THE ENDURING CONTRIBUTIONS OF JUSTICE MALCOLM TO THE LAW ON HABEAS CORPUS *

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It seems fitting and appropriate on a Law day that we take time out to devote some thoughts on the writ of *habeas corpus,* admittedly the most effective antidote against the toxin of illegality that manifests itself as a restraint on liberty. It is the aim of this brief lecture to inquire, however inconclusively, into the enduring contributions of the late Justice George A. Malcolm to the law on *habeas corpus.* Those of us gathered here today, however diverse our activities may be or different our fields of interest are, are united, I would assume, by a bond of affection for this great College of which he was the founder and to which up to the end of his life, he always gave the full measure of his devotion; as well as by our concern for constitutionalism, of which, during his incumbency in our Supreme Court, he was the foremost exponent.

For proof of such an assertion, all that is necessary is reference to the opening paragraph of *Villavicencio v. Lukban,*[1] certainly even now the most significant decision on the subject. This is how Justice Malcolm expressed himself: "The annals of juridical history fail to reveal a case quite as remarkable as the one which this application for *habeas corpus* submits for decision. While hardly to be expected to be met with in this modern epoch of triumphant democracy, yet, after all, the cause presents no great difficulty if there is kept in the forefront of our minds the basic principles of popular government and if we give expression to the paramount purpose for which the courts, as an independent power of such a government, were constituted. The primary question is — Shall the judiciary permit a government of men instead of a government of laws to be set up in the Philippine Islands?"[2]

In a discussion then of the significant role played by Justice Malcolm in the development of the law on *habeas corpus,* an appraisal thereof in a recent decision may well be the starting point. *Gumabon v. Di-*

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1 39 Phil. 778 (1919).

2 *Ibid,* p. 780.

rector of Prisons[3] put the matter this way: "A full awareness of the potentialities of the writ of *habeas corpus* in the defense of liberty with its limitations may be detected in the opinions of former Chief Justices Arellano, Avanceña, Abad Santos, Paras, Bengzon, and the present Chief Justice. It fell to Justice Malcolm's lot, however, to emphasize quite a few times the breadth of its amplitude and of its reach."[4]

We start with a brief survey of the current state of the authoritative doctrines on *habeas corpus*. Then the role played by Justice Malcolm in making it truly effective as a safeguard of liberty, precluding any infringement in the absence of statute or ordinance, the validity of which may be inquired into through this action, will be assayed. Nor does its usefulness end there. As made clear by him, it is likewise a mode by which a proceeding in a criminal prosecution may be nullified even after the finality of a sentence if constitutional rights are not respected, and by which any further restraint on one's freedom may be avoided after compliance with the penalty imposed. Then lastly his opinions enunciating how it may be availed of to test the validity of confinement arising from contempt of court or of a legislative body will be briefly touched upon.

1. *The law on habeas corpus in general*

There is aptness and accuracy in the characterization of the writ of *habeas corpus* as the writ of liberty. Rightfully it is latitudinarian in scope. It can dig deep into the facts to assure that there be no toleration of illegal restraint. Detention must be for a cause recognized by law. The writ imposes on the judiciary the grave responsibility of ascertaining whether a deprivation of physical freedom is warranted. This it has to discharge without loss of time. The party who is keeping a person in custody has to produce him in court as soon as possible. What is more, he must justify the action taken. Only if it can be demonstrated that there has been no violation of one's right to liberty will he be absolved from responsibility. Unless there be such a showing, the confinement must thereby cease. Nor may it suffice that there be a court process, order, or decision on which it is made to rest. If there be a showing of a violation of constitutional rights, the jurisdiction of the tribunal issuing it is ousted. Moreover even if there be a valid sentence, it cannot, even for a moment, be extended beyond the period provided for by law. When that time comes, he is entitled to be released.[5]

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[3] G.R. No. L-30026, January 30, 1971, 37 SCRA 420 (1971), citing In re Patterson, 1 Phil. 93 (1902); Ortiz v. Villar, 57 Phil. 19 (1932); Slade Perkins v. Director of Prisons, 58 Phil. 271 (1933); Pomeroy v. Director of Prisons, 107 Phil. 50 (1960). In the case of Chief Justice Concepcion, his opinion in Lansang c. Garcia, G.R. No. L-33964, December 11, 1971, 42 SCRA 448 (1971), decided after Gumabon, must be mentioned.

[4] *Ibid*, 423-424.

[5] Cf. FERNANDO, THE BILL OF RIGHTS, 251-262 (1970); FERNANDO, THE BILL OF RIGHTS, 295-328 (2nd ed., 1972).

It is in that sense then, as so well put by Holmes, that this great writ "is the usual remedy for unlawful imprisonment."[6] It does afford, to borrow from the language of Birkenhead, "a swift and imperative remedy in all cases of illegal restraint or confinement." [7] Not that there is need for actual incarceration. A custody for which there is no support in law suffices for its invocation. The party proceeded against is usually a public official, the run-of-the-mill petitions often coming from individuals who for one reason or another have run afoul of the penal laws. Confinement could likewise come about because of contempt citations,[8] whether from the judiciary or either chamber of Congress. It could also be due to statutory commands, whether addressed to cultural minorities [9] or to persons diseased.[10] Then too this proceeding could be availed of by citizens subjected to military discipline [11] as well as aliens seeking entry into or to be deported from the country.[12] Even those outside the government service may be made to account for their action as in the cases of wives restrained by their husbands or children withheld from the proper parent or guardian.[13] It is thus apparent that any deviation from the legal

[6] Chin Yow v. United States, 208 US 8, 13, 28 S. Ct. 201, 52 L. Ed. 369 (1908).

[7] Secretary of States of Home Affairs v. O'Brien A.C. 603, 609 (1923). As the writ originated in England, it may be of some interest to note that as early as 1220 the words *habeat corpora* appeared in an order directing an English sheriff to produce parties to a trespass action before the Court of Common Pleas. In succeeding centuries, the writ was made use of by way of procedural orders to ensure that parties be present at court proceedings. "By the close of the sixteenth century there were many forms of habeas corpus, of which the most important was *habeas corpus ad subliciendum*, the writ used in cases of criminal confinement." Cf. *Developments in the Law of Federal Habeas Corpus*, 83 HARV. L. REV. 103 (1970): Goddard, *A Note on Habeas Corpus*, 65 LAW Q. REV. 30 (1949); Tan Chor-Yong, *Habeas Corpus in Singapore*, 2 UNIV. OF MALAYA L. REV. 323 (1960).

[8] *Cf.* Finnick v. Peterson, 6 Phil. 172 (1906); Jones v. Harding, 9 Phil. 279 (1907); Villaflor v. Summers, 41 Phil. 62 (1920); Carag v. Warden, 53 Phil. 85 (1929); Lopez v. De los Reyes, 55 Phil. 170 (1930); Estacio v. Provincial Warden, 69 Phil. 150 (1939); Arnault v. Nazareno, 87 Phil. 29 (1950); Arnault v. Balagtas, 97 Phil. 358 (1955).

[9] *Cf.* Rubi v. Provincial Board, 39 Phil. 660 (1919).

[10] *Cf.* Lorenzo v. Director of Health, 50 Phil. 595 (1927).

[11] *Cf.* In re Carr, 1 Phil. 513 (1902); Mekin v. Wolfe, 2 Phil. 74 (1903); Cabantag v. Wolfe, 6 Phil. 273 (1906); In re Smith, 14 Phil. 112 (1909); Cabiling v. Prison Officer, 75 Phil. 1 (1945); Raquiza v. Bradford, 75 Phil. 50 (1945); Reyes v. Crisologc, 75 Phil. 225 (1945); Yamasita v. Styer, 75 Phil. 563 (1946); Cantos v. Styer, 76 Phil. 749 (1946); Tubb and Tedrow v. Griess, 78 Phil. 249)1946); Miquiabas v. Phil. Ryukyus Command, 80 Phil. 262 (1948); Dizon v. Phil. Ryukyus Command, 81 Phil. 286 (1948).

[12] *Cf.* Lo Po v. McCoy, 8 Phil. 343 (1907); Lorenzo v. McCoy, 15 Phil. 559 (1910); Edwards v. McCoy, 22 Phil. 598 (1912); Que Quay v. Collector of Customs, 33 Phil. 128 (1916); Tan Me Nio v. Collector of Customs, 34 Phil. 944 (1916); Bayani v. Collector of Customs, 37 Phil. 468 (1918); In re McCulloch Dick, 38 Phil. 41 (1918); Mateo v. Collector of Customs, 63 Phil. 470 (1936); Chua v. Secretary of Labor, 68 Phil. 649 (1939); Villahermosa v. Commissioner of Immigration, 80 Phil. 541 (1948); Mejoff v. Director of Prisons, 90 Phil. 70 (1951); Borovsky v. Commissioner of Immigration, 90 Phil. 107 (1951).

[13] *Cf.* Reyes v. Alvarez, 8 Phil. 723 (1907); Lozano v. Martinez, 36 Phil. 976 (1917); Pelayo v. Lavin Aedo, 40 Phil. 501 (1919); Bancosta v. Doe, 46 Phil. 843 (1923); Sanchez de Strong v. Beishir, 53 Phil. 331 (1929); Makapagal v. Santamaria, 55 Phil. 418 (1930); Salvaña v. Gaela, 55 Phil. 680 (1931); Ortiz v.

norms calls for the restoration of freedom. It cannot be otherwise. It would be sheer mockery of all that such a legal order stands for, if any person's right to live and work where he is minded to, to move about freely, and to be rid of any fears that a knock on the door, whether by day or some unholy hour of the night, means being jailed, is not accorded full respect. The significance of the writ then for a regime of liberty cannot be overemphasized.[14]

Rightly then could Chafee refer to the writ as "the most important human rights provision" in the American Constitution.[15] He explained why: "Perhaps Dr. Johnson went too far in telling Boswell, 'The Habeas Corpus is the single advantage our government has over that of other countries.' Still, such great liberties as worship and speech will go on somehow, despite laws, but not liberty of the person. Censorship can be evaded; prosecutions against ideas may break down; a prison wall is *there*. Only habeas corpus can penetrate it. When imprisonment is possible without explanation or redress, every form of liberty is impaired. A man in jail cannot go to church or discuss or publish or assemble or enjoy property or go to the polls." [16] Without such a guarantee, as Fraenkel was at pains to point out, "much else would be of no avail." [17] Cooley and Willoughby did stress its pivotal role as a "safeguard to personal liberty", thus precluding "arbitrary and illegal imprisonment by whomsoever detention may be exercised or ordered." [18] There was thus no hyperbole when Burdick referred to it as "one of the most important bulwarks of liberty." [19]

What these eminent commentators stated finds support in American Supreme Court rulings. As was set forth in *Gumabon:* "An 1830 decision of Chief Justice Marshall put the matter thus: 'the writ of habeas corpus is a high prerogative writ, known to the common law, the great object

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Del Villar, 57 Phil. 19 (1932); Flores v. Cruz, 99 Phil. 720 (1956); Murdock v. Chuidian, 99 Phil. 821 (1956).

[14] As was so aptly put in an article written by the then Professor, now Solicitor General Estelito Mendoza: "It is a well-known fact that the privilege of the writ of the *habeas corpus* is an indispensable remedy for the effective protection of individual liberty. This is more so when the infringement arises from government action. When liberty is threatened or curtailed by private individuals, only a loud cry (in fact, it need not even be loud) need be made, and the government steps in to prevent the threatened infringement or to vindicate the consummated curtailment. The action is often swift and effective; the results generally satisfactory and gratifying. But when the government itself is the 'culprit', the cry need be louder, for the action is invariably made under color of law or cloaked with the mantle of authority. The privilege of the writ, however, because it may be made to bear even upon governmental officers, assures that the individual's cry shall not, at least, be futile and vain." Mendoza, *The Suspension of the Writ of Habeas Corpus: Suggested Amendments*, 33 PHIL. L. J., p. 630, at 635 (1958).

[15] CHAFEE, HOW HUMAN RIGHTS GOT INTO THE CONSTITUTION, 51, (1952).

[16] *Ibid.*

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

[18] The first quoted portion comes from 2 COOLEY, CONSTITUTIONAL LIMITATIONS, 709 (8th ed., 1927) and the latter from 3 WILLOUGHBY ON THE CONSTITUTION, 1612 (1929).

[19] BURDICK, THE LAW OF THE AMERICAN CONSTITUTION, 27 (1922).

of which is the liberation of those who may be imprisoned without sufficient cause'." Then there is this affirmation from an 1869 decision of the then Chief Justice Chase: "The great writ of habeas corpus has been for centuries esteemed the best and only sufficient defense of personal fredom." The passing of the years has only served to confirm its primacy as a weapon in the cause of liberty. Just the other year, Justice Fortas spoke for the United States Supreme Court thus: "The writ of habeas corpus is the fundamental instrument for safeguarding individual freedom against arbitrary and lawless state action.

"The scope and flexibility of the writ—its capacity to reach all manner of illegal detention—its ability to cut through barriers of form and procedural mazes—have always been emphasized and jealously guarded by courts and lawmakers. The very nature of the writ demands that it be administered with the initiative and flexibility essential to insure that miscarriages of justice within its reach are surfaced and corrected." Justice Fortas explicitly made reference to Blackstone, who spoke of it as 'the great and efficacious writ, in all manner of illegal confinement." Implicit in his just estimate of its preeminent role is his adoption of Holmes' famous dissent in *Frank v. Magum:* "But habeas corpus cuts through all forms and goes to the very tissue of the structure." [20]

2. *The all-embracing sweep of habeas corpus: Villavicencio v. Lukban.*

It has been said of Justice Malcolm's assignment as *ponente* for the Supreme Court in *Villavicencio v. Lukban* [21] that he had everything going for him to assure that a landmark opinion could be in the making. Why such a remark was not inappropriate would be obvious from a perusal of the facts. The case had its origins when the then Mayor of Manila, Justo Lukban, prompted by the best of motives, decided to rid the city of organized crime and close the segregated district wherein women of ill-repute were residing. During a period of about nine days, October 16 to October 25, 1918, they were kept confined in their houses by the police. All the while city authorities quietly perfected arrangements with the Bureau of Labor for sending them to Davao, Mindanao, to work in less disreputable occupations. At about midnight of October 25, police officials, acting pursuant to orders from their chief Anton Hohmann and the then Mayor Lukban, gathered some 170 of them into patrol wagons, and placed them on board two coastguard cutters. They were not even given the opportunity to collect their meager possessions. They were mistakenly under the impression that they were merely being taken to a police station for

[20] Gumabon v. Director of the Bureau of Prisons, G.R. No. L-30026, January 30, 1971, 37 SCRA 420, 424-425 (1971). The American decisions cited were *Ex parte* Yerger, 8 Wall. 85, 95, 19 L. E. 332 (1869); Harris v. Nelson, 394 U.S. 286, 291 (1969); Frank v. Mangum, 237 U.S. 309, 346, 35 S.Ct. 582, 59 L. Ed. 969 (1915).

[21] 39 Phil. 778 (1919).

an investigation; they had no knowledge that they would be taken to Mindanao. Much less were they asked whether it was their wish to do so. There was no consent then, either express or implied, to what was done to them. That same night the vessels left for Davao, arriving on October 29. After landing, a great number of such women were employed as laborers in two haciendas, whose owners had no previous knowledge of their previous line of work or that they were deported from Manila.

As far back as October 25, 1918, an attorney for the relatives and friends of a considerable number of the deportees presented a petition for *habeas corpus* to a member of the Supreme Court. Subsequently, through stipulation of the parties, it was made to include all of the women who were thus sent to Davao. Then came the allegation that the women were illegally restrained of their liberty by Justo Lukban, mayor of the city of Manila; Anton Hohmann, chief of police of the city of Manila; and by certain unknown parties. The writ was made returnable before the full court. The city fiscal appeared for the respondents, Lukban and Hohmann, and admitted certain facts as to such temporary confinement and subsequent deportation. It was contended that petitioners were not proper parties, that the action should have been begun in the Court of First Instance of Davao. There was an assertion that respondents did not have any of the women under their custody or control. According to an exhibit attached to the return of the fiscal, the women were destined to be laborers, at good salaries, on the hacienda of Yñigo as well as of then Governor Francisco Sales of Davao. There was an admission at the hearing that they had been sent out of Manila without their consent.

The significant fact according to the opinion of Justice Malcolm was that by virtue of the act of respondent mayor 170 women were isolated from society, and that at night, without their consent and without any opportunity to consult with friends or to defend their rights, were forcibly taken on board steamers for transportation to regions unknown. It gave rise to the then decisive question of: by authority of what law did the Mayor and the Chief of Police presume to act in deporting by duress these persons from Manila to another distant locality within the Philippines?

This was the answer: "But one can search in vain for any law, order or regulation, which even hints at the right of the Mayor of the city of Manila or the chief of police of that city to force citizens of the Philippine Islands—and these women despite their being in a sense lepers of society are nevertheless not chattels but Philippine citizens protected by the same constitutional guaranties as are other citizens—to change their domicile from Manila to another locality. On the contrary, Philippine penal law specifically punishes any public officer who, not being expressly authorized by law or regulation, compels any person to change his residence." [22]

[22] *Ibid.*, p. 786.

To leave them remediless under the circumstances would be unthinkable. It would be a blot on the law. Such invasion of personal liberty did call for redress, one that would be the most effective considering the gravity of the infraction. While therefore as admitted by Justice Malcolm, there could be resort to either a civil action or a criminal prosecution, neither is quite satisfactory. The former is a slow process, while the latter may be an improvement but not much. What is needed is a remedy that can promptly assure vindication of the rights of the victims of such arbitrary official action. For him then, it is the writ of *habeas corpus,* devised "as a speedy and effectual remedy to relieve persons from unlawful restraint," [23] its principal purpose being to set individuals at liberty.

The situation, as it began, was thus made to order for the invocation of the writ. As it developed, however, a complication did set in as a great many of the women involved apparently were not restrained of their liberty by respondents. While Justice Malcolm admitted that such a fact could be and was indeed made a defense, it was far from being conclusive. For "acceptance of such dictum is found to be perversive of the first principles of the writ of habeas corpus." [24] As was explained by him: "A prime specification of an application for a writ of habeas corpus is restraint of liberty. The essential object and purpose of the writ of habeas corpus is to inquire into all manner of involuntary restraint as distinguished from voluntary, and to relieve a person therefrom if such restraint is illegal. Any restraint which will preclude freedom of action is sufficient. The forcible taking of these women from Manila by officials of that city, who handed them over to other parties, who deported them to a distant region, deprived these women of freedom of locomotion just as effectively as if they had been imprisoned. Placed in Davao without either money or personal belongings, they were prevented from exercising the liberty of going when and where they pleased. The restraint of liberty which began in Manila continued until the aggrieved parties were returned to Manila and released or until they freely and truly waived this right." [25]

Moreover, he emphatically stressed: "Consider for a moment what an agreement with such a defense would mean. The chief executive of any municipality in the Philippines could forcibly and illegally take a private citizen and place him beyond the boundaries of the municipality, and then, when called upon to defend his official action, could calmly fold his hands and claim that the person was under no restraint and that he, the official, had no jurisdiction over this other municipality. We believe the true principle should be that if the respondent is within the jurisdiction of the court and has it in his power to obey the order of the court and thus to undo

[23] *Ibid.*, p. 788.
[24] *Ibid.*, p. 791.
[25] *Ibid.*

the wrong that he has inflicted, he should be compelled to do so. Even if the party to whom the writ is addressed has illegally parted with the custody of a person before the application for the writ is no reason why the writ should not issue. If the mayor and the chief of police, acting under no authority of law, could deport these women from the city of Manila to Davao, these same officials must necessarily have the same means to return them from Davao to Manila. The respondents, within the reach of process, may not be permitted to restrain a fellow citizen of her liberty by forcing her to change her domicile and to disavow the act with impunity in the courts, while the person who has lost her birthbright of liberty has no effective recourse. The great writ of liberty may not thus be easily evaded." [26]

Another defense interposed, that the petition should have been filed in the Court of First Instance of Davao, was easily disposed of by Justice Malcolm thus: "It is a general rule of good practice that, to avoid unnecessary expense and inconvenience, petitions for habeas corpus should be presented to the nearest judge of the court of first instance. But this is not a hard and fast rule. The writ of habeas corpus may be granted by the Supreme Court or any judge thereof enforcible anywhere in the Philippine Islands. * * * Whether the writ shall be made returnable before the Supreme Court or before an inferior court rests on the discretion of the Supreme Court and is dependent on the particular circumstances. In this instance it was not shown that the Court of First Instance of Davao was in session, or that the women had any means by which to advance their plea before that court. On the other hand, it was shown that the petitioners with their attorneys and two original respondents with their attorney, were in Manila; it was shown that the case involved parties situated in different parts of the Islands; it was shown that the women might still be imprisoned or restrained of their liberty; and it was shown that if the writ was to accomplish its purpose, it must be taken cognizance of and decided immediately by the appellate court. The failure of the superior court to consider the application and then to grant the writ would have amounted to a denial of the benefits of the writ." [27]

It is easily understandable then why this opinion of Justice Malcolm did elicit the commendation of all lovers of liberty. For thereby the Supreme Court did speak in no uncertain terms that any restraint thereof in the absence of any statute or ordinance that meets the test of validity cannot and will not be tolerated. Even defenses that might be conjured to lessen the effectiveness of this great writ would be of no avail, for only

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[26] *Ibid. Cf.* Perlman, Philip B., *Habeas Corpus and Extraterritoriality*, 36 AM. BAR ASSO. J. 187 (1950).

[27] *Ibid.*, 789-790. As to the defense that there was a defect in parties petitioners, this is how Justice Malcolm disposed of it: "The first defense was not pressed with any vigor by counsel." At p. 789.

thus could the all-embracing scope of such a remedy be fully realized. Certainly, the thoughts given great utterance by Justice Malcolm did aid the Supreme Court in later cases and continue to be reflected in subsequent decisions.[28]

a. *Where deference to demand of liberty less than complete: Rubi v. Provincial Board*

It must be remembered though that with all Justice Malcolm's well-known dedication to the cause of freedom, he wrote the opinion for the Supreme Court upholding the validity of legislation that would require a cultural minority group to live in reservations. Thus was *Rubi v. Provincial Board* [29] decided. There was an element of surprise as the ruling was handed down barely eighteen days prior to *Villavicencio,* to be exact on March 17, 1919. It would, of course, be too harsh an appraisal to call it a blot on his record. Would it were otherwise, however.

In this *habeas corpus* petition, Rubi and other Manguianes of Mindoro alleged that they were illegally deprived of their liberty by respondent officials, who were responsible for their being made to live in a reservation. In the return submitted by the then Solicitor-General Quintin Paredes, the justification for such action taken was a provincial board resolution of Mindoro, dated February 1, 1917, which was to the effect that by virtue of Section 2077 of the Administrative Code, 800 hectares of public land in the *sitio* of Tigbao on Naujan Lake were designated as a site for the permanent settlement of Manguianes in Mindoro. Such resolution was duly approved by the Secretary of Interior on February 21, 1917. It was justified as a necessary measure for their protection and their welfare as it would introduce them into the ways of civilization. Then came an order on December 4, 1917, from the provincial governor of Mindoro directing Manguianes in the vicinities of the townships of Naujan and Pola as well as those east of the Baco River and Dulangan and Calapan, to take their habitation on such site, not later than December 31, 1917. It was further provided that any member of such tribe refusing to comply would be liable to imprisonment under Section 2759 of the Revised Administrative Code. The statutory support for the resolution was Section 2145 of the Administrative Code of 1917, which reads as follows: "With the prior approval of the Department Head, the provincial governor of any province in which non-Christian inhabitants are found is authorized, when such a course is deemed necessary in the interest of law and order, to direct such inha-

[28] *Cf.* Oliveros de Tan v. Fabre, 83 Phil. 755 (1949); Nava v. Gatmaitan, 90 Phil. 172 (1951); Commissioner of Immigration v. Cloribel. G.R. No. L-24139, August 31, 1967, 20 SCRA 1241 (1967); Celeste v. People, G.R. No. L-31435, January 30. 1970, 31 SCRA 391 (1970); Gumabon v. Director of the Bureau of Prisons, G.R. No. L-30026, January 30, 1971, 37 SCRA 420 (1971).

[29] 39 Phil. 660 (1919).

bitants to take up their habitation on sites on unoccupied public lands to be selected by him and approved by the provincial board." [30]

The *habeas corpus* petition could thus prosper only if such Section 2145 were annulled. If it were a valid police power measure enacted to promote the general welfare and the public interest, then the attack would fail. That was the conclusion reached by the Court speaking through Justice Malcolm. As was explained by him: "In so far as the Manguianes themselves are concerned, the purpose of the Government is evident. Here, we have on the Island of Mindoro, the Manguianes, leading a nomadic life, making depredations on their more fortunate neighbors, uneducated in the ways of civilization, and doing nothing for the advancement of the Philippine Islands. What the Government wished to do by bringing them into a reservation was to gather together the children for educational purposes, and to improve the health and morals—was in fine, to begin the process of civilization. This method was termed in Spanish times, "bringing under the bell." The same idea adapted to the existing situation, has been followed with reference to the Manguianes and other peoples of the same class, because it required, if they are to be improved, that they be gathered together. On these few reservations there live under restraint in some cases, and in other instances voluntarily, a few thousands of the uncivilized people. Segregation really constitutes protection for the Manguianes. Theoretically, one may assert that all men are created free and equal. Practically, we know that the axiom is not precisely accurate. The Manguianes, for instance, are not free, as civilized men are free, and they are not the equals of their more fortunate brothers. True, indeed, they are citizens, with many but not all the rights which citizenship implies. And true, indeed, they are Filipinos. But just as surely, the Manguianes are citizens of a low degree of intelligence, and Filipinos who are a drag upon the progress of the State. In so far as the relation of the Manguianes to the State is concerned, the purposes of the Legislature in enacting the law, and of the executive branch in enforcing it, are again plain. Settlers in Mindoro must have their crops and persons protected from predatory men, or they will leave the country. It is no argument to say that such crimes are punished by the Penal Code, because these penalties are imposed after commission of the offense and not before. If immigrants are to be encouraged to develop the resources of the great Island of Mindoro, and its as yet, unproductive regions, the Government must be in a position to guarantee peace and order." [31]

[30] *Ibid*, p. 669. Section 2759 of the same Code is likewise material. It is worded thus: "Any non-Christian who shall refuse to comply with the directions lawfully given by a provincial governor, pursuant to section two thousand one hundred and forty-five of this Code, to take up habitation upon a site designated by said governor shall upon conviction be imprisoned for a period not exceeding sixty days." *Ibid.*

[31] 39 Phil. 660, 712-713 (1919).

For the Justice, the question was "above all one of sociology." [32] The approach to be followed by the judiciary was set forth by him thus: "In resolving such an issue, the Judiciary must realize that the very existence of government renders imperative a power to restrain the individual to some extent, dependent, of course, on the necessities of the class attempted to be benefited. As to the particular degree to which the Legislature and the Executive can go in interfering with the rights of the citizen, this is, and for a long time to come will be, impossible for the courts to determine." [33] Hence the conclusion: "Considered, therefore, purely as an exercise of the police power, the courts cannot fairly say that the Legislature has exceeded its rightful authority. It is, indeed, an unusual exercise of that power. But a great malady requires an equally drastic remedy." [34]

There was a dissenting opinion by Justice Johnson predicated on the absence of a hearing before the Manguianes were deprived of their liberty and another one by Justice Moir with whom Justices Araullo and Street concurred. It was their conclusion: "I think this Court should declare that sections 2145 and 2759 of the Administrative Code of 1917 are unconstitutional, null and void, and that the petitioners are illegally restrained of their liberty, and that they have been denied the equal protection of the laws, and order the respondents immediately to liberate all of the petitioners." [35]

It could be said that Justice Malcolm could have displayed greater sympathy for the plea of liberty. Undoubtedly, due process and equal protection questions did arise. There was an element of religious discrimination in the face of such measures. Non-Christians were treated differently. At the same time, one cannot lose sight of the fact that while the freedom of the Manguianes was in fact denied, the current thinking then was that Christianization would further their welfare and the action taken by the Provincial Board in accordance with the Administrative Code provision was a step in the right direction. That was at the time the prevailing climate of opinion. It has changed, of course, and for the better. No such feeling of certitude as to minority cultures being deprived of their right to follow their traditional way of life now exists. The stress appears to be on diversity as not being incompatible with the general welfare. The likelihood that this case would be decided differently now does not of itself argue for a lack of understanding as to why then such a result was reached. Nonetheless, a reaction of mild disappointment is not to be wondered at.

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[32] *Ibid.*, p. 717.
[33] *Ibid.*
[34] *Ibid*, p. 718.
[35] *Ibid*, p. 738.

3. *Availability of habeas corpus as an aid to the exercise of the power of judicial review: Ganaway v. Quillen and Lorenzo v. Director of Health*

Justice Laurel in the leading case of *People v. Vera*[36] noted that while the question of the validity of an act of the legislature and, necessarily so, of an executive order is frequently raised in ordinary actions, resort may likewise be made to what were then known as extraordinary legal remedies and now identified either as special civil actions or special proceedings under the Rules of Court.[37] There can be no question then that a *habeas corpus* proceeding lends itself to such a purpose. He could very well have referred to the preceding case of *Rubi v. Provincial Board*[38] as well as to the subsequent cases of *Ganaway v. Quillen*[39] and *Lorenzo v. Director of Health,*[40] the opinions in the two latter cases being also penned by Justice Malcolm. In all three decisions, it was made clear that a petition for habeas corpus could be availed of to challenge the constitutionality of legislation. It was only in *Ganaway,* however, where the act assailed was in effect invalidated. Petitioner there sought his release from Bilibid Prison in this *habeas corpus* petition, his incarceration being an "imprisonment for debt in a civil cause growing out of a contract."[41] In the return, it was alleged that he was confined by virtue of a warrant of arrest issued under Chapter XVII of the then Code of Civil Procedure. Justice Malcolm, speaking for the Court, noted that "standing alone the petition for *habeas corpus* was fatally defective in its allegations, * * *."[42] Nonetheless, the Court on its own motion ordered that the record in the lower court be sent up. It was shown that the complaint in the civil case "is grounded on a contract, and asks in effect for an accounting." That this is true is shown by the phraseology of the complaint which repeatedly speaks of an agreement entered into by the plaintiffs and the defendant and by the exhibits offered.

Reference was then made to the ban in the then organic law on a debtor being jailed for inability to pay. Thus: "The constitutional prohibition in effect in the Philippine Islands is in the same category as those States in which imprisonment for debt is absolutely prohibited. The Constitution of the Philippine Islands, unlike some States in the American Union, makes no exception in cases of fraud. The prohibition in the Philippine Bill, reproduced in the Jones Law, is "that no person shall be

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36 65 Phil. 56 (1937).
37 *Ibid,* 82-83.
38 39 Phil. 650 (1919).
39 42 Phil. 805 (1922).
40 50 Phil. 595 (1927).
41 42 Phil. 805 (1922).
42 *Ibid.* Certainly such a response by the Court—it could be presumed at the urging of Justice Malcolm—did indicate the high regard for this writ as an instrument of liberty.

imprisoned for debt." It should be given the same interpretation which similar provisions have received in the United States. Abolition of imprisonment for debt was brought about by the force of public opinion which looked with abhorrence on statutory provisions which permitted the cruel imprisonment of debtors. The people sought to prevent the use of the power of the State to coerce the payment of debts. The control of the creditor over the person of his debtor was abolished by humane statutory and constitutional provisions."[43]

After which, the opinion took up the case in hand. Thus: "It is clear that the action pending in the Court of First Instance of the city of Manila in which Thomas Casey, et al. are plaintiffs and George H. Ganaway is the defendant, is one predicated in an obligation arising upon a contract. Consequently, the imprisonment of the petitioner is in contravention of the organic law. It is for us in the Philippine Islands to let no obstacle interfere with a reasonable enforcement of the enlightened principle of free government relating to imprisonment for debt. It may, however, be appropriate to remark that our holding need not be taken as going to the extent of finding Chapter XVII of the Code of Civil Procedure invalid and should be understood as limited to the facts before us and as circumscribed by the various exceptions to the constitutional prohibition." [44]

The preceding paragraph should make clear the care with which Justice Malcolm approached the judicial function. There is enough in the premises, as set forth in his opinion, that would justify a nullification of the provision in question. Nonetheless, out of caution, to some perhaps rather excessive, he would limit the effect of the decision only to the facts of the case and further "circumscribed by the various exceptions to the constitutional prohibition." Nonetheless, it could be safely asserted that after *Ganaway* the procedures set forth for arrest in civil cases did become obsolete. At any rate, no doubt can be entertained that a *habeas corpus* petition may be availed of to test the validity of an act of legislature or of an executive order.

As a matter of fact, mention was already made that *Rubi* was deliberated upon by the Supreme Court on that assumption, but the Administrative Code provision was found to be not in contravention of any organic law prescription. After *Ganaway*, there is *Lorenzo v. Director of Health*,[45] a habeas corpus petition where the question raised was the validity of Section 1058 of the Revised Administrative Code empowering the Director of Health "to cause to be apprehended, and detained, isolated,

[43] *Ibid.*
[44] *Ibid*, pp. 810-816.
[45] 50 Phil. 595 (1927).

or confined, all leprous persons in the [Philippines]." [46] Petitioner, admittedly, was a leper. It was, however, alleged that his confinement in the San Lazaro Hospital by virtue of such provision was in violation of his constitutional rights. The claim was also made that leprosy was not an infectious disease. The return of respondent was to the effect that petitioner had to stay in such hospital as the law so required.

The validity of Section 1058 was upheld, Justice Malcolm explaining why: "Section 1058 of the Administrative Code was enacted by the legislative body in the legitimate exercise of the police power which extends to the preservation of the public health. It was placed on the statute books in recognition of leprosy as a grave health problem. The methods provided for the control of leprosy plainly constitute due process of law. The assumption must be that if evidence was required to establish the necessity for the law, that it was before the Legislature when the act was passed. In the case of a statute purporting to have been enacted in the interest of the public health, all questions relating to the determination of matters of fact are for the Legislature. If there is a probable basis for sustaining the conclusion reached, its findings are not subject to judicial review. Debatable questions are for the Legislature to decide. The courts do not sit to resolve the merits of conflicting theories." [47] To further fortify the conclusion reached, Justice Malcolm spoke of leprosy being then "commonly believed to be an infectious disease tending to cause one afflicted with it to be shunned and excluded from society, and that compulsory segregation of lepers as a means of preventing the spread of the disease is supported by high scientific authority. * * * Upon this view, laws for the segregation of lepers have been provided the world over. Similarly, the local Legislature has regarded leprosy as a contagious disease and has authorized measures to control the dreaded scourge. To that forum must the petitioner go to re-open the question. We are frank to say that it would require a much stronger case than the one at bar for us to sanction admitting the testimony of expert or other witnesses to show that a law of this character may possibly violate some constitutional provision." [48] While again there was no judgment against the validity of a legislative act, nothing

[46] Sec. 1058 of the Revised Administrative Code (1917) as originally worded reads in full: "The Director of Health and his authorized agents are empowered to cause to be apprehended, and detained, isolated, or confined all leprous persons in the Philippines; and it shall be the duty of every National, provincial, or municipal official having police powers, upon request of said Director or his agent, to arrest and deliver, at such place as the officer making the request shall indicate, any person alleged or believed to be a leper, in order that such suspect may be subjected to the medical inspection and diagnostic procedure necessary to determine the presence or absence of leprosy. It shall also be the duty of said authorities having police power to guard the person suspected of being a leper while he is in custody and to assist in removing him to place of detention, treatment, or segregation and in restraining him at such place, when so required by the Director of Health or his agent; and if it be found that the suspected person is not a leper they shall assist in his conveyance to the place at which he was arrested, unless other satisfactory arrangements are made."

[47] 50 Phil. 595, 597 (1927).

[48] *Ibid*, 598.

can be clearer than that *habeas corpus* is a handy tool for invoking the power of judicial review to annul legislative or executive acts.

That there is a need for such a principle is made apparent where measures whether in the interest of the general welfare as in *Rubi* or of public health as in *Lorenzo* are enacted, the enforcement of which would call for the restraint of the person. If such acts could not be assailed through petitions of this character, then very likely unjustified detention under the fundamental law would not be remedied in the shortest time possible. It is also possible as in *Ganaway* that a provision under the Constitution [49] would be disregarded, again without a speedy recourse to putting an end to a deprivation of liberty. It is not beyond the realm of possibility, although the probability is remote, that there could be legislation that may have an effect of an involuntary servitude.[50] Under the circumstances, *habeas corpus* certainly should lie for the purpose of nullifying it. Ordinarily, in the event that the rights of an accused [51] are invaded, the provision for a trial before incarceration is enough of a safeguard as far as unconstitutional statutes are concerned. It could be though that with reference to the right to bail [52] as well as the ban on cruel and unusual punishment,[53] a situation may arise where even prior to the termination of the criminal proceeding, *habeas corpus* would be the proper remedy on the assumption that the legislation could be thus impugned.

As is apparent though from both *Rubi* and *Lorenzo,* the repugnancy may arise from a deprivation of liberty without due process. If it were intellectual rather than physical freedom that is involved, the usual presumption of validity does not call for undeviating adherence. Liberty, in the physical sense however, as was made clear in a recent decision "does not rule out. in appropriate cases legislative deprivation as long as due

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[49] According to Article III, Section 1, par. 12 of the Constitution; "No person shall be imprisoned for debt or non-payment of a poll tax."

[50] According to Article III, Section 1, par. 13 of the Constitution: "No involuntary servitude in any form shall exist except as a punishment for crime whereof the party shall have bten duly convicted."

[51] According to Article III, Section 1, pars. 15 to 20 of the Constitution: "No person shall be held to answer for a criminal offense without due process of law." (15) "All persons shall before conviction be bailable by sufficient sureties, except those charged with capital offenses when evidence of guilt is strong. Excessive bail shall not be required." (16) "In all criminal prosecutions the accused shall be presumed to be innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy and public trial, to meet the witnesses face to face, and to have compulsary process to secure the attendance of witnesses in his behalf." (17) "No person shall be compelled to be a witness against himself." (18) "Excessive fines shall not be imposed, nor cruel and unusual punishment inflicted." (19) "No cruel and unusual punishment shall be twice but in jeopardy of punishment for the same offense. If an act is punished by law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act." (20).

[52] According to Art. III, Sec. 1, par. 16 of the Constitution: "All persons shall before conviction be bailable by sufficient sureties, except those charged with capital offenses when evidence of guilt is strong. Excessive bail shall not be required."

[53] According to Art. III, Sec. 1, par. 19 of the Constitution: "Excessive fines shall not be imposed, nor cruel and unusual punishment inflicted."

process is observed. While courts should not relax its vigilance in assuring that no undue curtailment of liberty exists, still it is to be admitted that except in cases where the specific freedoms of belief, whether religious or secular, of expression, of assembly and of association are concerned, a domain where Congress is forbidden to trespass except under the clear and present danger doctrine, the need for introducing evidence to counteract the assumption that a statute is valid may be unavoidable." [54] In that respect, what was said by Justice Malcolm, in *Rubi* where confinement in reservation could be justified for reasons of health, morals and education, as well as in *Lorenzo* where on a debatable question, the legislative body is given a greater latitude in seeking to resolve the merit of conflicting theories, still has the ring of orthodoxy. Nonetheless, if there be greater awareness that judges are presumably devotees at the altar of liberty, then perhaps there would be no undue insistence on viewing the matter primarily from the standpoint of what serves the community, to the prejudice of the individuals adversely affected. At any rate, the advance made in enabling the judiciary to inquire with the least possible delay into any form of restraint by virtue of this principle so clearly and forcefully set forth in the foregoing opinions penned by Justice Malcolm cannot be disputed.

This contribution of Justice Malcolm to the law on *habeas corpus* is all the more remarkable considering what was held in the leading case of *Glasgow v. Moyer,*[55] decided by the American Supreme Court in 1912, five years before his appointment to the Philippine Supreme Court. There, in line with the prevailing doctrine that the writ of *habeas corpus* cannot be made to perform the office of a writ of error, it was declared by the American Supreme Court: "The principle is not the less applicable because the law which was the foundation of the indictment and trial is asserted to be unconstitutional or uncertain in the description of the offense. Those questions, like others, the court is invested with jurisdiction to try if raised, and its decision can be reviewed, like its decisions upon other questions, by writ of error. The principle of the cases is the simple one that if a court has jurisdiction of the case, the writ of habeas corpus cannot be employed to re-try the issues, whether of law, constitutional or other, or of fact." [56] The *Glasgow* ruling, for some commentators of American federal law on *habeas corpus,* has been construed as an "implicit rejection of *Siebold* after direct review was established." [57] There it was held by that tribunal that the constitutionality of a statute upon which a charge was based could be examined on *habeas corpus* as an

[54] Vera v. Arca, G.R. No. L-25721, May 26, 1969, 28 SCRA 351, 363 (1969).
[55] 225 U.S. 420, 32 S. Ct. 753, 56 L. Ed. 1147 (1912).
[56] *Ibid,* 429. *Cf. In re* Belt, 159 U.S. 95, 15 S. Ct. 987, 40 L. Ed. 88 (1895); *In re* Lincoln, 202 U.S. 178, 26 S. Ct. 602, 50 L. Ed. 984 (1906); and *In re* Moran, 203 U.S. 96, 27 S. Ct. 25, 51 L. Ed. 105 (1906).
[57] *Developments in the Law of Federal Habeas Corpus,* 83 HARV. L. REV. 1038, 1947 (1970).

unconstitutional statute was said to deprive the trial court of its jurisdiction. *Glasgow* has since then been subsequently followed.[58] It must not be forgotten that Justice Frankfurther speaking for the American Supreme Court in *Adams v. United States* [59] stated: "Of course the writ of habeas corpus should not do service for an appeal. * * * This rule must be strictly observed if orderly appellate procedure is to be maintained. Mere convenience cannot justify use of the writ as a substitute for an appeal. But dry formalism should not sterilize procedural resources which Congress has made available to the federal courts. In exceptional cases where, because of special circumstances, its use as an aid to an appeal over which the court has jurisdiction may fairly be said to be reasonably necessary in the interest of justice, the writ of habeas corpus is available to a circuit court of appeals." [60] Since such a doctrine was announced by the American Supreme Court only in 1942, it is quite apparent how far in advance of the state of federal jurisprudence was the approach followed by Justice Malcolm in sanctioning the use of a *habeas corpus* petition to test the validity of a statute or executive order.

4. *Resort to habeas corpus to assure respect for constitutional rights: Conde v. Unson*

Again it is Justice Malcolm who is entitled to full credit for the prevailing and lately much-invoked principle that *habeas ocrpus* may be relied upon to test the validity of an incarceration notwithstanding the finality of the judgment if the proceedings leading to such conviction were tainted by a denial of constitutional rights. It is not open to dispute that such a doctrine further strengthens a constitutional regime founded on liberty. It goes a long way towards mitigating what in not a few cases is the harshness incident to the rule that the writ is unavailing where the confinement arises from a lawful order, process, or judgment of a court vested with jurisdiction.[61] This is a doctrine that dates back to 1902.[62] With all due

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[58] *Cf,* Huntley v. Schilder, 125 F. 2d 250 (1942); Schramm v. Brady, 129 F. 2d 109 (1942); Hawk v. Olson, 130 F. 2d 910 (1942); Sanders v. Sanford, 138 F. 2d 415 (1943); Spencer v. Cox, 140 F. 2d 73 (1944); Long v. Benson, 140 F. 2d 195 (1944); U.S. v. Hiatt, 141 F. 2d 664 (1944); Enge v. Clark, 144 F. 2d 648 (1944); Eury v. Huff, 146 F. 2d 17 (1944); United States v. Jackson, 146 F. 2d 251 (1944); Ashley v. Pescor, 147 F. 2d 318 (1945); Dorsey v. Gill, 148 F. 2d 857 (1945); U.S. v. Hoffa, 382 F. 2d 856 (1967); Keto v. U.S., 189 F. 2d 247 (1951).

[59] 317 U.S. 369, 63 S.Ct. 236, 87 L. Ed. 268, 143 ALR 435 (1942).

[60] *Ibid,* 374.

[61] Sec. 4, Rule 102 provides: "If it appears that the person alleged to be restrained of his liberty is in the custody of an officer under process issued by a court or judge or by virtue of a judgment or order of a court of record, and that the court or judge has jurisdiction to issue the process, render the judgment, or make the order, the writ shall not be allowed; or if the jurisdiction appears after the writ is allowed, the person shall not be discharged by reason of any informality or defect in the process, judgment, or order. Nor shall anything in this rule be held to authorize the discharge of a person charged with or convicted of an offense in the Philippines, or of a person suffering imprisonment under lawful judgment." 3 MORAN, COMMENTS ON THE RULES OF COURT, p. 604, 1970 ed.

[62] *Cf. In re* Prautch, 1 Phil. 132 (1902).

recognition of its salutary character in normal cases, there is still the need for a cure that is both prompt and effective when, as does unfortunately occur, the judicial process is not immune from the malady of ignoring what the Constitution commands. The rule of law cannot be satisfied in any other way. There is this restatement of such cardinal principle in *Gumabon*. "Once a deprivation of a constitutional right is shown to exist the court that rendered the judgment is deemed ousted of jurisdiction and habeas corpus is the appropriate remedy to assail the legality of the detention." [63]

It is worth noting that Justice Malcolm's opinion setting forth such a doctrine was announced not in an application for *habeas corpus* but in a suit for mandamus and prohibition. The case is *Conde v. Unson*.[64] There petitioner, formerly a municipal midwife in Lucena, province of Tayabas then, Quezon now, had been charged in no less than five informations for various crimes and misdeameanors, being compelled to appear with her witnesses and counsel at hearings on no less than eight different occasions only to have them postponed. She would have respondent provincial fiscal ordered "to abstain from further attempts to prosecute [her] pursuant to informations growing out of the facts set forth in previous informations, and the charges [then] pending before respondent justice of the peace ordered dismissed." [65] She obtained the writs prayed for.

Justice Malcolm for the Court stressed at the outset the importance of the right to speedy trial in these words: "Philippine organic and statutory law expressly guarantee (sic) that in all criminal prosecutions the accused shall enjoy the right to have a speedy trial. Aurelia Conde, like all other accused persons, has a right to a speedy trial in order that if innocent she may go free, and she has been deprived of that right in defiance of law. Dismissed from her humble position, and compelled to dance attendance on courts while investigations and trials are arbitrarily postponed without her consent, is palpably and openly unjust to her and a detriment to the public. By the use of reasonable diligence, the prosecution could have settled upon the appropriate information, could have attended to the formal preliminary examination, and could have prepared the case for a trial free from vexatious, capricious and oppressive delays."[66] After which, he emphasized that the Supreme Court was "under a moral and legal obligation to see that these proceedings come to an end and that the accused is discharged

[63] Gumabon v. Director of Prisons. G.R. No. L-30026, January 30, 1971, 37 SCRA 420, 427 (1971).
[64] 45 Phil. 650 (1924).
[65] *Ibid*, 652.
[66] *Ibid*, 651.

from the custody of the law".[67] Then came the announcement of the doctrine that had she been confined *habeas corpus* should lie. Thus: "We lay down the legal proposition that, where a prosecuting officer, without good cause, secures postponements of the trial of a defendant against his protest beyond a reasonable period of time, as in this instance for more than a year, the accused is entitled to relief by a proceeding in mandamus to compel a dismissal of the information, or if he be restrained of his liberty, by *habeas corpus* to obtain his freedom." [68]

Subsequently, in a 1947 decision, *Santiago v. Director of Prisons*,[69] with Justice Tuason as *ponente*, there was an affirmance of the principle that a deprivation of the constitutional rights affords grounds for relief by *habeas corpus*. So it was reiterated a year later through the same Justice in *Harden v. Director of Prisons*.[70] Then came, in 1949, *Abriol v. Homeres*,[71] where upon a showing of a denial of the constitutional guarantee to present evidence after his motion to dismiss was turned down, the sentence imposed by the lower court was declared null and petitioner was ordered discharged from custody within fifteen days from the promulgation of the decision unless the Provincial Fiscal should present a motion asking that the proceeding be resumed, at which occasion petitioner could present his evidence. As was so firmly stated by Justice Ozaeta speaking for the Court: "No court of justice under our system of government has the power to deprive him of that right. If the accused does not waive his right to be heard but on the contrary—as in the instant case—invokes that right, and the court denies it to him, that court no longer has jurisdiction to proceed; it has no power to sentence the accused without hearing him in his defense; and the sentence thus pronounced is void and may be collaterally attacked in a habeas corpus proceeding." [72] Then not so long ago, in 1968 to be exact, in *Chavez v. Court of Appeals*,[73] *habeas corpus* was again resorted to, petitioner alleging that in the trial resulting in conviction, his right not to testify against himself was not respected.[74] Such a step was rewarded with success. The dispositive portion of the opinion reads: "Upon the view we take of this case, judgment is hereby rendered directing the respondent Warden of the City Jail of Manila or the Director of Prisons or any other officer or person in custody of petitioner Roger Chavez by reason of the judgment of the Court of First Instance of Rizal, Quezon City Branch, in Criminal Case Q-5311, entitled

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[67] *Ibid.*
[68] *Ibid*, 652.
[69] 77 Phil. 927 (1947).
[70] 81 Phil. 741 (1948).
[71] 84 Phil. 525 (1949).
[72] *Ibid*, 534.
[73] G.R. No. L-29169, August 19, 1968, 24 SCRA 663 (1968).
[74] According to Art. III, sec. 1, par. 18 of the Constitution: "No person shall be compelled to be a witness against himself."

'People of the Philippines, plaintiff, vs. Ricardo Sumilang, et al., accused,' to discharge said Roger Chavez from custody, *unless* he is held, kept in custody or detained for any cause or reason other than the said judgment in said Criminal Case Q-5311 of the Court of First Instance of Rizal, Quezon City Branch, in which event the discharge herein directed shall be effected when such other cause or reason ceases to exist." [75] As was so emphatically stressed by Justice Sanchez: "The course which petitioner takes is correct. *Habeas corpus* is a high prerogative writ. It is traditionally considered as an exceptional remedy to release a person whose liberty is illegally restrained such as when the accused's constitutional rights are disregarded. Such defect results in the absence or loss of jurisdiction, and therefore invalidates the trial and the consequent conviction of the accused whose fundamental right was violated. That void judgment of conviction may be challenged by collateral attack, which precisely is the function of *habeas corpus*. This writ may issue even if another remedy which is less effective may be availed of by the defendant. Thus, failure by the accused to perfect his appeal before the Court of Appeals does not preclude a recourse to the writ. The writ may be granted upon a judgment already final. For, as explained in *Johnson v. Zerbst*, the writ of *habeas corpus* as an extraordinary remedy must *be liberally given effect* so as to protect well a person whose liberty is at stake." [76] In *Gumabon* itself, decided in 1971,[77] the constitutional right invoked is the safeguard of equal protection. Again it sufficed for ending the jail terms of petitioners who pleaded guilty to the complex crime of rebellion with multiple murder, robbery, arson and kidnapping and after serving the twelve-year period invoked the ruling in *People v. Hernandez*,[78] negating the existence of such an offense. How fruitful, therefore, for the course of jurisprudence has been this principle first announced by Justice Malcolm.

This contribution of Justice Malcolm to the law on *habeas corpus* assumes a truly impressive aspect when it is considered that as late as 1906, it was held by the United States Supreme Court that compelling the accused to stand up and walk before the jury, and stationing the jury during a recess so as to observe his size and walk, even if contrary to the self-incrimination clause of the Federal Constitution, did not affect the jurisdiction of the court so as to justify relief by *habeas corpus*.[79] It was not until 1939 that the American Supreme Court came around to Justice Malcolm's way of thinking when in *Bowen v. Johnson*,[80] it ruled that the re-

[75] 24 SCRA 663, 686.
[76] *Ibid.*, 683-684. Johnson v. Zerbst is reported in 304 US 458 (1939).
[77] G.R. No. L-30026, January 30, 1971, 37 SCRA 421 (1971).
[78] 99 Phil. 575 (1956).
[79] *Re* Moran, 203 US 96, 27 S. Ct. 25, 51 L. Ed. 105 (1906).
[80] 306 US 19, 59 S. Ct. 442, 83 L. Ed. 455 (1938). *Cf.* Brennan, *Federal Habeas Corpus, and State Prisoners*, 7 UTAH L. REV. 423 (1961); Reitz, *Federal Habeas Corpus*, 74 HARV. L. REV. 1315 (1961); Bator, *Finality in Criminal Law and Federal Habeas Corpus*, 76 HARV. L. REV. 441 (1963); Leighton, *Federal Supremacy and Federal Habeas Corpus*, 12 ST. LOUIS UNIV. L. J. 74 (1967).

medy of *habeas corpus* is available wherever it is found that the court in which the petitioner was tried had no jurisdiction to try him, or that in its proceedings his constitutional rights were denied. Such a doctrine assumed stability and firmness with its reiteration in *Waley v. Johnston*[81] in 1942, sustaining that reliance on the writ of *habeas corpus* in the Federal court to test the constitutional validity of a conviction for crime is not restricted to those cases where the judgment is void for want of jurisdiction, but extends also to those exceptional cases where the conviction has been in disregard of the constitutional rights of the accused, and where *habeas corpus* is the only effective means of preserving such rights.

Nor is this all that must be said. It bears repeating that under this principle calling for the utmost respect for constitutional rights to give the impress of validity to a criminal prosecution, physical freedom becomes more secure. To assure that it is not reduced to a barren concept to which only verbal obeisance is paid, the writ is made available to one who can justly allege that he is indeed so aggrieved. Certainly, there is a great public interest in the efficient administration of penal laws, but never at the cost of disregarding constitutional commands. It was on such a premise, the force of which must be obvious to all desirous of upholding the rule of law, that this further advance in extending the frontiers of liberty was predicated. Here again Justice Malcolm was at the vanguard. It could be, as asserted in certain quarters, that at most he did take a timid and tentative step forward. We have gone much further since then, it is true. Who could tell, however, whether the journey would have been begun at all were it not for the start thus made. Our debt to him then, which is considerable, must not go unrecognized.

5. *Habeas corpus as a deterrent to any further molestation once sentence complied with: Gregorio v. Director of Prisons.*

Nothing can be clearer therefore than that our law on *habeas corpus* owes so much to Justice Malcolm. What will be taken up next may not have the transcendental importance possessed by the principles thus far discussed. Nonetheless, it did add to vitalizing the remedy of this great writ. As will be seen, it did remove any doubt as to an individual's right not only to freedom after serving his sentence but also to any other form of molestation once the pecuniary penalty imposed had been satisfied.

Reference is made to *Gregorio v. Director of Prison*.[82] Petitioner in this *habeas corpus* proceeding sought his discharge from the custody of the Director of Prisons, whose defense was that he was confined by virtue

[81] 316 US 101, 62 S. Ct. 964, 86 L. Ed. 1302 (1942). *Cf.* Darr v. Burford, 339 US 200, 70 S. Ct. 587, 94 L. Ed. 761 (1950); and Townsend v. Sain, 372 US 293, 83 S. Ct. 745, 9 L. Ed. 2d 770 (1963).

[82] 43 Phil. 650 (1922).

of a judicial decision. It turned out that after being found guilty by the municipal court of the city of Manila of the crime of physical injuries through reckless imprudence for which he was sentenced to one month and one day's imprisonment and to pay the costs, he appealed to the Court of First Instance of Manila. He was permitted to enter a plea of guilty to a charge of a misdemeanor, and, with the conformity of the assistant fiscal, was ordered on July 17, 1922, to pay a fine of ₱25 and the costs. That he did right away. Afterwards, the trial judge on that very day rescinded his decision and reassigned the case for a new trial. This time petitioner withdrew his plea of guilty and substituted therefor the plea of not guilty. Then on July 31, 1922, he was found guilty of the crime alleged in the information and was condemned to suffer one month and one day of *arresto mayor*. His petition for *habeas corpus* was filed before the rendition of the judgment last mentioned.

After stating that a sentence in a criminal case could become final in two ways, either by a lapse of fifteen days after its promulgation or by compliance with its terms, Justice Malcolm stated: "As a general rule, where the defendant has executed or entered upon the execution of a valid sentence, the court cannot, even during the fifteen-day period, set it aside and render a new sentence. * * * To paraphrase the language of the United States Supreme Court * * *, the petitioner having paid into court the fine of ₱25 imposed upon him, and that money having passed into the Treasury of the Philippine Islands, and beyond the legal control of the court, or of any one else but the Philippine Legislature, all under a valid judgment, can the court vacate that judgment entirely, and, without reference to what has been done under it, impose another punishment on the prisoner? To do so is to punish him twice for the same offense. He is not only put in jeopardy twice, but put to actual punishment twice for the same thing. Respondent relies on the rule that the writ of habeas corpus will not lie where there is a remedy by appeal. This is undeniable, although in rare and exceptional cases, the writ may be issued, even where such remedy exists. It is, however, sufficient to point out that if the fifteen-day period counting from July 17, had not expired when the petition was filed in this court, it had expired when the instant decision was handed down, so that as of that date, no other legal remedy except that of habeas corpus was available to the petitioner." [83]

Thus is made manifest anew how attached to the principle of liberty Justice Malcolm was, an attachment that led him to emphasize how the writ could be utilized to ward off any assault. There could have been in this case a technical issue raised against resort to this remedy. It was brushed aside. It was enough for him that a doubt as to whether it could be utilized to secure one's freedom should not constitute an obstacle. That would be to diminish its effectiveness as "the best and only sufficient

[83] *Ibid*, 652-653.

defense of personal freedom." [84] Hence for him what did transpire in the way of immediate compliance with the sentence imposed sufficed. The Supreme Court did see its way clear to heed petitioner's plea. Such an approach has borne fruit. It is under such an assumption that in a recent certiorari and prohibition proceeding, the Supreme Court refused to allow the lower court to reconsider a dismissal of a criminal complaint issued verbally.[85] Justice Malcolm had indeed paved the way.

6. *Habeas corpus as a mode of testing the validity of a contempt citation whether by a court or a legislative body.*

Finally, to round out this admittedly rather brief survey of the enduring contributions of Justice Malcolm to the law on *habeas corpus*, attention should be paid to the doctrines emanating from his pen as to the availability of the writ to test the validity of a contempt citation whether proceeding from a court or a legislative body. In either case, more specifically where it concerns a direct contempt court, his decision was the first of its kind. So it was likewise for a suit based on a legislative contempt. Here again, the extensive learning at his command as well as his insight helped to shape the law.

a. *Contempt of court: Villaflor v. Summers and Carag v. Warden.*

As to when *habeas corpus* lends itself to being utilized as a means for testing the validity of a direct contempt citation, Justice Malcolm's decision in *Carag v. Warden* [86] is quite specific. However, an earlier case, *Villaflor v. Summers*,[87] should not be ignored. It was shown there that in a suit pending before a court of first instance of Manila, Emeteria Villaflor and Florentino Souingco were charged with the crime of adultery. During the trial before the then Judge Pedro Concepcion, upon the petition of an assistant fiscal for the city, she was ordered to submit her body to the examination of one or two competent doctors to determine whether she was pregnant. She refused to obey on the ground that such examination of her person was a violation of her constitutional right not to incriminate herself. She was then found in contempt of court and was committed to Bilibid Prison until she would allow herself to be so examined. She went to the Supreme Court on *habeas corpus*.

The sole legal issue, according to Justice Malcolm "is whether the compelling of a woman to permit her body to be examined by physicians to determine if she was pregnant, violates that portion of the Philippine Bill of Rights and that portion of our Code of Criminal Procedure which find their origin in the Constitution of the United States and practically all state constitutions and in the common law rules of evidence, providing

[84] Villavicencio v. Lukban, 39 Phil. 778, 788, (1919).
[85] Acebedo v. Sarmiento, G.R. No. L-28025, December 16, 1970, 36 SCRA 247 (1970).
[86] 53 Phil. 85 (1929).
[87] 41 Phil. 62 (1920).

that no person shall be compelled in any criminal case to be a witness against himself." [88]

After noting that the authorities "are abundant but conflicting," [89] he proceeded to state: "What may be termed the conservative courts emphasize greatly the humanitarianism of the constitutional provision and are pleased to extend the privilege in order that its mantle may cover any fact by which the accused is compelled to make evidence against himself." [90] The reference was made to cases which for him are "more progressive in nature." [91] Mention was next made of "decisions of the United States Supreme Court, and the Supreme Court of these Islands." [92] He could point to an opinion of Justice Holmes [93] as well as previous rulings [94] here to disprove the contention that there was no violation of the self- incrimination guarantee.

Justice Malcolm felt however that the decision should be made "to rest on a strong foundation of reason and justice than on a weak one of blind adherence to tradition and precedent." [95] He concluded that there was such a basis. Thus: "Fully conscious that we are resolving a most extreme case in a sense, which on first impression is a shock to one's sensibilities, we must nevertheless enforce the constitutional provision in this jurisdiction in accord with the policy and reason thereof, undeterred by merely sentimental influences. Once again we lay down the rule that the constitutional guaranty, that no person shall be compelled in any criminal case to be a witness against himself, is limited to a prohibition against compulsory testimonial self-incrimination. The corollary to the proposition is that, on a proper showing and under an order of the trial court, an ocular inspection of the body of the accused is permissible. The proviso is that torture or force shall be avoided. Whether facts fall within or without the rule with its corollary and proviso must, of course, be decided as cases arise." [96] He insisted though, as was proper, on safeguards being provided. Thus: "It is a reasonable presumption that in an examination by reputable and disinterested physicians due care will be taken not to use violence and not to embarrass the patient any more than is absolutely necessary. Indeed, no objection to the physical examination being made by the same sex can be seen." [97]

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[88] *Ibid*, 64-65.
[89] *Ibid*, 65.
[90] *Ibid*.
[91] *Ibid*, 66.
[92] *Ibid*, 66-67.
[93] Holt v. United States, 218 US 245, 31 S. Ct. 2. 54 L. Ed. 1021 (1910).
[94] U.S. v. Tan Teng, 23 Phil. 145 (1912) and U.S. v. Ong Siu Hong, 36 Phil. 735 (1917).
[95] *Ibid*, 68.
[96] *Ibid*, 70.
[97] *Ibid*.

Even with such a conclusion arrived at, the predisposition of Justice Malcolm to accord the utmost respect for constitutional rights is discernible. That he could not see any violation of the safeguard against self-incrimination does not militate against this observation. If it were not thus, the contempt citation would have been quashed. Certainly, he would have ruled that the court was devoid of jurisdiction to hold petitioner in contempt. Thus four years before *Conde*,[98] there was already some indication that the Justice had in his mind the doctrine, which as noted owed its origin to him, that *habeas corpus* is the appropriate remedy where the restraint is vitiated by the failure to obey constitutional commands.

It is even more to the credit of Justice Malcolm that a later decision than *Villaflor, Carag v. Warden*,[99] makes clear that where a jurisdictional defect could be shown, a penalty imposed for direct contempt could be set aside. In *Carag*, an application for *habeas corpus* petition, it was shown that petitioner, when asked by then Judge Catalino Sevilla to read not once but three times the answer he filed as counsel for protestee in an election protest, refused to do so. The third time he was warned that if he would persist in his disobedience, he would be punished for contempt. He said he was disposed to take such risk, announcing further that he would immediately file *habeas corpus* if jailed. The order was for confinement for ten days for manifest disobedience and insubordination. He was actually jailed for about two days before he was temporarily released by the Supreme Court upon the filing of his petition.

He was unsuccessful however in his effort to nullify such order, the opinion of Justice Malcolm explaining why: "It is thus self-evident that when the judge directed the attorney to read his answer, His Honor was acting within his jurisdiction. While the permissive word 'may' appears in the law, this language does not in any degree qualify the superior authority of the court. When, therefore, the court requested the attorney to read his answer, and when the attorney refused to do so, the attorney was guilty of direct contempt because of misbehavior in the presence of the court. The excuse was made by the attorney for not acceding to the order of the court that he, the attorney, was hoarse. But certain it is that the attorney had sufficient voice to make such audible representations of his alleged ailment as to be understood by the Judge and those present. The evidence cannot be reviewed for the purpose of determining the guilt or innocence of the person detained. The justice or propriety of the commitment is not open to review. If the court in committing a person for contempt acted within its jurisdiction, its action is final and the writ of *habeas corpus* will not lie." [100]

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[98] Conde v. Rivera, 45 Phil. 650 (1924).
[99] 53 Phil. 85 (1929).
[100] *Ibid*, 90.

It would appear that American Supreme Court decisions on the whole speak similarly. *Ex parte Terry*,[101] promulgated in 1888, was not quite explicit. It was there held that whether the facts justified punishment for contempt for acts in the presence of the court cannot through such a writ be inquired into. A year later, however, in *Ex parte Savin*,[102] the pronouncement was that where the court in a proceeding to punish for contempt had jurisdiction of the subject matter and the person of the offender as well, irregularities in the conduct of the proceeding cannot be reviewed through *habeas corpus*. There was the implication then that the jurisdiction question was open for inquiry. Then came *Delgado v. Chavez*,[103] an 1891 decision, specifying that *habeas corpus* issues in contempt proceedings for the sole purpose of determining jurisdiction. Even if it be assumed that for the protection of liberty, Justice Malcolm was disposed to widen the scope of discretion of an appellate tribunal, the well-settled state of the law at a time when the Philippines was still under American rule must have interposed an obstacle.

b. *Legislative contempt: Lopez v. De los Reyes.*

The Supreme Court, before *Lopez v. De los Reyes*[104] was decided in 1930, had no previous opportunity pass upon the implied power of a legislative body to punish for contempt. When it did so, Justice Malcolm was the spokesman. In that application for *habeas corpus*, petitioner sought to be relieved from the restraint of his liberty by a ranking official of the Philippine Constabulary arising from a warrant of arrest for contempt issued by the then Speaker of the House of Representatives pursuant to two of its resolutions. The first one dated November 6, 1929, after reciting that the then Representative Jose Dimayuga was assaulted while on his way to the session hall of the House by petitioner, declared him guilty of the assault. The punishment was for him to be confined for twenty-four hours in Bilibid Prison. As the warrant of arrest was not served on petitioner in 1929, there was a confirmatory resolution of September 16, 1930. It was by virtue thereof that petitioner was restrained of his liberty. The two main issues according to the opinion of Justice Malcolm center on the power of the House to punish non-members for contempt and, if so, the duration thereof.

It was the holding of the Court on the first question that there was "a limited power to punish persons not members for contempt. * * *."[105] As to when it could be exercised, this was the basic principle announced: "Conceding, without really having to decide, that the House of Representatives, in the exercise of a fair discretion with which the courts should

[101] 128 US 289, 9 S. Ct. 77, 32 L. Ed. 405 (1888).
[102] 131 US 267, 9 S. Ct. 699, 33 L. Ed. 150 (1889).
[103] 140 US 586, 11 S. Ct. 874, 35 L. Ed. 578 (1891).
[104] 55 Phil. 170 (1930).
[105] *Ibid*, 181.

not interfere, was justified in finding Lopez in contempt, as contemplated in the original resolution, we pass to the consideration of the second branch of the case. As will soon appear, the proposition which follows is accepted with hardly any dissent, namely, imprisonment for a term not exceeding the sessions of the deliberative body in which the contempt occurred, is the limit of the authority to deal directly by way of contempt, without criminal prosecution." [106] Mention was then made of the law in England: "This is the rule in England for the House of Commons but not the House of Lords. In the celebrated case of *Stockdate v, Hansard* * * * Lord Denman, the Chief Justice, in a masterly opinion, to use the words of the United States Supreme Court in *Kilbourn v. Thompson*, * * * said the following: 'However flagrant the contempt, the House of Commons can only commit till the close of the existing session. The privilege to commit is not better known than this limitation of it. Though the party should deserve the severest penalties, yet, his offence being committed the day before a prorogation, if the House ordered his imprisonment but for a week, every Court in Westminster Hall and every judge of all the courts would be bound to discharge him by habeas corpus." [107] Then came this reference to American practice: "Likewise it may be said to be the rule for the Congress of the United States. In congressional practice, the only instance where a person was imprisoned extended beyond the adjournment of the session, occurred in the case of Patrick Woods in 1870. But the following year, in the case of White and Ramsdell, the United States Senate virtually repudiated the action of the House in *Wood's* case. * * * The United States Supreme Court has twice definitely held that the power is limited to imprisonment during the session of the legislative body affected by the contempt. * * * " [108]

He then explained that under the circumstances, petitioner was entitled to liberty. Thus: "Giving application now to the exact words of the United States Supreme Court, which it is our bounden duty to do, 'the session of the body in which the contempt occurred' was the second session of the Philippine Legislature, without the resolution affecting Lopez having been enforced. It was this session beyond which the imprisonment could not be extended. When at the next session, the third, the order of arrest was attempted to be resuscitated, the House was without legal right so to proceed. The fact that the House at this third session, without a new hearing and adjudication, passed a confirmatory resolution of the resolution approved at the second session, added nothing to the legal position of the House. The legislative function to act having ceased with the cessation of the legislative power in a previous session, a resolution could not be revived by mere reapproval." [109] He stated further: "Where a per-

[106] *Ibid.*
[107] *Ibid.*
[108] *Ibid.*, 181-182.
[109] *Ibid.*, 183-184.

son, who is declared in contempt of the House of Representatives at one session of the Legislature is not committed to prison during that session, it is very doubtful if a new order for his commitment may be made at the next ensuing session of the Legislature. This right has never been exercised by any legislative body deriving from the common law system. On the contrary, the uniform practice of such bodies appears to have proceeded upon the assumption that the power to punish an invasion of legislative privileges ends with the session during which the wrongful act was done. * * *." [110]

The opinion of Justice Malcolm in this case as to the power of the House of Representatives to punish for contempt represented the views of five other members of the Court.[111] Justices Johns, Villamor and Ostrand, however, dissented. For them, the House was bereft of such competence. Necessarily, they had to concur in the conclusion reached by Justice Malcolm that petitioner was entitled to liberty. On the other hand, the then Chief Justice Avanceña as well as Justices Romualdez and Johnson could not concur with him insofar as such release was ordered, as, in their view, the House of Representatives could validly require that petitioner serve his sentence as long as there was no final adjournment. It has been assumed in certain quarters that on the question of the duration of such power, the law is still unsettled. As a result, those so inclined to view matters that way greeted with approval the later case of *Arnault v. Nazareno*,[112] a 1950 decision. With only the then Justice Tuason dissenting, it was stated in the opinion of Justice Ozaeta for the Court that the better view should be that the power to punish would be exercised "until the final adjournment." [113] While ostensibly the doctrine announced by Justice Malcolm was not followed, it should be observed that the contempt in this case was committed against the Senate, which "is a continuing body whose members are elected for a term of six years and so divided that the seats of only one-third become vacant every two years, two-thirds always continuing into the next Congress save as vacancies may occur through death or resignation." [114] Under the circumstances, it cannot be asserted with assurance that what was set forth by Justice Malcolm is no longer authoritative. Moreover, insofar as the result reached under his reading of such implied power of Congress did further the cause of freedom, it has much to commend it. Certainly, such a doctrine was in keeping with his well-known libertarian views.

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[110] *Ibid.*, 184-185.
[111] Chief Justice Avanceña, Justices Johnson, Street, Villareal and Romualdez.
[112] 87 Phil. 29 (1955).
[113] *Ibid.*, 62.
[114] *Ibid.*, 61.

7. *By way of a conclusion*

What had Justice Malcolm wrought? An impressive output, not only from all appearances but in reality. Long before his time, it is to be admitted that *habeas corpus* had proved itself to be a weapon to safeguard liberty. It took his constant and unflagging interest in its potentialities, however, for it to live up to its role much more effectively. It is now beyond doubt that no infringement on physical freedom is allowable in the absence of a legal norm, which must meet the test of constitutionality. Nor does it suffice that such requisite be satisfied. Any one facing the ordeal of a criminal trial can insist and rightly so that all his constitutional rights be respected. Otherwise, the validity of the proceedings can be tested through this remedy. Moreover if there be, through any of the ways recognized by law, a compliance with the judgment, even if one of conviction, then he is free again, immune from molestation in the absence of any other transgression. When it is remembered further that contempt of legislative body or of court may be tested by this writ, the conclusion is undeniable that Justice Malcolm did accomplish much in this branch of the law.

It may be ironic, but what Justice Malcolm did achieve as a pioneer with a vision may have obscured the true worth of his contributions to the law on habeas corpus. Through his insights, no doubt the product of his dedication and commitment to the cause of liberty coupled with his juridical skills, it has now been made available to attain objectives previously thought beyond its reach. The Supreme Court has gone that far. It is to be hoped that it will go further. Mention has been made that in some quarters there are those who failed to afford recognition to what he had achieved. That is, it must be stated anew, to ignore the seminal role that was his in its development and growth. To emphasize how unwarranted is such a view, all that is necessary is to call attention to the Supreme Court in *habeas corpus* cases, relying all these years on his memorable utterances and authoritative views.

Is it not proof enough that where there is still so much smoke, there must have been at one time a luminous flame? I venture to suggest that those of us gathered here, and countless others besides, know fully well that he did light the torch of constitutionalism, and the glow that even after all these years emanates from it suffices to illuminate our intellectual search and curiosity for enduring principle—and not only in the legal terrain that is preempted by the law of *habeas corpus*.