"All powers need some restraint .... Superior strength — the use of force — cannot make wrongs into rights."[177] Judicial review is a constant reminder to agents of the government to act with circumspection in carrying out their functions. While convicting felons is a laudable purpose, prudence must be exercised in the prosecution of offenses and care must always be taken not to trample on human rights guaranteed by the Constitution.[178] This is especially so in the realm of public discourse. "Freedom to comment on public affairs is essential to the vitality of a representative democracy. It is the duty of the courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon."[179]

V. CONCLUSION

Fairly recently, a week prior to the *Ladlad* ruling, Transparency International[180] "lauded the Supreme Court for standing up against 'executive encroachments on the judiciary' under the administration of President Macapagal-Arroyo." In its Global Corruption Report 2007, the Court was said to have guarded the Constitution when it struck down Executive Order (E.O.) 464,[181] the Calibrated Preemptive Response Policy,[182] and Proclamation 1017.[183] E.O. 464 had forbidden executive officials from testifying before a Senate Committee investigating the "Hello Garci" scandal, wherein a wiretapped phone conversation allegedly showed that President Gloria Macapagal-Arroyo instructed former Election Commissioner Virgilio Garcillano to ensure her victory in the elections. The Calibrated Preemptive Response Policy and Proclamation 1017, on the other hand, limited the freedom of speech, expression, assembly, and the

177. David v. Macapagal-Arroyo, 489 SCRA 160, 198 (2006) (citing Tom C. Clark, *Law and Disorder, in* The XIX Franklin Memorial Lectures 29 (1971)).

178. Allado v. Diokno, 232 SCRA 192, 210 (1994).

179. *David*, 489 SCRA at 270 (citing Boyd v. United States, 116 U.S. 616 (1886)).

180 Transparency International is a global civil society organisation whose goal is effecting change through the elimination of corruption. *See*, Transparency International: The Global Coalition Against Corruption, *at* http://www.transparency.org (last accessed Aug. 17, 2007).

181. Ensuring Observance of the Principle of Separation of Powers, Adherence to the Rule on Executive Privilege and Respect for the Rights of Public Officials Appearing in Legislative Inquiries in Aid of Legislation under the Constitution, and for Other Purposes, Executive Order 464 (2005); *see*, Senate v. Ermita, 495 SCRA 170 (2006).

182. *See*, Bayan v. Ermita, 488 SCRA 226 (2006).

183. *See*, David v. Macapagal-Arroyo, 489 SCRA 160 (2006).

Schmaltz Anew: *Pinoy*-Style Community-Based Limited Partnership as a Socio-Legal Technique for Agricultural Development

*Eugenio H. Villareal**

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I. LOTS OF LAND, BUT NO CURRENCY

The scene is familiar in present-day rural Philippines: a farmer and his family preside over a small piece of agricultural land planted with rice or corn; and while still managing to survive the day on garden-produced root crops, they

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hardly have any currency to buy medicine, send the children to school, much less pay the loan sharks from whom the desperate farmer was forced to borrow when the planting season began for lack of qualifications to avail of traditional loan facilities. The irony is sad as it is scandalous. The land is abundant with more than enough natural resources to live on and to develop, and yet the father of the family is often made to choose between antibiotics for a sick child and the optimum quantity of fertilizer in the allocation of his remaining pesos.

Many years have passed since a number of well-meaning economic experts suggested that the key to development for this country is industrialization. The call was for the creation of many factories to produce volumes and volumes of goods for export. Although there was some measure of success in this regard, the Philippines' reaching "tiger status" remains a dream. Self-sufficiency in food, security in shelter, and access to basic services continue to be on the country's wish list. In fact, in more recent times, the station manager of a provincial radio station sadly reported that there are still people in the countryside who die of hunger or of inadequate medical assistance.[1]

Slow growth in industry and increasing production costs, together with the country's high susceptibility to adverse movements in the world economy, impel a hard and serious look at agriculture as not only a solution for survival, but also as a vehicle for economic growth. Borrowing the language of management and self-improvement gurus, agriculture is a something over which most Filipinos — quite passionately at that — have a "core competence." The key here is that one need not necessarily start with something big. It can all begin in the local community, and even more basic than that, in the family. Certainly, while this would entail harnessing other disciplines and techniques, it is comforting, and equally challenging, to discover that law has a crucial and important role to play in this "back-to-basics" quest for economic self-reliance and development.[2]

1. Station Manager Elizer Abarra, et al., *Atty. Eugenio 'Toto' Villareal kag Ang Kasugu-an* (DYVR-Radio Mindanao Network, 2005 – 2006).

2. This essay, while cognizant of proposed non-legal solutions to socio-economic ills, does not profess to be an authoritative work on finance and economics. The subject of this essay will necessarily be legal: revisiting law as a social technique, developing the private arranging legal technique as a solution to poverty and lack of development that is consistent with the dignity of the human person, and applying the basic framework of the traditional limited partnership to the evolution of a community-based business organization for agriculture. The essay will not, however, tackle in detail the more intricate legal aspects of the proposed business organization, such as possible tax benefits and the procedure for possible securitization.

II. LAW AS SOCIAL TECHNIQUE: EMPOWERMENT THROUGH THE PRIVATE-ARRANGING TECHNIQUE

Each individual is interested in the achievement and protection of desired goods, as well as the redress of wrongs, and the eradication of the causes for such wrongs. Such interest, which is actually made up of more specific sub-interests — for example, the preservation of human life, the protection of marriage and the family, the earning of a truly just and living wage, and the entitlement to a home —, is, as it were, translated into the interest of society as a whole. The attainment of such aspirations is the objective of what legal philosopher Hans Kelsen refers to as social techniques. According to Kelsen, social techniques may be subdivided into non-legal (an example would be organized faith or religion) and legal.[3] The legal social technique, or simply put, law, was described by Kelsen, as follows:

> The social technique that we call 'law' consists in inducing the individual, by a specific means, to refrain from forcible interference in the spheres of interests of others: in case of such interference, the legal community itself reacts with a like interference in the spheres of interests of the individual responsible for the previous interference.[4]

Even as the abovementioned description seemed to regard the law as just one technique with one particular modality, Kelsen distinguished between penal, civil or compensatory, and administrative legal techniques. Finding this still wanting, Cornell law professor Robert S. Summers proposed that law is actually made up of five basic techniques — *grievance-remedial*, *penal*, *administrative-regulatory*, *public benefit conferral*, and *private arranging*.[5] In a later work, law professors John H. Farrar and Anthony M. Dugdale ventured to add two more basic legal techniques to those identified by Summers. These are the *constitutive* and the *fiscal* techniques.[6] Consistent with the writer's emphasis on private initiative, this essay will primarily be interested in the *private arranging* technique, and by extension, the *constitutive* technique. To ensure their efficacy though, some reliance will have to be made on the *administrative-regulatory* technique as well.[7]

3. Hans Kelsen, *Law as a Specific Legal Technique*, 9 U. CHI. L. REV. 75 (1941).

4. *Id.* at 81.

5. Robert S. Summers, *The Technique Element in Law*, 59 CAL. L. REV. 733, 735-36 (1971).

6. JOHN H. FARRAR & ANTHONY M. DUGDALE, INTRODUCTION TO LEGAL METHOD 13-5 (3d ed. 1990).

7. *See,* FARRAR, *supra* note 6, at 15-23, 28 & 30; Summers, *supra* note 5, at 739. Although they do not constitute the focus of this essay, the other mentioned basic legal techniques are still worth describing. The *penal* technique involves rules which prohibit socio-deviant behavior, the maintenance of a police force as well as other law enforcement agencies to detect violations, the maintenance

The *private arranging* technique involves the utilization of law as a means to facilitate and effectuate arrangements among, and determined by, private persons themselves to the end of realizing certain goods and aspirations: to name a few –

> self-determination, efficient distribution of economic goods, marital bliss, joys of parenthood, capacity to make gifts, the delights of good company and social life, happiness in one's chosen occupation, religious resources that help sustain oneself in the face of adversities, a sense of meaningful participation in service organizations, and even the settlement of some controversies and disputes.[8]

Clearly, the lamenting farmer depicted earlier in this essay wishes for a good number of the goods and aspirations just mentioned. The attainment of any of these purposes — all of which are but reflections of the common good — must, however, be definitive. There must be that sense of stability that the law, characteristic as it is, of order, can provide. Hence, the *private arranging* technique necessarily requires three essential or primary elements, to wit:

> First, a grant of legal power to citizens for the creation of the relevant private arrangement, *e.g.* a marriage, a will, a contract, or a private organization.
>
> Second, rules of validation that specify steps to be taken if legal significance is to be given to the private arrangement.
>
> Third, affirmative significance that the law will accord the private arrangement once the appropriate validating steps are taken.[9]

The question of poverty and the lack of meaningful development in the agricultural sector are of such gravity and complexity that a return to what is basic is imperative. There comes a point when government involvement becomes more bane than boon, as when the crop raiser is constrained to sell

of a prosecutorial agency, as well as an over-all criminal justice (including penal) system. The *grievance-remedial* technique requires the statement of substantive legal rules, principles, and standards, which create rights and duties, as well as remedies to back up those rights. It also requires the establishment and maintenance of civil courts to process claims for remedies. The *fiscal technique* essentially involves the raising of revenue through taxes and the establishment of formal structures to administer collection. The *public benefit conferral* technique (called "conferral of social benefits" technique by Farrar and Dugdale) involves conferring upon individuals, through law, substantive governmental benefits such as education, roads and infrastructure, and national defense and health programs. It goes without saying that in the performance of any social function, such as the eradication of a lingering social ill, not one but a combination of any two, some, or all of the basic legal techniques may be employed.

8. Summers, *supra* note 5, at 742.

9. *Id.*

his produce not at the best possible price to a government-owned purchasing outfit. Also, consider the sad fact that barrio farmers are forced to spend more for transportation to get their produce to the market just because the government has a totally different idea of laying out farm-to-market roads. The local farmer must now turn to himself for the solution. If there is any one who best understands the farm, it is the farmer. If there is any one who knows the workings of local culture and economy, it is the local dweller himself.

This is the essence of the *private arranging* technique. At the fore are private choice and judgment. Being totally competent in their respective spheres, private parties thus determine the content of their arrangement, acting, as Summers put it, as "private legislators."[10] That this is so in the natural scheme of things is not entirely surprising. This technique perfectly squares with the natural law principle of *subsidiarity*. This emphasizes the role of intermediate family and voluntary groups or associations, which stand between the individual and the state, for the attainment of both the good of the individual and the common good.[11] Logically then, any approach or solution anchored on the *private arranging* technique will essentially be person-oriented — that is, inherently good for the human person and his family. The state will be there to aid, not to destroy or to contribute to personal ruin. Neither will it become an unwitting promoter of selfish economic and/or political interests that have long oppressed the poor and marginalized. Professor Charles Rice aptly recalls, in this regard, the words of *Centesimus Annus*:

> The social nature of man is not completely fulfilled by the state, but is realized in various intermediary groups, beginning with the family and including social, economic, political, and cultural groups which stem from human nature itself and have their own autonomy, always with a view to the common good.[12]

Professors Farrar and Dugdale have preferred to consider, as a distinct basic legal technique, the specific legal significance or identity given to a group of persons when the latter manage to comply with all the legal steps required to attain the same. Under the *constitutive* technique, the law recognizes a group of people as constituting a legal person, for example, a corporation, as separate and distinct from the individuals making up the

10. *Id.* at 734; *cf.* David F. Cavers, *Legal Education and Lawyer-Made Law*, 54 W. VA. L. REV. 177 (1952).

11. *See,* CHARLES E. RICE, 50 QUESTIONS ON THE NATURAL LAW (WHAT IS IT AND WHY NEED IT) 38 (1996).

12. *Id.* at 60 (citing *Centesimus Annus,* Encyclical Letter of Pope John Paul II on the Hundredth Anniversary of *Rerum Novarum*, May 1, 1991, *available at* http://www.vatican.va/holy_father/john_paul_ii/encyclicals/documents/hf_jp-ii_enc_01051991_centesimus-annus_en.html (last accessed July 20, 2007)).

group.[13] Meant to complement both the *private arranging* and *constitutive* techniques, but without violating the basic autonomy of individuals to organize and perform mutually desirable activities, is the *administrative-regulatory* technique. In this technique, wholesome activity is regulated to the end that any commonly accepted private arrangement is not abused or marked by socially deviant behavior. Positively put, this technique ensures that those who legitimately live out their legally-recognized private arrangement can do so in peace. Officials adopt regulatory standards, communicate these to those subject to them, and take steps to secure compliance. Such steps normally include licensing, inspection, and if warranted, the revocation of any license earlier granted.[14]

III. FAMILY FARMS AND SMALL-SCALE GARDENS

The family farm portrayed at the beginning of this essay is not uncommon in the Philippines. Family farms are "operated units in which most of the labor and enterprise come from the farm family, which puts much of its working time into the farm."[15] While there are large and successful family farms in the First World, small family farms are predominant — that is, they "account for a big majority of farm value-added, workforce, and area" — in Third World countries, particularly in East and South Asia and Sub-Saharan Africa. It is unfortunate though that worldwide poverty is concentrated in such areas (accounting for 92% of the world's 1.1 billion "dollar-poor").[16] Rural family farms may be less than a hectare or more, but those that range from three to five hectares[17] can be considered substantial in the eyes of common rural folk.

This notwithstanding, the small family farm, developed adequately in terms of financing, economics, as well as of law, could very well be the vehicle for eradicating poverty in the Third World. "Small farms have lower labor-related transaction costs. They also have more family workers per hectare, each motivated to work, and each able to find, screen, and supervise [if need be and/or financially affordable] hired workers."[18] These farms are a natural feature of early-developing countries on account of low savings and

13. FARRAR & DUGDALE, *supra* note 6, at 26.

14. *Id.* at 27.

15. Michael Lipton, *The Family Farm in a Globalizing World: The Role of Crop Science in Alleviating Poverty* (June 2005) (available with the International Food Policy Research Institute in Washington, U.S.A.).

16. *Id.* at 1, 4-5.

17. Comprehensive Agrarian Reform Law of 1988, Republic Act No. 6657, § 6 (1988). The retention limit for a landowner is five hectares, while three hectares may be awarded to each child of the landowner under certain conditions.

18. Lipton, *supra* note 15.

equally low capital per unskilled worker.[19] Their sheer simplicity of organization combined with their inherent capability of promoting domestic unity and harmony — factors quite important in the Philippine setting — easily produce a sort of romantic fondness for them as pro-poor instruments for development. Nevertheless, even before the excitement over this most Filipino of economic institutions begins to settle, practical questions like the availability of sufficient credit, the existence of good roads and bridges, and the quality of current crop science arise.

Economist Michael Lipton goes on further to identify the following essential preconditions to pro-poor progress for family farms: (a) the raising of what he calls "total factor productivity" (TFP) in such farms through locally profitable but usually employment-intensive technology (requiring better seeds, a degree of water control, and agronomy; also irrigation, better pest control, and more fertilizers; but with less recourse to tractors and herbicides, unless farmland expansion is constrained by lack of plowing or weeding labor); (b) the "not-too-unequal" land and water distribution as a departure from the unequal distribution of such resources wrought by historical and/or political factors and their sustainable use (versus environmental threats); and (c) farm production patterns that are not too vulnerable to the disabling of incentives by domestic or overseas policies that sharply erode or distort farm prices, as well as unshiftable initial conditions.[20]

Focusing on what is small for purposes of economic development can also be seen in the so-called "German Allotment Gardens,"[21] which, like the family farm, can be used as another vehicle for poverty alleviation in the country. Unlike the family farm, however, these gardens are more proper to urban areas — similar to the *Green Revolution* plots found even in places like Metropolitan Manila during the "New Society" years.

Conceived as "gardens for the poor," these gardens are known to be the brainchild of German medical doctor Daniel Gottlob Moritz Schreber (hence, they are sometimes called "*Schrebergartens*"). While he had no idea

19. *Id.* Even as this implies that farms are generally smaller in poor countries and farm size normally rises with economic development, experts are quick to note that the applicability of these twin theories can be distorted by historical and/or political developments, *e.g.* land grabbing and subsequent counteractive land reforms.

20. *Id.* at 13-20. Examples of such conditions include imposed gross land inequality, and/or in-built adverse trends, for instance poor farmers are locked into commodities where science-induced progress induces more-than-offsetting price erosion as in tea, coffee, cocoa, and oil palm.

21. A.W. Drescher, *The German Allotment Gardens - A Model for Poverty Alleviation and Food Security in Southern African Cities? (A Summary)*, Urban Agricultural Notes, City Farmer, Canada's Office of Urban Agriculture, Jan. 15-21, 2001, *at* http://www.cityfarmer.org/germanAllot.html (last accessed July 20, 2007).

about gardening, Dr. Schreber "wanted to create possibilities for children in cities to get them away from the streets, bring them on the fresh air, and give them a useful occupation."[22] Allotment gardens were linked together under garden associations, the first of which was founded by a school director by the name of Ernst Innocenz who leased four fields where garden plots were established.[23] Professor A. W. Drescher briefly describes these gardens:

> Allotment gardens consist of a piece of land between 200 and 400 meters, most of them with a little shed for gardening tools. Allotment gardens formed a buffer for food security, especially in times of crisis. Shortly after (World War) II, Berlin contained 200,000 allotment gardens. Today there are still about 80,000.
>
> The basis for a successful and permanent establishment of allotment gardens was laid through the establishment of associations of small scale gardeners in the cities (*Kleingartenvereine, Schrebergartenvereine*). The council provides the land, establishes a water system and eventually fences the area. The gardeners pay a small rent for the plot and have to attend to certain duties within the association.
>
> The German allotment gardens are ... mainly used for horticulture and flower production for home consumption .... Small allotments consist of a few plots only while big allotments (are made up) of several hundreds of plots. Animal husbandry and housing are not allowed in German allotment gardens.[24]

Professor Drescher's proposal to adopt the German garden system to selected Southern African cities could very well be one for the Philippines' own urban areas, where there are still plenty of open spaces that can be devoted to small-scale agriculture. In fact, the said scheme should not be alien to the Philippines' metropolitan areas, as the factors for development cited by Professor Drescher almost automatically apply to the Philippine setting: sound water management, irrigation, and harvesting techniques, fencing facilities, the possibility of small-scale animal husbandry (which is a slight deviation from the original German concept), and the integration of organic waste recycling.[25]

Being small-scale, the family farms and allotment gardens (which could also be operated by families) are easy to organize and manage. Their make-up is relatively simple such that even the unlettered or barely educated can create them. These atomic organizations serve then as ideal material for the *private arranging* technique. What is more, the sheer closeness of their membership equally make them ideal soil for the

22. *Id.*
23. *Id.*
24. *Id.*
25. *Id.*

planting of human virtues and qualities — such as diligence, industriousness, honesty, prudence, justice, fidelity in credit, openness to change, and responsible citizenship — all of which are essential to both human and economic development.

Then again, both the success formula outlined by Mr. Lipton for family farms and the requisites for development spelled out by Professor Drescher in the case of the allotment gardens cannot be possible without funding. Difficulty in obtaining both traditional and non-traditional credit as well as insufficient government support warrant an appeal for investment to the private sector (those who have the funds, but do not exactly have the skill and/or the time to directly engage in agricultural work). The "smallness" of such enterprises easily militates against the formation of stock corporations. Yet, this same "smallness" and sheer simplicity, provide reason for seriously considering the limited partnership — its existence in the present Philippine Civil Code[26] notwithstanding — ultimately as a model vehicle for agricultural development and poverty alleviation for the common *tao*.

IV. THE LIMITED PARTNERSHIP AS A BUSINESS ORGANIZATION

As known today, a limited partnership is a partnership[27] having as members one or more general partners and one or more limited partners.[28] General partners are those whose liabilities to third persons extend to their separate property. They may be partners who contribute capital — *i.e.* money or property — or industry.[29] Limited partners are those whose liabilities are limited to their capital contributions.[30] Also called "special" partners, they are those who, though not inclined to engage in the business, are disposed to furnish capital upon such limited liability with a view to the share of the profits which might be expected to result to them from the use of such funds.[31] Limited partners are not

26. An Act to Ordain and Institute the Civil Code of the Philippines [CIVIL CODE], Republic Act No. 386, bk. IV, tit. XI, ch. 4 (1949).
27. *Id.* art. 1767 ("A partnership is a contract under which two or more persons bind themselves to contribute money, property, or industry to a common fund, with the intention of dividing the profits among themselves.").
28. Elmer R. Kiehl, *et al.*, *The Use of Public Limited Partnership Financing in Agriculture for Income Tax Shelter, available at* http://www.aae.wisc.edu/forg/publications/mono1(2).pdf (last accessed July 20, 2007).
29. CIVIL CODE, arts. 1816 & 1843. *See*, HECTOR S. DE LEON & HECTOR M. DE LEON, JR., COMMENTS AND CASES ON PARTNERSHIP, AGENCY & TRUSTS 77-78 (6d ed. 2005).
30. CIVIL CODE, art. 1843. *See*, DE LEON & DE LEON, *supra* note 29, at 78.
31. DE LEON, *supra* note 29, at 299 (citing 40 Am. Jur. 474).

allowed to contribute services or industry; otherwise, they will be considered as general partners (for having become an industrial partners as well) and, thus, will not anymore be exempt from personal liability.[32]

The earliest limited partnerships first appeared in third century B.C. Rome and were known as *societates publicanorum*. Looking more like the modern-day corporation which can have numerous shareholders, many Roman limited partnerships had hundreds of investors, and their interests in the business were publicly traded.[33]

Medieval Italy saw the revival of this type of business organization in the 10th century as the so-called *commenda*. Used primarily to finance maritime trade, the *commenda* had both the traveling trader and off-ship investors as partners. The trader, who corresponds to the present-day general partner, had unlimited liability. On the other hand, the investors on land were shielded therefrom, their exposure being limited to their investment. The *commenda* was not, however, a common form for long-term business ventures as the latter were still expected to be secured against the assets of the individual owners of the business.[34]

The limited partnership also surfaced in France in the Middle Ages. Referred to as the *société en commandite* in the French Commercial Code, the concept eventually found its way to common law jurisdictions.[35] Commenting on the 1822 New York limited partnership statute,[36]

32. *Id.* at 307; *cf.* CIVIL CODE, art 1845. *See also*, Uniform Limited Partnership Act [ULPA], § 4 (1916); Kiehl, *et al.*, *supra* note 28, at 3 (in the United States, 48 states have adopted the ULPA with only a few minor alterations. Delaware has its own statutory provisions, while Louisiana allows for the organization of a limited partnership based upon the said entity's civil law foundation under the French Code); HARRY HENN & JOHN ALEXANDER, LAWS OF CORPORATIONS 86 -87 (3d ed. 1983) (There are some states which have adopted the Revised Uniform Limited Partnership Act (1976), under which "a limited partner may contribute services, as well as other specified consideration, and upon liquidation, except as otherwise provided, has no priority over general partners.").

33. *Cf.* Limited Partnership, *at* http://www.en.wikipedia.org/wiki/Limited_partnership (last accessed July 20, 2007).

34. Henry Hansmann, *et al.*, *Law and the Rise of the Firm*, 119 HARV L. REV. 1333 (2006).

35. Kiehl, *et al.*, *supra* note 28.

36. Owing to the civil law foundation of the limited partnership, jurisdictions which derive their legal heritage from the English common law tradition — one of them being the State of New York — had to resort to statutory enactment to allow for such kind of business organization.

Surrogate W. Bradford illustrated the medieval beginnings of the limited partnership:

> The system of limited partnerships, which was introduced by statute into this state, and subsequently very generally adopted in many other states of the Union, was borrowed from the French Code. 3 Kent, 36; *Code de Commerce*. It has existed in France from the time of the Middle Ages; mention being made of it in the most ancient commercial records and in the early mercantile regulations of Marseilles and Montpellier. In the vulgar Latinity of the middle ages it was styled *commenda*, and in Italy *acommenda*. In the statute of Pisa and Florence, it is recognized as far back as the year 1160; also in the ordinance of Louis-le-Huton, of 1315; the statutes of Marseilles, 1253; of Geneva of 1588. In the middle ages, it was one of the most frequent combinations of trade and was the basis of the active and widely extended commerce of the opulent maritime cities of Italy. It contributed largely to the support of the great and prosperous trace carried along the shores of the Mediterranean; was known in Languedoc, Provence, and Lombardy, entered into most of the industrial occupations and pursuits of the age and even traveled under the protection of the arms of the Crusaders to the City of Jerusalem. At a period when capital was in the hands of nobles and clergy, who from pride or caste, or canonical regulations, could not engage directly in commercial enterprises and reaping the profits of such lucrative pursuits without personal risks, and thus the vast wealth, which otherwise would have lain dormant in the coffeirs or the rich, became the foundation by means of this ingenious idea of that great commerce which made princes of the merchants, elevated the trading classes and brought the commons into position as an influential estate of the common wealth.[37]

The French *société en commandite* (or simply *commandite)* persisted through the centuries and is found in the Napoleonic Code of 1807. It is described as thus:

> Under the Napoleonic Code, which shaped enterprise law across Continental Europe and Latin America, businesses could organize as limited partnerships (*commandites*) as well as ordinary partnerships. Limited partnerships had to have at least one general partner who was unlimitedly liable for the firm's debts, but they could have any number of special partners whose liabilities were limited to their investments (and whose shares could also be traded). Limited partnerships had strong shielding with respect to special partners whose investments were sunk for the duration of the partnership agreement and whose personal creditors had no claim to the special partner's interest in the partnership. Although limited partnerships were only weakly shielded with respect to general partners, it was possible under the Code to write clauses into the articles of association that constrained the general partners' ability to borrow on behalf of the firm. (This could be done

37. Kiehl, *et al.*, *supra* note 28 (citing Ames v. Downing, 1 Bradf. 321, 351 (1858)).

for ordinary partnerships as well as for *commandites*.) These agreements were enforceable against third parties and thus could limit the extent to which personal creditors of the general partners could lay claim to the assets of the firm.[38]

Professors Naomi Lamoreaux and Jean-Laurent Rosenthal note the convenient and flexible features of the *commandite*:

> The difficulties that French firms faced in forming corporations were not as significant as they are often made out to be, moreover, because the Code de Commerce offered business people an important alternative: the *société en commandite*, or limited partnership. A descendent of the medieval Italian *commenda*, the limited-partnership form was sanctioned by Colbert's Ordinance of 1673 and explicitly defined and regulated by Napoleon's Code of 1807. *Sociétés en commandite* (simples) consisted of one or more general partners, who managed the firm and were unlimitedly liable for its debts, and one or more special partners, whose liabilities were limited to their investments and who played no role in management. An important advantage of the form was that it enabled the general partners to raise funds from wealthy individuals who were not interested in participating actively in the business. The other organizational forms to which French business people had access were equally flexible. The managing partners of a *commandite*, for example, could and did organize themselves with as much diversity as if they had been members of a simple partnership. For example, of the 412 *commandites* simples in (the said 'professors') dataset that had multiple managing partners, 42.7% imposed some kind of restriction on management, and 10.1% completely prevented the managing partners from borrowing, in effect requiring the approval of the silent partners for the firm to take on debt. *Commandite* contracts could also require the managing partners to render accounts to the silent partners on a regular basis, and they could require that the managing partners pay out a minimum dividend each year (generally between 4 and 6%) to guarantee the silent partners at least a fixed return on their investment. As in the case of ordinary partnerships, moreover, the value of this flexibility appears to have increased with the size of the firm.[39]

38. Naomi Lamoreaux & Jean-Laurent Rosenthal, *Entity Shielding and the Development of Business Forms: A Comparative Perspective*, 119 HARV. L. REV. FORUM 238 (citing Naomi Lamoreaux & Jean-Laurent Rosenthal, *Legal Regime and Contractual Flexibility: A Comparison of Business's Organizational Choices in France and the United States During the Era of Industrialization*, 7 AM. L. & ECON. REV. 28, 33 (2005); Timothy Guinnane, *et al.*, *Business Organization in the Long Run: Private Limited Companies Rule!* (Aug. 9, 2006) (unpublished manuscript, on file with the Harvard Law School Library); Aurora Gómez-Galvarriato & Aldo Musacchio, *Larger Menus and Entrepreneurial Appetite: An Empirical Investigation of Organizational Choice in Mexico, 1886–1910* (May 30, 2006) (unpublished manuscript, on file with the Harvard Law School Library); Ch. Lyon-Caen & L. Renault, *Manuel de droit Commercial, in* Y COMPRIS LE DROIT MARITIME 143, 146 (1924)).

The limited partnership, as a business form, became available to Britain under the Limited Partnership Act of 1907, long after New York adopted the French *commandite*. By the time the Uniform Limited Partnership Act (ULPA) was proposed in 1916, all states then of the United States, except New Mexico, had a limited partnership statute following the language of the New York statute.[40]

The main formality of creating a limited partnership under the ULPA is the filing of the certificate of limited partnership with the designated public official and the payment of the requisite legal fees. Notably, Missouri and New York further require the publication of the certificate or its substance.[41] The designation of this formality is crucial for the attainment of the private arrangement's legal significance which, in the Philippine context and as will be discussed hereinbelow, should be as simple and inexpensive as possible.

The attraction of limited partnerships to capital investors — in other words, limited partners — lie in advantages like the establishment of a tax shelter,[42] investment without management responsibility, limited liability, and in a good number of cases, the so-called *schmaltz*, or the desire of investors to associate themselves with what they consider as glamorous industries, or to be where the action is, so to speak. This last mentioned consideration primarily involves "the real or imagined desire of ... investors to capture the newness of an innovation or approach before other investors overcrowd the industry or legislative response lowers the boom on another lucrative loophole."[43]

The unadulterated simplicity of an arrangement under which one or more financial backers contribute money or resources, while the other

39. Naomi Lamoreaux & Jean-Laurant Rosenthal, *Legal Regime and Business's Organizational Choice: A Comparison of France and the United States during the Mid-Nineteenth Century*, Jan. 22 2004, *available at* http://www.econ.ucla.edu/people/papers/rosenthal/Rosenthal309.pdf (last accessed July 20, 2007).

40. Kiehl, *et al.*, *supra* note 28, at 2-3. *See also*, Lamoreaux & Rosenthal, *Entity Shielding*, *supra* note 38, at 240.

41. Kiehl, *et al.*, *supra* note 28, at 3; *cf.* ULPA, § 2 (1976).

42. *Cf.* Limited Partnership, *supra* note 33. Using the limited partnership as a tax shelter merits a separate article in itself. Suffice it to say that the said type of business entity is found attractive to firms wishing to provide returns on investment to many individuals without the additional tax liability of a corporation. Save for the brief mention, the essay does not cover the same.

43. Kiehl, *et al.*, *supra* note 28, at 7.

partners do the actual work (of course, general partners are not prevented from investing their own capital) — also known as "labor-capital" partnerships — account for the popularity of this type of business organization for Broadway productions and film enterprises, oil and gas exploration, or plainly, in businesses that focus on a single or limited-term project.[44] "Well-known limited partnerships include Carnegie Steel Company, Bloomberg L.P., and CNN."[45] Easily, one can detect a sense of *schmaltz* in these entities, even as one may recall the much earlier Black Watch cattle breeding herds to the "Wall Street cowboys" of the 1960s.[46]

There is a precedent in the United States, dating back even to the 1970s, of the prevalence of the limited partnership as a vehicle to finance agricultural ventures, including the breeding of livestock.[47] This, together with the "easy-to-understand" as well as capital-friendly features of the limited partnership, inescapably merit a second look at the said business type. While already a feature of the Philippine statutory landscape, this business organization appears to cry out for a major facelift in its particular application to agricultural development. Hopefully, with a fine-tuned grassroots approach, this facelift will be innovative enough to generate a whole new investment excitement of its own.

In essence, there is perhaps no greater ground for *schmaltz* than what corporate intellectuals and marketing gurus term as a "Big New Idea." 2006 Nobel Peace Prize winner Muhammad Yunus, also known as the father of microcredit, has introduced what observers say is one such kind of revolutionary idea: the *social business enterprise*. In essence, this idea integrates the interests of capital with economic development, such that the latter will reap not only revenue, but also social returns. In this process, profits will be returned to the communities where investments are made.[48]

Describing the business venture started some months back with French food company Danone and Grameen (the three-decade institution founded by Economics Professor Yunus to finance small entrepreneurs, mostly poor women, in Bangladesh) for the production and selling of

44. *Cf.* Limited Partnership, *supra* note 33. *See, supra* text accompanying note 32; *see also,* Kiehl, *et al.*, at 2.

45. *See, supra* text accompanying note 32.

46. Kiel, *et al.*, *supra* note 28, at 7.

47. *Id.* at 16.

48. Sheridan Prasso, *Saving the World with a Cup of Yogurt,* FORTUNE MAGAZINE, Feb. 5, 2007, Vol. 155, No. 2.

yogurt,[49] Marc Van Ameringen, executive director of the Geneva-based Global Alliance for Improved Nutrition, optimistically remarked:

> The new wave in business is, forget corporate social responsibility and philanthropy — how do you integrate this into your business? ... The idea Danone has of creating a social dividend for shareholders — that's cutting-edge. No one has come up with this interesting a model. It supports your brand, returns your capital, you're not going to lose money, and you give your shareholders a vision of doing something good.[50]

While the Danone model varies in terms of the types of business organization employed, the fundamental idea is the same: the economic empowerment of the poor and marginalized — not by dole-outs, but by doing business with them. This model is worth considering, even if our laws will have to discard, for a higher social cause, the traditional or "default" notion that juridical entities, like corporations and partnerships, cannot become partners.[51] After all, this may very well be new *schmaltz* — that is, participating in an enterprise which makes money and, over and above that, reaping social benefits for all.

V. *PINOY*-STYLE *COMMANDITE*

The Filipino agricultural entrepreneur, whether he be the head of a family or a small-scale farm, or the tiller of an urban garden, no doubt has

49. *Id.* at 47. The business venture required Danone to set up a yogurt factory in the outskirts of Bogra, Bangladesh.

> The factory ... will rely on Grameen microborrowers (sic) buying cows to sell it milk on the front end, Grameen microvendors (sic) selling the yogurt door to door, and Grameen's 6.6 million members purchasing it for their [children]." It will employ 15 to 20 women, and is expected to provide income for 1,600 people within a 20-mile radius of the plant.

50. *Id.* at 48.

51. *See,* 68 C.J.S. 408; DE LEON & DE LEON, *supra* note 29, at 18, 306–07; *cf.* CIVIL CODE, arts. 1843-44. Echoing traditional American jurisprudence, the rule in this jurisdiction is that, "unless authorized by statute or by its charter, a corporation is without capacity or power to enter into a contract of partnership." This is, even as the Uniform Limited Partnership Act itself expressly allows corporations to become partners. As for partnerships, there is no express prohibition to become a partner. The commentators De Leon opine, however, that since the Civil Code provides that the membership of a limited partnership consists of "specified" persons, a partnership cannot become a general partner. With the above, it is clear that this statute could very well allow corporations and partnerships to invest as limited partners in the *Pinoy*-style *commandite* proposed herein, most especially if this will generate more capital into the agricultural sector.

the skill to make his enterprise sustainable and productive. The urgency of alleviating poverty and the naturalness of associating with others to achieve a certain good, conspire to motivate him to seek financial help from those who could provide capital. The relative smallness of area[52] of the lands and gardens render impracticable the organization of corporations under the Corporation Code,[53] or even of traditional partnerships, limited ones included, under the Civil Code. The twin requirements of executing a certificate (or articles) of limited partnership and of recording the same with Securities and Exchange Commission (SEC) under paragraph (2), article 1844 of the Civil Code — even if one were to consider the norm of substantial compliance in good faith in the said article — easily deter the ordinary tiller from even thinking about organizing an entity through which capital can flow in. Truth to tell, not even the fact that the SEC has extension offices in seven major cities,[54] aside from its main office in Mandaluyong City, can give any solace to, say, a poor farmer from a far-flung *barangay* in Cuartero, Capiz or a even a jobless man in Navotas, both of whom naturally would have to prioritize getting something to eat rather than pool a few pesos for transportation fare and photocopying costs.

A. Grassroots, Pro-Poor Business Organization

The law is thus challenged anew to provide a *radically* simple and convenient, yet economically dynamic, business vehicle for the lowly tiller. It must be so uncomplicated that it would be easy for both the investor to put in his money and for the tiller to organize the same at the least cost. The attainment of its legal significance and personality must be easily achieved with the least, or with no, government intervention. The entity must be such that it can be integrated and synergized with similar units to make it more economically powerful. The author thus proposes a pro-poor specie of limited partnership, specifically attuned to the needs and dynamics of agricultural enterprise. Separate and distinct in a number of respects from the traditional limited partnership under the Civil

52. *See,* Drescher, *supra* note 21. The urban garden may be no more than 500 square meters, while the farm land may even be less than 5 hectares. Through another practical application of the private-arranging technique, various gardens or farms may organize themselves into associations. These associations will, in effect, bring together the resources for greater economic strength of otherwise small and economically weak farms.

53. The Corporation Code of the Philippines, Batas Pambansa Blg. 68 (1980).

54. *See,* Securities and Exchange Commission, *at* http://www.sec.gov.ph/index.htm?index-main (last accessed July 20, 2007). The Securities and Exchange Commission has extension offices in the cities of Baguio, Legaspi, Iloilo, Cebu, Davao, Cagayan de Oro, and Zamboanga.

Code,[55] this specific business type shall be rooted primarily in the *barangay,*[56] as the most basic political unit, and secondarily, in the cities and municipalities.[57] This strongly underscores the norms of private initiative and economic independence. Not waiting for any windfall from government, the lowly tiller, through the proposed legal technique, will take the bull by the horns, so to speak, and chart his own economic destiny.[58] The otherwise marginalized worker of the soil is transformed to a visionary entrepreneur, imbued with a dignity that allows him to stand on his own even amongst the country's captains of industry. After all, whatever food that comes to the latter's table will necessarily come from the agricultural entrepreneur.

B. Simple Formality

If there is one thing that deters the common *tao* from making use of the business organizations provided by law, it is formality. The need for a sworn certificate containing the requirements under paragraph (1), article 1844 of the Civil Code is simply too much for him — most especially, if he has little or no schooling. Parenthetically, the requirement that the certificate be sworn to by the partners before a notary or such other person authorized by law to administer oaths exists more as a practical and financial burden, rather than as a source of repose as regards the agreement's correctness, genuineness, and authenticity.[59] This is not to

55. It follows that any provisions of the present Philippine law on limited partnerships, not otherwise inconsistent with the innovations suggested in this essay, would remain in force. The author opts to focus at this juncture on the salient innovations of the proposed legal technique. Nonetheless, since the purpose of this essay is to spur discussion on simpler and more dynamic vehicles for economic development, particularly the evolution of a pro-poor type of limited partnership, the author's back-to-basics approach will hopefully lead to future works of a more comprehensive nature.

56. An Act Providing for the Local Government Code of 1991 [LOCAL GOVERNMENT CODE OF 1991], Republic Act No. 7160, § 394 (1991).

57. *Id.* §§ 440, 448.

58. Be that as it may, there is no obstacle for would-be partners to organize themselves under the present-day provisions on limited partnership, or even of general partnership, under the Civil Code.

59. Significantly, failure to comply with the requirement for the certificate to be sworn to is not legally considered as substantial compliance with the essential requisites to bring into existence a limited partnership under Philippine law — that is, even if all the requirements enumerated in article 1844, paragraph (1), appear in the articles. *See,* ESTEBAN B. BAUTISTA, TREATISE ON PHILIPPINE PARTNERSHIP LAW 339 (1995 ed.) (citing Bergeson v. Life Insurance Corp. of America, 170 F. Supp. 150, 158) & 342 (citing Hoefer v. Hall, 411 P. 2d 230). The requirements provided under article 1844 constitute *essential* formalities

say that the requirement of having written articles containing the matters enumerated in paragraph (1), article 1844 should be discarded altogether. It is still essential, and the author so agrees, that signers realize "the necessity of the certificate's being true and correct so that third persons may not be misled or defrauded."[60]

Be that as it may, it suffices then that the agreement simply be in writing, in any form and/or presentation whatsoever, for as long as the matters enumerated under paragraph (1), article 1844 are present. It will not matter if the paper used is bond or yellow pad paper. The agreement may be in the form of a declaration, an outline, or even a letter addressed to the government functionary with whom the same is to be registered. And while the present law on partnership does not actually proscribe the use of any language or dialect other than English, the grassroots orientation of the legal technique will be further enhanced by a categorical indication[61] that the agreement may be in the vernacular or in a dialect commonly known and understood by the parties. As an alternative to having the deed notarized, it may be sworn to before the *punong barangay*[62] having jurisdiction over the area where the farm land or garden concerned is located. As another alternative, the deed may be attested to by at least three disinterested witnesses, who shall all belong to the same local political unit where the farm land or garden is situated. Introduced here is the legal fiction of these witnesses representing the community, which, in effect, is giving its imprimatur to the proposed business.

C. Barangay-Assisted Execution of Contract

necessary to bring the contract, *e.g.* the limited partnership, into legal existence. Should there be failure to comply with such, and despite the presence of the basic elements under article 1767 of the Civil Code, the arrangement becomes a general partnership as to third persons. As among themselves, the limited liability of the limited partners remains in force. While a limited partnership cannot be constituted orally, the reverse is true with respect to a general one consistent with the Civil Code's article 1771. *See also,* DE LEON & DE LEON, *supra* note 28, at 303 -04. Parenthetically, however, article 1771 provides that where immovables or real rights are contributed, a public instrument shall be necessary.

60. *See,* BAUTISTA, *supra* note 59, at 344.
61. It goes without saying that the indications proposed in this essay would have to be enfleshed in specific legislation.
62. LOCAL GOVERNMENT CODE OF 1991, § 389. The *punong barangay*, being the leader of the most basic political unit, is like the father (or mother) of the community. The Local Government Code allows the said official to "[e]xercise such other powers and perform such other duties and functions as may be prescribed by law" aside from those listed therein.

Given the importance of having the articles in writing, the problem of deficient literacy, or even illiteracy in some cases, would have to be addressed. Consistent with the "grassroots" approach of this essay, the author proposes that should at least one of the parties to the contract be unable to read or write, or will be literarily deficient, the parties can agree to formalize their agreement in writing in the presence, and under the supervision, of the *punong barangay* having jurisdiction over the place where the farm land or garden is located. The *punong barangay* shall make sure that the illiterate or literarily deficient prospective partner understands the arrangement, and that what is to be set down in writing reflects the arrangement. The parties may choose any one of them to write and/or type the agreement, or request the *punong barangay*, the *barangay* secretary,[63] or any resident of the *barangay* unanimously appointed by the parties to do so. In the last case, the resident shall, prior to the performance of his function, take an oath before the *punong barangay* that he or she shall faithfully transcribe what will be agreed upon the parties, which oath shall be in a written document to be appended to, and made an integral part of, the articles. This requirement is akin to the oath required of one who assists an illiterate or disabled voter under section 196 of the Omnibus Election Code of the Philippines.[64] Upon the other hand, the preparation, finalization, and execution of the articles before the punong barangay brings to mind the said official's function, as chairperson of the *lupong tagapamayapa*, of assisting and mediating parties in dispute to come to an agreement under the *barangay* justice system.[65]

D. Flexible Stipulations

It goes without saying that over and above, or insofar as it may not be inconsistent with, the matters listed under paragraph (1), article 1844, the partners are free to agree on such stipulations that may be peculiar to their situation or the type of agricultural enterprise they are to engage in, or that may be dictated by some local custom or usage. It helps to note to that there are certain contractual rights under the said legal provision which are not mandatory but are left to the discretion to the parties as to whether such rights will be given.[66] The parties are also free to agree or

63. *See,* LOCAL GOVERNMENT CODE OF 1991, § 394, which states that the *barangay* secretary can "[e]xercise such other powers and perform such other duties and functions as may be prescribed by law," apart from those specifically listed therein.
64. Omnibus Election Code of the Philippines, Batas Pambansa Blg. 881 (1985).
65. LOCAL GOVERNMENT CODE OF 1991, § 410 (b).
66. *See,* CIVIL CODE, art. 1844, ¶¶ (i), (j), (k), (l), (m) & (n). Such rights include, the right given to a limited partner to substitute an assignee as contributor in his or her place, the right of the partners to admit additional partners, the right of

not on a specific time when the contribution of each limited partner is to be returned.[67] Verily, the partners will rely on the intrinsic flexibility that characterizes the French *commandite* as described above. Of course, an indispensable requisite is that the articles must specify the term for which the limited partnership is to exist.[68]

Relevantly, it is good law to specify by way of statute the exact term for which the grassroots agricultural limited partnership is to exist. This will be beneficial to limited partners, who will be able to know the exact period of their financial exposure to the business.[69] In Manitoba, Canada, for instance, where the limited partnership is being promoted as farm business arrangement, such has a life span of five years from the date it is registered with the registry designated by law and, unless renewed, will become a general partnership.[70] This transformation is, incidentally, no different from the rule under Philippine law that "[t]he failure of a limited partnership to extend its term when [the said term] expired ..., and to register it anew ..., has the effect of divesting the limited partners of the privilege of limited liability."[71] As far as third persons are concerned, the firm becomes a general partnership with juridical personality.[72]

one or more of the limited partners to priority over other limited partners in terms of contribution or compensation by way of income, the right of the remaining general partners or partners to continue the business on the death, retirement civil interdiction, insanity or insolvency of a general partner, and the right of a limited partner to demand and receive property other than cash in return of his or her contribution.

67. *Cf.* CIVIL CODE, art. 1844, ¶ (h).

68. *Cf.* CIVIL CODE, art. 1844, ¶ (e).

69. Should the lawmaker insist on flexibility on this point (although the author believes that investor-friendliness should take priority in this regard), any statute on the matter can at least provide that the term should be five years, unless a different period is unanimously agreed upon by the partners in writing. It must be recalled also that a limited partnership is not exactly ideal for long-term ventures. In fact, in the context of agriculture, its lifetime may coincide with the lifetime of a farming contract.

70. *Cf.* Manitoba Agriculture, Food and Rural Initiatives, Farm Business Arrangements, *at* http://www.gov.mb.ca/agriculture/financial/farm/caf03s02.html (last accessed July 20, 2007).

71. DE LEON & DE LEON, *supra* note 29, at 306.

72. *Id.* (citing McDonald v. Morky, U.S.L. 499, May 21, 1956; SEC Opinion, May 1968).

E. Simplified LGU-Based Registration; LGU as Stakeholder

Obviously, another concern is the requirement of registration with the SEC. Alongside the practical and even financial burden that, as mentioned, characterizes this requirement, the above-proposed flexibility in terms of formality becomes intrinsically incongruent with the nature and quality of documentation in the said agency. Registration, however, is important in order "to give actual or constructive notice to potential creditors or persons dealing with the partnership to acquaint them with its essential features, foremost among which is the limited liability of the limited partners so that they may not be defrauded or misled."[73] The alternative then is to designate a registry closer to home, so to speak, and give registration with it the same effect as registration with the SEC as required under the Civil Code.

In jurisdictions following the ULPA, "the proper depository for the certificate may be the recorder of deeds, ... or the clerk of the county court."[74] Following this approach of having a more localized registry, what easily comes to mind is the local business permits and licensing office of the municipality or city where the area to be tilled is located.[75] The articles, as prepared under any of the simplified modes indicated above, can just simply be attached to the application for the requisite business permit. The law can provide that, as in the case of a certain jurisdiction, the registration can be done no later than one month after the formation of the partnership, that is, the execution of the articles.[76] This cures the uncertainty that presently plagues the current limited partnership law as regards the "reasonable time" to consider the parties as having substantially complied with the requirements under article 1844.[77] Such simplified registration can be one-time until the registration is up for renewal. Yearly reportorial requirements in between renewals can be

73. *Id.* at 303.

74. Kiehl, *et al.*, *supra* note 28, at 3.

75. *Cf.* LOCAL GOVERNMENT CODE OF 1991, §§ 147, 151 (on the power of municipalities and cities to impose reasonable fees and charges.). "Regulation of activity under the [state's] police power is frequently accomplished by delegating to administrators under [certain] standards, the power to approve or withhold licenses and permits. Without the license or permit, the activity cannot be undertaken." The exaction of these fees is part and parcel of the *administrative-regulatory technique*. *See,* FLORECITA FLORES, LOCAL GOVERNMENT TAXATION, 373-74 (1d ed. 2000) (citing DAVID MCCARTHY, LOCAL GOVERNMENT LAW, WEST NUTSHELL SERIES (1990)).

76. *See,* Business Names Registration Act of Manitoba, § 3 (2), *available at* http://www.canlii.org/mb/laws/sta/b-110/20060115/whole.html (last accessed July 20, 2007).

77. *Cf.* DE LEON & DE LEON, *supra* note 29, at 303; BAUTISTA, *supra* note 59, at 339.

submitted together with the annual application for a business or mayor's permit.

That the *barangay*-based limited partnership need only have its articles registered with the pertinent municipality or city easily makes the local government unit (LGU) involved an indirect stakeholder in the success of the enterprise. Ordinances can be passed to give support and incentives to enterprises of such kind, as well as provide areas of cooperation and mutual benefit. Urban allotment gardens, for instance, and most especially if they decide to band together as associations for greater economic capability,[78] can be promoted as agri-economic zones for the LGU and, at the same time, provide work possibilities even for the retired and elderly, as well as the handicapped. The urban gardens also afford recreational space to children from poor families, and allow then to experience nature in an active manner.[79] Aside from these, the over-all development of the individual members of the community and their families will be further enhanced by values training (which could even be initiated by the garden owners, with possible help from the government and/or private sector/s), which is naturally easier to conduct in a compact community. Moreover, the LGU can be an effective catalyst for the entry and participation of financing institutions as well as those which can provide better and more cost-effective technology to enhance productivity. With the imprimatur of the LGU, the gardens can be showcases to promote a balanced ecology and care for the environment. Quite easily, these innovations can be replicated in rural farms, with due regard for the unique conditions of the latter.

Verily, from the perspective of the LGU, any form of positive government intervention to enhance the success of the small-scale agricultural enterprise will be a living out of the *general welfare clause*.[80]

78. *Cf.* Drescher, *supra* note 21, at 5.

79. *Id.*

80. *See,* LOCAL GOVERNMENT CODE OF 1991, § 16.

> Every local government unit shall exercise the powers expressly granted, those necessarily implied there from, as well as powers necessary, appropriate, or incidental for its efficient and effective governance, and those which are essential to the promotion of the general welfare. Within their respective territorial jurisdictions, local government units shall ensure and support, among other things, the preservation and enrichment of culture, promote health and safety, enhance the right of the people to a balanced ecology, encourage and support the development of appropriate and self-reliant scientific and technological capabilities, improve public morals, enhance economic prosperity and social justice, promote full employment among their residents, maintain peace and order, and preserve the comfort and convenience of their inhabitants.

In addition, section 17 also mandates that local government units, including *barangays*, provide their inhabitants with agricultural support services.

LGU involvement, moreover, will promote the constitutionally prescribed norm of local autonomy, through which they will develop as "self-reliant communities and ... effective social partners in the pursuit of national development and progress."[81] In this light, the LGUs will regard the small farmers and planters as viable and self-reliant economic engines. The multiplication of these economic engines (they can actually be from all walks of life: the corner store entrepreneur, the recently arrived *balikbayan*, the investment-hungry overseas contract worker (OFW), the landed retiree, the old fish vendor in the public market, the newly married clerk at the municipal hall, to name some) spurred on by the entry of investors, attracted by the simple documentation that marks the inception of the limited partnership, will ultimately make a significant impact on the fight for poverty alleviation. As mentioned earlier, similar to the organization of individual German allotment gardens into city-wide associations,[82] the rural farms and urban gardens formed as *Pinoy*-style *commandites*, can band themselves, pursuant to a radical re-orientation of the applicable law, into separate entities, whether as corporations or partnerships, to improve their economic capabilities and benefit from mutual cooperation on various areas of concern (for example, continued non-formal education, best practices training, and values formation). In this connection, there will be no room for prohibiting a partnership from becoming a partner in another partnership.[83]

VI. CONCLUSION

All told, the legal innovations proposed in this essay constitute a legal revolution of sorts by the marginalized Filipino farmer or tiller. The common worker of the soil has the know-how but obviously lacks the funding to make his enterprise a viable economic engine. The solution is not to wait for the implementation of some grand national program, but the development of an agricultural enterprise powered by the community — both through private initiative and meaningful local government intervention. It is through an enlightened mix of social solidarity and subsidiarity that the farmer or tiller is empowered to chart his economic future. By these means, the erstwhile marginalized and underprivileged common *tao* realizes his self-worth and dignity as an authentic and vital

81. PHIL. CONST. art X, § 2. *See also,* JOAQUIN G. BERNAS, S.J., THE 1987 PHILIPPINE CONSTITUTION: A COMPREHENSIVE REVIEWER 414 (2006 ed.) (citing Limbona v. Mangelin, 170 SCRA 786 (1989)).

82. *Cf.* Drescher, *supra* note 21, at 4.

83. DE LEON & DE LEON, *supra* note 29, at 18.

contributor to national progress. Beyond that, he is joined in a daring economic odyssey by investors, juridical or otherwise, who will not only reap financial returns, but also social ones for the benefit of all.