

# The Commoner.

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## CONSTITUTIONAL LIBERTY

The worst feature of the supreme court decision in the Downes case is that it strikes a blow at constitutional liberty. In attempting to defend the position taken by the majority of the court, Justice Brown used arguments which, if carried to their logical conclusion, would deny the necessity for a constitution anywhere. According to the decision of the court, Congress can govern Porto Rico as a colony, without constitutional limitations, so far as the taxing power is concerned, and enough is said in the majority opinion to show that no political right is absolutely secure.

The question naturally arises: If the Porto Ricans do not need the protection of a written constitution, why do the people of the United States need a written constitution? If we concede that the Porto Ricans are safe without a constitution we must also admit that the American people would be safe without a constitution. Justice Brown says: "Grave apprehensions of danger are felt by many eminent men—a fear lest an unrestrained possession of power on the part of congress may lead to unjust and oppressive legislation, in which the natural rights of territories, or their inhabitants, may be engulfed in a centralized despotism. These fears, however, find no justification in the action of Congress, nor in the conduct of the British parliament toward its outlying possessions since the American revolution. \* \* \* There are certain principles of natural justice inherent in the Anglo-Saxon character which need no expressions in constitutions or statutes to give them effect or to secure dependencies against legislation manifestly hostile to their real interests."

I shall at another time treat of his reference to the benevolence of the British Parliament, but my purpose at this time is to emphasize the fact that he repudiates the arguments which have always been given in support of a written constitution. It was necessary to do so in order to justify the Porto Rican decision, and yet in doing so he surrenders one of the most vital principles of government. Some of the republican papers have violently assailed me because I pointed out the political heresy uttered by the court. Will any republican paper quote the language which I have quoted above, and then answer two questions?

**First:—Is a Constitution a Good Thing for the People of the United States?**

**Second:—If so, do not the Porto Ricans also need a Constitution?**

A special invitation is extended to the edi-

tor of Postmaster General Smith's paper to answer these questions, but any republican paper, great or small, conspicuous or obscure, is at liberty to try. The Porto Ricans do not elect the congress; we do, and yet we have the protection of a constitution while the Porto Ricans have none. We can retire the members of congress if we don't like their conduct; the Porto Ricans cannot, and yet we have a constitution and the Porto Ricans have none. The members of congress are chosen from among us, and they must live under the laws which they make for us; the congressmen are not chosen from among the Porto Ricans, and do not live under the laws made for the Porto Ricans, and yet we have a constitution and the Porto Ricans have none. If "there are certain principles of natural justice inherent in the Anglo-Saxon character which need no expression in constitutions or statutes to give them effect or to secure dependencies against legislation manifestly hostile to their real interests," why were the people of revolutionary days unwilling to rely upon that "natural justice?" If there is no danger in "an unrestrained possession of power on the part of congress" why were our forefathers so careful to restrain that power? Has human nature so changed as to make unnecessary now the constitutional limitations which were thought necessary a century ago?

Constitutional liberty has been attacked and the attack must be met at once. The doctrine laid down by Justice Brown is antagonistic to all that the American people have been taught to believe sacred. If we admit his argument when applied to Porto Ricans, upon what ground can we stand when we claim for ourselves the protection of the constitution or the bill of rights? If the principle contended for by Justice Brown is established for the government of colonies, it will by irresistible logic become operative in the United States. That the readers of THE COMMONER may fortify their own views by the wisdom of Thomas Jefferson, the following extracts are made from his writings as collected in that invaluable volume "The Jeffersonian Cyclopedia."

In 1803 Mr. Jefferson said: "Our peculiar security is in the possession of a written constitution. Let us not make it a blank paper by construction."

In 1802 he wrote: "Though written constitutions may be violated in moments of passion or delusion, yet they furnish a text to which those who are watchful may again rally and recall the people. They fix, too, for the

people the principles of their political creed."

At another time he described our constitution as "the ark of our safety, and grand palladium of our peace and happiness."

It will be remembered that the federal constitution was opposed by some because it did not contain a bill of rights, and the first ten amendments were immediately adopted to remedy this defect and provide additional guarantees to life, liberty and property. Jefferson was a firm believer in the doctrine which led to the adoption of the bill of rights. In a letter written in 1789 he said: "I disapproved from the first moment the want of a bill of rights (in the constitution) to guard liberty against the legislative as well as the executive branches of the government; that is to say, to secure freedom in religion, freedom of the press, freedom from monopolies, freedom from unlawful imprisonment, freedom from a permanent military, and a trial by jury in all cases determinable by the laws of the land."

In a letter to James Madison, written in 1787, Jefferson said: "A bill of rights is what the people are entitled to against every government on earth, general or particular; and what no just government should refuse, or rest on inferences."

At another time he defined his position as follows: "By a declaration of rights I mean one which shall stipulate freedom of religion, freedom of the press, freedom of commerce against monopolies, trial by juries in all cases, no suspensions of the habeas corpus, no standing armies. These are fetters against doing evil which no honest government should decline."

Jefferson was a believer in popular government, but he also believed in the inalienable rights of individuals—rights which the government does not give and ought not to take away—rights which cannot be safely intrusted to the keeping of any legislative body. Until recently, Jefferson's position on this subject was unanimously endorsed.

Every state has adopted a constitution placing restrictions upon the legislative branch as well as upon the other branches of the government. The state of Ohio has a constitution and a bill of rights; how can Senator Hanna and President McKinley favor a constitution and a bill of rights for Ohio and then declare that the people of Porto Rico need no such protection? If the farmers, laborers, and business men of Ohio are not willing to trust the wisdom and justice of an unrestrained state legislature, by what process of reasoning do they reach the