PRESIDENTIAL SUSPENSION OF THE WRIT OF HABEAS CORPUS IN THE PHILIPPINES: ITS ANTECEDENTS

ESTELITO P. MENDOZA *

"The privilege of the writ of *habeas corpus* shall not be suspended except in cases of invasion, insurrection, or rebellion, when the public safety requires it, in any of which events the same may be suspended wherever during such period the necessity for such suspension shall exist." (Art. III, sec. 1, par. 14, Constitution of the Philippines).

"The President shall be commander-in-chief of all armed forces of the Philippines and, whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion, insurrection, or rebellion. In cases of invasion, insurrection, or rebellion, or imminent danger thereof, when the public safety requires it, he may suspend the privileges of the writ of *habeas corpus*, or place the Philippines or any part thereof under martial law." (Art. VII, sec. 10, par. 2, Constitution of the Philippines).

When on October 22, 1950, the privilege of the writ of habeas corpus was suspended for the second time in the Philippines,[1] these provisions of the Constitution became fertile subjects of legal inquiry, classroom discussion and judicial consideration. For, indeed, the writ of habeas corpus [2] and its suspension have always been rich sources of research and prolific parents of litigation.

---

* LL.B. (U.P.); LL.M. (Harvard). Instructor in Law, College of Law, University of the Philippines.

[1] The first suspension was on Jan. 31, 1905 (Exec. Order No. 6). The second suspension was by Proc. No. 210, 46 O.G. 4682 (1950).

[2] There are several kinds of writs of *habeas corpus*, but the one referred to in our Constitution (*see* Opinion of Justice Bengzon in the cases of Nava v. Gatmaitan, G.R. No. L-4855; Hernandez v. Montesa, G.R. No. L-4964; and Angeles v. Abaya, Oct. 11, 1951) and in the Constitution of the United States is the one mentioned in the Magna Charta, the same writ which alone was the subject of the acts of 16 Chas. I and 31 Chas. II, known as the *writ of habeas corpus ad subjiciendum* (State *ex rel.* Deeb v. Fabisinski, 111 Fla. 454, 152 So. 207, *rehearing denied*, 111 Fla. 454, 156 So. 261).

This writ has been defined by Blackstone as one "directed to the person detaining another, and commanding him to produce the body of the prisoner, with the day and cause of his caption and detention, ad faciendum, subjiciendum, et recipiendum, to do, submit to, and receive whatsoever the judge or court awarding such writ shall consider in that behalf." (3 BLACK, COMMENTARIES 131).

Other writs of "habeas corpus" have, however, also been issued. As the Court in State *ex rel.* Deeb v. Fabisinki, *supra*, puts it:

> "Other writs called 'habeas corpus' were issued and in common experience. They took their names from the characteristic words which they contained when the process and records of the English courts were written in Latin, but they were distinguished from the great writ in question and from one another by the specific terms of declaring the object of the writ. The writ of habeas corpus ad subjicien-

Where did this great writ originate? It's origin has often been described as hazy; it's early history, not a matter of general knowledge.[3] What has made it so great and so invaluable? So great, indeed, that Blackstone referred to it as "the most celebrated writ in the English Law";[4] a New Jersey court described it as "the most important of all the writs known to common or statute law;"[5] while Fraenkel aptly considered it "a proceeding without which much else would be of no avail."[6]

From its preferred position of greatness, however, arises another question: Why then must it be suspended at all?[7] What is

---

dum et recipiendum, having acquired in public esteem a marked importance by reason of the nobler uses to which it was devoted, has, say the authorities, so far appropriated the generic term to itself that it is now by way of eminence commonly called the writ of habeas corpus simply. BOUVIER, LAW DICTIONARY; 21 Cyc. 284.

"The names of other writs containing the phrase habeas corpus were: 'Habeas corpus cum causa.' 10 Cyc. 1364. 'Habeas corpus ad deliberandum et recipiendum; habeas corpus ad prosequendum; habeas corpus ad respondendum; habeas corpus ad satisfaciendum and habeas corpus ad testificandum.'"

[3] See COHEN, SOME CONSIDERATIONS ON THE ORIGINS OF HABEAS CORPUS (1938); Gleick, H., *The Origin of the Writ of Habeas Corpus*, 24 CASE AND COMMENT 643 (1942); and of late a brief, but illuminating exposition, Simmons, R. G., *The Writ of Habeas Corpus: The Most Celebrated Writ in the English Law*, 41 A.B.A.J. 413 (1955).

[4] 3 BLACKSTONE, COMMENTARIES 129.

[5] *Ex parte* Stegman, 112 N.J. Eq. 72, 163 A. 422.

[6] FRAENKEL, OUR CIVIL LIBERTIES 6 (1944).

[7] a. "It is essential to the safety of every government that, in a great crisis, like the one we have just passed through, that there should be a power somewhere of suspending the writ of habeas corpus. In every war, there are men of previously good character, wicked enough to counsel their fellow-citizens to resist the measures deemed necessary by a good government to sustain its just authority and overthrow its enemies; and their influence may lead to dangerous combinations. In the emergency of the times, an immediate public investigation according to law may not be possible; and yet, the peril to the country may be too imminent to suffer such persons to go at large. Unquestionably, there is then an exigency which demands that the government, if it should see fit, in the exercise of a proper discretion, to make arrests, should not be required to produce the person arrested in answer to a writ of habeas corpus." (*Ex parte* Milligan, 4 Wall. 2 [U.S. 1866]).

b. "The civil courts are ill adapted to cope with an emergency of this kind. As a rule they proceed only upon formal charges. Their province is to determine questions of guilt or innocence of crimes already committed. In this respect their functions are punitive, not preventive; whereas the purpose of the detention of suspected persons in critical military areas in time of war is to forestall injury and to prevent the commission of acts helpful to the enemy." (*Ex parte* Zimmermann, 132 F.2d 442, 446 [1942]).

c. President Lincoln once said, when his own suspension of the writ was being subjected to censure and criticism: "By general law, life and limb must be protected, yet often a limb must be amputated to save a life; but is never wisely given to save a limb." (2 NICHOLAY AND HAY, ABRAHAM LINCOLN Complete Works 508

suspended, the privilege or the writ?[8] When may it be suspended?[9] Who may suspend it?[10] And having been suspended, does the suspension affect the rights of the accused to bail[11] and the rights he should enjoy in trial?[12]

This brief discussion does not seek to answer these questions. Notes to this article suggest, at best, answers to them. Rather, we ask: From where were our constitutional provisions on habeas cor-

---

[1902]).

d. The same thought is expressed by Sydney G. Fisher, thus:

> ". . . . Every man thinks he has a right to live and every government thinks it has a right to live. Every man when driven to the wall by a murderous assailant will override all laws to protect himself, and this is called the great right of self-defense. So every government, when driven to the wall by a rebellion, will trample down a constitution before it will allow itself to be destroyed. This may not be constitutional law, but it is fact." (*The Suspension of Habeas corpus During the War of the Rebellion*, 3 POL. SCI. Q. 454, 484-5).

e See Pineda and Espiritu, *The Suspension of the Privilege of the Writ of Habeas Corpus: Its Justification and Duration*, 27 Phil. L.J. 19 (1952).

[8] See *Ex Parte* Vallandigham, 1 Wall. 243 (U.S. 1864); *Ex Parte* Milligan, 4 Wall. 2 (U.S. 1866); *Ex Parte* Yerger, 8 Wall. 85 (U.S. 1869); but note the following statement from *Ex Parte* Zimmermann, *supra*, note 7, at 445:

> "It is little to the purpose to attempt here an analysis of distinction between suspension of the privilege and suspension of the writ. Whether the writ be awarded in any particular case depends on the showing made. The statute 18 U.S.C.A. § 455, provides that the writ shall be awarded 'unless it appears from the petition itself that the party is not entitled thereto.' And see Walker v. Johnston, 312 U.S. 275, 283, 284, 61 S. Ct. 574, L. Ed. 830; United States ex rel. Isserin v. Cox, October 29, 1942, 63 S. Ct. 2, 87 L. Ed. The writ ought not to be awarded if the court, upon examination of the petition, is satisfied that the petitioner would be remanded to custody. *Ex Parte* Watkins, 3 Pet. 193, 201, 7 L. Ed. 650."

[9] See Montenegro v. Castañeda, et al., 48 O.G. 3392 (1952).

[10] See Barcelona v. Baker, 5 Phil. 87 (1905); Montenegro v. Castañeda, et al., *supra* note 9. It may be inquired whether the Congress of the Philippines has the power to suspend the writ in our country notwithstanding the express conferment of the power on the President in Article VII. Said the Court in the *Montenegro* case:

> "Is the prohibition of suspension in the bill of rights to be interpreted as limiting legislative powers only—not executive measures under Article VII?"

Note that while the *bill of rights* provision of the Jones Law on the writ specifies the Governor-General, our Consitution points to the President in Art. VII only, but not in the Bill of Rights.

[11] See Nava v. Gatmaitan, G.R. No. L-4855; Hernandez v. Montesa, G.R. No. L-4964; Angeles v. Abaya, G.R. No. L-5102 (all these three cases were promulgated on Oct. 11, 1951); Fernando and Quisumbing-Fernando, *The Role of the Supreme Court as Protector of Civil Liberties in Times of Emergency*, 27 PHIL. L.J. 1 (1952); Ponce Enrile, J., *The Effect of the Suspension of Habeas Corpus on the Right to Bail in Case of Rebellion, Insurrection and Sedition*, 27 PHIL. L.J. 48 (1952).

[12] See Laurel, S., *An Inquiry into the Effects of the Suspension of the Privilege of Habeas Corpus Upon the Constitutional Rights of an Accused Except the Right to Bail*, 27 PHIL. L.J. 62 (1952).

pus adopted? What are their probable antecedents? Were the provisions part of America's rich constitutional legacy to us? Were they the fruits of what many believe seems to be our perennial weakness for things American, political law included? Or were they the products of a deliberate, selective, and considered effort at adoption by the framers of our Constitution? These, we will try to answer.

While no direct evidence has been found particularly showing that our constitutional provisions on the writ have been adopted from the Jones Law,[13] the striking similarities of the former to the latter seems to leave no room for doubt that such was the case. Section 3, paragraph 7 of the Jones Law, provided:

> "That the privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion, insurrection, or invasion the public safety may require it, in either of which events the same may be suspended by the President, or by the Governor-General, wherever during such period the necessity for such suspension shall exist."

And Section 21 of the same law in part provided that:

> ". . . he (referring to the Governor-General) may, in case of rebellion or invasion, or imminent danger thereof, when the public safety requires it, suspend the privileges of the writ of habeas corpus, or place the Islands, or any part thereof, under martial law: *Provided*, That whenever the Governor-General shall exercise this authority, he shall at once notify the President of the United States thereof, together with the attending facts and circumstances, and the President shall have power to modify or vacate the action of the Governor-General."

Before considering these provisions, it would be well to recall that the Jones Law served as the organic law of the Philippines during its effectivity, and that the Governor-General who was appointed by the President of the United States was the executive of the country during that time.[14]

As in our Constitution, the privilege of the writ of *habeas corpus* is not explicitly granted by the Jones Law, but is implicitly guaranteed when its suspension is generally prohibited. As in our Constitution, there were two separate provisions dealing on the suspension of the writ, one in both cases in the Bill of Rights, and the other, in the provisions on the executive department. Like the *habeas corpus* provision in our Bill of Rights, paragraph 7 of Section 3 of the Jones Law allows the suspension of the privilege of the writ of *habeas corpus* in cases of rebellion, insurrection or invasion, when the public safety requires it, wherever during such period the necessity for such suspension shall exist. Finally, like Section 10, para-

---

[13] Public No. 240, 29 STAT. 545 (1916); reprinted in 2 ARUEGO, THE FRAMING OF THE PHILIPPINE CONTITUTION 800-16 (1937). See note 44.

[14] § 21, Jones Law.

graph 2 of Article VII of our Constitution, Section 21 of the Jones Law allows the suspension of the writ by the executive not only on the occasions of invasion or rebellion, but likewise when there is *imminent danger* of these contingencies, contrary to their corresponding Bill of Rights provisions.[15] What is an inconsistency in our Constitution seems to be no more than a carry-over from the Jones Law.

The exactitude in phraseology, the similarity in substance *even on a point of error or inconsistency*, strongly points to a conclusion that the habeas corpus provisions of our Constitution were based on corresponding provisions of the Jones Law.

Prior to the Jones Law, the Philippine Bill of 1902 [16] was enforced in the Philippines. This law provided:

> "That the privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion, insurrection, or invasion the public safety may require it, in either of which events the same may be suspended by the President, or by the Governor-General with the approval of the Philippine Commission, whenever during such period the necessity for such suspension shall exist." [17]

It will again be observed that, as in our Constitution and the Jones Law, the right of the people to the privilege of the writ of *habeas corpus* is not expressly granted, but is implicitly assumed by a guarantee against suspension except in certain cases. As in the Constitution and the Jones Law, the privilege of the writ may be suspended in cases of rebellion, insurrection, or invasion, when the public safety requires it, although the Philippine Bill of 1902 does not contain the "imminent danger" clause. These similarities may well imply that the Jones Law provisions on habeas corpus were in turn just as fully "copied" from the Philippine Bill of 1902, except for the fact that while the Jones Law gave the Governor-General the power to suspend the writ acting by himself alone, the power of suspension under the Philippine Bill of 1902 may only be exercised by the Governor-General, with the *approval of the upper chamber of the legislative body, or the Philippine Commission*.[18] This Jones Law departure may, however, be easily explained.

Under the Philippine Bill of 1902, the Governor-General and the members of the Philippine Commission were appointed by the Pres-

---

[15] This apparent inconsistency was raised before the Supreme Court and resolved in Montenegro v. Castañeda, 48 O.G. 3392 (1952).

[16] Public No. 235, 32 STAT. 691 (1902); reprinted in ARUBGO, *op. cit. supra* note 13, at 770-99.

[17] § 2, par. 7.

[18] § 7, Phil. Bill of 1902.

ident of the United States with the advice and consent of the Senate. The Jones Law abolished the Philippine Commission and instead created a Philippine Legislature, consisting of two houses, a Senate and a House of Representatives, the members of *both* of which were elective.[19]

The Congress of the United States may not be taken to have entirely discarded the possibility of a Filipino rebellion at that time. In such a case, a legislative body of Filipinos would probably have failed or refused to act. Thus, since the suspension of the writ is intended primarily to protect the security of the state or its government, it was understandable that the United States Congress vested the power of suspension in an official or body appointed by the President of the United States. In other words, the conferment of the power of suspension of the writ on the Governor-General and the Philippine Commission, acting concurrently, in the Philippine Bill of 1902, and on the Governor-General only in the Jones Law, was evidently demanded by the situation in which the United States was before the Commonwealth—a foreign power in a "conquered" territory with a people demanding and restless for independence.

The congressional records of the United States Congress on these two laws do not, however, contain ample evidence to either directly support or contradict this conclusion. But a comparison of the provisions of the Jones Law and of our Constitution with corresponding provisions of the Constitution of the United States and of the states of the Union would be rewarding.

Let us start with the Constitution of the United States which provides: "The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it."[20] No other provision in the Constitution of the United States deals on the writ.

It will be noted that like the Jones Law and our Constitution the right to the writ is guaranteed by implication, not by explicit provision. The right to the writ is not declared. Rather, its denial is expressly limited.

As in the Jones Law and our Constitution the writ may be suspended in cases of rebellion or invasion. The provision of the United States Constitution does not, however, provide for suspension in case of insurrection or in case of *imminent danger* of invasion, insurrection, or rebellion. But these differences are merely apparent, and if no other difference existed, the provision of the United States Con-

[19] § 12, Jones Law.
[20] Art. 1, § 9, par. 2.

stitution on the writ would not substantially be different from those of the Jones Law or our Constitution.

Let us take the absence of the "imminent danger" clause. It is extremely difficult to define the separating borders of actuality and imminence. In fact, modern invasions are most often now prepared by fifth columnists, which even render finer the distinction between actual invasion, rebellion, and imminent invasion. The United States Supreme Court has held that the power to repel an invasion includes the power to provide against the attempt and danger of invasion.[21] Besides, the rule that whoever has the power of suspension has the final and binding authority to determine the existence or non-existence of the occasions for suspension [22] render academic any difference on this point between the United States Constitution on the one hand, and the Jones Law and our Constitution on the other.

As to the absence of "insurrection" in the United States Constitution, this also is not a material difference. Our laws in their application have not distinguished between either. Rebellion and insurrection have been used and applied interchangeably.

Our Constitution and the Jones Law limit the suspension of the writ "wherever during such period the necessity for such suspension shall exist." This clause limits the power of suspension both as to time and geographical extent. The Constitution of the United States does not contain this clause. But again the rule on finality of determination of the necessity of suspension renders academic whatever difference this clause may bring about. Or if the rule on finality is not to be followed, it would be extremely doubtful that the courts of the United States would tolerate a suspension in Virginia on account of a rebellion in California.[23]

However, it will be noted that the Constitution of the United States does not provide anywhere *who* shall have the power to suspend the writ. Our Constitution specifies the President.[24] The Jones

---

[21] The Supreme Court of the United States in Martin v. Mott, 12 Wheat. 19 (U.S. 1827), said:

> "In our opinion there is no ground for doubt on this point, even if it had been relied on, for the power to provide for repelling invasions includes the power to provide against the attempt and danger of invasion, as the necessary and proper means to effectuate the object. One of the best means to repel invasion is to provide the requisite force for action before the invader himself has reached the soil."

[22] Barcelon v. Baker, 5 Phil. 87 (1905); Montenegro v. Castañeda. 48 O.G. 3392 (1952); Martin v. Mott, 12 Wheat. 19 (U.S. 1827); Luther v. Borden, 7 How. 1 (U.S. 1849). *But see* Sterling v. Constantin, 287 U.S. 378 (1932); *Ex Parte* Zimmermann, 132 F.2d 442 (1942).

[23] See note 22, *supra*.

[24] Art. VII, § 10, par, 2. *But see* note 10.

Law points to the Governor-General.[25] But the Constitution of the United States is silent and does no more than provide *when* the writ may be suspended, but not *who* may suspend the writ. That was why Lincoln's suspension of the writ provoked a widespread controversy in the United States as to whether the President of the United States acting by himself alone, had the power to suspend the writ.[26] Some believed that he had such power,[27] but more be-

---

[25] § 3, par. 7; § 21.

[26] It was on April 27, 1861, that Lincoln addressed to General Scott his first suspending order:

"You are engaged in suppressing an insurrection against the laws of the United States. If at any point or in the vicinity of any military line which is now or which shall be used between the City of Philadelphia and the City of Washington, you find resistance which renders it necessary to suspend the writ of *habeas corpus* for the public safety, you personally or through the officer in command, at the point at which resistance occurs, are authorized to suspend the writ.

"Abraham Lincoln

"By the President,

"Wm. H. Seward, Secretary of State."

Similar orders were afterwards issued for other places, and on Sept. 24, 1862, a proclamation providing for a nation-wide suspension of the writ was issued:

"Whereas it has become necessary to call into service not only volunteers, but also portions of the militia of the United States by draft in order to supress the insurrection existing in the United States, and disloyal persons are not adequately restrained by the ordinary processes of law from hindering this measure and from giving aid and comfort in various ways to the insurrection:

"Now, therefore, be it ordered, first, that during the existing insurrection, and as a necessary measure for suppressing the same, all rebels and insurgents, their aiders and abettors, within the United States, and all persons discouraging volunteer enlistments, resisting militia drafts or guilty of any disloyal practice affording aid and comfort to rebels against the authority of the United States, shall be subject to martial law and liable to trial and punishment by courts-martial or military commissions; second, that the writ of *habeas corpus* is suspended in respect to all persons arrested, or who are now or hereafter during the rebellion shall be imprisoned in any fort, arsenal, military prison, or other place of confinement by any military authority or by the sentence of any court-martial or military commission." 13 STAT. 730.

Not until March 3, 1863 did Congress authorize the President to suspend the writ during the rebellion (12 STAT. 755), and not until Sept. 15, 1863 did Pres. Lincoln suspend the writ by virtue of such authorization (13 STAT. 734). Lincoln regarded such act of Congress to be merely declaratory of his power to suspend the writ. See Lincoln's message to the special session of Congress in the summer of 1861, quoted in full in RANDALL, CONSTITUTIONAL PROBLEMS UNDER LINCOLN 122 (1951 ed.).

For an exhaustive bibliography on the habeas corpus question during the civil war, see Fisher, S. G., *The Suspension of Habeas Corpus During the War of the Rebellion*, 3 POL. SCI. Q. 454, 485-8.

For a general study of the suspension, see RANDALL, *supra*, c. VI.

[27] *Ex Parte* Field, 9 F. Cas. No. 4761 (1862); Opinion of Atty. Gen. Bates, July 5, 1861: O.R., Ser. II, Vol. 2, pp. 20-30; BINNEY, H., THE PRIVILEGE OF THE WRIT OF HABEAS CORPUS UNDER THE CONSTITUTION (1862). See President Truman's veto message on the Internal Security Act of 1950 (50 U.S.C. 783).

lieved the contrary.[28] In this regard, the Constitution of the United States differs substantially from the writ provisions of the Jones Law and our Constitution.

While the Jones Law follows in large measure the Constitution of the United States then, it differs on the agency vested with the power of suspension. That it differs in this particular regard, we believe, supports the view that the Jones Law conferment of the power of suspension in the Executive, which our Constitution follows, was designed primarily as a measure of protection to the United States, a foreign power. This will be increasingly evident when we examine the Constitutions of the various states of the Union. At this point, to avoid any misimpression, it may be well to advance the proposition which we shall consider later, that although this may be true, the adoption of the Jones Law provisions by our Constitution was not done in blind imitation of things American.

The right of the people to the writ is impliedly recognized in the constitutions of the various states of the Union by either prohibiting[29] or limiting[30] its suspension, as in our Constitution, in the

---

[28] *Ex Parte* Merryman, 17 F. Cas. No. 9487 (1861); BURDICK, THE LAW OF THE AMERICAN CONSTITUTION 84-5 (1922); HOLST, H. VON, CONSTITUTIONAL LAW OF THE UNITED STATES 196-7 (1887); POMEROY, J. N., AN INTRODUCTION TO THE CONSTITUTIONAL LAW OF THE UNITED STATES 473-4 (1883); STORY, J., COMMENTARIES ON THE CONSTITUTION § 1342 (1883); 2 TUCKER, J. R., THE CONSTITUTION OF THE UNITED STATES 642-52 (1899); 3 WILLOUGHBY, CONSTITUTIONAL LAW OF THE UNITED STATES 1611-15 (1929). These are by no means exhaustive.

[29] Alabama: "That the privilege of the writ of habeas corpus shall not be suspended by the authorities of this state." Art. 1, § 17.

Arizona: "The privilege of the writ of habeas corpus shall not be suspended by the authorities of the state." Art. 2, § 14.

Georgia: "The writ of Heabeas Corpus shall not be suspended." Art. 1, Par. 11.

Maryland: "The General Assembly shall pass no law suspending the privilege of the Writ of Habeas Corpus." Art. 3, § 55.

Missouri: "That the privilege of the writ of habeas corpus shall never be suspended." Art. 1, § 12.

North Carolina: "The privilege of the writ of habeas corpus shall not be suspended." Art. 1, § 21.

Oklahoma: "The privilege of the writ of habeas corpus shall never be suspended by the authorities of this State." Art. 2, § 10.

Texas: "The writ of habeas corpus is a writ of right, and shall never be suspended. The Legislature shall enact laws to render the remedy speedy and effectual." Art. 1, § 12.

Vermont: "The Writ of Habeas Corpus shall in no case be suspended. It shall be a writ issuable of right; and the General Assembly shall make provision to render it a speedy and effectual remedy in all cases proper therefor." § 33.

West Virginia: "The privilege of the writ of habeas corpus shall not be suspended." Art. III, § 4.

[30] Arkansas: "The privilege of the writ of habeas corpus shall not be suspended, except by the General Assembly, in case of rebellion, insurrection, or invasion, when

Constitution of the United States and in the Jones Law, with the exception of a few state constitutions like Massachusetts [31] and New Hampshire [32] which declare expressly in positive terms a guarantee to the writ.

---

the public safety may require it." Art. 2, § 11.

California: "The privilege of the writ of habeas corpus shall not be suspended unless when, in cases of rebellion or invasion, the public safety may require its suspension." Art. 1, § 5.

Colorado: "The privilege of the writ of habeas corpus shall never be suspended, unless when in case of rebellion or invasion, the public safety may require it." Art. 2, § 21.

Connecticut: ". . . and the privileges of the writ of Habeas Corpus shall not be suspended, unless, when in case of rebellion or invasion, the public safety require it; nor in any case, but by the legislature." Art. 1, § 14.

Delaware: "The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it." Art. 1, § 13.

Florida: "The writ of habeas corpus shall be grantable speedily and of right, freely and without cost, and shall never be suspended unless, in case of rebellion or invasion. the public safety may require its suspension." Declaration of Rights, § 7.

Idaho: "The privilege of the writ of habeas corpus shall not be suspended, unless in case of rebellion or invasion, the public safety requires it, and then only in such manner as shall be prescribed by law." Art. 1, § 5.

Illinois: ". . . and the privilege or writ of habeas corpus shall not be supended, unless when in cases of rebellion or invasion the public safety require it." Art. 2, § 7.

Indiana: "The privilege of the writ of habeas corpus shall not be suspended, except in case of rebellion or invasion; and then, only if the public safety demanded it." Art. 1, § 27.

Iowa: "The writ of habeas corpus shall not be suspended, or refused when application is made as required by law. unless in case of rebellion, or invasion the public safety may require it." Art. 1, § 13.

Kansas: "The right to the writ of habeas corpus shall not be suspended, unless the public safety may require it in case of invasion or rebellion." Bill of Rights, § 8.

Kentucky: ". . . and the privilege of the writ of habeas corpus shall not be suspended unless when, in case of rebellion or invasion, the public safety may require it." § 16.

Louisiana: The privilege of the writ of habeas corpus shall not be suspended, unless when in case of rebellion, or invasion, the public safety may require it.

Maine: ". . . And the privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion, or invasion the public safety require it." Art. 1, § 10.

Michigan: "The privilege of the writ of habeas corpus shall not be suspended unless in case of rebellion or invasion the public safety may require it." Art. 2. § 11.

Minnesota: ". . . and the privilege of the writ of habeas corpus shall not be suspended, unless when in case of rebellion or invasion the public safety may require." Art. 1, § 7.

Mississippi: "The privilege of the writ of habeas corpus shall not be suspended, unless when in case of rebellion or invasion, the public safety may require it, nor ever without the authority of the legislature." Art. 3, § 21.

Montana: "The privilege of the writ of habeas corpus shall never be suspended, unless, in case of rebellion or invasion, the public safety require it." Art. 3, § 21.

But unlike our Constitution and the Jones Law, there is invariably but *one* provision regarding habeas corpus in each state

---

Nebraska: "The privilege of the writ of habeas corpus shall not be suspended, unless in case of rebellion or invasion the public safety requires it, and then only in such manner as shall be prescribed by law." Art. 1, § 8.

Nevada: "The privilege of the writ of habeas corpus shall not be suspended, unless when, in case of rebellion or invasion, the public safety require its suspension." Art. 1, § 5.

New Jersey: "The privilege of the writ of habeas corpus shall not be suspended, unless in case of rebellion or invasion the public safety may require it." Art. 1, Par. 11.

New Mexico: "The privilege of the writ of habeas corpus shall never be suspended, unless, in case of rebellion or invasion, the public safety requires it." Art. 2, § 7.

New York: "The privilege of a writ or order of habeas corpus shall not be suspended unless, in case of rebellion or invasion, the public safety requires it." Art. 1, § 4

North Dakota: "The privilege of the writ of habeas corpus shall not be suspended unless, when in case of rebellion or invasion, the public safety may require." Art. 1, § 5.

Ohio: "The privilege of the writ of habeas corpus shall not be suspended, unless, in cases of rebellion or invasion, the public safety require it." Art. 1, § 8.

Oregon: "The privilege of the writ of habeas corpus shall not be suspended, unless in case of rebellion or invasion, the public safety requires it." Art. 1, § 23.

Pennsylvania: " . . . and the privilege of the writ of habeas corpus shall not be suspended. unless when in case of rebellion or invasion the public safety may require it." Art. 1, § 14.

Rhode Island: " . . . The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety shall require it; nor ever without the authority of the general assembly." Art. 1, § 9.

South Carolina: "The privilege of the writ of habeas corpus shall not be suspended unless when, in case of insurrection, rebellion or invasion, the public safety may require it." Art. 1, § 23.

South Dakota: ". . . The privilege of the writ of habeas corpus shall not be suspended unless, when in case of rebellion or invasion, the public safety may require it." Art. 6, § 8.

Tennessee: ". . . And the privileges of the writ of habeas corpus shall not be suspended, unless when, in case of rebellion or invasion, the General Assembly shall declare that the public safety require it." Art. 1, § 15.

Utah: "The privilege of the writ of habeas corpus shall not be suspended, unless, in case of rebellion or invasion, the public safety requires it." Art. 1, § 5.

Virginia: "The privileges of the writ of habeas corpus shall not be suspended unless when, in cases of invasion or rebellion, the public safety may require it." Art. 4, § 58.

Washington: "The privilege of the writ of habeas corpus shall not be suspended, unless in case of rebellion or invasion the public safety requires it." Art. 1, § 13.

Wisconsin: " . . . and the privilege of the writ of habeas corpus shall not be suspended unless when, in cases of rebellion or invasion the public safety may require it." Art. 1, § 17.

Wyoming: "The privilege of the writ of habeas corpus shall not be suspended unless, when in case of rebellion or invasion the public safety may require it." Art. 1, § 17.

constitution. Such a provision is usually found in an article or chapter on the "Bill of Rights," [33] or "Declaration of Rights," [34] or "Rights and Privileges," [35] or in a "Declaration of Certain Constitutional Rights and Privileges." [36] Maryland's and Virginia's are, however, made part of Legislative Department articles; Vermont's of its Judicial Department; and Massachusett's and New Hampshire's of their constitutions' miscellaneous provisions.

A majority of the states provide for suspension of the writ "when, in cases of rebellion or invasion, the public safety may require it," without specifying the body or agency who shall have the power of so suspending the writ.[37] Several provide for suspension on practically the same grounds, but indicate quite explicitly that the power of suspension shall be vested on the legislative branch of the government alone.[38] Some prohibit the suspension of the writ in any instance.[39] *But no state constitution expressly gives the power to the executive.* No state constitution has any provision similar to that of Article VII, Section 10, paragraph 2 of our Constitution or to Section 21 of the Jones Law. This, we believe, lend credence to the theory that the grant of the power of suspension to the Governor-General in the Jones Law was designed to effectively protect the security of the United States in the Philippines, at that time a foreign power, in a "conquered" territory with a people demanding and restless for independence.

On the other hand, a comparison of the provisions of our Consituation and those of the Jones Law with the writ provisions of

---

[33] "The privilege and benefit of the writ of habeas corpus shall be enjoyed in this commonwealth in the most free, easy, cheap, expeditious and ample manner; and shall not be suspended by the legislature, except upon the most urgent and pressing occasions, and for a limited time not exceeding twelve months." Chap. VI. See also constitutional provisions of Florida, Texas and Vermont, *supra*.

[34] "The privilege and benefit of the habeas corpus, shall be enjoyed in this state, in the most free, easy, cheap, expeditious, and ample manner, and shall not be suspended by the legislature, except upon the most urgent and pressing occasions, and for a time not exceeding three months." Art. 91. Note time limitation. This is the only constitution with such a limitation.

[35] Colo., Del., Ga., Ill., Ind., Iowa, Kan., Ky., La., Minn., Mo., Miss., Neb., N.M., N.Y., Ohio, Okla., Ore., S.D., Tex., and W.Va.

[36] Ala., Ariz., Ark., Cal., Conn., Fla., Idaho, Me., Mich., Mont., Nev., N.C., N.D., Penn., S.C., Tenn., Utah, Wash., Wis., and Wyo.

[37] N.J.

[38] R.I.

[39] Cal., Colo., Del., Fla., Idaho, Ill., Ind., Iowa, Kan., Ky., La., Me., Mich., Minn., Mont., Neb., Nev., N. J., N. M., N. Y., N. D., Ohio, Ore., Penn., S. D., S. C., Utah, Wash., Wis., and Wyo.

[40] Ark., Conn., Mass., Miss., N. H., R. I., Tenn., and Va.

[41] See note 29 *supra*.

the Organic Acts of Hawaii and Puerto Rico will show significant similarities. Sec. 67 of the Organic Act of Hawaii [40] provides as follows:

> "The governor shall be responsible for the faithful execution of the laws of the United States and of the Territory of Hawaii within the said Territory; and he may, in case of rebellion or invasion, or imminent danger thereof, when the public safety requires it, suspend the privilege of the writ of *habeas corpus*, or place the territory or any part thereof, under martial law until communication can be had with the President and his decision thereon made known."

It must be noted that like the Governor-General of the Philippines before the Commonwealth, the governor of Hawaii is appointed by the President of the United States with the advice and consent of the Senate. In the case of Puerto Rico, Sec. 7 of its Organic Act [41] provides that:

> "The privilege of the writ of *habeas corpus* shall not be suspended, unless when in case of rebellion, insurrection or invasion the public safety may require it, in either of which events the same may be suspended by the President, or by the governor, whenever during such period the necessity for such suspension shall exist."

while Section 1 of the same law in part provides that:

> ". . . whenever it becomes necessary he (governor) may call upon the commanders of the military and naval forces of the United States in the island, or summon the posse comitatus, or call out the militia to prevent or suppress lawless violence, invasion, insurrection, or rebellion, and he may, in case of rebellion, or invasion, or imminent danger thereof, when the public safety requires it, suspend the privilege of the writ of *habeas corpus*, or place the island, or any part thereof, under martial law until communication can be had with the President and the President's decision therein made known . . . ."

The governor of Puerto Rico was also appointed by the President of the United States, with the advice and consent of the Senate thereof,[42] until August 5, 1947 when the people of Puerto Rico were authorized to elect their Governor beginning with the general election of 1948.[43]

Observe that even the "imminent danger" inconsistency in our Constitution and in the Jones Law appears in the writ provisions of the Organic Act of Puerto Rico. Note that Hawaii and Puerto Rico are, as the Philippines was before, both territorial possessions of the United States. Note that in both Hawaii and Puerto Rico the power of suspension is vested in their respective Governor, both,

---

[40] Act of the United States Congress of April 30, 1900; 31 STAT. 153; 48 U.S.C.A. § 532.

[41] 61 STAT. 772.

until recently, appointed by the President of the United States. In the light of comparisons with the United States and state constitutions previously made, these similarities acquire much significance and should render conclusive the view previously advanced, that the Jones Law provisions on the writ which we adopted in our Constitution were peculiarly intended for a colony with no definite assurance of independence, but restless for it—at least, in so far as its provisions vest the power of suspension on the executive. In other words, what was intended for a territorial possession seems to have been adopted by the framers of our Constitution for an independent and sovereign republic.

Delegate Laurel, in speaking before the Constitutional Convention on the Bill of Rights of our Constitution, made this observation: "There is in reality nothing new in this proposed Bill of Rights. It is but a restatement of what is found in the Jones Law, and the Bill of Rights contained in this law is, in turn, but a reproduction of similar provisions in American Constitutions, both Federal and State." [44] The observation was well made. The writ provision of our Constitution in the Bill of Rights was taken from a Jones Law provision which has much similarity with corresponding Federal and State constitutions. However, the writ provision in Article VII, which supplements and controls [45] the provision in the Bill of Rights, stands alone among these constitutions.

The observations so far made do little credit, if at all, to the framers of our Constitution. Historical antecedents of the writ provisions of our Constitution indicate that we adopted for an independent republic, provisions intended to secure a "colony." The deliberations of the Constitutional Convention on the matter, however, show that the adoption was made after much discussion and consideration. A proposal was in fact made by Delegate Araneta to instead incorporate the following provision:

> "In case of rebellion, insurrection, or invasion, when the public safety requires it, the National Assembly may suspend the privilege of the writ of *habeas corpus*. In case the National Assembly is not in session, the

---

[43] 39 STAT. 955.

[43] § 1, 61 STAT. 770.

[44] From the speech delivered by Delegate Jose P. Laurel before the Constitutional Convention on Nov. 19, 1934, as Chairman of the Committee on Bill of Rights, quoted in full in 2 ARUEGO, *op. cit. supra* note 13, at 1041-62.

[45] On the "imminent danger" inconsistency, the Supreme Court ruled in the case of Montenegro v. Castañeda, 48 O.G. 3392 (1952), that Art. VII, § 10, par. 2 of the Constitution should prevail over Art. III, § 1, par. 14. Whether the Art. VII provision controls the Bill of Rights provision to the extent that it would deny to any other body the power of suspension is another question, still not raised and decided.

> President may suspend the privilege of the writ of *habeas corpus* with the consent of the majority of the Supreme Court, but this suspension of the privilege of the writ of *habeas corpus* will be considered revoked if the President does not call a special session of the National Assembly within fifteen days from the decree suspending the writ of *habeas corpus* or if the National Assembly fails to confirm the action of the President within 30 days." [46]

The proposal is significantly different from the present constitutional provisions on the writ, not so much as to the occasions for suspension, as to the agency and mode by which the writ may be suspended. The Constitutional Convention, however, voted down the amendment.[47] It's acceptance would undoubtedly have meant protection of the writ against possible abusive presidential curtailment, but correspondingly a diminution in the totality and effectiveness of the presidential powers.

A need for a strong executive was felt by the Constitutional Convention. Adoption of the Araneta proposal would have taken so much of the strength of the Executive. For the constitutional provisions on the writ undoubtedly vest tremendous powers on the President. The last suspension of the writ is too recent for this to need elucidation. They were, and are, believed to be strong and powerful enough to enable in large measure the Governor-Generals of United States' territorial possessions to maintain peace in the territories, and to keep the sovereignty of the United States secure. In the ultimate, the Constitutional Convention seems to have granted the President powers over the writ which when written into the Jones Law by the United States Congress were believed peculiarly appropriate for a territorial possession. Whether it did wisely or unwisely, we need not conclude. The events that surrounded the last suspension speak quite audibly and we find no need to evaluate them at this time. Definitely, however, in fairness to the framers of our Constitution, there was not a blind copying of the Jones Law provisions on the writ. Even the "imminent danger" inconsistency was noted, though left uncorrected. Rather, there seems to have been a considered adoption of the Jones Law provisions on the writ probably influenced by the desire of the convention to have a strong executive.

Off and on, there have been moves to amend our Constitution. Should these sporadic attempts ever result in a definite move not only to amend, but moreover to revise, our Constitution, the habeas corpus provisions would be worth considering. These brief observations on how a provision peculiarly intended for a "colony" found its way into the constitution of an independent republic, most prob-

---

[46] 1 ARUEGO, THE FRAMING OF THE CONSTITUTION 430-2 (1936).
[47] *Ibid.*

ably on the wave of a need for a strong executive, may well be of help to those who would make further studies on the writ provisions of our Constitution. Needed to secure a colony, they were deemed fit to secure a republic. Have they?

PHILIPPINE LAW JOURNAL

Published by the College of Law, University of the Philippines
Diliman, Quezon City

VOLUME 31 | FEBRUARY, 1956 | NUMBER 1

The Editorial Staff and the College of Law publish contributions of interest and value to law students and the legal profession, but the views of the contributors to the columns of the PHILIPPINE LAW JOURNAL do not necessarily reflect those of the College of Law and the JOURNAL.

Communications of either an editorial or business nature should be addressed to PHILIPPINE LAW JOURNAL, College of Law, University of the Philippines, Diliman, Quezon City, Philippines.

It will be assumed that a renewal of subscription is desired, unless a notice of discontinuance is received by the JOURNAL on or before the expiration date.