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Between the Letter and Spirit of the Law: Ethnic Chinese and Philippine Citizenship by Jus Soli, 1899–1947

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Abstract

Through an examination of archival materials and decisions of the Philippine Supreme Court, this article documents and analyzes the history of citizenship laws and jurisprudence in the Philippines from the close of the nineteenth century to the immediate postwar period. It demonstrates that the articulation between race and nation, mediated by citizenship, varied according to historical and geopolitical contexts, which informed citizenship debates, policies, and interpretations of legal texts. The short-lived 1899 Malolos Constitution offered an inclusive principle of jus soli, but it was superseded by the concept of Philippine citizenship enunciated in the 1902 Philippine Bill. Emblematic of contradictions within the U. S. imperial apparatus, the same legal framework that was used to exclude Filipinos from U. S. citizenship provided the means for individuals of Chinese or part-Chinese parentage to be granted Philippine citizenship based on jus soli starting in 1911, a direction the U. S. State Department began to oppose in 1920. The Commonwealth period and the crafting of the 1935 Philippine Constitution gave ascendancy to the principle of jus sanguinis, but only after the formal end of U. S. rule did the Supreme Court reverse its stance on jus soli in favor of a myth of descent.

Keywords: citizenship, racism, nationalism, U. S. imperialism, Chinese mestizos

In Philippine legal history, the case of *Jose Tan Chong vs. 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, Laguna, 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 of government, appealed [Supreme Court of the Philippines (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

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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 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 prewar 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].[1] However, after providing a different reading of previous case decisions, and cognizant that its decision was "momentous," it 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 U. S. tenet of jus soli embodied in the Fourteenth Amendment was never extended to the Philippines and restating Section 4 of the Philippine Bill of 1902 as amended in 1912, the court abandoned jus soli once and for all. Jus sanguinis, with its myth of descent, has since been the regnant principle in Philippine citizenship.[2] Jose Tan Chong, then 32 years old, was declared not a citizen of the Philippines.

One could only speculate that, had the case been resolved prior to the end of U. S. rule, Tan Chong would have been declared a Filipino citizen. The case was doubly ironic because, although the Fourteenth Amendment (1868) —— which provides that "[a]ll 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" —— was indeed not extended to the Philippines on racial grounds and thus required the invention of Philippine citizenship [Aguilar 2010], a similar type of prejudice was now at work in using this nonextension to deny a person like Tan Chong access to Philippine citizenship. In an altered historical setting, a different sentiment could emerge and express itself in terms of a radically divergent interpretation of the law. The legal text had not changed, but the changed context allowed it to be read differently. Evincing that the law is ultimately malleable, the Supreme Court's seemingly belated discovery that it had not been all that fair was reason enough to act in a manner the court saw as patriotic and ——"now that we're independent!" —— withhold Philippine citizenship from someone deemed undeserving for being a racial Other.[3]

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1) A copy of *Tan Chong vs. The Secretary of Labor* [SCP 1954] is available online, http: //www.uniset.ca/phil/tan_chong.pdf, accessed 9 June 2010.

2) Jus sanguinis remains the dominant principle even with the Citizenship Retention and Reacquisition Act of 2003, a de facto law on dual citizenship available only to natural-born Filipinos [cf. Cariño 2007].

3) The case decision on Tan Chong included the concurrent case of Lam Swee Sang who was born in Sulu on 8 May 1900 of a Chinese father and a Filipina mother; he had lived continuously in the country, and was married to a Filipina by whom he had three children [SCP 1954: 257]. In 1938 he filed in the Court of First Instance of Zamboanga a petition for naturalization, which the Supreme Court declared in its decision of 15 October 1941 as unnecessary because Lam was a Philippine↗

As I have shown elsewhere [Aguilar 1999], the history of Southeast Asia suggests that, despite the separate origins of nationalism and racism, these ideologies were not to be easily disentangled in practice. The delineation of membership and national belonging through access to the gate of citizenship was influenced heavily by the cartographic and cultural-ethnic politics of colonial states and their definitions of race and minority groups. In the postcolonial period, citizenship was seized upon by ruling elites to promote a narrow, conservative, and homogenizing nationalism. Excluded from the fold, barred from entry to the gate of citizenship —— though sometimes admitted on an inferior and highly contentious juridical status [Aguilar 2001] —— were the racial Others who were supposedly outside the culture, history, heritage, and destiny of the dominant social group.

In the Philippines, among all Others, the "Chinese" represented the test case of debates on inclusion and exclusion during the period of American rule. Under Spain there had been a long history of migration between the southeastern coast of the Chinese mainland and the islands that comprised the Philippines, with many Chinese men settling down and marrying local women, in the absence of women from China. From the mid-eighteenth century, especially after the mass expulsion of ethnic Chinese (but for the few who converted to Catholicism) for cooperating with a short-lived British occupation of the islands, these mixed unions produced the category of Chinese mestizos that formed the core of the Filipino native elite, who had a vexed relationship with their Chinese heritage [Wickberg 1964; 1965]. The ascendancy of Chinese mestizos in Philippine history is traced to the period from 1741 to 1850, when no substantial Chinese presence existed to either compete economically with the mestizos or serve culturally as a pole of identification. Spain's lifting of immigration barriers in the 1850s resulted in a new influx of Chinese male migrants. An identifiable and distinct "Chinese community" existed, members of whom had greater liberty than in the past to travel within the colony. They dislodged the older generation of Chinese mestizos from their established economic niches, as in the native textile industry in Iloilo whence the local mestizos shifted to sugar production on Negros Island [Aguilar 1998]. The new generation of mestizos that emerged in the second half of the nineteenth century, issuing from Chinese migrants' marriage or cohabitation with local women, had the greater possibility of identifying with the Chinese, even as they also deployed flexible identities in pursuit of familial as well as capitalist interests. Given the liberal atmosphere of travel, a steady stream of border crossings ensued, with children of these mixed unions visiting the Chinese mainland briefly or for prolonged periods. These border crossings persisted through the United States' period of invasion and subsequent colonization of the Philippines, which early on saw the imposition of Chinese exclusion. In 1909 it was estimated that about 5,000 Chinese "domiciled in the Philippine Islands visit the homes of relatives and friends" in the Amoy (Xiamen) region.[4)]

↘ citizen [*ibid*.: 251]. In 1947, along with Tan Chong, Lam was declared to be not a Philippine citizen, but his petition for naturalization was granted.

4) Julean H. Arnold, American Consul, to the Assistant Sec. of State, Amoy, China, 11 May 1909, US↗

What was the legal status of Chinese travelers who claimed the Philippines as their place of birth and residence? Were they to be barred from entry for being Chinese or allowed into the territory as citizens of the Philippines? How did they stand vis-à-vis the law, given the then widespread anti-Chinese sentiment among Filipinos in the Philippines and among Americans in the U. S. mainland? As this article seeks to show, the entwining of racism and nationalism is not unilinear, as the history of citizenship laws and jurisprudence in the Philippines from the close of the nineteenth century to the immediate postwar period demonstrates. In particular, this article hopes to shed light on the broad historical circumstances that occasionally lift the gate of citizenship for a category of the excluded, whose entry to the territory was contingent upon a different reading of the law. Citizenship for this class of individuals, then, is a case study that is also a sign of the complexity of the history of U. S. imperialism in the Philippines.

The Inclusiveness of the Malolos Constitution

The principle of jus soli (law of the soil) was not an American introduction. It had been enunciated in the 1899 Malolos Constitution, which was liberal on many counts, not just in terms of the rights and duties of citizenship, but also in its ideology of political inclusion. Title IV, Article 6 (1), of the constitution declared that "Filipinos" included "all persons born on Filipino territory" (*Todas las personas nacidas en territorio filipino*).[5] In Article 6 (2), a form of jus sanguinis (law of the blood) was stipulated for birth outside the territory, but patrilineality was not favored: children of either a Filipino father or mother, although born outside of the Philippines, were deemed to be Filipinos (*Los hijos de padre ó madre filipinos, aunque hayan nacido fuera de Filipinas*). Article 6 (3) specified that foreigners could become Filipinos through naturalization. Finally, Article 6 (4) reiterated the spatial element through a form of *jus domicile* (law of residence), at that time a very advanced notion —— considering that only now in the early twenty-first century is this "additional principle … gaining momentum" [Levanon and Lewin-Epstein 2010: 421] —— anyone, even if not naturalized, who had lived for two uninterrupted years in any locality within Philippine territory and performed the duties of a citizen (primarily paying taxes) was considered a Filipino.

↘ NARA RG 350, Entry 5, Box 71, File 370-221, p. 1.

5) In English translation, the Malolos Constitution reads:

"Art. 6. The following are Filipinos:

1. All persons born in the Philippine territory. A vessel of Philippine registry is considered, for this purpose, as part of Philippine territory.
2. Children of a Filipino father or mother, although born outside of the Philippines.
3. Foreigners who have obtained certificate of naturalization.
4. Those who, without such 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 condition of being Filipino is lost in accordance with law." [Guevara 1972: 89–90, 105–106]

The citizenship provision of the Malolos Constitution was 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 ilustrados in the 1880s–90s. It also seemed prepared to acknowledge members of "tribal" ethnic communities as fellow Filipinos, social groups that had been excluded from the Propaganda Movement's campaign for civil and constitutional liberties for being beneath lowland groups, such as the Tagalog, in the cultural and civilizational hierarchy [Aguilar 2005]. What could explain the inclusiveness of Malolos in delineating the body politic?

The constitution as a whole was said to have derived "inspiration" from the charters of several Latin American countries [Agoncillo 1960: 297]. One could argue that the citizenship provision was simply copied from an external model. In particular, it appears to have been patterned directly from the Spanish Civil Code, which was already in force in Spain since May 1888,[6] but which became applicable in the Philippines, as well as Cuba and Puerto Rico, on 8 December 1889. In form Article 6 of the 1899 Malolos Constitution and Article 17 of the 1889 Spanish Civil Code are alike, with "Filipinos" being substituted for "Spaniards." Perhaps the Malolos drafters were simply imitating the inclusive pluralism of the Spanish Civil Code —— itself intended to accommodate the complexity of civil laws and local customs in Spain [Brown 1956] as well as embrace Cuba and Puerto Rico, with its large Hispanic population (and the Philippines, too, probably by default), within what remained of the Spanish empire.[7] Nonetheless, there were significant divergences between the Malolos Constitution and the Spanish Civil Code, with the archipelagic Philippines emphasizing a broader application of jus 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 text supplied a definite timeframe of two years.[8] However, Article 25 of the civil code required naturalized citizens to renounce their former nationality, swear allegiance, and "inscribe themselves as Spaniards in the civil registry,"[9] a stipulation not found in the Malolos document, the

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6) Charles Magoon, Law Officer, Division of insular Affairs, to the Secretary of War, 24 June 1901, US NARA RG 350, Entry 5, Box 75, File 425-41, p. 3.

7) The 1889 Spanish Civil Code has been described as the final "culmination" of a "modern codification impulse" that began in 1812 "and coinciding with the Spanish Constitution of that year" [Rodriguez Ramos 1970: 723]. Interestingly, both the 1812 constitution and the 1889 civil code served as grounds of contention in the Spanish Philippines. In espousing assimilation the Propaganda Movement asserted that the natives of the Philippines ought to be treated as of equal standing as Spaniards for the former were as much *ciudadanos españoles* (Spanish citizens) as the latter.

8) In English translation, the Spanish Civil Code reads:

"Art. 17. The following are Spaniards:
1. Persons born in Spanish territory.
2. Children of a Spanish father or mother, even though they were born out of Spain.
3. Foreigners who may have obtained naturalization papers.
4. Those who, without such papers, may have acquired a domicile in any town in the Monarchy." [Peck 1965: 464, n. 35]

9) Article 25 reads: "In order that foreigners who have obtained letters of naturalization or gained a↗

requirements of two years' legal residence and payment of taxes being sufficient for one to be considered a Filipino citizen.

Despite the use of external models, the specification of citizenship in the Malolos Constitution can be seen as a product of the exigency of state formation. In a highly unsettled context, a united territory and polity was of utmost value, as evinced by Aguinaldo's reaching out to ethnic communities as brethren. Rather than creating residuals of otherness, one could build a solid state by claiming all peoples and all localities within a predefined territory as belonging to the state.[10] All the more so as inclusiveness had already been put to effect and tested in the many soldiers of diverse races and ethnicities —— Chinese, Japanese, and with the onset of the Filipino-American War Spaniards, Cubans, French, British, Italians, as well as White and Black Americans —— who served in Aguinaldo's army and fought for the Filipino cause [Dery 2005: 3–15].[11] Moreover, driven by the desire to be accepted by other states as a free, independent nation, the Malolos government had little time and few alternatives. The delegates needed a template, and the Spanish code was a good one. If the ideals of the civil code were not fully realized under Spain, perhaps the constitutional framers felt those ideals finally could become reality under a Filipino government. This conjecture, however, cannot be supported by any direct evidence because, although the issue of state religion was intensely debated, accounts of the making of the Malolos Constitution make no mention at all of citizenship [Agoncillo 1960: 294–309; Zafra 1963]. Because the Malolos government was cut short by the U. S. invasion and the ensuing war, there was no opportunity to probe its tenet on citizenship before a court of law.

What is clear is that, soon after the U. S. takeover of the Philippines, the application of the Chinese Exclusion Law to the Philippines provided the opportunity for the expression of Filipino anti-Chinese sentiments. On 26 September 1898, one month after the establishment of a military government that he headed, Brig.-Gen. Elwell S. Otis ordered what was in effect the extension of the 1882 Chinese Exclusion Law in the U. S. to the Philippines. In formulating its recommendation on the question of Chinese immigration, the Philippine Commission indicated it was "primarily a political question insofar as the Filipinos were concerned," particularly as Commission member Benito Legarda "expressed 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].

↘ residence in any place in the monarchy may enjoy Spanish nationality, they have to previously renounce their former nationality, swear to the constitution of the monarchy, and inscribe themselves as Spaniards in the civil registry." Cited in Wilbur J. Carr, for the Secretary of State, to Algar E. Carleton, American consul, Amoy, China, Washington, D. C., 5 Nov. 1921, US NARA RG 350, Entry 5, Box 1085, File 26526-25-A, p. 9. This and other aspects of Spanish laws on citizenship would become contentious in cases involving ethnic Chinese, as will become apparent later in this discussion.

10) Indonesia's revolutionary constitution of 1945 was similarly inclusive, but at the same time it differentiated and provided the grounds for marginalizing "those of other races (*orang-orang bangsa lain*)" [Aguilar 2001: 514].

11) I thank Caroline S. Hau for pointing this out to me.

In 1901 the U. S. War Department affirmed Otis's order. With the exception of former Philippine residents and those who belonged to the "exempt classes,"[12] all other Chinese immigrants were barred from entry to the Philippines.[13] American civilian authorities in Manila pleaded to be granted room to maneuver and adapt to local conditions. The American and Chinese chambers of commerce advocated the entry of Chinese coolie labor.[14] However, the Chinese Exclusion Law in the Philippines became official legislation by an act of the U. S. Congress, which Pres. Theodore Roosevelt signed into law in April 1902.

Belatedly joining the tussle over this legislation was Isabelo de los Reyes who, as president of the Unión Obrera Democrática, addressed a petition to the U. S. president in August 1902 in support of Chinese exclusion. The reasons he adduced were that "Asiatic immigration" was "very dangerous to public order and the sovereignty of the U. S."; it caused "a competition injurious to Filipinos and Americans"; it fomented vagrancy and brigandage among Filipinos who could not compete with Asiatic migrants; "yellow immigration was anti-civilizational" for the bad examples displayed by Chinese migrants; there was no lack of Filipino workmen; and there was the "peril" arising from the "falsifications of Chinese merchandise."[15] Given the expressed desire of key Filipinos, Chinese exclusion could be framed as intended for, in the words of an American colonial official, "the Filipino people for whose protection the exclusion laws have been applied to these Islands."[16] Gone was the inclusiveness of Malolos.

The American Invention of Philippine Citizenship

Having acquired possession of the Philippines from Spain in the 1898 Treaty of Paris, American authorities proceeded to exclude it from the territory of the United States by citing a Congressional resolution that was passed during the intense deliberations: "That by the ratification of the treaty of peace with Spain it is not intended to incorporate the inhabitants of the Philippine Islands into citizenship of the United States, nor is it intended to permanently

12) The exempt classes included Chinese officials, teachers, students, merchants, and "travelers for curiosity or pleasure."

13) Clark Alejandrino [2003: 48] argues that the application of the same Chinese Exclusion Law in the U. S. to the Philippines "resulted in even more Chinese merchants entering the Philippines, and allowed the Chinese to continue holding on to important sections of the economy."

14) F. E. Green, Pres. of the American Chamber of Commerce of Manila, An appeal to Congress for the enactment of laws, allowing coolie labor to enter the Philippine Islands, 3 Jan. 1902, US NARA RG 350, Entry 5, Box 70, File 370-68; J. G. G. Bunuan, Pres. of the Chinese Chamber of Commerce, Manila, 18 Nov. 1902, US NARA RG 250, Entry 5, Box 70, File 370-89; Cu-Unjieng, Pres. of the Chinese Chamber of Commerce for the Philippine Islands, to the Hon. William H. Taft, Sec. of War, Manila, 29 Aug. 1905, US NARA RG 250, Entry 5, Box 70, File 370-127.

15) Petición de exclusión de los chinos en Filipinas, Isabelo de los Reyes, president of the Unión Obrera Democrática, to the U. S. President, Manila, 16 Aug. 1902, US NARA RG 350, Entry 5, Box 70, File 370-86.

16) Insular Collector of Customs to the Secretary of Finance and Justice, Manila, 25 Apr. 1908, US NARA RG 350, Entry 5, Box 71, File 370-195.

annex said islands as an integral part of the United States" [Magoon 1900: 11]. Considered an "objectionable race" [*ibid*.: 72] and inassimilable to American society, Filipinos were deemed inherently undeserving of U. S. citizenship, which justified the nonextension of the Fourteenth Amendment to the Philippines. George Malcolm [1916: 549], then the Dean of the College of Law of the University of the Philippines, described the Philippines in relation to the U. S. as "not a foreign country; not sovereign or semi-sovereign; not a State or an organized, incorporated territory; not a part of the United States in a domestic sense; not under the Constitution, except as it operates on the President and Congress; and not a colony." The Philippines was a "dependency —— an unincorporated territory belonging to the United States and under its complete sovereignty —— a part of the United States in an international sense" [*ibid*.]. Sardonically Malcolm concluded, "If these statements were put in parallel columns, the anomalous status of the Philippines Islands and its people would be graphically portrayed" [*ibid*.: 550].

Thus anomalously Philippine citizenship was invented when the Cooper Act or the Philippine Bill of 1902 was signed into law on 1 July 1902 to become the Philippines's "first organic act." As I have demonstrated elsewhere [Aguilar 2010], the necessary precedents of this act appear to have been the passage of a similar legislation for Puerto Rico and the application of the U. S. Chinese Exclusion Law to the Philippines. Section 4 of the Philippine Bill of 1902 declared:

> 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.

By this stipulation the "inhabitants" of the nonsovereign Philippine Islands who were Spanish subjects on 11 April 1899, the date when the Treaty of Paris was proclaimed as duly ratified by both Spain and the U. S., became "citizens of the Philippine Islands." Philippine citizenship was presented as a break from yet also a direct successor to Spanish subjecthood. In specifying the Philippine citizenship of "children born subsequent thereto," this clause also established jus sanguinis as one of the means to determine Philippine citizenship, unless their parents opted to preserve their Spanish nationality.

The invention of Philippine citizenship could have appeased many Filipinos as a foretaste of autonomy and independence. It served to bestow a collective national identity and anticipated a presumed state that, although deferred, would materialize in the distant future. There seemed to have been no major debate in the Philippines questioning the validity of Philippine citizenship. However, citizenship conferred by an entity that was not a sovereign and independent state was

plainly vacuous, a fact of which U. S. authorities should have been cognizant.[17] The notion of Philippine citizenship acquired legal weight only because of the simultaneous extension of "protection by the United States." The legal mythology of Section 4 held that U. S. protection was contingent upon Philippine citizenship as though Philippine citizenship was a prior reality: once "deemed and held to be citizens of the Philippine Islands" they merited protection: "as such [they were] entitled to the protection of the United States."

A U. S. 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]. That "internal American function," evidently, served the desires and requisites of U. S. racialized citizenship and differential imperialist strategies [Aguilar 2010]. However, because Filipinos owed allegiance to the United States, migrants to the U. S. could not be classified as aliens. In 1912 Filipinos, who carried U. S. passports, were categorized as noncitizen U. S. nationals. Along with other groups of people, Filipinos as U. S. nationals did not possess "all the rights of 'full' citizens" in the U. S. but nonetheless were subjected to U. S. "plenary power" and "consistently treated as 'outsiders' both in popular consciousness and in U. S. jurisprudence" [Saito 2002: 437]. Nevertheless, there were instances, particularly in the late 1930s, when the U. S. government recognized the de facto U. S. citizenship of Filipinos, even as the Philippine independence bill (the 1934 Tydings-McDuffie Act) resulted in their widespread perception as aliens [Aguilar 2010]. Despite its contradictions "Philippine citizenship," once invented, acquired a life of its own. Its desirability was heightened by immigrants to the Philippines who sought this juridical status lest they face nonadmission or be haunted by deportation. Backed by the force of an imperial ruler, the legal fiction became fact.

"Asiatics" and the Philippine Citizenship Bill of 1916

The original provision that invented Philippine citizenship in 1902 was retained in Section 2 of the Jones Law, or the Philippine Autonomy Act, which was signed into law by Pres. Woodrow Wilson on 29 August 1916. However, it contained the additional provision that had been stipulated in an amendment passed in 1912:

> 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

17) "The United States is equally committed to the doctrine that an independent State may tender citizenship to any or all persons upon such terms and conditions as it sees fit to adopt; and, in so doing, is not accountable to any other State." This statement was made in relation to Spain, but was conveniently forgotten in relation to the Philippines. Charles Magoon, Law Officer, Division of insular Affairs, to the Secretary of War, 24 June 1901, US NARA RG 350, Entry 5, Box 75, File 425-41, p. 4.

> 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.

This proviso devolved authority to the Philippine Assembly to enact a law on Philippine citizenship within the parameters of U.S. law for persons inadvertently excluded by the Philippine Bill of 1902.

However, even before the passage of the Jones Law, by early 1916 Filipino prejudice had converged with American racism to produce a piece of legislation crafted by the Philippine Assembly that barred "Asiatics" from acquiring Philippine citizenship. The passage of this citizenship bill provoked a major debate in the Manila Spanish-language press between Jose Alejandrino, a general in the revolution and a member of the Malolos Congress, and Pedro Guevara, a lawyer and member of the assembly who voted with the majority.[18)]

Alejandrino argued that the citizenship bill was "one of the greatest errors" committed by the Philippine Assembly; he contended that the barring of other Asians from Philippine citizenship was a mistake, as it would antagonize Japan whom he saw as a strong power and deserving to be cultivated as an ally.[19)] He opined that no Japanese would take on Philippine citizenship even if that right were extended to them; he considered the Japanese people "very sensitive" about national honor and would "not pardon nor forget an injury," emphasizing that "only the intelligent Japanese of goodwill would understand our difficult situation, while it is indubitable that the jingoistic leaders would take advantage of this opportunity to excite against us the indignation of the masses."[20)]

Emphasizing the uncertain political status of the Philippines, Alejandrino reckoned that Europeans would not be offended for "no European who respects himself and enjoys in the Philippines greater considerations and privileges than any native would be willing to exchange his well-defined and respected nationality for that of a country which is not a territory, colony nor dependency, which is unowned and the future of which is so insecure."[21)] Given the indeterminacy of its political status, no citizenship bills need be passed: "If we cannot legislate according to our interests and our convenience, we had better abstain from doing so," Alejandrino urged, adding —— out of concern for "our future external relations"—— that "if we are not free to make the laws most convenient for us, neither are we obliged to adopt those

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18) At the time Alejandrino was about 46 years old, while Guevara was about 36 years old [cf. Aruego 1936–37: 25, 33].

19) "The Citizenship Bill According to General Alejandrino: Present Points of View," translation of article that appeared in *La Vanguardia*, 25 Jan. 1916, US NARA, RG 350, Entry 5, Box 586, File 5507-A.

20) [*ibid.*].

21) "Actual Interesting Polemic on the Citizenship Law. Gen. Alejandrino Replies to His Worthy Adversary, Hon. Pedro Guevara, Assemblyman," translation of article that appeared in *La Vanguardia*, 1 Feb. 1916, US NARA RG 350, Entry 5, Box 586, File 5507-A.

which might create for us conflicts in the future."[22] "Besides," he contended, "we have done without this law for so many years that I believe that we could have been able to get along perfectly well without it for a few more years."[23]

Moreover, he argued that if the logic of U. S. law, which excluded "Malays and Mongolians from naturalization" in American territory, were to be pursued it "should also exclude the Filipinos from citizenship in our own country" since it was essentially American territory, "unless the Honorable Guevara can prove that we are neither Malays nor Mongolians."[24] Because of the discriminatory nature of "the American naturalization and citizenship law, which excludes the Yellow Race (including Filipinos) from its benefits," Filipinos "should not lend ourselves as instruments to humiliate our own race and place obstacles in the way of the policy of equal opportunity for all."[25] Alejandrino's argumentation evoked the state building concerns of Malolos, particularly in seeing the need to establish good relations with a country like Japan, which he visited from February to March 1897 in pursuit of arms for the revolution against Spain [Alejandrino 1949: 64–74]. Through Mariano Ponce's close association with Sun Yat-sen, which grew in Japan, Alejandrino would have been well acquainted with Chinese intellectuals in the pan-Asianist network [Mojares 2009]. Despite Japan's turn to expansionism beginning with the Twenty-One Demands in 1915 and the retreat of anticolonial pan-Asianist discourse in the late 1910s to the 1920s [Aydin 2007], Alejandrino had a vision of the Philippines in a broader regional context, an Asianism —— which he conceived as a "sentimental, altruistic, and noble pan-Orientalism" [Mojares 2009: 6] —— that would build a world free of imperialism and colonialism.[26]

Guevara's response could only stress the fact that the Philippine Assembly was "limited by the Constitution and Laws now in vigor in the United States," and within that framework the assembly could not have "committed any error."[27] Guevara argued that there was no need to be defensive because "The Japanese people, as well as the Chinese and others of the Oriental race who are included in the exclusion law of the United States, understand perfectly that the Philippine Legislature has no faculty for approving a law by virtue of which they may be admitted."[28] Like Alejandrino, Guevara pointed out that the Philippines was a country with "no

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22) "The Citizenship Bill According to General Alejandrino …" (See footnote 19)
23) "Actual Interesting Polemic on the Citizenship Law. Gen. Alejandrino Replies …" (See footnote 21)
24) [*ibid*.].
25) "The Citizenship Bill According to General Alejandrino …." Cognizant of the opportunism of his fellow native elites, Alejandrino [*ibid*.] presciently chided the legislators: "I also hope that they will not be the first ones to don *kimonos*, to eat with the *hashi*, and become a chorus for the Japanese" should Japan become the hegemonic power.
26) According to Mojares [2009: 6], "While Alejandrino lamented the imperialistic turn of Japanese pan-Asianism, he believed that the original, emancipative spirit of the idea remained valid and needed and had to be promoted by Asians."
27) "Political Note: Statements of Delegate Guevarra [sic]. The Citizenship Bill," translation of article that appeared in *El Mercantil*, 27 Jan. 1916, US NARA RG 350, Entry 5, Box 586, File 5507-A.
28) [*ibid*.].

political personality."[29] Although he admitted that the exclusion law in California caused "popular indignation" in Japan, Guevara rebutted that the Japanese should know that "we are not responsible for the making of certain laws in vigor in the United States."[30] Besides, in his view, raising the specter of Japan was fanning "a fear of a monster which does not exist." He charged Alejandrino with damaging the Philippines by saying that "our people" nurtured "asperities and prejudice against the neighboring countries."[31] Guevara's defense was either disingenuous in using U. S. racism and imperial control to give vent to his "anti-Oriental" prejudice, or plain mendicant in hewing closely to what he deemed were the wishes of the United States, serving as a form of self-absolution for favoring an exclusionary bill on citizenship that was in keeping with the racist laws of the sovereign imperial power.

Even if final responsibility could be passed to the U. S., evidently most Filipino legislators in the Philippine Assembly, much like the ilustrados of the late nineteenth century, harbored anti-Chinese sentiments that could be mobilized to curtail access to Philippine citizenship. Except for a few like Alejandrino, these legislators appeared not to sense the kind of historical urgency that confronted Malolos or the importance of forging ties with other Asian nations as part of the nationalist struggle. By the early 1930s "anti-foreigner" bills were increasingly being filed in the Philippine legislature, aimed chiefly at the Chinese who dominated the retail trade, but also at the Japanese who held extensive fishing interests in Manila and hemp plantations in Davao.[32] These proposed measures, which aimed to nationalize industries dominated by foreigners, embodied the intertwining of economic interests and race-based sentiments.

The eventual fate of the citizenship bill that was at the center of the debate between Alejandrino and Guevara is uncertain, for there is hardly a trace of it in the annals of Philippine citizenship laws. If it did pass the Philippine Assembly, it could have been squelched in Washington, D. C., which would have nullified Guevara's position. However, pursuant to the

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29）"Intellectual Flashes: Some More About the Citizenship Bill. Delegate Guevara Answers Gen. Alejandrino," translation of article that appeared in *La Vanguardia*, 3 Feb. 1916, US NARA RG 350, Entry 5, Box 586, File 5507-A.

30）[*ibid.*]. Note, however, that unlike the Chinese Exclusion Law the Japanese were not barred from migrating to the Philippines.

31）[*ibid.*].

32）"Anti-foreigner bills increase in the Philippines," *New York Herald Tribune*, 30 Oct. 1931, US NARA RG 350, Entry 5, Box 842, File 15309-14. After Japanese nationals were excluded from entry to the United States in 1924, "would-be Japanese emigrants looked increasingly to the possibilities of settlement in the Philippines," with the number of Japanese arrivals in 1925 jumping four times from the previous year's figure, the official count of Japanese residents in the Philippines rising to 19,281 by 1931. To the frustration of the Japanese who since 1937 lobbied hard against its passage, the Philippine Assembly passed the 1940 Immigration Law, which imposed an annual quota of 500 persons, regardless of the country of origin —— the result of U. S. pressure in the wake of Japan's attack on China in July 1937, which ignited the Second Sino-Japanese War, and the fear that Japanese in the Philippine could damage its security [Goodman 1967]. From another vantage point, Tomas Fonacier [1949: 3] hailed this immigration law as bringing "to a close the epoch of Chinese exclusion policy."

Jones Law the Philippine Assembly 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."[33] This act of the Philippine legislature was incorporated as Section 2 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.[34]

Semantically, citizens of the Philippine Islands became equated with "Filipinos," which really meant "Filipino citizens." But more significant was the ambiguous phrase "by birth" as a means of acquiring Philippine citizenship. Perhaps the Filipino legislators, secure in their Philippine citizenship, had merely intended to pass on their citizenship status to the next generation members of whom, by birth, would acquire Philippine citizenship, effectively the principle of jus sanguinis. However, the governor-general's office interpreted the phrase as birth in the territory, taking the act of the Philippine legislature specifically as adopting jus soli, "the same as the 14th amendment to the Constitution of the United States"; however, as the American governor-general's secretary admitted, there was "no chance in this country" to test the law's validity and "to have this question decided by the courts here for the Supreme Court of these Islands has already upheld the doctrine of *jus soli*."[35]

The Supreme Court and Jus Soli: Invoking the Spirit of the Law

Even before the 1916 citizenship law was passed, and in opposition to the Chinese Exclusion Law and the withholding of the Fourteenth Amendment from the Philippines, in 1911 the Supreme Court began to apply the principle of jus soli and grant Philippine citizenship primarily to persons with "Chinese" fathers and "Filipino" mothers, usually travelers from China whom local authorities initially sought to exclude from entry for being Chinese in the non-exempt category.

Until the 1880s persons with such mixed parentage would have been classified as "Chinese mestizos," but the Spanish colonial state's shift to a modern taxation system formally abolished this sociolegal category. Forming the basis of an optional identity, identification with the mestizo category diminished considerably in the 1880s and 1890s [Doeppers 1994]. The last two decades

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33) 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.
34) Cited in [*ibid*.: 4].
35) [*ibid*.: 4–5].

of the nineteenth century appeared to be the period of greatest flexibility in identities —— even as, at the same time, many (male) mestizos identified themselves as *indios* or *naturales*, a moment of redrawing boundary lines for mestizos whose families had been in the mestizo category for several generations. Emblematized by Jose Rizal, these mestizos identified with the majority lowland colonial subjects of Spain [Aguilar 2005]. Although under American rule some persisted in employing mestizo as a self-designation, a number of wealthy persons of mixed background —— members of a new generation of mestizos —— identified themselves with the Chinese [Chu 2010]. However, the fluidities of social and personal identities and their relationship to these court cases cannot be determined. Most basic is the absence of information on the individuals' self-identification and the ethnic markers of their public persona in the case decisions upon which this discussion relies.[36] These court decisions indicate, for instance, that the parties to a case had legal representation, but whether the persons concerned actually appeared in court cannot be ascertained. Because as a rule the Supreme Court is not a hearing court,[37] personal factors, such as the appellant's more "Filipino" than "Chinese" countenance or vice versa, might not have influenced the court. However, the Supreme Court studied the proceedings of the boards of special inquiry and courts of first instance that heard the cases of passengers from China seeking to enter the Philippines without the requisite documentation, and in the boards of special inquiry it was judicially acceptable to assess a person on the basis of appearance to determine claims of identity based on age [e.g., Tan Beko in SCP 1914; Jose Felipe Braca in SCP 1919d] as well as ethnic identity [e. g., Lim Yiong in SCP 1919a].

If we set aside ethnic self-identification as a determining factor, it becomes clear that what were 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 Philippine Bill. 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 also pertinent in 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 citizenship.

The history of jus soli citizenship is traced to the case of Go Siaco, who was born in Pampanga 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 [SCP 1909: 491]. In July 1908 Go

36) The discussion of these cases is constrained by whatever information is found in the published decisions of the Supreme Court.

37) Apart from exceptional cases, the Supreme Court of the Philippines, as that of the United States, does not hear oral testimonies, according to Justice Maria Lourdes Sereno in a conversation held on 2 March 2011.

was arrested, brought before a justice of the peace, and remitted to the Court of First Instance of Tarlac for not possessing a "certificate of registration" as a laborer, which Act 702 of the Philippine Commission required. The lower court's judgment, issued in September 1908, ordered his deportation [*ibid*.]. 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 [*ibid*.: 496]. 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" [*ibid*.]. 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."[38)]

The Supreme Court's first clear enunciation of jus soli citizenship was made in the case of Benito Muñoz, who was born in Camalig, Albay, 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.[39)] 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" [*ibid*.]. The court also emphasized 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].[40)]

Tranquilino Roa, who was born in Luculan, Mindanao, on 6 July 1889, was similarly denied

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38) 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.

39) Benito Muñoz's father was identified as Antonio Muñoz Ting Jian Co, who was born in China but migrated to the Philippines when he was about 15 years old; he obtained permission from the Spanish government to reside in the Philippines, and became a successful merchant; he became a Roman Catholic when he was about 25 years old; twice married, his second wife, Antonia Nacional, "a native of the Philippine Islands," was the mother of Benito [SCP 1912a: 495–496].

40) Muñoz's case is cited in Solicitor-General to the Bureau of Insular Affairs, Manila, 17 June 1914, pp. 3–4, 8. Chu [2010: 337–342] also presents summaries of the cases of Muñoz, Yu Kiao, Roa, Lim Teco, Ong Tianse, and Cayetano and Marcelino Lim.

entry as he returned to the Philippines from China in October 1910. Roa's father was named as Basilio Roa Uy Tiong Co, "a native of China," while his mother was Basilia Rodriguez, a "native of this country" [SCP 1913a: 317]. Roa's father went to China in 1895 and died there about five years later in 1900; subsequently his mother sent him to China to study —— "and always with the intention of returning" to the Philippines —— which he did in 1910 when he was "a few days under 21 years old and 3 months of age" [*ibid.*]. The court emphasized that "From the date of his birth to the time he returned to this country he had never in a legal sense changed his domicile. A minor cannot change his own domicile" [*ibid.*: 337]. In addition to stressing Roa's right to "reënter the land of his birth," the court also argued that Roa followed "the nationality" of his mother, who reacquired her Philippine citizenship after her husband's death, which occurred prior to Roa's departure for China [*ibid.*: 340–341]. In its decision of 30 October 1912 the Supreme Court declared Roa "a citizen of the Philippine Islands on July 1, 1902, and never having expatriated himself, he still remains a citizen of this country" [*ibid.*: 341].[41)]

Also denied admission as he landed in Manila from China in October 1909 was Santiago Vañó Uy Tat Tong, who was born in Cebu on 11 October 1892. His Filipina mother had been dead when, "by reason of ill health," his father went to China, taking him and two younger sisters along while leaving his older brother in Cebu [SCP 1913b: 482]. After about six months the father died and "immediately" the three siblings returned to the Philippines. The board of special inquiry permitted Matilde Vañó, 15 years old, and Celestina Vañó, 10 years of age, to enter the country, but Santiago Vañó, who was 18, was not [*ibid.*: 481]. However, the Supreme Court, stressing his domicile and immediate family ties, noted that Santiago had "lived in the Islands ever since his birth, except for a period of about six months … [that his older brother] was to look after him and his two sisters; that the only relatives which he has are residents of the Philippine Islands … [and] that at the time he accompanied his father and sisters to China it was with the express intention of returning to the Philippine Islands" [*ibid.*: 482]. The court declared in its decision of 20 November 1912 that, "even though he is of Chinese descent," Santiago Vañó was "a citizen of the Philippine Islands by virtue of his birth and residence" [*ibid.*: 483]. Invoking the Chinese Exclusion Law "for the purpose of keeping out of the Philippine Islands actual bona fide citizens" was "an abuse of authority" [*ibid.*].[42)]

In 1914 the application for a passport by Cesareo V. Lim Keng In, who was born in Davao on 13 February 1893 by a Chinese father and a "Moro-Chinese mestiza" mother, led the solicitor-general to review the previous cases and proffer the observation that in the cases mentioned above the persons concerned had been in China

> temporarily, but with the intention of returning to the Philippine islands; that on the date of the Treaty of Paris they were all minors, but at the time of the passage of the Philippine Bill, some of them had attained majority. In none of the cases mentioned above has the Supreme Court discussed the

41）Roa's case is cited in Solicitor-General to the Bureau of Insular Affairs, Manila, 17 June 1914, pp. 4–5.
42）Vañó's case is cited in [*ibid.*: 5–6].

> nationality of the father. It seems that the Court only had in mind the fact that they (the fathers) were Chinese subjects lawfully married to Filipino women, with a permanent residence in these Islands, and some of them having acquired property.[43]

Permanent domicile in the Philippines was emphasized for both fathers and sons, in accordance with the citizenship clause of the 1902 Philippine Bill [Aguilar 2010: 217–219].

The appellant's choice of the Philippines as one's country upon reaching the age of majority was deemed crucial, following a rule adopted by the U. S. 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 domiciliary principle was already evident when, on 21 March 1910, the Supreme Court rendered its decision on the case of Eugenio Pascual Lorenzo, who claimed birth in Santa Maria, Bulacan, on 19 June 1881 of a Filipina mother named Apolonia Pascual and a Chinese father named Marcelino Lorenzo Vy Ju [SCP 1910: 564–565]. Lorenzo said he left the Philippines when he was about 15 years old and remained in China until he was 34, but the proceedings of the board of special inquiry noted he could only speak Chinese [*ibid*.: 574], seemingly with no knowledge of Tagalog. Although the Supreme Court did not settle the question of Lorenzo's birthplace, it opined that, assuming he was a Philippine citizen by birth, "his long residence in China" after reaching 21 years of age and admission that he had no plans to return to the Philippines until he sought entry on 7 April 1908 resulted in the forfeiture of Philippine citizenship [*ibid*.: 592].

The selection of country of residence upon reaching the age of majority was deemed as resolving the conflict of dual nationality, an acute point in the case of Victorino Lim Teco, who was born in Manila on 8 November 1885 of a Chinese father, Apolinario Lim Teco, and a mother, Lucia Tiangco, who "was born in the Philippine Islands of a Chinese mestizo father and mother, who were likewise born here" [SCP 1913c: 85]. Lucia Tiangco was never described as a native of the islands, and "foreign parentage" was ascribed to Victorino [*ibid*.: 86]. He went to China when he was 5 years old and remained there until he returned to Manila in October 1910 [*ibid*.: 85]. The court stated he was "a citizen by birth of the Philippine Islands" but China's jus sanguinis also had a claim on his nationality [*ibid*.]. The court noted that, after the father's death in Manila in 1900, his mother, two brothers, and one sister continued to reside in the Philippines. Victorino, too, had the "legal right to claim a domicile within the Philippine Islands" until he became of age, but after he turned 21 he continued to reside in China for another five years, which the court "regarded as a strong presumption of his purpose to become definitely identified with the body politic of his father's country" [*ibid*.: 86, 88]. Based on the standard that a person born in the U. S. who was in a foreign country when he turned 21 could elect to be a U. S. citizen "by promptly

43) [*ibid*.: 7]. No document was encountered to show the resolution of Cesareo V. Lim Keng In's application for a passport.

returning" to the United States, the Supreme Court stated in its decision of 15 January 1913 that Victorino Lim Teco had "irrevocably lost" the right to choose Philippine citizenship "by his failure to exercise it within a reasonable time after becoming of age," thus he was "no longer a citizen of the Philippine Islands" [*ibid*.: 89–90].[44)]

In seeking to understand the mind of the Supreme Court, in relation to the passport application of Cesareo V. Lim Keng In, the solicitor-general turned to the decision in *Roa vs. the Collector of Customs*, where he found "the question fully discussed."[45)] Penned by Justice Grant Trent, the decision considered at length the Spanish Civil Code, the Fourteenth Amendment, the Treaty of Paris, the Philippine Bill of 1902, various decisions of the Supreme Court of the United States, and other legal instruments. It quoted and discussed at length the landmark case of Wong Kim Ark (1898), which, based on the Fourteenth Amendment, recognized the U. S. citizenship of a male laborer who was born in San Francisco in 1873 of Chinese parents, who were legal migrants, despite their ineligibility for naturalization.[46)] It also advanced an interpretation that by Section 4 of the Philippine Bill "the doctrine or principle of citizenship by place of birth which prevails in the United States was extended to the Philippine Islands, but with limitations" [SCP 1913a: 333]. In the case at bar the court "insisted that as the appellant was born in the Philippine Islands he under Spanish law became a Spanish subject by reason of the place of his birth," although his Spanish nationality was "suspended during his minority in the absence of a declaration on the part of his father" [*ibid*.: 337–338]. However, Roa could no longer acquire Spanish nationality as the U. S. had terminated Spanish rule by the time he reached his 21st birthday.

The decision asked rhetorically if it would be in conflict with any act of the U. S. Congress, "any provision of the Constitution, any doctrine enunciated by the Supreme Court of the United States or the general policy of the United States to now declare that the appellant is, by reason of the place of his birth, residence, the death of his father, the present nationality of his widowed mother, and his election, a citizen of the Philippine Islands?" [*ibid*.: 339] Under these circumstances the court argued that Section 4 of the Philippine Bill

> must be read according to its spirit and intent …. It should be construed to conform to the well-settled governmental policy of the United States on the subject of citizenship. It is to be given that construction which best comports with the principles of reason and justice. This section declares that a certain class of inhabitants shall be citizens of the Philippine Islands. It does not declare that other

44) Lim Teco's case is cited in [*ibid*.: 6].

45) [*ibid*.: 8].

46) The full text of *United States v. Wong Kim Ark* may be found at http: //www.law.cornell.edu/supct/html/historics/USSC_CR_0169_0649_ZO.html, accessed 31 Mar. 2011. Six justices voted to recognize Wong's U. S. citizenship against the dissent of Chief Justice Melville Fuller, who was joined by Justice John Harlan. Because of the birth of children of unauthorized migrants in the United States today, the U. S. Supreme Court is seen by some critics to have erred in applying the Fourteenth Amendment to Wong's case [e.g., Wolverton 2010].

> inhabitants shall not be citizens. Neither does it declare that other inhabitants shall be deemed to be aliens to the Philippine Islands, and especially it does not declare that a person situated as is the appellant shall not be nor shall not elect to be a citizen of the country of his birth …. While it has been decided that the [U. S.] Constitution and acts of Congress do not apply *ex propio vigore* to this country, but that they must be expressly extended by Congress, nevertheless, some of the basic principles upon which the government of the United States rests and the greater part of the Bill of Rights, which protects the citizens of that country, have been extended to the Philippine Islands by the instructions of the President to the first Philippine Commission and the Philippine Bill.… Then to hold, after all of this has been done, that Congress intended by section 4 to declare the appellant is an alien and not entitled, under the circumstances, to reënter the land of his birth and become a citizen thereof, would be a holding contrary to the manifest intent of that body. That Congress did not so intend is irresistibly inferred from these facts. [*ibid.*: 339–340]

In thus deciding Roa's Philippine citizenship, the Supreme Court sought to uphold "the principles of reason and justice" and considered the best of the American democratic tradition as in fact extended to the Philippines. The court summarized its decision in a subsequent case by stating: "In the case of Tranquilino Roa … we held that persons born of Chinese fathers and Filipina mothers within the Philippine Islands are citizens thereof …" [SCP 1913c: 85].

The court cited approvingly a previous U. S. Supreme Court decision that "no principle has been more repeatedly announced by the judicial tribunals of the country, and more constantly acted upon, than that the leaning, in questions of citizenship, should always be in favor of the claimant of it" [SCP 1913a: 338]. In this light, it is understandable that the Supreme Court of the Philippines espoused a highly personal and compassionate view of Roa's case, asserting that to construe the Philippine Bill as preventing his return to the Philippines "would have the effect of excluding the appellant from his native country, from home and all that home means, from his mother, brothers, and sisters, and compel him to live in practically a strange country and among strange people" [*ibid.*]. In effect, the Supreme Court suggested that, in addition to birth in the territory and one's decisive return to the land of birth, personal sentiments and affection and familial ties were implicated in a territorially anchored sense of political belonging.[47] In emotively emphasizing the right of the individual to enter the land of his birth, rejoin his family, rekindle ties, and live in a meaningful social environment, the court nowhere described nor painted Roa as "Chinese." On the contrary, the court imputed upon Roa an alienation from China: "a strange country" with its "strange people." Whether or not the court was correct in making such attribution, what was exemplary was its insistence on treating Roa as an individual person, refusing to subsume him under a label or category that it probably realized could easily be manipulated to excite blind passions.

In a decision rendered on 27 September 1917, the Supreme Court took a further step in applying the principle of jus soli to a person whose parents were both Chinese, made even more

47) Thanks to Caroline S. Hau for underscoring this point to me.

remarkable by the fact that the man was a laborer. 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 Philippine Islands his home" and since then had lived continuously in Manila [SCP 1919c: 925]. In the decision written by Justice Elias Finley Johnson, the court 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].[48)]

The U. S. State Department: Arbiter of Spanish Subjecthood

Also in 1911, when the Supreme Court of the Philippines began to apply jus soli on the basis of American legal principles, the U. S. State Department in Washington, D. C., made a landmark decision on the passport application of Jose Velasco based on a retroactive application of Spanish law.[49)] Jose Velasco was born in Manila on 15 September 1887 to parents both of whom were described as "natives" of China.[50)] His father, Mariano Velasco, "had been domiciled in the Philippine Islands for more than 50 years prior to December 16, 1908," the date when Jose filed his application for a passport. Although both Mariano and Jose were engaged in business and had built up "a large fortune" in the Philippines, neither the father nor the son had been "inscribed as a Chinese citizen, or upon the Spanish Registry for the purpose of originally establishing Spanish nationality," indicating ambiguity in their status.[51)] Both, however, had been baptized as Catholics.

The favorable decision in Velasco's case rested on the interpretation that "the elder Velasco had *acquired residence* in the Islands under Law 3, Title II, Book 6 of the Novísima

48）Jensen [1975: 163] claimed that in 1917 "the Philippine Supreme Court ruled that a child born of Chinese parents in the Philippines, was a Filipino citizen," an assertion cited by Chu [2010: 290]. Jensen cited a source from the Bureau of Insular Affairs dated 30 Aug. 1917, but did not cite the actual Supreme Court decision. The case was probably that of Lim Bin.

49）The recourse to Spanish law was necessitated by Section 4 of the Philippine Bill, which crafted Philippine citizenship as the replacement for Spanish subjecthood. Prior to its passage, however, Spain was blamed for the unsettled political status of the inhabitants of Cuba, the Philippines, and Puerto Rico [Aguilar 2010: 208].

50）Memorandum of J. A. Hull, Acting Judge Advocate General, to the Chief of the Bureau of Insular Affairs, Washington, D. C., 13 June 1922, US NARA RG 350, Entry 5, Box 1085, File 26526-27, p. 1.

51）[*ibid*.].

Recopilación."[52] This law of 1870 identified thirteen different ways by which migrants could be considered residents within the Spanish realm, including naturalization, birth within the Spanish kingdom, conversion to Catholicism, acquisition of immovable property, marriage to a native woman, and being a householder for ten years within the realm.[53] Further, the decision pointed out that Article 2 of the Royal Decree of 17 November 1852 stated that "Foreigners who have obtained naturalization papers or acquired residence in accordance with the law are considered as Spaniards."[54] This point was reiterated in the decree of 18 September 1870, which provided that "Foreigners acquiring naturalization papers or residence according to law in any town in the Spanish Provinces beyond the seas are considered as Spaniards."[55] Thus the State Department regarded the elder Velasco's legal residence in the Spanish Philippines as having made him a Spanish subject, a nationality he was thought to share with his son.[56] Moreover, unlike most cases brought to the Supreme Court, in this instance no mention of travel to China on the part of either Mariano or Jose was made. On the basis of Section 4 of the Philippine Bill of 1902, on 11 September 1911 "the Department of State held that Jose Velasco was a citizen of the Philippine Islands."[57]

Guided by this ruling, the governor-general's office in Manila admitted to having "issued a number of passports to persons having the status of Velasco, upon showing to the satisfaction of this office that they complied with the provisions of the Novísima Recopilación"[58] —— a statement that indicated several unnamed ethnic Chinese formalized their Philippine citizenship in this manner from 1911 until about 1920. The attorney general of the Philippine Islands used the same guidelines in deciding the case of Ty Kong Tin. Ty's Chinese father had migrated to the Philippines in 1880 and had established a business firm there in 1885, during which time the attorney general in Manila regarded him to have been legally domiciled and therefore a Spanish subject. Ty, who was born in China on 10 March 1890, presumably of a Chinese mother, moved to the Philippines in April 1904 "where he has since resided."[59] Ty's application to register as a Philippine citizen, lodged in the U. S. consulate in Amoy, China, probably to ensure his readmission to the Philippines, received the attorney general's approval.

In reviewing Ty's case, the State Department emphasized the importance of Spanish

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52) [*ibid*.: 2].

53) This section of the Novísima Recopilación is cited in full in Wilbur J. Carr, for the Secretary of State, to Algar E. Carleton, American consul, Amoy, China, Washington, D. C., 5 Nov. 1921, US NARA RG 350, Entry 5, Box 1085, File 26526-25-A, p. 4.

54) Cited in [*ibid*.: 3].

55) Cited in [*ibid*.: 4].

56) Memorandum of J. A. Hull, Acting Judge Advocate General, to the Chief of the Bureau of Insular Affairs, p. 2.

57) [*ibid*.: 1].

58) C. W. Franks, Secretary to the Governor-General, to the Chief, Bureau of Insular Affairs, War Department, 21 Mar. 1922, US NARA RG 350, Entry 5, Box 1085, File 26526-26, p. 1.

59) Wilbur J. Carr, for the Secretary of State, to Algar E. Carleton, Esquire, American Consul, Amoy, China 5 Nov. 1921, US NARA RG 350, Entry 5, Box 1085, File 26526-25A, pp. 1–2.

subjecthood, which was now deemed to be contingent upon an active gesture of applying for residence. Setting aside the Novísima Recopilación for not having been "extended and applied to the Philippine Islands,"[60] the State Department put emphasis on a royal order issued in 1841, which stipulated that a formal petition must be made and government approval granted, otherwise a sojourner could not be considered a resident. It also stressed Article 25 of the Spanish Civil Code of 1889, which required the renunciation of one's former nationality before naturalization could be granted and the inscription of one's Spanish nationality in a civil registry. However, this civil registry before which aliens could make their declaration of Spanish nationality was never established in the Philippines [Peck 1965: 465]. Nevertheless, the State Department emphasized the need for evidence of having sought Spanish nationality and receipt of a favorable decision on such application. Because Ty could not furnish evidence that his father had complied with the 1889 Civil Code and was a Spanish subject on 11 April 1899, as stipulated in Section 4 of the Philippine Bill of 1902, the State Department, in a decision reached in June 1920, reversed Manila's recommendation on Ty's case. Ty was also deemed not to have been a Spanish subject on that date, and accordingly was not considered a citizen of the Philippines.[61]

Along with Ty's case, the State Department also rendered a negative decision on the case of Atanacio Fernandez. His father, Dionisio Fernandez, moved to the Philippines in 1875 and married a local woman in 1885, Atanacio, who was born in the Philippines in 1888, being one of their children. When he was 9 years old, Atanacio was taken to China by his father to attend school there until 1914, when he returned to the Philippines where he was domiciled. However, his father was officially registered in the Philippines as a Chinese subject and was said not to have applied for residence, and thus was deemed not to have complied with the royal order of 1841 as well as with Article 25 of the Spanish Civil Code. In December 1921 the State Department concluded: "Since it is the opinion of the Department that neither Atanacio Fernandez nor his father was a Spanish subject on April 11, 1899, Atanacio Fernandez cannot be considered a citizen of the Philippine Islands, and therefore is not entitled to a passport of this Government."[62]

A case elevated to Washington, D. C., in 1922 concerned Domingo Batlle Hernandez Chua Chiacoco, who was born in the Philippines of a "Filipino" mother and a Chinese father. The family went to China where the father died while Hernandez was still a minor; both mother and son continued to reside in China for the boy's education. The governor-general's office in Manila reckoned that Hernandez followed the citizenship of his mother, who "reacquired her Filipino citizenship" after the death of her husband. In fact that office opined that Hernandez's case was very similar to Roa's "the only difference being that after the death of the father of Domingo

60) C. W. Franks, Secretary to the Governor-General, to the Chief, Bureau of Insular Affairs, War Department, 21 Mar. 1992, p. 1.

61) [*ibid.*: 9–10].

62) Cited in Memorandum of J. A. Hull, Acting Judge Advocate General, to the Chief of the Bureau of Insular Affairs, p. 3.

Batlle Hernandez Domingo did not return with his Filipino mother to the Philippine Islands but continued to reside in China for the purpose of study, and did not return to this country until after he reached the age of majority."[63] The governor-general's office asserted that Hernandez "returned to his native country within a sufficient time after reaching majority" and, as such, "he was, and still is, a citizen of this country to all intents and purposes."[64] It considered Hernandez to be a Philippine citizen also on the basis of the principle of jus soli, which the Philippine legislature had enacted and was embodied in the Administrative Code of 1917.[65] Against such position, the State Department held that Hernandez was not a Philippine citizen because his father was not a Spanish subject on 11 April 1899 and accordingly not entitled to Philippine citizenship under U. S. legislation.

In appealing the cases of Dionisio Fernandez and Domingo Batlle Hernandez Chua Chiacoco, the governor-general's office in Manila stressed that the Supreme Court of the Philippines had been applying the principle of jus soli. It recalled the case of Santiago Vañó Uy Tat Tong as an unequivocal application of this principle. In overturning the decision of the customs authorities, the Supreme Court declared that Vañó was a citizen of the Philippines "by virtue of his birth and residence" and it did not matter that he was "of Chinese descent."[66] In view of such clarity in applying jus soli, the governor-general's office admitted that it was

> placed in a somewhat difficult position in view of the conflicting decisions of the State Department and the Supreme Court of the Philippine Islands, the highest tribunal in this country, and as such its decision should at least be respected in order that harmony and coordination will exist among the different branches of this government.[67]

The "liberality with which the doctrine [of jus soli] was enunciated by the court"[68] and emulated by the governor-general's office in the Philippines stood in marked contrast to the views in Washington, D.C. Amid such conflicting opinions, the governor-general's office in Manila reported to the Bureau of Insular Affairs that

> As the matter now stands we are forced to disregard the decision of the Supreme Court of these Islands in so far as citizenship is concerned out of deference to the opinion of the State Department, and as a result of this difference in opinion between the two departments above mentioned many Filipinos, who, according to the several decisions of the Supreme Court are Filipino citizens, will have to be

63) C. W. Franks, Secretary to the Governor-General, to the Chief, Bureau of Insular Affairs, War Department, 15 June 1922, US NARA RG 350, Entry 5, Box 1085, File 26526-28, p. 2.
64) [*ibid.*].
65) [*ibid.*: 2–4].
66) C. W. Franks, Secretary to the Governor-General, to the Chief, Bureau of Insular Affairs, War Department, 21 Mar. 1992, US NARA RG 350, Entry 5, Box 1085, File 26526-26, pp. 2–3.
67) [*ibid.*: 3–4].
68) Solicitor-General to the Bureau of Insular Affairs, Manila, 17 June 1914, p. 14.

denationalized, in accordance with the decision of the State Department.[69)]

In reviewing these cases, the Office of the Judge Advocate General of the War Department arrived at the "conclusion that there is a real and fundamental conflict between the holdings of the State Department and the Philippine Courts," ending with the statement that "The matter appears to be of sufficient importance to call for a re-examination of the entire question."[70)]

At this point the paper trail ends, and we are left with the question: Why did American authorities in the Philippines adopt a liberal interpretation of the law in contrast to the stringency of the metropole? Although immigration authorities and lower courts were not necessarily accommodating of persons arriving from China who claimed Philippine citizenship, the American justices of the Supreme Court, along with their Filipino colleagues in the Bench, exemplified liberality throughout the period of U. S. colonial rule. The case decisions indicate that they were drawing from the "activist" or "reformist" edge of the U. S. Supreme Court, exemplified in its March 1898 decision on Wong Kim Ark's case that diametrically contradicted the prevailing public sentiment and anti-Sinicism that were fuelling the Chinese Exclusion Laws at the time. That decision demonstrated the high court's relative autonomy as a social institution, and that "no matter how extensive congressional and executive power is in the fields of exclusion, deportation, and naturalization, jus soli operates independently and solely by the fact of birth within the jurisdiction of the country" [Glen 2007: 76]. The recency of the Wong Kim Ark decision —— when the United States was in the cusp of taking over the Philippines —— exerted a powerful jurisprudential influence on the justices of the Philippine Supreme Court, its invocation made all the more stark by the parallel exclusion laws that immigrants confronted in both the Philippines and the United States. The force of this jurisprudence moved justices in the Philippines to uphold "the principles of reason and justice" by insisting on the extension of the Fourteenth Amendment to the Philippines as the spirit of the law and thus contradicting the earlier stance of the U. S. Congress and the executive branch, particularly the Bureau of Insular Affairs of the War Department.

That jus soli was applied in large measure to cases involving children of Chinese fathers and Filipina mothers was the result of a statistical probability. Because there were very few Chinese women in the Philippines in the late nineteenth century and in the early part of the twentieth —— they constituted a mere 1.26 per cent of the total Chinese population in the Philippines in 1902 [Alejandrino 2010: 98] —— Chinese men were most likely to marry local women and have children by them. Consequently the cases presented to the Supreme Court that led to the affirmation of jus soli citizenship, starting very clearly in 1912, were overwhelmingly those of children of mixed unions. When the case of Lim Bin, whose parents

69) C. W. Franks, Secretary to the Governor-General, to the Chief, Bureau of Insular Affairs, War Department, 15 June 1922, US NARA RG 350, Entry 5, Box 1085, File 26526-28, p. 5.

70) Memorandum of J. A. Hull, Acting Judge Advocate General, to the Chief of the Bureau of Insular Affairs, p. 4.

were both Chinese, faced the high court in 1917, all that was needed was to call upon precedents.

In the Philippines, moreover, the Supreme Court decisions were highly influential upon the executive branch, particularly the office of the governor-general as well as that of the solicitor-general —— which could be due to the imperatives of maintaining coherence of the colonial state. It could also be that those American authorities in the Philippines were guided by the pragmatics of governance and realized the indispensability of the ethnic Chinese to the economic advancement of the Philippines, as the Spaniards had also realized during their time. As early as 1909 an American living in Iloilo lamented that the failure "to provide any means whereby an alien may become a citizen … is anything but in accord with the political beliefs of the American people and entails a say that business and industry will never forge ahead unless adequately represented in the body of lawmakers." Evidently referring to the ethnic Chinese, he argued for a naturalization law that would allow "nine-tenths of the businessmen, now aliens, [to be] admitted to citizenship."[71] Perhaps, too, personal acquaintances, if not friendships, might have altered the perceptions and views of key American officials in the Philippines, making them see Chinese persons as individuals rather than as depersonalized members of an ethnic category.

Conversely, Filipino migration to the U. S. mainland began to climb in 1920 and Filipinos began to become objects of white American racism [Aguilar 2010: 221–225]. The bureaucracy in Washington, D. C., might not have shared those popular sentiments, but the retrospective application of Spanish law explicitly "in order to avoid opening the door to fraud"[72] was meant to enforce the letter of Section 4 of the Philippine Bill of 1902. This action harked back to the onset of American rule in the Philippines, which treated Filipinos as undeserving of U. S. citizenship while seeing the territory as a potential backdoor for Chinese to enter the U. S., hence the need to apply the U. S. Chinese Exclusion Laws in the Philippines [*ibid.*: 214–216]. Whatever the exact motivations might have been, American authorities in the executive branch of the Philippine government were predisposed to abide by the Philippine Supreme Court's enforcement of the principle of jus soli.

Jus Sanguinis: Of "Blood" and "High Privilege"

The question of citizenship and national belonging began to acquire a distinct Filipino inflection as Filipinos took the helm of government during the Commonwealth period. To prepare for the official end of U. S. rule, a convention was held to draft what became the 1935 Philippine Constitution. If citizenship was not debated in Malolos, it was an important issue in the drafting of the 1935 charter.

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71) "Wanted: Naturalization laws in the Philippines," Arvid E. Gillquist, Iloilo, Panay, Philippine Islands 6 Jan. 1909, US NARA RG 350, Entry 5, Box 628, File 10968-7.

72) Wilbur J. Carr, for the Secretary of State, to Algar E. Carleton, American consul, Amoy, China, Washington, D. C., 5 Nov. 1921, p. 6.

A “second draft” of the citizenship provisions sought to introduce a limited form of jus 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 1936–37: 198]. Evidently patterned after judicial decisions, this proposal was “very vigorously debated” [*ibid*.: 210]. Those who supported jus soli took a cosmopolitan view and stressed that it was a “sound liberal national policy” [*ibid*.] as well as economically beneficial: As Delegate Conrado Benitez[73] emphasized during the debate,

> There may be some who would say that foreigners migrate here and decide to become Filipinos purely because of economic reasons. Why, what is wrong with migration for economic reasons? Gentlemen, if you analyze the history of migration all over the world, from time immemorial, you will see that great nations have attained greatness because of migrations. People who migrate from their native countries and are willing to give up their old citizenship are the ones who are endowed with the valuable traits that we need in this country. [Escareal 1966: 445–446]

Despite the required election of Philippine citizenship once a person was of legal age, the 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” [Aruego 1936–37: 211]. For instance, Delegate Miguel Cuaderno[74] stressed that the “national patrimony” might be lost to those who would exploit this provision:

> a child without a drop of Filipino blood in his veins can, at the age of twenty-one, make himself appear that he selects Filipino citizenship perhaps for economic reasons, perhaps in order that he cannot be covered by the limitations as to the acquisition and enjoyment of national resources. Who knows if behind that idea of adopting local citizenship he is not mentally reserving the citizenship of his blood, his parents? [Escareal 1966: 444]

Thus the constitutional convention raised the specter of fraud, deceit, and thievery on the part of those of foreign parentage who would have been deemed citizens based on this proposition. One’s real political sentiments, it was believed, resided in the “blood,” which, conceived as acting independently, gave one a set of immutable personal as well as political characteristics. Citizenship was deemed “of his [or her] blood,” a view literally evoking jus sanguinis.

The discourse of blood citizenship so dominated the convention that even Delegate Jose Alejandrino, who by this time was probably disillusioned by Japan’s heightened militarism, also

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73）At the time of the constitutional convention, Conrado Benitez from Laguna Province was 46 years old and had served as dean of the College of Liberal Arts of the University of the Philippines (U. P.) and dean of the U. P.’s College of Business Administration; he was also a former editor of *Philippines Herald* [Aruego 1936–37: 27].

74）Miguel Cuaderno from the Province of Rizal was 44 years old; he was a lawyer and a banker, having held the post of vice-president of the Philippine National Bank [*ibid*.: 31].

subscribed to blood citizenship, declaring "yo creo que no merece ser filipino el hombre que no tiene en sus venas una gota de sangre Filipina, no tiene educación filipina, no tiene sentimientos filipinos y que aun en nuestro país no quiere tratar con nosotros" (I believe a man without a drop of Filipino blood in his veins, without Filipino education, with no Filipino sentiments and who does not want to deal with us even if he is in our country does not deserve to be a Filipino) [*ibid*.: 422].

However, a fraction of "Filipino blood" in a mestizo was deemed sufficient to grant a concession. The 1935 Constitution recognized as citizens "those whose mothers are citizens of the Philippines, and, upon reaching the age of majority, elect Philippine citizenship" —— defended by its proponents as "in keeping with the trend of modern constitutions, like those of Spain, the Irish Free State, Poland, and Czechoslovakia, and even the Malolos Constitution" [Aruego 1936–37: 208]. The objections arose from the fear that the "mother's blood" could be overwhelmed, interestingly not by the father's "foreign blood" but by socialization: such children "if reared under the influence and control of their foreign fathers, might not turn out to be devoted and loyal Filipino citizens" [*ibid*.]. Such children, it was also feared, could have conflicting dual political loyalties if de facto they had both the father's and the mother's nationality. The solution was found in the requirement —— not imposed on those with Filipino fathers —— to elect Philippine citizenship at the legal age, before which the child was not regarded a Filipino citizen, having "only an inchoate right to citizenship" [*ibid*.: 209]. With this provision the Supreme Court's earlier favorable decision on Tan Chong —— and by implication all previous cases on the Philippine citizenship of mestizos —— was considered in harmony [SCP 1951: 308]. However, in the convention, the jurisprudence on jus soli was reinterpreted from a jus sanguinis perspective. During the debate on citizenship through the mother, Cuaderno alluded to Roa and other cases and suggested blood as compelling agency, thus erasing the Supreme Court's emphasis on jus soli: "a child, who expresses his intention to retain his citizenship within the time specified by law, should not be denied the cry of his blood to come back to the place of his mother. In one case it was decided that even though the Chinese father was not married to the Philippine mother, their child nevertheless had a right to keep his Philippine citizenship because of *jus sanguinis*" [Escareal 1966: 426].[75)]

Evidently, the theory of citizenship by blood was not followed consistently, given that routes to claim Philippine citizenship were made possible by "fractions of blood" and the constitution's admission to citizenship of "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, in fact, subscribed to an extremely restricted form of jus soli, which was made contingent upon election to public office and only for cases prior to the adoption of the constitution. This odd provision was intended as an "accommodation" of Delegate Fermin G. Caram, a 46-year-old physician who was born in the Philippines of Syrian parents, had never been naturalized, but was elected a member of the provincial board of Iloilo

75) See the case of the brothers Cayetano Lim and Marciano Lim in SCP [1919b].

[*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*.].

Just as jus soli lost favor in the constitution making process, in the executive branch during the Commonwealth period jus sanguinis began to be asserted —— although the judiciary at this time, certainly until 1941 as we have seen in Tan Chong's case, held fast to jus soli. This situation sowed confusion among many ethnic Chinese. Of the individuals with Filipino mothers and non-Filipino fathers who could elect Philippine citizenship upon reaching the requisite age, Jensen [1975: 164] stated that "It is recorded that few have gone to make such a declaration, since the Philippine government by the principle of *jus soli*, took for granted that they were Philippine citizens." We can only speculate that, in the postwar period, many of them (and their children) would discover they were not deemed Filipino citizens after all. In any event, during this interregnum, the Supreme Court (which had always been headed by a Filipino chief justice) was asserting one doctrine, while Filipino politicians and the executive department were advancing another.

For instance, Secretary of Justice Jose Abad Santos formulated a crucial ruling in 1939 that rendered Mariano Sy Jueco, who was born in the Philippines, a noncitizen. The facts in his case paralleled those of earlier cases in which Philippine citizenship was granted, but the justice secretary held a different opinion, asserting —— and echoing the U. S. State Department —— that, because his father was not a Spanish subject when Mariano was born in 1892 in Malabon, he could not be a Philippine citizen. "Nor did Mariano's birth in these Islands make him a citizen of the Philippines." Tellingly, the ruling concluded with the statement: "considering that citizenship being a high privilege, doubts concerning a grant of citizenship are generally resolved in favor of the government and against the claimant."[76] The justice secretary, it seemed, had conveniently forgotten the rulings of the Supreme Court. In a tone that was worlds apart from the court's ruling in Roa's case, Abad Santos sidestepped the humanity of the person involved by invoking citizenship as a "high privilege."

The tide of legal opinion was undergoing a sea change, which would culminate in 1947 when the Supreme Court of the independent Philippines closed Tan Chong's case. First it argued against the court's decision in the case of Roa, stating:

> If all the native inhabitants residing in the Philippines on the 11th day of April 1899, regardless of their alien parentage, are citizens thereof, the amendatory Act of Congress of 23 March 1912 empowering the Philippine Legislature to provide by legislation for the acquisition of Filipino citizenship by those natives excluded from such citizenship by the original section 4 of the Philippine Bill, would be

76）"Santos ruling on citizenship is held vital: Secretary says real estate man born here of Chinese father and Filipino mother is not a Filipino," *Tribune*, 8 Nov. 1939, US NARA RG 350, Entry 5, Box 586, File 5507-A-1.

> meaningless. [SCP 1954: 256]

The court then declaimed:

> While birth is an important element of citizenship, it alone does not make a person a citizen of the country of his birth. Youth spent in the country; intimate and endearing association with the citizens among whom he lives; knowledge and pride of the country's past; belief in the greatness and security of its institutions, in the loftiness of its ideals, and in the ability of the country's government to protect him, his children, and his earthly possessions against perils from within and from without; and his readiness to defend the country against such perils, are some of the important elements that would make a person living in a country its citizen. Citizenship is a political status. The citizen must be proud of his citizenship. He should treasure and cherish it. [*ibid.*]

Despite these unquantifiable and hard-to-ascertain qualities ("pride of the country's past; belief in the greatness and security of its institutions . . ."), the court assumed that the "natural-born" would possess them inherently —— a highly problematic assumption. At the same time, the ruling implied that "youth spent in the country" by those whose parents were not Filipino citizens seemed useless in instilling civic virtues. Thus, the myth of blood propelled the Philippine political system as it shifted to jus sanguinis. In 2009, with an attitude bred by decades of implementing jus sanguinis as if it were absolute truth, the Supreme Court no longer needed to mince words as in 1947 and so declared flatly that what transpired in the past was a "mistaken application of *jus soli*" [De Leon 2009: 2].

The sentiment that predominated in the 1935 Constitution ultimately bore fruit in 1947 in the Supreme Court's landmark decision on Tan Chong's case. Already foreshadowed in the constitutional convention debates, the Retail Trade Nationalization Act was passed into law in 1954, some seven years after Tan Chong. Subsequent generations of Philippine-born persons of Chinese, South Asian, and other foreign heritage would not be considered Filipino citizens, unless they underwent a very costly process of naturalization. At the 1972 Constitutional Convention attempts to reintroduce jus soli, even of a "qualified" sort, came to naught. The citizenship committee of that convention, in justifying why majority of the committee members, as its report stated, "were for retaining the nationalistic features of the present provision on citizenship," extolled the idea of citizenship using the very same words of the Supreme Court reproduced above, albeit without attribution [Ang 1974: 197–198]. The committee's report also raised anew the specter of deception, saying citizenship "should be zealously guarded against aliens who may want to take Philippine citizenship for purely economic advantage and convenience" [*ibid.*: 198]. Ironically it would take the authoritarian regime of Ferdinand Marcos —— in view of the opening of diplomatic ties with the People's Republic of China —— to institute the "mass naturalization" of aliens in the Philippines in 1975,[77] opening the gate of

77) Marcos's 1975 edict has borne fruit in the Administrative Naturalization Law of 2000 (RA 9139).↗

citizenship to those persons that democratic processes had shunted.

Res Adjudicata as Saving Grace

Without engaging in profound casuistry, the Supreme Court jettisoned the principle of jus soli in 1947. The saving grace of that decision was its clear statement, following the doctrine of *res adjudicata*, that those on whom Filipino citizenship had been conferred judicially would not be divested and deprived of that citizenship [SCP 1954: 258]. Unstated was the derivative citizenship of their children, who thus would be treated as Filipino citizens and as natural-born Filipinos had they been born after the judicial decision. Tan Chong and others in similar position might have been barred from entering the gate of citizenship, but those who had passed through the gate, such as Go, Muñoz, Roa, Vañó, Lim, and others like them, were now irrevocably part of the fold.

Evidently the myth of blood is not unbendable. As long as legal hurdles are overcome, or a legal concession found (even through naturalization), and a person obtains Filipino citizenship, the law is blind to one's past life. It is as if one is "born again" as a Filipino: the foreign blood undergoes transubstantiation and becomes Filipino blood, with all the putative traits believed as its natural concomitants. Children inherit this blood and its accompanying citizenship. This point helps to illumine the nature of laws on citizenship: these are far from absolute but rather subject to historic negotiations. This process occurs, as the history presented in this article demonstrates, even when the legal statutes remain the same, as it did in the course of American rule of the Philippines. The interpretation of the law, for sure, does not occur in a historical vacuum. The context shapes the sentiments that are brought to bear in deciding which laws apply and in rendering an interpretation of those laws.

At the same time, a pattern is discernible, at least for the period covered in this discussion. Advocates of the principle of jus soli take the spirit of the law and give it a liberal interpretation, a stance accompanied by political inclusiveness and sensitivity to the humanity of the persons concerned. In contrast, believing in the determinative power of blood to dictate political beliefs and practices, opponents of jus soli and exponents of jus sanguinis conjure the fear of economic usurpation that is allayed by putting the state above the individual and privileging an abstract ideal of citizenship over the mundane reality of personal lives. Blood leans to the letter, soil evokes the spirit of the law.

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↘ Rather than requiring a court case, an application for naturalization can be lodged at the Office of the Solicitor General.

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