

The Case of *Risos-Vidal v. COMELEC* and the Pardoning Power as the Most Benevolent Power of the Chief Executive

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I. INTRODUCTION

The Constitution gives the President overwhelming powers, one of which is to extend benevolence to transgressors of law who, in the opinion of the Chief Executive, are deserving of mercy.¹ This executive gift is said to be without limitation, except for those specifically stated in the Constitution.² But like most exclusive powers, the power to pardon is almost deferred from scrutiny of the co-equal branches of government under the principle of separation of powers.³ Hence, it is highly susceptible to abuse.

The conviction of President Joseph Ejercito Estrada shocked the country with overwhelming issues of graft and corruption.⁴ But all these seemed to have been obliterated by the pardon granted by former President Gloria Macapagal-Arroyo.⁵ It is conceded that executive clemency is considered as a prerogative of the Chief Executive.⁶ However, the exercise of such an enormous power, which largely involves public interest, should not be left unexamined.

With the promulgation of the case of *Risos-Vidal v. Commission on Elections*⁷ confirming the qualification of Estrada to run for public office, the Author deems it necessary to revisit the nature of pardon as a private act of the President. This Essay will discuss the nature of the pardoning power of the Chief Executive and examine the issues pertinent to this prerogative, in relation to the case of *Risos-Vidal*. First, the factual antecedents are provided, focusing on the rise and fall of Estrada in Philippine politics. Second, the case of *Risos-Vidal* is discussed with the issues, arguments, and rulings in the case. Third, the history and nature of pardoning power of the President are

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1. See PHIL. CONST. art. VII, § 19.
 2. See *People v. Salle, Jr.*, 250 SCRA 581, 588 (1995).
 3. See *Cristobal v. Labrador*, 71 Phil. 34, 38 (1940).
 4. GMA News, Sandigan verdict: Erap guilty of plunder, cleared of perjury, available at <http://www.gmanetwork.com/news/story/60237/news/nation/sandigan-verdict-erap-guilty-of-plunder-cleared-of-perjury> (last accessed July 29, 2015). See also *Republic v. Sandiganbayan*, 369 SCRA 394, 429 (2001).
 5. GMA News, Arroyo frees Erap as Senate pries into her role in ZTE deal, available at <http://www.gmanetwork.com/news/story/65884/news/nation/arroyo-frees-erap-as-senate-pries-into-her-role-in-zte-deal> (last accessed July 29, 2015) [hereinafter GMA News, Arroyo frees Erap].
 6. JOAQUIN G. BERNAS, S.J., THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY 924 (2009 ed.) [hereinafter BERNAS COMMENTARY].
 7. *Risos-Vidal v. Commission on Elections*, G.R. No. 206666, Jan. 21, 2015, available at <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/january2015/206666.pdf> (last accessed July 29, 2015).

revisited, followed by a discussion on executive clemency in light of the separation of powers. This Essay then concludes with an analysis of the contentious issues involved in the interpretation of the pardon extended to Estrada.

II. FACTUAL ANTECEDENTS: ESTRADA'S ROLLER COASTER RIDE IN THE POLITICAL ARENA

A. Rise and Fall of the “Champion of the Poor”

[W]alang kai-kaibigan, walang kumpa-kumpare, walang kama-kamag-anak.

— Joseph Ejercito Estrada⁸

These were the strong words proclaimed by former President Estrada during his inaugural speech at the Luneta Park on 30 June 1998.⁹ Portraying himself as the “President of the Masses,” Estrada promised to eradicate graft and corruption, and eliminate cronyism. He added, “[*w*]alang *Pilipinong magugutom sa sarili niyang bayan*” as he promised food on the table, stable jobs, adequate wages, affordable housing, and low prices.¹⁰

No more than two years and five months as the seating President in Malacañan, however, Estrada was forced to exit the back doors of the palace and to cross the Pasig River away from angry protesters calling for his ouster.

This unfortunate ending to the Estrada administration was caused by a number of controversies that haunted the presidency. On 9 October 2000, the Estrada administration faced its “most serious scandal”¹¹ when it was alleged by Luis “Chavit” C. Singson that President Estrada had received more or less ₱4,000,000.00 as *jueteng*¹² money and ₱130,000,000.00 worth of

8. APRODICIO A. LAQUIAN & ELEANOR R. LAQUIAN, *THE ERAP TRAGEDY: TALES FROM THE SNAKE PIT I* (2002).

9. *Id.*

10. *Id.*

11. DIRK J. BARREVELD, *ERAP OUSTED: PEOPLE POWER VERSUS CHINESE CONSPIRACY?* 17 (2001).

12. EARL K. WILKINSON, *TRIAL OF THE CENTURY: THE IMPEACHMENT OF PHILIPPINE PRESIDENT JOSEPH E. ESTRADA* 61-62 (2001). *Jueteng* is an illegal numbers game in which

[t]he participant picks two numbers and bets as much as he can afford, usually in single pesos. The operator conducts a draw where two numbers are extracted. The ones who picked these two numbers are paid out immediately at a rate of 400 to [one], with no taxes being deducted. Everybody knows that the game favors the operators, but to the winner

“kickbacks from the repayment of tobacco taxes to the province of Ilocos Sur.”¹³

This exposé led to calls for the President’s resignation and impeachment.¹⁴ The House of Representatives eventually approved a resolution calling for the impeachment of the President on grounds of bribery, graft and corruption, betrayal of public trust, and culpable violation of the Constitution.¹⁵

After weeks of presentation of witnesses and evidence, as well as various political maneuverings, during the first impeachment trial against a president of the Philippines, the trial ended in a surprising twist. In a vote of 11 against nine, however, the senators decided not to open an envelope containing documents allegedly pointing to Estrada as the very same person who used the pseudonym “Jose Velarde” — who, using bank accounts in that name, was alleged to be the recipient of bribery and *jueteng* money.¹⁶ This prompted the prosecution panel to vacate their chairs. This event triggered the so-called “EDSA People Power II.” The tide of anguish and frustration ended with Estrada leaving the halls of Malacañan Palace.

B. Aftermath of the Fall: Criminal Case and Conviction

The misfortunes of former President Estrada did not end there. Eight Informations were filed before the Sandiganbayan.¹⁷ These are for violations of Republic Act (R.A.) No. 7080, or the law penalizing plunder;¹⁸ R.A. No. 3019, or the Anti-Graft and Corrupt Practices Act;¹⁹ R.A. No. 6713, or the

who is poor and who bet just two pesos, a reward of eight hundred will ensure a good week for him and his family.

Id.

13. LAQUIAN & LAQUAIN, *THE ERAP TRAGEDY*, *supra* note 8, at 18.

14. *Id.*

15. See PHIL. CONST. art. XI, § 2.

16. BARREVELD, *ERAP OUSTED*, *supra* note 11, at 326-27 & LAQUIAN & LAQUAIN, *THE ERAP TRAGEDY*, *supra* note 8, at 32. See also Marco Garrido, *People Power: From revolution to riot*, available at http://www.atimes.com/atimes/Southeast_Asia/FB27Ae01.html (last accessed July 29, 2015) & Raul Pangalangan, *EDSA 2 as a scripted event*, PHIL. DAILY INQ., Jan. 21, 2011, available at <http://opinion.inquirer.net/inquireropinion/columns/view/20110121-315705/EDSA-2-as-a-scripted-event> (last accessed July 29, 2015).

17. *Sandiganbayan*, 369 SCRA at 429.

18. An Act Defining and Penalizing the Crime of Plunder, Republic Act No. 7080 (1991).

19. Anti-Graft and Corrupt Practices Act, Republic Act No. 3019 (1960).

Code of Conduct and Ethical Standards for Public Officials and Employees;²⁰ Article 183 of the Revised Penal Code, or for perjury;²¹ and Commonwealth Act No. 142, or for illegal use of an alias.²²

After six years of legal battle, the Sandiganbayan convicted Estrada of the crime of plunder.²³ Estrada was sentenced to suffer the penalty of *reclusion perpetua*, and the accessory penalties of civil interdiction during the period of sentence and also perpetual absolute disqualification. Thus, following Section 2 of R.A. No. 7080, the amounts deposited in the name of Erap Muslim Youth Foundation and “Jose Velarde” — as well as the “Boracay Mansion” in New Manila, Quezon — were forfeited in favor of the government.

For having been sentenced to *reclusion perpetua*, Estrada was supposed to be incarcerated for a period of 20 years and one day to 40 years. Along with it, the accessory penalties imposed upon Estrada include absolute disqualification “to vote in any election for any popular elective office or to be elected to such office.”²⁴ Estrada also stood to lose all of his rights to retirement pay or other pension for any office formerly held by him, including the Presidency.²⁵

C. Executive Clemency and the Return to the Political Arena

Just days after the conviction of Estrada, Gloria Macapagal-Arroyo — who assumed the Presidency after EDSA People Power II — extended executive clemency, by way of pardon, to Estrada.²⁶ The pardon reads as follows —

MALACAÑAN PALACE

MANILA

By the President of the Philippines

20. An Act Establishing a Code of Conduct and Ethical Standards for Public Officials and Employees, to Uphold the Time-Honored Principle of Public Office Being a Public Trust, Granting Incentives and Rewards for Exemplary Service, Enumerating Prohibited Acts and Transactions and Providing Penalties for Violations Thereof and for Other Purposes, Republic Act No. 6713 (1989).

21. An Act Revising the Penal Code and Other Penal Laws [REVISED PENAL CODE], Act No. 3815, art. 183 (1930).

22. An Act Amending Commonwealth Act Numbered One Hundred Forty-Two Regulating the Use of Aliases, Republic Act No. 6085 (1969).

23. *Sandiganbayan*, 369 SCRA at 429.

24. REVISED PENAL CODE, art. 30 (2).

25. *Id.* art 30 (3) & (4).

26. GMA News, Arroyo frees Erap, *supra* note 5.

PARDON

WHEREAS, this Administration has a policy of releasing inmates who have reached the age of seventy (70),

WHEREAS, Joseph Ejercito Estrada has been under detention for six and half years,

WHEREAS, *Joseph Ejercito Estrada has publicly committed to no longer seek any elective position or office,*

IN VIEW HEREOF and pursuant to the authority conferred upon me by the Constitution, I hereby grant executive clemency to JOSEPH EJERCITO ESTRADA, convicted by the Sandiganbayan of Plunder and imposed a penalty of [r]eclusion [p]erpetua. *He is hereby restored to his civil and political rights.*

The forfeitures imposed by the Sandiganbayan remain in force and in full, including all writs and processes issued by the Sandiganbayan in pursuance hereof except for the bank account(s) he owned before the tenure as President.

Upon acceptance of this pardon by JOSEPH EJERCITO ESTRADA, this pardon shall take effect.²⁷

On the same day, Estrada “received and accepted” the pardon by affixing his signature beside his handwritten notation thereon.²⁸ Little did the country know that such acceptance has far-reaching implications in political law.

Believing fully well that the pardon extended by President Arroyo restored to him all his “civil and political rights,” Estrada ventured again in the world of politics. In 2009, Estrada filed his certificate of candidacy for the position of President for the 10 May 2010 elections.²⁹

This move was not left unopposed as three petitions were filed with the Commission on Elections (COMELEC) questioning the qualifications of

27. Malacañang Records Office, Pardon granting executive clemency to Joseph Ejercito Estrada, *available at* <http://www.gov.ph/2007/10/25/pardon-granting-executive-clemency-to-joseph-ejercito-estrada-october-25-2007/> (last accessed July 29, 2015) (emphasis supplied).

28. Marichu Villanueva, *GMA pardons Erap*, PHIL. STAR, Oct. 26, 2007, *available at* <http://www.philstar.com/headlines/23673/gma-pardons-erap> (last accessed July 29, 2015).

29. Jose Rodel Clapano, *It's official: Erap joins presidential derby*, PHIL. STAR, Dec. 1, 2009, *available at* <http://www.philstar.com/headlines/528102/its-official-erap-joins-presidential-derby> (last accessed July 29, 2015).

Estrada to run as President. However, these three oppositions³⁰ were dismissed by the COMELEC Second Division on the ground that, first, “[c]onstitutional proscription on re-election applies to a sitting president;” and second, the pardon granted to Estrada “restored [his] right to vote and be voted for a public office.”³¹

Nevertheless, all the petitions were rendered moot by the subsequent defeat of Estrada — who managed to garner only the second highest number of votes — against President Benigno C. Aquino III who was elected as President. With this, the petition for *certiorari* filed with the Supreme Court questioning the decision of the COMELEC was also dismissed for being moot and academic.³²

As strong and persistent as he was in his movies, Estrada again decided to face a new political rumble. In 2012, he filed his certificate of candidacy for Mayor of the City of Manila.³³

Predictably, Estrada’s candidacy was again opposed, this time by lawyer Alicia Risos-Vidal who filed a Petition for Disqualification against Estrada before the COMELEC.³⁴ Risos-Vidal argued that Estrada was disqualified to run as Mayor, or to any public office for that matter, due to his conviction for plunder by the Sandiganbayan.³⁵ As he was sentenced to suffer penalty of *reclusion perpetua* and perpetual absolute disqualification, Estrada was disqualified to run by virtue of Section 40 of Local Government Code and Section 12 of the Omnibus Election Code.³⁶

30. See *Risos-Vidal*, G.R. No. 206666. The three oppositions filed with the COMELEC are: (1) “Petition to Deny Due Course and Cancel Certificate of Candidacy” filed by Rev. Elly Velez B. Lao Pamatong, ESQ, docketed as SPA No. 09-024 (DC); (2) “Petition for Disqualification as Presidential Candidate” filed by Evilio C. Pormento, docketed as SPA NO. 09-028 (DC); and (3) “Petition to Disqualify Ejercito Estrada, Joseph M. from Running as President due to Constitutional Disqualification and Creating Confusion to the Prejudice of Estrada, Mary Lou B.” filed by Mary Lou Estrada, docketed as SPA No. 09-104 (DC). *Id.*

31. *Id.*

32. *Pormento v. Estrada*, 629 SCRA 530 (2010).

33. Rappler.com, Erap files COC for Manila mayor bid, *available at* <http://www.rappler.com/nation/politics/elections-2013/13447-erap-files-coc-for-manila-mayor-bid> (last accessed July 29, 2015).

34. Jocelyn R. Uy, ‘Dirty Harry’ playing dirty, says Estrada, PHIL. DAILY INQ., Jan. 28, 2013, *available at* <http://newsinfo.inquirer.net/348693/dirty-harry-playing-dirty-says-estrada> (last accessed July 29, 2015).

35. See *Risos-Vidal*, G.R. No. 206666.

36. *Id.*

However, COMELEC dismissed Risos-Vidal's petition for lack of merit.³⁷ The constitutional commission asserted that the controversy was already passed upon when it declared that Estrada was not disqualified to run as President in the 2010 national elections.³⁸

Hence, Risos-Vidal filed a petition for *certiorari* with the Supreme Court, assailing the dismissal of her petition before the COMELEC.³⁹ While the petition, however, was pending before the Supreme Court, Estrada was proclaimed as the duly-elected Mayor of Manila. After 97.5% of the votes were counted, Estrada defeated the then-incumbent Mayor Alfredo S. Lim by a slim margin, with Estrada garnering 342,252 votes and Lim with 307,291.⁴⁰

Yet again, in typical fashion, Estrada declared that he will “[dedicate] the last few years of [his] life to uplifting the lives of the poor.”⁴¹

III. RISOS-VIDAL V. COMMISSION ON ELECTIONS: ESTRADA'S DISQUALIFICATION REMITTED BY PARDON

In the recently decided case of *Risos-Vidal*, the Supreme Court declared that the pardon extended to Estrada was “absolute.”⁴² The decision penned by Justice Teresita J. Leonardo-De Castro, who was — ironically — one of the justices who convicted Estrada in the Sandiganbayan, maintained that Estrada shall fully exercise his civil and political rights, and qualified to be Mayor of Manila.⁴³

The subsequent sections will discuss the issue of the case, arguments of the parties, and the ruling of the Supreme Court.

A. Issues of the Case

37. Shiela Crisostomo, *Comelec junks DQ case vs Erap*, PHIL. STAR, Apr. 3, 2013, available at <http://www.philstar.com/metro/2013/04/03/926209/comelec-junks-dq-case-vs-erap> (last accessed July 29, 2015) & Jose Rodel Clapano et al., *Erap is new Manila mayor, defeats Lim by slim margin*, PHIL. STAR, May 15, 2013, available at <http://www.philstar.com/headlines/2013/05/15/942230/erap-new-manila-mayor-defeats-lim-slim-margin> (last accessed July 29, 2015).

38. *Id.*

39. *Risos-Vidal*, G.R. No. 206666.

40. Amanda Fernandez, *Erap takes oath as new mayor of Manila*, available at <http://www.gmanetwork.com/news/story/315265/news/metromanila/erap-takes-oath-as-new-mayor-of-manila> (last accessed July 29, 2015).

41. *Id.*

42. *Id.*

43. *Id.*

The main issue before the Supreme Court in *Risos-Vidal* was “[w]hether or not the COMELEC committed grave abuse of discretion amounting to lack or excess of jurisdiction in ruling that former President Estrada is qualified to vote and be voted for in public office as a result of the pardon granted to him by former President Arroyo.”⁴⁴

To resolve this main issue, however, the Court first resolved several secondary issues. One is on the propriety of limiting the pardoning power of the President by legislative action. Another is on the proper interpretation of Articles 36 and 41 of the Revised Penal Code,⁴⁵ Section 40 of the Local Government Code,⁴⁶ and Section 12 of the Omnibus Election Code,⁴⁷ all in relation to the pardoning power of the President. Lastly, the Court was also asked to rule on the effects of the third *whereas clause* of the pardon to the right of Estrada to run for public office.⁴⁸

B. Arguments of the Parties

1. Petitioner Risos-Vidal’s Arguments

Risos-Vidal argued that the pardon extended to Estrada was *conditional*.⁴⁹ She argued that the condition was embodied in the third *whereas clause* providing that “Estrada has publicly committed to no longer seek any elective position or office.”⁵⁰ As Estrada ran for President and City Mayor of Manila, he should be recommitted for prison for failing to fulfill the condition.⁵¹

Further, it was argued that Estrada was disqualified to run for public office by virtue of Section 40 of the Local Government Code which disqualifies to run for elective local position “[t]hose sentenced by final judgment for an offense involving moral turpitude or for an offense punishable by one (1) year or more of imprisonment, within two (2) years after serving sentence[.]”⁵²

44. *Id.*

45. REVISED PENAL CODE, arts. 36 & 41.

46. An Act Providing for a Local Government Code [LOCAL GOVERNMENT CODE], Republic Act No. 7160, § 40 (1991).

47. Omnibus Election Code [OMNIBUS ELECTION CODE], Batas Pambansa Blg. 881, § 12 (1985).

48. *Risos-Vidal*, G.R. No. 206666.

49. *Id.*

50. *Id.* See also Malacañang Records Office, *supra* note 27.

51. *Risos-Vidal*, G.R. No. 206666.

52. LOCAL GOVERNMENT CODE, § 40.

In relation thereto, Section 12 of the Omnibus Election Code also disqualified Estrada. It was argued that Estrada fell into “any person who has been declared by competent authority insane or incompetent, or *has been sentenced by final judgment* for subversion, insurrection, rebellion, or for any offense for which he has been sentenced to a penalty of more than [18] months or *for any crime involving moral turpitude[.]*”⁵³ Though this Section qualifies this disqualification as inapplicable to persons who “has been given plenary pardon or granted amnesty[.]”⁵⁴ Estrada did not fall into the exception as the pardon granted to him was not plenary, but merely conditional.⁵⁵

Risos-Vidal also emphasized the requirements and effects of pardon under Articles 36 and 41 of the Revised Penal Code. These provisions provide —

Art. 36. *Pardon; its effects.* — A pardon shall not work the restoration of the right to hold public office, or the right of suffrage, *unless such right be expressly restored by the terms of the pardon.*

A pardon shall in no case exempt the culprit from the payment of the civil indemnity imposed upon him by the sentence.

Art. 41. *Reclusion perpetua and reclusion temporal; Their accessory penalties.* — The penalties of *reclusion perpetua* and *reclusion temporal* shall carry with them that of civil interdiction for life or during the period of the sentence as the case may be, and that of perpetual absolute disqualification which the offender shall suffer *even though pardoned as to the principal penalty, unless the same have been expressly remitted in the pardon.*⁵⁶

Risos-Vidal asserted that the remission of the accessory penalties requires express declaration to that effect.⁵⁷ These Sections, it was argued, require a categorical statement restoring the right of Estrada to hold public office.⁵⁸ Since such was lacking in the pardon granted to Estrada, the accessory penalty of perpetual absolute disqualification was not remitted.⁵⁹

2. Respondent COMELEC's Arguments

53. OMNIBUS ELECTION CODE, § 12 (emphases supplied).

54. *Id.*

55. *Risos-Vidal*, G.R. No. 206666.

56. REVISED PENAL CODE, arts. 36 & 41 (emphases supplied).

57. *Risos-Vidal*, G.R. No. 206666.

58. *Id.*

59. *Id.*

The COMELEC, represented by the Office of the Solicitor General (OSG), asserted that the issue of Estrada's qualification had already been passed upon by the Commission in 2010 in SPA Nos. 09-024, 09-028, and 09-104.⁶⁰

The OSG maintained that the pardon granted to Estrada was *absolute*.⁶¹ As with regard to the third *whereas clause*, the OSG posited that such is “not an integral part of the decree of the pardon and cannot therefore serve to restrict its effectivity.”⁶²

However, while it was conceded that on the face of the law — particularly Section 40 of the Local Government Code — it might seem Estrada was not qualified to run, the subsequent grant of absolute pardon cured this defect; thus, Estrada was allowed to seek public office.⁶³ As to the interpretation of the Articles 36 and 41 of the Revised Penal Code, the OSG countered that the strict interpretation of the provision unduly stretched its application beyond the actual contemplation of the law.⁶⁴

C. Court's Ruling

After weighing the arguments presented by the parties, the Supreme Court categorically declared that the pardon granted to Estrada was *absolute* and has *fully restored all his civil and political rights*.⁶⁵ The Court reached this conclusion by plainly reading the text of the pardon, which is “complete, unambiguous, and unqualified.”⁶⁶ Hence, the COMELEC did not commit grave abuse of discretion amounting to lack or excess of jurisdiction.⁶⁷

1. Pardoning Power of the President Cannot Be Limited by Pardon

The Court maintained that the pardoning power of the President stemmed from the Constitution and cannot be limited by an ordinary act of Congress.⁶⁸ Hence, only the Constitution can restrict the exercise of this constitutional prerogative.⁶⁹ That Congress has no power to limit the pardoning power of the President was said to be manifest in the deliberations

60. *Id.*

61. *Id.*

62. *Id.*

63. *Risos-Vidal*, G.R. No. 206666.

64. *Id.*

65. *Id.*

66. *Id.*

67. *Id.*

68. *Id.*

69. *Risos-Vidal*, G.R. No. 206666.

of the framers of the 1987 Constitution. The members of the constitutional commission deliberately deleted a provision which included “graft and corruption” as an exception to the pardoning power of the President.⁷⁰ This was greatly debated because the nature and practices of “graft and corruption” shall be defined by Congress through enactment of a law, and retention of such provision in the Constitution would have meant that Congress can indirectly limit the extent of pardon that may be granted by the President.⁷¹

Having considered the intent of the framers of the Constitution, the Court ruled that the private nature of pardon, as an executive power rooted in the Constitution, can only be limited by the provisions of the Constitution and not by any legislative enactment emanating from Congress.

2. Articles 36 and 41 of the Revised Penal Code and Subservient to the Constitution

Having ruled that the pardoning power may only be limited by the Constitution, the Supreme Court ruled that Articles 36 and 41 of the RPC cannot be interpreted to unduly restrict the President’s prerogative. Hence, the declaration that Estrada “is hereby restored to his civil and political rights”⁷² substantially complies with the requirement of the Revised Penal Code that “the right to hold public office, or the right of suffrage, [...] be expressly restored by the terms of the pardon.”⁷³

Justice Marvic Mario Victor F. Leonen dissented, however, pointing out that the pardon did not expressly restore Estrada’s right to hold public office.⁷⁴ Justice Leonen further argued that the Revised Penal Code does not restrict the pardoning power of the President but, instead, it provides for a “procedural prescription.”⁷⁵ He expounds that “[t]hey are not concerned with areas where or instances when the President may grant pardon; they are only concerned with *how* he or she is to exercise such power so that no other governmental instrumentality needs to intervene to give it full effect.”⁷⁶

70. 1 RECORD OF THE CONSTITUTIONAL COMMISSION 524-26 (1986).

71. *Id.*

72. Malacañang Records Office, *supra* note 27.

73. REVISED PENAL CODE, art. 36.

74. *Risos-Vidal*, G.R. No. 206666 (J. Leonen, dissenting opinion).

75. *Id.*

76. *Id.*

The *ponencia* addresses this as argument as tending to erode the principle of separation of powers.⁷⁷ For if the assertion of Justice Leonen is correct, then the enactment of Articles 36 and 41 also diminishes the pardoning power of the President as it prescribes the form and manner by which such power must be exercised.⁷⁸ Hence, non-compliance with this form prescribed by Congress through the Revised Penal Code, infringes on the power of a co-equal branch of government — the Executive.⁷⁹

The *ponencia* maintained that Articles 36 and 41 of the Revised Penal Code must be interpreted in a manner that would give “full effect” to the executive clemency of the President.⁸⁰ A balance must be attained between the “power of the Congress to define crimes and prescribe the penalties for such crimes[,] and the power of the President to grant executive clemency.”⁸¹ Hence, the *ponencia* ruled that Articles 36 and 41 merely “clarify” the effect of clemency in that the pardon of the principal penalty does not carry with it the remission of the accessory penalties, unless the President expressly remits the accessory penalties.⁸²

With all the foregoing, the Court concluded that the *provisio* that “[Estrada] is hereby restored to his civil and political rights” has the effect of remitting the penalties of civil interdiction and perpetual absolute disqualification against the former president.

3. Estrada Not Disqualified Under the Local Government Code and the Omnibus Election Code

The Court recognized that without the pardon extended to Estrada, he would have been disqualified to run by virtue of Section 40 of the Local Government Code. Estrada, having been sentenced to suffer the penalty of *reclusion perpetua* for the crime of plunder, was more than disqualified under the said provision which disqualifies “[t]hose sentenced by final judgment for an offense involving moral turpitude or for an offense punishable for one (1) year or more of imprisonment[.]”⁸³

The majority decision, however, took notice of the exception under Section 12 of the Omnibus Election Code. This Section, aside from listing the disqualifications, also provided for a “legal escape from the prohibition,”

77. *Risos-Vidal*, G.R. No. 206666.

78. *Id.*

79. *Id.*

80. *Id.*

81. *Id.*

82. *Id.*

83. LOCAL GOVERNMENT CODE, § 40.

which is none other than a grant of plenary pardon or amnesty.⁸⁴ It was inferred, therefore, that the law allows a person granted pardon to run for and consequently hold public office, whether local and national position.⁸⁵

4. Third Whereas Clause Not a Condition

The most novel issue that the Court was confronted with, however, was the appropriate interpretation of *whereas clauses* in the pardon extended to Estrada — specifically, the third *whereas clause* which provides that “*Joseph Ejercito Estrada has publicly committed to no longer seek any elective position or office.*”⁸⁶

The Court, rationalizing by analogy that *whereas clauses* are not part of the operative language of statutes, ruled that *whereas clauses* in this case were similarly not integral part of the decree of pardon to Estrada.⁸⁷ The Court compared the *whereas clauses* of the pardon to a preamble, the latter “not [being] an essential part of [a statute] as it is an introductory or preparatory clause [which explains] the reasons for the enactment.”⁸⁸

This being the case, the subject *whereas clause* did not and cannot serve as a condition to the pardon extended to Estrada.⁸⁹ The operative language of the pardon did not explicitly and categorically provide that Estrada’s pardon is contingent to him not running for elective office.⁹⁰ Ultimately, the Court considered the *whereas clauses* of the pardon to Estrada as a mere declaration of the state of affairs at the time of the granting of the pardon.⁹¹ That the *whereas clauses* were intended to declare the state of affairs was, to the mind of the Court and absent contrary evidence presented, buttressed by former President Arroyo’s silence with regard to the decision of Estrada to run as President in 2010.⁹²

5. Right to Hold Public Office as a “Civil and Political Right”

Lastly, the *ponencia* addressed Justice Leonen’s dissent in that the “civil and political rights” restored by the pardon did not include the right to hold

84. *Risos-Vidal*, G.R. No. 206666.

85. *Id.*

86. Malacañang Records Office, *supra* note 27.

87. *Risos-Vidal*, G.R. No. 206666.

88. *Id.*

89. *Id.*

90. *Id.*

91. *Id.*

92. *Id.*

public office. Justice Leonen pointed out that had the President intended to include the rights of suffrage and to hold public office, she “could have been clear on her intentions.”⁹³

To this, the *ponencia* briefly responded to that the statement, “[h]e is hereby restored to his civil and political rights,” is “crystal clear” as to include *all* civil and political rights regardless of the omission of the word “full.”⁹⁴ The *ponencia* flatly states that “[e]xceptions to the grant of pardon cannot be presumed from the absence of the qualifying word ‘full’ when the pardon restored the ‘political rights’ of former President Estrada without any exclusion or reservation.”⁹⁵

After a relatively lengthy discussion of the abovementioned points, the Supreme Court declared that the COMELEC did not commit grave abuse of discretion amounting to lack or excess of jurisdiction in ruling that Estrada is qualified to run for public office.⁹⁶

IV. EXECUTIVE CLEMENCY: THE MOST BENEVOLENT POWER

By reason of the pardon granted by former President Arroyo to Estrada, the former President who was convicted of plunder is now back in public service and serving as the highest official of our country’s capital. This overarching consequence of executive clemency highly necessitates the analysis of the nature and effects of pardon. This part of the Essay discusses the nature of the pardon as an exclusive power of the President to extend mercy to convicts and to compensate for the undue harshness of laws and its enforcement. Further, the kinds of pardon and its application to administrative cases are illustrated. Lastly, the debate as to the effect of pardon to the remission of guilt of the convict is also analyzed.

A. Nature of Pardon

Pardoning power is solely lodged in the Chief Executive.⁹⁷ It is a private act of the President extended to transgressors of law who, in the eyes of the President, are entitled to remission of the penalty imposed upon them.⁹⁸ In

93. *Risos-Vidal*, G.R. No. 206666.

94. *Id.*

95. *Id.*

96. *Id.*

97. BERNAS, COMMENTARY, *supra* note 6, at 924.

98. *Llamas*, 202 SCRA at 861.

the case of *U.S. v. Wilson*,⁹⁹ former U.S. Chief Justice John Marshall explained the pardoning power of the President, to wit —

A pardon is an act of grace, proceeding from the power entrusted with the execution of the laws, which exempts the individual, on whom it is bestowed, for the punishment the law inflicts for a crime he has committed. It is the private, though official act of the executive magistrate, delivered to the individual for whose benefit it is intended, and communicated officially to the court.¹⁰⁰

This overwhelming power of the Chief Executive is an act of grace through presidential action.¹⁰¹ Hence, being an act of pure generosity, no law or obligation may compel the President to extend pardon or to grant it to a particular individual.¹⁰²

Through Chief Justice Marshall's definition, *mercy* has been the reason for pardon. However, in *Biddle v. Perovich*,¹⁰³ the U.S. Supreme Court provided for a wider and comprehensive purpose of pardon —

A pardon in our days is not a private act of grace from an individual happening to possess power. It is part of the Constitutional scheme. When granted it is the determination of the ultimate authority that the *public welfare will be better served* by inflicting less than what the judgment fixed.¹⁰⁴

In light of these pronouncements, the pardoning power of the President may be said to be the Executive's medium to ensure that relief would be afforded to the victims of "undue harshness" of the criminal justice system.¹⁰⁵ Chief Justice William Howard Taft in *Ex parte Grossman*,¹⁰⁶ expressed such idea in this wise —

The administration of justice by the courts is not necessarily always wise or certainly considerate of circumstances which may properly mitigate guilt. To afford remedy has always been thought essential in popular governments, as well as monarchies, to vest in some other authority than

99. *U.S. v. Wilson*, 32 U.S. 150 (1833).

100. *Id.*

101. *Id.*

102. BERNAS, COMMENTARY, *supra* note 6, at 926 (citing *De Leon v. Director of Prisons*, 31 Phil. 60, 63 (1915)).

103. *Biddle v. Perovich*, 274 U.S. 480 (1927).

104. *Id.* at 486 (emphasis supplied).

105. VICENTE G. SINCO, PHILIPPINE POLITICAL LAW PRINCIPLES AND CONCEPTS 282 (10th ed. 1954).

106. *Ex-Parte Grossman*, 267 U.S. 87 (1925).

the courts power to ameliorate or avoid particular criminal judgments. It is a check entrusted to the [E]xecutive for special cases.¹⁰⁷

Hence, pardon exempts the individual from the penal consequences of conviction. It removes penalties and remits and forfeitures imposed upon the convict, unless otherwise ordered by the President.¹⁰⁸ It also obliterates all disabilities and the specific legal consequences for the crimes committed.¹⁰⁹ Despite the powerful effects of pardon, however, it cannot discharge the convict of his civil liability to the individual he has wronged,¹¹⁰ for it is beyond the President's power to pardon a private wrong.¹¹¹ Furthermore, executive clemency does not restore offices, property, or rights vested in others as consequence of the conviction of the donee.¹¹² Pardon does not provide for an automatic reinstatement.¹¹³ As to public officers, for example, it merely removes disqualification from and restores eligibility to hold public office.¹¹⁴

It is noteworthy that pardon requires acceptance. It must be delivered to and accepted by the convict before it takes effect.¹¹⁵ Hence, before acceptance, the President may withdraw it as it is an executive prerogative, and the convict will not be entitled to the benefits of pardon.¹¹⁶ Once accepted, however, the President cannot anymore revoke it.¹¹⁷ The pardonee then accepts the pardon subject to all its conditions and limitations, if any.¹¹⁸

B. Kinds of Pardon

As abovementioned, the President, having the prerogative whether or not to grant pardon, may dictate limitations and conditions for this grant. The pardon which the Chief Executive may grant may be plenary or partial, and absolute or conditional.

107. *Id.* at 120-21.

108. *People v. Pariarca, Jr.*, 341 SCRA 464, 472 (2000).

109. *Monsanto*, 170 SCRA at 196.

110. *See* REVISED PENAL CODE, art. 36.

111. *Barrioquinto v. Fernandez*, 82 Phil. 642, 647 (1949).

112. *Pariarca, Jr.*, 341 SCRA at 472.

113. *Monsanto*, 170 SCRA at 200.

114. *Id.*

115. *Id.* at 196.

116. *De Leon*, 31 Phil. at 64.

117. RUPERTO G. MARTIN, PHILIPPINE POLITICAL LAW 287 (1988).

118. *De Leon*, 31 Phil. at 62.

On one hand, a *plenary* pardon releases the offender from all the penalties imposed upon him.¹¹⁹ It extinguishes all the consequences, including all the necessary disabilities.¹²⁰ On the other hand, a *partial* pardon frees the pardonee only as to a portion of the penalty.¹²¹

In either case, a pardon may be absolute or conditional. An *absolute* pardon does not subject the pardonee to any restriction or condition.¹²² It becomes effective and binding upon grant and acceptance.¹²³ A *conditional* pardon, meanwhile, subjects the grant of pardon to “conditions” or qualifications that the President may see fit to impose on the pardonee.¹²⁴

As discussed, though, a conditional pardon also requires acceptance by the pardonee since the pardonee may prefer the original penalty than to comply with the condition.¹²⁵ A common condition imposed by the Chief Executive is that the pardonee “shall not again violate any of the penal laws of the Philippines.”¹²⁶ Upon violation of the condition, the pardonee may be ordered to be imprisoned to serve the remaining period of one’s sentence,¹²⁷ or to be prosecuted under Article 159 of the Revised Penal Code for violation of conditional pardon.¹²⁸ However, the power to determine whether the pardonee committed a crime — hence, violated his conditional pardon — is a contentious matter to be discussed in the succeeding parts of this Essay.

119. *Cristobal*, 71 Phil. at 38.

120. *Id.*

121. *Cabantag v. Wolfe*, 6 Phil. 239, 278 (1906).

122. *Cristobal*, 71 Phil. at 38.

123. *Monsanto*, 170 SCRA at 200.

124. *In Re: Wilfredo Sumulong Torres*, 251 SCRA 709, 712 (1995).

125. *Cabantag*, 6 Phil. at 278.

126. *See Tesoro v. Director of Prisons*, 68 Phil. 154 (1939); *Sales v. Director of Prisons*, 87 Phil. 495 (1960); & *Espuelas v. Provincial Warden of Bohol*, 108 Phil. 353 (1960).

127. *In Re: Torres*, 251 SCRA at 712.

128. REVISED PENAL CODE, art. 159. This provides—

Other cases of evasion of service of sentence. — The penalty of *prison correccional* in its minimum period shall be imposed upon the convict who, having been granted conditional pardon by the Chief Executive, *shall violate any of the conditions of such pardon*. However, if the penalty remitted by the granting of such pardon be higher than six years, the convict shall then suffer the unexpired portion of his original sentence.

Id. (emphasis supplied).

C. Applied to Administrative Cases

Though the Constitution provides that pardon may be extended only after *conviction* by final judgment, executive clemency is not limited to criminal convictions. The power of the President is all-encompassing as it includes the power to grant pardon even to administrative cases. The landmark case of *Llamas v. Orbos*¹²⁹ declared that the Constitution does not distinguish between which cases executive clemency may be exercised by the President, with the sole exclusion of impeachment cases.

In *Llamas*, private respondent Mariano Un Ocampo III, then Governor of the Province of Tarlac, was suspended from office by the Secretary of Local Government, having found him guilty of violating R.A. No. 3019.¹³⁰ Subsequently, however, the President granted him executive clemency “in the sense that his [90]-day suspension is hereby reduced to the period already served.”¹³¹ By virtue of such pardon, Ocampo resumed governorship, allegedly without notice to the incumbent Vice Governor Rodolfo D. Llamas who took his place.¹³² For that reason, Llamas went to seek judicial relief.

Petitioner Llamas contended that “executive clemency could be granted by the President only in criminal cases as there is nothing in the statute books or even in the Constitution which allows the grant [of pardon] in administrative cases.”¹³³

The Court, however, ruled in favor of Ocampo and maintained that the Constitution grants full discretionary authority to the President on the exercise of executive clemency. It concluded that, by applying the doctrine of *ubi lex non distinguit, nec nor distinguere debemos*, the Constitution does not distinguish in which cases can pardon be extended by the President.¹³⁴ The Court also found it absurdly untenable that the President would be allowed to extend pardon to criminal offenses, but prohibited to do so in less serious offenses like administrative cases.¹³⁵

D. Effects to Remission of Guilt

129. *Llamas v. Orbos*, 202 SCRA 844 (1991).

130. *Id.*

131. *Id.* at 852.

132. *Id.*

133. *Id.*

134. *Id.* at 857-58.

135. *See Llamas*, 202 SCRA at 857.

But while it is certain that pardon discharges the accused from the penal consequences of crime, there is debate as to its effect of remitting one's guilt. On one hand, there is jurisprudence alleging that executive clemency obliterates the guilt of the convict — as if no crime was committed — exemplified by the case of *Cristobal v. Labrador*.¹³⁶ On the other hand, the more realistic trend, beginning in *Monsanto v. Factoran, Jr.*,¹³⁷ is that pardon does not erase the commission of the crime, but merely saves the convict from its consequences.¹³⁸

The remission of guilt, or otherwise, according to the terms of the pardon is a critical factor in analyzing the nature of pardon extended. It shows whether accessory penalties, like political disabilities, are also obliterated by executive clemency. The nature of pardon dictates the effects of pardon absent Articles 36 and 41 of the Revised Penal Code — which may now be deemed as “indirect limitations” to the President's pardoning power as in the case of *Risos-Vidal*.

Before *Monsanto* in 1989, Philippine jurisprudence on pardon was said to be influenced heavily by the U.S. Supreme Court¹³⁹ which, in the case of *Ex Parte Garland*,¹⁴⁰ declared that a pardon extended by a president obliterates the existence of guilt of the convict, to wit —

[P]ardon reaches both the punishment prescribed for the offense and the guilt of the offender, and when the pardon is full, it releases the punishment and blots out the existence of guilt, so that, in the eye of the law, the offender is *as innocent as if he had never committed the offense* [...] if granted after conviction, it removes the penalties and disabilities and restores him to all his civil rights; it makes him as it were, a new man, and gives him a new credit and capacity.¹⁴¹

The only limitation, said the U.S. Supreme Court, is that the pardon did not restore the offices forfeited and interests previously held by the convict and which were thereafter vested in others in consequence of the conviction.¹⁴² In all other respects, however, the convict was relieved from the penalties and disabilities attached to the crime of rebellion as the convict,

136. *Cristobal v. Labrador*, 71 Phil. 34, 38 (1940).

137. *Monsanto*, 170 SCRA at 190.

138. *Id.* at 200.

139. *Id.* at 197-98 (*Compare Cristobal*, 71 Phil. at 34 *with Ex Parte Garland*, 71 U.S. at 333).

140. *Ex Parte Garland*, 71 U.S. at 333.

141. *Id.* at 380 (emphasis supplied).

142. *Id.* at 381.

from the words of the Court, was a “new man.”¹⁴³ This same doctrine was relied upon by the Philippine Supreme Court in *In Re Lontok*¹⁴⁴ in reinstating a lawyer to the practice of law after his conviction for bigamy.

This was reiterated by the Court in the 1940 case of *Cristobal* where Teofilo C. Santos, respondent, was found guilty of estafa and sentenced to imprisonment of six months with accessory penalties.¹⁴⁵ He was eventually elected as Municipal President of the municipality of Malabon, Rizal.¹⁴⁶ However, he was subsequently disqualified by enactment of Commonwealth Act (C.A.) No. 357, Section 94 of which disqualified the respondent from voting for having been “declared by final judgment guilty of any crime against property.”¹⁴⁷ Santos was subsequently granted pardon by the President which restored his “full civil and political rights, except that with respect to the right to hold public office or employment, he will be eligible for appointment only to positions which are clerical or manual in nature and involving no money or property[.]”¹⁴⁸ The Court interpreted this pardon as absolute in so far as it restored Santos’ full civil and political rights. It further declared that the absolute pardon granted to Santos “blots out the crime committed,” and removes all disabilities resulting from the crime.¹⁴⁹ Hence, Santos’ right to vote was restored by the executive clemency extended him.

In 1941, the landmark case of *Cristobal* served to justify the ruling in *Pelobello v. Palatino*.¹⁵⁰ In *Pelobello*, Gregorio Palatino, elected mayor of municipality of Torrijos, Marinduque, was also disqualified under C.A. No. 357, Section 94. Similarly, pardon was also granted to him by the President. The Court decided to give deference to the prerogative of the President by ruling that the absolute pardon extended by the Chief Executive removes all the consequences of the Palatino’s conviction.¹⁵¹ Enactment of C.A. No. 357, said the Court, cannot impair the power of the President to grant pardon.¹⁵²

This was until the 1989 case of *Monsanto*, where the Court reversed the doctrines laid down in *Garland*, *Cristobal*, and *Pelobello*. In *Monsanto*,

143. *Id.* at 380-81.

144. *In Re Lontok*, 43 Phil. 293 (1922).

145. *Cristobal*, 71 Phil. at 36.

146. *Id.*

147. Election Code, Commonwealth Act No. 357, § 94 (1938).

148. *Cristobal*, 71 Phil. at 36.

149. *Id.* at 36.

150. *Pelobello v. Palatino*, 72 Phil. 441 (1941).

151. *Id.* at 442.

152. *Id.* at 443.

Salvacion A. Monsanto, assistant city treasurer of Calbayog City, along with three others were convicted of complex crime of estafa through falsification of public documents.¹⁵³ While Monsanto's motion for reconsideration was pending before the Supreme Court, former President Ferdinand E. Marcos extended to him an absolute pardon.¹⁵⁴ By virtue of such executive clemency, Monsanto requested that she be reinstated as the assistant city treasurer since the same was still vacant.¹⁵⁵ Such request, while initially granted by the Ministry of Finance, was denied by the Office of the President.¹⁵⁶ Hence, she filed a case with the Supreme Court on the theory that the pardon extended to her amounts to acquittal, having been issued before final conviction and that there was no offense to speak of because of the pardon.¹⁵⁷

The Court, debunking the arguments of Monsanto, declared that it is immaterial when the pardon was granted — whether before or after the conviction.¹⁵⁸ Having accepted the pardon while her appeal is pending in the Supreme Court, Monsanto was deemed to have abandoned her appeal and her conviction attained finality.¹⁵⁹ In rejecting the doctrines flowing from *Garland*, the Court ruled that the more “realistic” interpretation of pardon is that “the very essence of pardon is forgiveness or remission of guilt. *Pardon implies guilt*. It does not erase the fact of the commission of the crime and the conviction thereof. It does not wash out the moral stain. In involves forgiveness and not forgetfulness.”¹⁶⁰ Further, pardon looks to the future and not to the past; it affords no relief for what has been suffered by the offender as she was in fact convicted of the crime though unpunished by reason of pardon.¹⁶¹

Moreover, the Court maintained a protective stance by ruling that pardon cannot mean automatic reinstatement of the pardonee to her former position.¹⁶² The Court rejected the postulate that pardon could amount to

153. *Monsanto*, 170 SCRA at 193.

154. *Id.*

155. *Id.*

156. *Id.* at 194.

157. *Id.*

158. *Id.* at 196.

159. *Monsanto*, 170 SCRA at 196.

160. *Id.* at 198.

161. *Id.*

162. *Id.* at 200.

“virtual acquittal,” hence rationalizing his automatic re-appointment as assistant city treasurer.¹⁶³

Lastly, the *Monsanto* decision also recognized that pardon can also remit accessory penalties and disqualifications subject to its express remission under Articles 36 and 41 of the Revised Penal Code. However, pardon “cannot go beyond that.”¹⁶⁴ Hence, since pardon cannot amount to an automatic re-appointment, even if accessory penalties may also be pardoned, the Court thus required Monsanto to re-apply and undergo the same procedure to regain her former post as assistant city treasurer.¹⁶⁵

In view of the foregoing jurisprudential pronouncements, pardon does not remit the guilt of the accused. It merely excuses the pardonee from the consequences of crime. To rule otherwise would run counter to the well-settled distinction of pardon and amnesty.¹⁶⁶

Clearly, then, pardon is a plenary and overwhelming power granted exclusively to the President. Moreover, as discussed in *Risos-Vidal*, this power, being a presidential prerogative, cannot be limited by any legislative enactment. However, it must be emphasized that the Constitution is strongly anchored on the separation of powers *as well as* checks and balance among the three branches of government.

V. PARDON AND THE SEPARATION OF POWERS

Having established the nature and effects of executive clemency as a prerogative of the President, this part of the Essay shall discuss its effects to the other co-equal branches of government — the Legislative and the Judiciary. By virtue of separation of powers, the pardoning power of the President is not absolute as to interfere to acts which are within the exclusive competence of the other branches.

A. Pardon and the President

Adhering to the principle of separation of powers, the Legislature and the Judiciary respectfully defers to the power of the President to grant pardon. As discussed, this power of the President is plenary and *almost* unlimited. The pardoning power may be limited only by no less than the Constitution itself. The 1987 Constitution, particularly Section 19 of Article VII and Section 5 of Article IX-C, restricts the power of the President. Section 19 of Article VII provides —

163. *Id.*

164. *Id.* at 201.

165. *Monsanto*, 170 SCRA at 201.

166. *Pariarca, Jr.*, 341 SCRA at 472.

Except in cases of *impeachment*, or as otherwise provided in this Constitution, the President may grant reprieves, commutations, and pardons, and remit fines and forfeitures, *after conviction by final judgment*.

He shall also have the power to grant amnesty with the concurrence of a majority of all the Members of the Congress.¹⁶⁷

Meanwhile, Section 5 of Article IX-C provides — “No pardon, amnesty, parole, or suspension of sentence for violation of election laws, rules, and regulations shall be granted by the President without the *favorable recommendation of the [COMELEC]*.”¹⁶⁸

From the above-quoted provisions, the pardoning power of the President may not be granted: (1) in impeachment cases; (2) before final judgment convicting the offender; and (3) in violation of election laws without recommendation from the COMELEC. Aside from these three limitations, Congress and the Courts cannot encroach upon the President’s prerogative.

Moreover, the Judiciary is bound not to inquire into the wisdom or reasonableness of the pardon granted by the President. It cannot delve into the reasons or motives which moved the Chief Executive to grant such pardon.¹⁶⁹ Corollary thereto, the courts cannot compel the President to grant pardon to a particular person or class of persons.¹⁷⁰ His or her discretion is absolute and its exercise is final and unappealable.¹⁷¹ But as will be discussed, this power of the President is not totally unreachable by judicial review.¹⁷²

B. Pardon and the Legislative

Like the President’s dominance over the matters within its powers, Congress also exercises independence and authority in matters within its competence as granted by the Constitution. Despite the well-entrenched doctrine that pardon cannot be fettered by legislative restrictions, executive clemency cannot be exercised over cases of congressional contempt declared by resolution of the legislative body.¹⁷³

167. PHIL. CONST. art. VII, § 19 (emphases supplied).

168. PHIL. CONST. art. IX-C, § 5 (emphasis supplied).

169. *Llamas*, 202 SCRA at 856.

170. *U.S. v. Guarin*, 30 Phil. 85, 88 (1915).

171. *Id.*

172. *Llamas*, 202 SCRA at 854-55.

173. MARTIN, *supra* note 119, at 286.

As mandated by the Constitution, either both Houses of Congress or any of its respective committees, “may conduct inquiries in aid of legislation in accordance with its duly published rules of procedure.”¹⁷⁴ Even though the Constitution does not provide for an express grant of contempt powers, it is essential and auxiliary to legislative power. As discussed by the Court in *Arnault v. Nazareno*,¹⁷⁵

[a] legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions the conditions which the legislation is intended to affect or change; and where the legislative body does not itself possess the requisite information — which is not infrequently true — recourse must be had to others who do possess it.¹⁷⁶

Hence, to compel and to obtain information, Congress has the inherent power to punish transgressors for contempt. This power, however, was qualified as to be exercised only when the person’s testimony is required in a matter into which Congress has jurisdiction to inquire.¹⁷⁷

Arguing that the President may grant immunity, or pardon to say the least, in cases of congressional contempt would run afoul to the Constitution’s separation of powers. While it is beyond doubt that the President may exempt persons from the effects of criminal prosecution, the same exemption cannot be extended to those who transgress the inherent congressional contempt powers. In relation to separation of powers, congressional contempt “takes place wholly outside the criminal code, [and] not subject to executive execution of the laws and prosecutorial discretion, and thus, appears completely beyond the reach of the [E]xecutive branch.”¹⁷⁸ Also, the contempt powers of Congress is not intended to punish, but rather “to coerce” compliance, if not acquiescence, to congressional inquiries.¹⁷⁹ That being said, the President cannot encroach upon the power of Congress and grant pardon to those punished for contempt.

C. Pardon and the Judiciary

174. PHIL. CONST. art. VI, § 21.

175. *Arnault v. Nazareno*, 87 Phil. 29 (1950).

176. *Id.* at 40.

177. *Id.*

178. Todd Garvey & Alissa M. Dolan, *Congress’s Contempt Power and the Enforcement of Congressional Subpoenas: Law, History, Practice, and Procedure* (An Unpublished Report of the Congressional Research Service) 38, available at <https://www.fas.org/sgp/crs/misc/RL34097.pdf> (last accessed July 29, 2015).

179. *Arnault*, 87 Phil. at 40.

The relationship between the President's pardoning power and the Judiciary is more contentious. Being the "last bulwark of constitutional rights and liberties,"¹⁸⁰ the Judiciary exercises judicial power over government instrumentalities and agencies — including the President — to check grave abuses of discretion.¹⁸¹ Judicial power was expanded this way because of the manner by which the Supreme Court's refused to review "political questions" during the Marcos regime.¹⁸² Political questions are "those questions, which, under the Constitution, are to be decided by the people in their sovereign capacity, or in regard to which full discretionary authority has been delegated to the [L]egislative or [E]xecutive branch of the government."¹⁸³

As the Constitution grants full discretionary authority to the President in extending executive clemency, exercise thereof is said to constitute a "political question" which is beyond judicial power.¹⁸⁴ In *Llamas*, however, the Court boldly ruled that the exercise of executive clemency is not totally beyond judicial review.¹⁸⁵ When the issue concerns the validity of the discretionary act — or whether within the limits prescribed by the Constitution — it cannot fall within the ambit of political question doctrine.¹⁸⁶

Like all powers granted by the Constitution, the power of the President to grant pardon is subject to constitutional limitations. The Court, under its "expanded jurisdiction," may "check" whether the particular measure in question is in accordance with the Constitution.¹⁸⁷ But in exercising judicial intervention, "the Court is to merely check whether or not the governmental branch or agency has gone beyond the constitutional limits of its jurisdiction, not that it erred or has a different view."¹⁸⁸

Beyond the issue of propriety of judicial review, there is also the issue between the Executive and the Judiciary in the determination of whether a condition of the pardon is violated. On one hand, it is said that the determination lies exclusively in the sound discretion of the President and the courts cannot interfere by way of review with any of the findings of the

180. BERNAS, COMMENTARY, *supra* note 6, at 946.

181. PHIL. CONST. art. VIII, § 1.

182. BERNAS, COMMENTARY, *supra* note 6, at 952.

183. *Tañada v. Cuenco*, 103 Phil. 1051, 1066 (1965).

184. *Llamas*, 202 SCRA at 854.

185. *Id.* at 855.

186. *Id.* at 856.

187. *Id.*

188. *Id.*

Executive. On the other hand, it is argued that a person is considered to have committed a crime only when one is convicted in the courts of law, hence, violation requires judicial pronouncement.

In the case of *Torres v. Gonzales*,¹⁸⁹ the Court settled that this power is vested in the Executive. In his petition for *habeas corpus*, Wilfredo S. Torres impugned the validity of the Order of Arrest and Recommitment issued against him for the alleged violation of his conditional pardon. He was initially convicted by the Court of First Instance for two counts of estafa. Before his maximum sentence expired in 2000, a conditional pardon was granted to him by the President in 1979 with a condition that Torres would “not again violate any of the penal laws of the Philippines. Should this condition be violated, he will be proceeded against in the manner prescribed by law.”¹⁹⁰ Torres accepted this and subsequently released from confinement. However, seven years later, the Board of Pardons and Parole recommended the cancellation of his conditional pardon as Torres was again charged with estafa and sedition, among others.¹⁹¹ Therefore, the Minister of Justice, by authority of the President, issued the Order of Arrest and Recommitment.¹⁹²

The Court, in setting aside the argument of lack of due process, relied on three former rulings of the Court. The cases of *Tesoro v. Director of Prisons*,¹⁹³ *Sales v. Director of Prisons*,¹⁹⁴ and *Espuelas v. Provincial Warden of Bohol*¹⁹⁵ unanimously declared that executive clemency is granted with the conditions named in it and the President shall himself declare when the contingency has arisen to revoke the pardon. The Court stressed that Section 64 (i) of the Revised Administrative Code of 1917¹⁹⁶ (RAC) grants the then Governor-General (now the President) the power “to authorize the arrest and recommitment of any such person who, in his judgment, shall fail to comply with the condition, or conditions, of his pardon, parole, or suspension of sentence.”¹⁹⁷

The Court, hence, conceded that this determination is beyond judicial scrutiny and falls in the exclusive ambit of the President. When the Chief

189. *Torres v. Gonzales*, 152 SCRA 272 (1987).

190. *Id.* at 274 (emphasis supplied).

191. *Id.* at 277.

192. *Id.*

193. *Tesoro v. Director of Prisons*, 68 Phil. 154 (1939).

194. *Sales v. Director of Prisons*, 87 Phil. 495 (1960).

195. *Espuelas v. Provincial Warden of Bohol*, 108 Phil. 353 (1960).

196. An Act Amending the Administrative Code [ADMINISTRATIVE CODE], Act No. 2711, § 64 (i) (1917).

197. *Id.* (emphasis supplied).

Executive opts to proceed with pardon in accordance with Section 64 (i) of the RAC, there is no need for pronouncement of guilt — much less conviction of crime by final judgment.¹⁹⁸ Though it is recognized that the offender may be prosecuted under Article 159 of the RPC for violation of conditional pardon, the President may also order recommitment without judicial pronouncement of the guilt of the pardonee. The Court also ruled that Section 64 (i) of the RAC and Article 159 of the RPC are not exclusive, and both “can stand together and that the proceeding under one provision does not preclude action under the other.”¹⁹⁹

On the issue of due process, the Court in *Torres*, quoting *Espuelas*, ruled that —

*Due process is not necessarily judicial. The appellee had had his day in court and been afforded the opportunity to defend himself during his trial for the crime of inciting to sedition, with which he was charged, that brought about or resulted in his conviction, sentence[,] and confinement in the penitentiary. When he was conditionally pardoned it was a generous exercise by the Chief Executive of his constitutional prerogative. The acceptance thereof by the convict or prisoner carrie[d] with it the authority or power of the Executive to determine whether a condition or conditions of the pardon has or have been violated. To no other department of the Government [has] such power been intrusted.*²⁰⁰

These pronouncements of the Court faced a strong dissent from by Justice Isagani A. Cruz. Exclaiming that “[m]ere accusation is not synonymous with guilt[,]” he declared that the authority conceded by the majority amounts to encroachment of judicial functions.²⁰¹ Allegation is not tantamount to commission of the crime as a crime is established to have been committed only when the offender is found guilty thereof.²⁰² Hence, a person may be considered “criminal” only if he is convicted of the crime; and the determination of whether or not a crime was committed, whether or not a person is a criminal, is a judicial function — not executive.²⁰³

Despite these debatable pronouncements, there is one power of the Judiciary that the President cannot encroach upon — contempt of court. The power to punish an individual in contempt of court is inherent in the Judiciary, necessary to enforce its orders and decrees, and essential to enable

198. *Torres*, 152 SCRA at 279.

199. I LUIS B. REYES, *THE REVISED PENAL CODE 179* (2012) (citing *Sales*, 87 Phil. at 492).

200. *Torres*, 152 SCRA at 279 (citing *Espuelas*, 108 Phil. at 279).

201. *Id.* at 281 (J. Cruz, dissenting opinion).

202. *Id.*

203. *Id.* at 282.

the Judiciary to perform the functions for which it was created.²⁰⁴ Based on the established constitutional principle of separation of powers, the Judiciary should be distinct and independent from interference. If the President is allowed to grant pardon to those punished for contempt, the Judiciary shall be made dependent on the Executive.²⁰⁵ The dignity and authority of the Judiciary is imperiled when the President “possesses a veto over the exercise of its power to punish for contempt and disobedience.”²⁰⁶ As noted in literature —

As the governor [(President)] is charged with the duty of seeing that the laws are faithfully executed it is in strict accordance with the theory of the power of pardon that he should have power to pardon offenders against the laws which it is his duty to execute. But it *does not by any means follow that he should have the power of pardoning offenses with respect to which he has no duty or concern*; and he has no duty or concern with respect to the offense of contempt of court.²⁰⁷

D. Synthesis

After discussing the dynamics of the pardoning power of the President and the separation of powers, it is submitted that the three co-equal branches should not be read to interfere with each other’s respective spheres of competence.

The relationship of the President and the Legislative is as clear as what the Constitution provides. This relative independence of the Legislative and the Executive, in fact, animated the ruling of the Court in *Risos-Vidal*. By invoking independence and non-interference, the Court gave due weight to the pardon granted to Estrada with respect to executive discretion, and harmonized it with the Revised Penal Code, the Local Government Code, and the Omnibus Election Code.

However, the relationship of the President and the Judiciary in relation to pardon is complicated, to say the least. It became more intricate with the expanded jurisdiction of the Court to determine grave abuse of discretion on the part of instrumentalities of the government, including the President. As the last bulwark of rights and liberties, a balance must be made by the Court between non-interference and keeping faithful to its duty of upholding the Constitution.

204. See *People v. Godoy*, 243 SCRA 64, 92 (1995).

205. Francis T. Ready, *Pardon for Contempt*, 5 NOTRE DAME L. REV. 31 (1929).

206. *Id.* at 32.

207. *Id.* at 33 (emphasis supplied).

The power of the President to grant pardon is so powerful that the reasons, motives, and exercise thereof are almost unlimited. Being a highly political exercise, it overrides the functions of the courts in determining a person's guilt, or lack thereof. Practically speaking, not all acts of executive clemency are "acts of grace," as some are shrouded in mystery — troubled with arbitrariness dictated by political motives. These matters, however, are beyond judicial notice. A system of checks and balance must be established and maintained to ensure that the pardoning power is exercised by the President in harmony with the oath to "preserve and defend the Constitution, execute its laws, [and] *do justice to every man*["]."²⁰⁸

VI. ASSESSING THE INTERPRETATION APPLIED TO THE ESTRADA PARDON

In light of the legal principles involved in Philippine executive clemency and the bedrock principle of separation of powers, did the Court properly adhere to the applicable legal principles in the case of *Risos-Vidal*?

A. As to Its *Whereas* Clauses

1. The Debate

While the *ponencia* in *Risos-Vidal* was concise in interpreting the *whereas clauses* of the Estrada pardon as absolute, unconditional, and merely declaratory of the pardon's context, the concurring opinion of Associate Justice Arturo D. Brion and the dissenting opinion of Associate Justice Leonen extensively illustrate the divergent points of view within the Supreme Court.

Justice Leonen maintained that the preambular clauses of the pardon militate against Estrada's pardon.²⁰⁹ He emphasized that the practice of the Court is to utilize *whereas clauses* of laws, contracts, and resolutions so as to discern the intent of Congress or of its authors.²¹⁰ The *whereas clauses*, thus, indicate the events and considerations that precipitated the grant of pardon by former President Macapagal-Arroyo.²¹¹

Justice Leonen cited the case of *People v. Purisima*,²¹² where the Court interpreted the legislative act of the President — who held legislative powers at that time — through the statute's *whereas clauses* which spelled out the

208. PHIL. CONST. art. VII, § 5 (emphasis supplied).

209. *Risos-Vidal*, G.R. No. 206666 (J. Leonen, dissenting opinion).

210. *Id.*

211. *Id.*

212. *People v. Purisima*, 86 SCRA 543 (1978).

intention and context for the enactment of the statute.²¹³ In reading the *whereas clauses* in relation to the text of the statute, the Court ruled that the text of the statute cannot prevail over the intentions laid down in the clauses in order to prevent “absurdity, injustice, and contradictions.”²¹⁴ This was interpreted in this wise to settle that the statute in question prohibits carrying of bladed, pointed, or blunt weapons “only in the context of subversive activities.”²¹⁵ Otherwise, an absurd situation will result wherein innocently carrying bladed weapons outside one’s residence would lead to prosecution under the law.²¹⁶

Likewise, Justice Leonen cited *Lizaros v. Gatmaitan*²¹⁷ which utilized the *whereas clauses* of a contract to determine the intention of the parties.²¹⁸ He also cited *Kuwait Airlines, Corporation v. Philippine Airlines, Inc.*²¹⁹ where resort to *whereas clauses* was made in order to determine the real intention of the parties, although the Court put primacy to the contemporaneous and subsequent acts of the parties.²²⁰

In response, Justice Brion argued that these *whereas clauses* are mere statements of fact declaring the conditions present at the time it was granted.²²¹ The first two merely refers to the administration policy and to the age of Estrada — and this could not have been conditions which Estrada have to fulfill.²²² Moreover, although the third *whereas clause* may be read as if it was a “commitment” made by Estrada, there is nothing in the text of the pardon that would make it a condition for Estrada’s pardon.²²³ As further discussed by Justice Brion,

the third *whereas clause* stands in the same footing and should be characterized in the same manner that the two clauses are characterized: singly or collectively, they are simply declarations of what the grant or recognized as facts at the time the pardon was granted. In the manner the

213. *Id.* at 558.

214. *Id.*

215. *Id.*

216. *Id.* at 562.

217. *Lizaros v. Gatmaitan*, 362 SCRA 548 (2001).

218. *Id.* at 558.

219. *Kuwait Airways, Corporation v. Philippine Airlines, Inc.*, 587 SCRA 399 (2009).

220. *Id.* at 410 (citing An Act to Ordain and Institute the Civil Code of the Philippines [CIVIL CODE], Republic Act No. 386, art. 1371 (1950)).

221. *Risos-Vidal*, G.R. No. 206666 (J. Brion, separate opinion).

222. *Id.*

223. *Id.*

Court spoke of preambles in the case of *Kuwait Airways, Corporation* [], the *whereas clauses* merely manifest consideration that cannot be the origin of rights and obligations and cannot make the [Estrada] pardon unconditional.²²⁴

In support of his thesis, Justice Brion cites by analogy the case of *Cobarrubias v. People*,²²⁵ where the Court declared that unless there is manifest mistake in formulating the dispositive portion, the *fallo* or the dispositive part of the decision shall be the controlling factor in resolving the issues in a case.²²⁶ The theory in *Cobarrubias* is that it is the final order which is subject of execution, while “the body of the decision merely contains the reasons or conclusions of the court [but it orders] *nothing*.”²²⁷ Hence, by putting primacy to the structure of the pardon, which is allegedly parallel with the *fallo* judicial decisions, the *whereas clauses* cannot significantly affect the pardon’s dispositive portion — consequently, the pardon must be read as restoring to Estrada his civil and political rights.²²⁸

2. Synthesis

The Author opines that an order of pardon is *sui generis*. It cannot be totally likened to contracts, statutes, or judicial decisions. While the exercise of executive clemency is jurisprudentially deemed a private act of the President — which might make it seem to be a contract between the President and the grantee — one must be careful in absolutely construing it as a purely a contractual agreement between contracting parties. This is because it essentially involves public interest, which the President represents as trustee of the highest public office for the benefit of the sovereign people.²²⁹

Hence, a balance must be made. Contrary to the *Cobarrubias* analogy, it is necessary to take into consideration the *whereas clauses* as indicators of the real intention of the parties since an order of pardon is a private act of the President. However, such construction must be made in light of Article 1370 of the Civil Code, to wit — “If the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control. If the words appear to be contrary to the evident intention of the parties, the latter shall prevail over the former.”²³⁰

224. *Id.*

225. *Cobarrubias v. People*, 596 SCRA 77 (2009).

226. *Id.* at 89.

227. *Id.* See also *Gonzales v. Solid Cement Corporation*, 684 SCRA 344, 352 (2012).

228. *Risos-Vidal*, G.R. No. 206666 (J. Brion, separate opinion).

229. PHIL. CONST. art. XI, § 1.

230. CIVIL CODE, art. 1370.

Hence, similar to *Salvacion* and *Licaros*, the *whereas clauses* of a grant of pardon may be resorted to in order to determine the evident intention of the parties. This is to prevent absurdity and injustice in the implementation of the agreement.

However, despite the wording of the third *whereas clause* in the Estrada pardon, the Civil Code also provides that “contemporaneous and subsequent acts shall be principally considered” in judging the intention of the parties.²³¹ Consequently, what militates strongly in favor of Estrada was the subsequent silence of the pardoning authority, former President Macapagal-Arroyo, in the face of Estrada running for public office — silence which was positively identified by both the *ponencia* and the dissent.²³² But what could be the real reason for such silence? Only Macapagal-Arroyo would know. To the mind of the Court, however, such silence echoed that the pardon granted to Estrada was absolute.

B. As to Interpretation and Construction

1. The Debate

If the *whereas clause* cannot be considered as having imposed a condition on the grant of pardon, because of the subsequent acts — of silence — of former President Macapagal-Arroyo, then why must the silence of the grantor be read in favor of the pardonee when the contrary interpretation can be assumed?

On this point, there is again divergence of opinion. Justice Brion maintained that executive clemency requires liberal mode of interpretation in favor of the grantee.²³³ Diametrically opposed is the position of Justice Leonen who argued for a strict construction.²³⁴

In support of liberal construction, Justice Brion relied in the 1908 case of *Frank v. Wolfe*,²³⁵ where the Court declared that acts of grace — like commutation and pardon — are construed favorably to the grantee, consistent with postulate that pardon is a benevolent act of the Chief Executive. To wit —

It is a principle universally recognized that all such grants are to be construed favorably to the grantee, and strictly as to the grantor, not only because they partake of the nature of a deed, and the general rule of

231. CIVIL CODE, art. 1371.

232. *Risos-Vidal*, G.R. No. 206666 (J. Leonen, dissenting opinion).

233. *Id.* (J. Brion, separate opinion).

234. *Id.* (J. Leonen, dissenting opinion).

235. *Frank v. Wolfe*, 11 Phil. 466 (1908).

interpretation that the terms of a written instrument evidencing a deed are to be construed adversely to the maker applies with especial force to grants of pardon and commutations, wherein the grantor executes the instrument with little or no right on the part of the grantee to intervene in its execution or dictate its terms, but because of the very nature of the grant itself as an *act of grace* and clemency.²³⁶

The same principle was reiterated by the Court in *Infante v. Provincial Warden of Negros Occidental*.²³⁷ Any limitation on the act of grace must be strictly construed. Hence, when conditional pardon is susceptible to more than one interpretation, it must be construed favorably to the grantee.

On the other hand, Justice Leonen, throughout his dissenting opinion, expressly utilized strict interpretation of the pardon granted to Estrada. Relying merely on the words used — and not used — in the pardon, Justice Leonen asserted that no express remission was made of Estrada’s political disabilities.²³⁸ Working on a game of semantics, he emphasized the absence of the word “full,” as jurisprudence on pardon usually provides for restoration of “*full* civil and political rights.”²³⁹ Thus, he posited that omission of the word “full” means that not all civil and political rights of Estrada were restored.²⁴⁰ Lastly, he also submitted that the right to vote and be voted for an elective public office are entirely different composite set of rights, apart from “civil and political rights.”²⁴¹ Hence, under Articles 36 and 41 of the Revised Penal Code, an express remission these two distinct rights are needed.

Another contentious point is the interests involved in an exercise of executive clemency. Justice Brion is of the opinion that the pardon must interpreted in light of the protection of the interest of the electorate or the declaration of *vox populi*, particularly when the pardonee has already been elected by the people.²⁴² Technicalities in election law should not be an obstacle to the true will of the electorate. In fact, in a series of cases,²⁴³

236. *Id.* at 470 (emphasis supplied).

237. *Infante v. Provincial Warden of Negros Occidental*, 92 Phil. 310 (1952).

238. *Risos-Vidal*, G.R. No. 206666 (J. Leonen, dissenting opinion).

239. *Id.*

240. *Id.*

241. *Id.*

242. *Id.* (J. Brion, separate opinion).

243. *See, e.g.*, *Fernandez v. House of Representatives Electoral Tribunal*, 608 SCRA 733 (2009); *Frivaldo v. Commission on Elections*, 257 SCRA 727 (1996); *Malabaguio v. Commission on Elections*, 346 SCRA 699 (2000); *Alberto v. Commission on Elections*, 311 SCRA 215 (1999); *Maruhom v. Commission on*

election laws are liberally construed by the Court so as not to defeat the voice of the people. The Court, being the bulwark of justice, cannot be the stumbling block to giving life to democracy through free and honest casting of votes.

Justice Leonen, however, insists on the constitutional doctrine that “public office is a public trust.”²⁴⁴ To the good Justice, this doctrine requires that the President should be equivocal in restoring one’s right to run for public office since public office greatly affects public interest.²⁴⁵ As the President presumably exercises its powers for the common good, being categorical with the intention for pardon is required so as not to leave doubt in the qualifications of public officers.²⁴⁶ He adds that the power of the President to grant pardon under the Constitution is invested with the phrase, “as otherwise provided in this Constitution.”²⁴⁷ Hence, the Justice submits that the President’s power cannot be detached with an equally important constitutional principle — that public office is a public trust.²⁴⁸

2. Synthesis

With these contradicting pronouncements, the Author submits that a clearer expression of interests involved must be made by the Court in future cases to enrich jurisprudence. On the one hand, equity dictates that executive clemency be construed in favor of the grantee as he is in the mercy of the Chief Executive, especially in cases of conditional pardon. Strict interpretation of pardon would likely result to absurd situations wherein the intention of the grantor is dominated by blind harshness when precisely the point of pardon is to “make a [person] anew,”²⁴⁹ even in a limited sense. On the other hand, it is not amiss to emphasize that the President has sworn to protect the Constitution. Hence, there is also merit in the argument that the grant of pardon to offenders, in light of public office being a public trust, must be clear and express as to its nature and intention.

VII. FINAL NOTE

Elections, 331 SCRA 473 (2000); & *Rulloda v. Commission on Elections*, 395 SCRA 535 (2003).

244. *Risos-Vidal*, G.R. No. 206666 (J. Leonen, dissenting opinion).

245. *Id.*

246. *Id.*

247. *Id.*

248. *Id.*

249. *Ex Parte Garland*, 71 U.S. at 380.

The case of *Risos-Vidal* is novel. It involves a President of the Philippines, having been convicted for plunder, who was subsequently pardoned by his successor. It is the first time in recent history that the pardoning power of the President was put to scrutiny, not only within the halls of the Supreme Court, but throughout the country.

Joseph Ejercito Estrada is no common convict. After having sworn before the Filipino people that he will faithfully execute the laws of the Philippines and declaring that in his administration, “*walang kai-kaibigan, walang kumpa-kumpare, walang kama-kamaq-anak*,”²⁵⁰ and the Filipino people are beyond frustration when evidence of massive corruption arose. The premature fall of the Estrada presidency was not attributable solely to Estrada, but to the totality of the Philippine political culture. However, it seems that the lessons that the country learned from the Estrada controversy were obliterated by the pardon extended to him by President Macapagal-Arroyo.

The real reason behind the pardon granted to Estrada shall remain unknown. In fact, whatever the reasons, it shall be beyond judicial scrutiny in light of the exclusive nature of the pardoning power of the President. The issue of pardon is more political. The only way to go about it is to demand continued adherence to a separation of powers, which is the fundamental system for check and balance in our government.

But regardless of the contentious pronouncements as to the proper interpretation of pardon, the Author submits that executive clemency must always be invoked and construed in light of its reason for existence — to correct the undue harshness and infirmities of the administration of justice.

At the same time, however, it is time to think about alternative safeguard measures. As the pardoning power of the President remains unrestrained, efforts must then be made so as to ensure that the Filipino electorate continues to elect qualified and highly ethical leaders.

250. LAQUIAN & LAQUIAN, THE ERAP TRAGEDY, *supra* note 8, at 1.