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Report on Citizenship Law

China and Taiwan

Choo Chin Low

1. Introduction

Modern China's discourse and practice of citizenship is the product of the state's emigration history, a series of state successions, post-war inter-state rivalry, internal migration and the flow of returned migration. Emigration in Imperial China created 'emigrant citizenship' which was defined by descent and a strict expatriation regime. Republican China and Socialist China inherited the *ius sanguinis* citizenship regime, in which *ius soli* has played virtually no role in assigning citizenship. Territorial birth right citizenship is an uncommon tradition in all Chinese citizenship regimes (including contemporary Taiwan). The factor of descent is, however, downplayed in the Hong Kong Special Administrative Region (HKSAR) and Macau SAR. Citizenship rights in these SARs are associated with permanent residency status. The constitution of these two regions, the Basic Law, accorded fundamental rights to all residents and political rights to permanent residents. Non-Chinese residents, without PRC nationality, are also entitled to civil rights. Residence has constituted a more crucial factor for determining social membership in the HKSAR and Macau SAR.

Though there is only one category of PRC nationality, citizenship practices in different administrative regions reflect 'one country, multiple citizenship systems' (Wu 2010). Local citizenship is more valued when it comes to the rights and obligations of citizenship, pinpointing that the household registration system (*hukou*) is a kind of 'local citizenship' (Smart & Smart 2001), and permanent residency in the special administrative regions is a type of 'quasi citizenship' (Ghai 2001). As far as the allocation of citizenship rights is concerned, the *hukou* system raises a sharp distinction between rural and urban citizens in mainland China. Inclusion at the local level is grounded on one's admissibility into the local *hukou* in the mainland and permanent residency status in Hong Kong and Macau (Smart & Smart 2001). The prominence of a 'local citizenship' status may explain the devaluing of PRC 'national' citizenship. PRC formal citizenship is immaterial, as it does not guarantee access to the possession and exercise of rights. What matters most is 'local' citizenship, without which, one is excluded from the rights and privileges of citizenship at the local level.

A controversial citizenship debate in both China and Taiwan concerns the liberalisation of the dual citizenship restriction. New waves of emigration (and returned migration to the mainland) are soon followed by lobbying efforts in challenging the state's single nationality principle. Facilitating dual nationality among Chinese emigrants benefits the state's economic globalisation but, at the same time, may upset the state's anti-corruption

efforts. Security considerations play an upper-hand role in the way China configures its single nationality rule, silencing the proposals to relax dual nationality for economic developmental gains. Compared to China, Taiwan's nationality debates centre on the right of naturalised citizens to dual nationality. Taiwan's citizenship discourse is distinctive, as Taiwan selectively allows dual nationality among its birthright citizens but excludes naturalised citizens from such a privilege. Naturalised citizens (New Taiwanese) do not enjoy similar rights as native citizens. The 2000 Nationality Act distinguished between the two categories of citizens in terms of the legal right to dual nationality and the right to hold public offices. The handicap facing naturalised citizens as well as the high barriers to naturalisation have been contested. As naturalisation is a winding path without equal rights, the Taiwan naturalisation regime is increasingly being viewed as selective, restrictive and exclusive.

2. Historical Background

The law of blood has governed the Chinese citizenship regime since the Qing dynastic era (1644-1911). Chinese citizenship can be inherited perpetually by children born to Chinese fathers. Admission to Chinese citizenry has been subject to high naturalisation barriers. Among the features of the Chinese citizenship regime, the strict expatriation regime has been the most problematic. Citizenship was made difficult to lose, resulting in conflicting nationality claims. Dual nationality had continued to trouble the state's relationship with its diasporic community throughout the post-war period, until the People's Republic of China (PRC) ended the strict expatriation regime, which was identified as the source of dual nationality. In the 1950s, the PRC recognised the automatic right to expatriation, thus putting an end to dual nationality practices among the overseas Chinese. The automatic loss of Chinese nationality was implemented along with the recovery of lost citizenship. Returned ethnic Chinese and Chinese refugees were allowed to recover their Chinese nationality upon repatriation to China. Citizenship recovery protected these displaced persons in the wake of discrimination against ethnic Chinese in Southeast Asia.

2.1 Emigration and citizenship

Emigration has shaped the direction of citizenship in China under the Qing dynasty. The Qing attitude towards its overseas population has defined the *ius sanguinis* regime of the state. China's first nationality law was enacted in the context of emigration to counter foreign nationality claims on the overseas Chinese in colonial territories. The Netherlands applied its policy of *ius soli* to the residents in Java in 1907 and a nationality law was necessary for China to claim the allegiance of all overseas Chinese (Pina-Guerassimoff & Guerassimoff 2007).

The state's dominant *ius sanguinis* regime has its root in the country's emigration history. The principle of blood lineage reflects the state's relationship with all Chinese. The 1909 Qing Nationality Law, formulated by China's last dynasty, attributed membership on the basis of parentage and naturalisation. The law defined *Chinese* as children born of a Chinese father. Children born of a Chinese mother could inherit the Chinese nationality only if the

father was unknown or without a determinate nationality.¹ The *ius sanguinis* principle (*xuetong zhuyi*) was adopted with two objectives; to preserve its sovereignty at the height of Western imperialism and to maintain the absolute obedience of all the Qing subjects. *Ius sanguinis* was preferred over *ius soli* because the former was in line with the traditional Chinese values of perpetual allegiance, lineal continuity and filial piety (Shao 2009).

The *ius soli* principle of nationality is uncommon in the Chinese citizenship tradition, as China has never been an immigration country. Birth in China alone does not guarantee Chinese citizenship. The 1909 Qing Nationality Law (but also the 1912 and 1914 laws, see below) ‘disregarded *jus soli* as a factor of determining Chinese nationality’ (Chen 1983: 285). *Ius soli* was only applicable to children born in China of unknown parents or of stateless parents and abandoned children found on Chinese soil.² The inclusion of immigrants into China was not a priority; rather, the motivation behind the law was to prevent the Chinese from emigrating and being naturalised in foreign countries (Shao 2009). Naturalisation barriers were set high, and only desirable aliens were admitted to Chinese nationality. Naturalised citizens were treated differently in terms of political rights, as compared to native citizens (Tsai 1910). Any alien desiring to be admitted to Chinese nationality had to fulfill at least ten years of continuous residence, be of good moral character, have economical independence and be deemed to have lost the former nationality.³ The law imposed a twenty-year ban on naturalised subjects from holding public offices and serving in the army.⁴

The Qing adopted a strict rule against expatriation. Under the strict expatriation regime in the nationality traditions of China, the transfer of allegiance was not recognised and the right to automatic expatriation was denied. Chinese nationality was made difficult to lose, as reflected in the 1709 Qing court edict ‘once a Chinese, always a Chinese’ (De Padua 1985: 258). Renunciation of Chinese nationality was conditional upon obtaining permission from the government.⁵ This provision was to ensure that the applicants were not involved in any court cases, were not in arrears with any state or communal taxes, were not bound to military duties and were not holding government positions.⁶ Unless the official permission was granted, the foreign naturalisation of any Chinese was not recognised and one remained Chinese for all purposes.⁷

The ‘direct denial of the so-called inherent right of expatriation’ (Tsai 1910: 408) served to protect the state interests due to the extraterritorial practice of foreign powers in China. Chinese who held a foreign nationality were beyond the jurisdiction of Chinese law. In order to prevent dual nationals avoiding Chinese jurisdiction under the practice of consular jurisdiction, the 1909 Nationality Law denied the right to expatriation without the consent of the state (Tsai 1910). The strict expatriation regime (rather than *ius sanguinis*), resulted in dual nationality conflicts with the host countries, in which the overseas Chinese sought naturalisation (De Padua 1985). The Republic of China (ROC), which succeeded the Qing Dynasty in 1912, inherited the dual legacy of the law of blood and strict expatriation rules.

¹ Qing Nationality Law, 1909, art. I. English text in ‘Law on the Acquisition and Loss of Chinese Nationality,’ *American Journal of International Law*, Vol. 4, No. 2, Supplement: Official Documents (1910), pp. 160-166.

² *Ibid.* art. II.

³ *Ibid.* art. III.

⁴ *Ibid.* art. VIII.

⁵ *Ibid.* art. XI.

⁶ *Ibid.* art. XII.

⁷ *Ibid.* art. XVIII.

2.2 State succession and the *ius sanguinis* citizenship regime

As mentioned, the Imperial Qing Nationality Law of 1909 was based on the natural possession of Chinese nationality, which emphasised the continuity of blood lineage (Shao 2009). This principle was inherited by the newly established Republican government in January 1912. The Republic of China (ROC) enacted a new nationality law in 1912, and the 1912 law was amended in 1914. The Kuomintang (KMT) or Nationalist Party (which became the ruling party in 1928) enacted a new nationality act in 1929, which remained in force in China until the ROC government moved to Taiwan in 1949 (Chiu 1990).

The principle of blood lineage remained unchanged in guiding the nationality rules of China despite a few series of state successions taking place: the Qing-ROC transition in 1912, the foreign colonisation of Manchuria, Taiwan, Hong Kong and Macau beginning in 1842, and the ROC-PRC contestation after 1949 (Shao 2009). *Ius sanguinis* gained more importance after the post-World War II division, as the competition for loyalty was a means of gaining legitimacy over the rival states. In 1949, the Chinese Civil War ended with the establishment of the People's Republic of China (PRC) on 1 October on the mainland and the withdrawal of the ROC to Taiwan. In the post-1949 era, both the ROC and PRC governments did not define their political membership and formulate a new nationality law. As Shao Dan, a political scientist argued, 'Under the principle of *uti possidetis* (as you possess), states can succeed one another within the same territory and rule over the same population, but a new regime does not define the name, territory, and membership of its state in the same way as the old' (Shao 2009: 21).

Both states claimed political allegiance based on '*xuetong zhuyi*'. Political membership was ascribed following the principle of 'natural possession' of Chinese nationality with political allegiance passing from parents to children. *Ius sanguinis* presents both Chinese governments with a convenient tool (though problematic) to claim the allegiance of all Chinese, regardless of the changes in its national boundary (Shao 2009). Citizenship became a critical instrument for political legitimacy and territorial unification. For divided nations, defining one's political allegiance based on bloodline presented the divided states with a convenient tool to claim political allegiance of their population (including those in the rival states). Each of these states claimed the allegiance of all Chinese, as the case might be, as nationals, based on descent. Interstate rivalry, which impelled the divided states to compete for worldwide recognition, explains why citizenship in divided nations functions primarily to support the claim to sole representation. Effective control over the population has become the metric of the state's legitimacy and sovereignty (Low 2016).

The 1929 Nationality Law was in force in China (though not in Taiwan) until 1949. No nationality law was passed in the PRC in the period between 1949 and 1980. The 1980 Law is silent on repealing or replacing pre-PRC nationality laws. It does not define who is a national of the PRC. Nationality conflicts involving its overseas population, during the 'silent period' between 1949 and 1980, were solved through diplomatic efforts by the Ministry of Foreign Affairs. Bilateral treaties and joint communiqués on dual nationality continued to have legal consequences in the new 1980 Chinese Nationality Law (Chen 1983; Ginsburgs 1982).

2.3 Dual nationality treaties and the socialist regime

Non-recognition of dual nationality occupied a decisive position in China's international diplomacy in her bid to normalise relations with neighbouring states while defeating international isolation. Dual nationality practices were reversed in 1954, brought about by geopolitical developments during the Cold War and the global trend of non-recognition of dual nationality in socialist states. Dual nationality was the cause of diplomatic frictions. China's refusal to recognise the right of expatriation was ideological and politically sensitive to the third world countries, when overseas Chinese were associated with revolutionary activities (Low 2015a). In 1954, China explicitly recognised the right to renounce Chinese nationality. As Zhou Enlai, the Chinese Premier, acknowledged: 'The problem of dual nationality is something which is left behind by the Republic of China... The People's Republic of China, however, is ready to solve the problem of dual nationality of overseas Chinese with the governments of countries concerned' (Ambedkar & Divekar as cited in Low 2015a: 1666). Soon after Zhou's declaration at the Bandung Conference, China signed a dual nationality treaty with Indonesia in 1955.

The preferred solution was bilateral dual nationality treaties. The PRC invited the host countries to solve the nationality problems through the conclusion of bilateral treaties, which was tantamount to recognition of the socialist Chinese regime. Bilateral treaties 'had far reaching political effects in terms of interstate rivalry in divided nations' (Low 2016: 1658). By concluding treaties with the non-recognising states, diplomatically isolated China could establish diplomatic relations. Politically, the conclusion of a state treaty implied the recognition of PRC state sovereignty. A more important factor was ideological. The signatory states of the nationality treaty would only recognise PRC nationality, thus effectively denying the jurisdiction of its rival state over Chinese nationals in a third state. In determining the choice of citizenship, dual nationals involved could only choose between PRC nationality and the nationality of the host country. Bilateral treaties served two foreign objectives of socialist China; ending diplomatic isolation and bringing its overseas nationals into the PRC's political system. The treaty system was firmly embedded in the interstate rivalry and Cold War contexts (Low 2015a).

The Sino-Indonesia Dual Nationality Treaty provided for the renunciation of one of the nationalities based on the principle of free choice. According to the option model, Chinese dual nationals living in Indonesia were required to choose, in accordance with their own will, between the nationality of the PRC and the nationality of the Republic of Indonesia.⁸ Individuals who had attained the age of eighteen years were required to exercise the right of option within two years of the coming into effect of the Treaty.⁹ All Chinese nationals, including minors, had the right to renounce Chinese nationality, provided that they made a declaration. Those holding the two nationalities desiring to choose Indonesian nationality must declare before the appropriate authorities of Indonesia that they renounced their Chinese nationality.¹⁰ Upon choosing Indonesian nationality, such persons automatically lost Chinese nationality.¹¹ For those who failed to choose their nationality within the stipulated two-year period, they were considered to have chosen the nationality of their father.¹² The occurrence

⁸ Agreement on the Issue of Dual Nationality between the Republic of Indonesia and the People's Republic of China, 22 April 1955, art I.

⁹ Ibid. art. II.

¹⁰ Ibid. art. III.

¹¹ Ibid. art. IV.

¹² Ibid. art. V.

of dual nationality among children was eliminated by requiring minors to choose their nationality within a year upon reaching the age of adulthood. Prior to that, the citizenship of minors was to be decided by their parents.¹³

Following the termination of diplomatic relations with the PRC in 1967, the treaty was unilaterally suspended by Indonesia in 1969. Due to the absence of the Chinese authorities in Indonesia since 1969, declaration to become a Chinese citizen was impossible. The treaty was administratively burdensome. During the option period (two years beginning from 20 January 1960), dual nationals were required to make a declaration renouncing either Chinese or Indonesian citizenship with the relevant authorities. Politically, Indonesia was worried of the political orientation of Chinese children opting for Indonesian Nationality without being screened. Compared to other foreigners, Indonesian Chinese received special treatment in terms of the acquisition of Indonesian nationality, without going through the process of naturalisation. This privileged treatment contradicted the principle of equality (Suryadinata 1976).

The Sino-Indonesia Treaty proved unsatisfactory to Indonesia. Many dual nationals were ineligible for Indonesian nationality. As far as Indonesia was concerned, the implementation of the treaty would 'compromise Indonesia's sovereignty in internal matters affecting aliens' (Mozingo 1961: 26). The treaty in fact allowed the PRC to intervene on behalf of the Chinese who chose to remain Chinese nationals in Indonesia (Low 2015a). With the termination of this treaty, Chinese children could only become Indonesian citizens through naturalisation - subject to thorough screening, complicated procedures and high fees - in accordance with the 1958 Citizenship Act. Advocating the principle of a single nationality, the act required the Chinese applicants to declare their intention to renounce their Chinese citizenship. Nevertheless, the status of those who already had Indonesian citizenship under the treaty and their children remained unchanged. The termination of the treaty ended the privileged access to Indonesian citizenship (Suryadinata 1976).

The option model was problematic. Other countries were not convinced of the practicability of concluding a dual nationality treaty with the PRC. First, its method of implementation was unfeasible. The option model required the registration of options by the dual nationals. A simpler solution would be providing for the automatic loss of nationality under the Chinese nationality law. Second, there were issues concerning the legal status of Southeast Asian countries, which were still under colonial rule in 1955 and did not have the legal capacity to conclude a treaty with the PRC. Third, prior to achieving full independence, British colonial territories such as Malaya, Singapore, Myanmar, Hong Kong, Sarawak, Brunei and Mauritius had differing nationality laws, which made it impossible to adopt the option model. If a treaty following the lines of the Sino-Indonesia Treaty were to be concluded, alien Chinese in the British territories would be granted the right of option to choose British nationality, without going through the naturalisation process (Low 2015a).

The treaty system was revised in 1956. Acknowledging setbacks to its offer, the PRC revised its policy in 1956 in which dual nationals were permitted to choose their own nationality without any dual nationality treaties. China's new dual nationality policy, those who had chosen local citizenship were considered to have renounced Chinese citizenship. This was a far-reaching departure from the 1929 Nationality Law. China now allowed Chinese nationals to divest themselves of Chinese nationality (Fitzgerald 1972).

Joint communiqués with an expatriation clause were concluded with the Federation of Malaysia (31 May 1974), the Republic of the Philippines (9 June 1975) and Thailand (1 July

¹³ Ibid. art. VI.

1975). In the joint communiqués establishing diplomatic relations, the Chinese government recognised the inherent right to expatriation, thus resolving the remaining issue concerning the dual nationality problem of the overseas Chinese. It considered anyone of Chinese origin who had voluntarily acquired the contracting state's nationality as automatically forfeiting Chinese nationality. Malaysia, the Philippines, and Thailand recognised the PRC as the sole legal government of China.¹⁴ The dual legacy of the Chinese citizenship tradition – dual nationality and strict expatriation – was legally and constitutionally abandoned when the socialist state promulgated its first nationality law adopted at the third session of the fifth National People's Congress on 10 September 1980. Automatic loss of Chinese citizenship was adopted.¹⁵ A single nationality principle was gazetted. Article 3 of the Law stated, 'The People's Republic of China does not recognize dual nationality for any Chinese national'.¹⁶

2.4 Recovery of Chinese nationality and returned overseas Chinese

From the legal perspective, the Chinese law of blood was to a certain extent advantageous to the governments in the host countries. The Chinese nationals in colonial territories could be banished, and banishment offered the host countries an opportunity to get rid of its unwanted Chinese elements. Criminals, bandits, paupers, the unemployed and communist sympathisers could be legally sent back to China based on the definition of the Chinese Nationality Law. The Chinese law of blood, then, had guaranteed the right to return to the mainland.

The influx of Chinese migrants into China in the post-war period was unprecedented. Since the establishment of the PRC in 1949 until 1961, an estimated 500,000 to 600,000 ethnic Chinese returned to the mainland. The returned overseas Chinese (*Guiqiao*) included various categories, such as patriots, refugees, tycoons, scientists, intellectuals, community leaders and students. Their return was motivated by various factors, ranging from the desire to participate in the nation building of the new China, to serve their motherland, to join family members, to seek Chinese educational opportunities and to seek economic investment possibilities. However, most of the returned overseas Chinese were forced to return to seek relief from pressing racial discrimination in their host countries. Post-war anti-Chinese persecution and violence in Southeast Asia, particularly in Indonesia, the Philippines, Myanmar and Vietnam, created a mass wave of refugees landing on Chinese ports in the 1950s. An anti-communist campaign in colonial Malaya resulted in the deportation of ethnic Chinese suspected of supporting the Malayan Communist Party's insurgency war. In the eyes of China, these ethnic Chinese, who might not have ever set their foot on Chinese soil were considered Chinese nationals (Peterson 2012).

The right to return and recover lost nationality was assured even after the PRC abandoned its nationality claim on overseas Chinese with foreign nationality in the 1950s. With the policy of voluntary expatriation, those who had chosen local citizenship were considered to have renounced Chinese citizenship. The principle of recovery of lost citizenship was articulated by Zhou Enlai, the Chinese Premier, during the ratification of the

¹⁴ Joint Communiqué of the Government of the People's Republic of China and the Government of Malaysia of 31 May 1974; the Joint Communiqué of the Government of the People's Republic of China and the Government of the Republic of the Philippines of 9 June 1975; the Joint Communiqué of the Government of the People's Republic of China and the Government of Thailand of 1 July 1975, reprinted in Leo Suryadinata, *China and the Asean States: The Ethnic Chinese Dimension* (Singapore: Marshall Cavendish Academic, 2005).

¹⁵ Nationality Law of the People's Republic of China, 1980, art. 9.

¹⁶ Ibid. art 3.

Sino-Indonesia Treaty in the Standing Committee of the National People's Congress in December 1957.¹⁷

Under the current 1980 Nationality Law, the restoration of Chinese nationality was facilitated for former Chinese nationals who held foreign nationality, if they had legitimate reasons. However, it is unclear as to what reasons were deemed to be legitimate.¹⁸ The recovery provision did not attach any additional criteria in terms of the category of persons eligible, the required length of residence, moral character and economic livelihood conditions. Thus the provision was flexible enough to encompass any categories of Chinese nationals who had legitimate reasons. This provision had been increasingly important due to the 'Chinese problem' in Southeast Asia and their repatriation to the mainland. Cases of ethnic persecution among the Chinese resulted in the withdrawal of their foreign nationality and statelessness. Facing unfavourable circumstances in their host countries, these overseas Chinese deportees, who would otherwise be stateless, were re-admitted into Chinese nationality. Repatriation constituted grounds for recovery of Chinese nationality (Ginsburgs 1982).

Article 13 of the 1980 Nationality Law provided constitutional protection for displaced persons. It provided for the recovery of Chinese nationality for former Chinese citizens who lost their Chinese nationality for any reasons that were considered to be legitimate. In other words, the provision offered them the right to return. Though overseas nationals and their descendants with foreign nationality automatically lost Chinese nationality, the 1980 Law provided an option to recover their Chinese nationality if they decided to return for permanent residence.¹⁹ A returned overseas Chinese was 'someone who was "Chinese" by virtue of blood and citizenship but had lived outside its territorial borders and then engaged in an act of "return"' (Peterson 2012: 131). Thus, the provision enabled the government 1) to appoint prominent Chinese intellectuals and community leaders to high positions in public offices, such as the Chinese People's Political Consultative Conference (CPPCC), the National People's Congress (NPC) and the Overseas Chinese Affairs Commission (OCAC); and 2) to provide necessary protection to ethnic Chinese deportees. It was this provision that enabled these Chinese to enjoy the same constitutional and legal rights as other Chinese. The provision for citizenship restoration enabled the overseas Chinese who returned to acquire similar rights and to assume the responsibility of citizenship (Chen 1983; Peterson 2012).

3. The Current Citizenship Regime

The present citizenship regime is found in the 1980 Nationality Law, which departs significantly from the nationality principles of its predecessors. It is a brief document containing eighteen articles with significant changes in line with the socialist system: 1) one single class of nationality, 2) a combination of *ius sanguinis* and *ius soli*, 3) equality between sexes and 4) non-recognition of dual nationality (Ginsburgs 1982). These principles are applicable in the Hong Kong SAR and the Macau SAR as of 1 July 1997 and 20 December 1999, respectively.

¹⁷ Zhou Enlai's speech at the 89th Meeting Standing Committee of the People's Congress on 30 December 1957, in Zhou Nanjing, *境外华人国籍问题讨论辑* [The Citizenship Problems of Chinese Overseas: A Collection of Documents and Articles] (Hong Kong: Hong Kong Press for Social Sciences Ltd, 2005), p. 26.

¹⁸ Nationality Law of the People's Republic of China, 1980, art. 13.

¹⁹ Zhou Enlai's speech, *Gazette of the Standing Committee of the People's National Congress*, May 1980, 84.

The 1982 Constitution of the PRC recognised that all persons holding the PRC nationality are citizens of the PRC, enjoying equal rights before the law.²⁰ The 1980 Law recognises the legal consequences of pre-PRC nationality laws, including China's bilateral treaties and joint communiqués. The nationality status of those who had acquired or forfeited Chinese citizenship prior to 10 September 1980 shall remain valid.²¹

3.1 Modes of acquisition of citizenship

The Nationality Law distinguishes two methods of becoming PRC nationals: by birth and by naturalisation. Chinese nationality acquired by birth includes those born in the country whose parents are Chinese nationals, those born abroad whose parents are Chinese and those born in China with unknown parents. In determining nationality acquired at birth, the 1980 Chinese Nationality Law incorporates the element of *ius soli* in combination with *ius sanguinis*. Chinese parentage and birthplace, taken together, make a child a Chinese national (Chen 1983). Article 4 states, 'Any person born in China whose parents are both Chinese nationals or one of whose parents is a Chinese national shall have Chinese nationality'.²² Article 4 introduces gender equality. All the pre-PRC nationality laws were based on the paternal line in determining a child's nationality. The child inherited the nationality of his father. Article 4 of the new law embraces gender equality by allowing the mother to transmit Chinese nationality to the child as well, consistent with China's socialist ideology of law and its constitution, which guarantees equal rights between sexes. Equal rights in transmitting nationality allows children born of mixed marriages to obtain birthright nationality (Ginsburgs 1982; Chen 1983).

The second mechanism of acquiring citizenship at birth is through birth abroad. Children born abroad whose parents are both Chinese nationals or one of whose parents is a Chinese national shall have Chinese nationality. But Chinese nationality is denied to children born overseas whose parents have settled abroad and the child has acquired a foreign nationality by birth.²³ Article 5 eliminates dual nationality acquired at birth consistent with the socialist principle of non-recognition of dual nationality. The pre-PRC laws which attributed nationality to descent alone resulted in the extensive granting of Chinese nationality. The current 1980 Law applies restrictions to its permanently settled emigrant community (Chen 1983).

In 2008, the Ministry of Public Security (MPS) clarified the implementation of Article 5. It restated the criteria of 'settling abroad' of one of the parents as the precondition of the automatic loss of citizenship for generations of children born abroad. Such children born abroad that had obtained a foreign citizenship do not have PRC nationality if they fulfil one of the following circumstances: first, both parents are Chinese citizens and settled in a foreign country; second, one of the parents is a foreigner, the other is a Chinese citizen and settled in a foreign country; third, both parents are Chinese citizens, and one of them has settled abroad. Children of PRC citizens acquiring foreign nationality at birth could apply for naturalisation in accordance with Article 7.²⁴

²⁰ Constitution of the People's Republic of China, 1982, art. 33.

²¹ Nationality Law of the People's Republic of China, 1980, art. 17.

²² *Ibid.* art. 4.

²³ *Ibid.* art. 5.

²⁴ Notice of the Ministry of Public Security on Article 5 of the Nationality Law of the People's Republic of China (No. 2204 of 2008 of the Ministry of Public Security), 2008,

Ius sanguinis remains the primary method for determining citizenship acquisition. Birth in China or abroad to a Chinese parent determines one's nationality status. *Ius soli* is only applicable to children born of stateless parents on Chinese soil. They are automatically granted Chinese nationality with an additional criterion that the parents must have settled in China.²⁵ The requirement of the permanent residence of the parents is to ensure that the children have sufficiently assimilated into the local way of life (Ginsburgs 1982).

The Nationality Law of the People's Republic of China of 1980 became effective in the Hong Kong Special Administrative Region and the Macau Special Administrative Region as of 1 July 1997 and 20 December 1999, respectively.²⁶ In both regions, the 1980 PRC Nationality Law is applied in accordance with two interpretations: 1) the Interpretation by the Standing Committee of the National People's Congress on Some Questions Concerning Implementation of the Nationality Law of the People's Republic of China in the Hong Kong Special Administrative Region and 2) the Interpretation by the Standing Committee of the National People's Congress on Some Questions Concerning Implementation of the Nationality Law of the People's Republic of China in the Macau Special Administrative Region of the PRC.

Both Interpretations provided that Hong Kong and Macau residents of Chinese descent born in Chinese territory (including Hong Kong and Macau) are PRC nationals.²⁷ The combined principle of *ius sanguinis* and *ius soli* of the PRC law is applicable to Hong Kong and Macau. 'Chinese descent' refers to those with at least one parent who is of Chinese origin (Song 2008: 615). The interpretations provided that any other person who meets the conditions for Chinese nationality as prescribed by the 1980 Nationality Law of the People's Republic of China are Chinese nationals.²⁸ The acquisition of Chinese nationality at birth in both regions follows the PRC model: 1) birth in Hong Kong and Macau to Hong Konger or Macanese Chinese parent; 2) birth abroad to Hong Konger or Macanese Chinese parents; and 3) birth in Hong Kong and Macau to stateless parents, or when their nationality is uncertain, who have settled there.

3.2. Non-recognition of dual nationality and naturalisation

With the PRC Nationality Law in the HKSAR and Macau SAR coming into effect, Hong Kong and Macau residents of Chinese descent born in Chinese territories are Chinese citizens, regardless of their foreign nationality status. The PRC does not recognise any foreign nationality of the Chinese citizens in Hong Kong and Macau. Chinese compatriots residing in Hong Kong and Macau are Chinese nationals regardless of their possession of British or Portuguese passports. According to Article 2, 'All Chinese compatriots residing in Hong Kong, whether they are holders of the British Dependent Territories Citizens' Passport or the

http://www.zhejiang.gov.cn/art/2015/1/9/art_14213_192281.html

²⁵ Ibid. art. 6.

²⁶ Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, 1 July 1997, art. 18 & Annex III; Basic Law of the Macau Special Administrative Region of the People's Republic of China, 20 December 1999, art 18 & Annex III.

²⁷ Interpretation by the Standing Committee of the National People's Congress on Some Questions Concerning Implementation of the Nationality Law of the People's Republic of China in the Hong Kong Special Administrative Region, 1997, art 1; Interpretation by the Standing Committee of the National People's Congress on Some Questions Concerning Implementation of the Nationality Law of the People's Republic of China in the Macau Special Administrative Region of the PRC, 1999, art 1.

²⁸ Ibid.

British National (Overseas) Passport, are Chinese nationals'.²⁹ As of 1 July 1997, the holders of such passports may continue to use the British travel documents for travelling purposes, but they are not entitled to British consular protection in the Chinese territory.³⁰

With respect to Macau SAR, Chinese nationality is extended to any Macau resident of Chinese descent who was born in Macau whether or not he or she holds Portuguese travel documents or identity cards.³¹ For Macau residents, their Portuguese passports function as a travel document per se. After the establishment of the Macau Special Administrative Region, the Portuguese travel documents could continue to be used, but the holders of Portuguese passports were not entitled to Portuguese consular protection in Chinese territories.³² Macau and Hong Kong presented a complicated case for the PRC, as the transfer of sovereignty did not result in the loss of the former nationality of the residents. In both regions, the PRC considers British and Portuguese passports as a travel document and allows its nationals to continue using their foreign passports. But their foreign nationalities do not have any legal effect in the PRC territories (Song 2008).

The single nationality principle was written into the PRC's first nationality law on 10 September 1980. Dual nationality aversion is reflected in Articles 5, 8, 9 and 13, termed as 'anti-dual nationality devices' (Chen 1983: 307). Article 8 deals with naturalisation of foreign nationals while Article 9 stipulates the loss of Chinese nationality via naturalisation abroad. Naturalised PRC citizens are not allowed to retain foreign nationality upon the acquisition of Chinese nationality.³³ Naturalisation is made eligible to those who meet one of the following conditions: 1) they are close relatives of Chinese nationals, 2) they have settled in China, and 3) they have other legitimate reasons.³⁴ The article does not spell out the period of residence required, does not define the degree of kinship required to be considered a close relative and does not indicate what constitutes 'legitimate reasons'; thus, it grants broad discretionary powers to the MPS (Chen 1983). Its application is less clear on the effects of marriage on nationality. Foreign spouses of a Chinese national are not given an automatic pathway to Chinese nationality. There is no automatic marital citizenship, but the spouses of a Chinese national are 'close relatives of Chinese nationals' and eligible for naturalisation. Both the male and female spouse can gain admission into Chinese nationality via naturalisation (Ginsburgs 1982).

The family members of a naturalised person do not automatically acquire Chinese nationality consistent with the principle of non-derivative nationality. 'The loosely defined grounds for naturalisation' enable the spouse and children of a naturalised Chinese citizen to acquire Chinese nationality since they are considered 'close relatives' of a Chinese national. The norm respects free choice of nationality (Chen 1983). Chinese nationality does not extend to the wife and children of a naturalised person. A person's acquisition of Chinese nationality has no effect on the nationality status of his wife and children. In contrast with the republican citizenship tradition, which granted automatic naturalisation to the family members to maintain family unity, the new law thus avoids dual nationality, while respecting the principle of free choice (Ginsburgs 1982). Its application is less clear in cases of adoption, as there is no specific provision applicable to adopted children.

²⁹ Interpretation of the Nationality Law of the PRC in Hong Kong, 1997, art. 2.

³⁰ Ibid. art. 3.

³¹ Interpretation of the Nationality Law of the PRC in Macau, 1999, art. 1.

³² Ibid. art. 2.

³³ Nationality Law of the People's Republic of China, 1980, art. 8.

³⁴ Ibid. art. 7.

In the HKSAR, naturalisation is conditional upon meeting the requirements of Articles 7 and 8 of the 1980 Chinese Nationality Law. Application for naturalisation as a Chinese national is considered on its own merits based on the following criteria: having a near relative who is a Chinese national, habitual residence in the HKSAR, principal members of the family in the HKSAR, economic independence, paid taxes, good character and a sound mind, sufficient knowledge of the Chinese language, intent to continue to live in the HKSAR upon the approval of the application and other legitimate reasons.³⁵ If the application for naturalisation as a Chinese national is approved, the applicant cannot retain his or her foreign nationality in accordance with Article 8 of the Nationality Law. The Immigration Department of the HKSAR is in charge of naturalisation applications. Based on its statistics, there were 1,458 and 1,689 applications received for naturalisation in 2014 and 2015, respectively. Applications for renunciation of Chinese nationality stood at 112 and 109, respectively, for 2014 and 2015, whereas the Immigration Department recorded three and five cases of application for restoration of Chinese nationality for the similar duration.³⁶

3.3 Loss of nationality and dual nationality

Two mechanisms relate to the loss of Chinese nationality: 1) automatic loss of nationality and 2) renunciation. As the government is committed to reducing dual nationality, voluntary expatriation was a new feature introduced by the 1980 Nationality Law. Cases of dual nationality acquired through naturalisation abroad are prevented in Article 9, which stipulates that a Chinese national living abroad loses his or her Chinese nationality automatically if he or she voluntarily acquires a foreign nationality.³⁷ In contrast with the 1909, 1914 and 1929 laws, which did not allow Chinese to renounce their nationality without permission, the recognition of the automatic loss of nationality was the first modern feature in Chinese citizenship history. The PRC officially put the policy of non-recognition of dual nationality into a law after taking into consideration that it could not prevent its overseas nationals from acquiring a second nationality. The foreign nationality would still be valid even if the PRC refused to recognise the second nationality of its nationals. A more practical solution would be to end the person's right to PRC nationality if they acquired a foreign nationality (Ginsburgs 1982). The 1980 mechanism does not provide for the deprivation of citizenship by the unilateral act of the government, and the government can continue to exercise jurisdiction over undesirable individuals (Chen 1983).

The automatic loss of nationality by operation of law is based on the deliberate act of the person involved in obtaining a foreign nationality and the intention of permanent settlement abroad. In its 1999 rule, the Shanghai Second Intermediate People's Court, upheld the idea that a loss of citizenship is contingent on 'settlement abroad'. Obtaining (or purchasing) a foreign nationality alone is insufficient to result in the automatic loss of Chinese nationality. In a case involving fraud and misuse of a visa in a foreign country, the court ruled that the possession of foreign passport(s) does not actually amount to resettlement in a foreign country. Article 9 is not applicable in the case involving the purchase of foreign passport(s), which does not satisfy the requirement of 'resettlement' in a foreign country. Article 10,

³⁵ Hong Kong Immigration Department, 2012, 'Application for Naturalisation as a Chinese National', http://www.immd.gov.hk/eng/services/chinese_nationality/Application_for_Naturalization_as_a_Chinese_National.html

³⁶ Hong Kong Immigration Department, 2012, 'Facts and Statistics: Chinese Nationality', <http://www.immd.gov.hk/eng/facts/naturalisation-nationality.html>

³⁷ Nationality Law of the People's Republic of China, 1980, art. 9.

concerning the renunciation of Chinese nationality, could not be invoked to escape Chinese legal jurisdiction. The court ruled that Article 10 is not applicable. Before the approval of renunciation is granted, one is still a Chinese national and subject to Chinese jurisdiction for the crime committed.³⁸

The second mode of loss is the renunciation of nationality. The MPS exercises wide discretionary powers in administering the renunciation procedure. According to the law, Chinese nationals living in China may renounce their nationality (with permission) based on the following grounds: 1) they are close relatives of foreign nationals, 2) they have settled abroad, and 3) they have other legitimate reasons.³⁹ The broadly defined criteria of what constitute ‘other legitimate reasons’ is flexible enough to allow the applicants to file an application for denaturalisation for any reasons deemed to be fit by the ministry. As part of the state’s effort to eliminate conflicting loyalties, it is only natural that those establishing permanent residence abroad are eligible for denaturalisation. The degree of kinship mentioned here concerns family unity in particular cases of mixed marriages. Marriage to a foreigner serves as legitimate grounds for the renunciation of nationality, as the Chinese national is expected to acquire the nationality of the foreign spouse (Ginsburgs 1982; Chen 1983).

The only restriction prohibiting a national from the renunciation of citizenship applies to state functionaries and military personnel in active service. Article 12 forbids public servants and government officials from renouncing Chinese nationality.⁴⁰ The prohibition was upheld by the People’s Court of Zhengzhou Municipality, in a 2012 decision. The court denied government servants the right to voluntary expatriation as guaranteed under Article 9, thus making them remain under Chinese jurisdiction for lawsuits. Upholding Article 12, the court declared that the defendant still possessed the nationality of the PRC, although he had settled abroad, cancelled his household registration and obtained an Australian passport. Article 12 serves to ensure that dual nationals are subject to the Chinese judicial system for the breach of law, such as embezzlement of public funds.⁴¹ Dual nationality could not be tolerated for government officials involved in law infringement, and Article 9, which pertains to the voluntary loss provision, is not applicable to public servants.

Cases of public servants with dual citizenship fleeing abroad, transferring assets and evading legal sanctions due to their nationality status brought the issue to the forefront of political debates. According to the media, 18,000 officials have escaped the country since the 1990s, along with over 800 billion yuan. Anti-corruption considerations have driven the MPS to strictly enforce its single citizenship policy. In strengthening its control over the issue, the MPS initiated a new policy to tighten checks for dual citizenship. The public is encouraged to report cases of Chinese nationals holding dual nationality through an online platform established on 15 July 2014. Between January 2013 and June 2014, China cancelled the household registration accounts (*hukou*) of 1.06 million Chinese with dual citizenship.⁴² Though the government does not allow dual nationality, many Chinese emigrants have

³⁸袁闵钢, 包华敏骗取出境证案, 上海市第二中级人民法院(2000), 最高人民法院《刑事审判参考》69号. Yuan Min Gang, Bao Hua Min, Visa Fraud Case, Shanghai Second Intermediate People’s Court(2000), Supreme People’s Court 《Criminal Justice Reference》 No.69.

³⁹ Nationality Law of the People’s Republic of China, 1980, art. 10.

⁴⁰ Ibid. art. 12.

⁴¹ 赵书伟挪用款案, 上海市第一中级人民法院民事判决书 (2011) 郑刑一初字第 90 号. Zhao Shuwei, Misappropriation of Funds Case, Civil Judgment of Shanghai First Intermediate People’s Court, (2011) Zheng Xing Yi Chu Zi No. 90.

⁴² Yin Pumin, ‘Debating Dual Citizenship: Experts call for dual citizenship to attract talents despite tightened single citizenship management’, *Beijing Review*, 25 September 2014, http://www.bjreview.com.cn/nation/txt/2014-09/25/content_642355_2.htm

changed their nationality without informing the MPS. They continue to keep their *hukou* in China. Another factor contributing to the rise is the lack of an integrated information sharing system between foreign affairs offices and MPS officials. Data about renunciation by Chinese nationals abroad is not updated by the ministry, resulting in its failure to cancel the *hukou*.⁴³

Dual nationality is either due to the negligence of the person involved in requesting renunciation or rejection of those applications for release. Automatic expatriation by law (Article 9) is applicable to Chinese nationals settling abroad. While Chinese residing abroad are allowed to divest themselves of nationality without prior approval of the state's apparatus, Chinese nationals residing in the PRC must obtain official approval for renunciation (Article 10). Prior to the state's consent, the person involved is still treated for all purposes as a Chinese national, regardless of his possession of a foreign nationality. Holding foreign passports, therefore, does not comply with the criteria of settlement abroad as indicated in Article 9. Automatic expatriation does not apply to Chinese dual nationals residing in China (Song 2008; Ginsburgs 1982).

In the HKSAR and Macau SAR, the two interpretations provided an option to change one's nationality based on the principle of free choice. Chinese nationals residing in Hong Kong and Macau holding foreign passports could apply for a declaration of change of nationality if they wished to retain their foreign nationality and to reside in Hong Kong or Macau as a foreign national (Song 2008). Any resident in Macau who is of both Chinese and Portuguese descent may choose either the nationality of the PRC or of the Republic of Portugal.⁴⁴ Similarly, any Chinese national residing in Hong Kong who wishes to change his or her nationality may, by producing valid documents, apply to the Hong Kong authorities. Upon approval, such applicants will no longer be regarded as Chinese citizens.⁴⁵ In 2014 and 2015, the HKSAR Immigration Department recorded a total of 137 and 134 applications for change of nationality.⁴⁶ Applications for change of nationality must fulfil the following requirements: the applicant is aged 18 or over and of sound mind, a Chinese national, a Hong Kong resident and able to produce evidence (such as a foreign passport or documents that are not forged or obtained by illegal means) to show that the applicant has a foreign nationality. Also, applicants must show that they will not become a stateless person after disclaiming Chinese nationality.⁴⁷

3.4 Rights of citizens and 'one country, multiple citizenship systems'

China has only one category of nationality, which assigns the same rights to all its nationals without differentiating among native-born nationals, naturalised nationals or nationals who have recovered their Chinese nationality. This is in sharp contrast with the 1909 and 1929 laws, in which naturalised nationals were not allowed to serve in the military or high public office (Chen 1983; Ginsburgs 1982). Under the 1929 Nationality Law, a naturalised man and his naturalised wife and children were not entitled to hold public offices unless they petitioned

⁴³ Zhao Yinan, 'Lawmakers call for dual nationality check', *China Daily*, 28 April 2014, http://www.chinadaily.com.cn/china/2012-04/28/content_15165588.htm

⁴⁴ Interpretation of the Nationality Law of the PRC in Macau, 1999, art. 1.

⁴⁵ Interpretation of the Nationality Law of the PRC in Hong Kong, 1997, art. 5.

⁴⁶ Hong Kong Immigration Department, 2012, 'Facts and Statistics: Chinese Nationality', <http://www.immd.gov.hk/eng/facts/naturalisation-nationality.html>

⁴⁷ Hong Kong Immigration Department, 2012, 'Application for Declaration of Change of Nationality', http://www.immd.gov.hk/eng/services/chinese_nationality/Declaration_of_Change_of_Nationality.html

to the Ministry of the Interior (MOI) to have the restriction removed after 10 years.⁴⁸ A person who had re-acquired Chinese nationality was not allowed to hold certain public offices until after a period of three years.⁴⁹ In contrast, the 1980 Law does not bar naturalised nationals and nationals recovering their Chinese nationality from enjoying the same rights.

Although the PRC nationality law echoes a single category of nationality, the distribution of citizenship rights differs considerably across different administrative regions. Chinese nationals are segregated into different citizen groups reflecting ‘one country, multiple citizenship systems’ (Wu 2010; Tseng & Wu 2011). This section briefly discusses the different distribution of rights in accordance with different administrative systems, namely, the differences between rural and urban citizenship in Mainland China, the treatment of Taiwan compatriots under the Chinese Nationality Law, and the rights of residence in Hong Kong and Macau, which are non-dependent on the status of Chinese nationality.

Rural and urban citizenship

Though citizenship rights are identical for naturalised citizens and native citizens, there are differences between rural and urban residents. The distribution of citizenship rights is linked to the household registration system (*hukou*). Migrants from rural areas working and living in the cities are still not considered to be citizens of places of settlement. Beyond their native place, rural migrants are not entitled to civil rights, such as the right of movement and residence, the right to free choice of employment, and the rights to public education and the distribution of welfare benefits. Segmented and differentiated allocations of citizens’ rights have resulted in rural migrants living in cities as second-class citizens. As Wu (2010) pointed out, ‘The *hukou* is at the core of Chinese citizenship rights allocation’ (Wu 2010: 56). PRC citizens are divided into different categories according to birthplace, household registration, and employment status. The differentiated allocation of citizens’ rights is termed ‘differential citizenship’ (Wu 2010, 56). *Hukou* is equated to ‘urban citizenship’ as it regulates the legal residency rights of Chinese citizens at the local level (Ho 2011: 649).

The granting of this urban citizenship was based on the *ius sanguinis* principle via the maternal lineage. City-born Chinese enjoy the privileges of urban citizenship, from which the country-born have been excluded (Solinger 1999). Urban *hukou* was inherited from the mother before 1998. Since the reform in 1998, children can choose to inherit *hukou* from the father or the mother. Furthermore, the regulations have been relaxed to grant urban *hukou* to rural migrants based on residence and economic independence. The categories of people eligible for urban *hukou* are expanded to include 1) rural residents who have lived in the city for more than one year and whose spouses hold urban *hukou*; 2) elderly parents whose only children live in cities; and 3) people who have made investments, established enterprises, purchased apartments, hold stable jobs and accommodations and lived more than one year in a city (Fan 2008).

Urban citizenship is a privileged status available only to the PRC citizens with urban *hukou*. Additionally, full urban membership is available to 1) those immigrants who are employed in urban units and allowed to transfer their *hukou* to the host city, 2) people whose parents were sent down from the city to the countryside during the Cultural Revolution and now reclaim their urban membership as returnees, and 3) people with high skills who are

⁴⁸ Nationality Act of the Republic of China, 1929, art. IX. English text in Chang Chi Shing, ‘Law of Nationality Promulgated by the Nationalist Government on Feb 5, 18th Year of the Republic,’ *China Law Review*, 1930, Vol. 4, No. 3. pp. 39-45.

⁴⁹ *Ibid.* art. XVIII.

eligible to be naturalised as full members. Internal migrants constitute a separate category of citizens. As explained by Wu: ‘The migrants are citizens (*gongmin*) of the PRC only when they stay in their native places, that is, the place of their *hukou* registration. Once they leave, they are transformed into aliens or more accurately, “alien nationals”’ (2010: 65). The gaps between the privileged urban *hukou* and the deprived rural *hukou* pointed to the lack of an egalitarian citizenship, with equal rights for all citizens in China (Tseng & Wu 2011). The stratification of social and economic rights is partly due to the *hukou* system and partly due to the uneven economic reforms since 1978, which allowed selected regions, industries and persons to enjoy special privileges. As Yu has commented, ‘Citizenship means completely different things to urban citizens and rural citizens, with the former in a more advantageous position’ (2010: 305).

Residency-based rights in the HKSAR and Macau SAR

The Basic Law of the HKSAR defines political rights and obligations in terms of permanent residency. All fundamental rights (except the right to vote, the right to stand for elections and the eligibility for public service) are granted to all residents. Chinese nationality is immaterial when it comes to determining the entitlement of rights in the HKSAR (Ghai 2001). Article 26 accorded electoral rights based on permanent residency: ‘Permanent residents of the Hong Kong Special Administrative Region shall have the right to vote and the right to stand for election in accordance with law’.⁵⁰ Article 99 granted the right to hold public office based on permanent residency: ‘Public servants serving in all government departments of the Hong Kong Special Administrative Region must be permanent residents of the Region...’⁵¹ According to the Basic Law of the HKSAR, non-Chinese nationals are granted the right of abode if 1) they have ordinarily resided in Hong Kong for a continuous period of not less than seven years and have taken Hong Kong as their place of permanent residence before or after the establishment of the HKSAR, 2) a minor born in Hong Kong of those residents, and 3) those residents who had the right of abode in Hong Kong before the establishment of the HKSAR.⁵²

The return of Hong Kong to PRC sovereignty did not significantly affect the practice of citizenship rights of its residents. Citizenship rights in the HKSAR are defined based on the status of permanent residence, rather than on citizenship status. Though the Nationality Law is based on Chinese descent, the Basic Law granted most citizenship rights that were pertinent to the right of abode. Non-Chinese Hong Kong residents could gain the right to abode without having to be Chinese nationals. The exercise of citizenship rights is dependent on one’s permanent residence status, with nationality playing a minimal role. The status of permanent residence is equated to ‘quasi-nationality’ (Ghai 2001: 144). With the emergence of this special type of local citizenship, the significance of national citizenship may be diminished. Citizenship in Hong Kong reflects the nature of Hong Kong as a ‘non-national society’ in which non-national residents receive the benefits of political and social membership (Leung 2006: 100).

Similarly, the Basic Law of the Macau SAR grants fundamental rights to all Macau residents (including permanent residents and non-permanent residents), with the exception that the right to vote and the right to stand for election are reserved for permanent residents of the Macau SAR.⁵³ Article 97 stated that ‘Public servants serving in the Macau SAR must be

⁵⁰ Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China, 1997, art. 26.

⁵¹ Ibid. art. 99.

⁵² Ibid. art. 24.

⁵³ Basic Law of the Macau Special Administrative Region of the People’s Republic of China, 1999, art. 26.

permanent residents of the region'.⁵⁴ Besides Chinese citizens, the permanent residents of Macau also include 1) Portuguese who were born in Macau and have taken Macau as their place of permanent residence; 2) Portuguese who have ordinarily resided in Macau for a continuous period of not less than seven years; and 3) persons and their children (persons under 18 years of age born in Macau) who have ordinarily resided in Macau for a continuous period of not less than seven years. In all cases, the duration of seven years is required regardless of the status before or after the establishment of the Macau SAR.⁵⁵

A 'local' citizenship status in Hong Kong and Macau is acquired through a permanent resident status. The permanent resident status with the right of abode is viewed as a 'local citizenship', which is different from Chinese nationality. The Basic Laws of HKSAR and Macau SAR thus created a distinct category of 'local citizenship', and this local citizenship is acquired through a seven-year permanent resident status. Chinese nationality is immaterial for determining the fundamental rights of residents in the HKSAR and Macau SAR.

Taiwanese compatriots in the PRC

In the PRC, the legal status of Taiwanese migrants is 'residents of Taiwan region' and 'Chinese nationals without registered household status' (Tseng & Wu 2011: 273). As long as the PRC continues to hold to the prospect of reunification, the status of compatriots in Taiwan remains an unresolved question. As a result of the PRC's territorial claim on Taiwan, the population in the ROC are considered PRC nationals. As mentioned above, citizenship rights in the PRC are closely linked to the household registration system, which distinguishes 'citizens' from 'nationals'. Only resident nationals who are registered through the household system are regarded as citizens. Citizenship as legal membership is differentiated from nationality as symbolic membership. The PRC Nationality Law of 1980 shared the common feature of a single category of Chinese nationality without differentiating between the concepts of citizenship and nationality. In practice, however, the PRC state restricts full citizenship rights to its own resident citizens by decoupling the two terms 'citizenship' and 'nationality' (Tseng & Wu 2011: 267–268).

Differential citizenship also applies to the situation of the Taiwanese in China. Despite being regarded as PRC Chinese nationals, Taiwanese compatriots do not enjoy the same citizenship status as the other Chinese nationals. They constitute a special category of 'Chinese nationals' different from ordinary 'Chinese citizens' or 'foreigners' due to the legacy of the inter-state rivalry. Though they are PRC nationals, they are required to register with the household registration system to qualify as citizens. They are still required to go through the restrictive naturalisation process, a process similar to that for foreigners, in applying for Chinese citizenship. Naturalisation is conditional upon two criteria. The first is through marriage to a Chinese citizen (and fulfilling other criteria). In this case, naturalisation via marriage is the same as of other foreigners. The second naturalisation pathway, however, is only for elderly exiles that migrated to Taiwan after 1949 and live in Taiwan alone with family members in China. The applicants must be financially independent, and their dependants in China must be willing and financially capable of supporting such applicants (Tseng & Wu 2011).

Two regulations in regard to the citizenship status of ROC residents have been enforced, as a formal definition was absent from the 1980 Nationality Law. The PRC treats all ROC citizens as Chinese citizens, which is evident from two regulations: 1) Measures for the

⁵⁴ Ibid. art. 97.

⁵⁵ Ibid. art. 24.

Control of Chinese Citizens Travelling to or from the Region of Taiwan and 2) the Anti-Secession Law (Chi Chung 2009). The former regulation defines Taiwan residents as ‘PRC citizens residing on Taiwan’.⁵⁶ The Anti-Secession Law defines ROC citizens as ‘Taiwan compatriots’ and implies that Taiwan compatriots are Chinese.⁵⁷

4. Nationality in Taiwan

4.1 Historical development prior to the 2000 nationality reform

When the Republic of China succeeded the Qing Empire in 1912, Taiwan was not a part of ROC territory. Under the Treaty of Shimonoseki (1895), Taiwan became a Japanese colony. The Treaty provided an option clause that permitted the population of Taiwan to choose Qing nationality. Those who did not choose Qing nationality before 7 May 1897 became Japanese subjects. When the 1929 Act was enacted in mainland China, Taiwan was under Japanese colonial rule and the Japanese Nationality Law was in effect there. After the Second World War, Taiwan was returned to China and the then ruling Nationalist government declared that the people of Taiwan resumed their Chinese nationality effective from 25 October 1945, after having lost it during the Japanese occupation. The Nationality Act of 1929 was applicable to Taiwan since 1945, when the Nationalist government took over Taiwan (Chen 2009).

Taiwan had been governed by the 1929 Act until the ROC government revised some articles in 2000. Some of the principles of the 1929 Nationality Act leave a long-lasting legacy to the current political debates in Taiwan: 1) differential rights between native citizens and naturalised citizens, 2) a strict naturalisation regime and 3) gender inequality. The differential treatment of naturalised citizens, historically, is evident in terms of the right to dual nationality and the right to hold public offices. Naturalised citizens were not entitled to the right of dual nationality nor to hold public office. There was no explicit provision in the 1929 Nationality Act prohibiting naturalised citizens from possessing dual nationality and the obligation to renounce one’s original nationality was not explicitly spelled out in the 1929 Nationality Act, but Judicial Yuan Interpretation 21 [1932] Yuan No. 827 provided that naturalisation would only be approved upon the release from one’s original nationality (Chiu 1990: 17).⁵⁸

In contrast to naturalised citizens, ethnic Chinese were allowed dual nationality. The widespread practice was the result of the extensive application of *ius sanguinis* and a strict expatriation regime (Chiu 1990). *Ius sanguinis* reflected ‘the traditional Chinese emphasis on lineage and ancestry’ (Hsia 2009: 26). Meanwhile, strict expatriation was influenced by the need to prevent Chinese nationals from acquiring foreign nationality to avoid Chinese jurisdiction. This would preserve Republican China’s right to exercise diplomatic protection over overseas Chinese (Chiu 1990). The rights of naturalised citizens and native citizens were

⁵⁶ Measures for the Control of Chinese Citizens Travelling to or from the Region of Taiwan, 1992, art. 2.

⁵⁷ Anti-Secession Law, 2005, art. 2.

⁵⁸ The Judicial Yuan is the judicial branch of the government. The central government of the ROC consists of five branches (called Yuan); the Executive Yuan, the Legislative Yuan, the Judicial Yuan, the Examination Yuan, and the Control Yuan.

different under the 1929 Act. Naturalised citizens were not entitled to hold public office. Their eligibility to hold certain public offices was restricted until after a period of ten years.⁵⁹

Republican China had different sets of naturalisation rules: one relating to foreigners with familial or territorial connection and another set for other foreigners. Foreigners, under the 1929 Act, can be naturalised as Chinese citizens after having resided in China for more than five years without interruption, as long as they are of good character and economically independent.⁶⁰ The residential requirement was shortened to three years if the applicant had a Chinese parent or a Chinese wife or was born in China to first-generation immigrants. No residential obligation was imposed when the person was born in China and one of the parents was also born there.⁶¹

The Taiwanese marital citizenship regime reflected the patriarchal ideology, which constructs the status of married women as dependent on their husbands. Female spouses obtained ROC citizenship automatically, while male spouses had to apply for naturalisation (Chen 2009).⁶² The patriarchal family orientation was also visible as the Chinese nationality obtained by a foreign husband of ROC citizens could be passed to his wife and his minor children. The naturalisation of a foreign man affected the nationality status of his family members.⁶³

In the patriarchal Chinese family, the Nationality Act of 1929 granted automatic nationality to children born of a Chinese father.⁶⁴ Children born to a household of an ROC mother and foreign father were denied ROC citizenship. The Act created foreigners among children of mixed marriages with a foreign husband. ROC fathers had the ability to transmit their nationality to children born in wedlock and born out of wedlock. In both cases, the Act denied the right of transmission for ROC mothers (if married to foreign husbands). Only when the father refused to take the responsibility of fatherhood were women allowed to transmit their nationality (Chen 2009). The child took the nationality of the mother if the father's nationality was unknown or when the father was stateless.⁶⁵ Children born out of wedlock inherited the mother's nationality if the father was unknown or had not acknowledged the children.⁶⁶ Gender inequality was ingrained in the 1929 Nationality Act in two aspects, the disparate treatment of spouses in the acquisition of nationality and the transmission of nationality to children (Chen 2009).

The 1929 Nationality Act remained stable and governed the nationality practices of Taiwan until 2000. The ROC government finally revised some of the provisions, which were deemed outdated in the modern world, seventy years after the enactment of the 1929 Nationality Law. During the reform debates in 1999/2000, two principles were agreed upon after examining the nationality laws of other states: the assurance of gender equality and a relaxation of the ban on dual nationality among public officers (Low 2013).

⁵⁹ Nationality Act of the Republic of China, 1929, art IX.

⁶⁰ Ibid. art III. See Chiu, 1990 for a detailed analysis of the 1929 Nationality Act.

⁶¹ Ibid. art. IV (1), (2) and (3).

⁶² Ibid. art. II (1) and art IV (2).

⁶³ Ibid., art. VIII.

⁶⁴ Nationality Act of the Republic of China, 1929, art I (1).

⁶⁵ Ibid. art I (3)

⁶⁶ Ibid. art II (3)

4.2 Nationality reform and the current nationality regime

The 2000 Nationality Act introduced significant changes in the area of gender equality. Male and female spouses are put on an equal footing in terms of citizenship acquisition. Marital citizenship for female spouses is abolished. The automatic right to citizenship via the marital gateway is replaced by naturalisation. Spouses of an ROC national, regardless of their gender, are now required to reside in Taiwan for three consecutive years before they are eligible for naturalisation.⁶⁷ The new amendment inserts a domicile criterion in the wake of cases of ‘marriages of convenience’, which had been prevalent among women from Southeast Asian countries.⁶⁸ Automatic citizenship for female spouses is substituted with a gender-neutral naturalisation regime. With regards to marital expatriation, the 2000 Act does not deprive ROC nationals married to a foreigner of their nationality (Chen 2009). ROC nationals with spouses who are foreigners may now renounce their nationality with the approval of the Ministry of the Interior (MOI).⁶⁹

Gender neutrality is also visible in the transmission of ROC citizenship. The revised Act replaced the patrilineal principle with an egalitarian concept, guaranteeing the mothers’ right to confer nationality to their children (Chen 2009). Prior to 2000, the Republican Nationality Law of 1929 granted automatic nationality to children of Taiwanese fathers and foreign nationals. The 2000 Act is amended to allow ROC citizenship to be inherited by a person whose father or mother is or was a citizen of the ROC.⁷⁰ It facilitates the acquisition of citizenship among children of households of mixed marriages as long as one of their parents is an ROC national.

State membership is determined mostly by parental lineage and Chinese ancestry. The ROC government continues to maintain a *ius sanguinis* regime. The 2000 Nationality Act establishes two routes to Taiwanese citizenship: by birth and by naturalisation. Birthright citizenship is available to those born to an ROC citizen, regardless of the place of birth. There is no element of *ius soli* by the operation of law except for a person who was born in the ROC with unknown parents or who is stateless.⁷¹ The Act, however, maintains the principle of ‘delayed *ius soli*’ for second generation local-born foreigners. Children born in the ROC are entitled to apply for citizenship provided that either one of their parents was also born in the ROC. But this form of acquisition is not automatic. Rather than obtaining citizenship through the operation of law, children of immigrants born in the country acquire ROC citizenship via naturalisation, conditional upon the discretionary power of the MOI.⁷² For children born in Taiwan to foreign-born parents, three years of domicile is required to apply for naturalisation.⁷³ Though the 2000 Act does not grant birthright citizenship based on unconditional *ius soli*, it facilitates the local-born children to claim ROC citizenship via naturalisation.

The 2000 Nationality Act reiterates the distinction of the rights to dual nationality among three categories of nationals: naturalised citizens, native citizens and government officials. Public officers are not allowed to hold a foreign nationality, and even the possession

⁶⁷ Nationality Act, 2000, art 4 (1). English text in *Chinese (Taiwan) Yearbook of International Law and Affairs*, Vol. 18 (1999-2000), pp. 24-30.

⁶⁸ Deborah Shen, ‘Nationality Law changes seek equality between the sexes’, *Taiwan Info*, 20 January 1995, <http://taiwaninfo.nat.gov.tw/ct.asp?xItem=12889&ctNode=103>

⁶⁹ Nationality Act, 2000, art 11(3).

⁷⁰ Nationality Act, 2000, art 2 (I) and (II).

⁷¹ *Ibid.* art 2 (III).

⁷² *Ibid.* art 5 (I).

⁷³ *Ibid.* art 4 (IV).

of a green card is a politically sensitive issue (Low 2015b). This double standard between the three categories of citizens has its historical roots in the practice of Republican China (1912 – 1949). Article 10 of the Rules for the Implementation of the (1929) Nationality Act prohibited dual nationals from holding public office (Chiu 2010). As the dual nationality ban among public office holders resulted in difficulties in finding experts, the legislators – during the 1999/2000 nationality reform – proposed granting an exception to a certain category of people as long as the head of the institution agreed (Low 2013). Under the 2000 Nationality Act, the prohibition of dual nationality among government officers remains unchanged, but the rules are relaxed for those in academic and technical fields. The revision is an attempt to encourage the return of Taiwanese scholars and professionals from overseas.⁷⁴

The 2000 Act relaxes the dual nationality ban among public officers. It exempts certain categories of public officers from such a rule: presidents of public universities, public school teachers, research fellows, employees of public enterprises and professionals, provided that they have rare or highly valuable expertise and their jobs are not concerned with national secrets. In principle, Article 20 of the 2000 Act prohibits members of the National Assembly, legislators, public officers directly elected in municipalities, cities or townships, and village and borough chiefs from obtaining foreign nationality. Article 20 states, ‘A citizen of the Republic of China who has obtained the nationality of a foreign country shall not hold public office in the Republic of China. Those who hold public office shall be released from their posts by the competent authorities’.⁷⁵

In 2001, a further amendment to Article 20 grants a grace period of one year from the date of taking office for public officers with a foreign nationality to complete the renunciation process of their foreign nationality.⁷⁶ Government officials are constitutionally not allowed to hold dual citizenship. ROC legislators holding foreign nationality (the majority have U.S. citizenship and a green card) were widely criticised for their lack of loyalty. The possession of foreign citizenship during their term of public office was regarded as a violation of the Nationality Act and caused a political crisis. Following the discovery of dual citizenship cases among the ruling Kuomintang (KMT) officials, especially since 2008, legislators have called for all legislators and political appointees to undergo tightened background checks before taking office.⁷⁷ With an amendment to the Civil Service Employment Act in 2013, dismissed public servants, who hold dual nationality, were required to return the salary they had earned during their term of office. The amendment signals the government’s position that dual citizenship is not tolerated among all civil servants, strengthening the enforcement of Article 20 (Low 2015b).

⁷⁴ ‘Editorial: Positive moves on nationality’, *Taipei Times*, 18 January 2000, <http://www.taipeitimes.com/News/editorials/archives/2000/01/18/0000020351>

⁷⁵ Article 20 of the Law of Nationality revised and promulgated on 9 February 2000.

⁷⁶ Nationality Act, Revised and Promulgated on 20 June 2001, art. 20. English text in *Chinese (Taiwan) Yearbook of International Law and Affairs*, Vol. 19 (2001), pp. 54-55.

⁷⁷ The Kuomintang (KMT) returned to govern Taiwan following its electoral victory in the 2008 and 2012 elections. The KMT had been governing Taiwan for over five decades before its defeat in the 2000 election to the Democratic Progressive Party (DPP). The DPP is the current ruling party of Taiwan after its 2016 election victory.

4.3 Naturalisation

The 2000 Nationality Act increases the bar for naturalisation. Naturalisation (*gui hua*) is restricted to people with five-year residency, above 20 years old, with good moral character (and without criminal records), who meet certain financial requirements and who renounce their former nationality.⁷⁸ Familial relations with an ROC citizen enables the applicant to naturalise with a shorter residential criterion compared to the normal naturalisation process. The residential requirement is shorter (three years) if the applicant's parents are Chinese, the applicant's spouse is Chinese, or the applicant is adopted by an ROC citizen. All the naturalisation requirements are waived for a minor alien or a stateless person whose father, mother, adopted father or adopted mother is an ROC citizen.⁷⁹

Prior to 2008, the greatest obstacle to naturalisation was financial requirements (Hsia 2009). Financial criteria were set with an exceptionally high requirement to ensure that applicants possess a self-supporting capability.⁸⁰ The enforcement rules of the Nationality Act detailed a person holding sufficient property as someone possessing either 1) an average income for the most recent year of more than double the basic wage promulgated by the Council of Labour Affairs of the Executive Yuan or 2) property with a total assessed value of more than five million New Taiwan dollars (NT\$5,000,000). If the applicant is the spouse of an ROC citizen, the amount includes the income or property of the Taiwanese spouse in the ROC.⁸¹ The financial requirements practically excluded foreign spouses from naturalisation, as their combined household income would likely not meet the requirement. Taiwanese men who marry foreign spouses are mostly low-skilled agricultural and industrial labourers, while women from Southeast Asian countries tend to have a low education level and marry Taiwanese men to escape poverty. As discussed above, automatic citizenship for female spouses is obliterated, and they are required by the 2000 Act to go through the same assessment as other foreigners. The government set high barriers for marriage migrants in the wake of the 'deterioration of the quality of the next generation' (Hsia 2009: 193).

Obtaining citizenship is crucial for a foreign spouse, as the welfare system in Taiwan is based on the household registration system and identification cards (proof of citizenship). Without ROC citizenship, foreign spouses are ineligible for social services and welfare benefits. The financial criteria obstructed many otherwise qualified marriage migrants from acquiring ROC citizenship (Hsia 2009). Visible pressures have been initiated by the immigrant movement demanding that the 'proof of financial security' be scrapped. As a result of a series of protest actions and a rally joined by hundreds of marriage migrants in 2007, which was organised by the 'Coalition Against Financial Requirement for Immigrants' (CAFRI), the government changed its policy in 2008 (Hsia 2009).

On 14 November 2008, the MOI abolished the financial requirement for foreign spouses applying for permanent residence or for naturalisation, as a result of migrant advocacy. The original rules required the applicant to provide proof of financial resources consisting of a monthly income at least double the minimum wage or deposits or real estate with a total value of at least 24 times the minimum wage (NT\$420,000). Under the revised rule, foreign spouses are required to prove their income, the payment of taxes and their ownership of movable property or real estate. The applicants fulfil the requirement of self-

⁷⁸ Ibid. art 3 and art 9.

⁷⁹ Nationality Act, 2000, art 4 (I) (II) and (III).

⁸⁰ Art 3 (4), 2000 Law.

⁸¹ Enforcement Regulation of the Law of Nationality, 1 February 2001, art 5. English text in *Chinese (Taiwan) Yearbook of International Law and Affairs*, Vol. 19 (2001), pp. 47-54.

support as long as their family members do not receive financial assistance from the state.⁸² These changes were reflected in a new set of rules applicable only to foreign spouses. Instead of putting a definite value on the household income and property, the new rules only required either 1) proof of domestic income, tax payment, and property ownership; 2) proof of employment by the employer; 3) a certificate of a specific professional or technical skill; or 4) other documents that can prove the applicant is able to be self-reliant.⁸³ Meanwhile, financial requirements remained high for other categories of migrants.⁸⁴

Language tests were a new naturalisation component introduced in 2005 to enhance the assimilation of foreign nationals, especially foreign spouses. Applicants are required to demonstrate basic Taiwanese-language ability and basic knowledge of the rights and duties of a citizen (Chen 2009). A majority of marriage migrants are from regions where the Chinese language is foreign to them. The disability to speak and read Mandarin presents a social barrier for them in the household and also in finding employment (Hsia 2008). Out of 1,465 foreigners who obtained ROC citizenship in 2003, 93 per cent were foreign brides, mostly from Southeast Asia with a low level of education. Due to the increasing number of children born to foreign mothers, the government is concerned that poor Chinese language proficiency might affect their families and the upbringing of their Taiwanese children.⁸⁵ On 20 May 2005, the Legislative Yuan passed an amendment on the naturalisation rules requiring foreigners to pass both language and naturalisation tests on the basic knowledge of the rights and duties of a citizen.⁸⁶

Applicants must demonstrate Chinese language proficiency, which is defined as ‘the abilities of talking and communicating with others in daily life and knowing relevant social information’.⁸⁷ For the oral test, answers may be given in Mandarin, Taiwanese Hokkien, Hakka or an indigenous language. The written test consists of 20 multiple-choice questions to be completed in Mandarin. The naturalisation test can be taken in either oral or written form.⁸⁸ Each question on the naturalisation test is worth 5 points, for a total of 100 points. Passing scores vary in accordance with different categories of naturalisation. For foreign spouses applicants, passing scores are 60 points or above.⁸⁹ Some foreigners are exempt from the naturalisation tests, including those who have studied in a domestic public or private school for at least one year or who have participated for a certain number of hours (at least 72 hours is required for foreign spouses) in an educational program offered by government agencies.⁹⁰ The naturalisation test is also subject to immigrant discontent though it is not as controversial as the financial requirement. Again, foreign spouses, especially from Southeast Asia, are more affected by the new language regulation than other groups.⁹¹

⁸² Ministry of Interior, Interpretation Ref. No: Tai-Nei-Hu-Zi-0970152850, English text in *Chinese (Taiwan) Yearbook of International Law and Affairs*, Vol. 26 (2008), p. 259.

⁸³ Enforcement Rules of the Nationality Act, 2010, art. 7 (1).

⁸⁴ Ibid. art. 7 (2).

⁸⁵ ‘Taiwan citizenship hopefuls required to pass language test’, *Taipei Times*, 20 April 2004

<http://www.taipeitimes.com/News/taiwan/archives/2004/04/20/2003137354>

⁸⁶ ‘Chinese ability to be tested for naturalisation’, *China Post*, 21 May 2005,

<http://www.chinapost.com.tw/print/62700.htm>; see also Nationality Act, Promulgated on 15 June 2005 by No. Hua-Tsung-1-Yi No. 09400088881 Order of President, art. 3.

⁸⁷ Standards for Identification of Basic Language Abilities and Common Sense of National Rights and Duties of Naturalized ROC Citizens’, 9 December 2014, art 2.

http://www.moi.gov.tw/english/english_law/law_detail.aspx?sn=298

⁸⁸ Ibid. art 6.

⁸⁹ Ibid. art 7.

⁹⁰ Ibid. art 3.

⁹¹ ‘Foreigners decry citizenship law’, *Taipei Times*, 7 July 2005,

<http://www.taipeitimes.com/News/taiwan/archives/2005/07/07/2003262511/2>

Naturalisation as a Taiwanese appears to be an unattractive choice for some foreigners from Western countries. Immigrants from developed countries are less inclined to naturalise, as the Nationality Act made naturalisation subject to renunciation of their original citizenship. Therefore, the naturalisation rate is higher among marriage migrants from less-developed countries and rather low among the applicants from Western countries (Hsia 2009). Between 1982 and 2015, the Department of Household Registration Affairs recorded a total of 84,513 naturalisation applicants, of which 28 were Americans, 5 were Germans, 25 were Singaporeans, 227 were Japanese, and 1,083 were Koreans.⁹²

Two important naturalisation trends in Taiwan are the high proportion of naturalised females and the large proportion of marriage migrants. Female spouses constituted the largest group of naturalised migrants. Foreign brides accounted for 7,309 among the total naturalised persons (95 per cent) in 2010, 5,576 (94.1 per cent) in 2011, 5,196 (92.8 per cent) in 2012, 4,612 (92.2 per cent) in 2013, 3,929 (89.3 per cent) in 2014 and 3,198 (88.5 per cent) in 2015. The majority of naturalisations involve female immigrant spouses from Southeast Asia. In 2015, out of 3,612 foreigners who obtained ROC citizenship, 87.3 per cent were foreign brides from Vietnam, the Philippines, Indonesia, Myanmar, Thailand and Cambodia.⁹³ The large share of marriage migrants in the total number of naturalisations can be explained for two reasons. First, the naturalisation numbers reflect the Taiwanese immigration trend of the feminisation of marriage migration (Wang & Bélanger 2008). Second, labour migrants are excluded from the privilege of naturalisation. This is deeply embedded in the concept of 'population quality' in Taiwan's migration and citizenship policy. Under the government's categorisation of migrants, unskilled migrant workers are considered a lower-quality population. They are openly excluded from applying for permanent residence status or naturalisation (Wang 2011). Foreign workers cannot fulfil the five-year continuous residential criterion required by the Nationality Act (Cheng 2003).

4.4 Rights of naturalised citizens

The 2000 Nationality Act distinguishes between the two categories of citizens in terms of the right to dual nationality and the right to hold public offices. Naturalised citizens do not enjoy similar rights as native citizens.⁹⁴ Naturalised citizens suffer discrimination in terms of their eligibility for public offices, and the restriction is removed ten years after a person's naturalisation. Ten positions are not available to naturalised citizens: 1) president or vice president; 2) member of the National Assembly; 3) minister of the Executive Yuan, Judicial Yuan, Examination Yuan and Control Yuan; 4) specially appointed political personnel, 5) deputy minister of each ministry, 6) extraordinary ambassador or extraordinary minister, 7) commissioner of the Mongolian and Tibetan Affairs Commission or vice minister of the Overseas Compatriot Affairs Commission, 8) other public servant of selected appointment higher than the thirteenth grade, 9) general in the Army, Navy or Air Force and 10) elected local government office position.⁹⁵ These restrictions are viewed as unconstitutional by migrant advocacy groups. Naturalised citizens or 'New Taiwanese' who wish to run for Taiwan parliament have had their applications rejected by the election commission. But the

⁹² Ministry of Interior, 'Acquirement of the R.O.C. Nationality', <http://sowf.moi.gov.tw/stat/year/elist.htm>

⁹³ Ibid.

⁹⁴ Nationality Act, 2000, art 9 and art 10.

⁹⁵ Ibid. art. 10.

New Taiwanese have continued to demand equal constitutional rights to dual nationality and to run for public office.⁹⁶

A more debatable barrier to naturalisation than the ineligibility for certain offices is the renunciation of one's original nationality before being granted ROC citizenship. All foreign nationals seeking naturalisation are required to provide the certification of his or her loss of previous nationality. The Nationality Act requires the renunciation of foreign nationality before one is granted ROC nationality. However, it does not necessitate such renunciation if the failure to obtain the proof of renunciation does not rest with the applicant and the reason for the failure has been verified by the Ministry of Foreign Affairs.⁹⁷ With regards to native citizens, the 2000 Act does not prohibit dual nationality among ROC citizens seeking naturalisation abroad (but forbids dual nationality among foreign nationals seeking naturalisation in Taiwan). The acquisition of foreign nationality by a ROC citizen does not terminate his or her Taiwanese citizenship. To legally renounce one's Taiwanese citizenship, one has to apply for official permission from the Ministry of the Interior (MOI). Any person who has not been exempted from military service or who is currently performing military service or holding public office is not allowed to renounce their ROC citizenship.⁹⁸

5. Reform Plans in Taiwan

5.1. Naturalisation and selective tolerance of dual nationality

The 2000 Nationality Act exhibits a striking similarity to the 1929 Nationality Act in perpetuating the differences between naturalised and native citizens. Naturalised citizens suffer similar legal discrimination with regards to the entitlement to run for government offices and to possess dual nationality. The practice of a 'double standard' between its birth citizens and naturalised citizens is obvious in mixed marriage families, in which Taiwanese spouses and their children may be able to acquire dual citizenship, whereas the foreign spouses may not. Applying the term 'selective tolerance' and 'double standard', Taiwanese citizens are classified into three broad categories in terms of their eligibility for dual citizenship: local Taiwanese, government officers and immigrants. Among them, only local Taiwanese can enjoy dual nationality (Low 2015b).

At the time of writing this report, a new nationality bill is being pushed through in the Legislative Yuan. Since 2012, the call for nationality reform has become louder, as several draft proposals to amend the Nationality Act have been submitted to the Legislative Yuan. In 2014, the legislative debates resumed to review several draft amendments on naturalisation rules. The parliamentary debates revolved around equal protection mechanisms for naturalised citizens: lifting the dual nationality restriction (Article 9), redefining the vague restrictions relating to behaving 'decently' and having 'no criminal record' (Article 3), guaranteeing the

⁹⁶ Trista di Genova, 'Wild at Heart U.S. lawyer runs for Taiwan parliament', *China Post*, 15 February 2009, <http://www.chinapost.com.tw/taiwan/intl-community/2009/02/15/196129/p2/Wild-at.htm>

⁹⁷ Nationality Act, 2000, art 9.

⁹⁸ Nationality Act, 2000, art 12.

rights of naturalised citizens to hold government offices (Article 10) and abolishing the government discretion to revoke the citizenship of naturalised citizens (Article 19).⁹⁹

Democratic Progressive Party (DPP) legislators proposed to delete Article 9 of the Nationality Act. The prerequisite of having to give up one's citizenship of his or her country of origin before securing Taiwanese citizenship, places the applicant at risk of becoming stateless should the application be rejected or the granted citizenship be revoked.¹⁰⁰ The problem of statelessness was partially addressed. On 20 June 2008, the MOI issued an interpretation to prevent a foreign spouse from becoming stateless. The MOI ruled that a foreign spouse shall renounce his or her original nationality only after his or her application for naturalisation is approved.¹⁰¹

The concern now is statelessness caused by the revocation of ROC nationality. The MOI has discretionary powers to revoke naturalised citizens from their citizenship within the first five years if it is found that the naturalisation does not conform to the provisions of the Nationality Act.¹⁰² A criminal record or failure to satisfy the requirements of decency constitute grounds for the revocation of citizenship.¹⁰³ Government discretion to strip the 'New Taiwanese' of their citizenship has been contested in recent years. First, the clause is not applicable to native ROC citizens. Second, the clause renders them stateless, as naturalised citizens have to renounce any foreign allegiance. For foreign spouses, the consequences are much more severe compared to other migrants. Denaturalisation is impossible after their Taiwanese spouses passed away.¹⁰⁴

Another disputed qualification for naturalisation is the requirement to demonstrate good moral character, indicated as behaving 'decently' and having 'no records of crime'.¹⁰⁵ Both conditions are not clearly defined but abstract, vague and subjective and grant discretionary power to the relevant authorities to disqualify immigrants from naturalisation for minor offenses. Decency is a subjective term, which may leave a wide discretionary power for interpretation. The phrases are too abstract, and naturalisation applicants have been turned down for petty offenses. Some quarters have pushed to have the decency requirement deleted.¹⁰⁶ 'Legislating morals' has been problematic in the patriarchal orientated Chinese society. Women are judged with a different standard in terms of marital and family obligations. NGOs such as the Taiwan Association for Human Rights and the Awakening Foundation have campaigned for the removal of the requirement to behave decently. Its subjectivity may subject naturalisation applicants to the nation's traditional values and ethics morality, which have a gender-bias connotation.¹⁰⁷ Unequal gender relations are rooted in the strong patriarchal family system in Taiwan. The traditional system has made foreign spouses a 'dependent wife and an obedient daughter-in-law' (Wang 2011: 187).

⁹⁹ Lii Wen, 'Legislature set to resume review of Nationality Act', *Taipei Times*, 17 December 2014, <http://www.taipeitimes.com/News/taiwan/archives/2014/12/17/2003606944>

¹⁰⁰ Ibid.,

¹⁰¹ Ministry of the Interior, Interpretation Ref. No.: Tai-Nei-Hu-Zi-0970103816. English text in *Chinese (Taiwan) Yearbook of International Law and Affairs*, Vol. 26 (2008), p. 257.

¹⁰² Nationality Act, 2000, art 19.

¹⁰³ For two reported cases, see Loa Iok-sin, 'Legislator to propose changes to naturalization laws', *Taipei Times*, 15 December 2012, <http://www.taipeitimes.com/News/taiwan/archives/2012/12/15/2003550192/1>

¹⁰⁴ Abraham Gerber, 'Amendments fail to protect naturalization, groups say', *Taipei Times*, 19 April 2016, <http://www.taipeitimes.com/News/taiwan/archives/2016/04/19/2003644315>

¹⁰⁵ Nationality Act, 2000, art 3 (3).

¹⁰⁶ Lii Wei, 'Nationality Act reforms pass first stage of review', *Taipei Times*, 18 December 2014, <http://www.taipeitimes.com/News/taiwan/archives/2014/12/18/2003607021>

¹⁰⁷ Alison Hsiao, 'Immigrant groups slam amendment proposals', *Taipei Times*, 12 June 2015, <http://www.taipeitimes.com/News/taiwan/archives/2015/06/12/2003620521/1>

On 17 December 2014, a revised version of the Nationality Act passed its preliminary reading at a legislative committee level. Proposals submitted by DPP legislators to allow dual nationality for naturalisation was blocked. The working principle behind Article 9 would remain unchanged, but its implementation would be relaxed. The revised version of Article 9 would require applicants to renounce their original nationality within one year of obtaining ROC citizenship. Moreover, during the reform deliberation, removal of the ‘decency’ requirement was rejected. The majority opinion preferred maintaining Article 3 with a clearer definition of the legal term. Under the revised rule, convicted cases of adultery and drug trafficking fall under six main categories of behaviour considered to be ‘indecent’.¹⁰⁸ Individuals violating social order will be barred from naturalisation. In its proposal, the MOI revised the vague requirement of ‘no criminal record’ to ‘allow minor offenses, provided the applicant has finished his or her sentence or paid the required fine and has had the offense erased from police records’.¹⁰⁹

To reduce statelessness in cases where a naturalisation application is rejected, the nationality bill made an important concession. Rather than requiring the applicants to renounce their nationality before applying for naturalisation, the bill required the renunciation process to be completed after naturalisation. A grace period of one year would be given to naturalised citizens to submit their certificate of renunciation of their original nationality. The proposed amendments fell short of allowing naturalised citizens to enjoy dual nationality, provoking a series of protests and demonstrations by migrant groups – most notably the Taiwan International Family Association (TIFA) and the TransAsia Sisters Association, Taiwan (TASAT). The alliance proposed alternative amendments, which include the repeal of the dual nationality ban, a ten-year restriction of standing for public offices, government discretion to revoke citizenship and the decency criteria.¹¹⁰ In April 2016, the civic groups protested outside the Legislative Yuan against the nationality bill, which failed to bridge the existing divide between naturalised foreign citizens and native citizens. Having gone through the process of naturalisation, the former wanted similar rights as ‘Taiwanese’. Naturalised citizens stand a double risk of being stripped of citizenship if 1) they have a criminal record within five years of naturalisation and 2) they fail to obtain a release from their former nationality within one year of naturalisation. The nationality bill, thus, ‘perpetuated double standards on dual citizenship’.¹¹¹

Foreign professionals, however, would be exempt from the dual nationality restriction under the proposed nationality bill. If it were to be approved, Taiwan would have another category of citizens with regards to eligibility for dual nationality. The government would make it easier for highly skilled foreign nationals to naturalise without renouncing their former nationality. To attract immigrants of high quality, the naturalisation pathway would be relaxed. Among foreigners, only high-skilled professionals could enjoy the best of both worlds.¹¹² Taiwan’s dual citizenship policy is selective, exclusive and restrictive. Immigrants of high quality are highly valued and welcomed into the Taiwanese citizenry, while the path to naturalisation is closed for those of lower-quality populations.

¹⁰⁸ Lii Wei, ‘Nationality Act reforms pass first stage of review’, *Taipei Times*, 18 December 2014, <http://www.taipeitimes.com/News/taiwan/archives/2014/12/18/2003607021>

¹⁰⁹ Tai Ya-chen, Hsieh Chia-chen and Lilian Wu, ‘Amendment to ease naturalisation advances in Legislature’, 17 December 2014 <http://focustaiwan.tw/news/aip/201412170031.aspx>

¹¹⁰ Alison Hsiao, ‘Immigrant groups slam amendment proposals’, *Taipei Times*, 12 June 2015, <http://www.taipeitimes.com/News/taiwan/archives/2015/06/12/2003620521/1>

¹¹¹ Abraham Gerber, ‘Amendments fail to protect naturalization, groups say’, *Taipei Times*, 19 April 2016, <http://www.taipeitimes.com/News/taiwan/archives/2016/04/19/2003644315>

¹¹² Dimitri Bruyas, ‘Becoming Taiwanese’, *China Post*, 6 January 2015, <http://www.chinapost.com.tw/taiwan/intl-community/2015/01/06/425826/Becoming-Taiwanese.htm>

6. Current Political Debates in China

6.1. Returned migrants and dual nationality

The state's challenge is to harvest the benefits of returned overseas talents without putting pressure on the rigid single citizenship principle. Naturalisation abroad entails the loss of Chinese nationality. Returned migrants (*haigui*) are an integral part of the state's quest for global competitiveness, but liberalising dual nationality is at odds with stricter citizenship enforcement measures against corruption.

Since 1999, legislators have called for the liberalisation of dual nationality. Proposals to abolish the single citizenship policy were tabled in the Chinese People's Political Consultative Conference (CPPCC) – the national advisory body – in 1999 and 2005 but were rejected by the MPS. The overseas Chinese community (mostly in Western countries) have called for the recognition of dual citizenship by expressing their views to the National People's Congress, the People's Consultative Congress and the Office of Overseas Chinese Affairs. For the new generation of returned migrants, the policy is a historical legacy, designed for the old generation of overseas Chinese during the Cold War period (Wang, Wong & Sun 2006; Ho 2011; Liu 2010).

As recently as 2016, a member of the Chinese People's Political Consultative Conference Standing Committee again proposed to allow dual citizenship. Under the proposal, dual nationals would have no rights to take part in elections and to hold public offices. Chinese passports would be used only for entry and exit purposes. The restriction was criticised for being detrimental to reversing the nation's brain drain. Revoking emigrants of their Chinese nationality would discourage the return of overseas talents. Opponents believed that liberalising dual citizenship would be beneficial to China's economic globalisation.¹¹³

None of the proposals have been approved by the national advisory body. The campaigns have yielded no fruitful results either. At the same time, a counter-proposal urged the government to take action against Chinese dual nationals who conceal their foreign nationality status. The opponents of dual nationality viewed it as a question of illegality or lawbreaking. Members of the National People's Congress Standing Committee proposed a thorough check to locate holders of dual nationality through an integrated multi-agency nationality database.¹¹⁴

Very recently, dual nationality has sparked significant political debates following corruption cases. Chinese authorities are highly suspicious of nationals with a foreign nationality. Cases of dual nationals taking advantages of the grey areas in the law and evading legal sanctions with a foreign nationality status alarmed the state. In July 2014, an online platform was launched to encourage the public to report cases of those concealing their *hukou* after obtaining foreign nationality, followed by withdrawal of *hukou* from 1.06 million dual national Chinese. There are serious concerns that re-introduction of dual nationality would

¹¹³ Ting Yan, 'Time to allow overseas Chinese dual nationality to encourage return of talent, delegate proposes', *South China Morning Post*, 11 March 2016, <http://www.scmp.com/news/china/policies-politics/article/1923508/time-allow-overseas-chinese-dual-nationality-encourage>

¹¹⁴ Zhao Yinan, 'Lawmakers call for dual nationality check', *China Daily*, 28 April 2014, http://www.chinadaily.com.cn/china/2012-04/28/content_15165588.htm

jeopardise China's anti-corruption efforts.¹¹⁵ The 2014 crackdown on nationals holding foreign citizenship reflects the Chinese government's growing intolerance to the abuse of dual nationality status among its corrupt officials (and also criminals). Strict enforcement action on this targeted category of dual nationals has affected the returned Chinese migrants. Relaxing the dual nationality rules is a salient issue. While some experts believe that dual citizenship is advantageous to Chinese emigrants, the cost is high in terms of public security. Scholars have acknowledged that the tolerance of dual nationality may not be suitable, given the internal security concerns: 'Enacting legal dual citizenship does not appear to be a priority in the near term'.¹¹⁶

The failure to reform Article 3 of the Nationality Law – dealing with dual nationality rules – has led to a series of debates about alternative policy measures. Policy suggestions have taken various forms. Some scholars have urged a relaxation of the criteria and scope of China's green card system to include more of those who wish to return home. The current immigration practice is granting 'green cards' to facilitate residency for those overseas Chinese who do not possess PRC citizenship, thereby bypassing the dual nationality restriction. While other states are recognising dual nationality to attract talents, the PRC is not adopting a similar measure. Launched in August 2004, the PRC's green card system allows foreign citizens, regardless of their nationality to have permanent residence rights. The green card system is, however, far from a satisfactory solution. The criteria for the acquisition of permanent residence are very strict (Wang, Wong & Sun 2006; Choe 2006). The Chinese green card is highly selective and competitive, and only a small number of foreigners have permanent residence status. Between 2004 and 2013, only 7,356 foreigners out of 848,500 foreign nationals living in China obtained green cards.¹¹⁷

Some quarters have proposed an 'overseas citizenship' card, as the tolerance of dual nationality may not be suitable given the internal security concern. As an alternative solution, overseas citizenship would entitle its holders to fundamental rights in China with the exceptions of electoral rights and the right to hold public offices, freedom of travel, and visa waivers.¹¹⁸ Similar scheme have been implemented with considerable success in India (Overseas Indian Citizenship for People of Indian Origin), Mexico (Mexican nationality without citizenship for emigrants) and Turkey (pink card for Turkish emigrants). Though dual citizenship is recognised, the rights enjoyed by citizens with dual citizenship are limited. These states do not permit such citizens to exercise political rights.

Recently, the proposal to introduce an 'overseas Chinese card' (*hua yi ka*) for former Chinese nationals was suggested to the central government. Tabled in Beijing's legislative body on 27 November 2015, the proposed scheme circumvents China's policy against dual nationality in its global quest for talent. An overseas Chinese card would entitle the holder to permanent residency status with similar rights as Chinese nationals for investments, property purchases and education. Though this talent policy differentiates between former PRC citizens and foreign nationals of Chinese descent, the beneficiaries are still foreigners with

¹¹⁵ Yin Pumin, 'Debating Dual Citizenship: Experts call for dual citizenship to attract talents despite tightened single citizenship management', *Beijing Review*, 25 September 2014, http://www.bjreview.com.cn/nation/txt/2014-09/25/content_642355_2.htm

¹¹⁶ Hu Wei, 'China Crackdown on Dual Citizens Causes Concern', VOA News, 28 August 2014 <http://www.voanews.com/a/china-crackdown-on-dual-citizens-causes-concern/2431499.html>

¹¹⁷ Li Ying, 'New Policies are making it easier for Chinese descendants to apply for permanent residence permits', *Global Times*, 28 August 2016, <http://www.globaltimes.cn/content/1003237.shtml>

¹¹⁸ Yin Pumin, 'Debating Dual Citizenship', *Beijing Review*, 25 September 2014, http://www.bjreview.com.cn/nation/txt/2014-09/25/content_642355_2.htm

Chinese ethnicity. The overseas Chinese card may be a sensitive subject, and it would be problematic to define which category of Chinese could be classified as *huayi*.¹¹⁹

Within days of the proposal's introduction, there was media speculation that China was implementing a 'Chinese card' for Chinese born overseas.¹²⁰ The 'overseas Chinese card' proposal was indeed controversial and did not materialise. On 15 March 2016, the China Overseas Chinese Affairs Office of the State Council official declared that China had no plans at present to introduce an 'overseas Chinese card'. Alternatively, mega cities such as Beijing and Shanghai have relaxed the permanent residency rules since 2015, making it easier to obtain a green card. Favourable visa policies were also implemented in China's major cities, giving ethnic Chinese privileged treatment.¹²¹ As of 1 March 2016, foreign nationals with Chinese ethnicity and a doctorate or who have worked in a Chinese enterprise for more than four years are eligible for the Chinese green card. As far as the policy-makers are concerned, immigration reform has gradually resolved the dual nationality impasse.¹²²

7. Conclusions

The Chinese nationality institution has been reasonably stable since its very first formulation by the People's Republic of China in 1980. Its guiding principles have not been amended despite various calls articulated by legislators, policy-makers, scholars and emigrant organisations. They remain unchanged, notwithstanding the increasing complexity of international migration, rural-to-urban migration, cross-straits migration and return skilled migration.

In PRC citizenship practices, there are differences between substantive citizenship and formal citizenship. Formal citizenship (i.e, nationality) in China is of minimal consequence when it comes to the exercise of rights. Substantive citizenship is often what really matters, as it influences the rights of residence and access to welfare benefits. In PRC citizenship practices, substantive citizenship and formal citizenship may not coincide. As Smart and Smart (2001) pointed out, 'In China formal citizenship does not guarantee access to substantive rights'. Inclusion is determined by one's local *hukou* status and one's residency status in the SAR. Chinese national citizenship means different things to different categories of citizens in different administrative regions. The modes of acquisition and loss of Chinese nationality apply similarly in Hong Kong and Macau; the differences lie in the allocation of rights, which are not contingent on nationality per se. The importance of residency for state membership in the HKSAR and Macau SAR might help to suggest the devaluing of PRC

¹¹⁹ Kor Kian Beng, 'Buzz over bid by China's "Silicon Valley" to draw foreign talent', *Straits Times*, 15 December 2015,

<http://www.straitstimes.com/asia/east-asia/buzz-over-bid-by-chinas-silicon-valley-to-draw-foreign-talent>

¹²⁰ Roberto, 'Chinese Card To Be Introduced For People Of Chinese Origin', *News Independent*, 19 December 2015, <http://www.thenewsindependent.com/china-to-soon-introduce-chinese-card-for-south-east-asians-of-chinese-origin/7614/>

¹²¹ Kor Kian Beng, 'No plans for Beijing to issue overseas Chinese card: Official', *Straits Times*, 15 March 2016, <http://www.straitstimes.com/asia/east-asia/no-plans-for-beijing-to-issue-overseas-chinese-card-official>

¹²² Li Ying, 'New Policies are making it easier for Chinese descendants to apply for permanent residence permits', *Global Times*, 28 August 2016, <http://www.globaltimes.cn/content/1003237.shtml>

‘national’ citizenship. *Ius sanguinis* is still prevalent in both regions as the major factor in determining citizenship, but the factor of descent is diluted. Though the Chinese Nationality Law defines PRC nationals based on ‘Chinese descent’, the Basic Laws of Hong Kong and Macau have granted fundamental rights to all residents.

China and Taiwan emphasise the law of blood. The PRC supplemented the principle of *ius sanguinis* with *ius soli*. Birth in Chinese territories to a Chinese parent makes a person a PRC citizen (*gongmin*). The dominance of the *ius sanguinis* citizenship regime is also reflected in the household registration system (*hukou*) for determining citizenship rights. *Hukou* is mostly hereditary from either parent, though certain cities have relaxed the *hukou* regulation based on economic independency and residency.

The application of the law of blood is stronger in contemporary Taiwan: being born to an ROC citizen remains the prerequisite for having full citizenship rights. Restrictions to holding government offices and dual nationality have contributed to the disadvantaged status of naturalised citizens. The immigrants’ protests for nationality reforms have two main concerns: high naturalisation barriers preventing otherwise eligible immigrants from naturalisation and equality after naturalisation.

Dual nationality in Taiwan is a privilege reserved to birthright citizens and those with valuable skills. The fact that the dual nationality ban among public officers is relaxed for those with highly valuable expertise (Article 20) shows the selective practice of the state. The state has exempted a few categories of experts from the dual nationality restriction and yet prohibits dual nationality for non-skilled migrants. Its dual nationality regime is selectively based on class: those high-quality immigrants are granted an easier pathway to naturalisation and unskilled foreign workers are excluded. The ‘New Taiwanese’ cannot challenge the boundaries of citizenship and must demonstrate that they love Taiwan. The current reform debates taking place do not respond to migrant advocacy and maintain the division between native and naturalised citizens. An egalitarian practice of citizenship may be difficult to achieve, as liberal reform efforts contradict Taiwan’s traditional values of fidelity.

As for China, observers are not confident that the relaxation of dual nationality can be done in the near future. Reversing the single nationality norm is difficult partly because the state’s aversion to it has its roots in security concerns and partly because multiple loyalties are viewed with suspicion. The state is highly suspicious of its citizens with a foreign passport and has stepped up its campaign against dual nationality by withdrawing the *hukou* of dual nationals. The aversion to dual nationality appears solidly embedded in the state’s anti-corruption concerns – and continues to frustrate the prospects for dual nationality reforms.

References

- Chen, C. J. (2009), 'Gendered Borders: The Historical Formation of Women's Nationality under Law in Taiwan', *Positions* 17 (2): 289-314.
- Chen, T. P. (1983), 'The Nationality Law of the People's Republic of China and the Overseas Chinese in Hong Kong, Macau and Southeast Asia', *New York Law School Journal of International and Comparative Law* 5: 281-235.
- Cheng, Lucie (2003), 'Transnational Labour, Citizenship and the Taiwan State', in Arthur Rosett, Lucie Cheng and Margaret Y. K. Woo (eds.), *East Asian Law: Universal Norms and Local Cultures*, 85-105. London: Routledge.
- Chi, Chung (2009), 'International Law and the Extraordinary Interaction between the People's Republic of China and the Republic of China on Taiwan', *Indiana International & Comparative Law Review* 19 (2): 233-322.
- Chiu, H. D. (1990), 'Nationality and International Law in Chinese Perspective', in Ko S. S. (ed.), *Nationality and International Law in Asian Perspective*, 27-64. Dordrecht: Martinus Nijhoff.
- Choe, Hyun (2006), 'National Identity and Citizenship in the People's Republic of China and the Republic of Korea', *Journal of Historical Sociology* 19 (1): 84-118.
- De Padua, D. A. S. (1985), 'Ambiguous Allegiance: Multiple Nationality in Asia', *Philippine Law Journal* 60 (2): 239-267.
- Fan, Cindy C. (2008) 'Migration, Hukou, and the Chinese City', in Shahid Yusuf and Anthony Saich (eds.), *China Urbanizes: Consequences, Strategies, and Policies*, 65-90. Washington: The World Bank.
- Fitzgerald, S. (1972), *China and the Overseas Chinese: A Study of Peking's Changing Policy, 1949-1970*. London, Cambridge University Press.
- Ghai, Y. (2001), 'Citizenship and Politics in the HKSAR: The Constitutional Framework', *Citizenship Studies* 5(2): 143-164,
- Ginsburgs, G. (1982), 'The 1980 Nationality Law of the People's Republic of China', *The American Journal of Comparative Law* 30(3): 459-498
- Ho, Elaine L-E. (2011), 'Caught between Two Worlds: Mainland Chinese Return Migration, Hukou Considerations and the Citizenship Dilemma', *Citizenship Studies* 15 (6-7): 643-658
- Hsia, H. C. (2008), 'The Development of Immigration Movement in Taiwan: The Case of Alliance of Human Rights Legislation for Immigrants and Migrants', *Development and Society* 37 (2): 187-217.
- Hsia, H. C. (2009), 'Foreign Brides: Multiple Citizenship and the Immigrant Movement in Taiwan', *Asian and Pacific Migration Journal* 18 (1): 17-46.
- Liu, Hong (2010), 'Chinese Overseas and a Rising China: The Limits of a Diplomatic "Diaspora Option"', in Zheng, Yong Nian (ed.), *China and International Relations: The Chinese View and the Contributions of Wang Gungwu*, 177-200. New York: Routledge.

- Leung, H. C. (2006), 'Politics of incorporation and exclusion: Immigration and citizenship issue', in Agnes S. Ku and Ngai Pun (eds.), *Remaking Citizenship in Hong Kong: Community, Nation and the Global City*, 97-114. London: Routledge.
- Low, C. C. (2013), 'Taiwanese and German Citizenship Reforms: Integration of Immigrants without challenging the Status Quo, 1990-2000', *European Journal of East Asian Studies* 12 (2): 269-294.
- Low, C. C. (2015a), 'Same System, Different Outcomes: Comparing the Implementation of Dual Nationality Treaties in East Germany and China', *Europe-Asia Studies* 67 (10): 1656-1684.
- Low, C. C. (2015b), 'Debates over Liberalising Dual Citizenship: Prospects and Limits in Taiwan and the People's Republic of China', *International Journal of Asia Pacific Studies* 11(1): 1-33.
- Low, C. C. (2016), 'The politics of citizenship in divided nations: Policies and trends in Germany and China', *Communist and Post-Communist Studies* 49 (2): 123-135.
- Mozingo, D. (1961), 'The Sino-Indonesian Dual Nationality Treaty', *Asian Survey* 1(10): 25-31.
- Peterson, G. (2012), *Overseas Chinese in the People's Republic of China*. Oxon: Routledge.
- Pina-Guerassimoff, C. & Guerassimoff, E. (2007), 'The Overseas Chinese: The State and Emigration from the 1890s through the 1990s', in Nancy L. Green and Francois Weil (eds), *Citizenship and Those Who Leave: The Politics of Emigration and Expatriation*, 245-247. Urbana, University of Illinois Press.
- Shao, Dan (2009), 'Chinese by Definition: Nationality Law, Jus Sanguinis, and State Succession, 1909–1980', *Twentieth-Century China* 35 (1): 4-28.
- Smart, A. & Smart, J. (2001), 'Local citizenship: welfare reform urban/rural status, and exclusion in China', *Environment and Planning A* 33(10): 1853-1869.
- So, Alvin Y. (2006), 'One country, three system? State, nation, and civil society in the making of citizenship in the Chinese triangle of Mainland Taiwan Hongkong', in Agnes S. Ku and Ngai Pun (eds.), *Remaking Citizenship in Hong Kong: Community, Nation and the Global City*, 235-253. London: Routledge.
- Song, X. X. (2008), 'Development of the Nationality Law of China: On nationality issues of Hong Kong and Macau Residents', *Frontiers of Law in China* 3(4): 611-629
- Solinger, D. (1999), 'Citizenship Issues in China's Internal Migration: Comparisons with Germany and Japan', *Political Science Quarterly* 114(3): 455-478.
- Suryadinata, L. (2005), *China and the Asean States: The Ethnic Chinese Dimension*. Singapore: Marshall Cavendish Academic.
- Suryadinata, L. (1976), 'Indonesian Policies toward the Chinese Minority under the New Order', *Asian Survey* 16 (8): 770-87.
- Tsai, C. T. (1910), 'Chinese Nationality Law 1909', *American Journal of International Law* 4(2): 404-411
- Tseng, Y. F. & Wu, J. M. (2011), 'Reconfiguring Citizenship and Nationality: Dual Citizenship of Taiwanese Migrants in China', *Citizenship Studies* 15(2): 265-282.
- Wang, C. B., Wong S.L, and Sun, W. B. (2006), 'Haigui: A New Area in China's Policy toward the Chinese Diaspora?', *Journal of Chinese Overseas* 2(2): 294-309.

- Wang, H. Z. (2011), 'Immigration trends and policy changes in Taiwan', *Asian and Pacific Migration Journal* 20 (2): 169-194.
- Wang, H. Z. and D. Bélanger (2008), 'Taiwanizing Female Immigrant Spouses and Materializing Differential Citizenship', *Citizenship Studies* 12 (1): 91-106.
- Wu, J. M. (2010), 'Rural migrant workers and China's differential citizenship: a comparative-institutional analysis', in Martin King Whyte (ed.), *One country, two societies: rural-urban inequality in contemporary China*, 55-81. Cambridge: Harvard University Press.
- Yu, X. Z. (2002), 'Citizenship, Ideology, and the PRC Constitution', in Merle Goldman and Elizabeth J. Perry (eds.), *Changing meanings of citizenship in Modern China*, 288-307. Cambridge: Harvard University Press.
- Zhou, N. J. (2005), *境外华人国籍问题讨论辑* [The Citizenship Problems of Chinese Overseas: A Collection of Documents and Articles]. Hong Kong: Hong Kong Press for Social Sciences Ltd.

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