Republic

OR

Empire?

By

PERRY BELMONT.

Prepared at the Request of the
New York Democratic State Committee.
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PREFACE.

I.

The preface to the contents of this pamphlet, much of which had been published before "imperialism" had been as clearly defined as it now, and by the debates in the last Congress in which so many competent lawyers participated, has been prepared at the request of the Democratic State Committee of New York.

The Democratic National Convention declared at Kansas City that "the burning issue of imperialism, growing out of the Spanish war, involves the very existence of the Republic, and the destruction of our free institutions. We regard it as the paramount issue of the campaign."

Thereafter the issue could not be evaded. "The Republican Campaign Text Book," recently issued by the Republican National Committee, has emphasized it as supreme, and attempted its definition.

II.

The republican definition of "Imperialism" is:

"There is and can be no such thing as imperialism under a republican form of government."
"There is no such thing as imperialism as distinguished from expansion."
"Imperialism is sovereign rule without law. It is the government of a people by a personal will."
"Where law rules imperialism does not and cannot exist."
"The President exercises no authority in the Philippines except by virtue of law. The power under which he establishes military government or creates temporary civil authority pending the action of Congress is conferred by law. Imperialism is autocratic rule without law and against the public will."

Identification of "Imperialism" with enlargement of national area had nothing in our history on which to rest before the last war. There is beneath the rule of law imperialism in Great Britain, Germany and Russia, but not in the United States. In the main, the Republican definition of the "Imperialism" which the Kansas City Convention described and labelled, is correct. It is government lawlessness. It has nothing to do with crowns, courts, orders of nobility and the various other well known features of a monarchical government, unless our Constitution forbids them, as orders of nobility are forbidden by its First Article.
III.

The treatment of the native inhabitants of our new islands, to which President McKinley required Spain to assent at Paris, is quite unlike the treatment of the native inhabitants stipulated in the treaties of cession concluded with France, Spain, Mexico and Russia.

International law has many rules not quite consistent with ordinary reason, and one of them is that a treaty dictated under the stress of military menace shall be deemed a voluntary act, unless the menaced sovereign signing it is a captive prisoner, but were it not for the rule a war might never end till one party has been annihilated. A similar rule is that when war breaks out individuals are inseparable from the State, and, therefore, when Congress declared war against Spain, even every Alaskan became instantly an enemy of every Filipino, and personally bound by the result of the war; but the rule has been found useful, it is said, in preventing, or shortening wars. A similar rule is that a belligerent has a right to seize and confiscate property of an enemy found on land, but fortunately the Supreme Court (8 Cranch, 133), derogating from the unlimited "war power" of the President, decided that Congress must have authorized it. Another rule of hardship and injustice is that, if the conquered in war makes a treaty of cession, the inhabitants of the ceded country are, especially under a representative government, so bound up with their rulers that such inhabitants are transferred without their consent. And so Republican leaders assert that, under the second clause of the third section of the fourth article of the Constitution, Congress can cede New-Mexico back to Mexico and transfer therewith, without consulting them, all the inhabitants of the latter territory, as Spain by the cession of the Philippines transferred the natives. That is a harsh rule, and one not to be countenanced by the United States, unless the exigency admits of no other course.

The third article of the French treaty of 1803 stipulated:

"The inhabitants of the ceded territory shall be incorporated in the Union of the United States, and admitted as soon as possible, according to the principles of the Federal Constitution, to the enjoyment of all the rights, advantages and immunities of citizens of the United States; and in the meantime they shall be maintained and protected in the free enjoyment of their liberty, property and the religion which they profess."

On the 2d of February, 1819, Spain ceded Florida to the United States, and the sixth article of the treaty of cession contained the following provision:

"The inhabitants of the territories which His Catholic Majesty cedes to the United States by this treaty shall be incorporated in the Union of the United States as soon as may be consistent with the principles of the Federal Constitution and admitted to the enjoyment of the privileges, rights and immunities of the citizens of the United States."

Chief Justice Marshall, speaking for the Court (1 Peters, 511) in relation to that article, defined the difference between civil rights and political rights when he said:
"This treaty is the law of the land, and admits the inhabitants of Florida to the enjoyment of the privileges, rights and immunities of the citizens of the United States. It is unnecessary to inquire whether this is not their condition, independent of stipulation. They do not, however, participate in political power; they do not share in the Government till Florida shall become a State. In the meantime Florida continues to be a Territory of the United States, governed by virtue of that clause of the Constitution which empowers Congress 'to make all needful rules and regulations respecting the territory or other property belonging to the United States.'" 

Women and children have in New York civil rights, but not political rights, inasmuch as they do not vote or hold office.

The ninth article of the Mexican treaty of 1848 declared:

"The Mexicans *** shall be incorporated into the Union of the United States, and be admitted at the proper time (to be judged of by the Congress of the United States) to all the rights of citizens of the United States, according to the principles of the Constitution; and, in the meantime, shall be maintained and protected in the free enjoyment of their liberty and property, and secured in the free exercise of their religion without restriction."

The third Article of the Russian treaty of 1867, says:

"They, with the exception of the uncivilized native tribes, shall be admitted to the enjoyment of all the rights, advantages and immunities of citizens of the United States, and shall be maintained and protected in the free enjoyment of their liberty, property and religion. The uncivilized tribes will be subject to such laws and regulations as the United States may, from time to time, adopt in regard to the original tribes of that country."

The first three treaties add nothing to what the Constitution declares regarding new States, and do not bind Congress to admission into the Union, as can be seen in the case of New Mexico which is not yet a State at the end of fifty-two years.

The words "privileges and immunities" are in the first clause of the second section of the fourth Article of the Constitution defining the rights a citizen of New York has in Rhode Island. What those treaties mention definitely is "privileges, rights and immunities," which are equivalent to "liberty, property and religion," all of which are, through the Supreme Court, secured by the Constitution. Resident or traveling aliens have them in all our States and Territories.

Since republican leaders endeavor to mislead voters by asserting for a treaty a superiority over the Constitution and statutes enacted by Congress, it is necessary to quote at considerable length from two Supreme Court decisions.

A treaty, then, is a law of the land, as an act of Congress is, whenever its provisions prescribe a rule by which the rights of the private citizen or subject may be determined. And when such rights are of a nature to be enforced in a court of justice, that court resorted to the treaty for a rule of decision for the case before it as it would to a statute.

A treaty is made by the President and the Senate. Statutes are made by the President, the Senate, and the House of Representatives. The additions of the latter body to the other two in making a law certainly does not render it less entitled to respect in the matter of its repeal or modification than a treaty made by the other two.

In short, we are of opinion that, so far as a treaty made by the United States with any foreign nation can become the subject of judicial cognizance in the courts of this country, it is subject to such acts as Congress may pass for its enforcement, modification or repeal.
The validity of this act, as already mentioned, is assailed as being in effect an expulsion from the country of Chinese laborers in violation of existing treaties between the United States and the Government of China, and of the rights vested in them under the laws of Congress. The objection that the act is in conflict with the treaties was earnestly pressed in the court below, and the answer to it constitutes the principal part of its opinion. (36 Fed. Rep., 431.) Here the objection made is that the Act of 1888 impairs a right vested under the treaty of 1880, as a law of the United States, and the statutes of 1882 and of 1884 passed in execution of it.

It must be conceded that the Act of 1888 is in contravention of express stipulations of the treaty of 1868 and of the supplementary treaty of 1880, but it is not on that account invalid or to be restricted in its enforcement. The treaties were of no greater legal obligation than the act of Congress. By the Constitution laws made in pursuance thereof and treaties made under the authority of the United States are both declared to be the supreme law of the land, and no paramount authority is given to one over the other. A treaty, it is true, is in the nature of a contract between nations, and is often merely promissory in its character, requiring legislation to carry its stipulations into effect. Such legislation will be open to future repeal or amendment. If the treaty operates by its own force, and relates to a subject within the power of Congress, it can be deemed in that particular only the equivalent of a legislative act, to be repealed or modified at the pleasure of Congress. In either case the last expression of the sovereign will must control.

(Chae Chan Ping vs. United States, 130 U. S., 581-611.)

IV.

The next treaty of cession after the Russian is the recent Spanish treaty. Its American negotiators endeavored to change previous stipulations regarding the natives. Why did President McKinley try to make a radical and serious departure?

All that the treaty of Paris stipulated regarding the civil and political rights of the ceded peoples, beyond protecting religion, which is adequately done by the Constitution, is in this closing sentence of the ninth article:

"The civil rights and political status of the native inhabitants of the territories hereby ceded to the United States shall be determined by the Congress."

The treaty did less for the Spanish subjects, natives of the islands ceded, than for those born in Spain and resident in the islands, because they do have a protection of civil rights by public law and other treaties, which the Republican "Text Book" affirms the transferred natives of Porto Rico and the Philippines have not. They are, in the Paris treaty, assimilated with "the uncivilized tribes" of Alaskans in the Russian treaty.

No argument based on the condition of members of an Indian tribe can aid in determining the condition of other persons, and for the reason that the European discoverers of our continent, Great Britain, the Colonies, the Revolutionary Congress, the Confederacy, and, finally, the Constitution, treated the tribal Indians as foreign nations peculiarly situated, and Congress was empowered to regulate commerce with them as "with foreign nations and among the several States." The Russian treaty stipulated "that the United States must treat the uncivilized Alaskans not less well than our Indian tribes."

The republican leaders and the American negotiators at Paris must have been, two years ago, very scantily informed of Supreme Court decisions, if
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they supposed anything said, or omitted, in the treaty could enlarge, or diminish, the force of the Constitution. When the Court had before it (9 Peters, 117) the effects of the words "liberty, property and religion" in the French treaty, it said that the principle expressed by the phrase would have been sacred independent of the treaty.

That such is not the view of the Republican party is proven on page 54 of its "Text Book" where it is said:

"Senator Foraker, in an address before the Union League Club, Philadelphia, and afterward printed in the Congressional Record at his own request, said: 'When we acquired Louisiana, New Mexico, Florida, etc., it was provided in the treaty in each case that its inhabitants should be incorporated into the Union of the United States and be admitted to all the rights, advantages and immunities of citizens of the United States. The act by which we annexed Hawaii declared in express terms that the Hawaiian Islands shall become and be a part of the United States, but no such provision was incorporated in the Treaty of Paris as to Porto Rico and the Philippine Islands; and if there had been it is safe to say that the treaty would never have been ratified.'"

He endeavored to suppress the fact that the inhabitants were not to be incorporated into the Union until Congress was pleased to vote. Why should not the recent treaty have been ratified with such a stipulation as to admission into the Union, binding no branch of the government of the United States to anything more than exercise of discretion?

The next two sentences of the "Text Book" are even more startling as confessions of republican purpose. These are they:

"On the contrary, for the purpose of making it clear that no such consequence was intended, it was provided in the treaty that the 'civil rights and political status of the native inhabitants of the territory hereby ceded to the United States shall be determined by Congress.' This provision was inscribed upon by our Commissioners and was necessary to the ratification of the treaty, because we then had too little knowledge of the people of the Philippines and not enough of those of Porto Rico to know whether it would be wise or desirable to incorporate them into our body politic and to extend to them the privileges and immunities of American citizenship and undertake to govern them under the Constitution and subject to its restraints and requirements."

In other words, the Republican leaders were so ignorant of our acquired peoples as to be unable to decide whether or not to give to them the civil rights that aliens have.

That, however, is not the most startling part of the Republican confession, President McKinley and the American negotiators intended long before the Aguinaldo outbreak to deny the natives of Porto Rico and the Philippines the "privileges and immunities" secured them by the Constitution, and meant to govern them without the protection of the fundamental law of the land.

Such lawlessness fully meets the republican definition of "Imperialism." When we recall what the American Commissioners at Paris promised the Spanish Commissioners Congress would do for the ceded natives, the confession betrays something worse than lawlessness.

In an article in the December North American Review, herewith reprinted, there is an account of what took place in the tribunal at Paris, and the pledge of the American Commissioners, regarding the civil rights of the ceded natives.
The failure by Congress to redeem that pledge presents something much more serious for the honor of our country than a mere question of law.

It has been shown how the republican "Text Book" and the Senate Chairman of the "Pacific Islands and Porto Rico" Committee insist that the republican leaders required at Paris that Spain consent to a change in our customary treaties of cession so as to expel the native and American citizens dwelling in the Philippines (foreigners are protected by treaties and the law of nations) into an outer darkness unillumined by the Constitution; how Senator Foraker contended that Republicans would not have ratified the Paris treaty if it had stipulated that the natives "shall be maintained and protected in the free enjoyment of their liberty and property"; how the Supreme Court has in effect declared that such enjoyment is guaranteed by the Constitution to all within the jurisdiction of the United States. The judicial precedents are ample and there is an executive precedent that should be conclusive.

The latter came about as follows:

The Mexican treaty, as concluded by Mr. Trist on behalf of President Polk, contained a rambling and prolix article which was expunged by the Senate and the present ninth article substituted. Other amendments were made which Mexico ratified, and then transmitted to Washington subsequent conversations with our Commissioners as a sort of protocol. The Senate called for it, and President Polk explained the whole matter in an elaborate message of reply. (See "Messages and Papers of the Presidents," Vol. IV., p. 69.) Therein he said:

"If the ninth article of the treaty, whether in its original or amended form, had been entirely omitted in the treaty, all the rights and privileges which either of them confers would have been secured to the inhabitants of the ceded territories by the Constitution and laws of the United States."

Thus Polk's administration, a half century ago, clearly saw that over all the forms of government, whether martial law government or belligerent right government (which is not an individual despotism of the nations), or territorial government, or Federal States government of the people of the States, the Constitution is supreme, and that under it Congress decides political questions everywhere throughout the sovereignty of the United States. The Supreme Court defines the area of those political questions, and then protects all the people, treaty or no treaty, in their civil rights, privileges and immunities, their liberty, property and religion, against President and Congress alike if need be.

The hidden reason (See Cong. Rec. for March 30, 1900, p. 3750) for the radical change from former treaties insisted upon by President McKinley and the Republican leaders, was defense of the protective policy. to promote which he was nominated by them in 1896, and not because, as we now know, of his devotion to the gold standard or of any purpose to strengthen it.

Destroy the protective policy, stop sequestering our home market to benefit a few home industries, and there should be no serious impediment to the world-wide power of our trade. No one believes the present Chinese crisis arose because the United States purchased the Philippines, or was influenced thereby. Few political economists think our trade with China has been or
can be much promoted by the purchase, but very many are convinced that securing the archipelago, in the way we did, has complicated our obtaining more Chinese trade. Coaling stations, and a naval base, would have been well enough. To-day, the Republican candidate will denounce, it maybe, as "criminal aggression," the seizure, conquest, or purchase of Chinese territory, but re-elect him President, and any day he may turn up in the Senate with a treaty of cession, undertaking to pay therefor no one knows how many millions, and then government of the acquisition by himself and the War Department in defiance of the Constitution. Thus the millions outside the Constitution, might, in time, on Republican theories, exceed those within its protection.

Mr. Thayer, of Magnolia, Mass., hit the nail on the head, when in a letter printed in the New York Evening Post of September 4, 1900, he said "that Imperialism is but the final hideous outgrowth of the corruption which, under the guise of protection, has been fostered by the Republican party."

On page 55 of the "Text Book" that party officially declares:

"Absolute freedom of trade between the United States and the Philippines with their population of nearly 10,000,000 of Asiatic cheap labor would have proved damaging to the labor interests of the United States, both to the farmers who expected to be able to establish the beet sugar industry, to the tobacco growers, to the coal miners who are already suffering from the competition of cheap labor from other parts of the world, and to other classes of our laboring population. For these reasons it was thought best, inasmuch as the necessities of the situation required it, in the very first legislation regarding the islands coming to the United States by this treaty, to establish a precedent asserting the right of Congress to place such tariff and other restrictions between territory of this character and the United States as it might deem best, thus leaving to it the determination of the precise relation which each of the territories thus gained might occupy, as time and circumstances should develop, especially as the treaty had specifically provided that "the civil rights and political status of the native inhabitants of the territories hereby ceded to the United States shall be determined by Congress." It was for this specific purpose of protecting the labor of the United States, on the farm, in the mine, in the factory or elsewhere, that Republican leaders determined to insist upon a mere shadow of tariff duties between Porto Rico and the United States.

There was a time when the protective policy was only aimed against foreign lands and their products, but under "imperialism" it is aimed against our own islands and their products.

If another witness is needed to explain what the Republican party has done, and reasons therefor, Senator Foraker can be called upon. He is Chairman of the Senate Committee on "Pacific Islands and Porto Rico."

In the Congressional Record for March 30, 1900 (p. 3748) he is reported as saying:

We do not believe that Porto Rico stands in the same relation to the United States that other territories that have been acquired have stood. I do not believe that Porto Rico is a part of the United States. There is where the roads part about this whole matter. Porto Rico is, I think, simply a possession of the United States.

Mr. Allen—I am trying to get at the reason of the matter. I do not care anything about the policy of it. I want to know the reason why it should not be erected into a Territory.

Mr. Foraker—The reason is that it is not a part of the United States, as a Territory is a part of the United States, where we have given Territorial government.

Mr. Allen—Why should it not be a part of the United States?

Mr. Foraker—Perhaps there is no reason why it should not be. We could make it a part of the United States, but we have not yet made it a part of the United States.
Our commissioners who represented us in the framing of this treaty had in mind when this treaty was drawn that we were not only acquiring Porto Rico with Porto Ricans, the inhabitants of that country, but also the Philippines, with eight or ten million people, about whom we did not know very much; we did not know whether or not they would make good citizens of the United States, and did not know whether it would be wise to incorporate that territory, when so acquired, into the Union as a part of the territory of the United States, even as a Territory, much less as a State.

What a confession of ignorance in December, 1898! Hence "imperialism" and rejection of the Constitution!

Let the Republican Chairman of the "Pacific Islands and Porto Rico" again give his testimony:

In the *Congressional Record* for March 8, 1900, page 2818, this colloquy is reported:

Mr. Tillman—But, Mr. President, the Senator's argument, if it amounts to anything, has reduced itself to this: That he is not certain yet as to whether he wants the Philippines or not. If the Supreme Court shall determine that the Philippine Islands under the treaty are a part of the United States and that the laws and Constitution of the United States will be enforced there, if they go there ex proprio vigore—to use the law phrase which has been dinged into our ears here for the last two years—if we have the Philippines as a part of this country, then he does not know whether he wants the Philippines or not.

Mr. Foraker—It will be a question always what we shall do as to the Philippines: and I will frankly say to the Senator, if it shall be determined by the Supreme Court, when that question is properly presented, that we can not levy any tax on imports from this country into the Philippines, or on imports from there here, we may have to adopt a very different policy in respect to the Philippines from that which I now anticipate will be adopted.

Mr. Tillman—Then what becomes of the contention about philanthropy and the flag and the glory and everything of that kind, and of the humanitarian aspects of the case? [Laughter.]

Mr. Foraker—There is an easy answer to that, Mr. President. The Senator can not ridicule that idea in this connection. What I referred to in that connection was this: We want to settle it not alone that we may know on what kind of conditions we can trade with that people, but we want to settled in order that we may know whether or not we can say to the people of the United States that the labor and the industry of this country shall be protected from what has been charged as the unjust competition of the Malay in the Philippines and the products of Malay cheap labor.

All over the country in the last campaign, Mr. President—to be more specific with respect to that which was in my mind—we were told by those who represented organized labor; we were told by Democrats on the stump, all speaking, no doubt, according to their honest judgment, that by the annexation of the Philippines we had taken a people into the United States against whom and whose systems of labor there was no power in the Congress of the United States under the Constitution to defend and protect the labor and the industry of this country.

As it is as absolutely certain as anything can be in the future, unless the maxim *stare decisis* is to be disregarded by the Court, that the Porto Rico tariff legislation of May, 1900, will be adjudged unconstitutional, what sort of a Philippine policy is to be expected if a Republican President and House of Representatives shall be the outcome of the ballot boxes next November?

V.

There is another reason, disclosed in the "Text Book," why *Mr. Kinleyism* is so bent on "imperialism," and on setting aside the Constitution when trying to govern our new islands. It takes the voters back to that mysterious alliance between *Mr. Kinleyism* and British *Toryism* growing out of Lord Salisbury's withdrawal from the European Concert which protested against war
between the United States and Spain, and suggests what is popularly known as "the open door" in China. Chairman Foraker told the Senate on March 8, 1900, that the McKinley Administration had, by its diplomacy, put Congress and the country under "a moral obligation" to keep the Philippines open to free trade for all the world, excepting the States of the United States.

This is what he said:

We want to trade with the far East. We have reached that point in the development of our resources, in the manufacture of products, in the aggregation of capital, and in the command of skilled labor when we are turning out annually millions in value more than we can consume at home. So we must find a market somewhere in the world. We can not find it in Europe, but it is in the far East. In recognition of that fact, an open door to the markets of China is of the highest importance, for in China and Japan and Oceania and Australasia they have some six or seven or eight hundred million people possibly, who are just now being introduced to our civilization and who are coming to want our products.

Now, we say to Germany, to France, and to England, who have been making lodgments there and who are in command of the situation, "You shall not shut these doors against us," as it was recently proposed they would. England said it two or three years ago, and I remember when she sailed her ships over to Chemulpo, and stood them off opposite Port Arthur, and issued that proclamation which made the Anglo-Saxon blood start all over the world, in which she said, "These ports of China shall be open to all or open to none."

Following that we have without any such declaration, without any threat, without any menaces, succeeded in obtaining for ourselves what Great Britain was unable to accomplish, although she made that threat; we have been accorded an open door, and it is of the utmost importance to us to consider what may be asked in return, for I say the probabilities are that we shall be asked to give an open door in the Philippines as soon as the insurrection there is suppressed and we institute a civil government. It is one of the inevitable coming questions, in my judgment. Now, when we are asked—we will not be necessarily required to give it, and we may not give it at all; but after we have so strenuously insisted upon it and received it, it strikes me it will be a little bit embarrassing to withold it.

On the day before that, Mr. Dolliver, in the House (Congressional Record, p. 2741), made it even more clear why "imperialism" must prevail, and that the expositions of our Constitution by the Supreme Court during the last three-quarters of a century be swept aside. This is what he asserted:

"If the Constitution of the United States establishes free trade between Manilla and San Francisco, as it undoubtedly does between Maryland and Virginia, then the circumstance that we have got into new competition, possibly injurious to some of our industries, is only the least trouble that is before us. A consideration vaster by far than that arises at once, for we are in that case disarmed in advance in the momentous demand which this nation has made for equal rights in the commerce of Asia.

"I violate no secret of this government when I say that to-day there is pending in the State Department the most elaborate commercial negotiation ever attempted in the history of our diplomacy, based upon a pledge made by our commissioners at Paris, that whatever we do, in the Pacific Ocean we will maintain an open door for the commerce of the world. And I ask Republicans, I ask those Democrats from Georgia, from South Carolina, from the great cotton belt of the South, whose people are interested in the prospects that are wrapped up in the commerce of the East, with what countenance can we stand before the cabinets of Europe, protecting against the occupation of the ports of China to the prejudice of American trade, when we ourselves, from our headquarters on the border, being tied down by an obsolete construction of our own Constitution, have deliberately drawn a commercial dead line about the Philippine Islands for the permanent exclusion of everybody else?"

There it is, "based upon a pledge made by our Commissioners at Paris." "An obsolete construction of the Constitution." Free trade for Europe and Asia with the Philippines, but not for New York.
Alongside of the two intelligent and persistent interests to which I have alluded, that have been pushing the Republican party into an attitude of hostility to the Constitution, there was another co-operating force, less intelligent and persistent, but influential enough to be considered. It was represented by those of our countrymen who sincerely admire England, her political, financial and social institutions, and especially her colonization efforts. They yearned for colonies of brown men, or black men, it mattered little which, to civilize and elevate to self-government. A dozen pages of the Republican "Text Book" (132-143) disclose that the advocates of American colonization in Asia, Africa, and islands of the tropics, have had an industrious and ingenious ally in the Statistical Bureau of the Treasury Department, telling us that we are buying, on an average, a million of dollars a day in value of tropical products; that all we need can be produced in our new islands, and that we can send to them in exchange all the merchandise they want. It was an attractive picture when environed with the promise of free trade and the rule of uniform tariff taxation under the first clause of the eighth section of the first article of the Constitution, but the attraction vanished under the Republican Porto Rico tariff law of the first of last May. The protective system is a perpetual enemy of our world-wide power.

The Chief of the Statistical Bureau, working under the direction of Secretary of the Treasury, should have told those to whom he addressed his official publications on the glories and blessings of the English colonial system, that it was based on "imperialism," and could not exist under our written Constitution, and our American system of liberties. To a great many of our countrymen who so sincerely admire the political institutions of England, that would have been news. Perhaps it is now news to the head of the Treasury Statistical Bureau who supposes that British "imperialism" is as lawless there as McKinley's "imperialism" is lawless here.

The Treasury Statistical Bureau, and the editor of the Republican "Text Book," may ask to be told why and how the "imperialism" on which the British colonial system rests is lawful there, but unlawful here.

The answer is among the commonplaces of the literature of the creation of our governments, State and Federal. Every commentary on the Constitution, from Tucker of Virginia to Cooley of Michigan, dwells on it. Each repeats the utterances of the other. It is not easy to employ new ideas, or language, in giving the answer.

In the first place England has not a written Constitution. Her Constitution is a system of unwritten customary and traditional law, all subject to the unrestrained power of Parliament. There, Sovereignty is held by the Queen and the two Houses of Parliament, and not by the people. Everywhere in Europe, Sovereignty, or the power to govern, comes down from above, and does not ascend from the people. In England, the people have only such rights as sovereigns have conceded them, but in the United States, Presidents, Governors, Legislatures and Courts have only such rights and powers as the people have conceded. Chief Justice Marshall summed it all up in a sentence I have quoted in this volume. England has no Supreme
bench empowered to test all acts of Parliament by a Constitution, to decide finally all cases arising under treaties, and in effect to put its veto on everything it deems forbidden by the fundamental law. In England, sovereignty is indivisible, but not so in the United States where, while the Union was in formation, it was discovered, for the first time, that sovereignty can be partitioned, and therefore the people of the States, being the only sovereigns, gave a part of their sovereignty to the government at Albany, another part to the government at Washington and kept the remainder for themselves, as any one can see who will read the ninth and tenth Amendments to the Federal Constitution. Therefore, neither the President, nor Congress, has an atom of power in Territories or colonies not imparted by the people of the States through our written Constitution, but the Queen and Parliament have, on the contrary, all power. The Secretary of the Colonies, Mr. Chamberlain, can do in South Africa whatever he pleases, and is authorized "in council" to do, and so can, in India, the Secretary for India. Whoever has endeavored to get it in the head of even the most intelligent European how and why each and every dweller in New York, his person and property, are subject to a Federal Court and also to a State Court with concurrent jurisdiction, each having power to take his life, will appreciate the American idea of divided and reserved sovereignty. The government at Washington has not and cannot have the unrestrained power over the Philippines that the government at London has over India and the two prostrated republics in South Africa. In the United States "all legislative powers" are vested in Congress, and "the executive power" is vested in the President, but no one before the McKinley period ever supposed that the legislative power could disregard the Constitution in such a legislative act as determining the civil rights of inhabitants of one of our new islands, or enacting the Porto Rico law of May 1, 1900. England can have one system for India, another for the Fiji islands and a third for Canada, regardless of any hard and fast rule, but the United States must submit to a very hard and fast constitutional rule in dealing with colonies. McKinleyism refuses to submit, and that is "imperialism."

The great name and fame of Daniel Webster are invoked by the imperialists, who give garbled extracts from his utterances on the question of slave labor, as expressing his opinion that the Constitution did not, and does not, control Congress when legislating for territories. The Republican "Text Book" quotes from Mr. Webster, and, in like manner, garbles his utterances. For example, it suppresses this in the 1849 debate:

"Mr. Underwood—I say that we are bound, in legislating for the Territories as well as for the States, scrupulously to observe every principle and provision of the Constitution, for we have taken an oath to support it. Let me put a case by way of illustration. Ours is a Protestant country, in the main, while New Mexico and California are Catholic countries. Suppose we provide by our legislation that nobody shall be appointed to office there who professes the Catholic religion. What do we do by an act of this sort?

"Mr. Webster—We violate the Constitution, which says that no religious test shall ever be required as a qualification to any office."

On March 23, 1848, Mr. Webster tersely explained why the government at Washington cannot rule colonies as can European governments which have not a written Constitution and a Court to compel every executive or legislative
official act to conform thereto, and he predicted precisely that to which Democrats believe McKinleyism and "imperialism" are driving our country, when he said:

"An arbitrary government may have territorial governments in distant possessions, because an arbitrary government may rule its distant territories by different laws and different systems. Russia may govern the Ukraine and the Caucasus and Kamchatka by different codes or akases. We can do no such thing. They must be of us—part of us—or else estranged. I think I see, then, in progress what is to disfigure and deform the Constitution. * * * I think I see a course adopted that is likely to turn the Constitution under which we live into a deformed monster—into a curse rather than a blessing—into a great frame of unequal government, not founded on popular representation, but founded in the grossest inequalities; and I think if it go on, for there is a great danger that it will go on, that this Government will be broken up."

VI.

The mere acquisition of the Philippines and Porto Rico for the United States was not of itself conclusive evidence of "imperialism." Enlargement of the national area may be perfectly praiseworthy and lawful, but government of the acquisition after cession may be vicious and lawless. Expansion on the lines of Jefferson, Monroe, Polk and Pierce is democratic, but "imperialism" is not democratic. That vicious and lawless government of the islands ceded by Spain constitutes the "imperialism" of McKinley and his Republican Congress, and has brought them within the definition of the Republican "Text Book."

The profitless radical departure by the President in the stipulations of the Spanish treaty regarding the future civil rights of the Spanish subjects transferred with the islands so unlike those contained in similar treaties of cession negotiated by the United States, creates a well-founded suspicion of a purpose at Washington to modify our customary law on such matters. What was done, and that which was not done, by the President and Congress after April 11, 1899, furnish satisfactory proof that when the President and the republican leaders decided to demand of Spain the cession of the islands and their native inhabitants on payment of twenty millions, it had been agreed in Washington, between Congress and the Executive, that those inhabitants should, in imitation of British imperialism, be ruled in disregard of our Constitution and in defiance of the Supreme Court, in order, among other things, to preserve the McKinley protective system and carry out arrangements made with the government at London in regard to China.

It must also have been understood and agreed that since the new islands were to be ruled in disregard of the Constitution, therefore the people of all the other territories must be treated in like manner.

Out of the overwhelming mass of evidence of a republican intention to set aside our customary jurisprudence in such matters, and substitute British "imperialism" in its place and stead, these points, among others, stand out conspicuously:

(a) The refusal of the President to convene Congress immediately after he proclaimed peace with Spain on April 11, 1899, and refusal, in his annual message of the next December, to really urge Congress to determine, as the
treaty required, the civil rights and political status of the natives of the islands acquired.

(b) The failure of Congress to announce its determination (even if the President did not urge it) discloses conspiracy between the two.

(c) This declaration, made by the Secretary of War in his annual report for 1899:

"I assume, for I do not think that it can be successfully disputed, that as between the people of the ceded islands and the United States the former are subject to the complete sovereignty of the latter, controlled by no legal limitations except those which may be found in the treaty of cession; that the people of the islands have no right to have them treated as the Territories previously held by the United States have been treated, or to assert a legal right under the provisions of the Constitution, which was established for the people of the United States themselves, and to meet the conditions existing upon this continent, or to assert against the United States any legal right whatever not found in the treaty."

(d) The speeches made in Congress by nearly every Republican lawyer, upholding, in substance, the opinions expressed by Senator Ross of Vermont, and approved by the Republican Text-Book, as well as the following utterances by Mr. Grosvenor in the House on March 7, 1900:

"These territories, Puerto Rico and the Philippines, were acquired with the distinct condition placed in the treaty that everything relating to the people of these islands should be settled by Congress. The makers of the treaty declined to touch any conditions and left it all to the uncontrolled action of Congress. 'But,' say our enemies, 'do you say and claim that the Constitution of the United States has no effect upon the Territories?' That is what we say, yes."

(e) The averments in the House by Mr. Dalzell, of Pennsylvania, that it would be "grotesque," and by Mr. Moody, of Massachusetts, that it would be "impossible" to govern our new islands under the restraints of the Constitution.—(Cong. Rec., p. 2792.)

(f) Senator Foraker having introduced into the Senate a bill relating to Porto Rico based on the President's "plain duty" theory, and a few days later having presented another on the opposing lines of "imperialism," Senator Bacon, on March 31, 1900 (Cong. Rec., p. 3790), offered the first Foraker bill as a substitute for the second Foraker bill, and pledged to it the democratic support if republicans would accept the substitute. Senator Bacon said:

"I want to say another thing; that I have offered the amendment in the utmost good faith; that I shall be more than delighted if it can be passed, and passed, not as my amendment or substitute, but as the bill of the Senator from Ohio. In this original bill of the Senator from Ohio, which has been presented by me now as a substitute after it has been practically put aside by those who originally favored it, there is a declaration that the inhabitants of Porto Rico are citizens of the United States. It imposes upon imports into Porto Rico from foreign lands the duties levied by the Dingley Tariff Law. It specifically declares that there shall be no tariff duties between Porto Rico and any part of the United States as to goods coming from Porto Rico or going to Porto Rico. It establishes a legislative assembly in the island and denominates it the Legislative Assembly of the Island of Porto Rico, United States of America. The provision of the bill requires that in the enactment of laws by that Territorial Legislature the following language shall be used: 'Be it enacted by the Legislative Assembly of the Island of Porto Rico, United States of America."

"It further prescribed that there shall be no legislation inconsistent with the Constitution of the United States, and it provides that the existing laws of the island shall continue in force, except so far as inconsistent with the Constitution of the United States.
"It provides that the officers of the judicial courts shall be officers of the United States—
the judges, the district attorneys and the marshals.

"There is another point which I omitted to mention. It extends over the island, the
internal revenue system of the United States. Finally, it gives to the people of Porto Rico
a Delegate in Congress.

"Now, I will not stop at this time to contrast that with the present measure which is now
urged upon the Senate, but I desire to say that if the Senator from Ohio, and those who act
with him, should see fit to bring to a vote in the Senate the bill as originally introduced by him,
with such minor amendments as may be found necessary, while I am not authorized to speak
for all on this side of the Chamber, I know there are a number who would vote for it, and I do
not believe there would be a dissenting voice on this side, Chamber in support of that measure,
for the reason that it accomplishes what we think ought to be accomplished."

It is needless to say that the Republicans refused to vote for the substitute
constructed on the lines of "plain duty."

(g) On March 30, 1900, Senator Pettus offered this amendment to the Porto Rico bill,
and every Republican Senator present voted against it:

Sec. 12. That the Constitution of the United States and also the Laws of the United States
not locally inapplicable, shall have the same force and effect in Porto Rico as in other Territor-
ies of the United States.

(h) On March 20, 1900, a resolution offered by Senator Allen.

That the Constitution was, by force of the treaty concluded between the United States of
America and the Kingdom of Spain at the City of Paris, France, April 11, 1899, extended
over the island of Porto Rico and its inhabitants."

was laid on the table by the following party vote:

Yea—36. Allison, Baker, Bard, Beveridge, Carter, Davis, Deboe, Elkins, Fairbanks,
Foraker, Foster, Gallinger, Gear, Hale, Hanna, Hawley, Kean, Lindsay, Lodge, McBride,
McComas, McComber, McMillan, Penrose, Perkins, Pritchard, Quarles, Ross, Sewell, Shoup,

Nays—17. Allen, Bacon, Bate, Berry, Butler, Chilton, Clark (Mont.), Clay, Cockrell,
Culberson, Harris, Kenney, MacLaurin, Morgan, Rawlins, Tillman, Turley.

All the text-books lay down as elementary the rule that when, on April 11,
1900, the United States had acquired Porto Rico and the Pacific Islands, all
the laws of those islands remained in force, so far as not changed peremptorily
by the political institutions of the United States, until Congress had legislated
thereon. If that be so where shall we look for evidence of the character
of our political institutions if not to the Constitution?

(i) Conspiracy between the republican Executive and republican Congress
to disregard the Constitution in governing Porto Rico is also proven by the
republican statute of May 1, 1900, by what the President says of it in his
letter of acceptance of a renomination, dated September 8, 1900, by the levy
of tariff duties under the second section of that statute in plain defiance of
the President's "plain duty" advice, by refusal in the law to make the native
Cubans citizens of the United States, and by enacting that they, and all New
Yorkers residing in the island, shall be citizens only of Porto Rico.

Alluding to the Porto Rico law in his letter of acceptance the President
says:

"Congress has given to this island a government in which the inhabitants * * * elect
their own Legislature, enact their own local laws, provide their own system of taxation, and in
these respects have the same power and privileges enjoyed by other territories belonging to the
United States."

Republic or Empire?
The 18th and 27th sections of the law do not so read, but, on the contrary, enact that the upper branch of the legislative assembly, exercising all local legislative powers, is to be appointed by the President. Porto Rico does not have the same power and privileges as New Mexico, which has a representative in the Congress at Washington.

(j) If all other proof failed the Republican "Text Book" would establish the conspiracy to adopt the British colonial system benefit of an admirable feature of it, a court, selected from the Privy Council according to rules established by Parliament, to which the subjects of the Queen in all parts of her dominion may appeal for redress of injuries, and whose territorial jurisdiction expands with the expansion of the Empire. There is no such tribunal in the United States.

Mr. Randolph, of the New York bar, in an admirable monograph on "the law of territorial expansion," says of this English court of appeal, that it will entertain an appeal from the act of a colonial governor in imprisoning an African chief (Sprigg vs Sigan [1897], A. C., 238); from the order of a colonial court denying certain powers and privileges to a colonial legislature (Speaker, etc., vs. Glass L. R. 3, P. C., 560); from the judgment of a police magistrate in a petty colony (Falkland Islands Company vs. The Queen, 1 Moore P. C., N. S., 299); and it will receive appeals in criminal cases generally whenever it appears that "by a disregard of the forms of legal process, or by some violation of natural justice or otherwise, substantial and grave injustice has been done" (Dillet's case, 12 Appeal Cases, 459).

But a republican Congress will not establish in the Philippines any system of judicature by which a native, injured in liberty, or property, by the rude hand of military force, can sue his aggressor in a court from whose decision either side can appeal to the Supreme Court at Washington.

VII.

The Governor of the State of New York—abandoning his duties at Albany, rushing westward in pursuit of his own candidacy, stopping long enough at St. Paul to denounce his neighbors and fellow-citizens on Long Island who stand by the Democratic ticket as standing "for lawlessness and disorder, for dishonesty and dishonor, for license and disaster at home and cowardly shrinking from duty abroad"—has recently said, in his letter of acceptance, that Louisiana "was acquired by treaty and purchase under President Jefferson exactly and precisely as the Philippines have been acquired by treaty and purchase under President McKinley." It had by others been thought there was a difference in the acquisition growing out of war, conquest and the defeat of Spain. He commends what Jefferson did in Louisiana, and affirms that McKinley and a republican Congress have precisely followed in the Philippines what Jefferson and a democratic Congress did in Louisiana, all of which Democrats deny, and for the reason that, within ten days after the French treaty had been ratified, Jefferson asked a Democratic Congress to legislate, and it did legislate, but at the end of eighteen months a Republican Congress has not legislated for the archipelago.
Possibly Governor Roosevelt can somewhere find evidence of executive usurpation like McKinley's in ruling a territory, but if it be found it will be seen that the usurpation was not justified as a right, but as a necessity to be afterward condoned by Congress. Neither Jefferson, nor any Democrat, a hundred years ago, claimed to be independent of the Constitution in dealing with a territory. No Democrat asserted in that early day that a territory should have self-government before it became a State, or that the United States should get consent of a foreign people before conquering them in a just war as it did Mexicans, and acquiring the conquered by treaty cession. No Democrat in the earlier days endeavored to assimilate wild Indians and uncivilized blacks with men and women of the white race. No one fancies, as does Roosevelt, that the removal of Seminole Indians from Florida, under a treaty and after the territory had been acquired from Spain, or the suppression of "Sitting Bull," or Sioux and Apache Indians, then murdering white people, are in the same category, or rest on the same principles of public law, as governing Porto Rico. No Democrat finds fault with a Government over our new islands conforming to the Constitution, and which does not contemplate making the President a legislator. The Democratic law of 1803 for Louisiana recognized as binding the laws of the territory, and then merely empowered the President to temporarily fill the offices, and execute that old system of jurisprudence.

VIII.

The reply of President McKinley to a nomination for re-election made nearly three months ago, is prolix and elaborate, but not too prolix and elaborate for the defensive explanations required. His pathway was filled with awkward crevasses for which a bridge of words was convenient. He strives to give supremacy to gold mono-metallism as an issue, despite his own dedication only a few years ago to silver mono-metallism, but he devotes quite five-sevenths of his long document to the Philippines and "imperialism."

He begins his defense of his own conduct as an imperialist with these words:

"The purposes of the executive are best revealed and can best be judged by what he has done and is doing."

The keynote of the pending controversy is the last clause of the ninth article of the Paris treaty which reads thus:

"The civil rights and political status of the native inhabitants of the territories hereby ceded to the United States shall be determined by the Congress."

Congress is not referred to by the President, but the first personal pronoun has never been worked more incessantly.

The letter of acceptance reads as if he had been persuaded, or flattered, into the belief that the people of the United States have poured into his lap all the rights, powers and duties—executive, legislative and judicial—they possessed, or ever could possess, to discipline the natives of the new islands into a fitness for self-government.
"The Government of the United States, it is I!"

Of a piece with it, are the brazen conceit and affront—typical perhaps of a certain class of office-holders in all countries—which attribute industrial prosperity in 1897, 1898 and 1899, not to a natural rebound from five years of depression, good crops here and bad crops there, an unusual quantity of gold dug from the earth, greatly increased bank credits, revived trade demand in Great Britain and Germany increasing our exports to those countries, higher prices necessarily enlarging the total values of the trade even although quantities might be stationary, but to the inauguration of McKinley and the laws enacted by a republican Congress. It would not be any more preposterous to attribute the condition of this year’s cotton crop, the cyclone which devastated Texas and the destructive fires in New England to the Kansas City Convention.

One thing only is new in the letter, and that is the date (October 28, 1898) when the President ordered the American Commissioners at Paris to demand from Spain cession of the Philippines. A little while before, he had preached to them of “duty” and “humanity”; of expelling from their minds and purposes “design of aggrandizement” and “ambition of conquest”; but a few months later they were told that “the interests of humanity” demanded both. Why so much time and space to the doings of Dewey, Merritt and the negotiation and ratification of the treaty, if it be true, as he says in his letter, that he is “in agreement with all of those who supported the war with Spain, and also with those who counseled the ratification of the treaty of peace.” Upon these two great essential steps there can, the President adds, “be no issue, and out of these came all of our responsibility.”

Why, in face of what our Commissioners solemnly affirmed at Paris to the Spanish Commissioners, devote so much labor to a denial that any officer of the United States had, in the beginning, treated Aguinaldo as an ally?

Why publish to his countrymen a solemn declaration like this:

“The republican party does not have to assert its devotion to the Declaration of Independence. It wrote into the Constitution the amendments guaranteeing political equality to American citizenship and it has never broken them or counseled others in breaking them. It will not be guided in its conduct by the one set of principles at home and another set in the new territory belonging to the United States.”

One amendment referred to is the 13th, which McKinley has, in his Sulu treaty, broken by recognizing slavery in the Philippines. He has “one set of principles at home” in New Mexico, and “another set in the new territory” of Porto Rico, and another in the Malay archipelago.

That is, however, quite secondary to the primary question of “imperialism” now pending, which relates to the source of the authority which President McKinley has exercised in Porto Rico and the Philippines since the treaty of peace was by him proclaimed on April 11, 1899.

Under the treaty, it was the duty of Congress to take the reins of government of the islands, but the President would not convene Congress and it could not convene itself. The situation had one and only one guiding prece-
dent, and that was California after peace with Mexico had been proclaimed in 1848. Nothing that had happened in Europe could aid as a precedent. It was a situation under our written Constitution. It did not present a question of humanity, or duty, or moral law, or international law, excepting as embodied in the Constitution of the United States, or statutes enacted thereunder. No part of any law of nations can, in a question of private rights, be a part of our jurisprudence, unless the Supreme Court shall so adjudge. That was decided in the Paquete Habana case as recently as the eighth of last January, wherein it was argued, on behalf of President McKinley, that decision of what is a usage of war is in his exclusive discretion as Commander-in-Chief in war, but the Court replied that he must take international law from the Court when private rights are involved.

For his duty in both archipelagos after March 11, 1899, President McKinley had not only an executive precedent set by one of his predecessors in office but a judicial precedent by the Supreme Court's adjudication on President Polk's conduct regarding California. What that great lawyer and jurist—Governor Marcy—did as Secretary of War, by levying taxes in California and New Mexico while in our military occupation before peace came, and afterward by maintaining as de facto the military government existing after the war had ended, but Congress although often invited did not, and could not by reason of the slavery dispute, legislate, was then so novel, that the Whig opposition passed three or four resolutions asking under what pretext of law he had acted. Several of the replies by President Polk have been published in the fourth volume of "Messages and Papers of the Presidents" and the instructive War Office correspondence can be found in full in the Congressional documents of the Thirtieth and Thirty-first Congress, and a fairly good abstract thereof in the Congressional Record of April 11, 1900. This is what President Polk said to Congress on December 5, 1848:

"Upon the exchange of ratifications of the treaty of peace with Mexico on the 9th of May last, the temporary governments which had been established over New Mexico and California by our military and naval commanders, by virtue of the rights of war, ceased to derive any obligatory force from that source of authority, and, having been ceded to the United States, all government and control over them under the authority of Mexico had ceased to exist.

"Impressed with the necessity of establishing Territorial governments over them, I recommended the subject to the favorable consideration of Congress in my message communicating the ratified treaty of peace, on the 6th of July last, and invoked their action at that session. Congress adjourned without making any provision for their government. The inhabitants, by the transfer of their country, had become entitled to the benefits of our laws and Constitution, and yet were left without any regularly organized government. Since that time the very limited power possessed by the Executive has been exercised to preserve and protect them from the inevitable consequences of a state of anarchy. The only government which remained was that established by the military authority during the war.

"Regarding this to be a de facto government, and that by the presumed consent of the inhabitants it might be continued temporarily, they were advised to conform and submit to it for the short intervening period before Congress would again assemble and could legislate on the subject.

Strike out therefrom "New Mexico and California" and insert Porto Rico and the Philippines, and all will be plain to every voter.
On October 9, 1848, Marcy wrote to the military officers in California:

"But the government de facto can, of course, exercise no powers inconsistent with the provisions of the Constitution of the United States, which is the supreme law of all the States and Territories of our Union. For this reason no import duties can be levied in California on articles the growth, produce, or manufacture of any State or Territory of the United States, and no such duties can be imposed in any part of the Union on the productions of California; nor can duties be charged on such foreign productions as have already paid duties in any part of the United States."

Two days before Secretary of State Buchanan, by direction of the President, wrote to an official on his way to California:

"The President congratulates the citizens of California on the annexation of their fine province to the United States. On the 30th of May, 1848, the day on which the ratifications of our late treaty with Mexico were exchanged, California finally became an integral part of this great and glorious Republic. The President deeply regrets that Congress did not, at their late session, establish a Territorial government for California. It would now be vain to enter into the reasons for this omission. Whatever these may have been, he is firmly convinced that Congress feels a deep interest in the welfare of California and its people and will, at an early period of the next session, provide for them a Territorial government suited to their wants."

"In the meantime, the condition of the people of California is anomalous and will require on their part the exercise of great prudence and discretion. By the conclusion of the treaty of peace, the military government which was established over them, under the laws of war as recognized by the practice of all civilized nations, has ceased to derive its authority from this source of power. But is there, for this reason, no government in California? Are life, liberty and property under the protection of no existing authorities? This would be a singular phenomenon in the face of the world, and especially among American citizens, distinguished as they are above all other people for their law-abiding character. Fortunately they are not reduced to this sad condition.

"The termination of the war left an existing government—a government de facto—in full operation; and this will continue, with the presumed consent of the people, until Congress shall provide for them a Territorial government. The great law of necessity justifies this conclusion. The consent of the people is irresistibly inferred from the fact that no civilized community could possibly desire to abrogate an existing government when the alternative presented would be to place themselves in a state of anarchy beyond the protection of all laws, and reduce them to the unhappy necessity of submitting to the dominion of the strongest.

"This government de facto will, of course, exercise no power inconsistent with the provisions of the Constitution of the United States, which is the supreme law of the land."

The main inquiry is: Where did President McKinley derive power as a legislator in our new islands? His de facto government, if purely executive, would have been well enough, but he has ordered new laws made and old ones set aside. Where is the source of that power? He can repel insurrection there as he might in New Mexico, but how make laws? He can enforce old laws and use existing local agencies, but by what authority create new offices and impose new taxes? No President ever before claimed a right to make laws for a territory. Other Presidents may have yielded to necessity and afterward asked indemnity of Congress. Much has been said of what Jefferson did in Louisiana, but one brief Special Message of his to Congress, on October 21, 1803 (1, President's Papers, p. 362), explains all and demonstrates that he never fancied he had legislative power in a territory.

"Ah!" replies McKinley, "a new war began in the Philippines on February 4, 1899, by which I had new war power." Grant it, but there was no war in Porto Rico where the President acted the part of legislator.
Public
From the right the the had opinion 22 peace executive the shall another, United States. The Congress, Constitution, but local civil laws and customs remained. All the President had the right to do was to execute them. This sentence from the Supreme Court opinion on Cross vs. Harrison makes all plain:

"The second objection states a proposition larger than the case admits, and more so that the principle is, which secures to the inhabitants of a ceded conquest the enjoyment of what had been their laws before, until they have been changed by the new sovereignty to which it had been transferred. In this case foreign trade has been changed, in virtue of a belligerent right, before the territory was ceded as a conquest, and after that had been done by a treaty of peace the inhabitants were not remitted to those regulations of trade under which it was carried while they were under Mexican rule, because they had passed from that sovereignty to another, whose privilege it was to permit the existing regulations of trade to continue and by which only they could be changed."

Notwithstanding the dissertation on the Tagal insurrection against McKinley rule in Luzon, it is rather plain that much remains to be revealed regarding the early relations between the Tagals and our consular and naval officers. The Aguinaldo uprising was well timed to give President McKinley an opportunity to insist that the commotion at Manila on February 4, 1899, was of a character to enable him, if he wished it, to claim the right to continue the exercise of war powers in the Philippines, without a declaration of war by Congress, just as President Lincoln exercised belligerent rights after Fort Sumpter was fired upon and before Congress had declared war. Whenever an important election has been on in any State during the last year or two, the Administration has announced the Philippines war quite at an end, but it always revives again in a mysterious way when new belligerent power, or a larger army, is needed at Washington. The uprising of Aguinaldo was also timely, in order to enable the republican leaders and newspapers to pretend to bring into politics "copperheads" composed of those who, like Senator Hoar, denounced the President's "brutal and tactless" policy of merely nagging the Tagals and not quickly suppressing them as he might have done. The Massachusetts Senator has been forgiven by the Republicans during, at least, the Presidential contest of 1900, much as Vallendingham was forgiven by President Lincoln during the Presidential contest of 1864 and permitted to return to Indiana from Canada.

The Republican candidate says, in his letter of acceptance, that the insurrection in Luzon was practically ended last March. His second Commission headed by Judge Taft, reported on the 21st of last month to its Chief that in nearly all Luzon the revolt had been suppressed. On what pretext, then, is the President authorizing that Commission to make laws? From what source
Republican or Empire?

has he the power if peace exists? He has no more warrant of law to do what he describes himself as doing in the Philippines than he has to exercise the functions of the New York Assembly when sitting at Albany.

The lawyers of our country should be interested to know which one of them advised the President that he had constitutional power to announce his order of April 7, 1900, to the Secretary of War regarding the second Philippines Commission. Was it Mr. Magoon? In that order the republican candidate directs the Commission, by these words, to exercise legislative powers:

"Beginning with the 1st day of September, 1900, the authority to exercise, subject to my approval, through the Secretary of War, that part of the power of government in the Philippine Islands which is of a legislative nature is to be transferred from the Military Governor of the islands to this Commission, to be thereafter exercised by them in the place and stead of the Military Governor, under such rules and regulations as you shall prescribe, until the establishment of the civil central government for the islands, contemplated in the last foregoing paragraph, or until Congress shall otherwise provide. Exercise of this legislative authority will include the making of rules and orders, having the effect of law, for the raising of revenue by taxes, custom duties and imposts."

The Constitution commands that "all bills for raising revenue shall originate in the House of Representatives." The exclusive right to legislate for the Philippines vested in Congress on April 11, 1899, and there has not since been a place for the exercise of legislative power by the Executive. In the words of the Supreme Court, "Congress cannot delegate legislative power to the President, is a principle universally recognized as vital to the integrity and maintenance of the system of government ordained by the Constitution." (Field vs. Clark, 143 U. S., 649, 692.)

There should not be mystery and concealment regarding this supreme issue to be decided by the ballot boxes on the 6th of November. It should be plain to every voter! Is the Constitution to exist at Washington as a restraint on the executive and legislative branches of our Government, when disposing of, and making needful rules and regulations respecting our new islands and all our territories? Are the decisions of Chief Justice Marshall and the Supreme Court, regarding the supremacy of the Constitution over all and every act of the President and Congress, alike in war and in peace, to stand or be overthrown? No voter should doubt—republicans in the Senate have foreshadowed it—that the Republican party, which "packed" the court in order to reverse its previous judgment on the legal tender greenback cases, will, if its candidates shall prevail, put pressure again on the Supreme Bench to reverse, in the interest of "imperialism," its previous decisions. The strain will come if the voters shall, by re-electing McKinley, permit it. The court can now make of the Constitution what it pleases in the sense of the power of the President and Congress over the territories. If the republican candidate and a republican House shall be elected next November, in order to exert improper pressure on the judicial bench, and such pressure shall be exerted and prevail, the consequence will not in our day be curable or reparable. The use
of a foreign war to accomplish a partisan result will have done its fatal work. Better men in 1904, at each end of Pennsylvania avenue, cannot restore a Constitution thus dethroned. Other consequences, such as unsound money for awhile, or temporary business depression, can be repaired, but not the consequences of a subservient Supreme Court "packed" to surrender the Constitution by opening a gate at a vital point.

Can voters be hoodwinked and misled by the imperialist cry that the party of Jefferson and Jackson will, if successful in November, impair the income of the rich as well as of wage-earners and salary-earners? Not if those who have persuasive voices and pens will point out the fact, that in Jefferson's first campaign for the Presidency, the Federalists, and in both of Jackson's campaigns, the Whigs, said of Democratic candidates, and of the party supporting them, almost the same things that the imperialists are now uttering against Bryan and those upholding him. In Jackson's day the Whig newspapers represented Tammany Hall, and the up-State Albany "regency" controlled then by Marcy, Van Buren, and Silas Wright, to be "monsters of iniquity," bent on despoiling the rich, just as now do Republican newspapers represent the Democracy.

IX.

The republican candidate for the Presidency has, by his letter of acceptance, formally raised a question which, so far as I know, had not been brought into prominence by the democratic candidate, or by any Democrat. That question relates to responsibility for American lives lost at Manila on February 4, 1899. The urging of voters to inquire into that responsibility is really the gist of the President's elaborate document sent to Senator Lodge, and it offers a good opportunity to measure the writer's qualifications for discussing such questions. He begins in this way:

"It has been asserted that there would have been no fighting in the Philippines if Congress had declared its purpose to give independence to the Tagal insurgents."

His only reply is: "The insurgents did not wait for the action of Congress. They assumed the offensive, they opened fire on our army." That is true, but why did they not wait? The next sentence is no answer:

"Those who assert our responsibility for the beginning of the conflict have forgotten that before the treaty was ratified in the Senate and while it was being debated in that body, and while the Bacon resolution was under discussion, on February 4, 1899, the insurgents attacked the American army, after being previously advised that the American forces were under orders not to fire upon them except in defense.""

"My," not "our" responsibility would have been more accurate! The voters have the facts in mind! The republican candidate adds:

"The papers found in the recently captured archives of the insurgents demonstrate that this attack had been carefully planned for weeks before it occurred. Their unprovoked assault upon our soldiers at a time when the Senate was deliberating upon the treaty shows that no action on our part except surrender and abandonment would have prevented the fighting and leaves no doubt in any fair mind of where the responsibility rests for the shedding of American blood."
REPUBLIC OR EMPIRE?

How many "weeks"? Did they begin to run from the end of December, 1898? What the President intended, like Governor Roosevelt, to hint was that responsibility for the blood shed is on the Tagalogs, and those in the Senate, or elsewhere in our country, who criticised the President's conduct immediately after the treaty had been signed at Paris on December 10, 1898.

The following facts will throw light on the question raised by the republican candidate:

Only eleven days after the signing of the treaty, nearly two months before our Senate consented to what had been concluded at Paris, more than three months before Spain had ratified it, and more than four months before President McKinley had proclaimed (April 11, 1899) an exchange of ratifications, he, on December 21, 1898, issued a military order declaring "the future control, disposition and government of the Philippine Islands are ceded to the United States," and the military government at Manila must, "with all possible dispatch" be extended over the whole of the Archipelago. The premise of the order was false! The treaty of cession was not binding till April 11, 1899. No one should say that the December Executive order was issued out of ignorance, or deny that it was made in violation of the Constitution and in usurpation by the President of the treaty-making power, for he must have known that, under the Constitution, the Executive cannot, unaided by statute or treaty, enlarge the sovereignty of the United States and the territorial jurisdiction of Congress.

The text of that December order can be found in "Messages and Papers of the Presidents" (vol. 10, p 219), and any voter comparing it with the four words omitted by the President in the sentence therefrom that he quotes, will discover what there was in the order that he wished now to be kept concealed.

When I commented on that order nearly a year ago, I was unaware of facts concerning it disclosed by Senator Hoar last April in a letter published in the Congressional Record, p. 4363, in which he says:

I have carefully read Dewey's dispatches, including the testimony of two naval officers, whom he sent on a two months' tour through Luzon, before the conflict between our troops and those of Aguinaldo, which, under his own signature, he declares to be the best statement of the condition of things there that has been made. I have read many of the dispatches of General Otis. A few of these have been published. Some of them have, so far, been withheld from public knowledge. They establish, beyond reasonable doubt, clearly:

Three—That that people have from the beginning desired independence and desire it now.

Four—That this desire was communicated to our commanders when they gave them arms, accepted their aid, and brought Aguinaldo from his exile when he was put in command of 30,000 Filipino soldiers, who were already in arms and organized.

Nine—That the outbreak of hostilities was not their fault, but ours. We fired upon them first. The fire was returned from their lines. Thereupon it was returned again from us, and several Filipinos were killed. As soon as Aguinaldo heard of it he sent a message to General Otis saying that the firing was without his knowledge and against his will; that he deprecated it, and he desired hostilities to cease, and would withdraw his troops to any distance General Otis should desire. To which the American General replied, that as the fighting had begun, it must go on."
Senator Hoar announced that he had read in the secret archives of the War Office what Otis had written. I prefer to let the Senator speak in his own words, as follows:

"Now, on December 24, 1898, the President sent to Otis a proclamation, which he commanded him to issue. Otis, on reading it, to use the language of his report:

"After fully considering the President's proclamation and the temper of the Tagalos, with whom I was in daily discussion of political problems and the friendly intentions of the United States Government toward them, I concluded that there were certain words and expressions therein, such as 'sovereignty,' 'right of cession,' and those which directed immediate occupation, etc., though most admirably employed and tersely expressive of actual conditions, might be advantageously used by the Tagalo war party to incite widespread hostilities among the natives. The ignorant classes had been taught to believe that certain words, as 'sovereignty,' 'protection,' etc., had peculiar meaning disastrous to their welfare and significant of future political domination.'"

The ignorant people of America have been taught to believe just such things. I have seen such things in the writings of Washington and Adams and Jefferson, of Whitman and Garrison and Nathan Dane and Hunt, and others of the men of Essex. Now Otis goes on to say:

"It was my opinion, therefore, that I would be justified in so amending the paper that the beneficent object of the United States Government would be brought clearly within the comprehension of the people."

Wh upon Otis proceeds to amend the President's proclamation by striking out everything in it which contains a purpose to assume sovereignty or protection, and which was significant of future political domination, and instead thereof he issued, on January 4, 1899, less than eight weeks before the outbreak of hostilities, a proclamation which he gives in a report, in which he suppressed all these utterances, and assures them that it is the purpose of the people of the United States to give them, "in every possible way, the full measure of individual rights and liberty which is the heritage of a free people." And he adds:

"I am convinced that it is the intention of the United States Government to seek the establishment of a most liberal government for the islands, in which the people themselves shall have as full representation as the maintenance of law and order will permit, and which shall be susceptible of development, on the lines of increased representation and the bestowal of increased powers, into a government as free and independent as is enjoyed by the most favored provinces of the world."

Unfortunately the good influence of this modification of the President's action was frustrated by the conduct of General Miller, who, outside of Manila, published the original order.

Senator Hoar then asserts this:

"Otis says that the proclamation which actually came out, through Miller's departure from his instructions, was calculated to cause, and did cause, the hostilities and excite alarm and indignation in the bosoms of that freedom-seeking people."

If Senator Hoar truly represented what he had read, if he believed that General Otis wrote what he declares he read, and that it was true, and if he now believes it to be true that McKinley's December order caused the first spilling, by the Tagals, of American blood at Manila, on February 4, 1899, then right-minded voters will think the Senator should, to be consistent, also declare that Mr. McKinley better deserves impeachment than a re-election to the Presidency.

Perry Belmont.
Beginnings of Imperialism.

[From the New York Herald of June 17, 1899.]

Mr. Perry Belmont, who sails this morning for Europe on the "Campania," while speaking yesterday with political friends concerning "imperialism" as a probable issue in the next campaign for President, said:

If such a severe test shall be made as a choice between abandoning the Constitution and abandoning the Philippines, Democrats will, in my opinion, let the Philippines go rather than the Constitution. But no such test is likely or necessary.

If Congress is not to assemble before the usual time, there will not be national politics during the next six months for those outside the Administration circle.

The management of our new islands, including taxation and expenditure, is now treated at Washington as purely an executive affair.

The President should satisfactorily punish Aguinaldo and his followers for their assault early last February on our army at Manila. When that has been accomplished, and Congress has assembled, there will be real problems growing out of expansion that will press for solution.

Then may come a crisis, created not only by territorial enlargement in the tropics and the sudden accession to our population of millions of Asiatics, but by proposed plans for their future government which will ignore our fundamental law.

Republican lawyers have been busy driving ingenious tunnels underneath the Constitution in order to open a feasible government route between Washington and Manila, and republican opinion seems to be drifting to the conclusion that Cuba cannot be pacified, order established in Porto Rico, or the natives in the Philippines civilised if the Constitution,
its guarantees and limitations, are to have sway over the new
islands as they now have over our home territories. The
Republican party must therefore in the end take its stand on
the demand that the President hold, exercise and represent
in those islands the whole power of "sovereignty," which is
the power to govern unrestrained.¹

He is now exercising such power without much question,
or regret, from any source, and yet no one has explained the
source of that power. The Republican leaders act as if con-
fident that neither the voters, nor the Supreme Court, will
impede a government in the Philippines on the English plan
as applied in India, Africa and in British crown colonies.

Republican contention now is that the treaty ceding our
new islands did not confer any political or civil rights on the
natives of Cuba, Porto Rico or the Philippines. If the
Republican party shall not modify that contention, or if
Congress shall refuse to take the new islands out of the hands
of the War Department, there will be interesting politics next
year over the authority of Congress and of the Executive.

The Republicans maintain that our title to the Philippines
has not been so completed as to put them under the Constitu-
tion; that even if Congress shall legislate over them, the
President can still exercise, as now, the rule of a military
conqueror, and that when Congress does legislate, it need not
regard the Constitution.

Hitherto Congress has collected the same taxes in the
territories as in the States and made uniformity the rule, but
if the party in power at Washington shall plainly declare its
purpose to tax the territories and rule therein without any
regard for the Constitution, Democratic voices and votes will
be audible in denunciation.

¹ When the Republican Congress had assembled in December, 1899, it did
take that stand. It refused to execute the stipulation of the treaty requiring
it to define the civil status and political rights of the native inhabitants of the
new islands. It did not provide a civil government for them, but permitted
the President to govern millions of people in time of peace, as in Porto Rico,
under martial law and under his claim of prerogative "belligerent right," as
in time of war.
Imperialism and the Boers.

[Letter to George W. Van Siclen, Secretary of the Mass Meeting at Carnegie Hall, October 11, 1899, to express sympathy with the Boers.]

New York, October 10, 1899.

George W. Van Siclen, Esq.,
No. 141 Broadway, N. Y.:

Sir—I regret extremely my inability to be present at the meeting to be held Wednesday, October 11.

The principle of home rule is very dear to the people of the United States. It means the internal sovereignty of every independent State. Under it, the citizen, or subject, of a foreign country has not the privilege of citizenship until he has, by his own act, made himself a citizen of the State into which he has come. Till then he has a right to demand in a foreign state only such good treatment as his government can, under treaty, or international law, insist upon in his behalf.

The Lord Chief Justice of England, when trying the Jamieson raiders, charged the jury that "the Queen's Government recognizes the complete independence and autonomy of the South African Republic, subject only to the restrictions of the Convention of 1884, to the effect that the South African Republic should have no power to come into any treaties without this country's consent."

The internal sovereignty of the Transvaal was thus pronounced to be complete. If that was good law in 1896, why not to-day? What would we say if England were to insist that, because Englishmen owned a majority of all New York, or Colorado, railways, industrial properties and mines, they should constitute a determining factor in the government of those States?
A different question would be presented if either State refused Englishmen rights recognized by public law, by reciprocity and by international comity.

There are said to be thirty, or even fifty thousand "Outlanders," recently arrived in the Canadian gold fields at the Yukon headwaters. Will they receive on demand representation and a ballot in the local Parliament of the northwest territories of Canada?

The dispute in its last analysis is one of law, both sides professing to stand on written agreements, the Transvaal conceding the right of interference from London under the convention of 1884, England claiming the right to interfere under more than one convention and international law. It is therefore a dispute pre-eminently suitable for arbitration.

Yours truly,

Perry Belmont.
Congress, the President and the Philippines.

[From the North American Review of December, 1899.]

The country has expressed, with more or less distinctness and unanimity, a desire that Congress, when it assembles, shall legislate on the civil rights and political status of the native inhabitants of the islands recently ceded to the United States and on taxation reform, currency and banking reform, and trusts.

There are reasons why the first-named of those subjects of legislation should have precedence, and the civil rights and political status of eight or ten millions of people be not postponed till after enactments relating to the other three topics.

The millions of native inhabitants of the ceded islands have not now, under the Paris Treaty, defined civil rights. The inhabitants who were born in Spain have rights stipulated by the treaty, but the natives have none. The United States promised Spain that Congress would determine "the civil rights and political status of the native inhabitants." That obligation is as yet unfulfilled.

It is unusual for human beings not to have a nationality. Spain was constrained to abandon those natives, and sunder their allegiance to her. The United States did not by the treaty make them citizens, nor naturalize them, nor give them an opportunity to become citizens. Probably the wisest lawyer cannot say whether the natives can leave the islands till Congress has given permission, although the right of expatriation, repatriation and naturalization is cherished in our country, nor whether the natives now owe such allegiance to our Government that they can be punished for treason if they levy war on the United States.
The precise condition, in our American law, of inhabitants of a country ceded to the United States is obscure till Congress has made a definition, if the treaty of cession does not prescribe it. The Supreme Court is reported as saying in Rapentigny's case, that "the conqueror, who has obtained permanent possession of the enemy's country, has the right to forbid the departure of his new subjects or citizens from it." If the native inhabitants of the Philippines cannot depart therefrom without permission from Washington they are like medieval feudal serfs.

Up to the recent treaty, cessions of foreign territory to the United States determined the status, as to citizenship, of the inhabitants. The Spanish treaty, ceding Florida, admitted them, declared the Supreme Court in Canter's case, "to the enjoyment of the privileges and immunities of the citizens of the United States." That was the invariable rule of our treaties of cession up to 1898.

Was it expedient to make a new departure in negotiating the recent treaty, where the two chief points of contention were the Cuban debt and the cession of the Philippines? Denying that, under the August protocol, the American plenipotentiaries were entitled to demand cession of sovereignty over the Philippines, Spain proposed to submit that question to arbitration, but the American plenipotentiaries rejecting the proposal, offered to Spain twenty millions for the Philippines, which offer Spain accepted. Thereupon the rights of the inhabitants to choose their citizenship was considered, and it was agreed that the natives of Spain be allowed a year in which to decide whether or not to remain Spanish subjects, or adopt the nationality of "the territory" in which they might reside, but to the natives of the islands that was refused by the American plenipotentiaries. Their civil and political rights were, by the ninth article, put absolutely in the hands of Congress which, our plenipotentiaries declared, "will enact laws to govern the ceded territories." That pledge, as an inducement to the signatures of the treaty, should be

1 What is the "nationality" of the territory in which the natives of the new islands are now residing? Is it not American?
promptly met by fulfillment. The treaty does not declare that the "United States" (as in the fourth section of the fourth article of the Constitution relating to a "guarantee of a republican form of government") or the President, but Congress shall determine the rights of the natives.

Existing uncertainty regarding the citizenship of children of natives born in the islands since April 11, 1899, is another reason why Congress should now clear up the question. The fourteenth article of the Constitution declares that "all persons born, or naturalized, in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside," and the fifteenth article adds "that the right of citizens of the United States to vote shall not be denied or abridged, * * * on account of race, color, or previous condition of servitude."

If the Philippines were "in" the United States on April 11, 1899, and a child of a native was there born "subject to the jurisdiction thereof," then such a child became a citizen despite any present or future enactment by Congress. Was and is the Philippine archipelago "in" the United States? The treaty is silent on that question. If the parents and the child, being "in the Philippines," were not subject to the jurisdiction of the United States, then to the jurisdiction of what country were they, and are they now, subject? If such a child came to reside in New York, would it be a citizen of New York? It has been recently decided by the Supreme Court that a child even of Chinese parents is, if born in one of our States, a citizen of that State, and of the United States. Residing in Manila, the child would not, of course, be a citizen of any State of the United States, but under the fourteenth article would the child not be a citizen of the United States, and would it not have a status defined by the Constitution? Congress should express its opinion. ¹

¹ "Imperialists" affirm that a child born in the Philippines after April 11, 1899, when the treaty was proclaimed, is not a citizen of the United States, because, since the archipelago is not (as they say), a part of the United States, the child was not born within the United States, because the Fourteenth Amendment is ineffective outside of the forty-five States, and because under Secretary Root's contention the natives of the archipelago cannot "assert against the United States any legal right whatever not found in the treaty,"
There is a most cogent reason, growing out of the Federal revenue, why legislation by Congress regarding Porto Rico and the Philippines should have priority, which is the doubt whether or not importations from those islands into our home ports are dutiable, and whether or not Congress is constitutionally bound to levy and collect duties on foreign imports into those islands uniform with those levied and collected at our home ports on like articles. The Constitution is explicit that "all duties * * * shall be uniform throughout the United States." Will Congress declare that the word "throughout" and the restriction apply only to the ports of forty-five states now in the Union? The Supreme Court has twice decided that the words "throughout the United States" embrace all of what Chief Justice Marshall described as our "country."

There is another reason why the Philippine problem should have priority, which is that "involuntary servitude" exists there in the form of Mohammedan slavery, and debt which only stipulates that Congress shall determine both the civil rights and the political status of the natives. The Supreme Court, however, has decided (169 U. S. Reports, 649), that "in the United States" is equivalent to "within the limits of the United States" as area, and "within the sovereignty of the United States." The designation "citizens of the United States" may embrace others than citizens of the States. The Constitution declares that a Senator from a State shall have been "nine years a citizen of the United States," but if New Mexico were admitted as a State it will surely not be claimed that one presenting himself as her Senator, who had been born in New Mexico since 1848, always resided there, and a citizen of the United States nine years, could not be her Senator because not nine years a citizen of a State. Nothing is left to the "imperialists" but the vain contention that the Treaty of Paris has suppressed the Fourteenth Amendment.

One of the most enlightening speeches on the Porto Rico Tariff Law in the last Congress was that of Judge Crumpacker, a Republican from Indiana, delivered in the House April 11, 1900. He presented with exceptional clearness the relation of territories to the Constitution and to Congress. He explained that territorial government is not self-government and is not "Home Rule," such as a State has, and for that very reason Congress should make it as popular as possible and should make the territorial period as brief as can be. He demonstrated that the Republican party came "into existence as the champion of the theory that the Constitution extends to territories." His exposition of taxation and representation in the territories was excellent. He said:

When the Revolutionary fathers came to frame their own government, so jealous were they of the power of taxation, so fearful were they of its abuse, that they refused to confer it upon the confederacy at all. They provided a system of contributions to be levied upon the States, with no power of enforcement. It was a melancholy failure, and the present Constitution followed. In the light of history, and in view of their own experience, the taxing power was safeguarded in every possible manner. The principle that taxes could only justly be levied by the taxpayers was preserved. The Constitution
slavery, presenting, on the one hand, the relation of the slave to his owner as property, and on the other hand, to the United States as a human being. The thirteenth article of the Constitution forbids slavery, or involuntary servitude, to exist "within the United States, or any place subject to their jurisdiction," except as a punishment for crime for which the party shall have been duly convicted by a common law jury. The pens of pessimists and cynics in our politics will be sharpened if the Republican party in the present Congress, born as that party was, less than fifty years ago, of hostility to slavery and polygamy in our territories, shall now protect, or even tolerate, those "twin relics" in the Philippines.

Besides those questions, arising under the last clause of the ninth article of the recent treaty, there are innumerable others growing out of the first ten additions, or amendments, to the Constitution. The first amendment, which is addressed to Congress by name, forbids it to do certain things, and the United States to do anywhere within its jurisdiction declares that "all bills for raising revenues shall originate in the House of Representatives." Taxation and representation is an active, living principle to-day and will continue to be as long as there are people to govern. But it has a practical operation when applied to republican government. The philosophy of the principle is that taxes shall be imposed only by those who pay them, and self-interest is the highest guaranty against immoderation and abuse.

But, sir, when the Constitution was ordained we had all the Northwest Territory—an empire within itself—which it was expected would be carved into States. Under our plan of government sovereignty is in the people of the States, and, in the probationary State, the Territories would be governed by Congress. Congress would impose taxes upon the people of the Territories without their consent, and to provide against the abuse of that power the Constitution was made to declare that "all duties, imposts, and excises shall be uniform throughout the United States." The only general power of taxation conferred upon Congress is granted with that limitation. Congress by express provision is given power to levy only a general uniform tax, and that limitation goes wherever the power of taxation extends. Congress cannot carry into Territories or islands greater or different powers than those it possesses.

Thus we said to the people of the Territories, in the most solemn manner, "While you have no representation in the General Government, you shall bear only the same rate of taxation that we voluntarily impose upon ourselves." What higher guaranty of justice could be given? And that guaranty has been religiously observed in all our dealings with the Territories, and it fully preserves the principle of taxation and representation. The proposed tariff upon Porto Rican trade violates that guaranty and contravenes the great principle underlying the Federal system of taxation. If we can levy a tariff at all against American territory in contravention of the principle of uniformity, there is no limit to our power. We may levy 15 per cent. of the Dingley rate now, the next Congress may levy the full Dingley rate, and the next may double it."
or under its sovereignty the enumerated acts, or to permit, in time of peace, the tyranny known as martial law. Will any one, after reading that first amendment of the Constitution, contend that Congress can, no matter what is in a treaty of cession, establish in any colony, or dependency, systems of religious faith and worship, or prohibit the full exercise of any system, or abridge free speech or the right of petitioning Congress to redress grievances?

The war against Spain, and the treaty ending the war and securing peace with Spain, are not now in issue. Those great transactions have been closed. The treaty has been, since that date, a supreme law of the land. The Philippines and Porto Rico are possessions of the United States by as valid and secure a title as are now New Mexico and Alaska.

After Dewey had conquered the Bay of Manila, was its sovereignty in the United States or in Spain up to April 11, 1899? There have been two theories regarding the possession of sovereignty over an area conquered and actually occupied, either by a foreign enemy, or by internal rebels. One theory, and an old one, is that it was in the United States, but the more modern and probably the better one is that the United States had full rights of occupancy and government, but the sovereignty of Spain was intact till the conquest had been completed by treaty, although the United States had legal authority to do there whatever was necessary for the prosecution of war. The Filipino insurgents were rebels against Spain. They had, outside of Manila, subdued Spanish resistance, and occupied as against Spain, all of Luzon, as the Schurman Commission has recently declared. Taxes were paid to the insurgents and they were the de facto rulers, precisely as before the protocol of August 12, 1898, Dewey ruled in the harbor, and afterward Merritt, or Otis, ruled in the city of Manila. The Paris treaty was negotiated on the theory that Spain held the sovereignty and ceded to the United States a valid title to sovereignty over the entire archipelago. The fact that Luzon was, outside of Manila, held by the insurgents as conquered and occupied, and the United States had not at that time sovereignty over even the
city, bay and harbor of Manila, should have constrained the President to be passive and unaggressive under the August protocol till the treaty had been ratified, and the ratifications exchanged.

That much-debated second clause of the third section of the fourth article of the Constitution, relating to the government of territories by Congress, requires a "belonging" to the United States. If Congress has the right to govern colonies and dependencies, not from the clause just referred to, but from the right to acquire them, or from the former and latter combined, then obviously acquiring and possessing the sovereignty are a condition precedent to governing.

Since April 11, 1899, opposition to enlargement of territorial area has not been a feasible and winning issue, in a political sense, but the immediate application by Congress of the Federal Constitution to such recent enlargements still holds the field as the pre-eminent duty of the legislative power. The Government of the United States, created by the Constitution, cannot disregard the Constitution and require or authorize acts to be done which the Constitution has forbidden. Congress cannot destroy limitations on its own powers over states, territories and dependencies. The Government cannot wander into the Orient so far that the Constitution is inoperative.

In an interview published last June, I said that if such a severe test should be made as a choice between the Constitution or the Philippines, Democrats would, in my opinion, let the Philippines go, but no such test is likely or necessary; that the President should satisfactorily punish Aguinaldo and his followers for their assault, early last February, on our army at Manila, and when that has been accomplished, and Congress has assembled, there will be real problems that will press for solution.

An enlargement of the area of the United States is not to be decried, if an expansion of their political institutions, as prescribed by the Federal Constitution, shall accompany the territorial enlargement. Democrats do not condemn the successive enlargements which their party
made under treaties with France in 1803, with Spain in 1819, and with Mexico in 1843 and 1853, but which the Whig party condemned. In all of them the Constitution expanded over the acquisitions. No one now denies that the Constitution is over New Mexico, but Republicans deny that the Philippines are a part of the "United States," as the term is used in the Constitution. They declare that the Constitution will not be over the Philippines till after Congress has placed it there, ¹ arguing that the treaty ceding the Philippines is so radically and intentionally unlike all former treaties of cession that no judicial decision regarding "territory" can be a precedent; that in all former treaties it was stipulated that the people of the ceded possession could, if remaining therein, be citizens of the United States; that the body politic, described as "the United States," embraces, in strict law, only "States"; that the Constitution restrains Congress only when legislating for "States" and their inhabitants, and that, therefore, the Philippines are a dependency outside the Union and the Constitution till Congress shall bring them in by appropriate legislation.

A Republican argument diligently put about of late and denying that Congress will be restrained by the Constitution, in executing the last clause of the ninth article of the treaty with Spain, is something like this:

The Constitution has created two kinds of jurisdiction—one for internal and one for external affairs, in which last the new islands are included. The former jurisdiction is now confined to the existing forty-five States, and is limited in scope, but the latter is unrestrained, excepting possibly by the law of nations. The Government of the United States can lawfully do all that any nation can, unless the Government hamper itself by treaty or by a statute and accept the Constitution as a restraint. Therefore, as the treaty with Spain has not imposed any restraint on Congress, the legislative power will be unimpeded in Porto Rico and the Philippines, and till Congress shall have legislated to the contrary, the President will,

¹If the Constitution extends over a territory only because placed there by Congress then Congress can withdraw it.
under the law of nations, have a free hand in the islands. Will Congress abstain from enacting restraint?

"Imperialism" exultingly reminds us of the truth that a judicial precedent, although made by Marshall or Taney, cannot bind, under the recent treaty, excepting in a case the facts of which cannot be distinguished from those of the decided case, and that therefore there are no binding precedents for the questions arising in governing Porto Rico and the Philippines. What then is to restrain party passion in Congress, from enacting an *ex post facto* law, or making arrests by general warrant, or prosecuting a second time for the same offense, or making property of a human being, or taking private property for a public purpose without payment, or denying jury trials, or depriving persons of life, liberty or prosperity without due process of law, or confiscating property held by churches, Catholic or Protestant, by monasteries, convents, priests, monks or friars?

Empire, Emperor and Empress are now captivating words all over the world. They are modern revivals of the old. It is less than a quarter of a century since, by act of Parliament under Lord Beaconsfield, the Queen of the United Kingdom of Great Britain and Ireland assumed the title of "Empress of India," the great dependency being as much outside of the United Kingdom and the British Constitution as the Philippines would be outside of the United States and the American Constitution—if those to whom I have referred carry out their intention. "Territories" are not new in our political system. The word is in our Constitution. There have been differences of opinion as to whether or not the Constitution, *proprio vigore*, covers a foreign territory as soon as acquired, as well as over the power Congress can exercise in a territory. The last question precipitated the war of the secession. Whether or not the amendments of the Constitution enforcing trial by jury must be applied in a territory has, since then, been repeatedly considered by the Supreme Court.

If the Philippines are not to be "a part" of the United States, nor to be under the Constitution, nor to have a civil
government, why may not the titular designation of our Executive be "President of the United States of America and Emperor of the Philippines"?

Debate in Congress ought not to be postponed, evaded or avoided by pleading an existing war in the Philippines. There is no war in Porto Rico. It is due to the Porto Ricans that they know whether or not the American Constitution and the Supreme Court are to protect them. The constitutional question of the power of Congress is in Porto Rico what it is in New Mexico. Congress cannot go outside the Constitution in the exercise of civil authority in Porto Rico.

The end and aim of war is peace, and the quickest route to peace with the Filipinos is for Congress to intervene, inquire into the facts, convince the natives of the good faith of the United States, and prescribe terms of pacification. When that has been done, the natives will know their fate. Whatever the reason for retaining the Philippines—whether as a trust only for the good of the native inhabitants, or as a military and naval station, or as a trading country under our flag, or a stepping-stone to Asia, or as an American commercial rival to British Hongkong and Singapore, or as a point of easy departure when China, the "sick man," is on a death bed—the first and indispensable thing is for our Congress to win and deserve the confidence and friendship of natives now alienated from us.

There are those who say that if the Government at Washington is to be restrained in dealing with the Philippines, by the taxing clauses of the Constitution, by the first ten amendments, and by the thirteenth and fourteenth as well, then it will be impracticable to rule all over the islands. A code of criminal law in the island of Sulu, for example, requiring conviction for crime by a jury, an indictment, a judge and petit jury would, it is said, with cogency, make world-wide merriment. It may, however, be that, if Congress refuses to tolerate in our new islands the things which the Constitution declares shall not anywhere be done, self-government there will not be a failure.
Many experts assume that free trade between Porto Rico, the Philippines and all our ports, levying the same rate of duties in those islands as at our home ports on foreign imports, is impracticable, and therefore it is suggested (in order to avoid the danger, that if Congress shall execute the last clause of the ninth article of the treaty, or shall in any manner legislate for Porto Rico and the Philippines, the restraints of the Constitution will attach themselves and the Supreme Court will acquire jurisdiction) that Congress abstain from any action, and thus the Constitution be circumvented by permitting the present military power of the President to continue indefinitely. That device comes from those who fear the Constitution will expand over the new islands, and restrain Congress, whenever it shall legislate for the islands and shall determine the status of the natives. It does not come from those who contend, as so many do with great subtlety, that with the single exception of prohibiting slavery, the Constitution was made only for the States in the Union, and does not expand over territories, or colonies, or dependencies, and that Congress is as free to do what it pleases in the Philippines as the British Parliament is to do as it pleases in India or any crown colony.

As an indication of tendency of opinion regarding the scope of the President's war powers and their continued duration, the following publication a few days ago is significant: "Attorney-General Griggs, after a careful consideration, has decided that the President, as Commander-in-Chief of the Army and not as President, could make appointments of Civil Governors without legislation by Congress. He thus holds that the President exercises absolute control over territory held through military occupation, and that none of his acts regarding such territory can be called in question so long as they are not made in his purely civil capacity as President."

The vast powers of the President in a foreign country, as Commander of the Army and Navy, after Congress has declared war, or war exists, are not adequately realized by all of us. He is, in theory, under the restraint of the Constitu-
tion and Congress, but yet his power is in practice uncontrolled. We have seen that in Cuba, Porto Rico and the Philippines. The Constitution adopts the law of nations which prescribes the usages of war, which usages impart to the President that tremendous power so unlike that which he possesses in time of peace. When peace came, that despotic power fell in our new islands, but the President claims it was revived by another war, undeclared by Congress, and created by the conduct of the Filipino insurgents on the 4th of February last. On April 11, 1899, the Spanish political system disappeared from the Philippines and an American political system took its place, established by necessity and by its own force. What was that American system, thus applicable to the Philippines? If the treaty defined it as to be the one to be prescribed by Congress the President did not convene Congress. What, then, was his power in the newly acquired islands after April 11, 1899? It was settled as to California a half century ago. It was debated in Congress and finally determined by the Supreme Court. At that time there was in California a young lieutenant of Army Engineers who was Secretary to the Military Governor, and, subsequently, as General Halleck, produced out of that large practical experience a treatise on the American laws of conquest and cession, and on the President's power when Congress has not legislated, which treatise was referred to at Paris by both governments as an

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1 Imperialists talk and write as if the President's power, as a military commander in time of war, is heaven-descended like that which the Emperor of Germany describes to be his own, but it has ascended to the President from the people of the States through the Constitution, which declares that "he shall be commander-in-chief of the army and navy and of the militia of the States when called into active service." He is to subdue the enemy, but in subordination to the laws of his country. He cannot make military laws, or appeal, or suspend, or alter them. His duty is to execute them. He cannot create an "article of war," or disobey one, any more than can a private soldier. The Supreme Court is over him to teach him many things, and among them the law of nations and what he can lawfully seize as prize of war on territory of the enemy. His military power is chiefly over military people, and Congress is, under the Constitution, supreme over citizens not in the army, as well as over the general features of a war. Congress could in the recent war have forbidden the President to attack Spain in the East.

2 A good but brief summary of the California affair is to be found in the Congressional Record for April 11, 1900, page 4334. It happens to be there in this way: On March 30, 1899, Mr. Magoun of Nebraska, the law officer of the
authoritative text-book. If there be a difference between the President's power in California and in the Philippines after proclamation of the treaties of peace, it is to the diminution of McKinley's power in comparison with Polk's, because the recent Spanish treaty, unlike the Mexican treaty, distinctly excluded executive power by requiring Congress to prescribe a political and civil code.

It is argued, with more or less plausibility, that Porto Rico and the Philippines have been since the middle of last April "a part" of the United States and under its sovereignty in foreign affairs and in an international sense, but not a part thereof, and under Constitutional jurisdiction, in domestic affairs and in a national sense. Constitutional and legal truth respecting our new acquisitions cannot be long obscured. A case presenting the problem may find its way to the Supreme Court. An importer compelled to pay duties on an import from one of those islands may do so under an adequate protest, presenting for interpretation the phrase, "throughout the United States," appeal from the Collector's decision to the Treasury and, if the Collector be sustained, begin a suit to recover back the money paid.

Whatever may be the final outcome of argument and debate of those Constitutional questions, Congress cannot well evade, quite apart from obligations imposed by the treaty, the task of prosecuting an inquiry in order to ascertain what have been, since May, 1898, the real relations of Aguinaldo to the President, as well as to the naval and military author-

War Department, gave to the Department an elaborate opinion that Congress could not legislate for Porto Rico in violation of the Constitution. Early in the next December the President and the Secretary of War advised Congress in the same sense, and that "plain duty," as well as national honor, required free trade between that island and all United States ports. During the next month Mr. Payne, Chairman of the Ways and Means Committee, reported to the House a bill to secure such free trade, but, within a few days thereafter, on pressure by the trusts and by President McKinley, he reported a bill to tax the trade between the same ports. About that time, and while the President and the Republican leaders were executing a right-about-face, an official opinion from the same Mr. Magoon was published, declaring in effect that only Congress could extend the Constitution over Porto Rico. It bore date of February 12, 1900, and its publication brought to light the conflicting opinion of May 30, 1899. Both opinions were thereupon obtained and published by Congress, one condemning and the other commending "imperialism."
ities. Such an impartial inquisition is needed in order to ascertain how peace in the Philippines can be most safely obtained and assured.

Aguinaldo may be in captivity or exile before this paper has been published, but the question, why so many natives of Luzon have so long followed his standard of revolt from the benevolent assimilation promised in the President's December military order, will remain to be explained by Congress.

It has been industriously put about that those who delayed ratification of the treaty from the fourth of January (as if that were an excessive period of time) till the sixth of February are responsible for insurgent conduct on the fourth of the last-named month, which created belligerence around Manila. The recent preliminary report by the Schurman Commission has put an end to that by showing that a falling out between the natives and our troops began on Merritt's arrival; that then the Filipino newspapers started anti-American feeling, and the "popular clubs" were organized to assail us within and without Manila; that "the relations between the two forces were strained from the beginning"; that after the landing of our troops Aguinaldo decided to start the insurrection. The Commission has said he did not openly declare that he intended to attack our troops, but he aroused and excited his followers, and especially the military element, by claiming independence. The Commission was not distinct and explicit regarding the relative responsibility of Aguinaldo and the co-operative natives, but the following sentence in the report, alluding to failure of negotiations by the Commission with Aguinaldo's representatives, inculpates the former as most to be blamed: "No better proof could be furnished that the primary object of his struggle is not, as is pretended, the liberty of the Filipino peoples, but the continuance of his own arbitrary and despotic power."

It may be inferred that the negotiations referred to broke down because Aguinaldo asked for a "suspension of hostilities," which the Commission refused to discuss because "a military matter," and because the Commission, not representing Congress, could not deal with the insurgents. It issued
a proclamation on the fourth of last March, declaring "the principles by which the United States would be guided in exercising the sovereignty which Spain had ceded to us over the Philippine islands, and assuring the people not only of their rights and privileges, but also of the largest participation in government which might be found compatible with the general welfare and reconcilable with the sovereign rights and obligations of the United States," and verbally assured Aguinaldo's agents "of a liberal form of government when they laid down their arms," but all the Commission offered, or could offer, was necessarily vague and unsatisfying, because the Commission did not represent Congress.

What Admiral Dewey, on arriving at New York, has been reported as saying to the Associated Press agent is more illuminating, in explanation of the failure of the President's Commission, than the official report he signed as Commissioner. This is it:

"Aguinaldo was a junior clerk in the navy-yard. He is a pretty smart fellow. I know him pretty well. In fact, we were great friends, and are, for the matter of that, but he has not the brains. There are people behind him, some of them lawyers and able fellows, who make a tool of Aguinaldo. The fight in the Philippines should be easily ended. The people had been so badly treated for such a length of time by the Spaniards that they were distrustful. This is the great difficulty in dealing with them. Where we have met them and they have been in such contact with us so as to learn that we mean to treat them well; where they have seen that we mean what we say, there is no trouble. They stand by us all the time."

A Commission sent by Congress, instead of by the President, might have met a better fate.

When Congress seriously takes in hand the real relations at Manila since May, 1898, between the United States and the former rebels against Spain, it will naturally look to see what the President's plenipotentiaries said and did at Paris regarding Aguinaldo and the forces standing around him. The precise nature of the "political pledges," expressed or implied,
that were given may not be accurately known by the public in our day, if ever. Each reader of narrations of the events from April 15 to August 15, 1898, will, nevertheless, draw his own inferences.

It is indisputable that the subjects of Spain, led by Aguinaldo, gave aid to Dewey and Merritt in accomplishing the capitulation of Manila. In the annex to the thirteenth protocol of the Paris treaty the American plenipotentiaries are recorded as saying:

"The city was closely besieged on the land side by the insurgents. It was in extremities for provisions, and the insurgents controlled the water supply. The Spanish forces had been unable to raise the siege, and therefore could not escape from the city on the land side."

Again, in the first protocol, it is set forth that the Spanish plenipotentiaries, having alluded to the Tagalo rebels as forming, during the campaign, "an auxiliary force to the regular American troops," the American plenipotentiaries replied in the fifteenth protocol that alliance with the Filipinos "is not a relation which the Government of the United States intended to establish, but it must, at least, be admitted that the insurgent chiefs returned and resumed their activity with the consent of our military and naval commanders, who permitted them to arm with weapons which we had captured from the Spaniards, and assured them of fair treatment and justice."

Those last seven words indicate that assurances of a definite nature were, by somebody, given to the insurgents, and yet President McKinley in his last annual message, describing to Congress the surrender of Manila, did not allude to them. It is open to him to argue that he never encouraged, authorized, or ratified the acts of our Consuls in bringing Admiral Dewey and Aguinaldo together, or sanctioned what Admiral Dewey did in placing Aguinaldo in a position to fight against Spain at the head of the insurgents. In August, 1898, he instructed Adjutant-General Corbin to cable General Merritt that there must not, by Aguinaldo's insurgents, be joint occupation with us of Manila, and that they must obey the proclamation of a truce under the protocol.
Our Consuls at Manila, Singapore and Hongkong wrote fully concerning Aguinaldo to the State Department, and on June 16, 1898, it replied by order of the President to Consul-General Pratt at Singapore, admonishing him to make no promises to Aguinaldo, or "any alliance with the Philippine insurgents," but "to obtain the unconditional personal assistance of General Aguinaldo in the expedition to Manila would be proper if, in so doing, he was not induced to form hopes which it might not be practicable to gratify."

Consul-General Pratt brought Admiral Dewey and Aguinaldo together and, under the eye of Dewey, Aguinaldo, before Manila capitulated, conquered, and held by conquest, a great part of Luzon, as the Schurman Commission affirmed. Aguinaldo's "personal assistance" had been obtained, and accepted.

The Schurman Commission reported that he (Aguinaldo) arrived with thirteen of his staff on May 19 and immediately came on board the "Olympia," to call on the Commander-in-Chief, after which he was allowed to land at Cavité and organize an army; that this was done with the purpose of strengthening the United States' forces and weakening those of the enemy; that no alliance of any kind was entered into with Aguinaldo, nor was any promise of independence made to him, then or at any other time; that shortly afterward the Filipinos began to attack the Spanish; that their number was rapidly augmented by the militia, who had been given arms by Spain, all of whom revolted and joined the insurgents; that great Filipino successes followed; that many Spaniards were taken prisoners, and while the Spanish troops now remained quietly in Manila, the Filipino forces made themselves masters of the entire island, except that city." Mention of the furnishing of arms to Aguinaldo by Dewey was omitted in the report.

General Merritt testified at Paris:

"It was not the wish of the Government to make any promises to the insurgents, or act in any way with them. I had telegraphed to the War Department of the possible trouble that might arise with the insurgents, and asked for instructions as
to whether I should consider them as enemies, and treat them accordingly in such case. *To that request I had no reply.*

The injunction of secrecy was by the Senate removed from that testimony of January 11, 1899, and its publication was ordered. Anybody's imagination is equal to fancying its effect on the Filipinos and Aguinaldo when read by them, as it should never have been.

It may not be necessary that a Committee of Congress visit the archipelago. There are witnesses, documents, records, letters and cable messages in Washington. If the Executive will submit all of them to Congress, they may, when collected, be examined and analyzed, and a keen, free debate in both houses of Congress had thereover furnish all the light that is required in execution of the ninth article of the treaty.

The members of the Schurman Commission have been and are, collectively and individually, zealous in denial that hopes were officially held out to the insurgents between the middle of March and August, 1898, which the President has not fulfilled or recognized; but it is plainly disclosed in Senate Document No. 62, pages 318 to 362, that Consuls Williams, Wildman and Pratt, and Admiral Dewey, had frequent conversations with Aguinaldo before the capitulation of Manila. All those officers are now accessible, and cross-examinations by a Committee of Congress ought to uncover the truth.

By the protocol signed at Washington on August 12, 1898, the United States were to hold the city, bay and harbor of Manila, and nothing else, "pending the conclusion of a treaty of peace," which treaty when signed stipulated that to be binding it must be ratified by our Senate and President, by the Queen of Spain, and the ratifications be exchanged at Washington within six months. Otherwise there was no treaty. The Philippine islands were not to be evacuated by Spain till after such exchange of ratifications, and meanwhile the protocol of August 12, 1898, was to remain in force. The treaty was not ratified by our Senate till February 6, 1899, nor by Spain till March 19, 1899, nor were ratifications exchanged till April 11, 1899. Till the last-named date, the United States had therefore no title to or sovereignty over
the Philippines, and had not lawful power to hold and rule any part of the archipelago excepting the city, bay and harbor of Manila. Outside of that limit Aguinaldo and his forces had, by public law, the right to rule wherever, and so far only, as their conquests and military occupation completely expelled Spanish power. Over that area, the people, styling themselves the "Philippine Republic," or by any other name, had as good a right in law to rule as the United States had to rule over Santiago immediately after its conquest early in July. That was the situation on December 10, 1898, and up to April 11, 1899. The United States could not lawfully invade the area held by Aguinaldo till the treaty had been ratified because the protocol forbade.

In that situation of the facts and applicable law, the President, only eleven days after the signature of the treaty of Paris, and before it had been ratified even by himself, ordered the Secretary of War to proceed to "the actual occupation and administration of the entire group of the Philippine islands," and to the extension, with all possible dispatch, of "the military government, heretofore maintained by the United States in the city, harbor and bay of Manila, * * * to the whole of the ceded territory." "Ceded" by what? Not by treaty, for it had not at that time been ratified by any body, and Congress had not even agreed to pay the twenty millions which was the condition precedent of cession. The two premises assigned by the President in the order as its reason and justification were, first, that by Dewey's victory and the capitulation of Manila, the "conquest" of the entire archipelago had been effected. The second premise was that, by the treaty of peace signed at Paris, "the future control, disposition and government of the Philippine islands are ceded to the United States," which was equivalent to saying that a treaty is binding only when signed by agents appointed by the President.

The illegality of the order was bad enough, but its stupidity as diplomacy in pacifying and conciliating the Filipinos was worse. It was a blow in the faces of those whom the United
States wishes to allure to consent to be led by Congress upward and onward in happiness and welfare. There was not in the order a persuading sentence! Each was alienating and repelling! With one hand the President offered the Filipinos submission to him and with the other he threatened war. The choice was offered to millions of people over whom the United States had not a scintilla of lawful authority and could get none under the protocol till the treaty had been ratified. A month later the President appointed the Schurman Commission to facilitate "the effective extension of authority throughout these islands," and over a people at that time not under the sovereignty of the United States. The name of the official who wrote these two orders is as yet unknown by the public, but it ought to be, as an example and a warning, if the order sent toward the end of December explains the tension of bitterness and emotion which brought on the existing belligerence between Otis and Aguinaldo.

In one aspect, that December order is now immaterial excepting as an Executive act not to be commended by Congress as a precedent, but it is of paramount importance if it provoked the deplorable incident at Manila of the fourth of February, and Congress should take cognizance of it as a piece of evidence tending to explain why the natives whom the United States rescued from Spain are now in arms against their deliverer and former ally.

After the disastrous effect of the December order had been felt in Washington, the need of more soldiers in Luzon had been seen and the country was beginning to condemn the President because there was not in Manila an army large enough to enforce his December order; the President offered his defense at Pittsburg. It tore in pieces his December order. It was this:

"Until the treaty was ratified (April 11, 1899), we had no authority beyond Manila city, bay and harbor."

"We then had no other title to defend, no authority beyond that to maintain."

"Spain was still in possession of the remainder of the archipelago."
The last sentence of the defense was inaccurate, because the insurgents were, as the Schurman Commission reported, in possession of a large part of Luzon. On what pretext could the President have signed that December order? It is the work of Congress to ascertain.

It is plain now to see that the Philippines are not to be surrendered, abandoned and left derelict. For good or ill, they are in our hands. Armed rebellion will be suppressed, either by removal of misunderstandings, or, if that fails, then by the armed hand. If it shall be decided that the Constitution has already expanded over the archipelago and is not to be circumvented; that Congress is in its every act under the restraint of the Constitution, but that the Philippines cannot, under the Constitution, be reduced to order and elevated in civilization, then the Constitution will be an impediment in the "vast mission for the advancement of mankind," alluded to by Lord Salisbury, in association with the United States, and to which, perhaps, our country has been committed, so far as the Executive can bind it. Then our country has really come to "the forking of the road."

The United States Government is not bound to "go into all the world" preaching any other political gospel than that of its written Constitution, under which every new acquisition has been treated as an inchoate State, to be trained and fitted for immortality as a member of our glorious Union of States. Only of that Constitution, that Union, that expansion, that country, has our flag hitherto been an emblem wherever it has floated on land or sea.

A specific obligation confronts the next Congress, imposed by the last clause of the ninth article of the recent treaty, and accepted by its ratification.

"The civil rights and political status of the native inhabitants of the territories thereby ceded," must be determined. Congress must in the determination decide first of all whether or not the treaty has removed, diminished or impaired any of the restraint which, before the war with Spain, was imposed by the Constitution on Congress when legislating for the territory, or other property, of the United States. Next,
whether or not that restraint is so expressly declared and asserted in the Constitution that the Supreme Court must adjudge null and void any legislation disregarding and repudiating that restraint. Finally, if the restraints upon Congress are not literal and explicit, in words to be applied to the Philippines, then, whether or not the principles of our constitutional liberties and of the fundamental limitations in favor of personal right and civil rights, formulated in the Constitution and its amendments, constrain Congress in executing the ninth article of the treaty.

Perry Belmont.
The Philippines and the Supreme Court.

[From the North American Review for March, 1900.]

The result of the exercise by the President in the Philippines of what is known as "the war power" (he has described it as "belligerent right") is daily becoming more evident. Heretofore "the United States" has in area embraced all the States, the District of Columbia and the Territories. The words "throughout the United States," which are used in the Constitution, have long been taken to mean "within the United States, or any place subject to their jurisdiction." That phrase is employed in the Thirteenth Amendment, but there is now an effort to regard "the United States" as confined to our forty-five States. Although existing statutes have extended the Constitution over all our organized territories, there is a persistent attempt to place our newly acquired islands outside the United States. If we can make a safe inference from the writings of their leading professors, even our universities and colleges are taking sides in the controversy; Harvard, Cornell and the University of Pennsylvania insisting that the Constitution protects only States, and that Congress is as supreme over our new islands as is the British Parliament over its colonies and dependencies, while Yale and Columbia take a different view.

The United States had outlying possessions described as territories when the treaty of peace was concluded with England, and the Constitution provided for them. Later other outlying possessions came by cession from France, Spain, Mexico and Russia, and all were embraced by the words "United States." In 1853, the Supreme Court declared that "after the ratification of the Mexican treaty, California became a part of the United
States." If the decision does not in principle cover our new islands, it must be because of the difference in the language of the two treaties of 1848 and 1898. The Mexican treaty declared: "The Mexicans, who in the territories aforesaid, shall not preserve the character of citizens of the Mexican Republic conformably with what is stipulated in the preceding article, shall be incorporated into the Union of the United States, and be admitted at the proper time (to be judged of by the Congress of the United States) to the enjoyment of all rights of citizens of the United States, according to the principles of the Constitution." The recent Spanish treaty declared "the civil rights and political status of the native inhabitants of the territories hereby ceded to the United States shall be determined by the Congress." Has the recent treaty made the precedents set by the Supreme Court inapplicable to Puerto Rico and the Philippine Islands? The words "United States" have, as used in the Constitution, two meanings: one, the political corporation, the body politic, the Government now at Washington; the other refers to the States, the District of Columbia and the Territories.

Since the inauguration of President McKinley there has been an enormous extension of Executive power. What went on during a previous administration while President and Congress were contending over the question of recognizing the insurgent Cubans as belligerents, may have accustomed the country to look on the Executive as a chief source of power in the Spanish question.

During all the annoyances of the last half-century endured by the United States from Spain in Cuba, England united with the concert of Europe to resist our intervention. She warned President Grant against doing exactly what President McKinley did twenty-three years afterward. In 1898 Eng-

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1 Senator Foraker and Republican leaders contend that the Philippines are unlike New Mexico, in the eyes of constitutional law, because the ninth article of the Spanish treaty is unlike the ninth article of the Mexican treaty, and because Congress enacted the Constitution over New Mexico and has not over the Philippines. That contention is in effect a contention that the Constitution is not the supreme law over a territory ceded to the United States, unless the treaty-making power or Congress shall so declare.
land changed her policy. Then armed hostility against Spain began, and the prerogative of our Executive known as the "war power" was brought into use which, as the President said in his recent annual message, only Congress can end, even although peace has returned. These were his words: "Until Congress shall have made known the formal expression of its will, I shall use the authority vested in me by the Constitution and the statutes to uphold the sovereignty of the United States in those distant islands, as in all other places where our flag rightfully floats." That adroit language has put on Congress the responsibility of continuing the supremacy of martial law.

The President is always, in peace or in war, Commander-in-Chief of the Army and Navy, but when war exists there flows into his hands new powers and duties. Over what is embraced within a military occupation, or a conquest, the President is almost supreme. During the War of 1812 serious questions of "war power" on land did not arise. But during the Mexican War they did. Mr. Marcy, Secretary of War, ordered Colonel Kearny to occupy California and to organize a temporary military government. The treaty of peace with Mexico was proclaimed in 1848, but owing to delays created by the slavery question, California was never organized as a Territory, and was finally admitted into the Union as a "State" in 1850. California was, during those two years, governed under the de facto government then existing, but Marcy, then Secretary of War, declared that the President will, "of course, exercise no powers inconsistent with the provisions of the Constitution of the United States, which is the supreme law for all the States and Territories of our Union." The exercise of such power was then so novel that the Whig majority in the House bombarded the Executive with resolutions inquiring where the President obtained constitutional authority thus to govern California.

Excepting by the declaration of war against Spain, the voting of men and money therefor, the ratification of the treaty and appropriating twenty millions of dollars, Congress has had nothing to do with initiating and executing the policy
which has resulted in the new problems referred to by the President in his late annual message. The record of the written debates at Paris between the plenipotentiaries of the negotiating nations makes it indisputable that when the President authorized the August Protocol, his judgment was in suspense regarding the future of the Philippines. There was ample time to convene the Senate, but the final treaty was proposed by the President on his official responsibility, as was his prerogative right. He could not make a treaty binding on the United States till two-thirds of the Senators had consented to it, but it would not, under all the circumstances, have been easy for the Senate to reject the treaty with Spain which had been already signed, and when it had been ratified, the House was morally bound to vote an appropriation of the needed twenty millions. By sending to Paris as his plenipotentiaries three experienced, able and trusted Senators, the President took the Senate into the negotiation, although his plenipotentiaries must obey him, even when they are Senators, and in voting as Senators on ratification, it is improbable that they would repudiate their work as negotiators.

Those who now examine the official papers emanating from the President, to which publicity has been given, and which assign reasons for the Protocol of August, 1898, and for the treaty itself, must be impressed by the sterility of information therein contained. The constitution has not been violated, but how omnipotent has been the Executive during nearly two years!

II.

The natives of the ceded islands were transferred to the United States without their consent, and a phrase in the Declaration of Independence is used as a ground for criticism of the treaty. Some modern treaties have contained stipulations for obtaining such consent, but, in general, the engagements in treaties of transfer have only gone so far as to give the inhabitants time and right to decide to remain in the ceded country, or to depart therefrom. Such en-
gagements existed in the cessions to the United States by France, Spain and Mexico. The free white inhabitants remaining were to be citizens of the United States, and the territories ceded were in the discretion of Congress to be in due time admitted into the Union as States, according to the principles of the Constitution. That was deemed a compliance with the requirement regarding "consent of the governed." The recent treaty with Spain was negotiated on a different basis, compelled probably by the conditions existing in the Philippine Archipelago. The Spanish plenipotentiaries insisted on a stipulation that the natives should, like those born in Spain, have a right to choose their nationality. In the Twenty-first Protocol they appear as saying:

"The American Commission refuses to acknowledge the right of the inhabitants of the countries ceded or relinquished by Spain to choose the citizenship with which, up to the present, they have been clothed, and nevertheless this right of choosing, which is one of the most sacred rights of human beings, has been constantly respected since the day on which man was first emancipated from servitude. This sacred right has been respected in treaties of territorial cession concluded in modern times."

To that the American plenipotentiaries replied:

"An analysis of this article will show that Spanish subjects, natives of Spain, are allowed a year's time in which, by the simple process of stating in a court of record their intention so to do, they may preserve their allegiance to Spain. Such persons have the fullest right to dispose of their property or remove from the territory, or, remaining, to continue to be Spanish subjects, or elect the nationality of the new territory. As to natives, their status and civil rights are left to Congress, which will enact laws to govern the ceded territory. This is no more than the assertion of the right of the governing power to control these important relations under the new government. The Congress of a country which never has enacted laws to oppress or abridge the rights of residents within its domain, and whose laws permit the largest liberty consistent with the preservation of order and
the protection of property, may safely be trusted not to depart from its well-settled practice in dealing with the inhabitants of these islands. It is true that the Spanish Commissioners propose an article on the subject of nationality supplementing the one offered by them as to nationality of Spanish subjects, which provides that all inhabitants of the ceded territory other than Spanish subjects shall have the right to choose the Spanish nationality within one year after the exchange of ratification of the treaty. This would permit all the uncivilized tribes which have not come under the jurisdiction of Spain, as well as foreign residents of the islands, to elect to create for themselves a nationality other than the one in control of territory, while enjoying the benefits and protection of the laws of the local sovereignty. This would create an anomalous condition of affairs leading to complications and discord important to avoid.

Congress should execute the treaty in a way to give the natives the rights of "life, liberty and the pursuit of happiness," because the treaty definitely excludes the exercise of the President's "war powers" in the determination of those rights. Halleck, in the chapter of his International Law on "The Rights of Complete Conquest," says that the rule of public law with respect to the allegiance of the inhabitants of a conquered territory is no longer to be interpreted as absolutely unconditional, as acquired by conquest or transfer, and handed over by treaty, like a thing assignable by contract and without the consent of the subject. He adds that if the inhabitants of the ceded territory choose to leave it on its transfer, they have, in general, the right to do so. He then quotes from a decision of Chief Justice Marshall:

"On the transfer of territory the relations of its inhabitants and the former sovereign are dissolved. The same act which transfers their country transfers the allegiance of those who remain in it."

"This rule," Halleck says, "is the most just, reasonable and convenient which could be adopted. It is reasonable on the part of the conqueror who is entitled to know who become his subjects and who
prefer to continue aliens; it is very convenient for those who wish to become the subjects of the new State; and it is not unjust toward those who determine not to become its subjects. According to this rule, domicile, as understood and defined in public law, determines the question of transfer of allegiance, or rather is the rule of evidence by which that question is to be decided."

III.

Under the Constitution, "no money shall be drawn from the Treasury, but in consequence of appropriations made by law, and a regular statement and account of the receipts and expenditures of all public money must be published from time to time." (1) All money received by tax gatherers, or collectors of customs, must, in time of peace, be paid into the Treasury of the United States, and can only be expended by an appropriation by Congress, to be examined and certified by the proper accounting and auditing officers of the Treasury. The power to modify tariff laws was committed to Congress.

The danger of pressure by importers and taxpayers upon the Executive was deemed too great to permit any discretion to be lodged there. Since April 11, 1899, and for some time before that, the power to levy duties on merchandise imported into our new islands, and internal taxes therein, has been exercised by the War Department, and the rates of those import duties and taxes varied to suit the pleasure of the Executive. Executive orders under the "war power" to that effect have been made applicable in Cuba, in Puerto Rico and in the Philippine Islands. The following is a sample:

(1) When that was written, the frauds in Cuba were unknown by the public.
"War Department, Washington, \}
"July 13, 1898.
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"The following Order of the President is published for the information and guidance of all concerned:

"Executive Mansion, July 12, 1898.

"By virtue of the authority vested in me as Commander-in-Chief of the Army and Navy of the United States of America, I do hereby order and direct that upon the occupation and possession of any ports and places in the Philippine Islands by the forces of the United States, the following tariff of duties and taxes to be levied and collected as a military contribution, and regulations for the administration thereof shall take effect and be in force in the ports and places so occupied. Questions arising under said tariff and regulations shall be decided by the General in Command of the United States forces in those islands.

"Necessary and authorized expenses for the administration of said tariff and regulations shall be paid from the collections thereunder. Accurate accounts of collections and expenditures shall be kept and rendered to the Secretary of War.

(Signed) "William McKinley.

"Upon the occupation of any ports, or places, in the Philippine Islands by the forces of the United States the foregoing order will be proclaimed and enforced.

(Signed) "R. A. Alger, Secretary of War."

What are the obligations imposed by the Constitution regarding duties to be levied in the ports of the United States on the American continent upon imports from our new islands? Those who negotiated and ratified the treaty with Spain should have considered that. There is a way by which those who dread the effect upon certain voters of conceding free trade between the before-mentioned ports can avoid the anticipated political consequences to themselves. They can promote a suit to carry the question to the Supreme Court for a prompt judgment. Unless the precedents in previous
cases be set aside, the result must be that absolute free trade has existed since April 11, 1899, and that such free trade cannot be prevented by Congress unless our new islands shall again become foreign territory.

IV.

There have been suggested these three ways of Congressional dealing with Puerto Rico and the Philippines:

First—A concession to the natives of powers of self-government and home rule, with independence more or less qualified under Congressional supervision.

Second—Ruling the islands as colonies in the way Great Britain rules her dependency, India, and her crown colonies, on the theory of unlimited power in Congress to govern them under the recent treaty as a peculiar estate outside the Constitution and the Union.

Third—Assimilation of the new islands to the conditions of New Mexico, for example, and governing them as our territories are now governed.

The first plan is sternly condemned by the President in his late annual message. He has not distinctly commended any other plan, but what he said plainly indicated his preference for a continuance of his "war power"—"belligerent right"—as he describes it.

The second plan is the favorite of Republican leaders.

While the President is reticent, his present Secretary of War, appointed on account of his learning and wisdom in matters of Constitutional law, has, in his recent annual report, spoken definitely, clearly and concisely. The following is what he said:

"I assume, for I do not think that it can be successfully disputed, that (1) all acquisition of territory under this treaty was the exercise of a power which belonged to the United States, because it was a nation, and for that reason was endowed with the powers essential to national life; and (2) that the United States has all the powers in respect of the territory which it has thus acquired, and the inhabitants of that terri-"
tory, which any nation in the world has in respect of territory which it has acquired; that (3) as between the people of the ceded islands and the United States, the former are subject to the complete sovereignty of the latter, controlled by no legal limitations except those which may be found in the treaty of cession; that (4) the people of the islands have no right to have them treated as States, (5) or to have them treated as territories previously held by the United States have been treated, or (6) to assert a legal right under the provisions of the Constitution which was established for the people of the United States themselves, and to meet the conditions existing upon this continent, or to assert against the United States any legal right whatever not found in the treaty.

"(7) The people of the ceded islands have acquired a moral right to be treated by the United States in accordance with the underlying principles of justice and freedom, which we have declared in our Constitution, and which are the essential safeguards of every individual against the powers of government, not because those provisions were enacted for them, but because they are essential limitations inherent in the very existence of the American Government. To illustrate: (8) The people of Puerto Rico have not the right to demand that duties should be uniform as between Puerto Rico and the United States, because the provision of the Constitution prescribing uniformity of duties throughout the United States was not made for them, (9) but was a provision of expediency, solely adapted to the conditions existing in the United States upon the continent of North America; (10) but the people of Puerto Rico are entitled to demand that they shall not be deprived of life, liberty or property without due process of law, that private property shall not be taken for public use without compensation, that no law shall be passed impairing the obligation of contracts, etc., because our nation has declared these to be rights belonging to all men. (11) Observance of them is a part of the nature of our government. (12) It is impossible that there should be any delegation of power by the people of the United States to any legislative, executive or judicial officer which should carry the right to
violate these rules toward any one anywhere; and there is an implied contract on the part of the people of the United States with every man who voluntarily submits himself or is submitted to our dominion that they shall be observed as between our Government and him, and that in the exercise of the power conferred by the Constitution upon Congress, 'to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States,' Congress will hold itself bound by those limitations which arise from the law of its own existence."

For convenience of comment the foregoing has been divided by numerals.

In the debate over the purchase and government of Louisiana, every question of constitutional law was considered that has been presented by the acquisition of our new islands. Federalists endeavored to discriminate between the inherent powers of a 'nation' of States united by the Constitution and the Government at Washington created by the Constitution.

A quarter of a century after the chaos of opinions over such arguments, the Supreme Court, by the luminous pen of Marshall, brought order out of disorder. He said of the inhabitants of Florida:

"They do not share in the government till Florida shall become a State. In the meantime, Florida continues to be a territory of the United States governed by virtue of that clause in the Constitution which empowers Congress 'to make all needful rules and regulations respecting the territory or other property belonging to the United States.' Perhaps the powers governing a territory belonging to the United States which has not, by becoming a State, acquired the means of self-government, may result necessarily from the fact that it is not within the jurisdiction of any particular State, and is within the power and jurisdiction of the United States. The right to govern may be the inevitable consequence of the right to acquire territory. Whichever may be the source whence the power is derived the possession of it is unquestioned."
As to Secretary Root's first proposition, it is not to be denied that our treaty-making power could and did acquire our new islands, but that treaty-making power had the needed authority therefor, not because the United States constitute a "nation," but because it was imparted by the second article of the Constitution.

Of the second proposition, it is clear that the Government at Washington is sovereign and independent in its domestic as well as its foreign affairs, with absolute and exclusive authority within its own territory, which embraces the right to make such fundamental law and such statutes as it pleases, but the pending question is, whether or not our existing Constitution restrains Congress in the execution of the last clause of the ninth article of the Paris Treaty.

The third proposition recognizes that question. As sovereignty is the power to govern, the people of the ceded islands are, by the treaty, under the sovereignty of the United States. Its ninth article stipulates that the civil rights and political status of the natives thereof shall be determined by Congress, but that stipulation has not ousted all control by the Constitution over Congress when making its determination.

The fourth may be agreed to, and as to the fifth, the natives under the treaty have no right to demand anything except that Congress "determine" their civil rights and political status, but the voters of the United States may insist that the new islands shall be treated by Congress as other territories of the United States, including those ceded by France, Spain and Mexico, have been treated.

As to the sixth, the preamble of the Constitution declares it to be established "for ourselves and our posterity." It makes no mention of conditions existing on this continent, excepting that it had been framed "for the United States of America." The last clause of the sixth proposition takes us around in a circle to the old question of the power of a treaty to modify the fundamental law of the existence of our Government.

Up to this point the Secretary of War has contended that our Constitution does not extend over the natives of the new
islands, and they cannot appeal to it; but in the seventh proposition he concedes they can appeal to it on the ground of morals. How and why in regard to moral rights if not legal rights? Could the Supreme Court pronounce unconstitutional a determination by Congress of the civil rights and political status of the natives which would violate their moral rights?

The eighth and ninth propositions affirm that the first clause of the eighth section of the First Article of the Constitution is only to be enforced "upon the Continent of North America," and therefore a higher or lower rate of duties on similar imports can be collected in the ports of Puerto Rico and the Philippines than in the port of New York, although the Constitution declares that "all duties, imposts and excises shall be uniform throughout the United States."

The eighth and ninth propositions also raise the inquiry whether or not the Constitution compels absolute free trade between our new islands and our ports on the North American Continent, and at its threshold stands the now well-known Supreme Court case of Loughborough vs. Blake, declaring that "our territories are a part of our society in a state of infancy, looking forward to a complete equality as soon as a state of manhood is obtained." The question involved in that case was the meaning of the phrase "throughout the United States," and these were Marshall's words:

"The eighth section of the first article gives to Congress the 'power to lay and collect taxes, duties, imposts and excises' for the purposes thereafter mentioned. This grant is general without limitation as to place. It consequently extends to all places over which the Government extends. If this could be doubted, the doubt is removed by the subsequent words, which modify the grant. These words are: 'But all duties, imposts and excises shall be uniform throughout the United States.' It will not be contended that the modification of the power extends to places to which the power itself does not extend. The power then to lay and collect duties, imposts and excises may be exercised, and must be exercised, throughout the United States. Does this term designate the whole or any particular portion of the Ameri-
can empire? Certainly this question can admit of but one answer. It is the name given to our great Republic, which is composed of States and Territories. The District of Columbia or the territory west of the Missouri is not less within the United States than Maryland or Pennsylvania; and it is not less necessary, on the principles of our Constitution, that uniformity in the imposition of impost, duties and excises should be observed in the one than the other. Since, then, the power to lay and collect taxes, which include direct taxes, is obviously co-extensive with the power to lay and collect duties, impost and excises, and, since the latter extends throughout the United States, it follows that the power to impose direct taxes also extends throughout the United States."

That is a clear, judicial precedent, and later there was an executive precedent which should now appeal with great force to the War Department. The Whigs in Congress, during and after the Mexican War, annoyed the Polk Administration with numberless inquiries respecting its power to tax imports into California and to lay taxes in New Mexico after peace with Mexico had been proclaimed in July, 1848. Robert J. Walker was then at the head of the Treasury Department, and he informed the collectors of customs that, by the treaty of peace with Mexico "the Constitution of the United States is extended over" California, and customs duties there applied according to the rates of the Tariff Law of 1846.

At that time an illustrious New Yorker was at the head of the War Department, who was, like its present chief, an eminent lawyer, and there was also in military command over California General Persifer Smith, as wise a lawyer as he was efficient in the control of a military department. Marcy held that on the conclusion of the treaty of peace with Mexico the military government which had been established in California "under the laws of war, ceased to derive its authority from this source of power. The end of the war, he added, left a government de facto in full operation, "with the presumed consent of the people" until Congress should provide a government, and
that such *de facto* government as existed must obey the Federal Constitution. No duties could be levied in California on articles imported from any State or Territory, nor could they be levied in any part of the country on the products of California. If Secretary Root shall argue that the ninth article of the Spanish treaty made those precedents inapplicable to Puerto Rico and the Philippines, he must contend with Marshall and Marcy.

After the ninth and tenth, the propositions seem to conflict with the previous ones, and especially with the third, which had affirmed that Congress in governing the natives of the Philippines will be "controlled by no legal limitations except those which may be found in the treaty of cession." The tenth declares that the natives are entitled to insist on three of the enumerated guarantees contained in the Constitution, because the United States has declared those guarantees to belong to everybody, because observance of them is a part of the nature of our Government, and because there is an implied contract that Congress will observe the three guarantees. When and where have those three been made "a part of the nature of our Government" to the exclusion of others? They are not specially referred to in the treaty. Why those, any more than guarantees against *ex post facto* laws, unwarranted trial and conviction for crime, jury-less civil trials, and even uniform taxes and customs duties?

The Secretary of War seems confident that the recent treaty, *and not the Constitution*, is the test of the authority of Congress over Puerto Rico and the Philippines. He has perfect trust, no doubt, in the wisdom of the present Congress and of the President, but yet he manifests uneasiness over what a possible future Congress and President may do, if the islands be left exposed to legislation unrestrained by the Constitution. He prefers to rely on the spirit and nature of our fundamental law rather than on its letter, but that is perhaps immaterial provided the judicial power can, in a proper case, sit in judgment on whatever Congress may do. *The essential thing is Constitutional control.*
During the second quarter of the century just ending the opinion of the Supreme Court regarding the power of Congress over national possessions outside of States, was affected by the slavery problem. In the Dred Scott case the "needful rules and regulations" clause of the Constitution was set aside as not applicable to possessions thereafter acquired by cession, and power to govern was, in that case, based on the power to acquire, but accompanied by a denial of unrestricted power to rule over them as colonies or dependent provinces. After the War of Secession the "needful rules and regulations" clause was revived and the power of Congress to govern Territories was vested therein by the Supreme Court, but always subject to restrictions imposed by the Constitution.

Perry Belmont.
The Constitution and the Presidential Campaign.

[Condensed from The New York Times, April 8, 1900.]

Democrats in Congress are defending the Constitution and the Supreme Court against "imperialism," and if upon that issue the approaching Democratic National Convention shall nominate candidates in whom the country can have confidence, the present Administration will have little chance of another four years of power.

The Republican contention that Congress, when legislating for any part of the possessions of the United States outside of the forty-five States, is at liberty to enact such laws as it deems best, and that by the recent treaty with Spain sovereignty over Puerto Rico and the Philippines can be exercised by Congress unrestrained by the Constitution, is to be the issue.

It will not do to ridicule those who cling to the letter and the spirit of our fundamental law and the judgments of the Supreme Court. When Tweed was at the summit of his eminence as an organizer for the plunder of the people by corrupt legislation and venal executive administration, he said to an associate who suggested that a proposed law in the interest of knavery would violate the Constitution of New York: "What is the Constitution among friends?"

In these days of imperialism there is impatience with the restraints of our Federal Constitution and its final interpretation by the judicial power.

Acquisition by the United States of the rights and duties of governing the new possessions was not a spontaneous preference of the inhabitants of those islands, nor the desire of the majority of the people of our own country. It was a reckless "leap in the dark." The Administration at Washing-
ton had not thought out the new problem. Speculators were willing to take the risk because they contemplated great Government expenditures of money. Admirers of England's new policy, whose imaginations had been inflamed by the Queen's Jubilee, welcomed the Philippines, but had little thought of military consequences, which compelled Mr. Balfour to protest in the House of Commons: "I myself am not one of those who watch imperial expansion wholly without misgiving or wholly without anxiety. I think it is necessary, but that it ought not to be undertaken with a light heart." In the stress and strain of the South African situation the British Prime Minister complained in the House of Lords that even the British Constitution (although its interpretation, unlike our own, is uncontrolled by judicial power, and the Queen and Parliament can any moment throw it into the Thames) is not an efficient fighting instrument, and that it hampers imperialistic preparations for an adequate defense of that modern British Empire which Republican leaders at Washington would imitate in our America.

Republican leaders are averse to coming into close quarters with the new situation. Their attitude toward the twenty million purchase would be laughable were it not so humiliating. They deny that the purchase is now a part of the United States, or is independent, or is a part of any foreign country. They fear to legislate, be it ever so little, lest the Constitution or the Supreme Court be thereby extended over the new islands. Even the more conservative leaders of the McKinley party do not, in the presence of the new fad of "imperialism," fight manfully for the Constitution and the recorded judgments of the Supreme Court, but whisper amendments to the Constitution if the Supreme Court will not, in the interest of imperial powers for Congress and the President, overthrow its former decisions.

One Republican Senator (Mr. Beveridge) put the Republican contention in the form of a resolution "to establish and maintain such governmental control as the situation may demand." Had he said "Constitution" instead of "situation," it would have been well.
In the President's messages to Congress the use of the word "Constitution" is avoided as if it were a pestilent microbe. What is the reason? Our fundamental law blocks the way of the schemes of "imperialism." To-day it is the Constitution, next year it may be Congress, that stops the way.

The impulse of patriotism and the wish to save our public officials from foreign criticism, dictates a resistance to the suspicion that, after it was decided at Paris to demand from Spain a cession of the Philippines, the President and the Republican hierarchy devised the stipulation in the last clause of the ninth article of the recent treaty in order to prepare the way for the threatening issue now pending. What is that issue? A Republican Senator from Vermont (Mr. Ross) presented it in a Senate resolution, as follows: "That by the recent treaty the United States have taken sovereignty over our new islands to exercise it unrestrained by the provisions of the Constitution." He endeavored to defend the resolution by a speech which followed the lines laid down, even before the treaty with Spain had been ratified, by two learned professors of law in Harvard University—Thayer and Langdell. Their exposition was, in effect, that the term "United States" as used in the Constitution means either the political corporation, the body politic created thereby, or the States united thereby, and does not embrace the District of Columbia or the territorial possessions or colonies belonging to the United States. The word, or descriptive name, that embraces all combined is not disclosed.

The Senator affirmed that Congress, whenever it shall see fit to enter territories for the purpose of legislation under the sovereignty of the United States, can go there unaccompanied by that Constitution which created Congress, and by which it now exists and holds whatever powers it has. The speech for the resolution and the utterances of other leading Republicans made the broader claim that, unless controlled by a treaty or by a law hampering itself, the Constitution is not an impedi-

1 The Republican campaign text-book emphasizes the resolution and the speech, circulating it by giving both in full as containing sound Republican doctrine.
ment in the way of Congress doing what it pleases in any territory.

It logically follows, if Congress has heretofore extended the Constitution over the territories, which was the condition of all before the treaty with Spain, that Congress can, by a repealing law, withdraw its protection and put New Mexico, Oklahoma, Alaska, the Philippines and Puerto Rico in the same category of absolute subjection to its will, without possible interference by the judicial power. Or else there are to be two classes of territories, one under the protection of the Constitution and the Supreme Court and the other bereft of both. Such a differentiation between territory acquired under the Northwest Ordinance, the treaties with France, Spain, Mexico and Russia, on the one hand, and the recent treaty with Spain, on the other hand, Republican leaders are endeavoring to promote. They assert that the former treaties stipulated that the inhabitants have the rights, privileges and immunities of citizens of the United States, but the latter treaty did not, and therefore as to them Congress will be unrestrained.

The before-mentioned Republican Senator from Vermont, Mr. Ross, of excellent repute as a lawyer, put the following question of constitutional law: "Does the Constitution of the United States ex proprio vigore, unaided by the treaty or act of Congress, extend to and cover the inhabitants of territories acquired by the United States?" The question recognized a restraint upon Congress inherent in the Constitution, but dormant and not to be reached by the Supreme Court until vivified by treaty stipulation with a foreign government or by act of Congress. The Senator who formulated the question answered it in the negative and repudiated the better view, which is, that the Constitution expresses positive and peremptory prohibitions against the exercise of certain specified powers by the United States and by Congress, which prohibitions are universal in time and place and of spontaneous and original force. It is immaterial whether those prohibitions on the United States, on Congress and on the President are positive or negative. Sovereignty over Puerto Rico and the
Philippines is the exercise of legislative power which, under our system, is limited, Congress having only such powers as have been granted by the Constitution. If the Constitution has declared that an act shall not be done, it cannot be done anywhere, and if the Constitution has said that it shall be done, it must be done everywhere, no matter what a treaty may stipulate.

Because the Republican leaders give such efficacy to the treaty-making power in this relation, it is worth while to analyze their argument. During a large portion of the century now drawing to a close, the domain of the treaty-making power has been in debate. It had had one aspect for political and foreign questions and another for judicial and domestic questions. If one rate of duty on imports was prescribed by treaty and a different one by statute, the judicial power enforced the last in order of date, leaving the political branch to get out of the difficulty as best it could. Rather recently the Supreme Court has laid down the whole law of the matters as follows: "The treaty power, as expressed in the Constitution, is in terms unlimited, except by those restraints found in that instrument against the action of the Government or of its departments, and those arising from the nature of the Government itself and that of the States. It would not be contended that it extends so far as to authorize what the Constitution forbids, or a change in the character of the Government, or that of the States, or the cession of any portion of the latter without its consent." Therefore the treaty-making power, as well as Congress, must obey the Constitution. That decision by the Court is the law of the land until reversed by the Court, and the recent treaty with Spain must be conformed thereto, which stipulates "that the civil rights and political status of the native inhabitants of the Philippines shall be determined by Congress." What would have happened if it had declared that they should be determined by the President or the Secretary of State, and, which is a more practical inquiry, what would be the situation if, after disposing as it did of the inhabitants born in Spain, it had been silent regarding the native inhabi-
itants? Would not the inherent power of the Constitution over Congress and over the United States, when legislating for those native inhabitants, be precisely what it now is? When the recent treaty named "Congress" it, of course, meant the legislative branch of the United States, including the President and his veto power. *It meant a statute lawfully enacted under the Constitution.*

That obvious fact leads up to an examination of the previous treaties of cession, all substantially alike on the point under consideration. That with Russia, however, has no clause regarding admission into the Union whenever Congress shall decide, such as was in the other three treaties. The stipulation ceding Louisiana is an example of the other two, one with Spain and the other with Mexico, and is as follows: "The inhabitants of the ceded territory shall be incorporated in the Union of the United States, and admitted *as soon as possible, according to the principles of the Federal Constitution*, to the enjoyment of all rights, advantages and immunities of the citizens of the United States, and in the meantime they shall be maintained and protected in the free enjoyment of their liberty, property and the religion which they profess."

The opinion that the treaty added nothing to the rights which the inhabitants would have had and did have under the Constitution is confirmed by the following sentence in the Supreme Court opinion in Canter's case: "The inhabitants of the territories which his Catholic Majesty cedes to the United States by this treaty shall be incorporated into the United States as soon as consistent with the Federal Constitution, and admitted to the enjoyment of the privileges, rights and immunities of citizens of the United States. *It is unnecessary to inquire whether this is not their condition independent of stipulation.* They do not, however, participate in political power; they do not share in the government until Florida becomes a State." The Constitution, without any treaty stipulation, guaranteed, therefore, to any inhabitant of the new territories "free enjoyment of liberty, property and religion," and any official or other individual interfering would have felt the hand of judicial power in some form.
The Supreme Court had declared that the "United States" included the District of Columbia and the territories, and that the phrase "throughout the United States" covered all possessions.

The efforts of the Administration to evade the Constitution and the Supreme Court revives memories of the Missouri Compromise, of Calhoun's theory that the Constitution *ex proprio vigore* enabled the Southern slaveholder to go with his slave property into the Territories, and there possess such property until the Territory became a State; the Wilmot proviso; the delay in organizing California as a Territory; the compromise of 1850, the squatter sovereignty invented by Cass, the popular sovereignty invented by Douglas, the debate between him and Lincoln, and the Kansas-Nebraska episode. 1 Those now living who, on the side of freedom, participated in those events, naturally exclaim: "Do you expect me to uphold the theory of the Constitution invented by Calhoun in order to enable slavery to invade the free territories

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1 Imperialists endeavor in vain to extract comfort for themselves over the contentions of the republican party in regard to slavery in the territories between the date of the Dred Scott decision and the adoption of the Thirteenth Amendment which ended the controversy by putting an end to slave labor. That controversy troubled Congress from the beginning of the government till the war of secession. The turning point of it was the Constitution and what it permitted Congress to do. Nobody denied that the Constitution controlled Congress in the matter. Up to the time of the Mexican War Congress prohibited or permitted slave labor in the territories, according to its appreciation of the existing situation. Before the acquisition of Louisiana Congress legislated four times, under the Constitution, on slave labor in the territories, twice against it and twice for it. From 1803 to 1820 it legislated twice, once for slavery in the territories and once against it, and in the last-named year Congress inhibited slavery north of 36 degrees 30 minutes. Six times Congress organized territorial governments, recognizing and confirming slave labor. During the crisis of the war with Mexico, Mr. Wilmot, a Whig from Pennsylvania, introduced a resolution in Congress which passed the House but was defeated in the Senate, the effect of which was that over any and all territory acquired from Mexico slave labor shall be excluded. The significance now of that episode is that it created a deadlock in Congress which, in the end, prevented legislation from giving a territorial government to California, and kept it for two years under a *de facto* military government. Finally came the republican platform of 1860, on which Lincoln stood, and which in effect declared that as the Constitution forbade a man to be deprived of his liberty without due process of law, therefore neither Congress nor a territorial legislature, nor anybody, could give legal existence to slavery in a territory. Lincoln became President, the war of secession followed, and slave labor was extirpated from our country till McKinley revived it by his treaty of August 29, 1899, with the Sultan of Sulu, by which he not only tolerated slavery, but even covenanted, as President, that the United States will not alienate the Sulu group of islands unless the Sultan shall consent.
of the United States?" The answer is that the situation in Puerto Rico and the Philippines is, thanks to the Thirteenth Amendment, the reverse of what it was in Kansas and Nebraska, because to-day the supremacy of the Constitution means the destruction of slavery in Sulu, and the prevalence of the freedom, liberty, equal justice and self-government for which Lincoln labored.

In the case of McCulloch (4 Wheaton's Reports, page 316) Chief Justice Marshall, speaking for the whole bench, said:

"The government of the Union is a government of the people; it emanates from them; its powers are granted by them, and are to be exercised on them and for their benefit."

That description was so accurate and felicitous of the government framed by the Constitution that Lincoln, slightly condensing its language, adopted and made it his own. How does such a government compare with one the Republican leaders would give to the millions of people coming to us from Spain?

Republicans in Congress repeat the party shibboleth that "the Constitution of the United States was made for the people, and not they for it." But the history of the American people under the Constitution warrants the belief that they were really predestined for the Constitution, so exceptional has been their freedom, prosperity and happiness. It was ordained to secure the blessings of liberty and justice, but does the national conscience uphold the Republican contention which deprives Puerto Ricans of that liberty and justice?

The President has never told the country when it was that he decided to demand the cession of the Philippines. Possibly the date was disclosed to the Senate Foreign Affairs Committee by the official instructions from Washington laid by the President before them, but when the August protocol was signed the President had, as every one now knows, not decided to demand the cession, and Spain contended at Paris that she understood the protocol only required the determination by a treaty of the terms on which Spain should retain the sovereignty of the archipelago. The President resisted that view and Spain insisted an arbitration of the question by a
neutral power. Then the President offered twenty millions for sovereignty over the Philippines, and no further allusion to the August protocol. The offer was accepted by Spain, whose interest in the natives thereupon became languid, and the President dictated, as the published protocols show, the peculiar stipulation concerning the natives at the end of the ninth article of the treaty, which is so unlike that of previous treaties.

There has been much patriotic gush and sentiment in explanation of demanding cession of the Philippines, but, excepting what naval officers have said of Subig Bay, little that is not superficial. One partisan of the Administration tells the taxpayers that the large sum was paid for the right to elevate the natives in Christian civilization, another insists on the intrinsic merits of the archipelago, and another will have it that the price was paid to inaugurate with China a commercial war of exports and imports. President McKinley ought to explain to his countrymen what may happen to them in the commercial strife he would promote with China if she shall awake from her lethargy and use the exceptional power of her four hundred million people to pour the products of her cheap labor over the Pacific into our Western ports.

PERRY BELMONT.
To the Editor of the Enquirer:

Before the noise and confusion, the brass bands and torch-light processions of a Presidential campaign shall overwhelm us it will be well to get a clear perception of the dogmas which the Republican leaders intend, if they can, to compel the voters to accept.

Senator Foraker, who, by his position as Chairman of the Senate Committee, is the sponsor for the preposterous Porto Rico law, has by his Senate speeches and by a recent speech in Philadelphia made clear what the McKinley Republicans are to contend for during the approaching campaign.

Their first contention is to be that the islands ceded to the United States by Spain in full sovereignty, jurisdiction and possession are "not a part of the United States" even though they belong to the United States. So Senator Foraker declared recently in Philadelphia, and so he and his Republican associates balk and shy in fear of the inevitable consequences of the treaty which McKinley made, and which they ratified.

The Senator says that the new islands are not a part of the United States. Why? Because, in the first place, as he affirms: "We Republicans would not have voted to ratify the treaty had that, in our view, been its legal effect, and, in the next place, such was the legal effect of the previous treaties with France, Spain, Mexico and Russia."

What logic is there?1

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1 The Supreme Court has decided that if a country be ceded to another by treaty the ceded territory becomes "a part" of the nation to which it has been ceded (16 Howard, 164, and other cases). The third article of the Spanish treaty declares that "Spain cedes to the United States the archipelago known as the Philippine Islands." In regard to the Mexican treaty the Supreme Court declared in the before-mentioned case of Cross vs. Harrison: "By the ratifications of the treaty California became a part of the United States. And as there is nothing differently stipulated in the treaty with respect to com-
But when did Senator Foraker discover that the treaty did not make Porto Rico "a part of the United States?" It must have been after he reported the first Porto Rican bill to the Senate, for in that bill he recognized native Porto Ricans as citizens of the United States—a recognition he repudiated in Philadelphia.

The inference is irresistible, from the attitude of Senator Davis, of Minnesota, one of the negotiators of the recent treaty, toward the Porto Rican law, that he does not sympathize with the Foraker fads, one of which is that because the recent treaty has placed the determination of the civil rights and political status of the natives of Porto Rico in the hands of Congress, therefore Porto Rico is not "part of the United States."

Where else than in Congress could the determination have been placed? If in the hands of the President, what effect could that have had on the main question which is whether or not Porto Rico is "a part of the United States?"

The previous treaties with France, Spain and Mexico, placed upon Congress the determination of the questions when the inhabitants should be incorporated into the Union. Senator Foraker carefully suppresses the evidence of that fact in those treaties and endeavors to make his listeners and readers think that the old treaties with France, Spain and Mexico put the inhabitants of the ceded acquisitions into the United States immediately as states and citizens. He knows better! New Mexico is not yet a state, and may not be till after Porto Rico comes into the Union. Even assuming that each of those three treaties declared expressly that the new acquisitions should be, immediately, part of the United States, how could that warrant the inference that the Philippines and Porto Rico are not a part?

A man of common sense would rather say that, if California became a part of the United States on ratification of the Mexican treaty, as the Supreme Court declared, then that Porto Rico and the Philippines are presumably a part. If, on the contrary, the treaty intended that those islands should not be a part of the

"merce, it becomes instantly bound and privileged by the laws which Congress had passed to raise revenue from duties on imports and tonnage."

Senator Foraker's statement raises the inquiry whether the President and Republican leaders endeavored, by the treaty of Paris, to change, in the interest of "imperialism," our customary rule regarding treaties of cession.
United States why did the President fail to make the treaty so declare in so many words? What has Senator Davis to say on that point?

Every other treaty has made its cessions of territory a part of the United States, and inerentially such was the intention of the McKinley treaty, inasmuch as it is silent on the critical point. The Foraker idea must have come to him after the McKinley "plain duty" advice to Congress last December.

That the United States acquired by the treaty sovereignty and jurisdiction over the new islands such as it has over New Mexico Senator Foraker does not deny. No more can he deny that under the ninth article of the treaty the "nationality" of the new islands is ours, and that sovereignty, jurisdiction and nationality are inseparable.

Another Foraker idea is that if the Philippines are "a part of the United States" then the United States cannot sell or alienate them. The Republicans contemplate alienation of the archipelago, do they, and repudiation of McKinley's declaration that where the flag has been raised there it must abide?

Another Foraker idea is that it won't do to say that Porto Rico is "a part" of us, because, if we do, and the President should anywhere plant our flag, the locality would become "a part of the United States," but the Senator is too good a lawyer not to have read Fleming vs. Page (P. Howard, 603) and not to know that the President, unaided by a law or a treaty, cannot enlarge the boundaries of the United States.

Another Foraker fad is that if the Philippines are "a part of the United States," then, since Spain has, under the treaty, free access for her merchandise during ten years, and since there must be free trade under our Constitution between our mainland and the Philippines, therefore Spain and all other nations can by way of the Philippines enter at New York their merchandise duty free! Was ever such a non sequitur in logic? The Senator is quite wrong, but were he quite right he should have perceived the constitutional situation before voting to ratify the McKinley treaty. A Democratic Congress will know how to dissipate that idea!
Another idea is that the "open door" for us in China implies free trade for all the world with our archipelago. What can he imagine the "open door" for us in China means? That our merchandise is to enter China duty free forever? Has the McKinley Administration secured that? Every one knows it has not, but only has a promise that our trade treaties with China shall stand, and that we shall pay no more at Chinese ports on our own merchandise than is there exacted of other similar merchandise. Secretary Hay has not (has he?) stipulated that in consideration of an "open door" for us in China, under our Chinese treaties, there shall be free ports for foreigners in the Philippines, or anywhere else in the United States? Can it be that the McKinley Administration has put our country in such a situation that we must either abandon the Constitution or open all our ports free to all imports?

The unwillingness of Senator Foraker to treat our new islands as a part of the United States is born of a determination not to recognize the Constitution in legislating for them.

But behind all this can be perceived the Republican belief and dread that all Customs duties levied under the recent Porto Rico law must be paid back to the importers by our Treasury, and the Supreme Court will overthrow the Republican contentions.

New York, June, 1900.

Perry Belmont.
Bryan Preferable to McKinley.

[An Interview Published in The New York Times on August 16, 1900.]

Mr. Palmer and General Buckner have been reported as advising Democrats to vote for McKinley. Four years ago I did what I could for their candidacy at a time when federal finance, coinage and taxation constituted the supreme issue, but, since that, the McKinley Administration and the Republican leaders in the Senate have made a new and vital issue for 1900. That new issue is well enough described as "Imperialism." Everybody understands its meaning. Its essence is the claim that the President and Congress can govern, unrestrained by the Constitution, all our territories which are not States. It demands for the President and Congress as much power over the Philippines and Porto Rico as Queen Victoria and Parliament have over India. It defies the restraints of our fundamental law and denies the control of the Supreme Court. Quite recently, in the case of The Paquete Habana, the McKinley Administration, through its Assistant Attorney General, contended that the Supreme Court could not restrain the war power of the President from ordering the capture of innocent fishing vessels in violation of the Law of Nations. That contention the Court summarily rejected. The President asks the voters not merely to condone but to justify his usurpation of legislative and judicial powers in our new islands during the last two years. If he should be re-elected there will be an end of the great political experiment based upon the strict observance of our written Constitution. There will eventually disappear the political inducements which during the century have transferred some of the best blood of the old world into the veins of the new. I shall do all I can for the success of the Democratic ticket.
The Supreme Issue Is Imperialism.

[From the N. Y. Tribune of August 21, 1900.]

To the Editor of The Tribune:

Sir—Were our country and its political institutions the same as four years ago there would be force in your recent criticism of me, but they are not the same. President McKinley and the last Congress have made a change for the worse, which may be permanent unless Mr. Bryan and a Democratic House shall be elected next November.

The Chicago platform of 1896 was enlarged at Kansas City to meet that radical and startling change in our National affairs. Mr. Bryan has accepted that enlargement and promised loyalty to it. Were the political situation the same as it was four years ago, and I could not foresee (as I could not then) the havoc which McKinleyism would work in four years, I would now oppose the Chicago platform and Bryan as I did then.

What is the supreme issue to-day?

It is not coinage, currency or the payment of the National debt. The Republican financial law enacted by the last Congress has removed, or modified, that issue. Like so much of the Republican currency legislation, it was a makeshift.

Neither of the two great parties seems yet ready to return in such matters to Democratic standards planted in the statute-book before the war of secession, when there was no legal tender other than gold and silver dollars, and but little Government debt. The coinage and currency issues of 1896 were superseded by the new Republican financial law, by the Treaty of Paris, and by President McKinley’s exercise in the islands thereby ceded of what he has described as his “bel-
ligerent right," even after peace with Spain had been proclaimed in April, 1899.

Nearly forty years ago the Republicans, against the votes of the united Democracy, first put on our statute-book the dishonest and unconstitutional law making greenbacks legal tender for all debts, whether incurred before or after the enactment; but it may be supposed that in the following Presidential election of 1864 the issue raised by that legislation was considered trivial in the face of an imperilled Constitution and of the war of secession.

Not many years ago McKinley advocated and voted in the House for free silver coinage at 16 to 1, and for paying Government bonds in silver dollars, but such greenbacks and silver dollars are not the issue now, whatever Mr. Bryan and Mr. McKinley may think of them to-day.

What is, then, the supreme issue of 1900?

It is the Treaty of Paris, its interpretation and legal effect, its relation and the relation of the islands it ceded to the Constitution, whether or not the United States can rule over those islands in disregard of the restraints the people have by their Constitution imposed on their National agents, wherever, on sea or land, in States or Territories, in Porto Rico, New Mexico, Alaska, the Philippines or in China, any of those agents, be it President or Congress, may seek to exercise Government power.

The results of the war and the problems arising in our new possessions must be solved under the Constitution. Out of our great national prosperity arises the necessity of new outlets for capital, but such capital and individual rights must have the safeguards of constitutional protection. There is no safety for liberty or property over which our Constitution does not extend.

A part of the supreme issue of 1900 is also the rights and duties of the United States toward the other nations of the world, independent and sovereign, and toward all foreign peoples everywhere, in Asia, Africa or the islands of the sea.

May I ask you to publish this reply to your criticism?

Perry Belmont.
Voters will Reject Imperialism.

NEWPORT, R. I., September 5, 1900.

Hon. John T. McGraw,
National Committeeman for West Virginia,
Grafton, West Virginia:

My Dear Sir—I am very sorry I cannot at present go to Wheeling, as you ask me, and aid in the campaign against the re-election of President McKinley. Later on I may be able to do so.

The Republican idea—the imperialistic idea—that all the millions of people in our territories and islands, a greater number than was our whole population seventy years ago, can, in time of peace, excepting those who are aliens and protected by treaties, be governed by Congress according to its own fancy unrestrained by the Constitution and the judicial power, and if Congress shall not legislate, can by any President, be he McKinley, or Bryan, or any one else, be ruled arbitrarily and regardless of any other restraint than the usages of war—will, I am confident, be rejected by the voters of West Virginia.

Such “imperialism” was by the Kansas City Convention made the supreme issue, and voters are rapidly coming to perceive that, in comparison with it, other pending political issues are trivial.

The Republican leaders asked in their Philadelphia platform the re-election of President McKinley because he had obtained the treaty of Paris; but now they condemn Mr. Bryan because he, as they say, achieved its ratification in the Senate. Mr. Denby has been for twelve years in the diplomatic service of the United States, and recently employed by President McKinley in the Philippines. He has recently
declared that Mr. Bryan accomplished the ratification so that he might thereby create, what Mr. Denby describes as "the bogey of imperialism," in order that he might fight and overcome the "monster." He imagines that the "imperialism" which Democrats denounce is altogether the treaty and is not the Republican desire and purpose to govern the ceded islands in disregard of the Constitution.

The Republican National platform commended the recent Republican financial law as an enactment "by which the parity of all our money and the stability of our currency upon a gold basis has been secured." Mark the word, "secured." But now Secretary Gage and the Republican newspapers affirm that Secretary Gage, or any Secretary of the Treasury, can, without rendering himself liable to impeachment for violating the new law, easily put the country on a silver-dollar basis.

After reading what Secretary Gage has recently said of the inefficiency of the last Republican financial law of March 4, 1900, we may wonder whether or not there are in the Republican party many voters who really wish for the United States an effective gold monometallic basis as in England, where silver coins are only a token currency and nothing is full legal tender excepting gold coins. Gold dollars the only standard dollars, but silver dollars at the same time so far a standard as to be full legal tender for all government and private debts, are on the face of it incompatible and inconsistent. However that may be, the completest gold standard that human ingenuity can make would be poor compensation for the abandonment by the United States of their Constitution as "imperialists" propose.

Frantically endeavoring to evade and shirk the issue of "imperialism," the Republican leaders count up the number of vacancies soon to be on the Supreme Court bench and announce the names of those Mr. Bryan will propose to the Senate after March 4 to fill the vacancies. How infallible as mind-readers and foretellers of events in the future those "imperialists" must be if they are really sincere in what they say to their countrymen.
Republic or Empire?

Have you not been impressed by evidence of the alienation of the Republican party from the Constitution, disclosed by omission in the Philadelphia platform of any mention of the Constitution in connection with a plan to govern the new islands, and omission by the President, in his speech at Canton on the 12th of July last, to mention the Constitution in connection with anything whatever? He proclaimed the baldest "imperialism" when he said to the Committee notifying him of his renomination, that Congress "has full legislative power over the territory belonging to the United States," and therefore by inference can govern in disregard of the Constitution, which does not permit the exercise anywhere by any Federal agent of such arbitrary power.

That Constitution is now as necessary in our new islands as in West Virginia, and it is difficult to understand how our banks, our trust companies, our insurance companies and individuals having loanable capital seeking investment in those islands can tolerate the "imperialism" which deprives that capital of the protection of the Constitution and the judicial power. "Imperialism" offers nothing in place of the Constitution but the arbitrary will of those ruling for the time at Washington.

Yours very truly,

Perry Belmont.