

On municipal autonomy (III)

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Volume: 34 | No: 45

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Issued : 11/16/2006

This is my third column on a constitutional amendment to provide for municipal autonomy in Puerto Rico. The lack of it is the principal flaw of our Constitution. In my past two columns, I pointed out that such an amendment should empower the residents of the municipalities to govern themselves through democratic procedures. Today, the municipalities are creatures of the Legislature. The democratic processes for municipal government exist at the pleasure of the Legislature.

The scope of local government should be defined in the amendment by the principle of subsidiarity, which requires the powers of government should be allocated to the *municipios* if the municipality has, or can be provided with, the wherewithal—administrative and financial—to attend to the problem. That is, problems should be attended to by the unit of government closest to the citizens.

Now, I turn to other features that should be provided in the amendment for municipal autonomy. Municipal governments should be constitutionally invested with corporate personae, with full power over municipal finances, with the power of eminent domain, and with dominion over municipal assets and spaces dedicated to public use—streets, plazas, tertiary roads—within their territory.

Some will ask whether this is not the case today. Well, strange as it may seem, no. Under our archaic creatures-of-the-state doctrine, central government can take municipal properties by law at its pleasure without paying compensation to the municipality. It happened—not recently—to the municipality of San Juan with regards to its aqueducts. And this taking was sanctioned by our Supreme Court. The pernicious doctrine that the municipalities are creatures of the state, and therefore central government can do with them as it pleases, is so embedded in our jurisprudence that it must be constitutionally eviscerated.

Giving the municipalities full power over municipal finances in a constitutional amendment, requires identifying their sources of revenue and providing them with the authority to access the bond market. The availability of resources with which to govern is essential to autonomous government.

The constitutional amendment should provide for municipal participation in central government's revenue. The exact amount should be left open for the Legislature to determine. From a practical standpoint, this would mean they would start out with the present allotment, but that such a minimum would be constitutionally guaranteed. From this source, central government should create an equalization fund. This fund would be distributed among all municipalities compensating for the limited capacity of the smaller ones to meet their revenue requirements.

Going further, the municipalities should be able to levy surtaxes over matters taxed by the central government. If such a provision were in force today, the Legislature would not have had to provide for the 1.5% sales tax for the municipalities because they would have had the power to do this on their own.

The centralist mentality embedded in our thinking about government will immediately react negatively to such an empowerment. This will lead to different levels of taxation and deficient administration, they will say. The smaller municipalities do not have the capacity to impose and administer such taxes, they will add.

I do not subscribe to such paternalism. Local officials must be empowered so they may assume political responsibility. Being able to levy a surcharge does not mean they have to impose it, or to impose it for a certain amount. It means they have the authority to do so to attend to the needs of the municipality. Imposing it will require political and administrative judgment.

This is the type of mental exercise necessary to political maturation that will turn the municipal governments into schools of democracy. The levels of the surtaxes will be what the market can bear. The market is a great corrector of governmental decisions in a democracy. If a municipal government oversteps the limits that prudence dictates in levying a surtax, it should not be up to Big Daddy central government to spank them but for the municipal electorate to do so at the next election. This is what growing up in a democracy is all about.

Participating in central taxation through devolution of a certain percentage of revenue and through surtaxes imposed at the municipal level will not be enough to attend to municipal responsibilities. The traditional municipal sources of revenue—*patentes* and property taxes—should be constitutionally allocated to the municipalities. This would transfer the responsibility for collecting these taxes to the municipalities. Currently, they all collect the *patentes* but property taxes are collected by CRIM, a central government agency.

CRIM should be abolished and each municipality should assume responsibility for collecting its property taxes. Again, we would hear the story that the smaller municipalities cannot do this. Of course they can if they have to, but given the choice of doing so on their own or relying on central government, they will rely on the central government. Centuries of centralism have instilled in them a dependent mentality. Again we come back to the issue of political maturation. Autonomy means assuming responsibilities, which leads to better government.

Given these sources of revenue, the municipalities should be able to access the bond market. But doing so should be their responsibility, not that of the central government. This does not mean the Government Development Bank should not be their fiscal agent. It does mean, however, that Section 2 of Article VI of the Constitution should be amended so the municipalities can exercise their judgment as to the credit they need and the guarantees provided to the bondholders be extended to bonds issued by the municipalities on their own authority.

These amendments would permit our municipalities to gain a solid financial position from which to exercise their autonomy. In my next column, I will go into other matters regarding municipal autonomy, necessary for providing a better government for Puerto Rico.

