Current Issues and Emerging Policy Trends in Local Autonomy

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Introduction

This essay seeks to present an overview of current issues and emerging trends in local autonomy. Recent policy issuances and decisions promulgated by the Supreme Court will also be examined in light of these issues and trends. Finally, proposals for policy reform and possible constitutional amendments or revisions will be explored.

I. Alternative Forms: Unitary and Federal Forms of Government

There are two basic fonns of local government systems: the unitary and the federal form.

A. Unitary Form

Under a unitary state, local governments are intra-sovereign subdivisions of one sovereign nation, where the local governments operate as part of a larger whole. It cannot be a case of *imperium in imperio,* or an empire within an

empire.[1] The Philippines is one such unitary state. The 1987 Constitution, as in previous constitutions, does not prescribe federalism. What it did was to grant the local governments a certain degree of autonomy, in the unitary sense. However, this grant does not contemplate making mini-states out of local governments.[2]

B. Federal Form

A federation, on the other hand, may be defined as an "institutional arrangement" taking the form of a sovereign state, and distinguished from other such states solely by the fact that its central government incorporates regional units in its decision-making procedure on some constitutionally entrenched bases. Federalism means the active promotion or support of federation. Thus, there may be Federalism without a federation but there can be no federation without some matching variety of federalism.[3] In a federal form of government, states exercise some form of self-rule, with minimal intervention from the central government, particularly on state affairs. Further, the constitutions of the member states divide power in such a way as to prevent either the federal or state governments from eroding each other's powers.[4] Thus, powers may be shared (concurrent powers), or exercised solely by either the federal or state government (exclusive powers). Often, exclusive powers of a particular level of government are enumerated, whereas those not listed belong to the other levels of government.

C. Post-Modern Federalism

There is also another emerging form of federation as recognized by scholars. Post-modern federalism is a new form, which shows that a constitutionally created federation is not the only route to federalism, as demonstrated by the Spanish experience. Federal arrangements may develop from a non-federating constitution that fosters autonomy. The process involves the development and differentiation of a unitary political community into a federally organized whole.[5]

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1. *See* Alvarez v. Guingona, 252 SCRA 695 (1996); Basco v. PAGCOR, 197 SCRA 52 (1991).
2. Ganzon v. CA, 200 SCRA 271 (1991).
3. P. King, *Federalism and Federation, in* Federalism and Federation in Western Europe (Michael Burgess ed. 1982).
4. Local Government in Liberal Democracies: An Introductory Survey 3 (J.A. Chandler ed. 1993).
5. Robert Agranoff, *Federal Evolution in Spain,* 17 Q. J. Int'l Pol. Sci. Rev. 386 (1996).

D. The Philippine Setting

At present, the Philippine Constitution provides for a unitary governmental set-up. Although the Constitution does not expressly mention that the Philippines adheres to a unitary form of government, this may be inferred from: (1) the express reference to Philippine sub-national institutions as political and territorial subdivisions,[6] (2) the grant of local autonomy to municipal corporations,[7] and (3) the supervisory authority of the President over local governments.[8]

A constitutional revision would be needed to change such a set-up into a federal government. If indeed this is the objective, then federalism must be strengthened as a transitionary measure towards a constitutionally constructed federation. Another option would be to follow the route Spanish local governments took.

II. The Local Governments of Spain

The Constitution of Spain identifies three levels of local governments, authorizes the creation of Autonomous Communities (ACs), and mandates that these sub-national governments shall enjoy self-government. It provides that "the State is organized territorially into municipalities, provinces, and any Autonomous Communities that may be constituted. All these bodies shall enjoy self-government for the management of their respective interests."[9]

Provinces may, by agreement, form Autonomous Communities. "In the exercise of [the] right to self-government recognized in Article 2 of the Constitution, bordering provinces with common historic, cultural and economic characteristics, island territories, and provinces with historic regional status, may accede to self-government and form Autonomous Communities."[10] Another route to "autonomization," which is recognized as a faster route,[11] is by way of initiative. In this case, the Spanish Parliament under Article 151 of the Constitution of Spain, approves upon petition submitted by groups of provinces or by a single province, the national statute of autonomy for each territory.[12]

6. Phil. Const. art. X, § 1.
7. Phil. Const. art. X, § 2.
8. Phil. Const. art. X, § 4.
9. Spain Const. art. 137, *reprinted in* VI Constitutions of Dependencies and Special Sovereignties (1995).
10. Spain Const. art. 143.
11. *See* Agranoff, *supra* note 5, at 387.
12. *Id.*

Comparing the Philippine[13] and Spanish local autonomous regions under their respective Constitutions, the following observations can be presented illustratively:

	PHILIPPINES	SPAIN
NAME	Autonomous Regions (AR)	Autonomous Communities (AC)
COMPOSITION	A province cannot be an autonomous government	A province can become an autonomous community
CRITERIA	Common historical and cultural heritage, economic and social structures	Common historic, cultural and economic characteristics
UNITS	Constitution only allows the creation of two ARs (Cordillera and Muslim Mindanao)	For as long a criteria met, any AC may be formed
MODES OF FORMATION	Congress enacts an Organic Act and approval in a Plebiscite is required	ACs may be formed by agreement of provinces or by approval of Parliament
POWERS	Enumerated Powers (those not enumerated are vested with the State)	Enumerated Powers (the State has enumerated powers)
STRUCTURE	Regional Governor as Executive, Regional Assembly as Legislative and Shari'a Courts	President with a Governing Council, Legislative Assembly and Court of Justice
RESOURCES	(No provision in the Constitution)	Enumerated (share in national taxes, local taxes, credit schemes, revenues from property)

III. Overview of Local Government Systems: The Philippine System

The different systems of local government around the world may be represented in the following manner:[14]

	BRITAIN	U.S.A. & CANADA	FRANCE & ITALY	SWEDEN & DENMARK	JAPAN
CONSTITUTIONAL STATUS	Creature of Parliament	State/ Constitutional	National/ Constitutional	National/ Constitutional	National/ Constitutional
NATIONAL STRUCTURE	Mixed	Mixed	3-tier	2-tier	2-tier
POWERS	Limited by Statute	Limited by Statute	General Competence & statute	General Competence & statute	General Competence
CONTROL OF LEGALITY BY	Courts	Courts	Regions & courts	State & courts	State & courts
CONTROL OF LOCAL POLICY	Low	Low	Interlocked	Interlocked	Interlocked
CONTROL OF LOCAL POLICY HISTORICALLY	Low	Low	High	High	High
LOCAL FUNCTIONS 1949-89	Reduced	Various	Increased	Increased	Increased
LOCAL EXECUTIVE AUTHORITY	Council	Mixed	Mayor or President	Mixed	Mayor or Governor with Board

13. Phil. Const. art. X, §§15-21.
14. Alan Norton, International Handbook of Local and Regional Government: A Comparative Analysis of Advanced Democracies 14, *citing* figures from Poul Eirk Mouritzen & K.H. Nielsen, Handbook of Comparative Urban Fiscal Data (1988).

A. National/Constitutional

In the case of the Philippines, the types of local governments are identified by the Constitution.[15] They cannot go out of existence except by constitutional amendment. However, the creation of particular local governments is a legislative act. Congress may create provinces, cities, municipalities, or *barangays*. At present, *barangays* may also be created by cities and provinces through ordinances enacted by their legislative arm.[16]

B. Five and Four-Tiered

There are five levels of local government and four basic units: autonomous regions, provinces, cities, municipalities, and *barangays*. The basic units are the provinces, cities, municipalities, and *barangays*.

C. Sources of Power

The sources of power of local governments are the Constitution, statutes, and the local government's own charter. They have no inherent power, possessing only delegated powers.

D. Executive Supervision and Legislative Control

Local governments are made accountable to the national government through executive supervision and legislative control. The Executive Branch exercises general supervision over local governments, with the President exercising direct supervision over the autonomous regions, provinces, highly urbanized and independent cities, and municipalities within Metro Manila. The President also exercises general supervision over component cities, municipalities, and *barangays*.[17] The higher local government, referred to as *supervising unit*, exercises direct supervision over the lower local government, or *supervised unit*. On the other hand, Congress retains control, although in a reduced degree, over local governments. Congress may provide for the form and structure of local government, the share of local governments in national taxes and national wealth, and the powers of local governments, among others.[18]

E. Control over Local Policy: Interlocked

Presently, local governments share control over their own policies with the national government (*i.e.*, they are *interlocked*). Under a centralized government, the role of the national government is the more dominant one, as it was in the past.

15. PHIL. CONST. art. X, § 1.
16. Local Government Code of 1991, R.A. 7160, §385 (1991).
17. *Id.* §4.
18. *See* Basco v. PAGCOR, 197 SCRA 52 (1991).

F. Local Functions Increased

With devolution and deconcentration, local government functions are increased. *Devolution* refers to the act by which the national government confers power and authority upon the various local government units, to perform specific functions and responsibilities.[19] It is premised on the constitutional mandate that all local government units possess and enjoy local autonomy and the Local Government Code of 1991 (R.A. 7160) has made this process mandatory. *Deconcentration*, on the other hand, is the transfer of requisite authority and power to the appropriate regional or field offices, whose major functions are not devolved to local governments.[20]

G. De Facto Separation of Powers and System of Checks and Balance

Except for the *barangay*, there is *de facto* separation of powers at the city, provincial, and municipal levels.

There is also a system of checks and balance, in terms of veto of ordinances and formulation by the mayor or governor of the local government budget. Each Local legislative council enacts and adopts ordinances and resolutions subject to the approval by the mayor or the governor, as the case may be.

IV. LEVELS OF AUTONOMY UNDER A UNITARY SET-UP

The Constitution mandates that "the territorial and political subdivisions shall enjoy local autonomy."[21] However, the Constitution makes no qualification or description of what local autonomy means. Neither does it illustrate the various levels of autonomy. Curiously, the 1991 Local Government Code has no definition of local autonomy either.

Thankfully, the Supreme Court has been more helpful in clarifying the content of the term. The Court has held that under a unitary set-up, local autonomy is a measure of decentralization.[22] It is either decentralization of administration (*i.e.*, *administrative* autonomy), or decentralization of power (*i.e.*, *political* autonomy). Provinces, cities, municipalities, and *barangays* enjoy administrative autonomy, while autonomous regions enjoy a higher level of autonomy, that of political autonomy.[23]

A. Administrative Autonomy

Decentralization of administration exists when the central government delegates administrative powers to political subdivisions in order to broaden the

19. Local Government Code, §17.
20. *Id.* §528.
21. PHIL. CONST. art. X, § 2.
22. *See Basco*, 197 SCRA 52.
23. *See* Cordillera Broad Coalition v. Commission on Audit, 181 SCRA 495 (1990).

base of government power, and in the process, to make local governments more responsive and accountable. This ensures their fullest development as self-reliant communities, and makes them more effective partners in the pursuit of national development and social progress.[24] Principally, administrative autonomy refers to the power and responsibility to deliver basic services.

B. Political Autonomy

Decentralization of power, on the other hand, involves an abdication of political power in favor of local government units declared to be autonomous. In that case, the autonomous government is free to chart its own destiny and shape its future with minimum intervention from central authorities. Decentralization of power amounts to self-immolation, since the autonomous government becomes accountable not to the central authorities, but to its constituency.[25]

C. Quasi-Political Autonomy

Using the above-stated definition, there could be a third level of autonomy, *quasi-political* autonomy, which the author believes provinces, cities, municipalities and *barangays* currently enjoy. This is premised on the statutory fact that the four basic units under the 1991 Local Government Code do not merely assume the responsibility of delivering basic services. Under the broad concept of devolution, they now assume regulatory functions, such powers having been transferred from national government agencies. Local governments now perform the following delegated functions: approval of subdivision plans from the National Housing Authority, regulation of tricycle operators from the Land Transportation Franchising Regulatory Board, licensing of cockpits and cockfighting from the now defunct Philippine Gamefowl Commission, quarantine from the Department of Health, inspection of food products from the Department of Agriculture, and enforcement of environmental laws from the Department of Environment and Natural Resources.[26]

D. Possible Policy Reforms

One possible constitutional amendment or policy pronouncement is one that provides for the three levels of local autonomy under a unitary set-up, and that particular kinds or classes of local governments enjoy a certain degree of the three different levels of local autonomy.

24. *See* Ganzon v. CA, 200 SCRA 271 (1991).
25. *See id. See also* Limbona v. Mangelin, 170 SCRA 786 (1989).
26. Local Government Code, § 17.

Policy makers may also consider adopting a definition of local autonomy. This author suggests the following definition: *In pursuit of a more responsive and accountable local government structure, local governments may use their broad discretion to exercise those powers expressly given them, those implied therefrom, and those not otherwise prohibited by law, for the general welfare of its constituents, subject only to executive supervision and limited legislative control.*

V. CLARIFYING CONTROL AND SUPERVISION OVER LOCAL GOVERNMENTS

The terms *control* and *supervision* as used in the law on local autonomy are not specifically defined by statute. However, in a long line of cases,[27] the Supreme Court has defined these to mean:

> [i]n administrative law, *supervision* means overseeing or the power or authority of an officer to see that the subordinate officer performs their duties. If the latter fails or neglects to fulfill them the former may take such action or step as prescribed by law to make them perform their duties. *Control*, on the other hand, means the power of an officer to alter, modify, nullify or set aside what a subordinate officer had done in the performance of his/her duties and to substitute the judgment of the former for that of the latter.[28]

A. Executive Supervision

The Constitution only grants unto the President the power of general supervision over local governments.[29] The President wields no more authority than that of checking whether local governments perform their duties according to law. He cannot interfere with local government affairs so long as the latter act within the scope of their authority. The President's oversight power does not include the power to restrain. He cannot substitute his discretion for that of the local officials.

However, policy instruments were issued in the recent past that this author believes amounts to executive control. These are, to name a few: Presidential E.O. No. 12,[30] which requires the prior approval of the Committee on Privatization for any disposition of property by local governments; DILG M.C. No. 99-64, [31] which requires mandatory accreditation of organizations conducting training, and requires the prior authorization from the Department of Interior and Local Government (DILG) for attendance of local government officials using local funds in seminars and conferences; DILG M.C. No. 99-65[32]

27. Drilon v. Lim, 235 SCRA 135 (1994); Carpio v. Executive Secretary, 206 SCRA 290 (1992); Taule v. Santos, 200 SCRA 512 (1991); Ganzon v. CA, 200 SCRA 271 (1991); De Villa v. Bacolod, 189 SCRA 736 (1990).
28. *Id.* [emphasis supplied].
29. PHIL. CONST. art. X, § 4.
30. Dated Aug. 25, 1998.
31. Dated Apr. 23, 1999.
32. Dated Apr. 23, 1999.

and 99-100,[33] which requires prior clearance on the use of local intelligence funds from the DILG; DILG M.C. No. 99-66[34] and 99-99,[35] which enumerates an exclusive list of activities to be funded out of the 20% development fund, and requires prior approval from the DILG before the purchase of heavy equipment; DILG M.C. No. 99-67,[36] which requires authority from the Office of the President/DILG for travel abroad by local government officials; DILG M.C. No. 99-101,[37] which enjoins local governments to facilitate release of permits to PAGCOR and its contractors; OP M.C. No. 33,[38] which imposes a 1-year moratorium, enjoining municipal mayors and officials from initiating conversions; Presidential A.O. No. 87,[39] which prohibits all local governments from granting amelioration assistance to officers and employees; Presidential A.O. No. 87,[40] which enjoins local governments to undertake activities in line with the National Day of Prayer called by the Administration; and DILG M.C. 99-188, which streamlines and directs the issuance of local business permits.

In the short term, a clear policy statement must be made regarding the extent of the authority of the Executive Branch of Government over the affairs of local governments. Discretion in making choices on local policies and deciding on local projects cannot be clipped. Local governments cannot be forced into following national norms and standards, disregarding unique local conditions and interests.

B. Congressional Control

On the other hand, Congress exercises control (although to a significantly reduced degree) over local governments. Broadly, Congress has authority to:

1. Allocate among the different local government units their powers, responsibilities, and resources;[41]

2. Provide for the qualifications, election, appointment and removal, term, salaries, powers and functions and duties of local officials, and all other matters relating to the organization and operation of local units;[42]

3. Impose guidelines and limitations on taxing powers of local governments;[43]

33. Dated June 15, 1999.
34. Dated Apr. 23, 1999.
35. Dated June 15, 1999.
36. Dated Apr. 26, 1999.
37. Dated June 16, 1999.
38. Dated June 17, 1999.
39. Dated Sept. 24, 1999.
40. Dated Sept. 24, 1999.
41. PHIL. CONST. art. X, § 3.
42. *Id.*

4. Determine the just share of local governments in national taxes;[44]

5. Set the equitable share in the proceeds of the utilization and development of the national wealth;[45]

6. Fix the term of office of elective *barangay* officials;[46]

7. Define the manner by which local sectoral representatives will be chosen;[47]

8. Create, divide, merge, abolish, or alter boundaries of local governments;[48]

9. Form special metropolitan political subdivisions;[49]

10. Identify the purposes by which inter-local government cooperative arrangements may be guided;[50] and

11. Enact an Organic Act for each autonomous region.[51]

However, legislative control is not absolute. Congress cannot add or delete from the present set of local governments; create another autonomous region other than those identified in the Constitution;[52] dispense with the plebiscite in the creation or dissolution of local governments;[53] compel local governments to enter into joint undertakings; change the term (which is three years) of regional, provincial, city and municipal elective officials;[54] provide a share in national taxes that is not just or a share in the proceeds in the development of national wealth that is not equitable;[55] and impose limitations on local taxing authorities that are inconsistent with local autonomy;[56] since these limitations are expressly provided for in the Constitution.

VI. LOCAL AUTONOMY CAN BE SELF-GOVERNMENT

A. Under a Unitary System

Under a unitary set-up, local autonomy cloaks local governments with limited, not absolute, self-governing powers. Local autonomy is not equivalent to total

43. *Id.* § 5.
44. *Id.* § 6.
45. *Id.* § 7.
46. *Id.* § 8.
47. *Id.* § 9.
48. *Id.* § 10.
49. *Id.* § 11.
50. *Id.* § 13.
51. *Id.* § 18.
52. *Id.* § 15.
53. *Id.* § 10.
54. *Id.* § 8.
55. *Id.* § 6.
56. *Id.* § 5.

self-government, which means that the powers of local governments are not absolute or without limits. Local governments cannot exercise powers that are prohibited by or inconsistent with the Constitution and statutes. Neither do they have any inherent powers. Hence, under this set-up, total self-determination or self-rule is not legally possible.

B. Under a Federal System

Self-government is more real in a federal arrangement than in a unitary set-up. In a federal set-up, the federal government adopts a policy of non-interference in purely local government affairs. States would therefore operate without any direction from the central government and local authorities were largely self-regulating within state law.[57]

C. Our Options

The option therefore, given the present set-up, entails a constitutional amendment, that is, to expand the Constitutional powers of Philippine local governments, expressly grant political autonomy to certain levels of local governments, and adopt a liberal view of municipal powers.

VII. To Expand Constitutional Powers

Article X of the Constitution delegates to local governments specific powers such as the power to raise revenue, the power to tax,[58] and the power to enter into coordinative arrangements with other local governments.[59]

As previously discussed, local governments in the Philippines do not possess inherent powers. They only possess delegated powers as granted by the Constitution, by statute (such as the 1991 Local Government Code), or by their charters.

The Supreme Court has also expressly declared that while police power and the power of eminent domain are inherent powers of the State, these are not so with respect to local governments. There must be a valid delegation of such authority by the National Legislature in order for the local governments to exercise these powers.[60] Further, and despite local autonomy, these delegated powers cannot be broadened (or constricted) by implication.[61] Thus, Congress can repeal Sections 16 (General Welfare Clause) and 19 (Eminent Domain) of the 1991 Local Government Code and this, arguably, will not be violative of the Constitution.

57. Agranoff, *supra* note 5, at 10.

58. Phil. Const. art. X, §5.

59. Phil. Const. art. X, §13.

60. Binay v. Domingo, 201 SCRA 508 (1991); Moday v. CA, 268 SCRA 586 (1997).

61. Camarines Sur v. CA, 222 SCRA 173 (1993).

It is therefore proposed that the police power and power of eminent domain like the power to tax, be made constitutional, not merely statutory, powers.

VIII. Liberal View of Municipal Powers

A. Centralist/Centrist Local Autonomy

The prevailing policy environment shows adherence to the centralist/centrist view of local autonomy. Under this view, local governments can only exercise those powers expressly delegated to them and those necessarily implied therefrom. They cannot exercise those powers that are not otherwise prohibited by law. Under this doctrine, not allowing means prohibiting.

B. Indications

Several policy issuances are indicative of this policy. The Department of Justice and the Department of Interior and Local Government sometime in 1995 made separate pronouncements that lottery outlets, sellers and agents of the Philippine Charity Sweepstakes Office are exempted from the requirement of securing business permits or licenses from cities, municipalities and *barangays*. These policies were issued when the Code itself empowers local governments to issue licenses and permits to regulate all legitimate activities.

The Department of Budget and Management, through National Budget Circular No. 442 dated March 29, 1995, imposed a cap on registration fees for participation in conventions and seminars. Under the circular, local governments are only permitted to pay an amount not exceeding PhP900 per day per participant. This amount may be taken from local funds. Any amount in excess shall be at the expense of the participant. There is no law that restricts this authority of local governments.

On June 4, 1996, the Commission on Audit promulgated COA Decision No. 96-287 on the use of Special Education Fund (SEF). The Commission ruled that based on Section 272 of the Code, the SEF could not be used as payment of the PhP 1,500 allowance to public school teachers assigned to a local government. The local government can only provide a PhP 1,000 per teacher allowance from its local funds. Section 100 of the Code in outlining a system of priorities — construction, repair and maintenance of school buildings, establishment and maintenance of extension classes and sports activities — does not prevent a local government from using the SEF for other education-related activities and expenses.

C. Implications

By adhering to this restrictive view, the meaning of local autonomy under the 1987 Constitution has been thrown down to the level of autonomy under the 1935 Constitution.[62] In the case of *Magtajas v. Pryce Properties,*[63] the Supreme Court said that local governments cannot prevent the Philippine Amusement and Gaming Corporation (PAGCOR) from operating a casino in Cagayan de Oro City. PAGCOR can set-up casinos anywhere it wants to, with or without the consent of the local government affected.

On the other hand, under the liberal view of local autonomy, local governments may perform those powers not otherwise prohibited by law pursuant to the fundamental grant of local autonomy and in furtherance of the general welfare of the community. Thus, local governments may, by themselves, establish development enterprises, enter into joint ventures for local infrastructure projects, impose curfews, invest, enact local codes, among others.

The intent of the framers of the Constitution was to adopt a liberal view of local autonomy, not a restrictive policy favoring the central government in the exercise of discretionary authority. However, the clear trend shown by the above executive issuances veers towards a centralist application of the grant of local autonomy, despite such intent. A clear policy pronouncement at this stage may be necessary.

IX. Conflict-Resolution in Favor of Integration and Local Solidarity

One author has depicted tensions between central government on one hand and local governments on the other as endemic since values of local government conflict with the central government's need to ensure that its policies are carried out throughout the country.[64] In conflict situations, the local choice is almost instinctively clipped.

In England and Wales, central government has increased its capacity to control local administration by removing certain functions from the local government portfolio.[65] In France, the tradition of informal patron-client relationships is underscored by a superficially highly centralized formal system.[66] In Italy, central and local governments are viewed as a single unified

62. Joaquin G. Bernas, S.J., The Constitution of the Republic of the Philippines: A Commentary 962 (1996).

63. 234 SCRA 255 (1994).

64. Howard Elcock, Local Government, Policy and Management in Local Authorities 6 (3d ed. 1994).

65. Local Government in Liberal Democracies: An Introductory Survey 21 (J.A. Chandler, ed. 1993).

66. *Id.* at 67.

organization where governments occupy two opposing poles and their relationship is seen as a kind of a zero-sum game.[67] In Germany, activities of the *Kreise* and *Gemienden* (two levels of local governments) are closely scrutinized by the Ministry of Interior that exercises general control over the former.[68] In Canada, there is increasing national centralization in certain provinces as evidenced by the use of public funds. As a consequence, the increased domination of the federal government over the province gives the latter opportunity to intervene in the affairs of the municipality.[69]

To some extent, Philippine local governments like the above-mentioned countries are experiencing some degree of re-nationalization, as clearly demonstrated by the executive issuances discussed in the previous section.

The Supreme Court on one occasion adopted the policy of integration in resolving conflicts between governments. In that case, lakeshore municipalities were denied the power to authorize the construction and dismantling of fishpens within Laguna Lake. The Court said that Laguna de Bay cannot be subjected to fragmented concepts of management policies where lakeshore local governments exercise exclusive dominion over portions of the lake. In effect, the Court upheld the authority of the Laguna Lake Development Authority as a public corporation, over the entire Laguna Lake area. This, of course, was in opposition to the contention of the different local governments of the municipalities surrounding Laguna Lake, who believed that the Local Government Code of 1991 clearly granted them such authority over their area of the lake.[70]

This Supreme Court pronouncement clearly demonstrated its partiality towards a centralist view. The rule established was, in case there is a conflict between a central government or a public corporation on one hand and local government on the other, such must be resolved in favor of the former if the conflict involves an issue affecting more than one local government. However, this author believes that in the event a conflict involving an issue or problem affects only one local government, then the conflict must be resolved in local government's favor. The principle of local solidarity must be advanced. However, this was not the policy adopted by the Supreme Court in the case of the conflict between PAGCOR and Cagayan de Oro.[71] In this case, the court upheld the authority of the PAGCOR, a public corporation under the national government, despite the fact that only one local government unit, that of the City of Cagayan de Oro, was affected.

67. *Id.* at 93.

68. *Id.* at 111.

69. *Id.* at 179-80.

70. Laguna Lake Development Authority v. CA, 251 SCRA 42 (1995).

71. *See supra* note 63 and accompanying text.

X. Express Policy on Separation of Powers

Under a presidential form of government, the principle of separation of powers is a given. The 1987 Constitution guarantees this. Each department — Executive, Legislative and Judiciary — is prevented from invading the domain of the others. This is to prevent monopolization of powers in one department and thereby to avoid tyranny.[72]

As a rule, the doctrine of governmental separation of powers does not apply strictly to local governments. At present, a local government official or office may perform executive and legislative functions. However, by legislative fiat, powers may be delegated and even shared by branches within a local government.

Under the 1991 Local Government Code, there is separation of powers at the provincial, city and municipal levels but not at the *barangay* level. The *Punong Barangay* acts as the chief executive of the *barangay*,[73] presides over the *barangay* council,[74] and even heads the *Lupong Tagapamayapa*,[75] which is effectively the closest thing a *barangay* has to a judicial branch. With respect to the mayor or governor, he or she exercises executive functions. The mayor or governor does not preside over the local legislative council, but merely reviews and approves ordinances enacted by the latter. This review authority is a form of check and balance between the two branches of government.

Congress, however, has the power revert to the old system,[76] whereby the mayor is a member of the council and presides over its sessions. Today, whether or not there should be separation of powers is a question of wisdom and discretion on the part of Congress. A constitutional policy statement may be adopted to guide Congress in this regard.

XI. Defining the Role of the Courts

A. The Local Government Code

The 1991 Local Government Code and the Supreme Court have defined the role of the courts over local governments.

The Code provides for the lower courts to have jurisdiction over violations of local ordinances. Petitions for *Certiorari*, Declaratory Relief, *Mandamus*, Prohibition, and Injunction may likewise be lodged with the appropriate court.

72. *Supra* note 22, at 603.
73. Local Government Code, § 389(a).
74. *Id.* § 389 (b)(4).
75. *Id.* § 399.
76. Local Government Code of 1983, B.P. Blg. 337 (1983).

Further, courts have jurisdiction over local officials and their acts including malfeasance, nonfeasance and misfeasance in their assigned duties.

In particular, courts have jurisdiction over exercise of eminent domain,[77] removal of an elective official,[78] appeal over boundary disputes,[79] nullity of proposition adopted through initiative and referendum,[80] disputes over fees on weights and measures,[81] enforcement of collection of delinquent taxes and fees,[82] legality of tax ordinances,[83] appeal over protest of assessments,[84] and collection of real property tax,[85] among others.

B. Jurisprudence

On the topic, the Supreme Court has stated that the exercise of an authority or power by a local government may be judicially inquired into and corrected only if it is capricious, whimsical, unjust or unreasonable, or when there is denial of due process or a violation of any other constitutional guarantee.[86]

With regard to the internal acts of a *sanggunian*, these have been held to be subject to the jurisdiction of the courts. However, acts of the *sanggunian* of a local government that enjoys political autonomy, debatably, are beyond the domain of the courts, perhaps in much the same way as the internal acts of Congress are likewise beyond judicial scrutiny.[87]

Thus, as regards the execution of powers, courts may inquire into the actions (even omissions) of local governments. However, acts involving discretion or the exercise of wisdom, cannot be questioned or reversed by the courts.

Under the present set-up however, internal acts of local legislative councils such as voting, determination of quorum, preparation of minutes, attestation by the presiding officer, among others, may be properly raised and inquired into by courts.[88] Under existing legislation, judicial review is therefore allowed.

77. *Id.* § 16.
78. *Id.* § 60.
79. *Id.* § 119.
80. *Id.* § 127.
81. *Id.* § 181.
82. *Id.* § 183.
83. *Id.* § 187
84. *Id.* § 195.
85. *Id.* § 266.
86. Ortigas and Co. v. FEBTC, 94 SCRA 533 (1979).
87. *See* Limbona v. Mangelin, 170 SCRA 786 (1989).
88. *See generally* the Rules of Court of the Philippines (granting, *inter alia*, for *certiorari*, prohibition, and *mandamus* powers to courts).

Again, a constitutional policy on separation of powers may alter this set-up. In such case, courts cannot inquire into the internal acts of all local councils, not only councils of local governments that enjoy political autonomy but also the councils of those that enjoy administrative autonomy.

XII. Local Governments as Agents and Stewards

A. Dual Capacity, Two-Fold Function

Local governments exist in a dual capacity and their functions and powers are two-fold: public, governmental or political, and corporate, private or proprietary.

Governmental powers, which spring from sovereignty, are those exercised in administering the powers of the State and promoting the public welfare. They include various legislative, judicial, public and political powers. Proprietary powers, arising from its existence as legal persons and not as public agencies, are those exercised for the special benefit and advantage of the community. These powers include those that are ministerial, private and corporate.

As a consequence of this, local governments are considered as agents of both the State and the community. They perform a dual-agency role. A municipal corporation proper has a public character as regards the State at large, insofar as it is its agent in government; and it has a private character insofar as it functions to promote local necessities and provides for the convenience of its own community.[89]

B. Conflicting Supreme Court Stance

However, under the present set-up, the agency role of local governments with regard to the community is de-emphasized. There are occasions where the Supreme Court had chosen to adopt national solutions and programs to address local concerns rather than respecting and allowing local governments to provide local solutions and remedies. One such occasion was the setting-up of a casino in Cagayan de Oro City by the Philippine Amusement and Gaming Corporation. Despite two ordinances prohibiting and penalizing the maintenance of a casino enacted by the city council and popular opposition, the Supreme Court ruled in favor of the national government.[90]

However, there was one instance where a local government was allowed to prescribe a local solution. The Supreme Court in that case, declared that municipal authorities are in a better position to determine the evils sought to

89. City of Manila v. IAC, 179 SCRA 428 (1989); San Fernando v. Firme, 195 SCRA 692 (1991).

90. *See supra* note 63 and accompanying text.

be prevented by the inclusion or incorporation of particular provisions in enacting a particular statute and therefore, to pass the appropriate ordinance to attain the object of the law. Although the general law requires a majority vote in enacting ordinances, a local legislative council may provide for a higher requisite vote in amending specific ordinances.[91]

C. Agents and Stewards

As representatives of the people, local governments should be given substantive and effective latitude to protect the general welfare of their local constituents and prescribe local solutions to local problems. Local governments must not only be treated as agents but as stewards of the central government and the community. Local governments should be left to discharge their responsibilities with the central government interfering only if the steward's conduct (the local governments') is found to have been unsatisfactory[92] or unlawful.

XIII. Principle of Subsidiarity Pursued

At the local level, the principle of subsidiarity may be pursued. This principle was made prominent in the papal encyclical "*Quadragesimo Anno*" (1931). It assumes that social responsibility rests primarily on the individual, or that level of society (in this case, local governments) nearest to the individual person.

In another encyclical, the Catholic Church declared that the proper role of public authorities in economic affairs is to encourage, stimulate, regulate, supplement and complement — not replace — individual efforts. It also opined that public authorities may do so by the provision of regional aid by central governments.[93] The policy therefore facilitates and does not stifle initiative. Local elective officials, not national government officers, are in a better position to make and implement local choices. This policy will be more in keeping with the spirit of local autonomy.

XIV. Advancing Democratization is Promoting Autonomy

Democracy and decentralization as operative principles of local autonomy cannot be pursued separately. They are integral parts of one whole, one policy. The Supreme Court has had an occasion to show the relationship between these two principles. It has declared that the value of local governments as institutions of democracy is measured by the degree of local autonomy they enjoy. It further articulated its view that people may establish a system of free

91. Casino v. CA, 204 SCRA 449 (1991).

92. Agranoff, *supra* note 5, at 7.

93. *Supra* note 1, at 29.

government, but without the spirit of municipal institutions, it cannot have the spirit of liberty.[94]

A. *Demonopolization*

Democratization must be coupled with "demonopolization." Powers of central government must continue to be devolved and de-concentrated to sub-national governments in order to create an environment where democracy will further thrive. Exercise of popular initiatives by citizens, non-governmental and people's organizations should not be trivialized[95] but should, however, be given premium at the local government level.

B. *Venues for Participation*

Venues for participation outlined in the 1991 Local Government Code must be fully implemented. Local special bodies must be convened, their policies transformed to municipal policies, and participation of popular organizations ensured. The system for local initiative and referendum must be developed and the resources for their eventuality must be allocated. Local policies on public accountabilities through access, genuine public hearings and consultations, recall, and discipline of erring elective and appointive officials must be reinforced and operationalized. Independence of non-governmental, civic, business and people's organizations must be protected while partnering opportunities with local authorities should be harnessed. Finally, the constitutional mandate of having sectoral representation in local legislative councils must be institutionalized by legislation.

C. *"Local Authorities"*

The meaning of "local authorities" may be expanded to include not only the local government and its formal structure, but also the citizens and the community that the former ought to serve. For in fact, local governments are only agents, representatives, and stewards, with the people themselves as principals. The act of decision-making, policy formulation, development, planning and mobilization of resources, must therefore be shared with citizens or at the very least be checked and corrected by them.

XV. Local Governments Enjoy Fiscal Autonomy

Political organizations, such as local governments entrusted with a wide range of duties and responsibilities, cannot function effectively without financial resources. Fiscal autonomy therefore is necessary for local governments to effectively serve their principals *i.e.* the State and the community.

94. San Juan v. CSC, 196 SCRA 69 (1991).

95. Garcia v. Comelec, 237 SCRA 279 (1994).

A. *Constitution*

While the Constitution specifically grants fiscal autonomy only to the Supreme Court and the Constitutional Commissions,[96] local governments also enjoy fiscal autonomy. This may be implied from Article X of the Constitution:

> *Section 5.* Each local government shall have the power to create its own sources of revenues and to levy taxes, and charges subject to such guidelines and limitations as Congress may provide, consistent with the basic policy of local autonomy. Such taxes, fees, and charges shall accrue exclusively to the local governments.
>
> *Section 6.* Local governments shall have a just share, as determined by law, in the national taxes which shall be automatically released to them.
>
> *Section 7.* Local governments shall be entitled to an equitable share in the proceeds of the utilization and development of the national wealth within their respective areas, in the manner provided by law, including sharing the same with the inhabitants by way of direct benefits.
>
> *Section 13.* Local governments may group themselves, consolidate or coordinate their efforts, services, and resources for purposes commonly beneficial to them in accordance with law.

B. *Jurisprudence*

Fiscal autonomy, in the light of local governments, has likewise been defined by the Supreme Court. "Fiscal autonomy means that local governments have the power to create their own sources of revenue in addition to their equitable share in the national taxes released by the national government, as well as the power to allocate their resources in accordance with their own priorities."[97] Fiscal autonomy therefore, covers two local government powers: the generation of funds and the use of these funds.

C. *Vested and Constitutional Right Vis-à-vis Congressional Control*

Thus, the power to tax or the power to create sources of revenue, the right to a share in national taxes and national wealth, and the prerogative to enter into joint undertakings and share resources, may be exercised by local governments not by mere delegation of authority by Congress, but pursuant to the direct authority conferred by the Constitution.[98] In this regard, any doubt involving fiscal powers should be resolved in favor of local governments. In fact, the Supreme Court declared that in interpreting statutory provisions on municipal fiscal powers, doubts will have to be resolved in favor of municipal corporations.[99]

96. PHIL. CONST. art. VIII, §3; art. IX, §5.

97. Pimentel v. Aguirre, GR No. 132988, July 19, 2000.

98. Mactan Cebu International Airport Authority v. Marcos, 261 SCRA 667 (1996).

99. San Pablo v. Reyes, 305 SCRA 353 (1999).

Fiscal autonomy is therefore a vested and constitutional right of local governments. Under the present set-up, the power to tax, and the power to raise revenues and shares in national taxes and national wealth, are not gifts, dole-outs, or forms of assistance from the National Government. The above-cited constitutional mandates cannot be taken away, effectively reduced, or diminished by Congress. Likewise, executive orders and issuances must be consistent with said mandate. The President, absent a valid law authorizing him/her to do so, cannot cause the impoundment of funds and revenues automatically earmarked for local governments. Further, when there are no valid legislative restrictions, no such restrictions may be imposed by the National Government.[100]

However, this does not give Congress absolute control over local funds. Any statutory limitations that the Congress may wish to enact upon the taxing powers of local governments must be consistent with local autonomy. The share of local governments in the national taxes must be just. Such share must be automatic and not subject to any lien or holdback. Congress cannot impose limitations or pre-conditions to the release. The share in the proceeds of the utilization and development of the national wealth of local governments must be equitable. These are limitations over Congressional control enshrined in the Constitution itself.

CONCLUSION

The author does not seek to espouse the adoption of a federal system in the Philippine context. However, the distinct advantages of granting autonomy to local governments, whether it be under the unitary system or the federal system, cannot be overlooked. As discussed above, the grant of autonomy to the local governments is premised on the conception that the people will best be served by local officials who are in the foremost position to know their particular and special needs, and who are also best equipped to address them in the most efficient and expedient manner.

For this reason alone, the author believes that such grant of local autonomy having been enshrined in the 1987 Constitution is a step in the right direction. Sadly, it seems that ten years is not enough. Despite the passage of the 1991 Local Government Code pursuant to the constitutional grant of local autonomy, Philippine local governments have yet to realize the full potential and extent of this power.

To date, there is still no operational and universally accepted definition of local autonomy. This deficiency renders the constitutional grant almost nugatory. To make things worse, since January 1, 1992, when the Code took effect, local autonomy and local governments have been the object of several

100. Alberto C. Agra, Local and Fiscal Autonomy of Local Governments (1999) (unpublished essay) (on file with author).

policy assaults. Instead of augmenting local autonomy, the national government has enacted policies that run counter to local autonomy, or are inconsistent with each other. In effect, these various executive issuances tend to push governance towards centralization rather than decentralization and devolution. The step in the right direction taken by the Constitutional grant has been effectively neutralized by this centrist trend. The challenge now lies with the advocates of local autonomy to work together and push for authentic local autonomy as envisioned by the framers of the Constitution.