INITIATIVE AND REFERENDUM: AN EXPERIMENTATION AT PEOPLE EMPOWERMENT*

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The concepts of initiative and referendum are not new. Their beginnings may be traced to the Athenian *Ecclessia,*[1] the Roman *Comitia Tributa,*[2] and the Swiss *Landsgemeinde.*[3] In present times, initiative and referendum have found acceptance in a number of states of the U.S.[4]

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[1]The *Ecclessia* or the Popular Asembly was the sovereign body representing the will of the people which was not unlike the U.S. Congress and the British Parliament. Entry to the *Ecclesia* was not by election; one could be a member of the same provided one was an Athenian citizen born of Athenian parents and was of age. Every member of the *Ecclessia* had a right to initiate measures and amendments thereto, but all privately-initiated motions must first pass through an executive council called the *Boule*, which decided whether to include the motion in the *Ecclessia*'s agenda. Any citizen may speak and debate on such initiated motions in the meetings of the *Ecclessia*. The *Boule* generally had initiative in all legislations but the *Ecclessia* retained the last word and in it the people directly ratified or rejected the recommendations laid before it. G. GLOTZ, THE GREEK CITY AND ITS INSTITUTIONS 129, 159-161 (1965); D. PICKLES, DEMOCRACY 32-33 (1970); W. HALLIDAY, THE GROWTH OF THE CITY STATE: LECTURES ON GREEK AND ROMAN HISTORY 131 (1967).

[2]Also called the Tribal Assembly of the People. By the year 200 B.C., the *Comitia Tributa* became the chief source of private law in Rome. In contrast to the Athenian *Ecclessia*, the people did not have freedom of discussion and debate. One of the magistrates proposed and defended a law before the Assembly, while the other magistrate may speak against it. The Assembly merely listened to the speeches and voted for or against the proposed law. W. DURANT, THE STORY OF CIVILIZATION III: CEASAR AND CHRIST 26-27 (1944); W. HALLIDAY, *supra* note 1, at 151-153, 165.

[3]Ancient democratic town assemblies of the Swiss cantons where all male citizens of full age met annually to listen to the reports of their chosen representatives, to vote on new laws by a show of hands, or to initiate legislation and taxation. J. Balagot, Peculiarities Of The Swiss Political Institutions 15 (1951) (unpublished thesis available in the University of the Philippines Main Library); 26 ENCYCLOPAEDIA AMERICANA 148 (1966).

[4]The states of the U.S. that have adopted the system of initiative and referendum are Alaska, Arizona, Arkansas, California, Colorado, Idaho, Maine, Massachusetts, Michigan, Missouri, Montana, Nebraska, Nevada, North Dakota, Ohio, Oklahoma, Oregon, South Dakota, Utah, Washington, District of Columbia, Guam, North Marianas Islands and Puerto Rico. Sturm and May, *State Constitutions and*

The move to incorporate initiative and referendum provisions in the Constitution was first made in the 1971 Constitutional Convention. A total of nine resolutions[5] calling for initiative or referendum or both were filed by Convention delegates. Unfortunately, however, the idea did not gain enough support and was not included in the final draft of the proposed 1973 Constitution.

The inclusion of the system of initiative and referendum in the 1987 Constitution was largely a reaction to the country's experiences during the Marcos Administration. The decline of public confidence in the Batasang Pambansa during the last years of the Marcos Administration and the presidential dominance over the legislature brought about by Amendment No. 6[6] were the primary reasons that compelled the 1986 Constitutional Commission to provide for a mode by which the people can directly enact laws or compel the submission of any measure to popular vote should the legislature show itself indifferent to their needs.[7]

The system of initiative and referendum is thus a recognition of the need to empower the people with the means to effectuate their actual interests. It is a positive tool by which the people can participate directly in the formulation of policies and programs of the government although the process therefor may not necessarily be more speedy and less cumbersome.

This paper will dissect the features of this experimentation at institutionalized people empowerment. It will look into the system as it is provided in the Constitution and in the enabling law. It will discuss

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Constitutional Revision: 1986-87, 27 THE BOOK OF STATES 21 (1988-89 ED.); D. MAGLEBY, DIRECT LEGISLATION: VOTING ON BALLOT PROPOSITIONS IN THE U.S. 34 (1984). These do not include states that have adopted either initiative or referendum alone, nor the more than 100 cities that offer voters the chance to pass measures by initiative. US INFORMATION AGENCY, STEERING THE COURSE: POLICYMAKING IN THE UNITED STATES 34 (n.d.).

[5]C.C. Res. Nos. 1234, 3248, 4635, 4113, 5131, 5457, 5483, 5658, and 5697 filed with the Committee on Legislative Power of the 1971 Constitutional Convention (available in the U.P. Law Center Recto Library).

[6]CONST. (1973) amend. 6 provides:

> Whenever in the judgment of the President (Prime Minister) there exists a grave emergency or a threat or imminence thereof, or whenever the interim Batasang Pambansa or the regular National Assembly fails or is unable to act adequately on any matter for any reason that in his judgment requires immediate action, he may, in order to meet the exigency, issue the necessary decrees, orders or letters of instruction which shall form part of the law of the land.

[7]2 J. BERNAS, THE CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES 68 (1988) (citing the RECORD OF THE CONSTITUTIONAL COMMISSION (1986)).

the legal problems and issues that might arise in its implementation and will analyze the context in which the system is going to operate, especially the socio-political factors at play that will be determinative of the efficacy and the eventual success of the system of initiative and referendum in this jurisdiction.

The Legal Framework

A. In General

Initiative and referendum on national and local legislations are enshrined in article VI, section 32 of the Constitution which provides:

> The Congress shall, as early as possible, provide for a system of initiative and referendum, and the exceptions therefrom, whereby the people can directly propose and enact laws or approve or reject any act or law or part thereof passed by the Congress or local legislative body after the registration of a petition therefor signed by at least ten 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 thereof.

in relation to section 1 of the same article:

> The legislative power shall be vested in the Congress of the Philippines which shall consist of a Senate and a House of Representatives, except to the extent reserved to the people by the provision on initiative and referendum.

The above provisions are not self-executory. While the people have reserved to themselves the power to directly enact laws and to approve or reject, in whole or in part, those passed by the legislature, the extent of that power and the manner by which it shall be exercised are left to the determination of the Congress. Compared with those in other jurisdictions, the system of initiative and referendum on laws as found in the 1987 Constitution is clearly wanting. In most jurisdictions, the system is set out in self-executory constitutional provisions, without need for an enabling act to be passed by the legislature.[8] In others, only

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[8] *See* ALASKA CONST. art. XI, secs. 1-7; ARIZ. CONST. art. IV, secs. 1-2; ARK. CONST. amend. 7; CAL. CONST. art. IV, sec. 1; COLO. CONST. art. V, sec. 1; MASS. CONST. amend. art. XLVIII; MISS. CONST. art. III, secs. 49-53; MONT. CONST. art. 5, sec. 1; NEB. CONST. art. III, secs. 1-4; N.D. CONST. art. II, sec. 25; OR. CONST. art. IV, secs. 1, 1a; WASH. CONST. art. II, sec. 1 (All set out in detail the procedure for the exercise of the power of initiative and referendum.). The Constitution of the State of North Dakota, in addition to providing that the section on initiative and referendum "shall be self-executing and all its provisions shall be treated as mandatory," authorizes the legislature to enact laws "to facilitate its operation, but no law shall be enacted to hamper, restrict or impair the exercise of the rights herein reserved to the

matters of procedure are left to the determination of the legislature.[9] Where exceptions have been made to the power, the exceptions are explicitly set out in the constitution.[10]

Pursuant to the constitutional mandate, the Congress enacted Republic Act No. 6735[11] entitled "An Act Providing for a System of Initiative and Referendum and Appropriating Funds Therefor." While the power as provided in Republic Act No. 6735 is comprehensive in scope, the situation becomes anomalous when we consider that the definition of the scope of the power is by a law which may be repealed or amended by the Congress.[12] Inasmuch as the Constitution clearly empowers the Congress to determine the exceptions to the power of initiative and referendum, it may not be argued that the Congress is not authorized to enlarge or abridge the power. We have thus a case where the power reserved by the sovereign people to themselves is subject to the will of their elected representatives who may decide at any time to enlarge or abridge the scope of the reserved power. It is beyond question that the Congress may not totally deprive the people of the power of initiative and referendum as long as the provisions thereon remain in the Constitution. The interesting question is how far the Congress can restrict such power.

By their very language, sections 1 and 32 of article VI of the Constitution give rise to a contradiction. If the people, by the provision on initiative and referendum, *reserved* to themselves the power to legislate to an "extent," as article VI, section 1 puts it, why is the scope of that power not defined in the provision (section 32) on initiative and referendum? Why is the Congress given the discretion to determine the extent of the power which is its very essence? Is the power a sovereign power reserved or a power delegated by the Congress to the people? Is the power coordinate with that of the Legislature?

In some states of the U.S., it is fully settled that the legislature and the people, when exercising the power of initiative

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people." N.D. CONST. art. II, sec. 25. A similar provision is found in ALASKA CONST. art. XI, sec. 6; NEB. CONST. art. III, sec. 4; OR. CONST. art. IV, sec. 1.

[9]*See* IDAHO CONST. art. III, sec. 1; S.D. CONST. art. III, sec. 1.

[10]*See, e.g.*, ALASKA CONST. art. XI, sec. 7; MISS. CONST. art. III, secs. 51, 52(a); MONT. CONST. art. V, sec. 1; NEB. CONST. art. III, sec. 3; N.D. CONST. art. II, sec. 25; OR. CONST. art. IV, sec. 1; S.D. CONST. art. III, sec. 1; WASH. CONST. art. II, sec. 1, par. (b).

[11]Approved on August 4, 1989.

[12]This only proves that while the legislative power of the Congress is plenary, that of the people under the system of initiative and referendum is not. J. BERNAS, *supra* note 7, at 69.

and referendum on statutes, act as coordinate legislative bodies.[13] This doctrine, however, was carved out of constitutional provisions on initiative and referendum that are self-executory, with the power well-defined. The applicability of the doctrine in this jurisdiction may be questioned considering that the scope of the power of initiative and referendum is left to the determination of the Congress. If the people act as a coordinate legislative body, should not the scope of the power be independent of the will of the Legislature? On the other hand, it may be argued that once the Congress has passed the enabling law, in this case Republic Act No. 6735, the people, in accordance with that law, act as a body co-equal with the Congress and therefore not subject to the latter's will. In that sense, the people act as a coordinate legislative body. This paper adopts the latter view.

It has also been held in the U.S. that the power of initiative and referendum is not a delegated power, but one which the people reserved to themselves.[14] Indeed, to consider the power of initiative and referendum as a power delegated by the Congress to the electorate is legally untenable. It is a fundamental principle of constitutional law that a power delegated cannot also be delegated: *delegata potestas non potest delegari.* Moreover, to accept the proposition is to allow a legal inconsistency: the people who are the source of the power delegated are in turn delegated with the power they delegated to the Congress in the first place. Obviously, this position cannot hold. On the other hand, the proposition that the power of initiative and referendum is a reserved and not a delegated power seems to find support in the language of article VI, section 1 of the Constitution:

> The legislative power shall be vested in the Congress of the Philippines which shall consist of a Senate and a House of Representatives, except to the extent *reserved* to the people by the provision on initiative and referendum.[15]

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[13]State v. Houge, 271 N.W. 677, 680 (N.D. 1937). *See* State *ex rel.* Bullard v. Osborn, 143 P. 117, 118 (Ariz. 1914); Baird v. Burke County, 205 N.W. 17, 20 (N.D. 1925); State *ex rel.* Richards v. Whisman, 154 N.W. 707, 709-710 (S.D. 1915); Kadderly v. Portland, 74 P. 710, 720 (Or. 1903).

[14]*See* State *ex rel.* Bullard v. Osborn, 143 P. 117, 118 (Ariz. 1914) (citing Allen v.State, 14 Ariz. 458, 130 Pac. 1114, 44 L.R.A. (N.S.) 468).

[15]Emphasis supplied. Fr. Joaquin G. Bernas, S.J. interprets this provision in relation to sec. 32 of the same article in this wise:

> In republican constitutional theory, the original legislative power belongs to the people who, through the Constitution, confer derivative legislative power on the legislature. Through Section 1, however, in connection with Section 32, the people have, in addition to their constituent power, reserved to themselves ordinary legislative power. The purpose is to institutionalize "people power" by providing for an

There is no doubt that the people act in their sovereign capacity when they propose constitutional amendments through initiative[16] under article XVII, section 2 of the Constitution which provides:

> 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 this Constitution nor oftener than once every five years thereafter.

While the Congress, when proposing amendments to the Constitution, derives its authority from the same Constitution, the people, when performing the same function, do not derive their authority from the Constitution, for they are the very source of all powers of government and, for that matter, the Constitution itself.[17]

In the United States, the power of initiative and referendum had been attacked on the ground that it was contrary to and destructive of the representative form of government and was therefore in violation of the Federal Constitution. The issue was finally settled by the U.S. Supreme Court in *Pacific States Teleph. & Teleg. Co. v. Oregon*,[18] where the Court, speaking through Mr. Chief Justice White, held that the manner, method, and instrumentalities by which the people of a state determine to legislate are political and not judicial questions, and that the courts cannot consider the wisdom thereof.

That the constitutional issue raised in the *Pacific* case arose at all is explained by the fact that it is only in state constitutions that the power of initiative and referendum is recognized. Its being in accord with the Federal Constitution thus became subject to question. Of course, the question of the constitutionality of the power of initiative and referendum will never arise in this jurisdiction because the power is enshrined in our only fundamental law.

The effect of the power of initiative and referendum on the plenary legislative power of the legislature and its place in a

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> instrument which can be used should the legislature show itself indifferent to the needs of the people.

J. BERNAS, *supra* note 7 (citing the RECORD OF THE CONSTITUTIONAL COMMISSION (1986)).

[16]1 RECORD OF THE CONSTITUTIONAL COMMISSION 377, 391 (1986). *See* State *ex rel.* Conway v. Superior Court, 131 P.2d 983, 987 (Ariz. 1942).

[17]Tolentino v. Commission on Elections, 41 SCRA 702, 714 (1971) (citing Gonzales v. Commission on Elections, 21 SCRA 774 (1967)).

[18]223 U.S. 118 (1912).

republican government had also been the subject of several judicial decisions in the various states of the U.S. In the case of *Kadderly v. City of Portland,*[19] the Supreme Court of the State of Oregon had this to say:

> The people have simply reserved to themselves a . . . share of legislative power, but they have not overthrown the republican form of the government, or substituted another in its place. The government is still divided into the legislative, executive, and judicial departments, the duties of which are discharged by representatives selected by the people. . . . it is true, the people may exercise a legislative power, and may, in effect, veto or defeat bills passed and approved by the legislature and the Governor; but the legislative and executive departments are not destroyed, nor are their powers or authority materially curtailed. Laws proposed and enacted by the people under the initiative clause of the amendment are subject to the same constitutional limitations as other statutes, and may be amended or repealed by the Legislature at will.[20]

A similar pronouncement was made by the North Dakota Supreme Court in *Baird v. Burke County:*[21]

> The state Legislature therefore has full power of legislation except as limited by the federal or state Constitution. The initiative and the referendum neither add to nor substract from that power; except as its scope is restricted by constitutional limitations, the power is still plenary in the legislature. Though the people have reserved legislative power, the representative character of the government is fully retained.[22]

The above pronouncements equally apply in this jurisdiction. The system of initiative and referendum has not replaced our republican form of government,[23] which, like those of the American states, is divided into three branches: the legislative,[24] the executive,[25] and the judicial[26] departments.

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[19]74 P. 710 (Or. 1903).

[20]74 P. at 720.

[21]205 N.W. 17 (N.D. 1925).

[22]205 N.W. at 20.

[23]CONST. art. II, sec. 1. declares that the "[t]he Philippines is a democratic and republican State. Sovereignty resides in the people and all government authority emanates from them."

[24]CONST. art. VI.

[25]CONST. art. VII.

[26]CONST. art. VIII.

B. Definitions and Concepts

1. Initiative

Republic Act No. 6735 defines *initiative* as "the power of the people to propose amendments to the Constitution or to propose and enact legislations through an election called for the purpose."[27] There are three systems of initiative under the Act:

> (1) Initiative on the Constitution which refers to a petition proposing amendments to the Constitution;
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> (2) Initiative on statutes which refers to a petition proposing to enact a national legislation; and
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> (3) Initiative on local legislation which refers to a petition proposing to enact a regional, provincial, city, municipal, or barangay law, resolution or ordinance.[28]

The Act also provides for an *indirect initiative* which is the exercise of initiative through a proposition sent to the Congress or the local legislative body for action.[29] While in direct initiative it is the people who enact laws in accordance with the procedure set out in Republic Act No. 6735, in indirect initiative, the legislature acts on proposed laws submitted by duly accredited people's organizations, as defined by law,[30] following the regular legislative procedure for the enactment of laws.[31] It must be noted, however, that in indirect initiative the legislative discretion as to whether to act on the proposed law or not, or whether to adopt it as proposed or with revisions, remains unhampered.

2. Referendum

Referendum is "the power of the electorate to approve or reject a legislation through an election called for the purpose."[32] Its subject may either be an act passed by the Congress,[33] or a law, resolution or

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[27]Sec. 3 (a).

[28]Rep. Act No. 6735 (1989), sec. 3(a.1), (a.2), (a.3).

[29]Rep. Act No. 6735 (1989), sec. 11.

[30]There is no law at present defining "duly accredited people's organizations." But the Constitution defines "people's organizations" as *"bona fide* associations of citizens with demonstrated capacity to promote the public interest and with identifiable leadership, membership, and structure." CONST. art. XIII, sec. 15.

[31]Outlined in CONST. art. VI, secs. 26, 27.

[32]Rep. Act No. 6735 (1989), sec. 3 (c).

[33]Rep. Act No. 6735 (1989), sec. 3 (c.1).

ordinance enacted by regional assemblies and local legislative bodies.[34] The submission of a law to a referendum is by petition of the people. Approval by the people in a referendum is not required under Republic Act No. 6735 for the effectivity of laws. The law, ordinance or resolution subject of the referendum is already in force and effect[35] and shall so remain if the requisite number of votes is not met.[36] In effect, the power of referendum is only a power to reject laws.

C. Scope and Limitations of the Power

1. Scope

(a) Initiative and Referendum on Statutes

Under Republic Act No. 6735, initiative and referendum cover all kinds of laws without exceptions.[37] In general, laws may be the subject of referendum immediately after their enactment. However, statutes involving emergency measures, the enactment of which is specifically vested in the Congress by the Constitution, may not be the subject of *referendum* within ninety days after their effectivity.[38] Exactly what these emergency measures are still remains to be determined. One clear example, however, is a law authorizing the President, in times of war or other national emergency, for a limited period and subject to such restrictions as the Congress may prescribe, to exercise powers necessary and proper to carry out a declared national policy.[39]

The scope of the referendum under Republic Act No. 6735 is broader than those in other jurisdictions. The constitutions of many states of the U.S. provide several exceptions to the *power of referendum.*[40] While the exceptions slightly differ in terminology from state to state, in the main they are of two categories:

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[34]Rep. Act No. 6735 (1989), sec. 3 (c.2).

[35]This is clear from the following provision of the Act:

> However, if the majority vote is not obtained, the national law sought to be rejected or amended *shall remain in full force and effect.*

Rep. Act No. 6735 (1989), sec. 9, par. (a) (emphasis supplied).

[36]*Id.*

[37]Referendum provisions had been held to apply only to legislative acts and not to administrative or executive matters. State v. Butler, 17 N.W.2d 683, 688 (Neb. 1945) (citing Read v. City of Scottsbluff, 297 N.W. 669, 671).

[38]Rep. Act No. 6735 (1989), sec. 10, par. (b).

[39]CONST. art. VI, sec. 23, par. (2).

[40]*See, e.g.*, ARIZ. CONST. art. IV, sec. 1, subdiv. (3); ARK. CONST. amend. 7; CAL. CONST. art. IV, sec. 1, par. 4; COLO. CONST. art. V, sec. 1; MASS. CONST. amend. art.

> (1) Laws necessary for the immediate preservation of public peace, safety, and health.
>
> (2) Laws necessary for the immediate support of the government and its public institutions.[41]

Excepting the first category of laws from the rule in a number of states that every act of the legislature is referrable and its effectivity is conditioned on its approval by the people has been held to be for the cause of "a stable and efficient government," because some laws need to take effect immediately in order to meet emergencies in the daily operations of the government.[42] However, laws falling under the first category are not *ipso facto* excepted; they must be declared emergency measures by the legislature.[43]

The second category of exceptions, namely, laws necessary for the immediate support of the government and its institutions, refers primarily to revenue and appropriation acts.[44] The exception is intended to ensure the continuous operation of state governments and state institutions.[45]

The reasons given for the above exceptions to the power of referendum do not apply in this jurisdiction. Here, the approval by the people in a referendum is not *sine qua non* to the effectivity of a law. Neither does the referendum suspend the effectivity of the law subject thereof. Considerations of emergencies requiring immediate action do not therefore apply.

Nonetheless, the second category of exceptions, relating to revenue and appropriation laws, deserves serious consideration. There is a reason more basic and more significant than what is stated above for the second exception. Appropriation and revenue laws are excluded from the initiative and referendum

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XLVIII, subdiv. III (under The Referendum), sec. 2; MISS. CONST. art. III, sec. 52(a); MONT. CONST. art. V, sec. 1; N. D. CONST. art. II, sec. 25; S.D. CONST. art. III, sec. 1.

[41]Annotation, *Construction and Application of Constitutional or Statutory Provisions Expressly Excepting Certain Laws from Referendum*, 146 A.L.R. 284, 286 (1943); *see* note 40, *supra*.

[42]State *ex rel.* Wegner v. Pyle, 226 N.W. 280, 281 (S.D. 1929).

[43]Warner v. White, 4 P.2d 1000, 1003, 1004 (Ariz. 1931); State *ex rel.* Richards v. Whisman, 154 N.W. 707, 711, 712 (S.D. 1915).

[44]Annotation, *supra* note 41, at 294.

[45]Moreton v. Haggerty, 216 N.W. 450, 453 (Mich. 1927); State *ex rel.* Bonner v. Dixon, 195 P. 841, 845 (Mont. 1921) (citing Bartling v. Wait, 148 N.W. 507 (1914)).

> for the very apparent reason that an initiative measure might be proposed and passed by the people without sufficient knowledge of the necessity therefor or of the amount of funds available; and a referendum of any such measure might easily cripple or destroy the administration of governmental affairs even to the extent of requiring the legislative, executive, or judicial branches of the government, or all of them, to cease to function.[46]

A similar justification was articulated in the case of *State ex rel. Wegner v. Pyle*:

> [That] the people could not know the financial needs of the state to be supported by tax levies and tax laws nor the revenues available for appropriation . . . . is the best and probably the only reason for excepting such laws [as may be necessary for the immediate preservation of the public peace, health or safety, support of the state government and its existing public institutions] from the operation of the referendum. . . .[47]

The same considerations should apply in this jurisdiction. Revenue and appropriation measures, because of their nature, should be excepted not only from referendum but also from initiative. It is doubtful, however, whether they are excepted. The constitutional provision on initiative and referendum makes no mention of particular exceptions and leaves the same for Congress to decide. Republic Act No. 6735, the enabling law, similarly fails to include revenue and appropriation laws in its short list of exceptions.[48] Thus, it may be argued that, following the rule of *inclusio unius est exclusio alterius*, revenue and appropriation laws may be the subject of initiative and referendum. Even if it is assumed that revenue and appropriation laws are emergency measures, the enactment of which is specifically vested in the Congress, within the meaning of section 10 of Republic Act No. 6735, they are still not excepted from the power of initiative and referendum, for under section 10, the said emergency measures may not be subject to referendum only within the ninety day-period following their effectivity. However, on the principle that constitutional limitations and restrictions must always be read into every law despite the latter's failure to provide for the same, the significance of article VI, section 24, comes to the fore. Said section provides:

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[46]State *ex rel.* Bonner v. Dixon, 195 P. at 845.

[47]226 N.W. 280, 281 (1929).

[48]"Sec. 10. *Prohibited Measures.* - The following cannot be the subject of an initiative or referendum petition: (a) No petition embracing more than one subject shall be submitted to the electorate; and (b) Statutes involving emergency measures, the enactment of which are [sic] specifically vested in the Congress by the Constitution, cannot be subject to referendum until ninety days (90) days after its [sic] effectivity."

> All appropriation, revenue or tariff bills, bills authorizing increase of the public debt, bills of local application, and private bills shall originate *exclusively* in the House of Representatives, but the Senate may propose or concur with amendments.[49]

Does the above provision mean that appropriation, revenue or tariff bills, bills authorizing the increase of public debt, bills of local application, and private bills may originate only from the House of Representatives, exclusive even of the people acting through initiative? The above provision falls under the article on the Legislative Department. Is it not reasonable to construe the same as only referring to the two Houses of the Congress and, therefore, does not preclude the people from initiating the measures enumerated thereunder? This is clearly one area rich for judicial construction.

(b) Initiative and Referendum on Local Legislation

Initiative on ordinances and resolutions is expressly limited by law to matters which are within the power of the local legislative bodies to enact.[50] Accordingly, an initiated ordinance or resolution that runs counter to validly enacted laws is invalid. It goes without saying that an initiated ordinance or resolution must also conform to the Constitution.

(c) Initiative on Constitutional Amendments

While the Congress or a Constitutional Convention may propose amendments to or revisions of the Constitution,[51] the people, acting through initiative, may propose only amendments.[52] In this sense, the people's power of initiative on constitutional amendments is narrower in scope than that of Congress acting as a constituent body or of a Constitutional Convention. The power is further circumscribed in that it may not be exercised within five years following the ratification of the Constitution nor oftener than once every five years thereafter.[53] Any amendment to the Constitution proposed by the people through initiative shall be valid when ratified by a majority of the votes cast in a plebiscite held for the purpose.[54]

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[49]Emphasis supplied.
[50]Rep. Act No. 6735 (1989), sec. 15, par. (b).
[51]CONST. art. XVII, sec. 1.
[52]CONST. art. XVII, sec. 2.
[53]*Id.*
[54]CONST. art. XVII, sec. 4, par. 2.

2. *Constitutional Limitations*

(a) On Initiative and Referendum on Statutes

While the Constitution does not expressly provide for limitations on the exercise of the power of initiative and referendum on statutes (other than the requirements on the number of signatories to the petition for initiative or referendum), the same constitutional limitations imposed on the Congress in the exercise of its lawmaking power are obligatory on the people when legislating under the system of initiative and referendum. The constitutionality of each initiated act must be tested by the same rules that are employed in testing the validity of laws enacted by the legislature. This is the rule in the U.S.[55] which, it is submitted, applies in this jurisdiction.[56] When acting as a legislative body, the people can no more transgress the constitution than can the legislature.[57]

Accordingly, the people cannot pass by initiative irrepealable laws or laws which cannot be enacted by the legislature under the Constitution. Nor can an unconstitutional act passed by the legislature be validated by the vote of the people in a referendum.[58]

The following limitations on the legislature had been held to be equally applicable to the people in the exercise of the power of initiative:

(1) Every bill passed shall embrace only one subject which shall be expressed in the title thereof.[59]

(2) No law shall be passed invading the constitutionally delegated powers of a constitutional body.[60]

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[55]Hernandez v. Frohmiller, 204 P.2d 854, 858 (Ariz. 1949); Preckel v. Byrne, 243 N.W. 823, 825 (N.D. 1932); Kadderly v. City of Portland, 74 P. 710, 720 (Or. 1903); Commonwealth v. Higgins, 178 N.E. 536, 537 (Mass. 1931); State *ex rel.* Conway v. Superior Court, 131 P.2d 983, 987 (Ariz. 1942).

[56]This position is not without basis. Under Rep. Act No. 6735, it is declared that

> Nothing in this Act shall prevent or preclude the proper courts from declaring null and void any proposition approved pursuant to this Act for violation of the Counstitution or want of capacity of the local legislative body to enact the said measure. *Id.* at sec. 18.

[57]State *ex rel.* Palagi v. Regan, 126 P.2d 818, 826 (Mont. 1942) (citing State *ex rel.* Evans v. Stewart, 53 Mont. 18, 161 P. 309; State *ex rel.* Bonner v. Dixon, 59 Mont. 58, 195 P. 841); State v. Houge, 271 N.W. 677, 680 (N.D. 1937).

[58]People v. Gould, 178 N.E. 133, 140 (Ill. 1931).

[59]Hernandez v. Frohmiller, 204 P.2d 854, 859 (Ariz. 1949). *See* CONST. art. VI, sec. 26, par. (1).

[60]Hernandez v. Frohmiller, 204 P.2d at 860.

(3) An act must not be indefinite, uncertain, and incomplete to the extent that it is incapable of intelligent enforcement.[61]

(4) In giving rule-making powers to administrative agencies, the authority granted must, by the provisions of the act, be circumscribed by definite standards, limitations, and policies.[62]

The mandates of the due process and equal protection clauses and of the rest of the bill of rights provisions no doubt also apply with equal force to initiated measures. So do particular constitutional provisions commanding adherence to the rule of uniformity and equitability of taxation[63] and proscribing the enactment of *ex post facto* laws and bills of attainder.[64]

(b) Judicial Review

Laws passed or approved by the people through initiative and referendum are subject to judicial review.[65] The court, when performing its legitimating or checking function, must use the same constitutional standards against which the validity of laws passed by the legislature is tested. And when the court passes upon the validity of an initiated measure and strikes it down for being repugnant to the Constitution, the court does not assert supremacy but simply carries out the duty imposed upon it by the Constitution to determine conflicting claims by allocating constitutional boundaries.[66]

A question may arise as to whether the submission to the electorate of a proposed legislation may be enjoined on the ground that the proposed act, even if favorably voted upon, would be unconstitutional. In the case of *State ex rel. Bullard v. Osborn*,[67] the action was brought to restrain the Secretary of State from certifying and causing to be printed on the official ballot an initiated measure to create and organize Miami county. It was alleged that the proposed initiative bill was unconstitutional. The Supreme Court of Arizona refused the injunction sought, holding that since courts are powerless to restrain a member of the legislature from introducing any measure, valid or invalid, for such would constitute interference with the action of the legislative department, the *Osborn* court may not also enjoin the

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[61]204 P.2d at 860-862.
[62]204 P.2d at 863.
[63]CONST. art. VI, sec. 28, par. (1).
[64]CONST. art. III, sec. 22.
[65]Rep. Act No. 6735, sec. 18.
[66]Angara v. Electoral Commission, 63 Phil. 139 (1936).
[67]143 P. 117 (Ariz. 1914).

Secretary of State from certifying an initiated measure for submission to the people because an initiative petition is also a step towards legislation. The court pronounced:

> For the Secretary of State, or the courts, to assume in advance the power and right to decide whether the proposed measure was invalid would be tantamount to claiming the power of life and death over every initiated measure by the people. It would limit the right of the people to propose only valid laws, whereas the other lawmaking body, the Legislature, would go untrammeled as to the legal soundness of its measures.[68]

This principle is fundamental in a democratic and tripartite system of government like ours. By the doctrine of separation of powers, the courts are precluded from enjoining the submission of an initiated measure to the people.

3. *Initiative and the Veto Power*

In the states of the U.S., constitutional provisions on initiative expressly deny the executive the power to veto initiated measures.[69] The omission of both the Constitution and Republic Act No. 6735 to provide for the veto power of the chief executive over initiated measures raises two questions: First, may the chief executive veto initiated measures despite the absence of an express constitutional and statutory grant? Second, may the Congress validly amend Republic Act No. 6735 to provide for the veto power over initiated laws?

The veto power of the President is found in article VI, section 27 of the Constitution which provides:

> (1) Every bill passed by the Congress shall, before it becomes a law, be presented to the President. If he approves the same, he shall sign it; otherwise, he shall veto it and return the same with his objections to the House where it originated, which shall enter the objections at large in its Journal and proceed to reconsider it. If, after such reconsideration, two-thirds of all the Members of such House shall agree to pass the bill, it shall be sent, together with the objections, to the other House by which it shall likewise be reconsidered, and if approved by two-thirds of all the Members of that House, it shall become a law. . . . The President shall communicate his veto of any bill

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[68] 143 P. at 118.

[69] *See* ALASKA CONST. art. XI, sec. 6; ARIZ. CONST. art. IV, sec. 1, subdiv. (6); ARK. CONST. amend. 7; CAL. CONST. art. IV, sec. 1; COLO. CONST. art. V, sec. 1; MASS. CONST. amend. art. XLVIII, subdiv. V (under General Provisions); MISS. CONST. art. III, sec. 52(b); MONT. CONST. art. V, sec. 1; NEB. CONST. art. III, sec. 4; N. D. CONST. art. II, sec. 25; OR. CONST. art. IV, sec. 1; S.D. CONST. art. III, sec. 1.

> to the House where it originated within thirty days after the date of the receipt thereof; otherwise, it shall become a law as if he had signed it.
>
> (2) The President shall have the power to veto any particular item or items in an appropriation, revenue, or tariff bill, but the veto shall not affect the item or items to which he does not object.

It is submitted that section 27 cannot be invoked as the basis for the exercise of veto power by the President over initiated measures. Said provision specifically applies only to bills passed by the Congress. If indeed there is a grant to the President of veto power over initiated measures, the source of the grant must be located elsewhere and not in the said provision.

Section 27 provides that a bill passed by the Congress becomes a law only when approved by the President, or when the President fails to act on it within thirty days from its receipt, or, in case he vetoes the bill, when the veto is overriden by two-thirds vote of all the members of the Congress. On the other hand, Republic Act No. 6735 does not require that a proposition approved by the people through initiative be likewise approved by the President before it becomes a law. It simply provides that:

> If as certified by the Commission [on Elections], the proposition is approved by a majority of the votes cast, the national law proposed for enactment, approval, or amendment *shall become effective fifteen (15) days following the completion of its publication* in the *Official Gazette* or in a newspaper of general circulation in the Philippines.[70]

As the law stands, therefore, the President cannot veto initiated measures.

This, however, does not put an end to the issue. It may be argued that the silence of the Constitution on the veto power of the President over initiated measures does not imply the denial of the power. If so, nothing precludes the Congress from amending Republic Act No. 6735 to provide for executive veto over initiated measures. Thus, until it is resolved that the constitutional provision on initiative and referendum denies the President veto power over initiated measures, the issue will remain unsettled.

Inasmuch as the constitutional provision on initiative and referendum sheds no light on the issue, it becomes necessary to examine the intent of the framers of the 1987 Constitution. Unfortunately, the records of the deliberations of the Constitutional Commission do not

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[70]Rep. Act No. 6735 (1989), sec. 9, par. (a) (emphasis supplied).

disclose a clear intent to grant or deny the President veto power over initiated measures. The question of executive veto was briefly raised once during the period of sponsorship and debate on the proposed article VI, section 32. When Commissioner Suarez asked whether enactments initiated by the people must be approved or may be vetoed by the President, Commissioner Davide replied that the law that "will be enacted by the [Congress] will provide for everything in respect to the full implementation of the two concepts [approval and veto by the President]," except those which have been fixed by the Constitution, i.e., the minimum percentage requirements for approval as found in section 32 of article VI.[71] Although the reply of Commissioner Davide may not be representative of the intent of the framers, it seems to imply that Congress has the absolute discretion to decide whether to empower the President to veto initiated measures.

The implication of Commissioner Davide's statement notwithstanding, it can be argued that the veto power is implicitly denied the executive by the Constitution for the following reasons:

(a) Under section 32 in relation to section 1 of article VI, the people, as the sovereign, reserved to themselves the power to initiate and reject or disapprove laws. Said power of initiative and referendum is circumscribed only by the Constitution and no other. The Constitution, in article VI, section 32, *only* authorizes the Congress to enact a law for the exercise of the reserved power by the people and to provide in the said law *exceptions* to the power. The provision does not, by its language, authorize the Congress to empower the President, under the enabling law, to veto initiated measures.

(b) The veto power of the President is granted, defined, and circumscribed by the Constitution.

This second argument finds support in the principle that the veto power is not inherent in the President and, therefore, can exist only when there is an express constitutional grant.[72] When the power exists, it may be exercised only within the confines of the grant and in the manner prescribed therein.[73] The Constitution, in article VI, section 27, does grant the President veto power, but such power extends only to bills passed by the Congress. It may not therefore be exercised over initiated measures.

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[71] 2 RECORDS OF THE CONSTITUTIONAL COMMISSION 91 (1986).
[72] 82 C.J.S. Statutes § 52.
[73] *Id.*

This position is further buttressed by the very rationale behind the grant of veto power to the Executive. The power to veto is part of the system of checks and balances in our tripartite system of government; it is intended in general to give the President an instrument of control over legislation by the Congress.[74] As the people when legislating through initiative cannot be considered the legislature or a component thereof, measures enacted by them may thus not be subject to the President's veto power.

Given the foregoing, the silence of the Constitution on the power of the President to veto initiated measures cannot be reasonably interpreted except as a denial.

4. *Amendment or Repeal of Initiated Measures*

(a) National Level

It is axiomatic that both the Congress and the people, acting through initiative, may not pass irrepealable laws. As to initiated measures, however, a question may arise as to whether they may be amended or repealed by the Congress, or only by the same process by which they were enacted, i.e., by initiative, or by both.

Both the Constitution and Republic Act No. 6735 are silent on the power of the Congress to amend or repeal a nationally initiated measure duly approved by the people. Unlike locally initiated measures which the local legislative bodies are prohibited from amending, modifying, or repealing within a period of six months from the date of their approval,[75] no similar prohibition is found with respect to initiated laws of national character.

The 1987 Constitution provides that "the legislative power shall be vested in the Congress of the Philippines . . . except to the extent reserved to the people by the provision on initiative and referendum."[76] By enshrining the system of initiative and referendum in the Constitution, the people have not overthrown the republican form of government;[77] the representative character of the government is fully retained.[78] Thus, the pronouncement in *Baird v. Burke County*[79] is applicable:

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[74]*Id.*
[75]Rep. Act No. 6735 (1989), sec. 16.
[76]Art. VI, sec. 1.
[77]CONST. art. II, sec. 1.
[78]CONST. arts. VI, VII and VIII.
[79]205 N.W. 17 (N.D. 1925).

> The . . . legislature [still] has full power of legislation except as limited by the . . . Constitution. The initiative and the referendum neither add to nor subtract from that power; except as its scope is restricted by constitutional limitations, the power is *still plenary* in the legislature.[80]

Since the legislative power of the Congress is still *plenary*, it has absolute power to pass, amend or repeal any law. This power may only be circumscribed by the Constitution. No limitation or restriction is imposed on this power of the Congress under the initiative and referendum provision.[81] In the absence of a constitutional provision to the contrary, the legislature is not divested of its plenary power to amend or repeal any initiative or referendum measure approved by the people in accordance with the procedure provided by the enabling statute. And it may not be argued that an initiated or referred measure, being direct enactments of the people, may not be amended or repealed by the Congress. Measures passed or approved through initiative or referendum have the same force and effect as any enactment of the Congress and, as such, may be amended or repealed.

That the legislature may amend or repeal an initiated measure is well settled in the United States.[82] In *Luker v. Curtis*,[83] the Idaho Legislature passed a resolution purporting to repeal the "Senior Citizens Grants Act" initiated and passed by the people at the general election of November 1942. The initiative provision of the State Constitution of Idaho placed no limitation on the Legislature's power to amend or repeal an initiated act. The state Supreme Court dismissed the petition for prohibition filed by concerned citizens, stating that:

> This power of legislation, reclaimed by the people through the medium of the amendment to the constitution, *did not give any more force or effect to initiative legislation than to legislative acts but placed them on an equal footing*. The power to thus legislate is derived from the same source and, when exercised through one method of legislation, it is asserted, is just as binding and efficient as if accomplished by the other method; that the legislative will and result is as validly consummated the one way as the other.
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> . . . If the legislature repeals or amends an initiative act, the people have at least two remedies, both of which they may exercise at the same time, to redress their grievance, if indeed they have a grievance, over the act of the legislature: First, they may reenact the measure by another initiative and, second, at the same time and at the

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[80] 205 N.W. at 20 (emphasis supplied).
[81] *See* CONST. art. VI, secs. 1 and 32.
[82] 82 C.J.S. Statutes §150.
[83] 136 P.2d 978 (Idaho 1943).

> same election, may elect other members of the legislature who will, or may, better heed their wishes.[84]

It was also held by the Supreme Court of Oregon in the case of *Kadderly v. City of Portland*[85] that while the people exercise legislative power under the initiative and referendum clause and may, in effect, veto or defeat bills passed by the Legislature and the Governor, such exercise neither destroys the executive and legislative departments nor materially curtails their powers or authority.[86] Hence, the Court concluded, "laws proposed and enacted by the people under the initiative clause of the amendment are subject to the same constitutional limitations as other statutes, and may be amended or repealed by the Legislature at will."[87] A similar ruling was obtained in several other cases.[88]

In *Kibbee v. Lyons*,[89] the Supreme Court of New York held that the legislature cannot, except to the extent expressly provided in the Constitution, delegate the legislative power to the people or deprive itself of the plenary power to amend laws including referendum acts.[90] Hence, the Court upheld the validity of the amendment introduced by the State Legislature to a referendum act approved by the people, which amendment reduced the limitations imposed by the said referendum act on the Legislature in incurring debts for the improvement of the Erie Canal.

On the other hand, there are certain jurisdictions where their respective constitutions either expressly or impliedly prohibit the legislature from amending or repealing initiated measures.[91]

(b) Local Level

Republic Act No. 6735 provides certain limitations on local legislative bodies in amending or repealing initiated and referendum measures:

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[84]136 P.2d. at 979 (emphasis supplied).

[85]74 P. 710 (Or. 1903).

[86]74 P. at 720.

[87]*Id.*

[88]*See* Bartosh v. Board of Osteopathic Examiners, 186 P.2d 984 (Dist. Ct. App. Cal. 1947); State *ex rel.* Strutz v. Baker, 299 N.W. 574 (N.D. 1941); State *ex rel.* Richards v. Whisman, 154 N.W. 707 (S.D. 1915); State *ex rel.* Halliburton v. Roach, 130 S.W. 689 (Miss. 1910); Baird v. Burke County, 205 N.W. 17 (N.D. 1925).

[89]192 N.Y.S. 696 (1922).

[90]192 N.Y.S. at 698 (citing People v. ex rel. Unger v. Kennedy, 207 N.Y. 533).

[91]*See* Allen v. Hollingsworth, 56 S.W. 2d 530 (Ct. App. Ky. 1933); State *ex rel.* Knez v. City of Seattle, 28 P.2d 1020 (Wash. 1934); Stetson v. City of Seattle, 134 P. 494 (Wash. 1913).

> Sec. 16. *Limitations upon local legislative bodies* - Any proposition or ordinance or resolution approved through the system of initiative and referendum as herein provided *shall not be repealed, modified or amended by the local legislative body within six (6) months from the date therefrom [sic], and may be amended, modified or repealed by the local legislative body within three (3) years thereafter by a vote of three-fourths (3/4) of all its members*; Provided, however, that in case of barangays, the period shall be one (1) year after the expiration of the first six (6) months.[92]

Thus, unlike the Congress which is not subject to any limitation whatsoever, the local legislative body is prohibited from repealing, modifying or amending any local initiative and referendum measure within six months from the date of its approval by the people. After the six-month period, the local legislative body may amend or repeal the proposition, but it must do so within three years and by a vote of three-fourths of all its members.

The reason behind this difference is that local legislative bodies are mere creations of the Congress. They do not derive their powers directly from the people but from the Congress in which the legislative power is vested.

(c) Some Observations

By allowing the Congress to amend or repeal, in whole or in part, laws passed or approved by the people, the purpose for reserving legislative power to the people may be defeated. One need not emphasize the financial expenditures that will be borne by the government each time a petition for initiative or referendum is filed only to have the initiated or approved law subsequently repealed by the Congress.

Nonetheless, the power of the Congress may yet be curtailed and the above situation remedied. There seems to be no prohibition under Republic Act No. 6735 against the inclusion of a provision in the initiated measure prohibiting its amendment or repeal by the Congress or the local legislative bodies for a specified period. Such a provision will not be violative of the constitutional prohibition against the passage of irrepealable laws since the initiated measure may be

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[92]Emphasis supplied. This section seems to imply that after three years (or one year in the case of barangays) following the lapse of the six-month period from approval, the ordinance or resolution may not anymore be amended, modified or repealed by the local legislative body. Inasmuch as irrepealable laws are not constitutionally sanctioned, this may only be reasonably interpreted as giving the people the exclusive power to amend, modify or repeal the ordinance or resolution after such period through initiative and referendum.

amended or repealed upon the lapse of the period specified. But while this may not be prohibited under the Constitution, considerations of public welfare militate against the wisdom of inserting provisions of such character in initiated measures. As was aptly stated in *Luker v. Curtis*:[93]

> It may have been, and is, altogether probable, that the framers of the initiative amendment to the constitution . . . refrained from inserting any prohibition against the legislature amending an initiative act; but rather preferred to leave that entire legislative field of deliberation to the people and their chosen legislators. *It is not unreasonable to infer, that the people themselves realized that emergencies might arise requiring amendment, alteration or repeal of initiative laws, as well as legislative acts, that could not, with safety to the public welfare, be deferred for two years or until the next general election.*[94]

Indeed, the necessity for a more speedy legislation -- something that cannot be said of initiative and referendum -- to meet the exigencies of the times cannot be gainsaid.

It may happen that statutes enacted subsequent to the passage of initiated measures are totally repugnant to the latter, but without express repealing clauses. Following the general principles of statutory construction, where two laws are completely inconsistent with each other such that harmonization is virtually impossible, the subsequent law abrogates the prior law. The initiated measure is deemed impliedly repealed by the legislative enactment.

It may be well to note the case of *Arkansas Game and Fish Commission v. Edgmon*[95] which involved a provision in the Arkansas State Constitution declaring that no measure approved by the people may be amended or repealed except by a two-thirds vote of all the members of the legislature. The Court in that case held that the legislature may not enact a statute that conflicted with an initiated measure so as to effectuate an implied repeal and circumvent the constitutional voting requirement. A case similar to *Edgmon* will never arise in this jurisdiction because no similar constitutional limitation is found in the Constitution. The case, however, gives another mode by which the power of the Congress to amend, repeal and alter an initiated measure may be limited. A provision in the initiated measure requiring a higher voting majority in the Congress for purposes of amending or repealing the same may serve to curtail arbitrary repeals or

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[93]136 P.2d 978 (Idaho 1943).

[94]136 P.2d at 980 (emphasis supplied).

[95]235 S.W.2d 554 (Ark. 1951).

amendments by the Congress. Such a provision may, however, raise a constitutional issue: it may be attacked on the ground that it curtails the legislative power of the Congress in that it adds a requirement for the amendment or repeal of laws not found in the Constitution.

Furthermore, the people can always exercise their sovereign power to amend the Constitution through initiative[96] in order to provide that no act adopted under the system of initiative and referendum may be amended or repealed except by the people.

5. Reenactment of Disapproved Measures

In the absence of any constitutional prohibition, the Congress may reenact a measure after it has been defeated in a referendum. The reenacted measure may be subject to a second referendum upon petition of the required number of voters. If the reenacted measure is defeated the second time, the legislature may again reenact the measure, and so on and so forth. Nothing can prevent this legislative "merry-go-round" because no constitutional prohibition exists.

In one case,[97] the reenactment by the legislature of an unpopular tax law, which was repealed by the people in a referendum, was held valid. The Supreme Court of Oregon pronounced that it cannot be contended that by such reenactment the legislature acted contrary to the express will of the people because "the amendment to the [State] Constitution providing for the initiative and referendum did not lessen the power of the Legislature in the matter of enacting laws."[98]

Some Considerations

Not a few criticisms had been raised against the grant of the power of initiative and referendum as well as its exercise. An examination of some of them is in order to shed light on the factors to be considered in the exercise of the power in this jurisdiction.

Political Maturity

A truly meaningful exercise of the initiative and referendum depends on the people. The prudent exercise of the power by the people would prove that this experimentation at popular empowerment is worth the enormous public funds expended. This, however, is only possible with a politically mature electorate.

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[96]CONST. art. XVII, sec. 2.
[97]State *ex rel.* Pierce v. Slusher, 248 P. 358 (Or. 1926).
[98]248 P. at 360.

The reason why initiative and referendum are used widely in a number of states of the U.S. and in several European countries is that it is in those countries that there was a long experience of popular assemblies and initiatives. In contrast, our political history records a tradition of centralized government, and the present day attests to its continuance, with little or no popular participation at all in governance except through the election of representatives by the ballot.

The entry of the initiative and referendum into our constitutional system was little known to the mass of our people. No popular acclaim met the enactment of the enabling law. Even those who are aware of the existence of the law are skeptical about its feasibility given the socio-political factors obtaining in this jurisdiction. The following lines from an article on citizen participation in government give a glimpse of the electoral process in this jurisdiction:

> It was a matter of notoriety that elections were not decided on issues, but on personalities and it was not the best candidate who won. In too many instances gold, guns, and goods carried the day. By the end of the 1960's political bailiwicks in many parts of the country were maintained by private armies; voters' support could be obtained for a price . . . .[99]

That vote-buying happens is common knowledge in this country. One need not look far back into the past in order to ascertain the existence of such a practice. In view of the electorate's disinclination to observe the sanctity of the ballot, or perhaps their lack of appreciation of the essence of the exercise of the right of suffrage, it would not come as a surprise if the same practice will be maximized by interested parties in order to ensure the success of their campaign either for or against an initiative or referendum measure. Unless something can be done to stop this notorious practice, the reason for the initiative and referendum will be rendered naught.

There is no gainsaying that the meaningful exercise of the initiative and referendum in this country neccessitates an electorate that appreciates the significance of the power and believes in its exercise. The electorate must realize that the system of initiative and referendum, as a complement to the legislative power of the Congress, is a powerful tool by which the people can enact socially-relevant legislations and strike down those they do not approve of. That there will be resistance from some people in power who will be affected by the exercise of initiative and referendum is certain.

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[99]Cortes, *Citizens' Participation in Government from the Grass Roots: Some Reflections on the Legal Aspect of Contemporary Developments*, 51 PHIL. L.J. 455, 462 (1976).

Even in the United States, the initiative and referendum were not immediately accepted. In fact, there was much initial resistance from the judiciary to the adoption of the process as can be seen in several judicial decisions. The ground often invoked by the courts in striking down the exercise of the power as unconstitutional was *delegata potestas non potest delegari.* In *Barto v. Himrod,*[100] it was stated that the "exercise of this power by the people is not expressly and in terms prohibited by the Constitution; but it is forbidden by necessity and unavoidable implication." Furthermore, in the case of *Santo v. State,*[101] it was held that "the people have no power in their primary and individual capacities to make laws."

Eventually, however, these devices were widely adopted by a considerable number of states[102] in the belief that by granting the people a means to overrule legislative action and initiate legislations by popular vote, abuses that were then characteristic of state legislatures may be prevented.[103] It was reported that from 1970 to 1979, some 175 initiatives had been presented to voters at the state level, nearly double the number in the 1960's.[104] Among the initiative measures passed in 1978 were the following: Michigan raised the legal drinking age from 18 to 21; Oregon restored capital punishment; Alaska set aside 30 million acres of land for small homesteaders; and Montana placed restrictions on nuclear power plant licensing and operation.[105] Issues such as school busing, the death penalty, environmental controls, coastal zoning, marijuana decriminalization, nuclear safety, political reform measures and tax measures have become, one way or another, ballot propositions.[106] Evident was the dramatic growth of interest in direct legislation in the United States as a complement to the regular legislative process. The trend toward direct legislation in the United States is an important manifestation of the direct democracy reform movement. It is an implicit recognition of the reality that the political party machinery and powerful special interests often hamper the speedy passage of legislative acts necessary for good governance, hence, the resort to popular initiatives. That very same reality exists in this jurisdiction. Initiative and referendum should and must serve as the

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[100]8 N.Y. 483 (1853), *cited in* J. ZIMMERMAN, PARTICIPATORY DEMOCRACY: POPULISM REVIVED (1986).

[101]2 Clark [Iowa] 163, *cited in* J. ZIMMERMAN, *supra* note 100.

[102]*See* note 4, *supra.*

[103]19 ENCYCLOPAEDIA BRITANNICA 37.

[104]US INFORMATION AGENCY, *supra* note 4, at 35.

[105]*Id.*

[106]Lee, *The American Experience 1778-1978,* in THE REFERENDUM DEVICE 51-57 (A. Ranney ed. 1981).

alternative means by which the people can enact legislations responsive to their needs and the general welfare of society.

Legislation by the Congress results in better laws.

In the United States, critics of the initiative and referendum often point out that elected legislators who are better trained and better informed than the voters produce better laws than initiated ones, perhaps because the latter are often poorly drafted by amateurs and create problems in construction and implementation.[107]

Such skepticism is not unfounded. Even the proponents of direct democracy have come to realize that the initiative and referendum process, even at its best, is merely complementary to the representative process.[108] The business of governing and legislating as a whole, it is said, cannot be done directly by the people but must necessarily be delegated to their elected representatives.

The same opinion has been expressed in several surveys made to find out the interest of the electorate in popular initiatives. In an Eagleton survey conducted among New Jersey citizens,[109] an overwhelming majority agreed that citizens should be able to make laws directly, especially when representatives in the Congress are afraid of offending some groups. Furthermore, the majority of those interviewed believed that when people directly voted on issues, they were more likely to participate in government and politics. However, the same respondents felt that the public is ill-suited to cast an informed ballot and that special interest groups will gain power by spending money to promote their side of an issue. In a California survey conducted by Mervin Field[110] on the same issue, two-thirds of the Californian voters interviewed believed that while the voting public should be allowed to decide directly on important government issues, elected representatives were better suited to decide on highly technical or legal policy matters.

In the Philippines, this factor is aggravated by the fact that our laws are Greek to the majority of the electorate. Most often, voters also fail to appreciate the issues.

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[107]J. ZIMMERMAN, *supra* note 100.
[108]D. MAGLEBY, *supra* note 4, at 10.
[109]*Id.* at 7-8.
[110]*Id.* at 9-10.

Distortion and oversimplification of issues

The problem of dissemination of information with respect to ballot propositions also comes to the fore. The enabling act only requires that upon determination of the sufficiency of the petition, the Commission on Elections shall cause the publication of the same in Filipino and English at least twice in newspapers of general and local circulation.[111] How the voters are supposed to be informed of the advantages and disadvantages of the initiative and referendum proposal is left to the proponents. It may not be far-fetched to imagine that the proponents will distort or oversimplify the issues in order to gain votes in their favor.

To solve the difficulty encountered by ordinary laymen in understanding propositions and in deciding how to vote, the State of California published a voter's handbook to avert confusion and foster voter awareness. It was found out, however, that confusion is mainly derived from the fact that propositions are often lengthy and written in technical or legal language. Furthermore, a proposition may be written to disguise what a yes or no vote means. An example of this problem was the 1976 California nuclear initiative, where a yes vote meant in effect a no vote on the future development of nuclear power.[112] The same problem will surely arise in this jurisdiction.

Determination of authenticity of signatures

Under Republic Act No. 6735, in order to exercise the power of initiative and referendum, a petition shall be registered with the Commission on Elections, which petition should contain the required number of signatures as provided therein.[113] The Election Registrar is required to verify the signatures on the basis of the registry list of voters' affidavits and voters' identification cards used in the immediately preceding election. It is not clear from the Act when the

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[111]Rep. Act No. 6735 (1989), sec. 8.

[112]D. MAGLEBY, *supra* note 4, at 57.

[113]Rep. Act No. 6735 (1989), sec. 5 requires at least 10% and 12% of the total number of registered voters, of which every legislative district is represented by at least 3%, as signatories in the petition for the exercise of initiative or referendum on laws of national character and constitutional amendments respectively; for autonomous regions, province, or city, 10% of the registered voters in the region, province or city, of which every legislative district is represented by at least 3%; for municipalities, at least 10% of the registered voters therein, with each barangay being represented by at least 3% of the voters therein; and lastly, at least 10% of all registered voters of the barangay, in case of initiative or referendum at the barangay level.

Election Registrar is supposed to verify the authenticity of such signatures. As it is, the process appears cumbersome.

Conclusion

The legal ramifications of the system of initiative and referendum are many. This paper attempted to discuss only some of them. While the field is unexplored in this jurisdiction, the experiences especially of the states of the U.S. that have adopted the system may serve as guiding posts in the exercise of initiative and referendum by the Filipino people. The efficacy of the system depends on a lot of factors. But it is within the power of the people to provide justification for this experimentation at people empowerment.