The Constitution and the Flag.

"The constitution follows the flag," says one of our contemporaries this morning.

"The constitution does not follow the flag," declares another.

"The constitution does not necessarily follow the flag," asserts a third.

"Porto Rico is not a part of the United States," according to a fourth.

"Porto Rico is under the constitution," proclaims a fifth.

It is not surprising that "confusion worse confounded" should thus reign in the journalistic mind after reading the several majority and minority opinions of the United States supreme court in the insular cases. In none of these was the decision of the court unanimous, or, it may be added, clearly defined. In each the justices divided almost equally. In one of the two leading cases the majority held that the Dingley tariff could not apply to Porto Rico because it was not a foreign country, but a territory of the United States. In the other it ruled that for tariff purposes the island was not a "part of the United States."

Five justices agreed that the Foraker act was constitutional, but disagreed as to the reasons why. The opinion of the court read by Justice Brown proceeds on the theory that Porto Rico is beyond and congress above the constitution. The other four seem to concede this only so far as tariff legislation is concerned. Differing from Justice Brown in the reasoning and scope of the decision, it is not clear why they agreed to the embodiment of his views in the prevailing opinion of the court, when all might have coincided in the simple result and then presented their individual views in individual opinions.

It may be well said that such a result leaves much to be desired. When neither lawyers nor laymen can agree as to the meaning or scope of the various rulings, and the justices themselves are in conflict, it is obvious that there must be a confusion and uncertainty which leave the door wide open to future doubt and discussion. Until, however, the court reverses itself or more clearly defines and settles the constitutional issues raised, the practical effect of its judgment in the Downes case will be that beyond the states the constitution does not apply to the national domain, in the matter of general government, but that there the power of congress is plenary and its will supreme.

In announcing this conclusion Justice Brown compared the power of congress with British colonial sovereignty. But this simply begs the question, for the evident reason that Great Britain is a monarchy without and the United States a republic with a written constitution.—New York Evening Telegram.

They are Now "The Colonies."

It is somewhat difficult for the layman to brush away the mazes that surround these varied decisions upon different phases of the Porto Rico tariff cases, but in the one case where the issue is clean-cut, the court holds that it is in the power of congress to make for the "new possessions" such tariff laws as it chooses.

In other words, that so far as the taxing power of the government is concerned, the constitution does not go with the flag into newly acquired territory.

This means that congress can go ahead and erect such tariff barriers as it chooses against the products of these countries that have come, or may hereafter come, under the jurisdiction and sovereignty of the United States, decreeing at the same time that the products of this country shall go in there free of duty. Inferentially, this means that the republic has the power, under the constitution, to go ahead and provide such colonial forms of government as it may choose.

If this is the meaning of the court's decision, the issues of the future will be over the methods of administration; the amount of independence which should be accorded these people of our outlying possessions; the amount of tariff which should be levied against their products. So far as the tariffs are concerned, for instance, there will be a struggle between those interests which from selfish motives would erect a tariff wall against the colonies, dependencies, territories—or whatever they may be called—and those who will advocate fair play for our friends in Porto Rico and the Philippines, and will in the end force the free opening of our markets to them as theirs are to us. For in such a contest, the end must be freedom of trade with the colonies, even if selfishness may prevail for the present and the immediate future.

So much for the tariff phase of the question. Irrespective of any other issues, it would have been better had the supreme court decided against tariffs, for then the question would have been settled for all time; in view, however, of this decision, there must be a political contest, probably a long one, before the inevitable end is reached.

The constitution does not follow the flag. That means, for one thing, that the ultimate fate of the Philippines is still, and can for all time be, an open question. Had the court held that the constitution accompanied sovereignty, these islands would, as the result of the treaty of Paris, have to remain a part of the union for all time. Once acquired, there could be no parting with them. The court now holds that we have the right to hold them and give them any government we may choose; and that while they belong to the United States they are not part of the union in the meaning of the constitution. This means that if it should be deemed unwise to hold them we can make such disposition of them as we see fit, transferring them to a local government or even to some foreign government.—Atlanta Constitution.

Intelligence Insulted.

"What a noble conception it was of the fathers, the founding of this government, not upon the will and judgment of the few, but upon the will and judgment and conscience of the many, a government in which all the people of every state participate in a citizenship that is equal everywhere, equal citizenship in equal states in a union that has never been equaled. And, whether American manhood and American liberty go to Cuba or Porto Rico, or to Hawaii or to the Philippines, it raises the same standard, proclaims the same principles that for a century and a quarter this self-governing people have enjoyed."

The above assertions were made by President McKinley in his address to the Knights Templar at San Francisco. Very noble and patriotic they sound, but, alas! very misleading. It is true that American liberty and American manhood should carry the same principles and the same standard wherever they go; and, as a corollary, the stars and stripes should be planted in no place where those principles cannot be put into practice. Can President McKinley pretend to believe that they have been carried into any of these insular domains mentioned by him above? Can he deny that, at the very outset, they are shut off by a prohibition of export? Has not he, backed by a republican congress, decreed that American principles shall not be carried into these islands? Is it not the open and avowed policy of his administration that they shall not even become states, but shall remain colonial possessions, thus deliberately following the example of the imperialistic nation from which our forefathers wrested our liberty a century and a quarter ago? Has not every particle of legislation in the premises been taken with that end in view? And in defense of these actions, has not the position been openly taken by the administration that these islands are not a part of the United States, in order to establish a sort of defense for the levying of a special tariff duty in the case of Porto Rico in direct defiance of the constitutional provision that all such taxes "shall be uniform throughout the United States?"

Is not the president aware, and does he imagine the people of the United States are so ignorant that they, too, do not know that in none of these islands is there 'a self-governing people," or a government resting on "the will and judgment and conscience of the many?" Can he, for a moment, suppose that his hearers believe that such a state of affairs is in existence in Cuba, or Porto Rico, or the Philippines, with the possible exception of the domains of the Sultan of Jolo, with whom he has made a treaty which permits and tolerates the existence of polygamy and slavery?

President McKinley may not intentionally offend, but in making such assertions, or in asking his auditors to believe them, he certainly insults the intelligence of the American public when he asks them to accept, unquestioned, such statements as these, in direct contradiction to history so recent that every American schoolboy of the age of fourteen is conversant with the facts, even though they have not yet crept into the text-books.—Buffalo Times.

Supreme Court's Insular Decisions

The supreme court's decisions in the insular cases will be cause for disappointment throughout the whole country, except in administration circles, for more than one reason, but chiefly because of the confusion arising from so many dissenting and conflicting opinions.

It looks to the unprofessional mind as if law ought to be law, and as if the very learned men on the highest bench in the country ought to know what the law is and be practically unanimous in declaring it.

It certainly weakens the court's conclusions that four of the nine justices disagree with the other five, and that of the five at least three reach the general agreement by the majority on other reasoning than that pursued by the justice who handed down the leading opinion. A conclusion reached in such a way, by a bare majority of the court, can serve as only a temporary opinion and have little or no binding force as a respectable precedent. In a word public confidence in the infallibility of the court must be considerably shaken.

Justice Brown's leading opinion is a manifestly labored effort to avoid the force of precedents and give a plausible view to the government's side of the contention. To reach his conclusions, however, he has been compelled to set congress above the instrument which created it, except in cases where the rights of "organized states," within the union, are involved. He has even recognized congress' right to "interpret" the constitution as to its own powers, and regards such interpretation as a precedent to be regarded by the court especially organized under the constitution as the real and final interpreter of that instrument.

In short, after a mass of confused and confusing argument, Justice Brown limits the constitution to the "states" of the union, holds that the term "United States" means only the actual states, and erects congress into an autocratic, unlimited and imperial ruler over all territories belonging to this country not organized as states! That is the "half republic, half empire" theory in its complete fullness. The flag of the free can float over political slaves if congress wills it. Not until congress says so can new territory under the flag ever enjoy the benefits of the constitution. The constitution only follows the flag by the grace of congress!—Houston Post.

Imperialism Sustained.

With the court nearly evenly divided, it can scarcely be said that the five-to-four decision finally and conclusively settles the main question as to status of new territory. The death or resignation of one member of the court and the appointment of a new justice might result in a virtual reversal of the decision rendered in the Downes case. It is to be presumed, however, that President McKinley would be careful to appoint no justice not in accord with the administration view and the majority decision.

There is a possibility of a rehearing in the Downes case, and of a change in the views of one or more members of the court, resulting in a reversal of the decision just rendered. Meanwhile it must stand and be accepted as the law.

The net outcome of this decision is that the constitution, by its own force, follows the flag part way, but that beyond a certain indefinite point it goes only so far as congress may see fit to extend it.

Imperialism, with all its disastrous possibilities, is virtually sustained.—Sacramento Bee.