

Extent of the Supremacy of Treaties

An interesting letter has been written to the Louisville (Ky.) Courier-Journal by William C. Coleman of Baltimore, Md. The letter relates to the "extent of the supremacy of the treaty" and is reproduced in The Commoner because it is likely to be interesting to Commoner readers. It must be said that this reproduction does not necessarily commit The Commoner to any particular view expressed by Mr. Coleman. Some other articles relating to this same subject will be reproduced. Mr. Coleman's letter follows:

Under the proposed California anti-alien land law, now causing so much interest throughout the country, aliens ineligible to citizenship, that is, all those neither of the Caucasian race nor of African descent, can not own land in California. It is not clear that this legislation would be a violation of our treaty of 1911 with Japan, for the ownership specifically accorded under that of land is not one of the rights specifically accorded under that treaty. Furthermore, whatever rights are accorded under it are stated to be reciprocal, and Americans are forbidden to own land in Japan. However, the present agitation brings once more prominently before us a most important question of constitutional law—academic though it may be for the moment—namely, What is the extent of the supremacy of treaties over state laws?

There are three main theories of constitutional interpretation in dealing with this question. According to one theory—the theory of the states' rights advocate—the treaty-making power is derived from the constitution, and therefore the exercise of that power must be limited by the grants of that instrument. According to a second theory—the extreme federalist theory—the treaty-making power is inherent in sovereignty, and is therefore without any limitation. There is still a third theory—an intermediate theory—which declares that although the treaty-making power is derived from grant, and not from sovereignty, nevertheless that grant is without limitation by the very words of the sixth article of the constitution, which recites that "All treaties made or which shall be made under the authority of the United States, shall be the supreme law of the land."

While the supreme court has never declared a treaty void, the first theory is believed to be the sound one, although the language almost invariably used in the numerous decisions of the supreme court would seem on its face to sustain the last-named theory. But these decisions have dealt with only a few of the many questions that can arise. The more difficult questions have never been adjudicated. The second theory has no support in the decisions.

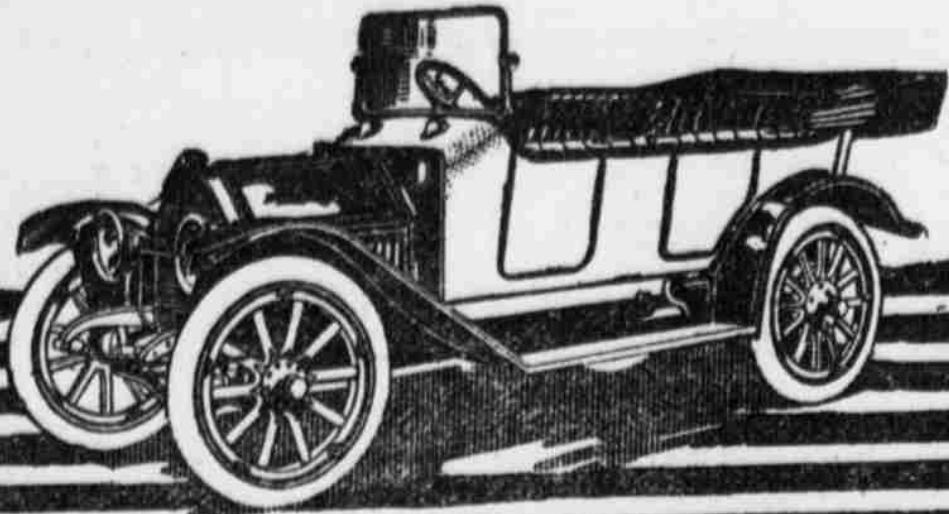
We must remember that ours is a dual government, with certain powers expressly granted by the constitution to the central government, and the residuary powers expressly left to the states. One of these powers so granted to the central government is the treaty-making power. This is essentially a power to deal with parties, while all other powers granted to the federal government or reserved to the states are powers to deal with subjects. It is the fact that the contract is made with a sovereign nation, that is, with a certain party, that constitutes it a treaty. On the other hand, it is the nature of the subject legislated upon which brings it within the power of congress or relegates it to the states. Conceivably the president and the

senate, in whom the treaty power exclusively vests, can enter into a treaty with any party and upon any subject. But whether this subject is a proper one for treaty negotiations depends under our form of government not upon a determination of whether the contracting parties have solemnly declared that it shall be, but whether under our constitution it can be a subject for treaty negotiations. In other words, while one nation in dealing with another may not be required to know, and therefore may not be held to be bound by the peculiar constitutional structure of the other nation, if, however, there are certain limitations, expressed or implied, upon our government's treaty-making power, these limitations can not be overridden. Therefore, if the national government has no power to make a particular treaty, the argument that a state has actually or impliedly consented to the treaty, by virtue of its equal representation in the senate, becomes immaterial.

One of the great weaknesses of the confederation which preceded the formation of the union under our present constitution was that the central government, although exclusively clothed with the treaty-making power, had no power to enforce treaties against the will of the individual states. The framers of our constitution zealously sought to cure this defect, as both the debates in the constitution, seems at first blush very words of the constitution itself show. The meaning of the word "supreme," as used in article 6 of the constitution, seems at first blush plain enough. But acts of congress and treaty provisions stand under that article on an equal footing.

In fact, the last expression of the federal will, whether it be by statute or by treaty, must prevail. Since therefore neither more nor less efficacy can be claimed for a treaty provision than for an act of congress, is it not contradictory to say that the treaty power knows no limitations whatsoever in relation to state's rights, or the exercise by the state of what is commonly known as its police powers—broadly speaking, the power over the health, morals, safety and general welfare of its people? Congress has power to regulate interstate commerce, for example, but if it attempts to extend its regulation so as to embrace intrastate commerce, such action is void. Likewise congress may prohibit the movement of certain articles in interstate commerce, but it can not simply by virtue of this power prohibit the manufacture of these articles within the boundaries of the individual states. Again congress, having exclusive power over the mails and the postal system of our country, could conceivably say that no article, the product or manufacture of child labor, shall be transmitted by parcel post, but it could not say that children shall not be employed in the states. If this be true, can we not equally imagine a treaty—ratified in all good faith—which would similarly transcend the proper bounds of federal jurisdiction?

There are two broad classes of disabilities of aliens. The first includes civil rights; the second, political rights. In regard to civil rights the supreme court has time and again decided that a treaty may properly control the right of aliens to be protected against confiscation of debts due them; to hold, enjoy and inherit property; and to engage



The Gearless Car!

The simplest car made—has none of the weak points of the ordinary gear car. You have unlimited speeds—one lever control—power to climb 50 per cent hills—in fact, you travel all roads, good and bad. These features make the



With the Gearless Transmission

the best value on the market from a real service standpoint. No jerks nor jars—about half the usual tire and upkeep bills. Four splendid models—everyone completely equipped, including electric starting and lighting system.

Send for Catalog

Big 64 page book yours for the asking. Send for it before you buy.

Cartecar Company, Pontiac, Mich.

Model 5A—Five passenger Touring Car. With electric starting and lighting system and complete equipment, \$1700

Model 5B—A classy Roadster. With electric starting and lighting system and complete equipment, \$1600

Bargain in Choice, Well-Located Eastern Nebraska Farm

A fine farm near Lincoln—160 acres. New buildings, complete; modern, up-to-date improvements for a horse, cattle or hog farm; 3 1/2 miles of heavy woven wire fence with steel posts. Splendid new barn and shed; new hog houses; new poultry house; unlimited amount of pure water; new silo. Farm includes alfalfa, upland hay, pasture and plow land. Entire farm fenced and crossed fenced with hog-tight and mule-proof fencing. Located 2 1/2 miles from street car line. Immediate possession can be given. Any one desiring to move near Lincoln or to purchase a highly improved farm at a reasonable price

Address Desk B, Commoner Office,
Lincoln, Neb.

BARGAIN OFFER

for Limited Time to New or Renewing Subscribers

THE COMMONER AND THRICE-A-WEEK NEW YORK WORLD, both One Year for Only One Dollar.

Address Orders to THE COMMONER, Lincoln, Nebr