Notes and Comments

The Scope of the Constitutional Provision on Citizenship

I. INTRODUCTION

The Constitutional Provision on Citizenship—

It is the inherent right of every independent nation to determine for itself and according to its own Constitution and laws what classes of persons shall be entitled to its citizenship.[1] Section 1, Article IV of our Constitution enumerates the persons who are citizens of the Philippines. They are: Those who are citizens of the Philippine Islands at the time of the adoption of the Constitution; (2) Those born in the Philippine Islands of foreign parents who before the adoption of this Constitution, had been elected to public office in the Philippine Islands; (3) Those whose fathers are citizens of the Philippines; (4) Those whose mothers are citizens of the Philippines and upon reaching the age of majority, elect Philippine citizenship; (5) Those who are naturalized in accordance with law."

II. SUBSECTION ONE

Historical Background—

From this enumeration of citizens, some controversial points have arisen and will arise calling for judicial consideration and decision. The first subsection provides that "those who are citizens of the Philippine Islands at the time of the adoption of this Constitution," are citizens of the Philippines. Who are those persons, "citizens at the time of the adoption of the Constitution"? Attention is immediately drawn to Section 4 of the Philippine Bill of 1902, and to Section 2 of the Jones Law.[2] (2) The provisions cited however raise further the question of

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[1] U.S. v. Wong Kim Ark, 169 U.S. 649; Roa v. Collector, 23 Phil. 321.

[2] Section 4 of the Philippine Bill provides:

"That all inhabitants of the Philippine Islands continuing to reside therein who were Spanish subjects on the 11th day of April, 1899, and then resided in said islands, and their children born subsequent thereto, shall be deemed and held to be citizens of the Philippine Islands 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 Paris between the United States of America and Spain, signed at Paris, December 10, 1898."

Section 2 of the Jones Law is as follows:

"That all inhabitants of the Philippine Islands who were Spanish subjects on the eleventh day of April, 1899, and then resided in said islands,and their children born sub-

who are "the inhabitants"? What persons could be considered "Spanish subjects on the 11th of April, 1899? It would appear that the term "inhabitants" as used in the above-mentioned sections of the Philippine Bill and the Jones Law includes not only the **native** inhabitants of the Philippines but also those subjects of Spain born in the Peninsula, who chose not to preserve their allegiance to Spain, who were residing in the Philippnes on the 11th of April, 1899, continued to reside therein and their children born subsequent thereto. In a later case (3) the Supreme Court construed the word "inhabitants" to include also naturalized subjects of Spain. The Court refused to accept the Solicitor General's interpretation of the term "inhabitants" as meaning only **native** inhabitants. Spain, in the Court's opinion, could not have been solicitous only of the future political status of her subjects born in Spain and residing in the Philippine Islands and neglectful of the status of her subjects residing in the Philippine Islands who were not born in Spain (4). Within the term "inhabitants' therefore, it may now safely be asserted are included: (1) the native inhabitants of the Philippine

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sequently thereto, shall be deemed and held to be citizens of the Philippine Islands, except such as shall have elected to preserve their allegiance to the Crown of Spain in accordance with the provisions of the Treaty of peace between the United States of America and Spain signed at Paris, December tenth, eighteen hundred and ninety eight, and except such others as have since become citizens of some other country; *Provided*, That the Philippine Legislature herein provided for, is hereby authorized to provide by law for the acquisition of Philippine citizenship by those natives of the Philippine Islands who do not come within the foregoing provisions, of the natives of the insular possession of the United States and such other persons residing in the Philippine Islands who are citizens of the United States if residing therein."

[3] Palanca v. Republic of the Philippines, G. R. No. L-301 (April 7, 1948).

[4] The majority said: "The plenipotentiaries of Spain who signed the treaty of Paris could not have been solicitous only about the future political status of her subjects born in Spain and residing in the Philippine Islands and neglectful of the status of her subjects residing in the Philippines who were not born in Spain. If Spain had allowed her subjects born in Spain who were residing in the Philippine Islands to become citizens of the latter upon their failure to preserve their allegiance to her (Spain), it could not have been her intention not to allow her subjects residing in the Philippine Islands who were not born in Spain to become citizens of the country of their residence, in the same way that she had allowed her subjects born in Spain and residing in the Philippine Islands to become citizens of the latter, or, by failing to stipulate on their future political status, to make them citizens of their country of origin, the citizenship of which they had renounced by becoming Spanish subjects. There seems to be no doubt that the lack of treaty stipulation regarding Spanish subjects, residing in the Philippine Islands, who were not born in Spain, was merely due to an oversight. It was not deliberate for the purpose of reverting them to the citizenship of their country of origin, for a change of citizenship must be voluntary or by an act, express or implied, of the citizen or subject". Justice Hilado dissented. He said: "I am of the opinion that, because he (Palanca) was not a natural, but merely a naturalized citizen of the former sovereign, he was remitted to his native citizenship (Chinese) upon the cession of the territory to the acquiring state. Palanca's remission to his native citizenship was, like his original native citizenship itself, of course independent of his will—and regardless of whether he knew it or not. x x x At any rate since petitioner appellant was neither a "Spanish subject, native of the Peninsula", nor a "native inhabitant of the territory", it would seem to be clearly beyond the power of the United States Congress to determine or regulate his citizenship and allegiance."

Islands;[4a] (2) subjects of Spain born in the Peninsula; (3) subjects of Spain by naturalization, the last two not having chosen to preserve their allegiance to the Crown; all three groups having been in the Philippines on the 11th of April 1899 and continued to reside therein.

The Roa Case.—

Before and at the ratification of the treaty of Paris, who could be considered as **Spanish subjects?** The law on the point at the time was Articles 17-27 of the Civil Code. The law then was a combination of the principles of **jus soli, jus sanguinis,** and recognized the principles of naturalization as a means of acquiring citizenship.[5] It is to be noted that in the hitherto leading case of Roa v. Collector of Customs,[6] the case involved a child of a Chinese father and a Filipino mother, born in the Philippine Islands on July 6, 1889 (before the ratification of the treaty of Paris). His political status therefore was subject to the laws existing at the time of his birth, namely, the Civil Code. Applying this law alone, Tranquilino Roa was a Spanish subject.

Observations on the Roa Case.—

Justice Hilado in his concurring opinion in the cases of Tan Chong v. Secretary of Labor, G. R. No. 47616 and Lam Swee Sang v. the Commonwealth of the Philippines, G. R. No. 47623 (September 16, 1947 made this statement: "x x x the ruling in that case (the Roa case) cannot be invoked in favor of the petitioner in G. R. No. 47616 nor of the applicant in G. R. No. 47623 for the reason, that, while Tranquilino Roa in that case was born in the Philippines in the year 1889, when Articles 17 et seq. of the Civil Code were yet in force here and made him a Spanish subject, the said petitioner and applicant in the instant cases were born, altho also in the Philippine Islands in 1915 and 1900,

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[4a] "The cession of the Philippines definitely transferred the allegiance of the native inhabitants from Spain to the United States (Articles 3 and 9 of the treaty of Paris). Filipinos remaining in this country who were not natives of the Peninsula could not according to the terms of the treaty, elect to retain their allegiance to Spain. By the cession their allegiance became due to the United States of America and they became entitled to its protection. The nationality of the island became American instead of Spanish" (Roa v. Collector of Customs, 23 Phil. 337).

[5] Under Article 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.

[6] In Roa v. Collector of Customs, supra, Justice Trent held that even if the father of Roa failed to elect Spanish citizenship for Tranquilino Roa which was necessary to make the latter a Spanish subject pursuant to the requirements of the Civil Code, "yet the appellant, by reason of the place of his birth, acquired at least an inchoate right to Spanish nationality. He could have within one year after reaching his majority become a Spanish subject, but conditions have so changed (not through any act on the part of the appellant Roa) that he cannot now acquire Spanish nationality (23 Phil. 330).

respectively, i.e., after the abrogation of said articles due to their political character upon the change of sovereignty following the treaty of Paris ending the Spanish-American war." It is likewise to be observed in the Roa case that when Roa's father died in 1900 (subsequent to the ratification of the Treaty of Paris), Roa was still a minor. His mother under the laws existing at the time **ipso facto** regained her former nationality—that of the land of her birth and her minor son followed her nationality. The Court said: "the mother (of Roa) before she married was a Spanish subject and entitled to all the rights, privileges and immunities pertaining thereto. Upon the death of her husband, which occurred after the Philippine Islands were ceded to the United States of America, she, under the rule prevailing in the United States of America, **ipso facto** reacquired the nationality of the Philippine Islands, being that of her native country. When she reacquired the nationality of the country of her birth the appellant was a minor and neither she nor his mother had ever left this country" (Roa v. Collector, supra).

Compared with the Villahermosa Ruling.—

It is interesting to note the variance on this point between the Roa case and the recent case of Villahermosa vs. Commissioner of Immigration. In the later case, the mother of Delfin Co, who was a Filipino citizen at the time of her marriage to a Chinese subject, repatriated herself in accordance with Commonwealth Act 63. The Court held that her son, a minor at the time of her repatriation, did not follow her nationality **ipso facto.** The court thru Justice Bengzon said: "Commonwealth Act 63 does not provide that upon repatriation of a Filipina, her children acquire Filipino citizenship. It would be illogical to consider Delfin as repatriated like his mother, because he never was a Filipino citizen and could not have reacquired such citizenship." According to the Court Delfin Co could only claim that his mother was a Filipino within par. 4, sec. 1 of Art. IV of the Constitution and any right given him to choose Philippine citizenship could be exercised only upon attaining majority.

Article 18 of Civil Code Held Applicable by Dissenters.—

Justices Perfecto, Tuason and Feria dissented. They felt, that, and under Art. 18 of the Civil Code, children while under parental authority have the nationality of their parents." That the mother repatriated herself only when her son was apprehended for deportation was "logical" to Justice Perfecto. It was only to give "tangible expression to her maternal love, which is, without any doubt, universally considered the most sublime feeling nature has infused on human heart."

Roa Dictum Which Set a Precedent.—

But as is well known, the Court in the Roa case went further than declaring Roa a citizen of the Philippine Islands. It declared that the 14th Amendment declaratory of the **jus soli** principle was in force in this jurisdiction.[7] And this part of the decision was followed in subsequent cases.[8]

The Roa Dictum Disaffirmed.—

The rule in this jurisdiction however was laid down in the case of Tan Chong vs. Secretary of Labor (G. R. No. 47616) and Lam Swee Sang v. Commonwealth (G. R. No. 47623), reaffirmed in Villahermosa v. Commissioner of Immigration, where the Court categorically stated that the rule of **jus soli** had never been extended to this jurisdiction by the United States; that the law in force was Section 4 of the Philippine Bill of 1902 as amended, and Section 2 of the Act of 1916.[9]

Subsection I Includes Naturalized Citizens.—

Likewise considered "citizens at the time of the adoption of the Constitution" are those who had been naturalized in accordance with law. On March 26, 1920, the Philippine Legislature passed Act 2927, subsequently amended by Act 3448. Under this Naturalization Law, however, only certain classes of persons could be naturalized. The Congressional Act of 1916 (Jones Law) had enumerated these classes:— (1) natives of the Philippines who are not citizens under the Jones Law; (2) natives of the Insular Possessions of the U.S.A.; and (3) citizens of the U.S.A. or of foreign countries who under the laws of the U.S.A. may become citizens of the said country if residing therein. After the adoption of our Constitution Act 2927 was repealed by Act 473, otherwise known as the Revised Naturalization Law.

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7 "By sec. 4 (Philippine Bill) the doctrine or principle of citizenship by place of birth which prevails in the United States of America was extended to the Philippine Islands, but with limitations" (Roa v. Collector of Custom, supra).

8 Vaño v. Collector, 23 Phil. 41; U.S. v. Am Bin, 36 Phil. 924; Go Julian v. Government, 45 Phil. 289; Haw v. Collector, 59 Phil. 612; Torres v. Tan Chim, 40 O. G., 2 supp. 244).

9 The majority, thru Justice Padilla said: "Considering that the common law principle or rule of *jus soli* obtaining in England and in the United States of America, as embodied in the 14th Amendment to the Constitution of the United States of America has never been extended to this jurisdiction (sec. 1, Act of 1 July 1902; sec. 5, Act of 29 August 1916); considering that the law in force and applicable to the petitioner and the applicant in the two cases at the time of their birth is sec. 4 of the Philippine Bill (Act of 1 July 1902), as amended by Act of 23 March 1912, which provides that only those "inhabitants of the Philippine Islands continuing to reside therein who were Spanish subjects on the 11th day of April 1899, and then resided in said Islands, and their children born subsequent thereto, shall be deemed and held to be citizens of the Philippine Islands, "we are of the opinion and so hold that the petitioner in the first case and the applicant in the second case, who were born of alien parentage, were not and are not, under said section, citizens of the Philippine Islands."

III. SUBSECTION TWO

Requisites Laid Thereunder.—

The second subsection of the Constitution makes reference to persons "born in the Philippine Islands of foreign parents who before the adoption of the Constitution had been elected to public office in the Philippines". Three requisites are laid down under this provision: (1) birth before the adoption of the Constitution; (2) birth in the Philippine Islands of foreign parentage; and (3) having been elected to any public office in the Philippine Islands.[10]

The Chiongbian Case.—

In a recent case (Chiongbian v. De Leon, G. R. No. L-2007), the Supreme Court had occasion to construe this constitutional provision. Victoriano Chiongbian was elected councilor of Plaridel, Occidental Misamis in 1925. At the time of the adoption of the Constitution, Victoriano's son, William, whose citizenship was contested in the case, was a minor. The Court held that Victoriano, under Article IV, sec. I, subsection 2, became a Filipino citizen **upon the adoption of the constitution;** and his son William at the same time became a citizen of the Philippines under Article IV, sec. I, subsection 3. "This", said Chief Justice Moran, is also in conformity with the settled rule in our jurisprudence that a legitimate minor child follows the citizenship of his father". The latest opinion of the Court is manifestly opposite to the view expressed by Justice Recto in his concurring opinion in Caram v. Montinola (IV L. J. 850) wherein he said that the foreigner must be deemed a Filipino citizen from the time of his election and not from the time of the adoption of the Constitution, to avoid an absurd case where a person has occupied illegally an office and has committed a criminal act with the tolerance of the government and the community.

IV. SUBSECTION THREE

Interrelated with Act No. 473.—

The third subsection provides that "those whose **fathers** are citizens of the Philippines," are citizens of the Philippines. The provision makes no distinction as to whether the father is a natural-born Filipino or a naturalized Filipino. If the first is true, no question seems to arise. The child is a Filipino unless he losses his citizenship under any of the ways mentioned in Commonwealth Act No. 63, as amended by Republic Act No. 106. If the father is a naturalized Filipino, the

[10] See opinion of Justice Carlos Imperial in Caram v. Montinola, IV L. J. 850.

children born subsequent to the naturalization, regardless of the place of birth are Filipino citizens. The only qualification is that the foreign-born child must within one year upon reaching majority register himself as a Filipino and take the corresponding oath of allegiance to the Philippines. If the children were minors at the time of the naturalization of their father, and were born in the Philippines, they are considered citizens of the Philippines. If the foreign-born minor children were dwelling in the Philippines at the time of their father's naturalization, they are automatically Filipinos by virtue of their father's naturalization. If the foreign-born minor children were not dwelling in the Philippines at the time of their father's naturalization, they are considered Filipinos only during their minority, unless they being to reside permanently in the Philippines during said minority in which case they are to continue to be Filipinos even after becoming of age.[11]

Not Applicable to Children of Age at Time of Naturalization.—

As to children, however, who are already of age at the time of their father's naturalization, they are no longer affected by their father's change of citizenship. This conclusion finds support in the decision of the Supreme Court in Chiongbian v. de Leon, **supra,** for it will be observed that William Chiongbian's father became a Filipino citizen at the time of the adoption of the Constitution and William, who became a Filipino citizen also at the same time, was a minor. The Court held that the rule in our jurisprudence is that a legitimate minor child follows the citizenship of his father. If therefore William was not a minor at the time his father became a Filipino citizen, a different decision may have been reached by the Court as to his citizenship.

V. SUBSECTION FOUR

Must Mothers be a Phil. Citizen at Time of Child's Election?—

The application and construction of the 4th subsection has become of great practical importance in view of the number of cases involving persons who in common parlance are "Chinese mestizos", during the occupations, "Japanese mestizos", and after liberation "American mestizos". It considers as Filipinos "those whose mothers are citizens of the Philippines, who upon reaching the age of majority, elect Philippine citizenship" Must the mother be a Filipino citizen at the time of the election by her son or is it enough that she be a Filipino citizen at the time of her marriage to foreigner? While there may be drawn from the Villahermosa case an inference that the mother should be a Filipino citizen at the time of her son's election, still no definite judicial pronouncement has been made on this provision.

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[11] See sec. 15, Com. Act 473.

Liberal Rule Advanced.—

But as it will appear, if we require that the mother be a Filipino citizen at the time of the election of her son, the constitutional provision would find little application at all, for the general rule is that the wife follows the nationality of her husband.[12] During the continuance of the marital status, the wife has the nationality of her husband, so that when the child reaches majority he cannot elect Philippine citizenship for the mother is not a Filipino at the time of the election. The exception to this would be if we provide that the Filipino woman should not lose her citizenship upon marriage to a foreigner, or if she does **not,** by virtue of the laws of her husband's country, follow his nationality,[13] or in case she becomes the wife of a stateless citizen;[14] and when the marital status is terminated by the death of the foreigner husband or on the separation of the spouses, the wife does not automatically reacquire Filipino citizenship. She still follows the nationality of her deceased husband, until she repatriates herself in the manner provided by Commonwealth Act 63 so much so that Filipinos who were married to Japanese subjects, were deemed to have lost their Philippine citizenship and became Japanese citizens. This was the ruling of the Secretary of Justice in an opinion dated July 29, 1946, citing Commonwealth Act 63, in connection with the nationality laws of Japan (see nationality law, Flourney and Hudson, pp. 175, 383). It was also held that even if their Japanese husband's whereabouts were not known, they continued to be Japanese citizens. They could reacquire Philippine citizenship only upon the dissolution of the marriage and upon complying with the requirements of Commonwealth Act 63. And the marriage was not deemed dissolved by the fact that their Japanese husbands could not be located. Unless, according to the Justice Department, a thorough and diligent search has been made of the missing husbands, the genuine presumption of death can be availed of only after the expiration of the period of seven years during which the absent husbands have not been heard from (Rule 123 x, Rules of Court) Op. No. 247, s. 1947. If we follow the rule that the mother should be a Filipino citizen at the time of the child's election, then the latter cannot elect Filipino citizenship as long as the mother has not repatriated or cannot repa-

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[12] See Prof. Sinco's Phil. Pol. Law, rev. edition (1941) p. 378.

[13] A Filipina was married to an American soldier, citizen of the U.S.A. in 1945. The Secretary of Justice held that she did not lose her citizenship by virtue of said marriage. Under Com. Act 63 she loses her Philippine citizenship if by virtue of the laws in force in her husband's country, she acquires his nationality; and under the laws of the U.S.A. an alien who marries a citizen of the U.S.A. does not become, except by naturalization, a citizen of the U.S.A. by reason of such marriage (USCA Title 8, sec. 710 6; Op. No. 249, s. 1947).

[14] In Commonwealth v. Baldello, the Court said: "The general rule that a married woman follows the nationality of her husband presupposes nationality in the husband. Where no such nationality exists, the rule does not apply."

triate herself. And the right of election must be exercised "upon reaching the age of majority" or at most within a reasonable time thereafter.

If we should require only that the mother be a Filipino citizen at the time of her marriage, then, even during the continuance of the marital status of the Filipino wife and the foreigner-husband, even if the Filipino wife loses her original citizenship by virtue of such marriage, even if after the termination of such marital status, she fails to repatriate, the child of such marriage upon reaching the age of majority may elect Philippine citizenship. The latter view has been adopted by the Government's Executive Branch. Recently, the Secretary of Justice reiterated this view in an opinion rendered for the Solicitor General. The opinion read: "To construe the constitutional provision otherwise (that is, to require that the mother be a Filipino citizen at the time of election) would practically render it nugatory, since election can then be allowed only in the few cases where the Filipino mother does not follow the citizenship of her husband. Such a case is rare, for the rule generally prevailing is that the wife follows the nationality of the husband. It cannot be said that the provision was meant to apply to the illegitimate offspring of a Filipino woman; because the records of the Constitutional Convention show that it intended to accept the recognized principle of international law that an illegitimate child of a Filipino woman and an alien is a Filipino citizen by birth, and does not need to choose Philippine citizenship upon reaching the age of majority (See Aruego, Framing of the Philippine Constitution, Vol. 1, p. 209)."

WHEN TO ELECT.—

The option to elect Philippine citizenship under this subsection must be exercised "upon reaching the age of majority", or within a reasonable time thereafter.[15] With respect to those entitled to the option who should have exercised such right during the Japanese occupation, the Department of Justice has also opined that the period should be deemed suspended until after the Commonwealth Government was reestablished.[16] The same may be said of those in a similar position caught

[15] The Department of Justice in a number of opinions has held that "in line with judicial precedents on the matter, three years is the reasonable time within which election of the Philippine citizenship must be exercised (citing Lim Teco vs. Collector of Customs, 24 Phil. 84; Roa v. Collector of Customs, 23 Phil. 315; Muñoz v. Collector, 20 Phil. 494; Lorenzo v. McCoy, 15 Phil. 559)" Ops. of Dec. 29, 1939; Feb. 27, 1940, Aug. 12, 1946 & June 26, 1947.

[16] The right of election however was deemed suspended during the occupation and considered revised only on Feb. 27, 1945, when the Commonwealth Government was reestablished. This is based on the theory that the taking of the oath of allegiance to the Constitution and the Commonwealth Government, which is one of the essential requisites

by the war in a foreign country under enemy occupation, as Japanese or German occupied territories, for the election was not only not legally feasible, but also physically impossible due to absence of the officers of the United States of America authorized to administer oaths to the parties residing outside of the Philippines.

PROCEDURE OF ELECTION UNDER OLD LAW.—

The procedure to be followed for the exercise of said option is outlined in Commonwealth Act No. 625.[17] Prior to the passage of said Act (June 7, 1941) the Department of Justice had held that inasmuch as there was no prescribed form for the election of Philippine citizenship (under this subsection), the mere performance of overt acts before majority expressive of choice of Philippine citizenship, was sufficient to constitute election under the Constitution.[18] Voluntary registration for military training under the National Defense Act and forthwith taking the oath of allegiance to the Philippines and the United States of America was one such overt act.[19]

COMMONWEALTH ACT NO. 625.—

After the passage of Commonwealth Act No. 625, however overt acts alone were not sufficient to indicate election. The provisions of the law have to be strictly complied with. The requirements in short are (1) the signing of a sworn statement declaring the election of Philippine citizenship; (2) the taking of an oath of allegiance to the constitution and the Government of the Philippines and (3) the filing of said oath and affidavit with the nearest civil registry.

PURPOSE OF THE LAW.—

The purpose of said requirements has been described thus: "Since election by one qualified, as naturalization, results in the admission of a foreign subject or citizen into the political body of a nation, and the bestowal upon him of the qualities of a citizen, the law requires said election to be expressed formally on a statement which must be not only signed but also sworn to by the party concerned. And as a guarantee of his loyalty to the country which he is about to adopt, the same law requires further that he take an oath of allegiance to its constitution and its government. Lastly, to assure the safekeeping of the documents evidencing said act for the mutual benefit and protection of the party concerned and the state, the law directs their filing with the nearest civil registry (Op. Sec. of Jus. August 12, 1946).

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for such election of citizenship, was incompatible with the fact of occupation by the Japanese Military authorities and could not have been accomplished during said period." (Op. June 26, 1947).

[17] See Sec. 2, Com. Act 625, also Op. Sec. of Jus. June 26, 1947.

[18] Op. Sec. of Jus. re-citizenship of Crispina Ang, No. 328, s. 1940.

[19] Op. Sec. of Jus. June 5, 1946.

VI. SUBSECTION FIVE

Its Importance and Effect.—

The last subsection of Sec. I of Article IV provides for citizens by naturalization. The qualifications required, the grounds for disqualification, and the steps to be followed for the issuance of the papers of naturalization are expressly laid down by law (Commonwealth Act No. 473, known as the Revised Naturalization Law). It may be observed in this connection that the number of applicants for naturalization may increase in view of the case of Tan Chong vs. Secretary of Labor, supra. Mere birth of a person in the Philippines does not make him a citizen thereof. He may nevertheless become a Filipino citizen thru naturalization. And it may be logically expected that those of alien parentage born in the Philippines, who have lived, and mingled with Filipinos, studied in the Philippines, and obtained their fortunes in the Philippines should desire to be citizens thereof. Another decision which may be expected to increase the number of applicants for naturalization is Krivenko v. Register of Deeds, 44 O.G. 961. Inasmuch as "private residential lands can be acquired only by Filipino citizens, aliens may consider it convenient to apply for Philippine citizenship.[20]

Requirement Re Children's Schooling Interpreted.—

Mention may be made of two recent cases on naturalization—Thomas Pritchard v. Republic of the Philippines, G.R. No. L-1715 and Kookooritchkin v. Solicitor General, G.R. No. L-1812. The first concerned the application for naturalization by Tom Pritchard, a known restauranteur of Manila. Among the questions raised in said application was whether or not in order to be exempt from the filing of a declaration of intention on the ground of 30 years or more residence in the Philippines, the applicant's children should have completed the primary and high school education in the public schools or in private schools recognized by the government. The Court said: "The legal provision requiring that the applicant has given primary and secondary education to all his children in the private or public schools recognized by the Government should be construed in the sense that, if the applicant has children, and they are of school age, they should be given primary or secondary education in the schools mentioned by the law. The words "has given" should be interpreted to mean that the

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[20] Chief Justice Moran himself pointed out the way by which aliens may acquire "private residential lands" thus: "We are satisfied however, that aliens are not completely excluded by the Constitution from the use of lands for residential purposes. Since their residence in the Philippines is temporary, they may be granted temporary rights such as lease contract which is not forebidden by the Constitution. Should they desire to remain here forever and share our fortunes and misfortunes, Filipino citizenship is not impossible to acquire."

children, if of school age should be given the opportunity of getting primary or secondary education, by their opportune enrollment and attendance in the schools mentioned by the law, but not that they must have completed in said schools both primary and secondary education."

And as to the Solicitor General's contention that "it is imperative that petitioner s children should be enrolled during the entire period of residence in the islands required of the applicant," the Court said: "The provision of the law invoked by appellant must be interpreted in the sense that the enrollment required by law must be made at any time during the entire period of the residence of the applicant in the Philippines."

The Kookooritchkin Case.—

In the Kookooritchkin case, among other things alleged by the Solicitor General was that the applicant, a former subject of the Russian Czar, who escaped from his country with the triumph of the Bolshevists and who was therefore held to be stateless, had only a muttering of Bicol, the Filipino language he alleged to know, and he could not speak it as the was not able to translate from English to Bicol the questions asked by the Court and the provincial fiscal. On this point, the Court held that the law does not set a specific standard of the required ability to speak and write any of the principal Philippine languages. A great number of standards can be set. x x x Perhaps less than one hundred well selected words will be enough for the ordinary purpose of daily life." But what perhaps influenced the Court more was the fact that the petitioner joined the guerrillas in Bicol and took part in skirmishes with the Japanese. "If he", reasoned out the Court, "with his muttering of Bicol was able to get along with his Bicol comrades in the hazardous life of the resistance movement, we believe that his knowledge of the language satisfies the requiremets of the law." Cases of the above-nature are not many.

And it is not unreasonable to desire that our Naturalization Laws should be strictly comlied with to the end that only those deserving of our citizenship and its rights and privileges may be admitted as one among us.

● **Teodoro Padilla**

A Historic View of the Revised Charter of Manila

> Experience has taught nations that when men congregate in large numbers in a small portion of the State, it is convenient to permit such persons, in a limited way to govern themselves, the State retaining the authority to modify, enlarge, restrain or to absolutely revoke such grant of power at any time this convenience ceases.
> (Aguado v. City of Manila, 9 Phil. 513)

I. HISTORICAL BACKGROUND

A—Pre-Spanish Period

The historical continuity of a municipality embracing the inhabitants of the territory now occupied by the City of Manila is impressive. Before the conquest of the Philippine Islands by Spain, Manila existed. The Spaniards found on the spot now occupied a populous and fortified community of Moros.[1] This settlement was situated on the seashore, near a large river, and under the rule and protection of a chief called Rajamora. Opposite on the other side of the river, was another large settlement named Tondo, which was likewise held by another chief named Rajamatanda.[2] In the words of Colin, the Spaniards found there "barbarians" who observed laws and policies which were not very barbarous, such consisting wholly of traditions and customs followed with rigorous exactness.[3] Manila, as it existed then, was merely one of a congerie of small groups, relatively advanced than the rest but, judging from Spanish standards still deficiently cohesive in respect to its political and social organization.[4]

B—Spanish Period

On the 6th of June 1570, Martin de Goiti, Master of Camp of the Spanish forces of colonization, took possession of Manila, peace overtures with the two chiefs having failed, and forthwith declared that in the name of the Spanish Crown, "he was occupying and did occupy, was taking and did take, royal ownership and possession, actual and quasi of the island of Luzon and of all other ports, towns and territories adjoining and belonging to this said Islands.[5]

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1 Vasquez Villas v. City of Manila, 42 Phil. 953
2 Blair and Robertson, Vol. 15, p. 48, 'Morga's *Sucesos de las Islas Filipinas*'.
3 Blair and Robertson, Vol. 40, p. 82 'Colin's *Labor Evangelica*'.
4 Blair and Robertson, Vol. L p. 48.
5 Blair and Robertson, Vol. 3, p. 105-106, *Document of 1570 by Hernando Riquel, Chief*

On the site donated by Rajamora to the Spaniards, Legaspi established a municipal corporation, "giving the title of city of this colony and appointing on the 24th day of 1571 two alcaldes-in-ordinary, one alguacil mayor, and twelve regidores. On the day following he appointed one notary for the **Cabildo** * and two notaries public for the court of the said alcaldes".[1] In 1574 there was conferred upon the city the title of "Illustrious and ever loyal city of Manila" [2] and subsequently, by royal concession, Philip II made the city of Manila "capital of the New Kingdom of Castilla and gave it a special favor, among other things a crown coat of arms which was chosen and assigned by his Royal person." [3]

The local administration of the city became the model of other important and thriving communities throughout the Islands. This governmental set-up was not an innovation introduced by the Spaniards for the Philippines merely. As a matter of fact, this was characteristic of Spanish colonies in other parts of the world, particularly in California. The Cabildo (corporation) was invariably administered by the same kind of officers: alcaldes-in-ordinary, regidores, registrar and constable, differing perhaps in number as the size of the community required. The alcaldes were justices and elected annualy from the householders of the corporation; the regidores were aldermen and with the registrar and constable held office permanently as a proprietary right.** These permanent positions in the Cabildo could be brought and sold and inherited.[4]

From time to time there occurred amendments in the charter, among the earliest of which was that decreed on June 29, 1573 by Governor Guido de Lavezaris, successor to Legaspi. Heretofore, following the practice in Spanish colonies, the regidores held office permanently. Lavezaris put an end to this practice by ordering that regidores exercise their office by virtue of an election held annualy, "because in that way they would do their duties well, understanding that the office is to last but a short time." [5]

At the close of the 18th century, there were added a few features in the civic administration of the Cabildo: regidores were reduced from

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* The *Cabildo* was the municipal official corporation nearly the same as the American city council; the regidores were members of it. The alguacil was an official who executed the orders given by the Cabildo, or by the Alcaldes.

[1] Blair and Robertson.

[2] Vasquez Vilas v. City of Manila, *supra*.

[3] Blair and Robertson, Vol. 16, p. 136.

** *Report on the Office Saleable in the Philippines, 1582:* City of Manila—Seven positions as city magistrates; two officials as notaries public; notary for the Cabildo and office of the alguacil mayor (high constable).

[4] Zuñiga, *Estadismo de las Islas Filipinas*, i. p. 245.

[5] Blair and Robertson, Vol. 3 p. 187, *Document of 1573*.

twelve to eight in number; the governor of the fort and other royal official were given seats in the city council but took no part in its deliberations. The jurisdiction of the city extended through the district of Manila and five leagues all around and included the supervision into the supply of provisions, and the imposition of fines on those who committed frauds in the sale of bread, meat, candles etc.[1] Judicial power was exercised by two alcaldes-in-ordinary who decided disputes that were taken to them in the first instance and exercised royal jurisdiction.[2]

The Ayuntamiento, (Court of Aldermen of Municipality) enjoyed very extensive privileges, approaching those of Houses of Assembly; their powers however, according to observations by an Englishman who visited the country during the years 1819-1822, "were more confined to remonstrances and protests, representations against what they conceived arbitrary or erroneous in government, or recommendations of measures suggested either by themselves or others. They had, in general, well answered the object of their institution as a barrier against the encroachments of government, and as a permanent body for reference in cases where local knowledge was necessary, which last deficiency they well supplied."[3] Civic and police power were lodged in the hands of a Corregidor and two alcaldes; the decision of these was final in cases of civil suits, where the value in question was small, one hundred dollars being the maximum. Their criminal jurisdiction extended only to slight fines and corporal punishments, and imprisonment preparatory to trial. The police was confined to the care of the Corregidor who had extensive powers, and also the inspection and control of prisons.[4]

C—Under American Sovereignty

This pattern of city government remained practically unaltered up to the occupation of Manila by the American forces on August 13, 1898. At the inception of American rule, the affairs of government was conducted by military authorities.

Commission Act No. 183—

On July 31 1901, an incorporating act was passed by the Philippine Commission and since then, the city has been an autonomous municipality. The charter then in force was Act No. 183 of the Philippine Commission and now may be found as chapters 68 to 75 of the

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[1] Zafra, *Readings in Philippine History*, p. 328.
[2] Ibid.
[3] Zafra, Readings in Philippine History, *Estadismo de las Islas Filipinas* by Fr. Joaquin Martinez de Zuñiga.
[4] Ibid.

Compiled Acts of the Philippine Commission. The first section of the Charter of 1901 reads as follows:

> "The inhabitants of the City of Manila, residing within the territory described in Sec. 2 of this Act, are hereby constituted a municipality which shall be known as the City of Manila and by that name shall have perpetual succession, and shall possess all the rights of property herein granted or heretofore enjoyed by the City of Manila as organized under Spanish Sovereignty." [1]

Section 1 (b) of Act No. 183 of the Philippine Commission provided that the City "may have a common seal, and alter the same at pleasure, and may take, purchase, receive, hold, lease convey and dispose of real and personal property for the general interests of the City, contract and be contracted with, sue and be sued, and prosecute and defend to final judgment and execution and execute all powers hereinafter conferred."

The boundaries described in Sec. 2 included substantially the area and inhabitants, which had theretofore constituted the old City. By Section 4 of the same act, the government of the city was invested in a Municipal Board."[2]

The boundaries and limits referred to in Section 2 was however only temporary in character, leaving to the municipal board the power to fix, after careful investigation, what in its opinion, the proper boundaries of the city would be. For this purpose, the board was empowered to cause surveys to be made of proposed new boundaries and to include therein territory not theretofore included in the City of Manila.[3] By Section 2 of Act 341 of the Philippine Commission, January 29, 1902, the suburb of Gagalangin was annexed to the district of Tondo and the municipality of Santa Ana, constituted a new district of the city. On August 15, 1902 the number of districts were increased to thirteen by the addition of the former municipality of Pandacan as a new district.

The Municipal Board in which the government of the City was vested consisted of three members, appointed by the Civil Governor with the consent of the Commission and removable in like manner. One member was designated to act as president and presided at all meetings of the board. The president was empowered to sign all ordinances, resolutions, bonds, contracts, and obligations made or authorized by the board and was empowered to issue such orders and instructions as were necessary to carry out and enforce the ordinances of the city and orders of the Board relating thereto.[4] Before entering

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[1] Vasquez Vilas v. City of Manila, *supra*.
[2] Ibid.
[3] Act No. 183 of the Philippine Commission, Sec. 2.
[4] Sec. 4, Act 183 of the Philippine Commission.

upon his duties, each member was required to take an oath [1] and execute a bond.[2] Upon the Board was conferred executive power exercised through the Departments of Engineering and Public Works, Police, Law, Fires and Building, Inspection and Assessment and Collection.[3]

Section 3 of the same Act established the jurisdiction of the city for police purposes only extending to three miles from the shore into Manila Bay and over a zone surrounding the city on land of five miles in width.

Section 68 exempted the city from liability for damages or injuries to persons or property arising from failure of the municipal board or any city officer to enforce the provisions of the Charter, or any law or ordinance, or from negligence of said Board or other officers while enforcing or attempting to enforce the same.

The Administrative Code—

Subsequently, Act 2657 was passed which amended the charter of 1901. However this was short-lived for on March 10, 1917, Act 2711, otherwise known as the Administrative Code was passed superseding the former was passed. From time to time this Code was subject to amendments and from it as amended up to August 28, 1940, the following salient provisions relative to the Charter of the City of Manila are embodied:

Section 2428—The City of Manila constitutes a political body corporate and as such is endowed with the attributes of perpetual succession and possessed of powers which pertain to a municipal corporation, to be exercised in conformity with the provisions of this Chapter.

Section 2429 regarding the seal and general powers of the city was a virtual restatement of Section 1 (b) of Act 138 of the Philippine Commission, except that the City was vested with the additional power to condemn private property for public use.

Section 2430 exempted the City from liability for damages or injuries to persons or property arising from failure of the municipal board, or any city officer or the mayor (which official did not exist under Act 183) to enforce the provisions of the Charter, or any law or ordinance, or from negligence of the said Board, or other officers of the Mayor while enforcing or attempting to enforce the same.

Section 2432 divided the City, for all administrative and other municipal purposes, into fourteen districts: Tondo, San Nicolas, Binondo, Sta. Cruz, Quiapo, San Miguel, Sampaloc, Intramuros, El Puerto, Ermita, Malate, Paco, Pandacan and Santa Ana.

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[1] Sec. 7 Ibid.
[2] Sec. 8 Ibid.
[3] Sec. 11 Ibid.

Section 2433 amplified the provisions of Sec. 3 of Act 183, and provided as follows: "Jurisdiction of the City of Manila for police purposes only shall extend to three miles from the shore into Manila Bay and over a zone surrounding the city on land of two and one-half miles in width; and for the purpose of protecting and insuring the purity of water supply of the city such police jurisdiction shall also extend over all territory within the drainage area of such water supply or within 100 meters of any reservoir, conduit, canal, aqueduct, or pumping station used in connection with city water service. The court of first instance and municipal court of the city of Manila is vested concurrent jurisdiction with courts of first instance and justice of the peace courts of provinces and municipalities to try crimes and misdemeanors committed within said zone of two and one-half miles in width, within said drainage area, or within said space of 100 meters. The court first taking jurisdiction of such offenses shall thereafter retain exclusive jurisdiction thereof. The police of several municipalities concerned shall have concurrent jurisdiction with police of the City of Manila for the maintenance of good order and enforcement of lawful ordinances throughout said zone, area and space."

Section 2434 provided for a Mayor who "shall be the chief executive of the city" excrcising immediate control over the executive functions of the different departments, subject to the authority and supervison of the Secretary of the Interior. He was to be appointed by the President of the Philippines with the consent of the Commission on Appointments of the National Assembly, to hold office for three years and was vested with the general duties and powers enumerated under Sec. 2434 (b).

In the event of the sickness, absence of other temporary incapacity of the mayor, or in the event of a definitive vacancy in the position of the mayor, Sec. 2434 (a) designated the city engineer to perform the duties of the mayor, and in default of the latter, the city treasurer.

Legislative power was vested in the Municipal Board, consisting of 10 members elected at large, holding office for three years, with the members electing from among themselves, a president having the power to preside for one year at all meetings of the board.[1]

Section 2445 divided the city government into seven departments, with the Mayor having general supervisory power over them: the Department of Engineering and Public Works under the charge of a City Engineer,[2] the Police Department, under the control of a Chief of Police;[3] Law Department consisting of a Fiscal and twenty two assist-

[1] Secs. 2439, 2440 (a), Act 2711 as amended up to Aug 28, 1940.
[2] and [3] Secs. 2458, 2460, Act. 2711, supra.

ant fiscals discharging their duties under the general supervision of the Secretary of Justice;[1] the Fire Department, with a Chief of the Fire Department having management and control of all matters relating to the administration of the said department,[2] a department of Finance with a City Treasurer having charge of the same and acting as chief fiscal officer and financial adviser of the city and custodian of its funds[3] a Department of Assessment under the charge of a City Assessor;[4] a Department of Health and Welfare under a City Health Officer, appointed by the President of the Philippines with the consent of the Commission on Appointments of the National Assembly.[5]

II—Changes under the Revised Charter

Recently, on June 18, 1949, Republic Act No. 409, AN ACT TO REVISE THE CHARTER OF THE CITY OF MANILA, AND FOR OTHER PURPOSES, was approved by the President of the Philippines. As House Bill No. 2520 it was presented with a view of revising the old Charter, embodied in the Administrative Code which for the past forty years has been undergoing several amendments, so as to bring it up to date with all necessary changes to suit present conditions in the City of Manila.[6]

With the passage of this Act, Chapter Sixty of the Revised Administrative Code and all laws or parts of laws inconsistent therewith were repealed.[7] Important innovations affecting the representative districts of Manila, the office of the Mayor and election of members of the Municipal Board were introduced.

Electoral Districts—

Section 7 divided the City into four representative districts for purposes of national representation, each district to be represented by one member in the House of Representatives; and to that end, Tondo was designated as the First District; the districts of San Nicolas, Binondo, Quiapo and Santa Cruz were comprised into the Second District; Sampaloc and San Miguel were included into the Third District, and Intramuros, Port Area, Ermita, Malate, Paco, Pandacan and Santa Ana composed the Fourth District.

Elective Mayor—

Sec. 9, Article II, provides for a mayor who shall be elected at large by the qualified electors of the city; he shall hold office for four years, unless sooner removed. Before a mayor can be elected he shall be at least thirty years of age, a resident of the city at least five years prior to his election, and a qualified voter therein. A vice-mayor shall be

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[1], [2], [3], [4], [5] Secs 2465, 2479, 2480, 2481 and 2482 Act 2711, as amended.
[6] Explanatory note of House Bill No. 2520
[7] Sec 102, Republic Act No. 409

elected in the same manner as the mayor and shall at the time of his election possess the same qualifications as the mayor. In the event of the sickness, absence or other temporary incapacity of the mayor, or in the event of a definitive vacancy in the position of the mayor, the vice-mayor shall perform the duties of the mayor, and in default of the vice-mayor, the duties of the mayor shall be performed by the city engineer.

District Councilors—

Sec. 13, Article III provides for a Municipal Board which shall consist of three elective members from each representative district, who shall hold office for four years, and in order to qualify for election each must be, at the time of election, a qualified elector, shall be a resident of the City for at least four years, must have actually resided at least one year in the representative district concerned, and not less than twenty-three years of age.

In all other aspects, all provisions of the Revised Administrative Code, laws or parts thereof which are inconsistent with the provisions of Republic Act No. 409 stand repealed and of no effect.

III—Observations

Of the continuity of the charter from the time of Legaspi to the present there can be no doubt. The Incorporating Act of 1901, true enough, wrought changes in the system of administration, eradicating those aspects which were inconsistent with the American system of government, but otherwise kept intact the entity that existed before the advent of American rule. In a number of cases it was held that, "when a new form is given to an old corporation, or such a corporation is reorganized under a new charter, taking the place of the old, embracing substantially the same corporators and the same territory, it will be presumed that the legislature intended a continued existence of the same corporation, although different powers are possessed under the new charter and different officers administer its affairs." [1] More emphatically, it was held in O'Connor v. Memphis, 6 Lea. 730 that "neither the repeal of the charter of a municipal corporation nor a change of its name, nor an increase or diminution of its territory or population nor a change in its mode of government, nor all of these combined will destroy the identity, continuity, or succession of the corporation if the people or territory reincorporated constitute an integral part of the corporation abolished. x x x The corporators and the territory are the essential constituents of the corporation."

● **Aquilino Bonto, Jr.**

[1] Mobile v. Watson 116 U.S. 289; Broughton v. Pensacola 93 U.S. 266.