

**PHILIPPINE CITIZENSHIP,
DUAL CITIZENSHIP, AND DUAL ALLEGIANCE:
AN EVALUATION OF
R.A. 9225,
THE DUAL CITIZENSHIP LAW**

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"Philippine citizenship is a gift that must be deserved to be retained. The Philippines, for all her modest resources compared to those of other states, is a jealous and possessive mother demanding total love and loyalty from her children."

-Justice Isagani Cruz

On August 29, 2003, President Gloria Macapagal-Arroyo signed into law Republic Act No. 9225, an Act making the Citizenship of Philippine Citizens who acquire Foreign Citizenship permanent. This law is also known as the Citizenship Retention and Re-acquisition Act of 2003 or, simply, the Dual Citizenship law. The said Act is a consolidation of Senate Bill 2130 and House Bill 4720, sponsored by Senate President Franklin Drilon and Representative Oscar Rodriguez, respectively.

The Dual Citizenship law also amended the old citizenship law, Commonwealth Act No. 63, which provides that acquisition of foreign citizenship is a ground for the loss of Philippine citizenship. Thus, under R.A. 9225, citizens of the Philippines who become citizens of another country shall be deemed not to have lost their Philippine citizenship under the conditions of the law.¹ This leaves only the following as grounds for one to

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¹R.A.No.9225,§2.

lose his Philippine citizenship: express renunciation of Filipino citizenship; being in the service of the armed forces of a foreign country; and, seeking public office in a foreign country. Hence, effectively allowing and approving dual citizenship.

Although the law has survived the debates in the halls of Congress, critics maintain that Dual Citizenship is not allowed under Section 5 of Article IV of the 1987 Constitution² which considers it inimical to national interest. Also, the law has been under incessant attack from writers such as Conrado de Quiros and Raul Palabrica, including eminent constitutionalists like Fr. Joaquin Bernas and Justice Isagani Cruz.

On the other hand, Senator Drilon claims, as lawmakers have agreed, that what the Constitution prohibits is dual allegiance, not dual citizenship.³ He also argues that the law would encourage Filipinos who have become naturalized citizens of other countries to visit the Philippines more often and settle in the country permanently once they retire. Further, when asked whether it would harm the national interest, he said that dual citizenship even enhances the national interest because we open up the economy to more Filipinos by allowing them to engage in economic areas and investments previously closed to them.⁴ The law has received great support from former Filipinos abroad, especially those who are based in the United States.

Now, we may ask, what is dual citizenship? How about dual allegiance? Are they the same? Does citizenship connote allegiance? Does allegiance follow citizenship? Is it a plus having dual citizenship? What are the problems that can be caused by dual citizenship? And the ultimate question: Is dual citizenship, as espoused by R.A. 9225, allowed by our Constitution?

Considering that the fate of R.A. 9225 has not yet been decided by the Supreme Court, all arguments raised by proponents and critics alike are just mere opinions. Nothing is settled yet. As it is said, "The law is what the judges say it is." This paper, as an academic exercise, will try to discuss

² CONST, art IV, § 5: Dual allegiance of citizens is inimical to the national interest and shall be dealt with by law.

³ Drilon sees passage of dual citizenship bill, *Philippine Daily Inquirer*, Feb. 24, 2002 < www.inq7.net >

⁴ *Id.*

every question surrounding dual citizenship, dual allegiance, and the dual citizenship law. It is intended to shed some light on the issue using legal principles, doctrines, and jurisprudence.

WHAT IS CITIZENSHIP?

Citizenship is personal and more or less permanent membership in a political community. It denotes possession within that particular political community of full civil and political rights subject to special disqualifications such as minority.⁵

This status confers upon the individual certain prerogatives which may be denied the alien. Thus, the citizen enjoys certain exclusive rights, such as the rights to vote, to run for public office, to exploit natural resources, to operate public utilities, to administer educational institutions, and to manage the mass media.⁶ Reciprocally, it imposes the duty of allegiance to the political community.⁷

In the same way, Black defines it as the status of one who, under the Constitution and laws of the United States, or of a particular state, is a member of the political community, owing allegiance and being entitled to the enjoyment of full civil rights.⁸

Philippine citizenship has always been valued and treasured by our Supreme Court that it once described it as "not a cheap commodity."⁹ "Philippine citizenship is not a commodity or ware to be displayed when required and suppressed when convenient," says another case.¹⁰ Justice Melencio-Herrera dubs it as "a priceless heritage,"¹¹ while Justice Cruz brands it as "a gift that must be deserved to be retained."¹²

⁵ J. BERNAS, THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY 558(1996).

⁶1. CRUZ, CONSTITUTIONAL LAW 372 (2000).

⁷J. BERNAS, *supra* note 5 at 558.

⁸Black's Law Dictionary (6* ed. 1991).

⁹*Labo, Jr. v. COMELEC*, 176 SCRA1 (1989).

¹⁰ *Yu v. Defensor-Santiago*, 169 SCRA 364 (1989).

¹¹ *Azgar v. COMELEC*, 185 SCRA 703 (1990), Dissenting Opinion of Justice Melencio-Herrera.

¹² *Id.*, Dissenting Opinion of Justice Cruz.

MODES OF ACQUIRING CITIZENSHIP

Modern law recognizes three distinct modes of acquiring citizenship: (1) *jus sanguinis*, or acquisition of citizenship on the basis of blood relationship; (2) *jus soli*, or acquisition of citizenship on the basis of place of birth; and (3) naturalization, or the legal act of adopting an alien and clothing him with the privilege of a native born citizen.

Prior to the adoption of the 1935 Constitution, the Supreme Court applied the principle of *jus soli* to determine the citizenship of persons who were born in the Philippines.¹³ Thus, in one case,¹⁴ it was held that "all inhabitants of the Philippine Islands who were Spanish subjects on the 11th day of April, 1899, and then resided in said islands and their children born subsequent thereto, shall be deemed and held to be citizens of the Philippine Islands, except such 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 in Paris, December tenth, 1898, and except such others as have since become citizens of some other country."

The Supreme Court later abandoned this principle¹⁵ in favor of the principle of *jus sanguinis*. It has been held, however, that the abandonment of the principle of *jus soli* did not, in certain cases, divest those who have been conferred Philippine citizenship under the principle of *res judicata*.¹⁶ At present, basic Philippine law follows the rule of *jus sanguinis* based on Section 1 (2) of Article IV of the 1987 Constitution.¹⁷ The *jus soli* rule, on the other hand, is the one being used in countries like the United States¹⁸ and Canada.

Naturalization is also allowed in our jurisdiction.¹⁹ It may be direct or derivative. Direct naturalization is effected: (1) by individual proceedings, usually judicial, under general naturalization laws; (2) by special act of the legislature, often in favor of distinguished foreigners who have rendered

¹³ R. LEDESMA, AN OUTLINE OF PHILIPPINE IMMIGRATION AND CITIZENSHIP LAWS 354 (1999).

¹⁴ *Roa v. Collector of Customs*, 23 Phil. 315 (1912).

¹⁵ *Tan Chong v. Secretary of Labor*, 79 Phil. 249 (1947).

¹⁶ R. LEDESMA, *supra* note 13, citing *Rodrigo Tio Tiam v. Republic*, 101 Phil. 195, at 355.

¹⁷ CONST., art IV, § 1: (2) Those whose fathers or mothers are citizens of the Philippines.

¹⁸ US CONST. Fourteenth Amendment, § 1: "All persons *born* or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.XXX"

¹⁹ CONST., art IV, § 1: (4) Those who are naturalized in accordance with law.

some notable service to the local state; (3) by collective change of nationality (naturalization en masse) as a result of cession or subjugation; and (4) in some cases, by adoption of orphan minors as nationals of the State where they are born.²⁰

Derivative naturalization in turn is conferred: (1) on the wife of the naturalized husband; (2) on the minor children of the naturalized parent; and (3) on the alien woman upon marriage to a national.²¹

CITIZENS OF THE PHILIPPINES

Under the present Constitution, the following are considered 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 attaining the age of majority.
- (4) Those who are naturalized in accordance with law.²²

Hence, based on Article IV, Section 1 (2) of our 1987 Constitution, the basic rule on citizenship in the Philippines, irrespective of the place of birth, is that a person born of either a Filipino father or a Filipino mother shall be considered a Philippine citizen following the *jus sanguinis* rule.

Unlike the rule in American law,²³ however, where the Congress cannot strip a person of his citizenship absent his voluntary renunciation, our Constitution expressly provides that 'Philippine citizenship may be lost or

²⁰ 1. CRUZ, *supra* note 6, at 376.

²¹ 1. CRUZ, INTERNATIONAL LAW 183 (2003).

²³ *Afymim it Rusk*, 387 US. 253 (1967): Congress has no express power under the Constitution to strip a person of citizenship, and no such power can be sustained as an implied attribute of sovereignty. The Fourteenth Amendment's provision that "All persons born or naturalized in the United States ... are citizens of the United States . . ." completely controls the status of citizenship and prevents the cancellation of petitioner's citizenship without his assent

reacquired in the manner provided by law."²⁴ Thus, our Congress can provide for specific grounds that could result in loss of one's Philippine citizenship such as those provided under Commonwealth Act No. 63.

This distinction is relevant for whatever efforts the US Congress makes in preventing dual citizenship, it just cannot do so without amending their own Constitution, which elevates US citizenship to a constitutionally protected right which cannot be taken away without the voluntary consent of the citizen.²⁵ In fact, recognizing the problems it may cause, the official US position is that they allow dual citizenship not because they approve of it but because they tolerate it.²⁶ On the other hand, the Philippine Congress, given with ample powers to prevent the undesirable problems dual citizenship can cause, still chooses to allow it with full approbation despite the constitutional declaration that "dual allegiance is inimical to the national interest."

DUAL CITIZENSHIP: AN OXYMORON?

Dual Citizenship is citizenship in two different countries.²⁷ The concept of dual citizenship recognizes that a person may have and exercise rights of nationality in two countries and be subject to the responsibilities of both.²⁸ It is generally a result of the concurrent application of the different laws of two or more states; a person is simultaneously considered a national by the said states.²⁹

Looking at history, dual citizenship arose, even as early as classical times, because of the mobility of individuals, the need to take legal cognizance of multiple identities and, in the case of Rome, the mutual interests of provincial notables and the Roman imperium.³⁰ As early as the ancient times, dual citizenship has already raised contentious and interesting questions.

²⁴ *CONST, art IV, § 3.*

²⁵ *Ajnyim u Rusk, supra* note 23.

²⁶ "Dual Nationality" <<http://travel.state.gov/dualnationality.html>>

²⁷ Black's Law Dictionary (6th ed 1991).

²⁸ *Kawakita v. U.S.*, 343 U.S. 717 (1952).

²⁹ *Mercedo K Montana*, 307 SCRA 630 (1999), *citing* SALONGA, PRIVATE INTERNATIONAL 166 (1995).

³⁰ D. HEATER, WHAT IS CITIZENSHIP 117 (1999).

During the century from c.50 BC, the matter of dual citizenship became a live legal and political issue in Rome and its provinces. As Rome expanded its authority throughout the Mediterranean basin, it extended the coveted title of Roman citizen with some generosity. But should this conferment of Roman rights involve the enfranchised man, in return, renouncing his native civic rights?³¹

A famous test case occurred in 56 BC. Cicero denied the possibility of Cornelius Balbus retaining his status as a citizen of Gades after his enfranchisement by Pompey as a citizen of Rome. The principles of residence and allegiance, key elements in the status of citizenship, could not be shared. In expounding his position with characteristic forensic logic, Cicero nevertheless revealed that Roman practice was not as clear-cut as Roman law, and that, in any case, Roman law was out of line with the laws and practices of neighboring cities.³²

Now all other states would, without hesitation, bestow their citizenship upon our citizens, if we had the same system of law as themselves... Thus we see that citizens of Athens, Rhodes, Sparta, and of other states far and wide, are enrolled as citizens of Greek states, and that the same persons are citizens of many states. And I myself have seen certain ignorant men, citizens of ours, misled by this, sitting at Athens amongst jurymen and members of the Areopagus... since they did not know that if they had acquired citizenship there, they had forfeited it here. (Cicero, 1958, pp. 29-30)

By c.50 BC, distinguished persons were openly flouting this incompatibility rule, especially in Italy; by c.AD 50, dual citizenship was being widely practiced. The best-known assertion of dual citizenship is the response by St. Paul on the occasion of his arrest (c.AD 58). While demanding the judicial rights of his Roman citizenship, he yet proudly proclaimed himself 'a Jew of Tarsus, a city in Cilicia, a citizen of no mean city⁵ (Acts 21:39).³³

Now, in the modern world, dual citizenship seems to be gaining more and more acceptance, especially because of the birth of the concept called globalization. This is evident from the list of countries, which continues to

³ *Id.*, at 118.

² *Id.*

³¹ *Id.*

increase, that allow dual citizenship, to wit: the United States, Canada, Britain, Netherlands, Italy, Ireland, Portugal, Switzerland, Greece, Cyprus, Israel, Australia, New Zealand, France, Sweden, Finland, and others. Countries which recently liberalized their citizenship laws and now allow dual citizenship include India, Mexico, Australia, and, now, the Philippines, by virtue of R.A. 9225. There are, according to Senator Drilon, eighty-nine (89)³⁴ countries that allow some form of dual or multiple citizenship and fourteen (14) Latin American nations.³⁵

Prior to the enactment of R.A. 9225, considering the citizenship clause (Article IV) of our Constitution, it was possible for the following classes of citizens to possess dual citizenship: (1) Those born of Filipino fathers and/or mothers in foreign countries, which follow the principle of *jus soli*; (2) Those born in the Philippines of Filipino mothers and alien fathers, if by the laws of their fathers' country, such children are citizens of that country; (3) Those who marry aliens, if by the laws of the latter's country, the former are considered citizens, unless, by their act or omission they are deemed to have renounced Philippine citizenship.³⁶

An example of the first instance above is a person born of Filipino parents in New York. The child will be considered a dual citizen because, under the *jus sanguinis* rule, he is a Filipino citizen for having been born of a Filipino father or mother. At the same time, the child is considered an American citizen for having been born in the United States, following the *jus soli* rule. As a result of the different citizenship laws of the two states, the child is both a Filipino and an American.

But under the above instances, it can be clearly seen that the acquisition of dual citizenship is involuntary and unintentional. It happens without the person performing any voluntary act to acquire dual citizenship. Moreover, a choice will have to be made by the individual concerned at

³⁴ This is also based on Stanley Renshon's Dual Citizenship in America article. It is also the figure Congressman Libanan mentioned in his sponsorship speech (House of Representatives Journal, May 22, 2002). On the other hand, the Federation of Philippine American Chambers of Commerce, Inc. (FPACC) claims that there are 96 countries that allow dual citizenship.

³⁵ "Ople: Let's go easy on dual citizenship law," Philippine Daily Inquirer, Nov. 25, 2001 <www.inq7.net>

³⁶ *Merado v. Montana*, 307 SCRA 630 (1999).

some point in time in his life.³⁷ This is the opposite in case of one who acquires dual citizenship via RA. 9225.

One writer says that "dual citizenship" is an oxymoron.³⁸ It is an oxymoron in the sense that one cannot truly be a citizen of two different countries because, ultimately, loyalty, which is an integral element of citizenship, cannot be divided. One cannot serve two masters.

MERCADO v. MANZANO: DISTINGUISHING DUAL CITIZENSHIP AND DUAL ALLEGIANCE

In *Mercado v. Manzano*,³⁹ a certain Ernesto Mamaril filed a disqualification case against vice-mayorality candidate Manzano on the ground that he is not a citizen of the Philippines but of the United States. In its resolution, the second division of the Commission on Elections (COMELEC) granted the petition of Mamaril and ordered the cancellation of the certificate of candidacy of Manzano on the ground that he is a dual citizen and, under the Local Government Code and the Makati charter, persons with dual citizenship are disqualified from running for any elective position. The Commission found out that Manzano was born in 1955, of a Filipino father and a Filipino mother, in San Francisco, California, in the United States. Hence, he is an American citizen, following the *jus soli* rule, and at the same time, a Filipino citizen for being born of Filipino parents.

Manzano filed a motion for reconsideration. Pending such motion, the 1998 elections was held and Manzano garnered the highest number of votes for vice-mayor in the city of Makati. His proclamation was suspended, pending resolution of the case. Petitioner Mercado, who garnered the second highest number of votes to Manzano, intervened in the disqualification case. Without resolving Manzano's motion, the COMELEC en banc reversed the ruling of the COMELEC second division and declared Manzano qualified to run for vice-mayor. Hence, Mercado filed a petition for certiorari to the Supreme Court seeking to set aside the resolution of the COMELEC en banc.

³⁷ *Aznar v. COMELEC*, 185 SCRA 703 (1990), Dissenting Opinion of Justice Melencio-Herrera.

³⁸ Phyllis Schlafly, "Dual citizenship is an oxymoron," May 15, 2002 www.eagleforum.org/column/2002/may02/02-05-15.shtml

³⁹ See note 36, *supra*.

The Supreme Court denied the petition. It held that the phrase "dual citizenship" in RA 7160 (Local Government Code), §40 (d), and in RA 7854 (Makati Charter), §20, must be understood as referring to "dual allegiance." Consequently, persons with mere dual citizenship do not fall under this disqualification. This conclusion of the court is based on Section 5, Article IV of the 1987 Constitution, which provides, "Dual allegiance of citizens is inimical to national interest and shall be dealt with by law." The Supreme Court held that under the said provision, the concern of the Constitutional Commission was not with dual citizens *per se*, but with naturalized citizens who maintain their allegiance to their countries of origin even after their naturalization.

The Court further held that for candidates with dual citizenship, it should suffice if, upon the filing of their certificates of candidacy, they elect Philippine citizenship to terminate their status as persons with dual citizenship, considering that their condition is the unavoidable consequence of conflicting laws of different states.

In this case, the court distinguished dual citizenship from dual allegiance. According to the Court, *Dual Allegiance refers to the situation in which a person simultaneously owes, by some positive act, loyalty to two or more states.* It says that while *dual citizenship is involuntary, dual allegiance is the result of an individual's volition.*

This case seems to be the basis of our lawmakers in enacting R.A. 9225.⁴⁰

⁴⁰ House of Representatives Journal (June 5, 2003):

REP. JARAULA. XXX "Dual citizenship of citizens is inimical to national interest and shall be dealt with by law."

This mandate to deal with dual allegiance, Your Honor, is a mandate to us. To penalize, to provide sanctions because it is inimical to national interest. Contrary to that constitutional mandate, we are in fact now reversing. And I find this constitutionally infirm.

I hope we will not insist because our exercise here, Your Honor, will become useless. Because if this is challenged, and it will be challenged in the Supreme Court—if there will still be a Supreme Court remaining by that time. I am certain that this bill as now proposed cannot pass constitutional standards.

Thank you very much, Your Honor, Mr. Speaker.

REP. LJBANAN. Thank you very much, Mr. Speaker. But if I may answer the Gentleman...

Since the court held that Section 5, Article IV of the 1987 Constitution sanctions only dual allegiance and not dual citizenship, then dual citizenship may be allowed. What they failed to notice is that based on the decision, what Section 5, Article IV of the 1987 Constitution does not sanction is dual citizenship *per se*. As can be inferred from the discussions of the court, dual citizenship *per se* is that involuntarily acquired, which is a consequence of the application of different citizenship laws of different states of which we have no control. But the case did not say that dual citizenship that can be acquired voluntarily or by some positive act, like that authorized under R.A. 9225, is not under the proscription of Section 5, Article IV of the 1987 Constitution.

THE DUAL CITIZENSHIP LAW (R.A. 9225)

Under this new law, it declares as the policy of the State that all Philippine citizens who become citizens of another country shall be deemed not to have lost their Philippine citizenship.⁴¹

It provides that natural born citizens of the Philippines who have lost their Philippine citizenship by reason of their naturalization as citizens of a foreign country, are hereby deemed to have reacquired Philippine citizenship upon taking the following oath of allegiance to the Republic:

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 impose

REP. SYJUCO. Mr. Speaker, point of order.

REP. LJBANAN—Mr. Speaker, that issue has already been resolved by the Supreme Court in the case of Mercado versus Manzano, Mr. Speaker. That very clearly, including Section 5 in Article IV of citizenship, the concern of the Constitutional Commission was not with dual citizenship *per se* but with naturalized citizens who remain allegiance to their countries of origin even after their naturalist-inn

So, Mr. Speaker, we are not dealing here with natural-born citizens and that issue on Section 5, Article IV has been resolved already by the Supreme Court in the case of Mercado versus Manzano.

⁴¹ R.A. No. 9225, § 2.

this obligation upon myself voluntarily without mental reservation or purpose of evasion.⁴²

Also, natural born citizens of the Philippines who, after the effectivity of the law, become citizens of a foreign country, shall retain their Philippine citizenship upon taking of the aforesaid oath.

Philippine citizenship will not only be reacquired by the applicant, but will also be acquired by his unmarried child, whether legitimate, illegitimate, or adopted, who are below eighteen (18) years of age.⁴³

Those who retain or reacquire Philippine citizenship under the law shall enjoy full civil and political rights and be subject to all attendant liabilities and responsibilities under existing laws of the Philippines and the following conditions:

- (1) Those intending to exercise their right of suffrage must meet the requirements under Section 1, Article V of the Constitution, The Overseas Absentee Voting law, and other existing laws;
- (2) Those seeking elective public office in the Philippines shall meet the qualifications for holding such public office as required by the Constitution and existing laws and, at the time of the filing of the certificate of candidacy, make a personal and sworn renunciation of any and all foreign citizenship before any public officer authorized to administer an oath;
- (3) Those appointed to any public office shall subscribed and swear an oath of allegiance to the Republic of the Philippines and its duly constituted authorities prior to their assumption of office; Provided, that they renounced their oath of allegiance to the country where they took that oath;
- (4) Those intending to practice their profession in the Philippines shall apply with the proper authority for a license or permit to engage in such practice; and
- (5) That right to vote or be elected or appointed to any public office in the Philippines cannot be exercised by, or extended to, those who: (a) are candidates for or are occupying any public office in the country of which they are naturalized citizens; and/or (b) are

⁴² *Id.*, § 3.

⁴³ *Id.*, § 4.

in active service as commissioned or non-commissioned officers in the armed forces of the country which they are naturalized citizens.⁴⁴

ADVANTAGES OF DUAL CITIZENSHIP AND THE DUAL CITIZENSHIP LAW

Generally, dual citizens can carry two passports and essentially live, work, and travel freely within their native and naturalized countries. Some dual citizens also enjoy the privilege of voting in both countries, owning property in both countries, and having government health care in both countries.⁴⁵

Dual citizens under R.A. 9225 shall enjoy full civil and political rights of a Philippine citizen,⁴⁶ aside from the privileges they have as citizens of other states. Thus, dual citizens under the said law can fully participate in the exploitation of our natural resources without being subjected to the 40-60 percent arrangement in case of foreigners. They can manage and own a mass media entity which was taken away from them after becoming citizens of other countries. They can operate public utilities and administer educational institutions like any other Filipino. They can also own properties and businesses in the country without the restrictions accorded to a foreigner by our existing laws and the Constitution.

As to their enjoyment of some of the civil and political rights of a Philippine citizen, however, they are still subject to certain conditions. Hence, they can only exercise the right of suffrage upon compliance with the requirements of R.A. 9189, the Overseas Absentee Voting law. They cannot hold an elective public office without complying with the existing laws and the Constitution, as well as without renouncing all foreign citizenship. They also cannot hold an appointive public office without renouncing their oath of allegiance to other states. These conditions, which somehow limit the exercise of some of their civil and political rights, are provided under Section 5 of R.A. 9225.

⁴⁵ What is dual citizenship <www.newcitizen.us/dual.html>

⁴⁴ *Id.*, § 5

⁴⁵ What is dual citizenship www.newcitizen.us/dual.html

⁴⁶ Subject, however, to the attendant liabilities and responsibilities under existing laws of the Philippines (R.A. 9225, § 5)

According to the proponents of the law, the best advantage, the dual citizenship law can provide is to our country, which is facing a daunting and gargantuan economic crisis. They say that the law can be of great benefit to our economy. According to one sponsor of the law, it can draw investments because a lot of Filipinos who have lost their citizenship would love to invest in the country.⁴⁷ He adds that being treated as non-Filipinos it is unthinkable to them, that is why they should be allowed to become dual citizens.

According to another lawmaker,⁴⁸ Filipinos abroad have much to contribute to our economic development, particularly considering what they already have in terms of funds and expertise and what we need at this state and stage of our economy. Moreover, in the words of Speaker De Venecia, "Filipinos abroad constitute a mighty economic force. Their investments could trigger a housing and real-estate boom."⁴⁹ Furthermore, he says that the law will bring in up to \$10 billion in investments from Filipinos abroad.⁵⁰

THE DOUBTS AND PROBLEMS ON DUAL CITIZENSHIP

A dual citizen may have and exercise rights of nationality in two countries and be subject to the responsibilities of both. Concurrently, he will be subject to claims from both nations, claims which at times may be competing or conflicting.⁵¹

⁴⁷ Representative Libanan, House of Representatives Journal (June 3,2003):

REP. ZAMORA. And that is supposed to help, distinguished colleague, that is supposed to help this impoverished country of ours?

REP. LIBANAN. The economic aspect, Mr. Speaker, may be secondary but what is necessary is justice and equity with regards to our brothers and sisters who are out, Mr. Speaker. And in terms also of investments, this can draw also investments because a lot of Filipinos who lost their citizenship, based on our committee hearings, would love to invest in our country. But being treated as non-Filipinos is unthinkable to them.

⁴⁸ Representative Del Mar, House of Representatives Journal (May 22,2002).

⁴⁹ "Philippines: Enfranchising a nation abroad,' <www.atimes.com/atimes/southeastasia/EH20Ae02.html>

⁵⁰ However, during the interpellation of Representative Libanan by Representative Zamora, this figure was found out to be a mere estimate. It was based on the \$7 billion yearly remittance of Filipinos working abroad (House of Representatives Journal, June 3,2003).

⁵¹ *Kamakita v. U.S.*, 343 U.S. 717 (1952).

One problem with dual citizenship is the divided loyalty⁵² of the person possessing two citizenships. Although this was seemingly safeguarded by the authors of R.A. 9225 when they provided that, for example, as to elective public officials, before assuming office, they would have to renounce their other citizenship, the authors of R.A. 9225 still failed to consider other situations where undivided loyalty is important. One example would be the ownership and management of mass media.⁵³ The Constitution provides:

Section 11. (1) The ownership and management of mass media shall be limited to citizens of the Philippines, or to corporations, cooperatives or associations, wholly-owned and managed by such citizens.⁵⁴

By allowing dual citizenship, it is possible for aliens to control the mass media industry. Mass media is a very powerful tool nowadays in shaping the minds of our people. It can command our people to act in a particular manner, dress according to their wishes, and think based on their ideologies. This is dangerous for it can dissolve the Filipino identity. Soon, Filipinos will be acting according to the dictates of an alien whose interest for his other country far outweighs his interest for the Philippines.

Another problem is with respect to civil or military services.⁵⁵ For instance, in cases of war, on which militia will a dual citizen serve? This will not be a problem if only one state of which he is also a citizen is engaged in war, for such state may insist on military service when the person is present within its territory.⁵⁶ This will not involve conflict of loyalty or allegiance. What if the countries of which he is both a citizen wage war against each

⁵² *Rogers v. Bellei*, 401 U.S. 815 (1971): The Congress has an appropriate concern with problems attendant on dual nationality. These problems are particularly acute when it is the father who is the child's alien parent and the father chooses to have his family reside in the country of his own nationality. The child is reared, at best, in an atmosphere of divided loyalty. We cannot say that a concern that the child's own primary allegiance is to the country of his birth and of his father's allegiance is either misplaced or arbitrary.

⁵³ Other instances where undivided loyalty is important includes the operation of public utilities and administration of educational institutions.

⁵⁴ CONST, art. XVI, §11, HI.

⁵⁵ CONST, art. II, § 4: xxx The Government may call upon the people to defend the State and, in the fulfillment thereof, *all citizens may be required*, under conditions provided by law, *to render personal, military, or civil service*.

⁵⁶ *Kau/akita v. U.S.*, *supra.*, citing Orfield, The Legal Effects of Dual Nationality, 17 Geo. Wash. L. Rev. 427,429.

other? Which country will he serve?

One U.S. case answers this question in this wise: In time of war, if he supports neither belligerent, both may be aggrieved. If he supports one belligerent, the other may be aggrieved. One state may be suspicious of his loyalty to it and subject him to the disabilities of an enemy alien, including sequestration of his property, while the other holds his conduct treasonable.⁵⁷ This is what happened in the case of *Kawakita v. U.S.*, where petitioner Kawakita, a dual citizen of the United States and Japan, was found guilty for committing the crime of treason against the U.S. during World War II for abusing American prisoners while working in one company producing war materials for Japan. The Court held that as a dual citizen, Kawakita owes allegiance to both states of which he is a citizen. This case will be discussed further later.

The obligations of military service have frequently given rise to controversies. In the case of Frank Ghiloni, the United States Department of State requested the Italian Government, in 1915, to release from compulsory military service a man born in the United States in 1885, whose father was at that time an Italian subject. Ghiloni had resided seventeen years in the United States before going to Italy in June, 1914, and it was held by the Department of State that such continued residence indicated that Ghiloni, although born with dual nationality, had elected American nationality. The Italian Government, however, refused to recognize the prior claim of the United States. Although a third party, Austria-Hungary, on capturing Ghiloni in battle, acknowledged the justice of the claim and released the prisoner.⁵⁸

In the case of P.A. Le Long, the Department of State was presented in 1915 with an inquiry whether a person, born in the United States of a native French father, who had immigrated to the United States at twenty years of age, could be held liable for military service in case he should visit France during the progress of the war. In reply, the Department of State, after citing the provisions of the French Civil Code, explained the legal status of Le Long as being one of dual nationality, and informed him that it could not therefore give him "any assurance that you would not be held liable for

⁵⁷ *Id.*

⁵⁸ C. FENWICK, INTERNATIONAL LAW 303-304 (4TH ed. 1965)

the performance of military service in France should you voluntarily place yourself within French jurisdiction."⁵⁹

In *United States (Alexander Tellech) versus Austria and Hungary*, the question was to be decided whether the Austrian Government was entitled to subject Alexander Tellech, who was by parentage an Austrian citizen and by birth a citizen of the United States, to compulsory military service. It was held that the action taken by the Austrian civil authorities in the exercise of their police powers and by the Austro-Hungarian military authorities, of which complaint is made, was taken in Austria, where claimant was voluntarily residing, against claimant as an Austrian citizen. Citizenship is determined by rules prescribed by municipal law. Under the law of Austria, to which claimant had voluntarily subjected himself, he was an Austrian subject. The Austrian and Austro-Hungarian authorities were well within their rights in dealing with him as such. Possessing as he did dual nationality, he voluntarily took the risk incident to residing in Austrian territory and subjecting himself to the duties and obligations of an Austrian citizen arising under the municipal laws of Austria.⁶⁰

Furthermore, there is doubt as to payment of taxes of dual citizens. As explained by one writer, it could happen that the financial burden of making available the country's facilities and infrastructure to Filipino-foreigners will only be shouldered by locally based Filipinos who religiously pay their taxes. In effect, Filipino-foreigners get a free ride at the expense of other Filipinos—

Taxes are the lifeblood of a country. It is through these compulsory monetary collections that governments are able to comply with their primary obligation to provide for the basic needs of their citizens. Under our existing laws, money earned by Filipinos outside of the country is not subject to income tax. The country where the income is earned has the right to impose and collect that tax. This means a Filipino-foreigner is exempt from the payment of taxes for whatever wealth he has earned and stashed away in his other country. If he earns some income in the Philippines for any business he may have, the taxes the Philippine government can collect from

⁵⁹ *Id.*, at 304.

⁶⁰ H. KELSEN, *PRINCIPLES OF INTERNATIONAL LAW* 376 (2nd ed. 1967), citing Tripartite Claims Commission, *Decisions and Opinions* 71 (1929).

him is limited to that business. It *is not far-fetched to think that a Filipino-foreigner whose business and treasure chest are in his other country will become entitled to civil and political rights in the Philippines and the protection of the Philippine government without paying a single centavo in taxes. The financial burden of making available the country's facilities and other infrastructure to the Filipino-foreigner, including whatever government services he may avail of, will be shouldered by the locally based Filipinos who faithfully pay their taxes.* The Filipino-foreigners will get a free ride at the expense of those who have chosen to cast their lot with the country.⁶¹

According to the same writer, dual citizenship could become a vehicle for opportunism and exploitation by unscrupulous Filipino-foreigners. The country has no use for Filipinos who avail themselves of the privileges of Philippine citizenship when it suits their interests, but will immediately jump back to their other country when things don't turn out well.⁶²

In the sphere of Private International law, dual or multiple citizenship can also be a problem, especially with respect to the application of the Nationality principle, or *lex nationalii* which pervades Philippine law. The Nationality theory is the theory by virtue of which the status and capacity of an individual are generally governed by the law of his nationality.⁶³ This is the theory which we have principally adopted in the Philippines as can be seen from the following provisions, among others:

Article 15, New Civil Code (NCC). Laws relating to family rights and duties, or to the status, condition, and legal capacity of persons are binding upon *citizens of the Philippines*, even though living abroad.

Article 16, NCC. Real property as well as personal property is subject to the law of the country where it is situated.

However, intestate and testamentary successions, both with respect to the order of succession and to the amount of successional rights and to the intrinsic validity of testamentary provisions, shall be regulated by the *national law of the person* whose succession is under consideration, whatever may be the nature of the property and regardless of the country wherein said property may be found.

⁶¹ R. Palabrica, "Doubts about dual citizenship," A Commentary, Philippine Daily Inquirer, Jan. 12, 2002 <www.inq7.net>

⁶² *Id.*

⁶³ E. PARAS, PHILIPPINE CONFLICT OF LAWS 102 (1990).

Article 1039, NCC. Capacity to succeed is governed by the *law of the nation* of the decedent

It should be noted that for purposes of Private International law, nationality and citizenship are synonymous terms. Thus, when we say that successional right to the estate of a person shall be governed by his national law, we really mean the law of the state of which the deceased was a citizen at the time of his death.

One author observes that one of the shortcomings of the principle of nationality is its failure to solve the problem posed by persons of multiple nationality.⁶⁴ Hence, we may ask, in cases of dual citizens, which citizenship will control? In answering this, there is a need to resort to supplementary rules. The Hague Convention of 1930 on the Conflict of Nationality Laws provides:

Art. 1. It is for each State to determine under its law who are its nationals. This law shall be recognized by other States insofar as it is consistent with international conventions, international customs, and the principles of law generally recognized with regard to nationality.

Art. 2. Any question as to whether a person possesses the nationality of a particular State shall be determined in accordance with the law of the State.

Art. 3. Subject to the provisions of the present Convention, a person having two or more nationalities may be regarded as its national by each of the States whose nationality he possesses.

Art. 4. A State may not afford diplomatic protection to one of its nationals against a State whose nationality such person also possesses.

Art 5. Within a third State, a person having more than one nationality shall be treated as if he had only one. Without prejudice to the application of its law in matters of personal status and of any convention in force, a third State shall, of the nationalities which any such person possesses, recognize exclusively in its territory either the nationality of the country in which he is habitually and principally resident or the nationality of the country with which in the circumstances he appears to be in fact most closely connected.

⁶⁴J. SALONGA, PRIVATE INTERNATIONAL LAW 167 (1995).

Art. 6. Without prejudice to the liberty of a State to accord wider rights to renounce its nationality, a person possessing two nationalities acquired without any voluntary act on his part may renounce one of them with the authorization of the State whose nationality he desires to surrender. This authorization may not be refused in the case of a person who has his habitual and principal residence abroad, if the condition laid down in the law of the State whose nationality he desires to surrender are satisfied.

In the case of a testator, considered both a Filipino and an American, thus, a dual citizen, who died in a foreign land, leaving properties in the Philippines, how should a Filipino judge in a Philippine court of justice determine the successional rights to the estate of the decedent? One author says, applying the principles above, that inasmuch as we regard him as a Filipino citizen, there is no doubt that applying Article 16, paragraph 2 of the New Civil Code, Philippine law shall control the successional rights to his estate.⁶⁵ Can the judge not apply American law in case the heirs of the testator from the United States submit since the testator is also an American citizen? Is the judge right in invoking the use of the Hague Convention of 1930 on the Conflict of Nationality Laws even though the United States is not a party to it?⁶⁶

Another example where the problem of dual citizenship as to the application of the principle of nationality is evident is in case of a dual citizen, both a Filipino and an American, for instance, marrying a Filipina in the Philippines. In case the dual citizen husband subsequently obtained a divorce decree abroad, will it be recognized in the Philippines? Can he be allowed to remarry? The settled rule is that divorce decrees obtained abroad by Filipinos are not recognized in our jurisdiction following the nationality principle embodied in Article 15 of the New Civil Code, which provides that, "Laws relating to xxx the status, condition, and legal capacity of persons are binding upon citizens of the Philippines, even though living abroad" for our laws do not allow absolute divorce as it is considered against morality and public policy.⁶⁷ On the other hand, if the divorce decree is obtained by

⁶⁵ E. PARAS, *supra* note 62 at 105.

⁶⁶ The United States did not become a party to the convention (W. FRIEDMAN, *THE CHANGING STRUCTURE OF INTERNATIONAL LAW* 236 (1964)). This is also confirmed by G. VON GLAHN, *LAW AMONG NATIONS* 183 (1965).

⁶⁷ M. STA. MARIA, *PERSONS AND FAMILY RELATIONS LAW* 165 (1999). See also *Tenchave v. Escano*, 15SCRA256(1965).

an alien abroad, it shall be recognized in the Philippines, provided that it is valid according to his national law.⁶⁸

Now, can the dual citizen husband not argue that since he is also an American and that absolute divorce is allowed in his "other" national law, then it should be recognized in the Philippines as well and that he should be allowed to remarry? Following the logic in the answer in the previous example, it would seem that the divorce should not be recognized in the Philippines and that he should not be allowed to remarry for the Philippines can only regard and consider him as a Filipino.

But it should be noted that in case of a divorce decree obtained abroad by a naturalized American, previously a Filipino, it will be recognized in the Philippines because of our adherence to the nationality principle with respect to the status of a person.⁶⁹ So, why the difference? If a divorce decree obtained by a naturalized American, who was a Filipino when he got married, is recognized in the Philippines, thus giving him the right to remarry, then it should as well recognize a divorce decree obtained by the dual citizen and give him the right to remarry, for he is admittedly an American also from the time of marriage up to the rendition of the divorce decree. Does being a dual citizen make him less American?

Another problem is that under Public International law, if an individual is a citizen of two or more states, each of these states may consider him as its own citizen, but none of them is able to give him diplomatic protection against the others.⁷⁰ International law recognizes that the person in whose behalf a claim for redress for injuries is made must be a citizen of the state making the claim; and at the same time no state is required to make redress if the person on whose behalf the claim is made is at the same time its own citizen.⁷¹

Hence, in the Canevaro case, the question was asked as to whether Italy may file a diplomatic claim against Peru on behalf of Rafael Canevaro, who is a national of both states under their respective municipal laws. It

⁶⁸ *Id.*, at 166.

⁶⁹ *Id.*

⁷⁰ H. KELSEN, *op. at.*, note 59 at 376-377.

⁷¹ C. FENWICK, *op. at.*, note 57 at 304-305. See also Article 4 of the Hague Convention of 1930 on Conflict of Nationality laws.

was held that whereas, according to Peruvian legislation (34 of the Constitution), Rafael Canavero is a Peruvian by birth because born on Peruvian territory, and, whereas, on the other hand, according to Italian legislation (Article 44 of the Civil Code) he is of Italian nationality because born of an Italian father; whereas, as a matter of fact, Rafael Canavero, had on several occasions, acted as a Peruvian citizen, both by running as a candidate for the Senate, where none are admitted except Peruvian citizens and where he succeeded in defending his election, and, particularly, by accepting the office of Consul General for the Netherlands, after having secured the authorization of both the Peruvian Government and the Peruvian Congress; . . . under these circumstances, whatever Rafael Canavero's status as a national may be in Italy, the Government of Peru has a right to consider him a Peruvian citizen and to deny his status as an Italian claimant.⁷²

One author observed that the problem of dual nationality has not been settled by means of a general convention. A convention on certain questions relating to conflict of nationality laws, signed at the Hague in 1930, represented the modest beginning. The instrument attempted to deal with the question *but accomplished very little*.⁷³

The problem of dual citizenship is eloquently summarized by Gordon and Rosenfield, thus:

Dual nationality (or citizenship) is universally recognized as an *undesirable phenomenon*. It inevitably results in *questionable loyalties* and leads to *international conflicts*.^{*}, x x. Dual nationality also makes possible the use of citizenship as a *badge of convenience* rather than of undivided loyalty. And *it impairs that singleness of commitment*-which is the hallmark of citizenship and allegiance. A person should have a right to choose his own nationality, and this choice should be honored by all countries. However, he should not be entitled to claim more than one nationality.⁷⁴

⁷² H. KELSEN, *op. at.*, note 59 at 377, citing Tribunal of the Permanent Court of Arbitration (1912) Scott, Hague Court Reports (1916), 284.

⁷³ G. VON GLAHN, *LAW AMONG NATIONS* 183 (1965).

⁷⁴ *A^nam. COMELEC*, 185 SCRA 703 (1990), Dissenting Opinion of Justice Padilla citing Gordon & Rosenfield, *Immigration Law and Procedure*, Volume 4, 11 -12.

These are just some problems that may be caused by dual citizenship. There may be others such as "circumstances that may compel one who has a dual nationality to do acts which otherwise would not be compatible with his obligations as a citizen of another state." The list could be endless, considering the growing complexities of modern life.

CONSTITUTIONALITY OF R.A. 9225:

"To Doubt Is To Sustain." But, is it just mere doubt?

Under International law, R.A. 9225 has no problem considering that every sovereign state is free and has the right to determine who it will recognize as its citizens. But is this true in domestic law?

Under our present legal system, all laws passed by Congress must conform with and not contravene the highest law of the land, which is the 1987 Constitution. Is R.A. 9225, which effectively allows dual citizenship, in accordance with the Constitution?

Perusal of the highest law of the land would make us conclude that not a single provision deals with dual citizenship. The closest the Constitution has to say is that, "Dual allegiance of citizens is inimical to the national interest and shall be dealt with by law."⁷⁵

However, some⁷⁶ would argue that the above-mentioned provision is not applicable to natural born citizens and the dual citizenship law, for the

⁷⁵ CONST, art. IV, § 5.

⁷⁶The argument of Representative Libanan, House of Representatives Journal (June 3, 2003):

REP. LIBANAN. I would beg to disagree, Mr. Speaker, because very clearly in the records of the Constitutional Commission when this provision of the Constitution was inserted, then Commissioner Blas Ople was referring to the naturalized citizens from Taiwan and Beijing who, after being naturalized, still owe allegiance to either Taiwan or Beijing and it has been repeated many times in the records of the Constitutional Commission and it does not refer to our natural citizens, Mr. Speaker.

House of Representatives Journal (June 5, 2003):

REP. JAVIER. Is not there an implied prohibition in the Constitution on dual citizenship?

REP. LIBANAN. Mr. Speaker, on allegiance, as this Representation has stated, the provision of the Constitution refers to naturalized citizens, as the records of the Constitutional Commission would show, Mr. Speaker. And there is no prohibition of dual citizenship in the Constitution, Mr. Speaker

said provision, when inserted by the author, refers to the naturalized citizens from Taiwan and Beijing who, after being naturalized, still owe allegiance to either Taiwan or Beijing. In short, they are saying that the applicability of the said provision is limited only to the said class of people i.e. naturalized citizens from Taiwan and Beijing and not to natural born citizens. The argument is not persuasive. As Father Bernas put it, "the provision makes no mention of such Chinese and is general in application."⁷⁷ Hence, it should not be interpreted to mean that it is exclusively applicable to such Chinese only. *Ubi lex non distinguit nec nos distinguere debemus*. When the law does not distinguish, we should not distinguish.

Now, in order to know the true meaning of the said provision, we have to go behind the provision and ascertain the intentions of the framers of our Constitution. The provision was formulated at the instance of the late Commissioner Blas Ople. In fact, the earlier concern of most constitutional commissioners, which would have been the subject of the said provision, was the alarming problem of dual citizenship.⁷⁸ However, due to the rejection of the so-called Bernas Committee, which is the committee on citizenship, and also due to the realization of its difference from dual allegiance, the provision against dual citizenship did not materialize.

Instead, dual allegiance became the subject of Section 5 of Article IV. Commissioner Ople explained the necessity of said provision:

I want to draw the attention to the fact that dual allegiance is not dual citizenship. I have circulated a memorandum to the Bernas Committee according to which a dual allegiance—and I reiterate a dual allegiance—is larger and more threatening than that of mere double citizenship which is seldom intentional and, perhaps, never insidious. That is often a function of the accident of mixed marriages or of birth on foreign soil. And so, I do not question double citizenship.

What we would like the Committee to consider is to take constitutional cognizance of the problem of dual allegiance.xxx

When I speak of double allegiance, therefore, I speak of this unsettled kind of allegiance of Filipinos, of citizens who are already but who, by their acts, may be said to be bound by a *second*

⁷⁷ 'Dual Citizenship and Dual Allegiance,' TODAY, July 2, 2003.

⁷⁸1 RECORD OF THE 1986 CONSTITUTIONAL COMMISSION 190,192,203,209,233-235.

*allegiance.*⁷⁹

Based on the above explanation of Commissioner Ople, dual allegiance, and not dual citizenship, became the subject of the provision because dual citizenship is seldom intentional and is often a result of mixed marriages or of birth on foreign soil. In other words, dual citizenship *per se* is not threatening for it is usually involuntary, unlike dual allegiance, which is a result of one's positive acts.

In the questioning that followed, Commissioner Ople explained:

Double citizenship *does not reflect on the motives of citizens enjoying double citizenship.* As I said, this is largely a function of accident of mixed marriages or of birth on foreign soil.⁸⁰

Clearly, the contradistinction made by Commissioner Ople between dual allegiance and dual citizenship did not amount to the total exclusion of all forms of dual citizenship, no matter how acquired, from the ambit of the provision declaring dual allegiance as inimical to the national interest. What it does not cover are only those that are involuntarily acquired, or those that in the words of Commissioner Ople are *unintentional* and *not insidious*, for this *does not reflect the motives of citizens enjoying dual citizenship.*

As a matter of fact, dual citizenship generally includes dual allegiance, and dual citizenship, involuntarily or accidentally acquired, is an exceptional case, thus, not covered by said provision. This inference was reaffirmed in the exchange between Bishop Bacani and Commissioner Ople:

BISHOP BACANI: Mr. Presiding Officer, does citizenship always include allegiance?

MR. OPLE: Yes.

BISHOP BACANI: Therefore, *if we have dual citizenship, we have dual allegiance.*

MR. OPLE: *Allegiance at the formal level.* There is another allegiance at an inner and deeper level — formality versus the authentic sentiment of the citizen.

I said that dual citizenship is a formality; I am not disturbed by it. It

⁷⁹ *Id.*, at 360-361.

⁸⁰ *Id.*, at 362.

is often a function of an accident, say, a mixed marriage, or birth in a foreign soil. There is nothing insidious in it; there is nothing in it that threatens national security or sovereignty.

BISHOP BACANI: Yes, but if every citizenship includes allegiance, if we deny dual allegiance, we also deny dual citizenship. Is this not yet foreclosed by the interpretation of Section 2?

MR. OPLE: Actually, I think the future legislature that will deal with this problem of dual allegiance will address many specific borderline cases, and all I am saying is there is no necessary correlation between dual allegiance and dual citizenship.

In dual allegiance, there can be malice, or an insidious threat to our sovereignty and security. But in dual citizenship, especially for those Filipinos born in American soil and have become American citizen as a consequence thereof, I will not read any embarrassment of a dual allegiance in that situation. I think dual allegiance, as interpreted in this amendment, refers to more insidious acts than merely the accident—whether welcome or unwelcome—of a dual citizenship occurring out of mixed marriages or birth in a foreign soil.*

BISHOP BACANI: At any rate, if it is *formal alliance (dual citizenship acquired involuntarily or by accident)*, I wonder whether or not we could really regulate that by law because we are making that distinction.

MR. OPLE: *I think that part of it will have to be treated as an exceptional case, where Filipino children born in the United States, for example, because of jus soU doctrine there, have to grow up having, in effect, dual citizenship, although upon the attainment of maturity, that dilemma, if dual allegiance exists, can actually be overcome by election by this particular person as to whether to become a Filipino or an American citizen.*⁸¹

Considering the foregoing, it is fair and logical to conclude that dual citizenship may also be covered by the constitutional provision declaring that dual allegiance is inimical to the national interest. The only exception is when dual citizenship was acquired involuntarily or by accident, such as those resulting from mixed marriages or birth on foreign soil.

Is this conclusion contrary to the holding of the Supreme Court in *Mercado v. Manzano*,⁸² declaring that dual allegiance is different from dual citizenship?

⁸¹ *Id.*, at 366-367 (Emphases supplied).

⁸² 307 SCRA 630 (1999).

The inconsistency is more apparent than real. In *Mercado v. Manzano*, the Supreme Court correctly distinguished dual citizenship from dual allegiance. It held that while dual citizenship is involuntary, dual allegiance is the result of one's individual volition. The Court obviously adopted the same form of dual citizenship as that used by Commissioner Ople in his elucidations above, which is one that is involuntarily or accidentally acquired. Thus, the Court correctly concluded that the concern of the Constitutional Commission in including Section 5 in Article IV on citizenship was not dual citizens *per se*, but those citizens having a second allegiance.

But the Court did not also say that the provision may not cover all dual citizens, especially those who acquire dual citizenship through a positive act of applying for naturalization in a foreign country and taking an exclusive oath of allegiance to it, then subsequently taking a non-exclusive oath of allegiance back to the Republic, such as that authorized by R.A. 9225. What it excluded from the coverage of Section 5, Article IV on citizenship are those dual citizens *per se*, who based on the explanations of the Court, are those who acquire dual citizenship involuntarily or by accident, similar to that used by Commissioner Ople.

Since it is now settled that Section 5 of Article IV on citizenship only excludes from its ambit dual citizenship involuntarily acquired, the next question is, does dual citizenship that can be voluntarily and intentionally acquired, such as that authorized by R.A. 9225, amount to dual allegiance?

The most basic definitions of citizenship will give us the answer. Fr.

Bernas defines citizenship as:

A precious commodity that entails both rights and obligations. It is personal permanent membership in a political community. It denotes possession within that particular political community of full civil and political rights subject to special disqualifications such as minority. Reciprocally, it imposes the *duty of allegiance* to the political community.⁸⁴

Another author defines it as:

⁸³ *Supra*.

⁸⁴ J. Bernas, 'Dual Citizenship and Dual Allegiance,' TODAY, July 2, 2003.

A personal status. It is a status or character of being a citizen, and membership in a political society. It imposes upon the citizen the *duty of allegiance* to a state, in return for which, the state provides him its sovereign protection.⁸⁵

Not to be outdone, Mr. Black thinks of citizenship as:

The status of one who, under the Constitution and laws of the United States, or of a particular state, is a member of the political community, *owing allegiance* and being entitled to the enjoyment of full civil rights.

The above authorities are in unison: *duty of allegiance*. This is the unavoidable partner of citizenship. Citizenship connotes allegiance. How can one be a citizen of a state without having allegiance to it? Citizenship confers upon a person possession of civil and political rights which in return he must profess allegiance. Thus, in one case,⁸⁶ the Supreme Court says, "A citizen owes, not a qualified and temporary, but an absolute and permanent allegiance, which consists in the obligation of fidelity and obedience to his government or sovereign."

Citizenship's main integrate element is allegiance, says our Supreme Court.⁸⁷ Dual citizenship assumes as a necessary complement thereof dual allegiance at the same time to two different countries.⁸⁸ Hence, dual citizens, at least insofar as those voluntarily and deliberately acquired, owe allegiance to both states to which they are citizens, thus, resulting in dual allegiance as contemplated under Section 5 of Article IV on citizenship.

This was also the ruling of the United States Supreme Court in the famous case of *Kawakita v. U.S.*,⁸⁹ in a well-written ponencia by Mr. Justice Douglas. In the said case, Kawakita was charged and convicted for committing the crime of treason against the United States. He was born in 1921 in the United States, of Japanese parents who were citizens of Japan. He was thus a citizen of the United States following *the jus soli rule* and, by reason of Japanese law, a national of Japan. In 1939, Kawakita went to

⁸⁵ R. LEDESMA, *op. tit.*, note 13 at 353.

⁸⁶ *Laurel v. Misa*, 77 Phil. 856 (1947).

⁸⁷ *Tan Chong v. Secretary of Labor*, 79 Phil. 249 (1947).

⁸⁸ *Aznar vs. COMELEC*, 185 SCRA 703 (1990), Dissenting Opinion of Justice Padilla.

⁸⁹ 343 U.S. 717 (1952).

Japan to visit his grandfather, traveling with a United States passport, and taking an oath of allegiance to the United States to obtain it. He remained in Japan and entered Meiji University and took a commercial course and military training.

When the war was declared, he was still a student at Meiji University. Since he could not, at that time, return to the United States, he obtained employment as an interpreter with the Oeyama Nickel Industry Co., Ltd., where he worked until Japan's surrender. He was hired to interpret communications between the Japanese and the prisoners of war who were assigned to work at the mine and in the factory of this company. There he committed treasonable acts by abusing American prisoners of war.

When the war was over, he went to the United States consul and registered as an American. He was issued a passport and returned to the United States in 1946. Shortly thereafter he was recognized by a former American prisoner of war, whereupon he was arrested, indicted, and tried for treason. The jury convicted him and he appealed his case to the United States Supreme Court.

The United States Supreme Court denied his appeal. One of his arguments, relevant to our discussion was that a person who has dual nationality can be guilty of treason only to the country where he resides, not to the other country which claims him as a national. More specifically, he maintained that while he resided in Japan, he owed his paramount allegiance to that country and was, indeed, in the eyes of American law, an alien enemy.

The Court held that one who has dual nationality will be subject to claims from both nations, claims which at times may be competing or conflicting.⁹⁰ *American citizenship, until lost, carries obligations of allegiance as well as privileges and benefits.* It also held, citing an administrative ruling of the State Department, that a person with dual citizenship who lives abroad in the other country claiming him as a national owes an allegiance to it, which is paramount to the allegiance he owes the United States. But, it added, this does not mean that a citizen in that position owes no allegiance to the United

⁹⁰ It should be noted that in this particular case, *Kawakita*, through his own positive act, voluntarily exercised the rights and privileges of a national of both states. Hence, it would be as if he acquired his dual citizenship through a positive act and not involuntarily.

States. One cannot turn it into a fair-weather citizenship, retaining it for possible contingent benefits but, meanwhile, playing the part of the traitor. *An American citizen owes allegiance to the United States wherever he may reside.*

This case indoctrinates that a dual citizen owes allegiance to both states to which he is a citizen. Considering this ruling of the United States Supreme Court, it would be hard to conceive that a Filipino naturalized in the United States who subsequently took an oath of allegiance to the Republic as authorized by R.A. 9225, thus, possessing dual citizenship, owes allegiance only to the Philippines. As the *Kawakita* case says, American citizenship, until lost, carries obligations of allegiance to the United States. Moreover, until now, it is still the official United States position that a dual citizen owes allegiance to the two states to which he is a citizen.⁹¹ So how can we say that a former Filipino who avails himself of dual citizenship, as authorized by R.A. 9225, owes allegiance only to the Philippines when the other country claims his allegiance as well? Hence, said person availing of dual citizenship under R.A. 9225 without renouncing his American citizenship or, at least, without taking an exclusive oath of allegiance to the Philippines, also possesses dual allegiance, which is considered as inimical to national interest by our Constitution.

Furthermore, the recognition and approval of a second allegiance or dual allegiance, which is abhorred by our Constitution, is very obvious from the dual citizenship law, RA 9225, itself.

First, the oath of allegiance, as provided under R.A. 9225, is *not* an oath of exclusive allegiance to the Republic, unlike any other oath of allegiance, such as that used in naturalization and repatriation proceedings. RA. 9225 provides a new hypocritical oath of allegiance, to wit:

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 impose this obligation upon myself voluntarily without mental reservation or purpose of evasion.⁹²

The above oath is a total deviation from the customary oath of exclusive allegiance used long ago in this jurisdiction and even in other jurisdictions,

⁹¹ Dual Nationality <<http://travel.state.gov/dualnationality.html>>

such as the United States, viz:

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 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 Republic of the Philippines, and I hereby declare that I recognize and accept the supreme authority of the Republic of the Philippines and will maintain true faith and allegiance thereto; and I impose this obligation without mental reservation or purpose of evasion.⁹³

The deletion of the phrase, "*I renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state or sovereignty, and particularly to the state/ country of which at this time I am subject or citizen,*" which is the very heart of the oath, is evident. This sudden change in the contents of the oath of allegiance, as provided under R.A. 9225, clearly shows the deliberate move of our lawmakers to allow dual allegiance or second allegiance, which they have no power to do since Section 5 of Article IV of the 1987 Constitution mandates them to act against it and not to promote it.

The change is also of no choice for Congress because if it will adopt the same oath of exclusive allegiance, then dual citizenship will be impossible. This is especially true as to Filipinos who would like to be, or who have been, citizens of the United States and at the same time want to retain their Filipino citizenship. This is due to the holding of the United States Supreme Court in one case,⁹⁴ where the Court held that the intent to give up American citizenship can be ascertained from an individual's specific statements or by inference from his actions or conduct. Because of this, if Congress will be using the same oath of exclusive allegiance above, there will be a great danger

⁹²R.A.No.9225,§3.

⁹³This is the oath of allegiance used in Section 12 of Commonwealth Act No. 473, The Revised Naturalization Law. It is also the oath of allegiance used in the following rules: Rule 3 of the Rules and Regulations governing reacquisition of lost Philippine citizenship under CA 63; Rule 3 of the Rules and Regulations implementing Presidential Decree No. 725 regarding the repatriation of Filipino women who lost their Philippine citizenship by marriage to aliens and natural-born Filipinos who have lost their Philippine citizenship; and Rule III of the Rules and Regulations implementing R.A. 8171 regarding the repatriation of Philippine citizenship. (Emphases Supplied)

⁹⁴*Vance v. Terrazas*, 444 U.S. 252 (1980).

that the oath-taker will be stripped of his American citizenship, thus, rendering the dual citizenship law inutile.

Second, the approval of a second allegiance or dual allegiance is as clear as crystal because *only* those who are to be appointed to any public office are required to renounce their oath of allegiance to the country where they took such oath. Section 5 of RA 9225 provides:

(3) Those appointed to any public office shall subscribed and swear an oath of allegiance to the Republic of the Philippines and its duly constituted authorities prior to their assumption of office; Provided, that they renounced their oath of allegiance to the country where they took that oath.

Considering this, it logically follows that dual citizens under R.A. 9225, aside from those appointed to any public office, are allowed to have second allegiance since they are not required to renounce their oath of allegiance to that other country where they took that oath. This clearly results in dual allegiance declared by our Constitution as inimical to national interest.

To sum it up, R.A. 9225, which promotes dual citizenship through the positive act of applying for naturalization in another country and subsequently taking a non-exclusive and hypocritical oath of allegiance to the Republic, is apparently unconstitutional, for it amounts to dual allegiance proscribed by Section 5 of Article IV of our 1987 Constitution for the following reasons:

1. Although it is settled under international law that a sovereign state is free and has the right to determine who it will consider as its citizens, such right, if made through a legislative act of Congress, is still subject to and must conform with the highest law of the land, the Constitution.
2. Section 5 of Article IV of the 1987 Constitution is not applicable only to naturalized citizens, especially the Chinese, for it made no mention of such naturalized citizens or Chinese and is general in application. *Ubi lex non distinguit nec nos distinguere debemos*. When the law does not distinguish, we should not distinguish.
3. What is excluded from the purview of Section 5 of Article IV of our 1987 Constitution, which provides that "Dual allegiance is inimical to the national interest," is dual citizenship *per se*, meaning, based on the explanations of Commissioner Ople and as adopted by the Supreme Court in *Mercado v. Manzano*, that which is involuntarily acquired or which is a result of mixed

marriages or birth on foreign soil. It does not exclude from its provision all forms of dual citizenship, especially those acquired through a positive deliberate act, such as that authorized by R.A. 9225.

4. Dual citizenship generally includes dual allegiance and dual citizenship involuntarily or accidentally acquired is an exceptional case not covered by Section 5 of Article IV of the 1987 Constitution. This is also very clear from the most basic definitions of citizenship as given by authorities. Citizenship connotes allegiance, says Fr. Bernas. Moreover, in *Kawakita v. U.S.*, it was held that a dual citizen owes allegiance to both states to which he is a citizen, at least insofar as those acquired through a positive act, such as that authorized by R.A. 9225.

5. The recognition and approval of second allegiance or dual allegiance is crystal clear from the face of R.A. 9225, the dual citizenship law, itself. First is its use of a non-exclusive and hypocritical oath of allegiance, which is a total deviation from the customary oath of allegiances. This will allow maintenance of allegiance of dual citizens under R.A. 9225 to other countries aside from the Philippines. Second is the requirement of renunciation of foreign oath of allegiances being applicable *only* to appointed public officials. Thus, it follows that for those not to be appointed as public officials, they may retain their foreign allegiances, effectively resulting in dual allegiance considered as inimical to the national interest by our Constitution.

CONCLUSION

Dual citizenship or multiple citizenship is rapidly becoming a reality, this is in part due to globalization. Our world is getting smaller and smaller every day. The traditional obstacles in communication and transportation no longer exist in the modern world, thanks to high-speed advances in science and technology. These have obliterated territorial barriers of states and even diluted the identities of the members of every state, forcing many states to offer membership to outsiders like hot-selling pancakes while the latter keeps buying the best products.

In spite of this, the Philippines must not go with the flow if it will result in the transgression of the most fundamental rule that governs it, which is the Constitution. The Constitution made a judgment, "Dual allegiance is inimical to the national interest." This cannot be disregarded

even by our very own law-making body, for to disregard it would be tantamount to having no power to act. The spring cannot rise higher than the source.

Philippine Citizenship is no simple thing. "It is a priceless heritage," says Justice Melencio-Herrera. "It is a jealous spouse, one that demanded absolute exclusivity and brooked no rivals,"⁹⁵ adds Mr. de Quiros. "Citizenship, the main integrate element of which is allegiance, must not be taken lightly. Dual allegiance must be discouraged and prevented," says our Supreme Court from as early as 1947.⁹⁶

One reason for the enactment of the dual citizenship law, aside from the economic benefit that our country can gain, according to the proponents of the law, is the giving of justice to many of our Filipino brothers and sisters who have been unceremoniously stripped of their Philippine citizenship by mere operation of law when they opted for naturalization in their adopted country in order to reap and avail of the full benefits that the opportunities of migration has to offer.⁹⁷ This is not convincing. Apropos are the words of Justice Cruz in his dissenting opinion in *Aznar*.⁹⁸

Professing continued allegiance to the Philippines after renouncing it because of its meager resources, or for other ulterior and equally base reasons, is to me a paltry form of patriotism. It is a sop to the repudiated state and a slight to the adopted state. No matter how noble this attitude may appear to others, it is to me nothing less than plain and simple hypocrisy that we should not condone, let alone extol.

Dual or multiple citizenship presents the demands of multiple understanding, multiple identities, multiple loyalties, multiple rights, and multiple duties which at times may be conflicting. Although admittedly, dual citizenship has some benefits, most notable of which is the flexibility in work and in life, still, it is outnumbered by the problems that it may cause the individual concerned. These problems could continuously increase, considering the growing complexities of modern life.

⁹⁵ C. de Quiros, "Troth," Philippine Daily Inquirer, February 25, 2002 <www.inq7.net>

⁹⁶ *Tan Chong v. Secretary of Labor*, 79 Phil. 249 (1947).

⁹⁷ House of Representatives Journal (May 22, 2002).

⁹⁸ 185SCRA703(1990).

The statement of the Constitution seems to be very clear. However, until and unless the highest court of our land, the Supreme Court, has spoken, under our legal system, the act of Congress is presumed to be valid and constitutional. At least, for the meantime.