

DEPT. OF STATE

AUTHOR
"Law of Private Corporations,"
"Corporate Management,"
"Trusts and Monopolies,"
"Extraordinary Relief,"
"Injunctions," "Mandamus,"
"Habeas Corpus," "Prohibition,"
"Quo Warranto," "Certiorari, or Review," "New Trial and Appellate Practice," and
"Federal Safety Appliance Law"

THOMAS CARL SPELLING

ATTORNEY AND COUNSELLOR AT LAW

SUITE 1004 MUTUAL LIFE BUILDING
(Entrance 32 Liberty Street)

JIM JOHN

CHIEF CLERK
DEC
8
1906
DEPT. OF STATE

New York, N. Y., Dec. 5, 1906 190

Hon. Theodore Roosevelt, President

Dear Sir:-

I keep a very close watch upon all national matters, a habit which I could scarcely avoid, since much of my life's work was devoted to the exposition of farreaching legal principles for publication.

I understand from your message that the rights which you claim for Japanese children domiciled in San Francisco, as well as those which you claim for Japanese adults domiciled in the States are inferable from certain stipulations found in treaties. I have not the treaties at hand but believe the treaty with Japan contains the "most favored nation" clause with reference to domiciliary rights.

The constitution says (Art. VI) that "treaties made under the authority of the United States shall be the supreme law of the land". Now those who insist upon the right of a State to deprive denizens of the benefit of a treaty stipulation argue that a treaty which would in effect deprive states of a constitutionally guaranteed right would not be made "under authority" of the United States, because, (they say) the constitution nowhere gives to the Senate authority to amend or suspend any part of the constitution. The ready answer is that there is such thing as sovereignty of the United States, attaching and belonging to this nation, not dependent for its existence upon any language in

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TELEPHONE, 344 JOHN

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the constitution, but arising from the fact that our independent nation, or sovereignty, was created. The power to make treaties is an attribute of all sovereignties, and such treaties when made would be essentially "the supreme law of the land" even if the constitution had been silent on the subject. In other words, when the States voluntarily created a sovereign nation, and surrendered to it any and all treaty making power, there could not, in the nature of things be reserved to the States, nor to the people, any power or right to nullify any treaty stipulation, or to impede the performance by the national government of any duty assumed under any treaty.

The federal authority under treaties does not rest on a mere aggregation of the enumerated powers; nor can it be limited by any reservations annexed to the powers conferred upon congress which is only one branch of the federal government. This broad principle of an independent sovereignty, with its essential attributes, has been recognized by the Supreme Court in several cases. (For instance *McCulloch v Maryland* 4 Wheat. 316, 348, power to charter national banks; *Kahl v United States* 91 U. S. 367, power to exercise right of eminent domain; *Legal Tender case*, 110 U. S. 421, power to issue legal tender notes; *Chinese Exclusion Cases* 130 U. S. 581, exclusion of Aliens). In these cases, especially in the *Legal Tender Case*, a power inherent in all sovereignties, as exercised by other sovereignties at the time of the adoption

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of the constitution, was expressly recognized as inhering in our Federal
State. And in *Re Nagel* (135 U. S. 1) it was held that there is a "Peace
of the United States" which can be enforced by the executive. These
fundamental principles were also very strongly asserted in the *Debs*
case (158 U. S. 1) where the court said that the government of the
United States, in the exercise of its power over the mails, and in pro-
tecting interstate commerce, had jurisdiction over every foot of soil in
its territory upon every citizen.

I do not presume, Mr. President, that the foregoing contains
anything with which you are not fully conversant; but I believe an ac-
cession of other opinions in accord with your own will not prove unwel-
come at this time.

But I doubt if such extreme States' righters as Senator
Rayner have ever given true interpretation to the cases above cited, or
would be able to answer the argument inferable therefrom.

Yours truly,

T. C. Spelling