

The year 2004 could have well been marked in the annals of the Philippines by the maiden use of the automated election. But the country was deprived of the golden chance to join the growing roster of states with modern election systems which include developing countries such as Kenya, Mali, Zambia, Romania, Albania, Mexico and Argentina because of the *Decision* of the Court.¹¹⁹

The *Decision* of the of the Court left the country in a position that was the same as before – with manual elections subject to the same problems and delays. The wherefores of the Automated Election Laws are still left hanging. It would be unjust to say that it was solely because of the *Decision* by which the Philippines was denied an automated election. Perhaps the manner by which COMELEC decided to implement the computerization of the elections of 2004 contributed to put to naught the *ratio* of the Automated Election law – forcing the Supreme Court to step into COMELEC's realm and nullify the Contract because of national interest and of such transcendental cause.

The computerization of the national elections was founded on a post-modern premise – the adoption of information technology to augment the political processes of the country. The *ratio* of the Automated Election Laws being the expediency, efficiency and the furtherance of the efficacy of the national electoral processes – the conclusion seemingly was unavoidable – progress or the movement towards the next wave.

As an afterthought, it may be left to mind, that as with all great premises, sometimes the conclusion does not carry through. The minor premises, such as the implementation aspect or the enforcement and execution aspect, sometimes (as in this case) destroy the functionality of the syllogism and the *ratio* of the argument.

Citizenship: Man's Being Defined and Undefined in Light of *Tecson et al v. Comelec*

Anna Maria Karla B. Ng*

I. INTRODUCTION	292
II. THE CASE OF <i>Tecson et al. v. COMELEC</i>	294
A. <i>The Parties</i>	
B. <i>Facts</i>	
C. <i>The Decision of the Comelec</i>	
D. <i>The Issues Before the Supreme Court</i>	
E. <i>The Ruling of the Court</i>	
III. LEGAL BACKGROUND ON CITIZENSHIP	300
A. <i>Statutory Background</i>	
B. <i>Jurisprudential Background</i>	
IV. THE DECISION EXPLAINED	309
V. ANALYSIS	310
A. <i>Burden of Proof for Establishing Filiation in Political Cases</i>	
B. <i>Jus Sanguinis as Applied to Illegitimate Children</i>	
VI. CONCLUSION	312

119. *Information Technology Foundation of the Philippines* at 82.

* '06 J.D., cand., Ateneo de Manila University School of Law. Editor and Office Manager, *Ateneo Law Journal*. She co-authored *In Re: Purisima and the Competence and Character Requirement for Membership in the Bar*, 48 ATENEO L.J. 840 (2003) with Ms. Aimee Dabu et al. She is also the Associate Lead Editor for this issue.

Cite as 49 ATENEO L.J. 291 (2004).

Youth spent in the country; intimate and endearing association with the citizens among whom he lives; knowledge and pride of the country's past; belief in the greatness and security of its institutions, in the loftiness of its ideals, and in the ability of the country's government to protect him, his children and his earthly possessions against perils from within and from without; and his readiness to defend the country against such perils, are some of the important elements that would make a person living in a country its citizen. Citizenship is a political status. The citizen must be proud of his citizenship. He should treasure and cherish it.¹

I. INTRODUCTION

"Citizenship is a treasured right conferred on those whom the state believes are deserving of the privilege. It is a precious heritage, as well as an inestimable acquisition that cannot be taken lightly by anyone."²

How is Citizenship determined? In the case of *Tecson v. Comelec*,³ a person's citizenship was questioned amidst a flurry of political disarray and massive campaign spending. Apparently, allegiance to one's country cannot be certain until it is questioned, brought to court, and finally determined by such competent court. Though the subject of this case did not emerge as the winning candidate for the position of President in the 2004 elections, the issue of citizenship is still very much a national concern.

Under the 1987 Philippine Constitution, there seems to be no dispute as to *who* is a Filipino Citizen. The pertinent provision lucidly states:

The following are citizens of the Philippines:

1. Those who are citizens of the Philippines at the time of the adoption of this Constitution;
2. Those whose fathers or mothers are citizens of the Philippines;
3. Those born before January 17, 1973, of Filipino mothers, who elect Philippine citizenship upon reaching the age of majority; and
4. Those who are naturalized in accordance with law.⁴

But a more important concern comes to fore when the issue of a natural born citizen is taken up. The Constitution elucidates: "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

1. *Tan Chong v. Secretary of Labor*, 79 Phil. 249, 256 (1947).
 2. *Tecson and Desiderio v. COMELEC*, G.R. 161434 (Mar. 3, 2004.) (emphasis supplied). This case was printed and published in a pamphlet format of which the pagination of this comment refers to.
 3. *Id.*
 4. PHIL. CONST., art IV, § 1.

who elect Philippine Citizenship in accordance with paragraph (3), Section 1 hereof shall be deemed natural born citizens."⁵

There is a broader national interest in the determination of who is a natural born Filipino citizen because it is a requirement for a number of constitutional offices, to wit: the President,⁶ Vice-President,⁷ Chief Justice and Associate Justices of the Supreme Court,⁸ as well as members of lower collegiate courts,⁹ and members of the Constitutional Commissions.¹⁰ Thus, it is in these crucial public positions where the sensitivity of determining who is a natural-born citizen lies. Despite efforts to maintain equality among all Filipinos in crafting constitutional provisions there are "frightening possibilities"¹¹ sought to be avoided by the drafters of the Constitution nevertheless present? In illustrating the said "frightening possibilities," Commissioner Suarez said:

We may have a president whose father's name is Jack Reagan who is based in Washington, D.C. and is a member of the CIA. We may have a Vice-President whose name [is] Naburo Nakasone, based in Tokyo, Japan. We may have a Chief Justice of the Supreme Court whose father may be a Miguel Gorbachev, a member of the KGB in Moscow. We may have a Chairman of the Commission on Elections whose father may be called Jose Deng Xiaoping, based in Peking.¹²

To further complicate matters, the issue of filiation may come into play. Is an illegitimate child, born of a Filipino father and an alien mother, bereft of the benefit of natural-born citizenship? Furthermore, what kind of proof is necessary to prove paternity and filiation in political cases such as the one at hand?

If faces were on milk cartons, citizenship would be the brand that is emblazoned over the carton. However, individual citizenship is determined in a much more complicated manner. As much as people would like it to be tattooed on their foreheads, citizenship depends on blood relationship, and in other jurisdictions, place of birth. How this fact is illustrated, is the tricky part. Is citizenship dependent on paper proof?

5. PHIL. CONST. art IV, § 2.
 6. PHIL. CONST. art VII, § 2.
 7. PHIL. CONST. art VII, § 3.
 8. PHIL. CONST. art VIII, § 7, ¶ 1.
 9. PHIL. CONST. art VIII, § 7, ¶ 1.
 10. PHIL. CONST. art IX-B, § 1, ¶ 1; art IX-C, § 1, ¶ 1; art IX-D, § 1, ¶ 1.
 11. JOAQUIN G. BERNAS, *THE INTENT OF THE 1986 CONSTITUTION WRITERS*, [1995]. (citing I RECORD OF THE CONSTITUTIONAL COMMISSION 355).
 12. *Id.* (formatting supplied)

II. THE CASE OF *TECSON ET. AL V. COMELEC*A. *The Parties*

The case is a consolidation of three petitions. The first two petitions¹³ challenged the jurisdiction of the COMELEC over citizenship issues and posited that based on Article VII, section 4, paragraph 7 of the 1987 Constitution, only the Supreme Court, sitting as the Presidential Electoral Tribunal (PET), has original and exclusive jurisdiction to resolve the dispute.¹⁴ The third and last petition¹⁵ filed by Victorino X. Fornier is a petition for certiorari assailing the decision of the COMELEC, dismissing the petition to disqualify or cancel the certificate of candidacy of respondent Ronald Allan Kelley Poe, more popularly known as Fernando Poe Jr. (FPJ). The petitioners are suing in their capacity as citizens. The subsequent references to the petitioner involve only Fornier's petition, the first two having been dismissed outright by the Court for lack of merit.¹⁶

B. *Facts*

FPJ filed his certificate of candidacy for the position of President of the Republic of the Philippines on 31 December 2003. In his certificate of candidacy, FPJ represented himself to be a natural-born citizen of the Philippines, born on 20 August 1939 in the city of Manila. The Court found that the earliest established ascendant of FPJ was his paternal grandparent, Lorenzo Pou who was married to Marta Reyes. Lorenzo Pou's record of birth was not presented as evidence. However, his death certificate showed that he was a Filipino, a resident of San Carlos, Pangasinan, and eighty-four years old at the time of his death on 11 September 1954. Lorenzo Pou and Marta Reyes sired Allan Poe, FPJ's father. Allan Poe's birth certificate showed that he was born on 17 May 1915. The marriage certificate of Allan Poe and Bessie Kelley, FPJ's mother, showed that they were married on 16 September 1940. The birth certificate of FPJ presented by both the Petitioner and FPJ indicated that Allan Poe was a Filipino citizen while Bessie Kelley was an American citizen. They were both unmarried at the time of FPJ's birth on 20 August 1939, exactly the same date indicated in

13. *Tecson*, G.R. 161434 at 5-7.

14. PHIL. CONST. art. VII, §4, ¶7 ("The Supreme Court, sitting en banc, shall be the sole judge of all contests relating to the election, returns, and qualifications of the President or Vice President, and may promulgate its rules for the purpose.").

15. *Tecson*, G.R. 161434 at 2.

16. *Id.* at 7.

FPJ's certificate of candidacy as his date of birth. The certificate of birth of FPJ however, did not bear the signature of his father.

Victorino Fornier filed a petition before the COMELEC to disqualify FPJ and to deny or cancel his certificate of candidacy on the basis that FPJ made a material misrepresentation in his certificate of candidacy by claiming to be a natural-born Filipino citizen. The said petition alleged that Lorenzo Pou was a Spanish subject thereby making FPJ's father, Allan Poe, a Spanish national. It also proposed that since both parents of FPJ were foreigners, consequently, FPJ could not be a Filipino citizen. It further argued that assuming that Allan Poe was indeed a Filipino citizen, he could not have transmitted his Filipino citizenship to FPJ, the latter being an illegitimate child of an alien mother.¹⁷

C. *The COMELEC decision*

The COMELEC, through its Third Division, dismissed Fornier's petition. The said decision made the following important points: first, it acknowledged that the Philippine Bill of 1902 had the effect of mass naturalization, and second, that a child of a Filipino father, even if illegitimate, is a Filipino.¹⁸

D. *The Issues Before the Supreme Court*

Hence, the main issue that had to be resolved by the Supreme Court was: Did FPJ make a material misrepresentation in his certificate of candidacy by indicating his citizenship to be that of a Filipino?

The court resolved two tangential issues necessary to uncover the answer to the main issue:

1. Did the documents presented by both parties establish facts that were sufficient to render certain FPJ's natural-born citizenship? Should the proofs of paternity required for purposes of civil law or the Rules of Court on Evidence have been applied?
2. Can the Filipino citizenship of a father be transmitted to his illegitimate child?¹⁹

17. *Tecson*, G.R. 161434 at 2.

18. Joaquin G. Bernas, *What Did the COMELEC Decide?*, TODAY, Jan. 25, 2004, at 10.

19. *Tecson*, G.R. No. 161434 at 26-29.

E. The Ruling of the Court

1. Proof of Paternity and Filiation

The Court's hands were tied on the documents that were presented to it as evidence by the Petitioner and the Respondent. As summarized by the Court, the following were the documents presented by the petitioner:

1. A copy of the certificate of birth of FPJ;
2. A certified photocopy of an affidavit executed in Spanish by Paulita Poe y Gomez attesting to her having filed a case for bigamy and concubinage against the father of the respondent, Allan F. Poe after discovering his bigamous relationship with Bessie Kelley;
3. An English translation of the said affidavit;
4. A certified photocopy of the certificate of birth of Allan F. Poe;
5. A certification issued by the Director of the Records Management and Archives Office, attesting to the fact that there was no record in the National Archives that a Lorenzo Poe or Lorenzo Pou resided or entered the Philippines before 1907;²⁰
6. A certification from the Officer-In-Charge of the Archives Division of the National Archives to the effect that no available information could be found in the files of the National Archives regarding the birth of Allan F. Poe.²¹

For his part, FPJ presented 22 pieces of documentary evidence. The more important ones were highlighted by the Supreme Court:

1. A certification issued by Estrella M. Domingo of the Archives Division of the National Archives that there appeared to be no available information regarding the birth of Allan F. Poe in the registry of births for San Carlos, Pangasinan;
2. A certification issued by the Officer-In-Charge of the Archives Division of the National Archives that no available information regarding the marriage of Allan F. Poe and Paulita Gomez can be found;
3. A certificate of birth of FPJ;
4. Original Certificate of Title No. P-2247 of the Registry of Deeds for the Province of Pangasinan, in the name of Lorenzo Pou;
5. Copies of Tax Declarations in the name of Lorenzo Pou;
6. Copy of the Certificate of Death of Lorenzo Pou;

20. Note that 1907 was after the promulgation of the Treaty of Paris and the Philippine Bill of 1902.

21. *Tecson*, G.R. No. 161434 at 2-3.

7. Copy of the purported marriage contract between Allan Poe and Bessie Kelley;
8. A certification issued by the City Civil Registrar of San Carlos City, Pangasinan, stating that the records of birth in the said office during the period from 1900 until May 1946 were totally destroyed during World War II.²²

The principal question is: what rule will prevail in the determination of the standard of proof in proving paternity and filiation? Will it be the rules found in the Civil Code or the rules of evidence under the Rules of Court?

The Civil Code provides that recognition or acknowledgement of paternity is evidenced by the record of birth of the individual in question, in a will, a statement made before a court of record, or any authentic writing.²³ The required "authentic writing" was defined by *amicus curiae* Prof. Ruben F. Balane as simply a genuine or indubitable writing of the father.²⁴ The term includes a public instrument or private writing admitted by the father to be his.²⁵ These strict requirements do not preclude the presentation of circumstantial evidence to serve as proof of paternity. Article 283 of the Civil Code provides for circumstances wherein the father may be obligated by law to recognize the child,²⁶ provided however, that any of the forms of recognition under Article 278 of the New Civil Code is available and that the circumstantial evidence under Article 283 is presented during the lifetime of the father.

22. *Id.* at 3.

23. An Act to Ordain and Institute the Civil Code of the Philippines [CIVIL CODE OF THE PHILIPPINES], art. 278 (1950). (Recognition shall be made in the record of birth, a will, a statement before a court of record, or in any authentic writing.)

24. *Tecson*, G.R. 161434 at 18.

25. *Id.*

26. CIVIL CODE OF THE PHILIPPINES, art. 283.

Article 283 provides:

In any of the following cases, the father is obliged to recognize the child as his natural child:

- 1.) In cases of rape, abduction, or seduction, when the period of the offense coincides more or less with that of the conception;
- 2.) When the child is in continuous possession of status of a child of the alleged father by the direct acts of the latter or of his family;
- 3.) When the child was conceived during the time when the mother cohabitated with the supposed father;
- 4.) When the child has in his favor any evidence or proof that the defendant is his father.

Thus, applying the foregoing to FPJ's case, he cannot prove his paternity there being no recognition by his alleged father in his birth certificate. Even if any other form of recognition accepted under Article 278 was presented, he still could not have presented the circumstantial evidence under Article 283 since his father is already deceased.

The Family Code expanded the Civil Code provisions and provided for different requirements for legitimate and illegitimate children. In this regard, legitimate filiation can be established by:

1. A record of birth appearing in the civil register or a final judgment;
2. An admission of legitimate filiation in a public document or a private handwritten instrument signed by the parent concerned.²⁷

In the absence of the above-mentioned documents, legitimate filiation may also be proved by:

1. The open and continuous possession of the status of a legitimate child; or
2. Any other means allowed by the Rules of Court and special laws.²⁸

The action to claim legitimacy must be brought by the child during his or her lifetime and shall be transmitted to the heirs in case he or she dies during minority or in a state of insanity.²⁹

For establishing illegitimate filiation, the Family Code provides that such may be established in the same manner and evidence as that of legitimate children. The same period provided for establishing legitimate filiation is also afforded for establishing illegitimate filiation. However, if the action brought by an illegitimate child is based on a public document or private handwritten instrument signed by the parent concerned, the action may be brought only during the lifetime of the alleged parent.³⁰

It should be noted that the provisions of the Family Code have retroactive application insofar as such application does not prejudice or impair vested rights in accordance with the Civil Code and other laws.³¹

On the other hand, the Court found the Rules of Court to be applicable to the question of admissibility of the proof provided by FPJ. The aforementioned rule provides that:

27. Executive Order 209, Family Code of the Philippines [FAMILY CODE] art. 172 (1988).

28. *Id.*

29. FAMILY CODE, art. 173.

30. FAMILY CODE, art. 175.

31. FAMILY CODE, art. 256.

The act or declaration of a person deceased, or unable to testify, in respect to the pedigree of another person related to him by birth or marriage, may be received in evidence where it occurred before the controversy, and the relationship between the two persons is shown by evidence other than such act or declaration. The word 'pedigree' includes relationship, family genealogy, birth, marriage, death, the dates when and the places where these facts occurred, and the names of the relatives. It embraces also facts of family history intimately connected with pedigree.³²

It was a clear choice in favor of the Rules of Court that the Court found the duly notarized declaration made by Ruby Kelley Mangahas, sister of Bessie Kelley and aunt of FPJ, "might be accepted to prove the facts of Allan F. Poe, recognizing his own paternal relationship with FPJ."³³

2. Citizenship of Illegitimate Children of a Filipino Father and an Alien Mother

Based on the rulings of the court in *Morano v. Vivo*,³⁴ citing *Chiongbian v. de Leon*³⁵ and *Serra v. Republic*,³⁶ the Petitioner posited that since FPJ was an illegitimate child, he followed the citizenship of his mother, Bessie Kelley, an American citizen. Upon prompting by *amicus curiae* Fr. Joaquin G. Bernas, S.J., and the expression of similar views by fellow *amicus curiae* Justice Vicente Mendoza, Prof. Ruben F. Balane, and Dean Merlin Magallona, the Court analyzed the *lis mota* of the cases cited by the Petitioner and concluded that the thesis of the Petitioner hinged upon *obiter dicta* and, as such, should not be given due course. In defense of the cited decisions, the Court explained:

Where jurisprudence regarded an illegitimate child as taking after the citizenship of its mother, it did so for the benefit of the child. It was to ensure a Filipino nationality for the illegitimate child of an alien father in line with the assumption that the mother had custody, would exercise parental authority and had the duty to support her illegitimate child. It was to help the child, not to prejudice or discriminate against him.³⁷

Therefore, the cited cases did not produce a doctrine that prevented illegitimate children from taking the Filipino citizenship of their fathers. The Filipino citizenship of a father is still transmitted to any of his children,

32. RULES OF COURT, Rule 130, § 29.

33. *Tecson*, G.R. No. 161434 at 22.

34. *Morano v. Vivo*, 20 SCRA 562 (1967).

35. *Chiongbian v. De Leon*, 82 Phil. 771 (1949).

36. *Serra v. Republic*, 91 Phil 914 (1952).

37. *Tecson*, G.R. No. 161434 at 26.

whether legitimate or illegitimate. Thus, assuming that Allan Poe was a Filipino citizen, FPJ acquired this citizenship.

3. FPJ's Citizenship and Alleged Misrepresentation

The Supreme Court sifted through the documents presented by the parties and drew the following conclusions:

1. The parents of FPJ were Allan F. Poe and Bessie Kelley;
2. FPJ was born to them on 20 August 1939;
3. Allan F. Poe and Bessie Kelley were married on 16 September 1940;
4. The father of Allan F. Poe was Lorenzo Poe; and
5. At the time of his death on 11 September 1954, Lorenzo Poe was 84 years old.³⁸

From the foregoing facts, the Court found that the totality of the evidence did not establish conclusively that FPJ was a natural-born citizen of the Philippines. Nonetheless, the Court dismissed Fornier's petition. But while the Court did not make a definite and final ruling on FPJ's citizenship, it conceded that the preponderance of the evidence presented was enough to lead to the conclusion that FPJ did not make a material misrepresentation in his certificate of candidacy.³⁹

III. LEGAL BACKGROUND ON NATURAL-BORN CITIZENS

The development of the law with regard to the questions that came up in the FPJ case shall be presented to highlight the change in the law produced by the decision.

A. Statutory Background

The concept of a "citizen" in the Philippines is Spanish origin. On 18 December 1889, the Spanish Civil Code defined who were Spanish Citizens.⁴⁰ Barely a decade later, Spain ceded the Philippines to the United

38. *Id.* at 14-5.

39. *Id.* at 27.

40. THE CIVIL CODE OF SPAIN, art 17 (superseded 1950).

The following are Spaniards:

- 1.) Persons born in Spanish Territory;
- 2.) Children born of a Spanish father or mother, even though they were born out of Spain.
- 3.) Foreigners who may have obtained naturalization papers.

States through the Treaty of Paris entered into on 10 December 1898.⁴¹ The said change in sovereignty had the effect of abrogating all the political laws then in force while the civil laws remained virtually intact.⁴² All laws then in existence which posed any conflict with the political character, constitution, or institutions of the substituted sovereign lost their force.⁴³

The Treaty of Paris applied to two types of individuals: Spanish natives residing in the Philippines and native inhabitants of the Philippines. The former were given the option to remain within Philippine soil, or to move elsewhere. Those who chose to remain preserved allegiance to the Crown of Spain by making a declaration of their desire to preserve such allegiance before a court of record within a year from the date of exchange of ratifications of the said treaty. Those who failed to make the declaration were deemed to have renounced allegiance to the Crown of Spain and to have adopted the *nationality* of the territory in which they reside. The native Philippine inhabitants' civil rights and political status were left to the U.S. Congress.⁴⁴ At this point, the idea of a "Filipino Citizen" was not yet concrete since the Treaty of Paris made reference to a "national."

On 1 July 1902, the U.S. Congress enacted the Philippine Bill of 1902 or the Philippine Organic Act of 1902 which was the law in the Philippines until 1916.⁴⁵ Under the Act, those who were Spanish subjects on 11 April 1899 and who resided in the Philippine Islands, and their children born subsequent to the said date were held to be Filipino citizens.⁴⁶ A question

4.) Those who, without said papers may have acquired domicile in any town in the monarchy.

41. JOAQUIN G. BERNAS, THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY 7 (1996).

42. *Tecson*, G.R. No. 161434 at 10.

43. David G. Nitafan, *Touchy Issues on Citizenship: A Century Hence*, 197 SCRA 928, 932 (1991) (citing *Government v. Monte de Piedad*, 35 Phil. 728 (1916)).

44. THE TREATY OF PARIS, art. IX (1898).

45. CONSTANTINO G. JARAULA, CONSTITUTIONS OF THE PHILIPPINES AND BASIC DOCUMENTS 143 (1997).

46. Philippine Bill of 1902, § 4 provides:

[A]ll inhabitants of the Philippine Islands continuing to reside therein who were Spanish subjects on the eleventh day of April, eighteen hundred and ninety-nine, and then resided in said Islands, and their children born subsequent thereto, shall be deemed and held to be citizens of the Philippine Islands and as such entitled to the protection of the United States, except such as shall have elected to preserve their allegiance to the crown of Spain in accordance with the provisions of the treaty of peace between the United States and Spain, signed at Paris, December tenth eighteen hundred and ninety-eight.

arose as to what would be the citizenship of children born prior to the enactment of the Philippine Bill of 1902 and after the enactment of the Treaty of Paris. At that time, jurisprudence gave credence to the view that the rule of *jus soli* would apply.⁴⁷

Noticeably, the Philippine Bill of 1902, as worded, failed to legislate on the citizenship of the native inhabitants referred to in the second paragraph of Article IX of the Treaty of Paris.⁴⁸ In *Palanca v. Republic*,⁴⁹ the Court stated that the lack of the treaty stipulation for the natives was due to an oversight. It held that since: (1) the petitioner was an inhabitant of the Philippine Islands and a *naturalized subject of Spain* on 11 April 1899; and (2) there is no limitation over the power of the U.S. Congress to determine the political status of *all* inhabitants of the Philippines on 11 April 1899 and those who continued to reside therein after such date, then the petitioner is a Filipino citizen by virtue of the Philippine Bill of 1902 and amendments thereto.⁵⁰ The Court further held:

There seems to be no doubt that the lack of treaty stipulation regarding Spanish subjects residing in the Philippine Islands, who were not born in Spain, was merely due to an oversight. It was not deliberate for the purpose of reverting them to the citizenship of their country of origin, for a change of citizenship must be voluntary or by act, expressed or implied, of the citizen or subject.⁵¹

It is however odd that *Palanca* concluded that a naturalized Spanish citizen who was not a native inhabitant of the Philippine Islands was deemed a Philippine citizen, considering that the Treaty of Paris covered only native inhabitants and not naturalized citizens.

Provided: that the Philippine Legislature 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 other insular possessions of the United States, and such other persons residing in the Philippine Islands, who could become citizens of the United States under the laws of the United States if residing therein. (emphasis supplied).

47. *Tecson*, G.R. No. 161434 at 11. (citing LEON T. GARCIA, THE PROBLEMS OF CITIZENSHIP IN THE PHILIPPINES 4 [1949].) *Jus soli* is the acquisition of citizenship on the basis of place of birth (BLACK'S LAW DICTIONARY 1000 (4TH ed. 1951)).

48. Philippine Bill of 1902, art. IX, ¶ 2. (The civil rights and political status of the native inhabitants of the territories hereby ceded to the United States shall be determined by Congress.)

49. *Palanca v. Republic*, 80 Phil. 578 (1948).

50. *Id.* at 584.

51. *Id.* at 583-84.

Justice Perfecto's dissenting opinion in *Palanca* posited that the majority opinion failed to take into consideration a number of facts which should have led to a different conclusion. First, the petitioner registered himself as a Spanish subject with the Spanish Consulate General in Manila shortly before instituting the case to acquire Filipino citizenship. Second, he made it appear three years later in his marriage contract that he was of Spanish nationality.⁵²

In Justice Hilado's dissenting opinion in *Palanca*, he cited the case of *Tobin v. Walkinshaw*⁵³ against the proposition that the status of the native inhabitants are to be determined under international law. In *Tobin*, the Court recognized that the same act that transfers the country transfers the allegiance of those who remained in it. However, the transferred allegiance refers only to the allegiance which attached to the individuals in the first instance independent of their volition.⁵⁴ "This does not include naturalized citizens without whose voluntary choice and election should never have become such citizens of the country of adoption nor owed it allegiance."⁵⁵ Therefore, those native inhabitants who never made the declaration of allegiance to Spain and were held to be in default Philippine subjects under the Treaty of Paris should be remitted to his original status. "No power existed in one government to transfer, or in the other to receive, the voluntary or statutory allegiance of a naturalized citizen."⁵⁶

The 1935 Constitution came up with a more solid definition of who are citizens of the Philippines. It provided that the following are Filipino citizens:

1. Those who are citizens 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;
3. Those whose fathers or mothers 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.⁵⁷

However, the 1935 Constitution was accompanied by a law that resulted to discrimination among men and women. Commonwealth Act No. 63

52. *Id.* at 589 (Perfecto, J., dissenting).

53. 23 Fed. Cases 1346, 1348.

54. *Palanca*, 80 Phil. at 583-4 (Perfecto, J., dissenting) (citing *Tobin v. Walkinshaw*, 23 Fed. Cases 1346, 1348.)

55. *Id.* at 599 (Hilado, J., dissenting).

56. *Id.*

57. 1935 PHIL. CONST. art IV, § 1 (superseded 1973).

provided that women who marry foreigners automatically lose their Filipino citizenship and acquired that of their husband's.⁵⁸ This incapacitated the women from transferring their citizenship to their children.

The 1973 Constitution sought to correct this disparity and provided that "a female citizen of the Philippines who marries an alien retains her Philippine Citizenship."⁵⁹ Under the said Constitution, the following are Filipino Citizens:

1. Those who are citizens of the Philippines at the time of this Constitution;
2. Those whose fathers or mothers are citizens of the Philippines;
3. Those who elect Philippine citizenship pursuant to the provisions of the Constitution of 1935; and
4. Those who are naturalized in accordance with law.⁶⁰

Meanwhile the 1987 Constitution provides that the following are Filipino citizens:

1. Those who are citizens of the Philippines at the time of the adoption of this Constitution;
2. Those whose fathers or mothers are citizens of the Philippines;
3. Those born before January 17, 1973 of Filipino mothers, who elect Philippine citizenship upon reaching the age of majority; and
4. Those who are naturalized in accordance with law.⁶¹

In the matter of who is a natural-born citizen, the present Constitution provides: "Natural-born citizens are those who are citizens of the Philippines 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."⁶²

B. Jurisprudential Background

Since the enactment of the 1973 Constitution, the Philippines has followed the rule of *jus sanguinis*⁶³ in determining who its citizens are. Prior thereto,

58. An Act Providing for the Ways in Which Philippine Citizenship May Be Lost or Reacquired, Commonwealth Act No. 63, as amended, § 1, ¶ 7 (1936).

59. 1973 PHIL. CONST. art III, § 2 (superseded 1987.)

60. 1973 PHIL. CONST. art III, § 1.

61. PHIL. CONST. art IV, § 1.

62. PHIL. CONST. art IV, § 2.

63. *Jus sanguinis* is the acquisition of citizenship on the basis of blood relationship (*In re Florencio Mallare*, 23 SCRA 292, 296 (1968)).

the rule of *jus soli* was in force in Philippine jurisdiction. In *Roa v. Insular Collector of Customs*,⁶⁴ the Court ruled on the citizenship of Tranquilino Roa who was born in 1889 in the Philippine Islands, and whose father was a native of China while his mother was a native Filipina. His father was domiciled in the Philippines until 1895 when he went to China and never returned. Years later, Roa's mother had him sent to China for the sole purpose of studying. Upon reaching the age of majority, he sought admission into the Philippines. His attempt was however denied because the board of special inquiry found that the appellant was a Chinese person, hence, not entitled to enter the Philippine Islands.⁶⁵

Roa appealed such decision to the Supreme Court which held that Roa could not be deprived of the right to enter his land of birth. In construing the provisions of the Philippine Bill of 1902, the Court stated that to declare that the appellant is an alien and not entitled, under the circumstances, to re-enter the land of his birth and become a citizen thereof, would be a holding contrary to the manifest intent of that body.⁶⁶ The Court, of course, did not intend to deem every individual not falling within the Philippine Bill of 1902 as aliens. Section 4 of the said law declares that a certain class of inhabitants shall be citizens of the Philippine Islands. It did not declare that other inhabitants shall not be citizens.⁶⁷

However, it must be noted that the Court's decision in allowing Roa to re-enter the Philippines was based on the fact that the death of Roa's father in China in 1900 produced the effect of his mother's re-acquisition of Filipino Citizenship.⁶⁸ This seemed to suggest that the decision was not purely based on the rule of *jus soli*. Nevertheless, subsequent cases which applied the principle *jus soli* in the Philippines followed the *Roa* case.⁶⁹

In 1939, the Supreme Court signaled the move towards abandoning the rule of *jus soli* when it held in *Chua v. Secretary of Labor*⁷⁰ that a Chinese woman who was of Chinese parentage was not allowed to claim Filipino nationality merely on the ground that she was born on Philippine soil.

Yet in 1947, the Supreme Court finally put the issue to rest and declared in *Tan Chong v. Secretary of Labor*⁷¹ that the *jus soli* doctrine is no longer

64. *Roa v. Insular Collector of Customs*, 23 Phil 315 (1912).

65. *Id.* at 317.

66. *Id.* at 338.

67. *Tan Chong v. Secretary of Labor*, 79 Phil. 249, 255 (1947).

68. *Roa*, 23 Phil. at 340.

69. *See Torres vs. Tan Chim*, 69 Phil. 518 (1940), and *Gallofin vs. Ordoñez*, 70 Phil. 287 (1940).

70. *Chua v. Secretary of Labor*, 68 Phil 649 (1939).

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

effective in Philippine jurisdiction. The Court in *Tan Chong* held that the rule of *jus soli* has been abandoned in *Chua*. It however recognized that cases decided after *Chua* reverted back to the *jus soli* principle as cited in cases prior to *Chua*. Nevertheless, the Court struck down *jus soli* in its application to individuals of alien parentage. It explained that the applicable law at the time of Tan Chong's birth was Section 4 of the Philippine Bill of 1902, as amended by the Act of 23 March 1912, and that Tan Chong did not become a citizen by virtue of the said provision of law.⁷² This pronouncement is a very important consideration in the determination of citizenship of individuals who were born while the Philippine Bill of 1902, as amended by the Act of 23 March 1912 was in force. If said individual is of alien parentage, consequently, he is disqualified from acquiring Filipino Citizenship under the said law because of the *Tan Chong* pronouncement.

In the case of Lorenzo Pou, drawing on the Court's assumption that by virtue of his Death Certificate Lorenzo Pou is presumed to have resided in the Philippines prior to his death in 1954, proof of alien parentage would have disqualified Lorenzo from acquiring Filipino citizenship. For this reason, Allan Poe could not have acquired Filipino citizenship from Lorenzo.

On the other hand, assuming that Allan's mother was a Filipina, he could have actually acquired her Filipino citizenship. However, as records of the case revealed, there is no record of Allan's birth in San Carlos, Pangasinan, which is allegedly his place of birth. Hence, there could be no authoritative conclusion on this matter. Thus, the question of FPJ's citizenship still remains.

The Petitioners cited *Morano v. Vivo*⁷³ in order to bolster the argument that an illegitimate child does not follow the citizenship of his Filipino father but rather the citizenship of his alien mother. In this case and the other cases cited therein, the Court said that the pronouncement on the issue of citizenship was not relevant to the *lis mota* and was therefore *obiter dictum*.

Morano involved a Chinese woman and her son who both went to the Philippines to visit a relative using temporary permit upon putting up a bond in favor of the Immigration office. The Chinese woman married Morano, a Filipino. Thereafter, she asked for the extension of her temporary permits. A number of extensions were granted. However, the last extension eventually expired and the Commissioner of Immigration ordered the Chinese woman and her son to leave the country. Otherwise a warrant for their arrest will be issued and their bond forfeited. The woman and her son replied by filing the case to cancel their Alien Certificates of Registration and to prohibit their arrest.

72. *Id.* at 258.

73. *Morano v. Vivo*, 20 SCRA 562 (1967).

The Court ruled that both the mother and her son were not Filipino citizens. The Chinese woman did not acquire Filipino citizenship simply by marrying a Filipino citizen. The Court stated that she can only acquire Filipino citizenship if she departed from the country, procured the proper visa – not a temporary one but as an immigrant – and submitted herself for examination with the Bureau of Immigration. As for the son, he was not a Filipino citizen simply because of his mother's marriage to Morano. At best, he was a step-son of a Filipino. A stepson was not a foreign-born child of the step-father,⁷⁴ and neither can he be classified as an illegitimate child of the Filipino.

Clearly, there was nothing in the said case which could be applied to the situation of FPJ who was a natural child of a Filipino father. As much as *Morano* held that a child could not acquire the citizenship of his Filipino step-father, *Morano* made no pronouncement on the status of a natural child of a Filipino father and an alien mother. Consequently, it could not have made a doctrine on natural children that would be applicable to FPJ.

Chiongbian v. De Leon,⁷⁵ a case cited in *Morano* is likewise not an authority for the contention of the petitioners as to incapability of an illegitimate child to acquire his father's citizenship.

Chiongbian owned three vessels and the respondents sought to have the sale of the vessels rescinded and the registration for the vessels cancelled on the ground that Chiongbian was not a Filipino citizen and as such, was disqualified from being the registered owner of vessels registered in the Philippine registry. The Court ruled that the respondent was a Filipino citizen because as the *legitimate* child of a Chinese father who was elected to the office of municipal councilor, and on the strength of the Constitution then in effect, the petitioner acquired Filipino citizenship.⁷⁶

Again, this case is not applicable to the case of FPJ because it had no discussion regarding illegitimate children of Filipino fathers and alien mothers.

In *Serra v. Republic*,⁷⁷ the Court stated that "it was not about the illegitimate son of a Filipino father. Serra was an illegitimate child of a Chinese father and a Filipino mother. The issue was whether one who was already a Filipino because of his mother who [sic] still needed to be naturalized."⁷⁸

74. *Id.*

75. *Chiongbian v. de Leon*, 82 Phil. 771 (1949).

76. *Id.* at 775. See 1935 PHIL. CONST. art IV, §1, ¶ 2.

77. *Serra v. Republic*, 91 Phil 914 (1952).

78. *Id.*

The case of *Paa v. Chan*⁷⁹ was also discussed in the FPJ case. The case involved one Quintin Chan who was claiming Filipino citizenship on the ground that his father Leoncio was the legitimate child of a Chinese father and a Filipino mother. Similar to the case of FPJ, Quintin was not able to present proof to aid the court in determining his filiation and citizenship. The Court therein held that it could not be established whether Leoncio's mother was a Filipino citizen. Hence, since his father is not a Filipino, Quintin could not be pronounced as Filipino.⁸⁰

Thereafter, the court went on to say that assuming that Leoncio is a Filipino, Quintin still could not be considered a Filipino citizen because being born out of wedlock, thus an illegitimate child, he could not have been legitimized because he was not acknowledged by his parents as required by the Civil Code. There being no proof that he was acknowledged by his parents, Quintin could not be presumed to have acquired Filipino citizenship as a legitimate child.⁸¹ However, in FPJ's case, the Court agreed with *amicus curiae* Fr. Joaquin Bernas that the foregoing statement by the Court in *Paa* was merely *obiter* because it was based on a fact contrary to the assumption.⁸²

Moreover, Quintin applied for naturalization. He also registered himself twice as an alien and five out of eight of his children were enrolled in a local Chinese school. All these facts belied his claim of Filipino citizenship and hence, he could not claim with sincerity that he was a Filipino more than he was Chinese. At the very least for FPJ, he can lay claim to facts that would suggest his affiliation with the Filipino community and culture. He is, after all, a big figure in Philippine cinema.

IV. THE DECISION EXPLAINED

Tacson resolved the first issue presented above. For purposes of determining citizenship under political law, the Rules on Evidence are applicable.

The purpose of allowing the proof, as required under the Rules of Court, is to eliminate or minimize the discrimination between legitimate and illegitimate children. The Court held in *Tacson*:

The growing trend to liberalize the acknowledgement of recognition of illegitimate children is an attempt to break away from the traditional idea of keeping well apart legitimate and non-legitimate relationships within the family in favor of the greater interest and welfare of the child. The provisions [Civil Law] are intended to *merely govern the private and personal affairs of the family*. There is little to indicate that the legitimate or illegitimate

79. *Paa v. Chan*, 21 SCRA 753 (1967).

80. *Id.* at 763.

81. *Id.* at 764.

82. *Tacson*, G.R. 161434 at 26.

status of the individual would also affect his political rights or his relationship to the State.⁸³

Indeed, the legitimacy or illegitimacy of a child has very little or no bearing at all in his capacity to exercise his political rights, enjoy Philippine citizenship, and run for President. The Court itself has recognized that "civil law provisions point to an obvious bias against illegitimacy."⁸⁴ The decision in the case at hand clearly frowned upon the "invidious discrimination" which was codified in the Spanish Civil Code and adopted in the 1950 Civil Code and clarified that such should not be extended in the sphere of Political Law, thus, strengthening the view that the Rules of Court may be applied:

Such distinction, however, remains and should remain only in the sphere of civil law and not unduly impede or impinge on the domain of political law. The proof of filiation or paternity for purposes of determining his citizenship status should thus be deemed independent from and not inextricably tied up with that prescribed for civil law purposes. The Civil Code or Family Code provisions on proof of filiation or paternity, *although good law*, do not have preclusive effects on matters alien to personal and family relations. *The ordinary rules on evidence could well and should govern.*⁸⁵

On the second issue, the Court asserted that an illegitimate child can take the citizenship of its Filipino father. The cases cited by the Petitioner did not in any way create a rule which prevents an illegitimate child from acquiring the citizenship of its Filipino father or one which limits the child from acquiring the citizenship of the mother alone. Such rule would have been unconstitutional. The reason is clear as day: the 1987 Constitution itself provides that children born of Filipino fathers or mothers are Filipino citizens.⁸⁶ No condition, qualification or distinction was made. *Ubi lex non distinguit nec nos distinguere debemus.*

V. ANALYSIS

A. Burden of Proof for Establishing Filiation in Political Cases

In allowing the application of the provisions of the Rules of Court on Evidence for proving filiation in political law cases, the decision of the Court in *Tacson* marks the opening of a field day for practitioners. This allows them to prove the citizenship of a person through the use of fewer documents and less inquiry into the person's lineage.

83. *Id.* at 19 (emphasis supplied).

84. *Id.* at 21.

85. *Id.* at 22 (emphasis supplied).

86. PHIL. CONST. art IV, § 1, ¶ 2.

The interest of Philippine society is likewise served by the elimination of the distinction between legitimate and illegitimate children as to their capacity to acquire the Filipino citizenship of their parents. In fact, to say that the distinction was erased is a misnomer, for all along, the literal wording of the Constitution suggests no such distinction. The ruling further reinforces the people's faith in the Constitution. Indeed, it is not perfect and could use a good number of amendments. Nevertheless, the Constitution, as it now stands, is still the primary law of the land.

Illegitimate children of Filipino fathers who seek to exercise political rights can be assured of their Filipino citizenship. Regardless of illegitimacy, there is no more doubt that they are equally capable of acquiring either parent's Filipino citizenship. After *Tacson*, if their citizenship would ever be questioned in court through any of the possible modes, they only need to prove that at least one of their parents is a Filipino.

One can see a less stringent and more liberal court in the present case as compared to that in *Paa*.⁸⁷ In *Paa*, Quintin was running for the position of councilor, while in the present case, FPJ was running for the office of the President no less. In *Paa*, the citizenship of Quintin was questioned through a *quo warranto* proceeding, while FPJ's citizenship was questioned in a petition for cancellation of certificate of candidacy by reason of misrepresentation. And while Quintin was not allowed to run for the post in *Paa*, FPJ was permitted to run for the highest position in the country.

The difference in the conclusion of the court may be explained by and attributed to the fact that FPJ seemed to be more in tune and more deep-rooted in Philippine culture. This does not go to show that FPJ was adjudged to be a natural-born Filipino based on extrinsic evidence and on the absence of contrary petitions for his part. In fact, it should be recalled that the Court said that his natural-born citizenship could not be conclusively established. On the other hand, Quintin Chan who was claiming Filipino citizenship was not certain for himself. This was demonstrated by his flip-flopping petitions for alien registration and naturalization and by his seeming insincerity in applying for Filipino citizenship. As the court said in *Paa*, Quintin claimed to be Chinese when the sailing was rough for Filipinos during Japanese occupation and then claimed to be a Filipino when everything was calm in time of peace.⁸⁸ On the other hand, until he ran for the position of President and his citizenship was questioned in court, FPJ was probably not even aware that he could be anything other than a Filipino citizen.

87. *Paa*, 21 Phil 753 (1967).

88. *Id.* at 763.

B. *Jus Sanguinis* as Applied to Illegitimate Children

This is a triumph in favor of the Philippine Constitution. The Court was vigilant in protecting the constitutional rights of the respondent. It was correct in holding that a child can acquire Filipino citizenship if either parent is a Filipino citizen regardless of legitimacy. To conclude that an illegitimate child of a Filipino father and an alien mother can only take the citizenship of the mother is short of imposing our laws on an individual whose citizenship is still in question.

Philippine courts, of course, have the power to determine who are Filipino citizens. But can the same Philippine courts insist that an individual is a citizen of another sovereign? Certainly not. The courts can say that an individual is not a Filipino citizen but it cannot make a final determination and impress upon an individual foreign citizenship, especially when such foreign laws are not within its expertise and power. As held in *Aznar v. Osmeña*,⁸⁹ Philippine courts are only allowed to determine who are Filipino citizens and who are not, but "whether or not a person is considered an American under the laws of the United States does not concern us here."⁹⁰

Further, to make a distinction between the child of a Filipino father and alien mother, and the child of an alien father and Filipino mother violates the letter law which states that a child of a Filipino mother or father is a Filipino citizen. If at least one parent is a Filipino, the child acquires Filipino citizenship. The child can also acquire foreign citizenship if the other parent belongs to a sovereign which follows the *jus sanguinis* rule. In such a situation, the child is said to have dual citizenship. But nowhere in the Constitution is there a prohibition on holders of dual citizenship from running for the presidency. While it can be argued that a question on the candidate's allegiance might arise, the absence of a prohibition against individuals with dual citizenship demonstrates the lack of justification for the court to even venture into this issue. The only question that is important is whether or not FPJ is a natural-born Filipino.

To hold that an illegitimate child cannot take the citizenship of the father is also in violation of the equal protection clause in the words of *amicus curiae* Joaquin G. Bernas which was likewise cited by the Court in *Tacson*:

[I]t would violate the equal protection clause not once but twice. First, it would make an illegitimate distinction between a legitimate child and an illegitimate child, and second, it would make an illegitimate distinction between the illegitimate child of a Filipino father, and the illegitimate child of a Filipino mother.⁹¹

89. *Aznar v. COMELEC*, 185 SCRA 703 (1990).

90. *Id.* at 709-10.

91. *Tacson*, G.R. 161434 at 25-26.

It is no secret that Philippine society and our civil laws discourage the formation of illicit relationships. The distinctions in treatment between legitimate and illegitimate children rife in Civil Law were created to discourage the proliferation of illegal relationships and the fruits thereof but not to isolate illegitimate children from the rest of the community as if they were factory rejects.

However, it is also in the greater interest of the state to maintain the integrity and sanctity of the family as the basic unit of society. Thus, in the realm of citizenship and political rights, specifically in determining capacity to run for the presidency, the Court took one step towards removing the distinctions which oppress illegitimate children by affirming their right to acquire either of their parents' Filipino citizenship. The decision primarily rendered an invaluable service to the illegitimate child: that of revitalizing their rights in the world of Philippine politics.

VI. CONCLUSION

In the end, perhaps the best approach would be pragmatic. What makes a person a Filipino citizen is his heart, his actions, his way of living. But to argue such to the courts, there is instant vulnerability of it being viewed as a mockery of the legal system, unless of course there is legal basis to support such a proposition.

While the statement on Fernando Poe Jr.'s citizenship leaves much to be desired, it has given the country an opportunity to introduce certain changes in legislation and minimize the badges of discrimination against illegitimate children under Philippine law. It would have been better if the Court truly decided on FPJ's citizenship, but the sad part of the story is that even if the Court had desired such outcome, it still could not have done so due to the dearth of evidence presented. Hence, if in the future the citizenship of certain individuals would again be questioned for the purpose of verifying whether or not they can exercise their political rights, the individuals concerned can present all the evidence they can obtain and can only hope that the court will find the documents sufficient to make a clear pronouncement on their citizenship.

But realizing now that a great number of documents of Civil Registrars in the Philippines have been burned, lost, inundated or otherwise destroyed, there is doubt whether enough documents can ever be obtained. Rest assured, if there are not enough documents, preponderance of evidence can be claimed to overthrow claims against one's citizenship. Hence, as long as the weight of evidence presented leans in favor of Filipino citizenship, then it cannot be said that one is not a Filipino citizen.

It further implies that there need not be absolute certainty for one to exercise his political rights such as running for elective office. For purists then, the only manner by which total certainty of one's Filipino citizenship can be achieved is through a personal evaluation of one's sincerity in claiming Filipino citizenship.

Are you a Filipino?