

LILY RAQUIZA ET AL., PETITIONERS VS. LR. COL. L. J. BRADFORD ET AL., RESPONDENTS.

G.R. No. L-44. September 13, 1945

Ponente: HILADO, J.

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HILADO, J.:

Alleging in their petition for a writ of habeas corpus, dated August 30, 1945, that they have been and are being "confined, restrained and deprived" of their liberty in the Coire'ctional Institution for Women, petitioners, Lily Raquiza, Haydee Tee Han Kee and Emma Link Infante, pray that the officers therein named, to wit, Lt. Col. L. J. Bradford and Capt. Inez L. Twidle of the CIC, U. S. Army, "or whoever acts in her place or stead," be directed to appear before this Court and produce the bodies of petitioners, and to show cause why petitioners should not forthwith be set at liberty.

Respondent Lt. Col. Bradford, having been served with this Court's order to show cause dated August 31, 1945, made return thereto dated September 5, 1945, to which are attached as parts thereof certain commitment orders marked Schedules A, A-1 and A-2, the first and last emanating from the Headquarters of the Sixth Army, 306th Counter Intelligence Corps Detachment, and the second from that of the United States Army Forces in the Far East, 493rd Counter Intelligence Corps Detachment.

Respondent Captain Caroline De Eason, WAC, having been served with this Court's order to show cause dated September 7, 1945, made return thereto dated on the same day, incorporating therein by reference Schedules A, A-1 and A-2 of her co-respondents' return above mentioned.

It appears from these returns, as well as from the arguments of counsel, that by virtue of the proclamation issued by General of the Army MacArthur on December 29, 1944, petitioner Lily Raquiza was on March 13, 1945, arrested by the 306th Counter Intelligence Corps Detachment of the U.S. Sixth Army, and detained under Security Commitment Order No. 385 (Schedule A), wherein she was charged as follows:

"Commitment Order.—The person named and described above is deemed a risk to the security of the U. S. Forces for the reasons set forth above. The commanding officer of any military stockade, jail, or comparable installation in which this person may be confined is authorized and directed to detain him in custody until released by competent military authority."

In said Schedule A the specific complaint or charge against petitioner Lily Raquiza is "Espionage activity for Japanese."

As to petitioner Haydee Tee Han Kee, it appears that by virtue of the aforesaid proclamation she, on February 25, 1945, was arrested by the same 306th Counter Intelligence Corps Detachment, and detained under Security Commitment Order No. 286 (Schedule A-2) wherein the Commitment Order is in exactly the same terms as in Schedule A. The specific complaint or charge against petitioner Tee Han Kee in Schedule A-2 is "Active collaboration with the enemy."

With regard to petitioner Emma Link Infante, it appears that by virtue of the same proclamation she, on April 10, 1945, was arrested by the 493rd Counter Intelligence Corps Detachment of the United States Army Forces in the Far East, and detained under Commitment of that date (Schedule A-I), wherein she was charged with "Active collaboration with the Japanese." Her previous association with the enemy constitutes a present security risk to the United States Armed Forces.

The said proclamation reads:

"GENERAL HEADQUARTERS

"SOUTHWEST PACIFIC AREA

PROCLAMATION

"PROVIDING FOR MILITARY MEASURES TO BE TAKEN UPON THE APPREHENSION OF CITIZENS OF THE PHILIPPINES WHO VOLUNTARILY HAVE GIVEN AID, COMFORT AND SUSTENANCE TO THE ENEMY.

"Whereas evidence is before me that certain citizens of the Philippines voluntarily have given aid, comfort and sustenance to. the enemy in violation of allegiance due the Governments of the United States and the Commonwealth of the Philippines; and

"Whereas military necessity requires that such persons be enemy in violation of allegiance due the Governments of the United States and the Commonwealth of the Philippines; and

"NOW, THEREFORE, I, Douglas MacArthur, General of the Army, United States Army, as Commander-in-Chief Southwest Pacific Area, hereby do publish and declare it to be my purpose to remove such persons, when apprehended, from any position of political and economic influence in the Philippines and to hold them in restraint for the duration of the war; whereafter I shall release them to the Philippine Government for its judgment upon their respective cases.

"Done at General Headquarters, Southwest Pacific Area, in the field, this twenty-ninth day of December, 1944.

"DOUGLAS MACARTHUR

"General of the Army

"United States Army

"Commander-in-Chief"

Of course, the power of the Commander in Chief of the United States Army to issue the foregoing proclamation cannot be seriously questioned. It has not been questioned in this case. Where opinions are divided as to its interpretation and effects.

General of the Army MacArthur therein published and declared it to be his purpose, among other things, to hold in restraint the persons referred to, when apprehended, "for the duration of the war; whereafter, I shall release them to the Philippine Government for its judgment upon their respective cases." He premised his proclamation upon two grave reasons, to wit, (1) that evidence was before him "that certain citizens of the Philippines voluntarily have given aid, comfort and sustenance to the enemy in violation of allegiance due the Governments of the United States and the Commonwealth of the Philippines"; and (2) that "military necessity requires that such persons be removed from any opportunity to threaten the security of our military forces or the success of our military operations."

In the very nature of things, the Commander in Chief of the Army of liberation at the time of issuing that proclamation had to act upon the evidence then before him. The exigencies of the mighty military operations that

he had then but recently begun for the destruction or defeat of the powerful enemy who was at that time occupying the Islands, did not permit of any other procedure. And to deny him the exclusive power and competency to determine the strength and sufficiency of such evidence would have been destructive of that military efficiency with which, in the interest of all the citizens of the Philippines themselves, not excluding the herein petitioners, the operations for their liberation had to be conducted. And once having apprehended the persons to whom the proclamation referred, the same exigencies required that the said Commander in Chief be invested with the exclusive power and authority to decide when he should deliver them to the Commonwealth of the Philippines.

Has the war terminated within the meaning of that part of his proclamation wherein the Commander in Chief declared his purpose to hold such persons in restraint "for the duration of the war"? We are of opinion that it has not.

In the case of *United States vs. Tubig* (3 Phil., 244, 254), this Court said:

"From that day the fighting continued, and the insurrection did not end officially until the President proclaimed it at an end, July 4, 1902. It is necessary to refer to a public act of the Executive Department to fix the date of the closing of the war. (*Freeborn vs. The Protector*, 79 U. S., 700.)

"If it be alleged that, notwithstanding the insurrection, there were no actual hostilities in Nueva Bcija at the times above mentioned, the answer is that the condition of hostility remained impressed on the whole island until it was removed by the proclamation of the President. * * *"

"War, in the legal sense, continues until, and terminates at the time of, some formal proclamation of peace by an authority competent to proclaim it. It is the province of the political department, and not of the judicial department, of government to determine when war is at an end. * * *" (67 C. J., 429, sec. 195.)

And even if the war had terminated, we are of opinion that under the aforesaid proclamation the petitioners, who are held in restraint thereunder, would continue legally under custody of the proper military authorities of General of the Army MacArthur's or his successors' command, for a reasonable time after termination of the war.

If General of the Army MacArthur had, in express terms, declared in his aforesaid proclamation that after termination, of the war he will release the persons therein named to the Philippine Government within a reasonable time, we think that, he could have done so within his legitimate powers as Commander in Chief of the United States Army; and not only this, but that for obvious reasons he should be the best and, therefore, the only judge of how long or how short that time should be under the circumstances. And in order to give his proclamation a reasonable construction, we are of opinion that this should be implied from the context. Otherwise, we would be giving to this solemn document the irrational interpretation that said Commander in Chief thereby announced a purpose which would be physically impossible for him to carry out; namely, to make delivery to the Philippine Government immediately upon termination of the war of persons under restraint whose number he could not then foresee but which he could reasonably expect to be more or less considerable, with their respective charges and pertinent evidence, papers, and the like. It was not a matter of delivering a certain quantity or amount of personal property but human beings who, although under custody, had to be properly housed, maintained and otherwise treated as becoming the "dignity of the human person," which is one of the cardinal principles of democracy for which the United Nations have fought in this war.

The fact that, as this Court can take judicial notice of, delivery of certain persons under custody of the United States Army pursuant to the said proclamation has already begun does not mean that the war has, in the legal sense, already terminated, which it clearly has not. Such delivery is undoubtedly within the power of the proper military authorities to make even before the termination of the war. The existence of the military necessity to

which General of the Army MacArthur refers in his proclamation, as well as its continuance, is a question exclusively for the military authorities to determine, as regards each and every person under detention. For obvious reasons, the civil courts should not here interfere, and it is to be presumed that in the judgment of said military authorities that necessity no longer requires the detention by them of the persons whom they have already delivered to the Philippine Government.

In the case of *Coleman vs. Tennessee* (97 U. S., 509), the Supreme Court of the United States, among other things, said:

"It is well settled that a foreign army, permitted to march through a friendly country or to be stationed in it, by permission of its government or sovereign, is exempt from the civil and criminal jurisdiction of the place. The sovereign is understood, said this court in the celebrated case of *The Exchange*, 7 Cranch, 13,9, to cede a portion of his territorial jurisdiction when he allows the troops of a foreign prince to pass through his dominions: "In such case, without any express declaration waiving jurisdiction over the army to which this right of passage has been granted, the sovereign who should attempt to exercise it would certainly be considered as violating his faith. By exercising it, the purpose for which the free passage was granted would be defeated, and a portion of the military force of a foreign independent nation would be diverted from those national objects and duties to which it was applicable, and would be withdrawn from the control of the sovereign whose power and whose safety might greatly depend on retaining the exclusive command and disposition of this force. The grant of a free passage, therefore, implies a waiver of all jurisdiction over the troops during their passage, and permits the foreign general to use that discipline and to inflict those punishments which the government of his army may require." (Italics ours.)

In the case of the United States Army of liberation, not only has the Commonwealth Government asked, and the United States Government agreed, that it come and be stationed in the Philippines, but it is here for the very realization of the overruling and vehement desire and dream of the Filipino people to be freed from the shackles of Japanese tyranny, and to see this war brought to a victorious end. If a foreign army permitted to be stationed in a friendly country, "by permission of its government or sovereign," is exempt from the civil and criminal jurisdiction of the place, with much more reason should the Army of the United States which is not only permitted by the Commonwealth Government to be stationed here but has come to the islands and stayed in them for the express purpose of liberating them, and further prosecuting the war to a successful conclusion, be exempt from the civil and criminal jurisdiction of this place, at least for the time covered by said agreement of the two Governments. By analogy, an attempt of our civil courts to exercise jurisdiction over the United States Army before such period expires, would be considered as a violation of this country's faith, which this Court should not be the last to keep and uphold. By exercising it, paraphrasing the foregoing quotation, the purpose for which the stationing of the army in the islands was requested or agreed upon may be hampered or prejudiced, and a portion of said military force would be withdrawn from the control of the sovereign to whom they belong. And, again, by analogy, the agreement for the stationing of the United States Army or a part of its forces in the Philippines implies a waiver of all jurisdiction over their troops during the time covered by such agreement, and permits the allied general or commander in chief to retain that exclusive control and discipline which the government of his army may require.

Chief Justice Marshall, in the case of the *Schooner Exchange* (7 Cranch, 139), gave the reasons underlying the doctrine of mutual waiver of jurisdiction between nations in the following paragraphs:

"The world being composed of distinct sovereignties, possessing equal rights and equal independence, whose mutual benefit is promoted by intercourse with each other, and by an interchange of those good offices which humanity dictates and its wants require, all sovereigns have consented to a relaxation in practice, in cases tinter certain peculiar circumstances, of that absolute and complete jurisdiction within their respective

territories which sovereignty confers.

* * * * *

"This perfect equality and absolute independence of sovereigns, and this common interest impelling them to mutual intercourse, and an interchange of good offices with each other, have given rise to a class of cases in which every sovereign is understood to waive the exercise of a part of that complete exclusive territorial jurisdiction, which has been stated to be the attribute of every nation."

Furthermore, we are of the opinion that the present petitioners, while under the custody of the United States military forces, may be considered as prisoners of war. In volume II, Hyde International Law, page 345, section 676, we read:

"* * * It should be borne in mind that an army in the field, in the course of any operation in any locality * * * may also avail itself of the right to make civilians prisoners of war."

The author cites from the Rules of Land Warfare which contain an enumeration of civilians who may be made prisoners of war. This enumeration includes:

"(c) Persons whose services are of a particular use and benefit to the hostile army or its government, such as the higher civil of- ficials, diplomatic agents, couriers, .guides, etc. * * * " (Italics ours.)

We think that the petitioners would prima facie come within this classification under the charges of "Espionage activity for Japanese," "Active collaboration with the Japanese," and "Active collaboration with the enemy."

We are not unmindful of the fact that the detention of the petitioners may have subjected them to hardships, but this situation is one of those born of all wars where hardships of all description are visited upon even the most innocent people. At any rate, we do not think that the petitioners are totally without remedy. We think they may have recourse to the proper military authorities by making due representations to them.

These military authorities, we can safely presume, will not deny to the petitioners any remedy which may be available under the military laws and under the prevailing circumstances. The United States army forces which have come to the Philippines for the express purpose of liberating the Filipinos and to restore to them the blessings of liberty under a democratic government, just as fast as the military situation would permit, would not be—we can justly assume—the very ones to take from them any of those liberties without legal reason or justification. But the present state of the world is such that military exigencies or military necessity may, under certain circumstances, still require some limitation on the restoration or enjoyment of those liberties. The present case is, in our opinion, one such situation.

Whether the doctrine here laid down would be applicable to cases arising in time of peace, we do not decide. In conclusion, we hold that the petition should be dismissed. No special pronouncement as to costs. So ordered.

Moron, C. J., Jaranilla, Feria, De Joya, and Pablo, JJ., concur.

DISSENTING

OZAETA, J., with whom concurs PARAS, J., :

We dissent from the majority opinion which sanctions the long-continued deprivation of the petitioners of their

sacred liberty without due process of law.

The petitioners, Lily Raquiza, Haydee Tee Han Kee, and Emma Link Infante, were arrested by an agent of the Counter Intelligence Corps (CIC) of the United States Army on March 13, 1945, February 25, 1945, and April 10, 1945, respectively, and have since then been confined in the Correctional Institution for Women by order and under the custody of the respondents. The returns filed by the respondents herein simply say that the petitioners were arrested and are being detained by virtue of the proclamation issued by General MacArthur on December 29, 1944, which reads as follows:

"WHEREAS evidence is before me that certain citizens of the Philippines voluntarily have given aid, comfort and sustenance to the enemy in violation of allegiance due the Governments of the United States and the Commonwealth of the Philippines; and

"WHEREAS military necessity requires that such persons be removed from any opportunity to threaten the security of our military forces or the success of our military operations;

"NOW, THEREFORE, I, Douglas MacArthur, General of the Army, United States Army, as Commander-in-Chief, Southwest Pacific Area, hereby do publish, and declare it to be my purpose to remove such persons, when apprehended, from any position of political and economic influence in the Philippines and to hold them in restraint for the duration of the war; whereafter I shall release them to the Philippine Government for its judgment upon their respective cases.

"Done at General Headquarters, Southwest Pacific Area, in the field, this twenty-ninth day of December, 1944." (41 Off. Gaz., 148, 149.)

Attached to the returns as Schedules A, A-1, and A-2 are copies of confidential security commitment orders which show: as to the petitioner Lily Raquiza, "Complaint: Espionage activity for Japanese"; as to the petitioner Emma Link Infante, "Remarks: Active collaboration with the Japanese"; and as to the petitioner Haydee Tee Han Kee, "Complaint: Active collaboration with the enemy."

Up to this date the petitioners have not been informed of the nature of the accusation against them, no complaint or information charging them with any specific offense has been filed against them in any court or tribunal, and they have never been given even a summary hearing. They have not been turned over to the Philippine Government for its judgment upon their respective cases, and no allegation or intimation is made in the returns as to whether and when the respondents will release the petitioners to the Philippine Government.

The petitioners now invoke from this Court the writ of habeas corpus to recover the precious liberty of which they have long been and are still being deprived. The important question before us is whether this Court has jurisdiction or legal power to afford relief to the petitioners in the sad and sorry plight to which they have been and are being subjected. Six members of the Court voted for the negative and three for the affirmative.

Our affirmative and dissenting vote is based on the following considerations:

The guaranty of due process of law found in the Fifth Amendment of the Constitution of the United States, which declares "that no person shall be deprived of life, liberty, or property without due process of law," is incorporated in section 1, Article III of the Constitution of the Philippines, which we have solemnly sworn to support and defend.

"The essential elements of due process of law are notice and an opportunity to be heard and to defend in an orderly proceeding adapted to the nature of the case before a tribunal having jurisdiction of the cause. One of the most famous and perhaps the most often quoted definition of due process of law is that of Daniel Webster in his argument in the Dartmouth College Case, in which he declared that by due process of law is meant 'a law

which hears before it condemns; which proceeds upon inquiry, and renders judgment only after trial.' Somewhat similar is the statement that it is a rule as old as the law that no one shall be personally bound until he has had his day in court, by which is meant until he has been duly cited to appear and has been afforded an opportunity to be heard. Judgment without such citation and opportunity lacks all the attributes of a judicial determination; it is judicial usurpation and oppression and can never be upheld where justice is fairly administered." (12 Am. Jur., Const. Law, sec. 573.)

The right to due process of law is more than a prerogative. It is an immanent and inalienable right of every man, woman, and child living under a government of laws. It cannot be dispensed with or brushed aside either in time of war or in time of peace. In time of war martial law may be declared. But even under martial law appropriate tribunals such as courts-martial are set up to hear and decide the case before anybody can be punished.

General MacArthur's proclamation of December 29, 1944, says that "evidence is before me that certain citizens of the Philippines voluntarily have given-aid, comfort and sustenance to the enemy in violation of allegiance due the Governments of the United States and the Commonwealth of the Philippines"; that "military necessity requires that such persons be removed from any opportunity to threaten the security of our military forces or the success of our military operations"; and that it was his purpose "to remove such persons, when apprehended, from any position of political and economic influence in the Philippines and to hold them in restraint for the duration of the war; whereafter, I shall release them to the Philippine Government for its judgment upon their respective cases."

If that proclamation was meant to be a sentence pronounced by General MacArthur against certain specific persons who, when apprehended, were to be held in restraint for the duration of the war, such sentence did not constitute, or was totally devoid of, due process of law because those persons had not been heard before they were condemned; the evidence before him, whatever it was, must have been taken at the back and without the knowledge of said persons, everyone of whom, under the Bill of Rights, to the protection of which every person living under the American flag is entitled, had "the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses in his behalf." Such sentence, moreover, is void on its face because the persons condemned were not named therein, so that anybody whom the agents of the Army might apprehend could be held thereunder for the duration of the war; and even if the persons condemned had been named, the proclamation could not be upheld because, in so far as it purports to pronounce judgment of treason on "certain citizens" who have not been tried in the courts, it partakes of the nature of a bill of attainder which is likewise prescribed by the Bill of Rights. If that proclamation was promulgated and intended as a military law or order whereby those who had committed treason might be apprehended and held in restraint for the duration of the war, then the persons affected should have been accused and tried by a military tribunal before they were consigned to imprisonment for the duration of the war. Otherwise, how could it have been legally and justly determined that the accused fell within the purview of the proclamation—that they had voluntarily given aid, comfort, and sustenance to the enemy? In either case there was failure of the indispensable requisites of due process of law.

We take for granted the military necessity that gave rise to General MacArthur's proclamation—the Court is not competent to inquire into it. But we understand that military necessity to an army of liberation like that of General MacArthur was not intended to override law and justice as regards the lives and liberties of the citizens of the country being liberated; and law and justice required that no accused be condemned without a hearing. Even the most notorious war criminals of Germany and Japan who are publicly known to have committed horrible, inhuman atrocities during the war have to be accused before and tried by duly constituted tribunals before punishment can be meted out to them.

To be held in restraint for the duration of the war was in itself a punishment. It may, parenthetically, be observed here that the petitioners and thousands of other Filipino citizens held in restraint for the duration of the war by virtue of the proclamation in question have suffered that punishment with fortitude and abnegation. While the war was in progress they refrained from questioning the legality of the drastic military measure taken by General MacArthur in order not to place any obstacle to his titanic task of driving the enemy out of their country. The Filipino people's gratitude to General MacArthur for their liberation from the clutches of their Japanese oppressors was so great that they did not mind the hardship suffered by them in connection with his prosecution of the war—even the restraint of the liberties of thousands of them for the duration of the war.

But now that the enemy has surrendered and the war is over, no one can blame the petitioners for knocking at the portals of justice and demanding their inalienable right not to be further deprived of their liberty without due process of law. The majority opinion turns a deaf ear to their pathetic supplication on the supposition that the war is not yet over, for the final treaty of peace between the belligerents has not yet been signed and the Congress of the United States has not yet proclaimed the termination of the war, and that therefore the military necessity to hold the petitioners in restraint still subsists, for which reason the Court has no jurisdiction to order the respondents to discharge them from custody. We cannot yield to such supine attitude. It disregards "fundamental human rights" and "the dignity and worth of the human person" for which this global war has been fought and won. (See Charter of United Nations.)

We have shown that with or without war the petitioners are entitled to due process of law, and that without due process of law their confinement by the respondents is illegal. Section 1 of Rule 102 of the Rules of Court provides that "the writ of habeas corpus shall extend to all cases of illegal confinement or detention by which any person is deprived of his liberty * * *." Section 2 of the same Rule provides that "the writ of habeas corpus may be granted by the Supreme Court, or any member thereof, on any day and at any time, * * * in the instances authorized by law, and if so granted it shall be enforceable anywhere in the Philippines * * *."

It is true that section 529 of Act No. 190, as amended by Acts Nos. 272 and 421, provided, among other things, that it shall be a conclusive answer to a writ of habeas corpus against a military officer or soldier, and a sufficient excuse for not producing the prisoner in all other organized provinces than those therein named, if the commanding general or any general officer in command of the department or district shall certify that the prisoner is held by him as a prisoner of war. But when section 529 of the Code of Civil Procedure was reenacted as section 4 of Rule 102 of the Rules of Court, that provision was omitted and therefore impliedly obrogated.

The only exceptions, then, to the application of the writ of habeas corpus are those now found in section 4 of Rule 102, namely: (1) if the person alleged to be restrained of his liberty is in the custody of an officer under process issued by a court or judge, or by virtue of a judgment or order of a court of record, and that the court or judge had jurisdiction to issue the process, render the judgment, or make the order; (2) the case of a person charged with or convicted of an offense in the Philippines or in any part of the United States, and who ought to be delivered up to the executive power of the United States, or of any State or territory thereof; and (3) the case of a person suffering imprisonment under lawful judgment. The case of the petitioners herein does not fall under any of these exceptions.

The majority are of the opinion that the Court has no jurisdiction over the respondents as members of the United States Army. We do not share that opinion. General MacArthur himself, on the occasion of the restoration of the Commonwealth Government on February 27, 1945, addressed to the President of the Philippines the following eloquent words:

"* * * God has indeed blessed our arms! The girded and unleashed power of America supported by our Allies turned the tide of battle in the Pacific and resulted in an unbroken series of crushing defeats upon the enemy

culminating in the redemption of your soil and the liberation of your people. My country has kept the faith! "These soldiers have come here as an army of free men, dedicated, with your people, to the cause of human liberty and committed to the task of destroying those evil forces that have sought to suppress it by brutality of the sword. An army of free men that has brought your people once again under democracy's banner, to rededicate their churches, long desecrated, to the glory of God and public worship; to reopen their schools to liberal education; to till the soil and reap its harvest without fear of confiscation; to reestablish their industries that they may again enjoy the profit from the sweat of their own toil, and to restore the sanctity and happiness of their homes unafraid of violent intrusion.

"Thus to millions of your now liberated people comes the opportunity to pledge themselves—their hearts, their minds, and their hands—to the task of building a new and stronger nation—a nation consecrated in the blood nobly shed that this day might be—a nation dedicated to making imperishable those sacred liberties for which we have fought and many have died.

"On behalf of my Government I now solemnly declare, Mr. President, the full powers and responsibilities under the Constitution restored to the Commonwealth whose seat is here reestablished as provided by law.

"Your country thus is again at liberty to pursue its destiny to an honored position in the family of free nations. Your capital city, cruelly punished though it be, has regained its rightful place— Citadel of Democracy in the East." (41 Off. Gaz., 86, 87.)

Thus General MacArthur himself, as Commander in Chief of the United States Army in this area and as the representative of the Government of the United States, declared the full powers and responsibilities under the Constitution restored to the Commonwealth. This Court functions under and by virtue of the Constitution. As the highest court of the land it is the bulwark of civil rights and individual liberties. It is its inescapable duty to apply the law no matter on whom it falls. It would be an astonishing manifestation of judicial timidity for the Court to hesitate to subject any person or class of persons to its mandate in a proper case for fear of lack of physical power to enforce it.

It is the undying glory of our democratic form of government implanted here by America herself, that no man living under it is above the law. General MacArthur himself as the peerless defender of democracy, would be the first to recognize this fundamental principle, and his "army of free men, dedicated, with your people, to the cause of human liberty," cannot but graciously obey the law as interpreted by the courts. We know of no law which places members of the army beyond the power and jurisdiction of the civil courts in matters affecting civil rights. In the instant case, the fact that in due time the respondents filed their returns to the order of this Court to show cause is a positive acknowledgment by them of the Court's jurisdiction over their persons.

The majority are not satisfied with the spontaneous recognition by the respondents themselves of the Court's jurisdiction over their persons. To justify their stand the majority opinion cites and applies the rule of international law mentioned in the case of *Coleman vs. Tennessee* (97 U. S., 509; 24 Law. ed., 1118), to the effect that a foreign army, permitted to march through a friendly country or to be stationed in it, by permission of its government or sovereign, is exempt from the civil and criminal jurisdiction of the place. The case cited has no applicability whatsoever to the case at bar. It appears in that case that Coleman, while a regular soldier in the military service of the United States, committed the crime of murder on March 7, 1865, in the State of Tennessee and was convicted by a general court-martial regularly convened for his trial at Knoxville, Tennessee, and sentenced to death by hanging. Pending the execution of that sentence Coleman was indicted in the Criminal Court for the District of Knox County, Tennessee, on the 2d of October, 1874, for the same murder. Under that indictment he was tried and convicted and sentenced to death, and on appeal to the Supreme Court of the State the judgment was affirmed. Pending the appeal to the State Supreme Court, the defendant was brought before the Circuit Court of the United States for the Eastern District of Tennessee on habeas corpus, upon a petition stating

that he was unlawfully restrained of his liberty and imprisoned by the sheriff of Knox County, upon the charge of murder, for which he had been indicted, tried, and convicted by the general court-martial. The question brought before the Supreme Court of the United States was whether the Criminal Court of the State of Tennessee had jurisdiction to try the case.

The Supreme Court of the United States declared that the judgment and conviction in the Criminal Court should have been set aside and the indictment quashed for want of jurisdiction. It held that the State of Tennessee, at the time the crime was committed therein, was an enemy territory under the military occupation of the United States and that the military tribunals had exclusive jurisdiction to try and punish offenses of every grade committed by persons in the military service. The court said that "officers and soldiers of the armies of the Union were not subject during the war to the laws of the enemy, or amenable to his tribunals for offenses committed by them. They were answerable only to their own government, and only by its laws, as enforced by its armies, could they be punished." The court then mentioned the rule of international law quoted in the majority opinion and argued as follows: "If an army marching through a friendly country would thus be exempt from its civil and criminal jurisdiction, a fortiori would an army invading an enemy's country be exempt?" Thus it is clear that the rule of international law above mentioned formed no part of the holding of the court in the said case.

Neither can such rule of international law of itself be applicable to the relation between the Philippines and the United States, for the reason that the former is still under the sovereignty of the latter. The United States Army is not foreign to the Philippines. It is here not by permission or invitation of the Philippine Government but by right of sovereignty of the United States over the Philippines. It has the same right to be here as it has to be in Hawaii or California. The United States has the same obligation to defend and protect the Philippines, as it has to defend and protect Hawaii or California, from foreign invasion. The citizens of the Philippines owe the same allegiance to the United States of America as the citizens of any territory or State of the Union.

If instead of the Philippines California had been invaded by Japan, and General MacArthur had issued the same proclamation in question against certain citizens of that State, we do not doubt, from our knowledge of the American people and of their tradition and jurisprudence, that any of such citizens apprehended and confined by virtue of said proclamation without due process of law would have been set at liberty by any competent court there through the issuance of the writ of habeas corpus. If, as seems to us indisputable, a citizen of the Philippines is entitled to the protection of the same Bill of Rights, particularly as regards due process of law, as any citizen of the United States, one would be at a loss to understand why under the same facts and circumstances the latter would be entitled to his liberty and the former not.

Our Habeas Corpus Law is of American origin. It is substantially the same law that reigns in every State of the Union. If it can be successfully invoked from the courts there under a given set of facts, there is no reason why it cannot be invoked from the courts here under the same circumstances. The Philippine courts are vested with the same power and jurisdiction to grant the writ as the American courts.

The case at bar is not like the Coleman case wherein a member of the United States army of occupation was indicted by the enemy state for a crime committed against a citizen of the latter after he had been tried and convicted by a proper court-martial. This is a case wherein nationals of the United States living under the protection of the army of the United States are being deprived of their liberty by members of that Army without due process of law, and wherein no conflict of jurisdiction between the military court and the civil court is involved. In fact, no military court is claiming jurisdiction over the persons of the petitioners. And yet while sympathizing with the petitioners this court, by the majority opinion, declares itself impotent to grant them any relief, and suggests that "they may have recourse to the proper military authorities by making due representations to them"—the very same military authorities who have long been and are depriving them of their liberty without

due process of law. That is tantamount to throwing a meritorious case out of court on the ground that the plaintiff may seek his remedy from the defendant himself by making due representations to him. One might wonder what the court is good for.

Another reason given to support the judgment is that while under the custody of the United States military forces the petitioners may be considered as prisoners of war, citing Hyde on International Law to the effect that an army in the field in the course of any operation in any locality, may also avail itself of the right to make civilians prisoners of war, such for example as of "persons whose services are of a particular use and benefit to the hostile army or its government, such as the higher civil officials, diplomatic agents, couriers, guides, etc." We do not dispute that rule of international law; but, again, we think it has no application to the case before us. That rule evidently refers to civilians of the enemy country of whom the hostile army operating in that country may make prisoners of war. The Philippines is not an enemy of the United States, whose army came here to liberate this country and not to conquer or invade it. Under the rule cited, as we understand it, the United States Army could make prisoners of war of Japanese civilians. It could not make prisoners of war of Filipinos any more than it could make them of Americans. Of course, if the petitioners were Japanese subjects who were held as prisoners of war by the United States Army, no one in his right mind would contend that this court should entertain a petition for habeas corpus from them. But that is clearly not the case, and with all due respect we think the citation of the rule to support the majority opinion is out of place here.

In the case of *Payomo vs. Floyd* (42 Phil., 788), it appears that one Calixto Mendigorin, a civilian resident of Subic, Zambales, was arrested by a naval officer and arraigned and sentenced by the naval reservation police judge for violation of the laws and regulations which prohibited the cutting of timber on the naval reservation without a permit from the proper officer. Upon petition for habeas corpus originally filed in this court by Juliana Payomo in behalf of Mendigorin, this court, speaking through Mr. Justice Street, held that the Supreme Court and the Courts of First Instance of the Philippines Islands have jurisdiction to entertain a petition for the writ of habeas corpus to set at liberty a civilian person who is alleged to have been detained by the naval authorities of the United States; that in this respect said courts have the same authority as the Federal courts in the United States; and that the naval authorities of the United States have no authority to establish a tribunal in the Olongapo Reservation with jurisdiction to try and sentence civilian persons for offenses committed on said reservation in violation of the penal laws enacted by the Philippine Legislature. The prisoner was ordered released.

The refusal of this court now to exercise similar jurisdiction over the respondents herein because they are members of the United States Army constitutes, in our opinion, a reversal of or a retrogression from the sound and liberal doctrine laid down by this same court in that case.

We think it is idle to discuss whether the war has terminated as a matter of law or has ended as a matter of fact. In his proclamation of December 29, 1944, General MacArthur announced that after the war he would release the prisoners to the Philippine Government, and the fact that the CIC has partially turned over said prisoners to the Philippine Government shows that they themselves recognize that the war has ended within the purview of said proclamation.

The war having ended as a matter of fact with the unconditional surrender of Japan formalized on September 2, 1945, the petitioners, who have been deprived of their liberty without due process of law since they were arrested five or six months ago, are peremptorily entitled now to that due process. Due process will not commence for them until and unless they are turned over by the CIC to the Commonwealth Government. Respondents not having intimated in their returns whether and when they will release the petitioners to the Philippine Government, the court has no alternative but to order their immediate discharge.

DISSENTING**PERFECTO, J.,**

The petitioners complain that they are being illegally detained and pray that they be set at liberty without delay.

They allege that they had been taken from their respective residence in the City of Manila by certain individuals posing themselves as agents of the Counter Intelligence Corps (CIC), Lily Raquiza on March 13, 1945; Haydee Tee Han Kee on February 25, 1945; and Emma Link Infante on April 10, 1945, and since then had been restrained and deprived of their liberty in the Correctional Institution for Women in Mandaluyong.

They allege also that no formal complaint or accusation for any specific offense had been filed against them, nor any judicial writ or order for their commitment has at any time been issued so far, and that they did not commit, either individually or collectively, any offense for which they may be arrested or deprived of their liberty without any formal charge or judicial warrant, and that, according to reliable information, they are being unlawfully detained by a temporary warden named Captain Inez L. Twidle, by order and at the behest of one Lieutenant Colonel L. J. Bradford of the Counter Intelligence Corps, and that, there being no martial law in the Philippines and the civil government having been formally delivered to the authorities of the Commonwealth and the Constitution of the Commonwealth being in full operation, the confinement of the petitioners is illegal.

Respondent, Lieutenant Colonel L. J. Bradford, of the United States Army, alleges in his return that he is attached on duty in the Counter Intelligence Corps (CIC) of the United States Army; that petitioners were detained by virtue of the proclamation issued by General MacArthur on December 29, 1944, and were immediately turned over to the Provost Marshal at Bilibid Prison on the dates specified in Schedules A, A-1 and A-2, attached to the writ, and since then respondent had nothing to do with petitioners, and has absolutely no connection with the correctional institution for women.

Respondent alleges further that he is not acquainted and has no official connection with Captain Inez L. Twidle; that Captain Twidle is in no manner connected with the Counter Intelligence Corps and at the date of petition, August 30, 1945, with the Correctional Institution for Women.

In Schedule A it appears that petitioner Lily Kaquiza was arrested on March 13, 1945, by Lieutenant Colonel L. J. Bradford, accused of espionage activities for Japanese and under commitment order worded as follows:

"The person named and described above is deemed a risk to the security of the United States Forces for the reasons set forth above. The Commanding Officer of any military stockade, jail, or comparable installation in which this person may be confined is authorized and directed to detain him in custody until released by competent military authority."

In the same schedule it appears that said petitioner was delivered to Bilibid Prison on March 13, 1945.

In Schedule A-1 it appears that Emma Link Infante has been delivered to the Provost Marshal in Bilibid Prison on April 10, 1945, pursuant to the authority of the proclamation issued by the Commander in Chief, GHQ, South-west Pacific Area, dated 29 December, 1944, accused of active collaboration with the Japanese and because her previous association with the enemy constitutes security risk to the United States Armed Forces.

In Schedule A-2 it appears that petitioner Haydee Tee Han Kee has been arrested on February 25, 1945, for active collaboration with the enemy under a commitment order identical to what appears in Schedule A and was delivered on the same day to the Provost Marshal in Bilibid Prison.

There is absolutely no mention in the return of any formal complaint or charge filed against any of the petitioners nor of any legal proceedings regarding the offenses imputed to them as mentioned in Schedules A, A-1 and A-2, nor of any judicial order or writ issued by competent authority for the detention or commitment of petitioners.

Attorney for petitioners filed a reply alleging that, no denial having been made of the essential allegations of the petition, to the effect that petitioners had been deprived of their liberty, following the doctrine set in case *Villavicencio vs. Lukban* (39 Phil., 778), the Supreme Court should grant the writ of habeas corpus and order Lieutenant Colonel L. J. Bradford and Captain Caroline De Eason or whoever actually is in command of the Women's Detention Centre in Welfareville to appear before this Court and produce the bodies of petitioners and explain then and there why they should not be set at liberty immediately.

Lest we forget, it is timely to remember that at the hearing of this case it was denounced by counsel that one of the petitioners, since her custodian received the order of the Supreme Court to show cause why petition should not be granted, has been subjected to harsh maltreatment, confined into a solitary cell, and deprived of food. It is a pity that we were deprived of the opportunity of verifying the truth of the denunciation by hearing the testimony of the petitioners, because the writ of habeas corpus was not issued as we have twice proposed.

The nature and gravity of the charges against, the petitioners, we hope, will not induce us to consider with prejudice their case. Whatever our feelings are against the enemy and those who helped him as spies or collaborators, and no matter how sincere and strong those feelings might be, it is our inescapable duty not to allow them to sway our judgment and reasoning. Our position imposes upon us the responsibility of applying the law above all considerations, and it is one of the great elemental principles of law that all accused are presumed innocent until, after due legal process, they are finally found guilty beyond reasonable doubt.

Perhaps it is worthy of note that the United States Army, instead of following the ordinary military course with regard to spies and collaborators, and of subjecting them to summary trial and immediate execution, had chosen merely to keep the petitioners restrained of liberty, abstaining completely from trying them by court-martial, and proposing to deliver them to the Commonwealth Government. That fact might mean that evidence of guilt of the petitioners is not strong enough to justify a drastic action, and that if they are guilty, they belong to the harmless type, and, therefore, will not endanger the safety of military personnel and installations nor jeopardize public order.

As a matter of fact, it was authoritatively stated at the hearing of this case that many other persons placed in identical situation as the petitioners are being turned over to the Government of the Commonwealth.

Respondent Captain Caroline De Eason, in her return, states that petitioners are detained in the Women's Correctional Institution, of which she is in charge, by virtue of the proclamation issued by General Mac Arthur on December 29, 1944, and the commitments Schedules A, A-1 and A-2.

The proclamation of General MacArthur relied upon by the respondent, it seems, is in conformity with the statement made by President Franklin D. Roosevelt, upon signing S. J. Resolutions Nos. 93 and 94, on June 29, 1944, the first of them laying down a policy for the granting of independence and for the acquisition of bases adequate to provide for the mutual protection of the United States and the Philippines. President Roosevelt said:

"* * * The measure makes it possible to proclaim independence as soon as practicable after constitutional processes and normal functions of government have been restored in the Philippines.

"It is contemplated that as soon as conditions warrant, civil government will be set up under constitutional officers. It will be their duty forthwith to take emergency measures to alleviate the physical and economic hardships of the Philippine people, and to prepare the Commonwealth to receive and exercise the independence

which we have promised them. The latter includes two tasks of great importance: Those who have collaborated with the enemy must be removed from authority and influence over the political and economic life of the country, and the democratic form of government guaranteed in the constitution of the Philippines must be restored for the benefit of the people of the Islands." (41 Off. Gaz., No. 1, p. 85.)

The proclamation of General MacArthur, issued in the field on the 29th of December, 1944, is as follows:

"Whereas evidence is before me that certain citizens of the Philippines voluntarily have given aid; comfort and sustenance to the enemy in violation of allegiance due the Governments of the United States and the Commonwealth of the Philippines; and "Whereas military necessity requires that such persons be removed from any opportunity to threaten the security of our military forces or the success of our military operations;

"Now, therefore, I, Douglas MacArthur, General of the Army, United States Army, as Commander in Chief, Southwest Pacific Area, hereby do publish and declare it to be my purpose to remove such persons, when apprehended, from any position of political and economic influence in the Philippines and to hold them in restraint for the duration of the war; whereafter I shall release them to the Philippine Government for its judgment upon their respective cases." (41 Off. Gaz., No. 2, pp. 148, 149.)

It may appear at first blush that the persons whose liberty is restrained under the Proclamation, which shall hereafter be referred to as the December proclamation, may be considered as military prisoners.

But they are not. They are political prisoners. As a matter of fact, if we delve into the history of the December proclamation, we will find out that the same has been issued to accommodate the Commonwealth Government and to relieve it from a difficult position under the circumstances, at the time it began to function in Leyte, immediately after the landing of the Armed Forces of Liberation, when many political prisoners were detained and were intending to seek habeas corpus relief and the Commonwealth Government, handicapped by lack of facilities, was not in a position to cope with the extraordinary situation confronting it.

Of course, General MacArthur had the technical right to issue the December proclamation, under the extraordinary powers wielded by a military commander in chief during war operations, but let us analyze carefully the text of the document and we will see that the persons included under it, although they may also be considered as military prisoners as indicated in the second "Whereas", are in fact civil prisoners, accused of offenses of political character, not amenable to military justice but to the ordinary administration of justice in civil courts.

It is true that in the second "Whereas" military necessity is invoked for the removal of affected persons from any opportunity to threaten the security of the military forces, but in the dispositive part of the December proclamation, which is the controlling part, it is categorically stated that it is the purpose of General MacArthur "to remove such persons, when apprehended, from any position of political and economic influence in the Philippines," and just "to hold them in restraint," NOT TO PROSECUTE, NOR to TRY, NOR TO PUNISH, "for the duration of the war."

Finally, General MacArthur says: "Whereafter I shall release them to the Philippine Government for its judgment upon their respective cases." That is saying in other way that their cases belong to the civil jurisdiction of the Commonwealth ordinary tribunals, and not the court-martial or other military tribunal's jurisdiction. Taking into consideration the December proclamation in conjunction with President Roosevelt's declaration, the conclusion is inevitable that said document is, in fact, a political proclamation, not military.

If the petitioners are political prisoners subject to the civil jurisdiction of ordinary courts of justice if they are to be prosecuted at all, the army has no jurisdiction, nor power, nor authority, from all legal standpoints, to continue holding them in restraint. They are entitled, as a matter of fundamental right, to be immediately released, any allegation as to whether the war was ended or not, notwithstanding, as the Supreme Court of the United States of

America, the highest tribunal under the American flag, has stated that the constitutional guaranties of personal liberty are a shield for the protection "OF ALL CLASSES, AT ALL TIMES, AND UNDER ALL CIRCUMSTANCES."

"The constitutional guaranties of personal liberty are a shield, for the protection of all classes, at all times, and under all circumstances; and the writ of habeas corpus issues to inquire into the legality of the detention of an accused." (Ex parte Milligan, 4 Wall., 2.)

It is alleged that petitioners are being held as a measure of military necessity and that the army Commander in Chief, and not an outsider, including the members of this Supreme Court, is the competent judge as to the existence of military necessity.

Certainly, the army Commander in Chief is supposed to be the most competent judge as to whether military necessity requires or not the detention of petitioners, and ordinarily this Court should accept his judgment as conclusive.

But in this case there is nothing to show that General MacArthur, as the Commander in Chief of the American Armed Forces, is of the opinion that military necessity requires the detention of petitioners. The only opinion that we have in the record is the one expressed by respondent Bradford AT THE TIME OF THE APPREHENSION of petitioners. In his return dated September 5, 1945, said respondent stated that petitioners "were temporarily detained" by virtue of the December proclamation, and nothing is said whether military necessity still requires their further detention. In fact said respondent washes his hands when he alleges that immediately after the apprehension of petitioners, he ceased to have nothing to do with said persons, while respondent Captain Caroline De Eason, in continuing to restrain the liberty of petitioners, is invoking the authority of the commitment orders of Lt. Col. Bradford, the other respondent. So, it seems that the two respondents are mutually throwing responsibility to each other's shoulders.

Under the circumstances, we are entitled to opine that no competent or authoritative statement is on record to the effect that petitioners must remain under restraint as a matter of military necessity. Many other persons placed in the same situation are being released to the Commonwealth Government.

It is easy to understand the absence of such statement if we take into consideration that the state of war has ceased to exist.

The contention that, notwithstanding the historical facts leading to the conclusion that war has ended, we cannot declare that the war has terminated unless and until a treaty of peace has been formally signed, like the Treaty of Paris which ended the Spanish-American war, or a formal declaration of the United State Congress to the effect that peace has been restored, as it was done two years after the termination of hostilities in the First World War, is untenable.

Shall the members of this Supreme Court be blind enough to maintain the existence of a state of war between the Allied Nations and Japan after Japanese Foreign Minister Mamoru Sigemitsu has signed on V-J Day, September 2, 1945, the document of unconditional surrender of Japan, by accepting completely the July 26, 1945, Potsdam declaration?

The following indubitable historical facts are matters of judicial notice, and they are officially recorded in the Official Gazette:

- On August 10, 1945, the Japanese Government declared its readiness to accept the Potsdam allied joint declaration "with the understanding that the said declaration does not compromise any demands which prejudices the prerogatives of his Majesty as a sovereign ruler."

- On August 11, 1945, the Allies answered that from the moment of surrender "the authority of the Emperor and the Japanese Government shall be subject to the Supreme Commander of the Allied Powers."

- On August 14, 1945, the Japanese Government accepted the Allied counter-proposal. The Japanese reply was considered by President Truman as "a full acceptance of the Potsdam Declaration which specifies the unconditional surrender of Japan."

Accordingly, on September 2, 1945, the document of formal surrender was signed by the Japanese representatives at Tokyo Bay, aboard the battleship Missouri, Admiral Halsey's flagship, in the presence of General MacArthur, as Supreme Allied Commander, and of representatives of individual allied nations.

One day after, General Yamashita, the biggest Japanese military figure in the last war, the Conqueror of Singapore and called as the "Tiger of Malaya," signed the surrender of all his forces in the Philippines.

We do not believe it right to maintain the existence of war when, as a matter of fact, war is over. The immediate and main objective of a warring nation is victory. Once attained, war ceases to exist. War cannot exist without two contending parties. It is a struggle between two opposing nations or combinations of states. No fight can exist if there is only one fighter. In the last war, which ended on September 2, 1945, there were two opposing parties, the Allied Nations on the one hand, and on the other, Japan. And Japan laid down arms, refused to continue to fight, surrendered completely. If it is maintained that there is still war, among whom is it being fought? Certainly, it is not between the United Nations and Japan, because Japan is not willing to put up any fight anymore. It is preposterous to think that the Allied Nations shall engage in a shadow war.

Therefore, the formality of a treaty of peace or a resolution of the Congress of the United States, declaring that war is over, is absolutely unnecessary. At most, it is a mere technicality that cannot add anything to the stark reality which is facing us. With or without congressional declaration, the Supreme Court cannot close its eyes to the reality of the termination of war which is confronting us with the same tangibility of a fist blow.

Suppose the Congress of United States of America does not make any formal declaration about the end of war within two or three years, as it seems improper for the Allied Powers to sign any peace treaty with vanquished Japan subject to the authority of the Allied Supreme Commander, shall the Supreme Court of the Philippines declare that war is going on, that war continues to exist that far? To do that we must lose all sense of truth.

We hope nobody will suppose that we will have to endure the Japanese self-delusion of not accepting the existence of a state of war between Japan and China in what they used to call a mere incident, although for years since the Marco Polo bridge action took place in 1937, thousands of soldiers and millions of Chinese innocent civilians had died during protracted military hostilities in wide areas of China, ending only with the unconditional surrender of Japan at the Tokyo Bay.

In considering the case of the petitioners, we believe that instead of the December proclamation, we must take into consideration what we shall call hereafter the October proclamation, issued by General Douglas MacArthur on October 23, 1944.

It is declared therein that the Government of the Commonwealth of the Philippines is the "sole and only government having legal and fundamental jurisdiction over the people in areas of the Philippines free of enemy occupation and control," which is the case of the place wherein the petitioners are being held in restraint; that the "laws now existing in the statute books" and the regulations promulgated pursuant thereto "are in full force and effect and legally binding," including the Constitution which guarantees that "no person shall be deprived of liberty without due process of law" (sec. 1, Article III) and the laws affording the relief of habeas corpus to all who are illegally detained.

It is further announced by General MacArthur in the October proclamation that it is his purpose to restore and extend to the people of the Philippines "the sacred right of government by constitutional process."

It is not logical to entertain the idea that, with the issuance of the December proclamation, General MacArthur had the least idea of jeopardizing the personal liberty of any citizen of the Philippines, which is one of the fundamental human rights guaranteed by our Constitution and laws.

On the morning of February 27, 1945, upon turning over to President Osmena the full powers and responsibilities of the Commonwealth Government at a ceremony held at Malacafian Palace, General MacArthur declared in a stirring speech that his soldiers have come here as an army of free men, dedicated, with our people, "to the cause of human liberty," and that with our liberation, millions of our people will have the opportunity to pledge themselves to the task of building a new and stronger nation "dedicated to making imperishable those sacred liberties for which many have fought and died."

These words are in line with the United Nations' joint declaration made on January 1, 1942, to the effect that complete victory over the enemies "is essential to defend life, liberty, independence and religious freedom, and to preserve human rights and justice."

It is again General MacArthur who, in the speech delivered at a special session of our Congress on July 9, 1945, said:

"Since the beginning of time men have crusaded for freedom and for equality. It was this passion for liberty which inspired the architects of my own government to proclaim so immutably and so beautifully that 'all men are created equal' and 'that they are endowed by their Creator with certain inalienable rights—that among these are Life, Liberty, and the pursuit of Happiness.' On such rights rest our basic concept of human freedom, in defense of which we have fought and still continue to fight on the battle fields of the world. These rights are the very antithesis to the totalitarian doctrine which seeks to regiment the people and control the human will as the price for presumed efficiency in government." And as a final declaration, binding to all United Nations, including the United States of America and the Philippines, it is stated in the Charter adopted in the Conference on June 26, 1945, that it is one of the main purposes of the organization to promote and encourage "respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion." (Sec. 3, Article I, Chapter I of the Charter of the United Nations.)

It is interesting to note that counsel for respondent is invoking section 4 of Rule 102 and Act No. 190, as amended by Acts Nos. 272 and 421, to maintain that this Supreme Court is without jurisdiction to entertain the petition.

We cannot help declaring that the very legal provisions invoked precisely show that petitioners are entitled to the relief sought in the petition.

The pertinent provision of Act No. 190, as amended by Acts Nos. 272 and 421, provides specifically that relief by habeas corpus cannot be afforded to military prisoners.

We have shown already that petitioners are not military prisoners.

The provisions of Act No. 190, as amended, were enacted specifically for special extraordinary situations, and said provisions are no longer in effect, as all procedural provisions on habeas corpus are incorporated in the present judicial rules, wherein said provisions are omitted. When the Supreme Court adopted the rules, by omitting said provisions, it intended clearly to repeal them, and with good reason, because they are incompatible with democratic principles and with the provisions of our Constitution. It has been argued with energy by those who oppose our issuing the order for the release of the petitioners, that if we decide to issue it, the United States Army might refuse to set them at liberty, with the result that the order of release will become a mere scrap of

paper and the Supreme Court of the Philippines will be placed in the unenviable position of utter ridicule. We have to answer in the most definite way that we cannot agree with such a narrow point of view.

As Greece was the cradle of democracy in the West, so the Philippines is the cradle of democracy in the East. If the first occidental democracy was born in Greece centuries before the Christian Era, at the end of the last century the Philippines gave birth to the first democracy in the Orient, the abode of more than one-half of all humanity. That first oriental democracy was born with the drafting of the Malolos Constitution in the most difficult and trying circumstances, under conditions less appropriate for a healthy and vigorous growth, when our country was enduring the hardships of an uphill bloody struggle for national independence. But America, the greatest occidental democracy, came to offer us a helping hand as a second mother. With solicitude she nursed the small child. She reared and cared for her with the self-sacrificing earnestness of maternal love. The child has grown into a brown girl, full of the joy of life. The girl learned from the American teacher the full meaning of constitutional guaranties, of civil liberties, of fundamental human rights. She studied at heart the accomplishments of Washington, Jefferson, and Lincoln. She followed the teachings of Franklin, Hamilton, and Madison. She saw how law is really above all men, and how a humble police officer in the discharge of his official duties, arrested President Grant, and how the Chief Magistrate of that great nation, the United States of America, submitted to the arrest. That girl has grown into full maturity, the personification of beauty, bewitching, the sweetheart of one billion lovers, the greatest pride of America in the continent of Asia, on the shores of the vast Pacific.

Now, who shall dare to lay hands on her? Who shall dare to destroy that most beautiful masterpiece of the greatest American democratic virtues? Who shall have heart to strangle the neck of Philippine democracy, the beloved daughter of American democracy? Certainly, not the United States Army, nor the heroic and glorious Army of Liberation, not the gallant warriors who fought thousands of battles to return to rescue Philippine democracy from the Japanese monsters, with the same romantic courage of a knight of old in the rescue of the beloved princess in captivity. No, certainly not. The American Army shall never allow itself to stand indicted before the bar of the whole world as the cold-blooded murderer of the liberated little daughter of American democracy.

But suppose the most unexpected should happen, that there might be members of the United States Armed Forces who will be blind enough to ignore the order of this Supreme Court, to make a mockery of the administration of justice, shall that unthinkable hypothesis deter us from doing our duty? Our answer is simple. No. No one and nothing in the whole world, neither the all-powerful army which humbled Germany and forced the surrender of the "invincible" Japanese Army, nor weapons more dreadful than the atomic bomb, nor the menace of an imminent catastrophe, shall be powerful enough to make us flinch from complying with our plain duty as justices of the Supreme Court. We must do our duty as our conscience dictates, without fear nor favor. It is our duty to make reason and right supreme, regardless of consequences. Law and justice might suffer setbacks, endure eclipses, but at the end they shall reign with all the splendors of real majesty.

Justice Cooley, one of the most distinguished American judges and law-writers, said:

"It would be strange indeed if, at this late day, after the eulogiums of six centuries and a half have been expended upon the Magna Charta, and rivers of blood shed for its establishment; after its many confirmations, until Coke could in his speech on the petition of right that 'Magna Charta was such a fellow that he will have no sovereign,¹ and after the extension of its benefits and securities by the petition of right, bill of rights and habeas corpus acts, it should now be discovered that evasion of that great clause for the protection of personal liberty, which is the life and soul of the whole instrument, is so easy as is claimed here." (In the matter of Jackson [1867], 15 Mich., 416.)

Referring to this opinion of Justice Cooley our Supreme Court said:

"The opinion of Judge Cooley has since been accepted as authoritative by other courts. (Rivers vs. Citchell

[1881], 57 Iowa, 193; Breene vs. People [1911], Colo., 117 Pac. Rep., 1000; Ex parte Young [1892], 50 Fed., 526.)" (Villavicencio vs. Lukban 39 Phil., 791- 793.)

We have the almost one-fourth-century-old legal doctrine laid down by this Supreme Court to the effect that this tribunal and the courts of first instance of the Philippines have jurisdiction to set free, through habeas corpus proceedings, a civilian who has been illegally arrested or is unduly being detained by military or naval authorities of the United States. (Payomo vs. Floyd [Feb. 17, 1922], 42 Phil., 788.)

We agree that, while war is going on, ordinary civil laws shall remain silent, in order not to impede the effectiveness of war operations. It is a legal maxim that laws are silent amidst arms. Silent leges inter arma. But when the din of war is over, when the clang of arms has ceased, civil laws are restored with full effectiveness, and it is the function of tribunals to interpret and apply them. If they fail to apply them in a proper case submitted to them, they will be recreant to their judicial duties, and are liable to be marked with a stigma they cannot be proud of. Legem terrae amittentes perpetuum infamiae notam inde merito incurrunt. Those who do not preserve the law of the land, thence justly incur the ineffaceable brand of infamy.

It is evident that petitioners are being deprived of their personal liberty without due process of law.

More than three years under the arbitrary rule of the Japanese kempei might have habituated us to view with some leniency the illegal deprivation of individual freedom. The gestapo procedures of apprehending indiscriminately our citizens at any time of the day, mostly after midnight, employed by the ruthless Japanese military police, were a daily occurrence, and it might have deadened our sense of personal freedom, and might make us insensible to the injustice being done to petitioners, to their moral sufferings in their involuntary imprisonment, and, therefore, might have closed our eyes to a situation that requires immediate relief, and our ears to the anguishing clamors of the victims of the injustice. But the fact that immediately after we assumed jurisdiction in this case, and respondents have been required to show cause why relief should not be granted to petitioners, one of them has been subjected to maltreatment, to an inquisitorial procedure hardly justifiable to be used against a Japanese prisoner, must arouse us to the full realization that here there is a case which needs prompt relief, if the final victory won by the United Nations at Tokyo Bay on September 2, 1945, must have a substantial meaning.

With the facts confronting us in this case, we cannot remain indifferent. They present a question that affects us in the deepest recesses of our being. It is human freedom which is at stake. It is one of the fundamental rights which have existed since mankind began to live in this world, much before the Code of Hammurabi has been written, anterior and superior to any constitutional guarantees, and recognized before the organization of society and of any government, because they have their roots in human nature. We cannot remain unmoved when we see how such natural right is disregarded, and violated by official representatives of a democratic government.

If we allow freely such flagrant trampling of the personal freedom of three of our citizens, we shall shake the faith of one hundred million fellow malayans in the effectiveness of democratic processes, and one billion orientals shall cease to look here for the MacArthur's Citadel of Democracy. If the facts presented to us shall happen to reach such public forums as our Congress and the American Congress, they will not fail to arouse waves of protest and civic indignation. This is the first case submitted to the new Supreme Court of the Philippines, as reconstituted since our liberation, wherein our power is invoked for the protection of personal liberty, flagrantly violated. Shall we shrink from doing our plain duty?

If we refuse to grant the redress sought by petitioners, we are afraid we are sanctioning and perpetuating the same procedure which made Fort Santiago a veritable house of horrors, which branded with eternal infamy the Axis concentration camps, Buchenwald, Dachau, Maidanak predicated on the supremacy of torture among the functions of government, in which ease the only peace possible is the peace of death. And then, what was the use

of requiring our boys to fight, to shed their blood, to die in the battle fields of Bataan? What was the purpose of fighting in the whole world to crush Germany and Japan, if we are to follow their procedures? What meaning will the gospel of fundamental freedoms preached by Roosevelt have?

We will not conclude without challenging the applicability of the quotation in the majority opinion of what has been said by the Supreme Court of the United States of America in the case of *Coleman vs. Tennessee* (97 U. S., 509), recognizing the privilege of extraterritoriality in a foreign army, permitted to march through a friendly country or to be stationed in it.

The American Army of Liberation is not a "foreign army." It represents the same sovereignty of the United States of America under which the Philippines is placed. That army is waving the same American flag that waves in the government offices of the Commonwealth. From our point of view, we must consider it as a domestic army. Is it not the continuation of the Fil-American Army which fought in Bataan and Corregidor? Did not the American boys and our boys mix their blood in the same holocaust, in the same battles? Are not the dead American soldiers resting in the same graves with the dead Filipino soldiers in an eternal embrace of brotherhood, sanctified by the noblest ideals?

There is no analogy between that of a foreign army which is granted free passage in a friendly country and that of the American Army in the Philippines, which has belonged here since the American flag began to fly in this country, had to return to vindicate the honor of the American sovereignty, wantonly insulted in the treacherous attack of Pearl Harbor, and shall remain, even after the formal proclamation of our national independence, to protect that independence, as has been solemnly pledged by President Roosevelt, and to maintain vigilance in the first line of defense of the United States of America.

With regards to the privilege of extraterritoriality granted to a foreign army, permitted to march through a friendly country, it must be understood as limited to the internal matters of said army. That is, it is exempt from the civil and criminal jurisdiction of the place as far as it does not affect the substantial rights of the nationals of the friendly country where it is stationed. Those substantial rights, specially if guaranteed in the Constitution, in proper cases, shall always merit the protection of the courts of the territory. That official duty of the courts shall be the more imperative if we take into consideration the stress given in the Charter of the United Nations upon the protection of human rights and fundamental freedoms.

We cannot accept the position of those who maintain that our civil courts should not exercise jurisdiction over the United States Army, the very army of a country which recognizes no one as being above the law, no matter how high his position is or how powerful he is, a country wherein a humble police officer, in the performance of his official duty, may legally arrest the Chief Magistrate of the nation. Such position is subversive of the fundamental tenets of democracy. We cannot accept it in the same way that we cannot accept military dictatorship or any other kind of dictatorship. Under the American flag, the supremacy of the civil government has always been recognized. Under either the American Constitution or the Philippine Constitution, the army is always placed under the authority of civil government, functioning through its legislative, executive and judicial branches. The supreme commander of the army is the President, a civil officer elected by the people. The army has to obey the laws. The jurisdiction of the courts is granted by the Constitution and by the laws. We cannot accept a theory that might revive or reproduce the military tyranny of Himmler or of the Japanese Kempei. With all our admiration for the gallant American Army, with all our deep gratitude for the freedom it has restored to us, we cannot recognize in it any power that is above the law of our land. All tyranny is hateful, even if it be exercised by our own parents, the very persons to whom we owe our lives and all opportunities for happiness. We must do all we can to show our recognition, respect, and gratitude to the American Army, but we should never renounce the supremacy of the law. If we should falter in our national duty of upholding law, we will be unworthy of the efforts and sacrifices

undergone by the American Army to liberate our country. And we can uphold the law by applying it in the proper case and, if its application requires the exercise of jurisdiction over the American troops, nothing shall make us hesitate to exercise that jurisdiction. It is the only way open to us under our official duties. It is the only way of keeping alive the public faith in the effectiveness of the courts as the bulwark of the rights of the people.

We are, therefore, of the opinion that an order should be issued by this Court without delay for the immediate release of petitioners.

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