the powers that the Constitution confers upon them, the executive and the legislative. But when we come to the judicial department we give it no show; we do no not allow it to exercise its proper constitutional functions and legitimate influence upon that country.

The difficulty which has attended this subject for many, many years, has been fully stated in the difference which these statutes show, where Congress has conferred one jurisdiction upon the Territorial courts in a certain Territory, and turned around in the same or next the section, conferring a different jurisdiction upon a court of the same sort in a different Territory. There are a great many cases of courts we have given jurisdiction to both to try— but the instances that are cited in the Revised Statutes are enough to show anybody who will look the subject over that it is impossible to get any real system out of it.

All of these appointments have been made heretofore for the purpose of avoiding the legislature and whatever else was necessary in the situation in the particular Territory. So one has one law and another has another law upon this subject. That has been because Congress has departed from the rule that ought to have been established in the outset, of establishing district courts in the Territories. Because it has not done so; therefore, but has conferred a choice in a particular court, a short jurisdiction, as to the term of office upon the local courts, we are in the trouble we now find ourselves. The Hawaiian Commission sought advice, information, and instruction from the laws of the United States and looked through all the different Territorial acts and examined the powers relating to these courts only, to see if there was any one we could adopt. I want to call attention to one particular case, found in section 1913 of the Revised Statutes, which reads:

The supreme and district courts of every Territory, and the respective judges thereof, except for Idaho and Montana, may grant writs of habeas corpus and all other writs which are equally within the power of the United States in the District of Columbia.

There was general legislation conferring upon all of these courts of the different Territories—that is, of every Territory of the United States—the power to grant writs of habeas corpus on the same sort of a case, and the Territories were not permitted to get any jurisdiction except as the District of Columbia might grant them, with an exception as to Idaho and Montana.

How are we to contend that there has been any regularity of legislation or any system adopted by the Congress of the United States? The reason that the Supreme Court of the United States is not permitted to grant writs of habeas corpus in the same manner as they are granted by judges of the district courts of the United States.

Our legislation on this subject has been entirely fragmentary and irregular, and I believe that in this bill there is the first effort which has ever yet been made to give to the judicial department of a Territory and of the United States—both of them—their full and just authority.

For this reason, Mr. President, and certainly there is no objection to be found in the Constitution of the United States, why we should not take this course; and if there is no reason, if there is no objection, I think I have sufficiently shown, and the report of the committee has sufficiently shown, that the necessity for this action is so clear, and the benefit of the people is such, that it is the duty of the Senate to adopt it. Of course I have the greatest possible respect for the opinion of the Senator from Colorado [Mr. TELLER] and all the other Senators who have opposed this view of the subject, and who have argued so laboriously here against its constitutionality; but it has not yet seen that any argument has been produced which shows that the Congress of the United States has not got the power to locate a district court of the United States in a Territory.

Mr. TELLER. Mr. President—Mr. MOUGAN. Mr. President—Mr. MOUGAN. There is another point about this which I desire to state, and then I shall yield, if the Senator will allow me to go on.

Mr. TELLER. Certainly. Mr. MOUGAN. I want to call attention to this matter for a moment.

This is a provision of this act by which the jurisdiction of the district court of the United States in a Territory may be extended over a county in Texas. That is a strange provision. I will admit that it is given in this statute, Congress seemed to have concluded that it had jurisdicenot over all of the Territory, but over the organized portion of the Territorial courts, and they have conferred upon them more power than has ever been conferred upon any other class of courts. That is my objection to the whole system. I want the power divided. I want the Government of the United States to have its judicial system in the Territories, as well as the local governments, and not take the judicial powers from the Government of the United States and confer them, along with local jurisdiction, upon these courts.

I think I am right about it; but Congress has heretofore legislated in a most irregular manner, and sometimes in the most unaccountable manner, upon this subject of Territories. There is an excuse for it; and that is that every Territorial government that came in here had its representatives, and they had peculiarities which had to be overcome or provided for in some way. So, there are a great variety of judicial establishments, a great variety in the organization and jurisdiction of these courts and judges in vacation. Some of these courts have the power to assign district judges to certain circuits, and all of that, in the different Territories. It was the building-up process, where we in Congress took things as we found them and attempted to do for them the best we could, and not to let them be what they were. And there is not a situation that we were establishing in these different Territories, according to the mandate of the Constitution, as I have frequently said in this debate, a republican form of government. That is the limit of our duties, that is the mandate that is upon us, and that of course we must carry out.

Mr. TELLER. Mr. President, the provision in this bill for this court is unlike any other provision in any of the statutes of the United States. In all other cases we have conferred upon the legislatures, as it is called in the Territories, the power of a State court, and we have conferred also the power of a Federal court, and those courts have exercised those powers without any controversy whatever. The United States courts, as has been stated, repeatedly, have exercised those powers of the State courts as to controversies between citizens, but not as to controversies that would pertain to the Federal jurisdiction. But these courts do not have the same powers of the Federal courts as to controversies between citizens, but as to controversies that would pertain to the Federal jurisdiction. Therefore the jurisdiction is infinitely greater than of a circuit or a district court.

I do not believe that the amendment offered by the Senator from Connecticut [Mr. Platt], which I accepted, after the word "exercise," so that it would read as follows:

And said judge shall have and exercise in the Territory of Hawaii all the powers and duties of a district judge in the United States upon the judges of the district and circuit courts of the United States.

I shall ask to have that inserted. I desire to say that I have lived and practiced law assiduously in a Territory and did nothing else for fifteen years. I know that these judges in the Territories are not the right of judges until the Territories are the right of judges in the United States. They are not the right of judges until the Territories are the right of judges in the United States.

In determining, however, to the Hawaiian Commissioners, I waived that point; and I said, "If you think you ought to have a court specially charged with the disposition of the cases which arise under the Constitution and laws of the United States, I will yield that;" and so I made this suggestion.

I propose to take the advantage in having a district court in Hawaii, the people there will get it under this provision. We are denying nothing whatever to those people; and the complaint the Senator makes that we are not treating them fairly is not well founded, it seems to me. I was inclined to think that we would escape a political court if we followed the judgment of the commission in the first place, and let the governor appoint the judges of the circuit court; but that was voted down by the Senate.

I hope the Senator will accept my amendment and not feel that anybody here is attempting to do anything to interfere with the proper discharge of the business in Hawaii, or to offer anything that is intended to discredit the action of the commission because they are not doing something that the Senator wants done.

I believe, as the Senator from Wisconsin [Mr. Spooner] said yesterday, that there is no power to establish this court as a national constitutional court. I am not going to discuss that at this late hour. I was prepared to do so yesterday, but there was no time. I shall content myself with saying what I have said and let the proposition be voted upon. I know very well if this court is established as a Federal court—no, I do not know that, but I am very confident of it—the court will be no court at all; and there is great doubt whether it will be established. In that