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EXPANSION AND IMPERIALISM.

ADDRESS

—Delivered by—

JUDGE H. C. McDOUGAL,

—Before the—

Union Veteran Patriotic League,

—AT—

KANSAS CITY, MISSOURI,

September 1st, 1900.

ADDRESS

—OF—

JUDGE H. C. McDOUGAL,

—BEFORE THE—

UNION VETERAN PATRIOTIC LEAGUE,

—AT—

KANSAS CITY, MISSOURI,

SEPTEMBER 1st, 1900.

Mr. President and Gentlemen:

As a plain, plodding lawyer, a Republican who takes little active interest in practical politics, an old soldier of the Republic who still loves his country, I am here to-night in the hope that I may be able to throw some light upon the questions of expansion and imperialism now claiming public attention.

From the dawn of time, one of the highest desires of man has been to own, possess and hold lands, and from the day that Abram's name was changed to Abraham, and the Lord granted him the land wherein he was a stranger—"all the land of Canaan for an everlasting possession"—the chosen people of the Lord have been natural born land owners and expansionists.

In looking backward through the centuries, history demonstrates that those nations having the highest and best types of civilization, which do most to uplift, upbuild and better the conditions of humanity, as England, Germany, France, Russia and later the United States, wherever public interest demanded and the power was possessed, have subserved that interest and exercised that power by the extension of their public domain. This is but the onward march of civilization. Sluggish, slow, dull, non-progressive nations, as China, and the like, are never expansionists.

The plain truth, however, is that the question of expansion has not been so much a question of abstract right, as of power and interest. Will it pay? Will the material interests of the country be advanced and bettered by the acquisition of new territory? Have we the power and the right, under the laws of war and of nations, to take it? If so, the *might* has made the *right*, and the coveted territory was absorbed. This was notably true as respects the territory we acquired from Mexico in 1848.

Once taken in, such territory is to be retained or disposed of, at the pleasure of the sovereignty taking it. One foreign nation may prey upon the commerce of another, may plunder, imprison and even murder its citizens, and insult its flag, and but little attention is paid to it—dollars pay the bill. But let that foreign country go to the shores of the other and establish its sovereignty, raise its flag over and possess itself of but *one acre of land*, and at once war is on. Nations do not give up their lands without a fight any more than do individual owners.

The government of the United States, from its formation to date, and the Democratic party, from its formation until its golden patriotism

became amalgamated with and was swallowed up and lost in the pessimistic dross of Populism, alike steadily pursued the policy of expansion.

Every American schoolboy who has studied the history of his country knows that such has always been the policy of our government, and that for nearly a century it was also the policy of the Democratic party. But as this year of grace, 1900, has raised up men who seem to have forgotten the history, traditions and policies hitherto pursued by the government, as well as by the old Democratic party, it will not be amiss to now recall and briefly restate some of the controlling historic facts relating to this question:

The fathers of the republic laid wide and deep the foundation for expansion in the Articles of Confederation of 1778, in this provision:

"Article XI. Canada acceding to this confederation, and joining in the measures of the United States, shall be admitted into, and entitled to all the advantages of this Union."

And ten years later, whilst still under the Articles of Confederation, the State of Virginia ceded, and the next year deeded, to the United States the great Northwest Territory:

"Upon the condition that the territory so ceded *shall be* laid out and *formed into States*."

The Congress at once accepted cession and deed and provided for a temporary civil government of that territory, Article 6 of that ordinance providing that:

"There shall be neither slavery nor involuntary servitude in the said territory, otherwise than in the punishment of crimes," &c.

Under the administration of three distinguished Democratic Presidents and the policy of Democratic Congresses, respectively, the United States next expanded by the acquisition of territories belonging to foreign powers, as follows:

In 1803, under President Jefferson, the Louisiana Purchase;

In 1819, under President Monroe, the Floridas, and

In 1848, under President Polk, California, New Mexico and Arizona."

Then came on that long-continued, persistent Democratic "manifest destiny" effort to expand over and take in the Island of Cuba. The immense proportions of this Island, its wondrous resources, strong position in the tropical seas, together with its "fatal gift of beauty," had for years enchanted American statesmen, who longed in some way to annex it to the United States. It was reserved for a Democratic administration, however, to take decisive measures to secure this prize. President Pierce, in 1854, offered Spain $100,000,000 for Cuba, which was peremptorily refused. At his direction, our Ministers to England (James Buchanan), France (J. Y. Mason) and Spain (Pierre Soule) met and held a conference at Ostend, in Belgium, with a view to the acquisition of Cuba. These Ministers, at the conclusion of their labors, submitted to Marcy, Secretary of State, their report, which is down in history as "THE OSTEND MANIFESTO," which contains the clearest, strongest and most forceful reasons for expansion over Cuba anywhere found. The "manifest destiny" of the United States meant the extension of the federal sovereignty over that fair and favored Island. (For the full text of "The Ostend Manifesto," see Halstead's "Story of Cuba," 172-178).

The Democratic platform of 1856 declared for "the perpetuity

and *expansion* of the Union," and further, "That the Democratic party will expect of the next administration that every proper effort will be made to insure our ascendency in the Guif of Mexico," both of which meant Cuba. But as they were disappointed in the Buchanan administration in that behalf, in their platforms of 1860 both the Douglas and Breckenridge wings of the Democratic party came out squarely in favor of expansion over Cuba, the latter wing declaring:

"4. That *the Democratic party are in favor of the acquisition of the Island of Cuba*, on such terms as shall be honorable to ourselves and just to Spain, at the earliest practicable moment." (Cooper's American Politics, B'k 2, p. 43).

Later on, in 1867, our territorial limits were expanded by the purchase and cession of Alaska, and again, in 1898, by taking in the Spanish Isles.

Yet a political alliance, masquerading under a name honored by its great leaders, Jefferson, Jackson and Douglas, now contends that it is a crime for a Republican administration to pursue that policy which they conceived, moulded into shape and advocated.

Jefferson was an ardent expansionist, often expressed his earnest desire to extend our government over Canada, and in speaking of his great purchase, in his second inaugural address (1 "Messages and Papers of the Presidents," p. 379), said:

"I know that the acquisition of Louisiana has been disapproved by some from a candid apprehension that the enlargement of our territory would endanger its union. *But who can limit the extent to which the federative principle may operate effectively? The larger our association the less will it be shaken by local passions.*"

Andrew Jackson, in 1843, wrote a letter urging the proposition to acquire Texas, and saying, that:

"On this subject I have thought, with the ancient Romans, that it was *right never to cede any land or boundary of the Republic*, but always to *add to it* by honorable treaty, thus extending the area of freedom, and it was in accordance with this feeling that I gave our Minister to Mexico instructions to enter upon a negotiation for the cession of Texas to the United States."

Stephen A. Douglass, that apostle of Democracy, its candidate for the Presidency, and the acknowledged leader and statesman of its conservative element, in speaking of the acquisition of Cuba, said:

"*I am in favor of expansion* as fast as consistent with our interests and the increase and development of our population and resources. * * * I believe the interests of commerce, of civilization, every interest which civilized nations hold dear, *would be benefited by expansion.*"

And again, in the Lincoln-Douglas debate at Freeport, Illinois, in 1858, Douglas said:

"It is idle to tell you or me that we have territory enough. * * * I tell you, increase and multiply and *expand* is the law of this nation's existence. * * * Just so far as our interests require additional territory, in the north, in the south, or *on the islands of the sea*, I am for it.

CONSTITUTIONAL PROVISIONS.

Under the Articles of Confederation (1778) each State retained its sovereignty and independence. The government was weak, the Articles formed simply a league between the States. No powers were implied. Hence the Fathers determined upon, formulated and finally adopted the Constitution, which merged the sovereignty of former States into the United States. It was neither made nor adopted for or by the *States*, but by the people; firmly established "a government of the people, by the people and for the people." (Lincoln; 4 Wheat., 316).

In the careful and candid consideration of the questions now

before us, it is well to bear in mind that when "we, the people of the United States," adopted the Constitution and the amendments thereto, we therein and thereby, of our own free will, imposed certain duties and conferred certain rights, privileges and powers upon: 1, the people; 2, the Congress; 3, the President and 4, the Supreme and other Federal courts, and by the tenth amendment provided that:

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

For convenient reference, the following provisions of the Constitution granting express powers to the Congress, the President and the Federal Courts are here grouped:

1. The CONGRESS: "We, the people," granted to Congress, the following powers:

"The Congress *shall have power* to dispose of and make all needful rules and regulations respecting *the territory* and other property belonging to the United States." (Art. IV, Sec. 3).

"The Congress *shall have power* * * * to make all laws which shall be necessary and proper for carrying into execution the foregoing powers *and* all other powers vested by this constitution in the government of the United States, *or* in any department or office thereof." (Art. I, Sec. 8).

2. THE PRESIDENT: "We, the people," first said that "The President *shall be* the commander-in-chief of the army and navy of the United States," and then declared that:

"He *shall have power*, by and with the advice and consent of the Senate, *to make treaties*, provided two-thirds of the senators present concur." (Art. II, Sec. 2).

And lastly we gave him this command:

"He *shall* take care that the laws be faithfully executed." (Id., Sec. 3).

3 THE FEDERAL COURTS: "We, the people," first said:

"The judicial power of the United States *shall be* vested in *one* Supreme Court, and in such other inferior courts as the Congress may from time to time ordain and establish." (Art. III, Sec. 1).

And then "We, the people," vested in the federal judiciary this vast and far reaching power:

"The judicial power *shall* extend to *all cases*, in law and in equity, arising under this *constitution*, the *laws* of the United States and *treaties* made or which shall be made under their authority." (Id., Sec. 2).

SUPREME LAW OF THE LAND: And "We, the people," finally solemnly covenant that:

"This *Constitution and* the *laws* of the United States which shall be made in pursuance thereof, *and* all *treaties* made or which shall be made under the *authority* of the United States SHALL BE THE SUPREME LAW OF THE LAND." (Art. VI).

When "we, the people," vested the judicial power of our country in the "one Supreme Court" and declared that this "judicial power shall extend to all cases * * * arising under this Constitution, the laws of the United States, and *treaties* made," we made that Court the *final arbiter* of all these questions and bound ourselves to abide by its decisions, obey its mandates and follow its construction of the Constitution, laws and treaties.

If it be found upon examination that questions now before the public have been settled by that high tribunal, then it is submitted that such questions are no longer open.

TREATIES.

Upon the power to make treaties, there are no Constitutional limitations or restrictions. The simple language is that the President "*shall have power*, by and with the advice and consent of the Senate,

to *make* treaties." When so made, a treaty becomes, by express Constitutional grant, "the supreme law of the land," and binds the nation in the aggregate, as well as all its officers and citizens, to the observance of its terms.

This question was first presented to and decided by the "Father of His Country" in 1796. In refusing compliance with a resolution of the House to lay before it "a copy of the instructions to the Minister of the United States," together with correspondence and other documents relating to a treaty with Great Britain, President Washington said:

"Having been a member of the General Convention, and knowing the principles on which the Constitution was formed, I have entertained but one opinion on this subject; and from the first establishment of the Government to this moment my conduct has exemplified that opinion—that the power of making treaties is exclusively vested in the President, by and with the advice and consent of the Senate, provided two-thirds of the Senators present concur; and that every treaty so made and promulgated thence forward *became the law of the land.* It is thus that the treaty-making power has been understood by foreign nations, and in all the treaties made with them *we* have declared and *they* have believed that, when ratified by the President, with the advice and consent of the Senate, they became obligatory. In this construction of the Constitution every House of Representatives has heretofore acquiesced, and until the present time not a doubt or suspicion has appeared, to my knowledge, that this construction was not the true one. Nay, they have more than acquiesced, for, till now, without controverting the obligation of such treaties, they have made all the requisite provisions for carrying them into effect." (1 "Messages and Papers of the President," 195).

For this refusal, Washington was assailed by the opposition with even more bitterness and venom than his great successors, Jefferson, Jackson, Lincoln, Grant, Cleveland and McKinley, were ever assailed by their opponents when they dared to do right in disregard of public clamor. But lawyers, statesmen and courts have for more than a century followed Washington's construction of this Constitutional provision, and no one now questions it.

POWER TO ACQUIRE TERRITORY.

The right and the power of the Federal government to acquire additional territory by conquest, cession, annexation or purchase, and to own, hold and govern the same, has been so firmly established by the policy and practice of the Nation for more than a century, as well as by the repeated acts and doings of each of the three great departments of our government, that the man who now questions such right or power is not to be taken seriourly by any—save, perhaps, himself.

Jefferson's State rights theories led him to doubt this right, and soon after the Purchase he wrote to his friend Breckenridge, saying:

"The Constitution has made no provision for our *holding* foreign territory, still less for our incorporating foreign nations into our Union. The executive, in seizing the fugitive occurrence, which so much advances the good of this country, *has done an act beyond the Constitution.*"

But Jefferson was evidently a politician who sometimes winked the other eye, as they do to-day, for whilst discussing the question of the right and duty of the Congress under the Constitution, with Lincoln-like humor, he said:

"The less that is said about any Constitutional difficulty, the better; and it will be desirable for Congress to do what is necessary *in silence.* In September writing from Monticello to Colonel Nicholas, the president says: 'Whatever Congress shall think it necessary to do, should be done with as little debate as possible, and particularly as far as respects the constitutional difficulty.'" (3 Spencer's Hist. U. S., 41-2).

Notwithstanding his fears and talks, the Congress took the broad, national view that the right to acquire territory by conquest or purchase *was inherent in every sovereign nation,* that ours was a sovereign nation, and that under the Constitution that power and right belonged to the Federal government. Hence, by an overwhelming majority, the Senate ratified the treaty, and Congress at once passed laws for the government of the Purchase, all of which was sanctioned by every branch of the government, and by the American people.

Lest some doubting Thomas still fear our government does not possess this power, the following quotations are made from a few of the many decisions of the Supreme Court of the United States upon this question:

"The Constitution confers absolutely on the government of the Union the power of making war and of making treaties; consequently that government possesses the power of acquiring territory either by conquest or treaty."—Insurance Co. v. Canter, 1 Pet., 543.

"The power to acquire territory is derived from the treaty making power and the power to declare and carry on war. The incidents of these powers are those of national sovereignty and belong to all independent governments."—Mormon Church Case, 136 U. S., 43.

"The power of governing and legislating for a territory is the inevitable consequence of the right to acquire and hold territory."—Sere v. Petot, 6 Cranch, 336.

"It would be absurd to hold that the United States has the power to acquire territory and no power to govern it when acquired."—Mormon Church Case, 136 U. S., 44.

"The United States, having rightfully acquired the territories, have the entire dominion and sovereignty, national, municipal, federal and state, over all the territories."—Shively v. Bowlby, 152 U. S , 48.

STATUS OF INHABITANTS ON CHANGE OF SOVEREIGNS.

As to the personal and political status of the inhabitants of conquered or ceded territory, the law of nations is: That those laws which affect the relation of the individual continue to exist, notwithstanding the change of sovereignty; whilst those laws which affect the relation of the people to the former sovereign cease at once.

That our treaty making power has, and has exercised the right to change both of these, will be shown by the course and policy of our government in making *different* provisions for the inhabitants under our four principal treaties with foreign nations, as follows:

The Louisiana Treaty (1803) provides as follows:

"Art. 3. The inhabitants of the ceded territory *shall be incorporated in the union of the United States,* and admitted as soon as possible, according to the principles of the federal constitution, to the enjoyment of all the rights, advantages and immunities of the citizens of the United States."

The Florida Treaty of 1819 provides:

"Art. 6. The inhabitants of the territory which his Catholic Majesty cedes to the United States by this treaty *shall be incorporated in the union of the United States* as soon as may be consistent with the principles of the Federal Constitution, and admitted to the enjoyment of all the privileges, rights and immunities of the *citizens of the United States.*"

Articles 8 and 9 of the treaty with Mexico of 1848 provide, first, that Mexicans "who shall prefer to remain in the said territories, may either retain the title and rights of Mexican citizens, or acquire those of citizens of the United States." And it is next provided that Mexicans who shall not preserve the character of Mexican citizens,

"shall be incorporated into the union of the United States, and be admitted at the proper time (to be judged by the Congress of the United States) to the enjoy-

ment of all the rights of citizens of the United States, according to the principles of the Constitution."

Article III of the Alaska treaty (with Russia, 1867), provides as follows:

"The inhabitants of the ceded territory, according to their choice, reserving their natural allegiance, may return to Russia within three years; but if they should prefer to remain in the ceded territory, they, *with the exception of uncivilized native tribes*, shall be admitted to the enjoyment of all the rights, advantages and immunities of citizens of the United States, and shall be maintained and protected in the free enjoyment of their liberty, property and religion. The *uncivilized tribes* will be subject to such laws and regulations as the United States may from time to time adopt in regard to *aboriginal tribes of that country*."

The 9th article of the treaty of Paris (1898) relating to the Spanish Isles, simply provides that:

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

This treaty was ratified in February, 1899, the Senate at the same time declaring:

"That by the ratification of the treaty of peace with Spain it is *not* intended to incorporate the *inhabitants* of the Philippines into citizenship of the United States, *nor* is it intended to permanently annex said islands as an integral part of the territory of the United States; but *it is the intention* of the United States to establish on said islands a government suitable to the wants and conditions of the inhabitants of said islands, to prepare them for local self-government, and in due time to make such disposition of said islands as will best promote the interests of the citizens of the United States *and* the inhabitants of the said islands."

ACQUIRED TERRITORY—BY WHAT LAW GOVERNED.

Unless otherwise provided by the treaty of cession, the laws and customs in force at the date of the cession continue in force until changed by the new sovereign.

As will be apparent from Congressional action and treaty in the following instances, the policy of our government, sanctioned by the people and upheld by the courts, has been to make such regulations respecting the laws for the government of the conquered or ceded territory as to *our government* seemed best, viz:

The Louisiana treaty (1803) did not, but the Act of Congress authorizing the President "to take possession of and occupy the territory ceded by France" *did* recognize existing (Spanish) laws, section 2 of which provided that:

"All military, civil and judicial powers exercised by *existing government* of the same, shall be vested in such person or persons * * * as the the President * * * shall direct."

And the Act of 1804, dividing the territory, expressly provided for the continuance of such laws, as follows:

"Sec. 11. The laws in force in the said Territory at the commencement of this act, and not inconsistent with the provisions thereof, *shall continue in force* until altered, modified or repealed by legislature."

The Florida treaty (1819) did not, but the Act authorizing the President to take possession, did continue in force the despotic laws of Spain (6 Benton's Abridg., 711 and note), whilst the Act of 1822, establishing territorial government, contained this provision:

"Sec. 13. That the laws in force in the said territory, at the commencement of this act, and not inconsistent with the provisions thereof, shall continue in force until altered, modified or repealed by the legislature."

Neither the Mexican treaty of 1848, nor the Russian treaty (Alaska) of 1867, provide what laws shall govern the territory ceded;

nor do the first acts of Congress respecting said territories. But in 1849 the Congress did extend our revenue laws over the former, and in 1868 our laws "relating to customs, commerce and navigation" over the latter. Indeed, as to California and New Mexico, the only governments there from 1846 to 1850 were the *quasi* military governments set up under the direction of President Polk.

And in this connection it is well to note that in providing for the government of territories, the Congress may ordain that all civil officers shall be appointed by the President, as in Alaska, or they may authorize a local territorial council or legislature, whose every act is subject to Congressional control, as in New Mexico and Arizona. That the Congress has the unquestioned power "to withhold from the inhabitants of Alaska the power to make laws" has been expressly decided (29 Fed. Rep., 205); and that it has absolute control of all territorial legislative acts and "may make a void act of the territorial legislature valid and a valid act void," has also been decided (101 U. S., 129).

Under the powers so conferred, Alaska has been governed first by the military and then by Congress, without a local legislature, for 33 years; whilst New Mexico and Arizona, with local legislatures, have been governed first by the military and then by the Congress for more than 50 years. During all these years neither of these territories has ever had the benefit of a single vote in either House of the Congress, for the reason that under the Constitution, States, and States *only*, can be there represented. Fifty years is a long time to subject the inhabitants of a territory to "taxation without representation." Yet that very thing has always been done, in all our territories and older possessions, just as it is now being and will be done in our new possessions. The dogma that such territorial government is in violation of the Constitution and is "imperialism," did not have its origin in the old Democratic party, but seems to be one of the many unique products evolved from the rather vivid imagination of a citizen of Nebraska.

It is a little curious to note, in passing, that, following the precedent established by Jefferson 18 years before, one of the first acts of President Monroe, after his second inauguration, in March, 1821, was the appointment of General Andrew Jackson as Governor of the ceded territory of Florida. And that democratic president then and there vested in that great democratic general and (later) president:

"All the powers and authorities hitherto exercised by the governor and captain-general and intendant of Cuba, and by the governors of East and West Florida." (3 Spencer's Hist. U. S., 334).

And it is still more curious to note that many of the existing laws, so "continued in force" in both the Louisiana Purchase and Florida were highly repugnant to the Constitution of the United States, and the institutions of our government. Among these were the Spanish cabildo, the laws of Spain for the government of the territories, and the use of the Spanish tongue in all courts and by all officers. Then again:

"There was a religious establishment. Two canons and twenty-five curates received salaries from the public treasury. (Pub. Doc., 8th Cong., Appendix 38). All travelers previous to circulating any news of importance were bound to relate it to the syndic of the district who was authorized to forbid its further circulation if he thought such prohibition would be for the public good. (Ibid., Appendix 71). A son, whose father was living, could not sue without his consent, nor persons belonging to a religious order without that of their superior. (Ibid., Appendix 28). A married woman convicted of adultery and her paramour were to be delivered up to the will of the husband, with the reserve, however, that if he killed one he must

kill both. (Ibid., Appendix 46). He who reviled the Savior or the Virgin Mary was to be punished by having his tongue cut out and his property confiscated. (Ibid., Appendix 45)." (Doc. 231, 56th Cong., pp. 8-9).

These are only a few of the obnoxious Spanish laws to be enforced in Louisiana by *one* or more persons *at the will of the president*, and in Florida by General Jackson as the military governor. The criticism and conclusion of Senator Benton of and on the act of 1803 respecting Louisiana apply with full force to the Florida situation. He said:

"From the terms of this act, and especially of the second section, it is seen that the Spanish system of government was continued in the ceded territory after it became the property of the United States, and that the military, the civil and judical power of the Spanish Intendants (for France never took possession of the country except to deliver it to the United States), were transferred by law to such persons as the President should appoint. The powers of the Spanish Intendants, as all know, were an emanation of the *despotic power of the kings of Spain*, and wholly incompatible with our constitution—a very clear declaration of Congress that the constitution *did not* extend to the territory, and that its inhabitants could claim no rights under it; and this declaration was in consonance with all the previous acts for the government of territories, all of which were inconsistent with the constitution." (3 Abridg. Debates of Cong., 9).

Lastly comes the treaty of Paris (1898, ratified 1899), by which Spain relinquished "all claim of sovereignty over and title to Cuba" (Sec. 1); ceded to the United States Porto Rico and other islands (Sec. 2) and the Philippine Islands (Sec. 3).

Section 4 provides for Spanish free trade with the Philippine Islands "for *ten* years," and Sections 11 and 12 continue existing laws, civil and criminal, in the several Islands named, respectively. Whilst Sec. 7 of the Act of Congress of April 12, 1900, establishing a temporary government for Porto Rico, provides that all inhabitants who were Spanish subjects and resided in Porto Rico on April 11, 1899, and their children born subsequent thereto,

"shall be deemed and held to be *citizens of Porto Rico*, and as such entitled to the *protection* of the *United States*, except such as shall have elected to preserve their allegiance to the crown of Spain."

Section 8 continues in full force and effect all laws and ordinances of Porto Rico,

"except as altered, amended, or modified hereinafter, or as altered or modified by military orders and decrees in force when this act shall take effect, and so far as the same are not inconsistent or in conflict with the statutory laws of the United States," etc.

Beyond continuing in force existing laws by the Paris treaty, no action has been taken by the legislative branch of our government to establish local civil government either in Cuba or the Philippines. The civil government of these Islands, how and when each shall be dealt with, present questions of policy which cannot be answered by the executive or judicial, and which must, therefore, be solved, sooner or later, by the legislative branch of our government at such time and in such manner as to the Congress shall seem best.

In the meantime, and until the Congress in its own time and manner, shall solve all problems of policy by its appropriate action, the president has but a single duty to perform. That duty is to continue the policy and practice of our government and of the old Democratic party, which prevailed for a century, as the Commander in Chief of the Army and Navy, govern and control these Islands and their inhabitants through the military under the same constitution and laws, and in precisely the same manner, as our earlier acquired territories have been governed and controlled under every political party that ever held the reins of national government. The Bryan party is now pleased to

term this "imperialism," but with the high precedents, policies and practices of the past to sustain him, the President ignores their "bogy man," and with dignity, courage and patriotism continues the performance of his high duty.

HOW MAY TERRITORIES BE LAWFULLY GOVERNED?

This question must be divided into two periods: 1. How governed between the date of conquest, purchase or cession and the date when the Congress provides a local territorial government? and, 2. How governed whilst under territorial government and until it is erected into a State?

The first may be answered under either the laws of nations and of war, or, if Congress shall have taken action, then under that clause of the federal constitution which gives to the Congress the absolute power to "make all needful rules and regulations respecting" territories, whilst the second is answered only under this constitutional provision:

1. BEFORE CONGRESSIONAL ACTION such territories have always been and are to-day lawfully goverened by the President as constitutional commander of the army and navy of the United States. This position is fully sustained by the Supreme Court of the United States in Cross v. Harrison (1853), 16 Howard, 164–202. The facts stated in that case were, that during the Democratic administration of President Polk, the Mexican war was declared, fought out and peace concluded by treaty proclaimed on July 4th, 1848. Our arms conquered California in 1846. The President soon established a gov ernment over that territory with Col. Mason of the 1st Dragoons of the Army as military governor. On March 3, 1849, the revenue laws of the United States were extended to California, but the Congress having failed to establish a temporary civil government, that territory was governed and controlled by military government, under the orders of the President, until California became a State in 1850.

From the time of occupation, up to notification of the treaty of peace on August 7, 1848, *war tariff* duties were collected, and, thereafter the regular government tariffs.

In 1851, one Cross, an importer, sued a former collector at San Francisco to recover the amount of tariff duties which had been paid under protest in 1848–9.

A careful study of that and kindred cases decided by the Supreme Court, in connection with the messages and directions of President Polk and his cabinet officers, especially the instructions of James Buchanan, who was then Secretary of State, develops a mine of fact and law of rare value and interest in this campaign.

In the Cross case, the Supreme Court held that he was not entitled to recover moneys paid as tariff duties prior to the ratification of the treaty, for the reason that California was a "conquered territory, within which the United States were exercising belligerent rights" (p. 191). As to the continuation of the military government, the Court quotes, and later approves, the language of Secretary of State Buchanan, that

> "The termination of the war left *an existing government*, a government *de facto*, in full operation, and this will continue, *with the presumed consent of the people*, until Congress shall provide for them a territorial government. The great law of necessity justifies this conclusion" (p. 185).

On page 190 the Court says:

"Early in 1847, the President, as constitutional commander-in-chief of the army and navy, authorized the military and naval commander of our forces in California to exercise the belligerent rights of a conqueror, and to form a civil government for the conquered country, *and to impose duties on imports* and tonnage as military contributions for the support of the government, and of the army which had the conquest in possession. * * * No one can doubt that these orders of the President, and the action of our army and navy commander in California, in conformity with them, was according to the law of arms and the right of conquest, or that they were operative until the ratification and exchange of a treaty of peace."

In stating the views and acts of Colonel Mason as military governor, the Court says, at pp. 193–4:

"He determined, in the absence of all instruction, to maintain the existing government. The territory had been ceded as a *conquest*, and was to be preserved *and governed as such until the sovereignty to which it had passed had legislated for it.* That sovereignty was the United States, under the constitution, by which power had been given to Congress to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States, with the power also to admit new States into this Union, with only such limitations as are expressed in this section in which this power is given. The government, of which Colonel Mason was the executive, had its origin in the lawful exercise *of a belligerent right over a conquered territory.* It had been instituted during the war *by the command of the President of the United States.* It was the government when the territory was ceded as a conquest, and it did not cease, as a matter of course, or as a necessary consequence of the restoration of peace.

"Colonel Mason was fortunate in having his determination to continue the existing government sustained by the President of the United States and these cretaries of his cabinet."

Cross contended that the President "had no legal authority to order the collection of duties;" that Congress alone could authorize their collection, and that he was therefore entitled to recover the sums paid on duties *after* the ratification of the treaty, but the Court held otherwise, and said, at page 195:

"Our conclusion, from what has been said, is, that the civil government of California, organized as it was from a right of conquest, did not cease or become defunct in consequence of the signature of the treaty or from its ratification. We think it was continued over a ceded conquest, without any violation of the constitution or laws of the United States, and that, until Congress legislated for it, the duties upon foreign goods, imported into San Francisco, were legally demanded and lawfully received by Mr. Harrison, the collector of the port, who received his appointment, according to instructions from Washington, from Governor Mason."

In his messages, executive orders and other official documents relating to the prosecution of the Mexican war, President Polk protested repeatedly that that war *was not being prosecuted for conquest*, but as early as March 23rd, 1847, in his executive order to the Secretary of the Treasury, is found the following statement, which justifies the conclusion that from the beginning it was the intention of his administration to conquer and hold as much of Mexican territory as possible. He there says:

"The conqueror possesses the right also to establish a temporary *military form of government* over such seaports, towns or provinces and to prescribe the conditions and restrictions upon which commerce with such places may be permitted. He may, in his discretion, exclude all trade, or admit it with limitation or restriction, or impose terms the observance of which will be the condition of carrying it on." (4 Messages and Papers of the President, p. 523).

This same language in substance is found in his third annual message, as well as in his message to the Senate on February 10, 1848, as will be seen by reference to pages 548 and 570 of the same volume.

However, in this same third annual message, he comes out squarely in favor of retaining the conquered territory, for in speaking of the Californias as conquered territory, he says: "I am satisfied that they should *never be surrendered to Mexico.*"

After the treaty of peace with Mexico, in his fourth annual message, of December 5, 1848, as will be seen by reference to page 638 of the volume referred to, in speaking of the government of the new territory, Presidemt Polk says:

"The only government which remained was that established by *the military authority* during the war. Regarding this to be a *de facto* government, and that by the *presumed consent* of the inhabitants it *might be continued* temporarily, they were advised to conform and submit to it for the short interventng period before Congress would again assemble and could legislate on the subject."

In the exercise of this power, upon his occupation of Santa Fe, General Kearny detailed two distinguished Missouri soldiers in his command, Colonel A. W. Doniphan and Willard P. Hall, to draft "The Kearny Code" for the governmenl of New Mexico. With rare skill and ability they performed that duty, and General Kearny proclaimed this code on September 22, 1846, "by virtue of the authority conferred upon him by the *government* of the United States." This code, so made by a commanding General, remained the law until a territorial civil government was established four years later.

2. AFTER CONGRESSIONAL ACTION our territories have always been and are to-day lawfully governed and controlled by the Congress under the constitutional clause quoted. Jefferson himself recognized this, for in his message of October 17, 1803 (1 Messages and Papers of the Presidents," p. 358), transmitting the treaty of purchase, he said:

"With the wisdom of Congress it will rest to take those ulterior measures which may be necessary for the immediate occupation and *temporary government* of the country."

This constitutional clause was drafted by Governor Morris, and fifteen years after the adoption of the Constitution, in answer to a question as to its precise meaning, he wrote:

"I always thought, when we should acquire Canada and Louisiana, it would be proper *to govern them as provinces and allow them no voice in our councils.* In wording the third section of the fourth article I went as far as circumstances would permit to establish the exclusion." (3 Morr. Wr., p. 192).

This clause, too, has often been construed by the Supreme Court of the United States. In one case that court said:

"The term territory, as here used, is merely descriptive of one kind of property, and is equivalent to the word lands. And Congress has the same power over it as over any other property belonging to the United States; and this power is vested in Congress *without limitation*; and has been considered the foundation upon which the Territorial governments rest." (United States v. Cratiot et al., 14 Pet., 524, 537).

In passing upon the rights and powers of Congress over Alaska (and the same is true of every other territory until the Congress establishes a local territorial government), Judge Lafayette Dawson, once a distinguished member of the Missouri bar, and a stalwart Democrat, said:

"Possessing the power to erect a Territorial government for Alaska, they could confer upon it such powers, judicial and executive, as they deem most suitable to the necessities of the inhabitants. *It was unquestionably within the constitutional power of Congress to withhold from the inhabitants of Alaska the power to legislate and make laws.* In the absence, then, of any *law-making power in the territory*, to what source must the people look for the laws by which they are to be governed? This question can admit of but one answer. Congress is the only law-making power for Alaska." (United States v. Nelson, 29 Fed. Rep., 202, 205, 206).

In speaking of the powers of Congress in legislating for territory subject to jurisdiction of the Unitrd States, but outside of the jurisdiction of any one of the States of the Union, the Circuit Court of Appeals, ninth circuit, say:

"It may legislate in accordance with the special needs of each locality, and

vary its regulations to meet the conditions and circumstances of the people." (Endleman v. United States, 86 Fed. Rep., 456, 459).

In Snow v. United States (18 Wall., 319), the Supreme court say:

"The government of the Territories of the United States belongs, primarily, to Congress; and, secondarily, to such agencies as Congress may establish for that purpose. During the term of their pupilage as Territories they are mere dependencies of the United States. *Their people do not constitute a sovereign power.* All political authority exercised therein is derived from the General Government."

Territories are not organized under the constitution, but are creations exclusively of the legislative department, and subject to its supervision and control." Benner V. Porter, 9 How., 242.

"Congress has full and complete legislative authority over the people of the territories and all the departments of the territorial government." Bank V. Yankton, 101 U. S., 132.

As to the power of government of ceded territory and people therein, Chief Justice Marshall, in 1828, in his opinion in American Insurance Company v. Canter (1 Peters, 511), which case involved the relation of Florida to the United States, said that the

"Government possesses the power of acquiring territory, either by conquest or treaty * * * the ceded territory becomes a part of the United States to which it is annexed, *either* on the *terms stipulated in the treaty* of cession *or on such as the new master shall impose.* * * * The same act which transfers their country, transfers the allegiance of those who remain in it; and the law, which may be denominated political, is necessarily changed, although that which regulates the intercourse and general conduct of individuals, remains in force until altered by the newly created power."

Then after quoting Article 6 of the Florida Treaty, he says:

"*This treaty is the law of the land,* and admits the inhabitants of Florida to the enjoyment of the privileges, rights and immunities of the citizens of the United States. It is unnecessary to inquire whether this is not their condition, independent of stipulation. They *do not*, however, *participate in political power;* they do not share in the government until Florida shall become a State. In the mean time, Florida continues to be a territory of the United States, governed by virtue of that clause in the Constitution which empowers Congress "to make all needful rules and regulations respecting the territory or other property belonging to the United States."

In 1879, the case of the National Bank v. County of Yankton (101 U. S., 129) came before the Supreme Court on the question as to the government of the territory of Dakota *after* a local territorial government had been established by Congress. Chief Justice Waite, in delivering the opinion, said:

"The territories are but political subdivisions of the outlying dominions of the United States."

After holding that the authority of Congress, within constitutional limitations, to legislate for territories, is supreme, he says:

"Congress may not only abrogate the laws of the territorial legislatures, but it may itself legislate directly for the local government. It may make a void act of the territorial legislature valid, and a valid act void. In other words, it has *full and complete* legislative authority over the *people* of the territories *and* all the departments of the territorial government" (p. 131).

Later on, the case of Murphy v. Ramsey (114 U. S., 15–47), came before the Supreme Court of the United States on the questions involving the rights of the people of the territory of Utah. Mr. Justice Mathews, among other things, says, at pages 44 and 45:

"But in ordaining government for territories, and the people who inhabit them, *all the discretion* which belongs to legislative power *is vested in Congress*; and that extends, beyond all controversy, to determining by law, from time to time, the form of local government in a particular Territory, and the qualifications of those who shall administer it. It *rests with Congress to say* whether, in a given case, any of the people resident in the Territory, shall participate in the election of its officers, or the making of its laws; and *it may*, therefore, *take from them any right of suffrage* it may previously have conferred, or at any time modify or abridge it, as it may deem ex-

pedient. The right of local self-government, as known to our system as a constitutional franchise, belongs, under the Constitution, to the *States*, and to the people thereof, by whom that Constitution was ordained, and to whom by its terms all power not conferred by it upon the government of the United States was expressly reserved. The personal and civil rights of the inhabitants of the Territories are secured to them, as to other citizens, by the principles of constitutional liberty which restrain all the agencies of government, State and National; their political rights are franchises which they hold as privileges in the legislative discrelion of the *Congress* of the United States.

FREE TRADE OR TARIFF IN TERRITORIES.

Article 7 of the treaty with France (1803) provided that the ships of both France *and* Spain, coming directly from either country, and "loaded only with the produce of manufactures" of France *or* Spain "shall be admitted during the space of *twelve years* in the ports of New Orleans, and in all other legal ports of entry within the ceded territory, in the same manner as ships of the United States, * * * without being subject to any other or greater duties * * * than those paid by the citizens of the United States." (Charters and Constitutions of U. S., p. 688).

Article 15 of the treaty with Spain (Florida, 1819) gave to Spain the same privilege in trading with the Floridas for a like period of twelve years (Id., p. 312).

Section 4 of the treaty of Paris (1898) provides for the extension of like privileges to Spain in its trade with the Philippines "for ten years."

The first gave to France and Spain free trade with the Louisiana Purchase for twelve years, the second gave to Spain free trade with Florida for a like period, while the third and last provides for Spanish free trade with the Philippines for ten years.

PORTO RICAN TARIFF.

Following the treaty of Paris, came the Act of Congress of April 12, 1900, providing for a temporary civil government of Porto Rico.

Section 3 of this act provides that "all merchandise coming into the United States from Porto Rico and coming into Porto Rico from the United States shall be entered at the several ports of entry upon payment of *fifteen per centum of the duties which are required to be levied, collected and paid upon like articles* of merchandise imported from foreign countries."

And it is further provided in this section as follows:

"And whenever the *legislative assembly* of Porto Rico shall have enacted and *put into operation a system of local taxation* to meet the necessities of the government of Porto Rico, by this Act established, and shall by resolution duly passed so notify the President, he shall make proclamation thereof, and thereupon *all tariff duties on merchandise* and articles going into Porto Rico from the United States or coming into the United States from Porto Rico *shall cease* and from and after such date all such merchandise and articles shall be entered at the several ports of entry *free of duty;* and in no event shall any duties be collected after the *first day of March, nineteen hundred and two*, on merchandise and articles going into Porto Rico from the United States or coming into the United States from Porto Rico."

Under Section 4, all duties and taxes collected in Porto Rico under this act are to be held as a separate fund, at the disposal of the President, "*to be used for the government and benefit of Porto Rico* until the government of Porto Rico shall have been organized;" and it is there provided further that as soon as the civil government of Porto Rico shall have been organized and proclamation thereof made, then all such duties and taxes "*shall be paid into the treasury of Porto Rico* * * * instead of being paid into the treasury of the United States."

The opposition lashes itself into a fury in discussing this Act, and as proof positive that the imposition of this tariff is in direct violation of the federal coustitution, quotes the following from its provisions:

"All duties, imposts and excises shall be uniform throughout the United States." (Art. I, Sec. 8).

Also:

"No preference shall be given by any regulation of commerce or revenue to the ports of one *State* over those of another, nor shall vessels bound to or from one *State* be obliged to enter, clear or pay duties in another." (Id., Sec. 9).

It will be observed, however, that the former says "States" and the latter "State," and that nothing is there said about "territories" or "territory." The Constitution was made for "States." Had its framers intended to include "territories," organized or not, they would have said so. Morris, who drafted the clause relating to the government of territories, no doubt voiced the intentions of the constitutional convention when he said he thought it would "be proper to govern them as provinces and allow them *no voice in our councils*."

In a long line of decisions the Supreme Court of the United States has recognized the wide difference between "States" and "territories." Attention is now directed to the two most directly in point:

In Bennet v. Porter, (9 Howard, 235, 242), that court, in speaking of territories, said:

"They are not organized under the constitution nor subject to its complex distribution of the powers of government, as the organic law, but are the creations of the legislative department, and *subject to its supervision and control*."

And in the later case of Talbott v. Silver Bow County, (139 U. S., 446), the same court, speaking through Mr. Justice Brewer, with reference to a territory, says:

"It is not a distinct sovereignty. It has no independent powers. It is a political community organized by Congress, *and all whose acts are subject to Congressional supervision*. Its attitude to the general government is no more independent than that of a city to the State in which it is situated, and which has given to it its municipal organization."

But apart from all this, and as a mixed question of law and morals, it is respectfully suggested that if the Democratic administration of Jefferson and Monroe could grant to France and Spain and next to Spain absolute free trade with the Louisiana Purchase and with Florida for twelve years each, without a violation of these provisions of the Constitution (and no lawyer ever questioned it), then it must follow, in logic and in law, that the Republican Administration of McKinley had the same right and power under the Constitution to impose a tariff of 15 per cent. of the established rate, on Porto Rico, as well as to lay the foundation for Spanish free trade with the Philippines for ten years. And this is especially true in view of the fact that under this Porto Rican law not a single penny of this tariff can belong to or be used by the United States, but must be held and used exclusively "for the government and benefit of Porto Rico until the government of Porto Rico shall have been organized," and must cease not later than March 1, 1902.

The precise question here involved was presented for adjudication in the very recent case of Goetze v. United States, decided by Judge Townsend in the United States Circuit Court in New York City. There Goetze imported Tobacco from Porto Rico, but claimed that the imposition of the tariff duties thereon was unlawful, for the reason that Porto Rico was not a foreign country. But Judge Townsend, in a most exhaustive opinion, held otherwise, held that the duties were lawfully assessed, and that this act of Congress was constitutional. (51 Cent. Law Jour., 41).

In this connection there is another historic fact worth remember-

ing: Soon after our forces occupied California in 1846, President Polk, *without Congressionalauthority*, directed the imposition of *war tariff* duties "as military contributions *for the support of* the government and of the army;" that thereafter, and until California became a State, tariffs were imposed and collected for the support of the *quasi military government* there set up by Polk; but the unspent residue thereof, instead of going to Californians, was covered and "*received into the treasury of the United States,*" and further, that thereafter the Democratic Congress, by two Acts approved by Democratic Presidents, ratified and confirmed all this. The curious will find the history of these transactions given by the Supreme Court of the United States in Cross v. Harrison (1853), 16 Howard, 85.

Since the publication of that opinion, nearly fifty years ago, no lawyer has questioned the right of President Polk to impose that tariff, nor the right of the general government to the balance after defraying the expenses of the military government of California; and in view of this decision it is clear that the criticisms of the opposition on the Porto Rico tariff may be traced to one of three sources: lack of information, misinformation or the sheer rant of the reckless demagogue.

DOES THE CONSTITUTION FOLLOW THE FLAG?

The dogma of the transmigration of the Constitution—that "the Constitution follows the flag"—was invented by that able defender of slavery and John the Baptist of disunion and secession, John C. Calhoun, in the discussion of the Wilmot Proviso in 1847, solely with the view of carrying the slavery part of the Constitution into the territories. But Calhoun was an able lawyer, and did not claim that the Constitution followed the flag in its entirety, saying, "wherever our authority goes the Constitution *in part* goes, *not* all its provisions certainly." He knew that the Constitution contained no guaranty that any organized territory should even have a republican form of government; knew that there was no constitutional authority for senators and representatives, with the right to vote and represent the people of any territory in the Congress, for such rights were given alone to "States," not to territories; knew that as to many of its provisions, the Congress had no power to extend the Constitution over territories, but his contention was that the Congress did have the power to extend slavery into the territories. That was the sole object of the amendment "to extend the Constitution by law to the territories," so ably discussed by the giants in the Senate in 1849.

In Volume 16 of Benton's Abridgement of the Debates of Congress, these splendid arguments are given at length.

Whilst contending that "wherever our flag waves—wherever our authority goes, the Constitution *in part* goes, *not* all its provisions certainly, but all its suitable provisions," Senator Calhoun says:

"The territories belong to us; they are ours; that is to say, they are the property of the thirty States of the Union; and we, as the representatives of those thirty States, have the right to exercise all that authority and jurisdiction which ownership carries with it." (p. 309).

Daniel Webster, the great expounder and defender of the Constitution,during that debate laid down the following propositions:

"What is meant by the proposition, in a law, to 'extend the Constitution of the United States to the Territories.' Why, sir, the thing is utterly impossible. All the legislation in the world, in this general form, could not accomplish it. There is no cause for the operation of the legislative power in such a manner as that. The

Constitution—what is it. We extend the Constitution of the United State? by law to a territory! What is the Constitution of the United States? Is not its very first principle that all within its influence and comprehension shall be represented in the Legislature which it establishes, with not only a right of debate and a right to vote in both Houses of Congress, but a right to partake in the choice of the President and Vice President? And can we by law extend these rights, or any of them, to a territory of the United States? Everybody will see that it is altogether impracticable. * * *

"Let me say that in this general sense there is no such thing as extending the Constitution. The Constitution is extended over the United States and over nothing else, and can extend over nothing else. It cannot be extended over anything except over the old States and the new States that shall come in hereafter, when they do come in. There is a want of accuracy of ideas in this respect that is quite remarkable among eminent gentlemen, and especially professional and judicial gentlemen. It seems to be taken for granted that the right of trial by jury, the *habeas corpus*, and every principle designed to protect personal liberty is extended by force of the Constitution itself over every new Territory. That proposition cannot be maintained at all. How do you arrive at it by any reasoning or deduction? It can only be arrived at by the loosest of all possible constructions. It is said this must be so, else the right of the *habeas corpus* would be lost. Undoubtedly these rights must be conferred by law before they can be enjoyed in a Territory." (p. 306).

"But they do not exist in Territories till introduced by the authority of Congress. These principles do not, *proprio vigore*, apply to any one of the Territories of the United States, because that Territory, while a Territory, does not become a part, and is no part of the United States" (p. 309).

"The Crown of England often makes conquests of territory. Who ever heard it contended that the constitution of England, or the supreme power of Parliament, because it is the law of the land, extended over the territory thus acquired, until made to do so by a special act of Parliament? The whole history of colonial conquests shows entirely the reverse. Until provision is made by act of Parliament for a civil government, the territory is held as a military acquisition. It is subject to the control of Parliament, and Parliament may make all laws that they deem proper and necessary to be made for its government; but until such provision is made, the territory is not under the dominion of English law. And it is exactly upon the same principle that territories coming to belong to the United States by acquisition or by cession, as we have no *jus coloniae*, remain to be made subject to the operation of our supreme law by an enactment of Congress. * * *

"The precise question is, whether a Territory, while it remains in a territorial state, is a part of the United States. I maintain it is not." (p. 311).

Senator Berrien, who had been President Jackson's Attorney-General, and one of the most accomplished lawyers that ever held that high office, was of opinion that the theories of Webster and Calhoun were alike good in part and bad in part. After saying that he found constitutional power for acquiring and governing territories, he added that whether that power

"results from the clause which has been referred to, or whether it is deduced as an incident from the war or treaty-making power, it is still a power derived from the constitution and is to be exercised in conformity to it" (Id., p. 318).

In 1848, after the adoption of the amendment excluding slaves from theTerritory of Oregon, Calhoun for the first time laid bare the real object and purposes of his wild theory, in this language:

"The great strife between the North and the South is ended. The North is determined to exclude the property of the slave-holder, and, of course, the slave-holder himself, from its territory. On this point there seems to be no division in the North. In the South, he regretted to say, there was some division of sentiment. The effect of this determination of the North was to convert all the Southern population into slaves; and he would never consent to entail that disgrace on his posterity. He denounced any Southern man who would not take the same course. Gentlemen were greatly mistaken if they supposed the Presidential question in the South would override this more important one. *The separation of the North and the South is completed.* The South has now a most solemn obligation to perform—to herself, to the constitution, to the Union. She is bound to come to a decision not to permit this to go on any further, but to show that, dearly as she prizes the Union, there are questions which she regards as of greater importance than the Union. This is not a question of territorial government, but a question involving the continuance of the Union." (1 Cooper's American Politics, p. 49; 16 Benton's Abridgment, p. 250).

Calhoun's dogma was in effect followed eight years later by Chief Justice Taney in his opinion in the Dred Scott case; but has been repudiated and denounced as unsound by every great statesman, great lawyer and high court called upon to express an opinion upon the subject. In his "Thirty Years View" (Vol. 2, p. 713), Benton reviews this question, and adds:

"History cannot class higher than as the vagary of a diseased imagination this imputed self-acting and self-extension of the constitution. The constitution does nothing of itself—not even in the states, for which it was made. Every part of it requires a law to put it into operation. No part of it can reach a territory unless imported to it by an act of Congress."

That Benton was right, will not be doubted by any lawyer familiar with constitution, laws, decisions, policy and history of our government.

The alarmist of today may predict all sorts of calamities, as did his prototype of the past; but it is safe to trust to the good sense of the people. They remember that the constitution was not violated, nor did the government of the States of the Union "go to the demnition bow-wows" because of the military government of our territories under several Democratic Administrations, and they do not believe that the days of the Republic are numbered because Cuba and the Philippines are to-day temporarily governed in the same way under a Republican Administration. With great Garfield they to-day say: "God reigns and the government at Washington still lives," and add, "shall live so long as the waters of mountain and plain shall flow out through our rivers to oceans eternal."

Those who have read and studied the question will recollect that in the discussion of the bill authorizing the President to take possession of the Louisiana Purchase, as well as on the bill providing for its civil government, the same arguments against "expansion" and "imperialism" were used as are now employed, but that the former was adopted in the Senate by a vote of 26 to 5, and the latter by overwhelming majorities in both houses. Thus fully, at that early day, committing *this government* to that policy of expansion and territorial government which has ever since prevailed.

In that day, however, there was some excuse for such opposition; now there is none. Then the Constitution had been in force but for fourteen years, and the Supreme Court had not passed upon these questions. Hence in the pessimistic mind of that day there was some room for a doubt; now there is none. The Constitution has been in force for one hundred and eleven years, and a multitude of decisions of the Supreme Court of the United States, together with acts of the legislative and executive branches of our government without number, have authoritatively, finally and forever settled all these questions against the wild contention of the Bryan party. Among the many questions settled was this: That the Constitution as a whole was made for and applies only to "States;" that necessarily it has not, does not and cannot "follow the flag" into territories, and that Congress alone has the power to send such parts of it there as may be applicable to territorial governments.

It is true that the *sovereignty* of our government "follows the flag" wherever the flag is raised by its authority, but not so with either our territorial boundaries or the Constitution, for the reason that their extension presents a purely *political* question which must be answered by the Congress alone. (See U. S. v. The James G. Swan, 50 Fed. Reporter, and Jones v. U. S., 137 U. S., p. 212). In the last case the Supreme Court of the United States said:

"Who is the sovereign, *de jure* or *de facto*, of a territory, is not a judicial but a *political* question, the determination of which, *by the legislative and executive* departments of any government, *conclusively binds* the judge as well as all other officers, *citizens and subjects of that government.* This principle has always been upheld by this court and has been affirmed under a great variety of circumstances." (See authorities cited).

In the Senate and House, participating in the discussions on the Louisiana and Florida treaties, respectively, were illustrious and patriotic lawyers and statesmen of the days of the Revolution, who as members of the General Convention had assisted in the formation and adoption of, and knew, the Constitution. Scarcely less illustrious and brilliant were the second generation of statesmen who later debated the Mexican treaty. The contention of those who opposed the first two treaties in the main was that the government had no constitutional right to acquire territory; whilst the contention of those who opposed the latter treaty rested wholly upon the question of slavery in the territories. The course of the government in the acquisition of territories has closed the former contention, and the latter was ended when the institution to which it was directed faded away in the fierce light of the immortal emancipation proclamation.

These malcontents and doubters, like the poor, are with us always. They not only object to the course of the administration in the late Spanish Isles, but object to the wise, prudent and just measures that are being taken to protect our ministers, consuls and other American citizens now lawfully in China by treaty right.

They forget that their patron saint, Jefferson, justified a raid on Spanish soil to protect our citizens, and in his message of December 6, 1805, said he awaited Congressional "authority for using force in any degree *that could be avoided*," and further that our forces should not go beyond our own lines except "when necessary to repel an invasion *or to rescue a citizen or his property.*" (1 Mess. and Papers of the Presidents, p. 389).

They forget that another saint, Jackson, under the order of President Monroe, led our forces into Spanish territory (Florida), where, in 1818, he caused to be executed two British subjects and some Indian Chiefs, in his royal Jacksonian way, and then justified himself *"on the immutable principles of self defense;"* and forget, too, that under the orders of President Polk, our forces invaded the soil of Old Mexico before the Congress had declared war, and further, that as a matter of fact there was no formal declaration of war against Mexico, the act of Congress only recognized "a state of war *as existing* by the act of the Republic of Mexico." (34 Am. Law Rev., 584–5).

They likewise forget that down about Taos, in New Mexico, in January, 1847, there were a lot of Mexicans whose *"consent"* was not asked as to the new government which our people imposed upon them, and who for some reason would not, or at least did not, volunteer such "consent," and that in three separate engagements which our troops under the command of Colonel (afterward General) Sterling Price then had with these Mexican Filipinos so failing to "consent," 282 Mexicans were killed and a larger number wounded ("Doniphan's Expedition" by Hughes, p. 392 et. seq.). These non-consenting Mexicans ware then killed by our troops in the same way and for the same reasons that our boys are to-day killing Filipinos. In his official report of February 15, 1847, Colonel Price duly advised the government at Washington of all this, yet if the then Democratic President, Congress, party, or any of its statesmen or politicians, ever denounced or

characterized the acts of our soldiers as unconstitutional or imperialistic, no record thereof was ever made.

There is this important difference between the then slaughter of Mexicans and the present punishment of Filipinos. The Mexicans were killed months *after* General Kearny had set up and proclaimed military government for New Mexico, and more than a year *before* the United States acquired that territory by cession, whilst both the military government and the cession and purchase of the Philippines have now for a year and a half been fixed facts. Yet the truth remains that the offense of the Mexicans was as rank as that of the Filipinos, and they then as richly deserved their punishment as do the marauding, murderous, lawless Filipinos of to-day—no more, no less.

"CONSENT OF THE GOVERNED."

The Kansas City platform gravely and reverently refers to the Declaration of Independence and the flag; declares "that any government not based upon the *consent of the governed* is a tyrrany;" further, "that to impose upon any people a government of force is to substitute the methods of *imperialism* for those of a *republic,*" and still further, that "the Constitution follows the flag."

It is easy to understand how and why a zealous, enthusiast—a self-constituted "man of destiny"—like Col. Bryan, may read, and *think* he believes, that platform; but it must strain the philosophy of level headed statesmen, like former Governor Willian J. Stone, to read without smiling, either the Kansas City platform or that other glittering structure without a foundation—Bryan's Indianapolis notification speech.

In drafting that platform and cramming it down the throat of that Convention, however, Colonel Bryan overlooked the *law:* That from the formation of our government, the people of all our territories have been legally governed by President and Congress without their "consent;" also the *law:* That Virginia ceded and the government accepted the Northwest territory upon the condition that it should be formed into States "and admitted into the Federal Union" with the same rights as other *States;* that under the Louisiana, Florida and Mexico treaties, "*the inhabitants*" of these ceded territories were to be "incorporated in the Union," and were guaranteed all the rights, privileges and immunities of "*citizens*" of the United States; that no such rights were guaranteed to "the inhabitants" of the territories ceded by Russia (1867), nor Spain (1898), but on the contrary, by the express terms of the latter, "The civil rights and political status of the native inhabitants * * * *shall* be determined by Congress."

Not only is the law so overlooked, but the distinguished orator who made that platform ignored the following well known historical facts:

That the government of the United States *has never either asked or received* the "consent" of the inhabitants of any single territory, to the new government which we imposed upon them;

That from the day of Washington to that of McKinley, all conquered or ceded territory has always been lawfully governed *first* by the military, under the orders of the President as Commander in Chief, until a local civil territorial government was established by the Congress; and *second,* by the Congress from the date of such civil territorial government until a State government was established.

The examples of these propositions are, *first:* That the Louisiana Purchase, under Jefferson; the Florida cession, under Monroe; and the

Mexican conquest and cession under Polk—all good Democrats in their day—were controlled and governed by the military until civil territorial governments were established in Louisiana and Florida, and in California until it was made a State; and that in the first two, especially, the despotism of Spanish laws and customs was enforced by our own officers.

But it is most curious in this connection to note that although from 1804 to 1818 civil laws were provided for the entire Louisiana Purchase, yet as a matter of historcal fact, all that part of the Purchase lying north of the now south line of Kansas, northward to the British possessions, and west of Missouri to the crest of the Rocky mountains, was wholly without local civil government of any kind from the date of the Purchase up to the time that vast stretch of country was carved up into territories, beginning with Kansas and Nebraska in 1854. The result was that all this part of the Purchase, now cut up into many States, was governed and controlled by the military for more than fifty years.

Now, if it be "imperialism" and "militarism" for President McKinley to govern the Philippines under a treaty ceding these Islands and making them the *property* of the United States, and which expressly provides that the "civil and political status" of the inhabitants "*shall* be determined by Congress," then what colossal crimes must have been perpetrated by the Democratic Presidents, Jefferson, Monroe and Polk, in governing, *in precisely the same way*, the Louisiana Purchase, Florida and California, respectively, under treaties which expressly guaranteed to the inhabitants of those territories "all the rights, privileges and immunities of *citizens* of the United States."

Again, at the dates of the Louisiana, Florida and Mexican treaties, at least 90 per cent of the "inhabitants" of those territories, so guaranteed the rights of citizenship, were copper-colored Indians, and the same was true of the inhabitants of Alaska. Yet our Indians have never been, and to-day are not citizens (3 Am. & Eng. Enc. of Law., 245–6). Thousands of them, of both full and mixed bloods, are educated, intelligent and well disposed; yet the American tribal Indian today cannot even make a valad contract of any kind without the consent of the government. As to our Indians, the government has never been, nor is it now, "based upon the consent of the governed," and as to them it is, according to this platform, "a tyranny," "imperialism," "militarism!" Yet our government has pursued this same Indian policy for more than a century and still lives!

Our soldier boys are to-day fighting the Filipinos just as our soldier boys in the past fought the Indians, Mexicans and outlaws of earlier purchased and ceded territories, and for the same purpose—to restore peace and establish law and order. They will do it. No one who knows both races will assert that the Filipino masses are higher in the scale of civilization, or better fitted for self-government or citizenship than are our American Indians or Southern negroes. In discussing, with tears in eyes and voice, the wrongs of "the dear, little, brown-faced Filipinos," this suggestion is respectfully made to the Bryan spell-binder:

"Absent thee from felicity awhile
And in this harsh world draw thy breath in pain
And tell" the story of the copper-colored American Indian and then the story of the black-skinned American *citizen* of North Carolina.

PARIS TREATY BEYOND ATTACK.

The Paris treaty (1898) is now not only an established fact, the solemn, lawful act and deed of two great nations, but upon its ratification became, and still is, a part of the "supreme law of the land." As such, it binds people and President alike, and *must* be obeyed and executed by the President, for the Constitution makes it his sworn duty to "take care that the laws be faithfully executed." The time to have attacked that treaty was *before* its ratification. Once ratified, however, it is as far beyond and above attack as the Constitution itself, and the Constitution makes it so.

TWO PRESUMPTIONS OF LAW.

No two presumptions are more firmly established in our jurisprudence than that "every one is presumed to know the law," *and* "to intend the natural and probable consequence of his acts."

Whilst the Paris treaty was pending before the Senate, and still the subject of attack, Colonel Bryan felt called upon to, and did, go on to Washington, and there urged Senators, both Populist and Democratic, to vote for its ratification. He then knew, or is presumed to have known, that if and when ratified that treaty would become "the supreme law of the land," and that every law-abiding American citizen was bound to observe and obey its terms equally with the Constitution; *and* that after its ratification, it would be the duty of the President to exercise his constitutional authority and govern and control the territory and people in question until the Congress should otherwise provide, just as his Democratic predecessors had always governed and controlled other ceded territories and the people therein.

Under and in consequence of Bryan's fervid and eloquent appeals, certain Populist and Democratic Senators voted for ratification, as did also certain Republican Senators, whilst Senators of each of the three political parties voted against it. So that for the ratification of that treaty the people are alike indebted to the three political parties; but to no one American citizen, aside from President McKinley, are they so greatly indebted as to William Jennings Bryan.

In his attacks upon this treaty and upon the usual, proper and lawful methods employed by the President in carrying it into effect, Colonel Bryan's present position is not only diametrically opposed to his former position, but he places himself in the attitude of direct antagonism to, and in open violation of, "the supreme law of the land."

To Colonel Bryan's two inconsistent positions, the citizen may well apply the two presumptions of law which I have quoted, and ask: Why this change of front? Was he dealing fairly and honestly in so urging ratification? Was he mistaken then, or is he now mistaken? Which? The people will answer at the polls.

"HISTORY REPEATS ITSELF."

The Bryan party, unmindful of the lessons of history, forgetful of the logic of events, blind to the signs of the times, would haul down and furl the flag, recall our troops, desert territories vast and rich ceded to and now the absolute property of our government, leaving their inhabitants the prey of enemies at home and abroad, and thus disgrace the fair name of American citizen, all on the insane, coyote howl of "Imperialism."

But the world loves, honors and dips its colors to patriotic courage, to progress, success, valor, achievement; cheers on the soldier in the

field of battle, and with profound respect sustains the policy of the man at the helm, who upholds the honor, bears aloft the flag, guides and controls the destiny of country in time of war.

It is true that in every crisis through which our country has passed, and from each of which it has emerged with increased national honor and renown, there have always been malcontents, birds of evil omen, who predicted calamities dire unless captain and crew of the ship of state were changed in the battle's heat, and feared to breathe, lest some provision of the Constitution might possibly be violated and the whole fabric of Republican government fall to the ground; yet to the glory and hnnor of American patriotism, it is well to recollect:

That throughout the Revolution the people sustained Washington and the party back of him; that in the War of 1812 it was the same; that in the Mexican war—"one of the most unjust ever waged by a stronger against a weaker nation"—the people loyally stood by the war party; that in the throes of our great civil war, the Democratic National Convention, in 1864, explicitly declared "that after four years of failure to restore the Union by the experiment of war," the public good, justice and *liberty* demanded that "immediate efforts be made for a cessation of hostilities." But again the people were loyal to country and war party; the triumphant re-election of Lincoln followed; there was no "cessation of hostilities" until the old flag again floated free from sea to sea, and then came, as a blessing and a benediction even to those who sought to destroy it, the redeemed and restored Union.

As it has been in other wars, so it will be in this. A great soldier and statesman, summing up a like situation, said:

"Experience proves that the man who obstructs a war in which his nation is engaged, no matter whether right or wrong, occupies no enviable place in life or history."—U. S. Grant.

YOUNG MEN FOR EXPANSION.

Expansion is progress, development, life; contraction is stagnation, decay, death. No one more keenly realizes this than the ambitious young man who has the courage to do and dare.

Love of adventure and hope of gain and fame led the young men of America, over an hundred years ago, into the wilds of the North-west Territory, where now stand the great States of Ohio, Indiana, Illinois, Michigan and Wisconsin, with their teeming millions of happy and proseprous people. The same high incentive, during the century upon which the sun eternal will soon go down, called the young men of courage, faith and hope from the more densely populated parts of our country, first to wildernesses of the Louisiana Purchase and later into trackless forests and vast mountains and plains of every territory since acquired, and behold the results: The tremendous energy, sterling worth and rare courage of our young men have made all our past acquisitions what they are to-day. The young men have subdued the savage and the lawless, have also subdued the soil and made it blossom as a rose; have given liberty and freedom to peoples and greatness and glory to our country. In view of the past, who can doubt that the young men of to-day—God bless them, for upon their shoulders must soon rest the future of the Republic—will prove themselves worthy sons of courageous and patriotic sires, and, actuated by the same high resolves, will in the years to come conquer a peace, restore law and order, cultivate the soil, rule and govern in all these new possessions as their ancestors have done in the others. Who, at the

dates of their acquisition, could have foreseen the possibilities of the North-west Territory, the Louisiana Purchase, California, Alaska? No one then on earth. Yet take all these possessions from the United States to-day and what Nation of earth would honor the flag, or fear the prowess of the remainder? None, worth mentioning. Who can now lift the veil and see and comprehend the possibilities vast of Porto Rico, Cuba, the Philippines and our other late accessions, in the years that yet shall be? No one now on earth.

The hopeful, ambitious, patriotic young American citizen of to-day, with rich red blood in his veins, stands for progress and development, is a born expansionist, and only asks that the same opportunities be afforded him in our new possessions that his ancestors had in the old. That this ambition will be gratified now seems certain.

In every crisis of the past, with characteristic American wisdom, courage and patriotism, the people have performed every duty and will again do so in this. They know that these Islands are ours in fact and in law; know that the question is not what should have been done before the ratificatian of the Paris treaty, but what should be done now and hereafter with Islands and people; know that we must either, like a nation of cowards, surrender our property in these Islands and relinquish our rights over the inhabitants, leaving them to their fate; or, as a nation of honorable owners of the soil and lawful rulers of the inhabitants, govern and control both as best we may until the Congress—the only authority—shall say what shall be done and how.

However you may feel about it, to me it seems that, honoring and revering the Constitution which they made, loving the flag as the symbol of the honor, the dignity and the power of their common country, the people—the source of power and justice; the people, the *only* sovereign in this fair land of ours—are little concerned whether technically, the flag follows the Constitution or the Constitution follows the flag, but standing, as they have always stood, in their majesty and might, for both Constitution and flag, they will insist upon holding and governing Islands and peoples.

In the course of an address delivered out at Fairmount Park on July 2, 1898, I said:

"Mourning for our brave boys already dead, with an endless pity for others for whom the fate of war will soon sound the last tattoo, including the dear boys who fell on yesterday and those who are falling to-day on the bloody field of Santiago, yet from the Isles of ancient Leon and Castile, from the Canaries to the Philippines,

> ' * * * Fortunate Isles
> Where falls no winter's snow,
> Where palm trees wave in endless spring,
> And birds sing, and balmy west winds blow'—

there is coming to us on the soft summer air the first faint notes of a song of *hope* that will yet swell to a grand chorus of *praise and triumph* and soften our grief for our nation's dead. It may be still far away, this dream of peace for the oppressed and power and glory and dominion for the United States, but it will yet be realized and the heritage will belong to all the people of Greater America.

That this war will result in planting the stars and stripes upon all these Spanish Isles no one doubts, and once there, 'Old Glory' is there to stay."

Study and reflection have alike tended to strengthen the sentiments then expressed. I believed then, and still believe, that as brains, courage and patriotism, linked with a faith sublime in the future of the Republic, had won in other troublous times, so they would win in this. I believed then, and still do, in the rugged, stalwart loyalty of the people to flag and country, as well as in the strong, courageous

and sagacious administration of that American of Americans—William McKinley.

The cry of "imperialism" may affright weakly, timorous souls, but these have never either made or controlled the destinies of any nation of freemen, nor will they. Knowing that under our form of government nothing short of a majority of all the people can ever become imperialist, the wail of "imperialism" has no terrors for the descendants of the heroes of Bunker Hill, Valley Forge and Yorktown, nor for the survivors of the mighty armies that fought under Grant and Lee in the Wilderness, under Sherman and Johnston in the southwest, nor for our brave boys who from amid the thunders of Santiago and Manila Bay wrested victories so splendid and far-reaching in effect as to place at the head of the column of the Nations of earth our beloved United States of America.