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## THE LEGAL EFFECT OF THE ACQUISITION OF THE PHILIPPINE ISLANDS.

### THE RIGHT AND THE POWER OF THE UNITED STATES TO ACQUIRE TERRITORY.

By the exchange of ratifications at Washington, on April 11, 1899, the Treaty of Paris, between the United States and Spain, went into complete effect. By the third article of this Convention, "Spain cedes to the United States the archipelago known as the Philippine Islands." It is foreign to the purpose of this article to discuss the policy of our government in accepting these islands, but it may be well here to consider the *right* and the *power* of the United States thus to acquire them.

Under the laws and usages of nations, the right of extending its bounds and acquiring new territory has always been regarded as inherent in every sovereign state. In the language of Bynkershoek, "*Postquam Lex certos dominiū acquirendi modos præscripsit, hos sequemur*" (Opera III, 254), while Grotius gives three modes by which a nation may enlarge its national domain: "(1) By occupation; (2) by treaty and convention; (3) by conquest." (Lib. II, c. IX, s. 11, p. 338.) It is by the second method that the Philippines have become a

part of the territory of the United States, and the right of our national government thus to extend its bounds has never been, nor can it ever be, called in question by any other nation.<sup>1</sup>

It is a matter of common history that sovereign states have been wont, from the earliest times, thus to enlarge their national domains, and their right to do so is unquestioned, if we except those occasional interferences on the part of the European states, when the balance of power seemed to be endangered. If the power of the United States is subject to any limitations, they must be sought elsewhere than in international law. The only other limitation upon the actions of the United States Government is the will of the sovereign people,—the authors of that government,—as expressed in the Constitution under which it was established, and through which it derives its governmental powers.

It must be admitted that nowhere in the Federal Constitution is authority in express words given to the national government to acquire additional territory. Is such authority granted by implication? Two of the reasons for establishing the Constitution, as given in the preamble, are, "to provide for the common defence and promote the general welfare," and the power to do these two things is given to Congress (Art I, sec. 8). In the same section Congress is empowered "to declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water," "to raise and support armies," "to provide and maintain a navy," etc. Under Art. II, sec. 2, the President "shall have power by and with the advice and consent of the Senate, to make treaties." Under Art. IV, sec. 3, "new states may be admitted by the Congress into this Union," and "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." Finally it is provided that "this Constitution and the laws of the United States, which shall be

<sup>1</sup> 1 Phillimore, *Int. Law*, 324 (3d Ed.). Woolsey *Int. Law*, 65 (6th Ed.). W. E. Hall's *Int. Law*, 104 (3d Ed.). 1 Halleck's *Int. Law*, 131 (Baker's Ed.).

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, sec. 2).

In determining whether or not the power to acquire territory is impliedly granted to the federal government in the foregoing sections, we must look to the decisions of the United States Supreme Court,—the interpreter and expounder of the supreme law of the land. The opinions of our early statesmen, as well as those of other recognized authorities on constitutional law, will also be of service in determining this question.

President Jefferson, a strict-constructionist of the old school, expressed the opinion that Louisiana could not be acquired under the existing Constitution, and accordingly recommended its amendment. " Yet he did not hesitate without such amendment to give effect to every measure to carry the treaty into effect during his administration." (4 Jeff. Constitution, 1, 2, 3.) Either Mr. Jefferson in reality believed that there was an implied power to acquire territory, or else he knowingly participated in a gross infraction of the Constitution. We prefer to accept the former hypothesis.

Mr. Justice Story, than whom there is no greater authority on the United States Constitution, says: " As an incidental power, the constitutional right of the United States to acquire territory would seem so naturally to flow from the sovereignty confided to it, as not to admit of very serious question. The Constitution confers on the government of the Union the power of making war and of making treaties, and it seems consequently to possess the power of acquiring territory, either by conquest or treaty. If the cession be by treaty, the terms of that treaty must be obligatory. They are within the scope of the constitutional authority of the government, which has the right to acquire territory, to make treaties and to admit new states into the Union." (Story on the Constitution, sec. 1,287; see also sec. 1,324.)

He would indeed be a rash jurist or statesman, who would set up his opinion on a constitutional question in opposition to Chief Justice Marshall. In the case of the *American Insurance Company v. Canter* (1 Pet. 542), Mr. Marshall pronounced

the following concise decision: "The Constitution confers absolutely on the government of the Union the powers of making war and of making treaties; consequently that government possesses the power of acquiring territory either by conquest or by treaty."

A generation later the same question arose in the celebrated *Dred Scott* case. In the opinion of the court, delivered by Chief Justice Taney, "the power to expand the territory of the United States by the admission of new states is plainly given; and in the construction of this power by all the departments of the government, it has been held to authorize the acquisition of territory not fit for admission at the time."<sup>1</sup> We may dissent from the rulings on several points of this case and a great part of the decision is no longer law, but the conclusions reached on this particular point are thoroughly in accord with the utterances of the court in the earlier cases, and have since been uniformly followed in numerous decisions of the United States Supreme Court.<sup>2</sup>

Throughout the history of the United States the actions of the legislative departments of the federal government have been in accord with what we have just seen has been the uninterrupted current of judicial opinion. Beginning with a small strip of territory along the Atlantic coast, the federal government, almost as soon as established, began to acquire lands to be governed as territories by inducing the individual states to cede to it their unoccupied possessions lying to the west and extending to the Mississippi River.

In 1803, Napoleon, having first acquired the vast territory of Louisiana from Spain by a treaty, the terms of which have never been made public, ceded it to the United States. This was the consummation of a cherished purpose of the Corsican, as may be gathered from his words to President Jefferson on the exchange of ratifications of the treaty. "This acquisition of territory," said he, "strengthens forever the power of the United States. I have just given England a maritime

<sup>1</sup> *Dred Scott v. Sandford*, 19 How. 447.

<sup>2</sup> *Sere v. Pitot*, 6 Cranch 332; *Fleming v. Page*, 9 How. 614; *Cross v. Harrison*, 16 How. 191; *New Orleans v. Armas*, 9 Pet. 224; *Mormon Church v. United States*, 136 U. S. 42.

rival that will, sooner or later, humble her pride." Soon afterwards, the national domain was further enlarged by the acquisition of Florida from Spain, by treaty of cession, in 1819. Texas was annexed in 1845, and three years later the vast territory, forming the southwest quarter of the United States, was ceded by Mexico, thus extending the dominion of the Federal Union from ocean to ocean, fifteen hundred miles in width. The lower part of the present territory of Arizona was added by the Gadsden treaty in 1854, while Russia practically presented to the United States her American possessions when she ceded Alaska in 1867. For thirty years the boundaries of the United States remained unchanged. In 1898 the Hawaiian Islands were annexed, and now by the Treaty of Paris other islands, both in the Pacific and in the Atlantic, have passed into the possession of the United States. This steady extension has not been the work of any one political organization, but has been wrought now by one party, now by another.

#### THE POWER OF THE UNITED STATES TO GOVERN ACQUIRED TERRITORY.

It is not for us to say whether we would have been a stronger, a more prosperous and a happier nation to-day, had we remained within our original boundaries east of the Mississippi River. The extension of our boundaries is a *fact*. The acquisition of the Philippine Islands is a *fact*. The next question which confronts us is, "what disposition shall be made of them?" And first a few words as to the power of the United States to govern these islands. "As the general government possesses the right to acquire territory, either by conquest or by treaty, it would seem to follow, as an inevitable consequence, that it possesses the power to govern what it has so acquired. The territory does not, when so acquired, become entitled to self-government, and it is not subject to the jurisdiction of any state. It must consequently be under the dominion and jurisdiction of the Union or it would be without any government at all." (Story on the Const. sec. 1324.) Chief Justice Marshall, speaking for the Court in *Sere v. Pitot* (6 Cranch 336) holds that "the power of governing and of

legislating for a territory is the inevitable consequence of the right to acquire and to hold territory." And again in *American Insurance Co. v. Canter* (1 Pet. 542), the same conclusion is reached. "Perhaps," says the Chief Justice, "the power of governing a territory belonging to the United States which has not by becoming a state acquired the means of self-government, may result necessarily from the facts, that it is not within the jurisdiction of any particular state and is within the power and jurisdiction of the United States. The right to govern may be the inevitable consequence of the right to acquire territory. Whichever may be the source whence the power is derived, *the possession of it is unquestioned.*" This power, which was so early pronounced to be "unquestioned," has not only been recognized with equal emphasis in the later decisions of the Supreme Court (See *United States v. Gratiot*, 14 Pet. 526; *McCulloch v. Maryland*, 4 Wheat. 422; *Scott v. Sandford*, 19 How. 393; *Cross v. Harrison*, 16 How. 164; *Mormon Church v. United States*, 136 U. S. 44; *Shively v. Bowlby*, 152 U. S. 48; *Murphy v. Ramsay*, 114 U. S. 44), but has been exercised as is well known in the government of the territory acquired by the various treaties above mentioned.

The power to acquire and to govern territory being so unmistakably included among the functions of our federal government, the next question is, "*how shall our acquired territory be governed?—how shall the Philippines be governed?*"—for we can perceive no reason why a different rule should be adopted with reference to those islands, than with reference to Hawaii, Alaska or our territories in the Southwest. Congress is empowered to dispose of and to make all needful rules and regulations respecting the territory or other property belonging to the United States. No reference being made to the location of the acquired territory, the distant islands of the Pacific come as completely within the provisions of this section as does Oklahoma, surrounded on all sides, as she is, by the states and territories of the Union. So broad indeed is the Constitution on this point that, should it ever become practicable and desirable to annex one of the planets, we submit that no amendment to the Constitution would be necessary to authorize such acquisition, or to empower Congress to establish a government for it.

## THE POWER OF THE PRESIDENT TO ESTABLISH A TEMPORARY GOVERNMENT FOR THE PHILIPPINE ISLANDS.

Leaving out of consideration, for the purposes of this article, the rights of the present inhabitants of the Philippines to govern themselves without interference from any nation whatever, we find the United States the unquestioned owner of those islands, with plenary power to dispose of or to govern them. The next question to be determined is "how shall they be disposed of? or how shall they be governed?"

For two reasons, the LV. Congress did not adopt any regulations, or establish any government for the Philippine Islands: first, because our rights therein had not yet become complete by the exchange of the treaty ratifications; and secondly, because of the state of insurrection which then existed, and which still continues there—formerly against the Spanish Government, now against the United States.

Under the Constitution, "the President shall be Commander-in-Chief of the Army and Navy of the United States and of the militia of the several states, when called into the actual service of the United States." (Art. II, Sec. 2.) It therefore becomes the duty of the President, as Commander-in-Chief of the Army and Navy, to establish a temporary military government until the cessation of hostilities.

The Territory of New Mexico having been acquired by the arms of the United States, in 1846, and the civil government of that territory having been overthrown, General Kearney, "in virtue of the power of conquest and occupancy, and in obedience to the duty of maintaining the inhabitants in their persons and property, ordained under the sanction and authority of the United States, a provisional or temporary government for the acquired territory." The power to do this was upheld in *Leitensdorfer v. Webb* (20 How. 178), in which it is further held that the "ordinances and institutions of the provisional government" continued even after peace was restored until "revoked or modified" by Congress. In the case of *The Grapeshot* (9 Wall. 129), Chief Justice Chase pronounced the opinion that during the Civil War, "it became the duty of the national government, whenever the insurgent power was overthrown and the territory

which had been dominated by it, was occupied by the national forces, to provide as far as possible, so long as the war continued, for the security of persons and property, and for the administration of justice. The duty of the national government, in this respect, was no other than that which devolves upon the government of a regular belligerent occupying, during war, the territory of another belligerent. It was a military duty, to be performed by the President as commander-in-chief, and entrusted as such with the direction of the military force by which the occupation was held."<sup>1</sup>

The power of the President to authorize the "military and naval commander of our forces in California (in 1847) 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" was upheld in *Cross v. Harrison* (16 Wall. 190).<sup>2</sup> Were the question now to arise for the first time, there could be little doubt in the mind of any one of the power of the President to maintain a temporary government, until the cessation of hostilities, and until the establishment of a permanent form of government by Congress. So strongly supported, both on principle and authority, and so firmly established by usage, this power of the President can be no longer open to question.

#### THE PERMANENT GOVERNMENT OF THE PHILIPPINE ISLANDS.

When hostilities in the Philippines shall have ceased, and therewith the necessity for a military government, what disposition shall then be made of those islands? We conceive that four courses will be open to Congress, when it comes to consider the matter, any one of which is within its *power* to adopt, so that in choosing one, only questions of national policy need be considered by it. (1) Congress may cede to some other nation her rights in the Philippine Islands. (2) Congress may authorize the immediate withdrawal of all

<sup>1</sup> *The Grapeshot*, 9 Wall. 129.

<sup>2</sup> See also 1 Halleck's Int. Law, p. 498, 503 (Baker's Ed.); U. S. Stat. at Large, 55th Cong., p. 750.



American troops and leave the inhabitants to work out their own destiny. (3) Congress may extend the protection of the United States over these islands, either temporarily or permanently. (4) Congress may govern these islands as territories of the United States.

The first possibility may be dismissed with a word. The United States is not dealing in foreign real estate as a speculation, nor is it her purpose to free the inhabitants of the Philippines from subjection to one power, only to place them in bondage to another. The second course is equally out of the question, since the part which the United States has taken warrants the other nations of the world in expecting her to see that a government of some kind shall be established in the Philippines of sufficient stability to afford protection to their countrymen domiciled there and to their commerce with those ports. Should the islands, under the third alternative, eventually become an independent government, a consideration of their future would be irrelevant here, consequently we shall consider the future government of the Philippines under the fourth proposed system, which seems, on the whole, most likely to be adopted.

The disposition which is to be made of the Philippine Islands should not be difficult to forecast, if we can trust our national legislature to restrain its actions within constitutional limitations. The normal condition of the several political entities, which go to make up our Union, is that of distinct and individual states, each with its own local government, limited in its powers by the Federal Constitution as well as by its own. Outside of the several component parts of the Union known as states, there lie certain lands not within the domain of any state, yet within the national boundaries. These lands comprise the territory spoken of in the Constitution, of which Congress shall have power to dispose and respecting which Congress shall have the power to make all needful rules and regulations. (U. S. Const., Art. III, Sec. 2.)

When territory is ceded to the United States it does not become *ipso facto* a state in the Union, for new states can be admitted only by the Congress. (Id., Art. III, Sec. 1.) Such acquisitions do become a part of the territory and, as such,

are subject to such disposition and regulations as Congress may see fit to make respecting them. The people of a state owe allegiance to two governments, one state the other national, but over the people of a territory "Congress exercises the combined powers of the general and of the state governments." In *American Ins. Co. v. Canter* (1 Pet. 542), Chief Justice Marshall held that Florida, until admitted as a state, "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 of the United States." Aside from the District of Columbia and the small reservations for forts, federal buildings, etc., on one hand, and the states on the other, the national government recognizes no land in possession except her territories, as mentioned in the Constitution. Whether it is within the power of Congress to govern the national territory permanently as such, or only temporarily until it shall become fitted to take upon itself the duties of state government, and to take its place in the Union of states, need not here be considered, since nothing could possibly be gained by a determination of the question. Any one who is acquainted with the rapid development of our western territories would scarcely presume to say that *any* territory could never become admissible into the Union of states. Considering climatic conditions, accessibility and general productiveness, who will say that Luzon may not be ready for admission to statehood in advance of Alaska?

The power of Congress over national territories cannot be made to depend upon their future capability of admission as states, much less upon their *supposed* future unfitness for statehood. Should the Philippine Islands therefore be retained by the United States it will be the duty of Congress to make such rules and regulations respecting them as will give them a stable government, and afford ample protection to life and property. Congress, in the exercise of its constitutional power to govern the territories, may do so mediately or immediately; either by the creation of a territorial government, with power to legislate for the territory, subject to such limitation and restraint as Congress may impose upon it, or by the passage

of laws directly operating upon the territory without the intervention of the subordinate government.<sup>1</sup> It must be evident that, with the exceptions mentioned above of the reservations for strictly governmental purposes, the lands of the United States which have not yet been admitted to statehood consist of three organized territories—New Mexico, Arizona and Oklahoma—the unorganized Territory of Alaska, the Indian Territory, which is a political anomaly, the Hawaiian Islands and our recent acquisitions from Spain, whose government has not yet been definitely determined by Congress, but which must be governed either as organized or unorganized territories. Such has been the history of our territorial governments, and it is safe to say that no new mode of government will be attempted, even if permitted by the Constitution and laws of the United States.

Speaking of the territory acquired from France in 1803, Chief Justice Taney said: "The form of government to be established necessarily rested in the discretion of Congress. It was their duty to establish the one that would be best suited for the protection and security of the citizens of the United States and other inhabitants who might be authorized to take up their abode there, and that must always depend upon the existing conditions of the territory, as to the number and character of its inhabitants and their situation in the territory. In some cases a government consisting of persons appointed by the federal government would best subserve the interests of the territory when the inhabitants were few and scattered and new to one another. In other instances it would be advisable to commit the powers of self-government to the people who had settled in the territory, as being the most competent to determine what was best for their own interests. But some form of civil authority would be absolutely necessary to organize and preserve civilized society and prepare it to become a state; and what is the best form must always depend on the condition of the territory at the time and the choice of the mode must depend upon the exercise of a discretionary power by Congress, acting within the scope of its constitutional authority, and not infringing upon the rights of person or

<sup>1</sup> *Edwards v. Steamship Panama*, 1 Ore. 423.

rights of property of the citizen who might go there to reside or for any other lawful purpose. It was acquired by the exercise of this discretion and it must be held and governed in like manner until it is fitted to be a state.”<sup>1</sup>

Much light is thrown upon the subject of the relation of the territories to the Union by the concise opinion of Chief Justice Chase in *National Bank v. Yankton* (101 U. S. 133): “All territory within the jurisdiction of the United States, not included in any state, must necessarily be governed by or under the authority of Congress. The territories are but political subdivisions of the outlying dominion of the United States. Their relation to the general government is much the same as that which counties bear to the respective states, and Congress may legislate for them, as a state does for its municipal organizations. The organic law of a territory takes the place of a constitution as the fundamental law of the local government.” Citing this case with approval in *Mormon Church v. United States* (136 U. S. 42), Mr. Justice Bradley held that “the power of Congress over the territories of the United States is general and plenary,” while in the case of *Murphy v. Ramsey* (114 U. S. 44), the court considered the question of the power of Congress over the territories to be no longer open to discussion, it having “passed beyond the stage of controversy into final judgment.”<sup>2</sup>

#### THE STATUS OF THE INHABITANTS OF THE PHILIPPINE ISLANDS.

It being in the power and discretion of Congress to govern the Philippines either directly from Washington or indirectly through the medium of a local territorial government, subject to the Constitution and laws of the United States, we come next to consider what shall be the rights and privileges of the individual inhabitants of those islands, and first of all, their political rights. It is clear that their political rights, or rather privileges, must depend largely upon whether Congress shall decide to govern them immediately or to grant them a local

<sup>1</sup> *Scott v. Sandford*, 19 How. 448. See also *ex parte Perkins*, 2 Cal. 424.

<sup>2</sup> See *Amer. Ins. Co. v. Canter*, 1 Pet. 511; *Benner v. Porter*, 9 How. 235; *Forsyth v. U. S.*, 9 How. 571.

territorial government. Should the former method be adopted, then they would have no political privileges, while under an organized territorial government, their privileges would be just such as Congress should in its discretion, grant to them, and their legislative powers would "extend to all rightful objects of legislation, not inconsistent with the laws and the Constitution of the United States."<sup>1</sup>

Speaking of the inhabitants of the territories, the court, in *Murphy v. Ramsey* (114 U. S. 44.), said: "Their political rights are franchises, which they hold as privileges in the legislative discretion of the Congress of the United States." In cases of cession by treaty "the ceded territory becomes a part of the nation to which it is annexed, either on terms stipulated in the treaty, or on such as its new master shall impose. Their relations with their former sovereign are dissolved and new relations are created between them and their new sovereign. The act transferring the country transfers the allegiance of its inhabitants. They do not participate in political powers, nor can they share in the powers of the general government, until they become a state."<sup>2</sup> "The law which may be denominated political is necessarily changed." (Id.) The political destiny of the inhabitants of the Philippines, being exclusively and absolutely entrusted to the discretion of Congress—in other words, Congress having plenary power to define what shall be their relations to their new sovereign, the United States of America,—our next concern is with their relations with each other. Whatever may have been the usages of nations in ancient times, under the more humane principles of modern international law, the inhabitants of acquired territory are no longer put to the sword, nor cast into prison, nor deprived of their private property. Says Vattel, "the new sovereign takes only the possessions of the state, the public property, while private individuals are permitted to retain theirs."<sup>3</sup> "The relations of the inhabitants with

<sup>1</sup> *Mormon Church v. U. S.*, 136 U. S. 44. See also 9 U. S. Stat. 454.

<sup>2</sup> Story on the Constitution, Sec. 1234; *American Ins. Co. v. Canter*, 1 Pet. 542; 1 Halleck's Int. Law, p. 380, (Baker's Ed.); 2 Wharton's Digest of Int. Law, p. 425.

<sup>3</sup> Law of Nations, p. 388.

each other do not change. The general laws, not strictly political, remain as they were until altered by the new sovereign."<sup>1</sup> The law which "regulates the intercourse and general conduct of individuals remains in force until altered by the newly created power of the state."<sup>2</sup> It is true, that stipulations are often inserted in treaties of cession, securing to the inhabitants of the ceded territory, their rights in private property, but this is only done out of abundant caution, since the same rights are secured to them under the law of nations, "whether or not it is so stipulated in the treaty of cession."<sup>3</sup>

These cases were cited and followed in an able opinion by Mr. Justice Daniel, in *Leitensdorfer v. Webb* (20 Hos. 177). Referring to the acquisition of New Mexico, he says: "By this substitution of a new supremacy, although the former political relations were dissolved, their private relations, their rights vested under the government of their former allegiance, or those arising from contract or usage remained in full force and unchanged, except so far as they were in their nature and character found to be in conflict with the Constitution and laws of the United States or with any regulations which the conquering and occupying authority should ordain. For example, the right of property in slaves would be recognized in no territory which might be acquired by the United States, slavery being forbidden by the Thirteenth Amendment to the Constitution of the United States."

Life, liberty and property being, by the principles of international law, secured to the inhabitants of the Philippine Islands, and the right to religious freedom being guaranteed to them by the terms of the treaty (Art. X), what further rights or privileges can they lay claim to? Thus far all the inhabitants have received equal consideration, whether European, Asiatic or Oceanic, but Article IX of the treaty stipulates for superior advantages in favor of "Spanish subjects, natives of the Peninsula," one of which is the right to make an election within one year whether they will retain their allegiance to the crown of Spain or adopt the "nationality of the territory"

<sup>1</sup>Story on the Const. 1234.

<sup>2</sup>American Ins. Co. v. Canter, 1 Pet. 542.

<sup>3</sup>United States v. Percheman, 7 Pet. 51; Mitchell v. U. S., 9 Pet. 711.

—that is of the United States. Should they elect the latter, they will be entitled to all the privileges and immunities of other citizens of the United States residing in the organized or unorganized territories, as the case may be. The treaty further provides that “the civil rights and political status of the native inhabitants of the territories hereby ceded to the United States shall be determined by the Congress.”<sup>1</sup>

“If the treaty stipulates that they shall enjoy the privileges, rights and immunities of citizens of the United States, the treaty as part of the law of the land, becomes obligatory in these respects.”<sup>2</sup> But the Treaty of Paris does not so stipulate. In fact it negatives the idea that any such stipulation can be implied, for it explicitly leaves the civil and political rights of the inhabitants to the future determination of Congress. The native inhabitants of the Philippines therefore, are neither citizens possessed of the privilege of suffrage, nor are they citizens without that franchise. Until Congress shall extend and enlarge their privileges, they stand in the position of all other aliens, resident in the territories of the United States, owing certain duties and receiving limited protection from the national government.

The United States, as a sovereign state, has the inherent right to make her own rules and regulations respecting naturalization. Moreover, the power to make such regulations has been specifically entrusted to Congress.<sup>3</sup> Congress therefore may enact laws, providing for the naturalization of every inhabitant of the Philippine Islands, or it may admit certain classes to the privileges of citizenship, while it excludes all others. As to such as shall not become citizens, their rights are limited to such as are secured to them by the laws of nations and by the terms of the treaty. As to those who may become citizens under the authority of Congress, their rights will be identical with those of all other American citizens resident in our territories, and all the privileges and immunities which the Constitution guarantees to a citizen of the United States and which do not depend upon his being also a citizen of one of

<sup>1</sup> Article IX.

<sup>2</sup> Story on the Const. Sec. 1234.

<sup>3</sup> U. S. Const., Art. I., Sec. 8.

the states, will be then extended to the native Philippine inhabitants so naturalized.

The "inalienable rights," and the "privileges and immunities" of the Constitution extend not to aliens but to citizens, and that, too, to naturalized and natural-born citizens equally, whether residents of Arizona, Alaska or the Philippine Islands. Since the Constitution does not guarantee the right of suffrage to all citizens, it follows that the electoral franchise can be exercised only by such of the citizens of the United States as Congress shall see fit to entrust with it.<sup>1</sup> The treaty by which Louisiana was acquired, in 1803, provides (Art. III) that "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 rights, advantages and immunities of citizens of the United States; *and in the meantime* they shall be maintained and protected in the free enjoyment of their liberty, property and the religion which they profess." Clearly the constitutional privileges did not extend to the inhabitants of the Territory of Louisiana until admitted into the Union.

Article VI of the Florida treaty is a trifle ambiguous—"shall be incorporated into 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,"—but it seems clear that the inhabitants were to become citizens only when admitted to statehood, unless citizenship should be sooner conferred upon them by act of Congress. Article VIII of the Treaty of 1848 with Mexico, contains practically the same provisions with reference to the inhabitants of the territory thereby ceded. The question of the applicability of the Federal Constitution to the national territories was soon afterwards settled by act of Congress, as follows: "The Constitution and all laws of the United States which are not locally inapplicable, shall have the same force and effect within all the *organized* territories and in every ter-

<sup>1</sup>Miner v. Happersett, 21 Wall. 162.



ritory hereafter organized, as elsewhere in the United States."<sup>1</sup> Could anything be plainer than the intention of Congress to exclude *unorganized* territory from the "force and effect" of the Constitution?

The next territorial acquisition of importance was that of Alaska in 1867. The third article of the Treaty of Cession is so similar to the ninth article of the treaty by which the Philippines were acquired, that it may well be quoted here: "The inhabitants of the ceded territory, according to their choice, preserving 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 tribes, shall be permitted to the enjoyment of all the rights and 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." On the acquisition of Alaska, only the Russians could, by the treaty, become United States citizens, the status of all others must be regulated by Congress. On the acquisition of the Philippines, only the Spaniards may become United States citizens, "the civil rights and political status of the native inhabitants shall be determined by Congress."

The Constitution to-day extends over the Philippines to the same extent that it did over Alaska by the treaty of 1867 with Russia. The inhabitants of the Philippine Islands are to-day entitled to the same rights, privileges and immunities as were the native tribes of Alaska under the same treaty. The Constitution and laws of the United States, therefore, do not *proprio vigore*, extend to the Philippines or to any other unorganized territory. Should Congress establish a territorial government in the Philippine Islands, unquestionably the act of 1850 (*supra*) would extend the Constitution and laws of the United States over all the inhabitants, unless exceptions should be expressly made, but until Congress does establish such a government, or by special enactment extends the

<sup>1</sup> Rev. Stat. U. S., Sec. 1891. (1850.)

provisions of the Constitution to the Philippines, or otherwise provides for their naturalization, the inhabitants of those islands can claim no rights, privileges or immunities under the Constitution.

In the celebrated Slaughter House Cases (16 How. 74), Mr. Justice Miller for the court, speaks as follows: "Of the privileges and immunities of the citizens of the United States, and of the privileges and immunities of the citizens of the state, and what they respectively are, we will presently consider; but we wish to state here, that it is *only the former* which are placed by this clause under the protection of the Federal Constitution." In *Connor v. Elliott* (18 How. 593), it was said: "No privileges are secured by it, except those which belong to citizenship."

The right to come to the seat of government and to pass freely from one state to another was held, in *Crandall v. Nevada* (6 Wall. 44), to belong to *citizens* of the United States. In a word, the privileges and immunities of the Constitution are guaranteed, not to every one who happens to be or to come within the national boundaries, but only to citizens of the United States.

Let Congress grant citizenship indiscriminately to the white, black, yellow and brown races of the Philippine Islands, and unquestionably they will then have no power to exclude them from coming to the continent or from the enjoyment of any other constitutional right or privilege, but until such legislation by Congress, the Constitution of the United States extends no greater privileges to the peoples of the Philippine Islands than to the savage tribes of Alaska.

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