

The Commoner.

receive its inhabitants and what their status shall be in what Chief Justice Marshall termed "The American empire."

Justice Brown then distinctly declared that the annexation of territory did not make the inhabitants of that territory citizens of the United States. He admitted, however, that whatever may be finally decided as to the status of these islands and their inhabitants "it does not follow that in the meantime the people are in the matter of public rights unprotected by the provisions of our constitution and subjected to the mere arbitrary control of congress. Even if regarded as aliens, they are entitled, under the principles of the constitution, to be protected in life, liberty and property."

Here we find the supreme court's declaration of the status of the people of these islands. Although the constitution does not follow the flag, "under the principles of the constitution" the people of our new possessions are entitled "to be protected in life, liberty and property." In other words although cut away from all former allegiance, although taken away from former sovereigns and denied the right of building a sovereignty for themselves, and although required to render allegiance to this country, yet they are in the attitude of "aliens," they are to be taxed without representation, and to be governed without having a voice in the government. This is imperialism pure and simple.

Throughout the majority opinion delivered by Justice Brown runs the theory that the American congress may do anything not forbidden in the constitution. This is one of the most repugnant features of

this opinion. Justice Brown seems to have searched the constitution for prohibitions rather than for that grant of power which the American people have always conceived to be the true office of that instrument. In one place Justice Brown said: "If in limiting the power which congress was to exercise within the United States, it was also intended to limit it with regard to such territories as the people of the United States should thereafter acquire, such limitations should have been expressed." In another place he refers to a constitutional clause as "suggestive of no limitations upon the power of congress in dealing with territories." In another place he says that "no construction of the constitution should be adopted which would prevent congress from considering each case upon its merits unless the language of the instrument imperatively demands it." And in his conclusion Justice Brown, referring to the right or authority of congress to do what ever it sees fit to do, said—"We decline to hold that there is anything in the constitution to forbid such action."

The American system of government is not a complicated one. Indeed, its strength and success have depended, in a marked degree, upon its very simplicity. For years we have been taught to look in the constitution for powers delegated to the United States and for powers prohibited by the constitution to the states. For years we have been taught that

the federal constitution was a grant of power, while the state constitution was a limitation of power; yet the opinion delivered by Mr. Justice Brown encourages the notion that our federal authorities may do whatever they think necessary to be done when the same is not specifically forbidden in the federal constitution.

The dangers arising from such an irrational, un-American notion will depend entirely upon the character and disposition of men in authority. A written constitution has been the safeguard of American institutions, and once it shall be fully established that that constitution is a limitation rather than a grant of power, this government and its people are completely at the mercy of the men who happen to be in authority.

The mischievous character of Justice Brown's decision on this point is indicated in one paragraph wherein he said—"The states could only delegate to congress such powers as they themselves possess, and as they have no power to acquire new territory they have none to delegate in that connection." This was Justice Brown's apology for the absence from the constitution of a delegation of power to congress to deal with newly acquired territory. He would then hold that Congress, the creature of the constitution, had greater powers than the body that created the constitution itself. In order to avoid the well established theory that the constitution is a grant of power, we have, according to Justice Brown's opinion, only to ascertain that the grantors of power were without authority in a certain respect in order to give to the creatures of the constitution whatever authority and power those creatures see fit to exercise.

Justice Harlan discusses this point at considerable length, and his words are quoted here that the reader may note the contrast between his views and those expressed by the majority of the court through Justice Brown. Justice Harlan says:

"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.

"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. 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.

"The idea that this country may acquire territories anywhere upon the earth, by conquest or treaty, and hold them as mere colonies or provinces, is wholly inconsistent with the spirit and genius as well as with the words 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. "It will be an evil day for American liberty if the theory of a government outside of the su-

preme law of the land finds lodgment in our constitutional jurisprudence."

The court's decision was based upon expediency. In the opinion to which Justice Harlan referred as an effort to establish "two governments in this country—one resting on the constitution for Americans—the other carried on in the national capitol by the same people, without the constitution for a subject people," Justice Brown said: "A false step at this time might be fatal to the development of what Chief Justice Marshall called 'The American Empire'."

It would seem that this phrase was employed by way of apology or defense for the American empire which Justice Brown and his colleagues were seeking to erect upon the ruins of the American constitution. When the great Marshall used the term "the American empire," he referred to an empire of love, an empire of perfect republicanism, an empire of hearts, an empire in which the people reigned supreme and the congress, the executive and the courts were the servants, rather than the masters, of the people. He referred to "the American empire" as expressing the perfect reign of American principles on every foot of American territory, and the enjoyment of American rights, privileges, and immunities on every foot of soil within the American domain.

It was in 1820 that Chief Justice Marshall used this term. The court at that time had under consideration the constitutional provision that "all duties, imports and excises shall be uniform throughout the United States." On this point Chief Justice Marshall said—"Does this term (The United States) designate the whole or any portion of the American 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 river 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 imposts, duties and excises should be observed in the one than in the other."

"What a difference, then, between "the American empire" of the great Marshall and the American empire of Mr. Justice Brown!

Marshall's "American empire" was "our great republic which is composed of states and territories." The American empire of Mr. Justice Brown contemplates "two governments in this country; one resting on the constitution for Americans—the other carried on in the national capitol by the same people, without the constitution and for a subject people."

One of the extraordinary features of the Supreme Court's decision, delivered by Justice Brown, is the attempt to assure the people that the safeguard of a written constitution can be destroyed without danger. This argument is of such a remarkable character that it deserves to be pasted

Delegated Powers.

A Radical Change.

Soothing Syrup.