

THE NATURE OF THE GOVERNMENT IN CUBA

The resignation of President Palma and his cabinet consequent upon the success of the open and armed rebellion against his government, and President Roosevelt's appointment of Charles E. Magoon as provisional governor, have led to no little comment and query as to the international status of the Cuban republic.

A consideration and understanding of a few elementary facts and principles dissipate any reasonable doubt.

The present government, while termed provisional to distinguish it from the ordinary and settled government under officials elected or selected by Cuba, is a constitutional government just as truly as was the government of Palma.

It is constitutional because it is provided for and is in strict accordance with the exact letter and spirit of the Cuban Constitution, promulgated May 20, 1902, which states, in express terms in Annex III, that

the government of Cuba consents that the United States may exercise the right to intervene for the preservation of Cuban independence, the maintenance of a government adequate for the protection of life, property and individual liberty and for discharging the obligations with respect to Cuba imposed by the treaty of Paris on the United States, now to be assumed and undertaken by the government of Cuba.

It follows from this article that the United States possesses the constitutional right to intervene in the affairs of Cuba for certain clear and well-defined purposes, and that the government established by such intervention is the government prescribed and therefore recognized by the Constitution of Cuba. Governor Magoon, appointed by the United States, governor of Cuba to effectuate these specified purposes, is the Cuban constitutional executive.

In the next place the act of the President of the United States in intervening and appointing Magoon governor, is not only constitutional according to the Cuban Constitution, but it is lawful according to the laws of the United States, because an act of Congress of the United States, approved March 2, 1901, commonly known as the Platt Amendment, recognized and stated this right of the United States to intervene in the exact language of Annex III of the Cuban Constitution already set forth. As a matter of fact and of history, this clause of the Cuban Constitution was the exact language of the act of Congress of March 2, 1901, and it was incorporated bodily into the Cuban Constitution.

Nor does the lawfulness of the transaction stop here, for in the treaty between the United States and Cuba concluded May 22, 1903, ratified by the President June 25, 1904; ratifications exchanged July 1, 1904, and

proclaimed July 2, 1904, the language of the act of Congress of March 2, 1901, and of Annex III, of the Cuban Constitution, appears in the exact words of the law and the Constitution in Article III of the treaty (*Treaties in Force*, 1904, p. 954). The lawfulness of the intervention appears from two laws of the United States, the act of Congress and the treaty, and as the President "shall take care that the laws be faithfully executed" (Constitution, Art. II, sec. 111), it follows that the President was not only permitted but by the Constitution and his oath the duty was imposed upon him to intervene in obedience to the laws with whose execution he was charged.

The act of the President in intervening and appointing a provisional governor and government was not only constitutional according to the Constitution of Cuba, but was lawful according to the laws of the United States, and the provisional government established and now existing in Cuba in pursuance of the Cuban Constitution, is the constitutional government of Cuba. It is therefore the government of Cuba; it is not the government in any sense of the United States. It follows, therefore, that Cuba is in possession of its own government and is not occupied by the United States.

Such is the theory of the intervention and such is the actual status. This republic of Cuba exists as a separate and independent international entity; its diplomatic ministers and consuls remain under the provisional government; foreign ministers and consuls remain in Cuba as under the administration of Palma, and exercise their ordinary and legitimate functions as if no change had occurred.

The American minister remains in Havana to represent the interests of the United States and to serve as the intermediary between the provisional government of Cuba and the United States.

The personnel of the government has changed; the constitutional administration of Palma has been succeeded by the no less constitutional government of Magoon and the Cuban republic is intact.

THE JAPANESE SCHOOL QUESTION

The establishment of separate schools for Japanese students and the exclusion of Japanese students from the ordinary public schools of San Francisco by local ordinance based upon a law of the state of California raises the question of the rights and privileges of Japanese subjects in the United States under the treaty of November 22, 1894, concluded between the United States and Japan.

Viewed in the light of the treaty the question is one of international law; from the standpoint of the Californian authorities the question is