A CRITIQUE ON DUAL NATIONALITY AS A STATE POLICY IN THE PHILIPPINES

EDGAR S. ASUNCION
LUIS CHITO F. DIORES
TEODORO C. FERNANDO
ILDEFONSO R. JIMENEZ
GILBERT G. KINTANAR
MIGUELITO V. OCAMPO

INTRODUCTION

One of the most fundamental precepts in international law is that of state sovereignty. Indeed, it is the recognition of the independence of states that necessitates an international law. Within the limits of its territory, each state exercises supreme and independent authority, and an important attribute of this authority is the right of the state to determine that group of individuals who shall be considered its citizens, including their status with respect to rights and obligations vis-a-vis the state.

Consistent with this principle of sovereignty, Article 1 of the Convention on Certain Questions relating to the Conflict of Nationality Laws provides that:

> It is for each state to determine under its own laws who are its nationals. This law shall be recognized by other states in so far as it is consistent with international conventions, international custom, and the principles of law generally recognized with regard to nationality.

That nationality should be conceived as a subject that states are desirous of reserving to their own jurisdiction is both natural and expected since the very existence of a state requires a population that will ensure its preservation and continuity.[1]

In the succeeding discussion, we shall see more concretely this interrelationship between sovereignty and citizenship.

I. CONCEPTS OF NATIONALITY

A. *Concepts and definitions*

"Nationality" refers to membership in a state. It is often used interchangeably with "citizenship." These two terms actually emphasize two

[1] Tunis and Morroco Case, P.C.I.J., series C, no. 2, at 83-84 (1923).

different aspects of the same notion — membership in a political community. While "nationality" stresses the international, "citizenship" emphasizes the municipal aspect. The idea of "citizenship" involves the individual's duty of allegiance to and his right to protection from the state. There are reciprocal obligations, one being a compensation for the other.[2] For purposes of this paper, however, these terms are to be treated as synonymous.

In the realm of international law, while nationality would have a general connotation of membership in a state, its content and meaning as far as the rights and duties of citizens are concerned is defined by each state's municipal law, and therefore will assume a different significance for each state. This, of course, is but a consequence of the exercise of state sovereignty. The only limitation in this regard are the generally accepted principles relating to nationality — the conferment of nationality must be based on actual and substantial bonds, and not on imagined or fictitious ones, in order to be respected by other states.

This brings us to another attribute of nationality, known as "effective nationality."

B. *Importance in municipal and international law*

As mentioned earlier, one of the consequences of conferment of nationality is the acquisition of reciprocal rights and obligations by the citizen and the state. In the Philippines, these duties and obligations may be found in the Constitution itself,[3] and includes such duties as the rendering of military service, to vote, to be loyal to the Republic and to honor the Philippine flag. It also grants certain rights, such as the right to vote and to be voted,[4] the right to own land,[5] and the right to exploit the country's natural resources.[5a] It is this demand for allegiance and exercise of exclusive rights that creates problems in the case of dual nationalities, which will be expanded more in a later chapter.

With respect to international law, nationality plays an equally important role. For one thing, it is the vehicle through which an individual is recognized as a proper subject of international law. The citizen's personal interests are raised to the level of state interests and may therefore be defended or pursued under international law. Without nationality, an individual will not be able to assert himself in the international sphere. Corollary to this is the right of the state to extend diplomatic protection over its citizens, to the exclusion of any other state. In this sense, nationality

---

2 Luria v. The United States, 231 U.S. 9, 22 (1913).
3 CONST., art. V, secs. 1-4.
4 CONST., art. VI, sec. 1.
5 CONST., art. XIV, sec. 14.
5a CONST., art. XIV, sec. 9.

is the justification in international law for the intercession of one government to protect persons, and property in another state.[6]

C. *Modes of acquiring nationality*

There are three distinct modes for the acquisition of nationality recognized by modern public law. They are: (1) blood relationship; (2) place of birth; and (3) naturalization. The first two of these modes fall under the so-called original acquisition of nationality and the third mode falls under the so-called derivative acquisition of nationality.

1. Original Acquisition

The two principles on which original acquisition of nationality is based are *jus soli* and *jus sanguinis*. The first principle refers to the acquisition of nationality by birth in the territory of the State whereby, as a rule, all persons born in a state are considered citizens of that state, regardless of the citizenship of their parents. This principle is followed in the United States. On the other hand, the second principle refers to the acquisition of nationality by descent or blood relationship. Under this principle, as a rule, illegitimate children are under the parental authority of the mother and follow her nationality, not that of the illegitimate father[7] and a legitimate child that of his parents or, if the parents are of different nationalities, that of the father.

In the Philippines, both under the 1935 and 1973 Constitutions, *jus sanguinis* is the prevailing principle and is considered a better guarantee of loyalty to the country of one's parents. Thus, in the 1935 Constitution, the citizenship of the father is the determining factor of the citizenship of the child.[8] This principle was affirmed by the Philippine Supreme Court in the cases of *Tan Chong v. Secretary of Labor*,[9] *Lam Swee Sang v. Commonwealth*,[10] and *Tio Tian v. Republic*,[11] where it ruled that, *jus soli* by itself was never recognized in the Philippines, thereby repudiating the ruling laid down by the Court in the cases of *Roa v. Collector of Customs*,[12] *Haw v. Collector of Customs*,[13] *Torres v. Tan Chin*,[14] wherein it recognized the applicability of the doctrine of *jus soli* in the Philippines.

The 1973 Constitution has preserved the principle of *jus sanguinis* as the basic foundation of citizenship and has expanded its application by

---

[6] Commissioner Nielsen in the US-Mexican Special Claims Commissions in the case of *Naomi Russell*, 4 U.N. REPORTS 805 at 911, as quoted in WEIS, NATIONALITY AND STATELESSNESS IN INTERNATIONAL LAW 35 (1956).

[7] *See* Board of Immigration v. Gallano, G.R. No. 24530, Oct. 31, 1968, 25 SCRA 890 (1968).

[8] CONST., (1935), art. IV, sec. 1, par. (3).

[9] 79 Phil. 249 (1947).

[10] 79 Phil. 249 (1947).

[11] 101 Phil. 195 (1957).

[12] 23 Phil. 315 (1912).

[13] 59 Phil. 612 (1934).

[14] 69 Phil. 518 (1940).

placing the Filipino woman on the same level as the male in matters of citizenship. Thus, the Constitution of 1973 considers as citizens of the Philippines "those whose fathers or mothers are citizens of the Philippines."[15] Pursuant to this provision, a child is considered a Filipino citizen, if either parent, father or mother, is a Filipino citizen at the time of the child's birth regardless of the citizenship of the other parent or of the place of birth.

It must be noted however, that although the principle of *jus sanguinis* is the prevailing rule in the Philippines, there is nothing either in the 1935 or in the 1973 Constitution to prohibit and prevent the National Assembly from adopting the principle of *jus soli.*

2. Derivative Acquisition

Apart from acquisition of nationality by birth, either under the *jus soli* doctrine or the *jus sanguinis* doctrine, nationality may be acquired by naturalization. The term "naturalization" may be understood in two senses. In the loose and broad sense of the term, it may mean not only the judicial process but also the acquisition of nationality by marriage, legitimation, option, acquisition of domicile and entry into State service. In the strict sense, it is a judicial process, where formalities of the law have to be complied with including a judicial hearing and approval of the petition. The formalities of the law to be complied with for the grant of naturalization vary from country to country.

In the Philippines, this mode of acquisition of nationality is well recognized by the Constitution when it declares as Filipino citizens "those who are naturalized in accordance with law." The present law on naturalization is the Revised Naturalization Law, Commonwealth Act No. 473, approved on June 17, 1939. Under the law, an applicant for naturalization must prove that he possesses all of the qualification and none of the disqualification set forth in the law. He is further required to follow a very strict procedure in the application for and in the final acquisition of Philippine citizenship. This strict application of the law was affirmed by the Supreme Court when it declared that naturalization "is not a matter of right, but one of the privilege of the most discriminating, as well as delicate and exacting nature, affecting, as it does, public interest of the highest order, and which may be enjoyed only under the precise conditions prescribed by law therefor."[16]

With the advent of martial law, Philippine citizenship has been granted by direct Presidential Decree, e.g., Presidential Decree No. 192[17] which granted Philippine citizenship to Ronald William Nathanielsz; Presidential Decree No. 300[18] which granted Philippine citizenship to William Sheehy

[15] CONST., art. III, sec. 1, par. (2).
[16] Cuaki Tan Si v. Republic, 116 Phil. 855, 857 (1962).
[17] Took effect on May 14, 1973, 68 O.G. 4652-K No. 21 (May 21, 1973).
[18] Took effect on Sept. 24, 1973, 69 O.G. 9129 No. 40 (Oct. 1, 1973).

Schaare, or through Naturalization by Presidential Decree, i.e., Presidential Decree No. 1379[19] granting citizenship to deserving aliens who have applied for naturalization. This last mentioned decree was issued pursuant to Letters of Instruction Nos. 270[20] and 491[21] where application for naturalization by decree were received by the Special Committee on Naturalization created for processing and evaluation. After processing and evaluating the applications, this Special Committee makes recommendations to the President of the Philippines. It must be noted that, as compared to our Revised Naturalization Law, C.A. 473 as amended, this procedure of granting citizenship by direct Presidential Decree or through the Naturalization by Presidential Decree is summary in nature. This less rigorous procedure of granting citizenship resulted in the naturalization of more than 16,399 alien applicants as of May 1978, and some 22,439 applications are still pending consideration.[22] This grant of Philippine citizenship by summary proceedings is, as observed by Prof. Salonga, "a novel experience, one that is fraught with far-reaching consequences."[23]

D. *Dual nationality*

The concept of dual citizenship is not a new concept in Philippine law. It is a concept which our government has always recognized as part of our laws, in recognition of the fact that we are only a part of a community of nations composed of several states having diverse and separate system of law, and the fact that Philippine law cannot control international law and the laws of other countries on citizenship. In fact, this concept was incorporated in one of our statutes, and our Constitution, itself allows for the possibility of dual citizenship which arises "since the universal rule is that the child follows the citizenship of the father, and since under Section 1(2) the child also follows the citizenship of the Filipino mother, and since under Section 2 the Filipino does not lose Philippine citizenship by marriage to an alien husband."[24]

Commonwealth Act No. 63, entitled An Act Providing For The Ways In Which Philippine Citizenship May Be Lost or Reacquired, as amended by Republic Act Nos. 2639 and 3834, expressly incorporates the concept of dual citizenship when it provides the following provisions:

> The provision of this section notwithstanding, the acquisition of citizenship by a natural born Filipino citizen from one of the Iberian and any friendly democratic Ibero-American countries or from the United Kingdom shall not produce loss or forfeiture of his Philippine citizenship if the law of that country grants the same privilege to its citizens and such had been

19 Took effect on May 17, 1978.
20 Took effect on June 5, 1975.
21 Took effect on December 29, 1976.
22 Pres. Decree No. 1379, took effect on May 17, 1978.
23 SALONGA, PRIVATE INTERNATIONAL LAW 152 (1979).
24 BERNAS, THE 1973 PHILIPPINE CONSTITUTION NOTES AND CASES 31 (1974).

agreed upon by treaty between the Philippines and the foreign country from which citizenship is acquired.

1. How dual nationality arises

Generally, dual citizenship arises either as a result of the application by different states of conflicting laws over the same individual or it may result from a declared policy of the state to recognize dual citizenship.

Senator Salonga presents three possible situations where dual citizenship arises as a consequence of conflicting laws:[25]

a) By the concurrent application of the principles of *jus soli* and *jus sanguinis,* at birth;

These two theories of acquisition of nationality at birth have already been discussed in an earlier section. To illustrate, let us suppose that a child is born in the United States of Filipino parents. Under Philippine law, *jus sanguinis* is applied and therefore the child is a Filipino but under American law, where the *jus soli* principle is followed, the child is an American citizen — a classic case of dual nationality obtains.

b) By the denial by one state of the right of expatriation.

Expatriation is the right of abandoning one's nationality and embracing another. At present, expatriation has not been recognized as an international custom or practice although it has been recognized in some states with varying qualifications. One common restriction imposed on the right of expatriation is prior consent of the country of origin, such as in Egypt, France, Greece, Hungary, Russia and Switzerland, where consent is necessary for loss of citizenship, and in Japan, Spain, Austria, Romania, Portugal and Sweden, consent is necessary for naturalization.[26]

Problems of dual citizenship have arisen when a state withholds expatriation permits and refuses to recognize naturalizations obtained without their consent. Many cases have arisen wherein expatriates returned to their country of origin and were forced to perform military service or were prosecuted for evading their duty to perform military service.[27]

c) By marriage

Under the 1973 Constitution, a Filipino who marries an alien retains her Philippine citizenship, unless by her act or omission, she is deemed, under the law, to have renounced her citizenship.[28] This change from the 1935 Constitution is an express recognition of the trend to recognize the independence and equality of the sexes. In fact, this principle is embodied in the 1957 U.N. General Assembly Convention on the Nationality of

[25] SALONGA, *supra* at 136.
[26] *Ibid.*
[27] WEIS, *op. cit., supra,* note 6 at 135.
[28] CONST., art. III, sec. 2.

Married Women, where each contracting state agrees that neither the celebration nor the dissolution of marriage between one of its nationals and an alien, nor the change of nationality by the husband during the marriage, shall automatically affect the nationality of the wife.[29]

Again, this may result in dual nationality, as where the law of the alien husband confers its citizenship upon the Filipino wife when the latter has not renounced her Philippine citizenship.

d) By recognition pursuant to a state policy

Apart from the three possible situations given above, the problem of dual nationality may arise as a result of a state policy that extends citizenship to a foreign national without the latter having to renounce his former citizenship. Among these countries are Israel, the United Kingdom and Switzerland. The present proposals at the Interim Batasang Pambansa on dual nationality are attempts at incorporating such a policy. A more comprehensive discussion and comparison of these foreign and national policies will be given in a later chapter.

We have outlined the various possibilities where dual nationality may arise. We must note, however, that except for the fourth situation, the dual nationality exists only in theory, resulting as it does from a conflict of laws. In the actual implementation, only one nationality will be recognized, whether it be from the point of view of either of the competing states or from the point of view of a third state. Without an express state policy, both of the competing states will recognize their own citizenships and will apply their own municipal laws whereas a third state will use the test of "effective nationality" and recognize only that one. The existence of dual nationality is thus merely a theoretical problem and not a factual situation. Only in the fourth situation is dual nationality a real and factual phenomenon.

2. How dual nationality problems are resolved

Problems of dual nationality have often come before international tribunals. Generally, however, the determination of which nationality to recognize is raised not as the main issue but rather as a preliminary issue to determine the jurisdiction of the tribunal or the right of a state to assert the individual's rights.[30]

In earlier decisions, there was a tendency to resolve the issue by assigning relative weights to the various modes of acquiring nationality, that is, to prefer the nationality at birth to one subsequently acquired, or to prefer *jus soli* over *jus sanguinis* and vice-versa, or to prefer naturalization. Recently, however, tribunals have not adhered to these tests.

---

[29] General Assembly Resolution 1040 (XI), January 29, 1957.
[30] WEIS, *op. cit., supra,* note 6 at 180.

The more preferred test if we were to examine the recent cases, is the so-called "effective nationality" test.[31] When faced with the issue of double nationality, courts have recognized that nationality which the person in fact exercises. Points of contact between the individual and either state are considered, such as the situs of his family, his business or profession, his residence or domicile, his exercise of political rights (voting at elections, assuming public office) — in general, attachment as a matter of fact rather than by legal fiction is preferred. In some instances, the issue was decided in favor of the nationality of the state where the individual had his habitual residence or domicile. Dr. Weis believes that his "territorial test" is not a basic deviation from the tendency to favor the individuals factual attachment because domicile and habitual residence certainly constitute important elements in assessing factual attachment.[32]

II. Textual Analysis of Parliamentary Bills 303 and 982

Early this year, President Marcos went to Hawaii to address the American Association of Newspaper Publishers. Part of the program for the President's visit was an address before the Filipino community in Hawaii. Many questions were raised concerning the conditions in the Philippines. In response, President Marcos invited all former Filipinos to come home and see for themselves, and as an incentive, he made a commitment to enact legislation that would grant them certain rights which the Constitution reserved to Filipino nationals, or alternatively, to grant them dual nationality.

Subsequently, a series of Bills and Resolutions were filed at the Batasang Pambansa, namely, Parliamentary Bills 303 and 982 and Resolutions 182, 185 and 197. Some of these proposals were limited to the granting of certain rights enjoyed exclusively by Filipino citizens, while others went as far as granting them full Philipine citizenship without necessity of renouncing their former citizenship. It is apparent that the proposals are intended for the benefit of "former Filipino citizens who were naturalized abroad, and who wish to return to the Philippines or foreign nationals of Filipino descent." For convenience, we have abbreviated this class of persons and we shall hereafter refer to them as *balik-bansa.*

A. *Parliamentary Bill No. 303*

Parliamentary Bill No. 303 which is "An Act Confering Philippine Citizenship Upon Former Filipino Citizens and Foreign Nationals of Filipino Origin or Descent Without Causing the Forfeiture of Their Foreign Citizenship" suffers from certain vagueness in its provisions.

The Bill speaks of "former Filipino citizen or foreign national of Filpino origin or descent...." without making any qualification as to its

[31] *The Canevaro Case* (Italy v. Peru) 1 Scott, Reports, pp. 284-96; *Salem Case,* 2 U.N. Reports, p. 1101; *Nottebohm Case,* [1955] I.C.J. Rep. 4.

[32] *Naomi Russell Case, op. cit., supra,* note 6 at 181.

terms. Does origin or descent mean that the father or mother or both of the former citizen or foreign national have to be Filipino citizens for him to qualify, as it is one of the modes of acquiring citizenship under Philippine law under the principle of *jus sanguinis*. Does Filipino descent or origin refer to any ascendant of whatever degree, so that a foreigner who has a Filipino for a great-great-grandfather as the only possible origin but is otherwise of pure American stock can qualify? The point raised is that the vagueness of this phrase can lead to absurdities as to who can qualify. Perhaps a limit should be set as to what degree of ascendancy a former Filipino citizen or foreign national can qualify.

Another vagueness that reveals itself is that part of the proposed bill which confers automatic Filipino citizenship upon the filing of an oath of allegiance with the office of the local civil registrar of the place where he intends to reside. The question is the implication of "filing at the place where he intends to reside". Does it mean that there must be an established residency in the locality within the Philippines or does the mention of intention of residence negate this idea?

The last sentence of Section One of the proposed bill states that conferment of Philippine citizenship shall not cause the forfeiture of his foreign citizenship unless otherwise provided by the laws of the country of which he is a national, nor shall he be required to renounce the same. This portion of the bill is a recognition of the basic premise that it is the State that confers citizenship and that it is the State that sets the rules for its law. So, the proposed bill recognizes a limitation namely that Philippine law can not control the power of another State to consider who are its citizens.

The historical and economic links of the Philippines to the United States of America has seen a large number of Filipinos migrating to that country. If ever the bill is enacted into law it would most probably affect those Filipinos who have become American citizens. However a problem arises. By its own provision the bill makes an exception to the non-forfeiture of a *balik-bansa's* foreign citizenship only when the law of that foreign State provides so.

Under Public Law 414 of June 27, 1952 of the United States is "An Act to Revise the Laws Relating to Immigration, Naturalization and Nationality and for Other Purposes of the United States of America." Chapter Three provides for the "Loss of Nationality" and under the sub-title "Loss of nationality by native born or naturalized citizen," Section 349 (a) states these to be:

> (1) Obtaining naturalization in a foreign state upon his own application, upon an application filed in his behalf by a parent, guardian or duly authorized agent, or though the naturalization of a parent having legal custody of such person: *Provided*, That nationality shall not be lost by any person under the section as a result of the naturalization of a parent

> or parents while such person is under the ages of twenty-one years or as the result of a naturalization obtained on behalf of a person under twenty-one years of age by a parent, guardian or duly authorized agent, unless such person shall fail to enter the United States to establish a permanent residence prior to his 25th birthday.
>
> (2) Taking an oath or making an affirmation or other formal declaration of allegiance to a foreign state or a political subdivision thereof.[33]

The law above cited at once places the United States as outside the purview of Parliamentary Bill No. 303. It is also true of many other states, as will be discussed later. By the exception in the Bill, it seems that it only confers apparent privileges rather than real ones. As it stands, the bill would apply to those countries which allow dual nationality of its citizen. Israel would be an example, but how many Filipinos migrate to Israel and become citizens of that country?

Section 2 of the Bill provides that the Minister of Justice is to provide the necessary rules and regulations to implement provisions of this Act. These regulations to be enacted face the possibility of being invalidated since the proposed bill is uncertain as to what standards it should apply. Being so incomplete, it would seem that once the Minister of Justice starts to place limitations, there may result an undue delegation of legislative power as the law has left so much to be done.

In the Explanatory Note of this proposed bill number 303, the reason for the law is to encourage former Filipino citizen and foreign nationals of Filipino origin or descent to return and reside in the Philippines. These former citizens are presumed to want to return because of family and friendship ties, with a desire to contribute to the development of Philippine natural resources coupled with loyalty to their country of origin. But why liberalize the law on citizenship in favor of such former citizens who have actually made concrete acts of renunciation of their country as against, for example, a foreign national of no Filipino origin or descent who has resided in this country for, say, twenty years and has made substantial contributions to national development?

Another query is with respect to the automatic grant of Filipino citizenship. Does this mean that the provisions of Commonwealth Act No. 63 as amended by Republic Act No. 106, on reacquisition of citizenship will not apply? That law in Section 2 provides: "How citizenship may be reacquired — Citizenship may be reacquired:

"(1) By naturalization; Provided that the applicant possess none of the disqualifications prescribed in Section 2 of Act No. 2927;"

"(2) By repatriation of deserters of the Army, Navy, or Air Corps;...

"(3) By direct act of the National Assembly."

---

[33] Public Law No. 414 of the United States of America, June 27, 1952.

Section 3 provides the following:

> "(1) That the applicant be at least 21 years of age and shall have resided in the Philippines at least 6 months before he applies for naturalization;
>
> (2) That he shall have conducted himself in a proper and irreproachable manner during the entire period of his residence in the Philippines, in his relations with the constituted government as well as with the community in which he is living; and
>
> (3) That he subscribes to an oath declaring his intention to renounce absolutely and perpetually all faith and allegiance to the foreign authority, state or sovereignty of which he was a citizen or subject."[34]

It must be remembered that these provisions of law were made as safeguards and guides as to what type of persons are to be regarded as citizens of the Republic. With an automatic grant, there exists no safeguard. The present reacquisition law is precisely a process of screening with certain requirements which necessarily does not contemplate an automatic grant of citizenship.

B. *Parliamentary Bill No. 982*

Parliamentary Bill No. 982 is "An Act Allowing Filipino Citizens Who Have Become Citizens of the United States of America to Retain Their Philippine Citizenship, Amending Subparagraph (1) Section 1 of Commonwealth Act No. 63 as Amended."

Section 1(1) of Commonwealth Act No. 63 as amended provides for the substitution of a new nationality by naturalization. With the amendment, substitution of nationality will occur in all instances except when the nationality sought by the Filipino is American in which case he retains his nationality.

This proposed bill is more limited in its application in that it favors Filipinos who became American citizens. The reason for the law is based on kinship ties of Filipinos as well as a vaguely defined loyalty of being "Filipinos at heart" because of money remittance made by such citizen to their families and/or relatives. The reasons for the law seem to be unjustified and misleading. The legislators seem to equate close kinship ties with their families, providing material and moral support for them and taking interest in their native land and contributing to its economy by monetary remittances to relatives and being "Filipino at heart" with reasons for being naturalized. What the legislators seem to miss is that these former citizens have renounced Filipino citizenship expressly by pledging allegiance to another country and undergoing its naturalization process. This is the

[34] Com. Act No. 63, 1936 Sec. 3.

basis for citizenship, the membership of one in a State, the consequences of such membership being loyalty and allegiance. It could not be kinship ties because this connotes a loyalty to a family and not to the State. It is possible for a *balik-bansa* to have very close ties with his family in the Philippines, regularly sending them money and maintaining an interest in the country but yet he could be a traitor to his country, and no amount of kinship will change that circumstance. Applying the proposed law as it is explained would mean a substitution of loyalty and allegiance to the State with sentimentality, as a basis for granting citizenship. This would effectively destroy the concept of mutual relationship between Sovereign and individual as expressed in the phrase: *Ligentia est duplex et reciprocum legamen.* It is a commonplace that nationality confers right as well as imposes obligations.[35] If it is only on the basis of sentimentality then the *balik-bansa* is not imposed with any obligation of loyalty to the Sovereign or the State as loyalty to his family in the Philippines is enough.

Aside from this, if kinship ties, concern, and sending of money is the basis for citizenship, what makes Filipinos who are now American citizens qualified, and others, e.g., Filipinos who are now Canadians, not qualify? There seems to be a privileged class of former Filipinos, now Americans, who may acquire Filipino nationality without any substantial basis. These *balik-bansa* now Americans cannot possibly claim a monopoly of close kinship ties as this is a trait that attaches to the Filipino wherever he maybe, or whatever citizenship he may choose to acquire. The query therefore is: Why the discrimination?

Section 2 of the proposed Parliamentary Bill No. 982 considers Filipino citizens who have become American citizens before effectivity of this Act as not divested of their Philippine citizenship upon their naturalization in the United States. This section seeks to make a retroactive application of this recognition of Filipino citizenship. The proposed law is generous as it makes no limitation.

As the Philippines applies the *jus sanguinis* rule in acquiring citizenship, the descendants of the first Filipino migrant workers to the United States, or the first Filipino immigrant will all be Filipino citizens and any American with at least one Filipino in his family tree could claim Filipino citizenship. Reducing the argument into absurdity, a large percentage of the American population would be composed of Filipino citizens. This would be the consequence when no limit is set as to how far back "before the effectivity of this Act" is to be applied.

The two proposed bills numbers 303 and 982 are short in their provisions. However, it is this brevity that betrays the length of complexities that the bills on their text would pose.

---

[35] WEIS, *op. cit., supra,* note 6 at 32.

III. TEXTUAL ANALYSIS OF BATASANG PAMBANSA RESOLUTIONS NOS. 182, 185 AND 197

The other means by which the granting of privileges to the *balik-bansa* is found in Batasang Pambansa Resolutions Numbered 182, 185 and 197. As an alternative to the enactment of a law as proposed by Parliamentary Bills Numbered 303 and 982, these resoluitons seek the amendment of Article XIV of the 1973 Philippine Constitution by making its Sections 3, 5, 9 and 14 applicable to former Filipino natural born citizens. Without the amendment, Article XIV gives rights to Filipinos exclusively as it deals with the national economy and the patrimony of the nation.

The rights that would be granted to the *balik-bansa* are:

"Article XIV, Section 3. The National Assembly shall, upon recommendation of the National Economic and Development Authority, reserve to citizens of the Philippines or to corporations or associations wholly owned by such citizens, certain traditional areas of investments when the national interest so dictates."

"Article XIV, Section 5. No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines at least sixty *per centum* of the capital of which is owned by such citizens,..."

"Article XIV Section 9. The disposition, exploration, development, exploitation, or utilization of any of the natural resources of the Philippines shall be limited to citizens of the Philippines, or to corporations or associations at least sixty *per centum* of the capital of which is owned by such citizens,..."

"Article XIV Section 14. Save in cases of hereditary succession, no private land shall be transferred or conveyed except to individuals, corporations, or associations qualified to acquire or hold lands of the public domain."

This approach to the problem conferring rights to former Filipino citizens is more specific. Instead of granting citizenship which is unclear as to what particular rights it would vest as in the proposed bills numbered 303 and 982, the Resolutions confer no citizenship but grant the *balik-bansa* certain economic rights which are previously reserved for Filipino citizens There is nothing new with this approach as it had been recognized in the Parity Rights Amendments to the 1935 Constitution. That portion of the 1935 Constitution is entitled "Second Ordinance Appended to the Constitution," which provisions "....the disposition, exploitation, development, and utilization of all agricultural, timber, and mineral lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces and sources of potential energy, and other natural resources of the Philippines

and the operation of public utilities, shall, if open to any person, be open to citizens of the United States and to all forms of business enterprises owned or controlled, directly or indirectly, by citizens of the United States, in the same manner as to, and under the same conditions imposed upon, citizens of the Philippines or corporations or associations owned or controlled by citizens of the Philippines." However, there was a qualification under this agreement and that was by way of a time limit until 1974.

It must be remembered that by no stretch of the imagination are these former citizens, though once natural born Filipinos, citizens of the Philippines. They are in the eyes of the law, foreigners. This would be no different from the granting of another parity right to foreigners under the 1973 Constitution. At the time of the enactment of the amendment to the 1935 Constitution in 1947, certain fears were expressed which were proved by the passage of time.

"As has been pointed out, the Philippine Trade Act required that within a reasonable time the Philippine Constitution be amended to grant Americans equal rights with Filipinos in the development of the natural resources and the operation of the public utilities of the Islands. In September of 1946, the Philippine Congress began considering such measures. The opponents of the amendments expressed fear lest the Philippines might be opened to imperialistic economic exploitation which would enjoin Philippine sovereignty and deprive Filipino of financial advantages by permitting them to pass to American entrepreneurs."[36]

It is true that the rights are being granted to former Filipinos but it is more true that these are also being granted to Americans, Canadian or whatever new citizenship former natural born Filipino citizens may have adopted. It would be naive to presume that these *balik-bansa* are loyal to the Republic of the Philippines when by their express acts, they have chosen to pledge allegiance to another State and have gone through the process of naturalization. It would be more likely for them to be serving foreign interests.

Another reason why the granting of equal rights should not be allowed is because there were real economic considerations at the time that amendment was appended to the Constitution. President Roxas defended the said amendment by stating that if the amendment was not allowed, the government would suffer economically by the cancellation of their existing executive trade agreements on sugar, coconut and cordage plus the damage claims still unsettled. These were necessary for the rebuilding of the post-war economy of the Philippines.[37] Under the present proposed amendment there are no such considerations expressed. As a result, patrimonial rights

[36] New York Times, Sept. 18, 1946, p. 4 and Sept. 19, 1946, p. 18 at cited in GRUNDER & LIVEZEY, THE PHILIPPINES AND THE UNITED STATES 272 (1951).

[37] *Ibid.*

are now again being granted to foreigners this time on rather vague notions of "deserving of paternal care,"[38] "long cherished dream,"[39] "wanting to now invest in the Philippines"[40] "to give our economy a much needed boost"[41] without consideration of the possible end result of the grant of such new rights.

IV. COMPARATIVE ANALYSIS WITH FOREIGN LEGISLATION

The idea of dual nationality as a state policy is not a new concept. The same has been adopted by the United Kingdom and Israel. For the purpose of learning from the experiences of other countries a comparison will now be made between the dual nationality proposed in the Parliamentary Bills by the Batasang Pambansa and the dual nationality laws in the above mentioned countries.

A. *Israel*

1. The Nationality Law of April 1, 1952

Israel's Nationality Law provides that Israel nationality is acquired by return, by residence in Israel, by birth and by naturalization.[42] Among these means of acquisition Israel recognizes, as a matter of policy, dual citizenship in all except in the case of naturalization. Section 14 of Israel's Nationality Law states that "save for the purposes of naturalization, acquisition of Israel nationality is not conditional upon renunciation of a prior nationality."

Because of its resemblance to the acquisition of nationality under Parliamentary Bill No. 303, only the acquisition of Israel nationality by return which results in dual nationality shall be discussed here.

A Jew residing in a foreign country who expresses his desire to settle in Israel shall be granted an "oleh's"[43] visa unless the Minister of Immigration is satisfied that the applicant is acting against the Jewish people or is likely to endanger public health or security of the State.[44] When he comes to Israel and subsequent to his arrival expresses his desire to settle in Israel, he is entitled to an "oleh's" certificate subject also to the same restrictions for the approval of the Minister of Immigration.[45]

A Jew immigrating to Israel permanently, automatically acquires Israel nationality from the day of the issuance to him of an "oleh's" certificate.[46]

---

38 Resolution No. 182.
39 Resolution No. 185.
40 *Ibid.*
41 Resolution No. 197.
42 The Nationality Law (1952), Sec. 1.
43 A Jew immigrating to Israel permanently.
44 The Law of Return (1950), Sec. 2.
45 The Law of Return (1950), Sec. 3.
46 The Nationality Law (1952), Sec. 2(4).

If the country from where he has returned permits dual nationality, he may retain his previous nationality in addition to the newly acquired nationality of Israel. If, however, the country of origin does not recognize dual nationality and the returning Jew desires to retain his original nationality, an "opting out" is provided. The "oleh" declares his intention of retaining his foreign nationality and that he does not with to be conferred Israel nationality by his return. "Opting out" may be exercised by the parent of a minor for him by simply including him in the parent's declaration. However, such "opting out" may be reconsidered later on by giving notice to the Minister of Immigration and the effect of such reconsideration retroacts to the date of notification.

2. A Comparison with Parliamentary Bills No. 303 and 982

A perusal of Parliamentary Bill No. 303 reveals its striking resemblance with Israel's Law of Return and the acquisition of Israel nationality by return as discussed above. The operative act by which the privilege of acquiring nationality under both laws may be exercised is similar, that is — the return of the prospective national and his desire to reside permanently in the place of return. Although Section 1 of Parliamentary Bill No. 303 does not expressly require the return of the prospective national, its necessity may be gleaned from the additional requirement of "filing an oath of allegiance with the office of the local civil registrar of the place where he intends to reside." Furthermore, one of the aims of the bill is "to encourage former Filipino citizens and foreign nationals of Filipino origin or descent to return and reside in our country."[47] Another similarity is the grant of the privilege to individuals with blood ties to the people of the country granting the privilege. In the Nationality Law of Israel, it is granted to Jews whereas in Parliamentary Bill No. 303 it is granted to foreign nationals of Filipino origin or descent.

However, despite the similarities mentioned above, there are blatant differences between the Nationality Law of Israel and Parliamentary Bill No. 303 that affects the efficacy, effectivity and rationale of the latter scheme in recognizing dual citizenship.

First and foremost, perhaps, of these differences lies in the requirement found in Parliamentary Bill No. 303 "of filing an oath of allegiance" by the prospective national. This requirement is not found in the Nationality Law of Israel. It is here contended that this requirement found in Parliamentary Bill No. 303 destroys its efficacy.

It is of common knowledge that many, if not most of the "former Filipino citizens or foreign nationals of Filipino origin or descent" are American citizens. However, the Public Law 414 of June 27, 1952 of the United States of America (as reproduced above) provides that American

[47] Paragraph 3 of the Explanatory Note of Parliamentary Bill No. 303.

nationality is lost when one takes an oath of allegiance to a foreign state.[48] The nationality laws of Canada,[49] Australia[50] and Spain[51] provide for similar provisions. As such the scheme of granting dual citizenship under Parliamentary Bill No. 303 is defeated. The very reason for which the Bill was conceived is lost.

Another glaring difference between the Nationality Law of Israel and Parliamentary Bill No. 303 is the lack of legal standards and safeguards in the determination of the worthiness of the prospective national under Parliamentary Bill No. 303. It seems that the mere filing of an oath of allegiance in the office of the local civil registrar where he intends to reside is sufficient for the conferment of Filipino citizenship. There is no determination of whether the applicant would be a loyal and useful Filipino citizen. The granting of citizenship is automatic upon the filing of the oath of allegiance. Unlike Israel wherein the Minister of Immigration is given the discretion to withhold the issuance of the "oleh's" certificate, Parliamentary Bill No. 303 certainly opens the doors of Philippine society to economic and political opportunists.

B. *United Kingdom*

1. Commonwealth Citizenship

It is quite inaccurate to state that the United Kingdom recognizes, as a matter of state policy, dual or multiple nationality in the sense that it grants British citizenship to a foreigner without forfeiting his foreign nationality. What the United Kingdom recognizes is what is termed as "Commonwealth citizenship."

A Commonwealth citizen (also, known as a British subject) is a person who is a citizen of the United Kingdom and Colonies or who under any enactment for the time being enforced in Canada, Australia, New Zealand, the Union of South Africa, Newfoundland, India, Pakistan, Southern Rhodesia or Ceylon is a citizen of any of that country.[52] The determination therefore of who is a British subject depends upon the citizenship laws of any of the countries mentioned above. If an individual is a citizen of any of these countries, he is also a British subject or a Commonwealth citizen.

It is difficult to fully understand the concept of Commonwealth citizenship without looking at its historical development. A brief description of its evolution is therefore proper. It is hoped, however, that its briefness will not defeat its purpose.

---

[48] Section 349 (a) (2).
[49] Canadian Citizenship Act of 1946 as amended in 1949, 1950 and 1951, Sec. 15 (1).
[50] Nationality and Citizenship Act No. 83 of December 21, 1948, Sec. 17.
[51] Article 20 of the Spanish Civil Code as amended by the Act of 9 December 1931.
[52] British Nationality Act of July 30, 1948, Sec. 1 (1) and (3).

The modern idea of a Commonwealth citizen sprang from the status of a "subject of the King of England". The "Crown of Great Britain", to which British subjects owe allegiance, came into existence when the two distinct titles of King of England and King of Scotland were merged into one. The pure milk of the common-law doctrine of allegiance to the Crown is to be found a century earlier in Calvin's Case (1608), otherwise known as the Case of Postnati, meaning persons born after the accession of James VI of Scotland as James I of England. In that case Calvin instituted an action against Smith and others for the illegal possession of certain lands. The defendants pleaded that the plaintiff was an alien and that the action was not maintainable since the plaintiff was admittedly a "post-natus". One of the fundamental issues raised in the controversy was: Does the fact that the relationship arises in respect of persons born in different territories belonging to the same King give those persons a common status? The issue was decided in the affirmative and Calvin was declared to be not an alien. The reason for the rule is found in the maxim "One King, one obedience". The allegiance to the King is one and undivided and his sovereignty cannot be divided. A consequence of this rule is that since the subjects owe obedience to the King, the King owes protection to the subjects.[53]

The concept of a common nationality for the whole British Empire as conceived in the Calvin Case was carried for three centuries until it broke down when the dominions became independent and started enacting their own nationality laws. Accordingly, the British Nationality Act of 1948 reorganized the law by dividing British subjects into two classes: (a) Citizens of the United Kingdom and colonies, who continue to enjoy a common nationality, regardless of race, and who constitute United Kingdom nationals for the purposes of international law; and (b) Citizens of independent Commonwealth countries, who are not United Kingdom nationals for the purposes of international law, but who continue to enjoy certain rights in the United Kingdom.[54] These rights are governed by special legislation and examples of these rights are the enjoyment of voting rights and a special treatment with respect to immigration laws.

Today, therefore, a British subject who is not a United Kingdom national enjoys a more privileged status than an alien but less than that of a United Kingdom national.

2. A Comparison with Parliamentary Bill No. 303 and 982

From the discussion above, it can be gleaned that "Commonwealth citizenship" is an entirely different concept with dual nationality as conceived in Parliamentary Bill No. 303.

---

[53] M. JONES, BRITISH NATIONALITY LAW 51-62 (1956).
[54] AKEHURST, A MODERN INTRODUCTION TO INTERNATIONAL LAW 83 (1977).

First, the determination of who is a British subject does not solely lie upon the laws of the United Kingdom. This determination is wholly dependent upon the nationality laws of the respective Commonwealth countries. In Parliamentary Bill No. 303, the qualifications for dual citizenship is within the text itself.

Second, for purposes of international law, the British subject is a national of the Commonwealth country according to the law of which he is a citizen. In Parliamentary Bill No. 303, as far as international law is concerned, the individual granted dual nationality is a citizen of the Philippines.

Third, the status of a British subject in the United Kingdom is less than that of a United Kingdom national. He is merely given a better treatment than an alien. Under Parliamentary Bill No. 303, the individual granted dual citizenship seemingly enjoys the full status of a Filipino citizen and consequently ought to enjoy all the rights of a Filipino citizen.

It is evident from the differences of the two concepts involved that the problems that have arisen in the United Kingdom may not be the ones that will beset the Philippines under Parliamentary Bill No. 303. Hence, the success by which the United Kingdom has coped with it cannot be a basis to strengthen our hope that we too will succeed in facing the problems that may confront us in the future if Parliamentary Bill No. 303 is enacted. The historical and political relationship between the United Kingdom and the Commonwealth countries is unique. The common allegiance that the peoples of the Commonwealth countries have to the King of England is certainly absent in the Philippine setting. Furthermore, the three and a half centuries of the gradual evaluation of the concept of a British subject have given the United Kingdom the tool and experience to cope with the situation that the Philippines does not possess.

V. POSSIBLE PROBLEM AREAS UNDER DUAL NATIONALITY

An attempt shall be made at this point, to identify some possible problem areas in the fields of Civil Law, Corporation Law, Political Law and International Law.

A. CIVIL LAW

Foremost in the discussion of problem areas concerning the dual citizenship bills is "What law applies to a *Balik-bansa?*" It is the law of the foreign country of which he is a national or is it Philippine law? Until and unless the answer to these questions are made clear in the proposed bills, enforcement and application of the laws will be left uncertain. For example Philippine laws on personal relations, property relations and succession were designed to apply to individuals on the basis of a single nationality. Whenever a judicial controversy arose involving a foreign

element the courts invariably applied the conflict of law rules found in our own municipal law in order to resolve the conflict. The conflict of law rules directed the court to apply either Philippine law or foreign law provided that such foreign law was pleaded and proved, and the application of such law does not fall in any of the exceptions. Such rules always speak of or refer to a "National law" for example the national of the testator, national law of the person whose succession is under consideration, or national law of the husband, etc. However, the national law as contemplated by the Civil Code always refers to either and only a foreign law or Philippine law and never to both. With the advent of the concept of dual citizenship for *Balik-bansa* the obvious dilemma that will arise is "what is the national law of a person who has two nationalities?"

By way of example a practical problem that may arise is the validity of a foreign marriage that is not considered incestuous in the place of celebration but considered incestuous in the Philippines. Marriages between collateral relatives by blood within the 4th civil degree is considered incestuous according to Art. 81 of the Civil Code but California law considers such marriages as valid. With the marriage of a *balik-bansa* couple who are first cousins and who have been married in California be considered valid here?

There is also a possibility of a circumvention of our law when Filipino first cousins apply for American citizenship for the mere purpose of getting married and return to the Philippines under the *balik-bansa* program. The marriage then is celebrated abroad not between Filipinos as contemplated by prevent laws but Filipinos who have dual nationality. They may then invoke their foreign citizenship and allege that since the marriage is not bigamous or polygamous nor is it universally incestuous, i.e., between brothers and sisters, or between ascendants and descendants, then the marriage should be considered valid. Can a *balik-bansa* invoke that law which is more favorable to him? If we apply Philippine law to *balik-bansa* will it not be in derogation of vested rights validly acquired in a foreign country? If we apply the foreign law of the *balik-bansa* will it not be creating a privileged class?

B. *Corporation Law*

In the field of corporation law where foreign investments and ownership in domestic corporations engaged in vital and essential businesses are concerned the recognition of dual citizenship also has its adverse effects. It is the policy of the state to control foreign investments in vital industries in order to preserve the economic stability and independence of the country. Under the present state of the law foreign investment in these businesses is considered as the amount of outstanding capital stock owned by foreigners. Complicated processes have already been developed to determine

the actual amount of foreign ownership in such businesses under a complex set of circumstances such as the grandfather rule. Will such rules apply as well to investments by *balik-bansa?* How will their investments be considered? Will it not create an opportunity to evade or circumvent citizenship requirements?

Also considering that there are numerous businesses where citizenship is a requirement certainly these are valid grounds for concern in considering the adoption of dual citizenship as a state policy. Among the vital industries and areas of investments which have citizenship requirements are: having a franchise, certicate or any other form of authorization for the operation of a public utility (Sec. 5, Art. XIV Constitution); disposition, exploration, development, exploitation or utilization of any of the natural resources of the Philippines (Sec. 9, Art. XIV, Constitution); in retail trade and operation of rural banks; awarding of requisition and procurement contracts of the government and any of the instrumentalities (R.A. No. 5183); culture, production, milling, processing and trading (except retailing) of rice and corn (Pres. Decree No. 194); Inter-Island shipping (Act No. 2778); banking institutions (R.A. No. 337); financing companies (R.A. No. 5980); the Investment Incentives Act., etc.

C. *Political Law*

1. Military Service

Section 2 of the Declaration of Principles and State Policies of our Constitution provides that all citizens may be required by law to render personal, military or civil service, pursuant to the principle that the defense of the State is a prime duty of the Government and the People. All state constitutions contain a similar provision. The existence of dual citizenship will create a very grave problem area with respect to this obligation. Since a person who is a citizen of the Philippines and a foreign country at the same time cannot be expected to entertain a genuine moral allegiance to both states. Since citizenship implies allegiance to a state, dual citizenship is essentially an incongruity.

The dilemma produced by conflicting military obligations is best illustrated in the case of Alfonso Mozzarella, an American citizen of Italian origin and a typical dual citizen by virtue of the concurrent application of the principles of *jus soli* and *jus sanguinis.* Upon reaching the age of twenty-one, in accordance with US laws, Mozzarella was scheduled for induction under the Military Service Act. At the same time, however, he was drafted into the Italian army in accordance with Italian law. Mozzarella went to Italy for his honeymoon, intending to go back to the U.S. in time for induction. He was arrested, however, by the Italian police who charged him with being a compulsory military service evader. The American ambassador protested, but to no avail, since the Italian Govern-

ment took the position that by Italian law these men were liable to military service.[55]

The problem is compounded in case a state of war exists between the countries of which a person is a citizen. The greatest wartime hazard faced by a dual citizen is that of refusing to assist the state in which he finds himself and be shot for desertion, or to aid that state and be considered a traitor by the other state of which he is also a citizen. Hence, in the case of *Kawakita v. U.S.*[56] a dual national of Japanese ancestry was convicted of treason by an American court. The Court, in deciding the case, pointed out the fact that under U.S. law, an American citizen cannot owe "permanent allegiance" to more than one country at any given time; that is to say it is legally impossible for any American citizen to owe conflicting allegiance to any other country so long as he or she remains a citizen of the United States.

Dual citizenship, therefore, as envisioned by Parliamentary Bill No. 303 and 982 will cause inconvenience and hardship to the individual so situated, with respect to his obligation to render military service. This situation becomes doubly confusing and grave when there is an existence of a state of war.

2. *Suffrage*

Suffrage has been defined as the right to vote in the election of all officers chosen by the people, and in the determination of all questions submitted to the people.[57] Article 6, Section 1 of the Philippine Constitution provides that suffrage shall be exercised by citizens of the Philippines not disqualified by law, in pursuance to the theory that the right is a necessary attribute of membership in the state and in accordance with the fundamental principle of our system of government that sovereignty resides in the people and all authority emanates from them.

Among the rights which Parliamentary Bill No. 303 seeks to grant to foreigners of Filipino origin and descent is the right of suffrage. The author of the bill believes that since foreigners of Filipino origin and descent remain Filipinos at heart and maintain close ties with their native land, the sacred right of suffrage should be exercised by them. The concept of dual citizenship therefore, grants to the dual citizens the unique privilege of choosing representatives to discharge sovereign functions in two states.

The privilege of suffrage, however, is a public trust to be performed for the good of the citizens of the state.[58]

---

[55] Status of Italo-American.
[56] 343 U.S. 717 (1952).
[57] MARTIN, ADMINISTRATIVE LAW, LAW OF PUBLIC OFFICERS, AND ELECTION LAW, Part III, p. 3 (1977).
[58] U.S. v. Cruikshank, 92 U.S. 542 (1876).

It should be exercised not exclusively for the benefit of the citizens or class of citizens professing it, but in good faith and for the benefit and welfare of the state.[59] For this reason, the framers of the Election Code of 1976 thought it best to disqualify from voting any person who has been adjudged by final judgment by a competent court or tribunal of having violated his oath of allegiance to the Republic of the Philippines.[60] For the same reason, this Constitution specifically limits the exercise of the right to qualified citizens whose moral allegiance to the Republic is beyond question. The fact, therefore, that a dual citizen owes allegiance to two states puts in serious doubt his capacity to exercise the privilege of suffrage as a public trust and for the welfare of the state.

A more serious problem area would arise if the concept of dual citizenship is applied to another aspect of suffrage, that is, the right to hold public office. Public office, just like the right to vote, is a public trust created in the interest and for the benefit of the public. The trust attached to a public office should be exercised in behalf of the government or of the citizens.[61] As a safeguard, therefore, the Revised Administrative Code bars aliens from holding office in the Philippines, either appointive or elective.[62] In a decided case,[63] a public school teacher who married a Chinese citizen was removed from her position because of her loss of citizenship. The Supreme Court upheld the removal, stating that a voluntary change of citizenship or a change thereof by operation of law disqualifies a person to continue any civil service position, reiterating the view that a public function can be performed by Filipino citizens only.

As an additional safeguard, Section 17 of the Election Code of 1976 provides that any person declared disloyal to the constituted government in a final judgment or order shall not be eligible for public office.

Under the New Constitution, the Members of the National Assembly, Members of the Supreme Court and Judges of Inferior Courts Chairmen and Members of the Constitutional Commissions must be natural born citizens. By statutory provisions, the Members of the Monetary Board, the Commissioner of Immigration and the Tariff Commissioner were also required to be natural born. Once again, our legislators, considering the importance of the positions above-mentioned, thought it best to limit them to natural born citizens whose loyalty to the Republic is beyond doubt.

Considering the laws above-mentioned, a grant to dual citizens of the right to be elected or appointed to a public office would be totally inconsistent with the nature of a public office being a public trust and would

[59] Abañil v. Justice of the Peace Court of Bacolod, 70 Phil. 28 (1940).
[60] Election Code of 1976, Section 38(b).
[61] Torre v. Borja, G.R. No. 31947, March 27, 1977, 56 SCRA 47 (1977).
[62] Revised Adm. Code (Act 2657), Sec. 675.
[63] Yee v. Director of Public Schools, G.R. No. L-16924, April 29, 1963, 7 SCRA 832 (1963).

defeat the safeguards provided for in our law on Public Officers. It is undeniable that undivided loyalty cannot be expected from one who owes allegiance to two states. It could give rise to a situation of a public officer serving two masters at the same time and upholding the interest of only one, that of the other state's. It could also open the possibility of a dual citizen occupying two positions in different states at one time. For authorities are of the view that though acceptance of an incompatible office is a mode of terminating official relation, the same cannot apply if the second office belongs to a different sovereignty.[64] Physical impossibility of performing the functions of two offices is not the criteria in determining incompatibility, but rather the nature of the two functions which would result in contrariety and antagonism.[65] Neither could there be abandonment, as the term implies total relinquishment, and not to a partial or temporary one. In effect, a dual citizen may therefore be allowed to serve two masters at one time, a situation so detrimental to public welfare.

D. *International Law — Aliens Right of Diplomatic Protection*

Apart from recent attempts to safeguard human rights, international law does little or nothing to interfere with the way in which a state treats its own natoinals. A state may adopt whatever political, economic or social system it likes, may oppress its nationals, may lapse into anarchy — all without violating international law. But international law does demand a minimum international standard for the treatment of aliens. Hence, though the state is not obliged to admit aliens to their territory, once they permit aliens to come, they must treat them in a civilized manner.[66]

Failure to comply with the minimum international standard may give rise to state responsibility, and the national state of the injured alien may exercise its right of diplomatic protection, i.e., may make a claim, through diplomatic channels, against the other state, in order to obtain compensation or some other form of redress. It must be stressed however, that a state is liable only for its own acts and omissions, in accordance with the doctrine of state imputability, that is, the act which brings about liability must be done by a governmental apparatus. For example, if a policeman beats up a foreigner, the state is liable. In certain instances, however, even if the act was done by a private individual, a State could be liable, as when the state itself encourages individuals to attack foreigners or fails to provide police protection when a riot against foreigners is imminent.

The existence of dual citizens in the Philippines, as proposed by Parliamentary Bills No. 982 and 303 may give rise to a problem area with respect to violations of the minimum international standards due to

64 MARTIN, LAW ON PUBLIC OFFICERS 150 (1977).
65 MECHEM, A TREATISE ON THE LAW OF PUBLIC OFFICER AND OFFICERS 268 (1890), Sec. 422.
66 AKEHURST, A MODERN INTRODUCTION TO INTERNATIONAL LAW 88 (1977).

citizens of a foreign state. For all intents and purposes, assuming PB 303 and PB 982 is approved, a citizen of a foreign country of Filipino origin and descent is considered to have retained his Filipino citizenship. An interesting question which would come up is whether the foreign state of an injured "dual citizen" can exercise its rights of diplomatic protection and hold the Philippines responsible for violation of the minimum international standard. Inversely, can the Philippines exercise the same rights and hold liable for the same violation a foreign country where a "dual citizen" is also a member? Two problems would therefore result, first, can one of the states claim diplomatic immunity against the other? Second—which state can claim against a third state? As regards claims by one national state against the other, the orthodox view is that all such claims are inadmissible,[67] but there have been cases, particularly in recent years, which indicate that the State of the master nationality, that is, the state to which the individual has closer ties, can protect the individual against the other national state.[68] The United Kingdom still accepts the orthodox rule.[69] As regards claims against third states, the most widely held view is that both States can claim,[70] although the view has not gone unchallenged.[71] Hence, dual nationality will result in problems concerning diplomatic immunity, which the proposed law does not provide any remedy.

VI. CONCLUSIONS AND RECOMMENDATIONS

The conclusion that can be reached with respect to the Parliamentary Bills No. 303 and 982 is that both proposed laws are vague and poorly drafted. There seems to be a lack of foresight as to the possible ill effects that the bills might bring which will overshadow what ever benefits or privileges that it hopes to impart. This is brought about by the conflicts that the bills will create as they are not in harmony with the existing law on Naturalization as embodied in Commonwealth Act No. 63 as amended.

Aside from this, the procedure for reacquisition is not clearly provided for in the bills. In Parliamentary Bill No. 303 the procedure is provided for but it is vague and gives to the Minister of Justice the powers to enact rules for implementation. Under Parliamentary Bill No. 982 the matter was not considered a problem and avoided altogether under the notion that the present naturalization law would resolve whatever problems may be encountered. But this is fallacious. As shown in the discussion on that bill, there are no means by which to trace who are Filipinos by origin or descent.

---

67 Reparation for Injuries Case [1949], I.C.J. REP. 174, 186.
68 Merge Case; 22 INTERNATIONAL LAW REPORTS 443 (1955).
69 BRITISH PRACTICE IN INTERNATIONAL LAW 120 (1963).
70 Salem Case, 6 ANNUAL DIGEST OF PUBLIC INTERNATIONAL LAW CASES 188 (1931-32).
71 Yearbook of International Law Commission, 1958, Vol. 2, pp. 6667 (A report suggested that claims could be brought only by the state of the master nationality).

Resolutions 182, 185 and 197 propose amendment to the 1973 Constitution. It would have been a better provision in that it allowed limited rights to the *balik-bansa,* avoiding the problem of dual nationality. However, it will give rise to another problem, namely, the possibility of economic exploitation which had previously shackled our country to the United States in 1947, under the Parity Rights Amendment in the 1935 Constitution.

The comparison made with foreign legislations have magnified the inadequacy and inefficacy of Parliamentary Bills Nos. 303 and 982. Countries recognizing dual citizenship have set standards and safeguards to ensure that the prospective citizen is deserving of the grant. The menace that disloyal and opportunistic "dual citizens" could do to Philippine political and economic society should have at least disturbed the minds of the framers of the bills and led them to place procedures to guard against such an inevitable outcome. Yet none could be found in any of the proposed bills..

The haphazardness of the way the bills were drafted and the failure to foresee the possibility that it may become ineffective — since it is a practice in most states that a citizen loses his nationality upon the taking of an oath of allegiance in another state — manifests the lack of research made by the authors of the bills. It is also evident that the framers failed to consider the fact that other countries have adopted the policy of recognizing dual citizenship because of sheer necessity which is certainly absent in the Philippine setting.

Perplexing legal questions have resulted from the application of dual nationality in foreign countries. The proposal to apply dual nationality in the Philippines under Parliamentary Bills Nos. 303 and 982 would likewise, give rise to problem areas in different branches of Philippine law. The legal implications of the bill are varied and complex which could not have been contemplated by the proponents of the bills, otherwise, they could have inserted provisions with respect to its application, as well as its limitations and conditions. More consideration should be given to such bills if ever they are to be approved in order to harmonize them with existing legislation.

It is submitted by the authors of this paper that the proposed bills on dual citizenship now before the Batasang Pambansa be withdrawn. The problem that will result from it as far too many to salvage the same for the purpose of granting the benefits and privileges therein.

The resolutions to amend the Constitution are as well to be withdrawn as these would reopen the scars left by the similar granting of such rights to foreigners. It is proposed by the authors not out of any xenophobic considerations but rather because the lessons of history are to recent to forget.