Supervision Over Local Governments and Local Officials

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THE AUTHORITY OF THE PRESIDENT OVER LOCAL OFFICIALS *

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The Constitution of the Philippines has invested the President with vast powers. But as they affect certain areas, there is need for defining them with some degree of accuracy. Thus doubt has been insistently expressed, on the nature and extent of the President's power over the administrative officials of the subdivisions of the Philippine Government. As a matter of fact, the decisions of our Supreme Court so far handed down in this field seem to lend force to the assumption, if not the interpretation, that the President's power over them is strictly limited, so limited that it goes no farther than mere supervision in most cases. But these judicial pronouncements are neither clearly definite nor sufficiently unequivocal.

The question affecting this Presidential authority has been of vast political significance. At bottom it has an intimate relation to the legal basis of the executive position in the governmental system established by the Constitution. The uncertainty or inadequacy of the answers that judicial decisions have so far seemed to have given has been a source of almost endless embarrassments to several Presidents. This has specially been the case when the exercise of Presidential power over local officials has taken place in an atmosphere surcharged with partisan political squabbles. Hence an inquiry into the nature of this particular authority of the President is not only of legal but also of practical value.

When we speak of *subdivisions* of the Philippine Government, we refer to the governments of provinces, cities,

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and municipalities. The Constitution itself makes use of this term when it refers to these entities, at times interchanging them. Limiting our discussion to this specific subject, the questions that are presently pertinent are: How much administrative power does the President have over the officers of these subdivisions? What congressional intervention is necessary or permissible in defining the relationship between the President and these officers, if any intervention is at all needed under the Constitution?

To arrive at the answers to these questions, an analysis of the position and powers of the President as stated in specific provisions of our Constitution is essential. These provisions run as follows:

(a) "The executive power shall be vested in a President of the Philippines." (Art. VII, sec. 1)

(b) "The President shall have control of all executive departments, bureaus, or offices, exercise general supervision over all local governments as may be provided by law and take care that the laws be faithfully executed." (Art. VII, sec. 10, par. 1).

These constitutional provisions are intended to establish a highly centralized system of government for the Philippines. The provision that "the executive power shall be vested in a President of the Philippines" places solely in the hands of the President complete control of all the executive functions of the government except in those cases where the Constitution expressly provides otherwise. It conveys the idea that the President is *the executive*. He is not merely the *chief executive* of the government, a term which simply describes one who is the first among equals. He is the sole head, and all the other executive officials are merely his subordinates and agents rather than his equals.

How does our President compare with governors of States of the American Union or with the President of the United States in this respect? Let us take first the case of

the State government. In that organization, there are other high executive officials besides the State governor who are invested with executive functions that are not subject to the supervision or control of the governor. The Supreme Court of the Philippines in the case of *Severino v. Governor-General*[1] had occasion to speak of the position of the Governor-General, the predecessor of the present President of the Philippines, and that of the governor of a State of the United States. The Court drew the comparison of the two officers in this language:

"*Governors of States in the Union are not the 'executives but are only the 'chief executives.'* All State officials associated with the governor, it may be said as a general rule are, both in law and in fact, his colleagues, not his agents nor even his subordinates . . . They are not given him as advisers; on the contrary they are coordinated with him. As a general rule he has no power to suspend or remove them. It is true that in a few of the States the governors have power to appoint certain high officials, but they can not be removed for administrative reasons. These are exceptions to the general rule. The duties of these officials are prescribed by constitutional provisions or by the governor. The actual execution of a great many of the laws does not lie with the governors, but with the local officers who are chosen by the people in the towns and counties and 'bound to the central authorities of the States by no real bonds of responsibility.' In most of the States there is a significant distinction between the State and local officials, such as county and city officials over whom the governors have very little, if any, control; *while in this country the Insular and provincial executive officials are bound to the Governor-General by strong bonds of responsibility. So we conclude that the powers, duties, and responsibilities conferred upon the Governor-General are far more comprehensive than those conferred upon State governors.*" (Italics supplied.)

In reading the foregoing passage let us again remember that the President of the Philippines is virtually the successor of the Governor-General, having practically all the powers and duties of the latter. This circumstance

[1] 16 Phil. 366, 386.

gives us a good idea of the difference between the position and powers of governor of States of the American Union, on the one hand, and the place and authority of the President of the Philippines as the head of the executive department and of all administrative officials in both the central and the local governments, on the other.

This position of executive and administrative supremacy of the President as defined in the Constitution is more particularly explained by the Supreme Court in the case of *Villena v. Secretary of Interior*[2] in the following terms:

"The first section of Article VII of the Constitution, dealing with Executive Department, begins with the enunciation of the principle that 'The executive power shall be vested in a President of the Philippines.' This means that the President of the Philippines is the Executive of the Government of the Philippines, and no other. The heads of the executive departments occupy political positions and hold office in an advisory capacity, and, in the language of Thomas Jefferson, 'should be of the President's bosom confidence' (7 Writings, Ford ed., 498), and in the language of Attorney-General Cushing (7 Op., Attorney General, 453), 'are subject to the direction of the President.' Without minimizing the importance of the heads of the various departments, their personality is in reality but the projection of that of the President."

The power of the President under the same provisions of the Constitution has also been fully discussed in *Planas v. Gil*[3] in which the Court explained the significance of the President's functions and duties under paragraph 1, Section 10, Article VII of the Constitution which says *inter alia* that the President shall "take care that the laws be faithfully executed." With respect to this provision the Court said that "in the fulfillment of this duty which he cannot evade, he is granted specific and express powers and functions. (Art. VII, Sec. 11). In addition to these

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[2] 67 Phl. 451, 464.
[3] 67 Phil. 62, 76.

specific and express powers and functions, he may also exercise those necessarily implied and included in them. (Myers vs. United States (1926), 272 U. S., 52; 71 Law. ed., 160; 47 Sup. Ct. Rep. 21; Willoughby, Constitution of the United States, p. 139.) *The National Assembly may not enact laws which either expressly or impliedly diminish the authority conferred upon the President by the Constitution.*" (Italics supplied).

The foregoing analysis merely pinpoints the obvious, namely that the President's powers are those expressly enumerated in the Constitution plus those which may be fairly implied from them. His investigatory powers may be implied from these provisions and from the provisions of Section 11 (1), Article VII, which says: "The President shall have control of all the executive departments, bureaus, or offices." Statutory evidence of this authority to investigate is Section 64 (c) of the Revised Administrative Code of 1917 which grants the President the following power: "To order, when in his opinion the good of the public service so requires, an investigation of any action or the conduct of any person in the Government service, and in connection therewith to designate the official, committee, or person by whom such investigation shall be conducted."

In the case of *Planas v. Gil*, it was held that by virtue of this statutory provision the President may order an investigation of a local official *for causes other than disloyalty, dishonesty, oppression, misconduct, or maladministration in office.* Planas, who was a woman councilor of the City of Manila, was ordered investigated by President Quezon for uttering severe criticism against him. She questioned the President's authority to order her investigation. In resolving this point, the Court said that on the assumption that the councilor's charge which gave rise to the investigation "is not one of the grounds provided by law for which the petitioner may be investigated adminis-

tratively, (Sec. 2078 Rev. Adm. Code) there is weight in the argument that the investigation could still be in order for no other purpose than to cause a full and honest disclosure of all the facts so that, if found proper and justified, appropriate action may be taken against the parties alleged to have been guilty of the illegal acts charged."

Thus under the decisions of the Court in the cases of *Villena v. Secretary of Interior* and *Planas v. Gil*, the authority of the President to investigate and to suspend local officials, whether of a city or of a municipality, has been fully established. But as may be seen later, the President's investigatory and disciplinary power really rests on a much stronger basis than on what was declared in these cases.

However, even the authority of the *Planas* and *Villena* decisions no longer offers a safe and sure guide. For in a much newer case, the case of *Lacson v. Roque*,[4] the Supreme Court has declared that the President may not suspend a local official for more than 30 days. But the question has been raised: How good is the conclusion of the Court in this case in so far as it sets limits on the President's authority over city or municipal officials? One thing appears certain, and that is that the authorities relied upon by the majority opinion of the Court in *Lacson v. Roque* respecting removal and suspension or regarding the President's power over municipal officials could not be properly made applicable in this jurisdiction. They refer to the powers of State governors; and as has been stated correctly in the case of *Severino v. Governor-General*, the governor or chief executive of a State of the American Union is not the exact counterpart of the President of the Philippines in regard to the character and scope of his powers, functions, and privileges. The concentration of executive and administrative powers in our President is

[4] 49 Off. Gaz. 95.

something unique in the Constitution of the Philippines. In the sense that it makes him an all-powerful head of state by constitutional provision, it gives him practically dictatorial powers for the duration of his term of office. Nowhere under the American flag is there any executive head with an equal measure of authority. In many cases, the power of a State governor over administrative and local officials is so limited that he may not remove even his own appointees.[5]

It is thus quite obvious that in relying upon decisions of American State courts and upon works of certain American commentators [6] referring to limitations of the authority of State governors over municipal officials, our Supreme Court has inadvertently overlooked this fact in its more recent decisions. Consequently, the principle established in *Lacson v. Roque* on the basis of the authorities therein cited needs a radical revision in order that the provisions of our Constitution on the powers of the President over municipal officials may be more faithfully observed.

Then, again, another consideration should not be overlooked. In the different States of the United States the power and position of municipal officials in towns and cities rest on the concept of *local self-government.* The system of local self-government virtually establishes what is often termed as an *imperium in imperio.* American municipalities are generally autonomous bodies. Each of them possesses what is appropriately termed *local self-government,* which, of course, is not the equivalent of *local government.* The two concepts do not coincide. As correctly pointed out by McQuillin:

"Local government embraces the agencies and functions of public regulation established within an area less than that of a state, or organs of government for subdivisions or localities of the state.

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[5] Severino v. Governor-General, 16 Phil. 366, 386-387.

[6] McQuillin, Municipal Corporations; Corpus Juris Secundum; American Jurisprudence.

The officers who administer local affairs are usually chosen from and by the locality, but that is not always so. Therefore local government does not always mean government of, or by, localities. The term *'local government'* and *'local self-government'* are not synonymous. (Italics supplied).

"Municipal home rule in its broadest sense means the power of local self-government. Any power of local self-government, therefore, in whatever manner arising, whether inherent as sometimes claimed, or conferred or recognized by constitutional or statutory grant, or powers emanating from the people of the local community themselves and set forth in a charter authorized by the state organic law, would be included. The phrase is usually associated with powers vested in cities and towns by constitutional or statutory provisions, particularly the former, and more especially organic authorization to the local inhabitants to frame and adopt their own municipal charters. Rights thus emanating by constitutional grant are viewed as constitutional rights protected from invasion or interference by the people of the state in their representative legislative capacity. Cities and towns having constitutional freeholders or home rule charters, in theory at least, derive their power of local self-government from the state constitution."[7]

On the other hand, the concept referred to and recognized by our Constitution is merely *local government*, not *local self-government*. As explained in *Planas v. Gil*, the reason for this is that no agreement having been reached in the Constitutional Convention on giving our provinces and municipalities the right of local self-government, the Constitutional Convention adopted a sort of "compromise resulting from the conflict of views in that body, mainly between the historical view which recognized the right of local self-government and the legal theory which sanctions the possession by the state of absolute control over local governments. The result was the recognition of the power of supervision and all its implications and the rejection of what otherwise would be an *imperium in imperio* to the detriment of a strong national government." Hence, decisions of American courts on the exemption of municipal

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[7] McQuillin, Municipal Corporations, Third ed., sec. 1.93, p. 340.

governments from the control of the central government may not be indiscriminately followed in this jurisdiction.

The position and powers of the President of the Philippines are approximately comparable to those of the President of the United States. But as will soon be demonstrated, the President of the Philippines is invested with even more legal powers than the President of the United States specially in matters of administration as distinguished from those which are technically political and executive affairs. The Constitution of the United States does not make the President of the United States the sole head of the federal administrative organization. It makes him merely the sole political and executive head. The result is that many administrative officers or agencies of the American Federal Government are independent of the authority of the President. Unless Congress places them under the President, they are outside his control. As Lindsay Rogers states: "Throughout much of the administrative field, the President is unable to initiate or to prevent. The heads of departments and independent establishments have authority which is theirs to use without the necessity of securing presidential approval." [8]

The constitutional position of the President of the Philippines is quite different. For our Constitution expressly makes him the sole head of the entire administrative machinery of the Philippine Government. Thus the President of the Philippines plays a dual constitutional role: That of executive and that of administrative head of the government. As executive head, his powers are defined in specific constitutional provisions which, in turn, emanate from the constitutional provision which says: "The executive power shall be vested in a President of the Philippines." As administrative head, his powers directly flow from this provision: "The President shall

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[8] Quoted in Herring, *Presidential Leadership*, p. 111.

have control of all the executive departments, bureaus, or offices." This provision finds no counterpart in the Constitution of the United States. Consequently, the United States Supreme Court held in the case of *Kendall v. United States* [9] that the President of the United States does not have any exclusive administrative direction over every department and branch of the United States federal government. More specifically the Court said on this point:

"The executive power is vested in a President; and in so far as his powers are derived from the Constitution he is beyond the reach of any other department, except in the mode prescribed by the Constitution, through the impeaching power. But it by no means follows that every officer in every branch of that department is under the exclusive direction of the President. Such a principle, we apprehend, is not, and certainly can not be claimed by the President. There are certain political duties imposed upon many officers in the executive department, the discharge of which is under the direction of the President. But it would be an alarming doctrine, that Congress can not impose upon any executive officer any duty they may think proper, which is not repugnant to any rights secured and protected by the Constitution; and in such cases, the duty and responsibility grow out of and are subject to the control of the law, and not to the direction of the President. And this is emphatically the case, where the duty enjoined is of a mere ministerial character."

To clarify this point: Under the Constitution of the United States, the line of administrative control or direction runs directly from Congress to the administrative departments and offices of the American federal government. Hence, it is Congress that decides how and by whom the departments and other offices of the United States federal government should be administered and directed. If Congress should desire to make the President of the United States the head of the administrative department, it may do so. But if Congress should not so desire, it is absolutely free to give that authority to any other official than the

[9] Pet. 552.

President. The American Constitution, therefore, established what is known as a system of decentralized administration. Experts have criticized this system as inefficient and even conducive to irresponsibility. But we shall deal with this subject more extensively later.

The weakness of the President of the United States in matters of administration has been discussed by W. F. Willoughby, a well-known writer on administration; and in the course of his discussion he says:

"From the purely constitutional standpoint he, thus, is not head of the administration. Even the heads of the great executive departments constituting his cabinet are not his subordinates in the sense that he has legal authority to give orders to them in respect to the performance of their duties. From the legal standpoint his authority in respect to them is executive in that, it consists merely of his right to take such steps as may be necessary to see that such orders as are given to them by law are duly enforced. Substantially the same condition exists in the individual states in respect to the constitutional status and powers of the governors. To State this condition in another way, the line of authority in both the national and state governments runs directly from the administrative services to the legislature, except where the latter has expressly provided otherwise."[10]

On the other hand, under the Constitution of the Philippines, the line of administrative control runs from the President of the Philippines directly to all the administrative offices and departments of the Philippine government. The Congress of the Philippines, unlike the American Congress, has no constitutional authority to vest, independently of the President, the power of supervision and direction over all or any of the administrative offices and departments of the Philippine government in any other official. Thus in the field of administration, the Constitution has placed the President of the Philip-

[10] W. F. Willoughby, *Principles of Public Administration*, pp. 36-37.

pines in a position of supremacy. It has established a highly centralized system of administration upon the pattern of a pyramid with the President at its apex.

It is thus evident that by virtue of the position of the President as sole head of the administration and because of the pattern of the Philippine administrative system, which includes both the national government and the government of all subdivisions, he has the authority and the duty to take disciplinary action over all administrative officers, appointive or elective, national or local. He may place them under investigation, and suspend and remove them for cause. This is unavoidable, his position not being merely regulatory or advisory in character. The Constitution is clear on this point: "The President shall have the control of all executive departments, bureaus, or offices." These terms are comprehensive enough to embrace the entire field of administration. They leave no room for independent offices outside of what the Constitution might have provided.

As the constitutional head of the administration, the President stands outside the authority of Congress. The power of control vested in him by the Constitution is intended to enable him to manage an effective centralized administrative system. It is intended to enable him to fix a uniform standard of administrative efficiency which he cannot establish unless he has disciplinary authority over all administrative officials and employees. Obviously, the power of control loses its meaning if shorn of full disciplinary authority. No implementing congressional statutes are needed to enable him to exercise this power of control.

Some emphasis need be placed on this last statement. For the constitutional provision would be meaningless unless it is self-executory. If we were to assume that Congress must first pass a law defining how the President should control administrative officers, on what occasions he should exercise his power of control, for what reasons

administrative officials should be controlled by him, we would be depriving the President of discretion and judgment in the use of a power granted to him exclusively by our Constitution. This may not be validly done. The principle of separation of powers read in connection with the express provision of the Constitution forbids such assumption.

If it should be claimed that this interpretation of the Constitution be violative of the Rule of Law, or the principle of government of laws and not of men, the answer is that in administraitve cases the rights to life, liberty, and property are not essentially involved, and the Constitution recognizes this qualification. In the classic language of the United States Supreme Court, speaking through Justice Mathews, "it is, indeed, quite true that there must be lodged somewhere and in some person or body the authority of final decision, and in many cases of mere administration the responsibility is purely political, no appeal lying except to the ultimate tribunal of public judgment, exercised either in the pressure of opinion or by means of the suffrage." [11]

It is, therefore, evident that the President does no more than exercise his constitutional power as the supreme administrative head when, for example, he suspends a municipal or city mayor from his office pending investigation of his conduct as a subordinate administrative officer accused of violating a national law. It would be an illegal invasion of this discretionary authority for Congress or the courts to interfere with it by limiting the duration of the suspension of a subordinate official to 30 days or to any other length of time. As investigation ordered by the President may last a week, 6 months, or a year, depending upon the difficulty or ease of securing pertinent information or upon the complexity of the case, the President might deem an order of suspension necessary during the

[11] Yick Wo v. Hopkins, 118 U.S. 356.

progress of the investigation; or he might think it proper to punish him with further suspension after the investigation is concluded.

No subordinate administrative official, such as a provincial governor or a city mayor, may legally complain that a lengthy investigation and suspension deprive him of any right of property, for a public office is not property. It is not created nor obtained by contract. A public office is a public trust. If, in the opinion of the President as the constitutional head of the administration, a provincial or municipal official is not worthy of public confidence and trust, neither Congress nor the courts have any authority to compel the President to adopt a contrary attitude. The mere fact that the position held by the official is elective does not give him any more rights nor does it lessen his duties under the Constitution and the laws than if the position had been appointive. Election and appointment are merely two different methods of filling a public office. One method gives no more legal and constitutional rights to the holder of an office than the other method. There may be political differences but such differences have no legal consequences apart from what may be provided by the laws creating the office.

It is of course true that in the case of a governor of a province or a mayor of municipality, the official's right to hold the office arises not from an act of appointment but from the fact of his election. But his right to hold the office is subject to the constitutional authority granted by the Constitution to the President to supervise and control the administration. By definition control is a power of the highest order. It presupposes the right of initiative on the part of the official possessing that authority as well as the authority of final decision on questions and matters within his jurisdiction. The President's order suspending such officials being purely administrative in nature, res-

ponsibility for it lies only in "the ultimate tribunal of public judgment."

It is true that the Administrative Code in its Section 64, paragraph (b) seems to limit the power of the President to remove in these terms:

> "To remove officials from office conformably to law and to declare vacant the offices held by such removed officials. For disloyalty to the Republic of the Philippines, the President of the Philippines may at any time remove a person from any position of trust or authority under the Government of the Philippines."

It would seem that under this provision disloyalty is the only statutory ground for the removal of a public officer by the President. But the context of this section is sufficient to nullify this apparent restriction. Let us note that the provision starts with a statement of *a general power given to the President* to remove officials from office conformably to law and to declare vacant the office held by such removed officials. This is a broad authority. Disloyalty is just one of the causes which in a sense may be considered as merely suggested by Congress. The United States Supreme Court in the famous case of *Springer v. Government of the Philippines*,[12] declared that the rule of *inclusio unius, exclusio alterius* does not apply in the case where a statute grants a general power and also a specific one which may be included among those comprehended in the general grant.

But there is another important consideration: This provision of the Administrative Code (Sec. 64, par. b) may not be considered an original grant of authority to the President, because the President has already that authority under express provisions of the Constitution. The constitutional power of the President to control administrative officials must include, *by necessary implication*, the power to remove. In any language, control over

[12] 277 U. S. 189, 48 S. Ct. 480, 484.

subordinate officials should comprehend the power of removal, otherwise it would be something else, not control. Therefore, this provision of the Administrative Code must necessarily be considered as merely *declaratory* of the constitutional authority of the President,—a recognition of his position as supreme head of the administration. The contrary idea would do violence to the purpose of the fundamental law.

It would be absurd to assume that disloyalty to the Republic could be the only cause of administrative inefficiency. Experience has shown many other causes. Insubordination, negligence, drunkenness, immorality, disrespect to law and order, and other forms of misconduct on the part of administrative officers impair the efficiency of the administration without necessarily involving any question of disloyalty to the Republic. To ignore these causes of inefficiency would merely place the President in a position of responsibility without power. The Constitution could not have contemplated such condition when it has precisely vested in the President the *power of control* over all departments and offices of the government. To so limit the disciplinary authority of the President over administrative officials would proportionately limit this broad power. Neither the letter nor the spirit of the Constitution warrants such diminution.

The discretionary nature of the power of the President is clearly manifested in another provision of the Administrative Code which mentions among the powers of the President the following: "To order, *when in his opinion* the good of the public service so requires, an investigation of any action or the conduct of any person in the Government service, and in connection therewith to designate the official, committee, or person by whom such investigation shall be conducted." [13] This statutory provision should

[13] Sec. 64 (c).

likewise be understood as merely declaratory of a power which the Constitution has itself given to the President when it vests in him the authority to control all the executive departments, bureaus, or offices of the government. The words *"when in his opinion the good of the public service so requires"* leave no doubt about the discretionary nature of the authority. It is implicit in this investigatory power the right of the President to suspend the official investigated if in his opinion such step is required for a fair and unimpeded investigation.

But now we come to a point which has not yet been squarely met and fully explained in any decision of our Supreme Court. It concerns the meaning and scope of the following provision of the Constitution: "The President shall . . . exercise general supervision over all local governments as may be provided by law."

This constitutional provision indeed involves two restrictions on the power of the President. The first refers to the limitation of the President's power over local governments to mere general supervision, not control; and the second is that such general supervision shall be exercised in accordance with law. Let us consider this constitutional provision carefully.

A thorough understanding of its real meaning is not possible unless the provision is considered in relation to the President's power of the control over the executive departments, bureaus, or offices. The provision in full reads as follows: "The President shall have control of all the executive departments, bureaus, or offices, exercise general supervision over all local governments as may be provided by law." [14]

Let us note carefully how this provision distinctly classifies the functions of the President into two separate groups. In the first, which we have previously discussed, the President is given control over all executive offices.

[14] Constitution of the Philippines, Sec. 10 (1).

In the second, he is to exercise general supervision over all local governments as may be provided by law. In the first, the Constitution itself directly gives him the power of control. It says, "The President shall have control." As previously indicated, the President does not have to wait for any organ, officer, or agency to give him the power to control all executive offices. The terms of the grant of this power are direct and unequivocal. While in the second, the exercise of general supervision over all local governments *as may be provided by law* implies the intervention of Congress. The implication is that while general supervision shall be exercised by the President, the control over all local governments belong to Congress. Here the Constitution merely follows the general practice and tradition of the States in the American Union of placing local governments under legislative control.

Legislative control over local governments is the invariable rule except when the contrary is expressly provided in the constitution; but this has not been done under the Constitution of the Philippines. Consequently, the Philippine Congress possesses full authority to create or to dissolve local governments. But having once created local governments, Congress has to give to the President the power of supervising them. This is the maximum authority the President may exercise over *local governments*. Congress itself may not place local governments under the control of the President, even if it wants to, for the Constitution has laid down the exact measure of power that the President may exercise over them. As summarized in McQuillin's work on Municipal Corporations: "In the absence of any restriction in the constitution, express or implied, the general legal doctrine, supported by an unbroken line of authorities, is that *political powers conferred upon municipal corporations for local government* are not vested rights as against the state, and the legislature has absolute power to change, modify, or destroy them at pleasure." [15] (Italics supplied).

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[15] 2 McQuillin, Municipal Corporations, 3rd ed., sec. 4.05, p. 13.

Note the care with which the foregoing summarization is expressed: "political powers conferred upon municipal corporations for *local government.*" This careful particularization of powers conferred upon municipal corporations for *local government* brings out the idea that there are other powers conferred upon municipal corporations not for local government but for the performance of general governmental functions. This is but the consequence of the dual nature of a municipal corporation. A municipal corporation is in part an agent of the state and, as such, it is a unit of the central government; and in part it is an organ of local government to administer the local affairs..[16] These two aspects of a municipal corporation, such as a province, a city, or a municipality, has been so often recognized and explained in decisions of American and Philippine courts that it is superfluous to discuss the principle at length.

As to when an officer of a municipal corporation act as an agent of the state and when he acts as an officer of the local government the answer depends upon the nature of the function he performs. Thus McQuillin explains clearly this subject:

"Officers of a municipal corporation may be classified as (1) those whose functions concern the whole state or its people generally, although territorially restrained, and (2) those whose powers and duties relate exclusively to matters of purely local concern. Ordinarily, where not otherwise provided by the constitution of the state, the legislature may control municipal officers whose duties pertain to the state at large or the general public, but may not, subject to certain exceptions, interfere with or regulate officers whose functions pertain exclusively to the municipality of which they are officers. However, the same officer may, in the exercise of some of his powers, act as a state officer and in the exercise of other powers, act solely as a purely municipal officer, so far as legislative control is concerned. Generally, in the absence

[16] Mendoza v. De Leon, 33 Phil. 508; Vilas v. City of Manila, 42 Phil. 953.

of special constitutional provision, all officers whose duties pertain to the exercise of the police powers of the state, are in that sense state officers, and under the control of the legislature, even though they are officers of a municipality and charged with the enforcement of the local police regulations of the municipality.

"Conflicting decision as to legislative control of officers of a municipality often may be reconciled, at least in part, by distinguishing between the two types of officers, a matter closely connected with the distinction between state and municipal affairs of a municipal corporation, so far as legislative control is concerned, which has already been considered in this chapter. The one class of officers is often referred to as state officers and the other as municipal officers. The distinction between the two rests on the extent of their powers and the nature of their duties, rather than the time and manner of election or appointment."[17]

The power of the President over local governments under the Constitution may be well understood and correctly defined if this dual nature of a municipal corporation is borne in mind. Unfortunately, this particular point has been overlooked in all discussions of this question.

The Constitution explicitly declares that the President shall "exercise general supervision over *local governments* as provided by law." It should be carefully noted that the Constitution refers expressly to *local governments*. In this particular provision, the Constitution refrains from using the term municipal corporations or municipalities, provinces, and cities, or subdivisions of the government, all of these concepts being used in other provisions. Therefore, *it follows that the President's power of general supervision refers only to that aspect or phase of a municipal corporation pertaining to local government.* When the municipal corporation acts as an agent of the state, it acts as a unit or an organ of the central government, and consequently, it is subject to the *control* of the President.

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[17] 2 McQuillin, Municipal Corporations, 3rd Ed., sec. 4.115, p. 171-172.

It is the confusion of these two distinct categories of a municipal corporation that has caused a good deal of misunderstanding of the powers of the President of the Philippines over city, provincial, and municipal officers. By avoiding this obvious error, the field of authority vested in the President is rendered visible and clear. The only questions that need be asked in any given case are whether an act of a local official concerns the national government or whether it concerns exclusively local affairs. If it is the first, then the official is an agent of the national government regardless of his designation, whether that of city mayor, municipal councilor, or provincial governor; and, as such, he is under the control of the President. If, on the other hand, his act refers to purely local matters then he is merely an agent of local government. In this case, he is merely subject to the President's power of general supervision rather than to his power of control.

To disregard these two distinct categories of a municipal corporation would impair the unitary and centralized character of our governmental system. It would result in the creation of a haphazard decentralized administrative or governmental organization. It would produce confusion and would be violative of the Constitution which has precisely refrained from providing municipal autonomy or local self-government.

To summarize, the Constitution has established a highly centralized system of administration by vesting all executive authority and full control of all the administrative functions of the government in one officer,—the President of the Philippines. He is held solely responsible for the execution of the law and for all acts of administration. As the head of the administrative offices of the government, he is the constitutional *Major-Domo* of the nation directing the housekeeping functions of all the executive departments, bureaus, or offices of the government. It is his responsibility to see to it that all administrative officers faithfully perform their duties. This he cannot do unless he

has full control over them; and the Constitution has precisely placed this power in his hands to be directly exercised by him.

There is no parity in administrative authority between the President of the Philippines and the President of the United States. Much less is there such parity between the Philippine President and the governors of States. For this reason, it is not only dangerous but downright erroneous to indiscriminately make use of American decisions affecting questions of administrative regulation and control.

American municipalities largely enjoy local *self-government* either from tradition or by virtue of constitutional guaranties. This is the legal and factual basis of American decisions protecting State local officials against the power of the governor to remove or to suspend them. On the other hand, our Constitution has no guarantee to local self-government. It speaks only of *local governments*. Thus again any indiscriminate use of American decisions on the immunities of local officials from state control may only lead our courts into unwarranted conclusions.

The highly centralized character of our government unavoidably places all executive and administrative officers, including municipal, city, or provincial, under the control of the President as long as they exercise functions of a general nature. Presidential control over them is reduced to mere supervisory authority only in those cases when local officials perform functions restricted in its effect and validity to the jurisdiction of the city, municipality, or province. Any disturbance of this arrangement would be fatal to the system of administrative centralization.

THE POWER OF THE PRESIDENT OF THE PHILIPPINES OVER LOCAL GOVERNMENTS AND LOCAL OFFICIALS*

JUAN F. RIVERA **

At the outset it is important to note that the terms *local governments* and *local officials* do not have the same meaning and functions. This paper will attempt to point out that the power of the President of the Philippines over the former stems from a specific provision of the Constitution, whereas his power over the latter stems from one or more provisions of the same fundamental law, but definitely not from the provision from which he derives power over the local governments.

The *local governments* are the instrumentalities of the State through which its will and authority may be enforced in particular areas or *loci* which are relatively small parts of the national territory. These areas are the cells of the State. They have their respective "hearts" and "organs" indispensable to the accomplishment of their special functions. They may "grow throughout the ages" or "deform under the assaults of life." [1] Hence some kind of supervision, which includes a certain phase of control, is needed to insure the former and prevent the latter to happen.

The *local officials* are the persons authorized to administer their respective local governments. They are

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[1] Le Corbusier, *Concerning Town Planning* 11, 48 (1948).

men who "are fools (the dictionary says: autonomous, wise, reflective, reasoning, feeling); but men are not wise, reflective, or feeling, for they remember nothing, feel nothing, see nothing." [2] They come from the many, the people, who, as Woodrow Wilson observed, "are selfish, ignorant, timid, stubborn, or foolish . . . albeit there are hundreds who are wise." [3] Necessarily another kind of supervision, which includes a certain form of control distinct from that adverted to it in the preceding paragraph, is needed to prevent the local officials from causing the local governments to "lose their vital nature and degenerate into vast parasitic conurbation." [4]

The specific portion of the Constitution involved in this study is Section 10, paragraph 1, Article VII. It reads:

"The President shall have control of all the executive departments, bureaus, or offices, exercise general supervision over all local governments as may be provided by law, and take care that the laws be faithfully executed."

This constitutional provision, it will be noted, has three distinct parts, *viz.*:

First Part: *"The President shall have control of all the executive departments, bureaus, or offices, . . ."*

Second Part: *"The President shall . . . exercise general supervision over all local governments as may be provided by law, . . ."*

Third Part: *"The President shall . . . take care that the laws be faithfully executed."*

I shall attempt to explain each part and show the relation between one and the other. I will start with the second part for reasons which will presently be apparent.

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[2] *Ibid.*, p. 33.
[3] *The Study of Administration*, 2 *Pol. Sci. Q.* (1887); reprinted in 56 *Pol. Sci. Q.* 481 (1941).
[4] Corbusier, *op. cit.* supra note 1, at 48.

Legal Status of Local Governments

"The President shall . . . exercise general supervision over all local governments as may be provided by law, . . ." This implies a subordination of local governments to the National Government. Without such a provision, the subordination of the local governments will not exist under the Constitution but under a judge-made theory, as in the United States. Local governments in that country are considered subordinate bodies because of Chief Justice Dillon's dictum in *City of Clinton v. Cedar Rapids and Missouri R. R.*, which reads:

"Municipal corporations owe their origin to, and derive their power and rights wholly from, the legislature. It breathes into them the breath of life, without which they cannot exist. As it creates, so it may destroy. If it may destroy, it may abridge and control. Unless there is constitutional limitation on the right, the legislature might, by a single act, if we can suppose it capable of so great a folly and so great a wrong, sweep from existence all of the municipal corporations in the States, and the *corporations* could not prevent it. We know of no limitation on this right so far as the corporations themselves are concerned. They are so to phrase it, the mere *tenants at will* of the legislature."[5]

This view was followed by the West Virginia Supreme Court of Appeals in 1915 in the case of *Booten v. Pinson.* Speaking for the court, Mr. Justice Williams said:

"Municipalities are but political subdivisions of the state, created by the legislature for purposes of governmental convenience, deriving not only some, but all, of their powers from the legislature. They are mere creatures of the legislature, exercising certain delegated governmental functions which the legislature may revoke at will. In fact, public policy forbids the irrevocable dedication of governmental powers. The power to create implies the power to destroy."[6]

The subordinate status of municipalities as first judicially asserted by Chief Justice Dillon in 1868 was challenged three years later by Judge Cooley's historical view

[5] 24 Iowa 455, 475 (1868).
[6] 77 W. Va. 412 (1915).

of inherent rights of local self-government in the case of *People v. Hurlbut*,[7] followed by the state courts of Indiana, Kentucky and Texas.[8] Judge Cooley maintained that "the constitution has been adopted in view of a system of local government, well understood and tolerably uniform in character, existing from the very earliest settlement of the country, never for a moment suspended or displaced, and the continued existence of which is assumed," and that "the liberties of the people have generally been supposed to spring from, and be dependent upon, that system." He said further:

"It is not the accepted theory that the states have received delegations of power from independent towns; but the theory is, on the other hand, that the state governments precede the local, create the latter at discretion, and endow them with corporate life. But, historically, it is as difficult to prove this theory as it would be to demonstrate that the origin of government is in compact, or that title to propery comes from occupancy. The historical fact is, that local governments universally, in this country, were either simultaneous with, or preceded, the more central authority . . . The right in the state is a right, not to run and operate the machinery of local government, but to provide for and put it in motion. It corresponds to the authority which constitutional conventions sometimes find it needful to exercise, when they prescribe the agencies by means of which the new constitution they adopt is to be made to displace the old."

Evidently in furtherance of Judge Cooley's stand, Mr. Justice Poffenbarger, in his dissent in the *Booten* case, said:

"Assertions of inherent right . . . mean no more than that, as municipal corporations were known, at the date of the adoption of the Constitution, local self-government was an invariable attribute or element thereof, just as a piston and a steam chest are now known to be parts of steam engines, wheels necessary elements of wagons, and foundations essential parts of houses. In that sense, it was literally and indisputably inherent . . . . Legislatures are no older nor better defined, legally, historically, or scientifically, than

[7] 24 Mich. 44 (1671).
[8] Council of State Governments, *State-Local Relations* 141 (1949).

municipal corporations. Each has its vital and distinctive characteristics and functions. Each is an agency of the state. Neither is the state."

To date, the weight of authority in the United States denies the existence, in the absence of special constitutional provisions, of any inherent right of local self-government which is beyond legislative control. With us, a compromise view of the legal status of municipalities has been adopted by the framers of our Constitution. According to Mr. Justice Laurel in the case of *Planas v. Gil*:

" . . . the deliberations of the Constitutional Convention show that the grant of the supervisory authority to the Chief Executive in this regard was in the nature of a compromise resulting from the conflict of views in that body, mainly between the historical view which recognizes the right of local self-government (People ex rel. Le Roy v. Hurlbut [1871], 24 Mich., 44) and the legal theory which sanctions the possession by the state of absolute control over local governments (Booten v. Pinson, L.R.A. [N.S., 1917-A], 1244; 77 W. Va., 412 [1915]). The result was the recognition of the power of supervision and all its implications and the rejection of what otherwise would be an *imperium in imperio* to the detriment of a strong national government." [9]

This compromise view constitutionally protects the existence of the local governments as instrumentalities to administer local affairs and problems of the area within their respective boundaries. The Congress of the Philippines retains the power of political control over the local governments, but it cannot "sweep" them from existence and bring, as it had the power to do were it not for the constitutional provision adverted to, all the inhabitants and property "again" under the direct control of the State or central government in all their relations among themselves and with the State.[10] Neither can the Congress take away the local governments from the President of

[9] 67 Phil. 62, 78 (1939).

[10] *Cf.* Aguado v. City of Manila, 9 Phil. 513 (1908); Phil. Corp. Livestock Ass'n v. Earnshaw, 59 Phil. 129 (1933).

the Philippines as said constitutional provision grants him the power of general supervision over them. This brings us to a discussion of the meaning of the term "supervision" as used in the hereinbefore quoted provision of our Constitution.

Meaning of Supervision over Local Governments

From another standpoint, it may be said that the framers of the Constitution of the Philippines deliberately placed the local governments under the general supervision of the President owing to the unitary system of the Philippine Government they established. We have only *one government.* As defined in Section 2 of the Revised Administrative Code: " 'The Government of the Philippines' is a term which refers to the corporate governmental entity through which the functions of government are exercised throughout the Philippines, including, save as the contrary appears from the context; the various arms through which political authority is made effective in the Philippines, whether pertaining to the central Government or to the provincial or municipal branches or other form of local government." This unitary or centralized government has been adopted in this jurisdiction because, in the words of Delegate Jose M. Aruego, "The political traditions of the people had been for an integrated and centralized administrative system." [11] This system is similar at least in form, to the unitary system of government of England, France, and Italy. It is different from the American system. I will explain why we have borrowed from all these systems, the purpose being to show the nature of the duty of the President to exercise general supervision over the local governments.

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[11] I Aruego, *The Framing of the Philippine Constitution* 429 (1936).

Spain introduced here the highly centralized French system of local government administration.[12] In the words of Dr. David Rubio, curator of the Hispanic Room at the Library of the Congress of the United States and Professor of Spanish-American History at Catholic University, Washington, D. C.:

"As for the government of the Islands, the main change brought about by the Spaniards was the creation of a strong central regime. They did not abolish the existing local governments. It was not Spanish policy to trample underfoot and completely disregard existing native administration, no matter how poor it was. At the head of each barrio or local unit was a cabeza de barangay. As these minor barangays were grouped into larger units or towns, the former datus were elected captains and 'little governors.' Gradually the several social classes were suppressed."[13]

And according to Morga, all the islands were governed from Manila by means of *alcades-mayores, coregidores,* and lieutenants.[14] The Spanish Governor-General was the ex-officio president of all the ayuntamientos and the governors of the "civil" provinces were his representatives. Under his immediate orders was the *Secretaria del Gobierno General* who looked, among others, after all matters relating to provincial and municipal administration. This office was created in 1874. It may be said to be the equivalent of the present Executive Secretary who is also, under the immediate orders of the President of the Philippines, in charge of the existing city, provincial, and municipal governments. This Spanish (French) system is still

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[12] The French system of centralized local government, the second greatest contribution of France to the science of government (the first being the Civil Code), is found, with very little change, in Italy, Spain, Portugal, Belgium, Poland, Holland, Greece, and in the Balkan states. With various adaptations, it appears to be the framework of local government administration in the Far East, in the Near East, and in Latin America. See Munro, B., *The Government of Europe* 550 (1927).

[13] Spain in the Philippines, in *Philippines* Vol. 1, No. 2, p. 11 (Feb., 1941).

[14] Blair & Robertson, *The Philippine Islands* 1493-1898, 135-193 (1907).

in vogue in the Philippines, especially in the cities of Quezon City, Tagaytay, Dansalan, Calbayog, and Trece Martires; in all the municipal districts; also in the cities of Dagupan, Iligan, Baguio, Cavite, Davao, and Zamboanga. As in France, all the officials of the first four named cities and all the municipal districts and the majority of the officials of the remaining named cities are appointive. Being appointive, they are, like the prefects of France, the "image" of the appointing authority. Said Munro:

"To understand this curious combination of administration and bossism, it is necessary to bear in mind that Napoleon created the prefect in his own image. He desired to have, in every department, an underling on whom he could rely. These prefects were to be the doers of his will, not the keepers of his conscience. Naturally, when this system was geared to a republican scheme of government it jolted considerably, and it continuos to jolt. For the prefect is no longer the *missus dominicus* of an emperor whose precarious tenure of office depends on the caprice of the deputies."[15]

In the said areas we come within what Paul Deschane, a former President of France, declared: "We have a republic at the top, the empire at the base." [16] The fact is we have, as in France, a highly centralized system in which local governments are made generally dependent on decisions from Manila. As well observed by three authors on European government, " 'local administration' would thus be a more accurate description of the actual situation than the phrase 'local government'." [17]

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[15] *Id.*, at 556. To Napoleon may be attributed authorship of the centralized system of local government administration. It appears that France had a democratic and a decentralized system of local government in 1789 and 1790. Extensive powers were placed in the hands of locally selected executives. But "Napoleon completely overthrew this system, (however) and replaced it with a highly centralized, administrative hierarchy, headed in each department by a *prefect* who controlled the communes in the area as well as the department at large and was merely "advised" by nominated local bodies and officers" See Ranney, C. and Carter G., *The Major Foreign Powers* 444 (1950).

[16] Quoted by Ranney and Carter, *op. cit.*, at 444.

[17] Hill, N., Stoke, H., and Schneider, C., *The Background of European Governments* 243 (1951).

As practiced by the Fourth Republic of France, supervision over local governments is aimed to (1) recognize the existence of local government units,[18] which are free to administer themselves through councils elected by universal suffrage;[19] (2) coordinate the activities of the state officials in the administration of the local governments by a delegate of the Government designated by the Cabinet;[20] and (3) to extend municipal liberties and determine "the conditions under which local service of central administrations will function in order to bring the administration closer to the people." [21]

Properly implemented, the system of local government administration contemplated by our Constitution should be or ought to be that as now practiced by the Fourth Republic of France or that developed in England. Central supervision over local governments in England is administrative in character and is extremely flexible. The laws merely provide that the local authorities may do certain things with the consent of the appropriate national authorities. These authorities may grant their consent to one city and withhold it from another. Everything depends upon the circumstances of the individual case of a local area. The work of central supervision is vested for the most part in the hands of the national departments. The spheres of supervisory jurisdiction which the several departments possess are not in all cases precisely defined. But in no case is the work of local administration directly undertaken by these central departments. They merely advise, inspect, regulate, give approval, or withhold approval. Munro described central supervision of local governments in England as follows:

"Now although it has been the practice to bestow large powers upon the local authorities in England, this does not mean that the latter are free to exercise these powers as they will,without sup-

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[18] Constitution of France (1946), Title 10, Art. LXXXVI.
[19] *Ibid., id.*, Art. LXXXVII.
[20] *Ibid., id., Art.* LXXXVIII.
[21] *Ibid., id., Art.* LXXXIX.

ervision on the part of the national government. All branches of English local government are subject to a considerable measure of control and supervision by the national authorities. There is more of this central supervision in England than in the United States, but less of it than in the countries of continental Europe. What now exists in England, moreover, is largely the product of the last fifty years. For centuries there was almost none at all. Counties, boroughs and parishes did about as they pleased, with no interference from above. But this arrangement was practicable only so long as most of the people lived in rural districts and required very little in the way of public services. With the growth and shifting of population which took place during the nineteenth century this go-as-you-please policy broke down. It became necessary for the central government to step in and see that essential public services were provided. This central control of local government began to develop in the early years of the nineteenth century; it grew slowly at first but took on momentum as the years went by." [22]

In the American System, as De Tocqueville spoke of it, control over local governments is for the most part legislative, and hence more rigid. Thus when a law says that local legislative bodies shall do this and this, or shall not do that and that, it gives them no leeway. In short, the American state legislatures have kept the supervision of local government in their own hands, and have exercised it in the only way open to their ideology of government of laws and not of men, by enacting laws. We have copied this system insofar as the legislative branch enumerates the powers that the local governments can exercise. This is the so-called system of enumeration of powers, in contrast to the system of France of listing powers that local governments may not exercise. To a certain extent we copied this French system, especially in the field of municipal taxation, as may be seen from Commonwealth Act No. 472.

Centralized supervision of local governments is, therefore, unknown in the United States. It would not be

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[22] *Op. cit. supra* note 12, at 297.

practicable, on any broad scale, according to Munro, under the American plan of government. In fact, the Americans want to strengthen their local governments by decentralization. Thus the Commission on Inter-governmental Relations, in its report to the President of the United States last June, 1955, recommended: (1) allocating to local government those activities that can be handled by these units, together with the necessary financial resources; (2) giving greater discretion to local governments to choose their own form of government and to supply themselves with desired services; and (3) encouraging the states to develop local government through the creation of political subdivisions that are efficient units for providing governmental services and through maintaining local governments that achieve wide citizen participation. The Commission believes that the best division of civic responsibilities is to "leave to private initiative all the functions that citizens can perform privately; use the level of government closest to the community for all public functions it can handle; utilize cooperative intergovernmental arranngements where appropriate to attain economical performance and popular approval; reserve national action for residual participation where state and local governments are not fully adequate, and for the continuing responsibilities that only the national government can undertake." [23]

From all the foregoing the reader could see that supervision is a term used to describe the relation between the central and local governments, not the relation between their officials. From my standpoint, the President's power of general supervision over the local government is a substitute for detailed legislative control over them. It is a device to make the local governments "grow throughout the ages" and to prevent them to "deform under the as-

[23] *Public Management*. Journal of the International City Managers Association, Vol. XXXVII, No. 8 (August 1955), p. 180. See also *National Municipal Review*, Vol. XLIV, No. 8 (Sept. 1955), p. 396.

saults of life." It is a tool for widening, not narrowing the discretion of local governments. It aims at increasing the competence of local officials and at improving the organization and procedures of local agencies. It is the supervision which stimulates local governments to greater and more diversified efforts. It is an alternative to the detailed statutes which unduly restrict communities in their day-to-day affairs. "In a word," said the Council of State Governments, "state supervision is not state dictation. It is primarily state advice, and state cooperation. It is a means of freeing localities from the rigidity of legislative controls. And it has the valuable by-product of encouraging high standards of administration for the internal affairs of local governments." [24]

This type of supervision is different from the supervision referred to by the Supreme Court in its statement: "In administrative law supervision means overseeing or the power or authority of an officer to see that subordinate officers perform their duties. If the latter fail or neglect to fulfill them the former may take such action or step as prescribed by law to make them perform their duties." [25] This latter type of supervision does not spring from the second part of Section 10, paragraph 1, Article VII, of the Constitution—"The President shall . . . exercise general supervision over all local governments as may be provided by law"—but from the third part of the same section—"The President shall . . . take care that the laws be faithfully executed." The duty of the President to see that the laws be faithfully executed involves two distinct functions: supervision over functional and institutional activities and supervision over the performers of such activities. This is the supervision referred to by White in his statement: "The chief executive is not himself an operating official . . . It is his business to "see that the laws are executed," not himself to execute them. He is

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[24] *Supra* note 8, at 53.
[25] Mondano v. Silvosa, G. R. L-7708, May 30, 1955.

in command of the ship, but he does not himself hold the steering wheel, run the engines, or give instructions to the galley," [26] or by Willoughby when he said: "The President in the execution of his duty to see that the laws be faithfully executed, is bound to see that the Postmaster-General discharges 'faithfully' the duties assigned to him by law, but this does not authorize the President to direct him how he shall discharge them." [27]

Meaning of Control

After defining "supervision" as used in the second part of the section of the Constitution quoted above, from the standpoint of administrative law, the Supreme Court proceeded in the *Silvosa* case to distinguish it from "control" by saying: "Control, on the other hand, means the power of an officer to alter or modify or nullify or set aside what a subordinate officer had done in the performance of his duties and to substitute the judgment of the former for that of the latter." This is the form of control which John M. Gaus had in mind when he said: "We are apt to think of the word *'control'* as expressing a negative, forbidding, preventive, and even punitive attitude or action." [28] The supervisory form of administrative control refers to "the duty of the chief executive to keep informed of the course of administrative operations, to intervene where necessary to settle jurisdictional disputes, to guide the policy and program of the whole organization, and to supply the over-all sense of direction." [29] Such form of control stems also from his duty to see that the laws be faithfully executed. It is the "administrative control" referred to in Section 79 (C) of the Revised Administrative Code, as distinguished from the power that "The

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[26] White, L., *Introduction to the Study of Public Administration* 51 (1948).

[27] Willoughby, W., *Constitutional Law of the United States* Sec. 1418 (1929).

[28] Gaus, J., *Reflections on Public Administration* 93 (1947).

[29] White, *op. cit., supra* note 26, at 51.

President shall have control of all the executive departments, bureaus, or offices." [30] This is the political or hierarchical control of the administrative branch intended to make the President of the Philippines constitutionally the Administrative Chief of our bureaucracy. It is the provision not found in the United States Constitution because the President of that country was originally intended to be primarily a political chief. Said Willoughby:

"In the United States it was undoubtedly intended that the President should be little more than a political chief; that is to say, one whose functions should, in the main, consist in the performance of those political duties which are not subject to judicial control. It is quite clear that it was intended that he should not, except as to those political matters, be the administrative head of the government, with general power of directing and controlling the acts of subordinate Federal administrative agents. The acts of Congress establishing the Department of Foreign Affairs [State] and of War, did indeed recognize in the President a general power of control, but the first of these departments, it is to be observed, is concerned chiefly with political matters, and the second has to deal with the armed forces which by the Constitution are expressly placed under the control of the President as Commander-in-Chief." [31]

While the Constitution vests in the President the power to "exercise general supervision over all local governments," and is silent on whether he has any power of control over such governments, it does not thereby mean that the President may not exercise some kind of control over the local governments. In this connection, *administration* must not be confused with government. The latter refers to the conduct of an undertaking towards its objective by seeking to make the best possible use of all the resources at its disposal. On the other hand, the former means to plan, to organize, to command, to co-ordinate, and to control.[32] As the *Executive* and the *Administrative*

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[30] Phil. Const. Art. VII, Sec. 10 (1), cl. 1.
[31] Willoughby, *op. cit., supra* note 27, Sec. 958.
[32] Urwick, L., *The Elements of Administration* 16 (1943).

Chief the President has full control over the local governing bodies as bodies politic. These bodies have dual functions. As a body politic, a municipality or city is a political organ. It is the instrumentality of the State in exercising powers and duties not strictly or properly local in their nature, but which are in their essence state powers, and, therefore, to this extent it is a mere agency of the state, aiding in the administration of state affairs in so far as such matters affect the people residing within the local community in common with the inhabitants of the State.[33] Here the President obviously has control as well as supervision. The latter may be delegated to the provincial governor. Under the law the provincial governor is "the chief executive officer of the provincial government. As such it shall be his duty to exercise, in conformity with law, a general supervision over the government of the province and of the municipalities or other political subdivision contained in it and to see that the laws are faithfully executed by all officers therein."[34] This power is called in France, whose system of local government administration is the mother of ours, *tutelle administrative* (administrative guardianship). The provincial governor, like the prefect in France, is the dominant figure in local administration. He is "the link, and sometimes the buffer, between the central administration and the local area."[35] He, like the prefect, concentrates in his own person the perpetual conflict of authority and freedom . . . He is at once the agent of the government, the tool of the party, and the representative of the area which he administers."[36]

The Presidential power of control of local governments may be exercised in various ways. In a unitary government like ours and those of England, France and Italy, all authority for local officials in local areas proceeds from and rests upon the central government. The acts of the

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[33] 43 C. J. 69-70.
[34] Rev. Adm. Code, Sec. 2082
[35] Ranney and Carter, *op. cit.*, *supra* note 15, at 449.
[36] *Ibid.*

local government officials are always subject to the scrutiny of an agent or representative of the central government of the state. As a body corporate, a municipality is a corporation, created to regulate and administer the affairs of the area embraced within its corporate limits, in matters peculiar to such place and not common to the State at large. Here the Congress has the control, for it can go to the extent of abolishing the corporation. On his part the President may exercise supervision in the constitutional sense of the meaning of the term, as, for instance, to stimulate greater and more diversified efforts to improve local affairs. But he may exercise some form of control. For instance, he may advise the local governments to use their pre-war deposits, which are purely their own money in the custody of the Philippine National Bank, for drilling artesian wells in their respective barrios, otherwise he will not authorize their releases for other purposes. As will be noted the latter is a form of control, a negative and forbidding control. This is an element of administration.

Presidential Supervision of Local Officials

In the *Silvosa* case hereinbefore cited, the Supreme Court said through Mr. Justice Padilla:

"Section 10, paragraph 1, Article VII, of the Constitution provides: 'The President shall have control of all the executive departments, bureaus, or offices, exercise general supervision over all local governments as may be provided by law, and take care that the laws be faithfully executed.' Under this constitutional provision the President has been invested with the power of control of all the executive departments, bureaus, or offices, but not of all local governments over which he has been granted only the power of general supervision as may be provided by law . . . Likewise, his authority to order the investigation of any act or conduct of any person in the service of any bureau or office under his department is confined to bureaus or offices under his jurisdiction and does not extend to local governments over which, as already stated, the President exercises only general supervision as may be provided by law."

What directed my attention to this statement is that it considers "departments," "bureaus," "offices," and "local governments" the same as the officers running or operating them. Surely the driver of a car is different from the car itself, or perhaps my point may be made clearer by inviting attention to the admitted fact that the Court is different from the Judge presiding it. In other words, "local governments" are not the "local officials." The local governments are the machineries of the State for the regulation, restraint, supervision, or control of the members of municipal jural societies, while local officials are the persons invested with authority to administer them for the time being. These local officials form part of what Willoughby calls the "Magistracy," [37] a term defined in its widest sense as including the whole body of public functionaries, whether their offices be legislative, judicial, executive, or administrative, or in a more restricted sense as denoting the class of officers who are charged with the application and execution of the laws.[38] The President's power of supervision over the "local magistracy," I submit, arises not from the constitutional provision that "The President shall . . . exercise general supervision over all local governmnts as may be provided by law, "but from the constitutional provision that "The President shall . . . take care that the laws be faithfully executed." [39] This is the provision that dovetails with the Court's statement, it bears repetition, that "In administrative law supervision means overseeing or the power or authority of an officer to see that subordinate officers perform their duties. If the latter fail or neglect to fulfill them the former may take such action or step as prescribed by law to make them perform their duties."

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[37] Willoughby, W., *The American Constitutional System* 3-4 (1904).
[38] Black, *Law Dictionary* 1140 (3d ed.)
[39] This constitutional provision, I likewise submit, is the source of authority of the President over the "national magistracy, not the constitutional provision that "The President shall have control of all the executive departments, bureaus, or offices." Art. VII, Sec. 10 (1), cl. 1.

The first case in which the Supreme Court clearly makes the President's power of supervision over the local governments as including supervision over the local officials is that of *Lacson v. Roque.*[40] Speaking for the Court, Mr. Justice Tuason said:

"There is neither statutory nor constitutional provision granting authority to remove municipal officials By Article VII, Sec. 10, par. (1) of the Constitution the President 'shall * * * exercise general supervision over all local governments,' but supervision does not contemplate control. (People v. Brophy, 120 P. 2nd, 946, 49 Cal. App. 2nd, 15.) Far from implying control or power to remove, the President's supervisory authority over municipal affairs is qualified by the proviso " 'as may be provided by law,' a clear indication of constitutional intention that the provision was not to be self-executing but requires legislative implementation."

I have closely read the case cited, and I am convinced that it refers precisely to supervision by a state official over those who assist him in his work of enforcement of the laws, like district attorneys and sheriffs. In this *Brophy* case it appeared that the Honorable Earl Warren, as Attorney General of the State of California, ordered a telephone company to discontinue its service to Brophy, a subscriber, on ground that such service encouraged the perpetration of certain alleged unlawful acts. The Court had to determine by what authority may that Attorney General invade the affairs of other governmental agencies in general and public utility companies in particular. The constitutional provision which came up for application was Section 21 of Article V of the Constitution of California. It provided as follows:

"Subject to the powers and duties of the Governor vested in him by Article V of the Constitution, the Attorney General shall be the chief law officer of the State and it shall be his duty to see that the laws of the State of California are uniformly and adequately enforced in every country of the State. He shall have direct supervision over every district attorney and sheriff and over such other law enforcement officers as may be designated by law, in all mat-

[40] G. R. No. L-6225, Jan. 10, 1953.

ters pertaining to the duties of their respective offices, and may require any of said officers to make to him such written reports concerning the investigation, detection, prosecution and punishment of crime in their respective jurisdictions as to him may seem advisable. Whenever in the opinion of the Attorney General any law of the State is not being adequately enforced in any country, it shall be the duty of the Attorney General to prosecute any violation of law which the superior court shall have jurisdiction, and in such cases he shall have all the powers of a district attorney. When required by the public interest, or directed by the Governor, he shall assist any district attorney in the discharge of his duties. . . ."

The Court held that the constitutional provision giving the attorney general direct supervision over every district attorney and sheriff, and over such other law enforcement officers as may be designated by law, does not contemplate absolute control and direction of such officials, especially as to sheriffs and district attorneys, since such officials are "public officers," as distinguished from mere "employees" with public duties delegated and entrusted to them; that the word "supervision" as used in the constitutional provision that the attorney general shall have direct supervision over every district attorney and sheriff and over such other law enforcement officers as may be designated by law, in all matters pertaining to the duties of their respective offices, does not contemplae control. and sheriffs and district attorneys cannot avoid or evade the duties and responsibilites of their respective offices by permitting a substitute of judgment; and that enforcement of the laws contemplates enforcement according to law, the procedure for which is definitely established, and the attorney general is not authorized to depart from that procedure by the constitutional provision that the attorney general shall be the chief law officer of the state, and it shall be his duty to see that the laws of the state are uniformly and adequately enforced in every county of the state.

It will thus be seen that supervision in the *Brophy* case is related to public officials in connection with the

enforcement of laws, a matter clearly different from our constitutional provision empowering the President of the Philippines to exercise general supervision over local governments.

Removal of Local Officers

The Constitution of the Philipines, like the Constitution of the United States, contains no express reference to a power of the President to remove from office, except for the provision which authorizes the removal from office on impeachment of the President of the Philipines, the Vice-President of the Philippines, the Justices of the Supreme Court, the Auditor General, and the Commissioners on Elections.[41] But the President may exercise the power to remove by implication from four known constitutional sources: (1) from his power to see that the laws are faithfully executed;[42] (2) from "The Executive Power";[43] (3) from his power to appoint;[44] and (4) from the constitutional provisions that an officer may be removed for cause.[45] This implied power of the President to remove public officers may not be abridged by Congress but the proper courts have the power to decide questions regarding the constitutionality of any removal by him. This was the interpretation accepted after six days of

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[41] Art. IX, Sec. 1; Art. X, Sec. 1.

[42] Field, O., *Civil Service* Law 180 (1939); Corwin, E., *The Presidents Office and Powers* 100 (1948).

[43] Myers v. United States, 272 U. S. 52 (1926); Corwin, *id.*, at 111, 114. In the Myers' case, Mr. Chief Justice Taft said: "As he (the President) is charged specifically to take care that they be faithfully words, was that as part of his executive power he should select exceuted, the reasonable implication, even in the absence of express those who were to act for him under his direction in the execution of the laws. The further implication must be, in the absence of any express limitation respecting removals, that as his selection of administrative officers is essential to the execution of the laws by him, so must be his power of removing those for whom he can not continue to be responsible," *Cf.* Humphrey's Executor v. United States. 295 U. S. 602 (1935).

[44] See note 42 *supra.*

[45] Phil. Const. Art. XII, Sec. 4.

debate in the United States Senate on the question whether the power of removal, and hence the control of executive officials, belonged to the President, the Senate, or both. [46] Mr. Justice Peckham said in *Parsons v. United States:*

"Then ensued what has been many times described as one of the ablest constitutional debates which has taken place in Congress, since the adoption of the Constitution. It lasted for many days, and all arguments that could be thought of by men—many of whom had been instrumental in the preparation and adoption of the Constitution—were brought forward in debate in favor of or against that construction of the instrument which reposed in the President alone the power to remove from office. [47]

This implied power of the President to remove public officers in the executive, we may also say administrative, departments is applicable not only to the officers of the National government but also to those of the local governments, the simple reason being that both levels of governments form part of the "The Government of the Philippines" as defined in Section 2 of the Revised Administrative Code.

Removal of Elective Local Officials

One of the sources I indicated above from which the President may derive his implied power to remove local officials is Section 4 of Article XII of the Constitution which provides that "No officer or employee in the Civil Service shall be removed or suspended except for cause as provided by law." This provision refers to those falling under the "merit system" and not to those belonging to the "political system" or the "patronage system." [48] The local elective officials belong to the "political system" and those appointed by the President and other appointing

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[46] United States Civil Service Commission, *History of the Federal Civil Service* 3 (1941).

[47] 167 U. S. 324, 329 (1897). See also Charles Warren's account of the debate, quoted in Rivera, J., *Law of Public Administration* 659 (1956).

[48] Field, O., *op. cit. supra* note 42, at 3. See War v. Leche, 189 La. 113, 179 So. 52 (1937).

authorities are under the "patronage system." All belong to "the civil service" as distinguished from the naval or military service.[49] As the Constitution provides, those under the "merit system"[50] may only be removed "for cause as provided by law." As to those under the "political" and "patronage" system, the President, I submit, may be guided by the causes *declared* by Congress which do not abridge his power of removal or by any cause he may in conscience and discretion consider as a good cause for removal. Thus he may remove a municipal mayor for what he believes to be moral turpitude even before the mayor's conviction "independently," as I stated in a book, "of Section 2188 of the Administrative Code or of any statute, declaratory of the President's power or not."[51] The reason is that it is the obligation of the President "to set the moral tone as chief executive for the entire administration. His own decisions and attitudes largely determine the morale and the standards of officials throughout the government. His words and actions have consequences beyond their immediate effects."[52] Moreover—

"In administrative investigation guilt need not be proven beyond a reasonable doubt. The investigator does not sit in judgment upon the respondent but merely ascertains the facts so that the proper administrative officer can determine the desirability or undesirability of retaining the accused employee in the service. Public office, by its nature, demands that the incumbent be above reproach; public servants, by the power they wield assume a position of trust and confidence. A high ethical and moral standard is therefore contem-

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[49] Hope v. City of New Orleans, 30 So. 842, 843; Long v. Wells, 198 S.E. 763, 768; Kennedy v. State Personnel Board, 57 P. 2d 486, 487.

[50] " 'Civil service' without the definite article is used to describe certain procedures of recruitment and personnel management; in this sense it refers more to an organization. It is in this latter use that the term 'merit system' applies, as distinguished from the 'political system' or the 'patronage system.' It is possible to distinguish between the two meanings of the phrase only by reference to the context." Field, *op. cit.*

[51] *Law of Public Administration* 658 (1956).

[52] Graham, G., *Morality in American Politics* 157 (1952).

plated. The moment the honesty, morality or integrity of a public officer is seriously impeached he can and should be separated. It is essential that public employees be not only efficient but also morally clean and upright, for in no other way can the good name and dignity of the service be maintained. In cases of immorality, for example, it is immaterial whether the offended woman has consented or not, or is of unchaste reputation, or is of age. Aside from the injury done to private parties, there is the insult to the state and the highly demoralizing effects of such act when committed by public officers." [53]

Conclusions

From all the foregoing considerations, I conclude:

1. That the President of the Philippines, as the Administrative Chief or Head of the Administration, has power of general supervision over *the local governments*. This is our political tradition learned from the French centralized administrative system through Spain, our first mother country, owing to which we should logically look, if we may, upon the practices of France [54] or of England [55] for guidance as to the meaning of "supervision" from one level of government to another, a system opposite the "American System."

2. That the President of the Philippines, as the Executive and the Administrative Chief or Head of the Administration has power of removal (and therefore control) and supervision over not only the public officers of the local governments of any category, arising from his duty to see that the laws be faithfully executed. This duty of supervision, which may include control, is distinct and separate from the President's power of general supervision over the local governments.

3. That the President of the Philippines, as the Administrative Chief, has control not only of all the executive

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[53] Director of Civil Service, *Twenty-Ninth Annual Report* (Bureau of Printing, Manila, 1929), p. 18.

[54] See notes 18 to 21, *supra*.

[55] See note 22, *supra*.

departments, bureaus, or offices, but also over the local governments when these act as agencies of said departments, bureaus, or offices in respect to the execution of their respective functions within the jurisdiction of said local governments, as is the practice of England.

4. That the President of the Philippines, as the Administrative Chief, has power of removal of those under the "merit system" distinct from his power of removal of those under the "political" and "patronage" systems.