The Rule Of Jus Soli In The Philippines.

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JUS *Soli* and *Jus Sanguinis* are the two ways by which citizenship is generally acquired. By the doctrine of *jus soli*, a person acquires the citizenship of the country where he is born irrespective of the citizenship of his parents. By the doctrine of *jus sanguinis*, on the other hand, a person acquires the citizenship of his parents irrespective of the place of his birth. Are both these rules observed and followed in the Philippines?

Article IV. Section 1 of the Philippine Constitution provides: "The following are citizens of the Philippines: (1) Those whose fathers are citizens of the Philippines; (2) Those whose mothers are citizens of the Philippines and upon reaching the age of majority, elect Philippine citizenship."

Under this provision of the Constitution, it is quite clear that only the doctrine of *jus sanguinis* is followed. The Constitutional Convention did not deem wise to adopt the doctrine of *jus soli* as "aliens, such as Chinese, Japanese and Europeans do not necessarily imbibe Filipino ideals nor appreciate Filipino institutions by the mere accident of their being born in the land. They should not, therefore, be made citizens of the Philippines when their loyalty may have still remained in the country of their parents. The disintegration of a state is bound to occur with perilous rapidity when its citizenry is saturated with unabsorbed elements" (*Sinco, Phil. Gov't. and Political Law, p. 344, 5th edition*).

Before the adoption, however, of the Constitution, was the doctrine of *jus soli* recognized in the Philippines? The determination of this question is of particular importance in view of the fact that the citizenship status of thousands of persons born in the Philippines of foreign parents is involved. Should these persons be considered citizens of the Philippines by the mere fact of their birth in the Islands and consequently "entitle them to the right to hold public office, the right to be protected by the state" (*Te kin Guk v. Aldanese, G. R. No. 44244, 1936*), the right to acquire and hold agricultural lands, own and operate public utilities, lease mining territories and enjoy all other rights secured and granted exclusively to Filipino citizens by the Philippine Constitution? In answering this question, we will divide the period prior to the adoption of the constitution into two: (1) during the Spanish regime, and (2) during the American regime.

During the Spanish Regime

Before the cession of the Philippines by Spain to the United States, the term citizenship was unknown in this country. All the inhabitants of the islands were considered subjects of Spain (*Yu Ching Po. v. Collector of Customs, G. R. No. 46795, Oct. 6, 1936*). Before the enforcement of the Civil Code in 1889, "Children of foreigners and the children of a foreigner and a Spanish mother born in the Spanish territory, were foreigners as long as they did

not claim Spanish nationality (*Art 2, Royal Decree of Nov. 17, 1852 and Art. 1, No. 3 Law of Foreigners of July 4, 1870*). However, foreigners who had acquired residence in accordance with law were considered as Spanish subjects and consequently their children were Spanish subjects (*Law of Foreigners of July 4, 1870*). Such residence could only be acquired if the foreigners had obtained a declaration of residence from the Captain-General of the Philippines in accordance with Paragraph 3 of the Order of the Regency of August 14, 1841 (*Caram v. Montinola, election protest No. 24, August 29, 1936; Alindogan v. Secretary of Labor, CA-G. R. No. 3059, Oct. 31, 1938*). Under the provisions of the Civil Code, "Spaniards are (1) those born in Spanish territory (2) children of a Spanish father or mother (3) foreigners who have obtained a certificate of naturalization (4) those who have not obtained such certificate but have acquired domicile in any town or monarchy" (Article 17). In case of children of foreign parents however, "they have the nationality of their parents while they remain under parental authority" (Article 18), and they "must declare within a year subsequent to their age of majority or emancipation, whether they desire to enjoy Spanish nationality which Article 17 grants them" (Article 19). In the case of *Roa vs. Collector of Customs, 23 Phil. 315*) it was held that by virtue of these provisions of the Civil Code the doctrine of jus soli was extended to the islands during the Spanish regime. It is submitted, however, that this holding is unwarranted by the law on the subject. For, to acquire Spanish nationality before the extension of the Civil Code in 1889, a person born of foreign parents must claim Spanish nationality or obtain a declaration of residence and if birth occured after such extension, he "must declare within a year subsequent to his age of majority or emancipation, whether he desires to enjoy Spanish nationality which Article 17 grants him." His voluntary act, therefore, not his mere birth in the islands confer on him Spanish nationality. Consequently, the principle of *jus soli* can not be said to have been recognized during the Spanish regime. Article 17 of the Civil Code providing that "Spaniards are those born in Spanish territory" cannot support the contention that *jus soli* was recognized as this provision does not include those persons born of foreign parents by virtue of the limitations set forth in Articles 18 and 19 providing that children of foreign parents "have the nationality of their parents while they remain under the parental authority," and that they must declare within a year subsequent to their age of majority or emancipation, whether they desire to enjoy Spanish nationality which Article 17 grants them."

During the American Regime

The Philippines was ceded by Spain to the United States by the Treaty of Paris of 1898, Article IX of which provided, "The civil rights and political status of the native inhabitants of the territories hereby ceded to the United States shall be determined by Congress." In the exercise of that power, Congress passed an act on July 1, 1902, Section 4 of which provided, "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 reside 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 such as shall have elected to preserve their allegiance to the crown of Spain in accordance with the provisions of the Treaty of Peace between the United States and Spain signed at Paris, December tenth, eighteen hundred and ninety-eight." This section was incorporated in the Act of Congress of 1912 and re-incorporated in Section 2 of the Jones Law of 1916. Does this provision recognize the doctrine of *jus soli?* The Supreme Court of the Philippines had occasion to interpret this provision in the leading case of *Roa vs. Collector of Customs, 23 Phil. 315,* where it held that by virtue of this provision "the doctrine of citizenship by place of birth (*jus soli*) which prevails in the United States was extended to the Philippines but with limitations." The limitations mentioned are those provided in Section 4 of the Act of Congress of July 1, 1902 that (1) his parents must be Spanish subjects on April 11, 1899 *(Paz Chua vs. Sec. of Labor, G. R. No. 46451, Sept. 30, 1939)*; and (2) he must continue to reside in the islands from the moment of his birth. It is submitted, however, that these limitations are inconsistent with the conclusion of the Court that "the doctrine of citizenship by place of birth which prevails in the United States was extended to the Philippines by the Congressional Acts referred to." For the said acts do not confer Philippine citizenship by the mere fact of birth in the islands. The condition that the parents be Spanish subjects on April 11, 1899, cannot be considered a limitation on the doctrine of *jus soli* as such condition is the very essence of the doctrine of *jus sanguinis.* Neither can the court's conclusion be based on or implied from the condition of continuous residence in the islands after birth as this cannot stand alone without the primary requisite of being born of parents who were Spanish subjects on April 11, 1899. On the contrary, the said Congressional Acts can only be said to have recognized the principle of *jus sanguinis* when it required that in order that birth may confer Philippine citizenship, the parents must be Spanish subjects on April 11, 1899, subject to the further condition that the person concerned must continuously reside in the islands after birth. The Supreme Court made the question more obscure when citing the case of *U. S. vs. Wong Kin Ark, 169 U. S. 649,* it said: "The questions presented in this case were definitely settled by the Supreme Court of the United States. According to the doctrine here enunciated, it is quite clear that if the appellant in the case at bar had been born in the United States and was now trying to re-enter that country under the same circumstances that he is now trying to re-enter this country, he would be entitled to land upon the ground that he was a citizen of the United States." Thus, the court made an unqualified extension of the doctrine of *jus soli* which it further re-affirmed in the case of *Haw vs. Collector of Customs, 59 Phil. 612* when it held that a child born in 1916 of a Chinese father and a Filipina mother, is a Filipino citizen by the

mere fact of his birth in the islands. It is submitted again that this stand is utterly inconsistent with the provisions of the Acts of Congress of 1902, 1912, and 1916 as it completely disregarded the limitations set forth therein, namely, that the parents of the child must be Spanish subjects on April 11, 1899. The doctrine in the Wong Kim Ark case cannot be applied here as it is an interpretation of the fourteenth amendment of the United States Constitution which is inapplicable here. The Philippines being an unincorporated territory of the United States, the Constitution of the United States does not apply to it in its entirety, *ex propio vigore* (*Sinco, Phil. Govt. and Political Law, p. 85, 5th edition*). Furthermore, Congress had expressly provided in Section 1 of the Act of Congress of July 1, 1902, that Section 1891 of the Revised Statutes of 1878 providing that "The Constitution and all laws of the United States which are not locally inapplicable, shall have the same force and effect within all the organized territories, and in every territory hereafter organized, as elsewhere within the United States," shall not apply to the Philippines (*Dorr vs. U. S., 195 U. S. 138*). Section 5 of the Jones Law also provided: "That the statutory laws of the United States hereafter enacted shall not apply to the Philippine Islands except when they specifically so provided, or it is so provided in this act" (*See dissenting opinion, Torres vs. Tan Chim, G. R. No. 46593, Feb. 3, 1940*).

Apparently seeing these inconsistencies, in the subsequent case of *Paz Chua vs. Secretary of Labor, G. R. No. 46451, Sept. 30, 1939*, the Supreme Court impliedly reversed its decision in the Roa and Haw cases when it held that a child born in the Philippines in 1914, of Chinese parents cannot be considered a Filipino citizen as his parents were not Spanish subjects on April 11, 1899. In the subsequent case, however, of *Yu Ching Po vs. Collector of Customs, G. R. No. 46795, Oct. 6, 1939*, the court, in determining the citizenship of the petitioner who was born in China of a Chinese-Filipino mestizo father born in the Philippines in 1892, held that he was a Filipino citizen being the son of a native born citizen of the islands and stated its re-affirmation of the doctrine enunciated in the Roa and Haw cases. Does this reaffirmation reverse the ruling in the Chua case? The Supreme Court answered this question in the case of *Torres v. Tan Chim, G. R. No. 46593, Feb. 3, 1940*, when it said that "the factual and legal environment there (Chua case) was wholly different from that in the case at bar." Thus, the ruling in the Chua case stands unreversed and it is quite clear that under that ruling, persons born in the Philippines of foreign parents who are not Spanish subjects on April 11, 1899, cannot be considered citizens of the Philippines by the mere fact of their birth. Consequently, that ruling in the Roa and Haw cases making an unqualified extension of the doctrine of *jus soli* in the Philippines on the basis of the doctrine laid down by the United States Supreme Court in the Wong Kin Ark case may be deemed reversed. The Supreme Court, however, further said (In the Tam Chim Case): "when in Roa vs. Collector of Customs we declared the applicant to be a citizen of the Philippines, that declara-

tion was a statement of general principle, applicable not only to Tranquilino Roa individually, but to all those who were in the same situation, that is to say, all persons born in the Philippines before the ratification of the Treaty of Peace between the United States and Spain, of Chinese father and Filipino mother". By this statement, much of the confusion in the Roa ruling was clarified. We thus find that the Supreme Court had made an unwarranted application of the doctrine of *jus soli* during the Spanish regime. This ruling is not warranted by the law on the subject. For "under the laws of this country prior to the ratification of the treaty of Paris, children born in the Philippines of foreign parents follow the nationality of their parents, while they remain under parental authority (Art. 18). Roa, being a minor, followed the nationality of his father, who was a Chinese subject, and, therefore, could not be considered a citizen under the Jones Law" (*See dissenting opinion, Torres v. Tan Chim. G. R. No. 46593, Feb. 3, 1940*). The mere fact, therefore, that a person is born in the Philippines before the ratification of the Treaty of Paris of 1899, of Chinese father and Filipina mother does not confer on him Spanish nationality and consequently, Philippine citizenship under the Jones Law. Apparently recognizing in a way the weakness of the Roa doctrine the majority opinion in the Tan Chim case said, "While we profess no idolatrous reverence for precedents, we should not overlook the fact that the rule laid down in the Roa case had been adhered to and accepted for more than twenty years before the adoption of the constitution; not only this court but also inferior courts had consistently and invariably followed it; the executive and administrative agencies of the Government had therefore abided by it; and the general public had acquiesced to it. Withal, our decision should not be, as to a given period of time upon the same or similar facts and circumstances, as fluctuating as to engender the phenomenon described by Mr. Justice Thompson of the Supreme Court of Virginia as *ignis fatius*". A fitting answer to this argument was given in a well-reasoned dissenting opinion by Justice Moran in the same case: "If we have induced the Government and the public to follow and accept an error for some time, it does not seem to be a good policy to continue inducing them to follow and accept the same error once discovered. The rule of *stare decisis* does not apply to the extent of perpetuating an error (15 C. J., 918). It is the duty of every court to examine its own decisions without fear and to revise them without reluctance (*Baker v. Lorillard, 4 N. Y. 257*). As was well said in a case, 'I deem it to be the duty of this court freely to examine its down decisions, and, when satisfied that it has fallen into a mistake, to correct the error by overruling its own decision. An acknowledged error must be more venerable and more inveterate that it can be made by any series of concession or extrajudicial resolutions, or even by any single decision before it can claim impunity upon the principle of stare decisis' (*Leavitt v. Blatchafird, 4 N. Y. 257, 521, 523*). 'Precedents are to be regarded as the great storehouse of ex-

perience; not always to be followed, but to be looked to as beacon lights in the progress of judicial investigation. Their authority must often yield to the force of reason, and to the paramount demands of justice as well as to the decencies of civilized societies, and the law ought to speak with a voice responsive to these demands". (*Norton v. Randolph 176 Ala. 381*).

"Indeed, I can find no serious obstacle to the propriety of correcting the erroneous ruling laid down in the Roa case. The doctrine of *stare decisis* is not the equivalent of *res adjudicata*. The first relates to legal principles, the latter to specific facts. Accordingly, such persons who, like Roa, have secured judicial declaration of their status, are protected by the rule of *res adjudicata*, and those who, similarly situated, have not obtained such judicial declaration but have acquired tangible rights in the exercise of their bona-fide citizenship, may, if such rights are still existing, be saved from the effects of the reversal. If we agree that the Roa ruling is erroneous, the most logical course to follow is to reverse it but saving, as a matter of equity, the vested rights above mentioned."

In all the cases so far discussed, it may be seen that birth occurred either before the ratification of the Treaty of Paris in 1899 and consequently, the determination of Philippine citizenship is governed by the Spanish laws; or after such ratification and after Congress acted in pursuance to the provisions of such treaty in which case the determination of Philippine citizenship is governed by the provisions of the Congressional Acts of 1902, 1912 and 1916. But it may be asked, —After the ratification of the Treaty of Paris in 1899 but before Congress acted in pursuance to the provisions of said treaty, what laws during such intervening period determined Philippine citizenship? This question was squarely presented in the case of *"Go Julian vs. Gov't. of the Philippines, 45 Phil. 289"* where the petitioner born on September 7, 1899 in Iloilo, of Chinese parents both of whom do not appear to be Spanish subjects before the ratification of the Treaty of Paris, petitioned the Court that he be naturalized in accordance with the provisions of Act 2927. "During his minority, his father chose the nationality of his country and the petitioner upon reaching the age of majority, chose the nationality of his father." The Supreme Court held that he has "at least a latent right to Philippine citizenship" by the mere fact of his birth in the islands following the ruling in the Wong Kim Ark case, but having chosen the nationality of his father, he lost it and consequently he is now entitled to recover the same as a native of the Philippines under the provisions of Act No. 2927 providing that "Philippine citizenship may be acquired by natives of the Philippines who are not citizens thereof under the Jones Law." The Court, however, failed to answer the question propounded. It simply said, quoting the Roa ruling:

> "Articles 17 to 27, inclusive, of the Civil Code deal entirely with the subject of Spanish citizenship. When these provisions were enacted, Spain was and is now the sole and exclusive judge as to who shall and who shall not be subjects of

> her kingdom, including her territories. Consequently, said articles being political laws (laws regulating the relations sustained by the inhabitants to the former sovereign), must be held abrogated upon the cession of the Philippine Islands to the United States. By well-settled public law, upon the cession of territory by one nation to another, either following a conquest or otherwise, those laws which are political in their nature and pertain to the prerogatives of the former government, immediately cease upon the transfer of sovereignty. (Opinion, Atty. General, July 10, 1889)."

It can thus be seen that the Spreme Court extended the doctrine of *jus soli* to the Philippines based on the assumption that by virtue of the cession of the Philippines to the United States by Spain, the "political laws" of the former sovereignty as are not in conflict with the new, were abrogated and "would necessarily be superseded by the existing laws of the new government upon the same matters." (*See Concurring Opinion of Justice White, Downes vs. Bidwell, 182 U. S., 300*). In this, the writer thinks, lies all the confusion in the Roa doctrine. It proceeded on that assumption without taking into account the passage of the Acts of Congress of 1902, 1912, and 1916. That this is so is evidenced by the statement on the applicable laws on the subject by Justice Malcolm in his concurring opinion in the case of *U. S. vs. Lin Bin, 36 Phil., 925* that "if a child was born of Chinese parents in the Philippine Islands after the acquisition of the islands by the United States, the citizenship of the child is determined by American laws of citizenship, naming especially the Fourteenth amendment to the United States Constitution and the leading construction of the United States Supreme Court in the case of *U. S. v. Wong Kim Ark.*" The Court thus made the "political laws" of the United States apply to the Philippines even after Congress had passed the Acts of 1902, 1912, and 1916, and so extended the *jus soli* doctrine as they had recognized it in the case of *Roa v. Collector of Customs* and other subsequent cases. It is quite clear, however, that the substitution of these "political laws", *if ever applicable at all to the Philippines,* would apply only before Congress acted on the matter pursuant to Article IX of the Treaty of Paris providing that "Congress shall determine the civil rights and political status of the inhabitants of the Philippine Islands". But after Congress had acted, that is, after the passage of the Philippine Bill of 1902, there can be no doubt that those "political laws" could no longer be applied having been substituted by an enactment of Congress expressly providing that "Section 1891 of the Revised Statutes of 1878 providing that 'The Constitution and all laws of the United States which are not locally inapplicable, shall have the same force and effect within all the organized territories and in every territory hereafter organized, as elsewhere within the United States', shall not apply to the Philippines" (*Dorr v. U. S. 195 U. S. 138*).

Even before Congress acted, however, the writer submits that such "political laws" were still in applicable. For the Philippine Bill of 1902 in providing 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 reside in the said islands, and their children born subsequent thereto,* shall be deemed and held to be citizens of the Philippine Islands" had already taken into account such intervening period. In other words, Congress had expressly made the law cover not only the period after 1902 when the law was passed, but even before, starting from April 11, 1899 when the Treaty of Paris was ratified. Certainly, the principle laid down in the case of Downes vs. Bidwell cannot be properly applied to the Philippines, Congress having expressly determined "the civil status and political rights of the inhabitants of the islands" from the time of the ratification of the Treaty of Paris on April 11, 1899.

Indeed, the doctrine of *jus soli* has never been recognized in the Philippines. The decisions of the Supreme Court particularly in the cases of Roa, Go Julian, Haw and subsequent ones recognizing the extension to the Philippines of such doctrine are not only erroneous and unwarranted by the law on the subject, but also furnish a means of nullifying provisions of the Philippine Constitution. Persons "who do not necessarily imbibe Filipino ideals nor appreciate Filipino institutions" nor "mingle socially with the Filipinos" or "evince a desire to learn their traditions, customs and ideals" are by such judicial interpretations given the right to acquire, and hold agricultural lands, own and operate public utilities, lease mining territories and enjoy all other rights secured and granted exclusively to Filipino citizens by the Constitution. The mere fact that "it had been adhered to and accepted for more than twenty years before the adoption of the constitution" and that "not only this Court but also inferior courts had consistently and invariably followed it" do not constitute sufficient basis for consistently following such erroneous judicial interpretation. The harm which the Court seeks to avert is much less than the evils which necessarily are bound to follow from a blind application of an obvious error. As Lord Coke said, "Precedents may be of value in discovering what has already been achieved, but it is of little use in refining our sense of justice and defining the limits of liberty."

"MISTAKES, errors, fallacies and flaws elude us in spite of ourselves unless the case is pounded and hammered at the bar."—JUDGE DILLON.