

Mandates and Funding: The Divorce of Implementation from Policy

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We remain students of public policy because we are aware that policy design is of utmost consequence to both the integrity of the implementation process as well as the achievability of program objectives, two items that could very well make up the definition of good governance. For even if consensus is gained in the shaping-which is near to impossible – a policy that is wanting in terms of implementation may be more insidious to the field of public policy and intergovernmental relations than adopting no policy at all. This article argues that creating national programs without adequate provision for their total implementation is a disservice to the implementing institutions directly, and the nation ultimately. If no one took an inventory, we are merely accumulating unimplemented and unimplementable laws, while wondering where the problem of governance lies. A practical way of looking at policy has never been more urgent.

Introduction

The era of local autonomy was at hand, if one listened closely to prophets of Philippine local politics in 1991. Why, then, is there something that approximates cognitive dissonance when the topic shifts to unfunded national laws? Under Aquino, the re-democratization efforts culminated with the passage of a local autonomy law, the Local Government Code of 1991 (Republic Act 7160). Devolution was adopted pursuant to the 1987 Constitution, which states, “The State shall ensure the autonomy of local governments.” But during this decade, the country also awoke to the reality of unfunded laws. Many local officials feel a certain cognitive dissonance, enough to question what the constitutionally guaranteed local autonomy is really about. But as will be shown in this article, unfunded mandates to local governments are a malaise that also plague agencies of the national government.

The Matter with Unfunded Laws

Unfunded mandates are terribly problematic and important to understand. In public policy, creating laws that do not stand a chance of being implemented as envisioned in principle can only weaken the institutions that are supposed to uphold the principle as well as the regard of the body politic for the rule of law. For the government’s decentralization policy in particular, the presence of unfunded mandates places a huge obstacle to the achievement of its goals. The succeeding sections look into the perceived

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impact of unfunded mandates and reasons for their existence that also bear on the inadequacy of funding for programs of national government agencies.

The study owes its importance to what may be called the 'irony' of Philippine decentralization policy and politics. Some believe that radical events have occurred since the fall of the dictatorship that should translate to meaningful changes in the way government is conducted. Others remain skeptical that although central politicians are wary of "people power" and local government is more viable now than ever, politics remains a contest characterized by back-door connections, under-informed voters, and the absence of coherent planning for people's welfare. Thus status quo is hostage to powerful interests. Seen from this light, even a 'good' policy divorced from implementation is a reason to examine how far we have gone if indeed we moved forward. As a normative analysis, this article proposes that unfunded laws interfere with the direction of three important elements of Philippine public administration: (1) the substantiation of decentralization and democratization, (2) the learning process in governance, and (3) the policy dynamics involved in determining public welfare. Specifically, the study asks: do unfunded mandates throw a monkey wrench into the process of strengthening the capability of local governments in this period of decentralization? Do they perpetuate dependence on the center? Do they stymie local priorities and plans? Are unfunded programs found also at the national level?

Having found at this stage a qualified 'yes'¹ to these questions, some 'causes' need be identified. Mandates are partly driven by clientele groups and coalitions, and partly by the limelight-seeking behavior of lawmakers. Opaque and immature lawmaking processes and the lack of budgetary openness and participation also perpetuate them. In governance, they are ineffective in solving public problems. They waste public attention, government energy and public trust. Unfunded mandates to local governments are vestiges of centralization that are yet to be shaken off by national politicians. Coupled with unfunded national programs, they disappoint many sectors and weigh the system down.

Mandates and Autonomy

Devolution through RA 7160 is the watershed mark for those championing local government. Funds for some major devolved functions to local government units (LGUs) were to come from the share of local government from general taxes (called the Internal Revenue Allotment or IRA). This Code was hailed as radical by many quarters, yet adequate preparation was not made before the transfer for LGUs that were used to subservience.² Implementation was therefore beset with problems. At one point, devolution was almost scrapped in the health sector.³ Political reactions and administrative snags notwithstanding, local autonomy was inscribed into the political lexicon as the banner of the new, multi-purpose local government. It was a heady time for governors and mayors; they were being asked to become "area managers" with their new-found taxing, territorial and organizational powers while discharging old central agency programs. Mostly, LGUs felt triumphant; but the real meat of public policy lay in implementation (Tapales et al. 1996).

Mandates to local governments cannot be divorced from the issue of autonomy in decentralization. The definition of local autonomy is evolving and being debated by many sides. There continues a drawing and redrawing of boundaries of the scope or level of local government power, mainly because of the first major perceived unfunded mandates in the Code itself. The costs of devolved functions were not immediately covered by the share given to LGUs of internal revenue allotments (IRA), making devolution look like an unfunded mandate at first. The design of devolution policy is seen as causing vertical and horizontal imbalances among LGUs as those with bigger tax bases are favored by the formula used to allocate the internal tax revenues (Manasan n.d.).

A dictionary meaning of autonomy is "independence." Local governments, being political subdivisions of the state, autonomy could only therefore be a matter of degree. Local officialdom would like to believe that the Code gave them greater or meaningful autonomy. To the so-called "Father of the Local Government Code," Senator Aquilino Pimentel, devolution means

that certain powers, functions and money are transferred to local government units and are, thereafter, used by the local governments units as they deem fit. Only Constitutional and legal limits constrain the use of devolved powers, functions, and money (Manasan n.d.).

Euphoria, however, can give rise to a craving for a maximum definition of autonomy. Thus, various clarifications and a recourse to Supreme Court judgments followed to clarify the law and how it could protect local governments from the one thing they fear most now, unfunded mandates.

In the United States, the Unfunded Mandates Reforms Act (UMRA) defines a mandate as any provision in legislation, statute, or regulation that would impose an "enforceable duty" on local governments (Kelly and Gullo 2002). Posner (1998: 13-14) classified mandates that regulate American state and local governments into six forms: (1) direct orders, (2) crosscutting requirements, (3) crossover sanctions, (4) partial preemption, (5) total preemptions, and (6) major program-specific grant conditions.

Although used in the context of federalism, this typology is useful because they show that preemptions are no less intrusive than direct mandates. Mandates in the Philippines can come from legislative and executive bodies. They range from most significant decrees to seemingly trivial things.

For example: selling of tickets for beauty pageants, organization/hosting of chess fests, quiz bees, trade fairs, exhibits...many of these directives are commitments of the national government for implementation by LGUs without proper or prior consultation with the latter...⁴

Joseph Estrada once mandated LGUs to set aside in their budgets no less than 5 percent of 20 percent of their IRA for his anti-drug campaign. Most local annoyance has to do with executive orders but the more costly mandates come from Congress.

Unfunded mandates are problematic for the implied lack of respect for LGUs. The Department of the Interior and Local Government (DILG) itself can acknowledge that unfunded mandates are at best resolved through “best efforts” (Joaquin 1997) and at worst are “an infringement of local autonomy as a Constitutional principle.” Unfunded mandates are said to reflect “the old issue of unmeaningful devolution.”⁶ What then is local autonomy that makes unfunded mandates logically intrusive and devolution unmeaningful? Let us examine mandates from national agencies and Congress.

National/Central Agencies

Two Presidents who were elected after the Code attempted in 1997⁷ and then again in 1998⁸ to cut the share of LGUs in the IRA as “belt-tightening measures.” The Supreme Court was dragged into the issue of defining what local autonomy exactly meant. The newly established League of Local Governments filed a petition successfully nullifying the two Presidential Orders. In its decision, on 19 July 2000, the Court noted that the cut “effectively encroaches on the fiscal autonomy of local governments” and that even if reasons for the cuts were to save under dire economic conditions, “laudable purposes must be carried out by legal methods” (Balangay 2001: 1). In clarifying the difference between supervising and controlling local governments, the Court declared:

In administrative law, supervision means overseeing or the power or authority of an officer to see that the subordinate officers perform their duties. If the latter fails or neglects to fulfill them the former may take such action or step as prescribed by law to make them perform their duties. Control, on the other hand, means the power of an officer to alter or modify or nullify or set aside what a subordinate officer had done in the performance of his/her duties and to substitute the judgment of the former for that of the latter (Agra 2002: 5).

To the Court, the national government has not completely relinquished all its powers over local governments; only administrative powers are delegated to political subdivisions. Thus, what LGUs have is administrative autonomy “in order to broaden the base of governmental power and in the process make local government more ‘responsive and accountable.’ Local governments also have fiscal autonomy, which includes “the power to allocate their resources in accordance with their own priorities.”⁹

A sub-theme that emerges is that local autonomy is something like respect that LGUs must earn rather than receive, which the Constitution guarantees. The Court decision might have bolstered this perception. The deeper issue in the suit was “the continued implementation of and respect for local autonomy” because most LGUs depend on the IRA to provide the services that were devolved. When the cuts were nullified, the President of the League of Provinces “congratulated all local officials and NGOs/POs that have fought and continue to fight for local autonomy, stressing that vigilance is the key” (Balangay 2001: 1).

The boundaries are shifting nonetheless: in a controversial case that brought local citizens into the streets, the Supreme Court ruled that local governments could

not prevent the national Games and Amusements Corporation from operating a casino in Cagayan de Oro City. The city council enacted an ordinance banning casinos from locating in their city. The Court ruled that consent of local governments is not necessary despite the city's defense of a provision in the Code¹⁰ that national programs must be implemented only with LGU concurrence.

Other policy issuances that came from central agencies and Commissions indicate that local autonomy is more limited than what local officials would like (Agra 2002: 8). For instance, the Code empowers LGUs to issue licenses and regulate legitimate activities. And yet the national Department of Justice (DOJ) and the DILG in 1995 made separate pronouncements that lottery outlets, sellers and agents of the Philippine Charity Sweepstakes Office (PCSO) are exempted from the requirement of securing business permits or licenses from cities, municipalities and barangays. The Department of Budget and Management (DBM), which has been the government's enforcer of cutback management, also restricted LGU spending on training programs. DBM imposed a cap on seminar fees of P900 per day per participant from local funds.¹¹ The Commission on Audit (COA) also ruled that the Special Education Fund¹² could not be used as payment of the P1,500 allowance to public school teachers assigned to LGUs. Local governments can only provide a P1,000 per teacher allowance from its local funds, although the Code does not prevent the use of the SEF for other education-related activities and expenses. As a ranking official of the Interior noted, mandates are "ironic."¹³ "Even as local government executives may want to speed up the modernization of their localities," according to Pimentel:

...certain obstacles lie on the way. The more serious ones are...the unfunded mandates coming from the central government...and the continued existence of antiquated...departments whose main functions have already been devolved.¹⁴

The downpour of directives during the first years of the Code's implementation was so hard that some issued conflicting directives (Manasan n.d., Joaquin 1995). One of the duties of the Oversight Committee on the Implementation of the Code then became just to sort out contradicting orders from executive departments.

Directives from Central Executive Agencies and Commissions

<i>Originating Office</i>	<i>Subject of Directives to Local Government Units</i>
Audit Commission	Requiring "arcane" auditing procedures
Budget Department	Requiring approval of budget, organization and staffing plans
Civil Service Comm	Requiring approval of organization and staffing plans
Finance Department	Exempting certain corporations from paying local franchise tax
Interior Department	Enjoining local governments to undertake activities in line with the National Day of Prayer
Interior Department	Enumerating an exclusive list of activities to be funded out of the 20 percent development fund; Requiring prior approval from DILG regarding purchase of heavy equipment

Interior Department	Requiring prior authorization from DILG for attendance of local government officials using local funds in seminars and conferences
Interior Department	Requiring prior clearance on use of local intelligence funds
Interior Department	Streamlining and directing the issuance of local business permits
Interior Department	Enjoining local governments to facilitate release of permits to PAGCOR and its contractors
Interior Department	Requiring mandatory accreditation of organizations conducting training
Interior Department	Requiring authority from the Office of the President/DILG for travel abroad by local government officials
Office of the President	Imposing a 1-year moratorium-enjoining municipal mayors and officials from initiating conversions
Office of the President	Prescribing allocation for various Presidential pet programs (Anti-Drug program; Gender and Development; Human Ecological Services; Social Reform Agenda)
Office of the President	Requiring prior approval of the Committee on Privatization of any disposition of property by local governments
Office of the President	Prohibiting all local governments from granting amelioration assistance to officers and employees
Office of the President	Withholding 10%, then 5% of the LGU share in IRA without consultation with LGUs
Office of the President	Withholding release of LGU share in Internal Revenue Allotment pending conditions (submission of Annual Investment Plans, reports to the Interior Department)

Note: Data in this Table are not exhaustive.

Preemption by executive agencies of LGU activity is a queer issue. Because these agencies are under the Executive branch, they have no control over local government beyond the measure of supervision that the Office of the President performs. Many believe that supervision should involve only checking that LGUs are performing their mandated duties, not adding to them (Agra 1996). The view that supervision in intergovernmental relations is a power that enables an authority to tell another what it should *not do*, not what it should do does not help the LGUs' cause (Norton 1994). A lawyer for the League of Local Governments (now called Union of Local Authorities of the Philippines, or ULAP) notes that the Presidential power to supervise "does not include the power to restrain" (Agra 2002: 6). In the U.S., the Unfunded Mandate Reform Act (UMRA) has been proven to be ineffective in preventing preemption (Kelly and Gullo 2002).

Congress

The biggest mandate of the past ten years in terms of political impact was the Magna Carta for Public Health Workers (Republic Act 7305). Enacted at the behest of the Department of Health (DOH), it assuages the grief of the organizationally strong union of health workers at being devolved to financially weak LGUs. It created a unified pay scale for health employees and special benefits that many LGUs could not afford to "diffuse some of the opposition within the DOH" against the devolution (Bossert et al. 2000: 55). The formulation and implementation of the Magna Carta is rich in

themes of bureaucratic politics, clientelism, and centralism (Joaquin 2001). Protest rallies were common in the 1990s for back payments that LGUs promised in staggered compliance with the mandate but were unable to do on time. This Magna Carta was ironically an unfunded mandate that gave birth to another unfunded mandate:

(The) Act gave centrally employed health workers a...generous package of benefits...the associated costs constituted an unfunded mandate, which disturbed LGU decision makers and deepened the gap between reassigned DOH and locally hired staff. These problems led to a follow up 1995 Barangay Health Workers' Benefit and Incentives Act, which partly defused tensions...(The World Bank Group n.d.: 4).

The Magna Carta also created what became known as "that DOH problem" generating envy among the rest of the bureaucracy for increased benefits. "While the initial round of salary increases was meant to keep government pay competitive...this second round was partially attributable to the impact the Magna Carta was having on most government workers" (Perez n.d.: 7).

Mandates to Local Government by Congress (Republic Acts)

<i>Act of Congress</i>	<i>Subject of Law</i>
RA 6758	Salary Standardization Law
RA 7160	Code provisions on mandatory positions
RA 7305	Benefits of public health workers
RA 7883	Granting benefits to barangay health workers
RA 7875	National health insurance
RA 8551	Creating People's Law Enforcement Boards
RA 8505	Assistance and protection to rape victims
RA 8749	Clean Air Act
RA 8792	E-commerce Law
RA 8759	Creation of public employment office in provinces
RA 9064	Granting incentives to athlete-winners
RA 9003	Ecological solid waste management
RA 9164	Synchronized local elections

Note: Data in this Table are not exhaustive.

LGUs complained that the Salary Standardization Law as well as the Code's provisions for mandatory offices (like the Office of the Agricultural Officer in cities that have no agricultural bases) constitute preemption of the power to determine their own organizational and staffing powers. LGUs are also indignant that they have to shoulder the blame from the public for partial or non-implementation of mandates.¹⁵

A flipside of preemption is seen in the case of the wealthiest city in the country. Makati City asked the DBM for exemption from the Salary Standardization Law. According to the Mayor, cities that can afford to pay higher to get the brightest workers should be allowed to do so without resorting to Congressional actions.¹⁶

Unfunded Mandates in the Making?

Bills reported out of committees of the 12th Philippine Congress as of February 2003:

- Creation of local housing boards in every city and municipality
- Creation of youth development centers in every city and municipality
- Allowing additional seats in local development councils for sectoral representatives
- Mandatory appointment of social welfare and development officers in all local government units and increasing the benefits received by social welfare workers

Source: Committee News. A Publication of the Committee Affairs Department, Vol. 11, various numbers, February 2003. Accessible at [http://www.congress.gov.ph/committees/commnews_det.php?newsid=521]

As Posner noted, preemption of local authority falls under the rubric of mandates as they prompt similar issues and effects on local government resources and flexibility.

Why Are Mandates Here?

There is an underlying current that national legislators could determine better what more needs to be done at the local level that LGUs are not doing and therefore had to be mandated. In the U.S., mandates are said to exist because “local governments cannot be left to implement national policies without some kind of federal intervention” (Levine and Posner 1981: 81). But if nationally conceived solutions were indeed superior, central governments should arguably be willing to back them up with funds (Kelly and Gullo 2002).

One major reason for the existence of unfunded mandates in the Philippines is that the governance learning process is still evolving. Passing unfunded mandates is a habit of the centralized government tradition that has yet to be *unlearned* by the central government.

(L)argely due to the inertia of centralized politico-administrative structures, a number of national government agencies continue to formulate and develop programs and projects at the national level...and then mandate local governments to implement them, without so much as consulting them, and finally require them to pay for such programs (Brillantes n.d.: 14).

Second, there seems to be ambivalence at the central bureaucracy in giving up control over LGUs. This is evident in their maximization of the opportunity to create

shared local programs with LGUs as well as in applying supervision and reporting rules to LGUs. This hesitation of central government bureaucrats to fully back up devolution “stems from their fear of losing turf.”¹⁷ The *Omnibus Bill Amending the Local Government Code* declares that long established bureaucratic systems, procedures and practices cannot cope with the imperatives of a decentralized regime and that bureaucratic resistance to devolution is a mis-appreciation of the eventual benefits it will bring to the collective polity.¹⁸

Even the succeeding batch of national legislators was seen having “ambivalence...toward creating strong LGUs” (Ferrazi 2001: 13). This resistance to yield turf is speculated in this paper to be a reason behind the flurry of grants, joint programs, and sharing schemes that have been drawn up in the health sector.

Unhealthy Politics¹⁹

It probably began as *post-partum* blues. The Department of Health, the agency most hit by devolution in terms of personnel and program, complained that it was not consulted enough in the design of the Local Government Code. When implementation began, central employees, wary of bossism in the countryside and lack of local perks and funds, lobbied hard for their transfer back to the mother agency. As Allison and Zelikow (1999: 258) noted, “making sure that government does what is decided” is a different matter. The bill to amend the Code divided the new Congress. The DOH-led campaign to amend the Code lost but they got a law increasing the salaries of health workers. The unfunded mandate was denounced and augmentation funds were set up to help LGUs implement the increase over a period of several years. But it proved that the DOH was still a major political player. The amendment campaign resurfaced years later. Stories circulated about the black-market work of devolved workers who were not content with their salaries. This brings to mind the theme of the centralizing effects of austerity on the intergovernmental system (Levine and Posner 1981). When times are hard, the relationship of local government to the central government becomes one of dependence, distorting local priorities in favor of centrally designed and financed programs. Perez (2000: 1) noted this when “the financial crisis of 1997...revived proposals for centralized health services.”

The next target of central agency concern was local health management. Concern was raised that mayors and governors did not constitute Local Health Boards because they thought it would just be another advisory body. The DOH sought help from the Department of the Interior and Local Government to compel LGUs with a series of memorandums in 1995 (Joint Memorandum Circulars 1,2,3) to organize, operationalize, and reconstitute Local Health Boards (LHBs) and implement Health Board Assessment Guides. In one province, the municipalities were warned that their budgets would not be approved if they did not submit a monthly report of their health board meetings. When some sectors later noted that health performance was lagging under the LGUs, the DOH—whose budget actually increased in the years after the Code as a testament to its strength—designed several program packages that sought local government cooperation.

In exchange for funds, LGUs had to follow the central agency preferences and priorities. It was suggested that the Comprehensive Health Care Agreement “represent primarily a fiscal incentive mechanism by which the DOH can encourage LGUs to undertake targeted programs...By 1994, 94 percent of all provinces and cities had signed a CHCA with the DOH, and it is reported that the...advent of CHCAs have brought a turn from opposition toward greater collaboration between the DOH and the LGUs” (Bossert et al. 2000: 57). The CHCAs represent a “creeping renationalization” in government finance. “It is unclear, at this point, what the magnitude of the supplementary DOH resources are, how the CHCAs affect LGUs autonomy, and what results they have on health service delivery” (Bossert et al. 2000: 63). Through new “joint” programs, the national agency did not really lose out in terms of territory and budget, variables that in the organizational behavior model define organizational “health” (Allison and Zelikow 1999). The national agency clearly took advantage of opportunities to regain control of agenda and money.

Third, some of the reasons behind mandates and pre-emption in the U.S. are also witnessed in the Philippine setting (Posner 1998). These are pressures to cater to publicity and popular whims, “valence politics”—the improbability of opposing programs with populist appeal—the weakness of local governments coalitions, the invisibility of costs, and the seduction of grants and sharing schemes. The dimension of party ideology is frustratingly lacking in the Philippine case—although Posner found that it is not a significant determinant of the chances of mandates being passed. Philippine parties are not distinguishable from one another, a testament to the unfortunate personalization of the democratic process.

In Philippine Congress, the passage of the Clean Air Act, the Assistance to Rape Victims Act, the Solid Waste Management Act and most other major mandates were passed due to combined pressures from a coalition of concerned NGOs, the intensity of the national media attention, and the tendency of lawmakers to seek the limelight in a personality-driven political environment. When the Clean Air Act was passed, it is said that the “legislators have done their part, although their acts might be motivated by some political ambitions” (Mission 1999: 1). The law was also a product of a decade’s lobbying and through two Congresses by environmental groups. But their effort was made stronger by public outcry in the capital city, Manila. As proponents defined it:

The underlying principle of the Clean Air Act is that every Filipino has the right to breathe clean air...a universally recognized right. (The) Clean Air Act is the government’s reply to the deafening cries of most Metro Manila residents desperate to save themselves from respiratory diseases caused by air pollution (Mission 1999: 1).

The way issues are framed determines the chances of laws being passed in Congress. When a demand is defined as a “right,” it is only a matter of time before Congress creates a law for it. “Defining the issue in compelling public health terms,” recalling the school asbestos battle in the U.S., neutralizes those who could normally be expected to oppose new programs. The laws cited above counted on high public

moral support that Congress could not ignore and LGUs could not oppose for their "demagoguery potential" (Posner 1998: 71 and 101).

Other reasons behind mandating in the Philippines are mainly dysfunctions in the legislative and policy processes: pork barrel politics, opaque lawmaking process, the tendency to make promises without concern for the budget deficit, and the failure to implement previously adopted policies.

The disconnect between the implementation requirements of policy and intergovernmental politics is showcased in pork barrel politics. Good laws are simply crowded out of funding. The FY 2000 General Appropriations Act was "big on promises, short on resources."²⁰ When then President Joseph Estrada tried to deprive Congress of pork, the House held the Appropriations Bill "hostage" and tried to scrap the presidential share of pork. A compromise was later reached that renamed the pork as Priority Development Assistance Fund to finance legislators' pet projects. Presidential pork was also restored. The budget contained some \$600 million to cater to the whims and caprices of the central political actors. The situation is vulnerable to corruption-ridden public works projects, away from straight up funding of program that Congress had already created. Instead, the pork system appears to work so that funds are selectively handed out to dependent LGUs. While some public programs were allocated inadequate amounts, the Clean Air Act and the Pasig River Rehabilitation Program, as well as other important laws were virtually unfunded.

The government's incapacity to meet its financial commitment to projects and programs, as in the case of the Agriculture and Fisheries Modernization Act and the Public Energy Program, has to be seen side by side with the appetite of leaders for pork barrel (Carrera 2000).

Opaque lawmaking processes is closely related to the not-so-hidden desires of lawmakers to have as much power as possible in controlling the funds. Culturally, perhaps, laws in the Philippines are made "out of the penchant of Filipinos for 11th hour decisions, knee-jerk reactions, (creating) presidential deadlines, and commitments to private sector partners."²¹

Also, politics can thrive on empty promises. Lawmakers could add to their re-election campaign blitz that they authored such and such laws without accounting for their implementation. Congressional deliberations for FY 2003 budget reflect the themes of (1) creating more linkage between promises and capacity to deliver, (2) deficit management, and (3) enjoining the public to join the process of resolving the country's budget deficit problems.²²

Mandating is perhaps only one of the many ills that can be cured if more prudence and transparency mark the management of the public purse. LGUs could benefit from having a system of accounting for the cost of unfunded mandates. Because of the crude system of information management in the public sector, financial data are often fudged. This is one of the most basic problems of Philippine governance.

Mandates and Sanctions

Most laws are in need of so-called enabling and implementing rules to be crafted at agency levels after Congress passes a law. In the Philippines, the details of funding and implementation often are found in the implementing guidelines, not in the act of Congress. In the U.S. costs are left to agency rulemaking:

Though the benefits of mandates are compelling, their costs are often vague and dependent on agency regulations published several years after passage of mandate legislation...Because specifying implementation and cost impacts threatens to unhinge coalitions and arouse state and local lobbyists, these kinds of "details" are left for subsequent elaboration by the federal agency (Posner 1998: 88).

It is at this level of rule making where it is presumed that bargaining is done in hammering out which agency and level is to shoulder which part of the program. In the case of the creation of the People's Law Enforcement Boards in local government, the DILG wrote the implementing rules explicitly stating:

Section 73: Budget Allocation. The annual budget of the Local Government Units (LGUs) shall include an item and corresponding appropriation for the maintenance and operation of their local PLEBs.²³

Political cynicism in the country arose in no small measure from knowing that programs and laws are pieces of paper unless fully enforced. The reason lies in an oft-quoted phrase: *subject to availability of funds*. A lot of benefits under unfunded mandates are "computed in accordance with prevailing circumstances as determined by the local government unit concerned."²⁴ A bill currently filed at the House of Representatives for the election of sectoral representatives (women, workers, urban poor, etc.) in the local government councils/boards leaves it up to LGUs to determine how much of these new positions they can shoulder financially.²⁵ However, the jealousy and political wrangling created by merely *having* the law is big enough problem for LGUs.

Often there is no mention of penalties for non-implementation. Nonetheless, the rules on creating local People's Law Enforcement Board is an example of a Congressional mandate with sanction that (1) attempts to undermine local autonomy by intercepting local government share of the IRA as a penalty (an unconstitutional move) and (2) creates more problems for resource-poor municipalities—that rely a great deal on their share of the national taxes to deliver services—if they do not implement the mandate.

Section 73: ...Municipalities or cities without a PLEB or with insufficient number of organized PLEBs shall have 30 more days from the effectivity of these implementing rules and regulations to organize their respective PLEBs. After such period, the DILG and the Department of Budget and Management shall withhold the release of the LGU's share in the national taxes in cities and municipalities still without PLEBs.²⁶

This kind of restriction is denounced in local circles as the sort of trap they get into as they are blamed for non-implementation of unfunded mandates when their biggest source of income is threatened. Sometimes, the law states that Congress shall appropriate the funds. When this is so, the words "AND APPROPRIATING FUNDS THEREFOR" appear in the title of the Republic Acts themselves. When Congress does not specify where the funds are going to come from, this is a cause for alarm. But even if the source is specified, uncertainty remains when there is no knowledge of the total cost of implementation and the sharing of burden between central and local governments.

Coping with Mandates

Unfunded mandates can result in the distortion of local planning and budgeting processes, blocking of local modernization efforts, and persistence of dependence on the center (Lopez n.d.). LGUs are expected to comply with them, as an official from the Interior stressed,

I am resigned to the situation even if I am fully aware that unfunded mandates are an infringement of local autonomy...Presidential directives requiring LGU participation with deadlines set yesterday are top priority for execution. No ifs and buts!²⁷

At the face of it, local governments respond and cope by (1) using their savings, (2) being financially creative, (3) staggering or delaying implementation, (4) partial or non-implementation, (5) seeking augmentation from central agencies, (6) joining programs with national agencies, (7) requesting congressional pork, (8) seeking relief from Courts, and (9) Leagues action and Congressional lobbying.

When LGUs were ordered in 1992 to create different positions for some of the devolved functions, many opted to combine positions in single offices in order to save money. For instance, instead of creating the mandatory positions of the Local Agriculturist and Local Veterinarian separately, many cities merged the duties in one position. If there were two transferred employees with similar ranking, one of them was severed, made an assistant with the same salary level, or appointed to other positions.²⁸

The Leagues of local government are gaining strength as a coalition. "In every forum where the various leagues meet, say, in a national convention or island congress, 'abolition' of unfunded mandates is a battle cry."²⁹ An observation of these leagues is one of their feistiness, banding together

to more forcefully deliver policy advice to government. The leagues have been active in the streets and in the courts. They have been able to form alliances as needed with NGOs, donors, and academic institutions. One of their successes has been winning some changes in the interpretation and application of the Code (Ferrazi 2001: 13).

Perhaps similar to using "home-rule" in the U.S. to expand the powers of municipal government, the Union of Local Authorities, identified one of their legislative advocacy agenda as:

Broadening the devolved powers:

Expand the concept of general welfare clause to expressly authorize, pursuant to local autonomy, LGUs to exercise those powers not otherwise prohibited by law (ULAP 2002).

A Bill amending the Code provides LGUs with more voice in matters that relate to programs and projects below. The bills' author believes that unfunded mandates of the central government should be prohibited,³⁰ although an UMRA-type law may not appear in the Philippine Congress anytime soon. Proposals include:

- e. The archaic regulations of the Commission on Audit must be reformed to facilitate, not to impede, local governments in the discharge of their duties....
- f. The powers of the Department of the Budget and Management over local government units should be clipped further so that DBM should have no power over local governments pending....
- j. The powers of the Civil Service Commission over staffing patterns of local governments should be revised to promote local autonomy.

The Philippine Councilors League in 2000 called on local councils to pass resolutions opposing IRA cuts and unfunded mandates. A Resolution that captures local sentiments was passed by Muntinlupa city. The text called the IRA reduction unconstitutional, arbitrary, discriminatory and grossly unfair. It embodies the postulates of this research that functions without adequate funds hurt the learning process in decentralization, the intergovernmental relations, and the general welfare. It states that cutting the biggest local government source of fund:³¹

- violates constitutional provisions that guarantee local autonomy
- undermines the power and responsibilities of LGUs, and infringes upon their vested rights
- deprives LGUs the necessary funds for services and functions transferred by Congress with the enactment of the 1991 Local Government Code
- neglects the continuing development of eighty percent (80%) of our LGUs (that rely) on IRA
- denies local government employees ten percent (10%) increase of the salaries and wages (that) national government employees would enjoy by the year 2000
- places the blame on lower class LGUs for non-compliance to unfunded mandates due to lack of IRA
- reinforces the separation of the national and local governments to the detriment of LGUs

Local governments also cope by accepting more grants from central agencies in return for their compliance with central directives. LGUs were reluctant to co-finance premium subsidies under the National Health Insurance Act of 1995 as they were already funding local health facilities. It was being perceived as a “double-burden.” The Health Sector Reform Agenda was crafted by the DOH to encourage LGU “collusion” and cost-sharing, including co-financing of health facilities by creating a package of technical assistance and monitoring commitments (The World Bank Group n.d.: 4-5). In the environment sector, centralized management still exists in the guise of the community-based forestry management programs (Elazegui et al. 2001). The DILG suggests coping strategies that include saving on the part of LGUs and national agencies for unexpected mandates, apart from continuing dialogue between agencies and LGUs.³²

If LGUs could only make use of their full revenue powers, implementing mandates may not be as troublesome. But many have noted that the increase of the LGU share of national taxes has created a substitutive effect³³ especially in the initial years. LGUs were simply not using their new taxing powers. A financial autonomy ratio measuring the ratio of revenue from local sources to expenditures registered low levels in provinces and municipalities from 1992 to 1999. Cities enjoyed the highest degree of fiscal autonomy although they also depended on the IRA for most of their income during this period (Manasan n.d.).

When Great Hopes are Dashed: The Divorce of Implementation from Policy³⁴

The deeper problems of the Philippine policy process—or worse yet, democracy—are revealed by a habit of creating laws that have no teeth or programs that are almost dead on arrival. In the course of this research, it was found that unfunded mandates burden executive agencies as well. Congress has passed numerous laws whose implementation are either zero or hampered because funds were not appropriated for the duration of the programs.

(A) law should specify where funding should come from. For example, PCSO [Philippine Charity Sweepstakes Office] funds are tapped almost every time there is a need to identify source of funds for new programs without even bothering to ask PCSO the implications or if there are any more funds to share...³⁵

National Laws Hampered by Funding Problems

<i>Act of Congress</i>	<i>Subject of Republic Act</i>
RA 6758	Salary Standardization Law
RA 7192	Integration of women in nation building
RA 7877	Sexual harassment in the workplace
RA 8505	Assistance and protection to rape victims
RA 8749	Clean Air Act
RA 8792	E-commerce Law

RA 9003	Ecological solid waste management
RA 7875	National health insurance
RA 7192	Women in nation building
RA 8551	Pay levels of police officers
RA 8042	Migrant workers and overseas Filipinos
RA 7722	Higher Education Development Fund
RA 8545	Assistance to Private Education
RA 8550	Fisheries Code
RA 8435	Agriculture and Fisheries Modernization
RA 7393	Rural Credit Guarantee
RA 7884	National Dairy Development
RA 8175	Crop insurance
RA 8371	Indigenous peoples' rights
RA 8757	Sports Hall of Fame
	And various laws enacted on children's' rights (RA 7658, RA 8043, RA 8044, RA 8369, RA 8172, RA 8296, RA 8370)

Scarcity is a given in the Philippines. The budget is eaten up annually by debt servicing by more than 50 percent. But the matter of mandating without the funds or directing funds somewhere else is a grievous way of policymaking and governing. Instead of rationalizing available resources, problems seem to be dealt with by "legislating them away" with empty promises. The Table above enumerates laws whose implementation is hampered by the lack of appropriation. Many of them are currently being reviewed by the 12th Congress for the status of their implementation.³⁶

Is Anything Gained and Everything Lost from Non-implementation?

"What good is a law if it cannot be implemented? And how can implementation be if there is no funding" (Mission 1999)? LGUs strive to implement mandate, especially when they concern employee benefits, but others get away without implementation, as in the creation of new offices and positions. Non-implementation is a way of coping with mandates but with it, the system loses the chance to learn what is wrong with policy and how policy design can be improved for achievability.

Unfunded mandates may not have created as much distortion on agency/local government budget as they could due to non-implementation or partial implementation of mandates at the local level. Besides, monitoring and evaluation of government program and projects has been identified as the weakest link in Philippine governance by the National Economic and Development Authority (Mission 1999).³⁷ At any point in time, who possesses the data of where a public program stands? We have a long way to go in utilizing numbers.

It would be interesting to measure the lag between the passage of laws from Congress and the writing of rules and regulations to implement them. It is likely that agency rulemaking is delayed to soften the impact of mandating, or that rules are not written at all to nullify the mandate. As long as there is no implementing guideline, not a single centavo has to be spent, while credit for policymakers has been duly noted

in the press. There are laws in the Philippines that went without implementation for years for lack of guidelines. It is happening in the case of the Solid Waste Management Act, which depends heavily on LGUs action; it has happened in the case of the Rape Victims Assistance and Protection Act.³⁸

What suffer from non-implementation—for whatever reason—are the public welfare, the efforts behind the passage of the law, and the efforts to strengthen organizational learning in democratic institutions. People who stand to benefit from the policy remain ignored or disenfranchised. The issue attention cycle might have kicked in after passage, in some cases, and thus wastes the time and effort of those who initiated the lobby, and the money and political unity spent along the way. Government's failure to provide sufficient resources challenges the success of any undertaking (Carrera 2000: 15). The public may not even realize that the laws were unfunded. The public may assume that the culprit is the red tape, or the frequent change of administrators, or clientelism, however defined. This shows that the politics of implementation may be more crucial in a Third World country than anything else. "Legislators can only legislate laws, not execute them" said the author of the Clean Air Act, when lobbyists went looking for the funds (Mission 1999).

Conclusion and Agenda for Research

In exploring the policy and politics of mandating, this research came across a variety of interlocking phenomena about intergovernmental relations in the Philippines. Unfunded mandates are entangled in the elements of politics, policy, intergovernmental relations, and re-democratization efforts in the country. Lacking a one-dimensional explanation of what causes mandates, their impact, and what perpetuates them, the study finds that despite the multiplicity of variables that could help explain their existence in government, it is clear that mandates are manifestation of the immature yet growing intergovernmental relations in the Philippines. The problem will probably remain as long as (1) the political processes encourage local government dependence on the center for funds instead of using their own local revenue raising powers; (2) local governments remain unable to coalesce as a strong force to counter the ambitions of less accountable national politicians; and, (3) civil society leaves policymaking in the hands of politicians³⁹ and "maximizing bureaucrats" without taking them to task on policy implementation.

For local government, the decisions of the Supreme Court on the IRA cuts have not entirely given them the leeway it seeks in determining priorities of their own and avoiding unfunded mandates. The unitary setup of government, with a huge bi-cameral national legislature and personality-driven electoral system, perhaps will keep things the same for a long time, until local governments come into their own.⁴⁰ In fact the current call for federalism in the Philippines⁴¹ is gaining favor among the poor regions. It is being touted as the next logical step for decentralization policy.

Before any change is contemplated, however, it is a must that we understand first what is making the current system fail in policy implementation. Last 5 February

2003, relevant committees jointly studied House Bill 1008. It was a bill seeking to revert devolved agriculture and health functions to central agencies. Devolution, according to the bill's author is impractical, as local governments are found incapable of delivering such basic services. Whose benchmark was used, and were people clear about the benchmark in the first place? Is this a matter of poor policy design, failure to implement laws due to funding problems, politics, or something else?

Does never having enough funds mean never ever having programs taken to their logical conclusion? This article concludes by urging empirical studies to explore the issue further. We could pursue the following related aspects of policy implementation:

- (1) On intergovernmental policy dynamic: mandates and incentives are the threads – *a la* spider's web—that determine the fate of programs for intergovernmental implementation.⁴² We need to know how the different levels utilize their powers so that incentives and mandates meet local interests or preferences. What do the intergovernmental finance figures indicate about the health and initiative of our local governments?
- (2) On intergovernmental politics: what coalitions are emerging, and what are not? What kind of national ties should local government cultivate? One could look at the background of national legislators to find out their knowledge of local government conditions. Another item to look for is political party ties. The dimension of political party was dismissed at the outset knowing the amorphous nature of Philippine parties; nonetheless, one element that could have been substituted for analysis is the familial ties among local and Congressional politicians. Future research could look into Congressional representation of local interests.
- (3) On public participation in policy: political maturity of electorate is important in democratization. Even with the proliferation of NGOs, what percentage of our population are truly in touch with their congressional representatives? How many are versed in budget making at both national and local levels? The people should get involved and learn at the same time as the officials. What kind of studies of civic orientation have we got at present?
- (4) On policymaking and decentralization: have we learned what determines the survival or death of national programs in this kind environment? What are the alleys and the stumbling blocks? Has decisionmaking really changed since martial law? Will we learn what implementation means in a unitary government setting? Do we have enough knowledge of how local governments work and work together before we move to a federalist arrangement?

This article has evidently raised more issues than it set out to do. However, the point is that a government that placed its hands on the plow, though it can, must not look back. The ongoing political reform in the country, of which devolution is a major part, has cost too much already and should move on through a continuing cultivation

of democratic culture and institutional learning. As this article has shown, implementation is a practical lens with which to assess the quality of public policy and the political will behind it. Decentralization should not only work, it should be made to work. Mistakes are all right, as long as implementation runs its full course. No measure that attempts to improve the lot of the masses can succeed without a deliberate and exhaustive analysis of their implementability. Before any more discussion of federalism is conducted we need to know if the body politic is capable of implementing any policy at all. Everyone knows that some policies look good on paper. If this is the era of empowerment, are we not free also to make them look good in reality?

Endnotes

¹The qualification being, the study lacks a quantitative assessment of impact of unfunded laws, relying instead on perceptions of concerned sectors. In this regard, this study should be seen as a preliminary assessment until Congress and LGUs are able to quantify the effect of unfunded mandates on local finances as well as the costs of having national programs that never run their full course due to Congressional inability to exercise fiscal prudence.

²Before, LGUs had to seek permits from national agencies in Manila before they could use their own funds for local needs, such as garbage trucks. Fiscal control was limited as 73 percent of local budgets was under national redirection (See T. Bossert, J. Beauvais, and D. Bowser. "Decentralization of Health Systems: Preliminary Review of Four Country Case Studies," *Partnerships for Health Reform Major Applied Research 6 Technical Report 1*, January 2000.)

³A re-nationalization bill was passed by Congress in 1995 later on vetoed by then President Fidel V. Ramos. See Senate Bill 1172 - An Act Re-nationalizing Devolved Health Services and Facilities, Appropriating Funds Therefor, and for Other Purposes. Authored by Sen. Blas Ople, 11th Congress.

⁴Interview with an official of the Department of the Interior and Local Government, 27 September 2002.

⁵Interview with an official of the DILG, 27 September 2002.

⁶Interview with a Policy Analyst, Center for Policy and Executive Development, National College of Public Administration and Governance, University of the Philippines, 25 October 2002.

⁷Office of the President. Administrative Order No. 372 withholding 10 percent of the share of local governments in the IRA and requiring LGUs to cut expenditures by 25 percent (Signed by President Fidel V. Ramos on 27 December 1997).

⁸Office of the President. Administrative Order No. 42 withholding 5 percent of the share of local governments in the IRA (Signed by President Joseph E. Estrada on 10 December 1998).

⁹Philippine Supreme Court. *Pimentel v. Aquirre et al.*, G.R. No. 132988. Decision. 19 July 2000.

¹⁰SEC. 27. *Prior Consultations Required.*- No project or program shall be implemented by government authorities unless the consultations mentioned in Sections 2 (c) and 26 hereof are complied with, and prior approval of the sanggunian concerned is obtained.

¹¹DBM Budget Circular No. 442 dated 29 March 1995.

¹² Decision No. 96-287. The Special Education Fund (SEF) comes from real property tax revenues and which Local School Boards shall primarily appropriate for school building construction, repair and maintenance.

¹³ Interview with an official of the DILG, 27 September 2002.

¹⁴ Senator Aquilino Q. Pimentel. Speech on 1 September 2001.

¹⁵ Resolution No. 20-176. Resolution Strongly Opposing the Reduction in the Internal Revenue Allotment (IRA) of Local Government Units and Urging the Union of Local Authorities of the Philippines to take Legal Steps in Restoring the IRA Cut in the Year 2000 National Budget. Municipality of Muntinlupa. Available at [www.muntinlupacity.gov.ph/resolutions/20-176.htm]. Accessed on 14 October 2002.

¹⁶ Binay Urges DBM to Study Makati Proposal to Allow LGUs to Give Higher Pay. In *Makati Headlines*. 2 September 2002.

¹⁷ Senator Aquilino Q. Pimentel. Speech on 1 September 2001.

¹⁸ Senator Aquilino Q. Pimentel. Opening Statement as Chair of the Senate Committee on Local Government at the opening ceremonies of the public consultations on the proposed amendments to the Local Government Code of 1991. 4 August 2000.

¹⁹ *The Governmental Politics Model Applied to the Philippine Decentralization Law*. An excerpt.

²⁰ Percivil Carrera. The Year 2000 National Budget: Big on Promises, Short on Resources. In *Community Habitat*. No. 6. Philippine Rural Reconstruction Movement. Issue 6, 2000. See also: G. Mission. Where are the funds for the Clean Air Act? *CyberDyaryo news*. 16 December 1999, on the capture of government budget by private interests.

²¹ Interview with an official of the DILG on 18 October 2002.

²² Republic of the Philippines. House of Representatives. *Journal No. 20*. 1 October 2002. Bill on First Reading HB 5238. An Act Appropriating for the Operations of the Government of the Philippines for the Fiscal Year Two Thousand and Three. Available at [www.congress.gov.ph]. Accessed 11 November 2002. Excerpts follow: "Rep. Aquino then inquired whether the Body would be in favor of submitting a budget based on the (projected) revenue collection...Rep. Teves replied that this would be most ideal...but commented that based on the precedence of the past few years, government has always exceeded the appropriation provided by revenues.

Rep. Aquino stressed that...it is about time that the Members propose something to reach this objective, particularly since the country's budgetary deficit and external debt seems to be growing bigger...there will come a time that the appropriation for debt payments would far exceed expected government revenues, he said. Rep. Aquino underscored that the implication of this kind of policy entails great sacrifices for the Filipino people. Thus, in order to seek their cooperation to observe certain savings measure, it is necessary for Congress to inform the people of the dire financial situation.

In closing, Rep. Aquino stressed that he is still for the submission of a balanced budget with either a supplemental or an unprogrammed amount depending on the actual revenue amount collected by the government."

²³ Republic of the Philippines. Department of the Interior and Local Government. Rules and Regulations Implementing the PNP Reform and Reorganization Act of 1998 (Republic Act 8551). 11 January 1999.

²⁴ See Barangay Health Workers' Benefits Acts of 1995.

²⁵ Republic of the Philippines. House of Representatives. *Committee News*. Vol. 11, No. 26. 11 November 2002. Available at [http://www.congress.gov.ph/committees/commnews_det.php?newsid=520]. Accessed on 17 November 2002.

²⁶ Republic of the Philippines. Department of the Interior and Local Government. Rules and Regulations Implementing the PNP Reform and Reorganization Act of 1998 (Republic Act 8551). 11 January 1999.

²⁷ Interview with an official of the DILG on 28 October 2002.

²⁸ As observed by the researcher during her work with various LGUs at the Center for Local and Regional Governance at the University of the Philippines.

²⁹ Ibid.

³⁰ Senator Aquilino Q. Pimentel. Transcript of speech on 1 September 20001.

³¹ Resolution No. 20-176. Resolution Strongly Opposing The Reduction In The Internal Revenue Allotment (IRA) Of Local Government Units And Urging The Union Of Local Authorities Of The Philippines To Take Legal Steps In Restoring The IRA Cut In The Year 2000 National Budget. Municipality of Muntinlupa. Available at [www.muntinlupacity.gov.ph/resolutions/20-176.htm]. Accessed on 14 October 2002.

³² Interview with an official of the DILG on 28 October 2002.

³³ Dependence on income from external sources inhibits the stimulation of the local sources.

³⁴ For an illuminating treatise on the problems of implementation, see Jeffrey Pressman and Aaron Wildavsky, *Implementation*. 3rd edition. University of California Press, 1984.

³⁵ Interview with NCPAG-UP Policy Analyst on 25 October 2002.

³⁶ *Committee News*. Review of unimplemented laws continues. Accessible at [<http://www.congress.gov.ph>.] 16 December 2002.

³⁷ See also Ma. E. Joaquin. *Implementation of the Local Government Code in the Municipality of Muntinlupa*. Local Government Center, University of the Philippines. Unpublished manuscript.

³⁸ RA 9003. *The Ecological Solid Waste Management Act. A Dissection into Policy Implementation Issues*. Undated.

³⁹ The current President is aware of the problem of unfunded mandates. Gloria-Macapagal Arroyo said she hoped that the Solid Waste Management Act would not be another one of them during the ceremonial signing on 26 January 2001.

⁴⁰ Interview with an official of the DILG on 28 October 2002.

⁴¹ See Aquilino Q. Pimentel. *Why Adopt the Federal System of Government? A Primer*. The senator believes that economic problems as well as the armed rebellion in Mindanao can be helped by creating a federal system of government with three states in Luzon, three in Vizayas, and four in Mindanao.

⁴² H. Koenig. *The Spider Web Model of Intergovernmental Relations*. Prepared for Presentation at the Annual Midwest Political Science Conference, 2002.

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