

land is being Russianized. Language, liberty, and all are to be submerged in Russian despotism. And then the word will be, "Next!" On this side of the Atlantic, we need not fear Russia. But in Europe, where natural defensive boundaries are few, an agreement for general disarmament would be almost equivalent to the cession of the continent to the czar.

Our opinion published in *The Public* of February 4, in connection with the question of remitting the extreme penalty for murder in the case of a woman in New York, because she is a woman, has evoked an inquiry from one of the best known and justly loved executives in the United States. We said that "it is not one of the functions of an executive to determine whether a penalty is proper or not; it is his function to execute the law as he finds it." Referring to this, the executive to whom we have alluded, writes us, asking if we are certain that our position is a tenable one. He says:

Does not an executive have a duty as a citizen, as well as an executive? And might he not contribute quite as much to the education of the public mind by calling pointed attention to a law that was unscientific, and therefore wrong, and even using the powers of his office of executive clemency, if you please, or any other power that he may possess, in behalf of a better and more just law?

Upon further reflection we are confirmed in the opinion that the position we took regarding Gov. Roosevelt's possible use of the pardoning power regardless of the law, and which is questioned above, is tenable. Indeed, we think it unassailable from any other point of view than that of the monarchical theory of government. Upon the democratic theory of government, it is not a function of the executive to pass upon the propriety of laws. His single duty as executive is to execute. That he has also a duty as a citizen is true. But when that duty conflicts with his duty as an executive he must distinguish his functions by performing his duties as a citizen in his capacity of mere citizen, and his duties as executive in

his capacity of executive. To concede that the executive may in his individual discretion obey or disobey laws which he has been chosen to execute, is to put him above the laws which the people, whose servant he is, have made; and that is to establish what is in essence an absolute, even if elective, monarchy.

It must be observed, however, that there are circumstances in which executives are justified, upon democratic principles, in virtually abrogating laws that they have been appointed to enforce. But these are not "exceptions proving the rule;" they are really within the rule, and exceptions only in appearance. When, for example, offensive laws are superimposed upon a community from without—as when England undertakes to regulate the internal affairs of Ireland, or an American state attempts arbitrarily to regulate the purely local concerns of its towns and cities—it may be quite within the democratic right of locally elected executives to ignore those laws. In such cases, that is what they are elected for. Disregard of the law is then in a high sense obedience to the popular will. But when both the law and the executive are regularly chosen by the community to be affected, the simple function of the executive is to execute.

Joseph Edwards's fifth issue of his "Labour Annual," is more valuable than the best of its predecessors. What the Statesman's Year Book is to the general student of the world's politics, this annual is to students of the progress of social reforms. It keeps track of the men and movements and doctrines that are related to social, economic and political reform the world over. The book in paper is mailed to any part of the world, free of postage, for 31 cents, and may be had directly of Joseph Edwards, Wallasey, Cheshire, England.

The Outlook proposes an experiment in the Philippines with the

single tax. We have no right to experiment there with the single tax or anything else. If the justice and practicability of the single tax commend it, here among ourselves is the place to experiment with it. Let the Filipinos learn from our teaching and our experience, not from enforced obedience to our irresponsible authority.

LEGAL ASPECTS OF THE PHILIPPINE QUESTION.

I.

It is remarkable if not significant that the advocates of Philippine subjugation have been so very reticent about the application to our Philippine question of the principles of international law. They have not lacked occasion to refer to those principles. But their speeches and writings will be examined in vain for any appeal to that source of authority.

There is no accounting for this upon any theory of the nice technicalities of international law, which might make the subject too obscure for ordinary citizens to understand. International law is not at all a highly technical subject. While it includes numerous specific rules and precedents which only special students are familiar with, yet in its broad applications it need not be at all mysterious to the ordinarily intelligent citizen. No branch of legal science is so free from technicality; none rests so solidly upon simple apprehensions of right.

We do, indeed, look to the international practice of governments for expressions of international law; but no such practice is accepted as authoritative unless it has been adopted deliberately and from a persuasion that the practice is right. A practice is no part of international law, if it have nothing to support it but force.

With a knowledge, then, of the facts in a given international problem, the citizen of reasonable intelligence, provided he be a just man, can without much difficulty or danger of going wrong, discover and correctly apply the principles of international law. He can at least readily understand and estimate the value of a coherent explanation.

II.

For the purpose of inquiring into the rights under international law, of the United States in the Philippine islands, the central point of observation now must be the peace protocol. Before that was signed, the United States had no legitimate political relations whatever with the Philippines, except as the armed enemy of Spain. Since then, the United States has had no such relations except in virtue of the protocol.

So much is obvious to any intelligent person. It is hardly more than a statement of historical fact.

Had a treaty been ratified by both the United States and Spain prior to our difficulties with the Filipinos, the present political relations of the Filipinos to this country might have been determined by the treaty instead of the protocol. But no treaty has been ratified even yet. To validate the Paris treaty, the approval of the Spanish government is still needed. Doubtless that approval will be given. Spain can hardly help herself. But when given, it can make no difference, so far as concerns the relations of the United States to the Filipinos up to the present time. Whatever our government has so far done in the Philippine islands, has been done, regardless of any treaty that may yet be ratified, either as the enemy of Spain before the protocol, or as a contracting power with Spain under the protocol. The protocol is the great central fact.

III.

It was on the 12th of August, 1898, that the protocol became operative. At that time, though the American fleet possessed the harbor and bay of Manila, and occupied a bit of land south of the city of Manila, all the rest of the archipelago was in possession of either the Spaniards or the Filipinos. The city of Manila itself was in possession of Spaniards whom the Filipinos had penned in there.

At about the same time the Americans bombarded Manila and received its surrender from the Spanish commandant. This event actually occurred after the signing of the protocol; but as it did not secure to the Americans any advantages in excess of what the protocol had conferred, that fact is immaterial to the purposes of the present inquiry. The Americans, we may therefore say,

were in possession, upon the signing of the protocol, of the bay and harbor of Manila, and of the city of Manila with its suburbs. But they had no foothold elsewhere in the archipelago.

How was it at this time with the Filipinos?

As far back as the 19th of March, 1898—six weeks before Dewey's naval victory, and a month before hostilities between Spain and the United States—the old rebellion against Spain in the Philippines had blazed up anew; and, in the language of the American consul general at Manila, in a letter of that date, it was "never more threatening to Spain." On the 21st of March, also upon the authority of Consul General Williams, the rebels menaced Manila itself. There was, moreover, abundant evidence of the fact that the Philippine rebellion was again in full swing before the American war with Spain, in the news reports of the time. It was noted on page 12 of the first number of *The Public*, that of April 9, 1898—ten days before our war began. This notation was upon the authority of the American daily press. It was noted again in the issue of April 23, on page 11, upon the authority of a private letter of April 14—six days before the war—which had appeared in the American daily papers, and which described Manila as panic-stricken, owing to the strength of the rebellion. That letter reported over 20,000 well-armed men as in the field against Spanish authority. Aguinaldo, the president of the former republic, though not then in the islands, was again directing the rebellion.

Upon Aguinaldo's return to the islands, the rebellion became still more formidable; and in a little while the Spanish were driven into the principal cities, outside of which they were thereafter unable to exercise either civil or military authority.

On the 1st of July, as the American papers at the time reported, the rebels formally re-proclaimed the republic. It had been organized in 1896; and upon a treaty with Spain, promising reforms, had been dissolved. On account of Spain's violation of this treaty, the rebellion broke out again in 1898, as told above. Having proclaimed the republic anew on the 1st of July, 1898, and established

local governments in many of the districts, President Aguinaldo formally announced to foreign governments on the 6th of August, that independence had been declared. In doing this he asserted, what subsequent events have substantially verified, that the republic maintained "on a war footing more than 30,000 soldiers, organized, commanded and acting as a regular army;" and that it held "nearly 9,000 prisoners of war," who were "treated according to the rules of war of the most civilized nations, and the laws of humanity."

Besides this, the government so proclaimed did in fact exercise the only civilized authority—except at Manila, where the Americans may be considered to have been in possession, and at Iloilo and other coast cities of similar importance, where the Spanish were hemmed in by rebel troops—that was recognized or submitted to by the inhabitants of the Philippine islands at the time of the signing of the Spanish-American protocol.

It is true that no foreign governments recognized the Philippine republic as one of the family of nations. But that is not conclusive. Two kinds of government are known to international law—governments "de jure," and governments "de facto." Governments "de jure," or legalized governments, are those which are in general recognized as having all the attributes of sovereign power, whether able to enforce their sovereignty over the territory they claim or not. Governments "de facto" are those which, without being recognized abroad as possessing the legal attributes of sovereignty, nevertheless actually exercise the powers of sovereignty at home. All rebellious governments are at first necessarily governments "de facto." Upon achieving complete success they become governments "de jure."

Clearly the Philippine republic was not, at the time of the signing of the Spanish-American protocol, a government "de jure." But just as clearly it was at that time a government "de facto." Its resistance to the authority of Spain had passed beyond simple or temporary acts of treason, mutiny or sedition, and assumed the character and proportions of a permanent rebellion or insurrection. It follows, upon reasonable and acknowl-

edged principles of international law, that it was maintaining civil war—a fact which conclusively testifies to its having achieved the dignity of a government “de facto.” For only governments can wage war; and when civil war exists, the contesting government that is not such “de jure” must be such “de facto.”

IV.

We find, therefore, that on the 12th day of August, 1898, when the protocol was signed, the Philippine islands were occupied and governed, in different parts, by three sovereignties. The city, bay and harbor of Manila, were under the jurisdiction of the United States; Iloilo and a few other coast cities, were held by Spain; all the rest of the territory was held and governed by a “de facto” government, the Philippine republic, which, in prosecuting a civil war, had to that extent expelled the “de jure” government of Spain from its former possessions.

V.

By the protocol, Spain authorized the United States, as she had the right and power in international law to do, to occupy and hold the city, bay and harbor of Manila. Only this. Nothing more.

True, it was stated in the protocol that the treaty of peace, when concluded, should “determine the control, disposition and government of the Philippines.” But as that treaty has not yet been concluded, all that the United States has so far done in the Philippines, since the signing of the protocol, has been done by virtue solely of the authority given in the protocol to “occupy and hold the city, bay and harbor of Manila.” There is absolutely no other authority now, of which international law can take notice.

VI.

Being in lawful possession of Manila, we are entitled under the protocol to resist aggressions, on the part of the Filipinos or anyone else. For the time being Manila is American territory, and the Filipinos cannot attempt to seize it without making war upon us.

On the other hand, we cannot attempt to seize any territory which their “de facto” government holds against Spain, without making war upon them. We are, and ever since

the protocol have been, bound to restrict our occupation to the harbor, bay and city of Manila, leaving Spain and the Philippine republic to fight out their civil war upon the remaining territory between themselves.

VII.

Now consider the events that followed the protocol. The civil war between Spain and the Philippine republic continued, and the republic increased its power and extended its authority. From nearly all the cities and towns she occupied, Spain was driven out. The whole island of Luzon, outside of Manila, came under the authority of the Philippine republic, as did also the island of Panay, where the Spaniards surrendered Iloilo. Nothing was left to Spain in the whole archipelago but a few distant and scattered garrison posts of no importance.

Meanwhile, the United States demanded of Spain the cession, for a price, of all the Philippine territory; not only that which the United States already occupied and that which Spain still held, but also those much more extensive and populous parts which recognized the sovereignty of the Philippine republic. This demand, moreover, was made in defiance of the “de facto” Philippine government.

Then, troops in large numbers were hurried to Manila. They were not needed for the defense of that city, and the necessary inference was that they were sent out to enable the United States to take Spain’s place in the civil war.

A little later, and an overt act was committed. The American authorities sent a military expedition to Iloilo to relieve the Spanish garrison which the Filipinos were closely investing.

Finally, the president of the United States ordered the secretary of war, under date of December 21, to extend the military government of the United States to the whole Philippine archipelago, an order which was promulgated by proclamation to the Filipinos.

The natural result followed. Its existence thus directly menaced, the Philippine republic—the “de facto” government in possession of all the important territory of the islands except Manila,—prepared to defend itself.

Six weeks later the American war with the Philippine republic began.

Who struck the first blow is immaterial. The crucial questions are only two. First, Was there then a “de facto” government holding adverse possession to Spain in the islands? If so, second, Was the United States then vested with any legal right, other than the mere naked right of inaugurating a war of conquest, to assail that government, directly or indirectly, outside the limits of the bay, harbor and city of Manila?

VIII.

Those questions are not now difficult to answer.

That ever since the protocol, as well as before, there was a “de facto” government holding possession in the Philippines adverse to Spain, we have plainly seen. It was the Philippine republic, which, at the time of President McKinley’s order, held two-thirds of all the territory of the islands, and governed more than nine-tenths of the inhabitants.

We have also seen that under the protocol, the United States had no right to assail any power, not even Spain, much less the Philippine republic, beyond the limits of the harbor, bay and city of Manila. Nor has any such right been even yet acquired by treaty. For wholly apart from Spain’s power to cede territory which a “de facto” government has expelled her from, there is as yet no effective treaty. Spain’s ratification is still lacking. There is not, therefore, and since the signing of the protocol there has never been, any legal right vested in the United States—other than the mere naked, brutal and abhorrent right of inaugurating a war of conquest—to advance upon territory held by the Philippine republic.

The forwarding of troops, then, and the Philippine negotiations at Paris, together with the expedition to Iloilo and the president’s order of December 21 for the immediate military occupancy of the whole archipelago, were unwarranted acts of aggression.

If the Filipinos attacked the American line on the 4th of February, the Americans did have the legal right to resist the attack, and to do anything, even to the extent of invasion, to make that resistance effectual. They had this right under

the protocol, for their occupancy of Manila was lawful. And they had it, even though the Filipinos were goaded on to the attack by the manifest disposition of the Americans to subjugate the whole archipelago.

But they had no right to go further. Having secured Manila, their legal authority to fight the Philippine republic ended. Consequently, the subsequent capture of Iloilo, 350 miles from Manila and on another island, and the later capture of Cebu, still farther away and on still another island, were as utterly without lawful warrant as if no attack upon the American line at Manila had been made. These captures were not defensive. They were made in execution of the president's order of six weeks before the Manila attack. There is not and cannot be any serious pretense to the contrary.

IX.

To sum up the whole matter—

The United States has made war upon the "de facto" government of the Philippines.

It has done so for the purpose of making conquest of the whole Philippine archipelago, under the guise of purchase from the expelled "de jure" government.

It has based its claim of purchase upon a treaty with the "de jure" government, a treaty which—aside from the question of the selling government's legal right to sell what it does not possess—has as yet no legal existence.

It can set up for that claim no other legal sanction than the protocol, which distinctly restricts the occupancy of the United States to the harbor, bay and city of Manila, and therefore is no sanction at all.

X.

If the Philippine republic had a powerful friend in the family of nations, or if its rights could be adjudicated by an impartial tribunal, the United States would, upon principles of international law, be compelled to withdraw from the position it has taken, and to abandon all Philippine territory outside of the harbor, bay and city of Manila. The case of our nation rests now solely upon superior force, not upon legal right.

What, then, is our duty?

Honor demands that what authority or power could rightly compel the

United States to do, she should do voluntarily. Our country can get no real credit by winning from the Philippine republic by force of arms what we could not lawfully demand as a right under the law of nations. It is our duty, then, in justice and therefore in honor, to restore to the Philippine republic the territory we have wrested from it, and to assure it of our future friendliness.

NEWS

The American war in the Philippines is now in its fourth week. It began on the 4th of February and has been in progress ever since, with almost daily fighting. Our last account closed with the press reports of the fire and fighting on the 22d in Manila, when some 700 houses were burned and a loss of life was suffered, the full extent of which has not yet been reported. On the 23d there was desperate fighting at Tonda, a suburb of Manila, with great slaughter, say the press reports, of Filipinos.

The movement of the Filipinos upon Tondo, mentioned above, began at dawn. They opened fire with cannon upon Caloocan, between two and three miles north of Tondo. This fire was silenced by American cannon; but meantime the Filipinos emerged from the marshes inside the American position between Manila and Caloocan, where they had been concealed, and endeavored to break the American line. The Americans resisted this movement, surrounding the Filipinos from the city on the south and from Caloocan on the north, and being assisted by the warships in the bay, which swept the marshes and the burned district of Tondo with shell. Though completely surrounded the Filipinos fought stubbornly, throwing up numerous barricades, but they were cut to pieces, and finally driven back into the marshes. During this fighting, two Englishmen were shot, one being wounded and the other killed, by American soldiers.

While the fighting was in progress in the Tondo suburb of Manila, other detachments of Filipinos were engaging the Americans farther south and east, at the Manila suburbs known as Santa Cruz and San Sebastian. All the detachments were composed of Filipino militia organized within the American lines, which responded to

signals from the regular Filipino troops outside.

The official report of the engagements described above, and of similar ones in the two days preceding, was made on the 24th by Gen. Otis as follows:

Scandia arrived last night. On nights 21st and 22d and yesterday morning insurgent troops gained access to outskirts of city behind our lines. Many in hiding and about 1,000 intrenched themselves. Completely routed yesterday, with loss killed and wounded about 500 and 200 prisoners. Our loss very slight. City quiet; confidence restored; business progressing.

The mention by Gen. Otis of the arrival of the Scandia refers to the arrival of the first reinforcements of the 8,000 or more that have been recently sent to Manila. The Scandia had on board the Twentieth infantry, which embarked January 26, at San Francisco.

On the 24th, the day following the occurrences reported above, frequent volleys were fired at the Americans by Filipinos, the latter being most active in front of the southeastern section of the American line. They were shelled from a gunboat in the Pasig river. Farther north, in front of Caloocan, Filipino sharpshooters were active all day. They continued their work through the 25th; and in the evening a skirmish occurred at the village of Mariquina. On the 26th the sharpshooting at Caloocan continued at close range. On that day also a significant dispatch to Gen. Lawton, who is on the way to Manila with further reinforcements, was repeated from Colombo, Island of Ceylon, where he received it. It was from Gen. Otis at Manila, and reads:

Situation critical. Your early arrival necessary.

An attack was made on the 27th from the jungle near Malibon, to the north of Caloocan, which was replied to with shells by an American gunboat. The shelling destroyed the Malabon church. Throughout the day desultory firing upon the American line at other points continued, as it did also on the 28th; and on the 1st of March an attack was made on the waterworks, and a sharp skirmish occurred at San Pedro Macati, near the American center. At night on the 1st it was unusually quiet, the Filipinos being apparently busy preparing defenses in anticipation of the arrival of American reinforcements, when