

GEORGE L. TUBB AND WESLEY TEDROW, PETITIONERS, VS. THOMAS E. GRIESS, RESPONDENT.

G.R. No. L-1325. April 07, 1947

Ponente: MORAN, C.J.

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MORAN, C.J.:

This is a petition for habeas corpus filed by George L. Tubb and Wesley Tedrow, citizens of the United States but residents of the Philippines, under written contract of employment with the Army of the United States. It appears that sometime between January 4, as alleged by petitioners, and January 13, 1947, as appearing in the "charge sheet" submitted by respondent, the herein petitioners were apprehended by the authorities of the United States Army and have since been held in custody. On January 28, 1947, petitioners were formally charged by said authorities with violations of Articles of War regarding misappropriation of United States Government property destined for military use, said acts having been committed within premises occupied by the United States Army under lease contracts.

Petitioners now come before this Court alleging that they are being unlawfully deprived of their liberty and that Philippine courts have exclusive jurisdiction over their arrest, confinement and imprisonment because (1) they are not persons subject to military laws, and (2) martial law is no longer enforced.

In the contract of employment entered into by petitioners with the United States Army, it is shown that they voluntarily submitted themselves to United States military law while serving said contract, thereby submitting themselves to the full extent of the authority of the United States Army in this area. This, coupled with the fact that petitioners are American citizens, makes their position during the subsistence of said contract no different from that of enlisted men, enlistment after all being nothing more than a contract of voluntary service in the armed forces of one's country. Petitioners then, in relation to the United States Army in the Philippines and during the subsistence of their employment contract, can be deemed to possess the status of military personnel.

It is a settled principle of International Law that a foreign army allowed to march through a friendly country or to be stationed in it, by permission of its government or sovereign, is exempt from the civil and criminal jurisdiction of the place. In applying this rule in the case of *Raquiza vs. Bradford* (75 Phil., 50), this Court held that "if a foreign army permitted to be stationed in a friendly country, 'by permission of its government or sovereign,' is exempt from the civil and criminal jurisdiction of the place, with much more reason should the Army of the United States which is not only permitted by the Commonwealth Government to be stationed here but has come to the islands and stayed in them for the express purpose of liberating them, and further prosecuting the war to a successful conclusion, be exempt from the civil and criminal jurisdiction of this place, at least for the time covered by said agreement of the two Governments. By analogy, an attempt of our civil courts to exercise jurisdiction over the United States Army before such period expires, would be considered as a violation of this country's faith, which this Court should not be the last to keep and uphold. By exercising it, paraphrasing the foregoing quotation, the purpose for which the stationing of the army in the islands was requested or agreed upon may be hampered or prejudiced, and a portion of said military force would be withdrawn from the control of the

sovereign to whom they belong. And, again, by analogy, the agreement for the stationing of the United States Army or a part of its forces in the Philippines implies a waiver of all jurisdiction over their troops during the time covered by such agreement, and permits the allied general or commander-in-chief to retain that exclusive control and discipline which the government of his army may require."

The basis of this ruling is the leading case of *The Schooner Exchange vs. McFadden* (7 Cranch, 116) in which the United States Supreme Court speaking thru Chief Justice Marshall, held that "a third case in which a sovereign is understood to cede a portion of his territorial jurisdiction is, where he allows the troops of a foreign prince to pass through his dominions. In such case, without any express declaration waiving jurisdiction over the army to which this right of passage has been granted, the sovereign who should attempt to exercise it would certainly be considered as violating his faith. By exercising it, the purpose for which the free passage was granted would be defeated, and a portion of the military force of a foreign independent nation would be diverted from those national objects and duties to which it was applicable, and would be withdrawn from the control of the sovereign whose power and whose safety might greatly depend on retaining the exclusive command and disposition of this force. The grant of a free passage therefore implies a waiver of all jurisdiction over the troops during their passage, and permits the foreign general to use that discipline, and to inflict those punishments which the government of his army may require."

Since then, this principle has been consistently embodied in treaties of military character among friendly nations and has been accepted by all the countries of the world. The most authoritative writers on International Law firmly concur in this rule. To quote—

Wheaton.—"A foreign army or fleet, marching through, sailing over, or stationed in the territory of another State, with whom the foreign sovereign to whom they belong is in amity, are also, in like manner, exempt from the civil and criminal jurisdiction of the place." (Elements of International Law, section 95.)

Hall.—"Military forces enter the territory of a state in amity with that to which they belong, either when crossing to and fro between the main part of their country and an isolated piece of it, or as allies passing through for the purposes of a campaign, or furnishing garrisons for protection. In cases of the former kind, the passage of soldiers being frequent, it is usual to conclude conventions, specifying the line of road to be followed by them, and regulating their transit so as to make it as little onerous as possible to the population among whom they are. Under such conventions offences committed by soldiers against the inhabitants are dealt with by the military authorities of the state to which the former belong; and as their general object in other respects is simply regulatory of retail, it is not necessary to look upon them as intended in any respect to modify the rights of jurisdiction possessed by the parties to them respectively. There can be no question that the concession of jurisdiction over passing troops to the local authorities would be extremely inconvenient; and it is believed that the commanders, not only of forces in transit through a friendly country with which no convention exists, but also of forces stationed there, assert exclusive jurisdiction in principle in respect of offences committed by persons under their command, though they may be willing as a matter of concession to hand over culprits to the civil power when they have confidence in the courts, and when their stay is likely to be long enough to allow of the case being watched. The existence of a double jurisdiction in a foreign country being scarcely compatible with the discipline of an army, it is evident that there would be some difficulty in carrying out any other arrangement." (Italics supplied; International Law, 7th ed., section 56.)

Lawrence.—"The universally recognized rule of modern times is that a state must obtain express permission before its troops can pass through the territory of another state * * *. Permission may be given as a permanent privilege by treaty for such a purpose as sending relief to garrisons, or it may be granted as a special favor for the special occasion on which it is asked. The agreement for passage generally contains provisions for the maintenance of order in the force by its own officers, and makes them, and the state in whose service they are, responsible for the good behavior of the soldiers towards the inhabitants. In the absence of special agreement

the troops would not be amenable to the local law, but would be under the jurisdiction and control of their own commanders, as long as they remained within their own lines or were away on duty, but not otherwise." (Principles of International Law, 6th ed., section 107, p. 246.)

Oppenheim.—"Whenever armed forces are on foreign territory in the service of their home State, they are considered extraterritorial and remain, therefore, under its jurisdiction. A crime committed on foreign territory by a member of these forces cannot be punished by the local civil or military authorities, but only by the commanding officer of the forces or by other authorities of their home State. This rule, however, applies only in case the crime is committed, either within the place where the force is stationed, or in some place where the criminal was on duty; it does not apply, if, for example, soldiers belonging to a foreign garrison of a fortress leave the rayon of the fortress, not on duty but for recreation and pleasure, and then and there commit a crime. The local authorities are in that case competent to punish them." (International Law, 4th ed., Vol. I, section 445.)

Westlake affirmed Wheaton's view.

Hyde.—"Strong grounds of convenience and necessity prevent the exercise of jurisdiction over a foreign organized military force which, with the consent of the territorial sovereign, enters its domain. Members of the force who there commit offenses are dealt with by the military or other authorities of the State to whose service they belong, unless the offenders are voluntarily given up." (I International Law, section 247.)

McNair and Lauterpacht.—"It is a principle of international law that the armed force of one State, when crossing the territory of another friendly country, with the acquiescence of the latter, is not subject to the jurisdiction of the territorial sovereign, but to that of the officers and superior authorities of its own command." (Annual of Digest, 1927-1928, Case No. 114.)

Vattel.—"* * * the grant of passage includes that of every particular thing connected with the passage of troops, and of things without which it would not be practicable; such as the liberty of carrying whatever may be necessary to an army; that of exercising military discipline on the officers and soldiers * * *." (III, 8, section 130, as quoted in Woolsey's International Law, 6th ed., section 68.)

Without applying the recent treaty on military bases concluded between the governments of the Philippines and the United States, it having reference to base sites not involved in this case, and considering that a part of the United States Army is stationed in the Philippines with permission of our government, and that petitioners who belong to the military personnel of that army are charged with violations of Articles of War for offenses committed in areas under the control of the United States Army, thereby giving said army jurisdiction over their person and the offenses charged, petition is dismissed, without costs.

Feria, Pablo, Hilado, Bengzon, Briones, Hontiveros, Padilla, and Tuason, JJ., concur.

PARAS, J.:

I concur in the result.

DISSENTING

PERFECTO, J.:

Connected as civilian employees with the Manila Engineer Department of the United States Army depot at the North Harbor, Manila, petitioners George L. Tubb and Wesley Tedrow were arrested on January 4, 1947, by individuals posing as agents of the CID (Criminal Investigation Division) and since then they were confined, restrained and deprived of their liberty.

In their petition filed with this Court, dated February 20, 1947, petitioners allege that in spite of the fact that they had been detained for more than one month, no formal complaint or information for any specific violation of law has been filed against them, nor any judicial writ or order for their commitment has at any time been issued so far; that they did not commit any offense for which they may be arrested, detained or deprived of their liberty without formal charges or judicial warrant; that, according to information, they are detained by the United States Army authorities at the North Harbor, Manila, at the behest and alleged order of a certain Captain Thomas E. Griess, Security Officer of the Manila Engineer District, whose office is at Pasay, Rizal; that their detention, according to information, was based on the suspicion of having stolen and disposed of certain construction materials, explosives, and other miscellaneous items belonging to the United States Army; that they are not persons subject to military laws and only a competent court having jurisdiction in the Philippines can order their arrest, detention, and imprisonment; that there being no martial law in the Philippines, war having been officially terminated as of December 31, 1946, and the Constitution in the Philippines being in full force and operation, the detention and confinement of petitioners are utterly illegal.

Respondent Thomas E. Griess, Captain, Corps of Engineers, United States Army, in his return averred that respondent, as an officer of the United States Army, pursuant to orders issued by his superiors and in his official capacity as such officer, has in custody the petitioners against each of whom charges have been filed, which charges are to be tried and heard by a general court-martial; that petitioners are each civilian employees of the United States Army in the Philippines, Tubb under a written contract of employment dated January 30, 1946, clause 26 of which, in part, reads: "The Employee understands he or she is subject to U.S. Military Law while serving under this agreement," and the latter (Tedrow) under a written contract of employment dated July 29, 1946, clause 9 of which, in part, reads: "You are subject to military law wherever it is established by competent authorities;" that part of the United States Army is stationed in the Philippines by virtue of the laws of the United States among which is Joint Resolution No. 93, which provides for the mutual protection of the United States and the Philippines and, petitioners were engaged as civilian employees of said army; that all persons serving with the Armies of the United States without the territorial jurisdiction of the United States are subject to the articles of war of said country; that on January 28, 1947, formal charges for violation of the 94th Article of War were filed against petitioner Tubb, and on the same day formal charges for violation of the 96th Article of War were filed against petitioner Tedrow, and it is by virtue of aforesaid charges and military orders that respondent has custody of petitioners; that the place at the North Harbor, Manila, where petitioners are in custody is under the jurisdiction of the United States by virtue of duly executed leases dated June 14 and November 14, 1945; that petitioners are not confined in any prison or jail but are confined under surveillance of respondent in their living quarters which are situated on the leased premises.

At the hearing of this case, which took place on March 7, 1947, Atty. Justiniano S. Montano appeared and argued for petitioner and Atty. J.A. Wolfson, for respondent, The latter, accompanied by respondent and two-star generals of the United States Army, garbed in their military uniform, made the statement that this case has been communicated to Washington and that the U. S. Government is interested in its result. The intimidation implied in the statement compelled counsel for petitioners to make an impassioned protest against the uncalled-for statement and one of the Justices made the statement to the effect that this Court shall not allow any outsider to influence it in deciding this case.

No mention having been made in the decision of the incident, notwithstanding the fact that it involves a clear attempt to jeopardize the authority and dignity of this Court, we deem it necessary to state that such kind of attempts should not be allowed to pass without a rebuke or a more drastic action. The Supreme Court of the Philippines, if it is to uphold its dignity and prestige and keep the faith and respect of the people, should not be slow in repressing, correcting, or punishing any and all bullying tactics that any litigant or attorney should resort

to in a pending litigation. It is necessary to make of record that in the performance of its official functions this Supreme Court will not allow any foreign government or all the combined armies of the world to cow it and to make it deviate even an iota from its duty. The interest of justice is all-paramount. It is above all governments and armies, which, after all, if they should serve the political and ethical purposes for which they are created and established, are but also instruments to make justice effective.

Upon the undisputed facts in this case, we entertain no doubt that petitioners are illegally deprived of their personal freedom and, therefore, are entitled to be immediately released.

The commitment in their contracts of employment to the effect that they are subject to military law may not repeal the mandates in the Bill of Rights of the Constitution. Fundamental rights are not goods of commerce. They are not proper subjects of contracts. Besides, petitioner's commitment can never be construed as a renunciation of their constitutional rights. Military law is not superior nor equal to the supreme law. The Constitution is always paramount.

At the risk of being repetitious, it is necessary to remind that, under the Constitution, no person shall be deprived of liberty without due process of law nor shall any person be denied the equal protection of the laws. The right of the people to be secure in their persons against unreasonable searches and seizures shall not be violated, and no warrant shall be issued but upon probable cause to be determined by the court after examination under oath or examination of the complainant and the witnesses he may produce, particularly describing the place to be searched and the persons or things to be seized. The liberty of abode and of changing the same within the limits prescribed by law shall not be impaired. No involuntary servitude in any form shall exist except for the punishment of crime whereof the party shall have been duly convicted. No person shall be allowed to answer for a criminal offense without due process of law. All persons shall before conviction be bailable. Free access to the courts shall not be denied to any person by reason of poverty.

All these constitutional guarantees are intended to protect not only Filipino citizens, but all human beings within the territory of our Republic, including American citizens and, if need be, even against their own government and army. The fundamental law does not use the word citizens in the Bill of Rights. It invariably uses the word person. Due process of law by which a person may be deprived of his liberty contemplates judicial process. The Bill of Rights contemplates judicial process. And judicial process can only be had with the intervention of tribunals. Under Article VIII of the Constitution, the judicial power shall be vested in one Supreme Court and in such inferior courts as may be established by law. There cannot be and should not be any question that petitioners' fundamental rights, as guaranteed by the Constitution of the Philippines, have been flagrantly violated and this Court will be recreant in not granting them the expected relief to which they are entitled under the law.

This is one more case in which, by majority vote, this Supreme Court abdicates its powers, denying the victims of the redress to which they are entitled. In this case the abdication of judicial power is aggravated by a surrender of the sovereignty of the Filipino people. Without the benefit of ambassadorial negotiations, of senatorial ratifications, or even of a scrap of treaty or convention, the majority, in fact, accept and recognize extra-territoriality, only to wash hands in petitioners' case. No dissent is vigorous enough against such judicial attitude.

Since international law has been indiscriminatingly and confusingly misapplied in support of the glaringly erroneous majority opinion in *Co Kim Cham vs. Valdez Tan Keh and Dizon* (75 Phil., 113), many have been misled into imitating the example to the extent of creating a portentous Judicial vogue. The fashionable is morbidly contagious. It seems that one is liable to lose his self-respect if he can not invoke international law once

in a while, although to do it he has to hurriedly scratch the surface of the science and often misread his authors, an unavoidable risk in litigations where there is no legal issue between nations. How risky it is shown by the hard time endured by those who supported the majority opinion in the *Co Kim Cham* case to explain their international law pronouncements, which shrewd counsel for petitioner in *Laurel vs. Misa* (77 Phil., 856), had invoked as authority in support of the theory of "suspended allegiance." Inconsistencies are hard to explain. It is even harder if the only reasonable explanation that can be given would exact an honest admission of error. The greatness of soul required to confess an error belongs only to the elite of moral aristocracy.

Here we have a litigation in which the legal issues are centered on the question of the personal freedom of two individuals, small civilian employees in the service of the U.S. army, and who happen to be under the territorial jurisdiction of the Republic of the Philippines and under the pale of our Constitution. The litigation does not raise any question involving any nation or group of nations. The fact that petitioners are American citizens is indifferent. Liberty, as one of the fundamental human rights, is a constitutional issue, and not international. Notwithstanding this fact, the real and only issue, the constitutional one, is side-stepped by the majority. International law is used as a bludgeon to blast petitioners' faith in the inviolability of their constitutional rights.

At the expense of committing tuatery, we are compelled to conclude that cheap international law has nowadays become a fashion in judicial and legal circles. Under the spell of international law, the sense of legal values has suffered and is enduring a moral disturbance, blurring judicial vision. Swayed by the transient infatuation of the new legal fad, the majority allow themselves to be blindfolded by the fulgour of the newly found juridical shibboleth to ignore petitioners' clamors for the vindication of their constitutional rights, as guaranteed by our fundamental law, condemning their earnest prayers for relief to the futility of "*vox clamantis in deserto*." Such is the glamor of the resounding international law that it was able to drown and obliterate completely the humanitarian and lofty tenets stereotyped in the Constitution by the will of the sovereign people.

Misunderstood, misinterpreted, misapplied, international law has become a sort of juridical panacea, a universal thesaurus, always at hand for any solution that can be desired in any ticklish litigation. It is even recognized as endowed with aseity.

The root of this awry judicial attitude lies in a glaring misunderstanding and misconception of Section 3, Article VIII of the Constitution which says:

"The Philippines renounces war as an instrument of national policy, and adopts the generally accepted principles of international law as part of the law of the Nation."

There is the mistaken idea that international law had become part of the Constitution and even superior to the primary principles and fundamental guarantees expressly enunciated therein. To correct such a mistake, it is necessary to remember the following basic ideas:

- That the declaration that the Philippines "adopts the generally accepted principles of international law as part of the law of the Nation" is an enunciation of a general national policy but never intended to lay down specific principles, provisions, or rules superior or even equal to the specific mandates and guarantees in the fundamental law.
- That "the generally accepted principles of international law" made part of our statute books are not placed in a higher legal hierarchy than any other law that Congress may enact.
- That said "generally accepted principles of international law" are not fixed and unchangeable but, on the contrary, may undergo development and amplification, amendment and repeal, that is, the same biological rules that govern all laws, including the fundamental one.

- That the general statement made by the Constitution implies that the principles of international law which should be considered as part of the law of the nation are subject to determination by the agencies of our government, including courts of justice, and once determined they may be amended, enlarged or repealed, exactly as any act of Congress.
- That those principles are to be gathered from many sources—treaties and conventions, court decisions, laws enacted by legislatures, treatises, magazine articles, historical facts and others—and the majority of them must be sifted from conflicting opinions coming from said sources.
- That the provisions of the Constitution should always be held supreme and must always prevail over any contrary law without exempting principles of international law, no matter how generally or universally they may be accepted.

Under the express provisions of the Constitution, petitioners appear to be unconstitutionally deprived of their personal liberty and, therefore, are entitled to be set free. To deny the petition, the majority invoke international law. In the hypothesis that there is such a law in support of the majority position, that law must give way to the supremacy of the Constitution.

The hypothesis happens to be wrong because it is expressly based on pronouncements made in the case of *Raquizza vs. Bradford* (75 Phil., 50), which, as we have shown in our opinion in said case, are completely mistaken.

Said mistaken pronouncements are made to rely on the opinion of Chief Justice Marshall in *The Schooner Exchange vs. McFadden* (7 Cranch, 116) which, although rendered by one considered to be the greatest luminary whoever graced the Supreme Court of the United States, was written long ago, in the horse-and-buggy age, which, from the cultural point of view, notwithstanding the inverse difference of years, appears to be millennia behind from our Atomic Age than the Stone Age was from Marshall's time.

But even accepting the validity of Chief Justice Marshall's pronouncement, there is nothing in them to support the majority position in this case, because, while the American jurist recognized the jurisdiction of a foreign army passing through another country over their "troops during their passage," the majority in this case fail to differentiate petitioners from said "troops," both parties agreeing that petitioners are civilians, and no one can pretend that Chief Justice Marshall would commit the lexicographical error of including "civilians" among the "troops" of an army.

The several quotations in the majority decision are inapplicable.

Wheaton is quoted by the majority to say that "a foreign army or fleet, marching through, sailing over, or situated in the territory of another state * * * are * * * exempt from the civil and criminal jurisdiction of the place." There is nothing in the words of Wheaton to authorize the majority position. There is nothing in this case to intimate that this Supreme Court is asked or is trying to exercise any jurisdiction over the United States Army stationed in Manila. Petitioners are neither an army nor a fleet. They are just a couple of American civilians.

Hall is the next authority invoked by the majority. The quotation states that "offenses committed by soldiers" of passing or stationed military forces "against the inhabitants are dealt with" under concluded "conventions," adding that when there are no such conventions, "it is believed that the commanders * * * exert exclusive jurisdiction in principle in respect of offenses committed by persons under their command." It is clear that Hall offers no support to the majority position. There is absolutely no convention that the majority may invoke in this case, and what Hall said "it is believed" cannot seriously be entertained by any court of justice. To accept a conjecture as an authority or a basis to set a legal rule is below the level of judicial dignity.

"In the absence of a special agreement the troops would not be amenable to the local law but would be under the jurisdiction and control of their own commanders," so says Lawrence, the third authority quoted by the majority. Considering that petitioners are civilians and cannot be classified within the designation of "troops," to apply the words of Lawrence to the present case must necessarily be based on a misreading.

The quotation from Oppenheim, the fourth authority invoked by our brethren, deals with "soldiers." Has any one in this case pretended that petitioners are soldiers?

The next authority is Westlake, affirming Wheaton's view, and we have already shown how this view is absolutely inapplicable to the present case.

The quotation from Hyde, the sixth authority invoked, deals with "organized military force" and with "members of the force who commit offenses." Here we have another instance of missing the point, as the words "member" of an "organized military force" can never be understood to include civilians.

The seventh authority is McNair and Lauterpacht. The quotation deals exclusively with the jurisdiction on "the armed forces" of a foreign country. Civilians are not a part of armed forces.

The eight and last authority is Vattel, and the quotation in the majority opinion contains absolutely no word applicable to the present case. The nearest are where the author says "that the grant of passage includes * * * that of exercising military discipline on the officers and soldiers." To apply the quotation to the present case, petitioners must first undergo a metamorphosis to cease being civilians and, through magic, become overnight "officers" or "soldiers," so the facts in this case can be made to conform to the legal theory intended to be applied by the majority.

The above analysis of the very quotations inserted in the majority opinion show conclusively that the pretended principles of international law invoked by the majority in support of their position happen to be conclusively missing in each and everyone of the very quotations inserted in their opinion. Only the force of an overpowering auto-suggestion can permit one to read in those quotations what is not written therein.

Proneness to read in the writings of authorities of international law or even in judicial decisions any ruling, principle, or doctrine, that may justify the trampling down of the fundamental human rights invoked by petitioners, rights which are specifically guaranteed in our Constitution and in the constitutions of all democracies and enlightened countries, must have been corrected once and for all since June 25, 1945, when the Charter of the United Nations was adopted in San Francisco.

Since then, the principles or rules of international law which may happen to be incompatible or deviating from the principles and ideals enunciated in the Charter must be considered obsolete.

In the said Charter, the United Nations asserted their determination:

"to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, 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 establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and

"to promote social progress and better standards of life in larger freedom."

Anybody will notice that "fundamental human rights" and "dignity and worth of the human person" form part of

the supreme concern of the United Nations, Neither the Philippines nor the United States of America can honorably ignore the solemn commitments entered into by them as members of the United Nations. All the agencies of their respective governments, including tribunals and armies, are duty bound to respect, obey and make effective those commitments. The preamble of the Charter specifically provides "that armed forces shall not be used, save in common interest," the latter comprehending the basic purposes of the organization of the United Nations, such as "promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion."

There is absolutely no reason why we should be afraid, reluctant, or hesitant in performing our duty to grant petitioners the legal relief to their illegal and unconstitutional deprivation of personal liberty, because our action may displease the army or the government of the United States of America, or because the American army stationed in Manila may disregard our decision.

Justice is one of the paramount concerns and ideals of humanity. We cannot believe that any part of the United States army stationed in the Philippines would dare to challenge a final decision of this Supreme Court or of any court in the Philippines. We cannot believe that any responsible officer or soldier of that great army will ever commit an act that may tarnish the record of brilliant and glorious achievements it accomplished in the battle of the Philippines. That army fought to help us reconquer our freedom from Japanese slavery and to obtain justice against the criminal invasion of our soil, and we cannot believe it will ever do anything to obstruct the efficient functioning of our machinery of justice.

But whether this litigation has been communicated to Washington, or whether the United States Government is interested in its outcome, or whether the American army may ignore any decision we may render in favor of petitioners, or whatever adverse action may be taken by the all-powerful United States, these are considerations that should not stop us from doing our duty in the administration of justice. No power in the whole universe should be allowed to deter us from performing our functions as our conscience dictates. Others may do as they please, but we cannot have any other alternative but to keep this tribunal as the veritable bulwark of the Constitution and of the fundamental rights guaranteed therein. Only by failing to do so may we merit the sneers of shame, the wrath of our people, the curse of the present and future generations, the scorn of all humanity. There is no greater mission in life than justice. There is no greater responsibility than to administer it.

On February 10, 1947, by unanimous vote of all the members of this Court, the petition in *Martin vs. Ramos* (L-1290), was summarily dismissed, without the need of requiring any answer from the respondents. The legal question involved appeared so clear to entertain any doubt. All the Justices in this Court maintained that the Court of First Instance of Ilocos Norte has jurisdiction to try Felipe Martin, a guard in the service of the United States Army in Laoag, for killing Pantaleon Tabac while said Martin was in the performance of his official duties as a guard. Said court denied the petition of Lt. Walter T. Bartlett to have Martin delivered to the United States Army.

Now the legal position in the Martin case is reversed with the decision in the present case. The inconsistency is unquestionable. What is the reason of this change of judicial criterion in two months' time? There is no valid reason. There is no legal justification.

We dissent from such judicial fickleness. The apodeictic self-contradiction involved in the reversal can not help strengthen popular faith in the decisions of this Court. Judicial inconsistency is a conclusive evidence that of two inconsistent decisions one is necessarily wrong and unjust, based on false theory, founded on fallacious doctrine. Who is going to judge which of the two contradictory decisions is true to justice? Tribunals enunciate very often the Latin maxim "*falsus in unus, falsus in omnibus*." By its inconsistency, is not this Supreme Court being placed in the quandary of seeing the logic of that maxim hanging upon it as a sword of Damocles?

We refuse to believe that the fact that respondent, an officer of the United States Army, is vigorously opposing the petition, and that his attorney hurled at our face a menacing statement which, unfortunately, has not been met, either promptly or belatedly, by appropriate action from this Court, has anything to do with the reversal. But apparently stronger reasons than the inapplicable quotations on international law made in the majority opinion must be adduced to allay all suspicion that judicial supremacy is being abdicated in favor of military omnipotence. A journalist has recently published this assertion: "Under prevailing judicial policy our courts are afraid to go against the theoretical independence of each of the three branches of government, in spite of the judiciary's function as guardian of the Constitution." That the newspaperman, instead of using another word, had written "afraid" and once Mr. Justice Ozaeta had to allude to what he called "judicial timidity" are alarming symptoms that need be quelled, not by verbal protests, but by positive action, the meaning of which should be conclusive to everybody.

Larger doses of dynamism and red blood must be injected in judicial thought so as to free it from all hindering complexities, to emancipate it from all human frailties, to allow it to loosen all moral shackles that may keep it from resolutely facing its tasks and acting with Olympian serenity. Formerly no Justice or judge dared to discuss decisions or methods of their courts believing it offensive to propriety. On March 16, 1947, we delivered before the College Editors' Guild a speech discussing some decisions and methods of the Supreme Court. No one suspected then that we were starting a revolution in judicial attitude. One week later all our brethren released public statements to the press, addressed to the people at large, wherein, trying to answer our speech, they took occasion to expose and condemn our alleged individual defects and personal conduct, to the extent of assuming what our sense of righteousness and personal dignity should counsel us and of suggesting our resignation.

The freedom of expression of Justices and judges, as one of the fundamental human rights, achieved a moral victory against the superstitious fear to offend the dreaded sense of propriety, which, after all, is nothing basic and is but an expression of collective or individual taste, highly momentary and changeable as any fashion can be. Now all the members of the Supreme Court are unanimous in the position that we should not be afraid to exercise our freedom of expression even outside of this Court.

Our brethren's branding our conduct as highly improper and inconsistent with the self-restraint of members of an appellate court can not prevail upon the significance of their own course of action in releasing their press statements.

Our duty to interpret, apply and make effective the Constitution must be performed without any fear nor favor. Must not be deterred by the mistaken idea that there exists any principle, rule or doctrine of international law that can supersede, supplant, or overpower the fundamental law. No consideration, absolutely no consideration, should be allowed to deviate us from that duty.

President Roxas a few days ago made the following statement:

"This administration is determined to raise the standard of the judiciary to the highest level so that the people may have full trust and confidence in our courts. This objective can only be attained if the judges are men of the highest integrity and moral character, of unquestioned capacity, and of broadest human sympathies and understanding. They should not only be familiar with the law but, above all, they should respect and apply it under all circumstances and never to sacrifice the same for the sake of expediency."

The petition in this case, besides invoking the guarantees of the Constitution, is an appeal to our "broadest human sympathies and understanding." If, according to President Roxas, judges should respect and apply the law "under all circumstances and never to sacrifice the same for the sake of expediency," then there is absolutely no reason why petitioners should be denied the protection of the law "par excellence," the supreme law, the Constitution.

Of course, neither the President of the Philippines nor any authority on earth, except the people from whose sovereignty our powers are derived, may take any hand on how this Supreme Court is to administer justice, but the standard set in the presidential statement is so basically sound that we do not see any reason why it should not be included in our goals.

The decision in this case has a wider and deeper significance than superficial observers may gather from the insignificance of the individuals concerned. It goes down to shake the very foundations of human society and reaches far to the destiny of civilization. The effectiveness of legal and constitutional guarantees of human rights is the one in issue. The majority decided to set at naught that effectiveness. If the law can not afford effective protection to individual rights, where shall we look for that protection? Since its more primitive stages, human society has been able to exist thanks to law as its strongest foundation. The binding force of law unified the members of a family under its head, patriarch or matriarch; grouped families into clans and tribes; created towns and cities; consolidated nations and federations of states. That binding force is the sovereign talisman that will weld all humanity into the unity essential for the attainment of the ideal of One World.

There is despair in many hearts. There are many who feel that an upheaval is going to doom mankind into universal destruction. They think that the very foundations are falling apart. The harnessing of atomic energy gives them little consolation. While it is considered as the greatest scientific triumph, the outstanding milestone in human progress, a source of new light, new warmth, new freedom, new happiness, it also placed man on the brink of an abyss where only ruin and chaos can exist. The greatest victory in the conquest of nature may yet prove to be the unhappiest and last tragedy for man. But these gloomy premonitions, alarms, fears, and despair shall be dispelled once we think that eventually all the countries, nations and peoples of the world will adhere to, abide by, and enforce the principle of singleness of the law as the only means of ensuring world peace. The Charter of the United Nations and the Statute of the International Court of Justice are the first steps in the right direction. They are laws intended for the majority of the nations of the earth. We hope that in no distant future will the whole mankind be ruled by the same laws enacted by a single world authority, representing the world's collective conscience.

But to attain this ideal we must strengthen faith in the law, in its effectiveness, in its vitalizing social function, in its guarantees of human rights. That faith can not be strengthened by making of the safeguards of the Constitution a mummery.

The petition must be granted and so we vote.

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