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Citizenship Puzzle: Is Grace Poe a natural born citizen?

By: Roberto Rafael V. Lucila[1]

The citizenship of Senator Grace Poe, the 2013 Senatorial topnotcher with a mandate of more than 21 Million votes, is the crux of the raging national debate precipitated by the *quo warranto* case[2] before the Senate Electoral Tribunal which has now ripened to a Supreme Court case under the latter's expanded judicial review powers,[3] and the four cases[4] for the cancellation of her Certificate of Candidacy for President before the Commission on Elections (COMELEC).

Many are minded and moved to put their views on the table either by their noble intentions as citizens of the Philippines entitled to exercise their right of suffrage, or simply by their parochial interests as political partisans.

This article joins this debate as a modest attempt to unravel this citizenship puzzle, and to contribute to the enlightenment of the Filipino voters.

The relevant facts as agreed by the parties

On the basis of the decisions of the Senate Electoral Tribunal (SET) and the two divisions of the COMELEC in the four petitions to deny due course or cancel her Certificate of Candidacy (COC) as President of the Philippines in the 2016 national elections, the parties are more or less in agreement on the following facts:

(a) Senator Grace Poe was found as a baby in the Parish Church of Jaro Iloilo on September 3, 1968,

(b) she was adopted by the legendary Fernando Poe Jr. ("Da King") and his ever charming wife Susan Sonora Roces when she was 5 years old,

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[2] SET Case No. 001-15 entitled "Rizalito V. David v. Mary Grace Poe Llamanzares"

[3] Const., Article VIII, Section 1

[4] COMELEC SPA CASES Nos. 15-002, 15-007, 15-139 and 15-001 (DC)

(b) she was adopted by the legendary Fernando Poe Jr. ("Da King") and his ever charming wife Susan Sonora Roces when she was 5 years old,

(c) she became a citizen of the United States on October 18, 2001,

(d) she returned to the Philippines when the "Da King" of Philippine Movies passed away,

(e) she completed her reacquisition of the Philippine citizenship pursuant to Republic Act No. 9225 (Citizenship Retention and Reacquisition Act of 2003),

(f) she was appointed as the Chairperson of the Movie and Television Review Classification Board (MTRCB) and,

(g) she was elected as Senator of the Philippines in 2013 garnering the 21 Million votes that made her the No. 1 Senator of the Philippines.

Main Issue

On the basis the foregoing facts, the main issue can be framed as follow:

Is Senator Grace Poe considered to be **stateless or without nationality and therefore a person that requires certain acts to be performed for the acquisition or perfection of her citizenship, or a natural born citizen of the Philippines** under the 1935 Constitution, the 1973 Constitution, the 1987 Constitution and/or under the laws of the Philippines?

The Submission

It is submitted that as a foundling in the Philippines, Sen. Poe takes the citizenship of the Philippines **at the time of her birth, and is therefore a natural born citizen of the Philippines,** unless it is proven that she is not one of those enumerated as citizens of the Philippines under the 1935 Constitution,[5] or that she was not found in the Philippines.

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[5] "Article IV. Citizenship
Section 1. The following are citizens of the Philippines:

(1) Those who are citizens of the Philippine Islands at the time of the adoption of this 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.

The arguments in support of this submission require a review of the past as it intersects with the present law on the citizenship requirement for a candidate for President.

Spanish Colonial Period

In *Tecson v. Commission on Elections* and the companion cases,[6] Justice Jose C. Vitug writing the majority opinion for the Supreme Court *en banc* explained the status of the citizenship during the Spanish colonial period.

> There was no such term as "Philippine citizens" during the Spanish regime but "subjects of Spain" or "Spanish subjects." In church records, the natives were called 'indios', denoting a low regard for the inhabitants of the archipelago. Spanish laws on citizenship became highly codified during the 19th century but their sheer number made it difficult to point to one comprehensive law. Not all of these citizenship laws of Spain however, were made to apply to the Philippine Islands except for those explicitly extended by Royal Decrees.
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> Spanish laws on citizenship were traced back to the Novisima Recopilacion, promulgated in Spain on 16 July 1805 but as to whether the law was extended to the Philippines remained to be the subject of differing views among experts; however, three royal decrees were undisputably made applicable to Spaniards in the Philippines - the Order de la Regencia of 14 August 1841, the Royal Decree of 23 August 1868 specifically defining the political status of children born in the Philippine Islands, and finally, the Ley Extranjera de Ultramar of 04 July 1870, which was expressly made applicable to the Philippines by the Royal Decree of 13 July 1870.
>
> The Spanish Constitution of 1876 was never extended to the Philippine Islands because of the express mandate of its Article 89, according to which the provisions of the Ultramar among which this country was included, would be governed by special laws.

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(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."

[6] 424 SCRA 277, 327-329 (2004); citations omitted

It was only the Civil Code of Spain, made effective in this jurisdiction on 18 December 1889, which came out with the first categorical enumeration of who were Spanish citizens. -

"(a) Persons born in Spanish territory,

"(b) Children of a Spanish father or mother, even if they were born outside of Spain,

"(c) Foreigners who have obtained naturalization papers,

"(d) Those who, without such papers, may have become domiciled inhabitants of any town of the Monarchy.

Treaty of Paris (1898)

Under the Treaty of Paris between the United States and Spain (1898), the Spanish subjects residing in the Philippines (and presumably those born in the Philippines called as "*indios*" or inhabitants or natives) were required to affirm their allegiance to the Crown of Spain by making a sworn declaration before a court of record, otherwise they were presumed "to have renounced it and to have adopted the nationality of the territory in which they may reside."[7]

The Philippines was then considered as part of the "new possessions" of the United States over which the latter exercises sovereignty,[8] though not forming part of the United States. As such, the Philippines was not accorded the "incorporated status" of a part of the United States under the Treaty of Paris in contrast to the (i) Treaty of Guadaloupe Hidalgo with Mexico on the annexation of California to the United States, (ii) the treaty with Russia for the cession of Alaska, (iii) the treaty with France for the cession of Louisiana, and (iv) the treaty with Spain for the cession of Florida. Though both ceded by the Crown of Spain in the Treaty of Paris, Puerto Rico and the Philippines were treated differently: the former was immediately "incorporated" as part of the United States, while the latter was placed under military rule en route to local civilian government due to the strong nationalism of the Filipinos, their fervent desire for freedom, and the 1899 Filipino American War or the "Philippine Insurrection" to the

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[7] *Treaty of Paris, Article IX*

[8] *Abbott Lawrence Lovell.*The Status of Our New Possessions: A Third View. (Harvard Law Review XIII:3 (November1899)http://www.nmid.uscourts.gov/documents/districtconference/hlr_lowell_status_of_our_new_possessions.pdf, (accessed on December 15, 2015)

Americans, that caused severe loss of lives from both sides, and the civilian populace.[9]

The Treaty of Paris clearly stated that the "civil rights and political status of the inhabitants [of the territories hereby ceded to the United States] shall be determined by the Congress." *(brackets supplied)*

In the case of the *United States v. Dorr,*[10] the Philippine Supreme Court, in denying the right to a jury trial to the accused, made these observations on the force and effect of the US Constitution, as well as the status of the Philippines as a territory of the United States:

We reach the conclusion in this case:

1. That while the Philippine Islands constitute territory which has been acquired by and belongs to the United States, **there is a difference between such territory and the territories which are a part of the United States with reference to the Constitution of the United States.**

2. That the Constitution was not extended here by the terms of the treaty of Paris, under which the Philippine Islands were acquired from Spain. **By the treaty the status of the ceded territory was to be determined by Congress.**

3. That the mere act of cession of the Philippines to the United States did not extend the Constitution here, except such parts as fall within the general principles of fundamental limitations in favor of personal rights formulated in the Constitution and its amendments, and which exist rather by inference and the general spirit of the Constitution, and except those express provisions of the Constitution which prohibit Congress from passing laws in their contravention under any circumstances; that the provisions contained in the Constitution relating to jury trials do not fall within either of these exceptions, and, consequently, the right to trial by jury has not been extended here by the mere act of the cession of the territory.

4. That Congress has passed no law extending here the provision of the Constitution relating to jury trials, nor were any laws in existence in the Philippine Islands, at the date of their cession, for trials by jury, and

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[9] *Cabranes, Jose A.* Citizenship and the American Empire. (University of Pennsylvania Law Review 127:319 (1978))http://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=4838&context=penn_law_review(accessed onDecember 15, 2015); The war between the US and the Philippine revolutionaries reportedly lost 4,000 US soldiers, 20,000 Filipino soldiers , and 250,000 civilians; see *Francia, Luis H.* A History of the Philippines (From Indios Bravos to Filipinos). (The Overlook Press, New York; 2010), p.160.

[10] 2 Phil. 332 (1903)

consequently there is no law in the Philippine Islands entitling the defendants in this case to such trial; that the Court of First Instance committed no error in overruling their application for a trial by jury.

We also reach the conclusion that the Philippine Commission is a body expressly recognized and sanctioned by act of Congress, having the power to pass laws, and has the power to pass the libel law under which the defendants were convicted. *(bold face supplied)*

The 1899 Malolos Constitution

On the other hand, the short-lived Malolos Constitution (1899) considered all persons born in the Philippine territory as "Filipinos". [11] The Malolos Constitution was in force and effect only for a brief period and in places where the first Philippine Republic under Emilio F. Aguinaldo had control until his surrender in Isabela.

United States Colonial Rule and Commonwealth Period

In the Cooper Act of 1902 (the Philippine Organic Act or Philippine Bill of 1902), passed by the US Congress for the transition from the military rule to the civilian government in the Philippines, all the Spanish subjects or natives of the Philippines who continued to reside in the Philippines, and who did not affirm allegiance to the Crown of Spain, were for the first time declared to be the "citizens of the Philippines Islands and as such entitled to the protection of the United States..."[12]

The Jones Law of 1916 had a similar provision as Section 4 of the Cooper Act, but this time it included naturalization as a process of acquiring Philippine citizenship for those not falling under the general rule governing the Spanish subjects, viz.:

That all inhabitants of the Philippine Islands who were Spanish subjects on the eleventh day of April, eighteen hundred and ninety-

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[11] 1899 Malolos Constitution, Article 6
The following are Filipinos:
1. All persons born in Philippine territory. Any sea vessel where the Philippine flag is flown is considered, for this purpose, a part of Philippine territory.
2. Children of a Filipino father or mother, even though they were born outside the Philippines.
3. Foreigners who have obtained the certificate of naturalization.
4. Those who, without such certificate, have acquired domicile in any town within Philippine territory.

[12] Cooper Act, Section 4

> nine, and then resided in said Islands, and their children born subsequent thereto, shall be deemed and held to be citizens of the Philippine Islands, except such as shall have elected to preserve their allegiance to the Crown of Spain in accordance with the provisions of the treaty of peace between the United States and Spain, signed at Paris December tenth, eighteen hundred and ninety-eight, 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, the natives of the insular possessions of the United States, and such other persons residing in the Philippine Islands who are citizens of the United States, or who could become citizens of the United States under the laws of the United States if residing therein.[13]

In *Rubi v. Provincial Board of Mindoro,*[14]Justice George Malcolm described the initial instructions of President William McKinley to the First Philippine Commission on April 7, 1900 on the American Government of the Philippines:

> ...Portions of these instructions have remained undisturbed by subsequent congressional legislation. One paragraph of particular interest should here be quoted, namely:
>
> > In dealing with the uncivilized tribes of the Islands, the Commission should adopt the same course followed by Congress in permitting the tribes of our North American Indians to maintain their tribal organization and government and under which many of these tribes are now living in peace and contentment, surrounded by civilization to which they are unable or unwilling to conform. Such tribal governments should, however, be subjected to wise and firm regulation; and, without undue or petty interference, constant and active effort should be exercised to prevent barbarous practices and introduce civilized customs.

Were these "tribesmen" then considered American or Pacific *Negroes*[15] or *Indios*, and therefore citizens of the Philippines? They should be deemed citizens of the Philippines under the Philippine Bill of 1902 and the Jones Law of 1916.

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[13] Jones Law of 1916, Section 2

[14] 39 Phil. 660,680 (1919).

[15] See *Bradley, James.* The Imperial Cruise: A Secret History of Empire and War (Little Brown and Company; 2009)

Were they considered "natural born citizens" of the Philippines? The discussion that follows would tend to show that they should be so considered together with the Commonwealth Presidents.

The 1935 Constitution

When the 1935 Constitution was adopted, the laws of the United States implementing the Treaty of Paris, including the McKinley Instructions, Philippine Bill of 1902, and the Jones Law of 1916 were already the governing laws in the Philippines, in pursuance of the imperialist expansion agenda of the United States. The 1930 Hague Convention on Certain Questions Relating to the Nationality Laws (the "1930 Hague Convention") was also already adopted by certain states in the community of nations.The Hague Convention, in Article 14, second paragraph, states that "[a] foundling, until the contrary is proved, is presumed to have been born on the territory of the State in which it is found."

It is therefore reasonable to conclude that Sr. Manuel A. Roxas was therefore referring to the 1930 Hague Convention when he made this remark[16] in the deliberations of the 1934 Constitutional Convention on the citizenship provisions:

"SR. ROXAS:

> Mr. President, my humble opinion is that **these cases are few and far in between, that the constitution need [not] refer to them. By international law the principle that children or people born in a country of unknown parents are citizens in this nation is recognized, and it is not necessary to include a provision on the subject exhaustively."**

In the same vein, in this exchange, he should be deemed to have been aware of the laws of the United States then governing the Philippines as a territory of the United States, as his very participation as delegate to the 1934 Constitutional Convention was in fact pursuant to the Philippine Independence Act or the Tydings-McDuffie Act.

The Philippines was understandably not a signatory to the 1930 Hague Convention as the Philippines was not then a sovereign country, being a territory of the United States. Pursuant to the Philippine Independence Act, "[f]oreign affairs shall be under the direct supervision and control of the United States".[17]

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[16] Decision dated November 17, 2015 at pp. 23-24, SET Case No. 001-15

[17] Section 2(a) 10, Philippine Independence Act

The US Nationality Act of 1940

Applicability to the Philippines as a US Territory

The United States was also not a signatory to the 1930 Hague Convention. However, the US Congress enacted the Nationality Act of 1940. As a territory of the United States then, the Philippines was nevertheless bound by the said law until she gained her independence on July 4, 1946.

The Nationality Act of 1940 defines in Section 101 (a) and (e), (1) a "national" of the United States as a person who though not a citizen of the US owes permanent allegiance to the latter, and (2) "outlying possessions" refer to territories other than those enumerated in Section 101, subsection (d)[18] over which the United States exercises rights of sovereignty,[19] except the Canal Zone. Indubitably, the Philippines is within the definition of the phrase "outlying possessions" of the United States; while a citizen of the Philippines falls within the definition of a "national" for purposes of the said law.

Foundling deemed a citizen at birth

The Nationality Act of 1940 defines in Section 204 that "[u]nless otherwise provided in section 201, the following shall be nationals, but not citizens, of the United States **at birth**:

> xxxxxxxxx
>
> (c) a child of unknown parentage found in an outlying possession of the United States, **until shown to have not been born in such an outlying possession.**" *(bold face supplied)*

Foundlings in the Philippines are therefore considered natural born citizens of the Philippines, not only by the force and effect of the 1930 Hague Convention, but also by the Nationality Act of 1940 passed by the US Congress- which is in the nature of a municipal law. Though not a signatory, the enactment of the said law nonetheless committed the United States to adhere to the principle in the 1930 Hague Convention as to the citizenship at birth of a foundling.

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[18] United States, Alaska, Hawaii, Puerto Rico, and Virgin Islands of the United States
[19] Philippines, Cuba, and Guam

The US Immigration and Nationality Act of 1952

In 1952, the US Congress passed the Immigration and Nationality Act of 1952. Section 301 (1)(6) of the said Act states that "[t[he following shall be nationals and citizens of the United States **at birth:**

> (6) a person of unknown parentage found in the United States while under the age of five years, **until shown, prior to his attaining the age of twenty-one years, not to have been born in the United States.**" *(bold face supplied)*

This is a continuing affirmation of the commitment of the United States to Article 14, of the 1930 Hague Convention. While the Philippines was no longer part of the US territory or an "outlying possession" in view of the independence she obtained in July 1946, and therefore no longer covered by the law, the enactment of the Immigration and Nationality Act of 1952 would nonetheless show that **the Hague Convention, particularly as it declares that a foundling is at birth deemed a citizen of the State where he or she is found, forms part of the customary international law,** as no less than the United States has incorporated this provision in its own laws since 1940.

Jus Sanguinis v. Jus Soli

Even the principle of *jus soli* does not bar a person born outside of the United States whose parents are US citizens or at least one of them is a US citizen, from being considered a natural born citizen as in the case of Senator Ted Cruz, (who was born in Canada) a Republican Party contender in the 2016 US Presidential elections, Senator John McCain (who was born in Panama) in the 2008 elections, Governor George Romney (who was born in Mexico) in the 1968 elections and Senator Barry Goldwater (who was born in Arizona prior to its statehood) in the 1964 elections.[20]

In the 1935 Constitution, these principles of *jus soli* and *jus sanguinis* likewise co-exist in Article IV, especially in the first two items of the enumeration in Section 1 thereof which may include those born within the Philippines but of foreign parents, viz.:

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[20] *Neil Katyal and Paul Clement.* On the Meaning of Natural Born Citizen (Harvard Law Review, 128:61 (March 2015))http://harvardlawreview.org/2015/03/on-the-meaning-of-natural-born-citizen/ accessed December 15, 2015

Section 1. The following are citizens of the Philippines:

(1) Those who are citizens of the Philippine Islands at the time of the adoption of this 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.

International Law

Under Art. 2 of the 1961 International Convention on Statelessness "**a foundling found in the territory of a Contracting State shall, in the absence of proof to the contrary, be considered to have been born within the territory of parents possessing the nationality of that State.**" The Philippines however is not a signatory to this Convention. But this should not deter its application in the Philippines as it may form part of the general principles under customary international law given the US laws and the other laws of the developed countries that will be surveyed briefly in this article.

In addition, a foundling has likewise been accorded the right to acquire a nationality on the basis of the International Covenant on Civil and Political Rights (ICCPR),[21] UN Covenant on the Rights of the Child (UNCRC), [22] and UN

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[21] International Covenant on Civil and Political Rights (1966), Article 24 which states:

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.

2. Every child shall be registered immediately after birth and shall have a name.

3. Every child has the right to acquire a nationality.

[22] Convention on the Rights of the Child (1989), Article 7 which states:

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and. as far as possible, the right to know and be cared for by his or her parents.

2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

Declaration of Human Rights (UNDHR)[23] as these are binding commitments of the Philippines, and apply even prior to their formal ratification.[24]

In *Agustin v. Edu,*[25] the Supreme Court held that:

> The 1968 Vienna Convention on Road Signs and Signals is impressed with such a character. It is not for this country to repudiate a commitment to which it had pledged its word. The concept of *Pacta sunct servanda* stands in the way of such an attitude, which is, moreover, at war with the principle of international morality.

In *Republic v. Sandiganbayan,*[26]J. Antonio T. Carpio affirmed the binding effects of the UN Declaration of Human Rights (UNDHR) and International Covenants on Civil and Political Rights (ICCPR), even during the so-called "interregnum" (February 25, 1986 to March 25, 1986, prior to the Freedom Constitution) after the EDSA I People Power Revolution when no Constitution was in place or in force and effect. He considered UNDHR and ICCPR as not only binding, **but self-executing as well**, so that any person may invoke or exercise his or her rights therein, even in the absence of any legislative (law) or administrative fiat (executive issuance) or the Constitution.

In his separate opinion in *Tecson v. COMELEC*[27], Chief Justice Puno erased all doubts on the commitment of the Philippines to the Convention on the Rights of the Child, viz.:

> The Convention on the Rights of the Child was adopted by the General Assembly of the United Nations on November 20, 1989. The Philippines was the 31st state to ratify the Convention in July 1990 by virtue of Senate Resolution 109. The Convention entered into force on September 2, 1990. **A milestone treaty, it abolished all discriminations against children including discriminations on account of birth or other status.** Part 1, Article 2 (1) of the Convention explicitly provides:

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[23] UN Declaration of Human Rights (1948), Article 15, which states:

(1) Everyone has the right to a nationality.
(2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

[24] *Koruda v. Jalandoni,* 83 Phil 171 (1949)
[25] 88 SCRA 195 (1979)
[26] *Id.;* citation omitted
[27] 424 SCRA 277, 355, 399-400

Article 2

1. State Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination **of any kind**, irrespective of the child's or **his or her parents** or legal guardians race colour, sex, language religion, political or other opinion, national, ethnic or social origin, property, disability, **birth or other status**.

The Convention protects in the most comprehensive way all rights of children: political rights, civil rights, social rights, economic rights and cultural rights. It adopted the principle of interdependence and indivisibility of children's rights. A violation of one right is considered a violation of the other rights. It also embraced the rule that all actions of a State concerning the child should consider the best interests of the child.

Pursuant to Article VII, Section 21 of the 1987 Constitution, this Convention on the Rights of the child became valid and effective on us in July 1990 upon concurrence by the Senate. We shall be violating the Convention if we disqualify respondent Poe just because he happened to be an illegitimate child. It is our bounden duty to comply with our treaty obligation pursuant to the principle of *pacta sunct servanda*. As we held in **La Chemise Lacoste, S.A. vs. Fernandez**,[21]*viz:*

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For a treaty or convention is **not a mere moral obligation** to be enforced or not at the whims of an incumbent head of a Ministry. It creates a legally binding obligation on the parties founded on the generally accepted principle of international law of **pacta sunct servanda** which has been adopted as part of the law of our land. *(Constitution, Article II, Section 3)*

Indeed there is no reason to refuse compliance with the Convention for it is in perfect accord with our Constitution and with our laws.

Other States recognize the citizenship at birth of foundlings

Based on the Law Library of Congress study,[28] the following countries including some G7 members by their municipal laws recognize a foundling as a citizen of the country where such person is found at birth:

(a) France pursuant to Article 19 and 19-1, Civil Code
(b) Germany pursuant to Section 4(2), Citizenship Act
(c) Greece pursuant to Article 1, Citizenship Code
(d) Italy pursuant to Article 1, New Rules of Citizenship
(e) Spain pursuant to *Codigo Civil*
(f) United Kingdom pursuant to British Nationality Act 1981

A "natural born citizen" was defined only after the birth of Senator Poe

It was only in the 1973 Constitution,[29]and later in the 1987 Constitution,[30] that a natural born citizen of the Philippines is defined. The Supreme Court *en banc* in *Bengzon III v. HRET*[31] was categorical on who are considered to be natural born citizens, in this wise:

> Two requisites must concur for a person to be considered as such: (1) a person must be a Filipino citizen from birth and (2) he does not have to perform any act to obtain or perfect his Philippine citizenship.
>
> Under the 1973 Constitution definition, there were two categories of Filipino citizens which were not considered natural-born: (1) those who were naturalized and (2) those born before January 17, 1973, of Filipino mothers who, upon reaching the age of majority, elected Philippine citizenship. Those "naturalized citizens" were not considered natural-born obviously because they were not Filipinos at birth and had to perform an act to acquire Philippine citizenship. Those born of Filipino mothers before the effectivity of the 1973 Constitution were likewise not considered natural-born because they also had to perform an act to perfect their Philippine citizenship.

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[28] Citizenship Based On Birth in Country, Compiled byConstance A. Johnson (May 2012); http://www.loc.gov/law/help/citizenship-birth-country/citizenship-birth-country.pdf December 15, 2015

[29]Article III, Sec. 4, 1973 Constitution

[30]Article IV, Sec. 2, 1987 Constitution.

[31]G.R. No. 14280, May 7, 2001; citations omitted

The present Constitution, however, now considers those born of Filipino mothers before the effectivity of the 1973 Constitution and who elected Philippine citizenship upon reaching the majority age as natural-born. After defining who are natural-born citizens, Section 2 of Article IV adds a sentence: "Those who elect Philippine citizenship in accordance with paragraph (3), Section 1 hereof shall be deemed natural-born citizens." Consequently, only naturalized Filipinos are considered not natural-born citizens. It is apparent from the enumeration of who are citizens under the present Constitution that there are only two classes of citizens: (1) those who are natural-born and (2) those who are naturalized in accordance with law. A citizen who is not a naturalized Filipino, i.e., did not have to undergo the process of naturalization to obtain Philippine citizenship, necessarily is a natural-born Filipino. Noteworthy is the absence in said enumeration of a separate category for persons who, after losing Philippine citizenship, subsequently reacquire it. The reason therefor is clear: as to such persons, they would either be natural-born or naturalized depending on the reasons for the loss of their citizenship and the mode prescribed by the applicable law for the reacquisition thereof. As respondent Cruz was not required by law to go through naturalization proceedings in order to reacquire his citizenship, he is perforce a natural-born Filipino. As such, he possessed all the necessary qualifications to be elected as member of the House of Representatives.

A final point. The HRET has been empowered by the Constitution to be the "sole judge" of all contests relating to the election, returns, and qualifications of the members of the House. The Court's jurisdiction over the HRET is merely to check "whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction" on the part of the latter. In the absence thereof, there is no occasion for the Court to exercise its corrective power and annul the decision of the HRET nor to substitute the Court's judgment for that of the latter for the simple reason that it is not the office of a petition for certiorari to inquire into the correctness of the assailed decision. There is no such showing of grave abuse of discretion in this case.

Commonwealth Presidents - deemed natural born citizens

Sr. Manuel A. Roxas was born on January 1, 1892 as a Spanish subject. His parents Gerardo Arroyo Roxas and Rosario Villaruz Acuna, were both Spanish subjects. Sr. Roxas therefore became a citizen of the Philippines through the Cooper Act, a US Congress action or by legislative fiat.

The same is true with the first Commonwealth President Manuel Luis Molina Quezon who was born on August 19, 1878 to Lucio Quezon and Maria Dolores Molina. Vice-President Sergio Osmena Sr., who succeeded Quezon when the latter died of tuberculosis in Lake Saranac, New York in 1944, was born on September 9, 1878 to Juana Suico Osmena Sr. and to a reportedly "19th century 'rags-to-riches' Chinese immigrant tycoon, philanthropist and Cebu Chinese community leader Don Pedro Lee Gotiaoco."[32]

The 1935 Constitution does not define a "natural born citizen" of the Philippines, which was already a requirement then for Presidential and Vice-Presidential candidates. Though born as Spanish subject, Manuel L. Quezon was President most of the Commonwealth period from 1935 thru 1944; and his Vice President then Sergio Osmeña Sr. allegedly of Chinese descent succeeded him. Sr. Roxas also ran and became the fifth President of the Philippines under the 1935 Constitution; and his being born a Spanish subject did not prevent him from seizing and assuming power on June 3, 1946.

The "natural born citizenship" requirement under the 1987 Constitution[33]could not therefore be applied to Senator Grace Poe given the circumstances of her birth and the history of our country's law on citizenship, as well as the general principles of customary international law.

With equal weight then that one can argue that as Senator Poe was born under the 1935 Constitution, the definition of a natural born citizen under the 1987 Constitution could not be retroactively applied to her. There is no logic to exact the standard of a natural born citizen under the 1987 Constitution, to a person born prior to the effectivity of the Constitution that provides such a standard. A contrary proposition would amount to a violation of her right as a

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[32]*Wilson Lee Flores.* "The secret father of President Sergio Osmena& forebear of John Gokongwei, Jr., Gaisanos, Gotianuns" (Philippine Star , June 20, 2010)

[33] The 1987 Constitution defines in Section 2, Article IV thereof, "*Natural-born citizens*" as follows:

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

citizen of the Philippines, and her right as a foundling under the general principles of customary international law, apart from being oppressive and unreasonable. It could not be said that she lost her natural born citizen status with the change in the constitutional provisions on citizenship in the 1973 and 1987 Constitution. Indeed, Justice Isagani A. Cruz noted that:

> Finally, it should be observed that the provisions of the constitution should only be given prospective application, unless the contrary is clearly intended. Were the rule otherwise, rights acquired or vested might be unduly disturbed or withdrawn even in the absence of unmistakable intention to place them within the scope of the constitution.[34]

Thus her citizenship qualification should not be based on the 1987 Constitution Section 2, Article IV definition of a natural born citizen because such a definition was not the prevailing law when she was born in 1968.

On the reacquisition of citizenship

Fr. Joaquin G. Bernas opines that:

> If a natural-born Filipino citizen loses his citizenship by renunciation or by any other mode recognized by law, would he still be considered natural-born if he subsequently reacquires citizenship? It is submitted that, whether under the 1973 or 1987 provision, such a person would not be a natural-born Filipino.[35]

In *Daniel vs. Agbay*[36] the Supreme Court made a distinction in the interpretation of the Dual Citizenship Law (Republic Act No. 9225) in that natural-born citizens who became citizens of another country **before** the effectivity of said law shall **reacquire** their Philippine citizenship after they take an oath of allegiance to the Philippines, while those who became foreign citizens **after** the effectivity of said law shall **retain** their citizenship upon taking the same oath.

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[34] *Cruz, Isagani A. and Cruz, Carlo C.* The Constitutional Law (Central Book Supply, 2015 Ed.) p.11.

[35] *Bernas, J.G.The Constitution of the Republic of the Philippines, A Commentary,* vol. 1, 1st Edition, 1987, p. 513, noting that *'The same answer to the question was given in meeting of the 166-men Special Committee, November 16, 1972*

[36] *David v. Agbay and People of the Philippines* , G.R. No. 199113, March 18, 2015

R.A.9225, otherwise known as the "Citizenship Retention and Re-acquisition Act of 2003," was signed into law by President Gloria Macapagal-Arroyo on August 29, 2003. Sections 2 and 3 of said law read:

> SEC. 2. *Declaration of Policy.*–It is hereby declared the policy of the State that all Philippine citizens who become citizens of another country **shall be deemed not to have lost their Philippine citizenship under the conditions of this Act.**

SEC. 3. *Retention of Philippine Citizenship.*–Any provision of law to the contrary notwithstanding, natural-born citizens of the Philippines who have lost their Philippine citizenship by reason of their naturalization as citizens of a foreign country are hereby deemed to have **reacquired Philippine citizenship upon taking the following oath of allegiance to the Republic:**

> "I _____, solemnly swear (or affirm) that I will support and defend the Constitution of the Republic of the Philippines and obey the laws and legal orders promulgated by the duly constituted authorities of the Philippines; and I hereby declare that I recognize and accept the supreme authority of the Philippines and will maintain true faith and allegiance thereto; and that I impose this obligation upon myself voluntarily without mental reservation or purpose of evasion."

Natural-born citizens of the Philippines who, **after the effectivity of this Act**, become citizens of a foreign country shall **retain their Philippine citizenship upon taking the aforesaid oath.** *(Emphasis supplied)*

While Section 2 declares the general policy that Filipinos who have become citizens of another country shall be deemed "not to have lost their Philippine citizenship," such is qualified by the phrase "under the conditions of this Act." Section 3 lays down such conditions for two categories of natural-born Filipinos referred to in the first and second paragraphs. Under the first paragraph are those natural-born Filipinos who have lost their citizenship by naturalization in a foreign country who shall re-acquire their Philippine citizenship upon taking the oath of allegiance to the Republic of the Philippines. The second paragraph covers those natural-born Filipinos who became foreign citizens after R.A. 9225 took effect, who shall retain their Philippine citizenship upon

taking the same oath. The taking of oath of allegiance is required for both categories of natural-born Filipino citizens who became citizens of a foreign country, but the terminology used is different, "re-acquired" for the first group, and "retain" for the second group.

The law thus makes a distinction between those natural-born Filipinos who became foreign citizens before and after the effectivity of R.A. 9225. Although the heading of Section 3 is "Retention of Philippine Citizenship", the authors of the law intentionally employed the terms "re-acquire" and "retain" to describe the legal effect of taking the oath of allegiance to the Republic of the Philippines. This is also evident from the title of the law using both re-acquisition and retention.

In fine, for those who were naturalized in a foreign country, they shall be deemed to have re-acquired their Philippine citizenship which was lost pursuant to CA 63, under which naturalization in a foreign country is one of the ways by which Philippine citizenship may be lost. As its title declares, R.A. 9225 amends CA 63 by doing away with the provision in the old law which takes away Philippine citizenship from natural-born Filipinos who become naturalized citizens of other countries and allowing dual citizenship,[21] and also provides for the procedure for re-acquiring and retaining Philippine citizenship. In the case of those who became foreign citizens after R.A. 9225 took effect, they shall retain Philippine citizenship despite having acquired foreign citizenship provided they took the oath of allegiance under the new law.

Senator Poe belongs to the first category; hence she **reacquired** the same original natural-born status. Indubitably, her status at birth is the only status she could reacquire as that was the sole status at the time of her birth for she never performed any act to acquire or perfect her Philippine citizenship since the time of her birth. It would be defeating the policy under the law and her rights under the customary international law as well as the covenants and commitments that the Philippines adhered to, should she be denied of her right under the law to reacquire her natural born citizenship.

To conclude this article, these words of Chief Justice Reynato S. Puno in his separate opinion in *Tecson v. Comelec*[37] give comfort to the resolution of this constitutional puzzle.

EPILOGUE

> Whether respondent Fernando Poe, Jr. is qualified to run for President involves a constitutional issue but its political tone is no less dominant. The Court is split down the middle on the citizenship of respondent Poe, an issue of first impression made more difficult by the interplay of national and international law. Given the indecisiveness of the votes of the members of this Court, the better policy approach is to let the people decide who will be the next President. For on political questions, this Court may err but the sovereign people will not. To be sure, the Constitution did not grant to the unelected members of this Court the right to elect in behalf of the people.

- END -

December 15, 2015

[37] 424 SCRA 277, 399-400