IMPERIALISM AND EXPANSION.

Does the Constitution Justify Annexation of the Philippines?

SENATOR RAWLINS' SPEECH.

Rights Guaranteed by the Constitution Apply to All Who Come Under the Jurisdiction of the United States.

The following is the full text of the speech of Senator Joseph L. Rawlins in the Senate, February 1, 1899:

Mr. Rawlins—I ask for the reading of the joint resolution introduced by the Senator from Missouri [Mr. Vest.]

The president pro tempore—The chair lays before the Senate the joint resolution No. 16, which will be read.

The secretary read the joint resolution (S. R. 16) to establish and maintain the Constitution of the United States so power is given to the Federal government to acquire territory to be held and governed permanently as colonies, as follows:

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That under the Constitution of the United States no power is given to the Federal government to acquire territory to be held and governed permanently as colonies.

The colonial system of European nations cannot be established under our present Constitution, but all territory acquired by the government, except such small islands as may be necessary for coaling stations, correction of boundaries, and similar governmental purposes, must be acquired and governed with the purpose of ultimately organizing such territory into States suitable for admission into the Union.

Mr. Quay—I move to substitute for the joint resolution of the Senator from Missouri the joint resolution introduced by the Senator from Georgia [Mr. Bacon] for the joint resolution introduced by the Senator from Missouri.

The President pro tempore—The Senator from Utah gave notice that he would make a speech today, and also gave notice that it would be on the joint resolution introduced by the Senator from Missouri, and the chair laid that joint resolution before the Senate.

Mr. Quay—And then the Senator from Pennsylvania moved to substitute the joint resolution introduced by the Senator from Georgia. However, it is not a matter of much consequence.

Mr. Cockrell—I hope that will not be done. My colleague [Mr. Vest] is not here now.

Mr. Quay—I withdraw the motion.

Mr. Rawlins—Mr. President, this atmosphere just now seems to be clouded with perplexing problems. Everyone, I presume, is imbued with a wish to adhere to justice and do the best he can for his country. He has—I have not but been opposed to expansion. This question has been one of growth in population from Lincoln to Jefferson's purchase, and in territory from the shores of the Atlantic across the continent into the swelling waters of the Pacific. Millions of homes of our sturdy and patriotic people and magnificent States have been the fruits of our expansion. Some of us cannot afford to tear the limb which supports so honest, generous and the trunk of the tree.

Territorial expansion with consummate wisdom of constitutional freedom is twice blessed. It blesses those that give and those that receive. No man can set an artificial barrier to the inevitable progress of the American people. So far our progress has been that of freedom and not of tyranny.

Mr. President, when our fathers christened this Republic they gave it a name which their conditions deemed sufficient to cover all the exigencies and developments of its future career. That name was the United States of America. We might stretch out to the north and to the south until we encompassed the two continents and all the islands of the Caribbean sea, and still we might appropriately bear the name which our fathers gave us.

Mr. President, the mere idea of expansion, of extending our borders, does not alarm me so much as some of the startling doctrines advanced in its justification. We are today confronted with the question as to whether we shall change the name of the Republic, and if so, who shall do the name by, and what shall it symbolize? Shall it be the United States of America and the Kingdom of Luzon, or shall it be the Empire of America and Asia? Alongside there are special visions of rule in the political world.

It is not necessary, in order to uphold the right and power of this government to acquire territory, to hold territory, and govern its inhabitants, to maintain that this is an absolute, despotic or an imperial department. The right to acquire and hold property is an ordinary one. It belongs to every private individual. It is incident to the existence of every corporation, whether public or private, with the ordinary limitations that it must be to subserve the objects and purposes of the corporation. This nation possesses the right of property. Illinois it. But it is a power not existing independent of and apart from the Constitution, but is derived from the express authority which that instrument confers upon the Federal government.

This being an implied power, there are, of course, no express limitations upon it, but there is always the implied one that the territory acquired must be to subserve some legitimate object and ends for which the government itself was created.

If we should contend for the purpose of the argument that the power to acquire, and to hold territory was unlimited, it would by no means follow as an implication from that, or as a corollary to proposition, that this nation would have absolute and despotic control over the inhabitants which would thereby become subject to such despotism by reason of the acquisition of such territory. The aim of this nation, as indeed of all other nations, is to secure or defense against a foreign foe, to some limited or remote extent, it is aimed to the expansion and safety of its people, whether living in a State or in a Territory.

Mr. President, there have been two schools of political thought in this country, both of them understanding and agreed that the Constitution is the people's grant of power to the government of the United States. They differ, however, only as to the latitude of the construction of the grant. Both sides have agreed that all power not granted to the government by the express terms of the Constitution and its amendments to the State is reserved to the States and to the people. Both schools of constitutional hermeneutics seem to have arisen in the person of the distinguished senator from Connecticut [Mr. Platt]. I quote his exact language. He says:

I propose to maintain that the United States is a nation; that as a nation it possesses every sovereign power not reserved to the Constitution to the States or the people.

Mr. President, the power to define and punish crime is part of the sovereign power. It does not in the Constitution reserved to the States. Therefore, according to the logic of the senator, the States do not possess that power. The sovereign power of government denied to exists in the Constitution, and it is not in the States. Therefore, the States do not possess it. The power to create corporations, recognized in the Constitution as a sovereign power, is nowhere in the Constitution reserved to the States. Therefore the States do not possess it. So the proposition of the senator is reduced to absurdity.

The senator from Connecticut affirms that this is a nation, that it is possessed of plenary sovereignty, and, especially as relates to all its international relations and to its territories which may become subject to its jurisdiction.

Mr. President, what is this thing which the senator calls a nation, which he so boldness and exalts? It is not the States or the people. They acknowledge its life as derived from and as a part of it. They possess only such crumbs of power as may be reserved to them expressly in the Constitution itself.

Is it the President, the Executive, who is the sole representative of this unconstitutional and uncontrollable authority, or are we, the individuals that compose the United States of the United States, the more than Forty Tyrants whose creature is to be? Shall we bring face with the mandate that the people or they pass by must fall down and worship the beast?

Mr. President, it is not in the nature or essence of our institutions, and it is not impossible under our system of government, to any part of its internal structure and administration, can be so all one of subjugation and so lack of competence to stalk forth anywhere, either in State or Territory, to oppress and destroy.

It is claimed by the senator from Connecticut and reiterated by the senator from Massachusetts [Mr. Lodge] that the Constitution is not operative except within the limits or boundaries of a State or of the United States. It does not extend, and does extend, to the Territories, under and by virtue of an act of Congress. The senator from Massachusetts [Mr. Lodge] uses this language:

I believe that the power of the United States in the Territories is in succession outside the limits of the States themselves is absolute, with the single exception of the limitations imposed by such outside possession by the fifteenth amendment. Such, at all events, has been the policy of the United States and its course of action in practice.

Secondly, he says:

Without a legislative act the Constitution does not extend to the Territories or other possessions of the United States outside the limits of the States themselves.

I refer to this in order to make examination of it to see whether there is any proper foundation for these assertions. If it proves to be true that the Constitution of the United States is not operative at all beyond the limits of a State, it proves too much for the purpose of those who assert it. If the moment one step outside of a State, the Constitution ceases to be a constitution, it ought to be referred to, because it has no vitality. What are the consequences of such a doctrine? The 40 individuals who constitute the Congress of the United States, the nine who now occupy the Presidential chair, of once cease to be clothed with any official character or possession of any power whatsoever. No one of the departments of this government, either the Executive, the judicial, or the legislative, has any authority anywhere, either in the States or the Territories, except under and by virtue of the Constitution. Strike away the Constitution and they are emasculated of all authority. They can not take upon any authority, anywhere. They are possessed of no more power than that which pertains to the meanest of the people.

Mr. President, it may be that the Constitution in some of its provisions does not extend to the Territories in the same sense as it does to a State. Certainly Congress has provided for tribunals in the Territories, and the Supreme Court has conferred with jurisdiction to protect and clothed them with jurisdiction to enforce rights and to redress wrongs, the inhabitants of the Territories. Where has been a violation of any of the fundamental rights secured to them by virtue of the Constitution they stand without opportunity or means of redress? It is possible that they may be imprisoned often unlawfully, without due process of law, and be without the remedy of the writ of habeas corpus, but in the meantime, until Congress has provided the only devised upon it by the Constitution and created such tribunals and clothed them with the necessary jurisdiction, are these rights nonexistent? Are they dead? If they are infringed, it is a violation of right, and if for the time being there is no tribunal competent to grant redress, as soon as such tribunal is created and vested with the necessary power, the individual who has been wronged, it is claimed may go into court and seek the forth of redress which may then be competent.

Mr. President, will the senator yield for a question?

The President pro tempore. Does the senator from Utah yield to the senator from Illinois?

Mr. Rawlins. I yield.

Mr. Hanna. Has the senator discussed at all the statute which enters, or attempts to enter, the Territories, the statutes he has been quoting? Is the statute 1911 of the revised statutes provides that:

All persons—

It does not say all citizens, but—

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains and penalties and to

Would not that statute extend all the benefits of the Constitution to all persons who may be within the jurisdiction of the United States, even though the constitutional provisions do not?

Mr. Rawlins—Mr. President, I am not considering the question of the necessity or the force of that statute. Congress has passed it. I am considering the question as to the scope and operation of the constitutional provisions. The proposition I make is that in the States some of the provisions of the Constitution may not be self-executing and it is no less true in the Territories than it is in the States.

Bearing now to the condition in a Territory where the territory is acquired from another government, all the rights and privileges which persons had at the time of the acquisition continue to be in force after that time, that is, those which are secured by compacts or treaties, subject, however, to this qualification, that they must be so modified as to yield to the fundamental principles established by the Constitution of the government succeeding to the sovereignty of the country. Some laws would be wiped out of such principles. That was the rule which was applied with respect to the Louisiana purchase, and with respect to the acquisition from Mexico.

During the interregnum, the moment the territory is acquired the Constitution of the United States and all the provisions of the Constitution, in so far as they are not essentially unsuited and inapplicable to the condition of the country, become operative upon and applicable thereto and control all the municipal laws and regulations which may have been in force there and may have controlled the people up to that time.

Mr. President, it is true that Congress may from time to time, as it deems proper in its duty of providing a form of government and judicial tribunals in a Territory, begin to bring it forward from its constitutional date in preparing for courts inferior to the Supreme Court and provide for a form of a State, but we are not to indulge in any presumption that Congress will neglect to confer upon the people the privileges which it under and by virtue of the authority conferred upon Congress by the Constitution.

Let us proceed one step farther in this matter. There are certain provisions of the Constitution which in their nature are not and can not be self-executing, or any part of its internal structure and administration, can be so all one of subjugation and so lack of competence to stalk forth anywhere, either in State or Territory, to oppress and destroy.

It is claimed by the senator from Connecticut and reiterated by the senator from Massachusetts [Mr. Lodge] that the Constitution is not operative except within the limits or boundaries of a State or of the United States. It does not extend, and does extend, to the Territories, under and by virtue of an act of Congress. The senator from Massachusetts [Mr. Lodge] uses this language:

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Mr. President, I have asserted the proposition that no authority can be exercised in the Territories of the United States except under and by virtue of the Constitution. Take away the Constitution, and who is it that possesses the absolute control of the Territories? Is it the President? Is it the Congress? Are we at the very threshold with the question: What is Congress? We have no means of answering the question, if we undertake this, and we do not know what we are doing nor what follows. The 40 individuals who constitute the Congress of the United States, the nine who now occupy the Presidential chair, of once cease to be clothed with any official character or possession of any power whatsoever. No one of the departments of this government, either the Executive, the judicial, or the legislative, has any authority anywhere, either in the States or the Territories, except under and by virtue of the Constitution. Strike away the Constitution and they are emasculated of all authority. They can not take upon any authority, anywhere. They are possessed of no more power than that which pertains to the meanest of the people.

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Would not that statute extend all the benefits of the Constitution to all persons who may be within the jurisdiction of the United States, even though the constitutional provisions do not?

Mr. Rawlins—Mr. President, I am not considering the question

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would not the President, if such authority defined and recognized in the constitutional law conferred on the Territory, be guilty of murder?

Mr. President, we cannot take one step anywhere within the limits of our national domain as affecting the rights of the meanest of any of the inhabitants dwelling anywhere therein without an allegiance except under and by virtue of the Constitution. No matter how many of the departments authorizedly participate in that act, they stand upon the footing of secretaries, and pirates when they infringe upon the right, the liberty, or the property of the inhabitants anywhere within our national domain saved in the exercise of power which has been conferred upon them by the fundamental law of our land. Therefore I state that to the extent that the Constitution is only operative within the limits of a State or of the United States, it is not operative at all.

What is the proposition, when it is stated in its naked form, which is presented here to justify the proceedings which is proposed to be had in the Philippines by some statute? The proposition is that the Constitution can not be carried to the Territories except by virtue of an act of Congress. It is equally certain that an act of Congress can not carry the Constitution to the Territories except by virtue of the Constitution. In logic that is what is called a vicious circle.

The senator from Massachusetts [Mr. Lodge], stating the propositions which he claimed that the Supreme Court had in operative force out of the States and that it could only be made applicable by virtue of an act of Congress, said that such had been the course and practice of this government. No such proposition has ever been in practice nor been presented to us. Every precedent, whether legislative or judicial, is against the proposition contained. All my life has been spent in a Territory. For twenty-five years I have practiced law there and never before and I have anybody else in his place and contend that the authority of the Constitution were not a vital and living force anywhere in the Territories. Time and again I have appealed to the Constitution to find safeguards to protect the rights of my clients, citizens of a Territory, and never have I carried it to the highest judicial tribunal in this land, and never been able successfully to assert and maintain those rights in that august tribunal.

I say that there never has been an opinion rendered by the Supreme court, there never has been a him or suggestion by any judge who has ever occupied a place that assumed a tribunal from the time of its creation until the present hour, which has ever asserted that the Constitution is not operative vigorously applicable to the territories, and does not as much safeguard, in those provisions relating to civil and individual rights, the citizens of the territory as the citizens of the states. Let me ask, Mr. President, if the Senator from Colorado (Mr. Teller) for one precedent of legislative practice which is to my mind, the most conclusive of the

The ordinance relating to the Northwest Territory was passed in the year 1787, before the Constitution of the United States was framed and ratified. The Constitution was ratified in 1788. The Constitution was adopted and ratified—the prior municipal regulations continuing in force until superseded, modified and repealed by action of public and international law, subject to the qualifications which I have stated—and the Northwest Territory of the United States did not become by virtue of its ratification operative in the Northwest Territory then in force as it was originally enacted, and there would have been no necessity to change or modify it to order to conform to the limitations and provisions of the Constitution.

On August 7, 1789, the very year in which the Constitution of the United States was ratified, Congress, composed of men who participated in the framing of that instrument, deemed it necessary to pass this act, entitled "An act to provide for the government of the territory northwest of the Ohio river," containing this provision which I quote:

Whereas, in order that the ordinance of the United States in the Territory assented for the government of the territory northwest of the river Ohio may be carried to have full effect, it is requisite—

Note the words—

that certain provisions should be made so as to extend the jurisdiction of the Constitution of the United States—States at Large, volume 1, page 50-51.

No such act solemnly passed as that could have been passed by the men who participated in framing and adopting the Constitution of our country, unless they believed that that instrument and all its provisions not utterly inapplicable to a territory could be made to properly operate upon the territory, and it would be necessary to make any legislation previously enacted or subsequently enacted conform to the provisions of the Constitution. Never may have been done after that in legislating, especially to those who did not participate in framing that instrument. This is a contemporaneous construction, an interpretation of the Constitution by those who said in effect that that instrument was originally intended to apply to the territories and they put upon it that construction which made it within the limits of the states. There is nothing in contemporaneous legislation which gives us to think that it was inconsistent with the interpretation to which I have referred.

Turn to the supreme court, Mr. President. At the point I may be—perhaps I ought to be—I am quite aware that the decisions of the court, especially a part of the history of that tribunal and all its decisions, are against the proposition I have put in this question. In 4 Wheaton (Houghborough vs. Fisher Chief Justice Marshall, in delivering the opinion of the court, said:

The eighth section of the first article gives to Congress the "power to dispose of and make all needful rules and regulations" for the purpose therein mentioned. The grant is general, unlimited in its nature, and if the territory belonging to the United States be properly within the scope of the grant, the power of Congress over it is plenary and exclusive.

The power, then, to lay and collect duties, imports, and excises may be exercised in all the ports, wherever situated, throughout the United States. Does this term designate the whole or any part of the United States? Congress alone can decide this question, and if it be decided that the ordinance of 1787 is in force throughout the United States, or in any part of the United States than Maryland or Pennsylvania, and it is not less necessary, on the supposition that it is in force, that uniformity in the imposition of imports, duties, and excises should be preserved throughout the whole, or in any part of the United States than in the other. Since, then, the power to lay and collect taxes, which includes direct taxes, is to be exercised within the power to lay and collect duties, imports, and excises, and since the latter can be exercised in the United States, it follows that the power to impose direct taxes also extends throughout the United States.

I next call attention to the case of Webster vs Reid (11 Howard, page 460), which arose in the territory of Iowa. The defendant in error, Reid, recovered judgment against Webster for a quarter section of land. The validity of the judgment depended upon the regularity of proceedings under a statute of said territory, and the question of error of Reid was held invalid by the supreme court. In this case Justice McLean said:

By the seventh article of the amendments of the Constitution it is declared: "In suits at common law where the value in controversy shall exceed $20 the right of trial by jury shall be preserved." The [Territorial] act under which the state proceeding was had prohibited the trial by jury in matters of fact in which the suits were founded. In this respect the act was void.

The opinion in that case was delivered by Mr. Justice Nelson, and the court held that the seventh article of the Constitution was applicable to the Territory of Iowa.

In the case of Reynolds vs The United States (98 U. S., 145), which arose in the Territory of Utah, Reynolds claimed that his rights under the Constitution had been infringed in his conviction. In the opinion of the Supreme Court in this case Chief Justice Waite, in delivering the court, said:

Congress can not pass a law for the government of the Territories which shall prohibit the free exercise of religion. The first amendment to the Constitution expressly forbids such legislation. Polygamy or bigamy is a crime forbidden by the laws of all the States so far as Congressional legislation is concerned.

Mr. President, that the Iowa case? Mr. Rawlins—Yes.

Mr. Grar—I thought the Senator was arguing the Iowa case.

Mr. Teller—I did not want to interrupt the senator until he was through with that case. I did not ask if that is not the Utah case?

Mr. Rawlins—Yes.

Mr. Teller—I want to call attention to the fact that Congress in 1850, in the act to establish a Territorial government for Utah, used this language:

That the Constitution and laws of the United States are hereby extended over and shall be in force in said Territory of Utah as elsewhere within the United States, except the clause prohibiting the establishment of a religion, and the prohibition of the free exercise thereof, and the provisions of the article of the Constitution relating to the prohibition of the importation of persons of color, shall not be in force therein.

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