

# The Commoner.

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## Emperor McKinley

### The Porto Rico Case.

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 REMOVE? 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 realization 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.

The election of 1900 did not decide this question, for the republicans denied that they favored imperialism, but they can deny it no longer. They must now admit their repudiation of the constitution as well as the Declaration of Independence.

So much space is given to the majority and minority opinions (see pages five to eleven) that extended comment is impossible at this time, but the discussion of the subject will be continued in future issues.

The opinions delivered by the United States Supreme Court in the Porto Rican cases are so important, not only for the present but for the future, that it behooves every American citizen to thoroughly understand their purport. In these opinions, three separate periods were treated, and it will be well to consider them in proper order.

Between the time when General Miles took possession of Porto Rico and the time of the ratification of the peace treaty, the military authorities established certain military tariff duties. The court sustained these duties on the broad ground of military authority and necessity.

After the ratification of the peace treaty and prior to the enactment of the Foraker law, in which law the present Porto Rican tariff duties are set forth, tariff duties were levied on goods coming from Porto Rico to the United States under the terms and rates of the Dingley law. On this point the court held that the Dingley law contemplated the levying of duties on foreign goods from foreign countries; that after the ratification of the peace treaty Porto Rico became "domestic" territory, and therefore the Dingley duties could not prevail.

In the Downes case the court took up that feature of the Foraker law which established tariff duties on goods coming from Porto Rico to the United States. The court held these

duties to be lawful on the ground that congress had full authority to make rules, regulations and laws for the government of "domestic" territory other than states.

In order to fully understand these opinions it must be known that in ruling that the Dingley tariff rates could not prevail against Porto Rico, the court did not act on the theory that the constitution followed the flag during any of these periods under consideration. This ruling was made because, in the opinion of the court, a law enacted for the purpose of levying tariff duties against a foreign country could not be applied in levying tariff duties against a country that was not "foreign." In other words, if immediately after the ratification of the peace treaty, congress had enacted a law levying the Dingley rates specially against Porto Rico those rates would have prevailed. In the court's opinion, the legality of any tariff rate between Porto Rico and the United States simply waited upon a formal act of congress establishing those rates as applying to Porto Rico.

The logic of this opinion as it applies to the right of congress to levy tariff customs would make it possible for congress to levy tariff duties on articles coming from any territory of the United States.

With respect to our new possessions, the decision is an unfair one because it denies to them equal trade privileges with other portions of the United States whose sovereignty has been established over them, and the purpose of the constitution in providing for equal trade privileges was that no section subject to United States sovereignty should ever become the victim of discrimination. This principle is in line with the very foundation principles of this government which contemplated that all the people of the United States should have equal privileges, should be exempt from discriminations, and should enjoy the immunities which the constitution makers conceived to be essential to the perpetuity of free institutions.

In the opinion delivered by Justice Brown in the Downes case, the Supreme Court went much farther than the consideration of the right to levy tariff duties. Justice Brown contended that power to acquire territory by treaty "implies not only the power to govern such territory, but to prescribe on what terms the United States will

### A Statement of the Case.

### The Attitude of Aliens.