# PIERCING THE IRON CURTAIN RULE IN INTESTATE SUCCESSION: A DUE PROCESS APPROACH*

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## ABSTRACT

This Note introduces the irrebuttable presumption analysis as a new viable constitutional framework for judicial review to the "iron curtain rule." Using the framework, it is suggested that the rule should be viewed as a conclusive presumption of enmity that bars succession between an illegitimate child and her parents' legitimate relatives, but should give way to contrary evidence to vouchsafe a litigant's right to a meaningful participation in the judicial process.


## INTRODUCTION

Philippine law on succession prohibits intestate succession between an illegitimate child and her parents' legitimate relatives.[1] This rule is known as the "iron curtain rule" for it acts as the metaphorical iron curtain that bars succession between legitimate and illegitimate relatives. The law apparently presumes an ill-will between legitimate and illegitimate relatives and imposes the successional barrier to "avoid further grounds of resentment."[2]

But this presumption does not always conform to reality.[3] It is possible that no hostility exists at all between an illegitimate child and her parents' legitimate relatives from whom she seeks to succeed. Unfortunately,

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[1] CIVIL CODE, art. 992.

[2] Diaz v. Intermediate App. Ct. [hereinafter "Diaz"], G.R. No. L-66574, 182 SCRA 427, 432-433, Feb. 21, 1990.

[3] *See, e.g.*, Suntay III v. Cojuangco-Suntay, G.R. No. 183053, 621 SCRA 142, 157, June 16, 2010.

even if such is the case, the law provides no remedy to contest the rule and its underlying presumption. Courts have enforced the iron curtain rule with unbending rigidity.

This Note seeks to change the way we see the iron curtain rule. It proposes a new perspective to temper the application of the law. The proposal is simple—the iron curtain rule should be viewed as a disputable, and not a conclusive, presumption of enmity. And when this presumption is rebutted by contrary evidence, intestate succession should be allowed between the illegitimate child and her parents' legitimate relatives.

To do this, a recently transplanted constitutional framework in the Philippines is relied on—the irrebuttable presumption analysis. In the United States, the irrebuttable presumption analysis has been used to contest conclusive presumptions on the ground that they deny due process of law. When there is a conclusive presumption, no contrary evidence may be presented. In effect, the aggrieved party is deprived of meaningful participation in the judicial process.

This Note is divided into three parts. Part I discusses the iron curtain rule, and its evolution in Philippine jurisprudence. Part II introduces the irrebuttable presumption analysis as developed by the United States Supreme Court. Moreover, it compares the irrebuttable presumption to other frameworks of constitutional scrutiny. It also explores how the framework has been used by the Philippine Supreme Court in recent cases. Part III concludes with an illustration of how the irrebuttable presumption analysis applies to the iron curtain rule.

## I. THE IRON CURTAIN RULE

Philippine law allows succession through two modes—by will or by law.[4] The first mode refers to testamentary succession.[5] This occurs when the decedent left a will that conforms to the formalities required by law.[6] The second mode is called the intestate or legal succession.[7] Here,

[4] III AMBROSIO PADILLA, CIVIL LAW: CIVIL CODE ANNOTATED 496 (1987).
[5] *Id.*
[6] *Id.*
[7] CIVIL CODE, art. 960.

succession is by operation of law and *it is the law itself that presumes the will of the decedent.*[8]

Intestate succession takes place in four instances: (1) if the decedent died without a will, or with a void will, or a will that subsequently lost its validity; (2) when the will does not dispose of the whole estate, intestate succession applies to the undisposed portion; (3) when the suspensive condition attached to the institution of an heir does not happen, or if the heir predeceases the testator, or if the heir repudiates the inheritance and there is no substitution or accretion; and (4) when the heir instituted is incapable of succeeding.[9]

When intestate succession takes place, the general rule is that the nearest relative excludes the more distant ones.[10] Proximity in such cases is measured by the number of generations separating the decedent and heir.[11] For example, a niece will exclude the grandniece since the niece is nearer in degree to the decedent than the grandniece.[12]

One exception to the rule on proximity is the right of representation.[13] This right exists when the person represented cannot inherit because he or she predeceases the decedent, gets disinherited, or becomes incapacitated.[14] By legal fiction, the law raises the legitimate descendants of the person represented, and deems them to be in the same degree as the other heirs.[15]

When the right of representation occurs, *the representative succeeds in her own right.*[16] In other words, she does not succeed from the person represented but rather from the one whom the person represented would have succeeded.[17] For instance, a grandchild, whose parents predeceased her grandparents, succeeds in her own right from her grandparents. She does

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[8] PADILLA, *supra* note 4, at 496; III ARTURO M. TOLENTINO, COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE 431 (1992); RUBEN F. BALANE, JOTTINGS AND JURISPRUDENCE ON CIVIL LAW (SUCCESSION) 473-474 (2010).

[9] CIVIL CODE, art. 960.

[10] Art. 962.

[11] Arts. 963, 966.

[12] PADILLA, *supra* note 4, at 502.

[13] CIVIL CODE, art. 970. *See* PADILLA, *supra* note 4, at 514; TOLENTINO, *supra* note 8, at 439.

[14] PADILLA, *supra* note 4, at 515; TOLENTINO, *supra* note 8, at 433-436.

[15] CIVIL CODE, art. 970; PADILLA, *supra* note 4, at 514; BALANE, *supra* note 8, at 480-481.

[16] CIVIL CODE, art. 971.

[17] *Id.*

not succeed from her parents whom she is representing. Because the representative succeeds in her own right, *the law presumes that it is the will of the decedent* to institute the representative as her heir.

But this right to represent only exists in the legitimate line. Article 992 of the Civil Code denies illegitimate children the right to inherit through intestate succession from the legitimate children and relatives of her father or mother.[18] In the same manner, the legitimate children and relatives are barred from succeeding from the illegitimate child.[19]

This successional barrier is also known as the iron curtain rule. This rule presumes that an "intervening antagonism and incompatibility exists between the legitimate family and the illegitimate family."[20] Apparently, illegitimate children are "disgracefully looked down upon by the legitimate family."[21] They are seen as "nothing but the product of sin [and] palpable evidence of a blemish broken in life."[22] The legitimate family allegedly are "hated by the illegitimate child; the latter considers the privileged condition of the former, and the resources of which it is thereby deprived."[23] Thus, the law, in its omniscience, "does no more than recognize this *truth*, by avoiding further grounds of resentment."[24]

Recall that intestate succession embodies what the law presumes as the will of the decedent.[25] Hence, this presumption underlying intestate succession implies two things for the iron curtain rule. First, the law presumes that the hatred between legitimate and illegitimate relatives is so intense that the decedent would not have wanted the illegitimate children of her legitimate relative to inherit from her *ab intestato*. In the same manner, the illegitimate child would not want the legitimate relatives of his parents to inherit from her.

But all this seems too abstract. It might be better to tell a story to capture the essence of the rule. Let us imagine a typical Filipino family.[26] In

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[18] CIVIL CODE, art. 992.

[19] *Id.*

[20] PADILLA, *supra* note 4, at 556.

[21] *Diaz*, 182 SCRA 427, 432.

[22] *Id.* at 433.

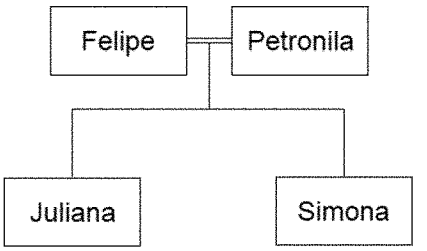
[23] *Id.* at 432-433.

[24] *Id.* at 433. (Emphasis supplied.)

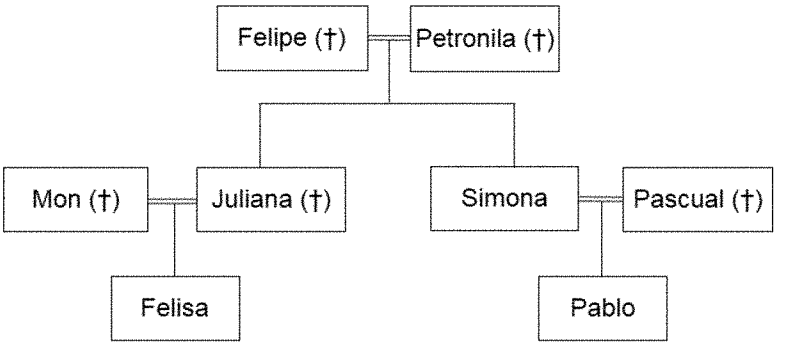
[25] PADILLA, *supra* note 4, at 496; TOLENTINO, *supra* note 8, at 431; BALANE, *supra* note 8, at 473-474.

[26] The story will be loosely based on the facts of *Diaz*, 182 SCRA at 427, a landmark case involving the iron curtain rule.

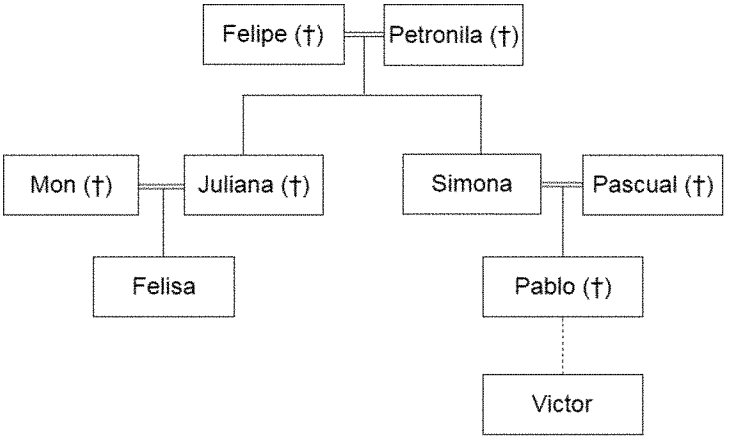
the 1920s, Felipe married Petronila. During their marriage, Petronila gave birth to two daughters, Juliana and Simona.




When Juliana and Simona had come of age, both Felipe and Petronila died. In the 1950s, Juliana married Mon and gave birth to Felisa. Simona, on the other hand, married Pascual, and gave birth to Pablo. Years later, Juliana, Mon, and Pascual died.




During his lifetime, Pablo remained single but fathered a minor child named Victor. Pablo, unfortunately, predeceased his mother, Simona. Pablo's son, Victor, is the only grandchild Simona ever had. Illegitimate though he may be, Victor was showered by his grandmother, Simona, with love and affection, as any Filipino grandmother would to her grandchild. Indeed, Simona even contributed to her grandchild's education and sustenance ever since Pablo died.




The controversy arose when Simona died without a will. She left two putative heirs—Felisa, Simona's niece and only surviving legitimate relative; and Victor, her only (illegitimate) grandson.

The lower courts excluded Victor from Simona's estate, applying the iron curtain rule embodied in Article 992 of the Civil Code. The case eventually reached the Supreme Court. Before it, Victor might proffer two arguments to support his cause:

A. The iron curtain rule denies substantive due process and equal protection of the law;[27]

B. The term relatives in Article 992 should be construed to exclude legitimate grandparents and should include only collateral relatives.[28]

Will Victor succeed with his arguments?

## A. The Iron Curtain Rule and the Equal Protection Clause

The Constitution proscribes the State from depriving a person of her life, liberty, or property without due process of law.[29] This constitutional command has always been theorized to have two aspects—procedural and substantive due process. The first refers to the process of the deprivation and typically requires that a person be given an opportunity to air her side

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[27] *See* Sandra M.T. Magalang, *Legitimizing Illegitimacy: Revisiting Illegitimacy in the Philippines and Arguing for Declassification of Illegitimate Children as a Statutory Class*, 88 PHIL. L.J. 467, 506-516 (2014).

[28] *See Diaz*, 182 SCRA 427.

[29] CONST. art. III, § 1.

first before she is made to answer before the law. The second aspect deals with the substantive content of the law itself. Thus, for the deprivation to be valid, it must be under authority of a valid law.

The Equal Protection Clause provides one such test of constitutional validity. One commentary even opines that it is subsumed under substantive due process for "a law that invalidly classifies is an invalid law."[30] However, it adds that the Equal Protection Clause has evolved to be a main framework in constitutional litigation over the years.[31]

The Equal Protection Clause enjoins the State from denying the equal protection of law to a person. However, this does not mean that everyone is treated equally under the law. Indeed, equal treatment might even be more prejudicial to a certain class of persons. On the contrary, the Equal Protection Clause allows the law to classify as long as the classification is not unreasonable. In *Victoriano v. Elizalde Rope Workers' Union*,[32] the Supreme Court expounded on what constitutes reasonable classification:

> The equal protection of the laws clause of the Constitution allows classification. Classification in law, as in the other departments of knowledge or practice, is the grouping of things in speculation or practice because they agree with one another in certain particulars. A law is not invalid because of simple inequality. The very idea of classification is that of inequality, so that it goes without saying that the mere fact of inequality in no manner determines the matter of constitutionality. All that is required of a valid classification is that it be reasonable, which means that the classification should be based on substantial distinctions which make for real differences, that it must be germane to the purpose of the law; that it must not be limited to existing conditions only; and that it must apply equally to each member of the class. This Court has held that the standard is satisfied if the classification or distinction is based on a reasonable foundation or rational basis and is not palpably arbitrary.[33]

In other words, a classification is valid if it is based on substantial distinctions grounded on real differences; when such is germane to the

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[30] ISAGANI CRUZ & CARLO CRUZ, PHILIPPINE CONSTITUTIONAL LAW 246 (2015).

[31] *Id. See also* Miriam Defensor-Santiago, *The New Equal Protection*, 58 PHIL. L.J. 1 (1983).

[32] G.R. No. L-25246, 59 SCRA 54, Sept. 12, 1974.

[33] *Id.* at 77-78.

purpose of the law; and when the law applies to all members of the same class.[34]

Over time, equal protection analysis has trifurcated into three levels with varying extent of scrutiny depending on the basis of classification. These are the rational basis scrutiny, intermediate scrutiny, and strict scrutiny.[35]

Rational basis is the lowest in the rung of scrutiny. It merely requires that there be a reasonable connection between the object of regulation and the classification. In other words, rational basis "demands that the classification in the statute reasonably relates to the legislative purpose."[36]

On the other extreme is strict scrutiny, which is the highest level of scrutiny under the Equal Protection Clause. The strict scrutiny comes into play whenever a classification discriminates against a suspect class, such as race, or when a regulation impinges on a fundamental right.[37] To surmount strict scrutiny, the classification must serve a compelling state interest and should be necessary to achieve this interest. In addition, the government must demonstrate that the classification is narrowly tailored to further the compelling state policy.[38]

Between rational basis and strict scrutiny is the intermediate or heightened level of scrutiny. This level is applied whenever a law discriminates against a quasi-suspect class, such as gender and illegitimacy.[39] Intermediate scrutiny requires the classification to serve an important government objective.[40] In addition, the classification must be substantially related to the achievement of such objective.[41]

Victor could argue that the iron curtain rule calls for the application of intermediate scrutiny. In all fairness to this argument, it has a good chance of winning the case. After all, under intermediate scrutiny, the law is presumed unconstitutional. The government bears the burden of showing

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[34] Central Bank Employees Ass'n, Inc. v. Bangko Sentral ng Pilipinas, G.R. No. 148208, 446 SCRA 299, 345, Dec. 15, 2004.

[35] Garcia v. Drilon, G.R. No. 179267, 699 SCRA 352, 447, June 25, 2013.

[36] *Id.*

[37] *Id.* at 448.

[38] *Id.* at 450.

[39] *Id.* at 447-448.

[40] *Id.*

[41] *Id.*

that the state objective is important and that the classification is substantially necessary to achieve this interest.

Moreover, the jurisprudence of the US Supreme Court supports this trend. In *Trimble v. Gordon*,[42] it was held that a law prohibiting intestate succession to illegitimate children is unconstitutional. According to the US Supreme Court, penalizing illegitimate children is not the proper way to discourage extra-marital relationships:

> [T]he Equal Protection Clause requires more than the mere incantation of a proper state purpose. No one disputes the appropriateness of Illinois' concern with the family unit, perhaps the most fundamental social institution of our society. The flaw in the analysis lies elsewhere. As we said in Lucas, the constitutionality of this law "depends upon the character of the discrimination and its relation to legitimate legislative aims." ... In subsequent decisions, we have expressly considered and rejected the argument that a State may attempt to influence the actions of men and women by imposing sanctions on the children born of their illegitimate relationships.[43]

Unfortunately for Victor, Philippine jurisprudence has also evolved to provide the government with defenses in constitutional cases that call for the application of the intermediate or strict scrutiny. In *Diocese of Bacolod City v. Commission on Elections*,[44] the Court declared that compelling state interests include constitutionally declared principles, citing *Soriano v. Laguardia.*[45] In *Soriano*, the Court held that the State's mandate to protect and look after children's welfare justified prior restraint on utterances in television broadcast.[46] Hence, even if abridgment of free speech, a fundamental right, calls for the application of the strict scrutiny, the government is not without defense. It could now cite any of the state policies enumerated in the Constitution as evidence of compelling state interests.

The Court's pronouncements in *Diocese of Bacolod City* and *Soriano* have one important implication. Previously, the State almost always loses cases that involve strict or intermediate scrutiny. Indeed, scrutiny in these

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[42] 430 U.S. 762 (1977).

[43] *Id.* at 769.

[44] Hereinafter "Diocese of Bacolod City", G.R. No. 205728, 747 SCRA 1, 97-98, Jan. 21, 2015.

[45] Hereinafter "Soriano", G.R. No. 164785, 587 SCRA 79, Apr. 29, 2009.

[46] *Id.* at 110.

cases has been described as strict in theory, fatal in fact.[47] It was an almost insurmountable feat for government to present a compelling or important state interest. But now, the government may point to a constitutional policy and prove that the assailed act reasonably forwards such policy. Suddenly, the floodgates of defenses were opened for the government and it now has an opening in complex constitutional cases.

Hence, in Victor's case, the government has a fighting chance in defending the iron curtain rule against an equal protection attack. It may cite Section 12 of Article II, as well as Sections 1 and 2 of Article XV, of the Constitution.[48] These constitutional policies enjoin the State to protect and strengthen the social institutions of family and marriage.

To make matters worse for Victor, the Court seemed to have ignored altogether the constitutional issues arising from the iron curtain rule. In the 1948 case of *Malonda v. Infante Vda. De Malonda*,[49] the Court declined to deal with the constitutionality of the rule. At that time, the Code Commission has just submitted the draft Civil Code to Congress. The Court brushed aside the issue of constitutionality, reasoning that:

> Some authors and jurists regard this rule as unfair to natural children who are brought into this world through no fault of their own. Others sustain it upon the ground that it protects the rights of the legitimate family and serves to discourage illicit relations. Much could be written expounding or criticizing the opposing schools of thought. But it is unnecessary to do so at this time. The Code Commission has taken a definite stand on the matter in the draft of the Civil Code it has submitted to the Congress[]—which is currently under study by a committee of the House of Representatives—and any official pronouncements made in this connection might be considered as an attempt to influence the members thereof and the Congress itself, whose wisdom,

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[47] Gerald Gunther, *The Supreme Court, 1971 Term – Foreword: In Search of Evolving Doctrine on a Changing Court: A Model for a Newer Equal Protection*, 86 HARV. L. REV. 1, 8 (1972).

[48] CONST. art. II, § 12. "The State recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution. It shall equally protect the life of the mother and the life of the unborn from conception. The natural and primary right and duty of parents in the rearing of the youth for civic efficiency and the development of moral character shall receive the support of the Government."

Art. XV, § 1. "The State recognizes the Filipino family as the foundation of the nation. Accordingly, it shall strengthen its solidarity and actively promote its total development."

Art. XV, § 2. "Marriage, as an inviolable social institution, is the foundation of the family and shall be protected by the State."

[49] Hereinafter "Malonda", G.R. No. 49081, 81 Phil. 149, May 28, 1948.

> patriotism and vision will surely be put to a test in the discussion of the many statutory reforms the Code Commission has chosen to recommend. In the meantime, until this particular rule about natural children is modified by legislative authority our duty is to apply it in proper cases, regardless of our preferences.[50]

Justice Gregorio Perfecto, in his dissent, argued that the distinction between legitimate and illegitimate children be struck down as unconstitutional, and relegated to the annals of curious legal historical artifact:

> The philosophy underlying the provision in question is the product of the twisted medieval mentality which, giving back to the healthy processes of reason, would punish or impose civil sanction or social ostracism not upon the guilty parents, but upon the innocent children who have no choice whether to be born out of approved wedlock or out of more or less clandestine illegitimate relationship. The injustice is so glaring that only defective or morbid mentality can fail to perceive it.
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> It is high time that, in the light of the equal protection of the law and social justice clauses of the fundamental law, the discriminatory provisions against illegitimate children in the Spanish Civil Code should be erased from our statute books as a nullity and permanently relegated to the archaeological museum of the mistakes and injustices of a socially and morally immature humanity.
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> All children are entitled to equal protection from their parents. Only a distorted concept of that parental duty, which springs from and is imposed by nature, may justify discriminatory measures to the prejudice of those born out of illicit sexual relations. The legal or moral violations upon which some of our present day legal provisions penalize illegitimate children with social, economic and financial sanctions, are perpetrated by the parents without the consent or knowledge of the children. If the erring parents deserve to have their foreheads branded with the stigma of illegitimacy, it is iniquitous to load the innocent children with the evil consequences of that stigma. There can be illegitimate parents but there should not be any illegitimate children.
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> In affording protection to their offspring, animals, including the wildest and most ferocious, do not make unjust distinctions. Can a people of the 20th century afford to face the

[50] *Id.* at 151-152.

> indictment of lacking the sense of justice with which even the most sanguinary beasts are endowed? There will not be enough water in the Jordan to wash out such shame nor enough flames in the Phlegethon to melt the plaque of that sin.[51]

Unfortunately, Justice Perfecto's dissent in this case fell on deaf ears. And over the years, the Court continued to feign deafness to the ostensible constitutional infirmity of the rule. Even as it adopted intermediate scrutiny in our jurisprudence, the Court declined to deploy it to the most obvious field of application—the civil law distinction between legitimate and illegitimate children. The most the Court has done is use the equal protection analysis in cases where illegitimacy has no relation to the law's purpose, such as in election law.[52]

On the contrary, the Court continues to recognize the distinction based on illegitimacy in matters involving family relations. Corollarily, the Court applied the iron curtain rule without batting an eyelash as the majority did in *Malonda*. This leaves Victor with even less chances of winning his case.

Victor can, of course, argue that penalizing illegitimate children for their parents' indiscretion is not the best way to pursue these constitutional policies. He can cite empirical data to that effect. But even with the Supreme Court's expanded power of judicial review, it might still be difficult to argue this point as it deals with the wisdom of the law.

### B. Relatives Covered by the Iron Curtain Rule

Victor may additionally assert that the term "relatives" does not include grandparents.[53] In other words, the iron curtain rule exists only between the illegitimate child and her parents' legitimate collateral relatives.

Professor Ruben Balane, however, argued against this expansive interpretation of the law.[54] He observed that relatives, in its general

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[51] *Id.* at 153-154, (Perfecto, *J. dissenting.*)

[52] *See, e.g.*, Tecson v. Comm'n on Elections, G.R. No. 161434, 424 SCRA 277, 343, Mar. 3, 2004, where Justice Jose Vitug opined that "[the] distinctions between legitimacy and illegitimacy were codified in the Spanish Civil Code, and the invidious discrimination survived when the Spanish Civil Code became the primary source of our own Civil Code. Such distinction, however, remains and should remain only in the sphere of civil law and not unduly impede or impinge on the domain of political law."

[53] The same argument was raised by the petitioners in *Diaz*, 182 SCRA 427.

[54] Ruben F. Balane, *Does the Term "Relatives" in Article 992 of the Civil Code Include the Legitimate Parents of the Father or Mother of the Illegitimate Children?*, 62 PHIL. L.J. 449 (1987).

connotation, include grandparents and ascendants.[55] Moreover, he cited jurisprudence dating back to 1902 where the Supreme Court interpreted "relatives" in a way that affirms its general meaning.[56] Lastly, he asserted that this interpretation accords well with the intention of the law to put up a successional barrier between legitimate and illegitimate relatives.[57]

Unfortunately for Victor, the Supreme Court, in *Diaz*, adopted Prof. Balane's position. It held that petitioners in that case cannot inherit from their grandmother because of the iron curtain rule.

## II. THE IRREBUTTABLE PRESUMPTION ANALYSIS

On the assumption that the iron curtain rule withstands such scrutiny by the Court, the only constitutional framework left to Victor to contest the rule is procedural due process. There is denial of procedural due process when a party is deprived of the opportunity to be heard.

In the present case, this requirement has been satisfied over and above the minimum. Victor was able to prosecute his claim before the trial court. He was even allowed to appeal his case up to the highest court of the land. There is no doubt that he has been afforded his time in court in satisfaction of the bare requirement of procedural due process.

This is where the irrebuttable presumption analysis comes in. This analytical framework will give Victor an opening to contest the very conclusive presumption that underpins the iron curtain rule. The discussion that follows explores the concept of presumptions in law as a springboard to examining the irrebuttable presumption analysis. The history of the irrebuttable presumption analysis in the United States and its subsequent adoption in Philippine jurisprudence is then discussed.

### A. Presumptions in Philippine Law

A presumption, by definition, is a legal inference as to the existence of a certain fact based on another known or proven fact.[58] According to McCormick, "a presumption is a standardised practice, under which certain

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[55] *Id.* at 450-456.
[56] *Id.* at 456-457.
[57] *Id.* at 457-459.
[58] BLACK'S LAW DICTIONARY 1304 (9TH ED., 2009).

oft-recurring fact groupings are held to call for uniform treatment whenever they occur, with respect to their effect as proof to support issues."[59]

In other words, presumptions are rules that demand a certain outcome if left unrebutted.[60] Hence, if a party successfully proves the fact that gives rise to the presumption, the burden of evidence automatically shifts to the opposing party to overcome the presumption.[61]

A presumption, if dissected, comprises two elements: a basic fact, and an inferred fact.[62] The basic fact is that which must first be satisfied or proved before the presumption can arise.[63] It is the predicate assertion from which the inference arises.[64] The inferred fact is, of course, the inference or assumption that flows from the basic fact.[65]

But why is there a need for presumptions in a legal system? Is it not more sound to let parties prove each and every fact proposed? McCormick argues that presumptions are needed for two important and interrelated reasons—regularity and policy.[66]

First, they arise in law because, from experience, a certain event X regularly occurs whenever Y happens.[67] Put differently, the next time X occurs, there is a reasonable probability that Y also happens. From this recurring experience, it makes sense to create a rule of presumption linking X and Y instead of requiring parties to prove X and Y all the time. As Thayer explains it:

> Many facts and groups of facts often recur, and when a body of men with a continuous tradition has carried on for some length of time this process of reasoning upon facts that often repeat themselves, they cut short the process and lay down a rule. To such facts they affix, by a general declaration, the character and operation which common experience has assigned to them.[68]

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[59] Charles T. McCormick, *Charges on Presumptions and Burden of Proof*, 5 N.C. L. REV. 291, 295 (1926).

[60] BLACK'S LAW DICTIONARY 1304 (9TH ED., 2009).

[61] *Id.*

[62] Edmund M. Morgan, *Presumptions*, 12 WASH. L. REV. & ST. B. J. 255, 257 (1937).

[63] *Id.*

[64] *Id.*

[65] McCormick, *supra* note 59, at 304.

[66] *Id.*

[67] James B. Thayer, *Presumptions and the Law of Evidence*, 3 HARV. L. REV. 141, 165 (1889)

[68] *Id.* at 157.

The second reason is that a presumption involves "procedural or social policy."[69] Thus, a presumption can be instituted to reflect deeply held policies and values important to a community. For example, our own rules of evidence provide for a presumption of lawful marriage whenever a man and a woman deport themselves as husband and wife.[70] This presumption merely mirrors the policy under the 1987 Constitution to protect and strengthen the family as the basic autonomous social institution and marriage as the foundation of the family.[71]

**B. Kinds of Presumptions**

Presumptions are often grouped into two categories—disputable and conclusive.[72] Disputable presumptions, on the one hand, are true presumptions in name and essence—these presumptions are never final and may be overcome by contrary evidence. Thus, disputable presumptions "are satisfactory, if uncontradicted, but may be contradicted and overcome by other evidence."[73]

Conclusive presumptions, on the other hand, are presumptions only in name. These presumptions direct the conclusive inference of a fact whenever a basic fact or group of facts is proven.[74] In legal contemplation, they are substantive—and not procedural—rules which may not be refuted even by overwhelming contrary evidence.[75]

A bill of attainder is one such conclusive presumption. Because a bill of attainder has determined, by legislative fiat, the guilt of the accused, no contrary evidence may be presented. Of course, the Constitution proscribes bills of attainder. It requires that guilt should only be pronounced if proved beyond reasonable doubt in a judicial trial.

The Rules of Court seemingly provide for two other examples of conclusive presumptions. These are found in Section 2 of Rule 131. One

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[69] McCormick, *supra* note 59, at 304.

[70] RULES OF COURT, Rule 131, § 3 (aa).

[71] CONST. art. II, § 12.

[72] There are also quasi-conclusive presumptions, which may be rebutted by evidence specified by law. For instance, legitimacy is a quasi-conclusive presumption since only certain grounds are available to impugn it under Article 166 of the Family Code.

[73] RULES OF COURT, Rule 131, § 3.

[74] § 3.

[75] 29 Am. Jur. 2d, Evidence, § 184.

thread, however, underpins both conclusive presumptions—the doctrine of estoppel.

The first conclusive presumption pertains to estoppel *in pais* or estoppel by conduct. There are two sides to this conclusive presumption—the one invoking the estoppel, and the one sought to be estopped.

For a party to successfully invoke estoppel, the following requisites must concur:

(a) lack of knowledge and of the means of knowledge of the truth as to the facts in question;
(b) reliance, in good faith, upon the conduct or statements of the party sought to be estopped; and
(c) action or inaction based thereon of such character as to change the position or status of the party claiming the estoppel, to [her] injury, detriment, or prejudice.[76]

For the party sought to be estopped, there must be:

(a) a conduct amounting to false representation or concealment of material facts; or at least calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert;
(b) intent, or at least, expectation, that this conduct shall be acted upon by, or at least influence, the other party; and
(c) knowledge, actual or constructive, of the actual facts.[77]

The second conclusive presumption concerns the tenant-landlord relationship.[78] In particular, this conclusive presumption bars the tenant from asserting a better title than her landlord at the time of the commencement of the lessor-lessee relationship.[79] In other words, by entering into a lease agreement, the lessee impliedly admits the right of possession of the lessor at the commencement of the tenant-landlord relationship and is estopped from questioning the same.[80] This rule applies

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[76] Phil. Savings Bank v. Chowking Food Corp., G.R. No. 177526, 557 SCRA 318, 329-330, July 4, 2008.

[77] *Id.* at 328.

[78] RULES OF COURT, Rule 131, § 3.

[79] Datalift Movers, Inc. v. Belgravia Realty & Dev't Corp., G.R. No. 144268, 500 SCRA 163, 169-170, Aug. 30, 2006.

[80] *Id.* at 170.

even if the lessor, in reality, had no right or title to the property at the commencement of the lease agreement.[81]

The Supreme Court explained that these two conclusive presumptions in the Rules of Court are "inferences which the law makes so peremptory that it will not allow them to be overturned by any contrary proof however strong" because they are "based upon the grounds of public policy, fair dealing, good faith, and justice." [82]

In truth, however, these so-called conclusive presumptions in the Rules of Court are not presumptions per se. They are, in reality, definitions of which acts comprise estoppel. Hence, in the strict sense, they are not rules of evidence but rather, substantive provisions of law.

### C. The History of the Irrebuttable Presumption Analysis in US Jurisprudence

Real conclusive presumptions are rare. Indeed, to justify the validity of conclusive presumptions, mere habituality is not enough. Rather, the weight of the public policy pursued must be of the most compelling character. In *United States v. Provident Trust Co.*,[83] the US Supreme Court explained that the use of conclusive presumptions "rests upon grounds of expediency or policy so compelling in character as to override the generally fundamental requirement of our system of law that questions of fact must be resolved according to the proof."[84]

Because of this stringent requirement, the law has evolved over the years to disfavor conclusive presumptions. Their decline can be attributed to the evolution of a new doctrine articulated by the US Supreme Court to deal with such presumptions—the irrebuttable presumption analysis. The following surveys the birth, resurgence, and enduring value of this doctrine.

#### *1. Birth of the Doctrine*

The irrebuttable presumption analysis traces its roots to several tax cases in the pre-World War II jurisprudence of the US Supreme Court. One of the earliest cases is *Schelesinger v. Wisconsin*.[85] Here, the law in question was

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[81] Golden Horizon Realty Corp. v. Sy Chuan, G.R. No. 145416, 365 SCRA 593, 598, Sept. 21, 2001.

[82] Datalift Movers, Inc. v. Belgravia Realty & Dev't Corp., 500 SCRA at 170.

[83] 291 U.S. 272 (1934).

[84] *Id.* at 281-282.

[85] Hereinafter "Schlesinger", 270 U.S. 230 (1926).

a Wisconsin statute that presumed all substantial gifts made by a decedent within six years prior to death as having been made in contemplation of death. Consequently, such gifts are included in the computation of the decedent's estate for estate tax purposes.

The presumption was defended on the ground that "the legislature found them necessary in order to prevent evasion of inheritance taxes."[86] Obviously, tax authorities would not be hard-pressed to prove that the gifts made six years prior to the decedent's death were in contemplation of death. The conclusive presumption made that an automatic finding of fact for tax authorities. The only factual issue on hand is whether the gifts were made within the period provided by law.

The US Supreme Court, however, disagreed with this justification. It held that the conclusive presumption is arbitrary because it denied petitioners due process and equal protection of the laws.[87] In particular, it reasoned that there is no adequate distinction between "gifts *inter vivos* within six years of death, but in fact made without contemplation thereof"[88] and "like gifts at other times are not thus treated." [89] Furthermore, the presumption is "no mere *prima facie* presumption of fact"[90] that the gifts were made in contemplation of death. Rather, they are "conclusively presumed to have been so made without regard to actualities."[91]

This decision signaled the birth of a new framework for judicial review—the irrebuttable presumption analysis. [92] After *Schelesinger*, subsequent cases invalidated similar provisions in the tax laws of other States. These provisions share one common trait—they conclusively presumed gifts made by the decedent for a certain period before her demise as having been made in contemplation of death.

One case is particularly enlightening. In *Heiner v. Donnan*,[93] the assailed law conclusively presumed that any substantial gifts made by the decedent two years prior to her death as made in contemplation of death. The peculiar aspect of *Heiner* is that the assailed law converted a once

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[86] *Id.* at 240.

[87] *Id.*

[88] *Id.*

[89] *Id.* at 239.

[90] *Id.* at 240.

[91] *Id.* at 239.

[92] Michael O'Connell, *Equal Protection: Modes of Analysis in the Burger Court*, 53 DENV. L.J. 687, 702 (1976)

[93] Hereinafter "Heiner", 285 U.S. 312 (1932).

disputable presumption into a conclusive presumption. The statute was defended on the ground that because of the amendment, the rule had become one of substantive law and not anymore a rule of evidence.

Before the US Supreme Court, the threshold question was whether Congress possesses such power to create a conclusive presumption. In other words, is there a constitutional power to deny the estate the right to refute the presumption?

The Federal Court answered in the negative. Citing *Schelesinger*, it maintained that the conclusive presumption is unconstitutional. The conversion of a disputable presumption into a conclusive one, according to the Federal Court, "constitutes an attempt, by legislative fiat, to enact into existence a fact which here does not, and cannot be made to, exist in actuality…."[94] The Court added that "a legislative body is without power to enact as a rule of evidence a statute denying a litigant the right to prove the facts of his case … in the guise of a rule of substantive law."[95]

After *Schelesinger* and *Heiner*, however, the irrebuttable presumption analysis declined in popularity. It failed to maintain its prominence in post-World War II jurisprudence. Indeed, the irrebuttable presumption analysis became dormant in the following decades.[96] It was only in the 1970s that the doctrine experienced something of a resurgence,[97] starting with the case of *Bell v. Burson*.[98]

*2. Resurgence of the Doctrine*

In *Bell*, petitioner Bell is a clergyman in the State of Georgia. He ministers to three communities and travels mostly by car to perform his duties. One day, he figured in an accident when a girl rode her bicycle into the side of his car. When the girl's parents filed an accident report with the Director of the Department of Safety, Bell was informed that under Georgian law, his driver's license will be suspended. The only way to stop this is if Bell can show that (1) he was covered by liability insurance policy; (2) he filed a bond or cash security deposit; or (3) he presented a notarized release from liability and proof of future financial responsibility.[99]

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[94] *Id.* at 329.

[95] *Id.* at 285.

[96] John Philips, *Irrebuttable Presumptions: An Illusory Analysis*, 27 STAN L. REV. 449, 449 (1974).

[97] *Id.*

[98] Hereinafter "Bell", 402 U.S. 535 (1971).

[99] *Id.* at 537.

Bell insisted that he was not liable in the accident and demanded an administrative hearing before his license is suspended. The Director agreed on the condition that the hearing will only pertain to the following matters: (a) whether petitioner or his vehicle was involved in the accident; (b) whether petitioner has complied with the Georgian law in question; and (c) whether petitioner's case falls under any of the exception under the said law. Unfortunately for Bell, the narrowing of the issues barred him from presenting evidence to prove that he was not liable in the accident.[100]

To justify the preclusion of issues and evidence, the State argued that "the licensee's interest in avoiding the suspension of his licenses is outweighed by countervailing governmental interests, and therefore that this procedural due process need not be afforded him."[101]

For the US Supreme Court, however, these justifications fell short of the demands of due process. The hearing required by the Due Process Clause must be *meaningful* and *appropriate* to the nature of the case. Since Georgia's licensing scheme is fault-based, a hearing which does not concern the fault of the licensee is neither meaningful nor appropriate to the nature of the case. Therefore, before the State can deprive petitioner of his license, there must first be a hearing on the very nature of his liability. Bell must be allowed to present evidence on the issue of his liability. The US Supreme Court then remanded the case for further hearing.[102]

Note that in *Bell*, there was no mention of the irrebuttable presumption analysis. However, *Bell* paved the way for the resurgence of this doctrine by laying down the standards on the kind of hearing required by the Due Process Clause, that is, the hearing should be meaningful and appropriate to the nature of the case.

The "meaningful and appropriate hearing test" was applied in the case of *Stanley v. Illinois*,[103] which marked a direct reference to the irrebuttable presumption doctrine.[104] In *Stanley*, the law in question was an Illinois statute that automatically deemed children of unwed fathers as wards of the State upon death of the mother.[105] Under this law, unwed fathers are conclusively

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[100] *Id.* at 537–538.
[101] *Id.* at 537.
[102] *Id.* at 541-542.
[103] Hereinafter "Stanley", 405 U.S. 645 (1972).
[104] *See* Note, 87 HARV. L. REV. 1534, 1540-1541 (1973).
[105] Stanley, 405 U.S. at 646.

presumed to be unfit parents.[106] Stanley questioned the constitutionality of the law and alleged that it violated the Equal Protection Clause.[107] The law purportedly discriminated against unwed fathers when unwed mothers as well as married fathers are not presumed to be unfit parents.[108]

The issue that confronted the US Supreme Court is whether "a presumption that distinguishes and burdens all unwed fathers is constitutionality repugnant."[109] The Federal Court held in the affirmative and reasoned that the Due Process Clause grants Stanley the opportunity to prove that he is not unfit to raise his illegitimate children:

> [A]s a matter of due process of law, Stanley was entitled to a hearing on his fitness as a parent before his children were taken from him and that, by denying him a hearing and extending it to all other parents whose custody of their children is challenged, the State denied Stanley the equal protection of the laws guaranteed by the Fourteenth Amendment.
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> Under Illinois law, therefore, while the children of all parents can be taken from them in neglect proceedings, that is only after notice, hearing, and proof of such unfitness as a parent as amounts to neglect, an unwed father is uniquely subject to the more simplistic dependency proceeding. By use of this proceeding, the State, on showing that the father was not married to the mother, need not prove unfitness in fact, because it is presumed at law. Thus, the unwed father's claim of parental qualification is avoided as "irrelevant."[110]

While the Court acknowledged the State's interest to protect the welfare of the children, it nevertheless found unconstitutional the means used to achieve this aim.[111] While speed and efficiency of determination are paramount values in a legal system, the US Supreme Court held in higher esteem a person's right to due process of the law, slower and less efficient it may be:

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[106] *Id.* at 647.
[107] *Id.*
[108] *Id.*
[109] *Id.* at 649.
[110] *Id.* at 649-650.
[111] *Id.* at 652-653.

> It may be argued that unmarried fathers are so seldom fit that Illinois need not undergo the administrative inconvenience of inquiry in any case, including Stanley's. The establishment of prompt efficacious procedures to achieve legitimate state ends is a proper state interest worthy of cognizance in constitutional adjudication. But the Constitution recognizes higher values than speed and efficiency. Indeed, one might fairly say of the Bill of Rights in general, and the Due Process Clause in particular, that they were designed to protect the fragile values of a vulnerable citizenry from the overbearing concern for efficiency and efficacy that may characterize praiseworthy government officials no less, and perhaps more, than mediocre ones.[112]

Ultimately, the Federal Court held that presuming unwed fathers as unfit parents without any meaningful hearing violates the Due Process Clause.[113] In addition, the Court also found that the classification violates the Equal Protection Clause for singling out unwed fathers and imposing upon them a heavier burden in gaining and maintaining custody over their children.[114]

However, instead of invalidating the law, the US Supreme Court granted Stanley a hearing where he can prove his fitness to care for his children.[115] The Federal Court added that convenience in just presuming unfitness of the unwed father does not justify the refusal to grant a party a hearing he is entitled to.[116] Under the Due Process Clause, such convenience is not a sufficient reason to forego hearing altogether.[117]

The case of *Vlandis v. Kline*[118] provided another opportunity for the Court to strike down an irrebuttable presumption. In *Vlandis*, at issue was the constitutionality of Connecticut's statutory definition of residents and nonresidents. The classification was for the purpose of computing the tuition fee to be paid in Connecticut's state universities.[119]

The Connecticut law classified an unmarried student as a nonresident if her legal address was outside Connecticut one year

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[112] *Id.* at 656.
[113] *Id.* at 657-658.
[114] *Id.* at 658.
[115] *Id.* at 658-659.
[116] *Id.* at 657.
[117] *Id.* at 657-658.
[118] Hereinafter "Vlandis", 412 U.S. 441 (1973).
[119] *Id.* at 442.

immediately prior to her admissions application.[120] Similarly, the statute also classified a married student living with her spouse as nonresident if her legal address at the time of application for admission was not in Connecticut.[121] Moreover, the classification is permanent during the stay of the student in the university. Thus, any affected student will have to pay higher tuition for the whole duration of her studies.[122]

It is important to note that the petitioners in *Vlandis* did not pray that the statute be struck down.[123] On the contrary, the students recognized the right of the State to classify students into residents and nonresidents.[124] What they claimed is that they have a constitutional right under the Due Process Clause to refute the presumption of nonresidence by presenting contrary evidence.[125]

The US Supreme Court granted the petition and agreed with the petitioners. It reasoned that denying the students the opportunity to rebut the presumption of non-residence is odious to the Due Process Clause:

> [S]ince Connecticut purports to be concerned with residency in allocating the rates for tuition and fees in its university system, it is forbidden by the Due Process Clause to deny an individual the resident rates on the basis of a permanent and irrebuttable presumption of nonresidence, when that presumption is not necessarily or universally true in fact, and when the State has reasonable alternative means of making the crucial determination. Rather, standards of due process require that the State allow such an individual the opportunity to present evidence showing that he is a bona fide resident entitled to the in-state rates. Since [the statute] precluded the appellees from ever rebutting the presumption that they were nonresidents of Connecticut, that statute operated to deprive them of a significant amount of their money without due process of law.[126]

The US Supreme Court held in more or less the same way in *US Dep't of Agriculture v. Murray*.[127] In *Murray*, the appellees come from

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[120] *Id.*
[121] *Id.* at 442-443.
[122] *Id.* at 443.
[123] *Id.* at 445.
[124] *Id.*
[125] *Id.* at 445-446.
[126] *Id.* at 471-472.
[127] Hereinafter "Murray", 413 U.S. 508 (1973).

households which were disqualified from receiving food stamps.[128] Their disqualification is based on the fact that their households include individuals 18 years or older, who have been claimed as dependents by taxpayers who are themselves ineligible for stamp relief.[129] Once deemed ineligible for food stamp relief, the disqualification lasts for a period of two (2) years.[130] The law presumes that the tax dependent's household does not require assistance and has access to adequate food.[131] The presumption therefore aims to prevent ineligible families from participating in the program.[132]

The US Supreme Court noted that there is no rational basis between the tax dependence of one member with the eligibility of the other members of the household to receive food stamps.[133] It may be the case that a ten-member household will be disqualified on the ground that just one child was declared a dependent for tax purposes.[134] Hence, on this score alone, the court held that the said law is already unconstitutional.

But as an additional ground, the Federal Court noted that the provision created an irrebuttable presumption of non-neediness for the duration of the disqualification. This is the case even if this is not the case in reality.[135] Thus, a family entitled to receive food stamps is deprived of the opportunity to show their entitlement to the benefit precisely because of the conclusive presumption. According to the court, this deprives the family of an entitlement without due process of the law.[136]

Finally, in *Cleveland Board of Education v. La Fleur*,[137] a rule was adopted by the local school board requiring pregnant public school teachers to take a mandatory maternity leave starting in the fifth month of their pregnancy. Further, affected teachers are not allowed to return to work until the beginning of the next regular school semester, which follows the date when their child attains the age of three months.[138] The school board contended that the rule was necessary to maintain continuity of classroom instruction since advance knowledge of when the pregnant teachers undergo

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[128] *Id.* at 511.
[129] *Id.*
[130] *Id.*
[131] *Id.*
[132] *Id.* at 513.
[133] *Id.*
[134] *Id.* at 514.
[135] *Id.*
[136] *Id.*
[137] Hereinafter "La Fleur", 414 U.S. 632 (1973).
[138] *Id.* at 635.

maternity leave gives the board enough time to find substitutes.[139] In addition, the school board asserted that some pregnant teachers are physically incapable of adequately performing their duties.[140]

The US Supreme Court, however, held that although continuity of classroom instruction and quality education are valid state interests, the means used to pursue such ends unnecessarily burden constitutionally protected liberties.[141] While requiring advance notice is necessary to achieve continuity of classroom instruction, requiring teachers to go on mandatory leave in the fifth month of their pregnancy even if they are still capable of teaching sweeps too broadly.[142] Citing *Vlandis* and *Stanley*, the Court explained that the rule engaged in a conclusive presumption of physical incapacity by sole reason of a teacher's pregnancy—"and that presumption applies even when the medical evidence as to an individual woman's physical status might be wholly to the contrary."[143]

*Stanley*, *Vlandis*, *Murray*, and *La Fleur* are just some of the cases that entrenched the irrebuttable presumption analysis once more in the jurisprudence of the US Supreme Court. We have seen that in these cases, the irrebuttable presumption framework requires a meaningful and appropriate hearing before a rule, which is based on a conclusive presumption, is made to apply. A hearing is appropriate and meaningful if it engages with the factual issue at the very heart of the case. This means that all relevant evidence may be presented, even those that tend to rebut the conclusive presumption. In other words, the conclusive presumption becomes a true presumption, the applicability of which is determined through a meaningful and appropriate hearing.

### D. The Irrebuttable Presumption Analysis as a Distinct Constitutional Framework

The rebirth of the irrebuttable presumption analysis attracted much scholarly attention. Legal scholars debated where this rebirthed doctrine locates itself in the constitutional litigation framework. On its face, the irrebuttable presumption analysis looks like a conflation of equal protection and procedural due process guarantees—equal protection because of the way it treats classifications, and procedural due process because of the

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[139] *Id.* at 540-641.
[140] *Id.* at 641.
[141] *Id.* at 650.
[142] *Id.* at 643-644.
[143] *Id.* at 644.

remedy it provides. The following discussion attempts to distinguish the irrebuttable presumption from equal protection and procedural due process.

*1. The Irrebuttable Presumption Analysis and Procedural Due Process*

Procedural due process entails perhaps the most cursory application. At its heart, it is concerned with a modicum of opportunity to be heard. It is synonymous with a litigant's chance to have her day in court or tribunal. Thus, where a party was prevented from participating in a proceeding, filing a motion for reconsideration has been held to cure the initial denial of due process. By filing the motion, jurisprudence holds that the party has been accorded an opportunity to present her side. According to the Court, this satisfies a party's right to due process.[144]

Faced with a conclusive presumption, procedural due process demands only that an aggrieved party is given her day in court, however futile that may be. She is afforded the chance to air her side but the conclusive presumption is made to apply to her anyway. The superficial hearing a party is entitled to seems like a Kafkaesque way to announce that she has no legal way to escape the inescapable conclusive presumption.

In contrast to a mere perfunctory opportunity to be heard, the irrebuttable presumption analysis demands more—hearing should not be any hearing, but a meaningful and appropriate hearing. A hearing is meaningful and appropriate when all underlying issues are threshed out and all admissible evidence germane to these issues is allowed. Hence, even conclusive presumptions may not be conclusive after all. The meaningful and appropriate hearing demanded by the irrebuttable presumption analysis provides an escape route, a chance to rebut once and for all what has been deemed conclusive by legislative fiat.

*2. The Irrebuttable Presumption Analysis and the Equal Protection Clause*

When a law fails equal protection scrutiny, it means that the classification does not further a purported state interest. When this happens, the law itself is deemed of no binding effect. The classification is struck down paving the way for equal treatment between groups previously

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[144] *See, e.g.*, Vivo v. Phil. Amusement and Gaming Corp., G.R. No. 187854, 709 SCRA 276, 285, Nov. 12, 2013; Ledesma v. Ct. of Appeals, G.R. No. 166780, 541 SCRA 444, 453, Dec. 27, 2007; Sunrise Manning Agency, Inc. v. Nat'l Labor Relations Comm'n, G.R. No. 146703, 443 SCRA 35, 41-42, Nov. 18, 2004; and Mendiola v. Civil Service Comm'n, G.R. No. 100671, 221 SCRA 295, 306, Apr. 7, 1993. *But see* Fontanilla v. Comm'n on Audit, G.R. No. 209714, 794 SCRA 213, 225-226, June 21, 2016.

classified. By contrast, in irrebuttable presumption cases, the classification always withstands equal protection scrutiny. The law remains valid but the means by which it is applied is tempered by a procedural remedy.

Viewed in this light, the irrebuttable presumption analysis should be regarded as an additional test in addition to the equal protection analysis. A reading of the aforementioned irrebuttable presumption cases reveals that the assailed classifications impliedly satisfied equal protection scrutiny. Thus, where the classification is imperfect but nevertheless surpasses equal protection scrutiny, the irrebuttable presumption analysis may be applied to temper the application of the law. In particular, it mitigates the harsh application of the law by affording disadvantaged classes the chance to exempt themselves from the classification of the law.

In *Stanley*, for instance, the Court did not impugn the anchoring of one's capacity to be a parent on sex and marital status.[145] Thus, the Court accepted, albeit not expressly, the State's logic in presuming unwed fathers as incapable parents.[146] Such would have entailed heightened scrutiny since it discriminates based on both sex and marital status. In effect, the Court accepted the State's logic that unwed fathers, more often than not, are incapable of complying with their parental obligations. However, what the Court did dispute is the lack of process for those who are prejudiced by the imperfect classification.[147] Hence, the law remains but in disputable form to accord capable unwed fathers the chance to gain custody of their children.[148] This way, the law still satisfies the State's objective of protecting the well-being of the children without overburdening unwed fathers.

Simpson argues that in irrebuttable presumption cases, what the Court did was to balance the burden imposed by the conclusive presumption against the burden imposed on the state for individualized determination.[149] In all successful irrebuttable presumption cases, the cost occasioned by according an individualized hearing is significantly less than the prejudice caused to the disadvantaged class.[150] In other words, "the benefit to the individual from greater precision in state processes warrants the higher cost borne by the state to ensure such precision."[151]

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[145] Gary Simpson, *The Conclusive Presumption Cases: A Search for a Newer Equal Protection Continues*, 24 CATH. UNIV. L. REV. 217, 223 (1975).

[146] *Id.*

[147] *Id.*

[148] *Id.*

[149] *Id.*

[150] *Id.* at 229-230.

[151] *Id.* at 232-233 (1975).

For Harvard Professor Laurence Tribe, the irrebuttable presumption framework is appropriate in cases where equal protection analysis is insufficient to strike down a law.[152] He adds that the problem lies not in the classification per se but rather the conclusiveness of the rules:

> No amount of "equal protection" analysis can sustain it, since its thrust is not to complain of a mismatch between classifications and purposes, between rules and ends. Its complaint is with the very use of binding, determinate rules that preexist the dispute to which they are applied and foreclose a more personal and discretionary style of decision. "The remedy, given such a complaint, could hardly be the "less restrictive alternative" of a better fitting (though equally determinate) rule. It must instead be an individualized hearing leading to a necessarily more ad hoc determination.[153]

In sum, equal protection and irrebuttable presumption differ on three grounds. First, the former is based on the invalidity of the classification itself, whereas the latter on the unreasonableness of the means used in applying the law. Second, failure to satisfy equal protection analysis results in the invalidity of the law, whereas application of the irrebuttable presumption analysis renders conclusive classifications disputable. Third, as to remedy, equal protection removes the distinction paving the way for equal treatment, whereas irrebuttable presumption analysis provides an opportunity in the form of a meaningful and appropriate hearing before the classification is made to stand.

### E. The Irrebuttable Presumption Analysis as Structural Due Process

There is something uncanny in the way irrebuttable presumption affords a meaningful and appropriate hearing to a disadvantaged class. In a meaningful and appropriate hearing, even policies that underlie a law, and the way they are pursued, are not immune from scrutiny.

In *Stanley*, the law's pro-child stance as seen in the way the law excluded unmarried fathers from custody was dealt with in a hearing to test a particular father's parental capabilities. In *La Fleur*, the law's concern for female teachers' welfare was pursued through a mandatory maternal leave.

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[152] *See* Laurence Tribe, *Structural Due Process*, 10 HARV. C.R.-C.L. L. REV. 269 (1975).
[153] *Id.* at 289.

Yet, these policies and the way they were realized were issues threshed out in a meaningful and appropriate hearing.

In all the irrebuttable presumption cases, there seems to be a dialogue between the State and the individuals disadvantaged by a particular policy, and its execution.[154] The individual proves to the State that granting her an exemption does not necessarily diminish the state policy pursued, and indeed may even further it. The State, on the other hand, has to explain its own policies and the way it has applied it in a particular way. But the way the State explains its policies is not as defensive as in other frameworks. Because the law is allowed to stand, the State only had to explain the reasonableness of its actions.

This dialogue between the government and the governed has been described by Tribe as hallmarks of structural due process. This new form of due process, according to Tribe, lies in "structures through which policies are both formed and applied and formed in the process of being applied."[155] Tribe contrasts structural due process from other frameworks, which to him involve a static model of law and policy and rigidly determines whether:

> (1) the state is deemed either to "have" a certain policy or not; (2) the policy the state "has" is deemed to be expressed solely by its positive body of enacted law; and (3) a state's policies are then either "applied" or "not applied" in particular factual situations. The familiar substance-procedure dichotomy quietly nestles into this model. Having identified a specific state policy, one can ask, substantively, whether the content of that policy comports with various constitutional limits on the ends government may pursue and the means it may employ. Given an attempted invocation of the policy to someone's disadvantage, one can ask, procedurally, whether the application of the policy has been sufficiently accurate as a means of implementing its purposes.[156]

Structural due process, on the other hand, assumes a dynamic progression of forming and applying law and policy. He likens it to a "motion picture: (1) in which we are as concerned with the development of policy over time as with a snapshot of policy at any given point, and (2) in which are as interested in the process of decision itself as with the outcomes produced."[157] In other words, structural due process structures the process of change in principles without prescribing the result.

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[154] *Id.* at 269.
[155] *Id.*
[156] *Id.* at 290.
[157] *Id.*

For irrebuttable presumption analysis, structural due process plays out in how it is applied over time. With each meaningful and appropriate hearing, the conclusiveness of a conclusive presumption considerably erodes. As the patterns of thought and behavior that gave rise to a presumption lose its hold in the habits and imagination of society, the State eventually runs out of explanation to support the perpetuation of the presumption. As Tribe puts it, "[i]f the original justification for a law has faded and the state can come up with no other justification that substantially fits the law, then we can perhaps describe a court which strikes the law down as more acknowledging a change in social values than inventing one."[158] In other words, "[l]egislation loses supporting purposes—and thus becomes increasingly subject to invalidation on the seemingly 'neutral' ground of arbitrariness or irrationality—precisely as it loses touch with evolving values and conceptions."[159]

## F. Transplantation of the Irrebuttable Presumption Analysis in Philippine Jurisprudence

In the Philippines, the irrebuttable presumption analysis was adopted in 2004. Its application has been sparse but nevertheless, it has been transplanted into our legal system and may thus be invoked by a litigant in a proper case. In the discussion that follows, the transplantation of the doctrine of irrebuttable presumption in Philippine jurisprudence is traced.

### *1. Government Service Insurance System v. Montesclaros*

The irrebuttable presumption analysis was first introduced, albeit not explicitly, in the 2004 case of *Government Service Insurance System v. Montesclaros.*[160] In *Montesclaros*, petitioner Milagros Orbiso married the deceased, Nicolas Montesclaros in 1983. In 1984, Nicolas retired from government service and filed his claim for benefits before the Government Service Insurance System (GSIS) the following year, designating Milagros as her sole beneficiary. When Nicolas died in 1992, GSIS denied Milagros's claim for survivorship pension. According to GSIS, Section 18 of Presidential Decree No. 1146 disqualifies a surviving spouse from receiving pension if his marriage with the pensioner is contracted within three years before the pensioner qualified for pension. In this case, Milagros married Nicolas less than one year from the latter's date of retirement, the time he

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[158] *Id.* at 299.

[159] *Id.* at 300.

[160] Hereinafter "Montesclaros", G.R. No. 146494, 434 SCRA 441, July 14, 2004.

qualified for pension. Hence, her case comes within the purview of disqualification in Section 18. Milagros assailed the validity of this rule.

The Court subsequently held that the proviso in Section 18 is unconstitutional for violating the Due Process Clause as well as the Equal Protection Clause. According to the Court, the pensioner acquires a vested right to the benefits provided by law when he retires and meets the eligibility criteria. Hence, the GSIS cannot deprive the retiree and his dependents of these benefits absent notice and hearing. Otherwise, it will be tantamount to confiscation of property rights without due process of the law.

The Court also held that the proviso in Section 18 denies equal protection of the law. Because there is no substantial difference between a couple who married three years or less before the retirement of the pensioner and those who married more than three before such retirement, the classification created by the law has no reasonable connection to a legitimate end. Worse, the law itself does not provide any reason or purpose for such a prohibition.

Thus, the Court had to study similar statutes abroad which relied on the same prohibition to surmise that such was intended to prevent sham marriages contracted for monetary gain. However, even with this hypothetical purpose, the Court explained that the law would still violate the Equal Protection Clause for it conclusively presumed all marriages as fraudulent if these are contracted three years before the pensioner qualified for pension. In other words, the statute *conclusively presumed* all such marriages as deathbed marriages, contracted solely for the purpose of defrauding the government insurance system.

The Court also noted that Republic Act No. 8291, or the new GSIS Law, awards survivorship benefits to the surviving spouse regardless of the date of marriage to the retiree. The Implementing Rules and Regulations created only a disputable presumption of fraud but puts the burden of proof on GSIS to show that indeed the marriage was contracted mainly to receive survivorship benefits. Thus, the new law correctly framed the issue of fraud as one of fact.

Even if *Montesclaros* seems to use irrebuttable presumption analysis, the remedy granted was not hearing *per se* but a wholesale invalidation of the questioned provision of the law. Hence, the invalidation in effect accorded similar treatment to all surviving spouses by removing the distinction created by the law. In a strict sense, *Montesclaros* did not conform to the remedy provided by the irrebuttable presumption analysis to dispose of the case.

However, it is not without use since it did pave the way for the subsequent use of the framework in later cases.

*2. Dycaico v. Social Security System*

The case of *Dycaico v Social Security System*[161] presented the next opportunity for our Supreme Court to apply the irrebuttable presumption analysis. Here, a certain Bonifacio Dycaico became a member of the Social Security System (SSS) in 1980 and named petitioner Elena and their eight children as beneficiaries. At that time, Bonifacio and Elena were living together as husband and wife without the benefit of marriage. Bonifacio subsequently retired in 1989 and started receiving retirement benefits from the SSS. He died in 1997 but a few months before he passed away, he married Elena to legalize their relationship.

When Elena applied for survivor's pension, the SSS denied her claim citing a proviso[162] in Republic Act No. 8282 disqualifying any person who is not a primary beneficiary at the time of the pensioner's retirement. Since Bonifacio and Elena were not yet married at the time Bonifacio retired from service, the law prohibits her from claiming any benefits from the SSS.

Before the Supreme Court, Elena assailed the validity of the proviso for denying due process and equal protection of the law. SSS maintained that there is no violation of the Due Process Clause since Elena had her day in court. In addition, it also asserted that there is no violation of the Equal Protection Clause since the law merely aimed to ferret out fraudulent claims. Drawing similarities from *Montesclaros*, the Court held that the proviso was unconstitutional. The Court, citing *Vlandis*, *Murry*, and *Jimenez v. Weinberger*,[163] held that:

> [b]y this outright disqualification of the surviving spouses whose respective marriages to SSS members were contracted after the latter's retirement, the proviso "as of the date of his retirement" qualifying the term "primary beneficiaries" for the purpose of entitlement to survivor's pension has created the presumption that marriages contracted after the retirement date of SSS members were entered into for the purpose of securing the benefits under Rep. Act No. 8282. This presumption, moreover, is conclusive because the said surviving spouses are not afforded any opportunity to disprove the presence of the illicit purpose.

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[161] Hereinafter "Dycaico", G.R. No. 161357, 476 SCRA 538, Nov. 30, 2005.
[162] Rep. Act No. 8282, § 12 (8)(d).
[163] 417 U.S. 628 (1974).

> The proviso, as it creates this conclusive presumption, is unconstitutional because it presumes a fact which is not necessarily or universally true. In the United States, this kind of presumption is characterized as an "irrebuttable presumption" and statutes creating permanent and irrebuttable presumptions have long been disfavored under the due process clause.[164]

In *Dycaico*, although petitioner and the deceased got married months before the latter's demise, it was merely to legalize their relationship which goes a long way back. In fact, they have been living together since 1980 but without the benefit of marriage. Thus, had she been given an opportunity to be heard on the issue of whether her marriage is sham or not, she could have rebutted the presumption of fraud. The irony in this case is that, as alluded to earlier, the SSS actually argued that *Dycaico* has been accorded due process since she already had her day in court. However, this token due process was only for the purpose of determining whether she contracted marriage with the beneficiary after the latter's retirement. Following the requirements laid down in *Bell*, the hearing in *Dycaico* was not meaningful and appropriate to the nature of the case, that is, a hearing on whether the marriage is indeed a fraudulent one.

*Dycaico* marks the first time a specific reference was made to the irrebuttable presumption doctrine. However, the Court here seems not to have understood how it should be applied. Similar to *Montesclaros*, the Court struck down the law as unconstitutional and nullified the proviso instead of remanding the case back to the SSC for further hearing to determine whether the marriage truly is sham. In addition, the Court seems to have been vague in its application of the Equal Protection Clause. It did not allude as to which tier of scrutiny it is actually using.

Notwithstanding these shortcomings, the Court was correct in holding that the provisos in *Montesclaros* and *Dycaico* violate the Due Process Clause. For conclusively presuming a fact without the benefit of evidence, the aggrieved parties were denied the opportunity to present evidence on the very factual issue crucial to the resolution of the case. Indeed, even if hearings were conducted to verify their claims, these were only token hearings as the real factual issue to be litigated—the existence of an illicit purpose—was not passed upon at all. The only issue actually litigated was whether they come under the purview of provisos.

*3. Poe-Llamanzares v. Commission on Elections*

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[164] Dycaico v. Social Security System, 476 SCRA at 558-559.

The latest invocation of the irrebuttable presumption analysis in the Philippines is in the concurring opinion of Justice Francis Jardeleza in *Poe-Llamanzares v. Commission on Elections*.[165] In this case, Grace Poe-Llamanzares (Grace Poe), a foundling, ran for presidency and filed her certificate of candidacy (COC) for the position. This spawned several petitions to deny due course to or cancel her COC with the Commission on Elections (COMELEC) on the ground of material misrepresentation.[166] The petitions were anchored, among others, on the fact that Grace Poe is not a natural-born Filipino, a status required by the Constitution for presidential candidates.

The COMELEC granted the petitions and held that when Grace Poe admitted in her COC that she is a foundling, this is already tantamount to admitting that she is not natural-born. Since the 1935 Constitution, applicable to Poe's case, excludes foundlings in its enumeration of who are deemed Filipino citizens, the COMELEC reasoned that she cannot be considered a natural-born Filipino. In addition, the COMELEC stated that the burden of proof is on Grace Poe to show natural filiation with a Filipino parent. It seems though that the only evidence that the COMELEC will accept is one that is as definitive as DNA evidence.

In his concurring opinion, Justice Jardeleza opined that the COMELEC gravely abused its discretion when it automatically inferred that Grace Poe is not natural-born based solely on her admission that she is a foundling. He expounds that:

> [t]he COMELEC's starting position is that foundlings are not natural-born citizens unless they prove by DNA or some other definitive evidence that either of their biological parents are Filipino citizens. Thus, it limited its inquiry to the question of whether the 1935 Constitution considered foundlings as natural-born citizens. In effect, the COMELEC has created a conclusive or irrebuttable presumption against foundlings, i.e., they are not natural-born citizens. This is true notwithstanding the apparently benign but empty opening allowed by the COMELEC. By definition, foundlings are either "deserted or abandoned . . . whose parents, guardian or relatives are unknown," or "committed to an orphanage or charitable or similar institution with unknown facts of birth and parentage." Considering these unusual circumstances common to all foundlings, DNA or other

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[165] G.R. No. 221697, (Jardeleza, *J., concurring*), 786 SCRA 1, Mar. 8, 2016.
[166] ELECT. CODE, § 78.

> definitive evidence would, more often than not, not be available. A presumption disputable only by an impossible, even cruel, condition is, in reality, a conclusive presumption.[167]

In other words, the COMELEC effectively created a conclusive presumption that a person is not a natural-born Filipino based solely on the fact that she is a foundling. The COMELEC refused to weigh all the pieces of evidence that tended to show that Grace Poe is a natural-born citizen. It considered only one possible proof of filiation with a Filipino citizen—DNA evidence. The problem is that a foundling, by definition, is one who does not know who her parents are. For a foundling, asking for DNA evidence therefore means that no evidence may ever prove filiation to a Filipino citizen. When there is no evidence that may rebut a presumption, it effectively becomes conclusive by default.

Because this violated Grace Poe's right to due process, the conclusive presumption created by the COMELEC against foundlings was converted into a disputable one. And to resolve the factual issue, there was no need to remand the case to the COMELEC. In examining all the evidence adduced before the respondent Commission, the Court eventually held that Grace Poe is a natural-born Filipino and eligible to run for office.

## IV. THE IRON CURTAIN RULE AND THE IRREBUTTABLE PRESUMPTION ANALYSIS

We left Victor with the unenviable dilemma of surmounting the iron curtain rule. To recall, his attempt to discredit the rule using the equal protection analysis and creative statutory construction might be frustrated equally plausible counter-analysis.

The judicial process Victor went through, however, focused solely on whether the iron curtain rule applies. Thus, the only evidentiary matters allowed strictly relate to the following issues: (1) whether Victor is an illegitimate child; and (2) whether Victor's father is a legitimate relative of the decedent. These questions were obviously resolved in the affirmative. Thus, the courts inevitably had to rule against Victor's right to succeed from Simona, her grandmother.

But the vital issue in Victor's case was left untouched by the judicial process. The very existence of the iron curtain rule, which links illegitimacy

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[167] Poe-Llamanzares v. COMELEC, (Jardeleza, *J., concurring*), 786 SCRA at 895-896.

to hatred by force of presumption, was never dealt with. The law itself has declared by legislative fiat, whether empirically or conceptually, two things: first, a conclusively presumed hatred underlies Victor and Simona's relationship by mere reason of Victor's illegitimacy, and second, Simona's conclusively presumed hatred is the reason why she would never allow her illegitimate grandson to inherit from her. Thus, these legislated facts are beyond evidence. What Victor, therefore, needs is an individualized determination on whether his grandmother truly harbored ill-will against her own illegitimate grandson.

And here is where we apply the irrebuttable presumption analysis. The reality is that the iron curtain rule is a conclusive presumption of enmity between the decedent and the person seeking to succeed. This enmity supplies the justification for barring succession between Victor and his deceased grandmother. As explained by Manresa, the rationale behind the law is the *reality* that the legitimate family absolutely hates the illegitimate child:

> The Code denies all successional rights between the illegitimate child and the legitimate parents of the father or mother who recognized the former. They cannot be considered as relatives, nor do they have the right to inherit. It is true that there exists a blood relationship between them, but this tie is not recognized by the law. *Art. 943 is founded on reality and in the presumed will of those who have an interest in the succession in question.* The illegitimate child is looked upon with disfavor by the legitimate family. The latter is, in turn, hated by the illegitimate child, because of their privileged position and the rights to which he is not entitled. The legitimate family, on the other hand, sees the illegitimate child as the product of vice and living proof of a stain in their reputation. All. relations are ordinarily rooted in life; and the law does no more than acknowledge this truth, avoiding new motives for resentment.[168]

Sanchez Roman similarly affirms the existence of a conclusive presumption that underlies the iron curtain rule:

> The basis of this article is nothing more than *the common antagonism and absolute incompatibility between the illegitimate family and the legitimate family*, with the sole exception of parents with respect to illegitimate or legitimated children.[169]

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[168] Balane, *supra* note 53 at 458, n.21. (Emphasis supplied.)
[169] *Id.* n.22. (Emphasis supplied.)

Since the iron curtain rule is a conclusive presumption, the Due Process Clause demands more than a mere token hearing on whether the rule applies to a certain fact pattern. Rather, it demands meaningful participation in the judicial process by opening the range of evidentiary matters that may be presented. Hence, to accord Victor real due process, he must be allowed to contest the conclusive presumption underlying the iron curtain rule.

But, of course, in a court of law, Victor must still prove that his grandmother did not harbor any anger towards him. Thus, he may present as evidence, among others: (1) the fact of support from the decedent; (2) a void will that names him as an heir; (3) a failed attempt by the decedent to adopt the illegitimate child; and (4) the testimonies of those who witnessed the love and affection showered by his grandmother on him. The evidentiary possibilities are endless.

And if Victor can show that his grandmother, Simona, harbored no ill-will towards him when she was still alive, then Victor, as a matter of right, should be able to succeed. The aim of the law in preserving family relations is fulfilled. Moreover, the disposition of the case would align more to the wishes of the deceased. Indeed, the dissent of Justice Hugo Gutierrez, Jr. in *Diaz* might just be true in Victor's case:

> My dissent from the majority opinion is also premised on a firm belief that law is based on considerations of justice. The law should be interpreted to accord with what appears right and just. *Unless the opposite is proved, I will always presume that a grandmother loves her grandchildren—legitimate or illegitimate*—more than the second cousins of said grandchildren or the parents of said cousins. The grandmother may be angry at the indiscretions of her son but why should the law include the innocent grandchildren as objects of that anger. "Relatives" can only refer to collateral relatives, to members of a separate group of kins but not to one's own grandparents.[170]

From a structural due process perspective, applying the irrebuttable resumption analysis to the iron curtain rule is a surefire way to account for changes in how society views illegitimacy. In other words, as society becomes more accepting of illegitimate children, the easier it will be to prove the absence of enmity between the putative heir and the decedent. It accords Congress a certain leeway in maintaining the classification, seeing that it might have some basis in experience. However, the irrebuttable presumption

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[170] *Diaz*, (Gutierrez, *J.*, *dissenting*), 182 SCRA 427, 438-439. (Emphasis supplied.)

framework also provides an opening to obtain an exception from the law's sweeping classification.

## CONCLUSION

Tolstoy, describing the caprices of family life, said that "[h]appy families are all alike; every unhappy family is unhappy in its own way."[171] In the same way, all legitimate children are alike—born to married father and mother or adopted to a family. This Note is an attempt to capture the unique circumstances surrounding illegitimate children and their parents' legitimate relatives—that it may not be all resentment and ill-will as the law would want us to believe, or that the child's parents might have chosen not to get married—indeed, the permutations abound.

The aim of this Note is two-fold: first, the introduction of the irrebuttable presumption analysis as a new viable constitutional framework for judicial review, and second, the demonstration of the utility of this new framework by showing how it applies to the iron curtain rule.

Using this framework, the iron curtain rule should not be viewed as a conclusive presumption of enmity that bars succession between an illegitimate child and her parents' legitimate relatives. Thus, by preclusion of evidence on the very factual issue conclusively presumed, the iron curtain rule denies due process. Thus, to vouchsafe a litigant's right to a meaningful participation in the judicial process, the conclusive presumption of enmity should give way to contrary evidence.

The Supreme Court has already started treading this path. In *Suntay III v. Cojuangco-Suntay*,[172] the Court relaxed the application of the iron curtain rule because the evidence overwhelmingly showed the absence of ill-will against the illegitimate child. However, *Suntay III* admittedly was an exceptional case—the illegitimate grandchild was reared from infancy by his legitimate grandparents, and the illegitimate grandchild was subsequently adopted by his grandfather. These circumstances impelled the Court to conclude that "[the] peculiar circumstances of [that] case, [...] overthrow the legal presumption in Article 992 of the Civil Code that there exist animosity

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[171] Opening line of LEO TOLSTOY, ANNA KARENINA (Constance Garnett trans., 1901) (1848), *available at* http://www.gutenberg.org/files/1399/1399-h/1399-h.htm (last visited July 4, 2018) [https://perma.cc/7JW5-6JNT].

[172] 621 SCRA 142.

and antagonism between legitimate and illegitimate descendants of a deceased."[173]

With the irrebuttable presumption framework, the Court need not look for extraordinary circumstances to disregard the iron curtain rule. On the contrary, the Constitution itself, through the Due Process Clause, commands the courts to disregard the conclusiveness, not only of the iron curtain rule, but any irrebuttable presumption. In effect, groups aggrieved by an irrebuttable presumption now possess a fighting chance to have a dialogue with the law, and show that what the law has in mind has not transposed itself to reality. Indeed, in the case of the iron curtain rule, love, in the end, might just overcome the "irrebuttable" presumption of enmity.

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[173] *Id.* at 157.