

**NO CONSTITUTIONAL POWER TO
CONQUER FOREIGN NATIONS AND
HOLD THEIR PEOPLE IN
SUBJECTION AGAINST THEIR WILL;
SPEECH, IN THE SENATE OF THE UNITED
STATES, JANUARY 9, 1899**

Published @ 2017 Trieste Publishing Pty Ltd

ISBN 9780649226221

No Constitutional Power to Conquer Foreign Nations and Hold Their People in subjection against their will; Speech, in the Senate of the United States, January 9, 1899 by George F. Hoar

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Edited by Trieste Publishing Pty Ltd.
Cover @ 2017

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S P E E C H

OF

HON. GEORGE F. HOAR,^{Michigan}
OF MASSACHUSETTS,

IN THE

SENATE OF THE UNITED STATES,

JANUARY 9, 1899.

WASHINGTON.
1899.

1300

SPEECH
OF
HON. GEORGE F. HOAR.

The Senate having under consideration the joint resolution (S. R. 101) declaring that under the Constitution of the United States no power is given to the Federal Government to acquire territory to be held and governed permanently as colonies.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That under the Constitution of the United States no power is given to the Federal Government to acquire territory to be held and governed permanently as colonies.

The colonial system of European nations can not be established under our present Constitution, but all territory acquired by the Government, except such small amount as may be necessary for coal-mining stations, correction of boundaries, and similar governmental purposes, must be acquired and governed with the purpose of ultimately organizing such territory into States suitable for admission into the Union.

Mr. HOAR said:

Mr. PRESIDENT: I am quite sure that no man who will hear or who will read what I say to-day will doubt that nothing could induce me to say it but a commanding sense of public duty. I think I dislike more than most men to differ from men with whom I have so long and so constantly agreed. I dislike to differ from the President, whose election I hailed with such personal satisfaction and such exulting anticipations for the Republic. I dislike to differ from so many of my party associates in this chamber, with whom I have for so many years trod the same path and sought the same goal. I am one of those men who believe that little that is great or good or permanent for a free people can be accomplished without the instrumentality of party. And I have believed religiously, and from my soul, for half a century, in the great doctrines and principles of the Republican party. I stood in a humble capacity by its cradle. I do not mean, if I can help it, to follow its hearse. I am sure I render it a service; I am sure I help to protect and to prolong the life of that great organization, if I can say or can do anything to keep it from forsaking the great principles and doctrines in which alone it must live or bear no life. I must, in this great crisis, discharge the trust my beloved Commonwealth has committed to me according to my sense of duty as I see it. However unpleasant may be that duty, as Martin Luther said, "God help me. I can do no otherwise."

I am to speak for my country, for its whole past, and for its whole future. I am to speak to a people whose fate is bound up in the preservation of our great doctrine of constitutional liberty. I am to speak for the dead soldier who gave his life for liberty that his death might set a seal upon his country's historic glory. I am to speak for the Republican party, all of whose great traditions are at stake, and all of whose great achievements are in peril.

Certainly, Mr. President, no man can ever justly charge me with a lack of faith in my countrymen, or a lack of faith in the

principles on which the Republic is founded. If during thirty years' service within these walls, or during fifty years of constant, active, and absorbed interest in public affairs, there has ever come from my lips an utterance showing lack of faith in the people, in the Republic, in country, in liberty, or in the future, let them be silent now. I thank God that if I have no other Christian virtue, I have at least in the fullest measure that which stands as the central figure in the mighty group which the Apostle says is forever to abide—Hope. I thank God that as my eyes grow dim they look out on a fairer country, a better people, a brighter future.

I have in my humble way, poor enough I know, but it was my best, defended the character of the American people, their capacity for self-government, the character of the great legislative bodies through which that government is exercised, whenever and by whomsoever assailed. I do not distrust them now. But the strongest frame may get mortal sickness from one exposure; the most vigorous health or life may be destroyed by a single drop of poison, and what poison is to the human frame the abandonment of our great doctrine of liberty will be to the Republic.

It is not my purpose, of course, to discuss the general considerations which affect any acquisition of sovereignty by the American people over the Philippine Islands, which has been or may be proposed. I am speaking to-day only of the theory of constitutional interpretation propounded by the Senator from Connecticut. If at any time hereafter the Senator shall seek to put his theories into practice by reducing to subjection a distant people, dwelling in the Tropics, aliens in blood, most of them Moslem in faith, incapable to speak or comprehend our language, or to read or to write any language, to whom the traditions and the doctrines of civil liberty are unknown, it will be time to point out what terrible results and penalties this departure from our constitutional principles will bring upon us.

After all, I am old-fashioned enough to think that our fathers, who won the Revolution and who framed the Constitution, were the wisest builders of states the world has yet seen. I think that they knew where to seek for the best lessons of experience and they knew how to lay down the rules which should be the best guides for their descendants. They did not disdain to study ancient history. They knew what caused the downfall of the mighty Roman Republic. They read, as Chatham said he did, the history of the freedom, of the decay, and the enslavement of Greece. They knew to what she owed her glory and to what she owed her ruin. They learned from her the doctrine that while there is little else that a democracy can not accomplish it can not rule over vassal states or subject peoples without bringing in the elements of death into its own constitution. The Americans have been aptly called the Greeks of modern times. The versatile, enterprising, adventurous Yankee has been likened to the people of Athens, who were of the Ionian race, and the brave, constant, inflexible men of the South to the brave, constant, and inflexible Sparta, whose people were Dorians.

There are two lessons our fathers learned from the history of Greece which they hoped their children would remember—the danger of disunion and domestic strife and an indulgence in the greed and lust of empire. The Greeks stood together against the power of Persia as the American States stood together against the tyranny of England. For us the danger of disunion has happily

passed by. Our Athenians and our Spartans are bound and welded together again, each lending to the other the strength of their steel and the sharpness of their tempered blade in an indissoluble Union. Our danger to-day is from the lust of empire. It is a little remarkable that the temptation that besets us now lured and brought to ruin the Athenian people in ancient times. I hope that we may be able to resist and avert that danger as we resisted and averted the peril of disunion. Pericles and Cleon, the conservative and the radical leaders, differing in everything else, united in their vain warning to their countrymen against this peril. Cleon, though a demagogue and a radical, boldly told his countrymen that—

A democracy was incapable of holding dominion over others; that they were slaves to every new paradox, and that as they listened to the orators for expansion they resembled monkeys sitting to be amused by rhetoricians rather than deliberating on state affairs.

They disregarded his warning. The result was the Syracusan expedition and the overthrow of the Athenian Republic.

Professor Creasy, in his *Six Decisive Battles of the World*, well says:

There has never been a republic yet in history that acquired dominion over another nation that did not rule it selfishly and oppressively. There is no single exception to this rule either in ancient or modern times. Carthage, Rome, Venice, Genoa, Florence, Pisa, Holland, and republican France, all tyrannized over every province and subject State where they gained authority.

My excellent friend, the honorable Senator from Connecticut, after stating that in his judgment Governments derive their just powers from the consent of "some of the governed," is polite enough to add that he wishes I understood the doctrines of the Declaration of Independence as well as the fathers did.

The Senator further goes on to taunt me with doubt and fear. Well, Mr. President, I do not think that I have been, am now, or am likely to be in a condition of much doubt in regard to this transaction. I am compelled to part company with the Senator. But I am very confident I am in the company of the framers of the Constitution, the signers of the Declaration, the men of the Revolution, and the great statesmen and lovers of liberty of every generation since until six months ago. As to fear, I will return the kindness of my honorable friend by suggesting to him that there is a fear, which I hope some time may possess him, which is defined by the highest authority as the beginning of wisdom. It is the fear of the Lord; the fear of doing wrong; the fear of usurping power; the fear of violating trust; the fear of violating the highest trust ever committed to mortal man—a restrained, delegated, and specific political power intrusted to him for public ends, for the service of liberty and the benefit of the people.

I hope not to weary the Senate by reiteration. But this is the greatest question, this question of the power and authority of our Constitution in this matter, I had almost said, that had been discussed among mankind from the beginning of time. Certainly it is the greatest question ever discussed in this Chamber from the beginning of the Government. The question is this: Have we the right, as doubtless we have the physical power, to enter upon the government of ten or twelve million subject people without constitutional restraint? Of that question the Senator from Connecticut takes the affirmative. And upon that question I desire to join issue.

Mr. President, I am no strict constructionist. I am no alarmist. I believe this country to be a nation, a sovereign nation. I believe Congress to possess all the powers which are necessary to accomplish under the most generous and liberal construction the great objects which the men who framed the Constitution and the people who adopted it desired to accomplish by its instrumentality. I was bred, I might almost say I was born, in the faith, which I inherited from the men whose blood is in my veins, of the party of Hamilton and Washington and Webster and Sumner, and not in that of Madison or Calhoun or the strict constructionists. The men by whose hands Connecticut signed the Declaration of Independence, who in her behalf helped frame the Constitution, who represented her in either House of Congress in the great Administrations of Washington and John Adams, were of that way of thinking. But the man of them most thoroughgoing and extreme, Hamilton himself, Ellsworth himself, Adams himself, would have looked with amazement if not with horror upon the doctrines asserted by the honorable Senator from Connecticut to-day. I am not speaking only of his denial of the great doctrine of constitutional liberty and of political morality that government derives its just power from the consent of the governed, and that any people has the right, when it thinks its existing government is destructive of the great ends of life, liberty, and happiness, to throw off the old government and make a new one for itself, and certainly if it have that right no other man has the right to impose one on it against its consent. But I am not speaking of that. I am speaking of his astonishing and most extravagant construction of the powers of Congress under the Constitution.

Now, Mr. President, that I may not do him an injustice, I have carefully digested and put in order the different propositions to which he commits himself, to which he seeks to commit the Senate, and which he wishes to make the foundation for the new departure which he desires the country to take.

The Senator from Connecticut says:

As to every matter the United States as a nation possesses sovereign power, except only where sovereignty has been reserved to the States and the people.

He says again:

As a nation it possesses every sovereign power not reserved in its Constitution to the States or to the people. The right to acquire territory was not reserved, and is therefore an inherent, sovereign right. In the right to acquire territory is found the right to govern it, and as the right to acquire is a sovereign, inherent right, the right to govern is a sovereign right not limited in the Constitution.

He says again:

A sovereign right cannot be limited.

He would—

like any Senator to point out to him the language in which the Constitution places any limit upon a sovereign or inherent power, or prescribes the mode and manner in which it would be exercised.

Now, Mr. President, these propositions of the Senator from Connecticut I deny. I deny them, not as a strict constructionist, but as a liberal constructionist; not as a States' rights man, but as a Federalist; not as a disciple of Madison or Calhoun, but as a disciple of Alexander Hamilton and Daniel Webster and Charles Sumner.

1. I affirm that every constitutional power, whether it be called a power of sovereignty or of nationality—neither of which phrases is found in terms in the Constitution—or whether it be a power

expressly declared and named therein, is limited to the one supreme and controlling purpose declared as that for which the Constitution itself was framed: "In order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare and secure the blessings of liberty to ourselves and to our posterity." Now, the liberal constructionists claim that everything which is done to accomplish either of these purposes, unless expressly prohibited, may be constitutionally done by the law-making power. And in that I agree with them.

The strict constructionist claims and has claimed from the time of Madison that these objects can only be accomplished after ways and fashions expressly described in the Constitution or necessarily implied therein. And in that I disagree with him.

But when the Senator from Connecticut undertakes to declare that we may do such things not for the perfect union, the common defense, the general welfare of the people of the United States, or the securing of liberty to ourselves and our children, but for any fancied or real obligation to take care of distant peoples beyond our boundaries, not people of the United States, then I deny his proposition and tell him he can find nothing either in the text of the Constitution or the exposition of the fathers, or the judgments of courts from that day to this, to warrant or support his doctrine.

Further, the first article of the Constitution declares: "All legislative powers herein granted shall be vested in a Congress of the United States." What becomes, in the light of that language, of the Senator's repeated assertion that powers not denied may be so exercised? Is not legislative power a power of sovereignty? Therefore, according to the Senator's logic, every power of legislation that any foreign government—legislative, constitutional, limited, or despotic—may exercise may be exercised by us. We have heard of limited monarchies, constitutional monarchies, despotisms tempered by assassination; but the logic of the Senator from Connecticut makes a pure, unlimited, untempered despotism without any relief from assassins.

I repeat, Mr. President, the first article of the Constitution, section 1, says: "All legislative powers herein granted shall be vested in a Congress of the United States." So, certainly, there are legislative powers that are not "herein granted." All legislative powers are powers of sovereignty. So the Senator's whole argument seems to me to topple over when the first article of the Constitution is read. But Connecticut herself made that clear in the First Congress, when she caused to be perfected the tenth amendment of the Constitution: "The powers not delegated to the United States by the Constitution nor prohibited by it to the States are reserved to the States, respectively, or to the people." Mark the clear distinction between the legislative powers of the States and between the sovereign powers of the States and those belonging to the United States. The powers of the United States must be affirmatively delegated or they do not exist. The powers claimed by the States must be expressly prohibited or they do exist. And there are other powers not delegated to the United States and prohibited to the States which are reserved to the people; that is, there are powers which the people of the United States mean shall not be exercised by anybody on the face of the earth, so far as their jurisdiction and authority extend, unless they shall hereafter change their mind and grant them.

What, then, becomes of these sentences I have cited from the

speech of the honorable Senator from Connecticut? They are not supported by a single one of his authorities. He cites authority that Congress may admit new States. He cites authority that Congress may acquire territory and he cites authority that Congress may govern territory. And I admit frankly that the authority he cites is ample and abundant to establish all these postulates.

But the question with which we now have to deal is whether Congress may conquer and may govern, without their consent and against their will, a foreign nation, a separate, distinct, and numerous people, a territory not hereafter to be populated by Americans, to be formed into American States and to take its part in fulfilling and executing the purposes for which the Constitution was framed, whether it may conquer, control, and govern this people, not for the general welfare, common defense, more perfect union, more blessed liberty of the people of the United States, but for some real or fancied benefit to be conferred against their desire upon the people so governed or in discharge of some fancied obligation to them, and not to the people of the United States.

Now, Mr. President, the question is whether the men who framed the Constitution, or the people who adopted it, meant to confer that power among the limited and restrained powers of the sovereign nation that they were creating. Upon that question I take issue with my honorable friend from Connecticut.

I declare not only that this is not among the express powers conferred upon the sovereignty they created, that it is not among the powers necessarily or reasonably or conveniently implied for the sake of carrying into effect the purposes of that instrument, but that it is a power which it can be demonstrated by the whole contemporaneous history and by our whole history since until within six months they did not mean should exist—a power that our fathers and their descendants have ever loathed and abhorred—and that they believed that no sovereign on earth could rightfully exercise it, and that no people on earth could rightfully confer it. They not only did not mean to confer it; but they would have cut off their right hands, every one of them, sooner than set them to an instrument which should confer it.

Now, let us trace for a moment the history of this beautiful, august, pure, invincible sovereign of ours. The idea that our fathers intended to clothe it with such a sovereignty is as repugnant to me as the idea that because God created a seraph, or an archangel, or even a man in His own image, He intended that he should be at liberty to commit murder or robbery or any form of bestiality because He had clothed him with the physical power to accomplish it.

Expositio contemporanea maxime valet. The great contemporaneous exposition of the Constitution is to be found in the Declaration of Independence. Over every clause, syllable, and letter of the Constitution the Declaration of Independence pours its blazing torchlight. The same men framed it. The same States confirmed it. The same people pledged their lives, their fortunes, and their sacred honor to support it. The great characters in the constitutional convention were the great characters of the Continental Congress. There are undoubtedly, among its burning and shining truths, one or two which the convention that adopted it were not prepared themselves at once to put into practice. But they placed them before their countrymen as an ideal moral law to which the liberty of the people was to aspire and to ascend as soon as the nature of existing conditions would admit. Doubt-