

PRESIDENTIAL SUCCESSION AND ITS CONSTITUTIONAL DILEMMA: AVERTING A CRISIS IN DEMOCRATIC LEGITIMACY*

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ABSTRACT

Under the Constitution, only the vice-president can fully succeed the presidency upon the death of the president. While there is a “succession” scheme in the event that the Offices of the President and the Vice-President become simultaneously vacant, the officials who are next in the line of succession—the senate president, or in his or her absence, the house speaker—will only serve as “acting president” until a special election is conducted within a specific timeframe. But what happens when the senate president and the house speaker perish together with the president and the vice-president? Two bills were filed in the 18th Congress in an attempt to address this question. These bills expressly sought to adopt the American practice of having a “designated survivor” who would be sequestered to a secure location during major government events. However, it is argued that reference to U.S. succession laws is misplaced since the Philippine law on presidential succession has long diverged from its American counterpart. Furthermore, these bills would only address one of the two scenarios that may lead to a constitutional crisis, in the event of simultaneous vacancies in the top four elective offices of the Philippine government. The other scenario, which is argued as a fatal flaw in drafting the Constitution, may only be remedied through a constitutional amendment.

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“Men may die, but the fabrics of our free institutions remain unshaken. No higher or more assuring proof could exist of the strength and permanence of popular government than the fact that though the chosen of the people be struck down[,] his constitutional successor is peacefully installed without shock or strain except the sorrow which mourns the bereavement.”

—Chester A. Arthur¹

INTRODUCTION

Congress is once again in the public spotlight after the filing of two bills aiming to extend the presidential line of succession. These bills resurfaced amidst the uncertainty surrounding the status of President Rodrigo Duterte's health,² and the renewed calls for a revolutionary government by his supporters.³ The spike in public interest was expected, but who would have thought that two bills of significant importance would be inspired by a Western political drama?

The American television show “Designated Survivor” followed the story of Secretary of Housing and Urban Development Tom Kirkman, who, on the day of the U.S. State of the Union Address, was informed that he was about to be unceremoniously relieved from his post. The White House Chief of Staff also informed Secretary Kirkman that the President had chosen him as the “designated survivor.” As the “designated survivor,” Kirkman was inconspicuously ushered to a safe location while every other person in the line of presidential succession attended the State of the Union Address. However, during the President’s speech, a bomb planted by a terrorist exploded, destroying the U.S. Capitol and killing the President, Vice-President, Speaker of the House, Senate President *pro tempore*, and all other members of the

¹ Chester Arthur, Address Upon Assuming the Office of the President of the United States, THE AMERICAN PRESIDENCY PROJECT, Sept. 22, 1881, at <https://www.presidency.ucsb.edu/node/204710>.

² Raissa Robles, *If Duterte is too ill to lead the Philippines, who is next in line for power?*, S. CHINA MORNING POST, Oct. 9, 2018, available at <https://www.scmp.com/week-asia/politics/article/2167573/if-duterte-too-ill-lead-philippines-who-next-line-power>.

³ Trisha Mostoles & Aleta Nieva Nishimori, *Group of Duterte supporters calls for revolutionary government, launches people's initiative*, ABS-CBN NEWS, Aug. 22, 2020, at <https://news.abs-cbn.com/news/08/22/20/group-of-duterte-supporters-calls-for-revolutionary-government-launches-peoples-initiative>.

Cabinet. Thus, what should have been his last night as a Cabinet official became the beginning of Kirkman's presidency.⁴

While the show's plot is purely fictional, the scenario is not unlikely to happen in the Philippines. Is it remote? Perhaps. Is it impossible in an era where several countries have developed more advanced weapons technology? No. In fact, in 2007, an improvised bomb exploded within the premises of the House of Representatives—the venue of the annual State of the Nation Address (“SONA”)—just as a regular session ended. This resulted in the death of then-Basilan Representative Wahab Akbar.⁵

At present, the COVID-19 pandemic poses a similarly grave threat. It has not only halted the economy of almost all countries, but has also afflicted many heads of government across the globe.⁶ No less than former U.S. President Donald Trump has tested positive for COVID-19.⁷ In the Philippines, at least two members⁸ of the House of Representatives have died from COVID-19, while at least five senators⁹ and several other

⁴ *Designated Survivor: Pilot* (ABC television broadcast, Sept. 21, 2016).

⁵ *Philippine congressman assassinated*, AL JAZEERA, Nov. 13, 2007, at <https://www.aljazeera.com/news/2007/11/13/philippine-congressman-assassinated-2>.

⁶ Among other top officials who have contracted the virus are: President Jair Bolsonaro of Brazil, Prime Minister Boris Johnson and Prince Charles of the United Kingdom, Vice-President Eshaq Jahangiri of Iran, Prince Albert II of Monaco, and President Juan Orlando Hernandez of Honduras. See Vincent Wood, *Trump coronavirus: Which world leaders and officials have had Covid-19?*, THE INDEPENDENT, Oct. 2, 2020, available at <https://www.independent.co.uk/news/health/coronavirus-world-leaders-trump-jair-bolsonaro-boris-johnson-covid-19-a9607071.html>; Darcy Palder & Amy Mackinnon, *Coronavirus in the Corridors of Power*, FOREIGN POL'Y, Mar. 18, 2020, available at <https://foreignpolicy.com/2020/03/18/coronavirus-corridors-power-which-world-leaders-have-covid-19/>; Kayla Epstein & Kelly McLaughlin, *These 13 government officials and world leaders have reportedly tested positive for COVID-19*, INSIDER, Mar. 28, 2020, at <https://www.businessinsider.com/coronavirus-government-officials-around-the-world-test-positive-2020-3>.

⁷ Katanga Johnson & David Lawder, *Factbox: White House staff, top Republicans who have tested positive for COVID-19*, REUTERS, Oct. 4, 2020, at <https://www.reuters.com/article/us-health-coronavirus-trump-exposure-fac/factbox-white-house-staff-top-republicans-who-have-tested-positive-for-covid-19-idUSKBN26P0P5>.

⁸ *Sorsogon Rep. Ramos dies after COVID-19 diagnosis*, CNN PHIL., Sept. 8, 2020, at [https://www.rappler.com/nation/senior-citizens-lawmakers-francisco-datol-jr-dies](https://cnnphilippines.com/news/2020/9/8/Sorsogon-Rep.-Ditas-Ramos-dies-.html?fbclid=IwAR2yhxqUpK2-RLfgtBpEajcSk4gQQOU9-2HOvtgoNQ9MHLr8ewsOriwKdSs; Mara Cepeda, Senior Citizens lawmaker Francisco Datol Jr dies of COVID-19</i>, RAPPLER, Aug. 10, 2020, at <a href=).

⁹ Senators Miguel Zubiri, Aquilino "Koko" Pimentel III, Sonny Angara, Ramon "Bong" Revilla, Jr., and Senator Bato dela Rosa had been infected with the virus. See Joyce Ilas, *Senator Bato dela Rosa catches COVID-19*, CNN PHIL., Nov. 21, 2020, at <https://www.cnnphilippines.com/news/2020/11/21/ronald-bato-dela-rosa-COVID-19.html>.

representatives have been infected.¹⁰ The ongoing pandemic, coupled with the uncertainties surrounding the 75 year-old President's health in the past few months,¹¹ makes it prudent to revisit the rules on presidential succession, as they could soon be put to the test.

Another reason to inquire into this topic is the general public's lack of understanding of the Philippine rules on presidential succession. A cursory look at the comments section of reputable media outlets covering the aforementioned bills would show that despite the ordinary words employed by the Constitution, there seems to be confusion regarding the provision's proper interpretation.¹² This is unsurprising, given that some of the leading commentaries on the 1987 Constitution lack substantial discussion on the provisions governing presidential succession, particularly Article VII, Section 8.¹³

Finally, presidential succession is an important topic to discuss as the enactment of a statute that would extend the presidential line of succession is a duty imposed by the Constitution on Congress.¹⁴ Despite the use of the mandatory word "shall" in the 1987 Constitution, no such law has been enacted in the past 34 years to extend the presidential line of succession. Thus, this Note aims to further the discourse on the topic that would hopefully prove useful to Philippine legislators and future drafters of constitutional amendments.

Part I provides a brief overview of the presidential succession laws in the Philippines, starting with the 1935 Constitution and culminating with the 1987 Constitution. The Philippine rules on succession will be compared with

¹⁰ *Sorsogon congresswoman Ditas Ramos tests positive for coronavirus*, RAPPLER, Sept. 6, 2020, at <https://www.rappler.com/nation/sorsogon-congresswoman-ditas-ramos-positive-coronavirus>.

¹¹ See *De Leon v. Duterte*, G.R. No. 252118, May 8, 2020.

¹² See CONST. art. VII, § 8, ¶ 1.

¹³ In his commentary, Fr. Bernas explained that Section 10 is another rule that deals with the "rather rare probability of having a vacancy in both the presidency and vice-presidency." See JOAQUIN BERNAS, *THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY* 859 (2006 ed.). Justice Cruz also presented the provision without any commentary. See also ISAGANI CRUZ, *PHILIPPINE POLITICAL LAW* 354-55 (2014).

¹⁴ CONST. art. VII, § 7, ¶ 6. "The Congress shall, by law, provide for the manner in which one who is to act as President shall be selected until a President or a Vice-President shall have qualified, in case of death, permanent disability, or inability of the officials mentioned in the next preceding paragraph."

Art. VII, § 8, ¶ 2. "The Congress shall, by law, provide who shall serve as President in case of death, permanent disability, or resignation of the Acting President. He shall serve until the President or the Vice-President shall have been elected and qualified, and be subject to the same restrictions of powers and disqualifications as the Acting President."

those of the United States, with the observation that the former has paralleled the development of its statutory succession rules to that of the latter. In 1987, however, the Philippines adopted the framework of U.S. presidential succession law, not as a statute, but as a provision in the Constitution itself. This elevation to constitutional status has changed both how the provision is interpreted and how it could be remedied in case of conflict.

Part II distinguishes among the kinds of presidential successors: the constitutional successor, the constitutional acting successor, and the statutory successor. It is argued that statutory successors can only assume the role of acting president if either the senate president or the house speaker—the constitutional acting successors—had validly assumed the position of acting president beforehand.

Part III introduces the concept of “constitutional crises” as understood in the legal academic field, and contrasts it with how it is used by officials and courts in the Philippines. This Part will introduce two possible scenarios that would cause a power vacuum, which would then lead to a constitutional crisis. These are: (1) when either the senate president or speaker of the house assumes the role of acting president and subsequently dies, resigns, or becomes permanently incapacitated, and there is no statute extending the line of succession; and (2) when the Offices of the President, Vice-President, Senate President, and Speaker of the House simultaneously become vacant, regardless of whether there is a statute extending the line of succession. Based on these scenarios, it is posited that the problem with Philippine presidential succession rules is not the absence of legislation extending the line of succession, but the way the wording of the present Constitution allows for a power vacuum.

Part IV supports the earlier discussion by examining the 1987 Constitution to determine whether it is capable of addressing the power vacuum and consequent constitutional crises—a query that this Note answers in the negative. There is no constitutional mechanism that allows any person who is not the vice-president, the senate president, or the speaker of the house to assume the presidency in order to remedy the said crises.

Part V circles back to the two bills filed in the 18th Congress that claim to address the possibility of a “constitutional crisis.” This Part concludes that, at best, Senate Bill No. 982¹⁵ addresses only one of the two possible

¹⁵ S. No. 982, 18th Cong., 1st Sess. (2019). An Act Prescribing the Order of Presidential Succession.

events that will lead to such a crisis. Meanwhile, House Bill No. 4062¹⁶ fails to address either scenario. This discussion affirms the author's thesis that legislation itself is not the solution to avert the constitutional crises. Instead, the risk of having a power vacuum can only be remedied through a constitutional amendment.

Part VI discusses the legal and policy considerations that must be addressed by future drafters of presidential succession rules. Given the similarities in government structure and succession rules between the Philippines and the United States, this Note draws from the experience of the latter to be used in identifying such issues.

Finally, in Part VII, the recommendations are provided on how to proceed with the constitutional amendment.

I. HISTORY OF THE PRESIDENTIAL SUCCESSION LAWS

This part of the Note will delve into the Philippines' different rules on presidential succession since 1935, as provided by the different constitutions and statutes. A brief overview of these laws would show that the constitutional framers and lawmakers have failed to close the loopholes in our existing presidential succession rules.

TABLE 1. History of Succession Laws

Presidential Succession
1935 Constitution¹⁷
President Vice-President
C.A. No. 68¹⁸
President Vice-President *Elected by Representative In Acting Capacity: Secretary of Interior (temporary) Secretary of Finance Secretary of Justice Secretary of Agriculture and Commerce Secretary of Public Works and Communications Secretary of Public Instruction Secretary of Labor ¹⁹

¹⁶ H. No. 4062, 18th Cong., 1st Sess. (2019). Presidential Succession Act.

¹⁷ CONST. (1935), art. VII, § 7.

¹⁸ Com. Act No. 68 (1936), §§ 1–2.

¹⁹ Act No. 2711 (1917), § 75.

E.O. No. 390 ²⁰
President Vice-President Secretary to the President Secretary of Finance Secretary of National Defense Secretary of Justice Secretary of Agriculture and Commerce Secretary of Public Works and Communications Secretary of Public Instruction Secretary of Labor Secretary of Health and Public Welfare
Rep. Act No. 181 ²¹
Vice-President Senate President (Acting) House Speaker (Acting) *Elected Senator or Representative by Congress in joint session
1973 Constitution ²²
President Executive Committee Headed by the Prime Minister Speaker of the Batasang Pambansa
1973 Constitution (as amended) ²³
President Speaker of the National Assembly
1987 Constitution ²⁴
President Vice-President Senate President (Acting) House Speaker (Acting)

A. 1935 Constitution

The rule on Philippine presidential succession begins with the 1935 Constitution which, for the first time, allowed Filipinos to directly elect the first Philippine president²⁵ and to have complete control over the legislative department.²⁶ The provision on presidential succession in the 1935

²⁰ Exec. Order No. 390 (1941).

²¹ Rep. Act No. 181 (1947), § 1. An Act Prescribing the Order of Presidential Succession.

²² CONST. (1973), art. VII, § 4.

²³ CONST. (1973, amend.), art. VII, § 5.

²⁴ CONST. art. VII, §§ 7–8.

²⁵ Maximo Kalaw, *The New Constitution of the Philippine Commonwealth*, 13 FOREIGN AFF. 687, 689 (1935).

²⁶ *The History of the Senate of the Philippines*, OFFICIAL GAZ., available at <https://www.officialgazette.gov.ph/featured/the-history-of-the-senate-of-the-philippines> (last visited Feb. 24, 2020). *But see* Act No. 2711 (1917), § 60, which authorizes the U.S.

Constitution is a near-exact copy of Article II, Section 1, Clause 6 of the U.S. Constitution. Section 9, Article VII of the 1935 Constitution states:

In the event of the removal of the President from office or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice-President, and the National Assembly shall by law provide for the case of removal, death, resignation, or inability, both of the President and Vice-President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed or a President shall be elected.²⁷

On the other hand, Article II, Section 1, Clause 6, of the U.S. Constitution provides:

In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the Same shall devolve on the Vice President, and the Congress may by law provide for the Case of Removal, Death, Resignation or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.²⁸

There are minimal differences between the two provisions. These include punctuation, capitalization, and the use of the word “Congress” instead of “National Assembly.” This was merely a matter of nomenclature, as the Philippines had a unicameral legislature during the promulgation of the 1935 Constitution.²⁹ After the 1935 Constitution was amended in 1941 to reflect the transition to a bicameral legislature,³⁰ its presidential succession provision became identical to that of the U.S. Constitution.³¹

Under the 1935 Constitution, the officer designated by statute to serve as acting president would only do so until the selection of a new president via special election.³² However, it must be noted that because there

President to appoint a Governor-General from among the Department Secretaries in the event of the incumbent Governor-General's incapacity.

²⁷ CONST. (1935), art. VII, § 9.

²⁸ U.S. CONST. art. II, § 1, cl. 6.

²⁹ *Supra* note 26. The unicameral legislative assembly was changed into a bicameral one in 1941 through an amendment of the 1935 Constitution. The term was subsequently changed from “National Assembly” to “Congress” in the amended 1935 Constitution.

³⁰ *Id.*

³¹ Compare CONST. (1935, amend.), art. VII, § 8; with U.S. CONST. art. II, § 1, cl. 6.

³² CONST. (1935), art. VII, § 9.

was no designated time frame provided for the holding of the special election, such an election may, in theory, never materialize. Had the Offices of the President and Vice-President become simultaneously vacant, whoever would have succeeded as acting president based on the prevailing special law could have finished the term without interruption. This situation may be compared to when former U.S. President William Harrison died just a month after assuming office.³³ Notwithstanding opposition from members of Congress and authorities of constitutional law, Vice-President John Tyler asserted that he had fully “succeeded” to the Presidency and was not a mere “acting president.” He then went on to serve for the remainder of the term. It should be noted that at the time, the prevailing interpretation of the text of the U.S. Constitution was that the vice-president does not succeed the presidency, and can only serve as “acting president.”³⁴ Instead, Tyler’s assertion created a precedent used by succeeding vice-presidents, which was subsequently institutionalized in the 25th Amendment of the U.S. Constitution.³⁵

B. Commonwealth Act No. 68

In compliance with the constitutional imperative, the National Assembly enacted Commonwealth Act No. 68 (C.A. No. 68) in 1936. Under this law, in the event of the removal, death, resignation, or inability of the president and the vice-president, “the National Assembly shall forthwith convene and elect, by a majority vote of all its Members, the person or officer who shall act as President until the President-elect or the Vice President-elect shall have qualified, the inability removed, or a President shall have been elected.”³⁶ The provision also states that when the aforementioned inability becomes permanent, “the National Assembly shall determine by resolution whether or not a special election shall be held to elect a President.”³⁷ Thus, under C.A. No. 68, the legislature would decide who would act as temporary president. The pool for the selection of such person was not limited to the members of the National Assembly or the Cabinet. The law also ensures that the Republic would never be without a chief executive in between the occurrence of the vacancy and the election in the National Assembly. Section 2 thereof provides that: “pending the election of an acting president by the

³³ John Feerick, *The Problem of Presidential Inability-Will Congress Ever Solve It?*, 83 FORDHAM L. REV. 73, 74 (2015).

³⁴ JOSE ARUEGO, *THE FRAMING OF THE PHILIPPINE CONSTITUTION* 419 (1936).

³⁵ *Id.*; Romeo Torres, *Presidential Succession*, 7 ATENEO L.J. 365, 369 (1958); JOHN FEERICK, *FROM FAILING HANDS: THE STORY OF PRESIDENTIAL SUCCESSION* 88–98 (1965); Ruth Silva, *Presidential Succession and Disability*, 21 LAW & CONTEMP. PROBS. 646, 648-49 (1956).

³⁶ Com. Act No. 68 (1936), § 1.

³⁷ § 1.

National Assembly, a Department Secretary, in the order of rank established in the Administrative Code, will perform the duties of temporary President.”³⁸

However, the problem with C.A. No. 68 was that it did not provide for immediate special elections for the positions of president and vice-president. This would have allowed the acting president, who was elected by the National Assembly, to remain in power and finish the term. If Congress had failed to elect an acting president, the temporary president—a department secretary—could have similarly finished the term.

C. Commonwealth Act No. 671 and Executive Order 390

Commonwealth Act No. 671 (C.A. No. 671) was enacted on December 16, 1941, in the advent of the Japanese invasion of the Philippines. Due to the exigencies of that time, Congress felt that it was necessary to vest the President with extraordinary powers, including the power to reorganize the order of succession through legislation.³⁹ Subsequently, invoking the aforementioned power, President Manuel L. Quezon issued Executive Order No. 390 (E.O. No. 390) which prescribed the “order of precedence and/or succession to the Presidency of the Philippines”⁴⁰ in case of vacancies or inability in both the Offices of the President and Vice-President. Under E.O. No. 390, the new line of succession, in descending order, would be the following: Secretary to the President, Secretary of Finance, Secretary of National Defense, Secretary of Justice, Secretary of Agriculture and Commerce, Secretary of Public Works and Communications, Secretary of Public Instruction, Secretary of Labor, and lastly, the Secretary of Health and Public Welfare.

The obvious difference between E.O. No. 390 and C.A. No. 68 is that the former eliminated the necessity of Congress electing an acting president. This was based on the fact that the members of Congress might not be able to physically meet in the first place. However, it must be noted that the line of succession still generally follows the order found in the Administrative Code, but with the addition of the Secretary of National Defense and the Secretary of Health and Public Welfare, and the removal of the Secretary of the Interior.⁴¹

³⁸ § 2.

³⁹ See §§ 1–2.

⁴⁰ Exec. Order No. 390 (1941), ¶ 1. Prescribing the Order of Presidential Succession and Abolishing the Department of Interior.

⁴¹ ¶ 2. “The Department of the Interior is hereby abolished and all its bureaus and offices and their powers, functions, duties, records, documents, furniture, office equipment,

In the end, the only pragmatic effect of E.O. No. 390 was the rearrangement of the order of succession among the department secretaries. In reality, had C.A. No. 68 been applied in the absence of E.O. No. 390, one of the Cabinet secretaries would still have become temporary president under Section 2 of the former.⁴² However, said Cabinet member would only serve as acting president, since only the vice-president was allowed to fully succeed the presidency under the 1935 Constitution. The Cabinet member could have continued as acting president until the end of the term because the law did not call for a special election. In any case, E.O. No. 390 should be recognized as the law that institutionalized the succession of the Cabinet members as acting president, instead of a mere interim president as was provided in C.A. No. 68.

Interestingly, E.O. No. 390 made the Philippine rules on presidential succession similar to those of the United States. During its enactment, the prevailing law in the United States was the Succession Act of 1886.⁴³ Under said statute, the members of the Cabinet, beginning with the Secretary of State, were installed as the immediate successors in the absence of both the president and the vice-president.⁴⁴

and property shall be distributed in Commonwealth Act Number Six hundred sixty, effective January 1, 1942.”

⁴² Com. Act No. 68 (1936), § 2.

⁴³ 24 Stat. 1, Pub. Acts of the 49th Cong. of the U.S. [hereinafter “Presidential Succession Act of 1886”] (1886). *See also* Ruth Silva, *The Presidential Succession Act of 1947*, 47 MICH. L. REV. 451, 452 (1949); FEERICK, *supra* note 35, at 140–46.

⁴⁴ Presidential Succession Act of 1886, § 1. “*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in case of removal, death, resignation, or inability of both the President and Vice-President of the United States, the Secretary of State, or if there be none, or in case of his removal, death, resignation, or inability, then the Secretary of the Treasury, or if there be none, or in case of his removal, death, resignation, or inability, then the Secretary of War, or if there be none, or in case of his removal, death, resignation, or inability, then the Attorney-General, or if there be none, or in case of his removal, death, resignation, or inability, then the Postmaster-General, or if there be none, or in case of his removal, death, resignation, or inability, then the Secretary of the Navy, or if there be none, or in case of his removal, death, resignation, or inability, then the Secretary of the Interior, shall act as President until the disability of the President or Vice-President is removed or a President shall be elected: Provided, that whenever the powers and duties of the office of President of the United States shall devolve upon any of the persons named herein, if Congress be not then in session, or if it would not meet in accordance with law within twenty days thereafter, it shall be the duty of the person upon whom said powers and duties shall devolve to issue a proclamation convening Congress in extraordinary session, giving twenty days’ notice of the time of meeting.*” (Emphasis in the original.)

D. Republic Act No. 181

Republic Act (R.A.) No. 181 expressly repealed C.A. No. 68 and E.O. No. 390.⁴⁵ This law replaced the Cabinet members with the senate president and the speaker of the house in the presidential line of succession. In case of the death, permanent incapacity, or disability of the House Speaker, or if there is none at all, R.A. No. 181 required Congress to elect among themselves an acting president through a majority vote.⁴⁶

It is interesting to note that R.A. No. 181 was passed on June 21, 1947, the same year that the Presidential Succession Act of 1947 was passed in the United States.⁴⁷ This shows how both the United States and the Philippines simultaneously shifted away from the previous practice of having Cabinet members as immediate successors. For the United States, the Presidential Succession Act of 1947 brought the house speaker and senate president *pro tempore* back to the front of the line of succession, contrary to preceding succession law.⁴⁸ The reason behind this change was President Truman's argument that the acting president needed to be an elected official with a mandate.⁴⁹

However, unlike C.A. No. 68, R.A. No. 181 does not provide as to who will sit as temporary president pending Congress' selection of an acting president in the absence of the senate president and the house speaker.⁵⁰ Thus, a power vacuum would have been created from the time the vacancy existed, until the election of an acting president by a joint session of Congress.

E. The 1973 Constitution

The 1973 Constitution reflected the shift to a parliamentary form of government. This change consequently affected the line of presidential succession. Article VII, Section 7 thereof states that: "In case of permanent disability, death, removal from office or resignation of the President, the Executive Committee headed by the Prime Minister [...] shall exercise the

⁴⁵ Rep. Act No. 181 (1947), § 2.

⁴⁶ § 1.

⁴⁷ Paolo Celeridad, *Convention v. Coherence: An Alternative Perspective on Philippine Presidential Succession*, 84 PHIL. L.J. 1077, 1090–91 (2010).

⁴⁸ Silva, *supra* note 43, at 451–53; FEERICK, *supra* note 35, at 57–62.

⁴⁹ Silva, *supra* note 43, at 453; FEERICK, *supra* note 35, at 204–05; Ser. 110, 108th US Cong., 2nd Sess. (2004). *Presidential Succession Act: Hearing Before the Subcomm. on the Constitution on H. Comm. on the Judiciary*, 108th Cong. [hereinafter "Presidential Succession Act Hearing"] (2004).

⁵⁰ Compare Rep. Act No. 181 (1947), § 1; with Com. Act No. 68 (1941), § 2.

powers of the President until a President shall have been elected and qualified.”⁵¹ Unlike in the previous succession laws, the 1973 Constitution provided for a mandatory special election in case of a presidential vacancy. The election for a new president must be held within 90 days after the vacancy occurs. The only exception is when the vacancy occurs less than 18 months before the end of the presidential term. The 1973 Constitution also provided that: “In the absence of an Executive Committee, the Speaker [of the Batasang Pambansa] shall act as the President” until a new one is elected.⁵²

A later amendment to the 1973 Constitution abolished the Executive Committee and this was reflected in its succession provisions.⁵³ Here, the Speaker of the National Assembly becomes the acting president in case a vacancy occurs. The presidential line of succession now ends with the Speaker and can no longer be extended by an act of Congress.

F. The 1987 Constitution

The rule on presidential succession, as presently worded in the 1987 Constitution, provides:

In case of death, permanent disability, removal from office, or resignation of the President, the Vice-President shall become the President to serve the unexpired term. In case of death, permanent disability, removal from office, or resignation of both the President and Vice-President, the President of the Senate or, in case of his inability, the Speaker of the House of Representatives, shall then act as President until the President or Vice-President shall have been elected and qualified.

The Congress shall, by law, provide who shall serve as President in case of death, permanent disability, or resignation of the Acting President. He shall serve until the President or the Vice-President shall have been elected and qualified, and be subject to the same restrictions of powers and disqualifications as the Acting President.⁵⁴

⁵¹ CONST. (1973), art. VII, § 7, ¶ 1.

⁵² Art. VII, § 7, ¶ 2.

⁵³ CONST. (1973, amend.), art. VII, § 5. “In case of permanent disability, death, removal from office, or resignation of the President, the Speaker of the National Assembly shall act as President until a successor has been elected for the unexpired portion of the term of the President.”

⁵⁴ CONST. art. VII, § 8.

According to Jose Aruego, the 1987 Constitution made the real intention of the framers of the 1935 Constitution clear: that the vice-president fully succeeds the presidency in case of death, permanent disability, removal from office, or resignation of the president.⁵⁵

Nevertheless, the provision deserves closer inspection because there still seems to be some confusion. The present Constitution expressly provides that only the vice-president fully succeeds upon the president's death as denoted by the words "shall become the President."⁵⁶ The treatment should be differentiated from that of the senate president or the house speaker, or the officer installed as successor through special law. The senate president, or in his absence, the house speaker, shall only "act" as president and only "until the President or Vice-President shall have been elected and qualified."⁵⁷

The same treatment is applicable to the "president" who shall serve in the absence of an acting president, as may be provided by statute. The second paragraph of Article VII, Section 8 makes it clear that this "president" is also "subject to the same restrictions of powers and disqualifications as the Acting President"⁵⁸ and shall serve only "until the President or the Vice-President shall have been elected and qualified."⁵⁹ Thus, whoever becomes successor as a result of the special law extending the presidential line of succession shall only serve as an acting president, and does not fully succeed to the presidency, unlike the vice-president.

Perhaps the biggest difference between Article VII, Section 8 of the 1987 Constitution and the U.S. Presidential Succession Act of 1947 is that the latter expressly provides that the acting successor, without prejudice to subsequent bumping and supplantation, will finish the remainder of the term.⁶⁰ This is not the case under the 1987 Constitution, which provides that

⁵⁵ ARUEGO, *supra* note 34. See BERNAS, *supra* note 13, at 839. "[The Vice-President] has no other function than to be prepared to assume the presidency should a vacancy in the office arise."

⁵⁶ CONST. art. VII, § 7, ¶ 4.

⁵⁷ Art. VII, § 8, ¶ 1.

⁵⁸ Art. VII, § 8, ¶ 2.

⁵⁹ Art. VII, § 8, ¶ 2.

⁶⁰ 3 U.S.C. § 19 (c) (2006). The Presidential Succession Act of 1947. "An individual acting as President under subsection (a) or subsection (b) shall continue to act until the expiration of the then current Presidential term, except that – (1) if his discharge of the powers and duties of the office is founded in whole or in part on the failure of both the President-elect and the Vice-President-elect to qualify, then he shall act only until a President or Vice-President qualifies; and (2) if his discharge of the powers and duties of the office is founded in whole or in part on the inability of the President or Vice President, then he shall act only until the removal of the disability of one of such individuals."

unless the vacancies in the Offices of the President and Vice-President occur within 18 months from the next presidential election, a special election must be held within 71 days.⁶¹ The records of the 1986 Constitutional Commission reveal that the intention of the framers was for the person serving as acting president to retain his or her original position, and revert back to it upon the conclusion of the special election.⁶²

1. As Inspired by the U.S. Presidential Succession Act of 1947

Both the 1935 Philippine Constitution and the U.S. Constitution did not explicitly provide for a constitutional successor in the absence of the president and vice-president. Instead, both Constitutions directed their respective legislatures to extend the line of succession. Moreover, the enabling statutes from 1935 to 1947 for both countries exclusively installed Cabinet members in the line of succession.

Enter Vice-President Harry Truman, who became a beneficiary of the succession provision of the U.S. Constitution upon the death of his predecessor President Franklin D. Roosevelt.⁶³ Shortly after ascending to the presidency, President Truman spoke before Congress and advocated for the enactment of a new presidential succession law that would place the house speaker on top of the list of presidential successors, followed by the senate president *pro tempore*, who traditionally is the longest-serving senator of the party holding the Senate majority.⁶⁴ While the Cabinet members were still included in the line of succession, they were relegated behind the two

⁶¹ Congress shall meet three days after the occurrence of a vacancy in the positions of the President and Vice-President. Within seven days therefrom, Congress must enact a law calling a special election, which must not be held later than 60 days from such call. This puts the maximum time for the election of a President and Vice-President at 71 days. *See* CONST. art. VII, § 10.

⁶² 2 RECORD CONST. COMM'N 492 (July 31, 1986).

⁶³ Presidential Succession Act Hearing, *supra* note 49, at 12; John Fortier & Norman Ornstein, *Presidential Succession and Congressional Leaders*, 53 CATH. U. L. REV. 993, 997 (2004).

⁶⁴ FEERICK, *supra* note 35, at 205. “[B]y reason of the tragic death of the late President, it now lies within my power to nominate the person who would be my immediate successor in the event of my own death or inability to act. I do not believe that in a democracy this power should rest with the Chief Executive. Insofar as possible, the office of the President should be filled by an elective officer. There is no officer in our system of government, besides the President and the Vice-President, who has been elected by all the voters of the country. The Speaker of the House of Representatives, who is elected in his own district, is also elected to be the presiding officer of the House by a vote of all the Representatives of all the people of the Country. As a result, I believe that the Speaker is the official in the Federal Government whose selection, next to that of the President and Vice-President, can be most accurately said to stem from the people themselves.”

aforementioned legislative officials.⁶⁵ President Truman's argument was that a president should not be able to appoint his immediate successor, which is what would happen in the event that a Cabinet member, who is a presidential appointee, succeeds as acting president.⁶⁶ Congress heeded Truman's plea and enacted the U.S. Presidential Succession Act of 1947—which closely resembles the first presidential succession law enacted in 1792.⁶⁷

President Truman's argument became the basis for the Philippine Congress to enact the R.A. No. 181.⁶⁸ This later served as the inspiration for Article VII, Section 8 of the 1987 Constitution, which installed the senate president and the house speaker in the immediate line of succession after the vice-president.⁶⁹

However, while the U.S. Presidential Succession Act of 1947 included in the list of succession members of the Cabinet and provided the order thereof, the members of the 1986 Constitutional Commission decided to leave to the wisdom of the Philippine Congress the determination of the line of succession after the house speaker.⁷⁰ It must also be noted that in the U.S. Presidential Succession Act of 1947, the house speaker precedes the senate president *pro tempore*⁷¹ who, in turn, must be differentiated from the

⁶⁵ 3 U.S.C. § 19 (d)(1). “If, by reason of death, resignation, removal from office, inability, or failure to qualify, there is no President pro tempore to act as President under subsection (b) of this section, then the officer of the United States who is highest on the following list, and who is not under disability to discharge the powers and duties of the office of President shall act as President: Secretary of State, Secretary of the Treasury, Secretary of Defense, Attorney General, Secretary of the Interior, Secretary of Agriculture, Secretary of Commerce, Secretary of Labor, Secretary of Health and Human Services, Secretary of Housing and Urban Development, Secretary of Transportation, Secretary of Energy, Secretary of Education, Secretary of Veterans Affairs, Secretary of Homeland Security.”

⁶⁶ Feerick, *supra* note 33.

⁶⁷ See *Presidential Succession Act*, U.S. SENATE WEBSITE, at https://www.senate.gov/artandhistory/history/minute/Presidential_Succession_Act.htm (last visited Feb. 25, 2021). “On July 18, 1947, President Harry Truman signed the Presidential Succession Act. The original act of 1792 had placed the Senate president pro tempore and Speaker of the House in the line of succession, but in 1886 Congress had removed them. The 1947 law reinserted those officials but placed the Speaker ahead of the president pro tempore.”

⁶⁸ Celeridad, *supra* note 47, at 1092. “Congressman Enrique Medina’s explanatory note uses Truman’s arguments calling for a line of succession that is ‘more democratic and more in consonance with the spirit of our institutions, because while department secretaries are not elected by the people, the officials authorized by this measure to succeed the President are so elected.’”

⁶⁹ CONST. art. VII, § 8.

⁷⁰ Art. VII, § 8, ¶ 2.

⁷¹ 3 U.S.C. § 19 (b).

senate president, who is also the vice-president and is already in the line of succession.⁷²

2. *As a Point of Divergence from American Tradition*

The U.S. Presidential Succession Act of 1947 has been the subject of debate for decades.⁷³ Several authorities of American constitutional law have argued against its constitutionality and have questioned the wisdom of the policy, particularly the inclusion of legislative officials in the line of succession.⁷⁴ The same constitutional attacks cannot hold water in our jurisdiction because it is paradoxical to call “unconstitutional” what is exactly provided for by the Constitution.⁷⁵ Consequently, while our current presidential succession rules have been inspired by the United States, the fact that their rules are merely contained in a statute, while ours have been enacted as a provision of the 1987 Constitution has become the point of diversion with U.S. tradition and interpretation.

Ironically, the framers thought that they were making Article VII, Section 8 of the Constitution as flexible as its counterpart in the U.S. Constitution⁷⁶ by only including the senate president and the house speaker in the line of succession and leaving to the Congress the power to extend it, to wit:

MR. REGALADO. We will appreciate the formulation of an amendment to that. But the reason why we did so is that we felt that a constitutional provision specifically stating the order of succession after the Vice-President would make any future changes a little less flexible, because then we will have to have a plebiscite to amend the Constitution. In the United States, up to now, the order of succession after the Speaker is also provided by law, not by a constitutional provision.⁷⁷

⁷² See Torres, *supra* note 35, at 367. Torres notes that a consideration for why R.A. No. 181 placed the Senate President before the House Speaker in the line of succession is the fact that the Philippine Vice-President does not preside over the Senate as is the case in the United States.

⁷³ See, generally, Presidential Succession Act Hearing, *supra* note 49.

⁷⁴ Akhil Reed Amar & Vikram David Amar, *Is the Presidential Succession Law Constitutional?*, 48 STAN. L. REV. 113, 133 (1995). See, generally, Richard Albert, *The Constitutional Politics of Presidential Succession*, 39 HOFSTRA L. REV. 497, 508 (2011); Fortier & Ornstein, *supra* note 63, at 997–98; See also Silva, *supra* note 43, at 454.

⁷⁵ See *infra* Part VI.A.

⁷⁶ See U.S. CONST. art. II, § 1, cl. 6.

⁷⁷ 2 RECORD CONST. COMM’N 391 (July 29, 1986).

However, as discussed earlier, under the U.S. Constitution,⁷⁸ only the vice-president is explicitly included in the line of succession. Furthermore, the U.S. Constitution delegated to Congress the power to further extend the line of succession.⁷⁹

Inadvertent or not, the institutionalization of the U.S. Presidential Succession Act of 1947, through the inclusion of the senate president and the house speaker, has molded the Philippine interpretation of the separation of powers. Through the ratification of the Constitution by the people, as opposed to the mere process of legislation in the United States, the Filipino nation has accepted the capacity of Philippine legislators to succeed as acting president.

The other consequence is that any problem arising from the current phrasing of the Philippine rule on presidential succession will require constitutional amendment as a solution. In contrast, the U.S. rule on presidential succession can easily be amended or repealed through the enactment of another succession law by the U.S. Congress.

II. DECONSTRUCTING THE PRESIDENTIAL SUCCESSORS UNDER THE 1987 CONSTITUTION

Under the 1987 Constitution, there are three types of successors: (1) the constitutional successor, (2) the constitutional acting successors, and (3) the statutory successors. It is important to distinguish among the three because the Constitution affords each type with its own conditions for their valid assumption of the position of acting president.

TABLE 2. Succession Under the 1987 Constitution

Type	Position	Requisites
Constitutional Successor	Vice-President	Vacancy in the Office of the President
Constitutional Acting Successors	Senate President	Vacancies in the Offices of the President and Vice-President
	House Speaker	Vacancies in the Offices of the President, Vice-President, and Senate President
Statutory Acting Successors	Provided for by Law	Vacancies in the Offices of the President and Vice-President, assumption of a constitutional acting successor as acting president, and the

⁷⁸ U.S. CONST. art. II, § 1, cl. 6.

⁷⁹ See *supra* Part I.A.

		subsequent death, permanent disability, or resignation of the constitutional acting successor.
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The first kind of successor, the *constitutional successor*, pertains to the vice-president, who, following a vacancy in the Office of the President, shall fully succeed as president.⁸⁰

The second kind of successor pertains to the constitutional *acting successors*. This pertains to the senate president, or, in his inability, the house speaker.⁸¹

The third kind of successor is the *statutory successor* as described under the last paragraph of Article VII, Section 8. This pertains to those who, by the determination of Congress, shall become acting president if the second kind of successor, the constitutional acting successor, dies, becomes permanently disabled, or resigns while serving as acting president.⁸²

The constitutional successor—the vice-president—becomes the actual president upon a vacancy in the Office of the President. The ascension of the constitutional acting successors, the senate president or the house speaker, is premised on the absence of the constitutional successor and is characterized as merely in an acting capacity, given the constitutional time frame for special elections. This was made clear in the deliberations of the 1986 Constitutional Commission, to wit:

[MR. RODRIGO]. Section 9 deals with permanent disability. So if both the President and Vice-President die, become permanently disabled or are removed from office, the Senate President becomes permanent President[?]

MR. REGALADO. No, he is only in an acting capacity.

MR. RODRIGO. He is only Acting President until the end of the term or until a President is elected?

⁸⁰ CONST. art. VII, § 8, ¶ 1. “In case of death, permanent disability, removal from office, or resignation of the President, the Vice-President shall become the President to serve the unexpired term.”

⁸¹ Art. VII, § 8, ¶ 1.

⁸² Art. VII, § 8, ¶ 2. “The Congress shall, by law, provide who shall serve as President in case of death, permanent disability, or resignation of the Acting President. He shall serve until the President or the Vice-President shall have been elected and qualified, and be subject to the same restrictions of powers and disqualifications as the Acting President.”

MR. REGALADO. Until a President shall have been elected under the circumstances envisioned in Section 10.

MR. RODRIGO. So, the Senate President and the Speaker, in the same way, do not lose their positions as Senate President and Speaker and as Member of the Senate and House, respectively?

MR. REGALADO. Yes, Madam President, that is correct.⁸³

Thus, even if no special elections could be held in cases where the vacancies in the Offices of the President and Vice-President transpire within 18 months from the next presidential election, the acting president continues to perform in a mere acting capacity and does not become the actual president. This draws a clear line among the different types of successors, especially considering how the ascension of the statutory successor was phrased in the Constitution. However, the same interpretation may also be called problematic because of its potential to blur the principle of separation of powers, as will be further discussed in the succeeding parts of this Note⁸⁴

Finally, the statutory successor's existence is premised on whether the legislature will fulfill the Constitution's directive to extend the presidential line of succession. Moreover, the statutory successor's ascension into the post of acting president is dependent not merely on the absence of the constitutional successor and constitutional acting successor, but also on the prior assumption of a constitutional acting successor (i.e., senate president or house speaker) as acting president and his subsequent death, resignation, removal, or permanent incapacity. Essentially, the third kind of successor is a fallback in the event that the constitutional acting successor suddenly dies, resigns, gets removed, or becomes permanently incapacitated while serving as acting president.

Having distinguished the three types of presidential successors, it becomes clear that the rules on presidential succession, as currently worded, do not cover all possible scenarios of vacancies. For instance, in the absence of a statutory successor as a result of lack of legislation, who becomes acting president in the simultaneous absence of the constitutional successor and the constitutional acting successor? Furthermore, assuming that the statutory successor is available, what happens if the second type of successor does not get to assume the position of acting president either because the vacancies occurred simultaneously, or because the second type of successor has not been validly elected by either house of Congress? It is argued that these

⁸³ 2 RECORD CONST. COMM'N 492 (July 31, 1986).

⁸⁴ See *infra* Part VI.A.

circumstances will produce a power vacuum that may result in a constitutional crisis if not remedied through constitutional amendment and legislation.

III. DEFINING CONSTITUTIONAL CRISIS

In advocating for the passage of the Senate Bill No. 982, its sponsor argued that the passage of the bill would prevent what he calls a “constitutional crisis.”⁸⁵ To some extent, such a reason is tenable. However, the term “constitutional crisis” must first be defined to understand the propriety of its usage.

The words “constitutional crisis” have been thrown around a lot by Philippine government officials, but such a term has not been clearly defined. For instance, the late Senator Miriam Defensor Santiago gave warning of a constitutional crisis should the Supreme Court intervene in the Senate impeachment trial of the late Chief Justice Renato Corona.⁸⁶ This sentiment was reiterated by the late House of Representatives Committee on Justice Chairman Reynaldo Umali when news surfaced that then Chief Justice Maria Lourdes Sereno was seeking a temporary restraining order on the House impeachment proceedings against her from the Supreme Court.⁸⁷ From these pronouncements, it would seem that the term “constitutional crisis” is interpreted by some members of the legislative branch as the situation that would follow upon a gross violation of the separation of powers provided for by the Constitution.⁸⁸

The Supreme Court justices, however, seem to have a different interpretation. In his concurring and dissenting opinion in the case of *Padilla v. Congress*,⁸⁹ Justice Marvic M.V.F. Leonen argued that the ruling of the majority which interpreted Section 18 of Article VII of the Constitution as allowing the two houses of Congress to vote separately, instead of jointly, on the issue of whether to extend the proclamation of martial law the whole of

⁸⁵ Ruth Abbey Gita-Carlos, *Palace sees wisdom of having ‘designated survivor’*, PHIL. NEWS AGENCY, Sept. 2, 2020, at <https://www.pna.gov.ph/articles/1114099>.

⁸⁶ Interview with Sen. Miriam Defensor Santiago (Feb. 8, 2012), available at http://legacy.senate.gov.ph/press_release/2012/0208_santiago2.asp.

⁸⁷ Joyce Ilas, *House panel chair warns of ‘constitutional crisis’ if Sereno lawyers turn to high court*, CNN PHIL., Nov. 20, 2017, at <https://cnnphilippines.com/news/2017/11/20/umali-constitutional-crisis-sereno-supreme-court.html>.

⁸⁸ The principle of separation of powers has no express provision in the Constitution, but the Court has held that it is provided by the actual division of the branches in the Constitution. See *Angara v. Electoral Comm’n*, 63 Phil. 139, 156 (1936).

⁸⁹ G.R. No. 231671, 832 SCRA 282, July 25, 2017.

Mindanao, could lead to a “constitutional crisis” in the event that the Senate and the House reach contrary decisions and they get caught in a deadlock.⁹⁰ On the other hand, Justice Teodoro Padilla, in his dissent in *Marvos v. Manglapus*,⁹¹ called the Court's refusal to grant the prayer of the family of the late dictator Ferdinand Marcos’ to return from exile and inter his body in the Philippines as violative of the constitutional right to be buried in one's own country. Justice Padilla then lamented that by ruling in this manner, the majority had “passed [on] an opportunity to defuse a constitutional crisis.”⁹² In *Francisco v. The House of Representatives*,⁹³ the Court, through Justice Conchita Carpio-Morales, held that no constitutional crisis could result from the exercise of an independent branch of the government of the powers explicitly granted to it by the Constitution.⁹⁴ This came as a response to the allegations that a refusal of the judiciary to exercise constraint over petitions questioning the legality of the second impeachment complaint against then-Chief Justice Hilario Davide Jr., which was filed just five months after the first, could lead to a constitutional crisis.⁹⁵ In *Neri v. Senate Commission on Accountability of Public Officers and Investigations*,⁹⁶ then-Chief Justice Reynato Puno, in his dissenting opinion, advised that “collisions in the exercise of constitutional powers should be avoided in view of their destabilizing effects. Reasonable efforts at negotiation and accommodation ought to be exerted, for when they succeed, constitutional crises are avoided.”⁹⁷ Meanwhile, Justice Mariano del Castillo, in his dissenting opinion in *Republic v. Sereno*,⁹⁸ said that to allow the interpretation of *quo warranto* proceedings to include impeachable officers, while at the same time upholding the immunity of the president, “opens up a possibility of a constitutional crisis.”⁹⁹ For instance, if the person elected as president is ineligible for office, Justice del Castillo argued that it would be unclear if he or she could invoke his or her immunity from suit against a *quo warranto* petition. On the other hand, Justice Antonio Carpio’s dissent in the same case considered the *quo warranto* proceeding against then-Chief Justice Sereno as an encroachment of Congress’ “exclusive mandate [...] to remove impeachable officers from office.”¹⁰⁰ This, Justice Carpio opined, “would

⁹⁰ *Id.* at 375 (Leonen, J., *dissenting*).

⁹¹ G.R. No. 88211, 178 SCRA 760, Oct. 27, 1989.

⁹² *Id.* at 769 (Padilla, J., *dissenting*).

⁹³ G.R. No. 160261, 415 SCRA 44, Nov. 10, 2003.

⁹⁴ *Id.* at 104.

⁹⁵ *Id.* at 104–05.

⁹⁶ G.R. No. 180643, 547 SCRA 77, Sept. 4, 2008.

⁹⁷ *Id.* at 246 (Puno, C.J., *dissenting*).

⁹⁸ G.R. No. 237428, 863 SCRA 690, June 19, 2018.

⁹⁹ *Id.* at 503 (Del Castillo, J., *dissenting*).

¹⁰⁰ *Id.* at 346–47 (Carpio, J., *dissenting*).

have created a constitutional crisis that could only weaken the public's faith in the primacy of the Constitution."¹⁰¹

From the foregoing, there appears to be three common causes of a constitutional crisis. The first cause is when the separation of powers among the three branches of the government—a fundamental principle of our Constitution and republican form of government—is grossly violated. When one branch is allowed to transcend its jurisdiction, the constitutional design is eroded. The second cause of a constitutional crisis is the emergence of a situation for which the Constitution offers no remedy. Lastly, the third cause is the deliberate pursuit of extra-constitutional means by state actors to address a particular problem.

The aforementioned examples are correct insofar as they are “possible causes” of constitutional crises, but they cannot be characterized as constitutional crises *per se*. According to constitutionalists Sanford Levinson and Jack Balkin, mere disagreements, that are a normal feature of politics, or any constitution which provides for a mechanism of checks and balance, do not amount to a constitutional crisis.¹⁰² As long as the constitutional design functions properly, even if state actors strongly disagree with and threaten each other, there can be no constitutional crisis. In other words, as long as the aforementioned possible causes are settled within the constitutional design, then there is no constitutional crisis.¹⁰³

For Levinson and Balkin, there are three types of constitutional crises. The first occurs when political leaders claim the right to suspend features of the Constitution in order to preserve the overall social order and to meet the exigencies of the moment.¹⁰⁴ The second type occurs when all relevant actors comply with their widely accepted constitutional duties and roles, but, following the accepted understanding of the Constitution, fail to resolve the existing political crisis.¹⁰⁵ The third type occurs when the relevant actors all proclaim their constitutional fidelity but so vehemently disagree on the proper interpretation that they resort to threats or violence in order to prevail.¹⁰⁶

Keith Whittington echoes Levinson and Balkin’s argument that political crises are not necessarily constitutional ones. Instead, Whittington

¹⁰¹ *Id.* at 347.

¹⁰² Sanford Levinson & Jack Balkin, *Constitutional Crises*, 157 U. PA. L. REV. 707, 714 (2009).

¹⁰³ *Id.*

¹⁰⁴ *Id.* at 721.

¹⁰⁵ *Id.* at 729.

¹⁰⁶ *Id.* at 738–39.

argues that “constitutional crises arise out of the failure, or strong risk of failure, of a constitution to perform its central functions.”¹⁰⁷ Whittington, however, offers a different classification. He distinguishes crises into two: “operational crises” and “crises of fidelity.”¹⁰⁸ According to Whittington, “operational crises arise when important disputes cannot be resolved within the existing constitutional framework.”¹⁰⁹ Thus, extraconstitutional steps are needed to overcome such failure. Crises of constitutional fidelity, on the other hand, “arise when important political actors threaten to become no longer willing to abide by existing constitutional arrangements or systematically contradict constitutional proscriptions.”¹¹⁰

Having defined “constitutional crises,” it would seem that it was former Senator Defensor Santiago who had the closest idea to its proper definition. Going back to the earlier discussion, given that neither the legislature nor the judiciary had an army to enforce their will, Senator Defensor Santiago opined that had the Supreme Court intervened with the Senate’s constitutional duty to act as an impeachment court, there would have been an “intellectual stalemate” between the two branches. This stalemate, the Senator warned, could have led to “people ris[ing] up in the streets.”¹¹¹

But what happens when the presidency itself becomes the source of the political crisis? Given the current constitutional framework regarding presidential succession, there are three scenarios that would inevitably result in a constitutional crisis in relation to the vacancy of the Office of the President.

TABLE 3. Successional Scenarios

	Ideal	First	Second	Third
P.	Died at the same time	Died at the same time	Died at the same time	Died at the same time
V.P.				
S.P.	Either S.P. or H.S. Assumed Acting President, but both died	Assumed Acting President but died	Died at the same time	Died at the same time
H.S.				
Officer	Assumed Acting President	N/A because there is no special law	Available	N/A because there is no special law

¹⁰⁷ Keith Whittington, *Yet Another Constitutional Crisis?*, 43 WM. & MARY L. REV. 2093, 2099 (2002).

¹⁰⁸ *Id.* at 2100.

¹⁰⁹ *Id.* at 2101.

¹¹⁰ *Id.* at 2109–10.

¹¹¹ *Supra* note 86.

Effect	No Problem	Line Ends	Line Ends because an officer cannot assume because S.P. or H.S. did not assume prior	Line Ends because an officer cannot assume because S.P. or H.S. did not assume prior
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The *first* scenario would occur if the senate president or the house speaker dies while serving as acting president, and no special law is passed by Congress.

The *second* and *third* scenarios would occur if the Offices of the President, Vice-President, Senate President, and House Speaker become simultaneously vacant. The Constitution does not provide for a mechanism of appointment of a successor or an alternative acting president. Regardless of whether or not there is a special law, the effect is the same, which is the end of the line of succession. This is because a statutory successor is only authorized by the Constitution to replace the constitutional acting successor who has already been serving as acting president.¹¹² Stated differently, the successor installed by special law cannot assume the Office of Acting President until and unless: (1) the senate president or house speaker had previously assumed the post of acting president;¹¹³ and (2) the senate president or house speaker had died, became permanently disabled, or resigned while serving as acting president.¹¹⁴ A power vacuum in the executive as a result of the *second* and *third* scenario, would undoubtedly result in a constitutional crisis. This is precisely because the situation is not contemplated by the existing constitutional framework, which in turn, would force state actors to engage in extraconstitutional acts in order to attain legitimacy (the first type of crisis as per Levinson and Balkin; operational crises as per Whittington). On the other hand, relevant state actors may choose to do nothing in faithful adherence to the Constitution, which would result in political paralysis (the second type of crisis as per Levinson and Balkin). Alternatively, should there be conflict among officials claiming to be the logical successor, the struggle may cause the opposing parties to resort to threats or violence (the third type of crisis as per Levinson and Balkin; crises of constitutional fidelity by Whittington).

¹¹² CONST. art. VII, § 8, ¶ 2.

¹¹³ Art. VII, § 8, ¶ 1.

¹¹⁴ Art. VII, § 8, ¶ 2.

A. First Scenario

With respect to the first event leading to a constitutional crisis, it is clear from the second paragraph of Article VII, Section 8 of the Constitution that in the event that the president and the vice-president are incapacitated, and the senate president and the house speaker also subsequently become incapacitated, then the only way for there to be a successor to the presidency is if a special law provides for one.

To illustrate, suppose a terrorist attack occurs during the SONA and President “A,” Vice-President “B,” Senate President “C,” are killed simultaneously as a result thereof. Suppose further that there is no special law that extends the presidential line of succession. Pursuant to Section 8, Article VII of the 1987 Constitution, House Speaker “D” becomes the acting president while a special election is prepared and conducted within a 71-day constitutionally-mandated time frame. However, a few days later, Acting President “D” succumbs to a heart attack. In this scenario, there will exist a power vacuum, not because of a flaw in the constitutional design like the scenarios that will subsequently be discussed, but because of the absence of legislation designating statutory successors.

B. Second and Third Scenarios

The second and third scenarios that could lead to a constitutional crisis occur when the Offices of the President, Vice-President, Senate President, and House Speaker are simultaneously vacant. In this case, there can be no president, acting or otherwise, because the Constitution does not allow it.

On this matter, it is respectfully offered that the correct interpretation of Article VII, Section 8 is that it is only the senate president or the house speaker *at the time of the vacancy* who should become acting president.¹¹⁵ Hence, members of Congress cannot just subsequently elect a new senate president or house speaker to remedy the situation. A contrary interpretation could yield to a dangerous situation wherein the senate president or the speaker of the house may be changed at any time before their assumption of office for political reasons. This would be a blatant violation of the principle of

¹¹⁵ Art. VII, § 8, ¶ 1. “In case of death, permanent disability, removal from office, or resignation of the President, the Vice-President shall become the President to serve the unexpired term. In case of death, permanent disability, removal from office, or resignation of both the President and Vice-President, the President of the Senate or, in case of his inability, the Speaker of the House of Representatives, shall then act as President until the President or Vice-President shall have been elected and qualified.”

separation of powers since a house of Congress effectively decides who gets to be president.

Such interpretation would also render nugatory the provision which says that the house speaker should be acting president in the absence of a senate president. This is because the Senate might insist that they be allowed to subsequently elect a senate president instead of allowing the house speaker to assume the position of acting president. On the flip side, the House of Representatives could also do the same towards the statutory successors, or perhaps, argue that any one of the deputy speakers should become the acting president.

The situation mentioned in the previous paragraph is what is called “bumping” or supplantation, which cannot be done under the 1987 Constitution. It is one of the greatly-debated issues in the United States with respect to their succession laws, and is a result of how the Presidential Succession Act of 1947 was drafted. This will be discussed more extensively in the succeeding parts of this Note.

1. Illustrative Cases of the Second and Third Scenario

To put the scenarios into a better perspective, suppose a terrorist attack occurs during SONA and President "A," Vice-President "B," Senate President "C," and House Speaker "D" perished simultaneously as a result thereof. Even if there was a special law enacted extending the line of succession, it is submitted that Art. VII, Section 8 does not allow another person to become acting president other than the then-senate president or house speaker.¹¹⁶ The remaining members of the Senate cannot right there and then, meet and “elect” a new senate president because the Constitution provides that if the senate president is unable, then the duty to act as president would be transferred to the house speaker, which in this hypothetical example, would be Speaker “D.” But because Speaker “D” also hypothetically perished in the same situation, then no other person can claim to be the constitutionally-legitimate acting president. The constitutional provision ends with the speaker as the last officer who can assume the position of acting president.

The power vacuum would then be inevitable. This is demonstrated by the fact that even if there were a law extending the line of succession, the statutory successors could not assume the position of acting president since

¹¹⁶ Art. VII, § 8, ¶ 1.

the Constitution limits their succession to instances when there is death, permanent disability, or resignation of the acting president. Thus, regardless of whether or not there is a law, so long as both the senate president and the house speaker have failed to assume the role of "acting president," then there can no longer be any statutory successor.

In relation to the third scenario, had the framers intended another meaning, they could have used the phrase "in case of simultaneous death, permanent disability, or resignation of the Senate President or the Speaker of the House." Alternatively, the framers could have used a similar phrasing found in a provision of R.A. No. 181, which provides for who shall serve as acting president should there be no senate president or speaker of the house.¹¹⁷

The second and third scenarios could transpire even without a single incident killing all the four officials mentioned in Article VII, Section 8 of the Constitution. An example would be the period in between the assumption of office by the newly elected president and vice-president, and the subsequent election of the senate president and house speaker. To illustrate, President Rodrigo Duterte and Vice-President Leni Robredo took their oath as the president and vice-president of the Philippines on June 30, 2016.¹¹⁸ On the other hand, Senator Aquilino Pimentel III and Representative Pantaleon Alvarez, Jr. were elected as Senate President and Speaker of the House of Representatives respectively on July 25, 2016—almost a month after their election as members of Congress.¹¹⁹ Thus, had the President and the Vice-President died simultaneously, or even in separate occurrences between July 1 to 24, the same constitutional crisis would arise. To reiterate, because there is no senate president and house speaker elected between those dates, there can be no "acting president." Thus, no legislation providing for a replacement of the acting president can ever be used to remedy the problem.

¹¹⁷ Rep. Act No. 181 (1947), § 1. "[T]he President of the Senate, or if there be none, or in the event of his removal, death, resignation, or of his inability to act as President, the Speaker of the House of the Representatives, or if there be none[.]"

¹¹⁸ *Duterte takes oath as 16th President of the Philippines*, RAPPLER, June 30, 2016, at <https://www.rappler.com/nation/duterte-takes-oath-president>; *Leni Robredo takes oath as 14th VP*, ABS-CBN NEWS, June 30, 2016, at <https://news.abs-cbn.com/nation/06/30/16/leni-robredo-takes-oath-as-14th-vp>.

¹¹⁹ *Camille Elemia, It's final: Koko Pimentel is new Senate President*, RAPPLER, July 25, 2016, at <https://www.rappler.com/nation/koko-pimentel-senate-president-17th-congress>; *Mara Cepeda, Pantaleon Alvarez is new House Speaker*, RAPPLER, July 25, 2016, at <https://www.rappler.com/nation/pantaleon-alvarez-election-house-speaker-17th-congress>.

The scenario of the president dying with no constitutional successors has already been faced by the United States on more than one occasion during the years when the Presidential Act of 1792 was still in effect. When Vice-President Chester Arthur succeeded to the presidency after President James Garfield died due to complications from a gunshot wound on September 19, 1881, Congress was not yet in session and had not yet elected both the senate president *pro tempore* and the house speaker. A few years later, in 1885, Vice-President Thomas Hendricks died only nine months after the beginning of his term.¹²⁰ Similarly, his death transpired when Congress was not in session, and the senate president *pro tempore* and house speaker had not yet been elected.¹²¹

Both cases caused serious threats to American democracy. President Arthur had to call for a special session of Congress two months earlier than scheduled to allow Congress to elect a senate president *pro tempore* and house speaker.¹²² On the other hand, President Grover Cleveland used the peculiar timing to lobby for the enactment of a new presidential succession law—one where the Cabinet secretaries would precede the legislative officers in the line of succession.¹²³

2. *The 1987 Constitution as Harbinger of the Constitutional Dilemma*

To be clear, the second and third scenarios are only made possible by the institutionalization of the U.S. Presidential Succession Act in the 1987 Constitution. Under the 1935 Constitution, the only successor is the vice-president, but Congress could enact a law that would determine who will serve as acting president in the event that the president and vice-president perish simultaneously.¹²⁴ Consequently, under the 1935 Constitution, the second and third scenarios leading to a constitutional crisis are not present—Congress can merely enact laws to ensure that there will always be a sitting president.

However, the 1987 Constitution specifically included the senate president and the house speaker in the constitutional line of succession; although they may only succeed as acting president.¹²⁵ As previously

¹²⁰ FEERICK, *supra* note 35, at 141.

¹²¹ *Id.*, see Albert, *supra* note 74, at 509; Fortier & Ornstein, *supra* note 63, at 997; Presidential Succession Act Hearing, *supra* note 49, at 2.

¹²² FEERICK, *supra* note 35, at 130–31.

¹²³ Albert, *supra* note 74, at 510–11.

¹²⁴ CONST. (1935, amend.), art. VII, § 8.

¹²⁵ CONST. art. VII, § 8, ¶ 1.

mentioned, however, by making the assumption of statutory successors dependent on a prior assumption of said legislative officers, the framers also inadvertently created a scenario where no person could constitutionally serve as acting president.

IV. ARE THERE ALTERNATIVE CONSTITUTIONAL REMEDIES?

In the event that the president, vice-president, senate president, and house speaker simultaneously die, become permanently incapacitated, or resign, is there any constitutional provision that would allow a constitutional successor to emerge? In this section, the possible answers to this question are explored by reference to other provisions in the Constitution.

A. Vacancy in the Office of the President

The Constitution provides for five instances when the Office of the President may be vacated. The *first* is when the president-elect fails to qualify. In this situation, the vice-president “shall act as President until the President-Elect shall have qualified.”¹²⁶ The *second* situation is when a president-elect has not been chosen. In such a case, the vice-president-elect “shall act as President until a President shall have been chosen and qualified.”¹²⁷ The *third* situation is when the president-elect dies or becomes permanently disabled at the beginning of the term. In this situation, the vice-president-elect “shall become the President.”¹²⁸ The *fourth* situation is when no president and vice-president was chosen or qualified. The *fifth* is when both shall have died or become permanently disabled. In the *fourth* and the *fifth* situations, the president of the senate or, in case of his inability, the house speaker, “shall act as President until a President or a Vice-President shall have been chosen and qualified.”¹²⁹

The *fourth* and *fifth* situations could happen either because both the president-elect and vice-president-elect have died or failed to qualify, or because no winner has been proclaimed. The underlying assumption in this situation is that neither the president-elect nor vice-president-elect have officially assumed their offices. Thus, this rule should not be mistaken to be applicable in the situation contemplated in this Note, which is governed by a different provision.¹³⁰

¹²⁶ Art. VII, § 7, ¶ 2.

¹²⁷ Art. VII, § 7, ¶ 3.

¹²⁸ Art. VII, § 7, ¶ 4.

¹²⁹ Art. VII, § 7, ¶ 5.

¹³⁰ See Art. VII, § 8.

From the foregoing, it becomes clear that the Office of the President can only be filled, either in a permanent or temporary capacity, by the existence of the vice-president, the senate president, or the house speaker. Thus, the provision on the filling of presidential vacancies *per se* would not solve the second scenario that will lead to a constitutional crisis wherein all top four elective posts become vacant. Such a scenario, as has been discussed, will lead to a power vacuum.

B. Vacancy in the Office of the Vice-President

Article VII, Section 7 of the Constitution similarly applies to a situation where no vice-president-elect qualifies to assume the Office of the Vice-President.¹³¹ However, with respect to a vacancy arising during the term, the Constitution provides that the filling of a vacancy in the Office of the Vice-President would be through the nomination by the president of a member of the Senate or the House of Representatives, which shall be ratified by the majority vote of both houses voting separately.¹³² Article VII, Section 9 was applied after Vice-President Gloria Macapagal-Arroyo ascended to the presidency after the overthrow of former President Joseph Estrada through People Power II. The new President Macapagal-Arroyo subsequently nominated then-Senator Teofisto Guingona as Vice-President, whose nomination was confirmed by both houses.¹³³

Thus, without a sitting president, there can be no “succession” in the Office of the Vice-President.

C. Senate President and House Speaker

Pursuant to the constitutional provision empowering each house to formulate its own rules,¹³⁴ the selection of the senate president and the house speaker is governed by the Senate Rules and the House Rules, respectively,

¹³¹ See Art. VII, § 7.

¹³² Art. VII, § 9. “Whenever there is a vacancy in the Office of the Vice-President during the term for which he was elected, the President shall nominate a Vice-President from among the Members of the Senate and the House of Representatives who shall assume office upon confirmation by a majority vote of all the Members of both Houses of the Congress, voting separately.”

¹³³ BERNAS, *supra* note 13, at 858. See also Tolentino v. COMELEC, G.R. No. 148334, 420 SCRA 438, 445, Jan. 21, 2004. This case explained the events of the succession of Senator Guingona as Vice-President and the subsequent special elections to fill the vacancy in the Senate.

¹³⁴ CONST. art. VI, § 16.

and not by the Constitution. Thus, vacancies in the Office of the Senate President and the Speaker of the House are likewise filled in accordance with their respective rules. The senate president and house speaker are elected and remain in position through their ability to gain and maintain the support of a majority of their colleagues. As such, they may be removed from their posts at any time, as was the case in a recent power struggle between Representatives Alan Peter Cayetano and Lord Allan Velasco.¹³⁵

D. Conclusion

Based on the foregoing, there is no way for anyone to become acting president in the event of a power vacuum as contemplated by the event of simultaneous deaths, incapacity, or resignation, given that there is no statute extending the line of succession. The Constitution on its own simply does not specifically provide for which person becomes acting president in such a situation.¹³⁶ Thus, the first event leading to a constitutional crisis would still exist and can only be remedied through an amendment of the Constitution.

V. EIGHTEENTH CONGRESS BILLS AS SOLUTION?

A. Senate Bill No. 982

Senate Bill No. 982 is undoubtedly inspired by the political drama mentioned in this Note's introduction. It proposes that upon the death of the acting president, the most senior senator in terms of length of service shall become acting president, followed by the most senior representative in terms of length of service, and finally by "[a] member of the Cabinet designated by the President."¹³⁷ It is worth noting that the language of Senate Bill No. 982 seems to align with the author's thesis that a statutory successor cannot succeed until and unless: (1) the senate president or house speaker has previously assumed the post of acting president; and that (2) the senate president or house speaker subsequently dies, resigns, gets removed, or becomes permanently disabled while serving as acting president.¹³⁸ Thus, as

¹³⁵ Erwin Colcol, *The Cayetano-Velasco speakership row*, GMA NEWS, Oct. 13, 2020, at <https://www.gmanetwork.com/news/news/nation/759571/the-cayetano-velasco-speakership-row/story>.

¹³⁶ CONST. art. VII, § 8, ¶ 2.

¹³⁷ S. No. 982, 18th Cong., 1st Sess., § 2 (2019).

¹³⁸ § 2. "In the event of permanent disability, death, removal from office or resignation of the Acting President before the President or Vice-President shall have been qualified, the following elected and appointed officers of the Republic of the Philippines and who is not under any disability to discharge the powers and duties of the Office of the

also argued by the author, this bill, or any other similar bill for that matter, will not avert a constitutional crisis in the event that the president, vice-president, senate president, and the house speaker all simultaneously die, resign, become permanently disabled, or get removed from office.

The bill also plans to adopt the practice of the U.S. Secret Service in sequestering the cabinet member who is chosen by the President as a designated survivor to a “secret and secure location.” The said cabinet member shall then become the acting president upon the death or permanent disability of the constitutional, constitutional-acting, and the other statutory successors.

Aside from the wisdom as to the choice of successors, other problems are apparent in the bill. First, given that the sequestration is done clandestinely, what are the means to assure that it was this particular Cabinet member who was indeed “designated”? Will there be a public instrument? What happens if two Cabinet members actually survive and both claim to be the designated survivor? In the United States, this is not a problem since the Presidential Act of 1947 provides for a hierarchy among Cabinet members.¹³⁹

Another concern is that the bill essentially wants to delegate to the president the power to decide, without requiring him or her to inform Congress, who among his Cabinet members would be placed in the presidential line of succession for a particular event. This can be assailed as unconstitutional for being an undue delegation of legislative powers. The only time Congress can delegate legislative powers to the president is when the Constitution so provides.¹⁴⁰ While the Constitution gave Congress the power to determine who can be included in the line of succession, it did not give Congress the power to delegate the same to the president. In this case, it is the President who will “legislate” who among the Cabinet members would become the constitutional successor for a particular event. That same statutory successor can be changed for every event at the pleasure of the president without Congress—or worse, the general public—ever finding out.

This leads to another problem. Given that the statutory successor only becomes such for purposes of a particular event, what happens if the simultaneous vacancies resulted from the successive deaths of the constitutional successors outside a particular event, such as when the

President shall act as President in the following order: (1) the most senior Senator [...], (2) the most senior Representative [...], (3) the member of the Cabinet designated by the President.”

¹³⁹ 3 U.S.C. § 19 (d)(1).

¹⁴⁰ *Marc Donnelly & Assoc., Inc. v. Agregado*, 95 Phil. 143, 147 (1954).

president, vice-president, senate president, and speaker of the house have become afflicted with a virus and die simultaneously? Will the Cabinet member who was the most recent designee assume the presidency? Until when is such designation effective?

If the intention was to mimic the same mechanism used in the United States, it would be more prudent for Congress to classify all cabinet members as statutory successors and provide an order of precedence among them. Doing this would avoid all the issues raised in the preceding paragraphs. It must be noted that the reason why the U.S. practice of sequestering a designated survivor is effective, despite the absence of its inclusion in the U.S. Presidential Succession Act of 1947, is that all Cabinet members are already included in the presidential line of succession. Hence, even if the president of the United States does not expressly assign a “designated survivor” before an event, the highest-ranking cabinet member who survives will automatically succeed as acting president.

In any case, and, as already discussed, this will only solve one of the scenarios that will lead to a constitutional crisis.

B. House Bill No. 4062

Another bill that seeks to address insufficiencies in the current presidential line of succession is House Bill No. 4062,¹⁴¹ or the Presidential Succession Act. This bill is a substantially similar, albeit poorly worded version of Senate Bill No. 982. Both contemplate a situation wherein all the “successors” simultaneously die. Under House Bill No. 4062, the sponsor wanted the president to “designate” a successor, to be chosen among the members of the Cabinet, in every “occasion or gathering,” who will then be given extraordinary protection during the event. However, the faulty phrasing of the bill may lead to problematic implications. For example, the bill provides the president unrestricted discretion as to who among the Cabinet members shall become the designated survivor.¹⁴² Be that as it may, the issue has now become moot because the bill’s sponsor withdrew the same immediately after receiving public ire.¹⁴³

¹⁴¹ H. No. 4062, 18th Cong., 1st Sess. (2019).

¹⁴² § 2.

¹⁴³ *QC lawmaker withdraws 2019 bill granting the President power to choose a successor*, CNN PHIL., Aug. 30, 2020, at <https://www.cnnphilippines.com/news/2020/8/30/precious-hipolito-castelo-hb4062-withdraw.html>.

C. Conclusion

Based on the previous discussion, it is clear that the legislative bills filed in both the Senate and the House of Representatives are inadequate to address a situation wherein the Offices of the President, Vice-President, Senate President, and House Speaker become simultaneously vacant. At best, these bills can only supply a statutory successor who will take over in a scenario where the constitutional acting successor—the senate president or house speaker serving as acting president—subsequently dies, becomes permanently disabled, or resigns. At this point, it must already be clear that the only way to avert the possibility of constitutional crises is to amend the present Constitution.

VI. LEGAL AND POLICY CONSIDERATIONS

In drafting the next governing constitutional provision or statute on presidential succession, several legal and policy issues must first be contemplated. These issues have been at the center of debates on presidential succession in the United States for centuries. Given that the Philippine presidential succession rules find similarity with those of the United States,¹⁴⁴ the former can learn from the latter's experiences and mistakes as the same legal and policy considerations could find application in Philippine jurisdiction.

A. Constitutional Legitimacy: Defining “Officer,” Separation of Powers, and Qualifications

In the United States, there are still existing doubts as to the constitutionality of the Presidential Succession Act of 1947. In a nutshell, some constitutional authorities believe that the term “officer” in the U.S. Constitution excludes members of the legislative branch, house speaker, and senate president *pro tempore*.

Ruth Silva, a notable scholar on presidential succession,¹⁴⁵ argues against the constitutionality of the U.S. Presidential Succession Act of 1947 on two grounds. First, she asserts that the speaker and the senate president

¹⁴⁴ See *supra* Part I.

¹⁴⁵ See John Feerick, *Presidential Succession and Inability: Before and After the Twenty-Fifth Amendment*, 79 *FORDHAM L. REV.* 907, 913 (2010). Feerick cites Silva as a “leading scholar on presidential succession.”

pro tempore are not “officers” in the constitutional sense.¹⁴⁶ Based on how the word “officer” was used in other provisions of the U.S. Constitution, and how the provisions on house speaker and the senate president *pro tempore* were phrased, Silva posits that the U.S. Constitution does not recognize the president *pro tempore* as an officer of the Senate and recognizes only the house speaker as an officer of the House, not of the United States.¹⁴⁷

Second, Silva believes that the person to whom the presidential powers devolve must continue to hold the office upon which these powers and duties are annexed. According to Silva’s interpretation of the U.S. Constitution, Congress has no power to declare which specific person shall become acting president.¹⁴⁸ Instead, Congress can only annex presidential powers and duties to an office, such as that of the house speaker or senate president *pro tempore*. However, what the U.S. Presidential Succession Act of 1947 requires is that the official in the line of succession resign first from his or her office before he or she can become acting president.¹⁴⁹ Therefore, based on Silva’s analysis, the U.S. Congress has exceeded the limitations provided for by the U.S. Constitution¹⁵⁰ when it: (1) authorized legislative officers—such as the house speaker and the senate president *pro tempore*—to act as president;¹⁵¹ and (2) required the succeeding officer—whether it be one of the presiding officers of the legislative houses or a member of the Cabinet—to resign his or her office prior to becoming acting president¹⁵² given that the presidential powers are appended not to the person who resigned, but to the office from which the person resigned.

Akhil and Vikram Amar, on the other hand, argue that statutory successors in the United States could not be federal legislators because of the Incompatibility Clause of the U.S. Constitution¹⁵³ which prohibits members of the legislature from assuming other offices in government.¹⁵⁴ Thus, based on this premise, the U.S. Presidential Succession Act of 1947 is unconstitutional because it allows the house speaker and the senate president

¹⁴⁶ Silva, *supra* note 43, at 457.

¹⁴⁷ *Id.* at 463.

¹⁴⁸ *Id.*

¹⁴⁹ 3 U.S.C. § 19 (a)(1), (b), (d)(3).

¹⁵⁰ Silva, *supra* note 43, at 476.

¹⁵¹ 3 U.S.C. § 19 (a)–(c).

¹⁵² 3 U.S.C. § 19 (a)(1), (b), (d)(3).

¹⁵³ U.S. CONST. art. I, § 6, cl. 2. “No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been increased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.”

¹⁵⁴ Amar & Amar, *supra* note 74, at 118.

pro tempore to succeed to the presidency in the event of a vacancy.¹⁵⁵ Using the interpretative text of intratextualism and with resort to the drafting history of the Constitution, the Amar brothers identified other instances where the term “officer” was used in the Constitution in order to spot patterns of usage of said term and to determine what the Founders meant in authorizing Congress to enact a law extending the line of succession by designating an “officer.”¹⁵⁶ The Amar brothers concluded that the intention of the Founders was for the terms “officer” and “legislator” to be mutually exclusive.¹⁵⁷

Following the same logic as Silva and the Amar brothers, Paolo Celeridad implied that R.A. No. 181, which included the senate president and house speaker in the line of succession, is “of doubtful constitutionality”¹⁵⁸—drawing a comparison between the U.S. Constitution and the 1935 Constitution in the use of the word “officer” to refer to the constitutional acting successor.¹⁵⁹ However, the exact argument cannot apply in the case of the Philippines.

Article XVI of the 1935 Constitution, which was to take effect upon the proclamation of the independence of the Philippines, expressly stated that constitutional officers are those officials who were elected and were serving under the Constitution.¹⁶⁰ Thus, “constitutional officers” are no different from the “officers” as generally used in the laws on public officers and are, in fact, a subset of it. In any case, in the 1987 Constitution, the provision now states that Congress provides “who shall serve as President,”¹⁶¹ instead of “what officer shall then act as President.”¹⁶²

¹⁵⁵ *Id.* at 113.

¹⁵⁶ Albert, *supra* note 74, at 520, *citing* Amar & Amar, *supra* note 74.

¹⁵⁷ *Id.* at 520–21.

¹⁵⁸ Celeridad, *supra* note 47, at 1091.

¹⁵⁹ *See* CONST. (1935, amend.), art. VII, § 8. “In the event of the removal of the President from office, or his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice-President, and the Congress shall by law provide for the case of removal, death, resignation, or inability, both of the President and Vice-President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected.”

¹⁶⁰ CONST. art. XVII, § 1, ¶ 2. “The officials elected and serving under this Constitution shall be constitutional officers of the free and independent government of the Philippines and qualified to function in all respects as if elected directly under such Government, and shall serve their full terms of office as prescribed in this Constitution.”

¹⁶¹ Art. VII, § 8, ¶ 2.

¹⁶² CONST. (1935, amend.), art. VII, § 8.

Celeridad also pointed out that R.A. No. 181 was a blatant violation of the principle of separation of powers.¹⁶³ This Note adopts the same stance, since R.A. No. 181 was enacted during the 1935 Constitution, which had a similar succession provision with that of the United States, as earlier discussed.

The attack on separation powers in the U.S. presidential succession laws can be traced back to a letter dated February 21, 1792 from James Madison, one of the founding fathers and a former U.S. President, to then-Governor of Virginia Edmund Pendleton. In the letter, Madison said that should the acting president retain his function as a legislative officer, the incompatible functions of the two branches will be “blended.”¹⁶⁴ According to Madison, the fact that the U.S. Succession Act of 1792 did not require the legislative officer to relinquish his seat in the Senate or House of Representatives before ascending to the post of acting president violated the Incompatibility Clause.¹⁶⁵ On the other hand, Madison also pointed out that since the U.S. Constitution annexed the role of acting president not to a private citizen, but to the office itself, then requiring the senate president *pro tempore* or house speaker to resign would mean that he or she would no longer be eligible to serve as acting president.¹⁶⁶

The attacks on separation of powers by the scholars in the United States are likewise structural and premised on the violation by the Presidential Succession Act of 1947 of the U.S. Constitution—echoing the sentiments of Madison. For instance, Silva argued that the U.S. Presidential Succession Act of 1947 is an “evasion of the Constitution” because the Federal Convention rejected the idea of a senate president, which was originally conceived as a purely legislative officer, being the immediate successor to the presidency.¹⁶⁷ Meanwhile, the arguments of the Amar brothers echoed the assertion of Madison which was premised on the Incompatibility Clause,¹⁶⁸ as well as

¹⁶³ Celeridad, *supra* note 47, at 1092.

¹⁶⁴ National Archives, From James Madison to Edmund Pendleton, 21 February 1792, FOUNDERS ONLINE, available at <https://founders.archives.gov/documents/Madison/01-14-02-0206>, citing James Madison, Letter to Edmund Pendleton, in 14 THE PAPERS OF JAMES MADISON 235–36 (Robert Rutland et. al. eds, 1983).

¹⁶⁵ FEERICK, *supra* note 35, at 61–62, citing Madison, *supra* note 164.

¹⁶⁶ *Id.* at 61. See Amar & Amar, *supra* note 74, at 120. “Madison and others argued that Congress could annex presidential powers only ex officio—that is, to some fixed *office*, not a *person*.”

¹⁶⁷ Silva, *supra* note 43, at 464.

¹⁶⁸ U.S. CONST. art. I, § 6, cl. 2.

Article I, Section 3 of the U.S. Constitution¹⁶⁹ which prohibited the vice-president from presiding over the Senate when exercising the power of the president.¹⁷⁰

The issue regarding the principle of separation of powers is best summarized by the work of Professor Richard Albert. In his article, he conceded that while separation of powers is a “cornerstone of the American constitutional edifice,” the Presidential Succession Act of 1947 is only unconstitutional today because of the Incompatibility Clause, and thus, prior to the incorporation of the said clause, “joint inter-branch service may well have been constitutional.”¹⁷¹

Hence, R.A. No. 181 indeed violated the principles of separation of powers, as the 1935 Constitution rejected a parliamentary model¹⁷² and did not expressly include the presiding officers of the legislative houses in the presidential line of succession—unlike the present Constitution.

Another argument against the inclusion of legislative officers in the presidential line of succession concerns the impeachment process. It is Congress that possesses the power to impeach a president.¹⁷³ Hence, the inclusion of legislative officers in the presidential line of succession introduces a potential conflict of interest. To illustrate, consider a situation where there is a vacancy in the vice-presidency. In this scenario, the legislative officers in the line of succession, i.e. the senate president and the house speaker, may have an interest in seeing the sitting president impeached. This is because such an impeachment would leave a vacancy in the presidency, thus paving the way for a legislative officer to become acting president.¹⁷⁴

But given that the present Constitution designates the senate president and speaker of the house as successors to the presidency, then the

¹⁶⁹ Art. I, § 3, cl. 5. “The Senate shall choose their other officers, and also a President pro tempore, in the absence of the Vice President, or when he shall exercise the office of President of the United States.”

¹⁷⁰ Amar & Amar, *supra* note 74, at 118–20.

¹⁷¹ Albert, *supra* note 74, at 508.

¹⁷² During the deliberations regarding Article VI of the 1935 Constitution, the framers had to decide whether to adhere to the presidential system or to adopt a parliamentary form of government by approving a motion to suppress a provision similar to the incompatibility clause of the United States. The Convention decided to adhere to the presidential system. See ARUEGO, *supra* note 34, at 230–31.

¹⁷³ CONST. art. XI, § 3.

¹⁷⁴ Amar & Amar, *supra* note 74, at 114. “If legislators are in line to fill a vacant Oval Office, a pervasive conflict of interest will warp their judicial roles in presidential and vice-presidential impeachment proceedings.” See also Celeridad, *supra* note 47, at 1081-82.

objection based on the separation of powers has ceased to exist. Since the Constitution itself provides that the presiding officers of the two houses of Congress are in the line of presidential succession,¹⁷⁵ it will be paradoxical to call it unconstitutional for violating the principle of separation of powers.

In relation to the preceding paragraphs, it must be noted that in our jurisdiction, members of Congress are not the only officers affected by an Incompatibility Clause. It would appear that in the present context, there is a stronger argument for the constitutional validity of the inclusion of the senate president and house speaker in the line of succession than that of the Cabinet members. While Article VII, Section 8 of the Constitution expressly installs the presiding officers of the two houses of Congress in the line of succession,¹⁷⁶ Article VII, Section 13 prohibits Cabinet members from occupying any other position in government.¹⁷⁷ Hence, it can be said that a Cabinet member is barred from being included in the line of succession by the Incompatibility Clause. The only way to remedy this problem is through a constitutional amendment.

B. Democratic Principle and Party Continuity

In the United States, the issues of democratic principle and party continuity *vis-à-vis* the issue on the presidential line of succession are interrelated. While the principle of democracy was a huge factor in the passage of the 1947 Succession Act, party continuity was the primary policy consideration in the enactment of the Succession Act of 1886.

In the United States, it has been argued by some that the presidential line of succession after the vice-president should begin with popularly elected officials, rather than the appointed members of the Cabinet—the latter being the case under the Presidential Succession Act of 1886. President Truman, in his special message to Congress, said:

[B]y reason of the tragic death of the later President, it now lies within my power to nominate the person who would be my immediate successor in the event of my own death or inability to act.

¹⁷⁵ Celeridad, *supra* note 47, at 1096. “[T]he deliberations resulted in the enshrinement of a constitutional quandary where the separation of executive and legislative powers is blurred.”

¹⁷⁶ CONST. art. VII, § 8.

¹⁷⁷ Art. VII, § 13.

I do not believe that in a democracy this power should rest with the Chief Executive.

In so far as possible, the office of the President should be filled by an elective officer. There is no officer in our system of government, besides the President and Vice-President, who has been elected by all the voters of the country.

The Speaker of the House of Representatives, who is elected in his own district, is also elected to be the presiding officer of the House by a vote of all the Representatives of all the people in the country. As a result, I believe that the Speaker is the official in the Federal Government, whose selection next to that of the President and Vice-President, can be most accurately said to stem from the people themselves.¹⁷⁸

On the other hand, some argue that the speaker, while chosen by a majority of his or her peers in the House, has only won the approval of the voters in his congressional district.¹⁷⁹ Meanwhile, the post of the senate president *pro tempore* which, like all other seats in the U.S. Senate is only elected by the officeholder's home state,¹⁸⁰ is traditionally occupied by the senator of the majority party with the longest tenure, rather than by the senator who is most fit to become a successor to the president.¹⁸¹

Those who advocate for a line of succession based on party continuity argue that the person acting as president at a time of crisis should come from the same political party as the previous incumbent. This would ensure the continuity of the policies of the president chosen by the voters in the last election.¹⁸² This was the policy behind the adoption of the Presidential Succession Act of 1886. Prior to its enactment, President Cleveland, whose Vice-President died a few months after being elected into office, feared that he would be replaced by someone from the opposing party had he also suddenly died during his term.¹⁸³ Thus, President Cleveland used the then-simultaneous absence of a vice-president, senate president *pro tempore*, and

¹⁷⁸ FEERICK, *supra* note 35, at 205.

¹⁷⁹ Fordham University School of Law Clinic on Presidential Succession, *Ensuring the Stability of Presidential Election in the Modern Era*, 81 FORDHAM L. REV. 1, 45 (2012). See Amar & Amar, *supra* note 74, at 130. The authors argued that congressmen only represent parts of the country, not the whole, and “do not reflect the national vision the [p]eople have historically wanted their [p]residents to possess.”

¹⁸⁰ Clinic on Presidential Succession, *supra* note 179.

¹⁸¹ *Id.* at 41.

¹⁸² Feerick, *supra* note 145, at 945–46.

¹⁸³ Albert, *supra* note 74, at 509.

house speaker as a reason to advocate for the removal of the said legislative officers from the line of succession. In the legislative officers' place, the members of the president's Cabinet were installed in the line of succession.¹⁸⁴

Proponents of the party continuity argument assert that succession by the speaker or senate president *pro tempore* from a different party would be a reversal of the people's mandate which is inherently undemocratic,¹⁸⁵ or in the words of Amar, would "upend the results of a [p]residential election."¹⁸⁶ Furthermore, it is advanced that a change of presidential party could be more disruptive than constructive, and could introduce "an additional element of [...] instability [at] a time of crisis."¹⁸⁷ In the United States, the possibility of this happening is not remote since it is not uncommon for the leaders in the executive and legislative branches to belong to different parties.¹⁸⁸ In fact, during the term of Republican President Donald Trump, the Senate President *Pro Tempore* was Republican Chuck Grassley of Iowa,¹⁸⁹ while the House Speaker was Democrat Nancy Pelosi of California.¹⁹⁰

In our jurisdiction, only the democratic principle argument deserves consideration in the choice between congressional officers and Cabinet members. The reason why the senate president precedes the house speaker is because the senate president is also voted at-large¹⁹¹ and is thus considered to represent every Filipino. With respect to party continuity, the problem is generally not applicable in the Philippines, given that the country has a weak

¹⁸⁴ FEERICK, *supra* note 35, at 103. "The present conditions of the law relating to the succession to the Presidency [...] is such as to require immediate amendment. This subject has repeatedly been considered by Congress, but no result has been reached. The recent lamentable death of the Vice President and vacancies at the same time in all other offices [...] have caused public anxiety and a just demand that a recurrence of such a condition of affairs should not be permitted." See also Albert, *supra* note 74, at 510.

¹⁸⁵ Presidential Succession Act Hearing, *supra* note 49, at 17.

¹⁸⁶ *Id.*

¹⁸⁷ Albert, *supra* note 74, at 525; Fortier & Ornstein, *supra* note 63, at 1005.

¹⁸⁸ FEERICK, *supra* note 35, at 267. "For about eight of the thirty-seven years during which the vice-presidency has been vacant, the person next in line was of the opposing party." See also Albert, *supra* note 74, at 525–26, which listed the instances in recent history where the president of the United States and house speaker belonged to different parties.

¹⁸⁹ See *Chuck Grassley*, U.S. SENATE WEBSITE, at https://www.senate.gov/artandhistory/history/common/briefing/President_Pro_Tempore.htm (last visited Feb. 2, 2021).

¹⁹⁰ See *Leadership*, U.S. HOUSE OF REPRESENTATIVES WEBSITE, at <https://www.house.gov/leadership> (last visited Feb. 2, 2021).

¹⁹¹ CONST. art. VI, § 2. "The Senate shall be composed of twenty-four Senators who shall be elected at large by the qualified voters of the Philippines, as may be provided by law."

political party system, characterized as being built around personality rather than political programs or platforms.¹⁹²

C. Efficient Conduct of the Presidency

Another argument raised in debates in the United States is that the functions of a house speaker or senate president *pro tempore* are purely legislative and in no way translate into executive administration.¹⁹³ Furthermore, the wisdom of choosing the senate president *pro tempore* has been questioned since the title is given on the basis of seniority—making the titleholder more likely to be already very old.¹⁹⁴ For instance, the incumbent Senate President *Pro Tempore* of the 117th U.S. Congress is Patrick Leahy, who is currently 80 years old.¹⁹⁵ Leahy’s predecessor, Charles Grassley, was 87 years old when his term concluded,¹⁹⁶ while Grassley’s predecessor, Orrin Hatch, was 84 years old when the 115th U.S. Congress ended.¹⁹⁷

Dean John Feerick, in one of his earlier writings, argues that from a policy perspective, there is “little justification” for having the speaker and the senate president *pro tempore* in the line of succession given that their experiences are strictly legislative in nature.¹⁹⁸ Instead, he advocates for a presidential line of succession consisting exclusively of Cabinet members.¹⁹⁹ Similarly, Celeridad argues that Cabinet members—starting from the Executive Secretary who is the most knowledgeable of the executive functions among all Cabinet members—should immediately follow the vice-president in the order of succession.²⁰⁰ A Cabinet member taking over as acting president would result in an efficient turnover given that he or she regularly attends Cabinet meetings and therefore, has intricate knowledge of the inner workings and plans of the executive.

¹⁹² Nathan Gilbert Quimpo, *The Philippines: Political Parties and Corruption*, 2007 SE. ASIAN AFF. 277, 277 (2007).

¹⁹³ Albert, *supra* note 74, at 531. “From the standpoint of policy, there seems to be little justification for having the Speaker and President *pro tempore* in the line of succession [given that their] experience [...] is almost strictly legislative in nature.”

¹⁹⁴ *Id.*

¹⁹⁵ See Patrick Leahy, U.S. SENATE WEBSITE, at <https://www.leahy.senate.gov/about> (last visited Feb. 16, 2021).

¹⁹⁶ *Supra* note 189.

¹⁹⁷ See Chelsey Parrott-Sheffer, *Orrin Hatch*, BRITANNICA, at <https://www.britannica.com/biography/Orrin-Hatch> (last visited Feb. 10, 2021).

¹⁹⁸ FEERICK, *supra* note 35, at 266.

¹⁹⁹ *Id.*

²⁰⁰ Celeridad, *supra* note 47, at 1096.

Albert also adopts the same position saying that while “[t]he Speaker of the House and the Senate President Pro Tempore may be schooled in the science of legislation[,] both are inexpert in the art of popular leadership.”²⁰¹ Unlike Silva and Feerick, however, Albert proposes that former living presidents should be included in the order of succession prior to the Cabinet secretaries, in reverse chronological order, beginning with the former presidents belonging to the same party.²⁰² Aside from addressing some of the problems faced by having legislative officers or Cabinet officers as successors, Albert opines that former presidents are the only ones “equipped with the proven competence, domestic repute, and foreign stature,” which would be useful for a country undergoing a crisis.²⁰³ If this were applied to the present leaders in the United States, instead of Speaker Nancy Pelosi succeeding as president in the simultaneous unavailability of Democratic President Joe Biden and Vice-President Kamala Harris, the next successor would be former President Barack Obama, who is likewise a Democrat.

The arguments raised by the proponents of a Cabinet-centered succession are worth noting as in the United States, several presidents have served as Secretary of State immediately prior to their election as president, namely: Thomas Jefferson, James Madison, James Monroe, John Quincy Adams, Martin Van Buren, and James Buchanan.²⁰⁴ Several former Secretaries of State have launched their own campaigns for president but lost—Hillary Clinton being the most recent one.²⁰⁵ However, if we were to look at the track record of Philippine presidents, only two (excluding former vice-presidents who may concurrently serve as department secretaries) out of all 16 presidents served as a Cabinet member before becoming president. These were Presidents Manuel Roxas, who served as Executive Secretary and Secretary of Finance, and Ramon Magsaysay and Fidel Ramos, both of whom served as Secretary of National Defense. Most of the other presidents, excluding Emilio Aguinaldo (leader of the Philippine revolution), Corazon Aquino (private citizen), and Rodrigo Duterte (mayor of Davao City), had either served as a member of the Senate—a significant number of whom were elected as senate president—or as vice-president immediately prior to becoming president. In contrast to the United States, only 17 of the 45 men who have served as president were previously members of the Senate.

²⁰¹ Albert, *supra* note 74, at 498.

²⁰² *Id.* at 499.

²⁰³ *Id.*

²⁰⁴ See *Secretaries of State Who Became President*, CNN POL., Aug. 12, 2016, at <https://edition.cnn.com/2016/08/11/politics/gallery/secretaries-of-state-who-became-president/index.html>.

²⁰⁵ See *Hillary Clinton: I'm Running for President*, BBC NEWS, Apr. 12, 2015, at <https://www.bbc.com/news/av/world-us-canada-32278971>.

D. Bumping and Supplantation

The issue of bumping or supplantation in the United States started with the U.S. Presidential Succession Act of 1947. Under the said statute, the officer acting as president will only continue to do so until the disability or failure to qualify of any officer higher in the order of succession is removed.²⁰⁶ If the disability is removed, the higher-ranking officer can “bump” the person then acting as president. Hence, the vice-president can bump the house speaker or senate president *pro tempore* acting as president. Meanwhile, a Cabinet member can be bumped by the vice-president, house speaker, and senate president *pro tempore*.²⁰⁷

To illustrate, suppose the president, vice-president, house speaker, and senate president *pro tempore* all die. Under the statute, the most senior Cabinet member becomes the acting president. However, once the House elects a new speaker, the newly elected speaker would “bump” the Cabinet secretary and assume the Office of Acting President. This supplantation leads to further problems with respect to a temporary disability of the vice-president, since whoever becomes acting president by virtue of the succession law, no matter how brief, would have to resign from their previous posts.²⁰⁸ Suppose that following the president’s death and the disability of the vice-president, the position “of acting president” is assumed by the house speaker. In this scenario, the house speaker would have to resign from his or her post before becoming acting president. However, once the vice-president has recovered, the house speaker would be supplanted and would also be out of a job.²⁰⁹ Similarly, a senior Cabinet member, who is deemed resigned after taking his oath as acting president,²¹⁰ would be out of a job once he is subsequently bumped by either the vice-president, house speaker, or senate president *pro tempore*. Court of International Trade Judge M. Miller Baker argues that not all supplantations are detrimental. He classified supplantations

²⁰⁶ 3 U.S.C. § 19 (d)(2). “An individual acting as President under this subsection shall continue so to do until the expiration of the then current Presidential term, but not after a qualified and prior-entitled individual is able to act, except that the removal of the disability of an individual higher on the list contained in paragraph (1) of this subsection or the ability to qualify on the part of an individual higher on such list shall not terminate his service.”

²⁰⁷ § 19 (d)(2).

²⁰⁸ § 19 (a), (b), (d)(2).

²⁰⁹ Amar & Amar, *supra* note 74, at 118–19.

²¹⁰ 3 U.S.C. § 19 (d)(3). “The taking of the oath of office by an individual specified in the list in paragraph (1) of this subsection shall be held to constitute his resignation from the office by virtue of the holding of which he qualifies to act as President.”

into “good bumping” and “bad bumping.”²¹¹ Good bumping occurs when the position of acting president was initially assumed by a more junior cabinet member (i.e., Secretary of Agriculture) because the senior cabinet member (i.e., Secretary of State) was not immediately available when the simultaneous vacancies occurred.²¹² In this case, Baker surmises that it would be in the interest of the country to allow bumping. However, good bumping is not permitted under the U.S. Presidential Succession Act of 1947.²¹³ On the other hand, an example of “bad bumping” would be when the surviving members of Congress would select a new house speaker to displace a Cabinet officer who has already assumed the role of acting president, which is what the current presidential succession statute provides.²¹⁴ According to Baker, the provision in the U.S. Presidential Succession Act of 1947 which allows bad bumping is “essentially a coup d’état” written into law.²¹⁵ Another situation which can be considered as “bad bumping” is when a higher-ranked successor, who initially chose not to assume the position, would suddenly later assert his or her constitutional and statutory right to do so.²¹⁶ Thus, Baker advocates for the replacement of the existing “bad bumping” provision in the U.S. Presidential Succession Act of 1947 with that of “good bumping.”²¹⁷

To be clear, bumping and supplantation are possible in the U.S. Constitution because the Presidential Succession Act of 1947 expressly allows for “bumping.” Under said statute, the acting president will continue to serve in the same post until a “qualified and prior-entitled individual is able to act.”²¹⁸ In contrast, under the 1987 Constitution, both the constitutional acting successor and the statutory acting successor shall only act as president “until the President or Vice-President shall have been elected and qualified.”²¹⁹ Of course, Congress can enact a law to allow certain officials to bump or supplant each other. But this law can only cover the statutory successors because the rules applicable to the constitutional acting successors are determined by the Constitution.²²⁰

²¹¹ Presidential Succession Act Hearing, *supra* note 49, at 38.

²¹² *Id.* at 38-39.

²¹³ 3 U.S.C. § 19 (d)(2).

²¹⁴ Presidential Succession Act Hearing, *supra* note 49, at 38. *But see* Silva, *supra* note 43 at 456, explaining that under the U.S. Presidential Succession Act of 1947, “a [Senate] president pro tempore upon whom the presidential powers and duties devolve will not be displaced by the subsequent election of a new Speaker who is able to qualify.”

²¹⁵ Presidential Succession Act Hearing, *supra* note 49, at 38.

²¹⁶ *Id.*

²¹⁷ *Id.*

²¹⁸ 3 U.S.C. § 19 (d)(2).

²¹⁹ CONST. art. VII, § 8.

²²⁰ Art. VII, § 8.

E. Resignation, Special Election, and Prescription Period

Under the U.S. Presidential Succession Act of 1947, whoever assumes the position of acting president would have to resign from his current post and would then serve the remainder of the presidential term. This is because the statute does not provide for special elections.²²¹

The aforementioned scenario is not the case in the Philippines because the Constitution does not require the resignation of either the senate president or house speaker for them to succeed as acting president. This was made clear during the constitutional deliberations.²²² Celeridad pointed out that the framers of the Constitution were aware of the possibility of either a senate president or house speaker clinging to his or her regular position while simultaneously serving as the acting president; however, they decided to retain this situation.²²³ The framers considered that if they had required the senate president or the house speaker to resign prior to assuming the position of acting president, while at the same mandating that special elections be held within 71 days from the vacancy, then the acting president would be out of a job once the new president is elected through the special election.

However, the scenario does become problematic if the Offices of the President and the Vice-President become simultaneously vacant within 18 months from the next presidential election because Article VII, Section 10 of the Constitution prohibits the holding of a special election during said period.²²⁴ Hence, the acting president would have to simultaneously occupy two positions for an extended period of time. Allowing the leader of a house of Congress to simultaneously serve as acting president for a lengthy duration would not only inevitably result in the overlapping of functions—which would be a violation of the separation of powers—but it could also potentially paralyze the operations of a chamber of Congress.

²²¹ Silva, *supra* note 43, at 456. “The Presidential Succession Act of 1947 embodies all of Truman’s suggestions except the one for a special election of a President to complete the term.” *See also* Presidential Succession Act Hearing, *supra* note 49, at 12.

²²² Celeridad, *supra* note 47, at 1094–96.

²²³ *Id.* “There seems to be no apparent explanation why the non-resignation of the legislative presiding officers in order to act as the Chief Executive was not for the Constitutional Commission an issue of conformity with a constitutional principle, more specifically an issue of separation of powers. The issue of practicality was not even thoroughly discussed in detail. Once again, the haste characteristic of reorganizing a country recently beset by profound societal and historical changes may have had a hand in half-baking the constitutional provision in question[.]”

²²⁴ CONST. art. VII, § 10.

A solution to this seeming impasse could perhaps come in the form of a constitutional provision that is situational in nature. Should the vacancy occur at a time where a special election is mandatory, then the acting president should not resign from his post as senate president or house speaker. However, if there are 18 months or less left in the presidential term which would require the acting president to serve out the rest of the term, then he or she should first be required to resign from his or her seat in Congress.

VII. RECOMMENDATIONS

The purposes of this Note are: (1) to remind Congress of the long ignored constitutional directive to enact a law that would extend the line of succession; (2) to inform the members of Congress and the public of the need for a constitutional amendment because of the possible constitutional crises regardless of whether Congress enacts a special law; and, (3) to provide guidance by identifying the legal and policy issues that must be considered in enacting the law and amending the Constitution.

The following are some guidelines to give Congress more elbow room to decide, without constitutional hindrances and deadlocks, and the risk of constitutional crises, which officer to place in the presidential line of succession. First, Article VII, Section 8 should be amended to exclude the senate president and the house speaker from the line of succession.²²⁵ Second, Article VII, Section 10 should be modified so that the holding of a special election is merely optional rather than mandatory. Should Congress decide to retain the senate president and house speaker as the immediate successors, they can do so by passing a special law reflecting the same. Likewise, should Congress decide that the conduct of special elections is necessary, such may be provided in the succession legislation. Of course, it must be noted that the amended constitutional provision must expressly provide that Congress may pass a law requiring the conduct of special elections in case of simultaneous vacancies in the offices of the president and the vice-president. Otherwise, its mere inclusion in a statute may be assailed as unconstitutional.²²⁶

²²⁵ Art. VII, § 8, ¶ 2.

²²⁶ Under the present Constitution, there are two ways to be elected as president: (1) through a general election as per Art. VII, § 4; and (2) a special election, as provided for under Art. VII, § 10, which is triggered by the simultaneous vacancies in the offices of the President and Vice-President.

To address possible constitutional issues regarding the separation of powers, the amended constitutional provision should expressly state, without necessarily determining the order, the classes of officials who can be included by Congress in the extended line of succession.²²⁷ It should also state whether such designation is annexed to the person occupying the position or to the office itself.

The constitutional provision should also expressly provide for an order of succession among the Cabinet members. However, this provision must be couched in flexible terms so as to contemplate a possible future increase or decrease in the number of Cabinet positions. The Cabinet member assuming the position would do so not merely in an acting capacity, but would actually become president, unless there is a succession law passed by Congress. If there was neither a succession law nor special elections to be conducted, it would make no sense to make the presidential successor a president only in an acting capacity. If a presidential succession law has indeed been passed by Congress, then the provision with regard to the Cabinet secretaries will become inoperative and the special law would prevail. In this way, a constitutional crisis is averted in the event of congressional inaction,²²⁸ and such inaction could be treated as an implied agreement on the part of Congress to have Cabinet members as the Constitutional successors after the vice-president. The Cabinet member will also not become president if the incapacity that occurred in the Office of the Vice-President is only temporary. Furthermore, as among Cabinet members, the ascension will immediately pass to the one next in line even if the disability of the higher-ranking Cabinet member is merely temporary. This way, the possible “bumping” or supplantation is avoided.

Lastly, to mitigate the likelihood of a power vacuum, the special law must contemplate a scenario where, in addition to the death or incapacity of the president, vice-president, senate president, and house speaker, a substantial number of senators, congressmen, and Supreme Court justices simultaneously die, resign, become permanently disabled, or were removed from their positions. As for the other matters, such as whether the immediate conduct of a special election is required or whether the acting officer should

²²⁷ See Art. VII, § 8.

²²⁸ Several provisions in the Constitution presently remain inoperative because of congressional inaction. Aside from the mandate to extend the line of succession, Congress has also refused to define political dynasty, and enact a general reapportionment law. Thus, leaving the enactment of a succession law to Congress without a contingency in place would allow the possibility of congressional inaction for another 30 years and would counteract the very reason for the proposed amendment.

resign from his elected or appointed position, those must be left to the sound discretion of Congress as the voice of the people.

CONCLUSION

Notwithstanding its several loopholes, the constitutional provisions on the presidential line of succession remain untouched. According to Professor Dante Gatmaytan, the skepticism towards changes in the Constitution can be traced back to the time when the late dictator Ferdinand Marcos tried to dodge term limits and extend his power indefinitely by enacting the 1973 Constitution.²²⁹ But even before the 1987 Constitution, it has been evident that Philippine legislators are hesitant to enact changes to the Constitution. In fact, the 1935 Constitution was only amended twice. The first amendment was made to reflect the shift to a bicameral legislature and to change the term limit of the president. The second was to give U.S. citizens parity rights with Filipino citizens in the development of the country's natural resources and in the operation of public utilities.²³⁰ The revision resulting in the promulgation of the 1973 Constitution, on the other hand, should not be counted because, as Dean Antonio La Viña notes, they were only introduced to perpetuate Marcos' one-man-rule.²³¹ Furthermore, the revisions were rigged, orchestrated, and made possible by President Marcos' control of the government bureaucracy and the judiciary.²³² In the same way, constitutional change also occurs in the United States only when there is a tragedy or an imminent disaster.²³³

The country's global pandemic response has exposed the inability of the government to effectively respond to a major health crisis. It has also exposed the country's vulnerability as to the issue of continuity of government, for it showed the mortality and fragility of even the top government leaders. If the country can barely survive the pandemic alone,²³⁴

²²⁹ Sofia Tomacruz, *LOOK BACK: Past Charter Change Attempts and Why They Failed*, RAPPLER, Jan. 17, 2018, at <https://www.rappler.com/newsbreak/iq/past-attempts-charter-change-philippines-failed>.

²³⁰ *Evolution of the Philippine Constitution*, OFFICIAL GAZ., available at <https://www.officialgazette.gov.ph/constitutions/constitution-day> (last visited Feb. 2, 2021).

²³¹ Antonio La Viña, *Eagle Eyes: The Tragedy of the 1973 Constitution*, MANILA STANDARD, Sept. 20, 2016, available at <https://manilastandard.net/opinion/columns/eagle-eyes-by-tony-la-vina/216640/the-tragedy-of-the-1973-constitution.html>.

²³² *Id.* See also Dante Gatmaytan-Magno, *Changing Constitutions: Judicial Review and Redemption in the Philippines*, 25 UCLA PAC. BASIN L. J. 1, 4–7 (2007).

²³³ Albert, *supra* note 74, at 575.

²³⁴ See Luz Wendy Noble, *PHL Recovery to Lag Asia Pacific*, BUSINESSWORLD, Nov. 19, 2020, at <https://www.bworldonline.com/phl-recovery-to-lag-asia-pacific/>.

what more when a graver national emergency is compounded with power struggles brought by the absence of government leaders?

In the United States, debates on the wisdom of presidential succession laws have spanned for centuries, although the country has never had a need to implement such laws.²³⁵ The call for a review of the U.S. Presidential Succession Act of 1947 was at its peak in the aftermath of the September 11 terrorist attack where hijacked planes partially destroyed the Pentagon, headquarters of the U.S. Department of Defense.²³⁶ Evidence that later surfaced suggested that the target of United Flight 93—the third hijacked plane that failed to reach its intended target—was the Capitol, the traditional venue of the annual State of the Union Address.²³⁷

The question now is: must we wait for a similarly grave tragedy to occur in the Philippines before we start taking the issue of presidential succession seriously? Should we only debate on the wisdom of presidential succession once the worst-case scenario has already happened? The high political and social investment demanded by a change to the provisions of the Constitution is far outweighed by the benefits from the assurance of averting possible constitutional crises and avoiding possible questions on an eventual successor's legitimacy. While it is inevitable for someone to eventually ascend to the role of presidency,²³⁸ regardless if the Constitution is amended and a statute extending the line of succession is enacted, there will always be lingering questions regarding the successor's constitutionality and legitimacy.

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²³⁵ Presidential Succession Act Hearing, *supra* note 49, at 4–5.

²³⁶ Fortier & Ornstein, *supra* note 63, at 993; Clinic on Presidential Succession, *supra* note 179, at 100–113 (2013); Albert, *supra* note 74, at 533. *See also* M. Miller Baker, *Fools, Drunkards, & Presidential Succession*, THE FEDERALIST SOC'Y, Dec. 1, 2001, available at <https://fedsoc.org/commentary/publications/fools-drunkards-presidential-succession>.

²³⁷ Howard Wasserman, *Continuity of Congress: A Play in Three Stages*, 53 CATH. U. L. REV. 949, 949–50 (2004).

²³⁸ *See Estrada v. Desierto*, G.R. No. 146710, 353 SCRA 452, 549, Mar. 2, 2001 (Mendoza, J., concurring). “The operative fact which enabled Vice-President Gloria Macapagal-Arroyo to assume the presidency was the fact that there was a crisis, nay a vacuum, in the executive leadership which made the government rife for seizure by lawless elements. The presidency was up for grabs, and it was imperative that the rule of succession in the Constitution be enforced.”