that the question of annexing these territories was made a subject of debate. The difficulties of bringing about a union of the states was so great, the objections to it seemed so formidable, that the whole thought of the convention centered upon surmounting these obstacles. The question of territories was dismissed with a single clause, apparently applicable only to the territories then existing, giving congress the power to govern and dispose of them.

"Had the acquisition of other territories been contemplated as a possibility, could it have been foreseen that within little more than one hundred years we were destined to acquire not only the whole vast region between the Atlantic and Pacific oceans, but the Russian possessions in America and distant islands in the Pacific, it is incredible that no provision should have been made for them, and the question whether the constitution should or should not extend to them have been definitely settled. If it be once 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. 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. Instead of that, we find the constitution speaking only to states, except in the territorial clause, which is absolute in its terms and suggestive of no limitations upon the power of congress in dealing with them.

POWER TO ACQUIRE NOT HAMPERED.

"The states could only delegate to congress such powers as they themselves possessed, and as they had no power to acquire new territory they had none to delegate in that connection. The logical inference from this is that if congress had power to acquire new territory, which is conceded, that power was not hampered by the constitutional provisions. If, upon the other hand, 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.

"There is a provision that 'new states may be admitted by the congress into this union.' These words, of course, carry the constitution with them, but nothing is said regarding the acquisition of new territories or the extension of the constitution over them. 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. There is not even an analogy to the provisions of an ordinary mortgage for its attachment to after-acquired property, without which it covers only property existing at the date of the mortgage. In short, there is absolute silence upon the subject. 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, and unless such interpretation be manifestly contrary to the letter or spirit of the constitution, it should be followed by the judicial department.

VITAL TO COUNTRY'S DEVELOPMENT.

"Patriotic and intelligent men may differ widely as to the desirableness of this or that acquisition, but this is solely a political question. We can only consider this aspect of the case so far as to say 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 demand it. A false step at this time might be fatal to the development of what Chief Justice Marshall called the American empire. Choice in some cases, the natural gravitation of small bodies toward large ones in others, the result of a successful war in still others, may bring about conditions which would render the annexation of distant possessions desirable. If those possessions are inhabited by alien races, differing from us in religion, customs, laws, methods of taxation and modes of thought, the administration of government and justice, according to Anglo-Saxon principles, may for a time be impossible; and the question at once arises whether large concessions ought not to be made for a time, that, ultimately, our own theories may be carried out and the blessings of a free government under the constitution extended to them. We decline to hold that there is anything in the constitution to forbid such action.

"We are therefore of opinion that the island of Porto Rico is a territory appurtenant and belonging to the United States, but not a part of the United States within the revenue clause of the constitution; that the Foraker act is constitutional, so far as it imposes duties upon imports from such island, and that the plaintiff cannot recover back the duties exacted in this case.

"The judgment of the circuit court is therefore affirmed.'

Justice White's Opinion.

The Washington Post thus reports the separate opinion read by Justice White:

Justice White read an opinion showing he stood with Justice Brown in holding that congress had power to levy taxes on an insular possession like Porto Rico distinct from the taxes that apply in the country generally, and that the Foraker act, revenue clauses and all, was valid. His process of reasoning was distinctly different from that of Justice Brown. Justice Gray read a separate opinion, which was very brief, reaching the same conclusion. Justice Shiras and Justice McKenna concurred with the opinion of Justice White.

Justice White began with the statement that while he regarded the duty complained of as validly imposed, and therefore he concurred in the decree confirming the judgment, he did so upon grounds which were not only different from but in conflict with those expressed by Justice Brown, and he would state his reasons. After remarking that the question was whether the provisions of the Foraker act imposing duties on goods coming from Porto Rico into the United States conformed to the constitution, he said that the provision of the constitution which was involved was that giving congress the power to lay duties, imposts, and excises, and requiring that they should be uniform "throughout the United States." There were questions which had been argued on both sides of the case which the justice thought were too clear to require elaboration, and he would put them out of the case by at once conceding them and referring to the authorities by which they were established. These propositions—eight in number—were announced. They held that the government of the United States being created by the constitution, that instrument, where it limits the power of the government, does so everywhere wherever its authority is exerted. The propositions, therefore, in effect, maintain that the theory that the constitution does not follow the flag is unjustifiable. The opinion then states there never can be any serious question, when the government of the United States exercises an authority which the constitution confers, that the applicable limitations of the constitution control it. While this was true universally, in every case the question was not whether the constitution followed the flag, but granting that it did so, what provision was applicable to particular cases. The territorities, it was said, whatever be their relation to the United States, were, of course, controlled by the constitution. That congress had by the constitution power to govern them as to it in its discretion might seem best, to give them representative government if it pleased and to deny it. This statement was sustained by many authorities, which were referred to, and was illustrated by the present condition of the District of Columbia. When governing locally for the territories, it was said that congress, in accordance with the constitution, had the power to assess local taxes in its discretion, but that, in assessing national taxes congress was limited by the provisions of the constitution as to imposts and excises and by the uniformity restriction.

MR. WEBSTER QUOTED.

In discussing the question of the applicability of the constitution in the territories, it was said that this was shown by the history of the government. The opinion of Mr. Webster was quoted to establish that, although in a broad sense he claimed that the constitution did not extend to the territories, he yet admitted that the applicable provisions of the constitution did so, and reference was made to the various platforms of the free soil and republican parties, including the one upon which Mr. Lincoln was nominated, which, it was said, showed clearly that it was conceded that the applicable provisions of the constitution were in force in the territories. The opinion then went on to say that in every case, therefore, in the states as well as the territories, the question to be determined when the constitution was invoked was the applicability of the particular provision which was relied upon. It was said this was the general rule, but there were some cases which were an exception, because there were certain general limitations in the constitution in favor of liberty and property which withdrew all power from congress, and, of course, such limitations were everywhere applicable and could never be transgressed. Besides, he said, even in a case where there were no express limitations in the constitution operating upon congress in governing the territories locally, nevertheless those fundamental conceptions which lay at the basis of all free government would control congress in so legislating, and authorities were referred to on this subject. Citing instances showing the applicability of the constitution to different conditions, it was said that although federal judges were obliged by the constitution to have a life tenure, such provision had been decided not to be applicable in the territories, because of the temporary nature of their judicial system. That, on the other hand, the provisions as to juries had been held to be applicable in the incorporated territories, and yet again, the jury provisions had been decided not to be applicable to consular courts of the United States sitting in certain foreign countries, as provided by treaties.

RIGHT OF CONGRESS TO GOVERN.

The eight provisions above referred to were resumed by the following statement:

There is in reason, then, no room in this case to contend that congress can destroy the liberties of the people of Porto Rico by exercising in their regard powers against freedom and justice which the constitution has absolutely denied. There can also be no controversy as to the right of congress to locally govern the island of Porto Rico as its wisdom may decide, and in so doing to accord only such degree of representative government as may be determined on by that body. There can also be no contention as to the authority of congress to levy such local taxes in Porto Rico as it may choose, even although the amount of the local burden so levied be manifold more onerous than is the duty with which this case is concerned. But as the duty in question was not a local tax, since it was levied in the United States on goods coming from Porto Rico, it follows that if that island was a part of the United States, the duty was repugnant to the constitution, since the authority to levy an impost duty conferred by the constitution on congress does not, as I have conceded, include the right to lay such a burden on goods coming from one to another part of the United States. And, besides, if Porto Rico was a part of the United States, the exaction was repugnant to the uniformity clause.

The sole and only issue, then, is not whether congress has taxed Porto Rico without representation—for whether the tax was local or national, it could have been imposed, although Porto Rico had no representative local government and was not represented in congress—but is, whether the particular tax in question was levied in such form as to cause it to be repugnant to the constitution. This is to be resolved by answering the inquiry, Had Porto Rico, at the time of the passage of the act in question, been incorporated into and become an integral part of the United States?

PRINCIPLE OF INTERNATIONAL LAW.

Coming to consider this question, it was affirmed that the general principle of international law was that a country, sovereign within the limits of its powers, had the right to acquire territory by discovery, by agreement, and by conquest, and that the general rule also was that when a country was acquired by either of these methods the relation which it would bear to the acquiring country in the absence of treaty stipulations was to be determined by that country conformably to its institutions. Many international law writers and decisions are referred to as sustaining this theory. It is then declared that the United States, in virtue of its sovereignty, possesses the same powers on this subject that any other country in the family of nations enjoys. To support this the Declaration of Independence, the Articles of the Confederation which preceded the constitution, and the constitution itself, as well as many decisions of the court, were noticed. The assertion is made that the history of the United States from the beginning had manifested that this power was possessed by the United States. In this connection the justice said:

"Indeed, it is superfluous to cite authorities establishing the right of the government of the United States to acquire territory, in view of the possession of the northwest territory when the constitution was framed and the cessions to the general government by various states subsequent to the adoption of the constitution, and in view, also, of the vast extension of the territory of the United States brought about since the existence of the constitution by substantially every form of acquisition known to the law of nations. Thus, in part at least, 'the title of the United States to Oregon was founded upon original discovery and actual settlement of citizens of the United States, authorized or approved by the government of the United States.' (Shively vs. Bowlby, 152 U. S., 50.) The province of Louisiana was ceded by France in 1803; the Floridas were transferred by Spain in 1819; Texas was admitted into the union by compact with congress in 1845; California and