Robust debates recently sparked following the renewal initiatives of the congressional franchise of a mass media giant that is ABS-CBN. Some propose a rather simplified solution to the controversy by invoking past legislative acts where the lower House granted or renewed franchise to alleged similarly-situated broadcasting networks, without question. Others, however, dare challenge what is often disguised as a harmless given.

This terrain of impassioned exchanges breeds further questions, and prods discourse. The novelty of the issues involved affects and, naturally, resists nonchalance. Emphasis must be placed that the issues are Constitutional and legal, rather than personal. The approach remains in the context of what are interpreted as Constitutionally and legally permissible. If the Constitution’s normative contents were correctly treated as setting forth evaluative standards – of what things ought to be – then it is disservice, if not cowardice or treachery even, to remain silent and unheard.

Let us therefore disabuse ourselves from thinking that the issues confronting ABS-CBN denigrate or disparage dual citizens. Topics on the contributions of dual citizens, their stature and standing in the international community, are irrelevant because these are already acknowledged and undisputed, and, thus, would have no bearing to the fact in issue which is compliance with the Constitutional and legal requirements. It is entirely acceptable that there are countless dual citizens who are patriotic, talented, and productive, but the issue is not the acceptance of dual citizens as good individuals in the community. Non-compliance and disobedience to the letter and the spirit of the Constitution cannot be cloaked by enterprise and stature. The main issue is whether or not a dual citizen is allowed to manage and own industries in the Philippines expressly reserved by the Constitution to be 100% Filipino-controlled. As such, any reference to the contributions of dual citizens for the purpose of legitimizing an otherwise unconstitutional act is pure red herring.

Inasmuch as the ABS-CBN’s quandary is regarded as Constitutionally repercussive, it is fitting to begin with the fundamental tenets of Constitutional construction: *verba legis, ratio legis est anima*, and *ut magis valeat quam pereat*. The words of the Constitution are understood in the sense they have in common use.

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Simply, the framers and the people say what they mean. What the text says therefore compels acceptance and rejects alteration or modification. The text of the Constitution is not to be read in isolation or in truncated parts, but are to be interpreted as portions of a cohesive whole. All provisions bearing upon a particular subject are to be brought into view and to be so interpreted as to effectuate its purpose.2

These fundamentals carry significance because the ABS-CBN’s quest for the renewal of its franchise cannot be divorced from compliance with non-derogable requirements, foremost of which is the limiting provision that ownership and management of mass media must belong to citizens of the Philippines. Compliance with the citizenship requirement admits empirical data and is, thus, demonstrable. All that is required is for ABS-CBN to demonstrate that it is, indeed, 100% Filipino-owned and managed.

This issue may be addressed on two thrusts: one, is ABS-CBN wholly-owned and managed by Filipinos, and, two, does ABS-CBN permit foreign participation in its enterprise such that it dilutes the required 100% Filipino control.

**The aberration of dual citizenship**

The basic facts, insofar as admitted and uncontroverted, are that Eugenio (Gabby) Lopez III was born in the United States (US) to Filipino parents; that he participated in US elections and Philippine elections; and that he carries both US and Philippine passports and uses the former when travelling to Europe and the latter for travel to Asia. He received education from the US, but later on managed a broadcasting network in Philippine soil. He paid taxes to both countries.

Because two countries afford him rights and protection as well as exacted from him correlative obligations by virtue and as a consequence of citizenship “by birth,” Gabby Lopez III is someone understood, in a global platform, to be a “dual citizen” or a “transnational,” having identified as a Filipino and an American, at the same time.

The proposition is that Gabby Lopez III, notwithstanding his dual citizenship, is entitled to the full rights and obligations as Filipino citizens. The claim is that a dual citizen is 100% Filipino. This is, literally, a half-truth for it conveniently cancels the fact that, as a dual citizen, he is likewise 100% American.

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2 *Civil Liberties Union v. The Executive Secretary*, 272 Phil. 147, 162 (1991).
The argument is that the Constitution recognizes dual citizenship and, consequently, dual citizens ought to be given the same rights and privileges as Filipino citizens. This is inaccurate.

The Constitution never expressly mentioned dual citizenship. In fact, the Constitution does not even define citizenship (nor, parenthetically, does it make reference to nationality). Instead, the Constitution textually defines who are “citizens of the Philippines,” and, by inference, who are not:

**ARTICLE IV
CITIZENSHIP**

Section 1. The following are citizens of the Philippines:

[1] Those who are citizens of the Philippines at the time of the adoption of this Constitution;

[2] Those whose fathers or mothers are citizens of the Philippines;

[3] Those born before January 17, 1973, of Filipino mothers, who elect Philippine citizenship upon reaching the age of majority; and

[4] Those who are naturalized in accordance with law.

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.

Section 3. Philippine citizenship may be lost or reacquired in the manner provided by law.

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.

Section 5. Dual allegiance of citizens is inimical to the national interest and shall be dealt with by law.

Attention is drawn to Section 1(2) and Section 4 as apparently recognizing dual citizens. This is not Constitutional recognition. The Constitution can only define who its citizens are but it cannot define who are citizens of other countries for the obvious reason that we have absolutely no control over citizenship laws of foreign jurisdiction. At best, Section 1(2) embodies Constitutional tolerance of the possibility that dual or
even polygamous citizenship may arise ipso facto as a consequence of the operation of citizenship laws of different countries. Thus, dual citizenship – citizenship conferred by two countries similarly by birth right – was not proscribed by the Constitution. However, neither tolerance nor lack of proscription, is synonymous with recognition.

Dual citizenship is an anomaly for it is a departure from the classical definition of citizenship which is the vinculum juris between an individual and the State characterized by exclusive and perpetual allegiance. The 1913 US case of Luria v. United States, defines citizenship as a “membership in a political society,” and one that is burdened by the implication of “reciprocal obligations” of a member’s allegiance, on one hand, and societal protection, on the other. George Bancroft observed in 1849 that nationals should “as soon tolerate a man with two wives as a man with two countries; as soon bear with polygamy as that state of double allegiance.” Theodore Roosevelt in 1915 called the theory of dual nationality as a “self-evident absurdity.”

Certainly, there is an erupting movement in the international arena towards the acceptance of the status of dual citizenship and its recognition as a private interest over which the State has no business interfering with. Whether or not dual citizenship should be regarded as an interest or a right in terms of association and identification is another matter. For now, we limit ourselves as to how the Philippine Constitution treats dual citizenship.

Article IV, Section 1(2) and Section 4, as quoted, show the Framers’ cognizance of dual citizenship as a fact, that it may be the result of a legal accident be it due to one's marriage to an alien or the application of the jus soli principle. Nevertheless, the Constitution is silent as to the status of dual citizens as members of the body politic, the repercussions of being so, and its correlative implications.

It is logical to presume that one's status as a citizen of two countries would necessarily endow him or her of rights and privileges equally afforded to citizens of both countries. Such countries, in return, would expect loyalty and allegiance. After all, the protection afforded by a State to its citizen is a result of a delegated sovereignty by the people.

Is it then possible that a dual citizen, while possessing all the advantages offered by his/her countries, be patriotic and allegiant to only one? If a citizen of both US and the Philippines commits a crime in the latter country, flees and takes refuge in the US,

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3 231 US 9 (1913).
can he be extradited to the Philippines because he is a Filipino citizen? Will this not deprive the US of its right to prosecute her citizen? Can the US refuse the request for extradition on such basis? In other words, can dual allegiance be detached from a dual citizen? Will not dual citizenship entail divided loyalties?

**Dual citizenship and dual allegiance**

During the deliberations of the 1986 Constitutional Commission, Bishop Teodoro Bacani confirmed that citizenship cannot be separated from allegiance:

BISHOP BACANI. Mr. Presiding Officer, does citizenship always include allegiance?

MR. OPLE. Yes.

BISHOP BACANI. Therefore, if we have dual citizenship, we have dual allegiance.

In response, Commissioner Blas Ople distinguished two levels of allegiance:

MR. OPLE. Allegiance at the formal level. There is another allegiance at an inner and deeper level — **formality versus the authentic sentiment of the citizen.**

I said that dual citizenship is a formality; I am not disturbed by it. It is often a function of an accident, say, a mixed marriage, or birth in a foreign soil. There is nothing insidious in it; there is nothing in it that threatens national security or sovereignty.

BISHOP BACANI. Yes, but if every citizenship includes allegiance, if we deny dual allegiance, we also deny dual citizenship. Is this not yet foreclosed by the interpretation of Section 2?*4

MR. VILLACORTA. In the 1973 Constitution, there is an Article on Duties and Obligations of Citizens. Is that within the purview of the Committee as well?

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MR. OPLE. Actually, I think the future legislature that will deal with this problem of dual allegiance will address many specific borderline cases, and all I am saying is there is no necessary correlation between dual allegiance and dual citizenship.

In dual allegiance, there can be malice, or an insidious threat to our sovereignty and security. But in dual citizenship, especially for those Filipinos born in American soil and have become American citizens as a consequence thereof, I will not read any embarrassment of a dual allegiance in that situation. I think dual allegiance, as interpreted in this amendment, refers to more insidious acts than merely the accident — whether welcome or unwelcome — of a dual citizenship occurring out of mixed marriages or birth in a foreign soil. (emphasis supplied)

Paraphrasing Commissioner Ople, there could be a benign allegiance or allegiance at the “formal level” and an insidious allegiance at the “level of being a threat to society”. While the former deals with allegiance as a correlative and inescapable result of the application of different laws of each country, the latter supposedly evinces a much deeper level of allegiance, which is the conscious and voluntary submission of one’s loyalty to a country. In other words, benign allegiance flows from the fact of birth while the insidious allegiance is the consequence of a positive act.

The distinction between the two levels of allegiance was carried throughout the deliberations but rather took a different nomenclature: the allegiance resulting from the operation of citizenship laws of two or more sovereigns was regarded as “dual citizenship” while the allegiance resulting from a positive act was known as “dual allegiance.”

Going further, Section 5 was introduced which categorically proscribes “dual allegiance.” The proscription against dual allegiance under Section 5 must be read in the context of the proliferation of Chinese and Taiwanese in the Philippines who, at that time, became naturalized Filipinos but nonetheless remained allegiance to China and Taiwan:

MR. OPLE. xxxx.

What we would like the Committee to consider is to take constitutional cognizance of the problem of dual allegiance. For example, we all know what happens in the triennial elections of the Federation of Filipino-Chinese Chambers of Commerce which consists of about 600 chapters all over the

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5 Id.
country. There is a Peking ticket, as well as a Taipei ticket. Not widely known is the fact that the Filipino-Chinese community is represented in the Legislative Yuan of the Republic of China in Taiwan. And until recently, the sponsor might recall, in Mainland China in the People’s Republic of China, they have the Associated Legislative Council for overseas Chinese wherein all of Southeast Asia including some European and Latin countries were represented, which they dissolved after several years because of diplomatic frictions. At that time, the Filipino-Chinese were also represented in that Overseas Council.

When I speak of double allegiance, therefore, I speak of this unsettled kind of allegiance of Filipinos, of citizens who are already Filipinos but who, by their acts, may be said to be bound by a second allegiance, either to Peking or Taiwan. I also took close note of the concern expressed by some Commissioners yesterday, including Commissioner Villacorta, who were concerned about the lack of guarantees of thorough assimilation, and especially Commissioner Concepcion who has always been worried about minority claims on our natural resources.

Dual allegiance can actually siphon scarce national capital to Taiwan, Singapore, China or Malaysia, and this is already happening. Some of the great commercial places in downtown Taipei are Filipino-owned, owned by Filipino-Chinese — it is of common knowledge in Manila. It can mean a tragic capital outflow when we have to endure a capital famine which also means economic stagnation, worsening unemployment and social unrest.

And so, this is exactly what we ask — that the Committee kindly consider incorporating a new section, probably Section 5, in the Article on Citizenship which will read as follows: **DUAL ALLEGIANCE IS INIMICAL TO CITIZENSHIP** AND SHALL BE DEALT WITH ACCORDING TO LAW.

While the perspective used was partial (such that the Chinese/Taiwanese are capable of dual allegiance, but not Filipinos who may later on become Americans but remain allegiant to the Philippines), the link between allegiance and citizenship is clear: Filipinos or those who have become Filipinos, owe allegiance only to the Philippines which citizenship they enjoy and not to any other. Such linkage was recognized by the Framers in the original version of Section 5:

**MR. OPLE.** This is linked to citizenship in the original version before I accepted the Sarmiento amendment. Actually, it reads: **“DUAL ALLEGIANCE IS OBNOXIOUS TO CITIZENSHIP,”** until it was
replaced by “NATIONAL INTEREST.” We speak of a problem that in order to understand its importance, we really should locate it in the area of citizenship, because we generally speak of newly naturalized Filipinos who continue to manifest dual allegiance. Although we cannot be too detailed in a constitutional provision, that is in the immediate as well as in the distant background of this proposed amendment, Mr. Presiding Officer. So it is linked to citizenship.

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MR. MONSOD. I assume that when we say “dual allegiance is obnoxious to citizenship,” any act that promotes, cultivates or manifests dual allegiance is obnoxious.

MR. OPLE. Yes, obnoxious, pernicious, repugnant, inimical, offensive.

MR. MONSOD. Will the presence of such a provision in our Constitution be an inhibiting provision, or will it prohibit us from trying to attract our balikbayan back who have acquired American citizenship to reinvest and reestablish their linkages with their former country?

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There was actually a proposal to include a provision concerning dual citizenship of a Filipino citizen, who by reason of marriage to an alien, acquires the latter's citizenship thereby becoming a dual citizen. In inserting this provision, a dual citizen by reason of marriage must decide which citizenship to retain:

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MR. GUINGONA. Thank you.

The second amendment refers to the matter of dual citizenship and this is found in Section 2, starting with line 3, page 2. My proposed amendment would be: “Citizens of the Philippines who marry aliens BY REASON OF WHICH THEY ACQUIRED THE CITIZENSHIP OF THE SPOUSE shall retain their citizenship, PROVIDED THAT AT ANY TIME WITHIN ONE YEAR FROM THE CELEBRATION OF THEIR MARRIAGE, THEY RENOUNCE THE CITIZENSHIP OF THEIR SPOUSES, OTHERWISE, THEY WOULD LOSE THEIR PHILIPPINE CITIZENSHIP.”

This proposal was a verbatim copy of the proposal submitted by the University of the Philippines Law Revision Project of 1970 which suggested the possession of only one citizenship for the following reasons:

1. Citizens of the Philippines, including those of dual citizenship, would be entitled to all rights and privileges of a citizen, including the right to be elected to the highest positions in the government.

2. Filipinos of dual citizenship would be subject to the jurisdiction of other states of which he or she is also a citizen and to which he or she would owe allegiance and would have the duty to serve and the duty to pay taxes . . .

3. It would be advisable for us to provide in the Constitution even indirectly that we uphold the theory of only one citizenship as proposed by the late Dr. Salvador Araneta, a 1971 Constitutional Convention delegate. Filipinos of dual citizenship could at best be suspected of divided loyalty as far as the countries of which they are citizens are concerned. At times even these countries may, in the future, come into conflict with one another.

Finally, the renunciation of one’s citizenship under a foreign country, although the same may have no effect therein, would serve as an evident declaration of loyalty to our country.

While acknowledging the proposal, Father Joaquin Bernas submitted this matter to the will of the legislature:

FR. BERNAS. The matter of dual citizenship has relevance not just to Section 2 but also to paragraph 2 of Section 1 because the latter can also give rise to dual citizenship. But it is the position of the sponsor that the matter of dual citizenship be handled by ordinary legislation. It is perfectly within the competence of the legislative body to pass a law saying that those possessing dual citizenship must make a choice within a certain period.

And, further, as follows:

MR. ROMULO. May I ask a few questions. I want to determine whether or not a child, whose circumstances I will describe later, may have a dual citizenship even upon reaching the age of majority. A child is born in the United States of both Filipino parents, therefore, as I understand American laws, he is a natural-born American.

FR. BERNAS. Yes.

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MR. ROMULO. And as I understand these provisions, he is also a natural-born Filipino.

FR. BERNAS. Yes.

MR. ROMULO. He did not elect citizenship, neither under American law nor under Philippine law. Am I then correct in saying that he has dual citizenship for the rest of his life?

FR. BERNAS. I am not sure, if there is now a law in the Philippines requiring him to choose. I am not sure; but certainly he is born with dual citizenship.

MR. ROMULO. Yes.

FR. BERNAS. How long he is allowed to keep that, I am not sure.

MR. ROMULO. That is my question, and should that not be settled by the Constitution?

FR. BERNAS. We will entertain the wisdom of others on that.

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MR. OPLE. Therefore, I would like to revert to the point earlier raised by Commissioner Romulo on whether or not it might be time for his Committee to consider a more categorical policy on double citizenship, not only for the sake of national security but also for a greater clarity about our policy, it having been admitted earlier that it is actually possible for a Filipino-Chinese to be born and be reared under a double citizenship, if he is born in the United States of Filipino parents, and, therefore, his political status can be very ambivalent until he reaches a point where he is forced to make a choice between two citizenships. Does Commissioner Bernas’ Committee contemplate the possibility of addressing this concern now about double citizenship?

FR. BERNAS. The Committee in its discussion did not consider that, partly because the Committee thought that this is a matter better left to ordinary legislation because we already have in Section 3 a provision which says: “Philippine citizenship may be lost or re-acquired in the manner provided by law.”

So, the option we have really is, do we treat the matter of double citizenship - dual citizenship - in the Constitution or do we relegate that to ordinary legislation? It is something which we can discuss.8

MR. GUINGONA. As pointed out by Commissioner Rodrigo, a citizen of the Philippines who marries an alien and who, therefore, retains his or her citizenship, may acquire the citizenship of the alien’s spouse, if, according to the laws of the country of that spouse he or she acquires such citizenship. I am not aware of the consensus in the Gentleman’s Committee about the matter of dual citizenship.

FR. BERNAS. The feeling of the Committee, if I may attempt to reflect it, is that the question of dual citizenship can be dealt with in ordinary legislation.

MR. GUINGONA. I see. I felt that perhaps even in the Constitution itself, there could be some attempts to discourage dual citizenship. My question is: Has the Committee considered the possibility of requiring this Filipino citizen who has now a dual citizenship on account of marriage to renounce the citizenship of the spouse within a specified period?

FR. BERNAS. We did not because we feel that is better left to ordinary legislation. (emphasis supplied)

While the proposal of Commissioner Guingona did not find its way to the final version of the fundamental law, it nevertheless shows the preference to protect State sovereignty by exclusivity which the Framers deemed best for the legislature to address.

Consistently, there was a suggestion that a child of a Filipino parent and alien parent be left to decide on his/her citizenship, effectively choosing between the two and submitting his/her allegiance to just one:

FR. BERNAS. 

The purpose of the committee report is to elevate the Filipino mother to a level of equality with the Filipino father. First, we do not wish to punish the Filipino mother and her child simply because she married an alien, in the same way that we do not punish the Filipino father and his child when he marries an alien. Second, the child has two options. In many cases, he will have dual citizenship — he may either choose the citizenship of his mother or the citizenship of the father. He should be allowed to choose. The choice

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must not be imposed on him. True, this can give rise to dual citizenship but the naturalization law can provide that the child with dual citizenship must make a choice within a certain period of time." (emphasis supplied)

Based on the journals of the Constitutional Commission, the Framers wanted Congress to legislate on the status of dual citizens and at the same time put an end to dual allegiance, which they considered obnoxious to the national interest. The Framers were ambivalent in giving dual citizens express Constitutional recognition. Even Father Bernas admitted that a Filipino by blood cannot be allowed to remain as a dual citizen in perpetuity.

Dovetailing, the Supreme Court in *Mercado v. Manzano*, did not allow the perpetuation of dual citizenship as it actually mandated the renunciation of the foreign citizenship.

*Mercado*, in fact, recognized the perils of maintaining dual citizenship in seeking any elective post in the Philippines. The Supreme Court’s instruction reads: “Unlike those with dual allegiance, who must, therefore, be subject to strict process with respect to the termination of their status, for candidates with dual citizenship, it should suffice if, upon the filing of their certificates of candidacy, they elect Philippine citizenship to terminate their status as persons with dual citizenship considering that their condition is the unavoidable consequence of conflicting laws of different states.”

Clearly, for purposes of seeking any elective post, the Court finds the possession of a person of dual citizenship unacceptable. The Supreme Court in *Mercado* further explained that: “By electing Philippine citizenship, such candidates at the same time forswear allegiance to the other country of which they are also citizens and thereby terminate their status as dual citizens.”

Whether the allegiance is considered benign (or what was inaccurately termed as “dual citizenship”) or insidious (dual allegiance), it will be difficult to separate citizenship from allegiance, as these terms are ordinarily understood. Allegiance is necessarily interpreted within the context of citizenship. Allegiance, whether benign or insidious, should be interpreted as a matter of action (rather than mere intent) because without which allegiance will be reduced to an empty promise. Hence, it is entirely possible that a dual citizen presumed to possess only a benign or passive allegiance is, in actuality, allegiance to one but not to the other, or is actually bound by

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a second allegiance. When the actual allegiance either falls to the foreign state or is in addition to Philippine allegiance, such dual allegiance offends insofar as the Philippines is concerned.

**R.A. No. 9225**

As earlier noted, there is this growing trend towards the acceptance of dual citizenship. Adjunct with this initiative is the inclination of several countries like Mexico, the Dominican Republic, Italy, India, and Thailand to retain the birth citizenship notwithstanding naturalization elsewhere. In 2003, the Philippines joined this roster of nations with the passage of Republic Act (R.A.) No. 9225 or the Citizenship Retention and Re-acquisition Act of 2003. Reference to R.A. No. 9225 must be made considering its effect on the Constitutional proscription against dual allegiance and ambivalence towards dual citizenship, as well as on the Supreme Court’s pronouncement in *Mercado* that dual citizenship cannot be held *in perpetuum*.

Under the old law (Commonwealth Act 63), a natural-born citizen who became a naturalized citizen of a foreign country loses his Philippine citizenship. Now, under R.A. No. 9225, natural-born Filipinos who were naturalized in other countries could reacquire or retain their Philippine citizenship after undergoing the procedure provided for under the law.

It is interesting to note that while the original bills filed in the lower House referred to “dual citizenship,” the approved version now reflects the phrase “retention of Philippine citizenship by natural-born Filipino citizens who acquire foreign citizenship” – which essentially means the same thing. The law was astutely silent on the effect of its operation on the already acquired foreign citizenship. Assuming that the foreign citizenship is not thereby lost and applying the doctrine of processual presumption, then R.A. No. 9225 effectively created a dual citizen capable of dual allegiance.

The Supreme Court in 2007 was quick to notice that the law shifted to the concerned foreign country the burden of determining whether or not there is dual allegiance. This was a stance impelled either by lack of jurisdiction and incompetency to address foreign state’s citizenship laws or a product of a one-sided Philippine

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This ambivalence towards the operation of citizenship laws of other countries was justified by the need to “give back” to Filipinos the citizenship they lost through naturalization (which, under the Constitutional deliberations and the Mercado case, is a positive act from which dual allegiance flows). According to the proponents of the law, Filipinos were merely compelled by economic circumstances, short of saying financial strategy, to adopt foreign citizenship. Resistance to this line of reasoning is understandable, if not warranted. It reduces Filipinos as “liars” who would readily take an oath of allegiance to a foreign country for convenience, even if they really did not mean to be bound thereby.

A clear take-away, however, is that with the passage of R.A. No. 9225, the distinction laid down in Mercado that dual citizenship is involuntary while dual allegiance is the result of an individual's volition was rendered nugatory. Under R.A. No. 9225, Philippine citizenship is re-acquired or retained, as the case may be, by the positive act of taking the Philippine oath of allegiance before a duly authorized Philippine official.

The Supreme Court nevertheless upheld the law, noting the congressional deliberations that stressed that “by swearing to the supreme authority of the Republic, the person implicitly renounces his foreign citizenship.” Curiously, the oath, while exacting support to the Philippine’s Constitution, laws, and legal orders, and recognition of the Philippines’ supreme authority, does not require one to expressly and absolutely renounce his allegiance to any other country.

Because the crafters of R.A. No. 9225 realized that dual citizenship and, consequently, dual allegiance may result from the operation of the law, they installed safeguards by requiring the renunciation of foreign citizenship of those who seek political careers and by withholding from those who are candidates or public officials or enlisted servicemen the right to vote and be elected or appointed to a government post in the Philippines. These, without doubt, are clear elements of allegiance.

Citing AASJS v. Datumanong, the Supreme Court categorically stated in 2015 that R.A. No. 9225 “allows dual citizenship.” This “dual citizenship” could not have been the benign allegiance referred to under the Constitution precisely because the dual citizenship occasioned by R.A. No. 9225 was not accidental but a product of will

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13 Id.,
and volition – making the resulting allegiance of the insidious kind. R.A. No. 9225 is a complete departure from the intent of the constitutional framers, and contradicts the dictum laid down by the Supreme Court in *Mercado*. It is therefore not wrong to entertain doubts on the constitutionality of R.A. No. 9225.

**The perils of dual citizenship and dual allegiance**

Because dual citizenship is not formally recognized under the Constitution and R.A. No. 9225 denies reference to dual citizenship, it is difficult to propose dual citizenship as a right which must be entitled to absolute recognition. At best, dual citizenship is a private interest which brings advantages to its holder – ease of travel, increased voting power, double opportunities for social benefits, higher chances of employment – to name a few. In addition, dual citizens are proposed to be likewise equally entitled to all benefits including those especially reserved only to Filipinos. This very real possibility of dual benefits, increased opportunities, privilege, and advantage violate the core value underlying citizenship which is equality before the law.

If we are willing to cede easily and effortlessly our national sovereignty, economy, and patrimony to dual citizens, like Gabby Lopez III, we are likely to open a Pandora’s box. If we recklessly do so, we are obliged to grant equal or similar rights to other permutations of dual citizens. Granting parity or equal rights to dual citizens solely based on the goodness of their heart, their good reputation, and the expected contribution to our national coffers will endear us to the international community but will disenfranchise and disillusion countless Filipinos born and raised in the Philippines from availing and benefitting from the fruits of the motherland.

On the other end of the spectrum, dual citizenship and dual allegiance result to diluted civic ties. A dual citizen follows different traditions and immerse in different cultures. The possibility of conflict of interests and attachments is apparent. To brush aside the notion that citizenship would always necessarily and indispensably include allegiance on technicality and perceived vast polarity between them is to permit an “accidental” submission of allegiance by our own citizen to another country, offending the basic tenets of our Constitution.
Ownership requirement of nationalized industries

This discourse on dual citizenship and dual allegiance is relevant in the plight of ABS-CBN because of the Constitutional policy to limit the ownership and management of mass media to “citizens of the Philippines.” Going back to the basic postulate that the Constitution is to be interpreted as a whole, this Constitutional provision is to be interpreted not only in the light of who are defined as citizens of the Philippines but also in relation to the Constitutional policy of ensuring that the national economy is effectively controlled by Filipinos.\(^{15}\)

To place the national economy in the effective control of Filipinos, the Constitution further mandates the regulation of foreign investments\(^ {16}\) and imposes upon the State the duty to “conserve and develop our patrimony”\(^ {17}\) and ensure “a self-reliant and independent national economy effectively controlled by Filipinos.”\(^ {18}\) Such State regulation pervades in the grant of franchise to public utilities. Article XII, Section 11 of the Constitution states that:

Section 11. No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines, at least sixty per centum of whose capital is owned by such citizens; nor shall such franchise, certificate, or authorization be exclusive in character or for a longer period than fifty years. Neither shall any such franchise or right be granted except under the condition that it shall be subject to amendment, alteration, or repeal by the Congress when the common good so requires. The State shall encourage equity participation in public utilities by the general public. The participation of foreign investors in the governing body of any public utility enterprise shall be limited to their proportionate share in its capital, and all the executive and managing officers

\(^{15}\) Section 19. The State shall develop a self-reliant and independent national economy effectively controlled by Filipinos.

\(^{16}\) Section 10. The Congress shall, upon recommendation of the economic and planning agency, when the national interest dictates, reserve to citizens of the Philippines or to corporations or associations at least sixty per centum of whose capital is owned by such citizens, or such higher percentage as Congress may prescribe, certain areas of investments. The Congress shall enact measures that will encourage the formation and operation of enterprises whose capital is wholly owned by Filipinos.

In the grant of rights, privileges, and concessions covering the national economy and patrimony, the State shall give preference to qualified Filipinos.

The State shall regulate and exercise authority over foreign investments within its national jurisdiction and in accordance with its national goals and priorities.


\(^{18}\) Id., citing Section 19, Article II, Constitution.
of such corporation or association must be citizens of the Philippines.

The above is an express recognition of the sensitive and vital position of public utilities both in the national economy and for national security.\textsuperscript{19}

Consistently, legislations were enacted reserving certain areas of investments to Filipino citizens or to corporations at least sixty percent of the “capital” of which is owned by Filipino citizens. Some of these laws are: (1) Regulation of Award of Government Contracts or R.A. No. 5183; (2) Philippine Inventors Incentives Act or R.A. No. 3850; (3) Magna Carta for Micro, Small and Medium Enterprises or R.A. No. 6977; (4) Philippine Overseas Shipping Development Act or R.A. No. 7471; (5) Domestic Shipping Development Act of 2004 or R.A. No. 9295; (6) Philippine Technology Transfer Act of 2009 or R.A. No. 10055; and (7) Ship Mortgage Decree or P.D. No. 1521.\textsuperscript{20} The Foreign Investments Act (FIA) of 1991 or R.A. No. 7042, as amended by R.A. 8179, was particularly enacted to regulate and limit foreign investments in the Philippines.

While both citizenship and Philippine nationality escaped definition under the Constitution, the Omnibus Investments Code of 1987 and the FIA define a Philippine national, as follows:

Omnibus Investments Code:

Article 15. "Philippine national" shall mean a citizen of the Philippines or a diplomatic partnership or association wholly-owned by citizens of the Philippines; or a corporation organized under the laws of the Philippines of which at least sixty per cent (60\%) of the capital stock outstanding and entitled to vote is owned and held by citizens of the Philippines; or a trustee of funds for pension or other employee retirement or separation benefits, where the trustee is a Philippine national and at least sixty per cent (60\%) of the fund will accrue to the benefit of Philippine nationals: Provided, That where a corporation and its non-Filipino stockholders own stock in a registered enterprise, at least sixty per cent (60\%) of the capital stock outstanding and entitled to vote of both corporations must be owned and held by the citizens of the Philippines and at least sixty per cent (60\%) of the members of the Board of Directors of both corporations must be citizens of the Philippines in order that the corporation shall be considered a Philippine national.

The FIA of 1991:

\textsuperscript{19} Gamboa v. Teves, G.R. No. 176579, June 28, 2011.
\textsuperscript{20} Heirs of Gamboa v. Teves, 696 Phil. 276-485, 2012.
SEC. 3. Definitions. — As used in this Act:

a. The term "Philippine national" shall mean a citizen of the Philippines; or a domestic partnership or association wholly owned by citizens of the Philippines; or a corporation organized under the laws of the Philippines of which at least sixty percent (60%) of the capital stock outstanding and entitled to vote is owned and held by citizens of the Philippines; or a corporation organized abroad and registered as doing business in the Philippines under the Corporation Code of which one hundred percent (100%) of the capital stock outstanding and entitled to vote is wholly owned by Filipinos or a trustee of funds for pension or other employee retirement or separation benefits, where the trustee is a Philippine national and at least sixty percent (60%) of the fund will accrue to the benefit of Philippine nationals: Provided, That where a corporation and its non-Filipino stockholders own stocks in a Securities and Exchange Commission (SEC) registered enterprise, at least sixty percent (60%) of the capital stock outstanding and entitled to vote of each of both corporations must be owned and held by citizens of the Philippines and at least sixty percent (60%) of the members of the Board of Directors of each of both corporations must be citizens of the Philippines, in order that the corporation, shall be considered a "Philippine national."

Echoing Constitutional mandate, Executive Order No. 65, series of 2018, lists the following investment areas and/or activities specifically reserved for Philippine nationals and where no foreign equity is allowed:

1. Mass media, except recording (Art. XVI, Sec. 11 of the 1987 Constitution; Presidential Memorandum dated 05 May 1994) and internet business (DOJ Opinion No. 40, s. 1998);

2. Practice of professions (Art. XII, Sec. 14 of the Constitution, Sec. 1 of RA No. 5181, Sec. 7 [j] of RA No. 8981), including Radiologic and x-ray technology (RA No. 7431), Criminology (RA No. 6506), Law (Art. VIII, Section 5 of the Constitution; Rule 138, Sec. 2 of the Rules of Court of the Philippines), and Marine deck officers and marine engine officers (RA No. 10635), subject to the Annex on Professions attached herewith and forming an integral part of this document, indicating the professions where (a) foreigners are allowed to practice in the Philippines subject to reciprocity; and (b) where corporate practice is allowed. Foreigners may teach at higher education levels (RA No. 8292), provided the subject being taught is not professional subject (i.e., included in a government board or bar examination);
3. Retail trade enterprises with paid-up capital of less than US$2,500,000 (Sec. 5 of RA No. 8762);

4. Cooperatives (Ch. III, Art. 26 of RA No. 6938, as amended by Ch. II, Art. 10 of RA No. 9520);

5. Organization and operation of private detective, watchmen or security guards agencies (Sec. 4 of RA No. 5487);

6. Small-scale mining (Sec. 3 of RA No. 7076);

7. Utilization of marine resources in archipelagic waters, territorial sea and exclusive economic zone as well as small-scale utilization of natural resources in rivers, lakes, bays and lagoons (Art. XII, Sec. 2 of the Constitution);

8. Ownership, operation and management of cockpits (Sec. 5 of PD No. 449);

9. Manufacture, repair, stockpiling and/or distribution of nuclear weapons (Art. II, Sec. 8 of the Constitution);

10. Manufacture, repair, stockpiling and/or distribution of biological, chemical and radiological weapons and anti-personnel mines (various treaties to which the Philippines is a signatory and conventions supported by the Philippines); and

11. Manufacture of firecrackers and other pyrotechnic devices (Sec. 5 of RA No. 7183)

Foremost from this negative list is mass media. Mass media is defined as any medium of communication designed to reach the masses and that tends to set the standards, ideals and aims of the masses, the distinctive feature of which being the dissemination of information and ideas to the public, or a portion thereof. R.A. No. 7394 or the Consumer Act of the Philippines defines mass media as the means or methods used to convey advertising messages to the public such as television, radio, magazines, cinema, billboards, posters, streamers, hand bills, leaflets, mails and the like. The Rules and Regulations for Mass Media in the Philippines contains an identical definition of mass media as means of communication that reach and influence large numbers of people including print media, radio, television, and movies and involves the gathering, transmission and distribution of news, information, messages, signals and all forms of written, oral and visual communications. R.A. No.

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9211 expanded the definition of mass media to include electronic media. To state the obvious, ABS-CBN falls squarely within the definition of mass media.

The role of mass media is at once unique and precarious as it disseminates information configured to condition manners of thinking, living, feeling, and behaving. The purpose of the limitation is self-evident – to prevent mass media, with its indelible reach, from being utilized or exploited to influence and sway public opinion in a manner detrimental to national interest.

**Foreign participation via dual citizenship**

Following rudimentary Constitutional construction, when the fundamental law speaks of reserving the ownership and management of mass media to citizens of the Philippines, it does so in an absolute, restrictive, and exclusive manner. Again, conspicuously missing is the express reference to dual citizens and whether they should be granted the same right and privilege as those with singular Filipino citizenship.

Those who are willing to extend the same right to dual citizens argue along the lines that when the Constitution does not expressly prohibit, it thereby allows. This argument, however, labors under short-sightedness. The restrictive language of the Constitution should be sufficient indication that it admits of no further exposition, that the phrase “citizens of the Philippines,” should not be unduly enlarged as to encompass other variations of citizenship.

Aside from the lingual clues, the very reason behind the restriction enlightens as to why dual citizens could not have qualified. Mass media provides largely unrestricted avenue to influence and, later, control perception. Absent empirical evidence to the contrary, the presumption is that dual citizens are capable of advancing double or as many interests as the number of states the citizenship of which he or she carries and enjoys. Worse, a dual citizen may opt to advance the interest of the foreign country, instead of that of the Philippines. To recall, it is not the wielding of any kind of influence that is countenanced by the Constitutional restriction but such influence as to be detrimental to national interest. It is a possibility that dual citizens who are politically active in foreign jurisdictions will promote and advance foreign systems and inject such ideas into the Filipino psyche which they can successfully do so through the management of mass media.
The cure enunciated in *Mercado* that dual citizenship has to be terminated by those seeking any elective post apply with equal rigor to those seeking to own and manage mass media. Both concern and affect public interest. Both are manifestations of allegiance. Dual citizenship of those wanting to own and manage mass media has to be abrogated and cannot be indefinitely propagated. Dual citizens who refuse to terminate or abrogate their status as such clearly suffer from a Constitutional disqualification.

**Foreign participation via PDRs**

The operation and management of mass media is susceptible of foreign interference not only through overt ownership, but also through investments when there is opportunity for control.

Allegedly compelled by finances and economy, the mass media industry, much like several industries and outfits, have resorted to diversification strategies to obtain foreign investments. Among the strategy used is the issuance of Philippine Depositary Receipts (PDRs) which, unfortunately, had become a vehicle to circumvent foreign equity restrictions.

A PDR is a security which grants the holder the right to the delivery of sale of the underlying share. A PDR consists of a deposit price and an option price, which is considered as payment when the buyer opts to exercise his option of converting said PDRs to a corporation’s share. While PDRs are not evidence or statements nor certificates of ownership of a corporation, each PDR nevertheless represents a share, even in a restricted company, and when bought by a foreign entity, gives the buyer the right to all the dividends due from the shares of stock acquired.

Under international accounting standards, a financial instrument is an equity instrument only if (a) the instrument includes no contractual obligation to deliver cash or another financial asset to another entity, and (b) if the instrument will or may be settled in the issuer’s own equity instruments, it is either: (i) a non-derivative that includes no contractual obligation for the issuer to deliver a variable number of its own

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23 Id.

24 *Supra*, note 15 citing The Manila Times: An Indonesian tycoon’s media empire in the Philippines exposed, April 12, 2016.
equity instruments; or (ii) a derivative that will be settled only by the issuer exchanging a fixed amount of cash or another financial asset for a fixed number of its own equity instruments.\textsuperscript{23}

Based on the above definitions, a PDR is considered an equity instrument and the holders thereof have the right to receive all dividends and economic interest due to the shares acquired therein.

During the Congressional hearings, ABS-CBN denied having issued PDRs and conveniently passed the buck to an investment company known as the ABS-CBN Holdings Corporation. Nevertheless, it was admitted that ABS-CBN Holdings Corporation owns shares in ABS-CBN.\textsuperscript{26} Link between the two is, thus, unmistakable. In fact, ABS-CBN’s 2014 Financial Statement reflects the PDRs as part of its equity.\textsuperscript{27} These indicate that the holders of the PDRs benefit from the activities of ABS-CBN.

There is likewise continuous representation that the PDR holders would not own shares or exercise any form of control in ABS-CBN. It is naivety to take at face value such representation when investors would naturally and logically demand something in return for “providing funding and adding value to the business.”

At any rate, there is jurisprudence providing guides to determine compliance with foreign equity restriction. The tests used are the voting control test as well as the full beneficial ownership test. These tests, in a nutshell, provide the litmus for the presence of control.

In particular, \textit{Gamboa v. Teves} explains that for stocks to be deemed owned and held by citizens of the Philippines, mere legal title is not enough; there must be a concurrence of full beneficial ownership of the stocks and appropriate voting rights. In turn, \textit{Roy v. Herbosa},\textsuperscript{28} defined beneficial owner or beneficial ownership as any person who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has or shares voting power (which includes the power to vote or direct the voting of such security) and/or investment returns or power (which includes the power to dispose of, or direct the disposition of such security).

\textsuperscript{28} \textit{Supra}, note 18, G.R. No. 207246, November 22, 2016.
The import of the rulings in *Gamboa* and *Roy* is that, in order to be compliant with the foreign equity restriction, 100% of the total outstanding capital stock and the shares with voting rights must be owned by Filipinos *and* the right to receive dividends and the right to vote must belong to Filipino shareholders owning 100% of the shares with voting rights.\(^\text{29}\)

At this point, we harken back to the words of the Constitution which refer to “ownership and management” of mass media. The words “ownership and management” mean no less than control. Hence, no amount of foreign control may be introduced insofar as mass media is concerned. In corporate parlance, there is control when there is a right to vote in the election of directors, as the board of directors controls or manages the corporation, as in *Gamboa*.

Nevertheless (and this, perhaps, is the more important), the presence of control is not limited within the context of voting rights. Control is not limited to stock ownership but includes “other schemes that grant influence over corporate policy, actions and structure”\(^\text{30}\) irrespective of frequency and extent. Control is likewise present when the “power to determine the financial and operating policies of an entity in order to benefit from its activities” is manifest.\(^\text{31}\) Meaning, it is not only the ownership of voting shares *per se* that equates to control and this is especially true when there are control-enhancing mechanisms that are designed to limit the voting powers or reduce the voting shares of a shareholder.\(^\text{32}\)

Let’s appropriate the above understanding on the situation of ABS-CBN. ABS-CBN secures funding from ABS-CBN Holdings Corporation which, in turn, sold PDRs to foreigners, such as PCD Nominee Corporation (a PDR holder of 60.42%) and Prudential Singapore Holdings Pte. Limited, a Singaporean corporation which is also a substantial PDR holder. Recalling that a PDR instrument is an equity derivative since its value is dependent on the underlying equity, there is logic in the assumption that the legal and economic rights of the PDR holder can ultimately be traced to the legal and economic rights of ABS-CBN which are supposedly reserved only to its shareholders. Further, ABS-CBN itself admits that a PDR holder can trigger the transaction to sell the share, but was silent on whether ABS-CBN or ABS-CBN Holdings Corporation can trigger the transaction solely by themselves, without the PDR holders’ participation. These instances are clearly indicative that the actions of ABS-CBN Holdings Corporation and ABS-CBN itself concern, if not subservient, to

\(^{29}\) See Rappler, Inc. and Rappler Holdings Corporation *v.* SEC, C.A. G.R. SP. No. 154292, July 26, 2018.

\(^{30}\) Id., citing SEC Ruling.

\(^{31}\) Id., citing Rule 3.1.8, 2015 IRR of the Securities Regulation Code.

\(^{32}\) Id.
those of the PDR holders. When there is indication of subservience, even the slightest, the 100% Filipino effective control is compromised and diminished. Anything less than 100% Filipino is already a violation. Any appearance of foreign control is already a violation.

The perils of allowing foreign participation

We are naive if we think that foreign holders of PDRs are not interested in the management and decision-making process of ABS-CBN. If policies, decisions, and actions of the company are inimical to their interest, foreign holders will withdraw their investments. Even if it is successfully argued that PDR holders do not enjoy voting rights, it does not follow that the company can already contradict the personal interests of said foreign holders. It is a reality, even in international trade and foreign business transactions, that foreign creditors always have a say in decision-making. Accordingly, to allow the issuance of PDRs by mass media corporations to foreign corporations and nationals, is to expose said industry to foreign control – in deliberate disregard of the intent of the Constitution.

Necessarily, for all the reasons discussed above, interpreting the express constitutional provision of mass media ownership to Filipino citizens should not diminish that right through the legal fiction of corporate ownership and control.33 It is immaterial how the shares or investments are classified or called, and any arrangement, device or scheme which defeats the Constitutional policy and purpose should be eluded. The Filipino people should be mindful and it is the State’s duty to protect what the Constitution has expressly reserved to Filipinos, and not to allow foreign nationals to take ownership and control of mass media.

Granting the privilege to own and manage public utilities to a dual citizen, who is also a foreigner, is a disproportionate response as it would disenfranchise countless 100% Filipinos from exclusively availing of that privilege. It is wise to remember that the People Power Revolution gave birth to the Freedom Constitution and paved the way for the Constitution, as we know it today. If the learned Framers intended to grant parity or equal rights to dual citizens, who are also foreign nationals, with respect to nationalized industries, public utilities, and businesses exclusively reserved for Filipino nationals, they would have expressly done so without hesitation, ambivalence, or ambiguity. To impute to the Framers, tacit approval without consultation and without referendum with the Filipino people who brought them to power, would have been a

33 Supra, note 19.
fundamental betrayal of the public trust. The Constitution is ordained by the Filipino people. No waiver of Constitutional rights and privileges may be secured without their informed knowledge, express acceptance, and reasoned approval.

A primary choice

The advantage of entertaining a variety of views on a feverishly debated topic is that it gives birth to solutions that may address the difficult situation. A fault, especially in the absence of malice, is susceptible to rectification.

This discourse was opened with the basic suggestion that empirical data is admissible and may tilt one perception to the other. There is also the idea that allegiance, although palpable, is demonstrable. Given its uncompromising text, the burden is on ABS-CBN to show that it complies with the requirement of the Constitution. Since the dual citizenship of Gabby Lopez III was questioned and the business he is engaged in is imbued with public interest, he is obliged to make a primary choice between his two citizenships and, in the words of Mercado, to renounce his foreign citizenship. It is not sufficient to utter words of affection for the Philippines for she is a “jealous spouse” who demands nothing less than full and complete allegiance. Gabby Lopez III must solidify his attachments to the Philippines, and voting in the 2016 US elections does not achieve this purpose. He must demonstrate that he is bound to the Philippines, and to no other.

Conversely, Gabby Lopez III should demonstrate that he has no effective ties with the US. The US Constitution requires not only “birth on United States soil” but, more importantly, that the citizen is “subject to [its] jurisdiction.” Proof that he is not subject to US jurisdiction, by being far removed from it, politically, culturally, socially, civilly, may support negative allegiance to the US.

ABS-CBN should also review the terms of its PDR agreements with its foreign investors, cease from issuing such or modify the terms accordingly. The foreign investors should divest themselves of the PDRs in favor of Filipinos. Whether this will cure the violation is another matter but, at least, prospectively, will rid ABS-CBN of Constitutional perplexity.

Failure to renounce US citizenship and to strip itself of foreign participation forecloses the privilege of engaging in a mass media enterprise. The only remedy is a Constitutional amendment, to be submitted to the Filipino people on a plebiscite for
ratification. This is the equivalent of a constitutional imprimatur. Resort to an incomplete and vague interpretation of the Constitution to tailor-fit a disqualified enterprise is equivalent to a Constitutional shortcut that should not be encouraged but denounced as infidelity and treachery.