	1481	157, 889, 900.00	106, 610.33
7 <sup>th</sup>	1969-1972	512	210, 625, 556.00	411, 378.04
8 <sup>th</sup>	1987-1992	1000	4, 498, 495, 562.00	4, 498, 495.56
9 <sup>th</sup>	1992-1995	534	4, 634, 149, 000.00	8, 678, 181.65
10 <sup>th</sup>	1995-1998	573	6, 054, 386, 000.00	10, 566, 118.67
11 <sup>th</sup>	1998-2001	415	8, 876, 539, 000.00	21, 389, 250.60
12 <sup>th</sup>	2001-2004	76	11, 231, 882, 000.00	147, 787, 921.05

Shiela S. Coronel, Yvonne T. Chua, Luz Rimban and Booma B. Cruz. *The Rulemakers: How the Wealthy and Well-Born Dominate Congress* (Quezon City: Philippine Center for Investigative Journalism, 2004) p. 127

To appreciate both sides of the argument, the discussion will be comparative in character. The basis of comparison will be the manner in Presidential and Parliamentary systems by which laws are passed. The passage of law as the variable in focus is selected because the main function of the government is to pass laws to serve as basis of governance. After all, the government by definition is the agency of the state through which the state carries out its sovereign will. And the will of the state is expressed in terms of its laws.

This cost analysis of the law-making process in the Philippines argues for charter change. The agenda is very clear. And that is to argue that the legislative procedures that we have adopted as enshrined in our present Constitution is not only redundant and cumbersome but also circuitous and very costly.

### **The Legislative Assembly**

Whenever legislation is concerned, the operative provisions of the Constitution are Sections 1, 26 and 27 of Article VI. In a nutshell, section 1 tells us the repository of legislative power, that is, the Congress of the Philippines. It is composed of the House of Representatives and the Senate and to some extent, the people through the system of initiative and referendum. As to the dynamics involved, section 26 tells us how do bills (a proposed draft of law) become laws while section 27 informs us when bills become laws. Bills can either emanate from the House of Representatives or the Senate. Note that the Philippine Congress is a bicameral assembly composed of not more than 250 Congressmen in the House of Representatives who are elected from different legislative districts and the party list and a 24-member Senate who are elected at large.

### **The Legislative Process**

By virtue of section 26, Article VI, a bill before it becomes a law must pass three readings on three separate days. Another procedural requirement is that a copy of the bill in its final form must be distributed



to all the members three days before its passage. The only exemption to these requirements is when the president certifies to the necessity of the bill's immediate enactment to meet a public calamity or emergency.

Let us now illustrate these procedures by way of an example. Suppose a bill is proposed in the House of Representatives to legalize divorce in the Philippines. This bill must pass three readings. In the first reading, only the title of the bill is read and it is given a number for reference. It shall then be referred to the appropriate committee in the House. During the second reading, the bill will be debated on and on and amendments to the bill may be made at this stage. The third reading of the bill will be simple casting of votes for or against the bill. Suppose the House of Representatives approved the bill, what happens next? Here is where the redundancy comes. The approved bill from the House of Representatives will be forwarded to the Senate where it will undergo the same process. If the Senate approves the same on its third reading, the bill is forwarded to the office of the President where three possibilities await it. To wit:

1. Approved and signed by the President. It then becomes a law.
2. Presidential inaction within 30 days from date of receipt. It also becomes a law as if the President had signed it.
3. Vetoed by the President. The bill is returned to the House where it originated together with the President's objections.

The first and the second possibility is not a concern. Either way, the bill becomes a law (see Figure 1). The veto option however, will trigger another set of procedural dynamics. If the House from which the vetoed bill originated wishes to reconsider the bill, it can override the President's veto. To do this, it has to muster  $2/3$  votes of all its members. Once mustered, it shall then be forwarded to the Senate where  $2/3$  votes of all its members must likewise be mustered. With  $2/3$  of both Houses voting for the passage of the bill, it becomes a law even without presidential approval (see Figure 2).

Another possibility is when the bill coming from the House of Representatives turns out to be unacceptable to the Senate. What happens then? In a situation like this where there seems to be a legislative deadlock, the bill will be referred to a Bicameral Conference



**Committee.** This committee is to be composed of nominated members from both chambers. It is tasked to come up with a version of a bill acceptable to both chambers. Failing in this, the bill dies in the bicameral conference committee. The bicameral version of the bill has to be confirmed by both houses before it is submitted to the president where the bill again is faced with the three aforementioned possibilities (see Figure 3).

The redundancy and the cumbersomeness that we have thus observed makes the legislative process very circuitous, especially so when different political parties are in control of both chambers.

How do we streamline these unnecessarily complex legislative procedures? A very practical alternative for a country like ours with a perennial budget deficit is to keep the machinery lean and mean. And with respect to the issue, transforming the bicameral Congress into a unicameral body by abolishing the Senate can do this. The Senate would have to be abolished. Likewise, the Executive (President or Prime Minister) should become a part of a joint executive-legislative assembly, which for convenience we may momentarily call the Parliament. This procedure will greatly simplify the legislative process. Any bill approved by the parliament becomes a law; plain and simple (see Figure 4).

Interestingly, our more progressive neighbours like Japan, Malaysia, Singapore and South Korea adopt this simplified legislative procedure. Just how much money can be saved by this simplified procedure? My estimate which is on the conservative side because I did not include expenditures which are not regular like foreign junkets, public hearings in aid of legislation and the like, led me to a whooping sum of 3,873,480,000 pesos per year. The basis of this computation is mainly the pork barrel of the 24 Senators, their salaries and that of their staff. Bringing it closer to home, this yearly amount to be saved can be translated into the budget of MSU IIT for 13.78 years at its current level of operation. Likewise, it can easily be translated into 25,823 low cost housing units for the millions of homeless Filipinos.

The benefits derived from this alternative spending are clearly more efficient in the delivery of much wanted social services compared to the maintenance of a very expensive 24-member Senate.



## The Prospect

If we trace the arguments for the maintenance of a 24-member Senate in our legislative apparatus, the major argument was and still is the argument that it provides a national perspective different from that of the alleged parochial tendencies of the Congressmen. Also, the Senate provides the training and the stepping-stone for the Presidency. However, recent elections remind us all too clearly that this function has already been usurped by the world of showbiz and the media.

At a different level, the relationship of the Senators is rather unclear with respect to the sovereign people themselves. They are not the people's representatives in the sense of the elected members of the House of Representatives. No legislative district will complain of losing representation because of the abolition of the Senate. The same cannot be said for the abolition of the House of Representatives. Hence, the House must remain.

Moreover, performance wise, the Senate had a very anaemic showing. In 2004-2005, out of the 2,204 bills submitted to the Senate for enactment, only 16 laws were passed (Jurado, 2006).

Procedurally, the proposed change can be effected only with the concurrence of the Senate. And here lies the problem. A Congressman echoed the attendant problem when he said: "Why the will of the 250-member House of Representatives should be held hostage by a 24-member Senate?" I do not have answers to this question. To date the impasse is still there. While both chambers agree that changes are needed in the Constitution, they disagree on the procedural aspect of it. The House of Representatives wishes to effect changes economically by converting itself into a Constituent Assembly. On the other hand, the Senate wishes to go via the very expensive way of calling for a Constitutional Convention. This legislative gridlock so typical in a presidential system causes paralysis in the government. And this legislative stalemate, recurrent in a bicameral legislative set-up of a presidential system, is in itself a strong argument why should it be changed in the first place.

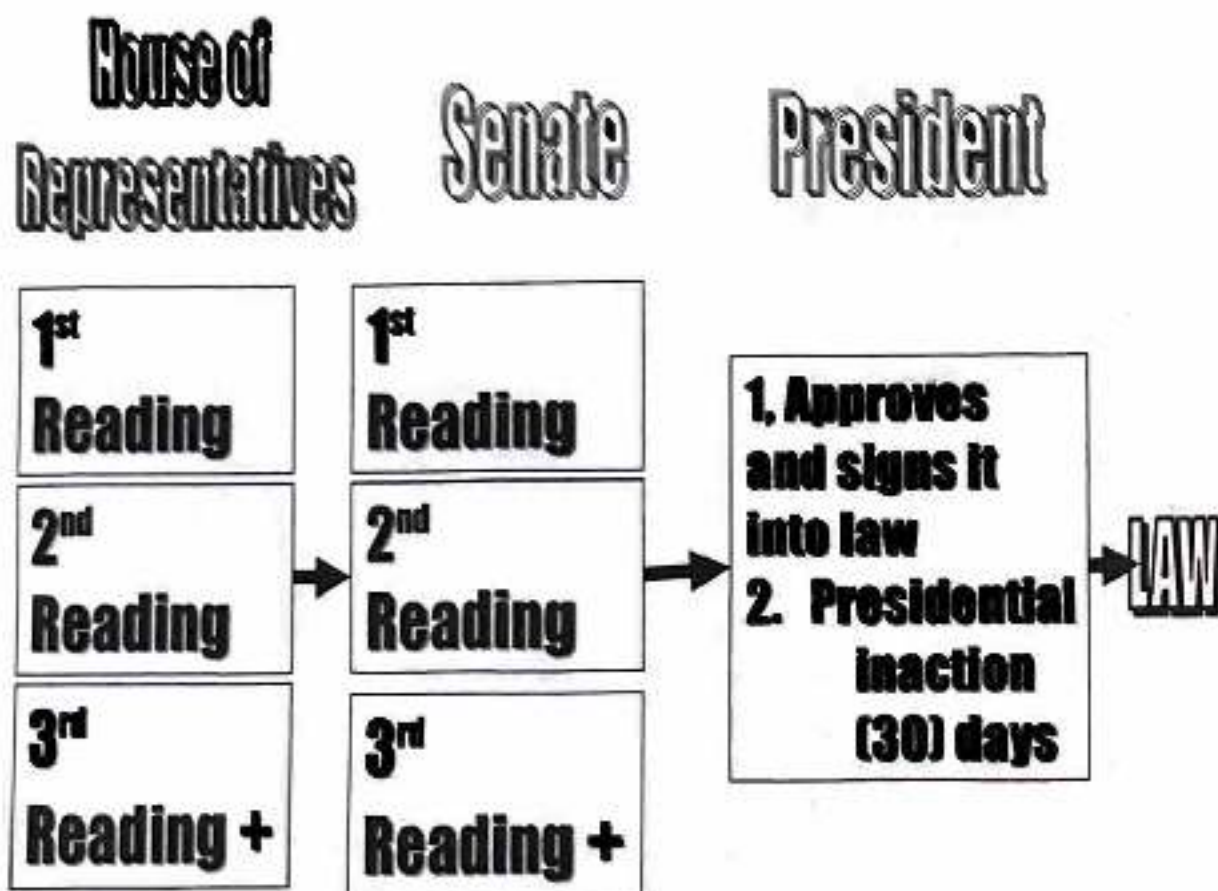


Figure 1



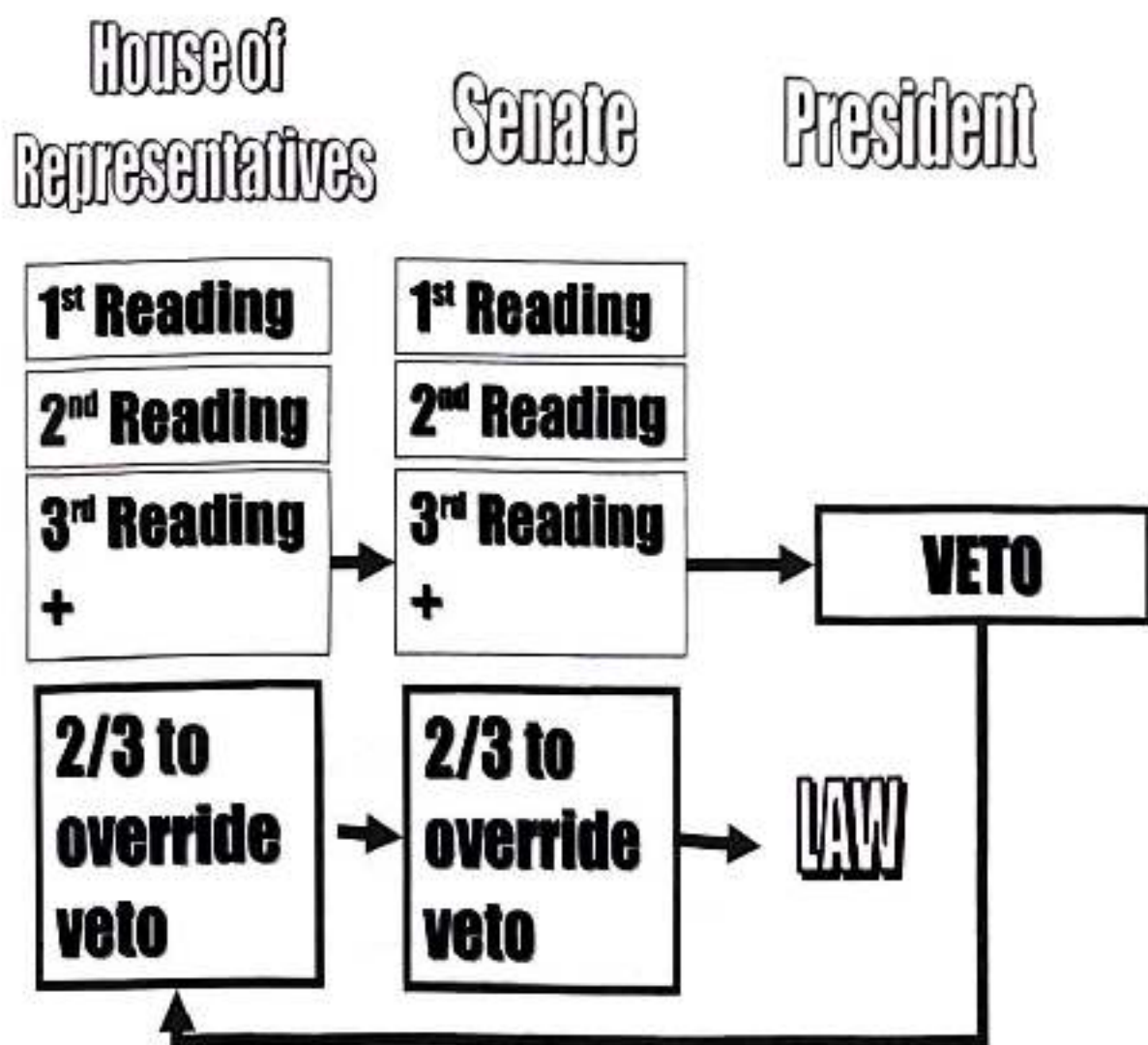


Figure 2

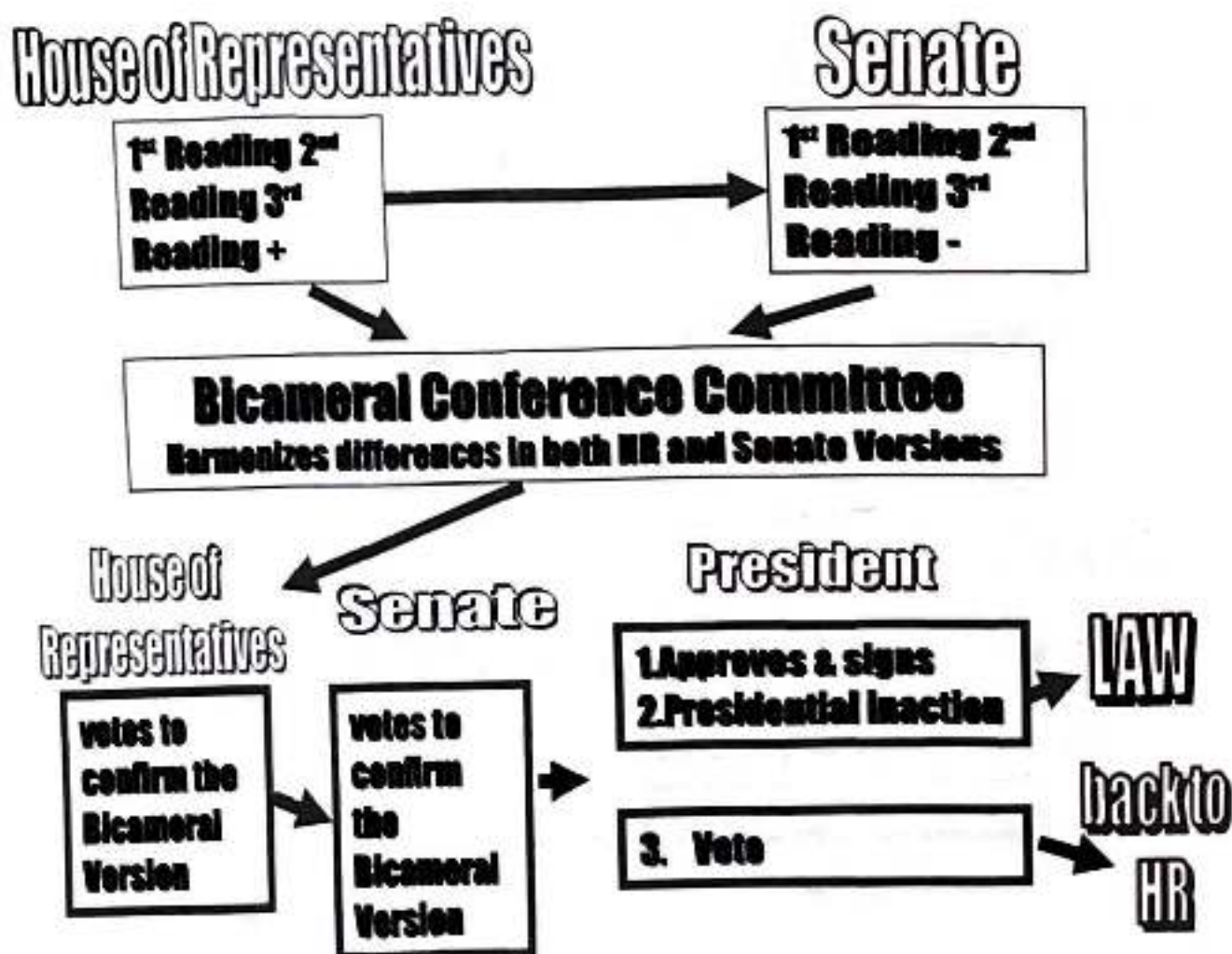


Figure 3



# Simplified Legislative Process

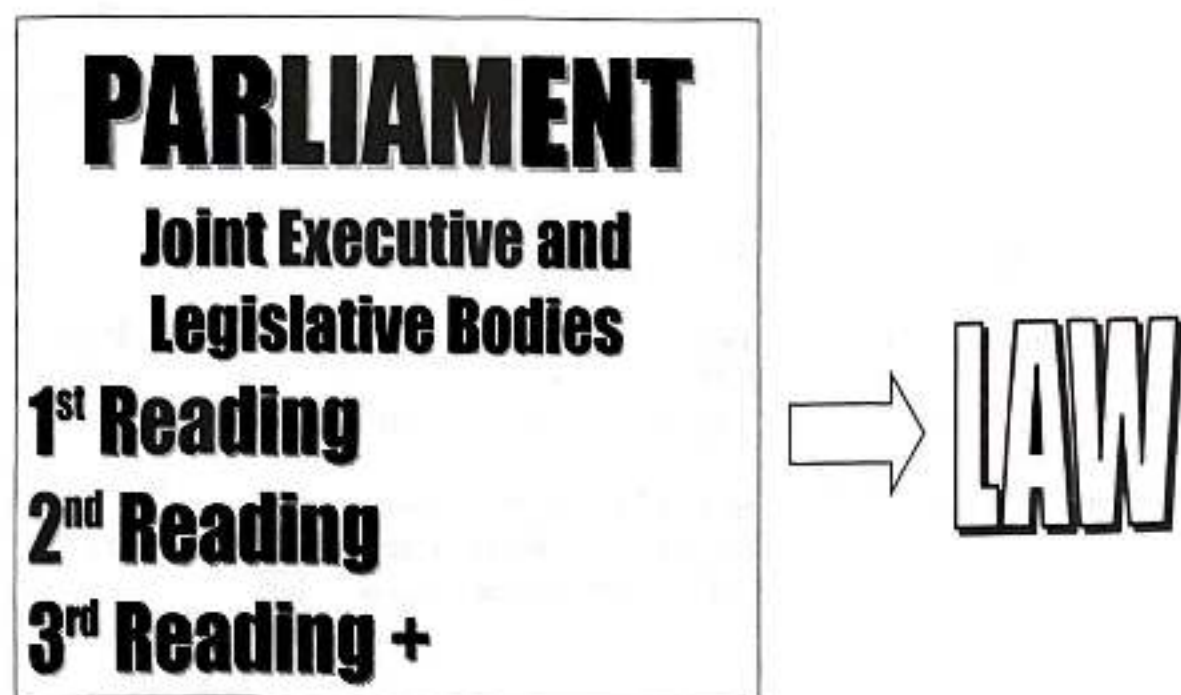


Figure 4

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