that the acquired territory has reached that state where it is proper that it should enter into and form a part of the American family. Does, then, the treaty in question contain a provision for incorporation, or does it, on the contrary, stipulate that incorporation shall not take place from the mere effect of the treaty and until congress has so determined? is then the only question remaining for consideration."

The only question, then, to be determined, the opinion says, is: Did the treaty incorporate? Attention was called to the fact that it expressly provided—differing from any treaty which had ever been executed before since the foundation of the government—that the civil rights and political status of the inhabitants of the islands should be determined by congress, and it was said, of course, the recognition of this treaty by congress could not give greater rights than the treaty itself gave. The Foraker act was then referred to, and attention was called to the fact that a clause in the bill as reported conferring citizenship was expressly stricken out before it was passed.

The summing up is as follows:

"In what has preceded I have, in effect, considered every substantial proposition, and have either conceded or reviewed every authority referred to as establishing that immediate incorporation resulted from the treaty of cession which is under consideration. Indeed, the whole argument in favor of the view that immediate incorporation followed upon the ratification of the treaty, in its last analysis, necessarily comes to this: Since it has been decided that incorporation flows from a treaty which provides for that result, when its provisions have been expressly or impliedly approved by congress, it must follow that the same effect flows from a treaty which expressly stipulates to the contrary, even although the condition to that end has been approved by congress. That is to say, the argument is thus: Because a provision for incorporation when ratified incorporates, therefore a provision against incorporation must also produce the very consequence which it expressly provides against.

FOREIGN IN A DOMESTIC SENSE.

"The result of what has been said is that whilst, in an international sense, Porto Rico was not a foreign country, since it was subject to the sovereignty of and was owned by the United States, it was foreign to the United States in a domestic sense, because the island had not been incorporated into the United States, but was merely appurtenant thereto as a possession. As a necessary consequence, the impost in question assessed on merchandise coming from Porto Rico into the United States after the cession was within the power of congress, and that body was not, moreover, as to such impost, controlled by the clause requiring that imposts should be uniform throughout the United States; in other words, the provision of the constitution just referred to was not applicable to congress in legislating for Porto Rico."

In concluding, it was said, that the question when territory was to be incorporated, that is, made a part of the United States, by conferring upon it the benefits and advantages of American citizenship, was a political question, to be determined by the American people, speaking through congress; and, that, whatever might be the opinions as to the dangers to arise from acquiring new territory, those dangers, even if they be conceded, would not justify the judiciary in usurping the political powers of the government. It was, moreover, said that even if the courts would forget their duty and usurp to themselves political power, no good would come from it, because the court had recently decided unanimously in the Neely case; that, although Cuba had come under the control and administration of the United States, and, therefore, under its sovereignty, that it was not a part of the United States, because of the promises and pledges of the United States, not contained in the treaty, but declared by congress before the war with Spain. That this decision recognized the right of the United States to hold and possess territory, where the treaty provided for a mere relinquishment of sovereignty in favor of the United States, and, therefore, if the judiciary were to assume to exercise the political powers of the government, the only result would be that as a cession could not be made in the future without parting with the birthright of the American people without their consent, relinquishment of sovereignty would be resorted to, to accomplish indirectly the end of holding the territory without destroying the rights of American citizens.

Minority Opinion.

(Delivered by Chief Justice Fuller, Justices Peckham and Brewer concurring—Justice Harlan concurred in the conclusions reached by the minority but read a separate opinion.)

Chief Justice Fuller said:

"The inquiry is whether the act of April 12, 1900, so far as it requires the payment of import duties on merchandise brought from a port of Porto Rico as a condition of entry into other ports of the United States, is consistent with the federal constitution.

"The act creates a civil government for Porto Rico, with a governor, secretary, attorney general, and other officers appointed by the president, by and with the advice and consent of the senate, who, together with five other persons, likewise so appointed and confirmed, are constituted an executive council; local legislative powers are vested in a legislative assembly, consisting of the executive council and a house of delegates to be elected; courts are provided for, and, among other things, Porto Rico is constituted a judicial district, with a district judge, attorney, and marshal, to be appointed by the president for the term of four years. All officials authorized by the act are required to 'before entering upon the duties of their respective offices take an oath to support the constitution of the United States and the laws of Porto Rico.'

GEOGRAPHICAL UNIFORMITY REQUIRED.

"The uniformity of taxation required by the constitution is a geographical uniformity, and is only attained when the tax operates with the same force and effect in every place where the subject of it is found. But it is said that congress in attempting to levy these duties, was not exercising power derived from the first clause of section 8, or restricted by it, because in dealing with the territories, congress exercises unlimited powers of government, and, moreover, that these duties are merely local taxes."

The chief justice referred at this point to the case of Loughborough vs. Blake and to Chief Justice Marshall's opinion, delivered thereon in 1820, and added:

"It is said in one of the opinions of the majority that the chief justice 'made certain observations which have occasioned some embarrassment in other cases.' I agree that the opinion of the court delivered by him must be embarrassing in this case, for it is necessary to overrule that decision in order to reach the result herein announced.

"It is wholly inadmissible to reject the process of reasoning by which the chief justice reached and tested the soundness of his conclusion as merely obiter. Nor is there any intimation that the ruling turned on the singular theory that the constitution irrevocably adhered to the soil of Maryland and Virginia, and, therefore, accompanied the parts which were ceded to form the District, or that 'the tie' between those states and the constitution 'could not be dissolved without at least the consent of the federal and state governments to a formal separation; and that this was not given by the cession and its acceptance in accordance with the constitutional provision itself, and hence that congress was restricted in the exercise of its powers in the District, while not so in the teritories.

PURPOSES OF NATIONAL TAXATION.

"On the contrary, the chief justice held the territories as well as the District to be part of the United States for the purposes of national taxation, and repeated in effect what he had already said in McCulloch vs. Maryland: 'Throughout this vast republic, from the St. Croix to the Gulf of Mexico, from the Atlantic to the Pacific, revenue is to be collected and expended, armies are to be marched and supported.'

"Conceding that the power to tax for the purpose of territorial government is implied from the power to govern territory, whether the latter power is attributed to the power to acquire or the power to make needful rules and regulations, these particular duties are nevertheless not local in their nature, but are imposed as in the exercise of national powers. The levy is clearly a regulation of commerce, and a regulation affecting the states and their people as well as this territory and its people. The power of congress to act directly on the rights and interests of the people of the states can only exist if and as granted by the constitution. And by the constitution congress is vested with power 'to regulate commerce with foreign nations, and among the several states, and with the Indian tribes.' The territories are, indeed, not mentioned by name, and yet commerce between the territories and foreign nations is covered by the clause, which would seem to have been intended to embrace the entire internal as well as foreign commerce of the country.

REGULATION OF COMMERCE.

"It is evident that congress cannot regulate commerce between a territory and the states and other territories in the exercise of the bare power to govern the particular territory, and as this act was framed to operate and does operate on the people of the states, the power to so legislate is apparently rested on the assumption that the right to regulate commerce between the states and territories comes within the commerce clause by necessary implication.

"Accordingly, the act of congress of August 8, 1890, entitled 'An act to limit the effect of the regulations of commerce between the several states and with foreign countries in certain cases,' applied in terms to the territories as well as to the states. In any point of view, the imposition of duties on commerce operates to regulate commerce, and is not a matter of local legislation; and it follows that the levy of these duties was in the exercise of the national power to do so, and subject to the requirement of geographical uniformity.

"The fact that the proceeds of these duties are devoted by the act to the use of the territory does not make national taxes local. Nobody disputes the power of congress to lay and collect duties, geographically uniform, and apply the proceeds by a proper appropriation act to the relief of a particular territory, but the destination of the proceeds would not change the source of the power to lay and collect. And that suggestion certainly is not strengthened when based on the diversion of duties collected from all parts of the United States to a territorial treasury before reaching the treasury of the United States. Clause 7 of section 9 of Article I. provides that 'no money shall be drawn from the treasury but in consequence of appropriations made by law, and the proposition that this may be rendered inapplicable if the money is not permitted to be paid in so as to be susceptible of being drawn out is somewhat startling.

APPLIES TO TERRITORIES AND STATES.

"Other parts of the constitution furnish illustrations of the correctness of this view. Thus the constitution vests congress with the power 'to establish an uniform rule of naturalizations, and uniform laws on the subject of bankruptcies throughout the United States.' This applies to the territories as well as the states, and has always been recognized in legislation as binding.

"Aliens in the territories are made citizens of the United States, and bankrupts residing in the territories are discharged from debts owing citizens of the states pursuant to uniform rules and laws enacted by congress in the exercise of this power.

"The fourteenth amendment provides that 'all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the states wherein they reside.'

"No person is eligible to the office of president unless he has 'attained to the age of thirty-five years and been fourteen years a resident within the United States.' (Clause 5, sect. 1, Art. II.)

"Would a native-born citizen of Massachusetts be ineligible if he had taken up his residence and resided in one of the territories for so many years that he had not resided altogether fourteen years in the states? When voted for he must be a citizen of one of the states (clause 3, sect. 1, Art. II.; Art. XII.), but as to length of time must residence in the territories be counted against him?

"The fifteenth amendment declares that 'the right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition 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 jurisdiction.' 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 constitution.'

"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