

RUBI ET AL. (MANGUIANES), PLAINTIFFS, VS. THE PROVINCIAL BOARD OF MINDORO, DEFENDANT.*G.R. No. 14078. March 07, 1919*

Ponente: MALCOLM, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-14078/>**MALCOLM, J.:**

In one of the cases which denote a landmark in American Constitutional History (*Worcester vs. Georgia* [1832], 6 Pet., 515), Chief Justice Marshall, the first luminary of American jurisprudence, began his opinion (relating to the status of an Indian) with words which, with a slight change in phraseology, can be made to introduce the present opinion—This cause, in every point of view in which it can be placed, is of the deepest interest. The legislative power of a state, the controlling power of the constitution and laws, the rights, if they have any, the political existence of a people, the personal liberty of a citizen, are all involved in the subject now to be considered.

To imitate still further the opinion of the Chief Justice, we' adopt his outline and proceed first, to introduce the facts and the issues, next to give a history of the .socalled "non-Christians," next to compare the status of the "non-Christi&ns" with that of the American Indians, and, lastly, to resolve the constitutional questions presented.

I. INTRODUCTION.

This is an application for habeas corpus in favor of Rubi and other Manguianes of the Province of Mindoro. It is alleged that the Manguianes are being illegally deprived of their liberty by the provincial officials of that province. Rubi and his companions are said to be held on the reservation established at Tigbao, Mindoro, against their will, and one Dabalos is said to be held under the custody of the provincial sheriff in the prison at Calapan for having run away from the reservation.

The return of the Solicitor-General alleges:

"1. That on February 1, 1917, the provincial board of Mindoro adopted resolution No. 25 which is as follows:

" 'The provincial governor, Hon. Juan Morente, jr., presented the following resolution:

" 'Whereas several attempts and schemes have been made for the advancement of the non-Christian people of Minr doro, which were all a failure,

" 'Whereas it has been found out and proved that unless some other measure is taken for the Mangyan work of this province, no successful result will be obtained toward educating these people,

" 'Whereas it is deemed necessary to oblige them to live in one place in order to make a permanent settlement,

" 'Whereas the provincial governor of any province in Which non-Christian inhabitants are found is authorized, when such a course is deemed necessary in the interest of law and order, to direct such inhabitants to take up their habitation on sites on unoccupied public lands to be selected by him and approved by the provincial board,

" 'Whereas the provincial governor is of the opinion that the sitio of Tigbao on Lake Naujan is a place most

convenient for the Mangyanes to live on, Now, therefore be it

" 'Resolved, That under section 2077 of the Administrative Code, 800 hectares of public land in the sitio of Tigbao on Naujan Lake be selected as a site for the permanent settlement of Mangyanes in Mindoro subject to the approval of the Honorable Secretary of the Interior, and

" 'Resolved further, That Mangyans may only solicit homesteads on this reservation providing that said homestead applications are previously recommended by the provincial governor.'

"2. That said resolution No. 25 (series 1917) of the provincial board of Mindoro was approved by the Secretary of the Interior of February 21, 1917.

"3. That on December 4, 1917, the provincial governor of Mindoro issued executive order No. 2 which says:

" 'Whereas the provincial board, by Resolution No. 25, current series, has selected a site in the sitio of Tigbao on Naujan Lake for the permanent settlement of Mangyanes in Mindoro.

" 'Whereas said resolution has been duly approved by the Honorable, the Secretary of the Interior, on February 21, 1917.

" 'Now, therefore, I, Juan Morente, jr., provincial governor of Mindoro, pursuant to the provisions of section 2145 of the revised Administrative Code, do hereby direct that all the Mangyans in the vicinities of the townships of Naujan and Pola and the Mangyans east of the Baco River including those in the districts of Dulangan and Rubi's place in Calapan, to take up their habitation on the site of Tigbao, Naujan Lake, not later than December 31, 1917.

" 'Any Mangyan who shall refuse to comply with this order shall upon conviction be imprisoned not exceeding sixty days, in accordance with section 2759 of the revised Administrative Code.'

"4. That the resolution of the provincial board of Mindoro copied in paragraph 1 and the executive order of the governor of the same province copied in paragraph 3, were necessary measures for the protection of the Mangyanes of Mindoro as well as the protection of public forests in which they roam, and to introduce civilized customs among them.

"5. That Rubi and those living in his rancheria have not fixed their dwellings within the reservation of Tigbao and are liable to be punished in accordance with section "2759 of Act No. 2711."

"6. That the undersigned has no information that Doroteo Dabalos is being detained by the sheriff of Mindoro but if he is so detained it must be by virtue of the provisions of articles Nos. 2145 and 2759 of Act No. 2711."

It thus appears that the provincial governor of Mindoro and the provincial board thereof directed the Mangyanes in question to take up their habitation in Tigbao, a site on the shore of Lake Naujan, selected by the provincial governor and approved by the provincial board; The action was taken in accordance with section 2145 of the Administrative Code of 1917, and was duly approved by the Secretary of the Interior as required by said action. Petitioners, however, challenge the validity of this section of the Administrative Code. This, therefore, becomes the paramount question which the court is called upon to decide.

Section 2145 of the Administrative Code of 1917 reads as follows:

"Sec. 2145. Establishment of non-Christians upon sites selected by provincial governor.—With the prior approval of the Department Head, the provincial governor of any province in which non-Christian inhabitants are found is authorized, when such a course is deemed necessary in the interest of law and order, to direct such inhabitants to take up their habitation on sites on unoccupied public lands to be selected by him and approved by the provincial board."

In connection with the above-quoted provision, there should be noted section 2759 of the same Code, which reads as follows:

"Sec. 2759. Refusal of a non-Christian to take up appointed habitation.—Any non-Christian who shall refuse to comply with the directions lawfully given by a provincial governor, pursuant to section two thousand one hundred and forty-five of this Code, to take up habitation upon a site designated by said governor shall upon conviction be imprisoned for a period not exceeding sixty days."

The substance of what is now found in said section 2145 is not new to Philippine law. The genealogical tree of this section, if we may be permitted to use such terminology, would read: Section 2077, Administrative Code of 1916; section 62, Act No. 1397; section 2 of various special provincial laws, notably of Act No. 547, specifically relating to the Manguianes; section 69, Act No. 387.

Section 2145 and its antecedent laws make use of the term "non-Christians." This word, as will later be disclosed, is also found in varying forms in other laws of the Philippine Islands. In order to put the phrase in its proper category, and in order to understand the policy of the Government of the Philippine Islands with reference to the uncivilized elements of the Islands, it is well first of all to set down a skeleton history of the attitude assumed by the authorities towards these "non-Christians," with particular regard for the legislation on the subject.

II. History.

A. BEFORE ACQUISITION OF THE PHILIPPINES BY THE UNITED STATES.

The most important of the laws of the Indies having reference to the subject at hand are compiled in Book VI, Title III, in the following language:

"LAW I.

"The Emperor Charles and the Prince, the governor, at Cigales, on March 21, '1551. Philip II at Toledo, on February 19, 1560. In the forest of Segovia on September 13, 1565. In the Escorial on November 10, 1568. Ordinance 149 of the poblaciones of 1573. In San Lorenzo, on May 20, 1578.

"THAT THE 'INDIOS' BE REDUCED INTO 'POBLACIONES' (COMMUNITIES) .

"In order that the indios may be instructed in the Sacred Catholic Faith and the evangelical law, and in order that they may forget the blunders of their ancient rites and ceremonies to the end that they may live in harmony and in a civilized manner, it has always been endeavored, with great care and special attention, to use all the means most convenient to the attainment of these purposes. To carry out this work with success, our Council of the Indies and other religious persons met at various times; the prelates of New Spain assembled by order of Emperor Charles V of glorious memory in the year one thousand five hundred and forty-six—all of which meetings were actuated with a desire to serve God and our Kingdom. At these meetings it was resolved that indios be made to live in communities, and not to live in places divided and separated from one another by sierras and mountains, wherein they are deprived of all spiritual and temporal benefits and wherein they can not profit from the aid of our ministers and from that which gives rise to those human necessities which men are obliged to give one another. Having realized the convenience of this resolution, our kings, our predecessors, by different orders, have entrusted and ordered the viceroys, presidents, and governors to execute with great care and moderation the concentration of the indios into reducciones; and to deal with their doctrine with such forbearance and gentleness, without causing inconveniences, so that those who would not presently settle and who would see the good treatment and the protection of those already in settlements would, of their own accord, present themselves, and it is ordained that they be not required to pay taxes more than what is ordered. Because the above has been executed in the greater part of our Indies, we hereby order and decree that the same be complied with in all the remaining parts of the Indies, and the encomenderos shall entreat compliance thereof in the manner and form prescribed by the laws of this title."

* * * * *

"LAW VIII.

"Philip II at the Pardo, on December 1, 1573. Philip III at Madrid, October 10, 1618.

"THAT THE 'REDUCCIONES' BE MADE IN ACCORDANCE WITH THE CONDITIONS OF THIS LAW.

"The places wherein the pueblos and reducciones shall be formed should have the facilities of waters, lands, and mountains, ingress and egress, husbandry and a passageway of one league long, wherein the indios can have their live stock that they may not be mixed with those of the Spaniards;

"LAW IX.

"Philip II at Toledo, on February 19, 1560.

"THAT THE 'INDIOS' IN 'REDUCCIONES' BE NOT DEPRIVED OF THE LANDS PREVIOUSLY HELD BY THEM,

"With more good-will and promptness, the indios shall be concentrated in reducciones. Provided they shall not be deprived of the lands and granaries which they may have in the places left by them. We hereby order that no change shall be made in this respect, and that they be allowed to retain the lands held by them previously so that they may cultivate them and profit therefrom."

"Law XIII.

"THE SAME AS ABOVE.

"THAT THE 'REDUCCIONES' BE NOT REMOVED WITHOUT ORDER OF THE KING, VICEROY, OR COURT.

"No governor, or magistrate, or alcalde mayor, or any other court, has the right to alter or to remove the pueblos or the reducciones once constituted and founded, without our express order or that of the viceroy, president, or the royal district court, provided, however, that the encomenderos, priests, or indios request such a change or consent to it by offering or giving information to that end. And, because these claims are often made for private interests and not for those of the indios, we hereby order that this law be always complied with, otherwise the change will be considered fraudulently obtained. The penalty of one thousand pesos shall be imposed upon the judge or encomendero who should violate this law."

"LAW XV.

"Philip III at Madrid, on October 10, 1618.

"THAT THERE BE MAYORS AND ALDERMEN IN THE 'REDUCCIONES,' WHO SHALL BE 'INDIOS.'

"We order that in each town and reducción there be a mayor, who should be an indio of the same reducción; if there be more than eighty houses, there should be two mayors and two aldermen, also indios; and, even if the town be a big one, there should, nevertheless, be more than two mayors and four aldermen. If there be less than eighty indios but not less than forty, there should be not more than one mayor and one alderman, who should annually elect nine others, in the presence of the priests, as is the practice in town inhabited by Spaniards and indios."

"LAW XXI.

"Philip II, in Madrid, on May 2, 1563, and on November 25, 1578. At Tomar, on May 8, 1581. At Madrid, on January 10, 1589. Philip III, at Tordesillas, on July 12, 1600. Philip IV, at Madrid, on October 1 and December 17, 1646. For this law and the one following, see Law I, Tit. 4, Book 7.

"THAT IN THE TOWNS OF THE 'INDIOS,' THERE SHALL LIVE NO SPANIARDS, NEGROES, 'MESTIZOS,' AND MULATTOS.

"We hereby prohibit and forbid Spaniards, negroes, mulattoes, or mestizos to live in the reducciones and towns of the indios, because it has been found that some Spaniards who deal, trade, live, and associate with the indios are men of troublesome nature, of dirty ways of living; robbers, gamblers, and vicious and useless men; and, to

avoid the wrongs done them, the indios would leave their towns and provinces; and the negroes, mestizos, and mulattoes, besides maltreating them and utilizing their services, contaminate them with their bad customs, idleness, and also some of their blunders and vices which may corrupt and pervert the goal which we desire to reach with regard to their salvation, increase, and tranquility. We hereby order the imposition of grave penalties upon the commission of the acts above-mentioned which should not be tolerated in the towns, and that the viceroys, presidents, governors, and courts take great care in executing the law within their powers and avail themselves of the cooperation of the ministers who are truly honest. As regards the mestizos and Indian and Chinese half-breeds (zambaigos), who are children of indias and born among them, and who are to inherit their houses and haciendas, they shall not be affected by this law, it appearing to be a harsh thing to separate them from their parents." (Law of the Indies, vol. 2, pp. 228, 229, 230, 231.)

A clear exposition of the purposes of the Spanish government, in its efforts to improve the condition of the less advanced inhabitants of the Islands by concentrating them in "reducciones," is found in the Decree of the Governor-General of the Philippine Islands of January 14, 1881, reading as follows:

"It is a legal principle as well as a national right that every inhabitant of a territory recognized as an integral part of a nation should respect and obey the laws in force therein; while, on the other "hand, it is the duty to conscience and to. humanity for all governments to civilize those backward races that might exist in the nation, and which, living in the obscurity of ignorance, lack all the notions which enable them to grasp the moral and material advantages that may be acquired in those towns under the protection and vigilance afforded them by the same laws.

"It is equally highly depressive to our national honor to tolerate any longer the separation and isolation of the non-Christian races from the social life of the civilized and Christian towns;; to allow any longer the commission of depredations, precisely in the Island of Luzon wherein is located the seat of the representative of the Government of the metropolis.

"It is but just to admit the fact that all the governments have occupied themselves with this most important ques[^] tion, and that much has been heretofore accomplished with the help and self-denial of the missionary fathers who have even sacrificed their lives to the end that those degenerate races might be brought to the principles of Christianity, but the means and the preaching employed to allure them have been insufficient to complete the work undertaken. Neither have the punishments imposed been sufficient in certain cases and in those which have not been guarded against, thus giving way for the majority of these races to persist in their mode of living and customs of isolation.

"As it is impossible to consent to the continuation of such a lamentable state of things, taking into account the prestige which the country demands and the inevitable duty which every government has in enforcing respect and obedience to the national laws on the part of all who reside within the territory under its control, I have proceeded in the premises by giving the most careful study of this serious question which involves important interests for civilization, from the moral and material as well as the political standpoints. After hearing the illustrious opinions of all the local authorities, ecclesiastics, and missionaries of the provinces of Northern Luzon, and also after finding the unanimous conformity of the meeting held with the Archbishop of Manila, the Bishops of Jaro and Cebu, and the provincial prelates of the Orders of the Dominicans, Agustinians, Recoletos, Franciscans, and Jesuits as also of the meeting of the Council of Authorities, held for the object so indicated, I have arrived at an intimate conviction of the inevitable necessity of proceeding in a practical manner for the submission of the said pagan and isolated races, as well as of the manner and the only form of accomplishing such a task.

"For the reasons above stated and for the purpose of carrying out these objects, I hereby promulgate the following :

"DECREE.

"1. All the indian inhabitants (indios) of the 'Island of Luzon are, from this date, to be governed by the common law, save those exceptions prescribed in this decree which are based upon the differences of instruction, of the customs, and of the necessities of the different pagan races which occupy a part of its territory.

"2. The diverse rules which should be promulgated for each of these races—which may be divided into three classes: one, which comprises those which live isolated and roaming about without forming a town nor a home; another, made up of those subdued pagans who have not as yet entered completely the social life; and the third, of those mountain and rebellious pagans—shall be published in their respective dialects, and the officials, priests, and missionaries of the provinces wherein they are found are hereby entrusted in the work of having these races learn these rules. These rules shall have executive character, beginning with the first day of next April, and, as to their compliance, they must be observed in the manner prescribed below.

"3. The provincial authorities in conjunction with the priests shall proceed, from now on, with all the means which their zeal may suggest to them, to the taking of the census of the inhabitants of the towns or settlements already subdued, and shall adopt the necessary regulations for the appointment of local authorities, if there be none as yet; for the construction of courts and schools, and for the opening or fixing up of means of communication, endeavoring, as regards the administrative organization of the said towns or settlements, that this be finished before the first day of next July, so that at the beginning of the fiscal year they shall have the same rights and obligations which affect the remaining towns of the archipelago, with the only exception that in the first two years they shall not be obliged to render personal services other than those previously indicated.

"4. So long as these subdued towns or settlements are located in fertile lands appropriate for cultivation, the inhabitants thereof shall not be obliged to move their dwelling-houses; and only in case of absolute necessity shall a new residence be fixed for them, choosing for this purpose the place most convenient for them and which prejudices the least their interests; and, in either of these cases, an effort must be made to establish their homes within the reach of the sound of the bell.

"5. For the protection and defense of these new towns, there shall be established an armed force composed precisely of native Christians, the organization and service of which shall be determined in a regulation based upon that of the abolished Tercios de Policia (division of the Guardia Civil).

"6. The authorities shall see to it that the inhabitants of the new towns understand all the rights and duties affecting them and the liberty which they have as to where and how they shall till their lands and sell the products thereof, with the only exception of the tobacco which shall be bought by the Hacienda at the same price and conditions allowed other producers, and with the prohibition against these new towns as well as the others from engaging in commerce or any other transaction with the rebellious indios, the violation of which shall be punished with deportation.

"7. In order to properly carry out this express prohibition, the limits of the territory of the rebellious indios shall be fixed; and whoever should go beyond the said limits shall be detained and assigned governmentally wherever convenient.

"8. For the purpose of assisting in the conversion of the pagans into the fraternity of the Catholic Church, all who have settled and who profess our sacred religion shall by this fact alone be exempt for eight years from rendering personal labor.

"9. The authorities shall offer in the name of the State to the races not subdued (aetas and mountain igorots) the following advantages in return for their voluntary submission: to live in towns; unity among their families; concession of good lands and the right to cultivate them in the manner they wish and in the way they deem most productive; support during a year, and clothes upon affecting submission; respect for their habits and customs in so far as the same are not opposed to natural law; freedom to decide of their own accord as to whether they want to be Christians or not; the establishment of missions and families of recognized honesty

who shall teach, direct, protect, and give them security and trust them; the purchase or facility of the sale of their harvests; the exemption from contributions and tributes for ten years and from the quintas (a kind of tax) for twenty years; and lastly, that those who are governed by the local authorities as the ones who elect such officials under the direct charge of the authority of the province or district.

"10. The races indicated in the preceding article, who voluntarily admit the advantages offered, shall, in return, have the obligation of constituting their new towns, of constructing their town hall, schools, and country roads which place them in communication with one another and with the Christians; provided, that the location of these towns be distant from their actual residences, when the latter do not have the good conditions of location and cultivation, and provided further that the putting of families in a place so selected by them be authorized in the towns already constituted.

"11. The armed force shall proceed to the prosecution and punishment of the tribes, that, disregarding the peace, protection, and advantages offered them, continue in their rebellious attitude on the first of next April, committing from now on the crimes and vexations against the Christian towns; and for this purpose, the Captain General's Office shall proceed with the organization of the divisions of the Army which, in conjunction with the rural guards (cuadrilleros), shall have to enter the territory of such tribes. On the expiration of the term, they shall destroy their dwelling-houses, labors, and implements, and confiscate their products and cattle. Such a punishment shall necessarily be repeated twice a year, and for this purpose the military headquarters shall immediately order a detachment of the military staff to study the zones where such operations shall take place and everything conducive to the successful accomplishment of the same.

"12. The chiefs of provinces, priests, and missionaries, local authorities, and other subordinates to my authority, civil as well as military authorities, shall give the most effective aid and cooperation to the said forces in all that is within the attributes and the scope of the authority of each.

"13. With respect to the reduction of the pagan races found in some of the provinces in the southern part of the Archipelago, which I intend to visit, the preceding provisions shall conveniently be applied to them.

"14. There shall be created, under my presidency as Governor-General, Vice-Royal Patron, a council or permanent commission which shall attend to and decide all the questions relative to the application of the foregoing regulations that may be brought to it for consultation by the chiefs of provinces and priests and missionaries.

"15. The secondary provisions which may be necessary, as a complement to the foregoing, in bringing about due compliance with this decree, shall be promulgated by the respective official centers within their respective jurisdictions." (Gaceta de Manila, No. 15) (Diccionario de la Administration, vol. 7, pp. 128-134.)

B. AFTER ACQUISITION OF THE PHILIPPINES BY THE UNITED STATES.

Ever since the acquisition of the Philippine Islands by the United States, the question as to the best method for dealing with the primitive inhabitants has been a perplexing one.

1. Organic law.

The first order of an organic character after the inauguration of the American Government in the Philippines, was President McKinley's Instructions to the Commission of April 7, 1900, later expressly approved and ratified by section 1 of the Philippine Bill, the Act of Congress of July 1, 1902. Portions of these instructions have remained undisturbed by subsequent congressional legislation. One paragraph of particular interest' should here be quoted, namely:

"In dealing with the uncivilized tribes of the Islands, the Commission should adopt the same course followed by Congress in permitting the tribes of our North American Indians to maintain their tribal organization and government and under which many of these tribes are now living in peace and contentment, surrounded by civilization to which they are unable or unwilling to conform. Such tribal governments should, however, be

subjected to wise and firm regulation; and, without undue or petty interference, constant and active effort should be exercised to prevent barbarous practices and introduce civilized customs."

Next comes the Philippine Bill, the Act of Congress of July 1, 1902, in the nature of an Organic Act for the Philippines. The purpose of section 7 of the Philippine Bill was to provide for a legislative body and, with this end in view, to name the prerequisites for the organization of the Philippine Assembly. The Philippine Legislature, composed of the Philippine Commission and the Philippine Assembly, was to have jurisdiction over the Christian portion of the Islands. The Philippine Commission was to retain exclusive jurisdiction of that part of said Islands inhabited by Moros or other non-Christian tribes.

The latest Act of Congress, nearest to a Constitution for the Philippines, is the Act of Congress of August 29, 1916, commonly known as the Jones Law. This law transferred the exclusive legislative jurisdiction and authority theretofore exercised by the Philippine Commission, to the Philippine Legislature (sec. 12). It divided the Philippine Islands into twelve senatorial districts, the twelfth district to be composed of the Mountain Province, Baguio, Nueva Vizcaya, and the Department of Mindanao and Sulu. The Governor-General of the Philippine Islands was authorized to appoint senators and representatives for the territory which, at the time of the passage of the Jones Law, was not represented in the Philippine Assembly, that is, for the twelfth district (sec. 16). The law established a bureau to be known as the "Bureau of non-Christian Tribes" which shall have general supervision over the public affairs of the inhabitants which are represented in the Legislature by appointed senators and representatives (sec. 22).

Philippine organic law may, therefore, be said to recognize a dividing line between the territory not inhabited by Moros or other non-Christian tribes, and the territory which is inhabited by Moros or other non-Christian tribes.

2. Statute law.

Local governments in the Philippines have been provided for by various acts of the Philippine Commission and Legislature. The most notable are Acts Nos. 48 and 49 concerning the Province of Benguet and the Igorots; Act No. 82, the Municipal Code; Act No. 83, the Provincial Government Act; Act No. 183, the Charter of the city of Manila; Act No. 787, providing for the organization and government of the Moro Province; Act No. 1396, the Special Provincial Government Act; Act No. 1397, the Township Government Act; Act No. 1667, relating to the organization of settlements; Act No. 1963, the Baguio Charter; and Act No. 2408, the Organic Act of the Department of Mindanao and Sulu. The major portion of these laws have been carried forward into the Administrative Codes of 1916 and 1917.

Of more particular interest are certain special laws concerning the government of the primitive peoples. Beginning with Act No. 387, sections 68-71, enacted on April 9, 1902, by the United States Philippine Commission, having reference to the Province of Nueva Vizcaya, Acts Nos. 411, 422, 445, 500, 547, 548, 549, 550, 579, 753, 855, 1113, 1145, 1268, 1306 were enacted for the provinces of Abra, Antique, Bataan, Ilocos Norte, Ilocos Sur, Isabela, Lepanto-Bontoc, Mindoro, Misamis, Nueva Vizcaya, Pangasinan, Paragua (Palawan), Tarlac, Tayabas, and Zambales. As an example of these laws, because referring to the Manguianes, we insert Act No. 547:

"No. 547.—AN ACT PROVIDING FOR THE ESTABLISHMENT OF LOCAL CIVIL GOVERNMENTS FOR THE MANGUIANES IN THE PROVINCE OF MINDORO.

"By authority of the United States, be it enacted by the Philippine Commission, this:

"Section 1. Whereas the Manguianes of the Province of Mindoro have, not progressed sufficiently in civilization to make it practicable to bring them under any form of municipal government, the provincial governor is authorized, subject to the approval of the Secretary of the Interior, in dealing with these Manguianes to appoint officers from among them, to fix their designations and badges of office, and to

prescribe their powers and duties: Provided, That the powers and duties thus prescribed shall not be in excess of those conferred upon township officers by Act Numbered Three hundred and eighty-seven entitled 'An Act providing for the establishment of local civil governments in the townships and settlements of Nueva Vizcaya.'

"Sec. 2. Subject to the approval of the Secretary of the Interior, the provincial governor is further authorized, when he deems, such a course necessary in the interest of law and order, to direct such Manguianes to take up their habitation on sites on unoccupied public lands to be selected by him and approved by the "provincial board. Manguianes who refuse to comply with such directions shall upon conviction be imprisoned for a period not exceeding sixty days.

"Sec. 3. The constant aim of the governor shall be to aid the Manguianes of his province to acquire the knowledge and experience necessary for successful local popular government, and his supervision and control over them shall be exercised to this end, and to the end that law and order and individual freedom shall be maintained.

"Sec. 4. When in the opinion of the provincial board of Mindoro any settlement of Manguianes has advanced sufficiently to make such a course practicable, it may be organized under the provisions of sections one to sixty-seven, inclusive, of Act Numbered three hundred and eighty-seven, as a township, and the geographical limits of such township shall be fixed by the provincial board.

"Sec. 5. The public good requiring the speedy enactment of this bill, the passage of the same is hereby expedited in accordance with section two of 'An Act prescribing the order of procedure by the Commission in the enactment of laws,' passed September twenty-sixth, nineteen hundred.

"Sec. 6. This Act shall take effect on its passage.

"Enacted, December 4, 1902."

All of these special laws, with the exception of Act No. 1306, were repealed by Acts Nos. 1396 and 1397. The last named Act incorporated and embodied the provisions in general language. In turn, Act No. 1397 was repealed by the Administrative Code of 1916. The two Administrative Codes retained the provisions in question.

These different laws, if they mean anything, denote an anxious regard for the welfare of the non-Christian inhabitants of the Philippines and a settled and consistent practice with reference to the methods to be followed for their advancement.

C. TERMINOLOGY.

The terms made use of by these laws, organic and statutory, are found in varying forms.

"Uncivilized tribes" is the denomination in President McKinley's instructions to the Commission.

The most commonly accepted usage has sanctioned the term "non-Christian tribes." These words are to be found in section 7 of the Philippine Bill and in section 22 of the Jones Law. They are also to be found in Act No. 253 of the Philippine Commission, establishing a Bureau of non-Christian Tribes and in Act No. 2674 of the Philippine Legislature, carried forward into sections 701-705 of the Administrative Code of 1917, reestablishing this Bureau. Among other laws which contain the phrase, there can be mentioned Acts Nos. 127, 128, 387, 547, 548, 549, 550, 1397, 1639, and 2551.

"Non-Christian people," "non-Christian inhabitants," and "non-Christian Filipinos" have been the favorite nomenclature, in lieu of the unpopular word "tribes," since the coming into being of a Filipinized legislature. These terms can be found in sections 2076, 2077, 2390, 2394, Administrative Code of 1916; sections 701-705, 2145, 2422, 2426, Administrative Code of 1917; and in Acts Nos. 2404, 2435, 2444, 2674 of the Philippine Legislature, as well as in Act No. 1667 of the Philippine Commission.

The Administrative Code specifically provides that the term "non-Christian" shall include Mohammedans and pagans. (Sec. 2576, Administrative Code of 1917; sec. 2561, Administrative Code of 1916, taken from Act No. 2408, sec. 3.)

D. MEANING OF TERM "NON-CHRISTIAN."

If we were to follow the literal meaning of the word "non-Christian," it would of course result in giving to it a religious signification. Obviously, Christians would be those who profess the Christian religion, and non-Christians, would be those who do not profess the Christian religion. In partial corroboration of this view, there could also be cited section 2576 of the last Administrative Code and certain well-known authorities, as Zuniga, "Estadismo de las Islas Filipinas," Professor Ferdinand Blumentritt, "Philippine Tribes and Languages," and Dr. N. M. Saleeby, "The Origin of Malayan Filipinos." (See Blair & Robertson, "The Philippine Islands," 1493-1898, vol. III, p. 300, note; Craig-Benitez, "Philippine Progress prior to 1898," vol. I, p. 107.)

Not content with the apparent definition of the word, we shall investigate further to ascertain what is its true meaning.

In one sense, the word can have a geographical signification. This is plainly to be seen by the provisions of many laws. Thus, according to the Philippine Bill, the authority of the Philippine Assembly was recognized in the "territory" of the Islands not inhabited by Moros or other non-Christian tribes. Again, the Jones Law confers similar recognition in the authorization of the twelfth senatorial district for the "territory not now represented in the Philippine Assembly." The Philippine Legislature has, time and again, adopted acts making certain other acts applicable to that "part" of the Philippine Islands inhabited by Moros or other non-Christian tribes.

Section 2145, is found in article XII of the Provincial Law of the Administrative Code. The first section of this article, preceding section 2145, makes the provisions of the article applicable only in specially organized provinces. The specially organized provinces are the Mountain Province, Nueva Vizcaya, Mindoro, Batanes, and Palawan. These are the provinces to which the Philippine Legislature has never seen fit to give all the powers of local self-government. They do not, however, exactly coincide with the portion of the Philippines which is not granted popular representation. Nevertheless, it is still a geographical description.

It is well-known that within the specially organized provinces, there live persons some of whom are Christians and some of whom are not Christians. In fact, the law specifically recognizes this. (Sec. 2422, Administrative Code of 1917, etc.)

If the religious conception is not satisfactory, so again the geographical conception is likewise inadequate. The reason is that the motive of the law relates not to a particular people, because of their religion, or to a particular province because of its location, but the whole intent of the law is predicated on the civilization or lack of civilization of the inhabitants.

At most, "non-Christian" is an awkward and unsatisfactory word. Apologetic words usually introduce the term. "The so-called non-Christian" is a favorite expression. The Secretary of the Interior who for so many years had these people under his jurisdiction, recognizing the difficulty of selecting an exact designation, speaks of the "backward Philippine peoples, commonly known as the 'non-Christian tribes.'" (See Hearings before the Committee on the Philippines, United States Senate, Sixty-third Congress, third session on H. R. 18459, An Act to declare the purpose of the people of the United States as to the future political status of the Philippine Islands and to provide a more autonomous government for the Islands, pp. 346, 351; letter of the Secretary of the Interior of June 30, 1906, circulated by the Executive Secretary.)

The idea that the term "non-Christian" is intended to relate to degree of civilization, is substantiated by reference to legislative, judicial, and executive authority.

The legislative intent is borne out by Acts Nos. 48, 253, 387, 1667, and 2674, and sections 701 et seq., and sections 2422 et seq., of the Administrative Code of 1917. For instance, Act No. 253 charged the Bureau of non-Christian tribes to conduct "systematic investigations with reference to non-Christian tribes * * * with special view to determining the most practicable means for bringing about their advancement in civilization and material prosperity."

As authority of a judicial nature is the decision of the Supreme Court in the case of *United States vs. Tubban [Kalinga]* ([1915], 29 Phil., 434). The question here arose as to the effect of a tribal marriage in connection with article 423 of the Penal Code concerning the husband who surprises his wife in the act of adultery. In discussing the point, the court makes use of the following language:

"* * * we are not advised of any provision of law which recognizes as legal a tribal marriage of so called non-Christians or members of uncivilized tribes, celebrated within that province without compliance with the requisites prescribed by General Orders No. 68. * * * We hold also that the fact that the accused is shown to be a member of an uncivilized tribe, of a low order of intelligence, uncultured and uneducated, should be taken into consideration as a second marked extenuating circumstance."

Of much more moment is the uniform construction of executive officials who have been called upon to interpret and enforce the law. The official who, as a member of the Philippine Commission, drafted much of the legislation relating to the so-called non-Christians and who had these people under his authority, was the former Secretary of the Interior. Under date of June 30, 1906, this official addressed a letter to all governors of provinces, organized under the Special Provincial Government Act, a letter which later received recognition by the Governor-General and was circulated by the Executive Secretary, reading as follows:

"SIR : Within the past few months, the question has arisen as to whether people who were originally non-Christians but have recently been baptized or who are children of persons who have been recently baptized are, for the purposes of Acts 1396 and 1397, to be considered Christian or non-Christians.

"It has been extremely difficult, in framing legislation for the tribes in these islands which are not advanced far in civilization, to hit upon any suitable designation which will fit all cases. The number of individual tribes is so great that it is almost out of the question to enumerate all of them in an Act. It was finally decided to adopt the designation 'non-Christians' as the one most satisfactory, but the real purpose of the Commission was not so much to legislate for people having any particular religious belief as for those lacking sufficient advancement so that they could, to their own advantage, be brought under the Provincial Government Act and the Municipal Code.

"The mere act of baptism does not, of course, in itself change the degree of civilization to which the person baptized has attained at the time the act of baptism is performed. For practical purposes, therefore, you will give the member of so-called 'wild tribes' of your province the benefit of the doubt even though they may recently have embraced Christianity.

"The determining factor in deciding whether they are to be allowed to remain under the jurisdiction of regularly organized municipalities or what form of government shall be afforded to them should be the degree of civilization to which they have attained and you are requested to govern yourself accordingly.

"I have discussed this matter with the Honorable, the Governor-General, who concurs in the opinion above expressed and who will have the necessary instructions given to the governors of the provinces organized under the Provincial Government Act." (Internal Revenue Manual, p. 214.)

The present Secretary of the Interior, in a memorandum furnished a member of this court, has the following to say on the subject:

"As far as names are concerned the classification is indeed unfortunate, but while no other better classification has as yet been made the present classification should be allowed to stand. * * * I believe the term carries the same meaning as that expressed in the letter of the Secretary of the Interior (of June 30, 1906, herein quoted). It is indicative of the degree of civilization rather than of religious denomination, for to hold that it is indicative of religious denomination will make the law invalid as against that Constitutional guaranty of religious freedom."

Another official who was concerned with the status of the non-Christians, was the Collector of Internal Revenue. The question arose for ruling relative to the cedula taxation of the Manobos and the Aetas. Thereupon, the view of the Secretary of the Interior was requested on the point, who, by return indorsement, agreed with the interpretation of the Collector of Internal Revenue. This construction of the Collector of Internal Revenue can be found in circular letter No. 188 of the Bureau of Internal Revenue, dated June 11, 1907, reading as follows (Internal Revenue Manual, p. 214):

"The internal revenue law exempts 'members of non-Christian tribes' from the payment of cedula taxes. The Collector of Internal Revenue has interpreted this provision of law to mean not that persons who profess some form of Christian worship are alone subject to the cedula tax, and that all other persons are exempt; he has interpreted it to mean that all persons preserving tribal relations with the so-called non-Christian tribes are exempt from the cedula tax, and that all others, including Jews, Mohammedans, Confucians, Buddhists, etc., are subject to said tax so long as they live in cities or towns, or in the country in a civilized condition. In other words, it is not so much a matter of a man's form of religious worship or profession that decides whether or not he is subject to the cedula tax; it is more dependent on whether he is living in a civilized manner or is associated with the mountain tribes, either as a member thereof or as a recruit. So far, this question has not come up as to whether a Christian, maintaining his religious belief, but throwing his lot and living with a non-Christian tribe, would or would not be subject to the cedula tax. On one occasion a prominent Hebrew of Manila claimed to this office that he was exempt from the cedula tax, inasmuch as he was not a Christian. This Office, however, continued to collect cedula taxes from all of the Jews, East Indians, Arabs, Chinamen, etc., residing in Manila. Quite a large proportion of the cedula taxes paid in this city are paid by men belonging to the nationalities mentioned. Chinamen, Arabs and others are quite widely scattered throughout the Islands, and a condition similar to that which exist in Manila also exists in most of the large provincial towns. Cedula taxes are therefore being collected by this Office in all parts of these Islands on the broad ground that civilized people are subject to such taxes, and non-civilized people preserving their tribal relations are not subject thereto.

(Sgd.) "JNO. S. HORD,
"Collector of Internal Revenue."

On September 17, 1910, the Collector of Internal Revenue addressed circular letter No. 327, approved by the Secretary of Finance and Justice, to all provincial treasurers. This letter in part reads:

"In view of the many questions that have been raised by provincial treasurers regarding cedula taxes due from members of non-Christian tribes when they come in from the hills for the purpose of settling down and becoming members of the body politic of the Philippine Islands, the following clarification of the laws governing such questions and digest of rulings thereunder is hereby published for the information of all concerned:

"Non-Christian inhabitants of the Philippine Islands are so classed, not by reason of the fact that they do not profess Christianity, but because of their uncivilized mode of life and low state of development. All inhabitants of the Philippine Islands classed as members of non-Christian tribes may be divided into three classes in so far as the cedula tax law is concerned. * * *

"Whenever any member of a non-Christian tribe leaves his wild and uncivilized mode of life, severs whatever

tribal relations he may have had and attaches himself to some civilized community, becoming a member of the body politic, he thereby makes himself subject to precisely the same law that governs the other members of that community and from and after the date when he so attaches himself to the community the same cedula and other taxes are due from him as from other members thereof. If he comes in after the expiration of the delinquency period the same rule should apply to him as to persons arriving from foreign countries or reaching the age of eighteen subsequent to the expiration of such period, and a regular class A, D, F, or H cedula, as the case may be, should be furnished him without penalty and without requiring him to pay the tax for former years.

"In conclusion, it should be borne in mind that the prime factor in determining whether or not a man is subject to the regular cedula tax is not the circumstance that he does or does not profess Christianity, nor even his maintenance of or failure to maintain tribal relations with some of the well known wild tribes, but his mode of life, degree of advancement in civilization and connection or lack of connection with some civilized community. For this reason so called 'Remontados' and 'Montescos' will be classed by this -office as members of non-Christian tribes in so far as the application of the Internal Revenue Law is concerned, since, even though they belong to no well recognized tribe, their mode of life, degree of advancement and so forth are practically the same as those of the Igorrots and members of other recognized non-Christian tribes.

"Very respectfully,

(Sgd.) "ELLIS CROMWELL,
"Collector of Internal Revenue,

"Approved:
(Sgd.) "GREGORIO ARANETA,
"Secretary of Finance and Justice."

The two circulars above quoted have since been repealed by Bureau of Internal Revenue Regulations No. 1, promulgated by Venancio Concepcion, Acting Collector of Internal Revenue, and approved on April 16, 1915, by Honorable Victorino Mapa, Secretary of Finance and Justice. Section 30 of the regulations is practically a transcript of Circular Letter No. 327.

The subject has come before the Attorney-General for consideration. The Chief of Constabulary requested the opinion of the Attorney-General as to the status of a non-Christian who has been baptized by a minister of the Gospel. The precise questions were these: "Does he remain non-Christian or is he entitled to the privileges of a Christian? By purchasing intoxicating liquors, does he commit an infraction of the law and does the person selling same lay himself liable under the provision of Act No. 1639?" The opinion of Attorney-General Avanceña, after quoting the same authorities hereinbefore set out, concludes:

"In conformity with the above quoted constructions, it is probable that the person in question remains a nonChristian, so that in purchasing intoxicating liquors both he and the person selling the same make themselves liable to prosecution under the provisions of Act No. 1639. At least, I advise you that these should be the constructions placed upon the law until a court shall hold otherwise."

Solicitor-General Paredes in his brief in this case says:

"With respect to the meaning which the phrase nonChristian inhabitants has in the provisions of the Administrative Code which we are studying, we submit that said phrase does not have its natural meaning which would include all non-Christian inhabitants of the Islands, whether Filipinos or strangers, civilized or uncivilized, but simply refers to those uncivilized members of the non-Christian tribes of the Philippines who, living without home or fixed residence, roam in the mountains, beyond the reach of law and order. * * *

"The Philippine Commission in denominating in its laws that portion of the inhabitants of the Philippines

which live in tribes as non-Christian tribes, as distinguished from the common Filipinos which carry on a social and civilized life, did not intend to establish a distinction based on the religious beliefs of the individual, but, without dwelling on the difficulties which later would be occasioned by the phrase, adopted the expression which the Spanish legislation employed to designate the uncivilized portion of the inhabitants of the Philippines.

"The phrase 'non-Christian inhabitants' used in the provisions of articles 2077 and 2741 of Act No. 2657 (articles 2145 and 2759) should be understood as equivalent to members of uncivilized tribes of the Philippines, not only because this is the evident intention of the law, but because to give it its literal meaning would make the law null and unconstitutional as making distinctions based on the religion of the individual."

The Official Census of 1903, in the portion written by no less an authority than Dr. David P. Barrows, then "Chief of the Bureau of non-Christian Tribes," divides the population into Christian or Civilized Tribes, and non-Christian or Wild Tribes. (Census of the Philippine Islands [1903], vol. 1, pp. 411 et seq.) The present Director of the Census, Hon. Ignacio Villamor, writes that the classification likely to be used in the Census now being taken is: "Filipinos and Primitive Filipinos." In a Pronouncing Gazetteer and Geographical Dictionary of the Philippine Islands, prepared in the Bureau of Insular Affairs, War Department, a subdivision under the title non-Christian tribes is, "Physical and Political Characteristics of the non-Christian Tribes," which sufficiently shows that the term refers to culture and not to religion.

In resume, therefore, the Legislature and the Judiciary, inferentially, and different executive officials, specifically, join in the proposition that the term "non-Christian" refers, not to religious belief, but, in a way, to geographical area, and, more directly, to natives of the Philippine Islands of a low grade of civilization, usually living in tribal relationship apart from settled communities.

E. THE MANGUIANES.

The so-called non-Christians are in various stages approaching civilization. The Philippine Census of 1903 divided them into four classes. Of the third class, are the Manguianes (or Mangyaris) of Mindoro.

Of the derivation of the name "Manguian" Dr. T. H. Pardo de Tavera in his *Etimologia de los nombres de Razas de Filipinas*, says:

"In Tagalog, Bicol, and Visaya, Manguian signifies 'savage,' 'mountainer,' 'pagan,' 'negro.' It may be that the use of this word is applicable to a great number of Filipinos, but nevertheless it has been applied only to certain inhabitants of Mindoro. Even in primitive times without doubt this name was given to those of that island who bear it to-day, but its employment in three Filipino languages shows that the radical meaning had in all these languages a sense to-day forgotten. In Pampango this ending still exists and signifies 'ancient,' from which we can deduce that the name was applied to men considered to be the ancient inhabitants, and that these men were pushed back into the interior by the modern invaders, in whose language they were called the 'ancients.'"

The Manguianes are very low in culture. They have considerable Negrito blood and have not advanced beyond the Negritos in civilization. They are a peaceful, timid, primitive, semi-nomadic people. They number approximately 15,000. The Manguianes have shown no desire for community life, and, as indicated in the preamble to Act No. 547, have not progressed sufficiently in civilization to make it practicable to bring them under any form of municipal government. (See Census of the Philippine Islands [1903], vol. I, pp. 22, 23, 460.)

III. COMPARATIVE—THE AMERICAN INDIANS.

Reference was made in the President's instructions to the Commission to the policy adopted by the United States for the Indian Tribes. The methods followed by the Government of the Philippine Islands in its dealings with the so-called non-Christian people is said, on argument, to be practically identical with that followed by the United States Government in its dealings with the Indian tribes. Valuable lessons, it is, insisted, can be derived by an

investigation of the American-Indian policy.

From the beginning of the United States, and even before, the Indians have been treated as "in a state of pupillage." The recognized relation between the Government of the United States and the Indians may be described as that of guardian and ward. It is for the Congress to determine when and how the guardianship shall be terminated. The Indians are always subject to the plenary authority of the United States.

Chief Justice Marshall in his opinion in *Worcester vs. Georgia*, hereinbefore mentioned, tells how the Congress passed an Act in 1819 "for promoting those humane designs of civilizing the neighboring Indians." After quoting the Act, the opinion goes on—"This act avowedly contemplates the preservation of the Indian nations as an object sought by the United States, and proposes to effect this object by civilizing and converting them from hunters into agriculturists."

A leading case which discusses the status of the Indians is that of the *United States vs. Kagama* ([1886], 118 U. S., 375). Reference is herein made to the clause of the United States Constitution which gives Congress "power to regulate commerce with foreign nations, and among the several States, and with the Indian tribes." The court then proceeds to indite a brief history of the position of the Indians in the United States (a more extended account of which can be found in Marshall's opinion in *Worcester vs. Georgia*, supra), as follows:

"The relation of the Indian tribes living within the borders of the United States, both before and since the Revolution, to the people of the United States, has always been an anomalous one and of a complex character.

"Following the policy of the European Governments in the discovery of America towards the Indians who were found here, the colonies before the Revolution and the States and the United States since, have recognized in the Indians a possessory right to the soil over which they roamed and hunted and established occasional villages. But they asserted an ultimate title in the land itself, by which the Indian tribes were forbidden to sell or transfer it to other nations or peoples without the consent of this paramount authority. When a tribe wished to dispose of its land, or any part of it, or the State or the United States wished to purchase it, a treaty with the tribe was the only mode in which this could be done. The United States recognized no right in private persons, or in other nations, to make such a purchase by treaty or otherwise. With the Indians themselves these relations are equally difficult to define. They were, and always have been, regarded as having a semi-independent position when they preserved their tribal relations; not as States, not as nations, not as possessed of the full attributes of sovereignty, but as a separate people, with the power of regulating their internal and social relations, and thus far not brought under the laws of the Union or of the State within whose limits they resided."

The opinion then continues:

"It seems to us that this (effect of the law) is within the competency of Congress. These Indian tribes are the wards of the nation. They are communities dependent on the United States. Dependent largely for their daily food. Dependent for their political rights. They owe no allegiance to the States, and receive from them no protection. Because of the local ill feeling, the people of the States where they are found are often their deadliest enemies. From their very weakness and helplessness, so largely due to the course of dealing of the Federal Government with them and the treaties in which it has been promised, there arise the duty of protection, and with it the power. This has always been recognized by the Executive and by Congress, and by this court, whenever the question has arisen. * * * The power of the General Government over these remnants of a race once powerful, now weak and diminished in numbers, is necessary to their protection, as well as to the safety of those among whom they dwell. It must exist in that government, because it never has existed anywhere else, because the theater of its exercise is within the geographical limits of the United States, because it has never been denied, and because it alone can enforce its laws on all the tribes."

In the later case of *United States vs. Sandoval* ([1913], 231 U. S., 28) the question to be considered was whether

the status of the Pueblo Indians and their lands was such that Congress could prohibit the introduction of intoxicating liquor into those lands notwithstanding the admission of New Mexico to statehood. The court looked to the reports of the different superintendents charged with guarding their interests and found that these Indians are dependent upon the fostering care and protection of the government "like .reservation Indians in general." Continuing, the court said "that during the Spanish dominion, the Indians of the pueblos were treated as wards requiring special protection, were subjected to restraints and official supervision in the alienation of their property." And finally, we note the following: "Not only does the Constitution expressly authorize Congress to regulate commerce with the Indian tribes, but longcontinued legislative and executive usage and an unbroken current of judicial decisions have attributed to the United States as a superior and civilized nation the power and the duty of exercising a fostering care and protection over all dependent Indian communities within its borders, whether within its original territory or territory subsequently acquired, and whether within or without the limits of a state."

With reference to laws affecting the Indians, it has been held that it is not within the power of the courts to overrule the judgment of Congress. For very good reason, the subject has always been deemed political in nature, not subject to the jurisdiction of the judicial department of the government. (Matter of Heff [1905], 197 U. S., 488; U. S. vs. Celestine [1909], 215 U. S., 278; U. S. vs. Sandoval, *supra*; Worcester vs. Georgia, *supra*; U. S. vs. Rogers [1846], 4 How., 567; The Cherokee Tobacco [1871], 11 Wall., 616; Roff vs. Burney [1897], 168 U. S., 218; Thomas vs. Gay [1898], 169 U. S., 264; Lone Wolf vs. Hitchcock [1903], 187 U. S., 553; Wallace vs. Adams [1907], 204 U. S., 415; Conley vs. Bollinger [1910], 216 U. S., 84; Tiger vs. Western Invest. Co. [1911], 221 U. S., 286; U. S. vs. Lane [1913], 232 U. S., 598; Cyr vs. Walker [1911], 29 Okla., 281; 35 L. R. A. [N. S.], 795.) Whenever, therefore, the United States sets apart any public land as an Indian reservation, it has full authority to pass such laws and authorize such measures as may be necessary to give to the Indians thereon full protection in their persons and property. (U. S. vs. Thomas [1894], 151U. S., 577.)

All this is borne out by long-continued legislative and executive usage, and an unbroken line of judicial decisions.

The only case which is even remotely in point and which, if followed literally, might result in the issuance of habeas corpus, is that of United States vs. Crook ([1879], Fed. Cas. No. 14891). This was a hearing upon return to a writ of habeas corpus issued against Brigadier General George Crook at the relation of Standing Bear and other Indians, formerly belonging to the Ponca Tribe of Indians. The petition alleged in substance that the relators are Indians who have formerly belonged to the Ponca tribe of Indians, now located in, the Indian Territory; that they had some time previously withdrawn from the tribe, and completely severed their tribal relations therewith, and had adopted the general habits of the whites, and were then endeavoring to maintain themselves by their own exertions, and without aid or assistance from the general government; that whilst they were thus engaged, and without being guilty of violating any of the laws of the United States, they were arrested and restrained of their liberty by order of the respondent, George Crook. The substance of the return to the writ was that the relators are individual members of, and connected with, the Ponca tribe of Indians; that they had fled or escaped from a reservation situated some place within the limits of the Indian Territory—had departed therefrom without permission from the Government; and, at the request of the Secretary of the Interior, the General of the Army had issued an order which required the respondent to arrest and return the relators to their tribe in the Indian Territory, and that, pursuant to the said order, he had caused the relators to be arrested on the Omaha Indian Territory.

The first question was whether an Indian can test the validity of an illegal imprisonment by habeas corpus. The second question, of much greater importance, related to the right of the Government to arrest and hold the relators for a time, for the purpose of being returned to the Indian Territory from which it was alleged the Indian escaped. In discussing this question, the court reviewed the policy the Government had adopted in its dealings with the

friendly tribe of Poncas. Then, continuing, the court said: "Laws, passed for the government of the Indian country, and for the purpose of regulating trade and intercourse with the Indian tribes, confer upon certain officers of the Government almost unlimited power over the persons who go upon the reservations without lawful authority. * * * Whether such an extensive discretionary power is wisely vested in the commissioner of Indian affairs or not, need not be questioned. It is enough to know that the power rightfully exists, and, where existing, the exercise of the power must be upheld." The decision concluded as follows:

"The reasoning advanced in support of my views, leads me to conclude:

"1. That an Indian is a 'person' within the meaning of the laws of the United States, and has, therefore, the right to sue out a writ of habeas corpus in a federal court, or before a federal judge, in all cases where he may be confined or in custody under color of authority of the United States or where he is restrained of liberty in violation of the constitution or laws of the United States.

"2. That General George Crook, the respondent, being commander of the military department of the Platte, has the custody of the relators, under color of authority of the United States, and in violation of the laws thereof.

"3. That no rightful authority exists for removing by force any of the relators to the Indian Territory, as the respondent has been directed to do.

"4. That the Indians possess the inherent right of expatriation, as well as the more fortunate white race, and have the inalienable right to 'life, liberty, and the pursuit of happiness,' so long as they obey the laws and do not trespass on forbidden ground. And,

"5. Being restrained of liberty under color of authority of the United States, and in violation of the laws thereof, the relators must be discharged from custody, and it is so ordered."

As far as the first point is concerned, the decision just quoted could be used as authority to determine that Eubi, the Manguian petitioner, a Filipino, and a citizen of the Philippine Islands, is a "person" within the meaning of the Habeas Corpus Act, and as such, entitled to sue out a writ in the Philippine courts. (See also *In re Race Horse* [1895], 70 Fed., 598.) We so decide.

As to the second point, the facts in the *Standing Bear* case and the *Rubi* case are not exactly identical. But even admitting similarity of facts, yet it is known to all that Indian reservations do exist in the United States, that Indians have been taken from different parts of the country and placed on these reservations, without any previous consultation as to their own wishes, and that, when once so located, they have been made to remain on the reservation for their own good and for the general good of the country. If any lesson can be drawn from the Indian policy of the United States, it is that the determination of this policy is for the legislative and executive branches of the government and that when once so decided upon, the courts should not interfere to upset a carefully planned governmental system. Perhaps, just as many forceful reasons exist for the segregation of the Manguianes in Mindoro as existed for the segregation of the different Indian tribes in the United States.

IV. CONSTITUTIONAL QUESTIONS.

A. DELEGATION OF LEGISLATIVE POWER.

The first constitutional objection which confronts us is that the Legislature could not delegate this power to provincial authorities. In so attempting, it is contended, the Philippine Legislature has abdicated its authority and avoided its full responsibility.

That the maxim of Constitutional Law forbidding the delegation of legislative power should be zealously protected, we agree. An understanding of the rule will, however, disclose that it has not been violated in this instance.

The rule has nowhere been better stated than in the early Ohio case decided by Judge Ranney, and since followed in a multitude of cases, namely: "The true distinction therefore is between the delegation of power to make the law, which necessarily involves a discretion as to what it shall be, and conferring an authority or "discretion as to its execution, to be exercised under and in pursuance of the law. The first cannot be done; to the latter no valid objection can be made." (Cincinnati, W. & Z. R. Co. vs. Comm'rs. Clinton County [1852], 1 Ohio St., 88.) Discretion, as held by Chief Justice Marshall in *Wayman vs. Southard* ([1825], 10 Wheat., 1) may be committed by the Legislature to an executive department or official. The Legislature may make decisions of executive departments or subordinate officials thereof, to whom it has committed the execution of certain acts, final on questions of fact. (U. S. vs. *Kinhead* [1918], 248 Fed., 141.) The growing tendency in the decisions is to give prominence to the "necessity" of the case.

Is not all this exactly what the Legislature has attempted to accomplish by the enactment of section 2145 of the Administrative Code? Has not the Legislature merely conferred upon the provincial governor, with the approval of the provincial board and the Department Head, discretionary authority as to the execution of the law? Is not this "necessary"?

The case of *West vs. Hitchcock*, ([1906], 205 U. S., 80) was a petition for mandamus to require the Secretary of the Interior to approve the selection and taking of one hundred and sixty acres by the relator out of the lands ceded to the United States by the Wichita and affiliated bands of Indians. Section 463 of the United States Revised Statutes provided: "The Commissioner of Indian Affairs shall, under the direction of the Secretary of the Interior, and agreeably to such regulations as the President may prescribe, have the management of all Indian affairs, and of all matters arising out of the Indian relations." Justice Holmes said: "We should hesitate a good deal, especially in view of the long established practice of the Department, before saying that this language was not broad enough to warrant a regulation obviously made for the welfare of the rather helpless people concerned. The power of Congress is not doubted. The Indians have been treated as wards of the nation. Some such supervision was necessary, and has been exercised. In the absence of special provisions naturally it would be exercised by the Indian Department." (See also as corroborative authority, if any is needed, *Union Bridge Co. vs. U. S.* [1907], 204 U. S., 364, reviewing the previous decisions of the United States Supreme Court; *U. S. vs. Lane* [1914], 232 U. S., 598.).

There is another aspect of the question, which once accepted, is decisive. An exception to the general rule, sanctioned by immemorial practice, permits the central legislative body to delegate legislative powers to local authorities. The Philippine Legislature has here conferred authority upon the Province of Mindoro, to be exercised by the provincial governor and the provincial board.

Who but the provincial governor and the provincial board, as the official representatives of the province, are better qualified to judge "when such a course is deemed necessary in the interest of law and order?" As officials charged with the administration of the province and the protection of its inhabitants, who but they are better fitted to select sites which have the conditions most favorable for improving the people who have the misfortune of being in a backward state?

Section 2145 of the Administrative Code of 1917 is not ""an unlawful delegation of legislative power by the Philippine Legislature to provincial officials and a department head.

B. RELIGIOUS DISCRIMINATION.

The attorney de officio, for petitioners, in a truly remarkable brief, submitted on behalf of his unknown clients, says that—"The statute is perfectly clear and unambiguous. In limpid English, and in words as plain and unequivocal as language can express, it provides for the segregation of 'non-Christians' and none other." The

inevitable result, then, is that the law "constitutes an attempt by the Legislature to discriminate between individuals because of their religious beliefs, and is, consequently, unconstitutional."

Counsel's premise once being conceded, his argument is unanswerable—the Legislature must be understood to mean what it has plainly expressed; judicial construction is then excluded; religious equality is demanded by the Organic Law; the statute has violated this constitutional guaranty, and Q. E. D. is invalid. But, as hereinbefore stated, we do not feel free to discard the long continued meaning given to a common expression, especially as classification of inhabitants according to religious belief leads the court to what it should avoid, the nullification of legislative action.

We hold that the term "non-Christian" refers to natives of the Philippine Islands of a low grade of civilization, and that section 2145 of the Administrative Code of 1917, does not discriminate between individuals on account of religious differences.

C. LIBERTY; DUE PROCESS OF LAW; EQUAL PROTECTION OF THE LAWS.

The third constitutional argument is grounded on those portions of the President's instructions to the Commission, the Philippine Bill, and the Jones Law, providing "That no law shall be enacted in said Islands which shall deprive any person of life, liberty, or property without due process of law, or deny to any person therein the equal protection of the laws." This constitutional limitation is derived from the Fourteenth Amendment to the United States Constitution—and these provisions, it has been said, "are universal in their application, to all persons within the territorial jurisdiction, without regard to any differences of race, of color, or of nationality." (*Yick Wo vs. Hopkins* [1886], 118 U. S., 356.) The protection afforded the individual is then as much for the non-Christian as for the Christian.

The conception of civil liberty has been variously expressed thus:

"Every man may claim the fullest liberty to exercise his faculties, compatible with the possession of like liberty by every other." (Spencer, *Social Statistics*, p. 94.)

"Liberty is the creature of law, essentially different from that authorized licentiousness that trespasses on right. It is a legal and a refined idea, the offspring of high civilization, which the savage never understood, and never can understand. Liberty exists in proportion to wholesome restraint; the more restraint on others to keep off from us, the more liberty we have. * * * That man is free who is protected from injury." (II Webster's Works, p. 393.)

"Liberty consists in the ability to do what one ought to desire and in not being forced to do what one ought not to desire." (Montesquieu, *Spirit of the Laws*.)

"Even liberty itself, the greatest of all rights, is not unrestricted license to act according to one's own will. It is only freedom from restraint under conditions essential to the equal enjoyment of the same right by others." (Field, J., in *Crowley vs. Christensen* [1890], 137 U. S., 86.)

"Liberty does not import 'an absolute right in each person to be, at all times and in all circumstances, wholly freed from restraint. There are manifold restraints to which every person is necessarily subject for the common good. On any other basis, organized society could not exist with safety to its members. Society based on the rule that each one is a law unto himself would soon be confronted with disorder and anarchy. Real liberty for all could not exist under the operation of a principle which recognizes the right of each individual person to use his own, whether in respect of his person or his property, regardless of the injury that may be done to others. * * * There is, of course, a sphere within which the individual may assert the supremacy of his own will, and rightfully dispute the authority of any human government—especially of any free government existing under a written Constitution—to interfere with the exercise of that will. But it is equally true that in every well-ordered society charged with the duty of conserving the safety of its members, the rights of the individual in respect of

his liberty may at times, under the pressure of great dangers, be subjected to such restraint to be enforced by reasonable regulations, as the safety of the general public may demand." (Harlan, J., in *Jacobson vs. Massachusetts* [1908] 197 U. S., 11.)

"Liberty is freedom to do right and never wrong; it is ever guided by reason and the upright and honorable conscience of the individual." (Apolinario Mabini.)

Civil liberty may be said to mean that measure of freedom which may be enjoyed in a civilized community, consistently with the peaceful enjoyment of like freedom in others. The right to liberty guaranteed by the Constitution includes the right to exist and the right to be free from arbitrary personal restraint or servitude. The term cannot be dwarfed into mere freedom from physical restraint of the person of the citizen, but is deemed to embrace the right of man to enjoy the faculties with which he has been endowed by his Creator, subject only to such restraints as are necessary for the common welfare. As enunciated in a long array of authorities including epoch-making decisions of the United States Supreme Court, liberty includes the right of the citizen to be free to use his faculties in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any avocation, and for that purpose, to enter into all contracts which may be proper, necessary, and essential to his carrying out these purposes to a successful conclusion. The chief elements of the guaranty are the right to contract, the right to choose one's employment, the right to labor, and the right of locomotion.

In general, it may be said that liberty means the opportunity to do those things which are ordinarily done by free men. (There can be noted *Cummings vs. Missouri* [1866], 4 Wall., 277; *Wilkinson vs. Leland* [1829], 2 Pet., 627; *Williams vs. Fears* [1900], 179 U. S., 274; *Allgeyer vs. Louisiana* [1896], 165 U. S., 578; *State vs. Kreutzberg* [1902], 114 Wis., 530. See 6 R. C. L., 258, 261.)

One thought which runs through all these different conceptions of liberty is plainly apparent. It is this: "Liberty" as understood in democracies, is not license; it is "liberty regulated by law." Implied in the term is restraint by law for the good of the individual and for the greater good of the peace and order of society and the general well-being. No man can do exactly as he pleases. Every man must renounce unbridled license. The right of the individual is necessarily subject to reasonable restraint by general law for the common good. Whenever and wherever the natural rights of citizens would, if exercised without restraint, deprive other citizens of rights which are also and equally natural, such assumed rights must yield to the regulation of law. The liberty of the citizen may be restrained in the interest of the public health, or of the public order and safety, or otherwise within the proper scope of the police power. (See *Hall vs. Geiger-Jones* [1916], 242 U. S., 539; *Hardie-Tynes Manufacturing Co. vs. Cruz* [1914], 189 Ala., 66.)

None of the rights of the citizen can be taken away except by due process of law. Daniel Webster, in the course of the argument in the *Dartmouth College Case* before the United States Supreme Court, since a classic in forensic literature, said that the meaning of "due process of law" is, that "every citizen shall hold his life, liberty, property, and immunities under the protection of the general rules which govern society." To constitute "due process of law," as has been often held, a judicial proceeding is not always necessary. In some instances, even a hearing and notice are not requisite, a rule which is especially true where much must be left to the discretion of the administrative officers in applying a law to particular cases. (See *McGehee, Due Process of Law*, p. 371.) Neither is due process a stationary and blind sentinel of liberty. "Any legal proceeding enforced by public authority, whether sanctioned by age and custom, or newly devised in the discretion of the legislative power, in furtherance of the public good, which regards and preserves these principles of liberty and justice, must be held to be due process of law." (*Hurtado vs. California* [1883], 110 U. S., 516.) "Due process of law" means simply * * * "first, that there shall be a law prescribed in harmony with the general powers of the legislative department of the Government; second, that this law shall be reasonable in its operation; third, that it shall be enforced according to

the regular methods of procedure prescribed; and fourth, that it shall be applicable alike to all the citizens of the state or to all of a class." (U. S. vs. Ling Su Fan [1908], 10 Phil., 104, affirmed on appeal to the United States Supreme Court.¹) "What is due process of law depends on circumstances. It varies with the subject-matter and necessities of the situation." (Moyer vs. Peabody [1909], 212 U. S., 82.)

The pledge that no person shall be denied the equal protection of the laws is not infringed by a statute which is applicable to all of a class. The classification must have a reasonable basis and cannot be purely arbitrary in nature.

We break off with the foregoing statements, leaving the logical deductions to be made later on.

D. SLAVERY AND INVOLUNTARY SERVITUDE.

The fourth constitutional contention of petitioner relates to the Thirteenth Amendment to the United States Constitution particularly as found in those portions of Philippine Organic Law providing "That slavery shall not exist in said Islands; nor shall involuntary servitude exist except as a punishment for crime whereof the party shall have been duly convicted." It is quite possible that the Thirteenth Amendment, since reaching to "any place subject to" the "jurisdiction" of the United States, has force in the Philippines. However this may be, the Philippine Legislature has, by adoption, with necessary modifications, in sections 268 to 271 inclusive, of the United States Criminal Code, prescribed the punishment for these crimes. Slavery and involuntary servitude, together with their corollary, peonage, all denote "a condition of enforced, compulsory service of one to another." (Hodges vs. U. S. [1906], 203 U. S., 1.) The term of broadest scope is possibly involuntary servitude. It has been applied to any servitude in fact involuntary, no matter under what form such servitude may have been disguised. (Bailey vs. Alabama [1910], 219 U. S., 219.)

So much for an analysis of those constitutional provisions on which petitioners rely for their freedom. Next must come a description of the police power under which the State must act if section 2145 is to be held valid.

E. THE POLICE POWER.

Not attempting to phrase a definition of police power, all that it is necessary to note at this moment is the far-reaching scope of the power, that it has become almost impossible to limit its sweep, and that among its purposes is the power to prescribe regulations to promote the health, peace, morals, education, and good order of the people, and to legislate so as to increase the industries of the State, develop its resources and add to its wealth and prosperity. (See *Barbier vs. Connolly* [1884], 113 U. S., 27.) What we are most interested in is the right of the government to restrain liberty by the exercise of the police power.

"The police power of the State," one court has said, * * * "is a power coextensive with self-protection, and is not inaptly termed the 'law of overruling necessity.' It may be said to be that inherent and plenary power in the State which enables it to prohibit all things hurtful to the comfort, safety and welfare of society." (*Lake View vs. Rose Hill Cemetery Co.* [1873], 70 111., 191.) Carried onward by the current of legislation, the judiciary rarely attempts to dam the onrushing power of legislative discretion, provided the purposes of the law do not go beyond the great principles that mean security for the public welfare or do not arbitrarily interfere with the right of the individual.

The Government of the Philippine Islands has both on reason and authority the right to exercise the sovereign police power in the promotion of the general welfare and the public interest. "There can be no doubt that the exercise of the police power of the Philippine Government belongs to the Legislature and that this power is limited only by the Acts of Congress and those fundamental principles which lie at the foundation of all republican forms of government." (*Churchill and Tait vs. Rafferty* [1915], 32 Phil, 580; *U. S. vs. Pompeya* [1915], 31 Phil., 245.)

With the foregoing approximation of the applicable basic principles before us, before finally deciding whether any constitutional provision has indeed been violated by section 2145 of the Administrative Code, we should endeavor to ascertain the intention of the Legislature in enacting this section. If legally possible, such legislative intention should be effectuated.

F. LEGISLATIVE INTENT.

The preamble of the resolution of the provincial board of Mindoro which set apart the Tigbao reservation, it will be remembered, assigned as reasons for the action, the following: (1) The failure of former attempts for the advancement of the non-Christian people of the province; and (2) the only successful method for educating the Manguianes was to oblige them to live in a permanent settlement. The Solicitor-General adds the following: (3) The protection of the Manguianes; (4) the protection of the public forests in which they roam; (5) the necessity of introducing civilized customs among the Manguianes.

The present Secretary of the Interior says of the Tigbao reservation and of the motives for its selection, the following :

"To inform himself of the conditions of those Manguianes who were taken together to Tigbao, the Secretary of the Interior on June 10 to 13, 1918, made a trip to that place. There he found that the site selected is a good one; that creditable progress has been made in the clearing of forests, construction of buildings, etc., that there appears to be encouraging reaction by the boys to the work of the school the requirements of which they appear to meet with enthusiastic interest after the first weeks which are necessarily a somewhat trying period for children wholly unaccustomed to orderly behaviour and habit of life. He also gathered the impression that the results obtained during the period of less than one year since the beginning of the institution definitely justify its continuance and development.

"Of course, there were many who were protesting against that segregation. Such was naturally to be expected. But the Secretary of the Interior, upon his return to Manila, made the following statement to the press:

" 'It is not deemed wise to abandon the present policy over those who prefer to live a nomadic life and evade the influence of civilization. The Government will follow its policy to organize them into political communities and to educate their children with the object of making them useful citizens of this country. To permit them to live a wayfaring life will ultimately result in a burden to the state and on account of their ignorance, they will commit crimes and make depredations, or if not they will be subject to involuntary servitude by those who may want to abuse . them.' "

The Secretary of the Interior, who is the official charged with the supervision of all the non-Christian people, has adopted as the polaris of his administration—"The advancement of the non-Christian elements of our population to equality and unification with the highly civilized Christian inhabitants." This is carried on by the adoption of the following measures:

"(a) Pursuance of the closer settlement policy whereby people of seminomadic race are induced to leave their wild habitat and settle in organized communities.

"(b) The extension of the public school system and the VOL. 39, MARCH 7, 1919. 711 Rubi vs. Provincial Board of Mindoro. system of public health throughout the regions inhabited by the non-Christian people.

"(c) The extension of public works throughout the Mohammedan regions to facilitate their development and the extension of government control.

"(d) Construction of roads and trails between one place and another among non-Christians, to promote social and commercial intercourse and maintain amicable relations among them and with the Christian people.

" (e) Pursuance of the development of natural economic resources, especially agriculture.

"(f) The encouragement of immigration into, and of the investment of private capital in, the fertile regions of Mindanao and Sulu."

The Secretary adds:

"To attain the end desired, work of a civilizing influence have been continued among the non-Christian people. These people are being taught and guided to improve their living conditions in order that they may fully appreciate the benefits of civilization. Those of them who are still given to nomadic habits are being persuaded to abandon their wild habitat and settle in organized settlements. They are being made to understand that it is the purpose of the Government to organize them politically into fixed and permanent communities, thus bringing them under the control of the Government, to aid them to live and work, protect them from involuntary servitude and abuse, educate their children, and show them the advantages of leading a civilized life with their civilized brothers. In short, they are being impressed with the purposes and objectives of the Government of leading them to economic, social, and political equality, and unification with the more highly civilized inhabitants of the country," (See Report of the Department for 1917,)

The fundamental objective of governmental policy is to establish friendly relations with the so-called non-Christians, and to promote their educational, agricultural, industrial, and economic development and advancement in civilization. (Note Acts Nos. 2208, 2404, 2444.) Act No. 2674 in reestablishing the Bureau of non-Christian Tribes, defines the aim of the Government towards the non-Christian people in the following unequivocal terms:

"It shall be the duty of the Bureau of non-Christian Tribes to continue the work for advancement and liberty in favor of the regions inhabited by non-Christian Filipinos and foster by all adequate means and in a systematical, rapid, and complete manner the moral, material, economic, social, and political development of those regions, always having in view the aim of rendering permanent the mutual intelligence between, and complete fusion of, all the Christian and non-Christian elements populating the provinces of the Archipelago." (Sec. 3.)

May the Manguianes not be considered, as are the Indians in the United States, proper wards of the Filipino people? By the fostering care of a wise Government, may not these unfortunates advance in the "habits and arts of civilization?" Would it be advisable for the courts to intrude upon a plan, carefully formulated, and apparently working out for the ultimate good of these people?

In so far as the Manguianes themselves are concerned, the purpose of the Government is evident. Here, we have on the Island of Mindoro, the Manguianes, leading a nomadic life, making depredations on their more fortunate neighbors, uneducated in the ways of civilization, and doing nothing for the advancement of the Philippine Islands. What the Government wished to do by bringing them into a reservation was to gather together the children for educational purposes, and to improve the health and morals —was in fine, to begin the process of civilization. This method was termed in Spanish times, "bringing under the bells." The same idea adapted to the existing situation, has been followed with reference to the Manguianes and other peoples of the same class, because it required, if they are to be improved, that they be gathered together. On these few reservations there live under restraint in some cases, and in other instances voluntarily, a few thousands of the uncivilized people. Segregation really constitutes protection for the Manguianes.

Theoretically, one may assert that all men are created free and equal. Practically, we know that the axiom is not precisely accurate. The Manguianes, for instance, are not free, as civilized men are free, and they are not the equals of their more fortunate brothers. True, indeed, they are citizens, with many but not all the rights which citizenship implies. And true, indeed, they are Filipinos. But just as surely, the Manguianes are citizens of a low degree of intelligence, and Filipinos who are a drag upon the progress of the State.

In so far as the relation of the Manguianes to the State is concerned, the purposes of the Legislature in enacting the law, and of the executive branch in enforcing it, are again plain. Settlers in Mindoro must have their crops and persons protected from predatory men, or they will leave the country. It is no argument to say that such crimes are punished by the Penal Code, because these penalties are imposed after commission of the offense and not before. If immigrants are to be encouraged to develop the resources of the great Island of Mindoro, and its, as yet, unproductive regions, the Government must be in a position to guarantee peace and order.

Waste lands do not produce wealth. Waste people do not advance the interest of the State. Illiteracy and thriftlessness are not conducive to homogeneity. The State to protect itself from destruction must prod on the laggard and the sluggard. The great law of overwhelming necessity is all convincing.

To quote again from the instructive memorandum of the Secretary of the Interior:

"Living a nomadic and a wayfaring life and evading the influence of civilization, they (the Manguianes) are engaged in the works of destruction—burning and destroying the forests and making illegal caingins thereon. Not bringing any benefit to the State but instead injuring and damaging its interests, what will ultimately become of these people with the sort of liberty they wish to preserve and for which they are now fighting in court? They will ultimately become a heavy burden to the State and on account of their ignorance they will commit crimes and make depredations, or if not they will be subjected to involuntary servitude by those who may want to abuse them.

"There is no doubt in my mind that this people has not a right conception of liberty and does not practise liberty in a rightful way. They understand liberty as the right to do anything they will—going from one place to another in the mountains, burning and destroying forests and making illegal caingim thereon.

"Not knowing what true liberty is and not practising the same rightfully, how can they allege that they are being deprived thereof without due process of law?

* * * * *

"But does the Constitutional guaranty that 'no person shall be deprived of his liberty without due process of law' apply to a class of persons who do not have a correct idea of what liberty is and do not practise liberty in a rightful way?

"To say that it does will mean to sanction and defend an erroneous idea of such class of persons as to what liberty is. It will mean, in the case at bar, that the Government should not adopt any measures looking to the welfare and advancement of the class of persons in question. It will mean that this people should be let alone in the mountains and in a permanent state of savagery without even the remotest hope of coming to understand liberty in its true and noble sense.

"In dealing with the backward population, like the Manguianes, the Government has been placed in the alternative of either letting them alone or guiding them in the path of civilization. The latter measure was adopted as the one more in accord with humanity and with national conscience."

* * * * *

"The national legislation on the subject of non-Christian people has tended more and more towards the education and civilization of such people and fitting them to be citizens. The progress of those people under the tutelage of the Government is indeed encouraging and the signs of the times point to a day which is not far distant when they will become useful citizens. In the light of what has already been accomplished which has been winning the gratitude of most of the backward people, shall we give up the noble work simply because a certain element, believing that their personal interests would be injured by such a measure has come forward and challenged the authority of the Government to lead this people in the path of civilization? Shall we, after expending sweat, treasure, and even blood only to redeem this people from the claws of ignorance and superstition, now willingly retire because there has been erroneously invoked in their favor that Constitutional

guaranty that no person shall be deprived of his liberty without due process of law? To allow them to successfully invoke that Constitutional guaranty at this time will leave the Government without recourse to pursue the works of civilizing them and making them useful citizens. They will thus be left in a permanent state of savagery and become a vulnerable point of attack by those who doubt, nay challenge, the ability of the nation to deal with our backward brothers.

"The Manguianes in question have been directed to live together at Tigbao. There they are being taught and guided to improve their living conditions. They are being made to understand that the object of the government is to organize them politically into fixed and permanent-communities. They are being aided to live and work. Their children are being educated in a school especially established for them. In short, everything is being done for them in order that their advancement in civilization and material prosperity may be assured. Certainly their living together in Tigbao does not make them slaves or put them in a condition compelled to do services for another. They do riot work for anybody but for themselves. There is, therefore, no involuntary servitude.

"But they are compelled to live there and prohibited from emigrating to some other place under penalty of imprisonment. Attention in this connection is invited to the fact that this people, living a nomadic and wayfaring life, do not have permanent individual property. They move from one place to another as the conditions of living warrant, and the entire space where they are roving about is the property of the nation, the greater part being lands of public domain. Wandering from one place to another on the public lands, why can not the government adopt a measure to concentrate them in a certain fixed place on the public lands, instead of permitting them to roam all over the entire territory? This measure is necessary both in the interest of the public as owner of the lands about which they are roving and for the proper accomplishment of the purposes and objectives, of the Government. For as people accustomed to nomadic habit, they will always long to return to the mountains and follow a wayfaring life, and unless a penalty is provided for, you can not make them live together and the noble intention of the Government of organizing them politically will come to naught." y

G. APPLICATION AND CONCLUSION.

Our exhaustive study should have left us in a position to answer specific objections and to reach a general conclusion.

In the first place, it is argued that the citizen has the right, generally speaking, to go where he pleases. Could he not, however, be kept away from certain localities? To furnish an example from the Indian legislation. The early Act of Congress of 1802 (2 U. S. Stat. at L., p. 141) punished those intruders who should cross the line into an Indian reservation. Those citizens certainly did not possess absolute freedom of locomotion. Again the same law provided for the apprehension of marauding Indians. Without any doubt, this law and other similar laws were accepted and followed time and again without question.

It is said that, if we hold this section to be constitutional, we leave this weak and defenseless people confined as in a prison at the mercy of unscrupulous officials. What, it is asked, would be the remedy of any oppressed Manguian? The answer would naturally be that the official into whose hands are given the enforcement, of the law would have little or no motive to oppress these people; on the contrary, the presumption would all be that they would endeavor to carry out the purposes of the law intelligently and patriotically. If, indeed, they did ill-treat any person thus confined, there always exists the power of removal in the hands of superior officers, and the courts are always open, for a redress of grievances. When, however, only the validity of the law is generally challenged and no particular case of oppression is called to the attention of the courts, it would seem that the Judiciary should not unnecessarily hamper the Government in the accomplishment of its laudable purpose.

The question is above all one of sociology. How far, consistently with freedom, may the rights and liberties of the individual members of society be subordinated to the will of the Government? It is a question which has assailed the very existence of government from the beginning of time. Not now purely an ethical or philosophical subject,

nor now to be decided by force, it has been transferred to the peaceful forum of the Judiciary. In resolving such an issue, the Judiciary must realize that the very existence of government renders imperative a power to restrain the individual to some extent, dependent, of course, on the necessities of the class attempted to be benefited. As to the particular degree to which the Legislature and the Executive can go in interfering with the rights of the citizen, this is, and for a long time to come will be, impossible for the courts to determine.

The doctrines of laissez faire and of unrestricted freedom of the individual, as axioms of economics and political theory, are of the past. The modern period has shown a widespread belief in the amplest possible demonstration of governmental activity. The courts unfortunately have sometimes seemed to trail after the other two branches of the Government in this progressive march.

Considered, therefore, purely as an exercise of the police power, the courts cannot fairly say that the Legislature has exceeded its rightful authority. It is, indeed, an unusual exercise of that power. But a great malady requires an equally drastic remedy.

Further, one cannot hold that the liberty of the citizen is unduly interfered with when the degree of civilization of the Manguianes is considered. They are restrained for their own good and the general good of the Philippines. Nor can one say that due process of law has not been followed. To go back to our definition of due process of law and equal protection of the laws, there exists a law; the law seems to be reasonable; it is enforced according to the regular methods of procedure prescribed; and it applies alike to all of a class.

As a point which has been left for the end of this decision and which, in case of doubt, would lead to the determination that section 2145 is valid, is the attitude which the courts should assume towards the settled policy of the Government. In a late decision with which we are in full accord, *Gamble v. Vanderbilt University* (200 Southwestern Reporter, 510) the Chief Justice of the Supreme Court of Tennessee writes:

"We can see no objection to the application of public policy as a ratio decidendi. Every really new question that comes before the courts is, in the last analysis, determined on that theory, when not determined by differentiation of the principle of a prior case or line of cases, or by the aid of analogies furnished by such prior cases. In balancing conflicting solutions, that one is perceived to tip the scales which the court believes will best promote the public welfare in its probable operation as a general rule or principle. But public policy is not a thing inflexible. No court is wise enough to forecast its influence in all possible contingencies. Distinctions must be made from time to time as sound reason and a true sense of justice may dictate."

Our attempt at giving a brief history of the Philippines with reference to the so-called non-Christians has been in vain, if we fail to realize that a consistent governmental policy has been effective in the Philippines from early days to the present. The idea is to unify the people of the Philippines so that they may approach the highest conception of nationality. If all are to be equal before the law, all must be approximately equal in intelligence. If the Philippines is to be a rich and powerful country, Mindoro must be populated,¹ and its fertile regions must be developed. The public policy of the Government of the Philippine Islands is shaped with a view to benefit the Filipino people as a whole. The Manguianes, in order to fulfill this governmental policy, must be confined for a time, as we have said, for their own good and the good of the country.

Most cautiously should the power of this court to overrule the judgment of the Philippine Legislature, a coordinate branch, be exercised. The whole tendency of the best considered cases is toward non-interference on the part of the courts whenever political ideas are the moving consideration. Justice Holmes, in one of the aphorisms for which he is justly famous, said that "constitutional law, like other mortal contrivances, has to take some chances." (*Blinn vs. Nelson* [1911], 222 U. S., 1.) If in the final decision of the many grave questions which this case presents, the court must take "a chance," it should be, with a view to upholding the law, with a view to the

effectuation of the general governmental policy, and with a view to the court's performing its duty in a narrow and bigoted sense, but with that broad conception which will make the courts as progressive and effective a force as are the other departments of the Government.

We are of the opinion that action pursuant to section 2145 of the Administrative Code does not deprive a person of his liberty without due process of law and does not deny to him the equal protection of the laws, and that confinement in reservations in accordance with said section does not constitute slavery and involuntary servitude. We are further of the opinion that section 2145 of the Administrative Code is a legitimate exertion of the police power, somewhat analogous to the Indian policy of the United States. Section 2145 of the Administrative Code of 1917 is constitutional.

Petitioners are not unlawfully imprisoned or restrained of their liberty. Habeas corpus can, therefore, not issue. This is the ruling of the court. Costs shall be taxed against petitioners. So ordered.

Arellano, C.J., Torres, and Avanceña, JJ., concur.

CONCURRING
CARSON, J.,

I fully concur in the reasoning and the conclusions of Justice Malcolm as set forth in the prevailing opinion.

The words "non-Christian" have a clear, definite and well settled signification when used in the Philippine statutebook as a descriptive adjective, applied to "tribes," "people," or "inhabitants," dwelling in more or less remote districts and provinces throughout the Islands¹.

Justice Malcolm, as I think, correctly finds that these words, as used in this connection in our statute-book, denote the "low grade of civilization" of the individuals included in the class to which they are applied. To this I would add that the tests for the determination of the fact that an individual or tribe is, or is not of the "low grade of civilization" denoted by the words "non-Christian" are, and throughout the period of American occupation always have been, "the mode of life, the degree of advancement in civilization, and connection or lack of connection with some civilized community." (Cf. letter of Collector of Internal Revenue dated September 17, 1910, and set out in the principal opinion.)

The legislative and administrative history of the Philippine Islands clearly discloses that the standard of civilization to which a specific tribe must be found to have advanced, to justify its removal from the class embraced within the descriptive term "non-Christian," as that term is used in the Philippine statute-book, is that degree of civilization which results in a mode of life within the tribe, such that it is feasible and practicable to extend to, and enforce upon its membership the general laws and regulations, administrative, legislative, and judicial, which control the conduct of the admittedly civilized inhabitants of the Islands; a mode of life, furthermore, which does not find expression in tribal customs or practices which tend to brutalize or debauch the members of the tribe indulging in such customs or practices, or to expose to loss or peril the lives or property of those who may be brought in contact with the members of the tribe.

So the standard of civilization to which any given number or group of inhabitants of a particular province in these Islands, or any individual member of such a group, must be found to have advanced, in order to remove such group or individual from the class embraced within the statutory description of "non-Christian," is that degree of civilization which would naturally and normally result in the withdrawal by such persons of permanent allegiance or adherence to a "non-Christian" tribe, had they at any time adhered to or maintained allegiance to such a tribe; and which would qualify them whether they reside within or beyond the habitat of a "non-Christian" tribe, not

only to maintain a mode of life independent of and apart from that maintained by such tribe, but a mode of life as would not be inimical to the lives or property or general welfare of the civilized inhabitants of the Islands with whom they are brought in contact.

The contention that, in this particular case, and without challenging the validity of the statute, the writ should issue because of the failure to give these petitioners, as well as the rest of the fifteen thousand Manguianes affected by the reconcentration order, an opportunity to be heard before any attempt was made to enforce it, begs the question and is, of course, tantamount to a contention that there is no authority in law for the issuance of such an order.

If the fifteen thousand Manguianes affected by the order complained of had attained that degree of civilization which would have made it practicable to serve notice upon, and give an opportunity for a real hearing, to all the members of the tribe affected by the order, it may well be doubted whether the provincial board and the Secretary of the Interior would have been justified in its enforcement. By what proceeding known to the law, or to be specially adopted in a particular case, could the officers of any province provide for a genuine hearing upon a proposal to issue a reconcentration order upon a head-hunting tribe in the north of the Island of Luzon; or upon one of the nomadic tribes whose habitat is in the mountain fastnesses of Mindanao, and whose individual members have no fixed or known place of residence, or upon the fifteen thousand Manguianes roaming in the wilds of Mindoro?

Of course, friendly headmen or chiefs might and, as a rule, should be consulted, after the practice in the United States when tribes or groups of American Indians have been placed upon reservations; but since non-Christian headmen and chiefs in the Philippines have no lawful authority to bind their peoples by their acts or their consent, the objection based on lack of a hearing, would have the same force whether the issuance of a reconcentration order was or was not preceded by a pow-wow of this kind.

The truth of the matter is that the power to provide for the issuance of such orders rests upon analogous principles to those upon which the liberty and freedom of action of children and persons of unsound minds is restrained, without consulting their wishes, but for their own good and the general welfare. The power rests upon necessity, that "great master of all things," and is properly exercised only where certain individuals or groups of individuals are found to be of such a low grade of civilization that their own wishes cannot be permitted to determine their mode of life or place of residence.

The status of the non-Christian inhabitants of these Islands, and the special and necessarily paternal attitude assumed toward them by the Insular Government is well illustrated by the following provisions found in the Administrative Code of 1917:

"Sec. 705. Special duties and purposes of Bureau (of non-Christian tribes).—It shall be the duty of the Bureau of non-Christian tribes to continue the work for advancement and liberty in favor of the regions inhabited by non-Christian Filipinos and to foster by all adequate means and in a systematic, rapid, and complete manner the moral, material, economic, social and political development of those regions, always having in view the aim of rendering permanent the mutual intelligence between and complete fusion of all the Christian and non-Christian elements populating the provinces of the Archipelago."

"SEC. 2116. Township and settlement fund.—There shall be maintained in the provincial treasuries of the respective specially organized provinces a special fund to be known as the township and settlement fund, which shall be available, exclusively, for expenditures for the benefit of the townships and settlements of the province, and non-Christian inhabitants of the province, upon approval of the Secretary of the Interior."

As I understand it, the case at bar does not raise any real question as to the jurisdiction of the courts of these

Islands in habeas corpus proceedings, to review the action of the administrative authorities in the enforcement of reconcentration orders issued, under authority of section 2145 of the Administrative Code, against a petitioner challenging the alleged fact that he is a "non-Christian" as that term is used in the statute. I, therefore, express no opinion on that question at this time.

DISSENTING

JOHNSON, J.,

I dissent. The petitioners were deprived of their liberty without a hearing. That fact is not denied. I cannot give my consent to any act which deprives the humblest citizen of his just liberty without a hearing, whether he be a Christian or non-Christian. All persons in the Philippine Islands are entitled to a hearing, at least, before they are deprived of their liberty.

DISSENTING

MOIR, J., with whom ARAULLO, and STREET, JJ., concur,

I dissent.

I realize that a dissenting opinion carries little weight, but my sense of justice will not permit me to let this decision go on record without expressing my strong dissent from the opinion of Justice Malcolm, concurred in by a majority of the court. I shall not attempt to analyze the opinion or to go into the questions in detail. I shall simply state, as briefly as may be, the legal and human side of the case as it presents itself to my mind.

The facts are that one Rubi and various other Manguianes in the Province of Mindoro were ordered by the provincial governor of Mindoro to remove their residence from their native habitat and to establish themselves on a reservation at Tigbao in the Province of Mindoro and to remain there, or be punished by imprisonment if they escaped. This reservation, as appears from the resolution of the provincial board, extends over an area of 800 hectares of land, which is approximately 2,000 acres, on which about three hundred Manguianes are confined. One of the Manguiahes, Dabalos, escaped from the reservation" and was taken in hand by the provincial sheriff -and placed in prison at Calapan, solely because he escaped from the reservation. The Manguianes sued out a writ of habeas corpus in this court, alleging that they are deprived of their liberty in violation of law.

The Solicitor-General of the Philippine Islands makes return to the writ copied in the majority opinion which states that the provincial governor of Mindoro with the prior approval of his act by the Department Secretary ordered the placing of the petitioners and others on a reservation.

The Manguianes, it is stated on page 694 of the majority opinion, "are very low in culture. They have considerable Negrito blood and have not advanced beyond the Negritos in civilization. They are peaceful, timid, primitive, seminomadic people. They number approximately 15,000 (?). The Manguianes have shown no desire for community life, and, as indicated in the preamble to Act No. 547, have not progressed sufficiently in civilization to make it practicable to bring them under any form of municipal government."

It may be well to add that the last P. I. Census (1903) shows that the Island of Mindoro (not including the smaller islands which together make the Province of Mindoro) has an area of 3,851 square miles and a population of 28,361 of which 7,369 are wild or uncivilized tribes (Manguianes). This appears to be the total Mangyan population of the province. The total population Was less than seven to the mile (Vol. 2, P. I. Census, pp. 30 and

407).

The Island is fertile, heavily wooded and well watered.

It has no savage population, but it is sparsely settled by Christian Filipinos along the coast and by Manguianes.

The Manguianes roamed its mountains and valleys, fishing and hunting at will long before Magallanes [Magellan] anchored his boats in the waters of Cebu. They have made little or no progress in the ways of civilization. "They are a peaceful, timid, primitive, seminomadic people," whom the Government of the Philippine Islands would bring under the beneficent influence of civilization and progress.

The law provides for it in section 2145, of the Administrative Code; and for those who like Dabalos do not take kindly, to the ways provided for civilizing them section 2759 provides the punishment.

The attorney for the petitioners has raised various constitutional questions, but only the fundamental one will be considered by me. It is that the sections of the Administrative Code, 2145 and 2759, quoted in the majority opinion, are in violation of the first paragraph of section 3 of the Act of Congress of August 29, 1916, which reads as follows:

"That no law shall be enacted in said Islands which shall deprive any person of life, liberty or property without due process of law, or deny to any person therein the equal protection of the laws."

It is not necessary to argue that a Mangyan is one of the persons protected by that provision.

The Attorney-General argues that the treatment provided for the Manguianes is similar to that accorded the Indians in the United States, and reference is made all through the court's decision to the decisions of the United States Supreme Court with reference to the Indians. It is not considered necessary to go into these cases for the simple reason that all the Indian nations in the United States were considered as separate nations and all acts taken in regard to them were the result of separate treaties made by the United States Government with the Indian nations, and, in compliance with these treaties, reservations were set apart for them on which they lived and were protected from intrusion and molestation by white men. Some of these reservations were larger than the Island of Luzon, and they were not measured in hectares but in thousands of square miles.

The Manguianes are not a separate state. They have no treaty with the Government of the Philippine Islands by which they have agreed to live within a certain district where they are accorded exclusive rights. They are citizens of the Philippine Islands. Legally they are Filipinos. They are entitled to all the rights and privileges of any other citizen of this country. And when the provincial governor of the Province of Mindoro attempted to take them from their native habitat and to hold them on the little reservation of about 800 hectares, he deprived them of their rights and their liberty without due process of law, and they were denied the equal protection of the law.

The majority opinion says "they are restrained for their own good and the general good of the Philippines."

They are to be made to accept the civilization of the more advanced Filipinos whether they want it or not. They are backward and deficient in culture and must be moved from their homes, however humble they may be and "brought under the bells" and made to stay on a reservation.

Are these petitioners charged with any crime? There is no mention in the return of the Solicitor-General of the Philippine Islands of any crime having been committed by these "peaceful, timid, primitive, semi-nomadic people."

A memorandum of the Secretary of the Interior of the Philippine Islands is copied in extenso in the majority opinion, and from it I gather the nature of their offense which is that—

"Living a nomadic and wayfaring life and evading the influence of civilization, they (the Manguianes) are engaged in the works of destruction—burning and destroying the forests and making illegal caingins thereon. Not bringing any benefit to the State but, instead, injuring and damaging its interests, what will ultimately become of those people with the sort of liberty they wish to preserve and for which they are now fighting in court? They will ultimately become a heavy burden to the State and, on account of their ignorance, they will commit crimes and make depredations, or if not they will be subjected to involuntary servitude by those who may want to abuse them.

"There is no doubt in my mind that this people has not a right conception of liberty and does not practice liberty in a rightful way. They understand liberty as the right to do anything they will—going from one place to another in the mountains, burning and destroying forests and making illegal caingins thereon.

"Not knowing what true liberty is and not practising the same rightfully, how can they allege that they are being deprived thereof without due process of law?

* * * * *

"But does the Constitutional guaranty that 'no person shall be deprived of his liberty without due process of law' apply to a class of persons who do not have a correct idea of what liberty is and do not practise liberty in a rightful way?

"To say that it does will mean to sanction and defend an erroneous idea of such class of persons as to what liberty is. It will mean, in the case at bar, that the Government should not adopt any measures looking to the welfare and advancement of the class of persons in question. It will mean that this people should be let alone in the mountains and in a permanent state of savagery without even the remotest hope of coming to understand liberty in its true and noble sense.

"In dealing with the backward population, like the Manguianes, the Government has been placed in the alternative of either[^] letting them alone or guiding them in the path of civilization. The latter measure was adopted as the one more in accord with humanity and with national conscience.

* * * * *

"The national legislation on the subject of non-Christian people has tended more and more towards the education and civilization of such people and fitting them to be citizens."

There appear to be two intimations or charges in this memorandum; one is that the Manguianes destroy the forests by making a caingin.. What is a "caingin" Simply this. These people move their camp or place of abode frequently and when they do move to a new place, it is necessary to clear the land in order to plant corn and camotes (sweet potatoes) and they cut down the smaller trees and burn these around the larger ones, killing them, so that they can plant their crops. The fires never spread in the tropical undergrowth of an island¹ like Mindoro, but the trees within the caingin are killed and crops are planted and harvested. This land may be abandoned later on—due to superstition, to a lack of game in the neighborhood, to poor crops from exhausted fertility, or to a natural desire to move on.

Granting that the Manguianes do make caingins or clear lands in spots and then abandon them for the more fertile lands, which every man knows to be just over the hills, we cannot see that they are committing such a great abuse as to justify incarcerating them on a small tract of land— for incarceration it is and nothing less.

The second intimation or charge is that "they will become a heavy burden to the state and on account of their ignorance they will commit crimes and make depredations, or if not they will be subjected to involuntary servitude by those who want to abuse them." They have never been a burden to the state and never will be. They have not committed crimes and, when they do, let the law punish them. The authorities are anticipating too much from these "peaceful, timid, primitive, semi-nomadic people." Their history does not demonstrate that we must

expect them to commit crimes and jail them to prevent the possibility. But the Secretary says "they will be subjected to involuntary servitude by those who want to abuse them." Are they more liable to be subjected to involuntary servitude when left free to roam their native hills and gain a livelihood as they have been accustomed to for hundreds of years, than they will be if closely confined on a narrow reservation from which they may not escape without facing a term in jail? Is it not more likely that they will be glad to exchange their "freedom" on a small reservation for the great boon of binding themselves and their children to the more fortunate Christian Filipinos who will feed them and clothe them in return for their services?

I think it not only probable but almost a certainty that they will all be subjected to involuntary personal servitude if their freedom is limited, as it has been. How will they live? There may be persons who are willing to lend them money with which to buy food on the promise that they will work for them. And if they accept the loan and do not work for the lender we have another law on the statute books, Act No. 2098, into whose noose they run their necks, and they may be fined not more than two hundred pesos or imprisoned for not exceeding six months or both, and when the sentence expires they must again go into debt or starve, and if they do not work will again go to jail, and this may be repeated till they are too old to work and are cast adrift.

The Manguianes have committed no offense and are charged with none. It does not appear that they were ever consulted about their reconcentration. It does not appear that they had any hearing or were allowed to make any defense. It seems they were gathered here and there whenever found by the authorities of the law and forcibly placed upon the reservation, because they are "non-Christians," and because the provincial governor ordered it. Let it be clear there is no discrimination because of religion. The term "non-Christian" means one who is not a Christian Filipino, but it also means any of the so-called "wild" or backward tribes of the Philippines. These non-Christian tribes are Moros, Igorrotes, Bukidnons, Ifugaos, Manguianes and various others, about one million souls all together. Some of them, like the Moros, Tinguianes and Ifugaos, have made great progress in civilization. They have beautiful fields reclaimed by hard labor—they have herds of cattle and horses and some few of them are well educated. Some of the non-Christians, like the Aetas and the Negritos, are very low in the scale of civilization, but they are one and all "non-Christians," as the term is used and understood in law and in fact.

All of them, according to the court's opinion under the present law, may be taken from their homes and herded on a reservation at the instance of the provincial governor, with the prior approval of the department head. To state such a monstrous proposition is to show the wickedness and illegality of the section of the law under which these people are restrained of their liberty. But it is argued that there is no probability of the department head ever giving his approval to such a crime, but the fact that he can do it and has done it in the present case is what makes the law unconstitutional. The arbitrary and unrestricted power to do harm should be the measure by which a law's legality is tested and not the probability of doing harm.

"It has been said that this is a government of laws and not of men; that there is no arbitrary body of individuals; that the constitutional principles upon which our government and its institutions rest do not leave room for the play and action of purely personal and arbitrary power, but that all in authority are guided and limited by these provisions which the people have, through the organic law, declared shall be the measure and scope of all control exercised over them. In particular the fourteenth amendment, and especially the equal protection clause, thereof, forbids that the individual shall be subjected to any arbitrary exercise of the powers of government; it was intended to prohibit, and does prohibit, any arbitrary deprivation of life or liberty, or arbitrary spoliation of property.

"As we have seen, a statute which makes a purely arbitrary or unreasonable classification, or which singles out any particular individual or class as the subject of hostile and discriminating legislation, is clearly unconstitutional as being opposed to the fourteenth amendment and especially to the equal protection clause thereof. This is a plain case, and requires no further discussion." (VqI. 4, Encyclopedia of U. S. Supreme Court

Reports, p. 366.)

"When we consider the nature and the theory of our institutions of government, the principles upon which they are supposed to rest, and review the history of their development, we are constrained to conclude that they do not mean to leave room for the play and-action of purely personal and arbitrary power. Sovereignty itself is, of course, not subject to law, for it is the author and source of law; but in our system while sovereign powers are delegated to the agencies of government, sovereignty itself remains with the people, by whom and for whom all government exists and acts. And the law is the definition and limitation of power. It is, indeed, quite true, that there must always be lodged somewhere, and in some person or body, the authority of final decision; and, in many cases of mere administration the responsibility is purely political, no appeal lying except to the ultimate tribunal of the public judgment, exercised either in the pressure of opinion or by means of the suffrage. But the fundamental rights to life, liberty, and the pursuit of happiness, considered as individual possessions, are secured by those maxims of constitutional law which are the monuments showing the victorious progress of the race in securing to men the blessings of civilization under the reign of just and equal laws, so that, in the famous language of Massachusetts Bill of Rights, the Government of Commonwealth 'may be a government of 'law and not of men.' For the very idea that one man may be compelled to hold his life, or the means of living, or any material right essential to the enjoyment of life, at the mere will of another, seems to be intolerable in any country where freedom prevails, as being the essence of slavery itself." (Yick Wo vs. Hopkins, 118 U. S., 374.)

It is said that the present law is an old Act being in substance Act No. 547 of the Philippine Commission. But it has never been brought before this court for determination of its constitutionality. No matter how beneficent the motives of the lawmakers if the law tends to deprive any man of life, liberty, or property without due process of law, it is void.

In my opinion the acts complained of which were taken in conformity with section 2145 of the Administrative Code not only deprive these Manguianes of their liberty, without due process of law, but will in all probability deprive them of their life, without due process of law. History teaches that to take a semi-nomadic tribe from their native fastnesses and to transfer them to the narrow confines of a reservation is to invite disease and suffering and death. From my long experience in the Islands, I should say that it would be a crime of little less magnitude to take the Ifugaos from their mountain homes where they have reclaimed a wilderness and made it a land of beauty and fruitfulness and to transfer them to the more fertile, unoccupied, malaria infested valleys which they look down upon from their fields—than it would be to order their decapitation en masse.

There can be no denial that the Ifugaos are "non-Christians," or "wild tribes" and are in exactly the same category as the Manguianes. If the Manguianes may be so taken from their native habitat and reconcentrated on a reservation—in effect an open air jail—then so may the Ifugaos, so may the Tinguianes, who have made more progress than the Ifugaos, and so may the Moros.

There are "non-Christian" in nearly every province in the Philippine Islands. All of the thirty-nine governors upon the prior approval of the head of the department, have the power under this law to take the non-Christian inhabitants of their different provinces from their homes and put them on a reservation for "their own good and the general good of the Philippines," and the courts will grant them no relief. These unfortunate citizens of the Philippine Islands would hold their liberty, and their lives, may be, subject to the unregulated discretion of the provincial governor.

And who would be safe?

After the reservation is once established might not a provincial governor decide that some political enemy was a non-Christian, and that he would be safer on the reservation. No matter what his education and culture, he could

have no trial, he could make no defense, the judge of the court might be in a distant province and not within reach, and the provincial governor's fiat is final.

The case of the United States vs. Crook (Federal Cases 14891), cited in the majority opinion, should be quoted at length. District Judge Dundy said: "During the fifteen years in which I have been engaged in administering the laws of my country, I have never been called upon to hear or decide a case that appealed so strongly to my sympathy as the one now under consideration. On the one side, we have a few of the remnants of a once numerous and powerful, but now weak, insignificant, unlettered, and generally despised race; and the other, we have the representative of one of the most powerful, most enlightened, and most christianized nations of modern times. On the one side, we have the representatives of this wasted race coming into this national tribunal of ours, asking for justice and liberty to enable them to adopt our boasted civilization, and to pursue the arts of peace, which have made us great and happy as a nation; on the other side, we have this magnificent, if not magnanimous, government, resisting this application with the determination of sending these people back to the country which is to them less desirable than perpetual imprisonment in their Dwn native land. But I think it is creditable to the heart and mind of the brave and distinguished officer who is made respondent herein to say that he has no sort of sympathy in the business in which he is forced by his position to bear a part so conspicuous; and, so far as I am individually-concerned, I think it not improper to say that, if the strongest possible sympathy could give the relators title to freedom, they would have been restored to liberty the moment the arguments in their behalf were closed. No examination or further thought would then have been necessary or expedient. -But in a country where liberty is regulated by law, something more satisfactory and enduring than mere sympathy must furnish and constitute the rule and basis of judicial action. It follows that this case must be examined and decided on principles of law, and that unless the relators are entitled to their discharge under the constitution or laws of the United States, or some treaty made pursuant thereto, they must be remanded to the custody of the officer who caused their arrest, to be returned to the Indian Territory which they left without the consent of the government.

"On the 8th of April, 1879, the relators Standing Bear and twenty-five others, during the session of the court held at that time at Lincoln, presented their petition, duly verified, praying for the allowance of a writ of habeas corpus and their final discharge from custody thereunder.

"The petition alleges, in substance, that the relators are Indians who have formerly belonged to the Ponca tribe of Indians now located in the Indian Territory; that they had some time previously withdrawn from the tribe, and completely severed their tribal relations therewith, and had adopted the general habits of the whites, and were then endeavoring to maintain themselves by their own exertions, and without aid or assistance from the general government; that whilst they were thus engaged, and without being guilty of violating any of the laws of the United States, they were arrested and restrained of their liberty by order of the respondent, George Crook.

"The writ was issued and served on the respondent on the 8th day of April, and, the distance between the place where the writ was made returnable and the place where the relators were confined being more than twenty miles, ten days were allotted in which to make return

"On the 18th of April the writ was returned, and the authority for the arrest and detention is therein shown. The substance of the return to the writ, and the additional statement since filed, is that the relators are individual members of, and connected with, the Ponca tribe of Indians ; that they had fled or escaped from a reservation situated in some place within the limits of the Indian Territory—had departed therefrom without permission from the government; and, at the request of the secretary of the interior, the general of the arhiy had issued an order which required the respondent to arrest and return the relators to their tribe in the Indian Territory, and that, pursuant to the said order, he had caused the relators to be arrested on the Omaha Indian reservation, and that they were in his custody for the purpose of being returned to the Indian Territory.

"It is claimed upon the one side, and denied upon the other, that the relators had withdrawn and severed, for all time, their connection with the H;ribe to which they belonged; and upon this point alone was there any testimony produced by either party hereto. The other matter stated in the petition and the1 return to the writ are conceded to be true; so that the questions to be determined are purely questions of law.

"On the 8th of March, 1859, a treaty was made by the United States with the Ponca tribe of Indians, by which a certain tract of country, north of the Niobrara river and west of the Missouri, was set apart for the permanent home of the said Indians,,in which the government agreed to protect them during their good behaviour. But just when or how, or why, or under what circumstances, the Indians left their reservation in Dakota and went to the Indian Territory does not appear.

* * * * *

"A question of much greater importance remains for consideration, which, when determined, will be decisive of this whole controversy. This relates to the right of the government to arrest and hold the relators for a time, for the purpose of being returned to a point in the Indian Territory from which it is alleged the Indians escaped. I am not vain enough to think that I can do full justice to a question like the one under consideration. But, as the matter furnishes so much valuable material for discussion, and so much food for reflection, I shall try to present it as viewed from my own standpoint, without reference to consequences or criticisms, which, though not specially invited, will be sure to follow.

* * * * *

"On the 15th day of August, 1876, Congress passed the general Indian appropriation bill, and in it We find a provision authorizing; the secretary of the interior to use \$25,000 for the removal of the Poncas to the Indian Territory, and providing them a home therein, with consent of the tribe. (19 Sta., 192.)

"The Poncas lived upon their reservation in southern . Dakota, and cultivated a portion of tha same, until two or three years ago, when they removed therefrom, but whether by force or otherwise does not appear. At all events, we find a portion of them, including the relators, located at some point in the Indian Territory. There, the testimony seems to show, is where the trouble commenced. Standing Bear, the principal witness, states that out of five hundred and eighty-one Indians who went from the reservation in Dakota to the Indian Territory, one hundred and fiftyeight died within a year or so, and a great proportion of the others were sick and disabled, caused, in a great measure, no doubt, from change of climate; and to save himself and the survivors of his wasted family, and the feeble remnant of his little band of followers, he determined to leave the Indian Territory and return to his old home, where, to use his own language, 'he might live and die in peace, and be buried with his fathers.' He also stated that he informed the agent of their final purpose to leave, never to return, and that he and his followers had finally, fully, and forever severed his and their connection with the Ponca tribe of Indians, and had resolved to disband as a tribe, or band of Indians, and to cut loose from the government, go to work, become self-sustaining, and adopt the habits and customs of a higher civilization. To accomplish what would seem to be a desirable and laudable purpose, all who were able to do so went to work to earn a living. The Omaha Indians, who speak the same language, and with whom many of the Poncas have long continued to intermarry, gave them employment and ground to cultivate, so as to make them self-sustaining. And it was when at the Omaha reservation, and when thus employed, that they were arrested by order of the government, for the purpose of being taken back to the Indian Territory. They claim to be unable to see the justice, or reason, or wisdom, or necessity, of removing them by force from their own native plains and blood relations to a far-off country, in which they can see little but new-made graves opening for their reception. The land from which they fled in fear has no attractions for them. The love of home and native land was strong enough in the minds of these people to induce them to brave every peril to return and live and die where they had been reared. The bones of the dead son of Standing Bear were not to repose in the land they hoped to be leaving forever, but were carefully preserved and protected and formed a part of what was to them a melancholy procession homeward. Such instances of parental affections, and such love of home arid native land, may be heathen in origin, but it seems to me that they are hot unlike Christian in principle."

And the court declared that the Indians were illegally held by authority of the United States and in violation of their right to life, liberty, and the pursuit of happiness, and ordered their release from custody.

This, case is very similar to the case of Standing Bear and others.

I think this Court should declare that sections 2145 and 2759 of the Administrative Code of 1917 are unconstitutional, null and void, and that the petitioners are illegally restrained of their liberty, and that they have been denied the equal protection of the laws, and order the respondents immediately to liberate all of the petitioners. Writ, denied.

[1] 218 U. S., 302; 54 L. ed., 1049

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.