

On municipal autonomy (II)

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In my last column, I explained the importance of municipal autonomy with regards to citizen participation in government, deepening our democracy and for the more efficient governance of Puerto Rico. I pointed out this was not well-understood and the Legislature, the judiciary and the executive branch were constantly chipping away at the autonomy granted to the municipalities during my last term as governor.

I was glad to see last week that Chief of Staff Jorge Silva Pura's re-engineering plan for a more efficient government includes turning over maintenance of schools and tertiary roads and certain other tasks to the municipalities. This is a step in the right direction, but if we are to think strategically about providing more efficient government on a long-term continuing basis, we must address the flaw in our Constitution regarding municipal autonomy. As I said in my last column, the foremost expert on government at the time, Dr. Carl J. Friedrich, who was an adviser to the convention, pointed out this was the most important flaw in the Commonwealth Constitution. In this and succeeding columns I will go into the nature of the constitutional amendment we need.

In order to provide for a more effective democracy, the people of the municipalities should be empowered by the Constitution to govern themselves in local affairs through autonomous municipal governments. This would do away with the centralist doctrine that municipalities are creatures of the Commonwealth government. The amendment should provide for elections to be held every four years to elect the mayors and municipal legislators. These elected officials should no longer be removed for improper conduct by the governor or by a commission of the central government as they are now. The amendment should provide for removal in case of improper conduct through legal proceedings brought before the courts of the Commonwealth.

Having established the source of power for the municipal governments is the people of the municipalities and provided for elections every four years, the scope of municipal power must be defined in the Constitution. The principle of subsidiarity should be the criterion to distinguish between local affairs that should be handled by municipal governments and islandwide affairs that should be handled by the central government. The principle of subsidiarity—that problems should be attended to by the unit closest to the people—holds that when municipal government has the resources or can be provided with the resources to attend more efficiently to whatever matter municipal government should have the power to do so and the subject matter concerned should be deemed local.

If the subject matter needs to be attended in a uniform way beyond the borders of any one municipality and requires the resources to deal with it efficiently on a regional or islandwide level, then central

government should attend to it. The Legislature would continue to have the power to decide which matters are not local and thus the responsibility of central government. The amendment, however, would require the Legislature to respect the principle of subsidiarity in making that decision.

Let us take an example to see how this would work. Today, taxi service within the municipalities is regulated by central government through the Public Service Commission. Suppose the Constitution is amended to provide for municipal autonomy over local matters with the principle of subsidiarity as the criterion to distinguish matters of a local nature. Let us further suppose that the Legislature of the Municipality of Ponce finds taxi service in Ponce is grossly inefficient and approves a municipal ordinance regulating taxi service in Ponce, requiring municipal licensing of taxis, establishing an office to handle these matters and appropriating the funds to run that office. The Public Service Commission then sues the municipality to annul the ordinance because it is contrary to the Public Service Law administered by the commission.

Once the amendment is passed, the courts would have to apply the principle of subsidiarity to resolve the conflict between Ponce's municipal ordinance and the Public Service Law. Applying that principle, the courts would uphold the Ponce Municipal Ordinance because taxi service does not go beyond municipal boundaries and the municipality has the administrative capability to regulate and license taxi service within the city.

This example also sheds some light on how centralized our government is. I know of no state of the union where taxi service or other local services are regulated by the state government for the whole state. But, in Puerto Rico, we do not even think such a matter should be regulated by the municipalities. Yet, the needs for these services are felt locally by citizens who are not empowered to deal with the problem locally. Although there are regional offices of the Public Service Commission and other agencies, decisions are made in San Juan. Thus there is no effective democratic accountability. Centralization has bred grossly inefficient government in Puerto Rico. Municipal autonomy would represent a great leap forward in better governance for this island.

The autonomic framework set out by the principle of subsidiarity will not automatically alter the distribution of competencies now existing between central government and the municipalities. At the beginning, the jurisdictional scales will maintain the same balance. But, given the authority to provide solutions to local problems now poorly attended to by central government, the municipalities will begin to take initiatives to address their own problems because there will be increasing pressure from their residents to do so. These initiatives will usher in a process of readjustment of competencies in different degrees between the different municipalities—large or small—and central government. The adjustments will take place through tolerances, express agreements, legislation or litigation. In the end, and given other changes that I will explain in future columns, we would have a better functioning democracy in Puerto Rico.