

Now, according to this bill, as I understand it, we are providing that great numbers of Chinese, resident in the Hawaiian Islands, not only those who were there when we acquired those islands, but the many thousands brought there under contract since, shall obtain certificates and possess the right to go anywhere in the United States and, in any line of business which they may see proper to enter upon, to compete with our own laborers. This is one of the fruits of reaching out and gathering in islands here and there, without reference to what the islands are, without reference to the people who inhabit them, and without proper care to prevent those islands from being overrun, while under our own control, with the most undesirable class of Asiatics.

We have in the Hawaiian Islands not only many who are entirely undesirable, but many others who are a serious menace to our own institutions, and provision is here made for domesticating them.

(I find in this bill another provision not novel, but worthy, I think, of a word of comment. That is section 5, which provides—

That except as herein otherwise provided, the Constitution and all the laws of the United States locally applicable shall have the same force and effect within the said Territory as elsewhere in the United States.

In this is not only a formal enactment but a philosophy comparatively new in the United States and, I suppose, tolerably new to philosophers in general. This section is to be made an exemplification of the doctrine that the Congress of the United States possesses power to extend the Constitution, to limit the force and scope of the Constitution, to determine when and where the Constitution shall have effect and when and where it shall have none. Now, the old doctrine was, and the correct doctrine to-day, I think, is, that Congress is absolutely without any power to float the Constitution anywhere, to anchor it at any place, or to deprive any inch of the territory of the United States legislated for as a continuing possession or any of its inhabitants from coming and being under the influence and effect and domination of the Constitution.

I do not know exactly what the draftsman of this bill meant; whether he meant to extend the laws so far as locally applicable or whether he meant also to extend the Constitution so far as locally applicable. The phraseology would bear either construction.

The Constitution as extended "shall have the same force and effect within the said Territory as elsewhere in the United States!"

That is, perhaps, the Constitution, wheresoever locally applicable, shall have the same force and effect within the Territory of Hawaii as elsewhere in the United States!

Now, to me it is a strange thought, although it is a very popular one, I admit, with a certain element (and in that sense it has lost its strangeness), that the Constitution, the supreme law of the land—that by which the Congress itself is created; that which is made to govern everything that belongs to the American Republic and to control every agency under the Republic—is itself so trivial and insignificant a thing that the Congress can extend it to any Territory or any part of any Territory where "locally applicable," or restrain its operations and prevent its having effect in any Territory or in any part of any Territory.

It may seem singular that this new doctrine should have been evolved as it has been in the last year or two. The exigencies which called it forth certainly must be extraordinary. It is not a natural deduction; it is not a natural development. I submit that it is not a natural inspiration. There must be particular occasion for it; there must be particular use for it. There must be necessity for the existence and the application of such a doctrine, or certainly it would not have been invented, and certainly so many would not be repeating and preaching it. What has called forth this doctrine? What has suggested its promulgation? What has caused so many gentlemen to insist upon it, so often and so loudly, and, apparently, with so much sincerity? I say apparently because I wish to cast no reflection upon the sincerity of anyone, and yet to me it is strange how a man who permits himself to think upon the subject can, in sincerity, believe in the soundness of the doctrine.

Of course we have not far to go and not much investigation to make to determine why this doctrine has been promulgated or why some men cling to it with such desperate energy. If the Constitution takes care of itself, if the Constitution is the one masterful law in this country, superior to all other laws, the supreme law by which all other laws are tested, then what may be done in any particular quarter, at any particular time, by any particular agency, must be determined by the Constitution itself. And in ascertaining what the Constitution means and what it is, after studying its own words and recurring to the history of the convention which framed it, and the concurrent facts surrounding it, appeal and reference must be made to the expositions of it by the Supreme Court of the United States. And neither in that great instrument itself nor in anything connected with the history of its formation, neither in the declarations of those who framed it nor

in the decisions of the Supreme Court, can be found any foundation or pretext for this new and strange doctrine, which makes the Constitution subject to the whim, wish, or will of Congress or any incident or accident of Congressional legislation.

Ought not our friends who invoke this doctrine to pause before they push it as far as it seems now their determination that it shall go? Ought they not to realize that it is far better to be upon sound constitutional ground, and to do the things which they desire to do only so far as the Constitution will permit, and to stop the doing of them at the point where their action would become unconstitutional? Would not that be far safer and better than to proceed as they have begun, to continue in the way they are going? If the Constitution can be annulled by Congress, what is the Constitution worth? Who can draw the line, who can mark the point, to which Congressional interference with the Constitution, or Congressional annulment of the Constitution, may go, and the point or the line beyond which Congress can not annul, limit, check, or interfere with that instrument, regarded by many as sacred, and by many more as the supreme law of the land, the test for all other laws?

Gentlemen would say that only with respect to the territory of the United States has Congress this ample power. That as to the States, of course the Congress can not dispense with the Constitution or interfere with it, can not carry it to a State and can not withhold it from a State; but as to the Territories of the United States, there Congress is supreme, and there the Constitution has no place unless Congress shall see fit to give it place.

How does it happen, or how can it happen, that Congress is supreme in the Territories, independent of the Constitution? What is the foundation for that contention? What is the support for it, if it has any?

If one holds to that doctrine, he must maintain either that the Constitution gives this power to Congress, this ample and supreme power of legislation over the Territories and their inhabitants, or that from some other source, independent of the Constitution, Congress has acquired it. Does the Constitution give it to Congress? If the Constitution gives the power to Congress, whatever it is, then the Constitution goes to the Territory and is in the Territory and over the Territory, and Congress legislates under the Constitution, exercising the powers given by the Constitution. If the Constitution conveys to Congress ample and unrestrained power of legislation in the Territories, then how can you dispense with the Constitution when Congress would exercise that power?

Why talk about there being no Constitution in or over the Territory unless Congress carries it there, if by virtue of the Constitution itself and by exercise of the power given by the Constitution Congress legislates for the Territory and the people who dwell in it?

Now, if it be true that the power to legislate respecting the Territories is derived from the Constitution, then the Constitution must determine the power. Then every time the power is exercised—whenever the question of exercising it arises—the Constitution must be appealed to, and the decision of the Constitution must be final and conclusive.

Some gentlemen deal with this Congressional power to legislate with strange inconsistency. At one time, in one breath, they say that the Constitution does not extend to a Territory except by Congressional action, by Congressional extension, and quote from the Constitution a clause from which they deduce the power to legislate free from constitutional restraint. They find in the Constitution a clause giving Congress power to deal with the Territories, and at the same time find that the Constitution has nothing to do with the Territories, but that the Congress has complete control not only over them but also over the Constitution itself beyond the State lines. And this is the paragraph of the Constitution which not only makes the Congress omnipotent, but which at the same time makes the Constitution itself impotent indeed—provided always, however, that the new school of philosophers are not in error:

The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular State.

Some insist that the power of Congress is absolute, not only over the Territories but over the Constitution also, outside the States, because the Constitution confers such unlimited power in and by the paragraph just quoted; that absolute power is absolutely granted by the Constitution over the Constitution.

I deny that in creating Congress through and under and by the Constitution, the Constitution in any particular was made subordinate to Congress. The Constitution did not perish in the throes of maternity in giving birth to Congress.

Moreover, this paragraph refers to the territory belonging to the United States at the time of the adoption of the Constitution, and there is no convincing reason for believing that the framers of the Constitution had any other territory in mind.

This Congressional power, however great, however far it may