

PEDRO M. DUARTE, PETITIONER, VS. WALLER H. DADE, DIRECTOR OF PRISONS, RESPONDENT.*G. R. No. 10858. October 20, 1915*

Ponente: TRENT, J.

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This is an original application in this Supreme Court for a writ of habeas corpus. The petitioner, Pedro M. Duarte, was tried in the first instance over his objection by the court of appeals of the Island of Guam on the 1st day of March, 1915, and sentenced to fourteen years eight months and one day of cadena temporal, to the accessory penalties provided by law, to indemnify the Government of the United States in the sum of \$40,944.20, and to the payment of the costs of the cause for the crime of misappropriation of public funds while postmaster at Guam. The governor of Guam mitigated the term of imprisonment to ten years and, under an agreement with the Governor-General of the Philippine Islands, designated Bilibid Prison, in the city of Manila, Philippine Islands, "as the place of the execution of so much of the sentence as relates to confinement." Subsequent thereto the petitioner was sent to Manila and turned over to the respondent to be confined in Bilibid Prison, where he now is. This case presents only two questions. (1) Had the court of appeals of the Island of Guam jurisdiction legally to try and sentence the petitioner in the manner and form above set forth? (2) Is the respondent authorized to hold the petitioner in confinement in Bilibid Prison, Philippine Islands? The petitioner insists that both these questions should be answered in the negative.

During the consideration of this case, it was suggested that this Supreme Court has no authority to inquire whether the court of appeals of Guam had jurisdiction to try the petitioner or not, because Guam and the Philippine Islands are separate and distinct governmental entities and it is our duty to accept without question the judgments of the courts of that Island.

Cases are cited from the United States Supreme Court reports in which it is held that state courts have no power to examine into the regularity of Federal judicial process or judgments of Federal courts. If, for instance, as in the case of *Ableman vs. Booth* (21 How., 506, 16 L. ed., 169), a United States marshal makes return to a writ issuing out of a state court that the petitioner is held on an order of a United States circuit court commissioner; or if, as in *Booth vs. United States* (139 Fed., 252; 71 C. C. A., 378), the petitioner is in custody in pursuance of a judgment upon an indictment, charging him with an offense against the laws of the United States; or if, as in *Tarble's case* (13 Wall., 397, 20 L. ed., 597), the person whose discharge is sought is held as an enlisted soldier of the army by an officer of that army, acting directly under the Constitution and laws of the United States, state courts have no power to go further in the premises. The return of the writ closes the door to all investigation. If the petitioner would have a judicial determination of the legality of his detention, he must apply to a Federal court. The reason for this is best stated in the language used by the court in *Tarble's case*, where, after reviewing both the other cases cited, it was said: "State judges and state courts, authorized by laws of their states to issue writs of habeas corpus, have, undoubtedly, a right to issue the writ in any case where a party is alleged to be illegally confined within their limits, unless it appear upon his application that he is confined under the authority, or claim and color of the

authority, of the United States, by an officer of that government. If such fact appear upon the application the writ should be refused. If it does not appear, the judge or court issuing the writ has a right to inquire into the cause of imprisonment, and ascertain by what authority the person is held within the limits of the state; and it is the duty of the marshal, or other officer having the custody of the prisoner, to give, by a proper return, information in this respect."

These cases do not supply a precedent governing the case at bar. The analogy fails in most important respects. The cages cited are, be it remembered, predicated upon the dual system of government in the United States where two governmental entities, both supreme in their own spheres of action, have identical territorial jurisdiction. They simply observe the rule that officers of the one cannot interfere with officers of the other in matters pertaining strictly to the latter. The governments of Guam and of the Philippine Islands are two separate entities presiding over wholly separate and distinct territories and neither has any control over the other, but both derive their powers from the central Government of the United States. Any respect which is given to the official acts of the one government by the other is, in the absence of constitutional restrictions and legislation by the Congress of the United States, purely a matter of comity and not of coercion. There is no compelling reason, other than comity, why the courts of this country should give to judgments of courts of the government of Guam any effect whatever, except in so far as our laws so direct. And the laws of this country treat judgments emanating from the Island of Guam precisely as it does judgments from other territories or States of the United States. Section 309 of the Code of Civil Procedure provides the effect of such a judgment in this country, and section 312 provides that "Any judicial record may be impeached by evidence of a want of jurisdiction in the court or judicial officer * * *."

The whole purpose of the writ of habeas corpus is to determine if the petitioner is legally held. According to the record before us, the judgment of the Guam court is the first link in the chain that deprives the petitioner of his liberty. If we are to determine the legality of his confinement, it seems to us that no valid reason can be assigned for not examining into the jurisdiction of the Guam court.

This court is authorized to grant writs of habeas corpus. (Sec. 526, C. C. P.) The petitioner is being deprived of his liberty within its territorial jurisdiction. His detention is not caused by the decree, order, or judgment of any Federal court or officer. Hence, the jurisdiction of this court is complete. If he can show that his confinement is illegal his case is good. He is attempting to do this by alleging a want of jurisdiction in the court which rendered judgment against him. If this is true, then his confinement is strictly illegal, for any detention which starts with a void judgment is illegal. It is our right and our duty to investigate the jurisdiction of the committing court.

The Island of Guam was occupied by the armed forces of the United States during the late war with Spain. By the Treaty of Paris, Spain formally ceded the island to the United States. (Art. II.) On December 23, 1898, the President of the United States issued the following Executive Order: "The Island of Guam, in the Ladrões, is hereby placed under the control of the Department of the Navy.

The Secretary of the Navy will take such steps as may be necessary to establish the authority of the United States and to give it the necessary protection and government.

(Sgd.) WILLIAM MCKINLEY."

On January 12, 1899, the Secretary of the Navy wrote the following letter:

"Sir: 1. The Island of Guam, in the Ladrões, Pacific Ocean, having been, by Executive Order, dated December 23, 1898 (copy of which is inclosed herewith), made a naval station and placed under the control of the Department of the Navy, you are hereby appointed naval governor of the Island of Guam, this duty being in addition to your duty as commander of a division of the Asiatic Fleet.

"2. In taking control of the government of the Island of Guam, you will particularly assume control of all crown lands, fortifications and public buildings of the Island, together with such archives as may be found there.

"8. You will, whenever opportunity affords, communicate with the Department, giving such suggestions as you may deem advisable in reference to the naval, commercial, and civil control, and the development of the Island.

"Very respectfully,

(Sgd.) "JOHN D. LONG, Secretary."

On the same date the Secretary of the Navy issued "Instructions for the military commander of the Island of Guam," which, in general outline, are of a similar tenor to President McKinley's instructions to the first Philippine Commission. Portions thereof read as follows:

"In performing this duty, the military commander of the United States is enjoined to make known to the inhabitants of the Island of Guam, that, in succeeding to the sovereignty of Spain, in severing the former political power, the authority of the United States is to be exerted for the security of the persons and property of the people of the Island and for the confirmation of all their private rights and relations. It will be the duty of the military commander to announce and proclaim in the most public manner that we come, not as invaders or conquerors, but as friends, to protect the natives in their homes, in their employments and in their personal and religious rights. All persons who, either by active aid or by honest submission, cooperate with the Government of the United States to give effect to those beneficent purposes, will receive the reward of its support and protection. All others will be brought within the lawful rule we have assumed, with firmness if need be, but without severity as far as it may be possible.

"Within the absolute domain of naval authority, which necessarily is and must remain supreme in the ceded territory until the legislation of the United States shall otherwise provide, the municipal laws of the territory, in respect to private rights and property and the repression of crime are to be considered as continuing in force, and to be administered by the ordinary tribunals, so far as practicable. The operations of civil and municipal government are to be performed by such officers as may accept the supremacy of the United States by taking the oath of allegiance, or by officers chosen as far as may be practicable from the inhabitants of the Island.

"Finally, it should be the earnest and paramount aim of the naval administration to win the confidence, respect, and affection of the inhabitants of the Island of Guam by assuring to them in every possible way that full measure of individual rights and liberties which is the heritage of free peoples, and by proving to them that the mission of the United States is one of benevolent assimilation, substituting the mild way of justice and right for arbitrary rule. In the fulfillment of this high mission, supporting the temperate administration of affairs for the greatest good of the governed, there must be sedulously maintained the strong arm of authority, to repress disturbance and to overcome all obstacles to the bestowal of the blessings of good and stable government upon the people of the Island of Guam under the free flag of the United States."

So far as the record shows, neither the President of the United States nor the Secretary of the Navy has issued any subsequent orders or instructions to the governor of Guam respecting the government of the civil population of that Island.

If we compare the government of Guam so constituted with the Government existing in the Philippine Islands from August 13, 1898, until September 1, 1900; or with the government existing in Porto Rico from July 25, 1898, until the Act of Congress of April 12, 1900 (31 Stat. at L., 77), became effective, we shall find that all three were similarly governed. In both Porto Rico and the Philippine Islands there was first an entry of the armed forces of the United States, followed by a resumption of civil government under the supervision and control of military governors who received their appointments and their instructions from the President of the United States. So that,

in discussing the powers and limitations of the governor of Guam, we may rightly consider as precedents the powers exercised by the military governors of the Philippine Islands and Porto Rico which were created by the President of the United States and were terminated by congressional legislation. All doubt as to the legality of such governments are put at rest by the stamp of approval placed upon them both by the legislative and judicial departments of the Federal Government. In the Organic Act of Porto Rico Congress recognized the exercise of legislative powers by the military governor in section 8 in the following language: "That the laws and ordinances of Porto Rico now in force shall continue in full force and effect, except as altered, amended or modified hereinafter, or as modified by military orders and decrees in force when this act shall take effect." Congress approved of and consented to the government established by the President in the Philippine Islands by the Act of March 2, 1901 (31 Stat. at L., 910), which reads in part as follows: "All military, civil, and judicial powers necessary to govern the Philippine Islands, acquired from Spain by the treaty concluded at Paris on the tenth day of December, eighteen hundred and ninety-eight, and at Washington on the seventh day of November, nineteen hundred, shall, until otherwise provided by Congress, be vested in such person and persons and shall be exercised in such manner as the President of the United States shall direct, for the establishment of civil government and for maintaining and protecting the inhabitants of said Islands in the free enjoyment of their liberty, property, and religion."

Still later, in the Act of July 1, 1902 (32 Stat. at L., 692), Congress again approved of the President's administration of government in the Philippines.

We quote rather fully from a late decision of the Supreme Court of the United States, owing to its peculiar fitness as a precedent for the case at bar:

"By the ratifications of the treaty of peace, Porto Rico ceased to be subject to the crown of Spain, and became subject to the legislative power of Congress. But the civil government of the United States cannot extend immediately and of its own force over conquered and ceded territory. Theoretically, Congress might prepare and enact a scheme of civil government to take effect immediately upon the cession, but, practically, there always have been delays and always will be. Time is required for a study of the situation, and for the maturing and enactment of an adequate scheme of civil government. In the meantime, pending the action of Congress, there is no civil power under our system of government, not even that of the President as civil executive, which can take the place of the government which has ceased to exist by the cession. Is it possible that, under such circumstances, there must be an interregnum? We think clearly not. The authority to govern such ceded territory is found in the laws applicable to conquest and cession. That authority is the military power, under the control of the President as Commander in Chief. In the case of *Cross vs. Harrison* (16 How., 164, 14 L. ed., 889), a situation of this kind was referred to in the opinion of the court, where it is said: 'It [the military authority] was the government when the territory was ceded as a conquest, and it did not cease as a matter of course, or as a necessary consequence of the restoration of peace. The President might have dissolved it by withdrawing the army and navy officers who administered it, but he did not do so. Congress could have put an end to it, but that was not done. The right inference from the inaction of both is that it was meant to be continued until it had been legislatively changed. No presumption of a contrary intention can be made. Whatever may have been the causes of the delay, it must be presumed that the delay was consistent with the true policy of the government.' (pp. 193, 194.) And see *Leitensdorfer vs. Webb* (20 How., 176, 15 L. ed., 891), and opinion of Mr. Justice Gray in *Downes vs. Bidwell* (182 U. S., 244, 345, 45 L. ed., 1088, 1128, 21 Sup. Ct. Rep., 770).

"The authority of a military government during the period between the cession and the action of Congress, like the authority of the same government before the cession, is of large, though it may not be of unlimited, extent.

In fact, certain limits, not material here, were put upon it in *Dooley vs. United States* (182 U. S., 222, 45 L. ed., 1074, 21 Sup. Ct. Rep., 762), and *Lincoln vs. United States* (197 U. S., 419, 49 L. ed., 816, 25 Sup. Ct. Rep.,

455), though it was said in the Dooley case, page 234: 'We have no doubt, however, that, from the necessities of the case, the right to administer the government of Porto Rico continued in the military commander after the ratification of the treaty, and until further action by Congress,'—citing *Cross vs. Harrison*, supra.

"But, whatever may be the limits of the military power, it certainly must include the authority to establish courts of justice, which are so essential a part of any government. So it seems to have been thought in *Leitensdorfer vs. Webb*, supra. With this thought in mind, the military power not only established this particular court in Porto Rico, but as well a system of courts which took the place of the courts under Spanish sovereignty, and were continued by the organic act. The same course was pursued in the Philippine Islands" (*Santiago vs. Nogueras*, 214 U. S., 260, 53 L. ed., 989.)

When New Mexico was conquered by the United States, the executive authority of the United States properly established a provisional government, which ordained laws and instituted a judicial system; all of which continued in force after the termination of the war, and until modified by the direct legislation of Congress, or by the territorial government established by authority of Congress. In *Leitensdorfer vs. Webb* (20 How., 176, 178) the Supreme Court of the United States, in speaking of the military government thus established, said:

"Accordingly we find that there was ordained by the provisional government a judicial system, which created a superior or appellate court, constituted of three judges; the circuit courts, in which the laws were to be administered by the judges of the superior or appellate court, in the circuits to which they should be respectively assigned. By the same authority the jurisdiction of the circuit courts to be held in the several counties was declared to embrace, first, all criminal cases that shall not be otherwise provided for by law; and second, exclusive original jurisdiction In all civil cases which shall not be cognizable before the prefects and alcaldes. (Vide Laws of New Mexico, Kearney's Code, p. 48.) Of the validity of these ordinances of the provisional government there is made no question with respect to the period during which the territory was held by the United States as occupying conqueror, and it would seem to admit of no doubt that during the period of their valid existence and operation those ordinances must have displaced and superseded every previous institution of the vanquished or deposed political power which was incompatible with them. But it has been contended that whatever may have been the rights of the occupying conqueror as such, these were all terminated by the termination of the belligerent attitude of the parties, and that with the close of the contest every institution which had been overthrown or suspended would be revived and reestablished. The fallacy of this pretension is exposed by the fact that the territory never was relinquished by the conqueror nor restored to its original condition or allegiance, but was retained by the occupant until possession was matured into absolute permanent dominion and sovereignty; and this, too, under the settled purpose of the United States never to relinquish the possession acquired by arms. We conclude, therefore, that the ordinances and institutions of the provisional government would be revoked or modified by the United States alone, either by direct legislation on the part of Congress or by that of the Territorial government in the exercise of powers delegated by Congress."

The above citations and quotations are sufficient to dispel all doubt as to the legality of military governments from the time a particular territory is acquired by the United States until Congress chooses to legislate for it and the power of such governments to create courts of justice. Aside from the establishment of judicial machinery by the military governments of Porto Rico and the Philippine Islands, as referred to in the quotation from *Santiago vs. Nogueras*, supra, we find two very notable pieces of legislation in the Philippine Islands promulgated in the form of military General Orders and which to this day have the force of law and are administered as such by all departments of the present Civil Government. They are General Orders No. 58, series of 1900, which still constitutes the bulk of our criminal procedure; and General Orders No. 68, under date of December 18, 1899, making radical changes in the marriage law, and which is still in effect without material amendment. Hence, we may conclude that the powers of a military governor to issue orders, decrees, regulations, etc., which have the

force of law in the territory over which he has jurisdiction is beyond question. Therefore, the governor of Guam had power to recognize the courts by his General Order No. 69 of 1903; No. 89 of 1905; and his Executive General Order No. 158 of 1910.

But it is objected that he had no power to issue the following communication or order:

"From: Governor of Guam.

"To: The court of appeals, Guam.

"SUBJECT: Pedro M. Duarte, charges against.

"1. The court of appeals of Guam shall take original jurisdiction in this case.

(Sgd.) "W. J. MAXWELL."

It may be admitted that under Executive General Order No. 158 of 1910, which embodies the last reorganization of the judiciary of the Guam government, original jurisdiction of the crime with which the petitioner was charged was vested in the "Island court of Guam" and not in the "court of appeals." But while much stress is laid upon the absolute lack of power on the part of the governor of Guam to issue this order, we are referred to nothing except previous orders of the governor himself relating to the establishment of courts, to which we have referred above, and to the ordinary criminal procedure observed in the Island, which is also embodied in an executive order of the governor of Guam. Certainly, these general orders, deriving their force as law from the governor Himself, are liable to repeal by him at any time and cannot of themselves prevent the governor from trying an accused person in some other manner. It is fundamental that what legislators have the power to enact they have the power to repeal. In speaking of the powers of legislative bodies, it is said in Lewis' *Southerland on Statutory Construction*, section 244: "A state legislature has a plenary law-making power over all subjects, whether pertaining to persons or things, within its territorial jurisdiction, either to introduce new laws or repeal the old, unless prohibited expressly or by implication by the federal constitution or limited or restrained by its own. It cannot bind itself or its successors by enacting irrepealable laws except when so restrained. Every legislative body may modify or abolish the acts passed by itself or its predecessors. This power of repeal may be exercised at the same session at which the original act was passed; and even while a bill is in its progress and before it becomes a law. This legislature cannot bind a future legislature to a particular mode of repeal. It cannot declare in advance the intent of subsequent legislatures or the effect of subsequent legislation upon existing statutes."

These principles must necessarily apply to the military governor of Guam. A military governor is not, of course, restrained by any laws of the territory which he governs.

As to the people within that territory, "the will of the conqueror is the law." Limitations upon his powers must be looked for in the laws of his own government and the instructions handed him by his superiors. Therefore, it is in order to determine whether the action of the military governor of Guam in ordering his court of appeals to take original jurisdiction in the petitioner's case and in denying him the right of appeal conflict with the constitution or laws of the United States, or with instructions emanating from his superiors. The President of the United States and the Secretary of the Navy, who are the superiors of the governor of Guam, are bound to observe the Constitution and laws of the United States in any instructions they give to him. It seems proper, therefore, to first determine whether the Constitution and law prohibit the action taken by the governor of Guam in the petitioner's case. It is now pretty well settled that the Constitution of the United States does not extend *ex proprio vigore* to newly acquired possessions of the United States until they are formally incorporated into what Chief Justice Marshall has called the "American Empire." (*Downes vs. BidweU*, 182 U. S., 244, 276, 45 L. Ed., 1088, 1102.) But in the case cited, Mr. Justice Brown, in announcing the judgment of the court, intimated that possibly some of

its provisions limited the powers of Congress to legislate for such possessions. Among these he mentioned the prohibition against passing ex post facto laws, laws granting titles of nobility, laws restricting religious freedom, free speech, and others. If these are restrictions upon the powers of Congress to deal with newly acquired possessions, there is good reason to suppose that they operate in a similar manner upon the executive department of the government in its administration of a military government. But, obviously, the action of the governor of Guam in the Duarte case does not touch any of these points.

The treaty of peace with Spain is a law of the land. (Const., Art. VI.) There are various provisions of this treaty which the President of the United States, the Secretary of the Navy, and the governor of Guam must recognize and obey. For instance, Articles IV and XV provide for the entry of Spanish ships and merchandise on the same terms as American ships and merchandise for a period of ten years. These provisions are now, of course, obsolete. Article VIII protects private property rights generally, and Article XIII property rights in copyrights and patents, and provides for the free admission of Spanish scientific, literary, and artistic works for a period of ten years, the latter provision now being obsolete. Article X provides that the inhabitants of the ceded territories shall be secured in the free exercise of their religion. All these are restrictions upon the authority of the President of the United States and his subordinates in their administration of the Guam government, but they do not approach the facts of the petitioner's case.

In a recent case, the Supreme Court of the United States, in referring to the military government of Porto Rico, said that the limitations upon the powers of the military governor must be looked for in the instructions given to the governor by his superiors, which were founded on the "general rules of international law, and from fundamental principles known wherever the American flag flies." (Ochoa vs. Hernandez y Morales, 230 U. S., 139, 67 L. ed., 1427.) The Hague Conference Code of 1899 contains much that robs martial law and military government of their terrors. Assuming that the President of the United States is bound by this international treaty, there is nothing contained therein which prohibits the actions taken in the petitioner's case.

Chief Justice Marshall said in *American Ins. Co. vs. Canter* (1 Pet., 511, 7 L. ed., 242): "The usage of the world is, if a nation be not entirely subdued, to consider the holding of conquered territory as a mere military occupation, until its fate shall be determined at the treaty of peace. If it be ceded by treaty, the acquisition is confirmed, and the ceded territory becomes a part of the nation to which it is annexed; either on the terms stipulated in the treaty of cession, or on such as its new master shall impose. On such transfer of territory, it has never been held that the relations of the inhabitants with each other undergo any change.

Their relations with their former sovereign are dissolved, and new relations are created between them and the government which has acquired their territory. The same act which transfers their country transfers the allegiance of those who remain in it and the law, which may be denominated political, is, necessarily, changed; although that which regulates the intercourse and general conduct of individuals remains in force until altered by the newly created power of the state."

There is no doubt that this correctly states the policy of the United States as is attested by the history of successive additions to its territory, and may be said to control military governments inaugurated by the President of the United States. But it cannot be said this policy has been violated in the petitioner's case.

If we examine the legislation of Congress relating to Guam, we find that it has to do almost wholly with appropriations for improvements either of a public or of a military character. There has been an annual appropriation for the care of lepers, a considerable amount has been allotted to an agricultural experiment station, for the building of roads, a water supply system, etc. The last two Tariff Acts have applied to the Island of Guam. The Immigration Act of 1908 was extended to Guam. United States Army transports were authorized to carry

passengers and freight destined to Guam. The government of Guam was directed to keep certain trade statistics. By Act of June 28, 1906, deeds and other instruments affecting land situated in the District of Columbia or any territory of the United States may be acknowledged in the Island of Guam before any notary public or judge appointed by the proper authority. This act and the acts appropriating monies afford some considerable ground for the argument that Congress has tacitly recognized and approved of the existing government of Guam. By the Act of August 22, 1912 (37 Stat. at L., 332), Congress decreed: "The Secretary of the Navy is authorized to transfer all lepers of Guam now segregated, and other cases that may later appear, to the Island of Culion in the Philippines, and to pay the cost of their transfer and maintenance from * * *" (the appropriation included in the Act).

It will be noted that Congress has never exercised its undoubted right to change or alter the form of government established on the Island of Guam by the executive department of the Federal Government. And none of these acts limit the power of the governor of Guam to take the action he did in the case of this petitioner.

To the argument that section 1891 of the Revised Statutes of the United States, which extends the Constitution and laws of the United States not locally inapplicable to all organized territories, it is sufficient to say that Guam is not an organized territory. Until it becomes one, a blanket extension to it of the Constitution and laws of the United States by virtue of section 1891 of the Revised Statutes is an academic question.

As a check upon the excesses of a military governor, we must not forget his responsibility to his superiors. Birkhimer, in his Military Government, has the following to say upon this point: "310. * * * Contrary to the very general belief, it will be found, when attentively considered, that military government, arbitrary though it be in its essential features, is far from being the mere will of the commanding general to be enforced by him without responsibility, either directly or through the medium of subordinates who themselves are answerable only to that commander. His responsibility is both military and civil; the former complete, the latter qualified by circumstances.

"311. First, the responsibility to military superiors extends wherever commanders may go. How extensive soever may be their operations, how far so ever conducted from the territory of their own government, they, and of course their subordinates as well, are never independent of that authority which sent them forth."

Lieber's Instructions for the Government of Armies of the United States in the; Field, known in Army circles as General Orders No. 100, 1863, contains much that limits the will of military commanders in directions they ought not to go, and the governor of Guam is, possibly, bound thereby. But they do not prohibit the action taken by him in the petitioner's case.

Finally, it may be added that the executive branch of the Federal Government cannot collide with public opinion in its administration of dependencies without serious consequences. Bryce, in his American Commonwealth (vol., 2, chap. 78), truly says: "Towering over Presidents and State governors, over Congress and State legislatures, over conventions and the vast machinery of party, public opinion stands out, in the United States, as the great source of power, the master of servants who tremble before it."

It is urged that the governor of Guam violated the instructions to him by the Secretary of the Navy under date of July 12, 1899, special stress being laid on the last paragraph of the quotation therefrom which we have inserted above. In the first place, we are clearly of the opinion that these very general instructions are not opposed to the particular act complained of, and that, therefore, the governor of Guam did not violate his instructions. But assuming, for the moment, that his action in the petitioner's case was violative of those instructions, the Secretary of the Navy specifically ratified the disposition of the Duarte case under date of June 4, 1915, as appears from the somewhat lengthy cablegram inserted in the record. It will hardly be denied that the Secretary of the Navy could thus ratify an act of his agent, the governor of Guam.

From the above authorities, it will be observed that the military governor of Guam and his superiors, the Secretary of the Navy and the President of the United States, are all limited and restricted in the administration of the civil affairs of the Island of Guam by the Constitution of the United States; by the Treaty of Paris; by international law with respect to conquered or ceded territory; by the declared policy of the United States with respect to such territories; by national and international codes of war; and, ultimately, by the judgment which public opinion must pass upon their administration of the civil government of Guam; and that the governor of Guam is directly and speedily answerable to his superiors for any ill-advised or arbitrary official act or conduct. These authorities require a government by the military authorities which will secure to the inhabitants of the territory over which they preside protection for life, liberty, and property. This is the task set for a military government, but in its accomplishment there are no instructions as to the procedure which they must observe. Civil governments under military authority will naturally assume a quite close resemblance to civil government as it exists in the homeland. The whole government machinery and its methods of doing business will be made to conform to the sovereign's standards of government. If the administration of justice under the laws of the foreign sovereign is not in harmony with the rest of the newly organized government, the courts and procedural law are remodeled to the extent that may be necessary. When these matters are satisfactorily adjusted, the military governor will permit the civil officials appointed by him or elected by the people with his permission, to administer the new government. With the exception of these administrative duties retained by himself, he will ordinarily allow the civil authorities to enforce the law and maintain order according to their best judgment and discretion without hindrance from him. But the military governor has it in his power to at any time summarily dismiss any such official who incurs his displeasure or to immediately modify or annul an order or law promulgated by him which does not appear to be accomplishing its purpose. All the power of the new government comes from him and what he has created he can destroy. His official acts, his decrees or laws and his administration of justice are not tested by laws of procedure. In observing those substantive principles which make government tolerable, he may adopt any procedure which will the more speedily gain the desired end.

In the case at bar, if the governor's order to his court of appeals were tested by what is required of lawmakers in governmental entities of the United States, where the ultimate power resides in the people, who, by written constitutions, require their lawmakers to mould their laws into certain specific forms; prohibit them from passing-retroactive laws; from enacting local or special laws; it is true that the said order would have to be declared invalid. It violates all of these rules of lawmaking which are so generally observed throughout the United States. But where in the authorities we have discussed above is there limitation of this sort upon the lawmaking powers of a military governor? We have not discovered any such restrictions, and, in the lengthy argument for the petitioner, it seems that these restrictions are assumed to exist. The fallacy of such argument is apparent. Such restrictions upon legislative power have never been assumed to exist in the United States. The people have only succeeded in incorporating these requirements into written constitutions after long and bitter struggles with selfish interests. A military governor is not obliged to put expressions of his will into any particular form in order that they may have the effect of law.

He may, for the sake of convenience, adopt the practice of recording his legislative acts in a numbered series of formal orders or decrees. But this does not imply that he shall not, if he so desires, inform the people within his jurisdiction by some other method which may, in his judgment, be more desirable. It is objected that the order to the court of appeals to try the case is not law. It comes from the same source as General Orders No. 58. We can conceive of no reason why it has not the same sanction as that general order; and, it being a later expression of the governor's will, must overrule all previous proclamations, orders, or regulations of the governor to the extent necessary to give it its full effect.

Nor, indeed, is it the first time in the history of the United States that military governors by a special order have

compelled a defendant to stand trial in a court different from that which would ordinarily take cognizance of his case. In 1867 Congress enacted what are known as the Reconstruction Acts (14 Stat. at L., 428; 15 Stat. at L., 14), dividing the States which had participated in the late rebellion into five military districts, each governed by a military governor. These governors were authorized among other things to "allow local civil tribunals to take jurisdiction of and to try offenders, or, when in his judgment it may be necessary for the trial of offenders, he shall have power to organize military commissions or tribunals for that purpose, and all interference under color of State authority with the exercise of military authority under this act, shall be null and void." These laws were in effect sustained by the Supreme Court of the United States in *White vs Hart* (13 Wall., 646, 20 L. ed., 685); *Texas vs. White* (7 Wall., 700, 19 L. ed., 227). Birkhimer, in his *Military Government*, says:

"As observed by Chief Justice Chase, the military existed only to prevent illegal violence to persons and property, and to facilitate the restoration of the States, and this fact district commanders constantly sought to impress upon the people interested. This appears from their orders, as, for instance, that the military courts convened under these laws were to be 'governed by the rules of evidence prescribed by the laws of the State in which the case was tried' (Second District, G. O. 18, 1868); that it was the purpose of the commanding general 'not to interfere with the operation of the State laws, as administered by civil tribunals, except where the remedies thereby afforded are inadequate to secure individuals substantial justice' (First District, G. O. 24, 1868); that 'the trial and punishment of criminals was to be left to the civil authorities so long as the said authorities are energetic, active, and do justice to the rights of persons and property without distinction of race or color' (Third District, G. O. 10, 1868)." Birkhimer, p. 486.)

The Military Governor of the Philippine Islands issued a general order (No. 22) on June 17, 1899, in which, after referring to the reestablishment of the civil courts by previous orders, he said: "The jurisdiction of the courts specified in paragraph 1 of this order, and of other civil courts which may hereafter be reestablished, shall not extend to and include crimes and offenses committed by either citizens of or persons sojourning within the Philippine Islands, which are prejudicial to military administration and discipline, except by authority especially conferred by the military governor."

In General Orders No. 24 [23], issued on June 24, 1899, the Military Governor said: "The provost courts named will take cognizance of only such civil causes as are referred to them for trial by the authority appointing them, or the successor to that authority; and their decrees and judgments, when approved by that authority, shall be final; * * *."

In General Orders No. 30, of July 22, 1899, which created a civil government for the Island of Negros under military supervision, it was said with reference to the judiciary of that government: "XIX. The jurisdiction of these courts shall not extend to nor include crimes and offenses committed by either citizens or persons sojourning within the Island of Negros which are prejudicial to military administration and discipline, except by authority especially conferred by the military governor."

By General Orders No. 64, dated December 5, 1899, civil courts were given jurisdiction of "the class of offenses specified in Rule 12, article 53, of the reformed compilation of provisions of Spanish law as to criminal procedure, under the usual procedure as to jurisdiction and appeal, excepting only such of these offenses as are, under provisions of law of the United States, within the jurisdiction of its military or naval courts martial, or are reserved by the military authorities for trial by other military tribunals; * * *."

In his General Orders No. 64, dated August 10, 1900, the Military Governor said: "L During the existence of military government in these Islands the duty devolves upon the military authorities to protect all persons in their rights of person and property, to suppress insurrection, disorder and violence and to punish, or cause to be punished, all disturbers of the public peace, and criminals. To this end local civil tribunals, where the same have been reconstituted, may take cognizance of and try offenses within their jurisdiction, or, when in their judgment it

may be expedient, the Department Commanders may cause such offenses to be brought to trial before duly constituted military commissions or provost courts; * * *.

"II. Criminal cases arising within the city of Manila and lawfully cognizable by the civil courts of the Province of Manila, will be reserved for trial by military commission only by authority of these headquarters; * * *."

In all these general orders, it will be noted that the right is asserted to remove any particular case from the court which would have jurisdiction under the general orders in question, as a matter of expediency, if the military governor deemed it necessary. If time and opportunity were available to inspect the records of the military government of the Philippine Islands, no doubt letters or communications of precisely the same nature as the one directed by the governor of Guam to his court of appeals could be found, taking from a court of original jurisdiction a particular case and causing it to be tried by some other court.

Some discussion has been indulged in of the deprivation of the defendant's right to appear before the court of appeals as an appellant from the judgment of the inferior court, the "island court of Guam." In *McKane vs. Durston* (153 U. S., 684, 38 L. ed., 866) it was said: "An appeal from a judgment of conviction is not a matter of absolute right, independently of constitutional or statutory provisions allowing such appeal. A review by an appellate court of the final judgment in a criminal case, however grave the offense of which the accused is convicted, was not at common law and is not now a necessary element of due process of law. It is wholly within the discretion of the state to allow or not to allow such a review. A citation of authorities upon the point is unnecessary."

This case has been frequently affirmed by the Supreme Court of the United States and state courts, and has been approved by noted constitutional writers, and is, without doubt, the accepted doctrine on the point. Duarte had no inherent right, as seems to be argued by his counsel, to have his sentence reviewed by an appellate court of the Island of Guam.

Finally, it is urged that the respondent, the warden of Bilibid, has no legal authority to hold the petitioner. We presume that this objection is based upon the lack of authority of the Governor-General of the Philippine Islands to enter into a contract or agreement with the governor of Guam to keep Guam convicts in Bilibid Prison at Manila.

Upon this point, we think it sufficient to quote from *Ex parte Karstendick* (93 U. S., 396, 23 L. ed., 889). In this case, a Federal prisoner was sentenced to imprisonment in the State penitentiary of West Virginia. The court said: "It is further insisted, on behalf of the petitioner, that the legislature of the State of West Virginia has not given its consent to the use of the penitentiary of the State by the United States for the punishment of their criminals, and that for this reason the order for his confinement there is void. The petitioner is actually confined in the penitentiary, and neither the state nor its officers object. Congress has authorized imprisonment, as a punishment for crimes against the United States, in the State prisons. So far as the United States can do so, they have made the penitentiary at Moundsville a penitentiary of the United States, and the State officers having charge of it their agents to enforce the sentences of imprisonments passed by their courts.

The question is not now whether the State shall submit to this use of its property by the United States, nor whether these state officers shall be compelled to act as the custodians of those confined there under the authority of the United States, but whether this petitioner can object if they do not. We think he cannot. So long as the State permits him to remain in its prison as the prisoner of the United States, and does not object to his detention by its officers, he is rightfully detained in custody under a sentence lawfully passed."

Writ denied and prisoner remanded, with costs.

Arellano, C. J., Torres, Carson, and Araullo, JJ., concur.

DISSENTING

JOHNSON, J.,

The petition for the writ of habeas corpus in the present case presents the question of the right of the warden of Bilibid Prison in the Philippine Islands to hold and detain, for a period of ten years, or for any other period, a person sentenced to be imprisoned by the court of appeals of the Island of Guam. There is no law in force in the Philippine Islands which authorizes said warden to accept and hold persons sentenced, except those who have been sentenced by the courts of the Philippine Archipelago. No law has been cited, and it is believed there is none, which authorizes the government of the Island of Guam to imprison its citizens in prisons outside of its territory.

Conceding for the purposes of the argument only, that the governor of Guam has all the power, military or civil, defined in the majority opinion; that he can make a law today and unmake it tomorrow; that he can adopt one procedure to-day and another to suit his own pleasure tomorrow; that he can create courts with well-defined jurisdiction to day, and other courts with special and limited jurisdiction to suit his convenience, the next day; that, notwithstanding the fact that he had courts, regularly organized, with prescribed jurisdiction, he can, by a letter simply, deprive such courts of their jurisdiction and give it to another, for a particular instance, yet, nevertheless, no law has been called to our attention, and diligent search has found none, which authorizes the Government of the Philippine Islands to detain in its prisons persons sentenced by another and separate sovereign. Neither has any law or regulation been found which authorizes the governor of the Island of Guam to have the citizens of his realm imprisoned in a foreign country. If he can contract with one sovereign to detain his prisoners, without express legal authority, then he can arrange with another. The Congress of the United States thought it necessary to have a law regulating the question of the imprisonment of prisoners in jails or penitentiaries, other than those expressly provided for. (Sees. 5540, 5541, 5542, and 5546 of the Revised Statutes of the United States.)

No contention is made that section 5546 of the Revised Statutes of the United States is applicable to the Island of Guam; and even granting that it is, no contention is made that the Attorney-General of the United States has designated the penitentiary of the Philippine Islands as the place for the detention of citizens of the Island of Guam, who have been sentenced by the courts of said island.

An imprisonment at a place and in a prison not authorized by law is illegal. (In re Mills, 135 U. S., 263.)

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