

Bringing Home Bad Bacon: The Unconstitutionality of the Pork Barrel System

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I. INTRODUCTION

On 19 November 2013, the Supreme Court (Court) declared the Priority Assistance Fund (PDAF), also known as the pork barrel, unconstitutional.¹ The Court voted 14-0-1 against the PDAF, the multimillion peso discretionary fund received by lawmakers every year.² Prior to the decision, each member of the House of Representatives received ₱70 million per annum and each member of the Senate received ₱200 million per annum.³ Each individual legislator could choose and

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1. Mark Merueñas, Supreme Court declares PDAF unconstitutional, *available at* <http://www.gmanetwork.com/news/story/336120/news/nation/supreme-court-declares-pdaf-unconstitutional> (last accessed July 9, 2014).
2. *Beda v. Ochoa*, G.R. No. 208566, Nov. 11, 2013.
3. Senate of the Philippines, Senate To Abolish “Pork,” *available at* http://www.senate.gov.ph/press_release/2013/0731_santiago1.asp (last accessed July 9, 2014).

identify the project from the priority list prepared by the implementing agency.⁴

Over the years, the pork barrel funds in the Philippines have increased astronomically.⁵ This created a facet which legislators could abuse and this, ultimately, gave way to corruption. It enraged Filipinos when the alleged “PDAF Scam” became known to the public.⁶ This alleged misuse by legislators of the PDAF funds not only resulted in the increased mistrust of the citizens towards the Government, but it also alerted the Court of the actual controversy needing immediate attention.

Although the Court has faced problems similar to this in the past, this issue of misuse was difficult for them to tackle because it concerned a conflict among the major branches of the Government. The Court needed to be delicate in proceeding with the controversy at hand since it was closely watched by the public, and the pressures against creating an adverse decision were obvious and imminent. The Court also had to ensure that it would not overstep its boundaries and continue to respect the separation of powers among the other branches.⁷

The issue of corruption is certainly nothing new to the Philippines. Although kickbacks and bribes as sources of income are nothing new when it comes to public officials, this Essay tackles a different kind of corruption, where the officer takes the public money for so-called “ghost projects.” This Essay discusses the history and development of the Pork Barrel, “commonly referred to as lumpsum, discretionary funds of [m]embers of the Legislature[,]”⁸ and also examines some of the constitutional issues which such appropriation violates, thereby leading to the declaration of its unconstitutionality.

II. HISTORY

A. Concept and History of the Pork Barrel in the Philippines

4. *Id.*

5. Solita Collas-Monsod, *Pork barrel: costs and benefits*, PHIL DAILY INQ., July 20, 2013, available at <http://opinion.inquirer.net/56945/pork-barrel-costs-and-benefits> (last accessed July 9, 2014).

6. Dante A. Ang, Growing anger over PDAF scam could bring govt down, available at <http://www.manilatimes.net/growing-anger-over-pdaf-scam-could-bring-govt-down/92359/> (last accessed July 9, 2014).

7. *Francisco, Jr. v. Nagmamalaskit na mga Manananggol ng mga Manggagawang Pilipino, Inc.*, 415 SCRA 44, 51 (2003).

8. *Beda*, G.R. No. 208566.

“Pork Barrel” is generally defined as “government projects that benefit people in a particular part of the country[,] and that are done in order to help the political careers of elected officials.”⁹

The case of *Beda v. Ochoa*¹⁰ defines the concept of “Pork Barrel.” It states that

‘Pork Barrel’ is political parlance of American-English origin. Historically, its usage may be traced to the degrading ritual of rolling out a barrel stuffed with pork to a multitude of black slaves who would cast their famished bodies into the porcine feast to assuage their hunger with morsels coming from the generosity of their well-fed master. This practice was later compared to the actions of American legislators in trying to direct federal budgets in favor of their districts. While the advent of refrigeration has made the actual pork barrel obsolete, it persists in reference to political bills that ‘bring home the bacon’ to a legislator’s district and constituents. In a more technical sense, ‘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. Some scholars on the subject further use it to refer to legislative control of local appropriations. In the Philippines, ‘Pork Barrel’ has been commonly referred to as lump-sum, discretionary funds of [m]embers of the Legislature, although[,] its usage would evolve in reference to certain funds of the Executive.¹¹

It can be observed that the Pork Barrel system, specifically the funds allocated to the members of the legislature, is mainly used for the purpose of a more “hands-on” style approach of appropriation of funds by the Government for the creation of projects. The members of the legislature are given lump-sum funds to be used for projects and programs they find necessary and appropriate for the betterment of their districts.¹² They are “given a free-hand to identify [their] pet projects [and] programs within [their] budget[. After choosing, they may] request the concerned departments to implement them, after a [G]eneral [A]ppropriation [A]ct [(GAA)] has been promulgated.”¹³ The Legislators are given discretionary powers to determine the socially acceptable project to satisfy the demands of

9. Merriam-Webster, Pork Barrel, available at <http://www.merriam-webster.com/dictionary/pork%20barrel> (last accessed July 9, 2014).

10. *Beda*, G.R. No. 208566.

11. *Id.*

12. *Id.*

13. Adrian M. Tamayo, Pork Barrel, Philippine Politics and the Economy, available at <http://philippine-democracy.blogspot.com/2011/07/pork-barrel-and-philippine-politics-and.html> (last accessed July 9, 2014).

their constituents.¹⁴ It is said that “[t]he [P]ork [B]arrel is a popular metaphor for projects and favors for legislators’ districts.”¹⁵ It is also said that in “[P]ork [B]arrel politics, the tone is typically critical, with an emphasis on the self-serving aspects of ‘bringing home the bacon.’”¹⁶

The Pork Barrel system is embodied in the GAA, which is the annual allocation of funds of the government.¹⁷ It can be divided in two categories: (a) the Congressional Pork Barrel; and (b) the Presidential Pork Barrel.¹⁸

The Congressional Pork Barrel, more popularly known as PDAF, is the official name of the Congressional Pork Barrel.¹⁹ It amounted to nearly ₱25 billion in 2013 alone.²⁰ Although it is merely one percent of the national budget,²¹ it could be and is strategically used by legislators for self-serving purposes such as to seek re-election or to fill their own pockets.

To further understand the Pork Barrel system in the Philippines, it is necessary to examine the history, origin, and purpose of such allocation of funds.

1. History of the Congressional Pork Barrel in the Philippines.

The historical development of the Congressional Pork Barrel can be divided into six periods: (1) Pre-Martial Law Era; (2) Martial Law Era; (3) Corazon Aquino’s administration; (4) Ramos administration; (5) Estrada administration; and finally, (6) the current administration.

During the Pre-Martial Law Era, the earliest form of the Congressional Pork Barrel was the Public Works Act of 1922,²² which appropriated funds

14. *Id.*

15. DIANA EVANS, GREASING THE WHEELS 2 (2004).

16. *Id.* at 5.

17. *Beda*, G.R. No. 208566.

18. *Id.*

19. Pagbabago! People’s Movement for Change, Primer: The Pork Barrel System (An Unpublishd Primer) 1, available at <http://www.cp-union.com/sites/www.cp-union.com/files/Primer%20on%20the%20Pork%20Barrel.pdf> (last accessed July 9, 2014).

20. *Id.*

21. Ef Legara, Infographic: PDAF is only one percent of the Budget ng Bayan, available at <http://www.gmanetwork.com/news/story/325561/news/special-reports/infographic-pdaf-is-only-one-percent-of-the-budget-ng-bayan> (last accessed July 9, 2014).

22. An Act Making Appropriations for Public Works, Act No. 3044 (1922).

for the use of the Director of Public Works for the purposes stated in the statute.²³ Before the funds become available, the Director of Public Works first needs the approval of the Congress for the funds to be released.²⁴ As stated in Section 3 of said Act —

[Section 3.] The sums appropriated [in] this Act shall be available for immediate expenditure by the Director of Public Works, but those appropriated in the other paragraphs shall be distributed in the discretion of the Secretary of Commerce and Communications, subject to the approval of a joint committee elected by the Senate and the House of Representatives. The committee from each House may authorize one of its members to approve the distribution made by the Secretary of Commerce and Communications, who with the approval of said joint committee, or of the authorized members thereof may, for the purposes of said distribution, transfer unexpended portions of any item of appropriation under this Act to any other item hereunder.²⁵

However, during the Martial Law Era, the Congressional Pork Barrel was discontinued by then President Ferdinand E. Marcos as he was the one who controlled the legislature.²⁶ In 1982, the Batasang Pambansa added an item called the “Support for Local Development Projects” (SLDP) in the GAA for that year.²⁷ It was reported that ₱500,000 was appropriated for the SLDP, but it was no longer limited to public works known as “hard projects.”²⁸ Legislators used their SLDP on capital investments and infrastructure projects like school houses, municipal buildings, roads, and the like.²⁹ But they also used the money for what are now known as “soft projects,” such as the “purchase of medicines, fertilizers, fumigants and insecticides, paints, and sports equipment, or for scholarships for constituents.”³⁰

After a few years, during the time of former President Corazon C. Aquino, the Congressional Pork Barrel was reincarnated in the form of the

23. *Id.*

24. *Id.*

25. *Id.*

26. *Beda*, G.R. No. 208566.

27. Ruben Magan Gamala, *Evolution of the Pork Barrel System in the Philippines*, available at <http://www.up.edu.ph/evolution-of-the-pork-barrel-system-in-the-philippines/> (last accessed July 9, 2014).

28. Yvonne T. Chua & Booma Cruz, B., “Pork by any name,” available at <http://verafiles.org/pork-by-any-name> (last accessed July 9, 2014).

29. *Id.*

30. *Id.*

“Mindanao Development Fund” and the “Visayas Development Fund” which amounted to ₱480 million and ₱240 million, respectively.³¹ This gave way to the creation of the “Countrywide Development Fund” (CDF), which was contained in the 1990 GAA for the funding for Luzon legislators.³² The CDF was to be released, with the approval of the President, to the implementing agencies as stated in the GAAs for years 1991 and 1992.³³ It has been reported that ₱12.5 million was given to each representatives and ₱18 million for each Senator, without any limitation as to what kind of project they may allocate these amounts.³⁴

In 1993, during the President Fidel V. Ramos’ administration, “the GAA explicitly stated that the release of CDF funds was to be made upon the submission of the list of projects and activities identified by, among others, individual legislators. For the first time, the 1993 CDF Article included an allocation for the Vice-President.”³⁵ Also, other Pork Barrel fund articles were inserted in the GAA. Examples of such were the Public Works Fund, restored in 1996; School Building Fund; Congressional Initiative Allocation; El Niño Fund; and the Poverty Alleviation Fund. Similar to what was done in the previous Pork Barrel funds, the legislators had the power to direct the appropriations of the said funds and how they are to be spent, which was a part of their discretionary power.

In *PHILCONSA v. Enriquez*,³⁶ the constitutionality of the CDF provisions in the GAA of 1994 was questioned.³⁷ It was alleged that the CDF involved executive power and not appropriation power.³⁸ The Court ruled in favor of the CDF’s legality saying that the Congressmen were only allowed to recommend projects, not to create projects.³⁹ The Court stated in its decision that

31. The Manila Times, Pork barrel is dead; long live the Supreme Court, *available at* <http://www.manilatimes.net/pork-barrel-is-dead-long-live-the-supreme-court/54512/> (last accessed July 9, 2014).

32. *Id.*

33. *Beda*, G.R. No. 208566.

34. Virgil B. Lopez, SC slams pork barrel as legislator’s personal kitty, *available at* <http://www.sunstar.com.ph/breaking-news/2013/11/25/sc-slams-pork-barrel-legislator-s-personal-kitty-315513> (last accessed July 9, 2014).

35. *Beda*, G.R. No. 208566.

36. *Philippine Constitution Association v. Enriquez*, 235 SCRA 506 (1994).

37. *Id.* at 517.

38. *Id.* at 520.

39. *Id.* at 523.

[t]he Constitution is a framework of a workable [G]overnment[,] and its interpretation must take into account the complexities, realities[,] and politics attendant to the operation of the political branches of [G]overnment. 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 [CDF] attempts to make equal the unequal. It is also 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.⁴⁰

The CDF was supposed to be abolished during the presidency of Joseph Ejercito Estrada but it simply changed form and became the PDAF.⁴¹ Since the budget of the Government during that time was deficient, the new system limited the discretionary powers of the legislators — they were only allowed to create projects and programs limited to the determination of the Executive department.⁴² This limitation is embodied in the requirement of prior consultation with the respective representative of the district.⁴³

The PDAF provisions for the years 2002 to 2010 did not specify the amount allocated to each legislator. As stated in the case of *Beda* —

Textually, the PDAF Articles from 2002 to 2010 were silent with respect to the specific amounts allocated for the individual legislators, as well as their participation in the proposal and identification of PDAF projects to be funded. In contrast to the PDAF Articles[,] however, the provisions under the [Department of Education] School Building Program and the [Department of Public Works and Highways] budget, similar to its predecessors, explicitly required prior consultation with the concerned Member of Congress on certain aspects of project implementation.⁴⁴

40. *Id.*

41. Leena C. Chua, Renaming pork barrel a form of ‘trickery,’ *available at* <http://www.manilatimes.net/renaming-pork-barrel-a-form-of-trickery-2/33578/> (last accessed July 9, 2014).

42. *Id.*

43. Chua, *supra* note 41.

44. *Beda*, G.R. No. 208566.

It was during this period where non-governmental organizations (NGOs) were allowed to participate in the use of PDAF for projects and programs to be chosen by said legislators.⁴⁵

The 2011 PDAF provisions in the GAA departed from the appropriations made in the GAAs for the years 2002 to 2010. The provisions in the 2011 GAA reverted to the form of the previous CDF Articles where each individual legislator and the vice president were reserved an amount of ₱70 million each, to be used for hard and soft projects, with the amount of ₱40 million and ₱30 million, respectively.⁴⁶

It is also stated in the 2011 GAA that

the Secretaries of Education, Health, Social Welfare[,] and Development, Interior and Local Government, Environment and Natural Resources, Energy, and Public Works and Highways to realign PDAF Funds, with [] further conditions that: (a) [the] realignment is within the same implementing unit and same project category as the original project, for infrastructure projects; (b) [the] allotment released has not yet been obligated for the original scope of work; and (c) the request for realignment is with the concurrence of the legislator concerned.⁴⁷

The 2013 PDAF Article now includes that Local Government Units (LGUs) are to be considered as implementing agencies, if they have the technical capability to implement the projects.⁴⁸

2. History of the Presidential Pork Barrel in the Philippines.

Although the Pork Barrel fund is used by legislators for projects and programs they deem necessary, there is a widened usage of the term to include the Malampaya Fund and the Presidential Social Fund, which is

45. Michael Punongbayan, *200 lawmakers in 'pork' mess*, PHIL. STAR, Apr. 8, 2013, available at <http://www.philstar.com/headlines/2013/08/17/1100611/200-lawmakers-pork-mess> (last accessed July 9, 2014).

46. Lira Dalangin-Fernandez, *Speaker: little risk of PDAF misuse now as graft-vulnerable projects got less*, available at <http://www.interaksyon.com/article/68751/speaker-little-risk-of-pdaf-misuse-now-as-graft-vulnerable-projects-got-less> (last accessed July 9, 2014).

47. *Beda*, G.R. No. 208566.

48. Marilou Mangahas, *PDAF abuse, misuse linger under 'Daang Matuwid'*, available at <http://www.abs-cbnnews.com/focus/10/07/13/pdaf-abuse-misuse-linger-under-daang-matuwid> (last accessed July 9, 2014).

subject to the discretion of the President with regard to how the said funds will be utilized.⁴⁹ These funds are considered as the Presidential Pork Barrel.

The Malampaya Fund was created under Section 8 of Presidential Decree (P.D.) No. 910 during the time of former President Marcos on 22 March 1976.⁵⁰ This Fund was created because of the energy-related activities of the Government in the Malampaya natural gas field in Palawan.⁵¹ In the same Section, the limitation of the use of said funds were enumerated.⁵² The use of this fund is limited “to finance energy resource development and exploitation programs and projects of the [G]overnment[,] and for such other purposes as may be hereafter directed by the President.”⁵³

Another fund under the category of the Presidential Pork Barrel is the Presidential Social Fund. This was created under Section 12, Title IV of P.D. No. 1869, also known as the Charter of the Philippine Amusement and Gaming Corporation (PAGCOR).⁵⁴ Two years after the enactment of P.D. No. 1869, it was amended by P.D. No. 1993.⁵⁵ Section 12 of Presidential Decree No. 1869 as amended states that —

Sec. 12. Special Condition of Franchise. — After deducting five [] percent as Franchise Tax, the [50%] percent share of the government in the aggregate gross earnings of the Corporation from this Franchise, or 60% if the aggregate gross earnings be less than ₱150,000,000.00, shall immediately be set aside and shall accrue to the General Fund to finance the priority infrastructure development projects and to finance the restoration of

49. Rey E. Requejo, SC justice declared Malampaya funds ‘pork,’ *available at* <http://manilastandardtoday.com/2013/11/22/sc-justice-declared-malampaya-funds-pork-/> (last accessed July 9, 2014).

50. Creating an Energy Development Board, Defining its Powers and Functions, Providing Funds, Therefor, and for Other Purposes, Presidential Decree No. 910, § 8 (1976).

51. *Id.*

52. *Id.*

53. *Id.*

54. Consolidating and Amending Presidential Decree Nos. 1067-A, 1067-B, 1067-C, 1399 and 1632, Relative to the Franchise and Powers of the Philippine Amusement and Gaming Corporation (PAGCOR), Presidential Decree No. 1869, § 12 (1983).

55. Amending Section Twelve of Presidential Decree No. 1869 Consolidating and Amending Presidential Decrees Nos. 1067-A, 1067-B, 1067-C, 1399, and 1632, Relative to the Franchise and Powers of the Philippine Amusement and Gaming Corporation (PAGCOR), Presidential Decree No. 1993 (1985).

damaged or destroyed facilities due to calamities, as may be directed and authorized by the Office of the President of the Philippines.⁵⁶

The Presidential Social Fund has been described “as a special funding facility managed and administered by the Presidential Management Staff[,] through which the President provides direct assistance to priority programs and projects not funded under the regular budget. It is sourced from the share of the Government in the aggregate gross earnings of PAGCOR.”⁵⁷

B. Priority Development Assistance Fund Scam

In the Philippines, the first controversy concerning the Pork Barrel arose from the award-winning exposé on the graft-ridden pork barrel, the CDF, by the late former Marikina City Representative Romeo D. Candazo.⁵⁸ Before this, there was no issue on the misuse of the “Pork Barrel Funds.”⁵⁹ Candazo is known for exposing the sums of government funds pocketed by legislators through kickbacks from projects and programs they enforce.⁶⁰ He revealed that the legislators would receive an amount ranging from 19% to 52% of the cost of projects they would pursue “which could be anything from dredging, rip rapping, [a]sphalting, concreting, and construction of school building.”⁶¹

Then in a few days, the story of the original whistle blower became the banner story of the 13 August 1996 issue of the Philippine Daily Inquirer, accompanied by an illustration of a roasted pig.⁶² The illustrator “showed which choice portions of the pig went to a member of the House, a senator,

56. *Id.* § 1.

57. *Beda*, G.R. No. 208566.

58. Philippine Daily Inquirer, *Candazo, first whistle-blower on pork barrel scam, dies*; 61, PHIL DAILY INQ., Aug. 20, 2013, available at <http://newsinfo.inquirer.net/469439/candazo-first-whistle-blower-on-pork-barrel-scam-dies-61> (last accessed July 9, 2014).

59. *Id.*

60. Juan L. Mercado, *Whistle-blowers' vindication?*, PHIL DAILY INQ., Aug. 20, 2013, available at <http://opinion.inquirer.net/70255/whistle-blowers-vindication> (last accessed July 9, 2014).

61. Philippine Daily Inquirer, *Candazo, first whistle-blower on pork barrel scam, dies*; 61, PHIL DAILY INQ., Aug. 20, 2013, available at <http://newsinfo.inquirer.net/469439/candazo-first-whistle-blower-on-pork-barrel-scam-dies-61> (last accessed July 9, 2014).

62. *Id.*

the head of the prequalification bidding and awards committee, and the resident auditor.”⁶³

In the case of *Lawyers Against Monopoly and Poverty (LAMP) v. Secretary of Budget and Management*⁶⁴ (*LAMP*), a Petition was filed for the nullification of the PDAF as enacted in the 2004 GAA for being unconstitutional.⁶⁵ Sadly, the doctrine of presumption of validity of a statute prevailed since there was no evidence of the alleged misuse, and the abuse sought to be prevented is merely hypothetical without any concrete evidence to support the allegations.⁶⁶

Now, on to the present issue that has caught the attention of public. This is the recent PDAF scandal that emerged in July 2013, which involves the misuse of the pork barrel funds.⁶⁷ The Philippine Daily Inquirer “ran a series of special reports detailing allegations about a multibillion pork barrel involving [Janet Lim-]Napoles and several lawmakers.”⁶⁸ It was Benhur K. Luy who acted as the whistle blower of the PDAF scam, wherein billions of pesos were misappropriated by several members of Congress with the aid of Napoles through several anomalous dealings.⁶⁹ Luy is also the second cousin of Napoles and her former personal assistant.⁷⁰ This triggered an investigation by the National Bureau of Investigation (NBI) to look into these said allegations of corruption through so-called “ghost projects.”⁷¹

Through the NBI investigation, it was discovered that the JLN Corporation already “swindled billions of pesos from the public coffers for ‘ghost projects’ using no fewer than 20 dummy NGOs for an entire

63. *Id.*

64. *Lawyers Against Monopoly and Poverty (LAMP) v. Secretary of Budget and Management*, 670 SCRA 374 (2012).

65. *Id.* at 383.

66. *Id.* at 386.

67. Jonathan Llanes, Pork barrel – Knowing the issue, *available at* <http://www.sunstar.com.ph/baguio/opinion/2013/09/05/llanes-pork-barrel-knowing-issue-301598> (last accessed July 9, 2014).

68. Yasmin D. Arquiza, Janet Napoles and the unraveling of the pork barrel scandal, *available at* <http://www.gmanetwork.com/news/story/341906/news/special-reports/janet-napoles-and-the-unraveling-of-the-pork-barrel-scandal> (last accessed July 9, 2014).

69. *Id.*

70. *Id.*

71. *Id.*

decade.”⁷² In this scenario, the NGOs are simply used as a cover up to be able to acquire funding from the government through non-existent projects and programs.⁷³ The funding supposedly received from these NGOs ended up in the personal accounts of Napoles.⁷⁴ It was reported that Napoles was also involved in the 2004 Fertilizer Fund Scam.⁷⁵

The Commission on Audit Special Audit Office Report No. 2012-03, a Government-wide performance audit on the PDAF and Various Infrastructure including Local Projects (VILP), showed the “ghost projects and dubious NGOs during the administration of then-President Gloria Macapagal-Arroyo.”⁷⁶ The Special Audit Report also stated that there were conflict of interest violations by lawmakers concerning the PDAF.

The Report stated the following — the amounts released for projects identified by a considerable number of legislators significantly exceeded their respective allocations; the amounts were released for projects outside of legislative districts of sponsoring members of the Lower House; the total VILP releases for the period exceeded the total amount appropriated under the 2007 to 2009 GAAs; the infrastructure projects were constructed on private lots without these having been turned over to the government; there were significant amounts released to implementing agencies without the latter’s endorsement and without considering their mandated functions and administrative and technical capabilities to implement projects; the 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; the selection of the NGOs were not compliant with law and regulations; the 82 NGOs entrusted with the implementation of 772 projects amount 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; and, the procurement by the NGOs, as well as some implementing agencies, of goods and services reportedly used in the projects were not compliant with the law.⁷⁷

72. *Id.*

73. *Id.*

74. Arquiza, *supra* note 68.

75. *Id.*

76. *Id.*

77. *Beda*, G.R. No. 208566.

This led to the issuance of arrest warrants against Napoles and her brother for the serious illegal detention of Luy, the whistle blower.⁷⁸ Napoles soon became a fugitive when the warrant was issued and she was nowhere to be found.⁷⁹ On 28 August 2013, Napoles surrendered to the President just before a ₱10 million bounty was to be put up for her immediate arrest.⁸⁰ She was placed in a detention facility in Laguna and was under the watchful eye of the media.⁸¹

Also, through the investigation of the NBI, “criminal complaints were filed before the Office of the Ombudsman, charging five [l]awmakers for Plunder, and three [o]ther lawmakers for Malversation, Direct Bribery, and Violation of the Anti-Graft and Corrupt Practices Act.”⁸²

The issue regarding the Presidential Pork Barrel involved at least ₱900 million from royalties in the operation of the Malampaya gas project off the Palawan Province, but was instead misappropriated to a NGO.⁸³ The COA Chairperson, Maria Gracia Pulido Tan, is in the process of preparing a consolidated report on the Malampaya Fund arising from the allegations of its misappropriation.⁸⁴

III. BEDA V. OCHOA: SUPREME COURT DECLARING THE PORK BARREL SYSTEM UNCONSTITUTIONAL

In *LAMP*, the constitutionality of the PDAF was presumed from the regularity of the performance of the duties of the legislators by enacting the said GAA that contained the PDAF articles.⁸⁵ But due to the subsequent unveiling of corrupt practices by various members of the Government, a reexamination of said presumption of constitutionality is necessary. Given the events that transpired in the past few months, it is undisputable that there is a necessity to re-examine the said PDAF Article.

78. Dexter San Pedro, Janet Napoles surrenders, *available at* <http://www.interaksyon.com/article/69587/janet-napoles-surrenders> (last accessed July 9, 2014).

79. *Id.*

80. *Id.*

81. *Id.*

82. *Beda*, G.R. No. 208566.

83. *Id.*

84. *Id.*

85. *LAMP*, 670 SCRA at 380.

In the case of *Beda*, the petitioners questioned the constitutionality of the Pork Barrel system and also sought to prevent the further disbursement of funds under the system.⁸⁶ There were various issues which convinced the Court to declare the Pork Barrel system unconstitutional. These substantial issues are divided into two: (1) Issues concerning the Congressional Pork Barrel; and (2) Issues concerning the Presidential Pork Barrel.⁸⁷

A. Unconstitutionality of the Congressional Pork Barrel

There are several constitutional issues that were violated by the Congressional Pork Barrel considering that the Pork Barrel system not only gave too much power to the members of Congress, but it also gave an outlet that is very susceptible to abuse and corruption, as recent events have proven.

i. Separation of Powers and Non-delegability of Legislative Power

The question is raised as to whether the PDAF violated the doctrine of the separation of powers enshrined in the 1987 Philippine Constitution. The inviolate doctrine of separation of powers among the legislative, executive, and judicial branches of Government by no means prescribes absolute autonomy in the discharge by each branch of that part of the governmental power assigned to it by the sovereign people.⁸⁸ The functions of the Government are divided into three separate branches: (1) the legislative branch, which creates the law; (2) the judicial branch, which interprets the law; and (3) the executive branch, which executes the law.⁸⁹

This doctrine divides the power to co-equal branches of government, which can be exercised independently, and each branch has exclusive cognizance of matters within its jurisdiction.⁹⁰ The purpose of this division is to prevent authority from being conferred upon a single person or group so as to avoid abuse and corruption that ultimately can cause the downfall of the State. As stated in *Lambino v. COMELEC* —

This separation is intended to prevent a concentration of authority in one person or group that might lead to an irreversible error or abuse in its exercise to the detriment of [the] republican institutions. In the words of

86. *Beda*, G.R. No. 208566.

87. *Id.*

88. *Neri v. Senate Committee on Accountability of Public Officers and Investigations*, 549 SCRA 77, 138 (2008).

89. *Lambino v. COMELEC*, 505 SCRA 160, 402 (2006).

90. *Id.* at 457.

Justice [Jose P.] Laurel, the doctrine of separation of powers is intended to secure action, to forestall overaction, to prevent despotism[,] and [to] obtain efficiency.⁹¹

The separation of powers doctrine is connected to the non-delegability of legislative power, where the latter states that legislative power is conferred in the legislative branch.⁹² This is provided in the Constitution, specifically in Section 1, Article VI of the said Constitution.⁹³ Only the Congress may wield legislative power which is entrusted to it by the will of the people, as embodied in the Constitution.⁹⁴

There are only a few exceptions to the non-delegability of legislative power, which are:

- (a) delegated legislative power to local governments which, by immemorial practice, are allowed to legislate on purely local matters; and
- (b) constitutionally-grafted exceptions such as the authority of the President to, by law, exercise powers necessary and proper to carry out a declared national policy in times of war or other national emergency, or fix within specified limits, and subject to such limitations and restrictions as Congress may impose, tariff rates, import and export quotas, tonnage and wharfage dues, and other duties or imposts within the framework of the national development program of the Government.⁹⁵

Going into the issue at hand, when it comes to the enforcement of the national budget through the GAA, it is the prerogative of the executive branch to exercise this function.⁹⁶ Consistent with the doctrine of separation of powers, the executive department has the exclusive power to implement the GAA and other appropriation laws.⁹⁷ The two other branches of Government cannot go against this constitutional mandate of division and exercise this power of execution of the national budget. The GAA is created through the formulation of the legislature, but the implementation of the national budget by Congress is a violation of the doctrine of the separation

91. *Id.* at 378.

92. *Id.* at 334.

93. PHIL. CONST. art. VI, § 1.

94. PHIL. CONST. art. VI, § 1.

95. *Beda*, G.R. No. 208566.

96. *Id.*

97. *Id.*

of powers. It is up to the discretion of the executive to implement the national budget as provided in the GAA.⁹⁸

However, the legislature is not totally powerless during the implementation stage of the national budget; its power is limited to scrutiny and investigation through the exercise of congressional oversight.⁹⁹ As stated in *Beda* —

[C]ongressional oversight must be confined to the following:

- (a) 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 and be heard by either of its Houses on any matter pertaining to their departments and its power of confirmation; and
- (b) investigation and monitoring of the implementation of laws pursuant to the power of Congress to conduct inquiries in aid of legislation.

Any action or step beyond that will undermine the separation of powers guaranteed by the Constitution.¹⁰⁰

In the PDAF Article, each legislator is given post-enactment functions, which violate the constitutional principle of separation of powers.¹⁰¹ In the 2013 GAA, the legislators are given “post-enactment [functions] which govern the areas of project identification, fund release[,] and fund realignment[,] are not related to functions of congressional oversight and, hence, allow legislators to intervene and/or assume duties that properly belong to the sphere of budget execution.”¹⁰² The authority of the Legislature must be limited to a recommendatory nature and it is quite clear from the PDAF that this is not the case, hence, the PDAF is violative of the doctrine of the separation of powers.

In *LAMP*, the Court ruled that if there is no showing of the participation of the legislators in the actual spending of the budget, the boundaries between the executive and the legislative are not deemed to have been violated.¹⁰³ However, the recent reports from the COA and pieces of

98. *Id.*

99. *Id.*

100. *Id.*

101. Tony La Viña, Understanding the PDAF decision, *available at* <http://manilastandardtoday.com/2013/12/03/understanding-the-pdaf-decision/> (last accessed July 9, 2014).

102. *Beda*, G.R. No. 208566.

103. *LAMP*, 670 SCRA at 380.

evidence that arose from the current controversy have shown that the legislators have exercised post-enactment functions in the implementation of the PDAF.

The PDAF Article gives a lump-sum fund to each individual legislator, which can be used with the discretion of said legislator in appropriating the project or program that said fund will be used for. This is violative of Section 29 (1), Article VI of the 1987 Constitution which states that “[n]o money shall be paid out of the Treasury except in pursuance of an appropriation made by law.”¹⁰⁴

The violation of the PDAF does not only concern the separation of powers of the government, but also the principle of non-delegability. The Court “observe[d] that the 2013 PDAF Article, insofar as it confers post-enactment identification authority to individual legislators, violates the principle of non-delegability since said legislators are effectively allowed to individually exercise the power of appropriation, which[,] as settled in [*PHILCONSA*], is lodged in Congress.”¹⁰⁵

2. Checks and Balances

Although the separation of powers doctrine acts as a check and balance to guard from the establishment of an arbitrary or tyrannical Government, the Constitution also provides for other checks and balances for the branches of Government in order to be able to ensure that each branch of the Government can coordinate with each other in different Government programs and projects, and other functions.¹⁰⁶ This is why the legislature, in the exercise of its legislative function in creating an appropriation, revenue, or tariff bill is still subject to the veto power of the President.¹⁰⁷ This item-veto power is found in Section 27 (2), Article VI of the 1987 Constitution which states that “[t]he 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 [or she] does not object.”¹⁰⁸

This power of the President constitutes the “safety net” to prevent the unfair enactments done by the members of Congress for their own personal gain. Specifically, this veto power refers to individual items of the appropriation, revenue, or tariff bill submitted by the Congress to the

104. PHIL. CONST. art. VI, § 29(1).

105. *Beda*, G.R. No. 208566.

106. *Lambino*, 505 SCRA at 413.

107. PHIL. CONST. art. VI, § 27(2).

108. PHIL. CONST. art. VI, § 27(2).

President.¹⁰⁹ The item-veto power of the President is done by the disapproval of the Chief Executive of a specific provision in the bill, and this vetoed item is deemed disregarded and the other provisions will not be affected and will still be enacted.¹¹⁰

The purpose of the item-veto power is “to avoid inexpedient riders being attached to an indispensable appropriation or revenue measure.”¹¹¹ This power is also for the purpose of preventing “log-rolling legislation, imposing fiscal restrictions on the legislature, as well as to fortifying the executive branch’s role in the budgetary process.”¹¹²

As mentioned before, the PDAF is a lumpsum appropriation subject to the discretion of the projects and programs the members of Congress would pursue for their designated districts.¹¹³ This appropriation will not be subject to the veto power of the President, hence it is contrary to the constitutional mandate of checks and balances on the power of the legislature. The President can only veto the PDAF Article in GAA as a whole, but this will effectively limit the resources of legislators with real projects, as a contrast to legislators with ghost projects.

The Court in *Beda* stated that the unconstitutionality of the PDAF Article is not limited to the “legislative identification feature,” but also because it is a lumpsum appropriation without a definite purpose and “does not readily indicate a discernible item which may be subject to the President’s power of item veto.”¹¹⁴

3. Accountability

Section 1, Article XI of the 1987 Constitution states that “public office is a public trust.”¹¹⁵ Public officers are expected to act in their official functions in good faith as the trust of the people is reposed in them.¹¹⁶ They are

109. See PHIL. CONST. art. VI, § 27(2).

110. *Philippine Constitution Association*, 235 SCRA at 535.

111. *Bengzon v. Drilon*, 208 SCRA 133, 143 (1992).

112. *Beda*, G.R. No. 208566.

113. Emeritus Leonor Magtolis Briones, On PDAF, lump sum appropriations, savings and all that, *available at* <http://www.manilatimes.net/on-pdaf-lump-sum-appropriations-savings-and-all-that/59303/> (last accessed July 9, 2014).

114. *Beda*, G.R. No. 208566.

115. PHIL. CONST. art. XI, § 1.

116. PHIL. CONST. art. XI, § 1.

effectively accountable for their acts and must perform their duties in a proper manner.¹¹⁷

The PDAF Article provides post-enactment functions to the legislators in a form beyond a simple congressional oversight. This function is improper in the use of the PDAF because the legislators who are appropriating funds for a certain project or program cannot be deemed disinterested in investigating the implementation of the appropriation act. The PDAF Article is unconstitutional in this aspect because it violates Section 14, Article VI of the 1987 Constitution, which provides that —

[n]o Senator or Member of the House of Representatives may personally appear as counsel before any court of justice or before the Electoral Tribunals, or quasi-judicial and other administrative bodies. Neither shall he, directly or indirectly, be interested financially in any contract with, or in any franchise[,] or special privilege granted by the Government, or any subdivision, agency, or instrumentality thereof, including any government-owned or controlled corporation, or its subsidiary, during his term of office. He shall not intervene in any matter before any office of the Government for his pecuniary benefit or where he may be called upon to act on account of his office.¹¹⁸

The post-enactment functions given to the members of Congress under the PDAF Article in the 2013 GAA clearly violates Section 14, Article VI of the 1987 Constitution, and violates the mandate of accountability towards public officers.¹¹⁹

The 1987 Constitution has institutionalized accountability and social justice as tools to prevent the evils of an unrestricted power and to prevent corruption, or have tyranny reigning again in the country.

4. Local Autonomy

Another issue which the Court tackled is the autonomy of LGUs. This policy is embodied in Section 25, Article II of the Constitution which states that “[t]he State shall ensure the autonomy of local governments.”¹²⁰ It is also mentioned in Sections 2 and 3 of Article X of the Constitution which provide:

Sec. 2 The territorial and political subdivisions shall enjoy local autonomy.

117. PHIL. CONST. art. XI, § 1.

118. PHIL. CONST. art. VI, § 14.

119. PHIL. CONST. art. XI, § 1.

120. PHIL. CONST. art. II, § 25.

Sec. 3 The Congress shall enact a local government code which shall provide for a more responsive and accountable local government structure instituted through a system of decentralization with effective mechanisms of recall, initiative, and referendum, allocate among the different local government units their powers, responsibilities, and resources, and provide for the qualifications, election, appointment and removal, term, salaries, powers and functions and duties of local officials, and all other matters relating to the organization and operation of the local units.¹²¹

The Constitutional provisions stated above show that the State intended for LGUs to be able to develop themselves as “self-sustaining and effective contributors to the national economy.”¹²²

It was argued that the Congressional Pork Barrel violates the principle of local autonomy because it allows district representatives to utilize public funds for local development, hence undermining the local officers and autonomy of said area.¹²³ The original intent of the Congressional Pork Barrel was “to make equal the unequal,”¹²⁴ which is clearly not the case in the PDAF Article in the 2013 GAA. The allocation of the funds under the PDAF Article was not based on “genuine parameters of equality.”¹²⁵ The reason for the inequality caused by the PDAF is that each representative gets the equal amount of funding as compared to representatives of districts which are less developed as compared to others. The inequalities between provinces will not be removed. The PDAF will be given to each legislator without regard to the district they belong to, and for the account of their office.

The PDAF clearly conflicts with the Local Development Councils (LDCs), which are given the authority to set the direction of the development within the territorial jurisdiction it has been conferred with. Any member of Congress can “simply bypass the [L]ocal [D]evelopment [C]ouncil and initiate projects on his [or her] own, and even take sole credit for its execution.” Hence, the Court found this as enough justification that the PDAF Article undermines the local autonomy of each LGU, by giving legislators a lump sum amount for projects that they deem appropriate and for their own advancement, rather than the development of the said LGU.

B. Unconstitutionality of the Presidential Pork Barrel

121. PHIL. CONST. art. X, §§ 2 & 3.

122. *Beda*, G.R. No. 208566.

123. *See* PHIL. CONST. art. X, §§ 2 & 3.

124. Lopez, *supra* note 34.

125. *Beda*, G.R. No. 208566.

To begin the discussion on the unconstitutionality of the Malampaya Fund, it must be discussed that the legislative power of Congress may be delegated to the Executive as part of the rule-making authority that is allowed to be given to the Executive by law.¹²⁶ This rule-making authority is limited to: (a) supplementary rule-making which is filling up the details of the law for its enforcement; (b) contingent rule-making which is ascertaining facts to bring the law into actual operation; or (c) administrative rule-making which primarily concerns internal rules to govern administrative units.¹²⁷

For a valid delegation of legislative power to be deemed proper, it must pass both the: (1) completeness test; and (2) sufficiency of standard test.¹²⁸

For the completeness test, “[t]he statute must be complete in itself so that by appropriate judicial review and control, any action taken pursuant to the delegate authority may be kept within the defined limits of the authority conferred.”¹²⁹ It must be worded in such a way that when it reaches the person to be delegated the power, the only thing to be done is to enforce it.¹³⁰ As for the sufficiency of standard test, it primarily depends on the nature of the power to be exercised as well as the right to be restricted.¹³¹ It must provide enough of a standard for the person delegated to ensure that he or she will not use his or her discretion to enact the said law.¹³² Detailed standards are not necessary as long as the standard will not result to the personal judgment of the delegate.¹³³

In the case of Section 8 of P.D. No. 910, it is a violation of delegation of legislative power because it fails to satisfy the sufficient standard test, as it provides the phrase, “and for such other purposes as may be hereafter directed by the President.”¹³⁴ It is clear from this Provision that the President will use the Malampaya Fund for “energy resource development and exploitation programs[,]”¹³⁵ but with the additional phrase that provides “for

126. *Id.*

127. *Id.*

128. HECTOR S. DE LEON, ADMINISTRATIVE LAW: TEXT AND CASES 207 (2010).

129. *Id.* at 192.

130. *Id.*

131. *Id.* at 214-15.

132. *Id.*

133. *Id.* at 214.

134. *Beda*, G.R. No. 208566.

135. P.D. No. 910, § 8

such other purposes as may be [] directed by the President”¹³⁶ it becomes an undue delegation of legislative power. The President is given the authority to direct the Malampaya funds for purposes he or she chooses. It is up to his discretion to use the said funds without any limitations stated in the law because of the phrase mentioned above.

The Court did not totally declare Section 8 of P.D. No. 910 unconstitutional, but only removed the phrase “and for such other purposes as may be hereafter directed by the President,” while retaining the other phrases in the said Section.¹³⁷ As stated by the Court —

While Section 8 of [P.D. No.] 910 may have passed the completeness test since the policy of energy development is clearly deducible from its text, the phrase ‘and for such other purposes as may be hereafter directed by the President’ under the same provision of law should nonetheless be stricken down as unconstitutional as it lies independently unfettered by any sufficient standard of the delegating law. This notwithstanding, it must be underscored that the rest of Section 8, insofar as it allows for the use of the Malampaya Funds ‘to finance energy resource development and exploitation programs and projects of the [G]overnment,’ remains legally effective and subsisting. Truth be told, the declared unconstitutionality of the aforementioned phrase is but an assurance that the Malampaya Funds would be used — as it should be used — only in accordance with the avowed purpose and intention of [P.D. No.] 910.¹³⁸

IV. CONCLUSION

Although corruption has always been widespread in the Philippines, the latest Pork Barrel scam involving various officials is simply inexcusable. Rather than receiving kickbacks by overstating the expenses accrued in projects and programs they pursue, the officers stooped so low as to actually create “ghost” projects. This completely undermines the right of the public to rely on the regular performance of the duties entrusted to the members of Congress. The Court must exercise its judicial power to fix the mistake that has deteriorated not only the Country’s wealth, but also the trust of the people in the Government.

The Pork Barrel system is effectively abolished because of the numerous constitutional mandates and principles that it violated, as seen in the inherent defects in the said law. The holes in the PDAF Article in the 2013 GAA show the weakness of the pork barrel system, thereby needing to be

¹³⁶ *Id.*

¹³⁷ *Beda*, G.R. No. 208566.

¹³⁸ *Id.*

immediately declared unconstitutional, in order to prevent further corruption in the system. It fails the constitutional mandate of equity towards the people as well as the accountability of the officers involved.

The Philippines is slowly fighting the corruption that has caused poverty of its citizens for years. The development of the Nation is crippled by this system for decades and now it has finally been abolished by the hands of the Court. The optimistic view is that this is one step towards the total annihilation of corruption in the Country. The other view is that this kind of corruption and abuse of power by officials is inherent in the government and cannot be remedied. One can only wish that the former view holds true and that this kind of evil is not inherent in the government.