Testing Constitutional Waters VII: Nationality, Citizenship, and Foundlings as Pronounced in *Poe-Llamanzares v. Commission on Elections*

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I. INTRODUCTION

The Philippine legal system was again challenged into addressing citizenship issue pertaining to foundlings. It had an unprecedented attempt to arrive at a judicial test on the determination of a foundling's citizenship.

The task that was imposed upon the Supreme Court of the Philippines (Supreme Court) was not easy in view of the political underpinnings that prevailed over the issue. Accordingly, the Supreme Court was tasked to undertake this standard-setting with the burden of having to insulate itself from the various political persuasions and considerations that have been advanced by election polls.

The Authors aim to provide the readers with a broader context of issues in determining nationality or citizenship for the purpose of properly situating

the delicate task of defining the judicial standards as applied to the status of foundlings in the Philippines.

This Article is divided into three parts. The first part discusses the issue at hand through the lens of international law by providing for the State practice on citizenship and nationality. It includes the various ways by which an individual may acquire and lose his or her nationality and the consequences of such nationality under international law. It focuses on the concept of multiple nationality and the continuing debate over its acceptance or rejection. The second part of this Article discusses the citizenship of foundlings under domestic law. It delves into the case of *Poe-Llamanzares v. Commission on Elections*[1] by providing for the facts and the issues of the case,

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followed by the ruling of the majority of the Supreme Court. The discussion of the case is divided into two — the majority's ruling through a human rights-based approach and through the use of novel tools of judicial review, on one hand, and the dissenting justices' opinion through classic statutory construction, on the other. Accordingly, the last part of this Article provides for the gaps and consequences of the Supreme Court's ruling in *Poe-Llamanzares* and for the possible questions that one could ask in analyzing the interpretation made by the Supreme Court.

The Authors further envision that this survey of State practice, as applied to the present case, would better inform the readers on the novelty of using a relatively new approach to judicial interpretation by applying statistical probability, among others.

II. STATE PRACTICE ON CITIZENSHIP AND NATIONALITY

A. Defining Nationality and Citizenship

Nationality and citizenship are often used interchangeably because of the close connection of the two concepts. Dr. Siofra O'Leary said that the two concepts "present legal significance and content[,] are of recent origin[,] and are closely linked to a series of historical and political developments which have varied from place to place."[2] In fact, writers and scholars are not in agreement in outlining the difference between these concepts.

Law and Its Application to Philippine Municipal Law, 51 ATENEO L.J. 823 (2007); *Testing Constitutional Waters: Balancing State Power, Economic Development, and Respect for Human Rights*, 51 ATENEO. L.J. 1 (2006); *Courts and Social Context Theory; Philippine Judicial Reform as Applied to Vulnerable Sectors*, 50 ATENEO L.J. 823 (2006); & *The Philippines and the Convention on the Rights of the Child: Evaluating Compliance with Respect to International Standards for Procedural Rules Involving Children*, 49 ATENEO L.J. 1016 (2004).

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Cite as 61 ATENEO L.J. 29 (2016).

1. Poe-Llamanzares v. Commission on Elections, G.R. No. 221697, Mar. 8, 2016, *available at* http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/march2016/221697.pdf (last accessed Aug. 31, 2016).
2. ALFRED M. BOLL, MULTIPLE NATIONALITY AND INTERNATIONAL LAW 58 (citing SIOFRA O'LEARY, THE EVOLVING CONCEPT OF COMMUNITY

On one hand, *nationality* is the "connection that links individuals to a particular [S]tate ... notwithstanding a particular individual's ethnic background or origin, or identity."[3] This concept centers on the relationship of the State and the individual which gives rise to rights and duties in relation to that individual on the "plane of the law of nations."[4] On the other hand, *citizenship* implies that "an individual possesses particular rights under a [S]tate's municipal law."[5]

Simply put, nationality is the "external manifestation of [S]tate membership," while citizenship is the "internal reflection of [S]tate membership" granting the citizen political, social, and economic rights.[6]

As far as international law is concerned, nationality is the legal status conferred upon a person by a State under international law, while citizenship is a person's relationship with the State under municipal law.[7] Though these two concepts are often converged under municipal law, their distinction under international law holds true until today.[8]

In international law, attribution of both nationality and citizenship is discretionary on the part of the States. Hence, under municipal legislation, States may extend some rights and obligations to its citizens, but not to its nationals, or vice versa.

B. Nationality in International Law

As a general rule, a person's nationality in international law is the same as his or her nationality under municipal law. Nevertheless, there are instances that international law "gives the effect of nationality"[9] of a State to a person who

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CITIZENSHIP — FROM THE FREE MOVEMENT OF PERSONS TO UNION CITIZENSHIP 12 (1996)).

3. *Id.*

4. *Id.* at 71.

5. *Id.* at 58. Max Weber provided for three distinct meanings for citizenship in social history. These are:

   (1) classes that share a specific communal or economic interest;

   (2) *membership determined by rights* within the State; or

   (3) strata defined by standard of living or social prestige.

   The second meaning is what is usually confused with *nationality*. Max Weber, *The Concept of Citizenship*, *in* MAX WEBER ON CHARISMA AND INSTITUTION BUILDING 239 (Shmuel N. Eisenstadt ed., 1968) (emphasis supplied).

6. BOLL, *supra* note 2, at 75 (citing O'LEARY, *supra* note 2, at 10).

7. BOLL, *supra* note 2, at 2.

8. *Id.*

9. *Id.* at 95.

is not considered a national under municipal law. Accordingly, nationality under international law, as defined by Dr. Paul Weis, "is the technical term denoting the allocation of individuals, termed nationals, to a specific State — the State of nationality — as members of that State, a relationship which confers upon the State of nationality ... rights and duties in relation to other States."[10] In an international context, the State's rights and duties, arising from the status of nationality, in relation to other States, are relevant. These matters are beyond the concern of nationality in the context of *municipal law* as the latter relates to the relationship between the national and the State of nationality, without regard to other States.[11]

In the *Nottebohm Case* (*Liechtenstein v. Guatemala*),[12] the International Court of Justice (ICJ) applied the "test of effective nationality" in the recognition of nationality in international law, especially in cases of multiple nationality. Friedrich Nottebohm was a German national and, in 1905, went to Guatemala and made it the center of his business activities.[13] He sometimes returned to Germany for business or for country holidays.[14] He also visited the Principality of Liechtenstein where one of his brothers had lived.[15] In October 1939, a month after the opening of the Second World War by Germany's attack on Poland, Nottebohm acquired the nationality of the Principality of Liechtenstein.[16] He acquired his new nationality by taking an oath of allegiance and by paying a substantial amount of fees and annual taxes.[17] Subsequently, using his Liechtenstein passport, he returned to Guatemala and resumed his business activities.[18] In Guatemala, however, his property was seized because Nottebohm was a German national or an "enemy alien" during the Second World War.[19] Nevertheless, Liechtenstein was a neutral State during the War.[20] It instituted a case in the ICJ against Guatemala for restitution and compensation due to the illegal confiscation of Nottebohm's property.[21]

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10. *Id.* (citing PAUL WEIS, NATIONALITY AND STATELESSNESS IN INTERNATIONAL LAW 59 (1979)).
11. *Id.*
12. Nottebohm Case (Liech. v. Guat.), 1955 I.C.J. 4 (Apr. 6, 1955).
13. *Id.* at 13.
14. *Id.*
15. *Id.*
16. *Id.* at 15-16.
17. *Id.*
18. *Nottebohm Case*, 1955 I.C.J. at 16.
19. *Id.* at 6-7.
20. *Id.* at 26.
21. *Id.* at 12.

Using the "test of effective nationality," the ICJ held that the claim of Liechtenstein was not admissible against Guatemala.[22] The ICJ gave preference to the "real and effective nationality" based on the real connection between the person and the State whose nationality is involved.[23] There are different factors to be considered, as the ICJ ruled — "the *habitual residence* of the individual concerned is an important factor, but there are other factors such as the [*center*] *of his interests*, his *family ties*, his participation in *public life*, *attachment* shown by him for a given country and inculcated in his children, etc."[24] As there was no real prior connection between Nottebohm and Liechtenstein, Guatemala is not obliged to recognize the nationality granted by Liechtenstein.[25]

It is worth emphasizing, however, that the "test of effective nationality" is not applied to persons with a single nationality,[26] but it is used in analyzing any form of nationality (i.e., other than through naturalization).[27] The *Nottebohm Case* also received its fair share of criticism by raising questions as to the equivalence of long-term residence to nationality, or whether Nottebohm should have been treated as a national of Guatemala because of his long-term connection with the State.

Nevertheless, the *Nottebohm Case* is an adequate illustration of the variance between nationality under municipal legislation and under international law. As States have the right to identify a person as its national, other States have the prerogative *not* to recognize a nationality attributed by naturalization.

C. State Practice in Determining Nationality

Nationality — including the rights and duties emanating from it — is largely within the domain of municipal law.[28] However, a balance has always been present between the concept of nationality under international law and under municipal law.[29]

The succeeding discussion will provide for the rules of international law and State practice related to nationality.

1. Attribution and Acquisition of Nationality

22. *Id.* at 26.

23. *Id.* at 22.

24. *Nottebohm Case*, 1955 I.C.J. at 22 (emphases supplied).

25. *Id.* at 26.

26. Flegenheimer Claim (Italy v. U.S.), 14 R.I.A.A. 327, 377 (1958).

27. BOLL, *supra* note 2, at 113.

28. BOLL, *supra* note 2, at 94 (citing WEIS, *supra* note 10, at 29).

29. *Id.* at 97.

The general rule is that the States have the absolute freedom in determining whom they consider as their nationals.[30] Alfred Michael Boll provided for five common modes of acquiring nationality under international law, or based on State practice,[31] to wit:

(1) *Jus soli* or birth in national territory;

(2) *Jus sanguinis* or birth to a parent who is a national of the State;

(3) Naturalization;

(4) Resumption; and

(5) Transfer of territory.[32]

a. Jus soli or birth in national territory

Jus soli provides for a birthright nationality to any person born within the territory of a State. It is said to have been the dominant mode of acquisition of nationality in 18th century Europe.[33] The *jus soli* rule is a State practice in the United States of America (U.S.), among other States.

b. Jus sanguinis or birth to a parent who is a national of the State

Jus sanguinis provides for the acquisition of nationality by blood relationship.[34] The Philippines follows the *jus sanguinis* rule by providing, under Article IV, Section 1 of the 1987 Constitution, that "[t]hose whose fathers and mothers are citizens of the Philippines"[35] are Filipino citizens.

c. Naturalization

In a limited sense, naturalization is the conferment of nationality by a State to an alien upon fulfillment of certain legal requirements.[36] Broadly, however, it is defined as the change of nationality after birth, including

> acquisition of nationality as a result of [S]tate succession, marriage to a foreign national, legitimation or adoption of children, naturalization of a

30. *Id.* at 98 (citing Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810, at 71 (Dec. 10, 1948) [hereinafter UDHR]).

31. *Id.* at 99.

32. *Id.*

33. Graziella Bertocchi & Chiara Strozzi, Citizenship Laws and International Migration in Historical Perspective, 4, *available at* http://www.iza.org/en/papers/Bertocchi10052005.pdf (last accessed Aug. 31, 2016).

34. JOAQUIN G. BERNAS S.J., THE 1987 PHILIPPINE CONSTITUTION: A COMPREHENSIVE REVIEWER 182 (2011 ed.).

35. PHIL. CONST. art. IV, § 1.

36. *See* BERNAS, *supra* note 34, at 182.

> minor as a result of the naturalization of the parents, acquisition of nationality through exercise of an option, obtaining appointment as a civil servant or joining the armed forces, and reintegration as a national.[37]

d. Resumption

Resumption, also called "reintegration," presupposes loss of nationality through naturalization in other States or for some other causes.[38] It is the recovery of a person's original nationality upon fulfillment of certain conditions and requirements as provided by the State's municipal law.[39]

e. Transfer of Territory

There has been disagreement among scholars as to the acquisition of nationality upon transfer of territory. While some provide for an automatic change of nationality, some declare it as a *right*, and not a duty, of a State. Nevertheless, in a Resolution adopted by the General Assembly of the United Nations,[40] "[e]very individual who, on the date of the succession of States, had the nationality of the predecessor State, ... has the right to the nationality of at least one of the States concerned[.]"[41] It gives due consideration to effective connection and prevention of statelessness by providing that "[e]ach State concerned shall grant a right to opt for its nationality to persons concerned who have appropriate connection with that State if those persons would otherwise become stateless as a result of the succession of States."[42]

2. Deprivation and Loss of Nationality

The State also has the absolute freedom of determining the mode upon which an individual would lose their nationality.[43] However, this "[S]tate discretion" with regard to deprivation or withdrawal of nationality is, to a certain extent, "[a] matter [ ] of direct importance for international law."[44] This is because "[w]hile the former national may suffer hardship by being excluded on the municipal level, withdrawal of nationality by a [S]tate means

37. BOLESLAW ADAM BOCZEK, INTERNATIONAL LAW: A DICTIONARY 190 (1987).

38. I LASSA FRANCIS LAWRENCE OPPENHEIM, INTERNATIONAL LAW 656 (8th ed. 1955).

39. *Id.*

40. G.A. Res. 55/153, U.N. Doc. A/RES/55/153 (Jan. 30, 2001).

41. *Id.* art. 1.

42. *Id.* art. 11 (2).

43. BOLL, *supra* note 2, at 101.

44. *Id.* at 102 (citing ROBERT JENNINGS & ARTHUR WATTS, OPPENHEIM'S INTERNATIONAL LAW 877 (2008)).

that the individual in question is, for lack of a better phrase, 'someone else's problem' on the international plane. The individual is left without the consequences of nationality[.]"[45]

Boll also provided for the State practices or modes of withdrawal of nationality, to wit:

(1) Release or renunciation;[46]

(2) Deprivation;[47] and

(3) Expiration.[48]

3. Recognition of Nationality

It is a generally accepted principle of law that municipal law dictates the acquisition or loss of nationality.[49] International law lays down the consequences of such acquisition and loss, and the *recognition* by other States or "whether a bestowal or removal of nationality must be [recognized] by other [S]tates."[50] Accordingly, the Convention on Certain Questions Relating to the Conflict of Nationality Laws (1930 Hague Convention),[51] declared that "[i]t is for each State to determine under its own law who are its nationals. This law shall be [recognized] by other States in so far as it is consistent with international conventions, international customs, and the principles of law generally [recognized] with regard to nationality."[52]

In this regard, States are not obliged to recognize the nationality of a person if such nationality was not attributed in accordance with international law.[53] As provided in the *Nottebohm Case*, international law does not afford recognition to a person's nationality without an effective link with the subject State. Other grounds for non-recognition include:

45. BOLL, *supra* note 2, at 102.

46. *Id.* at 101 (citing IVAN A. SHEARER, STARKE'S INTERNATIONAL LAW 311 (11th ed. 1994)).

47. *Id.*

48. *Id.*

49. *Id.* at 107.

50. *Id.*

51. Convention on Certain Questions Relating to the Conflict of Nationality Laws, *signed* Apr. 12, 1930, 179 L.N.T.S. 89 (entered into force July 1, 1937) [hereinafter 1930 Hague Convention].

52. *Id.* art. 1.

53. BOLL, *supra* note 2, at 109.

(1) Naturalization of nationals of other States who are unconnected to either the territory or the nationals of a State;[54]

(2) Naturalization of all persons of a given religious faith or political persuasion, speaking a given language, or being of a given race;[55]

(3) Naturalization by acquisition of real estate;[56] and

(4) Inhabitants of mandated and trust territories and of occupied territories.[57]

D. Consequences of Nationality

The importance of State practices in the acquisition and loss of citizenship stems from the acknowledgment that nationality has a variety of effects in international law. Both municipal and international laws confer certain rights, privileges, and duties upon States and its nationals.[58]

The following discussion lays down the "international importance" of international law as listed by Professor Joseph Gabriel Shearer.[59]

1. The State's right of diplomatic, consular or international protection, and international claims[60]

By virtue of nationality, a person may be given protection by the State in which he or she is a national. This consequence includes "providing help or protection to nationals abroad by diplomatic or consular agents, or invoking a claim for compensation when another [S]tate has treated a national in violation of international law."[61] It must be noted, however, that extending protection to nationals within the sphere of international law is *discretionary* on the part of the State.[62]

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54. *Id.* at 109 (citing ALBRECHT RANDELZHOFER, NATIONALITY 419 (2000)).

55. *Id.*

56. *Id.*

57. *Id.*

58. *Id.* at 113.

59. BOLL, *supra* note 2, at 113 (citing SHEARER, *supra* note 46, at 32).

60. BOLL, *supra* note 2, at 141.

61. *Id.* at 114 (citing RANDELZHOFER, *supra* note 54, at 420-21).

62. In this regard, it has been noted that

> [t]he right involved is one of customary international law, *of the* [*S*]*tate* of nationality, not of the individual. It is unconditional and is unlimited in time, but while [S]tates may provide a right to diplomatic

There are problems, however, with regard to the protection of multiple nationals. In such cases, which among the States may afford protection to a multiple national? The general rule is that both States may protect the person as its national. However, as against the other State in which the multiple national is also a national, it "may not afford diplomatic protection to one of its nationals against a State whose nationality such person also possesses."[63] This is called the *principle of equality*.[64] Also, according to the *principle of effective or dominant nationality*, a third State shall recognize the nationality of the State in which a multiple national is "habitually and principally resident, or the nationality of the country with which in the circumstances he [or she] appears to be in fact most closely connected."[65]

2. The State's responsibility to other States for acts of its nationals[66]

By virtue of nationality, a State may become responsible for the acts of its nationals; provided, however, that the act is "imputable to the [S]tate itself, not just to its national generally."[67] Accordingly, there could be no conflict when attributing State responsibility over an act of a multiple national. This is because an act must be directly linked to one of the States for the issue of State responsibility to arise.[68]

3. The State's duty to admit nationals and to allow residence[69]

By virtue of nationality, a State has a duty to grant to its nationals entry to its territory and to permit residence.[70] Accordingly, the State has an obligation not to expel its nationals.[71] Otherwise, the State which expels a national to a "[S]tate unwilling to receive them" contravenes "positive international law in relation to territorial supremacy"[72] of the unwilling State.

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protection to their nationals in their municipal law, in terms of international law its exercise is at the complete discretion of the [S]tate.

BOLL, *supra* note 2, at 114. (citing WEIS, *supra* note 10, at 32-44).

63. 1930 Hague Convention, *supra* note 51, art. 4.

64. BOLL, *supra* note 2, at 116.

65. *Id.* (citing 1930 Hague Convention, *supra* note 51, art. 5).

66. BOLL, *supra* note 2, at 122.

67. *Id.* (citing SHEARER, *supra* note 46, at 277-80).

68. BOLL, *supra* note 2, at 122.

69. *Id.* at 123.

70. *Id.*

71. *Id.*

72. *Id.*

4. The State's jurisdiction[73]

By virtue of nationality, a State exercises jurisdiction over a person "on a personal basis as opposed to a territorial one[.]"[74] As a general rule, especially in criminal cases, jurisdiction is exercised by a State if the subject act is committed within its territory — this is called the *territorial principle.* Accordingly, the State has jurisdiction over all persons, subjects, and transactions occurring or present within its territory. Through time, however, State practice has generated four other principles of jurisdiction.[75]

First is the *nationality principle* which provides for State jurisdiction over its nationals wherever they may be found outside the State's territory. This principle is based on "the grounds that a national owes allegiance to his country irrespective of wherever he may be and that his [S]tate has responsibility for its nationals as well as an interest in them and the right to protect them while they are outside its territorial jurisdiction."[76]

Second is the *passive personality principle* or principle of passive nationality which allows a State to acquire jurisdiction over harm done abroad if its national suffers injury or civil damage.[77] This is considered as an "extension of [a State's] diplomatic protection" to its nationals.[78]

Third is the *protective or security principle* which recognizes the State's exercise of jurisdiction over acts of foreign nationals which, though committed outside its territorial jurisdiction, are against the State's "security and integrity or its vital economic interests."[79]

Lastly, the *universality principle* permits any State's exercise of jurisdiction over heinous crimes without consideration over the territory where the crime was committed or the nationality of the subjects involved.[80] These crimes include genocide, piracy, and war crimes as defined in the 1949 Geneva Convention.[81]

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73. *Id.* at 125.

74. BOLL, *supra* note 2, at 125.

75. BOCZEK, *supra* note 37, at 77.

76. *Id.*

77. BOLL, *supra* note 2, at 130 & BOCZEK, *supra* note 37, at 79.

78. BOLL, *supra* note 2, at 130.

79. *Id.* at 132 (citing Ivan Shearer, *Jurisdiction, in* SAM BLAY ET AL., PUBLIC INTERNATIONAL LAW – AN AUSTRALIAN PERSPECTIVE 170-71 (2d ed. 2005)).

80. BOLL, *supra* note 2, at 133.

81. *See, e.g.*, Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, *opened for signature* Aug. 12, 1949, 75 U.N.T.S. 85.

5. The State's protection of its nationals and the use of force[82]

By virtue of nationality, a State may extend protection to its nationals by use of force against another State. There is, however, no agreement among scholars if indeed such *right* exists. As a general rule, States are prohibited from resorting to threat or use of force against the "territorial integrity" or "political independence" of other States.[83] This is without prejudice to the State's inherent right of self-defense under Article 51 of the United Nations Charter. This provision, along with "humanitarian intervention," was used for validating the State's *right* to protect its nationals by use of force.[84]

Protection of nationals under this principle has been criticized as a "pretext to intervene in the political and economic affairs of other [S]tates"[85] and as to its applicability to cases of multiple nationals. For the latter, this principle is "weakened" with regard to multiple nationals because of the *principle of equality* discussed above.[86] As the second State regards the subject as its national, it may treat him or her according to its policies; hence, the intervention of the first State is considered unjustified.[87]

6. The State's right to refuse extradition[88]

Unless there is a treaty providing for such obligation, the State, as a sovereign, has an inherent right to refuse to extradite its national to the custody of a requesting State.[89] This is based on the *nationality principle* which gives the State the "first bite" to prosecute its own national.[90] However, this consequence of nationality is highly susceptible to abuse, as when the State refuses to extradite to the requesting State its national accused of a serious crime, and fails to effectively prosecute and punish the latter.[91]

82. *Id.* at 133. This consequence of nationality "does not seem to have been applied in favor of just one individual. Along these lines, use of force to protect an individual or small group of individual nations against a [S]tate whose nationality she, he, or they also possess, would indeed seem to lack a legal foundation." *Id.* at 136.

83. U.N. Charter, art. 2 (4).

84. BOLL, *supra* note 2, at 134.

85. *Id.* at 133.

86. *Id.* at 135.

87. *Id.* at 135-36.

88. *Id.* at 136.

89. *Id.*

90. BOLL, *supra* note 2, at 136.

91. *Id.* at 137.

7. The State's determination of enemy status in wartime[92]

As a consequence of nationality, States determine a person's "enemy character," as opposed to "neutral," during wartime.[93] These classifications, nevertheless, are not limited to nationality as it may be based on allegiance, residence, and control, among others.[94]

E. Multiple Nationality

The peculiar nature of multiple nationality causes disagreements between legal scholars as to its desirability. Multiple nationality arises due to the presence of more than one mode of acquisition of nationality. As discussed in the previous part of this Article, a person may acquire nationality through *jus sanguinis*, *jus soli*, naturalization, resumption, and transfer of territory, among others. Concurrence of any of the two modes, without a mode of losing nationality, may result to multiple nationality.

From the discussion on the "Consequences of Nationality," multiple nationality often causes gray areas in the States' exercise of jurisdiction over its national. State practices during the Middle Ages until the independence of the American States in the 19th century caused the "crystallization" of the issues relating to the "overlap of claims to personal jurisdiction by [S]tates over individuals."[95] Interestingly, however, multiple nationality was embraced since States were unwilling to relinquish personal jurisdiction over emigrants.[96] Also, there were States which clung to the maxim *semel civis, semper civis* (once a citizen, always a citizen) by providing that acquisition of another nationality would produce no effect on one's initial nationality.[97]

Nevertheless, the 1930 Hague Convention, which entered into force on 1 July 1937, is the only universal multilateral treaty dealing with multiple nationality.[98] The Convention, under its preamble, declared that it was directed towards the "*abolition* of all cases of both statelessness and *double nationality*."[99] The framers of the Convention were "convinced that it is in the general interest of the international community to secure that all its members should [recognize] that every person should have a nationality and should have *one nationality only*[.]"[100] The Convention, however, was ratified

92. *Id.* at 139.

93. *Id.*

94. *Id.*

95. *Id.* at 184.

96. BOLL, *supra* note 2, at 184.

97. *Id.* at 191.

98. *Id.* at 194.

99. 1930 Hague Convention, pmbl. (emphasis supplied).

100. *Id.* (emphasis supplied).

or acceded to by only 22 States — providing for a blurry picture of State practice.[101]

Accordingly, the following discussions will outline the arguments for and against multiple nationality.

1. Rejection of Multiple Nationality

Professor Nissim Bar-Yaacov has expressed his disapproval of multiple nationality by proposing only one mode of acquisition of nationality at birth.[102] He adopted the view that "neither *jus soli* nor *jus sanguinis* ... is guaranteed to reflect the actual tie of the individual to the [S]tate whose nationality is attributed[,]"[103] rather it must be the nationality of the State in which one's parents established their *permanent residence.*[104] Bar-Yaacov, with other legal scholars,[105] provided for three main arguments in rejecting multiple nationality.

First is the *essence of nationality.* Multiple nationality causes "headaches" to States because

> [f]or reasons of administrative order and international peace, a regime of nation-[S]tates needs *to know where individuals belong.* Belonging means membership or citizenship. The fundamental rule of the international regime is that [S]tates should look after their own, and only their own. To do more is to interfere in the affairs of other [S]tates[.][106]

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101. Professor Boll expounded on this point by declaring —

> The 1930 Hague Convention has been ratified/acceded to by 22 [S]tates, signed by 27 others, and was denounced by Canada in 1996. All ratifications/accessions took place in 1930s, except for succession by one [S]tate in 1953, two [S]tates in the 1960s, two [S]tates in the 1970s (plus accession by Swaziland), and Kiribati in 1983. Only two [S]tates became party relatively recently, Zimbabwe having declared itself a successor in 1998, and Liberia succeeding in 2005. Its indicative value as far as [S]tate practice vis-à-vis multiple nationality is thus severely limited.

BOLL, *supra* note 2, at 195.

102. *Id.* at 209 (citing NISSIM BAR-YAACOV, DUAL NATIONALITY 271 (1961)).

103. *Id.*

104. *Id.* at 210.

105. *See* BOLL, *supra* note 2, at 211.

106. BOLL, *supra* note 2, at 211 (citing T. Alexander Aleinikoff & Douglas Klusmeyer, *Plural Nationality: Facing the Future in a Migratory World, in* CITIZENSHIP TODAY: GLOBAL PERSPECTIVES AND PRACTICES (T. Alexander Alenikoff & Douglas Klusmeyer eds., 2001)) (emphasis supplied).

Second is the *emotional attachment and identity of the multiple national.*[107] Multiple nationality causes contradiction or imbalance with how a multiple national identifies himself or herself with two or more States. This argumentation stems from the premise that nationality is more than a legal concept, but a sociological one.[108] This involves the *exclusive* "identification of the individual with a particular [State] and the continuous exercise on his part of certain rights and obligations[.]"[109]

Third is the impracticality of *simultaneously enjoying legal rights and performing legal obligations.*[110] This view mainly considers the incompatibility of a multiple national's loyalty in one State and in the other. As pronounced by Professor Bar-Yaacov —

> [N]ationality is considered to imply not only strictly defined legal obligations, such as the performance of military service, but also the *loyalty* and devotion of the individual. This being so, it is difficult to imagine how an individual could possess the qualifications required for the possession of the nationality of two different States.[111]

In relation to this, the obligation of military service to two or more States is tantamount to incompatible obligations for a multiple national. This is especially true when both States compulsorily require military service from their nationals.[112]

Finally, the vital concern of the rejectionists is the multiple national's performance of a governmental function involving *public trust.*[113] This predicament stems from the question of divided loyalty that a multiple national may possess. Professor Peter H. Schuck sufficiently summarized this position by stating —

> Our world is one in which hostilities may take the form not only of formal military campaigns but also of clandestine acts of terrorism or theft of valuable technologies undertaken on behalf of undemocratic regimes that[,] nevertheless[,] can claim the fervent political and religious loyalty to their people. Although legal or illegal aliens can also engage in such conduct, citizens probably have somewhat greater opportunities at the margin to do so ... [.] The fact that few dual nationals pose any greater danger of disloyalty than those with only one nationality does not preclude the risk

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107. BOLL, *supra* note 2, at 213.

108. *Id.*

109. *Id.* (citing BAR-YAACOV, *supra* note 102, at 257).

110. *Id.* at 215.

111. *Id.* (citing BAR-YAACOV, *supra* note 102, at 263) (emphasis supplied).

112. *Id.* at 217-20.

113. BOLL, *supra* note 2, at 220-21.

> that the dual citizenship of those few may place them in a better position to wreak immense damage.[114]

It must be emphasized, however, that divided loyalty is not a concern in the private sector. This is because companies benefit from multiple nationality by providing its employees with "additional flexibility in terms of travel and access to labor markets."[115]

2. Acceptance of Multiple Nationality

On the other side of the debate, legal scholars are leaning towards "tolerance" of multiple nationality.[116] Multiple nationality is a modern trend that the international community should embrace due to "high levels of immigration, changes in [S]tate policies, and the continuation of both *jus sanguinis* and *jus soli* citizenship norms."[117]

Acceptance of multiple nationals is essentially beneficial to States for the naturalization of resident aliens or immigrants and as part of a democratic state or process.[118] The argument of conflicting interest in cases of military service has been rendered illusory by the "increasing implausibility" of war or armed conflict.[119] Added to this is the fact that compulsory military service has been increasingly abandoned as a State practice.[120]

Professor Peter J. Spiro has adopted the view that "republicanism demands inclusion[,]" hence, resident aliens should become citizens and be part of the body politic.[121] Accordingly, nationals abroad are also entitled to political participation such as the right to vote. Such is the practice in Mexico, Italy, and the Philippines, among others.[122] Further, the argument that political participation of multiple nationals may lead to interference of other States is "unlikely" according to Professor Spiro because "any inclination to vote according to the interest of a foreign [S]tate, or under

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114. *Id.* at 221 (citing PETER H. SCHUCK, CITIZENS, STRANGER, AND IN-BETWEENS – ESSAYS ON IMMIGRATION AND CITIZENSHIP 239 (1998)).

115. *Id.* at 221.

116. *Id.* at 223.

117. *Id.* (citing ALEINIKOFF & KLUSMEYER, *supra* note 106, at 86-87).

118. *Id.* (citing Peter J. Spiro, *Dual Nationality and the Meaning of Citizenship*, 18 EMORY L.J. 1461-79 (1997)).

119. BOLL, *supra* note 2, at 224.

120. *Id.* at 218.

121. *Id.* at 228 (citing Spiro, *supra* note 118, at 1466-68).

122. PETER J. SPIRO, BEYOND CITIZENSHIP: AMERICAN IDENTITY AFTER GLOBALIZATION 71 (2008).

pressure from a foreign [S]tate, can take place without any foreign nationality."[123]

This Article does not aim to weigh the advantages and disadvantages of multiple nationality. Such conclusion is dominantly a policy issue and beyond the concern of this Article. Nevertheless, from the above discussion, it can be learned that citizenship and nationality, in international law, are different and complex, albeit often interchangeable, concepts. To reiterate, as far as international law is concerned, *nationality* is the legal status conferred upon a person by a State under international law, while *citizenship* is a person's relationship with the State under municipal law. Through different State practices, the international legal regime has developed different modes of acquiring and withdrawing nationality. However, through the *Nottebohm Case*, citizenship under municipal legislation does not automatically translate to nationality under international law.

After laying down the pertinent State practices in citizenship and nationality, its relevance in international law, and the concept of multiple nationality, the Authors will now discuss the crux of this Article — citizenship under Philippine Constitutional Law.

III. PHILIPPINE CITIZENSHIP AND THE CASE OF *POE-LLAMANZARES V. COMMISSION ON ELECTIONS*

> *It is not for* [*i*]*nternational* [*l*]*aw but for* [*m*]*unicipal* [*l*]*aw to determine who is, and who is not, to be considered a subject.*
>
> — Lassa Francis Lawrence Oppenheim[124]

Citizenship is a person's relationship with the State under its municipal law and, as such, largely depends on municipal legislation. In the Philippines, Filipino citizens are enumerated under Article IV, Section 1 of the 1987 Philippine Constitution, to wit:

> (1) [t]hose who are citizens of the Philippines at the time of the adoption of [the] Constitution;
>
> (2) [t]hose whose fathers or mothers are citizens of the Philippines;
>
> (3) [t]hose born before [17 January] 1973, of Filipino mothers, who elect Philippine citizenship upon reaching the age of majority; and
>
> (4) [t]hose who are naturalized in accordance with law.[125]

Hence, Philippine Constitutional law follows the rule of *jus sanguinis* and provides for naturalization.[126] Accordingly, for one to be a Filipino citizen,

123. *Id.* at 229 (citing Spiro, *supra* note 118, at 1469-72).

124. I OPPENHEIM, *supra* note 38, at 643.

125. PHIL. CONST. art. IV, § 1.

he or she must demonstrate either blood relationship with a Filipino citizen, or an act of naturalization; otherwise, a person cannot be considered as a Filipino citizen, let alone a natural-born Filipino.

This finds relevance in cases where no less than the Philippine Constitution requires "natural-born citizenship" in order to qualify for public service. Such requirement is indispensable to qualify as a Senator,[127] Member of the House of Representatives,[128] Vice-President,[129] Justice of the Supreme Court,[130] Chairman and Commissioners of the Constitutional Commissions, Ombudsman and its Deputies,[131] Chairman and Members of the Commission on Human Rights, and most importantly, the chief executive — the President.[132]

Therefore, for one to qualify for the above-mentioned Constitutional offices, he or she must be a "citizen[ ] of the Philippines from birth without having to perform any act to acquire or perfect their Philippine citizenship."[133] These constitutional provisions were put into light when a "foundling" in the name of Mary Grace Natividad S. Poe-Llamanzares (Poe) filed her certificate of candidacy for President.[134]

The Supreme Court, however, in the case of *Poe-Llamanzares*, declared that there was no misrepresentation on the part of Poe when she declared in her certificate of candidacy that she is a natural-born citizen — despite being a foundling — and has resided in the Philippines for a period of 10 years immediately preceding the day of the elections.

Arising now is the question of whether the Supreme Court has finally ruled that a foundling is a natural-born citizen of the Philippines or the ruling was a *pro hac vice* one.

To better understand this landmark case in Constitutional law, the brief facts of the case are laid down, followed by the relevant issues and rulings of the Supreme Court's majority. The Authors shall then provide for an

126. JOAQUIN G. BERNAS, S.J., THE 1987 PHILIPPINE CONSTITUTION: A COMPREHENSIVE REVIEWER 182 (2011 ed.).

127. PHIL. CONST. art. VI, § 3.

128. PHIL. CONST. art. VI, § 6.

129. PHIL. CONST. art. VII, § 3.

130. PHIL. CONST. art. VIII, § 7 (1).

131. PHIL. CONST. art. XI, § 8.

132. PHIL. CONST. art. VII, § 2.

133. PHIL. CONST. art. IV, § 2.

134. ABS-CBN News, Comelec: Grace Poe can file COC, *available at* http://news.abs-cbn.com/halalan2016/nation/10/11/15/comelec-grace-poe-can-file-coc (last accessed Aug. 31, 2016).

elaborate discussion on the two contentious main points laid down by the majority: *first*, its reliance on statistics and probabilities in concluding that it is "highly probable" that Poe is born of Filipino parents; and *second*, its reliance on international documents, including those not signed by the Philippines, in obligating the State to grant citizenship to foundlings.

A. Brief Statement of the Facts of the Case

1. From "foundling" to a Presidential candidate

On 3 September 1968, Poe was found abandoned by Edgardo Militar in the Parish Church of Jaro, Iloilo.[135] Emiliano registered Poe with the Office of the Civil Registrar of Iloilo City and was issued with a Foundling Certificate and Certificate of Live Birth.[136] When Poe was five years old, she was legally adopted by celebrity couple Ronald Allan Kelley Poe (Fernando Poe, Jr.) and Jesus Sonora Poe (Susan Roces).[137]

For her college education, Poe initially enrolled in the University of the Philippines, Manila to pursue a degree in Development Studies.[138] However, in 1988, she decided to continue her college education at Boston College in Chestnuts Hill, Massachusetts, U.S.[139] She graduated in 1991, and in the same year married Teodoro Misael Daniel V. Llamanzares in San Juan City, Philippines.[140] The couple flew back to the U.S. where Poe gave birth to their eldest son, Brian Daniel.[141]

On 18 October 2001, Poe became a naturalized American citizen and obtained a U.S. Passport on December of the same year.[142]

On 8 April 2004, Poe went back to the Philippines to support the candidacy of her adoptive father Fernando Poe, Jr. who was running for President in the May 2004 elections.[143] She returned to the U.S. in July of the same year, but just a few months later, went back to the Philippines upon learning of her father's deteriorating health condition.[144] The latter

135. *Poe-Llamanzares*, G.R. No. 221697, at 2.

136. *Id.*

137. *Id.*

138. *Id.* at 3.

139. *Id.*

140. *Id.*

141. *Poe-Llamanzares*, G.R. No. 221697, at 3.

142. *Id.* at 4.

143. *Id.*

144. *Id.*

died and Poe stayed in the Philippines until 3 February 2005 to assist in the settlement of her father's estate.[145]

Because of the death of her father, Poe and her family decided to move to the Philippines in 2005. Poe and her husband made the necessary changes with regard to the schooling of their children, moving their household goods and furniture, and bringing their pet dog, among others.[146]

On 24 May 2005, Poe and her children returned to the Philippines.[147] In the second half of 2005, her husband purchased a condominium unit in One Wilson Place Condominium in San Juan City.[148] In early 2006, the Llamanzares spouses acquired a house and lot in Corinthian Hills, Quezon City which they constituted as their family home, and where they reside in even today.[149]

On 7 July 2006, Poe took her Oath of Allegiance to the Republic of the Philippines under Republic Act (R.A.) No. 9225 or the Citizenship Retention and Re-acqusition Act of 2003.[150] On 10 July 2006, she also filed a petition with the Bureau of Immigration to reacquire Philippine citizenship, together with the petition for derivative citizenship of her children.[151] These were all granted by the Bureau.[152]

On 6 October 2010, President Benigno S. Aquino III appointed Poe as Chairperson of the Movie and Television Review and Classification Board.[153] Before assuming her post, she executed, by virtue of R.A. No. 9225, an "Affidavit of Renunciation of Allegiance to the United States of America and Renunciation of American Citizenship."[154]

On 9 December 2011, the U.S. Vice Consul issued a "Certificate of Loss of Nationality of the United States" after Poe executed an

145. *Id.*

146. *Id.*

147. *Poe-Llamanzares*, G.R. No. 221697, at 4.

148. *Id.* at 5.

149. *Id.*

150. *Id.* & An Act Making the Citizenship of Philippine Citizens who Acquire Foreign Citizenship Permanent, Amending for the Purpose Commonwealth Act No. 63, as Amended and for Other Purposes [Citizenship Retention and Re-acquisition Act of 2003], Republic Act No. 9225 (2003).

151. *Poe-Llamanzares*, G.R. No. 221697, at 5-6.

152. *Id.* at 6.

153. *Id.*

154. *Id.*

"Oath/Affirmation of Renunciation of Nationality of United States" in the U.S. Embassy.[155]

On 15 October 2012, Poe filed her Certificate of Candidacy (COC) for Senator in the 2013 Elections.[156] For the question of "[p]eriod of residence in the Philippines before [13 May] 2013," she answered "*six years and six months*"[157] or from November 2006. Poe won the senatorial race with the highest number of votes.

On 15 October 2015, Poe again filed her COC this time for the highest Executive position — the Presidency.[158] Therein she declared that she was a resident of the Philippines *10 years and 11 months* (counted from 24 May 2005) from the date of the elections on 9 May 2016.[159]

2. Petitions before the Commission on Elections (COMELEC)

Poe's filing of the COC for President triggered four petitions asking the COMELEC to cancel her COC. These petitions were filed by Estrella Elamparo, Francisco S. Tatad, Antonio P. Contreras, and Amado D. Valdez (collectively, Petitioners). The main argument of the four petitions was the alleged misrepresentation committed by Poe in her COC.[160] *First*, when she stated in her COC that she is a natural-born citizen despite being a "foundling;" and *second*, when she declared that she was a resident of the Philippines for 10 years and 11 months before the day of the election.

The Petitioners argued that, being a foundling, Poe has no known blood relationship, hence, it cannot be concluded that she is a Filipino citizen under the *jus sanguinis* rule.[161] Also, international conventions and treaties do not confer Filipino citizenship, let alone natural-born status, to foundlings.[162] There is also no standard State practice that automatically grants such status to foundlings like Poe. Accordingly, R.A. No. 9225, relating to the re-acquisition of Filipino citizenship, does not apply to her since she is not a natural-born citizen to begin with.[163] Assuming that she is a natural-born citizen, Poe had lost this status upon naturalization as an American citizen.[164]

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155. *Id.* at 7.

156. *Id.*

157. *Poe-Llamanzares*, G.R. No. 221697, at 7.

158. *Id.*

159. *Id.*

160. *Id.* at 8-12.

161. *Id.* at 11.

162. *Id.* at 8 & 11.

163. *Poe-Llamanzares*, G.R. No. 221697, at 8 & 11.

164. *Id.* at 7.

With regard to Poe's 10-year residency, all four petitioners were in agreement that she had failed to meet the requirement, but differed in the reckoning period of her residency. They provided that her period of residency should begin from the day when Poe took an Oath of Allegiance under R.A. No. 9225, the day she filed a petition before the Bureau of Immigration in July 2006, or the day she renounced her American citizenship in 2011.[165] Petitioners also agreed that regardless of the reckoning period, Poe made an admission in her 2013 COC that she was a resident of the Philippines for only six years and six months.

By virtue of these petitions, the COMELEC First and Second Divisions ruled against Poe by cancelling her COC because it contained material misrepresentations, and accordingly, she was not qualified to run for the Presidency.[166] The rulings of the two Divisions were affirmed by the COMELEC *en banc*, which denied Poe's Motions for Reconsideration.[167]

From the denial of her Motions for Reconsideration, Poe filed two petitions for *certiorari* with prayer for temporary restraining order and writ of preliminary injunction with the Supreme Court.[168]

B. Issues and Rulings of the Majority

Poe was victorious. The Supreme Court, in a decision dated 8 March 2016, ruled in favor of her natural-born citizenship and her 10-year residency. The following discussion provides for the issues and the respective rulings of the Supreme Court.

1. Whether or not the COMELEC can decide on the qualifications, or lack thereof, of a candidate

The Supreme Court ruled in the negative and deprived the COMELEC of jurisdiction to rule on Poe's disqualification case. Relying on the Supreme Court's pronouncements in *Romualdez-Marcos v. Commission on Elections*[169] and *Fermin v. Commission on Elections*,[170] along with the amendment of the COMELEC's Rules of Procedure, the Supreme Court ruled that disqualification of a Presidential candidate must be a declaration by a final

165. *Id.* at 8 & 11-12.

166. *Id.* at 10 & 14.

167. *Id.* at 10 & 15.

168. *Id.* at 15. *See* ABS-CBN News, Grace Poe asks SC to overturn disqualification, *available at* http://k2.abs-cbnnews.com/halalan2016/nation/12/28/15/grace-poe-asks-sc-to-overturn-disqualification (last accessed Aug. 31, 2016).

169. Romualdez-Marcos v. Commission on Elections, 318 Phil. 329 (1995).

170. Fermin v. Commission on Elections, 595 Phil. 449 (2008).

judgment of a competent court.[171] Accordingly, the Constitution particularly provided for the Presidential Electoral Tribunal (i.e., Supreme Court *en banc*) as the "sole judge of all contests relating to the election, returns, and qualifications of the President[.]"[172]

2. Whether or not Poe has a blood relationship with a Filipino citizen, and hence, is a natural-born citizen

The Supreme Court interestingly ruled, using statistics and probabilities, that Poe is born of a Filipino mother and father, and hence, is a natural-born Filipino. Citing data from the Philippine Statistics Authority (PSA), the Supreme Court concluded that there is 99.55-99.62% probability that Poe has Filipino blood relationship.[173]

Further, the Supreme Court ruled that foundlings are natural-born citizens when analyzed through the lenses of municipal and international law. Under municipal law, the Supreme Court gave sufficient weight to the intention of the 1934 Constitutional Convention to include foundlings in the enumeration of Filipino citizens.[174] The amendment suggested by Mr. Nicolas M. Rafols, Jr. was set aside merely because the number of foundlings was not enough to warrant a specific mention in the Constitution.[175] Also, the 1987 Constitution guarantees the basic right to equal protection of laws,[176] to dignity of every person,[177] and "to assistance, ... and special protection from all forms of neglect, abuse, cruelty, exploitation"[178] of children. Under international law, the Supreme Court cited the Universal Declaration of Human Rights (UDHR),[179] the United Nations Convention on the Rights of the Child (UNCRC),[180] and the International Covenant on Civil and Political Rights (ICCPR)[181] as obligating the Philippines to grant foundlings Filipino citizenship. The Supreme Court also relied on the

171. *Poe-Llamanzares*, G.R. No. 221697, at 16-21.

172. *See* PHIL. CONST. art. VII, § 4.

173. *Poe-Llamanzares*, G.R. No. 221697, at 22. The Court's use of probabilities and statistics is elaborated in the latter part of this Article.

174. *Id.* at 25-27.

175. *Id.* at 26.

176. PHIL. CONST. art. III, § 1.

177. PHIL. CONST. art. II, § 11.

178. PHIL. CONST. art. XV, § 3.

179. UDHR, *supra* note 30.

180. Convention on the Rights of the Child, *adopted* Nov. 20, 1989, 1577 U.N.T.S. 3 (entered into force Sep. 2, 1990) [hereinafter UNCRC].

181. International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976) [hereinafter ICCPR].

1930 Hague Convention[182] and the 1961 Convention on the Reduction of Statelessness,[183] despite the Philippines being a non-signatory to these international instruments.

The argumentation of the Supreme Court on this issue is further discussed by the Authors in the subsequent part of this Article.[184]

3. Whether or not Poe is a resident of the Philippines for 10 years on the day before the 2016 elections

The Supreme Court also ruled that Poe has satisfied the constitutional requirement of 10-year residency. It reckoned the period from 24 May 2005 when the family permanently returned to the Philippines.[185] The Supreme Court called out the COMELEC in treating Poe's period of residency in her 2012 COC as conclusive against her. Such mistake, according to the Supreme Court, may be overcome by the overwhelming evidence presented that Poe was in the Philippines since 24 May 2005. Accordingly, "[h]ad the COMELEC done its duty, it would have seen that the 2012 COC and the 2015 COC *both* correctly stated the *pertinent* period of residency."[186]

4. Whether or not Poe committed false material representation in her COC

Finally, by ruling that Poe is a natural-born citizen and a resident of the Philippines for a period of 10 years, the Supreme Court concluded that she did not commit any misrepresentation in her COC and that the COMELEC committed grave abuse of discretion in cancelling Poe's COC.[187]

C. The Majority Decision: Novel Tools of Judicial Review and Liberal Interpretation of International Law

A plain reading of the majority decision shows the interconnectedness of the arguments laid down by the Supreme Court. But among these arguments, the majority adopted novel and arguable approaches in resolving the issues presented before it. *First*, it relied on statistics in concluding that it is "highly probable" that Poe is born of Filipino parents; and *second*, it relied on international documents, including those not signed by the Philippines, in obligating the State to grant citizenship to foundlings.

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182. 1930 Hague Convention, *supra* note 51.

183. Convention on the Reduction of Statelessness, *adopted* Aug. 30, 1961, 989 U.N.T.S. 989 (entered into force Dec. 13, 1975).

184. See Parts II (C) and II (D) of this Article.

185. *Poe-Llamanzares*, G.R. No. 221697, at 41.

186. *Id.*

187. *Id.* at 44.

1. "High probability" citizenship of foundlings

Interestingly, the majority of the Justices adopted the official statistics from the PSA presented by the Office of the Solicitor General. The statistics admitted by the Supreme Court, as summarized in Table 1, show the "high probability" that Poe is born of Filipino parents because more than 99% of the population in Iloilo in 1960 and 1970 were Filipinos.[188]

Table 1. Census Statistics for Iloilo Province in 1960 and 1970.

Year	Filipinos	Foreigner	Probability
1960	962, 532	4,734	99.62%
Male	210,349	886	99.58%
Female	230,528	730	99.68%
1970	1,162,669	5,304	99.55%
Male	245,740	1,165	99.53%
Female	270,299	1,190	99.56%

It is worthy to note that in the 111th footnote in the *Poe-Llamanzares* case, the Supreme Court cited the cases of *Herrera v. Commission on Elections*[189] and *Bagabuyo v. Commssion on Elections*[190] by declaring that Statistics from the PSA and its predecessor agencies are admissible as evidence.[191] However, *Herrera* and *Bagabuyo* involved the districting of Guimaras and Cagayan de Oro City, respectively, using census statistics from the National Statistics Office (predecessor-office of PSA). Accordingly, the cases cited do not involve an issue of citizenship.

Arguably, the use of statistics and probabilities is not new to the Supreme Court. In torts cases, the Supreme Court has consistently used probabilities in the computation of an aggrieved party's life expectancy; while in evidence cases, it adopts certain discussions on probabilities to determine conclusiveness of non-paternity in DNA cases.[192] As such, one could ask if there is indeed a sufficient legal basis for the Supreme Court's use of probabilities in ruling that one is a natural-born Filipino citizen.

The Supreme Court further stretched its argumentation by resorting to other circumstantial evidence, including "the fact that [Poe] was abandoned as an infant in a *Roman Catholic Church* in Iloilo City. She also has *typical*

188. *Id.* at 22.

189. Herrera v. Commission on Elections, 318 SCRA 336 (1999).

190. Bagabuyo v. Commission on Elections, 573 SCRA 290 (2008).

191. *Poe-Llamanzares*, G.R. No. 221697, n. 111.

192. *See* People v. Vallejo, 382 SCRA 192 (2002).

Filipino features: height, flat nasal bridge, straight black hair, almond shaped eyes[,] and an oval face."[193]

With the conclusion that probabilities laid down are admissible under Section 4, Rule 128 of the Revised Rules of Evidence, the Supreme Court declared that there is "more than ample probability[,] if not statistical certainty, that [Poe's] parents are Filipinos."[194]

2. Right of foundlings to nationality under international law

After providing for a discussion of a "high probability" citizenship, the majority pronounced the legal status of a foundling under both municipal and international law. It was concluded that foundlings are citizens under international law through examination of international treaties which the Philippines has signed as well as those to which the Philippines is not a party.

International law becomes part of Philippine laws either by incorporation or transformation.[195] On one hand, the *method of incorporation* is embodied in Article II, Section 2 of the Philippine Constitution by providing that the Philippines "adopts the generally accepted principles of international law as part of the law of the land."[196] In *Mijares v. Ranada*,[197] the Supreme Court declared that international customary rules are generally accepted principles of international law.[198] On the other hand, the *method of transformation* requires that an international law be "transformed" into a municipal law through local legislation for it to be part of Philippine laws.[199] This is embodied in Article VI, Section 21 of the Philippine Constitution which states that "[n]o treaty or international agreement shall be valid and effective unless concurred in by at least two-thirds of all the members of the Senate."[200]

In categorically ruling that foundlings are citizens under international law, the majority of the Supreme Court ruled based on the following international treaties:[201]

(a) the Universal Declaration of Human Rights (UDHR);[202]

193. *Poe-Llamanzares*, G.R. No. 221697, at 23 (emphases supplied).

194. *Id.*

195. *Id.* at 29.

196. PHIL. CONST. art. II, § 2.

197. Mijares v. Ranada, 455 SCRA 397 (2005).

198. *Id.*

199. *See* Pharmaceutical and Health Care Association of the Philippines v. Duque III, 535 SCRA 265 (2007).

200. PHIL. CONST. art. VI, § 21.

201. *Poe-Llamanzares*, G.R. No. 221697, at 29-33.

(b) the United Nations Convention on the Rights of the Child (UNCRC);[203]

(c) the International Covenant on Civil and Political Rights (ICCPR);[204]

(d) the 1930 Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws;[205] and

(e) the 1961 Convention on the Reduction of Statelessness.[206]

In the case of *Republic v. Sandiganbayan*,[207] the Supreme Court interpreted the UDHR as part of the generally accepted principles of international law, hence binding on the Philippines.[208] Under Article 15 of such international document, "[e]veryone has the *right to a nationality*."[209]

Further, Article 7 of the UNCRC, as ratified by the Philippines on 21 August 1990,[210] imposes upon the State the following *obligations*:

> 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[; and]
>
> 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*.[211]

Also, as ratified by the Philippines on 23 October 1986, Article 24 (3) of the ICCPR provides that "[e]very child has the *right to acquire a nationality*."[212]

From the foregoing international documents, the Supreme Court adopted the view that the Philippines *obligated* itself "to grant nationality from birth and ensure that no child is stateless."[213] It also liberally construed

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202. UDHR, *supra* note 30.

203. UNCRC, *supra* note 180.

204. ICCPR, *supra* note 181.

205. 1930 Hague Convention, *supra* note 51.

206. Convention on the Reduction of Statelessness, *supra* note 183.

207. Republic v. Sandiganbayan, 407 SCRA 10 (2003).

208. *Id.*

209. UDHR, *supra* note 30, art. 15 (emphases supplied).

210. UNCRC, *supra* note 180, art. 7.

211. UNCRC, *supra* note 180, art. 7 (emphases supplied).

212. ICCPR, *supra* note 181, art. 24 (3) (emphases supplied).

213. *Poe-Llamanzares*, G.R. No. 221697, at 31.

the international obligation by imposing upon the Philippines the duty to adhere to the 1930 Hague Convention and the 1961 Convention on the Reduction of Statelessness, despite not being a contracting State.[214] The Supreme Court reiterated its ruling in *Razon v. Tagitis*[215] and *Mijares* where it relied on unratified treaties as generally accepted principles of international law and as widespread State practice.

The Supreme Court rationalized this by saying that Section 15 of the UDHR merely "affirms" Article 14 of the 1930 Hague Convention —

> A child whose parents are both unknown shall have the *nationality of the country of birth.* If the child's parentage is established, its nationality shall be determined by the rules applicable in cases where the parentage is known.
>
> A foundling is, until the contrary is proven, *presumed to have been born on the territory of the State in which it was found.*[216]

Also, Article 2 of the Convention on the Reduction of Statelessness "gives effect" to Article 15 (1) of the UDHR by providing that 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.*"[217]

In view of the foregoing arguments, the majority of the Supreme Court ruled that the Philippines has an obligation under international law to grant natural-born citizen status to foundlings like Poe. Hence, Poe was "declared qualified to be a candidate for President in the National and Local Elections of 9 May 2016."[218]

D. The Dissenting Opinions: Classic Statutory Construction of International Law

The *Poe-Llamanzares* case is not a product of unanimity among the Justices of the Supreme Court. It is a divided decision with six Justices dissenting to the decision of the majority. As such, the Authors will discuss the arguments of the dissenting Justices in light of the "novel and arguable" propositions of the majority discussed above.

1. "High probability" citizenship has no basis in law

The use of statistics and probability has no basis in the Constitution or in law. Article IV of the Constitution provided for an exclusive enumeration of

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214. *Id.* at 31-32.

215. Razon v. Tagitis, 606 SCRA 598 (2009).

216. 1930 Hague Convention, *supra* note 51, art. 14 (emphases supplied).

217. Convention on the Reduction of Statelessness, *supra* note 183, art. 2 (emphases supplied).

218. *Poe-Llamanzares*, G.R. No. 221697, at 45.

Filipino citizens and for the definition of a natural-born citizen.[219] From the plain reading of the Constitution, it does not provide for the use of statistical probability in determining one's citizenship.

Further, it must be noted that the statistics presented by the Solicitor General are numbers of Filipino and foreign males and females in the Philippines and in Iloilo.[220] As observed by Senior Associate Justice Antonio T. Carpio — "[t]he data do not show the number of foundlings born in the Philippines from 1965 to 1975 and from 2010 to 2014. The data also do not show the number of foundlings who were later determined to have Filipino parentage."[221] Accordingly, what the data provides is the number of Filipino and foreign births, and not of foundlings since, in the first place, there is no way to know the parentage of a foundling.[222] It is nothing but fallacious to utilize the class of children with known parents in determining the probability of a foundling's citizenship.[223] This is plain *non sequitur* and was described by Justice Carpio as "comparing apples with oranges and avocados."[224]

By concluding that a foundling abandoned in the Philippines is highly probable to be a Filipino citizen because he or she is found in the Philippines is a virtual substitution of the *jus sanguinis* rule to the *jus soli* rule.

2. The Philippines has no obligation under international law to grant citizenship to foundlings

Determination of who are a State's citizens is solely within the domain of municipal law. Though international law may, in some instances, give an effect of nationality as ruled in the *Nottebohm Case*, still, "every independent nation [has an inherent right] to determine for itself, and according to its own constitution and laws, what classes of persons shall be entitled to its citizenship."[225] Justice Carpio summarized this view from the perspective of municipal law in this wise —

> This means that *municipal law, both constitutional and statutory, determines and regulates the conditions on which citizenship is acquired.* There is no such thing as international citizenship or international law by which citizenship may be acquired. Whether an individual possesses the citizenship of a particular

219. PHIL. CONST. art. IV, §§ 1 & 2.

220. *Poe-Llamanzares*, G.R. No. 221697, at 39 (J. Carpio, dissenting opinion).

221. *Id.*

222. *Id.*

223. *Id.*

224. *Id.*

225. United States v. Wong Kim Ark, 169 U.S. 649, 668 (1898).

> [S]tate shall be determined in accordance with the constitution and statutory laws of that State.[226]

According to the dissenting Justices, by the plain and unequivocal wording of the 1935 Constitution, and the subsequent Constitutions, foundlings are not Filipino citizens, let alone natural-born. Compared to the liberal interpretation made by the majority, the dissenting Justices relied on basic statutory construction in debunking the arguments laid down by the majority. A two-tier argument was made — the first is based on municipal law, and the second on international law.

The 1935 Constitution does not expressly provide for foundlings as Filipino citizens.[227] *Verba legis non est recedendum* — from the words of the statute there should be no departure. Assuming there is an ambiguity in the constitutional provision, *ratio legis est anima* — the words of the Constitution should be interpreted based on the intent of the framers. According to Associate Justice Arturo D. Brion, Poe cannot take refuge to the records of the 1934 Constitutional Convention because the Convention rejected the inclusion of foundlings in the 1935 Constitution.[228]

Also, the list of Filipino citizens under Article IV of the 1935 Constitution is an exclusive list. Being so, *expressio unius est exclusio alterius* — items not provided in a list are presumed not to be included in it.[229] As foundlings are clearly not included in Article IV, Section 1,[230] they are not granted citizenship under the 1935 Constitution, unless they choose to avail of the opportunity to be naturalized under Section 1 (5).[231] Accordingly, the 1935 Constitution must be interpreted as a whole, *ut magis valeat quam pereat.*[232] Justice Brion explained —

> To address the position that [ ] Poe related in this case, the fact that the 1935 Constitution did not provide for a situation where both parents are unknown (as also the case in the current 1987 Constitution) does not mean that the provision on citizenship is ambiguous with respect to foundlings; it simply means that the constitutional provision on citizenship based on

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226. *Poe-Llamanzares*, G.R. No. 221697, at 19 (J. Carpio, dissenting opinion) (emphases supplied).

227. 1935 PHIL. CONST. art. IV, § 1 (superseded 1973).

228. *Poe-Llamanzares*, G.R. No. 221697, at 95 (J. Brion, dissenting opinion).

229. *Id.* at 96 (citing Initiatives for Dialogue and Empowerment through Alternative Legal Services, Inc. (IDEALS, INC.) v. Power Sector Assets and Liabilities Management Corporation (PSALM), 682 SCRA 602, 649 (2012)).

230. 1935 PHIL. CONST. art. IV, § 1 (superseded 1973).

231. 1935 PHIL. CONST. art. IV, § 1 (5) (superseded 1973).

232. *Poe-Llamanzares*, G.R. No. 221697, at 94 (J. Brion, dissenting opinion) (citing Francisco v. House of Representatives 460 Phil. 830 (2003) & Chavez v. Judicial and Bar Council 691 Phil. 173 (2012)).

> blood or parentage has not been made available under the Constitution but *the provision must be read in its totality so that we must look to other applicable provisions that are available*, which in this case is paragraph (5) as explained above.
>
> In negative terms, even if Poe's suggested interpretation *via* the parentage provision did not expressly apply and thus left a gap, *the omission does not mean that we can take liberties with the Constitution through stretched interpretation*, and forcibly read the situation so as to place foundlings within the terms of the Constitution's parentage provisions. We cannot and should not do this as we would thereby *cross the forbidden path of judicial legislation.*[233]

Further, under international law, the Philippines has no obligation to grant an automatic citizenship to foundlings. As far as the Philippines is concerned, international obligations cannot contravene the Constitution.

Clearly, ICCPR and UNCRC are both valid and binding on the Philippines. However, from the clear wording of the treaties, they merely provide for the "right [of every child] to *acquire* nationality."[234] They merely impose an obligation on the part of the State Parties to "recognize and facilitate the child's right to acquire a nationality[,]"[235] and not to immediately and automatically confer Philippine citizenship to foundlings. In fact, Article 2 (2) of the ICCPR[236] and Article 4 of the UNCRC[237] provide

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233. *Poe-Llamanzares*, G.R. No. 221697, at 97 (J. Brion, dissenting opinion) (emphasis supplied).

234. ICCPR, *supra* note 181, art. 24 (3) & UNCRC, *supra* note 180, art. 7 (1) (emphasis supplied).

235. *Poe-Llamanzares*, G.R. No. 221697, at 108 (J. Brion, dissenting opinion) (emphasis omitted). Justice Carpio expounded on the matter by saying — "The [UNCRC] *does not guarantee a child a nationality at birth*, much less a natural-born citizenship at birth as understood under the Philippine Constitution, but merely the right to acquire a nationality in accordance with municipal law." *Poe-Llamanzares*, G.R. No. 221697, at 22 (J. Carpio, dissenting opinion) (emphasis supplied).

236. Article 2 (2) of the ICCPR provides the following —

> Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, *to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.*

ICCPR, *supra* note 181, art. 2 (2) (emphasis supplied).

237. Article 4 of the UNCRC declares —

> States Parties shall *undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention.* With regard to economic, social and cultural rights, States

that obligations under the treaties must be complied through a framework of State's national laws.[238]

Justice Carpio also pointed out that the UNCRC was ratified on 21 August 1990, or more than 20 years after the birth of Poe in 1968.[239] Accordingly, the UNCRC which defined a "child" as a human being below 18 years old[240] could not have affected the status of Poe.[241]

Further, Justice Brion emphasized that the UDHR is not a treaty.[242] He explained —

> It is an international document recognizing inalienable human rights, which eventually led to the creation of severally legally-binding human rights, such as the ICCPR and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Thus, *the Philippines is not legally-obligated to comply with the provisions of the UDHR per se. It signed the UDHR because it recognizes the rights and values enumerated in the UDHR*; this recognition led it to sign both the ICCPR and the ICESCR.[243]

Assuming, however, that the UDHR has reached the status of a customary international law (CIL) or of a generally-accepted principle of international law, Article 15 does not require an automatic grant of citizenship to foundlings. It merely recognizes the right of every person to nationality, but it does not impose any obligation on the signatory States on the manner of recognition.[244]

Moreover, with regard to the supposed obligation of the Philippines under the 1930 Hague Convention, Justice Carpio categorically declared that the Philippines is not bound by the treaty, not being a signatory to it.[245] But assuming that the 1930 Hague Convention has also reached the level of a generally-accepted principle of international law, the Convention clearly provides foundlings with a "nationality of the *country of birth*[,]" and not

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> Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

UNCRC, *supra* note 180, art. 4 (emphasis supplied).

238. *Poe-Llamanzares*, G.R. No. 221697, at 109 (J. Brion, dissenting opinion).

239. *Poe-Llamanzares*, G.R. No. 221697, at 22 (J. Carpio, dissenting opinion).

240. UNCRC, *supra* note 180, art. 1.

241. *Poe-Llamanzares*, G.R. No. 221697, at 22 (J. Carpio, dissenting opinion).

242. *Poe-Llamanzares*, G.R. No. 221697, at 110 (J. Brion, dissenting opinion).

243. *Id.* (emphasis supplied).

244. *Poe-Llamanzares*, G.R. No. 221697, at 23 (J. Carpio, dissenting opinion) & *Poe-Llamanzares*, G.R. No. 221697, at 110-11 (J. Brion, dissenting opinion).

245. *Poe-Llamanzares*, G.R. No. 221697, at 24 (J. Carpio, dissenting opinion).

nationality at birth of the State where the foundling was abandoned.[246] Article 14 only provides for a presumption — not an obligation — that a foundling is a citizen of the State in which it is found. The majority also seem to have forgotten Article 15 of the Convention which provides that

> [w]here the nationality of a State is not acquired automatically by reason of birth on its territory, a child born on the territory of that State of parents having no nationality, or of unknown nationality, *may* obtain the nationality of the said State. *The law of that State shall determine the conditions governing the acquisition of its nationality in such cases.*[247]

Accordingly, no less than the Convention itself provides that the acquisition of nationality, or citizenship for that matter, is not automatic and requires an implementation through domestic legislation.

Also, the Convention on the Reduction of Statelessness does not bind the Philippines, which is a non-contracting State. As Article 2 of the Convention provides that "[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 that territory of parents possessing the nationality of that State[,]"[248] Justice Carpio had the following legal conclusions:

> (1) Article 2 applies only to foundlings found in Contracting States; but Poe was found in the Philippines which is not a Contracting State.[249]
>
> (2) Assuming that the Convention binds the Philippines, Article 2 applies only in the absence of proof that the parents of the foundling are not citizens of another State. This is a factual issue that requires administrative or judicial determination, hence, the grant of citizenship cannot be automatic;[250] and
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> (3) Article 2 requires municipal statutory law. The grant of citizenship contemplated by the Convention is by operation of law or through naturalization as provided under Philippine laws.[251]

Stretching the argumentation further, is granting foundlings natural-born citizenship a CIL? Or is the presumption under the Convention that a

246. *Id.* (emphasis omitted).

247. 1930 Hague Convention, *supra* note 51, art. 15 (emphasis supplied).

248. Convention on the Reduction of Statelessness, *supra* note 183, art. 2.

249. *Poe-Llamanzares*, G.R. No. 221697, at 26 (J. Carpio, dissenting opinion).

250. *Id.*

251. *Id.*

foundling is "born within [the] territory of parents possessing the nationality of that State" a CIL?

In the case of *Bayan Muna v. Romulo*,[252] CIL was defined as the "general and consistent practice of states recognized and followed by them from a sense of legal obligation."[253] It requires two elements: (1) State practice or the "continuous repetition of the same or similar kind of acts or norms by States;"[254] and (2) *opinio juris sive necessitates* which requires that the State practice "be carried out in such a way, as to be evidence of a belief that this practice is rendered obligatory by the existence of a rule of law requiring it."[255]

Justice Carpio ruled in the negative. He particularly pointed that the element of State practice is absent because only 64 States have ratified the Convention, out of the 193 Member-States of the United Nations.[256] Of these 64 States, only 13 States provide for an "automatic and unconditional acquisition of nationality by foundlings."[257]

Assuming *arguendo* that the Philippines should grant citizenship to foundlings, such grant does not necessarily translate to a natural-born status. As discussed, the Philippines confers citizenship either by the *jus sanguinis* rule or by naturalization. Article IV, Section 2 defines a natural-born citizen as a "citizen[ ] of the Philippines from birth *without having to perform any act to acquire or perfect their Philippine citizenship*[,]"[258] which excludes naturalization and necessarily implies *jus sanguinis* or blood relationship. Having no known blood relation to a Filipino father or mother, a foundling cannot be a natural-born citizen but only a citizen by naturalization.

From the foregoing discussions, the Philippines has no international obligation to grant citizenship to foundlings like Poe. As the majority of the Supreme Court resorted to probabilities and liberal interpretation, the dissenting Justices reached this conclusion through classic statutory construction.

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252. Bayan Muna v. Romulo, 641 SCRA 244 (2011).

253. *Id.* at 293 (citing Patrick Simon S. Perillo, *Transporting the Concept of Creeping Expropriation from De Lege Ferenda to De Lege Lata: Concretizing the Nebulous Under International Law*, 53 ATENEO L.J. 434, 509-10 (2008)).

254. *Bayan Muna*, 641 SCRA at 293.

255. *Id.* (citing North Sea Continental Shelf (Ger./Neth. & Ger./Den.), 1969 I.C.J. 1, ¶ 77 (Feb. 20)).

256. *Poe-Llamanzares*, G.R. No. 221697, at 28 (J. Carpio, dissenting opinion).

257. *Id.* at 30.

258. PHIL. CONST. art. IV, § 2 (emphasis supplied).

IV. THE GAP IN THE PHILIPPINE CONSTITUTION: ANSWERS AND CONSEQUENCES

> *Indeed, this Court has repeatedly stressed the importance of giving effect to the sovereign will in order to ensure the survival of our democracy. In any action involving the possibility of a reversal of the popular electoral choice, this Court must exert utmost effort to resolve the issues in a manner that would give effect to the will of the majority, for it is merely sound public policy to cause elective offices to be filled by those who are the choice of the majority.*
>
> — Chief Justice Artemio V. Panganiban[259]

The Philippines is undoubtedly a part of a community of nations. However, it is clear that the issue of citizenship is within the exclusive realm of municipal law. The State adopts a *dualist approach* to international law, by virtue of which, the Philippines may look at the issue of citizenship from two lenses — the international plane and the domestic plane.[260] Accordingly, Justice Brion explained —

> The rule in the domestic plane is, of course, separate and different from our rule in the international plane where treaty obligations prevail. If the country fails to comply with its treaty obligations because they contradict our national laws, there could be repercussions in our dealings with other States. This consequence springs from the rule that our domestic laws cannot be used to evade compliance with treaties in the international plane. *Repercussions in the international plane, however, do not make an unconstitutional treaty constitutional and valid. These repercussions also cannot serve as an excuse to enforce a treaty provision that is constitutionally void in the domestic plane.*[261]

As such, as far as the Philippines is concerned, the question of natural-born citizenship is governed by the Constitution. It is clear that there is a constitutional void when a foundling runs for the highest Executive position in the Philippines. The Constitution provides for an exclusive list of Filipino citizens without including foundlings. Did the Constitution leave the determination to the Legislature or to the Judiciary? In any case, such determination should not contravene the express provisions of the Constitution. The Legislature cannot add foundlings to the exclusive enumeration of the Constitution, and the Judiciary cannot interpret it in a matter contrary to the real intention of the Constitution.

If the obligation is primarily legislative, may the Supreme Court, in *Poe-Llamanzares*, be considered to have crossed the border of judicial legislation? In the case of *Constantino, Jr. v. Cuisia*,[262] the Supreme Court itself declared

259. Frivaldo v. Commission on Elections, 257 SCRA 727, 771 (1996).

260. *Poe-Llamanzares*, G.R. No. 221697, at 106 (J. Brion, dissenting opinion).

261. *Id.* at 112-13.

262. Constantino, Jr. v. Cuisia, 472 SCRA 505 (2005).

that the "worst kind of judicial legislation [is when] the courts ... misconstrue and change the meaning of the organic act."[263] It is also too stretched of an interpretation for the Supreme Court to utilize census and probabilities in rationalizing Poe's natural-born citizenship. This is considered a novel tool in the judicial review of constitutional cases. Census has been consistently used by the Supreme Court in districting, as in the cited cases of *Herrera* and *Bagabuyo*. However, the Authors are unaware of any case applying the same method in citizenship issues except in *Poe-Llamanzares*.

The Supreme Court must not lose sight of the fact that the determination of a natural-born status has a wide array of consequences — from political status to economic, cultural, and social rights. The Philippine Constitution reserves the highest government positions to natural-born citizens. Being a natural-born citizen is indispensable to qualify for the positions of Senator,[264] Member of the House of Representatives,[265] Vice-President,[266] Justice of the Supreme Court,[267] Chairman or Commissioner of the Constitutional Commissions, Ombudsman or its Deputies,[268] and most importantly, the chief executive — the President.[269] Also, a natural-born citizen who has lost his citizenship may still be a transferee of private lands despite the constitutional limitation against foreign ownership of lands and subject to limitations provided by law.[270] Only natural-born citizens are

263. *Id.* at 525.

264. PHIL. CONST. art. VI, § 3.

265. PHIL. CONST. art. VI, § 6.

266. PHIL. CONST. art. VII, § 3.

267. PHIL. CONST. art. VIII, § 7 (1).

268. PHIL. CONST. art. XI, § 8.

269. PHIL. CONST. art. VII, § 2.

270. PHIL. CONST. art. XII, § 8. *See also* PHIL. CONST. art. XII, §§ 2 & 7. The limitation refers to Section 10 of the Foreign Investments Act, amended, to wit —

> Section 10. *Other Rights of Natural Born Citizen Pursuant to the provisions of Article XII, Section 8 of the Constitution.* — Any natural born citizen who has lost his Philippine citizenship and who has the legal capacity to enter into a contract under the Philippine laws may be a transferee of a private land up to a maximum area of five thousand (5,000) square meters in the case of urban land or three (3) hectares in the case of rural land to be used by him for business or other purposes. In the case of married couples, one of them may avail of the privilege herein granted: *Provided*, that if both shall avail of the same, the total area acquired shall not exceed the maximum herein fixed.
>
> In case the transferee already owns urban or rural land for business or other purposes, he shall still be entitled to be a transferee of additional

qualified to be members of the Monetary Board, the central monetary authority of the Philippines.[271]

The Supreme Court's declaration as to the natural-born citizenship of foundlings may be interpreted as a *pro hac vice* decision applying only to the very peculiar circumstances of the case of Poe. It may also be considered as a mere *obiter dictum* as the Supreme Court was called upon to rule primarily on the jurisdiction of the COMELEC to decide on the qualifications of the candidates for President.

Indeed, this case is of a peculiar nature. It is worth emphasizing that Poe has been a consistent front runner in the 2016 Presidential elections.[272] As such, one must not lose sight of the Supreme Court's possible intention to give effect to the will of the electorate. In fact, it has been a consistent stance of the Supreme Court, in deciding constitutional and electoral cases, to give deference to the choice of the Filipino people. As early as the 1926 case of *Mandac v. Samonte*,[273] the Supreme Court made a proposition that the Judiciary should not rule in a manner that will frustrate the true expression of the will of the electorate.[274] In *Maruhom v. Commission on Elections*,[275] regarding elections contests,[276] the Supreme Court declared that "laws and

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> urban or rural land for business or other purposes which when added to those already owned by him shall not exceed the maximum areas herein authorized.
>
> A transferee under this Act may acquire not more than two (2) lots which should be situated in different municipalities or cities anywhere in the Philippines; *Provided*, That the total land area thereof shall not exceed [ ] 5,000 square meters in the case of urban land or three (3) hectares in the case of rural land for use by him for business or other purposes. A transferee who has already acquired urban land shall be disqualified from acquiring rural land and vice versa.

An Act to Further Liberalize Foreign Investments, Amending for the Purpose Republic Act No. 7042, and for Other Purposes, Republic Act No. 8179, § 5 (1996).

271. PHIL. CONST. art. XII, § 20 & The New Central Bank Act, Republic Act No. 7653, ch. I, art. II, § 8.

272. *See generally* Rappler, Grace Poe regains top spot in presidential poll – Pulse Asia, *available at* http://www.rappler.com/nation/politics/elections/2016/121512-grace-poe-front-runner-poll-january-2016 (last accessed Aug. 31, 2016).

273. Mandac v. Samonte, 49 Phil. 284 (1926).

274. *Id.* at 299.

275. Maruhom v. Commission on Elections, 331 SCRA 473 (2000).

276. "Election contests" refer to election protests or petitions for *quo warranto*. On one hand, "election protest" is an "election contest relating to the *election and returns* of elective officials, grounded on frauds or irregularities in the conduct of the elections, the casting and counting of the ballots and the preparation and

statutes governing election contests, especially the appreciation of ballots must be liberally construed to the end *that the will of the electorate in the choice of public officials may not be defeated* by technical infirmities."[277]

The will of the electorate, however, must be balanced with the express constitutional provisions outlining the qualifications of the President and the definition of a natural-born citizen. At the end of the day, the Philippine government is a government of law, and not of men.[278]

V. EPILOGUE

This brief survey of the varying opinions of the majority and the minority in the Supreme Court in *Poe-Llamanzares* has squarely outlined two approaches to judicial interpretation of existing international law instruments in relation to municipal law.

The resolution by the majority opinion demonstrates a continuing tension between international law and municipal law. What is clear from the entire deliberation of the Supreme Court is that State practice in the determination of citizenship remains with the State. The application, however, of this power is susceptible of resorting to creative tools of statutory construction. On one hand, the majority of the Supreme Court emphasized a human rights perspective. On the other hand, the weighty dissenting opinion stressed a strict construction in an effort to avoid the contention towards possible judicial legislation.

In the end, the Supreme Court has once again engaged in an exercise that puts into context a highly charged electoral debate — the result of which may not necessarily determine the actual results of the 2016 elections.

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canvassing of returns. The issue is who obtained the plurality of valid votes cast[;]" on the other hand, a *quo warranto* is an "election contest relating to the qualifications of an elective official on the ground of ineligibility or disloyalty to the Republic of the Philippines. The issue is whether respondent possesses all the *qualifications* and none of the disqualifications prescribed by law." Commission on Elections, Rules of Procedure in Election Contests Before the Courts Involving Elective Municipal and Barangay Officials, rule 1, § 3, ¶¶ c, d, & e (May 15, 2007).

277. *Maruhom*, 331 SCRA at 485-86 (emphasis supplied).

278. People v. Aminnudin, 163 SCRA 402, 408 (1988); Metropolitan Traffic Command West Traffic District v. Gonong, 187 SCRA 432, 442 (1990); Brillantes, Jr. v. Yorac, 192 SCRA 358, 361 (1990); State Prosecutors v. Muro, 236 SCRA 505, 525 (1994); & Rodriguez-Manahan v. Flores, 709 SCRA 297, 301 (2013).