

Intergovernmental Relations in a Cordillera Autonomous Region

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The article looks into the implications in intergovernmental relations brought about by the creation of an autonomous region in the Cordilleras. National/regional relations in a federal state and in states with autonomous regions are presented as models which bring out a two-fold lesson: the overwhelming powers of the national government, and the political nature of national/regional relations. The models imply that the extent and nature of autonomy will be determined not by formal law but by political interaction. As to regional/local relations, the article points out the need to clarify the governmental unit that should be the proper venue for political action, and the place of tribes, indigenous institutions and non-governmental organizations in the political processes of the region. It also examines the proposed Organic Act and finds many restrictions imposed by Congress. The article asserts that the creation of an autonomous region is merely a new stage in a political struggle and not a triumph of autonomy.

Introduction

The 1987 Philippine Constitution provides for the creation of:

autonomous regions in Muslim Mindanao and in the Cordilleras consisting of provinces, cities, municipalities, and geographical areas sharing common and distinctive historical and cultural heritage, economic and social structures, and other relevant characteristics....1

The creation of such autonomous regions raises an enormous number of questions, since these regions would be new creations within the governmental structure. One set of questions, which forms the topic of this paper, has to do with intergovernmental relations. How will the several governmental entities—national, regional, and local—relate to each other? A discussion of some of the issues raised may help clarify matters, even though definitive answers must await the actual implementation of any Organic Act for autonomy.

This paper divides its treatment of intergovernmental relations into two major sections, each of which has a theoretical discussion followed by an examination of how the proposed Organic Act fits into the discussion. The first section deals with national/regional relations—how the region relates to the nation. I will try to present insights by discussing examples of federal states and states with autonomous region, and by discussing substantive policy. Then, I will cite provisions of the proposed Organic Act which bear on points made in the theoretical discussion. The second section focuses on intraregional relations:

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how the region relates to the local government, and how the formal local government institutions (the municipality and the barangay) relate to the indigenous institutions governing the *ili*. The format remains a general discussion, followed by specification of provisions from the proposed Organic Act.²

National/Regional Relations

The Republic of the Philippines under previous constitutions was a unitary state. Now that special autonomous regions are being created, we can look to two sources for models on national/regional relations: federal states and states with special autonomous regions. After we have dealt with these two topics, we will then examine relations in substantive policy areas by looking at national/regional relations within bureaucratic structures.

Federal States

It may be useful to begin by being clear about the constitutional status of federalism in the Philippines.³ The Constitutional Commission of 1986 explicitly rejected the idea that the Philippines should be a federal state. Only a small fraction of the Commissioners were willing to depart from the unitary tradition of Philippine Government. Furthermore, the Commission rejected the draft of the Committee on Local Government, which provided that any region of the Philippines could apply to Congress to be granted autonomy. The reasons for these rejections had to do with the fear of weakening the central government in the face of pressing economic and internal security problems.

Hence, the Constitutional Commission decided to grant autonomy only to those regions requesting it. Muslim Mindanao had clearly been searching for genuine autonomy ever since the Tripoli Agreement. For the Cordilleras, a colorful and well-organized lobby, sponsored by the Cordillera People's Alliance, successfully pressed for autonomy. Since only two regions were making representations, these were the only regions slated for autonomy under the new Constitution. Autonomy for any other region would require constitutional amendments.

If the Philippines is not to be a federal state, why look at federal states for inspiration? Because, it is in such states that we find a good deal of experience in having autonomous local entities related to an overarching national structure. Some differences in the nature of national/regional relations may be caused by the fact that not all regions in the Philippines will be autonomous, but any such differences are likely to be small enough not to vitiate our analysis.

Of the federal states in the world, many are part of the advanced industrial west, the First World: The United States, Canada, The Federal Republic of Germany, and Australia. Third World states tend to be unitary, for the same reason

cited by the Philippine Constitutional Commission when it voted down federalism: a strong central authority is desired to solve the pressing problems of the nation. Prominent exceptions to this generalization include India and Malaysia. I will focus on the Malaysian case because the initial impression of most Filipinos is that Malaysia is more relevant. Although the character of the federal system of the two states is different, I would assert that the conclusions drawn from Malaysia also apply to India.⁴

One of the most important reasons for structuring Malaysia as a federal state had to do with the system of "indirect rule" practiced by the British colonialists, with the consequent persistence of traditional Rulers in peninsular Malaysia. The traditional forms were retained and elected state governments established, but the balance of power remained with the national government. Development of natural resources (land, agriculture, forestry) are the main powers retained by the states, but even here the national government concerns itself.

An idea of the relative power of the state and national governments can be gleaned from a comparison of their expenditures. Expenditures of all state governments combined total only about 20 percent of those of the national government. Thus, the national government is, in the aggregate, five times as active as the state governments. We can establish a point of comparison by looking at the same ratio for the Philippines, gleaned from Tables 12.4 and 12.7 of the *Medium Term Philippine Development Plan: 1987-1992*.⁵ The total expenditures of local governments in the Philippines was estimated in 1986 to be eight percent of the national government, making the Philippines much more centralized than Malaysia.

The Borneo states (Sabah and Sarawak) are special cases, being given the right to maintain their indigenous laws and customs when they joined the Malaysian federation. They are more direct analogies to the Cordillera, since these special privileges were granted in recognition of the fact that the population was largely non-Malay. These states were even given the option to choose English, in addition to Bahasa Malaysia, as their official language. At any rate, both states opted that the only official language would be Bahasa.

We see in the language issue a recognition of "realities" by the state governments that despite their largely non-Malay populace it is necessary to conform to the dominant practice of exclusive use of Bahasa Malaysia. The "reality" is the premiere role played by the national government. In this situation, it is the harmonizing influence of party" which ensures that national/regional relations are on an even keel. Currently, all Malaysia states are dominated by members of the National Front, the coalition that has always ruled the national government. This linkage provides a coordinating device that is not embodied in formal written constitutions. An example of the necessity of joining the National Front in

order to serve the interest of one's state is provided by recent events in Sabah.⁶ A party supported by the indigenous people ousted the ruling party, which was allied with the National Front. From the very beginning of its accession to office, the new party sought to join the National Front. It was successful in so joining, after providing assurances that the interests of Malays would not be harmed.

The lesson that could be drawn from the Malaysian example is two-fold. First, even in a country with a long tradition of separate regional government entities, the powers of the central government are overwhelming. The tendency to retain power at the national level cannot be overestimated and must be dealt with. This reality has been recognized by Congressman William Claver, Chairman of the House Committee on Cultural Minorities, in his talk at the "Forum on Indigenous People's Concerns:"

The Cordillera people must continue to assert their right to self-determination as they have done during the Chico and Cellophil (two national government development projects) struggles.⁷

The second is that the matter of national/regional relations is not one of formal models or constitutional provisions. It is a political matter based on power relationships and how they interact. In Malaysia (and, for that matter, in India) there is a well-established dominant political party through which relations can be handled. Here in the Philippines there are no longer (if there ever were) well-established parties. As a result, it is safe to predict a degree of instability in national/regional relations. This instability may not necessarily be undesirable, since it may be an opening for an autonomous region to assert more independence.

Examples of Autonomous Regions

The same lesson can be drawn from a brief examination of two examples of states which have special, autonomous regions. Both the People's Republic of China and Nicaragua are countries which have established autonomous regions for indigenous peoples.⁸

The "General Programme for the Implementation of Regional Autonomy for Nationalities," promulgated by the government of the PRC in 1952, states:

Regional autonomy shall be exercised in areas where national minorities are concentrated.... All national minorities shall have the freedom to develop their spoken and written language, to preserve their traditions, customs and religious beliefs.

To outsiders, the best-known autonomous region is Tibet, and this example illustrates well the pitfalls of following formal, written models.⁹ While there is some dispute about the extent to which the "traditions, customs and religious beliefs" of Tibet are currently being respected, there is no dispute that during the

Cultural Revolution, virtually all temples in Tibet were destroyed by the Red Guards. Suffice it to say that despite provisions for "Local Democratic-Coalition Governments of Nationalities," the central government of the People's Republic of China has always had the power, and on certain occasions, the will to enforce conformity with the dominant Han culture.

The case of Nicaragua demands a more thorough examination, as it provides what seems to be a good analogy to the Philippines. There exists a dominant mestizo culture of the majority of Nicaraguan citizens along with indigenous peoples on the Atlantic coast (separated from the rest of Nicaragua by mountains). Unfortunately, the realities of the Nicaraguan situation tend to be obscured by the fog of war, since the facts of the situation can be construed either to favor the Sandinista national government or the US-backed Contra rebels.

Still, several facts seem clear. First, even with the best intentions, when the Sandinistas moved into the Atlantic coast with their literacy and other post-revolution development programs, it was generally seen as forced integration into the national society. Opposition to these measures made it easy for the Contra rebels to recruit among the indigenous peoples. Secondly, the Sandinistas quickly recognized their mistakes and moved to placate the peoples of the Atlantic coast. Whether these moves were mere tactics in a civil war or prompted by a genuine concern for the rights of peoples is irrelevant for our purposes. We need only to look at the autonomy being offered to the Atlantic coast peoples.

In contrast with China's thirty-five year experience of autonomous regions, those in Nicaragua have only been set up in 1987. Thus, we must rely mostly on the formal, written Autonomy Law for our analysis. In an attempt to avoid the pitfalls of an analysis of formal models referred to above, we can try to ascertain the maximum degree of autonomy in national/regional relations that would be afforded by the Autonomy Law.

First, "the resolutions and laws of the regional councils must be in accordance with the laws of the Republic." This is not surprising, and the Philippine Constitution makes the same point. The legislative powers of the autonomous regions shall be "subject to the provisions of this Constitution and national laws."¹⁰ Such restrictions do not necessarily, however, mean that regional laws have to be the same as national laws. For example, in the Nicaraguan autonomous regions "the municipal administration will govern according to relevant law" but the regional council is empowered to "work out a preliminary draft for the division and organization of municipalities in the region...." In short, national laws (including the Organic Act setting up the autonomous region) can specify exceptions for autonomous regions, so that special provisions to take into account

special regional characteristics will still be "in accordance with the laws of the Republic." Naturally, the specification of exceptions is a political matter.

The reader may have noticed the phrase "preliminary draft," above. This brings us to our second point about the Nicaraguan Autonomy Law. Repeatedly this phrase is included in the specifications of powers:

To prepare the *preliminary draft* of the regional budget.

To work out a *preliminary draft* for the division and organization of municipalities in the region, taking into account their social, economic, and cultural characteristics.

To draw up a *preliminary draft* of a law pertaining to the regional use and conservation of natural resources.

Thus, it can be seen from the written version of the Autonomy Law that the maximum degree of autonomy is limited by the need to gain national government approval of these preliminary drafts.

Third, the national/regional link is directed through the regional coordinator, who is elected by the regional council from among its members. The regional coordinator has the function to "comply with and oversee the fulfillment of the policies, guidelines and decrees of the national executive branch." While the Philippine Constitution states that the President shall exercise general supervision over autonomous regions to ensure that the laws are faithfully executed,¹¹ it does not specify through which agency of the autonomous regions this supervision will be exercised.

Fourth, the national/regional link is further specified in the provision of the Nicaraguan Autonomy law that "the office of the regional coordinator is compatible with that of the representative of the presidency in the region." This is a recognition of the great importance of the central government, even in the exercise of regional autonomy. A similar set-up is found in the system of Cabinet Officers for Regional Development (CORDs) in the Philippines. Here, a particular cabinet official is assigned to each administrative region to facilitate regional development. An irony of ironies of decentralization is that it seems necessary (both in the Philippines and in Nicaragua) that it must be accomplished by strengthening links to the center.

Finally, there is the provision in the Nicaraguan Autonomy Law that not only shall the regional budget be drawn from regional taxes (including taxes on profits of enterprises operating in the region), but also from "an earmarked fund from the general budget of the Republic." These are matters of taxation and finance which are also part of the aspects of national/regional governmental relations. We shall be looking at the provisions in the Organic Act that pertain to the fiscal relations of the Cordillera Autonomous Region.

By way of summary of this section, I merely repeat the general conclusion reached in the section on "federalism." The extent and content of autonomy cannot be guaranteed by written formulae. Rather, we have here a **political** question which needs to be settled by political interaction. Just as a long struggle was necessary to obtain the right to an autonomous region, a political struggle will determine the realities of the autonomy. In this politicking, support of both national authorities and local constituencies are vital.

Substance and Bureaucracy

The 1987 Philippine Constitution provides the proposed autonomous regions with legislative powers over the following:¹²

- (1) Administrative organization;
- (2) Creation of sources of revenues;
- (3) Ancestral domain and natural resources;
- (4) Personal, family, and property relations;
- (5) Regional urban and rural planning development;
- (6) Economic, social, and tourism development;
- (7) Educational policies;
- (8) Preservation and development of the cultural heritage; and
- (9) Such other matters as may be authorized by law for the promotion of the general welfare of the people of the region.

As these powers overlap with those of the national government, there is a good deal of room for conflict in any national/regional interrelationship.

Take for example one of the most pervasive issues in the Cordilleras – that of land tenure.¹³ In the Cordillera, the vast majority of inhabitants are, legally speaking, squatters on their own land. Most of the Cordillera is classified as non-alienable and non-disposable. It is public land and as such not available for ownership by the indigenous inhabitants. This anomalous situation was one of the prime motivating factors behind the drive for Cordillera autonomy. Naturally, cognizance will be taken in the Organic Act to insure the indigenous communities' control over their ancestral domain.¹⁴

What is the attitude of the national bureaucracies to such an autonomous move? A representative indication can perhaps be gleaned from pronouncements emanating from the Department of Agrarian Reform (DAR):

Autonomous regions can draft their own [sic] land reform program but they must conform to the provisions of the Comprehensive Agrarian Reform Law enacted by Congress, the Department of Agrarian Reform said....¹⁵

This is a typical agency reaction – that uniformity must be imposed throughout the Philippines. After all, what are bureaucratic standards about, if not consistent application of rules? Yet, such a stand goes against the very rationale for autonomous regions that they need to be treated differently from other parts of the country.

As pointed out in the discussion of the Nicaraguan Autonomy Law, there is some initial plausibility to the stand by the DAR. The 1987 Philippine Constitution does specify that the legislative powers of the autonomous regions shall be subject to the provisions of this Constitution and national laws. . . .¹⁶ Thus, it may seem that any land reform legislation of the autonomous region must conform with the national law on the subject. But, to expand on the assertion of the earlier discussion, it is possible for the autonomous regions to be exempt from provisions of national laws. Inasmuch as the constitutionally-mandated Organic Act will be a national law, it can specify the exclusion of national authority from the areas covered by the legislative powers of the region. In this fashion, the autonomous regions would be truly autonomous, subject only to the provisions of the Philippine Constitution and not to provisions of national law.

Of course, such a solution is (once again) a political one. It will require the mustering of considerable political will for the Congress to allow the region to take full control over the areas of legislative power enumerated in the Constitution. And, since the Organic Act is merely a national law, it could be subject to changes by the national legislature. It is precisely this doubt about the existence of a political will that fuels the arguments of the pessimists. In his remarks to the forum cited above, Congressman Claver specifically cited the opposition of vested interests to bills dealing with ancestral land. It may be that, in the end, the Autonomous Region in the Cordillera will remain subject to the very substantive controls which sparked demands for the establishment of an autonomous region.

We can see how this might happen by looking at the language of the proposed Organic Act with respect to land reform:

Article XXI, Section 11: The Presidential Agrarian Reform Council (PARC) may suspend the implementation of the Comprehensive Agrarian Reform Law (CARL) with respect to ancestral lands in the Cordilleras for the purpose of identifying and delineating such lands: *Provided*, that in the Cordillera Autonomous Region, the Cordillera Assembly may enact its own law on ancestral domain *subject to the provisions of the Constitution and the principles enunciated in this Act and other national laws.*

Notice two things in this provision. First, the suspension of the CARL is at the discretion of a national agency, the PARC. Secondly, even after the suspension, the law passed by the regional government must be "subject to . . . the principles enunciated in . . . national laws." On both these counts, the freedom of the regional government to maneuver is restricted. We can see the heavy hand of

the national government in substantive directions in a policy area vital to the interests of the Cordillera.

This example provides an introduction to an analysis of the provisions of the proposed Organic Act which bear on the points raised above.

Proposed Organic Act and National/Regional Relations

We shall begin with a general discussion of the extent to which the actions of the regional government will be subject to the will of the national government, finding a great deal of possible control by the national government. Then, we shall examine a number of separate provisions bearing on national/regional relations in the areas of supervision by the President and agencies not within the control of the Autonomous Government. Finally, we shall look at the implications of some fiscal provisions for intergovernmental relations.

It will be remembered that in preceding sections of this paper, I argued that the Constitutional provision – that the legislative powers of the autonomous regions shall be "subject to the provisions of this Constitution and national laws" – does not necessarily mean subservience to the national government. The Organic Act could (as a national law) specify as to when the Autonomous Government might be exempted from other, substantive, national laws.

However, as a reading of the proposed Organic Act reveals, the Congress did no such thing. In fact, rather than specifying exemptions from substantive national laws, the Organic Act as proposed by Congress repeatedly specifies that provisions are subject to national laws and policies. On the following page is a listing of the range of provisions in the proposed Organic Act (along with the Article and Section numbers) which include the phrases "subject to" or "consistent with" national laws or policies.

We can see that the subject matters so constrained include many which form the justification for having autonomous regions. Economic, social, and cultural matters are found in the Table. Economic matters are controlled by national policies via provisions of Article II, Sections 18 and 19; Article XIII, Sections 6, 7, and 9; and Article XIV, Section 3. Natural resource provisions are found in Article VIII, Section 4; and Article XII, Sections 4 and 5. The use of customary law is subjected to national laws or policies in Article X, Section 5 and Article XI, Section 5. Ancestral domain is referred to in Article XI, Section 1 and Article XXI, Section 1. Educational and cultural matters are restricted by this phrase in Article II, Section 9; and Article XV, Sections 1 and 1(b). Human rights and peace policies must be within the national thrusts, as specified in Article II, Section 27 and Article XVII, Section 1.

**Provisions that are Subject to,
Consistent with, or Within the Framework of
National Laws, Policies and Goals**

Area of Concern	Provision (Article; Section)
	The Regional Government shall:
Economic	<p>provide incentives to investors, corporations and businesses but shall adopt measures to prevent the exploitation of natural and human resources (II:18).</p> <p>review all forms of future aid or loans to local government units in order to safeguard autonomy and enhance development (II:19).</p> <p>evolve a system of economic agreements or trade compacts to generate block grants for regional investments and improvements of regional economic structures (XIII:6).</p> <p>insure that donations or grants to the Autonomous Region . . . shall be deductible in full in determining the taxable income of the donor or grantor (XIII:7).</p> <p>insure that foreign loans may be contracted (XIII:9).</p> <p>encourage and regulate foreign investments and the exportation of indigenous products, in accordance with its goals and priorities (XIV:13).</p> <p>set guidelines for energy production, public transportation and communications (II:20).</p>
Agrarian Reform	<p>adopt and implement a comprehensive urban land reform and land use program (XII:13).</p>
Use of Natural Resources	<p>insure that local government units are entitled to an equitable share in the proceeds of the utilization and development of the natural resources within their respective areas (VIII:4)</p> <p>except for strategic minerals such as uranium and others as may be defined by national law, insure that the control and supervision over . . . natural resources of the Autonomous Region is hereby delegated to the Regional Government (XII:4).</p> <p>enact laws pertaining to the natural resources of the region. Such legislative authority may relate to mineral, energy and forestry resources management (XII:5).</p>
Use of Customary Law	<p>insure that the acquisition, disposition and encumbrance of property in accordance with customary laws of the place shall be recognized and protected (X:5).</p>

Table cont.

Area of Concern	Provision (Articles: Section)
	The Regional Government shall:
	pass, within a period of ten (10) years . . . laws relating to customary tenure of land and communal property including the rights and usages connected thereto (XI:5).
Ancestral Domain	insure that all lands and natural resources in the Autonomous Region that have been possessed or occupied by indigenous cultural communities since time immemorial, except when prevented by war, force majeure or other forms of forcible usurpation, shall form part of the ancestral domain (XI:1).
	enact its own law on ancestral domain (XXI:11).
Education and culture	establish . . . an educational system (II:9).
	exercise legislative powers over regional educational policies and cultural matters . . . (XV:1).
	insure the development of curricula relevant to the cultural heritage, and to the economic, social, political, and moral needs of the people in the Autonomous Region [XV:1 (b)].
Human rights and peace	pursue reconciliation efforts and promote peace and demilitarization in the region (II:27).
	create the Cordillera Commission on Human Rights (XVII: 1).

So, we can see an effort by the Congress to systematically restrict the policy-making power of the Autonomous Government. This effort is made all the more obvious by a reading of the draft prepared by the Cordillera Regional Consultative Commission (CRCC). We see that most of these provisions were in the CRCC draft, but that Congress inserted the phrase "subject to" or "consistent with" national laws and policies. So, while Congress and the CRCC agreed on the range of powers to be exercised by the Cordillera Autonomous Government, the Congress consistently felt the need to qualify those powers by subjecting them to national laws and policies.

A similar insertion between the CRCC draft and the proposed Organic Act as passed by Congress is found in Article IV, Section 4:

The President shall exercise general supervision over the Regional Government including the local government units therein, directly or, through the Cordillera Governor, to insure that national and regional laws are faithfully executed (emphasis added).

The CRCC draft had said:

The President of the Philippines shall supervise the region through the Regional Governor.¹⁷

As noted in the discussion of the autonomous regions in Nicaragua, the Philippine Constitution had not specified through what agency the President would exercise general supervision. The CRCC draft attempted to specify the Regional Governor as that agency, but the Congress inserted the possibility of bypassing the chief executive of the autonomous region. Again, we have subordination of the regional government to the national.

Another change from the CRCC draft to the proposed Organic Act as passed by Congress has to do with the independent commissions: Civil Service, Auditing, and Elections. The CRCC draft devoted an entire article (Article VII of the CRCC Draft) to the establishment of a Cordillera Electoral Commission, Cordillera Audit Commission, and Cordillera Civil Service Commission (all independent, as would be police and human rights commissions). The proposed Organic Act as passed by Congress, on the other hand, specifically reserves these matters for the national government in Article III, Section 3(B.i.10). Given the importance of these matters, especially auditing and civil services for the daily operation of government, shifting their control from the Autonomous Region to the national government involves the shift of a great deal of power.

Up to now we have been citing provisions which tend to limit the autonomy of any Cordillera regional government. It is true that in many provisions, the Congress chose to emphasize the subordination of the regional government to the national government. However, Congress did in fact substantially increase the fiscal autonomy of the regional government over the current situation of local government units in the Philippines. This is not the place to review the entire topic of fiscal relations. Rather, I will just make some remarks on how fiscal matters relate to intergovernmental relations.

Article XIII of the proposed Organic Act, Fiscal Autonomy, begins in Section 1 with:

The Regional Government shall have the power to create its own sources of revenues and to levy taxes, and charges, subject to such limitations as the Constitution and this Act may provide. . . .

We can contrast this with the normal revenue powers of a local government unit as specified in Chapter 2, Section 8 (1) of the Local Government Code:

Each local government unit shall have the power to create its own source of revenue and to levy taxes, subject to such limitations as may be provided by law.

Clearly, there is an increase in the powers of the Cordillera Autonomous Region over those of a typical local government unit, as the limitations are only those specified in the Constitution and the Organic Act itself, and not other national laws (as is the limitation in the Local Government Code). This is an instance where Congress followed the procedure outlined above, of specifying in the Organic Act (a national law) that the Autonomous Region would be insulated from other national laws.

The major limitation set out in the Organic Act is that income taxation . . . shall be solely the concern and prerogative of the National Government.¹⁸ But even with respect to income taxes, they are to be paid to the region and local governments (that is, in the area of businesses' operation, rather than at the location of their principal offices)¹⁹ and then remitted to the national government after the local share has been deducted.²⁰ In other words, the revenues generated automatically stay with the lower levels of government. This is in stark contrast with the current practice of local governments having to wait for the national government for revenues, much of which were paid at business offices in the national capital region.

Thus, by increasing the revenue powers of the Autonomous Region, by specifying that taxes shall be paid where corporations actually operate, and by stipulating that the local government units automatically retain their share of revenues before passing the remainder on to higher levels, the proposed Organic Act increases the autonomy of the local government units.

We see here the sort of decentralization that has been long urged for the Philippines.²¹ The granting of regional autonomy is one of the current manifestations of decentralization, making it attractive to some leaders. Still, an autonomous region is not the same as greater autonomy for local government. The idea behind the Constitutional provision for autonomous regions is to allow the separate development of peoples with distinctive cultures and traditions. The granting of greater fiscal autonomy does not change the overall rationale for

an autonomous region. Regional problems and characteristics are sufficiently different as to suggest the necessity for a different form of government.

When we look beyond fiscal autonomy to the more general considerations of the autonomous development of the Cordillera, we see (as outlined above) many restrictions imposed by Congress. It must be reiterated that at the bottom, the question of regional autonomy is a political one. The Organic Act, if ratified in the plebiscite, will need political will to implement in ways conducive to the welfare of the inhabitants of the Cordillera.

Intraregional Relations

Another level of discussion of intergovernmental relations has to do with the relation between the regional government and local entities. In a sense, indigenous Cordillera political communities have been practicing "local autonomy" from time immemorial, with each village being autonomous from every other village. The setting up of a regional entity is an entirely different enterprise, raising the danger that the government in the regional capitol would be as insensitive and overbearing as the national government is perceived to be. Structuring the autonomous region is of utmost importance so as to avoid this danger.

In 1988, as the draft of the Organic Act was being prepared by the Cordillera Regional Consultative Commission, there were published reports in the local papers of discussions on "internal federalism" or "autonomy within autonomy." Thus, this part of the paper begins, once again, with a discussion of federalism. This discussion will then lead to a consideration of the relation between formal governmental structures, and the informal indigenous political institutions. Finally, it will once again examine the provisions of the proposed Organic Act in the light of the points made in the theoretical discussion.

Federalism

Riker²² offers the following definition:

Federalism is a political organization in which the activities of government are divided between regional governments and a central government in such a way that each kind of government has some activities on which it makes final decisions.

Aside from the possible confusions arising from the fact that our "regional" is Riker's "central," and our "local" his "regional," this is a useful definition.

Notice that one common notion of federalism is not included in this definition. Often, it is said that certain functions are left to central government while others are reserved to the local units. Empirically, it is not true that successful

(that is, those that continue to exist) federations divide their powers in this manner. Typically, there are many functions which are shared by the levels of government, with each having some decision-making powers. The reader will anticipate by now that I will say that the arrangement of decision-making powers is a political one.

In fact, Riker maintains that the very decision to form federations is in response to internal or external threats, and a willingness on the part of local politicians to give up some of their independence in order to deal with this threat. Analyzed from this perspective, some of the history of debate about Cordillera autonomy achieves a new significance.

In the beginning, many of the professional and political class did not agree on the need for regional autonomy. A desire for the creation of an administrative region in the Cordillera was evinced, but only to insure that the problems of the areas were not neglected (as they were in the previous administrative setup, with the Cordillera provinces being attached to more populous lowland provinces). Subsequently, it was from an organization drawn from this stratum, the Cordillera Broad Coalition (CBC), that the first call came for a federal system in the Cordillera. The organization's "Statement of Position on the Cordillera Autonomous Region"²³ called for popular assemblies to draft provincial charters (and one for Baguio City), "the same charters to serve as a basis for a draft regional charter."

If Riker's thesis is correct, this call should be in response to some perceived threat. While there is no direct evidence, there seems to be two sources of such a perception. The first is that the national government was in negotiations with Father Conrado Balweg's Cordillera People's Liberation Army/Cordillera Bodong Administration (CPLA/CBAd), whose negotiations did not appear to be leading to a conclusion acceptable to the members of the CBC. Secondly, and more generally, the new Constitution had mandated an autonomous region, and so there was the "threat" that such a region would be created in any case. Hence, there was an incentive to help shape autonomy into an acceptable form.

And, there is the curious twist that the organization responsible for placing the provision in the Constitution, the Cordillera People's Alliance (CPA), was no longer part of the process of instituting autonomy. The CPA had been effectively marginalized by the negotiations with Balweg's CPLA, and had thus lost faith in the national government. The result is that the original perception of threat by the CPA, that of dominance by an alien culture and exploitation of resources by outsiders, was replaced in a sense by the "threat" perceived by other Cordillera sectors that autonomy would be defined in unacceptable ways.

The result is a shift in emphasis from the CPA's call for "grassroots empowerment through people's organizations" to the current call for "internal

federalism." The latter, naturally, is based on local units of government, either the provinces or the municipalities. The question arises as to whether or not the municipality is the appropriate unit that could serve as the venue for political action. It certainly is for the political elite of the Cordillera which structures its perceptions according to the existing governmental boundaries (province and municipality).

Executive Order No. 220, creating the Cordillera Administrative Region, tried to take into account possible objections to utilizing the municipality as the only basic unit. In the Cordillera Regional Assembly there are representatives of "tribes" and non-governmental organizations (NGOs) as well as municipal and city representatives. In this fashion, political action which is structured along non-traditional governmental lines could be accommodated.

The Cordillera Regional Assembly under EO 220 was appointive, while the Philippine Constitution mandates that the legislature and executive of the autonomous regions be elected. It does not take too much to see that the notion of electing representatives from NGOs or "tribes" would pose grave difficulties. Election by territorial district (such as municipalities or provinces) would be much simpler, but would not necessarily provide safeguards on the ability of the local governments to make decisions on some matters.

In general, for autonomy to succeed it must be made worthwhile to officials of subordinate units to campaign for autonomy. The mayor of Mankayan, Benguet, which houses a large scale mine, called for the retention of one-half of the local revenue for the municipality. This would increase his budget from 1.5 million pesos to 22 million pesos. Clearly, he would be in favor of autonomy within autonomy. At the same time, less prosperous municipalities would presumably want to limit the degree of autonomy within the autonomous region, so as to have some access to the revenues generated in the more prosperous communities.²⁴ So, any call for internal federalism must recognize that the political process has to settle these sorts of questions.

Indigenous Political Institutions

Finally, at the fringes of the topic of intergovernmental relations lies the question of how to deal with the indigenous political institutions. The work of June Prill-Brett²⁵ is most relevant here, so I will merely make a few remarks.

First, it happens that municipal boundaries generally respect indigenous boundaries. This is reflected in census data which show that most of the municipalities have concentrations of over 90 percent of one ethnic group. At a micro level, examination of indigenous territorial boundaries shows that these groups tend to remain within one municipal boundary.

However, there are usually more than one indigenous political community in a municipality. The current legal subdivisions of municipalities are "barangays," and it is often not the case that barangays and indigenous political communities are co-extensive. However, the redrawing of boundaries can be left to the government of an autonomous region (as it was in the Nicaraguan Autonomy Law) and certainly need not be done in an Organic Act. Among other observations, more intensive research on local boundaries has to be undertaken.

The relation between the barangay and the indigenous political community is not merely a territorial one. Prill-Brett's research has found informal accommodations between the two, with village elders being chosen as barangay officials, or a division of labor between the two institutions. Often, dispute settlement remains with the indigenous political community while responsibility for infrastructure (e.g., paths, bridges) is relegated to the barangays which have access to governmental funds.²⁶ Again, further research into this division of labor, and later legislation by a functioning autonomous government may be called for.

The need for further research holds true for the codification of traditional law. At the present time, indigenous dispute settlement still takes place, and it needs to be recognized in any institution of autonomy for the Cordillera. However, the Organic Act is not the place to legislate on detailed matters. The process of codification will be a long one—it is for a future political process to fill in the details.

Proposed Organic Act and Intraregional Relations

We can begin this last section by looking at the general provisions regarding the relation between local government units and the proposed Cordillera Autonomous Regional government. Then, we will look briefly at fiscal autonomy as it affects regional-local relations. Finally, we will specify some of the provisions relating to respect for indigenous political practices.

Once again, it is instructive to begin with a contrast between the draft Organic Act of the CRCC and the proposed Organic Act as passed by Congress. The CRCC draft states that "The Autonomous Region is a federation of the component provinces and cities."²⁷ The proposed Organic Act as passed by Congress contains no such provision, thus dimming the prospects of "internal federalism."

Still, the proposed Organic Act does say that "nothing in this Act shall be construed to authorize the diminution of the powers and functions already enjoyed by local government units."²⁸ With particular reference to Baguio City, we have:

Cities within the Autonomous Region shall be governed by their charters. Nothing herein shall be construed in any manner as to diminish the powers and functions already enjoyed by these cities.²⁹

In general, "the Local Government Code shall be applicable" until the regional government implements "a policy of devolution of powers and functions...."³⁰

The proposed Organic Act thus preserves the current level of local government autonomy, limited as this autonomy may be. And in the provision just cited, it mandates: "the Regional Government shall pursue a policy of devolution of powers and functions...."³¹ Further, the proposed Organic Act states:

The powers and functions of government in the Autonomous Region granted under the...Constitution shall be, where appropriate, shared and exercised by the Regional Government and the local government units.³²

As we can see, the proposed Organic Act holds out the possibility for eventual increases in the autonomy of local government units, but it does not provide any immediate move in that direction.

With respect to supervision of local government units, the proposed Organic Act is definitely ambiguous. As noted above, Article IV, Section 1 states:

The President shall exercise general supervision over the Regional Government including the local government units therein, directly or through the Cordillera Governor, to insure that national and regional laws are faithfully executed.

In this provision, we cannot tell who will be the supervising power. Whether the President or the Regional Governor, the extent of local government autonomy will not increase until the actions of local government units are governed by something other than the current Local Government Code.

The provisions on fiscal autonomy, cited above in the discussion of national/regional relations, also apply to local government units. The local units are empowered to retain automatically their share of national revenue collected in their jurisdiction, thus obviating the need to wait for national government action. This represents a step forward for local level independence, but such a step is limited by the small amount of revenues collected in most Cordillera municipalities.

A potentially large step would be to assert that "local government units are entitled to an equitable share in the proceeds of the utilization and development of the natural resources within their respective areas." But as we saw in the listing of provisions, the Philippine Congress made this provision subject to "nation-

al policies."³³ Thus, the basic principle that exploitation of natural resources should benefit the community concerned is asserted in an equivocal manner.

With respect to the existence of indigenous political institutions, the proposed Organic Act attempts a balancing act. On the one hand, it asserts non-discrimination: "without distinctions based on ethnic origin, sex, language...."³⁴ Thus, the qualification for holding office in the proposed Cordillera Autonomous Region is five years residency. Or, as noted in the listing of provisions, it makes customary property and tenure rules subject to national laws and policies.³⁵

On the other hand, the proposed Organic Act does attempt to recognize the existence of indigenous political institutions. It mentions the "ili" where applicable"³⁶ as a unit of local government. When setting out the terms of office of the lowest level officials (barangay and ili) the provision cites the need to include customary law in determining the length of the term.³⁷

Still, the proposed Organic Act in fact leaves most of the details on accommodating traditional structures to the future. Indigenous courts are still to be set up by the Autonomous Government, in consultation with the Supreme Court; and a Council of Elders may be set up.³⁸ The laws on ancestral domain must be passed within 10 years.³⁹ Most generally, a Cordillera Commission on Customary Laws is to be set up within one year, to submit its report within five years, to codify indigenous laws and to demarcate ancestral lands.⁴⁰

So, while the initial impulse to autonomy for the Cordillera grew out of the distinctiveness of the indigenous peoples living there, the proposed Organic Act does not fulfill any specific set of cultural aspirations. This conclusion should not surprise us, since it is the same as the one reached at the end of the section on national/regional relations.

In short, should the proposed Organic Act for the Cordillera Autonomous Region be ratified in a plebiscite, it will not represent the triumph of autonomy. Rather, it would represent a new stage in a political struggle.

Endnotes

¹Republic of the Philippines, *1987 Constitution*, art. X, sec. 15.

²The preparation of this paper followed several steps. In July 1988, as part of a Cordillera Studies Center (CSC) briefing for the incoming Commissioners of the Cordillera Regional Consultative Commission, I made an oral presentation of "models of autonomy" focusing on the Malaysian experience with federalism and the Nicaraguan model of autonomy for indigenous peoples. Then, in November 1988, I presented a draft of this paper in a symposium entitled *Decentralization and the Cordillera Autonomous Region* co-sponsored by the CSC and the Friedrich Ebert Stiftung. Finally in late 1989, I revised the paper, adding comments derived from the proposed Organic Act as passed by Congress and signed by President Aquino.

³This and the following paragraph of the constitutional status of federalism are based on the presentation of Adolfo Azcuna, "The View of the Constitutional Commission" in *Issues on*

Cordillera Autonomy: Conference Proceedings, ed. Steven Rood (Baguio City: Cordillera Studies Center, 1987).

⁴This discussion of Malaysia is drawn from R. S. Milne and Diane K. Mauzy, *Politics and Government in Malaysia* (Singapore: Times Books International, 1980), especially Chapter 6, "Federal-State Relations."

⁵Republic of the Philippines, National Economic and Development Authority (NEDA), *Medium-Term Development Plan: 1987-1992* (Manila: NEDA, 1988).

⁶See the *Far Eastern Economic Review*, 26 May 1988.

⁷*Baguio Cordillera Post*, 9 October 1988, p. 5.

⁸Most of the material on regional autonomy in China and Nicaragua is drawn from the Cordillera Resource Center, *International Models on Regional Autonomy* (Baguio City: Cordillera Resource Center, 1988).

⁹For material on the current situation in, and disputes about, Tibet, see the *Far Eastern Economic Review*, 15 October, 19 November and 10 December 1987; and 4 February and 17 March 1988.

¹⁰1987 Constitution, art. X, sec. 20.

¹¹*Ibid.*, sec. 16.

¹²*Ibid.*, sec. 20.

¹³A short treatment of the issues involved in tenurial systems can be found in June Pril-Brett, "Preliminary Perspectives on Local Territorial Boundaries and Resource Control," *Cordillera Studies Center Working Paper 06*, Baguio City, August 1988. A longer study on this topic is Ma. Fe Caces, et al., *Land Tenure Study* (Baguio City: Cordillera Studies Center, 1987).

¹⁴See number 3 of the legislative powers listed in art. X, sec. 20 of the 1987 Philippine Constitution.

¹⁵*Philippine Daily Inquirer*, 23 October 1988, p. 9.

¹⁶1987 Constitution, art. X, sec. 20.

¹⁷Article III, sec. 4 of the Draft Organic Act prepared by the Cordillera Regional Consultative Commission.

¹⁸Republic Act No. 6766 (*Act Providing for an Organic Act for the Cordillera Autonomous Region*), art. XI, sec. 2.

¹⁹*Ibid.*, sec. 3.

²⁰*Ibid.*, sec. 5.

²¹Alex B. Brillantes, Jr., "Decentralization in the Philippines: An Overview," *Philippine Journal of Public Administration*, Vol. XXXI, No. 2 (April 1987), pp. 131-148.

²²William H. Riker, "Federalism," in *Handbook of Political Science*, ed. Fred I. Greenstein and Nelson W. Polsby (Reading, Massachusetts: Addison-Wesley Publishing Co., 1975), p. 101.

²³Rood, *op. cit.*

²⁴Research shows that the only real obstacle to administrative capability in the Cordilleras is lack of funds. Perlina Montilla, "Administrative Capability of the Mountain Province Provincial Government," paper presented to the Cordillera Regional Consultative Commission, Baguio City, 19 July 1988.

²⁵ June Prill-Brett, "A Survey of Cordillera Indigenous Political Institutions," *Cordillera Studies Center Working Paper 05*, Baguio City, December 1987; Prill-Brett, *op. cit.*

²⁶ On the barangays, see also Violeta Adorable, "Introduced Community Political Institutions," paper presented to the Cordillera Regional Consultative Commission, Baguio City, 19 July 1988.

²⁷ Article III, sec. 1 of the Draft Organic Act prepared by the Cordillera Regional Consultative Commission.

²⁸ *Republic Act No. 6766*, art. III, sec. 2.

²⁹ *Ibid.*, art. VIII, sec. 6.

³⁰ *Ibid.*, art. II, sec. 14.

³¹ *Ibid.*

³² *Ibid.*, art. III, sec. 3(a).

³³ *Ibid.*, art. VIII, sec. 4.

³⁴ *Ibid.*, art. II, sec. 6.

³⁵ *Ibid.*, art. X, sec. 5; art. XI, sec. 5.

³⁶ *Ibid.*, art. VIII, sec. 1.

³⁷ *Ibid.*, art. VIII, sec. 5.

³⁸ *Ibid.*, art. VII, sec. 1.

³⁹ *Ibid.*, art. XI, sec. 5.

⁴⁰ *Ibid.*, art. XXI, sec. 12.

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