

FAMILIAR AND FAMILIAL: BASQUE/SPANISH-FILIPINOS VIS-À-VIS ASEAN, EU, AND EUSKADI

Familiar y de Familia: Vasco/Español-Filipinos vis-à-vis ASEAN, la Unión Europea, y Euskadi

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Abstract

Basques and other Iberians have been travelling to the Philippines since 1521 or for almost half a millennium now, initially when the archipelago was a Spanish dominion from the 16th to the late 19th centuries. They sailed to the islands to administer the colony, spread the word of God, and seek their fortunes. Not a few established families and founded enterprises, some of which still exist.

Spanish sovereignty ended in 1898 but Basques¹ and Spaniards continued to journey to the Philippines during the American period (1899-1946), as they do until now.

The movement of people also went the other way, as many Filipinos have been going to Spain for hundreds of years.

So it should be no surprise that there are about 115,000 persons who are citizens of both countries². And for Basques and Spaniards to have relatives in the Philippines; the mother of the current Spanish Ambassador was born there³. These transnational ties are the reasons for this study.

¹ Larrabeiti (2003).

² Masigan (2018).

³ Republic of the Philippines Presidential Communications Operations Office (2018).

It examines the rules on citizenship in the Constitutions, laws, and legal sources of Spain and the Philippines. It investigates the effect on their citizens of their respective regional groups, the European Union (EU) and the Association of Southeast Asian Nations (ASEAN). And it explores how persons of Filipino and Iberian ancestry and/or dual citizenship can situate themselves within the citizenship frameworks of both countries and regions, and how Filipinos with Basque ancestry can situate themselves in the Basque Country.

Keywords

Dual nationality/citizenship, ASEAN, EU, Euskadi, Spanish-Filipino, Basque-Filipino

Resumen

Los vascos y otros íberos han estado viajando a Filipinas desde 1521 o durante casi medio milenio ahora, inicialmente cuando el archipiélago era un dominio español desde el siglo XVI hasta finales del siglo XIX. Navegaron a las islas para administrar la colonia, difundir la palabra de Dios y buscar su fortuna. No pocas familias establecidas y empresas fundadas, algunas de las cuales todavía existen.

La soberanía española terminó en 1898, pero los vascos y los españoles continuaron viajando a Filipinas durante el periodo estadounidense (1899-1946), como lo hacen hasta ahora.

El movimiento de personas también fue al revés, ya que muchos filipinos han estado yendo a España durante cientos de años.

Por lo tanto, no debería sorprendernos que haya aproximadamente 115,000 personas que son ciudadanos de ambos países. Y para que los vascos y los españoles tengan parientes en Filipinas; La madre del actual embajador español nació allí. Estos lazos transnacionales son las razones de este estudio.

Examina las normas sobre ciudadanía en las Constituciones, leyes y fuentes legales de España y Filipinas. Investiga el efecto sobre sus ciudadanos de sus respectivos grupos regionales, la Unión Europea (UE) y la Asociación de Naciones del Sudeste Asiático (ASEAN). Y explora cómo las personas de ascendencia filipina e ibérica y/o doble ciudadanía pueden situarse dentro de los marcos de ciudadanía de ambos países y regiones, y cómo los filipinos con ascendencia vasca pueden ubicarse en el País Vasco.

Palabras clave

Doble nacionalidad/ciudadanía, ASEAN, UE, Euskadi, español-filipino, filipino-español.

SUMMARY: I. CITIZENSHIP / NATIONALITY: AN OVERVIEW. II. CITIZENSHIP / NATIONALITY UNDER THE PHILIPPINE AND SPANISH CONSTITUTIONS. III. DUAL SPANISH-FILIPINO CITIZENSHIP / NATIONALITY NOT PROHIBITED. IV. SPANISH-FILIPINOS, SPAIN, AND THE PHILIPPINES. V. SPANISH-FILIPINOS, THE EU, AND ASEAN. VI. BASQUE-FILIPINOS AND EUSKADI. VII. MULTIPLE NATIONALITY, MULTIPLE NATIONAL LAWS. VIII. A NUANCED APPROACH. REFERENCES.

I. CITIZENSHIP / NATIONALITY: AN OVERVIEW

Citizenship is the master status that defines the rights and entitlements that individuals may access⁴; ‘membership of a political community’ namely the nation-state⁵. Under the 1930 Convention on Certain Questions Relating to the Conflict of Nationality Laws (Hague Convention)⁶, it is the state’s laws which determine whether or not a person possesses its nationality.

The tie between citizen and state was originally a “perpetual allegiance” which the former cannot end⁷ without the latter’s consent⁸. Citizenship was very closely linked to patriotism, national identity, and loyalty to one’s nation, among others⁹. Since states typically demanded exclusive allegiance from their citizens and prohibited overlapping memberships¹⁰, the tolerance of dual nationality in Articles 3¹¹ and 6¹² of the Hague Convention was grudging at best¹³.

THE RISE OF DUAL CITIZENSHIP. One involuntarily acquires citizenship by operation of law. It is literally an accident of birth that depends on the law of

⁴ Harpaz & Mateos (2018).

⁵ Painter (1998).

⁶ Articles 1 and 2.

⁷ Casper (2008).

⁸ The Hague Convention, Article 6: Without prejudice to the liberty of a State to accord wider rights to renounce its nationality, a person possessing two nationalities acquired without any voluntary act on his part may renounce one of them with the authorisation of the State whose nationality he desires to surrender.

This authorisation may not be refused in the case of a person who has his habitual and principal residence abroad, if the conditions laid down in the law of the State whose nationality he desires to surrender are satisfied.

⁹ Anderson (2011).

¹⁰ Harpaz & Mateos, note 1.

¹¹ Article 3. Subject to the provisions of the present Convention, a person having two or more nationalities may be regarded as its national by each of the States whose nationality he possesses.

¹² Note 5.

¹³ Anderson, note 6.

the place of one's birth (*jus soli*), or the law of the state one's parents are citizens of (*jus sanguinis*), or both, because there is no universal rule on nationality and citizenship¹⁴. But citizenship may also be acquired voluntarily, through the process of naturalization.

While perpetual allegiance is “the antiquated, opprobrious system of feudal vassalage”¹⁵, citizenship is now seen both as a form of association and a vehicle for individual identity¹⁶, in part because of the women's rights movement¹⁷ and of globalization¹⁸. The idea that there is or should be a congruence between national identity, territoriality, statehood, and citizenship is now being challenged and undermined through a “restructuring of governance”¹⁹.

Notably, the Universal Declaration of Human Rights recognizes nationality, the right to leave any country including one's own (Article 13(2)), and the right to change nationality (Article 15(2)), effectively recognizing the right to renounce citizenship. And there is now a proposal to elevate dual citizenship to the status of a human right²⁰.

II. CITIZENSHIP / NATIONALITY UNDER THE PHILIPPINE AND SPANISH CONSTITUTIONS

Articles 11 and 149(1)(ii) of the 1978 Spanish Constitution (SC) are the provisions on Spanish nationality, while Article IV of the 1987 Philippine Constitution (PC) are the provisions on Philippine citizenship:

¹⁴ Cariño (2007); see also Articles 1 and 2 of the Hague Convention.

¹⁵ Warren (1922), cited in Casper, note 4.

¹⁶ Spiro (2010).

¹⁷ *The Link Between Dual Citizenship and the Women's Rights Movement*. 2019.

¹⁸ Anderson, note 6.

¹⁹ Painter, note 2.

²⁰ Spiro, note 13.

1978 Spanish Constitution ²¹ (SC)	1987 Philippine Constitution (PC)
<p style="text-align: center;">Article 11</p> <p>1. Spanish nationality is acquired, retained and lost in accordance with the provisions of the law.</p> <p>2. No person of Spanish origin may be deprived of his or her nationality.</p> <p>3. The State may negotiate dual nationality treaties with Latin American countries or with those which have had or which have special links with Spain. In these countries, Spaniards may become naturalised without losing their nationality of origin, even if said countries do not recognise a reciprocal right to their own citizens.</p> <p>x-x-x</p>	<p style="text-align: center;">Article IV Citizenship</p> <p>Section 1. The following are citizens of the Philippines:</p> <p>(1) Those who are citizens of the Philippines at the time of the adoption of this Constitution;</p> <p>(2) Those whose fathers or mothers are citizens of the Philippines;</p> <p>(3) Those born before January 17, 1973, of Filipino mothers, who elect Philippine citizenship upon reaching the age of majority; and</p> <p>(4) Those who are naturalized in accordance with law.</p>
<p style="text-align: center;">Article 149</p> <p>1. The State holds exclusive competence over the following matters:</p> <p>x-x-x</p> <p>ii) nationality, immigration, emigration, status of aliens, and right to asylum;</p> <p>x-x-x</p>	<p>Section 2. Natural-born citizens are those who are citizens of the Philippines from birth without having to perform any act to acquire or perfect their Philippine citizenship. Those who elect Philippine citizenship in accordance with paragraph (3), Section 1 hereof shall be deemed natural-born citizens.</p> <p>Section 3. Philippine citizenship may be lost or reacquired in the manner provided by law.</p> <p>Section 4. Citizens of the Philippines who marry aliens shall retain their citizenship, unless by their act or omission, they are deemed, under the law, to have renounced it.</p> <p>Section 5. Dual allegiance of citizens is inimical to the national interest and shall be dealt with by law.</p>

SIMILARITIES. Both Constitutions recognize nationals or citizens by birth (*nacionalidad española de origen* and natural-born Filipino citizens) and provide that the loss or acquisition of nationality or citizenship shall be in accordance with law.

²¹ English translation sourced from <https://www.boe.es/legislacion/documentos/ConstitucionINGLES.pdf>, accessed April 13, 2019.

Both Constitutions generally but do not exclusively refer to the Civil Codes of both countries, particularly Book I (On Persons) Title I (On Spaniards and Foreigners) Article 17 to 26 of the Spanish Civil Code (SCC)²² and Book I (Persons) Title II (Citizenship and Domicile) Articles 48 and 49 of the Philippine Civil Code (PCC). Parenthetically, Articles 48 and 49 of the PCC (which took effect on August 30, 1950) are similar to (but not exactly the same as) Article IV Sections 1 and 3 of the PC (which took effect on February 2, 1987).

DIFFERENCES. Article 11(2) of the SC stating that Spaniards *de origen* may not be deprived of Spanish nationality, has no counterpart in the PC²³. On the other hand, Article VI Sections 1 and 4 of the PC which enumerate who Filipino citizens are (including naturalized Filipinos) and state that Filipino citizens who marry aliens shall retain their citizenship, have no equivalents in the SC. Moreover, while the SC explicitly recognizes that Spaniards can also be nationals or citizens of certain countries – dual citizenship, in other words – the PC proscribes dual allegiance. And Article 149(1)(ii) of the SC in relation to Article 2 thereof on the indissoluble unity of the Spanish nation which is composed of Euskadi and other autonomous communities has no counterpart in the PC, even though the latter's Article X Sections 15-21 establish the grounds for the creation of autonomous regions. Lastly, the SC refers to “nationality”, while the PC refers to “citizenship”²⁴.

But these differences are more apparent than real.

²² English translation sourced from <http://derechocivil-ugr.es/attachments/article/45/spanish-civil-code.pdf>, accessed April 13, 2019.

²³ A law to revoke Philippine citizenship (which was not specifically directed towards naturalized Filipinos only) was promulgated by then-President Ferdinand Marcos when he had law-making powers. Presidential Decree (PD)1735 (1980) “Imposing Additional Penalties for Rebellion, Insurrection, Sedition and Subversion Committed Within or Outside Philippine Territory” imposed the “penalty of forfeiture of his rights as a citizen of the Philippines” on “any person found guilty of subversion, rebellion or insurrection, or sedition, or conspiracy to commit rebellion, or insurrection, or sedition whether Committed within or outside the territorial jurisdiction of the Philippines”; this was reiterated in PD 1835 (1981) “The Anti-Subversion Law of 1981”. However, PD 1975 (1985) “Amending Presidential Decree 835” removed the penalty of forfeiture of one's rights as a citizen of the Philippines.

²⁴ Rubio Marín, et al. (2012) explain in footnote 1 of their *Country Report: Spain* that “the Spanish term used to refer to the concept of ‘nationality’, understood as the legal bond between an individual and the state, is ‘nacionalidad’. The Spanish term for citizenship, referring to the full entitlement of political rights is ‘ciudadanía’. From the legal viewpoint, the concept of citizenship is therefore more restricted than nationality. However, in some cases, ‘citizenship’ is used in the legal texts in a less accurate way as it is actually referring to the wider conceptual sphere of ‘nationality’ (e.g. articles 11.3, 13.4, and 41 of the Spanish Constitution; article 22.2 of the Spanish Civil Code). From a political or sociological viewpoint, the term ‘nacionalidad’ can also be understood as the different

III. DUAL SPANISH-FILIPINO CITIZENSHIP / NATIONALITY NOT PROHIBITED

There are 4,723 Spaniards in the Philippines of which 55 are Basques (from Araba – 5; Bizkaia – 26; Guipúzcoa – 24)²⁵, while there are some 1,800 to 2,000 Filipinos in the *País Vasco*, La Rioja, Navarra, Cantabria, Burgos, Palencia, and Asturias²⁶ out of an estimated 200,000 Filipinos living and working in Spain²⁷. This figure reportedly excludes the more or less 115,000 persons who are citizens of both Spain and the Philippines²⁸. Not all Spanish-Filipinos are both Spaniards *de origen* and natural-born Filipinos; some are natural-born citizens/nationals of one country who acquired the citizenship/nationality of the other.

SPANIARDS DE ORIGEN WHO ACQUIRE FILIPINO CITIZENSHIP DO NOT LOSE THEIR SPANISH NATIONALITY. The Philippines does not close its doors to qualified aliens who wish to become Filipinos²⁹ through administrative naturalization under Republic Act (RA) 9139, judicial naturalization under Commonwealth Act (CA) 473, or legislative naturalization³⁰. One of the requirements under CA 473 is residence of at least 10 years, reduced to 5 years for certain aliens, including those born in the Philippines; RA 9139 applies to aliens born in the Philippines and residing therein since birth.

Sections 2 (Qualifications), 3 (Special qualifications), and 4 (Who are disqualified) of CA 473 and Sections 3 (Qualifications) and 4 (Disqualifications) of the Administrative Naturalization Law 2001 explicitly state the

historical-cultural reality integrated within the Spanish national community. In fact, the Spanish Constitution acknowledges the plural character of the country using the term '*nacionalidades*' (article 2 of the Spanish Constitution). (Santolaya, 2008:11-14; Carras-cosa, 2007:17-23)."

²⁵ Email responses dated May 2 and 6, 2019 to the author from the Spanish Consulate in Manila.

²⁶ Email response dated May 22, 2019 to the author from Philippine Consul to Bilbao Susana Palomino Bilbao.

²⁷ Masigan (2018).

²⁸ Id. Interestingly, data from the *Instituto Nacional de Estadística* indicate that the Philippines was not even among the top 10 countries whose nationals acquired Spanish nationality through residence in Spain in the years 2016 and 2017 with the qualification that "persons who have acquired Spanish nationality while residing in other countries are excluded as well as those processes in which Spanish nationality is obtained by reason of origin (by simple presumption or adoption) or by consolidation (possession of status of those who already act as Spaniards)."

²⁹ Concurring opinion of Supreme Court of the Philippines Chief Justice Artemio Panganiban in the Supreme Court of the Philippines' *Bengson III v. House of Representatives Electoral Tribunal* (2011), cited in *David v. Senate Electoral Tribunal* (2016). Poe-Llamanzares was the private respondent in *David v. Senate Electoral Tribunal*.

³⁰ Under CA 63 (1936) and Letter of Instruction 270 (1975).

qualifications an applicant for Philippine citizenship must possess, as well as the disqualifications therefor.

While both laws require applicants to renounce their original citizenship, Spaniards *de origen* who acquire Philippine citizenship will not lose their Spanish nationality; recall Article 11(2) (3) of the SC, and the second paragraph of Article 24(2) of the SCC: “Acquisition of the nationality of Latin American countries, Andorra, the Philippines, Equatorial Guinea or Portugal shall not be sufficient to cause the loss of Spanish nationality by birth.”

NATURAL-BORN FILIPINOS WHO ACQUIRE SPANISH NATIONALITY DO NOT LOSE THEIR PHILIPPINE CITIZENSHIP. Rubio Marín et al. note the existence in Spanish law of a “special regime for nationals of certain countries or cultures with which Spain is said to have either a historical debt, special ties of cultural affinity or a logical combination of the two. The special treatment is limited to two features: the shortening of residence time required to naturalise, and the existence of a legal regime of dual nationality.”³¹

Thus Article 22(1) of the SCC states that the period of residence in Spain in order to acquire Spanish nationality is generally ten years, and applicants are required by Article 22(4) to show “good civic conduct and a sufficient degree of integration in Spanish society”³². However, Article 22(1) provides that the period is only two years for “citizens by birth” of the Philippines and certain other countries. Furthermore, while Article 23(b) requires applicants for Spanish nationality to renounce their prior nationality, those from the countries enumerated in section 2 Article 24 (which includes the Philippines) are not required to do so.

Filipino citizens may also qualify for Spanish nationality under *Ley 5/2007* or the Law of Historical Memory, or *Ley 12/2015* if they are descendants of Sephardic Jews.

While Article IV Section 5 of the PC explicitly prohibits dual allegiance, the Philippine Supreme Court acknowledges that Filipinos could be simultaneously considered nationals by other states in accordance with their own laws, either because they were born of Filipino parents in a *jus soli* jurisdiction³³ or in a mixed marriage³⁴. It emphasized in *Mercado v. Manzano* (1999) that dual citizenship is different from dual allegiance, and further clarified in

³¹ It was in 1521 when the peoples of the Iberian Peninsula and those of the islands which became the Philippines first met each other. While the relationship between them was initially between colonizer and colony, it is now one between equals.

³² According to Rubio Marín et al., these qualities are not described in the SCC, and thus it is up to the judge to determine what they are.

³³ *Mercado v. Manzano* (1999).

³⁴ *Aznar v. Osmeña* (1990); *Valles v. COMELEC* (2000).

AASJS v. Datumanong (2007) that Article IV Section 5 of the PC is not self-executing and requires congressional action.

CA 63 (1936)³⁵, “An Act providing for the ways in which Philippine citizenship may be lost or reacquired” was amended by RA 2639 (1960) to allow for dual citizenship with Spain and certain other countries:

Section 1. How citizenship may be lost. A Filipino citizen may lose his citizenship in any of the following ways and/or events:

1. By naturalization in a foreign country;

X-X-X

The provisions of this section notwithstanding, the acquisition of citizenship by a natural born Filipino citizen from one of the Iberian and any friendly democratic Ibero-American countries or from the United Kingdom shall not produce loss or forfeiture of his Philippine citizenship if the law of that country grants the same privilege to its citizens and such had been agreed upon by treaty between the Philippines and the foreign country from which citizenship is acquired.

RA 9225 (2003), “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” is just the latest Philippine law that recognizes dual citizenship. In the words of the Philippine Supreme Court, RA 9225 is an “abbreviated repatriation process ... [t]he repatriation of the former Filipino will allow him to recover his natural-born citizenship... R.A. No. 9225 was obviously passed in line with Congress’ sole prerogative to determine how citizenship may be lost or reacquired. Congress saw it fit to decree that natural-born citizenship may be reacquired even if it had been once lost...”³⁶

There is no record of any treaty between the Philippines and Spain in relation to CA 63 as amended. But it is submitted that a treaty is now unnecessary because of the Philippine Supreme Court decisions and the Spanish and Philippine legal provisions enumerated above.

IV. SPANISH-FILIPINOS, SPAIN, AND THE PHILIPPINES

AS FILIPINO CITIZENS. Spanish-Filipinos are protected by Article III (Bill of Rights) of the PC. They enjoy the right of suffrage, can practice their profession, control and administer educational institutions³⁷, and engage in

³⁵ Further amended by RA 3834 (1963) to also include the United Kingdom.

³⁶ *Poe-Llamanzares v. COMELEC* (2016).

³⁷ Philippine Constitution, Article V (Suffrage) Section 1; Article XII (National Economy and Patrimony) Section 14; Article XIV (Education, Science and Technology, Arts, Culture, and Sports) Section 4(2).

various activities reserved for Filipino citizens³⁸. They are protected even if working abroad under the Migrant Workers and Overseas Filipinos Act (1995).

AS SPANISH NATIONALS. Spanish-Filipinos enjoy the freedoms and rights enumerated in Section 14, and in Division 1 (Fundamental Rights and Public Liberties) of Chapter 2, Sections 16-29 of the SC. They have the right to engage in popular action and take part in the administration of justice through the institution of the jury³⁹. They also have the right to a public social security system and it is the obligation of the public authorities to carry out a policy to provide special protection to its citizens who are physically, sensorially, and mentally handicapped, as well as provide for adequate pensions and social services for citizens in old age⁴⁰. Additionally, Section 42 of the SC provides that the State shall be especially concerned with safeguarding the economic and social rights of Spanish workers abroad; the legal framework is established in *Ley 40/2006*, the *Estatuto de la ciudadanía española en el exterior* (2006).

V. SPANISH-FILIPINOS, THE EU, AND ASEAN

UNDER THE EU. The Treaty of the Functioning of the European Union (TFEU) established EU Citizenship – “Article 20 (1). Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to and not replace national citizenship.” Since Spain is a member of the EU, Spanish-Filipinos are automatically citizens of the EU.

The TFEU enumerates the rights of EU citizens to non-discrimination, movement, to vote and stand for election, consular protection, petition, response, access, and Citizens’ Initiative⁴¹. They have various other rights such as when they travel and encounter delays, cancellations, damaged luggage, or have special mobility needs, to look for a job in the EU Civil Service and the European Commission and in another EU country, even in some positions in the public sector. And there is a European Union Agency for Fundamental Rights which was organized to support, safeguard, and ensure the minimum standards to ensure that a person is treated with dignity.

³⁸ Id., Article XII (National Economy and Patrimony) Sections 2 3, 10, and 11; Article XVI (General Provisions) Section 11(1)(2).

³⁹ SC, Part VI (Judicial Power) Section 125.

⁴⁰ Id., Part I (Fundamental Rights and Duties) Chapter 3 (Principles governing Economic and Social Policy), Sections 41, 49, and 50.

⁴¹ Articles 15[3], 18, 19, 20[2][a][b][c][d], 21[1], 22, 23, 24, 227, and 228.

Furthermore, the Charter of Fundamental Rights of the European Union strengthens the protection of the fundamental rights and universal values of human dignity, freedom, equality and solidarity, and citizens' rights in the EU.

UNDER THE ASEAN. The Philippines is a member of the Association of Southeast Asian Nations (ASEAN), thus Spanish-Filipinos have certain rights within ASEAN.

The ASEAN Charter which turned ASEAN into a legal entity and aims to create a single free-trade area for the region encompassing 500 million people, is a “new legal framework” which will “establish a number of new organs to boost its community-building process”. When the ASEAN Charter took effect in 2008, it was reported to be “a major step towards becoming an EU-style community”.

The ASEAN Charter does not have provisions on ASEAN citizens' rights similar to the TFEU, possibly because unlike the EU, ASEAN “was never an integration project but a sovereignty upholding project”⁴². Nevertheless, there have been calls to develop a sense of ASEAN citizenship through social integration⁴³ and by offering more privileges to Southeast Asian citizens⁴⁴, such as the Mutual Recognition Agreements (MRAs) entered into by the ASEAN countries for the cross-border practice of certain professions⁴⁵. As well as visa-free entry for citizens of ASEAN countries to visit other ASEAN countries⁴⁶. And while others share the view on the need to develop an ASEAN identity, they hold that the same should not be based on the EU model⁴⁷.

VI. BASQUE-FILIPINOS AND EUSKADI

WHO ARE THE BASQUES? Article 2 of the SC “recognizes and guarantees the right to self-government of the nationalities and regions” of which Spain is composed, one of which is the Basque Country or Euskadi. While the Spanish State has exclusive competence over civil legislation, this is without prejudice to the preservation, modification and development by the Self-governing Communities of their civil law, or special rights and traditional customs (*fueros*).

⁴² Michael Vatikiotis, Regional Director for the Asia Centre for Humanitarian Dialogue, cited in Gnanasagaran (2018). ASEAN and the EU: Like two peas in the same pod?

⁴³ Gnanasagaran (2018). Fostering a people-centric ASEAN.

⁴⁴ Kotarumalos (2017).

⁴⁵ Mendoza, et al., (2017).

⁴⁶ But ASEAN countries grant visa-free entry or visa-on-arrival to tourists from countries outside ASEAN, including Spain.

⁴⁷ Gnanasagaran (2018), *supra*, note 39.

The basic law of Euskadi is the *Euskal Autonomia Erkidegoko Estatutua* (Statute of Gernika, 1978), which enumerates in Article 7 those persons who have the “political status” of Basque. As Spanish nationals, Basque-Filipinos have the “political status” of a Basque if they reside within the Autonomous Community. They and their descendants enjoy the same political rights even if residing abroad, provided that their last legal residence in Spain was Euskadi and they retain their Spanish nationality. Additionally, Article 9(1) of the *Estatutua* provides that their fundamental rights and duties are those established in the SC. And under Article 9(2), one of the duties of the Basque public authorities is to “watch over and guarantee the proper exercise of the citizens’ fundamental rights and duties.”

DERECHO CIVIL VASCO. Basque-Filipinos can exercise certain rights in Euskadi if they have civil residence therein. Section 10 of the *Derecho Civil Vasco* (DCV) which governs property relations, civil societies, succession, Basque civil residence (*vecindad civil vasca*), matrimonial property regimes, and *parejas de hecho* (de-facto couples), provides *inter alia* that the civil law of Euskadi applies to those persons who have a Basque civil residence.

EFFECT OF BASQUE AND PHILIPPINE PRIVATE LAWS. Article 80 of the Philippine Family Code (PFC, 1988) allows the contracting spouses to stipulate in their ante-nuptial agreement that their property relationship shall be governed by foreign laws, so a Basque-Filipino and his/her spouse can decide that their property relationship will be governed by the DCV. Furthermore, Article 11 of the DCV acknowledges *parejas de hecho* or *de facto* couples, *Ley 2/2003* recognizes the legal rights of the persons constituting the same (who may be of the same or of opposite sexes), and *Ley 7/2015, de relaciones familiares en supuestos de separación o ruptura de los progenitores* which applies within Euskadi, regulates relations arising from nullity, separation, and divorce, and the extinction of *parejas de hecho*, modifications of measures agreed on, custody and guardianship of minors, and support.

But with respect to succession, the Spanish-Filipino should take note of Article 15 of the PCC, which provides in part that “intestate and testamentary successions, both with respect to the order of succession and to the amount of successional rights and to the intrinsic validity of testamentary provisions, shall be regulated by the national law of the person whose succession is under consideration”⁴⁸, regardless of one’s residence. Additionally, the PFC governs legal and *de facto* separation⁴⁹, annulment⁵⁰ and nullity of marriages⁵¹,

⁴⁸ Articles 744-1105 of the PCC are the Philippine laws on succession.

⁴⁹ PFC, Arts. 55-67, 127, 239.

⁵⁰ *Id.*, Art. 45.

⁵¹ *Id.*, Arts. 35, 36, 37, 38, 41, 42, 50.

support⁵², parental authority and child custody⁵³, and regulates the property rights of the parties (who must be of opposite sexes) in common-law relationships upon the termination of the relationship, but not during its subsistence⁵⁴.

VII. MULTIPLE NATIONALITY, MULTIPLE NATIONAL LAWS

MASTER NATIONALITY RULE. Article 15 of the PCC and Article 9(1) of the SCC both provide that one's personal law depends on one's nationality. The latter further states in Article 9(9) that "Spanish nationality shall prevail for persons who also hold another nationality that is not provided for in Spanish statutes or international treaties". Consequently, a Spanish-Filipino has two national laws. If s/he wishes to exercise certain rights or perform certain acts, or is liable for certain obligations, which national law prevails?

If the dispute is in a third state, then Article 5 of the Hague Convention applies⁵⁵.

If the matter involves taxation, the Convention between the Republic of the Philippines and Spain for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income (1994) states that income from immovable property "may be taxed in the Contracting State in which such property is situated" (Article 6[1]), and that business profits or "the profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein" (Article 7[1]).

But if another controversy is pending in Spain or the Philippines, Article 4 of the Hague Convention states that "A State may not afford diplomatic protection to one of its nationals against a state whose nationality such person also possesses." Along these lines is the Master Nationality Rule which is described as follows:

... the practical effect of this Article is that where a person is a national of, for example, two States (A and B), and is in the territory of State A, then State B has no right to claim that person as its national or to intervene on that person's behalf. Such a person who goes into the territory of a third

⁵² *Id.*, Arts. 49, 62, 68, 70, 94, 121, 174, 176, 194-208.

⁵³ *Id.*, Arts. 49, 50, 63(3), 209-227.

⁵⁴ *Id.*, Arts. 147 and 148.

⁵⁵ Within a third State, a person having more than one nationality shall be treated as if he had only one. Without prejudice to the application of its law in matters of personal status and of any conventions in force, a third State shall, of the nationalities which any such person possesses, recognise exclusively in its territory either the nationality of the country in which he is habitually and principally resident, or the nationality of the country with which in the circumstances he appears to be in fact most closely connected.

state may be treated as a national of either A or B - it does not normally matter which one, except, for example, where the courts of the third state have to adjudicate upon matters relating to that person's status and the relevant laws depend on the person's nationality. In such cases, it is necessary to choose an effective nationality (i.e. one of the two nationalities is selected as effective for the purposes of the third state).⁵⁶

CONFLICTING LAWS? While strongly influenced by the SCC, the provisions of the PCC are not similar thereto. For example, the legal age in Spain is 18⁵⁷ but an emancipated minor may get married⁵⁸. While Philippine law also used to allow emancipated minors to marry, 18 is now both the age of majority as well as the minimum age for marriage⁵⁹. And unlike the Philippines, same-sex marriages are legal in Spain, which also recognizes the rights of *parejas de hecho* not only after, but even during the subsistence of their relationship.

Furthermore, Article 9 in relation to Article 107 of the SCC provides that while separation and divorce may be governed by the common national law of the spouses, it also states that Spanish law applies if the foreign law "should not acknowledge separation or divorce, or should do it in a manner which is discriminatory or contrary to public policy."⁶⁰

⁵⁶ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/632318/dualnationality.pdf, accessed March 5, 2019.

⁵⁷ SC, Article 12; SCC, Article 315.

⁵⁸ SCC, Articles 46(1); 314(2); 324; 319.

⁵⁹ RA 6809 (1989). An Act Lowering The Age Of Majority From Twenty-One To Eighteen Years, Amending For The Purpose Executive Order Numbered Two Hundred Nine, And For Other Purposes.; Family Code, Article 5.

⁶⁰ Note however the following information on the website of the Spanish Ministry of Justice <https://www.mjusticia.gob.es/cs/Satellite/Portal/en/areas-tematicas/nacionalidad/nacionalidad/tener-doble-nacionalidad>, accessed July 11, 2019:

¿Qué implicaciones tiene la doble nacionalidad?

La concurrencia de dos nacionalidades en una misma persona tiene como consecuencia la existencia de un doble vínculo jurídico. La persona con doble nacionalidad es, a un tiempo, nacional de dos países, gozando de la plena condición jurídica de nacionales de ambos Estados.

Sin embargo, esto no quiere decir que estas personas puedan estar sometidas simultáneamente a las legislaciones de ambos países sino que, por el contrario, se articulan medios para "dar preferencia a una de las nacionalidades" a la persona con doble nacionalidad para, de esta manera, tener un punto de referencia en lo relativo a las relaciones ciudadano-estado.

Para ello, la mayor parte de los convenios de doble nacionalidad toma el domicilio como punto de referencia, de tal manera que los ciudadanos con doble nacionalidad no estarán sometidos de forma constante a ambas legislaciones, sino sólo a la del país en el que tengan fijado su domicilio. Esto será aplicable para cuestiones tales como el otorgamiento de pasaporte, la protección diplomática, el

In contrast, Philippine law does not allow divorce, except when both parties are Muslims and they married under the Muslim Code of Personal Laws (1977)⁶¹, or in the case of mixed marriages under the second paragraph of Article 26 of the PFC:

Where a marriage between a Filipino citizen and a foreigner is validly celebrated and a divorce is thereafter validly obtained abroad by the alien spouse capacitating him or her to remarry, the Filipino spouse shall have capacity to remarry under Philippine law.

The differing provisions of Spanish and Philippine private laws may result in legal complications. With respect to natural-born Filipinos who become naturalized Spaniards and thereafter reacquire or retain their Philippine citizenship under Republic Act 9225, the law “made natural-born Filipinos’ status permanent and immutable”⁶². However divorce decrees validly obtained abroad by former natural-born Filipinos before RA 9225 took effect should still be recognized in the Philippines⁶³. But what about those who are natural-born Filipinos under Philippine law and Spaniards *de origen* under Spanish law?

REPUBLIC v. MANALO. “Republic Act 9225 Spanish-Filipinos” as well as those who are natural-born Filipinos under Philippine law, and Spaniards *de origen* under Spanish law whose spouses are not Filipino citizens, may find interesting the Philippine Supreme Court’s decision in Republic v. Manalo (2018). The Court clarified that the second paragraph of Article 26 of the

ejercicio de los derechos civiles y políticos, los derechos de trabajo y de seguridad social y las obligaciones militares.”

(What are the implications of dual citizenship?)

The concurrence of two nationalities in the same person has as a consequence the existence of a double legal bond. The person with dual nationality is, at the same time, a national of two countries, enjoying the full legal status of nationals of both States.

However, this does not mean that these people can be simultaneously subject to the laws of both countries but, on the contrary, means as articulated to “give preference to one of the nationalities” to the person with dual citizenship, of this way, have a point of reference in relation to citizen-state relations.

For this, most of the agreements of dual nationality take the domicile as a point of reference, in such a way that citizens with dual citizenship will not be subject to both legislations constantly, but only to the country in which they have fixed their domicile. This will apply to issues such as the granting of a passport, diplomatic protection, the exercise of civil and political rights, labor and social security rights and military obligations.)

⁶¹ Juliano-Llave v. Republic of the Philippines (2011).

⁶² David v. Senate Electoral Tribunal, note 26.

⁶³ See *Republic v. Orbecido* (2005) and *Bayot v. Court of Appeals* (2008).

PFC gives Filipinos the capacity to remarry under Philippine law even if it was they who initiated the filing of a petition for divorce abroad:

Assuming, for the sake of argument, that the word “*obtained*” should be interpreted to mean that the divorce proceeding must be actually initiated by the alien spouse, still, the Court will not follow the letter of the statute when to do so would depart from the true intent of the legislature or would otherwise yield conclusions inconsistent with the general purpose of the act.

X-X-X

.... A Filipino who initiated a foreign divorce proceeding is in the same place and in like circumstance as a Filipino who is at the receiving end of an alien initiated proceeding. Therefore, the subject provision should not make a distinction...

Conveniently invoking the nationality principle is erroneous. Such principle, found under Article 15 of the Civil Code, is not an absolute and unbending rule. In fact, the mere existence of Paragraph 2 of Article 26 is a testament that the State may provide for an exception thereto. Moreover, blind adherence to the nationality principle must be disallowed if it would cause unjust discrimination and oppression to certain classes of individuals whose rights are equally protected by law. The courts have the duty to enforce the laws of divorce as written by the Legislature only if they are constitutional.⁶⁴

It will not be unusual for Basque/Spanish-Filipinos to find inconsistencies between their multiple national laws, particularly on the relatively restrictive provisions of Philippine private law in contrast with Basque and Spanish laws. It is submitted that they may invoke *Republic v. Manalo* and argue that the application of Philippine private law should not cause “unjust discrimination and oppression”.

VIII. A NUANCED APPROACH

The Spanish-Filipino inhabits many planes, all of which influence his/her identity: ethnic, cultural, social, linguistic, and legal are just some. More so the Spanish-Filipino who has Basque roots.

It is said that the distance between Euskadi and the Philippines and the limited number of Basque settlers in the country hinder Basque-Filipinos from developing their ethnic consciousness⁶⁵. But the same can be said of the descendants of the Catalans, Andalusians, and other Iberians who settled in the Philippines⁶⁶.

⁶⁴ The PSC also noted in *Republic v. Manalo* that while there is presently no divorce law in the Philippines, such a law would not be new.

⁶⁵ De Borja (2012, 138-139).

⁶⁶ Collins (1990 – 271-272) notes that Basques who immigrated to South and Central America also lost their “Basque-ness” because they “were living in a wider Hispanic en-

Where should Basque/Spanish-Filipinos situate themselves within these two (or even three) environments, especially when some of their rights and responsibilities in one are inconsistent with those in the other? They are members of more than one community. Can they choose one (or two) over the other/s? Must they?

Basque/Spanish-Filipinos are obliged to not just to situate themselves, but also to find their identity within their peculiar situations. Since the Civil Codes of both Spain (Article 6[1]) and the Philippines (Article 3) uniformly provide that ignorance of the law does not excuse noncompliance, they cannot be blissfully unaware of or willfully blind about the laws and regulations of their countries, especially their differing personal laws.

And while Euskadi or the Basque Country is not a state in fact, it is a state of mind and a state of the heart. It is more than just an imagined community.

Therefore, Basque/Spanish-Filipinos must be mindful of their particular legal, national, social, and cultural circumstances. They must make full use thereof to introduce positive changes in their communities, their countries, and on the world. Like the Basque explorers of old, who have left an indelible mark on world civilization and society.

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environment in which the regional particularisms of the Iberian peninsula ceased to be significant,” but remarked that the Basques who settled in English-speaking North America from the early 19th century onwards appear to have retained a much greater sense of their distinctive cultural traditions, in part because they were often able to continue in their new land the distinctive economic practices of the old.

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FAMILIAR AND FAMILIAL: BASQUE/SPANISH-
FILIPINOS VIS-À-VIS ASEAN, EU, AND EUSKADI

*Familiar y de Familia: Vasco/Español-Filipinos vis-à-vis
ASEAN, la Unión Europea, y Euskadi*

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