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THE STATUS OF OUR NEW POSSESSIONS —A THIRD VIEW.

ONLY one excuse can be offered for adding another to the many articles that have already appeared upon this theme. It is that the subject is of such supreme importance that any suggestion from a new point of view may have a value out of proportion to its own intrinsic merit. The questions presented are as novel as the conditions under which they arise, and will have to be worked out from the existing law much as the courts developed the law of railroads from the earlier law of common carriers; not by reversing established principles, but by seeking how far they are applicable to the new conditions.

The general canon for the interpretation of legal authorities is well known. It requires the search for a principle which shall reconcile all the authorities, or, if this is out of the question, a principle which shall reconcile as large a part of them as possible, so that those only are rejected which cannot by any theory be brought into accord with the rest. Of two propositions of which one is consonant with all or nearly all the authorities, and of which the other agrees only with a part of them and contradicts another part, the former is always to be preferred. Legal authorities are no doubt of different weight; the most important being actual decisions, that is judgments in cases where the point in question was so involved that the judgment could not have been rendered without

passing upon it. But although an actual decision is the most weighty, it is not the sole source of legal authority. Every opinion expressed by the court is entitled to consideration, even if it is merely a dictum. Moreover there is a difference to be observed among dicta. Those which are a part of the *ratio decidendi*, which are treated by the court itself as an essential link in the chain of reasoning by which the decision is reached, are certainly more important than those which are purely *obiter*, that is which are consciously superfluous for the purpose of deciding the case. In the interpretation of a Constitution some weight must also be attributed to the conditions under which it was framed; to previous Constitutions; to the steps by which it attained its final form; and finally to generally accepted legal opinion. The balance of authorities in any case cannot be measured with mathematical accuracy; yet their relative weight may be roughly estimated.

Two opposing theories of the application of the Constitution to our new dependencies have been put forward, and both have been very ably advocated. One opinion, represented by Professors Langdell and Thayer, in the HARVARD LAW REVIEW for February and March of this year, and by Mr. Gardiner in the "American Law Review" for March-April, holds that the limitations imposed by the Constitution upon the federal government apply only to the States, and that the term United States, when used in a territorial sense, includes the States alone. The other opinion, represented by Mr. Randolph and Judge Baldwin, in the HARVARD LAW REVIEW for January and February, holds that these limitations apply wherever the jurisdiction of the government extends, and that all territory in the possession of the nation is a part of the United States. Both of these theories reject a certain number of decisions, and it may not be impossible to formulate a third opinion which reconciles a larger proportion of the authorities than either of them.

If the two prevalent theories are examined closely each of them presents serious objections. The narrower view of the Constitution, that which limits its provisions to the area of the States, besides contradicting many judicial opinions, which will be considered in detail at a later stage of the argument, leads to conclusions sharply at variance with commonly received opinion. It allows Congress to confiscate property in the District of Columbia or in a Territory without compensation, or to take it arbitrarily from the owner and bestow it upon another person. It suffers the government to pass a bill of attainder against a resident of Washington

