

WILLIAM F. PERALTA, PETITIONER, VS. THE DIRECTOR OF PRISONS, RESPONDENT.*G.R. No. L-49. November 12, 1945*

Ponente: FERIA, J.

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Petitioner-defendant, a member of the Metropolitan Constabulary of Manila charged with the supervision and control of the production, procurement and distribution of goods and other necessities as denned in section 1 of Act No. 9 of the National Assembly of the so-called Republic of the Philippines, was prosecuted for the crime of robbery as denned and penalized by section 2 (a) of Act No. 65 of the same Assembly. He was found guilty and sentenced to life imprisonment, which he commenced to serve on August 21, 1944, by the Court of Special and Exclusive Criminal Jurisdiction, created in section 1 of Ordinance No. 7 promulgated by the President of the so-called Republic of the Philippines, pursuant to the authority conferred upon him by the Constitution and laws of the said Republic. And the procedure followed in the trial was the summary one established in Chapter II of Executive Order No. 157 of the Chairman of the Executive Commission, made applicable to the trial violations of said Act No. 65 by section 9 thereof and section 5 of said Ordinance No. 7.

The petition for habeas corpus is based on the ground that the Court of Special and Executive Criminal Jurisdiction created by Ordinance No. 7 "was a political instrumentality of the military forces of the Japanese Imperial Army, the aims and purposes of which are repugnant to those aims and political purposes of the Commonwealth of the Philippines, as well as those of the United States of America, and therefore, null and void ab initio," that the provisions of said Ordinance No. 7 are violative of the fundamental laws of the Commonwealth of the Philippines and "the petitioner has been deprived of his constitutional rights"; that the petitioner herein is being punished by a law created to serve the political purpose of the Japanese Imperial Army in the Philippines, and "that the penalties provided for are much (more) severe than the penalties provided for in the Revised Penal Code."

The Solicitor General, in his answer in behalf of the respondent, states that, in his own opinion, for the reasons expressed in his brief in the case of People of the Philippines, plaintiff-appellant, vs. Benedicto Jose y Santos, defendant-appellee, G. R. No. L-22 (p. 612, post), the acts and proceedings taken and had before the said Court of Special and Exclusive Criminal Jurisdiction which resulted in the conviction and imprisonment of the herein petitioner, should now be denied force and efficacy, and therefore the petition for habeas corpus should be granted. The reasons advanced by the Solicitor General in said brief and in his reply memorandum in support of his contention are, that the Court of Special and Exclusive Criminal Jurisdiction created, and the summary procedure prescribed therefor, by said Ordinance No. 7 in connection with Executive Order No. 157 of the Chairman of the Executive Commission, are tinged with political complexion; that the procedure prescribed in Ordinance No. 7 does not afford a fair trial, violates the Constitution of the Commonwealth, and impairs the constitutional rights of accused persons under their legitimate Constitution. And he cites, in support of this last proposition, the decisions of the Supreme Court of the United States in the cases of Texas vs. White (7 Wall., 700,

743); *Horn vs. Lockhart* (17 Wall., 570, 581) ; *United States vs. Home Insurance Co.* (22 Wall., 99, 104) ; *Sprott vs. United States* (20 Wall., 459).

The City Fiscal of Manila appeared before this Court as *amicus curiae*. In his memorandum he submits that the petition for habeas corpus be denied on the following grounds: That the Court of Special and Exclusive Criminal Jurisdiction and the Acts, Ordinances and Executive Orders, creating it are not of a political complexion, for said Court was created, and the crimes and offenses placed under its jurisdiction were penalized heavily, in response to an urgent necessity, according to the preamble of Ordinance No. 7; that the right to appeal in a criminal case is not a constitutional right; and that the summary procedure established in said Ordinance No. 7 is not violative of the provision of Article III, section 1 (18) of the Constitution of the Commonwealth, to the effect that no person shall be compelled to be a witness against himself, nor of the provision of section 1 (1) of the same Article that no person shall be deprived of life, liberty, or property without due process of law.

The features of the summary procedure adopted by Ordinance No. 7, assailed by the petitioner and the Solicitor General as impairing the constitutional rights of an accused are; that the court may interrogate the accused and witnesses before trial in order to clarify the points in dispute; that the refusal of the accused to answer the questions may be considered unfavorable to him; that if from the facts admitted at the preliminary interrogatory it appears that the defendant is guilty, he may be immediately convicted; and that the sentence of the court is not appealable, except in case of death penalty which cannot be executed unless and until reviewed and affirmed by a special division of the Supreme Court composed of three Justices.

Before proceeding further, and in order to determine the law applicable to the questions involved in the present case, it is necessary to bear in mind the nature and status of the government established in these Islands by the Japanese forces of occupation under the designation of Republic of the Philippines.

In the case of *Co Kim Cham vs. Valdez Tan Keh and Dizon* (G. R. No. L-5, pp. 113, 127, ante), recently decided, this Court, speaking through the Justice who pens this decision, held:

"In view of the foregoing, it is evident that the Philippine Executive Commission, which was organized by Order No. 1, issued on January 23, 1942, by the Commander of the Japanese forces, was a civil government established by the military forces of occupation and therefore a *de facto* government of the second kind. It was not different from the government established by the British in Castine, Maine, or by the United States in Tampico, Mexico. As Halleck says, 'the government established over an enemy's territory during the military occupation may exercise all the powers given by the laws of war to the conqueror over the conquered, and is subject to all restrictions which that code imposes. It is of little consequence whether such government be called a military or civil government. Its character is the same and the source of its authority the same. In either case it is a government imposed by the laws of war and so far as it concerns the inhabitants of such territory or the rest of the world those laws alone determine the legality or illegality of its acts.' (Vol. 2 p. 466.) The fact that the Philippine Executive Commission was a civil and not a military government and was run by Filipinos and not by Japanese nationals is of no consequence."

And speaking of the so-called Republic of the Philippines in the same decision, this Court said:

"The so-called Republic of the Philippines, apparently established and organized as a sovereign state independent from any other government by the Filipino people, was, in truth and reality, a government established by the belligerent occupant or the Japanese forces of occupation. It was of the same character as the Philippine Executive Commission, and the ultimate source of its authority was the same—the Japanese military authority and government. As General MacArthur stated in his proclamation of October 23, 1944, a portion of which has been already quoted, 'under enemy duress, a so-called government styled as the "Republic of the Philippines" was established on October 14, 1943, based upon neither the free expression of the peoples' will nor the sanction of the Government of the United States.' Japan had no legal power to grant independence to

the Philippines or transfer the sovereignty of the United States to, or recognize the latent sovereignty of, the Filipino people, before its military occupation and possession of the Islands had matured into an absolute and permanent dominion or sovereignty by a treaty of peace or other means recognized in the law of nations."

As the so-called Republic of the Philippines was a de facto government of the second kind (of paramount force), as the government established in Castine, Maine, during its occupation by the British forces and as that of Tampico, Mexico, occupied during the war with that country by the United States Army, the questions involved in the present case cannot be decided in the light of the Constitution of the Commonwealth Government; because the belligerent occupant was totally independent of the constitution of the occupied territory in carrying out the administration over said territory; and the doctrine laid down by the Supreme Court of the United States in the cases involving the validity of judicial and legislative acts of the Confederate States, considered as de facto governments of the third kind, does not apply to the acts of the so-called Republic of the Philippines which is a de facto government of paramount force. The Constitution of the so-called Republic of the Philippines can neither be applied, since the validity of an act of a belligerent occupant cannot be tested in the light of another act of the same occupant, whose criminal jurisdiction is drawn entirely from the law martial as defined in the usages of nations.

In the case of *United States vs. Rice* (4 Wheaton, 246), the Supreme Court of the United States held that, by the military occupation of Castine, Maine, the sovereignty of the United States in the territory was, of course, suspended, and the laws of the United States could no longer be rightfully enforced there or be obligatory upon the inhabitants who remained and submitted to the belligerent occupant. By the surrender the inhabitants passed under a temporary allegiance to the British government, and were bound by such laws, and such only, as it chose to recognize and impose. And Oppenheim, in his *Treatise on International Law*, says that, in carrying out the administration over the occupied territory and its inhabitants, "the (belligerent) occupant is totally independent of the constitution and the laws of the territory, since occupation is an aim of warfare, and the maintenance and safety of his forces, and the purpose of war, stand in the foreground of his interest and must be promoted under all circumstances or conditions. (Vol. II, Sixth Edition, Revised, 1944, p. 342.)

The doctrine laid down in the decisions of the Supreme Court of the United States (in the cases of *Texas vs. White*, 7 Wall., 700; *Horn vs. Lockhart*, 17 Wall., 570; *Williams vs. Bruffy*, 96 U. S., 176; *United States vs. Home Insurance Co.*, 20 Wall., 249; *Sprott vs. United States*, 20 Wall, 459, and others) that the judicial and legislative acts of the Confederate States which impaired the rights of the citizens under the Constitution of the United States or of the States, or were in conflict with those constitutions, were null and void, is not applicable to the present case. Because that doctrine rests on the propositions that "the concession (of belligerency) made to the Confederate Government * * * sanctioned no hostile legislation * * * and it impaired in no respect the rights of loyal citizens as they had existed at the commencement of the war" (*Williams vs. Bruffy*, supra); that the Union is perpetual and indissoluble, and the obligation of allegiance to the state and obedience to her laws and state constitution, subject to the Constitution of the United States, remained unimpaired during the War of Secession (*Texas vs. White*, supra) and that the Confederate States "in most, if not in all instances, merely transferred the existing state organizations to the support of a new and different national head. The same constitutions, the same laws for the protection of property and personal rights remained and were administered by the same officers." (*Sprott vs. United States*, supra). In fine, because in the case of the Confederate States, the constitution of each state and that of the United States or the Union continued in force in those states during the War of Secession; while the Constitution of the Commonwealth Government was suspended during the occupation of the Philippines by the Japanese forces or the belligerent occupant at regular war with the United States.

The questions which we have to resolve in the present case in the light of the law of nations are, first, the validity of the creation of the Court of Special and Exclusive Criminal Jurisdiction, and of the summary procedure

adopted for that court; secondly, the validity of the sentence which imposes upon the petitioner the penalty of life imprisonment during the Japanese military occupation; and thirdly, if they were then valid, the effect on said punitive sentence of the reoccupation of the Philippines and the restoration therein of the Commonwealth Government.

(1) As to the validity of the creation of the Court of Special and Exclusive Criminal Jurisdiction by Ordinance No. 7, the only factor to be considered is the authority of the legislative power which promulgated said law or ordinance. It is well established in International Law that "The criminal jurisdiction established by the invader in the occupied territory finds its source neither in the laws of the conquering or conquered state,—it is drawn entirely from the law martial as denned in the usages of nations. The authority thus derived can be asserted either through special tribunals, whose authority and procedure is defined in the military code of the conquering state, or through the ordinary courts and authorities of the occupied district." (Taylor, International Public Law, p. 598.) The so-called Republic of the Philippines, being a governmental instrumentality of the belligerent occupant, had therefore the power or was competent to create the Court of Special and Exclusive Criminal Jurisdiction. No question may arise as to whether or not a court is of a political complexion, for it is mere governmental agency charged with the duty of applying the law to cases falling within its jurisdiction. Its judgments and sentences may be of a political complexion or not depending upon the nature or character of the law so applied. There is no room for doubt, therefore, as to the validity of the creation of the court in question.

With respect to the summary procedure adopted by Ordinance No. 7, and followed in the trial of the case which resulted in the conviction of the herein petitioner, there is also no question as to the power or competence of the belligerent occupant to promulgate the law providing for such procedure. For "the invader deals freely with the relations of the inhabitants of the occupied territory towards himself * * * for his security also, he declares certain acts, not forbidden by the ordinary laws of the country, to be punishable; and he so far suspends the laws which guard personal liberty as is required for the summary punishment of any one doing such acts." (Halls International Law, seventh ed., p. 500). A belligerent "occupant may where necessary, set up military courts instead of the ordinary courts; and in case, and in so far as, he admits the administration of justice by the ordinary courts, he may nevertheless, so far as is necessary for military purposes, or for the maintenance of public order and safety, temporarily alter the laws, especially the Criminal Law, on the basis of which justice is administered as well as the laws regarding procedure." (Oppenheim's International Law, Vol. II, sixth edition, 1944, p. 349.)

No objection can be set up to the legality of its provisions in the light of the precepts of our Commonwealth Constitution relating to the rights of accused under that Constitution, because the latter was not in force during the period of the Japanese military occupation, as we have already stated. Nor may said Constitution be applied upon its revival at the time of the re-occupation of the Philippines by virtue of the principle of postliminium because "a constitution should operate prospectively only, unless the words employed show a clear intention that it should have a retrospective effect" (Cooley's Constitutional Limitations, seventh edition, page 97, and cases quoted and cited in the footnote), especially as regards laws of procedure applied to cases already terminated completely.

The only restrictions or limitations imposed upon the power of a belligerent occupant to alter the laws or promulgate new ones, especially the criminal law as well as the laws regarding procedure, so far as it is necessary for military purposes, that is, for his control of the territory and the safety and protection of his army, are those imposed by the Hague Regulations, the usages established by civilized nations, the laws of humanity and the requirements of public conscience. It is obvious that the summary procedure under consideration does not violate those precepts. It cannot be considered as violating the laws of humanity and public conscience, for it is less objectionable, even from the point of view of those who are used to the accusatory system of criminal procedure than the procedural laws based on the semi-inquisitorial or mixed system prevailing in France and other countries

in continental Europe.

(2) The validity of the sentence rendered by the Court of Special and Exclusive Criminal Jurisdiction which imposes life imprisonment upon the herein petitioner, depends upon the competence or power of the belligerent occupant to promulgate Act No. 65 which punishes the crime of which said petitioner was convicted.

Westlake says that Article XLIII, Section III, of the Hague Conventions of 1907 "indicates that the laws to be enforced by the occupant consist of, first, the territorial law in general, as that which stands to the public order and social and commercial life of the district in a relation of mutual adaptation, so that any needless displacement of it would defeat the object which the invader is enjoined to have in view, and secondly, such variations of the territorial law as may be required by real necessity and are not expressly prohibited by any of the rules which will come before us. Such variations will naturally be greatest in what concerns the relation of the communities and individuals within the district to the invading army. and its followers, it being necessary for the protection of the latter, and for the unhindered prosecution of the war by them, that acts committed to their detriment shall not only Jose what justification the territorial law might give them. as committed against enemies, but shall be repressed more severely than the territorial law would repress acts committed against fellow subjects. Indeed the entire relation between the invaders and the invaded, so far as it may fall within the criminal department whether by the intrinsic nature of the acts done or in consequence of the regulations made by the invaders, may be considered as taken out of the territorial law and referred to what is called martial law." (Westlake, International Law, Part II, War, p. 96.)

According to Hyde (International Law, Vol. II, p. 386), the term "martial law," in so far as it is used to describe any fact in relation to belligerent occupation, does not refer to a particular code or system of law, or to a special agency entrusted with its administration. The term merely signifies that the body of law actually applied, having the sanction of military authority, is essentially martial. All law, by whomsoever administered, in an occupied district is martial law; and it is none the less so when applied by the civil courts in matters devoid of special interest to the occupant. The words "martial law" are doubtless suggestive of the power of the occupant to share the law as he sees fit; that is, to determine what shall be deemed lawful or unlawful acts, to establish tests for ascertaining the guilt of offenders, to fix penalties, and generally to administer justice through such agencies as are found expedient.

And the United States Rules of Land Warfare provide that the belligerent occupant may promulgate such new laws and regulations as military necessity demands, and in this class will be included those laws which come into being as a result of military rule; that is, those which establish new crimes and offenses incident to a state of war and are necessary for the control of the country and the protection of the army, for the principal object of the occupant is to provide for the security of the invading army and to contribute to its support and efficiency and the success of its operations. (Pub. 1940, pp. 76, 77.)

From the above it appears clear that it was within the power and competence of the belligerent occupant to promulgate, through the National Assembly of the so-called Republic of the Philippines, Act No. 65 of the said Assembly, which penalizes the crimes of robbery and other offenses by imprisonment ranging from the maximum period of the imprisonment prescribed by the laws and ordinances promulgated by the President of the so-called Republic as minimum, to life imprisonment or death as maximum. Although these crimes are defined in the Revised Penal Code, they were altered and penalized by said Act No. 65 with different and heavier penalties, as new crimes and offenses demanded by military necessity, incident to a state of war, and necessary for the control of the country by the belligerent occupant, the protection and safety of the army of occupation, its support and efficiency, and the success of its operations.

They are not the same ordinary offenses penalized by the Revised Penal Code.—The criminal acts penalized by said Act No. 65 are those committed by persons charged or connected with the supervision and control of the production, procurement and distribution of foods and other necessities; and the penalties imposed upon the violators are different from and much heavier than those provided by the Revised Penal Code for the same ordinary crimes. The acts penalized by said Act were taken out of the territorial law or Revised Penal Code, and referred to what is called martial law by international jurists, defined above by Hyde, in order, not only to prevent food and other necessities from reaching the "guerrillas" which were harassing the belligerent occupant from every nook and corner of the country, but also to preserve the food supply and other necessities in order that, in case of necessity, the Imperial Japanese forces could easily requisition them, as they did, and as they had the right to do in accordance with the law of nations for their maintenance and subsistence (Art. LII, Sec. III, Hague Conventions of 1907). Especially taking into consideration the fact, of which this court may take judicial notice, that the Imperial Japanese Army had depended mostly for their supply upon the produce of this country.

The crimes penalized by Act No. 65—as well as the crimes against national security and the law of nations, to wit: treason, espionage, inciting to war, violation of neutrality, correspondence with hostile country, flight to enemy's country, piracy; and the crimes against public order, such as rebellion, sedition and disloyalty, illegal possession of firearms and other, penalized by Ordinance No. 7 and placed under the jurisdiction of the Court of Special and Exclusive Criminal Jurisdiction—are all of a political complexion, because the acts constituting those offenses were punished, as are all political offenses, for public rather than private reasons, and were acts in aid or favor of the enemy and directed against the welfare, safety and security of the belligerent occupant. While it is true that these offenses, when committed against the Commonwealth or United States Government, are denned and also penalized, by the territorial law or Revised Penal Code, they became inapplicable as crimes against the occupier upon the occupation of the Islands by the Japanese forces. And they had to be taken out of the territorial law and made punishable by said Ordinance No. 7, for they were not penalized before under the Revised Penal Code when committed against the belligerent occupant or the government established by him in these Islands. They are also considered by some writers as war crimes in a broad sense. In this connection Wheaton observes the following:

"Of 'war crimes' the number is naturally indefinite, depending as they do on the acts from time to time ordered to be done or forbidden to be done in the martial law proclamation or regulations of the invading or occupying commander. Thus, in the Anglo-Boer war, the British military authorities proclaimed the following to be offenses against their martial law;—Being in possession of arms, ammunition, etc.; traveling without a permit; sending prohibited goods; holding meetings other than those allowed; using seditious language; spreading alarmist reports; overcharging for goods; wearing uniforms without due authority; going out of doors between certain hours; injuring military animals or stores; being in possession, without a permit, of horses, vehicles, cycles, etc.; hindering those in execution of military orders; trespassing on defense works. Such offenses, together with several others, were specified in the Japanese regulations made in the Russo-Japanese war." (Wheaton's International Law, War, seventh edition, 1944, p. 242.)

It is, therefore, evident that the sentence rendered by the Court of Special and Exclusive Criminal Jurisdiction against the petitioner, imposing upon him the penalty of life imprisonment, was good and valid, since it was within the admitted power or competence of the belligerent occupant to promulgate the law penalizing the crime of which petitioner was convicted.

(3) The last question is the legal effect of the reoccupation of the Philippines and restoration of the Commonwealth Government; that is, whether or not, by the principle of postliminy, the punitive sentence which petitioner is now serving fell through or ceased to be valid from that time.

In order to resolve this last question, it is not necessary to enter into an elaborate discussion on the matter. It is

sufficient to quote the opinion on the subject of several international jurists and our recent decision in the case of *Co Kim Cham vs. Valdez Tan Ken and Dizon*, supra.

Hall, commenting on the effect of the principle of postliminy upon sentences of the tribunals continued or created by the belligerent occupant, opines "that judicial acts done under this control, when they are not of a political complexion, administrative acts so done, to the extent that they take effect during the continuance of his control, and the various acts done during the same time by private persons under the sanction of municipal law, remain good. * * * Political acts on the other hand fall through as of course, whether they introduce any positive change into the organization of the country, or whether they only suspend the working of that already in existence. The execution also of punitive sentences ceases as of course when they have had reference to acts not criminal by the municipal law of the state, such for example as acts directed against the security or control of the invader." (Hall's *International Law*, seventh edition, p. 518.)

Westlake, speaking of the duration of the validity of punitive sentences for offenses such as the one in question, which is within the admitted power or competence of the belligerent occupant to punish, says that: "To the extent to which the legal power of the occupant is admitted he can make law for the duration of his occupation. Like any other legislator he is morally subject to the duty of giving sufficient notice of his enactments or regulations, not indeed so as to be debarred from carrying out his will without notice, when required by military necessity and so far as practically carrying out his will can be distinguished from punishment, but always remembering that to punish for breach of a regulation a person who was justifiably ignorant of it would be outrageous. But the law made by the occupant within his admitted power, whether morally justifiable or not, will bind any member of the occupied population as against any other member of it, and will bind as between them all and their national government, so far as it produces an effect during the occupation. When the occupation comes to an end and the authority of the national government is restored, either by the progress of operations during the war or by the conclusion of a peace, no redress can be had for what has been actually carried out but nothing further can follow from the occupant's legislation. A prisoner detained under it must be released, and no civil right conferred by it can be further enforced. The enemy's law depends on him for enforcement as well as for enactment. The invaded state is not subject to the indignity of being obliged to execute his commands." (Westlake, *International Law*, Part II, War, pp. 97, 98.)

And Wheaton, who, as above stated, considers as war crimes such offenses as those penalized in Ordinance No. 7 and Act No. 65, says: "In general, the cast of the occupant possess legal validity, and under international law should not be abrogated by the subsequent government. But this rule does not necessarily apply to acts that exceed the occupant's power (e. g., alienation of the domains of the State or the sovereign), to sentences for 'war treason' and 'war crimes,' to acts of a political character, and to those that operate beyond the period of occupation. When occupation ceases, no reparation is legally due for what has already been carried out." (Wheaton's *International Law*, supra, p. 245.)

We have already held in our recent decision in the case of *Co Kim Cham vs. Valdez Tan Keh and Dizon*, supra, that all judgments of political complexion of the courts during the Japanese regime, ceased to be valid upon the reoccupation of the islands by virtue of the principle or right of postliminium. Applying that doctrine to the present case, the sentence which convicted the petitioner of a crime of a political complexion must be considered as having ceased to be valid ipso facto upon the reoccupation or liberation of the Philippines by General Douglas MacArthur.

It may not be amiss to say in this connection that it is not necessary and proper to invoke the proclamation of General Douglas MacArthur declaring null and void all laws, among them Act No. 65, of the so-called Republic of the Philippines under which petitioner was convicted, in order to give retroactive effect to the nullification of

said penal act and invalidate the punitive sentence rendered against petitioner under said law, a sentence which, before the proclamation, had already become null and of no effect.

We therefore hold that the punitive sentence under consideration, although good and valid during the military occupation of the Philippines by the Japanese forces, ceased to be good and valid ipso facto upon the reoccupation of these Islands and the restoration therein of the Commonwealth Government.

In view of all the foregoing, the writ of habeas corpus prayed for is hereby granted and it is ordered that the petitioner be released forthwith, without pronouncement as to costs. So ordered.

Jaranilla, Pablo, and Bengzon, JJ., concur.

MORAN, C. J.: I concur in the result.

CONCURRING

OZAETA, J.,

Amidst the forest of opinions that have cropped up in this case it would seem unnecessary to plant an additional tree. To justify our effort—lest we seem intent to bring coal to Newcastle—we ought to state that the following opinion had been prepared before the others were tendered. It has been impossible for the Court to reconcile and consolidate the divergent views of its members although they arrive at practically the same result.

Accused of robbery in the Court of Special and Exclusive Criminal Jurisdiction of Manila, the petitioner was found guilty and sentenced to life imprisonment. He commenced to serve the sentence on August 21, 1944. He now petitions this Court for the writ of habeas corpus, alleging that Ordinance No. 7, by which the Court of Special and Exclusive Criminal Jurisdiction was created and which was promulgated on March 8, 1944, by the President of the "Republic of the Philippines," was null and void ab initio. The Solicitor General, answering the petition on behalf of the respondent Director of Prisons, expressed the opinion that "the acts and proceedings taken and had before the said Court of Special and Exclusive Criminal Jurisdiction which resulted in the conviction and imprisonment of the herein prisoner should now be denied force and efficacy," and recommended "that the writ of habeas corpus prayed for be granted and that the City Fiscal be instructed to prepare and file the corresponding information for robbery against the petitioner herein in the Court of First Instance of Manila."

The case was argued before us on September 21 and 22, 1945, by the First Assistant Solicitor General on behalf of the respondent and the City Fiscal as *amicus curiæ*—the former impugning and the latter sustaining the validity of said Ordinance No. 7.

Section 1 of the ordinance in question reads as follows:

"SECTION 1. There is hereby created in every province and city throughout the Philippines one or more courts of special criminal jurisdiction as the President of the Republic of the Philippines may determine upon recommendation of the Minister of Justice, which courts shall have exclusive jurisdiction to try and determine crimes and offenses penalized by Act No. 65 entitled 'An Act imposing heavier penalties for crimes involving robbery, bribery, falsification, frauds, illegal exactions and transactions, malversation of public funds and infidelity as defined in the Revised Penal Code and violations of food control laws, when committed by public officers and employees, and for similar offenses when committed by private individuals or entities, and

providing for a summary procedure for the trial of such offenders."

Section 2 confers upon the court mentioned in section 1 exclusive jurisdiction also to try the following crimes as defined in the Revised Penal Code; crimes against national security and the law of nations, crimes against public order, brigandage, arson and other crimes involving destruction, illegal detention committed by private individuals and kidnapping of minors; and illegal possession of firearms, as defined in an executive order. Section 3 provides for the appointment of one judge of first instance to preside over the court above mentioned and of a special prosecutor in each special court. Section 4 authorizes the court to impose a longer term of imprisonment than that fixed by law, or imprisonment for life or death where not already fixed by law, for the crimes and offenses mentioned in section 2. The remaining sections read as follows:

"SEC. 5. The trial of the cases arising under sections 1 and 2 hereof shall be started within two days after the filing of the corresponding information, shall be summary in procedure, and shall aim at their expeditious and prompt disposition. Technicalities shall be avoided and all measures calculated to serve this end shall be taken by the trial judge. Said cases shall be decided within four days after the same are submitted for decision. The summary procedure provided in Act No. 65 insofar as not inconsistent with the provisions of this Ordinance, shall govern the trial of the cases enumerated in said sections 1 and 2 hereof.

"SEC. 6. The decisions of the special courts herein created shall be final except where the penalty imposed is death, in which case the records of the particular case shall be elevated en consulta to a special division of the Supreme Court composed of three members to be designated by the President of the Republic of the Philippines. The clerk of each special court, upon the promulgation of a decision imposing the death penalty, shall immediately forward the records of the case to the special division of the Supreme Court herein created, which shall decide the case within fifteen, days from the receipt of the records thereof.

"SEC. 7. The interest of public safety so requiring it, the privileges of the writ of habeas corpus are hereby suspended with respect to persons accused of, or under investigations for, any of the crimes and offenses enumerated in sections 1 and 2 hereof.

"SEC. 8. All laws, rules or orders, or parts thereof, inconsistent with the provisions hereof, are hereby repealed or modified accordingly.

"SEC. 9. This Ordinance shall take effect immediately upon its promulgation."

The summary procedure provided in Act No. 65 of the "Republic," as referred to in section 5 above quoted, is in turn that established by Chapter II of Executive Order No. 157 of the Chairman of the Philippine Executive Commission, dated May 18, 1943. Under said procedure (section 17) "search warrants may be issued by the court or by any prosecuting officer, authorizing peace officers to search for and seize any articles or objects described in the warrant, including those which may be regarded as evidence of an offense under this Order even if such articles or objects are not included among those described in section 2, Rule 122, of the Rules of Court." Section 18 reads as follows:

"SEC. 18. The accused or his representative may be examined by the court, and with the permission of the court, by the fiscal or other prosecuting officer as to any matters favorable or unfavorable to him or his principal; and either may apply to the judge for the examination of the co-accused or the representative of the latter in matters related to the defense of the accused. Statements made by the accused, his co-accused, or the representative of the accused or a person acting in a similar capacity, irrespective of the circumstances under which they were made, shall be admissible in evidence if material to the issue."

Section 21 provides for the summary trial in the following manner:

"Such trials shall be conducted according to the following rules:

"(a) After arraignment and plea, the court shall immediately cause to be explained to the accused the facts constituting the offenses with which he is charged, and the judge shall interrogate the accused and the witnesses as to the facts and circumstances of the case in order to clarify the points in dispute and those which are admitted.

"(b) Refusal of the accused to answer any questions made or allowed by the court may be considered unfavorable to him.

"(c) Except for justifiable reasons, the accused shall not be allowed to plead and assert defenses that are inconsistent with each other.

"(d) If from the facts admitted at the preliminary interrogation, it should appear that the accused is guilty of the crime charged in the information, or in any other information subsequently filed by the prosecuting officer, a sentence of conviction may be immediately rendered against the accused. Otherwise, the judge shall dictate an order distinctly specifying the facts admitted by the accused and those which are in dispute, and the trial shall be limited to the latter, unless the judge, for special reasons, otherwise directs.

"(e) Unjustified absence of an accused who has been released on bail, or of his representative shall not be a ground for interrupting the proceedings or attacking the validity of the judgment.

"The provisions of Rules 115 to 117 of the Rules of Court shall be supplementary to the foregoing insofar as they are not in conflict therewith."

The record shows that during their existence the courts of special and exclusive criminal jurisdiction created by the ordinance in question convicted and sentenced a total of 94 individuals, 55 of whom had been prosecuted for illegal possession of firearms and 15 for robbery; and that of the 94 convicts only 3, including the herein petitioner, remain in confinement, 21 having escaped, 37 having been released, and 33 having died.

In synthesis, the argument of the Solicitor General is as follows: Acts of the military occupant which exceed his power tested by the criterion set forth in article 43 of the Hague Regulations, are null and without effect as against the legitimate government. (Wheaton's International Law, 7th ed., p. 245.) Acts in furtherance or support of rebellion against the United States, or intended to defeat the just rights of citizens, and other Acts of like nature, must, in general, be regarded as invalid and void (Texas vs. White, 74 U. S., 733; 19 Law. ed., 240.) Judicial or legislative acts in the insurrectionary states were valid where they were not hostile in their purpose or mode of enforcement to the authority of the national government, and did not impair the rights of citizens under the Constitution. (Horn vs. Lockhart, 17 Wall., 570-581.; 21. Law. ed., 660.) All the enactments of the de facto legislatures in the insurrectionary states during the war, which were not hostile to the Union or to the authority of the General Government and which were not in conflict with the Constitution of the United States, or of the states, have the same validity as if they had been enactments of legitimate legislatures. (United States vs. The Home Insurance Co., 22 Wall., 99-104; 22 Law. ed., 818.) Tested by these principles of international law, Ordinance No. 7 must be declared void (1) because it favored the forces of occupation and the civilian Japanese inasmuch as it provided an excessively heavy penalty for and the summary trial of possession of firearms and violations of food control regulations and (2) because it impaired the rights of citizens under the Constitution inasmuch as the procedure therein prescribed withdrew the privilege of the accused against self-incrimination and his right to appeal to the Supreme Court even where the penalty imposed was life imprisonment or death.

In substance, the City Fiscal argues that the heavier penalty for the illegal possession of firearms than that fixed by the Administrative Code was not directed toward the suppression of underground activities against the Japanese army, and the rigid enforcement of the food control measures was not intended to insure the procurement of supplies by said army, because in any event the Japanese military occupant freely exercised the power to go after and punish his enemies directly without recurring to the agencies of the "Republic," for there

were even cases where the offenders were already in the hands of the police or courts of the "Republic" but they were unceremoniously taken from said agencies by the Japanese military police and punished or liquidated by it at Fort Santiago or elsewhere; and as regards food control, the Japanese forces did not have any need of the measures or agencies established by the "Republic" because the Japanese forces themselves commandeered what they needed or sent put their own agents to purchase it for them at prices even much higher than those fixed by the "Republic"; that the procedure prescribed afforded a fair trial and did not violate any fundamental rights; that the military occupant was not in duty 'bound to respect the constitution and the laws of the occupied territory; that he could abrogate all of them and promulgate new ones if he so chose; that the cases cited by the Solicitor General are not applicable because they deal with the validity of acts and processes of the governments of the rebel states during the Civil War and are based upon the indissolubility of the Union; that the validity or nullity of the ordinance in question should be judged in the light of the provisions of the Constitution and the laws of the "Republic" and of generally accepted principles of international law; that even assuming that it should be judged by the standard of the Constitution of the Commonwealth, the ordinance satisfies all the requirements of said Constitution; that the right to appeal in a criminal case is not a constitutional but a purely statutory right which may be granted or withheld at the pleasure of the state; and, finally, that the supposed invalidity of the sentence imposed against the petitioner cannot be raised by habeas corpus.

There is no question that in virtue of the proclamation of General MacArthur of October 23, 1944 (41 Off. Gaz., 147, 148), Ordinance No. 7 is no longer of any force and effect since the restoration of the Government of the Commonwealth of the Philippines. The question before us is whether said ordinance ever acquired any force and effect or was null and void ab initio.

Invoking decisions of the Supreme Court of the United States in cases involving the validity of Acts of the Confederacy and of a rebel state as a de facto government during the Civil War, the Solicitor General maintains that the ordinance in question was null and void because it impaired the rights of citizens under the Constitution and because it was hostile in its purpose to the United States and the Commonwealth of the Philippines.

The decisions invoked would be applicable if the so-called Republic of the Philippines should be considered as a government established by the Filipino people in rebellion against the Commonwealth and the sovereignty of the United States. The decisions of the Supreme Court of the United States declaring invalid Acts of a rebel state or of the Confederacy which were in furtherance or support of rebellion against the United States or which impaired the rights of citizens under the Constitution, rest on the proposition that the Union is perpetual and indissoluble and that the obligations of allegiance to the state, and obedience to her laws, subject to the Constitution of the United States, remained unimpaired during the War of Secession. (See *Texas vs. White*, 74 U. S., 700; 19 Law. ed., 227, 237; *Williams vs. Bruffy*, 96 U. S., 176; 24 Law. ed., 716.) Obviously, that proposition does not hold true with respect to a de facto government established by the enemy in an invaded and occupied territory in the course of a war between two independent nations. Such territory is possessed temporarily by lawful government at war with the country of which the territory so possessed is a part, and during that possession the obligations of the inhabitants to their country are suspended, although not abrogated. (*United States vs. Rice*, 4 Wheat., 253; *Fleming vs. Page*, 9 How., 614; *Baldy vs. Hunter*, 171 U. S., 388; 43 Law. ed., 208, 210.) In the case of *Williams vs. Bruffy*, supra, the court, speaking through Mr. Justice Field, observed: "The rule stated by Vattel, that the justice of the cause between two enemies being by the law of nations reputed' to be equal, whatsoever is permitted to the one in virtue of war is also permitted to the other, applies only to cases of regular war between independent nations. It has no application to the case of a war between an established government and insurgents seeking to withdraw themselves from its jurisdiction or to overthrow its authority. The court further stated that the concession of belligerent rights made to the Confederate Government sanctioned no hostile legislation and impaired in no respect the rights of loyal citizens as they had existed at the commencement of hostilities.

On the other hand, in a war between independent nations "the rights of the occupant as a law-giver have broad scope." He may "suspend the existing laws and promulgate new ones when the exigencies of the military service demand such action, According to the Rules of Land Warfare he will naturally alter or suspend all laws of a political nature as well as political privileges, and all laws which affect the welfare and safety of his command." (Hyde on International Law, vol. 2, p. 367.) It will be seen then that in a war between independent nations the army of occupation has the right to enact laws and take measures hostile to its enemy, for its purpose was to harass and subdue the latter; and it is not bound to respect or preserve the rights of the citizens of the occupied territory under their Constitution.

Let us now look into the nature and status of the government styled "Republic of the Philippines" in order to determine the criterion by which the validity of its enactments should be tested. In the recent case of *Co Kim Cham vs. Valdez Tan Keh and Dizon* (G. R. No. L-5, p. 113, ante), this Court, speaking through Justice Feria, had occasion to comment upon the nature of said government in the following words:

"The so-called Kephublic of the Philippines, apparently established and organized as a sovereign state independent from any other government by the Filipino people, was, in truth and reality, a government established by the belligerent occupant or the Japanese forces of occupation. It was of the same character as the Philippine Executive Commission, and the ultimate source of its authority was the same—the Japanese military authority and government. As General MacArthur stated in his proclamation of October 23, 1944, a portion of which had been already quoted, 'under enemy duress a so-called government styled as the "Republic of the Philippines" was established on October 14, 1943, based upon neither the free expression of the peoples' will nor the sanction of the Government of the United States.' Japan had no legal power to grant independence to the Philippines or transfer the sovereignty of the United States to, or recognize the latent sovereignty of, the Filipino people, before its military occupation and possession of the Islands had matured into an absolute and permanent dominion or sovereignty by a treaty of peace or other means recognized in the law of nations. For it is a well-established doctrine in international law, recognized in Article 45 of the Hague Conventions of 1907 (which prohibits compulsion of the population of the occupied territory to swear allegiance to the hostile power), that belligerent occupation, being essentially provisional, does not serve to transfer sovereignty over the territory controlled although the *de jure* government is during the period of occupancy deprived of the power to exercise its rights as such. (*Thirty Hogshead of Sugar vs. Boyle*, 9 Cranch, 191; *United States vs. Rice*, 4 Wheat., 246; *Fleming vs. Page*, 9 Howard, 603; *Downes vs. Bidwell*, 182 U. S., 345.) The formation of the Republic of the Philippines was a scheme contrived by Japan to delude the Filipino people into believing in the apparent magnanimity of the Japanese gesture of transferring or turning over the rights of government into the hands of Filipinos. It was established under the mistaken belief that, by doing so, Japan would secure the cooperation or at least the neutrality of the Filipino people in her war against the United States and other allied nations."

We reaffirmed those statements. To show further the fictitious character of the much-propagandized "independence" which Japan purported to grant to the Philippines through the establishment of the "Republic," we may add that, as a matter of contemporary history and of common knowledge, in practice the Japanese military authorities in the Philippines never treated the "Republic of the Philippines" as an independent government after its inauguration. They continued to impose their will on its executive officials when their interests so required. The Japanese military police arrested and punished various high officials of said government, including the First Assistant Solicitor General, and paid no attention to the protests and representations made on their behalf by the President of the "Republic." As a climax of their continual impositions, in December 1944 the Japanese military authorities placed the President and the members of his Cabinet under the "protective" custody of the military police, and on the 22nd of that month forced them to leave the seat of government in Manila and hide with them in the mountains. The only measure they did not succeed in imposing upon the "Republic" was the conscription of the Filipino youth into an army to fight with the Japanese against the United States. So, while in theory and for the

purpose of propaganda Japan professed to be a benefactor and liberator of the Filipinos, hoping thereby to secure their willing cooperation in her war efforts, in practice she continued to enslave and oppress the Filipinos, as she saw that the latter remained loyal to the United States. She found that the Filipinos merely feigned cooperation as their only means of self-preservation and that those who could stay beyond the reach of her army of occupation manifested their hostility by harassing and attacking that army. Thus Japan continued to oppress and tyrannize the Filipinos notwithstanding the former's grant of "independence" to the latter. It would therefore be preposterous to declare that the "Republic of the Philippines" was a government established by the Filipino people in rebellion against the Commonwealth and the sovereignty of the United States.

The said government being a mere instrumentality of the Commander in Chief of the Japanese army as military occupant, the ordinance in question promulgated by the President of the "Republic" must be deemed as an act emanating from the power or authority of said occupant. The question, therefore, is whether or not it was within the competence of the military occupant to pass such a law.

Article 43 of the Hague Regulations provides as follows;

"ART. 43. The authority of the legitimate power having actually passed into the hands of the occupant, the latter shall take all the steps in his power to reestablish and insure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country."

Commenting upon this article, Hyde in his work on International Law, volume 2, pages 366, 367, 368, says:

"In consequence of his acquisition of the power to control the territory concerned, the occupant enjoys the right and is burdened with the duty to take all the measures within his power to restore and insure public order and safety. In so doing he is given great latitude with respect to choice of means and mode of procedure. This freedom may be partly due to the circumstance that the occupant is obliged to consider as a principal object the security, support, efficiency and success of his own force in a hostile land inhabited by nationals of the enemy.

* * *

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"The right to legislate is not deemed to be unlimited. According to the Hague Regulations of 1907, the occupant is called upon to respect, 'unless absolutely prevented, the laws in force in the country. Thus in restoring public order and safety he appears to be bound to make serious endeavor to continue in force the ordinary civil and criminal laws which do not conflict with the security of his army or its support, efficacy, and success."

In the exercise of his powers the commander must be guided by his judgment and his experience and a high sense of justice. (President McKinley, Order to the Secretary of War, July 18, 1898, on the occupation of Santiago de Cuba by the American forces, Moore, Dig. VII, p. 261.)

Acts of the military occupant which exceed his power tested by the criterion set forth in article 43 of the Hague Regulations, are null and without effect as against the legitimate government. (Wheaton's International Law, 7th ed. [1944], p. 245.)

Hall in his Treatise on International Law (7th edition), discussing the extent of the right of a military occupant, states:

"If occupation is merely a phase in military operations, and implies no change in the legal position of the invader with respect to the occupied territory and its inhabitants, the rights which he possesses over them are those which in the special circumstances represent his general right to do whatever acts are necessary for the prosecution of his war; in other words he has the right of exercising such control, and such control only, within the occupied territory, as is required for his safety and the success of his operations. * * * On occupying a

country an invader at once invests himself with absolute authority; and the fact of occupation draws with it as of course the substitution of his will for previously existing law whenever such substitution is reasonably needed, and also the replacement of the actual civil and judicial administration by military jurisdiction. In its exercise however this ultimate authority is governed by the condition that the invader, having only a right to such control as is necessary for his safety and the success of his operations, must use his power within the limits defined by the fundamental notion of occupation, and with due reference to its transient character. He is therefore forbidden as a general rule to vary or suspend laws affecting property and private personal relations, or which regulate the moral order of the community. * * *" (Pages 498, 499.)

We deduce from the authorities that the power of the occupant is broad and absolute in matters affecting his safety. But in affairs which do not affect the security, efficacy, and success of his military operations, his power is qualified by the transient character of his administration. He is forbidden "to vary or suspend laws affecting property and private personal relations, or which regulate the moral order of the community." Unless absolutely prevented, he is bound to respect the laws, civil and criminal, in force in the country.

Tested by this criterion, was it within the power or competence of the Commander in Chief, of the Japanese army of occupation of the Philippines to promulgate Ordinance No. 7? In so far as said ordinance created new court of special criminal jurisdiction we think his power to promulgate and enforce it during the occupation cannot be seriously disputed; but in so far as that ordinance varied radically our law of criminal procedure and deprived the accused of certain rights which our people have always treasured and considered inviolate, we are of the opinion that it transcended his power or competence. We base this opinion upon the following considerations:

- The occupant was not absolutely prevented from respecting our law of criminal procedure and applying it in the Court of Special and Exclusive Criminal Jurisdiction. The application or nonapplication of said law did not affect the security, efficacy, and success of his military operations. The crimes over which the said court was vested with jurisdiction were mostly crimes against property penalized in our Revised Penal Code, which crimes did not affect the army of occupation. As to the illegal possession of firearms the City Fiscal himself, who sustains the validity of the ordinance, informs us that the occupant did not avail himself of said court but punished his enemies direct without recurring to the agencies of the "Republic"; and he further informs us that "as regards food control, the Japanese forces did not have any need of the measures or agencies established by "Republic", nor did they make use of them.

- The summary procedure prescribed in Ordinance No. 7 was inquisitorial, repugnant to the humanitarian method of administering criminal justice adopted by all progressive, democratic, and freedom-loving countries of the world, and, therefore, devoid of that high sense of justice by which the military occupant must be guided in the exercise of his powers. This concept is, we think, borne out by an examination of the following features of said procedure:

- (a) Under the rule of procedure embodied in said ordinance any prosecuting officer may, on his own volition and even without probable cause, issue a search warrant for the seizure of documents and articles which may be regarded as evidence of an offense—in violation of section 2, Rule 122 of the Rules of Court and of the Bill of Rights contained in the Constitution of the Commonwealth, which guarantees "the right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures," and prohibits the issuance of warrants except upon probable cause to be determined by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce.

- (b) The trial must be commenced within two days after the filing of the information—in violation of section 7, Rule 114, which gives the accused at least two days after the plea of not guilty within which to prepare for trial.

- (c) The presumption of innocence in favor of the accused in all criminal prosecutions until the contrary is proved,

which is likewise guaranteed by the Bill of Rights, is violated in that, after the arraignment and before the presentation of any proof for the prosecution, the accused is interrogated by the judge as to the facts and circumstances of the case, and if from the facts obtained by such interrogation it should appear (to the judge) that the accused is guilty a sentence of conviction may be immediately rendered against him, thereby also depriving him of his right to meet the witnesses face to face and of his privilege against self-incrimination.

The City Fiscal justifies this feature of the procedure by giving the following hypothetical case: "In the house of Juan and under his bed a policeman finds a revolver. Juan is arrested and an information for illegal possession of firearms is filed against him by the fiscal. He is brought before the judge of the corresponding special court for the preliminary interrogatory. He is asked whether or not he admits that the revolver was found in his house. He answers in the affirmative but says that he is not the owner of the revolver and he does not know how it was placed there. Asked whether he knows of anybody who could have placed the revolver under his bed, he answers that it might have been placed there by a guest who slept on his bed the night previous to its discovery by the police. He is asked to give the name of the guest referred to and his address, but he refuses to answer. Asked if he has other witnesses to support his claim, he answers that he has none. As may be seen, the evidence of guilt is complete, and there being no further evidence to be presented that may change the result the accused may be then and there sentenced by the court. In this case, the conviction of the accused is reasonable and fair, for his refusal to reveal the identity of his alleged guest may be due, either to the fact that there was no such guest, or that the cause for concealing his identity is worth suffering for. *Volenti non fit injuria*."

But to us that hypothetical case is a good illustration of the injustice of such procedure. There the accused was convicted not because the prosecution had proved his guilt but because he was unable to prove his innocence. His inability to prove who the owner of the revolver was, did not to our mind prove him guilty beyond reasonable doubt, under the circumstances. He was accused of illegal possession of firearm, an offense punishable under the ordinance in question with imprisonment for six to twelve years. He pleaded not guilty, for according to him the revolver was not his and he did not know how it got into his house. He had no time to investigate and try to find out whether the policeman himself or some other person who wished to do him harm had planted it there, for no sooner was the revolver seized than he was brought before the court and interrogated about it when he was naturally dazed and in a state of alarm. If the law of criminal procedure had been followed, he would have had ample time to reflect and endeavor to unravel the mystery. He could have consulted a lawyer, and he would have been entitled to at least two days after the information was read to him to investigate the facts and prepare for the trial. At the trial he would not have been required to answer any question or present any proof in his defense until the prosecution had presented its witnesses, principally the policeman. His lawyer could have cross-examined the policeman and found out from him whether he had any grudge against the accused and how he happened to search the latter's house. From the testimony of the policeman the accused might have been enlightened as to how and by whom the revolver was placed in his house. Suppose that the policeman should say that his informant as to the presence of the revolver under the bed of the accused was a houseboy of the latter, and suppose that that houseboy was really the one who planted the revolver because of some grievance he had against his master but that the latter had not suspected before that his houseboy had any revolver. In view of the revelation of the policeman he would have been able to investigate and ascertain that fact. In that way he could have satisfactorily explained how and by whom the revolver was placed under his bed. But under the procedure in question as outlined by the City Fiscal, the accused was of course utterly unable to do that and was consequently doomed to at least six years' imprisonment for a crime he had not committed.

(d) Section 6 of the Ordinance in question provided: "The decisions of the special courts herein created shall be final except where the penalty imposed is death, in which case the records of the particular case shall be elevated en consulta to a special division of the Supreme Court composed of three members to be designated by the

President of the Republic of the Philippines." Under our law of criminal procedure, which the military occupant was bound to respect unless absolutely prevented, all persons accused of any offense have the right to appeal to the Court of Appeals or to the Supreme Court. It is true that as a rule that right is statutory and may be withdrawn by the legislature except in certain cases where the right to appeal is provided in the Constitution itself, as in the cases involving life imprisonment and death penalty; but the question here is not whether the legislative department of the legitimate government has the power to abrogate that right but whether it was within the competence of the military occupant to do so.

(e) In the instant case the penalty imposed upon the accused by the special court, after a summary trial, was life imprisonment, and he was denied the right to have that sentence reviewed by the Supreme Court, altho under subsection 4, section 2, Article VIII of the Constitution of the Commonwealth, he could not have been deprived by law of that right.

(f) Section 7 of the Ordinance suspended the privilege of the writ of habeas corpus with respect to persons accused of or under investigation for any of the crimes and offenses enumerated in sections 1 and 2. The Constitution of the Commonwealth prohibits the suspension of that privilege except in cases of invasion, insurrection, or rebellion when the public safety requires it. The suspension by the ordinance was not motivated by any one of these cases but by the necessity for waging a campaign against certain classes of crimes; martial law was not declared; and the suspension of habeas corpus did not apply to all persons living in the specified territory (as should have been done if the public safety required such suspension) but only to those accused of or investigated for certain specified crimes or offenses. The result of such partial suspension was that persons accused of or under investigation for any of the offenses specified in sections 1 and 2 could be held in detention indefinitely, whereas persons accused of or under investigation for crimes other than those specified, such for example as theft, physical injuries, homicide, murder, and parricide, had the right to demand their release by habeas corpus after the lapse of six hours. The same discrimination holds true with reference to the other features already noted above, namely, unreasonable searches and seizures, summary trial, denial of the presumption of innocence, self-incrimination, and denial of the right to appeal. Such discrimination was unwarranted and unjust and was contrary to the concept of justice prevailing in all democratic countries, where every person is entitled to the equal protection of the laws.

- It is apparent from the foregoing examination of the main features of the ordinance that while the methods thus adopted may not be unusual under totalitarian governments like those of the aggressor nations in the recent global war, they are strange and repugnant to the people of the democratic countries which united together to defeat said aggressors and "to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, * * * and to promote social progress and better standards of life in larger freedom." (Preamble Charter for Peace adopted by the United Nations at San Francisco, California, June 26, 1945.) The recent global war was a clash between two antagonistic ways of life, between facism and democracy. It would be strange indeed if this Court, which functions under a democratic government that fought with the other democratic nations in that war, should sanction or approve the way of life, against which that war was fought and won at the cost of millions of lives and untold sacrifices.

- The case involves the interpretation not of constitutional but of international law, which "is based on usage and opinion"; and "he who in such a case bases his reasoning on high considerations of morality may succeed in resolving the doubt in accordance with humanity and justice." (Principles of International Law, Lawrence, 7th ed., pp. 12, 13.) We think the contentions for the petitioner against the validity of the ordinance in question are in accord with humanity and justice.

Before concluding this opinion we deem it pertinent to comment on the remark of the City Fiscal that, as stated in

its preamble, the ordinance in question was promulgated in response to "an urgent necessity for waging an immediate and relentless campaign against certain classes of crimes and offenses and expediting the trial and determination thereof in order to hasten the re-establishment of peace and order throughout the country and promote a feeling of security among the people conducive to the earlier return of normalcy in our national life." We concede that the objective of the author of the ordinance was commendable, but we think—and in this we are supported by the actual result—it was unattainable thru the means and methods prescribed in said ordinance. Peace and order and normalcy could not be restored unless the root cause of their disturbance were eliminated first. That cause was the presence in the country of the Japanese army, which wrecked our political, social, and economic structures, destroyed our means of communication, robbed the people of their food, clothing, and medicine and other necessities of life, ejected them from their own homes, punished and tortured innocent men and women, and otherwise made life unbearable. The relative rampancy of the crimes mentioned in said ordinance was but the effect of that cause. The cornering and hoarding of foodstuffs would not have occurred were it not for the scarcity produced by the seizures and requisitions made by the Japanese army and the disruption of our commerce and industries on account of the invasion. The possession of firearms was rendered desirable to many persons to defend themselves against or attack the invader. Robberies and other crimes against property increased as a result of hunger and privation to which the people were subjected by the rapacity of the Japanese. It was a delusion to expect peace and normalcy to return without eliminating the cause of their disturbance; and the elimination of that cause meant the expulsion or destruction of the Japanese army in the Philippines—an objective to which the ordinance was not addressed. So, even from the point of view of the Filipino people and not of the Japanese army of occupation, the ordinance in question results untenable.

Having reached the conclusion that the enactment of the procedure embodied in said ordinance for the special court therein created was beyond the competence of the occupant, inasmuch as that procedure was inseparable from the first part of the ordinance which creates the special court and prescribes the jurisdiction thereof, we are constrained to declare the whole ordinance null and void ab initio. Consequently the proceedings in said court which resulted in the conviction and sentence of the petitioner are also void.

CONCURRING IN THE RESULT

PARAS, J.,

Charged with robbery, the petitioner herein was found guilty and sentenced to suffer life imprisonment. He commenced to serve the term on August 21, 1944. Inasmuch as he was a member of the Metropolitan Constabulary, the basis of the information was Act No. 65, passed during the Japanese-sponsored Republic of the Philippines and amending certain articles of the Revised Penal Code. The trial was held by the then existing Court of Special and Exclusive Criminal Jurisdiction which was authorized to conduct proceedings in a special manner. (Ordinance No. 7 of the "Republic")

After General of the Army Douglas MacArthur had issued the Proclamation dated October 23, 1944, the Act under which the petitioner was charged and convicted stands nullified, and the original provisions of the Revised Penal Code restored. By virtue of article 22 of the said Code, "Penal laws shall have a retroactive effect in so far as they favor the person guilty of a felony, who is not a habitual criminal, as this term is defined in rule 5 of article 62 of this Code, although at the time of the publication of such laws a final sentence has been pronounced and the

convict is serving the same."

In the absence of other details, it may here be assumed that the offense committed is that defined in article 294, paragraph 5, which provides as follows:

"Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer:

"The penalty of prision correctional to prision mayor in its medium period in other cases."

In accordance with the provisions of the Indeterminate Sentence Law (Acts Nos. 4103 and 4225), the maximum of the minimum penalty that can be imposed is six months of arresto mayor.

This Court has already dismissed cases wherein the defendants were charged with the violation of laws in force at the time of the commission and trial of the crime, after said laws had been repealed by subsequent legislation, *People vs. Moran* (44 Phil., 387); *People vs. Tamayo* (61 Phil., 226), and also repeatedly released on writs of habeas corpus prisoners who, although sentenced to suffer long terms of imprisonment, were given the benefit of subsequent legislation either repealing statute under which they had been convicted or modifying the same by imposing lesser penalties, *Escalante vs. Santos* (56 Phil., 483); *Directo vs. Director of Prisons* (56 Phil., 692).

Prisoners who behave well are almost always liberated upon the expiration of the minimum penalty fixed in the judgments of conviction or within a reasonable time thereafter. In the present case, there being no information that the petitioner has acted otherwise, and having served more than double the period of the minimum penalty that could be imposed upon him, he should be released. As this is the effect of the decision of the majority, I concur in the result.

CONCURRING

DE JOYA, J.,

The principal question involved in this case is the validity of the judicial proceedings held in criminal case No. 66 of the Court of Special and Exclusive Criminal Jurisdiction, established in the City of Manila, during Japanese occupation, under the authority of Ordinance No. 7, issued by the President of the so-called Philippine Republic, and the effect on said proceedings of the proclamation of General Douglas MacArthur, dated October 23, 1944.

In said criminal case, herein petitioner was accused of the crime of robbery and sentenced to life imprisonment, on August 21, 1944.

There can be no doubt that the government established in this country by the Commander in Chief of the Japanese Imperial forces, under the name of the Philippine Executive Commission, was a de facto government, as already held by this Court in civil case G. R. No. L-5, entitled *Co Kim Cham vs. Valdez Tan Keh and Dizon*, decided on September 17, 1945 (p. 113, ante). Said government possessed all the characteristics of a de facto government, as defined by the Supreme Court of the United States, in the following language:

"But there is another description of government, called also by publicists a government de facto, but which might, perhaps, be more aptly denominated a government of paramount force. Its distinguishing characteristics are (1), that its existence is maintained by active military power within the territories, and against the rightful authority of an established and lawful government; and (2), that while it exist it must necessarily be obeyed in

civil matters by private citizens who, by acts of obedience rendered in submission to such force, do not become responsible, as wrongdoers, for those acts, though not warranted by the laws of the rightful government. Actual governments of this sort are established over districts differing greatly in extent and conditions. They are usually administered directly by military authority, but they may be administered, also, by civil authority, supported more or less directly by military force.' (MacLeod vs. United States [1913,] 229 U. S., 416.)

Under a de facto government, the courts of the country, under military occupation, should be kept open, and wherever practicable, the subordinate officers of the local administration should be allowed to continue in their functions, supported by the military force of the invader, because the responsibility of maintaining peace and public order, and of punishing crime, falls directly upon the commander in chief of the occupying forces. And in the performance of this duty, he may make use of the local courts, wholly or in part; or he may proclaim martial law (Davis, Elements of International Law [3d ed.], pp. 330-332).

In occupied territory, the conquering power has a right to displace the pre-existing authority, and to assume to such extent as it may deem proper the exercise by itself of all the powers and functions of government. It may appoint all the necessary officers and clothe them with designated powers, according to its pleasure. It may prescribe the revenues to be paid, and apply them to its own use or otherwise. It may do anything necessary to strengthen itself and weaken the enemy. There is no limit to the powers that may be exerted in such cases, save those which are found in the laws and customs and usages of war (Cross vs. Harrison, 16 How., 164; Leitensdorfer vs. Webb, 20 Id., 176; The Grapeshot, 9 Wall. [U. S.], 129; New Orleans vs. Steamship Co., [1874], 20 Wall., [U. S.], 287).

It is generally the better course for the inhabitants of the territory, under military occupation, that they should continue to carry on the ordinary administration under the invader; but the latter has no right to force them to do so. If they decline, his only rights, and it is also his duty, is to replace them by appointees of his own, so far as necessary for maintaining order and the continuance of the daily life of the territory: other purposes, as these of the superior judicial offices, can bide their time (Westlake, International Law, Part II, War, 2d ed., pp. 121-123).

Though the fact of occupation imposes no duties upon the inhabitants of the occupied territory, the invader himself is not left equally free. As it is a consequence of his acts that the regular government of the country is suspended, he is bound to take whatever means are required for the security of public order; and as his presence, so long as it is based upon occupation, is confessedly temporary, and his rights of control spring only from the necessity of the case, he is also bound to alter or override the existing laws as little as possible (Hall, International Law, 6th ed., p. 476).

The government established here under the Philippine Executive Commission was more in consonance with the general practice among civilized nations, in establishing governments for the maintenance of peace and order and the administration of justice, in territories of the enemy under military occupation; because said government was of a temporary character. The government subsequently established under the so-called Philippine Republic, with a new constitution, was also of the nature of a de facto government, in accordance with International Law, as it was established under the authority of the military occupant and supported by the armed forces of the latter. But it was somewhat different from that established under the Philippine Executive Commission, because the former apparently, at least, had the semblance of permanency, which, however, is unusual in the practices among civilized nations, under similar circumstances.

Under military occupation, the original national character of the soil and of the inhabitants of the territory remains unaltered; and although the invader is invested with quasi-sovereignty, which gives him a claim as of right to the obedience of the conquered population, nevertheless, its exercise is limited by the qualification which has gradually become established, that he must not, as a general rule, modify the permanent institutions of the country

(Hall, International Law, 6th ed., p. 460).

The Convention Concerning: the Laws and Customs of War on Land, adopted at The Hague in 1899, lays down (Arts. 42, 43) definite rules concerning military authority over the territory of a hostile state. In addition to codifying the accepted law, it provides that the occupant must respect, unless absolutely prevented, the laws in force in the country.

It will thus be readily seen that the municipal law of the invaded state continues in force, in so far as it does not affect the hostile occupant unfavorably. The regular courts of the occupied territory continue to act in cases not affecting the military occupation; and it is not customary for the invader to take the whole administration into his own hands, as it is easier to preserve order through the agency of the native officials, and also because the latter are more competent to administer the laws of the territory; and the military occupant, therefore, generally keeps in their posts such of the judicial officers as are willing to serve under him, subjecting them only to supervision by the military authorities, or by superior civil authorities appointed by him (*Young vs. United States*, 97 U. S., 39; 24 Law. ed., 992; *Coleman vs. Tennessee*, 97 U. S., 509; 24 Law. ed., 1118; *Macleod vs. United States*, 229 U. S., 416; 33 Sup. Ct., 955; 57 Law. ed., 1260; *Taylor*, International Law, sees. 576, 578; *Wilson*, International Law, pp. 331-337; *Hall*, International Law, 6th ed. (1909), pp. 464, 465, 475, 476; *Lawrence*, International Law, 7th ed., pp. 412-413; *Davis*, Elements of International Law, 3rd ed., pp. 330-332, 335; *Holland*, International Law, pp. 356- 57, 359; *Westlake*, International Law, Part II, War 2d ed., pp. 121-123).

The judicial proceedings conducted, under the municipal law of the territory, before the court established by the military occupant are general considered legal and valid, even after the government established by the invader had been displaced by the legitimate government of said territory.

Thus the judgment rendered by the Confederate courts, during the Civil War, merely settling the rights of private parties actually within their jurisdiction, not tending to defeat the legal rights of citizens of the United States, nor in furtherance of laws passed in aid of the rebellion, had been declared legal, valid and binding (*Coleman vs. Tennessee*, 97 U. S., 509; 24 Law. ed., 1118; *Williams vs. Bruffy*, 96 U. S., 176; *Horn vs. Lockhart*, 17 Wall., 570; 21 Law. ed., 660; *Sprott vs. United States*, 20 Wall., 249; 22 Law. ed., 371),

When the military forces of the Confederate states were destroyed, their government perished, and with it all its enactments. But the legislative acts of the several States forming the Confederacy stood on a different ground, and so far as they did not impair or tend to impair the supremacy of the national authority, or the just rights of citizens under the Federal constitution, they were considered as legal, valid and binding (*Williams vs. Bruffy*, 96 U. S., 177; 24 Law. ed., 716; *Ford vs. Surget*, 97 U. S., 594; 24 Law. ed., 1018; *United States vs. Ins. Co.*, 22 Wall. [U. S.], 99; 22 Law. ed., 816; *Ketchum vs. Buckley* [1878], 99 U. S., 188; *Johnson vs. Atlantic G. & W. I. Transit Co.*, 156 U. S., 618; 15 Sup. Ct., 520).

In a later case, the Supreme Court of the United States reaffirmed that the judicial and legislative acts of the rebellious States, as de facto governments, should be respected by the courts, if they were not hostile in their purpose or mode of enforcement to the authority of the national government, and did not impair the rights of citizens under the Federal Constitution. (*Baldy vs. Hunter*, 171 U. S., 388; 18 Sup. Ct., 890; 43 Law. ed., 208.)

Under the proclamation of General Douglas MacArthur, dated October 23, 1944, declaring null and void all laws, regulations and processes issued and promulgated by the Philippine Executive Commission and the Philippine Republic, during Japanese occupation, said Ordinance No. 7 promulgated on March 8, 1944, creating the Court of Special and Exclusive Criminal Jurisdiction, ostensibly for the speedy reestablishment of peace and order, and Executive Order No. 157 of the Chairman of the Executive Commission, prescribing summary rules of procedure, and other allied laws, such as Act No. 65 of the puppet republic, prescribing heavier penalties, became null and

void, once the Japanese armies in the Philippines had been defeated, as with them the de facto governments, successively established under them, perished, and with them all their enactments and processes of a hostile character.

But there are other considerations equally important why judicial proceedings held and conducted before the courts established by said de facto governments, under laws promulgated by them, should be declared null and void, without violating, in the least, settled principles, judicial precedents or public policy.

Said Ordinance No. 7 adopted as integral parts thereof said Executive Order No. 157, as well as said Act No. 65 of the National Assembly of the puppet republic, prescribing exceptionally heavy penalties for the crimes enumerated therein.

The principal crimes mentioned in said Ordinance No. 7 and Act No. 65 of the puppet republic and the other allied laws are illegal possession of firearms, robbery, violations of food-control laws, falsification, malversation and bribery ; and it was under said laws that herein petitioner was prosecuted and sentenced to life imprisonment for the crime of robbery.

The penalty of life imprisonment or death for robbery was aimed principally at the underground forces resolute and determined to seize and remove stores of food provisions, whenever possible, to prevent them from falling into the hands of the enemy.

The penalty of twelve years' imprisonment for illegal possession of firearms was directed mainly against those underground forces, that had been receiving arms from the forces of liberation across the seas.

Violations of food-control laws were included and used as a pretext and justification for the seizure and confiscation of food provisions so badly needed by the invader.

And the inclusion under said Ordinance No. 7 of the crime of bribery and other was used as a cloak to conceal its venom and make said law look innocent.

By the imposition of excessive penalties, by the denial of the remedy of habeas corpus, by compelling the accused to testify against themselves, and by denying them the right of appeal to the highest court of the land, except where the death penalty was imposed, and by its summary procedure, said Ordinance No. 7 and the other allied laws impaired and defeated the just and legal rights of Filipino citizens under the Commonwealth Constitution, and the supremacy of the authority of the legitimate Government; Under said laws, the persons accused were deprived of liberty without due process of law.

In the language of this Court, "the phrase 'due process of law' used in the Philippine Bill should receive a comprehensive interpretation, and no procedure should be treated as unconstitutional which makes due provision for the trial of alleged criminal before a court of competent jurisdiction, for bringing the accused into court and notifying him of the cause he is required to meet, for giving him an opportunity to be heard, for the deliberation and judgment of the court, and for an appeal from such judgment to the highest tribunal" (United States vs. Kennedy,. 18 Phil., 122).

In their conception, in their purpose and mode of enforcement and execution said laws were hostile to the authority of the Commonwealth Government and that of the United States of America; as they had been promulgated in furtherance of the war aims of the enemy, and they are, therefore, of political character and complexion.

Those repressive laws were aimed at the men and women who had kept the faith, and whose heroes and martyrs now lie in graves still unknown and whose names remain unsung; but whose heroic efforts and sacrifices have

made immortal the legends of Filipino resistance, and made possible our participation in the councils of free and liberty-loving peoples and nations.

Said laws are contrary to the principles of Democracy, championed by North America, whose gigantic efforts and heroic sacrifices have vindicated human rights, human dignity and human freedom, and consecrated them anew all over the earth with the generous blood of her children. They violate the fundamental principles of Justice for which civilized Mankind stands, under the benign leadership of Totalitarianism and given all the nations of the earth a new birth as well as a new charter of freedom, to enable each and everyone to live a nobler and more worthy life and realize the justice and prosperity of the future.

For the foregoing reasons, I concur in the dispositive part of the opinion prepared by Mr. Justice Feria.

CONCURRING

PERFECTO, J.,

On October 21, 1944, petitioner William F. Peralta began to serve, in the Muntinglupa Prison Camp, a sentence of life imprisonment imposed by the Court of Special and Exclusive Criminal Jurisdiction, created by Ordinance No. 7 issued by President Laurel of the Republic of the Philippines under the Japanese regime, and now seeks a writ of habeas corpus in order that his liberty may be restored to him, contending that said Ordinance No. 7 was null and void ab initio because it was of a political complexion and its provisions are violative of the fundamental laws of the Commonwealth of the Philippines.

Petitioner alleges that sometime in the month of September, 1943, he joined the Constabulary forces as a private, against his will, and, before joining it, he was for several times arrested and maltreated as a guerrilla member, he being then a minor only 17 years old, and that he was prosecuted, not because he committed any crime, but because he joined the guerrilla organization, deserted the Constabulary forces, and followed political and military activities in open allegiance to the Commonwealth Government and the United States of America.

The Solicitor General, appearing in behalf of respondent Director of Prisons, answered the petition agreeing that the acts and proceedings taken and had before said Court of Special and Exclusive Criminal Jurisdiction should be denied force and efficacy, and therefore, recommended that the writ prayed for be granted.

At the hearing held on September 21, and 22, 1945, there appeared to argue the First Assistant Solicitor General, impugning the validity of said Ordinance No. 7, and the City Fiscal of Manila, as amicus curiae, who sustained the validity of the said Ordinance and the proceeding by virtue of which petitioner was sentenced to life imprisonment.

I. ORDINANCE NO. 7 AND PROCESSES UNDER IT NULLIFIED BY THE OCTOBER PROCLAMATION OF GENERAL MACARTHUR

On October 23, 1944, General of the Army Douglas Mac-Arthur, Commander in Chief of the Philippine-American Forces, which fought in Bataan and later liberated the whole Philippines, as an aftermath of the liberation, issued a proclamation declaring:

"1. That the Government of the Commonwealth of the Philippines is, subject to the supreme authority of the

Government of the United States, the sole and only government having legal and valid jurisdiction over the people in areas of the Philippines free of enemy occupation and control;

"2. That the laws now existing: on the statute books of the Commonwealth of the Philippines and the regulations promulgated pursuant thereto are in full force and effect and legally binding upon the people in areas of the Philippines free of enemy occupation and control; and

"3. That all laws, regulations and processes of any other government in the Philippines than that of the said Commonwealth are null and void and without legal effect in areas of the Philippines of enemy occupation and control."

It appears that Ordinance No. 7 in question has been issued under the Japanese regime and that the judicial process under which petitioner has been sentenced to life imprisonment, having been held in a court not belonging to the Commonwealth of the Philippines but organized and established under the authority of the enemy, became null and void and without effect since October 23, 1944, by virtue of the above-quoted October Proclamation of General MacArthur.

We have explained at length our position as to the effects of said October Proclamation in our dissenting opinion in the case of *Co Kim Cham vs. Valdez Tan Keh and Dizon* (G. R. No. L-5, 153, ante), and we deem it unnecessary to repeat what we stated in said opinion.

It is fortunate that all the members of the Supreme Court arrived at a unanimous conclusion as to the absolute nullity of the process under which petitioner is now being held in prison.

The shocking character of the provisions of Ordinance No. 7 and the processes held under it show once more how General MacArthur was absolutely right and justified in issuing the October Proclamation.

There are indications that more processes held under the Japanese regime will come to our knowledge, revealing strong grounds for their annulment, justifying, like the process here in question, the wisdom of the decision of General McArthur in nullifying in a sweeping manner all judicial processes held during enemy occupation.

The October Proclamation is, besides, in keeping with the following official statement of the President of the United States:

"On the fourteenth of this month, a puppet government was set up in the Philippine Islands with Jose P. Laurel, formerly a justice of the Philippine Supreme Court as president.' Jorge Vargas, formerly a member of the Philippine Commonwealth Cabinet and Benigno Aquino, also formerly a member of that cabinet, were closely associated with Laurel in this movement. The first act of the new puppet regime was to sign a military alliance with Japan. The second act was a hypocritical appeal for American sympathy which was made in fraud and deceit, and was designed to confuse and mislead the Filipino people.

"I wish to make it clear that neither the former collaborationist 'Philippine Executive Commission' nor the present 'Philippine Republic has the recognition or sympathy of the Government of the United States. * * *

"Our sympathy goes out to those who remain loyal to the United States and the Commonwealth—that great majority of the Filipino people who have not been deceived by the promises of the enemy. * * ?

"October 23, 1943.

"FRANKLIN DELANO ROOSEVELT

"President of the United States"

(From U. S. Naval War College, International Law Documents, 1943, pp. 93, 94.)

Putting aside the October Proclamation, by a mere perusal of the ordinance in question, we will see immediately how such law and the processes held under it are incompatible with the fundamental principles and essential safeguards in criminal procedure, universally recognized in civilized modern nations and how such ordinance and processes can only be justified by a retrogressive and reactionary mentality developed under the social, cultural, and political atmosphere of the era of darkness.

II. VIOLATION OF THE CONSTITUTIONAL GUARANTEE AGAINST UNREASONABLE SEARCHES AND SEIZURES

Section 5 of Ordinance No. 7 provides that cases arising under it shall follow the summary procedure provided in Act No. 65 of the Laurel Philippine Republic, which, in turn, is the same as that established by Chapter II of Executive Order No. 157 of the Chairman of the Vargas Philippine Executive Commission, dated May 18, 1943.

Under said procedure, "search warrants may be issued by the court or by any prosecuting officer, authorizing peace officers to search for and seize any articles or objects de-Scribed in the warrant, including those which may be regarded as evidence of an offense under this order even if such articles or objects are not included among those described in section 2, Rule 122, of the Rules of Court." This provision is repugnant to the Filipino sense of right in the matter of warrants of search and seizure, sense of right which has been clearly and definitely stereotyped in the following words of our fundamental law:

"The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated, and no warrants shall issue but upon probable cause, to be determined by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched, and the persons or things to be seized." (Art. III, sec. 1, No. 3, Constitution of the Philippines.)

This constitutional provision is violated by the summary, unreasonable, and arbitrary procedure provided under the authority of the ordinance in question:

- (1) By authorizing "any prosecuting officer" to issue search warrants, when under our Constitution such search warrants should be issued only by a judge;
- (2) By trespassing the limits established by section 2, Rule 122, of the Rules of Court, considered as a necessary element to make the warrant reasonable;
- (3) By authorizing the search and seizure of articles or objects not described in warrant, which is the real meaning of the words "including those which may be regarded as evidence of an offense under this Ordinance."

III. DISCRIMINATORY AND INQUITOUS SUSPENSION OF THE WRIT OF HABEAS CORPUS

Section 7 of Ordinance No. 7 in question provides that "the privileges of the writ of habeas corpus are hereby suspended with respect to persons accused of, or under investigation for, any of the crimes and offenses enumerated in sections 1 and 2 hereof."

This provision is also violative of one of the fundamental guarantees established in the Constitution of the Philippines, which provides that the writ of habeas corpus may be suspended only in case of "invasion, insurrection, or rebellion" and only "when the public safety requires it."

"The privilege of the writ of habeas corpus shall not be suspended except in cases of invasion, insurrection, or rebellion, when the public safety requires it, in any of which events the same may be suspended wherever during such period the necessity for such suspension shall exist." (Art. III, sec. 1, No. 14, Constitution of the

Philippines.)

Again, it is evident that the ordinance in question is repugnant to the deep sense of right of our people. It is so, not only because it suspends the privilege of the writ of habeas corpus, without the circumstances which can only justify said suspension, but because it flagrantly violates the fundamental principle of equality before the law, by depriving the accused, in cases falling under the ordinance in question, of the privilege of the writ of habeas corpus, which is not denied to the accused in all other cases: "No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws." (Art. III, sec. 1, No. 1, Constitution of the Philippines.)

IV. VIOLATION OF THE CONSTITUTIONAL GUARANTEE AGAINST SELF-INCRIMINATION

Under section 18 of Executive Order No. 157, above mentioned, "the accused or his representative may be examined by the court, and with the permission of the court, by the fiscal or other prosecuting officer as to any matters favorable or unfavorable to him or his principal." (Italics ours.)

It is also provided that "statements made by the accused, his co-accused, or the representative of the accused or a person acting in a similar capacity, irrespective of the circumstances under which they were made shall be admissible in evidence if material to the issue." (Italics ours.)

Under section 21 of Executive Order No. 157, after arraignment and plea, "the judge shall interrogate the accused * * * as to facts and circumstances of the case in order to clarify the points in dispute and those which are admitted."

In the same section it is also provided that "refusal of the accused to answer any questions made or allowed by the court may be considered unfavorable to him." (italics ours.)

Under the same section the absence of an accused or of his representative "shall not be a ground for interrupting the proceedings or attacking the validity of the judgment."

From the foregoing, it appears:

- (1) That the accused may be examined by the court or any prosecuting officer as to any matters favorable or unfavorable to him;
- (2) That the refusal of the accused to answer may be considered unfavorable to him;
- (3) That statements made by the accused, "irrespective of the circumstances under which they were made" (that is, even under third degree procedure, or exacted through brutal kempai tortures), shall be admissible in evidence;
- (4) That not only the accused, but "his representative" (his lawyer, whose personal security was jeopardized under the Japanese regime), may be examined by the court or by the fiscal or other prosecuting officer, as if said representative or attorney is facing the same criminal prosecution instituted against his client;
- (5) That the statement made by said representative or attorney, although exacted under duress, intimidation, or torture, shall be admissible in evidence;
- (6) That statements made by any person acting in a similar capacity as a representative of the accused which may be a relative or a friend or, perhaps, just a mere acquaintance, or even an impostor who might pose as a representative to assure the doom of the accused, "irrespective of the circumstances under which they were made (that is, even if made in the absence of the accused, or in the same circumstances under which masked spies decreed the death of innocent citizens pointed by them during zoning concentrations), shall be admissible in

evidence;

(7) That trial shall proceed in the absence of the accused ;

(8) That trial shall proceed in the absence of his attorney or other representative.

It is evident that the procedure established violates the following provisions of our fundamental code:

"In all criminal prosecutions the accused shall be presumed to be innocent until the contrary is proved, and shall enjoy 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." (Art. III, sec. 1, No. 17, Constitution of the Philippines.)

"No person shall be compelled to be a witness against himself." (Art. III, sec. 1, No. 18, Idem.)

The procedure is so revolting, so nauseating, and so opposed to human nature, that it takes a real courage to keep our equanimity while we are compelled to analyze it.

It is beyond our comprehension how a man, endowed with reason, could devise such an execrable system of judicial procedure, which is but a shameless mockery of the administration of justice.

We must be very careful to retain zealously the constitutional guarantee against self-incrimination. We must not forget that that constitutional guarantee was acquired as a result of protest against all inquisitorial and third degree procedures. We must not forget how, not very long ago, in the thirteen colonies of America, alleged witches were burned at the stake, as a means of compelling them to confess their fantastic compacts with the devil. We must not forget how an institution created in the twelfth century was the cause of so much tortures and sufferings, and that the terroristic menace of its racks was abolished in Spain, and therefore in Philippines, only in 1834.

We must not forget that during normal times, under the twentieth century lights, just before the last global war started, in the United States of America and in the Philippines, denunciations of third degree procedures employed by agents of the law were often heard. This very Supreme Court, not only once, had to deal with cases where such tactics were conclusively proved. Even today, among criminal cases we have under consideration, there is evidence of confessions exacted through cruel and brutal means.

No matter what merits can be found, from the theoretical point of view, in the arguments of those who are championing the suppression of the constitutional guarantee against self-incrimination, the undeniable reality of human experience shows conclusively the absolute need of such guarantee if justice must be served. Even with the existence of such guarantee, there are officers of the law who cannot resist temptation of using their power to compel, through third degree methods, innocent or guilty persons to admit involuntarily real or imaginary offenses. Let us allow changes tending to nullify the protection against self-incrimination, and no man, however innocent he may be, shall be secure in his person, in his liberty, in his honor, in his life.

V. THE FUNDAMENTAL RIGHT OF APPEAL TRAMPLED UPON

In section 6 of Ordinance No. 7, it is provided that "the decision of the special courts herein created shall be final except where the penalty imposed is death, in which case the records of the particular case shall be elevated en consulta to a special division of the Supreme Court composed of three members to be designated by the President of the Republic of the Philippines."

This provision is a clear violation of the fundamental right of appeal, constitutionally guaranteed to all accused in the Philippines.

Under the Constitution of the Philippines, all accused are entitled to appeal to the Supreme Court:

- (1) In all cases in which the constitutionality or validity of any treaty, law, ordinance, or executive order or regulations is in question. (Art. VIII, sec. 2, No. 1, Constitution of the Philippines.)
- (2) In all cases involving the legality of any tax, impost, assessment, or toll, or any penalty imposed in relation thereto. (Art. VIII, sec 2, No. 2, Idem.)
- (3) In all cases in which the jurisdiction of any trial court is in issue. (Art. VIII, sec. 2, No. 3, Idem.)
- (4) In all criminal cases in which the penalty imposed is death or life imprisonment. (Art. VIII, sec. 2, No. 4, Idem.)
- (5) In all cases in which an error or question of law is involved. (Art. VIII, sec. 2, No. 5, Idem.)

Before the adoption of the Constitution of the Philippines, it was the prevailing theory in judicial decisions that the right of appeal is not a fundamental one, but it is a mere privilege or mere statutory grant.

The drafters of our Constitution, taught by the unerring lessons of human experience, came to the conclusion that mistake is one of the most irretrievable human weaknesses.

The drafters of our Constitution, therefore, considered it necessary to establish constitutional guarantees to reduce to its minimum the effects of such innate human weakness by providing that appeal to the highest tribunal of the land may be enjoyed by any accused, who, under the specific provisions of the Constitution, believed himself to be the victim of a wrong in any inferior court.

The fact that the provisions of section 2, of Article VIII, of the Constitution, instead of stating that the accused shall not be denied of the right of appeal in the cases mentioned therein, provide that the Supreme Court may not be deprived of its jurisdiction to review, revise, reverse, modify, or affirm on appeal, certiorari, or writ of error as the law or the rules of court may provide, final judgments and decrees of inferior courts, in the specified cases, does not impair nor diminish the fundamental character of the right of appeal of the accused to the Supreme Court.

The provisions of section 2, of Article VIII, of the Constitution, have been enacted by our Constitutional Convention, not for the benefit of the Supreme Court, but for the benefit and well-being of the people.

In fact, the Supreme Court is just one of the instrumentalities created by the Constitution in the service of the people. The Supreme Court is not an entity or institution whose rights and privileges must be constitutionally guaranteed. It is only a means. It is one of the means considered necessary by our Constitution to better serve the supreme interest of the people.

As a matter of fact, the Supreme Court of the United States itself declared that the elimination of said tribunal is not incompatible with the existence of a government of laws. In a case of denaturalization wherein the Government of the United States sought to deprive a person of his American citizenship, on the ground that the 1928 platform of the Communist Party of the United States, to which the respondent belonged, advocated the abolition of the Supreme Court, of the Senate and of the veto power of the President, and replacement of congressional districts with "councils of workers" in which legislative and executive powers would be united, the Federal Supreme Court declared:

"These would indeed be significant changes in our governmental structure—changes which it is safe to say are not desired by the majority of the people in this country—but whatever our personal views, as judges we cannot say that person who advocates their adoption through peaceful and constitutional means is not in fact attached

to the Constitution—those institutions are not enumerated as necessary in the government's test of 'general political philosophy', and it is conceivable that 'orderly liberty' could be maintained without them. The Senate has not gone free of criticism and one object of the Seventeenth Amendment was to make it more responsive to the popular will. The unicameral legislature is not unknown in the country. It is true that this Court has played a large part in the unfolding of the constitutional plan (sometimes too much so in the opinion of some observers), but we would be arrogant indeed if we presume that a government of laws, with protection for minority groups, would be impossible without it. Like other agencies of government, this Court at various lines in its existence has not escaped the shafts of critics whose sincerity and attachment to the Constitution is beyond question—critics who have accused it of assuming functions of judicial review not intended to be conferred upon it, or of abusing those functions to thwart the popular will, and who have advocated various remedies taking a wide range." (Schneiderman vs. United States of America, June 21, 1943.)

VI. ABRIDGMENT OF THE CONSTITUTIONAL GUARANTEE OF EQUAL PROTECTION OF THE LAWS

The constitutional guarantee of equal protection of the laws is evidently abridged in the summary procedure in criminal cases under Ordinance No. 7:

- (1) By the fact that the accused therein are victims of search warrants specially provided for them, where the guarantees against unreasonableness in search warrants issued against other accused are specially eliminated.
- (2) By depriving the accused, under Ordinance No. 7, the privilege of the writ of habeas corpus enjoyed by the accused in other cases.
- (3) By depriving the accused, under Ordinance No. 7, of the fundamental right of appeal in all cases, except when sentence of death is imposed.
- (4) By discriminating against the accused, under Ordinance No. 7, where the right of appeal is retained for them, that is, in cases where the sentence imposed is death, by entrusting the power to revise said sentence to a small minority of the Supreme Court, under the Japanese regime, and a minority of three justices to be specially called out by the President of the Laurel Philippine Republic, undoubtedly with the evident purpose of assuring the confirmation of the conviction of the accused, and to make the appeal en consulta just an empty gesture to make the situation of the accused more pitiful by lengthening his days of agony.
- (5) By placing the accused, in the cases in question, under the sword of Damocles of an unfavorable presumption, should he refuse to answer any question that the court or any prosecuting officer might propound to him.

Under our Constitution, no one shall be deprived of the "equal protection of the laws." (Art. III, sec. 1, No. 1, Constitution of the Philippines.)

VII. THE PRESUMPTION OF INNOCENCE OF THE ACCUSED IN ALL CRIMINAL PROSECUTIONS VIOLATED

Since the American flag began to fly over our soil, the fundamental guarantee that in all criminal prosecution the accused shall be presumed innocent until the contrary is proved beyond all reasonable doubt, has been implanted in our country to remain forever.

That guarantee was consecrated in our Constitution:

"In all criminal prosecutions the accused shall be presumed to be innocent until the contrary is proved, and shall enjoy 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." (Art. III, sec. 1, No. 17, Constitution

of the Philippines.)

This guarantee is undoubtedly violated when, in the summary procedure established by Ordinance No. 7, it is provided that the refusal of the accused to answer any question, propounded by the court or any prosecuting officer, "may raise unfavorable presumption against him."

If we have to keep democracy in our country we must be vigilant in upholding the constitutional principle that all persons shall be presumed to be innocent until the contrary is proved beyond all reasonable doubt.

This principle is the opposite of that prevailing under autocracies, or under fascist or totalitarian regimes. During the Japanese occupation, all persons who might fall under the suspicion of any Japanese or their spies and lackeys, were presumed to be guilty of any imaginary crime until they were able to convince their victimizers of the contrary, beyond any reasonable doubt. Even then, they were submitted to preventive tortures and long months of imprisonment, just in case they might think later of committing any offense against the Japanese or their collaborators.

VIII. ORDINANCE NO. 7 VIOLATED THE HAGUE CONVENTION OF 1899

In the convention concerning the laws and customs of war on land, adopted by the Hague in 1899, it is provided that the military occupant must respect the laws in force in the occupied country, unless absolutely prevented. (Arts. 42 and 43.)

This provision of the Convention has been flagrantly violated when, under the enemy occupation, the Philippine Republic enacted Ordinance No. 7 which suspended our laws, including the fundamental one, by substantially subverting the judicial procedures in the special criminal cases instituted under said ordinance.

For this reason, said ordinance, being violative of international law, was null and void ab initio.

Under international law, under the most elemental principles of law, the legitimate government, once restored to its own territory, after expelling the enemy invader, enjoys the absolute freedom of not recognizing or of nullifying any and all acts of the invader, including those internationally legal ones. The situation is exactly the same as that of the owner of a house who can do anything in it that pleases him, after expelling the bandit who was able to usurp its possession for a while.

General MacArthur exercised correctly that power by the sweeping nullification decreed in his October Proclamation.

But even without the October Proclamation, the judicial process—maybe it is better to say injudicial process—which resulted in the imprisonment of petitioner, must be shorn of all effects because it had taken place under the authority of an ordinance which was null and void ab initio.

IX. THE DECISION CONVICTING THE PETITIONER HAVING BEEN RENDERED UNDER FOREIGN AUTHORITY IS UNENFORCEABLE

The decision by which petitioner William F. Peralta was convicted and is being confined for life having been rendered by a tribunal created, functioning, and acting under the authority of a foreign State, the Emperor of the Imperial Government of Japan, is unenforceable.

It has, therefore, the nature of a foreign decision or judgment. For that reason, it is unenforceable within the Philippines or under the Commonwealth, as we have shown in our opinion in the case of *Co Kim Cham vs. Valdez Tan Keh and Dizon* (G. R. No. L-5, p. 153, ante).

Said decision, having been rendered under Ordinance No. 7, which was null and void ab initio, carries the same vice as the ordinance under which it was rendered.

But even admitting arguendo that said decision is valid, because it is so under international law, and is not included in the nullification decreed by General Douglas MacArthur, still it cannot be enforced, being a foreign decision. A foreign decision can only be enforced through the institution of an action before our tribunals. Even decisions of a court of the United States or of any of its States or territories can be enforced in the Philippines only by the institution of an action or special proceeding before our own courts. This theory is confirmed by sections 47 and 48, Rule 39, of the Rules of Court, which read:

"SEC. 47. Effect of record of a court of the United States.—The effect of a judicial record of a court of the United States or of a court of one of the States or territories of the United States, is the same in the Philippines as in the United States, or in the State or territory where it was made, except that it can only be enforced here by an action or special proceeding, and except, also, that the authority of a guardian, or executor, or administrator does not extend beyond the jurisdiction of the Government under which he was invested with his authority.

"SEC. 48. Effect of foreign judgments.—The effect of a judgment of a tribunal of a foreign country, having jurisdiction to pronounce the judgment, is as follows:

"(a) In case of a judgment against a specific thing, the judgment is conclusive upon the title to the thing;

"(b) In case of a judgment against a person, the judgment is presumptive evidence of a right as between the parties and their successors in interest by a subsequent title; but the judgment may be repelled by evidence of a want of jurisdiction,, want of notice to the party, collusion, fraud, or clear mistake of law or fact."

X. THE STUNTING FACTS REVEALED IN THE REPORT OF THE DIRECTOR OF PRISONS

At the hearing of this case, respondent Director of Prisons was required to submit statistical data concerning the number of prisoners and the various crimes for which they were convicted by the Court of Special and Exclusive Criminal Jurisdiction.

In submitting said statistical data, the Solicitor General, as counsel for respondent, calls our attention to the fact that, out of the 92 prisoners committed by said courts to the Bureau of Prisons for confinement, fifty-five (55), that is more than one-half, were convicted of illegal possession of firearms, and that only 3 are now actually in confinement serving sentences, among them the petitioner in this proceeding, thus dissipating the unfounded fear entertained by the City Fiscal of Manila, to the effect that a pronouncement by this Supreme Tribunal that the sentences of the courts in question are null and void, will signify the release of hundreds of criminals, whose liberty and mixing with society will endanger public peace and order.

Of the other two remaining prisoners serving sentence, one has been committed for evasion of service of sentence, and the other for illegal possession of firearms.

Of the 55 prisoners convicted for illegal possession of firearms, 25 died, 23 were released, and 6 escaped, and this is the reason why only one remains in confinement.

It is striking that so many prisoners died, 25 of those convicted for illegal possession of firearms, that is, almost 50% of them, and 33 of the total of 94 prisoners committed, or more than one-third of them. This unusual and shocking percentage of mortality is worth inquiring into and, certainly, cannot be counted very favorably to judicial proceedings which eventually lead to such wholesale death, if not outright massacre.

The fact that a big number of the prisoners, 21 of them, were able to escape, was not explained to us. Is it reasonable to surmise, from the ruthless cruelty of the proceedings and of the penalties imposed, which exacted from the mouth of the First Assistant Solicitor General, who appeared to argue the case in behalf of the respondent, the adjective "ferocious", that the wardens themselves, moved by pity, directly or indirectly helped the escape?

More than one-third of the prisoners committed by the said courts in confinement to the Bureau of Prisons, that is, 33 of them died. May we ask if they died because they were executed? Of those who died, one was convicted of profiteering in rice, one of robbery, one of kidnapping of minor, one of violation of certain sections of Act No. 66, four of crimes against public order, and 25 of possession of firearms. If all of them were executed by virtue of sentences rendered by the courts in question, that fact does not speak very highly of their proceedings. If the accused died by natural death, there must be something physically or morally fatal in said proceedings.

If a tree must be judged by the fruits it bears, how shall we judge proceedings so deadly, so fatal, so wantonly inhuman as the proceedings had in the special courts in question ?

The City Fiscal of Manila exerted great efforts to show that the fact that in the proceedings in question "the refusal of the accused to answer any question made or allowed by the court may be considered unfavorable to him," does not violate the constitutional guarantee against self- incrimination. He even goes to the extent of maintaining the theory that such constitutional guarantee is not essential for the protection of the substantial rights of an accused.

His argument centered on the alleged freedom of the accused to refuse or not to refuse to answer any question made or allowed by the court, alleging that, if the accused chooses to refuse to answer, the court cannot compel him to answer under menace of punishment for contempt or through any other coercive or minatory measures.

The City Fiscal seems to labor under the belief that the fact that the silence of the accused "may be considered unfavorable to him", is of no consequence at all.

Such belief can logically be entertained alone by ignoring completely the lessons of experience in human conduct.

If the refusal to answer can be considered unfavorably to the accused, is not that the same as placing him on the hard predicament of choosing between testifying self- incriminatingly and risking the fatal effects of a legal presumption of guilt? Is not that the same as placing him between the two steel cages of a dilemma: self-incrimination or presumption of guilt? Is not that the same as placing him between Scylla and Charybdis, between a dagger and a wall? Either way, he will always find himself under the inexorable sword of Damocles of sure punishment, whether he testifies or refuses to testify.

It is not impossible to open a debate upon the abstract question whether the constitutional guarantee against self-incrimination should or should not remain. But the value of such a moot question, for purposes of this case, is nil.

The constitutional guarantee had to be adopted as a protest against inquisitorial method of the past, when accused and suspects were submitted to the most brutal torture to compel them to confess real or imaginary crimes. That past is not far away. It seems that we are still smelling the stench of human flesh burned in the stakes, where suspected witches suffered iniquitous death.

There is no doubt that the procedure in question shows the purpose of pandering to the most flagitious doctrines in criminal proceedings. The transgressions of the bill of rights in all its phases cannot be hidden even to a chela in constitutional law. It is the very negation of the administration of justice. Such procedure has absolutely no place in the framework of our juridical system. We will feel mere whiffers in our professed convictions, principles, and

creed, if we should permit ourselves to fall into the weakness of abetting it even for a moment, which could only happen once the flambeau of reason has ceased completely to burn. No one but the truckling lackeys of the arrogant enemy could have the servility of applauding the implantation of the criminal procedure in question.

All arguments and dissertations are useless to conceal the real fact. Behind and under said criminal process steal-thily crawls and trundles the Nippon psychosis, like a cobra with fangs overflowing with venom. To ferret it out from the hole where it lurks, waiting for its victims, and crush its head with one hammer blow, is an imperative measure of national self-defense.

XI. THE PETITIONER IS ENTITLED, AS A MATTER OF ABSOLUTE RIGHT, TO IMMEDIATE RELEASE

After showing the absolute nullity of the judicial process under which petitioner has been convicted to suffer the penalty of life imprisonment, the inevitable consequence is that he is entitled, as a matter of absolute right, to be immediately released, so that he can once again enjoy a life of freedom, which is the natural boon to law-abiding residents of our country, and of which he was unjustly deprived through means most abhorrent to human conscience.

We must not hesitate for one moment to do our duty in this case. The sooner we comply with it, the better. The process and judgment under which petitioner has been convicted and is now undergoing an unjust imprisonment, is one of the hateful vestiges left in our country by the moral savagery of a people spiritually perverted and debased. The seriousness of this matter cannot be viewed with insouciance.

We must not lose time to wipe out such vestiges if we must protect ourselves against their poisonous effects in our political, social, and cultural patrimony. We must erase those vestiges if we want to keep immune from all germs of decay the democratic institutions which are the pride of our people and country, under which we are enjoying the blessings of freedom and with which we hope to assure the well-being and happiness of the unending generations who will succeed us in the enjoyment of the treasures accumulated by a bountiful nature in this Pearl of the Orient.

If we allow such vestiges to remain we are afraid that some historian may write about Philippine democracy, Philippine race, and Philippine culture, what, on ancient art, Hegel said in the "Phenomenology of the Spirit", according to Kohler, the greatest work of genius that the nineteenth century has produced:

"The statues set up are corpses in stone, whence the animating soul has flown; while the hymns of praise are words from which all belief has gone. The tables of the gods are bereft of spiritual food and drink, and from his games and festivals, man no more receives the joyful sense of his unity with the Divine Being. The works of the muse lack the force and energy of the Spirit which derived the certainty and assurance of itself just from the crushing ruin of goods and men. They are themselves now just what they are for us—beautiful fruit broken off the tree, a kindly fate has passed on those works to us, as a maiden might offer such fruit off a tree. It is not their actual life as they exist, that is given us, not the tree that bore them, not the earth and the elements, which constituted their substance, nor the climate that determined their constitutive character, nor the change of seasons which controlled the process of their growth. So, too, it is not their living world that fate preserves and gives us with those works of ancient art, not the spring and summer of that ethical life in which they bloomed and ripened, but the veiled remembrance alone of this reality."

Our sense of national self-preservation compels us, as an imperative duty, not only to restore immediately the petitioner to his personal liberty; but, all possible means, to obliterate even the memory of the inquisitorial summary procedure depicted in the present case.

Such procedure exhibits either inversion, retroversion, subversion, or perversion of elemental human concepts. It

ignores completely and debases the high purposes of a judicial procedure. It represents a hylistic ideology which proclaims the supremacy of the state force over fundamental human rights. We must never allow the neck of our people to be haltered by the lethal string of that ideology. It is a virus that must be eliminated before it produces the logical disaster. Such ideology is a cancerous excrescence that must be sheared, completely extirpated, from the live tissues of our body politic, if the same must be saved.

We cannot understand how any one can justify the summary process in question under the principles embodied in our Constitution. To profess attachment to those principles and, at the same time, to accept and justify such kind of criminal miscarriage of justice, is just sheer hypocrisy. It is a repetition of what Seneca did when, after preaching moral virtue's, justified without any compunction the act of Nero, the sanguinary Roman Emperor, of murdering in cold blood his own mother. It is reproducing the crooked mentality of Torquemada, who, upon the pretext of combating and persecuting heresy to save souls from hell, conceived the diabolical idea of condemning their victims to an advanced version of hell in this life, and among those who suffered under the same spirit of intolerance and bigotry which was its very essence are counted some of the greatest human characters, such as Galileo, Giordano Bruno, and Girolamo Savonarola. That procedure might find justification in the thick heads of the Avars, Huns, Vandals, and Teutons, or in the stratified mentality of Japanese cullions, but not in a healthy mind of a cultured person of modern times. To allow any vestige of such procedure to remain is tantamount to reviving the situation during which our citizens endured sleepless nights in constant fear of the hobnail terror stalking in the darkness, when their personal security and their life were hanging by the thin fibre of chance.

We wish a way could be found to free completely our people of the sense of shame, which they cannot help feeling, engendered by members of our race who justified such abhorrent summary procedure and allowed themselves to become a party to the execution of a scheme only acceptable to the undeveloped mentalities of the dark ages. It is a shame that makes our blood boil when we think that countrymen of Father Gomez, of Rizal, of Mabini, could accept procedures representing the brutal ideology which is the very opposite of the humane, lofty, and dignified ideology that placed said heroes and martyrs among the purest and noblest specimens that humanity produced in all countries, in all time, and for all ones and light years to come.

It is with joy and pride that we agree with all our brethren in unanimously granting petitioner the redress he seeks in his petition.

CONCURRING

HILADO, J.,

I concur in the result, as well as in the reasons stated in the majority opinion not inconsistent with the views expressed in my dissenting opinion in G. R. No. L-5, *Co Kim Cham vs. Valdez Tan Keh and Dizon* (p. 199, ante).

However, I would additionally base my conclusion upon broader grounds.

Firstly, I reiterate here by reference the arguments advanced in said dissenting opinion in additional support of the conclusion that the writ of mandamus herein sought should be granted. Secondly, the importance and transcendence of the legal principles involved justify further elaboration.

From the allegations of the petition herein, it can be deduced that the petitioner William F. Peralta was a

"guerrillero" when he was arrested, tried and convicted; and that he had never voluntarily submitted to the Japanese forces in his civil capacity.

No attempt is made in the Solicitor General's answer to controvert the facts alleged in the petition from which the foregoing deduction flows, and from the record nothing appears which may tend to gainsay them. Even when he 'was forced temporarily to join the Constabulary, which had been organized under orders of the Japanese Army in the Philippines, he did so against his will.

Even granting for the sake of argument, and laying aside for the moment the reasons to the contrary set forth in my aforesaid dissenting opinion, that the rules of International Law regarding the power of a belligerent army of occupation to establish a provisional government in an occupied enemy territory, are still binding upon the United States and the Commonwealth of the Philippines, yet such , rules would not be of any avail to bind the herein petitioner by the laws, regulations, processes and other acts of the so-called "Republic of the Philippines", under and by virtue of which said petitioner has been convicted to life imprisonment by the Court of Special and Exclusive Criminal Jurisdiction of Manila in Criminal Case No. 66 thereof.

If we analyze the different adjudications and treatises which have been cited in support of the validity or binding force of the acts of such provisional governments, which have been variously called *de facto* governments, or governments of paramount force, with a view to finding the real ground, and philosophical justification for the doctrine therein announced, we will see that that reason and that justification are made to consist in the submission of the inhabitants upon whom the said acts have been held to be of obligatory or binding force, to the army of occupation. Thus, to cite just a few typical examples, we quote the following excerpts from three leading cases decided by the Supreme Court of the United States:

Excerpts from *Thorington vs. Smith* (8 Wall. [U. S.], 1; 19 Law. ed., 361) :

"That while it (government of paramount force) exists, it must necessarily be obeyed in civil matters by private citizens who, by acts of obedience, rendered in submission to such force, do not become responsible, as wrong-doers, for those acts, though not warranted by the laws of the rightful government" (p. 363; italics ours).

"The authority of the United States over the territory was suspended, and the laws of the United States could no longer be rightfully enforced there, or be obligatory upon the inhabitants who remained and submitted to the conqueror." (P. 364; italics ours.)

Excerpts from *Fleming vs. Page* (9 Howard. [U. S.], 603; 13 Law. ed., 276) :

"While it (Tampico) was occupied by our troops, they were in an enemy's country, and not in their own; the inhabitants were still foreigners and enemies, and owed to the United States nothing more than the submission and obedience, sometimes called temporary allegiance, which is due from a conquered enemy, when he surrenders to a force which he is unable to resist." (P. 281; italics ours.)

Excerpts from *United States vs. Rice* (4 Wheat [U. S.], 246; 4 Law. ed., 562) :

"The sovereignty of the United States over the territory was, of course, suspended, and the laws of the United States could no longer be rightfully enforced there, or be obligatory upon the inhabitants who remained and submitted to the conquerors." (P, 564; italics ours.)

It results from the above-quoted pronouncements of the Supreme Court of the United States that the laws, regulations, processes and other acts of the government that the occupying belligerent establishes are made binding only and precisely upon those inhabitants from whom obedience could be effectively exacted, namely, those who remain within the effective reach of the occupying forces and submit to them. This is plain common sense. Those who conceived and developed the doctrine could not logically have thought of the army of

occupation setting upon a civil government for those who still continued resistance. As to them, further military operations would be necessary to reduce them to submission, before one could think of civilly governing them.

In the Philippines, during the occupation by the Japanese of Manila and certain other portions of the Archipelago, the overwhelming majority of the people never submitted to the Japanese invaders, and never recognized any legality in the invasion of their country, and to the very date of liberation refused to accept the alleged protection or benefits of the puppet governments of the "Philippine Executive Commission" and the "Republic of the Philippines." The majority of our people lived in the provinces, in the farms, hills and other places beyond the effective reach of the Japanese military garrisons. Only a small minority submitted to the invaders for various reasons, such as their having been caught in Manila or other parts of the Islands occupying government positions, or residing therein without adequate facilities for escaping from or evading said invaders, reasons of ill health, disabling them from living the hard life of the mountains, hills, or country places, and the like.

To have bound those of our people who constituted the great majority who never submitted to the Japanese oppressors, by the laws, regulations, processes and other acts of those two puppet governments, would not only have been utterly unjust and downright illegal, but would have placed them in the absurd and impossible condition of being simultaneously submitted to two mutually hostile governments, with their respective constitutional and legislative enactments and institutions—on the one hand bound to continue owing allegiance to the United States and the Commonwealth Government, and, on the other, to owe allegiance, if only temporary, to Japan. Among them we find the petitioner William F. Peralta. The surrender of the Fil-American forces in Bataan and Corregidor did not matter so far as this was concerned. Much less did that surrender obligate all the civil population to submit to the Japanese, and obey all their future dictations. If it did, President Roosevelt and President Osmeia would not have so heartily commended the Philippine resistance movement and so enthusiastically extolled the firm stand of those who participated therein, in the former's message of October 23, 1943, and in the latter's speech of February 27, 1945, cited in the writer's above mentioned dissenting opinion. If these historic utterances should seem incompatible with any provision of the Hague Convention, we should understand from them that both Presidents must have considered such provision as no longer applicable to, or binding upon, the United States and the Philippines. Who knows but that their attitude was based upon the renunciation of war as an instrument of national policy by their respective peoples, which renunciation necessarily includes all the "rights" or "powers" which may be claimed to be derived from war so employed? Or else, upon the ground that such provision does not support the wrongful acts of Japan in the Philippines?

Another reason advanced to justify the creation of a provisional civil government, with its courts and other departments, in occupied enemy territory, is the alleged convenience of the civil population. It can immediately be asserted in reply that the convenience of the above- mentioned overwhelming majority of our people, far from requiring the establishment of such a government, was in the very nature of things positively opposed thereto. They not only did not need the supposed benefits of such a government, but they actually reputed them as inimical to the larger interest of the very ideology and cause for which they were continuing their resistance to those who would extend here the brutal power and pernicious influence of the now exploded "Greater East Asia Co-Prosperity Sphere." They suffered, yes, and suffered much—but they placed that ideology and that cause high above their private comfort. Let us not penalize them for it. If this government is democratic, and when it comes to a question of convenience, whose will and whose convenience should prevail, that of the majority or that of the minority? Are we going to force those free citizens of this free country to accept the alleged benefits and assume the burdens of a government they have never consented to own?

I am, furthermore, of opinion that there is another important consideration which argues against the recognition of the said government as a de facto government or government of paramount force during the Japanese occupation

of the Philippine Islands. Japan, in starting and prosecuting this war against the United States and her allies by breaking the most vital rules of civilized warfare as prescribed by International Law, must be deemed to have forfeited the right to invoke that law in so far as specific provisions thereof would favor her or her acts. Japan in treacherously attacking Pearl Harbor and the Philippines, successively on December 7 and 8, 1941, violated the rule providing for the necessity of declaring war as established at the Hague Conference of 1907 (Lawrence, Principles of International Law, 7th ed., pp. 321-322, 325); she has infringed the rule requiring that war prisoners be cared for and treated with humanity (Ibid, p. 377); the rule imposing the obligation to properly tend the sick and wounded (Ibid, 384), the rule interdicting bombing of open and defenseless cities (Ibid, 522, 523) when she bombed Manila after it had been declared an open city and all its military defenses had been removed; the rule exempting noncombatants from personal injury (Ibid, 397)—her violations of one or the other of which were matters of daily occurrence, one might say, during her three and a half years of tyranny and oppression in this country, and were climaxed by the ignominious and indescribable atrocities of the mass massacre of innocent civilians during the battle for Manila. In the interpretation of doubtful provisions of International Law, Doctor Lawrence, in his work cited above, has the following to say:

"* * * if a point of Municipal Law is doubtful, men resort to supreme court for a decision, or to a supreme legislature for an interpreting statute; but if a point of International Law is doubtful, they can resort only to general reasoning for a convincing argument, unless, indeed, they settle the question by blows. And International Law in many of its details is peculiarly liable to disputes and doubts, because it is based on usage and opinion. He who in such a case bases his reasoning on high considerations of morality may succeed in resolving the doubt in accordance with humanity and justice." (Pp. 12, 13.)

It would seem that to deny Japan the benefits, because she has refused to carry the burdens of the law, is to base our reasoning "on high considerations of morality", and to resolve any doubt, if doubt there be, as to the point in question, "in accordance with humanity and justice." In other words (even if we applied said rules to the instant case), Japan, under the circumstances of this case, could not be heard to say that the government which she established here was a de facto government, or a government of paramount force, as in the cases where such a government was deemed to exist.

In addition to what has been said above, let us see if the Japanese-sponsored "Republic of the Philippines" did not introduce such fundamental and drastic changes in the political organization of this country, as it existed upon the date of the Japanese invasion, as to vitiate with invalidity the acts of all its departments, executive, judicial, and legislative. To begin with, the Commonwealth Constitution was completely overthrown. It was replaced by the so-called constitution of the "Republic." A casual comparison of these two instruments cannot fail to reveal a most revolutionary transformation of the political organization of the country. While under the Commonwealth Constitution the retention of American sovereignty over the Philippines is expressly recognized, for the purposes specified in the ordinance appended thereto, in the very preamble of the constitution of the "Republic" the "independence" of the Philippines is proclaimed. While under the Commonwealth Constitution the President and Vice-President are elected "by direct vote of the people" Art. VII, sec. 2), under the constitution of the "Republic" the President (no Vice-President is provided for) was elected "by majority of all the members of the National Assembly" (Art. II, sec. 2). While under the Commonwealth Constitution the legislative power is vested in a bicameral Congress with, a Senate and a House of Representatives (Art. VI, sec. 1), under the constitution of the "Republic" that power was vested in a unicameral National Assembly (Art III, sec. 3). While under the Commonwealth Constitution the Senators are chosen at large by the qualified electors of the Philippines (Art. VI, sec. 2) and the Representatives by the qualified electors in the respective districts (Art. VI, sec. 5), under the constitution of the "Republic" the National Assembly was composed of the provincial governors and city mayors as members ex-officio, and of delegates elected every three years, one from each and every province and chartered

city (Art. III, sec. 2). While under the Commonwealth Constitution, respecting the Judicial Department, the members of the Supreme Court and all judges of inferior courts are appointed by the President with the consent of the Commission on Appointments of the Congress (Art. VIII, sec. 5), under the constitution of the "Republic" the members of the Supreme Court were appointed by the President with the advice of the Cabinet, and all judges of inferior courts, by the President with the advice of the Supreme Court (Art. IV, sec. 4).

These changes and innovations can be multiplied many times, but the foregoing will suffice for our purpose.

It has been said constantly in this discussion that political acts, or acts of a political complexion of a de facto government or a government of paramount force, are the only ones vitiated with nullity. Of course, I disagree with those who so hold. But even by this test the "Republic"— or, which is the same, the Imperial Japanese Forces—which gave it birth—in thus introducing such positive changes in the organization of this country or suspending the working of that already in existence, executed a political act so fundamental and basic in nature and operation that all the subsequent acts of the new government which of course had to be based thereon, inevitably had to be contaminated by the same vitiating defect.

"Thus judicial acts done under his control, when they are not of a political complexion, administrative acts so done, to the extent that they take effect during the continuance of his control, and the various acts done during the same time by private persons under the sanction of municipal law, remain good. * * * Political acts on the other hand fall through as of course, whether they introduce any positive change into the organization of the country, or whether they only suspend the working of that already in existence. * * *" (Hall, *International Law*, 6th ed., p. 483; italics ours.)

Finally, upon close scrutiny, we will find that all of the de facto governments or governments of paramount force which have (been cited in all this discussion were at the same time bona fide governments. The British established such a government in Castine, and ran it as a purely British organization, The Americans established another such government in Tampico, and ran it as an American organization. The Confederate States established a like government in the seceding States, and ran it as the Government of the Confederacy. They were all frank, sincere, and honest in their deeds as well as in their words. But what happened in this country during the Japanese occupation? When the "Republic of the Philippines" was established on October 14, 1943, under duress exerted by the Japanese Army, did the Japanese openly, frankly, and sincerely say that that government was being established under their orders and was to be run subject to their direction and control? Far from it! They employed all the means they could conceive to deceive the Filipino people and the outside world that they had given the Filipinos their independence, and that the Filipino people had drafted their own constitution and established that "Republic" thereunder. But behind the curtain, from beginning to end, there was the Imperial Japanese Army giving orders and instructions and otherwise directing and controlling the activities of what really was their creature for the furtherance of their war aims. I cannot believe that those who conceived and developed the doctrine of de facto government or government of paramount force, ever intended to include therein such a counterfeit organization as the Japanese contrived here—an organization which, like its counterparts in Manchukuo, Nanking, Burma, and Vichy, has been appropriately called "puppet" by the civilized governments of the world.

CONCURRENTE

BRIONES, M.,

El mandamiento de habeas corpus que se solicita debe concederse.

La proclama del General MacArthur de 23 de Octubre de 1944, lanzada cuatro dias despues de su desembarco en Leyte con las fuerzas libertadoras, reza en parte lo siguiente:

"3. Que todas las leyes, regulaciones y procesos de cualquier otro gobierno en Filipinas que no fuera el del Commonwealth son nulos e invalidos y caxecen de ef ecto legal en areas de Filipinas liberadas de la ocupacion y control del enemigo."

Recienteimente se ha discutido mucho en esta jurisdiccion sobre si la anulacion de que trata dicha proclama puede referirse tambien a actuaciones judiciales (judicial processes). En el asunto de Co Kim Cham contra Valdez Tan Keh y Dizon, R. G. No. L-5 (pag. 113, ante), he opinado afirmativamente, esto es, que el alcance de esa proclama puede extenderse a veces a ciertos actos o procesos judiciales. Reafirmo ahora mi opinion y con mayor vigor y enfasis si cabe. Porque, a mi juicio, la sentencia de reclusion perpetua impuesta al recurrente bajo la ocupacion militar japonesa es de aquellos actos judiciales del pasado regimen que por su naturaleza y circunstancias reclaman una decidida y pronta accion de parte nuestra en el sentido de aziularla y dejarla sin efecto. Mis razones se exponen a continuacion.

Parece innegable que la ley procesal bajo la cual fue enjuiciado y convicto el recurrente durante la ocupacion japonesa era absolutamente incompatible con las salvaguardias y garantias de un proceso justo, imparcial y ordenado que la constitucion y legislacion procesal del Commonwealth de Filipinas otorgan a todo acusado en una causa criminal. Hay en dicha ley ciertos aspectos decididamente repulsivos para una conciencia disciplinada en las normas y principios de una democracia constitucional Bajo nuestro sistema procesal el acusado tiene derecho a que no se le ponga en situacion de acriminarse. Tiene derecho a callarse sin que por esto pueda atribuirsele cargo inculpatario alguno. Este es un derecho fundamental, ga- rantido por la constitucion.

Empero bajo el sistema procesal que se discute, "la negativa del acusado a contestar cualquiera pregunta formulada por el tribunal o permitida por el mismo, puede ser considerada en contra de dicho acusado." (Seccion 21, Orden Ejecutiva No. 157.) Bajo este mismo sistema el caracter sumarlismo del proceso llega a tal extremo que "una sentencia condenatoria puede dictarse inmediatamente contra el acusado siempre que los hechos descubiertos en el interrogatorio preliminar demuestren que el acusado es culpable."

Bajo el sistema procesal del Commonwealth, cualquier acusado convicto ante el Juzgado de Primera Instancia tiene el derecho de apelar de la sentencia para ante el Tribunal superior de revision; y en los casos de condena a reclusion perpetua o a muerte, el Tribunal Supremo es el llamado a revisar la causa, siendo compulsoria la revision en el caso de condena a muerte. Esta jurisdiccion en apelacion del Tribunal Supremo en los casos de condena a reclusion perpetua y a muerte no se halla estatuida simplemente por una ley ordinaria, sino que esta proveida en la misma constitution del Commonwealth. Asi que el derecho del condenado a reclusion perpetua o a muerte para que se revise su causa por el Tribunal Supremo es constitucional y, por ende, no puede ser abolido por un simple fiat legislativo.

En camibio, bajo el sistema procesal en controversia las sentencias de los tribunales especiales o sumarias eran de caracter final, excepto cuando la pena impuesta fuera la de muerte, en cuyo easo los autos se elevaban en consulta a una division especial del Tribunal Supremo compuesta de tres miembros (Ordenanza No. 7 de la llniada Republica de Filipinas por la que se crearon las tribunales especiaies o sumarios). De modo que en esta ordenanza no solo se suprimia de una plumada el derecho de apelar reconocido y establecido por la legislacion procesal del

Commonwealth aun en los casos de delitos y penas ordinaries, sino que inclusive quedaba abolido el derecho de apelar otorgado por la constitution del Commonwealth al acusado condenado a reclusion perpetua. Por este motivo el recurrente, a quien se le habia impuesto esta pena por el alegado delito de robo, no pudo apelar de la sentencia para ante el Tribunal Supremo.

La cuestion que ahora tenemos que determinar y resolver es si debemos reconocer validez y eficacia en la sentencia por la cual el recurrente se halla extinguiendo su condena de reclusion perpetua, o debemos anularla ahora que esta en nuestras manos el poder hacerlo, restablecida como esta enteramente la normalidad juridica y constitucional en nuestro pais.

En favor de la validez de dicha sentencia se arguye que fue dictada por un tribunal creado por un gobierno de facto; que aun admitiendo el caracter inquisitorial, anti-democratico de la ley procesal bajo la cual fue enjuiciado el acusado, el gobierno de facto era dueno de establecer los procedimientos legates que quisiera; y que, segun las reglas y doctrinas conocidas de derecho internacional, las sentencias por "crimenes de guerra" o "delitos politicos" generalmente validas aun despues de restablecido el gobierno de jure. Se alega que en estos casos el derecho no tiene mas remedio que ceder a la fuerza, aeeptando la realidad de los heehos consumados.

Se admite, sin embargo, que la regla tiene sus excepciones. Una de ellas es que "los actos del ocupante militar que rebasen su poder a tenor del criterio establecido en el articulo 43 de las Regulaeiones de La Haya, son nulos y sin efecto con relacion al gobierno legitimo." (Wheaton's International Law, 7th ed. [1944], p. 245.) Segiin esto, las sentencias por "crimenes de guerra" o "delitos politicos" cometidos durante la ocupacion son, por razones perfectamente comprensibles, nulas e invalidas al restablecerse Ja soberania legitima. Tambien quedan comprendidos bajo esta excepcion los denominados actos de caracter o complexion politica.

Otra limitacion a los poderes de un gobierno de ocupacion militar es que el ejercicio de tales poderes debe extenderse tan solo hasta donde fuese necesario para su seguridad y el exito de sus operaciones, teniendo particularmente en cuenta el caracter transeunte de su ocupacion. Como regla general, al invasor se le prohíbe alterar o suspender las leyes referentes a la propiedad y a las relaeiones personates privadas, o las leyes que regulan el orden moral de la comunidad. (Hall, Treatise on International Law, 7th ed., pp. 498, 499). Lo que se hace fuera de estas limitaciones es en exceso de su competencia y es generalmente nulo al restaurarse la soberania legitima.

Otra excepcion es la que se refiere a los actos de un gobierno de faoto resultante de una insurreccion, rebelion, revolucion o guerra civil. A este efecto se ha declarado, por ejemplo, que los actos en fomento o apoyo de una rebelion contra los Estados Unidos, o encaminados a anular los jusios dereehos de los ciudadanos, y otros actos de igual indole, deben ser considerados, por lo general, invldidos y nulos (Texas vs. White, 74 U. S., 733; 19 Law, edv 240). En otro caso se ha declarado la validez de ciertos actos judiciales o legislativos en estados insurreccionados, siempre, que su proposito o modo de operation no fwere hostile a la autoridad del gobierno national, o no eonculcaren derechos de los ciudademos bajo la Constitution.—Horn vs. Lockhart, 17 Well, 570-581; 2 Law. ed., 660.)

Visto el caso que nos ocupa a la luz de estas doctrinas, ¿cual de ellas debemos adoptar para determinar si es o no valida la sentencia por la cual el recurrente sufre ahora pena de reclusion perpetua y pide ser liberado mediante peticion de habeas corpus?

Se asevera que no procede aplicar al presente caso la doctrina establecida en la jurisprudencia americana sobre gobiernos de facto resultantes de una insurreccion, revolucion o guerra civil porque evidentemente la llamada Reptiblica de Filipinas instaurada durante la ocupacion militar japonesa no tenia este caracter, sino que era mas bien un gobierno establecido mediante fuerza y coaccion por los mismos invasores para promover ciertos

designios politicos relacionados con sus fines de guerra. En otras palabras, era el mismo gobierno militar de ocupacion con fachada filipina arreglada y arbitrada coercitivamente.

Mientras estoy conforme con una parte de la asercion, esto es, que la aludida repiublica no tenia caracter insurreccional ni revolucionario, en disfrute de plena autonomia, sino que era simple pro duct o de la coaccion y estaba mediatizada continuamente por el invasor, dinero de la otra parte, aquella que declara inaplicable la conocida doctrina americana mencionada arriba sobre gobiernos de facto establecidos en el curso de una insurreccion, revolucion o guerra civil. Y la razon es sencilla. Si a un gobierno de facto de este ultimo tipo—gobierno establecido, despues de todo, por compatriotas, por conciudadanos—se le coarta con la restriecion de que sus actos legislativos o judiciales, en tanto son validos, al restaurarse el regimen de jure, en cuanto no conculcaren los derechos justos de los civdadanos, a los derechos garantidos por la constitution, pareee que no existe ninguna razon por que no se ha de aplicar la misma restriceion al gobierno de facto establecido como incidente de una guerra entre dos naciones independientes y enemigas. En realidad, la razon de nulidad es mucho mas poderosa y fuerte cuando, en su caso como el de Filipinas, el enemigo invasor inicio la agresion de una manera inicua y traicionera y la ejecuto luego con vesania y sadismo que llegaron a extremos inconcebibles de barbarie. En este caso la condulcacion de los justos derechos de los ciudadanos, o de los derechos garantidos por la constitution cobra proporciones de mucha mayor gravedad porque viene a ser tan solo parte de un vasto plan de rapina, devastation y atrocidades de todo genero cometidas contra la humanidad y contra las leyes y usos de la guerra entre naciones civilizadas. El invasor, en este caso, es como el foragido que se coloca fuera de toda ley. Por tanto, no hay absolutamente ninguna razon para no aplicarle una restriceion que se estima buena para el insurrecto o revolucionario.

La ventaja de extender hasta cierto punto la doctrina sobre gobiernos de facto resultantes de una insurreccion, rebelion o guerra civil a gobiernos de facto establecidos como incidente en el curso de una guerra entre dos naciones independientes enemigas es que, frente a casos de conculcacion de los justos derechos de los ciudadanos, o de los derechos garantidos por la constitution para los efectos de declararlos validos o nulos al restablecerse el gobierno de jure, ya no se hace preciso examinar si los actos conculcatorios fueron motivados por razones o exigencias de la seguridad y exito de las operaciones del ocupante militar, sino que la piedra de toque de la validez o nulidad viene a ser tan solo el acto positivo mismo de la conculcacion.

Esta forma de raciocinio no solo no es heterodoxa a la luz de los principios establecidos de derecho international, sino pareee ser una Mgica inferencia de los mismos. Ya hemos visto que al ocupante militar en el curso de una guerra international se le prohíbe, como regla general, alterar o suspender las leyes references a la propiedad y a las relaciones personates privadas, o las leyes que regulan el or den moral de la eomunidad. (Hall, Treatise on International Law, supra.) Ahora cabe preguntar: ¿Son los justos derechos de los ciudadanos, b los fundamentals garantidos por la eonstitution inferiores en categoria a la propiedad, o a las relaaciones personates privadas, o al orden moral de la eomunidad? ¿No son en cierto sentido hasta superiores? Por tanto, a nadie debe chocar que la prohibieion se extienda a estas materias. Es una inclusion perfectamente natural, mas que justificada por los avances y conquistas del moderno derecho internacional. Notese que en las fraguas de esta ultima guerra se han forjado unas modalidades juridicas harto originales que denotan el esfuerzo supremo y gigante de la humanidad por superar la banbarie y por dar al traste con las formulas arcaicas, reaccionarias. Para citar solamente algunos ejemplos los mas destacados, tenemos el enjuiciamiento de los llamados criminales de la guerra, y la responsabilidad que se exige a los jefes militares por las atrocidades cometidas por las tropas bajo su mando.

Mi conclusion, por tanto, es que desde cualquier angulo que se mire la sentencia impuesta al recurrente por el tribunal sumario de la llamada republica de Filipinas debe ser declarada nula, acotando las palabras del Procurador General, "no solo por razones fundadas en principios de derecho internacional, sino tambien por la

mas apremiante y poderosa de las razones, la de preservar y salvaguardar a nuestros ciudadanos de los actos del enemigo."

Dar validez a esa sentencia ahora, en plena atmosfera de libertad que respiran a pulmon lleno de resto de nuestros conciudadanos menos el recurrente y otras que corrieron su suerte durante la ocupacion japonesa, equivaldria tanto como prolongar el regimen de opresion bajo el cual se tramitd y se dicto la referida sentencia. Es mas, equivaldrfa a sancionar la ideologia totalitaria, despotica, medieval contra la cual nuestro pueblo lucho tan lheroicamente jugandose todo: vida, libertad y bienes materiales.

Ciertamente no nos hemos librado de la opresion para llegar a tan irrisorio resultado.

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