

**OUR RIGHT TO ACQUIRE AND HOLD  
FOREIGN TERRITORY: AN ADDRESS  
DELIVERED BEFORE THE NEW  
YORK STATE BAR ASSOCIATION AT ITS  
ANNUAL MEETING AT ALBANY,  
JANUARY 18TH, 1899, PP. 1-53**

Published @ 2017 Trieste Publishing Pty Ltd

ISBN 9780649300754

Our Right to Acquire and Hold Foreign Territory: An Address Delivered Before the New York State bar association at its annual meeting at Albany, January 18th, 1899, pp. 1-53 by Charles A. Gardiner

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**CHARLES A. GARDINER**

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CHARLES A. GARDINER

Entered at Stationers' Hall, London

MADE IN U.S.A.

The Knickerbocker Press, New York

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U.S. GOVERNMENT PRINTING OFFICE

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## OUR RIGHT TO ACQUIRE AND HOLD FOREIGN TERRITORY

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THE sovereign nations of the world possess equal rights and equal powers. Their equality is perfect, their independence absolute. Between them, national constitutions are unknown. In all international relations the United States is assumed by other sovereignties to possess absolute powers unrestrained by constitutional limitations. That assumption is correct, based upon the fundamental canon of the law of nations. The United States may ratify the proposed treaty with Spain, and no other nation has the right to question its political or constitutional authority to do so.

Are there, therefore, no limitations on our national sovereignty? During the

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colonial period, as Mr. Justice Iredell explained, the British monarchs were sovereign and the colonists their subjects; but after the Revolution, sovereignty passed to and vested in the sovereign people (3 Dall. 93)—and there it remains vested to-day, in the seventy-five million American citizens, not as individuals but as a political and sovereign unit. Historically, this unit preceded both State and Federal constitutions. It created them. The Declaration of Independence, the supreme act of sovereignty, gave birth to the Nation, while the Constitution gave form to its government. The Constitution is but a law of the people distributing, not creating, sovereign powers among the several organs of sovereignty. A vast residuum of power, not disposed of by the Constitution, is "reserved to the States, respectively, or to the people." (Art. X.)

Although the distinction is not expressly made in the Constitution, the consensus of decisions for a century, as well as the logic of the situation, makes the following



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deductions irresistible: In all internal and domestic relations the States possess the sovereignty originally vested in the people, except such as the Constitution specifically grants to the Federal government; where there is no such grant the national government has no power; authority resides in the State governments exclusively. In all external and international relations the rule is reversed. The Federal government possesses every sovereign power not expressly prohibited by the Constitution. If the Constitution is silent the Federal government, directly representing the sovereign people, is duly constituted agent and trustee to exercise such sovereignty. The States have no national powers whatever.

Early in the century, Chief Justice Marshall announced as a proposition, which should "command the universal assent of mankind," that the government of the Union "is supreme within its sphere of action. \* \* It is the government of all; its powers are delegated by all; it represents all; and acts for all."

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(4 Wheat. 405.) Chief Justice Chase reiterated this sentiment: "The people of the United States constitute one nation under one government, and this government, within the scope of its power, is supreme." (7 Wall. 76.) The idea was elaborated by Mr. Justice Bradley: "The United States is not only a government, but it is a national government. \* \* It is invested with power over all the foreign relations of the country, war, peace and negotiations and intercourse with other nations, all which are forbidden to the State governments." (12 Wall. 565.) In the Chinese Exclusion cases the court held: "The United States in their relation to foreign countries are one Nation invested with powers which belong to independent nations." (130 U. S. 604.) And Mr. Justice Lamar, in the Neagle case, used this language: "The Federal government is the exclusive representative and embodiment of the entire sovereignty of the Nation in its united character. \* \* In our intercourse with foreign Nations, States and State govern-

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ments and the internal adjustment of Federal power with its complex system of checks and balances are unknown, and the only authority those Nations are permitted to deal with is the authority of the Nation as a unit." (135 U. S. 84.)

I. RIGHT TO ACQUIRE.—The United States, possessing every attribute of the most potential sovereignty, and, in the felicitous language of Mr. Justice Lamar, the Federal government, in all external relations, being "the exclusive representative and the embodiment of the entire sovereignty of the Nation," it follows that any power possessed by any sovereignty is possessed by the United States; and unless specifically prohibited by the Constitution, can be exercised without restriction by the Federal government.

The war and treaty-making powers are not created by the Constitution; it merely designates agencies to exercise them. No one assumes that, had such agencies not been designated, this Nation could not have waged the wars and made the treaties of our history. The Nation