The Constitution and the New Territories

Address Delivered Before the Pennsylvania Bar Association, at Cambridge Springs, Pa., Tuesday, June 26, 1900, by Hon. John K. Richards, Solicitor-General of the United States.

NOTWITHSTANDING the omission from the Republican national platform of the plank declaratory of the administration's policy with reference to the government of new territory, the constitutional question involved is certain to figure largely in the discussions of the ensuing campaign. Below will be found an exhaustive contribution to the literature of this subject from the Republican standpoint, being an address delivered yesterday before the Pennsylvania Bar association by the solicitor general of the United States:

On April 11, 1899, an unanticipated war, waged in the interest of humanity, distinguished by an unbroken succession of glorious victories on land and sea, and memorable always as marking an epoch in the history of the Republic, was formally ended by the exchange of ratifications of the Treaty of Paris, whereby Spain ceded to the United States Porto Rico, Guam and the Philippine Islands.

The acquisition of these Territories, situated in distant tropical seas, and inhabited by alien races, savage or semi-civilized, strangers to our system of law and mode of government, with the accompanying obligation of so governing them as to secure and preserve peace and order and protect life and property, has brought us face to face with problems, more or less serious. The serious problem is how to govern them; underlying it is the question whether the constitution forbids us to give them the government they need. The former is a question of policy, the latter a question of law. To the discussion of the latter, as the more appropriate for the occasion and the audience, I shall address myself.

The question of the power of congress over the territories is an important but not a new one. It seems new, but it is as old as the constitution itself. We had a vast territory when the constitution was adopted and expected to acquire more, so express provision for its government was made. The purchase of Louisiana, and the government of that enormous region, scantily populated by the people of many races and of every degree of civilization, forced Jefferson's administration to find a practical solution of this question. They were the strict constructionists of that early day, but they promptly took the view that the limitations of the constitution applied only within the states united under the constitution, and that congress was entirely free to govern Louisiana as the existing conditions required. And this view was carried into legislation. The same thing was done in the case of Florida, and the Supreme court upheld it. Indeed, the cry "The Constitution follows the Flag," was not heard until after the Mexican war, when the grapple between freedom and slavery in the territories forced Calhoun to bring forward the doctrine that the Constitution ex proprio vigore extended to the territories, carrying with it, not the guarantees of liberty, but the safeguards of slavery. As Thomas Benton says in his Thirty Years View (Vol. 2, page 715):

A new dogma was invented to fit the case—that of the transmigration of the Constitution—(the slavery part of it) into the Territories, overriding and overruling all the anti-slavery laws which it found there, and planting the institution there under its own wing, and maintaining it beyond the power of eradication either by congress or the people of the Territory.

Webster Fought the Dogma.

The great expounder and defender of the Constitution, Daniel Webster, fought this dogma in the senate, but the Supreme court, in 1856, in the Dred Scott case, approved and applied it, holding the Missouri Compromise of 1820 unconstitutional and declaring that congress had no power to prohibit slavery in the territories. According to the construction thus sanctioned, wherever the flag flew the constitution went, carrying with it human slavery. The Constitution so construed was naturally denounced by the Abolitionists as "A covenant with death and a league with Hell." Acquiescence in the decision as a rule of political action was impossible for those who believed slavery wrong, and so a new party was formed, pledged to the proposition that congress could control as to slavery in the territories, and Abraham Lincoln was elected president, and the civil war came, and on a thousand battlefields the supremacy of the nation over national matters was vindicated and established then and for all time.

It was supposed this doctrine of Calhoun's, brought forward to extend and perpetuate slavery, was buried with slavery, but here it is again, threatening mischief and potent for evil. And now let us examine it closely.

Reduced to a legal proposition, the denial of the power which is being and must be exercised by the president and by congress in our new territories, amounts to this: Ceded territory becomes by the act of cession an integral part of the United States, to which the constitution ex proprio vigore at once extends, placing its people, its products and its ports on an immediate equality with ours, and conferring upon them all the rights, privileges and immunities enjoyed under the constitution by the people, the products and the ports on an immediate equality with ours, and conferring upon them all the rights, privileges and immunities enjoyed under the Constitution by the people, the products and the ports of the several states. Moreover, the limitations of the Constitution apply there as here, requiring same taxes, imposts, duties and excises to be collected, and the same Anglo-Saxon system of trial by jury to be used. Their people become at once our people, citizens of the United States, our ports become their ports, and our markets their markets; they are free to come here or to send their products here, while our taxes and our laws, although wholly unsuitable, must go there.

There is nothing obscure about this doctrine. It is plain and unmistakable. The act of cession is all powerful, its effect immutable. As soon as the title passes, the territory becomes a part of the United States, and the Constitution, ex proprio vigore, does the rest. This proposition is true as it is stated or not true at all. Either the mere act of cession makes territory a part of the United States, or it does not; either the Constitution extends as Constitution immediately and of its own force, or it does not extend as Constitution at all. Moreover, if the affirmative be true, the treaty-making power, in acquiring territory, is necessarily limited to providing for the mere act of cession. It can make no terms; it cannot make for this purpose or that; it can give no pledges; it can grant no privileges; it can reserve no questions for future disposition; in short, although called the treaty-making power, and granted without limitation, it is stripped of its proper functions, it cannot treat, it is lame, impotent, impossible, ridiculous.

President Cannot Extend Boundaries.

On the other hand, if the territory does not, by the act of cession, become immediately an integral part of the United States, if the Constitution does not ex proprio vigore extend over it then, of necessity the provisions of the treaty and the action of congress must determine whether it shall or shall not become or be deemed a part of the United States in the constitutional sense, and if ever, when? In other words, the disposition and government of the acquired territory rests with the treaty-making power and with congress. The president cannot extend the boundaries of the United States. It takes the legislative power to do that, and it may do it upon what terms it deems best.

If it takes action by congress to send the Constitution and the laws of the United States into the territory, or stated differently, to bring the territory within the scope of the Constitution, the disposition of the matter is left wholly to the discretion of congress. Congress may send or withhold, or send in part and when it sees fit. Such, in fact, has been the practice. Thus, to take one instance, in the act of September 9, 1850, organizing the territory of Utah the following section was inserted:

The Constitution and laws of the United States are hereby extended over and declared to be in force in said territory of Utah, so far as the same, or any provision thereof, may be applicable.

If it takes action by congress to "extend" the constitution, in the sense of applying its limitations and restrictions, evidently the constitution goes not as a constitution but as an act of congress. Its provisions are virtually incorporated into the act extending it and operate by adoption as a legislative enactment. In short, under this view, the territory becomes by the acts of session not a part but a possession of the United States, subject to complete control and disposition by congress. Such territory may, if conditions permit and if congress deems proper, be treated for legislative purposes as a part of the United States, but it does not in the constitutional sense become a part of the United States, over which the constitution ex proprio vigore extends, until organized as a state and admitted to the union.

In the noted case of Fleming vs. Page (9 How, 583,614), Chief Justice Taney says that the United States "may demand the cession of territory as the condition of peace, in order to indemnify its citizens for the injuries they have suffered, or to reimburse the government for the expense of the war." If territory may be acquired for such purpose, it certainly may be held under such conditions as may be proper and necessary to carry the purpose into effect. Territory acquired to indemnify and reimburse may be held as a possession or as a pledge, with the reserved power of disposition and control suitable to accomplish the desired end. To incorporate such territory into the union and make it a part of the United States might defeat the very object of the acquisition. Once there it would have to stay.

The Constitution.

The constitution, while vesting in the president and senate treaty-making power, provide that "This constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made or which shall be made, under the authority of the United States, shall be the supreme law of the land" (Article 6). The treaty of Paris was made "under the authority of the United States," and contains the terms upon which we acquired these territories. It is unique in this, that while former treaties of cession all provided that the civilized inhabitants of the ceded territories should ultimately become citizens of the United States, this treaty left the determination of their civil rights and political status to congress. Let me refer to a few pertinent provisions.

Spain ceded to the United States Porto Rico, Guam (Article 2) and the Philippines (Article 3). Spanish subjects, natives of the peninsula, residing in such territory, were given one year from the exchange of ratifications, that is, until April 11, 1900, to preserve their allegiance to Spain by making a declaration in a court of record. In default of this, they were to be held to have adopted, not the nationality of the acquiring power, but the "nationality of the territory in which they may reside." (Article 9). Then comes this striking provision:

The civil rights and political status of the native inhabitants of the territories hereby ceded to the United States shall be determined by the congress.

The inhabitants of the territories were to be "secured in the free exercise of their religion" (Article 10), a wholly unnecessary provision if the constitution of the United States extended its shield over them. Spaniards residing in the territory were to be "subject to the jurisdiction of the courts of the country," not the courts of the United States, "pursuant to the ordinary laws governing the same" (presumably the Spanish or civil law), and were to have the right to appear and pursue the same course therein "as citizens of the country to which the courts belong" (Article 11).

For ten years Spanish ships and merchandise were to be admitted to the ports of the Philippines on the same terms as ships and merchandise of the United States (Article 4); and for ten years Spanish scientific, literary and artistic works were to be admitted free of duty into all th ceded territories (Aricle 13).

Purpose of Provisions.

The purpose of these provisions is plain. Although under the power and protection of the United States, the territories are to have their own laws, their own courts, their own ports, their own commerce, their own citizenship, their own system of revenue. A separate and distinct existence under but without the United States is contemplated. The parties to the treaty both knew that the location and condition of these islands would not permit their incorporation into the United States, and the application to them of those laws of commerce, of revenue and of civil and criminal procedure, which the constitution requires to be uniform throughout the United States. They provided, therefore, for a system of government which should be suited to local conditions and needs. Are we free to disregard the plain provisions of the treaty, which the constitution says shall be the supreme law of the land? If so, what becomes of the consent of the treaty-making power to the acquisition? Would the president and the senate have consented to take the territories upon any other terms?

Certainly the treaty never intended to make these tropical islands a part of the United States in the constitutional sense, and just as certainly did it make them a part of the United States in the international sense. The term "the United States" may mean the territory which governs or the territory over which the government extends. The former is the constitutional, the latter the international, or it may be, legislative sense. In the latter sense, states and territories, all places subject to the jurisdiction of the national power, combine to constitute what Chief Justive Marshall in Loughborough vs. Blake (15 Wheaton, 317, 319) (1820), termed the "American Empire," "Our Great Republic."

"Does this term," said he, referring to the "United State," "designate the whole, or any particular 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 expression was a dictum, unnecessary to the decision of the case, for the exclusive power of legislation within the District of Columbia vested in congress authority to levy a direct tax there, which was the only question involved. But it is to be observed that the great chief justice was clearly correct in holding that the taxing power extends throughout the United States in the international sense, although the limitations of he constitution apply only throughout the United States, in the constitutional sense. What we are concerned with is the constitutional sense, for the vital question is whether the limitations and prohibitions which under the constitution apply throughout the United States, opera e in our new territories.

Established by the People.

As stated in its preamble, the constitution of the United States was ordained and established by "the people of the United States" "for the United States of America." There is no ambiguity about the meaning of the words "United States of America" as here used. They mean the states united under the constitution and are named individually in the second section of the first article. They were the thirteen colonies which had first become United States under the confederation, and through their people, framed the present constitution in order, among other things, to form a more perfect union. This conclusively appears from the sixth article, which provides that all debts contracted before the adoption of the constitution "shall be as valid against the United States under the constitution, as under the confederation."

The fact is not to be lost sight of that the primary source of sovereign power was the people of the thirteen original states. These men knew they were forming a government that would endure for ages and dominate a continent, but it does not appear that they worried themselves about the "consent of the governed" outside the states which they inhabited and which alone were to participate in political power. They formed a government in which the people of the states were alone represented and adopted a constitution which, in its distribution and limitation of power, applied only to the states.

In the early case of Hepburn vs. Ellzey (2 Cranch, 445) (1805), the question came before the Supreme court whether a citizen of the District of Columbia could maintain an action against a citizen of Virginia. In support of the jurisdiction Mr. Lee insisted that to give the term state a limited construction, would deprive the citizens of the district of the general rights of citizens of the United States and put them in a worse condition than aliens; and he put the pertinent question, whether, in the face of the provision that "No tax or duty shall be laid on articles exported from any state," congress could lay a tax or duty on articles exported from any state, congress could lay a tax or duty on articles exported from the District of Columbia. But the court properly held that a citizen of the district is not a citizen of a state and cannot use the United States courts as such, Chief Justice Marshall saying:

The members of the American confederacy only are the States contemplated in the Constitution. The house of representatives is to be composed of members chosen by the people of the several states, and each state shall have at least one representative. The senate of the United States shall be composed of two senators from each state. Each state shall appoint, for the election of the executive, a number of electors equal to its whole number of senators and representatives. These clauses show that the word state is used in the Constitution as designating a member of the Union.

Applies to Citizen.

It is obvious that this ruling applies, and indeed it was subsequently held to apply, to the citizens of the territories.

The states alone are the members of the American confederacy; they constitute the union, and the union and the United States are equivalent terms in the constitution. Thus the constitution and "the laws of the United States" are made the supreme law of the land (Article 6, Clause 2), yet congress is to provide for calling forth the militia to execute "the laws of the union" (Article 1, Section 8, Clause 15). All legislative powers granted are vested in the congress "of the United States" (Article 1, Section 1), but the president is required, from time to time, to give to the congress information of the state "of the union" (Article 2, Section 3).

In the first article, defining the legislative powers, it is provided that "representatives and direct taxes shall be apportioned among the several states which may be included within this union." This does not include the territories, but does operate throughout the United States.

"Duties, imposts and excises shall be uniform throughout the United States." This, too, is a geographical limitation, requiring indirect taxes to operate generally throughout the United States, that is, among the several states composing the union. The history of the adoption of this provision will be found, in interesting form, in the learned opinion of Mr. Justice White in the recent case of Knowlton vs. Moore (177 U. S. ——), sustaining the constitutionality of the federal tax on legacies. In the original draft, the provision prohibiting any preference to the ports of one state over those of another and that conferring and limiting the taxing power, were placed together. They really mean the same thing, that the states of the union shall be treated alike in the regulation of commerce and the imposition of taxes. The uniformity required in each case was a uniformity among the several states of the union. And this is shown by the decision in the Cherokee tobacco case (11 Wall., 616), affirming the constitutionality of the Act of 1868, extending the excise tax on liquors and tobacco alone to the Indian territory. A minority of the court (Justices Bradley and Davis) held, in view of the treaty provisions, that it was not the intention of congress to extend even the tax on liquors and tobacco to the Indian territory. Obviously, the court was unanimous in the opinion that, although the Indian Territory is within the exterior boundaries of the United States, the provision of the constitution requiring excises to be uniform throughout the United States does not apply within the Indian Territory, a conclusion which effectualy disposes of the dictum in Loughborough vs. Blake.

Powers of Regulate Commerce.

The constitution gives congress the power to regulate commerce 'among the several states;" "to establish a uniform rule of naturalization and uniform laws on the subject of bankruptcy throughout the United State. The recent acts have properly been extended to the contiguous territories, which congress, in its discretion, has seen fit to treat as a part of the United States.

It is provided that "no tax or duty shall be laid on articles exported from any state," but nothing is said about any territory; and that "no preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another, nor shall vessels bound to or from one state be obliged to enter, clear or pay duties in another;" but nothing is said about the ports of any territory.

The prohibitions of the Tenth section of the First article apply only to the states.

In the Second article, relating to the executive power, it is provided that congress may determine the date on which the electors shall give their votes, which day shall be the same "throughout the United States" (Article 2, Section 1). Necessarily the United States here means the states of the union, which alone take part in electing a president. Later it is provided, that during his term of office, the president shall not receive in addition to his stated compensation, any other emolument "from the United States, or any of them," showing the states alone were in mind.

The third article is devoted to the judicial power of the United States. It has been repeatedly held that the territorial courts are not organized under this article and are therefore not courts of the United State, and I think when the question is properly presented, it will be held that the limitation contained in his article with respect to trial by jury only applies to the courts of he United States, and does not extend to the territorial courts unless congress has so provided. The cases which apparently hold that it does can all be distinguished. This third article constantly keeps in mind the relation of the United States to the several states, and of those states and their citizens to one another. No consideration whatever is given to territories and their citizens.

The Fourth articles guards the rights of each state and its citizens with respect to every other state. The public acts of each shall have full faith and credit is all others. The citizens of each shall be entitled to the privileges and immunities of citizens in the several states. Fugitives from justice shall be surrendered; new states may be admitted into "this union"; and a republican form of government to every state in the union is guaranteed. But there is no safeguard or guarantee whatever in the case of a territory and its citizens. No republican form of government for the territories is guaranced. On the contrary, just preceding he guarantee to the states and following the provision for the admission of new states, the following plenary power is made:

Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States.

Territory as Property.

Notice the phraseology. Territory is treated as property, as something distinct from the United States, something owned by the United States, a subject to be ruled and disposed of by congress at its discretion as conditions might require ,without being hampered by the restrictions which were framed for the states.

The thirteenth amendment contains an explicit recognition of the fact that a place subject to the jurisdiction of the United States, is not necessarily a part of the United States, for it provides:

Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

There are other provisions to which I might refer if time permitted. I believe a careful examination of the constitution leads to but one conclusion, that the power of congress over the territories is plenary and absolute. Whether it follows from the power to acquire and hold territory, or is conferred by the clause of the constitution which declares that "congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States," it is full and complete and is unhampered by those limitations and restrictions which were intended to apply only within the states of the union. There is a line of decisions of the Supreme court going back to the early days which sustains this view.

Some years after the dictume in Loughborough vs. Blake, the case of Insurance Company vs. Canter (1 Peters, 11, 1828), came before the Supreme court over which Chief Justice Marshall still presided. A court of the territory of Florida, composed of a notary and five jurors, had sold a wrecked cargo of cotton, on a salvage claim, and transferred the title to Canter, the purchaser. It was insisted that upon the acquisition of Florida it became a part of the United States, over which the constitution extended, and that under the constitution admiralty jurisdiction could be exercised only by the courts of the United States. It had to be conceded that the territorial court had not been organized in accordance with the constitution, which requires judges to be appointed during good behavior. Mr. Webster argued the case for Canter, and in behalf of the jurisdiction said (page 538):

What Is Florida?

What is Florida? It is no part of the United States. How can it be? How is it represented? Do the laws of the United States reach Florida? Not unless by particular provisions. The territory and all within it are to be governed by the acquiring power, except where there are reservations by treaty.

By the law of England, when possession is taken of territories, the king, Jure Coronæ, has the power of legislation until parliament shall interfere. Congress have the Jus Coronæ in this case, and Florida was to be governed by congress as she thought proper.

What has congress done? She might have done anything—she might have refused a trial by jury and refused a legislature. She has given a legislature, to be exercised at her will, and a government of a mixed nature, in which she has endeavored to distinguish between State and United States jurisdiction, anticipating the future erection of the Territory in to a state.

Mr. Webster won his case. The opinion of Chief Justice Marshall is worthy of careful study. Its logic is unanswerable. While the power of congress to govern ceded territory was declared to be inevitable and absolute, the limitation of the constitution upon the exercise of the judicial power of the United States was expressly held to be confined to the states, the chief justice saying (page 545):

Although admiralty jurisdiction can be exercised in the states in those courts only, which are established in pursuance of the third article of the Constitution, the same limitation does not extend to the territories. In legislating for them, congress exercises the combined powers of the general, and of the state government.

The doctrine thus enunciated by the great chief justice, has been approved and followed by his successors in a long line of cases, including Benner vs. Porter (9 Howard, 235; 1850), Mr. Justice Nelson; Clinton vs. Englebrecht (13 Wall., 432; 1871), Chief Justice Chase; National Bank vs. Yankton (101 U. S., 129; 1879), Chief Justice Waite; Murphy vs. Ramsey (114 U. S., 15; 1884), Mr. Justice Matthews; Mormon Church vs. United States (136 U. S., 1; 1890), Mr. Justice Bradley; McAllister vs. United States (141 U. S. 174; 1891), Mr. Justice Harlan; and Shively vs. Bowlby, (152 U. S., 1; 1894), Mr. Justice Gray.

Justice Waite Speaks.

Chief Justice Waite speaks of the territories as "the outlying dominion of the United States," an apt phrase. He says that congress "may do for the territories what the people, under the constitution of the United States, may do for the states," the fullest and clearest expression of sovereign power without limitation. Mr. Justice Matthews says that "the people of the United States, as sovereign owners of the National territories, have supreme power over them and their inhabitants." "It rests with congress to say, whether, in a given case, any of the people, resident of the territory, shall participate in the election of its officers or the making of its laws." Mr. Justice Bradley says that "It would be absurd to hold that the United States has power to acquire territory, and no power to govern it when acquired." Mr. Justice Harlan says that "The whole subject of the organization of territorial courts, etc., was left, by the constitution, with congress under its plenary power over the territories of the United States." And Mr. Justice Gray says that "By the constitution, as is now well settled, the United States, having rightfully acquired the territories, and being the only government which can impose laws upon them, have the entire dominion and sovereignty, national and municipal, federal and state, over all the territories, so long as they remain in a territorial condition."

Are there then no limitations on this plenary power of congress to govern the territories? I believe there are. Obviously, those limitations which are laid upon the exercise by congress of a special power irrespective of the place where exercised, do apply, such as those forbidding congress to pass any bill of attainder, or any ex post facto law, or confer any title of nobility. The prohibition of slavery operates by express provision everywhere. But these are not the only limitations. It is always to be borne in mind that this is a government of the people, by the people and for the people, which was created, among other things, to establish justice and to secure the blessings of liberty. A government thus dedicated to liberty and justice, is based on fundamental principles and at all times must show respect for fundamental rights. Outside the limitations of the constitution, its spirit requires the government to treat all subject to our dominion with justice and equality under the law. Tyranny and oppression cannot constitutionally exist under the sovereignty of the republic, which is based upon the proposition that all men are entitled to life, liberty and the pursuit of happiness. This is what Mr. Justice Bradley meant when he said in Mormon Church vs. United States (136 U. S. 1, 44). "Doubtless congress in legislating for the territories would be subject to those fundamental limitations in favor of personal rights which are formulated in the constitution and its amendments; but these limitations would exist rather by inference, and the general spirit of the constitution from which congress derives all its powers, than by any express and direct application of its provisions." And it was to this that Mr. Justice Harlan referred in McAllister vs. United States (141 U. S., 174, 188), when he said: "How far the exercise of that power (the power to govern the territories) is restrained by the essential principles upon which our system of government rests, and which are embodied in the constitution, we need not stay to inquire"; and then he quotes the language of Mr. Justice Bradley, which I have just read.

Essential Principles.

But these essential principles upon which our government rests, these fundamental limitations in favor of personal rights, do not compel the president and congress to provide trial by jury in territories where no proper juries are to be had, or to let crime go unpunished. It is true that, in the case of Callan vs. Wilson (127 U. S., 540, 1887), it was held that under the constitution a man accused of a misdemeanor, committed in the District of Columbia, involving the punishment of imprisonment, was entitled to a trial by jury. The case was properly decided, because the District of Columbia had once been a part of Maryland and therefore a part of the United States under the constitution. The guarantee having once attached, was never withdrawn. But the cases of Webster vs. Reid (11 How., 437, 1850), and Reynolds vs. United States (98 U. S., 145, 1878), which are cited in Callan vs. Wilson, are not authorities upon the point that the limitations of the constitution respecting trial by jury extend, ex proprio vigore and without congressional action, to the territories. The first case (Webster vs. Reid) arose in the territory of Iowa and involved the right of trial by jury in a civil action, but the court points out in the opinion that the organic law of this territory, by express provision and by reference, extended the laws of the United States, including the ordinance of 1878, over the territory, thus guaranteeing the right of trial by jury involved in the case. And in the second case (Reynolds vs. United States), arising out of a conviction in Utah for bigamy, while the court did hold that the accused was entitled to a trial by jury, it is to be observed that congress, by the act of September 9, 1850, had extended the constitution an laws of the United States over the territory, and thus granted by statutory enactment the right inolved.

In the latter case of American Publishing Co. vs. Fisher 166 U. S., 464; 1897), while the court held that the territorial law of Utah authorizing a verdict when nine or more jurors concurred, was invalid, the decision was placed solely upon the ground that congress had, by the act of September 9, 1850, extended the constitution and laws of the United States over the territory and subsequently enacted that no party should be deprived of the right of trial by jury. Mr. Justice Brewer points out that the cases of Webster vs. Reid and Reynolds vs. United States, do not conclusively establish the proposition that the constitutional guarantee of a trial by jury extends ex proprio vigore into the territories. It is, he says, "matter of dispute." The clear effect of this decision is to hold that the guarantees of the constitution do not, of their own force, extend into the territories. When they go there, they go as the consequence of congressional action.

Case of Thompson.

The recent case of Thompson vs. Utah (170 U. S., 343; 1898), turns upon one point simply, the ex post facto character of the state law of Utah, providing for a jury of eight, when applied to a crime when a territory, and when, under the territorial law, the accused was entitled to a trial by a jury of twelve.

On the other hand, the supreme court has held, over and over again, that the states may do away with an indictment by a grand jury and a trial by a petit jury in criminal cases, and that no fundamental rights under our constitution or form of government are violated by so doing (Hurtado vs. California, 110 U. S., 516; Maxwell vs. Dow, 176 U. S., 581). In the line of decisions between these two cases, it has been repeatedly held that the first ten amendments were intended as restrictions and limitations upon the power of the general movement,and were not intended to and did not have any effect upon the powers of the several states; also, inevitably, that the right to be indicted by a grand jury and tried by a petit jury is not a privilege or immunity of a citizen of the United States. The right of the people of the states to change their laws and system of procedure so as to make them conform to changed views of administration, or the exigencies of their social life, has been sustained. If the constitutional guarantee relating to indictment by a grand jury and a trial by a petitit jury are not fundamental in character, and therefore do not tie the hands of the inhabitants of a territory when organizing a state, how can they be held to tie the hands of the president and congress in preserving order and protecting life and property in our new possessions.

It is a strange contention that as soon as the treaty went into effect the power of the president and congress to preserve order in these new possessions ceased. There were no grand juries, no petit juries, no machinery for punishing crime by the process of the Anglo-Saxon law, and yet, if the limitations of the constitution ex proprio vigore extended over these possessions, crime could be punished in no other way. The constitution which gave the United States the power to acquire territory by treaty, and imposed upon congress the duty of disposing of and governing it, did not leave the national government helpless by demanding impossibilities. Until the progress of the people of these territories, their civilization and education, will permit of the organization of courts and jries after our system, these guarantees must be held inoperative, or the preservation of peace and order and the protection of life and property be abandoned. The situation resembles that discussde in the case of In re Ross (140 U. S., 453), where a conviction of murder by a consular court in Japan, acting without a jury and upon information, was sustained, Mr. Justice Field saying (page 464):

And besides their enforcement abroad in numerous places where it would be highly important to have officers invested with judicial authority would be impracticable from the impossibility of obtaining a competent grand or petit jury. The requirement of such a body to accuse and try an offender would, in a majority of cases, cause an abandonment of all prosecution.

Territorial Governments.

The theory upon which our territorial governments have been organized has been to leave to the inhabitants of each territory, such powers of civil government as they may be capable of exercising. As their education in government progressed, the powers were enlarged until, finally, upon demonstrating their fitness for statehood, they have been allowed to organize their own republican form of government and have been admitted into the union upon terms of equality with the other states. Whether any one of these new possessions will ever become fit to be admitted as a state, time alone will show. We do not have to cross that stream yet. We can hold these territories, enforce peace and order, protect life and property, educate their people, civilize them, put them in the way of making the most of themselves, and leave the result to the future. When they are able to govern themselves, we shall be free to determine intelligently their permanent relations to us. Time and experience will show what is best for them and for us. Due regard for their laws and traditions should be shown. They have been accustomed to the jurisprudence of the civil law. It would be the height of tyranny and oppression to compel them to abandon it without good cause. In providing them a system of local government we should keep in mind what Mr. Justice Brown said in the recent case of Holden vs. Hardy (169 U. S., 366):

In the future growth of the nation, as heretofore, it is not impossible that congress may see fit to annex territories whose jurisprudence is that of the civil law. One of the considerations moving to such annexation might be the very fact that the territory so annexed should enter the Union with its traditions, laws and systems of administration unchanged. It would be a narrow construction of the Constitution to require them to abandon these, or to substitute for a system which represented the growth of generations of inhabitants a jurisprudence with which they had had no previous acquaintance or sympathy.

We have the new territories. We are responsible for them. We have entered upon a new epoch. The old sense of security and indifference, which a policy of isolation gave us, is gone. We have become one of the world powers, sharing the burdens they must bear. Even now our marines, shoulder to shoulder with the men of England and Germany and Russia and France and Austria and Italy and Japan, are at the gates of far-off Pekin to enforce the just demands of civilization. The path of duty before us is plain. May we not walk in it? Does the constitution forbid? Is the constitution a trap, caught in which we shall excite the pity of our friends and the derision of our foes? I refuse to believe so. The constitution is no mere declaration of denials. It created a nation, which has become the greatest on the earth. When it conferred power, it took care not to cripple action. It still remains the most perfect instrument ever struck off by the hand and brain of man, under which we are armed for every emergency and able to cope with every condition.

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THE STEIN-BLOCH CO.

We Want Critical Dressers

To see and examine these TEN, TWELVE AND FIFTEEN DOLLAR SUITS. A great many men in this city who are considered good dressers have already bought them. Maybe you have seen them on your friends and taken them for the custom tailor's product? There is a great deal more than ordinary merit about these ready-to-wear suits, and we only want a chance to convince you that this is the only store in this city that can show such cloth quality and tailoring for these prices. We placed our cloth orders long before you ever thought of wearing a Summer Suit, the consequence is that we got in ahead of the recent advance in price and these ready-to-wear suits are marked at prices hardly more than the wholesale tailors would charge us today.

At Ten Dollars

All these ready-to-wear suits are cut by the newest patterns, either in the single or double-breasted style. The cloths are fancy worsteds or Bannockburn Tweed of neat and dressy patterns. The cloth values and style can seen in our large Penn avenue show window, marked in plain figures, at..... **$10**

At Twelve Dollars

We have unusual advantages in this store for giving you quality and style that cannot be had in other stores. We give large orders to our tailors and to the cloth mills. For these reasons we get bigger discounts and give better values than if we had to buy from the jobber, as the smaller stores do. See these values at..... **$12**

At Fifteen Dollars

If you looked over all the cloths shown by every custom tailor in this city, we don't believe the assortment could be any larger than we show in these suits made up ready to wear, and no custom tailor could possibly put the same work into a single suit for less than $25. See them in our Lacka. avenue show window at... **$15**

Samter Brothers,

Scranton's Leading Outfitters.

Russia a Menace to World's Progress

THE WORLD'S HISTORY is the story of the white man. With the exceptions of the Chinese, Mexicans and Peruvians history treats of the Caucasian or white races almost exclusively. The Egyptians, Hebrews and Phoenicians, who were the ruling powers in ancient times, belonged to two groups of the Caucasian races. A third division is the Aryan or Indo-European and this is the true historic family. As the swinging of the pendulum, he surging and ebbing of the tide, the courses of the planets and the life of a human being follow a universal law of rhythmical movement, so the members of this group, obeying the same law, rise from obscurity to a controlling position, spread themselves abroad by force of arms, impress on the dependent and surrounding tribes their customs, religion, education and civilization. Each exhausts itself in the process, has its position wrested from it by a race of superior energy and retreats into obscurity and subjection. This has been the course of the Hindoos, Persians, Greeks and Latins, and is it not the probable career of the remaining Aryan races?

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The Anglo-Saxons, uniting the best of the German and Celt, have rapidly traversed the first part of this course. Their advance during this century in territory, population, commerce, navigation, war power, invention, industry and colonization has far surpassed that of any other nation for a like period. Great Britain and the United States, the Anglo-Saxons powers, control nearly one-third of the land area and population of the world. Their position is one of the most unique and marvelous in history. The Anglo-Saxon stands as the arbiter of the world, supreme, self-confident, respected and feared. As stood the Roman republic in relation to the ancient civilized world, so stand the Anglo-Saxon nations in the world today.

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But there is another Aryan race whose civilizing influence has not yet had a chance to exert its power. With this single exception all the white races have successfully led in the progress of civilization and each has left as its legacy to the world some idea necessary to the highest advancement of humanity. Now, however, this race, the Slavonian, is advancing on the stage, eager to take the leading role. The Slav is good-natured, long-suffering, strong and hardy and endowed with marvelous powers of adaptation to circumstances. Eminent authorities recognize him as the best colonizer among the Aryans by reason of his wonderful ability to absorb the tribes with which he comes in contact. Strange as it may seem, he is possessed of a thoughtfulness for others and a vein of soft humaneness that does not belong to any other of the western peoples.

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When the Huns, Mongols and Tartars were making their invasions into Europe, the Slavonians received the brunt of the conflict and, while thus guarding the western nations from hindrances to their advancement, were themselves retarded in civilization and education. Their former lack of progressiveness was also due to their distribution over so large a territory, only thirteen per cent. living in towns or cities. But the civilization of the Slavs is only a matter of time, as is shown by the ability which the Russians have already exhibited in music, art and science. Russia today is a veritable bee-hive. Factories are springing up, the methods of agriculture are being improved, the press is free, and the number of schools and colleges is constantly increasing. The young czar, Nicholas II, considers the internal development of his realm his paramount duty to his subjects and his recent law to abolish Siberian exile is a proof of his interest in their welfare. The attainment by the Slavs of the higher civilization will be no more wonderful than has been the transformation of the barbaric German conquerors of Rome.

Our strongest impression of Russia, however, is that of a vast military empire. The Russian army of more than 5,000,000 men is, in the opinion of General Miles, the best in Europe. Its officers are well-skilled, its soldiers hardy and capable of greater endurance than those of any other army. Its army and its severe and variable climate render Russia practically unconquerable and he who would attempt to subdue the Slavs would probably repeat the experience of Napoleon, and find the grave of his hope in the Russian snow.

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When the Russians first appeared in history they occupied one-fifth of their present European possessions. Now the Russian empire has a larger continuous territory than any other nation, having increased sixteen-fold in 400 years. As a glacier steadily and powerfully moves down from the region of eternal snow, so Russia has extended her domains on the line of least resistance over the effeminate races of Asia. Like a glacier, also, this slow advance may at any time break forth into a rapid torrent and carry everything before it.

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The history of Russia is a chronicle of expansion, conquest and absorption, containing no record of any important withdrawal from previously occupied territory. Although defeated by England, France and Turkey in the Crimean war, Russia in a short time retrieved the slight territorial losses, re-fortified Sebastopol, regained her control of the Black sea, and took advantage of the ensuing peace to obtain new territory in Asia. The whole of Siberia has been obtained without a conflict with European nations and usually without exciting the conquered tribes.

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This acquisition of territory is still continuing through the use of bold and skillful methods. One of these is the sending of traders into adjacent foreign towns followed by Cossack guards. In this way Russia obtained a hold on Persia and the grasp was tightened this year by a large Russian loan to the Persian government. In this way also Russia has annexed slice after slice of Afghanistan in her eagerness to get Herat, the "Gate of India." She has now built a railway to the boundary line within a few miles of Herat. In the event of war Russia could seize this key to India and hold the country at her mercy. At the Pamirs Russia has extended her territory to a point within twenty miles of India. Towering over the "Roof of Asia," the great black bear is covetously viewing the rich land of the lion. His figure looms up against the horizon large and protentous. He represents a nation whose manhood has been strengthened by life in a vigorous climate; whose army is the largest and most effective in the world; whose country is as invulnerable as Achilles; and whose aim and dream is even greater than its power. This aim is nothing less than the complete control of Asia. In the attainment of this purpose the English will be driven from India, the Americans will be thrust out of the Philippines, China will be annexed to Russia, and Corea, the sick man of the East, will die in a Russian hospital for treatment. With these results attained the position of the Slav is assured and who, then, can measure the power of the Lord of Asia?

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Shall the Anglo-Saxons passively allow the territory to be taken from them, their commercial interests in the east to be destroyed, their supremacy to be usurped by an absolute monarchy? The people of the United States and the British empire emphatically and confidently answer "No!" Humanity and civilization re-echo the answer with a prayerful "Amen!" To support this decision special preparation is needed in the line of diplomatic training and fuller information on the part of officials, and more unanimity and quickness of action in congress and parliament. So closely are the Saxons and Slavs related that the old adage may be fittingly changed to read: "When Saxon meets Slav comes the tug of war." The struggle will demand the exercise of all the best qualities of the Anglo-Saxon character. The Anglo-Saxon love of liberty, energy, push, talent for material progress, morality and Christianity will prove factors in winning the victory. But if they eat the lotus leaves of over-confidence, or sleep may prove fatal.

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The stability of a nation depends on the character of the individual. Therefore, let each raise the standard of integrity and purity within himself and increasing vigor and keep it free from stain and defeat. May the Anglo-Saxon awake to the greatest international problem of the twentieth century and continue the march of empire in the assurance that none can take their place while freedom and righteousness remain their watchword. Wayland