On the Subjects of “Conquest” and “Dominion”
Important Quotations from US Supreme Court decisions

Introduction:

Looking at the last four hundred years of Taiwan history, it quickly becomes clear that all changes of sovereignty have been based on the principle of conquest.

Changes of Sovereignty during the History of Taiwan

Date	Conqueror	Taiwan was acquired under the principle of _____	Taiwan was held under the dominion of _____
1624	Dutch	conquest	Dutch, 1624 to 1662
1662	Koxinga	conquest	Koxinga, 1662 to 1683
1683	Qing Dynasty	conquest	Qing Dynasty, 1683 to 1895
1895	Japan	conquest	Japan, 1895 to 1945
1945	USA	conquest	USA, 1945 to present

This chart is explained as follows:

In 1624 the Dutch invaded Taiwan and established administration over the island. (During this period, in 1626 the Spanish invaded northwest Taiwan established jurisdiction there until the Dutch forced them to abandon their settlement in 1642.) In 1662 the Dutch were defeated by a Ming loyalist, Cheng Cheng-kung (Koxinga) who established government rule over Taiwan. However, in 1683 Qing Dynasty military troops defeated Koxinga to seize control of the island, and in 1887 Taiwan was made a province of Qing China. After Japan defeated Qing China in the First Sino-Japanese War, Taiwan was ceded to Japan in the 1895 Treaty of Shimonoseki. In the period of WWII, all military attacks against (Japanese) Taiwan were conducted by United States military forces. Japanese troops in Taiwan surrendered on October 25, 1945, thus marking the beginning of United States Military Government (USMG) jurisdiction over “Formosa and the Pescadores.” General MacArthur delegated the administration of the military occupation of Taiwan to the Chinese Nationalists. Under such an arrangement, the United States is the principal occupying power, and the Republic of China is the subordinate occupying power.

The law of nations recognizes that territory may be acquired based on the principle of conquest, however in the post-Napoleonic period the disposition of such territory

must be done according to the laws of war. During the WWII period, the United States acquired Taiwan based on the principle of conquest, and USMG jurisdiction has remained in force up to the present day.

The significance and applicability of the concepts of “conquest” and “dominion” are clarified in the following quotations from relevant US Supreme Court cases.

=== Reference: JONES v. U.S., 137 U.S. 202 (1890) ===

By the law of nations, recognized by all civilized states, dominion of new territory may be acquired by discovery and occupation as well as by cession or conquest . . .

=== Reference: BOYD v. STATE OF NEBRASKA ex rel. THAYER, 143 U.S. 135 (1892) ===

Manifestly the nationality of the inhabitants of territory acquired by conquest or cession becomes that of the government under whose dominion they pass, subject to the right of election on their part to retain their former nationality by removal, or otherwise, as may be provided. [143 U.S. 135, 163]

=== Reference: RASUL et al. v. BUSH, PRESIDENT OF THE UNITED STATES, et al. 542 U.S. 466 (2004) ===

. . . all of the territories Blackstone lists as dominions, are the sovereign territory of the Crown: colonies, acquisitions and conquests, and so on ….

> (Notes: The delegates to the 1787 Constitutional Convention in Philadelphia were all intimately familiar with English law, and indeed Blackstone’s *Commentaries on the Laws of England* are a standard reference for investigating the intent and scope of applicability of many clauses in the United States Constitution. The above reference is to Book 1, Sec. 4, pages 93 - 106. For further analysis see Tucker, St. George, *Blackstone's Commentaries: With Notes of Reference to the*

Constitution and Laws of the Federal Government of the United States and of the Commonwealth of Virginia, 5 volumes, Philadelphia, 1803.)

=== Reference: U S v. CHAVES, 159 U.S. 452 (1895) ===

We adopt the language of Chief Justice Marshall in the case of U. S. v. Percheman, 7 Pet. 51, 86, as follows: 'It may not be unworthy of remark that it is very unusual, even in cases of conquest, for the conqueror to do more than to displace the sovereign, and assume dominion over the country. The modern usage of nations, which has become law, would be violated, that sense of justice and of right which is acknowledged and felt by the whole civilized world would be outraged, if private property should be generally confiscated and private rights annulled. The people change their allegiance; their relation to their ancient sovereign is dissolved; but their relations to each other and their rights of property remain undisturbed.

=== Reference: UNITED STATES V. STATE OF CALIFORNIA , 332 U.S. 19 (1947) ===

To speak of 'dominion' carries precisely those overtones in the law which relate to property and not to political authority. Dominion, from the Roman concept dominium, was concerned with property and ownership, [332 U.S. 19 , 44] as against imperium, which related to political sovereignty. One may choose to say, for example, that the United States has 'national dominion' over navigable streams. But the power to regulate commerce over these streams, and its continued exercise, do not change the imperium of the United States into dominium over the land below the waters. Of course the United States has 'paramount rights' in the sea belt of California -- the rights that are implied by the power to regulate interstate and foreign commerce, the power of condemnation, the treaty-making power, the war power. We have not now before us the validity of the exercise of any of these paramount rights. Rights of ownership are here asserted -- and rights of ownership are something else. Ownership implies acquisition in the various ways in which land is acquired-by conquest, by discovery and claim, by cession, by prescription, by purchase, by condemnation. When and how did the United States acquire this land?

=== Reference: UNITED STATES v. ALCEA BAND OF TILLAMOOKS, 329 U.S. 40 (1946) ===

'The title by conquest is acquired and maintained by force. The conqueror prescribes its limits. ... Where this incorporation is practicable, humanity demands, and a wise policy requires, that the rights of the conquered to property should remain unimpaired; that the new subjects should be governed as equitably as the old, and that confidence in their security should gradually banish the painful sense of being separated from their ancient connections, and united by force to strangers.

=== Reference: OCHOA v. HERNANDEZ Y MORALES, 230 U.S. 139 (1913) ===

(Speaking of the situation in Porto Rico in late July, 1898 --)
Porto Rico at the time was still foreign territory, and was under a provisional military government established by President McKinley as Commander-in-Chief. In order to determine the extent of the authority of General Henry, and the limitations upon it, we must look to the orders under which the military government was established and maintained.

The Island was occupied by the forces of the United States under Major General Miles, Commanding United States Army, on July 25, 1898. He appears to have had no special instructions from the President respecting the government that should be established, but it was well understood that he and those under him were subject to the instructions communicated by President McKinley to the Secretary of War under date July 13th with reference to Cuba (10 Mess. & Pap. 214), and published by the War Department as General Orders No. 101, [230 U.S. 139, 155] under date July 18, of which a copy is set forth in the margin.

> Freedom of the people to pursue their accustomed occupations will be abridged only when it may be necessary to do so. While the rule of conduct of the American Commander-in-Chief will be such as has just been defined, it will be his duty to adopt measures of a different kind, if, unfortunately, the course of the people should render such measures indispensable to the maintenance of law and order. He will then possess the power to replace or expel the native officials in part or altogether, to substitute new courts of his

own constitution for those that now exist, or to create such new or supplementary tribunals as may be necessary. In the exercise of these high powers the commander must be guided by his judgment and his experience and a high sense of justice. One of the most important and most practical problems with which it will be necessary to deal is that of the treatment of property and the collection and administration of the revenues. It is conceded that all public funds and securities belonging to the government of the country in its own right, and all arms and supplies and other movable property of such government, may be seized by the military occupant and converted to his own use. The real property of the state he may hold and administer, at the same time enjoying the revenues thereof, but he is not to destroy it save in the case of military necessity. All public means of transportation, such as telegraph lines, cables, railways, and boats belonging to the state, may be appropriated to his use, but, unless in case of military necessity, they are not to be destroyed. All churches and buildings devoted to religious worship and to the arts and sciences, all schoolhouses, are, so far as possible, to be protected, and all destruction or intentional defacement of such places, of historical monuments or archives, or of works of science or art, is prohibited, save when required by urgent military necessity. Private property, whether belonging to individuals or corporations, is to be respected, and can be confiscated only for cause. Means of transportation, such as telegraph lines and cables, railways and boats, may, although they belong to private individuals or corporations, be seized by the military occupant, but, unless destroyed under military necessity, are not to be retained. While it is held to be the right of the conqueror to levy contributions upon the enemy in their seaports, towns, or provinces which may be in his military possession by conquest, and to apply the proceeds to defray the expenses of the war, this right is to be exercised within such limitations that it may not savor of confiscation. As the result of military occupation the taxes and duties payable by the inhabitants to the former government become payable to the military occupant, unless he sees fit to substitute for them other rates or modes of contribution to the expense of the government. The moneys so collected are to be used for the purpose of paying the expenses of government under the military occupation, such as the salaries of the judges and the police, and for the payment of the expenses of the Army. Private property taken for the use of the Army is to be paid for, when possible, in cash at a fair valuation, and when payment in cash is not possible, receipts are to be given. All ports and places in Cuba

which may be in the actual possession of our land and naval forces will be opened to the commerce of all neutral nations, as well as our own, in articles not contraband of war, upon payment of the prescribed rates of duty which may be in force at the time of the importation. William McKinley. By order of the Secretary of War: H. C. Corbin, Adjutant General.

=== Reference: MACLEOD v. U S, 229 U.S. 416 (1913) ===

When the Spanish fleet was destroyed at Manila, May, 1, 1898, it became apparent that the government of the [229 U.S. 416, 425] United States might be required to take the necessary steps to make provision for the government and control of such part of the Philippines as might come into the military occupation of the forces of the United States. The right to thus occupy an enemy's country and temporarily provide for its government has been recognized by previous action of the executive authority, and sanctioned by frequent decisions of this court. The local government being destroyed, the conqueror may set up its own authority, and make rules and regulations for the conduct of temporary government, and to that end may collect taxes and duties to support the military authority and carry on operations incident to the occupation. Such was the course of the government with respect to the territory acquired by conquest and afterwards ceded by the Mexican government to the United States. Cross v. Harrison, 16 How. 164, 14 L. ed. 889. See also in this connection, Fleming v. Page, 9 How. 603, 13 L. ed. 276; New Orleans v. New York Mail S. S. Co. 20 Wall. 387, 22 L. ed. 354; Dooley v. United States, 182 U.S. 222 , 45 L. ed. 1074, 21 Sup. Ct. Rep. 762; 7 Moore's International Law Digest, 1143 et seq., in which the history of this government's action following the Mexican War, and during and after the Spanish-American War, is fully set forth; and also Taylor on International Public Law, chapter IX.; Military Occupation and Administration 568 et seq., and 2 Oppenheim on International Law, 166 et seq.

There has been considerable discussion in the cases and in works of authoritative writers upon the subject of what constitutes an occupation which will give the right to exercise governmental authority. Such occupation is not merely invasion, but is invasion plus possession of the enemy's country for the purpose of holding it temporarily at least. 2 Oppenheim, 167. What should constitute military occupation was one of the matters before The Hague Convention in 1899, respecting laws and customs of war on land, and the following articles were adopted [229 U.S. 416, 426] by the nations giving adherence to that Convention, among which is the United States

(32 Stat. at L. 1821):

'Article 42. Territory is considered occupied when it is actually placed under the authority of the hostile army.
'The occupation applies only to the territory where such authority is established, and in a position to assert itself.

'Article 43. The authority of the legitimate power having actually passed into the hands of the occupant, the latter shall take all steps in his power to re-establish and insure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.'

A reference to the Messages and Papers of the Presidents, to which we may refer as matters of public history, shows that the President was sensible of and disposed to conform the activities of our government to the principles of international law and practice. See 10 Messages and Papers of the Presidents, 208, Executive order of the President to the Secretary of War, in which the President said (p. 210):

> 'While it is held to be the right of a conqueror to levy contributions upon the enemy in their seaports, towns, or provinces which may be in his military possession by conquest, and to apply the proceeds to defray the expenses of the war, this right is to be exercised within such limitations that it may not savor of confiscation. As the result of military occupation, the taxes and duties payable by the inhabitants to the former government become payable to the military occupant, unless he sees fit to substitute for them other rates or modes of contributions to the expenses of the government. The moneys so collected are to be used for the purpose of paying the expenses of government under the military occupation, such as the salaries of the judges and the police, and for the payment of the expenses of the army.' [229 U.S. 416, 427]

To the same effect, Executive order of the President to the Secretary of the Treasury, in which the President said (p. 211):

> 'I have determined to order that all ports or places in the Philippines which may be in the actual possession of our land and naval forces by conquest shall be opened, while our military occupation may continue, to the commerce of all neutral nations, as well as our own, in articles not contraband of war, upon payment of the rates of duty which may be in force at the time when the goods are imported.'

=== Reference: SANTAIGO v. NOGUERAS, 214 U.S. 260 (1909) ===

By the ratifications of the treaty of peace, Porto Rico ceased to be subject to the Crown of Spain, and became subject to the legislative power of Congress. But the civil government of the United States cannot extend immediately and of its own force over conquered and ceded territory. Theoretically, Congress might prepare and enact a scheme of civil government to take effect immediately upon the cession, but, practically, there always have been delays and always will be. Time is required for a study of the situation, and for the maturing and enacting of an adequate scheme of civil government. In the meantime, pending the action of Congress, there is no civil power under our system of government, not even that of the President as civil executive, which can take the place of the government which has ceased to exist by the cession. Is it possible that, under such circumstances, there must be an interregnum? We think clearly not. The authority to govern such ceded territory is found in the laws applicable to conquest and cession. That authority is the military power, under the control of the President as Commander in Chief. In the case of Cross v. Harrison, 16 How. 164, 14 L. ed. 889, a situation of this kind was referred to in the opinion of the court, where it said; 'It [the military authority] was the government when the territory was ceded as a conquest, and it did not cease as a matter of course, or as a necessary consequence of the restoration of peace. The President might have dissolved it by withdrawing the army and navy officers who administered it, but he did not do so. Congress could have put an end to it, but that was not done. The right inference from the inaction of both is that it was meant to be continued until it had been legislatively changed. [214 U.S. 260, 266] No presumption of a contrary intention can be made. Whatever may have been the causes of delay, it must be presumed that the delay was consistent with the true policy of the government.' Pp. 193, 194. And see Leitensdorfer v. Webb, 20 How. 176, 15 L. ed. 891, and opinion of Mr. Justice Gray in Downes v. Bidwell, 182 U.S. 244, 345 , 45 S. L. ed. 1088, 1128, 21 Sup. Ct. Rep. 770.

The authority of a military government during the period between the cession and the action of Congress, like the authority of the same government before the cession, is of large, though it may not be of unlimited, extent. In fact, certain limits, not material here, were put upon it in Dooley v. United States, 182 U.S. 222 , 45 L. ed. 1074, 21 Sup. Ct. Rep. 762, and Lincoln v. United States, 197 U.S. 419 , 49 L. ed. 816, 25 Sup.

Ct. Rep. 455, though it was said in the Dooley Case, page 234: 'We have no doubt, however, that, from the necessities of the case, the right to administer the government of Porto Rico continued in the military commander after the ratification of the treaty, and until further action by Congress,' -- citing Cross v. Harrison, supra.

But, whatever may be the limits of the military power, it certainly must include the authority to establish courts of justice, which are so essential a part of any government. So it seems to have been thought in Leitensdorfer v. Webb, supra. With this thought in mind, the military power not only established this particular court in Porto Rico, but as well a system of courts which took the place of the courts under Spanish sovereignty, and were continued by the organic act. The same course was pursued in the Philippine Islands.

=== Reference: DORR v. U S, 195 U.S. 138 (1904) ===

As early as the February term, 1810, of this court, in the case of Sere v. Pitot, 6 Cranch, 332, 3 L. ed. 240, Chief Justice Marshall, delivering the opinion of the court, said:

'The power of governing and of legislating for a territory is the inevitable consequence of the right to acquire and to hold territory. Could this position be contested, the Constitution of the United States declares that 'Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States.' Accordingly we find Congress possessing and exercising the absolute and undisputed power of governing and legislating for the territory of Orleans. Congress has [195 U.S. 138, 141] given them a legislative, an executive, and a judiciary, with such powers as it has been their will to assign to those departments respectively.'

And later, the same eminent judge, delivering the opinion of the court in the leading case upon the subject (American Ins. Co. v. 356 Bales of Cotton, 1 Pet. 511, 542, 7 L. ed. 242, 255), says:

'The Constitution confers absolutely on the government of the Union the powers of making war and of making treaties; consequently that government possesses the power of acquiring territory, either by conquest or by treaty.

'The usage of the world is, if a nation be not entirely subdued, to consider the holding of conquered territory as a mere military occupation, until its fate shall be determined at the treaty of peace. If it be ceded by the treaty, the acquisition is confirmed, and the ceded territory becomes a part of the nation to which it is annexed, either on the terms stipulated in the treaty of cession, or on such as its new master shall impose. On such transfer of territory it has never been held that the relations of the inhabitants with each other undergo any change. Their relations with their former sovereign are dissolved, and new relations are created between them and the government which has acquired their territory. The same act which transfers their country transfers the allegiance of those who remain in it; and the law, which may be denominated political, is necessarily changed, although that which regulates the intercourse and general conduct of individuals remains in force until altered by the newly-created power of the state.

=== Reference: THE DIAMOND RINGS, 183 U.S. 176 (1901) ===

It is further contended that a distinction exists in that, while complete possession of Porto Rico was taken by the United States, this was not so as to the Philippines, because of the armed resistance of the native inhabitants to a greater or less extent.

We must decline to assume that the government wishes thus to disparage the title of the United States, or to place itself in the position of waging a war of conquest.

The sovereignty of Spain over the Philippines and possession under claim of title had existed for a long series of years prior to the war with the United States. The fact that there were insurrections against her, or that uncivilized tribes may have defied her will, did not affect the validity of her title. She granted the islands to the United States, and the grantee in accepting them took nothing less than the whole grant. [183 U.S. 176, 181] If those in insurrection against Spain continued in insurrection against the United States, the legal title and possession of the latter remained unaffected.

We do not understand that it is claimed that in carrying on the pending hostilities the government is seeking to subjugate the people of a foreign country, but, on the contrary, that it is preserving order and suppressing insurrection in the territory of the United States. It follows that the possession of the United States is adequate

possession under legal title, and this cannot be asserted for one purpose and denied for another. We dismiss the suggested distinction as untenable.

=== Reference: STATE OF RHODE ISLAND v. COM. OF MASSACHUSETTS, 37 U.S. 657 (1838) ===

Discovery or conquest are, no doubt, well recognised titles, from which to deduce, ab origine, grants of land, and political government. But these titles carry with them, by their very terms, the idea of possession. The discoverer or the conqueror, is the only person in possession; and by force of his possession so acquired, he establishes a government, marks out a territory, or conveys title to the soil. The grant is a contract which the grantor cannot vacate; but it was never doubted, although the case has never come into judgment, that it might be surrendered or abandoned by the grantee.

That when a territory is acquired by treaty, cession, or even conquest, the rights of the inhabitants to property, are respected and sacred. 8 Wh. 589; 12 Wh. 535; 6 Peters, 712; 7 Peters, 867; 8 Peters, 445; 9 Peters, 133; 10 Peters, 330, 718, &c.

=== Reference: DOWNES v. BIDWELL 182 U.S. 244 (1901) ===

That the power over the territories is vested in Congress [182 U.S. 244, 268] without limitation, and that this power has been considered the foundation upon which the territorial governments rest, was also asserted by Chief Justice Marshall in M'Culloch v. Maryland, 4 Wheat. 316, 422, 4 L. ed. 579, 605, and in United States v. Gratiot, 14 Pet. 526, 10 L. ed. 573. So, too, in Church of Jesus Christ of L. D. S. v. United States, 136 U.S. 1 , 34 L. ed. 478, 10 Sup. Ct. Rep. 792, in holding that Congress had power to repeal the charter of the church, Mr. Justice Bradley used the following forceful language: 'The power of Congress over the territories of the United States is general and plenary, arising from and incidental to the right to acquire the territory itself, and from the power given by the Constitution to make all needful rules and regulations respecting the territory or other property belonging to the United States. It would be absurd to hold that the United States has power to acquire territory, and no power to govern it when acquired. The power to acquire territory, other than the territory northwest of the Ohio River (which belonged to the United States at the

adoption of the Constitution), is derived from the treaty-making power and the power to declare and carry on war. The incidents of these powers are those of national sovereignty and belong to all independent governments. The power to make acquisitions of territory by conquest, by treaty, and by cession is an incident of national sovereignty.

Indeed, the practical interpretation put by Congress upon the Constitution has been long continued and uniform to the effect [182 U.S. 244, 279] that the Constitution is applicable to territories acquired by purchase or conquest, only when and so far as Congress shall so direct.

The words of Chief Justice Marshall in Gibbons v. Ogden, 9 Wheat. 1, 6 L. ed. 23, with respect to the power of Congress to regulate commerce, are pertinent in this connection: 'This power,' said he, 'like all others vested in Congress, is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations other than are prescribed in the Constitution. . . . The wisdom and discretion of Congress, their identity with the people, and the influence which their constituents possess at elections, are in this, as in many other instances -- as that, for example, of declaring war, -- the sole restraints on which they have relied to secure them from its abuse. They are the restraints on which the people must often rely solely in all representative governments.'

So too, in Johnson v. M'Intosh, 8 Wheat. 543, 583, 5 L. ed. 681, 691, it was said by him:

'The title by conquest is acquired and maintained by force. The conqueror prescribes its limits. Humanity, however, acting on public opinion, has established, as a general rule, that the conquered shall not be wantonly oppressed, and that their condition shall remain as eligible as is compatible with the objects of the conquest.

It may not be doubted that by the general principles of the law of nations every government which is sovereign within its sphere of action possesses as an inherent attribute the power to acquire territory by discovery, by agreement or treaty, and by conquest. It cannot also be gainsaid that, as a general rule, wherever a government acquires territory as a result of any of the modes above stated, the relation of the territory to the new government is to be determined by the acquiring power in the absence of stipulations upon the subject. These general principles of the law of nations are thus stated by Halleck in his treatise on International Law, page 126:

'A state may acquire property or domain in various ways; its title may be acquired originally by mere occupancy, and confirmed by the presumption arising from the lapse of time; [182 U.S. 244, 301] or by discovery and lawful possession; or by conquest, confirmed by treaty or tacit consent; or by grant, cession, purchase, or exchange; in fine, by any of the recognized modes by which private property is acquired by individuals. It is not our object to enter into any general discussion of these several modes of acquisition, any further than may be necessary to distinguish the character of certain rights of property which are the peculiar objects of international jurisprudence. Wheaton, International Law, pt. 2, chap. 4, 1, 4, 5; 1 Phillimore, International Law, 221 - 227; Grotius, de Jur. Bel. ac. Pac., lib. 2, chap. 4; Vattel, Droit des Gens, liv. 2, chaps. 7 and 11; Rutherford, Inst. b. 1, chap. 3, b. 2, chap. 9; Puffendorf, de Jur. Nat. et. Gent., lib. 4, chaps. 4 - 6; Moser, Versuch, etc., b. 5, chap. 9; Martens, Precis du Droit des Gens. 35 et seq.; Schmaltz, Droit des Gens, liv. 4, chap. 1; Kluber, Droit des Gens, 125, 126; Heffter, Droit International, 76; Ortolan, Domaine International, 53 et seq.; Bowyer, Universal Public Law, chap. 28; Bello, Derecho Internacional, pt. 1, chap. 4; Riquelme, Derecho, Pub. Int., lib. 1, title 1, chap. 2; Burlamaqui, Droit de la Nat. et des Gens, tome 4, pt. 3, chap. 5.'

The decisions of this court leave no room for question that, under the Constitution, the government of the United States, [182 U.S. 244, 303] in virtue of its sovereignty, supreme within the sphere of its delegated power, has the full right to acquire territory enjoyed by every other sovereign nation.

In American Ins. Co. v. 356 Bales of Cotton, 1 Pet. 511, 7 L. ed. 242, the court, by Mr. Chief Justice Marshall, said (p. 542, L. ed. p. 255):

'The Constitution confers absolutely on the government of the Union the powers of making war and of making treaties; consequently, that government possesses the power of acquiring territory, either by conquest or by treaty.'

In United States v. Huckabee (1872) 16 Wall. 414, 21 L. ed. 457, the court speaking through Mr. Justice Clifford, said (p. 434, L. ed. p. 464):

'Power to acquire territory either by conquest or treaty is vested by the Constitution in the United States. Conquered territory, however, is usually held as a mere military occupation until the fate of the nation from which it is conquered is determined; but if the nation is entirely subdued, or in case it be destroyed and ceases to exist, the right

of occupation becomes permanent, and the title vests absolutely in the conqueror. American Ins. Co. v. 356 Bales of Cotton, 1 Pet. 511, 7 L. ed. 242; 30 Hogsheads of Sugar v. Boyle, 9 Cranch, 195, 3 L. ed. 702; Shanks v. Dupont, 3 Pet. 246, 7 L. ed. 668; United States v. Rice, 4 Wheat. 254, 4 L. ed. 564; The Amy Warwick, 2 Sprague, 143, Fed. Cas. No. 342; Johnson v. M'Intosh, 8 Wheat. 588, 5 L. ed. 692. Complete conquest, by whatever mode it may be perfected, carries with it all the rights of the former government; or, in other words, the conqueror, by the completion of his conquest, becomes the absolute owner of the property conquered from the enemy nation or state. His rights are no longer limited to mere occupation of what he has taken into his actual possession, but they extend to all the property and rights of the conquered state, including even debts as well as personal and real property. Halleck, International Law, 839; Elphinstone v. Bedreechund, 1 Knapp, P. C. C. 329; Vattel, 365; 3 Phillimore, International Law, 505.'

In Church of Jesus Christ of L. D. S. v. United States (1889) 136 U.S. 1 , 34 L. ed. 478, 10 Sup. Ct. Rep. 792, Mr. Justice Bradley, announcing the opinion of the court declared (p. 42, L. ed. p. 491, Sup. Ct. Rep. p. 802):

'The power to acquire territory, other than the territory northwest of the Ohio River (which belonged to the United States at the adoption of the Constitution), is derived from the treaty-making power and the power to declare and carry [182 U.S. 244, 304] on war. The incidents of these powers are those of national sovereignty, and belong to all independent governments. The power to make acquisitions of territory by conquest, by treaty, and by cession is an incident of national sovereignty. The territory of Louisiana, when acquired from France, and the territories west of the Rocky mountains, when acquired from Mexico, became the absolute property and domain of the United States, subject to such conditions as the government, in its diplomatic negotiations, had seen fit to accept relating to the rights of the people then inhabiting those territories.'

In United States v. Percheman, 7 Pet. 87, 8 L. ed. 617, the Chief Justice said:
'The people change their allegiance; their relation to their ancient sovereign is dissolved; but their relations to each other, and their rights of property, remain undisturbed. If this be the modern rule even in cases of conquest, who can doubt its application to the case of an amicable cession of territory? . . . The cession of a territory by its name from one sovereign to another, conveying the compound idea of surrendering at the same time the lands and the people who inhabit them, would be necessarily understood to pass the sovereignty only, and not to interfere with private property.'

=== Reference: U.S. v. WONG KIM ARK, 169 U.S. 649 (1898) ===

'To create allegiance by birth, the party must be born, not only within the territory, but within the ligeance of the government. If a portion of the country be taken and held by conquest in war, the conqueror acquires the rights of the conquered as to its dominion and government, and children born in the armies of a state, while [169 U.S. 649, 665] abroad, and occupying a foreign country, are deemed to be born in the allegiance of the sovereign to whom the army belongs. It is equally the doctrine of the English common law that during such hostile occupation of a territory, and the parents be adhering to the enemy as subjects de facto, their children, born under such a temporary dominion, are not born under the ligeance of the conquered.' 2 Kent, Comm. (6th Ed.) 39, 42.

In U. S. v. Rice (1819) 4 Wheat. 246, goods imported into Castine, in the state of Maine, while it was in the exclusive possession of the British authorities during the lase war with England were held not to be subject to duties under the revenue laws of the United States, because, as was said by Mr. Justice Story in delivering judgment: 'By the conquest and military occupation of Castine, the enemy acquired that firm possession which enabled him to exercise the fullest rights of sovereignty over that place. The sovereignty of the United States over the territory was, of course, suspended, and the laws of the United States could no longer be rightfully enforced there, or be obligatory upon the inhabitants who remained and submitted to the conquerors. By the surrender, the inhabitants passed under a temporary allegiance to the British government, and were bound by such laws, and such only, as it chose to recognize and impose. From the nature of the case, no other laws could be obligatory upon them; for, where there is no protection or allegiance or sovereignty, there can be no claim to obedience.' 4 Wheat. 254.

=== Reference: ILLINOIS CENT. R. CO. v. STATE OF ILLINOIS, 146 U.S. 387 (1892) ===

The information rightly states that prior to the Revolution the shore and lands under water of the navigable streams and waters of the province of New Jersey belonged to

the king of Great Britain, as part of the jura regalia of the crown, and devolved to the state by right of conquest. The information does not state, however, what is equally true, that after the conquest the said lands were held by the state, as they were by the king, in trust for the public uses of navigation and fishery, and the erection thereon of wharves, piers, light-houses, beacons, and other facilities of navigation and commerce. Being subject to this trust, they were publici juris; in other words, they were held for the use of the people at large. It is true that to utilize the fisheries, especially those of shell fish, it was necessary to parcel them out to particular operators, and employ the rent or consideration for the benefit of the whole people; but this did not alter the character of the title. The land remained subject to all other public uses as before, especially to those of navigation and commerce, which are always paramount to those of public fisheries. It is also true that portions of the submerged shoals and flats, which really interfered with navigation, and could better subserve the purposes of commerce by being filled up and reclaimed, were disposed of to individuals for that purpose.

=== Reference: MORMON CHURCH v. UNITED STATES, 136 U.S. 1 (1890) ===

The power of congress over the territories of the United States is general and plenary, arising from and incidental to the right to acquire the territory itself, and from the power given by the constitution to make all needful rules and regulations respecting the territory or other property belonging to the United States. It would be absurd to hold that the United States has power to acquire territory, and no power to govern it when acquired. The power to acquire territory, other than the territory northwest of the Ohio River, (which belonged to the United States at the adoption of the constitution,) is derived from the treaty-making power, and the power to declare and carry on war. The incidents of these powers are those of national sovereignty, and belong to all independent governments. The power to make acquisitions of territory by conquest, by treaty, and by cession, is an incident of national sovereignty.

=== Reference: CITY OF NEW ORLEANS v. NEW YORK MAIL S S CO, 87 U.S. 387 (1874) ===

In Fleming v. Page,16 Chief Justice Taney says: 'The port of Tampico, at which the

goods were shipped, and the Mexican State of Tamaulipas, in which it is situated, were undoubtedly, [87 U.S. 387, 399] at the time of the shipment, subject to the sovereignty and dominion of the United States. The Mexican authorities had been driven out or had submitted to our army and navy; and the country was in the exclusive and firm possession of the United States, and governed by its military authorities, acting under the order of the President. But it does not follow that it was a part of the United States, or that it ceased to be a foreign country in the sense in which these words are used in the acts of Congress. . . . While it was occupied by our troops, they were in an enemy's country and not in their own; the inhabitants were still foreigners and enemies, and owed to the United States nothing more than the submission and obedience, sometimes called temporary allegiance, which is due from a conquered enemy when he surrenders to a force which he is unable to resist. Tampico, therefore (he says), was a foreign port when this shipment was made.'

This case is authority to the proposition that conquest and temporary military possession do not alter the national character of a city or port.

=== Reference: HANAUER v. WOODRUFF, 82 U.S. 439 (1872) ===

As to Castine, (Maine) that place was captured in September, 1814, by the British forces, and remained in their possession until the ratification of the treaty of peace of February, 1815. 'By the conquest and military occupation of Castine,' this court said, by Mr. Justice Story, in United States v. Rice,11 'the enemy acquired that firm possession which enabled him to exercise the fullest rights of sovereignty over that place. The sovereignty of the United States over the territory was, of course, suspended, and the laws of the United States could no longer be rightfully enforced there, or be obligatory upon the inhabitants who remained and submitted to the conquerors. By the surrender, the inhabitants passed under a temporary allegiance to the British government and were bound by such laws, and such only as it chose to recognize and impose. From the nature of the case no other laws could be obligatory upon them, for where there is no protection or allegiance, or sovereignty, there can be no claim to obedience.'

As to Tampico, that place was taken possession of in November, 1846, by the military forces of the United States, and in December following the entire State of Tamaulipas, in which Tampico is situated, was reduced to military subjection by our forces, and

both Tampico and the State remained in our occupation until the treaty of peace in 1848. While thus captured and held in subjection other nations [82 U.S. 439, 447] were bound, as this court said, speaking through Chief Justice Taney, in Fleming v. Page,12 'to regard the country, while our possession continued, as the territory of the United States, and to respect it as such. For by the laws and usages of nations, conquest is a valid title while the victor maintains the exclusive possession of the conquered country. The citizens of no other nation, therefore, had a right to enter it without the permission of the American authorities, nor to hold intercourse with its inhabitants, nor to trade with them. As regarded all other nations, it was a part of the United States, and belonged to them as exclusively as the territory included in our established boundaries.'

=== Reference: DOE EX DEM CLARK v. BRADEN, 57 U.S. 635 (1853) ===

III. This treaty with Spain in the consideration of the 8th article, and of the clauses of territorial cession, has been by the Supreme Court always determined to design no departure from the great principle of civilized justice, and of modern international law, that in no transfer of a territory can any domain be passed or be accepted from the ceding nation than what belongs to the government -- the public property. That property alone, and the sovereignty of the transferred region, are the only legitimate objects of such international transactions, and the sovereignty is to be esteemed the primary object. The court has said that the express terms of this treaty deferring to private rights, were not needed for thus limiting the treaty's scope; and the 8th article is not to be regarded as enlarging the cession of property. In order words that article, even as to grants subsequent [57 U.S. 635, 644] to 24th of January, 1818, must be construed in subserviency to the sanctity that our own public law accords to the rights of contract and private property. 8 Peters, 445, 449, 450; Aredondo's Case, 6 Ib. 735, 736; Percheman's Case, 7 Ib. 86; 9 Ib. 133, 169, 170; 14 Ib. 349; 8 Howard, 306, 307; Terrett v. Taylor, 9 Cranch, 43.

These cases affirm, too, the reformed doctrine of international law, that even by conquest the lands of individuals shall not be wrested from them, and in no respect are to be yielded even to the rights of war. Much less are they, then, to be conceded to the exactions of diplomatic bargaining. We may add to these authorities (not now adverting to all the treatises on international law where they enjoin the same doctrine) 1 Pet. 517; 12 Ib. 410, 511; 8 Wheat 464; 4 Ib. 518; 4 Cranch, 323; Fletcher v. Peck, 6

Ib. 87; Wheat. Nat. Law 269, b. 2, ch. 16. All real property taken in war is entitled to postliminy.

IV. These views, under our third head, lead to the conclusion that no grants of Spain, in her Florida region, of portions already conceded to individuals, could be asked to be annulled; or could be accepted by our government from Spain, if even her king had had despotic power to thus despoil without redress -- (which immunity and irremediableness of wrong defines despotic government) -- except only where the individual interest could be shown to have expired . . . . . .

=== Reference: WEBSTER v. REID, 52 U.S. 437 (1850) ===

Judge Story says: 'As the general government possesses the right to acquire territory, either by conquest or by treaty, it would seem to follow, as an inevitable consequence, that it possesses the power to govern what it has so acquired. The territory does not, when so acquired, become entitled to self-government, and is not subject to the jurisdiction of any State. It must consequently be under the dominion and jurisdiction of the Union, or it would be without any government at all.' 3 Story on Const. 193, 194; American Ins. Co. v. Canter, 1 Peters, 511.

=== Reference: FLEMING v. PAGE, 50 U.S. 603 (1850) ===

The first question, then, is, What is a foreign country, within the meaning of the revenue laws?

A foreign country is one exclusively within the sovereignty of a foreign nation, and without the sovereignty of the United States. This is the well-settled meaning of the word 'foreign,' in acts of Congress. 1 Gall. 58, 55; 1 Story, 1; 2 Gall. 4, 485; 1 Brock. 241; 4 Wheat. 254.

If, then, Tampico, during its occupation by the forces of the [50 U.S. 603, 607] United States, was not exclusively within the sovereignty of Mexico, it follows that it was not a foreign country, and consequently the goods brought from it were not liable to duty.

Tampico, during its military occupation by our forces, was under the sovereignty and within the jurisdiction of the United States. The sovereignty of Mexico over it was superseded by that of the United States.

This change of sovereignty, as a consequence of firm military occupation, is as settled as any other principle of the law of nations, and has been repeatedly recognized by the highest authority in this country. United States v. Rice, 4 Wheat. 246.

It might suffice to refer simply to the case of Castine, which contains a lucid exposition of the law of nations on the point in question, and is conceived to be decisive of the present case. It is proposed, however, to bring to the attention of the court some additional authorities on the subject of the legal effect of the capture and firm possession -- such as existed in the case of Tampico and the State of Tamaulipas -- of a portion of an enemy's territory.

The result of the authorities may be briefly stated as follows. The duty of allegiance is reciprocal to the duty of protection. When, therefore, a nation is unable to protect a portion of its territory from the superior force of an enemy, it loses its claim to the allegiance of those whom it fails to protect, and the conquered inhabitants pass under a temporary allegiance to the conqueror, and are bound by such laws, and such only, as he may choose to impose. The sovereignty of the nation which is thus unable to protect its territory is displaced, and that of the successful conqueror is substituted in its stead.

The jurisdiction of the conqueror is complete. He may change the form of government and the laws at his pleasure, and may exercise every attribute of sovereignty. The conquered territory becomes a part of the domain of the conqueror, subject to the right of the nation to which it belonged to recapture it if they can. By reason of this right to recapture, the title of the conqueror is not perfect until confirmed by treaty of peace. But this imperfection in his title is, practically speaking, important only in case of alienation made by the conqueror before treaty. If he sells, he sells subject to the right of recapture.

But although, for purposes of sale, the title of the conqueror is imperfect before cession, for purposes of government and jurisdiction his title is perfect before cession. As long as he retains possession he is sovereign; and not the less sovereign because his sovereignty may not endure for ever. [50 U.S. 603, 608] Grotius (Ch. 6, book 3, 4),

speaking of the right to things taken in war, says that land is reputed lost which is so secured by fortifications that without their being forced it cannot be repossessed by the first owner. And in Ch. 8, book 3, treating of empire over the conquered, he shows that sovereignty may be acquired by conquest.

Wolffius, in his treatise De Jure Gentium (Ch. 7, De Jure Gentium in Bello, 863), states the doctrine very strongly.

Puffendorf, book 8, ch. 11, title 'How Subjection ceases'; same author, Treatise on the Duties of the Man and the Citizen, book 2, ch. 10 , 2; Bynkershoek on the Law of War, Duponceau's translation, 124; 2 Burlamaqui, 74; Vattel, book 3, ch. 13, and book 1, ch. 17; Martens on the Law of Nations, book 8, ch. 3, 8; Wheaton, Elements of International Law, p. 440; 7 Co. 17, b; Dyer, 224, a, pl. 29; 2 P. Wms. 75; Cowper, 204; Dodson, 450; 2 Hagg. Consistory Rep. 371; 9 Cranch, 191; 7 Peters, 86; 2 Gall. 485; 4 Wheat. 246; 1 Opinions of Attorney-General, 119.

These authorities seem to establish conclusively, --

1st. That, by conquest and firm military occupation of a portion of an enemy's country, the sovereignty of the nation to which the conquered territory belongs is subverted, and the sovereignty of the conqueror is substituted in its place.

2d. That although this sovereignty, until cession by treaty, is subject to be ousted by the enemy, and therefore does not give an indefeasible title for purposes of alienation, yet while it exists it is supreme, and confers jurisdiction without limit over the conquered territory, and the right to allegiance in return for protection.

It follows that Tampico, while in the military possession of our forces, passed from the sovereignty of Mexico to the sovereignty of the United States, and was subject in the fullest manner to the jurisdiction of the United States, and therefore could in no correct sense be said to be foreign to the United States.

It cannot be denied that these principles, established by the common consent of the civilized world, must govern the title to conquests made by the United States. As one of the family of nations, they are bound by the law of nations, and the nature and effect of their acquisitions by conquest must be defined and regulated by that law.

That the United States may acquire territory by conquest results from their power to

make war. They cannot in this respect be less competent than all the other nations of the world. The right to acquire by conquest is an inseparable incident to the right to maintain war. [50 U.S. 603, 609] Mr. Justice Story, in the third volume of his Commentaries on the Constitution, says, at p. 160: -- 'The Constitution confers on the government of the Union the power of making war and of making treaties; and it seems consequently to possess the power of acquiring territory either by conquest or treaty.'

And at p. 193: -- 'As the general government possesses the right to acquire territory, either by conquest or treaty, it would seem to follow as an inevitable consequence that it possesses the power to govern what it has so acquired.'

Chief Justice Marshall, in the Am. Ins. Co. v. Canter, 1 Peters, 542, treats it as clear. 'The Constitution,' says he, 'confers absolutely on the government of the Union the powers of making war and of making treaties; consequently, that government possesses the power of acquiring territory either by conquest or treaty.'

The messages of the President to Congress during the war, and the instructions from the heads of departments, contain authoritative declarations as to the right of the United States to acquire foreign territory by conquest, and as to the effect of such conquest upon the sovereignty of the conquered territory, in accordance with the principles above stated. Thus, the President, in his message of December, 1846, says: -- 'By the law of nations a conquered territory is subject to be governed by the conqueror during his military possession, and until there is either a treaty of peace or he shall voluntarily withdraw from it. The old civil government being necessarily superseded, it is the right and duty of the conqueror to secure his conquest, and to provide for the maintenance of civil order and the rights of the inhabitants. This right has been exercised and this duty performed by our military and naval commanders, by the establishment of temporary governments in some of the conquered provinces in Mexico, assimilating them as far as practicable to the free institutions of our own country.'

It is true, that, when Tampico had been captured, and the State of Tamaulipas subjugated, other nations were bound to regard the country, while our possession continued, as the territory of the United States, and to respect it as such. For, by the laws and usages of nations, conquest is a valid title, while the victor maintains the exclusive possession of the conquered country. The citizens of no other nation, therefore, had a right to enter it without the permission of the American authorities,

nor to hold intercourse with its inhabitants, nor to trade with them. As regarded all other nations, it was a part of the United States, and belonged to them as exclusively as the territory included in our established boundaries.

But yet it was not a part of this Union. For every nation which acquires territory by treaty or conquest holds it according to its own institutions and laws. And the relation in which the port of Tampico stood to the United States while it was occupied by their arms did not depend upon the laws of nations, but upon our own Constitution and acts of Congress. The power of the President under which Tampico and the State of Tamaulipas were conquered and held in subjection was simply that of a military commander prosecuting a war waged against a public enemy by the authority of his government. And the country from which these goods were imported was invaded and subdued, and occupied as the territory of a foreign hostile nation, as a portion of Mexico, and was held in possession in order to distress and harass the enemy. While it was occupied by our troops, they were in an enemy's country, and not in their own; the inhabitants were still foreigners and enemies, and owed to the United States nothing more than [50 U.S. 603, 616] the submission and obedience, sometimes called temporary allegiance, which is due from a conquered enemy, when he surrenders to a force which he is unable to resist. But the boundaries of the United States, as they existed when war was declared against Mexico, were not extended by the conquest; nor could they be regulated by the varying incidents of war, and be enlarged or diminished as the armies on either side advanced or retreated. They remained unchanged. And every place which was out of the limits of the United States, as previously established by the political authorities of the government, was still foreign; nor did our laws extend over it. Tampico was, therefore, a foreign port when this shipment was made.

=== Reference: U S v. PERCHEMAN, 32 U.S. 51 (1833) ===

The law of nations. It is conceived, that, according to the mitigated rights of war, as now well understood and settled by international law, the lands of individuals are safe, even after conquest, Vattel lib. 3, c. 13, 200; much less, can a cession, of itself, destroy private rights. Absolute or perfect grants, it is believed, would be protected by the law of nations, independent of the treaty. Some legislative recognition of their validity might indeed be necessary to sustain a suit upon them in our courts, but the national obligation to respect them could hardly be denied.

It may not be unworthy of remark, that it is very unusual, even in cases of conquest, for the conqueror to do more than to displace the sovereign and assume dominion over the country. The modern usage of nations, which has become law, [32 U.S. 51, 87] would be violated; that sense of justice and of right which is acknowledged and felt by the whole civilized world would be outraged, if private property should be generally confiscated, and private rights annulled. The people change their allegiance; their relation to their ancient sovereign is dissolved; but their relations to each other, and their rights of property, remain undisturbed.

=== Reference: WORCESTER v. STATE OF GA., 31 U.S. 515 (1832) ===

But power, war, conquest, give rights, which, after possession, are conceded by the world; and which can never be controverted by those on whom they descend.

=== Reference: SHANKS v. DUPONT, 28 U.S. 242 (1830) ===

(*speaking of the British military occupation of South Carolina in 1780* --)
Now, in the first place, the capture and possession by the British was not an absolute change of the allegiance of the captured inhabitants. They owed allegiance indeed to the conquerors during their occupation; but it was a temporary allegiance, which did not destroy, but only suspend their former allegiance. It did not annihilate their allegiance to the state of South Carolina, and make them de facto aliens. That could only be by a treaty of peace, which should cede the territory, and them with it; or by a permanent conquest, not disturbed or controverted by arms, which would lead to a like result . . . . .

=== Reference: AMERICAN INS. CO. v. 356 BALES OF COTTON, 26 U.S. 511 (1828) ===

Is there any principle in the law of nations, which upon the Act of cession or conquest, gives to the ceded or conquered country, a right to participate in the privileges of the

Constitution of the parent country? The usages of nations from the period of Grecian colonization to the present moment, are precisely the reverse. Such a right never was asserted.

Territories acquired by conquest, and by cession, stand under different relations to the United States.

The Constitution confers absolutely on the government of the Union, the powers of making war, and of making treaties; consequently, that government possesses the power of acquiring territory, either by conquest or by treaty.

=== Reference: U S v. SMITH, 18 U.S. 153 (1820) ===

'Thus, as pirates are the enemies of the human race, piracy is justly regarded as a crime against the universal laws of society, and is every where punished with death. As they form no national body, as they have no right to arm, nor make war, and on account of their indiscriminate plunder of all vessels are considered only as public robbers, every nation has a right to pursue, and exterminate them, without any declaration of war. For these reasons it is lawful to arrest them, in order that they may undergo the punishment merited by their crimes.' (s. 12.) 'Pirates having no right to make conquests, cannot, therefore, acquire any lawful property in what they take; for the law of nations does not authorize them to deprive the true owner of his property, who always retains the right of reclaiming it wherever it may be found. Thus, by the principles of common law, as well as the law of nature, at whatever period, or in whatever manner, things taken by a pirate may be recovered, they return again to their former owners, who lose none of their rights by such unjust usurpation.'

=== Reference: DOW v. JOHNSON, 100 U.S. 158 (1879) ===

What is the law which governs an army invading an enemy's country? It is not the civil law of the invaded country; it is not the civil law of the conquering country: it is military law, -- the law of war . . . . .

Military conquerors of foreign states in time of war may doubtless displace the courts

of the conquered country, and may establish civil tribunals in their place for administering justice; and in such cases it is unquestionably true that the jurisdiction of suits of every description is transferred to the new tribunals. United States v. Rice, 4 Wheat. 246; Cross v. Harrison, 16 How. 164.

Towns, provinces, and territories, says Halleck, which are retaken from the conqueror during the war, or which are restored to their former sovereign by the treaty of peace, are entitled to the right of postliminy; and the original sovereign owner, on recovering his dominion over them, whether by force of arms or by treaty, is bound to restore them to their former state. In other words, he acquires no new right over them, either by the act of recapture or of restoration. . . . He rules not by any newly acquired title which relates back to any former period, but by his antecedent title, which, in contemplation of law, has never been devested. Halleck, Int. Law, 871.

When a town, reduced by the enemy's arms, is retaken by those of her own sovereign, says Vattel, she is restored to her former condition, and reinstated in all her rights. Vattel (ed. by Chitty), 395.

=== Reference: DOOLEY v. U S, 182 U.S. 222 (1901) ===

. . . . . The doctrine upon this subject is thus summed up by Halleck in his work on International Law (vol. 2, page 444): 'The right of one belligerent to occupy and govern the territory of the enemy while in its military possession is one of the incidents of war, and flows directly from the right to conquer. We therefore do not look to the Constitution or political institutions of the conqueror for authority to establish a government for the territory of the enemy in his possession, during its [182 U.S. 222, 231] military occupation, nor for the rules by which the powers of such government are regulated and limited. Such authority and such rules are derived directly from the laws of war, as established by the usage of the world and confirmed by the writings of publicists and decisions of courts, -- in fine, from the law of nations. . . . The municipal laws of a conquered territory or the laws which regulate private rights, continue in force during military occupation, except so far as they are suspended or changed by the acts of the conqueror. . . . He, nevertheless, has all the powers of a de facto government, and can at his pleasure either change the existing laws or make new ones.'

=== Reference: JOHNSON v. EISENTRAGER, 339 U.S. 763 (1950) ===

Conquest by the United States, unlike conquest by many other nations, does not mean tyranny. For our people "choose to maintain their greatness by justice rather than violence." Our constitutional principles are such that their mandate of equal justice under law should be applied as well when we occupy lands across the sea as when our flag flew only over thirteen colonies. Our nation proclaims a belief in the dignity of human beings as such, no matter what their nationality or where they happen to live.

=== Reference: DUNCAN v. KAHANAMOKU, 327 U.S. 304 (1946) ===

It is all too easy in this postwar period to assume that the success which our forces attained was inevitable and that military control should have been relaxed on a schedule based upon such actual developments. In fact, however, even now our Chief of Staff in his report to the Secretary of War as of June 30, 1945, reminds us that in 'the black days of 1942 when the Japanese conquered all of Malaysia, occupied Burma, and threatened India while the German armies approached the Volga and the Suez . ... Germany and Japan came so close to complete domination of the world that we do not yet realize how thin the thread of Allied survival had been stretched.' Biennial Report of the Chief of Staff of the United States Army (1945) 1.5 . . . . . .

=== Reference: OLIPHANT v. SUQUAMISH INDIAN TRIBE, 435 U.S. 191 (1978) ===

. . . . . Seizing on language in our opinions describing Indian tribes as "quasi-sovereign entities," see, e. g., Morton v. Mancari, 417 U.S. 535, 554 (1974), the Court of Appeals agreed and held that Indian tribes, "though conquered and dependent, retain those powers of autonomous states that are neither inconsistent with their status nor expressly terminated by Congress."

Addendum 1:

Grotius and Vattel on "Conquest" and "Dominion"

Hugo Grotius wrote extensively on the legal norms of war. Particularly noteworthy to the present discussion is *Mare Liberum* (1609), trans. Ralph van Deman Magoffin (New York: Oxford University Press, 1916), Chapter 4, in which Grotius recognizes the "title of war" as a legal title to territory and refers to the acquisition of sovereignty "by right of conquest."

Additionally, see in *De Jure Belli ac Pacis* (1625), trans. Francis W. Kelsey (Oxford: Clarendon Press, 1925), Book III, Chapter 6: "On the Right of Acquiring Things Taken in War" and Chapter 8: "On the Right to Rule Over the Conquered." Although in this latter work Grotius maintains that "it is praiseworthy to abstain from the exercise of the right to acquire sovereignty over the vanquished" (Book III, Chapter 15, Section 2), he none the less acknowledges that the practice of states supports the existence of such a right.

In a similar vein, see Emmerich de Vattel , *The Law of Nations* (1758), trans. Joseph Chitty (Philadelphia: T. & J. W. Johnson, 1863), Book III, Chapter 13. Of significance is that in Section 193 Vattel considers "How war is a method of acquisition" and in Section 195 observes that: "nations have ever esteemed conquest a lawful title; and that title has seldom been disputed . . ."

Addendum 2:

Extraterritorial Jurisdiction

=== Reference: REID v. COVERT, 354 U.S. 1 (1957) ===

Historians have traced grants of extraterritorial rights as far back as the permission given by Egypt in the 12th or 13th century B. C. to the merchants of Tyre to establish factories on the Nile and to live under their own law and practice their own religion. Numerous other instances of persons living under their own law in foreign lands existed in the later pre-Christian era and during the Roman Empire and the so-called Dark and Middle Ages -- Greeks in [354 U.S. 1, 59] Egypt, all sorts of foreigners in

Rome, inhabitants of Christian cities and states in the Byzantine Empire, the Latin kingdoms of the Levant, and other Christian cities and states, Mohammedans in the Byzantine Empire and China, and many others lived in foreign lands under their own law. While the origins of this extraterritorial jurisdiction may have differed in each country, the notion that law was for the benefit of the citizens of a country and its advantages not for foreigners appears to have been an important factor. Thus, there existed a long-established custom of extraterritorial jurisdiction at the beginning of the 15th century when the complete conquest of the Byzantine Empire by the Turks and the establishment of the Ottoman Empire substantially altered political relations between Christian Europe and the Near East. But commercial relations continued, and in 1535 Francis I of France negotiated a treaty with Suleiman I of Turkey that provided for numerous extraterritorial rights, including criminal and civil jurisdiction over all disputes among French subjects. 1 Ernest Charriere, Negociations de la France dans le Levant 283. Other nations and eventually the United States in 1830, 8 Stat. 408, later negotiated similar treaties with the Turks.

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