PHYSICAL PLANNING LAW IN THE PHILIPPINES: THE NEED FOR LEGISLATION†

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I. Introduction

The term "physical planning" will be used in this paper to refer in a rough way to the planning and programming of public works and to the sort of planning referred to by "land-use planning," "spatial planning," "town and country planning," "regional planning," and "urban planning." Though the terms may differ in emphasis, all involve the formulation of public policies and decisions in terms of the development of land and the spatial arrangement of land uses. The process, content and effect of physical planning vary greatly from one system to another, depending upon the extent to which public policies and decisions are organized and expressed in terms of land use and upon the extent to which and manner in which policies and decisions so expressed are given effect.

In Great Britain, for example, government plans and controls in considerable detail the development of every plot of land with a view to the "securing of the most advantageous use of the land resources of the nation as a whole and the resolving of conflicting claims upon any particular plot of land."[1] Government itself builds housing on a large scale and develops entire new cities. Local agencies plan and regulate private land use under the supervision of a na-

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[1] HAAR, LAND PLANNING LAW IN A FREE SOCIETY, 31 (1951).

tional ministry. Planning objectives include economic growth of lagging regions, more and better housing, reduced congestion, and limitation of urban sprawl. In the United States, in contrast, planning has been unfortunately concerned primarily with enhancing and protecting the middle-class residential neighborhood. Now that planning is engaged more actively in the problems of race and poverty, however, it is taking on a more sociological orientation.[2] Singapore, with a population of about 2,000,000, is constructing about 12,000 units of public housing a year (roughly equivalent to the total of all public housing in the Philippines since the end of World War II), renewing slum areas, and stimulating economic growth by the development of industrial sites in the Jurong Industrial Estate.[3] In Malaysia, the State of Selangor has developed one and is developing a second major satellite town outside Kuala Lumpur, combining industrial estates and large scale housing projects, thereby promoting industrial development and bringing a relative degree of order to the rapid growth of the Kuala Lumpur area.[4] In Venezuela, economic and physical planning have been closely linked in the development of a new city and industrial complex in a previously undeveloped area of great industrial potential.[5] The Korean government has determined to regionalize its third-Five-Year Plan, and efforts are under way to develop a regional planning system in which industrial investments will be allocated with a view not only to aggregate economic growth but also to equitable distribution of wealth and income among the regions.[6]

In the Philippines, it is becoming increasingly obvious that government must assume far greater responsibility for physical planning than it has traditionally exercised. This need arises from two related sets of conditions. The first is the policy (expressed in both the *Five-Year Integrated Socio-Economic Program* of the previous administrations and the *Four-Year Economic Program* of the present

[2] See for example, U.S. Department of Housing and Urban Development, *Improving the Quality of Urban Life, A Program Guide to Model Neighborhoods in Demonstration Cities.*

[3] See TAN JAKE HOOI, *Metropolitan Planning in Singapore*, AUSTRALIAN PLANNING INSTITUTE JOURNAL, October 1966. The estimate of Philippine public housing is from de Vera, *The Philippine Housing Situation* (1967).

[4] See Selangor State Development Corporation, *Industries in Petaling Jaya and Bata Tiga-Sungei Renggam, Selangor's New Industrial Estate.*

[5] See RODWIN, URBAN PLANNING IN DEVELOPING COUNTRIES.

[6] See KIM HAK-SO, CARIM and NORTON, *Toward Regional Planning for Korea* (1968).

administration) to accelerate infrastructure development and promote resource-oriented industrial development in order to achieve more rapid economic growth.[7] The second is the tendency toward urban chaos in the larger cities, which are beset by extreme traffic congestion, lack of public facilities, water and air pollution, clashing land uses, a severe shortage of both land and housing within the means of most of the people, and squatter colonies which are growing at twice the rate of the cities and threaten to dominate them within not so many years.[8]

As an example of what might be accomplished by a more ambitious planning effort, consider Epifanio de los Santos Highway, the major circumferential highway around Manila. This highway was planned after the war by the predecessor of the National Planning Commission. It was planned in view of the transportation needs and development of the metropolitan Manila area as a whole.[9] It has undoubtedly contributed much to the development of the area and, to the extent of that contribution, illustrates the benefits of planning. A more forceful illustration, however, arises upon consideration of the lost opportunities that might have been realized if the project had been undertaken in the context of a broader planning effort, with the coordinated use of government powers of expropriation, taxation and regulation. Had those other powers been exercised in conjunction with the project, such public benefits as the following might have been feasible: adjacent and nearby land could have been acquired for public use at a fraction of its value after and as a result of the project; to that extent the public rather than private land owners would have realized the benefit of the enhancement to the utility and value of the land by reason of public expenditures; the public uses so provided for could have included traditional public buildings, offices and schools, squatter resettlement projects, public housing, and industrial estates; industrial estates could

[7] MACAPAGAL, FIVE-YEAR INTEGRATED SOCIO-ECONOMIC PROGRAM OF THE PHILIPPINES (1963-1967); MARCOS, FOUR-YEAR ECONOMIC PROGRAM FOR THE PHILIPPINES, FISCAL YEARS 1967-1970.

[8] See de Vera, *The Philippine Housing Situation* (1967); de Vera, *The Philippine Housing Need 1960 to 1980* (1965); Wagner, *Housing and Urban Development in the Philippines* (1968); LAQUIAN, THE CITY IN NATION-BUILDING (1966); Juppenlatz, *Housing the People in the Philippines* (1966); Juppenlatz, *Urban Squatter Resettlement — Sapang Palay* (1965); Ramos, *Manila's Metropolitan Problem*, 5 PHIL. J. PUB. ADM. 89 (1961). *Abrams* and Koenigsberger, *A Housing Program for the Philippine Islands* (1959).

[9] See National Planning Commission, the Master Plan, City of Manila (1956).

have been laid out with a view to advantages of economies of scale, shared overhead, and complementarity among industries;[10] by means of zoning and of public acquisition and development of land, industrial, commercial and residential land uses could have been functionally integrated so as to reduce commuting and transportation costs and minimize mutual interferences among those uses in traffic patterns and nuisance effects; the effect of the highway in generating private development that in turn has generated new transportation and public facility needs could have been anticipated, with coordination of the operations of the many agencies of national and local government, public utilities and private developers in the area, avoiding the repeated tearing up of the same length of road by different agencies, and eliminating some of the major traffic bottlenecks that have developed; the development of private land required for future public use by reason of the development generated by the highway could have been regulated so as to minimize the public obligation to pay for improvements made in the interim; off-street parking and loading facilities could have been provided both publicly and by regulation of private development, thereby increasing the efficiency of the highway; the cost of the highway could have been recouped in part, not only by public acquisition of adjacent land, but also by special benefit assessments against adjacent private land enhanced in value by the highway. Generally, the effect of the highway on development could have been anticipated and modified by the use of all of the powers of government in consideration of the land needs of the metropolitan area as a whole....

Obviously all of this is easier said than done: it would be unrealistic to think that planning could have solved some of the most severe problems of Manila today. For example, the inadequacy of public facilities is obviously due not only to the failure to use planning to obtain the most efficient use of resources by planning but also to simple insufficiency of resources; and although the squatter problem could be mitigated in some measure by planning, it could not be solved without a heavy commitment of resources. The foregoing, however, can serve as an illustration of the kind of techniques available and the kind of objectives that can be at least partially realized by use of those techniques.

[10] See Roxas, *Regional Economic Development in the Philippines: Planning Industrial Estates in the* 1960's, in THE PHILIPPINE ECONOMY IN THE 1960's (Sicat ed. 1964).

Another example of what planning might be expected to accomplish can be found in the opportunities afforded by the proposed disposition of a portion of the Fort Bonifacio Military Reservation, a tract of about 2200 hectares, comprising the most valuable undeveloped land in the Manila area, with frontage on the Pasig River, Laguna de Bay, the railroad and the new South Highway, and with easy accessibility to both Makati and downtown Manila. It has been proposed that the government sell off a portion of this tract to finance land reform, or for other purposes. Two important public objectives arise in connection with this proposal: to obtain maximum value in exchange for the land; and to assure that the development and use of the land will best meet the urgent needs of metropolitan Manila. Although these objectives may appear contradictory, we believe that they are not and that they can be reconciled through planned development of the tract as an integrated satellite town. Officials of People's Homesite and Housing Corporation (PHHC) have prepared a plan for development of such a satellite town on about 680 hectares of the tract. Under the plan, PHHC considers it feasible, with the 680 hectares and a loan of ₱5,000,000, to earn an ultimate return of ₱441,000,000 for the public.

Whether or not that specific plan is adopted, it is important that its underlying principles of planned development with public participation be observed. By integration of industrial, commercial and residential uses, problems of commuting and traffic congestion can be alleviated not only within the area to be developed but within the entire metropolitan area. By providing low-cost housing, some impact can be made on the squatter problem. By providing for well-designed medium and high density housing, the supply of housing available for middle and low income classes can be increased, and urban sprawl, which pushes people farther out into the countryside with consequent costs of transportation and extension of public facilities, can be reduced. Under a plan for the entire tract, implemented by a combination of public development and controlled private development pursuant to a plan (made effective by conditions and restrictions embodied in the terms of sale and deeds), the tract can be developed in a rational sequence, in accordance with the needs of the metropolitan area, and with minimum public cost and maximum public benefit.

Moreover, these benefits in terms of the kind of development that will take place can be secured without prejudice to the objective of maximum monetary return for the land. Since urban land value depends in large part on the existing and prospective character of the neighborhood, the value of a particular parcel can be enhanced considerably if it is sold or leased as a part of a well-designed development. For example, it has been reported with reference to the private Ayala development in Makati:

> "Its most salient feature of attraction centers on the zoning and planning of the residential, commercial and industrial sectors."[11]

Further, government enjoys certain inherent advantages as land developer because it can combine the control it possesses as owner of a particular tract with its ability to influence the development of the entire community by the way in which it provides public services and facilities and regulates private land use. If the development of the Fort Bonifacio tract were to be undertaken subject to an overall plan and if government were to participate in that development, selling and leasing particular parcels only as they become ripe for development and only on condition that they be developed in accordance with the plan, the public would realize both a greater monetary return for the land and a far more publicly useful development of the land.

Under existing law, physical planning functions and powers are so confused, fragmented and diffused as to present serious if not insuperable obstacles to any effort at coherent planning. Substantive legal powers are probably adequate, though they could stand clarification and strengthening in several respects. The governmental structure for planning however, is in need of basic changes. To illustrate the point: the function of urban planning is now generally considered to be the responsibility of local government under the Local Autonomy Act of 1959, which vests the power to enact zoning and subdivisions regulations in cities and municipalities;[12] yet a number of national agencies perform functions far more influential in determining patterns of urban development than whatever land use regulations are enacted by local government. Effective urban planning will require some degree of integration of the regulatory

[11] Business Day, September 18, 1967. Vol. 1, No. 30, page 8.
[12] Rep. Act No. 2264 (1959).

functions of local government and the infrastructure development functions of national agencies. To take a simple and obvious example: local planning would probably do more harm than good if it failed to take account of a decision to construct a major national highway through the locality; and the efficiency of the highway would be impaired by the failure to regulate intelligently the use of adjacent land.

II. Historical Background

In the early history of the Philippines, communities were small and cohesive, organized socially, politically and economically by kinship and hereditary relationships.[13] As the Spanish took over, they pursued a deliberate policy of bringing the people "under the bell," into larger communities subject to the control of the church.[14] These communities were planned according to principles developed in Europe during the Renaissance, providing primarily for a strict gridiron layout of streets and a central plaza complex dominated by a church.[15] The results of this planning are, of course, still very much in evidence today.

Early in the American regime, Daniel Burnham, a noted architect and one of the leaders of the "city beautiful" movement in the United States,[16] was commissioned to prepare general plans for the city of Manila and the proposed new city of Baguio. The Burnham plans, which laid out prospective streets, parks and public buildings, and in the case of Baguio, major land use areas received legislative sanction in the Revised Administrative Code of 1917.[17] In 1928, the Code was amended to direct the Director of Public Works to prepare general plans for the development of all cities and municipalities.[18] Although prepared by an official of the central government, these plans were to be adopted by the municipalities and

[13] See CORPUZ, THE PHILIPPINES 21-24 (1965); *Reed, Hispanic Urbanism in the Philippines: A Study of the Impact of Church and State*, XL UNIVERSITY OF MANILA JOURNAL OF EAST ASIATIC STUDIES 1, 22-32 (1967).

[14] See Reed, *op. cit. supra* note 13 at 33-72; CORPUZ, *op. cit. supra* note 13 at 26.

[15] See Reed, *op. cit. supra* note 13 at 59-71.

[16] On the city beautiful movement and the historical development of the concepts exemplified in Burnham's plans, see Hancock, *Planners in Changing American City, 1900-1940*, XXXIII JOURNAL OF THE AMERICAN INSTITUTE OF PLANNERS 290 (September, 1967).

[17] REV. ADM. CODE §§1904, 1905 (Act No. 2711).

[18] Act No. 3482 (1928), amending Rev. Adm. Code §1901(*f*).

provinces.[19] During the same period, local governments began to enact zoning ordinances regulating the use of private property. (General plans apparently were intended to control only the location of public improvements.) Most of the zoning ordinances of the time seem to have been designed merely to restrict the location of certain obnoxious industries. Although there was no enabling act expressly authorizing zoning by local legislative bodies, the Supreme Court sustained local zoning ordinances as within the grant of power to provide for health, sanitation, abatement of nuisances and the general welfare.[20]

A 1934 Act[21] provided for tax-exempt public and private low-income housing. The Act was later extended and strengthened, but little was done to implement it.[22]

During the Commonwealth era, the Nationalist Economic Council was created to advise the government on economic and financial matters and to formulate an economic program based on national independence.[23] The National Assembly enacted legislation[24] pursuant to the Constitutional provision enabling it "to authorize, upon payment of just compensation, the expropriation of lands to be subdivided into small lots and conveyed at cost to individuals."[25] The program was conceived basically as a matter of rural land reform and was implemented only on a very small scale.

Two national agencies with urban planning and development functions were created under the Commonwealth, the People's Homesite Corporation and the National Housing Commission. These were the predecessors of the present People's Homesite and Housing Corporation (PHHC). People's Homesite Corporation was organized and financed by the National Development Company, which had been created in 1919 as a semi-private corporation and converted in 1936 to a publicly owned corporation to function as a vehicle for

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19 *Ibid.*

20 People v. Cruz, 54 Phil. 24 (1929); Seng Kee & Co. v. Earnshaw, 56 Phil. 204 (1931); Tan Chat v. Municipality of Iloilo, 60 Phil. 465 (1934); People v. de Guzman, 90 Phil. 132 (1951).

21 Act No. 4184 (1934).

22 Com. Act No. 43 (1936); Com. Act No. 368 (1938); Com. Act No. 648 (1941).

23 Com. Act No. 2 (1936). See Hawley, Mariano and Jacobini, *National Planning Administration*, in STENE AND OTHERS, PUBLIC ADMINISTRATION IN THE PHILPIPINES 263-88 (1956).

24 Com. Act Nos. 20 (1936), 260 (1938); 420 (1939), 538 (1940); See also Executive Order Nos. 191 and 209 (1939).

25 Then Article XII, Sect. 4; now Article XIII, Sect. 4.

public enterprise in industry.[26] People's Homesite Corporation was charged with responsibilities of promoting home building and home ownership, establishing model communities, and cooperative associations, and related functions. It acquired about 1600 hectares in Quezon City and developed some single-family houses on part of that land before the War. Most of the land, however, was developed by PHHC after the War.[27]

The National Housing Commission was vested with broad functions of acting on urban housing problems. It was empowered to expropriate and redistribute land, to build and provide housing, and to regulate building and sanitary conditions in slum areas.[28] Owing to the outbreak of war, however, the Commission was never formally organized, and after the war it was consolidated with the People's Homesite Corporation to form PHHC.[29]

The post-war era is characterized by confusion both in urban development itself and in the legal and administrative system for regulating urban development.[30] There has been a proliferation of agencies in all areas of government and a nearly constant process of organization and reorganization of old and new agencies.[31] Though it exists to a high degree here, this tendency is hardly unique to the Philippines. Anyone familiar with government in the United States will recognize the tendency and some of its causes. Many agencies have been given functions of economic or socio-economic planning which, if broadly construed, would certainly encompass urban and physical planning.[32] Some have been specifically charged with the responsibility of integrating and coordinating public and, in some cases, private development projects, but have not been given

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[26] ABUEVA and DE GUZMAN, HANDBOOK OF PHILIPPINE PUBLIC ADMINISTRATION, 163-164 (1967).

[27] DE VERA, *The Philippine Housing Situation*; *Juppenlatz, Housing the People in the Philippines*, Paragraph 165; Juppenlatz, *Urban Squatter Resettlement — Sapang Palay*, 19; *Abueva and de Guzman, op. cit supra* note 26 at 172-173.

[28] Com. Act 648 (1941).

[29] Juppenlatz, *Housing the People in the Philippines*, paragraph 165.

[30] See Roxas, *Organizing the Government for Economic Development Administration* (Manila, Feb. 29, 1964); authorities cited in note 8 *supra*; text *infra*.

[31] See Roxas, *Lessons from Philippines Experience in Development Planning*, IV PHIL. ECO. J. 35 (1965). Roxas mentions, for example, that there are twenty-six different agencies operating separately in agricultural matters.

[32] E.g., National Economic Council, Presidential Arm on Community Development, Presidential Economic Staff and the regional development authorities. See text *infra*.

the administrative and legal powers to perform that responsibility.[33] Generally, the agencies concerned with urban planning and development have not been backed up with financial, administrative and political support. Public spending functions have been uncoordinated and have not been related to government functions of taxation, regulation, and land acquisition and development. The planning agencies have been isolated from the spending decisions. Public funds have been dissipated among unplanned, uncoordinated and frequently unsound projects, many of which have never been completed.[34] Urban planning has been thought of, not as a means of securing maximum efficiency from scarce resources, but as a matter of amenities and as a luxury that the nation cannot afford. As a consequence, there has been practically no effective urban planning in the Philippines.

III. The Present Legal and Administrative Status of Physical Planning

The budget

The Constitution provides for the separation of powers among three branches of government, legislative, executive, and judicial. The power of the purse is formally vested primarily in Congress. No funds are to be disbursed except pursuant to an appropriation made by law.[35] The President is required each year to submit a budget to Congress as the basis of the general appropriation bill,[36] and the Constitution provides:

> "The Congress may not increase the appropriations recommended by the President for the operation of the Government as specified in the Budget, except the appropriations for the Congress and the Judicial Department."[37]

According to an understanding reached in the Constitutional Convention, however, appropriations for public works are not considered within the phrase "for the operation of the Government," and are therefore not subject to this clause.[38] The President has the power to veto particular items of an appropriation bill without affecting

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[33] See text *infra*.
[34] See Roxas, *op. cit. supra* note 31; Golay, *Obstacles to Philippine Economic Planning*, IV PHIL. ECO. J. 284 (1965).
[35] Article VI Sect. 23, par. 2.
[36] Article VI, Sect. 19, par. 1.
[37] *Ibid.*
[38] ARUEGO, THE FRAMING OF THE PHILIPPINE CONSTITUTION 381-385 (1936).

the remaining items.[39] (A presidential veto can be overridden by a qualified majority of each House.)[40]

In practice the power of the purse has been shifted in large part to the executive branch by reason of the propensity of Congress to appropriate funds far in excess of revenues, thus leaving it to the President and the Budget Commission to determine in their discretion what appropriations to implement by the release of funds and what to ignore.[41] To give some idea of the magnitude of this situation: the backlog of unimplemented public works projects has been estimated at ₱4 billion (as compared to annual public works expenditures of about ₱100 million);[42] Senator Aytona, a former Budget Commissioner, has estimated that every year total appropriations are about ₱11 billion, while revenues are only about ₱3 billion;[43] and Sixto K. Roxas, a principal economic adviser to President Macapagal, estimated that existing appropriation bills, outstanding as of 1962, could have covered 80-90 per cent of the capital expenditures provided in the Macapagal Five-Year Socio-Economic Program.[44] This point, obviously, has important implications for planning, which we shall return to later.

National Economic Council and other economic planning agencies.

The NEC is in theory the top over-all planning agency of the Philippines. It is made up of a chairman and three additional members appointed by the President, three members of each house of Congress (one of the members from each house is from the minority party), the Secretary of Commerce and Industry, the Governor of the Central Bank, and the Chairman of the Development Banks of the Philippines,[45] Its functions, among others, are to:

> "formulate definite and consistent national economic policies and prepare comprehensive economic and social development programs which, when approved by the President, and, if necessary, by Congress, shall be implemented by government executive departments, government corporations, government financial institutions, chartered cities, and other local governments."

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[39] Article VI, Sect. 20, par. 2.
[40] Article VI, Sect. 20, par. 1.
[41] See Rep. Act No. 922 §15(a), (1954).
[42] Estimate by Officials of Infrastructure Operations Room.
[43] Manila, Times, June 4, 1968.
[44] Golay, *Obstacles to Philippines Economic Planning*, 4 PHIL. ECO. J. 284, 305 (1965).
[45] Rep. Act No. 2699 (1960).

and,

> "review all existing programs, public or private, which have a bearing on economic development, and make modifications thereof at least once each year."[46]

Although these functions could be easily interpreted to encompass urban and physical planning, the NEC has done little in that regard. And although the second of the two quoted functions suggests the power to regulate, the NEC was apparently conceived of as not possessing regulatory powers, and constitutional objections could be raised against any assumption by it of such powers.[47] In any event, the NEC, on the whole, has not been able to plan effectively and its plans have been largely ignored.[48] This is attributable in part to its remoteness from the budgetary[49] and cash allotment functions,[50] and that remoteness seems inherent in the make-up of the NEC, which includes members of Congress, two of whom are required to be from the minority party, and in its conception as an advisory council of independent members, representing diverse interests, rather than as a staff agency of the presidency.

Other agencies responsible for aspects of economic planning include the Budget Commission;[51] the Office of Economic Coordination, which, although charged with supervision and coordination of government corporations, has jurisdiction over only about half of those corporations and has been effective only in controlling their finances and not in coordinating their policies;[52] the Central Bank which determines monetary policy,[53] the Tariff Commission,[54] the Repara-

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[46] Rep. Act No. 997 (1954); Reorganization Plan 10; H. Res. 40 (April 19, 1955); Executive Order No. 119 (1955).

[47] See Reyes, *The National Economic Council Planning and Private Enterprise*, in PLANNING FOR PROGRESS 48, 55 (Milne ed. 1960).

[48] See PLANNING FOR PROGRESS, (Milne ed. 1960), for a series of papers dealing with the experience of NEC. See also Golay, *Obstacles to Philippine Economic Planning*, 4 PHIL. ECO. J. 284 (1965).

[49] See Golay, *op. cit. supra* note 48.

[50] See text *supra*.

[51] During the latter part of the 1950's, the Budget Commission was accused of usurping the functions of NEC because it prepared five years fiscal programs which in effect superseded NEC planning. See Fabella, *Problems of Plan Implementation*, 4 PHIL. ECO. J. 341 (1965), Aytona, *The Budget Commission, Finance and Economic* in PLANNING FOR PROGRESS 83 (Milne ed. 1960); Araneta, *Appendix to The Planning, The Approval and Implementation of Economic Planning for Progress* 143.

[52] Executive Order No. 386 (1950). See Milne, *The Coordination and Control of Government Corporations in the Philippines*, 5 PHIL. J. PUB. ADM. 293 (1961).

[53] Rep. Act No. 265 (1948). See Cuaderno, *The Central Bank and Economic Planning* in PLANNING FOR PROGRESS, 92 (Milne ed. 1960.) (written before the decontrol measures of the early 1960's).

[54] Rep. Act No. 911 (1953), as amended by Rep. Act No. 1196 (1954).

tions Commission,[55] and the newly established and potentially powerfull Board of Investments, which will determine within broad limits of discretion the application of very substantial tax incentives to industries of priority status.[56] The most effective economic planning agency to date has been the Presidential Economic Staff (PES), which we shall discuss later.

The National Planning Commission

The only national agency with direct an explicit responsibility for urban and land use planning is the National Planning Commission. The most important of the predecessors of the Commission, the National Urban Planning Commission, was formed by order of President Osmeña immediately after the War.[57] (Pursuant to a reorganization act,[58] the National Urban Planning Commission, the Capitol City Planning Commission[59] and the Real Property Board,[60] were later consolidated in the National Planning Commission.[61] No distinction will be observed hereafter in this paper between the National Urban Planning Commission and the National Planning Commission.) The Commission was placed under the direct control and supervision of the President. It was empowered to prepare and adopt general plans, zoning regulations, and subdivision regulations, all of which were to be effective unless overruled by a three-fourths vote of the appropriate local legislative body.[62] The grant of zoning

[55] Rep. Act No. 1789 (1957), as amended by Rep. Act Nos. 2611 (1959) and 3079 (1961).

[56] R.A. 5186 (1967). The Board of Investments could very well become the most important body in the Philippines. It is required to submit its Investments Priorities Plan to the President through NEC, but NEC presumably has the power only to make recommendations to the President and not itself to modify the plan. See Sicat, *An Analysis of the Investment Incentives Act of 1967*, a paper to be included in a forthcoming book, A DESIGN FOR EXPORT-ORIENTED INDUSTRIAL DEVELOPMENT: ESSAYS ON PHILIPPINE INDUSTRIAL POLICY.

[57] Executive Order No. 98 (1946).

[58] Rep. Act No. 422 (1950).

[59] Rep. Act No. 333 (1948).

[60] Administrative Order No. 38 (1947).

[61] Executive Order No. 367 (1950).

[62] Zoning and subdivision regulations were to be filed with the local legislative bodies and were to take effect unless disapproved by a three fourths vote within 30 days. General plans were to become effective upon adoption by the Commission and were to control the location of public and publicly-assisted improvements, subject to exemption on approval by the Commission or on a three-fourths vote of the local legislative body overriding disapproval by the Commission. This technique of "legislation by inaction" is of doubtful Constitutional validity. See CORTES, THE PHILIPPINE PRESIDENCY 242-43, (1966), discussing *Miller v. Mardo*, G.R. Nos. 15138, 15377, 16660, 16781 & 17056, July 31, 1961, 59 O.G. 2307 (April, 1963).

functions to the Commission apparently was not considered to impair local zoning powers where the Commission had not acted.[63] Under a reorganization act, the functions of the Commission were broadened somewhat, to include among others, the preparation of a building code.[64]

In its early years, the Commission prepared plans for Manila and several other areas, promoted the organization of a number of local planning commissions,[65] and prepared a set of model subdivision regulations and a detailed building code. Several important highways conceived and planned by the Commission, including Highway 54 and Taft Avenue (as a divided highway), have been constructed. The Commission successfully protected the Luneta against several proposed encroachments. By and large, however, the Commission and its plans have been ignored.[66] The planning function of the Commission was not administratively linked to the programming of public works. Its plans were conceived mainly in terms of ultimate civic design. It did not receive adequate political, administrative and financial support. (It is now operating on an annual budget of about ₱200,000.00.) The Supreme Court in a confusing and inconsistent line of decisions, held on the one hand that zoning and subdivision regulations prepared by the Commission required affirmative enactment by local governments through the normal legislative process and on the other hand that the grant of power to the Commission to enact such regulations was void as an unconstitutional delegation of legislative power to an administrative

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[63] See *People v. de Guzman*, 90 Phil. 132 (1951), which sustained a local zoning ordinance without discussing the point.

[64] Executive Order No. 367 (1950). Whether the addition of this function was within the scope of authority to reorganize executive agencies of government may be questioned. See Cortes, *op. cit. supra* note 62 at 240-241, discussing the nullification by the Supreme Court of an order creating a Board of Tax Appeals under a reorganization act. The manner in which the building code was to become effective was ambiguous: on the one hand, it was to be "submitted to the local legislative bodies concerned for adoption in the form of ordinances," but, on the other hand, it was to "take effect in the same manner as zoning or subdivision regulations." In *University of the East v. City of Manila*, 96 Phil. 316 (1954), the Court impliedly interpreted this to require affirmative local legislative enactment as distinguished from mere failure to disapprove by a three-fourths vote within 30 days.

[65] See background material set forth in National Planning Commission, *The Master Plan, City of Manila* (June 30, 1954).

[66] See note 103 *infra* and text accompanying that note.

agency.[67] The holding that affirmative local enactment was required seems to have been based on the mistaken view that zoning and subdivision regulations constitute a form of building regulations, hence that an executive order which the Court interpreted to require affirmative enactment of the building code superseded the earlier executive order, which provided that zoning and subdivision regulations were to become effective upon failure of the local legislative body to disapprove them by a three-fourths vote. Finally, the Local Autonomy Act of 1959[68] in effect ratified the decisions of the Supreme Court by legislatively shifting the power to enact zoning and subdivision regulations to the municipalities and cities. As things now stand, the Commission is an advisory agency, understaffed and underfinanced, preparing plans and planning local regulations for local governments, which do not often adopt those plans and which implement them hardly at all.

People's Homesite and Housing Corporation and housing and home finance agencies

PHHC is the principal national housing agency. It was formed by executive order in 1947 as the result of the consolidation of the National Housing Commission and the People's Homesite Corporation.[69] Formally, it possesses the functions of both of its predecessors. In practice, it has not exercised the planning powers originally granted to the National Housing Commission. It was at one point granted the power to guarantee home mortgages within certain limits,[70] but shortly thereafter the Home Financing Commission was created to perform that function,[71] and PHHC never actively undertook it. In 1960, the administration of a worker's tenement project built under a 1934 Act[72] was transferred to PHHC.[73] Under the Land Reform Code of 1963, the urban land reform function was split from that of rural land reform and vested in PHHC,[74] but

[67] University of the East v. City of Manila, 96 Phil. 316 (1954); Unson v. Lacson, 100 Phil. 695 (1957). But see Javillonar v. National Planning Commission, 100 Phil. 485 (1956), Manzano v. Lacson, G.R. No. 11051, June 30, 1958, 55 O.G. 4443 (June, 1959).
[68] Rep. Act 2264 (1959).
[69] Executive Order No. 93 (1947).
[70] Rep. Act No. 222 (1948).
[71] Rep. Act No. 580 (1950).
[72] Act No. 4184 (1934).
[73] Rep. Act No. 2618 (1960).
[74] Rep. Act No. 3844 (1963), Sec. 73.

PHHC has not actively assumed the function.[75] PHHC has concentrated its activities primarily on middle-class residential subdivision development, in the suburbs of Manila. Although it has made some contribution in that sector, especially in Quezon City, which it has helped to give a truly middle-class character, it has not been given the financial support necessary to make a significant impact on a severe housing shortage, especially for lower income classes. It has had to support itself on the land acquired by the Homesite Corporation before the War and on its own operations. In the case of one project, its difficulties were compounded by an act requiring it to sell its properties to its tenants at cost, with full credit for all rents paid in the past.[76] It has built only about 11,000 units since the end of the War, and most of these have been far beyond the means of the lower income classes.[77] Recently it has built a five-story walk-up apartment house using experimental construction techniques at a cost that is high for the prevailing wage structure but considerably lower than other similar ventures in the Philippines. Given the high cost of land in the Manila area, which makes open plot squatter resettlement projects uneconomic, higher density housing of this sort (higher than normal public single-family housing if not existing squatter colonies) may have to be built on a large scale if the squatter problem is to be met.[78]

Exemplifying the proliferation of agencies in all areas of government since the War, a special committee was created to administer tenements built by the Department of Public Works and Communications during the Macapagal administration.[79] We might also note the creation of a special PHHC-like agency for Cebu, the Cebu Employees, Laborers, Fishermen and Peasants Housing Corporation, which, however, has never become operational.[80]

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[75] As will be discussed later, the Supreme Court has raised serious Constitutional obstacles to urban land reform.

[76] Rep. Act No. 3802 (1963).

[77] de Vera, *The Philippine Housing Situation* (1967).

[78] It is now becoming difficult to find subdivision land with reasonable accessibility to Manila employment centers for less than ₱100 per (w)square meter. The cost of the five-story building, which uses on-site pre-poured concrete floor and wall panels is about ₱150 per square meter, the same as the cost for single family units of permanent materials. See Development Bank of the Philippines. *Financing Plan for Low-Cost Homes* (1967). Land Costs may seem high, but it seems in the public interest to encourage more high density housing in the Manila area.

[79] Rep. Act No. 3469 (1962).

[80] Rep. Act No. 2013 (1957).

The Home Financing Commission was established to operate a mortgage insurance program,[81] but it has been limited by inadequate capital and a 6% interest ceiling (about half of the market rate) and has insured mortgages on only about 4,000 houses.[82] Several government agencies, the Government Service Insurance System (GSIS), Social Security System (SSS), and Development Bank of the Philippines (DBP) are authorized to make mortgage loans, but their mortgage policies, although recently adjusted in favor of genuinely middle income classes have mainly benefitted the relatively well-to-do.[83] The total of government financed housing has been about 70,000 units.[84]

Meanwhile, the number of squatters is increasing at about 12% annually,[85] and only token and piecemeal efforts have been made to meet the problem.[86] The Central Institute for Training and Relocation of Urban Squatters (CITRUS) has been established under the Social Welfare Administration to study and devise solutions to the problem of urban squatting and to train, relocate and rehabilitate urban squatters.[87] CITRUS has ambitious plans[88] but has not received the financial support necessary to make a significant impact on the squatting problem. More fundamentally, it seems doubtful that training and relocation, even if heavily supported, would be capable of dealing with more than marginal aspects of the problem. In view of the existing pressure on agricultural land and the high

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[81] Rep. Act No. 580 (1950); Rep. Act No. 1557 (1956).

[82] See Wagner, *op. cit. supra* note 8, for an excellent analysis of the home financing situation as well as other aspects of housing and urban planning. For a table showing annual numbers of mortgages insured see de Vera. *The Philippine Housing Situation* (1967).

[83] See Wagner, *op. cit. supra* note 8, de Vera, *The Philippine Housing Situation* (1967); Development Bank of the Philippines, *Financing Plan for Low-Cost Homes* (1967). The DBP plan contemplates loans of ₱5000 for houses costing about ₱6000. The loans are payable over ten or fifteen years with interest at 8%, in monthly installments, in the case of a fifteen year term, of ₱47.78. The borrower is expected to have title to a lot of at least 150 square meters. de Vera, in *The Philippine Housing Situation* (1967), indicates that government loans totalling ₱1,022,171,000 have been extended on 67,464 housing units. The average is thus about ₱15,000 for each mortgage.

[84] de Vera, *The Philippine Housing Situation* (1967).

[85] See Juppenlatz, *Urban Squatter Resettlement-Sapang Palay* 41-73 (1965) and Juppenlatz, *Housing the People in the Philippines* (1966), paragraphs 311-370, for details on the squatter problem.

[86] See both of Juppenlatz reports cited in note 85. See also, LAQUIAN, THE CITY IN NATION-BUILDING, Chapter VIII (1966); LAQUIAN, SLUMS ARE FOR PEOPLE (1968).

[87] Rep. Act No. 4852 (1966); Executive Order No. 79 (1967).

[88] See Central Institute for Training and Relocation of Urban Squatters, *Master Plan.*

rate of population growth, it is obvious that people will continue to pour into the cities even though the cities do not offer either sufficient employment opportunities for them or land within their means. Government cannot hope to create new communities with an economic base sufficient to support more than a small number of these in-migrants, especially since unemployment and underemployment are not limited to squatters nor to the uneducated. The most that could be hoped is to divert more of the flow from Manila to the regional centers. This would require policies encouraging dispersal of economic activities, a very difficult and uncertain matter, raising questions of economic efficiency and feasibility. To meet the needs of squatters as squatters, open plot settlement schemes should be sufficient in the regional cities, where land is readily available.[89] Experience in the Philippines seems to demonstrate that if people have land, and, preferably, minimum facilities (roads, water, electricity, some means of waste disposal), they manage to build decent housing on their own.[90] In Manila, however, the high cost and value of urban land probably rule out simple land distribution as a solution to the squatting problem.

A National Housing Council was created in 1955 with advisory functions regarding housing.[91] It apparently became defunct and a new National Housing Council was organized in 1967.[92]

The office of Presidential Assistant on Housing was created to coordinate and integrate the housing programs of the various governmental agencies, but has not been given the administrative or financial means to do so.[93] It may be observed that if the PHHC had been properly supported from the outset and a multitude of new agencies not created, there would have been no need to create any such office.

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[89] *See* ABRAMS, MAN'S STRUGGLE FOR SHELTER IN AN URBANIZING WORLD (1965); Turner, *Barriers and Channels for Housing Development in Modernizing Countries*, 33 JOURNAL OF THE AMERICAN INSTITUTE PLANNERS 167 (May, 1967); Abrams and Koenigsberger, *A Housing Program for the Philippine Islands* (1959), LAQUIAN, SLUMS ARE FOR PEOPLE (1968).

[90] This proposition is borne out by a visit to Sapang Palay, Barrio Magsaysay or any of many squatter colonies throughout the country, See ABRAMS, *op. cit. supra* note 89, ABRAMS and KOENIGSBERGER, *op. cit. supra* note 89; Laquian, *op. cit. supra* note 89. For a case study showing similar experience in Latin America, see TURNER, *op. cit. supra* note 89.

[91] Executive Order No. 148 (1955).

[92] Special Order No. 2, July 10, 1967.

[93] Executive Orders, 67, 68 (1964). See WAGNER, *op cit. supra* note 8.

Department of Public Works and Communications

An important line agency with functions greatly affecting the character of urban and physical development is the Department of Public Works and Communications. Under the Highway Act of 1953, it has the power to determine the location of national and national assistance highways.[94] Much of the funding for highway construction is derived from the Highway Special Fund, which is allocated among functional uses and between national and local projects in accordance with formulae provided by statute.[95]

National Waterworks and Sewerage Agency

The National Waterworks and Sewerage Agency (NWSA) was created in 1955 to consolidate all waterworks and sewerage systems, formerly vested in local governments, in a single national agency.[96] This may be seen as an attempt to obviate the limitations of local government by the creation of a single or limited-function agency at a higher level, a device often adopted for similar reasons, though with limited success in other nations. The Act creating NWSA provided for the transfer to NWSA of all existing waterworks and sewerage systems together with their indebtedness under a vague provision for compensation, at net book value, with an equal value of NWSA assets. Several local governments challenged the transfer as a taking of their patrimonial property without just compensation. Although the classification of such property as patrimonial and, more fundamentally, the usefulness of the patrimonial-government distinction in the resolution of such problems may be doubted,[97] the Supreme Court sustained the position of the local governments. In one case after another, it nullified transfers on the grounds that waterworks and sewerage systems, unlike roads and parks, constitute patrimonial property and that the compensation clause of the Act is too vague

[94] Rep. Act No. 917 (1953); See also Rep. Act No. 1192 (1954). See Pilar, Firmalino, and Pacho. *The Administration of the Public Highways Program*. 10 (PHIL. J. PUB. ADM. 154 (1966).

[95] *Ibid.*

[96] Rep. Act No. 1383 (1955); amended by Rep. Act No. 3597 (1963).

[97] See Note, *The Sovereign's Duty to Compensate for the Appropriation of Public Property*, 67 COLUM. L. REV. 1083 (1967). In New York, for example, the legislature has attempted to put the question of compensation on a more realistic basis than the governmental-proprietary distinction by requiring compensation to the local government only when the expropriation by the state government is for a purpose substantially different from that for which the property was held by the local government.

to meet constitutional standards of just compensation.[98] In a recent case, however, the Court has suggested a possible means of meeting the constitutional objection to such transfers:

> "As a consequence, neither may the National Government assume power of administration of patrimonial property of municipal corporations, if such action is based upon appropriation. In fact, it may not, by operation of law, assume such administration without appropriating title to the property, if the same or the income will be commingled with other property either of the National Government or of other municipal corporations, in such a way to permit use of the property or income for the benefit of another municipal corporation or of the State itself."[99]

Apparently the constitutional objection could be met by the maintenance of separate accounts for each constituent local systems. Perhaps subsequent grants of non-local funds to improve existing local systems could be made contingent upon waiver by the appropriate local governments of their rights to separate accounts. (This is not to argue for the undertaking of urban development functions through creation of single-function agencies, but only to indicate a way around a particular legal obstacle. Difficulties of coordination among such agencies are obvious.) We should also note that NWSA has not been given the financial capacity to eliminate severe water shortages throughout the country.

Local government and national agencies operating at the community level

Under the Local Autonomy Act of 1959, the power to enact zoning and subdivision regulations is vested in the municipalities and cities. In 1962, President Macapagal issued an administrative order calling upon the municipalities and cities to form local planning boards to initiate the preparation of physical development plans in consultation with the National Planning Commission, to prepare sub-

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[98] City of Baguio v. National Waterworks and Sewerage Authority, G. R. No. 12032, August 31, 1959, 57 O. G. 1579 (Feb., 1961); City of Cebu v. National Waterworks and Sewerage Authority, G. R. No. 12892, April 30, 1960; Municipality of Lucban v. National Waterworks and Sewerage Authority, G. R. No. 15525, October, 1961; Municipality of Naguilian v. National Waterworks and Sewerage Authority G. R. No. L-18540, November 29, 1963; Municipality of La Carlota v. National Waterworks and Sewerage Authority, G. R. No. L-20232, September 30, 1964; Municipality of Compostela v. National Waterworks and Sewerage Authority, G. R. No. L-21763, December 17, 1966.

[99] Municipality of Compostela v. National Waterworks and Sewerage Authority, *supra* note 98.

division, zoning and building regulations for approval by their respective legislative bodies, and to have all public improvements harmonize with a duly approved town or city development plan.[100] The local governments, however, have not been able or have not been willing to carry out such planning responsibilities. There are 50 cities and 1375 municipalities in the nation. Of the municipalities, 112 have local planning boards (not all necessarily active). The National Planning Commission has prepared development plans for 194 municipalities but only 60 have adopted the plans. Only 59 municipalities have enacted subdivision regulations and none have enacted zoning ordinances. Of the cities, only 12 have enacted subdivision regulations and only 8 have enacted zoning ordinances.[101] Although the Commission has prepared a master plan and a new set of zoning regulations for the City of Manila, the City has not adopted the proposed zoning regulations and is still operating under a 1940 zoning ordinance based on a 1928 plan.[102] Equally important, the local governments have shown little determination to implement the plans they have. Spot zoning is rampant; zoning building and subdivision regulations are not enforced; and land reserved under subdivision regulations for public use is being sold off for private use.[103] Undoubtedly the lack of implementation is due in part of the unrealistic nature of the regulations adopted, which seem to be modelled too much upon irrelevant American regulations. And most of the national agencies have not shown significantly greater ability to make plans effective. Yet experience under the Local Autonomy Act shows quite conclusively that the answer to urban planning cannot be found in simple decentralization of the planning function.

The national government has sought in a number of other ways to stimulate planning and development at the local level. The Presidential Arm (originally "Assistant") on Community Development was formed by President Magsaysay in 1956 to carry out a community development program, encourage local autonomy, and coordinate

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100 Administrative Order No. 31 (1962).
101 Information furnished by National Planning Commission.
102 Ramos, *op. cit supra* note 8.
103 See Ramos, *op. cit. supra* note 8; Mallari, *op. cit. supra* note 66; LAQUIAN, THE CITY IN NATION-BUILDING chapter III (1968); article, "Subdivision abuses eyed by House body," Manila Times, June 4, 1968; numerous columns by Teodoro Valencia in the Manila Times; Wagner, *op. cit. supra* note 8; Local Government Center, College of Public Administration, University of the Philippines, *Report on the Cebu City Government* (1967).

and integrate all government activities in community development.[104] Although it has participated in many public improvement projects involving local self-help, its emphasis has been on social and political rather than physical development. It has promoted the organization of community development councils at the provincial, municipal and barrio levels, but the councils apparently have not functioned effectively and, in any event, they have not undertaken physical planning on a significant scale.[105] Although PACD has been primarily concerned with rural communities, it has recently undertaken a pilot project in a Manila squatter area.[106] And, if the suggestions of Dr. Laquian are to be taken, urban community development projects may be expanded to include physical planning.[107]

The Bicol Development Planning Board represents an attempt to establish regional planning by local initiative and with existing units of local government. The Board was formed by the six provincial governors and two city mayors of the Bicol region with the cooperation of PACD. Each unit agreed to contribute ₱2,000 to a Bicol Development Fund. PACD undertook the task of gathering information about the area and its communities. The Board was conceived primarily as an instrument of local government, whose function at the national level was to recommend and promote programs. The Board has no regulatory or coercive powers over public or private entities; and it does not have the funds to undertake large scale development projects itself. It seeks to enhance and coordinate the development actions of other agencies by gathering and exchanging information, identifying problems and opportunities, and promoting regional interests at the national level.[108]

It is interesting to note that members of the Board initially opposed the bill to create the Bicol Development Company on the ground that it would place authority at the national level and impair

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104 Executive Order No. 156 (1956).

105 See Parco, *Regional Development Planning, The Bicol Experiment*, 9 PHIL. J. PUB. ADM. 265 (19—); *Aquino, Local Government and Community Development; The Indian and Philippine Experience*, 10 PHIL. J. PUB. ADM. 184 (1966).

106 See LAQUIAN, SLUMS ARE FOR PEOPLE (1968).

107 *Ibid.*

108 See Hare, *Phases in the Development of the Bicol Development Planning Board* (Institute of Philippine Culture, Ateneo de Manila, August 23, 1967); Parco, *op. cit. supra* note 105. The Hare paper is an analysis of the activities of the Board in terms of the general theory of social action presented in PARSON, BALES AND SHILS. WORKING PAPERS IN THE THEORY OF ACTION.

the authority of the Board. After the bill was enacted into law, the Board reached the conclusion that the respective functions of the two entities should be "preinvestment work" on the part of the Board and actual project development on the part of the Company.[109]

The inherent limitations of such a voluntary, cooperative, and promotional organization will probably preclude it from playing more than a marginal role in development planning. So long as the bulk of development funds originates in the national government, under the control of the President, it is unreasonable to expect a voluntary association of local leaders to be granted a controlling voice in their distribution.

A promising attempt to establish a basis for planning at the municipal level is now being undertaken by the Coordinator and Action Officer for the Presidential Advisory Council on Public Works and Community Development appointed by President Marcos.[110] The office of the Coordinator is in the process of preparing a Municipal Development Planning Book for each of the nation's 1375 municipalities. Each Book will bring together in one place data on the existing economic and physical conditions of the municipality, the development projects planned for the municipality at all levels of government, and the financing schemes and programs necessary to implement those plans. The Books are thus action or program oriented. The office of the Coordinator expects the Planning Books to have an advisory and disciplining effect on elected officials and to provide the basis for a more rational process of releasing funds for local public works. In other words, it is hoped that the office of the Coordinator will play a part in the programming of local projects equivalent to that played by the PES and the Infrastructure Operations Room with respect to national projects (described later in this paper). This will prove difficult, since the Coordinator, to a much greater extent than PES, will be required to work with a diverse group of independent officials not all of whom will be responsive to presidential policy and in a sector traditionally dominated by pork barrel practices.[111] It should also be noted that planning at the municipal

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[109] Hare, *op. cit. supra* note 108.

[110] Memorandum to Governor Norberto Romualdez, Jr. from President Marcos dated July 17, 1967.

[111] See Vidallon-Carino, *The Politics and Administration of the Pork Barrel* (Local Government Center, 1966).

level will not be effective in metropolitan areas, where the need for planning is greatest.

President Marcos has recently created provincial development committees, made up of the governors and the heads of the government agencies concerned with economic and social development in the respective provinces. The committees are directed to formulate provincial development plans in accordance with the "approved national development plan," to formulate guidelines for the coordination of project implementation activities, and to coordinate and integrate the efforts of public and private entities engaged in development actions.[112] The "approved national development plan" is not further identified. If it is the administration's *Four Year Economic Program,* it is difficult to find much guidance there for planning at the provincial level. The relationship of the committees to existing planning agencies and the legal and administrative means to carry out the functions of coordination and integration are not stated. For reasons to be mentioned later, it seems extremely unlikely that the President would transfer the public works programming functions of PES to provincial committees. Unless very close liaison is successfully established between the provincial development committees and PES, it seems very doubtful that the committees will prove effective. And even if they were to prove effective at the provincial level, sound planning would still require integration with planning for the cities, over which the provinces have no jurisdiction.

As cities have grown and as formerly distinct communities have become functionally integrated, the trend, rather than to consolidate units of local government, has been to create new units, thus further fragmenting local government and rendering it all the more incapable of planning on a territorially rational basis.[113] The political pressures and incentives for the creation of new units of government are not difficult to understand. Until recently the President as well as Congress exercised the function of creating new units of local government.[114] The basis for such action by the President existing in a section of the Revised Administrative Code inherited from the Am-

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[112] Executive Order No. 121 (1968).

[113] See CORTES, THE PHILIPPINE PRESIDENCY: A STUDY OF EXECUTIVE POWER 149-152 (1966); Silao, *A Summary of Laws and Regulations Affecting Philippine National-Local Government Regulations* (Local Government Center 1966).

[114] See CORTES *op. cit. supra* note 113.

erican colonial regime. In a recent case, however, the Supreme Court nullified that provision as an unconstitutional delegation of legislative power.[115] While the effect of the decision is to remove one source of the tendency towards the further fragmentation of local government, it also eliminates the possibility that a determined President, responding to urgent needs, might consolidate a group of local governments existing in a single metropolitan area (Manila or Cebu, for example). Although it must be conceded that such a possibility would at the present time seem remote, the possibility that Congress might take such action seems even more remote.

The Decentralization Act of 1967[116] should be mentioned in this discussion not so much for what was finally included in it, as for what it deleted from the Manglapus-Manahan Decentralization Bill, which had been passed by Congress but vetoed by the President. The Manglapus-Manahan Bill provided for the allocation and release of national public works appropriations under a formula whereby 60% of the total would be distributed among the congressional districts (in proportion to population and area) for projects determined by the engineers of the respective districts upon consultation with the respective congressional representatives. President Marcos vetoed the Bill for the reason, among others, that:

> "Hand in hand with the rice production program, and essential to its eventual solution, is the massive public works construction program and other infrastructure projects which the government has initiated and started to implement. Irrigation, roads and bridges have already been constructed in many parts of the country as part and parcel of this national program, as planned, implemented and coordinated from the national viewpoint.
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> "I am of the firm belief that in order to successfully prosecute our national public works construction program and infrastructure projects, it is essential that the control of planning, coordination and implementation as well as the funding thereof shall remain with the National Government. By setting aside and allocating sixty percentum of public work funds available in the general fund for community projects the listing of which shall be prepared upon consultation with the representative of the congressional district concerned, this bill takes away from the National Government that very control deemed expedient and indispensable to the implementation of those projects."[117]

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[115] Pelaez v. Auditor General, G. R. No. L-23825, December 24, 1965. See CORTES *op. cit. supra* note 113.

[116] Rep. Act No. 5185 (1967).

[117] Presidential veto message.

The administration offered a substitute bill deleting the formula for funding public works and several other of the more important provisions of the original bill (including the transfer of agricultural extension and rural health functions); and the substitute bill was passed into law as the Decentralization Act of 1967. As will be discussed later, it is difficult to envisage any president in the foreseeable future taking a position different from that stated in President Marcos' veto message.

Regional Development Authorities

There are now about a dozen regional development authorities existing on paper, the exact number depending on whether several authorities are to be classified as regional development authorities. The concept of regional planning has gained increasing importance around the world in recent years.[118] Generally, the need for regional planning has been found in national policies to stimulate the economic development of particular regions (often undeveloped regions of high economic potential in nations in early stages of industrialization,[119] and lagging regions in the case of older industrialized nations and occasionally in the case of "developing" nations;)[120] in the jurisdictional limits of existing units of government, functional in the case of national agencies and territorial in the case of local governments;[121] and in the notion that the region is (in part as a matter of definition) the appropriate geographical basis for translating national economic policies into concrete projects and programs.[122]

The first of the regional development authorities created in the Philippines was the Mindanao Development Authority (MDA).[123] The development of Mindanao has been a stated objective of government since early in the American regime. MDA grew out of the

118 See Friedmann and Alonso, *Introduction, and Friedmann, Regional Planning as a Field of Study,* in REGIONAL DEVELOPMENT AND PLANNING (Friedmann and Alonso, ed. 1964).

119 See Rodwin, *Urban Planning in Development Countries.*

120 See Wright, *Regional Development: Problems and Lines of Advance in Europe,* TAMING MEGALOPOLIS 119 (Eldredge ed. 1967). Friedmann and Alonso, *op. cit. supra note* 119; Kim, Carim and Norton, *Towards Regional Planning in Korea* (Seoul, 1968); Roxas, *Regional Economic Development in the Philippines; Planning Industrial Estates in the* 1960's in THE PHILIPPINE ECONOMY IN THE 1960's, (Sicat ed. 1964).

121 See Abrams, *Regional Planning in an Urbanizing World; Problems and Potentials,* in TAMING MEGALOPOLIS 1030 (Eldredge ed. 1967); Roxas, *op. cit. supra* note 10.

122 See Roxas, *op. cit. supra* note 10. Friedmann and Alonso *op. cit. supra* note 119.

123 Rep. Act No. 3034 (1961).

efforts of the Mindanao-Sulu-Palawan Association (MINSUPALA), a group of area leaders who developed the idea and the necessary political impetus for its creation.[124] According to the explanatory note accompanying the bill creating MDA:[125]

> "This legislative piece seeks to create the Mindanao Development Authority, a body corporate clothed with the power of government but possessed of the flexibility and initiative of a private enterprise. It is based on the proposition that the balanced growth of Mindanao, Sulu and Palawan could be best accelerated and realized through regional development, where the responsibility for administering duly prescribed policies is definitely laid in a specific agency." . . . [MDA] will operate only as a sort of a third or harmonizing sector to coordinate and/or integrate vigorously the diverse effort of the public and private sectors along regional development. The authority is not intended to absorb or duplicate the functions of established government agencies. Rather, it shall coordinate such functions to minimize if not eradicate piece-meal execution of projects, rivalry and in some instances indifferences among the various government offices, and confusion and overlapping of governmental activities which only result in tremendous waste and delay."

Notwithstanding the disclaimer of functions already performed by established government agencies, the appropriation of ₱300,000,000, to be paid out over a period of 10 years, was obviously for purposes that might otherwise be carried out by existing agencies. More important, the statute creating MDA charged it with planning and, possibly, regulatory functions not limited to its own projects but encompassing a broad range of public and private enterprise. The Act, however, was uncertain on crucial questions of implementation: the manner in which planning functions were to be exercised; relationships between MDA and established government agencies; and the extent of MDA's power to influence development projects of other government agencies and of private enterprise.

Among the statutory purposes of MDA are the following:

> "to draft a comprehensive and detailed plan to promote rapid social and economic development along general lines set forth by NEC, provided that the plan shall first be referred to the President, who shall act upon it within three months";
>
> "to provide machinery for extending planning, management and technical assistance to prospective and existing investors in the area";

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[124] See Jayme, *The Mindanao Development Authority: A New Concept in Philippine Economic Development*, 5 PHIL. J. PUB. ADM. 321 (1961).

[125] As quoted in Jayme, *op. cit. supra* note 124.

> "to make recommendations to the proper agencies [on industrial and agricultural projects]";
>
> "to coordinate and/or integrate such projects or operations of local governments, government agencies, public corporations and, where clearly necessary and feasible, those of private entities, as bear directly upon plans and activities of the Authority. . . ; set up a staff for liaison, consultation, or joint planning and/or implementation with such government and private entities; provided that disputes involving jurisdiction between the Authority and any government agency, or arising in coordination or integration of government plans, projects or operations shall be settled by decision of the President. . . ."

It might well be argued that the power to "integrate" public and private "projects or operations" implies the power to regulate (subject to Presidential review, in case of conflict with another governmental agency), especially since this power is qualified in the case of private entities by the phrase "where clearly necessary and feasible", a qualification that would be unnecessary if the power were merely advisory. The implication of regulatory power, however, seems a far reaching consequence to be based upon such sketchy statutory provisions and would raise serious Constitutional problems of delegation of legislative power to an administrative agency.[126] The more likely interpretation, therefore, is that MDA's functions of planning, programming and coordinating projects other than its own are to be carried out by means of advice and recommendation, and, in the case of conflict with another government agency, by submission of the conflict to the President.

MDA was granted powers, among others, to hold agricultural land in excess of the Constitutional limits applicable to private corporations,[127] to exercise the right of eminent domain in the name of the Republic, to borrow and issue bonds within specified limits, to organize subsidiary corporations, and to engage in pioneering enterprises. Its authorized capital is ₱300,000,000, to be subscribed and paid by the national government over a period of 10 years. It is governed by a Board of Directors of five, all appointed by the President with the consent of the Commission on Appointments and subject to removal only for cause.[128]

Although legislatively created in 1961, MDA was not organized until July, 1963. In the meanwhile the administration of President

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[126] Cf. University of the East v. City of Manila, *supra* note 67.

[127] For a criticism of this exemption on grounds of national economic policy, see Magallona, *Comments on Draft Administrative Code.*

[128] Rep. Act No. 3034 (1961).

Macapagal had assumed office. The Macapagal *Five-Year Integrated Socio-Economic Plan* was based in part upon an analysis of the economy leading to the conclusion that policies of exchange and import control had been exhausted, that rapid industrial growth on a low rate of capital formation was no longer possible, and that;

"Two conclusions follow from the premises:

1. The field for investment during the next ten years will be much narrower at the start because the tests of attractiveness and feasibility will be more rigorous.
2. The character of the investments will change. More basic developmental effort will be necessary.

"Further development of mining, agriculture and forestry will involve more substantial investments in basic facilities—roads, irrigation and water control system, warehouses, heavy equipment for clearing and cultivating pest control equipment, housing, etc. This is the result of bringing land under cultivation which is in less developed areas that must be exploited for settlement. . . .

"During the past ten years, the chief industries which were newly established, being devoted to the later stages of processing, assembly, and packaging, had to be located in or around Manila, near the principal markets. In the coming years, the principal industries may be located near sources of cheap power or raw materials. Larger investments will be required in the country to set up new communities with all the facilities involved in building water systems, electric power generating and distribution plants, sewerage system, housing, roads and communications facilities."[129]

This analysis has obvious implications for regional development policy, and the Five-Year Plan proposed a program for regional development giving priority to the Mindanao and Central Luzon-Cagayan Valley regions.[130] The program for the Mindanao region included a broad range of industrial and agricultural development projects, with a five-year outlay of ₱1.23 billion, of which about ₱.7 billion was to be accounted for by the public sector.[131] Specific projects mentioned included an integrated steel mill, aluminum, coke, fertilizer and plywood plants. The program for the Central Luzon-Cagayan Valley region concentrated on water resource development.

The rationale for the selection of those particular regions was somewhat ambiguous. It was pointed out that 73% of manufacturing production was concentrated in Metropolitan Manila and

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[129] *Five-Year Integrated Socio-Economic Plan* 10 (1962).
[130] *Id.* at 62-64.
[131] *Ibid.*

the adjacent Southern Tagalog region. But while it was stated at one point that the program was "to bring about more equitable regional development," it was stated at another point that "priority is placed on the most promising areas."[182]

The Five-Year Plan called generally for decentralization of planning functions and for the strengthening of the regional development authorities to plan and carry out regional development.[183] It is interesting to note, incidentally, that the Plan suggested the possibility of a Manila Metropolitan Development Authority.[184]

Some time later, Sixto K. Roxas, then Chairman of NEC and a principal advisor to President Macapagal, further elaborated on the rationale for regional development authorities as follows:

> "Economic planning at the national level is usually undertaken at too high a level of aggregation to produce results that are meaningful for specific investments. The gap between a national aggregative plan and specific projects is usually too great to enable prospective investors to identify from the plan realistic investment opportunities. On the other hand, proceeding on an individual project by project basis would be far too slow. Furthermore, there are always, by definition, individual projects, particularly in underdeveloped areas of the country, which when considered in isolation would prove unattractive or even uneconomical because each project must assume the burden of all the infrastructure facilities.
>
> "What we need, in other words, are two things. The first is an analytical approach that permits the identification of specific project opportunities, en masse so to speak, instead of individually. The second is machinery for promoting, implementing and administering projects in such complementary packages. The answer to the first is supplied by the newly emerging field of regional science and specifically industrial complex analysis. To the second, the answer is the establishment of area development authorities and, in the field of manufacturing, industrial estate promotions."[185]
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> * * *
>
> "First, economic development planning in the country must be done on a regional basis. Second, the concept of the region must be reworked to depart from political boundaries and to take into consideration the elements that make for economic complementary."[186]

In view of this background, one would have expected MDA and CLCVA to have received a significant impetus. But that was

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[182] *Ibid.*
[183] *Id.* at 70-73.
[184] *Id.* at 72.
[185] Roxas, in THE PHILIPPINE ECONOMY IN THE 1960's 166 at 168 (Sicat ed. 1964).
[186] *Id.* at 169.

not the case. Neither Authority received substantial financial or administrative support. In disregard of the announced policy of concentrating resources in areas selected for high priority, a series of new authorities for other regions were created.[137] It could hardly be expected that the other regions would fail to compete for national public resources, and the structure of Philippine politics is not conducive to the selective concentration of resources in something so abstract as the general national interest.[138] From the sheer magnitude of the capitalization of the Authorities as well as the experience of the existing Authorities, it may be doubted whether there was ever any serious expectation that the new Authorities would ever operate on the scale legally authorized.[139]

Of the subsequently created authorities, some were designed for general development and some for more limited purposes, such as port development.[140] Several of the charters are based on that of MDA and most are similar to it in substance. One significant variation is found in the charter of the Bicol Development Company.[141] Among its purposes is:

> "To approve all development plans, programs, or projects by any local government agencies, public corporations, and private enterprises where such plans, programs, or projects are related to the development of the region as envisioned in this Act. The Company shall determine whether such plans, programs, or projects need to be approved by the Company under these provisions. The decision of the Company in this regard shall be final."[142]

The scope, effect and validity of this power present difficult questions. If literally construed, it would permit the Authority to as-

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[137] Rep. Act No. 3655 (1963); Rep. Act No. 3856 (1964) [check Rep. Act No. 4755 (1966)]; Rep. Act No. 3961 (1964); Rep. Act No. 4188 (1965); Rep. Act No. 4567 (1965); Rep. Act No. 4663 (1966); Rep. Act No. 4690 (1966); Rep. Act No. 4850 (1966).

[138] See Golay, *Obstacles to Philippine Economic Planning*, IV PHIL. Eco. J. 284 (1965).

[139] The authorized capital of the early authorities, to be paid in by the government in installments over a ten-year period, amounted to hundreds of millions of Pesos. The total authorized capital of some thirteen development authorities (excluding those organized as non-stock corporations) is ₱1,470 million. Rep. Act Nos. 3034 (1961), 3054 (1961), 3655 (1963), 3856 (1964), 3961 (1964), 4071 (1964), 4132 (1964), 4188 (1965); 4412 (1965), 4567 (1965), 4663 (1966), 4690 (1966), 4850 (1966).

[140] See Rep. Act No. 4567 (1965) [San Fernando Port Authority]; Rep. Act No. 4663 (1966) [Cagayan de Oro Port Authority]; Rep. Act No. 3961 (1964) [San Juanico Strait Tourist Development Authority]; Rep. Act 3655 (1963) [Hundred Islands Conservation and Development Authority].

[141] Rep. Act No. 4690 (1966).

[142] Rep. Act No. 4690 (1966)

sume practically unlimited land use planning functions, completely superseding those of local government. It is interesting that the power was created at a time when the principle of local autonomy enjoyed considerable ostensible support and the locally initiated and locally controlled Bicol Development Board opposed its creation on principles of local autonomy.[143] The plans, programs and projects of the executive departments of the national government are not subject to this power, perhaps because such projects require appropriations by Congress. Congress can, of course, always authorize a public works project in any place without limitation by an administrative agency; and it cannot bind itself in advance to be limited by any plan. (It could, however, require all projects to conform to a plan unless expressly authorized to the contrary.) The most important question regarding this power is whether it could withstand attack as an unconstitutional delegation of legislative power to an executive agency without sufficiently definite standards. We have already noted that the Supreme Court in *University of the East v. City of Manila,*[144] nullified the grant of land use regulatory powers to the National Planning Commission on that ground. The scope of the power to approve or disapprove all private projects related to the development of the region is certainly as great as that of zoning and subdivision regulation. The former power, moreover, entails greater risks of arbitrary governmental action, since it is exercisable on a case-by-case basis and is not subject to the discipline and certainty inherent in action by rule and regulation.[145]

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[143] See Hare, *op. cit. supra* note 108.

[144] *Supra* note 67.

[145] See JAFFE AND NATHANSON, ADMINISTRATIVE LAW; CASES AND MATERIALS 36-38 (2d ed. 1961), who point out that the object of the principle of separation of powers, from which the doctrine against undue delegation is logically derived, is "the preservation of political safeguards against the capricious exercise of power." The standards involved in *University of the East* were, if anything, more definite than those limiting the discretionary power of the Bicol Development Company. The Court, in *University of the East,* did not discuss the possibility of finding sufficient standards in the surrounding recitals and language of the executive order granting regulatory powers to the National Planning Commission, although to do so would have been consistent with accepted practice. The purpose for which the Commission was to prepare plans and zoning and subdivision regulations were, as stated by the Executive Order:

> "to guide and accomplish a coordinated, adjusted, harmonious reconstruction and future development of urban areas which will in accordance with present and future needs, best promote health, safety, morals, order, convenience, prosperity, and general welfare, as well as efficiency and economy in the process of development: including among other things adequate provision for light and air, the promotion of healthful and convenient distribution of populations: the pro-

The Laguna Lake Development Authority is also worth special mention because it is to be owned and financed not by the national government but by the Provinces of Laguna and Rizal, together with such local governments, government corporations and private interests as choose to subscribe for its stock.[146] The Board of Directors is to be elected by the stockholders, and the officers are to be elected by the Board. Thus unlike the other Authorities, it is designed to be controlled by local government. There appear to be possibilities, however, that private interests could gain control of the Authority, in the event either that the Provinces should not pay up their subscriptions (the statute requires them to pay only 25% of their subscriptions) or that subsequent issues of authorized but not issued stock should be purchased predominantly by private interests. Given the unprofitable experience of government corporations in the past, however, it must be admitted that such heavy participation by private interests is a remote possibility. The contemplated combination of public and private interests in corporate form also raises questions of conflict between public and private interests.[147] Consider for example a project with unattractive earnings prospects which, nevertheless, might yield important public benefits to the region. Is it the duty of the Directors to vote in the inteterest of the corporation as an economic enterprise and of its shareholders as shareholders? Or are they to vote as public officials representing the region?

The purposes of the Laguna Lake Development Authority encompass a broad range of planning and development functions, including that of "passing with finality upon plans, programs, and projects of local governments, public corporations and private enterprises, when these are related to the development of the region."[148]

motion of good civic design and arrangement, economic, wise, efficient and equitable expenditure of public funds, and the adequate provision of public utilities and other public requirements." These are admittedly very vague. But they are not more so than "related to the development of the region," the standard provided in the grant to the Bicol Development Company of the power under discussion, nor than the statements of Congressional purpose in creating the Company.

[146] Rep. Act No. 4860 (1966).

[147] See, David, *The Laguna Lake Development Authority and the Mindanao Development Authority: Application of the Concept of Regional Planning and Development* (1968), a term paper by a third year student in the University of the Philippines College of Law. Cf. Schwartz, *Comsat, the Carriers and the Earth Stations: Some Problems with "Melding Variegated Interests,"* 76 YALE L. J. 441 (1967).

[148] Rep. Act No. 4850 (1966), sect. 4(d).

This is phrased in almost the same words as in the case of the Bicol Development Company and raises the same questions of scope and constitutional validity. Another interesting function of the Authority is to plan, program and undertake the relocation of population within the region.[149] Presumably, that purpose is to be exercised only through positive inducements.

Although the Regional Development Authorities are abundantly endowed with statutory powers, they have not proved to be an effective vehicle of public development action. Some of the Authorities have not even been formally organized; only several have received enough funds to become operational; and none has received more than a small fraction of its authorized capital.[150] By far the most active of the Authorities in MDA, which has completed a number of surveys and studies, including feasibility studies on specific projects.[151] But even MDA has received only ₱17,085,860 of its authorized capital of ₱300,000,000, which under its charter was to be paid in ten annual installments of ₱30,000,000.[152]

With such inadequate funding of the Authorities, perhaps it cannot be said that they have been fairly tested as an administrative vehicle for planning and development. It appears however, that they have already ran into serious administrative difficulties. A 1965 report by the Program Implementation Agency (the predecessor of the present Presidential Economic Staff) pointed out serious problems of coordination both among the Authorities themselves and between authorities and the other agencies of government.[153] With respect to management, the report noted,

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[149] Rep. Act No. 4850 (1966), sect. 4(f).

[150] Mindanao Development Authority has received ₱17,085,860. Central Luzon Cagayan Valley Authority ₱2,196,227 and none of the others more than ₱5,000,000. (These are the amounts actually released to them as against total appropriations of ₱126,000,000 and ₱3,000,000 for Mindanao Development Authority and Central-Luzon-Cagayan Valley Authority respectively.) Division A, Budget Commission.

[151] In 1966, the MDA completed a survey of the regions' physical and natural resources and formulated a plan for regional development. It finished 16 feasibility studies for specific projects such as construction and farm equipment tool, concrete road, paving, feed mill, banana plantation, and coconut coir processing plant. The Authority also initiated pilot rice production projects and organized a subsidiary corporation to undertake large scale plantation growing of corn, and the manufacture of corn grits, corn oil, and animal feeds for hogs and poultry. *MDA Annual Report* FY 1965-1966, pp. 2, 9-11; *Annual Report* for FY 1966-1967, pp. 10-13.

[152] Division A, Budget Commission.

[153] Program Implementation Agency, *Regional Development in the Philippines* (May 28, 1965).

> "Being a government corporation on a regional scale, in the appointment of the Board members and other executives, a lot of politicking, lobbying, pressuring, etc., takes place to accommodate certain groups."[154]

More recently the newspapers have reported charges of mismanagement and corruption in the Authorities. The Authorities are subject to the same difficulties that seem to plague all government-owned corporations in the Philippines.[155] They are not sufficiently subject to the discipline of either the profit motive or presidential authority; and they are subject to all of the pressures of political interference without the important constraints existing in the traditional administrative structure. Moreover, aside from the intrinsic merits or demerits of the case, the independence of the Authorities from the presidency appears to assure that they will never be given the administrative and financial support necessary to their assumption of a major role in national development programs.

A Committee on Regional Development was formed by presidential order in 1965[156] to coordinate regional planning efforts. But, as of a recent date, it had never met. This seems to emphasize that the regional development authorities are not being taken very seriously.

The final planning agency to be considered in this paper is the Presidential Economic Staff (PES). PES grew out of the Program Implementation Agency, first organized early in the administration of President Macapagal.[157] The executive order creating PIA recited the need for a staff agency to perform analytical work and advise the President in economic matters and to coordinate and implement the administration's Five-Year Socio-Economic Plan. In addition to making studies and recommendations, it was granted the following functions:

> "(a) It shall perform socio-economic planning work at a level in-between the overall aggregative view of the National Economic Council and the specialized specific views of individual government departments, corporations and financial institutions.
>
> "(b) It shall analyze, coordinate and integrate the plans, programs and studies of the various government departments, agen-

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[154] *Id.* at pp. 14-15.

[155] For an illuminating analysis, see Milne, *The Coordination and Control of Government Corporations in the Philippines*, 5 PHIL. J. PUB. ADM. 293 (1961).

[156] Administrative Order No. 123 (1965).

[157] Executive Order No. 17 (1962).

cies and instrumentalities for the purpose of formulating policy recommendations, establishing priorities and programming the utilization of public funds, manpower resources, and materials and equipment.

"(c) It shall analyze, evaluate, coordinate, and where necessary and with the approval of the President initiate major capital projects involving public funds or funds of public financial institutions.

* * *

(g) It shall establish, with the approval of the President, the necessary criteria and other guidelines for the public and private sectors for investment decisions consistent with the objectives of the Socio-Economic Program."

Quite obviously, these are functions that could in theory be performed by NEC, which is not legally restricted to an "over-all aggregative view" but has the function, among others, to "review all existing programs, public or private, which have a bearing on economic development, and make modifications thereof at least once each year."[158] The need for PIA, however, arose not from any lack of legal powers in existing agencies, but from a recognition of the powers of the Presidency in the planning process, especially in two critical areas, first, in supervision, control and coordination of the vast array of agencies in the executive branch with economic planning and development functions and, second, in the determination of what projects among the many for which Congress has appropriated funds (amounting to a total far in excess of available revenues) to implement by the release of funds.[159] As will be discussed later, it seems quite clear that an effective planning agency must operate in the closest relationship to the exercise of those powers, and that an agency as independent of the presidency as NEC is not likely to be able to establish such a relationship.

The rationale for the creation of PIA and the functions it was contemplated PIA would exercise were remarkably similar to the rationale and functions of the regional development authorities. Both PIA and the regional development authorities were seen as appropriate agencies to operate at a level intermediate between national economic planning and the planning and implementation of specific projects and at that level, to develop packages of interrelated infrastructure and industrial projects, which were considered to have assumed particular importance in the 1960's by reason of the lifting

[158] Reorganization Plan No. 10; see note 46 *supra*.
[159] See Roxas, *op. cit. supra* note 31.

of import and foreign exchange controls and the need for resource-oriented investment. This may be seen in two papers, one presented by Armand V. Fabella, then Director General of PIA, and the other by Sixto K. Roxas, who was instrumental in the creation of PIA. To quote Fabella:

> "PIA was organized in consideration of a basic economic fact: that both private and public projects are technically interrelated and interdependent, and if planned and executed in combination they can result in far greater returns than the sum of the benefits of each project taken as a unit. Individual projects were drawn up, evaluated and executed by the operating departments of the executive branch, by government-owned or controlled corporations, and by government financial institutions. The overall goals toward which these projects are supposed to contribute were set by the National Economic Council, which is responsible for overall national planning. The object of PIA was to provide effective control between these two ends of the economic development process.
>
> "What was needed was a clearing house where public and private projects could be systematically coordinated in the manner of industrial complexes."[160]

And, to quote Roxas:

> "The backlog of infrastructure investments in transportation, power and communication facilities which was not a serious deterring factor as long as investments were clustering around the metropolitan areas of the country, would become a serious bottleneck, now that investment had to be more resource-than-market oriented, in terms of locations. The planning, programming, scheduling and financing of government infrastructure projects needed to become more systematic, scientific, dexterous, than they had been in the past."[161]
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> "Then, the PIA needed to be a three-way arbitrator, in this manner attempting to synchronize and coordinate project designs and planning of the operation branches of the government; highway with flood control projects and harbor development; power and municipal waterworks with resettlement projects. Arbitration was also necessary in individual private project planning, particularly with the removal of exchange controls. Finally, arbitration had a place in synchronizing private project planning with government project planning and administration."[162]
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> "There was one particular tool that was intended to be a strategic factor in the entire work of the PIA. It was known as the presidential Economic Operations Center.... "Here, up-to-date

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160 Fabella, *Problems of Plan Implementation,* IV PHIL. ECO. J. 341, 348 (1965).

161 Roxas, *Lessons from Philippine Experience in Development Planning,* IV PHIL. ECO. J. 355, 373 (1965).

162 *Id.* at 380-381.

information would be kept on natural resources of the country, infrastructure facilities, key physical plants with their characteristics, current production information, commodity flows, transportation routes, the physical progress of public and private construction, demographic information, etc."[163]

"The Center was primarily intended to be the official Presidential briefing room where the President and his Cabinet would get an up-to-date picture of the current status of the economy of the country. In the Philippines, particularly, it is important that the force of the presidential supervisory powers be felt as widely as possible. A regular cycle of reporting was contemplated through which every last district engineer in a remote outpost would be made to feel presidential supervision.

"The center was to be also a planning and coordinating medium. By a skillful superimposition of, say, irrigation and flood control plans over highway and feeder road projects or of harbor and airport development projects over road construction schedules, it was expected that greater synchronization and coordination might be achieved among projects that were as a matter of practice usually planned and implemented in relative independence of one another. Later, it was anticipated that private and public sector projects might be 'packaged' in complementing units with synchronized timetables through the medium of PEOC."[164]

It will be observed that the PIA was thus created to perform at the national level just about all of the functions previously contemplated for the regional development authorities,[165] and Roxas reported that PIA had in fact started work on regional planning and industrial estate development.[166]

When President Marcos took office he in effect changed the name of PIA to Presidential Economic Staff (PES), formally dissolving PIA and transferring its personnel to PES, which was given substantially the same functions as its predecessor.[167] To carry out the functions of PES in overseeing project implementation along the lines set forth by Roxas in describing the concepts of PIA, PES established the Project Execution System.[168] From the Presidential

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[163] *Id.* at 384.

[164] *Id.* at 385.

[165] With the foregoing quotations, compare the quotations above from the *Five-Year Integrated Socio-Economic Plan* of President Macapagal and from Roxas, *Regional Economic Development in the Philippines, op. cit. supra* note 10.

[166] Roxas, *op. cit. supra* note 161 at 397-398.

[167] Executive Order No. 8 (1966).

[168] The Project Execution System is very clearly and very thoroughly described in Encarnacion, *The Infrastructure Operations Room: A Lesson In Planning Administration* (1968), a paper written for a course at the U. P. Institute of Planning, upon which most of the following discussion is based. Mr. Encarnacion is deputy director of the Infrastructure Operations Room.

Economic Operations Center evolved the present Infrastructure Operations Room (IOR), which has a central place in the Project Execution System. Overall management of the System is vested in an Executive Committee, headed by the Secretary of Public Works and Communications and composed of the heads of the several agencies concerned with infrastructure development. The IOR, which includes in its staff many officials on detail from the operating agencies, performs staff functions for the Committee. In effect, the system keeps relevant officials at the top level in continuous contact with the implementation of specific projects. These officials are able to act to meet problems as they arise, to modify plans, to move idle labor and equipment from one job to another, and to secure the release of further funds as needed. Tight control over cash flow is maintained, so that cash does not remain idle yet is available as required for the progress of the job. Moreover, the force of Presidential authority is directed and felt all the way down the line, to and including the field level. The present administration has given the military an important part in infrastructure development, and military construction activities are within the scope of the Project Execution System.

The results achieved under the system are impressive. During the fiscal year 1966-1967, 165 kilometers of main roads were paved with concrete, and 240 with asphalt; 645 kilometers of developmental and feeder roads; 4,400 lineal meters of bridges and 1,185 prefabricated schoolrooms were built; and 51,514 hectares of ricelands were put under irrigation. In fiscal year 1967-1968, accomplishments included 625 kilometers of roads paved with concrete, and 963 with asphalt; 976 kilometers of developmental and feeder roads, 6,183 lineal meters of bridges, and 17,713 prefabricated schoolrooms constructed; and 99,480 hectares of ricelands were put under irrigation. Comparable figures for prior years are:

roads paved with concrete	:	76 kilometers per year
roads paved with asphalt	:	115 kilometers per year
developmental and feeder roads	:	77 kilometers per year
bridges	:	1,757 lineal meters per year
prefabricated schoolrooms	:	2,564 rooms per year (1955-1958)
		3,458 rooms per year (1959-1962)
		202 rooms per year (1963-1966)
ricelands put under irrigation	:	21,422 hectares per year[169]

[169] Figures for fiscal years 1966-1967 and 1967-1968 were obtained from the Infrastructure Operations Center based on the Bureau of Public

Public works spending has also increased but not in proportion to the physical volume of construction. For example, highways expenditures during the previous Administration (1963-1966) amounted to ₱60.1 million as compared to the expenditures during the fiscal year 1967-1968 of ₱82.2 million. In school construction, the cost per prefabricated room during the previous years was ₱3,000 with the structures made of wooden frames and sidings; under the current program, the cost per room has remained the same, but the structures are stronger and more durable, being made of steel frame and concrete walls and floors.[170]

One of the most striking claims of IOR in terms of efficiency is with respect to dredging. Before 1966, 14 dredges accounted for a total of 5,000,000 cubic meters of material per annum. The rate for the same 14 dredges, 7 of which have been turned over to the Navy for operation, is now 27,000,000 cubic meters; and the unit cost has been brought down from ₱5.00 to ₱.70 per cubic meter. Whatever allowances might be required, the figures are impressive.

Thought is now being given to the possibility of establishing Regional Operations Centers, to operate under the IOR at the regional level. In order to take advantage of the military communications network, the regions, at least initially, would coincide with the four military areas.

Although PES is also performing national economic planning functions (thus duplicating NEC functions, a source of some controversy and criticism), there is not much planning between that level and the project execution level. Program formulation is on a

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Highways reports. Figures on roads and bridges for the past years were obtained from the Bureau of Public Highways. They represent the average annual accomplishments over the fiscal years 1963-1966 during the administration of President Macapagal. Figures on prefabricated schoolrooms for past years were obtained from the Infrastructure Operations Center while those on ricelands under irrigation for prior years were obtained from the Department of Public Works and Communications. They represent annual average over the fiscal years 1959-1962. The figures furnished by the Infrastructure Operations Room are consistent with those published in the press and in President Marcos' state of the union address, which, so far as the writer knows, have not been challenged (though their significance has been). See Kuinisala, *We Must Have Roads, The Road Building Program of Marcos*, PHILIPPINE FREE PRESS, July 22, 1967; *Public Works; Impressive Achievements But Weaknesses Remain*, THE ECONOMIC MONITOR, January 22, 1968; State-of-the-Union Message Manila Times, January 23 1968.

[170] Sources of information: Bureau of Public Highways, Department of Public Works and Communication, and the Infrastructure Operations Center.

one-year basis. Annual programs are based on the Four-Year Program and the vast backlog of unimplemented projects authorized in prior public works acts. The spatial dimension does not normally receive explicit attention. PES officials indicate that the packaging concept described by Fabella and Roxas has not proved workable except in connection with several specific projects and with programs to increase rice production. Obstacles they mention are limited resources, the natural pressures for equitable distribution of public funds, and the fact that much of the financing is from special funds, the use of which is controlled by statutory formulae.

In physical planning and development, PES has concentrated on short term programming and project execution. Using the powers of the President over the executive branch of government and over the release of funds, it has rationalized the public spending process at its most crucial point, where the cash is actually disbursed; and it has helped to achieve unprecedented levels of infrastructure development. Its success may be in part attributable to its working realistically within the limitations of the powers available to it. But if planning is to be expanded, it would seem wise to build upon the effective, though limited planning processes developed by PES.

Substantive Law

Substantive physical planning law is similar in basic concepts and techniques to that of the United States. Such concepts and techniques include, for example, due process, public use, just compensation, special benefit assessment, building codes, zoning, and subdivision regulation. But, because planning has not been taken seriously, there has been little elaboration of some of these concepts. To the extent that the legislative and executive branches have been willing to restrict the use of private property, the Supreme Court has been on the whole quite unfavorable, though several cases involving issues of economic nationalism[170-a] and a recent land reform case, together with the general trend of articulate political opinion reflected in the press and in public debate, indicate that a shift towards a more liberal position is probably underway.

170-a See Peck, *Administrative Law and the Public Law Environment of the Philippines*, 40 *Wash. L. Rev.* 403-46 (1965).

Taxation

The power of taxation has not been used to any significant extent as a planning instrument. There is a real property tax, applicable to both land and improvements, imposed by the local governments within various limits (between 1% and 2%) and collected by the provinces and cities.[171] Real property taxes, however, account for only about 15% of local government revenues.[172] Assessment and collection practices are extremely deficient. Collections run from about 30% to over 80%, and in 1964 they averaged 60% for provinces and 80% for cities,[173] with a national average of about 70%.[174] Equally important, assessments are normally obsolete and represent only a fraction of current market value. Even according to estimates by the city and provincial assessors themselves, assessment levels in one sample ran from about 25% to over 80%.[175] An estimate of the national average is 40%.[176]

Special benefit assessments are provided for by law but seldom used in practice.[177]

A system of tax incentives to encourage "new and necessary" industries was established soon after the war, but apparently was administered very loosely.[178] The recent Investment Incentives Act affers a very generous array of tax incentives and post-operative tariff protection to preferred and "pioneer" enterprises and establishes the Board of Investments with very broad discretionary power to administer the Act.[179] There is no provision for the granting of these incentives according to locational criteria and they cannot be considered an instrument of physical planning. The administration has proposed a bill to impose a tax on idle land, the proceeds of which

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171 Com. Act No. 470 (1939); Rep. Act No. 3590 (1963).

172 de Guzman, *Philippine Local Government: Issues, Problems and Trends*, 10 PHIL. J. PUB. ADM. 231, 236 (1966).

173 Soberano, *Tax Structure and Administration*, 11 PHIL. J. PUB. ADM. 98, 105-106 (1967). Soriano, *An Exploratory Survey on Local Autonomy*, 10 PHIL. ADM. 214 (1967).

174 de Guzman, *op. cit. supra* note 172 at 237.

175 Soriano, *op. cit supra* note 173.

176 de Guzman, *op. cit. supra* note 172 at 237.

177 EVANGELISTA, LOCAL TAXING POWER: NATURE, SCOPE, DEVELOPMENT AND CHANGES 17-18 (1966).

178 Rep. Act No. 35 (1946); Rep. Act No. 901 (1953). See Sicat, An Analysis of the Investment Incentives Act of 1967, to be published in a forthcoming book, A DESIGN FOR EXPORT-ORIENTED INDUSTRIAL DEVELOPMENT, ESSAYS ON PHILIPPINE PHILLINE INDUSTRIAL POLICY.

179 See Sicat, *op. cit. supra* note 178.

would go into a special fund for low cost housing.[180] The tax, if properly administered, might have the beneficial effect of bringing more land on to the market and lowering land values. Administration of the tax, however, would undoubtedly prove difficult, since its impact is determined by classifications which depend upon the judgment of the assessors. The pressures that would be brought to bear upon the assessors are obvious.

Public Spending

The public spending function does not raise many problems of substantive law. We have already discussed the constitutional and practical processes (in relation to the budget and the release of funds) by which that function is exercised. We may also note that the courts will enforce the principle that public funds are to be spent only for a public purposes and, in one case, struck down an appropriation enacted for construction of a road prior to dedication by the private owner of the right of way.[181]

Expropriation

Under the Constitution, the power of expropriation exists in two forms. One is the familiar power, under the guarantee of just compensation in the Bill of Rights, to take private property for public use upon the payment of just compensation.[182] In our discussion of the NWSA cases, we have seen how the waterworks systems of local governments were considered in effect to be the private property of the local governments, entitling them to compensation as a condition to transfer to an agency of national government. The other Constitutional basis for expropriation is found in Article XIII, Section 4, which provides:

> "The Congress may authorize, upon payment of just compensation, the expropriation of lands to be subdivided into small lots and conveyed at cost to individuals."

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180 H. B. No. 17194 passed by the House of Representative during the 3rd session of the 6th Congress. Introduced by Congressmen Kintanar, Castillo, Fornier, Gustilo, San Juan, Santiago, Loyola and Chiongbian.

181 Pascual v. Secretary of Public Works and Communications, G. R. No. L-10405, December 29, 1960.

182 Article III, Sect. 1(2). The Constitution, like that of the United States, assumes the existence of the power to take for public use and simply guarantees just compensation.

This clause seemingly replaces any public use requirement with its own provision as to purpose. It has, however, received a construction by the Supreme Court, that has in effect encumbered it not only with judicial notions of public use but with restrictive ones at that. The leading case is *Guido v. Rural Progress Administration*,[183] in which the Court invoked constitutional history, concepts of democracy, and free enterprise, the preferred position of real property, anti-communist ideology, and the spectre of oppressive expropriation to hold that it is the responsibility of the Court to determine on a case-by-case basis whether the expropriation in question is for a sufficient public benefit to give the proposed use a public character. Among the factors to be considered under this doctrine are the size of the land, the number of people to be benefitted by redistribution, and the extent of economic and social reform to be effected. The Court in *Guido* did not consider expropriation of a small parcel for redistribution to ten to fifty people of sufficient public benefit to justify expropriation. To illustrate how far the Court has been willing to go in making and enforcing its own determination of the public interest on a case-by-case basis, it considered in one case such factors as the proposed use of the property by the existing private owner, the ability of the proposed distributees to pay the government for the land, the location of the land, and the availability of other land.[184]

The position taken in *Guido* was hardened in *Republic v. Baylosis*,[185] an expropriation case initiated upon the petition of a group of 68 tenants to an agency created under Commonwealth legislation to carry out land reform programs. (The tenants asserted that their ancestors "were the ones who cleared the place of its big trees" and had "tilled [the land] since time immemorial" and that the owner among other abuses, was attempting to disregard the legal 70-30 sharing ratio.) The Court dismissed the petition for expropriation and held:

> ". . . under section 4, Article XIII of the Constitution, the Government may expropriate only landed estates with extensive areas, specially those embracing the whole or a large part of a town or city; that once a landed estate is broken up and divided into parcels of reasonable areas, either thru voluntary sales by the owner or owners of said landed estate, or thru expropriation,

[183] 84 Phil. 847 (1949).
[184] City of Manila v. Arellano Law Colleges, 85 Phil. 663 (1950).
[185] 96 Phil. 461 (1955).

> the resulting parcels are no longer subject to further expropriation under section 4, Article XIII of the Constitution; that mere notice of the intention of the Government to expropriate a parcel of land does not bind either the land or the owner so as to prevent subsequent disposition of the property such as mortgaging or even selling it in whole or by subdivision; that tenancy trouble alone whether due to the fault of the tenants or of the landowners does not justify expropriation; that the Constitution protects a landowner against indiscriminate and unwarranted expropriation; that to justify expropriation, it must be for a public purpose and public benefit, and that just to enable the tenants of a piece of land of reasonable area to own portions of it, even if they and their ancestors had cleared the land and cultivated it for their landlord for many years, is no valid reason or justification under the Constitution to deprive the owner or landlord of his property by means of expropriation."[186]

In *Guido,* although there were some suggestions that the applicability of the Constitutional clause depends solely on the size or at least the character of the land in question — that as a matter of construction the clause applies only to large estates and it is the function of the Court simply to determine whether or not the particular parcel falls within that category — the Court nevertheless stated explicitly that each case must be determined according to its peculiar circumstances and that not only the size of the land but the number of people benefited and the extent of the social and economic reform are factors to be considered. In *Baylosis,* size became an absolute criterion.

The point at which, under the *Baylosis* doctrine, a parcel of land becomes large enough to be subject to expropriation under Article XIII, Section 4 has not yet been definitively established. In *Baylosis* the Court, stating that the clause applies only to "landed estates with extensive areas, specially those embracing whole or large part of a town or city", held even 67 hectares to be insufficient. The effect of current Supreme Court doctrine, therefore, is not only to limit rural land reform but, for practical purposes, to render urban land reform constitutionally impossible.

The reasoning of the Court in *Guido* has been sharply criticized. Vicente G. Sinco, former President of the University of the Philippines and Dean of its College of Law, referring to the refusal of the Court to allow expropriation for redistribution to a small number of families, has asked:

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[186] *Id.* at 485.

> "Does the Court mean that the economic relief of a small portion of the nation is not a governmental duty? Does the Court mean that the government need not put out a small fire but should wait for the entire community to burn before it may validly extend its relief?"[187]

As pointed out by Sinco, the effect of the Constitutional clause is, in cases arising under it, to withdraw the question of public use from the courts. The Constitution itself has determined that redistribution of land is a legitimate function of government without qualification by reason of any independent standard of public use, public benefit or the like. Consequently there is no ground on which the Court may substitute for the Constitutional determination its own determination of public benefit. Sinco also criticized the Court's reliance on United States cases, which, since they are based on constitutional clauses explicitly embodying public use standards, are irrelevant. It is interesting to note that even under the public use doctrine of American constitutional law, expropriation for purposes of land reform has been upheld by the courts.[188]

To these criticisms, another may be added. The Court's restrictive construction of the constitutional clause is founded upon a view of constitutional history that is, we submit, mistaken. The Court's view of the intention of the framers of the Constitution was based on the speech of a delegate to the Constitutional Convention in favor of a predecessor draft of the clause finally adopted. The speech was concerned with the need for government to break up large estates. The Court stated that there was no amendment offered with respect to the clause and no debate on it and from that speech inferred that the clause was intended to apply only to large estates.[189] Two objections may be made to this conclusion. First, the statement of one delegate supporting the clause out of concern for the problem of large landed estates seems quite insufficient evidence for the conclusion that the Convention understood the word "land" to mean something like "large landed estates." Second, the clause was in fact amended, and the course of the amendments points to quite a contrary intention. The clause originally proposed by the

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[187] Sinco, *The Constitutional Policy on Land Tenure*, 28 PHIL. L. J. 837 (1953).

[188] People of Puerto Rico v. Eastern Sugar Associates, 156 F. 2d 316 (1946 *cert. denied*, 329 U.S. 772 (1946). Cf. Berman v. Parker, 348 U.S. 26 (1954).

[189] Giudo v. Rural Progress Administration, *supra* note 183 at 850.

Committee on Nationalization and Preservation of Lands and Natural Resources had two components. It provided that:

> "[the government] may expropriate *large landed estates* to be thereafter subdivided into small lots and conveyed at cost to individuals. . . . Likewise, a municipality or province may expropriate *any portion of a landed estate wherein a community of persons have their dwellings* and may thereafter subdivide the same into small lots conveying them at cost to the various householders therein but reserving portions necessary for streets, parks, cemeteries, and for other public needs." (Emphasis added)[190]

In the first draft of the Constitution, the clause read:

> "[the National Assembly] may expropriate *large landed estates* to be thereafter subdivided into small lots and conveyed at cost to individuals. . . . Likewise, the National Assembly may authorize the expropriation by a municipality or province of *large areas of land wherein a community have their houses* to be subdivided in small lots and sold at cost to the tenants thereof, with power to reserve such portions as may be necessary for public needs." (Emphasis added)[191]

The second draft consolidated the two components and read:

> "[the National Legislature] may authorize the expropriation of *lands* to be thereafter subdivided into small lots and conveyed at cost to individuals." (Emphasis added.)[192]

As finally adopted, the Constitution contained the present clause (except for the subsequent substitution of "Congress" for "The National Assembly" when a bicameral legislature was adopted):

> "The National Assembly may authorize, upon payment of just compensation, the expropriation of lands to be subdivided into small lots and conveyed at cost to individuals."[193]

Although it is impossible to draw any really strong inferences of intent from the shift from the phrases, "large landed estates" and "any portion of a landed estate" first to "large landed estates" and "large areas of land" and, finally, simply to "lands", it is certainly more plausible to conclude that the Convention intended to leave it to the legislative body to determine what kinds of land should be subject to expropriation (provided only that the lands be subdivided into small lots and conveyed at cost to individuals and that just compensation be paid) than to conclude that the Convention eliminated the express qualifications embodied in the phrases

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190 2 Aruego, THE FRAMING OF THE PHILIPPINE CONSTITUTION 975 (1936).
191 2 *id.* at 994.
192 2 *id.* at 1014.
193 2 *id.* at 1034.

"large landed estates" and "large areas of land," with the intention that the simple noun "lands" should nevertheless carry those qualifications, their precise scope to be determined by the courts. (This argument is strengthened by the fact that the changes in the Constitutional language added an express guarantee of just compensation and an express recognition that expropriation under the clause requires legislative authorization. The changes thus demonstrate a concern for the kind of land to be covered, the rights of the owner, and the institutional implementation of the clause.)

The hostility of the Court to the clause under discussion may be seen in the suggestion in another case that perhaps "a more liberal interpretation of just compensation in favor of the owner should be adopted" in cases of expropriation under that clause than in cases of expropriation under the traditional "public use" principle.[194]

The *Guido* and *Baylosis* opinions have a tone characteristics of the early 1950's. In view of an intellectual climate that is increasingly liberal, and in view of the strong criticisms that have been levelled against the decisions by Sinco and others, it may be expected that the restrictiveness of those opinions will be relaxed. If a well-planned scheme of urban land reform pursuant to a general program to meet social needs on a relatively broad scale and involving not just a single estate or a single group of tenants, were to be undertaken, one might even guess that the Court would sustain it. True, the Court in *Baylosis* indicated that it is the individual parcel, not the total package of parcels involved in a land reform proceeding, that must meet the definition of landed estate. But the opinions give a very strong impression that, fundamentally, the Court was reacting against the arbitrariness of the particular proceedings, which were undertaken, not pursuant to a comprehensive plan to deal with general social problems, but only to redistribute particular parcels to particular groups of tenants, who had been especially aggressive in seeking government intervention.

In practice, the power of expropriation, is not used nearly enough. We have already mentioned the failure to acquire land for public purposes such as industrial estates and low income housing in connection with the construction of Highway 54. Another example exists in Iligan, where the government has made a heavy

[194] Republic v. Gonzalez, 94 Phil. 957 (1954).

investment in a new integrated steel mill, which may employ 3000 people and is expected to attract numerous satellite industries, but has failed to acquire land to attract such satellite industries, to meet the need for public land that will follow upon such development and to guide the development of the area.

Regulation

Although physical planning has been thought of too much in terms of regulation of private land use and too little in terms of coordination of public spending decisions, legal principles of land use regulation have not been elaborated and refined to the extent one might expect. In part this is attributable to the simple fact that few regulatory measures have been enacted and that those that have been enacted have not been enforced rigorously. Zoning was adopted by several local governments during the 1920's and was sustained by the Supreme Court.[195] The cases, however, arose out of zoning ordinances designed simply to exclude certain obnoxious industrial uses from specified areas, and the Court relied in part upon nuisance concepts to sustain the ordinances. Also, the Court refused to recognize any claim to exemption or special protection prior non-conforming uses. In theory, therefore, it could be argued that those cases are not authority for modern zoning practices, which go well beyond principles of nuisance. Since the Court cited leading modern American zoning cases, however, it is quite clear that it did not take any such restrictive view of its holdings. And the cases are generally considered as authority for the constitutional validity of modern zoning measures.[196]

Two of the early zoning cases involved prior non-conforming uses.[197] In one of them,[198] the zoning ordinance in question divided the City of Manila into residential and industrial zones and pro-

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[195] People v. Cruz, 54 Phil. 24 (1929); Seng Kee and Co. v. Earnshaw, 56 Phil. 204 (1931); Tan Chat v. Municipality of Iloilo, 60 Phil. 465 (1934). People v. de Guzman, 90 Phil. 132 (1951). It is interesting to note that the power to zone was found in local powers to provide for health, sanitation, the abatement of nuisances and the general welfare. In the United States, where local government is considerably stronger, an explicit enabling act was generally considered necessary to authorize local zoning.

[196] See Sinco and Cortes, PHILIPPINE LAW ON LOCAL GOVERNMENT 88-89, 193 (2d ed., 1959).

[197] Tan Chat v. Municipality of Iloilo, *supra* note 195; Seng Kee & Co. v. Earnshaw, *supra* note 195.

[198] Seng Kee & Co. v. Earnshaw, *supra* note 195.

hibited certain noxious industrial uses in residential zones. Prior non-conforming uses were allowed to continue for a period of four years before application of the prohibition would be applied to them. The Court not only sanctioned such application to a prior use but suggested that an ordinance applicable only to new uses might be invalid.[199] More recent cases, involving subdivision regulations, have indicated a strong tendency to protect prior non-conforming uses, but the Court has still not developed an explicit doctrine to deal with the problem.[200] The present status of the prior non-conforming use must, therefore, be considered as still open to question.

As already noted, few zoning ordinances have been enacted and enforcement of those enacted has been lax. From rather limited familiarity with typical zoning ordinances it would seem that they are too rigid, too detailed, too ambitious, and too much in the American pattern, especially for application to smaller communities. A typical municipal ordinance may establish five classes of zones, two residential, one business and two industrial, with detailed specifications regarding use, height, area, yard, etc. for each class. In the community subject to the ordinance, large areas may consist of owner-built houses of light lumber, bamboo, sawali, nipa, etc. In many cases, various members of a large extended family may all live in a house, and as the family grows, additions may be made to the existing house or a new house may be built on the same lot, often behind the existing house. Relations among neighbors are likely to be characterized by attitudes of accommodation and reciprocity. Each family is likely to be engaged in an extensive system of personal relations and alliances encompassing, among others, political leaders and government officials. Political power tends to be based on systems of personal relations. And the individual is likely to feel a far stronger loyalty to groups bound together by such personal ties than to the more abstract entity represented by the local government.[201] Land uses, of course, are normally very

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199 *Id.* at 212.

200 Javillonar v. National Planning Commission, 100 Phil. 485 (1956); Francisco v. National Urban Planning Commission, 100 Phil. 984 (1957); see also dissenting opinion in Manzano v. Lacson, G. R. No. 11051, June 30, 1958, 55 O. G. 4443 (June, 1959).

201 See VILLANUEVA AND OTHERS, GOVERNMENT AND ADMINISTRATION OF A MUNICIPALITY (1966); HOLLNSTEINER, THE DYNAMICS OF POWER IN A PHILIPPINE MUNICIPALITY (1963); LANDE, THE STRUCTURE OF PHILIPPINE POLITICS (1964); CORPUZ, THE PHILIPPINES (1965).

mixed. In such a setting, detailed, highly restrictive zoning seems both impossible and unwise. The needs of the average municipality or small city would be well served if zoning were able effectively to establish reasonable set back lines from the roads, to provide for fire-resistant construction and perhaps off-street parking in the central business district, to protect limited high quality residential areas against conflicting uses, and to restrict especially offensive uses (in terms of smoke, odors, waste, and noise) to prescribed areas. Apart from such limitations, most of the area of the community could be zoned for general use, without restriction of the functional character of the use. Although more ambitious zoning may be feasible in the large cities, even there it appears that the emphasis should be on limited and clearly defined objectives, capable of gaining substantial community support.

The other major form of land use regulation used for planning purposes has been subdivision regulation. In 1949, the National Urban Planning Commission promulgated a set of model subdivision regulations to be adopted by local governments in accordance with specific local conditions.[202] These are quite similar to American counterparts. Approval by the National Director of Planning of a subdivision plat is made a condition to recording of a subdivision plat in the office of the Register of Deeds and to sale of subdivision lots.[203] Subdivision is defined as division into two or more lots for sale or building development. Design standards cover conformity to general plans, street layout, sidewalks, grades, size, shape and orientation of lots, utility easements, minimum utilities, etc. Provision is made for mandatory dedication of land for public use. In the case of residential subdivisions of one hectare or more, at least 5% of the gross area is to be dedicated to use for parks, playgrounds and schools.

Except for the problem of mandatory dedication of land to use, there should be little doubt as to the validity of the principles of subdivision regulation. Although the Supreme Court has not had

202 45 Official Gazette 2417.

203 Executive Order 98 (1946), creating the Commission, provided for adoption of subdivision regulations by the Commission with that legal effect, subject only to disapproval of the regulations by a three-fourths vote of the appropriate local legislative body. Rep. Act No. 440, however, amended the Land Registration Act in 1950 to provide for issuance of certificates of title in accordance with a subdivision plan without reference to approval by the Commission.

occasion to consider a direct attack upon those principles, it has indicated recognition of the validity of subdivision regulation.[204] Several problems of interpretation have arisen, however, *Javillonar v. National Planning Commission*,[205] raised the issue whether the minimum lot size provisions of subdivision regulations (prepared by the Commission and adopted by the Manila Municipal Board) were applicable to a scheme to expropriate and redistribute land to its tenants pursuant to Commonwealth land reform legislation. In a confusing opinion, the Court held not. It stated the issue:

> "is it fair and reasonable to apply said regulations to the tenants who are presently occupying the land expropriated by the government for their own benefit considering the area the houses they had built thereon long before its expropriation?"

The Court, pointing out that the tenants had established smaller lot sizes long before the subdivision regulations came into effect, answered the question in the negative. This of course looks very much like a holding on due process grounds against legal proscription of prior uses. But interpretation of the case as establishing a doctrine of protection of prior non-conforming uses is weakened by two points. First is the failure of the Court explicitly to invoke any Constitutional ground on which to base its inquiry into what is "fair and reasonable." Second, the Court did not rest with a determination of fairness, but stated an additional ground for its decision, which it characterized as "one legal aspect which justifies the stand taken by the tenants." The additional ground was the enactment of a statute authorizing expropriation of landed estates in the City of Manila and redistribution to tenants in lots not to exceed 150 square meters, 30 square meters less than the minimum provided by the subdivision regulations.[206]

An analogous problem was presented in *Francisco v. National Urban Planning Commission*.[207] Petitioners, co-owners of a parcel

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[204] See Manzano v. Lacson, *Supra*, note 100; see also, Javillonar v. National Planning Commission, 100 Phil. 485 (1956); Francisco v. National Urban Planning Commission, 100 Phil. 984 (1957).

[205] *Supra* note 204.

[206] Rep. Act No. 1162 (1954). The expropriation proceedings had been commenced in 1947 under Commonwealth land reform legislation. The subdivision plan for redistribution had been submitted to the Commission in January, 1954. Republic Act No. 1162 was enacted in June, 1954, and it expressly restricted application of the maximum lot size provision to "landed estates or haciendas expropriated *by virtue of this Act*" (emphasis added). The Court nevertheless considered the Act to be controlling.

[207] 100 Phil. 984 (1957).

of land, sought Commission approval of a subdivision plan for partition of the parcel into lots to be registered in their individual names in accordance with their actual occupation of the parcel. The Commission disapproved the plan for failure to meet the standards set forth in subdivision regulations. The Court of First Instance nevertheless approved the subdivision plan on the grounds that the subdivision regulations were not applicable and that, even if the regulations were considered applicable, the case at hand would fall within their provisions for variance in cases of hardship. The Supreme Court affirmed. It interpreted the subdivision regulations as applicable only to subdivision for sale or commercial development and, in the alternative, held that insofar as the regulations might be interpreted as restrictive of the right to partition, they were superseded by the later enactment of Civil Code provisions for partition without reference to such regulations. On the latter point, the Court's reasoning is questionable, since the Civil Code does not purport to create an absolute right to physical division of land owned in common but expressly provides against partition when prohibited by law and provides for sale of the land and division of the proceeds when physical division of the land would render it unserviceable.[208]

Although in neither the *Javillonar* nor the *Francisco* case did the Court develop an explicit prior non-conforming use doctrine, it was obviously influenced in each case by the fact that the proposed subdivision was in accordance with the prior occupation and use of the property. The *Francisco* decision probably presupposes the fact of prior use, since it is unlikely that the Court would sanction evasion of subdivision regulations by the simple expedient of purchase of a parcel of vacant land in the names in common of a number of persons and subsequent partition into a corresponding number of subdivision lots.

In the United States, although the courts are anything but consistent, the trend has been to sustain legislative proscription of prior non-conforming uses, provided that the owner is allowed a reasonable period in which to amortize his investment.[209] It is not clear whether, if squarely presented with the issue, the Philippine Supreme Court would adopt a similar position. In any event, it would seem

[208] Civil Code, Arts. 494, 495, 498.

[209] See, e.g., Harbison v. City of Buffalo, 4 N.Y. 2d 553, 152 N.E. 42 (1958).

unwise in the Philippine administrative and economic context to attempt to eliminate prior non-conforming uses except in clear nuisance cases.

As already noted, the subdivision regulations adopted by the National Planning Commission require the developer to dedicate a specified portion of the land to public use. Although, constitutionally, this is the most questionable aspect of subdivision regulation, it has not been brought to issue in the Supreme Court. (In the United States, the tendency has been to sustain such exactions when they are reasonably related to the need for public land arising out of the subdivision development for which approval is sought.[210] And, when exaction of land within the proposed subdivision is not feasible, provisions requiring payment of a cash fee in lieu thereof, to be used for the purchase of land for public use, have also been sustained.[211]) In practice, developers have been required legally to reserve land for public use, but too often the land so reserved has been later diverted to private use. In some cases, even public agencies have attempted to sell off to private developers land originally set aside by a subdivision plan for public use under a subdivision plan. Other abuses include failure of developers to provide the utilities and facilities required by the the regulations and approved subdivision plans. A House committee on public lands has recently announced that it will introduce bills to check such abuses and evasions of subdivision regulations by developers.[212] The problem, though, appears to lie in enforcement, not in deficiencies in existing law.

The Supreme Court has refused to sanction the use of the police power to reserve land for future public use by restricting development prior to public acquisition of the land. Regulatory techniques for that purpose have not been refined sufficiently, however, to determine whether they are to be considered illegal per se. In *Hipolito v. City of Manila,*[213] the City Engineer had refused to issue a building permit on the ground that the proposed building would

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[210] See Johnston *Constitutionality of Subdivision Control Exactions; The Quest for a Rationale,* 52 CORNELL L. Q. 871 (1967).

[211] Jenad, Inc. v. Village of Scarsdale, 18 N. Y. 2d 78, 218 N. E. 2d 673 (1968) (authority for the planning agency to require cash in lieu of land was found in the statutory provision that the agency might waive the public land exaction "subject to appropriate conditions.")

[212] Manila Times, June 4, 1968, "Subdivision abuses eyed by House body."

[213] 87 Phil. 180 (1950).

be situated within a proposed street widening as shown on a general plan for the City adopted by the National Urban Planning Commission. The Court compelled the City to issue the permit but failed to make clear the rationale of its decision. It pointed out that the proposed building was to be privately owned and financed, and that, under Executive Order No. 98, the adoption of a general plan affected only public and publicly-assisted improvements and did not entail any restriction of purely private improvement to land. Since the City relied solely upon the general plan to give legal effect to the proposed street widening. that would be a perfectly sufficient ground for the decision. The Court, however, obscured the scope of its holding of the case by stating further:

> "There being no allegation that petitioner had not complied with all the requisites of the Revised Ordinance of the City of Manila, and it being unquestioned that defendants refusal would amount to denying unlawfully to petitioner the right to beneficial use of his property, the writ of mandamus should be granted. The City has not expropriated the strip of petitioner's land affected by the proposed widening of Invernes Street, and inasmuch as there is no legislative authority to establish a building line, the denial of this permit would amount to the taking of private property for public use under the power of eminent domain without following the procedure prescribed for the exercise of such power."[214]

This passage suggests three reasons for the holding: (1) there simply was no authority for the Commission to establish set-back lines (except in zoning or subdivision regulations, which it had not yet adopted for the City of Manila); (2) set-back restrictions designed to minimize the cost of expropriation by prohibiting development of land that government intends some time in the future to acquire for public use constitute an unconstitutional taking of private property; and (3) set-back restrictions are unconstitutional per se.

Although those three reasons are logically distinct and each is independently sufficient for the disposition of the case, the Court mixed them together in such a way as to make it impossible to determine the scope of its holding. Since the Court has recognized the validity of zoning,[215] which in principle goes well beyond mere set-back regulations imposed in the interest of public safety, we may assume that the Court did not intend to invalidate set-back restrictions per se. And since nothing beyond the first and narrowest

[214] 87 Phil. 180 at 183.
[215] Cases cited note 195 *supra*.

of these three reasons (lack of authority) was necessary to the decision of the case and the Court invoked that reason in conjunction with its broader statements regarding denial of beneficial use and taking of private property with it, the holding (of unconstitutionality) may be reasonably considered as limited to set-back restrictions imposed without legislative authority.

In a subsequent case,[216] the Court nullified a municipal ordinance prohibiting the construction or repair of buildings in a specified area needed for the proposed extension of a public street on the ground that the effect of the ordinance was to deprive the owners of the use of their property without compensation and therefore without due process of law.

Although it is clearly unconstitutional for government, without providing compensation to impose an absolute proscription of development of land that it expects may some time in the future determine to acquire for public use, less rigid and drastic means to the same end may still be constitutionally available. For example, American courts have sustained statutes that provide for interim regulation of development of land designated for future public acquisition but also establish procedures for variance to assume that the owner will not be deprived of the reasonable use of his property.[217] Additional flexibility could be gained by providing for expropriation of easements entitling government to control development (or compensation for severe restrictions), and for accelerated expropriation under specified circumstances. As an additional safeguard, time limitations should be established within which expropriation proceedings must be brought or the property released from the restrictions.[218]

It is appropriate to conclude our discussion of regulatory techniques for physical planning with *de Genuino v. Court of Agrarian Relations,*[219] in which the Court sustained those parts of the Land Reform Code of 1963 which, with respect to rice land, strictly limit rents and otherwise regulate the relationship of landlord and tenant. The Land Reform Code is designed to work in two principal stages. The first stage is to alter the landlord-tenant relationship sharply in favor of the tenant by converting the so-called "tenancy" relationship, based on sharecropping, to a "leasehold" relationship based upon

[216] Clemente v. Municipal Board of City of Iloilo, G. R. No. L-8633, April 27, 1956.

fixed rents. The second is to redistribute land. Since the *de Genuino* case dealt only with the first stage, serious doubts remain as to the constitutionality of the provisions for the redistribution stage, which contemplate payment for expropriated land in long term bonds and shares in a Land Bank.[220] Apart from land reform, however, the decision offers some hope that the Court is moving away from its earlier ideological regard for the sanctity of private property and towards a more liberal view of the police power. The Court did not discuss in any detail the scope of the police power or its application to the land tenure problem. It stated simply:

> "Police power is broad enough to be exercised on the basis of the economic need for the public welfare. And, we do not see why public welfare should not be made to prevail through the state's exercise of its police power."

It may be grasping at straws to attribute much significance to this short statement, but it was made in justification of a decision sustaining a severe restriction of the economic and property rights of the agricultural landlord class and, when considered in the context of an increasingly liberal intellectual climate and in comparison to the language of the *Guido* and *Baylosis* opinions of more than a decade ago, it does seem to indicate that the Court may be willing to sustain reasonably stringent regulatory measures if the need for them is made clear.

IV. The Need for Legislation

Substantive Law

Most of the necessary legal techniques and powers necessary for effective physical planning are already found in one form or another in Philippines law and do not require radical alteration or expansion. The need is not fundamentally to alter existing substantive law but rather to provide an administrative structure for its effective use. Before turning to the administrative structure, however, let us pass quickly over several areas, most of which have already been noted, in which revisions to substantive law might be useful.

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217 See Kucirek and Beusher, *Wisconsin's Official Map Law*, 1957 WISCONSIN L. REV. 176.

218 See MANDELKER, MANAGING OUR URBAN ENVIRONMENT 865-875 (1965).

219 G. R. Nos. 25035-36, February 26, 1968.

220 For an argument in favor of the constitutionality of the compensation scheme, see Ferry, *The Constitutional and Social Aspects of Land Reform* in THE PHILIPPINE ECONOMY IN THE 1960's (Sicat ed. 1964).

If further attempts are to be made by government to redistribute urban land, a comprehensive program should be established embodying explicit statutory standards of general application for the determination of the land to be redistributed. It might be hoped that the Supreme Court would modify the doctrine of the *Guido*[221] and *Baylosis*[222] decisions to sustain expropriation proceedings brought under such a general program.

Zoning ordinances should be limited to clearly defined objectives and should be designed with a view to simple and easy administration. Strict segregation of uses is obviously impracticable in the Philippine context. Consequently, there should be little zoning based upon strict functional classification of uses and greater emphasis upon such tangible aspects of property use impinging upon the use of other property as the generation of traffic, smoke, noise, etc.

It might be wise to provide explicit statutory protection against regulatory proscription of prior non-conforming uses, except to the extent that measures of general application are required to protect health and safety and to restrict nuisances in the traditional sense. This would remove one ground of uncertainty as to the construction and validity of regulatory measures and would act as a check against overly ambitious planning.

Subdivision regulations requiring mandatory dedication of a portion of the proposed subdivision to public use could be clarified by an explicit limitation to such amounts of land as might be necessary to provide for public needs reasonably arising out of the proposed subdivision. They could also be made more flexible by providing for the payment of a cash fee in lieu of dedication of land when the latter action is impracticable. Such fees should be made payable to a special fund to be used for public land requirements arising out of the subdivision. It might also be wise to exempt land reform schemes from subdivision regulations, since land redistribution will normally be roughly in accordance with prior use and since land reform would normally take priority over the regulatory interest represented in subdivision regulations.[223] This, of course, is not to suggest that planning objectives should not be considered in

[221] *Supra* note 183.
[222] *Supra* note 185.
[223] *Cf.* Javillonar v. National Planning Commission, *supra* note 205.

the preparation of land redistribution schemes, but only that subdivision regulations drafted with a view to normal commercial subdivision should not be applicable to land reform and that land reform schemes should be individually designed. If prior non-conforming uses are protected, there should be no objection to providing that applications for partition of land should be subject to appropriate subdivision regulations.[224]

One legal planning power not presently available under existing Philippine law is provision for interim protection of land designated for future public acquisition and use.[225] A statute designed to perform that function should (a) provide for the formal designation of such land, (b) require notice to a public agency before private development of such land, (c) allow the appropriate public agency upon such notice either to purchase the land outright or to purchase an aesement in its enabling it to control and restrict development, (d) allow the agency, pursuant to procedures for fair notice and hearing, to impose reasonable regulations upon the development of the land so as to minimize expenses upon subsequent public acquisition while assuring the owner that he would not be deprived of the reasonable use of his property in the meanwhile, and (e) impose a reasonable time limitation upon the effective life of such regulations. Such a statute would give the planning agencies an important tool and would have a reasonably good chance of withstanding constitutional attacks on due process grounds.

Administrative organization: integration of functions

As already stated, it is more important to provide an administrative organization for the effective use of legal planning powers than fundamentally to alter or expand those powers that already exist. One step toward more effective administration would be to integrate presently distinct regulatory techniques such as zoning, subdivision regulations and perhaps even building codes and authorize the planning agency to regulate land use and development selectively and flexibly, without regard to such categories. These techniques often overlap considerably in objective and content, and they should be used in close combination and at times in hybrid forms.[226]

[224] *Cf.* Francisco v. National Urban Planning Commission, *supra* note 207.

[225] *Cf.* Hipolito v. City of Manila, *supra* note 213; Clemente v. Municipal Board of City of Iloilo, *supra* note 216.

Not only regulatory powers but other powers and functions of government bearing closely upon physical development should be brought within the scope of the planning agency. For example, if physical planning is to be taken seriously, the function of regulating private land use now performed by local government must be administratively linked with the public works programming function performed by PES. And the planning agency should be authorized (within limits, of course) to use the power of expropriation and real property tax incentives, special benefit assessments and perhaps other tax devices for planning purposes. This is not to suggest that all planning should be conceived as comprehensive; but all of the powers necessary for effective planning should be assembled and made available for selective and flexible use when and as feasible.

National participation

Under the Local Autonomy Act of 1959, the regulatory functions traditionally associated with physical planning were formally vested in local government. Since then there has been a continuing demand on the part of local government officials, some national political leaders known for their progressive views, and students of public administration for further decentralization of government and strengthening of local autonomy. The Decentralization Act of 1967, a greatly diluted version of the Manglapus-Manahan Bill, was a very limited step in that direction. There can be little doubt that, broadly speaking and in the long run, increased local autonomy can play an important part in reforming and strengthening the Philippine system of politics and government. The advantages to be gained have already been too thoroughly discussed to require restatement here.[227] It would, in any event, be manifestly impossible for the central government to administer from Manila all physical planning throughout the nation. There are, however, strong reasons for reserving to the national government some measure of control over physical planning.

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[226] See Reps. Requiem for Zoning, in PLANNING 1964 (American Society of Planning Officials 1964).

[227] See Domingo, *Philippine Local Government: A Bibliographic Essay*, 10 PHIL. J. PUB. ADM. 261 (1966) and works cited therein. For an excellent analysis of the fundamental considerations involved in determining at what level governmental functions should be performed, see Ylvisaker, *Some Criteria for a "Proper" Areal Division of Governmental Powers*, in REGIONAL DEVELOPMENT AND PLANNING, *supra* note 118.

First, many of the decisions of government most directly affecting physical development are, and for the foreseeable future, will be made at the national level. To a large extent, of course, the directions taken by urban and regional development are beyond the control of any form of government action, or at least, any democratic form of government action. For example, effective urban planning must consider but can influence only slightly the present high rate of immigration to the cities; for government is severely limited in its ability to control the population explosion, increase the supply of arable land, determine the course of industrialization, etc. Of those forms of government action that do substantially influence urban and regional development, many are outside the competence of physical planning. For example, the shift of national economic policy from import and exchange controls was dictated by factors having very little to do with considerations of urban or regional planning. Yet that shift of policy apparently has influenced the relative rates of growth of the major regions and urban centers of the Philippines far more than could any policy expressed in terms of urban or regional planning.[228] Of the forms of government action realistically within the competence of physical planning, several have obvious importance. These include infrastructure development, industrial financing and incentives, housing, redistribution of land, real property taxation, and the determination of the location of public enterprises. In the Philippines, these are all areas of national (as opposed to local) predominance. The share of local government in total public expenditures in recent years has been less than 20%.[229] Even in Manila, where the City accounts for about two-thirds of highway construction expenditures,[230] the recent controversy over the Recto Underpass indicates the importance of coordination of public works programming and cash releases from the national government to the City. And outside of Manila, the local contribution to highway construction is insignificant. In Davao, for example, over 90% of road building expenditures were

[228] See G. P. Sicat, *Regional Economic Growth in the Philippines,* 1948-1966, to be part of a forthcoming book of essays by G. P. Sicat on Industrial Export Growth, Investment Incentives, and Philippine Economic Development.

[229] See Table 1, appendix to Kintanar, *Tax Financing of Development in the Public Sector in the* 1960's in THE PHILIPPINE ECONOMY IN THE 1960's (Sicat ed. 1964).

[230] Pilar, Firmalino, and *Pacho, The Administration of the Public Highways Program,* X PHIL. J. PUB. ADM. 154 (1966).

accounted for by national and less than 10% by local government.[231] Conceding that allocation of greater responsibility and fiscal resources to local government is a desirable move, still it cannot realistically be expected that the present predominance of national over local government will be reversed within the foreseeable future. Strong local government will be a long time in evolving, and so long as national government is making most of the decisions affecting physical development, it must have some part in any effective planning process. As made clear in the presidential veto message on the Manglapus-Manahan Decentralization Bill, the national administration cannot be expected to subordinate its policies to the control of local planning. (If the national government should assume greater responsibility for economic planning and if economic planning should be developed to the point that it has strong implications in terms of physical planning, then the need for an effective national part in physical planning will, of course, become all the more inescapable.)

Second (of the reasons for reserving some elements of national control over physical planning), only the national government can determine priorities for the allocation of national resources, assert the national interest when it conflicts with local interests, and adjust conflicts among local interests.

Third, local government is not organized on a territorial basis relevant for planning, and there is little reason to hope for a reorganization of local government on a more rational basis. In the Manila area, to take the outstanding example, each of several units of local government pursues its own narrow interests and there is no vehicle for planning for the welfare of the area as a whole. The experience of the metropolitan areas of the United States, where the divergence of interests (as perceived, at least) between the old, obsolescent central cities and the new and affluent suburbs is one of the important factors in the much-discussed "urban crisis" and in the inability of government effectively to meet the crisis, should serve as sufficient warning against decentralization of physical planning powers to fragmented units of local government without reservation of some measure of control at a level high enough to encompass the entire metropolitan community.

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[231] *Ibid.*

Fourth, local government appears less able to withstand undue pressures on the part of special and private interests than national government. Land use planning obviously impinges very directly and heavily upon private property interests. In a political system built to a significant extent upon networks of personal relationships and shifting alliances of local and personal interests, effective planning will be difficult at any level. It might well be argued that the present susceptibility of local government to the influence of special interests is due to its weakness and subservience to national government and that, if local government were accorded greater responsibility and correspondingly greater fiscal and legal resources, such factors as greater accessibility and visibility, local initiative and participation, and civic pride would tend to counteract the influence of special interests. For the present and for some time to come, however, the public interest is likely to appear in forms too abstract to compete effectively at the local level with very concrete private property and economic interests. The situation is, of course, very nearly the same at the national level. But the overriding national interest in economic development is probably more effective at that level; government is somewhat further removed from purely personal pressures that can be brought to bear at the local level; and a variety of countervailing interests are more likely to be effective.

Our final reason for national participation in physical planning is that there are only a handful of trained and experienced planners in the Philippines. (The new Institute of Planning of the University of the Philippines will soon start to supply a number of trained planners each year, but there will not be enough to go around for many years.) And it is doubtful that many local governments could afford professional planners even if a sufficient number were available. If the limited number of planners available are to be used effectively, they must work in a central agency.

Flexibility, selectivity, and local participation

The foregoing is not intended to suggest that the national government should simply take over physical planning. A national agency should be empowered to stimulate, coordinate and, when necessary, direct planning in areas (both geographical and functional) of strong national interest. But the powers of the agency should be

carefully limited and local government should be left with residual planning powers. And the national agency should be designed to work through and with local governments. The national agency should be designed to provide coordination and supervision of planning to the extent required by geographical and functional limitations and conflicts of jurisdiction in and among existing national agencies and local governments and to assume substantive planning powers only to the extent required by overriding national interest.

A broad national framework plan based on economic and demographic trends, basic economic plans and major infrastructure and industrial development projects might serve functions of clarifying policy and providing guidelines for physical planning in specific areas. But such a framework plan would have to be simple and based upon manifest needs and strongly established policies, so as not to require elaborate and lengthy research and not to involve a host of policy determinations that would not be widely accepted and, consequently, either would stir fruitless controversy or, more likely, would be quietly ignored by political and government leaders acting on more intuitive notions of the public interest. Quite obviously, neither the funds, the personnel, nor the know-how are available for comprehensive physical planning of all of the Philippines, except perhaps in terms so vague as to be useless for any practical purpose. The need is for effective planning in several high priority areas. If an effective planning organization can be established, then it can gradually take on added responsibilities. The national agency should be empowered to designate areas in which it decides to assume jurisdiction and, without necessarily displacing existing agencies and local governments from their planning functions, direct planning in such areas.

In each area so designated, the national agency should be authorized to organize the administrative planning structure and process according to the problems and the existing governmental structure in the area. The national agency, rather than being designed as a super-agency, incorporating all of the necessary expertise and powers in itself, should be authorized to draw upon and put together combinations of existing agencies and local governments appropriate to the given area. The composition of a planning organization for metropolitan Manila, for example, should be quite unlike that for

the development of a new dam and power complex in a relatively undeveloped area.

The precedent for this approach is, of course, the PES and the Infrastructure Operations Room. In a sense, what we are proposing is an expanded PES, with limited powers of land-use planning.

Relation to presidency

The structure of Philippine politics presents especially severe obstacles to effective planning and to effective plan implementation. Although formal governmental power is highly concentrated in the central government (at least in comparison to many Western nations), political power is greatly fragmented and dispersed. The parties are not organized along class lines and are not ideologically differentiated. Rather, they consist of loose and shifting coalitions of locally based alliances and groupings held together by ties of kinship, patronage and personal relationship. Party discipline is weak. It is not uncommon for a leading figure in one party to defect and become a candidate of the other party; and wholesale defections of local government officials, in response to the pressures of patronage, are even more common. Regionalism is substantial. The power of the large land-owners, though diminishing with the progress of industrialization and urbanization, is still great, and the middle class is still rather thin. Identification with family is strong; and family, group and personal relationships play an important part in politics as well as in society generally. The political process tends to be based more upon the pursuit of specific local, group and individual objectives than of general class or national interests, though this seems to be slowly changing. In such a political system, special interests tend to play much too important a part, and even aside from explicit conflicts between public and special interests, the public interest itself tends to take the form of an aggregation of local interests rather than of a more general national interest.

The National Economic Council and the regional development authorities represent attempts in quite different ways to deal with the problem of political interference in the planning process. The National Economic Council in effect consists of members who, at least to some extent, are considered representatives of the President, the principal economic agencies of government, the majority and the

minority in each house of Congress, and private enterprise. It might be thought that, with such a membership, the Council could provide a vehicle for the formulation by consensus of national policies and plans that would have the support of the major centers of economic, political and governmental power. In fact, however, the Council has been largely ineffectual. This may be attributed in part to the fact that the members of the Council do not really represent well-organized and clearly defined interests apart from their personal positions, since as already suggested politics is built more along lines of personal relationship than of differentiated economic and functional interests. More important, the ineffectiveness of Council planning may be attributed to its independence of the presidency and its consequent remoteness from the making of budgetary and spending decisions.[232]

The regional development authorities represent an attempt to put planning above the play of political forces by vesting the function in independent political bodies. The problem, as already noted, is that while the authorities have not been immune from political interference, neither have they enjoyed the political support that might yield fiscal and administrative support. Again, their independence of the presidency tends to assure that they will not be given a significant part in the process of allocating public resources.

The one planning agency that has been effective is PES, which has no powers of its own and, at least in regard to infrastructure development, bases its planning functions almost entirely on presidential control over the agencies of the executive branch of government and over the release of funds. As discussed earlier, PES performs functions that in theory are well within the scope of both the National Economic Council and the regional development authorities. The relative effectiveness of PES as compared to those other agencies is therefore significant. The difference in effectiveness can be examined primarily in terms of the proximity of the planning agency to the presidency. Decisions affecting the disbursement of public funds must occupy a central place in any effective physical planning process. In the Philippines, owing to Congressional over-appropriations of vast proportions, these decisions are largely within

[232] See Golay, *op. cit. supra* note 48.

the control of the president. The allocation of public fiscal resources is by nature a highly political matter; and the ability to control the release of funds is an important and perhaps essential element of presidential power. Although this fiscal power has traditionally been exercised in a highly partisan manner, the question arises, in view of the fragmented structure of political power, whether the system could function effectively without it. It has been observed that, in the absence of strong party loyalty and discipline, the system of checks and balances built into the constitutional structure of Philippine government "works all too well."[233] Under the Constitution, the president has fairly extensive formal powers (for a democratic form of government based upon the separation of powers among legislative, executive and judicial branches). But it is extraordinarily difficult, nevertheless, for a president to carry out a truly national program responsive to long-term public interests of a national character rather than to an aggregation of short-term, local and special interests. With the patronage arising out of his control over the release of funds, the president is subject to many demands on the part of special interests; but he is also able to impose some degree of discipline on his party and to bargain for support for national programs. In any event, presidential control over the release of funds is likely to remain a feature of Philippine government for a number of years, whether it is considered a desirable or an undesirable feature. There is little reason to expect the president to subordinate the exercise of a power too vital to his political position to the policies of an independent planning agency. If physical planning is to be effective it must have an influence on spending decisions or, at the very least, it must be based upon knowledge of spending decisions reached independently. Only an agency controlled by the president and responsive to his policies can have any chance of establishing such a relationship between planning and spending.

It may be argued that to subordinate the planning agency to the presidency is to open planning to the evils of political interference. Although it is tempting to think that a planning agency can and should be insulated from political pressure, it must be recognized that physical planning impinges very directly upon political interests and involves many choices normally considered appro-

[233] Lande, *op. cit. supra* note 201 at 2.

priate to the political realm. And for reasons mentioned above, we submit that the more fruitful approach, rather than to attempt to isolate the planning function from political pressure and thereby isolating it from political power and rendering it ineffectual, is to locate it where the "right" political pressures will be most clearly focussed and be most effectively directed. In the current Philippine situation, that location is the presidency. The chances that special interests will be met by countervailing special interests and by national interests are greatest in that office; it is the only office with the governmental and political power necessary to secure the discipline necessary for effective planning; and the president alone is clearly and unequivocally charged with responsibility for the national interest to the nation and to history.

It should be noted that creation of a physical planning agency under the control of the president without provision for legislative sanctioning of plans would raise problems insofar as planning involves land use regulation, of delegation of legislative power to an executive agency. In *University of the East* v. *City of Manila*,[234] the Supreme Court declared void a delegation to the National Planning Commission of power to adopt zoning and subdivision regulations (even though their effectivity was dependent upon local legislative action or inaction). Those problems, however, should not prove insuperable. The trend is toward increasing use by legislative bodies of the technique of delegation of power[235] and a more liberal attitude on the part of the courts in this regard.[236] In other contexts, the Philippine Supreme Court

> "has accepted the following as sufficient standards: 'public welfare' (Municipality of Cardona v. Binangonan, 36 Phil. 47 [1917]), 'necessary in the interest of law and order' (Rubi v. Provincial Board of Mindoro, 39 Phil. 660 [1919]), 'public interest' (People v. Rosenthal and Osmena, 68 Phil. 328 [1939]), 'justice and equity and substantial merits of the case' (International Hardwood & Veneer Co. v. Pangil Federation of Labor, 70 Phil. 602 [1940]), 'simplicity, economy, and efficiency' (Cervantes v. Auditor General, 91 Phil 359 [1952]). 'adequate and efficient instruction' (Philippine Association of Colleges and Universities v. Secretary. 97 Phil. 806 [1955])."[237]

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[234] *Op. cit. supra* note 67.
[235] *E.g.*, Land Reform Code of 1963; Investment Incentives Act of 1967.
[236] See Cortes, *op. cit. supra* note 113 at 218, 239.
[237] Cortes, op. cit. *supra* note 113 at 239; but see Pelaez v. Auditor General, *supra* note 115.

Even in cases concerning the National Planning Commission, the Supreme Court has cast doubt on the validity of the *University of the East* opinion insofar as it deals with the delegation problem.[238] It is not necessary, in any event, to attempt to provide standards for administrative promulgation of *general* land use regulations. For under the kind of planning system described above, general land use regulation would be left to the normal legislative processes of local government; and the national agency would promulgate land use regulations only to the extent necessary to adjust conflicts of policy among local governments and to secure equitable and efficient use of national public funds.[239] Since public investments must be legislatively authorized, land-use regulations promulgated for the purpose of securing maximum public benefit from publicly-funded projects could be considered subordinate not only to general standards provided in the statute creating the planning agency ("equitable," "efficient," "public interest," etc.) but also to the legislative appropriations for the particular projects.

Conclusion

Legislation is required to clarify, limit in some respects and expand in other respects substantive planning powers. Far more important, legislation is required to provide an effective administrative structure for planning, especially in the public sector. A national planning agency should be created, not to take over or dominate existing agencies of government nor to assume jurisdiction of all physical planning throughout the country, but to initiate, coordinate and supervise planning on a case by case basis to the extent required by limitations and conflicts of jurisdiction in and among existing national agencies and local governments, and to assume substantive planning powers only within carefully defined limits and only when required to do so by manifest and overriding national interest. It should be designed to concentrate on the public sector and to work through other agencies and units of national and local government, and to assemble those agencies and units in such a manner as required by specific planning problems and op-

[238] See Javillonar v. National Planning Commission, *supra* note 67; Francisco v. National Urban Planning Commission *supra* note 207; Manzano v. Lacson, *supra* note 67. But see Unson v. Lacson, *supra* note 67.

[239] Pelaez v. Auditor General, *supra* note 115, suggests that a delegation of power to adjust conflicts of policy may be sustained where a delegation to make the basic policy itself would not be.

portunities. In order to assure the requisite relationship between planning on the one hand and public expenditures and the operations of the executive agencies of government, on the other, the planning agency should be under the control of the president. The administrative structure, in other words, should be designed for selective and flexible planning, closely related to presidential power over the executive branch of government and over public spending decisions.