

ANASTACIO LAUREL, PETITIONER, VS. ERIBERTO MISA, RESPONDENT.

G.R. No. 409. January 30, 1947

Ponente: "In G. R. No. L-409, Anastacio Laurel vs. Eriberto Misa, etc., the Court, acting on the petition for habeas corpus filed by Anastacio Laurel and based on the theory that a Filipino citizen who adhered to the enemy giving the latter aid and comfort during the Japanese occupation cannot be prosecuted for the crime of treason defined and penalized by article 114 of the Revised Penal Code, for the reason (1) that the sovereignty of the legitimate government in the Philippines and, consequently, the correlative allegiance of Filipino citizens thereto was then suspended; and (2) that there was a change of sovereignty over these Islands upon the proclamation of the Philippine Republic: "(1) Considering that a citizen or subject owes, not a qualified and temporary, but an absolute and permanent allegiance, which consists in the obligation of fidelity and obedience to his government or sovereign; and that this absolute and permanent allegiance should not be confused with the qualified and temporary allegiance which a foreigner owes to the government or sovereign of the territory wherein he resides, so long as he remains there, in return for the protection he receives, and which consists in the obedience to the laws of the government or sovereign. (Carlisle vs. United States, 21 Law. ed., 429; Secretary of State Webster Report to the President of the United States in the case of Thraser, 6 Web. Works, 526); "Considering that the absolute and permanent allegiance of the inhabitants of a territory occupied by the enemy to their legitimate government or sovereign is not abrogated or severed by the enemy occupation, because the sovereignty of the government or sovereign de jure is not transferred thereby to the occupier, as we have held in the cases of Co Kim Cham vs. Valdez Tan Keh and Dizon (75 Phil., 113) and of Peralta vs. Director of Prisons (75 Phil., 285), and if it is not transferred to the occupant it must necessarily remain vested in the legitimate government; that the sovereignty vested in the titular government (which is the supreme power which governs a body politic or society which constitute the state) must be distinguished from the exercise of the rights inherent thereto, and may be destroyed, or severed and transferred to another, but it cannot be suspended because the existence of sovereignty cannot be suspended without putting it out of existence or divesting the possessor thereof at least during the so-called period of suspension; that what may be suspended is the exercise of the rights of sovereignty with the control and government of the territory occupied by the enemy passes temporarily to the occupant; that the subsistence of the sovereignty of the legitimate government in a territory occupied by the military forces of the enemy during the war, 'although the former is in fact prevented from exercising the supremacy over them' is one of the 'rules of international law of our times'; (II Oppenheim, 6th Lauterpacht ed., 1944, p. 482), recognized, by necessary implication, in articles 23, 44, 45, and 52 of Hague Regulation; and that, as a corollary of the conclusion that the sovereignty itself is not suspended and subsists during the enemy occupation, the allegiance of the inhabitants to their legitimate government or sovereign subsists, and therefore there is no such thing as suspended allegiance, the basic theory on which the whole fabric of the petitioner's contention rests; "Considering that the conclusion that the sovereignty of the United States was suspended in Castine, set forth in the decision in the case of United States vs. Rice, 4 Wheaton, 246, 253, decided in 1819, and quoted in our decision in the cases of Co Kim Cham vs. Valdez Tan Keh and Dizon and Peralta vs. Director of Prisons, supra, in connection with the question, not of sovereignty, but of the existence of a government de facto therein and its power to promulgate rules and laws in the occupied territory, must have been based, either on the theory adopted subsequently in the Hague Convention of 1907, that the military occupation of an enemy territory does not transfer the sovereignty, or on the old theory that such occupation transfers the sovereignty to the occupant; that, in the first case, the word 'sovereignty' used therein should be construed to mean the exercise of the rights of sovereignty, because as this remains vested in the legitimate government and is not transferred to the occupier, it cannot be suspended without putting it out of existence or divesting said government thereof; and that in the second case, that is, if the said conclusion or doctrine, refers to the suspension of the sovereignty itself, it has become obsolete after the adoption of the Hague Regulations in

1907, and therefore it can not be applied to the present case; "Considering that even adopting the words 'temporary allegiance,' repudiated by Oppenheim and other publicists, as descriptive of the relations borne by the inhabitants of the territory occupied by the enemy toward the military government established over them, such allegiance may, at most, be considered similar to the temporary allegiance which a foreigner owes to the government or sovereign of the territory wherein he resides in return for the protection he receives as above described, and does not do away with the absolute and permanent allegiance which the citizen residing in a foreign country owes to his own government or sovereign; that just as a citizen or subject of a government or sovereign may be prosecuted for and convicted of treason committed in a foreign country, in the same way an inhabitant of a territory occupied by the military forces of the enemy may commit treason against his own legitimate government or sovereign if he adheres to the enemies of the latter by giving them aid and comfort; and that if the allegiance of a citizen or subject to his government or sovereign is nothing more than obedience to its laws in return for the protection he receives, it would necessarily follow that a citizen who resides in a foreign country or state would, on one hand, ipso facto acquire the citizenship thereof since he has to obey, with certain exceptions, the laws of that country which enforce public order and regulate the social and commercial life, in return for the protection he receives, and would, on the other hand, lose his original citizenship, because he would not be bound to obey most of the laws of his own government or sovereign, and would not receive, while in a foreign country, the protection he is entitled to in his own; "Considering that, as a corollary of the suspension of the exercise of the rights of sovereignty by the legitimate government in the territory occupied by the enemy military forces, because the authority of the legitimate power to govern has passed into the hands of the occupant (Article 43, Hague Regulations), the political laws which prescribe the reciprocal rights, duties and obligation of government and citizens, are suspended or in abeyance during military occupation (Co Kim Cham vs. Valdez Tan Keh and Dizon, supra), for the only reason that as they exclusively bear relation to the ousted legitimate government, they are inoperative or not applicable to the government established by the occupant; that the crimes against national security, such as treason and espionage, inciting to war, correspondence with hostile country, flight to enemy's country, as well as those against public order, such as rebellion, sedition, and disloyalty, illegal possession of firearms, which are of political complexion because they bear relation to, and are penalized by our Revised Penal Code as crimes against the legitimate government, are also suspended or become inapplicable as against the occupant, because they can not be committed against the latter (Peralta vs. Director of Prisons, supra); and that, while the offenses against public order to be preserved by the legitimate government were inapplicable as offenses against the invader for the reason above stated, unless adopted by him, were also inoperative as against the ousted government for the latter was not responsible for the preservation of the public order in the occupied territory, yet article 114 of the said Revised Penal Code, was applicable to treason committed against the national security of the legitimate government, because the inhabitants of the occupied territory were still bound by their allegiance to the latter during" the enemy occupation; "Considering that, although the military occupant is enjoined to respect or continue in force, unless absolutely prevented by the circumstances, those laws that enforce public order and regulate the social and commercial life of the country, he has, nevertheless, all the powers of a de facto government and may, at his pleasure, either change the existing laws or make new ones when the exigencies of the military service demand such action, that is, when it is necessary for the occupier to do so for the control of the country and the protection of his army, subject to the restrictions or limitations imposed by the Hague Regulations, the usages established by civilized nations, the laws of humanity and the requirements of public conscience (Peralta vs. Director of Prisons, supra; 1940 United States Rules of Land Warfare 76, 77); and that, consequently, all acts of the military occupant dictated within these limitations are obligatory upon the inhabitants of the territory, who are bound to obey them, and the laws of the legitimate government which have not been adopted, as well and those which, though continued in force, are in conflict with such laws and orders of the occupier, shall be considered as suspended or not in force and binding upon said inhabitants; "Considering that, since the preservation of the allegiance or the obligation of fidelity and obedience of a citizen or subject to his government or sovereign does not demand from him a positive action, but only passive attitude or forbearance from adhering to the enemy by giving the latter aid and comfort, the occupant has no power, as a corollary of the preceding consideration, to repeal or suspend the operation of the law of treason, essential for the preservation of the allegiance owed by the inhabitants to their legitimate government, or compel them to adhere and give aid and comfort to him; because it is evident that such action

is not demanded by the exigencies of the military service or not necessary for the control of the inhabitants and the safety and protection of his army, and because it is tantamount to practically transfer temporarily to the occupant their allegiance to the titular government or sovereign; and that, therefore, if an inhabitant of the occupied territory were compelled illegally by the military occupant, through force, threat or intimidation, to give him aid and comfort, the former may lawfully resist and die if necessary as a hero, or submit thereto without becoming a traitor; "Considering that adoption of the petitioner's theory of suspended allegiance would lead to disastrous consequences for small and weak nations or states, and would be repugnant to the laws of humanity and requirements of public conscience, for it would allow invaders to legally recruit or enlist the Quisling inhabitants of the occupied territory to fight against their own government without the latter incurring the risk of being prosecuted for treason, and even compel those who are not to aid them in their military operation against the resisting enemy forces in order to completely subdue and conquer the whole nation, and thus deprive them all of their own independence or sovereignty—such theory would sanction the action of invaders in forcing the people of a free and sovereign country to be a party in the nefarious task of depriving themselves of their own freedom and independence and repressing the exercise by them of their own sovereignty; in other words, to commit a political suicide; "(2) Considering that the crime of treason against the government of the Philippines defined and penalized in article 114 of the Penal Code, though originally intended to be a crime against said government as then organized by authority of the sovereign people of the United States, exercised through their authorized representative, the Congress and the President of the United States, was made, upon the establishment of the Commonwealth Government in 1935, a crime against the Government of the Philippines established by authority of the people of the Philippines, in whom the sovereignty resides according to section 1, Article II, of the Constitution of the Philippines, by virtue of the provision of section 2, Article XVI thereof, which provides that 'All laws of the Philippine Islands * * * shall remain operative, unless inconsistent with this Constitution * * * and all references in such laws to the Government or officials of the Philippine Islands, shall be construed, in so far as applicable, to refer to the Government and corresponding officials under this Constitution;' "Considering that the Commonwealth of the Philippines was a sovereign government, though not absolute but subject to certain limitations imposed in the Independence Act and incorporated as Ordinance appended to our Constitution, was recognized not only by the Legislative Department or Congress of the United States in approving the Independence Law above quoted and the Constitution of the Philippines, which contains the declaration that 'Sovereignty resides in the people and all government authority emanates from them' (section 1, Article II), but also by the Executive Department of the United States; that the late President Roosevelt in one of his messages to Congress said, among others, 'As I stated on August 12, 1943, the United States in practice regards the Philippines as having now the status as a government of other independent nations—in fact all the attributes of complete and respected nationhood' (Congressional Record, Vol. 29, part 6, page 8173); and that it is a principle upheld by the Supreme Court of the United States in many cases, among them in the case of *Jones vs. United States* (137 U. S., 202; 34 Law. ed., 691, 696) that the question of sovereignty is 'a purely political question, the determination of which by the legislative and executive departments of any government conclusively binds the judges, as well as all other officers, citizens and subjects of the country.' "Considering that section I (1) of the Ordinance appended to the Constitution which provides that pending the final and complete withdrawal of the sovereignty of the United States 'All citizens of the Philippines shall owe allegiance to the United States', was one of the few limitations of the sovereignty of the Filipino people retained by the United States, but these limitations do not do away or are not inconsistent with said sovereignty, in the same way that the people of each State of the Union preserves its own sovereignty although limited by that of the United States conferred upon the latter by the States; that just as to reason may be committed against the Federal as well as against the State Government, in the same way treason may have been committed during the Japanese occupation against the sovereignty of the United States as well as against the sovereignty of the Philippine Commonwealth; and that the change of our form of government from Commonwealth to Republic does not affect the prosecution of those charged with the crime of treason committed during the Commonwealth, because it is an offense against the same government and the same sovereign people, for Article XVIII of our Constitution provides that 'The government established by this Constitution shall be known as the Commonwealth of the Philippines. Upon the final and complete withdrawal of the sovereignty of the United States and the proclamation of Philippine independence, the Commonwealth of the Philippines shall thenceforth be known as the

Republic of the Philippines'; "This Court resolves, without prejudice to write later on a more extended opinion, to deny the petitioner's petition, as it is hereby denied, for the reasons above set forth and for others to be stated in the said opinion, without prejudice to concurring opinion therein, if any. Messrs. Justices Paras and Hontiveros dissent in a separate opinion. Mr. Justice Perfecto concurs in a separate opinion." CONCURRING PERFECTO, J.

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"In G. R. No. L-409, Anastacio Laurel vs. Eriberto Misa, etc., the Court, acting on the petition for habeas corpus filed by Anastacio Laurel and based on the theory that a Filipino citizen who adhered to the enemy giving the latter aid and comfort during the Japanese occupation cannot be prosecuted for the crime of treason defined and penalized by article 114 of the Revised Penal Code, for the reason (1) that the sovereignty of the legitimate government in the Philippines and, consequently, the correlative allegiance of Filipino citizens thereto was then suspended; and (2) that there was a change of sovereignty over these Islands upon the proclamation of the Philippine Republic:

"(1) Considering that a citizen or subject owes, not a qualified and temporary, but an absolute and permanent allegiance, which consists in the obligation of fidelity and obedience to his government or sovereign; and that this absolute and permanent allegiance should not be confused with the qualified and temporary allegiance which a foreigner owes to the government or sovereign of the territory wherein he resides, so long as he remains there, in return for the protection he receives, and which consists in the obedience to the laws of the government or sovereign. (Carlisle vs. United States, 21 Law. ed., 429; Secretary of State Webster Report to the President of the United States in the case of Thraser, 6 Web. Works, 526);

"Considering that the absolute and permanent allegiance of the inhabitants of a territory occupied by the enemy to their legitimate government or sovereign is not abrogated or severed by the enemy occupation, because the sovereignty of the government or sovereign de jure is not transferred thereby to the occupier, as we have held in the cases of Co Kim Cham vs. Valdez Tan Keh and Dizon (75 Phil., 113) and of Peralta vs. Director of Prisons (75 Phil., 285), and if it is not transferred to the occupant it must necessarily remain vested in the legitimate government; that the sovereignty vested in the titular government (which is the supreme power which governs a body politic or society which constitute the state) must be distinguished from the exercise of the rights inherent thereto, and may be destroyed, or severed and transferred to another, but it cannot be suspended because the existence of sovereignty cannot be suspended without putting it out of existence or divesting the possessor thereof at least during the so-called period of suspension; that what may be suspended is the exercise of the rights of sovereignty with the control and government of the territory occupied by the enemy passes temporarily to the occupant; that the subsistence of the sovereignty of the legitimate government in a territory occupied by the military forces of the enemy during the war, 'although the former is in fact prevented from exercising the supremacy over them' is one of the 'rules of international law of our times'; (II Oppenheim, 6th Lauterpacht ed., 1944, p. 482), recognized, by necessary implication, in articles 23, 44, 45, and 52 of Hague Regulation; and that, as a corollary of the conclusion that the sovereignty itself is not suspended and subsists during the enemy occupation, the allegiance of the inhabitants to their legitimate government or sovereign subsists, and therefore there is no such thing as suspended allegiance, the basic theory on which the whole fabric of the petitioner's contention rests;

"Considering that the conclusion that the sovereignty of the United States was suspended in Castine, set forth in the decision in the case of United States vs. Rice, 4 Wheaton, 246, 253, decided in 1819, and quoted in our decision in the cases of Co Kim Cham vs. Valdez Tan Keh and Dizon and Peralta vs. Director of Prisons, supra, in connection with the question, not of sovereignty, but of the existence of a government de facto therein and its power to promulgate rules and laws in the occupied territory, must have been based, either on the theory adopted subsequently in the Hague Convention of 1907, that the military occupation of an enemy territory does not transfer the sovereignty, or on the old theory that such occupation transfers the sovereignty to

the occupant; that, in the first case, the word 'sovereignty' used therein should be construed to mean the exercise of the rights of sovereignty, because as this remains vested in the legitimate government and is not transferred to the occupier, it cannot be suspended without putting it out of existence or divesting said government thereof; and that in the second case, that is, if the said conclusion or doctrine, refers to the suspension of the sovereignty itself, it has become obsolete after the adoption of the Hague Regulations in 1907, and therefore it can not be applied to the present case;

"Considering that even adopting the words 'temporary allegiance,' repudiated by Oppenheim and other publicists, as descriptive of the relations borne by the inhabitants of the territory occupied by the enemy toward the military government established over them, such allegiance may, at most, be considered similar to the temporary allegiance which a foreigner owes to the government or sovereign of the territory wherein he resides in return for the protection he receives as above described, and does not do away with the absolute and permanent allegiance which the citizen residing in a foreign country owes to his own government or sovereign; that just as a citizen or subject of a government or sovereign may be prosecuted for and convicted of treason committed in a foreign country, in the same way an inhabitant of a territory occupied by the military forces of the enemy may commit treason against his own legitimate government or sovereign if he adheres to the enemies of the latter by giving them aid and comfort; and that if the allegiance of a citizen or subject to his government or sovereign is nothing more than obedience to its laws in return for the protection he receives, it would necessarily follow that a citizen who resides in a foreign country or state would, on one hand, ipso facto acquire the citizenship thereof since he has to obey, with certain exceptions, the laws of that country which enforce public order and regulate the social and commercial life, in return for the protection he receives, and would, on the other hand, lose his original citizenship, because he would not be bound to obey most of the laws of his own government or sovereign, and would not receive, while in a foreign country, the protection he is entitled to in his own;

"Considering that, as a corollary of the suspension of the exercise of the rights of sovereignty by the legitimate government in the territory occupied by the enemy military forces, because the authority of the legitimate power to govern has passed into the hands of the occupant (Article 43, Hague Regulations), the political laws which prescribe the reciprocal rights, duties and obligation of government and citizens, are suspended or in abeyance during military occupation (*Co Kim Cham vs. Valdez Tan Keh and Dizon*, supra), for the only reason that as they exclusively bear relation to the ousted legitimate government, they are inoperative or not applicable to the government established by the occupant; that the crimes against national security, such as treason and espionage, inciting to war, correspondence with hostile country, flight to enemy's country, as well as those against public order, such as rebellion, sedition, and disloyalty, illegal possession of firearms, which are of political complexion because they bear relation to, and are penalized by our Revised Penal Code as crimes against the legitimate government, are also suspended or become inapplicable as against the occupant, because they can not be committed against the latter (*Peralta vs. Director of Prisons*, supra); and that, while the offenses against public order to be preserved by the legitimate government were inapplicable as offenses against the invader for the reason above stated, unless adopted by him, were also inoperative as against the ousted government for the latter was not responsible for the preservation of the public order in the occupied territory, yet article 114 of the said Revised Penal Code, was applicable to treason committed against the national security of the legitimate government, because the inhabitants of the occupied territory were still bound by their allegiance to the latter during" the enemy occupation;

"Considering that, although the military occupant is enjoined to respect or continue in force, unless absolutely prevented by the circumstances, those laws that enforce public order and regulate the social and commercial life of the country, he has, nevertheless, all the powers of a de facto government and may, at his pleasure, either change the existing laws or make new ones when the exigencies of the military service demand such action, that is, when it is necessary for the occupier to do so for the control of the country and the protection of his army, subject to the restrictions or limitations imposed by the Hague Regulations, the usages established by civilized nations, the laws of humanity and the requirements of public conscience (*Peralta vs. Director of*

Prisons, *supra*; 1940 United States Rules of Land Warfare 76, 77); and that, consequently, all acts of the military occupant dictated within these limitations are obligatory upon the inhabitants of the territory, who are bound to obey them, and the laws of the legitimate government which have not been adopted, as well and those which, though continued in force, are in conflict with such laws and orders of the occupier, shall be considered as suspended or not in force and binding upon said inhabitants;

"Considering that, since the preservation of the allegiance or the obligation of fidelity and obedience of a citizen or subject to his government or sovereign does not demand from him a positive action, but only passive attitude or forbearance from adhering to the enemy by giving the latter aid and comfort, the occupant has no power, as a corollary of the preceding consideration, to repeal or suspend the operation of the law of treason, essential for the preservation of the allegiance owed by the inhabitants to their legitimate government, or compel them to adhere and give aid and comfort to him; because it is evident that such action is not demanded by the exigencies of the military service or not necessary for the control of the inhabitants and the safety and protection of his army, and because it is tantamount to practically transfer temporarily to the occupant their allegiance to the titular government or sovereign; and that, therefore, if an inhabitant of the occupied territory were compelled illegally by the military occupant, through force, threat or intimidation, to give him aid and comfort, the former may lawfully resist and die if necessary as a hero, or submit thereto without becoming a traitor;

"Considering that adoption of the petitioner's theory of suspended allegiance would lead to disastrous consequences for small and weak nations or states, and would be repugnant to the laws of humanity and requirements of public conscience, for it would allow invaders to legally recruit or enlist the Quisling inhabitants of the occupied territory to fight against their own government without the latter incurring the risk of being prosecuted for treason, and even compel those who are not to aid them in their military operation against the resisting enemy forces in order to completely subdue and conquer the whole nation, and thus deprive them all of their own independence or sovereignty—such theory would sanction the action of invaders in forcing the people of a free and sovereign country to be a party in the nefarious task of depriving themselves of their own freedom and independence and repressing the exercise by them of their own sovereignty; in other words, to commit a political suicide;

"(2) Considering that the crime of treason against the government of the Philippines defined and penalized in article 114 of the Penal Code, though originally intended to be a crime against said government as then organized by authority of the sovereign people of the United States, exercised through their authorized representative, the Congress and the President of the United States, was made, upon the establishment of the Commonwealth Government in 1935, a crime against the Government of the Philippines established by authority of the people of the Philippines, in whom the sovereignty resides according to section 1, Article II, of the Constitution of the Philippines, by virtue of the provision of section 2, Article XVI thereof, which provides that 'All laws of the Philippine Islands * * * shall remain operative, unless inconsistent with this Constitution * * * and all references in such laws to the Government or officials of the Philippine Islands, shall be construed, in so far as applicable, to refer to the Government and corresponding officials under this Constitution;'

"Considering that the Commonwealth of the Philippines was a sovereign government, though not absolute but subject to certain limitations imposed in the Independence Act and incorporated as Ordinance appended to our Constitution, was recognized not only by the Legislative Department or Congress of the United States in approving the Independence Law above quoted and the Constitution of the Philippines, which contains the declaration that 'Sovereignty resides in the people and all government authority emanates from them' (section 1, Article II), but also by the Executive Department of the United States; that the late President Roosevelt in one of his messages to Congress said, among others, 'As I stated on August 12, 1943, the United States in practice regards the Philippines as having now the status as a government of other independent nations—in fact all the attributes of complete and respected nationhood' (Congressional Record, Vol. 29, part 6, page 8173); and that it is a principle upheld by the Supreme Court of the United States in many cases, among them in the

case of *Jones vs. United States* (137 U. S., 202; 34 Law. ed., 691, 696) that the question of sovereignty is 'a purely political question, the determination of which by the legislative and executive departments of any government conclusively binds the judges, as well as all other officers, citizens and subjects of the country.'

"Considering that section I (1) of the Ordinance appended to the Constitution which provides that pending the final and complete withdrawal of the sovereignty of the United States 'All citizens of the Philippines shall owe allegiance to the United States', was one of the few limitations of the sovereignty of the Filipino people retained by the United States, but these limitations do not do away or are not inconsistent with said sovereignty, in the same way that the people of each State of the Union preserves its own sovereignty although limited by that of the United States conferred upon the latter by the States; that just as to reason may be committed against the Federal as well as against the State Government, in the same way treason may have been committed during the Japanese occupation against the sovereignty of the United States as well as against the sovereignty of the Philippine Commonwealth; and that the change of our form of government from Commonwealth to Republic does not affect the prosecution of those charged with the crime of treason committed during the Commonwealth, because it is an offense against the same government and the same sovereign people, for Article XVIII of our Constitution provides that 'The government established by this Constitution shall be known as the Commonwealth of the Philippines. Upon the final and complete withdrawal of the sovereignty of the United States and the proclamation of Philippine independence, the Commonwealth of the Philippines shall thenceforth be known as the Republic of the Philippines';

"This Court resolves, without prejudice to write later on a more extended opinion, to deny the petitioner's petition, as it is hereby denied, for the reasons above set forth and for others to be stated in the said opinion, without prejudice to concurring opinion therein, if any. Messrs. Justices Paras and Hontiveros dissent in a separate opinion. Mr. Justice Perfecto concurs in a separate opinion."

CONCURRING

PERFECTO, J.:

Treason is a war crime. It is not an all-time offense. It cannot be committed in peace time. While there is peace, there are no traitors. Treason may be incubated when peace reigns. Treasonable acts may actually be perpetrated during peace, but there are no traitors until war has started.

As treason is basically a war crime, it is punished by the state as a measure of self-defense and self-preservation. The law of treason is an emergency measure. It remains dormant until the emergency arises. But as soon as war starts, it is relentlessly put into effect. Any lukewarm attitude in its enforcement will only be consistent with national harakiri. All war efforts would be of no avail if they should be allowed to be sabotaged by fifth columnists, by citizens who have sold their country out to the enemy, or any other kind of traitors, and this would certainly be the case if the law cannot be enforced under the theory of suspension.

Petitioner's thesis that allegiance to our government was suspended during enemy occupation is advanced in support of the proposition that, since allegiance is identical with obedience to law, during the enemy occupation, the laws of the Commonwealth were suspended. Article 114 of the Revised Penal Code, the law punishing treason, under the theory, was one of the laws obedience to which was also suspended.

Allegiance has been defined as the obligation for fidelity and obedience which the individual owes to his government or his sovereign in return for the protection which he receives.

"'Allegiance,' as the term is generally used, means fealty or fidelity to the government of which the person is either a citizen or subject. *Murray vs. The Charming Betsy*, 6 U. S. (2 Cranch), 64, 120; 2 Law. ed., 208.

"'Allegiance' was said by Mr. Justice Story to be 'nothing more than the tie or duty of obedience of a subject to the sovereign, under whose protection he is.' United States vs. Wong Kim Ark, 18 S. Ct., 456, 461; 169 U. S., 649; 42 Law. ed., 890.

"Allegiance is that duty which is due from every citizen to the state, a political duty binding on him who enjoys the protection of the Commonwealth, to render service and fealty to the federal government. It is that duty which is reciprocal to the right of protection, arising from the political relations between the government and the citizen. Wallace vs. Harmstad, 44 Pa. (8 Wright), 492, 501.

"By 'allegiance' is meant the obligation to fidelity and obedience which the individual owes to the government under which he lives, or to his sovereign, in return for the protection which he receives. It may be an absolute and permanent obligation, or it may be a qualified and temporary one. A citizen or subject owes an absolute and permanent allegiance to his government or sovereign, or at least until, by some open and distinct act, he renounces it and becomes a citizen or subject of another government or sovereign, and an alien while domiciled in a country owes it a temporary allegiance, which is continuous during his residence. Carlisle vs. United States, 83 U. S. (16 Wall.), 147, 154; 21 Law ed., 426.

"'Allegiance,' as defined by Blackstone, 'is the tie or ligament which binds the subject to the King, in return for that protection which the King affords the subject. Allegiance, both expressed and implied, is of two sorts, the one natural, the other local, the former being perpetual, the latter temporary. Natural allegiance is such as is due from all men born within the King's dominions immediately upon their birth, for immediately upon their birth they are under the King's protection. Natural allegiance is perpetual, and for this reason, evidently founded on the nature of government. Allegiance is a debt due from the subject upon an implied contract with the prince that so long as the one affords protection the other will demean himself faithfully. Natural-born subjects have a great variety of rights which they acquire by being born within the King's liegance, which can never be forfeited but by their own misbehaviour; but the rights of aliens are much more circumscribed, being acquired only by residence, and lost whenever they remove. If an alien could acquire a permanent property in lands, he must owe an allegiance equally permanent to the King, which would probably be inconsistent with that which he owes his natural liege lord; besides, that thereby the nation might, in time, be subject to foreign influence and feel many other inconveniences.' Indians within the state are not aliens, but citizens owing allegiance to the government of a state, for they receive protection from the government and are subject to its laws. They are born in allegiance to the government of the state. Jackson vs. Goodell, 20 Johns., 188, 911." (3 Words and Phrases, Permanent ed., pp. 226-227.)

"Allegiance.—Fealty or fidelity to the government of which the person is either a citizen or subject; the duty which is due from every citizen to the state; a political duty, binding on him who enjoys the protection of the commonwealth, to render service and fealty to the federal government; the obligation of fidelity and obedience which the individual owes to the government or to the sovereign under which he lives in return for the protection he receives; that duty which is reciprocal to the right of protection, arising from the political relations between the government and the citizen.

"Classification.—Allegiance is of four kinds, namely: (1) Natural allegiance—that which arises by nature and birth; (2) acquired allegiance—that arising through some circumstance or act other than birth, namely, by denization or naturalization; (3) local allegiance—that arising from residence simply within the country, for however short a time; and (4) legal allegiance—that arising from oath, taken usually at the town or leet, for, by the common law, the oath of allegiance might be tendered to every one upon attaining the age of twelve years." (3 C. J. S., p. 885.)

"Allegiance.—The obligation of fidelity and obedience which the individual owes to the government under which he lives, or to his sovereign in return for the protection he receives. 15 R. C. L., 140." (Ballentine, Law Dictionary, p. 68.)

"'Allegiance,' as its etymology indicates, is the name for the tie which binds the citizen to his state—the

obligation of obedience and support which he owes to it. The state is the political person to whom this liege fealty is due. Its substance is the aggregate of persons owing this allegiance. The machinery through which it operates is its government. The persons who operate this machinery constitute its magistracy. The rules of conduct which the state utters or enforces are its law, and manifest its will. This will, viewed as legally supreme, is its sovereignty." (W. W. Willoughby, *Citizenship and Allegiance in Constitutional and International Law*, 1 *American Journal of International Law*, p. 915.)

"The obligations flowing from the relation of a state and its nationals are reciprocal in character. This principle had been aptly stated by the Supreme Court of the United States in its opinion in the case of *Luria vs. United States*:

"Citizenship is membership in a political society and implies a duty of allegiance on the part of the member and a duty of protection on the part of the society. These are reciprocal obligations, one being a compensation for the other." (3 Hackworth, *Digest of International Law*, 1942 ed., p. 6.)

"Allegiance.—The tie which binds the citizen to the government, in return for the protection which the government affords him. The duty which the subject owes to the sovereign, correlative with the protection received.

"It is a comparatively modern corruption of ligeance (ligeantia), which is derived from liege (ligius), meaning absolute or unqualified. It signified originally liege fealty, i. e., absolute and unqualified fealty. 18 L. Q. Rev., 47.

* * * * *

"Allegiance may be an absolute and permanent obligation, or it may be a qualified and temporary one; the citizen or subject owes the former to his government or sovereign, until by some act he distinctly renounces it, whilst the alien domiciled in the country owes a temporary and local allegiance continuing during such residence. (*Carlisle vs. United States*, 16 Wall. [U. S.], 154; 21 Law. ed., 426." (1 *Bouvier's Law Dictionary*, p. 179.)

The above quotations express ideas that do not fit exactly into the Philippine pattern in view of the revolutionary insertion in our Constitution of the fundamental principle that "sovereignty resides in the people and all government authority emanates from them." (Section 1, Article II.) The authorities above quoted, judges and juridical publicists define allegiance with the idea that sovereignty resides somewhere else, on symbols or subjects other than the people themselves. Although it is possible that they had already discovered that the people and only the people are the true sovereign, their minds were not yet free from the shackles of the tradition that the powers of sovereignty have been exercised by princes and monarchs, by sultans and emperors, by absolute and tyrannical rules whose ideology was best expressed in the famous words of one of the kings of France: "L'etat c'est moi," or such other persons or group of persons posing as the government, as an entity different and in opposition to the people themselves. Although democracy has been known ever since old Greece, and modern democracies function on the assumption that sovereignty resides in the people, nowhere is such principle more imperative than in the pronouncement embodied in the fundamental law of our people.

To those who think that sovereignty is an attribute of government, and not of the people, there may be some plausibility in the proposition that sovereignty was suspended during the enemy occupation, with the consequence that allegiance must also have been suspended, because our government stopped to function in the country. But the idea cannot have any place under our Constitution. If sovereignty is an essential attribute of our people, according to the basic philosophy of Philippine democracy, it could not have been suspended during the enemy occupation. Sovereignty is the very life of our people, and there is no such thing as "suspended life." There is no possible middle situation between life and death. Sovereignty is the very essence of the personality and existence

of our people. Can anyone imagine the possibility of "suspended personality" or "suspended existence" of a people? In no time during enemy occupation have the Filipino people ceased to be what they are.

The idea of suspended sovereignty or suspended allegiance is incompatible with our Constitution.

There is similarity in characteristics between allegiance to the sovereign and a wife's loyalty to her husband. Because some external and insurmountable force precludes the husband from exercising his marital powers, functions, and duties, and the wife is thereby deprived of the benefits of his protection, may the wife invoke the theory of suspended loyalty and may she freely share her bed with the assailant of their home? After giving aid and comfort to the assailant and allowing him to enjoy her charms during the former's stay in the invaded home, may the wife allege as defense for her adultery the principle of suspended conjugal fidelity?

Petitioner's thesis on change of sovereignty at the advent of independence on July 4, 1946, is unacceptable. We have already decided in *Brodett vs. De la Rosa and Vda. de Escaler* (p. 752, ante) that the Constitution of the Republic is the same as that of the Commonwealth. The advent of independence had the effect of changing the name of our Government and the withdrawal by the United States of her power to exercise functions of sovereignty in the Philippines. Such facts did not change the sovereignty of the Filipino people. That sovereignty, following our constitutional philosophy, has existed ever since our people began to exist. It has been recognized by the United States of America, at least since 1935, when President Roosevelt approved our Constitution. By such act, President Roosevelt, as spokesman of the American people, accepted and recognized the principle that sovereignty resides in the people that is, that Philippine sovereignty resides in the Filipino people.

The same sovereignty had been internationally recognized long before the proclamation of independence on July 4, 1946. Since the early part of the Pacific war, President Quezon had been sitting as representative of a sovereign people in the Allied War Council, and in June, 1945, the same Filipino people took part—outstanding and brilliant, it may be added—in the drafting and adoption of the charter of the United Nations, the unmistakable forerunner of the future democratic federal constitution of the world government envisioned by all those who adhere to the principle of unity of all mankind, the early realization of which is anxiously desired by all who want to be spared the sufferings, misery and disaster of another war.

Under our Constitution, the power to suspend laws is of legislative nature and is lodged in Congress. Sometimes it is delegated to the Chief Executive, such as the power granted by the Election Code to the President to suspend the election in certain districts and areas for strong reasons, such as when there is rebellion, or a public calamity, but it has never been exercised by tribunals. The Supreme Court has the power to declare null and void all laws violative of the Constitution, but it has no power, authority, or jurisdiction to suspend or declare suspended any valid law, such as the one on treason which petitioner wants to be included among the laws of the Commonwealth which, by his theory of suspended allegiance and suspended sovereignty, he claims have been suspended during the Japanese occupation.

Suppose President Quezon and his government, instead of going from Corregidor to Australia, and later to Washington, had fled to the mountains of Luzon, and a group of Filipino renegades should have killed them to serve the interests of the Japanese imperial forces. By petitioner's theory, those renegades cannot be prosecuted for treason or for rebellion or sedition, as the laws punishing them were suspended. Such absurd result betrays the untenability of the theory.

"The defense of the State is a prime duty of Government, and in the fulfillment of that duty all citizens may be required by law to render personal, military or civil service." Thus, section 2 of Article II of the Constitution provides: That duty of defense becomes more imperative in time of war and when the country is invaded by an aggressor nation. How can it be fulfilled if the allegiance of the citizens to the sovereign people is suspended

during enemy occupation? The framers of the Constitution surely did not entertain even for a moment the absurdity that when the allegiance of the citizens to the sovereign people is more needed in the defense of the survival of the state, the same should be suspended, and that upon such suspension those who may be required to render personal, military or civil service may claim exemption from the indispensable duty of serving their country in distress.

Petitioner advances the theory that protection is the consideration of allegiance. He argues that the Commonwealth Government having been incapacitated during enemy occupation to protect the citizens, the latter were relieved of their allegiance to said government. The proposition is untenable. Allegiance to the sovereign is an indispensable bond for the existence of society. If that bond is dissolved, society has to disintegrate. Whether or not the existence of the latter is the result of the social compact mentioned by Roseau, there can be no question that organized society would be dissolved if it is not united by the cohesive power of the citizen's allegiance. Of course, the citizens are entitled to the protection of their government, but whether or not that government fulfills that duty, is immaterial to the need of maintaining the loyalty and fidelity of allegiance, in the same way that the physical forces of attraction should be kept unhampered if the life of an individual should continue, irrespective of the ability or inability of his mind to choose the most effective measures of personal protection.

After declaring that all legislative, executive, and judicial processes had during and under the Japanese regime, whether executed by the Japanese themselves or by Filipino officers of the puppet government they had set up, are null and void, as we have done in our opinions in *Co Kim Cham vs. Valdez Tan Keh and Dizon* (75 Phil., 113), in *Peralta vs. Director of Prison* (75, Phil., 285), and in several other cases where the same question has been mentioned, we cannot consistently accept petitioner's theory.

If all laws or legislative acts of the enemy during the occupation were null and void, and as we cannot imagine the existence of organized society, such as the one constituted by the Filipino people, without laws governing it, necessarily we have to conclude that the laws of the Commonwealth were the ones in effect during the occupation and the only ones that could claim obedience from our citizens.

Petitioner would want us to accept the thesis that during the occupation we owed allegiance to the enemy. To give way to that paradoxical and disconcerting allegiance, it is suggested that we accept that our allegiance to our legitimate government was suspended. Petitioner's proposition has to fall by its own weight, because of its glaring absurdities. Allegiance, like its synonyms, loyalty and fidelity, is based on feelings of attraction, love, sympathy, admiration, respect, veneration, gratitude, amity, understanding, friendliness. These are the feelings or some of the feelings that bind us to our own people, and are the natural roots of the duty of allegiance we owe them. The enemy only provokes repelling and repulsive feelings—hate, anger, vexation, chagrin, mortification, resentment, contempt, spitefulness. The natural incompatibility of political, social and ethical ideologies, between our people and the Japanese, making impossible the existence of any feeling of attraction between them, aside from the initial fact that the Japanese invaded our country as our enemy, was aggravated by the morbid complexities of haughtiness, braggadocio and beastly brutality of the Nippon soldiers and officers in their dealings with even the most inoffensive of our citizens.

Giving bread to our enemy, and, after slapping one side of our face, offer him the other to be further slapped, may appear to be divinely charitable, but to make them a reality, it is necessary to change human nature. Political actions, legal rules, and judicial decisions deal with human relations, taking man as he is, not as he should be. To love the enemy is not natural. As long as human psychology remains as it is, the enemy shall always be hated. Is it possible to conceive an allegiance based on hatred?

The Japanese, having waged against us an illegal war condemned by prevailing principles of international law,

could not have established in our country any government that can be legally recognized as de facto. They came as bandits and ruffians, and it is inconceivable that banditry and ruffianism can claim any duty of allegiance—even a temporary one—from a decent people.

One of the implications of petitioner's theory, as intimated somewhere, is that the citizens, in case of invasion, are free to do anything not forbidden by the Hague Conventions. Anybody will notice immediately that the result will be the doom of small nations and peoples, by whetting the covetousness of strong powers prone on imperialistic practices. In the imminence of invasion, weak-hearted soldiers of the smaller nations will readily throw away their arms to rally behind the paladium of the invaders.

Two of the three great departments of our Government have already rejected petitioner's theory since September 25, 1945, the day when Commonwealth Act No. 682 took effect. By said act, creating the People's Court to try and decide all cases of crime against national security "committed between December 8, 1941 and September 2, 1945," (section 2), the legislative and executive departments have jointly declared that during the period above mentioned, including the time of Japanese occupation, all laws punishing crimes against national security, including article 114 of the Revised Penal Code, punishing treason, had remained in full effect and should be enforced.

That no one raised a voice in protest against the enactment of said act and that no one, at the time the act was being considered by the Senate and the House of Representatives, ever dared to expose the uselessness of creating a People's Court to try crimes which, as claimed by petitioner, could not have been committed as the laws punishing them have been suspended, is a historical fact of which the Supreme Court may take judicial notice. This fact shows universal and unanimous agreement of our people that the laws of the Commonwealth were not suspended and that the theory of suspended allegiance is just an afterthought provoked by a desperate effort to help quash the pending treason cases at any cost.

Among the arguments adduced in favor of petitioner's theory is that it is based on generally accepted principles of international law, although this argument becomes futile by petitioner's admission that the theory is advantageous to strong powers but harmful to small and weak nations, thus hinting that the latter cannot accept it by heart. Suppose we accept at face value the premise that the theories, urged by petitioner, of suspended allegiance and suspended sovereignty are based on generally accepted principles of international law. As the latter forms part of our laws by virtue of the provisions of section 3 of Article II of the Constitution, it seems that there is no alternative but to accept the theory. But the theory has the effect of suspending the laws, especially those political in nature. There is no law more political in nature than the Constitution of the Philippines. The result is an inverted reproduction of the Greek myth of Saturn devouring his own children. Here, under petitioner's theory, the offspring devours its parent.

Can we conceive of an instance in which the Constitution was suspended even for a moment?

There is conclusive evidence that the legislature, as policy-determining agency of government, even since the Pacific war started on December 7, 1941, intimated that it would not accept the idea that our laws should be suspended during enemy occupation. It must be remembered that in the middle of December, 1941, when Manila and other parts of the archipelago were under constant bombing by Japanese aircraft and enemy forces had already set foot somewhere in the Philippines, the Second National Assembly passed Commonwealth Act No. 671, which came into effect on December 16, 1941. When we approved said act, we started from the premise that all our laws shall continue in effect during the emergency, and in said act we even went to the extent of authorizing the President "to continue in force laws and appropriations which would lapse or otherwise become inoperative," (section 2, [d]), and also to "promulgate such rules and regulations as he may deem necessary to

carry out the national policy," (section 2), that "the existence of war between the United States and other countries of Europe and Asia, which involves the Philippines, makes it necessary to invest the President with extraordinary powers in order to meet the resulting emergency." (Section 1.) To give more emphasis to the intimation, we provided that the rules and regulations provided "shall be in force and effect until the Congress of the Philippines shall otherwise provide," foreseeing the possibility that Congress may not meet as scheduled as a result of the emergency, including invasion and occupation by the enemy. Everybody was then convinced that we did not have available the necessary means of repelling effectively the enemy invasion.

Maybe it is not out of place to consider that the acceptance of petitioner's theory of suspended allegiance will cause a great injustice to those who, although innocent, are now under indictment for treason and other crimes involving disloyalty to their country, because their cases will be dismissed without the opportunity for them to revindicate themselves. Having been acquitted upon a mere legal technicality which appears to us to be wrong, history will indiscriminately classify them with the other accused who were really traitors to their country. Our conscience revolts against the idea of allowing the innocent ones to go down in the memory of future generations with the infamous stigma of having betrayed their own people. They should not be deprived of the opportunity to show through the due process of law that they are free from all blame and that, if they were really patriots, they acted as such during the critical period of test.

CONCURRING

HILADO, J.:

I concur in the result reached in the majority opinion to the effect that during the so-called Japanese occupation of the Philippines (which was nothing more than the occupation of Manila and certain other specific regions of the Islands which constituted the minor area of the Archipelago) the allegiance of the citizens of this country to their legitimate government and to the United States was not suspended, as well as the ruling that during the same period there was no change of sovereignty here; but my reasons are different and I proceed to set them forth:

I. SUSPENDED ALLEGIANCE

(a) Before the horror and atrocities of World War I, which were multiplied more than a hundred-fold in World War II, the nations had evolved certain rules and principles which came to be known as International Law, governing their conduct with each other and toward their respective citizens and inhabitants, in the armed forces or in civilian life, in time of peace or in time of war. During the ages which preceded that first world conflict the civilized governments had no realization of the potential excesses of which "men's inhumanity to man" could be capable. Up to that time war was, at least under certain conditions, considered as sufficiently justified, and the nations had not on that account, proscribed nor renounced it as an instrument of national policy, or as a means of settling international disputes. It is not for us now to dwell upon the reasons accounting for this historical fact. Suffice it to recognize its existence in history.

But when in World War I civilized humanity saw that war could be, as it actually was, employed for entirely different reasons and from entirely different motives, compared to previous wars, and the instruments and methods of warfare had been so materially changed as not only to involve the contending armed forces on well defined battlefields or areas, on land, in the sea, and in the air, but to spread death and destruction to the innocent civilian populations and to their properties, not only in the countries engaged in the conflict but also in neutral ones, no less than 61 civilized nations and governments, among them Japan, had to formulate and solemnly subscribe to the now famous Briand-Kellogg Pact in the year 1928. As said by Justice Jackson of the United

States Supreme Court, as chief counsel for the United States in the prosecution of "Axis war criminals," in his report to President Truman of June 7, 1945:

"International law is not capable of development by legislation, for there is no continuously sitting international legislature. Innovations and revisions in international law are brought about by the action of governments designed to meet a change in circumstances. It grows, as did the common law, through decisions reached from time to time in adopting settled principles to new situations.

* * * * *

"After the shock to civilization of the war of 1914-1918, however, a marked reversion to the earlier and sounder doctrines of international law took place. By the time the Nazis came to power it was thoroughly established that launching; an aggressive war or the institution of war by treachery was illegal and that the defense of legitimate warfare was no longer available to those who engaged in such an enterprise. It is high time that we act on the juridical principle that aggressive war-making is illegal and criminal.

"The re-establishment of the principle of justifiable war is traceable in many steps. One of the most significant is the Briand-Kellogg Pact of 1928 by which Germany, Italy, and Japan, in common with the United States and practically all the nations of the world, renounced war as an instrument of national policy, bound themselves to seek the settlement of disputes only by pacific means, and condemned recourse to war for the solution of international controversies.

"Unless this Pact altered the legal status of wars of aggression, it has no meaning at all and comes close to being an act of deception. In 1932 Mr. Henry L. Stimson, as United States Secretary of State, gave voice to the American concept of its effect. He said, 'war between nations was renounced by the signatories of the Briand-Kellogg Treaty. This means that it has become illegal throughout practically the entire world. It is no longer to be the source and subject of rights. It is no longer to be the principle around which the duties, the conduct, and the rights of nations revolve. It is an illegal thing * * *. By that very act we have made obsolete many legal precedents and have given the legal profession the task of re-examining many of its Codes and treaties.'

"This Pact constitutes only one reversal of the viewpoint that all war is legal and has brought international law into harmony with the common sense of mankind—that unjustifiable war is a crime.

"Without attempting an exhaustive catalogue, we may mention the Geneva Protocol of 1924 for the Pacific Settlement of International Disputes, signed by the representatives of forty-eight governments, which declared that 'a war of aggression constitutes * * * an international crime.'

"The Eighth Assembly of the League of Nations in 1927, on unanimous resolution of the representatives of forty-eight member-nations, including Germany, declared that a war of aggression constitutes an international crime. At the Sixth Pan-American Conference of 1928, the twenty-one American Republics unanimously adopted a resolution stating that 'war of aggression constitutes an international crime against the human species.'

* * * * *

"We therefore propose to charge that a war of aggression is a crime, and that modern international law has abolished the defense that those who incite or wage it are engaged in legitimate business. Thus may the forces of the law be mobilized on the side of peace." ("U. S. A.—An American Review," published by the United States Office of War Information, Vol. 2, No. 10; italics supplied.)

When Justice Jackson speaks of "a marked reversion to the earlier and sounder doctrines of international law" and "the re-establishment of the principle of justifiable war," he has in mind no other than "the doctrine taught by Grotius, the father of international law, that there is a distinction between the just and the unjust war—the war of

defense and the war of aggression" to which he alludes in an earlier paragraph of the same report.

In the paragraph of said report immediately preceding the one last above mentioned Justice Jackson says that "international law as taught in the 19th and the early part of the 20th century generally declared that war-making was not illegal and no crime at law." But, as he says in one of the paragraphs hereinabove quoted from that report, the Briand-Kellogg Pact constitutes a reversal of the viewpoint that all war is legal and has brought international law into harmony with the common sense of mankind—that unjustifiable war is a crime. Then he mentions as other reversals of the same viewpoint, the Geneva Protocol of 1924 for the Pacific Settlement of International Disputes, declaring that a war of aggression constitutes an international crime; the 8th assembly of the League of Nations in 1927, declaring that a war of aggression constitutes an international crime; and the 6th Pan-American Conference of 1928, which unanimously adopted a resolution stating that war of aggression constitutes an international crime against the human species: which enumeration, he says, is not an attempt at an exhaustive catalogue.

It is not disputed that the war started by Japan in the Pacific, first, against the United States', and later, in rapid succession, against other allied nations, was a war of aggression and utterly unjustifiable. More aggressive still, and more unjustifiable, as admitted on all sides, was its attack against the Philippines- and its consequent invasion and occupation of certain areas thereof.

Some of the rules and principles of international law which have been cited for petitioner herein in support of his theory of suspended allegiance, have been evolved and accepted during those periods of the history of nations when all war was considered legal, as stated by Justice Jackson, and the others have reference to military occupation in the course of really justifiable war.

Japan in subscribing the Briand-Kellogg Pact thirteen years before she started the aggressive war which threw the entire Pacific area into a seething cauldron from the last month of 1941 to the first week of September, 1945, expressly agreed to outlaw, proscribe and renounce war as an instrument of national policy, and bound herself to seek the settlement of her disputes with other nations only by pacific means. Thus she expressly gave her consent to that modification of the then existing rules and principles of international law governing the matter. With that modification, all the signatories to the pact necessarily accepted and bound themselves to abide by all its implications, among them the outlawing, proscription and renunciation of military occupation of another nation's territory in the course of a war thus outlawed, proscribed and renounced. This is only one way of saying that the rules and principles of international law therefore existing on the subject of military occupation were automatically abrogated and rendered ineffective in all future cases of war coming under the ban and condemnation of the pact.

If an unjustifiable war is a crime; if a war of aggression constitutes an international crime; if such a war is an international crime against the human species: a nation which occupies a foreign territory in the course of such a war cannot possibly, under any principle of natural or positive law, acquire or possess any legitimate power or right growing out or incident to such occupation. Concretely, Japan in criminally invading the Philippines and occupying certain portions¹ of its territory during the Pacific war, could not have nor exercise, in the legal sense—and only in this sense should we speak here—with respect to this country and its citizens, any more than could a burglar breaking through a man's house pretends to have or to exercise any legal power or right within that house with respect either to the person of the owner or to his property. To recognize in the first instance any legal power or right on the part of the invader, and in the second any legal power or right on the part of the burglar, the same as in case of a military occupant in the course of a justifiable war, would be nothing short of legalizing the crime itself. It would be the most monstrous and unpardonable contradiction to prosecute, condemn and hang the appropriately called war criminals of Germany, Italy, and Japan, and at the same time recognize any lawfulness in their occupation of territories they have so barbarously and feloniously invaded. And let it not be

forgotten that the Philippines is a member of the United Nations who have instituted and conducted the so-called war crimes trials. Neither should we lose sight of the further fact that this government has a representative in the international commission currently trying the Japanese war criminals in Tokyo. These facts leave no room for doubt that this government is in entire accord with the other United Nations in considering the Pacific war started by Japan as a crime. Not only this, but this country had six years before the outbreak of the Pacific war already renounced war as an instrument of national policy (Constitution, Article II, section 2), thus in consequence adopting the doctrine of the Briand-Kellogg Pact.

Consequently, it is submitted that it would be absolutely wrong and improper for this Court to apply to the occupation by Japan of certain areas of the Philippines during that war the rules and principles of international law which might be applicable to a military occupation occurring in the course of a justifiable war. How can this Court recognize any lawfulness or validity in that occupation when our own government has sent a representative to said international commission in Tokyo trying the Japanese "war criminals" precisely for the "crimes against humanity and peace" committed by them during World War II of which said occupation was but part and parcel? In such circumstances how could such occupation produce no less an effect than the suspension of the allegiance of our people to their country and government?

(b) But even in the hypothesis—and not more than a mere hypothesis—that when Japan occupied the City of Manila and certain other areas of the Philippines she was engaged in a justifiable war, still the theory of suspended allegiance would not hold good. The continuance of the allegiance owed to a nation by its citizens is one of those high privileges of citizenship which the law of nations denies to the occupant the power to interfere with.

"* * * His (of occupant) rights are not, however, commensurate with his power. He is thus forbidden to take certain measures which he may be able to apply, and that irrespective of their efficacy. The restrictions imposed upon him are in theory designed to protect the individual in the enjoyment of some highly important privileges. These concern his allegiance to the de jure sovereign, his family honor and domestic relations, religious convictions, personal service, and connection with or residence in the occupied territory.

"The Hague Regulations declare that the occupant is forbidden to compel the inhabitants to swear allegiance to the hostile power. * * *" (III Hyde, International Law, 2d revised ed., pp. 1898-1899.)

"* * * Nor may he (occupant) compel them (inhabitants) to take an oath of allegiance. Since the authority of the occupant is not sovereignty, the inhabitants owe no temporary allegiance to him. * * *" (II Oppenheim, International Law, pp. 341-344.)

The occupant's lack of authority to exact an oath of allegiance from the inhabitants of the occupied territory is but a corollary of the continuance of their allegiance to their own lawful sovereign. This allegiance does not consist merely in obedience to the laws of the lawful sovereign, but more essentially consists in loyalty or fealty to him. In the same volume and pages of Oppenheim's work above cited, after the passage to the effect that the inhabitants of the occupied territory owe no temporary allegiance to the occupant it is said that "On the other hand, he may compel them to take an oath—sometimes called an 'oath of neutrality'—* * * willingly to submit to his 'legitimate commands.' Since, naturally, such "legitimate commands" include the occupant's laws, it follows that said occupant, where the rule is applicable, has the right to compel the inhabitants to take an oath of obedience to his laws; and since, according to the same rule, he cannot exact from the inhabitants an oath of allegiance, it follows that obedience to his laws, which he can exact from them, does not constitute allegiance.

(c) The theory of suspended allegiance is unpatriotic to the last degree. To say that when one's country is unable to afford him its protection, he ceases to be bound to it by the sacred ties of allegiance, is to advocate the doctrine that precisely when his country is in such distress, and therefore most needs his loyalty, he is absolved from that loyalty. Love of country should be something permanent and lasting, ending only in death; loyalty should be its

worthy offspring. The outward manifestation of one or the other may for a time be prevented or thwarted by the irresistible action of the occupant; but this should not in the least extinguish nor obliterate the invisible feelings, and promptings of the spirit. And beyond the unavoidable consequences of the enemy's irresistible pressure, those invisible feelings and promptings of the spirit of the people should never allow them to act, to speak, nor even to think a whit contrary to their love and loyalty to the Fatherland. For them, indicted, to face their country and say to it that, because when it was overrun and vanquished by the barbarous invader and, in consequence, was disabled from affording them protection, they were released from their sacred obligation of allegiance and loyalty, and could therefore freely adhere to its enemy, giving him aid and comfort, incurring no criminal responsibility therefor, would only tend to aggravate their crime.

II. CHANGE OF SOVEREIGNTY

Article II, section 1, of the Constitution provides that "Sovereignty resides in the people and all government authority emanates from them." The Filipino people are the self-same people before and after Philippine Independence, proclaimed on July 4, 1946. During the life of the Commonwealth sovereignty resided in them under the Constitution; after the proclamation of independence that sovereignty remained with them under the very same fundamental law. Article XVIII of the said Constitution stipulates that the government established thereby shall be known as the Commonwealth of the Philippines; and that upon the final and complete withdrawal of the sovereignty of the United States and the proclamation of Philippine independence, "The Commonwealth of the Philippines shall thenceforth be known as the Republic of the Philippines." Under this provision the Government of the Philippines immediately prior to independence was essentially to be the identical government thereafter—only the name of that government was to be changed.

Both before and after the adoption of the Philippine Constitution the people of the Philippines were and are always the plaintiff in all criminal prosecutions, the case being entitled: "The People of the Philippines vs. (the defendant or defendants)." This was already true in prosecutions under the Revised Penal Code containing the law of treason. "The Government of the Philippines" spoken of in article 114 of said Code merely represents the people of the Philippines. Said code was continued, along with the other laws, by Article XVI, section 2, of the Constitution, which constitutional provision further directs that "all references in such laws to the Government or officials of the Philippine Islands shall be construed, in so far as applicable, to refer to the Government and corresponding officials under this Constitution"—of course, meaning the Commonwealth of the Philippines before, and the Republic of the Philippines after, independence (Article XVIII). Under both governments sovereignty resided and resides in the people (Article II, section 1). Said sovereignty was never transferred from that people—they are the same people who preserve it to this day. There has never been any change in this respect.

If one committed treason against the people of the Philippines before July 4, 1946, he continues to be criminally liable for the crime to the same people now. And if, following the literal wording of the Revised Penal Code, as continued by the Constitution, that accused owed allegiance upon the commission of the crime to the "Government of the Philippines," in the textual words of the Constitution (Articles XVI, section 2, and XVIII) that was the same government which after independence became known as the "Republic of the Philippines." The most that can be said is that the sovereignty of the people became complete and absolute after independence—that they became, politically, fully of age, to use a metaphor. But if the responsibility for a crime against a minor is not extinguished by the mere fact of his becoming of age, why should the responsibility for the crime of treason committed against the Filipino people when they were not fully politically independent be extinguished after they acquire this status? The offended party continues to be the same—only his status has changed.

DISSENTING

PARAS, J.:

During the long period of Japanese occupation, all the political laws of the Philippines were suspended. This is in full harmony with the generally accepted principles of international law adopted by our Constitution (Article II, section 3) as a part of the law of the Nation. Accordingly, we have on more than one occasion already stated that "laws of a political nature or affecting political relations, * * * are considered as suspended or in abeyance during the military occupation" (Co Kim Cham vs. Valdez Tan Keh and Dizon, 75 Phil., 113, 124), and that the rule "that laws of political nature or affecting political relations are considered suspended or in abeyance during the military occupation, is intended for the governing of the civil inhabitants of the occupied territory." (Ruffy vs. Chief of Staff, Philippine Army, 75, Phil., 875,881.)

The principle is recognized by the United States of America, which admits that the occupant will naturally suspend all laws of a political nature and all laws which affect the welfare and safety of his command, such action to be made known to the inhabitants. (United States Rules of Land Warfare, 1940, Article 287.) As allegiance to the United States is an essential element in the crime of treason under article 114 of the Revised Penal Code, and in view of its position in our political structure prior to the independence of the Philippines, the rule as interpreted and practiced in the United States necessarily has a binding force and effect in the Philippines, to the exclusion of any other construction followed elsewhere, such as may be inferred, rightly or wrongly, from the isolated cases[1] brought to our attention, which, moreover, have entirely different factual bases.

Corresponding notice was given by the Japanese occupying army, first, in the proclamation of its Commander in chief of January 2, 1942, to the effect that as a "result of the Japanese Military operations, the sovereignty of the United States of America over the Philippines has completely disappeared and the Army hereby proclaims the Military Administration under martial law over the districts occupied by the Army;" secondly, in Order No. 3 of the said Commander in Chief of February 20, 1942, providing that "activities of the administrative organs and judicial courts in the Philippines shall be based upon the existing statutes, orders, ordinances and customs until further orders provided that they are not inconsistent with the present circumstances under the Japanese Military Administration;" and, thirdly, in the explanations to Order No. 3 reminding that "all laws and regulations of the Philippines have been suspended since Japanese occupation," and excepting the application of "laws and regulations which are not proper to act under the present situation of the Japanese Military Administration," especially those "provided with some political purposes."

The suspension of political laws during enemy occupation is logical, wise and humane. The latter phase outweighs all other aspects of the principle aimed more or less at promoting the necessarily selfish motives and purposes of a military occupant. It is thus consoling to note that the powers instrumental in the crystallization of the Hague Conventions of 1907 did not forget to declare that they were "animated by the desire to serve * * * the interests of humanity and the over progressive needs of civilization," and that "in cases not included in the Regulations adopted by them, the inhabitants and the belligerents remain under the protection and the rule of the principles of international law, as they result from the usages established among civilized peoples, from the laws of humanity, and the dictates of the public conscience." These saving statements come to the aid of the inhabitants in the occupied territory in a situation wherein, even before the belligerent occupant "takes a further step and by appropriate affirmative action undertakes to acquire the right of sovereignty for himself, * * * the occupant is likely to regard himself as clothed with freedom to endeavor to impregnate the people who inhabit the area concerned with his own political ideology, and to make that endeavor successful by various forms of pressure exerted upon enemy officials who are permitted to retain the exercise of normal governmental functions." (Hyde, International Law, Vol. III, Second Revised Edition, 1945, p. 1879.)

The inhabitants of the occupied territory should necessarily be bound to the sole authority of the invading power, whose interests and requirements are naturally in conflict with those of the displaced government, if it is legitimate for the military occupant to demand and enforce from the inhabitants such obedience as may be necessary for the security of his forces, for the maintenance of law and order, and for the proper administration of the country (United States Rules of Land Warfare, 1940, article 297), and to demand all kinds of services "of such a nature as not to involve the population in the obligation of taking part in military operations against their own country" (Hague Regulations, article 52); and if, as we have in effect said, by the surrender the inhabitants pass under a temporary allegiance to the government of the occupant and are bound by such laws, and such only, as it chooses to recognize and impose, and the belligerent occupant 'is totally independent of the constitution and the laws of the territory, since occupation is an aim of warfare, and the maintenance and safety of his forces, and the purpose of war, stand in the foreground of his interest and must be promoted under all circumstances or conditions." (Peralta vs. Director of Prisons, 75 Phil., 285, 295), citing United States vs. Rice, 4 Wheaton, 246, and quoting Oppenheim, International Law, Vol. II, Sixth Edition, Revised, 1944, p. 432.)

He would be a bigot who cannot or would refuse to see the cruel result if the people in an occupied territory were required to obey two antagonistic and opposite powers. To emphasize our point, we would adopt the argument, in a reverse order, of Mr. Justice Hilado in Peralta vs. Director of Prisons (75 Phil., 285, 358), contained in the following passage:

"To have bound those of our people who constituted the great majority who never submitted to the Japanese oppressors, by the laws, regulations, processes and other acts of those two puppet governments, would not only have been utterly unjust and downright illegal, but would have placed them in the absurd and impossible condition of being simultaneously submitted to two mutually hostile governments, with their respective constitutional and legislative enactments and institutions—on the one hand bound to continue owing allegiance to the United States and the Commonwealth Government, and, on the other, to owe allegiance, if only temporary, to Japan."

The only sensible purpose of the treason law—which is of political complexion and taken out of the territorial law and penalized as a new offense committed against the belligerent occupant, incident to a state of war and necessary for the control of the occupant (Alcantara vs. Director of Prisons, 75 Phil., 494),—must be the preservation of the nation, certainly not its destruction or extermination. And yet the latter is unwittingly wished by those who are fond of the theory that what is suspended is merely the exercise of sovereignty by the de jure government or the latter's authority to impose penal sanctions or that, otherwise stated, the suspension refers only to the military occupant. If this were to be the only effect, the rule would be a meaningless and superfluous optical illusion, since it is obvious that the fleeing or displaced government cannot, even if it should want, physically assert its authority in a territory actually beyond its reach, and that the occupant, on the other hand, will not take the absurd step of prosecuting and punishing the inhabitants for adhering to and aiding it. If we were to believe the opponents of the rule in question, we have to accept the absurd proposition that the guerrillas can all be prosecuted with illegal possession of firearms. It should be borne in mind that "the possession by the belligerent occupant of the right to control, maintain or modify the laws that are to obtain within the occupied area is an exclusive one. The territorial sovereign driven therefrom, can not compete with it on an even plane. Thus, if the latter attempts interference, its action is a mere manifestation of belligerent effort to weaken the enemy. It has no bearing upon the legal quality of what the occupant exacts, while it retains control. Thus if the absent territorial sovereign, through some quasi-legislative decree, forbids its nationals to comply with what the occupant has ordained obedience to such command within the occupied territory would not safeguard the individual, from prosecution by the occupant." (Hyde, International Law, Vol. III, Second Revised Edition, 1945, p. 1886.)

As long as we have not outlawed the right of the belligerent occupant to prosecute and punish the inhabitants for

"war treason" or "war crimes," as an incident of the state of war and necessity for the control of the occupied territory and the protection of the army of the occupant, against which prosecution and punishment such inhabitants cannot obviously be protected by their native sovereign, it is hard to understand how we can justly rule that they may at the same time be prosecuted and punished for an act penalized by the Revised Penal Code, but already taken out of the territorial law and penalized as a new offense committed against the belligerent occupant.

In *Peralta vs. Director of Prisons*, 75 Phil., 285, 296), we held that "the Constitution of the Commonwealth Government was suspended during the occupation of the Philippines by the Japanese forces or the belligerent occupant at regular war with the United States," and the meaning of the term "suspended" is very plainly expressed in the following passage (page 298):

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

In much the same way, we should hold that no treason could have been committed during the Japanese military occupation against the United States or the Commonwealth Government, because article 114 of the Revised Penal Code was not then in force. Nor may this penal provision be applied upon its revival at the time of the reoccupation of the Philippines by virtue of the principle of postliminium, because of the constitutional inhibition against any ex post facto law and because, under article 22 of the Revised Penal Code, criminal laws shall have a retroactive effect only in so far as they favor the accused. Why did we refuse to enforce the Constitution, more essential to sovereignty than article 114 of the Revised Penal Code in the aforesaid case of *Peralta vs. Director of Prisons* if, as alleged by the majority, the suspension was good only as to the military occupant?

The decision in *United States vs. Rice* (4 Wheaton, 246), conclusively supports our position. As analyzed and described in *United States vs. Reiter* (27 Fed. Cas., 773), that case "was decided by the Supreme Court of the United States—the court of highest human authority on that subject—and as the decision was against the United States, and in favor of the authority of Great Britain, its enemy in the war, and was made shortly after the occurrence of the war out of which it grew; and while no department of this Government was inclined to magnify the rights of Great Britain or disparage those of its own government, there can be no suspicion of bias in the mind of the court in favor of the conclusion at which it arrived, and no doubt that the law seemed to the court to warrant and demand such a decision. That case grew out of the war of 1812, between the United States and Great Britain. It appeared that in September, 1814, the British forces had taken the port of Castine, in the State of Maine, and held it in military occupation; and that while it was so held, foreign goods, by the laws of the United States subject to duty, had been introduced into that port without paying duties to the United States. At the close of the war the place was by treaty restored to the United States, and after that was done the Government of the United States sought to recover from the persons so introducing" the goods there while in possession of the British, the duties to which by the laws of the United States, they would have been liable. The claim of the United States was that its laws were properly in force there, although the place was at the time held by the British forces in hostility to the United States, and the laws, therefore, could not at the time be enforced there; and that a court of the United States (the power of that government there having since been restored) was bound so to decide. But this illusion of the prosecuting officer there was dispelled by the court in the most summary manner. Mr. Justice Story, that great luminary of the American bench, being the organ of the court in delivering its opinion, said: 'The single question

is whether goods imported into Castine during its occupation by the enemy are liable to the duties imposed by the revenue laws upon goods imported into the United States. * * * We are all of opinion that the claim for duties cannot be sustained. * * * The sovereignty of the United States over the territory was, of course, suspended, and the laws of the United States could no longer be rightfully enforced there, or be obligatory upon the inhabitants who remained and submitted to the conquerors. By the surrender the inhabitants passed under a temporary allegiance of the British Government, and were bound by such laws, and such only, as it chose to recognize and impose. From the nature of the case no other laws could be obligatory upon them. * * * Castine was therefore, during this period, as far as respected our revenue laws, to be deemed a foreign port, and goods imported into it by the inhabitants were subjects to such duties only as the British Government chose to require. Such goods were in no correct sense imported into the United States.' The court then proceeded to say, that the case is the same as if the port of Castine had been foreign territory, ceded by treaty to the United States, and the goods had been imported there previous to its cession. In this case they say there would be no pretense to say that American duties could be demanded; and upon principles of public or municipal law, the cases are not distinguishable. They add at the conclusion of the opinion: 'The authorities cited at the bar would, if there were any doubt, be decisive of the question. But we think it too clear to require any aid from authority.' Does this case leave room for a doubt whether a country held as this was in armed belligerent occupation, is to be governed by him who holds it, and by him alone? Does it not so decide in terms as plain as can be stated? It is asserted by the Supreme Court of the United States with entire unanimity, the great and venerated Marshall presiding, and the erudite and accomplished Story delivering the opinion of the court, that such is the law, and it is so adjudged in this case. Nay, more: it is even adjudged that no other laws could be obligatory; that such country, so held, is for the purpose of the application of the law off its former government to be deemed foreign territory, and that goods imported there (and by parity of reasoning other acts done there) are in no correct sense done within the territory of its former sovereign, the United States."

But it is alleged by the majority that the sovereignty spoken of in the decision of the United States vs. Rice should be construed to refer to the exercise of sovereignty, and that, if sovereignty itself was meant, the doctrine has become obsolete after the adoption of the Hague Regulations in 1907. In answer, we may state that sovereignty can have any important significance only when it may be exercised; and, to our way of thinking, it is immaterial whether the thing held in abeyance is the sovereignty itself or its exercise, because the point cannot nullify, vary, or otherwise vitiate the plain meaning of the doctrinal words "the laws of the United States could no longer be rightfully enforced there, or be obligatory upon the inhabitants who remained and submitted to the conquerors." We cannot accept the theory of the majority, without in effect violating the rule of international law, hereinabove adverted to, that the possession by the belligerent occupant of the right to control, maintain or modify the laws that are to obtain within the occupied area is an exclusive one, and that the territorial sovereign driven therefrom cannot compete with it on an even plane. Neither may the doctrine in United States vs. Rice be said to have become obsolete, without repudiating the actual rule prescribed and followed by the United States, allowing the military occupant to suspend all laws of a political nature and even require public officials and the inhabitants to take an oath of fidelity (United States Rules of Land Warfare, 1940, article 309). In fact, it is a recognized doctrine of American Constitutional Law that mere conquest or military occupation of a territory of another State does not operate to annex such territory to the occupying State, but that the inhabitants of the occupied district, no longer receiving the protection of their native State, for the time being owe no allegiance to it, and, being under the control and protection of the victorious power, owe to that power fealty and obedience. (Willoughby, The Fundamental Concepts of Public Law [1931], p. 364.)

The majority have resorted to distinctions, more apparent than real, if not immaterial, in trying to argue that the law of treason was obligatory on the Filipinos during the Japanese occupation. Thus it is insisted that a citizen or

subject owes not a qualified and temporary, but an absolute and permanent allegiance, and that "temporary allegiance" to the military occupant may be likened to the temporary allegiance which a foreigner owes to the government or sovereign of the territory wherein he resides in return for the protection he receives therefrom. The comparison is most unfortunate. Said foreigner is in the territory of a power not hostile to or in actual war with his own government; he is in the territory of a power which has not suspended, under the rules of international law, the laws of political nature of his own government; and the protections received by him from that friendly or neutral power is real, not the kind of protection which the inhabitants of an occupied territory can expect from a belligerent army. "It is but reasonable that States, when they concede to other States the right to exercise jurisdiction over such of their own nationals as are within the territorial limits of such other States, should insist that those States should provide system of law and of courts, and in actual practice, so administer them, as to furnish substantial legal justice to alien residents. This does not mean that a State must or should extend to aliens within its borders all the civil, or much less, all the political rights or privileges which it grants to its own citizens; but it does mean that aliens must or should be given adequate opportunity to have such legal rights as are granted to them by the local law impartially and judicially determined, and, when thus determined, protected." (Willoughby, *The Fundamental Concepts of Public Law* [1931], p. 360.)

When it is therefore said that a citizen of a sovereign may be prosecuted for and convicted of treason committed in a foreign country or, in the language of article 114 of the Revised Penal Code, "elsewhere," a territory other than one under belligerent occupation must have been contemplated. This would make sense, because treason is a crime "the direct or indirect purpose of which is the delivery, in whole or in part, of the country to a foreign power, or to pave the way for the enemy to obtain dominion over the national territory" (Albert, *The Revised Penal Code*, citing 3 Groizard, 14); and, very evidently, a territory already under occupation can no longer be "delivered."

The majority likewise argue that the theory of suspended sovereignty or allegiance will enable the military occupant to legally recruit the inhabitants to fight against their own government, without said inhabitants being liable for treason. This argument is not correct, because the suspension does not exempt the occupant from complying with the Hague Regulation (article 52) that allows it to demand all kinds of services provided that they do not involve the population "in the obligation of taking part in military operations against their own country." Neither does the suspension prevent the inhabitants from assuming a passive attitude, much less from dying and becoming heroes if compelled by the occupant to fight against their own country. Any imperfection in the present state of international law should be corrected by such world agency as the United Nations organization.

It is of common knowledge that even with the alleged cooperation imputed to the collaborators, an alarming number of Filipinos were killed or otherwise tortured by the ruthless, or we may say savage, Japanese Army. Which leads to the conclusion that if the Filipinos did not obey the Japanese commands and feign cooperation, there would not be any Filipino nation that could have been liberated. Assuming that the entire population could go to and live in the mountains, or otherwise fight as guerrillas—after the formal surrender of our and the American regular fighting forces,—they would have faced certain annihilation by the Japanese, considering the latter's military strength at the time and the long period during which they were left militarily unmolested by America. In this connection, we hate to make reference to the atomic bomb as a possible means of destruction.

If a substantial number of guerrillas were able to survive and ultimately help in the liberation of the Philippines, it was because the feigned cooperation of their countrymen enabled them to get food and other aid necessary in the resistance movement. If they were able to survive, it was because they could camouflage themselves in the midst of the civilian population in cities and towns. It is easy to argue now that the people could have merely followed their ordinary pursuits of life or otherwise be indifferent to the occupant. The fundamental defect of this line of

thought is that the Japanese are assumed to be so stupid and dumb as not to notice any such attitude. During belligerent occupation, "the outstanding fact to be reckoned with is the sharp opposition between the inhabitants of the occupied areas and the hostile military force exercising control over them. At heart they remain at war with each other. Fear for their own safety may not serve to deter the inhabitants from taking advantage of opportunities to interfere with the safety and success of the occupant, and in so doing they may arouse its passions and cause it to take vengeance in cruel fashion. Again, even when it is untainted by such conduct, the occupant as a means of attaining ultimate success in its major conflict may, under plea of military necessity, and regardless of conventional or customary prohibitions, proceed to utilize the inhabitants within its grip as a convenient means of military achievement." (Hyde, International Law, Vol. III, Second Revised Edition [1945], p. 1912.) It should be stressed that the Japanese occupation was not a matter of a few months; it extended over a little more than three years. Said occupation was a fact, in spite of the "presence of guerrilla bands in barrios and mountains, and even in towns of the Philippines whenever these towns were left by Japanese garrisons or by the detachments of troops sent on patrol to those places." (Co Kim Cham vs. Valdez Tan Keh and Dizon, 75 Phil., 371, 373.) The law of nations accepts belligerent occupation as a fact to be reckoned with, regardless of the merits of the occupant's cause. (Hyde, International Law, Second Revised Edition [1945], Vol. III, p. 1879.)

Those who contend or fear that the doctrine herein adhered to will lead to an over-production of traitors, have a wrong and low conception of the psychology and patriotism of their countrymen. Patriots are such after their birth in the first place, and no amount of laws or judicial decisions can make or unmake them. On the other hand, the Filipinos are not so base as to be insensitive to the thought that the real traitor is cursed everywhere and in all ages. Our patriots who fought and died during the last war, and the brave guerrillas who have survived, were undoubtedly motivated by their inborn love of country, and not by such a thing as the treason law. The Filipino people, as a whole, passively opposed the Japanese regime, not out of fear of the treason statute but because they preferred and will prefer the democratic and civilized way of life and American altruism to Japanese barbaric and totalitarian designs. Of course, there are those who might at heart have been pro-Japanese; but they met and will unavoidably meet the necessary consequences. The regular soldiers faced the risks of warfare; the spies and informers subjected themselves to the perils of military operations, likely received summary liquidation or punishments from the guerrillas and the parties injured by their acts, and may be prosecuted as war spies by the military authorities of the returning sovereign; those who committed other common crimes, directly or through the Japanese army, may be prosecuted under the municipal law, and under this group, even the spies and informers, Makapili or otherwise, are included, for they can be made answerable for any act offensive to person or property; the buy-and-sell opportunists have the war profits tax to reckon with. We cannot close our eyes to the conspicuous fact that, in the majority of cases, those responsible for the death of, or injury to, any Filipino or American at the hands of the Japanese, were prompted more by personal motives than by a desire to levy war against the United States or to adhere to the occupant. The alleged spies and informers found in the Japanese occupation the royal road to vengeance against personal or political enemies. The recent amnesty granted to the guerrillas for acts, otherwise criminal, committed in the furtherance of their resistance movement has in a way legalized the penal sanctions imposed by them upon the real traitors.

It is only from a realistic, practical and common-sense point of view, and by remembering that the obedience and cooperation of the Filipinos were effected while the Japanese were in complete control and occupation of the Philippines, when their mere physical presence implied force and pressure—and not after the American forces of liberation had restored the Philippine Government—that we will come to realize that, apart from any rule of international law, it was necessary to release the Filipinos temporarily from the old political tie in the sense indicated herein. Otherwise, one is prone to dismiss the reason for such cooperation and obedience. If there were those who did not in any wise cooperate or obey, they can be counted by the fingers, and let their names adorn the

pages of Philippine history. Essentially, however, everybody who took advantage, to any extent and degree, of the peace and order prevailing during the occupation, for the safety and survival of himself and his family, gave aid and comfort to the enemy.

Our great liberator himself, General Douglas MacArthur, had considered the laws of the Philippines ineffective during the occupation, and restored to their full vigor and force only after the liberation. Thus, in his proclamation of October 23, 1944, he ordained that "the laws now existing on the statute books of the Commonwealth of the Philippines * * * are in full force and effect and legally binding upon the people in areas of the Philippines free of enemy occupation and control," and that "all laws * * * of any other government in the Philippines than that of the said Commonwealth are null and void and without legal effect in areas of the Philippines free of enemy occupation and control." Repeating what we have said in *Co Kim Cham vs. Valdez Tan Keh and Dizon* (75 Phil., 113, 133), "it is to be presumed that General Douglas MacArthur, who was acting as an agent or a representative of the Government and the President of the United States, constitutional Commander-in-Chief of the United States Army, did not intend to act against the principles of the law of nations asserted by the Supreme Court of the United States from the early period of its existence, applied by the President of the United States, and later embodied in the Hague Conventions of 1907."

The prohibition in the Hague Conventions (Article 45) against "any pressure on the population to take oath to the hostile power," was inserted for the moral protection and benefit of the inhabitants, and does not necessarily carry the implication that the latter continue to be bound to the political laws of the displaced government. The United States, a signatory to the Hague Conventions, has made the point clear, by admitting that the military occupant can suspend all laws of a political nature and even require public officials and the inhabitants to take an oath of fidelity (United States Rules of Land Warfare, 1940, article 309), and as already stated, it is a doctrine of American Constitutional Law that the inhabitants, no longer receiving the protection of their native state, for the time being owe no allegiance to it, and, being under the control and protection of the victorious power, owe to that power fealty and obedience. Indeed, what is prohibited is the application of force by the occupant, from which it is fair to deduce that the Conventions do not altogether outlaw voluntary submission by the population. The only strong reason for this is undoubtedly the desire of the authors of the Conventions to give as much freedom and allowance to the inhabitants as are necessary for their survival. This is wise and humane, because the people should be in a better position to know what will save them during the military occupation than any exile government.

"Before he was appointed prosecutor, Justice Jackson made a speech in which he warned against the use of the judicial process for nonjudicial ends, and attacked cynics who 'see no reason why courts, just like other agencies, should not be policy weapons. If we want to shoot Germans as a matter of policy, let it be done as such, said he, but don't hide the deed behind a court. If you are determined to execute a man in any case there is no occasion for a trial; the world yields no respect for courts that are merely organized to convict.' Mussolini may have got his just desserts, but nobody supposes he got a fair trial. * * * Let us bear that in mind as we go about punishing criminals. There are enough laws on the books to convict guilty Nazis without risking the prestige of our legal system. It is far, far better that some guilty men escape than that the idea of law be endangered. In the long run the idea of law is our best defense against Nazism in all its forms." These passages were taken from the editorial appearing in the *Life*, May 28, 1945, page 34, and convey ideas worthy of some reflection.

If the Filipinos in fact committed any errors in feigning cooperation and obedience during the Japanese military occupation, they were at most—borrowing the famous and significant words of President Roxas—errors of the mind and not of the heart. We advisedly said "feigning" not as an admission of the fallacy of the theory of suspended allegiance or sovereignty, but as an affirmation that the Filipinos, contrary to their outward attitude, had always

remained loyal by feeling and conscience to their country.

Assuming that article 114 of the Revised Penal Code was in force during the Japanese military occupation, the present Republic of the Philippines has no right to prosecute treason committed against the former sovereignty existing during the Commonwealth Government which was none other than the sovereignty of the United States. This court has already held that, upon a change of sovereignty, the provisions of the Penal Code having to do with such subjects as treason, rebellion and sedition are no longer in force (*People vs. Perfecto*, 43 Phil., 887). It is true that, as contended by the majority, section 1 of Article II of the Constitution of the Philippines provides that "sovereignty resides in the people," but this did not make the Commonwealth Government or the Filipino people sovereign, because said declaration of principle, prior to the independence of the Philippines, was subservient to and controlled by the Ordinance appended to the Constitution under which, in addition to its many provisions essentially destructive of the concept of sovereignty, it is expressly made clear that the sovereignty of the United States over the Philippines had not then been withdrawn. The framers of the Constitution had to make said declaration of principle because the document was ultimately intended for the independent Philippines. Otherwise, the Preamble should not have announced that one of the purposes of the Constitution is to secure to the Filipino people and their posterity the "blessings of independence." No one, we suppose, will dare allege that the Philippines was an independent country under the Commonwealth Government.

The Commonwealth Government might have been more autonomous than that existing under the Jones Law, but its non-sovereign status nevertheless remained unaltered; and what was enjoyed was the exercise of sovereignty delegated by the United States whose sovereignty over the Philippines continued to be complete.

"The exercise of Sovereignty May be Delegated.—It has already been seen that the exercise of sovereignty is conceived of as delegated by a State to the various organs which, collectively, constitute the Government. For practical political reasons which can be easily appreciated, it is desirable that the public policies of a State should be formulated and executed by governmental agencies of its own creation and which are not subject to the control of other States. There is, however, nothing in a nature of sovereignty or of State life which prevents one State from entrusting the exercise of certain powers to the governmental agencies of another State. Theoretically, indeed, a sovereign State may go to any extent in the delegation of the exercise of its power to the governmental agencies of other States, those governmental agencies thus becoming quoad hoc parts of the governmental machinery of the State whose sovereignty is exercised. At the same time these agencies do not cease to be instrumentalities for the expression of the will of the State by which they were originally created.

"By this delegation the agent State is authorized to express the will of the delegating State, and the legal hypothesis is that this State possesses the legal competence again to draw to itself the exercise, through organs of its own creation, of the powers it has granted. Thus, States may concede to colonies almost complete autonomy of government and reserve to themselves a right of control of so slight and so negative a character as to make its exercise a rare and improbable occurrence; yet, so long as such right of control is recognized to exist, and the autonomy of the colonies is conceded to be founded upon a grant and the continuing consent of the mother countries the sovereignty of those mother countries over them is complete and they are to be considered as possessing only administrative autonomy and not political independence. Again, as will be more fully discussed in a later chapter, in the so-called Confederate or Composite State, the cooperating States may yield to the central Government the exercise of almost all of their powers of Government and yet retain their several sovereignties. Or, on the other hand, a State may, without parting with its sovereignty of lessening its territorial application, yield to the governing organs of particular areas such an amplitude of powers as to create of them bodies-politic endowed with almost all of the characteristics of independent States. In all States, indeed, when of any considerable size, efficiency of administration demands that certain autonomous powers of local self-government be granted to particular districts." (*Willoughby, The Fundamental Concepts of Public Law* [1931], pp. 74, 75.)

The majority have drawn an analogy between the Commonwealth Government and the States of the American Union which, it is alleged, preserve their own sovereignty although limited by the United States. This is not true for it has been authoritatively stated that the Constituent States have no sovereignty of their own, that such autonomous powers as they now possess are had and exercised by the express will or by the constitutional forbearance of the national sovereignty, and that the sovereignty of the United States and the non-sovereign status of the individual States is no longer contested.

"It is therefore plain that the constituent States have no sovereignty of their own, and that such autonomous powers as they now possess are had and exercised by the express will or by the constitutional forbearance of the national sovereignty. The Supreme Court of the United States has held that, even when selecting members for the national legislature, or electing the President, or ratifying proposed amendments to the federal Constitution, the States act, ad hoc, as agents of the National Government." (Willoughby, *The Fundamental Concepts of Public Law* [1931], p. 250.)

"This is the situation at the present time. The sovereignty of the United States and the non-sovereign status of the individual States is no longer contested." (Willoughby, *The Fundamental Concepts of Public Law* [1931], pp. 251, 252.)

Article XVIII of the Constitution provides that "The government established by this Constitution shall be known as the Commonwealth of the Philippines. Upon the final and complete withdrawal of the sovereignty of the United States and the proclamation of Philippine independence, the Commonwealth of the Philippines shall thenceforth be known as the Republic of the Philippines." From this, the deduction is made that the Government under the Republic of the Philippines and under the Commonwealth is the same. We cannot agree. While the Commonwealth Government possessed administrative autonomy and exercised the sovereignty delegated by the United States and did not cease to be an instrumentality of the latter (Willoughby, *The Fundamental Concepts of Public Law* [1931], pp. 74, 75), the Republic of the Philippines is an independent State not receiving its power or sovereignty from the United States. Treason committed against the United States or against its instrumentality, the Commonwealth Government, which exercised, but did not possess, sovereignty (*id.*, p. 49), is therefore not treason against the sovereign and independent Republic of the Philippines. Article XVIII was inserted in order, merely, to make the Constitution applicable to the Republic.

Reliance is also placed on section 2 of the Constitution which provides that all laws of the Philippine Islands shall remain operative, unless inconsistent therewith, until amended, altered, modified or repealed by the Congress of the Philippines, and on section 3 which is to the effect that all cases pending in courts shall be heard, tried, and determined under the laws then in force, thereby insinuating that these constitutional provisions authorize the Republic of the Philippines to enforce article 114 of the Revised Penal Code. The error is obvious. The latter article can remain operative under the present regime if it is not inconsistent with the Constitution. The fact remains, however, that said penal provision is fundamentally incompatible with the Constitution, in that those liable for treason thereunder should owe allegiance to the United States or the Government of the Philippines, the latter being, as we have already pointed out, a mere instrumentality of the former, whereas under the Constitution of the present Republic, the citizens of the Philippines do not and are not required to owe allegiance to the United States. To contend that article 114 must be deemed to have been modified in the sense that allegiance to the United States is deleted, and, as thus modified, should be applied to prior acts, would be to sanction the enactment and application of an ex post facto law.

In reply to the contention of the respondent that the Supreme Court of the United States has held in the case of *Bradford vs. Chase National Bank* (24 Fed. Supp., 38), that the Philippines had a sovereign status, though with restrictions, it is sufficient to state that said case must be taken in the light of a subsequent decision of the same court in *Cincinnati Soap Co. vs. United States* (301 U. S., 308), rendered in May, 1937, wherein it was affirmed

that the sovereignty of the United States over the Philippines had not been withdrawn, with the result that the earlier case can only be interpreted to refer to the exercise of sovereignty by the Philippines as delegated by the mother country, the United States.

No conclusiveness may be conceded to the statement of President Roosevelt on August 12, 1943, that "the United States in practice regards the Philippines as having now the status as a government of other independent nations—in fact all the attributes of complete and respected nationhood," since said statement was not meant as having accelerated the date, much less as a formal proclamation of, the Philippine Independence as contemplated in the Tydings-McDuffie Law, it appearing that (1) no less also than the President of the United States had to issue the proclamation of July 4, 1946, withdrawing the sovereignty of the United States and recognizing Philippine Independence; (2) it was General MacArthur, and not President Osmeña who was with him, that proclaimed on October 23, 1944, the restoration of the Commonwealth Government; (3) the Philippines was not given official participation in the signing of the Japanese surrender; (4) the United States Congress, and not the Commonwealth Government, extended the tenure of office of the President and Vice-President of the Philippines.

The suggestion that as treason may be committed against the Federal as well as against the State Government, in the same way treason may have been committed against the sovereignty of the United States as well as against the sovereignty of the Philippine Commonwealth, is immaterial because, as we have already explained, treason against either is not and cannot be treason against the new and different sovereignty of the Republic of the Philippines.

[1] English case of *De Jager vs. Attorney General of Naval*; Belgian case of *Auditeur Militaires vs. Van Dieren*; cases of *Pétain, Laval* and *Quisling*.

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