"COLONY," - OR "FREE STATE"?
"DEPENDENCE," - OR "JUST CONNECTION"?
"EMPIRE," - OR "UNION"?

An Essay

Based on the Political Philosophy of the American Revolution, as Summarized in the Declaration of Independence, towards the Ascertainment of the Nature of the Political Relationship Between the American Union and Its Annexed Insular Regions

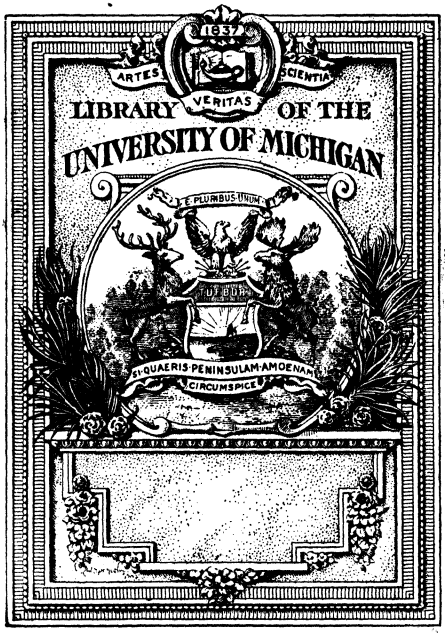
AND

THE QUESTION OF TERMINOLOGY.

An Address

Containing the Substance of the Foregoing Essay, with some Additions, Delivered before the Section for the Study of the Government of Dependencies, of the American Political Science Association, at the Meeting held at Providence, December 29, 1906

By Alpheus H. Snow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WASHINGTON
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From the time of the acquisition of Porto Rico and the Philippines, in 1898, under a Treaty with Spain which left indefinite the relations between the American Union and those regions, the question of the nature of this relationship has been discussed.

The Republican party, which has been in power ever since the war, has justified its acts on the ground of political necessity. Its policy has been that of giving the people of the Islands good administration, just treatment, and all practicable self-government. The Democratic party has declared such a policy to be only imperialism and colonialism under another name. It has asserted that "no nation can endure half Republic and half Empire" and has "warned the American people that imperialism abroad will lead quickly and inevitably to despotism at home." It has characterized the Republican government in the Insular regions as an "indefinite, irresponsible, discretionary and vague absolutism," and Republican policy as a policy of "colonial exploitation." That the American people have believed the Republican administration to have been good and beneficent, is shown by their retaining that party in power. But it is perhaps not too much to say that nearly all thoughtful persons realize that some part of the Democratic complaint is just, and that there is at the present time a lack of policy toward the Insular regions, due to the inability of either of the political parties, or the Government, or the students and doctors of political science, to propound a theory of a just political relationship between us and our Insular brethren which will meet with general approbation.

We are, however, not peculiar in this respect. Great Britain, France and Germany are in the same position. In none of

these countries is there any fixed theory of the relationship between the State and its annexed insular, transmarine and transterranean regions. The British Empire, so called, containing as it does several strong and civilized States in permanent relationship with Great Britain, gives many signs, to the student, of the direction in which political thought is traveling in its progress toward a correct and final theory; but at the present time there seems to be no prospect of the emergence of a final theory in that country. Here in America, political thinking, following the line of least resistance, has, as a general rule, concentrated itself upon the Constitution of the United States, as if in that instrument an answer was to be found for every political problem with which the Union may be confronted. To some of us, however, it has appeared inconsistent with the principles of the American Revolution that the Constitution of the United States should be the Constitution of any communities except the thirteen States forming the original Union and those which they have admitted into their Union; and, while yielding to none in our belief in the supremacy of the Constitution throughout the Union, we have sought to base the relationship between the Union itself and its Territories and annexed insular, transmarine and transterranean regions, upon such principles as would enable the American Union to justify itself in the eyes of all civilized nations, and as would be consistent with the ideas for which it stood at the Revolution. Those of us who thus limit the effect of the Constitution to the Union are charged with advocating an absolute power of the Union over its annexed regions. It is assumed that there is no intermediate theory between that which assumes the Constitution of the American Union to extend to these regions in some more or less partial and metaphorical way,—for it is evident upon inspection that it cannot extend in any literal way,—and that which assumes that the Union is the Government of all these regions with absolute power.

It is a somewhat curious illustration of the truth that history repeats itself that for ten years before the Continental Congress met in 1774, the British and Americans alike, with some few exceptions, discussed the question of the relationship between

Great Britain and the American Colonies as one arising from the extension of the Constitution of the State of Great Britain over America, just as for the past eight years Americans, Porto Ricans and Filipinos alike, have, with few exceptions, discussed the question of the relationship between us and our Insular brethren as one arising from the extension of the Constitution of the United States over these regions. It was not until the Continental Congress had discussed the matter for two years that this theory was definitely abandoned and the rights of the Americans based upon the principles which our Revolutionary Fathers considered to be just. We have not yet attained to this broader view. At the present time the doctrine of the Supreme Court, and therefore of the Government, is that all acts of the American Government in the annexed insular, transmarine and transterranean regions, are acts of absolute power, when directed toward communities, though tempered by "fundamental principles formulated in the Constitution" or by "the applicable provisions of the Constitution," when directed toward individuals.

I shall ask the reader to follow me in trying to find out exactly what this broader view of the Revolutionary Fathers was, and to adjudge, on the considerations presented, whether they did not discover the *via media* between the theory of the right of a State to govern absolutely its annexed insular, transmarine and transterranean regions, and the right of a State to extend its Constitution over these regions,—regions which, it is to be remembered, can never, from their local and other circumstances, participate on equal terms in the institution or operation of the Government of the State.

In trying to rediscover this *via media* of the Fathers, I shall accept the Declaration of Independence as the final and complete exposition of their theories; and in interpreting that great document I shall conform to the established rules of law governing the interpretation of written instruments.

Let me first, however, call attention to the well-known, but very interesting fact, that the American people, throughout this period of eight years since the Spanish war, during which the question has been discussed by experts almost exclusively as

one which relates to the application of the Constitution outside the Union, have always had an idea that it was the Declaration of Independence, rather than the Constitution, to which we were to look for the solution of our Insular problems. In 1900, the Democrats, in their platform, "reaffirmed their faith in the Declaration of Independence—that immortal proclamation of the inalienable rights of man" and described it as "the spirit of our Government, of which the Constitution is the form and letter." The Republicans in their platform declared it to be "the high duty of Government * * * to confer the blessings of liberty and civilization upon all rescued peoples," and announced their intention to secure to these peoples "the largest measure of self-government consistent with their welfare and our duties." The Populists, in their platform in the same year, insisted that "the Declaration of Independence, the Constitution and the American flag are one and inseparable." The Silver Republicans declared that they "recognized that the principles set forth in the Declaration of Independence are fundamental and everlastingly true in their application to government among men." The Anti-Imperialists declared that the truths of the Declaration, "not less self-evident today than when first announced by the Fathers, are of universal application, and cannot be abandoned while government by the people endures." In 1904, the Democratic party, while professing adherence to fundamental principles, declared in favor of casting into the outer darkness of a fictitious "independence" every people "incapable of being governed under American laws, and in consonance with the American Constitution," but the Populists still held to the principles of the Declaration, while the Republicans held to their declarations of 1900.

It is an ancient and well-established rule of law for the interpretation of written instruments that when the meaning of the words used is not so clear as to leave no room for doubt, and when there thus exists what is called in law an ambiguity, it is proper to consider the circumstances surrounding the execution of the instrument, so that, by placing ourselves as nearly as possible in the same situation in which the persons who exe-

cuted the instrument were at the time of its execution, we may have a basis for forming a reasonable opinion as to which of two or more possible constructions is correct. That such an ambiguity exists in the Declaration is undeniable. Opinions concerning the meaning of its philosophic statements, and indeed of nearly all its statements, differ between extremes at one of which are arrayed those who, with Rufus Choate and John James Ingalls, regard its philosophic declarations as "glittering generalities," and at the other of which stand that great body of men and women, living and dead, who, with Abraham Lincoln, believe, and have believed, that these declarations are the foundation of the only true and final science of politics. Following this ancient rule of interpretation, therefore, let us consider the circumstances surrounding the Declaration of Independence.

From the earliest times, the political philosophy of the people of America was directly connected with the religious and political philosophy of the Reformation. The essence of that philosophy was that man was essentially a spiritual being; that each man was the direct and immediate creature of a personal God, who was the First Cause; that each man as such a spiritual creature was in direct and immediate relationship with God, as his Creator; that between men, as spiritual creatures, there was no possibility of comparison by the human mind, the divine spark which is the soul being an essence incapable of measurement and containing possibilities of growth, and perhaps of deterioration, known only to God; that therefore all men, as essentially spiritual beings, were equal in the sight of all other men. Luther and Calvin narrowed this philosophy by assuming that this spiritual nature and this equality were properties only of professing Christians, but Fox, followed by Penn, enlarged and universalized it by treating the Christian doctrine as declaratory of a universal truth. Penn's doctrine of the universal "inner light," which was in every man from the beginning of the world and will be to the end, and which is Christ,—according to which doctrine every human being who has ever been, who is, or who is to be, is inevitably by virtue of his humanity, a spiritual being, the creature of God, and, as

directly and immediately related spiritually to Him, the equal of every other man,—marked the completion of the Reformation.

According to this theory, the life of animals, who, being created unequal, are from birth to death engaged in a struggle for existence in which the fittest survives, is eternally and universally differentiated by a wide and deep chasm from the life of men, who, being created equal, are engaged in a struggle against the deteriorating forces of the universe in which each helps each and all, and in which each and all labor that each and all may not only live, but may live more and more abundantly.

According to this theory, also, the glaring inequalities of physical strength, of intellectual power and cunning, and of material wealth, which are, on a superficial view, the determining facts of all social and political life, are merely unequal distributions of the common wealth, and each person is considered to hold and use his strength, his talents and his property for the development of each and all as beings essentially equal.

According to this theory, also, there is for mankind no "state of nature" in which men are equally independent and equally disregardful of others, which by agreement or consent becomes a "state of society" in which men are equally free and equally regardful of others, but the "state of nature" and the "state of society" are one and the same thing. Every man is regarded as created in a state of society and brotherhood with all other men, and the "state of nature,"—man's natural estate and condition,—is the "state of society."

Were anyone asked to sum up in the most concise form possible the ultimate doctrine of the Reformation, he could, perhaps, epitomize it no more correctly than by the single proposition, "All men are created equal." This doctrine of human equality arising from common creation, growing out of Lutheranism and Calvinism through the intellectual influence of Penn, and the broadening effect of life in this new and fruitful land, underlay all American life and institutions.

One of the results of this final theory of the Reformation was the conception, by certain devout men and great scholars, of a "law of nature and of nations," based on revelation and

reason, which was universally prevalent, and which governed the relations of men, of communities, of states and of nations. Out of this there had then emerged the conception which has now become common under the name of International Law, which treats of the temporary relations between independent states. But the conception of the "law of nature and of nations" was, as has been said, vastly wider than this. It was a universal law governing all possible forms of human relationship, and hence all possible relations between communities and states, and therefore determining the rights of communities and states which were in permanent relationship with one another. Based on the theory of the equality of all men by reason of their common creation, it recognized just public sentiment as the ultimate force in the world for effectuating this equality, and considered free statehood as the prime and universal requisite for securing that free development and operation of public sentiment which was necessary in order that public sentiment might be just.

While this philosophy of the Reformation was thus extending itself in America, both among the Governments and the people, and in Europe among the people, the Governments of Europe, though not recognizing the existence of any "law of nature and of nations" whatever, were nevertheless acting on the basis that such a law did exist and was based on the proposition that all men are created unequal, or that some are created equal and some unequal. The alleged superior was sometimes a private citizen, sometimes a noble, sometimes a monarch, sometimes a government, sometimes a state, sometimes a nation. The inferior was said to be "dependent" upon the superior—that is, related to him directly and without any connecting justiciary medium, so that the will of the superior controlled the will and action of the inferior. It was this alleged law of nature and of nations, based on an alleged divine or self-evident right of inequality—an inequality arising from creation—which was the basis of the British Declaratory Act of 1766, which may perhaps be called "The Declaration of Dependence." In that Act, the State of Great Britain declared, (basing itself evidently upon the law of nature and of

nations, since there was no treaty,) that the American Colonies "have been, are, and of right ought to be, subordinate unto and dependent upon the Imperial Crown and Parliament of Great Britain," and that the Parliament of Great Britain "had, hath, and of right ought to have, full power and authority to make laws and statutes of sufficient force and validity to bind the Colonies and people of America, subjects of the Crown of Great Britain, in all cases whatsoever." The expression "of right ought to have" clearly meant "has by the law of nature and of nations." Great Britain was thus declared to be the superior of America, with power according to the law of nature and of nations, to control, by its will, the will and action of America as a "dependent" country, and of each and all of its inhabitants as "dependent" individuals.

We discover, then, from an examination of the circumstances surrounding the Declaration of Independence, a most interesting situation. A young nation, separated by a wide ocean from Europe, settled by men who were full of the spirit of the Reformation, deeply convinced, after a national life of one hundred and fifty years, that these principles were of universal application, was suddenly met by a denial of these principles from the European State with which they were most intimately related. This denial was accompanied by acts of that State which amounted to a prohibition of the application of these principles in American political life. This European State was indeed the mother-country of America, and the Americans were bound to their English brethren by every tie of interest and affection. The Americans were only radical Englishmen, who gloried in the fact that England of all the countries of Europe had gone farthest in accepting the principles of the Reformation, and who had emigrated reluctantly from England, because they were out of harmony with the tendency of English political life to compromise between the principles of Mediævalism and the principles of the Reformation. The Declaratory Act of 1766 brought clearly into comparison the political system of America, as opposed to the political system of Europe. It was inevitable from that moment that the American System, based on the principles of the Reformation in their

broadest sense and their most universal application and briefly summed up in the proposition that "all men are created equal," must conquer, or be conquered by, the European System, based either on the principles of Mediævalism, summed up in the proposition that "all men are created unequal," or on a compromise between the principles of Mediævalism and the Reformation, summed up in the proposition that "some men are created equal, and some unequal."

In the light of this situation, let us examine the words of the Declaration. The philosophical statements in which we are interested, read:

> "When in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume, among the powers of the earth, the separate and equal station to which the laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation:—
>
> "We hold these truths to be self-evident: That all men are created equal; that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness; that to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute new government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness.
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> * * * * * * *
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> "Finally we do assert and declare * * * that these United Colonies are, and of right ought to be, free and independent states, * * * and that all political connection between them and the State of Great Britain is, and ought to be, totally dissolved."

The most reasonable interpretation, as it seems to me, of the statement that "all men are created equal" is, as I have said, that it is, and was intended to be, an epitome of the doctrine of the Reformation. There will be those who will scoff at the

suggestion that a political body like the Continental Congress should have based the whole political life of the nation upon a religious doctrine. But it is to be remembered that the Continental Congress was not an ordinary political body. It was the most philosophic and at the same time the most religious and the most intellectually untrammeled body of men who ever gathered to discuss political theories and measures. Meeting under circumstances where weakness of resources compelled the most absolute justness in their reasons for taking up arms, they must have discussed their position from the standpoint of morality and religion. John Adams tells us that one of the main points discussed at the opening of the Continental Congress, when they were framing the ultimatum which finally took the form of the Fourth Resolution was, whether the Congress should "recur to the law of nature" as determining the rights of America. He says that he was "very strenuous for retaining and insisting on it," and the Resolutions show that he succeeded, for they based the American position on the principles of "free government" and "good government," recognized that the "consent" of the American Colonies to Acts of the British Parliament justly regulating the matters of common interest was a "consent from the necessity of the case and a regard to the mutual interests of both countries," and claimed the rights of "life, liberty and property" without reference to the British Constitution or the American Charters. Jefferson tells us that throughout the period of nearly two years which intervened between the assembling of the Congress and the promulgation of the Declaration, the principles of the law of nature and of nations set forth in the preamble were discussed, and that when he wrote the preamble he looked at no book, but simply stated the conclusions at which the Congress, with apparently practical unanimity, had arrived.

But it is not necessary, it would seem, to resort to external evidence to prove that the Declaration is based on the doctrine of the Reformation. In several places it seems to expressly declare that the rights claimed by America are claimed under the law of nature and of nations based on divine revelation and on human reason. In the first sentence, it declares that "the

law of Nature and of Nature's God" entitles the Americans,—it having "become necessary" for them "to dissolve the political bands which have connected them with" the people of Great Britain,—to "assume a separate and equal station among the powers of the earth." In the next, it declares not only "that all men are created equal," but that they have "unalienable rights of life, liberty and the pursuit of happiness," not by virtue of any social contract or other form of consent, but by "endowment,"—that is, by voluntary gift and grant,—of "their Creator." This doctrine of "endowment" of men with "unalienable rights," by "their Creator," is of course the Christian doctrine. In the concluding part of the Declaration, it is declared not only that the United Colonies, as "the United States of America," are "free and independent states," but that they "of right ought to be" such; and in that paragraph the "connection between them and the State of Great Britain" is not merely declared to be "totally dissolved," but it is also declared that it "ought to be" so dissolved. There was certainly no "right" of the United Colonies, as the United States of America, to be free and independent states and to declare the connection between them and the State of Great Britain to be dissolved, except upon principles of some implied common law which was supreme over the Constitution of the State of Great Britain and the Charters and Constitutions of the Colonies, for none of these Constitutions or Charters made provision for the dissolution of the connection on any contingency.

There is necessarily implied in the statement that "all men are created equal" and that "they are endowed by their Creator with certain unalienable rights, among which are life, liberty and the pursuit of happiness," the conception of the right of human equality as a divine right. But is there any other basis than divine right on which to rest a doctrine of human equality? A doctrine of human equality by human right, is a doctrine of equality by consent. But if a man can consent regarding his equality with another man or with other men, he can, as has been often pointed out, consent himself into a state of permanent inequality, inferiority and slavery, even supposing

that a basis can be found for the assumption of an original state of equality arising from consent.

Assuming then, for the sake of argument at least, that the proposition that all men are created equal is and was intended to be a statement of the Reformation doctrine in its broadest and most universal form, a clue is given for the interpretation of the propositions which follow. If politics, as well as religion, assumes as its basis the proposition that all men are spiritual beings in direct and permanent relationship with God, and hence equal as regards one another, then the purpose of both politics and religion is to preserve this equality,—politics by compulsion and religion by persuasion. Because all men are spiritual beings in direct relationship with a common Creator who has established laws under which He is the final judge, which men can ascertain and apply through revelation and reason, men are declared to have rights. Man is thus distinguished from animals, who have no rights because they have no capacity to know the law—a knowledge which must inevitably precede a knowledge of the right. Politics looks at the universal needs of all men,—those needs which each man has in common with all humanity—and from the universal needs assumes a universal unalienable right of each against each other and against all, and a universal duty of each toward each other and toward all, to supply these needs. Religion regards the supplying of these universal needs as a duty toward God. Hence politics adopts as its second self-evident truth, the proposition that all men "are endowed by their Creator with certain unalienable rights, among which are life, liberty and the pursuit of happiness." The primary and universal needs of all mankind, regarded as equal creatures of a common Creator, are the need of life, the need of liberty and the need of pursuing happiness. These needs are unalienable. No man can rid himself of them without destroying himself as an equal creature of a common Creator. Consequently the rights and duties corresponding to these unalienable needs are themselves unalienable. There is no denial here of alienable rights and duties. But it is clearly laid down as a fundamental principle of the all-pervasive common law, that rights given by the Creator are unalienable,

and that no human being, however emphatically he may declare, or will, or agree to the contrary, may by any possible act of any other human being or of any set of human beings, whether calling themselves a government or not, or by any possible means, deprive himself, or be deprived of the right of life, liberty and the pursuit of happiness—these being necessarily incidental to the original right of equality.

To apply this interpretation to the relationship between ourselves and our brethren of the Insular regions: They are, according to the universal and common law of nature and of nations, as we and all other human beings are, equally creatures of a common Creator and equal with us. Under that all-pervasive law, they, with us, and all other human beings, are created with the unalienable need of life, liberty and the pursuit of happiness, and therefore with corresponding unalienable rights. Under that law we cannot deprive them of these unalienable rights, nor allow them to deprive themselves of their unalienable rights, nor allow a part of them to deprive the others of their unalienable rights. According to the philosophy of the Revolution, every man, every community, every state and every nation is bound to enforce, and cause to be enforced, this law of nature and of nations, which prevents the voluntary or involuntary alienation by any man, any community, any state or any nation of his or its rights of life, liberty and the pursuit of happiness.

The Declaration, having thus described the ends of all government, proceeds to describe the methods by which these ends are accomplished. It declares that "to secure these rights governments are instituted among men, deriving their just powers from the consent of the governed." Governments, it is declared, are instituted solely to secure to each and every being his and their unalienable rights, as equal creatures of a common Creator, to life, liberty and the pursuit of happiness. Here is a plain denial that government is universally the expression of the will of the majority; for it is matter of common knowledge that in only a few of the most highly civilized countries of the world does the will of the majority, as it is expressed, secure to

each and every person his and their unalienable rights of life, liberty and the pursuit of happiness.

There is also an implied denial of the proposition that government is the will of the majority, in the proposition that "governments are instituted among men." If the Fathers had meant that government was the will of the majority they would have said, "Men have the right to institute governments for themselves, according to the will of the majority." What they did was simply to state as a fact that "governments are instituted among men," which fact is wholly inconsistent with the hypothesis of a universal right of each and all communities to institute government for themselves.

There is, however, it would seem, clearly implied in the statement that "to secure these rights governments are instituted among men," the statement that governments are universal, that they begin with and continue through human existence,—that government is, as Calvin said, of "not less use among men than bread and water, light and air, and of much more excellent dignity," and therefore the prime necessity of human life,—and that there is a universal right of all men, all communities, all states and all nations, to such government as will secure these rights; for the rights which are to be secured being universal, government, which is the instrumentality for securing them, must also be universal.

Having thus declared governments of a kind suitable to secure the unalienable rights of the individual to be a universal right, and having by implication declared that it is not essential in all cases that governments should be instituted by the people governed, and that therefore there may be cases in which governments may justly be instituted by an external power, the Declaration proceeds to lay down as a universal proposition that all governments,—existing, as they do, solely for the purpose of securing to each and every individual his and their unalienable rights,—do, universally, whether instituted by the consent of the governed or not, "derive their just powers from the consent of the governed." The expression "deriving their just powers from" is generally read as if it were "by," and the expression "the consent of the governed" as if it were "the

will of the majority." Both of these readings are so plainly inconsistent with both the text and the context as to be clearly inadmissible. If the words are taken in their usual and proper meaning and read in the light of the context and the surrounding circumstances, it seems at least reasonable to conclude that the expression "deriving their just powers from the consent of the governed," is and was intended to be an epitome of the two fundamental principles of the law of agency, brought over into the English law from the Roman. These principles are: *"Obligatio mandati consensu contrahentium consistit,"* a translation of which is, "The powers of an agent are derived from the consent of the contracting parties," and *"Rei turpis nullum mandatum est,"* a translation of which is "No agent can have unjust powers." If this interpretation be correct, the expression "that to secure these rights governments are instituted among men, deriving their just powers from the consent of the governed" means that there is no universal absolute right of communities, states, or nations, to institute their own governments, but that every government, however instituted, is universally the agent of the governed, to secure to every individual, every community, every state, and every nation governed, his and their unalienable rights of life, liberty and the pursuit of happiness and to effectuate the equality of all men as the creatures of a common Creator.

On this interpretation a rule is laid down to determine under what circumstances a community, state, or nation has the right to institute its own government. Its rights are to be determined by the principles of agency. Agencies among individuals are of several kinds, express and implied, voluntary and involuntary. There may be co-agencies, in which the performance of one general agency is distributed among several agents. A person of full capacity has the right, according to the common law of persons, to appoint his own agent, unless he is in such just relationship with others that the common interests require that he should adopt as his agent an agent appointed by the others. So communities, states and nations which are of full capacity, have the right, assuming the existence of this common law of nature and of nations, to appoint their own

governments, subject to the necessary limitations growing out of their just relationships to other communities, states and nations. Infants, and persons *non compos* or spendthrift, are subject, by the principles of the common law of persons, to have an involuntary agency created for them by the Chancellor until the disability is removed, if the disability is temporary, or permanently, if the disability is permanent. The same is true by the law of nature and of nations, if the interpretation I have suggested be correct, regarding communities, states and nations, which are in a condition of infancy or anarchy, or are spendthrift. The Chancellor or Justiciar, whether a person, a state, or a nation, must possess the qualities and attributes of a Chancellor and Justiciar, and proceed as a Chancellor and Justiciar. Otherwise the attempt to create an involuntary agency for the suitor is nugatory. The fact that a person who is an infant, or *non compos*, or spendthrift, has an involuntary agency created for him by the Chancellor, does not destroy, or in any way affect, the juridical personality of such person, or his political equality with other persons; and, by parity of reasoning, the fact that a community which would otherwise be recognized as having free statehood and political personality and equality with other free states, has an involuntary government appointed for it by a Justiciar State, on account of its being in a weak or infantile condition, or on account of its being anarchic or spendthrift, can not destroy or in any way affect its free statehood,—or, what is the same thing, its political personality,—or its equality with other free states.

A further meaning apparently is that the first object of all government is to do justice, and the second object to do the will of the governed. A government which recognizes itself as deriving its just powers from the consent of the governed, is bound to do justice in such manner as will conform to the just public sentiment of the governed. It is in no case bound to execute the will of the governed, much less the will of the majority, unless that will conforms to justice in the particular case. Nor can it do an unjust act and plead in justification the consent of the governed, for the consent of the governed to an unjust act is void by the law of nature and of nations. This

principle was often appealed to by the Americans, notably in the final manifesto of 1778, as an answer to the British claim that the Americans were bound by the restrictive Acts of Parliament on account of their acquiescence in them. They said that an attempted consent to an unjust act of government was a nugatory act, an unjust act of government being itself nugatory, and deserving obedience only from motives of policy.

This doctrine that government is the doing of justice according to public sentiment is, of course, utterly opposed to the doctrine that government is the will of the majority. If government is the doing of justice according to public sentiment, government is the expression and application of a spiritually and intellectually educated public sentiment, since the knowledge of what is just comes only after a course of spiritual and intellectual education, and the forms and methods of government should be such as are adapted to such spiritual and intellectual education. Education takes place by direct personal contact, and can best be accomplished only through the establishment of permanent groups of individuals who are all under the same conditions. The formation and expression of a just public sentiment, therefore, requires the establishment of permanent groups of persons, more or less free from any external control which interferes with their rightful action, under a leadership which makes for their spiritual and intellectual education in justice. Such permanent groups within territorial limits of suitable size for developing and expressing a just public sentiment, are free states. Territorial divisions of persons set apart for the purpose of convenience in determining the local public sentiment, regardless of its justness or unjustness, are not states, but are mere voting districts. Just public sentiment, for its expression and application, requires the existence of many small free states, disconnected to the extent necessary to enable each to be free from all improper external control in educating itself in the ways of justice; mere public sentiment, for its expression and application, requires only the existence of a few great states, unitary in their form and divided into voting districts. Just public sentiment, as the basis of government, is a basis which makes government a mighty

instrument for spirituality and growth; mere public sentiment, regardless of its justness or unjustness, as the basis of government, is a basis which makes government a mighty instrument for brutality and deterioration. Human equality, unalienable rights, just public sentiment, and free statehood, are inevitably and forever linked together, as reciprocal cause and effect.

All the American public men were agreed that the American Colonies, so called, were and always had been free states, and that the State of Great Britain, acting through or symbolized by its Chief Executive or its Chief Legislature, or both of them, was a governmental agency, and a connecting medium, of all the free states which were connected with it, and which with it formed what they called "The British Empire." Some based this right of free statehood and political connection on the Colonial Charters; some on the doctrine of the extension to the Colonies of the Constitution of the State of Great Britain in a partial and metaphorical manner; some thought that the Colonies had always been not only free states, but also free and independent states, and that the political connection between them and the State of Great Britain was, and always had been, by consent, that is, by implied treaty. Upon careful examination, all these theories were found to be untenable. The Colonial Charters clearly did not intend to recognize the Colonies as free states, much less as free and independent states; the doctrine of the extension to them of the British Constitution was inconsistent with their statehood in any sense; and there was not a vestige of anything which could be regarded as a treaty between the Colonies and Great Britain. Finally, therefore, all were apparently brought to see that there was nothing on which to base the American claim that the Colonies were and always had been states, free or free and independent, except "the law of nature and of nations," and not even the law of nature and of nations as it was understood by the Governments of Europe, but a law of nature and of nations which was based on the broadest principles of the Reformation. Free statehood for the American Colonies was apparently asserted as a universal right of all communities, states and nations, because free statehood was considered by the framers of

the Declaration to be the universal and only means of forming and expressing a just public sentiment, and therefore to be the universal and only means of securing the universal and unalienable rights of individuals. The ultimate meaning of the expression "that to secure these rights Governments are instituted among men, deriving their just powers from the consent of the governed," seems therefore to be that by the law of nature and of nations there is a universal right of free statehood of all communities on the face of the earth within territorial limits of suitable size for the development and operation of a just public sentiment.

The Declaration denies even to all the people of a free state the right to change their government when and how they will, and according to mere public sentiment, regardless of its justness. Their right "to alter or abolish" a "form of government" is declared to exist, according to the law of nature and of nations, only when that form of government "becomes destructive of these ends," that is, when a government, instead of securing the unalienable rights of the individuals governed, attempts to destroy these rights. Moreover, it is declared that when the people alter or abolish one form of government, their right of establishing a new government is not absolute, but is limited, according to the law of nature and of nations, so that in establishing a new form of government they are obliged to "lay its foundation on such principles and organize its powers in such form, as to them shall seem most likely to effect their safety and happiness,"—that is, to secure the unalienable rights of the individual to life, liberty and the pursuit of happiness. This limitation upon the powers of even the whole people of a state necessarily results from the fact that the law of nature and of nations is universal and governs so completely every human act and relationship that no act can be done and no relationship formed which violates the unalienable rights of any individual. How the law of nature and of nations is to be enforced, the Declaration does not say. Apparently the obligation to enforce it rests upon every individual, every community, every body corporate, every state and every nation, and the ultimate force which com-

pels its application is the just public sentiment of the world, or, as Rivier called it, "the common juridical conscience."

The declaration of the universal right of free statehood is not only made in the statement that "to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed." It is asserted with much more clearness in the concluding part of the Declaration, which reads:

> "We, therefore, * * * declare that these United Colonies are, and of right ought to be, free and independent states, * * * and that all political connection between them and the State of Great Britain is, and ought to be, totally dissolved."

In the first draft of the concluding part of the Declaration, Jefferson wrote:

> "We, therefore, * * * utterly dissolve and break off all political connection which may have heretofore subsisted between us and the people or Parliament of Great Britain, and finally we do assert and declare these Colonies to be free and independent states."

The resolution of the Virginia Convention of May 15, 1776, which was the basis of the Declaration, read:

> "That the delegates * * * be instructed to propose to [the Continental Congress] to declare the United Colonies free and independent states, absolved from all * * * dependence upon the Crown or Parliament of Great Britain."

A comparison of the words used by the Congress with those used by the Virginia Convention and those used by Jefferson in the first draft, shows how much the judgment of the Congress was clarified by the great debate which occurred between May 15 and June 10, 1776, when the wording above quoted was agreed upon.

The wording of the Virginia resolution, if it had been adopted, would have implied that the Colonies had theretofore been "dependent upon the Crown and Parliament of Great

Britain," and that their statehood, their free statehood, and their independent statehood came into existence by virtue of their declaring themselves free and independent states.

The wording of Jefferson's first draft, if it had been adopted, would have implied that a "political connection" might or might not have theretofore existed between the American people and "the people or Parliament of Great Britain," and that if such a political connection had existed, the American people had the right to secede from it, whenever they considered that the terms of the connection were not observed by the people or Parliament of Great Britain; and that by such act of secession, and by their Declaration, their rights of statehood, of free statehood and of independent statehood came into existence.

The wording of the Declaration which was actually adopted implied that the Colonies had always been free states or free and independent states, and that, by the Declaration, at most their right of independent statehood came into existence; that they had theretofore at all times been in political connection, either as free states under the law of nature and of nations, or as free and independent states by implied treaty, with the free and independent state of Great Britain; that the dissolution of the connection had not come about by an act of secession on their part, but was due to the violation, by the State of Great Britain, either of the law of nature and of nations, or of the implied treaty on which the political connection was based.

The term "connection" was an apt term to express a relationship of equality and dignity. "Connection" implies two things, considered as units distinct from one another, which are bound together by a connecting medium. Just connection implies free statehood in all the communities connected. Union is a form of connection in which the connected free states are consolidated into a unity for the common purposes, though separate for local purposes. Merger is the fusion of two or more free states into a single unitary state. Connection between free states may be through a legislative medium, or through a justiciary medium, or through an executive medium. The connecting medium may be a person, a body corporate, or a state. States connected through a legislative medium,

whether a person, a body corporate or a state, and whether wholly external to the states connected or to some extent internal to them, whose legislative powers are unlimited or which determines the limits of its own legislative powers, are "dependent" upon or "subject" to the will of the legislative medium. Such states are "dependencies," "dominions," "subject-states," or more accurately "slave-states,"—or more accurately still, not states at all, but mere aggregations of slave-individuals. States connected through a legislative medium, whether a person, a body corporate or a state, and whether wholly external to the states connected or in part internal to them, whose legislative powers are granted by the states and which has only such legislative powers as are granted, are in a condition of limited dependence, dominion, and subjection; but their relationship is by their voluntary act and they may, and by the terms of the grant always do to some extent control the legislative will to which they are subject and on which they are dependent. Where states are connected or united through a justiciary medium, whether that justiciary medium is a person, a body corporate, or a state, all the states are free states, their relationships being governed by law. Where states are connected through an executive medium, whether that executive medium is a person, a body corporate, or a state, all the states are free and independent states, and each acts according to its will. All connections in which the legislative medium,—whether a person, a body corporate or a state, and whether wholly external to the states connected, or to some extent internal to the states connected,—has unlimited legislative powers or determines the limits of its own legislative powers, are fictitious connections, the relationship being really one which implies "empire" or "dominion" on one side, and "subjection" or "dependence" on the other. Such connections are properly called "empires" or "dominions." So also all connections in which the only connecting medium is a common executive, whether a person, a body corporate or a state, are fictitious connections, the relationship being one of "permanent alliance" or "confederation" between independent states. Such connections are properly called "alliances" or "confederations." The

only true connections are those in which there is a legislative medium, whether a person, a body corporate or a state, whose legislative powers are limited, by agreement of the connected states, to the common purposes, and those in which there is a justiciary medium, whether a person, a body corporate, or a state, which recognizes its powers as limited to the common purposes by the law of nature and of nations, and which ascertains and applies this law, incidentally adjudicating, according to this law, the limits of its own jurisdiction. Just connections tend to become unions, it being found in practice necessary, for the preservation of the connection in due order, that the power of adjudicating and applying the law for the common purposes should extend not only to the states, but to all individuals throughout the states.

Thus "dependence," as a fictitious and vicious form of connection, is, it would appear, forever opposed to "connection" of a just and proper kind. If it were attempted to sum up the issue of the American Revolution in an epigram, would not that epigram be: "Colony,"—or "Free State"? "Dependence,"—or "Just Connection"? "Empire,"—or "Union"?

Summarizing, then, the result of this examination of the philosophy of the Declaration, so far as it relates to communities rather than persons, it appears that the central conception of this philosophy is that of a universal right of free statehood. This conception, more specifically, is, it seems, that all communities on the earth's surface, within limits of territorial extent of such reasonable dimensions that within the area of each the just common sentiment about local concerns and external relations can be conveniently ascertained and executed, have an unalienable right to be free states and as such to have their respective just local sentiments about local matters ascertained and executed by their respective governments, this being, according to Revolutionary philosophy, essential to make effective the right of each and every person to life, liberty, and the pursuit of happiness. But a universal right of free statehood does not imply a universal right of self-government. Statehood and self-government are two different and distinct conceptions. The Americans claimed the right of free statehood as a part of

the universal rights of man, but they claimed the right of self-government because they were Englishmen trained by generations of experience in the art of self-government and so capable of exercising the art. A free state is not less or more a free state because it has self-government. It is a free state when its just public sentiment is to any extent ascertained and executed by its government, free from the control of any external power. It does not prevent a region from being a free state that its government is wholly or partly appointed by an external power, if that government is free from external control in ascertaining and executing the just local sentiment to any extent. Nor does it interfere with the right of free statehood when an external power stands by merely to see that the local government ascertains and executes the just local sentiment to a proper extent. The external power in that case is upholding the free statehood of the region. It stands as surety for the continuance of free statehood.

The right of self-government, according to this view, is a conditional universal right. When a community, inhabiting a region of such territorial extent that it is not too large to make it possible for a just public sentiment concerning its own affairs to be developed and executed, and not so small as to make it inconvenient that it should be in any respect free from external control, is of such moral and intellectual capacity that it can form and execute a just public sentiment concerning its internal affairs and its relations with other communities, states and nations, it has not only the right of free statehood,—that is, of political personality,—which is of universal right, but also the right of self-government. The right of such a free state to self-government is complete if there be no just political connection or union between it and other free states, or partial, if such a just connection or union exists, being limited, in this latter case, to the extent necessary for the preservation, in due order, of the connection or union.

The Declaration, by declaring the Colonies to be free and independent States and following this statement by the statement that the political connection between them and the State of Great Britain was dissolved, leaves it doubtful whether the

American claim was that the Colonies had always been free and independent States in treaty connection with Great Britain or merely free states in connection with Great Britain under the law of nature and of nations. The arrangement of the sentences was probably necessary to satisfy the extreme states'-rights party, but the study of great documents discloses that nearly all contain such compromises, and that the judgment of posterity usually approves the judgment of the less extreme party. When we consider, however, that even Jefferson, the most extreme of the states'-rights party in the Continental Congress, has recorded his belief that the whole issue of the Revolution could have been settled if Great Britain had adopted the principle of Lord Chatham's bill, and if that bill on the one side and the Fourth Resolution on the other had been taken as the basis of settlement, it is at least not unreasonable to conclude that the extreme states'-rights theory was put forward more in order that the Americans might have something to concede in a bargain with Great Britain than from any belief in the justness of it, and that the real belief of the Americans was that the Colonies had always been free states, but not independent until they so declared themselves, and that their political connection with the State of Great Britain was under the law of nature and of nations, and not by implied treaty with the State of Great Britain.

Independence was regarded, if this interpretation be correct, as a conditional universal right of free states. Those free states which conform to the conditions necessary to independence—great physical strength, great moral and intellectual ability, and great qualities of leadership—were regarded as entitled to the right of independence. But independence of a free state, as regarded other free states, meant, to the Fathers, only leadership and judgeship. The law of nature and of nations, being universal, they considered as abolishing sovereignty in the European sense, so that the highest function of an independent State was to be the Justiciar of other States. In the literature of the Revolution we find the rights of free and independent states described as rights of "jurisdiction"—not of "sovereignty."

Connection between free States on free principles was regarded by the Fathers as the proper and perhaps the normal condition. They recognized that connection, while based on the assumption of the original independence of the units, necessarily implied a surrender of the right of final decision concerning all or a part of the common purposes to a Justiciar State, or of the right of legislation for the common purposes, expressly defined by written agreement, to a Central Government. Political connection with European States was dissolved in the Revolution, and thereafter refrained from, because the European States stood for a law of nature and of nations which did not permit of free states being connected on free principles.

Taking the whole Declaration together, and reading it in the light of the political literature which was put forth on both sides of the water between the years 1764 and 1776, which is too voluminous to be referred to here specifically, it seems to be necessary to conclude that the views of the American statesmen of the period concerning the nature of the connection between Great Britain and the Colonies, in its details, were these:

They considered, as I interpret their language, that the connection between the American Colonies, as free states, and the free and independent State of Great Britain had existed and of right ought to have existed under the law of nature and of nations, interpreted in so broad a sense that it may perhaps be called the American system of the law of nature and of nations. They accordingly claimed, as I understand them, that Great Britain, as a free and independent state, had power, as Justiciar over the American free states for the common purposes of the whole connection, to finally decide, in a judicial manner, according to the principles of the law of nature and of nations, upon all questions arising out of the connection between them; and that each of the American free states had power, through its legislature, to legislate according to the just public sentiment in each, concerning its purely local matters, and had the right to have its local legislation executed by its executive, and interpreted and applied in private cases by its courts.

Some of the Americans, and those the most patriotic and conservative, thought that Great Britain had jurisdiction to

ascertain and execute the law of nations for the common purposes, and in the exercise of that jurisdiction to control, by its decrees and regulations, the action of individuals in the Colonies. This was to regard Great Britain and America as consolidated for the common purposes so as to form what may be called a Justiciary Union. They were content, so long as Great Britain acted on the theory that she was the Justiciar of the British-American Union for the common purposes, and maintained a competent tribunal for determining what were common and what local purposes according to the principles of the law of nature and of nations, that she should finally determine the limits of her own jurisdiction as the Justiciar State of the Union. While I do not mean to say that Great Britain ever recognized that the American Colonies were free states and that she was only a Justiciar State with power of final decision according to the law of nature and of nations over the whole British-American Union for common purposes, yet I think it may not be wholly incorrect to say that from 1700 to 1763, the King and the Parliament of Great Britain, advised by the Committee of the Privy Council for Plantation Affairs assisted by the Board of Commissioners for Trade and Plantations, really acted as the Supreme Administrative Tribunal for applying the principles of the law of nature and of nations in the decision of the questions common to all the free states of a *de facto* British-American Union and as a necessary incident thereto, decided the limits of the jurisdiction of Great Britain as the Justiciar State of this *de facto* British-American Union.

In this view, the actions of the Americans show the evolution of a continuous theory and policy, and the application of a single system of principles,—a system which was based upon free statehood, just connection and union. The British-American Union of 1763 was a Union of States under the State of Great Britain as Justiciar, that state having power to dispose of and make all rules and regulations respecting the connected and united free states, needful to protect and preserve the connection and union, according to the principles of the law of nature and of nations. The dissolution of this Union, caused by the violation by the State of Great Britain of its duties as Justiciar

State, gave a great impetus to the extreme states'-rights party, and the next connection formed,—that of 1778 under the Articles of Confederation,—was not a Union, the Common Government (the Congress) being merely a Chief Executive. Such a connection proving to be so slight as to be little more than a fiction, they formed, under the Constitution of 1787, the only other kind of a union which appears to be practicable, namely, a union under a common government which was a Chief Legislature for all the connected and united states by their voluntary grant, and whose powers were expressly limited, by limitation in the grant, to the common purposes of the whole connection and union of free states.

The power exercised by a Justiciar State in a Justiciary Union, the Fathers recognized as being neither strictly legislative, nor strictly executive, nor strictly judicial, but a power compounded of all these three powers. They considered that it was to be exercised after investigation by judicial methods, both of the facts and principles and of the public sentiment; that the just public sentiment of the free states connected and united with the Justiciar State was to be executed in local matters and was to be considered in the determination of the common affairs; and that the action of the Justiciar State was to result, after proper hearing of the free states concerned, in regulations which were to have the force of supreme law in each of the connected and united free states respectively. This kind of power, which the Fathers called "the superintending power" or "the disposing power" under the law of nature and of nations, and which may be called, using an expression now coming into use, "the power of final decision," being neither legislative nor executive, but more nearly executive than legislative, the more conservative among them considered might be exercised, consistently with the principles of the law of nature and of nations, either by the Legislative Assembly of the Justiciar State or by its Chief Executive. This right of both the Legislative Assembly and of the Chief Executive to exercise the powers of the Justiciar State under the law of nature and of nations is, I believe, also recognized by our Constitution, as I have elsewhere attempted to show.

The Fathers further considered, if my understanding of their belief is correct, that, inasmuch as both the Legislative Assembly and the Chief Executive of the Justiciar State, in exercising its power over the free states connected and united with it, and throughout the Justiciary Union, have as their function the ascertainment of facts and the application of the principles of the law of nature and of nations to those facts, they ought to exercise this function by the advice of a permanent Administrative Tribunal, properly constituted so as to advise them intelligently and wisely. As I have said above, the Revolutionary statesmen considered, as it would seem, that the Committee of the Privy Council for Plantation Affairs, assisted by the Board of Commissioners for Trade and Plantations, had, up to 1763, constituted such an Administrative Tribunal. They considered also, it would seem, that neither the Chief Executive nor the Legislative Assembly was bound by the action of this Administrative Tribunal, its action being wholly advisory, but that the Chief Executive was bound to take its advice before making his dispositions; and that the Chief Executive, when acting as an Administrative Tribunal for disposing and regulating the common affairs of the free states of the Justiciary Union, after taking the advice of this permanent Administrative Tribunal, was a tribunal of first instance. They further considered, as it would seem, that the Legislative Assembly, when acting as an Administrative Tribunal for adjudicating and regulating the common affairs of the Justiciary Union, was a tribunal of final instance, whose dispositions and regulations superseded those of the Chief Executive in so far as they conflicted with them. It was, as I understand it, because the situation of affairs in the British-American Union from 1700 to 1763 conformed to the theoretical ideas of the Americans as to the true nature of the relationship between the American Free States and the State of Great Britain, that they were ready to return to that situation at all times between 1763 and 1778. In the latter year, the spirit of American nationality manifested itself so strongly that all thought of political connection with Great Britain was abandoned.

The practical result of this theory is, that the Chief Ex-

ecutive of a Justiciar State may exercise the power of the Justiciary State, after investigation and adjudication and after taking the advice of a properly constituted permanent Administrative Tribunal given after investigation and upon adjudication, and that such action may take the form of regulations concerning the common affairs of the free states of the Justiciary Union (and even concerning the local affairs of the respective free states, when regulations concerning local affairs are reasonably and justly necessary, as incidental to the regulation of the common affairs, in order to make the regulation of the common affairs effective), and that such regulations may extend to the regulation of the conduct of individuals; and that the Legislative Assembly of the Justiciar State may exercise the same power, to the same extent, and that its dispositions and regulations supersede the dispositions and regulations of the Chief Executive in so far as they conflict with them. This conclusion seems correct, if we accept as correct the premise of a universal and common law of nature and of nations, based on human equality arising from creation; of a universal and unalienable human right of life, liberty and the pursuit of happiness; of a universal right of agency-government of a kind necessary to secure these rights; of a universal right of free statehood of all communities within reasonable teritorial limits suitable for the formation and application of just local public sentiment, as the necessary means to secure the right to agency-government; of a universal right of free states to be connected or united with other free states on just principles of the law of nature and of nations; of a universal conditional right of free states to be self-governing free states, if capable of self-government; of a universal conditional right of self-governing free states to be independent free states, if capable of independence; and of a universal conditional right of independent free states to be justiciar states of justiciary unions of free states, if capable of judgeship and able to make their dispositions and regulations effective.

Of course there must be conditions of transition where the relations between free states which would normally be in union, or between detached portions of what would normally be a

unitary state, temporarily assume a form which is partly one of union or merger, and partly of dependency. The justification of all such forms of relationship must, it would seem, be found in the fundamental right which every independent state, whether a justiciar state or not, has to the preservation of its existence and its leadership or judgeship—that is, in the right of self-preservation, which, when necessary to be invoked, overrules all other rights. On this theory must, it would seem, be explained the relations between the American Union and its Territories, between Germany and Alsace-Lorraine, and between England and Ireland. On this theory of self-preservation, also, must, it would seem, be explained the permanent relationship of dependency which exists between the District of Columbia and the American Union—such dependency being necessary to the preservation of the life of the Union.

Thus, if our interpretation of the Declaration is correct, there was evolved in it, out of the original proposition that "all men are created equal," a complete system of the philosophy of government, directly the opposite of the system of Europe, which was based on the proposition that "all men are created unequal," or that "some are created equal and some unequal;" and the Declaration of Independence was a declaration of an American System, as opposed to the European System. If this interpretation be correct, it was to preserve this American System that President Washington advised against "political connection" with Europe, and that President Jefferson warned America against "entangling alliances;" it was this American System which President Monroe and President Adams declared to have extended itself throughout this hemisphere; it was this American System to preserve which the Civil War was fought and to the maintenance of which President Lincoln rededicated the American people on the field of Gettysburg; it is this American System which President Roosevelt has upheld against the forces in our midst, which on the one side have, by the wrongful use of accumulations of wealth, sought to establish a doctrine of inequality based on the possession of property, and on the other side, by denying the rightful-

ness of all accumulations of wealth, have sought to establish a doctrine that the inequalities of physical wealth and intellectual ability are to be destroyed, instead of being employed, by those endowed with great wealth or great ability, as the common wealth, in helping each and all to secure their unalienable rights of life, liberty and the pursuit of happiness and thus to realize the divine right of equality; it is this American System which the American Congress, under the leadership of President McKinley and President Roosevelt, has actually applied in the determination of our relations with the Insular regions, so that they are to-day free states *de facto,* connected and united with the American Union as the Justiciar State, and so that it needs only our recognition to convert them into free states *de jure* and to bring into legal existence a Greater American Union of Free States, of which our present Union will be the Supreme Justiciary Head, determining the questions arising out of the relationship, not by edict founded on will and force, but by decision carefully made in each case after ascertaining the facts and the principles of the law of nature and of nations which are properly applicable.

If the principles and the corresponding terms adopted by the Revolutionary Fathers were adopted by them as of universal significance, and if they were right, must we not apply these principles and these terms to-day, when the position of America is reversed and she stands as a great and independent State in relationship with distant communities which are so circumstanced that they can never participate on equal terms in the institution and operation of her government? Must not this law of nature and of nations according to the American System, which for us underlies all other law and which is the Spirit of the Constitution itself, determine for us whether or not we shall continue to use the terms "colony," or "dependence," or "empire"?

If we must admit as Americans a universal right of free statehood, is it proper to call Hawaii, Porto Rico, the Philippines or Guam "colonies"? They are inhabited and we do not propose to colonize them. If they are free states in union with the American Union as the Justiciar State and form with it a

Greater American Union, is it proper to call them "dependencies," which may imply a direct legislative power over them? And if the American Union is only the Justiciar State of the whole Greater American Union of Free States, composed of the American Union and its Territories and Insular regions, with power of final decision for the common purposes according to the law of nature and of nations, why speak of this as "Empire," which may imply absolute power and a denial that there exists a universal law of nature and of nations protecting alike the rights of persons, communities, states and nations?

But it will be said the conception I have outlined is impracticable. Judging from the characteristics of human nature, a state which declares itself the Justiciar of a Union of free states in permanent political connection with it, for the purpose of discovering and applying the principles of the law of nations in the just conduct of the common affairs of the Union, is likely, if it acts as a true Justiciar, to accomplish much more by the persuasive effect of justice, exercised in accordance with an overruling law of nature and of nations, than is an Emperor-State by the issuing of edicts based on a claim of right to be the supreme legislative power over non-represented regions.

Widely scattered free states which are in political connection or union must necessarily have some charge of their own defence, both physically and commercially, and the right to protect and support themselves by tariff taxation must necessarily include the right to lay a tariff against the Central State as well as against the other connected states and against foreign states. All these conflicting rights must be harmonized by the Central State, and it must at the same time provide from the common resources for the common defence and welfare. The questions growing out of such relations are the most complicated known to politics. It seems that a Justiciar State, acting upon the advice of properly constituted administrative tribunals, which habitually act judicially and whose function is to decide all questions according to law and justice, is much more likely to solve such problems by investigation, hearing and adjudication, than is a Legislator State to settle them by edict, or than is an

Executive State to procure a settlement of them by persuading the parties to confer and compromise.

Is not this theory the true *via media?* The theory of the automatic extension of the constitution of a state over its annexed insular, transmarine and transterranean regions which from their local or other circumstances can never equally participate in the institution and operation of its government, in some cases protects individual rights, but it takes no account of the right of free statehood, which is the prime instrumentality for securing these rights. The theory of a power over these regions not regulated by a supreme and universal law, is a theory of absolute power over both individuals and communities in these regions. The theory of a power over these regions based on the principles of the law of nature and of nations, granting that this law is itself based on the divine right of human equality, protects the rights of persons, of communities, of states and of nations.

This theory is not inconsistent with the present doctrine of the Supreme Court of the United States. It is an application and extension of that doctrine. To say, as does the Supreme Court, that the American Union has power over its annexed Insular regions restricted by "the fundamental principles formulated in the Constitution," or by "the applicable provisions of the Constitution," is to say that the power of the Union over these regions is exercised under a supreme law which is not the Constitution of the United States; for "principles formulated in the Constitution" are not the Constitution, and to say that "the applicable provisions" of the Constitution are the Constitution is to say that a part is the whole. Such a supreme law can only be a supreme common law, and a common law can be supreme over a group of scattered states only because it is universal. The only difference between this doctrine and that of the Supreme Court is that the Court's doctrine protects only civil rights, while this protects both civil and political rights.

By adopting this theory of the Reformation and the American Revolution, may not the American System extend indefinitely without danger to America herself? There would be no

domination, no subjection. The same law of nature and of nations would extend over and govern throughout the whole Greater American Union. This Greater American Justiciary Union would be but a logical application of the principles underlying the American Legislative, Executive and Judicial Union formed by the Constitution of the United States. It would not be the Constitution which would follow the flag into the regions which America has annexed to herself, but the law of nature and of nations according to the American System. If the Revolutionary theory as I have interpreted it is correct, this law of nature and of nations is everywhere pervasive throughout the American System of Free States. It is greater than the Constitution of the United States. The Constitution lives in so far as it truly declares the law of nature and of nations according to the American System. If the Constitution is interpreted contrary to this law, as authorizing the Union to treat its annexed regions as subjects or as creating a hiatus or a conflict between the powers of the Central and the Local Governments, this overruling law will compel a new interpretation. On this theory the "Territory Clause" of the Constitution recognizes the law of nature and of nations as determining the relationship between the American Union and the Insular regions—"needful" rules and regulations being those which are adapted to accomplish the end desired and which are in accordance with the principles of the law of nature and of nations as declared in the Declaration of Independence.

How can such a theory endanger the Republic? It will require some new institutions, no doubt, but they will be institutions in line with republican ideas and ideals, for they will all be institutions for discovering and applying the principles of the common law. We shall only have to enlarge our conception of the common law, by adding to the definition of Coke, and saying that it is "the perfection of reason and revelation."

Out of this theory of a universal common law of nations have emerged the science of the Law of the State, which deals with the internal relations of states, and the science of International Law, which deals with the temporary relations between independent States. Why out of the same theory should

there not emerge a science of the Law of Connections and Unions of States, based on the proposition that free statehood is the normal form of all community life and the right of all communities within proper limits on the surface of the earth, and which will deal with the permanent relations between free states, whether independent or not,—a science which will occupy the wide field of human relationships which lies between that now occupied by the science of the Law of the State and that now occupied by the science of International Law?

To those who regard all law as an aggregate of eternal and universal principles inhering in the nature of things, which are discoverable by man through revelation and reason, and who therefore regard all governmental action as the ascertainment and application of these principles, the conception of a common and universal Law of Connections and Unions of Free States and that of a common and universal International Law, are equally without difficulty. To those who regard all law as an act of human will supported by force, the conception of a common and universal Law of Connections and Unions of Free States and that of a common and universal International Law, are equally impossible; and indeed these persons are logically obliged to deny the existence of any common law of any kind. To those who occupy the middle ground and regard all law as in one aspect the ascertainment and application of eternal principles, and in another aspect an act of human will supported by force, the conception of a common and universal Law of Connections and Unions of Free States is less difficult than that of a common and universal International Law, for the former implies a Justiciar State which is capable of enforcing its decisions and dispositions, while the latter implies the non-existence of any political power capable of enforcing the action agreed or decided upon.

Fortunately, there is every evidence that at the present time this narrow political sect who believe that law is only a human edict supported by physical force,—this sect which had its origin in the dark decades of the nineteenth century when the materialistic philosophy prevailed,—is dying out, under the influence of a general renaissance. There are, it is to be be-

lieved, many who will be ready and willing to accept as true the statement, which every student of political history must admit to be true, that the philosophy of the American Revolution was a religious philosophy. It is indeed perhaps not too much to say that the period of the American Revolution was the period in which both political and religious thinking reached the highest point, and that there is no question of government which has since arisen which was not either solved by the Revolutionary statesmen or put in the process of solution.

The political philosophy of the American Revolution has long been confused with that of the French Revolution. As matter of fact, they stand at opposite poles. Our philosophy was religious, the French non-religious. America had been peacefully assimilating, for a century and a half, the doctrines of the Reformation. France had been held for two centuries and a half in a condition of mediævalism, and the principles of the Reformation had little hold among the people. When the Americans spoke, it was with the calm wisdom of freemen; when the French spoke, it was with the folly and excess of intellectual and spiritual slaves who had suddenly emancipated themselves. To the Americans, to whom government was the expression of the just public sentiment, government, equally with religion, was a necessary good; to the French, to whom government was the expression of the will of the majority, whether just or unjust, government was a necessary evil and religion an unnecessary evil. The French Revolution made itself felt, even in America, for a century. Till within recent years, its principles have obscured, though they have never wholly eclipsed, the principles of the American Revolution. But now there seems reason to believe that the French Revolution has spent its force, and that the influence of the American Revolution is growing daily stronger. Signs of this are the councils and conferences which are steadily increasing in number and in power, on the subject of arbitration as the peaceful means of settling questions growing out of the relations of communities, of states and of nations. Arbitration, whether between persons or between communities, states and

nations, implies a universal and common law. Peace conferences can, it would seem, have no reasonable purpose and can hope to accomplish no permanent result, except as they attempt to substitute a universal and common law, supported by the public sentiment of the civilized world, for human edicts founded on human will and supported by physical force. The American System is but the establishment of interstate and international arbitration as the common and usual course of governmental action instead of as a voluntary or spasmodic manifestation of governmental will.

Only on the assumption of the existence of this universal common law can the relations between us and our Insular brethren be relations under law, for a written constitution between us and them is impossible. We realize, as Americans, that somehow these relations must be under law if they are to be according to the American System, for we know that there is no liberty except under law, and that the American System has, for its sole object, human liberty.

If we are right, the American people, in rejecting, as they have, the European terms "colony," "dependence" and "empire," and the theory which these terms symbolize, have been true to the American System. In substituting for these terms the American terms, "free state," "just connection" and "union" and the American theory which these terms symbolize, it is not necessary for us to alter in the least our established views concerning the Constitution as the supreme law of the Union. It is only necessary for us to realize that the Constitution is itself but one application of the great principles of the American System which, as the Supreme Court says, are "formulated" in it, and to proceed, by a new formulation or by adjudication, to apply these principles outside the present Union wherever American jurisdiction extends, in the confident belief that they can be applied universally, and that, wherever applied, they will bring the blessings of true liberty.

APPENDIX

THE AMERICAN SYSTEM

The Annunciation of the American System

"When in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume, among the powers of the earth, the separate and equal station to which the laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation:—

"We hold these truths to be self-evident: That all men are created equal; that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty, and the pursuit of happiness; that to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute new government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness.

* * * * * * *

"We, therefore, the representatives of the United States of America, in General Congress assembled, appealing to the Supreme Judge of the World for the rectitude of our intentions do, in the name, and by the authority of the good people of these Colonies, solemnly publish and declare, That these United Colonies are, and of right ought to be, Free and Independent States; that they are absolved from all allegiance to the British Crown, and that all political connection between them and the State of Great Britain is, and ought to be, totally dissolved; and that, as Free and Independent States, they have full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which Independent States may of right do. And, for the support of this Declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other our lives, our fortunes and our sacred honor."

The Continental Congress. Declaration of Independence of July 4, 1776.

THE ADOPTION OF THE AMERICAN SYSTEM BY THE AMERICAN UNION IN ITS CONSTITUTION, AS APPLYING TO ITS EXTERNAL JUSTICIARY RELATIONS.

"We, the people of the United States, in order to form a more perfect Union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America. * * *

"The Executive power shall be vested in a President of the United States of America. * * *

"The 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. * * *

"The Judicial power of the United States shall be vested in one Supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. * * * The Judicial power shall extend to all cases in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority."

The Constitutional Convention. The Constitution of the United States, of September 17, 1787.

THE AMERICAN SYSTEM DIFFERENTIATED FROM THE EUROPEAN BY PRESIDENT WASHINGTON.

"Of all the dispositions and habits which lead to political prosperity, religion and morality are indispensable supports. In vain would that man claim the tribute of patriotism who should labor to subvert these great pillars of human happiness —these firmest props of the duties of men and citizens. The mere politician, equally with the pious man, ought to respect and cherish them. A volume could not trace all their connections with private and public felicity. * * *

"Observe good faith and justice toward all nations. Cultivate peace and harmony with all. Religion and morality enjoin this conduct. And can it be that good policy does not equally enjoin it? * * *

"The great rule of conduct for us in regard to foreign nations is, in extending our commercial relations, to have with them as little political connection as possible. * * *

"Europe has a set of primary interests which to us have none or a very remote relation. Hence she must be engaged in frequent controversies, the causes of which are essentially foreign to our concerns. Hence, therefore, it must be unwise in us to

implicate ourselves by artificial ties in the ordinary vicissitudes of her politics or the ordinary combinations and collisions of her friendships or enmities.

"Our detached and distant situation invites and enables us to pursue a different course. If we remain one people, under an efficient government, the period is not far off when we may defy material injury from external annoyance; when we may take such an attitude as will cause the neutrality we may at any time resolve upon to be scrupulously respected; when belligerent nations, under the impossibility of making acquisitions upon us, will not lightly hazard the giving us provocation; when we may choose peace or war, as our interest, guided by justice, shall counsel.

"Why forego the advantages of so peculiar a situation? Why quit our own to stand upon foreign ground? Why by interweaving our destiny with that of any part of Europe, entangle our peace and prosperity in the toils of European ambition, rivalship, interest, humor, or caprice?

"It is our true policy to steer clear of permanent alliances with any portion of the foreign world."

President Washington. Farewell Address, September 17, 1796.

THE AMERICAN SYSTEM AS DEFINED BY PRESIDENT JEFFERSON.

"I deem the essential principles of our government [to be]: Equal and exact justice to all men, of whatever state or persuasion; peace, commerce, and honest friendship with all nations, entangling alliances with none; the support of the State Governments in all their rights, as the most competent administrations for our domestic concerns and the surest bulwarks against anti-republican tendencies; the preservation of the General Government in its whole constitutional vigor, as the sheet-anchor of our peace at home and safety abroad."

President Jefferson. First Inaugural Address, March 4, 1801.

THE EXTENSION OF THE EUROPEAN SYSTEM TO THE WESTERN HEMISPHERE DECLARED INCOMPATIBLE WITH THE AMERICAN SYSTEM, BY PRESIDENT MONROE.

"The political system of the Allied Powers is essentially different * * * from that of America. This difference proceeds from that which exists in their respective Governments; and to the defence of our own, which has been achieved by the

loss of so much blood and treasure, and matured by the wisdom of their most enlightened citizens, and under which we have enjoyed unexampled felicity, this whole nation is devoted. We owe it, therefore, to candor and to the amicable relations existing between the United States and those Powers, to declare that we should consider any attempt on their part to extend their system to any portion of this hemisphere as dangerous to our peace and safety. * * *

"It is impossible that the Allied Powers should extend their political system to any portion of either continent without endangering our peace and happiness."

President Monroe. Annual Message of December 2, 1823.

THE AMERICAN SYSTEM DECLARED TO HAVE EXTENDED ITSELF TO THE WHOLE WESTERN HEMISPHERE, BY PRESIDENT JOHN QUINCY ADAMS.

"Among the inquiries which were thought entitled to consideration before the determination was taken to accept the invitation [to the proposed Congress of the American Republics at Panama], was that whether the measure might not have a tendency to change the policy, hitherto invariably pursued by the United States, of avoiding all entangling alliances and all unnecessary political connections.

"Mindful of the advice given by the Father of our Country in his Farewell Address, that the great rule of conduct for us in regard to foreign nations is, in extending our commercial relations, to have with them as little political connection as possible, and faithfully adhering to the spirit of that admonition, I can not overlook the reflection that the counsel of Washington in that instance, like all counsels of wisdom, was founded upon the circumstances in which our country and the world around us were situated at the time when it was given; that the reasons assigned by him for his advice were that Europe had a set of primary interests which to us had none or a very remote relation; that hence she must be engaged in frequent controversies, the causes of which were essentially foreign to our concerns; that our detached and distant situation invited and enabled us to pursue a different course; that by our union and rapid growth, with an efficient Government, the period was not far distant when we might defy material injury from external annoyance, when we might take such an attitude as would cause our neutrality to be respected, and, with reference to belligerent nations, might choose peace or war, as our interests, guided by justice, should counsel.

"Compare our situation and the circumstances of that time with those of the present day, and what, from the very words of Washington then, would be his counsels to his countrymen now? Europe has still her set of primary interests, with which we have little or a remote relation. Our distant and detached situation with reference to Europe remains the same. But we were then the only independent nation of this hemisphere, and we were surrounded by European colonies, with the greater part of which we had no more intercourse than with the inhabitants of another planet. These colonies have now been transformed into eight independent nations, extending to our very borders, seven of them Republics like ourselves, with whom we have an immensely growing commercial, and must have, and have already, important political connections; with reference to whom our situation is neither distant nor detached; whose political principles and systems of government, congenial with our own, must and will have an action and counteraction upon us and ours to which we cannot be indifferent if we would.

"The rapidity of our growth, and the consequent increase of our strength, has more than realized the anticipations of this admirable political legacy. Thirty years have nearly elapsed since it was written, and in the interval our population, our wealth, our territorial extension, our power—physical and moral—have nearly trebled. Reasoning upon this state of things from the sound and judicious principles of Washington, must we not say that the period which he predicted, as then not far off, has arrived; that America has a set of primary interests which have none or a remote relation to Europe; that the interference of Europe, therefore, in those concerns should be spontaneously withheld by her upon the same principles that we have never interfered with hers, and that if she should interfere, as she may, by measures which may have a great and dangerous recoil upon ourselves, we might be called, in defence of our altars and firesides, to take an attitude which would cause our neutrality to be respected, and choose peace or war, as our interest, guided by justice, should counsel?

"The acceptance of this invitation, therefore, far from conflicting with the counsel or the policy of Washington, is directly deducible from and conformable to it. Nor is it less conformable to the views of my immediate predecessor, as declared in his Annual Message to Congress of the 2d December, 1823."

President John Quincy Adams. Communication to the House of Representatives, in answer to their Resolution of Inquiry, regarding the proposed Panama Congress, March 15, 1826.

THE AMERICAN PEOPLE REDEDICATED TO THE PRESERVATION OF THE AMERICAN SYSTEM, BY PRESIDENT LINCOLN, AT GETTYSBURG.

"Four score and seven years ago our fathers brought forth on this continent, a new nation, conceived in Liberty, and dedicated to the proposition that all men are created equal.

"Now we are engaged in a great civil war, testing whether that nation, or any nation so conceived and so dedicated, can long endure. We are met on a great battlefield of that war. We have come to dedicate a portion of that field, as a final resting-place for those who here gave their lives that the nation might live. It is altogether fitting and proper that we should do this.

"But, in a larger sense, we can not dedicate—we can not consecrate—we can not hallow—this ground. The brave men, living and dead, who struggled here, have consecrated it, far above our poor power to add or detract. The world will little note, nor long remember, what we say here, but it can never forget what they did here. It is for us the living, rather, to be dedicated here to the unfinished work which they who fought here have thus far so nobly advanced. It is rather for us to be here dedicated to the great task remaining before us—that from these honored dead we take increased devotion to that cause for which they gave the last full measure of devotion—that we here highly resolve that these dead shall not have died in vain, that this nation, under God, shall have a new birth of freedom, and that government of the people, by the people, for the people, shall not perish from the earth."

President Lincoln. Address at the Dedication of the National Cemetery at Gettysburg, November 19, 1863.

THE AMERICAN SYSTEM APPLIED IN THE EXTERNAL JUSTICIARY RELATIONS OF THE AMERICAN UNION, BY PRESIDENT MCKINLEY.

"In order to facilitate the most humane, specific, and effective extension of authority throughout [the Philippine Islands], and to secure with the least possible delay the benefits of a wise and generous protection of life and property, I have named Jacob G. Schurman, Rear-Admiral George Dewey, Major-General Elwell S. Otis, Charles Denby, and Dean C. Worcester to constitute a Commission to aid in the accomplishment of these results. * * *

"The Commissioners will endeavor, * * * to ascertain what amelioration in the condition of the inhabitants and what

improvements in public order may be practicable, and for this purpose they will study attentively the existing social and political state of the various populations, particularly as regards the forms of local government, the administration of justice, the collection of customs and other taxes, the means of transportation, and the need of public improvements.

"They will report to the State Department, according to the forms customary or hereafter prescribed for transmitting and preserving such communications, the results of their observations and reflections, and will recommend such Executive action as may from time to time seem to them wise and useful. * * *

"It is my desire that in all their relations with the inhabitants of the Islands, the Commissioners exercise due respect for all the ideals, customs, and institutions of the tribes and races which compose the population, emphasizing upon all occasions the just and beneficent intentions of the Government of the United States.

"It is also my wish and expectation that the Commissioners may be received in a manner due to the honored and authorized representatives of the American Republic, duly commissioned, on account of their knowledge, skill and integrity, as bearers of the good will, the protection, and the richest blessings of a liberating rather than a conquering nation."

President McKinley. Instructions to the Secretary of State regarding the First Philippine Commission, January 20, 1899.

THE DEFINITION OF THE AMERICAN SYSTEM, AS APPLIED BOTH TO THE INTERNAL AND EXTERNAL RELATIONS OF THE AMERICAN UNION, BY PRESIDENT ROOSEVELT.

"When all is said and done, the rule of brotherhood remains as the indispensable prerequisite to success in the kind of national life for which we strive. Each man must work for himself, and unless he so works no outside help can avail him; but each man must remember also that he is indeed his brother's keeper, and that while no man who refuses to walk can be carried with advantage to himself or any one else, yet that each at times stumbles or halts, that each at times needs to have the helping hand outstretched to him. To be permanently effective, aid must always take the form of helping a man to help himself; and we can all best help ourselves by joining together in the work that is of common interest to all. * * *

"It is no light task for a nation to achieve the temperamental qualities without which the institutions of free government are

but an empty mockery. Our people are now successfully governing themselves, because for more than a thousand years they have been slowly fitting themselves, sometimes consciously, sometimes unconsciously, toward this end. What has taken us thirty generations to achieve, we cannot expect to see another race accomplish out of hand, especially when large portions of that race start very far behind the point which our ancestors had reached even thirty generations ago. In dealing with the Philippine people we must show both patience and strength, forbearance and steadfast resolution. Our aim is high. We do not desire to do for the islanders merely what has elsewhere been done for tropic peoples by even the best foreign governments. We hope to do for them what has never before been done for any people of the tropics—to make them fit for self-government after the fashion of the really free nations."

President Roosevelt. First Message, December 3, 1901.

THE QUESTION OF TERMINOLOGY

THE QUESTION OF TERMINOLOGY

Mr. President, Members of the Association and Section, Ladies and Gentlemen:

You have heard ably discussed certain questions which arise out of the relationship between the American Union and the annexed Insular regions, viewed in its sociological and economic aspect. I now ask your attention to a question of immediate interest and importance growing out of this relationship viewed in its political, that is to say, its legal aspect. This question, which the Committee on Arrangements has called "The Question of Terminology," is: What are the correct terms to use in describing the political and legal relationship between the American Union and its distant annexed regions, assuming that this relationship is to be permanent and is to be on terms which are just to all parties?

More specifically, the question which I shall discuss will be, whether we, as Americans, ought, according to American principles, to use, in our political and legal language, the terms "colony," "dependence," and "empire," or whether we ought, according to those principles, to substitute for the term "colony," the term "free state," for "dependence," "just connection," and for "empire," "union."

It is needless to say that I shall accept the decisions of the Supreme Court of the United States as final in regard to all the matters adjudicated in them. But the Supreme Court has jurisdiction only for the purpose of determining the rights of individuals. The political relations between the Union and the Insular regions, it determines only so far as may be necessary to ascertain individual rights. Its present doctrine—that the American Union has power over the Insular regions subject to "fundamental principles formulated in the Constitution," or subject to "the applicable provisions of the Constitution," pro-

tects the civil rights of individuals, but under it the power of the Union for political purposes remains absolute. The proposition which I shall offer for your judgment, will, I believe, not only not be in conflict with the propositions laid down by the Supreme Court, but will give a reason why they are right. It will, too, I believe, give a reasonable basis for our holding that the power of the American Union over the Insular regions, while ample for the maintenance of a just and proper permanent relationship with them under our control, is not absolute even as respects their political rights.

I have said that I shall discuss this question upon American principles. I shall not base myself on the Constitution of the United States, though I shall try to show the relation of that document to the question, as I understand it. I shall assume it to be settled by the decisions of the Supreme Court,—as it seems clearly to be,—that with the exception of the "Territory" clause of that instrument, it is, and of right ought to be, the Constitution of the thirteen original States of the American Union and of the other States which they have admitted into their Union, and of no other States or communities; and that therefore it does not extend of its own force outside the American Union in any constitutional or legal sense, but only in a metaphorical sense—this being as I understand it, the meaning of the Court when they hold, as they do, that, though the "Territory clause" is of present and universal significance as respects all the regions annexed to the Union, yet, with this exception, only "the applicable provisions of the Constitution" or "the fundamental principles formulated in the Constitution" are in force in the annexed regions. "Extensions," so-called, of the Constitution by Act of Congress, are of course mere Acts of Congress, and whether such metaphorical "extensions" are permanent will depend upon the terms and conditions of the "extension."

But though I shall not base myself on the Constitution of the United States, I shall nevertheless base myself on a great American Document, which preceded the Constitution as a statement of American principles, and which is so far from being inconsistent with it that the Democratic party, in its

platform of 1900, called it "the Spirit of the Constitution"—I refer to the Declaration of Independence. It is the American principles set forth in that document which I shall try to discover. If I shall be adjudged to have rightly interpreted that instrument, it will follow that we ought to substitute, in our political and legal language, for the term "colony," the term "free state," for "dependence," "just connection," and for "empire," "union." In making such substitution, however, it will be necessary to give to the terms "free state" and "union," a scientific meaning which will differ from that which they now have in the popular mind, but which will, I believe, be the same as was given to these terms by the Revolutionary statesmen.

I shall not allow myself to be embarrassed by the fact that in my first published writing I used the terms "colony," "dependence" and "empire;" for at the same time that I used these terms, I based myself on principles which were those of free statehood, just connection and union, to which I adhere to this day.

Taking the Declaration of Independence, therefore, as the exposition of the fundamental principles on which all American political theory is based, and to which all American policy must conform, let me state briefly the general meaning and purpose of this instrument, as I understand it.

As a result of the discussion for twelve years preceding the Declaration, the doctrine of the extension of the British Constitution to the American Colonies, which from their situation, could never be represented on equal terms in Parliament, was found to be useless for the protection of American rights, political or civil; and the doctrine that their rights were dependent on the Colonial Charters was found to be inadequate, for these Charters, while protecting the civil rights of the Americans to some extent, proceeded on the theory that they held all their political rights at the will or whim of Great Britain. The Americans felt and knew that they were entitled to political, as well as civil rights, and they all firmly believed that each so-called "colony" was a free state and subject to no external control beyond what was necessary to preserve their relation-

ship with Great Britain on just terms to all the parties. The only question which the Americans discussed, as soon as they comprehended the whole situation, was, Why was each so-called "colony" a free state and why had it always been such? The Declaration of Independence, as I understand it, gave to the world their solution of this problem. Their answer, as I understand it, was, that the American Colonies were and always had been free states, because their relations with the State of Great Britain were not under the British Constitution and were not wholly under the Colonial Charters, but were under a supreme and universal common law, which governs the relations between men, communities, bodies corporate, states and nations, and which they called in the Declaration "the Law of Nature and of Nature's God," according to which every community on the earth's surface, within reasonable limits for the formation and execution of a just public sentiment, is entitled to be a free state,—that is, to be free from external control, in executing its just public sentiment, except so far as may be necessary to enable it to conform to the terms of its just connections with other free states. This doctrine of free statehood as a universal right is, as I understand it, the central idea of the Declaration.

Assuming this to be the central idea, let us see how this idea is reached; and for that purpose, let us notice the exact language of the Declaration. The first paragraph reads:

> "When in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume, among the powers of the earth, the separate and equal station to which the laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation."

The "causes of separation" are prefaced by a number of propositions determining the nature of the "political bands" by which one people may be "connected with" another. These propositions are all rules of human conduct, and are therefore

principles of law, though they are called "self-evident truths." This part of the Declaration reads:

> "We hold these truths to be self-evident: That all men are created equal; that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness; that to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute new government, laying its foundation on such principles and organizing its powers in such form as to them shall seem most likely to effect their safety and happiness."

The conception of the universal right of free statehood is reached, in the Declaration, through a series of three propositions, each stated to be self-evident, and yet all forming a sequence. The basal proposition is, that "all men are created equal." Rufus Choate and John James Ingalls have declared this proposition and the succeeding one that "all men are endowed by their Creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness," to be "glittering generalities." Abraham Lincoln, on the other hand, in his speech at Gettysburg, at the most solemn and stirring moment in the country's history, declared that the proposition that all men are created equal was the foundation-idea of the nation, to which it was dedicated by the Fathers.

The doctrine of equality arising from the common creation of all men as the spiritual offspring of a common Creator, was the doctrine of the Reformation in its broadest form, as declared by Penn. Taking into consideration the religious character of the Americans, as well as the learning and acumen of that most remarkable body of men who constituted the Continental Congress, it seems not only not improbable, but probable, and indeed necessary to conclude, that the proposition that "all men are created equal" was intended to be the epitome of the doctrine of the Reformation, as that doctrine was broadened by the influence of Penn and his followers. As the Governments of

Europe were at that time acting on the political philosophy of feudalism and mediævalism, which in its last analysis was based on the proposition that all men are created unequal, or that some are created equal and some unequal, the Declaration, if it be true that it based the American political philosophy upon the broadest doctrine of the Reformation, announced an American System as opposed to the European System.

From the doctrine of equality arising from the common creation of all men by a personal Creator to whom all were equally related, it is declared by the Declaration to follow as a "self-evident" truth that there are certain rights, which are attached to all men by endowment of the Creator as being the correlative of the unalienable needs of all men, and which inasmuch as they arise from the universal limitations which the Creator has imposed, are as unalienable as the needs themselves. These unalienable rights are declared to be the rights of life, liberty and the pursuit of happiness.

The doctrine of unalienable rights, necessarily supposes a universal law, for the conception of law must precede the conception of right. This law, as conceived of by the Declaration is a common and universal law. In the first part of the preamble this universal common law is spoken of as "the law of Nature and of Nature's God." Inasmuch as the rights claimed are those which depend for their existence upon revelation as well as reason, it is evident that this common and universal law to which the Declaration appeals, is the "law of nature and of nations," of the scholars of the Reformation, which was conceived of as based on revelation and reason, and as governing every relationship of men, of bodies corporate, of communities, of states and of nations. Out of this conception there had already grown that great division of the law which deals with the temporary relations between independent states, which we now call International Law.

Having thus established the doctrine of unalienable rights, based on a universal common law of nature and of nations, which all men, all bodies corporate, all communities, all governments, all states and all nations were bound to enforce, the

Declaration proceeds to a consideration of the forms, methods and instrumentalities by which these unalienable rights are to be secured.

It declares that the primary instrumentality by which these rights are secured, are governments "deriving their just powers from the consent of the governed." Contrary to the usual interpretation, the Declaration does not state that government is the expression of the will of the majority. Governments, it is declared, are instituted to "secure" the "unalienable rights" of individuals. The will of the majority, of course, is quite as likely to destroy as to secure the unalienable rights of individuals. Moreover, the Declaration says merely that "governments are instituted among men"—not that men universally institute their own governments. The whole statement that the governments which are instituted among men to secure the unalienable rights of individuals, universally "derive their just powers from the consent of the governed," is inconsistent with the proposition that governments are the expression of the mere will of the majority, for it is only their "just powers" that governments "derive" from "the consent of the governed," and the will of the majority may be just or unjust. The expression "deriving their just powers from the consent of the governed" seems to me most probably to be an epitome and summary of the two fundamental propositions of the law of agency—"*Obligatio mandati consensu contrahentium consistit,* a free translation of which is "The powers of an agent are derived from the consent of the contracting parties," and *Rei turpis nullum mandatum est,* a free translation of which is "No agent can have unjust powers." On this interpretation the meaning of the whole sentence "that to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed," is, it would seem, that there is a universal right of all communities to have a government of a kind best adapted for the securing of the unalienable rights of individuals, instituted either by their own selection or by the appointment of an external power, and that all governments, however instituted, are universally the agents of the governed

to secure these rights. Government is thus declared not to be the expression of the will of the majority, but the application of the just public sentiment justly ascertained through forms best adapted for this purpose.

The free statehood which is claimed in the concluding part of the Declaration to be the right of the Colonies is by the Declaration based on the philosophical declarations of the preamble. The particular proposition which bears upon the right of free statehood is evidently the one which declares that, "to secure these [unalienable] rights [of individuals], governments are instituted among men, deriving their just powers from the consent of the governed." The intermediate propositions, as the result of which the universal right of free statehood follows from this proposition, are, it would seem, these: If government is the doing of justice according to public sentiment, government is the expression and application of a spiritually and intellectually educated public sentiment, since, although a rudimentary knowledge of what is just is implanted in every human being, a full knowledge of what is just comes only after a course of spiritual and intellectual education. Hence it follows that the forms and methods of government should be such as are adapted to such spiritual and intellectual education. Education takes place by direct personal contact, and can be best accomplished only through the establishment of permanent groups of individuals who are all under the same conditions. The formation and expression of a just public sentiment, therefore, requires the establishment of permanent groups of persons, more or less free from any external control which interferes with their rightful action, under a leadership which makes for their spiritual and intellectual education in justice. Such permanent groups within territorial limits of suitable size for developing and expressing a just public sentiment, are free states. Territorial divisions of persons set apart for the purpose of convenience in determining the local public sentiment, regardless of its justness or unjustness, are not states, but are mere voting districts. Just public sentiment, for its expression and application, requires the existence of many small free states, dis-

connected to the extent necessary to enable each to be free from all improper external control in educating itself in the ways of justice; mere public sentiment, for its expression and application, requires only the existence of a few great states divided into voting districts, each district being under the control of the Central Government, which is to it an external control. Just public sentiment, as the basis of government, is a basis which makes government a mighty instrument for spirituality and growth; mere public sentiment, regardless of its justness or unjustness, as the basis of government, is a basis which makes government a mighty instrument for brutality and deterioration. Human equality, unalienable rights, government according to just public sentiment, and free statehood, are inevitably and forever linked together as reciprocal cause and effect.

The ultimate meaning of the expression "that to secure these rights governments are instituted among men, deriving their just powers from the consent of the governed," seems therefore to be that by the common law of nature and of nations there is a universal right of free statehood which pertains to all communities on the face of the earth within territorial limits of suitable size for the development and operation of a just public sentiment.

So complete and universal are the principles of government by just public sentiment and of free statehood that, according to the Declaration, even when all the people of a free state are meeting together to alter or abolish a form of government which has become destructive of the ends of its institution, as it is declared they may rightfully do, their right to form a new government is not absolute so that they can rightfully do whatever the majority wills, but is limited by this universal common law, so that they can rightfully institute only a new form of government whose foundation principles and mode of organization are such "as to them shall seem most likely to effect their safety and happiness"—that is, to secure the unalienable rights of individuals to life, liberty and the pursuit of happiness.

The declaration of the universal right of free statehood is accompanied, in the Declaration, by the claim that the Colonies,

as free states, had always been in political "connection" with the State of Great Britain. The concluding part of the Declaration reads:

> "We, therefore, * * * declare that these United Colonies are, and of right ought to be, free and independent states, * * * and that all political connection between them and the State of Great Britain is, and ought to be, totally dissolved."

In this it was necessarily implied that the Colonies had always been free states or free and independent states, and that, by the Declaration, at most their right of independent statehood came into existence; that they had theretofore at all times been in political connection, either as free states under the law of nature and of nations, or as free and independent states by implied treaty, with the free and independent State of Great Britain; that the dissolution of the connection had not come about by an act of secession on their part, but was due to the violation, by the State of Great Britain, either of the law of nature and of nations, or of the implied treaty on which the political connection was based.

The term "connection" was an apt term to express a relationship of equality and dignity. "Connection" implies two things, considered as units distinct from one another, which are bound together by a connecting medium. Just connection implies free statehood in all the communities connected. Union is a form of connection in which the connected free states are consolidated into a unity for the common purposes, though separate for local purposes. Merger is the fusion of two or more free states into a single unitary state. Connection between free states may be through a legislative medium, or through a justiciary medium, or through an executive medium. The connecting medium may be a person, a body corporate, or a state. States connected through a legislative medium, whether a person, a body corporate or a state, and whether wholly external to the states connected or to some extent internal to them, whose legislative powers are unlimited or which determines the limits of its own legislative powers, are "dependent"

upon or "subject" to the will of the legislative medium. Such states are "dependencies," "dominions," "subject-states," or more accurately "slave-states,"—or more accurately still, not states at all, but mere aggregations of slave-individuals. States connected through a legislative medium, whether a person, a body corporate or a state, and whether wholly external to the states connected or in part internal to them, whose legislative powers are granted by the states and which has only such legislative powers as are granted, are in a condition of limited dependence, dominion, and subjection; but their relationship is by their voluntary act and they may, and by the terms of the grant always do to some extent control the legislative will to which they are subject and on which they are dependent. Where states are connected or united through a justiciary medium, whether that justiciary medium is a person, a body corporate, or a state, all the states are free states, their relationships being governed by law. Where states are connected through an executive medium, whether that executive medium is a person, a body corporate, or a state, all the states are free and independent states, and each acts according to its will. All connections in which the legislative medium,—whether a person, a body corporate or a state, and whether wholly external to the states connected, or to some extent internal to the states connected,—has unlimited legislative powers or determines the limits of its own legislative powers, are fictitious connections, the relationship being really one which implies "empire" or "dominion" on one side, and "subjection" or "dependence" on the other. Such connections are properly called "empires" or "dominions." So also all connections in which the only connecting medium is a common executive, whether a person, a body corporate or a state, are fictitious connections, the relationship being one of "permanent alliance" or "confederation" between independent states. Such connections are properly called "alliances" or "confederations." The only true connections are those in which there is a legislative medium, whether a person, a body corporate or a state, whose legislative powers are limited, by agreement of the connected states, to the com-

mon purposes, and those in which there is a justiciary medium, whether a person, a body corporate, or a state, which recognizes its powers as limited to the common purposes by the law of nature and of nations, and which ascertains and applies this law, incidentally adjudicating, according to this law, the limits of its own jurisdiction. Just connections tend to become unions, it being found in practice necessary, for the preservation of the connection in due order, that the power of limited legislation for the common purposes and the power of adjudicating and applying the law for the common purposes should extend not only to the states, but to all individuals throughout the states.

Thus "dependence," as a fictitious and vicious form of connection, is, it would appear, forever opposed to "connection" of a just and proper kind. If it were attempted to sum up the issue of the American Revolution in an epigram, would not that epigram be: " 'Colony,' or 'Free State?' 'Dependence,' or 'Just Connection?' 'Empire,' or 'Union?' "

According to the opinion of the Revolutionary statesmen, as it would seem, a universal right of free statehood does not imply a universal right of self-government. Statehood and self-government are two different and distinct conceptions. The Americans claimed the right of free statehood as a part of the universal rights of man, but they claimed the right of self-government because they were Englishmen trained by generations of experience in the art of self-government and so capable of exercising the art. A state is not less or more a free state because it has self-government. It is a free state when its just public sentiment is to any extent ascertained and executed by its government,—however that government may be instituted,—free from the control of any external power. It does not prevent a region from being a free state that its government is wholly or partly appointed by an external power, if that government is free from external control in ascertaining and executing the just local sentiment to any extent. Nor does it interfere with the right of free statehood when an external power stands by merely to see that the local government ascer-

tains and executes the just local sentiment to a proper extent. The external power in that case is upholding the free statehood of the region. It stands as surety for the continuance of free statehood.

The right of self-government, according to this view, is a conditional universal right of free states. When a community, inhabiting a region of such territorial extent that it is not too large to make it possible for a just public sentiment concerning its affairs to be developed and executed, and not so small as to make it inconvenient that it should be in any respect free from external control, is of such moral and intellectual capacity that it can form and execute a just public sentiment concerning its internal affairs and its relations with other communities, states and nations, it has not only the right of free statehood,—that is, of political personality,—which is of universal right, but also the right of self-government. The right of such a free state to self-government is complete if there be no just political connection or union between it and other free states, or partial, if such a just connection or union exists, being limited, in this latter case, to the extent necessary for the preservation, in due order, of the connection or union.

Independence was regarded apparently also, by the Declaration, when it declared the Colonies to be "free and independent states," to be a right superadded to the right of free statehood in some cases, and therefore to be a conditional universal right of free states—that is, a right universally existing where the conditions necessary to independence—great physical strength, and great moral and intellectual ability—exist.

The Colonies regarded themselves as free states in such a just and rightful connection with the free and independent State of Great Britain as to form with it a union. From this it followed, inasmuch as this connection and union was conceived of as existing under a universal common law, that the State of Great Britain, through its Government, was the justiciary medium which connected the free states of that which they conceived of as the British-American Union, and as such applied the principles of this universal common law for pre-

serving and maintaining in due order the connection and union. There, therefore, resulted the conception of Great Britain as what may perhaps be called "the Justiciar State" of this British-American Union. If we were to use the exact language of the Revolution, it would probably be more proper to speak of Great Britain as "the Superintending State" of the British-American Union, as the power of Great Britain over the Colonies was generally spoken of by the Americans as "the superintending power." Lord Chatham used this expression in his famous bill introduced in the House of Lords. The expression "Justiciar State," however, seems to be more scientifically correct. A Justiciar was an official who exercised the power of government in a judicial manner. His power was neither strictly legislative, nor strictly executive, nor strictly judicial, but was complex, being compounded of all three powers, so that his executive action, taken after judicially ascertaining the facts in each case and applying to them just principles of law, resulted in action having the force of legislation.

The Revolutionary statesmen have left a very considerable literature showing their views concerning the nature of the right of a state to be the Justiciar State of a Union of States, and concerning the powers which a Justiciar State may rightfully exercise.

Arguing on the same basis as that adopted by them regarding the right of self-government and independence, it appears that they considered the right of a state to act as Justiciar for other states to be a right superadded to the right of self-government and independence in some cases—that is, that justiciarship is a conditional universal right of self-governing and independent states, the conditions necessary to its existence being great physical strength, a judicial character and a capacity for leadership.

The power exercised by a Justiciar State in a Justiciary Union, they recognized as being neither strictly legislative, nor strictly executive, nor strictly judicial, but a power compounded of all these three powers. They considered that it was to be exercised for the common purposes after investigation by judi-

cial methods; that the just public sentiment of the free states connected and united with the Justiciar State was to be considered by it in the determination of the common affairs; and that the action of the Justiciar State was to result, after proper hearing of the free states and all parties concerned, in dispositions and regulations made according to just principles of law, which were to have the force of supreme law in each of the connected and united free states respectively. This kind of power, which the Fathers called "the superintending power" or "the disposing power" under the law of nature and of nations, and which may be called, using an expression now coming into use, "the power of final decision," or more briefly "the justiciary power," being neither legislative, executive nor judicial, but more nearly executive than legislative, the more conservative among them considered might be exercised, consistently with the principles of the law of nature and of nations, either by the Legislative Assembly of the Justiciar State or by its Chief Executive, advised by properly constituted Administrative Tribunals or Councils; the action of the Legislative Assembly superseding that of the Chief Executive in so far as they might be inconsistent with each other. This right of both the Legislative Assembly and of the Chief Executive, properly advised, to exercise the powers of the Justiciar State—the former having supreme, and the latter superior justiciary power,—under the law of nature and of nations, is, I believe, also recognized by our Constitution, as I have elsewhere attempted to show.

Of course there must be conditions of transition where the relations between free states which would normally be in union, or between detached portions of what would normally be a unitary state, temporarily assume a form which is partly one of union or merger, and partly of dependency. The justification of all such forms of relationship must, it would seem, be found in the fundamental right which every independent state, whether a justiciar state or not, has to the preservation of its existence and its leadership or judgeship—that is, in the right of self-preservation, which, when necessary to be invoked, overrules all other rights. On this theory must, it would seem, be

explained the relations between the American Union and its Territories, between Germany and Alsace-Lorraine, and between England and Ireland. On this theory of self-preservation, also, must, it would seem, be explained the permanent relationship of dependency which exists between the District of Columbia and the American Union—such dependency being necessary to the preservation of the life of the Union.

Out of the conception of a universal common law of nature and of nations which governs all human acts and relationships,—and therefore all the acts and relationships of states and nations as well as of men, bodies corporate and communities,—there has arisen and at the present time exists, a science of the universal and common law of the state, called the Science of the Law of the State, which concerns itself with the internal relations of a state to its people, its bodies corporate and its communities, and a science of the universal and common law of independent states, called the Science of International Law, which concerns itself with the occasional and temporary relations of independent states. The great field of law which concerns the permanent relations of free states is not yet covered by a recognized science. Must there not therefore emerge from this conception of a universal and common law of nature and of nations, a third science of law, covering this field, which will take as its basal proposition the doctrine that free statehood is the normal and rightful condition of all communities on the earth's surface within suitable limits for the formation of a just public sentiment, and which will concern itself with the permanent relations between free states? As such permanent relations must always be by just connection, either in its simple form or in the form of union, may not such a science of law, standing between the science of the Law of the State and the science of International Law, be called the science of the Law of Connections and Unions of Free States?

Taking the whole Declaration together, and reading it in the light of the political literature which was put forth on both sides of the water between the years 1764 and 1776, it seems to be necessary to conclude that the views of the most conservative

of the American statesmen of the period concerning the connection between Great Britain and the Colonies were these:

They considered, as I interpret their language, that the connection between free and independent State of Great Britain, and the American Colonies, as free states, had existed and of right ought to have existed, according to the principles of the law of nature and of nations—that law being based on principles opposed to the principles applied by the governments of Europe, and being thus what may be called a law of nature and of nations according to the American System. Had they used a more definite and scientific phraseology, it seems that their view would best be expressed by saying that they considered that the relationship between Great Britain and the Colonies had always existed according to the principles of the Law of Connections and Unions of Free States. They accordingly admitted, as I understand them, that Great Britain, as a free and independent state, had power, as Justiciar, over the American Free States, for the common purposes of the whole Union, to finally decide, by dispositions, ordinances and regulations having the force of supreme law, made through its Government after a judicial hearing in each case for the investigation of facts and the application to them of the principles of the Law of Connections and Unions of Free States, upon all questions of common interest arising out of the connection and union; and that each of the American Free States had power, through its Legislature, to legislate according to the just public sentiment in each, and the right to have its local laws executed by its Executive and interpreted and applied by its Courts, free from all control by the State of Great Britain, except what was necessary to protect and preserve the Union.

In this view, the actions of the Americans show the evolution of a continuous theory and policy, and the application of a single American system of principles,—a system which was based upon free statehood, just connection and union. The British-American Union of 1763 was a Union of States under the State of Great Britain as Justiciar, that State having power to dispose of and make all rules and regulations respecting the connected

and united free states, needful to protect and preserve the connection and union, according to the principles of the Law of Connections and Unions. The dissolution of this Union, caused by the violation by the State of Great Britain of its duties as Justiciar State, gave a great impetus to the extreme states'-rights party, and the next connection formed,—that of 1778 under the Articles of Confederation,—was not a Union, the Common Government (the Congress) being merely a Chief Executive. Such a connection proving to be so slight as to be little more than a fiction, they formed, under the Constitution of 1787, the only other kind of a union which appears to be practicable, namely, a union under a common government which was a Chief Legislature for all the connected and United States by their express grant, and whose powers were expressly limited, by limitation in the grant, to the common purposes of the whole connection and union of free states.

If the Constitution, in defining what are the common purposes of the Union and what the local purposes of the States of the Union, is declaratory of the principles of the Law of Connections and Unions of Free States, as it seems not unreasonable to hold, the Limited Legislative Union formed under the Constitution may perhaps be considered, in view of the supremacy of the Judiciary, as Guardians of the Constitution, over the Limited Legislature, as a species of Justiciary Union.

Moreover, if in what has been said we are correct, the relationship at present existing between the American Union and the Insular regions, is that of *de facto* Justiciary Union, and the American Congress, under the lead of President McKinley and President Roosevelt, has acted, with reference to these regions, according to the principles of the American system. The American Union, through President McKinley, has declared itself to be "a liberating, not a conquering nation," and has recognized the people of Hawaii, Porto Rico and the Philippines as each having a separate and local citizenship, thus recognizing each of these regions as a *de facto* free state connected with the American Union. The action of the American Union extends to the regulation of the action of individuals in

these free States, so that a Greater American Union of Free States exists *de facto*. To bring into existence a Greater American Union *de jure*, it needs, first, the public and express recognition by the American Union of itself as the Justiciar State, and of each of the separate Insular regions within proper territorial limits, as a Free State in just connection and union with the American Union; and, secondly, the establishment by the American Union of the necessary Advisory Council for investigating facts and for advising the President before he, on behalf of the American Union as Justiciar State, exercises his superior justiciary powers, and for advising the Congress before it, in the same behalf, exercises its supreme justiciary powers. Councils suitable for advising the local Governors, when they, on behalf of the American Union as Justiciar State, exercise their inferior justiciary powers, already exist. Of such a Greater American Union, the present American Union would be the Supreme Justiciary Head, with power to finally determine the questions arising out of the relationship, not by edict founded on will and force, but by decision carefully made in each case after ascertaining the facts in each case and applying to them the principles of the Law of Connections and Unions properly applicable to them.

Is not this theory the true *via media?* The theory of the automatic extension of the constitution of a state over its annexed insular, transmarine and transterranean regions which from their local or other circumstances can never equally participate in the institution and operation of its government, in some cases protects individual rights, but it takes no account of the right of free statehood, which is the prime instrumentality for securing these rights. The theory of a power over these regions not regulated by a supreme law, is a theory of absolute power over both individuals and communities in these regions,—a theory which implies an absence of all rights. The theory of a power over these regions based on the principles of the Law of Connections and Unions, granting that this law is itself based on the right of human equality, protects the rights of persons, of communities, of states and of nations. On

this theory the "Territory Clause" of the Constitution recognizes the Law of Connections and Unions as determining the relationship between the American Union and the Insular regions—"needful" rules and regulations being those which are adapted to accomplish the end desired and which are consistent with the principles of the Law of Connections and Unions as declared in the Declaration of Independence. On this theory, the doctrine of the Supreme Court that the civil rights of individuals in cases growing out of our relations with our Insular brethren are protected by "the fundamental principles formulated in the Constitution," or by "the applicable provisions of the Constitution," is translated into the doctrine that these individual and civil rights are protected by the principles of the Law of Connections and Unions of Free States, as these principles are formulated in the Constitution and as they are disclosed by an examination of the applicable provisions of the Constitution, and that not only are these civil rights protected by this law, but also the political rights of all the parties to the relationship. On this theory, the jurisdiction of the Supreme Court continues to be exactly the same as at present. The necessary Advisory Councils for ascertaining the just political relations between the American Union and the Insular regions and for determining the political rights growing out of that relationship, would not in the least interfere with the Supreme Court in the exercise of its functions. They would supplement that Court, which now protects the civil rights of all concerned through its adjudications in civil cases, by assisting the Congress and the President to protect and preserve the political rights of all concerned through dispositions and needful rules and regulations in political cases.

By adopting this theory of the Reformation and the American Revolution, may not the American System extend indefinitely without danger to America herself? There would be no domination, no subjection. The same Law of Connections and Unions would extend over and govern throughout the whole Greater American Union. This Greater American Justiciary Union would be but a logical application of the prin-

ciples underlying the American Legislative, Executive and Judicial Union formed by the Constitution of the United States.

It would not be the Constitution which would follow the flag into the regions which America has annexed to herself, but the Law of Connections and Unions, which is a part of the Law of Nature and of Nations according to the American System.

I recur, therefore, to my first proposition and submit to your judgment whether the terms "colony," "dependence," and "empire," on the one hand, and the terms "free state," "just connection," and "union," on the other, are not the symbols of two great and fundamentally opposed systems of politics—the one European, and the other American; whether the American terms and the American System are not capable of being applied universally and beneficently, in the way pointed out above, throughout all places outside the present Union which are within the limits of its justiciary power; and whether, if they are capable of this application, it is not our duty, both logically and ethically, to use the American terms in describing the relations between us and our Insular brethren, applying at the same time the principles of the American System, and thus calling into existence a Greater American Union.