

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."<sup>11</sup> 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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<sup>11</sup> I Aruego, *The Framing of the Philippine Constitution* 429 (1936).

Spain introduced here the highly centralized French system of local government administration.<sup>12</sup> 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.”<sup>13</sup>

And according to Morga, all the islands were governed from Manila by means of *alcades-mayores*, *coregidores*, and lieutenants.<sup>14</sup> 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

<sup>12</sup> 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).

<sup>13</sup> Spain in the Philippines, in *Philippines* Vol. 1, No. 2, p. 11 (Feb., 1941).

<sup>14</sup> 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 continues 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."<sup>15</sup>

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."<sup>16</sup> 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'."<sup>17</sup>

<sup>15</sup> *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).

<sup>16</sup> Quoted by Ranney and Carter, *op. cit.*, at 444.

<sup>17</sup> 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,<sup>18</sup> which are free to administer themselves through councils elected by universal suffrage;<sup>19</sup> (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;<sup>20</sup> 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."<sup>21</sup>

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-

<sup>18</sup> Constitution of France (1946), Title 10, Art. LXXXVI.

<sup>19</sup> *Ibid.*, *id.*, Art. LXXXVII.

<sup>20</sup> *Ibid.*, *id.*, Art. LXXXVIII.

<sup>21</sup> *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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<sup>22</sup> *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 arrangements 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."<sup>23</sup>

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-

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<sup>23</sup> *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."<sup>24</sup>

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."<sup>25</sup> 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

<sup>24</sup> *Supra* note 8, at 53.

<sup>25</sup> *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,"<sup>26</sup> 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."<sup>27</sup>

### *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."<sup>28</sup> 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."<sup>29</sup> 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

<sup>26</sup> White, L., *Introduction to the Study of Public Administration* 51 (1948).

<sup>27</sup> Willoughby, W., *Constitutional Law of the United States* Sec. 1418 (1929).

<sup>28</sup> Gaus, J., *Reflections on Public Administration* 93 (1947).

<sup>29</sup> White, *op. cit.*, *supra* note 26, at 51.