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Report on Citizenship Law

Philippines

Filomeno V. Aguilar

1. Introduction

The Philippines has the interesting experience of having gone through two citizenship regimes. From an initial period in which jurisprudence favoured the principle of ius soli the country transitioned to the current regime in which ius sanguinis has been the prevailing principle. The initial period occurred during the first half of the twentieth century when the Philippines was under US colonial rule, while the subsequent period occurred after the Philippines gained independence.

In 1902, at the early stage of US colonial rule, the US created Philippine citizenship for its colonial subjects, who at the same time owed allegiance to the US. In fact, Philippine citizenship had no weight internationally apart from the protection extended by the United States to so-called Philippine citizens. In the US itself Filipinos were classified as US nationals. However, once it was invented Philippine citizenship acquired a life of its own.

The citizenship regime of ius sanguinis commenced immediately after the end of the Second World War when the Philippines became formally independent from the United States. The US-mandated preparatory phase prior to independence, called the Commonwealth Period, witnessed the drafting and approval of the 1935 Philippine Constitution, which stipulated the principle of ius sanguinis. This principle has been retained in subsequent charters, namely, the 1973 Constitution and the 1987 Constitution. In these later constitutions, gender equality in citizenship began to be enshrined. However, the question of whether foundlings are natural-born citizens has been resolved only in 2016 through a decision of the Philippine Supreme Court.

One major reason for the adoption of ius sanguinis in the 1935 Constitution and in postwar jurisprudence was the Filipino elite's prejudice against the ethnic Chinese, generations of whom had migrated from southern China to the Philippines over the course of several centuries. In the postcolonial period, Chinese who were born on Philippine territory, as well as those who migrated to the country, could acquire Philippine citizenship only through a costly judicial procedure of naturalisation. Chinese who could not afford the costs of naturalisation carried Taiwanese passports.

For several decades Chinese leaders campaigned for acceptance and inclusion in the Philippine body politic. Proposals for modified forms of ius soli were made but never prospered. In 1975, however, Ferdinand Marcos utilised the historical conjuncture to grant mass naturalisation to ethnic Chinese and other resident aliens, mostly South Asians, as part of establishing diplomatic relations with the People's Republic of China. In decreeing a relatively simple administrative procedure for naturalisation, an authoritarian ruler ironically provided ethnic minorities access to Philippine citizenship. Administrative naturalisation is now an established procedure, serving as the means by which aliens and a handful of stateless persons born on Philippine territory gain citizenship.

In 2003 the Philippines joined the ranks of states worldwide that grant dual citizenship, but this privilege is restricted to natural-born citizens who undergo naturalisation in another country. The law entitles them to retain or reacquire Philippine citizenship through an administrative process that includes the taking of a nonexclusive oath of allegiance to the Philippines. They then reacquire their natural-born status.

The policy and practice of Philippine citizenship has been influenced and in many ways shaped by the given historical context, as illustrated in this country report. From the outset, however, one practice has remained more or less constant: derivative citizenship. This has been applied whether in dealing with ethnic minorities who are admitted to Philippine citizenship or in the case of former citizens who reacquire Philippine citizenship. Thus dependents of the person who becomes a Philippine citizen also benefit from the person's acquisition of citizenship.

2. Historical Background[1]

2.1. The Original Conception of Philippine Citizenship

The first Philippine Constitution, which was crafted by the revolutionary movement under Emilio Aguinaldo, established the short-lived Malolos Republic (January 1899–March 1901) during the interregnum between Spanish and American colonial rule. Formally known as the *Constitución Política de 1899* but more popularly known as the Malolos Constitution, it was liberal on many counts, not just in terms of the rights and duties of citizenship, but also in its ideology of political inclusion.[2]

Title IV, Article 6(1), of the Malolos Constitution declared that 'Filipinos' included "all persons born on Filipino territory" (*Todas las personas nacidas en territorio filipino*). The very first charter of the Philippines unequivocally declared the principle of ius soli as the basis for determining citizenship. In Article 6(2), a form of ius sanguinis was stipulated for birth outside the territory, but patrilineality was not favoured because children of either a Filipino father or mother, although born outside of the Philippines, were deemed to be

[1] This section draws heavily from my previous studies on the history of Philippine citizenship, particularly Aguilar 2010 and 2011a.

[2] The text of the 1899 Malolos Constitution in both Spanish and English is available in the digital edition of the *Official Gazette of the Republic of the Philippines* (henceforth, *Official Gazette*). See http://www.gov.ph/constitutions/the-1899-malolos-constitution/.

Filipinos (*Los hijos de padre ó madre filipinos, aunque hayan nacido fuera de Filipinas*). The absence of bias against maternal descent was fully consistent with the bilateral cognatic kinship practiced then and now in the Philippines.

Article 6(3) specified that foreigners could become Filipinos through naturalisation. However, no law was passed that dealt with the specifics of implementing naturalisation. Finally, Article 6(4) enunciated a form of *ius domicile* (law of residence) in determining citizenship: it considered as Filipinos "those who, without such [naturalisation] certificate, have acquired a domicile in any town within Philippine territory. It is understood that domicile is acquired by uninterrupted residence for two years in any locality within Philippine territory, with an open abode and known occupation, and contributing to all the taxes imposed by the Nation". The principle was very advanced for its time, considering that only now in the early twenty-first century is this "additional principle . . . gaining momentum" (Levanon & Lewin-Epstein 2010: 421).

The citizenship provisions of the Malolos Constitution were remarkably politically inclusive. In considering all persons born on Philippine territory as Filipinos, regardless of ethnicity, the Malolos charter transcended the anti-Chinese racial sentiment found in the writings of the early nationalists (known as *ilustrados*) in the 1880s–1890s. The First Philippine Constitution also seemed to acknowledge members of 'tribal' and non-Hispanised ethnic communities as fellow Filipinos, social groups that had been excluded from the *ilustrados*' campaign for civil and constitutional liberties because of their perceived cultural and civilizational deficiencies (Aguilar 2005). All subsequent charters would include these communities within the coverage of Philippine citizenship.

One could argue that the citizenship provisions of the Malolos Constitution were simply copied from an external model. In particular, it appears to have been patterned directly after the Spanish Civil Code, which had been in force in Spain since May 1888, but which became applicable to the Philippines, as well as Cuba and Puerto Rico, on 8 December 1889.[3] In terms of form, Article 6 of the 1899 Malolos Constitution and Article 17 of the 1889 Spanish Civil Code are alike, with 'Filipinos' substituted for 'Spaniards' in the civil code. Cognisant of the social diversity of the Spanish Philippines, the writers of the Malolos charter perhaps realised the need to imitate the inclusive pluralism of the Spanish Civil Code. This code had been designed to embrace the complexity of civil laws and local customs in Spain (Brown 1956) and to include Cuba and Puerto Rico, with its large Hispanic population (and the Philippines, too, probably by default), within what remained of the Spanish empire. Indeed, the 1889 Civil Code of Spain was said to be the final 'culmination' of a "modern codification impulse" that began in 1812 and its liberal Spanish Constitution (Rodriguez Ramos 1970: 723).

Nevertheless, there were significant divergences between the Malolos Constitution and the Spanish Civil Code. The archipelagic Philippines emphasised a broader application of ius soli in that a Philippine-registered vessel was deemed part of its territory and, while the civil code did not specify a period of time to be considered domiciled, the Malolos document identified a definite timeframe of two years. Moreover, although Article 25 of the Spanish Civil Code required naturalised citizens to renounce their former nationality, swear allegiance, and "inscribe themselves as Spaniards in the civil registry", this stipulation was absent in the Malolos charter; the requirements of two years' legal residence and payment of taxes were deemed sufficient for one to be considered a Filipino citizen.

[3] For the Spanish Civil Code of 1889, see http://www.wipo.int/wipolex/en/text.jsp?file_id=221319.

Despite the use of an external model, the drafters of the Malolos Constitution adapted the legal provisions to suit the Philippine context. Moreover, they were working under the exigencies of state formation in a context of war. In a highly unsettled historical moment, the unity of territory and polity was of utmost importance, as evinced by Aguinaldo's reaching out to non-Hispanised ethnic communities as brethren. Rather than creating residuals of otherness, the Malolos Constitution's vision was of a unitary state that claimed all peoples and all localities within a predefined territory as belonging to the state. Moreover, driven by the desire for the Philippines to be accepted by other states as a free and independent new nation, the drafters of the Malolos Constitution opted for a liberal document. But because the republic's life was cut short by the US invasion, there was no opportunity to probe its tenets on citizenship before a court of law. On the contrary, the US colonisation of the Philippines subsequently determined its citizenship principles and practices.

2.2. Chinese Exclusion Law

On 26 September 1898, one month after the establishment of a military government of which he was the head, Brig.-Gen. Elwell S. Otis ordered the extension to the Philippines of the 1882 Chinese Exclusion Law of the United States. In formulating its recommendation on the question of Chinese immigration, the Philippine Commission, whose members were appointed by the US president, indicated that it was "primarily a political question insofar as the Filipinos were concerned", with Commission member Benito Legarda expressing "the belief that the adoption of a policy of Chinese exclusion by the United States in the Philippines would be a very good political measure" (Fonacier 1949: 12–13).

In 1901 the US War Department affirmed Otis's 1898 order. With the exception of former Philippine residents and those who belonged to the 'exempt classes' (which included Chinese officials, teachers, students, merchants, and 'travellers for curiosity or pleasure'), all other Chinese immigrants were barred from entry to the Philippines. American civilian authorities and businessmen in Manila pleaded to be granted room to manoeuvre and adapt to local conditions, but the fear that the Philippines would become a backdoor entry of Chinese to the United States was overwhelming. The Chinese Exclusion Law in the Philippines became official legislation by an act of the US Congress, which Pres. Theodore Roosevelt signed into law in April 1902.

Given elite Filipinos' bias against Chinese immigration, Chinese exclusion could be framed, in the words of an American colonial official, as intended for "the Filipino people for whose protection the exclusion laws have been applied to these Islands".[4] The inclusiveness glimpsed in the Malolos Constitution had been consigned to the past.

2.3. Philippine Citizenship under US Colonial Auspices

The Philippines, along with Puerto Rico and Guam, had been acquired by the US by virtue of the Treaty of Paris, which was signed on 10 December 1898, ratified by the United States on 6 February 1899 and by Spain on 19 March 1899, and proclaimed as in effect on 11 April 1899. However, the Philippines was officially classified as an 'unincorporated territory' under

[4] Insular Collector of Customs to the Secretary of Finance and Justice, Manila, 25 Apr. 1908, US National Archives and Records Administration (henceforth NARA) RG 350, Entry 5, Box 71, File 370–195.

US sovereignty, a territory the United States could exclude but also selectively enfold into the US political system.

To define the framework for governing the Philippines as a colony of the United States, the US Congress passed the Philippine Bill on 1 July 1902, which became known as the Philippine Organic Act of 1902. This law enunciated the first testable concept of Philippine citizenship.[5]

Section 4 of the Organic Act of 1902 created 'Philippine citizenship' by declaring:

> That all inhabitants of the Philippine Islands continuing to reside therein who were Spanish subjects on the eleventh day of April, eighteen hundred and ninety-nine and then resided in said Islands, and their children born subsequent thereto, shall be deemed and held to be citizens of the Philippine Islands and as such entitled to the protection of the United States, except as shall have elected to preserve their allegiance to the Crown of Spain in accordance with the provisions of the treaty of peace between the United States and Spain signed at Paris, December tenth, eighteen hundred and ninety-eight.

Thus by an act of the US Congress the Philippines—although not a sovereign state—was declared as possessing 'citizens' who had been former subjects of Spain as of 11 April 1899.

In specifying the Philippine citizenship of "children born subsequent thereto", the Organic Act of 1902 not only laid down the principle of derivative citizenship but it also established ius sanguinis as one of the subsequent ways to determine Philippine citizenship, unless their parents opted to preserve their Spanish nationality.

However, citizenship conferred by an entity that was not a sovereign state did not make legal sense. Evidently, Philippine citizenship was a legal device to exclude Filipinos from US citizenship. A US court later declared in 1950 in its decision concerning a citizenship case filed by a Filipino that the status of Philippine citizenship "had no international effect prior to the relinquishment of the United States sovereignty but rather served a useful internal American function" (cited in Isaac 2006: 37).

The notion of Philippine citizenship acquired legal weight only because of the simultaneous grant of "protection by the United States". Section 4 held that US protection was contingent upon Philippine citizenship as though Philippine citizenship was a prior reality. Once they were "deemed and held to be citizens of the Philippine Islands", the inhabitants merited protection: 'as such entitled to the protection of the United States'. As a result, Philippine citizens who found themselves in places outside US sovereignty could "call upon American consuls and diplomatic representatives for assistance' and they could 'receive the benefits of treaties between the United States and foreign countries" (Malcolm 1916: 548–549).

Within the US empire, Filipinos were deemed citizens of the Philippines who owed allegiance to the United States. How was allegiance established? The 1902 law specified that Spanish subjects who resided *and continued to reside* in the Philippines during the transition period were automatically and collectively transformed into 'citizens'. Residence was interpreted as an act that expressed voluntary allegiance to the United States. Legal jurisprudence of that time distinguished 'allegiance', said to be 'created by the consent of the individual', from 'citizenship', said to be "created by the consent of the sovereignty"

[5] The text of the Organic Act of 1902 is found in the section on Philippine Constitutions in the digital edition of the *Official Gazette*. See http://www.gov.ph/constitutions/the-philippine-organic-act-of-1902/. The creation of Philippine citizenship and its various contradictions are analysed at length in Aguilar 2010.

(Magoon 1900: 67). That is, citizenship originated from the state—the US, not the Philippines—in contrast to allegiance, which originated from the individual. Spaniards, for instance, would not owe allegiance to the US if they opted to return to the Iberian Peninsula, as stipulated in the Treaty of Paris and reiterated in Section 4 of the 1902 law.

As subjects of the United States, Filipinos travelled internationally using American passports. For instance, the passport issued to Concepcion Zaide on 18 June 1927 was a two-page form (12' x 17') that bore the printed phrase, 'Citizen of the United States'. But a handwritten phrase—"Philippine Islands owing allegiance to the"—had been interposed between the words 'Citizen of the' and 'United States'. In effect, the complete phrase read as "Citizen of the *Philippine Islands owing allegiance to the* United States".[6]

From a few students and workers, the number of Filipino migrants to the United States grew in the 1910s, raising the question of the legal status of Philippine citizens in the US. Because they owed allegiance to the US, Filipinos could not be considered as aliens, but neither were they officially US citizens. The solution was found in the categorisation of Filipino migrants as 'US nationals', a label that was not necessarily attached to Filipinos in the Philippines. This categorisation became clear in 1912 in *Roa v. Collector of Customs*, which laid down the principle that Filipinos were not to be regarded as aliens for customs purposes. "In a series of opinions the Attorney-General of the United States affirmed and reaffirmed that in an international sense Filipinos in foreign countries are entitled to the rights and privileges of American nationals" (Plender 1972: 76). In 1917 US immigration laws were declared to be inapplicable to "persons subject to the permanent jurisdiction of the United States"; in 1924 legislation was passed that stated categorically that the term 'alien' did not include "citizens of islands under US jurisdiction" (ibid.).

In being entitled to US protection, on top of owing allegiance to the United States, the inhabitants of the Philippines were in fact US citizens, although not officially acknowledged by US legislation. In 1940, in response to complaints filed by Filipinos in Alaska who claimed that their right to fish was being curtailed, the US bureaucracy acknowledged internally the anomalous status of Filipinos. In fact, the Acting Solicitor unhesitatingly said, "for purposes of the Game Law, Filipinos are citizens".[7] Here was a frank admission that, "according to the circumstances", Filipinos could be considered citizens of the US. Ironically, with the approaching independence of the Philippines came the recognition of Filipinos as US citizens "for some purposes but not for others".[8]

2.4. The Principle of Ius Soli and Colonial Jurisprudence

Despite its contradictions 'Philippine citizenship', once it had been invented, acquired a life of its own. Immigrants to the Philippines, who sought admission or avoided deportation, heightened the desirability of Philippine citizenship.

In 1916 the US Congress passed the Jones Law, also known as the Philippine

[6] Philippine National Archives, Pasaportes Extrangeros 1820–1896, Spanish Document Section (SDS) no. 14453.
[7] Frederic L. Kirgis, Acting Solicitor, approved by Oscar L. Chapman, Assistant Secretary, to the Hon. Secretary of the Interior, 5 August 1940, US NARA RG 350, Entry 5, Box 842, File 15309–74.
[8] Frederic L. Kirgis, Acting Solicitor, to the Secretary of the Interior, 6 April 1940, US NARA RG 350, Entry 5, Box 842, File 15309–64A.

Autonomy Act, which replaced the Organic Act of 1902.[9] Section 2 of the Jones Law reproduced Section 4 of the Organic Act of 1902, but added the following provision:

> That the Philippine Legislature, herein provided for, is hereby authorized to provide by law for the acquisition of the Philippine citizenship by those natives of the Philippine Islands who do not come within the foregoing provisions, the natives of the insular possessions of the United States, and such other persons residing in the Philippine Islands who are citizens of the United States, or who could become citizens of the United States under the laws of the United States if residing therein.

Thus the 1912 law devolved authority to the Philippine Congress to enact a law on Philippine citizenship within the parameters of US law for persons inadvertently excluded by the Organic Act of 1902.

The Philippine legislature reportedly enacted a law 'declaring that persons born in the Philippine Islands are citizens thereof, aside from those who are already Filipino citizens by virtue of the Act of Congress of July 1, 1902, as amended by the Jones Law'.[10] This provision was incorporated in the definition of terms found in Section 2, Article 1, Chapter 1 of Book 1 of the Administrative Code of 1917, stating that the category

> 'Citizens of the Philippine Islands' includes not only those who acquire the status of citizens of the Philippine Islands by birth or naturalization, but also persons who have acquired the status of Filipinos under Article IX of the Treaty of Paris, of the tenth of December, one thousand eight hundred and ninety-eight.[11]

The phrase 'by birth' as a means of acquiring Philippine citizenship was ambiguous. The US governor-general's office interpreted the phrase as birth in the territory, taking the act of the Philippine legislature specifically as adopting ius soli, "the same as the 14th amendment to the Constitution of the United States".

Even before the 1916 citizenship law was passed, the Philippine Supreme Court in 1911 had begun to apply the principle of ius soli and grant Philippine citizenship primarily to persons with 'Chinese' fathers and 'Filipino' mothers, usually travellers from China that local authorities initially sought to bar from entering the Philippines for being Chinese in the non-exempt category based on the Chinese Exclusion laws.[12] Quite surprisingly, colonial jurisprudence reinvigorated the principle of ius soli laid out in the Malolos Constitution.

Most pertinent to the Supreme Court's decisions were the concerned persons' place of birth *and* domicile in the Philippines, especially before the age of majority for those who had lived overseas for a time. In the court's view, "the effect of the earlier Spanish laws was to make a child born in the Philippines of alien parents a Spanish subject" (Peck 1965: 464) and therefore covered by the citizenship clause of the 1902 Organic Act. In a decision reached in 1910, "the Supreme Court expressed the view that a Chinese person who had acquired a residence and permanent domicile in the Philippines during the period prior to the effective date of the Civil Code had the same rights as any nationalized citizen" (ibid., n. 33). This view was pertinent to the court's assessment of the petitioners' fathers. In other words, the court did not wield race or ethnicity to discriminate against persons seeking Philippine

[9] The text of the 1916 Jones Law can be found in the section on Philippine Constitutions in the digital edition of the *Official Gazette*. See http://www.gov.ph/constitutions/the-jones-law-of-1916/.
[10] C. W. Franks, Secretary to the Gov.-Gen., to the Chief, Bureau of Insular Affairs, War Department, 15 June 1922 p. 4, US NARA RG 350, Entry 5, Box 1085, File 26526–28, p. 3.
[11] For the text of the Administrative Code of 1917, see the digital edition of the *Official Gazette* at http://www.gov.ph/1917/03/10/act-no-2711/.
[12] The colonial jurisprudence upholding ius soli is analysed extensively in Aguilar 2011a.

citizenship.

The history of jurisprudence on ius soli citizenship started with the case of Go Siaco, who was born in Pampanga province on 8 September 1876, the legitimate son of a Chinese father and Filipina mother. He left the Philippines in 1892, but returned permanently in 1896 (Supreme Court of the Philippines [henceforth SCP] 1909: 491). In July 1908 Go was arrested, brought before a justice of the peace, and remitted to the Court of First Instance of Tarlac province for not possessing a 'certificate of registration' as a labourer, which Act 702 of the Philippine Commission required. The lower court's judgment, issued in September 1908, ordered his deportation. The case was elevated to the Supreme Court, not to decide on citizenship but on Go's request to post bail, which the Supreme Court granted on 14 January 1909. In rendering that decision, the court noted that Go 'was born in this country, has lived here for more than 35 years and is now living here with his mother, a native of the Islands'. When the Supreme Court finally decided the merits of the case on 1 September 1911, it stated simply that the Chinese Registration Act was not applicable to Go Siaco (SCP 1912b: 582–583). In 1914 the solicitor-general observed, "when this case is referred to in subsequent cases, the Court takes it as a matter of fact that Go-Siaco was held to be a citizen of the Philippine Islands".[13]

The Supreme Court's first clear enunciation of ius soli citizenship was made in the case of Benito Muñoz, who was born in Camalig in Albay province on 17 January 1880. Muñoz was denied admission in January 1911 as he returned to the Philippines from China, where his Chinese father and Filipina mother had sent him when he was 11 years old. Muñoz, who asserted he was a "native and citizen" of the Philippines, had "presented satisfactory proof that he would have returned sooner to the Philippine Islands had it not been for certain financial difficulties, and that he had never intended to expatriate himself and had never taken any active steps to that end" (SCP 1912a: 496, 497). The Supreme Court ruled on 23 November 1911 that Muñoz was a Philippine citizen, declaring that it had already held in the case of Go Siaco "that a male person born in the Philippine Islands, of a Filipino mother and Chinese father, said father being domiciled with his permanent home in the Philippine Islands and subject to the jurisdiction of the government thereof, is, prima facie, a citizen of the Philippine Islands". The court also emphasised that Muñoz, who stayed in China for some twenty years until he was 31 years old, had the 'honest' intention to return to the Philippines ('the *animus revertendi* existed') "to make it his permanent home and country" but "*the return was prevented by circumstances over which the applicant had no control*", conditions that did not forfeit his Philippine citizenship (ibid.: 498).

The Supreme Court deemed the appellant's choice of the Philippines as his country upon reaching the age of majority crucial, following a rule adopted by the US State Department (cited in Muñoz's case) "to the effect that a continued residence abroad for three years, after the attainment of majority, produces a loss of citizenship, unless it is clearly proved that the *animus revertendi* existed" (SCP 1912a: 498). The court considered the selection of country of residence upon reaching the age of majority as resolving the conflict of dual citizenship.

In a decision rendered on 27 September 1917, the Supreme Court took a further step in applying the principle of ius soli to a person whose parents were both Chinese, made even more remarkable by the fact that the man was a labourer. Lim Bin alias Fermin V. C. Bio Guan was born in Manila in July 1882; when he was about 5 or 6 years of age his parents took him to China; he returned to Manila in 1898 as a minor "for the purpose of making the

[13] Solicitor-General to the Bureau of Insular Affairs, Manila, 17 June 1914, US NARA RG 350, Entry 5, Box 586, file 5507–49, p. 3.

Philippine Islands his home" and since then had lived continuously in Manila (SCP 1919: 925). The court's decision noted that Lim was a minor when the Treaty of Paris was concluded and when Act 702 of the Philippine Commission was issued. The court invoked the Fourteenth Amendment to determine Lim's Philippine citizenship and his exemption from Act 702. Anticipating possible objections, the decision declared, 'While this conclusion may be in conflict with the political laws in force here under the Spanish sovereignty, we believe that it is in harmony with the spirit of the law of the United States' (ibid.: 926–927). In concurring, Justice Malcolm argued that Lim's parents were Spanish subjects under Spanish law, that both he and his father became citizens of the Philippine Islands based on the Treaty of Paris, and that on attaining majority he elected Philippine citizenship. Malcolm stressed, "Chinese descent did not change Lin Bim's status" (ibid.: 928).

2.5. The 1935 Constitution and the Ascendancy of Ius Sanguinis

The question of citizenship and national belonging began to take a different inflection as Filipinos took the helm of government during the Commonwealth period (1935–1946). To prepare for the official end of US rule, a constitutional convention was held to draft what became the 1935 Philippine Constitution.[14] Section 1 of Article 4 of the 1935 Constitution specified that citizens of the Philippines were:

1. Those who are citizens of the Philippine Islands at the time of the adoption of this Constitution.
2. Those born in the Philippine Islands of foreign parents who, before the adoption of this Constitution, had been elected to public office in the Philippine Islands.
3. Those whose fathers are citizens of the Philippines.
4. Those whose mothers are citizens of the Philippines and, upon reaching the age of majority, elect Philippine citizenship.
5. Those who are naturalized in accordance with law.

Notwithstanding its seemingly progressive bill of rights, the 1935 Constitution reduced countless ethnic Chinese and South Asians who were born in the Philippines after the adoption of the constitution or those whose citizenship status had not been settled to the status of resident aliens. The charter institutionalised the prejudice harboured by Filipino elites, who were largely of Chinese mestizo extraction, against their commercial nemesis, the ethnic Chinese. With its preference for ius sanguinis, the 1935 Constitution set the framework for officially barring 'aliens' from Philippine citizenship and from participating in other areas of social life, including trade and the professions.

During the constitutional convention a draft of the citizenship provisions sought to introduce a limited form of ius soli by considering as Filipinos 'All persons born in the Philippines of foreign parents provided they adopt Philippine citizenship within one year after attaining legal age' (Aruego 1936–1937: 198). Evidently patterned after the extant judicial decisions, this proposal was "very vigorously debated" (ibid.: 210). Those who supported ius soli took a cosmopolitan view and stressed that it was a "sound liberal national policy" (ibid.). Despite the required election of Philippine citizenship once a person was of legal age, the

[14] For the text of the 1935 Constitution, see the digital edition of the *Official Gazette* at http://www.gov.ph/constitutions/the-1935-constitution/.

proposal was defeated because of "the feeling of fear among many members of the Convention that the policy enunciated by this precept might prove prejudicial to the economic interests of the country" (ibid.: 211). Those who favoured ius sanguinis stressed that the 'national patrimony' might be lost to those who would exploit the principle of ius soli.

However, a fraction of 'Filipino blood' was deemed sufficient to grant Philippine citizenship. The 1935 charter recognised as citizens "those whose fathers are citizens of the Philippines" as well as "those whose mothers are citizens of the Philippines, and, upon reaching the age of majority, elect Philippine citizenship".

The convention did not follow the theory of citizenship by blood consistently. The constitution admitted to citizenship "those born in the Philippine Islands of foreign parents who, before the adoption of this Constitution, had been elected to public office in the Philippine Islands". This latter provision served as an extremely restricted form of ius soli that was made contingent upon election to public office and only for cases prior to the adoption of the constitution. This strange provision was intended as an 'accommodation' of Convention Delegate Fermin G. Caram, a 46-year-old physician who was born in the Philippines of Ottoman Syrian parents who arrived in the Philippines around 1885; Caram had never been naturalised, but was elected a member of the provincial board of Iloilo (ibid.: 29, 204). Despite strong opposition, this provision was passed because the convention in effect was held hostage: "the most persuasive argument that swayed the body" was the assertion that "should this provision not be approved, there would be the anomalous situation that the Constitution would be signed by one who was not a citizen of the Philippines" (ibid.).

2.6. The Definitive End of Ius Soli

The case of *Jose Tan Chong v. the Secretary of Labor* (1947) marks a watershed in the jurisprudence on Philippine citizenship. Records indicate that Jose Tan Chong was born in San Pablo in Laguna province in July 1915 of a 'Chinese' father named Tan Chong Hong and a 'Filipino' mother named Antonia Mangahis. His parents took him to China in 1925 when he was about 10 years old, and he returned to the Philippines on 25 January 1940 when he was 24 years old. The board of special inquiry that heard his case denied him entry for being a Chinese citizen, a decision affirmed by the Secretary of Labor who also ordered his deportation. Tan Chong sued for a writ of habeas corpus in Manila's Court of First of Instance to secure his release from the custody of the Secretary of Labor, which the court granted. But the solicitor-general, representing the executive branch, appealed (SCP 1951: 307–308).

On 15 October 1941 the Supreme Court—with an all-Filipino Bench but still under the jurisdiction of the United States—affirmed the judgment of the lower court that Tan Chong, "having been born in the Philippines before the approval of our [1935] Constitution, of a Chinese father and a Filipino mother, is a Filipino citizen" (ibid.: 308). The Supreme Court also provided an explanation for Tan Chong's delayed return to the Philippines when it noted that after two years he had wanted to leave China "but his father would not allow him to come, and he did not have the means to pay for his transportation back to the Philippines until the date of his return" (ibid.). A week after the high court made its decision the solicitor general filed a motion for reconsideration, contending that Tan Chong was not a citizen based on the laws at the time of his birth. Dramatically the Second World War intervened before the case could be resolved, destroying the records that had to be reconstituted in 1946.

On 16 September 1947, the Supreme Court—now of the formally independent Republic of the Philippines—proceeded to resolve the pre-war motion for reconsideration. It admitted: 'In a long line of decisions, this court has held that the principle of *jus soli* applies in this jurisdiction' (SCP 1954: 252). However, after providing a different reading of previous case decisions, and cognisant that its decision was 'momentous', the court proceeded to assert that "While birth is an important element of citizenship, it alone does not make a person a citizen of the country of his birth" (ibid.: 256). Arguing that the US tenet of ius soli embodied in the Fourteenth Amendment was never extended to the Philippines and restating Section 4 of the Philippine Organic Act of 1902 as amended in 1912, the court abandoned ius soli once and for all. Ius sanguinis has since been the regnant principle in Philippine jurisprudence. Jose Tan Chong, then 32 years old, was declared not a citizen of the Philippines.

Thus, once and for all, the Supreme Court jettisoned the principle of ius soli in 1947. The saving grace was its clear statement, following the doctrine of *res adjudicata*, that those on whom Philippine citizenship had been conferred judicially would not be divested and deprived of that citizenship (SCP 1954: 258). Because of derivative citizenship, their children, too, would remain Philippine citizens and would be treated as natural-born Filipinos.

3. Current Citizenship Regime

3.1. Citizenship in the 1973 and 1987 Constitutions

The 1973 and 1987 Philippine Constitutions have preserved ius sanguinis as the basic principle of citizenship as laid out in the 1935 Constitution.[15]

Although the constitutional convention did not complete its work because Ferdinand Marcos declared martial law in September 1972 and Marcos hijacked the 1973 Constitution to legitimate his authoritarian rule, the earlier work of the convention had left an important legacy that sought to put women at par with men in terms of citizenship.

Section 1 of Article 3 of the 1973 Constitution states that Philippine citizens are:

1. Those who are citizens of the Philippines at the time of the adoption of this Constitution.
2. Those whose fathers or mothers are citizens of the Philippines.
3. Those who elect Philippine citizenship pursuant to the provisions of the Constitution of nineteen hundred and thirty-five.
4. Those who are naturalized in accordance with law.

The 1935 Constitution's stipulation that those whose mothers alone held Philippine citizenship needed to elect Philippine citizenship upon reaching legal age was removed. Thus, pursuant to this provision a child is a citizen of the Philippines if either parent is a Filipino citizen at the time of the child's birth, regardless of the citizenship of the other parent and of the child's place of birth.

[15] The texts of the 1973 Constitution and the 1987 Constitution are available in the digital edition of the *Official Gazette*. See, respectively, http://www.gov.ph/constitutions/1973-constitution-of-the-republic-of-the-philippines-2/ and http://www.gov.ph/constitutions/1987-constitution/.

However, the 1987 Constitution restored the requirement that the child must elect Philippine citizenship upon reaching the age of majority, probably out of concern that unless this choice was made it would result in a situation of dual citizenship. Apart from this aspect, the 1987 Constitution retains the framework of citizenship laid out in the 1973 Constitution.

Section 1 of Article 4 of the 1987 Constitution reads:

The following are citizens of the Philippines:

1. Those who are citizens of the Philippines at the time of the adoption of this Constitution;
2. Those whose fathers or mothers are citizens of the Philippines;
3. Those born before January 17, 1973, of Filipino mothers, who elect Philippine citizenship upon reaching the age of majority; and
4. Those who are naturalized in accordance with law.

In addition, the 1973 Constitution went further than the 1935 Constitution in gender equality by recognising the right of women to Philippine citizenship despite marriage to a non-citizen. Section 2 of Article 3 states that "A female citizen of the Philippines who marries an alien shall retain her Philippine citizenship, unless by her act or omission she is deemed, under the law, to have renounced her citizenship". Commentators have noted that this provision was in line with

> the principle embodied in the 1957 U.N. General Assembly Convention on the Nationality of Married Women, where each contracting state agrees that neither the celebration nor the dissolution of marriage between one of its nationals and an alien, nor the change of nationality by the husband during the marriage, shall automatically affect the nationality of the wife. (Asuncion, Diores, Fernando, Jimenez, Kintanar, and Ocampo 1980: 493–494)

The 1987 Constitution continues this principle, using gender-neutral language, as we see in Section 4 of Article 4: "Citizens of the Philippines who marry aliens shall retain their citizenship, unless by their act or omission they are deemed, under the law, to have renounced it". In both constitutions, this provision implicitly acknowledges the possibility of dual citizenship, in cases where the law of the alien spouse's country confers its citizenship upon the Filipino spouse even when the latter does not renounce his or her Philippine citizenship.

The 1973 Constitution in its Section 4 of Article 3 provided for the first time a definition of a natural-born citizen as 'one who is a citizen of the Philippines from birth without having to perform any act to acquire or perfect his Philippine citizenship'. This definition has been carried forward into the 1987 Constitution, in Section 2 of Article 4 which states in gender-neutral language: "Natural-born citizens are those who are citizens of the Philippines from birth without having to perform any act to acquire or perfect their Philippine citizenship".

Finally, the 1973 Constitution expunged the 1935 provision that granted an extremely limited form of ius soli to those who were born in the Philippines of non-Philippine citizen parents but who had been elected to public office. In similar vein, the 1987 Constitution does not contain this provision found in the 1935 Constitution. Instead, such persons can acquire Philippine citizenship through naturalisation, with birth on Philippine territory providing a slight advantage over non-citizens without this qualification.

3.2. Citizenship by Naturalisation

About four year after the approval of the 1935 Constitution, Commonwealth Act 473, officially known as the Revised Naturalization Law, was approved on 17 June 1939.[16] This law defined the conditions by which persons who possessed the specified qualifications could become citizens of the Philippines by naturalisation. It required the filing of a petition in the Court of First Instance in the province where the petitioner had resided for at least one year prior to the filing of the petition (Sec. 8). The law specified the following qualifications for naturalisation:

1. The person must not be less than 21 years of age on the day of the hearing of the petition;
2. The person must have resided in the Philippines for a continuous period of not less than ten years;
3. The person must be of good moral character and believes in the principles underlying the Philippine Constitution, and must have conducted himself or herself in a proper and irreproachable manner during the entire period of his or her residence in the Philippines in his or her relation with the constituted government as well as with the community in which he or she is living;
4. The person must own real estate in the Philippines worth not less than five thousand pesos, Philippine currency, or must have some known lucrative trade, profession, or lawful occupation;
5. The person must be able to speak and write English or Spanish and any one of the principal Philippine languages; and
6. The person must have enrolled his minor children of school age, in any of the public schools or private schools recognized by the Philippine government, where Philippine history, government, and civics are taught or prescribed as part of the school curriculum.

Section 3 of Commonwealth Act 473 reduced the requisite residence from ten to five years if the petitioner possessed any of the following qualifications:

1. Having honourably held office under the Government of the Philippines or under that of any of the provinces, cities, municipalities, or political subdivisions thereof;
2. Having established a new industry or introduced a useful invention in the Philippines;
3. Being married to a Filipino woman;
4. Having been engaged as a teacher in the Philippines in a public or recognized private school not established for the exclusive instruction of children of persons of a particular nationality or race, in any of the branches of education or industry for a period of not less than two years;
5. Having been born in the Philippines.

[16] The text of Commonwealth Act 473 is available online in *The LAWPhil Project* of the Arellano Law Foundation at http://www.lawphil.net/statutes/comacts/ca_473_1939.html.

As seen in Section 3, birth within the territory of the Philippines became just one of the enabling features of naturalisation by reducing the residency requirement. Section 6 of the law contained a further concession to those born in the Philippines who received their primary and secondary education in a recognised school in the country and sent their children to study in similarly recognised schools and who had lived in the Philippines for at least thirty years; such persons were exempt from the requirement to make a 'declaration of intention' to become a Philippine citizen one year prior to the filing of the petition for naturalisation.

The law evidently placed great premium on the education system as a mechanism for political socialisation. It assumed that aliens could be made into citizens if they went through the school system from one's youngest years. Moreover, in reducing the residency requirement from ten to five years, the law gave equal weight to engaging in the teaching profession as birth in the territory, being married to a Philippine citizen, holding a public office, or contributing to the country's economic growth by establishing a new industry or introducing a practical invention.

Birth in the territory and participation in the nation's education system were seen as particularly crucial for generations of ethnic Chinese born in the Philippines. The issue of whether ethnic Chinese could be assimilated into Philippine society was always contentious, especially because Chinese schools—supervised by Taiwan, even in terms of its curriculum—were regarded as part of the cultural isolation of ethnic Chinese. Language was also an index of so-called integration, or the lack thereof, of the ethnic Chinese; hence, English, Spanish, or a major Philippine language became a requirement for naturalisation. Because concepts of assimilation were preponderant, in Section 4 of Commonwealth Act 473, one of the grounds for disqualification from naturalisation, apart from the usual or apparent ones, was the condition in which non-citizens 'have not mingled socially with the Filipinos, or who have not evinced a sincere desire to learn and embrace the customs, traditions, and ideals of the Filipinos'.

To those who succeeded in hurdling the judicial process of naturalisation, Section 12 of Commonwealth Act 473 specified the oath of citizenship as follows:

> "I, _____, solemnly swear that I renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state or sovereignty, and particularly to the _____ of which at this time I am a subject or citizen; that I will support and defend the Constitution of the Philippines and that I will obey the laws, legal orders and decrees promulgated by the duly constituted authorities of the Commonwealth of the Philippines; and I hereby declare that I recognize and accept the supreme authority of the United States of America in the Philippines and will maintain true faith and allegiance thereto; and that I impose this obligation upon myself voluntarily without mental reservation or purpose of evasion. So help me God".

Not surprisingly, after Philippine independence in 1946, the oath was modified to remove references to the United States and to the Commonwealth. However, the wording emphasized the same exclusive and eternal 'allegiance and fidelity' as found in the original oath, although this time the reference was to the Republic of the Philippines.

By the late 1950s, many local-born Chinese had begun to identify the Philippines as their homeland and to petition for Philippine citizenship in increasing numbers, particularly as the People's Republic of China (PRC) had encouraged overseas Chinese to take up local citizenship (Tan 1988). However, the Chinese found the naturalisation process defined by Commonwealth Act 473 unwieldy and very expensive, discouraging large numbers from acquiring Philippine citizenship. Moreover, among the Philippine Chinese pro-Taiwan leaders, who subscribed to the Guomindang's policy that overseas Chinese remain Chinese,

predominated. As a result, a great number persisted in carrying Taiwanese passports. In the early 1970s there were an estimated 125,000 ethnic Chinese living in the Philippines who were known as 'overstaying' because they had no Philippine citizenship.

On 11 April 1975, with the Philippines two and a half years into martial rule, Ferdinand Marcos issued Letter of Instruction (LOI) 270, officially titled 'Naturalization of Deserving Aliens by Decree'.[17] In lieu of a complicated and costly court case but retaining the same conditions specified in Commonwealth Act 473, LOI 270 provided for an administrative procedure in which applicants for naturalisation indicated their interest to acquire Philippine citizenship to a committee headed by the Solicitor General. This committee then submitted recommendations to the president, who issued several presidential decrees that granted Philippine citizenship to specific individuals by name. To ensure derivative citizenship—which is not enjoyed by ethnic Chinese in countries such as Indonesia (Aguilar 2001)—Marcos issued Presidential Decree 836 on 3 December 1975 to expand the coverage of mass naturalisation to include the wife and minor children of the principal petitioner, who henceforth no longer had to undergo the entire process of naturalisation because they were deemed Philippine citizens by virtue of the naturalisation of the husband or father.[18] Nevertheless, this provision did not have gender parity. If the principal petitioner was a woman, derivative citizenship did not apply to any of her minor children whose father was a non-citizen.

LOI 270 marked the turning point in the quest of ethnic Chinese and other non-citizens living in the Philippines to acquire Philippine citizenship. In lieu of the cumbersome and costly judicial process, Marcos ordered a simple administrative procedure that enabled mass naturalisation. After campaigning for years to gain this right, ethnic Chinese almost overnight could become Philippine citizens. The local Chinese response to Marcos's offer was 'overwhelmingly enthusiastic', with huge numbers undergoing 'mass naturalization' (See 1988: 330). Other resident aliens, such as those of Indian descent, also readily took advantage of the liberalised procedure for naturalisation (Rye 1993: 749).

The main motivation for this drastic shift in policy was Marcos's official recognition of the PRC. Marcos used diplomacy as a strategy to deal with festering domestic issues, such as the armed rebellion of the Communist Party of the Philippines, which, Marcos hoped, the PRC would not support. It was also Marcos's way of pre-empting disputes arising from explorations in the South China Sea (Aguilar 2012). Moreover, in order to deal with the ideological conflicts among the ethnic Chinese as well as to ensure political socialisation into the Philippine body politic, Marcos decided to nationalise all Chinese schools (ibid.).

Today innumerable ethnic Chinese and their children enjoy Philippine citizenship owing to this measure, even if many still struggle for recognition as fully Filipino. In any event, it is ironic that a dictatorial ruler provided a means to integrate resident aliens into the Philippine body politic, an unprecedented development that could not have happened under democratic processes because of the deep Filipino prejudice against the Chinese. For his part, Marcos instrumentalised citizenship in pursuit of his own state objectives to lend legitimacy and stability to his martial law regime.[19]

Republic Act 9139, known as the Administrative Naturalization Law of 2000 and approved on 8 June 2001, codifies and updates the administrative procedure for naturalisation

[17] The text of Letter of Instruction 270 is found in the *Official Gazette*. See http://www.gov.ph/1975/04/11/letter-of-instruction-no-270-s-1975/.
[18] The text of Presidential Decree 836 is found in the *Official Gazette*. See http://www.gov.ph/1975/12/03/presidential-decree-no-836-s-1975/.
[19] The instrumentalisation of citizenship by Southeast Asian states is discussed at length in Aguilar 1999, 2011b.

made possible by LOI 270.[20] However, this law applies specifically to non-citizens who were born in the Philippines and have resided in it since birth. Such persons are eligible for administrative naturalisation as long as they are at least 18 years of age and they possess the specified qualifications that are basically the same as those identified in Commonwealth Act 473. As an application of the principle of derivative citizenship, the female spouse and minor children acquire Philippine citizenship by virtue of the naturalisation of the male spouse and father. However, if the petitioner is the female spouse, the benefit of administrative naturalisation does not extend to the male spouse, but it extends to her minor children, based on Section 12 of Republic Act 9139, which rectifies the gender bias in Presidential Decree 836.

For those whose birthplace is not the Philippines and those without a Filipino parent, the only way to acquire Philippine citizenship is through the process of naturalisation specified in Commonwealth Act 473. In the current state of globalisation, many Filipinas are marrying foreigners and a respectable number of them decide to reside in the Philippines at some point during their marriage. In such cases the alien husband who desires to acquire Philippine citizenship needs to comply with the unwieldy court-based procedure specified by Commonwealth Act 473. The judicial procedure is also very costly, and one must be prepared to spend anywhere between P170,000 to P230,000 (approximately 3,400–4,600 USD), or even more.

Based on the 2010 census, the foreign population in the Philippines numbered 177,365 as of May 2010 (Philippine Statistics Authority 2012). They comprised 0.2 per cent of the total household population. The largest number of foreign citizens came from the United States (29,959). The next largest numbers came from China (28,750), Japan (11,583), and India (8,963).

3.3. Loss and Reacquisition of Philippine Citizenship

About a year after the approval of the 1935 Constitution, Commonwealth Act 63, dated 20 October 1936, was passed.[21] The law stipulated that Philippine citizens could lose their citizenship through any of the following ways or events:

1. By naturalization in a foreign country;
2. By express renunciation of citizenship;
3. By subscribing to an oath of allegiance to support the constitution or laws of a foreign country upon attaining twenty-one years of age or more: Provided, however, That a Filipino may not divest himself of Philippine citizenship in any manner while the Republic of the Philippines is at war with any country.
4. By rendering services to, or accepting commission in, the armed forces of a foreign country, and the taking of an oath of allegiance incident thereto, except in certain specified cases;
5. By cancellation of the certificates of naturalization;
6. By having been declared by competent authority, a deserter of the Philippine armed forces in time of war, unless subsequently, a plenary pardon or amnesty

[20] For the text of Republic Act 9139, see http://www.lawphil.net/statutes/repacts/ra2001/ra_9139_2001.html.
[21] For the text of Commonwealth Act 63, see http://www.lawphil.net/statutes/comacts/ca_63_1936.html.

has been granted; and

7. In the case of a woman, upon her marriage to a foreigner if, by virtue of the laws in force in her husband's country, she acquires his nationality.

In regard to the last item, Republic Act 8171, approved on 23 October 1995, provides a mechanism that allows "Filipino women who have lost their Philippine citizenship by marriage to aliens and natural-born Filipinos who have lost their Philippine citizenship, including their minor children, on account of political or economic necessity", to reacquire Philippine citizenship through repatriation.[22] The repatriated person is required to take an oath of allegiance to the Republic of the Philippines.

The most drastic change in recent citizenship policy has come in the form of a law that reverses the first item in the list specified in Commonwealth Act 63 shown above. Republic Act 9225, approved on 29 August 2003, provides that natural-born citizens of the Philippines who had lost their Philippine citizenship by reason of naturalisation as citizens of a foreign country will be deemed to have reacquired Philippine citizenship upon taking an oath of allegiance to the republic.[23] Pursuant to Section 4 that specifies derivative citizenship, their children, regardless of whether they are legitimate, illegitimate, or adopted, as long as they are below eighteen years of age and are unmarried, shall also be deemed citizens of the Philippines.

No one would have anticipated that the Philippines would allow dual citizenship when the martial law regime of Ferdinand Marcos established the *Balikbayan* (Visit the Homeland) Program in 1973 as a legitimacy-seeking measure. Shortly thereafter the regime adopted a new labour code in 1974, which launched a labour-export policy ostensibly as a stopgap measure to deal with unemployment. In hindsight, these were the beginnings of the Philippine state's two-pronged strategy of wooing back the long gone migrants while simultaneously promoting the global dispersal of new, primarily labour, migrants.

As a further step to gain the support of overseas Filipinos, specifically Filipino Americans, for Marcos's authoritarian rule, in 1980 a number of parliamentary bills and resolutions on dual citizenship were introduced in the Marcos-controlled *Batasang Pambansa* or National Parliament (Asuncion et al. 1980: 498–502). However, these did not succeed. It is intriguing that the proposal for dual citizenship languished under Marcos because his authoritarian regime had introduced in 1975 mass naturalisation through LOI 270.

In the period after Marcos's downfall precipitated by the People Power Revolution in 1986, the Philippines granted several concessions to former natural-born Philippine citizens. These include visa-free entry for a period of one year (Republic Act 6768, approved on 3 November 1989), investment rights in thrift and rural banks (Republic Act 6938, approved on 10 March 1990), and ownership of urban property up to 5,000 square meters and rural property with a maximum size of five hectares (Republic Act 8179, approved on 28 March 1996). The reincorporation for former citizens culminated in Republic Act 9225, which puts the Philippines in a growing league of states that grant dual citizenship (Sejersen 2008).

About six months after absentee voting became law (Republic Act 9189), which was approved on 13 February 2003, came the passage of the dual citizenship legislation. Strictly speaking, Republic Act 9225 does not use the term 'dual citizenship', but declares the policy in Section 2 that "all Philippine citizens who become citizens of another country shall be

[22] The text of Republic Act 8171 may be found on the website of the Philippine Commission on Women at http://pcw.gov.ph/law/republic-act-8171.
[23] For the text of Republic Act 9225, see *The LAWPhil Project* at http://www.lawphil.net/statutes/repacts/ra2003/ra_9225_2003.html.

deemed not to have lost their Philippine citizenship under the conditions of this Act". Officially titled 'An Act Making the Citizenship of Philippine Citizens Who Acquire Foreign Citizenship Permanent', the law provides for the reacquisition of Philippine citizenship by natural-born Filipinos who have undergone naturalisation as citizens of another state. All it requires is an oath of allegiance that reads as follows:

> "I, _____, solemnly swear (or affirm) that I will support and defend the Constitution of the Republic of the Philippines and obey the laws and legal orders promulgated by the duly constituted authorities of the Philippines; and I hereby declare that I recognize and accept the supreme authority of the Philippines and will maintain true faith and allegiance thereto; and that I imposed this obligation upon myself voluntarily without mental reservation or purpose of evasion".

This nonexclusive oath is a dramatic departure from the text of the oath of citizenship that originates from Commonwealth Act 473, the law on judicial naturalisation.

Nonetheless, Republic Act 9225 requires those who seek an elective office "at the time of the filing of the certificate of candidacy, [to] make a personal and sworn renunciation of any and all foreign citizenship" (Sec. 5, Para. 2). Those who assume appointive public office are required to "subscribe and swear to an oath of allegiance to the Republic of the Philippines and its duly constituted authorities prior to their assumption of office" (Sec. 5, Para. 3).

Dual citizenship cleared the legislative process in a relatively short period of time. While absentee voting had lingered through four congresses since 1987, the dual citizenship bill entered the legislative arena only in 2002. In the Senate an overwhelming 16 out of 17 senators passed its version of the bill on 23 October 2002. About six months later (29 April 2003), the House of Representatives voted on its version of the bill: a total of 127 members (or 78 per cent) cast an affirmative vote, with only 32 (or 20 per cent) voting against the bill and 3 (nearly 2 per cent) choosing to abstain. After close to three months, agreement on the bicameral version was reached, gaining approval in the Senate on 25 August and in the House of Representatives on the following day. On 28 August 2003 the bill was transmitted to the Office of the President, and on the succeeding day it was signed into law.

This revision of state policy involved a radical recasting of the terms of national belonging, one of the elements of the migration revolution that has been the unintended consequence of the Philippine state's migration policies since the 1970s. The passage of the law on dual citizenship ran counter not only to Commonwealth Act 63 but also to the cultural and emotional premises that held immigration, let alone naturalisation, anathema to nationhood. An alternative discourse was crafted that redefined membership in the national community by highlighting immigrants' unending emotional ties to the homeland, while emphasising the crucial significance of migrant remittances and potential investments in developing the country's economy (Aguilar 2014). The Philippines also benefited from the demonstration effect of countries that had already adopted dual citizenship laws, which lawmakers admitted. Also making the law easy to pass in the early 2000s was the absence of security concerns about natural-born Filipinos, the law's only intended beneficiaries.

The constitutionality of Republic Act 9225 was challenged in the Supreme Court for violating the prohibition against dual allegiance stated in Section 5 of Article 4 of the 1987 Constitution. However, the high court upheld the law in *Advocates and Adherents of Social Justice for School Teachers and Allied Workers (AASJS) Member Hector Gumangan Calilung v. Simeon Datumanong, Secretary of Justice* promulgated on 11 May 2007. The court took note of the congressional deliberations that stressed that "by swearing to the supreme authority of the Republic, the person implicitly renounces his foreign citizenship" and that the

law "stayed clear out of the problem of dual allegiance and shifted the burden of confronting the issue of whether or not there is dual allegiance to the concerned foreign country" (SCP 2007).

During the interpellation period in the Senate when its version of the bill that became Republic Act 9225 was being debated, it was emphasized that the drafters of the 1987 Constitution stipulated the provision on dual allegiance as "inimical to the national interest" (Sec. 5, Art. 4) because they had in mind Chinese who became naturalised Filipinos but were suspected of maintaining 'allegiance' to 'their origin', either the PRC or Taiwan (Senate of the Philippines 2009, 712, 835)—even though by the mid-1980s the Philippines had been the birthplace of generations of ethnic Chinese. Among the constitutionalists, anti-Chinese sentiment once again reared its ugly head, which the Senate echoed unquestioningly in 2002. Filipino lawmakers found the dual allegiance of naturalised Chinese in the Philippines suspect, but did not countenance as problematic the dual allegiance of Filipinos who had been naturalised in other countries and who reacquired Philippine citizenship.

There has also been the question of whether the former citizen who reacquires Philippine citizenship by virtue of Republic Act 9225 is a naturalised or natural-born Filipino. The Supreme Court, in its decision made on 10 August 2012 in *Teodora Sobejana-Condon v. Comelec*, stated that "The 'sworn renunciation of foreign citizenship' must be deemed a formal requirement only with respect to the re-acquisition of one's status as a natural-born Filipino so as to override the effect of the principle that natural-born citizens need not perform any act to perfect their citizenship" (SCP 2012). In other words, a former natural-born Filipino who reacquires or retains his or her Philippine citizenship under Republic Act 9225 is a natural-born Filipino. Passed in 1995, Republic Act 8171, on the repatriation of Filipino women who lost their Philippine citizenship by marriage, also considers the person to have recovered the status of a natural-born citizen.

Initially immigrants were suspicious about the law, and there were few former citizens who reacquired Philippine citizenship. Over time there has been an increase in the number of former citizens who have reacquired Philippine citizenship. In 2011 the number stood at 19,328; in 2012 it rose by 57 per cent to 30,362. Filipino Americans constitute the largest group of dual citizens, followed by Filipino British and Filipino Canadians. An estimated 150,000 Filipinos worldwide are said to have availed themselves of this law (*GMA News Online* 2013).

4. Current Debates and Reforms

4.1. The Citizenship of Foundlings

Whether foundlings with no known parentage are natural-born citizens became a key issue in the May 2016 national election. Grace Poe was one of the candidates for the presidency, a position restricted constitutionally to natural-born citizens. Among several complex issues against Grace Poe's candidacy was the contention that as a foundling who was adopted by a celebrity couple in 1968 she did not possess the qualification of being a natural-born citizen.

One of the petitioners for Poe's disqualification to run for the presidency was Francisco Tatad, whose position the court summarized as follows:

> Tatad theorized that since the Philippines adheres to the principle of *jus sanguinis,* persons of unknown parentage, particularly foundlings, cannot be considered natural-born Filipino citizens since blood relationship is determinative of natural-born status. Tatad invoked the rule of statutory construction that what is not included is excluded. He averred that the fact that foundlings were not expressly included in the categories of citizens in the 1935 Constitution is indicative of the framers' intent to exclude them. Therefore, the burden lies on petitioner to prove that she is a natural-born citizen.
>
> Neither can petitioner seek refuge under international conventions or treaties to support her claim that foundlings have a nationality. According to Tatad, international conventions and treaties are not self-executory and that local legislations are necessary in order to give effect to treaty obligations assumed by the Philippines. He also stressed that there is no standard state practice that automatically confers natural-born status to foundlings.

However, the Supreme Court took the position that the burden of proof that Poe was not a natural-born citizen was on the opponents of her candidacy. "The private respondents should have shown that both of petitioner's parents were aliens. Her admission that she is a foundling did not shift the burden to her because such status did not exclude the possibility that her parents were Filipinos, especially as in this case where there is a high probability, if not certainty, that her parents are Filipinos" (SCP 2016).

The Supreme Court also argued that Poe's blood relationship with a Filipino citizen was 'demonstrable'. It took note of the official statistics presented by the Solicitor General that "from 1965 to 1975, the total number of foreigners born in the Philippines was 15,986 while the total number of Filipinos born in the country was 10,558,278. The statistical probability that any child born in the Philippines in that decade is natural-born Filipino was **99.83%**" (ibid., emphasis in original). In the province of Iloilo where Poe was found, Filipino citizens constituted the vast majority.

The Supreme Court contended that "All of the foregoing evidence, that a person with typical Filipino features is abandoned in [a] Catholic Church in a municipality where the population of the Philippines is overwhelmingly Filipinos such that there would be more than a 99% chance that a child born in the province would be a Filipino, would indicate more than ample probability if not statistical certainty, that petitioner's parents are Filipinos" (ibid.).

The highest court of the land declared unequivocally: "As a matter of law, foundlings are as a class, natural-born citizens" (ibid.).

The court also pointed out that the records showed that the drafters of the 1935 Constitution intended foundlings to be considered natural-born citizens. The high court contended, "We find no such intent or language permitting discrimination against foundlings. On the contrary, all three Constitutions guarantee the basic right to equal protection of the laws. All exhort the State to render social justice" (ibid.).

Furthermore, the Supreme Court pointed out that laws on inter-country adoption (Republic Act 8043 and Republic Act 8552) "all expressly refer to 'Filipino children' and include foundlings as among Filipino children who may be adopted" (ibid.). In fact, the court pointed out that "Domestic laws on adoption also support the principle that foundlings are Filipinos. These laws do not provide that adoption confers citizenship upon the adoptee. Rather, the adoptee must be a Filipino in the first place to be adopted" (ibid.).

The Supreme Court also made clear that "Foundlings are likewise citizens under international law", which could become a part of the sphere of domestic law either through

transformation or incorporation (ibid.). Among other international conventions to which the Philippines is a signatory, the high court stated that "In 1986, the country also ratified the 1966 International Covenant on Civil and Political Rights (ICCPR). Article 24 thereof provide for the right of *every child* '*to acquire a nationality*' (ibid.). The common thread of the country's international commitments "is to obligate the Philippines to grant nationality from birth and ensure that no child is stateless. This grant of nationality must be at the time of birth, and it cannot be accomplished by the application of our present naturalization laws" (ibid.).

The highest court also accepted Poe's evidence that shows that at least sixty countries in the world have passed legislation recognising foundlings as its citizen. It added:

> Forty-two (42) of those countries follow the *jus sanguinis* regime. Of the sixty, only thirty-three (33) are parties to the 1961 Convention on Statelessness; twenty-six (26) are not signatories to the Convention. Also, the Chief Justice, at the 2 February 2016 Oral Arguments pointed out that in 166 out of 189 countries surveyed (or 87.83%), foundlings are recognized as citizens.

Based on these data, the court argued, noting the large number of countries that abide by ius sanguinis in this camp, that "it is a generally accepted principle of international law to presume foundlings as having been born of nationals of the country in which the foundling is found". The Supreme Court concluded:

> all of the international law conventions and instruments on the matter of nationality of foundlings were designed to address the plight of a defenseless class which suffers from a misfortune not of their own making. We cannot be restrictive as to their application if we are a country which calls itself civilized and a member of the community of nations. (ibid.)

Grace Poe did not win the presidency, but her candidacy left an enduring legacy that solidified the status of foundlings as natural-born citizens of the Philippines.

4.2. Citizenship of Stateless Persons

The Department of Justice then headed by Secretary (now Senator) Leila de Lima made a big stride in issuing Department Circular 58 on 18 October 2012.[24] The circular is titled 'Establishing the Refugee and Stateless Status Determination Procedure', which according to Laura van Waas (2012)

> sets a good example, not only in the region, where protection frameworks for stateless people are largely absent, but also to countries in other parts of the world which acceded to the 1954 Convention but have yet to take this vital step in its implementation. There are currently 76 state parties to the 1954 Convention, but less than a dozen examples of dedicated statelessness determination procedures globally.

Van Waas also commends Department Circular 58 for improving on existing procedures by specifying in Section 7 of the circular that, once a person has made a formal claim to refugee or stateless status and has applied for status determination, "any proceeding for the deportation or exclusion of the Applicant and/or his or her dependents shall be suspended" and the persons concerned may be released from detention subject to conditions

[24] A copy of Department Circular 58 may be found online at http://www.refworld.org/docid/5086932e2.html.

set by the Secretary of Justice. In terms of burden of proof, Section 9 specifies: "The responsibility of proving a claim to refugee or stateless status is a shared and collaborative burden between the Applicant and the Protection Officer".

Section 15 stipulates that one benefit of recognition of refugees and stateless persons, together with their families, is "the right to residence" in the country. This section also specifies that "They are entitled to the appropriate visas and such other immigration documents appurtenant thereto as may be provided by immigration laws and regulations". Moreover, expulsion from the Philippines can only be done "in accordance with due process of law", as stated in Section 30.

The circular has been applied in the case of stateless persons of Indonesian descent who live mostly as subsistence farmers or fishermen in remote portions of the southern island of Mindanao. The earliest identifiable forebears had sailed from Sulawesi and settled in Mindanao in the late nineteenth century. Others arrived in the course of the twentieth century, but certainly many did so before the Republic of Indonesia was established in 1949. Over time some of the migrants returned to their origins. Interestingly, many of these 'Indonesian' settlers in the Philippines are Protestant Christians (Tan-Cullamar 1989).

The process of determining the status of these stateless persons started with a 'mapping process' that commenced soon after the issuance of Department Circular 58 in 2012. Espina-Varona (2016) has reported that the Department of Justice and the Indonesian consulate in Davao City have cooperated in this campaign, which has resulted in the identification of a total of 8,745 persons of Indonesian descent. Some of their forebears had "alien certificates of registration but were too poor to afford annual renewal" (ibid.).

In May 2016, 538 persons were 'confirmed' as Filipino citizens while 128 were 'confirmed' as Indonesians (ibid.). However, only very few were reported to have received their naturalisation papers. For those who acquired Philippine citizenship, their naturalisation followed the administrative procedure stipulated in Republic Act 9139. However, Section 9 of this law requires a payment of P100,000, approximately 2,000 USD, with half to be paid upon approval of the petition and the other half upon taking the oath of allegiance to the Republic of the Philippines. These fees are steep. It is not clear what will happen to the persons concerned who cannot afford to pay the requisite fees. Also yet to be seen is how other groups of stateless persons—foremost of which are the descendants of Vietnamese refugees in the 1970s and the handful of Syrian refugees who arrived in 2013—can find formal inclusion in the Philippine body politic.

5. Conclusion

The practice of citizenship in the Philippines in the course of over a century provides a clear illustration that it is neither absolute nor static. Changing historical conditions determine the level and type of access to citizenship of different groups of people who otherwise would have been excluded. In fact, the US Congress invented Philippine citizenship as a means to exclude the inhabitants of the Philippines—which the US took over from Spain in 1899 but kept as an 'unincorporated territory'—from being granted US citizenship. The Philippines as a non-sovereign entity granted citizenship to persons who owed allegiance to the United States. This allegiance, in turn, was expressed through continued residence in the Philippines,

which to the vast majority of its inhabitants was a course of action that had no alternative anyway. Yet, when Philippine citizens travelled overseas, especially to the United States, they were classified as US nationals.

Once it had been established, Philippine citizenship became a status that groups of people, particularly those of Chinese descent, desired in order to remain in the country to be with their kin. In this regard, colonial jurisprudence as seen in the decisions of the Supreme Court of the Philippines asserted the principle of ius soli—paradoxically the principle found in the country's very first charter, known as the Malolos Constitution of 1899, which however was short-lived because of the US invasion and takeover of the Philippines. Elite Filipino prejudice against the Chinese elevated the principle of ius sanguinis in the 1935 Constitution, which was drafted as a preparatory step to formal independence in 1946. In 1947, with the Philippines a formally independent republic, the Supreme Court overturned past jurisprudence to assert the pre-eminence of ius sanguinis. The only silver lining was the ruling that those already granted Philippine citizenship would retain that status, together with their dependents.

In the succeeding decades, attempts to introduce some form of ius soli all came to naught—until ironically the authoritarian ruler, Ferdinand Marcos, two and a half years into his reign, decreed in 1975 the mass naturalisation of aliens in the Philippines. Marcos used the historical conjuncture to naturalise ethnic Chinese in view of his initiative to open diplomatic relations with the People's Republic of China. Consequently, instead of the costly and unwieldy judicial process, Marcos mandated a simple and affordable administrative procedure for naturalisation. In the post-authoritarian period, a law was passed in 2001 that codified administrative naturalisation, a mechanism available only to non-citizens born on Philippine soil.

The long 1970s also witnessed the formal commencement of the country's labour export policy, while those who had immigrated to the United States were enticed with incentives to visit the homeland and thereby grant legitimacy to the martial law regime. Since then the global migrations of Filipinos have accelerated in intensity and extensity for reasons that are intertwined with the structural needs of the destination states. Given the global dispersal of overseas Filipinos and their support for the country's economy through migrant remittances, the post-authoritarian Philippines has taken several steps to re-embrace migrants in the body politic. In 2003 the drive toward the reincorporation of overseas Filipinos culminated in the twin legislations of absentee voting and dual citizenship. Republic Act 9225 enables former citizens who have naturalised elsewhere to retain or reacquire their Philippine citizenship by executing a nonexclusive oath of allegiance. Thus, the Philippines joined a growing number of states in the world that allow some form of dual citizenship. However, this entitlement is restricted to natural-born Filipinos. Once these persons reacquire their Philippine citizenship, their minor dependents also become Philippine citizens in consonance with the country's long-standing practice of derivative citizenship.

The Philippines is not only a migrant-sending country but also a migrant-receiving country, although the latter occurs on a much smaller scale than the former. Many foreign residents are married to Philippine citizens, but their desire to acquire Philippine citizenship after residing in the country for several years is often dashed by the tedious and costly procedure of judicial naturalisation. Other migrant arrivals are refugees. The Philippines is also home to several hundreds of stateless persons, many of them of Indonesian descent and some others are of Vietnamese descent. Although the Philippines is not a signatory to the 1961 UN Convention on the Reduction of Statelessness, in 2012 the Department of Justice issued Department Circular 58, which offers a fine and comparatively rare framework of protection for stateless persons and procedures for statelessness determination. It has been

called ‘an instant best practice’. Four years down the road, Department Circular 58 has resulted in the identification of 8,745 persons of Indonesian descent. However, the few hundred stateless persons who were ‘confirmed’ as Filipinos have yet to acquire Philippine citizenship because the cost of administrative naturalisation has been prohibitive for most of them. The application of Department Circular 58 to other groups of stateless persons is yet to be seen.

Philippine commitment to international law, which obligates it to grant citizenship from birth and ensure that no child is stateless, was one of the major arguments that moved the Supreme Court to issue a landmark decision in 2016 that ‘foundlings are as a class, natural-born citizens’. To hold otherwise would contradict other Philippine laws, such as those on inter-country adoption. Although the child’s parentage is unknown, the court emphasised that this decision is consistent with the principle of ius sanguinis, as evinced in the practice of other states that follow the same principle of citizenship. In the specific case at bar, the court underscored that Grace Poe’s relationship to a Filipino parent is ‘demonstrable’, given the statistical probabilities involved in her case.

International factors, as we have seen, have been an important factor in the practice of citizenship in the Philippines. In the 1970s the grant of mass naturalisation was intertwined with the opening of diplomatic relations with the People’s Republic of China. The demonstration effects of states with dual citizenship laws as well as states that consider foundlings natural-born citizens have been integral to advancing these causes.

The Philippines will probably remain committed to democratic principles of citizenship that find global advocates, although local issues and concerns mediate their appropriation to the country through domestic processes of legislation and jurisprudence. It is hoped that, regardless of whoever is the country’s president and head of state, social institutions in the Philippines will continue to uphold and advance the principles and practices of democratic citizenship.

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