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INTEREST-GROUP COMPETITION, LEGISLATIVE OBSTRUCTION, AND EXECUTIVE POWER

Emmanuel S. de Dios*

1. Introduction

Among the features of Philippine governance that have attracted serious concern has been the perceived inefficiency created by policy-conflicts or disagreements between legislature and executive. Congressional power, it is generally thought, has been excessive, unduly intervening with and indeed distorting initiatives by the executive. Such an assessement agrees with the historical view of the legislature as being particularly susceptible to lobbying by vested interests.

This paper argues, on the other hand, that the legislature's current function owes in fact to its general weakness and even subordination in relation to the executive. The apparent "noise" introduced by legislative intervention manifests the marginalization of localist interests and the legislature's inability to internalize a national agenda. Marginalization results in a situation where the legislature may find it in its interest to play a nuisance role. This has implications for the redesign of institutions, as is currently being considered in proposals to amend the constitution. This paper uses some concepts from game theory to explain some of the relationships existing between executive and legislative branches, as well as those within congress itself.

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* Professor, University of the Philippines School of Economics. Thanks are due Dr. Jose Edgardo Campos and Professor Temario Rivera for helpful comments on an earlier draft and to Prof. Hadi Esfahani who collaborated on a related theme (de Dios and Esfahani 1998). Remaining errors are the author's own responsibility.

2. Particularism

It is a long-standing observation that Philippine politics has tended to be dominated by the expression of particularist interests, that is, the decisions and outcomes reached within the political system are based not on any fair or rational balancing of competing social objectives, but are dominated by narrow group interests. At bottom, therefore, such observations are equivalent to the layperson's cruder assessment that the state has been captured by vested interests, or the denial that the country's political system is "truly representative" of the people's will.

Several authors have noted the remarkable continuity of this feature of Philippine political economy (e.g., Wurfel, 1970 and Doronila, 1992) and its deleterious effects on the quality of economic and political decision-making. The source of such particularist interests has been the subject of a good deal of analysis, from their characterization as an offshoot of "patron-client relations" and traditional landholding relations (Lande, 1965), to "bossism" (Sidel, 1995). Most discussion, however, has revolved around the social basis of such relations, especially the extent to which they were or still are identified with such particular economic relationships as agricultural landlord-tenant relations or political clans, the general inequality of wealth distribution, underdevelopment in general, or whether they have evolved into more sociologically neutral forms, such as plain money politics.[1] While such discussions are undoubtedly important, the ultimate sociological or economic foundations of particularism are beyond this paper's scope. Instead, its main concern is the narrower question of how, assuming a context of particularism, narrow-group interests are expressed in the formal processes of political decision-making. In particular, it is concerned with describing the role played by the legislature in the lobbying process.

Regardless of the origins and basis of particularism, however, views regarding the role of narrow-group interests

[1] See, e.g., Rivera (1995), Lacaba (1995), and McCoy (1993). Elsewhere, (de Dios, 1999) I have questioned the idea that the dominance of particularism is still a relevant model and sought to show that evolutionary processes have been at work to change it.

have also changed gradually. An earlier tradition tended to analyze Philippine politics — especially that prevailing before martial law — as the alternation in power of well-defined elite groups which may be based on political clans and kinship (e.g., Lande, 1969; Wurfel, 1988). The critique of particularism in this respect was based on the assessment that political institutions without exception were captured by narrow interest groups, as represented by varying elite factions, but not differing in the quality of interests they represent. Since state-capture is understood as being more or less total, then prescriptions for altering the situation have tended to be radical, being found in thoroughgoing changes in the bases of particularism, e.g., the basis of clans, concentrated landholding, the distribution of wealth, and so on.[2]

More recent approaches, however, have shown greater sensitivity to a differentiation of institutions based on their susceptibility to particularist lobbying. Part of this is an offshoot of the martial law experience and thereafter, which suggested that the state, and particularly the executive, could possess a sufficient degree of autonomy with respect to elite-interest groups and articulate a distinct agenda of its own. The other impulse for this type of thinking has been the work of authors such as Peter Evans and others who, in analyzing the authoritarian politics of some successfully industrialising Asian countries, found value in the "embedded autonomy" of such regimes from elite interests, which permitted social and economic reforms to be carried out. This has led indirectly to the rediscovery of an observation as old as Hegel and Marx [(1843)1975], which implicates the legislative more than the executive in the representation and implementation of narrow group interests. By contrast, a higher potential is imputed to the executive, particularly the bureaucracy, to internalize system-goals and -needs.[3] Such considerations have re-enforced the popular perception of the legislature as the haven of traditional politicians (*trapos*), contributing to the low public regard for it.

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[2] Even as Lande's observations on patron-client relations was accepted as a starting point for later literature which took on a more radical bent, Lande himself thought that the particularism represented by patron-client relations could also be of a more benevolent and stabilising quality.

[3] In particular, Hutchcroft (1998), proceeding from Weber, has argued that the absence of a strong bureaucracy is a major reason for the dominance of particularism in Philippine politics.

3. Instances of Legislative Obstruction

The current perception that the legislature has actually played a largely obstructionist role in policymaking has been shaped by instances in which legislative intervention has either delayed or substantially modified executive initiatives, for the better or for the worse.

The reform of the country's trade regime through the revision of tariffs provides one example. In the late 1980s and early 1990s, tariff reforms were in the balance owing to congressional intervention. During the term of President Aquino in 1990, an executive order (EO 413) was issued reducing the number of tariff levels from seven to four and narrowing their dispersion from 0-50 to 3-30 percent as part of the administration's liberalization strategy. The wide coverage of the reforms affected sensitive industries such as appliances, food processing, textiles, and packaging. Lobbying against the changes from affected businesses took many forms, with the main complaint that the reforms were drafted without sufficient consultation. As a result, the implementation of the executive order was suspended. Instead, a joint executive-legislative committee was formed to draft a new proposal. The committee's discussions were not made public. The resulting new EO 470, issued a year later by the executive, kept the peak tariff rate of 50 and reserved this for selected lines where significant domestic production existed (Gochoco-Bautista and Faustino, 1994:29-30). Significantly, the business sector's complaint over the lack of consultation was apparently met by the executive's concession to include Congress in the process of designing a new executive order. It is not far fetched to believe that lobbying by the business sector was coursed through the subsequent participation of the legislature in the process.[4]

The representation of small-group interests need not be written expressly into the law. It may suffice at times to allow

[4] I am grateful to Dr. Emmanuel Velasco of the Tariff Commission for pointing out the absence of congressional involvement in the process of negotiations for concessions under the ASEAN Free Trade Area. This fact itself is also interesting, however, since by a fluke, AFTA was concluded not as a treaty — which would have required Senate approval — but as an expansion of an earlier executive agreement, the earlier ASEAN Preferential Trading Arrangement.

a certain vagueness or arbitrariness in the law which preserves options for further lobbying. Hence, for example, the change in the basis of tariff assessment from "home consumption value", based on collected statistics in the source countries, to actual transactions value has long been part of a liberalisation agenda.[5] The law that was ultimately supposed to have accomplished this, however, continued to require that the assessment be based on a list of "published values" by the Bureau of Customs, thus nullifying the attempt to limit discretion. This ambiguity also has the effect of merely shifting the focus of lobbying from the Congress to the Bureau of Customs.

Taxation is another area that has turned up conflicts into interbranch conflicts. A classic example of policy gridlock, this time involving all three branches of government, was the passage of the law expanding the coverage of the expanded value-added tax (EVAT) in 1994. Certified by the executive, the measure had actually cleared congress, both houses of which were dominated by the ruling coalition, although opposition ran across party lines. In the end, however, members of congress on the losing side filed a case before the Supreme Court which duly issued an order restraining the implementation of the law. While the high court ultimately cleared the law, the hiatus caused a significant amount of uncertainty and produced a spectacle of all three branches of government seemingly working at cross purposes. The expedient among lawmakers of involving the courts is by no means infrequent. The debate on the ratification of the treaty of accession to the World Trade Organization provides another example: having lost a collegial vote, senators opposed to the treaty took the matter to the Supreme Court.

Another tax issue where congressional intervention was crucial was the long-drawn out reform of the taxation of beer and cigarettes. The department of finance, leading a tax task force, had proposed to shift from an *ad valorem* to a specific excise tax in order to plug a loophole for transfer pricing which was estimated to have resulted in huge revenue losses

[5] Let P be the actual landed cost of an imported good. Then its tariff-inclusive domestic price $p = (1 + t)P$, where t is the relevant tariff. However, if the basis of tariff assessment is not the transaction value P but some officially stipulated price P', such as "home consumption value", then the domestic price is $p' = P + tP'$. The tariff equivalent is then $t' = tk$, where $k = (P'/P)$. It is evident that $t' > t$ whenever $P' > P$, as is usually the case.

The measure, again certified by President Ramos, was thought to affect practices of the country's largest cigarette manufacturer and second-largest beer brewer (both owned by the same interests). As might be expected, the measure made only slow progress in the relevant committees of the congress, especially the house, and was passed with great delay and only with extreme persuasive efforts on the part of the executive branch.

On the side of expenditure, the annual *budget process* is the most cited example of legislative "distortion" or "obstruction" of executive priorities (e.g., Gutierrez, 1998). Until recently, congress creatively interpreted the constitutional provision preventing it from increasing "the appropriations recommended by the President for the operation of the government as specified in the budget."[6] This was routinely done through an interpretation of the prohibition as one against changing the *total* budget, and second by the expedient of slashing the automatic appropriations for debt. This allowed congress to claim to "save" portions of the budget, which it could then reallocate to the projects favored by its members, especially lump sum appropriations or "pork-barrel."[7] As a result, priorities may differ significantly from those the executive branch proposes.

The great leeway allowed legislators in identifying projects for their constituencies has not disappeared, notwithstanding the Estrada administration's earlier commitment to do away with the "pork barrel" system. Under the current system, members of congress may conceal "their" appropriations in the budgets of certain government agencies (e.g., the Department of Public Works), with the release of funds and even choice of projects being influenced by them. While the choice of projects to be financed by an appropriation at least ought in principle to be predetermined, even this may be altered through the expedient of making "realignments". Hence the element of discretion and flexibility inherent in a pork barrel system is maintained. We shall explain the resiliency of such a system further below.

The examples cited thus far pertain to areas in which legislature and executive appear to have joint or overlapping

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[6] Art VI, Sec. 25(1).

[7] For an extended discussion, see de Dios, 1999.

mandates. Congressional intervention can nonetheless extend in practice beyond such areas owing to the use of legislative's subpoena powers for the conduct of congressional inquiries or investigations. The function has almost unlimited applicability, since the investigation of virtually any issue can — with a sufficient stretch of imagination — be justified as being "in aid of legislation". Subjects for investigations and inquiries are typically awards and contracts concluded by executive agencies. The occasion for such inquiries has become more frequent with the pronounced privatization and deregulation thrust of various administrations since 1986. The increasing participation now allowed the private sector in the provision of infrastructure and other services (e.g., through build-transfer schemes) and the drive to privatize significant public assets present perceived opportunities for graft, or some other form of abuse of discretion. Rightly or not, therefore, such circumstances provide sufficient public justification for congressional intervention. House or senate inquiries have included projects dealing with asset sales (e.g., the PEA-AMARI deal), build-and-transfer projects (e.g., Caliraya-Botocan-Kalayaan power project), as well as regular purchases by line agencies (e.g., health department contracts on ferrosulfates, generic drugs, and so on).

Exposure by media, public controversy, possible court suits, as well as the legislature's influence on government agencies through the budget or through appointments, are the credible threats behind the power of inquiry that give it sufficient clout for the executive to take these seriously. When applied to proposed or existing projects, the effect of intervention is almost always to modify, delay, or even cancel proposed initiatives. The conclusion is almost inevitable that there is always some real cost involved.

While the permeability of congress to small-group lobbying tends to be understood as applying mainly to business or commercial issues, it is not restricted to this. Ideological and other lobbies may at times also play a disproportionate role with causes ranging from the profane to the sublime. Hence for example, the exemption of the show business actors and actresses from the value-added tax was justified as part of "freedom of expression", but was undoubtedly due to the presence of media and show-business personalities in congress. On the other extreme, the Catholic Church hierarchy has for a

long time succeeded in preventing efforts on the part of the Department of Health to allocate specific amounts for contraception in the government budget, a precarious situation considering the imminent withdrawal of foreign agencies from the provision of contraceptives.

In principle, congressional exposés and inquiries contribute to transparency and accountability, an important check to possible abuses of authority or acts of corruption by the executive branch. A less generous view, however, would observe that these also provide means for congress to share in rents and bribes and refocus lobbying from the executive to the legislature. This latter interpretation is bolstered by the poor record of inquiries in achieving clear resolutions of cases — not to mention the low rate at which those they indict are finally convicted.

4. Overlapping Mandates

The above examples describe the formal mechanisms for the occurrence of excessive congressional intervention. The implicit critique underlying this situation is based on overlapping mandates, in which the approval of two or more self-seeking entities is required for a project to push through, are well understood. Shleifer and Vishny (1993) argue in a well-known article (which makes explicit reference to the Philippines) that where agencies provide complementary services — such as when their concurrence is required to secure a licence or a franchise — their attempt to maximize revenues independently results in higher bribes and lower levels of service than if bribery were centralized. The reason is that independent monopolists fail to take account of what their counterparts do.

As Bardhan (1997) points out, moreover, this situation is worsened by "free entry", when other agents are not prevented from setting up additional regulations beyond those originally anticipated. Thus, when an investor has paid off certain key people, others suddenly emerge who also need to be rewarded. This is reminiscent of the anecdotal "AC-DC" modus operandi[8]

[8] The acronym AC-DC means "attack and collect, defend and collect" and refers to the alleged possibility of extorting bribes from project proponents by alternately opposing and supporting such projects.

practised by some legislators. Congressional investigations, privilege speeches and exposés that get press coverage, or legal suits are possible means by which congress may involve itself in executive decisions. While all are legitimate means of ensuring transparency and accountability, they also create openings for extracting bribes, if so desired. Because the total bribe that needs to be paid cannot be easily calculated, fundamental investment uncertainty is the result. Ultimately, higher political bribes per unit discourage investment, providing another channel for institutions to affect economic growth. The corollary, it has been pointed out (Campos, 1998) is that it is not simply and perhaps not even mainly the level of bribes that matters but their predictability.[9]

While difficult to measure, the qualitative economic effects of overlapping mandates are in principle well defined. In the broadest sense, they affect the level and direction of both public and private investment. From a purely economic viewpoint, the level of investment is affected by a high degree of uncertainty over the amounts to be paid, which are also probably higher than if corruption were monopolized, or it were completely decentralized. As a result, investment is lower than it would have been. The direction of investment is also affected, however: the investments that are likely to be implemented with bribery are likely to be different from those without, since the willingness of project proponents to participate in corruption is only imperfectly mapped onto the true social value of the projects they represent.

5. Congressional Weakness Relative to the Executive

While some aspects of the foregoing analysis are undoubtedly relevant to the Philippines, its applicability needs to be subtly qualified by the observation that the balance of power has been with the executive since 1986, especially so. The effect of this has actually been to reduce the blocking power of the legislature.

[9] These losses due to uncertainty are distinct and apart from classical losses occasioned by rent-seeking itself (e.g., Krueger, 1974; and Findlay and Wellisz, 1982), namely the losses in output due to the allocation of already-existing resources to lobbying activities, rather than to production itself.

The instances mentioned earlier have tended to be viewed as reflecting an overexpansion and misuse of congressional prerogatives. Examined more closely, however, they actually reveal congressional weakness and marginalization more than anything else. In all of the recent examples cited, it is significant to note that the "gridlock" or modification of executive prerogatives occurs precisely *after* congress has lost its power. In the case of tariffs, the participation of congress was based on its having the main responsibility of adjusting tariffs under the Tariff and Customs Code. In practice, however, most major tariff adjustments since 1987 have been initiated by the executive under a provision that allows the President to set tariff rates when congress is not in session. What would otherwise be a principal mandate of congress has, however, been effectively transferred to the executive, owing to an exceptional clause in the law.

On the other hand, taxation is conceded to be primarily a prerogative of congress. Again in practice, however, most tax initiatives tend to originate from the executive. The EVAT controversy, it will be recalled, occurred *after* the executive's plans had been carried through, and the obstruction was due not only to disgrunted members of congress, who resorted to the court

Finally, with respect to the budget process — which one would think was an area where congressional power was supreme — a number of presidential prerogatives effectively nullify congress's initiatives. First, the constitution gives the president "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 item to which he does not object."[10] Legal commentators (e.g. Nolledo, 1996) point out that the present constitution — like Marcos's 1973 constitution but unlike that of 1935 — removes congress's power to override the president's *partial* veto, although there is a procedure for overriding the veto of a particular bill.

Second, the President may impose special provisions in the disbursement of funds. This includes, among others, the requirement of the maintenance of budgetary reserves, which are typically imposed on agencies across the board, but may

[10] Art. VI, Sec. 27(1).

then be relaxed on a case-to-case basis, allowing a good deal of discretion. Rules on disbursement by the Department of Budget and Management also apply to legislators' pork-barrel funds,[11] enhancing the executive's powers over them. This expedient was utilized especially when the country needed to conform with IMF conditionality. In 1987-88, for example, about a fifth of appropriations were not disbursed, while in 1990-91 it was 16 percent. The practice has not changed significantly even in recent years. It is notable that this discrepancy between obligated and actual amounts became pronounced only after the Marcos period, when implicit executive control over the legislature was no longer possible. The discretion over the timing and amount of budgetary releases, especially for local projects, must be regarded as the single most important source of influence of the executive branch over the legislature at present.

Third, the president's office itself has discretion over large funds, which have been called the "presidential pork barrel". The President is allowed to augment appropriations in some items from savings in others.[12] [(In 1994, for example, the Office of the President alone disposed of over 1.3 percent of the total appropriations.] In addition, special discretionary funds are made available to the President. At other times, lump-sum appropriations may be requested from congress.

Each source of appropriation initiative on the part of congress finds a matching and definitive check on the part of the executive. In practice, therefore, while congress may increase total appropriations and change the priorities proposed by the executive through several expedients, this power is largely diluted. Owing to the executive's prerogatives, budgets as actually disbursed or implemented may differ significantly from the appropriated or "obligated" budget. Combined with the

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[11] The "countrywide development fund" was set up in the budget of 1994 to formalize a previous system that allowed representatives, senators, and the vice-president to identify favored projects up to certain ceilings: Php12 million per representative; Php18 million per senator; and Php20 million for the vice-president. Projects thus selected effectively short-circuit the normal selection and evaluation process.

[12] Art. VI, Sec. 25(5). The same paragraph also allows the house speaker, the senate president, and the chief justice to use savings according to their discretion, but given the much larger amounts appropriated for the president's office, it is clear whose prerogatives are most enhanced.

usual procedure of "deeming re-enacted" a previous year's budget when deadlocks occur (Art. VI, Sec. 25(7)), this gives the executive a powerful leverage against congress, since the previous appropriations would typically contain enough "slack" to permit normal government operations and continued executive discretion. Indeed, the effectiveness of this power is indirectly seen in the very infrequency with which vetos (item or otherwise) are exercised, which is testimony to the infrequent desire among legislators to displease the executive.

More recently, the abdication of congressional power has also become most evident in the practice of delegating the detailed elaboration of laws to the executive. "Implementing rules and regulations" (IRR) are typically drawn up by the executive agencies directly concerned with the implementation of the bills. A number of laws, however, lead to the impression of having been rushed, and fail even to specify the agency responsible for formulating implementing rules and regulations.[13]

The weakness of the congress relative to the executive is due to several factors. Political scientists have long professed to observe the importance of the authoritative leader or headman (hence *pang-ulo*) even in grassroots Philippine culture (Agpalo, 1972), an idea later actively promoted to justify authoritarian structures and processes under the Marcos dictatorship. More proximately, however, notwithstanding the return to democratic institutions and processes, many traditional prerogatives of the presidency under the dictatorship were retained or even expanded in the Constitution. Already discussed above were discretion over budgetary disbursements, disposal over large lump-sum funds, authority to draw up implementing rules and regulations for legislation, and the "line-item" veto.

Another factor is the change from the traditional two-party system to a multiparty system. Article IX (c), Sec. 6 provides for "a free and open party system" and is implemented

[13] A recent minor example of legislative sloppiness is the law on intellectual property rights (RA 8293), which fails to specify whether it is the Department of Trade and Industry's intellectual property office or the National Library that should formulate the IRRs. The same law also requires additional copies of every domestically published book to be deposited with the Supreme Court library aside from the National Library, clearly an unnecessary requirement, since the Supreme Court had initially only requested to be made the repository of legal books. I owe these observations to Ms. Loreli Cataylo-Dios and Atty. Vyva Aguirre.

through election rules permitting the representation of such parties in the processes of voters' registration, election inspection, and canvassing. The previous two-party system represented a predictable process of turnover for elite factions. While the phenomenon of turncoatism in favor of the party in power existed,[14] a minimal level of allegiance to the two major political parties remained, with one always maintaining a significant opposition— maintained by the prospect of contesting the next elections.[15] This state of affairs resulted in a certain independence of the congress from the executive.

The current multiparty system dilutes the potency of the legislature as an independent body. Compared to the old two-party system, the present large number of political parties raises the transactions costs of forming stable coalitions, and provides the opportunity for the executive to exert external influence — through the selective distribution of political largesse — and tilt the process of coalition-formation in its favor. The regime of all the three post-dictatorship Presidents were notably accompanied by the great instability of party-formations after the elections, and the formation of broad coalitions to support the incumbent executive, notably in the lower house, where local political interests are most represented.[16]

Even measures meant to weaken executive power can ironically had the effect of strengthening it. The prohibition on the President's re-election (Article VII, Sec. 4), for example, together with additional safeguards against the declaration of martial law, was meant to preclude attempts of term-extension, a precaution against the experience under martial law. On the other hand, an important source of congress's influence vis-à-vis the President was the need for local support for re-election. Reducing the presidency to a single term undercuts the basis

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[14] The 1987 Constitution removed a prohibition on turncoatism that was originally part of the 1973 Constitution.

[15] An economic analysis of the dynamics between the party in power and that in opposition is unfortunately beyond the scope of this paper. Clearly, however, there are circumstances when future electoral prospects confer some benefits to a party in opposition, which justify its refusal to participate in the short-term division of spoils available from collaborating with the party in power.

[16] These were the Laban ng Demokratikong Pilipino, the Lakas-NUCD, and, most recently, the Laban ng Masang Pilipino under the Aquino, Ramos, and Estrada presidencies.

of a good deal of congressional bargaining power. With the President's six-year term spanning the shorter terms (three years) of representatives and senators, moreover, it is the members of congress seeking re-election that tend to become beholden to executive favors and endorsement.

The President's election for a fixed term without re-election makes policy positions emanating from that office, less in principle, vulnerable to pressure-group politics. The national scope of the electorate and broad powers attending the office also permit the office-holder to mix agenda and engage in tradeoffs between different issues for different constituencies. By contrast, legislators typically run for office successively, either for re-election to the same office or for other offices and are therefore more concerned with not antagonizing important lobbies. The fact that lower-house representatives, in particular, are elected by smaller constituencies with primarily local concerns virtually implies that their interest for national issues is likely to be limited, except to the extent that the persons concerned have ambitions of rising to national prominence. Even at their most earnest moments, representatives state their primary aim as "bringing something back" to their local constituency. The incentive is small for such political actors to risk their fortunes over potentially controversial national issues whose immediate payoffs in terms of local politics are either nonexistent or uncertain.[17]

6. The Supply of Accommodation

The framework of relations between executive and congress therefore cannot be readily characterized as one between equals, but one where congress is by and large reactive and subordinate. We have contrasted with the reading that suggested that the relationship was similar to one between bilateral monopolists. A further point we now note is that the supply of accommodation — that is, the receptiveness to lobbying efforts — on the part of legislators is marked by competition and largely free entry. While a degree of hierarchy

[17] An example of this is the population issue, where the executive has been less impered in voicing its views than are local representatives, for fear of retaliation from e Catholic Church.

and mutual deference undoubtedly exists among legislators (e.g., due to seniority or charship of important committees), it is still more useful to view the relationships in congress as that among equals. One implication, however, is that there are, more often than not, multiple channels for lobbying efforts, so that if one member of congress were to be unreceptive to lobbying efforts, there would be alternatives who are more willing to accommodate lobbying. This is one explanation for the practice of filing multiple versions of bills. Interest groups that are discontented with a current legislative proposal may approach other lawmakers to file a more congenial version. The fact of having filed one version of a bill then gives the legislator the right to participate in and influence the course of discussions of subsequent versions of the bill. The same condition of free entry is likely to be true for congressional intervention in nationally initiated projects, which may be either strongly supported or opposed through investigations or privilege speeches. One prediction from industrial organization is that in activities where free entry is possible, payoffs to lobbying are likely to be low. Indeed, some newspaper reports about alleged payoffs to legislators in exchange for refraining from criticism and investigation of billion-peso projects suggest that the bribe amounts involved could be as low as a hundred-thousand pesos. (This statement must be qualified, of course, to the extent that some legislative functions and processes are not equally accessible to all lawmakers. For example, committee chairs play a large role in reporting out bills or determining the pace of hearings or investigations. It is difficult to confirm, but if bribes were paid at all for such "services", then these would likely be higher.)

Legislative subordination, combined with competition among legislators, also contributes to a situation where accommodative efforts by individuals are "strategic complements", in the sense that greater accomodation by one agent induces correspondingly greater accommodation by others, leading to mutual accommodation.[18] A particular form this

[18] In game theory, strategic complementarity implies that increased activity b some induces correspondingly greater activity by others. More formally, let x_i and x_j, j i. represent the Nash-equilibrium actions of the various agents, then strategic complementarit simply means that $\partial x^*_i / \partial x^*_j > 0$.

takes in the budgetary process is quid pro quo, or classic log-rolling for local projects. Higher budgetary demands by legislators for particular local projects will be typically accommodated, leading to a built-in tendency towards budgetary expansion. The constitutional stricture limiting the legislature's power, as already noted, has not worked owing to the expedient of "congressional initiative allocations" and other types of realignments. Instead, the effective check to budgetary expansion has reposed in the executive, through the system of budget cash releases that can make the obligations budget as approved by congress differ significantly from the expenditure programme actually implemented.[19]

The very system just described, however, makes it irrational for individual legislators to place limits on their demands for allocations. Under resource-rationing, executive discretion is ultimately decisive and individual lawmakers are powerless to affect the final spending programme. It therefore makes little sense on their part to temper their claims; conversely, it is rational to maximize individual claims, whether or not these have good chances of being fulfilled, just as one would wish to collect as many tickets in a lottery as possible. As a result, the gap increases between total congressional demands and the macroeconomically prudent size of the budget. The circle is completed and an equilibrium results, since it is precisely this gap and the resulting resource-rationing that enhances executive discretion and pre-eminence relative to the legislature.

From this vantage, the obstructive or nuisance role congress plays must be seen as a derivative phenomenon, signifying not excess prerogatives but relative marginalization. Whether individually or collectively, lawmakers find it in their interest to encumber executive initiatives whenever by doing so they can either enlarge the share of local versus national public goods, or get a share of the market for lobbying and corruption which the executive might otherwise monopolize — as well as genuinely fulfill their function of safeguarding public interest under the system of checks and balances. (In practice, of course, it is not always easy to distinguish where legitimate

[19] Releases of allocations in the past where under the purview of the department of udget; in recent years, another layer within the executive has been added (the office of the udget and corporate affairs) to review contracts before they can be bid out to contractors.

concerns over public interest ends and where a hold-up situation begins.)

On the other hand, to the extent it is dominant, the executive may win over congressional objections with sufficient effort and pressure. Hence, for example, congressional acquiescence to the passage of national tax laws may be obtained through the promise of additional appropriations, which may be justified as enlarging the share of local public goods. Somewhat less transparently, congressional exposés of or inquiries into corruption in executive-initiated projects could conceivably be stopped if a sufficient portion of bribes were paid to noisy interested parties in the legislature.

7. Relations between Executive and Legislature: Model Games

The foregoing has argued that legislators individually and as a whole are actually weak relative to the executive. In this section, the competing claims of particularism associated with congressional intervention and those of the executive are depicted in game-theoretic terms. In a simple case, suppose the executive and legislators had somewhat divergent interests, with one being concerned with the provision of national public goods and the other with local public goods. Both must agree on which to provide, or they end up with nothing.[20] Hence the payoffs may be depicted as in the following matrix (Figure 1):

The entries (E, L) in the various cells denote the returns to executive and to the legislature, respectively, as the outcome of the vote, with the executive proposing and the legislature approving. The executive benefits more if congress votes for national public goods; legislators benefit more if the president proposes local public goods. Hence, $a > b > 0$ and $B > A > 0$. It will be convenient to interpret the payoffs as shares in the budget, so that $a + A = 1 = b + B$. This situation is in the form of a "battle of the sexes" game characterized by multiple equilibria: either (a,A), (b,B), or a *mixed equilibrium*, which means that each of these entities selects one or the other

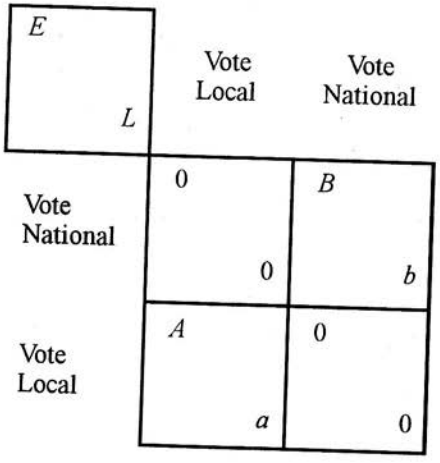
[20] In reality, the alternative is not nothing. Rather the law provides for the automatic reallocation of last year's budget in case no agreement between legislature and executive ensues. As already discussed, this actually gives the President an upper hand.

strategy with some frequency. Without additional assumptions, however, there is no obvious way to select the equilibrium. Indeed, without coordination, even disagreement not even (0,0) may be ruled out (Fudenberg and Tirole, 1993:19).

On the other hand, for any given probability p that the executive proposes a national agenda, congress chooses along with the executive if $pb + (1-p)0 > p0 + (1-p)a$, or $p > a/(a + b)$. The expression on the right *falls* as b increases, that is, *he stakes of the congress in a national* agenda. This simply onfirms the common-sense notion that for any given proposal y the executive, the likelihood of cooperation from congress ncreases as the stakes of congress rises in a national agenda. his is also consistent with the result that the original proposal s "diluted" in some sense. When the situation reappears rough time, it becomes more plausible to consider an equilibrium mixed strategies, with executive and legislature randomizing eir choice of strategies. In this case, it also turns out (see ppendix for a discussion) that the probability of the legislature aying a "national" strategy increases with b, its own stakes such a strategy.

A way of understanding pork barrel politics, therefore, that it selects among multiple equilibria, which implies that it ay serve a stabilizing role. In fact, pork barrel politics may tually serve the aims of the executive and may be tolerated, not actively encouraged. Far from representing excess

Figure 1



legislative prerogatives, the pork barrel signifies congressional weakness and a susceptibility to manipulation by the executive. The consequent regime of over-budgeting *cum* rationing permits the executive to exercise selectivity in the release of funds, thus re-asserting the importance of presidential patronage to individual members of congress. By the same token, of course, it opens the door more widely to possible abuses of power by the executive. An assessment of the extent of current corruption in the Philippines would be anecdotal at best, and is beyond the scope of this paper. It would be a testable proposition of the present hypothesis, nonetheless, that the shift of power in favor of the executive means opportunities for graft also become biased in its favor.

It is possible to depict the executive-legislative relationship even more simply by attributing more power and ominiscience to the executive, reducing it to a case of Stackelberg competition, with the executive branch as the "leader" and the legislature as "follower". The legislature's response is a function of the executive's action (hence reactive), but this is deemed already known to the executive. Hence, the latter pursues its objectives already allowing for and discounting possible actions by the legislature.[21] The closest approximation to this situation will have been the relationship prevailing under the Marcos regime between the executive and the Batasang Pambansa, the quasi-rubber stamp parliament. The actions of the latter were fully discounted by the dictator. The degree of certainty and omniscience depicted in this representation, however, does not appear to reflect current realities. In practice, while presidential influence is great and even dominant, a good deal of uncertainty still attends the relationship. Part of this is due to a "span of control" problem: it is not optimal for the executive always to put presidential prestige on the line on every issue; nor is the pork barrel expedient always available. The influence on the development of issues of other institutions, such as the courts, media, civil society, and so on, are not entirely predictable.

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[21] Let $P(N, L)$ represent the executive's objective as a function of its own action N and the actions of congress L, while $C(L,N)$ shows the objectives of the legislature as depending on its own action L and that of the executive N. For any given N, (e.g., the budget, or a proposal of national projects) the legislature chooses L, to maximize $C(L,N)$, giving L as a function of N, i.e., $L = f(N)$. The executive then chooses N to maximize $P(N, f(N))$.

As a result, the executive does not have its way in all respects and on all occasions. Nonetheless, there is no denying that the dominant element in Philippine politics today is presidential patronage.

It should not be thought that the expedient of presidential patronage has functioned solely to facilitate rent-seeking. It could and has served a development role. Especially during the Ramos administration, congressional votes on crucial national issues were often mobilized by the executive through implicit appeals to forthcoming pork-barrel releases. In what has heretofore been a typical pattern, the House speaker, who is also the leader of the amorphous pro-administration coalition, presides at a closed-door meeting to discuss a vote in frank conjunction with forthcoming political largesse. Prominent examples of successful executive persuasion through this means include the passage of a controversial law expanding the commodity-coverage of the value-added tax and of the downstream oil industry deregulation. This merely shows that the mechanism for patronage can be reoriented to push difficult reforms over particularist objections, and at times even mass protests. From a larger perspective, the emergent relationship between congress and the executive, of which pork-barrel politics is merely a symptom, has allowed the political system to devise a means of cobbling together consensus that would have been unthinkable in the Pre-Martial Law period.

8. Conclusion

Notwithstanding the fact that the existing situation appears — albeit crudely — to overcome some of the worst features of policy gridlock, these arrangements are far from ideal. Large costs are incurred in operating current arrangements, which include the upkeep of a large number of people (lobbyists and the politicians themselves), whose actions and ultimate acquiescence and agreement yield outcomes that are often less than optimal anyway. The all-important aspect that has not been addressed, moreover, is where the interest of the public lies. It is sometimes the implicit judgment, perhaps unjustly, that larger national interest is more likely to be found with the executive. From this view, the passivity and occasional intervention by congress in the initiatives of a strong presidency

represent an otherwise unnecessary obstacle posed by a democratic framework. From this, however, it is only a small step to succumbing to the charm of more authoritarian forms, a temptation that was evident in the various attempts to change the constitution.

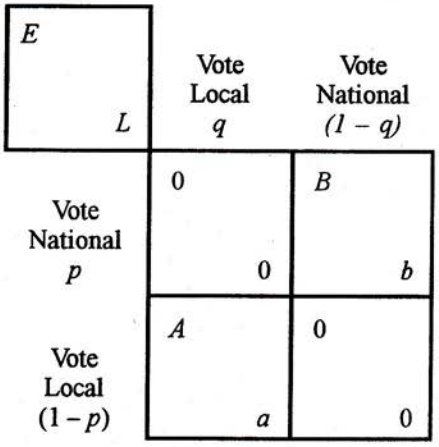
An implicit contention in this paper, however, is that the predominance of interest-group competition and lobbying in congress is itself an endogenous phenomenon. Observed congressional irresponsibility is due to its marginalization and effective subordination to the executive. Were the central executive power weakened instead — preferably in the context of a thoroughgoing devolution and a stronger bureaucracy — then the legislature may itself do a better job of fully internalizing all contending interests, rather than perform its Hydra-headed role of carping, caviling, and accommodating particularist interests. This is, in fact, the situation in a number of industrial democracies (the prime example being the U.S.) The dilemma for the Philippines is that it is caught in between these two, and incurring the costs of both.

APPENDIX 1

Mixed Strategy Equilibrium

In the typical "battle-of-the-sexes" game, the mixed-strategy equilibrium is one where each player is just indifferent between playing one strategy as against the other. Hence, let p represent the probability that the executive votes national, and $(1-p)$ the probability that it votes for local public goods. On the other hand, let q be the probability the legislature votes local and $(1-q)$ the probability it votes national. Then consider the following pay-off matrix:

where we continue to assume that $B + b = 1$ and $A + a = 1$. To find the mixed-strategy equilibrium, one must find p such that the legislature is indifferent between the two strategies. If the executive votes local, then the legislature's return is a if it concurs and 0 if it does not. For the expected utility from either strategy to be the same, one requires



$$(0)p + a(1 - p) = bp + 0(1 - p).$$

The LHS represents the legislature's expected returns if it votes local; the RHS represents returns if it votes national, where it is understood that $a > b$. This yields:

$$p = a/(a + b).$$

On the other hand, q may be der1ived similarly:

$$(0)q + B(1 - q) = Aq + 0(1 - q).$$

The LHS is the return to the executive if it votes national, while the RHS is the expected return from voting local. This yields:

$$q = B/(A + B) \text{ and } (1 - q) = A/(A + B).$$

But since $A + a = B + b = 1$, the last equation above may be rewritten as

$$(1 - q) = (1 - a)/(1 - a + 1 - b) = (1 - a)/(2 - a - b),$$

which is increasing in b and decreasing in a. Hence, the likelihood of the legislature voting with the executive, as might be expected,

increases with b, the legislature's payoff in a national agenda.

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