

## **The death knell on unicameralism**

By : RAFAEL HERNANDEZ COLON

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Prompted by what passes as public opinion today, the PDP Legislature approved in the last year of the Calderón administration a law for a referendum on unicameralism to be held the 10th of July 2005. Only 22.6% of registered voters participated and 83.8% of the participants voted in favor of the proposition.

Less than two weeks ago, the House of Representatives sounded the death knell on the Senate bill that pretended to implement the results of the referendum by mandating that the legislators vote for a resolution to amend the Constitution in order to provide for a unicameral legislature. This result came as no surprise because it was known before the referendum was held that the votes in the Legislature were not there to approve the resolution.

So, why was this sterile referendum—that cost \$3.6 million—held? It was a tactical response by Gov. Aníbal Acevedo Vilá to an issue generated by those who are shaping public opinion today and influencing governmental policy through distractions from our real problems.

The push for the unicameral legislature came from the so-called political analysts in their radio programs, and certain sectors of our daily press. They hammered away for months on this issue until it became politically sexy for the governor to espouse their cause.

Although the unicameral proposal was not in the PDP program and the governor was not a believer in unicameralism, he found it appropriate to spend the \$3.6 million to implement this referendum in order to allow the people to express themselves. When the House voted down the resolution to implement the results of the referendum, cries went up to the heavens about thwarting democracy, disrespecting the will of the people and other breast-beating propositions from the self-appointed representatives of the popular will in Puerto Rico. Lest our saviors overwhelm us with their sanctimonious protestations, some reflection on this matter is in order.

Modern democracies function under constitutional orders. Expressions of the popular will that are not elicited through the established constitutional processes are not legally binding. In order to change our bicameral legislature to a unicameral legislature the process established under our Constitution should have been followed. It was not. I pointed it out just before the referendum was held in a column in CARIBBEAN BUSINESS, titled “A referendum to nowhere” (CB June 9, 2005), from which I quote:

“The electors of Puerto Rico have been summoned to the polls by the previous Legislature to express their preference on sustaining the present bicameral system or changing it to a unicameral one. They will vote on July 10th not to amend the constitution, which provides for a bicameral legislature, but to mandate the

Legislature to again summon the electors on the 9th of July 2007 to vote to amend the Constitution to provide for a unicameral legislature.”

“I wonder how many of our electors are aware of this? Do they really know that the referendum of July 10th is merely an expensive public opinion poll without legal effects on the constitutional order? I do not think there are many electors aware of the import of their vote; that theirs is but the expression of a wish not binding on the Legislature as a matter of law. I have a strong feeling that behind all of this there is a rather loose understanding of our Constitution and of the seriousness that should attend a summons to the electorate so the voters maintain a high rate of participation in the system.

“The Legislature can not delegate to the public its constitutional authority to convene a referendum to amend the Constitution. This is not only an abdication of power, it is not only a flight from the responsible exercise of judgment that our democratic system demands from our Legislature, but it is also an act contrary to the Constitution itself and therefore null and void in its inception. The people can not mandate this referendum; only the Legislature acting through the proper procedures can do so.

“The procedure provided by our Constitution for amendments to that charter requires the Legislature approve an amendment by two-thirds majority, which will then be submitted to the people for approval in a referendum. This two-thirds majority requirement can not be circumvented by holding a referendum for the people to directly mandate a referendum as is done in Law 477. The mandate for the Legislative Assembly to approve the amendment has no legal effect.

“The members of the Legislature were elected in 2004 and empowered under our Constitution to exercise their judgment on legislative matters until 2008. Our Constitution does not contemplate that the electors can strip them of their powers to amend the Constitution. They can not be mandated to vote against their judgment. What will happen will be that our people will be frustrated if they express their will to provide for unicameral legislature through an unconstitutional referendum.”

The results of the referendum held on the 9th of July 2005 have no democratic legitimacy, not because of the dismal participation rate, but because they stem from an act that was alien to our Constitution. Let us hope the death knell sounded by the House will put an end to this distraction.

The unicameral distraction is just one example of the lack of focus on our real problems affecting our present divided government. The root of this problem lies in the tactical approach to governance, which focuses on front-page issues rather than on important issues. This constantly shifting focus is a constant diversion from the continuing attention that must be given to the ship of state in order to provide for the general welfare. It is proving extremely costly to Puerto Rico.