

Discretionary Power, Corruption, and Separation of Powers: An Evaluation of the Pork Barrel System from the Rule of Law Perspective

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Until the twin decisions of the Supreme Court declaring the Priority Development Assistance Fund (PDAF) and certain acts and practices under the Disbursement Acceleration Program (DAP) unconstitutional, wide discretionary powers in the disbursement of funds were entrenched and institutionalized in the Philippine legal and public financial systems for many decades. On the one hand, individual legislators had the authority to choose which projects to implement, which contractors would be awarded

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contracts, and when tranches of funds were to be released. On the other hand, the President realigned savings from funds for purposes they were not originally intended for.

The pork barrel system gave rise to a number of issues such as separation of powers, corruption, and patronage politics. These issues, which have been examined by scholars from the viewpoint of democracy and nation-building, are evaluated in this Article from a formal rule of law perspective, particularly the rule of law conception by Joseph Raz, Lon L. Fuller, and Albert Venn Dicey.

Upon evaluation, it is concluded that the pork barrel system's violation of the principle of separation of powers went against the rule that particular laws or orders should be guided by open, stable, and general rules. It also promoted arbitrariness and defeated the check and balance purpose of the separation of powers. The pork barrel system encouraged corruption, which denied citizens access to public funds and created uncertainty. Corruption promoted dissatisfaction and disrespect for the law. Patronage politics, or clientelism, created a *rule of men* situation and manipulated people into believing they were beholden to government officials for government benefits, which were due them under the law. A way forward is to address the system's weaknesses with reforms, strengthen institutions, and increase transparency. Until meaningful reforms are introduced, the rule of law and the human dignity of the Filipino citizen, continue to be compromised.

I. INTRODUCTION

In November 2013, the Supreme Court, in *Belgica v. Ochoa, Jr.*,¹ declared the PDAF as unconstitutional. Eight months later, in *Araullo v. Aquino*,² the Supreme Court also declared certain practices under the DAP as unconstitutional. Prior to these decisions, around ₱25 billion, or approximately one percent of the national budget of the Philippines, was allocated for legislative discretionary funds.³ The President controlled ₱1.2

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1. *Belgica v. Ochoa, Jr.*, 710 SCRA 1, 161 (2013).
 2. *Araullo v. Aquino*, G.R. No. 209287, July 1, 2014.
 3. *See* An Act Appropriating Funds for the Operation of the Government of the Republic of the Philippines from January One to December Thirty-One, Two Thousand and Thirteen, and for Other Purposes, Republic Act No. 10352, art. XLIV (2012). For the fiscal year 2013, ₱24.790 billion, which is approximately \$603 million, out of the ₱2.006 trillion budget, was allocated for the Priority Development Assistance Fund (PDAF). *Id.*

billion⁴ in discretionary funds, or approximately 22% of the national budget.⁵ More than half of the national budget was allocated to Special Purpose Funds (SPF) and lump-sum funds.⁶ These amounts placed under wide discretionary powers constituted the pork barrel.⁷ The pork barrel, under its various forms, has been entrenched and institutionalized in the Philippine legal and public financial system for many decades.

How did having the pork barrel as a dominant system of allocating and distributing funds affect the rule of law? The wide discretionary powers that officials possessed gave rise to a number of issues, such as violation of the principle of separation of powers, corruption, and patronage politics. This Article evaluates these issues from the perspective of the rule of law. Much attention has been given to the impact of corruption and patronage politics on democratic principles and nation-building.⁸ This Article focuses on the discourse of corruption and patronage politics and its effects on the rule of law. The Author argues that the wide discretionary powers that the members of Congress and the President had under the pork barrel system were incompatible with the rule of law, insofar as it created uncertainty, instability, and arbitrariness. In addition, it animated disobedience to the law. Distributive pork barrel practices amounted to enslavement and manipulation, which violated the virtue of the rule of law — human dignity.⁹

The Author begins Part II by discussing the concept of the rule of law that will be discussed in this Article, which is the formal or thin version of

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4. See Malou Mangahas, Scam no! PDAF a ‘mafia’ of executive & legislature, available at <http://pcij.org/stories/scam-no-pdaf-a-mafia-of-executive-legislature> (last accessed Sep. 11, 2014).
 5. See generally R.A. No. 10352. This amount is equivalent to approximately \$10 billion. *Id.*
 6. Mangahas, *supra* note 4.
 7. ABS-CBN News, A short history of the pork barrel, available at <http://www.abs-cbnnews.com/video/nation/08/26/13/short-history-pork-barrel> (last accessed Sep. 11, 2014).
 8. See TRANSPARENCY INTERNATIONAL, AFTER THE CONFLICT: NATION-BUILDING AND CORRUPTION 2-3 (4th issue, 2010) & Etienne B. Yehoue, Ethnic Diversity, Democracy, and Corruption (A Paper Submitted to the International Monetary Fund), available at <https://www.imf.org/external/pubs/ft/wp/2007/wp07218.pdf> (last accessed Sep. 11, 2014).
 9. See Joseph Raz, *The Rule of Law and its Virtue*, in THE AUTHORITY OF LAW: ESSAYS ON LAW AND MORALITY 220 (Joseph Raz ed., 1979) (citing F.A. HAYEK, THE ROAD TO SERFDOM 75 (1944)).

the rule of law as espoused mainly by Joseph Raz. The Author also discusses the ideas of Lon Fuller and Albert Dicey. This provides the framework against which the pork barrel system will be evaluated.

In Part III, the Author explores the Philippine situation. She establishes the Philippine structure of government under the Constitution because “the rule of law is inextricably linked to constitutionalism.”¹⁰ In a jurisdiction where the Constitution is the fundamental law of the land, the rule of law requires compliance therewith.¹¹ It is also within the Constitution that the general principles of law, to which all particular laws or orders should be consistent, are found. The Author also provides the history and evolution of corruption in general in order to give proper context. The Author then narrows the discussion down to the pork barrel system in the Philippines — its beginnings, various reincarnations, and the recent Supreme Court decisions that rendered the pork barrel system unconstitutional.

In Part IV, the Author analyzes the dynamics between and among patronage politics, separation of powers, corruption, and the rule of law. There is an examination of how the pork barrel system violated the principles and virtues of the rule of law. Inconsistency with general rules, corruption, and patronage politics violated principles of the rule of law, particularly those that promote stability, certainty, compliance with the law, and respect for human dignity. Expansive discretionary power led to patronage politics, which is incompatible with the rule of law. There was a structural deficiency in the framework of government that rendered the principle of separation of powers inutile, discouraged accountability, and encouraged corruption — all of which led to a weak rule of law regime for the Philippines.

II. THE FORMAL OR THIN CONCEPT OF THE RULE OF LAW

This Article will engage the formal or thin conception of the rule of law, primarily as articulated by Raz, supported by other formalists such as Fuller and Dicey.¹² The subject matter herein deals fundamentally with discretionary powers, separation of powers, corruption, and accountability, as it appears in the Philippine legal framework, and how they affect compliance with and obedience to the law. Thus, the formal or thin concept of the rule of law is more appropriate. This Article does not grapple with issues relating

10. Cheryl Saunders & Katherine Roy, *Perspectives on the Rule of Law*, in *THE RULE OF LAW 11* (Cheryl Saunders & Katherine Roy eds., 2003).

11. *Id.*

12. See generally Mark D. Walters, *Legality as Reason: Dicey and Rand and the Rule of Law*, 55 *MCGILL L.J.* 563, 565, & 570-71 (2010).

to human rights, poverty, or democracy, which are commonly identified with the thick concept of the rule of law.¹³ This Article is not concerned with whether the pork barrel system was a good law. Some legislators have put forward the argument that pork barrel was good as it was used to give financial assistance to the needy or to give scholarship opportunities to the underprivileged.¹⁴ While these are outcomes that can be said to be good, they are beside the point. What this Article seeks to determine is if, regardless of the asserted goodness of the system, the pork barrel violated aspects of the rule of law as formally conceived.

Raz prefaces his paper with the following quote on the essence of the rule of law —

[S]tripped of all technicalities[,] this means that government[,] in all its actions[,] is bound by rules fixed and announced beforehand [—] rules which make it possible to foresee with fair certainty how the authority will use its coercive powers in given circumstances, and to plan one's individual affairs on the basis of this knowledge.¹⁵

For Raz and Friedrich Hayek, one of the virtues of the rule of law is that it protects individual freedom.¹⁶ The rule of law guarantees a predictable environment, which in turn enables individual freedom because it increases a person's power of action.¹⁷

The rule of law is a requirement for the respect of human dignity because human dignity “entails treating humans as persons capable of planning and plotting their future.”¹⁸ Human dignity may be violated in a number of ways, such as by enslavement and by manipulation.¹⁹

13. See generally Thom Ringer, *Development, Reform, and the Rule of Law: Some Prescriptions for a Common Understanding of the “Rule of Law” and its Place in Development Theory and Practice*, 10 YALE HUM. RTS. & DEV. L.J. 178, 190 (2007).

14. See Camille Diola, *Lani: No PDAF, no scholarship grants*, PHIL. STAR, Aug. 28, 2013, available at <http://www.philstar.com/headlines/2013/08/28/1144661/lani-no-pdaf-no-scholarship-grants> (last accessed Sep. 11, 2014).

15. Raz, *supra* note 9, at 210 (citing F.A. HAYEK, *THE ROAD TO SERFDOM* 75 (1944)).

16. Raz, *supra* note 9, at 220.

17. *Id.*

18. *Id.* at 221.

19. *Id.*

Enslavement exists when a person is compelled to act in a certain way.²⁰ Manipulation exists when a person, by the manipulation of his environment, is practically denied other options of action.²¹ According to Raz, “[o]ne manipulates a person by intentionally changing his tastes, his beliefs[,] or his ability to act or decide. Manipulation [,] in other words [,] is manipulation of the person, of those factors relevant to his autonomy[,] which are internal to him.”²² Observing the rule of law can prevent manipulation; it prevents certain actors from diminishing another’s ability to believe in something or to decide for himself.²³

The other value of the rule of law is its use as a contrast to arbitrary power.²⁴ Arbitrariness is the use of public powers for private ends or for personal gains.²⁵ The rule of law restrains arbitrariness.²⁶

Raz puts forth the argument that the concept of law in the rule of law is consistent with the layman’s idea of what the law is — a set of open, general, and relatively stable laws.²⁷ While there are, necessarily, particular laws or legal orders, the rule of law requires that the particular laws should be subordinate to the general, open, and stable laws.²⁸ Specifically, Raz submits the following as principles of the rule of law:

- (1) All laws should be prospective, open, and clear;²⁹
- (2) Laws should be relatively stable;³⁰
- (3) The making of particular laws (particular legal orders) should be guided by open, stable, clear, and general rules;³¹
- (4) The independence of the judiciary must be guaranteed;³²

20. *Id.* The article describes enslavement as “the elimination of control by changing factors external to the person.” *Id.*

21. Raz, *supra* note 9, at 221.

22. *Id.*

23. *Id.*

24. *Id.* at 221.

25. *Id.* at 220.

26. *Id.*

27. Raz, *supra* note 9, at 213.

28. *Id.*

29. *Id.* at 214.

30. *Id.*

31. *Id.* at 215-16.

- (5) The principles of natural justice must be observed;³³
- (6) The courts should have review powers over the implementation of the other principles;³⁴
- (7) The courts should be easily accessible;³⁵ and
- (8) The discretion of the crime-preventing agencies should not be allowed to pervert the law.³⁶

Significant to this Article are the following principles — that laws should be relatively stable, and that legal orders should be guided by open, stable, clear, and general rules. With regard to the latter, because laws cannot possibly comprehend each and every situation, a certain degree of flexibility is required; and particular laws or legal orders are utilized by government agencies to incorporate such flexibility.³⁷ One of the features of these legal orders is that they are often ephemeral or temporary, responding only to specific situations.³⁸ To reduce the uncertainty brought about by having particular legal orders, they should be enacted only within a robust framework of general laws. The framework should impose standards on the exercise of powers by the power-holders.³⁹

Dicey's conception of the rule of law possesses a formal character as his concern relates to whether laws are passed in the "correct legal manner"⁴⁰ and that a person is judged guilty only after an "ordinary trial process."⁴¹ He considers the arbitrariness of the law differently.⁴² Dicey attaches a formal meaning to "arbitrary."⁴³ In particular, a law is arbitrary if its enactment did not follow the correct procedure, or, even if the proper procedure was followed, if it is "vague or unclear, with the result that individuals had no

32. *Id.* at 216-17.

33. Raz, *supra* note 9, at 217.

34. *Id.*

35. *Id.* at 217.

36. *Id.* at 218.

37. *Id.* at 216.

38. *Id.*

39. Raz, *supra* note 9, at 216.

40. Paul Craig, *Formal and Substantive Conceptions of the Rule of Law: An Analytical Framework*, PUB. L. 466, 470 (1997).

41. *Id.*

42. *Id.*

43. *Id.* at 471.

idea to plan their lives in the light of the relevant legal rule.”⁴⁴ The rule of law in this light is unconcerned with the leniency or goodness of the law.⁴⁵

Fuller provides a framework to evaluate whether the rule of law exists. He provides eight criteria, which would indicate a failure in the legal system, namely:

- (1) The failure to observe rules at all, so that every issue must be decided on an *ad hoc* basis;⁴⁶
- (2) The failure to publicize or to at least make available to the affected party, the rules he is expected to observe;⁴⁷
- (3) The abuse of retroactive legislation, which cannot itself guide action, but undercuts the integrity of the rules prospective in effect, since it puts them under the threat of retrospective charge;⁴⁸
- (4) The failure to make rules understandable;⁴⁹
- (5) The enactment of contradictory rules;⁵⁰
- (6) Rules that require conduct beyond the powers of the affected party;⁵¹
- (7) Introducing such frequent changes in the rules that the subject cannot orient his action by them;⁵² and
- (8) A failure to achieve congruence between the rules as announced and their actual administration.⁵³

44. *Id.*

45. *Id.*

46. See generally Barry Macleod-Cullinane, Lon L. Fuller, and The Enterprise of Law (A Legal Note Published by the Libertarian Alliance) 3, available at <http://www.libertarian.co.uk/lapubs/legan/legano22.pdf> (last accessed Sep. 11, 2014) (citing LON L. FULLER, THE MORALITY OF LAW 39 (1964 ed.)).

47. *Id.*

48. *Id.*

49. *Id.*

50. *Id.*

51. *Id.*

52. Macleod-Cullinane, *supra* note 46, at 3.

53. *Id.*

With regard to the pork barrel system, an evaluation is made with reference to the first and last criterion — the failure to observe laws, so that each issue is decided on an ad hoc basis, and the congruency between the law and its implementation.

There appears to be a disagreement between Raz and Fuller, specifically with regard to the moral aspect of the rule of law. Fuller states that a person has no moral obligation to comply with a law that possesses any of the stated criteria as it results in a defective legal system.⁵⁴ On the one hand, Fuller refers to the “reciprocity between government and the citizen with respect to the observance of rules”⁵⁵ or the relationship between and among the leader, who establishes the rules, the citizens who are required to follow, and the rules, which have been established and that are expected to be complied with.⁵⁶ On the other hand, Raz sees conformity with the law not merely as a moral virtue, but as something that “is a necessary condition for the law to be serving directly any good purpose at all.”⁵⁷ Conformity with the law is an inherent aspect of the rule of law, relating to the nature or the specific excellence of the law.⁵⁸ Nonetheless, this disparity does not render Raz’s and Fuller’s conception of the rule of law incompatible as they both relate to the formal, not substantive, aspect of the rule of law.

III. PHILIPPINE GOVERNMENT, PORK BARREL, AND CORRUPTION

A. *Structure of Government Under the Philippine Constitution*

I. The Three Branches of Government

The Philippines has a presidential democracy.⁵⁹ There are three branches of government. The Executive Department is composed of the President, in whom executive power is vested,⁶⁰ cabinet members, executive departments, bureaus, and offices.⁶¹ The Legislative Department is composed of two

54. See ROBERT S. SUMMERS, LON L. FULLER, *JURISTS: PROFILES IN LEGAL THEORY* 72 (1984).

55. *Id.* (citing FULLER, *supra* note 46, at 39-40).

56. *Id.*

57. Raz, *supra* note 9, at 225.

58. *Id.*

59. See PHIL. CONST. art. II, § 1 & art. VII, § 1.

60. See PHIL. CONST. art. VII, § 1.

61. See PHIL. CONST. art. VII, § 17.

chambers, the Senate and the House of Representatives.⁶² There are 24 senators elected at large⁶³ and 290⁶⁴ congressmen elected from legislative districts apportioned among provinces, cities, the Metropolitan Manila area, and party-lists.⁶⁵ The Judicial Department is composed of the Supreme Court and lower courts established by law.⁶⁶

The constitutional structure of government is meant to restore and preserve the separation of powers of the three branches.⁶⁷ As capably explained by Justice Jose P. Laurel in *Angara v. Electoral Commission*⁶⁸ —

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.⁶⁹

The fundamental importance of the constitutional principle of separation of powers has, time and again, been repeated and affirmed judicially by the Supreme Court of the Philippines.⁷⁰ This principle has been relied upon to

62. See PHIL. CONST. art. VI, § 1.

63. See PHIL. CONST. art. VII, § 2.

64. House of Representatives, House Members, *available* at <http://www.congress.gov.ph/members> (last accessed Sep. 11, 2014).

65. See PHIL. CONST. art. VI, § 5.

66. See PHIL. CONST. art. VIII, § 1.

67. See *Angara v. Electoral Commission*, 63 Phil. 139, 182 (1936).

68. *Id.*

69. *Id.* at 156-57.

70. See *Saguiguit v. People*, 494 SCRA 128, 134 (2006) (citing An Act to Ordain and Institute the Civil Code of the Philippines [CIVIL CODE], Republic Act No. 386, as Amended, art. 8 (1949)). The Supreme Court recognized that the doctrine of *stare decisis* is applicable “[w]hen the Court lays down a principle of law applicable to a certain set of facts, it must adhere to such principle and apply it to all future cases where the facts in issue are substantially the same.” *Id.*

strike down laws,⁷¹ orders,⁷² and has also been the basis for the courts to refrain from acting on matters that are within the sphere of the Executive or Legislative Departments.⁷³

2. Other Constitutional Bodies

There are also three independent constitutional commissions: the Civil Service Commission, the Commission on Elections, and the Commission on Audit (COA).⁷⁴ The chairmen and commissioners of each of the constitutional commissions are appointed by the President.⁷⁵

Relevant to this Article is the COA, vested in which is the

power, authority, and duty to examine, audit, and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the [g]overnment, or any of its subdivisions, agencies, or instrumentalities, including government-owned or [-]controlled corporations with original charters.⁷⁶

The Constitution also created the independent Office of the Ombudsman⁷⁷ to investigate any act or omission by a public official, to direct the officer concerned to take action against a public official at fault, and to recommend sanctions against the latter such as removal, suspension, or prosecution.⁷⁸ The Ombudsman is also appointed by the President from a list of nominees prepared by the Judicial and Bar Council.⁷⁹

71. *See Municipality of San Juan, Metro Manila v. Court of Appeals*, 279 SCRA 711, 718 (1997).

72. *See Pelaez v. Auditor General*, 15 SCRA 569, 585 (1965).

73. *See Santiago v. Guingona, Jr.*, 298 SCRA 756, 773 (1998) (citing *Javellana v. The Executive Secretary*, 50 SCRA 30, 84 & 87 (1973)).

74. *See* PHIL. CONST. art. IX-A, § 1.

75. *See generally* PHIL. CONST. art. IX-B, § 1 (2), art. IX-C, § 1 (2), & art. IX-D § 1 (2). These provisions of the Constitution grant the President the authority to appoint the Chairmen and Commissioners of the Constitutional Commissions. PHIL. CONST. art. IX-B, § 1 (2), art. IX-C, § 1 (2), & art. IX-D, § 1 (2).

76. PHIL. CONST. art. IX-D, § 2 (1).

77. *See* PHIL. CONST. art. XI, § 5.

78. *See generally* PHIL. CONST. art. XI, § 13 (1-8).

79. *See* PHIL. CONST. art. XI, § 9. *See also* PHIL. CONST. art. VIII, § 8 (1-2). The Judicial and Bar Council is a group “composed of the Chief Justice as *ex officio* [c]hairman, the Secretary of Justice[] and a representative of the Congress as *ex officio* [m]embers, a representative of the Integrated Bar, a professor of law,

The Ombudsman is the constitutional “watchdog”⁸⁰ of the government. However, for the entire duration of its existence — a period spanning approximately 25 years — there has virtually been no successful prosecution of any high-ranking official.⁸¹ The conviction rate of the Ombudsman from 2001 to 2006 was only 0.7%.⁸² A significant limitation in the performance of the Ombudsman’s functions is the lack of jurisdiction to investigate officials “who may be removed only by impeachment[,] or over Members of Congress, and the Judiciary.”⁸³

A criticism given against the system is that the Ombudsman lacks significant investigative powers, making it very weak or “practically toothless.”⁸⁴ The Ombudsman is unable to make use of the powers of a law enforcement agency, such as wiretapping, examination of bank accounts, freezing assets, and making arrests.⁸⁵ The inability of the Ombudsman to gather strong evidence results in a minimal chance of effective prosecution.⁸⁶

a retired [m]ember of the Supreme Court, and a representative of the private sector,” which recommends nominees to positions, such as justices, judges, and the Ombudsman, to the President for his appointment. PHIL. CONST. art. VIII, § 8 (1-2).

80. Office of the Ombudsman, Citizen’s Charter, ii, *available at* http://www.ombudsman.gov.ph/docs/citizens_ccb.pdf (last accessed Sep. 11, 2014).
81. See Emil P. Bolangaita, An exception to the rule? Why Indonesia’s Anti-Corruption Commission succeeds where others don’t — a comparison with the Philippines’ Ombudsman (An Online Publication by the U4 Anti-Corruption Resource Centre of the Chr. Michelsen Institute) 10, *available at* <http://www.u4.no/publications/an-exception-to-the-rule-why-indonesia-s-anti-corruption-commission-succeeds-where-others-don-t-a-comparison-with-the-philippines-ombudsman> (last accessed Sep. 11, 2014). An exception is the prosecution of former President Joseph E. Estrada for plunder. It was noted, however, that the evidence against Estrada was unearthed by investigative journalists and not by the Ombudsman. Further, the conviction of Estrada lacked any significant impact as he was fully pardoned a month after judgment. Also, Estrada was recently elected as Mayor of the City of Manila. *Id.*
82. *Id.* at 11.
83. *Id.* at 13. See also An Act Providing for the Functional and Structural Organization of the Office of the Ombudsman and for Other Purposes [The Ombudsman Act of 1989], Republic Act No. 6770, § 21 (1989).
84. Bolangaita, *supra* note 81, at 14.
85. *Id.*
86. *Id.*

The weakness of the Ombudsman also stems from its structure. For one, there exists a disjoint in its investigatory and prosecutorial divisions.⁸⁷ There is a lack of consultation and collaboration among investigators, thus, often leaving the prosecutors in the Office of the Ombudsman with the duty to prosecute cases with insufficient evidence.⁸⁸ Further, the Ombudsman, being the sole holder of that position, is theoretically more susceptible to outside influences than a collegial body would be.⁸⁹

3. Public Finance

The “power of the purse”⁹⁰ belongs to the Legislative Department of government, specifically the House of Representatives.⁹¹ The Constitution provides that “[a]ll 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.”⁹² With regard to the budget for government operations, the Constitution provides that it is the President who recommends the budget⁹³ and Congress may not increase the specific appropriations made in the recommended budget.⁹⁴ The President, who has the power to execute laws,⁹⁵ may not release money out of the Treasury except when there is an “appropriation made by law.”⁹⁶

B. The Endemic State of Corruption in the Philippines

87. *Id.* at 14-15.

88. *Id.*

89. *Id.* at 17.

90. *Suplico v. National Economic Development Authority*, 558 SCRA 329, 365 (2008). The Supreme Court describes the power of the purse as “the power of Congress to authorize payment from funds in the National Treasury.” *Id.*

91. *Id.*

92. PHIL. CONST. art. VI, § 24.

93. *See* PHIL. CONST. art. VII, § 22.

94. *See* PHIL. CONST. art. VI, § 25 (1).

95. *See* PHIL. CONST. art. VII, § 17.

96. PHIL. CONST. art. VI, § 29 (1).

It is almost accepted as a truism that corruption is prevalent in the Philippines.⁹⁷ This Section will begin with a discussion of the origins of corruption and will trace its evolution to its present form.

Corruption in the Philippines has been traced to its colonial past, when it was under Spanish rule. In particular, Spanish colonialism brought about the uneven distribution of assets.⁹⁸ Public offices were distributed through a system of favoritism.⁹⁹ Natives who were given administrative posts were able to claim communal land as personal property and trade its produce and fruits, which then allowed them to accumulate capital.¹⁰⁰ Onerous lending practices practiced by wealthy landowners allowed them to take ownership of smaller lands when the debts from small landowners, secured by mortgages, fell through.¹⁰¹ Violent land-grabbing was also exercised by some persons in power.¹⁰² These practices resulted in constructing a class of elites who accumulated vast and unequal amounts of wealth from capital.¹⁰³

Following Spanish rule, Americans reinforced social inequality when they required property qualifications for the exercise of certain rights.¹⁰⁴ Only property owners were allowed to vote and be voted into public office

97. See generally JON S. T. QUAH, CURBING CORRUPTION IN ASIAN COUNTRIES, AN IMPOSSIBLE DREAM? 120-27 (2011). Quah discusses the perceived extent of corruption in the Philippines. *Id.*

98. See PETER KRINKS, THE ECONOMY OF THE PHILIPPINES: ELITES, INEQUALITIES AND ECONOMIC RESTRUCTURING 26 (2002).

99. See Edna Estifania A. Co, *Challenges to the Philippine Culture of Corruption*, in CORRUPTION AND DEVELOPMENT: THE ANTI-CORRUPTION CAMPAIGNS 121 (Sarah Bracking ed., 2007).

100. KRINKS, *supra* note 98, at 26.

101. See generally National Library of the Philippines, The Spanish Colonial Tradition in Philippine Theater, available at <http://nlpdl.nlp.gov.ph:9000/rpc/cat/finders/CCo1/NLPooVMo52mcd/v7/v3.pdf> (last accessed Sep. 11, 2014).

102. See generally La Via Campesina: International Peasant's Movement, Land grabbing in the Philippines, available at <http://viacampesina.org/en/index.php/main-issues-mainmenu-27/agrarian-reform-mainmenu-36/1568-land-grabbing-in-philippine> (last accessed Sep. 11, 2014).

103. See generally Alain de Janvry & Elizabeth Sadoulet, The three puzzles of land reform (A Policy Brief Submitted to the University of California at Berkeley and Foundation for International Development Study and Research) 1, available at https://gssp.berkeley.edu/assets/uploads/research/pdf/The_three_puzzles_of_land_reform.pdf (last accessed Sep. 11, 2014).

104. See generally JOAQUIN G. BERNAS, S.J., THE 1987 CONSTITUTION OF THE PHILIPPINES: A COMMENTARY 669-70 (2009).

during the American occupation.¹⁰⁵ The elites were then able to amass political power, which they then used primarily to protect their property interests.¹⁰⁶ Having accumulated capital, the members of the elite class were able to dominate other private enterprises such as shipping, finance, and manufacturing.¹⁰⁷

When former President Ferdinand E. Marcos rose to power, he imposed an authoritarian regime, partly to deal with the great power of elite families. Marcos consolidated power centrally in the Executive Department, specifically in himself, his family, his cronies, and his trusted allies in the military.¹⁰⁸ During the authoritarian rule of Marcos, foreign debt grew by almost \$18 billion from 1972 to 1980.¹⁰⁹ As a consequence of the lack of checks and balances on executive power, cronies were able to obtain huge loans guaranteed by the government, use public money allocated to state agencies, and expand their private and personal enterprises.¹¹⁰

The authoritarian rule of former President Marcos ended in 1986 with the EDSA revolution.¹¹¹ However, the post-authoritarian government saw the return of the elite pre-dictatorship oligarchies.¹¹² Former President Corazon C. Aquino, perhaps unwittingly, allowed the return of the old system of the “elite democracy,”¹¹³ which continues to persist until the present. The latest statistics on the Philippines estimates that there are

105. *Id.*

106. Janvry & Sadoulet, *supra* note 103, at 1.

107. *See generally* Hassan Javid, *Class, Power, and Patronage: The Landed Elite and Politics in Pakistani Punjab*, at 12 (unpublished Ph.D. thesis, the London School of Economics and Political Science) (on file with the London School of Economics and Political Science) *available at* http://etheses.lse.ac.uk/468/1/Javid_Class%20Power%20and%20Patronage.pdf (last accessed Sep. 11, 2014).

108. *See* DAVID C. KANG, *CRONY CAPITALISM: CORRUPTION AND DEVELOPMENT IN SOUTH KOREA AND THE PHILIPPINES* 138–39 (2002).

109. *See generally* KRINKS, *supra* note 98, at 42. The foreign debt grew from \$2.7 billion in 1972 to \$20.9 billion in 1980. *Id.*

110. *Id.*

111. JONGSEUK WOO, *SECURITY CHALLENGES AND MILITARY POLITICS IN EAST ASIA: FROM STATE BUILDING TO POST-DEMOCRATIZATION* 124 (2011).

112. JEFFREY A. WINTERS, *OLIGARCHY* 206 (2011). Winters argues that Corazon Aquino’s major achievement was a return to a “cacique democracy,” which means to “rebuild the elite-dominated structures undermined by her authoritarian predecessor.” *Id.*

113. *Id.*

18,452,000 families in the country.¹¹⁴ Despite this, Congress is composed of representatives coming from only 70 families.¹¹⁵ The enduring inequality between the socio-economic-political elite and the masses has been identified as a root cause of corruption.¹¹⁶ A number of other factors have also been traced as causes of corruption in the Philippines. These are low salaries of the political leaders and civil servants,¹¹⁷ bureaucratic red tape and inefficiency of government agencies,¹¹⁸ the low risk of detection and punishment,¹¹⁹ cultural factors, such as the importance of kinship¹²⁰ and the trait of *utang na loob*,¹²¹ and lack of political will in leaders to promote public over private interests.¹²²

Presently, there are many opportunities for government corruption, such as rent-seeking by gatekeepers and front-line bureaucratic bribery. However, one of the most dominant forms of corruption takes its form in the diversion of public funds by way of the pork barrel system. Note that excessive discretion and lack of supervision or accountability have been identified as two of the four most “pernicious and prevalent factors that increased opportunities for corruption.”¹²³ This will be discussed in detail in Part III (D) of this Article.

C. Discretionary Power and Patronage Politics

114. National Statistical Coordination Board, Family Income, *available at* http://www.nscb.gov.ph/secstat/d_income.asp (last accessed Sep. 11, 2014). The information cited reflects 2009 statistics. *Id.*

115. See Tony Lopez, *Congress is the Philippines' biggest criminal syndicate*, MANILA TIMES, Aug. 20, 2013, *available at* <http://www.manilatimes.net/congress-is-the-philippines-biggest-criminal-syndicate/31274> (last accessed Sep. 11, 2014).

116. See generally Weena Gera, *The Crux of the Crisis: A Governance Analysis of Philippine Underdevelopment*, in LIMITS OF GOOD GOVERNANCE IN DEVELOPING COUNTRIES 64 (Hirotsume Kimura, et al., eds., 2011).

117. QUAH, *supra* note 97, at 127.

118. *Id.* at 129. See also Barry Bozeman, *A Theory of Government “Red Tape,”* 3 J. PUB. ADMIN. RES. THEORY 273, 274-75 (1993).

119. QUAH, *supra* note 97, 129-30.

120. *Id.* at 131.

121. *Id.* at 132-33.

122. *Id.* at 133.

123. *Id.* at 17.

Patronage politics has existed in the Philippines for many decades.¹²⁴ It permeates many levels of government, from the appointment of employees to the civil service, to the symbiotic relationship between local and central politicians.¹²⁵

Kent Eaton observes that because of the weakness of the political party system in the Philippines, electoral success is dependent on building personal reputations and on the distribution of particularistic benefits to a candidate's constituents.¹²⁶ Spurred by electoral incentive, legislators have claimed personal credit for making pork barrel benefits possible.¹²⁷

The pork barrel system was a method to circumvent the Local Government Code,¹²⁸ which provided for decentralization and devolution of services.¹²⁹ Legislators authorized additional items in the national budget to fund projects and services, the control of which should have already been decentralized.¹³⁰ By having the ability to determine which specific local government units would be the recipients of additional funds, the legislators were able to take credit for the fund transfers.¹³¹ Legislators have also attempted to divert tax revenues from the automatic revenue-sharing system under the Local Government Code¹³² to infrastructure funds over which legislators had the ability to exercise greater control.¹³³

The existence of the pork barrel reflected the immaturity of Philippine political dynamics. Presidents relied on the pork barrel system to push their policies and political agenda. The President's formal authority, which is required for the release of pork barrel funds, was used in strong-arming legislators into enacting policy changes the former desired.¹³⁴ Here, a

124. See generally Paul D. Hutchcroft & Joel Rocamora, *Strong Demands and Weak Institutions: The Origins and Evolution of the Democratic Deficit in the Philippines*, 3 J. E. ASIAN STUD. 259, 261-62 (2003).

125. *Id.*

126. See generally Kent Eaton, *Political Obstacles to Decentralization: Evidence from Argentina and the Philippines*, 32 DEV. & CHANGE 100, 114-15 (2001).

127. *Id.*

128. An Act Providing for a Local Government Code of 1991 [LOCAL GOVERNMENT CODE OF 1991], Republic Act No. 7160 (1991).

129. Eaton, *supra* note 126, at 121.

130. *Id.*

131. *Id.*

132. See generally LOCAL GOVERNMENT CODE OF 1991, § 284.

133. Eaton, *supra* note 126, at 121.

134. *Id.* at 115.

blurring of lines may be seen in the separation of powers. Legislative power is constitutionally vested in Congress,¹³⁵ but because of the existence of pork barrel, the President possessed the ability to interfere with the law-making process through the use of pork barrel funds.

D. Pork Barrel in the Philippines

1. Legislative Pork

Pork barrel refers to “state resources over which individual politicians exercise dispensal powers.”¹³⁶ The phrase “pork barrel” can be traced to a practice during the pre-Civil War period in the United States of America, where masters would give their slaves salted pork in barrels, which the slaves would then fight over.¹³⁷

In the Philippines, the pork barrel was institutionalized in 1922 under Act No. 3044,¹³⁸ which was a public works act.¹³⁹ Act No. 3044 appropriated a lump-sum fund to be distributed “[at] the discretion of the Secretary of Commerce and Communication, subject to the approval of a joint committee elected by the Senate and the House of Representatives.”¹⁴⁰ In 1950, an innovation in the budget allowed Congress itself to choose the projects.¹⁴¹ In 1955, the term “community projects” was introduced and referred to legislature-sponsored public works items that were segregated from other items in the budget.¹⁴² Community projects consisted of “nationwide selected projects,” or the projects identified by senators, and “miscellaneous community projects,” or the projects identified by congressmen.¹⁴³ Substantially the same system continued in the following

135. See PHIL. CONST. art. VI, § 1.

136. See Eric Gutierrez, *The Public Purse*, in PORK AND OTHER PERKS 44 (Sheila S. Coronel ed., 1998).

137. See Earl Parreño, *Pork*, in PORK AND OTHER PERKS 34 (Sheila S. Coronel ed., 1998).

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

139. Gutierrez, *supra* note 136, at 63.

140. Act No. 3044, § 3.

141. Gutierrez, *supra* note 136, at 63.

142. *Id.*

143. *Id.*

years,¹⁴⁴ until the declaration of martial law by former President Marcos in 1972 and Congress was abolished.¹⁴⁵

The reincarnation of the pork barrel came in 1990 when the Eighth Congress approved the Countrywide Development Fund (CDF).¹⁴⁶ The CDF was a lump-sum appropriation, with the legislators having full discretion to decide on the nature — such as those tagged for infrastructure — and location of the projects.¹⁴⁷ The CDF allocated ₱12.5 million for each legislator.¹⁴⁸ In the years that followed, legislators gradually added more SPF — such as the School Building Fund (SBF) and the Public Works Fund (PWF) — to the budget, which effectively increased their allocations.¹⁴⁹ In 1998, the pork barrel allocation reached ₱54 billion.¹⁵⁰

The steps involving the release of the CDF, SBF, and PWF are:

- (1) Congress approves the annual budget or the General Appropriations Act (GAA);¹⁵¹
- (2) The Department of Budget and Management (DBM) allocates amounts to the different government agencies;¹⁵²
- (3) The DBM asks legislators for their list of projects to be charged against the CDF, SBF, PWF, and other SPF;¹⁵³
- (4) Before legislators submit their lists to the DBM, there are, behind the scenes, negotiations between contractors and suppliers and the legislators;¹⁵⁴
- (5) Each legislator submits their list of projects to the DBM;¹⁵⁵

144. *Id.*

145. Parreño, *supra* note 137, at 36.

146. *Id.*

147. See Emmanuel S. De Dios, *Executive-Legislative Relations in the Philippines: Continuity and Change*, in INSTITUTIONS AND ECONOMIC CHANGE IN SOUTHEAST ASIA: THE CONTEXT OF DEVELOPMENT FROM THE 1960S TO THE 1990S 142 (Colin Barlow ed., 1999).

148. Parreño, *supra* note 137, at 36.

149. *Id.*

150. Gutierrez, *supra* note 136, at 63.

151. Parreño, *supra* note 137, at 37–39.

152. *Id.*

153. *Id.*

154. *Id.*

- (6) The DBM issues the Special Allotment Release Order (SARO), which gives authority to the implementing government agencies to contract goods and services, and the Notice of Cash Allocation (NCA), which actually transfers the amounts to the bank accounts of the implementing agencies;¹⁵⁶
- (7) The implementing agencies executes the contracts, including bidding or negotiated purchase of goods;¹⁵⁷ and
- (8) The contractor delivers the goods or executes the work.¹⁵⁸

In a study on the CDF, it was found that legislators had complete control over project implementation.¹⁵⁹ The legislator chose the supplier or contractor to engage.¹⁶⁰ Their decision prevailed over any objection of the implementing agencies.¹⁶¹ It was this system that enabled “kickbacks”¹⁶² to be given to the legislators, the congressional aide of the legislator, and the head of the implementing agency. For instance, for the purchase of books, medicines, and educational materials, the relevant legislators typically received a 45% kickback, while his congressional aide received five percent, and the head of the implementing agency received 10%.¹⁶³ Only 37% went to the supplier for the goods.¹⁶⁴ First-hand accounts say that most congressmen would not accept a kickback of less than 50% of the contract price.¹⁶⁵ This is why there are times when only a part of the goods were delivered and, sometimes, there were even ghost deliveries.¹⁶⁶ For public works, the legislator typically received a 16% kickback, the provincial, city,

155. *Id.*

156. *Id.*

157. Parreño, *supra* note 137, at 37-39.

158. *Id.*

159. *Id.* (citing Ma. Valle A. Congzon, et al., *An Evaluative Study of the Countrywide Development Fund (October 1997) (A Policy Paper Presented to the University of the Philippines College of Public Administration)*).

160. De Dios, *supra* note 147, at 147.

161. *Id.*

162. See BLACK'S LAW DICTIONARY (9th ed. 2009). Kickback is defined as the “return of a portion of a monetary sum received, [especially] as a result of coercion or a secret agreement.” *Id.*

163. Parreño, *supra* note 137, at 41.

164. *Id.*

165. *Id.* at 44.

166. *Id.* at 41.

or municipal engineer received 10%, the mayor received seven percent, while the *barangay* captain received three percent.¹⁶⁷ Only around 64% of the budget went to the actual implementation of the public works project, which included labor costs, materials, and profit margin of the contractor.¹⁶⁸ Thus, contractors often resorted to using substandard materials or to deviating from approved specifications by reducing the width of roads or leaving portions of the road hollow.¹⁶⁹

Legislators received the full amount of the kickback upfront before the specific project would be included in the list given to the DBM.¹⁷⁰ This avoided a situation of a supplier renegeing on the promised kickback.¹⁷¹ The legislator was paid in cash to avoid any paper trail.¹⁷²

Aside from the legislator, there was a whole gamut of other people to whom kickbacks were given by suppliers and contractors. Gatekeepers, such as the mayor and *barangay* captains, who could withhold the necessary permits, and the heads of the implementing agencies, who could delay the project by imposing “requirements,” demanded their share in the funds.¹⁷³ Close aides or staff members of the legislator also made similar demands by threatening to realign the budget to other projects and activities.¹⁷⁴

Aside from kickbacks, the system also fostered other forms of corruption, such as the use of the CDF for personal cellular phones and vehicles of the legislator, the gross overpricing of products by as much as 269% of market rate, and the practice of having a contractor or supplier shoulder a legislator’s official and personal expenses.¹⁷⁵

In 2000, the PDAF replaced the CDF.¹⁷⁶ Under the PDAF, each senator had an allocation of ₱200 million. Half of it, or ₱100 million, was intended

167. *Id.* at 42.

168. *Id.*

169. Parreño, *supra* note 137, at 47.

170. *Id.* at 44.

171. *Id.*

172. *Id.*

173. *Id.* at 46.

174. *Id.* at 45.

175. Parreño, *supra* note 137, at 48–49.

176. See generally Julio Teehankee, *Clientelism and Party Politics in the Philippines*, in PARTY POLITICS IN SOUTHEAST ASIA: CLIENTELISM AND ELECTORAL COMPETITION IN INDONESIA, THAILAND AND THE PHILIPPINES 201 (Dirk Tomsa & Andreas Ufen eds., 2007).

for hard or infrastructure projects, also called Various Infrastructure including Local Projects (VILP), and the other half, or ₱100 million, for soft projects or projects which delivered social services, such as scholarships and medical assistance.¹⁷⁷ Meanwhile, each congressman or party-list representative had an allocation of ₱70 million, which consisted of ₱40 million for hard projects and ₱30 million for soft projects.¹⁷⁸

The PDAF was enacted in the national budget as a lump SPF.¹⁷⁹ Legislators did not identify projects during deliberations prior to the approval of the GAA. Instead, legislators identified the projects during the budget execution phase.¹⁸⁰ According to the DBM Secretary, lawmakers consulted with their constituents prior to making the list of projects.¹⁸¹ Legislators were required to comply with a qualified project menu spelled out in the GAA, such as the types of projects that could be funded.¹⁸² Legislators also identified the beneficiaries of the projects.¹⁸³ After identification, the proposed projects underwent a two-step review process, first by the House Committee on Appropriations then by the DBM.¹⁸⁴ When the project satisfied the requirements, the DBM issued the SARO, which authorized the funding for the project.¹⁸⁵ The actual disbursement of cash to the contractor or supplier should have been supported by a NCA, based on the percentage

177. *See generally* Department of Budget and Management, Supporting Information to the Statement of the President on the Abolition of the Priority Development Assistance Fund, *available at* <http://www.dbm.gov.ph/?p=7026> (last accessed Sep. 11, 2014).

178. *Id.*

179. *Id.*

180. *Id.* Note that in 2013, President Aquino announced a new mechanism whereby identification of projects will be done during budget deliberations and prior to the approval of the GAA. The President also announced a number of reforms designed to increase transparency. This Article however focuses on the pork barrel system that has been in place for many decades under the CDF and the PDAF as it is uncertain that President Aquino's reforms will be implemented or will develop into the norm. *Id.*

181. Karol Ilagan, The flow of pork, *available at* <http://pcij.org/stories/the-flow-of-pork> (last accessed Sep. 11, 2014).

182. *Id.* Examples of the qualified projects include "education, health, livelihood, social services, peace and order and security, arts and culture, and public infrastructure projects." *Id.*

183. *Id.*

184. *Id.*

185. *Id.*

of project completion.¹⁸⁶ The relevant legislator was then informed that the SARO and the NCA have been issued for the project he had identified.¹⁸⁷

The implementing agency was supposed to handle the execution of the project.¹⁸⁸ However, the legislator remained involved and oversaw the implementation of the project.¹⁸⁹ According to sources from the Department of Social Welfare and Development (DSWD), legislators often insisted on selecting specific non-government organizations (NGOs) to be awarded projects funded by the PDAF.¹⁹⁰ Legislators also received progress reports on the status of the projects and were requested to give their approval before the release of any subsequent tranches.¹⁹¹

On 14 August 2013, the COA released a Special Audit Report (SAR)¹⁹² on the use of the PDAF and VILP. The report covered the use of the PDAF for soft projects, such as education, health, financial assistance, and social services, and the VILP for hard projects or public works, from 2007 to 2009.¹⁹³ According to the report, each congressional district and party-list representative was allocated ₱70 million while each senator was allocated ₱200 million.¹⁹⁴ Out of these amounts, a congressman could allocate ₱30 million for soft projects and ₱40 million for hard projects, while a senator could allocate ₱100 million for soft projects and another ₱100 million for hard projects.¹⁹⁵

According to the SAR, many irregularities marred the release of PDAF and VILP funds, such as:

186. Ilagan, *supra* note 181.

187. *Id.*

188. *Id.*

189. *Id.*

190. *Id.* (citing Che de los Reyes, Bogus, favored NGOs fail to account for ₱770-M pork, available at <http://pcij.org/stories/bogus-favored-ngos-fail-to-account-for-p770-m-pork> (last accessed Sep. 11, 2014).

191. *Id.*

192. Commission on Audit, Special Audits Office Report No. 2012-03, available at <https://docs.google.com/a/pcdsp.gov.ph/file/d/oB4I1yKpJVx9qSDFlaVNXNEljVW8/preview> (last accessed Sep. 11, 2014) [hereinafter SAO Report No. 2012-03].

193. *Id.*

194. *Id.* at 3.

195. *Id.*

- (1) A number of projects identified were outside of the legislative districts of the sponsoring congressman;¹⁹⁶
- (2) A total of ₱6.156 billion was transferred to NGOs without any ordinance or appropriation law, and for projects that were not eligible under the program. These projects were supported by spurious or questionable documents;¹⁹⁷
- (3) The beneficiary NGOs were selected on the sole basis of the endorsement by the sponsoring legislator and not by way of public bidding;¹⁹⁸
- (4) The implementation of the projects by the NGOs was highly irregular as suppliers were chosen without public bidding and transactions were undocumented;¹⁹⁹
- (5) The NGOs turned out to be irregular, with non-existent addresses or with given addresses as the residence of an officer. A number of NGOs had no business permits and were not registered with the Securities and Exchange Commission;²⁰⁰
- (6) Some legislators identified beneficiary NGOs that they themselves or their relatives incorporated;²⁰¹
- (7) Infrastructure projects costing ₱161.498 million were implemented in private property, which is contrary to law;²⁰²
- (8) Contract rates of infrastructure projects were found excessive by as much ₱100.989 million;²⁰³ and
- (9) The amount of ₱1.289 billion disbursed for financial assistance and other soft projects were either not eligible to be funded, or awarded to suppliers not legally existing, or were denied to have been received by suppliers, or for the procurement of items that could not be presented upon demand.²⁰⁴

196. *Id.* at 14.

197. *Id.* at 14-15.

198. SAO Report No. 2012-03, *supra* note 192, at 15.

199. *Id.*

200. *Id.* at 15-16.

201. *Id.* at 16.

202. *Id.* at 18.

203. *Id.*

204. SAO Report No. 2012-03, *supra* note 192, at 18-19.

When confronted with these irregularities, the government agencies, which were identified as the implementing agencies, claimed that their involvement was limited to facilitating the transfer of funds to the projects and the NGOs identified by the legislators.²⁰⁵ They claimed that they expected the legislators to supervise and participate in implementation of the project.²⁰⁶ According to local government units, they merely acted as a conduit of funds to beneficiaries of financial assistance “upon the request or direction of the sponsoring legislators.”²⁰⁷

In *Belgica*, the Court declared the PDAF unconstitutional, as well as past and present pork barrel laws, such as the CDF, other various congressional insertions of lump-sum allocations, and similar informal practices.²⁰⁸ According to the Court, the pork barrel system violated the principle of separation of powers, the principle of non-delegability of legislative power, and the principle of checks and balances.²⁰⁹ It also held that the pork barrel system impaired public accountability and subverted local autonomy.²¹⁰ The Court further objected to the practice of granting individual legislators the power to appropriate government funds for specific projects and of allowing them to participate in post-enactment budget execution and implementation.²¹¹

2. Presidential Pork

The President has, under his control, large lump sums of discretionary funds.²¹² In the 2013 budget, the President controlled ₱1.2 billion²¹³ in discretionary funds, which was approximately 22% of the entire national budget.²¹⁴ The President exercises control over calamity funds, intelligence

205. *Id.* at 19.

206. *Id.* at 20.

207. *Id.* at 21.

208. *Belgica*, 710 SCRA at 161-12.

209. *Id.* at 160-61.

210. *Id.* at 160.

211. *Id.* at 160-61.

212. De Dios, *supra* note 147, at 145.

213. Mangahas, *supra* note 4.

214. *See generally* R.A. No. 10352.

and confidential funds, and unprogrammed funds.²¹⁵ Among the specific funds that the President has control over are:

- (1) The Malampaya Fund, or the special fund set up by former President Marcos to develop energy resources;²¹⁶ and
- (2) The Presidential Social Fund (PSF), or the special facility created to provide direct assistance to priority programs and projects that are not included in the GAA.²¹⁷

Until *Belgica*, the President possessed wide latitude to use the Malampaya Fund “for such other purposes as may be directed by the President.”²¹⁸ The President also possessed the power to use the PSF to “finance infrastructure and/or socio-civic projects throughout the Philippines as may be directed and authorized by the Office of the President of the Philippines.”²¹⁹ These clauses, which formed the basis for the President’s broad discretionary powers over the Malampaya Fund and the PSF, were struck down by the Court as unconstitutional in *Belgica*.²²⁰

In *Araullo*, the Court declared certain acts and practices under the DAP as unconstitutional,²²¹ including the practice of funding projects, activities, and programs that were not covered by any appropriation under the GAA.²²² According to the Court, the President’s mandate to execute the laws of the land “did not translate to unfettered discretion that allowed the

215. Jhoanna Ballaran, *House retains PNoy pork*, MANILA TIMES, Sep. 27, 2013, available at <http://www.manilatimes.net/house-retains-pnoy-pork/40175> (last accessed Sep. 11, 2014).

216. *Belgica*, 710 SCRA at 91.

217. *Id.*

218. *Id.* (citing Creating an Energy Development Board, Defining its Powers and Functions, Providing Funds, therefor, and for Other Purposes, Presidential Decree No. 910, § 8 (1976)).

219. *Id.* at 91 (citing Consolidating and Amending Presidential Decrees No. 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, as Amended, § 12 (1983)).

220. *Id.* at 162.

221. See Official Gazette, The Disbursement Acceleration Program, available at <http://www.gov.ph/featured/dap> (last accessed Sep. 11, 2014). The Disbursement Acceleration Program (DAP) refers to the government realignment of savings generated during the year and from additional revenue sources. *Id.*

222. *Araullo*, G.R. No. 209287.

President to substitute his own will for that of Congress.”²²³ The Supreme Court reiterated that the spending power of the President is not unrestricted and that Congress has the final say on matters of appropriation.²²⁴

IV. PORK BARREL, CORRUPTION, PATRONAGE POLITICS, AND THE RULE OF LAW — AN EVALUATION

A. Separation of Powers and the Rule of Law

The principle of separation of powers is a mechanism for the state to constrain itself.²²⁵ According to Richard Bellamy, the rationale of the doctrine of separation of powers is to ensure that those who formulate laws are distinct from those who apply, enforce, and interpret them, thereby guaranteeing that the makers of the law will be made subject to them.²²⁶ Separation of powers results in being an incentive for lawmakers to enact laws that are stated in general terms in order for them to be equally applicable to all and to avoid self-interested legislation.²²⁷ The separation of powers is a principle that prevents tyranny.²²⁸ As Charles de Secondat, Baron de Montesquieu declared, “[w]hen the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty [] because apprehensions may arise, lest the same monarch or senate should enact tyrannical laws, and execute them in a tyrannical manner.”²²⁹

The lack of trust in a government with merged legislative and executive powers leads to a lack of liberty. The public becomes wary, misapprehensions arise, and restlessness overcomes them. A prime benefit of the principle of separation of powers is that arbitrariness is replaced with stability, as public power is not used to enact whimsical laws or laws that promote private ends.²³⁰ Instead, public power is used to enact laws that are

223. *Id.*

224. *Id.*

225. Ryan E. Carlin, *Rule-of-Law Typologies in Contemporary Societies*, 33 JUST. SYS. J. 154, 155 (2012).

226. See Richard Bellamy, *The Political Form of the Constitution: The Separation of Powers, Rights and Representative Democracy*, 64 POL. STUD. 436, 438 (1996).

227. *Id.*

228. *Id.* at 453.

229. *Id.* at 444 (citing CHARLES DE SECONDAT, BARON DE MONTESQUIEU, *THE SPIRIT OF LAWS* 173 (Thomas Nugent trans., 2001)).

230. *Id.* at 438.

prospective, clear, and relatively fixed.²³¹ Separation of powers allows the branches of government to compel horizontal accountability and prevent arbitrary government actions.²³² Here, a clear relationship is seen between separation of powers and the rule of law.

Bellamy also draws an indirect line between separation of powers and rule of law. He traces an early conception of separation of powers to Polybius, in particular, from his idea of “mixed government”²³³ represented by various classes and interests.²³⁴ The separation of powers functions to ensure that there is a balance between the different classes and interests where one can check the other.²³⁵ When separation of powers is violated, an imbalance occurs where a particular class or group holding an interest will prevail over the others.²³⁶ Separation of powers is, thus, a method to sustain “mixed government” or greater participation in government, which, in turn, according to Niccolò Machiavelli, makes them “more prudent, law-abiding and cause[s] them to identify their interest more closely with the common welfare.”²³⁷ Thus, separation of powers leads to acceptance and observance of the law.²³⁸

As discussed, one of the principles of Raz is that particular laws or legal orders should be guided by open, stable, clear, and general rules.²³⁹ The framework of general laws within which the legal orders operate should effectively constrain the exercise of government powers. In the Philippine legal framework, one of the primary general laws is the rule on the separation of powers. This rule is not only enshrined in the Constitution, but has been affirmed, time and again, as a bedrock principle of the Philippine Government.

The pork barrel system allowed the Executive and Legislative departments of government to exceed the powers allocated to them by the Constitution. Legislative pork barrel violated the separation of powers because legislators, individually, possessed the power to choose what projects

231. *Id.*

232. Bellamy, *supra* note 226, at 155.

233. *Id.* at 438.

234. *Id.*

235. *Id.*

236. *Id.* at 440.

237. *Id.* at 442.

238. Bellamy, *supra* note 226, at 443.

239. Raz, *supra* note 9, at 215-16.

to undertake.²⁴⁰ While the power of the purse belongs to Congress,²⁴¹ the Constitution prescribes that legislative power be exercised as a body, and not individually.²⁴² Each senator and congressman decided the kind, nature, and location of the projects individually.²⁴³ They also took an active part in the implementation of the project,²⁴⁴ which should belong to the Executive Department.²⁴⁵ The rules required that the legislators be given regular progress reports and that their approval be given before the release of subsequent tranches.²⁴⁶ Furthermore, studies show that in practice, legislators selected who the suppliers and contractors would be.²⁴⁷ This undermined the rules on government procurement.²⁴⁸ Meanwhile, the unrestricted discretionary powers given to the President allowed him to arrogate unto himself, the power of appropriation rightfully belonging to Congress.

B. Corruption and the Rule of Law

Corruption gives certain groups advantages over other groups.²⁴⁹ This is not only a problem of equality, which would violate the thick conception of the rule of law, but would also bring about a situation of enslavement and manipulation, which, according to Raz, violates human dignity.²⁵⁰ There is an extra tax imposed on citizens²⁵¹ — an exaction that is not authorized by law, but that which citizens are burdened with, and that goes into

240. Ilagan, *supra* note 181.

241. *Suplico*, 558 SCRA at 365.

242. *See generally* PHIL. CONST. art. VI, § 1. This Section provides that “[t]he legislative power shall be vested in the Congress of the Philippines[,] which shall consist of a Senate and a House of Representatives, except to the extent reserved to the people by the provision on initiative and referendum.” PHIL. CONST. art. VI, § 1.

243. De Dios, *supra* note 147, at 142.

244. Parreño, *supra* note 137, at 37-39.

245. *See generally* PHIL. CONST. art. VII, § 1.

246. Parreño, *supra* note 137, at 37-39.

247. SAO Report No. 2012-03, *supra* note 192, at 15.

248. *Id.*

249. *See* Eric M. Uslaner, *The Bulging Pocket and The Rule of Law: Corruption, Inequality, and Trust (A Presentation to The Quality of Government: What It Is, How to Get It, Why It Matters, Göteborg University, Sweden, Nov. 17-9, 2005) 5*, available at <http://www.gvpt.umd.edu/uslaner/uslanerbulgingpocketgoteborg.pdf> (last accessed Sep. 11, 2014).

250. Raz, *supra* note 9, at 221.

251. Uslaner, *supra* note 249, at 5.

subsidizing the pockets of government officials and private entities who benefit from the corrupt system.²⁵² It is the poor who are the most manipulated because they are the ones most deprived of choices in a situation where corruption is prevalent. More corruption means that there is less money available for programs such as education, which those at the bottom of the economic ladder would have no access to if not for public funding.²⁵³

Eric M. Uslaner points to the “fairness of the legal system”²⁵⁴ as the key institutional structure that affects corruption.²⁵⁵ Corruption cannot thrive without an unfair legal system.²⁵⁶ Corruption is less likely to occur when people perceive the existence of a fair and just system —

A well-ordered society is run through the rule of law. The key to less corruption is an effective system of property rights and the rule of law. Tyler argues that people respect [—] and obey [—] the law because they believe that the justice system is fair and that they have been treated fairly. If people feel that they have been treated unfairly by the police or [by] the courts, they are less likely to have faith in the legal system. Inequality before the law is part of the larger theme of inequality more generally.²⁵⁷

Thus, the rule of law and corruption have an inverse relationship. On one side, greater rule of law discourages corruption and less corruption

252. *Id.*

253. *Id.* at 9. See also PHIL. CONST. art. XIV, § 2 (1). This Constitution guarantees a system of free public education for elementary and high school levels. PHIL. CONST. art. XIV, § 2 (1).

254. Uslaner, *supra* note 249, at 6.

255. *Id.*

256. *Id.* at 26-27.

257. *Id.* at 20 (citing Johann Graff Lambsdorff, Corruption in Empirical Research — A Review (A Paper Submitted to the 9th International Anti-Corruption Conference, Durban, S. Afr., Dec. 10-15, 1999) available at http://www1.worldbank.org/publicsector/anticorrupt/d2ws1_jglambsdorff.pdf (last accessed Sep. 11, 2014); Carlos Leite & Jens Weidmann, Does Mother Nature Corrupt? Natural Resources, Corruption, and Economic Growth (A Working Paper Submitted to and Distributed by the International Monetary Fund) 20 & 23, available at <http://www.imf.org/external/pubs/ft/wp/1999/wp9985.pdf> (last accessed Sep. 11, 2014); & Daniel Treisman, Decentralization and Corruption: Why are Federal States Perceived to be More Corrupt?, Address at the Annual Meeting of the American Political Science Association, Atlanta, GA., U.S. (Sep. 2-5, 1999); & TOM R. TYLER, WHY PEOPLE OBEY THE LAW chs. 4-5 (1990)).

promotes the rule of law. On the opposite side, less rule of law encourages the growth of corruption and more corruption weakens the rule of law.

Following Uslaner, fairness promotes the rule of law and discourages corruption.²⁵⁸ If people believe that the system is fair, they are less likely to engage in corrupt practices and will comply with the law. In Fuller's list, the last criterion relates to enforcement.²⁵⁹ It has been argued that the "success of enforcement is contingent on the level of compliance within the population."²⁶⁰ Thus insofar as unfairness exists in a system, less people are likely to comply with the law and more people are likely to engage in corruption. Overall, the rule of law is severely damaged.

According to Jon S.T. Quah, "[c]orruption also increases administrative inefficiency by undermining the formal hierarchy of authority. Policies can be distorted by corruption through the imposition of unauthorized controls or fees on the population or changing the target beneficiaries. Above all, corruption weakens the political system and undermines political stability."²⁶¹

The pork barrel system weakened the rule of law because of the increase in the perception of corruption among the people.²⁶² Corruption undermines authority.²⁶³ People are less likely to comply with the law when they perceive that corruption is prevalent.²⁶⁴ They see the system as unfair and are less likely to respect and obey the law. The lack of transparency on the utilization of pork barrel funds contributed to distrust towards the government. Citizens were not aware of how funds were spent, what criteria were applied to the expenditure of funds, how projects were chosen, how suppliers and contractors were selected, and who the actual beneficiaries were.

More significantly, the pork barrel system challenged the essence of the rule of law, which is predictability, and the principle that laws are "capable of guiding the [behavior] of its subjects."²⁶⁵ Under the pork barrel system,

258. *Id.* at 16.

259. Macleod-Cullinane, *supra* note 46, at 50.

260. Marcelo Bergman, *The Rule, the Law, and the Rule of Law: Improving Measurements and Content Validity*, 33 JUST. SYS. J. 174, 177 (2012).

261. QUAH, *supra* note 97, at 23.

262. *Id.* at 440.

263. *Id.*

264. *Id.*

265. Raz, *supra* note 9, at 214.

citizens did not know how to gain access to public funds. They also had to deal with the individual personalities of lawmakers every time they needed access to public funds. This affected the stability of the process. Corruption exacerbated the problem, as there arose an uncertainty as to whether public funds would be used for public needs in the first place, or whether funds would merely be funnelled to private pockets.

Another group of people adversely affected by the uncertainty created by corruption were those who had dealings with the government such as front-line service customers²⁶⁶ — citizens who needed certain registrations, paperwork, and documentation — and those who intended to have business dealings with the government.²⁶⁷

Corruption is illegal and the illegal nature of corruption exacerbates unpredictability.²⁶⁸ It creates uncertainty and this destroys the framework within which they can operate. Beatrice Weder explains that

[b]ecause of its illegal nature[,] there can be no clear procedure for extracting corruption payments [and] no official tables that indicate how much the bribe is supposed to be for every specific occasion. From the point of view of the private sector, having to pay bribes instead of taxes involves much more uncertainty. The government official can use her discretionary power to set the level of the bribe arbitrarily and to keep demanding additional bribes instead of actually delivering the service[s]. The firm will thus be held hostage to new demands as soon as it has agreed to a first bribe.²⁶⁹

A corrupt system creates a condition of enslavement by a government official against the applicants, those who need a particular license, service, or approval from him.²⁷⁰ The government official can exercise arbitrariness — he can choose whether to demand a low or high bribe or whether or not to exact any bribe at all.²⁷¹ This arbitrariness places the applicant at the mercy of the government official.²⁷² He is unable to allocate the necessary amounts in

266. See Cathy Yamsuan, Senator Arroyo says corruption in low government offices continues, available at <http://newsinfo.inquirer.net/233663/senator-arroyo-says-corruption-in-low-government-offices-continues> (last accessed Sep. 11, 2014).

267. *Id.*

268. BEATRICE WEDER, MODEL, MYTH, OR MIRACLE? REASSESSING THE ROLE OF GOVERNMENTS IN THE EAST ASIAN EXPERIENCE 20 (1999).

269. *Id.*

270. *Id.* Weder's thesis on corruption and uncertainty can be applied similarly to the cited situation. *Id.* See also Raz, *supra* note 9, at 222.

271. WEDER, *supra* note 268, at 20.

272. *Id.*

order to gain the necessary approval. Even if he allocates a large amount, he is unsure when he will be able to gain the approval, if at all.²⁷³ Enslavement exists in three levels. First, the applicant is compelled to resort to corruption. Second, the applicant is compelled to pay whatever amount is demanded from him. And third, because corruption is illegal, the applicant, by participating in the act, becomes complicit and loses access to remedy or redress against the official. He is compelled to wait until the official approves the application.

Corruption is, thus, a breach of the rule of law because it amounts to enslavement by manipulation, particularly by those in political power, against the citizenry.²⁷⁴ In the Philippine context, prevalent corruption amounting to billions of pesos denied the citizens any assurance that they had access to public resources. They had to deal with shortages and scarcity in resources that were supposed to be guaranteed by law, such as education, quality infrastructure, and security. Because of this, they have been unable to plan their lives accordingly.²⁷⁵ Corruption breeds disrespect for the rule of law because citizens have become aware that a number of public officials, who are supposed to be caretakers of the rule of law, are corrupt. Citizens developed an aversion to dealing with the government because they know that they will not be able to deal with the government unless some form of corruption is involved.

C. Patronage Politics and the Rule of Law

Patronage politics, or political clientelism, “represents the distribution of resources (or promise of) by political office holders or political candidates in exchange for political support, primarily [—] although not exclusively [—] in the form of the vote.”²⁷⁶ In the Philippines, resources are channelled towards bailiwicks, which can deliver a large number of votes.²⁷⁷ Consequently, the least vote-rich districts have the least access to public funds.²⁷⁸

273. *Id.*

274. Raz, *supra* note 9, at 221.

275. *Id.* at 222.

276. Javier Auyero, *From the client's point(s) of view: How Poor People Perceive and Evaluate Political Clientism*, 28 *THEORY & SOC.* 297, 297 (1999) (citing Robert Gay, *Community Organization and Clientelist Politics in Contemporary Brazil: A Case Study from Suburban Rio de Janeiro*, 14 *INT'L J. URB. & REG'L RES.* 648 (1990)).

277. Mangahas, *supra* note 4.

278. *Id.*

The pork barrel system has been criticized as a mechanism used to advance the politics of “particularism”²⁷⁹ and as reducing the national budget into a mere instrument to reach short-term political goals of government officials.²⁸⁰ Discretionary power distorted the budgetary process.²⁸¹ Legislators could choose to disregard the advice of national economic and development planners and instead allocate funds as they wished.²⁸² Uncertainty was created within the citizenry as there was no uniform way to access funds. Instead, there was a *rule of men*. Men — particularly legislators and the President — were able to arbitrarily determine how resources would be allocated and who the beneficiaries would be.

Patronage politics²⁸³ manipulated the electorate into being beholden to legislators who had the power to choose the beneficiaries of public funds. In the Philippines, the concept of *utang na loob*, or a sense of being in someone’s debt, runs strong.²⁸⁴ This concept of *utang na loob* can influence a person to support a certain candidate.²⁸⁵ Gratitude is a compelling force for action — attendance at rallies, participation in the electoral machinery, and voting — whenever a person has been a constant recipient of public resources from a broker.²⁸⁶ Those who have consistently been on the receiving end of goods and assistance tend to equate the public officer with the State and do not see the goods and assistance as their right as citizens. Instead, they see it as a favor for which they feel indebted.²⁸⁷ The study conducted by Javier Auyero on clientelism from the poor client’s perspective confirms the conclusion that those within the inner circle of brokers — those who have repeated interactions with brokers and those who have continually been on the receiving end of distributive practices — tend to exhibit gratefulness and will reciprocate by lending political support to the broker’s principal.²⁸⁸

279. De Dios, *supra* note 147, at 144.

280. Gutierrez, *supra* note 136, at 79.

281. *Id.* at 61.

282. *Id.*

283. QUAH, *supra* note 97, at 132.

284. *Id.*

285. *Id.*

286. Auyero, *supra* note 276, at 308-13.

287. *Id.* at 314-15.

288. *Id.* at 324-26.

Citizens support corrupt leaders when institutions are weak.²⁸⁹ They rely on patron–client relationships to obtain tangible benefits.²⁹⁰ Citizens become aware that reliance on institutional channels is ineffective, and that resources are controlled by “political bosses.”²⁹¹ Government officials “cast themselves in the role of patrons,”²⁹² as the gatekeepers who could use their influence to give their constituency access to public funds.²⁹³ Thus, patronage politics is likely to be maintained by those in power.²⁹⁴ In order to be seen by the electorate, especially poor voters, as providers, officials have a vested interest in maintaining the inefficiency and ineffectiveness of institutions.²⁹⁵ It has been observed that “those who would benefit from the lack of transparency and participation by shifting public funds to their political supporters or preferred projects or by skimming profits directly”²⁹⁶ are oftentimes those who are in positions of power.²⁹⁷

Take, for example, the insistence of government officials that they needed the PDAF to provide for scholarships in their locality.²⁹⁸ If public education institutions were strong, everyone would have the opportunity to study at no cost, instead of having to rely on scholarships. The practice of handing out scholarships also promoted arbitrariness. There was no overarching rule on how to evaluate the beneficiaries of these scholarships.²⁹⁹ Officials were free to establish their own guidelines.³⁰⁰ In infrastructure projects, a local resident could go to the office of his legislator to seek job opportunities.³⁰¹ He then received a note from the legislator to

289. See Luigi Manzetti & Carole J. Wilson, *Why do Corrupt Governments Maintain Public Support?*, 40 COMP. POL. STUD. 949 (2007).

290. *Id.*

291. *Id.* at 954.

292. Randy David, *De-personalizing governance*, PHIL. DAILY. INQ., Aug. 28, 2013, available at <http://opinion.inquirer.net/59827/de-personalizing-governance> (last accessed Sep. 11, 2014).

293. *Id.*

294. Manzetti & Wilson, *supra* note 289, at 955.

295. *Id.*

296. SANJEEV KHAGRAM, ET AL., OVERVIEW AND SYNTHESIS: THE POLITICAL ECONOMY OF FISCAL TRANSPARENCY, PARTICIPATION, AND ACCOUNTABILITY AROUND THE WORLD 6 (2013).

297. *Id.*

298. Diola, *supra* note 14.

299. See generally SAO Report No. 2012-03, *supra* note 192, at 14-19.

300. Ilagan, *supra* note 181.

301. Parreño, *supra* note 137, at 48.

present to the contractor to whom a government contract has been awarded.³⁰² This endorsement would have assured him employment with the particular contractor in the construction project.³⁰³ Public officials also established themselves as the providers of other services such as medical assistance,³⁰⁴ burial assistance,³⁰⁵ and livelihood projects.³⁰⁶ These would not have been necessary if institutions such as the DSWD, the Department of Labor and Employment, the Department of Health, the Department of Trade and Industry, and the Development Bank of the Philippines were strong and could provide the needed services.

Christopher Clapham identified four necessary conditions of clientelism, namely:

- (1) First, one particular group controls critical resources and are able to deliver them;³⁰⁷
- (2) Second, patrons require something from the clients, such as political support, for which they are willing to allocate resources;³⁰⁸
- (3) Third, clients do not normally have access to the resources controlled by the patrons;³⁰⁹ and
- (4) Fourth, the absence of an effective public allocation system through which resources are allocated according to standard criteria, instead of private and personal ones.³¹⁰

302. *Id.*

303. *Id.*

304. *Id.* See also J.M., *Corruption in the Philippines: Scratching pork*, THE ECONOMIST, Aug. 29, 2013, available at <http://www.economist.com/blogs/banyan/2013/08/corruption-philippines> (last accessed Sep. 11, 2014).

305. Parreño, *supra* note 137, at 48.

306. *Id.*

307. See Bitten Aldal Jespersen, *Clientelism, Legitimacy, and Do Voters Have a Choice in Mexico* (An Unpublished Paper by the Aalborg University) 12, available at http://projekter.aau.dk/projekter/files/168290662/Clientelism_Legitimacy_and_Do_Voters_Have_a_Choice_in_Mexico_The_Return_of_The_PRI_final.pdf (last accessed Sep. 11, 2014) (citing CHRISTOPHER CLAPHAM, PRIVATE PATRONAGE AND PUBLIC POWER 7 (1982)).

308. *Id.*

309. *Id.*

310. *Id.*

Patronage politics limits a voter's autonomy to decide whether someone is really fit for office or if someone should be re-elected. A number of studies have produced overwhelming results supporting the conclusion that voters reward incumbent politicians who engage in distributive allocations.³¹¹ Pork barrel, thus, affected the ability of the people to decide for themselves who their leaders should be. The indirect manipulation of the electoral process endangers the stability of government as it taints the legitimacy of elected officials.³¹²

Patronage politics, as prompted by the pork barrel system, undermined the rule of law in three ways. First, it created uncertainty regarding the access of public resources. Public resources were distributed through the generosity of the officials. This created a *rule of men* situation. Second, it manipulated people into believing that they were beholden to a government official for the assistance they received. Beneficiaries of government largesse were manipulated into supporting their benefactor government officials. And third, it created a situation where government officials had a vested interest in maintaining the weakness of institutions, institutions that should have contributed to the stability and predictability of the dynamics between the citizenry and the government.

Meanwhile, strong institutions create the effective public allocation system that would allocate resources according to standard criteria. Strong institutions are antithetical to patronage politics. Strong institutions expand the client's choices and remove the manipulative influence of patronage politics. Strong institutions promote the rule of law because government begins to be predictable. In times of need, they know which institutions to approach, and under what circumstances will assistance and resources be available. There will be no need to depend on a politician's benevolence to obtain them.

D. The Way Forward: Strengthening the Weak State

Dicey argues that there are internal and external constraints on parliament, or in the Philippines' case, the Legislature.³¹³ It is limited, first, by its inherent nature, and second, by the threat of civil disobedience against an unsatisfactory law.³¹⁴ The Legislature has the duty to establish the rule of

311. Miriam Golden & Brian Min, *Distributive Politics Around the World*, 16 ANN. REV. POL. SCI. 73, 84–85 (2013).

312. See Frederick Tse-shyang Chen, *A Brief Clarification of "The 'Rule of Law'" in Policy Perspective*, 34 T. JEFFERSON L. REV. 95 (2011).

313. Saunders & Roy, *supra* note 10, at 8.

314. *Id.*

law, but at the same time poses a threat to it.³¹⁵ The survival of the pork barrel system through many decades shows that Philippine government was not constrained by its inherent nature. Instead, the government used its power to issue regulations that allowed public officials to make personal gains through corruption and by casting themselves as patrons in a clientelist relationship with their voters. However, the recent controversy surrounding the PDAF and DAP may have put into motion civil disobedience, thereby instigating a threat to the rule of law.

In a survey conducted during the height of the PDAF controversy, the public perception of graft and corruption in government increased greatly.³¹⁶ Fewer Filipinos had a positive view of the government's campaign against graft and corruption and became critical of the administration's anti-corruption initiatives.³¹⁷ Graft and corruption became the biggest concern of the citizens.³¹⁸ After the PDAF and DAP scandals came to fore, the President, who previously enjoyed remarkably high satisfaction ratings, suffered a massive drop in his satisfaction survey.³¹⁹ Some sectors have attributed the plunge to the President's failure to act on the PDAF and other lump-sum discretionary funds.³²⁰ Another outcome of the PDAF controversy are the calls from some sectors to resist paying taxes.³²¹ While there is still a need to gather, measure, and assess the behavioral effects of the pork barrel scandal,³²² early indicators show discontent with the present

315. *Id.* at 9.

316. See Amita O. Legaspi, Pulse Asia: Corruption in govt, top concern of Pinoys amid pork barrel mess, available at <http://www.gmanetwork.com/news/story/333015/news/nation/pulse-asia-corruption-in-govt-top-concern-of-pinoys-amid-pork-barrel-mess> (last accessed Sep. 11, 2014).

317. *Id.*

318. *Id.*

319. See Kristine Angeli Sabillo, *Aquino net satisfaction rating reaches all-time low-SWS*, PHIL. DAILY INQ., July 14, 2014, available at <http://newsinfo.inquirer.net/619446/aquino-net-satisfaction-rating-reaches-all-time-low-sws> (last accessed Sep. 11, 2014).

320. See Catherine Valente, et al., *President's rating plunges amid pork barrel outrage*, MANILA TIMES, Oct. 14, 2013, available at <http://www.manilatimes.net/presidents-rating-plunges-amid-pork-barrel-outrage/44895> (last accessed Sep. 11, 2014).

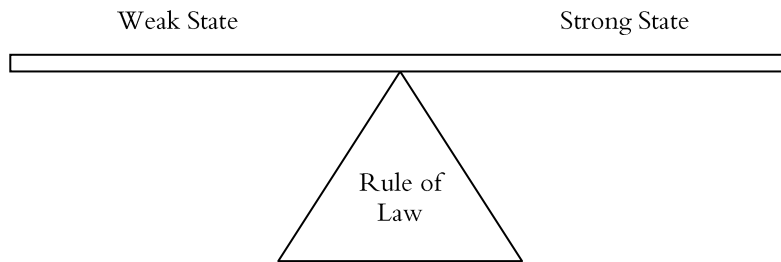
321. A Facebook group called "TAX Rebellion Pilipinas" was created during the height of the PDAF revelations. See *Tax Rebellion Pilipinas*, available at <https://www.facebook.com/pages/TAX-RebellionPilipinas/192427584266701> (last accessed Sep. 11, 2014).

322. See Bergman, *supra* note 260, at 178-79.

government officials and system of government.³²³ The growing discontent of the public may lead to questions regarding the legitimacy of government. The infringement of the principles of separation of powers and accountability, the existence of patronage politics and clientelism, and the prevalence of corruption have compromised stability and have violated the Filipino citizen's ability to plan his life with dignity. All these factors have led, and continue to lead, to a degradation of the rule of law.

According to Susan Rose-Ackerman, a deficiency in the rule of law can arise from state weakness, where the state is unable to effectively govern private actions, or from a strong state, which results in public impunity.³²⁴ The rule of law is sought to be established either to strengthen the capacities and institutions of the state or, on the opposite side of the spectrum, to rein in state power.³²⁵

Rose-Ackerman's description of the rule of law invokes an image of equilibrium where state power is neither too weak nor too strong.



Under the present government, institutions are weak. The Executive and Legislative departments have, historically, taken advantage of the weakness of these institutions in order to maintain clientelism or patronage politics. The weakness of the institutions, the unbridled discretion, and the wide opportunities for corruption resulted in impunity in the handling of public funds. The establishment of the rule of law is thus called for. In this regard, state capacities that deal with accountability and corruption, such as the COA and the Ombudsman, need to be reinforced. Institutions concerned with public procurement, infrastructure projects, education, and social welfare should be strengthened to curb the demand for clientelism. Mechanisms that increase transparency and accountability, such as laws that

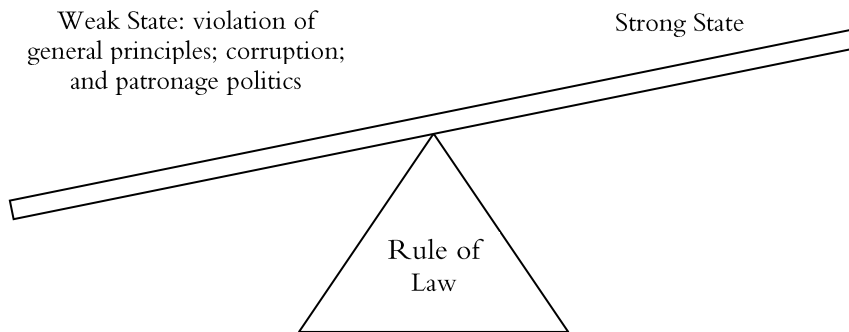
323. Sabillo, *supra* note 319.

324. See Susan Rose-Ackerman, *Establishing the Rule of Law, in* WHEN STATES FAIL: CAUSES AND CONSEQUENCES 182 (Robert I. Rotberg ed., 2003).

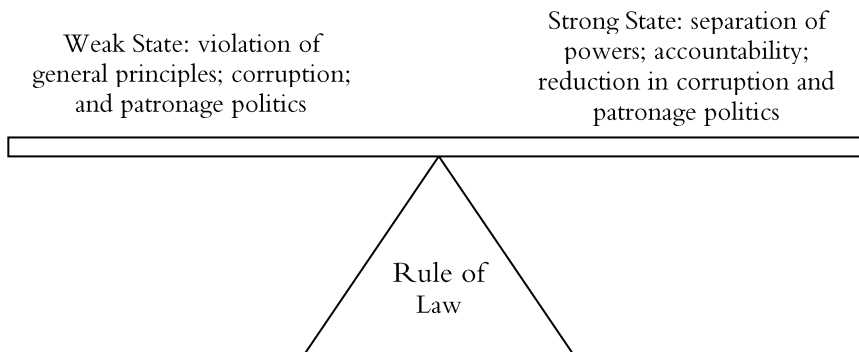
325. *Id.* at 183.

guarantee freedom of and access to information, should be put in place. These recommended actions do not ensure that corruption and patronage politics will be truly eradicated as scholars have identified a number of other causes of corruption.³²⁶ However, these are concrete initial steps in increasing the rule of law and bringing equilibrium to the Philippine social and political system.

The present Philippine system can be represented as this:



Fortifying the rule of law, by strengthening institutions and increasing accountability, would bring about a stronger state and would remove the imbalance.



V. CONCLUSION

326. See *QUAH*, *supra* note 97, at 127-33 & *KANG*, *supra* note 108, at 124.

[O]bservance of the rule of law is necessary if the law is to respect human dignity. Respecting human dignity entails treating human[s] as persons capable of planning and plotting their future. Thus, respecting [a person's] dignity includes respecting [his] autonomy [and his] right to control [his] future.

— Joseph Raz³²⁷

In a country beset with sociological and economic problems, one of the things that its citizens have come to rely on is the rule of law. It is through the rule of law that the human dignity is upheld — that one can trust that the law is applied to all, that the law is designed to grant access to public resources by those who need them, and that the law ensures that taxes are disbursed lawfully — that is, for public needs. It is through the rule of law that citizens of a calamity-prone country are assured that when disaster strikes, public funds are available to provide shelter, food, and medical attention.³²⁸ It is through the rule of law that citizens are assured that the taxes they pay are channelled to building strong and lasting infrastructure. The assurance that the rule of law brings enables the Filipino to plan his life with certainty and retain his dignity.

Entrenched in the legal and normative framework was a system where individual legislators and the President had wide discretionary powers to distribute scarce government resources. The pork barrel system violated the principle of separation of powers, allowed corruption to flourish, and fostered clientelism. Clientelism and corruption have often been studied against the framework of democracy.³²⁹ This Article shifted the discourse to the realm of the rule of law. The PDAF and DAP have been the subject of recent scrutiny, mainly due to allegations of fraud and corruption. What this Article has shown is that — more than the issues relating to good governance, the pork barrel system has a fundamental flaw — it weakened the rule of law.

The rule of law was compromised because the pork barrel system amounted to enslavement and manipulation. It created uncertainty, instability, and arbitrariness. It encouraged disobedience to the law. As declared by Rose-Ackerman, the significance of the rule of law “is not just

327. Raz, *supra* note 9, at 10.

328. See generally Christian V. Esguerra & TJ Burgonio, ‘Where’s calamity fund?’ victims ask, PHIL. DAILY INQ., Oct. 21, 2013, available at <http://newsinfo.inquirer.net/510843/govt-may-be-running-short-of-calamity-funds-based-on-official-pronouncements> (last accessed Sep. 11, 2014).

329. Teehankee, *supra* note 176, at 209.

the ability to assert power over others but also the ability to justify the exercise of power over those who feel its weight.”³³⁰

The Philippines is a relatively young republic, having been independent from colonial rule for less than a century. Perhaps it would have to undergo many more years of development and reform to shed decades of practices that prevent it from achieving a state of having a strong rule of law. Strengthening of institutions and increasing transparency are reforms that are worthy of further exploration. For now, it is imperative that leaders recognize the role that the pork barrel system has played in preventing the nation from achieving the rule of law. Unfettered discretionary powers, distributive pork barrel practices, and the persistence of corruption have compromised the rule of law. The Supreme Court decisions in *Belgica* and *Araullo*, which upheld the primacy of the Constitution and reiterated the fundamental principles of accountability and separation of powers, are steps in the right direction. It is necessary to employ vigilance to ensure that the pork barrel system does not find its way back into governance through other forms and devices.

330. Rose-Ackerman, *supra* note 324, at 210.