The Role of Judicial Review in the Anti-Corruption Agenda in the Philippines

The Case of the Pork Barrel System

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ABSTRACT

Judicial review has been under attack for being anti-democratic since a non-representative and unaccountable court interprets and enforces the constitution. Critics of judicial review, particularly the popular constitutionalists, argue that the legitimate interpretation of the constitution can only come from the people, by themselves or through their representatives in the government. This case study investigates the role of judicial review in the anti-corruption agenda of abolishing the Pork Barrel System in the Philippines. The Pork Barrel System refers to collective body of rules and practices that facilitated political corruption by providing pork funds to individual politicians – legislators and the President – and granting them control over said funds in violation of several constitutional principles. The case is unique because it presents a situation wherein resort to the representative or political branches of the government proved to be difficult, if not inutile, and resort to the judiciary through judicial review proved to be an available and adequate means to advance the anti-corruption agenda. Using a qualitative case-based research design with legal analysis, and contextual description as research tools, this study demonstrates how judicial review can be a change agent and a human rights mechanism.
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Karen Rodrigo
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CHAPTER I

INTRODUCTION

A. Background of the Study

CORRUPTION is the abuse of entrusted power for private gain.\(^1\) There is a multiform of corruption but the grandest of all is ‘political corruption’ which involves the violation of public trust since the entrusted power is that given by the sovereign people to their government officials. Also referred to as ‘grand corruption’, it is the “manipulation of policies, institutions and rules of procedure in the allocation of resources and financing by political decision makers, who abuse their position to sustain their power, status and wealth.”\(^2\) This type of corruption entails great peril to society including the disturbance of the Rule of Law since the behavior is contrary to the accepted rules and standards of conducting public office. Another is the weakening of social trust, and ultimately, of democracy.

Laws are in place to regulate behavior. As such, legal and penal deterrents are set to fight corruption in the government. Acts constitutive of corruption such as plunder, malversation, and bribery are criminalized not only to deter corrupt practices but also to ensure the prosecution of the erring public officials, and thus enforce accountability - a principle inherent in democracy. Administrative charges and the threat of impeachment are also deterrents. Government institutions are set up to perform governmental functions such as to ensure individual liberties, maintain and promote peace and order, deliver public services, administer justice, facilitate proper public administration which includes the prevention of corruption. The problem, however, is when these very institutions are the sources of corruption and have mechanisms that facilitate political corruption. This phenomenon is likely to happen since political corruption takes place in the policy formulation end of politics. From the stand point of democratic theory, this situation is a severe predicament because while the political systems that provides for ways to counter corruption, here, the political system is problematic such that resorting to ordinary political institutions becomes difficult. This directs us to these questions: [1] What actions can society

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\(^2\) Ibid., p. 35
resort to when corruption becomes institutionalized in the laws that are supposed to serve their interest; and [2] How do we ensure accountability when the culprits of such organized corruption are not merely individual public officials but the very political institutions of the government?

This study attempts to address these general questions by looking at the Philippine anti-corruption experience, particularly the fight for the elimination of the Pork Barrel System. In the local context, Pork Barrel, officially referred to as Priority Development Assistance Fund (PDAF) refers to a system or a form of government appropriation that provides *lump sum and discretionary funds to individual politicians* – legislators, president, and vice president – without specification of the program or project for which said funds could be used. In mid-2013, the country was stunned when reports\(^3\) came out that the government was defrauded of 10 billion pesos through a scheme that channels legislators’ pork funds into bogus non-governmental organizations (NGOs) and ghost projects in exchange for kickbacks. This is apart from the 900 million peso worth of presidential pork funds lost in the course of the scam.\(^4\) The August 16, 2013 Commission on Audit (CoA) Report of the legislator’s pork fund from 2007-2009 revealed the impropriety of the releases of funds by the Department of Budget and Management (DBM) and Government Owned and Controlled Corporations (GOCCs).\(^5\) As of today, at least 38 individuals, 28 of whom are members of Congress, are facing charges over the alleged conspiracy, and over a hundred more being investigated.\(^6\) The Pork Barrel System exemplifies political or grand corruption because it would not have been possible without the power to manipulate the laws and institutions that are entrusted to detail how the public treasury is to be spent.

Naturally, responses were displayed by Filipinos outraged by the ‘pork scam’. The social media was taken by storm with expressions of hate, anger, and disgust over the scandal. Eventually, calls to action for the abolition of pork were made, the most popular of which was a Facebook page entitled “Abolish Pork Barrel”. The creators of the page got the idea from a

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Facebook status by Ito Posadas who said: "What we need is a MILLION PEOPLE MARCH by struggling Filipino taxpayers - a day of protest by the silent majority that would demand all politicians and govt. officials (whatever the political stripes, color they may carry) to stop pocketing our taxes borne out from our hard work by means of these pork barrel scams and other creative criminal acts." Another user, Peachy Bretana, reposted the same call with a suggestion that it be held on August 26, 2013, in Luneta Park, Manila. On the date and venue mentioned, once again, the Filipino people went to the streets to cry for the total elimination of the Pork Barrel System. This time, unlike the People Power Revolutions, the mass protest is no longer directed against a particular regime, but against a rotten system of corruption in the form of pork. The August 26 Million People March by Filipinos in various cities all over the world is only the first among the series of social movement of Filipinos against pork.

Living in a democratic society where it is ensured that every citizen’s voice is heard, the responses to the pork scam highlight how the people exercised their constitutionally granted rights to free speech, freedom of expression and of the press, and the right to peaceably assemble and petition the government for redress of grievances. But on August 28, September 3 and 5, respectively, three petitions were lodged before the Supreme Court, all seeking that the Pork Barrel System be declared unconstitutional. This time, the constitutional right of citizens to a petition for judicial review was invoked. Judicial review refers to the institution by which citizens can petition the Supreme Court to review and nullify acts of the government, if found to be contrary to the constitution.

On November 19 of the same year, the Supreme Court rendered its ruling over the three consolidated petitions. Voting 14 – 0, the high court declared all pork or PDAF provisions of the 2013 General Appropriations Act (GAA) unconstitutional for being contrary to the constitutional precepts of separation of powers, non-delegability of legislative power, checks and balances, and local autonomy of local government units. The Supreme Court likewise nullified Section 8 of

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Presidential Decree (PD) 910 and Section 12 of PD 1869, as amended by PD 1993 (Presidential Pork) for being constitutive of undue delegation of appropriation powers to the president.

The fight against the Pork Barrel System is, to date, the biggest triumph of the people in its anti-corruption agenda. Indeed, the constitution is the fundamental law and no law by the agents can prevail over the intent of the sovereign people as expressed in the constitution. It is interesting, therefore, to investigate the role of judicial review - a constitutionally provided remedy - in the fight against political corruption in the Philippines.

B. Statement of the Problem.

The background of the study presents the remarkable situation where the two branches of the government - the legislative mandated to enact appropriations law, and the executive tasked to faithfully execute the laws – are involved in the institutionalization of political corruption. This renders said departments as channels for anti-corruption agenda extremely difficult, if not inutile. As in the Philippine experience, the people were constrained into resorting to social movements and judicial review in battling the Pork Barrel System of corruption. The Million People March, while truly a phenomenal anti-corruption social movement, had its limitations into fully realizing the aim of abolishing the Pork Barrel System. Meanwhile, the Supreme Court in the exercise of its power of judicial review, as petitioned by the citizens, rendered an authoritative and legally binding ruling that abolished the legislative and presidential forms of pork barrel.

This study is an effort to determine the role of judicial review in the anti-corruption agenda in the Philippines in light of the recent triumph of the people in abolishing the Pork Barrel System. To aid the researcher in addressing the main problem are the following research questions:

1. What is the Pork Barrel System and in what ways did it facilitate corruption?
2. What is judicial review under Philippine constitutional law and what legal assessment has the Supreme Court made in Belgica et. al. vs. Executive Secretary?\(^9\)

3. What are the effects of the affirmative judicial review ruling in the anti-corruption agenda in the Philippines?

4. What advantages does the institution of judicial review have that make it effective in abolishing the Pork Barrel System over other democratic means – election and legislative lobbying?

C. Justification for the Study

C.1. Corruption and Human Rights

Corruption entails massive social and economic consequences which ultimately redound to human rights violations and the impediment of human rights fulfillment. Corruption and human rights are inseparable concepts. The multiform of corrupt acts and practices infringe various universal human rights contained in international covenants that are deemed incorporated in Philippine laws.\(^10\) It disrupts not only the existing legal order – the Rule of Law – but also encroaches upon the civil liberties of the citizens through breach of government obligations to the people and through creating impediments in the full development and emancipation of the individual in particular and of society in general.

The United Nations High Commission on Human Rights and Transparency International are among the known organizations that have initiated a human rights-based approach to understanding and strategically solving corruption.\(^11\) This new direction and development in the fields of corruption and human rights is only a stepping stone towards a holistic and meaningful anti-corruption agenda. This study takes the similar direction by acknowledging the human rights

\(^9\) Belgica et. al. vs. Executive Secretary, G.R. No. 208566 (November 2013)

\(^10\) The 1987 Constitution of the Republic of the Philippines (Philippine Constitution), Article II, Section 2 of the Constitution declares that “The Philippines...adopts the generally accepted principles of international law as part of the law of the land…”

implications of corruption and highlighting the exercise of political rights, as part and parcel of human rights, in the anti-corruption efforts.

C.2. Judicial Review and Human Rights

The extensive and at times expansive powers of the state – police power, eminent domain, and taxation – make it prone to committing violations of both positive and negative human rights. Judicial review, meanwhile, is the power of the judicial branch of the government to check executive and legislative acts and to invalidate acts that are found contrary to the constitution – to declare statutes and government actions unconstitutional. In this sense, judicial review is a mechanism that enforces human rights laws, strengthens its protection and sanctions its violations and to some extent, monitors violator’s compliance. The system of judicial review is not only a judicial remedy but must also be credited as a human rights mechanism and should therefore be strengthened as an institution. It is in these premises that the present study is being undertaken.

D. Significance of the Study

D.1. Theoretical Significance

This research is of academic significance in two respects. First, this study fills in a gap in the existing literature on the debate on judicial review. A movement referred to as popular constitutionalism assails judicial review on the ground that the people and not the unelected and unaccountable judges are the interpreters of the constitution. Other scholars argue that judicial review is inconsistent with democracy. Meanwhile, scholars who defend judicial review argue that it is necessary to institute a check on political actors by others – such as judges - who are isolated from the political process and that there are legal doctrines and practices employed by the courts prevents it from encroaching on the powers exclusive to the executive and legislative branches. This study attempts to contribute by providing an empirical case study which shows

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13 See for example Evidence and Lessons from Latin America (ELLA) Policy Brief “Judicial Reviews: An Innovative Mechanism to Enforce Human Rights in Latin America
the vulnerability of the executive and legislative branches to abuse of power and demonstrates how judicial review proves to be the most effective and democratic safeguard when the popular branches of the government are corrupted and cannot therefore be avenues to fight the same corruption.

Also, as mentioned in C.1. under Justification for the Study, this research is among those that use a human-rights perspective in the understanding of corruption, and thereby emphasizes political rights (in this case, the right to petition for judicial review) as means to advance anti-corruption agenda and address specific corrupt institutions.

D.2. Practical Significance

This study concentrates on the role of judicial review in protecting rights against abusive and institutionalized government acts. By highlighting the use of judicial review, this study is of practical significance to civil society, making them aware of such mechanism by which their constitutionally protected rights can be protected and enforced. This allows civil society to take not only political but also legal approaches in advancing their advocacies. Moreover, this is of significance to social movements since a human rights-based understanding of corruption and approach to judicial review can intensify the amplitude of support to the movements.

As for the Philippine government, this study illustrates to the Supreme Court their role as stewards of the constitution thereby making them more truthful in the exercise of their functions so as not to damage the social trust placed in them by the Filipinos. The study also serves as a reminder to all government branches that sovereignty resides in the people as the authors of the Constitution.

E. Scope and Delimitation

This study presents an analysis of the role of judicial review by looking at the specific anti-corruption agenda of eliminating the pork barrel system in the Philippines. The corrupt practice central to the analysis is the institutionalized corruption in the form of budget laws – the General Appropriations Act and Presidential Decree 910 – that provide for legislative and
presidential pork barrel funds respectively. Although there are many forms of specific corrupt acts and practices involved in pork barrel scam, these are not covered in the study.

The judicial review case involved in the study is the consolidated petitions entitled Belgica et. al. vs. Executive Secretary. The study looks at the resort to the judiciary as the third branch of the government as a phenomenon brought about by the unavailability of effective means to fight the pork barrel system using the legislative and executive branches as alternative channels. As mentioned in the statement of the problem, this research endeavors demonstrate the superiority of judicial review in the elimination of the pork barrel system relative to other mechanisms. The popular mechanisms to be examined in the study are election and lobbying.

F. Definition of Terms

When used in this study:

Congressional Pork Barrel refers to a kind of lump-sum, discretionary fund wherein legislators, either individually or collectively organized into committees, are able to effectively control certain aspects of the fund’s utilization through various post-enactment measures and/or practices. It is also referred to as legislative pork or PDAF funds in this study.

The Decision refers to the November 19, 2013 Decision of the Philippine Supreme Court in the consolidated case of Belgica et. al. vs. Executive Secretary.

Judicial Review refers to the power of the judiciary as the third branch of the government to review legislative and executive acts and invalidate the same if found contrary to the constitution.

Million People March refers to the series of mass protests by Filipinos in the Philippines and abroad calling for the total abolition of the Pork Barrel System triggered by the public outrage over the Pork Barrel Scam.

The Petition refers to the three consolidated petitions lodged in the Philippine Supreme Court for the review of the Pork Barrel System and for the declaration of its unconstitutionality.
**Petitioner** refers to the individual/s citizen who filed the petition for judicial review.

**Political Corruption** refers to a type of corruption that involves the manipulation of policies, institutions and rules of procedure in the allocation of resources and financing by political decision makers, who abuse their position to sustain their power, status and wealth.

**Pork Barrel System** refers to the collective body of rules and practices that govern the manner by which lump-sum, discretionary funds, primarily intended for local projects, are utilized through respective participations of legislative and Executive branches of government, including its members.

**Pork Funds** refers to the sum of money appropriated under all or any of the pork barrel laws.

**Presidential Pork Barrel** refers to a kind of lump-sum, discretionary fund which allows the President to determine the manner of its utilization. It is also referred to as **executive pork** in this study.
CHAPTER II

RESEARCH METHOD

A. Research Design

This study is a Qualitative Case-based Research using legal analysis and context description as analytical tools. A case study research refers to an empirical inquiry that investigates a contemporary phenomenon within its real-life context and in which multiple sources of evidence are used.\(^{14}\) It is appropriate for answering broad research questions by providing a thorough understanding of the processes involved and developed in a particular case. The study at hand is a **Case-based Research** that aims to examine and understand a remarkably unique phenomenon – the Philippine experience in the elimination of the Pork Barrel System that involved two branches of the government as culprits of corruption, and the recourse to the third branch through judicial review. A Case-based Research is appropriate because it is a classic case study design by which a single case (\(N=1\)) or a few cases (small-\(N\) research) can be studied comprehensively and in considerable depth.\(^{15}\) In this research, \(N=1\) refers to the elimination of the Philippine Pork Barrel System through judicial review; and the case is used to determine the role of judicial review in the anti-corruption agenda in the Philippines.\(^{16}\)

According to Landman, the academic study of human rights has thrived considerably since the 1948 UN Universal Declaration of Human Rights and the process has involved a variety of disciplines from the legal, social, and human sciences.\(^{17}\) He also points out that normative and empirical studies within political science are conducted in attempt to establish the rational, cultural, and structural foundations for human rights, and their relationships with democracy.\(^{18}\) The present case study is among the social science empirical studies using legal analysis that looks at the interplay of the concepts of political corruption, human rights, judicial review, and democracy using the chosen phenomenon. **Legal analysis** as a tool is as necessary as it is inevitable because of the legal nature of constitutions and judicial review. Although events

\(^{15}\) Perri 6 & Bellamy, Christine (2012) *Principles of Methodology Research Design in Social Sciences*. P. 103
\(^{16}\) *Ibid.*
in the legal system can be adequately explained within the legal culture, Freidman argues that the causal direction belongs primarily to social forces, and not laws or legal institutions.\textsuperscript{19} The focal point of this study judicial review in the context of the case study and legal analysis is used to adequately understand the laws pertinent to the case.

Moreover, the case study also aims to provide a contextual description of the event concerning the elimination of the Pork Barrel System in the Philippines through judicial review.\textbf{Contextual description} allows political scientists to learn about the historical events, important actors, and cultural aspects, among other elements in countries with which they have little or no prior knowledge.\textsuperscript{20} Given the backdrop of the phenomenon, the anti-corruption agenda seems difficult to achieve using ordinary resorts to the political branches. Aware of the debates, particularly the attacks on judicial review as an institution, this thesis is interested at finding out the extent to which judicial review advanced the anti-corruption agenda in the Philippines. In a larger perspective, the study looks at the implications of the phenomenon and how it can guide us in our understanding of judicial review vis-à-vis democracy.

\textbf{B. Data and Analysis}

\textbf{B.1. Legal Sources}

In the attempt to understand the phenomenon in its real-life context, data about the constitutive events of the case are collected and analyzed in this study. The main primary data used in the study in the Philippine Supreme Court Decision of the judicial review case entitled \textit{Belgica et. al. vs. Executive Secretary}. This jurisprudence text contains factual and procedural precedents of the case, the issues determined and resolved by the Supreme Court, and the rationale for arriving at the decision. Apart from this, four laws pertinent to the study are: 1) The 1987 Philippine Constitution, 2) the General Appropriations Act of 2013, 3) PD 910, and 4) PD 1869, as amended by PD 1993. The last three are pork barrel laws while the Constitution is the basis for the legal assessment of said laws within the constitutional framework. The 1987

\textsuperscript{19} Friedman, Lawrence M. (1975) The Legal System: A Social Science Perspective (New York: Russell Sage Foundation)
\textsuperscript{20} Supra Note 16, p. 891
Constitution contains the constitutional basis for judicial review and the constitutional principles pertinent to this study such as separation of powers, and checks and balances. Collectively, these legal texts as primary sources will aid us in understanding the phenomenon. Textual analysis is used as a method to interpret the mentioned legal sources. It refers to a way of attempting to understand the likely interpretations of texts made by the people who consume them. Data interpretation is therefore grounded on the laws under scrutiny in the judicial review case and on the constitution within which their validity is assessed. The reading and understanding of legal texts differ from ordinary literature because provisions and statements are not to be interpreted in its plain meaning since legal concepts and words have specific meanings that are coupled with legal consequences. In the present case study, the researcher made use of plain language to explain legal concepts which implications are likewise discussed in detail.

B.2. Interview Data

Another primary data, but non-legal, is the electronic mail Interview with Atty. Samson Alcantara. Atty. Alcantara is one of the three petitioners in the consolidated Belgica judicial review case. He is the incumbent President of the Social Justice Society, a labor rights lawyer and advocate, a professor of law, and was a senatorial candidate in the 2013 elections in the Philippines.

The research instrument used is the Interview Questionnaire which contains questions that seek to find out a petitioner’s perspective of the motivation behind the petition for review, the possible influence of the Million People March to the decision, and the effectiveness of judicial review, among others. Atty. Alcantara’s response to the Interview is of valuable contribution to the research because it allows us to understand the perspective of a petitioner in a judicial review case and how he comprehends judicial review as a right, a process, and a mechanism in advancing the advocacy or interest he represents as a citizen affected political corruption. In this regard, Atty. Alcantara’s response is used to explain what the Petition for Judicial Review is about in the context of the Belgica case, and is used in the analysis part of the research when the general question of the role of judicial review is addressed.

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CHAPTER III

THEORETICAL DISCUSSION

A. Constitutionalism

A constitution is regarded as “all rules which directly or indirectly affect the distribution or the exercise of the sovereign power within a state.”\(^\text{23}\) Following the American tradition, a constitution is a “written instrument by which the fundamental powers of government are established, limited, and defined, and by which powers are distributed among several departments, for their more safe and useful exercise, for the benefit of the body politic.”\(^\text{24}\) Hence, it is the result of society’s rendering of sovereign powers to a government whose organization and functions are contained in the constitution and are only alterable by the sovereign giver themselves. Written or not, constitutions are linked to the narrower and hardly defined concept of constitutionalism. Perhaps the most prominently cited definition is that of political scientist and constitutionalist, David Fellman, who defines constitutionalism as “descriptive of a complicated concept, deeply imbedded in historical experience, which subjects the officials who exercise governmental powers to the limitations of a higher law.”\(^\text{25}\) It is therefore understood as the idea of limited government under law. Constitutionalism can be traced from the ancient times, but as a modern concept, scholars refer to the modern enlightenment as a manifestation of constitutionalism as a project that aimed political incumbents to be subjected to a higher law that they cannot, by themselves, unilaterally alter.\(^\text{26}\)

More specifically, Jürgen Habermas refers to democratic constitutionalism as government of law. He explains that constitutional democracy derives its legitimacy from the concepts of popular sovereignty, and rule of law. The primacy of rule of law in the modern conception of democracy, he says, stems from the liberal view that “the democratic self-determination of citizens” can exclusively be realized through law as a medium, which structural


\(^{26}\) Holmes, Stephen (2012)”Constitutions and Constitutionalism”, in M. Rosenfeld & A. Saj (eds.)*The Oxford Handbook of Comparative Constitutional Law*.
properties ensure liberty. Habermas discredits the alleged paradox of constitutional democracy by explaining that the relationship between democracy (public autonomy) and the rule of law (private autonomy) “resolves itself in the dimension of historical time, provided one conceives the constitution as a project that makes the founding act into an ongoing process of constitution-making that continues across generations.” Thus, he introduces to us the understanding of the constitution as an ongoing-project - a self-correcting historical process. He explains that rule of law and democracy are non-competing but rather mutually-interpreting concepts. Democratic self-legislation, he says, involves two stages. The first stage embodies popular sovereignty wherein “a self-determining association of free and equal citizens” determines and interprets individual right. Meanwhile, the second stage is the “civic-determination” of said rights which is a progressively on going process. Habermas concludes that the existence of the second stage allows the principle of popular sovereignty “come into its own as part and parcel of the idea of government by law” since the first stage necessitates legally established democratic self-legislation for civic-determination to be realized. Hence, democratic principles can only be realized if coupled with the idea of rule of law. Moreover, Habermas argues that in a constitutional democracy, the substance of the constitution must emerge “from an inclusive process of opinion- and will-formation on the part of citizens.” This is by virtue of the close relationship between the discursive nature of political judgment and democratic institutions, as advanced by radical democrats like Habermas, Jefferson, Marx, Gramsci, John Stuart Mill, and Dewey. For them, democratic participation is an important means of self-development and self-realization. It is from these premises that Habermas’ position as regards the democratic institution of judicial review can be understood. In response to the suspicion against judges as interpreters of the constitution, he argues: “Interaction with the larger public, before which legal experts are held responsible, is supposed

28 Ibid., p. 768.
29 Ibid.
30 Ibid., pp. 776 - 778
31 Ibid., p. 778
32 Ibid., p. 771
34 Ibid. As opposed to traditional democratic idea which sees the best possible democracy as one in which groups and coalitions can check experts and political elites through formal powers of voting and lobbying.
to contribute to the democratic legitimation of the decisions of a constitutional judge who has not been democratically legitimated or at least not sufficiently legitimated.” Therefore, in Habermas’ theory of democratic constitutionalism, public discourses apart from the legal exchanges internal to judicial review proceedings, are sources of legitimation for such power of constitutional or supreme courts.

Constitutionalism and Habermas’ theory of democratic constitutionalism are suited for the study at hand because the Philippines is a constitutional democracy with judicial review powers vested in one Supreme Court. The Philippine system of presidential government is heavily influenced by the American fashion of democratic constitutionalism. Enshrined in the operative 1987 Constitution of the Republic of the Philippines are the doctrines of Constitutional Supremacy, Separation of Powers, and Judicial Review. The last two will be discussed separately in the succeeding headings.

Under the doctrine of constitutional supremacy, if a law – whether promulgated by the legislative or by the executive branch – violates any norm of the constitution, that law is null and void; it has no effect. Isagani Cruz, an authority in Political Law in the Philippines, captures the essence of the doctrine. He writes: “No act shall be valid, however nobly intentioned, if it conflicts with the Constitution. The Constitution must ever remain supreme. All must bow to the mandate of this law. Expediency must not be allowed to sap its strength nor greed for power debase its rectitude. Right or wrong, the Constitution must be upheld as long as it has not been changed by the sovereign people lest its disregard result in the usurpation of the majesty of the law by the pretenders to illegitimate power.” Assailants of judicial review concede to the primacy of the constitution, their opposition however, is that politically insulated judges are not the best enforcers. They label judicial review as judicial supremacy as opposed to constitutional supremacy. Nonetheless, constitutional supremacy as a doctrine that embodied in the institution of judicial review is suited for this study. Aside from the explicit text of the 1987 Constitution, constitutional supremacy is likewise expressed in Article 7 of the Civil Code of the Philippines, providing that when the courts declare a law to be inconsistent with the Constitution, the former shall be void and the latter shall govern. Thus, the 1987 Philippine Constitution, as the

36 Article 7, Book I, The New Civil Code of the Philippines
operative fundamental law to date, is the basis of the validity of not only all other laws but also of all governmental acts.

**B. Separation of Powers Doctrine**

The doctrine of separation of powers, also called trias politica and sometimes, interdepartmental courtesy, is a key feature of a democratic government. In essence, it means that legislation belongs to the legislative, execution to the executive, and adjudication of legal controversies, to the judiciary. The separation of powers as a government design is aimed at avoiding despotism and tyranny as when government powers are in the hands of one possessor. James Madison once defined tyranny as “the accumulation of all powers, legislative, executive and judicial, in the same hands, whether of, a few, or many and where hereditary, self-appointed or elected.”

The vision is that government powers are divided and balanced in a creative fashion to prevent their misuse. As described in the works of Madison and Montesquieu, this doctrine in political theory is crucial for individual liberty. In the *Spirit of the Laws*, Montesquieu writes that there is no liberty “when legislative power is united with executive power in a single person or in a single body of the magistracy.”

Like constitutionalism, separation of the powers as a doctrine is hardly defined. Vile, however, advances that the “pure doctrine” of separation of powers be formulated in this way: “To each of these three branches there is a corresponding identifiable function of government, legislative, executive, or judicial. Each branch of the government must be confined to the exercise of its own function and not allowed to encroach upon the functions of the other branches.” He adds that it is equally essential that the persons who compose the three great departments of the government “must be kept separate and distinct” so that ultimately, “each of

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the branches will be a check to the others and no single group of people will be able to control
the machinery of the State."\(^{40}\)

The rationale for the doctrine is evident, says Wormuth, because if the legislators are also
to be the constant administrators and dispensers of law and justice, then as a consequence, the
people will be left without available remedy in case of injustice should the legislature act
inconsistent “with the very intent and natural import of true policy.”\(^{41}\)

Separation of powers as a feature of government is categorized as either strong or weak.
In strong separation, the legislative and executive branches are distinctly elected and have a
system of checks and balances. This model is particularly embodied in the United States
presidential form of government. Like the U.S., countries with strong separation of powers also
have constitutional courts that exercise strong judicial review.\(^{42}\) On the other hand, weak
separation is of British Parliamentary government origin. Such is dominated by the legislature
which is also responsible for electing the executive branch which only has some degree of
autonomy. Like the European countries, weak judicial review is the practice in governments with
weak separation.

The separation of powers doctrine was enshrined in the 1935 Philippine Constitution
when the presidential system of government was introduced in the country. Philippine
constitutionalist, Joaquin Bernas explains that separation of powers “operated as an implicit
limitation on legislative power as on the two other powers.”\(^{43}\) In the country’s constitutional
history, however, this doctrine was temporarily and partially abandoned when the 1973
Philippine Constitution established a parliamentary form of government. During the operation of
said constitution, separation of powers remained applicable but only as between the judiciary on
one hand and the legislature and executive on the other. As between the legislative and the
executive, union or cooperation was the operative principle. Eventually, the 1981 Constitution
reverted back to the presidential form of government but there was really no departure from the

\(^{42}\) See Jeremy Waldron’s distinction of weak and strong judicial review in *The Core Case Against Judicial Review*, 115 Yale Law Journal 1346
1973 Constitution as far as separation of powers is concerned. This is so because no real separation between the legislature and the executive took place by virtue of a law which gave full legislative power to then dictator President Ferdinand Marcos dominance over the National Assembly. The doctrine of separation of powers was restored in the 1987 Constitution which is still operative today. The constitutional history of the Philippines reflects why the separation of powers doctrine is a valued principle in the country’s democracy. The 1987 Constitution was an instrument designed to ensure that the dictatorship of the Marcos regime would never take place once more.

C. Theories of Judicial Review

Judicial review is referred to as the power of the judiciary as the third branch of the government to review legislative and executive acts and invalidate the same if found contrary to the constitution. This component of judicial power is an American invention. Hamilton, one of the founding fathers of the United States Constitution, depicts judicial review as a mechanism by which the courts can protect the people by restraining the legislature from acting in violation of the constitution. For him, courts were designed to be an “intermediate body” between the people and the legislature, such that in case the latter exceeds in its authority, the constitution - the intention of the people - and not by the will of the agents will prevail. Judicial review was first invoked by the U.S. Supreme Court in the case of Marbury v. Madison where it invalidated a statute which widened the court’s original jurisdiction in contravention of the Constitution. The decision penned by Chief Justice Marshall, invoking the Supremacy Clause, asserts that it is emphatically the province and duty of the judiciary to say what the law is. The Marbury decision triggered the debate on whether judicial review is an inevitable element of the judicial process. Some scholars assail it for being inconsistent with democracy while others even attack its legitimacy.

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44 Amendment 6, 1976 Amendments to the 1973 Constitution of the Republic of the Philippines
45 Hamilton, Alexander writing as Publius (1788) “The Federalist No.78.” The Federalist Papers. p. 4
46 Marbury v. Madison, 5 U.S. (1 Cranch) 137 (1803)
The “counter-majoritarian difficulty” argument against judicial review was introduced by Bickel. His core argument is that courts thwart actions of the current popular majority by striking down laws enacted by democratically elected legislature.\(^{47}\) To this argument, Dworkin responds that counter majoritarian institutions such as the Supreme Court is precisely designed to protect minority rights from majoritarian voices that are not in consonance with the constitution as well as universal human rights.\(^{49}\) For him, democracy without the institution of judicial review would redound to merely a theory of “statistical democracy” in which what is plural is legitimate.\(^{50}\) Bickel, despite branding judicial review as a “deviant institution”\(^{51}\) in a democratic society, concludes judicial review as appropriate because politically insulated judges can best enforce the long-term values embodied in the Constitution that may clash with the short-term values that politicians are particularly vulnerable to.\(^{52}\)

The same argument was rediscovered by scholars who form part of the so-called popular constitutionalist movement. A moderate popular constitutionalist is Kramer who, using a historical approach, argues that the framing generation of the U.S. Constitution intended elections or the people’s exercise of suffrage to be the primary means of enforcing the constitution.\(^{53}\) He notes “free speech” and “mobbing” as popular means to resist unconstitutional government actions.\(^{54}\) Meanwhile, strong popular constitutionalists, unlike Bickel and Kramer, reject judicial review. Waldron’s argument is premised on two considerations – that the relevant society has a representative legislature and non-representative courts that work, and that most citizens and officials share a commitment to individual and minority rights.\(^{55}\) He then proceeds that in such a case, should there be disagreements on the contents of said rights, the legislature is the interpreter of the limits of its own powers. He denies the criticisms that politicians lead to worse decisions as compared to judges by reason of the inherent features of political

\(^{47}\) Bickel, Alexander M. (1962) *The Least Dangerous Branch: The Supreme Court at the Bar of Politics* pp. 25-26

\(^{48}\) *Ibid.*, pp. 16-17


\(^{50}\) *Ibid.*

\(^{51}\) Bickel, Supra Note 35, p. 18

\(^{52}\) *Ibid.*, pp. 24-26


\(^{54}\) *Ibid.*

institutions.\textsuperscript{56} He adds that the legislature’s democratic responsiveness situate them at a better to resolve the precarious situation of those who seeks to vindicate their rights.\textsuperscript{57} Lastly, he underscores that democratic theory cannot explain why decisions of unaccountable judges, despite voting unanimously or by majority, are acceptable in a democratic society.\textsuperscript{58} For the foregoing reasons, he concludes that judicial review is undemocratic and illegitimate. Another prominent popular constitutionalist is Tushnet who prefers that constitutional questions should be resolved legislatively. He asserts that over time, judicial review will “simply reinforce whatever political movement can get outside the courts” since courts are politically appointed and are therefore inclined to submit to the current political majority.\textsuperscript{59}

Defenders of judicial review respond to criticisms in various ways. There are those who deny the existence of the counter-majoritarian dilemma. Friedman, for one, argues that judges are embedded in the web of political relationships since they are appointed by elected officials, making them likewise responsive to majoritarian preferences.\textsuperscript{60} Both he and Seidman dismiss the idea that court rulings are the last word on contested policy questions because they instead stimulate further debate within the framework of constitutional law. Judicial review therefore “unsettle[s]” fundamental political dispute\textsuperscript{61} bringing disputant parties – elected representatives and the general public – into a “societywide constitutional dialogue”. Meanwhile, there are other scholars who find evidence that the judiciary tracks public opinion and therefore strikes down legislative acts with the implicit blessing of the majority.\textsuperscript{62}

Another line of defense is scholars who concede that judicial review in non-democratic but strongly submits that the institution can enhance rather than undermine democratic performance of the political system. This line of thought comes from the premise that unlike the theoretical or ideal democratic institutions, actual institutions are prone to “democratic failures”.

\textsuperscript{56} Ibid., pp. 1384 - 85  
\textsuperscript{57} Ibid., p. 1378  
\textsuperscript{58} Ibid., 1387 - 92  
Various forms of democratic failures were identified by scholars and their works explain how judicial review functions to prevent or remedy said failures. In their distinct works, Ely and Rogers identify the prejudice of electoral representatives as part of democratic failures and they share the view that such leads to inevitable exclusion of some minorities. Thus, for these scholars, judicial review is justified to protect minorities from legislative bargaining and coalition formation that burden them. Another democratic failure is what both Chemerinsky and Sunstein describe as the “capture” by particular interest groups of the decision-making machinery to the prejudice of the more diffused majorities. Sunstein introduces the concept of “naked preferences” which refer to a mere aggregate of private interests in a pluralist vision of political process which he rejects. He argues that “the political process is one of self-determination” and theorizes that the institutional function of judicial review is to guaranty that legislative actions do not result from naked preferences but must mirror public values. Thus, they conclude that judicial review is a safeguard to the danger of special groups’ takeover of the government’s decision-making processes.

Additionally, institutional defenses for judicial review are provided by Fallon and Siegel. Fallon, although he adheres to legislative resolution of constitutional questions, perceives judicial review as an institutional “veto” which can prevent the exercise of government actions that may endanger individual rights. Siegel, on the other hand, argues that aside from a check by politically insulated officials on the acts of the politically accountable, judicial review possess institutional characteristics inherent in judicial processes that make it the superior instrument to enforce the constitution. First, it is “focused” because it is issue-specific. Also, it is “transparent” in the sense that the ruling is founded on reason, which is provided in the court’s written

63 Ely, John Hart (1980). Democracy and Distrust: A Theory of Judicial Review (Cambridge: Harvard University Press). For the purpose of categorizing, Ely’s argument is placed under this category. However, it must be underscored that in Democracy and Distrust, his main objective is to formulate a theory of judicial review that is compatible with representational democracy.
65 Supra Note 24
67 Sunstein, Naked Preferences, Ibid. p. 1694.
68 Ibid.
decision. Third, it is “individually engageable” because the right to petition can be utilized without having to attract support from other. Judicial review is also a “mandatory” duty on the part of the court since it must consider and rule on the justiciability and merit of the case when found justiciable. Fifth, the process employs “a system of precedents”, hence, stable and non-arbitrary. Lastly, he perceives judicial review as “non-majoritarian” since claimants need not prove majority support to have their rights enforced.  

In the Philippines, judicial power is vested in one Supreme Court and in lower courts established by law. Judicial power includes not only the duty of the courts of justice to settle actual controversies involving demandable rights, but also to determine whether any part of branch or instrumentality of the government has exercised “grave abuse of discretion amounting to lack or excess of jurisdiction.” The Philippine Constitution provides for a strong judicial review wherein the Supreme Court can strike down statutes enacted by Congress. This was invoked when in 2013, groups of citizens petitioned to have the Pork Barrel System reviewed. The debate on judicial review, particularly the normative arguments in its defense are relevant in the study at hand because the objective of the study is to determine the role that judicial review played in the anti-corruption agenda in the Philippines. As mentioned in I.D.1. Theoretical Significance of the Study, the present research is an empirical case study which looks at the vulnerability of the executive and legislative branches abuse of power and analyzes how judicial review as a democratic resort when the popular branches of the government are corrupted and cannot be avenues to fight the same corruption. The theories of judicial review are used an analytical tools to guide the researcher in arriving at conclusions.

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71 Section 1, Article VIII, Philippine Constitution
A. The Conceptual Underpinnings of the Pork Barrel System

Pork Barrel is the derogatory term for the Priority Development Assistance Fund (PDAF) of the Philippine budget system. The term originates from the American history of slave owners giving slaves a barrel of salted pork that they would have to fight over. The term was eventually used to refer to budget allocated for legislators. PDAF is a discretionary fund available to members of the Philippine Congress – Senators and House Representatives by reason or fact of office. It is designed to allow legislators to fund small-scale infrastructure or community projects which fell outside the scope of the national infrastructure program. In the study at hand, however, it will be seen that not only legislators but also the President has pork barrel funds provided for by various laws. The idea of pork barrel dates back to 1922 and has evolved into a system that allows individual politicians wide discretion and control over the use of funds without any check from either the legislative or executive branches of the government.\textsuperscript{72} The fact that the funds are lump-sum also makes it difficult for the Commission on Audit (CoA) to thoroughly check the use of funds.\textsuperscript{73}

The Supreme Court defines the Pork Barrel System as “the collective body of rules and practices that govern the manner by which lump-sum, discretionary funds, primarily intended for local projects, are utilized through respective participations of legislative and Executive branches of government, including its members.”\textsuperscript{74} The system involves two general kinds of funds: 1) the Congressional Pork Barrel; and the 2) Presidential Pork Barrel. The first one, also referred to as legislative pork in this study, is “a kind of lump-sum, discretionary fund wherein

\textsuperscript{72} Belgica et al. vs. Executive Secretary, G. R. No. 208566 (November 2013), hereinafter referred to as ‘Case’, pp. 4 - 17

\textsuperscript{73} In the Senate Investigation on the Pork Barrel Scam, CoA Chairperson Grace Pulido-Tan expressed her amazement at the failure of responsible government agencies to keep good records of fund disbursement. She opines that this omission, whether intentional or not, have aided and abetted in the misuse of government funds. GMA News Online (2013). COA head testifies at senate probe on pork barrel scam. URL = <http://www.gmanetwork.com/news/photo/43635/coa-head-testifies-at-senate-probe-on-pork-barrel-scam> Viewed, May 4, 2014.

\textsuperscript{74} Case, p. 35 (Emphasis supplied)
legislators, either individually or collectively organized into committees, are able to effectively control certain aspects of the fund’s utilization through various post-enactment measures and/or practices.”

Legislative pork stems from the pork or PDAF provision under the General Appropriations Act of 2013 (PDAF Articles). The Philippines has a bicameral Congress. The members of the House of Representatives are elected per district to represent local concerns of the citizens. Senators, meanwhile, are elected nation-wide to represent the wider, national concerns. Additionally, the country has a Party-List System wherein underrepresented or marginalized sectors of society participate in Congressional elections and nominees of the winning Party-Lists join the House of Representatives as Party-List Representatives. As earlier mentioned, the grant of pork funds to individual legislators is by virtue of fact of office, without any consideration of the particularities of the actual district being represented. PDAF’s claimed purpose is for legislators to immediately fund priority local projects outside the scope of the regular budget. As can be gleaned, however, the purpose of PDAF is defeated because not all legislators represent a local district.

The Presidential Pork Barrel, meanwhile, is defined as “a kind of lump-sum, discretionary fund which allows the President to determine the manner of its utilization.” This is derived from two legal sources: 1) Presidential Decree (PD) 910 providing a special fund for the Malampaya Deep Water Gas-to-Power Project or the “Malampaya Funds”; and 2) PD 1869, a law establishing the Philippine Amusement and Gaming Corporation (PAGCOR) that allows the President to provide direct assistance to priority programs and projects not funded under the regular budget. This special fund derived from the earnings of PAGCOR is referred to as the “Presidential Social Fund”.

Specifically under PD 910, the Malampaya Fund is to be used “to finance energy resource development and exploitation programs and projects of the government and for such

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75 Ibid.
76 Republic Act 7941, An Act Providing for the Election of Party-List Representatives through the Party-List System, and appropriating Funds Therefor; and Sections 3 and 5, Article VI of the Philippine Constitution
77 Ibid.
78 Presidential Decree 910, entitled “Creating an Energy Development Board, Defining its Powers and Functions, Providing Funds therefor, and for Other Purposes.”
other purposes as may be hereafter directed by the President”. This grants the President the authority to use the funds for any other purposes he deems proper, regardless of whether it is relevant to the Malampaya Project since neither the provision nor any other law provides limitations on the President’s discretion as regards the Malampaya Funds. Similarly, under PD 1869, the Presidential Social Funds is to be used “to finance the priority infrastructure development projects and to finance the restoration of damaged or destroyed facilities due to calamities, as may be directed and authorized by the Office of the President of the Philippines.”

It must be underscored that the quoted provision likewise grants the President the full discretion to determine what constitutes “priority infrastructure development projects” absent any guidelines set by law. Both the Malampaya and Presidential Social Funds have been controversial because the Malampaya Project has been tagged as a defunct gas project of the 1980s. Meanwhile, the government of the country plagued by an average of 21 typhoons annually has always been criticized for its inefficient, if not ineffective, rebuilding programs.

In 2006, a major development in the Pork Barrel System was introduced, that is the allowance for Non-Governmental Organizations (NGOs) to be beneficiaries of pork funds. In July 2013, the Philippine Daily Inquirer published an article that first exposed the 10 Billion Peso (232 Million US Dollar) Pork Barrel Scam revealing the misuse of congressional ‘pork’ from 2003 to 2013. In a nutshell, the modus operandi used is that bogus Non-Governmental Organizations are set-up in order to channel public funds into the private pockets of the conspirators. This massive corruption of public funds is done by no less than the members of the Philippine Congress in conspiracy with the Department of Budget and Management of the Executive Branch, and private individuals who are comrades of the public officials involved. This syndicated corruption would not have been possible if not for the legally faulty national budget system. Hence, the case has legal implications and raises a number of constitutional issues.

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80 Section 8, PD 910
81 Section 12, PD 1869, as amended by PD 1993.
83 In the Supplemental Budget for 2006, NGOs were, by law, encouraged to participate in the implementation of government projects.
The famous Million People March, which was a response to the exposed pork system of corruption, has a number of constitutional implications. It triggered various civil society groups to petition the Supreme Court to declare the system unconstitutional. Also, the mass protest and the developments it triggered is a living manifestation of that “sovereignty resides in the people and all government authority emanates from them.” Atty. Alcantara explains the influence of the movement in the Belgica et. al. vs. Executive Secretary judicial review case, to wit: “The Million People March galvanized widespread public outrage against the evils of the pork barrel system and forced the Supreme Court to take cognizance of and resolve within four (4) months the petitions to declare the system unconstitutional.” The speedy resolution of the case is therefore attributed to the emphatic display of the public of their interest in the issue, particularly in society’s anti-corruption agenda of eliminating pork barrel and of correcting the faulty political institutions.

B. Philippine Judicial Review

Since the 16th century, courts of law existed in the Philippines as part of the Spanish colonial government. These courts, however, are patterned after the courts of other European states such that they were neither separate nor autonomous from the administrative branch of the government. When the Americans took over, separation of powers and judicial review were introduced to the country. The 1935 Constitution which is labeled as an organic law was the first to contain a provision conferring upon the courts the power to invalidate laws and executive acts. In the landmark case Angara vs. Electoral Commission, the Supreme Court of then Philippine Commonwealth explains that “The overlapping and interlacing of functions and duties between the several departments...sometimes makes it hard to say just where one leaves off and the other begins...” and should there be conflict, “…the judicial department is the only Constitutional organ which can be called upon to determine the proper allocation of powers between the several departments and among the integral and constituent units thereof.” This reasoning echoes that

84 Ibid, Article II, Section 1.
85 Alcantara interview, response to Question No. 4
88 Ibid., p. 157
of the *Marbury* decision. Clearly, Philippine judicial review can be understood as a strong form of judicial review similar to that of the United States.

Under the present Philippine Constitution, judicial power is vested in the courts comprising the Judicial Department. Judicial power is constitutionally defined as “the duty of the courts of justices to settle actual controversies involving rights which are legally demandable and enforceable” and the duty “to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.”89 More particularly, the Philippine Supreme Court which is made up of a Chief Justice and fourteen (14) Associate Justices90 is constitutionally mandated to hear and decide cases “in which the constitutionality or validity of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question.”91 In the exercise of such review power, the Supreme Court sits en banc, meaning in full, and decides the case based on majority vote of the justices who “actually took part in the deliberations on the issues in the case.”92 Although the term judicial review is nowhere found in the Constitution, the mentioned provisions are the basis for the Supreme Court’s exercise of judicial review which is also referred to as judicial inquiry.

**B.1. The Belgica vs. Executive Secretary Petition for Review**

Provoked by the Pork Barrel Scam and by the findings of the CoA report, three petitions were lodged before the Supreme Court, all seeking that the Pork Barrel System be declared unconstitutional. The first was on August 28, 2013 by Atty. Samson Alcantara, President of the Social Justice Society, who also sought that a writ of prohibition be issued permanently against the incumbent Senate President and the Speaker of the House of Representatives for the purpose of restraining them from further appropriating and approving releases of pork funds. On September 3, another group of petitioners93 known as the “Belgica Petition” specifically prayed that the legislative pork embodied in the GAA of 2013, and the executive pork found in PD 910 be declared unconstitutional. The Belgica Petition also prayed for a Temporary Restraining

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89 Section 1, Article VIII, Philippine Constitution
90 *Ibid.*, Section 4 (1)
91 *Ibid.*, Section 4 (2)
93 The following individuals comprise the Belgica Petition: Greco Antonius Beda B. Belgica, Jose L. Gonzales, Reuben M. Abante, Quintin Paredes San Diego, and Jose Villegas.
Order (TRO) to restrain the Executive Secretary, DBM officials, the National Treasury, or their agents from releasing pork funds. Finally, on September 5, Pedrito M. Nepomuceno filed a similar petition with a prayer for a cease and desist order to be issued against the President and the DBM Secretary from releasing pork funds to individual legislators.

On September 10, the Court issued a Resolution which consolidated the three petitions. The same Resolution required the public respondents - the impleaded officials of Congress and the Executive Branch – to comment on the consolidated petitions, and set the date judicial review case for Oral Arguments on October 8, 2013. Also, the Court issued a TRO enjoining the DBM, National Treasurer, the Executive Secretary, and their agents from releasing the remaining legislative pork funds under the GAA of 2013 and the presidential pork funds pursuant to PD 910.

On September 23, the Office of the Solicitor General (OSG) – the counsel for the government – filed its Comment and sought for the lifting of the restraining order and for the dismissal of the case for lack of merit. Thereafter, he petitioners filed separate Replies to OSG’s Comment. On October 1, the Court issued an Advisory containing the guidelines for the Oral Arguments and directed the Solicitor General to bring with him representatives from the DBM and Congress who would be able to explain the budget process and implementation. Also, CoA Chairperson was appointed by the Court as amicus curiae – a party not involved in the litigation but is permitted by the court to advise it in some matters directly affecting the case in question. On October 8 and 10, the Oral Arguments were conducted and the parties submitted their respective Memoranda thereafter.

Atty. Alcantara explains that the consolidated petition is “in the nature of a tax payer’s suit.” Philippine jurisprudence\(^4\) dictates that a taxpayer may be sue on the ground that public funds are illegally disbursed, or that public money is being deflected to any improper purpose, or that such funds are wasted through the enforcement of an invalid or unconstitutional law or ordinance. The immediate goal of the petitioners is to suspend the release of pork funds in order to prevent fraudulent use of public money. This is the reason why all three separate petitions are coupled with prayers for either a writ of prohibition or a restraining order. As for the ultimate

goal, the petitioners, one with the civil society that participated in the Million People March, aim to have the Pork Barrel System abolished in the national government budgeting. A petition for judicial review, in the nature of a taxpayer’s suit was therefore filed before the Supreme Court. As for Atty. Alcantara, the petition is founded on the grounds that the Pork Barrel System: 1) allows the perversion by Congress of the constitutional power of taxation by providing opportunities for lawmakers to gorge themselves in funds collected pursuant to tax legislation they enacted purportedly for public good; 2) makes a mockery of the constitutional mandate on accountability, honesty and integrity of public officers; 3) renders useless the constitutional principle of separation of powers as it enables the Executive to allow or not allow release of pork to lawmakers and thereby control the latter; and 4) abets and perpetuates political dynasties.95

In Belgica vs Executive Secretary, the Supreme Court divided the issues into procedural and substantive classifications. This is a standard procedure in cases before the courts because the resolution of the procedural issue will determine whether the substance or merits of the case should be resolved or be dismissed. The Court determined the following procedural issues: 1) the existence of an actual and justiciable controversy; 2) the inapplicability of the Political Question doctrine; 3) the legal standing of the petitioners; and 4) the inapplicability of res judicata and stare decisis.

As for the substantive issues, the Court further divided the inquiry into “Congressional Pork Barrel”, and “Presidential Pork Barrel. For the former, the Court resolved whether the 2013 PDAF Article and all other Congressional pork laws violate the following constitutional precepts: 1) separation of powers; 2) non-delegability of legislative power; 3) checks and balances; 4) accountability; 5) political dynasties; and 6) local autonomy. For the latter, the Court rule on whether the provisions found in: 1) Section 8 of PD 910; and 2) Section 12 of PD 1869 are constitutive of undue delegation of legislative power.

B.2. The Supreme Court Decision

On November 19, 2013, the Supreme Court, voting 14 – 0, declared the Pork Barrel System of appropriation unconstitutional. This affirmative ruling will be discussed in the succeeding subheadings in the same order that the Court resolved the aforementioned issues.

95 Alcantara Interview, Response to Question No. 1
B.2.a. Resolution of the Procedural Issues

The High Court proceeded with the merits of the judicial review case upon determination that the case is free from procedural infirmities. First, there exists an actual controversy since the requirement that there must be a contrariety of legal rights is satisfied by the antagonistic positions of the parties. 96 At one hand, are the rights of the petitioners as citizens and tax payers to government accountability in the use of public money, and on the other, is the right and duty of the government to appropriate and use said funds. The controversy is also justiciable because the questions raised for constitutional scrutiny of the Pork Barrel System are “ripe” for adjudication. The Court explains that a question is “ripe for adjudication when the act being challenged has had a direct adverse effect on the individual challenging it.” 97 There are two prerequisites: 1) that an act must have been performed by either branch of the government before a court may intervene; and 2) the petitioner must allege that the challenged action has resulted in an “immediate or threatened injury” to itself. 98 In the present case, the challenged acts and laws are currently existing and operational. Hence, the Court finds that there exists an immediate or threatened injury to petitioners as a result of unconstitutional use of public funds.

Second, the Political Question Doctrine 99 - a limitation on the power of judicial review is inapplicable in the present case. A political question refers to “those questions which, under the Constitution, are to be decided by the people in their sovereign capacity, or in regard to which full discretionary authority has been delegated to the Legislature or executive branch of the Government. It is concerned with issues dependent upon the wisdom, not legality, of a particular measure.” 100 Finding that the Doctrine finds no application in this case, the Court explains that the substantive issues raised are legal and not political or matters of policy because the intrinsic constitutionality of laws is a legal question which the Constitution has commanded the Court to resolve. Moreover, the Court explains that in its exercise of judicial review, it “does not arrest”

96 Case p. 25
97 Ibid.
98 Ibid.
99 Ibid.
100 In American jurisprudence, Baker vs. Carr, 369 U.S. 186 (1962), the Doctrine applies when there is either: 1) a textually demonstrable constitutional commitment of the issue to a coordinate political branch; or 2) a lack of judicially discoverable and manageable standards for resolving it; or 3) the impossibility of deciding without an initial policy determination of a kind which is clearly for non-judicial discretion.
100 Case p. 30, the Court citing Tanada vs Cuenco, 100 Phil. 1101 (1957)
nor “impede the endeavors of the two other branches” but only ensures that “the pillars of change are erected on firm constitutional grounds.”

Third, the Court finds that the petitioners have a legal standing as taxpayers and citizens. As taxpayers, they contribute to the National Treasury and are bound to suffer from the unconstitutional usage of public funds. Meanwhile, as citizens, the issues raised in the present petition qualify as “of transcendental importance, of overreaching significance to society, or of paramount public interest.”

Finally, the Court rules that the 1994 PHILCONSA case and 2004 LAMP case do not bar the present petition from being heard. Res judicata is a principle of law which binds a subsequent case if a previous case has been judged on the merits by a competent court wherein in both cases there is an identity of parties, of subject matter and of causes of action. Meanwhile, the principle of stare decisis bars the re-litigation of a case when same questions relating to the same event have been already resolved in a precedent case. The Court explains that both principles do not apply because the laws assailed in the present petition are not the same budgetary provisions challenged in PHILCONSA and LAMP. Therefore, a ruling on the present petition will not disturb settled legal doctrines.

**B.2.b. Resolution of the Substantive Issues on the Congressional Pork**

The Supreme Court ruled that Congressional Pork Barrel general, and particularly the pork provisions under the GAA of 2014 providing for such funds violate the constitutional principles of separation of powers, non-delegability of legislative power, checks and balances, accountability, and local autonomy. On the issue of whether legislative pork violates the constitutional prohibition of political dynasties raised in the Alcantara Petition. The Court deferred from ruling on this issue because the constitutional provision prohibiting political dynasties are not self-executing, meaning, a law defining such is necessary before the constitutional prohibition can be invoked. Nonetheless, the petitioners obtained an affirmative

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101 Case, p. 31
102 Ibid., p. 32, citing Lanuza vs. Court of Appeals, 454 SCRA 54
103 Section 26, Article II of the Philippine Constitution provides that: “The State shall guarantee equal access to opportunities for public service, and prohibit political dynasties as may be defined by law.” (Emphasis supplied).
ruling in all the other substantive issues on the matter of Congressional Pork. The following is a discussion of the Court’s reasoning in all issues ruled in the affirmative.

i. Separation of Powers

The Court declares that the 2013 PDAF Article and other provisions of law similarly allowing individual legislators to exercise post-enactment authority in budget implementation violate the separation of powers doctrine. This principle may be violated in two ways: 1) when one branch interferes impermissibly with other’s performance of constitutionally assigned function; or 2) when one branch assumes a function entrusted to another.\(^\text{104}\) The national annual budgeting process begins with a proposal by the executive branch. Congress then, in the exercise of its legislative power of appropriation, enacts the GAA. The GAA, being a law, is subject to the faithful execution of the Executive branch. In the words of the Court: “Upon the approval and passage of the GAA, Congress’ law-making role necessarily comes to an end and from there the Executive’s role of implementing the national budget begins.”\(^\text{105}\) Therefore, the pork provisions allowing individual legislator to perform post-enactment measures such as project identification, release authority\(^\text{106}\), and realignment powers\(^\text{107}\), are void for said measures are within the sphere of budget execution which function belongs to the Executive. Additionally, the Court declared unconstitutional the informal practices through which legislators intrude in the budget execution for being acts of grave abuse of discretion.\(^\text{108}\)

ii. Non-Delegability of Legislative Power

Under the Constitution, legislative power is vested in Congress, and reserved to the people through initiative and referendum.\(^\text{109}\) By Congress, the Constitution refers to the Senate and the House of Representatives acting as a bicameral body. The principle of non-delegability states that no other branch, organ, or person may exercise legislative powers. The known exceptions to this are the delegated rule-making of administrative or implementing agencies as may be provided for by law. Part of legislative power is the power to appropriate which involves

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\(^\text{104}\) Case, p. 36-37, Court citing Guingona, Jr. vs. Carague, 273 Phil 443 (1991)
\(^\text{105}\) Ibid., p. 37
\(^\text{106}\) Special Provision 5 under the 2013 PDAF Article
\(^\text{107}\) Special Provision 4, paragraphs 1 and 2 under the 2013 PDAF Article
\(^\text{108}\) Case p. 43
\(^\text{109}\) Section 1, Article VI, Philippine Constitution
the setting apart of a certain sum from public revenue, and the specification of its purpose.\textsuperscript{110} Under the assailed 2013 PDAF Article, individual legislators are provided a personal lump-sum fund from which they can personally determine: 1) how much from such fund would be allocated; and 2) the specific project or beneficiary. The Court ruled that taken together, these acts constitute appropriation which belongs exclusively to Congress and not to individual legislators, hence, result in the violation of the non-delegability principle.

\textbf{iii. Checks and Balances}

Adjunct to the two previous doctrines is the principle of checks and balances. Separation of powers does not mean that the three great powers of government are “absolutely unrestrained and independent of each other” as the Constitution provides for “an elaborate system of checks and balances to secure coordination….”\textsuperscript{111} A prime example of which, the Court notes, is the power of the President to veto an item in an appropriation or tariff bill.\textsuperscript{112} The item veto power is designed to ensure that the items are consistent with the national agenda. Under the 2013 PDAF Article, the amount PhP 24.79 Billion appears as a “collective allocation” which is to be further divided and allocated to individual legislators. The Court ruled that as the said appropriation is only to be allocated after the passage of the GAA, the actual items of the appropriation, in effect, are effectuated without veto consideration. In the words of the Court: “This kind of lump-sum/post-enactment legislative identification budgeting system fosters the creation of a “budget within a budget…which impairs the President’s power of item veto.”\textsuperscript{113}

\textbf{iv. Accountability}

The Constitution provides that “public office is a public trust.”\textsuperscript{114} The Court agrees with the petitioners that Congressional Pork Barrel undermines the constitutional mandate of accountability. Congressional oversight is the duty of Congress to: 1) scrutinize heads of the departments within the Executive in connection with appropriations during the budget hearings;

\textsuperscript{110} Case, p. 45, Court citing Bengzon vs. Secretary of Justice, 62 Phil 912 (1936)
\textsuperscript{111} Ibid., p. 45-46, Court citing Angara vs. Electoral Commission, 63 Phil 139 (1936)
\textsuperscript{112} Ibid., p. 46. Section 27 (2) of the Philippine Constitution states: “The President shall have the power to veto any particular item or items in an appropriation, revenue, or tariff bill, but the veto shall not affect the item or items to which he does not object.
\textsuperscript{113} Ibid., p. 49
\textsuperscript{114} Section 1, Article XI, Philippine Constitution
and 2) investigate and monitor the implementation of laws.\textsuperscript{115} The Court explains that the post-enactment roles of the legislators in budget implementation are in conflict with their Congressional oversight function since it becomes “difficult for them to become disinterested “observers” when scrutinizing, investigating or monitoring” the implementation of the appropriation law.\textsuperscript{116}

\textbf{v. Local Autonomy}

The Court finds Congressional Pork Barrel inconsistent with local autonomy. As a constitutional principle, the State ensures the autonomy of local governments.\textsuperscript{117} Pursuant to this, Congress enacted the Local Government Code\textsuperscript{118} which policy declares that the territorial and political subdivisions of the State “shall enjoy genuine and meaningful local autonomy to enable them to attain their fullest development as self-reliant communities and make them more effective partners in the attainment of national goals.”\textsuperscript{119} The Code also requires all national agencies to “conduct periodic consultations” with local governments before any project or program can be implemented in their jurisdictions.\textsuperscript{120} Meanwhile, PDAF, as explained by the incumbent President, was established to enable legislators as district representatives to identify projects for communities that local governments cannot afford.\textsuperscript{121} The Court reasons that Congressional Pork belies its purpose since “the gauge of PDAF allocation/division is based solely on the fact of office” disregarding the specific needs and peculiarities of the district the individual legislator represents.\textsuperscript{122} Moreover, the legislator’s post-enactment discretion in identifying the local projects overrides the functions of the various Local Development Councils.\textsuperscript{123} Hence, the pork system allows legislators to intervene in purely local matters and thereby “subvert genuine local autonomy.”

\begin{itemize}
\item \textsuperscript{115} \textit{Ibid.}, Section 21, Article VI
\item \textsuperscript{116} Case, p. 51
\item \textsuperscript{117} Section 25, Article II; and Sections 2 and 3, Article X, Philippine Constitution
\item \textsuperscript{118} Republic Act 7160, An Act Providing for a Local Government Code of 1991
\item \textsuperscript{119} \textit{Ibid.}, Section 2 (a)
\item \textsuperscript{120} \textit{Ibid.}, Section 2 (c)
\item \textsuperscript{121} Case, p. 55
\item \textsuperscript{122} \textit{Ibid.}
\item \textsuperscript{123} Section 106 of the Local Government Code provides: “Local Development Councils – (a) each local government unit shall have a comprehensive multi-sectoral development plan to be initiated by its development council and approved by its sanggunian. For this purpose, the development council at the provincial, city, municipal, or barangay
\end{itemize}
B.2.c. Resolution of the Substantive Issues on the Presidential Pork

As discussed in IV.A., there are two sources of Presidential Pork: 1) the Malampaya Fund; and 2) the Presidential Social Fund. The first source contains a provision that allows the President to use the Malampaya Fund “for other purposes” than that primarily declared by law. The Court agrees with the petitioners that the provision constitutes undue delegation of legislative power because the discretion of the President, under said provision, is unbridled. In effect, it allows the President to unilaterally appropriate public funds “beyond the purview of law”. Absent any legislative guidelines, the delegation of a legislative power, the power to appropriate as in this case, is unconstitutional.

As for the second source, the law indicates that the Presidential Social Fund can be used for the following public purposes: 1) finance priority infrastructure development projects; and 2) finance the restoration of damaged and destroyed facilities due to calamities. The law, however, adds that said purposes are “as may be directed and authorized by the Office of the President of the Philippines.” The Court ruled that with reference to the first purpose, the President is given “carte blanche” authority to use the fund for what he may so determine as priority. Absent any legislative definition of “priority development infrastructure project”, the law constitutes undue delegation of appropriation power to the President.

For the reasons discussed in this subheading, the Supreme Court, in the exercise of its power of judicial review, struck down as unconstitutional the Pork Barrel System comprising of the Congressional and Presidential Porks as provided by the 2013 PDAF Article and the Presidential Decrees providing for the Malampaya and Presidential Social Funds.

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124 Section 8, PD 910
125 Case, pp. 59-60
126 Section 12, PD 1869, as amended by PD 1993
CHAPTER V

JUDICIAL REVIEW: A DEMOCRATIC AND EFFECTIVE CONSTITUTIONAL RIGHTS ENFORCEMENT MECHANISM

A. The Anti-Corruption Agenda and the Effectiveness of Judicial Review

The Philippines is placed 94th with a score of 36 over a perfect score of 100 in Transparency International’s 2013 Corruption Perception Index that ranked 177 countries and territories based on how corrupt their public sector is perceived to be. According to Transparency International, the top performers - the Nordic countries, New Zealand and Singapore - which scored from 91 - 86, all have a high level of transparency in government transactions which ensures accountability and prevent corruption. Huguette Labelle, chair of Transparency International, points out that in general, the “legal loopholes and lack of political will in the government” facilitate domestic corruption. The present case study reveals how the faulty national budget laws paved way for the Pork Barrel System of corruption in the Philippines. The multi-billion peso Pork Barrel Scam that stunned the country in mid-2013 until today is tagged as “the greatest corruption of all” and as “a perfect model of corruption.”

From the discussion of the Pork Barrel System as well as of the Belgica Case in Chapter IV, it is apparent that the system facilitated corruption because under the legal framework, individual legislators and the President fully control the use of public money without proper measures for transparency and accountability in place. In the ordinary political process, there seems to be no way to monitor the use of money because the funds are in lump-sum and post-enactment measures such as determining the amount and the project and/or beneficiary are all under the discretion of the individual politicians. It must be underscored that the purpose of enacting the annual General Appropriations Act is to have a law that will contain in detail the specific projects and programs that will be funded by the government and the amount for each of it. This

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128 Ibid.
129 Ibid.
system of item budgeting which makes the appropriation law transparent, is what the Supreme Court noted as absent in the Pork Barrel System.

Moreover, since 2006, NGOs were allowed by law to be beneficiaries of the pork funds. The Pork Barrel Scam involves bogus NGOs and ghost projects which were identified by legislators as beneficiaries of their pork funds. In the Senate investigation and from that of the National Bureau of Investigation, whistle blowers revealed that a good number of Senators and House Representatives alike channel their pork funds to NGOs of businesswoman Janet Lim Napoles in exchange for kickbacks. This created a divide in the Senate and proceedings and privilege speeches are used by senators to attack each other and play the blame game. As a consequence, the Senate which has oversight functions that allows it to investigate and summon people and documents in aid of legislation, does not have that full credibility in performing its oversight task. In principle it is supposed to monitor compliance to laws but in light of the Pork Barrel Scam, the Senate is ironically investigating itself.

The anti-corruption agenda of abolishing the pork system of corruption proved to be a unique experience because resorts to the political branches appear difficult and inutile because the legislative and executive departments are involved in the corruption. There are also allegations that pork funds are used by politicians to fund their election campaign. It must be emphasized that over-spending and vote-buying are rampant in Philippine elections. As Atty. Alcantara puts it, “Most politicians in the Philippines are part of political dynasties that perpetuate themselves through the pork barrel system. They cannot be expected to fight for the abolition of the very source of funds needed for their existence and survival.” This sheds light on another problem in Philippine politics – the existence of political dynasties. It is common in the Philippines for elite families to dominate both the legislative and executive arms of the government such as having a family member as a mayor or governor with relatives by consanguinity and affinity sitting in Congress or local legislative bodies. Thus, the political branches in the Philippines are dominated by political dynasties. Furthermore, the concept of political parties in the Philippines is blurred by the fact that politicians are political butterflies who switch parties freely. Hence, the political parties in the Philippines are not rooted on ideology and platforms but are mere vehicles for politicians to advance their interest of staying in power.
In the background of the study, we asked what can society resort to when the ordinary political institutions supposed to create and implement laws and policies against corruption are unavailable to advance society’s anti-corruption agenda. The case study shows that in the Philippine experience, citizens resorted to social movements and judicial review as means to combat the pork system of corruption.

In a democracy like the Philippines, there are various ways by which society propose, influence, and oppose government policies and practices in the hope to effect social change. In the case study, the social change desired is to ultimately reform the faulty budget laws into one that is characterized by transparency and accountability. Since democracy is understood as a rule of the people, political rights and public engagement are fundamental such that the systems of election, lobbying, and social movements are perceived as democratic resorts to reform government and society. Democratic states have a system of election wherein the people, if dissatisfied with the current administration, can opt to elect alternative parties or candidates to control the direction of that the country is taking. Lobbying or agitation is also a means for society to influence state policies by pushing for laws that will advance particular interests, or to pressure politicians into favoring or opposing at the table for deliberation, or altering or repealing operative laws. Social movements are likewise available as a means to stimulate public debate and advance societal interests. These means are also what the popular constitutionalists deem as the proper mechanisms to enforce or change the constitution. They claim that the people by themselves and through their representatives in the political branches are the best to interpret and enforce the constitution. Hence, their argument that judicial review is anti-democratic because it is not a popular mechanism but one that allows for judicial supremacy in lieu of constitutional supremacy.

In the case study, however, the popular mechanisms advanced by popular constitutionalists prove to be ineffective in the given anti-corruption agenda. The goal of eliminating the Pork Barrel System can be hardly fulfilled through elections. First of all, the upcoming general election in the Philippines is not until May 2016. Second, there is no guarantee that the electorate would vote against corrupt politicians considering the problems of political dynasties, political butterflies and election frauds that mark Philippine politics. As for legislative agitation, this can also hardly satisfy the anti-corruption agenda at hand because of the deepened loss of confidence in Congress brought about by the pork scandal.
It is apparent in the case study that the striking down of the pork laws is an immediate agenda against corruption. By constitutional set up, there are only two ways to alter laws – through Congress and the Supreme Court. In the middle of all the public outrage when the pork scandal came out, the Executive, through the President made a declaration of the abolition of PDAF.\footnote{President Benigno Aquino, Jr.’s statement on the abolition of PDAF URL = <http://www.gov.ph/2013/08/23/english-statement-of-president-aquino-on-the-abolition-of-pdaf-august-23-2013/> Accessed May 12, 2014.} But in the same declaration, the President made a statement that Congressional Pork was established for a worthy goal which is to enable legislators to identify projects for communities the local governments cannot afford. The declaration by President Aquino is intriguing in three respects. First, he defended the concept of pork barrel in the same declaration that was aimed to abolish PDAF. Second, his declaration was only for the purpose of abolishing Congressional Pork, and silent as to the Presidential Pork. Third and most important of all, by constitutional design, the President has no power to abolish a law as this power is vested in Congress by repealing and amending laws and in the Supreme Court by declaring laws unconstitutional in its exercise of the power of judicial review. Given these alternatives, as in the case study, it shows that as expected, Congress did not repeal nor amend the Pork Barrel laws. But the case study is an empirical account of the other alternative which is the Supreme Court declaration of the Pork Barrel laws as unconstitutional. Atty. Alcantara explains that “Judicial review is the most effective and only authoritative means by which an issue of national significance can be settled with finality.”\footnote{Alcantara Interview, Response to Question No. 2} Indeed, the Belgica decision, by force of law, made Pork Barrel System a mistake of the past and ensures that in the future, no similar law and practices can be made and done by the government.

Moreover, the case study illustrates the rise and power of civil society in the Philippines. Tocqueville perceives civil society as a way to limit the potential for despotism of an absolute state.\footnote{Elliot, Carolyn M. (2003) “Civil Society and Democracy A Comparative Review Essay” in Civil Society and Democracy A Reader (United Kingdom: Oxford University Press) p. 5} For him, civil society as “intermediary associations” play a dual role for having a life in society outside the political structure, but at the same time significant constituents of the political system by which they are able to disperse power and provide a basis for representation of social diversity.\footnote{Ibid.} The massive success of the Million People March and of the subsequent judicial review petition against the Pork Barrel System are manifestations of the power of civil society to
reform the government that is otherwise difficult to attain through elections and lobbying. The Supreme Court decision declaring the pork barrel system unconstitutional is truly a victory for the Filipinos as Atty. Alcantara emphasized. But he also notes that “the fight does not end there.” He adds that “What is needed is eternal vigilance for attempts to circumvent the decision will certainly be made by those who stand to lose by reason of the abolition thereof.”

The preceding discussion shows how judicial review is a possible and adequate constitutional rights mechanism in view of the anti-corruption agenda of eliminating Pork Barrel in the Philippines. The succeeding discussion will then illustrate how judicial review is not only the effective resort but that it is also a democratic or popular mechanism to enforce the constitution as evidenced by the empirical case study.

B. Judicial Review as a Democratic Process and a Constitutional Dialogue

The case study reveals that judicial review has a democratic process and that it facilitates a constitutional dialogue. It is so because the Court serves as a forum for all parties – the people, the political branches, experts, and the Courts – to engage in a dialogue in the framework of constitutional law and guided by a judicial process that is marked by due process, transparency, and rationality. In the institutional case for judicial review, Siegel argues that judicial review possesses institutional characteristics inherent in judicial processes that make it the superior instrument to enforce the constitution. These characteristics are manifest in the Belgica case. The discussion of the Petition (IV.B.1.) and the Decision (IV.B.2.) illustrates the different processes involved in the institution of judicial review. First, it starts with the filing of a Petition by any citizen. This right to petition bolsters the constitutional political rights of citizens to petition the government for redress of grievances. The filing of the Alcantara, Belgica, and Villegas petitions did not merely represent the interests of the individual petitioners nor of their respective organizations, but reflected the interest of sectors of, if not all of Philippine society. As argued by Atty. Alcantara, the petition is in the nature of a tax payer suit, and therefore through the petitions, the interest of all Filipino tax payers is represented as against the Pork Barrel System and its consequences in political corruption. This empirical account supports Seigel’s claim that judicial review as an institution is “individually engageable” because the right

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136 Alcantara Interview, Response to Question No. 5
137 Supra Note 61. See III.B. Theories of Judicial Review, pp. 20 - 21
to petition belongs to any citizen; and “non-majoritarian” since the petitioner/s need not attract support for the petition to prosper.

Second, the public respondents are then given the opportunity to Answer or respond to the petition and justify why the assailed government acts must not be disturbed. After which (Third) the petitioners can rebut in the form of a Reply. In both occasions the parties are provided the chance to engage in a debate and as a consequence, the arguments presented enable the Court to clarify and narrow down the issues to be resolved in the case. This inherent process of exchange in judicial proceedings facilitates in ensuring that the exercise of judicial review will only be committed to resolving constitutional questions and not political ones. Fourth, the case is also set for Oral Arguments where the parties and other invited experts are present to defend their respective positions in front of the full Supreme Court. All these procedures assure that judicial review is deliberative and with respect for due process which result in a “focused” and issue-specific case. This then ensures that political questions are untouched and only the constitutionality of a very specific act or statute will be subjected to judicial scrutiny. This addresses the concern of critics of judicial review that it is an encroachment on the exercise of the political branches of their respective functions, hence counter-democracy. The Belgica case serves as an illustration that judicial review does not thwart the will of the people by the court’s judgment. Instead, the court served as a venue for the people’s grievance to be heard and a forum for a constitutional dialogue among the people through the petitioners, and the branches of the government. As Hamilton appropriately termed it, the court is an “intermediate body” between the people and their representatives to ensure that the long-term societal values enshrined in the constitution will prevail over the impulses of the people’s agents in the government. Additionally, the Oral Proceedings are conducted in an open court, meaning open for public, hence, a transparent proceeding. In the present case, it was even televised.

Fifth, after deliberation on the merits of the case, the court releases a Written Decision. The written decision is mandatory in judicial proceedings, without which, a case is not considered to have taken place and no ruling is binding. The decision contains a detailed narration of the facts and procedural precedents of the case, the issues before the court, the ratio decidendi or the reason for the decision, and finally the judgment or ruling on the petition. This marks the transparent characteristic of judicial review because the decision is founded on legal arguments that are exhaustively contained in the written decision. This then addresses the
concern of judicial review critics who fear the arbitrariness of judges in replacing the people’s representatives’ judgment with theirs. In the Belgica decision, the Court carefully identified the procedural and substantive issues and gave a full legal explanation on their ruling in every issue. Moreover, written decisions are published and available for the public reading and scrutiny.

Judicial review scholar Seidman refers to judicial review as a society-wide constitutional dialogue. Indeed, in the case study, the matter is of transcendental importance that the Court acknowledged the interest of every Filipino citizen in its taking cognizance of the case. Aware of the direct effect of the misuse and illegal use of public funds, the Court disposed of the case within four months. Throughout the hearing of the case, the public are freely informed of the developments and even the contents of the case and of the different perspectives involved. In the Philippines, judicial review cases are with strong public engagement because of the attention the media place on it. The Belgica case along with its contemporary judicial review cases on the Reproductive Health Bill and the Anti-Cyber Crime Law, are among the most highly publicized judicial review cases in the country. The strong public opinion and particularly in the Belgica case, the strong public outrage, put pressure on the legislative and executive personalities to explain to the public their position as regards the propriety of pork barrel. Moreover, civil society through various NGOs and activist groups and individuals became more engaged by accessing public documents available involved in pork barrel system, and publicizing and scrutinizing the same. Expert opinions are also heard through television interviews and print news articles.

Furthermore, even after the decision in the Belgica case has been made, the debate goes on as reflections and deliberations on the current budget laws are made. Thus, the judgment of the Supreme Court is a mere declaration that the Pork Barrel practices are unconstitutional and the laws allowing it are no longer operative as of the date of the decision. It is a declaration based on legal arguments and upon the initiative of the citizens through the petition for judicial review. Assailants of judicial review view the finality of constitutional courts’ decisions as anti-democratic because the judgment is rendered by unelected judges. The Belgica case, however, is an illustration that the Court’s ruling, while with legal force, is not truly the final word on the contested question of the national budget law or policy. In fact, the decision stimulated further debate for the policy-makers and all stake-holders to correct the faulty budget laws within the

138 Supra Note 54
framework of the constitution. It is in this sense that judicial review serves a legitimating agent. By striking down unconstitutional laws, the Court protects the people from illegitimate laws and in the process, assists the representative branches of the government in their policies and decision-making, hence, ultimately enforces the people’s constitution.
CHAPTER VI

CONCLUSION

Although judicial review is assailed for being counter-majoritarian, hence, anti-democratic, the case study revealed that it is an effective constitutional rights mechanism in situations where the political branches of the government are unavailable to effect social change or to advance a societal interest. Political corruption through by the Pork Barrel System was made possible by the laws that provided individual politicians - legislators and the President – pork barrel funds and authority to perform post-enactment roles in the government budgeting endeavor. The Philippine Constitution specifically mandates Congress to enact the annual General Appropriations Act, the idea of which is to itemize government expenditure including its amount and fund source in order to ensure transparency and accountability in the use of the public treasury. However, these objectives are defeated because pork barrel funds are in lump sum and politicians have unbridled discretion in determining the amount, and the projects, programs, and beneficiaries of their pork funds. Instead of accountability, the system promotes impunity for corrupt officials in breach of the principle that public office is a public trust. While pork barrel has a noble purpose – to fund priority (i.e. immediate) development programs – the system has been misused and abused by politicians as exposed in the pork barrel scam. It was reported that the Filipino people was defrauded of billions of pesos in the course of the scam as ghost projects and bogus NGOs were identified by politicians as beneficiaries of their pork funds to gain kickbacks. Public money, which is supposed to be spent for public use and purposes, is put to waste benefitting greedy politicians and their co-conspirators.

Corruption and human rights are inseparable concepts. Particularly, political corruption impedes human rights realization and fulfillment since it is done through the manipulation of policies and government institutions. The people’s representatives in the government are the very perpetrators, making it difficult for the people to enforce their rights through ordinary political processes like election and lobbying. While social movements like the Million People March were resorted to in anti-corruption agenda of eliminating the Pork Barrel System, it also proved to have limited reach. Meanwhile, through the petition for judicial review, the third branch of the government was able to scrutinize specific laws and acts of the two other branches. In the case study, the Philippine Supreme Court made an affirmative ruling over the petition and rendered an
authoritative and legally binding declaration abolishing the Pork Barrel System. The decision is anchored on the assessment that the assailed laws are contrary to the constitutional precepts of separation of powers, non-delegability of legislative power, checks and balances, accountability, and autonomy of local governments. The Supreme Court decision not only abolished the Pork Barrel System, it also ensures that no similar law or practice can be made or done without the label of unconstitutionality. The Philippine experience contributes to our understanding of judicial review and its potential role as change agent and rights enforcement mechanism. From a human rights perspective, therefore, judicial review must be strengthened as an institution as it can be a possible and adequate mechanism to protect constitutional and human rights when the similar predicament of unavailable resort to political branches is encountered.
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APPENDIX
Mabuhay!

Thank you for your willingness to participate as a resource person for my research. I am a candidate for a degree in Master of Arts in Human Rights and am currently working on a thesis that aims to investigate the role of judicial review in advancing the anti-corruption agenda in the Philippines, particularly in the "pork barrel case" that involves the two other branches of the government as culprits. Being one of the petitioners in the recently decided *Belgica et. al. vs Executive Secretary*, your insight is a valuable contribution to my research endeavor. Attached is a questionnaire composed of five essay questions.

Thank you very much and more power to you and your advocacy.

Respectfully,

Karen Rodrigo
Q U E S T I O N N A I R E

(Please state if you would like to be anonymous. This means your name will not appear on the research and will be referred to as ‘petitioner’.)

1. What was the motivation behind or the interest you represent in the filing of the petition? What specific immediate and long-term goals did/do you want to achieve?

The petition, in the nature of a taxpayer’s suit, was grounded on the following:

The pork barrel system allows the perversion by congress of the constitutional power of taxation by providing opportunities for lawmakers to gorge themselves in funds collected pursuant to tax legislation they enacted purportedly for the public good.

The pork barrel makes a mockery of the constitutional mandate on accountability, honesty and integrity of public officers.

The pork barrel system renders useless the constitutional principle on separation of powers as it enables the executive to allow or not allow release of pork to the lawmakers and thereby control the latter.

The pork barrel system abets and perpetuates political dynasties.

2. What is the significance of judicial review in the attainment of your goals? Aside from judicial review, what do you consider as other means that you could have resorted to?

Judicial review is the most effective and only authoritative means by which an issue of national significance can be settled with finality. Aside from judicial review, resort to public opinion is the ultimate means to attain our goals.
3. What is your opinion of popular mechanisms such as election and legislative lobbying as means to fight the Pork Barrel System in the Philippines and corruption in general? (In the scholarly debates, critics attack judicial review for being inconsistent to representative democracy because unelected judges have the power to strike down acts of the popularly elected politicians. These critics suggest popular mechanisms such as election and legislative lobbying as means to enforce the constitution.)

Election and legislative lobbying cannot be effective means to fight the pork barrel system and corruption in the Philippines. Most politicians in the Philippines are part of political dynasties that perpetuate themselves through the pork barrel system. They cannot be expected to fight for the abolition of the very source of funds needed for their existence and survival.

4. What effect, if any, did the Million People March have in the fight against the Pork Barrel System? Had the mass protest been sufficient in the goal to eliminate the Pork Barrel System granting no judicial review case was filed? Why or why not?

The Million People March galvanized widespread public outrage against the evils of the pork barrel system and forced the Supreme Court to take cognizance of and resolve within four (4) months the petitions to declare the system unconstitutional.

5. What are the effects of the Supreme Court decision in Belgica et. al. vs. Executive Secretary in the anti-corruption agenda in the Philippines? Do these effects correspond to your goals in filing the petition?

The Decision declaring the pork barrel system unconstitutional is a victory for the Filipino taxpayer. But the fight does not end there. What is needed is eternal vigilance. For attempts to circumvent the decision will certainly be made by those who stand to loss by reason of the abolition thereof.