

ABSTRACT

Thesis title : Referendum in Thailand

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It is generally accepted that in a democratic government the sovereignty belongs to the people. However, due to the complicated nature of the state's duty it would be impractical, as well as chaotic to allow every individual to express that power. Therefore, almost every state expresses the will of the people through elected representatives in the assumption that every elected representative will be the agent of his constituency. The defect in this system is revealed when we consider the representative's potential conflict of interest which arises due to his affiliation with and consequent loyalty to a specific political party. As a result, the exercise of sovereign power on behalf of the people by representatives may not reflect the actual will of the people. Moreover, there does not exist any other scrutiny mechanism than general election. People are, therefore, forced to wait until the following election to decide against voting for the representatives whose work does not meet their satisfactions.

From this study, it was discovered that in other countries which employ a representatives government, such as Switzerland, USA, France, Italy and Sweden,

a referendum measure was employed to supplement the weaker points in the exercise of sovereign power through representatives and specifically, to scrutinize legislative maladministration. The major merit of a referendum is that it does not deprive the representatives of their duties and responsibilities. This study explored into details the different kinds of referendum employed in the aforementioned countries whose common characteristics is that each is utilized as the final procedure prior to the entry into force of legislation.

Since the reform of government from monarchy to a democracy, Thailand has employed a system of government in which sovereign power, which is deemed the supreme governing power belonging to the people, is perpetually exercised through representatives. In practice, this system has many problems which are encountered in the representative democratic system, the election system and the political party system, including the absence of representative accountability.

In Thailand, it was revealed that the ideal of utilizing a referendum has been considered on several occasions, but it was never employed in practice. The current Constitution provides for referendum in Section 214, but the structure of the referendum results in a form equivalent to consultation initiated by the cabinet, but with no binding effect on the applicable agency. If we reconsider the referendum, we will find that it is only a political tool employed by the cabinet and that there is a strong probability that it will be used to support a person, rather than a policy or any legitimate activities of the cabinet. It is difficult to find any legal measure to prevent such an action.

The writer proposes that Thailand elect to employ a obligatory referendum in such a way that it has a legally binding effect. The proposed measure should be employed, in the early stage, as an exception to representative democracy and should be used specifically for

the formulation of a new Constitution, the amendments thereto and its organic law.

In addition, there should be an amendment of the Constitution regarding the people's right to initiate bills and the present form of referendum as prescribed in Section 214 should be repealed.