Who's Afraid of the Truth? A Comment on *Biraogo v. The Philippine Truth Commission of 2010*

Camille Maria L. Castolo[*]
Candice Christine O. Tongco[**]

I. THE PHILIPPINE TRUTH COMMISSION OF 2010

A. The Birth of the Philippine Truth Commission

The birth of the Philippine Truth Commission (PTC) of 2010 can be traced from the series of events prior to the May 2010 elections, where Benigno Simeon Aquino III emerged as the new President of the Republic.[1] With the undying issue of massive corruption plaguing the administration which preceded his, and stirred by his campaign slogan "*kung walang corrupt, walang*

* '13 J.D. cand., Ateneo de Manila University School of Law. Member, Board of Editors, *Ateneo Law Journal*. The Author was Associate Lead Editor for the third issue of the 55th volume.

** '13 J.D. cand., Ateneo de Manila University School of Law. Member, Board of Editors, *Ateneo Law Journal*. The Author was Associate Lead Editor for the first issue of the 55th volume.

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1. *See* Louis C. Biraogo v. The Philippine Truth Commission of 2010, 637 SCRA 78 (2010).

mahirap," President Aquino formed a special body tasked to investigate the alleged instances of graft and corruption of the Arroyo administration.[2] Thus, on 30 July 2010, the new President issued Executive Order (E.O.) No. 1, creating the PTC of 2010.[3]

The PTC — established by virtue of the continuing power of the President to reorganize his office as provided by the Revised Administrative Code (RAC),[4] and pursuant to the constitutional mandate of Article XI, Section 1 of the 1987 Constitution of the Philippines[5] — is empowered to investigate on the reports of massive corrupt practices in the government during the Arroyo administration, and to subsequently report and recommend necessary measures to the President, the Congress, and the Ombudsman.[6] Particularly, it is a fact-finding body on graft and corrupt cases involving "third level public officers and higher, their co-principals, accomplices and accessories from the private sector."[7] The PTC shall be composed of a total of five members, namely: the Chairman and four other members who will serve as an independent collegial body.[8]

This Comment examines the circumstances surrounding the creation of the PTC and analyzes the relevant issues discussed by the Court in ruling that its establishment violated the equal protection clause (EPC) guaranteed by the Philippine Constitution.[9] This Comment, however, posits that, contrary to the Supreme Court's ruling, the PTC's constitutionality can be upheld, in the same way that the constitutionality of other similar bodies was sustained in the past. This claim will be shown by discussing each of the elements that will satisfy the requirements of the EPC, in light of the series of jurisprudence tackling the same issues. A comparison of the PTC vis-à-vis the Presidential Commission on Good Governance (PCGG) will also be shown to support the conclusion that like the PCGG, the PTC's constitutionality should be upheld.

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2. *Id.*

3. Office of the President, Creating the Philippine Truth Commission of 2010, Executive Order No. 1 (July 30, 2010) [hereinafter E.O. No. 1].

4. Instituting the "Administrative Code of 1987," Executive Order No. 292 (July 25, 1987).

5. PHIL. CONST. art. XI, § 1. This Section provides that "[p]ublic office is a public trust. Public officers and employees must, at all times, be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency; act with patriotism and justice, and lead modest lives." *Id.*

6. E.O. No. 1, whereas cl.

7. *Id.* § 2.

8. *Id.* § 1.

9. *See* PHIL. CONST. art. III, § 1.

B. The Nature of Truth Commissions

From the powers reposed and the tasks assigned to it, the PTC is said to be a public office — an ad hoc body under the Office of the President Proper.[10] It must be noted, however, that although it is vested with certain powers, such as the power to investigate, its authority is still very limited. First, it is not authorized to adjudicate and render judgment or vest awards to any conflicting parties. It also cannot cite people in contempt nor order anyone's arrest, albeit having the power to issue subpoenas.[11] Second, aside from making reports and recommendations, it cannot determine the existence of probable cause that will prompt the filing of a case in the courts.[12]

Truth commissions in other countries are mostly instigated by prolonged internal unrest and civil conflicts. Their creation is rooted on necessity, as brought about by the need to prevent the recurrence of crimes.[13] Thus, most of them mainly focus on making recommendations that will help alleviate the plight of the victims of abuses.[14] Hence, unlike the truth commissions established in other parts of the world, the PTC is different in that it is not an official body that investigates grave human rights violations committed in a particular country.[15]

Truth commissions have been characterized as bodies which have the following characteristics: (1) they examine only past events; (2) they investigate abuses committed over a certain time frame; (3) they are temporary bodies that merely make reports and recommendations; and (4) they are officially empowered by the State.[16] On the other hand, their three-fold task includes: (1) conducting hearings that will take notice of the experiences of the victims; (2) preparing comprehensive final reports that will present not only a systematic documentation of events, but also a moral account and narrative; and (3) submitting policy recommendations that will emphasize the need to establish mechanisms that will prevent further abuses of human rights.[17] From these, it could be deduced that generally, the main

10. *Biraogo*, 637 SCRA at 143 (citing Laurel v. Desierto, 381 SCRA 48 (2002)).

11. *Id.*

12. *Id.*

13. International Center for Transitional Justice, Truth, and Memory, *available at* http://ictj.org/our-work/transitional-justice-issues/truth-and-memory (last accessed May 23, 2011).

14. *Id.*

15. *Id.*

16. *Biraogo*, 637 SCRA at 144 (citing MARK FREEMAN, THE TRUTH COMMISSION AND PROCEDURAL FAIRNESS 12 (2006 ed.)).

17. International Center for Transitional Justice, *supra* note 13.

objectives of truth commissions revolve around two aspects: retribution and reconciliation.[18] Examples of retributory bodies include the Nuremburg and Tokyo War Crime Tribunals, whilst a form of reconciliatory tribunal is the Truth and Reconciliation Commission of South Africa, whose primary function is to address the violence experienced by the victims in South Africa.[19]

The PTC, by focusing on punishing graft and corrupt practices committed by a past administration, deviates from the usual framework of truth commissions.[20] In fact, it has been said that the mandate given to the PTC rules out reconciliation and is actually an embodiment of the "[d]raconian code spelled out by Aquino in his inaugural speech: 'To those who talk about reconciliation ... we have this to say: [t]here can be no reconciliation without justice. When we allow crimes to go unpunished, we give consent to their occurring over and over again.'"[21]

C. The Power of the President to Create the PTC

The power of the President to establish the PTC has been questioned, mainly because Section 31 of the RAC,[22] under which the President claims

18. *Id.*

19. *Biraogo*, 637 SCRA at 144.

20. *Id.*

21. Amando Doronila, *Truth body told: Take no prisoners*, PHIL. DAILY. INQ., Aug. 2, 2010, *available at* http://newsinfo.inquirer.net/inquirerheadlines/nation/view/20100802-284444/Truth-body-told-Take-no-prisoners (last accessed May 23, 2011).

22. E.O. No. 292, § 31. This Section provides —

> Sec. 31. Continuing Authority of the President to Reorganize his Office. — The President, subject to the policy in the Executive Office and in order to achieve simplicity, economy and efficiency, shall have continuing authority to reorganize the administrative structure of the Office of the President. For this purpose, he may take any of the following actions:
>
> (1) Restructure the internal organization of the Office of the President Proper, including the immediate Offices, the Presidential Special Assistants/Advisers System and the Common staff Support System, by abolishing, consolidating or merging units thereof or transferring functions from one unit to another;
>
> (2) Transfer any function under the Office of the President to any other Department or Agency as well as transfer functions to the Office of the President from other Departments and Agencies; and

his authority, only allows the "reorganization," "transfer," "consolidation," "merger," and "abolition" of offices, but has no reference to the creation of a public office. Hence, the establishment of the PTC is claimed to be a usurpation of the legislative power of Congress.[23] The Court, on the other hand, while conceding that the organization of the PTC is not covered by the mandate provided in the RAC, justifies its creation under Article VII, Section 17 of the Constitution,[24] which gives the President the obligation to make sure that the laws are faithfully executed.[25] The Court ruled that investigations which target "public accountability and transparency" are inherent in the President's powers. Hence, even if the creation of fact-finding or ad hoc bodies is not expressly reposed to the President, it still does not deprive him of such power.[26] The Decision also cited pertinent parts of the ruling in *Marcos v. Manglapus*,[27] to wit —

> It would not be accurate, however, to state that 'executive power' is the power to enforce the laws, for the President is head of state as well as head of government and whatever powers inhere in such positions pertain to the office unless the Constitution itself withholds it. Furthermore, the Constitution itself provides that the execution of the laws is only one of the powers of the President. It also grants the President other powers that do not involve the execution of any provision of law, e.g., his power over the country's foreign relations.
>
> On these premises, we hold the view that although the 1987 Constitution imposes limitations on the exercise of *specific* powers of the President, it maintains intact what is traditionally considered as within the scope of 'executive power.' Corollarily, the powers of the President cannot be said to be limited only to the specific powers enumerated in the Constitution. In other words, executive power is more than the sum of specific powers so enumerated. It has been advanced that whatever power inherent in the government that is neither legislative nor judicial has to be executive.[28]

> (3) Transfer any agency under the Office of the President to any other department or agency as well as transfer agencies to the Office of the President from other departments or agencies.

Id.

23. *See Biraogo*, 637 SCRA at 145.

24. PHIL. CONST. art. VII, § 17. This Section provides that "[t]he President shall have control of all the executive departments, bureaus, and offices. He shall ensure that the laws be faithfully executed." *Id.*

25. *See Biraogo*, 637 SCRA at 157-58.

26. *Id.* at 159.

27. Marcos v. Manglapus, 177 SCRA 668 (1989).

28. *Biraogo*, 637 SCRA at 158-59 (citing *Marcos*, 177 SCRA at 691-92) (emphasis supplied).

This authority to establish ad hoc committees is further bolstered by the ruling in *Department of Health v. Camposano*,[29] which affirmed the authority of the President to create a committee that will examine the claims against certain employees of the Department of Health regarding questionable purchases of medicines.[30] In the said case, the Court ruled that the investigating body will properly inform the President of the circumstances surrounding the issue, which in turn, will allow him to take the necessary measures to prevent future anomalous practices in the government.[31]

D. The Power of the PTC to Investigate

The power to investigate, as enunciated in *Cariño v. Commission on Human Rights*,[32] "means to examine, explore, inquire or delve or probe into, research on, study."[33] Clearly, it does not include the power to adjudicate, rule upon, or settle controversies.[34] Hence, the PTC, although authorized as a fact-finding body, does not have any quasi-judicial power. In this sense, the PTC, instead of infringing upon duties of the Ombudsman and the Department of Justice in determining the existence of probable cause and of prosecuting cases, will actually complement them.[35] Nonetheless, it is worth noting that the power of the Ombudsman to investigate is not exclusive to him. This means that it can be shared with other similar bodies.[36] At any rate, his authority to look into criminal cases[37] is akin to a preliminary investigation, which is entirely different from the power of the PTC to investigate, intended merely to aid the President in the enforcement of laws.[38] More importantly, the findings of the PTC are subject to review by the courts. At best, they are merely recommendatory, much like the findings of other similar bodies, like the Davide and Feliciano Commissions.[39]

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29. Department of Health v. Camposano, 457 SCRA 438 (2005).

30. *Id.* at 450 (citing PHIL. CONST. art. VII, § 17 & E.O. No. 292, bk. 3, tit. 1, ch. 1, § 1).

31. *Id.*

32. Cariño v. Commission on Human Rights, 204 SCRA 483 (1991).

33. *Id.* at 495.

34. *Id.*

35. *Biraogo*, 637 SCRA at 163-64.

36. *See* Ombudsman v. Galicia, 568 SCRA 327, 339 (2008).

37. *See* An Act Providing for the Functional and Structural Organization of the Office of the Ombudsman, and For Other Purposes [The Ombudsman Act of 1989], Republic Act No. 6770, § 15 (1989).

38. *Biraogo*, 637 SCRA at 163.

39. *Id.* at 164.

II. ANALYSIS OF THE RATIONALE

A. The Equal Protection Clause

The EPC is embodied in Article III, Section 1 of the 1987 Constitution.[40] It is "designed to prevent any person or class from being singled out as a special subject of hostile or discriminating legislation."[41] Simply put, it protects any person — whether natural or artificial, alien or local, and regardless of race or color — from being treated differently than others who belong to the same class.[42] It requires the State to look beyond the differences that are of no importance to the main issue at hand, and to disregard certain distinctions which are immaterial to legitimate state interests.[43] As so eloquently put, "[t]he goddess of justice is portrayed with a blindfold, not because she must be hindered in seeing where the right lies, but that she may not discriminate suitors before her, dispensing instead an even justice to all."[44] Although the EPC is part and parcel of the concept of due process, it is expressly provided for in a separate clause to emphasize the need to guarantee against any form of partiality or preference towards specific persons or group of persons. Thus, it has been said that although "[a]rbitrariness in general may be challenged on the basis of the due process clause[,] [ ] if the particular act assailed partakes of an unwarranted partiality or prejudice, the sharper weapon to cut it down is the [EPC]."[45]

It must be noted, however, that although the EPC covers all official acts of the State, including those of the instrumentalities, agencies, and subdivisions of the government, it does not concern itself with the conduct of private persons.[46] The presence of the EPC in the Constitution also does not add any new rights in favor of one citizen against another.[47] It, however, does not mean that all laws must be applied in the same manner to all

40. PHIL. CONST. art. III, § 1. This Section provides that "[n]o person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws." *Id.*

41. JOSE N. NOLLEDO, THE NEW CONSTITUTION OF THE PHILIPPINES ANNOTATED 146 (1990 ed.).

42. *Id.* (citing 16 Am. Jur. 857 2d).

43. *See* Lehr v. Robertson, 463 U.S. 248 (1983) (U.S.).

44. JOAQUIN G. BERNAS, S.J., THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY 139 (2009 ed.) (citing 2 BERNARD SCHWARTZ, THE RIGHTS OF THE PERSON 487-88 (1968)).

45. *Biraogo*, 637 SCRA at 167 (citing Philippine Judges Association v. Prado, 227 SCRA 703, 711 (1993)).

46. RUPERTO G. MARTIN, PHILIPPINE CONSTITUTIONAL LAW 196 (1982 ed.).

47. *Id.* (citing People v. Vera, 65 Phil. 56 (1937)).

persons of different stature. Instead, it only requires "equality among equals," based on a reasonable classification.[48] To be considered reasonable, the classification must satisfy the following jurisprudential requirements: (1) the classification rests on substantial distinctions; (2) it is germane to the purpose of the law; (3) it is not limited to existing conditions only; and (4) it applies equally to all members of the same class.[49]

B. The Four-Part Test

(1) Substantial Distinctions

In *Biraogo v. The Philippine Truth Commission of 2010* (PTC Case),[50] the Court ruled that E.O. No. 1 is unconstitutional for transgressing the EPC.[51] The classification made by the E.O. refers to the narrow focus of the PTC mandate on the Arroyo administration as a separate subject of inquiry.[52] The decision actually quoted at least three portions of the E.O. which emphasize that the investigation of the PTC should be limited to the acts of graft and corruption "during the *previous* administration."[53] In deciding whether this classification is valid, the Court focused mainly on the first requisite of reasonableness, saying that "[E.O. No. 1] suffers from arbitrary classification"[54] with the Aquino administration's "intent to single out the previous administration [being] plain, patent and manifest."[55]

The Arroyo administration, the ruling continued, is "*not* a class of its own,"[56] there being no substantial distinctions between it and all the other prior administrations. Upon studying the Court's ruling, it is evident that its reasoning rests on two main similarities between the Arroyo administration and all other past administrations. First, it is "just a member of a class, that is, a class of past administrations"[57] or administrations that came before the present Aquino administration. All of them represented the Executive Branch during their time. Second, "[t]he reports of widespread corruption in

48. *Biraogo*, 637 SCRA at 167.

49. *Id.* at 168 (citing Beltran v. Secretary of Health, 476 SCRA 168, 194 (2005)).

50. *Id.*

51. *Id.* at 178.

52. *Id.* at 171.

53. *Id.* 170-71 (emphasis supplied). *See also* E.O. No. 1, whereas cl., ¶ 7, and §§ 1 & 2.

54. *Biraogo*, 637 SCRA at 172.

55. *Id.* at 170.

56. *Id.* at 171 (emphasis supplied).

57. *Id.*

the Arroyo administration cannot be taken as basis for distinguishing said administration from earlier administrations which were also blemished by similar widespread reports of impropriety. They are not inherent in, and do not inure solely to, the Arroyo administration."[58] Therefore, to limit the scope of the PTC specifically to this administration does not constitute reasonable classification.[59] However, while the Authors concede that these administrations are similar in these two respects, the Authors posit that there are still sufficient and substantial differences among them that would validly support E.O. No.1.

i. The Two-Level Analysis

The first requisite of reasonableness requires that the classification is "characterized by substantial distinctions."[60] Hence, in order for a particular group to be a subject of separate treatment, that group must bear distinguishing features that will set it apart from others. These distinctions must find foundation on "real differences"[61] as opposed to "superficial"[62] ones. Understanding the difference between the two concepts will be instructive in analyzing the *PTC Case*.

On the one hand, the following have been upheld as valid bases for classification or as factors which constitute real differences:

(1) citizenship (in relation to the nationalization of the retail trade and the consequent barring of aliens from participating in it to protect the local economy);[63]

(2) civilization/culture (in relation to the prohibition on members of non-Christian tribes from drinking or possessing alcoholic beverage apart from native wines and liquors);[64]

(3) age/maturity (in relation to conducting random drug testing among secondary and tertiary level students due to their higher exposure and vulnerability to the dangerous effects of drugs);[65]

58. *Id.*

59. *Id.* at 172-73.

60. Tiu v. Court of Appeals, 301 SCRA 278 (1999).

61. *Id.*

62. *Philippine Judges Association*, 227 SCRA 703.

63. *See* Ichong, etc., et al. v. Hernandez, etc., and Sarmiento, 101 Phil. 1155 (1957).

64. *See* People v. Cayat, 68 Phil. 12 (1939).

65. *See* Social Justice Society (SJS) v. Dangerous Drugs Board, 570 SCRA 410 (2008).

(4) economic or social class (in relation to the burial assistance given to families with a certain level of income or paupers[66] and to the different tax treatments of sales of real property to the "homeless poor" and the "homeless less poor"[67] for reasons of social welfare and equality);

(5) position or nature of work (in relation to the imposition of preventive suspension on criminally-charged members of the Philippine National Police (PNP) in order to prevent the use of their position to their advantage[68] and the different manner of filing complaints before the Office of the Ombudsman due to its jurisdiction over government officials);[69] and

(6) location or environment (in relation to the different employment practices concerning "land-based" and "sea-based" Filipino overseas workers).[70]

On the other hand, an example of a superficial difference can be seen in *City of Manila v. Laguio*.[71] An ordinance prohibiting the operation of sauna parlors, massage parlors, karaoke bars, beerhouses, night clubs, day clubs, super clubs, discotheques, cabarets, dance halls, motels, and inns in the Ermita-Malate area was struck down as invalid for violating the EPC.[72] The assumption was that in these establishments, "women are used as tools in entertainment"[73] and that they "tend to disturb the community, annoy the inhabitants, and adversely affect the social and moral welfare of the community."[74] The ordinance violated the EPC in several respects. One, only motels and inns were banned, but not pension houses, hotels, lodging houses, or other similar establishments.[75] The Court found that there are no substantial distinctions between these two groups since all provide lodging, food, and other like services to its clients.[76] Two, there was also no reason

66. *See* Binay v. Domingo, 201 SCRA 508 (1991).

67. *See* Tolentino v. Secretary of Finance, 249 SCRA 628, 657-58 (1995).

68. *See* Himagan v. People, 237 SCRA 538 (1994).

69. *See* Almonte v. Vasquez, 244 SCRA 286 (1995).

70. *See* The Conference of Maritime Manning Agencies, Inc. v. Philippine Overseas Employment Administration, 243 SCRA 666 (1995).

71. City of Manila v. Laguio, Jr., 455 SCRA 308 (2005).

72. *Id.* at 317-18.

73. *Id.* at 317.

74. *Id.*

75. *Id.* at 349.

76. *Id.*

for prohibiting the operation of these establishments only in the Ermita-Malate area while they were still allowed in the other places since "[a] noxious establishment does not become any less noxious if located outside the area."[77] Lastly,

> [t]he standard 'where women are used as tools for entertainment' is also discriminatory as prostitution — one of the hinted ills the Ordinance aims to banish — is not a profession exclusive to women. Both men and women have an equal propensity to engage in prostitution. It is not any less grave a sin when men engage in it. And why would the assumption that there is an ongoing immoral activity apply only when women are employed and be inapposite when men are in harness? This discrimination based on gender violates equal protection as it is not substantially related to important government objectives. Thus, the discrimination is invalid.[78]

Laguio shows that the apparent differences recognized by the ordinance were, in fact, merely superficial and are not real or substantial enough to justify the classification made by the ordinance.

It is important to note, however, that no particular factor can be an absolute basis of classification. Jurisprudence shows that whether a particular factor constitutes real or superficial differences depends on each and every case.[79] For example, the other three requisites of reasonableness must also be considered in order to determine the constitutionality of the classification. To illustrate: as seen in the previous enumeration, their position or the nature of their work can be a valid basis for the different treatment of PNP officials.[80] However, when this same factor was put to test in *Philippine Judges Association v. Prado*,[81] a circular implemented by the Philippine Postal Corporation was declared unconstitutional.[82] The circular withdrew the franking privileges of the Judiciary while retaining the same for other branches of the government.[83] The supposed reason behind the withdrawal was that the Judicial Branch has no need for these privileges.[84] However, the Court said —

77. *Laguio*, 455 SCRA at 349.

78. *Id.* (citing Craig v. Boren, 429 U.S. 190 (1976) (U.S.)).

79. *Compare The Conference of Maritime Manning Agencies, Inc.*, 243 SCRA 666, *with Laguio*, 455 SCRA 308. In both cases, the location factor was used as a basis for classification. However, the classification in *The Conference of Maritime Manning Agencies, Inc.* was held valid while that in *Laguio* was not.

80. *See Himagan*, 237 SCRA 538.

81. *Philippine Judges Association*, 227 SCRA 703.

82. *Id.* at 716.

83. *Id.* at 705.

84. *Id.* at 713.

> Assuming that basis, we cannot understand why, of all the departments of the government, it is the Judiciary, that has been denied the franking privilege. There is no question that if there is any major branch of the government that needs the privilege, it is the Judicial Department, as the respondents themselves point out. Curiously, the respondents would justify the distinction on the basis precisely of this need and, on this basis, deny the Judiciary the franking privilege while extending it to others less deserving.[85]

Thus, when considering *solely* the nature of the Judicial Branch, it does make the Judiciary distinct from the other branches. However, when analyzed together with the purpose of the law to prioritize those who need franking privileges, the nature of the Judiciary becomes the very reason why it should have qualified to belong to the same class enjoying these privileges.[86]

In this sense, it seems that in determining whether there are substantial distinctions based on real differences, one must first analyze the basis of the classification *by itself* or on its own, whether it is gender, location, position, etc. Then, to finally decide, a consideration of the basis *together with other factors* present in the case must also be done. As a whole, this two-level analysis is the most reliable way of studying the first requisite of reasonableness.

ii. The Dumlao Case

The two-level analysis can be exemplified in *Dumlao v. COMELEC*.[87] In *Dumlao*, Section 4 of Batas Pambansa Bilang 52[88] provided that "[a]ny retired elective provincial, city or municipal official ... who shall have been 65 years of age at the commencement of the term of office to which he seeks to be elected[,] shall not be qualified to run for the same elective local office from which he has retired."[89] This special disqualification for 65-year-old retirees was assailed as being founded on "purely arbitrary grounds."[90]

In deciding the case, the Court looked first at the two bases of the classification: age and the fact of retirement. Age, when taken alone, does not appear to be a reasonable basis for disqualifying candidates who are 65

85. *Id.*

86. *Id.*

87. Dumlao v. COMELEC, 95 SCRA 392 (1980).

88. An Act Governing the Election of Local Government Officials, Batas Pambansa Bilang 52 (Dec. 22, 1979).

89. *Dumlao*, 95 SCRA at 398.

90. *Id.* at 399.

years old and above.[91] This is because while the presence of younger and newer personalities in politics can be beneficial, it does not necessarily make them better qualified than those beyond the age 65.[92] In the same manner, the fact of retirement, when considered by itself, is also not a valid basis for the disqualification.[93] After all, there are those who retire at an earlier age than 65.[94] Also, there is no sufficient reason in assuming that a 65-year-old retiree is less qualified to serve than a 65-year-old who is not a retiree.[95]

After the first level of analysis, neither of these factors can justify the classification separately,

> [b]ut, in the case of a 65-year-old elective local official, who has retired from a provincial, city or municipal office, there is reason to disqualify him from running for the same office from which he had retired, as provided for in the challenged provision. The need for new blood assumes relevance. The tiredness of the retiree for government work is present, and what is emphatically significant is that the retired employee has already declared himself tired and unavailable for the same government work, but, which, by virtue of a change of mind, he would like to assume again.[96]

Thus, it is in the second level of analysis, when they are taken together, that they become a valid basis for the disqualification. A *65-year-old* or a *retiree* cannot be disqualified. But a *65-year-old retiree* can be.[97] Both factors must concur in order to justify the disqualification. The purpose of the cut-off age of 65 years old is to usher in a new generation of officials while the fact of retirement assumes that these retirees no longer have the spirit to continue governmental work.[98] This case demonstrates that while a particular factor is not by itself a real difference constituting a substantial distinction, when other factors are considered with it, then together, they become a valid basis for classification.

iii. Application of the Two-Level Analysis to the PTC Case

According to the respondents in the *PTC Case*, one of the bases for distinguishing the Arroyo administration is the "widespread reports of large scale graft and corruption in the previous administration which have eroded

91. *Id.* at 404.

92. *Id.* at 404-05.

93. *Id.* at 405.

94. *Id.*

95. *Dumlao*, 95 SCRA at 405.

96. *Id.*

97. *Id.*

98. *Id.*

public confidence in public institutions."[99] However, the petitioners pointed out, and the Court agreed, that there were also instances of graft and corruption reported during earlier administrations.[100] Thus, corruption alone does not establish a substantial distinction.[101] As previously mentioned, this is a point that the Authors concede to. Prevalence of corruption alone cannot be the sole basis of distinction. This is evident at the first level of analysis. However, there are other factors that must be considered. By performing the second level of analysis, all these bases, taken as a whole, will sustain the validity of the classification.

Aside from the existence of corruption, timing is one factor that must be looked into. As Justice Roberto A. Abad puts it, these timing-related factors must "not be so easily dismissed as superficial."[102] In terms of proximity,[103] the Arroyo administration is the most recent predecessor of the Aquino administration which will therefore directly inherit whatever consequences may be borne out of the former's actions and decisions.[104] It is only logical that President Aquino prioritize the investigation of the Arroyo administration since the landscape he is presently moving in was directly influenced by it.[105] Also, being the closest predecessor in time, the feasibility and practicality of investigation is substantial in terms of availability of witnesses, documents, and resources.[106] Likewise related to this is the issue of prescriptive period of acts of graft and corruption,[107] which will be discussed in another Section of this Comment.[108] It further highlights the urgent need to focus the mandate of the PTC to the previous administration.

Another reason to distinguish the Arroyo administration is the fact that the prior administrations have already been the subject of previous investigations and inquiries.[109] The Marcos and the Estrada Commissions have been investigated by the PCGG and the Saguisag Commission, respectively.[110] Earlier administrations were subjects of inquiry of the

99. *Biraogo*, 637 SCRA at 166.

100. *Id.* at 164.

101. *Id.* at 173.

102. *Biraogo*, 637 SCRA at 397 (J. Abad, dissenting opinion).

103. *See Biraogo*, 637 SCRA at 246 (J. Carpio-Morales, dissenting opinion).

104. *Biraogo*, 637 SCRA at 430 (J. Sereno, dissenting opinion).

105. *Id.* at 246 (J. Carpio-Morales, dissenting opinion).

106. *See Biraogo*, 637 SCRA at 256 (J. Carpio-Morales, dissenting opinion).

107. *Biraogo*, 637 SCRA at 225 (J. Carpio, dissenting opinion).

108. *See* Part II, B (3) of this Comment.

109. *Biraogo*, 637 SCRA at 227 (J. Carpio, dissenting opinion).

110. *Id.*

Integrity Board, Presidential Complaints and Action Commission, Presidential Committee on Administrative Performance Efficiency, and Presidential Anti-Graft Committee.[111] At the time of the promulgation of E.O. No. 1, the Arroyo administration has not yet been investigated by any commission or body, a factor that could easily justify its treatment as a class of its own.[112]

Lastly, the petitioners contend "that the search for truth behind the reported cases of graft and corruption must encompass acts committed not only during the administration of former President Arroyo but also during prior administrations where the '*same magnitude of controversies and anomalies*' were reported."[113] However, it is doubtful whether the same magnitude of graft and corruption can be possible. After all, while it can be assumed that there was corruption in all the prior administrations, it cannot be assumed that they are all of the same nature. Primarily, the different nuances are owed to the people sitting in the government during a particular administration. This is evident just by looking at the headlines or news events during each particular administration. Former President Ferdinand E. Marcos was accused of crony administration,[114] former President Joseph E. Estrada was found guilty of diverting public funds into his personal accounts and receiving kickbacks from gambling lords,[115] and the Arroyo administration was scrutinized for the National Broadband Network (NBN)-ZTE deal[116] and the "Hello Garci" scandal,[117] to name a few. While all of these may constitute acts of graft and corruption, they are not exactly the same. Different facts and issues accompany these headlines. As such, it is only sensible that each administration be the subject of separate inquiry and investigation, rather than lumping them together.

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111. *Id.* at 247 (citing the Respondents' Memorandum).

112. *Id.* at 248.

113. *Biraogo.* 637 SCRA at 165 (citing the Lagman Petition).

114. *See* Some Are Smarter Than Others: The History of Marcos' Crony Capitalism, *available at* http://cpcabrisbane.org/Kasama/2006/V20n4/SmarterThanOthers.htm (last accessed May 23, 2011).

115. *See* James Sturcke, Estrada given life sentence for corruption, *available at* http://www.guardian.co.uk/world/2007/sep/12/philippines (last accessed May 23, 2011).

116. *See* Tony Bergonia, *Arroyo not just witness at NBN-ZTE deal signing*, PHIL. DAILY INQ., Mar. 6, 2008 *available at* http://newsinfo.inquirer.net/inquirerheadlines/nation/view/20080306-123054/Arroyo-not-just-witness-at-NBN-ZTE-deal-signing (last accessed May 23, 2011).

117. *See* Agence France-Presse, *Arroyo ready for 'Hello Garci' probe*, PHIL. DAILY INQ., May 12, 2010, http://newsinfo.inquirer.net/breakingnews/nation/view/20100512-269579/Arroyo-ready-for-Hello-Garci-probe (last accessed May 23, 2011).

Thus, when all these factors are considered, the existence of corruption, timing, proximity, feasibility, former investigations done of prior administrations, and differences in the nature of corruption during these administrations, the conclusion that will be arrived at is that there are substantial distinctions between the Arroyo administration and all the other prior administrations.

(2) Germane to the purpose of the law

In determining whether the classification made by E.O. No. 1 is germane to its purpose, the Court said —

> The public needs to be enlightened why [E.O. No. 1] chooses to limit the scope of the intended investigation to the previous administration only. The [Office of the Solicitor-General] ventures to opine that 'to include other past administrations, at this point, may unnecessarily overburden the commission and lead it to lose its effectiveness.' The reason given is specious. It is without doubt irrelevant to the legitimate and noble objective of the PTC to stamp out or 'end corruption and the evil it breeds.'[118]

To test the Court's decision on this matter, a proper understanding of the second requirement of reasonableness is in order. In explaining this requisite, retired Justice Isagani A. Cruz wrote —

> The classification, even if based on substantial distinctions, will still be invalid if it is not germane to the purpose of the law. To illustrate, the accepted difference in physical stamina between men and women will justify the prohibition of the latter from employment as miners or stevedores or in other heavy and strenuous work. On the basis of this same classification, however, the law cannot provide for a lower passing average for women in the bar examinations because physical strength is not the test for admission to the legal profession. Imported cars may be taxed at a higher rate than locally assembled automobiles for the protection of the national economy, but their difference in origin is no justification for treating them differently when it comes to punishing violations of traffic regulations. The source of the vehicle has no relation to the observance of these rules.[119]

Thus, before establishing whether the classification is germane to the law's purpose, it is indispensable to ascertain first what the purpose of the law is.[120] In doing so, two approaches may be taken: the stricter view and the broader view. The first approach zones in on the particular and specific

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118. *Biraogo*, 637 SCRA at 171 (citing Office of the Solicitor-General, Memorandum & E.O. No. 1, whereas cl., ¶ 6).

119. ISAGANI A. CRUZ, CONSTITUTIONAL LAW 131 (1998 ed.).

120. *Biraogo*, 637 SCRA at 252 (J. Carpio-Morales, dissenting opinion).

purpose of E.O. No. 1, which is the creation of the PTC as an investigatory body. The second approach deals with the larger picture, which is the eradication of graft and corruption in the government. Since both views result in different determinations as to *what* the law's purpose is, they may also lead to different conclusions regarding the classification's *relevance* to the purpose against which it is being tested. However, the Authors posit that applying either of these two approaches would lead to the conclusion that the Court erroneously ruled that the classification of the Arroyo administration is not germane to the law's purpose.

i. The Stricter View

This view holds that the objective of the law must be seen independently of and separately from the broader anti-corruption thrust of the Aquino administration. The purpose of the law is distinct from, albeit supplementary to, the aim of President Aquino to put an "end [to] corruption."[121] This approach is more specific in its analysis because it looks not at the administration's goal that prompted the promulgation of E.O. No. 1, but at the particular objective that the E.O. seeks to accomplish.

What, then, is the specific purpose of the law? E.O. No. 1 is clear and unambiguous in this regard: to create a fact-finding body which, after proper investigation and inquiry, will recommend appropriate actions and measures to the President regarding the reported cases of corruption during the Arroyo administration.[122] The law aims to establish a new investigatory commission — this can be confirmed by the E.O.'s title: "Creating the Philippine Truth Commission of 2010."[123] To ensure that this objective can be completed, the PTC was vested with several powers and functions, which include evaluating evidence gathered,[124] obtaining information and documents from the other branches of the government,[125] subpoenaing and taking testimonies of witnesses,[126] and such other acts as necessary to fulfill its mandate.[127] The objective of E.O. No. 1 is to create a body which will "produce a report which, insofar as the [PTC] is concerned, is the end in itself."[128] The action the President takes upon this report, in line with his administration's anti-corruption efforts, will be for him to decide as "[t]he

121. E.O. No. 1, whereas cl., ¶ 6.

122. *Id.* whereas cl., ¶ 7.

123. *See* E.O. No. 1.

124. E.O. No. 1, § 2 (b).

125. *Id.* § 2 (c) & (d).

126. *Id.* § 2 (e).

127. *Id.* § 2 (k).

128. Biraogo, 637 SCRA at 252 (J. Carpio-Morales, dissenting opinion).

purpose of the report is another matter which is already outside the control of E.O. No. 1."[129] In this light, the issuance by President Aquino of E.O. No. 1 and the subsequent creation of the PTC can be regarded merely as an implementation of the administration's broader objective of eradicating corruption. As Justice Conchita Carpio-Morales argues, "[t]he long-term goal of the present administration must not be confused with what E.O. No. 1 intends to achieve within its short life."[130]

The distinction between the two was blurred by the Court when it said that the classification made by E.O. No. 1 is "without doubt irrelevant to the legitimate and noble objective of the PTC to stamp out [corruption]."[131] Because of the confusion between the purpose of the law and the goal of the present administration, this statement is flawed in two respects. First, the Court looked at the "legitimate and noble objective *of the PTC*,"[132] and not at the objective of E.O. No. 1. The test of reasonableness requires that it must be germane to the purpose *of the law*, and not to the purpose of the body or office that the law creates. Second, the Court categorically said that the objective of the law is to eradicate corruption. Again, the stricter view holds that while this may be the underlying spirit of the law, this is not the law's purpose per se. These reasons prove that when the stricter view is used, it is clear that the Court was testing the second requisite against the *wrong* purpose of the law. Hence, any determination borne out of such analysis would be inaccurate.

ii. The Broader View

The broader view moves past the specific and particular purpose of the law and looks instead at the end goal of its promulgation: putting an end to graft and corruption.[133] The Court took this approach and reached the conclusion that the classification made by the law is not germane to its purpose.[134] In his separate opinion, Chief Justice Renato C. Corona said that "[c]orruption did not occur only in the past administration. To stamp out corruption, we must go beyond the façade of each administration and investigate all public officials and employees alleged to have committed graft in any previous administration."[135] This statement recognizes that corruption was likewise prevalent in earlier administrations. If the purpose of the law is to eliminate

129. *Id.* at 252-53.

130. *Id.* at 252.

131. *Biraogo*, 637 SCRA at 171.

132. *Id.* (emphasis supplied).

133. *See generally* E.O. No. 1, whereas cl.

134. *Biraogo*, 637 SCRA at 174-75.

135. *Biraogo*, 637 SCRA at 187 (J. Corona, concurring opinion).

graft, then there would be no reason in limiting the mandate of the PTC to the Arroyo administration only. In fact, it would seem to be more logical to include prior administrations as well. Hence, the classification is invalid.

However, contrary to this conclusion, there are two reasons why even when tested against this broader purpose, the classification still passes constitutional muster. First, to lump together the Arroyo administration with the earlier ones would actually be counter-productive to the law's purpose. In fact,

> [c]lassifying the '*earlier past administrations*' in the last 111 years as just one class is not germane to the purpose of investigating possible acts of graft and corruption. There are prescriptive periods to prosecute crimes. There are administrations that have already been investigated by their successor administrations. There are also administrations that have been subjected to several Congressional investigations for alleged large-scale anomalies. There are past Presidents, and the officials in their administrations, who are all dead. There are past Presidents who are dead but some of the officials in their administrations are still alive. Thus, all the '*earlier past administrations*' cannot be classified as just one single class — '*a class of past administrations.*'[136]

These reasons clearly prove that without the recognition of the Arroyo administration as a separate class, the drive towards the eradication of corruption will just be impeded, hampered, or rendered useless. To take action against the Arroyo administration is the most practical and realistic step that will go a long way into the administration's anti-corruption efforts. This is especially true when one considers that "[t]he segregation of the preceding administration as the object of fact-finding is warranted by the reality that unlike with administrations long gone, the current administration will most likely bear the immediate consequence of the policies of the previous administration."[137] Thus, the classification made by the law is germane to its purpose. As Justice Antonio T. Carpio says, "[t]o prioritize based on reasonable and even compelling grounds is not to discriminate, but to act sensibly and responsibly."[138] And in this fight against corruption, no better action can be taken than sensible and responsible ones.

Second, E.O. No. 1 does not "[represent] the entire anti-corruption efforts of the Executive Department."[139] Even assuming that the purpose of the law is to put an end to corruption, this does not mean that the E.O. is the *only* means of the administration of doing so. As Justice Maria Lourdes

136. *Biraogo*, 637 SCRA at 230 (J. Carpio, dissenting opinion).

137. *Biraogo*, 637 SCRA at 166.

138. *Biraogo*, 637 SCRA at 225 (J. Carpio, dissenting opinion).

139. *Id.* at 253 (J. Carpio-Morales, dissenting opinion).

P.A. Sereno puts it, "[i]f the investigation into the root of corruption is to gain traction, it must start somewhere, and the best place to start is to examine the immediate past administration, not distant past administrations."[140] Thus, it can be a mere "headstart on the campaign against graft and corruption."[141]

The case of *De Guzman, Jr. v. Commission on Elections*[142] is also instructive in this matter. In this case, petitioners questioned the validity of Republic Act No. 8189,[143] particularly Section 44, which prohibited COMELEC city and municipal election officers from holding such positions in the same city or municipality for more than four years.[144] It required them to be reassigned to another station after the lapse of the given period.[145] Petitioners argued that this is violative of the EPC, there being no justification for discriminating against officers in their positions since the prohibition does not apply to other officers.[146] In deciding that the classification is valid, the Court said —

> The singling out of election officers in order to 'ensure the impartiality of election officials by preventing them from developing familiarity with the people of their place of assignment' does not violate the [EPC] of the Constitution.
>
> In *Lutz* [*v*]. *Araneta*,[147] it was held that 'the legislature is not required by the Constitution to adhere to a policy of 'all or none.'' This is so for underinclusiveness is not an argument against a valid classification. It may be true that all the other officers of COMELEC referred to by petitioners are exposed to the same evils sought to be addressed by the statute. However, in this case, it can be discerned that the legislature thought *the noble purpose of the law would be sufficiently served by breaking an important link in the chain of corruption than by breaking up each and every link thereof*. Verily, ... election officers are the highest officials or authorized representatives of the COMELEC in a city or municipality. It is safe to say that without the

140. *Id.* at 447 (J. Sereno, dissenting opinion).

141. *Id.*

142. De Guzman, Jr. v. Commission on Elections, 336 SCRA 188 (2000).

143. An Act Providing for a General Registration of Voters, Adopting a System of Continuing Registration, Prescribing the Procedures Thereof and Authorizing the Appropriation of Funds Therefor [The Voter's Registration Act of 1996], Republic Act No. 8189 (1996).

144. *De Guzman, Jr.*, 336 SCRA at 194.

145. *Id.*

146. *Id.* at 196.

147. Lutz v. Araneta, 98 Phil. 148 (1955).

> complicity of such officials, large scale anomalies in the registration of voters can hardly be carried out.[148]

The Court upheld the classification because by focusing on the city and municipal election officers, corrupt practices during the election period can be earlier detected or even prevented. By blocking the chances of these officers of being exposed to bribery and other temptations, the accomplishment of the purpose of the law of insuring impartiality among its officers becomes more feasible. Just like these officers, the Arroyo administration is "an important link in the chain of corruption,"[149] it being the most recent administration. As a starting line, the classification of the Arroyo administration as a separate class would better serve the supposed anti-corruption goal of the law. Without such initial reference point, the campaign against corruption may just be marked by confusion, chaos, and disorder.

(3) The classification is not limited to existing conditions only

This element requires that obligations, rights, and sanctions imposed by the State be applicable not only to present conditions, but also to similar past and future circumstances. In *Ormoc Sugar Co. v. Treasurer of Ormoc City*,[150] where the Court declared unconstitutional an ordinance imposing tax to a particular sugar central, the Court ruled as follows —

> A perusal of the requisites instantly shows that the questioned ordinance does not meet them, for it taxes only centrifugal sugar produced and exported by the Ormoc Sugar Company, Inc. and none other. At the time of the taxing ordinance's enactment, Ormoc Sugar Company, Inc., it is true, was the only sugar central in the city of Ormoc. Still, the classification, to be reasonable, *should be in terms applicable to future conditions as well. The taxing ordinance should not be singular and exclusive as to exclude any subsequently established sugar central*, of the same class as plaintiff, for the coverage of the tax. As it is now, even if later a similar company is set up, it cannot be subject to the tax *because the ordinance expressly points only to Ormoc City Sugar Company, Inc.* as the entity to be levied upon.[151]

In the same vein, the creation of the PTC has been ruled not to satisfy this third requirement of EPC, mainly because its scope is allegedly limited to the Arroyo administration, excluding from investigations all the past administrations which are similarly plagued with controversies regarding graft and corruption.[152] An examination of Section 17 of E.O. No. 1, however,

148. *De Guzman, Jr.*, 336 SCRA at 196-97 (emphasis supplied).

149. *Id.*

150. Ormoc Sugar Co., Inc. v. Treasurer of Ormoc City, 22 SCRA 603 (1968).

151. *Id.* at 606 (emphasis supplied).

152. *See Biraogo*, 637 SCRA.

will show that the President actually has the power to expand the mandate of the PTC, and order the investigation even of prior administrations, even though the investigation of graft and corrupt practices under the Arroyo administration should remain its priority.[153] Such will still not violate the EPC because the prioritization is reasonably justified.[154] Furthermore, although this power depends largely on the discretion of the President, it cannot be denied that by express authority given by E.O. No. 1, such power exists. As put by Justice Sereno in her dissenting opinion, "under-inclusiveness of remedial measures is not unconstitutional, especially when the purpose can be attained through inclusive future legislation or regulation."[155] In fact, Section 17 of E.O. No. 1 is similar to Section 2 (b) of Executive Order No. 1 (PCGG Charter)[156] issued by President Corazon Aquino on 28 February 1986, creating the PCGG. Both Sections provide for the possible inclusion of prior administrations in the investigations of the respective bodies, yet the constitutionality of the PCGG was upheld.[157]

Furthermore, it would seem that the power of the President granted under Section 17 of E.O. No. 1 is largely moot[158] if we consider the prescriptive periods for prosecuting acts of corruption under the Revised Penal Code.[159] Under the law, the most serious acts of graft and corruption shall prescribe within 20 years;[160] offenses punishable under the Anti-Graft and Corrupt Practices Act shall prescribe within 10 years;[161] and offenses punishable under special laws where no prescriptive periods are provided

153. E.O. No. 1, § 17. This Section provides —

> If and when in the judgment of the President there is a need to expand the mandate of the Commission as defined in Section 1 hereof to include the investigation of cases and instances of graft and corruption during the prior administrations, such mandate may be extended accordingly by way of a supplemental Executive Order.

Id.

154. *Biraogo*, 637 SCRA at 224 (J. Carpio, dissenting opinion).

155. *Id.* at 438 (J. Sereno, dissenting opinion).

156. Creating the Presidential Commission on Good Government, Executive Order No. 1 (Feb. 28, 1986) [hereinafter PCGG Charter].

157. *Biraogo*, 637 SCRA at 438 (J. Sereno, dissenting opinion).

158. *See Biraogo*, 637 SCRA at 224 (J. Carpio, dissenting opinion).

159. An Act Revising the Penal Code and Other Penal Laws [REVISED PENAL CODE], Act No. 3815, arts. 90, 211-A, & 217 (1932).

160. *Id.* art. 90.

161. Anti-Graft and Corrupt Practices Act, Republic Act No. 3019, § 11 (1960).

shall prescribe within 12 years.[162] If we consider this, any investigation is then limited to acts committed within the last 20 years. Note, however, that lumping together all the past administrations of the Philippine government would amount to a total of 111 years,[163] and that the Arroyo administration extended to around nine years. This would mean that only few offenses are not covered by the PTC because all the other acts of corruption in the government have either prescribed, or really fall under the Arroyo administration.[164] Furthermore, although prescription periods run from the discovery of the offense, it must be noted that serious and large scale corruptions are "widely reported in media," which may have already prompted the running of their respective prescriptive periods.[165]

As to the applicability of the PTC to future administrations, it must be borne in mind that the PTC is mandated to complete its assigned duties on or before 31 December 2012.[166] Thus, it could be said that its creation is not really meant to cover future administrations.[167] In her dissenting opinion, Justice Carpio-Morales had this to say —

> That the classification should not be limited to existing conditions only, as applied in the present case, does not mean the inclusion of future administrations. Laws that are limited in duration (e.g., general appropriations act) do not circumvent the guarantee of equal protection by not embracing all that may, in the years to come, be in similar conditions even beyond the effectivity of the law. ... In the present case, the circumstance of available reports of large-scale anomalies that fall under the classification (i.e., committed during the previous administration) makes one an 'existing condition.' Those not yet reported or unearthed but likewise fall under the same class must not be excluded from the application of the law. There is no such exclusionary clause in E.O. No. 1. The ratiocination on this third requisite so as to include previous administrations already goes into the 'classifications,' not the 'conditions.'[168]

(4) The classification applies equally to all members of the same class

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162. An Act to Establish Periods of Prescription for Violations Penalized by Special Acts and Municipal Ordinances and to Provide When Prescription Shall Begin to Run, Act No. 3326, § 1 (1926).

163. *Biraogo*, 637 SCRA at 229 (J. Carpio, dissenting opinion).

164. *See Biraogo*, 637 SCRA at 224 (J. Carpio, dissenting opinion).

165. *Id.* (citing People v. Duque, 212 SCRA 607 (1992)).

166. E.O. No. 1, § 14.

167. *Biraogo*, 637 SCRA at 254 (J. Carpio-Morales, dissenting opinion).

168. *Id.*

This element simply embodies the general principle of "equality among equals,"[169] whereby "equals" are determined by a legitimate classification which sets them apart from others. An application of this can clearly be seen in *International School Alliance of Educators v. Quisumbing*,[170] where the Court ruled that Filipino teachers in the International School should receive the same salary as the foreign hires of equal rank, as exemplified by "the long honored legal truism of 'equal pay for equal work.' Persons who work with substantially equal qualifications, skill, effort and responsibility, under similar conditions, should be paid similar salaries. This rule applies to the School, its 'international character' notwithstanding."[171]

The fact, however, that the PTC does not cover prior administrations aside from Arroyo's does not necessarily mean that it does not satisfy this element. As discussed above, the Arroyo administration is a class by itself. It is different as against others in the sense that "unlike with administrations long gone, the current administration will most likely bear the immediate consequence of the policies of the previous administration."[172] Furthermore, it has been said that discrimination is rooted on the injustice caused to those being discriminated against, which however, is not applicable in the case of the PTC.[173] This can be seen in three aspects: (1) no one is being deprived of their right to appear before the Commission; (2) the PTC's authority only includes the power to investigate and recommend appropriate measures; it does not have any power to render any judgment that may prejudice the rights of any party;[174] and (3) failure to prosecute cases cannot be justified on the grounds that not all those who were probably guilty of the same are charged.[175]

III. THE PCGG JUXTAPOSITION

It would be difficult to discuss the constitutionality of the PTC without mentioning the PCGG. After all, the parallelism between the two cannot be

169. *Id.*

170. International School Alliance of Educators v. Quisumbing, 333 SCRA 13 (2000).

171. *Id.* at 22-23.

172. *Biraogo*, 637 SCRA at 166. *See also* Joaquin G. Bernas, S.J., *The SC and the Truth Commission*, PHIL. DAILY. INQ., Dec. 12, 2010, *available at* http://opinion.inquirer.net/inquireropinion/columns/view/20101212-308633/The-SC-and-the-Truth-Commission (last accessed May 23, 2011).

173. *Biraogo*, 637 SCRA at 255 (J. Carpio-Morales, dissenting opinion).

174. *Id.*

175. *Id.* at 255-56 (citing Reyes v. Pearlbank Securities, Inc., 560 SCRA 518, 539 (2008)).

denied. The latter, which was also established pursuant to E.O. No. 1[176] in relation to E.O. No. 2[177] and E.O. No. 14,[178] was the first presidential act of the late President Corazon C. Aquino, done 24 years before her son signed his own E.O. creating the PTC.[179] Both the PTC and the PCGG were created to investigate the anomalies during the administrations of their creators' predecessors.[180] Both were borne amidst public clamor for change and the desire to see former government officials answer for their betrayals of the public's trust.[181]

The PCGG has met and won its fair share of constitutional battles. The Court has consistently upheld the constitutionality of the commission, whether the legal attacks were concerned with its continuing power to file and prosecute the cases it investigates,[182] its status as a co-equal body with the Regional Trial Courts,[183] or the validity of its sequestration or freeze orders.[184] While many perceive that the PCGG should be abolished because it has "outlived its purpose,"[185] former Court of Appeals Justice Magdangal Elma, who is now the Presidential Assistant for Special Concerns, stresses that pursuant to Article XVIII, Section 3 of the 1987 Constitution,[186] "all existing laws ... shall remain operative until amended,

176. PCGG Charter.

177. Regarding the Funds, Moneys, Assets, and Properties Illegally Acquired or Misappropriated by Former President Ferdinand Marcos, Mrs. Imelda Romualdez Marcos, Their Close Relatives, Subordinates, Business Associates, Dummies, Agents, or Nominees, Executive Order No. 2 (Mar. 12, 1986).

178. Defining the Jurisdiction Over Cases Involving the Ill-Gotten Wealth of Former President Ferdinand E. Marcos, Mrs. Imelda R. Marcos, Members of Their Immediate Family, Close Relatives, Subordinates, Close and/or Business Associates, Dummies, Agents and Nominees, Executive Order No. 14 (May 7, 1986).

179. PCGG Charter.

180. *See* PCGG Charter, § 2 (a) & E.O. No. 1, § 1.

181. *See* PCGG Charter, whereas cls. & E.O. No. 1, whereas cls.

182. *See* Virata v. Sandiganbayan, 202 SCRA 680 (1991).

183. *See* Presidential Commission on Good Government v. Peña, 159 SCRA 556 (1988).

184. *See* Bataan Shipyard and Engineering Co., Inc. v. Presidential Commission on Good Government, 150 SCRA 181 (1987).

185. Aytch S. de la Cruz and Angie M. Rosales, *Palace surprised over Elma's PCGG formula*, PHIL. DAILY TRIBUNE, Dec. 15, 2010, *available at* http://www.tribuneonline.org/headlines/20101215hed4.html (last accessed May 23, 2011).

186. PHIL. CONST. art. XVIII, § 3.

repealed, or revoked." The PCGG Charter being a law, "remains effective up to the present."[187]

A. The Similarities of the Two Commissions

The PTC and the PCGG share several characteristic features. In discussing the EPC, these similarities become of paramount importance. First, both commissions were mandated to investigate the predecessor administrations of their creators. The PCGG was tasked to pursue "the recovery of all ill-gotten wealth accumulated by former President Ferdinand E. Marcos, his immediate family, relatives, subordinates and close associates" during his administration.[188] While the PCGG enjoys quasi-judicial powers,[189] which the PTC does not,[190] the laws creating them both treat the administrations subject of their mandates as separate classes. Thus, the same arguments why the singling out of the Arroyo administration rests on substantial distinctions can be said of the Marcos administration and why both E.O. No. 1 and the PCGG Charter apply equally to all members within the respective classes classified.[191] That this is the case is not surprising since —

> almost every fact-finding body focuses its investigation on a specific subject matter — whether it be a specific act, incident, event, situation, condition, person or group of persons. This specific focus results from the nature of a fact-finding investigation, which is a necessary and proper response to a specific compelling act, incident, event, situation, or condition involving a person or group of persons. Thus, the fact-finding commissions created under the previous Arroyo administration had specific focus: the Feliciano Commission focused on the Oakwood mutiny, the Melo Commission

187. Francis Earl A. Cueto, PCGG open to adopting Truth Commission, *available at* http://www.pinoynews.com.au/pcgg-open-to-adopting-truth-commission/ (last accessed May 23, 2011).

188. PCGG Charter, § 2 (a).

189. *See Peña*, 159 SCRA 556 & PCGG Charter, § 3.

190. *Biraogo*, 637 SCRA at 143. The Supreme Court held that —

> It is not, however, a quasi-judicial body as it cannot adjudicate, arbitrate, resolve, settle, or render awards in disputes between contending parties. All it can do is gather, collect and assess evidence of graft and corruption and make recommendations. It may have subpoena powers but it has no power to cite people in contempt, much less order their arrest. Although it is a fact-finding body, it cannot determine from such facts if probable cause exists as to warrant the filing of an information in our courts of law. Needless to state, it cannot impose criminal, civil or administrative penalties or sanctions.

Id.

191. *See* Parts II, A (1) & A (2) of this Comment.

> focused on extra-judicial killings, and the Zeñarosa Commission focused on private armies.[192]

The classifications made by the laws were also both relevant and appropriate in light of their common purpose: to fight corruption in the government. In the case of the Marcos administration, the PCGG's focus on it stemmed from the "urgent need"[193] to go after the "vast resources of the government [that] have been amassed"[194] during its tenure. Both commissions were mandated to zoom in on these administrations because of the widespread cases of corruption during their time, which their successor Aquinos desire to combat. Coincidentally, many perceive that the corruption during the Arroyo administration was the "worst the country has ever seen since the time of former President Ferdinand Marcos," [195] justifying the need to create another commission whose subject of inquiry was specific to it.

Another similarity shared by the two commissions is that both their mandates can possibly be expanded in the future. Section 2 (b) of the PCGG Charter provides that its investigatory powers can include "such cases of graft and corruption as the President may assign to the Commission from time to time."[196] In the same vein, when necessary, the President, through a supplemental Executive Order, can order the PTC to investigate graft and corrupt cases of even earlier administrations.[197] Upon this similarity, Justice Carpio observes —

> Thus, under Section 2 (b) of the PCGG Charter, the President can expand the investigation of the PCCG even as its primary task is to recover the ill-gotten wealth of the Marcoses and their cronies. Both [E.O. No. 1] and the PCGG Charter have the same provisions on the scope of their investigations. Both the [PTC] and the PCGG are primarily tasked to conduct specific investigations, with their mandates subject to expansion by the President from time to time.[198]

Given such provisions, both laws fulfill the requirement that the classification is not limited to present and existing conditions only.

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192. *Biraogo*, 637 SCRA at 226 (J. Carpio, dissenting opinion).

193. *See* PCGG Charter, whereas cls.

194. *Id.*

195. Michael Punongbayan, '*Corruption under GMA the worst since Marcos*', PHIL. STAR, Dec. 2, 2008, *available at* http://www.philstar.com/Article.aspx?articleid=420518 (last accessed May 23, 2011).

196. PCGG Charter, § 2 (b).

197. E.O. No. 1, § 17.

198. *Biraogo*, 637 SCRA at 223 (J. Carpio, dissenting opinion).

However, despite such similarities, E.O. No. 1 of 2010 was struck down as unconstitutional for being violative of the EPC, while the PCGG Charter has survived attacks on this ground. In *Virata v. Sandiganbayan*,[199] the Court categorically ruled that it "does not violate the [EPC] and is not a bill of attainder or an ex post facto law."[200] The decision does not explain this statement at length, only saying that "[t]here is valid and reasonable basis for the classification."[201] Its reasoning rests primarily on the inability of the petitioners to overcome the presumption of constitutionality accorded to laws: "To justify nullification of a law, there must be a clear and unequivocal breach of the Constitution, not a doubtful or argumentative implication; a law shall not be declared invalid unless the conflict with the Constitution is clear beyond a reasonable doubt."[202] If the PCGG has survived the attack on its transgression of the EPC, there seems to be no reason for the PTC to fail in this regard. The two commissions are substantially similar in the matters required to pass the test of reasonableness. In fact, if the disparate treatment of these two commissions is not recognized, then —

> [t]he majority opinion will also mean that the PCGG Charter — which tasked the PCGG to recover the ill-gotten wealth of the Marcoses and their cronies — violates the [EPC] because the PCCG Charter specifically mentions the Marcoses and their cronies. The majority opinion reverses several decisions of this Court upholding the constitutionality of the PCCG Charter, endangering over two decades of hard work in recovering ill-gotten wealth.[203]

B. The Difference Between the Two Commissions

When asked about the creation of the PTC, Senator Joker P. Arroyo opined that it would be "a toothless commission" since "[i]t would suffer from a very legal flaw."[204] The "legal flaw" goes straight into the most glaring difference between the two commissions: the manner of their creation. While both were created pursuant to an E.O., the powers used by the

199. *Virata*, 202 SCRA 680.

200. *Id.* at 698.

201. *Id.* at 699.

202. *Id.* at 698 (citing Peralta v. Commission on Elections, 82 SCRA 30 (1978) & Paredes, et al. v. Executive Secretary, 128 SCRA 6 (1984)).

203. *Biraogo*, 637 SCRA at 236 (J. Carpio, dissenting opinion) (citing *Virata*, 202 SCRA 680; *Peña*, 159 SCRA 556; & *Bataan Shipyard and Engineering Co., Inc.*, 150 SCRA 181).

204. Michael Lim Ubac, *Joker: Truth commission is doomed*, PHIL. DAILY INQ., July 29, 2010, *available at* http://newsinfo.inquirer.net/inquirerheadlines/nation/view/20100729-283748/Joker-Truth-commission-is-doomed (last accessed May 23, 2011).

respective presidents in issuing these orders were not the same.[205] This aspect may be irrelevant to the EPC conundrum, but its discussion will strengthen the Authors' position that the constitutionality accorded to the PCGG should likewise be given to the PTC.

Under the 1986 Freedom Constitution,[206] the late President Aquino enjoyed both legislative and executive powers.[207] This legislative power was given to her in order to prioritize the recovery of "ill-gotten properties amassed by the leaders and supporters of the previous regime and protect the interest of the people through orders of sequestration or freezing of assets of accounts"[208] and the elimination of "graft and corruption in government and punish those guilty thereof."[209] Accordingly, she created the PCCG pursuant to this power. Hence, the E.O. has the force and effect of the law.

The present Constitution, however, recognizes the separation of powers between the three branches of the government.[210] Consequently, lawmaking powers are vested exclusively upon the Congress.[211] Because of this, the question as to whether the President can create a fact-finding body such as the PTC has arisen. Having no legislative powers, "anything that the President does via an executive order does not have the force of law,"[212] leading to the conclusion that in the absence of legislative imprimatur, the PTC would have no subpoena powers and would be limited to inviting persons to cooperate with their investigations.[213]

However, this difference in the manner of creation is still not enough justification for the Court's different treatment of these two commissions, since the Court itself has ruled that due to his full control of the Executive Department, the President undoubtedly has the power to create an investigatory body.[214] Therefore, it is well within the President's *executive* powers to create the PTC. The power of the President to create a truth commission no longer being an issue, it becomes clear that there truly is no justification for the different treatment of the Court of the two commissions even if the PCGG was created via legislative powers.

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205. *Id.*

206. 1986 PHIL. CONST. (superseded 1987).

207. 1986 PHIL. CONST. art II, § 1.

208. 1986 PHIL. CONST. art II, § 1 (d).

209. 1986 PHIL. CONST. art II, § 1 (e).

210. *See generally* PHIL. CONST. arts. V, VI, & VII.

211. PHIL. CONST. art. VI, § 1.

212. Ubac, *supra* note 204.

213. *Id.*

214. *Biraogo*, 637 SCRA at 159.

IV. CONCLUSION

Nothing is original in the factual milieu of this case: an E.O. creating a fact-finding body was issued by a President in order to investigate a predecessor government marred by reports and scandals of graft and corruption. Perhaps what is only precedent-setting in the instant case is that unlike in the case of bodies past such as the PCGG, E.O. No. 1 was struck down for violating the EPC. Contrary to the ruling, this Comment discussed the four requisites of reasonableness and attempted to show through jurisprudence that they are all satisfied by E.O. No. 1. A comparison of the PTC with the PCGG also shows that due to their similarities and despite their differences, a similar constitutional treatment must be accorded to the PTC.

The Court itself described the purpose of E.O. No. 1 to eradicate graft and corruption as a "noble and legitimate objective."[215] Indeed, this aspiration is laudable. But with the Court's ruling in this case, the chances of punishing wrongdoers during the Arroyo administration seems to be slipping away. Perhaps the only alternative is that suggested by many, which is to assign the aborted functions of the PTC to the PCGG, which remains operational until the present.[216] Undoubtedly, this move will still be blocked or opposed for some reason or another. When even this option is thwarted, the country should be prepared to ask itself one question: who's afraid of the truth now?

215. *Id.*

216. *See* Delon Porcalla, *Palace studying all options on Truth Commission*, PHIL. STAR, Dec. 15, 2010, *available at* http://www.philstar.com/Article.aspx?articleId=639351&publicationSubCategoryId= (last accessed May 23, 2011).