

Taiwan's Local Government Reform – Unresolved Issues

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If people were asked to vote on the most important legal system reform in Taiwan in 2010, the amendment of the Local Government Act that gave birth to five special municipalities could be expected to win with the highest number of votes. For political scientists the change to a local government system with five metropolitan areas has created a number of brand new research topics such as interpreting the outcome of the recent municipal elections, the changing political landscape etc. But as far as the legal system is concerned, it seems that at the back of the change to a five special municipality system there is a host of political plots that lacks long-term integrated planning and reasonable debate.

To be more precise, the local government system does not only pertain to the rights of local residents, but also involves different legalistic issues such as: The delineation of powers between central and local government, administrative divisions, government budget allocation, the electoral system, social welfare and other related issues. When promoting major reforms regarding these important issues those in power should therefore only formally launch reforms after these have been discussed at length, with prudence and

from many aspects. Yet the Ma government caused earthshaking changes in Taiwan's local government system at the end of 2010, just by slightly amending several articles of the Local Government Act in March this year. The system change created a number of challenges that were not carefully considered beforehand. Exactly the same goes for the creation of the vague term “quasi-special municipality” in May 2007. On the whole the new system with five special municipalities has not only failed to alleviate the pathological phenomena that the local government system faces, but has even aggravated its illness. In order to bring the disease under control, we need to take another look at a number of unfinished legalistic issues.

Clarifying Criteria for Central-Local Division of Power

The division of powers between central and local government is the root of all problems. It does not only pertain to sharing government revenue between central and local government, but is also crucial for realizing local self-government. The difficult delineation of power between central and local government is a major problem that has

been nagging local self-governments for a long time and proven difficult to solve. It has already been proven more often than not that Sun Yat-sen's theory of equal powers only juggles with terms while lacking substance. This is reflected in the legal system. Up to today many Taiwanese laws and regulations still stipulate that "The competent authority referred to in this Act means the ... at the central government level, the...in Taiwan province or provincial level cities, the... in counties or county-level cities," which means that each level of government has jurisdiction regarding the same matters. But in theory there should be only one single competent authority and it should be clearly decided whether a matter falls under the authority of central or local government after all. The traditional legislative approach of "a multiple level division of powers" cannot solve this problem, but instead causes a passive power conflict when the central government shifts responsibility onto others, and is therefore not worthwhile.

As a result, the delineation of powers is still the precondition for clarifying the relationship between central and local government. No matter whether we opt for "equal powers" or "a multiple level division of powers," it would be sensible to take this decision from a legalistic perspective. The question whether there is a better legal system

that could even more appropriately solve the controversy over the division of powers, is certain to trigger another heated debate. But I am convinced that we could find a better model for the division of powers, if those in power had only the patience for an extensive, prudent discussion of the matter.

Reconsidering the Central Government's Legislative Monopoly

An important core principle of local self-government is the exercise of local legislative power. But what will happen if local law and national law conflict with each other? Under unitary governments the general approach is practically that local law must not conflict with national law. Article 30 of the The Local Government Act states exactly this intention: "Self-government ordinances shall become invalid if contradictory to the Constitution, laws, regulations promulgated in accordance with law, or self-government ordinances of the superior self-governing bodies." Yet it deserves some deliberation that, when national law is too tight, the leeway that local governments gained from legislative freedom could be constricted or even reduced to nearly zero at any time. If we still unconditionally abide by Article 30 of the Local Government Act in such cases, the central government will have a "legal monopoly" that will kill local

legislative power.

Therefore, the traditional view that central government law rightly supersedes local government ordinances needs to be properly restricted, so that the legislative power of local governments and the spirit of democratic self-government can be truly realized. When central government laws are formulated or amended in the future, a conservative, restrained attitude that respects local legislative leeway should be adopted, when it comes to matters pertaining to local self-government. A loose model of lawmaking that focuses on principles and frameworks should replace the traditional lawmaking model that covers the smallest detail.

Doubts About the Allocation of Tax Revenue

Getting a greater share of the money was a driving factor behind the creation of the five special municipalities. Those who were upgraded to special municipality status would join the winners, since they gained the same advantage in tax revenue allocation that the two original special municipalities Taipei City and Kaohsiung City already enjoyed. Now that five special municipalities have been formed, they will get a combined 61% share of centrally allocated tax revenue, up from the present 43%.

Yet given that the special municipalities get a greater share of fiscal resources, shouldn't the remaining counties and cities feel somewhat wronged? Admittedly there has never been a lack of theories which argued their point saying revenue should be allocated proportionally or based on a mathematical formula. Based on the meaning of the term "centrally allocated revenue" what should be the goal of letting the central government control these fiscal resources? It should be using central government intervention to prevent local disparities from overly affecting the basic welfare standard citizens generally ought to enjoy, given that regional development tends to be uneven if we let it run its natural course. To put it more simply, revenue should be allocated by the central government as assistance in times of need and not as icing on the cake. Therefore the author believes that local self-government bodies that already have a quite complete basic infrastructure and social welfare services such as Taipei and Xinbei cities should no longer receive centrally allocated revenue. But local governments that rather lack basic infrastructure and welfare services, be it the new geographically larger special municipalities or counties and county-level cities, need to ease local disparities with the help of funding from centrally allocated revenue. **BT**