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

JUAN F. RIVERA *

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

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

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

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* LL.B., B.S.E., Ph.B. (U.P.); M.S. (Wisconsin). Member of the Philippine Bar and First Philippine Government *pensionado* to the United States in public administration. Formerly Chief, Law Division, and Chief, Provincial Division of the then Department of Interior. Special Lecturer in Public Law, College of Law, U.P., on special detail from the Office of the President of the Philippines.

[1] LE CORBUSIER, CONCERNING TOWN PLANNING 11, 48 (1948).

[2] *Ibid.*, p. 33.

[3] *The Study of Administration*, 2 POL. SCI. Q. (1887); reprinted in 56 POL. SCI. Q. 481 (1941)

the local governments to "lose their vital nature and degenerate into vast parasitic conurbation." [4]

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

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

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

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

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

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

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

LEGAL STATUS OF LOCAL GOVERNMENTS

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

> "Municipal corporations owe their origin to, and derive their 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. If it may destroy, it may abridge and control. Unless there is constitutional limitation on the right, the legislature might, by a single act, if we can suppose it capable of so great a folly and so great a wrong, sweep from existence all of the municipal corporations in the State, and the *corporations* could not prevent it. We know of no limitation on this right so far as the corporations themselves are concerned. They are so to phrase it, the mere *tenants at will* of the legislature." [5]

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[4] CORBUSIER, *op. cit., supra* note 1, at 48.

[5] 24 Iowa 455, 475 (1868).

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

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

The subordinate status of municipalities as first judicially asserted by Chief Justice Dillon in 1868 was challenged three years later by Judge Cooley's historical view of inherent rights of local self-government in the case of *People v. Hurlbut*,[7] followed by the state courts of Indiana, Kentucky, and Texas.[8] Judge Cooley maintained that "the constitution has been adopted in view of a system of local government, well understood and tolerably uniform in character, existing from the very earliest settlement of the country, never for a moment suspended or displaced, and the continued existence of which is assumed," and that "the liberties of the people have generally been supposed to spring from, and be dependent upon that system." He said further:

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

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

> "Assertions of inherent right . . . mean no more than that, as municipal corporations were known, at the date of the adoption of the Constitution, local self-government was an invariable attribute or element thereof,

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[6] 77 W. Va. 412 (1915).
[7] 24 Mich. 44 (1871).
[8] Council of State Governments, *State-Local Relations* 141 (1949).

> just as a piston and a steam chest are now known to be parts of steam engines, wheels necessary elements of wagons, and foundations essential parts of houses. In that sense, it was literally and indisputably inherent . . . Legislatures are no older nor better defined, legally, historically, or scientifically, than municipal corporations. Each has its vital and distinctive characteristics and functions. Each is an agency of the state. Neither is the state."

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

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

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

Meaning of Supervision Over Local Governments

From another standpoint, it may be said that the framers of the Constitution of the Philippines deliberately placed the local go-

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

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

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

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

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

And according to Morga, all the islands were governed from Manila by means of *alcaldes-mayores, corregidores,* and lieutenants.[14] The Spanish Governor-General was the ex-officio president of all the ayuntamientos, and the governors of the "civil" provinces were his

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[11] I ARUEGO, THE FRAMING OF THE PHILIPPINE CONSTITUTION 429 (1936).

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

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

[14] BLAIR & ROBERTSON, THE PHILIPPINE ISLANDS 1493-1898, 135-193 (1907).

representatives. Under his immediate orders was the *Secretaria del Gobierno General* who looked, among others, after all matters relating to provincial and municipal administration. This office was created in 1874. It may be said to be the equivalent of the present Executive Secretary who is also, under the immediate orders of the President of the Philippines, in charge of the existing city, provincial, and municipal governments. This Spanish (French) system is still in vogue in the Philippines, especially in the cities of Quezon City, Tagaytay, Dansalan, Calbayog, and Trece Martires; in all the municipal districts; also in the cities of Dagupan, Iligan, Baguio, Cavite, Davao, and Zamboanga. As in France, all the officials of the first four named cities and all the municipal districts and the majority of the officials of the remaining named cities are appointive. Being appointive, they are, like the prefects of France, the "image" of the appointing authority. Said Munro:

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

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

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

[16] Quoted by RANNEY AND CARTER, *op. cit.*, at 444.

[17] HILL, N., STOKE, H., AND SCHNEIDER, C., THE BACKGROUND OF EUROPEAN GOVERNMENT 243 (1951).

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

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

> "Now although it has been the practice to bestow large powers upon the local authorities in England, this does not mean that the latter are free to exercise these powers as they will, without supervision on the part of the national government. All branches of English local government are subject to a considerable measure of control and supervision by the national authorities. There is more of this central supervision in England than in the United States, but less of it than in the countries of continental Europe. What now exists in England, moreover, is largely the product of the last fifty years. For centuries there was almost none at all. Counties, boroughs and parishes did about as they pleased, with no interference from above. But this arrangement was practicable only so long as most of the people lived in rural districts and required very little in the way of public services. With the growth and shifting of population which took place during the nineteenth century this go-as-you-please policy broke down. It became necessary for the central government to step in and see that essential public services were provided. This central control of local

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

government began to develop in the early years of the nineteenth century; it grew slowly at first but took on momentum as the years went by." [22]

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

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

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

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

From all the foregoing the reader could see that supervision is a term used to describe the relation between the central and local governments, not the relation between their officials. From my standpoint, the President's power of general supervision over the local government is a substitute for detailed legislative control over them. It is a device to make the local governments "grow throughout the ages" and to prevent them to "deform under the assaults of life." It is a tool for widening, not narrowing the discretion of local governments. It aims at increasing the competence of local officials and at improving the organization and procedures of local agencies. It is the supervision which encourages, advises, and supplies technical assistance for local initiative. It is the supervision which stimulates local governments to greater and more diversified efforts. It is an alternative to the detailed statutes which unduly restrict communities in their day-to-day affairs. "In a word," said the Council of State Governments, "state supervision is not state dictation. It is primarily state advice, and state cooperation. It is a means of freeing localities from the rigidity of legislative controls. And it has the valuable by-product of encouraging high standards of administration for the internal affairs of local governments." [24]

This type of supervision is different from the supervision referred to by the Supreme Court in its statement: "In administrative law supervision means overseeing or the power or authority of an officer to see that subordinate officers perform their duties. If the latter fail or neglect to fulfill them the former may take such action or step as prescribed by law to make them perform their duties." [25] This latter type of supervision does not spring from the second part of Section 10, paragraph 1, Article VII, of the Constitution—"The President shall . . . exercise general supervision over all local governments as may be provided by law"—but from the third part of the same section—"The President shall . . . take care that the laws be faithfully executed." The duty of the President to see that the laws be faithfully executed involves two distinct functions: supervision over functional and institutional activities and supervision over the performers of such activities. This is the supervision referred to by White in his statement: "The chief executive is not himself an operating official . . . It is his business to "see that the laws are executed," not himself to execute them. He is in command of the ship, but he does not himself hold the steering wheel, run the engines, or give instructions to the galley," [26] or by Willough-

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[24] *Supra* note 8, at 53.

[25] Mondano v. Silvosa, G.R. L-7708, May 30, 1955.

[26] WHITE, L., INTRODUCTION TO THE STUDY OF PUBLIC ADMINISTRATION 51 (1948).

by when he said: "The President in the execution of his duty to see that the laws be faithfully executed, is bound to see that the Postmaster-General discharges 'faithfully' the duties assigned to him by law, but this does not authorize the President to direct him how he shall discharge them." [27]

MEANING OF CONTROL

After defining "supervision" as used in the second part of the section of the Constitution quoted above, from the standpoint of administrative law, the Supreme Court proceeded in the *Silvosa* case to distinguish it from "control" by saying: "Control, on the other hand, means the power of an officer to alter or modify or nullify or set aside what a subordinate officer had done in the performance of his duties and to substitute the judgment of the former for that of the latter." This is the form of control which John M. Gaus had in mind when he said: "We are apt to think of the word *'control'* as expressing a negative, forbidding, preventive, and even punitive attitude or action." [28] The supervisory form of administrative control refers to "the duty of the chief executive to keep informed of the course of administrative operations, to intervene where necessary to settle jurisdictional disputes, to guide the policy and program of the whole organization, and to supply the over-all sense of direction." [29] Such form of control stems also from his duty to see that the laws be faithfully executed. It is the "administrative control" referred to in Section 79(C) of the Revised Administrative Code, as distinguished from the power that "The President shall have control of all the executive departments, bureaus, or offices." [30] This is the political or hierarchical control of the administrative branch intended to make the President of the Philippines constitutionally the Administrative Chief of our bureaucracy. It is the provision not found in the United States Constitution because the President of that country was originally intended to be primarily a political chief. Said Willoughby:

> "In the United States it was undoubtedly intended that the President should be little more than a political chief; that is to say, one whose functions should, in the main, consist in the performance of those political duties which are not subject to judicial control. It is quite clear that it was intended that he should not, except as to those political matters, be the administrative head of the government, with general power of directing

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[27] WILLOUGHBY, W., CONSTITUTIONAL LAW OF THE UNITED STATES § 1418 (1929).

[28] GAUS, J., REFLECTIONS ON PUBLIC ADMINISTRATION 93 (1947).

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

[30] PHIL. CONST. Art. VII, § 10 (1), cl. 1.

> and controlling the acts of subordinate Federal administrative agents. The acts of Congress establishing the Departments of Foreign Affairs [State] and of War, did indeed recognize in the President a general power of control, but the first of these departments, it is to be observed, is concerned chiefly with political matters, and the second has to deal with the armed forces which by the Constitution are expressly placed under the control of the President as Commander-in-Chief." [31]

While the Constitution vests in the President the power to "exercise general supervision over all local governments," and is silent on whether he has any power of control over such governments, it does not thereby mean that the President may not exercise some kind of control over the local governments. In this connection, *administration* must not be confused with *government*. The latter refers to the conduct of an undertaking towards its objective by seeking to make the best possible use of all the resources at its disposal. On the other hand, the former means to plan, to organize, to command, to co-ordinate, and to control.[32] As the *Executive* and the *Administrative Chief* the President has full control over the local governing bodies as bodies politic. These bodies have dual functions. As a body politic, a municipality or city is a political organ. It is the instrumentality of the State in exercising powers and duties not strictly or properly local in their nature, but which are in their essence state powers, and, therefore, to this extent it is a mere agency of the state, aiding in the administration of state affairs in so far as such matters affect the people residing within the local community in common with the inhabitants of the State.[33] Here the President obviously has control as well as supervision. The latter may be delegated to the provincial governor. Under the law the provincial governor is "the chief executive officer of the provincial government. As such it shall be his duty to exercise, in conformity with law, a general supervision over the government of the province and of the municipalities or other political subdivision contained in it and to see that the laws are faithfully executed by all officers therein." [34] This power is called in France, whose system of local government administration is the mother of ours, *tutelle administrative* (administrative guardianship). The provincial governor, like the prefect in France, is the dominant figure in local administration. He is "the link, and sometimes the buffer, between the central administration and the local area." [35] He, like the prefect, concentrates in his own person the perpetual conflict of authority

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[31] Willoughby, *op. cit., supra* note 27, § 958.
[32] Urwick, L., The Elements of Administration 16 (1943).
[33] 43 C. J. 69-70.
[34] Rev. Adm. Code, § 2082.
[35] Ranney and Carter, *op. cit., supra* note 15, at 449.

and freedom . . . He is at once the agent of the government, the tool of the party, and the representative of the area which he administers." [36]

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

Presidential Supervision of Local Officials

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

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

What directed my attention to this statement is that it considers "departments," "bureaus," "offices," and "local governments" the

[36] *Ibid.*

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

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

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

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[37] WILLOUGHBY, W., THE AMERICAN CONSTITUTIONAL SYSTEM 3-4 (1904).

[38] BLACK, LAW DICTIONARY 1140 (3d ed.).

[39] This constitutional provision, I likewise submit, is the source of authority of the President over the "national magistracy," not the constitutional provision that "The President shall have control of all the executive departments, bureaus, or offices." Art. VII, § 10 (1), cl. 1.

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

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

> "Subject to the powers and duties of the Governor vested in him by Article V of the Constitution, the Attorney General shall be the chief law officer of the State and it shall be his duty to see that the laws of the State of California are uniformly and adequately enforced in every county of the State. He shall have direct supervision over every district attorney and sheriff and over such other law enforcement officers as may be designated by law, in all matters pertaining to the duties of their respective offices, and may require any of said officers to make to him such written reports concerning the investigation, detection, prosecution and punishment of crime in their respective jurisdictions as to him may seem advisable. Whenever in the opinion of the Attorney General any law of the State is not being adequately enforced in any county, it shall be the duty of the Attorney General to prosecute any violation of law which the superior court shall have jurisdiction, and in such cases he shall have all the powers of a district attorney. When required by the public interest, or directed by the Governor, he shall assist any district attorney in the discharge of his duties. . . ."

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

lished, and the attorney general is not authorized to depart from that procedure by the constitutional provision that the attorney general shall be the chief law officer of the state, and it shall be his duty to see that the laws of the state are uniformly and adequately enforced in every county of the state.

It will thus be seen that supervision in the *Brophy* case is related to public officials in connection with the enforcement of laws, a matter clearly different from our constitutional provision empowering the President of the Philippines to exercise general supervision over local governments.

Removal of Local Officers

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

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[41] Art. IX, § 1; Art. X, § 1.

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

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

[44] See note 42 *supra*.

[45] Phil. Const. Art. XII, § 4.

longed to the President, the Senate, or both.[46] Mr. Justice Peckham said in *Parsons v. United States:*

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

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

Removal of Elective Local Officials

One of the sources I indicated above from which the President may derive his implied power to remove local officials is Section 4 of Article XII of the Constitution which provides that "No officer or employee in the Civil Service shall be removed or suspended except for cause as provided by law." This provision refers to those falling under the "merit system" and not to those belonging to the "political system" or the "patronage system." [48] The local elective officials belong to the "political system" and those appointed by the President and other appointing authorities are under the "patronage system." All belong to "the civil service" as distinguished from the naval or military service.[49] As the Constitution provides, those under the "merit system" [50] may only be removed "for cause as provided by law." As to those under the "political" and "patronage" systems, the President, I submit, may be guided by the causes

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

[47] 167 U.S. 324, 329 (1897). See also Charles Warren's account of the debate, quoted in Rivera, J., Law of Public Administration 659 (1955).

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

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

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

declared by Congress which do not abridge his power of removal or by any cause he may in conscience and discretion consider as a good cause for removal. Thus he may remove a municipal mayor for what he believes to be moral turpitude even before the mayor's conviction "independently," as I stated in a book, "of Section 2188 of the Administrative Code or of any statute, declaratory of the President's power or not." [51] The reason is that it is the obligation of the President "to set the moral tone as chief executive for the entire administration. His own decisions and attitudes largely determine the morale and the standards of officials throughout the government. His words and actions have consequences beyond their immediate effects." [52] Moreover—

> "In administrative investigation guilt need not be proven beyond a reasonable doubt. The investigator does not sit in judgment upon the respondent but merely ascertains the facts so that the proper administrative officer can determine the desirability or undesirability of retaining the accused employee in the service. Public office, by its nature, demands that the incumbent be above reproach; public servants, by the power they wield assume a position of trust and confidence. A high ethical and moral standard is therefore contemplated. The moment the honesty, morality or integrity of a public officer is seriously impeached he can and should be separated. It is essential that public employees be not only efficient but also morally clean and upright, for in no other way can the good name and dignity of the service be maintained. In cases of immorality, for example, it is immaterial whether the offended woman has consented or not, or is of unchaste reputation, or is of age. Aside from the injury done to private parties, there is the insult to the state and the highly demoralizing effects of such act when committed by public officers." [53]

CONCLUSIONS

From all the foregoing considerations, I conclude:

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

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[51] LAW OF PUBLIC ADMINISTRATION 658 (1955).

[52] GRAHAM, G., MORTALITY IN AMERICAN POLITICS 157 (1952).

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

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

[55] See note 22 *supra.*

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

3. That the President of the Philippines, as the Administrative Chief, has control not only of all the executive departments, bureaus, or offices, but also over the local governments when these act as agencies of said departments, bureaus, or offices in respect to the execution of their respective functions within the jurisdiction of said local governments, as is the practice in England.

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

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