UNPROGRAMMED APPROPRIATIONS, THE BUDGET CEILING, AND THE ACCOUNTABILITY CONSTITUTION*

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ABSTRACT

This Note investigates the additional unprogrammed appropriations in the F.Y. 2022 to 2024 General Appropriations Acts ("GAAs"), which exceeded the total budget recommended by the President. To help cut through the complexities of the appropriations power, and more than conducting a doctrinal analysis, it locates a guiding principle that would help us understand how the Philippine fiscal system is meant to work.

Drawing from existing literature, this Note characterizes the 1987 Constitution as an Accountability Constitution and offers an interpretation of the budget ceiling which is aligned with its power-checking role. It also reflects on recent trends in the national budget and invites readers to see how some seemingly harmless and well-hidden changes in the GAA contribute to the erosion not just of fiscal transparency, but of constitutional accountability as a whole.

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I. INTRODUCTION

The national budget is embroiled in a silent crisis. Recent developments concerning the General Appropriations Act ("GAA") have raised some legitimate questions not only on the constitutionality of certain budget items, but also on an emerging congressional practice for enacting an appropriations law. What makes this more urgent is how inscrutable the national budget can be, and how, even to the well-trained eye, some furtive but serious changes could go unnoticed.

Any conversation about the national budget will involve money. Specifically, the main concern will be public funds and where they go, with the high stakes set by the enormous amounts involved. There is merit in digging deeper, however, and examining how law interacts with politics and policy in the allocation of the government's money. Lying underneath is a complex web of rules, motivations, and relationships that could be extremely hard to follow, let alone identify.

The issues on the recent GAAs provide a good opportunity to revisit how the Constitution treats the power of the purse. More importantly, the attempts to manipulate and exploit its rules present novel legal questions on unprogrammed appropriations and the budget ceiling, while also resurfacing old ones involving pork barrels, corruption, and the constitutional design of

the Philippine fiscal system. Given the dearth of literature in this area, this is a rare chance to dissect key provisions which govern the flow of public funds, and to identify a broader principle that could guide how these are best read and operationalized.

This Note hopes to establish the budget ceiling as an accountability instrument and to offer an interpretation which comports well with its power-checking role. Part II contextualizes the anxieties surrounding the budget process, including the recent experiments deployed by Congress. Part III provides an overview of constitutional accountability approaches, and recasts the 1987 Constitution as an Accountability Constitution. Part IV looks more closely at the power of the purse and applies an accountability framework to examine its various mechanisms. Part V focuses on the budget ceiling provision, and undertakes to determine how unprogrammed appropriations fit within its paradigm. Part VI describes how accountability has been eroded by the constitutional violations, explores the effects of inaction or refusal to hold others accountable, and concludes the Note.

II. THE BUDGET POST-*BELGICA*

A. Covert Pork Barrels

The National Budget is the product of a highly technical and extremely political process,[1] and the GAA is the blueprint for public spending. On the technical side, it requires the use of very specific estimates, assumptions, and calculations to determine each item's amount.[2] On the political side, it clearly reflects the strength of competing interests, and the extent to which the government values certain constituencies and developmental outcomes.[3] When viewed as a legal object, it is simply a law which authorizes government agencies to disburse public funds.[4] The State's machinery could not function effectively without it, since the items contained in every annual budget must respond to the country's emerging challenges.

For many years, critical publics have monitored the budget's life cycle to ensure that the people's money will be properly allocated and well-spent.

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[1] IRENE S. RUBIN, THE POLITICS OF BUDGETING: GETTING AND SPENDING, BORROWING AND BALANCING 1 (2019).

[2] *See, e.g.,* Dep't of Budget & Mgmt. (DBM) Nat'l Budget Mem. No. 142 (2022) & Nat'l Budget Mem. No. 149 (2023). National Budget Call for F.Y. 2024 and 2025, respectively.

[3] *Id.* at 2.

[4] ADM. CODE, bk. VI, ch. 1, § 2(1).

These conversations are often concerned with policy, particularly with how the government should shepherd its massive—albeit still limited—resources. For example, some have observed that during the COVID-19 pandemic, the government's fiscal response appeared to be largely oriented towards infrastructure instead of health and economic aid.[5] Though worthy of extensive debate, such questions have been best left to the political departments, absent the violation of any legal standard.

Still, a palpable air of tension and unease envelops the national budget space. The underlying ambivalence rests on the open secret that the pork barrel system is alive and well, despite the Supreme Court striking down the Priority Development Assistance Fund ("PDAF") and similar schemes in the 2013 case of *Belgica v. Ochoa*.[6] There, the Court defined a pork barrel as "an appropriation of government spending meant for localized projects and secured solely or primarily to bring money to a representative's district."[7] It was further held that exercise by Congress of any authority post-enactment, beyond oversight, is prohibited.[8]

Belgica should have allayed fears of budget corruption since it shut off a major outlet for pork. The decision also played a crucial role in shining a jurisprudential light on the dynamics of national budgeting, as well as clarifying exactly what pork barrels are in legal terms. Having *Belgica* in effect, however, does not preclude some creative political maneuvers to find other ways of keeping pork alive.

For instance, Emerson Bañez articulated what many advocates and staffers know: that the "pork" projects were not stamped out by the Court's ruling in *Belgica,* but only that legislators now try to embed them within the budget proposals of each agency.[9] Going one step further, he said that under this new system of covert pork barrels, the items are "no longer subject to the same standards for distribution and accountability as PDAF allocations."[10]

This observation makes sense, especially since the pork barrel system is not circumscribed by the PDAF. Although the Court in *Belgica* plugged one

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[5] Zy-za Suzara, et al., *In this pandemic, Duterte has his priorities all wrong,* ALJAZEERA, June 6, 2021, *at* https://www.aljazeera.com/opinions/2021/6/6/dutertes-many-pandemic-failures.

[6] *See* [Hereinafter "*Belgica*"], G.R. No. 208566, 710 SCRA 1, Nov. 19, 2013.

[7] Emerson Bañez, *The "Pork Barrel" System and the Balance of Power in Executive-Legislative Relations,* 95 PHIL. L.J. 306, 313 (2022), *citing Belgica,* 710 SCRA at 51.

[8] *Belgica*, 710 SCRA at 118.

[9] Bañez, *supra* note 7, at 321–22.

[10] *Id.* at 322.

leak in the fiscal system, there are other avenues through which pet projects could find their way into public coffers. Legislators could convince agencies like the Department of Public Works and Highways (DPWH) to include additional local projects in their budget proposals, such as multipurpose halls or flood control structures, even without prior feasibility studies. They could then exert their influence throughout technical budget proceedings to ensure that such projects form part of the President's proposal. In this fashion, a pork project could more easily go unnoticed during legislative discussions and avoid public scrutiny.

In addition, last-minute pork insertions could be made during the final deliberations of the Bicameral Conference Committee ("Bicam"). Without any measure of transparency, a select few representatives and senators could drastically change the national budget. This includes creating new pork items or enlarging existing ones without need for plenary discussion.

What makes this system unsettling is not just the way that insertions are made, but that most of these pork projects are likely used for corruption and perpetration of power. In an ideal world, there would be nothing wrong with representatives and senators vying to win additional projects for their constituencies. These pragmatically would be crucial metrics by which their performance could be measured by the electorate. Having the political skill to secure larger portions of national funds for certain locales and issue areas is a desirable trait for a legislator, and constituencies would conceivably prefer to be represented by persons who are fit enough to compete this way.

Further, some insertions—even *pork*— may be necessary, such as when the President's budget proposal is unresponsive to recent social problems or overlooks an urgent item which needs funding. Congress is theoretically in a better position to assess and address the financial needs of its various constituencies, especially those which may have been found by the Executive to be too narrow or too small. Each member was elected based on their platform and capabilities, for the express purpose of forwarding local or special public interests.

However, the world is far from ideal, especially when considering Philippine budget politics. Pork items are distrusted because they are linked to lining the pockets of powerful groups. Many of these projects are accompanied by all-too-familiar kickbacks, in which the legislator gets a cut of the project cost, in exchange for it being awarded to a colluding

contractor.[11] The corrupted money then contributes to the politician's war chest to secure a seat in the next elections, or simply just to amass wealth. Such practices have been the subject of many graft and plunder cases, but only for those against whom enough evidence has been found. Often, it takes a whistleblower to crack the entire scheme wide open.

A more subtle method of using pork comes in the form of additional public services for favored areas. Extra funds for health, education, or cash transfers are inserted only for certain constituencies, thereby creating or strengthening a patron-client relationship with the incumbent. Though at least some benefit is dispersed to the members of the favored constituencies, public funds are inefficiently allocated without sufficient technical basis. Money goes to certain areas to bolster the political capital of the incumbent, and not because those areas objectively need money the most. As a result, the places which actually need that money are left wanting. These instances are difficult to prosecute, since they could be merely explained as offshoots of budget politics.

Covert pork barrels may have become the norm for the years after *Belgica.* These items have always been quite elusive, since it is difficult to determine which projects were inserted by legislators either at the agency level or at the Bicam. The lack of transparency also makes it hard to track the interests which these insertions serve, and even more difficult to gather enough evidence for litigation. When it comes to these kinds of problems, the prosecutorial approach to exacting accountability is often insufficient.

Recent developments, however, have triggered new questions on budget legislation. Some have theorized that this emergent scheme was implemented in furtherance of covert pork barrels, so that public money could be more easily used as a political bargaining tool at the appropriations level. Whereas covert pork had to fit within certain constitutional constraints post-*Belgica,* Congress' new experiment seeks to push those limits and break new ground in national budgeting.

B. Experiments in the F.Y. 2022 to 2024 GAAs

Pursuant to its exclusive power over the purse,[12] the discretion to determine what to fund and how much to fund rests entirely upon Congress. Still, the Constitution provides several limitations and checking mechanisms on this power. Perhaps the most innocuous of these is the budget ceiling,

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[11] *See, e.g., Belgica*, 710 SCRA at 77–83. (Citations omitted.)

[12] *See* CONST., art. VI, § 29(1)

which prohibits Congress from "increas[ing] the appropriations recommended by the President for the operation of the government as specified in the budget."[13]

This provision has never been controversial. Congress has traditionally respected the budget ceiling fixed by the President, even if the appropriations in the GAA varied greatly from the Executive's proposal.[14] Budget legislation has always been treated as a zero-sum game: if the funding for one item was to be increased, there would have to be a corresponding decrease in other items. For example, if Congress wants to increase the budget for the Pantawid Pamilyang Pilipino Program ("4Ps") by PHP 25 billion, it must carve out the same amount by reducing funds elsewhere.

But for the past three years, the budget ceiling has been consistently breached.[15] The total appropriations under the GAAs for F.Y. 2022 to 2024 have exceeded those found in the President's proposal through increases in unprogrammed appropriations.[16] The 2022 GAA shows a net increase of PHP 100 billion in total new appropriations, with the anomaly growing to PHP 219 billion in the 2023 GAA.[17] The 2024 GAA features the biggest breach yet, with additional funds worth about PHP 450 billion.[18]

Some posit that this is merely the first step in a grander scheme to further enable covert pork. Budget watchdogs have observed that the additional unprogrammed appropriations were comprised of basic government services, and have suspected that these were bumped off from the list of programmed appropriations to make way for more pork.[19] Further, a new special provision in the F.Y. 2024 GAA empowered the Executive to sweep cash from government-owned or controlled corporations ("GOCCs")

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[13] Art. VI, § 25(1).

[14] This is true for the 1987 Constitution. The budget ceiling worked differently under previous constitutions. *See infra* Part V.C.

[15] *See* Zy-za Suzara, *A Constitutional Question on the 2022–2024 GAAs* (Jan. 3, 2024). (Presentation slides on file with the author).

[16] *Id.*

[17] *Id.*

[18] *Id.*; Zy-za Suzara, Lecture delivered at the People's Budget Coalition Roundtable Discussion, JCS Building, Makati City (Mar. 23, 2024).

[19] Cristina Chi, *Public should keep eye on government us of 'bloated' unprogrammed funds – budget expert*, PHILSTAR.COM, Dec. 21, 2023, *at* https://qa.philstar.com/headlines/2023/12/21/2320472/public-should-keep-eye-government-use-bloated-unprogrammed-funds-budget-expert; Kenneth Christiane Basilio, *Increased social development funding pushed*, BUSINESSWORLD, Sept. 15, 2024, *at* https://www.bworldonline.com/the-nation/2024/09/15/621496/increased-social-development-funding-pushed.

and to use that money to fund unprogrammed projects.[20] It then enabled the Department of Finance (DOF) to direct the Philippine Health Insurance Corporation ("PhilHealth") to transfer PHP 89.9 billion of its funds to the government.[21]

This set-up, if left unchecked, has three clear implications. *First*, additional pork projects are guaranteed funding, since Congress made room for them as programmed appropriations. *Second*, crucial public services which were bumped off to unprogrammed appropriations are not guaranteed funding, and their implementation is subject to the availability of extra cash. And *third*, funds held by GOCCs may, under certain conditions, be forcibly remitted to the government to finance additional projects. Pork barrels come out on top, to the detriment of public services and GOCCs.

At the starting line is the budget ceiling provision.[22] Its interpretation would determine whether it is constitutional to increase unprogrammed appropriations beyond the grand total fixed by the President, and whether this scheme is viable for covert pork. Crucially, opinions differ on how to read the budget ceiling in response to the situation. This invites questions not only on the constitutionality of recent practices, but also on the greater landscape of accountability. Though settling these questions will not completely extinguish pork, the exercise offers a waypoint for analysis that touches on the pork barrel system through a demonstrable legal standard, without need for hard-to-obtain evidence. It further presents an opportunity to revisit some conceptual underpinnings of the power to appropriate funds.

Congress' recent experiments also beg the questions of why things must be so convoluted, and why the President has allowed a violation of their prerogative. After all, the budget ceiling is fixed by the President in their proposal, and the legislature is expressly prohibited from exceeding it. More than engaging in a textual and doctrinal analysis, there is a need to look for a principle in the Constitution to guide how the government's powers should be understood, especially as applied to public funds. After a careful search, one principle stands out as appropriate for this endeavor: accountability.

Intuitively, accountability bridges the gap between what the government is supposed to do and what it actually does. It encapsulates both

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[20] Rep. Act No. 11975 (2023), § 1, XLIV, spec. prov. 1(d).

[21] Andrea Taguines & Arra Perez, *Recto defends transfer of nearly P90 billion in 'idle' PhilHealth funds,* ABS-CBN NEWS, July 23, 2024, *at* https://news.abs-cbn.com/business/2024/7/23/recto-defends-transfer-of-nearly-p90-billion-in-idle- phil health-funds-1652; *see also* Rep. Act No. 11975 (2023), § 1, XLIV, spec. prov. 1(d).

[22] CONST. art. VI, § 25(1).

the legal and social expectations of the governed, held together by a relationship of trust in State action. When that trust is broken or when such expectations are unmet by public actors and institutions, the notion of accountability also calls for some form of correcting wrongs and making amends. Thus, accountability may explain why recent maneuvers on the national budget feel so strange and uncomfortable. Politicians who manipulate rules for private benefit, under the cloak of legal inscrutability, are breaking the public's trust and should not be allowed to get away with it. When conceived this way, accountability exists as the antithesis of impunity.

III. THE ACCOUNTABILITY CONSTITUTION

A. Accountability as a Constitutional Concept

The notion of accountability is a "cherished principle" both in law and public policy[23] that embraces the exercise of governmental power in democratic systems. It is both a "golden concept[ ] that no one can be against" and an elusive idea which can take on multiple meanings.[24] Scholars have noted that its flexibility has rendered it useful in several contexts, including the delivery of public services, the handling of grievances, the conduct of audits and internal review, and the overall administration of State affairs.[25] Its application to constitutional law has also been long-practiced, and was said to coincide with the rise of State powers and mandates.[26]

Accountability is hard to define given its broad scope. As a starting point, Mark Bovens generalized the common use of the term to either mean a virtue or a mechanism.[27] He noted that in American literature, accountability tends to be conceived normatively as a criterion to evaluate public actors' conduct.[28] Accountability as a virtue was further characterized as a contested

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[23] Nicholas Bamforth & Peter Leyland, *Introduction: Accountability in the Contemporary Constitution, in* ACCOUNTABILITY IN THE CONTEMPORARY CONSTITUTION 2 (Nicholas Bamforth & Peter Leyland eds., 2013), *citing* Elizabeth Fisher, *The European Union in the Age of Accountability,* 23 OXF. J. LEG. STUD. 495, 495 (2004).

[24] Mark Bovens, *Analysing and Assessing Accountability: A Conceptual Framework,* 13 EUR. L. J. 447, 448 (2007).

[25] CAROL HARLOW, ACCOUNTABILITY IN THE EUROPEAN UNION 189 (2002), *citing* Dermot Hodson & Imelda Maher, *The Open Method as a New Mode of Governance: The Case of Soft Economic Policy Co-ordination*, 39 J. COMM. MKT. STUDIES 719, 741 (2001).

[26] Bamforth & Leyland, *supra* note 23, at 3.

[27] Mark Bovens, *Two Concepts of Accountability: Accountability as a Virtue and as a Mechanism,* 33 WEST EUR. POL. 946, 947–48 (2010). (Citations omitted.)

[28] *Id.* at 947.

concept, since the standards commonly used to operationalize it are either umbrella concepts themselves (e.g., transparency, responsibility, effectiveness), or vary from context to context (e.g., different institutions, different officials).[29]

As a virtue, Dawn Oliver suggested that being accountable entails "being liable to be required to give an account or explanation of actions and, where appropriate, to suffer the consequences, take the blame[,] or undertake to put matters right if it should appear that errors have been made."[30] This formulation of accountability implies that power may not be wielded indiscriminately, and that those who exercise it must be ready to answer for their actions. It likewise has been said that accountability is "a central value of modern constitutions."[31]

Meanwhile, Bovens also noted that varied British, Australian, Canadian, and continental European discourse tend to view accountability as an institutional arrangement through which an erring public official can subsequently be held liable.[32] From a historical perspective, he said that accountability was closely linked to accounting. This was best illustrated in the old English mandate of rendering "a count" of all the kingdom's possessions in the Domesday Books under William I.[33] From a social perspective, Bovens stated that accountability could also be thought of as a relationship that obligates an agent to explain and justify their conduct to a principal or a forum.[34] The relationship extends to asking questions, passing judgments, and imposing sanctions or granting rewards.

From a functional perspective, Carol Harlow posited that accountability stems from the public's interest in State affairs, specifically that "'[t]he public wants to know how it is governed; it wants in particular to know how public money is spent and to receive assurances that it has been well spent.'"[35] These intuitive articulations, among others, lay the foundation for the idea that accountability can be decomposed as a relationship between two

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[29] *Id.* at 950. (Citations omitted).

[30] DAWN OLIVER, GOVERNMENT IN THE UNITED KINGDOM: THE SEARCH FOR ACCOUNTABILITY, EFFECTIVENESS AND CITIZENSHIP 22 (1991).

[31] Bamforth & Leyland, *supra* note 23, at 2, *citing* ANNIE DAVIES, THE PUBLIC LAW OF GOVERNMENT CONTRACTS 92 (2008).

[32] Bovens, *supra* note 27, at 948.

[33] *Id.* at 950–51.

[34] *Id.* at 951. (Citation omitted.)

[35] HARLOW, *supra* note 25, at 2, *citing* DAVID OSBORNE & TED GAEBLER, REINVENTING GOVERNMENT: HOW THE ENTREPRENEURIAL SPIRIT IS TRANSFORMING THE PUBLIC SECTOR (1992) *&* MICHAEL POWER, THE AUDIT SOCIETY: RITUALS OF VERIFICATION (1997).

sets of actors: (1) the persons or institutions accountable (i.e., agents, delegate bodies), and (2) the persons or institutions to whom they are accountable (i.e., principals, delegating bodies, fora).

Oliver further offered four types of accountability mechanisms in constitutions, which differ based on the actors and relationships involved. The first kind is political accountability, in which political actors are accountable to other political actors.[36] A clear example of this is the accountability of the delegate to the delegating power, such as when a department secretary is made to report to the president for poor performance, or when a local government unit is made to explain why it overstepped its congressionally delegated power. Politicians—either elected or appointed—are thus exposed to public censure and electoral risk.[37]

The second kind is public accountability, in which political actors are accountable to the public. Oliver refers not only to voters, and extends the analysis to include "the general public or interested sections of it,"[38] likely because the political actor's deeds (or misdeeds) affect even non-voters and non-constituents. The non-voters and non-constituents may, in turn, indirectly exact accountability by influencing the voters' judgment, exerting pressure, or embarrassing the offending actor or institution.[39]

Thus, elected officials are liable to the public and must explain their actions, at the risk of being penalized through the loss of support.[40] In representative democracies, this kind appears to be the easiest to understand. Voters who are dissatisfied with the performance of their elected officials theoretically hold the power to express their choice at the polls, and even non-voters may undertake efforts to express their sentiments towards this end. Similarly, appointed officials derive their legitimacy from being chosen by elected officials and from performing functions in democratic institutions.

The third kind is legal accountability, in which political actors are accountable to the courts "as an aspect of the rule of law."[41] They are required

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[36] OLIVER, *supra* note 30, at 23–25.

[37] *Id.* at 23.

[38] *Id.* at 25–26.

[39] *Id.* at 25.

[40] *See* Nicholas Stephanopoulos, *Accountability Claims in Constitutional Law,* 112 NW. U. L. REV. 989, 999-1001 (2018).

[41] OLIVER, *supra* note 30*,* at 26. The context of Oliver's claim was on the UK Constitution. In grappling with "rule of law" as a concept, Brian Tamanaha's definition is quite instructive. He says that "[t]here must be a system of laws […] *set forth in advance* that are *stated in general terms* […] The law must be *generally known and understood.* The requirements imposed

to justify their actions, chiefly by showing that these were within the confines of the law.[42] Notably, this also entails "mak[ing] amends" if found to have acted illegally.[43] Judicial review also falls within this category, since *ultra vires* actions of administrative bodies, violations of the separation of powers doctrine, and all other illegal or unconstitutional acts may be questioned in court.

The fourth kind is non-political governmental accountability, in which political actors are accountable to non-political bodies in the government.[44] These bodies include ombudsmen and public auditing institutions, among others, which are non-political, and specifically tasked with exacting accountability from erring officials, and improving efficiency and effectiveness.[45] Oliver further emphasized that the choice of accountability is critical to constitutional design. Defining who is accountable to whom, and using the correct mix of the different accountability mechanisms all constitute a careful balancing act that may determine the success of a constitution.[46]

Other scholars disagree with this broad reading, and thus prefer a narrower understanding of accountability. Richard Mulgan, for example, differentiates mechanisms of accountability from behavior control,[47] in an effort to prevent the former from practically covering the entirety of constitutional design.[48] He proposes that accountability mechanisms should only be limited to external scrutiny, or those which provide for enforcement procedures specifically to hold public officials liable for their actions.[49] With this in mind, accountability would be only within the ambit of the ombudsman, the public audit institution, or such other bodies organized for the same purpose.[50]

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by the law *cannot be impossible* for people to meet. The laws must be *applied equally to everyone according to their terms*. There must be *mechanisms* or *institutions* that *enforce the legal rules* when they are breached." Brian Z. Tamanaha, *The History and Elements of the Rule of Law,* 2012 SING. J. LEG. STUD. 232, 233. (Emphasis supplied.)

[42] *Id.*

[43] *Id.*

[44] *Id.* at 27. Note that this fourth kind of accountability goes by many names, with Oliver using "administrative accountability." "Non-political governmental accountability" was used in this Note for clarity, to prevent any confusion with administrative agencies.

[45] *Id.* at 27.

[46] *Id.* at 28.

[47] Bamforth & Leyland, *supra* note 23, at 5, *citing* Richard Mulgan, *"Accountability": An Ever Expanding Concept?,* 78 PUB. ADM. 555, 564.

[48] *Id.*, *citing* Mulgan, *supra* note 47, at 563.

[49] *Id., citing* Mulgan, *supra* note 47, at 564.

[50] *Id.* at 6, *citing* Mulgan, *supra* note 47, at 565.

Meanwhile, he submits that judicial review, the separation of powers, and compliance with the law are merely behavioral mechanisms which control the conduct of public actors.[51] Accountability is not directly linked to these mechanisms, since it is not the chief purpose of their operation.[52] Hence, according to Mulgan's proposal, though Congress and the courts may take a limited accountability role in the exercise of their functions, they are not considered institutions of accountability.[53]

These discussions represent only a snapshot of the scholarly conversations on the matter. Thoughtful engagement with these ideas are helpful in situating—and eventually reconstructing—our domestic understanding of constitutional accountability. It is also useful to note that while these theoretical discussions may appear to be esoteric, they eventually develop into key underpinnings of practical endeavors.

For instance, Bovens pointed out that accountability as a virtue and a mechanism finds relevance in democratic governance.[54] When conceived as a virtue, accountability is a source of legitimacy for public actors and institutions.[55] Critical publics expect transparency and responsiveness from State agents, and use these as metrics for political decision-making.[56]

When implemented as a mechanism, accountability also contributes to legitimacy, but additionally provides more "specific and direct purposes."[57] These mechanisms help provide public catharsis for any governmental failings, deter and monitor abuses of power, and induce public reflection and learning.[58] Ultimately, accountability is almost universally cherished as a principle because it tends to drive democratic publics, officers, and institutions towards an aspiration of good governance.

B. The 1987 Constitution as an Accountability Constitution

Locating accountability in the Constitution may not be immediately apparent through a textual search. Article XI, Section 1 is perhaps the clearest

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[51] *Id.*
[52] Bamforth & Leyland, *supra* note 23, at 6; Mulgan, *supra* note 47, at 565.
[53] *See* Bamforth & Leyland, *supra* note 23, at 6, *citing* Mulgan, *supra* note 47, at 565.
[54] Bovens, *supra* note 27, at 954.
[55] *Id.*
[56] *See id.* (Citations omitted.)
[57] *Id.*
[58] *Id.* at 954–56.

indication of positive behavioral standards, directing public officers to "at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives."[59] The rest of the provisions in Article XI work towards creating systems and structures which punish and prevent corruption and wastage in public service.[60] Other explicit references to the term are smattered within the text, appearing as a general descriptor for local governments[61] and a directive to the Civil Service Commission (CSC)'s management.[62]

Implicit references to accountability, meanwhile, are abundant. The declarations in Article II state that all "government authority emanates from" the sovereign people;[63] that the government's prime duty is to "serve and protect" them;[64] that "[c]ivilian authority is, at all times, supreme over the military[;]"[65] that honesty and integrity shall be maintained in the public service, in addition to affirmative steps taken against corruption;[66] and that there must be "full public disclosure of all its transactions involving public interest[,]" as regulated by law.[67] From these it can be inferred that the government is always liable to the people, and that it may not act against the interests of the sovereign.

But the references do not end there, especially when examining how powers are outlined and fine-tuned in the fundamental law. For almost every grant or constraint of authority, a certain public actor or institution is being made liable to another, or broadly, to the people. Every provision which limits governmental power or directs how it should be exercised can be viewed as an accountability measure, and the forcefulness by which these differ are based only on degree, and not on kind.

Seen in this light, the Constitution is the ultimate writ of accountability as between the sovereign and the government. Its very existence is premised on a shared expectation to be protected and to be cared

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[59] CONST, art. XI, § 1.

[60] *See* art. XI.

[61] Art. X, § 3. "The Congress shall enact a local government code which shall provide for a more responsive and *accountable* local government structure[.]" (Emphasis supplied.)

[62] Art. IX-B, § 3. "The Civil Service Commission […] shall strengthen the merit and rewards system, integrate all human resources development programs for all levels and ranks, and institutionalize a management climate conducive to public *accountability*." (Emphasis supplied.)

[63] Art II, § 1.

[64] Art. II, § 4.

[65] Art. II, § 3.

[66] Art. II, § 27.

[67] Art. II, § 28.

for, with redress when such expectation is violated or unmet. Those who violate the Constitution may be taken to court, or otherwise politically and publicly censured and embarrassed.

With all this in mind, it is still useful to articulate how accountability permeates the fundamental law, both as a virtue and a mechanism. As a caveat, this Section only provides a brief discussion on why this mode of reading the Constitution is viable and serves as a backdrop for the subsequent analysis of the provisions pertaining to the national budget. Deeper theorizing on the matter is best reserved for a separate work.

1. Accountability as a Virtue

The 1987 Constitution sprang from efforts to memorialize the country's emancipation from dictatorship,[68] and to prevent gross abuses of power which perpetuate poverty, injustice, killings, enforced disappearances, and many other grave human rights violations. From a political standpoint, its overwhelming ratification was crucial to settling legitimacy questions on the revolutionary government headed by former President Corazon Aquino.[69] Thus, a Constitutional Commission ("ConCom") was called to draft a new document to serve as the country's supreme law, subject to the people's approval.[70]

The job was daunting, since it had been shown that enterprising politicians, business interests, and military factions could easily manipulate and distort legal rules—even constitutional ones—to produce an artificial veil of legitimacy. Former President Ferdinand Marcos, Sr. and his allies notoriously maneuvered the 1935 Constitution, and even manufactured the 1973 Constitution to serve their purposes.[71] They adopted a strategy of

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[68] *See* Maria Ela L. Atienza, *The 1986 Constitutional Commission and the 1987 Constitution: Background, Processes, and Outputs, in* CHRONOLOGY OF THE 1987 PHILIPPINE CONSTITUTION 6-7 (Maria Ela L. Atienza, ed.) (2019).

[69] MARK R. THOMPSON, THE ANTI-MARCOS STRUGGLE: PERSONALISTIC RULE AND DEMOCRATIC TRANSITION IN THE PHILIPPINES 170–71 (1995).

[70] *See id.* at 166.

[71] *See* Carmencita T. Aguilar, *The Marcos Rule and its Dynamics of Political Control,* 1 INDIAN J. ASIAN AFF. 43, 43, 52 (1988).

constitutional authoritarianism,[72] and in the process, perpetrated one of the greatest robberies of a government ever committed.[73]

Scholars have since launched auteur readings of the Constitution, and have drawn additional insights on its goals. In examining the profiles of the 48 people who comprised the ConCom, Maria Ela L. Atienza noted that "in terms of education, profession, gender, age and geographic background, the composition […] was clearly elitist." However, she also acknowledged that 30 of the members were sectoral representatives.[74] Mark R. Thompson made a similar observation and highlighted that the ConCom, even with attempts to include key sectors and geographic areas, was still predominantly an elite assembly of lawyers, landowners, and business executives who obviously favored President Aquino.[75]

Naturally, the ConCom was motivated to create a draft that would prevent the rise of another dictator, and would better facilitate nation-building.[76] Hints of this could be seen in the drafters' tendency to move away from previous ideas associated with the Marcos regime.[77] Among those which stand out were the uneasy reckonings on the merits of a parliamentary government and on how Marcos implemented it in the 1973 Constitution, as seen in the ConCom's records:

> FR. BERNAS: Our experience in the Philippines has been primarily with the presidential system. We have never really experienced a parliamentary system. But in the period of the 1973 Constitution, we experienced what was referred to as a modified parliamentary system.[78]

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[72] *See* Gene Segarra Navera, *Metaphorizing Martial Law: Constitutional Authoritarianism in Marcos' Rhetoric (1972-1985),* 66 PHIL. STUD. HIST. & ETHNOGR. VIEWPOINTS 417, 423–27 (2018) .

[73] *See* Kristine Joy Patag, *Fact check: Guinness not disputing historical fact on 'greatest robbery of a gov't,'* PHILSTAR.COM, Mar. 18, 2022, *at* https://www.philstar.com/headlines/2022/03/18/2168193/fact-check-guinness-not-disputing-historical-fact-greatest-robbery-govt. (Citations omitted.)

[74] Atienza, *supra* note 68, at 5–6.

[75] THOMPSON, *supra* note 69, at 166, *citing* James R. Rush, The Cory Constitution (1987) (USFI Reports No. 4). *See also* Ma. Victoria Paez-Hidalgo et al., *Socio-Demographic Profile of the Members of the 1986 Constiuttional Commission*, 31 PHIL. J. PUB. ADMIN. 36, 36-64 (1987).

[76] *See* Atienza, *supra* note 68, at 6.

[77] *Id.*

[78] I RECORD CONST. COMM'N 24 (June 3, 1986).

MR. VILLACORTA: First of all, in evaluating the merits of the presidential and parliamentary systems, I think we would be doing an injustice to the parliamentary system if we call the Marcos government a modified parliamentary system. What we really had under Mr. Marcos since 1972 was a dictatorship that was cosmeticized by a so-called parliament, with a supposed Prime Minister who was actually appointed by Mr. Marcos and not elected by Members of Parliament […] Under no circumstances, therefore, could we consider the Marcos government as having had a semblance of the parliamentary form of government.

I would like to mention that in weighing the merits of both systems, we should consider the political culture of Filipinos who, according to many scholarly studies, favor a strong national leader. One of the questions that we should ask ourselves is: *Which form of government would best guarantee the reduction of the possibility that another dictator might emerge*?[79]

* * *

MR. TINGSON: Very good.

In the 1971 Constitutional Convention, we adopted the parliamentary system. If I recall it right, we said in the deliberations that the parliamentary system was more responsive, more responsible and *more accountable* to the people. Does Commissioner Bernas agree that it is not so in a presidential type of government?

FR. BERNAS: I think it is a question of the decision of the 1971 Constitutional Convention favoring the parliamentary system for being more responsive.

MR. TINGSON: I understand that today, throughout the world, there are more governments of the parliamentary type than of the presidential type, is that true?

FR. BERNAS: I have not made a head count.

* * *

MR. TINGSON: Finally, if the administration of the former President did adhere to the characteristics of the form of government we had and if he exemplified moral leadership in this country, would the government then existing have worked?

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[79] *Id.* at 28. (Emphasis supplied.)

> FR. BERNAS: I would follow the advice of some world leaders who do not answer questions based on "if."[80]

There was an understanding that a parliamentary government would, in theory, be more responsive to the people since its members must cater more to the sentiments of their constituencies.[81] But mindful of the social climate, and still reeling from parliamentary abuse, the ConCom's hesitation was quite understandable.

Though the presidential form eventually would be favored, the substance of the ConCom's work was still directed towards course-correcting for power imbalances. Despite the hesitation of some members, certain features of parliamentary governments like the Question Hour would be incorporated into the draft charter:

> MR. SUAREZ: […]
>
> Let me go to Section 18, the matter of a possible Question Hour for Members of the National Assembly to enjoy, as a right, calling upon Cabinet members. I take it that we are setting up a presidential system of government. Is my understanding correct?
>
> MR. DAVIDE: That is correct, and we felt that the incorporation of this strictly parliamentary government concept into a presidential form of government would be very, very helpful and *conducive to a further check on the executive*.
>
> MR. SUAREZ: But would it not violate the principle of separation of powers considering that in a presidential system of government, it is the President who is accountable to the electorate and he is not accountable to the National Assembly which is an independent political instrumentality?
>
> MR. DAVIDE: Madam President, we respectfully submit that it would not infringe upon that principle of separation of powers because that principle would not insulate one organ of the government from the other. Precisely, it is correlated with another principle of *check and balance*.
>
> MR. SUAREZ: So, the sponsor would want to integrate this in a presidential system of government notwithstanding the fact that it

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[80] *Id.* at 29. (Emphasis supplied.)
[81] *See* I RECORD CONST. COMM'N 2, 29 (June 3, 1986).

> is essentially a characteristic of a parliamentary system of government.
>
> MR. DAVIDE: Yes, because while it is a characteristic of the parliamentary system of government, we do submit that it is essential for the *enhancement and the strengthening of the doctrine of check and balance*.[82]

In addition, Surabhi Chopra observed that the drafting process also surfaced new arguments to implement political and socioeconomic restructuring through the new constitution.[83] She said that this was driven largely by the strong representation of civil society in the ConCom, with over half of the commissioners having previously joined progressive mass movements and protests.[84]

Accountability as the core constitutional value emanated from several sources. It was palpably the impulse of the ConCom to work along the lines of the anti-Marcos revolution. The "People Power" spirit continued to generate support for the Aquino government, and by extension, the ConCom, so it was necessary to propose a constitution that would ride and sustain that high.[85] Further, the ConCom was said to be acutely aware of the country's fragile political situation and found it important to create a draft that would successfully hurdle the plebiscite.[86] Even the process of developing the draft was consciously made to be participative in all stages,[87] emphasizing the commitment to depart from the previous regime's practices.

Accountability also formed the bedrock of forward-looking debates on issues of great concern at the time, such as foreign investments, American bases, social justice, land reform, and a stronger bill of rights.[88] It was implicit that the nation's prosperity could only be advanced by a government that truly embodied transparency, integrity, and legitimacy—an image that was diametrically opposed to that of the one that had just been overthrown.

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[82] II RECORD CONST. COMM'N 36, 92 (July 22, 1986). (Emphasis supplied.)

[83] Surabhi Chopra, *The Constitution of the Philippines and transformative constitutionalism,* 10 GLOBAL CONSTITUTIONALISM 307, 312 (2021). (Citations omitted.)

[84] *Id.*, *citing* Ma. Victoria Paez-Hidalgo et al., *supra* note 75.

[85] *See* Thompson, *supra* note 69, at 165–66.

[86] Atienza, *supra* note 68, at 8.

[87] *Id.* at 4, *citing* Ponciano L. Bennagen & Florangel Rosario Braid, *Talk during the forum "Matotokhang ba ang 1987 Constitution?"* (Feb. 23, 2018) (organized by the Third World Studies Center, Benitez Theater, Univ. of the Phil., Diliman.)

[88] *See id.* at 8–9.

This drive for accountability could even be observed in some of the commissioners' explanations for approving the draft constitution. Commissioner (and later, Chief Justice) Hilario Davide, Jr. presented his vision as a departure from the previous legal order, while Commissioner (and eventually, Senate President) Blas Ople offered perhaps the clearest articulation for accountability as a constitutional virtue:

> MR. DAVIDE: […]
>
> Having been victims of the oppressive, repressive, suppressive and unjust dictatorial regime of the deposed President and having been only recently ransomed from it through a successful revolution which exacted no blood and which was done only through prayers, roses and love, our task became more formidable, challenging and demanding […] We have completed our work, fulfilled our mission. We have drafted a new Constitution for our nation and our people.
>
> * * *
>
> With its provisions ensuring responsive and more *representative, democratic and accountable government*, […] we have crafted a new Constitution far better and more comprehensive than any of the previous constitutions.[89]
>
> * * *
>
> MR. OPLE: Thus drawing from contemporary realities, we have created a framework of government that allocates the powers of the State more judiciously to the three branches. If the executive is the sword, and the legislative is the purse, as Alexander Hamilton said in the Federalist Papers, and the judiciary is "the least dangerous of the three" because it has little say on both the sword and the purse, we have strengthened the judicial power. We have also strengthened the legislative power as the branch directly representing the people. And yet, Madam President, it does not follow that we have weakened the executive power on which the execution of the laws and of the Constitution itself depends. We have made those powers and the powers of the other two simply *more accountable.* What we have *removed is the possibility of the exercise of non-accountable power,* the existence of extraterritorial spaces as islands of sanctity and privilege in an otherwise open and accountable system of government which in the past had given rise

[89] V RECORD CONST. COMM'N 106, 916–17 (Oct. 12, 1986). (Emphasis supplied.)

> to an unprecedented abuse of power. *We have made accountability and popular sovereignty a pervasive theme of this Constitution.*[90]

When the time came to campaign for its approval, the draft constitution was packaged as the realization of the Philippine democratic journey.[91] However, there was an agreement between Aquino and her opponents that this was really a referendum on her presidency.[92] This was most apparent in the slogans. The rallying cry for the affirmative was "*Yes to Cory! Yes to Democracy! Yes to the Constitution!*" while the slogan for the negative was "*No to Cory! No to Communism! No to the Constitution!*"[93]

With a 90% turnout and a 76% affirmative vote, the 1987 Constitution was ratified and came into effect.[94] Similar to Thompson, other scholars remarked that the ratification was more a vote for the restoration of democracy than for the document's actual contents.[95] Even if this is taken to be true—though it likely is—the ratification was still an overwhelming rejection of the corruption and impunity of the deposed government, and a clear indication that the Filipino people preferred to be governed with openness, transparency, and answerability—all of which are hallmarks of accountability.

2. Accountability as a Mechanism

Fresh from a political upheaval, the framers of the new charter carried the burden of troubleshooting undemocratic practices and mending the loopholes previously exploited by the old regime. To this end, accountability mechanisms were given great emphasis in the 1987 Constitution. The ConCom recalibrated the system of checks and balances, which involved restoring subsystems that were scrapped under the 1973 Constitution (e.g., Commission on Appointments), modifying those which already existed (e.g., expanded judicial review), and adding new ones which filled an observable gap (e.g., Commission on Human Rights).[96]

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[90] *Id.* at 928. (Emphasis supplied.)

[91] *See* THOMPSON, *supra* note 69, at 170, *citing* James Clad, *Cory's Constitutional Gamble*, FAR E. ECON. REV., Jan. 29, 1987, at 21.

[92] *Id.*

[93] *Id.*

[94] *Id.*

[95] Chopra, *supra* note 83, at 313, *citing* James Putzel, *Survival of an Imperfect Democracy in the Philippines,* 6 DEMOCRATIZATION 198, 212 (1999).

[96] April Farell M. Relacion & Grace C. Magalzo, *System of Checks and Balances in the Philippine Presidential Form of Government,* 3 J. MULTIDISCIPLINARY STUD. 39, 43–44 (2014). (Citations omitted.)

This point is further shown by revisiting some mechanisms under the 1987 Constitution using Oliver's accountability framework as a guide. To recall, it was proposed that accountability mechanisms in constitutions come in four kinds: (1) political accountability, in which political actors or institutions are liable to other political actors or institutions; (2) public accountability, in which political actors are accountable to the electorate, as well as the general public and its interested sections; (3) legal accountability, in which political actors and institutions are liable to courts as an aspect of rule of law; and (4) non-political governmental accountability, in which political actors or institutions are liable to non-political bodies or actors in the government.[97]

For this Note, Oliver's broader reading is preferred over other narrower approaches. Oliver's framework tends to capture constitutional accountability measures better, in that specific purposes are not excessively contested. Even if an actor or an institution does not have accountability as its primary purpose, its role in asking questions (e.g., congressional oversight), vindicating wrongs (e.g., resort to courts), or in enforcing other elements of accountability are still recognized. Moreover, the Note's chief concern does not lie in constitutional design vis-à-vis accountability, but instead in establishing the accountability thrust of the Constitution as a whole. Discussing the appropriateness of labelling certain constitutional subsystems as accountability mechanisms, though worthwhile, is again better reserved for a separate work.

It is also recognized that Oliver's framework draws largely from the experience of the UK, which is a former imperial power governed by a constitutional monarchy through its parliament. As Paolo S. Tamase astutely observed, certain formulations of accountability in the UK do not correspond directly with the Philippines due to key differences.[98] For instance, political accountability entails a degree of inferiority or subsidiarity found in the accountable officer or institution, such as when a civil servant explains her actions to the minister, or when local officials answer to parliament.[99] The UK's politico-legal form is quite different from that of the Philippines, which by contrast is a former colony governed by a presidential republic.

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[97] *See supra* Part III.A.

[98] Paolo S. Tamase, Lecture on the Accountability Constitution, Malcolm Hall, College of Law, University of the Philippines (Oct. 1, 2024).

[99] *Id.*; *see also* OLIVER, *supra* note 30, at 23.

Even so, elements of the framework are adequately broad and malleable in that they can apply to a diverse set of histories and constitutional traditions. The exercise—i.e., identifying key actors and institutions and classifying the constitutional subsystems that force them to be vulnerable to criticism and reproach—is one that is sufficiently generalizable to transcend cultures and continents. It is, at the very least, a good starting point for conceiving a larger domestic theory of constitutional accountability.

In the political accountability example, it is submitted that the Philippine application indeed does look different. Inferiority and subsidiarity in the strict sense are not required to hold another politically accountable. The analysis does not need to be limited to appointing powers and their appointees, or to delegators and delegates. It can apply even to equal branches of government, so long as one has a legitimate source of ascendancy over the other in a particular situation. In the 1987 Constitution, this legitimacy is often drawn from the check-and-balance provisions.

The search for accountability mechanisms begins with emphasizing three key assumptions. *First*, it is accepted that the Constitution is a product of the direct exercise of sovereignty. This ordains the Constitution as the standard against which all other laws are tested[100] and justifies constitutional supremacy. In the Philippines, "[s]overeignty resides in the people[.]"[101] Thus, the people's ratification of the Constitution is a sovereign act that breathes life into the document. At this level, accountability mechanisms ensure that the provisions of the Constitution are heedfully followed, as a direct form of implementing the sovereign will.

Second, it is accepted that the doctrine of separation of powers—which dictates that each of the three branches of government are supreme in their own spheres[102]—is operational. Since the government is merely an agent of the sovereign, and because the branches are merely subdivisions of government, they are bound by the contents of the Constitution. Hence, the powers which have been textually committed by the Constitution to one branch may not be arrogated to or usurped by another, except for instances expressly allowed.[103] From this angle, accountability mechanisms are triggered when the doctrine is breached, raising an alarm on the disturbance of power balances.

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[100] *See* Angara v. Electoral Comm'n [hereinafter "*Angara*"], 63 Phil. 139, 158 (1936).

[101] CONST. art. II, § 1.

[102] *Angara*, 63 Phil. at 156.

[103] *See* Francisco v. House of Representatives [hereinafter "*Francisco*"], G.R. No. 160261, 465 SCRA 44, 124, Nov. 10, 2003, *citing Angara*, 63 Phil. At 156–57.

And *third*, it is accepted that the republican form of government allows the people to freely choose representatives who will exercise a portion of sovereignty on their behalf.[104] In other words, these chosen representatives also act as agents of the people when performing public functions. This is further articulated in Article XI, Section 1 of the Constitution, which expressly directs public officers and employees to always be accountable to the people.[105] Thus, accountability mechanisms kick in when public officers fail in their representational roles, and when they fail to live up to the standards—both positive and normative—fixed by the Constitution.

Of special note are accountability mechanisms which do not arise exclusively from direct agency permutations among institutions and actors, but from express constitutional mandates. Collectively, these have been called the system of checks and balances. In *Angara,* the Court noted that this complex system keeps the various departments coordinated, since they were not intended to be completely independent of each other.[106] This was further elaborated in *Francisco v. House of Representatives,* in which the Court said that checks and balances serve a tempering role in the exercise of separate powers.[107]

It can be inferred, then, that checks and balances are concessions to fine-tune the separation doctrine. Although governmental powers have been divided, untrammeled supremacy in exercising any of them could still lead to misuse and abuse. The body of the Constitution draws the contours of each governmental power, and mechanisms of accountability are embedded to keep the persons who exercise them in line. And because these mechanisms are found in the Constitution—a sovereign product—the institutions and actors carrying them out remain answerable to the people. Furthermore, even the checks and balances themselves are subject to public scrutiny, in that they could just as easily be scrapped or reworked through a constitutional revision, should the people deem fit.

Reading these mechanisms through Oliver's accountability lens allows them to be classified into the four categories. For instance, under the

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[104] Macalintal v. Comm'n on Elections, G.R. No. 263590, Oct. 5, 2023, slip op. at 12, *citing* v. Comm'n on Elections, 327 Phil. 521, 791–92 (1996) (Puno, *J., concurring*); ISAGANI CRUZ, PHILIPPINE POLITICAL LAW 49 (1991 ed.).

[105] CONST. art. XI, § 1.

[106] *Angara*, 63 Phil. at 156.

[107] *Francisco*, 415 SCRA at 105.

doctrine of qualified political agency,[108] the President can exact political accountability over their subordinates, while Congress, by delegating emergency powers,[109] can hold the President politically liable. The former case contemplates a superior-inferior or principal-agent relationship, similar to how Oliver conceives it in the UK.[110] The latter case, however, departs from the framework's usual application because the President and Congress wield separate but equal powers. This is still justified because the Constitution provides Congress with a legitimate reason to embarrass the President, since it explicitly requires them to be liable for how emergency powers are exercised.

It also becomes apparent that a great deal of the checking mechanisms under the 1987 Constitution fall under political accountability, partly because the job of tempering a specific power has been expressly allocated to a particular branch of government. Examples of these are the President's veto powers to check the enactment of laws,[111] the power to call for a special session of Congress at any time,[112] and the power to fix the ceiling for annual appropriations,[113] all of which are directed against Congress. As against the Supreme Court, the Executive wields appointment powers over judges and justices,[114] and the grant of reprieves, commutations, pardons, and remission of fines and forfeitures for those convicted by final judgment.[115]

Meanwhile, non-political governmental accountability can be found in the non-judicial constitutional bodies specially tasked to act separately and independently from the three great departments. To emphasize, these accountability mechanisms are chiefly run by actors and institutions who are not popularly elected, hence the term "non-political." Examples include the Commission on Elections (COMELEC), which is empowered to decide election-related disputes, except those otherwise reserved to a different forum, and to administer elections;[116] the Civil Service Commission (CSC), which establishes the government career service;[117] the Commission on Audit

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[108] Nat'l Power Corp. Bd. Of Dir. v. Comm'n on Audit, G.R. No. 242342, 935 SCRA 165, 177–78, Mar. 10, 2020, *citing* Manalang-Demigillo v. Trade & Invest. Dev't of the Phil. Corp., 705 Phil. 331, 347-349 (2013).

[109] CONST. art. VI, § 23(1).

[110] Tamase, *supra* note 98.

[111] Art. VI, § 27(1)–(2).

[112] Art. VI, § 15.

[113] Art. VI, § 25(1).

[114] Art. VIII, § 9.

[115] Art. VII, § 19, ¶ 1.

[116] Art. IX-C, §§ 2(1)–(2).

[117] Art. IX-B, § 3.

(COA), which examines, audits, and settles all government accounts;[118] the Office of the Ombudsman, which investigates and prosecutes public officials, employees, or bodies for wrongdoing;[119] and the Commission on Human Rights (CHR), which investigates violations of civil and political rights, and monitors the government's compliance with human rights treaty obligations.[120]

Legal accountability is the accountability exacted by the courts from political actors and institutions, and which calls upon them to provide legal justifications for their actions.[121] Pursuant to its judicial power and its expanded judicial review, the chief guardian of legal accountability under the Constitution is the judiciary. Aside from settling disputes on legally demandable and enforceable rights, courts are vested with the power to examine, test, and declare void the acts of other governmental bodies when found to be unconstitutional.[122] Further, and in response to the martial law years, judicial review was expanded in the 1987 Constitution to cover grave abuses of discretion that amount to a lack or excess of jurisdiction.[123] Generally, this has since prevented the political departments from indiscriminately raising the political question defense, and has allowed the courts to review abuses of power as justiciable questions.[124]

Thus, under expanded judicial review, almost every exercise of discretion that is subject to a legal standard can be brought before courts to demand legal accountability. This covers even mechanisms that fall under political and non-political governmental accountability, especially when the core question involves a political actor or institution refusing to yield to another. In hindsight, such disputes quite possibly comprise the great majority of the Court's decisions on political law.

Finally, public accountability submits the judgment of government acts to the public, including the electorate. It is a remainder mechanism that also covers truly political questions. This applies to those powers for which the Constitution provides no other standards and leaves matters entirely to the wisdom of those wielding it. No forum could force the President's hand

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[118] Art. IX-D, § 2(1).

[119] Art. XI, § 13(1).

[120] Art. XIII, § 18(1), (7).

[121] Oliver, *supra* note 30, at 26.

[122] Kilusang Mayo Uno v. Aquino, G.R. No. 210500, 899 SCRA 492, 512, Apr. 2, 2019, *citing* Araullo v. Aquino [hereinafter "*Araullo*"], G.R. No. 209287, 728 SCRA 1, 67, July 1, 2014.

[123] *Francisco*, 415 SCRA at 124–26.

[124] *Id.* at 149–50.

on the choice of appointments, nor could another body compel Congress to pass certain laws or appropriate funds for certain programs.

A major reckoning usually arrives on election day, during which the people evaluate how elected officials exercised their powers and decide whether they should be rewarded with renewed support. But conceptually, public accountability is not limited to electoral contests. It is constantly at play in vibrant democracies, such as when general sentiments are continuously expressed to the government.

Retrofitting Oliver's framework shows that public accountability could also be thought of as a secondary layer for all other kinds of accountability mechanisms, given that all institutions and actors only exercise power on behalf and for the benefit of the sovereign people. The ways through which State affairs are handled can similarly be evaluated through electoral retribution or public opinion. It then becomes easy to extend the analogy even further and construct a meta-accountability mechanism category called sovereign accountability, which may be exercised directly by the people through revolution, constitutional amendment or revision, or indirectly propagated through Oliver's four categories.

To summarize the foregoing discussion, Table 1 presents some constitutional mechanisms and reflects their proposed classifications under Oliver's accountability framework.

Table 1. Examples of accountability mechanisms in the 1987 Constitution.

Accountability Mechanism	**Agency Relationship**	**Check and Balance**
Political Accountability	*Legislative*: delegated emergency powers; delegated legislative powers *Executive*: qualified political agency	*Executive*: veto and line-item veto power; call special congressional sessions; fix budget ceiling; appointment of judges and justices; pardon, reprieves, commutations, remission of fines and forfeitures *Legislative*: impeachment prosecution and adjudication (as separate bodies); amnesty; override presidential veto; confirmation of Executive's appointments (through

Accountability Mechanism	**Agency Relationship**	**Check and Balance**
		Commission on Appointments); concurrence with treaties; limitation on declaration of martial law and suspension of the privilege of the writ of habeas corpus; oversight
Public Accountability	*Legislative*: choice of legislation; choice of appropriations *Executive*: choice of appointments; foreign policy; implementation of laws; program of government *Secondarily:* all other mechanisms identified in this matrix	
Legal Accountability	*Judiciary*: adjudication of cases or controversies *Executive*: investigation and prosecution	*Judiciary*: expanded judicial review; membership in electoral tribunals *Legislative*: membership in electoral tribunals
Non-political Governmental Accountability		*COMELEC*: authority over elections and election-related contests *CSC*: authority to prescribe standards for career service *COA*: examination, audit, and settlement of government accounts *Ombudsman*: investigation and prosecution of public officials *CHR*: investigation of human rights violations involving civil and political rights; monitoring government

Accountability Mechanism	Agency Relationship	Check and Balance
		compliance with human rights treaty obligations

When seen as a a whole, these points imply that the 1987 Constitution is an Accountability Constitution. The said principle is a key virtue in the charter's subtext and objectives, and a unifying logic for how it calibrates the many facets of governmental power. As a virtue, accountability serves as a foundation for envisioning how the government is supposed to run and how its officers are supposed to act. Several accountability mechanisms are also found in the Constitution, placed there to bring virtue to life. The clear thread of political agency between the people, the government, and their representatives, and the intricate system of checks and balances not only guard against abuses of power but also provide remedies should they arise.

Reading the Constitution through the accountability lens provides guidance on how government powers could be understood. Tamase points out that thinking of accountability this way expands the constitutional thrust beyond the conventional idea of preventing and punishing corruption.[125] It invites a re-appreciation of how the government sees itself.[126]

With this view, the interpretation of provisions that grant or limit authority must favor an outcome that promotes greater answerability and minimizes impunity. This can be helpful—and perhaps, even correct—when grappling with tricky constitutional subsystems, such as the national budget cycle, in which separate powers and titanic interests converge. Carrying this strong accountability objective will be helpful not just with how the Constitution is litigated, but also with how it is lived.

IV. THE POWER OF THE PURSE

The power of appropriation, otherwise known as "the power of the purse," includes "the power to specify the project or activity to be funded under the appropriation law."[127] It is a direct application of legislative power, since the itemization of funding is made through an appropriation law. The Court has also affirmed that only Congress can decide how the government

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[125] Tamase, *supra* note 98.

[126] *Id.*

[127] Phil. Const. Ass'n v. Enriquez, G.R. No. 113105, 235 SCRA 506, 522, Aug. 19, 1994.

will use its money, including the choice of which specific projects, activities, and programs ("P/A/Ps") to fund, and by how much these will be funded.[128] This is annually operationalized through the GAA, which in turn serves as the blueprint[129] for government spending in the succeeding year. It is for this reason that the GAA is also called the national budget.

The money involved is massive. For instance, the total national budget for 2024 is PHP 5.768 trillion, or 21.1% of the country's gross domestic product ("GDP").[130] These amounts set up government spending to make quite an impact on the national economy, both nominally and developmentally. In 2023, for example, total government expenditures amounted to PHP 3.465 trillion, accounting for about 14.25% of the GDP.[131] Spending even a portion of these large amounts for development-oriented projects promises to meaningfully improve the lives of millions of Filipinos. Conversely, losing them to corruption and wastage results in an overall welfare loss for the country.

Like other subsystems in the Constitution, the power of the purse is attended by several accountability mechanisms to ensure that money is well-appropriated and well-spent. Moreover, although Congress finally determines the budget, the process does not begin or end with the GAA's enactment. The budget undergoes a continuous cycle, with each phase overlapping with and informing the next.

A. The Philippine Budget Cycle

The Philippine budget cycle comprises of four key phases: (1) budget preparation, during which the Executive formulates its proposal; (2) budget legislation, during which Congress examines the proposed budget, deliberates on its contents, and enacts the GAA; (3) budget execution, during which the items in the GAA are implemented; and (4) budget accountability, during

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[128] *Araullo*, 728 SCRA at 136.

[129] *Id.* at 99, *citing* WILLIAM J. KEEFE & MORRIS S. OGUL, THE AMERICAN LEGISLATIVE PROCESS: CONGRESS AND THE STATES 359 (1993).

[130] *2024 People's Enacted Budget,* 4, DEP'T OF BUDGET & MGMT. WEBSITE, *available at* https://www.dbm.gov.ph/images/pdffiles/2024-Peoples-Enacted-Budget.pdf.

[131] *National Accounts of the Philippines,* PHIL. STAT. AUTH. WEBSITE, *available at* https://psa.gov.ph/sites/default/files/nap/01Summary_2018PSNA_Qrt_3.xlsx. The total government expenditure is the sum of Q1 to Q4 Government final consumption Expenditure for 2023. The percentage of GDP is computed from dividing the Government final consumption expenditure by the summation of the Q1 to Q4 Gross Domestic Product for 2023.

which budget performance is monitored and government expenditures are audited.[132]

The cycle persists as long as the government needs to spend money. Hence, various facets of State machinery continuously engage with budget processes almost year-round. It is also useful to note that under this system, preparations for the budget begin one year prior to implementation. This means that agencies must implement and monitor their budgets for the current year, while also proposing their funding amounts for the following year.

The first phase in the cycle is budget preparation, and begins with the country's top economic managers convened in the Development Budget Coordinating Committee ("DBCC").[133] The DBCC comes to an agreement about some key macroeconomic parameters, overall economic targets, desired total government expenditure levels, revenue projections, and budget principles,[134] and evaluates performance relative to the medium-term fiscal framework.[135] These would be later embodied in the Budget of Expenditures and Sources of Financing ("BESF"),[136] and would inform the individual proposals of the agencies.

Afterwards, the Department of Budget and Management (DBM) issues a budget call that sets out goals for the upcoming year and provides an expenditure management framework, planning guidelines and tools, and a budget preparation calendar.[137] This directs agencies to begin preparing their

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[132] *Araullo,* 728 SCRA at 87–99; *see also The Budget Cycle,* 1, DEP'T OF BUDGET & MGMT. WEBSITE, *available at* https://www.dbm.gov.ph/wp-content/uploads/Executive%20Summary/2016/Budget%20Cycle.pdf.

[133] *The Budgeting Process,* 1, DEP'T OF BUDGET & MGMT. WEBSITE, *available at* https://www.dbm.gov.ph/wp-content/uploads/2012/03/PGB-B2.pdf. The DBCC is chaired by the Secretary of the Department of Budget Management (DBM), and its members are the Bangko Sentral ng Pilipinas (BSP) Governor, the Secretary of the Department of Finance (DOF), the Director General of the National Economic and Development Authority (NEDA), and a representative of the Office of the President. *Id.*

[134] *Id.*

[135] *See* International Monetary Fund Asia Pacific Dept., *The Medium-Term Fiscal Framework in the Philippines, in* IMF COUNTRY REPORTS - PHILIPPINES: SELECTED ISSUES 21, 25 (2023).

[136] *See, e.g., Budget of Expenditures and Sources of Financing Fiscal Year 2024* [hereinafter "*2024 BESF*"], DEP'T OF BUDGET & MGMT. WEBSITE, Aug. 2, 2023, *available at* https://www.dbm.gov.ph/wp-content/uploads/BESF/BESF2024/BESF-2024.pdf.

[137] *The Budgeting Process, supra* note 133, at 1; *see, e.g.,* DBM Nat'l Budget Mem. No. 149 (2023). National Budget Call for F.Y. 2025.

budget proposals, which are then submitted to the DBM.[138] These proposals undergo a series of technical hearings before the DBM and then the DBCC, during which they are defended and, when appropriate, modified.[139]

The technical hearings usually consider the past performance of the agency and the P/A/Ps, as well as the feasibility of the proposals.[140] Once cleared, they are then reviewed by the President and the Cabinet, and upon approval, consolidated into the National Expenditure Program ("NEP").[141] At the end of this phase, the President transmits both the BESF and the NEP to Congress, pursuant to Article VII, Section 22 of the Constitution.[142] Often, these are accompanied by the President's Budget Message, which summarizes the administration's policy priorities for the year.[143]

These steps offer two key takeaways. *First*, it is clear that budget preparation is led by the Executive. The Constitution vests on the President not only the responsibility of preparing the basis of the general appropriations bill, but also the duty of implementing the GAA once it becomes effective.[144] It thus makes sense for proposals to originate from the bodies which would eventually execute them.

Second, both the BESF and NEP are crucial documents that must always be read together. The BESF provides Congress with a complete macroeconomic picture. It not only shows the proposed total government spending level, but also forecasts revenue collections and other receipts, as well as the amount of debt financing that must be acquired to provide cash cover for the budget. These figures are presented in the medium-term, and thus provide guidance on how Congress could strategize for future GAAs. Meanwhile, the NEP—popularly known as the Executive's budget proposal—itemizes the total spending level indicated in the BESF. It contains a detailed list of P/A/Ps with corresponding amounts which the implementing agencies, by their own estimates, hope to fully utilize.

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[138] *The Budgeting Process, supra* note 133, at 1–2.

[139] *Id.* However, the process is slightly different for government-owned and controlled corporations, government corporate entities, and bodies which enjoy fiscal autonomy. For brevity and focus, these nuances will no longer be discussed. *See, e.g.,* DBM Corp. Budget Mem. No. 45 (2023). Corporate Budget Call for F.Y. 2024.

[140] *The Budgeting Process, supra* note 133, at 2.

[141] *Id.*

[142] CONST. art. VII, § 22. "The President shall submit to the Congress within thirty days from the opening of every regular session, as the basis of the general appropriations bill, a budget of expenditures and sources of financing, including receipts from existing and proposed revenue measures."

[143] *The Budgeting Process, supra* note 133, at 2.

[144] *See* CONST. art. VII, § 17.

While the NEP always takes the spotlight,[145] it is often forgotten that the Constitution also refers to the BESF as a document which the President must submit to Congress. Specifically, the provision refers to a "budget of expenditures and sources of financing, including receipts from existing and proposed revenue measures" upon which the general appropriations bill shall be based.[146] Therefore, when interpreting constitutional provisions pertaining to the Executive's proposal, the BESF must be considered with the NEP.[147]

Upon the submission of the BESF and NEP to Congress, the budget legislation phase begins.[148] The Constitution requires that appropriation bills must originate exclusively from the House of Representatives,[149] so the House Committee on Appropriations and other sub-committees take a first crack at formulating the General Appropriations Bill ("GAB").[150] During this phase, the House deliberates on the contents of the budget, and calls upon agency heads to ask questions regarding their proposals. The Senate also conducts parallel budget hearings, but holds off on finalizing its GAB until the House passes and transmits its own version.[151]

These budget hearings have also been used as opportunities for legislators to exercise oversight. The inquiries directed to agency heads are often not limited to the budget proposals; they also deal with the agency's past and current spending performance, implementation progress, and even anomalies observed by the public or the Commission on Audit (COA). Thus, similar to the technical hearings conducted by the DBM and DBCC, the congressional hearings sometimes become avenues for budget accountability.

Conversely, the congressional hearings also give agencies a second chance to advocate for budget increases or modifications. Some items that

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[145] *See* Sheila Crisostomo, *2023 'Agenda for Prosperity' budget submitted to Congress,* PHILSTAR.COM, Aug. 23, 2022, *at* https://www.philstar.com/headlines/2022/08/23/2204445/2023-agenda-prosperity-budget-submitted-congress. Here, the BESF is not mentioned.

[146] CONST. art. VII, § 22.

[147] The Court has also recognized that the BESF is a document which the President must transmit to Congress as basis for appropriations. *See* Guingona v. Carague, G.R. No. 94571, 196 SCRA 221, 237, Apr. 22, 1991. "Thus, in accordance with Section 22, Article VII of the 1987 Constitution, President Corazon C. Aquino submitted to Congress the Budget of Expenditures and Sources of Financing for the Fiscal Year 1990." *Id.*

[148] *See The Budgeting Process, supra* note 133, at 2.

[149] CONST. art. VI, § 24.

[150] *The Budgeting Process, supra* note 133, at 2.

[151] *Id.*

were slashed or scrapped at the Executive level could find success at the House or Senate, depending on the inclinations of legislators. For example, the Department of Health (DOH) in 2023 asked for a bigger allocation to fund the unpaid allowance of COVID-19 health workers during a House hearing on its budget.[152]

Once both Houses have passed their respective versions of the GAB, they create a Bicameral Conference Committee ("Bicam") to reconcile differences.[153] The harmonized bill is then enrolled and presented to the President for approval.[154] At this point, the President may opt to approve the bill in its entirety, exercise line-item veto powers for certain items, or let it lapse into law.[155] Congress may, in turn, choose to override the veto.[156] In any case, if the GAB is enacted as law, it becomes the GAA.[157]

The GAA's effectivity marks the start of the budget execution phase. The DBM releases funds to the agencies for regular operations.[158] Each agency is given fund allotments—either through a General Allotment Release Order ("GARO") or a Special Allotment Release Order ("SARO")—which authorize them to incur obligations.[159] The agencies then obligate funds by executing new contracts or enforcing existing ones, which would be necessary to implement their P/A/Ps. For example, the Department of Agriculture (DA) would incur obligations to its personnel for their salaries, and to winning bidders for the procurement of various farming inputs.

Cash is then released to agencies through Notices of Cash Allocation ("NCAs"), which authorize agencies to withdraw money from government banks to satisfy their obligations.[160] Every month or every quarter, the DBM issues NCAs based on their financing requirements and on the national government's cash program.[161] The total amount of funds paid out by the agency, otherwise known as disbursements, are tallied quarterly and used as

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[152] Llanesca Panti, *DOH: P1.6B of unpaid COVID-19 allowance for health workers still unfunded,* GMA INTEGRATED NEWS, Sept. 6, 2023, *at* https://www.gmanetwork.com/news/topstories/nation/881274/doh-p1-6b-of-unpaid-covid-19-allowance-for-health-workers-still-unfunded/story/.

[153] *The Budgeting Process, supra* note 133, at 2.

[154] CONST. art. VII, § 27(1).

[155] Art. VII, §§ 27(1)–(2).

[156] Art. VI, § 27(1).

[157] *Araullo*, 728 SCRA at 96.

[158] *The Budgeting Process, supra* note 133, at 2.

[159] *Id.* at 3.

[160] *Id.*

[161] *Id.*

indicators of spending efficiency.[162] Further, agencies are usually given some flexibility in managing their cash allocations, such that they are allowed to pool them into a common fund.[163] Payments may be drawn from an agency's common fund as obligations become due, so long as the authorized allotment for a particular item is not exceeded.[164] This policy allows agencies to spend faster.[165]

The budget monitoring and accountability phase, meanwhile, runs parallel to budget execution.[166] Fund movements are internally monitored and evaluated as agencies obligate and disburse their funds, with periodic reports submitted to the DBM.[167] Performance targets are also reviewed to see if the agency is achieving its planned goals. [168] Several reports are then generated, reviewed, and published to keep the Cabinet, the DBCC, the President, and the public informed on implementation progress.[169]

Finally, when the agencies close their books for the year, COA begins its audit. COA checks if government funds have been properly spent, points out irregularities, recommends or imposes remedial measures, and monitors the agencies' compliance with its findings. The wealth of information generated during this phase is incredibly useful. Often, such data are considered in budget preparation and legislation for the following year. The media and interested publics also look at spending reports and audit findings to ask critical questions on budget priorities and fund use. These all feed into creating an environment of critical discourse and accountability concerning public funds.

B. Accountability Framework for Appropriations

The foundational provision that drives the importance of the appropriation power is Article VI, Section 29(1), which requires an

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[162] *See FY 2023 Statement of Appropriations, Allotments, Obligations, Disbursements, and Balances (Preliminary),* DEP'T OF BUDGET & MGMT. WEBSITE, *available at* https://www.dbm.gov.ph/wp-content/uploads/e-Fund_Releases/SAOB2023/4thQuarter/Preliminary-Updated/00.%20SUMMARY.pdf.

[163] *The Budgeting Process, supra* note 133, at 3.

[164] *Id.*

[165] *Id.*

[166] *Id.* at 1.

[167] The Budget Cycle, *supra* note 132, at 290.

[168] *Id.*

[169] *See The Budget Cycle, supra* note 132, at 290.

appropriation law for any government expenditure.[170] Thus, Congress exercises a strong influence on the operations of all government bodies Its funding choices often determine the success or failure of certain plans or programs for any given year.

Further, the members of Congress are accountable only to the public for strictly policy decisions. After all, their exercise of political wisdom and discretion is the essence of their being elected as representatives. If they fail to act as effective agents—e.g., by being poor advocates of their constituencies' budget needs—they are vulnerable to being disfavored in the next elections, or to being publicly pressured or shamed.

Still, other accountability mechanisms exist to keep the appropriation power in check. Multiple constitutional provisions explicitly serve as limitations on the procedure, form, and substance of the GAA. The first of these is the requirement that all appropriation bills must originate exclusively in the House of Representatives, subject to the Senate's proposals of or concurrence with amendments.[171] Since the origination requirement pertains only to the bill and not the law, the Court has clarified that the enacted version may substantially differ from the House version.[172]

Another set of limits could be found in Article VI, Section 25 of the Constitution, which provides that Congress shall determine the form, content, and manner of preparing the budget,[173] and that provisions in the GAB and GAA must directly relate to a specific appropriation, with their operation limited only to the same.[174] Further, it prohibits Congress from adopting a different procedure for appropriating its own funds, as compared to that used in appropriating the funds of other bodies.[175]

Special appropriations bills must specify their intended purpose, supported either by available funds or by a new revenue source.[176] In a similar vein, discretionary funds budgeted for specific officials must only be spent for

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[170] CONST. art. VII, § 22. "No money shall be paid out of the Treasury except in pursuance of an appropriation made by law."

[171] Art. VI, § 24.

[172] Tolentino v. Sec'y of Finance, G.R. No. 115455, 235 SCRA 630, 661, Aug. 25, 1994. Although the Court here ruled on a revenue bill, the logic also applies to an appropriation bill since the relevant provision is still Article VI, § 24.

[173] CONST. art. VI, § 25(1).

[174] Art. VI, § 25(2). Those which violate this rule have been called "inappropriate provisions." Phil. Const. Ass'n v. Enriquez, 235 SCRA at 534.

[175] CONST. art. VI, § 25(3).

[176] Art. VI, § 25(4).

public purposes, and must be supported by vouchers, subject to other guidelines that Congress may prescribe.[177] Moreover, the provision prohibits laws which authorize transfers of appropriations, except for augmentations from savings declared by the heads of the Executive, Legislative, Judiciary, and Constitutional Commissions.[178] This was notably applied in *Araullo,* in which the Court struck down the Disbursement Acceleration Program for facilitating cross-border transfers.[179]

The last rule from this set takes on the complexion of a fail-safe mechanism, as it provides for the automatic reenactment of the prior GAA should Congress fail to pass a new one on time.[180] Notably, the GAA is also subject to other constitutional rules governing the enactment of laws, such as the "one bill one title" rule and the "three readings" rule.[181]

Another limitation on Congress' power is the prohibition of post-enactment identification authority, fund release, and fund realignment, as established in *Belgica.* The Court reiterated that after enacting the GAA, the only influence which Congress may exert is oversight.[182] Post-enactment measures which allow legislators to participate beyond oversight are void, and constitute undue incursions into the domain of executive power.[183] These measures also directly weaken accountability by tainting the individual exercise of oversight functions. If legislators are allowed to participate in post-enactment activities, they would be partly checking on themselves, given their personal involvement and specific financial interests in the pork barrel projects.[184]

The Constitution, aside from regulating the form and procedure of the GAA, also carefully restricts congressional discretion on certain substantive budget matters. In support of the non-establishment clause, a counterpart provision is found in Article VI, Section 29(2) which prohibits appropriations to support any religion, except for a "priest, preacher, minister, or dignitary is assigned to the armed forces, or to any penal institution, or

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[177] Art. VI, § 25(6).

[178] Art. VI, § 25(5).

[179] *Araullo*, 728 SCRA at 157–64.

[180] CONST. art. VI, § 25(7).

[181] *See* Art. VI, § 26(1)–(2),

[182] *Belgica,* 710 SCRA at 116–17, *citing* ABAKADA Guro Partylist v. Purisma, G.R. No. 166715, 562 SCRA 251, 294–96, Aug. 14, 2008.

[183] *Belgica,* 710 SCRA at 116–17. *See also* ABAKADA Guro Partylist v. Purisima, G.R. No. 166715, 562 SCRA 251, 287, Aug. 14, 2008.

[184] *Belgica,* 710 SCRA at 132.

government orphanage or leprosarium."[185] Further, the fiscal autonomy of the judiciary is granted an extra layer of protection. The legislature is expressly forbidden from reducing the judiciary's appropriations to a level below its budget for the previous year.[186]

In addition, the Constitution features key checks and balances to further temper the power of the purse. The most prominent is the line-item veto, through which the President could object to specific items or provisions in the appropriations bill.[187] The veto could be direct, such that the item is separated from the GAA and is rendered inoperative. Alternatively, the veto could subject the item to conditional implementation.[188] Once the veto is communicated, Congress may choose to override it by a two-thirds vote of each House, voting separately.[189]

Another check is the budget ceiling provision found in Article VI, Section 25(1) of the Constitution, which prevents Congress from increasing the appropriations recommended by the President for government operations.[190] COA also plays an important role in guarding appropriations by pointing out abuses through its findings, albeit on a post-audit basis.[191] The last, and perhaps most encompassing of them all, is the expanded judicial review exercised by courts. This has been traditionally used as a course-correcting measure whenever a power has been misapplied.[192]

Viewing this system of rules through the lens of Oliver's accountability framework reveals that public accountability primarily applies only to the choice and extent of appropriations. In contrast, political accountability applies to the President's line-item veto, the Court's enhanced fiscal autonomy, the prohibition on post-enactment identification authority, and the budget ceiling. These all render Congress accountable to either the President or the Court. Meanwhile, the constitutional limits on the procedure, form, and substance of the GAA are enforceable through the Court's expanded judicial review as a mode of exacting legal accountability. In the same light, COA's auditing power could be considered a form of non-political

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[185] CONST. art. VI, § 29(2).

[186] Art. VIII, § 3.

[187] Art. VI, § 27(2).

[188] *See, e.g.,* President's Veto Message, 119 O.G. 779, 781–88 (2023), *available at* https://www.dbm.gov.ph/wp-content/uploads/GAA/GAA2024/VolumeI/VETO.pdf; *see also Araullo,* 728 SCRA at 95.

[189] CONST. art. VI, § 27(1).

[190] This will be discussed in richer detail in the succeeding parts of the Note.

[191] *See* Art. IX-D, § 2(1).

[192] *See also* Relacion & Magalzo, *supra* note 96, at 50–51.

governmental accountability against Congress, given that COA is a non-political body specifically mandated with this purpose. This is also true for the Ombudsman's investigative and prosecutorial powers in case legal standards are violated.

Still, and as earlier observed, the representative nature of democracy in a republic makes it possible to treat public accountability as a secondary mechanism, against which the exercise of the other kinds may be monitored and evaluated, subject to electoral and public reckoning. Table 2 below summarizes this Section's discussion.

Table 2. Accountability mechanisms on the power of the purse.

Accountability Mechanism	**Agency Relationship**	**Check and Balance**
Political Accountability		*Executive*: budget ceiling; line-item veto *Legislative*: override veto *Judiciary*: fiscal autonomy of the Supreme Court; prohibition of post-enactment identification authority
Electoral Accountability	*Legislative*: choice of what to fund, how much to fund *Secondarily:* all other mechanisms identified in this matrix	
Legal Accountability		*Judiciary*: judicial review (based on procedural and substantive limitations)
Non-political Governmental Accountability		*COA*: examination, audit, and settlement of government accounts *Ombudsman*: investigation and prosecution of public officials

These mechanisms are triggered once a breach occurs, and the institutions to which accountability is owed are legitimized to seek it. They

may opt to pursue legal relief through judicial review, since breaching a mechanism means violating the Constitution. If the facts bear out, they may even avail of the Court's expanded certiorari jurisdiction by building a case for grave abuse of discretion. And because these constitutional violations are justiciable controversies, Congress may not find safe harbor in the political question doctrine. The same is true for relying on bodies which are specially created to review public acts beyond court cases, such as COA's audits and the Ombudsman's fact-finding and disciplinary jurisdiction.

Alternatively, these institutions may castigate their counterparts whenever they fail to abide by the various mechanisms in play. This may be done either to enforce political accountability or to facilitate public accountability. There are many ways through which they could invoke their constitutional legitimacy without going to court, such as internally calling out the practice in coordinative meetings, exposing the wrongdoings, or asking them to explain and justify the violations, either internally or to the public. Although unorthodox from a litigious perspective, such methods are important because they help shape the government's internal accountability culture, inform the public's constitutional consciousness, and weave together both constitutional and popular legitimacy.

V. THE BUDGET CEILING

Of central importance to this Note is the budget ceiling, which has been breached by Congress for the past three years. Earlier discussions have established that this is a checking mechanism through which the President exacts political accountability from Congress vis-à-vis its power of the purse. Further, because the budget ceiling is a constitutionally enshrined standard, its violation presents a justiciable question that may be vindicated by seeking relief from the courts.

A. Breach of the Budget Ceiling

Soon after the 2024 GAA was enacted, Senator Aquilino Pimentel III, and Senator Panfilo Lacson flagged that an additional PHP 450 billion was included in the national budget through unprogrammed appropriations despite not being present in the Executive's proposal.[193] Meanwhile, Representative Edcel Lagman and Senator Pimentel invoked Article VI,

[193] Chi, *supra* note 19.

Section 25 of the Constitution on the budget ceiling.[194] Later on, Senator Pimentel also talked about filing a petition before the Supreme Court to question this increase.[195]

Zy-za Suzara, a public finance expert, remarked that the additional unprogrammed appropriations possibly breached the budget ceiling, since the spending authority in the GAA exceeded the proposal in the NEP.[196] She pointed out that this was not an isolated case as the same thing happened in the 2022 and 2023 GAAs.[197] A comparison of the figures from NEPs and GAAs for fiscal years ("F.Y.") 2022 to 2024 indeed show this gap, as presented in Table 3 below.

Notably, the differences in total amounts between the NEP and the GAA for the years covered are found only in the unprogrammed appropriations.[198] Suzara computed the figures by looking at budget totals in the Executive's BESF, then compared them with the totals in the GAA.[199] She also said that this practice was a red flag not only because the breach was growing from year to year, but also because key budget items were being moved to unprogrammed appropriations.[200] She surmised that this was likely done by Congress to make way for more pork.[201]

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[194] GMA Integrated News Research, *Unprogrammed funds: From 8 in NEP to 51 in GAA*, GMA NEWS ONLINE, Jan. 3, 2024, *at* https://www.gmanetwork.com/news/topstories/nation/893049/unprogrammed-funds-hiked-from-8-in-nep-to-51-in-gaa-2024/story/.

[195] Charie Abarca, *Pimentel to question in SC P450B hike in 2024 budget's unprogrammed funds*, INQUIRER.NET, Jan. 3, 2024, *at https://newsinfo.inquirer.net/1883340/pimentel-to-question-in-sc-p450b-hike-in-2024-budgets-unprogrammed-funds.*

[196] Suzara, *supra* note 18.

[197] Suzara, *supra* note 15.

[198] *Id.*

[199] *Id.*

[200] Suzara, *supra* note 18.

[201] *Id.*

Table 3. Discrepancies in the GAA for F.Y. 2022 – 2024.[202]

Items	NEP	GAA	Difference
F.Y. 2022[203]			
New General Appropriations	3,502,359,966,000	3,602,359,966,000	100,000,000,000
Programmed Appropriations	3,350,720,769,000	3,350,720,769,000	0
Unprogrammed Appropriations	151,639,197,000	251,639,197,000	100,000,000,000
Automatic Appropriations	1,672,879,231,000	1,672,879,231,000	0
Total Available Appropriations	5,175,239,197,000	5,275,239,197,000	100,000,000,000
Less: Unreleased Appropriations	151,639,197,000	151,639,197,000	0
Total Obligations	5,023,600,000,000	5,123,600,000,000	100,000,000,000
F.Y. 2023[204]			
New General Appropriations	4,259,253,923,000	4,478,253,923,000	219,000,000,000
Programmed Appropriations	3,671,091,443,000	3,671,091,443,000	0
Unprogrammed Appropriations	588,162,480,000	807,162,480,000	219,000,000,000
Automatic Appropriations	1,596,908,557,000	1,596,908,557,000	0
Total Available Appropriations	5,856,162,480,000	6,075,162,480,000	219,000,000,000
Less: Unreleased Appropriations	588,162,480,000	588,162,480,000	0

[202] This table was adapted from Suzara's presentation slides. Suzara, *supra* note 15. Individual figures have been independently verified. The Programmed Appropriation for the GAA, Difference, Total Available Appropriations, Unreleased Appropriations were derived from the other figures.

[203] *Budget of Expenditures and Sources of Financing Fiscal Year 2022* [hereinafter "*2022 BESF*"] 780–81, DEP'T OF BUDGET & MGMT. WEBSITE, *available at* https://www.dbm.gov.ph/wp-content/uploads/BESF/BESF2022/H.pdf; *Summary of FY 2022 New Appropriations* [hereinafter "*FY 2022 New Appropriations*"], 118(1) O.G. 826, 838 (Jan. 3, 2022), *available at* https://www.dbm.gov.ph/wp-content/uploads/GAA/GAA2022/VolumeI/SNA.pdf.

[204] *Budget of Expenditures and Sources of Financing Fiscal Year 2023* [hereinafter, "*2023 BESF*"] 804–05, DEP'T OF BUDGET & MGMT. WEBSITE, *available at* https://www.dbm.gov.ph/wp-content/uploads/BESF/BESF2023/H.pdf; *Summary of FY 2023 New Appropriations* [hereinafter "*FY 2023 New Appropriations*"], 118(2) O.G. 797, 809 (Dec. 26, 2022), *available at* https://www.dbm.gov.ph/wp-content/uploads/GAA/GAA2023/VolumeI/SNA.pdf.

Items	NEP	GAA	Difference
Total Obligations	5,268,000,000,000	5,487,000,000,000	219,000,000,000
F.Y. 2024[205]			
New General Appropriations	4,301,676,248,000	4,751,216,758,000	449,540,510,000
Programmed Appropriations	4,019,768,192,000	4,019,768,192,000	0
Unprogrammed Appropriations	281,908,056,000	731,448,566,000	449,540,510,000
Automatic Appropriations	1,747,831,808,000	1,747,831,808,000	0
Total Available Appropriations	6,049,508,056,000	6,499,048,566,000	449,540,510,000
Less: Unreleased Appropriations	281,908,056,000	281,908,056,000	0
Total Obligations	5,767,600,000,000	6,217,140,510,000	449,540,510,000

In defense of the 2024 GAA, Senator Juan Edgardo Angara and Representative Joey Salceda said that even if unprogrammed appropriations increased, the budget ceiling was not breached.[206] They argued that only programmed appropriations were within the scope of the ceiling, with Representative Salceda citing *Sarmiento v. Treasurer* in support.[207] He asserted that the ceiling is merely a constitutional device to prevent massive budget deficits, and since unprogrammed appropriations would be deficit-neutral, Congress was allowed to appropriate beyond the BESF level through unprogrammed funds.[208]

B. Pending Actions

Petitions have been filed before the Supreme Court to question the observed excess. In an action for certiorari and prohibition, Representatives Edcel Lagman, Gabriel Bordado, Jr., and Mujiv Hataman sought to nullify the PHP 449.5 billion unprogrammed appropriations in the 2024 GAA, which overshot the PHP 289.1 billion figure initially presented in the 2024 NEP

[205] *2024 BESF, supra* note 136, at 778–79; *Summary of FY 2024 New Appropriations* [hereinafter "*FY 2024 New Appropriations*"], 119(52) O.G. 791, 803 (Dec. 25, 2023), *available at* https://www.dbm.gov.ph/wp-content/uploads/GAA/GAA2024/VolumeI/SNA.pdf.

[206] Filane Mikee Cervantes, *Congress can increase unprogrammed funds in 2024 budget: House leader,* PHIL. NEWS AGENCY WEBSITE, Jan. 3, 2024, *at* https://www.pna.gov.ph/articles/1216253; GMA Integrated News Research, *supra* note 194.

[207] Cervantes, *supra* note 206.

[208] *Id.*

("*Lagman* petition").[209] They pointed out that since the unprogrammed items in the House and Senate versions of the 2024 GAB were identical, there was nothing for the Bicam to "reconcile" in its closed-door conference.[210] In other words, the Bicam should not have even touched those items.

The *Lagman* petition theorized that the budget ceiling applies to both programmed and unprogrammed appropriations, and that the cap fixed by President's proposal must be observed separately.[211] It claimed that "[t]he 2024 NEP recommended a total […] for programmed […] and unprogrammed appropriations. The *respective* ceilings *each* cannot be breached by Congress."[212] The foundation of the petition's theory is the principle of non-distinction.[213] Since the Constitution did not distinguish between the kinds of appropriations, the budget ceiling must apply to both. In doing so, the petition argued that the budget ceiling is not a singular amount. It is not the sum of programmed and unprogrammed appropriations. Instead, two budget ceilings are offered: one for programmed, and another for unprogrammed.

The petition then described Congress' scheme of using unprogrammed funds as a political cash cow.[214] In searing fashion, the *Lagman* petition called out the practice of "transferring funded projects to the unprogrammed appropriations in order to accommodate *replacement pet projects* which are then assured of funding. The unprogrammed appropriations have become the *sanctuary of partisan and pet projects* where funding and releases for implementation could even antedate the implementation of programmed appropriations."[215]

Officers of BAYAN MUNA, led by party-list chair Neri Colmenares, also filed a petition for certiorari and prohibition to declare void the additional unprogrammed appropriations worth PHP 449.5 billion ("*Colmenares*

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[209] Lagman v. Congress [hereinafter "*Lagman petition*"], G.R. No. 271059, Jan. 15, 2024, at 25 (Petition for Certiorari and Prohibition), *available at* https://edcellagman.ph/images/2024/Petition-G.R.-No.-271059.pdf. Senator Pimentel also filed a petition questioning the additional unprogrammed funds, but a copy of the pleading was not publicly available.

[210] *Id.* at 10–11.

[211] *Id.* at 4–5.

[212] *Id.* at 18. (Emphasis supplied.)

[213] *See Id.*

[214] *See id.* at 18.

[215] *Id.* (Emphasis supplied.)

petition").[216] Similar to the *Lagman* petition, they alleged that the amount was inserted at the Bicam level.[217] They also attacked a new provision[218] which allows the Executive to sweep cash from GOCC fund balances.[219]

The *Colmenares* petition did not dwell too long on the excess appropriations. It offered two interpretations of the budget ceiling and argued that adopting either would still result in Congress violating the Constitution.[220] In the first view, the budget ceiling was treated as the sum of programmed and unprogrammed appropriations. It was stressed that the additional funds inserted by the Bicam were unconstitutional for "increas[ing] the budget of expenditure submitted by the President […] in violation of Article VI[,] Section 25 (1)."[221] The petition hedged its theory by offering a second view, which seems similar to that of the *Lagman* petition. It said that even if the budget ceiling analysis was limited only to unprogrammed appropriations, the added items were still beyond the maximum recommended by the President.[222]

In its Comment to the *Colmenares* petition, the Office of the Solicitor General (OSG) asserted that the budget ceiling does not apply to unprogrammed appropriations.[223] This theory insists that only programmed and automatic appropriations form part of the President's budget proposal, since it is only the sum of these figures which are declared in the BESF's expenditure program.[224] Because unprogrammed appropriations do not

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[216] Colmenares v. Marcos [hereinafter "*Colmenares petition*"], G.R. No. 275405, Sept. 6, 2024, at 33 (Petition for Certiorari and Prohibition), *available at* https://sc.judiciary.gov.ph/wp-content/uploads/2024/09/Petition-275405.pdf.

[217] *Id.* at 12–14.

[218] *See Id.* at 33.

[219] *See* Rep. Act No. 11975 (2023), § 1, XLIII, spec. prov. 1(d). This provision is also attacked by other related petitions, since it is the legal basis for the transfer of PHP 89.9 billion unused funds from PhilHealth to the Executive department. *See* Pimentel v. House of Representatives [hereinafter "*Pimentel petition*"], G.R. No. 274778, Aug. 2, 2024 (Petition for Certiorari and Prohibition), *available at* https://sc.judiciary.gov.ph/wp-content/uploads/2024/08/Petition-274778.pdf; 1SAMBAYAN Coalition v. House of Representatives [hereinafter "*1SAMBAYAN petition*"], G.R. No. 276233, Oct. 16, 2024 (Petition for Certiorari and Prohibition), *available at* https://sc.judiciary.gov.ph/wp-content/uploads/2024/10/G.R.-No.-276233-Petition.pdf.

[220] *See id.* at 22.

[221] *Id.*

[222] *Id.*

[223] *See Colmenares petition,* G.R. No. 275405, Sept. 30, 2024, at 20 (OSG Comment on the Petition), *available at* https://sc.judiciary.gov.ph/wp-content/uploads/2024/10/Comment-on-the-petition-in-G.R.-No.-275405.pdf.

[224] *Id.* at 19–20. The *Colmenares* petition was subsequently consolidated with Pimentel v. House of Representatives and 1SAMBAYAN Coalition v. House of Representatives, set

appear in the BESF, Congress's act of increasing these funds were said to be beyond the scope of the constitutional prohibition.[225]

Hence, two opposing positions have emerged. One side argues that the Constitution made no distinction between programmed and unprogrammed appropriations, and thus, their totals as recommended by the President must be used as the budget ceiling. The other side, meanwhile, contends that the budget ceiling applies only to programmed and automatic, and that Congress is free to increase unprogrammed funds beyond the President's recommended level. To make sense of these arguments, it is necessary to take a closer look at the budget ceiling provision itself and understand its role in the Philippine fiscal system.

C. Reading the Budget Ceiling Provision

The budget ceiling first appeared in the 1935 Constitution under Article VI, Section 19(1). It was noticeably different from its modern iteration, in that special distinctions were made as regards the appropriations of certain branches of government.[226] The provision states:

> The President shall submit within fifteen days of the opening of each regular session of the Congress a budget of receipts and expenditures, which shall be the basis of the general appropriations bill. *The Congress may not increase the appropriations recommended by the President for the operation of the Government as specified in the Budget, except the appropriations for the Congress and the Judicial Department.* The form of the Budget and the information that it should contain shall be prescribed by law.[227]

A textual analysis surfaces three key findings. *First*, Congress was prevented from increasing appropriations recommended by the President.

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for oral arguments in January 2025. Press Briefer, SUPREME COURT OF THE PHIL. WEBSITE, Oct. 29, 2024, *available at* https://sc.judiciary.gov.ph/press-briefer-19/. While the former touches on the budget ceiling, the latter two are mainly concerned with the fund transfers from PhilHealth pursuant to an insertion in the 2024 GAA's special provisions. *See Pimentel petition,* G.R. No. 274778, Aug. 2, 2024 (Petition for Certiorari and Prohibition), *available at* https://sc.judiciary.gov.ph/wp-content/uploads/2024/08/Petition-274778.pdf; *1SAMBAYAN petition*, G.R. No. 276233, Oct. 16, 2024 (Petition for Certiorari and Prohibition), *available at* https://sc.judiciary.gov.ph/wp-content/uploads/2024/10/G.R.-No.-276233-Petition.pdf.

[225] *Colmenares petition,* G.R. No. 275405, Sept. 30, 2024, at 20 (OSG Comment on the Petition), *available at* https://sc.judiciary.gov.ph/wp-content/uploads/2024/10/Comment-on-the-petition-in-G.R.-No.-275405.pdf.

[226] *Compare* CONST. (1935), art. VI, § 19(1) *with* CONST. art. VI, § 25(1).

[227] CONST. (1935), art. VI, § 19(1). (Emphasis supplied.)

This is the substance of the budget ceiling, as it forced the legislature to respect the President's proposal. Congress was allowed, however, to decrease the recommended appropriations, based on its wisdom and policy.

Second, the recommended appropriations were required to be specified in the budget. Though used interchangeably in modern fiscal parlance, the text made a distinction between "appropriations" and "budget." The budget *must specify* the appropriations, meaning that the set of documents transmitted by the President must contain a detailed list of what the budget seeks to fund and of the particular purposes for these items.

And *third*, the budget ceiling applied only to items in the Executive branch. Congress was free to increase the appropriations for its own operations and for the Judiciary as much as it liked.

It can be gleaned from the records of the 1934 Constitutional Convention ("ConCon") that the prohibition against Congress was meant to be quite strict.[228] Congress was generally prevented from increasing appropriations beyond the President's recommended levels even on a per item basis, except for the budgets of Congress and the Judiciary.[229] The main thrust of the prohibition was to maintain the separation of powers.[230]

During deliberations, Delegate Serafin Marabut and his group sought to remove this limitation.[231] They contended that although the President was well-positioned to know the expenditures that government revenues could cover, Congress should still be given the power to exceed the proposed amounts so that it may correct any administrative oversights committed by the Executive branch.[232] Delegate (and later, President) Elpidio Quirino and his group, arguing for the other side, stood firm on not giving such power to Congress.[233] The proposed amendment by Mr. Marabut and his group was eventually defeated.[234]

The vision for what would become the final provision was expressed in concrete terms in the following excerpt:

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[228] *See* VII RECORD CONST. CONVENTION 688 (Dec. 7, 1934).
[229] *See* CONST. (1935), art. VI, § 19(1).
[230] *See* VII RECORD CONST. CONVENTION 721–22 (Dec. 7, 1934).
[231] *Id.* at 723–28.
[232] *Id.* at 695–96.
[233] *Id.*
[234] *Id.* at 735.

MR. MARABUT: There is where we disagree, because while I want to give equal powers to both the Legislature and the Chief Executive, you seem to give the extreme powers, so that the Chief Executive can cripple the Legislature, and [the] Legislature can also cripple the Chief Executive […] My opinion is to adopt the middle ground whereby the two powers can go [together] and work [harmoniously] for the best interest of the country.

MR. QUIRINO: Precisely, the present draft gives more powers now to the National Assembly than to the present legislature. The *present legislature in practice has never been able to increase appropriation*, confining [itself to other] legislative duties. Now, in the Constitution which we are drafting, we have authorized the Executive to increase the items for the legislature and judiciary departments, [an act] which is not [the practice] at present.

MR. MARABUT: Is it not true that very recently, [the] Governor-General [approved] the items inserted by the Legislature in the Budget to the Appropriation Bill increasing the appropriation of the General Hospital so that it can open two free wards and also [approved] an item of [PhP500,000] inserted by the Legislature to increase the insular aid for [the maintenance of public schools?] Supposing we maintained the provision of the draft as it is, in what way then can the Legislature remedy any defect in the administration?

MR. QUIRINO: There are two ways. *Either increase the item without destroying the total*, or aside from that, introduce a special [law] in accordance with the present laws.

MR. MARABUT: Under the provision of the draft you cannot do that, *it is not permitted to increase any item, even within the total.*

MR. QUIRINO: *If it is not specific, yes,* because, supposing there is a lump sum approved for the hospitals, say [PHP 100,000] for one wing of the General Hospital, that item is a lump sum in the general appropriations. In accordance with this draft, if you want to increase the salary of the [Director] of the Hospitals or reduce the salary of any of the personnel [thereof,] and such appropriation [for] the salary of the Director and [the] subordinates is taken from the lump sum*, you can make any change that you want to, provided that you do not exceed a single cent* over the [PHP 100,000] for the Hospital, because the salary of the Director and the subordinates is *specified in the Appropriation Bill*. If that is not satisfactory, you can introduce a special bill.

> MR. MARABUT: According to that, even that cannot be done.[235]

This also provides a glimpse into the budget interplay between the Executive and the Legislative during the effectivity of the Jones Law, which was in force at the time of the deliberations. Based on the remarks of the ConCon members, even prior to the 1934 Constitution the legislature could only decrease—and never increase—the budget proposal made by the Governor-General, with no exception.[236] Still, these deliberations are by no means an authoritative source. They offer, at the very least, one possible interpretation of the provision. Unfortunately there was also no clear jurisprudential rule from the time which would have provided guidance on how the provision was best read.

The 1973 Constitution, as amended, removed the budget ceiling. Its Article VIII, Section 16(1) was largely the same as Article VI, Section 9(1) of the previous Constitution, except for the noticeable absence of the budget ceiling clause.[237] The Prime Minister was still required to submit a budget to the legislature, and the period within which the budget of expenditures and receipts must be submitted was extended from 15 days to 30 days from the opening of the legislature's regular session. [238] It provides:

> The Prime Minister shall submit to the National Assembly within thirty days from the opening of each regular session, as the basis of the general appropriations bill, a budget of receipts based on existing and proposed revenue measures, and of expenditures. The form, content, and manner of preparation of the budget shall be prescribed by law.[239]

The budget ceiling was ultimately restored in the 1987 Constitution, and is found in Article VI, Section 25(1), which states that:

> [1] The Congress may not increase [2] the appropriations recommended by the President [3] for the operation of the Government [4] as specified in the budget. [5] The form, content,

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[235] *Id.* at 695–96. (Emphasis supplied.)

[236] There no explicit budget ceiling provision, but only that the Governor-General shall "submit […] a budget of receipts and expenditures, which shall be the basis of the annual appropriation bill." 39 Stat. 545 (Pub. Law 64-240), § 21(b) (1916). The Jones Law of 1916.

[237] *Compare* CONST. (1973, amend.), art. VIII, § 16(1) *with* CONST. (1935), art. VI, § 19(1).

[238] CONST. (1973, amend.), art. VIII, § 16(1).

[239] Art. VIII, § 16(1).

> and manner of preparation of the budget shall be prescribed by law.[240]

At first blush, its meaning appears to be quite simple and self-explanatory, but breaking down the provision into five component parts is useful in understanding it more clearly. Such a decomposition has been reflected in the quote above.

The *first* part of the provision is quite plain and simple. For brevity, it will be called the *subject and prohibition* clause. It pinpoints Congress as the institution to which the provision is addressed, and at the same time, places a prohibition against doing a particular act. In this case, Congress is prevented from increasing a certain object.

The *second* part continues the thought by providing the object of the prohibition. Hence, it will be called the *object* clause. According to the text, the object is the appropriations recommended by the President. This immediately calls to mind two possible interpretations. On one hand, the "appropriations" might refer to each of the line items proposed by the President, as embodied in the NEP, and possibly aligned with how the term is read in the 1935 Constitution. On the other hand, it may simply refer to the total level of recommended appropriations.

The Court in *Sarmiento* favored the latter interpretation.[241] In that case, it was held that "appropriations" in Article VI, Section 25(1) referred to the total level of recommended appropriations, and not the individual items therein.[242] By making this pronouncement, the Court affirmed that the budget ceiling was not meant to operate as it did in under the 1935 Constitution. Congress, in enacting the GAA, is free to increase or decrease any individual appropriation so long as the total never exceeded what was fixed by the President.

But in *Sarmiento*, the Court did not have the opportunity to specify whether the total level of recommended appropriations only referred to programmed and automatic expenditure items, or if it also included

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[240] CONST. art. VI, § 25(1). (Numbering supplied.) Notably, the excepting clause pertaining to the appropriations for the Congress and the Judiciary was removed, as compared to its counterpart provision in the 1935 Constitution. *Compare with* CONST. (1935), art. VI, § 19(1).

[241] Sarmiento v. Treasurer [Hereinafter "*Sarmiento*"], G.R. No. 125680, Sept. 4, 2001, (Unsigned resolution), available at https://chanrobles.com/scresolutions/resolutions/2001/september/125680.php.

[242] *Id.*

unprogrammed items.[243] To be fair, the petitioners in that case wanted a strict per-item interpretation of the budget ceiling, and did not question how unprogrammed appropriations interact with Article VI, Section 25(1). This will be examined in further detail later.

The *third* part of the provision is the *purpose* clause, as it defines the purpose for which the President made recommended appropriations. This is also quite uncontroversial, since the text makes it clear that the recommendations pertain to the operations of the government. This also reinforces the earlier observation that the Executive is tasked with leading budget preparations precisely because implementing agencies would likely have adequate information to forecast how much they could spend for public service delivery in the following year, and how much cash cover could be mustered.

The *fourth* part is the *reference* clause since it pertains to the documents in which the President's recommendations are embodied. To recall, at the end of the budget preparation phase, the President transmits to Congress the BESF, the NEP, and the President's Budget Message. The BESF sets forth the government's fiscal program for the following year, including the recommended total level of expenditures and the sources of revenue and financing. Meanwhile, the NEP details the recommended total expenditures by providing an itemized list of all things for which the government needs to spend. The budget message serves, by analogy, as an explanatory note for the President's recommendations.

At this point, there are again some possible interpretations for the term "budget" in the provision. One might think of it as the NEP, since it not only declares the total level of suggested spending, but also itemizes the P/A/Ps. It serves as an initial draft upon which Congress could make various revisions and amendments. Alternatively, "budget" might refer to the BESF, since it contains the total level of expenditures and the ways through which money could be raised to fund the GAA.

Article VII, Section 22 of the Constitution is quite instructive, as it states that "[t]he President shall submit to the Congress within thirty days from the opening of every regular session, as the basis of the general appropriations bill, a budget of expenditures and sources of financing,

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[243] *Id*

including receipts from existing and proposed revenue measures."[244] It is a key starting point for identifying the "budget" in the budget ceiling.

With this in mind, Representative Salceda asserts that the reference clause pertains to the BESF.[245] The OSG, in its Comment in the *Colmenares* petition, shares the same position.[246] The Comment categorically states that "only the BESF contains the two budget components required by the Constitution and the law: expenditures and sources of financing."[247]

This reading is quite understandable, but ultimately incomplete. It may be tempting to accept this interpretation because the BESF indeed contains expenditures and sources of funding, including actual and projected revenue collection. Its name even corresponds word for word with Article VII, Section 22 ("as the basis of the general appropriations bill, a *budget of expenditures and sources of financing*[.]")[248]

But taking one look at the BESF shows its inadequacy in serving as the only starting point for the GAB.[249] A legislator reading the BESF could discover the public sector's financial position or the sensitivity of revenues to changes in the inflation rate,[250] but they would be hard-pressed to find the appropriations for public elementary schools and district hospitals. The same is true for referring to the NEP only, when one seeks to check how the government's projects would be funded.[251]

More pressing is the textual requirement in Article VI, Section 25(1) that the budget must *specify* the appropriations recommended by the President in the proposal.[252] While the BESF does provide a breakdown of personnel costs, operating expenses, and capital outlays, among others, it does not contain a single item of recommended appropriation.[253] It only aggregates the

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[244] CONST. art. VII, § 22.

[245] Cervantes, *supra* note 207.

[246] *Colmenares petition,* G.R. No. 275405, Sept. 30, 2024, at 19–20 (OSG Comment on the Petition).

[247] *Id.* at 19.

[248] CONST. art. VII, § 22. (Emphasis supplied.)

[249] *See, e.g., 2024 BESF, supra* note 136.

[250] *Id.* at 3, 89.

[251] *See, e.g., National Expenditure Program Fiscal Year 2024* [hereinafter "*2024 NEP*"], DEP'T OF BUDGET & MGMT. WEBSITE, *available at* https://www.dbm.gov.ph/index.php/2024/national-expenditure-program-fy-2024.

[252] CONST. art. VII, § 25(1).

[253] *See, e.g.,* 2024 BESF, *supra* note 136, at 91–95 (Table B.1).

objects of spending, such as salaries, insurance premiums, repairs and maintenance, land outlay, etc.[254]

A portion of the BESF also contains clues that it would, by itself, be insufficient to satisfy the specification requirement. For instance, in Table H, labeled as "Reconciliation of the Obligation Program and the Proposed General Appropriations, FY 2024," the 2024 BESF expressly refers to proposed general appropriations.[255] It compares the aggregated objects of spending laid out in the BESF with the summary of proposed appropriations, which are set forth only in the NEP.[256] Even this summary would not be enough to qualify as appropriations, since the specific purposes for which the funds would be used are unstated.[257] The BESF only offers a grouping of projects based on various permutations (e.g., by object, by sector, by general expense class, by agency, by region), but does not provide for what those projects are exactly.[258]

Given these circumstances, the best approach is to jointly consider the NEP and the BESF. The reference clause indeed contemplates a "budget of expenditures and sources of financing, including receipts from existing and proposed revenue measures,"[259] but this is not sufficient basis to declare that only the BESF is relevant. Referring only to the BESF leaves out the highly specific and programmatic recommendations made in the NEP, while considering only the NEP omits key macroeconomic assumptions and fiscal targets which could inform congressional decision-making.

Contrary to the OSG's assertion in its Comment,[260] the BESF is not complete for purposes of determining the budget ceiling. While it contains expenditure levels and revenues as directed by Article VII, Section 22, it does not specify the President's recommended appropriations, as required by Article VI, Section 25(1). Taking the position of Representative Salceda and

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[254] *Id.*

[255] *Id.* at 722–79. (Table H).

[256] *Id.*

[257] In *Belgica,* an appropriation exists "when a provision of law (*a*) sets apart *a determinate or determinable amount* of money and (*b*) allocates the same for a *particular public purpose*." *Belgica,* 710 SCRA at 140–41. (Emphasis in the original.)

[258] *See, e.g.,* 2024 BESF, *supra* note 136.

[259] CONST. art. VII, § 22.

[260] *Colmenares petition,* G.R. No. 275405, Sept. 30, 2024, at 19 (OSG Comment on the Petition), *available at* https://sc.judiciary.gov.ph/wp-content/uploads/2024/10/Comment-on-the-petition-in-G.R.-No.-275405.pdf.

the OSG would result in the constitutional inadequacy of the documents submitted by the President.

A more workable interpretation of the reference clause is the recognition of both presidential submissions. The NEP and BESF are not separate and independent documents, but are instead two halves of the same "budget." The "budget" that is recommended by the President, then, is the integration of both the macro-level spending and revenue figures and the micro-level line-item amounts for P/A/Ps. This makes the President's recommendations complete, since these include not only expenditures and revenue sources, but also the recommended appropriations.

The *fifth and last* part is the *delegation* clause. It leaves the task of determining the form, content, and manner of preparation of the budget to Congress.

Reading the provision in its entirety, the budget ceiling prevents Congress from enacting a GAA that exceeds the total level of appropriations recommended by the President, as specified in the NEP and referenced in the BESF. Aside from its constraint on Congress, the provision also directs the President to specify the recommended appropriations in the budget. It is worth emphasizing that the ceiling is determined by the total level of *appropriations,* as written in the object clause, and not *expenditures*. Though intuitively the totals of these amounts should equal one another, the complexities introduced by unprogrammed appropriations warrant a different view.

D. Unprogrammed Appropriations and the Object Clause

An appropriation is the authority granted by law to spend public funds.[261] The specific purpose of the expenditure is expressed in a line item, alongside the amount of money which Congress sets aside for it. Based on jurisprudence, an appropriation must have a determinate or determinable

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[261] "Appropration [is] the act by which Congress 'designates a particular fund, or sets apart a specified portion of the public revenue or of the money in the public treasury, to be applied to some general object or governmental expenditure, or to some individual purchase or expense.' As pointed out in *Gonzales v. Raquiza*: 'In a strict sense, appropriation has been defined 'as nothing more than the legislative authorization prescribed by the Constitution that money may be paid out of the Treasury,' while appropriation made by law refers to 'the act of the legislature setting apart or assigning to a particular use a certain sum to be used in the payment of debt or dues from the State to its creditors.'" *Araullo,* 728 SCRA at 121, *citing Appropriation*, BLACK'S LAW DICTIONARY (6th ed. 1990), *&* Gonzales v. Raquiza, G.R. No. 29627, 180 SCRA 254, Dec. 19, 1989. *Id.* at 60.

amount, coupled with a particular public purpose.[262] Individual appropriations are proposed by the Executive, then made into law by Congress for government operations. But projects would not materialize and the government would not run simply by enacting the GAA.

The GAA must be funded somehow, and the Executive—chiefly through the DOF—is tasked with making it work.[263] This is why the Constitution requires from the President, during the preparation phase, a budget which considers both expenditures and sources of financing. To operationalize the projected expenditures, the Executive branch is also required to translate them into recommended appropriations.

The appropriations come in three kinds; they may be programmed, automatic, or unprogrammed. *Programmed* appropriations pertain to the P/A/Ps which will be supported by current revenue and financing sources.[264] These appropriations are almost guaranteed to be financed by the regular fundraising efforts of government,[265] e.g., tax administration and customs collection, and are thus immediately implementable. *Automatic* appropriations are the items for which the amounts are set aside, and made available by operation of law.[266] These are usually items which the government must pay notwithstanding policy priorities, such as sovereign debt interest payments. Both programmed and automatic appropriations comprise the fiscal program, and the DOF will always endeavor to find money to fund them.

In practical terms, sum of programmed and automatic appropriations is reflected as the "Expenditure Program" in the BESF[267] and as "Total Obligations" in the NEP.[268] It is this amount which is often announced in

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[262] *Belgica,* 710 SCRA at 140–41. (Citation omitted.)

[263] The DOF is responsible for managing the "government's resource mobilization effort," "administer[ing] fiscal and tax policies," handling the "collection of government revenues," and other related duties. ADM. CODE, bk. IV, tit. II, ch. 1, § 3(10).

[264] *Basic Concepts in Budgeting* 3*,* DEP'T OF BUDGET & MGMT. WEBSITE, *available at* https://www.dbm.gov.ph/wp-content/uploads/2012/03/PGB-B1.pdf.

[265] *Id.*

[266] Automatic appropriations are "one-time legislative authorization to provide funds for a specified purpose, for which the amount may or may not be fixed by law, and is made automatically available and set aside as needed. Since it is already covered by a separate law, it does not require periodic action by the Congress of the Philippines, and need not be included in the legislation of annual appropriations." *2024 BESF, supra* note 136, at 857.

[267] *See 2024 BESF, supra* note 136, at 2. (Table A.2).

[268] *See 2024 NEP, supra* note 251, at 1101 (Annex A).

press statements as comprising the national budget.[269] For F.Y. 2024, the PHP 5.768 trillion "budget" is really just the sum of PHP 4.020 trillion programmed appropriations and PHP 1.748 trillion automatic appropriations, as shown in Table 4:

Table 4. Expenditure Program and Total Obligations, F.Y. 2022 – 2024.[270]

Items	NEP	GAA	Difference
F.Y. 2022			
Programmed Appropriations	3,350,720,769,000	3,350,720,769,000	0
Automatic Appropriations	1,672,879,231,000	1,672,879,231,000	0
Expenditure Program/Total Obligations	5,023,600,000,000	5,023,600,000,000	0
F.Y. 2023			
Programmed Appropriations	3,671,091,443,000	3,671,091,443,000	0
Automatic Appropriations	1,596,908,557,000	1,596,908,557,000	0
Expenditure Program/Total Obligations	5,268,000,000,000	5,268,000,000,000	0
F.Y. 2024			
Programmed Appropriations	4,019,768,192,000	4,019,768,192,000	0
Automatic Appropriations	1,747,831,808,000	1,747,831,808,000	0

[269] *See, e.g.,* Zacarian Sarao, *Bongbong Marcos signs P5.768-trillion 2024 nat'l budget,* INQUIRER.NET, Dec. 20, 2023, *at* https://newsinfo.inquirer.net/1877645/bongbong-marcos-signs-p5-768-trillion-2024-natl-budget.

[270] *2022 BESF, supra* note 203 at 780–81; *2023 BESF, supra* note 204, at 804–05; *2024 BESF, supra* note 136, at 778–79; *FY 2022 New Appropriations,* 118(1) O.G. at 838; *FY 2023 New Appropriations,* 118(2) O.G. at 809; *FY 2024 New Appropriations,* 119(52) O.G. at 803.

This varies from Suzara's version in Table 3, since the Expenditure Program/Total Obligations is computed by subtracting unprogrammed appropriations from Total Available Appropriations. While the NEP tags the amount as "Unreleased Appropriations," the amount refers to unprogrammed items which are, as of the proposal stage, assumed to remain unreleased. *See National Expenditure Program Fiscal Year 2022* [hereinafter "*2022 NEP*"] 1107, DEP'T OF BUDGET & MGMT. WEBSITE, *available at* https://www.dbm.gov.ph/wp-content/uploads/NEP2022/Detailed-Annexes.pdf. (Annex A); *National Expenditure Program Fiscal Year 2023* [hereinafter "*2023 NEP*"] 1073, DEP'T OF BUDGET & MGMT. WEBSITE, *available at* https://www.dbm.gov.ph/wp-content/uploads/NEP2023/Detailed-Annexes.pdf. (Annex A); *2024 NEP, supra* note 251, at 1101 (Annex A).

Items	NEP	GAA	Difference
Expenditure Program/Total Obligations	5,767,600,000,000	5,767,600,000,000	0

There is no discrepancy in the Expenditure Program for F.Y. 2022 to 2024, as between the NEP and the GAA. This makes sense, since these encompass the items for which the government would likely assure funding through its resource mobilization efforts. If the President's proposal contained only programmed and automatic appropriations, then this would be the controlling figure for the budget ceiling. Using the Expenditure Program as the threshold would mean that Congress was justified in its recent experiments, as argued by the OSG in the *Colmenares* petition.[271]

But the President's recommendations also contain *unprogrammed* items, which are the third kind of appropriations. These are P/A/Ps that are not guaranteed funding and are not immediately implementable.[272] Certain conditions must be met before they can be used as basis to spend government money.[273] Hence, they are said to give only standby authority.[274]

For instance, the F.Y. 2023 GAA requires that there either must be a windfall in revenue collections, a new source of funds, or an approved loan to finance foreign-assisted projects before any item in the unprogrammed appropriations may be activated. [275] The full provision reads:

> Special Provision(s)
> 1. Availment of the Unprogrammed Appropriations. The amounts authorized herein […] may be used when any following exists:
> (a) *Excess revenue collections* in any one of the identified *non-tax revenue sources* from its corresponding revenue collection target, as reflected in the BESF;
> (b) *New revenue collections* or those arising from *new tax or non-tax sources* which are not part of, or included in, the original revenue sources reflected in the BESF; or
> (c) *Approved loans for foreign-assisted projects*.

[271] *Colmenares petition,* G.R. No. 275405, Sept. 30, 2024, at 15–20 (OSG Comment on the Petition).

[272] *See 2024 BESF, supra* note 136, at 875

[273] *See id.*

[274] *Id.*; *Araullo,* 728 SCRA at 165. (Citation omitted.)

[275] Rep. Act No. 11936 (2023), § 1, XLIV, spec. prov. 1.

> Release of funds shall be subject to the submission of the Special Budget pursuant to Section 35, Chapter 5, Book VI of E.O. No. 292, s. 1987 and the following: (i) for excess revenue collections, issuance of a certification that remitted collections to the [Bureau of Treasury] from a particular revenue source has exceeded the corresponding revenue collection target; or (ii) for new revenue collections, issuance of a certification that remitted collections identified were not part of, nor included in, the original revenue collection targets reflected.
>
> In the case of approved loans for foreign-assisted projects, the issuance of SARO covering the loan proceeds shall be subject to submission by the agency concerned of a Special Budget, together with the physical and financial plan, project profile, and a copy of the perfected loan agreement, as approved in accordance with pertinent laws, rule, regulations, and guidelines issued hereon.[276]

It is possible that items classified as unprogrammed appropriations might never be utilized during the fiscal year, given the restrictiveness of these conditions. For instance, if there are no new or excess revenues for the year, unprogrammed locally funded P/A/Ps will remain on standby until the GAA loses effectivity. Similarly, unprogrammed foreign-assisted projects may only begin implementation once there are approved loans which will cover their funding.[277] This uncertainty is the reason why unprogrammed items are excluded from the government's Expenditure Program.

Nonetheless, unprogrammed appropriations form part of the total appropriations recommended by the President. In the NEP, they are included in computing Total Available Appropriations[278] and in the BESF, as they are presented as part of New General Appropriations.[279] Table 5 summarizes these figures.

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[276] § 1, XLIV, spec. prov. 1. (Italics supplied.)
[277] *See, e.g., Araullo,* 728 SCRA at 167–68.
[278] *See, e.g., 2024 NEP, supra* note 251, at 1101 (Annex A).
[279] *See, e.g., 2024 BESF, supra* note 136, at 722–79 (Table H).

Table 5. Total Available Appropriations, F.Y. 2022 – 2024.[280]

Items	NEP	GAA	Difference
F.Y. 2022[281]			
New General Appropriations	3,502,359,966,000	3,602,359,966,000	100,000,000,000
Programmed Appropriations	3,350,720,769,000	3,350,720,769,000	0
Unprogrammed Appropriations	151,639,197,000	251,639,197,000	100,000,000,000
Automatic Appropriations	1,672,879,231,000	1,672,879,231,000	0
Total Available Appropriations	5,175,239,197,000	5,275,239,197,000	100,000,000,000
F.Y. 2023[282]			
New General Appropriations	4,259,253,923,000	4,478,253,923,000	219,000,000,000
Programmed Appropriations	3,671,091,443,000	3,671,091,443,000	0
Unprogrammed Appropriations	588,162,480,000	807,162,480,000	219,000,000,000
Automatic Appropriations	1,596,908,557,000	1,596,908,557,000	0
Total Available Appropriations	5,856,162,480,000	6,075,162,480,000	219,000,000,000
F.Y. 2024[283]			
New General Appropriations	4,301,676,248,000	4,751,216,758,000	449,540,510,000
Programmed Appropriations	4,019,768,192,000	4,019,768,192,000	0
Unprogrammed Appropriations	281,908,056,000	731,448,566,000	449,540,510,000
Automatic Appropriations	1,747,831,808,000	1,747,831,808,000	0
Total Available Appropriations	6,049,508,056,000	6,499,048,566,000	449,540,510,000

[280] The Programmed Appropriations were derived from other figures. The Unprogrammed Appropriations in the NEP is reflected as Unreleased Appropriation.

[281] *2022 NEP, supra* note 270, at 1107; *FY 2022 New Appropriations,* 118(1) O.G. at 838.

[282] *2023 NEP, supra* note 270, at 1073; *FY 2023 New Appropriations,* 118(2) O.G. at 809.

[283] *2024 NEP, supra* note 251, at 1101; *FY 2024 New Appropriations,* 119(52) O.G. at 803.

With unprogrammed appropriations factored in, the difference becomes quite apparent. Additional unprogrammed items worth PHP 100 billion in F.Y. 2022, PHP 219 billion in F.Y. 2023, and PHP 449.54 billion in F.Y. 2024 have bloated Total Available Appropriations beyond those initially recommended by the President. Using Total Available Appropriations as the budget ceiling would deliver the result sought by the *Lagman* and *Colmenares* petitions,[284] since Congress breached it in the three most recent GAAs.

As between the two amounts, the proper threshold is the Total Available Appropriations, and not the Expenditure Program. The Constitution's text, as well as the strong thread of accountability which weaves through its provisions, favor the inclusion of unprogrammed appropriations in computing the budget ceiling. In increasing these items beyond what was fixed in the President's proposal, Congress violated the Constitution.

First, it bears repeating that the relevant constitutional provision expressly refer to *recommended appropriations* as the object of the budget ceiling's prohibition.[285] This is textually straightforward, as it is stated that:

> Article VI, Section 25(1). The Congress may not increase the *appropriations recommended by the President* for the operation of the Government as *specified in the budget*. The form, content, and manner of preparation of the budget shall be prescribed by law.[286]
>
> Article VII, Section 22. The President shall submit to Congress within thirty days from the opening of every regular session, as the basis of the general appropriations bill, a *budget of expenditures and sources of financing*, including receipts from existing and proposed revenue measures.[287]

Although Article VII, Section 22 requires the President to submit a budget of expenditures and financing, Article VI, Section 25(1) makes it clear that the same budget should also include proposed appropriations. Having only projected expenditures will not be sufficient to satisfy both mandates. Expenditures describe how much the government seeks to spend,[288] while

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[284] *See Lagman petition,* G.R. No. 271059, Jan. 15, 2024, at 25 (Petition for Certiorari and Prohibition); *Colmenares petition*, G.R. No. 275405, Sept. 6, 2024, at 33 (Petition for Certiorari and Prohibition).

[285] *See* CONST. art. VI, § 25(1); *see* CONST. art. VII, § 22.

[286] Art. VI, § 25(1). (Emphasis supplied.)

[287] Art. VII, § 22. (Emphasis supplied.)

[288] In *Araullo,* the Court noted that public expenditures are expenses which could be broadly classified according to object (i.e., personal services, maintenance and other operating expenses, and capital outlays), function (i.e., economic development, social services, general

appropriations pertain to the items for which the government will spend.[289] Reading these provisions together means that the President, in submitting the budget of expenditures and sources of financing, must also specify the recommended appropriations for government operations. It is then those appropriations which determine the threshold for checking the GAA's compliance with the budget ceiling.

Book VI, Chapter 3, Section 12 of the Administrative Code, which governs the form and content of the budget proposal, lends further credence to this nuance.[290] It says that:

> The budget proposal of the President shall include current operating expenditures and capital outlays. It shall comprise such funds as may be necessary for the operation of the programs, projects and activities of the various departments and agencies. The proposed General Appropriations Act and other Appropriations Acts *necessary to cover the budget proposals* shall be submitted to the Congress to accompany the President's budget submission.
>
> The budget shall be presented to the Congress in such form and content as may be approved by the President and may include the following:
>
> (1) A budget message setting forth in brief the government's budgetary thrusts for the budget year, including their impact on development goals, monetary and fiscal objectives, and generally on the implications of the revenue, expenditure and debt proposals; and
>
> (2) Summary financial statements setting forth:
> (a) *Estimated expenditures and proposed appropriations* necessary for the support of the Government for the ensuing fiscal year, including those financed from operating revenues and from domestic and foreign borrowings;
> (b) Estimated receipts during the ensuing fiscal year under laws existing at the time the budget is transmitted and under the revenue proposals, if any, forming part of the year's financing program;
> (c) *Actual appropriations, expenditures*, and receipts during the last completed fiscal year;

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public services, national defense, and public debt), and nature (i.e., general fund, special fund, or bond fund). *See Araullo,* 728 SCRA at 89–91. (Citations omitted.)

[289] *See Belgica,* 710 SCRA at 140–41.

[290] ADM. CODE, bk. VI, ch. 3, § 12.

> (d) *Estimated expenditures* and receipts and *actual or proposed appropriations* during the fiscal year in progress[.][291]

The terms "expenditures" and "appropriations" are set apart from one another, each being mentioned as distinct components to the President's submission. Further, a proposed GAA (i.e., NEP) is said to be "necessary to cover the budget proposals," implying that a statement of expenditures is insufficient to comply with constitutional requirements. As earlier established, it is faulty to assert that the BESF is the sole determinative document in the budget ceiling provision. The BESF does not contain a single item of appropriation, and by itself, it fails to satisfy the specification requirement under Article VI, Section 25(1).

Though the Administrative Code appears to characterize the NEP as an accompanying document,[292] this does not negate how indispensable it is to the budget proposal. The NEP contains the recommended appropriations necessary to comply with Article VI, Section 25(1), and concretizes the government's financial plan in detail. The Code affirms that the BESF and NEP are really just two halves of the same budget, and that the President's submission would be incomplete without proposed appropriations. Since recommended appropriations are found only in the NEP, and the NEP is an integral part of the President's proposal to Congress, the total appropriations declared therein must be the controlling figure for fixing the budget ceiling.

Second, while the budget ceiling distinguishes between expenditures and appropriations, it does not discriminate among the kinds of appropriations in the NEP. There is nothing in the object clause which would limit its scope only to programmed and automatic appropriations. The plain text of the budget ceiling provision refers to "the appropriations recommended by the President," with no differentiation among the three kinds.[293] Thus, it would be prudent to apply *ubi lex non distinguit, nec nos distinguere debemus*, which the Court has held as an "elementary rule in statutory construction that: where the law does not distinguish, the courts should not distinguish."[294]

Third, the often-cited case of *Sarmiento* could not justify the exclusion of unprogrammed appropriations from the budget ceiling. Both Representative Salceda and the OSG rely on *Sarmiento* to argue that only the

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[291] Bk. VI, ch. 3, § 12. (Emphasis supplied.)
[292] BK. VI, ch. 3, § 12.
[293] CONST., art. VI, § 25(1).
[294] Villanueva v. People, G.R. No. 237864, 942 SCRA 178, 189 (2020).

Expenditure Program (i.e., programmed plus automatic appropriations) is the relevant budget total.[295] This is based on the supposed "purpose" of the budget ceiling, which is to control national debt.[296]

Preliminarily, *Sarmiento* is an unsigned resolution,[297] which "has no significant doctrinal value."[298] Further, the Court in *Sarmiento* was confronted with a taxpayers' suit which questioned, among others, the increases which Congress made in the GAA as compared to the President's proposed budget.[299] It was the petitioners' contention that "appropriations" in the object clause referred to the line items in the NEP, while the Solicitor General argued that it instead referred to the total budget.[300]

In denying the petition, the Court cited the Records of the 1986 ConCom and found that the budget ceiling's purpose was twofold: to prevent a massive budget deficit by prohibiting Congress from passing an outsized budget that could not be funded; and to assure that the government's expected revenues would be adequate to cover its expenses.[301] From this, the Court concluded that the framers' objectives are fulfilled by preventing Congress from appropriating a budget that exceeded the total set by the President.

The ratio did not address the kinds of appropriations embraced by the overall spending level, or whether having these appropriations categorized as programmed, automatic, or unprogrammed makes a difference. The fact pattern was also not analogous to those found in the three most recent GAAs. In *Sarmiento*, the Court mentioned how Congress did not increase total appropriations in the F.Y. 1996 GAA beyond what was fixed by the President.[302] It was emphasized that, in compliance with the budget ceiling, Congress reduced the budget for some items to make room for the increases made to others. In fact, the total appropriations under the F.Y. 1996 GAA was lower than that embodied in the Executive proposal.[303] This is patently different from the increases found in the GAAs for F.Y. 2022 to 2024.

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[295] *See* Cervantes*, supra* note 207; *see Colmenares petition,* G.R. No. 275405, Sept. 30, 2024, at 15-20 (OSG Comment on the Petition).

[296] Cervantes*, supra* note 207.

[297] *Sarmiento*, G.R. No. 125680, Sept. 4, 2001.

[298] SC INT. RULES., Rule 13, § 6(c).

[299] *Sarmiento*, G.R. No. 125680, Sept. 4, 2001.

[300] *Id.*

[301] *Id.*, *citing* II RECORD CONST. COMM'N 36, 107–08 (July 22, 1986) & II RECORD CONST. COMM'N 37, 170–71 (July 23, 1986).

[302] *Id.*

[303] *Id.*

Fourth, even if one were to look for the "purpose" of the budget ceiling, as disclosed *Sarmiento* and in the deliberations of the 1986 ConCom, no relevant differentiation among the kinds of appropriations vis-à-vis the budget ceiling would be found. It must be noted again that the proceedings of debates among the Constitution's framers serve as a weak extrinsic aid. As astutely elaborated in *David v. Senate Electoral Tribunal,*[304] the discussions merely summarize what certain members of the ConCom said, and do not necessarily reflect the thoughts of the entire delegation nor of the sovereign people who ratified the Constitution. In *David,* the Court reiterated its findings in other cases that "said proceedings are powerless to vary the terms of the Constitution when the meaning is clear."[305]

Assuming that divining the original intent of the framers is possible or viable, the proceedings themselves do not offer much enlightenment on how unprogrammed appropriations are to be treated. The heart of the "purpose" argument is that the budget ceiling is meant to keep the GAA deficit-neutral, and since unprogrammed appropriations do not increase the government's deficit, they are excluded from its scope. The Court in *Sarmiento*, as cited by the OSG, indeed declared that:

> [T]he purpose […] is to *avoid* the possibility of a *big budget deficit* if Congress were given an unbridled hand in passing upon the appropriations recommended by the President as specified in the budget […] [I]t is an assurance that the *expected income* of the government will be *sufficient* for the operational expenses of its different agencies and projects specified in the appropriations law.[306]

In coming to this conclusion, the Court cited two portions of the 1986 ConCom Records,[307] but its discussion on the big budget deficit focused on the exchange between Commissioners Natividad, Delos Reyes, and Davide.[308]

The exchanges between Commissioners Natividad and Davide, meanwhile, make no mention of unprogrammed appropriations as they

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[304] G.R. No. 221538, 803 SCRA 435, 484, Sept. 20, 2016.

[305] *Id., citing* Civil Liberties Union v. Executive Sec'y, G.R. No. 83896, 194 SCRA 317, 337, 169–70, 337–38, Feb. 22, 1991.

[306] *Sarmiento*, G.R. No. 125680, Sept. 4, 2001 (Emphasis supplied.), *citing* II RECORD CONST. COMM'N 36, 107–08 (July 22, 1986). II RECORD CONST. COMM'N 37, 170–71 (July 23, 1986).

[307] *Id.* at n.2, *citing* II RECORD CONST. COMM'N 36, 107–08 (July 22, 1986). II RECORD CONST. COMM'N 37, 170–71, (July 23, 1986).

[308] *Id.*

explored the budget ceiling provision.[309] In fact, they did not appear to even contemplate such a concept. When Commissioner Natividad raised the possibility of having a big budget deficit as a consequence of allowing Congress to increase the presidential budget, Commissioner Davide responded by saying that congressional power is bounded by a specific limitation: "the budget should be based on existing and proposed revenue measures."[310] The extended excerpt reads:

> MR. NATIVIDAD: So, we have a situation where the President prepares the budget every year based on the expected receipts and earnings of the government. The Constitution gives the President that duty because the President knows the expected earnings of the government. Traditionally, Congress will decrease certain items of the budget but it is not constitutionally authorized to increase because if the various items in the budget will be increased, the earnings of the government as expected from the receipts and taxes may not be enough and there will be a big budget deficit.
>
> MR. DAVIDE: Madam President, the further answer to the question is contained in the section itself, which reads:
>
> > The President shall submit to the Congress within thirty days from the opening of each regular session, as the basis of the general appropriations bill, a budget of receipts based on existing and proposed revenue measures, and of expenditures.
>
> In other words, Congress cannot increase because there is a limitation; the *budget should be based on existing ang proposed revenue measures*.
>
> If the Commissioner will further notice, under paragraph (4) of the same section, there is a *provision* to the effect that *a special appropriations bill* shall *specify the purpose* for which it is intended, and *shall be supported by funds actually available* as certified by the National Treasurer, or to be *raised by a corresponding revenue proposal* included therein. So, necessarily, there is already a maximum limit over which Congress cannot anymore go beyond.
>
> MR. NATIVIDAD: Paragraph (4) is a different matter, Madam President. This is a new proposal, like a public works bill, which one cannot present without the corresponding certification of availability of funds or the corresponding revenue proposal. But I

[309] II RECORD CONST. COMM'N 36, 107–08, (July 22, 1986).
[310] *Id.* at 107.

> would just like to clarify because the first response of the Committee is that the Congress may increase or decrease. The distinguished Chairman said Congress may not increase. So, which one is the right answer?
>
> MR. DAVIDE: I think the Commissioner may have in mind reincorporating the limitation provided for under the 1935 Constitution, prohibiting specifically the Congress to increase the recommended appropriations made by the President. We can entertain that at the proper time although I would like to repeat that the requirement under lines 26 and 27 on page 7 – "a budget of receipts based on existing and proposed revenue measures" – which is actually proposed by the President himself *cannot be exceeded by Congress*.
>
> MR. NATIVIDAD: As the Gentleman knows, the budget of receipts and proposed revenue measures is ambivalent. There is nothing sure about that because that is just a projection of future earnings and we do not know exactly if 80 percent will be realized or not. So, this is just a projection of the future earnings of the government.
>
> MR. DAVIDE: That is exactly the reason why Congress cannot go beyond that because what may be collected of the expected revenues may be only very much less than 100 percent.[311]

The discussion does not help establish any deficit-neutrality standard which would justify the exclusion of unprogrammed appropriations. Commissioner Davide's reference to the budget being based on actual or proposed revenues seems to be more of a response to Commissioner Natividad's issue with allowing Congress to tinker with line items in the President's proposal, and less of a pronouncement on what comprises the budget ceiling.[312]

The back-and-forth mostly dwelled on the new approach of the budget ceiling, but not its object.[313] Perhaps the clearest strand here was that the ConCom did not intend to retain the rule in the 1935 Constitution, in which the legislature could not touch the President's recommendations for the Executive department.[314]

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[311] *Id.* at 107–108. (Emphasis supplied.)

[312] *See id.* at 107.

[313] *See id.* at 107–08.

[314] *Id.* at 107. Notably, this was the *ratio* in Sarmiento, not deficit-neutrality. *See Sarmiento*, G.R. No. 125680, Sept. 4, 200, *citing* II RECORD CONST. COMM'N 36, 107–08 (July 22, 1986). II RECORD CONST. COMM'N 37, 170–71 (July 23, 1986).

If any, their dialogue invites questions not on the inclusion of unprogrammed appropriations in the budget ceiling, but on the entire practice of enacting unprogrammed appropriations. Taking to heart Commissioner Davide's remarks would mean that every appropriation must be backed by existing or expected revenue sources, since "the budget should be based on existing or proposed revenue measures."[315] Authority to spend for revenues excluded or exceeding the President's projections should be legislated through a special appropriations bill, which "one cannot present without the corresponding certification of availability of funds or the corresponding revenue proposal."[316]

In Commissioner Davide's explanation, appropriations should only be limited to those which are likely to be funded by the government.[317] This means that from the NEP, to the GAB, to the GAA, there should only be programmed and automatic appropriations. P/A/Ps with no guaranteed funding should not be in the GAA at all, and instead must be proposed in a separate special appropriations bill.[318]

This framework would reject the validity of unprogrammed appropriations, since these effectively antedate spending authority even if they are excluded from the fiscal program, and even before new or excess funds are actually available. Regardless of any convenience or expedience which unprogrammed items might provide, they would be judged improper when held to this standard. Thus, if the OSG and Representative Salceda would stand firm in their deficit-neutrality argument, they must ultimately concede that unprogrammed appropriations are entirely unconstitutional.

Meanwhile, Representative Salceda also relied on Commissioner Monsod's discussion to assert that the budget ceiling was designed to ensure that "Congress should not overstep the fiscal deficit programmed by the President."[319] He then noted that the conditions placed on unprogrammed appropriations make it so that the government incurs no additional deficit in implementing them.[320]

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[315] *Id.* at 107.

[316] *Id.*

[317] *Id.*

[318] "A special appropriations bill shall specify the purpose for which it is intended, and shall be supported by funds actually available as certified by the National Treasurer, or to be raised by a corresponding revenue proposed therein." CONST., art. VI, § 25(4).

[319] Cervantes, *supra* note 207.

[320] *Id.*

However, the portion of Commissioner Monsod's discussion referenced by Salceda was not cited by the Court in *Sarmiento*,[321] and was related to his proposed amendments to the GAA's automatic reenactment clause—not the budget ceiling.[322] In it he says:

> MR. MONSOD: Lines 23 and 24 state that the general appropriations law for the preceding fiscal year shall be deemed reenacted. I would like to propose an amendment by addition, after the word "re-enacted," insert PLUS AN INCREMENT THERETO NOT EXCEEDING THE ADDITIONAL REVENUES ACTUALLY COLLECTED BY THE GOVERNMENT FOR THE CURRENT YEAR. If I may explain, Madam President.
>
> THE PRESIDENT: The Gentleman may proceed.
>
> MR. MONSOD: This situation would only arise where Congress does not enact an appropriations law. So, it is an exceptional case; this would either be through the inaction or the fault of Congress. *What I am trying to address myself is a situation where the government cannot really function normally*. The appropriations from year to year must at least increase by the inflation rate. *And there is a limitation. The increment cannot exceed actual collections*. In other words, it is a pay-as-you-go system. *They cannot exceed actual collections*, additional collections that they are able to raise in the current year. *In other words, they cannot put the government in debt or deficit*. The appropriation is only limited to the actual collections. But this will enable the government to operate normally, while Congress has not enacted a general appropriations law. When the Congress enacts a general appropriations law, then the new appropriations law will then operate. This will just give the government a chance to operate normally, Madam President.[323]

The context of the words "they cannot put the government in debt or deficit" clearly relates to the extraordinary situation in which Congress could not pass the GAA, and to the proposed increments in case of reenactment. The words did not contemplate an ordinary appropriation year during which Congress proceeds with budget legislation. Further, Commissioner Monsod's proposed amendment did not find its way into the

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[321] *Sarmiento*, G.R. No. 125680, n.2, Sept. 4, 2001.
[322] *See* II RECORD CONST. COMM'N 38, 187 (July 24, 1986).
[323] *Id.* (Emphasis supplied.)

final version of the Constitution.[324] With all due respect, conjuring a deficit neutrality standard from this hypothetical scenario is quite misguided.

Fifth and last, including unprogrammed items in computing the budget ceiling is more in line with the provision's role as an accountability mechanism in the Constitution. At the political accountability level, the budget ceiling is a two-way checking mechanism as between Congress and the President. On one hand, Congress is forced to respect the appropriations recommended by the President, which the Court in *Sarmiento* has interpreted to be the sum of all new appropriations for the fiscal year, and not the individual items.[325] The President is legitimized to seek redress if this limit is not respected. On the other hand, the President is constrained to not only prepare a budget of expenditures and sources of financing to aid Congress, but also to specify the recommended appropriations in the same budget. Congress may reject the submission if it is constitutionally inadequate, and similarly exercise a legitimate right to have its grievance addressed.

Given the already specious nature of creating standby spending authority through unprogrammed appropriations, the impulse and mechanisms of the Constitution require that the interpretation which tends to strengthen accountability must be favored. In the case of the budget ceiling, including unprogrammed items renders Congress more answerable to the President for the way that it exercises the appropriations power. Excluding them would allow Congress to continue its practice of removing guaranteed funding for public services and replacing them with pork. It also makes the President more accountable, since they would be more vulnerable to criticism for all items included in her proposal, including unprogrammed P/A/Ps.

In sum, the object clause of the budget ceiling provision quite clearly does not distinguish between programmed and unprogrammed funds. The total appropriations indicated by the Executive in its proposal—as found in the NEP, which an integral part of the budget submission—is the controlling figure. For ease of reference, this amount is referred to as Total Available Appropriations.[326]

This must be the basis for determining whether the budget ceiling has been breached, and Congress must treat it as a binding constraint when enacting GAAs. If it wants to increase unprogrammed appropriations by a certain amount, a corresponding amount must be deducted from

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[324] *See* CONST. art. VI, § 25(7).
[325] *Sarmiento*, G.R. No. 125680, Sept. 4, 2001.
[326] *2024 NEP, supra* note 251, at 1101 (Annex A).

programmed appropriations to maintain a zero-sum balance. It is unconstitutional to bloat unprogrammed appropriations under the guise of a deficit neutrality standard, since such as test does not exist in the Constitution.

Moreover, favoring this interpretation comports well with the budget ceiling's role as an accountability mechanism in the fundamental law. It checks the broad congressional power of appropriation, and in doing so, contributes to safeguarding public funds from indiscretion and misuse. Maintaining this regime allows for the Executive to assert its authority as the body that is in the best position to evaluate the budget process and see how much (and how well) agencies could spend. Sustaining this also encourages, at least at the institutional level, some discipline in appropriation practices of Congress and in the preparation process of the Executive branch.

VI. THE ACCOUNTABILITY FALLOUT

The budget ceiling does not exist in a vacuum, and it generates ripple effects that operate beyond the proposal and enactment of the GAA. It is an accountability mechanism designed to safeguard not only public funds, but also the balances of power in government. Though seemingly innocuous, the three-year breach is both a signal of fresh attempts to find constitutional loopholes, and a symptom of accountability erosion in the power of the purse.

In violating the budget ceiling, Congress transgressed the three key assumptions which underpin the accountability framework. *First,* it violated the Constitution, which is a sovereign product. The directive to respect the appropriations recommended by the President was enshrined in a document ratified directly by the people. Its breach represents a break in the sovereign's implicit trust in State action, only to be aggravated by attempts to justify it as perfectly legal.

Second, Congress disturbed the power balances calibrated by the Constitution. It ignored a specific mandate to check its legislative power. For three successive fiscal years, it essentially arrogated unto itself a power expressly reserved to the President by insisting on setting its own ceiling amount, and shooting past the maximum appropriations which it may enact through the GAA.

And *third,* Congress as an institution failed in its representational role on behalf of its electors and constituents. By breaching the budget ceiling, it was unable to live up to the positive standards fixed by the Constitution.

A similar analysis can be drawn from examining the kinds of accountability affected by the breach. To reiterate, the budget ceiling is a mechanism which allows the President to exact political accountability from Congress. Whenever total appropriations in the GAA exceed those fixed in the proposal, the President is not only justified, but even duty-bound to question Congress and expose it to political censure, or to invoke judicial review as a means of pursuing legal accountability. .

Noticing the rapidly increasing excesses from F.Y. 2022 to 2024, one would think that the President—as accountability-holder—would be chomping at the bit to seek political and legal retribution against the legislature. Instead, the Palace has been silent on the issue. The DBM even released a statement that tended to defer to Congress' enlargement.[327]

This then begs the question of why Presidents Duterte and Marcos decided this way, and why they did not exercise their line-item veto power to strike down the additional unprogrammed funds from the GAA. The accountability mechanisms embedded in the Constitution are tools to hold erring persons and institutions responsible, set in motion by the entities to whom accountability is owed. Oliver's framework, and to some extent, the separation of powers principle, presume that the branches of government tasked with checking each other's power would do so in good faith. This was also the premise upon which judicial review and constitutional supremacy were declared in *Angara*.[328] Once a violation of a constitutional mechanism is made known, the Accountability Constitution requires swift and decisive action for course-correction. This healthy tension is what conceptually makes the system of checks and balances work.

The inability or refusal of the accountability-holder to seek redress or to otherwise embarrass the offending actor or institution is emblematic of an eroded accountability system. In the budget ceiling's case, the President in each of the three fiscal years had several options by which he could have exacted accountability. He could have used his veto power upon seeing that the enrolled bill exceeded his recommended appropriations, especially since there were last-minute insertions by the Bicam. He could have refused to sign the GAB, then castigated Congress and exerted political pressure on both Houses to correct their mistake. In the event that the breach only became apparent after signing the GAA into law, he could have exposed this fact and

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[327] Lady Vicencio, *DBM defends 'excess' in unprogrammed appropriations in 2024 national budget,* ABS-CBN NEWS, Jan. 17, 2024, *at* https://news.abs-cbn.com/business/01/17/24/dbm-defends-excess-unprogrammed-appropriations.

[328] *Angara,* 63 Phil. at 156–57.

encouraged the public to ask their representatives about the issue. He also could have been the first person to file a case in court to question the excess appropriations. But he did not.

As a result, more pork items wormed themselves into the budget process, from preparation, legislation, execution, and monitoring.[329] No doubt emboldened by this arrangement, Congress took it one step further and furtively inserted another means through which it could play around with public funds. In the F.Y. 2024 GAA, Congress expanded the grounds for activating unprogrammed appropriations, contrary to long-standing practice. Whereas before the standby authority could only be used in case of new or excess revenue collections, or when there are approved loans for foreign-assisted projects,[330] a new enabling condition has been added: when fund balances in GOCCs exist, as a result of the reduction of their reserve funds.[331] The provision states:

> Special Provision(s)
> 1. Availment of the Unprogrammed Appropriations. The amounts authorized herein […] may be used when any following exists:
>
> (a) Excess revenue collections in any one of the identified non-tax revenue sources from its corresponding revenue collection target, as reflected in the BESF;
>
> (b) New revenue collections or those arising from new tax or non-tax sources which are not part of, or included in, the original revenue sources reflected in the BESF;
>
> (c) Approved loans for foreign-assisted projects; or,
>
> (d) *Fund balance of the [GOCCs] from any remainder resulting from the review and reduction of their reserve funds to reasonable levels taking into account the disbursements from prior years.*
>
> The Department of Finance shall issue the guidelines to implement this provision within [15] days from effectivity of this Act.

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[329] *See* Delon Porcalla, *2023 budget should be purged of hidden 'pork' – Lagman,* PHIL. STAR, Oct. 4, 2022, *available at* https://www.philstar.com/headlines/2022/10/04/2214116/2023-budget-should-be-purged-hidden-pork-lagman; Tita C. Valderama, *P500B for the poor in 2024 budget: Is it generosity or greed?* VERA FILES, Jan. 22, 2024, *available at* https://verafiles.org/articles/p500b-for-the-poor-in-2024-budget-is-it-generosity-or-greed; Gabriel Pabico Lalu, *PH Congress urged to realign 'presidential pork barrel' in 2025 budget,* INQUIRER.NET, Aug. 27, 2024, *available at* https://newsinfo.inquirer.net/1977023/ph-congress-urged-to-realign-presidential-pork-barrel-in-2025-budget; Daily Tribune, *Budget stuffed with pork,* DAILY TRIBUNE, Sept. 6, 2024, *available at* https://tribune.net.ph/2024/09/05/budget-stuffed-with-pork.

[330] Rep. Act No. 11936 (2023), § 1, XLIV, spec. prov. 1.

[331] Rep. Act No. 11975 (2023), § 1, XLIII, spec. prov. 1.

Release of funds shall be subject to the submission of the Special Budget pursuant to Section 35, Chapter 5, Book VI of E.O. No. 292, s. 1987 and the following: (i) for excess revenue collections, issuance of a certification that remitted collections to the [Bureau of Treasury] from a particular revenue source has exceeded the corresponding revenue collection target; or (ii) for new revenue collections, issuance of a certification that remitted collections identified were not part of, nor included in, the original revenue collection targets reflected.

In the case of approved loans for foreign-assisted projects, the issuance of SARO covering the loan proceeds shall be subject to submission by the agency concerned of a Special Budget, together with the physical and financial plan, project profile, and a copy of the perfected loan agreement, as approved in accordance with pertinent laws, rule, regulations, and guidelines issued hereon.

Nevertheless, the *prioritization of funding* of the purposes under the Unprogrammed Appropriations may be as follows, presented from top priority:

(a) Not requiring excess/new revenue collections:
    (i) Support to foreign-assisted projects; and
    (ii) Budgetary Support to GOCCs;
(b) Requiring excess/new revenue collections;
    (i) Personnel benefits;
    (ii) Social services/continuing public health emergency;
    (iii) GOP Counterpart of Foreign-Assisted Projects;
    [iv] Infrastructure projects; and
    [v] Other priority projects authorized within Purpose Nos. 1, 3-5, and 7-51.

Notwithstanding the foregoing, the *order of priority may be modified* to support the funding of *urgent and implementation-ready projects,* which are: (1) based on commitments to international/multilateral organizations; (2) in furtherance of (i) the Philippine Development Plan 2023-2028, (ii) Medium-Term Fiscal Framework, (iii) the 8-Point Socioeconomic Agenda, and (iv) those that may be identified as key budget priorities.

In view of the nature of the sources of funding for Unprogrammed Appropriations, the validity period of releases covering Unprogrammed Appropriations shall be until December 31, 2024, while obligations and disbursements therefrom shall be

> subject to the rule under Section 70 of the General Provisions of this Act.[332]

The new language in the F.Y. 2024 GAA offers a lot of things to unpack, but its most important implication is that the national government could sweep GOCCs for cash and use that money to fund unprogrammed appropriations.[333] Under this scenario, GOCCs would be asked to review their reserve funds, reduce them based on past disbursements, then transmit the excess to the national government. For example, if XYZ Corp., a GOCC, retains PHP 100 billion, and historically only disburses PHP 50 billion annually, the President could direct the remittance of remaining PHP 50 billion, subject to other governing laws and new specific regulations issued by the DOF.

This development invites important questions on the propriety of the GOCC fund transfers and on the true purpose of the three budget ceiling violations. For certain social security GOCCs such as PhilHealth and the Social Security System, it has been argued that a portion of the funds they hold are set off as contributors' property, and may not be used or transferred for a different purpose.[334] Thus, any cash sweeps from social security GOCCs must be closely guarded, while those enforced against other such corporations likewise must be heedfully scrutinized. This presents quite the challenge not just for interested publics, but also for the COA, given the sheer number of GOCCs.[335]

Inserting this additional fund source for unprogrammed appropriations also allows Congress to inch closer to its pork agenda, and to effectively circumvent the budget ceiling. The additional PHP 100 billion and PHP 219 billion unprogrammed funds in the F.Y. 2022 and 2023 GAAs, although unconstitutional, were quite difficult to fund. New or excess revenues had to be collected, or foreign loans had to be approved to activate the standby authority embodied therein. For those years, it was harder to justify why crucial public services and facilities were bumped off to unprogrammed status. Though the subject matter was obscure, highly

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[332] Rep. Act No. 11975 (2023), § 1, XLIII, spec. prov. 1. (Emphasis supplied.)

[333] *See* Zy-za Suzara, *Yellow Pad: PhilHealth's cash sweep is just the tip of the iceberg,* BUSINESSWORLD, Aug. 5, 2024, *at* https://www.bworldonline.com/opinion/2024/08/05/611995/philhealths-cash-sweep-is-just-the-tip-of-the-iceberg/.

[334] *See* Jan Fredrick P. Cruz, *Is the GSIS-SSS Seed Capital in the Maharlika Fund a Tax?: A Comment on House Bill No. 6398, s. 2022,* 96 PHIL. L.J. 237, 262–68 (2023).

[335] The Good Governance Commission reported that it had 157 GOCCs under its jurisdiction. *Frequently Asked Questions,* GOOD GOVERNANCE COMM'N WEBSITE, *at* https://gcg.gov.ph/faqs/.

technical, and quite complex, watchdogs who kept an eye on the budget at least could find it easier to muster civic outcries and draw public accountability.

The extra PHP 450 billion in the F.Y. 2024 GAA,[336] however, presents a different story. Because a special provision now allows for GOCC cash sweeps to activate unprogrammed funds,[337] it would be much easier and much more viable to de-prioritize budget items and move them from programmed to unprogrammed. If anecdotal reports are true, this means that Congress could keep carving out more space for pork both at the budget preparation and legislation stages and spin a palatable explanation—that GOCCs would foot the bill—even if public services and contributions were housed in those same GOCCs.[338]

It thus becomes more crucial to uphold the few remaining mechanisms that have functioned so far. Even with the Legislature's observance of the budget ceiling in the past, it had already found loopholes to exploit the rules for their private benefit. Now that it has breached the ceiling, it continues with its playbook of poking and prodding at other institutional safeguards to find more areas that would budge.

Eroded accountability opens the door a little wider for possible corruption and patronage, as seen in the budget ceiling, unprogrammed appropriations, and the new special provision on GOCC reserve funds. If left to decay, the constitutional trappings against abuse, which were once

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[336] *See supra* Table 3, pp. 42–43.

[337] Rep. Act No. 11975 (2023), § 1, XLIII, spec. prov. 1(d).

[338] Since the enactment of the F.Y. 2024 GAA, the DOF has issued Memorandum Circular No. 003-2024 to implement the GOCC cash sweep. Dep't of Fin. (DOF) Dep't Circ. No. 003-2024 (2024). Guidelines to Implement Special Provision 1(D), XLIII Unprogrammed Appropriations of Republic Act No. 11975 entitled the General Appropriations Act for Fiscal Year 2024, *available at* https://dof.gov.ph/wp-content/uploads/2024/04/DC_003.2024.pdf. Pursuant to these guidelines, PhilHealth was ordered to remit about PHP 89.9 billion of its funds to the Executive branch. Jean Mangaluz, *PhilHealth's transfer of P89.9 billion legal, Congress approved – DOF,* PHIL. STAR, July 23, 2024, *at* https://www.philstar.com/business/2024/07/23/2372376/philhealths-transfer-p899-billion-legal-congress-approved-dof.

This was met with staunch opposition from healthcare workers, as well as legal challenges filed in the Supreme Court. Giselle Ombay, *Healthcare advocates appeal cancellation of PhilHealth fund transfers to natl treasury,* GMA INTEGRATED NEWS, Aug. 19, 2024, *at* https://www.gmanetwork.com/news/topstories/nation/917580/healthcare-advocates-appeal-cancellation-of-philhealth-fund-transfers-to-natl-treasury/story/; *Pimentel petition*, G.R. No. 274778, Aug. 2, 2024 (Petition for Certiorari and Prohibition); *1SAMBAYAN petition*, G.R. No. 276233, Oct. 16, 2024 (Petition for Certiorari and Prohibition).

celebrated, would become nothing more than legal ornaments. No culture of answerability and trust would survive if the representatives chosen to hold their peers responsible for errors refuse to do so, and would rather look out for themselves instead of their constituents.

The truly demoralizing thought, to which many may be woefully resigned, is that both the Executive and the Legislative might have been in on it together all along. After all, weakening the Accountability Constitution through non-implementation serves those who wish to enlarge their power and influence beyond that which is allowed by law. It is quite chilling to think about what will happen next if this—their next venture into unconstitutionality—is legitimized as perfectly valid and reasonable.

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