A SEPARATE PEACE: MAPPING OUT THE LIMITATIONS OF REGIONAL AUTONOMY THROUGH THE BANGSAMORO PARLIAMENTARY SYSTEM[*]

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ABSTRACT

The Philippines has a presidential form of government defined by the separation of powers into three branches—the executive, the legislative, and the judicial. However, parliamentarism has also found its way into the country with the establishment of the Bangsamoro Autonomous Region of Muslim Mindanao ("BARMM"). Jurisprudence has made it clear that a parliamentary system departs from the notion of separation of powers, which undergirds the three branches of government laid out by the Constitution. The adoption of a parliamentary system in BARMM, therefore, raises questions that have lasting repercussions for the Philippine legal system. The issue is murky partly because the very notion of "regional autonomy" is underexplored, and its limitations are not firmly established by contemporary jurisprudence. Using the Bangsamoro Parliament as a case study, this Note aims to explore the autonomy regime governing the relationship between autonomous regions and the national government, to flesh out its contours, and to map out its scope and limitations, in order to ascertain whether the regional autonomy established by the Constitution allows for such a system.

[*] *Cite as* Enrico Miguel dela Rama Dizon, *A Separate Peace: Mapping Out the Limitations of Regional Autonomy Through the Bangsamoro Parliamentary System,* 95 PHIL. L.J. 911, [page cited] (2022).

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INTRODUCTION

The separation of powers among three separate branches of government underpins the Filipino people's collective will to uphold democracy.[1] Accordingly, the Philippines follows a presidential form of government, wherein the executive power rests with the President, the legislative power with the Congress, and the judicial power with the courts.

In a presidential system, the Chief Executive is elected directly by the people and is, thus, accountable, not to the legislature as in the parliamentary system, but to the people who elected him.[2] The Chief Executive—often referred to as the President—likewise occupies a prominent position; hence, the designation "presidential form of government."[3] However, this does not mean that the other two branches of government are inferior to the President.

The distribution and sharing of government power—known as the principle of "separation of powers"—is a crucial element of a presidential system, and obtains in most countries which have adopted it. In the Philippines, however, "separation of powers" is neither specifically mentioned nor defined in the Constitution, whether it be the 1935, 1973, or 1987 incarnation. Rather, the principle obtains not from express constitutional mandate, but from a thorough analysis of the constitutional provisions, including the way each branch of the government is set up and the limits imposed on them, as elucidated by the Supreme Court in the landmark case of *Angara v. Electoral Commission*:[4]

> The separation of powers is a fundamental principle in our system of government. It obtains not through express provision but by actual division in our Constitution. Each department of the government has exclusive cognizance of matters within its jurisdiction, and is supreme within its own sphere. But it does not follow from the fact that the three powers are to be kept separate and distinct that the Constitution intended them to be absolutely unrestrained and independent of each other. The Constitution has provided for

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[1] CONST. art. II, § 1. "The Philippines is a democratic and republican State. Sovereignty resides in the people and all government authority emanates from them."

[2] JOHN J. PATRICK, UNDERSTANDING DEMOCRACY: A HIP POCKET GUIDE 76 (2006).

[3] JOAQUIN BERNAS, THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY 52 (6th ed. 2009).

[4] Angara v. Electoral Comm'n [hereinafter *"Angara"*], 63 Phil 139, 156 (1936).

> an elaborate system of checks and balances to secure coordination in the workings of the various departments of the government.

According to *Angara,* "the Constitution has blocked out with deft strokes and in bold lines, allotment of power to the executive, the legislative, and the judicial departments of the government."[5] These provisions do not only establish a separation of powers by actual division, but also confer plenary legislative, executive, and judicial powers, subject only to the limitations provided in the Constitution.[6]

In a nutshell, separation of powers simply means that each branch of government has supreme domain over its sphere. The drafting and promulgation of legislation pertains wholly to the legislature, the enforcement of the law to the executive, and the settlement of legal disputes and controversies to the judiciary.[7] In turn, the powers of each branch of government are limited by a system of checks and balances, each of which is listed throughout various constitutional provisions. The general rule is that no one branch is allowed to overstep its authority and interfere within the exclusive competence of another branch. Therefore, the legislature cannot adjudicate; the judiciary cannot formulate policy or direct the implementation of existing law; and the executive cannot make law or resolve legal disputes.

That the Constitution allows for checks and balances on the power of each branch of government demonstrates that the separation of powers is not total. Moreover, though the doctrine will readily cause any act violative of it to be struck down for being unconstitutional, the powers can be blended to a certain extent. For one, quasi-legislative functions can be delegated to certain branches of government such as administrative agencies, local governments, and the President in certain instances.

The separation of powers has been firmly established in our jurisdiction as early as the 1935 Constitution. However, the Philippines has not consistently adhered to the doctrine throughout its history. Under the 1973 Constitution, with then President Ferdinand Marcos, Sr. at the helm, a semi-parliamentary system was established wherein the power of the executive was broadened and the legislature was reduced to a largely

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[5] *Id.* at 157.

[6] Marcos v. Manglapus, G.R. No. 88211, 177 SCRA 688, 689, Sept. 15, 1989; Marcos v. Manglapus, G.R. No. 88211, 178 SCRA 760, 770, Oct. 27, 1989.

[7] Bernas, *supra* note 3, at 678.

subordinate role.[8] The then Chief Executive himself wielded legislative powers that time, as can be evidenced by the large number of Presidential Decrees, which still pervade the legal landscape to this day.

Though presidentialism was eventually restored under the 1987 Constitution, attempts to transition away from the presidential system did not end with Marcos. In 2006, a people's initiative spearheaded by the so-called Lambino Group attempted to introduce constitutional amendments that would transform the Philippine government from presidentialism to parliamentarism, only to be blocked by the Supreme Court.[9]

In recent years, Parliamentarism has found its way back into the Philippines, albeit at the *local* level rather than the national level. In January 2019, the people of the Bangsamoro region approved the Bangsamoro Organic Law ("BOL") in a plebiscite called for the purpose,[10] breathing life into a new autonomous region known as the Bangsamoro Autonomous Region in Muslim Mindanao ("BARMM"). The BOL provides for a drastic reorganization of the region, creating an entity with far more expansive powers, and arguably more autonomy, than its predecessor, the Autonomous Region in Muslim Mindanao (ARMM). For one, Section 3, Article IV of the BOL expressly declares that BARMM shall have a parliamentary form of government, a one-of-a-kind innovation found in no other territorial and political subdivision in the Philippines.

The BOL is already effective and in the process of being implemented, despite early challenges to its validity. However, the elephant in the room remains—is such a system constitutionally permissible under our framework of regional autonomy?

The adoption of a parliamentary system in BARMM potentially raises a case of first impression. A quick glance at the 1987 Constitution offers no clear answer and one can search in vain for a single word spoken about the subject from the framers themselves. What is only clear at this point is the massive dearth of jurisprudence on a matter of such importance, especially because it touches upon the very bedrock of Philippine democracy—the separation of powers.

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[8] ISAGANI CRUZ & CARLO CRUZ, PHILIPPINE POLITICAL LAW 131 (2014 ed.).

[9] *See* Lambino v. COMELEC [hereinafter "*Lambino*"], G.R. No. 174153, 505 SCRA 160, Oct. 25, 2006.

[10] Rep. Act No. 11054 (2018), art. IV, § 3. The Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao [hereinafter "BOL"].

The issue could be traced back to the lack of clarity in the regional autonomy framework laid down by the Constitution itself. The Supreme Court rarely had the opportunity to rule on the issue, and some of its decisions are of doubtful applicability, let alone binding. While there is much discussion regarding the nature of *local autonomy,* the legal relationship between local government units and the national government, the amount of attention paid to *regional autonomy* is comparatively scant, to the point that it is easy to forget that the two are separate regimes that come with their own distinct rights and privileges *vis-a-vis* the national government. The limits of regional autonomy are, sadly, underexplored.

This Note may thus serve an opportunity to further refine and clarify the concept of "regional autonomy" and its limitations. In the process, it aims to determine whether a form of regional government that departs from the principle of separation of powers has a place in the Philippines's overall government structure.

First, this Note will discuss the nature and characteristics of a parliamentary form of government, and its place in Philippine history. It will then discuss the various autonomy regimes in the Philippine legal system, bringing to light their differences and nuances in order to effectively differentiate them. Finally, using certain metrics, it will interpret both the Constitution and the BOL against the backdrop of regional autonomy.

This Note does not aim to formulate a definitive answer as to whether or not the Bangsamoro Parliament is constitutional. Such a matter cannot be resolved at this moment, as there are enough arguments for either side that the Supreme Court may rule either way if the issue should be brought before it. Neither does it aim to attack the constitutionality of the BARMM as a whole. Rather, the aim is simply to determine whether the regional autonomy provided under the Constitution precludes the establishment of a parliamentary government in an autonomous region.

I. THE PARLIAMENTARY SYSTEM IN THE PHILIPPINES: NATURE AND STATUS WITHIN OUR JURISDICTION

There is no one universally accepted definition of the parliamentary system, but its essential elements can be identified with

reasonable precision.[11] According to Stepan and Skach, the two fundamental characteristics of a pure parliamentary regime in a democracy are:

(1) The chief executive power must be supported by a majority in the legislature and can fall if it receives a vote of no confidence; and
(2) The chief executive power has the capacity to dissolve the legislature and call for elections.[12]

While there are usually three branches of government in a parliamentary system, only the members of the legislative branch are directly elected by the people. The members of the parliament, in turn, select the Chief Executive among themselves. In practical terms, this typically translates to the Chief Executive being elected if his or her party wins the majority of seats in parliament, depending on the variant of parliamentarism in question.[13] Corollary, if the Chief Executive loses the support of his or her party, he or she may be removed through a vote of no confidence. This leaves the executive accountable primarily to the legislature, and their legitimacy conditioned on the support of the legislature.

The eminent constitutionalist, Fr. Joaquin G. Bernas, enumerates the characteristics of a parliamentary government, as follows:

(1) The members of the government or cabinet or the executive arm are, as a rule, simultaneously members of the legislature.

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[11] Paul Silk, Westminster Foundation for Democracy, *The Role of Parliament in the Bangsamoro Administrative Code: A Comparative Assessment*, *available at* https://www.iag.org.ph/images/pdf/WFD_Bangsamoro_Admin_Code_Comparative_Assessment.pdf (last visited Feb. 28, 2022).

[12] Alfred Stepan & Cindy Skach, *Constitutional Frameworks and Democratic Consolidation: Parliamentarism and Presidentialism*, 46 WORLD POLIT. 3, 3, 106 (1993). *See also* Millard Lim, *Parliamentarism in BARMM: Important considerations,* BUSINESSWORLD, Jan. 1, 2020, *available at* https://www.bworldonline.com/editors-picks/2020/01/01/271362/parliamentarism-in-barmm-important-considerations/.

[13] There are two major variants of parliamentarism identified by political science scholars—(1) the Westminster model, which is influenced by British political tradition and tends to follow a more adversarial style of debate, with ministers chosen through a system of plurality or 'first-past-the-post' voting, thereby allowing for a stronger Chief Executive who can command a majority of the legislature; and (2) the "Consensus" model followed by most continental European states, where debating and decision-making is consensus-based rather than adversarial, and elections tend to be based on proportional representation, thus leading to a greater diffusion of power. *See* AREND LIJPHART, PATTERNS OF DEMOCRACY, 9–46 (2nd ed. 2012).

(2) The government or cabinet, consisting of the political leaders of the majority party or of a coalition who are also members of the legislative, is in effect a committee of the legislature.
(3) The government or cabinet has a pyramidal structure at the apex of which is the Prime Minister or his equivalent.
(4) The government or cabinet remains in power only for as long as it enjoys the support of the majority of the legislature.
(5) Both government and legislature are possessed of control devices with which each can demand of the other immediate political responsibility. In the hands of the legislature is the vote of non-confidence (censure) whereby government may be ousted. In the hands of government is the power to dissolve the legislature and call for new elections.[14]

The ability of the legislature to remove the executive is a necessary condition for a government to be considered a parliamentary one. Moreover, the crucial determinant is not the formation of government, but the *survival* of the government.[15]

Simply put, where a presidential system is a system of mutual independence, a parliamentary system is one of mutual dependence.[16] This is why a parliamentary government has most often been characterized as a "fusion of powers," which is very much in contrast with the separation of powers of a presidential system. The executive branch is not separate and independent from the legislature, and is indeed, in Bernas' words, functionally "a committee of the legislature,"[17] especially since the Chief Executive is a member of parliament. Moreover, in many other parliamentary systems, the Chief Executive possesses the power to dissolve the legislature and call for elections.[18] The fact that both branches of government have the power to dissolve one another is a far cry from the checks and balances available in a presidential system.

Despite, or perhaps *because,* of these characteristics, the Philippines has considered a parliamentary form of government numerous times. Historically, there have been two notable attempts to institute a parliamentary form of government in the Philippines before the Bangsamoro Organic Law ("BOL").

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[14] Bernas, *supra* note 3, at 52–53.

[15] JOSE ANTONIO CHEIBUB, PRESIDENTIALISM, PARLIAMENTARISM, AND DEMOCRACY 36 (2007).

[16] Stepan & Skach, *supra* note 12.

[17] Bernas, *supra* note 3, at 52.

[18] Lim, *supra* note 12.

The first attempt to radically alter the structure of the Philippine government came during the presidency of Ferdinand Marcos, Sr. In his second and what was supposed to be his last term, Marcos called a constitutional convention to change the Constitution. Among the most salient proposals, which Marcos, Sr. himself advocated for, was to shift the Philippine government from a presidential to a parliamentary system. Such a change would have allowed Marcos to skirt the term limit to his presidency by enabling him to run for a seat in parliament and assume the role of prime minister as the leader of the majority party. And as long as Marcos' party held a majority in parliament, he could have held onto power indefinitely.[19]

The resulting 1973 Constitution indeed adopted a parliamentary form of government. The Office of the President was retained, but reduced to a functionally ceremonial role, as the Prime Minister was the head of the Executive Committee, and thus in charge of "assist[ing] the President in the exercise of his powers and functions and in the performance of his duties as he may prescribe."[20] The Batasang Pambansa was given the right to withdraw its confidence from the Prime Minister by a majority vote of all its members.[21] The Prime Minister, in turn, had the right to advise the President in writing to dissolve the Batasang Pambansa whenever the need arises for a popular vote of confidence on fundamental issues, but not on a matter involving his or her own personal integrity.[22] The lines were further blurred upon the ratification of the 1976 Amendments, which fused the Office of the President and Prime Minister, and vested the latter's title in the former.

In practice, Marcos, Sr. continued to wield executive and legislative powers despite the creation of the Batasang Pambansa and the Interim Batasang Pambansa. Several more constitutional revisions eventually whittled away the original parliamentary structure laid down by the 1973 Constitution. The Supreme Court also observed in *Free Telephone Workers Union v. Minister of Labor and Employment*[23] that despite the presence of a Prime Minister and other ostensible trappings of parliamentarism, the Philippines still adhered to the presidential system in all but name. The

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[19] Dante Gatmaytan-Magno, *Changing Constitutions: Judicial Review and Redemption in the Philippines,* 25 UCLA PAC. BASIN L.J. 1, 4 (2007), *citing* John H. Adkins, *Philippines 1972: We'll Wait and See,* 13 ASIAN SURV. 140, 144 (1973).

[20] CONST. (1973), art. IX, § 3.

[21] Art. VIII, § 13(1).

[22] Art. VIII, § 13(2).

[23] [hereinafter "*Free Telephonem Workers Union*"], G.R. No. 58184, 108 SCRA 757, Oct. 30, 1981.

President still remained the Chief Executive and continued to wield executive power, as buttressed by the following observations:

> (1) The fact that, even though the Prime Minister was elected by the Batasang Pambansa, he was still to be nominated by the President beforehand;
> (2) The Prime Minister and the Batasang Pambansa were responsible for the program of government, but such program was subject to the President's approval;
> (3) The Prime Minister's term ended on the date the President submitted the nomination of his successor to the Batasang Pambansa;
> (4) The President had the authority and discretion to remove any member of the Cabinet or Executive Committee;
> (5) The term length of the Prime Minister depended primarily on the President, not the Legislature; and
> (6) The President was still the head of the country, given the fact that the President was still elected, taken in conjunction with the powers he wielded.[24]

The parliamentary system introduced by Marcos, Sr. was abandoned upon the overthrow of his government and the effectivity of the 1987 Constitution. However, it was not the last attempt to institute such a form of government in the Philippines.

Nearly 30 years after the EDSA Revolution, then President Gloria Macapagal-Arroyo attempted to introduce a parliamentary system the same way Marcos did—through a constitutional amendment. However, Arroyo did not have the support of the Senate, and her only viable option was to introduce her proposed amendments through a people's initiative.

Arroyo's motives were perceived to be similar to those of Marcos. In 2004, her administration was tainted by the "Hello Garci" scandal, which implicated her in serious allegations of election fraud and corruption, among other things. The scandal triggered widespread calls for her resignation, and her popularity plunged to an all-time low.[25] Attempting to offer Arroyo a graceful exit from power, former President Fidel V. Ramos suggested that the Constitution be amended in order to shift to a parliamentary form of government and to shorten Arroyo's term. Arroyo used the suggestion to deflect public attention from the

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[24] *Id.* at 764–65.

[25] Gatmaytan-Magno, *supra* note 19, at 7.

accusations against her. Speculation abounded that Arroyo's true intent was not to shorten her term, but to enable her to maintain her term indefinitely using the same tactics as Marcos, Sr.[26] The groups forwarding the people's initiative were said to have acted as puppets of Arroyo, who herself gave her sponsorship and support to the burgeoning initiative, while applying political pressure to the other branches of government to get in line.[27]

The Supreme Court ultimately rejected the people's initiative in the landmark case of *Lambino v. COMELEC*.[28] The Court made a distinction between amendments and revisions, a crucial one considering that people's initiatives may only propose *amendments,* and not revisions. The proposal to transition from a presidential to a parliamentary system was a revision, according to the Court, for it alters a basic principle in the Constitution—the separation of powers—and radically alters the framework of government as set forth therein.[29] Said the Court:

> The abolition alone of the Office of the President as the locus of Executive Power alters the separation of powers and thus constitutes a revision of the Constitution. Likewise, the abolition alone of one chamber of Congress alters the system of checks-and-balances within the legislature and constitutes a revision of the Constitution."[30]

From these two cases, we can draw two conclusions. First, in dealing with proposed structures of government, the Supreme Court does not bind itself to the technical designation offered by its proponents but examines the nature and substance of the proposal itself. If a government is designated as parliamentary but is fundamentally presidential in character, the Court will characterize it as presidential. Second, a parliamentary government not only falls outside the principle of separation of powers but attempting to shift the current Philippine government towards parliamentarism constitutes a radical alteration of a bedrock constitutional principle.

It is clear that a parliamentary form of government falls outside the framework of separation of powers in the Constitution. For it to be

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[26] *Id.* at 8.
[27] *Id.* at 9.
[28] *Lambino*, 505 SCRA at 249.
[29] *Id.* at 253.
[30] *Id.*

instituted in any way, shape, or form in the Philippines, a constitutional revision is required, as *Lambino* illustrates.

The departure of BARMM from presidentialism reasonably raises questions. But why did the BARMM adopt a parliamentary system in the first place?

The underlying motives behind the passage of the BOL are worth examining. The 1996 peace settlement between the Philippine government and the Moro National Liberation Front (MNLF), which resulted in the creation of the Autonomous Region of Muslim Mindanao (ARMM), was not universally accepted by the Bangsamoro people. The opposition came mainly from the Moro Islamic Liberation Front (MILF), a former splinter group of the MNLF that broke away because it wanted an Islamic government that followed the Shari'a Law,[31] as opposed to the more nationalist and secular leanings of the MNLF. Due to its dissatisfaction with the peace settlement, the MILF continued its insurgency against the government, which led to a series of negotiations that eventually birthed the BOL.[32]

The BOL, largely a product of negotiations between the government and the MILF, entails more extensive self-rule than that given its predecessor, the ARMM. Its provisions reflect a greater desire to accommodate the right of the Moro people to self-determination. It is this thrust that has motivated the establishment of a parliamentary system of government, similar to that of the United Kingdom.[33] According to a 2014 primer prepared by the Bangsamoro Transition Commission, the parliamentary system was chosen due to its resemblance to the best practices of participatory governance of the old Sultanates, Moro liberation fronts, and of indigenous communities.[34]

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[31] Anushka D. Kapahi & Gabrielle Tañada, *The Bangsamoro Identity Struggle and the Bangsamoro Basic Law as the Path to Peace*, 10 COUNTER TERRORISM TRENDS AND ANALYSES 3 (2018).

[32] John Unson, *Plebiscite in Mindanao: Will it be the last?*, THE PHIL. STAR, Jan. 27, 2019, *available at* https://www.philstar.com/headlines/2019/01/27/1888489/plebiscite-mindanao-will-it-be-last.

[33] Patrick Quintos, *After Bangsamoro Organic Law is ratified, now comes the hard part*, ABS-CBN NEWS ONLINE, Jan. 25, 2019, *at* https://news.abs-cbn.com/focus/01/25/19/after-bangsamoro-organic-law-is-ratified-now-comes-the-hard-part.

[34] BANGSAMORO TRANSITION COMMISSION, PRIMER ON THE PROPOSED BANGSAMORO BASIC LAW (ENGLISH) 17 (December 2014), *available at* https://www.hdcentre.org/wp-content/uploads/2016/07/Primer-on-the-proposed-Bangsamoro-Basic-Law-December-2014.pdf.

But the question remains—can an autonomous region institute a parliamentary system within a country that follows a presidential government?

II. AUTONOMY REGIMES IN THE PHILIPPINES: UNPACKING THEIR SCOPE AND LIMITATIONS

Local governance rests upon local autonomy. So central is this concept to the Philippine local government structure that it is mentioned twice in the Constitution, first under Section 25 of Article II—"The State shall ensure the autonomy of local governments"—and second under Section 2 of Article X—"The territorial and political subdivisions shall enjoy local autonomy."

However, as vital as local autonomy is in our current governmental framework, it is not the only autonomy regime that is present in the Philippines. There is an entirely distinct, and even more extensive, autonomy regime prescribed by the Constitution, one that the fundamental law has not explicitly identified, but one which can readily be gleaned by a close reading of the second half of Article X—regional autonomy. The delineation between the applicability of the two regime is simple enough even upon first glance. While local autonomy governs the relationship between local government units and the national government, regional autonomy governs the relationship between the autonomous regions and the national government.[35]

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[35] *See* Mandanas v. Ochoa [hereinafter "*Mandanas*"], G.R. No. 199802, 869 SCRA 440, 485–87, July 30, 2018. In this case, the Supreme Court noted:

> Two groups of LGUs enjoy decentralization in distinct ways. The decentralization of power has been given to the regional units (namely, the Autonomous Region for Muslim Mindanao [ARMM] and the constitutionally-mandated Cordillera Autonomous Region [CAR]. The other group of LGUs (i.e., provinces, cities, municipalities and barangays) enjoys the decentralization of administration. The distinction can be reasonably understood. The provinces, cities, municipalities and barangays are given decentralized administration to make governance at the local levels more directly responsive and effective. In turn, the economic, political and social developments of the smaller political units are expected to propel social and economic growth and development. In contrast, the regional autonomy of the ARMM and the CAR aims to permit determinate groups with common traditions and shared social-cultural characteristics to freely develop their ways of life and heritage, to exercise their rights, and to be in charge of their own

In practice, however, there is a clear imbalance as to how the two regimes are fleshed out as legal concepts. While local autonomy has been elaborated on at length by the Supreme Court in a number of decisions, it has not paid nearly as much attention to regional autonomy.[36] Its precise contours have not been as mapped out as those of local autonomy, thus making it difficult to definitively address the issue of whether regional autonomy permits a departure as radical as an autonomous region instituting a parliamentary government within an otherwise presidential country.

The confusion stems largely from the fact that while local autonomy is often emphasized in Local Government or Public Corporations classes in law schools, the regime governing autonomous regions is not given nearly as much attention. The fact that Local Government or Public Corporations is not a required subject in most law schools does little to help. Moreover, even legal textbooks on the subject only briefly mention the subject; and even when they do, they do not devote adequate attention to the concept, instead discussing the regional autonomy scheme as an adjunct of local autonomy or not doing enough to clearly delineate between the two concepts.

The creation of autonomous regions must be in accordance with the framework of the 1987 Constitution itself.[37] Therefore, the precise contours of regional autonomy must be fleshed out in order to understand whether Congress may institute therein a form of government that does not conform to the principle of separation of powers. The first order of business, then, is to unpack and flesh out the concept of regional autonomy, as a distinct regime apart from local autonomy, and especially as it relates to the relationship between autonomous regions and the national government. In order to achieve this, a comparison between the two concepts is in order.

> affairs through the establishment of a special governance regime for certain member communities who choose their own authorities from within themselves, and exercise the jurisdictional authority legally accorded to them to decide their internal community affairs.

[36] To date, only three Supreme Court decisions have dwelt at length on the nature of regional autonomy, its scope, and its impact, especially as distinguished from local autonomy—Limbona v. Mangelin [hereinafter "*Limbona*"], G.R. No. 80391, 170 SCRA 786, Feb. 28, 1989; Disomangcop v. Datumanong [hereinafter "*Disomangcop*"], G.R. No. 149848, 444 SCRA 203, Nov. 25, 2004; and *Mandanas*, 869 SCRA 440.

[37] CONST. art. X, § 15.

A. Local Autonomy

Local autonomy is not precisely defined either in law or in jurisprudence. That is because it is a broad, multi-faceted concept that acquires different meanings depending on the context. Indeed, the concept has been defined and framed largely according to its desired ends, rather than as a legal regime in and of itself.

The Constitution characterizes local autonomy as "a more responsive and accountable local government structure instituted through a system of decentralization with effective mechanisms of recall, initiative, and referendum."[38] According to Brillantes and Moscare, it means less reliance upon national government and increased reliance upon internally generated resources, or resources jointly generated with other institutions.[39] Gatmaytan refers to it as the means by which local governments become self-reliant partners in the attainment of national goals.[40]

Local autonomy, it seems, is not merely a regime of legal relationships, but a *goal* to be achieved, with the Constitution and the Local Government Code being the means. Hence, it is best understood by breaking down and demonstrating its components.

First, the concept of autonomy itself must be examined. The term "autonomy" generally connotes the right of self-government,[41] and, in the context of administrative divisions of a state, it generally refers to territories which can govern their internal affairs with some degree of independence from the central government. In local government law, autonomy is often equated with the political law concept of *decentralization*, which is the process of transferring functions, powers, responsibilities and accountabilities to lower-level institutions for better governance.[42]

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[38] CONST. art. X, § 3; Ganzon v. Ct. of Appeals [hereinafter *"Ganzon"*], G.R. No. 93252, 200 SCRA 271, 282, Aug. 5, 1991.

[39] Alex B. Brillantes, Jr. & Donna Moscare, Decentralization and Federalism in the Philippines: Lessons from Global Community 6 (discussion paper presented at the International Conference of the East West Center, Kuala Lumpur, Malaysia, July 2002).

[40] DANTE GATMAYTAN, I LOCAL GOVERNMENT LAW AND JURISPRUDENCE 12 (2018).

[41] *Autonomy,* Black's Law Dictionary (9th ed. 2009).

[42] Alex B. Brillantes, *Decentralization Imperatives: Lessons from Some Asian Countries*, 12 J. INT'L. COOP. STUD. 2 (2004).

Decentralization, in turn, embraces two concepts—decentralization of administration, and decentralization of power.[43] In *Limbona v. Mangelin*, the Supreme Court differentiated the two concepts, as follows:

> There is decentralization of administration when the central government delegates administrative powers to political subdivisions in order to broaden the base of government power and in the process to make local governments "more responsive and accountable," "and ensure their fullest development as self-reliant communities and make them more effective partners in the pursuit of national development and social progress." At the same time, it relieves the central government of the burden of managing local affairs and enables it to concentrate on national concerns. The President exercises "general supervision" over them, but only to "ensure that local affairs are administered according to law." He has no control over their acts in the sense that he can substitute their judgments with his own.
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> Decentralization of power, on the other hand, involves an abdication of political power in the favor of local governments units declared to be autonomous. In that case, the autonomous government is free to chart its own destiny and shape its future with minimum intervention from central authorities. According to a constitutional author, decentralization of power amounts to "self-immolation," since in that event, the autonomous government becomes accountable not to the central authorities but to its constituency.[44]

Local autonomy embraces decentralization of the first kind—the decentralization of *administration*, as achieved through a system of devolution, by which the national government confers power and authority upon the various local government units to perform specific functions and responsibilities.[45] In this setup, the central government does not devolve any of its political powers; there is no power-sharing between the central and local government. Instead, the central government merely devolves the performance of administrative functions onto local government units and gives them the operational freedom to perform their mandate with minimal interference from the central government.

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[43] *Limbona,* 170 SCRA at 794.
[44] *Id.* at 794–95.
[45] LOC. GOV. CODE, § 17(e).

The goal is to make governance at the local levels more directly responsive and effective, while also spurring economic, political and social developments in the smaller political units which may redound to the bigger units.[46]

The decentralization of administration is fully fleshed out and operationalized under the Local Government Code of 1991.[47] Often characterized as a "revolutionary" piece of legislation,[48] the Code contains a comprehensive listing of the responsibilities devolved onto local government units (LGUs), as well as the enforcement of certain regulatory powers previously lodged in the national government. Moreover, it broadens the financial power of local government units by providing them a specific share from the national wealth exploited in their area, increasing their share in the national taxes, and broadening the scope of local taxation by giving them the authority to tax subjects not specifically prohibited by law, and withdrawing all previous local tax exemptions granted before the Code's effectivity.[49]

Under this setup, what is then the relationship between the central and local governments? The degree of control depends on which branch of government is being discussed, but generally speaking, local autonomy breaks central government control over local affairs by allowing local government units the administrative and financial independence necessary to administer their own internal affairs. However, the central government is still given room to step in to bring the acts of local government units in line with the law, the Constitution, or national policy. As explained by the Supreme Court in *Ganzon v. Court of Appeals*:[50]

> The Constitution as we observed, does nothing more than to break up the monopoly of the national government over the affairs of local governments and as put by political adherents, to "liberate the local governments from the imperialism of Manila." Autonomy, however, is not meant to end the relation of partnership and inter-dependence between the central administration and local government units, or otherwise, to usher in a regime of federalism. The Charter has not taken such a radical step. Local governments, under the Constitution, are subject to regulation, however limited, and

[46] *Mandanas,* 869 SCRA at 486.

[47] Rep. Act No. 7160.

[48] AQUILINO Q. PIMENTEL, JR., THE LOCAL GOVERNMENT CODE OF 1991: THE KEY TO NATIONAL DEVELOPMENT (1993).

[49] Brillantes & Moscare, *supra* note 39, at 6.

[50] *Ganzon*, 200 SCRA at 286.

> for no other purpose than precisely, albeit paradoxically, to enhance self-government.

Thus, what local autonomy does *not* do is transform the Philippines from a unitary state into a federal state. The sub-units authorized to act (by delegation) do not possess any claim of right against the central government, nor do they become sovereign within the state.[51] What local autonomy envisions is simply to enable the country to develop as a whole, which necessitates that local programs and policies be integrated and coordinated towards a common national goal. Thus, policy-setting for the entire country still lies in the President and Congress, with local governments acting as agents of the national government in carrying out said national policy.[52]

When it comes to the relationship between LGUs and Congress, the traditional rule was that local governments were largely beholden to Congress, because it is Congress that creates them, grants them corporate powers, and confers them with juridical personality. Their continued existence and the grant of their powers are dependent on the discretion of Congress. Even their right to self-government could be taken away by Congress if it so wished, although it had to be in clear and express terms.[53] Therefore, the prevailing rule, known as "Dillon's Rule," was that the powers of local governments were strictly construed and limited to those expressly granted, those necessarily implied from the powers expressly granted, and those absolutely essential to their declared objects and purposes.[54]

Because local autonomy has been expressly enshrined in the Constitution, however, Congress's control over LGUs has been reduced. Congress can no longer deprive local governments of their authority to govern themselves. Moreover, Dillon's Rule, which had been gradually liberalized with the expansion of local autonomy, was finally overturned upon the passage of the Local Government Code of 1991, which provide that any provision as to the power of a local government unit should be liberally interpreted in its favor, and that all doubts are to be resolved in favor of the local government unit concerned.[55] Now, the rule is where a law is capable of two interpretations, one in favor of centralized power in

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[51] Lina v. Paño, G.R. No. 129093, 364 SCRA 76, 78, Aug. 30, 2001.

[52] Pimentel v. Aguirre, G.R. No. 132988, 336 SCRA 201, 217, July 19, 2000.

[53] City of Manila v. Manila Elec. Co., 36 Phil. 89, 99 (1917).

[54] JOHN DILLON, I THE LAW OF MUNICIPAL CORPORATIONS 89 (1873).

[55] LOC. GOV. CODE, § 5(a).

Malacañang and the other beneficial to local autonomy, the latter must prevail.[56]

Nevertheless, jurisprudence subsequent to the Local Government Code's passage seems to have tempered this liberalizing spirit somewhat.[57] The Court articulated the relationship between Congress and LGUs in *Magtajas v. Pryce Properties Corporation*,[58] as follows:

> Municipal corporations owe their origin to, and derive their powers 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. As it may destroy, it may abridge and control. Unless there is some constitutional limitation on the right, the legislature might, by a single act, and 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 State, and the corporation could not prevent it. We know of no limitation on the right so far as to the corporation themselves are concerned. They are, so to phrase it, the mere tenants at will of the legislature.
>
> This basic relationship between the national legislature and the local government units has not been enfeebled by the new provisions in the Constitution strengthening the policy of local autonomy. Without meaning to detract from that policy, we here confirm that Congress retains control of the local government units although in significantly reduced degree now than under our previous Constitutions. The power to create still includes the power to

[56] San Juan v. Civ. Serv. Comm'n, G.R. No. 92299, 196 SCRA 69, 75, Apr. 19, 1991.

[57] *See* Magtajas v. Pryce Properties Corp. [hereinafter "*Magtajas*"], G.R. No. 111097, 234 SCRA 255, July 20, 1994, which invalidated several ordinances passed by Cagayan de Oro City preventing the establishment of casinos, for being in contravention of Pres. Dec. No. 1869, the charter of the Philippine Amusement and Gaming Corporation (PAGCOR). The Court strictly construed the legislative power of LGUs, interpreting Sec. 458 as only allowing LGUs to prohibit gambling and games of chance which are not otherwise permitted by law. Since Pres. Dec. No. 1869 allowed the PAGCOR to centralize and regulate games of chance, LGUs were not at liberty to contravene its tenor.

See also City of Manila v. Laguio, G.R. No. 118127, 455 SCRA 308, April 12, 2005, which took a similar approach, applying Dillon's Rule and ignoring Sec. 5(a) of the Local Government Code by ruling that the City Council of Manila had no authority to regulate places of amusement or entertainment not mentioned in Sec. 458(a)(4)(vii) of the Code.

[58] *Magtajas*, 234 SCRA at 273, *citing* City of Clinton v. Ceder Rapids & Missouri River R.R. Co., 24 Iowa 455 (1868).

> destroy. The power to grant still includes the power to withhold or recall. True, there are certain notable innovations in the Constitution, like the direct conferment on the local government units of the power to tax, which cannot now be withdrawn by mere statute. By and large, however, the national legislature is still the principal of the local government units, which cannot defy its will or modify or violate it.[59]

The level of control retained by Congress over LGUs can be observed in the following aspects of local government law: (1) the fact that an ordinance cannot contravene a statute or it is void;[60] (2) the fact that property held by local governments in their governmental capacity is subject to the strict control of Congress, which may appropriate and dispose of said property as it wishes;[61] and (3) the fact that the national government retains control over public works and infrastructure projects, and other facilities, programs and services funded by the national government under the General Appropriations Act and other laws.[62]

Because local governments are creatures of Congress, the latter has broad discretion to define and prescribe the structure of the former. Congress can exercise the power to create LGUs even without a local government code.[63] Subsequent cases have construed Congress's power over LGUs very liberally. In *League of Cities of the Philippines v. COMELEC*,[64] the Court flip-flopped and ultimately upheld Congress's ability to create cities that did not meet the requirements of the Local Government Code, holding that the express mention of a "local government code" therein should not be interpreted as referring specifically to *the* Local Government

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[59] *Id.*

[60] Mosqueda v. Pilipino Banana Growers and Exp. Ass'n, G.R. No. 189185, 800 SCRA 313, 383, Aug. 16, 2016.

[61] Province of Zamboanga del Norte v. City of Zamboanga, G.R. No. 24440, 22 SCRA 1334, 1344, Mar. 28, 1968.

[62] LOC. GOV. CODE, § 17(c).

[63] Torralba v. Sibagat, G.R. No. 59180, 147 SCRA 390, 394, Jan. 29, 1987.

[64] G.R. No. 176951, 608 SCRA 636, Dec. 21, 2009; 628 SCRA 819, Aug. 24, 2010; 643 SCRA 150, Feb. 15, 2011; 648 SCRA 344, Apr. 12, 2011. In this case, the Court decided the issue of whether or not amendments to the requirements for the creation of cities introduced by Rep. Act. No. 9009 applied to 24 municipalities whose cityhood bills were already pending at the time of the amendment. In its 2009 decision, the Court held that the 24 municipalities did not need to abide by Rep. Act No. 9009 as Congress could validly exempt them from the requirements of the Local Government Code. According to the Court, Congress has the plenary power to create political subdivisions and may prescribe criterion for cityhood as it sees fit, and to prescribe when and where such criterion shall apply. The Court overturned the 2009 decision in 2010, but subsequently upheld it in 2011.

Code of 1991, and that Congress had the plenary power to exempt cities that did not meet the criteria set forth in the Code.

Congress's broad discretion carries over even down to prescribing the form and organization of their respective governments. Because of its absolute and near-unlimited control over the creation of municipalities, Congress has the power to prescribe the form of local government, and may lay out any type of organizational structure it so wishes. Bernas points out that the Constitution does not prescribe the actual form and structure which individual local government units must take, thus leaving it largely up to legislation.[65] In fact, Congress has done this already, through the Local Government Code itself, which meticulously lays out the various local offices, their rights, duties and responsibilities.

Are there limits to the power? Should the structure still conform to the separation of powers already established in our jurisdiction? The question very nearly arose during the deliberations of the 1986 Constitutional Commission, when the commissioners were discussing a proposed provision requiring any change in the form of a local government prescribed by Congress to be submitted to a nationwide plebiscite. Commissioner Davide raised the following concern:

> MR. DAVIDE: If the last sentence is deleted, is it possible for Congress to provide a parliamentary form of government for the local government units? I believe that the consensus of the Commission is to adopt the presidential system. The existing local government units are patterned after the presidential system. If we delete the last sentence now, can the provision grant Congress the authority to adopt the parliamentary system for the local government units?
>
> We go further. Can it also allow a sort of a federal system for the local government units like the provinces and the cities?
>
> MR. OPLE: Madam President, this is extending the horizons of possibilities to their farthest limit. I think we should be able to trust the sense of proportion of the Congress that will be elected under the aegis of this new Constitution.
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> MR. DAVIDE: In which case, I would strongly object to the amendment, because there might be the possibility that Congress will adopt another type of government for the local

[65] Bernas, *supra* note 3, at 1112.

> government units which would be against the presidential form. I am in favor of the parliamentary system, but I have to respect the decision of the Commission to adopt, in effect, the presidential system.[66]

There was a back-and-forth between the commissioners regarding the subject. Commissioner Davide argued in favor of retaining the provision because he was against giving Congress unbridled license to prescribe the form of local government, while Commissioners Ople and Nolledo argued that such a requirement would unduly tie the hands of Congress, and unnecessarily modify the provisions of Batas Pambansa Blg. 337, the old Local Government Code of 1983, requiring the creation of local government units. Ultimately, Commissioner Davide's argument was rejected and the requirement of a plebiscite to change the form of local government was removed from the final draft of the 1987 Constitution, seemingly confirming Congress's plenary authority over the subject.

However, Davide's concern about shifting the local governance structure from a presidential to a parliamentary system ultimately went unanswered, mooted by Commissioner Foz's observation:

> MR. FOZ: I think it is settled in some jurisprudence that *the presidential form of government and the parliamentary system are not applicable to local government systems*. As a matter of fact, in the existing local government setup, *there is a mixture as it is*. The provincial governor sits in the provincial board which is the legislative department of the provincial government, and this example is extended to some other forms of local government where the mayor sits as chairman or presiding officer of the city or municipal council. So, the question of whether this is parliamentary or presidential does not apply, does not come into play at all. So, the form of government as used in the provision involves the question of whether it is a mayor-council type of government or a manager type of government as far as local government is concerned. So the parliamentary and presidential systems are not at all involved.[67]

This view was confirmed by the current Local Government Code. Though the structure of each local government unit varies with the type of LGU concerned, the basic structure consists of an executive branch in

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[66] III RECORD CONST. COMM'N. 58 (Aug. 16, 1986), *available at* https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/24/51636.

[67] *Id.* (Emphasis supplied.)

the form of a local chief executive, as well as a local legislative body in the form of the various *sanggunian*,[68] who serve alongside other officials such as the local treasurer and the secretary, and the local assessor, among others. As with the national government, there is an allocation of governmental power among the branches of government, with the local chief executive exercising executive powers "and other such powers as may be granted to him by law,"[69] while local legislative power is to be exercised by the *sanggunian*.[70]

As Commissioner Foz stated, the traditional concept of separation of powers does not squarely apply with the structure of LGU governing bodies. For one, there is no local judiciary to act as the third branch of local government, and the review process of ordinances, resolutions and executive orders tends to follow a top-down structure, either emanating from the President (acting through the DILG pursuant to his power of supervision) or from the LGU higher in rank.[71] Secondly, there is more blending and interaction between the branches of government. For example, under Section 49(a) of the Local Government Code, the vice-governor or vice-mayor, a member of the local executive branch, acts as the presiding officer of the local legislative body.[72] There is also no clear delineation between executive and legislative powers on the barangay level.[73]

Nonetheless, Commissioner Foz's view was somewhat tempered by the ruling in *Gamboa v. Aguirre*,[74] wherein the Supreme Court seemed to have looked towards the separation of powers for guidance in delineating the powers of local elective officials. In that case, the Court dealt with the issue of whether or not an incumbent vice-governor acting concurrently as governor during a temporary vacancy could preside over the meetings of the *sangguniang panlalawigan*. The Local Government Code was silent on the issue, but the Court filled the vacuum in an almost *Angara*-esque way by referencing the delineation of powers between the two branches:

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[68] *See* LOC. GOV. CODE, §§ 387, 443, 454, 463.

[69] *See* §§ 444, 455, 465.

[70] § 48.

[71] §§ 30, 56, 57, 58.

[72] § 49(a).

[73] Gamboa v. Aguirre [hereinafter *"Gamboa"*], G.R. No. 134213, 310 SCRA 867, 873, July 20, 1999.

[74] *Id.*

> By tradition, the offices of the provincial Governor and Vice-Governor are essentially executive in nature, whereas plain members of the provincial board perform functions partaking of a legislative character. This is because the authority vested by law in the provincial boards involves primarily a delegation of some legislative powers of Congress.[75]

The Supreme Court also took a historical perspective, noting that the union of executive and legislative functions in the local chief executive under the old Local Government Code had been abandoned by the clear delineation of powers in the present Code. Though the Court did not explicitly state it, this pronouncement can be easily seen as the Court shaking off yet another vestige of the Martial Law era, emphasizing the primacy of separation of powers as a rejection of the Martial Law era's disregard for it. "Such is not only consistent with but also appears to be the clear rationale of the new Code wherein the policy of performing dual functions in both offices has already been abandoned."[76]

Therefore, it is readily observable that the concept of separation of powers is still applicable to a certain degree to local governments, with such separation even being recognized in *Gamboa* as a policy of the Local Government Code.

However, the persuasive force of the *Gamboa* ruling as an argument for strict adherence to presidentialism on the local level is somewhat undercut by the ruling in *Negros Oriental II Electric Cooperative v. Sangguniang Panlungsod of Dumaguete*,[77] a case which roundly demonstrates that whatever separation is applied to local governments is not as strict or as all-encompassing as that applied to the national government. In that case, the Supreme Court held that the power of legislative contempt exercised by the national legislature was not deemed possessed by local legislatures, because the peculiar circumstances justifying its existence on the national level did not exist at the local level. The Court grounded the existence of legislative contempt on the necessities brought about by the separation of powers, as follows:

> The exercise by the legislature of the contempt power is a matter of self-preservation as that branch of the government vested with the legislative power, independently of the judicial branch, asserts its authority and punishes contempts thereof.

[75] *Id.* at 872.
[76] *Id.* at 875.
[77] G.R. No. 72492, 155 SCRA 421, Nov. 5, 1987.

> The contempt power of the legislature is, therefore, sui generis, and local legislative bodies cannot correctly claim to possess it for the same reasons that the national legislature does. The power attaches not to the discharge of legislative functions per se but to the character of the legislature as one of the three independent and coordinate branches of government. The same thing cannot be said of local legislative bodies which are creations of law.[78]

To reach this ruling, the Court observed that it was the system of checks and balances, dictated by the separation of powers among the three co-equal branches of government, that birthed the power of legislative contempt. In denying this power to local legislatures, the Court effectively declared that local governments were not bound by the same strictures of separation of powers as the national government. Despite being decided on the basis of the 1973 Constitution and the Local Government Code of 1983, *Negros Oriental* remains a good case law insofar as the existence of local legislative contempt is concerned, and has not been overturned by the 1987 Constitution or the Local Government Code of 1991.

The state of jurisprudence, therefore, suggests that while local governments are not required to adhere to a strict separation of powers, nor do they need to have governments explicitly mirroring the presidential system of the national government, a certain degree of separation of powers still exists on the local level. Disputes concerning the powers of local officials can and will be resolved by invoking this "limited" separation.

Thus, the question still remains—does the mandate of local autonomy prohibit Congress from prescribing a different form of government for LGUs that abandons the separation of powers altogether, such as a purely parliamentary system?

As of this writing, there is no authoritative ruling on the subject, and the Supreme Court has yet to discuss the issue. However, in light of everything that has been discussed, the answer is most likely in the affirmative. If the power of Congress to create local government units is plenary, and nothing in the Constitution or law specifically and expressly prohibits local government units from adopting forms of government contrary to the presidential system, and if Congress itself has the power to create certain local government units and exempt them from the

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[78] *Id.* at 430.

requirements of the Local Government Code, even on occasion, then the most likely conclusion is that Congress can impose a parliamentary system on LGUs, either by amending the Local Government Code or passing a special law creating a municipality with a fully parliamentary form of government.

Assuming this to be the case for LGUs, is the answer the same for autonomous regions?

B. Regional Autonomy

Section 1, Article X of the Constitution enumerates the territorial and political subdivisions of the Philippines—the provinces, cities, municipalities, and barangays. It is these territorial and political subdivisions that enjoy local autonomy, in the concept discussed above;[79] thus, when the term "local government unit" is used, it is in reference to these political units.

However, the constitutional provision does not end there; it goes on to state that "[t]here shall be autonomous regions in Muslim Mindanao and the Cordilleras as hereinafter provided."[80] Despite being separated from the other territorial and political subdivisions, autonomous regions are considered local governments under the existing governmental framework.[81] There is a reason for the separation, however, because unlike local government units, autonomous regions enjoy a greater degree of autonomy from the central government, and are governed by their own distinct regime, which will be referred to as *regional autonomy,* in order to more efficiently differentiate it from local autonomy.

While the two regimes share some basic similarities, and autonomous regions are subject to the general dictates of local autonomy, there are qualities peculiar to regional autonomy which only autonomous regions enjoy.

First, if local autonomy is characterized by its end goal of making local governance more directly responsive and effective through a decentralized administrative system, what is the goal of regional

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[79] CONST. art. X, § 2.
[80] CONST. art. X, § 1.
[81] Kida v. Senate, G.R. No. 196271, 667 SCRA 200, 325, Feb. 28, 2012.

autonomy? According to the Supreme Court in *Disomangcop v. Datumanong*:[82]

> The objective of the autonomy system is to permit determined groups, with a common tradition and shared social-cultural characteristics, to develop freely their ways of life and heritage, exercise their rights, and be in charge of their own business. This is achieved through the establishment of a *special governance regime* for certain member communities who choose their own authorities from within the community and exercise the jurisdictional authority legally accorded to them to decide internal community affairs.

Considering this, it is fairly obvious that a greater degree of autonomy is necessary to achieve this end goal. While both local and regional autonomy can only be achieved through decentralization, the decentralization envisioned by the latter is not merely that of administration, but of power.[83] Thus, harking back to the terminology of *Limbona v. Mangelin,* regional autonomy involves a decentralization of *power,* or a devolution of political power in favor of local governments units declared to be autonomous, in order to enable the autonomous government to "free[ly] chart its own destiny and shape its future with minimum intervention from central authorities."[84]

It is noteworthy that in *Limbona,* the first case dealing with the autonomous regions mandated by the 1987 Constitution, the Supreme Court refused to definitively declare whether the regional autonomy afforded thereto constituted a true attempt to decentralize power, nor did subsequent cases attempt to resolve the ambiguity.[85] The Court only made a definitive acknowledgment thereon in *Mandanas v. Ochoa,* stating that:

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[82] *Disomangcop*, 444 SCRA at 231. (Emphasis supplied.)

[83] Cordillera Broad Coal. v. COA, G.R. No. 79956, 181 SCRA 495, 506, Jan. 29, 1990.

[84] *Limbona*, 170 SCRA at 795.

[85] In *Limbona,* the issue revolved around the acts of an autonomous region established prior to the 1987 Constitution; hence, it did not feel the need to resolve the issue. Said the Court:

> But the question of whether or not the grant of autonomy Muslim Mindanao under the 1987 Constitution involves, truly, an effort to decentralize power rather than mere administration is a question foreign to this petition, since what is involved herein is a local government unit constituted prior to the ratification of the present Constitution. Hence, the Court will not resolve that controversy now, in this case, since no controversy in fact exists. We will resolve it at the proper time and in the proper case.

"The decentralization of power has been given to the regional units (namely, the Autonomous Region for Muslim Mindanao [ARMM] and the constitutionally-mandated Cordillera Autonomous Region [CAR]). The other group of LGUs (*i.e.*, provinces, cities, municipalities and *barangays*) enjoy the decentralization of administration."[86]

This grant of political autonomy can be readily seen in the constitutional provisions relating to autonomous regions, found in the second half of Article X. Autonomous regions are granted their own institutions and their own laws. Each autonomous region is to be created *via* an organic act which shall define the basic structure of government, consisting of the executive department and legislative assembly, as well as special courts with personal, family, and property law jurisdiction consistent with the provisions of this Constitution and national laws.[87]

Unlike with local autonomy, wherein what is transferred is decision-making for the administration and delivery of basic social services, regional autonomy involves the transfer of *political powers* onto the regional governing body. This amounts to "self-immolation," in the words of Bernas, because, once the national government sheds its political powers and devolves them to the regional government, the autonomous government becomes accountable not to the central authorities but to its constituency.[88]

The list of these powers can be found under Section 20 of Article X, which grants the regional legislature the power to legislate over certain matters, such as: (1) administrative organization; (2) creation of sources of revenues; (3) ancestral domain and natural resources; (4) personal, family, and property relations; (5) regional urban and rural planning development; (6) economic, social, and tourism development; (7) educational policies; (8) preservation and development of the cultural heritage; and (9) such other matters as may be authorized by law for the promotion of the general welfare of the people of the region.[89] Moreover, responsibility over preservation of peace and order within the regions.[90]

Naturally, because the decentralization of power involves an abdication of political power from the national government, and, hence, a derogation of sovereign authority, the listing must be construed

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[86] *Mandanas,* 869 SCRA at 485–86.
[87] CONST. art. X, § 18.
[88] *Limbona*, 170 SCRA 786, 795.
[89] CONST. art. X, § 20.
[90] Art. X, § 21.

narrowly and strictly against the regional government. It is submitted that anything necessarily implied in the powers granted above must also be included. Anything else not expressly granted or necessarily implied in said grant remains within the exclusive authority of the national government.[91] In a sense, then, the interpretation of the political jurisdiction of regional governments should follow something similar to Dillon's Rule, unlike the liberal construction afforded to local autonomy.

Under the regional autonomy setup, what is then the degree of control exercised by the central government over the regional government? Once again, the particular degree of control may depend on which branch of government is being discussed, and the provisions of the organic act in question. But, as a general rule, the central government exercises a very minimal degree of control over regional affairs. In *Limbona,* the Court characterized autonomous regions as being "subject alone to the decree of the organic act creating it and accepted principles on the effects and limits of 'autonomy.'"[92] In *Disomangcop,* the Court stated that "[r]egional autonomy refers to the granting of basic internal government powers to the people of a particular area or region with *least control and supervision* from the central government."[93] With regard to the powers reserved to the regional government under Section 20 of Article X of the 1987 Constitution, such matters are left to the competence of the regional government.

Despite this extensive grant of autonomy to regional governments, however, regional autonomy is not unbridled. The primary limitation is that the acts of the autonomous regional government are limited by the provisions of the Constitution and other applicable national laws. This is an implied limitation which need not be stated within the organic acts; in fact, the framers of the Constitution deemed the limitation sufficient and declined to add other provisions expressly extending certain constitutional rules to the autonomous regions. For example, a provision extending the rule of uniformity and equitability of taxation to autonomous regions were deemed redundant and were thus not included in Article X.[94]

Corollary to this limitation, the autonomy afforded to autonomous regions must not be so total and all-encompassing so as to

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[91] Art. X, § 17.

[92] *Limbona,* 170 SCRA 786, 796.

[93] *Disomangcop,* 444 SCRA at 231.

[94] III RECORD CONST. COMM'N 62 (Aug. 21, 1986), *available at* https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/24/51934.

undermine the political and territorial sovereignty of the republic by creating a sovereign state in all but name. As such, an associative relationship between the national government and an autonomous region is repugnant to the Constitution, and any act providing for the establishment thereof is void.[95]

How, then, does this limitation apply to the relationship between the national and regional government? As Section 20, Article X of the Constitution demonstrates, there is a clear delineation maintained between regional matters and national matters. The enumerated matters are within the regional legislature's competence, but Congress retains its plenary authority to legislate within the regional government over anything excluded from the provision.

The interplay between these two domains is illustrated in *Sema v. COMELEC*.[96] Here, the Court held that Congress could not delegate the power to create provinces and cities to the ARMM Regional Assembly, because the creation of provinces and cities necessarily results in the creation of new legislative districts—an act that only Congress can perform under Section 5(3), Article VI of the Constitution. Nothing in Section 20, Article X of the Constitution authorized autonomous regions to create or reapportion legislative districts for Congress, nor did it have legislative power to enact laws relating to national elections. Hence, it cannot create a legislative district whose representative is elected in national elections.

It is clear that the regional assembly cannot legislate upon matters the national government retains legislative competence over. What is less clear, however, is whether Congress is wholly deprived of its legislative power over matters vested within the regional legislature. Section 20, Article X of the Constitution subjects regional legislative power to the provisions of the Constitution and national laws.[97] This means that, if there is a conflict between regional law and the Constitution, then the Constitution obviously prevails.[98] However, what if the conflict is between regional law and national law? Magallona argues that there can be no recognition of powers and jurisdictions exclusive to the Bangsamoro government; otherwise, the Republic would be conceding

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[95] Province of North Cotabato v. Gov't of the Rep. of the Phil. Peace Panel on Ancestral Domain [hereinafter *"Province of North Cotabato"*], G.R. No. 183591, 568 SCRA 402, 481, 521, Oct. 14, 2008.

[96] G.R. No. 177597, 178628, 558 SCRA 700, July 16, 2008.

[97] CONST. art. X, § 20.

[98] Bernas, *supra* note 3, at 1146.

that it does not possess internal sovereignty or supreme authority over matters within the exclusive powers of the Bangsamoro government.[99] However, as a counterpoint, Bernas points out that national laws themselves are subject to the Constitution, one of whose state policies is to ensure the autonomy of local governments.[100]

Certain pronouncements of the Supreme Court seem to bolster Bernas' point, suggesting that even within matters unqualifiedly within its plenary authority, the legislative power of Congress within the autonomous region is subject to the "accepted principles on the effects and limits of 'autonomy.'"[101] In fact, the same limitation imposed on the President's relationship to the regional government is also what curtails the power of Congress over the same—the fact that its power is limited to general supervision and not control.[102] Consequently, Congress will have to reexamine national laws and make sure that they reflect the Constitution's adherence to local autonomy. And in case of conflicts, the underlying spirit which should guide its resolution is the Constitution's desire for genuine local autonomy.[103]

Harmonizing these competing pronouncements leads to a sort of balancing of interests between the territorial integrity and national sovereignty, and the desire to fulfill the goals of regional autonomy. Thus, while Congress cannot be wholly deprived of its power to legislate within autonomous regions, its power to do so may, in certain cases, be more limited than usual.

One crucial limitation on regional autonomy is that regional autonomy cannot be framed or formulated in a manner so total and all-encompassing that it practically amounts to the creation of a sovereign state in all but name. While this matter was already briefly mentioned above, it is of such grave consequence, especially considering its history in the context of the Bangsamoro negotiations, that it merits its own subheading.

One of the most crucial steps in the peace process leading up to the creation of the current Bangsamoro Autonomous Region in Muslim Mindanao ("BARMM") was the drafting of the Memorandum of

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[99] Merlin Magallona, *Problem Areas in the Bangsamoro Basic Law*, 89 PHIL. L. J. 13, 20 (2015).

[100] Bernas, *supra* note 3, at 1146.

[101] *Limbona*, 170 SCRA at 796.

[102] CONST. art. X, § 16.

[103] *Disomangcop*, 444 SCRA at 236.

Agreement on Ancestral Domain ("MOA-AD"), a framework agreement which envisioned the creation of a Bangsamoro Juridical Entity ("BJE") with its own "basic law," police and internal security force, and system of banking and finance, civil service, education and legislative and electoral institutions, as well as full authority to develop and dispose of minerals and other natural resources.[104] The constitutionality of the framework agreement was assailed before the Supreme Court, resulting in the case of *Province of North Cotabato,* wherein the Court struck down the MOA-AD for effectively creating a political subdivision whose autonomy from the national government was so total and all-encompassing that it was basically an independent state.

In reaching this conclusion, the Court examined the provisions of the MOA-AD and noted that it gave the BJE powers far greater than any autonomous region thus far constituted in the Philippines. The Court observed that the relationship between the national government and the BJE was characterized therein as an "associative relationship", an international law concept which was traditionally seen as a preparatory step in the transition towards full statehood. Under such a setup, "[a]n association is formed when two states of unequal power voluntarily establish durable links. In the basic model, one state, the associate, delegates certain responsibilities to the other, the principal, while maintaining its international status as a state. Free associations represent a middle ground between integration and independence."[105]

The Court then noted that the MOA-AD contained many provisions consistent with the concept of association. This was most notably evidenced by the powers granted to the BJE, which included the capacity to enter into economic and trade relations with foreign countries, the commitment of the central government to ensure the BJE's participation in meetings and events in the Association of Southeast Asian Nations and the specialized United Nations agencies, and the continuing responsibility of the central government over external defense. The BJE also had the right to participate in Philippine official missions bearing on negotiation of border agreements, environmental protection, and sharing of revenues pertaining to the bodies of water adjacent to or between the islands forming part of the ancestral domain, resembles the right of the governments of the Federal States of Micronesia and the Marshall Islands

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[104] Inquirer Research, *What Went Before: The proposed MOA-AD*, PHIL. DAILY INQUIRER, Oct. 9, 2012, *available at* https://newsinfo.inquirer.net/285604/what-went-before-the-proposed-moa-ad.

[105] *Province of North Cotabato*, 568 SCRA at 478–79, *citing* C.I. Keitner and W.M. Reisman, *Free Association: The United States Experience*, 39 TEX. INT'L L.J. 1 (2003).

to be consulted by the US government on any foreign affairs matter affecting them.[106]

The Court proceeded to evaluate the BJE based on the parameters of identifying statehood established by the Montevideo Convention—a permanent population, a defined territory, a government, and a capacity to enter into relations with other states. In international law, it is the last requisite that often constitutes the decisive criterion in identifying a state,[107] and so it proved in this case. The BJE's ability to participate in official Philippine missions and its ability to enter into economic and trade relations with other states was what pushed it from a mere autonomous region into a state within a state. Allowing the BJE to come into existence would undermine the territorial and political integrity of the Philippines, and therefore it had to be struck down.

Therefore, regional autonomy cannot go so far as to dissolve the unity of the Philippines and clothe states with the economic and political machinery to secede from the Republic. In evaluating the discretion of Congress to prescribe a form of regional government, this limitation should always be kept in mind.

III. EXAMINING THE PROVISIONS OF THE BANGSAMORO ORGANIC LAW

A. Nature of the Organic Act

Considering now the level of control exercised by the national government over regional governments, does Congress have a similar level of authority to prescribe the form of government as it has over local governments as discussed above?

For local governments, Congress's near-unbridled ability to prescribe the form of government emanates from the fact that local governments are considered "mere creatures of Congress" as they are created entirely by legislative fiat. In fact, the creation of local government units (LGUs) is considered part of the plenary powers of Congress. The charter creating a local government is classified as a statute, except that it must be approved by a majority vote in a plebiscite conducted in the

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[106] *Id.*

[107] JAMES R. CRAWFORD, BROWNLIE'S PRINCIPLES OF PUBLIC INTERNATIONAL LAW 129 (8th ed. 2012).

political units directly affected.[108] Necessarily, an amendment or repeal of the city charter that affects the legal existence of the LGU, or results in a material change in the LGU directly affected, also requires a plebiscite.[109] In this regard, the charters of LGUs are lifted above the status of ordinary legislation.[110]

A similar rule applies to the organic acts of autonomous regions, in the sense that a plebiscite is necessary for them to come into effect. Originally, the rule regarding amendments and revisions of an organic act were much stricter—because organic acts came into effect through a plebiscite, Congress could not amend or repeal any provision without similarly conducting a plebiscite.[111] Previous organic acts such as Republic Act Nos. 6734[112] and 9054[113] contained provisions barring Congress from amending or repealing them without a plebiscite, or requiring a supermajority vote for any amendment.

However, in *Kida v. Senate*,[114] the Supreme Court limited the plebiscite requirement to amendments constitutionally essential to the creation of autonomous regions. Only aspects specifically mentioned in the Constitution, which Congress must provide for in the organic act, require ratification through a plebiscite. These include (a) the basic structure of the regional government; (b) the region's judicial system, *i.e.*, the special courts with personal, family, and property law jurisdictions; and (c) the grant and extent of the legislative powers constitutionally conceded to the regional government under Section 20, Article X of the Constitution.[115]

The Court held that requiring a plebiscite for every amendment of an organic act would effectively create an irrepealable law.[116] Irrepealable laws and laws requiring voting thresholds higher than those

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[108] CONST. art. X, § 10.

[109] Miranda v. Aguirre, G.R. No. 133064, 314 SCRA 603, 609, Sept. 16, 1999.

[110] Bernas, *supra* note 3, at 1142.

[111] Pandi v. Ct. of Appeals, G.R. No. 116850, 380 SCRA 436, 451, Apr. 11, 2002.

[112] An Act Providing for An Organic Act for the Autonomous Region in Muslim Mindanao (1989).

[113] An Act to Strengthen and Expand the Organic Act for the Autonomous Region in Muslim Mindanao, Amending for the Purpose Republic Act No. 6734, Entitled "An Act Providing for the Autonomous Region in Muslim Mindanao," as Amended (2001).

[114] G.R. No. 196271, 659 SCRA 270, Oct. 18, 2011.

[115] *Id.* at 302.

[116] *Id.*

prescribed by the Constitution are considered unconstitutional for being undue infringements upon Congress's plenary power to legislate.[117]

Therefore, in limiting the plebiscite requirement for amendment of organic acts and striking down provisions therein to the contrary, the Court brought organic acts closer to the level of charters creating local governments. In a very real sense, it can be said that both LGU charters and organic acts require a plebiscite for amendments to provisions necessarily affecting their creation. The main difference, therefore, is in the exact definition of what constitutes amendments essential to their creation. Organic acts extend the definition to include even the structures of the regional government, and the grant and extent of the legislative powers devolved upon them—two matters not essential for the existence of LGUs.

That being the case, can it be said that autonomous regions are mere creatures of Congress, as LGUs are? Obviously, the existence of the autonomous regions is not wholly dependent on Congress's will because the Constitution specifically mandates their existence. By contrast, the Constitution does not require Congress to create any particular LGU. Moreover, Congress does not have sole or unbridled control over the creation of autonomous regions, because the Constitution specifically provides for the contents of the organic act, and the procedure for their drafting.

It follows, therefore, that Congress cannot simply withdraw or dissolve the existence of an autonomous region. The very question of whether Congress can dissolve the existence of an autonomous region is, in itself, hotly disputed; in fact, one of the arguments levied against the constitutionality of the Bangsamoro Organic Law ("BOL") is that Congress had no power to dissolve the Autonomous Region in Muslim Mindanao.[118] This Note will not delve too deeply into the subject, but it can safely be assumed, at the very least, that once it has created an autonomous region in the Cordilleras or Muslim Mindanao, Congress cannot make it so that there is no autonomy in those regions.

As stated, Congress does not exercise the same level of control over autonomous regions as it does over local governments. Echoing

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[117] DANTE GATMAYTAN, LEGAL METHOD ESSENTIALS 3.0, at 297 (2016).

[118] Lian Buan, *Governor of Sulu runs to Supreme Court to block Bangsamoro Law*, RAPPLER, Oct. 30, 2018, *at* https://www.rappler.com/nation/215554-sulu-abdusakur-tan-ii-supreme-court-petition-block-bangsamoro-organic-law/.

Disomangcop, the President's power over autonomous regions is limited to that of general supervision also limits the powers of Congress in largely the same way.[119] This leads to the conclusion that autonomous regions are not "mere creatures of Congress," and that the rule that Congress has unbridled discretion to prescribe the form of government therein does not apply for the same considerations as it does to local governments.

Proceeding from this, an organic act cannot be considered an ordinary form of legislation. Not only is an organic act subject to the same requirement of favorable majority vote in a plebiscite as municipal or provincial charters, but the manner of its creation, its form and its content are dictated by the Constitution. The Constitution is a manifestation of the sovereign will of the people, and is the supreme, fundamental law of the land. Therefore, an organic act bears two direct hallmarks of direct democracy, elevating it above ordinary legislation, and even above ordinary charters creating LGUs.

Therefore, the question of whether or not the regime of regional autonomy allows Congress to prescribe a form of regional government that does not conform to the separation of powers largely rests upon an examination of the provisions of the Constitution.

B. Interpreting the Constitutional Directive

Section 18, Article X of the Constitution provides the contents required of an organic act, as well as the process for the creation of an autonomous region. The creation of an autonomous region shall take place only in accord with the constitutional requirements;[120] therefore, its directives are of utmost importance. The Constitutional Commission did not directly address the issue during its deliberations, and the one time the issue ever arose was within the context of *local governments*. Therefore, it appears that the issue largely revolves around the plain text of the Constitution. The relevant provision reads:

> Section 18. The Congress shall enact an organic act for each autonomous region with the assistance and participation of the regional consultative commission composed of representatives appointed by the President from a list of nominees from multi-sectoral bodies. The organic act shall define the basic structure of government for the region consisting of the executive department and legislative

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[119] *Disomangcop*, 444 SCRA at 236.

[120] Abbas v. COMELEC, G.R. No. 89651, 179 SCRA 287, 296, Nov. 10, 1989.

> assembly, both of which shall be elective and representative of the constituent political units. The organic acts shall likewise provide for special courts with personal, family, and property law jurisdiction consistent with the provisions of this Constitution and national laws.
>
> The creation of the autonomous region shall be effective when approved by majority of the votes cast by the constituent units in a plebiscite called for the purpose, provided that only provinces, cities, and geographic areas voting favorably in such plebiscite shall be included in the autonomous region.[121]

Under Section 18, Article X the basic structure of the autonomous region, which the organic act is to define, shall consist of an *executive department* and *legislative assembly*, both of which shall be *elective* and *representative* of the constituent political units. The Constitution does not specify the composition of the regional government beyond that broad mandate, which leads to the conclusion that Congress is free to define all other matters involving the structure of the autonomous regional government, as long as it remains within the boundaries set by Section 18, Article X. However, this freedom to define must be interpreted within the framework of regional autonomy. The question sought to be addressed here is whether the provisions of the BOL are sufficiently within this framework.

Determining the scope and application of the terms used by the Constitution poses some difficulty. The framers of the Constitution are silent on the exact scope and definition of the words "elective" and "representative," nor is there any particular qualification on the usage of the terms "executive department" and "legislative assembly." The plain meaning of the words should thus be utilized in construing them, consistent with the rules of constitutional interpretation. This interpretation will have to be guided by the nature, purpose, and rationale for the creation of autonomous regions, which means that any interpretation will have to uphold the fundamental law's desire for genuine and meaningful local autonomy in the territorial and political subdivisions.[122] Any interpretation contrary to this mandate cannot be sanctioned.

However, there is one more condition found elsewhere in the Constitution. Section 1, Article II provides that "[t]he Philippines is a

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[121] CONST. art. X, § 18.

[122] *Disomangcop,* 444 SCRA at 235.

democratic and republican State."[123] This sets out the basic framework of the Philippine government system. Being an autonomous region, and hence a mere territorial and political subdivision of the Philippines, it follows that the autonomous region's government structure must remain within the bounds of the democratic and republican system of government adhered to by the Philippines under the present Constitution. This is reinforced by the need for the autonomous region to be elective and representative. Any system that is undemocratic and non-republican by nature will be constitutionally impermissible.

The analysis will only involve provisions pertaining to the Bangsamoro framework, not parliamentary government in general, because, as illustrated by *Free Telephone Workers Union,* the designation of the government system in the organic law will be disregarded if the provisions themselves indicate a different government setup.

1. Presence of a Legislative Assembly and Executive Branch

The first criterion that must be satisfied is whether or not the parliamentary system of the BOL contains the three basic branches of government as set forth in the Constitution.

The Bangsamoro Autonomous Region in Muslim Mindanao ("BARMM") possesses a legislative assembly in the form of a parliament. It is the organ by which the powers and functions expressly granted by the BOL, as well as those and those necessary for, or incidental to, the proper governance and development of the BARMM, are vested. The Bangsamoro Parliament is also vested with authority to enact laws on matters that are within the powers and competencies of the Bangsamoro government.[124] Furthermore, its role is to set policies, legislate on matters within its authority, and, most importantly for the purposes of this Note, to *elect a chief minister* who shall exercise executive authority on its behalf.[125]

In turn, the chief minister is the head of the cabinet, in which the executive function and authority is vested by the BOL.[126] The chief minister acts as the head of the Bangsamoro government, and is in charge of appointing heads of ministries, agencies, bureaus, and offices of the Bangsamoro government or other officers of Bangsamoro-owned or

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[123] CONST. art. II, § 1.
[124] BOL, art. VII, § 3.
[125] Art. VII, § 2.
[126] Art. VII, § 4.

controlled corporations or entities with original charters. Alongside him are two deputy chief ministers who may each hold a cabinet position, whom the chief minister is to nominate, and whom the parliament shall elect.[127]

Consistent with other parliamentary forms of government, there is a process for the dissolution of the parliament and the convening of elections for a new parliament, and a new chief minister. Under Section 36, Article VI of the BOL, if two-thirds of the members decide to enact a vote of no confidence against the government of the day, the chief minister shall advise the *wali*, the ceremonial head of the Bangsamoro government, to dissolve the parliament and call for a new parliamentary election.[128] In the interim, the outgoing chief minister and the cabinet continue to run the government in a limited capacity.

Under this setup, there is clearly a legislative assembly, as mandated by the Constitution. The trickier question is whether there is an executive department. The Constitution uses the word "departments" which has been interpreted by some as mandating that the executive must be a separate entity from the legislature. A popular argument against the constitutionality of the BOL is that it fuses the executive powers of the cabinet and the legislative powers of the parliament, thereby violating the constitutional mandate that the executive and legislature be separate, pursuant to the principle of separation of powers.[129]

A look at the constitutional provisions, however, shows little in the way of direct or explicit support for this position. There is nothing in Section 18 of Article X that explicitly states that the two branches must be wholly separate. While such an interpretation can reasonably be inferred from the wording of the text, the absence of any other authoritative interpretation on the subject means this interpretation must remain a mere surmise. Taking the plain text of the Constitution at face value, the BOL appears to fulfill the requirement.

2. Government Being Elective and Representative

Under the BOL, members of the parliament are elected pursuant to a system of proportional representation. Half of the members shall be representatives of political parties and elected pursuant to said system,

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[127] Art. VII, § 35.
[128] Art. VII, § 36.
[129] Buan, *supra* note 118.

with the number of seats allocated for each political party based proportionately on the percentages of votes they obtain, as against the total votes obtained by each political party, as against the total votes cast in BARMM for the election of party representatives.[130] The other 40% of parliamentary membership is elected from single-member parliamentary districts to be apportioned by the parliament.[131] The remaining 10% is composed of reserved seats and sectoral representatives—two seats are reserved each for non-Moro indigenous peoples and settler communities, while one seat is allocated each for the women, youth, traditional leaders, and the Ulama sectors.[132]

The Bangsamoro Parliament fulfills the qualification of being elective and representative. However, the chief executive and deputy chief executives are selected by a majority vote of the members of the parliament.[133] In case no member of the parliament obtains the majority vote necessary to be elected chief minister in the first round of voting, the parliament will conduct a runoff election involving the two candidates who obtained the highest number of votes cast in the first round.

Does the fact that the chief executive is indirectly elected go against the constitutional mandate of elective and representative government? Some hold the position that it does, the most notable being Sulu Governor Abdusakur Tan II, who argued in his petition questioning the constitutionality of the BOL that it deprives the people of "their right to elect the head of the executive branch of the Bangsamoro Government."[134]

However, there is no right specifically granted to the people of the autonomous region to directly elect their head of state. The Constitution does not specify that the chief executive must be *directly* elected, only that the system of government must be elective. Going by the plain meaning of the word "elective", it simply means something "related to or working by means of election," which is defined as "the process of selecting a person to occupy an office (usually a public office), membership, award, or other title or status."[135]

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[130] BOL, Art. VII, § 7(a).
[131] Art. VII, § 7(b).
[132] Art. VII, § 7(c).
[133] Art. VII, § 31.
[134] Buan, *supra* note 118.
[135] *Elective,* Black's Law Dictionary (9th ed. 2009).

Nothing in the Constitution prohibits indirect forms of popular representation, which are consistent with the principle that the Philippines shall be a "democratic and *republican* state."[136] A republican government is a system of popular representation where the powers of government are entrusted to those representatives chosen directly *or indirectly* by the people in their sovereign capacity.[137] What is crucial is not the manner of election, but whether the government is adequately representative.

This position finds support in American jurisprudence, which may serve as a persuasive guide in interpreting the constitutional provision especially due to the dearth of authoritative pronouncements in our own jurisdiction. The United States is the primary source of our political law and presidential system of government, not to mention that it is the first to implement the model of separation of powers. Therefore, its system of government is roughly analogous to ours, with one major difference—it is a federal system, wherein the powers of the government are divided between the central government and the local sub-units comprising the nation-state, and there is *parity* between the central and local levels of government.[138] These units are not directly accountable to the federal government, but are instead supreme within their own spheres, and such units possess a claim of right against the central government, unlike the LGUs within the Philippines' decentralized system.[139]

Being federal sub-units, there is thus more leeway and independence granted to the states comprising the union. However, the US Constitution has a provision analogous to both Section 1, Article II and Section 18, Article X of the Philippine Constitution, prescribing the form of each State's government:

> Section 4. The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.[140]

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[136] CONST. art. II, § 1.

[137] *See* Tolentino v. COMELEC [hereinafter *"Tolentino"*], G.R. No 148334, 420 SCRA 438, 442, Jan. 21, 2004 (Puno, *J., dissenting*).

[138] John Law, *How Can We Define Federalism?*, 5 PERSPECTIVES ON FEDERALISM 88, 106 (2013), *available at* http://www.on-federalism.eu/attachments/169_download.pdf.

[139] *Disomangcop*, 444 SCRA at 233.

[140] U.S. CONST. art. IV, § 4.

The origins of this provision, known as the Guarantee Clause, are murky and uncertain, but it is thought to be a justification for the Federal Government to intervene in order to protect states from insurrection or invasion.[141] Though relatively few court challenges have arisen out of the Guarantee Clause, American case law provides ample jurisprudential doctrines for interpreting its scope, extent, and nature.

The 1849 case of *Luther v. Borden*[142] may prove particularly illuminating for the purposes of the present analysis. In this case, the issue arose due to the Dorr Rebellion, an attempt to overthrow the charter government of Rhode Island and install a new constitution and government which would broaden the voting rights of the state's citizens. One of the rebels, Martin Luther, was arrested in his home by a state official. Luther contended, among other things, that the charter government was unconstitutional for not being a republican form of government, since voting rights were restricted only to the most propertied classes; hence, the state official should be declared as having acted without authority. The US Supreme Court declined to resolve the issue, ruling that it was a political question outside the purview of the judiciary. Moreover, the Court ruled that under the Guarantee Clause, it was up to Congress to decide the form of government established in a state, and to determine the means necessary to fulfill the Guarantee Clause, with such determinations also being political questions.

In *Georgia v. Stanton*,[143] the petitioners assailed the validity of the Reconstruction Acts, which mandated the establishment of provisional military governments in several former confederate states until they drafted and ratified new constitutions, for going against the Guarantee Clause, arguing that the military governments to be established were unrepublican. The US Supreme Court ruled that the question was a political one, effectively recognizing Congress's actions on the matter as determinative.

In *Minor v. Happersett*,[144] the US Supreme Court took a liberal view of the definition of "republican government," observing that there was no particular form prescribed for what constituted "republican." Since the

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141 *Guarantee of Republican Form of Government*, LEGAL INFORMATION INSTITUTE, CORNELL LAW SCHOOL WEBSITE, *at* https://www.law.cornell.edu/constitution-conan/article-4/section-4/guarantee-of-republican-form-of-government (last visited Feb. 5, 2022).

142 48 U.S. 1 (1849).

143 73 U.S. 50 (1869).

144 88 U.S. 162 (1874).

adoption of the US Constitution did not necessarily operate to change existing state governments, it could be assumed that such governments fell within the definition of "republican" and were thus valid under the Guarantee Clause. This holding was used to uphold a system of government barring women from voting as non-violative of the Guarantee Clause. While this ruling is archaic and outdated, and its pronouncements on women voting have effectively been overruled by the Nineteenth Amendment, it can still be used to argue that the Guarantee Clause is not necessarily violated by a system which limits the people's right to vote.

Pacific States Telephone and Telegraph Company v. State of Oregon[145] saw a challenge levied against the then recently amended Constitution of Oregon, insofar as it allowed the people to directly propose legislation through initiative and referendum, on the ground that it allowed for a democratic form of government, contravening the Guarantee Clause which mandated a *republican* form of government. The US Supreme Court dismissed such a challenge again for being non-justiciable.

The readily discernible conclusion from this decision is that in leaving the question of compliance with the Guarantee Clause outside the ambit of judicial review, the US Congress is given significant leeway to prescribe the form of a state government. The only qualification is that the government be republican, with the definition of "republican" being given a loose and liberal interpretation. This opens the possibility that Congress may allow for a state government that does not strictly mirror the presidential setup of the federal government, perhaps even a parliamentary one wherein powers are blended rather than strictly separated. A court would be powerless to strike this determination down.

While the Philippine Constitution requires that the government be both *democratic* and republican (unlike the US Constitution which only requires the latter), American cases are persuasive in demonstrating that both requirements may be given a liberal interpretation that would not offend constitutional principles. Notably, the addition of the phrase "democratic," typically a qualifier that denotes a *direct* exercise by the people of their rights, was added by the framers of the Constitution in order to emphasize the instances wherein the people directly participate without the aid of their representatives, such as in recall elections,

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[145] 223 U.S. 118 (1912).

initiative, and referendum.[146] It was not intended to bar indirect forms of representation.

By that metric, the fact that the chief minister is elected indirectly by the people is sufficient. As illustrated, the electoral system of the Bangsamoro Parliament operates on a system of proportional representation, with special provisions uplifting marginalized and underrepresented sectors. This body can be said to be representative of the Bangsamoro region as a whole, and their acting in a representative capacity to elect the chief minister cannot be assailed as constitutionally impermissible on such ground.

3. Within the Framework of the Constitution

Everything so far discussed in this chapter has revolved upon what is on the face of Article X of the Constitution. By this metric alone, there does not seem to be any constitutional roadblock to the establishment of a parliamentary government in an autonomous region. However, there is one crucial limitation to the autonomous regional framework that has yet to be discussed.

Section 15, Article X of the Constitution requires that the creation of an autonomous region be in line with the framework of the Constitution and national sovereignty and territorial integrity of the Philippines. Does the establishment of a parliamentary government meet this requisite?

First, what does the phrase "framework of the Constitution" mean? As stated, Section 1, Article II already provides a basic framework of democratic and republican government, and it has already been demonstrated that the BOL does not, on its face, violate this framework. Does it end there, however? Taking the phrase at face value, it could be argued that the "framework" of the Constitution includes the fact that the Philippines adheres to the separation of powers. Assuming that this is the proper interpretation of the term, then the Bangsamoro Parliament is well outside the framework of the Constitution, as the separation of powers is a bedrock constitutional principle, and any alteration thereof constitutes a revision of the Constitution. *Lambino v. COMELEC,* the most instructive case on the subject of amendments and revisions of the

[146] *See Tolentino,* 420 SCRA at 769 (Puno, *J., dissenting*), *citing* IV RECORDS CONST. COMM'N 86, 769 (Sept. 18, 1986).

Constitution, even uses the alteration of the separation of powers as a textbook example of revision.[147]

However, this argument is undermined by the fact that the "framework of the Constitution" also includes the guarantee of regional autonomy. One of the state policies is to ensure the autonomy of local governments, after all,[148] and the Court has interpreted this guarantee to mean that Congress will have to reexamine national laws and make sure that they reflect the Constitution's adherence to local autonomy.[149]

What is unclear is the extent to which an autonomous region may depart from the governmental setup established by the Constitution on the national level. This presents an ambiguity in the plain text of the Constitution, which means the other aids of construction can be resorted to. Approaching the issue of constitutional construction on a deeper level, what is the intent of the framers behind the provision? The Constitutional Commission did not dwell on this phrase at length, but because it is included alongside the phrases "national sovereignty and territorial integrity of the Philippines," it can be assumed that it simply refers to maintaining the integrity of the Philippines by not creating a sovereign sub-state or a state within the state. Bernas seems to share this view.[150]

Does the imposition of the Bangsamoro Parliament violate this rule? *Province of North Cotabato*[151] is instructive on the issue, especially due to its invocation of the Montevideo Convention requisites of statehood. In that case, the tipping point that led the Court to label the Bangsamoro Juridical Entity a "state within a state" was the fact that it met the fourth and most decisive criterion for statehood—the fact that it had the independence to enter into relations with other states. The other three requisites—permanent population, defined territory, a government, prove useless here as all LGUs and autonomous regions share these characteristics.

Indeed, the choice of the Bangsamoro people to institute a form of government that more appropriately fits within their cultural and social framework may be considered a valid exercise of their right to self-determination. The prevailing norms of international law, which may be given effect as norms binding on the Philippine domestic legal order

[147] *Lambino,* 505 SCRA at 405.
[148] CONST. art. II, § 25.
[149] *Disomangcop*, 444 SCRA at 236.
[150] Bernas, *supra* note 3, at 1139.
[151] *Province of North Cotabato*, 568 SCRA at 482.

insofar as they do not conflict with the Constitution,[152] have long recognized the right to self-determination of "peoples." This does not only refer to self-determination of the entire population of a state, but also a portion thereof.[153] Moreover, while international law does not permit a unilateral right of secession, the right of people to *internal* self-determination, described as a people's pursuit of its political, economic, social and cultural development within the framework of an existing state, is allowed.[154] Thus, under international law, a determined group may pursue their own distinct form of development and self-government as long as it does not undermine the territorial integrity of a state.

Vesting BARMM with a parliamentary government even if the national government adheres to a presidential government does not necessarily undermine the territorial integrity of the republic. It does not automatically enable the Bangsamoro to enter into relations with other states. At most, it grants the region a unique form of government, and while specific issues may arise as to the supervision and review process due to the differing structural hierarchies between regional and national government, this does not mean the Bangsamoro region gains the capacity to represent itself and its interests on the world stage, independently of the national government. Sufficient clarificatory legislation may serve to bring the Bangsamoro parliamentary government structure in line with the national government.

With the ambiguity presented by the differing interpretations of the Constitution, it is submitted that, because the issue strikes deep into the heart of regional autonomy, it should be interpreted in favor of regional autonomy. Statutes should be construed in light of the objective to be achieved and the evil or mischief to be suppressed, and they should be given such construction as will advance the object, suppress the mischief and secure the benefits intended.[155] Again, the goal of regional autonomy is to establish a special governance regime that enables determinate groups with common traditions and shared social-cultural characteristics to freely develop their ways of life and heritage, to exercise their rights, and to be in charge of their own affairs.[156] A construction in favor of regional autonomy will best achieve this goal.

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[152] CONST. art. II, § 2.

[153] *Province of North Cotabato*, 568 SCRA at 489.

[154] *See Reference re* Quebec Secession, 2 S.C.R. 217 (1998).

[155] *Disomangcop*, 444 SCRA at 226.

[156] *Id.* at 231.

Therefore, in the absence of a specific legal or constitutional proscription against departing from the presidential system on the local or regional level, the will of those constituting the autonomous region should be respected. And it appears that they have chosen a parliamentary government.

CONCLUSION

The purpose of the establishment of an autonomous region is to empower certain people groups within the Philippines with shared common traditions and social-cultural characteristics and enable them to exercise their right of self-determination by allowing them the necessary freedom to chart their own destinies. If the Bangsamoro people have chosen a parliamentary system, then this choice should be respected. As this Note has demonstrated, there appears to be no legal or constitutional roadblock to its establishment. The lack of specificity in the terms used in the applicable constitutional provision indicates an intent to leave to the discretion of Congress the determination of regional government structures.

However, as this Note hopes to illustrate, there is a dearth of legal and jurisprudential guidelines on what seems to be a significant constitutional issue, one that has wide-ranging implications on, not just regional governments, but also the national government. The lack of legal or scholarly guidance on the subject may prove damaging in the long run, especially since the subject deals with the future of Philippine local governance.

For one, the establishment of the Bangsamoro region, with its parliamentary form of government, is touted to bolster the push for a federal form of government.[157] Such a move would require a constitutional revision, and like the Marcos and Arroyo regimes before it, may provide an opportunity for one President to once again skirt term limits and dictate provisions favorable to him. After all, a sub-national entity with a form of government different from that of the national government is undoubtedly a powerful symbolic move to prime the public for federalism. While the Duterte administration's push for federalism has

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[157] *Federalism, Bangsamoro Organic Law go hand in hand: DILG*, PHIL. NEWS AGENCY, Oct. 22, 2018, *at* https://www.pna.gov.ph/articles/1051740.

since cooled,[158] there is nothing stopping future presidents or public officials from pushing for the same. Given the nation's history of radical proposals for governmental shifts, and the largely cynical motives underpinning them, the lack of clarity on the subject may prove dangerous.

The law should not be interpreted in a vacuum. Considering the dearth of legal guidelines on the subject, it is recommended that future studies on the topic take a more policy-centered approach, focusing not just on the legal aspects, but taking into account the political considerations for the institution of a parliamentary system in the regions. Given the Philippines' history of politicians attempting sweeping changes in order to extend their own power and circumvent existing restrictions, there must be greater consideration of the political, financial and socio-economic aspect of these issues, in order to truly effect the constitutional mandate of autonomy and self-governance to the long-struggling Bangsamoro region. Above all else, the principle underpinning recommendations on the subject must always hark back to the mandate of regional autonomy.

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[158] Herbie Gomez, *Duterte's federalism turnabout broke hearts*, RAPPLER, June 29, 2021, *at* https://www.rappler.com/nation/duterte-federalism-turnabout-broke-hearts/.