

THE “PORK BARREL” SYSTEM AND THE BALANCE OF POWER IN EXECUTIVE-LEGISLATIVE RELATIONS*

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ABSTRACT

The appropriations process is often the site where the promises and perils of separation of powers are staged. In the Philippines, appropriation is a shared responsibility of the Executive, who plans and proposes the annual budget, and the Legislature, which approves the proposal by passing a general appropriations act. The powers of these departments over the appropriations process are constrained by provisions of the 1987 Constitution as well as prior legislation. Drawing the appropriate boundaries between the political branches has not been without controversy. This has been especially true for appropriations to fund projects selected by legislators—the so-called “pork barrel” funds. The Philippine Supreme Court has twice upheld, and then more recently rejected, the constitutionality of these appropriations. The Supreme Court’s latest decisions on the budget process seek to establish a clear line for public accountability. The shift in reasoning as well as the abandonment of precedents however signal an overreliance on the role of law and the judicial process—to the detriment of institutional prerogatives, the party system, and their impact in separation of powers. Although the budget has been cleared of textual anomalies, the decisions have created perverse incentives and merely made the corruption of the budget process more opaque and harder to root out.

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INTRODUCTION

In constitutional governments, especially those featuring distinct legislative and executive departments, the appropriations process can provide a platform where both the promises and perils of separation of powers are acted out. On one hand, the doctrine of separation of powers assigns to each of these branches their own functions, free from encroachment by the other. On the other hand, preparing the budget requires joint, coordinated action from both the executive and the legislature. The interface between the legislative and the executive can be especially problematic in cases of “pork barrel” appropriations, which can result from the confluence of political calculations and the corrosive influence of money. The decision of the Philippine Supreme Court in *Belgica v. Executive Secretary*¹ prohibits a class of pork barrel appropriations. While the Court recognized the potential for abuse, lack of accountability, and corruption associated with the pork barrel, the decision ultimately turned on the ground of separation of powers.

Both the political branches and the Philippine Supreme Court have grappled with this issue. The pork barrel system, in one form or another, has been a part of the country’s budget ever since the Americans transplanted their constitutional system to the archipelago. It has persisted through several iterations of the Philippine constitution, survived the imposition of Martial Law, and been practiced after the 1986 revolution that restored democracy to the country. The validity of the pork barrel system was questioned and upheld thrice in the Supreme Court before being ruled as unconstitutional in 2013, based largely on the separation of powers. This Article maintains that the Court’s reasoning was based on a conception of separation of powers that is overly formalistic and fails to account for both historical and functional considerations.

This Article aims to provide a brief overview of the development of pork barrel appropriations, outlining how such appropriations developed within the framework of separation of powers in successive Philippine constitutions. Next, it will provide a historical and legal background to the Supreme Court’s decision in *Belgica*. Finally, the paper will conclude with a critique of the decision and its effects on the political process, based on a functional understanding of the doctrine of separation of powers.

¹ [Hereinafter “*Belgica*”], G.R. No. 208566, 710 SCRA 1, Nov. 19, 2013.

Separation of Powers and the Budget Process

Congressional control over “the power of the purse” is textually committed in the Philippine Constitution: “No money shall be paid out of the Treasury except in pursuance of an appropriation made by law.”² The text has persisted unchanged through various iterations of the Philippine Constitution and can be traced to Article I, Section 9, par. 7 of the US Constitution.³

This means that activities of the national government must be backed by budgetary authority contained in a law—usually a General Appropriations Act (GAA) passed every year. In this manner, government power is tethered to broad political support. Far from being a mere fiscal matter, the process and substance of appropriations lie at the heart of defining political institutions that can maintain separation of powers.⁴ In the United States, the legislative department’s power over appropriations arose from the need of colonial legislatures to blunt the power of royal governors.⁵ The constitutional text provides its legislature exclusive power over appropriation, and this power has been zealously guarded for much of the early history of the United States. Colonial governments prior to the American War of Independence used the English parliamentary tradition of limiting appropriations to keep royal governors on a tight leash.⁶

² CONST. art. VI, § 29(1).

³ U.S. CONST. art. 1, § 9(7). “No money shall be drawn from the Treasury, but in consequence of appropriations made by Law...”

⁴ AARON WILDAVSKY, *THE NEW POLITICS OF THE BUDGETARY PROCESS* (2004).

⁵ *Id.* at 26–27. “The extraordinary effort of colonial legislators to control executives by limiting their expenditures, the duration for which they could be paid, and the objects for which the money could be spent gives this period its peculiar stamp. If the colonies belonged to England, and if the colonists were English subjects, then it was their duty to support royal governors. Because the colonists wanted British protection but not British rule, however, they freely used the English tradition of denying supply to force compliance with the legislative will.

“It was common colonial practice to vote salaries annually. Indirect taxes, excises, and import duties were often re-enacted yearly. Royal governors were allowed no permanent sources of revenue that might make them “uppity” - and that was only the beginning: Appropriations were specified for object and amount; extremely long appropriation clauses prescribed exactly what could and what could not be done and how much. The requirement that all unexpended balance revert immediately to the treasury added insult to injury.”

⁶ *Id.* at 25. “The power of the purse is the heart of legislative authority and thus an essential check on the executive branch. An executive establishment freed from dependence for funds upon the legislature (and hence the public) would be a law unto itself and ultimately a despotism. Those who made the American Revolution concluded from experience in Britain and the colonies that a free people had to keep its governors on a tight fiscal leash. From the earliest days of American government, budget decisions were treated as a struggle for power.”

The amounts appropriated and the manner and timing of their disbursement were strictly the sole domain of legislatures. This arrangement was preserved until 1921 when the Budget and Accounting Act⁷ formally authorized the President to propose expenditures based on the revenues of the federal government. The executive branch gained textual authority to participate in the budget process through this Act. The necessity of mustering and diverting resources quickly during times of war, the growing demands for flexibility, and the rational management of a burgeoning administrative state all required the US Congress to cede some control over the budget process to the executive department.⁸ The law created a Bureau of the Budget (later called the Office of Management and Budget) to help the executive in formulating its budget recommendations. The Budget and Accounting Act, as amended, provided the basis of the executive component of the federal budget process. Later, amidst concerns that overdependence on the executive’s budget had weakened the legislature’s position, the Congressional Budget and Impoundment Control Act⁹ was passed to provide for a congressional budget process. The law also established a Congressional Budget Office to provide data and analysis that would address the information asymmetry between the legislature and the executive.

Constitutional Budget Process

This requirement of legal authorization for government expenditure has been a part of Philippine constitutional law since the archipelago became an American territory. However, unlike the US appropriations clause, Philippine constitutional law has always provided a more explicit role for the executive in initiating and determining the budget. Under the Philippine Autonomy Act¹⁰—one of the earliest organic acts of the Philippines as a US territory—executive power was lodged in a Governor-General appointed by the US President. The law not only required congressional appropriation but also provided that the annual appropriations bill for the territory should be based on a budget of receipts and expenditures submitted by the Governor-General.¹¹ This division of labor was preserved in subsequent versions of the Constitution. Under the present Philippine Constitution, the authority to

⁷ Budget and Acct. Act of 1921, Pub. L. No. 67–13, 42 Stat. 20.

⁸ Bill Hennif, Jr., Megan Suzanne Lynch, & Jessica Tollestrup, Introduction to the Federal Budget Process (Dec. 3, 2012), at <https://fas.org/sgp/crs/misc/98-721.pdf>.

⁹ Cong. Budget and Impoundment Control Act of 1974, Pub. L. No. 93–344, 88 Stat. 297, 2 U.S.C. §§ 601–688.

¹⁰ Jones Act, Pub. L. No. 64–240, 39 Stat. 545 (1916).

¹¹ *Id.* § 21(b). This section provides that the Governor-General “[...] shall submit within ten days of the opening of each regular session of the Philippine Legislature a budget of receipts and expenditures, which shall be the basis of the annual appropriation bill.”

make appropriations is lodged with the legislature, which passes the GAA.¹² However, the GAA should be based on a program of expenditures proposed by the executive¹³ and the legislative department is prohibited from increasing appropriations as recommended by the executive.¹⁴ Although the legislature passes the budget as a single enactment, the executive has constitutional authority to cut spending programs through a line-item veto.¹⁵ The Constitution likewise contains a single-subject rule for legislation in general,¹⁶ and a subject-limitation rule for appropriations acts, specifically.¹⁷ This limits the ability of Congress to engage in logrolling legislation and riders that would allow for insertions in appropriations acts.

Finally, there are two other features of the Philippine budget process that change the relative powers and bargaining positions of the departments in favor of the executive. First, should the legislature fail to enact the annual general appropriation act, the previous year's budget is deemed reenacted.¹⁸ Unlike his or her American counterpart, the Philippine President is not subject to the threat of a government shutdown due to failure to pass a budget. Second, the President may realign expenditures from savings to any other item within his or her department. This means that all items of appropriation that were already disbursed in the previous fiscal year (usually the capital outlay

¹² CONST. art. VI, § 29(1). "No money shall be paid out of the Treasury except in pursuance of an appropriation made by law."; Art. VI, § 24: "All appropriation, revenue or tariff bills, bills authorizing increase of the public debt, bills of local application, and private bills shall originate exclusively in the House of Representatives, but the Senate may propose or concur with amendments."

¹³ 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."

¹⁴ Art. VI, § 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."

¹⁵ Art. VI, § 27(2). "The President shall have the power to veto any particular item or items in an appropriation, revenue, or tariff bill, but the veto shall not affect the item or items to which he does not object."

¹⁶ Art. VI, § 26(1). "Every bill passed by the Congress shall embrace only one subject which shall be expressed in the title thereof."

¹⁷ Art. VI, § 25(2). "No provision or enactment shall be embraced in the general appropriations bill unless it relates specifically to some particular appropriation therein. Any such provision or enactment shall be limited in its operation to the appropriation to which it relates."

¹⁸ Art. VI, § 25(7). "If, by the end of any fiscal year, the Congress shall have failed to pass the general appropriations bill for the ensuing fiscal year, the general appropriations law for the preceding fiscal year shall be deemed reenacted and shall remain in force and effect until the general appropriations bill is passed by the Congress."

component for completed projects) are considered savings and can be realigned by the executive in the re-enacted budget as he or she sees fit. These measures not only shield the executive from an *impasse* during the budget process but also provide a strong incentive for the executive to delay the submission of the budget to have a reenacted budget with appropriation items that can be treated as savings.¹⁹

Statutory Authority for the Budget Process

The substance and procedure of the budget is not determined by the Constitution alone. The Constitution itself provides that “[t]he form, content, and manner of preparation of the budget shall be prescribed by law.”²⁰ No Congress under the 1987 Constitution has passed legislation implementing this provision on elaborating a budget process. In the absence of such legislation, the law governing the budget process is Presidential Decree (PD) 1177.²¹ After declaring martial law, President Marcos exercised the power to legislate through presidential decrees. PD 1177 was one such law, implementing the executive’s first-mover status and informational advantage over the budget process.

This law provides both procedural and substantive requirements for budget preparation by the executive and, as will be explained below, results in greater executive control over the budget. The law centralizes all information and computation required for budget preparation in the executive and limits the legislature’s ability to deliberate on the executive’s budget proposal by: a) limiting the subject matter of legislative discussions to “policy, budgetary levels, thrusts and strategy;”²² b) limiting the number of session days allocated for budget debates;²³ and c) providing for a system of “automatic

¹⁹ This was in fact frequently used by former president Gloria Macapagal Arroyo. Deadlocks in the passage of a general appropriations act led to a re-enacted budget, the unallocated portions of which were treated as savings used for discretionary spending. *See Government gets re-enacted budget*, GMA NETWORK, June 8, 2006, at <http://www.gmanetwork.com/news/news/nation/8113/gov-t-gets-reenacted-budget/story/>.

²⁰ CONST. art. VI, § 25(1).

²¹ Pres. Dec. No. 1177 (1977). Budget Reform Decree of 1977.

²² § 26. “The National Assembly shall, during the discussion of the budget, focus on policy, budgetary levels, thrusts and strategy. Details of agency expenditures shall be considered as proper concerns of Executive Branch decision and action.”

²³ § 27. “Within seven (7) consecutive session days for the submission of the budget, the National Assembly shall, in plenary session, start the discussion of the budget, including both expenditure and revenue proposal. Debate shall be terminated on or before the eighteenth consecutive session day from the beginning of the discussions and final action shall be taken within three (3) consecutive session days thereafter.”

appropriations” for items of expenditure such as debt service.²⁴ PD 1177 also made the government budget less transparent by turning the bulk of government agency budgets into lump sum appropriations.²⁵ It is for all these reasons that PD 1177 has been criticized as a vestige of Marcos’s “fiscal dictatorship” that has since become entrenched.²⁶ Despite all the constraints it places on the legislature’s power, no law has been passed to amend or revise it.

These legal and historical developments should be considered as a baseline in any analysis of separation of powers. Although the United States and the Philippines have the same appropriations clause, the latter has constitutionalized executive participation in the appropriations process. This background, from the Philippines’ colonial status to the imposition of martial law, likewise indicates that executive participation has evolved into a high degree of control in the budget’s structure and content. Unlike in the United States, the Philippine executive has more levers it can apply: (1) the first-mover advantage and information asymmetry of the bureaucracy over the legislative department; (2) the time pressure and the incentive of the executive to have a re-enacted budget; (3) the lack of impoundment control; and (4) the collective action failure that has prevented the legislature from amending PD 1177.

Pork Barrel Appropriations

The appropriations process is a critical stage in the operation of the separation of powers. Money correlates with power; hence, constitutional design diffuses the power of appropriations through the legislature where it is hoped that both deliberation and political calculations converge into public welfare. The danger to separation of powers is exacerbated in the case of so-called “pork barrel” appropriations—project expenditures for a legislator’s local constituency. The term “pork barrel” can be difficult to define or at least

²⁴ § 31. “All expenditures for (a) personnel retirement premiums, government service insurance, and other similar fixed expenditures, (b) principal and interest on public debt, (c) national government guarantees of obligations which are drawn upon, are automatically appropriated: provided, that no obligations shall be incurred or payments made from funds thus automatically appropriated except as issued in the form of regular budgetary allotments.”

²⁵ § 30. “The General Appropriations Act shall be presented in the form of budgetary programs and projects for each agency of the government, with the corresponding appropriations for each program and project, including statutory provisions of specific agency or general applicability. The General Appropriations Act shall not contain any itemization of personal services, which shall be prepared by the Commissioner after enactment of the General Appropriations Act, for consideration and approval of the President.”

²⁶ James Matthew Miraflores, *Fiscal Dictatorship: The Scarcity of Financial Democracy in Post-EDSA Philippines* (2008) (unpublished study on file with the author).

differentiate from other forms of appropriations.²⁷ For purposes of this Article, we will adopt the Court’s definitions. “Pork barrel” refers to “an appropriation of government spending meant for localized projects and secured solely or primarily to bring money to a representative’s district.”²⁸ Meanwhile, the “pork barrel system” is “the collective body of rules and practices that govern the manner by which lump-sum, discretionary funds, primarily intended for local projects, are utilized through the respective participation of the Legislative and Executive branches of government, including its members.”²⁹ Regardless of the definition, there is widespread distaste for this type of appropriation. Much of the literature associates pork barrel with waste and corruption or asserts that such practice is not aligned with more rational, merit-based methodologies developed by the central bureaucracy.³⁰ Despite these criticisms, pork barrel appropriations have been a persistent feature in the country’s budget.

Judicial Decisions on the Pork Barrel

Pork barrel appropriations were a feature of the GAA even after the 1987 Revolution under President Corazon Aquino. The national budget featured a lump sum appropriation called the Countrywide Development Fund (CDF). It authorized PHP 2.9 billion for use in “infrastructure, purchase of ambulances, and computers, and other priority projects and credit facilities to qualified beneficiaries.”³¹ The provision allowed legislators to propose specific projects and activities, even after the passage of the appropriations act. Each legislator had an “allocation”, the maximum amount for projects they could identify and propose, which was PHP 12.5 million for each member of the House of Representatives and PHP 18 million for each Senator. The constitutionality of the CDF was first assailed before the Supreme Court in *Philippine Constitutional Association v. Enriquez*³² and again in *Lawyers Against Monopoly and Poverty (LAMP) v. Secretary of Budget*.³³

²⁷ See Ledivina Vidallon, *Pork Barrel Financing*, 10 PHIL. J. PUB. ADM. 29 (1966). “Because of the difficulty in dissociating political factors from any public works project, may it not be concluded that, on the average, most people equate all public works projects with the pork barrel?”

²⁸ *Belgica*, G.R. No. 208566, 710 SCRA 1, 51, Nov. 19, 2013.

²⁹ *Id.* at 105.

³⁰ See, e.g., Jan Carlo Punongbayan, *Pork barrel, Poverty, and Inequality* (Oct. 29, 2014) (unpublished study on file with the author), available at https://pdfs.semanticscholar.org/47b3/cf30e31bee1862bdfded5c40a84dd832ca95.pdf?_ga=2.140135344.288125175.1576544374-288939016.1576198767.

³¹ [Hereinafter “*Philconsd*”], G.R. No. 113105, 235 SCRA 506, 522, Aug. 19, 1994.

³² *Id.*

³³ [Hereinafter “*LAMP*”], G.R. No. 164987, 670 SCRA 373, Apr. 24, 2012.

Philconsa & LAMP

Petitioners in the case of *Philconsa* argued that the ability of legislators to propose and identify projects comprising the CDF amounted to an implementation of the GAA, therefore violating the separation of powers since the implementation of the budget was a function of the executive department. The Supreme Court, by a wide majority, upheld the provisions of the CDF. It reasoned that the power to propose and identify projects was already contained in the power of Congress to specify the form and substance of appropriations.³⁴ In the Supreme Court's analysis, Congress had the authority to determine the purposes for the appropriation; thus, deploying this authority either at the level of abstract lump sums or for specific projects and activities was within the mandate of the legislative department.

At the same time, the Court found that the executive's power to implement the law was not compromised. In fact, before any disbursement was carried out, the executive department would still need to check if the project or activity falls within the purpose that Congress set for the appropriation and if the disbursements can be reconciled with the government's spending agenda:

The authority given to the members of Congress is only to propose and identify projects to be implemented by the President. Under Article XLI of the GAA of 1994, the President must perforce **examine whether the proposals submitted by the members of Congress fall within the specific items of expenditures for which the Fund was set up, and if qualified, he next determines whether they are in line with other projects planned for the locality.** Thereafter, if the proposed projects qualify for funding under the Funds, it is the President who shall implement them. In short, the proposals and identifications made by the members of Congress are merely recommendatory.³⁵

To this, the Court added that the executive could still apply the usual administrative rules in the implementation of the projects. Control and accountability could be exercised by observing the laws on procurement, accounting, and other government standards.³⁶ The Court, adopting a framework of legal realism, saw these appropriations as a counterbalance to executive dominance in the budget process:

³⁴ *Philconsa*, 235 SCRA at 522-523.

³⁵ *Id.* at 523. (Emphasis supplied.)

³⁶ *See id.*

The Constitution is a framework of a workable government and its interpretation must take into account the complexities, realities and politics attendant to the operation of the political branches of government. Prior to the GAA of 1991, there was an uneven allocation of appropriations for the constituents of the members of Congress, with the members close to the Congressional leadership or who hold cards for "horse-trading," getting more than their less favored colleagues. The members of Congress also had to reckon with an unsympathetic President, who could exercise his veto power to cancel from the appropriation bill a pet project of a Representative or Senator.

The Countrywide Development Fund attempts to make equal the unequal. It is also a recognition that individual members of Congress, far more than the President and their congressional colleagues are likely to be knowledgeable about the needs of their respective constituents and the priority to be given each project.³⁷

The examples provided in the Court's reasoning suggest that it saw two distinct inequalities that pork barrel could equalize: 1) the inequality between members of Congress; and 2) the inequality between individual members of Congress and the Executive.

After obtaining judicial imprimatur in *Philconsa*, the pork barrel system was institutionalized and expanded. The appropriations, now called the Priority Development Assistance Fund (PDAF), amounted to billions and covered a broader set of purposes: "to fund priority programs and projects or to fund the required counterpart for foreign-assisted programs and projects."³⁸

The Court revisited the constitutionality of the pork barrel system in *LAMP*. Petitioners asked the Court to enjoin the Secretary of Budget and Management from "making, and, thereafter, releasing" pork barrel provisions from the 2004 budget.³⁹ Petitioners once again raised the issue of separation of powers, maintaining that based on media reports, individual legislators not only proposed and identified projects but actually received the corresponding funds.⁴⁰

³⁷ *Id.*

³⁸ *LAMP*, 670 SCRA at 378.

³⁹ *Id.*

⁴⁰ *Id.* at 379.

The Court found that the appropriation was facially valid—it was “outwardly legal and capable of lawful enforcement.”⁴¹ Setting aside the petitioners’ allegations of illegal use of the funds (i.e., representatives receiving kickbacks from contractors of proposed projects), the Court explained that there was no evidence sufficient to overturn the presumption of regularity, since petitioners only offered media accounts on alleged irregularities.⁴² On the separation-of-powers issue, the Court reiterated the reasoning in *Philconsa* that individual legislators were allowed to propose and identify projects. Without any evidence that funds were disbursed to individual legislators, there was no encroachment on the executive’s spending powers.⁴³ *LAMP*’s petition was dismissed.

Belgica v. Executive Secretary

Notwithstanding the finding of pork barrel appropriations as valid legislation, allegations of corruption continued to hound the PDAF. In the 2013 GAA, one of the main subjects of *Belgica*, the PDAF grew to PHP 24.79 billion, with allocations of PHP 100 million for every Senator and PHP 70 million for every member of the House of Representatives. Under the administration of President Benigno Aquino III, the PDAF contained limitations to address some of the criticisms against the pork barrel system. The purposes for which the PDAF could be disbursed were limited to selected public works and social services, and legislators could not propose projects outside of their districts.

Despite these restrictions, the system remained vulnerable to abuse and corruption. Around July 2013, media reports uncovered a scandal involving the misappropriation of pork barrel funds. These reports alleged that billions were funneled into substandard or non-existent projects, with legislators receiving kickbacks from contractors. This was supported by findings from the Philippine National Bureau of Investigation (NBI).⁴⁴ It was

⁴¹ *Id.* at 387.

⁴² *Id.*

⁴³ *Id.* at 390.

⁴⁴ *Belgica*, 710 SCRA 1 at 80. “Recently, or in July of the present year [2013], the National Bureau of Investigation (NBI) began its probe into allegations that “the government has been defrauded of some ₱10 billion over the past 10 years by a syndicate using funds from the pork barrel of lawmakers and various government agencies for scores of ghost projects.” The investigation was spawned by sworn affidavits of six (6) whistle-blowers who declared that JLN Corporation – “JLN” standing for Janet Lim Napoles (Napoles) – had swindled billions of pesos from the public coffers for “ghost projects” using no fewer than 20 dummy NGOs for an entire decade. While the NGOs were supposedly the ultimate recipients of PDAF funds, the whistle-blowers declared that the money was diverted into Napoles’

also confirmed by a report from the Commission on Audit (COA) detailing various irregularities in the proposal, selection of, and disbursements to projects funded by pork barrel appropriations.⁴⁵ Another petition was filed before the Supreme Court by public interest groups pleading for the

private accounts. Thus, after its investigation on the Napoles controversy, criminal complaints were filed before the Office of the Ombudsman, charging five (5) lawmakers for Plunder, and three (3) other lawmakers for Malversation, Direct Bribery, and Violation of the Anti-Graft and Corrupt Practices Act. Also recommended to be charged in the complaints are some of the lawmakers' chiefs-of-staff or representatives, the heads and other officials of three (3) implementing agencies, and the several presidents of the NGOs set up by Napoles.”

⁴⁵ *Id.* at 81-82. “On August 16, 2013, the Commission on Audit (CoA) released the results of a three-year audit investigation covering the use of legislators' PDAF from 2007 to 2009, or during the last three (3) years of the Arroyo administration. The purpose of the audit was to determine the propriety of releases of funds under PDAF and the Various Infrastructures including Local Projects (VILP) by the DBM, the application of these funds and the implementation of projects by the appropriate implementing agencies and several government-owned-and-controlled corporations (GOCCs). The total releases covered by the audit amounted to ₱8.374 Billion in PDAF and ₱32.664 Billion in VILP, representing 58% and 32%, respectively, of the total PDAF and VILP releases that were found to have been made nationwide during the audit period. Accordingly, the CoA's findings contained in its Report No. 2012-03 (CoA Report), entitled "Priority Development Assistance Fund (PDAF) and Various Infrastructures including Local Projects (VILP)," were made public, the highlights of which are as follows:

- Amounts released for projects identified by a considerable number of legislators significantly exceeded their respective allocations.
- Amounts were released for projects outside of legislative districts of sponsoring members of the Lower House.
- Total VILP releases for the period exceeded the total amount appropriated under the 2007 to 2009 GAAs.
- Infrastructure projects were constructed on private lots without these having been turned over to the government.
- Significant amounts were released to implementing agencies without the latter's endorsement and without considering their mandated functions, administrative and technical capabilities to implement projects.
- Implementation of most livelihood projects was not undertaken by the implementing agencies themselves but by NGOs endorsed by the proponent legislators to which the Funds were transferred.
- The funds were transferred to the NGOs in spite of the absence of any appropriation law or ordinance.
- Selection of the NGOs was not compliant with law and regulations.
- Eighty-Two (82) NGOs entrusted with implementation of seven hundred seventy two (772) projects amounting to ₱6.156 Billion were either found questionable, or submitted questionable/spurious documents, or failed to liquidate in whole or in part their utilization of the Funds.
- Procurement by the NGOs, as well as some implementing agencies, of goods and services reportedly used in the projects were not compliant with law.”

invalidation of PDAF and several lump sum funds used by the executive, termed “presidential pork barrel” by the Court.

Notwithstanding its prior decisions in *Philconsa* and *LAMP*, the Court struck down PDAF, and any similarly structured pork barrel appropriations, for violating the separation of powers. Adopting a formalistic lens, the Court determined that the legislature’s oversight after enactment of a law was limited to scrutiny and investigation.

The enforcement of the national budget, as primarily contained in the GAA, is indisputably a function both constitutionally assigned and properly entrusted to the Executive branch of government. [...] Thus, unless the Constitution provides otherwise, the Executive department should exclusively exercise all roles and prerogatives which go into the implementation of the national budget as provided under the GAA as well as any other appropriation law.

* * *

[T]he Legislative branch of government, much more any of its members, should not cross over the field of implementing the national budget since, as earlier stated, the same is properly the domain of the Executive. [...] Upon approval and passage of the GAA, Congress’s law -making role necessarily comes to an end and from there the Executive’s role of implementing the national budget begins. So as not to blur the constitutional boundaries between them, Congress must “not concern itself with details for implementation by the Executive.”

* * *

It must be clarified, however, that since the restriction only pertains to “any role in the implementation or enforcement of the law,” Congress may still exercise its oversight function which is a mechanism of checks and balances that the Constitution itself allows. But it must be made clear that Congress’ role must be confined to mere oversight. Any post-enactment-measure allowing legislator participation beyond oversight is bereft of any constitutional basis and hence, tantamount to impermissible interference and/or assumption of executive functions.⁴⁶

⁴⁶ *Id.* at 109-111.

Adopting the reasoning in *Abakada Guro Party List v. Purisima*,⁴⁷ the Court defined oversight to be limited to investigation and scrutiny.⁴⁸ Even proposals, when made post-enactment by individual legislators, violated the separation of powers.

Critique of the Court’s Decision

The Court’s decision was well-received by the public as a move towards greater transparency and accountability in the use of public funds. Years after *Belgica*, it may be possible to see how its promise translates to any actual change.

The more immediate impact was on the constituents of legislators, especially for project implementors who utilized the funds in good faith. The fact that some legislators were involved in anomalous projects should not have automatically tainted the entire system with invalidity. Distinguishing its earlier ruling on the facial validity of the appropriations, the Court noted that unlike in *LAMP*, *Belgica* was supported by official findings from the NBI and COA. That, however, only begs the question—if the investigation revealed the specific persons and *modus operandi* responsible for pork barrel fraud, why was it not enough to prosecute them? The potential for abuse and corruption is an attribute shared by a whole slew of government functions that involve discretion in granting or allocating value. The license regime for marriage, the system for tax credits, and all other similar processes are prone to abuse. Yet, one does not argue that sporadic, even systemic, corruption means that the system itself is invalid. The mere fact that a mechanism can be abused is an argument for vigilance against specific violations, not the invalidity of the mechanism itself.

It should be noted that that the ruling in *LAMP* was not only based on the amount or quality of evidence but also on the distinction between a funding mechanism that was valid in the abstract and specific uses of that mechanism that violated the law when misused. The lack of any ruling that

⁴⁷ G.R. No. 166715, 562 SCRA 251, Aug. 14, 2008.

⁴⁸ *Id.* at 287. “Any post-enactment congressional measure x x x should be limited to scrutiny and investigation. In particular, congressional oversight must be confined to the following:

(1) scrutiny based primarily on Congress’ power of appropriation and the budget hearings conducted in connection with it, its power to ask heads of departments to appear before it and be heard by either of its Houses on any matter pertaining to their departments and its power of confirmation; and

(2) investigation and monitoring of the implementation of laws pursuant to the power of Congress to conduct inquiries in aid of legislation.”

would save otherwise valid instances of pork barrel spending is disturbing, considering some of the fund's actual uses. For example, a large component of the fund spent on "soft" services was used for medical procedures, such as routine dialysis and medical subsidies. Additionally, the public works component of the funds supplemented appropriations used to repair roads and bridges damaged by typhoons.⁴⁹

The Court's formalistic conception of the separation of powers is especially problematic since the budget process is a joint activity between the legislative department and the executive with its inevitable overlaps and continuities. For example, any post-enactment period is a pre-enactment period for the next budget, and there is always likely to be a kind of push and pull expected in the political process. Congress has traditional functions beyond legislation and oversight. It may exercise its power through non-binding resolutions. It may even censure the executive. Every political tool outside of legislation can be used to shape the budget. The Court's formulation of the separation of powers fails to articulate a standard that can distinguish between mere influence and actual control. This turn to formalism is unnecessary since the Court's stand on *separation of powers* has always been rooted in a functional analysis. The Court's oft-cited decision in *Angara v. Electoral Commission*⁵⁰ underscores that what the principle requires is not establishing neat separation but maintaining a workable system of government:

The separation of powers is a fundamental principle in our system of government. It obtains not through express provision but by actual division in our Constitution. Each department of the government has exclusive cognizance of matters within its jurisdiction, and is supreme within its own sphere. But it does not follow from the fact that the three powers are to be kept separate and distinct, that the Constitution intended them to be absolutely unrestrained and independent of each other. The Constitution has provided for an elaborate system of checks and balances to secure coordination in the workings of the various departments of the government...

But in the main, the Constitution has blocked out with deft strokes and in bold lines, allotment of power to the executive, the legislative and the judicial departments of the government. The

⁴⁹ James Atkinson et al., *Pork and Typhoons: The Political Economy of Disaster Assistance in the Philippines*, SSRN ELECTRONIC JOURNAL (2013), at https://www.researchgate.net/publication/228296566_Pork_and_Typhoons_The_Political_Economy_of_Disaster_Assistance_in_the_Philippines.

⁵⁰ 63 Phil. 139 (1936).

overlapping and interlacing of functions and duties between the several departments, however, sometimes makes it hard to say just where the one leaves off and the other begins. In times of social disquietude or political excitement, the great landmarks of the Constitution are apt to be forgotten or marred, if not entirely obliterated. In cases of conflict, the judicial department is the only constitutional organ which can be called upon to determine the proper allocation of powers between the several departments and among the integral or constituent units thereof.⁵¹

It should be noted that prior to *Belgica*, neither the legislative nor executive department claimed that its constitutional prerogatives were somehow limited by pork barrel appropriations. In *Belgica*, we instead have a case where the legislative department is defending a long-accepted aspect of appropriation and the executive is not objecting to any constraints to its decision-making process or its power to execute the law.

A decision based on functional analysis would have looked at the long-term institutional role of pork barrel appropriations and factored in possible effects that its removal would have on the political process. In the long run, the decision could end up further eroding the authority of the legislative branch. Instead of securing an allocation for local projects in the GAA, legislators would have to coordinate with Cabinet Secretaries or even local administrators of government bureaus.

Furthermore, the PDAF provisions centralized and coordinated the interests of individual legislators across party lines. This made it harder for the Executive to veto local appropriations of individual legislators; while he could veto PDAF as a whole, it would severely affect congressional allies. Without this assurance of “guaranteed” appropriations, the budget process becomes further yoked to the Executive, leaving Congress with less of a counterweight, as can be seen in its ready willingness to allow a prodigious growth of the President’s opaque “intelligence funds”.⁵²

It is also possible that the net effect of the Court’s decision is not to remove the undesirable behavior but instead make it more opaque. Although PDAF-style provisions are no longer found in the GAA, it does not mean that “pork” has disappeared from the budget. It is likely that allocations for

⁵¹ *Id.* at 156–157.

⁵² See Aika Rey, *Duterte’s office has highest confidential intelligence funds in proposed 2020 budget*, RAPPLER, Aug. 28, 2019, available at <https://www.rappler.com/newsbreak/in-depth/238599-duterte-office-highest-confidential-intelligence-funds-proposed-2020-national-budget>

local projects proposed or endorsed by individual legislators have become embedded in the line items of each agency's budgets, particularly those for public works and social services, to be specified by individual legislators through informal mechanisms. This time, however, they are no longer subject to the same standards for distribution and accountability as PDAF allocations. Even though individual legislators no longer have a legal basis to identify or propose projects, there have been reports of legislators approaching department heads to disburse funds for projects they claim to have inserted in the GAA.⁵³ In yet another instance, an unexplained lump-sum appropriation was found by the upper house during amendments to the GAA.⁵⁴ Although these instances may not have been enabled by the same type of legal mechanism as PDAF, and even assuming that there is no corruption involved, these appropriations share many of the same criticisms lodged against pork barrel funds—they are still tied to patronage politics instead of any rational programming, and the projects they fund remain localized, inefficient, and inequitably distributed.

CONCLUSION

The intent behind the Court's decision in *Belgica* is laudable, but its methods severely underestimate the agency and motivation of political actors as well as the unbalanced power dynamics between the legislative department and the Executive. This imbalance is perhaps what the earlier version of the Court considered when it upheld pork barrel appropriations for helping "make the unequal equal."⁵⁵ The waste and inefficiencies of pork barrel were the inevitable by-products of localized geographic representation and majority rule: the democratic process, warts and all. *Belgica* has not caused any long-term, structural changes. If anything, pork is back with a vengeance, displacing transparency in the decision's wake, spreading across agency budgets as insertions or consolidating into other poorly explained lump-sum items. Collusion can still be resorted to when the executive implements projects based on directives of individual legislators as part of political *quid pro quo*. One may concede that the decision provides a clear—if symbolic—blow for public accountability. Since the Court could not promulgate budgetary law, it at least laid down budgetary virtue. This is a poor substitute for a sustained

⁵³ Maila Ager, *Taguivalo: Some lawmakers feel entitled to 'hidden pork'*, INQUIRER.NET, Aug. 17, 2017, available at <http://newsinfo.inquirer.net/923420/taguivalo-some-lawmakers-feel-entitled-to-hidden-pork>.

⁵⁴ Ed Margareth Barahan, *Gov't, lawmakers warned on hidden pork in 2017 budget*, INQUIRER.NET, Mar. 16, 2017, available at <http://newsinfo.inquirer.net/881414/govt-lawmakers-warned-on-hidden-pork-in-2017-budget>.

⁵⁵ *Philconsa*, 235 SCRA 506 at 523.

culture of accountability, both in processes and institutional design—one that requires an overhaul of PD 1177. *Belgica* tempts us with the prospect of clean legal outcomes free of the inconvenience of political engagement. But the solution to bad law is not an absence of politics, but better politics.

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