FAMILY RELATIONSHIP AS BASIS FOR DISQUALIFICATION TO HOLD PUBLIC OFFICE: A FRAMEWORK FOR A LAW PROHIBITING POLITICAL DYNASTIES

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Section 26, Article II of the 1987 Constitution provides that "the State shall guarantee equal access to opportunities for public service" and at the same time, "prohibit political dynasties as may be defined by law." It may be observed that the Constitution prohibits political dynasties but does not immediately define the term. Instead, this task was delegated to Congress. While, legally speaking, there is nothing to prevent Congress from defining the term in any manner it deems fit, the requirements of substantive due process dictate that such a definition should not be formulated arbitrarily.

In drafting its definition, Congress will not be enacting an ordinary piece of legislation. It would be discharging a Constitutional duty. Thus, Congress should comply with certain standards which are found within the Constitution itself. Before anything else, therefore, it is necessary to identify the purposes for which the prohibition against political dynasties was included in the Constitution. These purposes are: to guarantee equal access to opportunities for public service; to promote social justice; and to preserve the public trust character of a public office by avoiding potential conflict of interest situations. Any proposed anti-dynasty legislation must be tested against these three standards in order to find out whether the definition it offers is able to prevent the evils sought to be avoided.

Throughout the years, many politicians have twisted and turned the concept of democracy to suit their own purposes, leaving the public confused as to its true meaning. Today, the equal opportunity to hold public office that is the cornerstone of a democratic and republican government has become an empty slogan. The 1986 Constitutional Commissioners, taking the cue from several Latin American countries, sought to revive this concept by taking into account the peculiarities of Philippine culture and deciding to make family relationship a basis for disqualification to hold public office and prohibit political dynasties.

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Although many argue that such a prohibition is oppressive and is contrary to the ideals of democracy, the law which makes the prohibition executory must be passed because it is mandated by the Constitution. The passage of such a law would signal both the birth of a new Filipino system of government and possibly, the solution to many problems plaguing the nation.

INTRODUCTION

A. Background

The year 1986 was supposed to have been a turning point in Philippine history. The EDSA Revolution gave the Filipino people an opportunity to discard the mistakes of the past and start over. From a legal standpoint, the revolution provided a convenient justification for the adoption of a new Constitution, one that would contain a complete package of much-needed reforms in Philippine social, cultural, economic and political structures.

The concentration of wealth and political power in the hands of a small minority has been generally regarded as the root of many of the nation's problems. Thus, among the most significant innovations of the 1987 Constitution were the provisions on agrarian reform,[1] urban land reform,[2] autonomy of local government units[3] and the prohibition against political dynasties.[4] Due to time constraints and the utter complexity of these issues, the Constitutional Commissioners limited themselves to providing a basic policy framework for legislation and delegated to Congress the task of working out the necessary details. In short, the Constitutional provisions on these matters were not self-executory and would continue to be unenforceable unless Congress passes the enabling laws. Taken in this context, it may be said that the Constitution is an imperfect document and remains unfinished in many respects.

To date, and only after years of heated deliberations, Congress has enacted the Comprehensive Agrarian Reform Law,[5] the Urban Development and Housing Act,[6] and the Local Government Code of 1991.[7] Legislation prohibiting political dynasties, however, does not seem to be forthcoming. Many legislators see the passage of such a law as being adverse to their own interests and would rather divert the public's attention by arguing for a shift from a presidential to a parliamentary form of

1 PHILIPPINE CONSTITUTION, art. XIII, §§ 4-8.

2 *Id.* art. XIII, §§ 9-10.

3 *Id.* art. X.

4 *Id.* art. II, § 26

5 Republic Act No. 6657 (1988).

6 Republic Act No. 7279 (1992).

7 Republic Act No. 7160 (1991).

government. It must be understood, however, that the curative effect of the 1987 Constitution will never be felt unless and until all its provisions are in force. Without this requisite, any Constitutional amendment would only prove to be a futile and costly exercise.

Arriving at a viable definition of the term "political dynasty" is not as simple as it seems. The term "dynasty" is defined by Webster as:

> a succession of rulers of the same line of descent; a group or class or individuals having power or authority in some sphere of activity and able to choose their successors; a family that establishes and maintains predominance in a particular field of endeavor for generations.[8]

To insist on sticking closely to this definition, however, would obviously defeat the intent of the Constitutional Commission. A sound definition may be derived only after an analysis of the actual evils the drafters of the Constitution sought to prevent. This requires a close study of the provisions of the Philippine Constitution and the statutes currently in force.

B. Objective of the Study

This thesis aims to provide a comprehensive study of the political dynasty phenomenon in the Philippines for the purpose of formulating a viable definition, within the context of the 1987 Constitution, of the term "political dynasty." It will also provide guidelines for a fruitful discussion on the matter. Finally, this thesis suggests a framework for a law prohibiting political dynasties which would, in substance, adequately and effectively address the problems brought by the existence of political dynasties while still being reasonable enough to gain acceptance by legislators.

C. Limitations of the Study

This study will focus on the prohibition on political dynasties as applied to elective offices, although the term is general enough to include both elective and appointive offices. Because of the size and complexity of the Philippine bureaucracy, a study of the political dynasty prohibition as applied to appointive officials may be the subject of another thesis in itself. Family relationship as basis for disqualification to hold elective office is given priority in this thesis since no such law or similar law is currently in force in the Philippines. Family relationship is already a basis for disqualification to hold an appointive office.[9] Furthermore, there are other safeguards currently in place to prevent abuse of the appointing power. For instance, some

[8] WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY(1986).

[9] *See* PHILIPPINE CONST., art. VII, § 13; The Administrative Code of 1987, E.O. No. 229, § 59 (1987); The Civil Service Decree of the Philippines, P.D. No. 807, § 49 (1975); The Local Government Code of 1991, R.A. No. 7160, § 79 (1991).

presidential appointments require the approval of the Commission on Appointments;[10] while other appointments would generally require Civil Service eligibility obtained through competitive examinations.[11]

D. Organization of the Thesis

This thesis is divided into seven chapters. The first three chapters will focus on the prohibition against political dynasties. Chapter I gives the reader a background of the political dynasty problem as it existed before, during and after the ratification of the 1987 Constitution. Chapter II then discusses the legal basis for a prohibition against political dynasties as found in the Constitution. In Chapter III, the author examines the use of family relationship as basis for disqualification under Philippine law. This chapter also contains a comparative analysis of the prohibition against political dynasties as found in the Philippine Constitution and the provisions which make family relationship a basis for disqualification to hold elective office found in foreign Constitutions.

The next three chapters will proceed with a discussion geared towards the formulation an acceptable definition of the term "political dynasty." Chapter IV lays out the standards to be used in evaluating the viability of any proposed definition. This is followed by Chapter V, which contains a survey of congressional bills filed since the ratification of the Constitution, including an identification of their weaknesses in addressing the evils sought to be prevented. Chapter VI outlines a better framework for legislation which would satisfy the standards already identified in Chapter IV.

Finally, Chapter VII contains the writer's conclusions based on the research conducted and gives his recommendations regarding an ideal framework for a law prohibiting political dynasties.

I. POLITICS AS A FAMILY BUSINESS: THE POLITICAL DYNASTY AS A REALITY

A. Changelessness in Philippine Politics

Politics in the Philippines has been described as one of "continuity and change,"[12] and of "development and decay,"[13] On the one hand, the country has experienced periods of significant change. It has gone through a shift from a post-war democracy

[10] PHILIPPINE CONST., art. VII. § 16.

[11] PHILIPPINE CONST., art. IX-B, § 2(2).

[12] DAVID TIMBERMAN, A CHANGELESS LAND: CONTINUITY AND CHANGE IN PHILIPPINE POLITICS (1991).

[13] DAVID WURFEL, FILIPINO POLITICS: DEVELOPMENTAND DECAY (1988).

to martial law in 1972. Subsequently, it moved from martial rule to the post-EDSA administration of President Corazon Aquino in 1986.

On the other hand, many would find it disturbing to note that despite such changes, many things remain the same. The issues raised during elections in the 90's are more or less the same issues that were raised during elections twenty or even thirty years ago. Competition for public office remains violent and electoral fraud is rampant. Allegations of corruption, favoritism and incompetence dominate the election campaign.

Much of the changelessness in Philippine politics has been attributed to the leadership in the country, on both the national and local level. As noted by a political scientist,

> [t]he absence of change is rooted in the continuing influence of traditional political culture, the concentration of economic and political power in a conservative elite, and in the face of these conditions the inability of radical or reformist groups to significantly alter the status quo.[14]

The concentration of economic and political power has been the subject of many studies. Before Martial law, it was estimated that around 400 families controlled the Philippines.[15] By the late 1970s, a new oligarchy consisting of cronies and relatives of President Marcos had emerged. The number of families which controlled the nation's wealth, and consequently its politics, was reduced to sixty.[16]

There is changelessness because development in the country remains dependent on the decisions made by members of the elite class who have managed to allocate political power among themselves. For as long as the priorities and interests of the elite do not change, so will there be an absence of change in the social, economic and political conditions of the country.

The rest of this chapter will discuss the phenomenon of clan domination in Philippine politics, including its causes and the problems that arise because of it.

B. Clan Domination

In the Philippines, economically and politically powerful clans are considered more important organizations than political parties.[17] This explains why members of the same families have been holding both national and local offices for generations.

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[14] TIMBERMAN, *supra* note 12, at 385.

[15] *Id.* at 17.

[16] *Id.*

[17] Mamerto Canlas, *The Political Context* in MAMERTO CANLAS; MARIANO MIRANDA AND JAMES PUTZEL, LAND POVERTY AND POLITICS IN THE PHILIPPINES 73 (1988).

It is an established fact that these political families continue to survive despite changes in administration. In 1965, Dante Simbulan conducted a study which identified 169 families[18] whose members held public office at that time. Today, many of the families in Simbulan's study continue to hold public office.[19]

Despite the promise of change brought by the EDSA Revolution, clan support continues to be a big factor in determining the outcome of elections. The Institute for Popular Democracy,[20] concluded research on the 1987, 1988 and 1992 elections by stating that "[p]olitical clans are still the main organizations that play, and win (most of the time), on the uneven electoral field of the Philippines."[21]

For instance, out of the 200 members of the Eighth House of Representatives elected during the May 1987 elections: 133 have had a history of electoral participation;[22] 31 were newcomers and were related to politicians; and only 36 entered the political arena for the first time and were not related to any public official.[23]

The trend continued to hold true in the 1992 elections. In the Ninth Congress of the Philippines, 145 out of 200 elected members of the House of Representatives come from political families;[24] 45 congressmen have siblings who are public officials;[25] 64 have parents who are public officials;[26] 30 have grandparents who are public officials;[27] 23 have spouses who are politicians;[28] 21 have children who are politicians;[29] 55 have

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[18] DANTE SIMBULAN, A STUDY OF THE SOCIO-ECONOMIC ELITE IN PHILIPPINE POLITICS AND GOVERNMENT, 1946-63, *cited in* ERIC GUTIERREZ, THE TIES THAT BIND: A GUIDE TO FAMILY, BUSINESS AND OTHER INTERESTS IN THE NINTH HOUSE OF REPRESENTATIVES, at 301 (1994) [hereinafter TIES].

[19] TIES, *supra* note 18, at 301.

[20] The Institute for Popular Democracy is a non-governmental organization set up in 1986. It advocates, among others, for a pluralist and multiparty system or representative democracy which can provide more favorable conditions for participatory and direct democracy.

[21] TIES, *supra* note 18, at 300.

[22] An assumption inherent in this category is that the contender is not merely an "old face", but also belongs to a political clan or family that has been his vehicle for political and electoral involvement.

[23] ERIC GUTIERREZ, ET. AL., ALL IN THE FAMILY: A STUDY OF ELITES AND POWER RELATIONS IN THE PHILIPPINES 161 (1992) [hereinafter FAMILY].

[24] TIES, *supra* note 18, at 17.

[25] *Id.* at 315-516.

[26] *Id.* at 317-318.

[27] *Id.* at 319.

[28] *Id.* at 320.

[29] *Id.* at 321.

either uncles, nephews or cousins who are politicians;[30] and 32 have in-laws who are in politics.[31]

It is, therefore, evident that for over a hundred years, the Philippine Government has been run by members of the same families. Their stranglehold on public office has led some observers to refer to the Philippine system of government as an "elite democracy"[32] as opposed to "popular democracy" or "participatory democracy."

The phenomenon of clan domination in Philippine politics is attributable to both economic and cultural reasons.

1. WEALTH IS POWER, POWER IS WEALTH

In the Philippines, there is a strong correlation between wealth and political power. To paraphrase Jean Grossholtz, wealth *is* power.[33] This phrase, however, can be restated as "power is wealth" without making it less true.

On the one hand, it is an accepted fact that a candidate has to spend a lot of money in order to get elected into office. In the recent past, election spending has skyrocketed to astronomical heights. In the 1987 Senatorial elections, for instance, 67 senatorial candidates out of a field of 86 reported to the COMELEC campaign expenditures totalling P157.15 million. The top 26 candidates spent P101.2 million accounting for 65% of reported total expenses. This means that, on the average, each candidate "officially" spent around P4 million.[34] The indispensable need for huge financial resources explains why, on the local level, the province-based political clans are at the apex of the traditional class structure. These clans own the biggest landholdings or control the largest industries and commercial establishments in the province. They have used local government and the lower house of Congress as the primary structures for translating their economic power into political power.[35]

On the other hand, public office is coveted for it provides the holder the means to preserve or acquire wealth for themselves and for their family. Renato Constantino has described the Filipino politician in general as an "individual whose ultimate goal is to stay in power or to regain power, and to use that power to achieve financial success and social position."[36] Grossholtz adds,

[30] *Id.* at 322-325.

[31] *Id.* at 326-327.

[32] TIMBERMAN, *supra* note 12, at 43.

[33] JEAN GROSSHOLTZ, POLITICS IN THE PHILIPPINES 162 (1964).

[34] Ibon Facts and Figures, *Lavish Campaigning* 8 (5 July 1987).

[35] Francisco Nemenzo, *From Autocracy to Elite Democracy*, in AURORA JAVATE-DE DIOS, ET AL., DICTATORSHIP AND REVOLUTION ROOTS OF PEOPLE POWER 226 (1987).

[36] ATENEO CENTER FOR COMMUNITY SERVICES, THE PHILIPPINES TODAY: A SITUATIONAL ANALYSIS 32 (1991).

> [w]hile on paper, these officials serve as representatives of the people, in reality, they are out to serve their own interests. Philippine politicians deny publicly that they are professional politicians and seek to present themselves as public servants but in their calculations about one another, cynicism is the most obvious characteristic. It is assumed that men seek personal gain.[37]

Family members who hold public office frequently help protect or channel favors to the family business.[38] It seems that this behavior has become the general rule rather than the exception. As Grossholtz observes, "[t]hose who have power are expected to use it to promote their own interest and that of their family. There is no moral contempt for those who benefit from their power. It is as it should be, and many would be a fool to ignore these opportunities."[39]

Thus, public office is seen as a "vehicle for the control and allocation of privileges and government resources among competing factions and their followers."[40] On the local level,

> . . . politics have traditionally been contests between two, or sometimes, three wealthy landed families. Control of local office is coveted from a number of reasons: the opportunity it offers for financial enrichment; the political power that comes with having control over the distribution of resources and patronage, the control of law enforcement; and because it deprives rival families of the same opportunities and benefits. The local elité families, therefor have viewed direct or indirect control of local and provincial offices as critical to preserving or expanding their interests *vis-a-vis* other rival families.[41]

It is because political clans possess the wealth that they are able to get into public office. It is the desire to preserve or acquire more wealth by holding public office that effectively deprives ordinary citizens, who cannot match the clan's resources, of opportunities to serve the people. Public office has sadly become a tool, available only to the few who could afford it, for advancing the holder's private interests.

2. TRADITIONAL POLITICAL CULTURE

Clan domination is also a natural product of traditional Philippine political culture. In the Philippines, political affiliation and loyalties are determined primarily by family and linguistic ties, patron-client relationships, and patronage,[42] instead of ideological reasons. The electorate votes on personalities rather than on issues. A

[37] GROSSHOLTZ, *supra* note 33, at 164.

[38] WURFEL, *supra* note 13, at 58.

[39] GROSSHOLTZ, *supra* note 33, at 163.

[40] TIMBERMAN, *supra* note 12, at 49.

[41] *Id.* at 38.

[42] *Id.* at 49.

voter writes on the ballot the name of the candidate whom he believes is most likely to grant him benefits or favors. This is why some observe that a "clan leader's political clout is not built overnight. It is the product of years of dispensing countless favors, issuing recommendations and granting requests from local leaders and proteges for promotion or appointment to coveted public office."[43]

Thus, incumbents always have a built-in advantage during election time. They have used their office to distribute favors and largesse to the electorate in exchange for votes that he can expect when election day comes. While this scenario may be regarded as a "necessary evil," being an inherent weakness of both the electoral system and the Filipino political culture, the problem is aggravated when the newcomer would also have to contend with the relatives of the incumbent. For example, an incumbent governor has a son who wishes to run for mayor in his father's province. The son would have available to him the *utang na loob*[44] earned and the political machinery built-up by his father. The electoral contest is no longer one about vision, programs and ideology but one of reciprocation for past favors received. This situation breeds changelessness for it is the past that is the focus of attention, rather than the future.

C. The Problems of Clan Dominations

Unequal access to public office is a problem that is closely linked to the unequal distribution of wealth in the Philippines. But true democracy requires a level playing field, with equal access to opportunities to hold public office available to all. Democracy was never meant to be exclusively for the elite.

The Philippine electoral system, as in electoral systems around the world, is far from perfect. Although in concept it is free and open, a closer examination would easily reveal that a few members of wealthy and powerful political clans have managed to deprive others of equal opportunities to public office. They have controlled the government offices for generations. The concentration of political power in the hands of a few has had detrimental effects on the nation's drive towards the realization of participatory democracy in the Philippines. In fact, the Institute for Popular Democracy believes it remains the biggest obstacle to democratization in the post-1986 period.[45]

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[43] FAMILY, *supra* note 23, at 17.

[44] A system of reciprocity based on the principle that every service received, solicited or not, demands a return. When the a debtor reciprocates out of *utang na loob* (gratitude), he is frequently not sure how much of the debt he has paid back. And even when he believes that he has repaid with interest, he cannot be sure the other party thinks so, too. This element of insecurity regarding the fulfillment of the debt can maintain the relationship indefinitely, or at least as long as the parties remain geographically close enough to each other to continue interacting. Because an *utang na loob* relationship is rarely terminated, the status of the two parties is, ideally, never equal. They are never sure of who has emerged as creditor. In such a case, the fear of being termed *walang utang na loob* (ingrate) and *walang hiya* by the other party often prevents complacency about debt fulfillment and forces continued reciprocation. [Mary Racelis Hollnsteiner, Reciprocity as a Filipino Value, in Society Culture and the Filipino (Mary Racelis Hollnsteiner, ed., 1979)].

[45] TIES, *supra* note 18, at 302.

> The phenomenon of political families makes the distribution of political power less than ideal. An entrenched oligarchy makes it difficult for newcomers and deserving candidates from less privileged sectors to break into mainstream politics. Further, the growth of program-oriented and community-based political parties is seriously impaired when elections are reduced to contests between families rather than issues.[46]

Other adverse effects caused by the monopolization of political power include the widespread occurrence of electoral fraud, and graft and corruption.[47] Self-interest, rather than public interest, becomes the main consideration in decision-making. Furthermore, the continuing perception that elections are an exclusively intra-elite exercise has sown disillusionment and discontent among the masses.[48] Once the people lose faith in the electoral system, there is a real danger that radical elements may resort to less peaceful means of gaining power.

In the next chapter, the discussion will center on how the framers of the 1987 Constitution envisioned a change in the political structure — one that would solve the problem of political inequality that has been prevalent throughout the history of the Philippine Republic.

II. THE CONSTITUTIONAL PROHIBITION AGAINST POLITICAL DYNASTIES

The framers of the 1987 Constitution sought to correct the inequalities prevalent in the electoral field by introducing one of the most innovative and controversial provisions of the Constitution: the prohibition against political dynasties. The manner by which it finally made it into the Constitution is, in itself, filled with tension and drama. The matter was put to a vote on three separate occasions. Opposition in the Constitutional Commission (ConCom) remained unwavering until the end, as objections on both substantive and procedural grounds were aired every step of the way in an attempt to exclude the prohibition from the Constitution.

A. Birth

The inclusion of the prohibition against political dynasties was first suggested during the period for amendments[49] to § 2,[50] Article X of the Draft Constitution. This

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[46] *Id.* at 17.

[47] 4 RECORD OF THE CONSTITUTIONAL COMMISSION 940 (1986) [hereinafter CONCOM].

[48] Alexander R. Magno, *In the Grip of Politics*, in THE PHILIPPINE AND ECONOMIC SITUATION IN VIEW OF 1992: LECTURES DELIVERED AT THE UNIVERSITY OF HAWAII AT MARRON (Randolf S. David and Jonathan Y. Okamura, eds. 1992).

[49] 16 Aug. 1986.

[50] Now § 3.

provision requires Congress to enact a new local government code to replace Batas Pambansa Blg. 337, the local government code then in force. At the same time, it enumerates matters which the new local government code should contain. Commissioner Foz wanted to insert a clause which would require Congress to include a prohibition against political dynasties in the new local government code.[51] The basic philosophy behind the prohibition is best explained in the words of Commissioner Foz:

> The basic proposition is that in a democracy such as ours, *nobody is indispensable as far as public service is concerned.* It is true that certain persons may possess the necessary capabilities and special qualities to perform good deeds in the public office, but that does not rule out the possibility that others may have similar capabilities to serve the public good. So we cannot say that a relative . . . of an incumbent is deserving of succeeding his relative because of his special qualities and his capabilities or qualifications. The idea of a prohibition against the rise of political dynasties is essentially to prevent one family from controlling political power as against the democratic idea that political power should be dispersed as much as possible among our people. And the evils brought about by political dynasties are so well-known to us, because they happened in the recent political past.[52] (emphasis supplied)

The original idea was that the prohibition would only cover cases of immediate succession. The prohibition was intended to complement the provisions of the Constitution fixing term limits for both national and local offices. In the words of Commissioner Nolledo:

> "Let us take, for example, a governor who has grown old and has run for two elections as permitted by the Constitution, but now wants his son to continue to run for that same position. That is what we call political dynasty."[53]

It was also stressed, however, that the prohibition is temporary in nature. A person is allowed to run for office for as long as he does not immediately succeed a relative into office. Thus, a person disqualified to run during a particular election may be qualified to run in another election. The purpose of the prohibition is to "widen the political base to give chance to poor but deserving candidates."[54]

Because the term "political dynasty" was not defined and its concept remained sketchy at most, many Commissioners expressed their opposition to the measure. The amendment was put to a vote. Five voted in favor, while nineteen voted against. The amendment of Commissioner Foz was lost.

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[51] 3 CONCOM 92.

[52] *Id.* at 392-93.

[53] *Id.* at 394.

[54] *Id.* at 393.

B. Resurrection

The prohibition against political dynasties resurfaced during the deliberations on Article II of the Constitution— the Declaration of Principles and State Policies.[55] The original provision was worded as follows: "[t]he State shall broaden opportunities to public office and prohibit political dynasties."[56] Commissioner Nolledo made the observation that the prohibition was "very popular outside but does not seem to enjoy the same popularity inside the Constitutional Commission,"[57] obviously alluding to the vigorous opposition that successfully blocked the measure during the deliberations on the article on local governments.

He reiterates the explanation that the prohibition is designed to avoid circumvention of the provision limiting re-election of public officers. He elaborates thus:

> In the case of local government officials like governors, for example, we allow them to have two reelections.[58] If he is reelected twice, he can no longer run for reelection, in which case, he will ask his close relative— a son or a daughter or a brother or a sister—to run for public office under his patronage. And in this case, we circumvent the rule against further reelection because it may also happen that his younger son may run for governor and he is still strong enough to exercise moral as well as effective influence upon the son. And the son becomes a subaltern, subjecting himself to the will of the father who has apparently retired.[59]

Commissioner Monsod moved to delete the particular section, on the ground that the proposal had already been discussed and rejected during the deliberations concerning the article on Local Governments. Objections on substantive grounds were also raised. Several Commissioners expressed their apprehension about approving a concept they considered vague. The following exchanges are in point:

> MR. RODRIGO. . . . Before I vote intelligently on this matter, I would like to ask a very important question. What is the definition of a dynasty? What degree of consanguinity or affinity is meant by dynasty? Does it refer only to father and son? Does it refer to brother and brother? Or an uncle with his nephew? Up to what degree?

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[55] 23 Sept. 1986.

[56] 4 CONCOM 731.

[57] *Id.* at 935.

[58] Under § 8 of art. X of the Constitution as ratified by the people, no elective local official shall serve for more than three consecutive terms. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of his service for the full term for which he was elected.

[59] 4 CONCOM 936.

MR. NOLLEDO. We are not deciding that question here but we are recommending to Congress that the scope of the relationship shall be within the third degree of consanguinity or affinity. We leave it to Congress to determine the relationship.[60]

MR. NATIVIDAD. With the Commissioner's indulgence, the reason I voted against this provision is its vagueness. Are we speaking only of the position of the incumbent? Suppose there is a public official and his relative is running for a different position, are his relatives banned?

MR. NOLLEDO. That is the reason I said I am limiting it only to a situation where the rule against further reelection might be circumvented, *That is my suggestion to Congress although the Congress can also widen the meaning of political dynasty*.[61] (emphasis supplied)

The Motion to Delete of Commissioner Monsod was then put to a vote. The results show 17 votes in favor, and 18 against with one abstention; the proposed amendment by deletion is lost. Still, the matter was not laid to rest. A motion to reconsider the voting was made by Commissioner Monsod on the ground that there had been a violation of the Rules regarding the manner in which the voting was conducted.[62] Commissioner Monsod, however, later withdrew his motion "in order not to exacerbate the situation."[63]

Those opposed to the inclusion of this provision, however, did not give up that easily. Further resistance came during the period for amendments. Commissioner Davide proposed that the wording of the provision be amended to read "The State shall ensure equal access to opportunities to public service and prohibit political dynasties." An amendment to this amendment was then proposed by Commissioner Rodrigo, who wanted to delete the words "and prohibit political dynasties." This proposal was met with vigorous objections by other Commissioners who argued that "the very life and substance of the provision is found in the words `prohibit political dynasties'"[64] and since the body had already decided to retain this prohibition, the proposal of Commissioner Rodrigo should be considered "out of order." The amendment of Commissioner Rodrigo to the amendment of Commissioner Davide was then put to a vote. The results show 18 votes in favor and 21 votes against, with no abstention. The proposed amendment of Mr. Rodrigo is lost.[65]

After the conclusion of the period for amendments, the provision stands and reads,

[60] *Id.* at 940.

[61] *Id.* at 941.

[62] *Id.* at 943.

[63] *Id.* at 945.

[64] *Id.* at 946.

[65] *Id.* at 954.

Sec. 26. The State shall guarantee equal access to opportunities for public service, and prohibit political dynasties as may be defined by law.

Although the provision is included in the Constitution, its enforceability is another matter. The real battle is yet to be fought in the halls of Congress.

C. *Preliminary Observations*

1. THE PROHIBITION IS NOT SELF-EXECUTORY

The main consequence of including a prohibition against political dynasties under the Declaration of Principles and State Policies is that the prohibition is not self-executory.[66] There has to be enabling legislation passed by Congress before the prohibition can take effect. This is to be distinguished from provisions in the Bill of Rights which are self-executory and are, in themselves, bases for claiming certain well-defined rights.

From the debates of the ConCom, it is apparent that the prohibition was intentionally left incomplete. By adding the phrase, "as may be defined by law" the ConCom expressly delegated to Congress the task of formulating a definition that would breathe life into the prohibition. Unless Congress decides to pass the enabling law, no actual prohibition takes effect.

2. THE CONSTITUTION DID NOT DEFINE THE TERM "POLITICAL DYNASTY"

During the deliberations of the ConCom, it was made clear that the Commissioners would not delve into the formulation of the exact legal definition of the term "political dynasty." The biggest objection to this provision, therefore, was that it was too vague. Because of the lack of time[67] and the utter complexity of the issues involved, the Commissioners did not even attempt to define the term. Although it was clear that the intent was to make family relationship a basis for disqualification to hold public office, there were many other questions left unanswered, among which are:

a. Should the prohibition cover only the successive holding of public office, or the simultaneous holding of public office by members of the same family, or both?

b. Should the prohibited situations be confined to family relationship among public officers on the local level or should they include those relationships involving national officers as well?

[66] *See* 2 JOAQUIN BERNAS, THE CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY 2 (1988).

[67] *See* 4 CONCOM 761.

c. Up to what degree of relationship should the prohibition cover?

d. Should the operation of the law be limited to relationships that exist only within a particular political unit?

It is now up to Congress to provide the answers to these questions.

3. THE LANGUAGE USED IS MANDATORY.

An examination of the wording of § 26, Article II of the Constitution would reveal that it is composed of two parts. The first part refers to the guarantee of equal access to opportunities for public service, while the second part refers to the prohibition on political dynasties.

By isolating the second part, the provision reads: "[t]he State shall... prohibit political dynasties as may be defined by law." It may be observed that the clause which prohibits political dynasties can be further divided into two parts: the first refers to a prohibition while the second refers to a definition. The difference between the two is that the former is supplied by the Constitution, while the latter is yet to be formulated by Congress. The wording of the prohibition thus brings about a situation where there is a prohibition which does not immediately define what is prohibited. This serves only to stress the mandatory character of the task of Congress to supply the necessary definition.

In the absence of a contrary intention, the provisions of the Constitution should be regarded as mandatory rather than directory.[68] "Otherwise, the fundamental law would have no more force and prestige than to set directions which the government and the people would be free to disregard."[69]

> As a rule therefore, whenever the language used in the Constitution is prohibitory, it is understood as intended to be a positive and unequivocal negation; and whenever the language contains a grant of power, it is intended as a mandate, not a mere direction.[70]

The phrase "shall prohibit political dynasties" is an unequivocal mandate addressed to Congress. The phrase "as may be defined by law" grants authority and discretion to Congress only insofar as setting the parameters of the prohibition is concerned. While the prohibition as found in the Constitution is incomplete without the necessary definition, the reverse does not hold true. There can be no definition without a prohibition, for the operative act which makes the prohibition effective is the passage of a law defining the term "political dynasty". Congress cannot define the

[68] ISAGANI CRUZ, CONSTITUTIONAL LAW 8 (1989).

[69] *Id.* at 10.

[70] *Id. citing* BLACK, CONSTITUTIONAL LAW 20-21.

term "political dynasty" and declare that the same is not prohibited. Such a law would be clearly unconstitutional. This leads to the conclusion that the prohibition finds its source in the Constitution and it is only the definition that Congress is authorized to fix.

Therefore, whether a prohibition must or must not exist is no longer in issue and should no longer be subject to debate. The prohibition is mandated by the Constitution, which was ratified by the Filipino people in a plebiscite. The wisdom of providing for such a measure is not material. The people have spoken: a law giving life to the prohibition must be passed.

D. Legal Implications of its Inclusion in the Constitution

Worth noting at this juncture is the question posed by Commissioner Quesada during the proceedings of the ConCom: would Congress be precluded from banning political dynasties should this provision be deleted from the Constitution?[71] The answer given by Commissioner Rigos, then presiding officer, was that such would not necessarily be so but he did not state his reasons. Assuming this statement to be true, several questions come to the fore: Why was there a need to include the provision in the Constitution? What is the difference between a Constitutional prohibition as opposed to one that is merely statutory?

It is the author's position that the inclusion of the provision prohibiting political dynasties has three purposes: first, to bind the people; second, to make the prohibition mandatory and more or less permanent; and third, to authorize Congress to add an additional disqualification to offices the qualifications for which have been fixed by the Constitution.

1. A SELF-IMPOSED LIMITATION

The first effect of a Constitutional prohibition is that it makes the same a voluntary act of the people. The Constitution is the product of the will and is in fact a creation of the people as manifested through its ratification in a plebiscite held for that purpose. As such, it has been described as the supreme law[72] because it is the basic and paramount law to which all other laws must conform.[73] The Constitution has also been described as "a social contract which binds by its terms and conditions the people and their government in a civil society. To the people as a whole, it is an agreement fixing their common concerns."[74]

[71] 4 CONCOM 941.

[72] Mutuc v. Commission on Elections, 36 SCRA 228, 234-235 (1970).

[73] Myrna S. Feliciano, *The Philippine Constitution: Its Development, Structures, and Processes* in CONSTITUTIONAL AND LEGAL SYSTEMS OF ASEAN COUNTRIES 193 (Carmelo Sison, ed. 1990).

[74] *Id. citing* 1 PERFECTO FERNANDEZ AND CARMELO SISON, CONSTITUTIONAL LAW 54 (1974).

The people, having overwhelmingly ratified the Constitution in the plebiscite of February 1987, had in fact authorized the prohibition against political dynasties. It cannot, therefore, be argued that the prohibition is invalid for being in derogation of the right of the people to choose any candidate he desires nor of the right of citizens otherwise qualified to aspire for public office. This is because, by ratifying the Constitution, the people have placed this limitation upon themselves probably realizing the greater benefits that would accrue to the nation by this gesture of self-sacrifice.

2. MANDATORY AND PERMANENT CHARACTER

The second effect of a Constitutional prohibition is that the passage of a definition is mandatory, as earlier discussed. Had the provision been deleted, there would be no sense of urgency for Congress to pass such a measure. It would be just like any other ordinary piece of legislation. Congress would be free to adopt any measure calculated to ensure the equal access to opportunities for public service. The addition of this clause in the Constitution concretized the means by which equal access to opportunities for public service is to be achieved.

A certain degree of permanence is also achieved because the prohibition against political dynasties may not be removed except by Constitutional amendment. The definition of political dynasty, however, may expand or contract depending on the times as it is merely statutory.

3. AUTHORIZES DISQUALIFICATIONS OTHER THAN THOSE PROVIDED IN THE CONSTITUTION

Finally, the inclusion of the provision prohibiting political dynasties in the Constitution served to grant Congress the authority to add disqualifications to both local offices and to offices whose disqualifications have been set by the Constitution.[75]

Traditionally, it has been accepted that the qualifications enumerated by the Constitution were meant to be exclusive. This interpretation was based on the "care with which the qualifications were formulated"[76] and from "the absence of the explicit grant of power to add to the qualifications enumerated by the Constitution."[77] The rule may thus be stated in the following manner: In the absence of authority granted by the Constitution itself, Congress can neither add to nor subtract from the qualifications and disqualifications to hold Constitutional offices. The reason for this rule is found in American jurisprudence.

[75] The qualifications for the office of President are found in § 2, art. VII of the Constitution; the qualifications for the office of Vice-President are found in § 3, art. VII of the Constitution; the qualifications for the office of Senator are found in § 3, art. VI of the Constitution; and the qualifications for Member of the House of Representatives are found in § 6, art. VI of the Constitution.

[76] 2 BERNAS, *supra* note 66, at 124.

[77] *Id.*

In *Powell v. McCormack*,[78] Adam Clayton Powell was duly elected from the 18th Congressional District of New York to serve in the US House of Representatives. Although Powell had possessed the age, citizenship and residence requirements specified in the Constitution, he was not allowed to take his seat. A Resolution adopted by a majority of the members of the House of Representatives excluded Powell from membership and declared his seat vacant on the ground that he had wrongfully diverted House funds and had made false reports concerning expenditures during a prior Congress. The United States Supreme Court, relying on historical materials and Constitutional Convention debates, ruled that the House of Representatives had no power to exclude from its membership any person who was duly elected by his constituents and who met the age, citizenship, and residence requirements specified in the Constitution. Had it ruled otherwise, the Court would have vested "an improper and dangerous power in the Legislature." The Court cited the arguments presented by James Madison before the Constitutional Convention in 1787:

> The qualifications of electors and elected were fundamental articles in a Republican Government and ought to be fixed by the Constitution. If the Legislature could regulate those of either, it can by degrees subvert the Constitution. A Republic may be converted into an aristocracy or oligarchy as well by limiting the number capable of being elected, as the number authorised to elect ... It was a power also, which might be made subservient to the views of one faction against another. Qualifications founded on artificial distinctions may be devised, by the stronger in order to keep out partisans of [a weaker] faction.[79]

Philippine jurisprudence also seems to adopt this rule, although in a manner not quite as emphatic as its American counterpart. In *Maquera v. Borra*,[80] the Philippine Supreme Court declared as unconstitutional Republic Act No. 4421 which required all candidates for national, provincial, city and municipal offices to post a surety bond equivalent to a year's salary for the position to which he is a candidate. The Court held that R.A. No. 4421 had the effect of imposing property qualifications in order that a person could run for a public office and is, therefore, inconsistent with the nature and essence of the Republican system which is premised upon the basic tenet that sovereignty resides in the people and all governmental authority emanates from them. It also goes against the principle of social justice which presupposes equal opportunity for all, rich and poor alike, and that, accordingly, no person shall by reason of poverty, be denied the chance to be elected to public office.

Since *Maquera* did not contain a categorical statement to the effect that Congress can neither add nor subtract to the qualifications of Constitutional officers, one wonders whether the ruling would have been the same had the qualification not been based on property owned but on other considerations.

[78] 395 US 486, 23 L. Ed. 2d 491, 89 S.Ct. 1944 (1969).

[79] Powell, 395 U.S. at 533-534.

[80] 15 SCRA 7 (1965).

The case of *Dimaporo v. Mitra*[81] presents an example of how the exception to the exclusivity rule operates. In this case, the Supreme Court upheld the Constitutionality of § 67, Article IX of the Omnibus Election Code which provides: "[a]ny elective official whether national or local running for any office other than the one which he is holding in a permanent capacity except for President and Vice-President shall be considered *ipso facto* resigned from his office upon the filing of his certificate of candidacy."

Mohammad Ali Dimaporo, during his incumbency as the Representative of the Second District of Lanao del Sur, filed his certificate of candidacy for the position of Regional Governor of the Autonomous Region of Muslim Mindanao. Upon being informed of this development and acting on the basis of § 67, Article IX of the Omnibus Election Code, the Speaker and Secretary of the House of Representatives excluded Dimaporo's name from the Roll of Members of the House of Representatives. Dimaporo subsequently lost in the autonomous region elections. Thereafter, he wrote the Speaker of the House and expressed his intention to resume his duties as Member of the House. Failing to regain his seat, he brought his case before the Supreme Court, claiming that the Speaker had no authority to exclude him from the Roll of the House. He argued that the grounds for which the term of a Congressman may be shortened, as provided in the Constitution, are exclusive.[82] Dimaporo asserted that § 67, Article IX of the Omnibus Election Code, which took effect in 1985, is no longer operative because the filing of a certificate of candidacy for another office is not among the grounds expressly specified in the 1987 Constitution.

In sustaining the constitutionality of this provision, the Supreme Court held:

> That the ground cited in § 67, art. IX of BP 881 is not mentioned in the Constitution itself as a mode of shortening the tenure of office of members of Congressman does not preclude its application to present members of Congress. § 2 of Article XI provides that "[t]he President, the Vice-President, the Members of the Supreme Court, the Members of the Constitutional Commissions, and the Ombudsman may be removed from office, on impeachment for, and conviction of, culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust. *All other public officers and employees may be removed from office as provided by law, but not by impeachment.*" Such constitutional expression clearly recognized that the four grounds found in Article VI of the Constitution by which the tenure of a Congressman may be shortened are not exclusive.[83] (italics in the original)

[81] 202 SCRA 779 (1991).

[82] Namely, forfeiture of his seat by holding any other office or employment in the government under art. VI, § 13 of the Constitution; expulsion as a disciplinary action for disorderly behavior under art. VI, § 16 (3); disqualification as determined by the Electoral Tribunal under art. VI, § 17; and voluntary renunciation of office under art. VI, § 7.

[83] Dimaporo v. Mitra, 202 SCRA 779, at 791 (1991).

It would be observed that the Court again did not have the occasion to make a categorical statement as to the exclusivity of the qualifications and disqualifications of Constitutional officers. The issue that confronted the court in *Dimaporo* referred only to the exclusivity of the grounds for removal. In concluding that the grounds for removal with respect to members of the House of Representatives were not exclusive, the Court looked for a provision in the Constitution which granted Congress the authority to add grounds other than those provided in the Constitution. According to the majority, the grant of authority is found in § 2 Article XI of the Constitution.

Mr. Justice Gutierrez, in dissenting from the majority view,[84] took exception to the statement that the grounds for removal mentioned in the Constitution are not exclusive. His opinion is that they are exclusive. He states that "[i]t is a fundamental principle in Constitutional Law that Congress cannot add by statute or administrative act to the causes for disqualification or removal of constitutional officers. Neither can Congress provide a different procedure for disciplining constitutional officers other than those provided in the Constitution."[85] He noted that earlier statutes which considered elective officials as being resigned upon the filing of a certificate of candidacy all pertained to non-constitutional officers. He distinguishes them from the assailed provision of law thus, "[c]ongress has not only the power but also the duty to prescribe causes for the removal of provincial, city, and municipal officials. It has no such power when it comes to constitutional officers."[86] Justice Gutierrez, however, did not discuss the applicability or non-applicability of § 2, Article XI, the provision relied upon by the majority to support its view.

Thus, applying the above principles to the prohibition against political dynasties it may be concluded that there is no problem with respect to the qualifications for local offices. Under § 3, Article X of the Constitution, Congress is specifically authorized to set the qualifications for local offices. Thus, even without a Constitutional provision against political dynasties, Congress would still have the power to set a disqualification based on family relationship. The difference is that without § 26, Article II, Congressional authority to set qualifications and disqualifications for elective positions ends at the local level. Congress would not have authority to alter the terms of the Constitution with respect to the qualifications for Constitutional offices.

It is the author's position that § 26 of Article II of the 1987 Constitution provides an express grant of authority to add another disqualification to elective Constitutional officers. This interpretation finds support in the Records of the Constitutional Commission. The intent of the framers to include national offices within the scope of the political dynasty prohibition is evident from the examples they gave during the deliberations. For instance, Commissioner Nolledo gave an example where the prohibition is applicable to the office of President:

[84] Joined by Justices Padilla and Bidin.

[85] Dimaporo, 202 SCRA at 796.

[86] Dimaporo, 202 SCRA at 797.

> MR. NOLLEDO . . . And so, in the case of a President, for example, under the provisions of the Constitution, the President cannot run for re-election, she can ask, for example, Noynoy Aquino — assuming that he is already of age — to run for President, thereby negating the laudable purpose for prohibiting reelection. This seems to me to be the meaning of political dynasty although Congress may still widen the meaning of the term . . .[87]

Commissioner Monsod precisely wanted to avoid a situation where the qualifications set by the Constitution would have to be changed to accommodate the effects of the inclusion of a prohibition against political dynasties. In urging for the deletion of such provision, Commissioner Monsod stated:

> We have in this Constitution qualifications of those who seek elective office. We are adding in this section a disqualification to those who may aspire after public office, and, in effect, amending the various provisions in this Constitution which enumerate the qualifications and disqualifications of the law.
>
> So I move for the deletion of this section.[88]

It is clear, therefore that the members of the Concom had understood and intended the natural consequences of including a prohibition against political dynasties in the Constitution. They knew that the wording was broad enough to cover national offices whose qualifications are fixed by the Constitution. By providing a prohibition against political dynasties and at the same time delegating to Congress the task of defining the term, the Constitution has in effect given Congress the authority to provide an additional disqualification to these offices. This disqualification would have to be limited to one which is based on family relationship as it is intended to carry out the prohibition against political dynasties.

III. Family Relationship as Basis for Disqualification

From the debates of the ConCom it is apparent that the prohibition against political dynasties is nothing more than a disqualification from holding public office based on family relationship.[89] The term dynasty is generally defined as "a succession of rulers of the same line of descent."[90] As may be observed, the term dynasty itself has two fundamental components: that of succession and family relationship. During the debates, however, it was stated that the prohibition is not to be construed as being

[87] 4 Concom 936.

[88] *Id.* at 939.

[89] *See supra* note 52.

[90] Webster's Third New International Dictionary of the English Language (Unabridged ed., 1986).

limited to situations involving succession alone.[91] Apparently, the term "dynasty" was used in the Constitution to stress the element of family relationship more than that of succession.

In this chapter, the discussion will focus on family relationship and how the law uses it as a basis for disqualification.

A. Family Relationship

Taken in its broad sense, a family is "a group of persons united together by ties of marriage and blood. Its scope is sometimes extended and sometimes restricted, according to the particular legislation."[92] Under the Family Code, for instance, family relations include those between husband and wife, parents and children, among other ascendants and descendants and among brothers and sisters, whether of full or half-blood.[93]

"Proximity or relationship is determined by the number of generations. Each generation forms a degree."[94] "A series of degrees forms a line which may be either direct or collateral. A direct line is that constituted by the series of degrees among ascendants and descendants. A collateral line is that constituted by the series of degrees among persons who are not ascendants and descendants, but who come from a common ancestor."[95] The following rules apply to determine the degree of relationship between two persons:

> In the line, as many degrees are counted as there are generations or persons, excluding the progenitor. In the direct line, ascent is made to the common ancestor. Thus, the child is one degree removed from the parent, two from the grandfather and three from the great-grandparent.
>
> In the collateral line, ascent is made to the common ancestor and then descent is made to the person with whom the computation is to be made. Thus, a person is two degrees removed from his brother, three from his uncle, who is the brother of his father, four from his first cousin, and so forth.[96]

The scope of all legislation which makes family relationship a basis for disqualification is limited in terms of degrees as determined with the use of the rules as outlined above.

[91] *See supra* note 61.

[92] 1 Arturo M. Tolentino, Civil Code of the Philippines, Commentaries and Jurisprudence 501 (1987).

[93] The Family Code of the Philippines, E.O. 209, § 150 (1987).

[94] The Civil Code of the Philippines, R.A. No. 386, art. 963 (1950) [hereinafter Civil Code].

[95] Civil Code, art. 964.

[96] Civil Code, art. 966.

B. Disqualifications Based on Family Relationship in General

Many claim that a disqualification based on family relationship is unfair. They argue that it would be unjust to penalize a person on grounds not attributable to him but which occurred purely by accident of birth. An examination of Philippine laws reveals, however, that family relationship has always been used as a valid basis for disqualification. This is because in the Civil Code, family relationship is a circumstance that modifies or limits the capacity to act.[97] Capacity to act is the power to do acts with legal effect.[98]

Thus, several statutory provisions currently in force prohibit persons from performing certain acts or functions because of his family relationship. For example, the spouse, parents, or children of an attesting witness to the execution of a will is incapable of succeeding under such will;[99] neither may a relative, within the fourth degree of consanguinity or affinity, of a member of the board of election inspectors or of a candidate to be voted for in the polling place cannot serve as a chairman or member of the board of election inspectors;[100] and so on.[101]

C. As Applied to Appointive Offices

1. LAW AND JURISPRUDENCE

A disqualification to hold an appointive office based on family relationship has always been generally regarded as valid. The Constitution itself authorizes such a classification when it provides that:

> [t]he spouse and relatives by consanguinity or affinity within the fourth civil degree of the President shall not during his tenure be appointed as members of the Constitutional Commission, or the office of the Ombudsman, or as Secretaries, Undersecretaries, Chairmen or Heads of bureaus or offices, including government-owned or controlled corporations and their subsidiaries.[102]

[97] The following circumstances, among others, modify or limit capacity to act: age, insanity, imbecility, the state of being a deaf-mute, penalty, prodigality, family relations, alienage, absence, insolvency and trusteeship. [Civil Code of the Philippines, R.A. No. 386, art. 39 (1950)]

[98] Civil Code, art. 37.

[99] Civil Code, art. 1027.

[100] The Omnibus Election Code of the Philippines, B.P. Blg. 881, § 167 (1985).

[101] *See* The Civil Code of the Philippines, R.A. No. 386, arts. 1109, 1490, 1646, and 1782 (1950); The Family Code of the Philippines, E.O. No. 209, arts. 37, 38, 87 and 215 (1988); The Local Government Code of 1991, R.A. No. 7160, § 410 (d) (1991); The Revised Penal Code, Act No. 3185, arts. 20, and 332 (1932); The Revised Rules of Court, Rule 24, § 13; Rule 130, § 22, 24 (a), and 25, Rule 137, § 1; Code of Judicial Conduct, Rule 2.03, and 3.12 (d), (e).

[102] PHILIPPINE CONST. art. VII, § 13.

Statutory disqualifications to hold an appointive office based on family relationship may be found in § 59, Book V of The Administrative Code of 1987,[103] and § 49 of the Civil Service Decree,[104] both of which contain identical provisions against nepotism:

> Nepotism—(a) All appointments in the national, provincial, city and municipal governments or in any branch or instrumentality thereof, including government-owned or controlled corporations, made in favor of a relative of the appointing or recommending authority, or of the chief of the bureau or office, or of the persons exercising immediate supervision over him, are hereby prohibited.
>
> As used in this Section the word "relative" and members of the family referred to are those related within the third degree either of consanguinity or of affinity.
>
> (2) The following are exempted from the operation of the rules on nepotism: (a) persons employed in a confidential capacity, (b) teachers, (c) physicians, and (d) members of the Armed Forces of the Philippines: Provided, however, that in each particular instance a full report of such appointment shall be made to the Commission.
>
> The restriction mentioned in subsection (1) shall not be applicable to the case of a member of any family who, after his or her appointment to any position in an office or bureau, contracts marriage with someone in the same office or bureau, in which even the employment or retention therein of both husband and wife may be allowed.

It has been held that the basic purpose of the prohibition against nepotism is to "ensure that all appointments and other personnel actions in the civil service should be based on merit and fitness and should never depend on how close or intimate an appointee is to the appointing power."[105] This prohibition has been regarded as a comprehensive one[106] and has been strictly construed by the Supreme Court in the cases of *Laurel V v. Civil Service Commission*,[107] *Debulgado v. Civil Service Commission*,[108] and *Sulu Islamic Association of Masjid Lambayong v. Malik*.[109]

In *Laurel V v. Civil Service Commission*, it was held that the prohibition applies equally to both a designation and an appointment. The court saw no distinction

[103] E.O. No. 292 (1987).

[104] P.D. No. 807 (1975); *see also* The Local Government Code of 1991, R.A. No. 7160, art. 79 (1991).

[105] Debulgado v. Civil Service Commission, G.R. No. 111471, 26 Sept. 1994 *citing* Teologo v. Civil Service Commission, 191 SCRA 238 (1990) and Meram v. Edralin, 154 SCRA 238 (1987).

[106] Debulgado, G.R. No. 111471, 26 Sept. 1994.

[107] 203 SCRA 195 (1991).

[108] G.R. No. 111471, 26 Sept. 1994.

[109] 226 SCRA 193 (1993).

between a designation and an appointment because career service positions may be filled up only by appointment, either permanent or temporary. Hence a designation of a person to fill up the position because it is vacant is necessarily included in the term appointment, for it precisely accomplishes the same purpose. The Court further surmised that if a designation is not to be deemed included in the term appointment under § 49 of PD No. 807, "then the prohibition on nepotism would become meaningless and toothless. Any appointing authority may circumvent it by merely designating, and not appointing, a relative within the prohibited degree to a vacant position in the career service."[110] This is in conformity with the principle that what cannot be done directly cannot be done indirectly.[111]

In *Debulgado v. Civil Service Commission*, the Court held that the prohibition applies equally to all appointments whether original, promotional or subsequent. In this case, Mayor Rogelio Debulgado of San Carlos City in Negros Occidental appointed his wife as head of the Office of General Services of the City Government of San Carlos. Mrs. Debulgado had been in the service of the city government for 32 years prior to this promotion. Thereafter, the Civil Service Commission (CSC) issued a resolution disapproving the promotion of Mrs. Debulgado on the ground that the appointment violated the statutory prohibition against nepotism. Mayor Debulgado denied that he had been motivated by personal reasons when he appointed his wife and claimed that his wife was the most qualified among the candidates for appointment to that position. He further argues that to read the prohibition as applicable to both original and promotional or subsequent appointments, would be to deprive the government of the services of loyal and faithful employees who would thereby be penalized simply because the appointing or recommending authority happens to be related to the employee within the third degree of consanguinity or affinity. The Supreme Court stated that:

> It is essential to stress, however, that the prohibition applies quite *without regard to the actual merits of the proposed appointee* and to the good intentions of the appointing or recommending authority, and that the prohibition against nepotism in appointments whether original or promotional, is not intended by the legislative authority to penalize faithful service.
>
> The purpose of § 59 which shines through the comprehensive and unqualified language in which it was cast and has remained for decades, *is precisely to take out of the discretion of the appointing and recommending authority the matter of appointing or recommending* for appointment of *a relative*. In other words, § 59 insures the objectivity of the appointing or recommending official by preventing that objectivity from being in fact tested. The importance of this statutory objective is difficult to overstress in the culture in which we live and work in the Philippines, where family bonds remain, in general, compelling and cohesive.

[110] Laurel V, 203 SCRA at 209.

[111] Laurel V, 203 SCRA at 209.

> . . . [T]he public policy embodied in § 59 is clearly fundamental in importance, and the Court has neitner the authority nor inclination to dilute that important public policy by introducing a qualification here or a distinction there.[112] (italics in the original)

In *Sulu Islamic Association of Masjid Lambayong v. Malik*, the Supreme Court found Judge Nabdar J. Malik[113] guilty of nepotism, falsification and violation of the Code of Judicial Conduct and ordered his dismissal from the service. Judge Malik had recommended the appointment of his nephew, Omar Kalim, to the position of Janitor in the Municipal Trial Court of Jolo Branch 1. Subsequently, also upon recommendation of Judge Malik, Kalim was promoted to the position of MTC Aide and later, as Process Server. In support of his nephew's original appointment and subsequent promotions, Judge Malik had issued false certifications[114] which stated that Kalim was not related to him either by consanguinity or affinity. In ordering his dismissal from the service, the Supreme Court applied § 46(b)(30), Book V of the Administrative Code of 1987 which states that nepotism shall be grounds for disciplinary action. Under § 32, Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292 and Other Pertinent Civil Service Laws, nepotism is classified as a "grave offense" punishable with dismissal from the service, even as a first offense. The Court added that by committing nepotism and covering up his malfeasance by falsely disavowing any relationship to the appointee, Judge Malik is guilty of gross ignorance of the law, falsification and violation of the Code of Judicial Conduct which requires that "a judge shall not allow family, social or other relationship to influence his judicial conduct or judgment. Violations of the Code of Judicial Conduct are serious offenses punishable by dismissal, suspension or fine.

2. ANALYSIS

Having identified the public policy considerations in anti-nepotism legislation, the Supreme Court has been consistently strict in both the interpretation and enforcement of such laws. Hairline distinctions raised by the guilty parties were dismissed by the Court as being specious and contrary to the spirit of the law. The Court further stressed that the law was not intended to punish a certain class of people, rather its purpose is to preserve the integrity and quality of the civil service. Towards this end, the Court delivered the message that it will not hesitate to dismiss members of the judiciary found guilty of violating this law, as it had done in *Sulu*.

[112] Debulgado, G.R. No. 111471, 26 Sept. 1994.

[113] Then Presiding Judge of the Municipal Trial Court of Jolo, Sulu.

[114] In Layno v. People (213 SCRA 696), it was held that "although § 49 (a) of P.D. No. 807 does not explicitly provide that the appointing or recommending authority shall disclose his true relationship with the appointee in the form of a certification, nonetheless . . . the legal obligation of the appointing or recommending authority to state the true facts required to be stated in the certification is inherent in the law on prohibition against nepotism and the nature and purpose of such certification."

It would, therefore, not be amiss to apply the same policy of strict interpretation and enforcement to a disqualification from holding elective offices based on family relationship, considering that nepotism is a concept embraced in the term "political dynasties".[115]

D. As Applied to Elective Offices

1. THE PHILIPPINE SETTING

The prohibition against political dynasties as contained in § 26 of Article II of the Constitution provides the legal justification for making family relationship a basis for disqualification to hold an elective office. Oppositors of the anti-dynasty law claim that there is a distinction between elective and appointive offices, which would justify a disqualification based on family relationship when applied to appointive offices but not when applied to elective offices. A person may be appointed to an office based solely on the discretion of the appointing officer. Thus, the appointing officer, tempted by family interests may easily appoint a relative into office. An elective official, on the other hand, theoretically enjoys the mandate of the people. It is no longer simply the right of the person to hold public office that is involved, but also the corresponding right of the people to elect the person of their choice.

2. FOREIGN PRECEDENTS

Much of the apprehension with respect to the prohibition on political dynasties is that the Philippines had never disqualified a person from holding an elective office simply on the basis of family relationship. This concept, however, is not new in other parts of the world. A survey of constitutions in different jurisdictions reveals that a disqualification to hold an elective office has been in force in several Latin American countries even before 1948.

a. Latin American Constitutions, in General

Latin American Constitutions generally follow a certain pattern. This is not surprising considering the proximity of Latin American countries to one another and the striking similarities found in each culture within that region. Their Constitutions generally begin with a declaration that the country is democratic. Most of them adopt a presidential type of government. Many Latin American countries have also seen fit to include a disqualification to hold public office based on family relationship in their respective Constitutions. This is probably because of the importance of the family in almost all Latin American countries. One writer observes that:

> . . . [a]s one examines the roster of personnel of Latin American governments, he should not be surprised to find brothers, uncles, and cousins of the President and his wife in positions of authority. The relatives in turn see to it that their children and friends get on the public payroll. As Hispanic culture sanctifies the friend through *compadrazgo*, government becomes the preserve of family and friend. . .[116]

[115] *See* 4 CONCOM 945.

Several Latin American Constitutions prohibit a relative of the President from succeeding the latter into office. This type of prohibition usually extends to the spouse or relatives within the fourth degree of consanguinity or second degree of affinity of the individual holding the office of the Presidency or who has done so in the year preceding the election.[117] There are some Constitutions which contain additional provisions which also disqualify relatives of the person occupying the Presidency from running for Vice-President[118] or for a seat in the Legislature.[119]

Still, some Constitutions, such as that of Brazil and the Honduras, have more elaborate disqualifications based on family relationship. The Brazilian and Honduran Constitutions deserve a closer look as they may serve as models in drafting the Philippine Antidynasty law.

b. The Brazilian Model

The Brazilian Constitution of 1967 specifically lists persons ineligible for election into public office in the following manner:

> Art. 147. Likewise ineligible, under the same conditions set forth in the preceding article, are the spouse and relatives to the third degree of consanguinity or affinity, or by adoption:
>
> I. Of the President and the Vice-President of the Republic, or of a substitute who has assumed the presidency for:
>
> (a) President and Vice-President;
> (b) Governor; and
> (c) Deputy or Senator, except in the case of already having held the elective office for the same date
>
> II. Of the governor or federal intervenor in each State, for:
>
> (a) Governor
> (b) Deputy or Senator

[116] WILLIAM S. STOKES, LATIN AMERICAN POLITICS 38 (1959).

[117] *See* BOLIVIAN CONST., art. 89 (2) (1967); COSTA RICAN CONST., art. 132 (1949); PANAMANIAN CONST., art. 172 (1972); PERUVIAN CONST., art. 204(2); SALVADORIAN CONST., art. 152(2) (1984); ECUADORIAN CONST., art. 172(1) (1972).

[118] *See* BOLIVIAN CONST., art 89(2); COSTA RICAN CONST., art. 132; PANAMANIAN CONST., art. 173.

[119] *See* COSTA RICAN CONST., art. 109(8); SALVADORIAN CONST., art. 127(4).

III. Of a prefect, for

(a) Governor
(b) Prefect[120]

Other disqualifications to be set by law are authorized by the Brazilian Constitution, with the end view of preservation of the democratic system, democratic honesty and of normality and legitimacy of elections, against the absence of financial power and of the exercise of public offices or functions.[121]

c. The Honduran Model

The disqualifications under the Constitution of Honduras disqualify relatives of persons holding both elective and appointive office, including the military.

Under the Honduran Constitution of 1982, the spouses and relatives, within the fourth degree of consanguinity or second degree of affinity, of the President of the Republic and Presidential designates of the Republic, the Justices of the Supreme Court, Members of the military service with national jurisdiction, members of the National Elections Tribunal, the attorney-general and deputy attorney-general of the Republic, comptroller-general of the Republic and the director and deputy director of administrative probity, and the Secretaries and Deputy Secretaries of State, of Defense and Public Security may not be elected as deputies.[122]

The spouse and relatives of the chiefs of military zones, commander of military units, departmental or sectional military representatives, and representatives of security forces or of any other armed force within the 4th degree of consanguinity or 2nd degree of affinity, when these individuals are candidates for office in the department where they exercise jurisdiction are likewise, disqualified from being elected as deputies.[123]

Furthermore, the following may not be elected President of the Republic:

(5) The spouse and the relatives of military commanders serving as members of the high council of the armed forces, within the fourth degree of relationship by blood or the 2nd degree of relationship by marriage;

(6) Relatives of the president and presidential designates that have held the post of president in the year preceding the election, within the 4th degree of relationship by blood or the 2nd degree of relationship by marriage.[124]

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[120] BRAZILIAN CONST., art 147 (1967) in 4 AMOS J. PEASLEE, CONSTITUTIONS OF NATIONS 190-191 (1970).

[121] BRAZILIAN CONST., art. 148.

[122] HONDURAN CONST., art. 199(10) (1982).

[123] HONDURAN CONST., art. 199 (11).

[124] HONDURAN CONST., art 5240 (5)(6).

3. SOME OBSERVATIONS

a. Prohibitions are Specific in Latin American Constitutions

A striking distinction between the Philippine prohibition against political dynasties and its Latin American counterparts is that the Philippine Constitution makes no specific enumeration of the prohibited situations. In the Brazilian and Honduran Constitutions, for instance, specific provisions have been included which made their prohibitions executory. By making them part of the Constitution, the prohibition became more or less permanent since any change would have to be done by constitutional amendment. The Philippine anti-dynasty prohibition is Constitutional and thus a removal of the prohibition would entail a constitutional amendment. The definition of political dynasty, however, is statutory and may be changed according to the collective wisdom of the members of Congress.

b. Coverage of the Disqualification

1.) Relatives of Holders of National Positions

Most Latin American Constitutions prohibit relatives of persons holding national offices, such as the President or Vice-President, from running for a seat in the Legislature. In Brazil, relatives of the President or Vice-President are likewise disqualified from running for local government positions.

Some Latin American Constitutions do not limit the prohibition only to relatives of the President. Relatives of equally powerful and important men in their societies are similarly prohibited from seeking public office while these men are in power. The Honduran Constitution, for instance, prohibits relatives of cabinet secretaries and military officers from being elected into the legislature.

2.) Degree of Relationship not Consistent

Latin American Constitutions are not consistent with respect to the degree of relationship included within the scope of the disqualification. Some Latin American Constitutions prohibit relatives of the President, up to the fourth civil degree by consanguinity or affinity, from succeeding him into office; while other Constitutions make a distinction as to relationship by consanguinity and relationship by affinity. If relationship is by consanguinity the prohibition extends up to the fourth degree. If the relationship is by affinity, however, the prohibition covers only up to the second degree.

c. Covers Successive and Simultaneous Holding of Office

The Latin American Constitutions prohibit members of the same family from successively and simultaneously holding public office. Relatives of the President

cannot succeed the President into office, neither can they be elected to the legislature while the President is still holding office.

d. Allows Additional Statutory Disqualifications

Some Latin American Constitutions do not close the door to additional statutory disqualifications based on family relationship. In fact, the Brazilian Constitution specifically allows additional disqualifications and sets the standards for such legislation.

e. Similarities to the Philippine Situation

The parallelism between Latin America and the Philippines is indeed difficult to ignore, extending as it does to a multitude of spheres. The Philippines has been described as a Latin American country in Southeast Asia. Like most Latin American countries, the Philippines is predominantly Catholic. It has also been colonized by the Spaniards and the people hold the same values such as close kinship ties.[125]

Latin American countries have had their share of authoritarian regimes. Similarly, the Philippines has also gone through a period of dictatorship. In fact, the Constitution was drafted in reaction to the atrocities of the Marcos regime.

Some Latin American countries adopt family relationship as basis for disqualification to hold public office because of the transition from a monarchical system to the republican system, as in the case of Brazil. In the Philippines, the desire of the Marcoses to rule the Philippines like a private enterprise with members of their family conducting themselves as if they were royalty has been widely documented.[126] The Aquino regime was no better in this regard, as relatives of the president packed the legislature and local governments.[127] This prompted critics to collectively refer to the relatives of President Aquino as *Kamag-anak, Inc.*, because of their effective control of Philippine politics and business.

Apart from the similarities between the history and politics of both Latin American countries and the Philippines, there is also one fundamental thing that these countries have in common. By providing for a disqualification to hold public office based on family relationship, Latin American countries and the Philippines share a common vision: the removal of the obstacles that block the realization of true participatory democracy within their respective jurisdictions.

[125] See John Gillin, *The Middle Segments and their Values*, in LATIN AMERICAN POLITICS: STUDIES OF THE CONTEMPORARY SCENE 60-61 (Robert Tomasek, ed. 1970).

[126] *See* PRIMITIVO MIJARES, THE CONJUGAL DICTATORSHIP OF FERDINAND AND IMELDA MARCOS 187 (1976).

[127] TIMBERMAN, *supra* note 12, at 386.

E. Summary

Given the importance of close kinship ties in Philippine culture, Philippine law has always treated family relationship with caution. When family relations present a threat to public interest, as when the safeguards set by law may be circumvented, the law immediately steps in and disqualifies the relative even before the evil is actually committed. The disqualification is never meant as a penalty. It is intended for the preservation of a higher good.

Thus, family relationsnip has been used as a basis for disqualification in numerous statutes. When applied to appointive offices, the Supreme Court has strictly interpreted and enforced the disqualification taking into consideration the public policy considerations involved. Given the present set-up of Philippine law and jurisprudence and the Constitutions in different parts of the world, there is no real legal obstacle to making family relationship a basis for disqualification to hold an elective office.

IV. LAYING THE STANDARDS FOR A LEGAL DEFINITION

Thus far, this thesis has discussed the factual and legal bases for the prohibition on political dynasties. It has established that the task of formulating a definition is mandatory in character and that the use of family relationship as a basis for disqualification to hold public office is valid and consistent with existing Philippine law and jurisprudence. Having laid the necessary groundwork, this thesis will now proceed to focus the discussion on the definition of the term "political dynasty."

Although the words of the Constitution seem to impart that the authority to draw up a definition of the term "political dynasty" as granted to Congress is broad enough to give the latter free reign, it must be understood that the law should still comply with the requirements of substantive due process. At the heart of this requirement is the test of reasonableness.[128] The law must not be arbitrarily drafted. In the search for a viable definition of the term, it is necessary to first identify the purposes for which the prohibition was set up in the first place. In *CLU v. Executive Secretary*, the Court state that:

> A foolproof yardstick in constitutional construction is the intention underlying the provision under consideration, thus, it has been held that the Court in construing the Constitution should bear in mind the object sought to be accomplished by its adoption, and the evils, if any, sought to be prevented or remedied. A doubtful provision will be examined in the light of the history of the times, and the condition and circumstances under which the Constitution was framed. The object is to ascertain the reason which induced the framers of the Constitution to enact the particular provision and the purpose sought to be

[128] *See* United States v. Toribio, 15 Phil. 85 (1910); Ynot v. Intermediate Appellate Court, 148 SCRA 659 (1987).

accomplished thereby, in order to construe the whole as to make the word consonant to that reason and calculated to that effect and purpose.[129]

In drafting a definition of the term "political dynasty," the legislature is not enacting an ordinary piece of legislation—it is carrying out a specific Constitutional mandate. It would, therefore, be wise to use the same "foolproof yardstick" relied upon by the Judiciary to arrive at a definition in keeping with the intent of the ConCom and the understanding of the people who ratified the Constitution. In the final analysis, however, "[t]he proper interpretation of a Constitution ultimately depends more on how it was understood by the people adopting it rather than in the framer's understanding thereof."[130]

In searching for standards to serve as guides for the formulation of the term "political dynasty", separate yet related provisions of the Constitution should be taken into account. The only way to ascertain the spirit and intent of the Constitution is to read it as a whole. This method is, in fact, used by the Supreme Court:

> . . .[i]t is well established in Constitutional construction that no one provision of the Constitution is to be separated from the others; to be considered alone, but that all provisions bearing upon a particular subject are to be brought into view and to be interpreted as to effectuate the great purposes of the instrument. Sections bearing on a particular subject should be considered and interpreted together to effectuate the whole purpose of the Constitution and one section is not to be allowed to defeat the other, if by any reasonable construction, the two can be made to stand together.[131]

Thus, the following discussion will identify the purposes of the prohibition as culled from the Declaration of Principles and State Policies, the article on Social Justice and the article on Accountability of Public Officers. These will serve as the standards against which proposed definitions will be tested.

A. To Ensure Equal Opportunity for Public Service.

1. THE RIGHT AS ENSHRINED IN THE CONSTITUTION

The first standard is found in § 26, Article II of the Constitution. This provision may be divided into two parts. The first part states that it is the policy of the State to "guarantee equal access to opportunities for public service." The second part goes on to say that the State shall "prohibit political dynasties as may be defined by law." Clearly, the prohibition on political dynasties is but a means towards guaranteeing

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[129] Civil Liberties Union v. Executive Secretary, 194 SCRA 317, at 325 (1991), *citing* Maxwell v. Dow, 176 US 581.

[130] Civil Liberties, 194 SCRA at 338, *citing* Household Finance Corporation v. Shaffner, 203 SW 2d 734.

[131] Civil Liberties Union, 194 SCRA at 330-31 (citations omitted).

equal access to opportunities for public service. In the words of Commissioner Sarmiento:

> By including this provision, we widen the opportunities for competent, young and promising but poor candidates to occupy important positions in the government, while it is true we have government officials who have ascended to power despite accident of birth, they are exceptions to the general rule. The economic standing of these officials would show that they come from powerful clans with vast economic fortunes.
>
> So, I believe that with this provision and considering that social and economic inequalities will be with us for many years, maybe for decades, then there is wisdom for the inclusion of this section in our Constitution.[132]

There emerges, however, a seeming contradiction in the wording of the law. While the State endeavors to ensure equal opportunities for public office, it deprives a certain class of people from holding public office. Critics of the measure refer to this phenomenon as "reverse discrimination", or when members of political families are singled out and prohibited from holding public office.

The conflict, though, is more apparent than real as would be revealed from the following exchanges in the ConCom:

> MR. SUAREZ . . . . There might be some points of inconsistency here because in the first sentence we are saying that the State should give equal access to opportunities in order that the people can render public service, but the last portion would prohibit political dynasties in the manner prescribed by law. Would this not be a limitation of that equal access to opportunities?
>
> MR. DAVIDE. No, Mr. Presiding Officer. On the contrary the idea of eliminating political dynasties is really to see to it that there will be greater opportunities to public service. We have to consider the common good or the greater number of people who will be benefitted. When we prohibit political dynasties, it is to open up the opportunities to more and more people, otherwise it would be a monopoly of a very few.
>
> MR. SUAREZ. In other words, what we are saying is we are prohibiting the incumbents and their relatives from aspiring for that same position so that everybody will have equal access to or opportunity for this position.
>
> MR. DAVIDE. That is my perception, Mr. Presiding Officer—not only relatives aspiring for the same office. Probably the law may provide during the incumbency of an elective official, relatives may not be allowed to run for a position within the same political unit or be appointed to any position within the same political unit. . . .

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[132] 4 CONCOM 939

> MR. SUAREZ. Thank you for clearing up the apparent inconsistency which does not exist at all.[133]

From Commissioner Davide's explanation, the main justification is found in the Latin maxims *salus populi est suprema lex* and *sic utere tuo ut alienum non laedas*, which call for the subordination of individual interests to the benefit of the greater number.[134] Intrusions into the rights of individuals are allowable, provided they are reasonable.[135] The prohibition is reasonable considering that the persons against whom it is made to apply are the ones causing the inequality in opportunities. It is also reasonable because the prohibition is temporary. A person disqualified to run in a particular election year may be qualified to run in another, so long as none of the prohibited situations occur.

Thus, it will be observed that the right to equal access to opportunities for public service was never meant to be absolute. In fact, limitations on this right are recognized even on the international level.

2. RECOGNITION OF THE RIGHT IN INTERNATIONAL HUMAN RIGHTS INSTRUMENTS

The guarantee of equal access to opportunities for public service is not original to the Philippine Constitution. It has formed part of almost all major international human rights instruments.

The first catalogue of human rights and fundamental freedoms enumerated by the United Nations was the Universal Declaration of Human Rights (UDHR),[136] to which the Philippines is a signatory. Under Article 21 of the UDHR,

> 1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
>
> 2. Everyone has the right to equal access to public service in his country.
>
> 3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures. (emphasis supplied)

Realizing, however, that the UDHR did not impose sufficiently binding obligations, the UN Commission on Human Rights proceeded to draft Covenants on

[133] 4 CONCOM 955-965.

[134] Ynot, 148 SCRA 659.

[135] Ynot, 148 SCRA 659.

[136] Adopted on 10 Dec. 1948; GA Res. 217A (111), UN Doc A/810, at 71 (1948).

human rights designed to become legally binding on the UN member states.[137] One such covenant was to be known as the International Covenant on Civil and Political Rights (ICCPR),[138] to which the Philippines is also a signatory.[139]

The right to equal access to opportunities for public office also appears in Article 25 of the ICCPR:

> Every citizen shall have the right and opportunity, without any of the distinctions mentioned in Article 2[140] and without unreasonable restrictions:
>
> (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
>
> (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
>
> (c) To have access, on general terms of equality, to public service in his country. (emphasis supplied)

One striking distinction between the UDHR and the ICCPR that is worth noting is that, unlike the ICCPR, the UDHR is silent as to the allowable restrictions on the right of equal access to public service.

Apart from the UDHR and ICCPR, several regional human rights treaties have also sought to guarantee equal opportunities to public service. For instance, several countries forming the Americas[141] entered into an agreement known as the American Convention on Human Rights (ACHR).[142] The ACHR lifted paragraphs (a) to (c) of Article 25 of the ICCPR, with only some minor drafting changes. The ACHR lists specific grounds for regulating, by law, the exercise of the right to have equal access to opportunities for public office. The disqualifications may be based on age, nationality, civil and mental capacity, residence, language, education and sentencing by a

[137] PAUL SIEGHAAT, THE INTERNATIONAL LAW ON HUMAN RIGHTS 25 (1983).

[138] Adopted by the United Nations General Assembly on 19 Dec 1966 and entered into force on 23 March 1976; GA Res. 2000 (XXI), 21 UN GAOR Supp. (No. 16) 52, UN Doc. A/6316 (1966).

[139] The Philippines signed the covenant on 19 Dec. 1966 which was ratified on 23 Oct. 1986.

[140] The prohibited distinctions enumerated under art. 2 of the ICCPR are race, color, sex, language, religion, political or other opinion, natural or social origin, property, birth or other status.

[141] Among which are Barbados, Bolivia, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, United States of America, Uruguay, and Venezuela. It is interesting to note that many of the signatories to this instrument have provisions in their respective Constitutions which make family relationship a basis for disqualification to hold public office.

[142] Signed 22 Nov. 1969 and entered into force on 18 July 1978; OAS Treaty Series No. 36, at 1, OAS Off. Rec. OEA/ser. L/V/II.23 doc. rev. 2.

competent court in criminal proceedings. Thus, while both the ICCPR and the ACHR recognize the right to equal access to public office, they likewise recognize the power of the legislature in each country to set the qualifications for holding public office.

3. RESTRICTIONS ON THE RIGHT

Under the 1987 Constitution, a public office is a public trust.[143] As such, public office is not property within the sense of constitutional guarantees of due process of law,[144] neither is it a contract.[145]

> The basic idea of government in the Philippine Islands, as in the US, is that of popular representative government, the officers being mere agents and not rulers of the people, one where no man or set of men has a proprietary or contractual right to an office but where every officer accepts an office pursuant to the provisions of the law and holds the office as a trust for the people whom he represents.[146]

Thus, the Congress may determine the eligibility and qualifications of officers and provide the methods for filling offices subject only to Constitutional restrictions.[147]

The Constitutional guarantee of equal access to public service, therefore, is not absolute. The State guarantees equal access only to those who are qualified for the position being sought. Since the Constitution had mandated a prohibition against political dynasties, people falling within the definition of the term are disqualified from holding public office. Taken in this context, it cannot be said that the prohibition against political dynasties contradicts the guarantee of equal access to public service.

B. To Promote Social Justice

The second purpose of the prohibition is to promote social justice. While the concept of Social Justice has not been entirely foreign to the Philippine Constitution,[148] its meaning is incapable of exact definition. It continues to evolve over time.

The concept of social justice is not original to the Constitution, it was borrowed from the Catholic Church.[149] Long before the adoption of Social Justice as a secular

[143] PHILIPPINE CONST., art. XI, § 1.

[144] Taylor v. Beckham, 178 U.S. 548.

[145] Segovia v. Noel, 47 Phil 543 at 545.

[146] Cornejo v. Gabriel and Provincial Board of Rizal, 41 Phil 188.

[147] People v. Carlos, 78 Phil 535 (1947); *see also* discussion in Chapter II, *supra*.

[148] The 1935, 1973 and 1987 Philippine Constitutions all contained a provision on social justice in their Declaration of Principles and State Policies.

[149] Manuel M. Tejido, *Faith Justice and the Constitution*, PANTAS, March 1988, at 17.

concept, Papal Encyclicals[150] had been issued urging all Catholics to promote social justice based on the respect for the dignity of every person.

1. THE 1935 CONSTITUTION

Social Justice first emerged as a legal concept when it was enshrined in the Declaration of Principles of the 1935 Constitution:

> Sec. 5. The promotion of social justice to ensure the well-being and economic security of the people should be the concern of the State.

The provision itself does not exactly define the concept of social justice, neither does it provide any means of achieving the same. To ascertain the meaning of the term "social justice", commentators turn to the debates of the Constitutional Convention (ConCon):

> The idea of social justice in the Constitution was developed in the course of the debates to mean justice to the common *tao*, the "little man" so-called. It means justice to him, his wife, and children in relation to their employers in the factories, in the farms, in the mines, and in other employments. It means justice to him in the education of his children in the schools, in his dealings with the different offices of the government, including the courts of justice. In other words, it means justice to him in his relations with the more fortunate classes of people.[151]

Stated otherwise, social justice meant "those who have less in life, must have more in law."[152] Justice Laurel also had the occasion to explain the meaning of social justice in this oft quoted passage from *Calalang v. Williams*:[153]

> Social justice means the promotion of the welfare of all the people, the adoption by the Government of measures calculated to insure economic stability of all the competent elements of society, through the maintenance of a proper economic and social equilibrium in the interrelations of the members of the community, constitutionally, through the adoption of measures legally justifiable, or extra-constitutionally, through the exercise of powers underlying the existence of all governments on the time-honored principle of *salus populi est suprema lex*.[154]

It is clear that the concern of the Constitution then was that of providing people with the means to support themselves and to sustain a decent standard of living. It

[150] *See* RERUM NOVARUM (Leo XIII, 1891); QUADRAGESSIMO ANNO (Pius XI, 1931); MATER ET MAGISTRA (John XXIII, 1961); POPULORUM PROGRESSIO (Paul VI, 1967); SOLLICITUDO REI SOCIALIS (John Paul II, 1987)

[151] 1 JOSE M. ARUEGO, THE FRAMING OF THE PHILIPPINE CONSTITUTION 147 (1949).

[152] *See* 2 BERNAS, *supra* note 66, 41.

[153] 70 Phil 726 at 734-735 (1940).

[154] Antamok Goldfield Mining Co. v. Court of Industrial Relations, 70 Phil 340, at 356-7 (1940).

served to define the role of government as the protector of the poor and the underprivileged. Thus, decisions of the Supreme Court under the 1935 Constitution used the social justice provision as a guide to resolve disputes concerning relations between employer and employee. Subsequently, the concept was expanded to include the regulation of property rights to benefit a greater number. This provision served as the justification for launching an agrarian land reform program designed to benefit the landless.[155]

By not limiting the concept of social justice to a specific definition, the ConCon delegates provided flexibility which allowed the concept to expand or contract in keeping with the times. Thus, the concept of social justice continues to evolve. Future Constitutions would specify means to achieve social justice.

2. THE 1973 CONSTITUTION

The adoption of the 1973 Constitution brought with it a more concrete provision on social justice as compared to its predecessor. It reads,

> Sec. 6. The State shall promote social justice to ensure the dignity, welfare, and security of all the people. Towards this end, the State shall regulate the acquisition, ownership, use, enjoyment and disposition of private property, and equitably diffuse property ownership and profits.

There are two noteworthy changes in the State policy on social justice as contained in the 1973 Constitution. First, the Constitution had now prescribed a definite means to attain social justice: the regulation of private property and the equitable diffusion of property ownership and profits. Evidently, this is laden with labor and land reform undertones. Secondly, the provision also recognizes the fact that the concentration of wealth in the hands of a few is an obstacle to the attainment of social justice.

Although prior to the 1973 Constitution the Supreme Court had already equated the concept of social justice with labor and land reform, its codification was a big step towards defining the parameters of the social justice the State is mandated to promote.

3. THE 1987 CONSTITUTION

A further refinement and expansion of the concept of social justice was provided by the 1987 Constitution. The ConCom members had considered social justice a very important area of concern for the government that they devoted, not only a provision under the Declaration of Principles and State Policies, but also one entire article on the subject matter.

[155] Bernas, *supra* note 66, 43.

§ 10 of Art. II provides,

> The State shall promote social justice in all phases of national development.

§ 1 of Article XIII states,

> The Congress shall give *highest priority* to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good.
>
> To this end, the State shall regulate the acquisition, ownership, use and disposition of property and its increments. (emphasis supplied)
>
> Sec. 2. The promotion of social justice shall include the commitment to create economic opportunities based on freedom of initiative and self-reliance.

The social justice provisions of the 1987 Constitution include policies which go beyond the traditional areas such as labor, agrarian reform and urban land reform to encompass issues which include natural resources reform, housing, health, women and the rights of people's organizations. The concept of social justice was also expanded to include a policy of reducing political inequalities and removing cultural inequities by diffusing wealth and political power. The inclusion of this phrase is significant because it is a formal recognition of the correlation between wealth and political power within Philippine society. It may thus be inferred that the concentration of wealth and political power in the hands of a few impedes the attainment of social justice. As Commissioner Garcia states:

> . . . [i]n speaking of social justice, we deal with justice not as practiced among individuals but justice as embodied in the structures and institutions of society; namely, its system of law such as regulating the relationship between the owner and the worker of the land; or the relationship between the man who sells his labor and the manager of the company or the owner of the business enterprise. *It is the distribution of wealth and political power.* I mention this precisely because one of the insistent points throughout this whole Article is that *if we were to have justice, there will have to be a redistribution of not only economic wealth but also political power.* What we intended to say when we spoke of power is that political power must also be in the hands of the majority so that they can help shape the future that affect their lives.[156] (emphasis supplied)

Commissioner Monsod explains how the redistribution of political power is to be achieved:

> MR. MONSOD. . . . With regard to the redistribution of power, we refer to measures that see to it that the electoral process, for example, works in such a

[156] 2 CONCOM 620.

> ay that it is enforced so that people truly have access to elective offices, regardless of whether they are rich or poor. . . .[157]

Commissioner Monsod makes reference to measures intended to ensure access to elective offices. One such measure is found in the Constitution itself. Although not included in the Article on Social Justice, § 26 of article II, which provides that "the State shall guarantee equal access to opportunities for public service and prohibit political dynasties as may be defined by law" is nonetheless intended to promote social justice. In *Guido v. Rural Progress Administration*[158] the Court held that,

> [s]ocial justice does not champion the decision of property or equality of economic status; what it and the Constitution do guarantee are equality of opportunity, equality of political rights, equality before the law, equality between values given and received, ...

Thus, the social justice character of § 26, Article II of the Constitution is evident from its purposes: that of providing equal opportunities for public service towards the diffusion of the concentration of political power that is in the hands of a few and the encouragement of political participation among the people.

C. *To Preserve Public Office as a Public Trust*

The third purpose of the prohibition against political dynasties is to preserve the sanctity of public office. Under § 1 of Article XI of the Constitution,

> Public 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.

Thus, it has been held that a government official is not allowed to subordinate public interest to personal comfort and convenience.[159] When he does, a conflict of interest[160] situation arises. Conflict of interest has always been regarded as a valid ground for disqualification. It is the basis for anti-nepotism legislation. The same conflict of interest also arises when elective offices are involved. In prohibiting political dynasties, the potential conflict of interest that the Constitution intends to avoid is the

[157] *Id.* at 626.

[158] 84 Phil. 847 (1949).

[159] Floresca v. Quetulio, 82 Phil 128 (1948).

[160] For purposes of this thesis, the phrase "conflict of interest" is used in the same sense as it is used in the Local Government Code:

> Conflict of interest refers in general to one where it may be reasonably deduced that a (public officer) may not act in the public interest due to some private, pecuniary, or other personal considerations that may affect his judgment to the prejudice of the public service. [The Local Government Code of 1991, R.A. No. 7160, § 51 (1991)].

use of government resources by an incumbent to help a relative get elected into public office. Commissioner Nolledo illustrates this point by giving the example of a governor who, being already old, asks his son to run for governor to take his place.

> MR. NOLLEDO. . . . In the meantime, he (the father) holds public office while the campaign is going on. He has control; he has already institutionalized himself. His son will inherit the position of governor, in effect, and then this will go to the grandson, et cetera. The others who do not have the political advantage, in the sense that they have no control of government facilities, will be denied the right to run for public office. Younger ones, perhaps more intelligent ones, poorer ones can no longer climb the political ladder because of political dynasty.[161]

The desire to help relatives is a reaction that is very natural for the Filipino and is actually the norm of behavior.[162] Thus, the relationship in itself presents a potential source of conflicting interests. Sociologists have made studies on the Filipino and how he deals with the demands of family pressure.

> The family . . . simultaneously symbolizes security and anxiety. On the one hand, it embraces its members lovingly and without reservation. On the other, it creates crises for them by inculcating norms and behaviors often in conflict with the standards of other sectors of society. It sometimes forces them to choose between its welfare and that of other groups laying claim to their loyalty — friends, the workplace, the neighborhood community, the nation. The family's dual function of helping its members cope with society's demands while expecting from them compliance and assistance, regardless of society's demands, fosters inevitable tension in the individual.[163]

The prohibition against political dynasties is intended to preserve the sanctity of public office. Being a public trust, public office should not be used as a means to advance one's personal interests, neither should it be used to commit fraud. Public office should not be regarded as a profession or a family business where profit-making is the main objective. As seen from Philippine history, numerous conflict of interest situations arising from family relationship were eventually resolved against the public interest.[164] It is for this reason that the ConCom has thought it best to eliminate the potential conflict of interest by prohibiting political dynasties.

[161] 4 CONCOM 731.

[162] GROSSHOLTZ, *supra* note 33, at 165.

[163] Mary Racelis Hollnsteiner, *The Filipino Family Confronts the Modern World* in MARY RACELIS HOLLNSTEINER, SOCIETY, CULTURE AND THE FILIPINO 95 (1979).

[164] For instance, *see* RICARDO MANAPAT, SOME ARE SMARTER THAN OTHERS: THE HISTORY OF MARCOS' CRONY CAPITALISM 410-420 (1991).

D. Analysis

1. THE SPIRIT AND INTENT OF THE CONSTITUTION

From the discussion in this chapter, it is evident that a good definition of the term "political dynasty" is one that would provide equal access to opportunities for public service, promote social justice by diffusing the concentration of power in the hands of a few and preserve the sanctity of public office by avoiding potential conflict of interest situations.

The prohibition against political dynasties must also be viewed vis-a-vis other provisions of the Constitution which provide concrete means towards the achievement of the purposes outlined above. Among these are: the shortening of the term of office for Congressmen and elective local officials,[165] the imposition of a limit on the number of reelections[166] allowed, the system of initiative and referendum,[167] the system of sectoral representation,[168] the party-list system,[169] and the system of cooperatives[170] and consultative assemblies.[171]

The spirit and intent of the Constitution now becomes clearer: it is to achieve social justice by ensuring equal opportunities to public service and maximum participation in decision-making. While the standards in themselves are admittedly broad and worded in general terms, the pervasive theme underlying the Constitutional provisions emerges when taken as a whole. The prohibition against political dynasties is in reality part of a larger design to overhaul the existing structures which have impeded the development of the nation. Thus, the definition of the term "political dynasty" becomes all the more critical. The definition supplied by Congress should not defeat the purpose for which the prohibition was included in the Constitution. Otherwise, the social, economic and political reforms promised by the Constitution will never come into fruition. The purposes as outlined in this chapter shall serve as a test to determine the feasibility of any suggested definition of the term "political dynasty."

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[165] The term of office for congressmen and elective local officials is three years.

[166] The President is not eligible for re-election, the Vice-President and the Senators may not serve for more than two consecutive terms; Congressmen and Elective Local Officials may not serve for more than three consecutive terms. (*See* PHILIPPINE CONST., art. VII, § 4; art. VI, §§ 4, 7; art. X, § 8).

[167] PHIL. CONST., art. VI, § 32.

[168] PHIL. CONST., art. VI, § 5(2).

[169] PHIL. CONST., art. VI, § 5(2).

[170] PHIL. CONST., art. XII, § 15.

[171] PHIL. CONST., art. XIII, § 16.

2. THE TIME ELEMENT

Congress has to be reminded that it is imperative that the law defining political dynasties be passed soon. Being a measure that would promote social justice, it should be given the highest priority.[172] In the words of Commissioner Garcia,

> . . . [W]hy the primacy of social justice? Because we want to tell the State that the emphasis should not be simply on economic growth but basically, to create egalitarian conditions, to create social justice. This is what will provide lasting peace that could be the condition of the atmosphere within which all other projects prosper.[173]

The prohibition against political dynasties is seen as one of the keys towards achieving peace and change in the Philippines.

V. ANTI-DYNASTY BILLS IN THE PHILIPPINE CONGRESS

Since 1987, a total of nine anti-dynasty Bills have been filed in Congress. Two of these nine bills were filed during the term of the Eighth Congress. The first was Senate Bill No. 82 (SB 82) proposed by Senator Teofisto Guingona, which was actually passed by the Senate on Third Reading. The bill, however, did not become law because the House of Representatives failed to act upon it. The second was House Bill No. 1855 (HB 1855) filed by Representative Magdaleno Palacol.[174] Unlike SB 82, HB 1855 did not make it out of the Committee level.

More bills were filed during the Ninth Congress, all of which remain pending at the Committee level. Initially, two bills were filed in the Lower House. The first, House Bill No. 90 (HB 90), was filed by Representative Palacol. The text of HB 90 is identical to that of HB 1855 which he filed during the Eighth Congress. The second came from Representative Roger G. Mercado[175] and was designated as House Bill No. 10810 (HB 10810).

Subsequently, the Commission on Elections (COMELEC) took an active role in the preparation of the proposed Election Code of 1993 which was eventually filed by legislators in late 1993, and designated as House Bill No. 10911 and Senate Bill Nos. 1427, 1450 and 1472 . These bills contained identical anti-dynasty provisions. Subsequently, Senator Arturo M. Tolentino filed his own version of an anti-dynasty bill designated as Senate Bill No. 1919 (SB 1919), the text of which is entirely different from the anti-dynasty provision found in the proposed election code.

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[172] PHIL. CONST., art. XIII, § 1.

[173] 2 CONCOM 620.

[174] 4th District, Laguna.

[175] Lone district, Southern Leyte.

Thus, the nine anti-dynasty bills actually contain only five different definitions of the term "political dynasty." House Bill 1855 was refiled as HB 90. House Bill 10911, SB 1427, 1450 and 1472 all contain the same text, although filed by different legislators as separate bills. Included in the five definitions mentioned above is the final version of SB 82 which is radically different from its original version. At this point, it would do well to briefly discuss the main features of each idea in order to evaluate the viability of the definition of political dynasty contained in them, using the standards set forth in the preceding chapter.

A. Survey of Ideas Contained in Bills Filed in Congress

For purposes of this study, the five ideas contained in the nine anti-dynasty bills can be classified into three categories: the original, the comprehensive and the compromise; to the first category belongs SB 82. Filed in August of 1987, this bill contained the first and only anti-dynasty bill to be approved by a chamber of the legislature.

The second category is the comprehensive, which is comprised of HB Nos. 1855/90 and 10810. These bills may be classified as comprehensive because they cover all national and local offices, both appointive and elective.

The third category is the compromise, which is composed of the COMELEC formulation of the political dynasty definition and its offshoot, SB No. 1919. These are classified as compromise measures because, as will be discussed below, the scope of the prohibition contained in them is less than that of the bills falling under the original and the comprehensive categories.

The following survey places emphasis on the offices affected, whose relatives are prohibited and up to what degree of relationship is involved, as well as other means by which the legislators have tried to limit the scope of the prohibition.

1. THE ORIGINAL

Introduced by Senator Teofisto Guingona in August of 1987, SB 82 was the first antidynasty bill to be filed in Congress. It was unique in the sense that it was intended to give meaning not only to § 26, Article II of the Constitution, but also to § 1, Article XIII of the Constitution.[176] SB 82 defines a "Political Dynasty Relationship" as one that:

> . . . exists among family members of politicians or government officials who are related within the fourth civil degree of consanguinity or affinity, including the spouses of their brothers-in-law and sisters-in-law (*bilas*).[177]

[176] 1 RECORD OF THE SENATE 1906 (1987) [hereinafter SENATE].

[177] S.B. No. 82, § 3, 8th Cong., 1st reg. sess. (1987).

The Bill contained the following prohibitions:

> (a) No President, Vice-President, Senator, Congressman, Provincial Governor, City or Municipal Mayor shall be succeeded in office by any family member having a Political Dynasty Relationship to such officials.
>
> Neither may such family member be elected to or assume any elective position whose term of office commences during the incumbency of such officials, nor may such family member be a candidate for any public office in the same election of which another family member is a candidate for President, Vice-President or Senator.
>
> (b) No Congressman, Provincial Governor, or City or Municipal Mayor family member shall be succeeded in office by any family member having a Political Dynasty Relationship to such officials.
>
> Neither may such family member be elected to or assume any elective position within the same district, province, city or municipality, whose term of office commences during the incumbency of such officials nor may such a family member be a candidate for any public office in the same district, province, city, or municipality in the same elections, in which another family member within the Political Dynasty Relationship is a candidate for Congressman, Governor or Mayor.
>
> (c) No family member having a Political Dynasty Relationship to a cabinet member, the Chairman or a Commissioner of the Commission on Elections, the Chief of Staff or a member of the General Staff of the Armed Forces, or the Chairman or a Commissioner of the National Police Commission shall be elected to or assume any elective office whose term of office commenced during the incumbency of such officials.[178]

As may be observed, the prohibition under SB 82 extends to relatives up to the 4th civil degree of consanguinity or affinity; covers both successive and simultaneous holding of public office; is limited in operation based on territorial considerations; and includes relatives of both elective and appointive officials. The proposal also disallows members of the same family running simultaneously even if neither is an incumbent official. Among its stated purposes are to prevent undue influence by an elective official or appointive official over the results of an election, the use of government resources and the entrenchment of political families.[179]

During the period for debates, several objections were aired by some Senators. Many claimed that the bill would effectively deny the country the services of competent people;[180] that it would unjustly punish those falling within its terms;[181] that it

[178] S.B. No. 82, § 4.

[179] 1 SENATE 1921.

[180] 1 SENATE 1909.

[181] *Id.* at 1910.

constitutes an infringement to basic democratic rights[182] and that it would result in reverse discrimination.[183] All these objections, however, refer to the wisdom of the prohibition against political dynasties. Since the task of Congress is not the institution of a prohibition but only a definition of the term "political dynasty", these objections are no longer relevant for the purposes of this study.

The discussions of the Senators, however, were able to touch on the details of the prohibition that were not discussed by the Constitutional Commission. These included the degree of relationship,[184] status—whether legitimate, illegitimate[185] or adopted;[186] by consanguinity, or affinity.[187] There were also discussions on the termination of the relationship as well as the effect of legal separation[188] between husband and wife.

After much debate, the Senate finally passed SB 82 with several amendments by substitution. Thus, SB 82 in its final form defined "political dynasty" as:

> . . . a situation resulting in the concentration, consolidation or perpetuation of political power by persons related to one another as defined in section 4 of this Act, by holding public office.[189]
>
> Sec. 4. A dynastic relation exists between persons who are related within the first civil degree of consanguinity or affinity. For the purposes of this Act, a dynastic relation exists between spouses during the marriage. A break in the marriage bonds, either by the death of one of the spouses, the dissolution of the marriage or its invalidation in either a civil and/or ecclesiastical court, the legal separation of spouses as provided by law and the migration to a foreign country of a spouse resulting in *de facto* separation terminates any and all dynastic relation.[190]

The prohibited situations have likewise been amended to enumerate the following:

> a. The election to the office of President or Vice-President of a person who has a dynastic relation as defined in § 4 of this Act with the incumbent President or Vice-President at the time of the elections.

[182] *Id.* at 1913, 1935.

[183] *Id.* at 1938.

[184] *Id.* at 1914.

[185] *Id.* at 1941.

[186] *Id.* at 1940.

[187] *Id.* at 1920.

[188] *Id.* at 1917.

[189] S.B. No. 82, as amended, § 3; *see* 1 SENATE 1904.

[190] *Id.* at § 4.

> b. The election to the office of Senator of a person who has a dynastic relation as defined in § 4 of this Act with an incumbent Senator, an incumbent President or an incumbent Vice-President.
>
> c. The election to membership in the House of Representatives of a person who has a dynastic relation as defined in § 4 of this Act with the incumbent member of the House of Representatives of the same district, the incumbent President, the incumbent Vice-President, an incumbent Senator, the incumbent Governor of the Province to which the district pertains or the incumbent City Mayor in the case of a highly urbanized city of which the congressional district is part of.
>
> d. The election to the office of Provincial Governor of a person with a dynastic relation as defined in § 4 of this Act with the incumbent governor of the same province, the incumbent President, the incumbent Vice-President, and incumbent Senator and the incumbent Member of the House of Representatives in cases where the province has only one member in the said House of Representatives of the Congress of the Philippines.
>
> e. The election to the office of city mayor of a component city of a person with a dynastic relation as defined in § 4 of this Act with an incumbent President, an incumbent Vice-President, an incumbent Senator, the incumbent Member of the House of Representatives which encompasses the said component city in the congressional district, the incumbent provincial Governor of the province of which the said congressional city is a part and the incumbent city mayor of said city.
>
> f. The election to the office of city mayor of a highly urbanized city of a person with a dynastic relation as defined in § 4 of this Act with an incumbent President, an incumbent Vice-President, an incumbent Senator, an incumbent Member of the House of Representatives in cases when the said highly urbanized city is represented in the House by only one congressman and the incumbent city mayor of the said city.[191]

Thus, the final version of SB 82 reduced the degree of relationship from the fourth degree to the first degree and added a *proviso* which states that a break in the marriage bonds terminates the dynastic relation. It does not include within its scope relatives of appointive officials, municipal mayors, local legislative bodies, and barangay officials; and removes the prohibition against members of the same family running simultaneously for office even if none are incumbent officials. The amended version of SB 82, however, maintains the original version's coverage of both successive and simultaneous holding of public office; and the limitation in scope based on territorial considerations.

[191] *Id.* at § 5.

2. THE COMPREHENSIVE

The second category of bills is the comprehensive. They are classified as comprehensive because they prohibit relatives of incumbent officers from holding any public office, both national and local.

a. House Bill No. 1855 (1987)/ House Bill No. 90 (1992)

HB 1855/90 defines political dynasty as:

> . . . a sequence or series of public officers or officials from the same family or relationship holding public office, elective or appointive, whose degree of relationship between or among themselves is within the fourth civil degree by consanguinity or affinity.[192]

It prohibits the following situations:

> Sec. 4. No person shall succeed in (sic) any public office or position, elective or appointive, whose family member or relative is the incumbent holder of such office; Provided, that this section shall not apply to elective office for Vice-Mayor. Members of the Sangguniang Panlungsod, or Sangguniang Bayan, Punong-Barangay and Members of the Sangguniang Barangay.
>
> Sec. 5. No person shall be elected or appointed on (sic) any elective or appointive office, who is related to one currently holding or occupying an elective or appointive office. Provided, that this section shall not apply to elective office for Vice-Mayor. Members of the Sangguniang Panlungsod, or Sangguniang Bayan, Punong-Barangay and Members of the Sangguniang Barangay.
>
> Sec. 6. No person shall be elected to or assume any elective office to (sic) any district, province, city or municipality in which another family member or relative is holding or occupying an elective office; Provided, that this section shall not apply to elective office for Vice-Mayor. Members of the Sangguniang Panlungsod, or Sangguniang Bayan, Punong-Barangay and Members of the Sangguniang Barangay.
>
> Sec. 7. No elective or appointive official shall be eligible for appointment or designation in any capacity to any public office or position after his tenure.

From the above text, it may be gleaned that the prohibition under HB 1855/90 extends up to the 4th degree of relationship by consanguinity or affinity; covers both successive and simultaneous holding of public office, is limited by territorial jurisdiction and covers both elective and appointive offices. HB 1855/90, however, adds a disqualification not based on family relationship, but based on previous appointment.

[192] H.B. No. 1855, § 3(a), 8th Congress, 1st reg. sess. (1987); H.B. No. 90, § 3(a), 9th Congress, 1st reg. sess. (1992).

b. House Bill No. 10810 (1993)

Among the bills evaluated in this study, HB 10810 has the widest scope with respect to the public offices which relatives cannot hold but tempers it by reducing the degree of relationship to the second degree and exempting those already holding public office at the time of the effectivity of the law. House Bill 10810 defines "political dynasty" as "the concentration, consolidation, or perpetuation of political power by persons related to one another" within the second civil degree of consanguinity or affinity, it also refers "to a family that established and maintains whether by election or by appointment predominance in politics or bureaucracy within a given territory or jurisdiction."[193]

HB 10810 enumerates the following prohibited situations:

> a. A person who has a Political Dynasty Relation, hereinafter referred to as PDR, with an incumbent elective local official shall not be eligible as a candidate for or be appointed temporarily or permanently to a local office.
>
> b. A person who has a PDR with an appointive local official shall not be eligible as a candidate for a local office or be appointed temporarily or permanently to a local office.
>
> c. A person who has a PDR, with an incumbent elective national official shall not be eligible as a candidate for or be appointed temporarily or permanently in (sic) a local or national office.
>
> d. A person who has a PDR with an appointive national official shall not be eligible as a candidate for a local office or be appointed temporarily or permanently to a local or national office.[194]
>
> Sec. 5. Exception: Prohibition does not apply to any person who has previously been appointed or elected to a national or local office before the effectivity of this Act.

Under the provisions reproduced above, it may be seen that HB 10810, like HB 1855/90, covers both successive and simultaneous holding of public office and elective and appointive officials. In a sense, HB 10810 is a more mellow version of a comprehensive bill. Compared with HB 1855/90, it reduces the scope in two respects: HB 10810 extends only up to the second degree of relationship, it excludes officials

[193] *Id.* at § 3(a), 9th Congress, 2d reg. sess. (1993).

[194] *Id.* at § 4.

already holding office at the time of the effectivity of the act. House Bill 10810 is stricter than HB 1855/90 because it makes no exceptions as to the national or local offices covered and does not consider territorial jurisdiction material with respect to the prohibited situations.

3. THE COMPROMISE

Those classified under the category of compromise are the bills that adopt the COMELEC definition of a political dynasty, as well as their offshoot. The original idea of the legislators was not to enact the proposed election code *in toto*, and instead break it up into more manageable parts. They had junked the provision on political dynasties, saying that it would not be one of the electoral reforms that would see enactment in time for the May 1995 elections.[195] Subsequently and probably because of pressure from the media, Senator Tolentino filed SB 1919, which was certified urgent by the President. The leaders of both the Senate and the House of Representatives have vowed to pass an anti-dynasty law before the end of 1994.

a. The Proposed Election Code of 1994
House Bill No. 10911; Senate Bill No. 1427/1450/1472 (1993)

The proposed election code of 1993, the drafting of which was participated in by the COMELEC, was intended to replace Batas Pambansa Blg. 881[196] and more than ten other separate election laws. The bill contains a consolidation of all election laws currently in force and incorporates applicable jurisprudence on election cases and implements constitutional provisions applicable to elections. Among the major reforms of the proposed code are the continuing system of registration of voters;[197] a system for absentee voting;[198] party-list system of representation;[199] system of initiative and referendum;[200] sectoral representation;[201] the prohibition of undue ecclesiastical influence[202] and the prohibition against political dynasties.[203]

[195] *See* Jerry Esplanada, *Lawmakers Ignore Ban on Political Dynasties: Congress to Pass Only 5 provisions of Election Code*, PHILIPPINE DAILY INQUIRER, 13 Aug. 1994, at 9.

[196] The Omnibus Election Code (1985).

[197] S.B. Nos. 1427, 1450, 1472 and H.B. 10911, 9th Cong., 2d Sess., § 154 (1993).

[198] *Id.* § 89-95.

[199] *Id.* § 49-50.

[200] *Id.* § 74-88.

[201] *Id.* § 39.

[202] *Id.* § 126.

[203] *Id.* § 116.

Under this bill, a political dynasty is defined as:

> . . . a situation where persons related to each other within the third civil degree of consanguinity or affinity hold elective offices simultaneously or the same office successively in a region, legislative district, province, city or municipality.[204]

The prohibition reads:

> . . . persons within the same civil degree of relationship shall not be allowed to run for any elective position in the same political unit in the same election. Neither can a person within the same civil degree of relationship as the incumbent succeed to the position of the latter.[205]

Thus, the bill's coverage extends up to the third degree of relationship. It prohibits successive and simultaneous holding of public office; limits the operation of the prohibition on the basis of territorial considerations and prevents relatives from holding elective offices only. It is worth noting that the relatives of the President, the Vice-President and the Senators are not disqualified from holding public office under this bill.

b. Senate Bill No. 1919 (1994)

Unlike the other bills, SB 1919 does not contain any definition of the term political dynasty. The explanatory note admits that "the bill does not intend to fully explore the dimensions of a political dynasty as it is popularly understood." It states that the bill only serves as a "good beginning" for the prohibition of political dynasties. Its character as a compromise bill is evident from the explanatory note which states that "since the idea of excluding political dynasties may be contrary to the democratic principle that the people should be free to select their officials, it should be limited and sparingly applied." The scope of the prohibition is stated as follows:

> The spouse or any relative within the third degree, by consanguinity or affinity, whether legitimate or illegitimate, of a President of the Philippines, shall be disqualified to be a candidate for any local office or membership in the House of Representatives in any election during the incumbency of such President or in the election immediately after his tenure; Provided, That this shall not apply to any person who shall be already holding a local or congressional office at the time of the effectivity of this Act.[206]

Thus, under SB 1919, only relatives of the President up to the third degree of relationship are disqualified from holding elective office. The bill covers only simultaneous holding of office and not successive holding of public office. It is also

[204] *Id.*

[205] *Id.*

[206] S.B. No. 1919, § 2, 9th Cong., 2d sess. (1994).

worth noting that, under this bill, relatives of the President are not prohibited from running for Senator.

B. *Analysis and Critique of Bills*

1. PRELIMINARY OBSERVATIONS

a. Family Relationship is Controlling

As discussed earlier in this thesis, the traditional concept of a dynasty has two elements: that of family relationship and successive holding of public office. While all the anti-dynasty bills filed were consistent in making family relationship an integral part of the proposed legal definition, the element of succession is not held in the same regard. The bills surveyed do not limit the scope of prohibition only to cases of succession but also include cases of simultaneous holding of public office. This indicates that the members of the legislature regard the simultaneous holding of public office as an equally undesirable occurrence as that of succession into office. It may therefore be inferred that several congressmen and senators share the author's view that the term dynasty as used in the Constitution emphasizes or stresses the element of family relationship rather than a limitation to cases of succession only.

b. Limitations on the Scope of Prohibition

The debates regarding SB 82 reveal many of the apprehensions of legislators with respect to a disqualification to hold public office on the basis of family relationship. Many have expressed the opinion that the measure, being in derogation of fundamental democratic rights, such as the right of suffrage and the right to be elected into office, should be given a reasonable scope of application. Several Senators have stated the need to balance the competing interests involved in any anti-dynasty legislation. On the one hand there is the Constitutional guarantee of equal access to opportunities for public service. On the other hand there exists the right of the people to elect the candidates of their own free choice. Thus, this group of legislators assert the need to limit the scope of the anti-dynasty law. From a reading of the anti-dynasty bills that have been filed, these limitations have taken several forms: a limitation as to the degree of relationship covered by the prohibition, an exclusive enumeration of relatives and the government positions to which they cannot be elected; a limitation of the application of the prohibition to public offices within the same political unit and exemptions from the coverage of the law.

1.) Degree of Relationship

While the bills were consistent in making family relationship a basis for disqualification, there was no consensus with respect to the degree of relationship to be embraced within the terms of the prohibition. As in the provisions of Latin American Constitutions surveyed earlier in this thesis, the anti-dynasty bills filed in the Philippine

Congress do not reveal a pattern with respect to the degree of relationship to be included in the scope of the prohibition. The proposed coverage varies from bill to bill and ranges from the first degree to the fourth degree of consanguinity or affinity.

2.) Relatives and the Positions they cannot Hold

Some of the bills contemplate disqualification on the ground of family relationship with a person who holds an elective office only. There are bills, however, that expand the coverage of the prohibition to include relatives of appointive officials from running for or being appointed to an elective or appointive office. For example, the original version of SB 82 saw fit to adopt an aspect of the Honduran Constitution, as described in the previous chapter, by including relatives of cabinet officials and key military personnel within the scope of the prohibition. House Bill 1855/90 and HB 10810 have scopes broad enough to cover relatives in all national and local appointive positions. Evidently, these legislators hold the view that the term "public service" should be given a broad interpretation.

3.) Limitation based on Territorial Considerations

Almost all considered a limitation of the prohibition based on territorial considerations. Family members are prohibited from holding public office within the same political unit. Stated otherwise, this meant that members of the same family could simultaneously hold public office for as long as these are situated in different territorial jurisdictions. For instance, this provision would allow two brothers to hold the office of governor in two different provinces or two brothers to hold mayoral posts in towns situated in different provinces. This particular limitation on the coverage of the prohibition offers an exception to the prohibition regarding the simultaneous holding of public office by members of the same family.

4.) Exemptions

There are bills which allow for a transitory period before the prohibition against political dynasties is given full effect. These bills contain provisos which state that the act shall not be applicable to persons holding public office at the time the law takes effect.

2. APPLYING THE TEST

To repeat the standards as laid down in chapter 4, a law prohibiting political dynasties: 1) must be able to guarantee equal access to opportunities for public service, 2) must reduce political inequalities by equitably diffusing the concentration of political power and 3) must preserve public office as a public trust.

The provisions upon which these standards are derived are actually interrelated. They were included in the Constitution to provide a solution to the political

inequalities that exist in the Philippines. Thus, unequal access to public public service results in the concentration of power in the hands of a few which thereby potentially undermines the public trust character of public office. It may be observed that, these provisions use the terms "public service," "political power" and "public office" in their general sense. These terms must necessarily include all forms of public office and political power. Read in this light, the prohibition against political dynasties should prohibit relatives from holding any public offices, to be consistent with the provisions of the Constitution that make up the standards enumerated in Chapter 4, *supra*. Any limitation as to the scope of any anti-dynasty legislation that exempts certain relatives or certain offices from the application of the prohibition are contrary to the spirit of the Constitution.

Thus, the following bills do not meet this test:

a. SB 82 which does not disqualify a public official's relatives from running for the office of vice-governor, vice-mayor, member of the local legislative bodies;

b. HB 1855/90 which makes an exception as to relatives who are candidates for the office of vice-mayor or member of local legislative bodies;

c. The proposed election code which does not cover relatives of persons holding national office and candidates for the office of President, Vice-President or Senator;

d. SB 1919 which covers only relatives of the President and does not cover candidates for the office of the Vice-President and Senator allow the continuation of the evils sought to be prevented in certain instances.

It cannot be denied that inequalities exist at these levels; that political power may be concentrated in the hands of a few if such situations are allowed; and that the sanctity of these positions are also in danger of being violated. Tested against these standards, the limitations as outlined above seem to violate the spirit of the Constitution.

Only HB 10810, which has the broadest scope, seems to hurdle the test. HB 10810 prohibits relatives of incumbent holder of national or local elective or appointive positions from being elected or appointed to any local or national office. The scope of prohibition as provided in this bill would undoubtedly ensure equal access to opportunities for all forms of public service, equitably diffuse the concentration of all forms of political power and maintain the integrity of all public offices.

Having provided for a sweeping prohibition, would the effects of HB 10810 be unduly oppressive? Is such a wide application really necessary? These are the questions to be answered in the next chapter.

VI. A BETTER FRAMEWORK FOR ANTI-DYNASTY LEGISLATION

In the last two preceding chapters, this thesis has laid down the standards against which proposed anti-dynasty laws are to be tested. It has also reviewed the proposals that have been filed in Congress, none of which have become law. In this chapter, the author will discuss in detail the issues that have to be resolved by any anti-dynasty legislation—issues left unanswered by the ConCom and not adequately treated by pending Congressional Bills. These issues include: 1) Who are covered by the prohibition? This can be analyzed on two levels: Whose relatives are disqualified? and What degree of relationship falls within the scope of the prohibition?, 2) What offices are they prohibited from holding?, 3) Should the scope of the prohibition be limited by territorial considerations?, 4) When will the prohibition take effect? and 5) How will the prohibition be enforced?

A. Who are Covered by the Prohibition

1. WHOSE RELATIVES

The Anti-dynasty law should disqualify relatives of public officers holding either an elective national or local office. A law that makes a distinction between the two may be questioned on the ground that it is violative of the equal protection clause[207] of the Constitution.

It is an established principle of Constitutional law that the guaranty of the equal protection of the laws is not violated by a legislation based on reasonable classification. And the classification, to be reasonable, (1) must rest on substantial distinctions, (2) must be germane to the purposes of the law, (3) must not be limited to existing conditions only and (4) must apply equally to all members of the same class.[208]

> What the Constitution prohibits is the singling out of a select person or group of persons within an existing class, to the prejudice of such a person or group resulting in an unfair advantage to another person or group of persons.[209]

An attack on an anti-dynasty law, on the ground that it violates the equal protection clause, may be made on two levels. The first level of classification is with

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[207] § 1 of art. III of the Constitution provides,

> No 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.

[208] People v. Cayat, 68 Phil 12 (1939).

[209] Philippine Association of Service Exports, Inc. v. Drilon, 163 SCRA 396, at 394 (1988).

respect to relatives of public officers as against private citizens not related to any public officer. The second level of classification exists between those related to public officers who hold national office as against those related to public officers who hold local office.

On the first level, the basis for the classification is clear. As discussed earlier in this thesis, relatives of public officers have an undue advantage over those who are not. Equality of chances, rather than an unfair advantage in favor of a particular group, is the end sought to be achieved. An attack on the anti-dynasty law on this level cannot succeed.

To assail the measure on the basis of the second level of classification, however, would most likely produce a different result. There seems to be no basis for distinguishing between relatives of those holding a national office from those relatives holding a local office. As discussed in the fourth chapter of this thesis, the anti-dynasty provision seeks to diffuse the concentration of political power, to provide equal opportunity to public service and to avoid conflict of interest. The evils sought to be prevented are present whether one is related to a public officer holding a national office or one holding a local office. In fact, the evils are amplified on the national level. Considering the role local officials play in national politics, the temptation to support relatives in the local arena becomes a matter of necessity. As Timberman observes,

> [n]ational political parties have traditionally been built from competing alliances of local leaders. Local elections, therefore, have been a test not just of the local candidates themselves, but also of the relative influence and vote-getting ability of Congressmen and other members of the national political elite. The candidates for local office need the support and superior resources of the provincial or national politicians, who, in turn, need the support of the local politicians in order to further their own provincial or national political aspirations. Consequently, local elections have had an important influence on the alliance building between the local and provincial politicians and the national political leadership.[210]

It is thus clear that relatives of officials who hold national office are better off than, or at least on equal footing with, relatives of officials holding local office. There is no justification for disqualifying the latter and providing an exception in favor of the former.

2. DEGREE OF RELATIONSHIP

The degree of relationship is very flexible and would ultimately depend upon the discretion of the legislature. In fact, this is an area where Congress is free to limit the scope of the prohibition.

[210] TIMBERMAN, *supra* note 12, at 39.

Philippine laws do not reveal any set pattern or formula with respect to this aspect. The Philippine Constitution has sanctioned a disqualification to hold an appointive office on the basis of family relationship with the President up to the fourth degree, while the anti-nepotism provision under the Administrative Code and the Civil Service Decree extends only up to the third degree. Neither are the debates of the Constitutional Commission helpful in this regard. Commissioner Nolledo had stated at one stage of the debates that he is recommending to Congress a prohibition extending up to the third or fourth civil degree.[211] Faced with questions regarding the harsh effects if such recommendation is to be applied, Commissioner Nolledo in another instance admitted that Congress may limit the prohibition up to the second degree, if it sees fit to do so.[212]

It is the author's position that the prohibition should go beyond the second degree of relationship in order for the anti-dynasty law to have any impact. The law must also specifically state that legitimate, illegitimate and adopted children are covered by the prohibition.

The inclusion of common-law relationships,[213] within the scope of the prohibition, however, poses a special problem. Such relationships are difficult to prove and easy to deny. Since the evils sought to be prevented are also present in these cases, common-law relationship should be presumed, for purposes of the anti-dynasty law, so long as both partners live exclusively with each other. This is to avoid circumvention of the law by couples with political ambitions who decide not to get married but carry on as husband and wife. Common-law relationships must not have an advantage over legitimate marriages.[214]

B. The Issue of Successive or Simultaneous Holding of Public Office

It is the position of the author that the prohibition should cover both successive and simultaneous holding of public office by members of the same family.

If the dictionary definition of the term "dynasty" is to be followed, the concept of a "political dynasty" will be limited to the successive holding of public office. The debates of the ConCom likewise reveal that the concept, as proposed by Commissioner Nolledo, was limited to cases of succession, since the original intent was to prevent

[211] 4 CONCOM 762.

[212] *Id.* at 940.

[213] A common-law marriage is defined as a "non-ceremonial or informal marriage by agreement, entered into by a man and a woman having capacity to marry, ordinarily without compliance with such statutory formalities as those pertaining to marriage licenses. Such agreement must be coupled by consummation, which includes at least cohabitation as husband and wife and reputation in such a way that the public will recognize the marital status." [MELENCIO S. STA. MARIA, FAMILY RELATIONS LAW 13 (1991), citations omitted].

[214] Matabuena v. Cervantes, 38 SCRA 284 (1971).

the circumvention of the maximum number of consecutive terms an elective official is allowed by the Constitution. It is, however, also clear that Commissioner Nolledo did not wish to impose his own version of the prohibition when he stated that Congress has the authority to include simultaneous holding of office within the scope of the prohibition.[215]

Furthermore, under the social justice provisions, the reduction of political inequality shall be achieved by the diffusion of the concentration of political power in the country. When public office is held by members of the same family simultaneously, there undoubtedly arises a concentration of power in the hands of a few. Thus, while there is an evil in the successive holding of public office there is likewise a similar evil in allowing simultaneous holding of public office given the situation prevalent in the Philippines today.

C. What Offices are Involved

As discussed in Chapter 4 of this thesis, the Constitution guarantees equal access to opportunities for all forms of public service and intends to promote social justice by diffusing the concentration of political power in general. In order to be consistent with the spirit of the Constitution, Congress should refrain from limiting the scope of the prohibition as to the public offices involved. Limitations on the scope of the prohibition should instead be made on other aspects of the law, such as the degree of relationship where no clear-cut policy is provided by the Constitution. It is thus the position of the author that all elective offices from the President down to the barangay level be included within the operation of the law subject to the rules to be outlined below.

D. Limitations Based on Territorial Jurisdiction

Many of the bills surveyed in the previous chapter limited the scope of the prohibition within a particular unit. The proponents of such a limitation argue that to prohibit a person from seeking, for instance, a local office in Davao City because he has a cousin who is an incumbent Councilor of the City of Manila would be unduly restrictive as no evil that would justify the application of the law exists in such a situation. This argument deserves closer scrutiny.

In the Philippine system of government, elective offices are actually related to one another. For example, the President exercises the power of general supervision over local government units. This power is exercised directly by the Office of the President with respect to provinces and highly-urbanized cities, through the governor with respect to municipalities and through the mayors with respect to the barangays.[216] In terms of political machinery, the lower-ranking officials play a big

[215] *See supra* notes 61 and 87.

[216] *See* PHILIPPINE CONST., art. X, § 4.

role in the election of a higher-ranking official, who must in turn reciprocate by granting the former certain favors. Similarly, a higher-ranking official may use the resources available to his office to secure the election of a lower-ranking official. Given this set-up, well-placed family members would really help advance a particular family's interests and side-step the system of checks and balances painstakingly crafted into the law. The following discussion, will focus on the possibility of limiting the operation of the prohibition only to offices within a political unit without defeating the purposes outlined in Chapter 4.

The hierarchy followed from the national to the local governments is as follows:

I. National Offices

1. President
2. Vice-President
3. Senator
4. Member of the House of Representatives

II. Local Offices

5. Provincial Governor, or the Mayor in the case of highly-urbanized cities.
6. Sangguniang Panlalawigan Members, including the vice-governor, whose members are elected by districts, or the Sangguniang Panlungsod in the case of highly-urbanized cities.
7. Mayors
8. Sangguniang Panlungsod or Sangguniang Bayan Members, including the Vice-Mayor.
9. Punong Barangay
10. Sangguniang Barangay Members

It is the author's position that a person who has a relative occupying a national office should be disqualified from running for any national or local office. If the relative holds an office higher than that aspired for, there is a danger that the higher official would exert his influence on the outcome of the elections for the lower position and thus deny the other candidates an equal access to public office. Neither may a person related to one holding a lower office be allowed to seek a higher office, because this would result in the consolidation of power among members of the same family. It

is also for this reason that members of the same family should not be allowed to hold the office of Senator or Congressman at the same time.

With respect to local offices, a distinction has to be made. If the offices involved are located within the same province, the prohibition is operative. This is because the family members consolidate power in their hands which may affect any provincial, city or municipal election.

When the positions involved, however, are found in different provinces, the prohibition is generally inoperative. The exception is when the situation purely involves the positions of governor of an autonomous region, governor of a province or mayor of a highly urbanized city. Thus, a person who is running for a local office lower than governor in one province may be allowed to run, without violating the test outlined in Chapter 4, *supra*, despite being related to a person holding a local office in another province. One relative cannot secure the election of another, since he is based in a different province and has an entirely different set of constituents. The guarantee of equal access is therefore not violated. There is also no consolidation of power because the particular local official only possesses power within his particular territorial jurisdiction, neither can the policies affecting one province affect those of the other in a substantial way. Finally, any potential conflict of interest situation may be restrained by the system of checks and balances in the Local Government Code.[217]

An exception, however, has to be made when persons related to each other hold the position of governor of an autonomous region, governor of a province, or mayor of a highly-urbanized city, in two different provinces or cities simultaneously. This should not be allowed because this would go against the standards outlined in Chapter 4, *supra*. Considering that there are only a small number of autonomous regions, provinces and highly-urbanized cities in the Philippines, family members who control two or more provinces or highly-urbanized cities, would immediately consolidate power in their hands. They would possess considerable political clout to determine, or at least substantially affect, the results of any national election because of the number of votes they can deliver. This is precisely one of the evils sought to be avoided by the Constitution.

Thus, the proposed rules can be summarized as follows:

1. A person related to another who occupies a national position cannot hold any national or local office. Neither may a person seek a national office while a relative holds a local office. One of them must give way.

2. A person related to another who occupies a local office cannot, within the same province, hold any local office.

[217] *See* The Local Government Code of 1991, R.A. No. 7160, §§ 29, 30, 32, 55, 56, and 57 (1991).

3. No relative of a governor of an autonomous region, provincial governor or mayor of a highly-urbanized city can simultaneously occupy the position of governor in another province or of mayor in another highly-urbanized city.

4. A relative of a provincial governor may run for an elective post lower than governor in another province.

6. A relative of a person occupying an elective position lower than governor in one province may run for an elective position lower than governor in another province.

E. Enforcement Mechanism

Under the present election laws, a person becomes eligible for an elective office only if he files a sworn certificate of candidacy.[218] The law prohibiting political dynasties must contain an amendment to § 74 of the Omnibus Election Code which specifies the contents of the required certificate of candidacy. The provision should require the certificate to disclose the relatives of the candidate occupying government positions or contain a statement that the candidate does not fall within any of the disqualifications based on family relationship. The COMELEC should automatically deny due course to any certificate of candidacy filed by a person falling within the prohibition.

Furthermore, the disqualification should apply by operation of law notwithstanding the fact that a candidate's family relationship with an incumbent official has been overlooked and he manages to get himself elected. Any family relationship would soon be discovered as R.A. 6713, (The Code of Conduct and Ethical Standards for Public Officials and Employees) requires the disclosure of a public official's relatives in government once he enters into office.[219]

F. Effectivity

Some of the bills have provided for a transitory period by inserting an exception worded as follows: "the provisions of this act shall not apply to any person already holding public office at the time of the effectivity of this Act." The meaning of this clause is ambiguous and is susceptible to two interpretations. The first interpretation is that the exception attaches to all persons holding public office at the time the act takes effect. This means that with respect to these public officials, the disqualification will never apply to them, even in future elections. The second interpretation is that incumbent officials would continue to serve out their term, even if they should fall under those disqualified to hold public office. The prohibition would take effect

[218] The Omnibus Election Code of the Philippines, B.P. Blg. 881, § 73 (1985).

[219] The Code of Conduct and Ethical Standards for Public Officials and Employees, R.A. No. 6713, § 8 (b) (1989).

during the next elections. In view of the numerous delays which have derailed the passage of an anti-dynasty law, the second interpretation is preferable. Thus, the exemption clause should be reworded to make the intent clearer: that the Act should be applicable to all during the next national and local elections and to those to be held thereafter.

CONCLUSION

A. Findings

Traditional Philippine political culture is characterized by an intermingling of the three basic institutions of society: government, business and family. Public office is seen either as an opportunity to help the family business or as a business in itself. Close kinship ties influence decision-making at the top. The failure to draw the distinction between public and private interest has made graft and corruption so much a part of Philippine culture[220] and the unequal access to public office a problem more difficult to solve.

It is against this backdrop that the framers of the Constitution drew the dividing line that would separate government from business and family: a prohibition against political dynasties. Stated otherwise, it mandates the passage of a law which makes family relationship a basis for disqualification to hold public office.

From a reading of § 26, Article II of the Constitution, it would seem that the ConCom has given Congress a blanket authority to draw up a definition of the term "political dynasty." Considering, however, that the prohibition against political dynasties is mandated by the Constitution and ratified by the people, the formulation of a definition is not an ordinary piece of legislation. Such a definition must remain faithful to the spirit in which the Constitution had been drafted and the people's understanding of the same.

Based on the discussion in the earlier chapters of this thesis, several things are evident:

First, a law defining political dynasties definitely has to be passed. Whether or not a prohibition should take effect is not at issue. Only the details remain to be sorted out.

Second, a time element is involved. Being a measure which promotes social justice, the law defining political dynasties has to be given the highest priority by Congress. Judging from the way the congressmen are handling the anti-dynasty bills,

[220] *See* BELINDA A. AQUINO, POLITICS OF PLUNDER: THE PHILIPPINES UNDER MARCOS (1987); and JAMES B. GOODNOW, THE PHILIPPINES: LAND OF BROKEN PROMISES (1991).

it cannot be said that they have been faithful to this mandate. It also provides the best example where, in the decision-making process of legislators, family interest overrides the public interest.

Third, a prohibition against political dynasties is a disqualification to hold public office based on family relationship. The term dynasty is used to emphasize the element of family relationship rather than succession. Thus, the prohibition should not be limited to cases of successive holding of public office by members of the same family. It should also cover simultaneous holding of public office by members of the same family considering that this situation produces an evil equal to that of successive holding of office.

Fourth, the prohibition should cover all national and local, elective and appointive offices in keeping with the spirit of the Constitution.

Fifth, relatives of elective national officers should not be allowed to run for any national or local office. Relatives of elective local officers should not run for any national office or any local office within the same political unit, neither may a relative or a person holding the position of governor of an autonomous region, governor of a province or mayor of a highly-urbanized city be allowed to run for the position of governor in another province or mayor of a highly-urbanized city.

Sixth, the degree of relationship included within the scope of the prohibition is left to the discretion of Congress and it is in this aspect that the application of the law may be limited.

Finally, in case of doubt, a stricter interpretation should govern since the definition of "political dynasty" is merely statutory. If it turns out that the prohibition is unduly oppressive, then the law may be modified accordingly.

B. Prospects for an Anti-dynasty Law

In the main body of this study, the author deliberately avoided naming specific families so as not to muddle the issues with personalities. Having come to the conclusion that there are no real legal obstacles to the passage of an anti-dynasty law, the author can attribute the delay to no other source but the Congressmen themselves.

The death of previous anti-dynasty measures has been ascribed to the Rules Committee of the House of Representatives.[221] This committee sets the calendar for floor debates. Without the backing of the members of the rules committee, a bill will likely end up being forgotten or deliberately overlooked, as what happened to previous anti-dynasty proposals. Seventeen of the twenty Representatives that make up the

[221] Philippine Center for Investigative Journalism, *Are Anti-dynasty Bills Headed for Oblivion?*, TODAY, 18 Oct. 1994, at 4.

current House Committee on Rules belong to political families.[222] Leaders of this Committee stand to be directly affected by the passage of an anti-dynasty law. Committee Chairman Rodolfo Albano[223] has a son who is the incumbent mayor of Cabagan, Isabela. Vice-Chairman Manuel Garcia[224] has a daughter who is married to Albano's son. Garcia is also a brother-in-law of Rep. Rodolfo del Rosario. Vice-Chairman Artemio Adasa[225] has a brother who is the incumbent mayor of Dapitan City. The Committee's third vice-chairman, Cirilo Montejo, is not likely to be enthusiastic about the passage of an anti-dynasty law. His father was formerly a congressman representing Leyte, the province where his family continues to be active in politics.

Even if the measure makes it onto the floor, it would still be met with strong resistance. Two-thirds of the two hundred congressmen are members of political families.[226] Fifteen of them have spouses currently occupying elective positions. Should the scope of the prohibition extend to the first degree, at least 26 congressmen will be directly affected. If the prohibition covers relationships up to the second degree, at least 51 will be affected. If it extends up to the third degree, around 58 will be affected. If it is up to the fourth degree, about 71 will be affected. If relationships by affinity are to be covered then up to 83 congressmen stand to be affected.[227]

In the Upper Chamber of Congress, at least six senators stand to be affected by anti-dynasty legislation. It is interesting to note that even the new politicians have plans of building their own dynasties. For instance, actor-turned-Senator Ramon Revilla is grooming his son to become the vice-governor of Cavite in 1995.

The political dynasty phenomenon is also found in the executive branch of government. The President's sister is Senate President *Pro-Tempore*. Her son, the incumbent Vice-governor of Pangasinan, is being groomed to run for governor one day. Even the Vice-President has a son who is the incumbent mayor of the Municipality of San Juan, Metro Manila.

Given the prevailing realities, it would be difficult to expect any anti-dynasty law to emerge from the current Congress. Even the President possesses substantial motive to exercise his veto power, should an enrolled bill manage to reach his desk. If one ever becomes law, though, it is doubted that it would have any substantial impact on the current state of affairs.[228]

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[222] *Id.*

[223] First District, Isabela.

[224] Second District, Davao City.

[225] First District, Zamboanga del Norte.

[226] Philippine Center for Investigative Journalism, *Anti-dynasty Bill Hazardous to Lawmakers*, TODAY, 17 Oct. 1994 at 1.

[227] *See* TIES, *supra* note 18, at 315-327.

[228] *See* Joaquin Bernas, S.J., *Defining Dynasties*, TODAY, 18 Oct. 1994, at 8.

It is thus ironic that the people who, upon assumption of office, took an oath swearing to uphold the Constitution are the ones trying to defeat one of its mandatory provisions. If a substantial prohibition is desired, then the people would have to take matters into their own hands by availing of the right of initiative and referendum under Republic Act No. 6735.[229] The only way to ensure that the antidynasty law would be faithful to the will of the people and the spirit of the Constitution is through its enactment directly by the people, without passing through their so-called "representatives."

> A year after the ratification of the Constitution, Ed Garcia wrote:
>
> . . . it is clear that the best guarantee to ensure that our rights will ultimately be protected and our aspirations will bear fruit is this: reliance on our own efforts and resources, supported by our collective will. The people will bring about this passage from the state of powerlessness and poverty into the solidarity of economic and political participation, in a land where the Filipino is both proud and free.[230]

One wonders, though, why there is a need to maintain a government if its officials cannot be relied upon to initiate or implement measures which would benefit the public interest.

The inclusion of § 26 of Article II in the Constitution was precisely meant to restore the public service aspect of a public office. This provision furnishes the means by which the continuities in Philippine politics may be broken. It also proved, with a little help from the politicians, why a change in the political landscape is long overdue.

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[229] 1989.

[230] ED GARCIA, THE FILIPINO QUEST: A JUST AND LASTING PEACE 51 (1988).