

NOTE:

INVENTING ALLEGIANCE:
UNDERSTANDING THE CITIZENSHIP REQUIREMENT
FOR ELECTIVE PUBLIC OFFICE*

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*Iniibig ko ang Pilipinas.
Ito ang aking lupang sinilangan.
Ito ang tabanan ng aking lahi.
Ako'y kanyang kinukupkop at tinutulungan
upang maging malakas, maligaya, at kapakipakinabang.
Bilang ganti ay . . . paglilingkuran ko ang aking bayan
nang walang pag-iimbot at nang buong katapatan.
Sisikapin kong maging isang tunay na Pilipino
sa isip, sa salita, at sa gawa.*

Allegiance is an abstract metaphysical ideal that, like other metaphysical ideals, is difficult to define without resorting to language that is flowery and rhetorical.¹ A close synonym thereto would be the term *loyalty*: It is perceived to be an interior state of man, whereby he commits himself to something, and, by virtue of this, remains faithful to that to which he is committed, performing the duties and obligations that naturally flow from such an affinity. As an internal attribute, and as the product of a rational and freely made choice, the allegiance of a human being cannot be exacted by force or coercion. One might be able to demand from a human being the external displays of loyalty; one might be able to compel an individual to exhibit signs of fealty or affinity. But such exterior trappings are merely the docile signs of orthodox compliance with objective, and artificially imposed, standards.

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¹ See e.g., ALAN BARTH, *THE LOYALTY OF FREE MEN* 3 (1951), in which he claimed: "[L]oyalty may take as many forms as religious worship . . . [L]ike love, it must be freely given . . . Members of a family are loyal to one another . . . as a result of shared experiences, community of interests, and long mutual dependence. A great aggregation of individuals and families becomes and remains a nation, not through geographical propinquity alone, but rather through much this same process of shared experiences — which is to say, a common history — and, above all, through common acceptance of certain fundamental values. The national loyalty of free men is not so much to their government as to the purposes for which their government was created."

Genuine allegiance, that flows from an interior fundamental conviction, can never be gained by external compulsion.²

The allegiance of individuals to the political communities of which they are members is of fundamental concern to the countries concerned. A state has an overriding interest in ensuring that its citizens are loyal to it; the national security of the state may be threatened when citizens commit actions that are demonstrative of a lack of loyalty. It is for this reason that certain overt acts are punishable as treason, which, by definition, is the "violation by a subject of his allegiance to his sovereign or to the supreme authority of the State."³

By its very nature as an internal attribute of man, allegiance is difficult to perceive or adequately gauge; external attributes are therefore analyzed in the belief that the interiority of a human being might thereby be discerned. One such external sign of a person's allegiance is his citizenship — his personal and more or less permanent membership within a political community.⁴ Citizenship is used not only as a basis for determining a person's allegiance, but for demanding the same: A citizen of a particular state is deemed to have allied himself with that state, which, by the same token, is perceived to be able to claim allegiance from its citizens. As a general rule, the allegiance of citizens is rarely questioned, unless the citizen performs acts that are violative of the minimum standards of behavior that one would expect. In demanding allegiance from its citizens, a state is concerned with the external displays thereof; interior man is beyond both the scrutinizing gaze and the coercive power of the state.

Confusion arises, though, due to a tendency to overly equate the external attribute of citizenship with the interior attribute of allegiance: That is, to automatically assume that a citizen *by very definition* must be loyal. To say that a citizen *ought* to be loyal is not the same as saying that a citizen *is indeed* loyal to the state. But precisely because the hearts of human beings cannot be examined, citizenship is used as the barest

² This theory has been proposed even by the Supreme Court. See, e.g., *Parado v. Republic*, 86 Phil. 340, 343 (1950), in which the Court declared: "Loyalty, fealty, or allegiance of an individual is revealed by deeds performed and words uttered in the community where he lives and moves around. That feeling is hard to conceal. It cannot be controlled by lawes, nay, even by force."

³ *United States v. Abad*, 1 Phil. 437, 440 (1902).

⁴ JOAQUIN BERNAS, *THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY* 558 (1996).

minimum to determine whether or not some modicum of allegiance exists at all.

In imposing a citizenship requirement on its elective public officers, the Republic of the Philippines is not only making a demand of allegiance from its citizens, but appears to be making two conclusions. First of these is the belief that, by virtue of mere citizenship, an individual is automatically loyal to it. The second conclusion is that non-citizens cannot possibly possess the requisite allegiance that is demanded from elective public officials.

This Note examines the citizenship requirement imposed on elective public officers, in light of the two conclusions mentioned above. It argues that mere citizenship, understood in the ordinary sense, cannot be used as a basis for determining a person's loyalty to a state; such can only be, at best, a legal fiction. It further proposes a different standard for determining actual allegiance, drawing from Supreme Court decisions in order to effectively formulate a revised set of criteria.

I. THE CITIZENSHIP REQUIREMENT

A. Citizenship defined

It is difficult to come up with a definition of citizenship that captures all the nuances and various meanings of the term. Pared down to its essentials, citizenship seems to denote nothing more than a legal relationship between two entities — an individual, and the political community to which he belongs. The individual, as a member of a political community, relinquishes certain freedoms; in return for surrendering these freedoms, and for accepting certain duties to the political community, a person is entitled to exercise a vast range of civil and political rights.⁵ For accepting a duty to obey the state, the citizen is incorporated as an indivisible part thereof, and receives protection and security therefrom.⁶

Given these essential requirements, the concept of citizenship denotes nothing more than a vertical link between the citizen and the state,⁷ whereby

⁵ *Id.*

⁶ David Wishart, *Allegiance and Citizenship as Concepts in Constitutional Law*, 15 MELB. U. L. REV. 662, 667 (1986). Wishart here is interpreting Rousseau's social contract theory.

⁷ Aaron Edward et. al., Note, *The Functionality of Citizenship*, 110 HARV. L. REV. 1814, 1815 (1997).

the individual enjoys rights within the state's territory, subject to the imposition upon him of certain obligations. Notwithstanding the textbook definition of a state as being comprised of a people, a definite territory, a government, and sovereignty,⁸ the state as contemplated by this vertical relationship is really used in its ordinary sense, as being the political organization which is the basis for civil government.⁹ Within its territorial limits, each state exercises supreme and independent authority. An aspect of this authority is the right to decide who may be considered its citizens,¹⁰ encompassing the determination of the various modes of acquiring citizenship, and the elaboration of the rights that a citizen may exercise within the territory of that state. One advantage of citizenship is that a state tends to favor its citizens, according them a greater range of freedoms than are accorded to non-citizens.

The rights that a citizen exercises due to the vertical relationship between him and his state may be loosely termed the "functional dimension" of citizenship.¹¹ Clearly, the vertical link between a citizen and the state is descriptive of an attachment within a highly limited sphere. Citizenship binds individuals to a political entity, but does not necessarily bind that same individual to other citizens who also possess the same vertical link to that state. Stated differently, citizenship as the vertical link to a state is important insofar as it is only by virtue thereof that an individual can exercise particular rights, but it is not descriptive of a sense of *belonging* to a community of fellow citizens.

The Constitution provides that one may acquire a vertical link of affinity with the Philippines either by birth, or by naturalization.¹² In examining this vertical link, the Supreme Court has claimed that "the main

⁸ ISAGANI CRUZ, *PHILIPPINE POLITICAL LAW* 14 (1996).

⁹ Wishart, *supra* note 6, at 665.

¹⁰ Edgar S. Asuncion, Note, *A Critique on Dual Nationality as State Policy in the Philippines*, 55 PHIL. L. J. 488, 488 (1980).

¹¹ Edward, *supra* note 7, at 1814.

¹² The Constitution has the following pronouncements to make about Philippine citizenship:

CONST. art. IV, sec. 1. The following are citizens of the Philippines: (1) Those who are citizens of the Philippines at the time of the adoption of this Constitution; (2) Those whose fathers or mothers are citizens of the Philippines; (3) Those born before January 17, 1983, of Filipino mothers, who elect Philippine citizenship upon reaching the age of majority; and (4) Those who are naturalized in accordance with law.

Art. IV, sec. 2. Natural-born citizens are those who are citizens of the Philippines from birth without having to perform any act to acquire or perfect their Philippine citizenship. Those who elect Philippine citizenship in accordance with paragraph (3), section 1 hereof shall be deemed natural-born citizens.

Art. IV, sec. 3. Philippine citizenship may be lost or reacquired in the manner provided by law.

integrate element of [citizenship] is allegiance.”¹³ The concept of allegiance becomes especially important when instances of multiple citizenship arise. Generally, the allegiance of a citizen is not subject to doubt because the vertical link between a person and his state is perceived to imply automatic allegiance. However, situations do exist where individuals are citizens of more than one state,¹⁴ each of which demands the unequivocal manifestation of allegiance. Whereas the authority of a state to determine who may or may not be its citizens cannot be questioned, such authority does not extend to the application of its laws to reach out and claim the *exclusive* allegiance of whomever it pleases, and to declare that that person is not the citizen of another state.¹⁵ Because one state’s laws cannot control the law of other countries on citizenship, the application by different states of conflicting national laws over the same human being may lead to the interesting situation of multiple citizenship, by virtue of which the same individual has substantial bonds to two different states.¹⁶ Such possession of multiple citizenship has been condemned by many states because it is antithetical to the theory that a citizen should possess only one bond of allegiance. Some remedies that have been resorted to in order to solve this perceived problem include denationalization, that is, the revocation by a state of citizenship previously conferred on an individual;¹⁷ the explicit prohibition of dual citizenship in their domestic laws;¹⁸ and the application, by international tribunals, of the so-called “effective nationality” test,¹⁹ which is the resolution of cases of multiple nationality by examining the citizenship that a person exercises in actual fact, and not merely the citizenship that he possesses according to law.²⁰

¹³ Tan Chong v. Secretary of Labor, 79 Phil 249, 257 (1947).

¹⁴ In general, there are three different theories regarding the acquisition of citizenship: (1) *Jus sanguinis*, or citizenship “by blood,” which we follow in the Philippines, in which the individual automatically acquires the citizenship of one or both his parents; (2) *jus soli*, which refers to citizenship “by birth,” in which the individual acquires the nationality of the state in which he happens to have been born; and (3) citizenship by virtue of naturalization, which, strictly speaking, is the acquisition of citizenship by judicial process, in accordance with established guidelines set out by law.

¹⁵ Patricia McGarvey-Rosendahl, Note, *A New Approach to Dual Nationality*, 8 HOUST. J. INT’L L. 305, 309 (1986).

¹⁶ *Id.* at 310.

¹⁷ *Id.* at 312.

¹⁸ Such a solution, however, does not prevent another state from conferring a second citizenship upon an individual through its own domestic laws. *Id.* at 314. CONST. art. IV, sec. 5 provides that “Dual allegiance of citizens is inimical to the national interest and shall be dealt with by law.” This, however, speaks of dual *allegiance* and not of dual *citizenship*. Unless the two are automatically equated, there may perhaps be a *lacuna* in Philippine law.

¹⁹ PAUL WEIS, NATIONALITY AND STATELESSNESS IN INTERNATIONAL LAW 174 (1956).

²⁰ In applying a person’s “effective nationality” as a basis for determining citizenship, international tribunals have looked at a wide variety of factors, such as the location of the individual’s family; the primary location of his

B. The citizenship requirement for elective public officers

The citizenship requirement imposed on those who wish to hold public office must be situated within this broad conceptual framework of the nature of citizenship. In the Philippines, only Filipino citizens may hold public office;²¹ thus, the exercise of this right is a clear manifestation of citizenship's functional dimension. The requirement of citizenship flows from the general theory that a public office is a public trust,²² and that the voting populace can only entrust the interests of the country to fellow citizens, with whom they presumably share some bonds of kinship. Thus, the basic policy reason for the citizenship requirement is that in a republican form of government — like that of the Philippines — the citizens merely delegate the exercise of sovereignty to government officials.²³ These delegated powers, which are to be exercised in behalf of all citizens,²⁴ presumably must be in the hands only of those whose sincerity and loyalty to the State are beyond suspicion.

According to the Constitution, the President,²⁵ Vice-President,²⁶ Senators,²⁷ and Members of the House of Representatives²⁸ must all be natural-born citizens of the Philippines. The Local Government Code also provides a citizenship requirement for elective officials within local government units.²⁹

business or profession; the person's domicile; the person's exercise of political rights; et cetera. Asuncion, *supra* note 10, at 495.

²¹ There is no express prohibition which states that only Filipinos may hold public office. However, in enumerating the qualifications and disqualifications for particular public positions, the Local Government Code and the Constitution make Filipino citizenship an express requirement.

²² CONST. art. XI, sec. 1.

²³ PACIFICO AGABIN, *PUBLIC ACCOUNTABILITY: A HANDBOOK 2* (1992).

²⁴ HECTOR DE LEON, *THE LAW ON PUBLIC OFFICERS AND ELECTION LAW 2* (3d. 1997).

²⁵ CONST. art. VII, sec. 2.

²⁶ CONST. art. VII, sec. 3.

²⁷ CONST. art. VI, sec. 3.

²⁸ CONST. art. VI, sec. 6.

²⁹ Rep. Act No. 7160 (1990), sec. 39, provides that an elective local official must be citizen of the Philippines; a registered voter in the barangay, municipality, city, or province, or in the case of a member of the *sangguniang panlalawigan*, *sangguniang panlungsod*, or *sangguniang bayan*, the district where he intends to be elected; a resident therein for at least one year immediately preceding the day of the election. These elective officials, according to art. 71 of the Rules and Regulations Implementing the Local Government Code of 1991, are the following: the governor, vice governor, and members of the *sangguniang panlalawigan* of provinces; the mayor, vice mayor, and members of the *sangguniang panlungsod* of cities; the mayor, vice mayor, and members of the *sangguniang bayan* of municipalities; and the *pumong barangay*, members of the *sangguniang barangay*; and members of the *sangguniang kabataan* of barangays. Rep. Act No. 7160, sec. 40 also enumerates disqualifications for candidates running for any elective local position. Two of those are relevant for the purposes of this paper: par. (c), which disqualifies those convicted by final judgment for violating the oath of allegiance to the Republic; and par. (d), which disqualifies those with dual citizenship.

Beyond the requirement of citizenship at the inception of their term, the Constitution also suggests that these individuals cannot change their citizenship at any time while they are in office, by providing that "any public officer . . . who seeks to change his citizenship . . . during his tenure shall be dealt with by law."³⁰ Thus, a stricter standard is imposed upon public officials vis-à-vis their Filipino citizenship; public officers are not free to renounce their citizenship at will. The avowed purpose of such a requirement, according to the Supreme Court, is to "ensure that no alien, i.e., no person owing allegiance to another nation, shall govern our people and our country or a unit of territory thereof."³¹ Citizenship thus purports to be an objective standard in the determination of allegiance.

In construing this citizenship requirement, the Supreme Court has apparently come to the conclusion not merely that allegiance is an indispensable requirement as regards citizenship, but that the two are basically equivalent. This is noteworthy because, whereas citizenship purports to be an objective requirement, in the sense that the law clearly defines who is or who is not a citizen of the Philippines, the determination of a person's allegiance is most certainly not objective. The juxtaposition of an objective standard with one that is capable of manifold interpretation has resulted in the Court's inconsistent application of citizenship laws as regards elective public officials, taking into account other external standards.

The story of Juan Gallanosa Frivaldo, declared by the Supreme Court to be rightful Governor of Sorsogon in 1996, is a case in point. Originally a natural-born citizen of the Philippines, Frivaldo, purportedly a political enemy of President Marcos, claimed to have acquired American citizenship in order — and only — to escape political persecution. In 1989, the Court declared Frivaldo ineligible to hold public office due to his lack of Philippine citizenship, claiming that the renunciation thereof, regardless of the reasons, required valid expatriation under Philippine laws.³² Frivaldo's positive act of filing a certificate of candidacy was not considered a valid repatriation, notwithstanding the fact that Frivaldo had thereby lost his American citizenship. According to the Court, "[i]f a person seeks to serve in the Republic of the Philippines, he must owe his total loyalty to this country only,

³⁰ CONST. art XI, sec. 18.

³¹ *Frivaldo v. COMELEC*, G.R. No. 120295, 28 June 1996, 257 SCRA 727, 748.

³² *Frivaldo v. COMELEC*, G.R. No. 87193, 23 June 1989, 174 SCRA 245.

abjuring and renouncing all fealty and fidelity to any other state.”³³ Likening Philippine citizenship to a “pearl of great price,” the Court further declared that:

[O]nce it is surrendered and renounced, the gift is gone and cannot be lightly restored. This country of ours, for all its difficulties and limitations, is like a jealous and possessive mother. Once rejected, it is not quick to welcome back with eager arms its prodigal if repentant children. The returning renegade must show, by an express and unequivocal act, the renewal of his loyalty and love.³⁴

Apparently such a “renewal of loyalty and love” was demonstrated by Frivaldo in 1999, when he was repatriated under Presidential Decree No. 645 and took his oath of allegiance to the Philippines a scant six hours before the Provincial Board of Canvassers of Sorsogon proclaimed Raul Lee, Frivaldo’s losing opponent, the Governor of Sorsogon.³⁵ In overruling the Board of Canvassers, the Supreme Court ruled that Frivaldo possessed all the requisites for holding elective public office due to his valid repatriation.

What is interesting about Frivaldo’s repatriation is its temporal relationship with regard to the filing of the candidacy and the election itself. At both these times, applying the Court’s earlier ruling, Frivaldo was not yet a citizen of the Philippines. In the second *Frivaldo* case, however, the Court strictly construed section 39 of the Local Government Code, which does not specify any particular time or date when the candidate must possess citizenship. The Court took the citizenship requirement to mean that such a qualification was only necessary when an elective public official actually began his term, and not at the time of election or at the time of the filing of the certificate of candidacy. The Court further simply accepted the fact of Frivaldo’s having voted in four elections, notwithstanding the fact that citizenship is also required for registered voters. Again strictly construing the Local Government Code, the Court held that the requirement for a public official’s eligibility is simply that he be a “registered voter,” glossing over as unimportant the little detail that Frivaldo’s valid registration as such may have been open to questioning.

Perhaps of greater value in understanding the shift in ruling on Frivaldo’s case is the Court’s appreciation of Frivaldo’s overt acts that

³³ *Frivaldo v. COMELEC*, G.R. No. 87193, 23 June 1989, 174 SCRA 245, 255.

³⁴ *Frivaldo v. COMELEC*, G.R. No. 87193, 23 June 1989, 174 SCRA 245, 255-56.

³⁵ *Frivaldo v. COMELEC*, G.R. No. 120295, 28 June 1996, 257 SCRA 727.

demonstrated his allegiance. *Dicta* in the second *Frivaldo* case reveal that the Court looked with approval on the fact of Frivaldo's manifest loyalty to the Philippines:

In the case of Frivaldo, he was undoubtedly a natural-born citizen who openly and faithfully served his country and his province prior to his naturalization in the United States — a naturalization he insists was made necessary only to escape the iron clutches of a dictatorship he abhorred and could not in conscience embrace — and who, after the fall of the dictator and the re-establishment of democratic space, wasted no time in returning to his country of birth to offer once more his talent and services to his people.³⁶

Besides these overt displays of allegiance, the Court pointed to the overwhelming majority by which Frivaldo was elected in three successive elections, apparently as a sign that the citizens of Sorsogon had, indeed, accepted him as one of their own, and felt the selfsame affinity toward him that his overt actions seemed to manifest toward them.

Such overt signs of allegiance were also examined by the Court in the 1991 case of *Co v. Electoral Tribunal*,³⁷ in which the Court declared that Jose Ong Jr. was a natural-born Filipino citizen. Said the Court:

[Ong] was born in an outlying rural town of Samar where there are no alien enclaves and no racial distinctions. [He] has lived the life of a Filipino since birth. His father applied for naturalization when the child was still a small boy. He is a Roman Catholic. He has worked for a sensitive government agency. His profession requires citizenship for taking the examinations and getting a license. He has participated in political exercises as a Filipino and has always considered himself a Filipino citizen. There is nothing in the records to show that he does not embrace Philippine customs and values, nothing to indicate any tinge of alien-ness, no acts to show that this country is not his natural homeland. The mass of voters of Northern Samar are fully aware of Mr. Ong's parentage. They should know him better than any member of this Court will ever know him. They voted by overwhelming numbers to have him represent them in Congress. Because of his acts since childhood, they have considered him as a Filipino . . . For those already Filipinos when the time to elect came up, there are acts of deliberate choice which cannot be less binding [than the filing of a sworn statement or a formal declaration to elect Filipino

³⁶ *Frivaldo v. COMELEC*, G.R. No. 120295, 28 June 1996, 257 SCRA 727, 747.

³⁷ G.R. No. 92191-92, 30 July 1991, 199 SCRA 696.

citizenship]. Entering a profession open only to Filipinos, serving in public office where citizenship is a qualification, voting during election time, running for public office, and other categorical acts of similar nature are themselves formal manifestations of choice for these persons.³⁸

Apparently, therefore, at least insofar as Mr. Co was concerned, his outward display of allegiance was sufficient to demonstrate the fact that he was a Filipino. Throughout the course of his life, he had already proven his allegiance not only to the Republic of the Philippines, but to the culture and way of life of the Filipino people.

The Court's policy as regards an individual's exclusive debt of allegiance to the Republic of the Philippines is another area wherein much ambiguity arises. Whereas the Court has stated that a person who seeks Filipino citizenship must renounce "absolutely and forever all allegiance and fidelity" to any other State, because, otherwise, he would have "two nationalities and owe allegiance to two (2) distinct sovereignties, which our laws do not permit,"³⁹ the Court has also said that the Philippines is not concerned with whether or not a person is also a citizen of another state, for as long as our national laws consider him a Filipino. In *Aznar v. COMELEC*,⁴⁰ for example, the Court stated that whether or not a person may be considered a citizen of other countries under their national laws is not truly the concern of the Philippines. For so long as the person does not expressly state that he has taken an oath of allegiance to another state, he is still considered a Filipino citizen. Hence, Lito Osmeña was qualified to be Provincial Governor of Cebu, notwithstanding his acquisition of two Certificates of Alien Registration as an American citizen. Possession of such certificates was not construed as an express renunciation of Philippine citizenship. Said the Court:

[c]onsidering the fact that admittedly Osmeña was both a Filipino and an American, the mere fact that he has a Certificate stating he is an American does not mean that he is not still a Filipino. Thus, by way of analogy, if a person who has two brothers named Jose and Mario states or certifies that he as a brother named Jose, this does not mean that he does not have a brother named Mario; or if a person [who] is enrolled as student simultaneously in two universities, namely University X and University Y, presents a Certification that he is a student of X, this does not necessarily mean that he is not still a student of University Y. In the case of Osmeña,

³⁸ Co v. Electoral Tribunal. G.R. No. 92191-92, 30 July 1991, 199 SCRA 692, 708.

³⁹ Oh Hek How v. Republic, G.R. No. L-27429, 27 August 1969, 29 SCRA 94, 98.

⁴⁰ G.R. No. 83820, 25 May 1990, 195 SCRA 703.

the Certification that he is an American does not mean that he is not still a Filipino, possessed as he is, of both nationalities or citizenships. Indeed, there is no express renunciation here of Philippine citizenship; truth to tell, there is even no implied renunciation of said citizenship. When We consider that the renunciation needed to lose Philippine citizenship must be "express," it stands to reason that there can be no such loss of Philippine citizenship when there is no renunciation, either "express" or "implied."⁴¹

Such a characterization of the non-exclusivity of citizenship, and candid and unequivocal acceptance thereof, seems to go against the Court's previous assertions on this matter. For example, in *Labo v. Commission on Elections*,⁴² decided just a year earlier, the Court emphatically declared that Labo had lost his Filipino citizenship by virtue of his marriage to a Australian citizen and his oath of allegiance to Australia, even if his marriage was subsequently declared void. The Court was surely quibbling when it did not characterize Osmeña's acquisition of Certificates of Alien Registration as a positive act on his part, analogous to Labo's, which would serve, as well, as a renunciation of his citizenship. Apparently, Osmeña's other signs of allegiance — the fact that he was married to a Filipino citizen; the fact that he was the holder of a valid and subsisting Filipino passport; the fact that he had been a continuous resident of the Philippines since birth and had not gone out of the country for more than six months since 1965⁴³ — were enough to tip the scales in his favor.

Another interesting case in which the Court looked at overt acts manifesting allegiance is *Caasi v. Court of Appeals*,⁴⁴ in which the Court held that Merito Miguel was ineligible to run for mayor, in essence because he was perceived to have renounced his allegiance to the Philippines. This time, Miguel's citizenship was not an issue; what was doubtful was whether or not he had "cast his lot [with the Philippines] 'without any mental reservation or purpose of evasion.'"⁴⁵ Miguel possessed a green card that identified him as a resident alien of the United States. Notwithstanding Miguel's assertion that he needed periodic medical examinations in the U.S., and that he had obtained his immigrant status only to facilitate his travels thereto, the Court ruled that Miguel's green card — which entitled to live permanently in the United States

⁴¹ Aznar v. COMELEC, G.R. No. 83820, 25 May 1990, 185 SCRA 703, 711.

⁴² Labo v. COMELEC, G.R. No. 86564, 1 August 1989, 176 SCRA 1.

⁴³ Aznar v. COMELEC, G.R. No. 83820, 25 May 1990, 185 SCRA 703, 711.

⁴⁴ Caasi v. COMELEC, G.R. Nos. 88831 and 84508, 8 November 1990, 191 SCRA 229.

⁴⁵ Caasi v. COMELEC, G.R. Nos. 88831 and 84508, 8 November 1990, 191 SCRA 229.

— was *prima facie* evidence that he was no longer a resident of the Philippines, and, by implication, had renounced all bonds of allegiance to the State of his birth. The Court held that as an avowed resident alien of the United States, Miguel owed temporary and local allegiance thereto, and as such was disqualified to run for any elective office, unless he had waived his green card by positive acts. Merely filing a certificate of candidacy did not of itself indicate a desire to sever his ties with the United States. “The waiver of his green card,” said the Court, “should be manifested by some act or acts independent of and done prior to filing his candidacy for elective office in this country.”⁴⁶ As regards the specific acts that it would have required from Miguel, the Court was silent. Apparently, insofar as the Court was concerned, Miguel’s allegiance was more important than mere citizenship.

II. ASSESSING THE CITIZENSHIP REQUIREMENT

It seems, therefore, that in imposing a citizenship requirement on elective public officers, what the State really has an interest in is not citizenship *per se*, that is, not *mere* citizenship, but an individual’s *allegiance* which the State perceives to flow from such citizenship. It is allegiance, and not citizenship, that the Court has consistently concerned itself with in resolving election cases in which a candidate’s qualifications for office are in issue.

Philippine laws as regards the citizenship requirement vis-à-vis the concept of allegiance has divided the world’s population into three broad categories, who may or may not be loyal to the Republic of the Philippines. Bottom most in the hierarchy are those who are not Filipino citizens at all. If within the territorial boundaries of the Philippines, the State may expect temporary allegiance from them; but otherwise, they are perceived to have no allegiance to the Philippines whatsoever. A notch above aliens are naturalized citizens, who have voluntarily chosen Filipino citizenship by virtue of the performance of positive acts in accordance with law. These individuals may hold *some* elective public positions, but only within local government units. At the top of the heap are natural-born citizens of the Philippines, for whom the entire range of options is available. By virtue of their birth as Filipinos, the degree and quality of their allegiance to the State is deemed beyond dispute; only they, therefore, possess the requisite bond of loyalty that may entitle them to aspire to the highest elective public office in the land.

⁴⁶Caasi v. COMELEC, G.R. Nos. 88831 and 84508, 8 November 1990, 191 SCRA 229.

Yet is it indeed the case that the hierarchy outlined above is a valid interpretation of events, such that it makes sense to automatically arrive at these conclusions? Consider the hypothetical case of Person A, born in the United States of Filipino parents. Because Filipino citizenship follows the rule of *jus sanguinis*, in the eyes of Philippine law, Person A would be considered a citizen of the Philippines, even if he were entirely raised and educated in the Philippines, spoke not a word of Filipino, and failed to demonstrate his loyalty to the Philippines by virtue of any outward display whatsoever. Just before his thirtieth birthday, Person A comes to the Philippines and establishes his domicile within its national territory, but continues to spend much of his time in the United States. Ten years later, Person A would be qualified to run for President, even if he shares few or none of the dreams and aspirations of Philippine-bred Filipino citizens, and Philippine cultural idiosyncrasies are beyond his comprehension.

Now consider the case of Person B, born in Quezon City of Chinese immigrants, who spends his entire lifetime immersed in Filipino culture and surrounded by Filipinos. He considers himself a Filipino, as do all his peers; in basketball games between China and the Philippines, he cheers for the Filipino team. Yet because he is not a Filipino citizen, Person B would not even be eligible to run for Mayor of Quezon City. If upon reaching the age of twenty-one, Person B decides to become a naturalized Filipino citizen, he must conform to a host of requirements. He must, for instance, be of good moral character; he must believe in the principles underlying the Philippine Constitution; he must be able to speak and write at least one of the principal Philippine languages; and so on.⁴⁷ Assuming he meets all these requirements, he can then aspire to be Mayor of Quezon City, or hold any other elective position in local government. One would think that, having voluntarily chosen to become a Filipino citizen, his allegiance to the Philippines is not subject to questioning; and yet the current state of Philippine laws still suggests an ambiguous area with regard to the loyalty that he possesses. Hence, to the position of President, he may never aspire.

The disparity in the situations of these two fictitious individuals, in relation to the range of rights that they can validly exercise within the Philippines, suggests the inadequacy of the threefold hierarchy presented above.

⁴⁷ JOVITO SALONGA, PRIVATE INTERNATIONAL LAW, 181-84 (1995). See also Act No. 473, as amended by Act No. 535 and Rep. Act No. 530.

It is merely by legal fiction that a citizen is perceived to possess allegiance to the state, and that a natural-born citizen is perceived to possess greater allegiance than one who is merely naturalized. To be a citizen of the Philippines, one need not feel like a Filipino; and one need not be a citizen of the Philippines in order to feel affinity toward Filipino culture, longings, beliefs, and traditions.

Quite obviously, therefore, mere citizenship is an inadequate gauge to truly determine a person's allegiance. Whereas he may be vertically linked to the state and thereby exercise functional citizenship, he may not necessarily feel any interior binds of loyalty to the state that claims him as a member. Perhaps in imposing a requirement of allegiance on elective public officers, this allegiance should be judged not merely by the standard of citizenship; a scrutinizing gaze ought also to be turned toward a person's sense of *belonging* to a socio-cultural group. Political science defines this sort of membership as *nationality*.

Whereas the terms *citizenship* and *nationality* are often used interchangeably,⁴⁸ it is generally conceded that the two are far from synonymous. Citizenship speaks only of a vertical relationship between the individual and his state; nationality, on the other hand, suggests a horizontal link that binds individuals together via a sense of shared cultural identity.⁴⁹ Nationality suggests the development of a community of people with common loyalties, allegiance, and national character.⁵⁰ Thus, whereas citizenship as defined above refers to the state's applications of objective guidelines, nationality possesses an emotional content that citizenship does not. Mere citizenship does not reflect nationality, and vice versa: One may be a citizen of a country with whose people one feels no sense of community.

This confusion as regards the citizenship requirement for elective public officers has come about as a result of the injudicious substitution of the terms *nationality* and *citizenship*. Allegiance, speaking of the interior state of mind, is an essential component of *nationality*, but not of citizenship. And yet, in construing the citizenship requirement, the Supreme Court has invariably attempted to determine the person's *nationality*, insofar as such may be gauged from external acts; the citizenship requirement can thus be manipulated to take

⁴⁸IRENE CORTES, NATIONALITY AND INTERNATIONAL LAW FROM THE PHILIPPINE PERSPECTIVE 349 (1990).

⁴⁹Edward, *supra* note 7, at 1814.

⁵⁰*Id.* at 1815.

into account what the Court has perceived as a person's nationality. This is where the human beings who sit as Justices have applied their own, perhaps arbitrary, criteria as a gauge for determining the measure of a human being's allegiance. A perusal of the cases demonstrates indubitably that the Court continues to invent standards that might demonstrate allegiance, in much the same way that the writers of our laws have done. Other important elements that determine this link include:

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 ideas, and in the ability of the country's government to protect him, his childres and his earthly possessions against perils from within and from without; and his readiness to dedend the country against such perils . . .⁵¹

Thus, in interpreting the provisions on Filipino citizenship, the Court has actually applied the standard of effective nationality, as used by international tribunals in deciding cases of multiple allegiance. This test scrutinizes the active nationality of individuals, i.e. the one existing not merely in law, but also in fact.⁵² To check a person's *de facto* nationality, one looks beyond the standard of citizenship, into a variety of factor that determine his attachment. The diverse factors include a person's actual residence; his place of work or business; where his family is located; and other standards. The Court is more concerned therefore with the horizontal links that bind the individual to the community of other citizens, rather than with the vertical link that binds the individual citizen to the State.

The advantage of using the test of effective nationality, which the Supreme Court, judging from its decisions may have already discovered the basic inadequacy of scrutinizing mere *de jure* citizenship. Citizenship is important only because it serves as a purportedly objective guideline in determining a person's allegiance; and yet there can never really be an objective guideline in determining the ties that a person may feel. The standard of effective nationality suggests a humanization of the black letter law, in order to be able to make it respond more effectively to real human situations. Arguably, one might even do away with the requirement of *de jure* citizenship altogether, or at the very least one ought not to impose the hierarchical

⁵¹ Tan Chong v. Secretary of Labor, 79 Phil. 249 (1947).

⁵² WELS, *supra* note 18.

standards currently suggested by Philippine law. To use the standard of whether or not a person is a citizen, or whether or not he is natural-born, might yield some ludicrous results, as demonstrated above. To use the test of effective nationality would mean taking into account *all* factors that might determine a person's allegiance. Perhaps, at best, citizenship should be just one criterion among many, given no more nor no less weight than the others. And perhaps the act of making a positive affirmation of allegiance, that naturalization demands, should allow a person to become President of the Republic of the Philippines. To use the test of effective nationality would take this voluntary choice into account. Effective nationality is, of course, as much a legal fiction as is *de facto* citizenship insofar as the determination of allegiance is concerned. But because a greater number of factors are taken into account, the determination of the existence of allegiance might be more accurate.

Of necessity, of course, there must still be an objective standard of sorts, in order to avoid unnecessary quibbling as regards a person's qualifications each time he files a certificate of candidacy for public office. It is in this regard that a person's residence might be used as such an objective standard to determine allegiance, if stricter requirements are imposed as regards the length of time from which a person may be absent from his *animus manendi*. As currently construed by the Court, a person's residence is taken to mean the place "where a party actually or constructively has his permanent home,"⁵³ where he, no matter where he is at any given time, eventually intends to return and remain. The *animus revertendi*, or intention to return, is what is currently of value in determining a person's legal or constructive residence. Once again, this is an invented standard. The purported purpose of such a requirement, when imposed on elective public officers, is to ensure that only those who are familiar with the conditions and needs of a particular community are qualified to serve as its leader;⁵⁴ and yet, a person might actually be absent from his legal residence for an unlimited period of time, and still be qualified to run for office. Perhaps what ought to be imposed on individuals seeking elective positions is not merely legal or constructive residence, but *actual* residence, allowing absence therefrom for strictly limited periods of time. Only thus can one seeking public office acquire the horizontal bonds with his countrymen that genuine allegiance requires.

⁵³ Aquino v. COMELEC, G.R. 118910, 16 November 1995, 248 SCRA 400, 420.

⁵⁴ Aquino v. COMELEC, G.R. 118910, 16 November 1995, 248 SCRA 400, 420.

III. CONCLUSION

Any exterior signs used to glean a person's allegiance are based on the disputable claim that an interior attribute may be effectively perceived solely from an analysis of overt manifestations. This is not, and can never be, the case. A person's frame of mind cannot be adequately judged from the exterior. And yet judge it we must: As regards elective public officers, the State has an overriding interest in determining the extent and breadth of their allegiance.

The current objective standard that is being used is the standard of citizenship; and yet there are serious defects in the theory that citizenship effectively demonstrates a person's allegiance. In many instances, it is purely by legal fiction that a citizen is perceived as possessing allegiance; and, in imposing the citizenship requirement, the State has invented criteria and categories, and invented the corresponding level of allegiance that may be gleaned therefrom.

Effective nationality is a far better test. It falls far short, of course, if the hope is to be able to quantify and qualify a person's allegiance, and there are still defects in the imposition and application of such a test. But perhaps through the application of this test, the true state of a person's mind might be better understood. To paraphrase a biblical quotation, where one's treasure is, there one's heart is also. And perhaps, one feels bonds of allegiance, not to the state of which one is a citizen, but to the state where one lives and loves.

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