The People Power Revolution that toppled former South Korean President Park Geun-hye was historic and unprecedented. Among other things, it represented a visceral call by the public for clean government and an accountable democracy. The tasks now facing newly elected President Moon Jae-in are daunting and urgent.

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Tackling the Imperial Presidency: The Case for Constitutional Amendment

By Myung-bok Bae

The election of Moon Jae-in as South Korea’s new president on May 9 following the historic impeachment of President Park Geun-hye is understandably being seen as a new beginning for the country’s democracy. But one of the central challenges South Korea now faces is a very old one: how and whether to amend the country’s 1987 constitution to address a problem that has plagued the Republic of Korea since it was born in 1948 — the imperial presidency.

Moon has pledged to push forward with constitutional amendment. Myung-bok Bae explains the tough challenges that lie ahead.

WHEN THERE IS a car accident, often one of two things is asked: is the vehicle defective, or is the driver inexperienced or incapable? If there are more accidents even after the driver is changed, isn’t it likely that the vehicle is defective? Is South Korea, then, a broken car that causes accidents regardless of who drives it? If that is the case, what can be done?

It is the opinion of most Koreans that the current constitution, which dates to 1987, must be revised after being in place for 30 years. According to opinion polls, between 60 percent and 70 percent of people hold such a view. Among expert groups, including political scientists, 75 percent agree on the need for an amendment. The country’s constitution is the basic norm that greatly influences the lives of people by regulating all areas of state affairs such as politics, the economy, society and culture. Because there are flaws in the constitution, which serves as the supreme rule of the state, state affairs are hobbled regardless of who takes control.

In South Korea, however, the idea of amending the constitution is like the proverbial elephant in the room. Most people recognize the need for it, yet it is difficult to implement. The idea of a constitutional amendment has been raised repeatedly over the last 30 years, but no action has followed. This time, however, the situation appears different. With South Korea’s unprecedented impeachment of President Park Geun-hye, the need to amend the constitution has now become a pressing issue. A consensus has formed that the unfortunate impeachment crisis occurred because the existing constitutional system, which has been castigated for allowing an “imperial presidency,” was never fixed, and so amendment of the constitution has become an urgent task. This is why candidates who ran in the snap presidential election held on May 9, following Park’s removal from office in March, promised to amend the constitution during their term in office.

PLANNING A NEW AMENDMENT

Newly elected President Moon Jae-in was certainly not an exception. During his campaign, he promised that if elected, he would quickly organize a special constitutional amendment committee, as well as an umbrella committee called “The Organization to Discuss a Constitutional Amendment through Citizen Participation” to collect opinions from the public. He even presented a concrete schedule to incorporate the constitutional amendment in a referendum in time for local elections to be held in June next year, after the National Assembly votes on it in early 2018.

Even since his inauguration, Moon has openly and repeatedly discussed his intention to amend the constitution. During the commemoration ceremony for the 37th anniversary of the Gwangju Democratization Movement, he announced his intention to reflect the spirit of this movement in the new constitution. At a Blue House lunch with floor leaders of the five political parties, Moon reaffirmed his willingness to quickly seek an amendment to the constitution. Given the strong determination shown by the president, public and National Assembly in favor of amendment, it looks like this could become a reality next June.

The Constitution of the Republic of Korea was promulgated in 1948 on the third anniversary of the liberation from Japanese colonial rule. It was a presidential system modelled on the US Constitution. But the US-style constitution, when confronted with reality, resulted in serious side effects and confusion, because it was introduced with no experience of democracy and a strong tradition and mindset of the Confucian dynasty system at that time. Disregarding the legal stability required of such a constitutional system, the ruling forces often revised the constitution in accordance with their political intentions. It was also changed in special circumstances such as revolution or a coup d’etat. As a result, there have been nine amendments over the last 70 years since the establishment of the Republic of Korea. But the framework of a presidential system, in which authority is concentrated in the president, has not changed. In the third amendment, following the student revolution of April 19, 1960, a parliamentary system of government was introduced, but it only lasted for five months.

The current Constitution of the Sixth Republic, which was the result of the ninth amendment, is a product of the democratization movement of June 10, 1987. It is a constitution that was won with the blood, sweat and tears of citizens and students who fought against the military dictatorship of Chun Doo-hwan, who emerged after “strongman” Park Chung-hee’s 18-year rule. At the core of this constitution, which became the foundation of the so-called “1987 system,” is direct presidential election and a single five-year term. The consensus of the people at the time was that there was nothing more important than to prevent the abuses of long-term rule by an indirectly elected president. As a result, the constitution stipulated a directly elected president with just one five-year term. Therefore, the fundamental problem of the South Korean presidential system, in which power is concentrated in the president, remained even after democratization.

It is not an exaggeration to say that the numerous political tragedies and misfortunes that have occurred since the establishment of the South Korean government had their origins in a power
structure concentrated on the presidency. Checks and balances through the separation of three powers stipulated in the constitution was nothing more than a specious ornament. The president employed omnipotent authority over not only the executive branch but also the legislative and judicial branches. Due to such an imbalance, Rhee Syngman, the first president of South Korea, was toppled from his throne and forced to live in exile by the April 19 Revolution, in which young students were key participants. Park Chung-hee, who dreamed of becoming a lifelong president by taking power through the May 16 coup d’état, was shot dead by a subordinate. Chun Doo Hwan, who took power through the December 12 coup d’état, was indicted after he resigned from office and sentenced to death.

Even after the 1987 democratization, the “curse of the constitution” did not end. Past presidents, their family members and close aides have been brought before the courts and jailed for corruption. There has even been a president who committed suicide. And with Park, of course, the country had a president who ignored the constitution, abused her power and allowed herself to be swayed in her official duties by a close confidante, which ultimately led to her impeachment. It is the common perception of many citizens who came out on the streets with candles last winter that the unfortunate situation was the result of authority being solely concentrated on the president, something that the current constitution is unable to prevent. So, after election, the tendency is to see intentional forgetfulness as far as constitutional amendments are concerned. Former President Park Geun-hye opposed the constitutional amendment debate because she saw it as a black hole that would absorb immediate issues such as the economy, people’s livelihood and security whenever there were calls in political circles for a constitutional amendment. When she was cornered by the political crisis that began in October last year, Park herself proposed a constitutional amendment as an attempt to shift the focus of public attention. But that shift did not last longer than a day, because news of the “smoking gun” regarding her abuse of authority spread quickly throughout the media.

With the election of Moon, the possibility of constitutional amendment has risen significantly. However, it is too early to be optimistic, because the understanding of the specific terms of an amendment differ from each party and person. Even regarding the most crucial issue of the power structure of government, there have been various proposals including a four-year, two-term presidential system, a parliamentary system and a semi-presidential system. According to polls, 45 percent of South Koreans prefer the American system of two possible presidential terms of four years each. Moon agrees, but the amendment procedures will not easily proceed according to the president’s preferences. Support is also quite considerable among members of the National Assembly for an Austrian semi-presidential system, in which the president deals with foreign policy and the prime minister focuses on domestic policy, or the French semi-presidential system, in which the leader of the majority party in the National Assembly becomes the prime minister. There also exists minor support for a parliamentary system such as that in Germany or Japan.

Along with revisions of the power structure, electoral law has also been a central issue. There is a general consensus on lowering the voting age from 19 to 18, and introducing a run-off vote in the presidential elections. Many believe that the current single-member district system, which creates vested interests centered around large major parties and chronic regionalism-based politics, should be changed. Others voice the need to expand proportional representation to better reflect support for each party in the number of seats in the National Assembly, or implement the German mixed-member proportional system. Such proposals arise from the need to maximize the legitimacy and efficiency of representative democracy by modifying the electoral system and eliminating the abnormal power structure centered around the president.

Constitutional amendment should also reflect the zeitgeist. There is already an overarching consensus on extending human rights and ele-

PAST OBSTACLES, PRESENT OPPORTUNITY

To address these problems, all presidents of the Sixth Republic have agreed that a constitutional amendment is necessary, but no one has been able to achieve it. When a president is elected, often the biggest obstacle is the president’s own selfishness, which makes him or her not want to waste political capital on a problem that relates to the future, not to the current term in office. So, after election, the tendency is to see intentional forgetfulness as far as constitutional amendments are concerned. Former President Park Geun-hye opposed the constitutional amendment debate because she saw it as a black hole that would absorb immediate issues such as the economy, people’s livelihood and security whenever there were calls in political circles for a constitutional amendment. When she was cornered by the political crisis that began in October last year, Park herself proposed a constitutional amendment as an attempt to shift the focus of public attention. But that shift did not last longer than a day, because news of the “smoking gun” regarding her abuse of authority spread quickly throughout the media.

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ments of direct democracy, as well as reinforcing balanced regional development and decentralization of power. Many also agree on strengthening the constitution’s article on economic democracy. Nevertheless, the process of capturing such ideas into articles of the constitution is a different matter, and it will not be simple.

There are also procedural issues. Amendments can be tabled by the National Assembly with a majority vote, or by the president. Since the special committee for amendment already exists in the National Assembly, members believe the amendment process should be led by the assembly. However, adjusting the terms of the amendment among the ruling and opposition parties may be difficult. Some believe that the president should initiate the process for the sake of efficiency. Whichever path it takes, the amendment process needs to take into account public opinion in the most effective way possible. Issues as critical as the constitutional amendment should not be influenced by the interests of politicians.

For the amendment to take place in June next year, consensus has to form by no later than next spring. If agreement is not reached, President Moon proposes a national referendum on what will have been negotiated by then. Unlike his predecessors, Moon has shown an active and open attitude towards amendment, but reaching a consensus between the ruling and opposition parties is a pivotal part of the process. Moon’s forward-looking stance on amendment may even be high political groundwork based on the possible narrative of failure by the National Assembly to reach a consensus by early next year.

South Korea faces numerous issues such as the political culture of confrontation and distrust, as well as conflict between regions, social classes and generations; polarization of wealth; an economic structure centered around chaebol; collusion between the state and business; a low birthrate and an aging population; continuing division between North and South Korea; the North Korean nuclear issue, and many more. Amending the constitution will not solve all of these problems in one stroke. There is no such thing as a perfect policy or institution. Constitutional amendment is not a silver bullet.

The question of whether institutions or people come first will eternally remain a matter of debate. Some still believe that car accidents occur not because of car defects but because of inexperienced or incapable drivers. After his inauguration, President Moon distanced himself from the imperial presidency. He has lowered himself as much as he could, and has shown cooperative attitudes towards the public as well as the opposition parties. Such actions may be inevitable with an opposition-dominated National Assembly, but his actions are definitely different, especially compared with his predecessor, who generated much disdain due to her self-righteous arrogance and lack of communication.

Moon currently enjoys an approval rating of more than 80 percent. That is unusually high even during the “honeymoon period” after an election. This phenomenon proves the notion that even without revisions to the constitution, depending on the president’s actions, a mature democracy with a high level of popular support is feasible. If Moon’s approval ratings ride high for a longer period, the momentum for constitutional amendment may weaken. But we have learned from our past that such enduring support doesn’t last. Approval ratings are set to fall.

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