

extend, however many things it may reach, however extraordinary it may be, must be a ceded power, and therefore not superior to the higher power which grants it. Is there any trouble with that proposition? What gentleman dare assert that the warrant for Congressional action is found in the Constitution and yet deny, when the extent of the Congressional power is questioned, when the question is as to what Congress can do and what Congress can not do with a Territory, that the Constitution itself must be appealed to for answer?

When a dispute arises as to whether Congress has or has not any particular power, or extent of power, logically, naturally, constitutionally, the controversy must be settled by appealing to the Constitution, by getting the correct decision from the words of the Constitution, or, if necessary, from the proceedings of those who founded it, by the aid of the light of concurrent history, or from the decisions of the Supreme Court of the United States interpreting the Constitution. The Constitution is the fountain head, the Congress one of the streams flowing from it. Can the stream rise higher than its source? Hardly, I think, even under the pressure of "expansion." I care not to dwell longer upon that proposition. I know how easily one may be wrong while most confident that he is right; and although I am confident of the correctness of my proposition, I may be entirely in error; but I would be very much obliged to any gentleman on the other side if he would be kind enough to show me wherein I err, if that be error.

If you quote the Constitution for the power, you are bound by the Constitution; your power must be derived from it. Whether you have it or have it not in any particular instance must be determined by the Constitution and the exposition of the Constitution by the only authority appointed by itself to give us an exposition of it, the Supreme Court of the United States. Now, if that be not true, tell me wherein lies the fallacy. If it be true, tell me what goes with your doctrine that the Constitution must be extended to a Territory; "that the Constitution, so far as locally applicable, shall have the same force and effect within the said Territory (or any Territory) as elsewhere in the United States" only when Congress is pleased to say so. How can Congress determine what the power and the effect of the Constitution is or shall be? How can Congress determine that the Constitution shall have a certain effect in one place and a different effect in another place? How is that possible, as a matter of law or as a matter of reason? Can a director of a corporation cast aside the charter which created the corporation which made him?

But perhaps the Congressional power is derived from some other source than the Constitution. The difficulties are no less great in the way of the man or party who would maintain that doctrine. Do you choose to take the position that the Constitution does not give to Congress the unrestrained power to legislate for the Territories, but that Congress has it independent of the Constitution? Who takes that position? Who is here to maintain that doctrine? I will be under great obligations to the proponent of that doctrine if he will explain it and give us the philosophy upon which it rests. Then we would have the Constitution, not the supreme law of the land; then we would have the Constitution, made to govern the affairs of the American people, not governing in all particulars; then we would have Congress, which can not exist independent of the Constitution, to which it is subject with everything it does and can do, completely independent of the Constitution, by reason of some power derived elsewhere. Now, who dares to state that proposition and endeavor to maintain it?

Upon what ground other than one of these two can the contention be made that the Constitution has to be carried by an act of Congress to a Territory to get there at all; that the Constitution for its vitality anywhere, respecting any subject, depends upon Congressional legislation? Where can such a proposition have started? I submit—I do it confidently—I submit that nowhere in authority, nowhere in the Constitution, nowhere in the decisions of the Supreme Court, nowhere in reason and logic, can the warrant for the contention or the support for it be found. And yet our friends are put into such sore straits; they put themselves into such an awkward position; they so recklessly and defiantly entered upon the work of doing this, that, and the other thing, without reference to the Constitution; of legislating in ways new and strange to our people and contrary to the genius of our Government; that, relying to-day upon this and the next day upon that, proclaiming to-day free trade and to-morrow protection, in grasping for straws, hoping by their aid to float, they fastened upon this new and strange doctrine that we have the Constitution outside of the State just where, and only where, the Congress chooses to put it.

Now, then, let us look at this question in another light. What is the Constitution in the Territory when Congress carries it there? Is it there as a Constitution or is it there as statute law? When Congress, by a provision like this section 5, extends to Hawaii the laws of the United States locally applicable, Congress does no more and no less than Congress would do if it were to write out

word for word the entire body of those laws, embrace them in a bill, or in any number of bills, pass them, let them be approved by the President, and written anew in the statute book. That is just exactly what extending laws to the Territory amounts to—just that; no more and no less. This is the short way of enacting for the Territory the existing laws locally applicable to it. Now, then, is there anything more done with respect to the Constitution? Does the Congress of the United States make a constitution, as we understand the term—make a constitution (as the Constitution of the United States is for the States) the constitution also for a Territory by embodying it in an act of the Congress of the United States? Can that be done? Is that the way constitutions are made? Can constitutions be made in that way?

Then in extending the Constitution so far as "locally applicable" to Hawaii, the Congress of the United States is doing no more, and can do no more, than the Congress would do if we were to embody in a bill the Constitution of the United States word for word: "Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled," and then follow with the words of the Constitution. Let the President, after both bodies have passed the bill containing the Constitution and nothing else, affix his signature in approval, and then you have the Constitution "extended" to Hawaii just as completely, and no more completely, than it is extended by this act.

When the legislation is completed, what have you done? You have put the Constitution into the statute law of Hawaii, if you have done anything. That precisely and nothing more. Now, then, is that what gentlemen wish to accomplish by this measure? Did the gentleman who drew the bill wish to enact the words of the Constitution of the United States into statute law for Hawaii? Is that the purpose? I venture to say that it is not.

Assume, if you please, that the Constitution is not in force in Hawaii—those islands so very desirable for us, as so many people have said; those islands where the plague prevails, where contract labor is the rule, and slavery the result; where slavery, in fact, has been fostered and built up since the islands came under the control of the United States; the islands overrun with the cheapest labor of the Orient—if the Constitution is not over Hawaii, if the Constitution has not force and effect there, what force and effect will this legislation give it? Can you make a constitution for Hawaii by legislation of Congress? Why, sir, heretofore when our States have required constitutions they have made them themselves; they have been made by the people of the State. Then can you make the Constitution of the United States the constitution of Hawaii by Congressional enactment? It seems to me it is ridiculous to make such a contention.

Then how does this enactment carry the Constitution there? How can it carry the Constitution to Hawaii? How can a legislative act make over Hawaii a law supreme, as the Constitution of the United States is supreme over every sovereign State of this Union? How can it be done? And then when it is done, if it can be done, what about this vast Congressional power of which we have heard? The Congress which has the power to extend the Constitution to Hawaii—the Congress which, if it is right in now maintaining that Hawaii has not the Constitution of the United States and that it can put Hawaii under the shadow and protection of that Constitution—if it possesses that ample power—if it possesses that power which can not be derived from the Constitution, does it possess also the power to unmake, to undo? If it be true that the Constitution of the United States does not throw its protection over Hawaii and the people who dwell there to-day—if it be further true that after the passage of this act, if this section remains in it (but not otherwise), the Constitution of the United States will be over Hawaii—then I ask whether it is not also true that the same power which gives Hawaii the Constitution of the United States could take from Hawaii that Constitution? Who denies that proposition? If it is denied, why is it denied? [Applause on the Democratic side.]

Now, can it be that Congress possesses this ample power—power so vast, so transcendent, that the Constitution does not restrain it, either because the Constitution has granted the power beyond recovery or because the power is derived from some other source—can it be true that the Congress of the United States possesses the vast and ample power to determine that a particular Territory of the United States or all of the territory outside of the States shall or shall not have the Constitution of the United States as the supreme governing law? Can that be true? And can it be true also that having once exercised this power, having once spread the Constitution over the Territory, Congress is powerless to withdraw it?

I suppose these gentlemen who contend for this ample power on the part of Congress will hardly assume or hardly assert that Congressional legislation, from the time of the extending of the Constitution to a Territory, and during the time the Constitution is permitted to have an abiding place there, can be independent of the Constitution. I think that can not be true. When the Constitution is there or gets there, when the agis of the Constitution is over Hawaii, then, for the time being, Congress, in legislating