

to the contrary notwithstanding." It does not follow that all treaties negotiated and concluded by the Washington government are to be accepted finally as "the supreme law of the land," for there are certain well-defined constitutional limitations which must be considered; any treaty not made within these limitations is not properly "under the authority of the United States" and hence is not "the supreme law of the land." On the contrary, such a treaty would be utterly void because of its repugnance to the Constitution. These reflections are suggested by the contention of Japan that the children of Japanese subjects should enjoy the same privileges enjoyed by the children of American citizens in the public schools of California because of a stipulation in the treaty of 1894. If the treaty attempted to extend any such right to the children of subjects of the Mikado, it is, to that extent, utterly void, and the Federal courts are without authority to enforce the stipulation.

Mr. Root, Secretary of State, is said to have advised judicial proceedings under the second section of Article 6 of the Constitution. Assuming the treaty stipulation to have been correctly stated, the only vital question at issue is: Can the treaty-making power of the nation force the children of alien subjects into the public schools of California? It can not constitutionally do any such thing, and if an attempt has been made to do so in the case of the treaty with Japan, the provision is in derogation of the undoubted constitutional rights of the State of California. Right to enter the free public schools of a State is a political right exclusively within the jurisdiction and under the control of the State. States may, and many of them have, by express enactment, excluded from their public schools the children of citizens of other States. The question has not been considered as one with which the Federal government had any concern. How, then, can the Federal government undertake to force, by treaty or otherwise, into the public schools of California the children of subjects of an alien power? It has no right to do so, and it is an abuse of the judicial power to attempt to use it for any such unholy purpose.

The rule with respect to the limitations of treaties has been thus stated by an able student of the Constitution: "A treaty, therefore, can not take away essential liberties secured by the Constitution to the people. A treaty can not bind the United States to do what their Constitution forbids them to do. \* \* \* A treaty can not compel any department of the government to do what the Constitution submits to its exclusive and absolute will." Clearly, the California case is within the scope of the rule thus stated. The treaty with Japan, in so far as it may undertake to secure for the children of the Mikado's subjects equal privileges in the public schools of California, is in derogation of the State's constitutional rights, and hence, in legal contemplation, was not made

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are few more pleasant episodes than my friendship for the Doricourts. They are wealthy and of good family, but those are the least of their attrac-

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