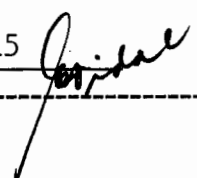


EN BANC

GR. No. 179334 – SECRETARY OF THE DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS and DISTRICT ENGINEER CELESTINO R. CONTRERAS, Petitioners, v. SPOUSES HERACLEO and RAMONA TECSON, Respondents.

Promulgated:
April 21, 2015



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DISSENTING OPINION

LEONEN, J.:

I dissent.

The concept of payment of the “fair market value at the time of taking” in expropriation cases is squarely raised in this case. The landowners are being paid compensation seventy-five years after the actual taking of their property. Thus, judicial doctrine should approximate the present or replacement value of the property had the compensation been paid at the time of the taking. I dissent with the mechanical application of arbitrary interest rates. Instead, we should adopt the economic concept of present value, which is widely used in business and in financial circles. By doing so, we remain consistent with the doctrine that just compensation is the fair market value at the time of taking.

Before us is a Motion for Reconsideration¹ filed by respondents Spouses Heracleo and Ramona Tecson (Tecson spouses) of this court’s Decision² dated July 1, 2013. The Decision held that the Tecson spouses are entitled to ₱0.70 per square meter, the fair market value of their expropriated property in 1940, and legal interest.³

I

The Tecson spouses were registered owners of a 7,268-square-meter property located in San Pablo, Malolos, Bulacan. This property was covered by Transfer Certificate of Title No. 43006.⁴

¹ *Rollo*, pp. 255–258.

² *Id.* at 229–238.

³ *Id.* at 237.

⁴ *Id.* at 124.



In 1940, government used the Tecson spouses' property without securing their consent and commencing the necessary expropriation proceedings. The property now forms part of MacArthur Highway.⁵

In 1994, the Tecson spouses demanded payment for the property taken from them. The Department of Public Works and Highways, through Celestino R. Contreras (Engineer Contreras), District Engineer of the First Bulacan Engineering District, offered to pay the Tecson spouses the amount based on Provincial Appraisal Committee Resolution No. XII dated January 15, 1950. The Provincial Appraisal Committee estimated the value of the Tecson spouses' property at ₱0.70 per square meter.⁶

The Tecson spouses rejected Engineer Contreras' offer. They demanded the return of their property or, in the alternative, the payment of compensation at its current market value. At that time, based on the most recent tax declaration, the property was valued at ₱2,543,800.00.⁷

The Department of Public Works and Highways ignored the Tecson spouses' offer. On May 17, 1995, the Tecson spouses filed a Complaint⁸ against Gregorio R. Vigilar, Department of Public Works and Highways Secretary, and Engineer Contreras (collectively referred here as the government) for recovery of possession with damages. The case was raffled to Branch 80 of the Regional Trial Court in Malolos.⁹

Government filed a Motion to Dismiss.¹⁰ It argued that the Complaint filed by the Tecson spouses is a suit against the state and is barred by prescription.¹¹ In the Order¹² dated June 28, 1995, the trial court dismissed the Tecson spouses' Complaint for being a suit against the state filed without the state's consent. The trial court no longer resolved the second ground in filing the Motion to Dismiss.¹³

The Tecson spouses filed an appeal.¹⁴ In the Decision¹⁵ dated February 11, 1999, the Court of Appeals decided in favor of the Tecson spouses. It ruled that the "immunity of the State from suit may not be applied with rigidity . . . because [the Tecson spouses'] property was converted into a highway without the benefit of expropriation proceedings

⁵ Id. at 125.

⁶ Id. at 142.

⁷ Id. at 125.

⁸ Id. at 138–141.

⁹ Id. at 124.

¹⁰ Id. at 143–145.

¹¹ Id. at 143.

¹² Id. at 147–148.

¹³ Id.

¹⁴ Id. at 149.

¹⁵ Id. at 62–68. The Decision was penned by Associate Justice Artemon D. Luna (Chair) and concurred in by Associate Justices Delilah Vidallon-Magtolis and Rodrigo V. Cosico of the Second Division.

and its restoration is not feasible because it has been in use as a public highway since the 1940s.”¹⁶ The Court of Appeals ordered that the case be remanded to the trial court to determine just compensation.¹⁷

Upon remand, the Regional Trial Court appointed commissioners to determine just compensation.¹⁸ The commissioners referred the matter to the Provincial Appraisal Committee.¹⁹ The Provincial Appraisal Committee issued Resolution No. 99-007 and resolved that the Tecson spouses are entitled to ₱1,500.00 per square meter.²⁰ In the Decision²¹ dated March 22, 2002, the Regional Trial Court resolved that ₱1,500.00 per square meter was the just compensation to be awarded to the Tecson spouses.²²

Government filed an appeal assailing the amount determined by the trial court as just compensation for the property taken.²³ In the Decision²⁴ dated July 31, 2007, the Court of Appeals affirmed the Decision of the Regional Trial Court with modification. The Court of Appeals included an award of “interest of 6% per annum computed from the time of the filing of this action on March 17, 1995 until full payment.”²⁵

Government filed a Petition for Review on Certiorari²⁶ before this court. In the Decision dated July 1, 2013, the majority of the Third Division of this court decided:

WHEREFORE, premises considered, the petition is **PARTIALLY GRANTED**. The Court of Appeals Decision dated July 31, 2007 in CA-G.R. CV No. 77997 is **MODIFIED**, in that the valuation of the subject property owned by respondents shall be P0.70 instead of P1,500.00 per square meter, with interest at six percent (6%) *per annum* from the date of taking in 1940 instead of March 17, 1995, until full payment.²⁷

The majority based this Decision on the doctrine that “[j]ust compensation is ‘the fair value of the property as between one who receives, and one who desires to sell, . . . *fixed at the time of the actual taking by the*

¹⁶ Id. at 155.

¹⁷ Id.

¹⁸ Id. at 162.

¹⁹ Id. at 163.

²⁰ Id. at 164.

²¹ Id. at 165–167.

²² Id. at 167.

²³ Id. at 168–182.

²⁴ Id. at 37–49. The Decision was penned by Associate Justice Lucas P. Bersamin (now Supreme Court Associate Justice) and concurred in by Associate Justices Portia Aliño Hormachuelos (Chair) and Estela M. Perlas-Bernabe (now Supreme Court Associate Justice) of the Third Division.

²⁵ Id. at 136.

²⁶ Id. at 14–35.

²⁷ *Secretary of the Department of Public Works and Highways v. Tecson*, G.R. No. 179334, July 1, 2013, 700 SCRA 243, 259 [Per J. Peralta, Third Division].

government.”²⁸ Based on the majority’s appreciation of the facts, the value of the property in 1940 was ₱0.70 per square meter.²⁹

On September 10, 2013, the Tecson spouses filed the Motion for Reconsideration raising the following grounds:

- A. The honorable court may look into the “just-ness” of the miserable amount of compensation being awarded to the herein respondents; [and]
- B. The honorable court may settle for a happy middle ground in the name of doctrinal precision and substantial justice.³⁰

Elevated for this court en banc’s consideration is the issue of whether the just compensation awarded in the Decision dated July 1, 2013 can be made fair without transgressing the doctrine that just compensation for expropriation cases should be computed at the time of taking.

II

I vote to grant the Tecson spouses’ Motion for Reconsideration.

The Tecson spouses correctly argue that pegging the value of the property to its 1940 value of ₱0.70 per square meter is “arbitrary and confiscatory[.]”³¹ It condones the Department of Public Works and Highways’ acts of disregarding the Tecson spouses’ property rights and of violating the due process of law.

Moreover, the Tecson spouses reiterated the statement in our Separate Opinion that “gross injustice w[ould] result if the amount [to] be awarded today w[ould] be based simply on the value of the property at the time of actual taking.”³² Hence, the Tecson spouses seek the “happy middle ground” as proposed in our Separate Opinion.

Government, on the other hand, agrees that the determination of just compensation is a judicial function.³³ However, it argues that the amount of just compensation should be the fair market value of the property at the time of its taking in 1940 and not its present market value as indicated in the

²⁸ Id. at 255, citing *Republic v. Court of Appeals*, 494 Phil. 494, 509 (2005) [Per J. Carpio, First Division].

²⁹ Id. at 258.

³⁰ *Rollo*, p. 256.

³¹ Id.

³² J. Leonen, Separate Opinion in *Secretary of the Department of Public Works and Highways v. Tecson*, G.R. No. 179334, July 1, 2013, 700 SCRA 243, 274 [Per J. Peralta, Third Division].

³³ *Rollo*, p. 30.

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Tecson spouses' tax declaration.³⁴

Government argues that the Provincial Appraisal Committee that recommended the payment of ₱1,500.00 per square meter stated that the fair market value of the property at the time of taking was ₱0.70 per square meter. Therefore, it is the rate of ₱0.70 per square meter that should be made the basis for just compensation to be awarded to the Tecson spouses.³⁵

III

The value of just compensation must be determined as of the time of the taking: not before or after the coercive state action.

The Constitution provides that an individual's "[p]rivate property shall not be taken for public use without just compensation."³⁶ Rule 67, Section 4 of the Rules of Court, among others, provides that just compensation is "to be determined as of the date of the taking of the property or the filing of the complaint, whichever came first."

The taking of the property of the Tecson spouses happened in 1940 or 75 years ago. Just compensation is the fair market value of the property at the time of taking. After government takes a property, its value can appreciate³⁷ or depreciate significantly.³⁸ If government's use of the property enhances commerce and productivity, the property's value appreciates. If contiguous landowners fear that their property would likewise be expropriated, the area may become unfavorable for landownership, thus adversely affecting its real estate prices.

*In Municipality of La Carlota v. Spouses Gan:*³⁹

The expropriation stands, and the owner as is the constitutional intent, is paid what he is entitled to according to the value of the property so devoted to public use as of the date of the taking. From that time, he had been deprived thereof. He had no choice but to submit. He is not, however, to be despoiled of such a right. No less than the fundamental law guarantees just compensation. *It would be an injustice to him certainly if from such a period, he*

³⁴ Id. at 31–32.

³⁵ Id.

³⁶ CONST., art. III, sec. 9.

³⁷ See *National Power Corporation v. Court of Appeals*, 325 Phil. 29 (1996) [Per J. Panganiban, Third Division] and *Municipality of La Carlota v. Spouses Gan*, 150-A Phil. 588 (1972) [Per J. Fernando, En Banc].

³⁸ See *Republic v. Lara, et al.*, 96 Phil. 170 (1954) [Per J. J.B.L. Reyes, En Banc] and *Provincial Government of Rizal v. Caro de Araullo*, 58 Phil. 308 (1933) [Per J. Vickers, En Banc].

³⁹ 150-A Phil. 588 (1972) [Per J. Fernando, En Banc].

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*could not recover the value of what was lost.*⁴⁰ (Emphasis supplied)

Just compensation approximates the value of the property determined in a fair and unencumbered transaction. It is that “sum of money which a person desirous but not compelled to buy, and an owner willing but not compelled to sell, would agree on as a price to be given and received therefor.”⁴¹

IV

It is the state’s duty, in exercising its inherent power of eminent domain, to initiate expropriation proceedings at the earliest time. The owners suffer as the payment value of the property equivalent to just compensation is delayed.

If, as in this case, the state does not take action, the private property owner has no other recourse but to file a suit for the recovery of possession of the property taken or for payment of just compensation. Unnecessarily, additional costs — apart from the opportunity costs for the compensation seasonably paid — in the form of expenses to pursue litigation are incurred. Delayed or uncompensated takings “[distort] people’s incentives and [cause] economic inefficiency[.] . . . Individual owners will go to great expense to prevent the state from taking their property without compensation. Indeed, the possibility of uncompensated takings would divert effort and resources away from production and toward the politics of redistribution.”⁴²

The costs of delay should not be borne by the owner of the property taken but belatedly paid by government. Unless these costs are recovered, delay diminishes the full amount of just compensation to be paid to the owner. This is an unconstitutional outcome. Besides, between the State and the landowner, the former is generally able to bear the costs of making the proper payment. It is its duty to ensure that just compensation makes up for the ownership of the property taken for public use.

The Tecson spouses found themselves in a situation where the government takes property without proper expropriation proceedings, thus delaying the payment of just compensation. In a similar case, this court emphatically noted:

⁴⁰ Id. at 596.

⁴¹ See *National Power Corporation v. Ong Co*, 598 Phil. 58, 65 (2009) [Per J. Tinga, Second Division]. This court summarized: “Just compensation is the fair market value of the property. Fair market value is that ‘sum of money which a person desirous but not compelled to buy, and an owner willing but not compelled to sell, would agree on as a price to be given and received therefor.’”

⁴² ROBERT COOTER AND THOMAS ULEN, *LAW AND ECONOMICS* 175 (4th ed., 2004).

This Tribunal does not look with favor on the practice of the Government or any of its branches, of taking away property from a private landowner, especially a registered one, without going through the legal process of expropriation or a negotiated sale and paying for said property without delay. The private owner is usually at a great and distinct disadvantage. He has against him the whole Government, central or local, that has occupied and appropriated his property, summarily and arbitrarily, sometimes, if not more often, against his consent. There is no agreement as to its price or its rent. In the meantime, the landowner makes requests for payment, rent, or even some understanding, patiently waiting and hoping that the Government would soon get around to hearing and granting his claim. The officials concerned may promise to consider his claim and come to an agreement as to the amount and time for compensation, but with the not infrequent government delay and red tape, and with the change in administration, specially local, the claim is pigeonholed and forgotten and the papers lost, mislaid, or even destroyed as happened during the last war. And when finally losing patience and hope, he brings a court action and hires a lawyer to represent him in the vindication of his valid claim, he faces the government represented by no less than the Solicitor General or the Provincial Fiscal or City Attorney, who blandly and with self-assurance, invokes prescription. The litigation sometimes drags on for years. In our opinion, that is neither just nor fair. When a citizen, because of this practice loses faith in the government and its readiness and willingness to pay for what it gets and appropriates, in the future said citizen would not allow the Government to even enter his property unless condemnation proceedings are first initiated, and the value of the property, as provisionally ascertained by the Court, is deposited, subject to his disposal. This would mean delay and difficulty for the Government, but all of its own making.⁴³

In *Apo Fruits Corporation, et al. v. Land Bank of the Philippines*,⁴⁴ this court discussed the need to impose a 12% interest rate for late payment of just compensation:

Apart from the requirement that compensation for expropriated land must be fair and reasonable, **compensation, to be “just,” must also be made without delay.** Without prompt payment, compensation cannot be considered “just” *if the property is immediately taken* as the property owner suffers the immediate deprivation of both his land and its fruits or income.

This is the principle at the core of the present case where the petitioners were made to wait for more than a decade *after the taking of their property* before they actually received the full amount *of the principal* of the just compensation due them. **What they have not received to date is the income of their landholdings corresponding to what they would have received had no uncompensated taking of these lands been immediately made. . . .**

⁴³ *Alfonso v. Pasay City*, 106 Phil. 1017, 1020–1021 (1960) [Per J. Montemayor, En Banc].

⁴⁴ 647 Phil. 251 (2010) [Per J. Brion, En Banc].

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The owner's loss, of course, is not only his property but also its income-generating potential. Thus, when property is taken, full compensation of its value must immediately be paid to achieve a fair exchange for the property and the potential income lost. The just compensation is made available to the property owner so that he may derive income from this compensation, in the same manner that he would have derived income from his expropriated property. If full compensation is not paid for property taken, then the State must make up for the shortfall in the earning potential immediately lost due to the taking, and the absence of replacement property from which income can be derived[.]⁴⁵ (Emphasis in the original, citations omitted)

The main concern in *Apo Fruits* was that the downpayment of the principal amount of "fair market value at the time of taking" was "not enough to compensate the petitioners for the potential income the landholdings could have earned for them if no immediate taking had taken place."⁴⁶ The time difference between taking and payment in *Apo Fruits* was merely 10 to 12 years, as opposed to the seventy-five-year gap in this case. Obviously, the Tecson spouses were denied a greater amount of potential income stream for not having been paid back in 1940. This inequity needs to be corrected.

V

That just compensation — equivalent to its fair market value — should be paid at the time of taking remains a hypothetical ideal. In reality, we recognize that expropriation takes some time. The concept of present value⁴⁷ can assist courts in approximating the ideal of paying the right amount to the landowner considering the delay while honoring the doctrine that the value of the property should be reckoned at the time of taking.

Money that should have been paid in the past has a different value today.⁴⁸ Economists derived a formula to account for the value and the income stream the money generates across time.

To place the concept of present value in the context of expropriation, let us suppose that the Tecson spouses were paid immediately for the use of their property at ₱0.70 per square meter. They would have received ₱5,087.60 in 1940. They could have used the money to start a business or

⁴⁵ Id. at 273–276.

⁴⁶ Id. at 272.

⁴⁷ PAUL A. SAMUELSON AND WILLIAM D. NORDHAUS, *ECONOMICS* 748 (18th Edition). Present value (of an asset) is defined as "the value for an asset that yields a stream of income over time."

⁴⁸ N. GREGORY MANKIW, *PRINCIPLES OF ECONOMICS* 567 (2007). Stated otherwise, "[m]oney today is more valuable than the same amount of money in the future."

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spend it for themselves to improve their welfare. Either way, this amount of money would have generated utility for them.

We can assume that the money, if timely paid, would have been used reasonably by the Tecson spouses. A fair assumption would be that, at the very least, they would have invested it in the safest investment available, such as treasury bills. Treasury bills produce a steady income stream of money through interest rates. The interest earned can be reinvested, hence, interest rates have a compounding effect. Through compounded interests, the principal amount of money and the interest it would earn subsequently earns additional interest. The ₱5,087.60 that should have been paid in 1940 would not be the same amount in 2015.

To compute for the value of ₱5,087.60 in 2015, we apply this formula:⁴⁹

$$PV_t = V*(1+r)^t$$

PV stands for the present value of the fair market value at the time of taking. *V* stands for the fair market value of the property at the time of the taking, taking in all the considerations that courts may use in accordance with law.

This is multiplied to $(1+r)$ where *r* equals the implied rate of return (average year-to-year interest rate). We propose the use of the treasury bill interest rate as *r*. $(1+r)$ is raised to the exponent *t*. The exponent *t* is the period or the number of years that has passed between the time of taking and the time of payment. It is treated as an exponent because it is the number of times you have to multiply $(1+r)$ to capture the effect of compounding interest rates. The derivation of this formula is discussed in greater detail in the July 1, 2013 Separate Opinion.⁵⁰

VI

The use of present value and the application of the proper interest rates are crucial in determining just compensation for private property owners whose properties were taken from them without immediate payment or the appropriate expropriation proceedings. Had they kept the possession of the property until such time they would be paid by government, they could have earned rent from it. Once land has been transformed into a financial asset, it should earn interest.

⁴⁹ N. GREGORY MANKIW, *ESSENTIALS OF ECONOMICS* 414–415 (4th ed., 2007).

⁵⁰ J. Leonen, Separate Opinion in *Secretary of the Department of Public Works and Highways v. Tecson*, G.R. No. 179334, July 1, 2013, 700 SCRA 243, 276–278 [Per J. Peralta, Third Division].

In jurisprudence, we consider two (2) kinds of interests: monetary interest and compensatory interest. In *Sun Life of Canada (Philippines), Inc. v. Sandra Tan Kit*:⁵¹

“Monetary interest refers to the compensation set by the parties for the use or forbearance of money.” No such interest shall be due unless it has been expressly stipulated in writing. “On the other hand, compensatory interest refers to the penalty or indemnity for damages imposed by law or by the courts.”⁵² (Citations omitted)

These types of interest rates are not the same as the interest rate used to determine the present value of money.

First, monetary interest rate is something determined by two parties entering into a contract of loan or any other contract involving the use or forbearance of money. Hence, monetary interest represents the *cost* of letting another person use or borrow money. On the other hand, interest rates used to determine the present value of money reflect the economic history that has affected the purchasing power of money. The interest rate in the present value formula represents the *opportunity cost* of the untimely payment of the sum of money already due and demandable.

Second, compensatory interest rates have been determined by this court as a penalty or indemnity for damages in monetary judgments. This is not the same interest rate used in determining the present value of money, which finds significance even outside monetary judgments. The interest rate in present value is not a penalty against the payor; rather, it reflects the fair amount the payor should pay considering the passage of time in our economic history.

There is no law imposing interest rates in determining present value. Hence, in cases of delay in the payment of just compensation of expropriated property, the interest to be considered should be the conservative annual year-on-year average of treasury bill rates.

This is different from this court’s previous practice of imposing interest rates to compensate the landowner for government’s delay in payment.⁵³ Such interest rate is a form of compensatory interest often

⁵¹ G.R. No. 183272, October 15, 2014
<<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/october2014/183272.pdf>>
[Per J. Del Castillo, Second Division].

⁵² *Id.* at 7.

⁵³ *National Power Corporation v. Angas*, G.R. Nos. 60225–26, May 8, 1992, 208 SCRA 542, 549 [Per J. Paras, Second Division] used 6% legal interest rate. *Republic v. Court of Appeals*, 433 Phil. 106 (2002) [Per J. Vitug, First Division] used 12% interest rate by way of actual or compensatory damages, following the ruling in *Eastern Shipping Lines, Inc. v. Court of Appeals*, G.R. No. 97412, July 12,

referred to as legal interest.

VII

Using present value is different from applying legal interest rates imposed for the use or forbearance of money.⁵⁴ Legal interest rates are *simple* interest rates and, hence, are not compounded. Simple interest rates fail to capture the economic reality that money earns more money. With simple interest rates, the interest earned is the product of the principal amount multiplied by the interest rate, and that product is multiplied further by the number of periods involved. This is opposed to compounded interest rates, where the interest earned from the first period is also subject to interest earnings in a subsequent period, with the amount subjected to the interest rate increasing each period.⁵⁵ Consequently, interest earnings increase every year as well.

For example: If ₱100.00 is subjected to a simple interest of 10% per year, then the interest earned will be ₱10.00 after one year, and another ₱10.00 will be earned on the second year. After two years of being subjected to a *simple* interest rate, the ₱100.00 will be ₱120.00. In contrast, if the ₱100.00 is subjected to a compounded interest rate of 10%, the amount will earn ₱10.00 after the first year. On the second year, the principal will now include the ₱10.00 interest earned the previous year, so ₱110.00 will be the amount subject to the 10% interest earning. Hence, the interest earned will be ₱11.00. After two years of being subjected to a *compounded* interest rate, the ₱100.00 will be ₱121.00. In simple interest rates, the amount added remains fixed at a nominal value, while in compounded interest rates, the amount added increases over time.

The use of compounded interest rates is intrinsic in the determination of present value. It is not anchored on Article 2212 of the Civil Code. Article 2212 states that “[i]nterest due shall earn legal interest *from the time it is judicially demanded*, although the obligation may be silent upon this point.” It is inaccurate to use this law because it contemplates a situation where the payee goes to court to collect payment. In expropriation cases, it is not the obligation of the payee to initiate proceedings to determine just compensation. It is the obligation of the state to initiate these proceedings in order not to violate the rights of the private property owner. The private property owner only files a court action as a matter of last resort in order not

1994, 234 SCRA 78 [Per J. Vitug, En Banc]. The Decision of this case dated July 1, 2013 reverted back to the 6% legal interest rate.

⁵⁴ See *Eastern Shipping Lines, Inc. v. Court of Appeals*, G.R. No. 97412, July 12, 1994, 234 SCRA 78 [Per J. Vitug, En Banc].

⁵⁵ N. GREGORY MANKIW, *PRINCIPLES OF ECONOMICS* 532 (2007). Compounding is “the accumulation of a sum of money in, say, a bank account, where the interest earned remains in the account to earn additional interest in the future.”

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to be denied of his or her constitutional right to just compensation.

Interest rates are compounded to determine the present value of the amount of money due to property owners. Compounded interest rates are part of the value of the property itself and not merely the interest given by two parties entering into a loan or an interest rate given together with a monetary judgment.

The use of economics, or any other discipline, in aid of judicial decisions does not violate the judicial temperament. Economics can be a tool for this court to approximate the constitutional ideal of “just compensation.” Judge Richard A. Posner recommends that:

we need a new style of judicial opinion writing (really a return to an older style), in which formalistic crutches — such as the canons of statutory construction and the pretense of deterministic precedent — exaggerate the autonomous elements in legal reasoning are replaced by a more candid engagement with the realistic premises of decision. *Judicial decisionmaking must also become more receptive to the insights of social science. Lawyers and judges must overcome the prevalent (and disgraceful) math-block that afflicts the legal profession.*⁵⁶ (Emphasis supplied)

Furthermore, legal interest rates is fixed at 6% or 12% depending on which prevailing Central Bank circular has been enacted. Meanwhile, computation of present value is dependent on the historical average of year-to-year interest rates.⁵⁷

Using fixed interest rates does not reflect the historical and contemporary economic realities. Contrary to the position of Justice Brion, this court has arbitrarily selected this in order to satisfy the need to give an equitable award of “just compensation” within the bounds of jurisprudence when it feels that the original landowner has been unduly deprived by government.

There is no clear basis as to why interest rates fixed at 6% or 12% will be able to approximate the replacement value of the property and, thus, result to just compensation for the landowners.

Previous jurisprudence⁵⁸ cited the use of Act No. 2655 and Central

⁵⁶ Richard A. Posner, *The Decline of Law as an Autonomous Discipline: 1962-1987*, 100 HARV. L. REV. 761, 778 (1987).

⁵⁷ The Bangko Sentral ng Pilipinas has been compiling Selected Domestic Interest Rates since 1949 <<http://www.bsp.gov.ph/statistics/excel/sdir.xls>> (visited April 10, 2014).

⁵⁸ *National Power Corporation v. Angas*, G.R. Nos. 60225–26, May 8, 1992, 208 SCRA 542, 548–549 [Per J. Paras, Second Division] used the 6% interest rate on the basis of Central Bank Circular No. 416 and Act No. 2655.

Bank circulars issued in relation to that law as basis for the use of 6% and 12%. Act No. 2655 is a law that determines a ceiling interest rate to avoid usurious loans. Throughout the text of the law, reference is made to a “person” or “corporation.” This law is not nuanced to fit the purposes of determining just compensation in favor of a private property owner. The transaction involved here is not a loan or forbearance of money between two private parties but expropriation, an exercise of eminent domain powers of the state. The use of usury laws and circulars in order to determine “just compensation” in case of delay is as crude as it is imprecise.

Shifting from the method used in earlier jurisprudence to a more accurate method of using present value is more in keeping with the constitutional character of the concept of just compensation. For purposes of determination of just compensation, statutes and executive enactments are merely recommendatory. In *Export Processing Zone Authority v. Judge Dulay*.⁵⁹

The determination of “just compensation” in eminent domain cases is a judicial function. The executive department or the legislature may make the initial determinations but when a party claims a violation of the guarantee in the Bill of Rights that private property may not be taken for public use without just compensation, no statute, decree, or executive order can mandate that its own determination shall prevail over the court’s findings. Much less can the courts be precluded from looking into the “just-ness” of the decreed compensation.⁶⁰

Instead of using 6% or 12%, we recommend that historical data be used in order to stay true to the constitutional mandate of “just compensation.”

One of the most recorded interest rates in our economic history has been the treasury bill interest rates.⁶¹ The Bangko Sentral ng Pilipinas, with its predecessor, Central Bank, has been offering treasury bills to the public since the Central Bank was created in 1949.⁶² Treasury bills are short-term debt instruments. They mature in 91, 182, or 364 days. These instruments are currently offered by the Bangko Sentral ng Pilipinas through weekly auctions. These are actively traded and preferred due to their liquidity. No possibility of default exists since these are guaranteed by the national government.⁶³ The rate of return on treasury bills is considered the bellwether interest rate because it is completely market-determined, and

⁵⁹ 233 Phil. 313 (1987) [Per J. Gutierrez, Jr., En Banc].

⁶⁰ Id. at 326.

⁶¹ Technically speaking, these “interest rates” are actually “rates-of-return” or “yield.” Government sells these treasury bills at a discount, and the bills are redeemed at face value. The “interest rate” here accounts for the difference between what the investor pays and the face value of the treasury bill.

⁶² Mamerto C. Singson Jr., *The Philippine Treasury Bill Market*, 8 PHILIPPINE REVIEW OF ECONOMICS 2, 43-44 (1971).

⁶³ FREDERIC S. MISHKIN, *THE ECONOMICS OF MONEY, BANKING AND FINANCIAL MARKETS*, Appendix to Chapter 2, p. 1 (7th ed).

other interest rates such as the overnight repurchasing rates and bank interest rates are consistently correlated with the rates set in the market for treasury bills.⁶⁴

In addition, the use of treasury bills provides a situational analogy to the delay in the payment of government of just compensation. It is as if government paid the private property owner in treasury bills and re-invested the returns on a yearly basis until the value of the bills could be liquidated.

In this case, we have to consider treasury bill rates from 1949 to 2014. This is acquired from the official data of the Bangko Sentral ng Pilipinas,⁶⁵ thus:

Table 1. Treasury Bill Rates Across Time

<i>Year</i>	<i>Annual Rate of Return for All Maturities</i>
1940	1.500
1941	1.500
1942	1.500
1943	1.500
1944	1.500
1945	1.500
1946	1.500
1947	1.500
1948	1.500
1949	1.500
1950	2.000
1951	2.000
1952	1.875
1953	2.125
1954	2.250
1955	1.750
1956	1.750
1957	1.879
1958	2.549
1959	2.599
1960	3.000
1961	3.000
1962	3.000
1963	3.500
1964	3.500
1965	4.000
1966	6.603

⁶⁴ Mario B. Lamberte, *Central Banking in the Philippines: Then, Now and the Future*, Philippine Institute for Development Studies Discussion Paper Series No. 2002-10 <<http://dirp3.pids.gov.ph/ris/dps/pidsdps0210.pdf>> 30 (footnote 33).

⁶⁵ Selected Domestic Interest Rates, Bangko Sentral ng Pilipinas <<http://www.bsp.gov.ph/statistics/excel/sdir.xls>> (visited April 10, 2014).

<i>Year</i>	<i>Annual Rate of Return for All Maturities</i>
1967	6.348
1968	6.944
1969	8.566
1970	13.372
1971	12.038
1972	12.154
1973	9.664
1974	10.260
1975	10.475
1976	10.406
1977	11.161
1978	10.950
1979	12.178
1980	12.316
1981	12.914
1982	14.415
1983	14.544
1984	36.985
1985	27.048
1986	16.040
1987	12.888
1988	15.510
1989	19.678
1990	24.742
1991	22.489
1992	17.008
1993	13.141
1994	13.750
1995	12.457
1996	13.014
1997	13.297
1998	16.283
1999	11.025
2000	10.904
2001	11.054
2002	6.038
2003	6.654
2004	8.127
2005	7.528
2006	6.196
2007	4.210
2008	6.355
2009	4.456
2010	4.034
2011	1.867
2012	1.826
2013	0.564
2014	1.495
AVERAGE	8.237

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With the enactment of Republic Act No. 245 in 1948, the Secretary of Finance was authorized to issue, among others, “[t]reasury bills issued on a discount basis and payable at maturity without interest. Treasury bills may be offered for sale either on a competitive basis or at a fixed rate of discount and may be made payable at any date not later than one year from the date of issue.”⁶⁶ The Central Bank began offering one-year treasury bills in 1949. Prior to that, upon the Central Bank’s creation, it assumed the liability of the treasury certificate fund offered by the Treasurer of the Philippines.⁶⁷ Considering that treasury certificates are also short-term money instruments, they can be said to be the predecessor of treasury bills as we know them now.

The historical event before 1949 was World War II, a time when no reasonable investments could be made. There were no historical rates of return officially recorded in the 1940s. For our purposes, we assume that the rate of return in 1949 would have been the rate in the past decade that was affected by the war. After all, the rate in 1949 was set by the Central Bank and was not market-determined. From 1957 to 1965, there were also no available recorded data, so the savings deposit rate⁶⁸ was used as a substitute figure.

The way the treasury bill was offered to the public changed in 1966.⁶⁹ Since 1966, the Central Bank offered two (2) maturities for the treasury bills. The Central Bank no longer determined the rate of return for these money instruments. In 1969, the Central Bank began offering a 273-day bill, which was eventually replaced by the 364-day bill.

Considering all these, the average year-to-year interest rate based on treasury bills from the 1940s to 2014 is **8.237%**. I believe that this is the interest rate that we should use to determine the present value of the fair market value at the time of taking *in this case*.

VIII

Applying the formula and using 8.237% as the average year-to-year

⁶⁶ Rep. Act No. 245 (1948), sec. 1(a).

⁶⁷ Rep. Act No. 265 (1948), sec. 135.

⁶⁸ See Selected Domestic Interest Rates, Bangko Sentral ng Pilipinas <<http://www.bsp.gov.ph/statistics/excel/sdir.xls>> (visited April 10, 2014). The Bangko Sentral ng Pilipinas explains that the savings deposit rate “[r]efer[s] to the annual percentage equivalent of commercial banks’ actual monthly interest expenses on peso-savings deposits to the total outstanding levels of these deposits.” It represents the interest rate that all commercial banks pay to their depositors per year.

⁶⁹ Mamerto C. Singson Jr., *The Philippine Treasury Bill Market*, 8 PHILIPPINE REVIEW OF ECONOMICS 2, 43-44 (1971).

interest rate, the present value of ₱5,087.60 is ₱1,926,167.01. In other words, had the landowners been paid in 1940 the right amount of compensation, its value today should be ₱1,926,167.01, not ₱5,087.60.

To show it more clearly:

$$PV_t = V*(1+r)^t$$

$$PV_{74} = ₱5,087.60 * (1 + 8.237\%)^{75}$$

$$PV_{74} = ₱5,087.60 * (1.08237)^{75}$$

$$PV_{74} = ₱5,087.60 * 378.600325229417$$

$$PV_{74} = ₱ 1,926,167.01$$

Applying the same formula, we compute that the present value of ₱0.70 per square meter in 1940 is ₱265.02 per square meter in 2015.

If legal interest of only 6% per annum were added to the fair market value at the time of taking, the Tecson spouses would only be entitled to ₱27,676.54.⁷⁰ Even if we consider the higher interest rate for expropriation cases⁷¹ of 12% per annum, the Tecson spouses would only receive ₱50,876.00.⁷² This is severely disproportionate to the present value of the fair market value of the property at the time of taking. It would not be just if the Tecson spouses were simply paid that amount of money.

IX

In balancing the interests of the landowners, the public, and government, we should be mindful that the value of money is not static. Otherwise, we diminish the true economic value of the land taken. In

⁷⁰ This amount was computed by finding 6% of ₱5,087.60, which is ₱305.26. This amount was multiplied by 75, assuming that government will pay in the year 2015 or 75 years after the land was taken. This yielded the amount of ₱22,894.20. With this added to the principal amount due and considering only the fair market value at the time of taking plus legal interest, the spouses will only be entitled to ₱27,891.80.

⁷¹ This higher interest rate for expropriation cases was defended by Justice Brion in the Resolution to the second Motion for Reconsideration in *Apo Fruits* (647 Phil. 251, 275–277 (2010) [Per J. Brion, En Banc]). The case cited several other expropriation cases that used 12% as the legal interest rate for delay in the payment of just compensation: *Republic v. Court of Appeals*, 433 Phil. 106 (2002) [Per J. Vitug, First Division]; *Reyes v. National Housing Authority*, 443 Phil. 603 (2003) [Per J. Puno, Third Division]; *Land Bank of the Philippines v. Wycoco*, 464 Phil. 83 (2004) [Per J. Ynares-Santiago, First Division]; *Republic v. Court of Appeals*, 494 Phil. 494 (2005) [Per J. Carpio, First Division]; *Land Bank of the Philippines v. Imperial*, 544 Phil. 378 (2007) [Per J. Quisumbing, Second Division]; *Philippine Ports Authority v. Rosales-Bondoc*, 557 Phil. 737 (2007) [Per J. Sandoval-Gutierrez, First Division]; and *Spouses Curata, et al. v. Philippine Ports Authority*, 608 Phil. 9 (2009) [Per J. Velasco, Jr., En Banc].

⁷² 12% of ₱5,087.60 is ₱610.51. If interest is paid annually for the past 75 years, this will amount to ₱45,788.40. With this added to the principal amount, the Tecson spouses will only be entitled to ₱50,876.00.

Republic v. Vda. De Castellvi:⁷³

The Court has weighed all the circumstances relating to th[ese] expropriations proceedings, and in fixing the price of the lands that are being expropriated the Court arrived at a happy medium between the price as recommended by the commissioners and approved by the court, and the price advocated by the Republic. *This Court has also taken judicial notice of the fact that the value of the Philippine peso has considerably gone down since the year 1959.*⁷⁴ (Emphasis supplied, citation omitted)

In *Commissioner of Public Highways v. Judge Burgos*,⁷⁵ government took privately-owned property in 1924 to construct Mango Avenue and Gorordo Avenue in Cebu City.⁷⁶ The taking was made without proper expropriation proceedings. When the original landowner instituted recovery proceedings in the trial court, this court ordered that just compensation be computed by the trial court and awarded to the landowner.⁷⁷ The trial court computed for just compensation only in 1973. The commissioners arrived at the value of ₱2.37 per square meter as the prevailing value of the property at the time of taking in 1924.⁷⁸

However, during trial, the former landowner presented a newspaper clipping showing that the peso depreciated relative to the dollar. The trial court took into account the deflated value of the peso by virtue of Article 1250 of the Civil Code, which states that “[i]n case an extraordinary inflation or deflation of the currency stipulated should supervene, the value of the currency at the time of the establishment of the obligation shall be the basis of payment, unless there is an agreement to the contrary.” The trial court considered a value higher than ₱2.37 per square meter in arriving at the final award.⁷⁹ In rejecting the amount awarded by the trial court, this court ruled that the Civil Code provision does not apply to expropriation proceedings:

It is clear that the foregoing provision applies only to cases where a contract or agreement is involved. It does not apply where the obligation to pay arises from law, independent of contract. The taking of private property by the Government in the exercise of its power of eminent domain does not give rise to a contractual obligation. . . .

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⁷³ 157 Phil. 329 (1974) [Per J. Zaldivar, En Banc].

⁷⁴ Id. at 359.

⁷⁵ 185 Phil. 606 (1980) [Per J. De Castro, First Division].

⁷⁶ Id. at 607.

⁷⁷ Id. at 607–608.

⁷⁸ Id. at 608–609.

⁷⁹ Id. The case stated that the trial court awarded ₱49,459.34 for the 6,167-square-meter property. From this, it appears that the price computed, considering currency devaluation, was at ₱8.02 per square meter.

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We hold, therefore, that under the law, in the absence of any agreement to the contrary, even assuming that there has been an extraordinary inflation within the meaning of Article 1250 of the New Civil Code, a fact We decline to declare categorically, the value of the peso at the time of the establishment of the obligation, which in the instant case is when the property was taken possession of by the Government, must be considered for the purpose of determining just compensation. Obviously, there can be no “agreement to the contrary” to speak of because the obligation of the Government sought to be enforced in the present action does not originate from contract, but from law which, generally is not subject to the will of the parties. And there being no other legal provision cited which would justify a departure from the rule that just compensation is determined on the basis of the value of the property at the time of the taking thereof in expropriation by the Government, the value of the property as it is when the Government took possession of the land in question, not the increased value resulting from the passage of time which invariably brings unearned increment to landed properties, represents the true value to be paid as just compensation for the property taken.⁸⁰ (Citation omitted)

As in this case, the payment of just compensation in *Commissioner of Public Highways* was made several years after the time of taking.

I agree with this court’s refusal to adjust just compensation based simply on the relative deflation of the Philippine peso. The value of currency is dependent on each individual economy, and there is no legal, rational, or historical basis for assigning the U.S. dollar as a more stable currency as opposed to the Philippine peso. The concept of present value does not rely on an arbitrary selection of a foreign currency peg. It simply considers historical interest rates recorded in the Philippines and the fair market value of the property expropriated at the time of taking.

There is no “extraordinary inflation” to be accounted for in this case. Article 1250 does not apply. The lapse of time between 1940 and 2015 was an amalgamation of ordinary inflation spread throughout an extraordinary length of time. This is not the same as extraordinary inflation, which can be characterized as hyperinflation⁸¹ in economics. This court can take judicial notice that between 1940 and 2015, despite several economic setbacks, the only hyperinflation recorded was in 1944, during World War II.⁸² The extraordinary inflation in 1944 is almost negligible considering that the approximate value of the property in the 1940s was computed by the Provincial Appraisal Committee in 1950.

Commissioner of Public Highways was implicitly overturned in

⁸⁰ Id. at 610–611.

⁸¹ PAUL A. SAMUELSON AND WILLIAM D. NORDHAUS, *ECONOMICS* 741 (Eighteenth Edition). “Hyperinflation is inflation at extremely high rates (say, 1000, 1 million, or even 1 billion percent a year).”

⁸² TEODORO A. AGONCILLO, *HISTORY OF THE FILIPINO PEOPLE* 402 (1990).

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Republic v. Court of Appeals.⁸³ In *Republic*, this court allowed the imposition of a 12% per annum interest on just compensation to “help eliminate the issue of the constant fluctuation and inflation of the value of the currency over time.”⁸⁴

X

Ever since government took the property in 1940, the public’s welfare increased due to the construction of MacArthur Highway. Government, however, did not pay for the property. This is akin to unjust enrichment in our Civil Code. Compensation is not merely about payment in the financial sense. It is the thing exchanged for the benefit derived by the community as a whole. Using the concept of present value will be a fair means for the public to shoulder the costs of expropriation to compensate the owners for their property.

There will be injustice for the Tecson spouses if we maintain this court’s previous Decision of awarding only the 1940 value of the property. It is also a mistake to make government pay at the fair market value computed 50 years after the taking.

A balance of interests that can truly approximate replacement value for the landowners, as well as capture the true economic costs and benefits for the public, could have been achieved in this case. Similar problems caused by the delay in paying just compensation could also have been properly guided by this decision. The costs of delay would be internalized by government: the amount paid would have to consider the landowner’s opportunity costs. Government, thus, would be provided with a powerful incentive to settle just compensation claims soonest. The timely settlement would then give an opportunity for landowners to use the payment productively and, thus, contribute to a more robust domestic economy.

Judicial interpretation should be both consistent and relevant. Remaining consistent with past judicial doctrines that fail to consider contemporary factors results in absurdity. It does not result in a stable and just environment for all economic actors to thrive. In other words, a doctrine now shown to be absurd cannot be good precedent.

Our task, as we judicially interpret the text of the Constitution and the law, is to examine our precedents in context. This means that we should also attempt to view the basis and consequences of doctrine through the lenses provided by the best of our sciences and arts. Blind repetition of precedents

⁸³ 433 Phil. 106 (2002) [Per J. Vitug, First Division].

⁸⁴ Id. at 123.

hopelessly condemns our people's hopes that justice should not only remain an unrealistic curiosity but a value that can be lived. Law has never been an autonomous discipline. It is also a social institution that matters.

ACCORDINGLY, I vote that the Motion for Reconsideration be **GRANTED**. The Decision dated July 1, 2013 should be **REVERSED** and **SET ASIDE**. The Tecson spouses should be entitled to ₱1,926,167.01 as just compensation, subject to adjustments in the event that they are not paid by government within this year.



MARVIC M.V.F. LEONEN
Associate Justice