et be denied or abridged by the United States or by any state on account of race, color, or previous adition of servitude.' Where does that prohibition on the United States especially apply if not in the territories?

NO SLAVERY IN TERRITORIES.

"The thirteenth amendment says that neither slavery nor involuntary servitude 'shall exist within the United States or any place subject to their furisdiction.' Clearly this prohibition would have operated in the territories if the concluding words had not been added. The history of the times shows that that addition was made in view of the then condition of the country-the amendment passed the house January 31, 1865-and, generally speaking, when words are used simply out of abundant caution, the fact carries little weight.

"From Marbury vs. Madison to the present day, no utterance of this court has intimated a doubt that in its operation on the people, by whom and for whom it was established, the national government is a government of enumerated powers, the exercise of which is restricted to the use of means appropriate and plainly adapted to constitutional ends, and which are 'not prohibited, but consistent with the letter and spirit of the constitu-

"The powers delegated by the people to their agents are not enlarged by the expansion of the domain within which they are exercised. When the restriction on the exercises of a particular power by a particular agent is ascertained, that is an end of the question.

To hold otherwise is to overthrow the basis of our constitutional law, and moreover, in effect, to reassert the proposition that the states and not the people created the government.

The power of the United States to acquire territory by conquest, by treaty, or by discovery, and occupation, is not disputed, nor is the proposition that in all international relations, interests, and responsibilities, the United States is a separate, independent, and sovereign nation; but it does not derive its powers from international law, which, though a part of our municipal law, is not n part of the organic law of the land. The source of national power in this country is the constitution of the United States; and the government, as to our internal affairs, possesses no inherent sovereign power not derived from that instrument, and inconsistent with its letter and spirit.

### MAY PROHIBIT COMMERCE ENTIRELY.

"The logical result is that congress may prohibit commerce altogether between the states and territories, and may prescribe one rule of taxation in one territory, and a different rule in another.

That theory assumes that the constitution created a government empowered to acquire countries throughout the world, to be governed by different rules than those obtaining in the original states and territories, and substitutes for the present system of republican government, a system of demination over distant provinces in the exercise of unrestricted power.

"In our judgment, so much of the Porto Rican act as authorized the imposition of these duties is invalid, and plaintiffs were entitled to recover.

"Some argument was made as to general consequences apprehended to flow from this result, but the language of the constitution is too plain and unambiguous to permit its meaning to be thus influenced. There is nothing 'in the literal construction so obviously absurd, or mischievous, ment, as to justify those who expound the constitution' in giving it a construction not warranted

Briefs have been presented at this bar, purporting to be on behalf of certain industries, and eloquently setting forth the desirability that our government should possess the power to impose a tariff on the products of newly acquired territories so as to diminish or remove competition. But that furnishes no basis for judicial judgment, and if the producers of tobacco, or sugar, or rice, in the existing states of this union, believe the constitution should be amended so as to reach that resuit, the instrument itself provides how such amendment can be accomplished. The people of all the states are entitled to a voice in the settle-

ment of that subject 'Again, it is objected on behalf of the government that the possession of absolute power is essential to the acquisition of vast and distant territories, and that we should regard the situation as it is today rather than as it was a century ago. "We must look at the situation as comprehending n possibility-I do not say a probability, but a possibility-that the question might be as to the powers of this government in the acquisition of Egypt and the Soudan, or a section of Central Africa, or a spot in the Antarctic Circle, or a sec-

tion of the Chinese empire. FRAMED FOR ALL AGES.

"But it must be remembered that, as Marshall and Story declared, the constitution was framed for ages to come, and that the sagacious men who framed it were well aware that a mighty future waited on their work. The rising sun to which Franklin referred at the close of the convention, they well knew, was that star of empire, whose course Berkeley had sung sixty years before.

"They may not indeed have deliberately considered a triumphal progress of the nation, as such, around the earth, but, as Marshall wrote: 'It is not enough to say, that this particular case was not in the mind of the convention, when the article was framed, nor of the American people, when it was adopted. It is necessary to go farther, and to say that, had this particular case been suggested, the language would have been so varied, as to exclude it, or it would have been made a

This cannot be said, and, on the contrary, in order to the successful extension of our institutions, the reasonable presumption is that the limitations on the exertion of arbitrary power would have been made more vigorous.

"After all, these arguments are merely political, and 'political reasons have not the requisite certainty to afford rules of judicial interpretation."

POWER TO EXECUTE ALL LAWS. "Congress has power to make all laws which shall be necessary and proper for carrying into execution all the powers vested by the constitution in the government of the United States, or in any department or officer thereof. If the end be legitimate and within the scope of the constitution, then, to accomplish it, congress may use 'all the means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the con-

stitution. The grave duty of determining whether an act of congress does or does not comply with these requirements is only to be discharged by applying the well-settled rules which govern the interpretation of fundamental law, unaffected by the theoretical opinions of individuals.

Tested by those rules, our conviction is that the imposition of these duties cannot be sustained."

Justice Harlan's Opinion.

"Although the states are constituent parts of the United States, the government rests upon the authority of the people of the United States, and not on that of the states. Chief Justice Marshall, delivering the unanimous judgment of this court in Cohens vs. Virginia, said: That the United States form for many, and for most important purposes, a single nation, has not yet been denied. In war, we are one people. In making peace we are one people. In many other respects the American people are one; and the government which is alone capable of controlling and managing their interests is the government of the union. It is their government, and in that character they have ro other. America has chosen to be, in many respects and to many purposes, a nation; and for all these purposes her government is complete; to all these objects it is competent. The people have declared that in the exercise of all powers given for those objects it is supreme. It can, then, in effecting these objects, legitimately control all individwals or governments within the American terriCONSTITUTION FOR THE TERRITORIES.

"In view of these utterances by this court, I cannot assent to the proposition, whether it be announced in express words or by implication, that the national government is a government by the states in union, and that the prohibitions and limitations of the constitution are addressed only to the states. That is but another form of saying that the government is a mere league of states, held together by compact between themselves; whereas, as this court has often declared, it is a government created by the people of the United States, with enumerated powers, and supreme with respect to certain objects throughout all the territory over which its jurisdiction extends. The constitution by which that government was created speaks not simply to the states in their organized capacities, but to all peoples, whether of states or territories, who are subject to the authority and jurisdiction of the United States.

"In the opinion to which I am referring it is also said that 'practical interpretation put by congress upon the constitution has been long continued and uniform to the effect that the constitution is applicable to territories acquired by purchase or conquest only when and so far as congress shall direct;' that while all power of government may be abused, the same may be said of the power of the government 'under the constitution as well as outside of it: 'that 'if it once be conceded that we are at liberty to acquire foreign territory, a presumption arises that our power with respect to such territories is the same power which other nations have been accustomed to exercise with respect to territories acquired by them; that 'the liberality of congress in legislating the constitution into all our contiguous territories has undoubtedly fostered the impression that it went there by its own force, but there is nothing in the constitution itself, and little in the interpretation put upon it, to confirm that impression;' that as the states could only delegate to congress such powers as they themselves possessed, and as they had no power to acquire new territory, and therefore none to delegate in that connection, the logical inference is that 'if congress had power to acquire new territory, which is conceded, that power was not hampered by the constitutional provisions;' that if 'we assume that the territorial clause of the constitution was not intended to be restricted to such territory as the United States then possessed, there is nothing in the constitution to indicate that the power of congress in dealing with them was intended to be restricted by any of the other provisions;' and that 'the executive and legislative departments of the government have for more than a century interpreted this silence as precluding the idea that the constitution attached to these territories as soon as acquired.'

ERA OF LEGISLATIVE ABSOLUTISM. "These are words of mighty import. They involve consequences of the most momentous character. I take leave to say that if the principles now announced should ever receive the sanction of a majority of this court, the result will be a radical and mischievous change in our system of government. We will, in that event, pass from the era of constitutional liberty, guarded and protected by a written constitution, into an era of legislative absolutism, in respect of many rights that are dear to all peoples who love freedom.

"Although from the foundation of the government this court has held steadily to the view that the government of the United States was one of enumerated powers, and that no one of its branches, nor all of its branches combined, could constitutionally exercise powers not granted, or which were not necessarily implied from those expressly granted, we are now informed that congress possesses powers outside of the constitution, and may deal with new territory, acquired by treaty or conquest, in the same manner as other nations have been accustomed to act with respect to territories acquired by them. In my opinion, congress has no existence and can exercise no authority outside of the constitution. Still less is it true that congress can deal with new territories just as other nations have done or may do with their new territories. This nation is under the control of a written constitution, which is the supreme law of the land, and the only source of the powers which our government, or any branch or officer of it, may exercise at any time or at any place.

MEANS A COLONIAL SYSTEM. "Monarchical and despotic governments, unrestrained in their powers by written constitutions, may do with newly acquired territories what this

government may not do consistently with our fundamental law. To say otherwise is to concede that congress may, by action taken outside of the constitution, engraft upon our republican institutions a colonial system such as exists under monarchical governments. That result was never contemplated by the fathers of the constitution, and if that instrument had contained a word suggesting the possibility of a result of that character, it would never have been adopted by the people of the United States. The idea that this country may acquire territories anywhere upon the earth, by conquest or treaty, and hold them as mere colonies or provinces-the people inhabiting them to enjoy only such rights as congress chose to accord to them-is wholly inconsistent with the spirit and genius, as well as with the words, of the constitu-

"The idea prevails with some-indeed, has found expression in public speeches and addresses -that we have here in this country substantially two national governments; one, to be maintained under the constitution, with all its restrictions; the other to be maintained by congress outside and independently of that instrument and exercising powers that belong to the other nations of the earth. It is one thing to give such a latitudinarian construction to the constitution as will bring the exercise of power by congress, upon a particular occasion or upon a particular subject, within its provisions. It is quite a different thing to say that congress may proceed outside of the constitution. The glory of our American system of government is that it was created by a written constitution which protects the people against the exercise of arbitrary, unlimited power, and the limits of which may not be passed by the government it created, or by any branch of it, or even by the people who ordained it, except by amendment or

change of its provisions.

INJUSTICE FROM ENGLISH RULERS. "The wise men who framed the constitution, and the patriotic people who decreed its adoption. were unwilling to depend for their safety upon what, in the opinion referred to, is described as 'certain principles of natural justice inherent in Anglo-Saxon character.' They well remembered that Anglo-Saxons across the ocean had attempted, in defiance of justice, to trample upon the rights of Anglo-Saxons on this continent, and had sought by military force, to establish a government that could at will destroy the privileges which inhere in freedom. They resolved that the establishment of a government here that could administer public affairs according to its will only, without regard to the inherent rights of freemen, would be ruinous to the liberties of the people and expose them to the oppressions of arbitrary power. Hence, the constitution enumerates the powers which congress and the other departments may exercise, leaving unimpaired, to the states or the people, the powers not delegated to the national government nor prohibited to the states. That instrument so expressly declares in the tenth article of amendment. It will be an evil day for American liberty if the theory of a government outside of the supreme law of the land finds lodgment in our constitutional jurisprudence."

In showing how the constitution was framed, Justice Harlan said that the fact that the convention struck out the words "the supreme law of the several states" and inserted "the supreme law of the land," is a fact of great significance. The "land" referred to manifestly embraced all the territory, whether within or without the states, over which the United States could exercise jurisdiction or authority.

REGARDS IT AS JUGGLING WITH WORDS. 'I reject altogether the theory that congress, in its discretion, can exclude the constitution from a territory which we have held to be a domestic Wall street stock market and any man which could only have been acquired, in virtue of who puts his money in there is a big-'territory of the United States,' acquired, and the constitution. I cannot agree that it is a do- ger fool than Thompson's colt. Rockemestic territory of the United States for the pur- feller created the wreck that swept pose of preventing the application of the Dingley away the fortunes of very man thoutariff act imposing duties upon imports from foreign countries, but not a domestic territory and sands of people by suddenly and withpart of the United States for the purpose of en- out a moment's notice calling in \$30,forcing the constitutional requirement that 'all 000,000 of money loaned on call. He duties, imposts, and excises' imposed by congress stopped it when he concluded to redo not understand how Porto Rico can be a do- duce the interest on call money from mestic territory of the United States, as we have 60 to 6 per cent. When a man can distinctly held in De Lima vs. Bidwell, and yet handle as many millions as Rockefelthat it is not, as is now held, embraced by the words 'throughout the United States.' The 'expanding future of our country,' justifying the be- pleases him with the markets. His lief that the United States is to become what is power is unlimited. Wall street mullet called a 'world power'-of which so much was heads will find that out after a while heard at the argument-does not justify any such and then they will all go to the other juggling with the words of the constitution as extreme and begin howling for socialwould authorize the courts to hold that the ism or something of that sort. words 'throughout the United States,' in the taxing clause of the constitution, do not embrace a 'territory of the United States.' This is a distinction which I am unable to make, and which for a man to get up on the next Fourth I do not think ought to be made when we are en- of July and begin reading the docudeavoring to ascertain the meaning of a great instrument of government.

"Conceding that the national government is one of enumerated powers, to be exerted only for ernments derive their just powers from the limited objects defined in the constitution, and the consent of the governed. If the that congress has no ower except as given by readers are honest they will change that instrument, expressly or by necessary implication, it is said that a new territory, acquired the words to say: "All men are not by treaty or conquest, cannot become incorporated created equal and all governments do into the United States without the consent of con- not derive their just powers from the gress. Of course, no such territory an become a consent of the governed—that there state without the consent of the legislative branch | are within the jurisdiction of the Unitof the government, for only congress is given pow- ed States some sixteen million people er by the constitution to admit new states. But it who are not equal before the law and is an entirely different question whether a terri- that the power to govern them does not tory, without becoming a state, may not, for all come from their consent, but is vested purposes of government by the nation, come un- in congress." Any man who is not a der the complete jurisdiction of the United States, hypocrice will be forced, if called upon and therefore a part of the United States, subject to read the Declaration of Indepento all the authority which the government may dence, to change it as above indicated, exert over any territory or people. If Porto Rico, if he supports the decision of the suwhose officers are appointed as if it were not a preme court. part of the United States, then New Mexico, Arizona., and Alaska, may be treated as not parts of the United States, and subject to such legislation as congress may choose to enact without reference to the restrictio : mposed by the constitution. NO VALUE TO CONSTITUTIONAL LIBERTY.

'This court has distinctly held that the people of the organized territories of the United States. and the p ople of this district, are entitled to the benefit of those provisions of the constitution which protect life, liberty, and property against the arbitrary power of government. What will it be but judicial legislation for this court to say that the express requirement of the constitution that all duties, imposts, and excises prescribed by congress 'shall be uniform throughout the United New Jersey the other day there were States,' shall not apply to a territory which this confined in the same jail two prisoners. court holds to be a part of the United States? The One was 108 years old and was charged concession, therefore, that no power can be exercised under and by authority of the United States | with fighting. It seems that this was except in accordance with the constitution is of no an old habit of the prisoner. He be- A Pipe Wrench practical value to constitutional liberty if, as soon gan fighting along with Jackson at as the concession is made, the constitution is so interpreted as to produce the same results as those which flow from the theory that congress may go | The other was also charged with fight-

"The addition of Porto Rico to the territory of was the "law" which had within its the United States has ben recognized by direct acclutches two prisoners, one 108 and FARMERS' tion upon the part of congress. It has legislated the other three years old, under the in recognition of the treaty with Spain. If Porto charge of fighting. If anything could Rico did not by such action become a part of the be more ridiculous, what is it? United States, it did become such at least when congress passed the Foraker act. I cannot believe that congress may impose any duty, impost, or excise with respect to that territory and its people which is not consistent with the constitutional requirement that all duties, imposts, and excises shall be uniform throughout the United

### Mr. Bryan's Criticism.

By a vote of five to four the Supreme Court has declared President McKinley emperor of Porto Rico, and according to the press dispatches the emperor has gladly and gratefully accepted the title and authority thus conferred upon him by the highest judicial tribunal of the land.

As the last issue of THE COMMONER was going to press, Justice Brown began reading the opinion of the court in the De Lima case and as the decision was against the government in that case it was at first thought that the inhabitants of Porto Rico had been brought under the protection of the constitution. But those who were encouraged to believe that the constitution had caught up with the flag were doomed to disappointment. In the Downes case, decided immediately afterwards, a majority of the court, composed of Justices Brown, Gray, White, Shiras and McKenna, held that congress could deal with Porto Rico (and the same logic applies to the Philippines) without regard to the limitations of the constitution. Chief Justice Fuller and Associate Justices Harlan, Peckham and Brewer dissented in strong and vigorous language, but the opinion of the majority—even a majority of one—stands until it is reversed. This is one of the most important decisions, if not the most important, ever rendered by the court; it not only declares that congress is greater than the constitution which created it-the creature greater than the creator—but it denies the necessity for a written constitution. The position taken by the court is defended, or rather excused, by reasoning which, if followed out, will destroy constitutional liberty in the United States. Every reason given by Justice Brown could be used with even more force to support a decision nullifying all limitations placed by the constitution on congress when dealing with the citizens of the several states. If the Porto Ricans can trust the wisdom and justice of a congress which they DO NOT ELECT and CAN NOT REMOVE, why do the people of the United States need a constitution to protect them from a congress which they DO ELECT and CAN RE-MOVE? The decision in effect declares that the people are not the source of power; it defends "taxation without representation" and denies that governments derive "their just powers from the consent of the governed."

It assails the foundations of the Republic and does so on the ground of expediency. The dissenting opinions bristle with precedents and burn with patriotism; they ought to awaken conscientious republicans to a realiza-

tion of the meaning of imperialism.

This decision, like the Dred Scott decision, raises a political issue which must be settled by the people. The Supreme Court has joined with the President and Congress in an attempt to change the form of our government, but there yet remains an appeal to the people.

Rockefeller absolutely dominates the ler can, he can do anything that

It will take a good deal of hypocrisy ment that solemnly declares that all men are created equal and that all gov-

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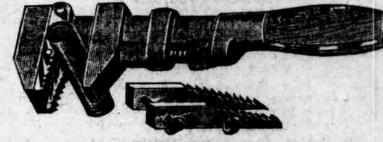
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which flow from the theory that congress may go outside of the constitution in dealing with newly acquired territories, and give them the benefit of the other for he was only three sive, but now everyone can have one. It can be adjusted to fit pipe or bolts from that instrument only when and as congress shall years old and had to stand upon a 1-8 to 3 inches. TRY IT, if not as represented, MONEY BACK.

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