Treaty Law-Making

Frank E. Holman
cherished possession.

However difficult and sometimes distasteful our task may be, we lawyers have the duty and responsibility of speaking out on public matters. That duty and responsibility are clearer today than ever before in our nation's history. If the American lawyers will fully awaken to the dangers of the day, if they, privately and through their Bar Associations, will speak out clearly, simply, and forcefully on current developments, if they will become the aggressive fighting force of which they are capable, the people will know and understand the full implications of the twentieth-century trend. The processes of our republican government will then produce the results truly desired by the majority of the American people. I, for one, feel perfectly confident the result will be the preservation and continuance of our American way of life.

Thank you very much.

TREATY LAW-MAKING

BY FRANK E. HOLMAN

Your invitation to speak again at an Annual Meeting of the Washington State Bar is an evidence of your professional and personal goodwill which I deeply appreciate. Pat Maitland—a former President of the Canadian Bar Association and an honorary member of our Washington Bar, whom we greatly regret is no longer with us—used to tell me that there was nothing quite to "ex" as an ex-Bar president. You have disproved this observation by coming here at this late hour of the day to listen to a speech by an ex-president which promises little in the way of entertainment. I hope there will be something of vital interest to you all, if not of entertainment, in what I shall have to say regarding the rapid development of treaty law-making.

However, some of you in coming into this hall may well have felt like the deaf old lady who one Sunday morning was approaching the steps of the Cathedral of York when the Bishop of York, coming along, took her by the arm to help her up the steps of his Cathedral. At the top of the steps the old lady, who was nearsighted as well as deaf, inquired, "Will you please tell me who is preaching this morning?" Her kindly escort replied, "Why, the Bishop of York." Whereupon the old lady said, "Will you kindly help me down the steps again?"

At the American Bar meeting in Chicago in 1943, when the House of Delegates created a "Special Committee to Study the Proposals for the Postwar Organization of the Nations for Peace and Law," and
President Henderson appointed me the Northwest representative on this Committee. I had some doubt as to whether such a study was within the scope and declared objects of the American Bar Association. I could find nothing in those declared objects (either in the Constitution or in the Bylaws) which in terms referred to the study of international organization as within the purview of the Association. I soon discovered, however, that by and through the proposals for the organization of the United Nations, many new international developments and concepts were likely to have a direct impact upon domestic law, and the local administration of justice throughout the United States—more direct than most lawyers at the time had any thought of. A considerable number of lawyers and most of the Press and the Public are even yet inclined to view treaties and international declarations, conventions and covenants thereunder as the sole concern of diplomats and statesmen.

Therefore, many of you today may have some doubt as to whether a discussion of “treaty law-making” is relevant to the purposes and objects of the Washington Bar and of interest to its members.

The average practicing lawyer has assumed that domestic or local law in an American jurisdiction is made up of certain remnants, common law principles, city charters and ordinances, state and federal statutes, and what has been termed judge-made law. Certainly, until recently, to the average Washington lawyer, it would have seemed unthinkable that the treaty-making power of the federal government could to any large extent be used to make domestic or local law for the people of the state of Washington, or for the peoples of any other American state, and fantastic, that through the treaty-making power, state and federal legislative processes and judicial processes could be bypassed by a group of internationalists sitting in a committee room of the United Nations and formulating treaties, conventions, and covenants for successive ratification by the United States Senate.

When I announced in a speech before the California State Bar Association two years ago that an International Commission, headed by Mrs. Roosevelt—all the other members of which were foreigners, including three Russians—was engaged in formulating a so-called Bill of Rights program to be ratified by the United States Senate which would affect domestic law and our basic American rights in many particulars and which would supersede any conflicting state constitutions and any state legislative enactments, and any existing federal legislation on the same subject, this statement was received in many quarters as that of
an "alarmist." I said then that the people and the lawyers of this country were faced with a new concept, revolutionary in character, by which our domestic law was henceforth not only to be influenced but in many instances controlled and over-ridden by international pronouncements under the treaty-making power vested in the President and Senate of the United States.

I am going to review with you today the law with respect to the federal treaty-making power as it seemed to be two years ago when I made the California speech and then call your attention to the law as announced in April of this year by the Fujii case in California. Finally, I will try to indicate where we Americans may find ourselves in the next two or three years unless, as lawyers, we raise our voices and save our domestic law and basic rights from the encroachments and engulfments of international legislation effected through the treaty-making power.

To understand the legal situation, we start, of course, with Article VI of the Constitution of the United States which reads as follows as to treaties:

All Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land, and the Judges in every State shall be bound thereby, anything in Constitution or Laws of any State to the contrary notwithstanding.

This provision of our Constitution is unlike the organic law of any other country in the world. It is said by some that a provision of similar import is to be found in the present French Constitution. This statement is inaccurate—not as to the fact that somewhat analogous language is to be found in the French Constitution, but the language is without similar import because, in the first place, France is not a federal republic like ours; it has no similar doctrine of states rights and its people lack many of the guarantees set forth in our Constitution and Bill of Rights. Hence, the French analogy is no analogy as bearing upon the problem we face of the treaty-making power being used to destroy or modify the rights of the states and the rights of American citizens.

Having before us Article VI of our Constitution, certain definite legal questions arise: (1) How far can a treaty affect or nullify the provisions of the Washington State Constitution? A treaty may completely nullify any provision in our state Constitution and without the people of the state having any voice in the matter. (2) How far can a treaty affect or nullify a Washington State Statute? The answer is the
same. (3) How far can a treaty affect or nullify a prior judicial decision of the Supreme Court of Washington? The answer is the same. (4) How far can a treaty affect or nullify existing federal legislation on the same subject? The answer is the same.

In addition to the foregoing strictly legal questions the following important legal-political questions arise: (1) How far can a treaty increase the powers of the federal government at the expense of the states? In the field of so-called civil rights, it has been definitely suggested that this can be done. It can probably be done in many other fields. (2) How far can a treaty affect or nullify the United States Constitution and Bill of Rights? There are those who assert that under the logical application of *Missouri v. Holland* this can be done by duly ratified treaty (3) How far can a treaty change our form of government from a republic to a socialistic and completely centralized state? There is a rising school of thought that this can and ought to be done.

We will consider the strictly legal questions first. Generally speaking, the treaty-making power is an admitted attribute of sovereignty. It is neither a grant from the states nor dependent on any affirmative grant in the Constitution. It embraces all the power of government adequate to an effective control of its international relations. (*U S. v. Curtiss-Wright Export Corporation*, 299 U S. 304).

In the beginning the Supreme Court of the United States was strongly Federalist in personnel. Its initial decisions with respect to the treaty-making power held that this power was practically supreme—that a treaty had at least equal force with the Constitution itself. For example, in *Ware v. Hylton*, 3 Dall. 199 (U S. 1796), the court nullified a Virginia statute confiscating certain British claims in that state because the statute contravened the provisions of the Treaty of Paris. The Court based its holding directly upon Article VI. Cushing, Justice, said: "The treaty, then, as to the point in question, is of equal force with the Constitution itself, and certainly, with any law whatsoever." However, approximately fifty years later in *Doe v. Braden*, 16 How 635 (U S. 1853), the court indicated that the Constitution was superior to a treaty: "The treaty is therefore a law made by the proper authority, and the courts of justice have no right to annul or disregard any of its provisions, unless they violate the Constitution of the United States."

Still later, in *Hauenstein v. Lynham*, 10 Otto 483 (U S. 1880), although the Court held a Virginia statute regarding escheat of alien property had been nullified by an American-Swiss treaty, it suggested
that there were limitations upon the treaty-making power by saying at page 490 that: "There are doubtless limitations of this power as there are of all others arising under such instruments; but this is not the proper occasion to consider the subject."

Following the Hauenstein case and in support of a doctrine of limitations came *De-Geofroy v. Riggs*, 133 U.S. 258 (1890). In this case the court clearly indicated that the treaty-making power was not to be treated as unlimited: "The treaty power, as expressed in the Constitution, is in terms unlimited except by those restraints which are found in that instrument against the action of government or of its departments, and those arising from the nature of the government itself and of that of the States. It would not be contended that it extends so far as to authorize what the Constitution forbids, or a change in the character of the government or in that of one of the States or a cession of any portion of the territory of the latter, without its consent. But with these exceptions, it is not perceived that there is any limit to the questions which can be adjusted touching on any matter which properly is the subject of negotiation with a foreign country."

In two earlier cases, *Whitney v. Robertson*, 124 U.S. 190, (1888) and *Botiller v. Domiegues*, 130 U.S. 238 (1889), an important limitation had been indicated, to wit, that a treaty may be abrogated by the enactment of a subsequent federal statute clearly inconsistent therewith. Such a limitation would, of course, have the salutary effect of preserving in the people, through their elected representatives in Congress, the ultimate power of preventing the President, with the consent of the Senate, from making domestic law on a particular subject, or supplementing or amending the Constitution of the United States without the consent of the people.

But the sanity and safety of the developing judicial doctrine of the earlier decisions regarding proper limitation upon the treaty-making power was more or less swept away by the language of Mr. Justice Holmes in *Missouri v. Holland*, 252 U.S. 416 (1920). This is the famous Migratory Bird case. In 1913, at the behest of certain wild life pressure groups, Congress enacted a federal Migratory Bird Act. Very soon after its approval by the President, its constitutionality was questioned on the ground that the law invaded the reserved powers of the states, and the statute was declared unconstitutional in *U.S. v. Shauver*, 214 Fed. 154 (1914).

That the national Constitution is an enabling instrument, and therefore Congress possesses only such powers as are expressly or by necessary
implication granted by that instrument, is not questioned. Unless, therefore, there is some provision in the national Constitution granting to Congress either expressly or by necessary implication the power to legislate on this subject, the act cannot be sustained.

Thereupon the President at the behest of the same wild life enthusiasts concluded a treaty with Great Britain governing the protection of migratory bird life, which treaty was ratified by the Senate. Following this a second Migratory Bird Act was enacted practically identical with the first act. To the charge of unconstitutionality the government contended that the second law was valid as a necessary implementation of a valid treaty Mr. Justice Holmes upheld the contention in the most sweeping language as follows:

Acts of Congress are the supreme law of the land only when made in pursuance of the Constitution, while treaties are declared to be so when made under the authority of the United States. It is open to question whether the authority of the United States means more than the formal acts prescribed to make the convention. We do not mean to imply that there are no qualifications to the treaty-making power; but they must be ascertained in a different way. It is obvious that there may be matters of the sharpest exigency for the national well-being that an act of Congress could not deal with, but that a treaty followed by such an act could, and it is not lightly to be assumed that, in matters requiring national action, "a power which must belong to and somewhere reside in every civilized government" is not to be found.

This decision, in effect, and really for the first time, opened the way for amending the Constitution of the United States by and through a treaty, because it proclaims that an otherwise unconstitutional law may become constitutional when, as, and if the President negotiates a treaty on the subject and obtains approval by the Senate. It is to be noted that a treaty can be ratified by two-thirds of the members of the Senate present. No quorum is required.

Since 1920, when *Missouri v. Holland* was decided, the U.S. Supreme Court has consistently followed its doctrine both in the matter of the superiority of the provisions of a treaty over all state law and as to the scope of the treaty-making power being broad enough to make matters otherwise unconstitutional—constitutional.

In *Asakura v. Seattle*, 265 U.S. 332 (1924), the Court reversed the Supreme Court of Washington and held a Seattle city ordinance void as contrary to a treaty with Japan because the ordinance denied a Japanese alien equality with citizens of this country in the conduct of the pawn-brokling business. The court said that the treaty-making
power extends to all subjects of negotiation between our government and other nations and that treaties are to be liberally construed.

In Valentine v. United States, 299 U.S. 5 (1936) the Court held that a treaty, in addition to its being an international contract, constitutes municipal law throughout the United States and judges in every state are bound to enforce its provisions, “anything in the Constitution or Laws of any State to the contrary notwithstanding.” To the same effect is the doctrine announced in Santovencenzo v. Egan, 284 U.S. 30 (1931), that in the event of a conflict between a treaty and the provisions of a state constitution or a state statute, whether enacted prior to or subsequent to the making of the treaty, the treaty will control.

In U.S. v. Belmont, 301 U.S. 324 (1937) the Court held that the transfer of Russian claims against funds of American nationals in a New York bank under an agreement of assignment by the Soviet government to the United States was valid, the law and policy of New York to the contrary notwithstanding, and even though the transfer was not effected by formal treaty but only by diplomatic negotiations between the President of the United States and the Soviet Ambassador. The Court said: “The external powers of the United States are to be exercised without due regard to state laws or policies.”

In U S. v. Pink—Pink—pretty good name, isn’t it? In U.S. v. Pink, 315 U.S. 203 (1942), the Court held that Soviet Russia had the power to take over certain Russian insurance funds in this country through an agreement with our State Department which was never ratified as a treaty This “Litvinov Assignment” made between the Russian Ambassador and our State Department was given substantially the same force and effect as a treaty.

In spite of the decision in Missouri v. Holland and the later cases, many internationalists ignore the “inherent sovereignty” theory of Mr. Justice Holmes and assure us, in connection with the International Bill of Rights Program and the Genocide Convention and other proposed international commitments, that such treaties, covenants, and conventions may be entered into with impunity in that they have no legal force and effect upon municipal law until implemented by domestic legislation.

When I asserted the contrary in my speech at the state Bar of California in September, 1948, many supporters of the International Bill of Rights Program proclaimed that I was quite wrong. But I
could not see how a lawyer could read and interpret *Missouri v. Holland* and later cases (see particularly *Amaya v. Standard Oil & Gas Co.*, 158 Fed. (2d) 554, as holding that a treaty required implementation in order to nullify the provisions of a state constitution, a state statute, existing federal legislation on the same subject and state and federal decisions. For example, no implementation was required in the *Asakura* case and other later cases (see *Stixrud v. State*, 58 Wash. 339, and cases cited), and none in the recent *Fujii* case in California to which further reference will soon be made.

The proponents of treaties like the Genocide Convention and the present draft of the Covenant on Human Rights contend that they will not become operative as to our domestic law until they have been "implemented" by local legislation. This contention is based on the fact that the Genocide Convention and the Covenant provide for such implementing legislation.

But in the case of the United States no such legislation is necessary, since according to the decisions of our Supreme Court, as well as other courts, our unique constitutional provision respecting treaties is self-executing (except in some matters of detail where the imposition of specific penalties is unprovided for) The proponents of these treaties overlook the fact that these clauses are being included because they are appropriate and necessary as to the other countries where treaties do not automatically become part of their domestic law. If such treaties provided in addition (which they do not) that their provisions should not be effective as to domestic law unless implemented by local legislation, a very different legal question would be presented—but this might to some degree put us on a quality with other nations.

The proposition that the Constitution of the United States may be amended through the treaty-making power is denied by most constitutional authorities, but the decision in *Missouri v. Holland* was reached by ignoring or nullifying in principle the Tenth Amendment to the Constitution, to wit, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people." Certainly, immediately prior to *Missouri v. Holland*, a federal court had held that the Migratory Bird Act was unconstitutional under the principle of the Tenth Amendment. If such unconstitutionality can be cured by a treaty as was there held, why cannot other instances of unconsti-
tutionality be cured by a treaty? However, it is insisted that the Supreme Court of the United States will never go so far as to sustain treaty provisions contravening basic affirmative grants in the Constitution like the right to jury trial or the right to the writ of Habeaus Corpus. But no state or federal court has ever held a treaty invalid and who can be sure in this rapidly developing field of international law where attempts are being made to level out our basic rights to a common denominator with rights as understood by fifty-seven other nations, that such precious rights as jury trial and the writ of Habeas Corpus may not, in the opinion of the Supreme Court, have to yield to the so-called common denominator of the other nations?

There are many countries in the world (in fact most) where people and courts do not agree that such rights are essential to the preservation of human liberty. The announced purpose of the internationalists is to set a common pattern of rights for billions of people of different races, language, religions, concepts of government, and standards of living and education, and it has been publicly asserted that to set such a common pattern of rights, people of higher standards may, in sacrifice to the common good and to the cause of world peace, have to accept the mediocrity of rights attainable as a world average. However, all I stated two years ago in the California speech was that in connection with the international "human rights proposals" we were faced with a program of creating a body of treaty law in this country of at least equal dignity with our federal Constitution and outranking all state constitutions, decisions, and laws on the same subject and superior to all existing federal laws on the same subject.

In April of this year the District Court of Appeals of California in Fujii v. State, 217 Pac. (2d) 481, unequivocally sustained what I predicted and held that the provisions of a treaty, to wit, the United Nations Charter, without legislative implementation outranks and nullifies the California statute and long years of California judicial decision with respect to the disability of aliens to own land.

Over a period of thirty years, alien land laws had been upheld by state courts and these holdings had been affirmed by the Supreme Court of the United States. The California court itself points out that the constitutionality of alien land laws had been the subject of attack for thirty years but had always been sustained by state courts in California, Washington, and elsewhere.

It is interesting to note that the Supreme Court of the United
States some years ago specifically sustained the provisions of the Constitution of the state of Washington prohibiting the ownership of land by aliens as not contravening the due process or equal protections provisions of the federal Constitution and said the Fourteenth Amendment does not take from the states those police powers that were preserved at the time of the adoption of the Constitution. But the court significantly indicated that a state would not have the power to deny aliens the right to own land if such denial was contrary to a treaty provision. (Terrace v. Thompson, 263 U.S. 197). The California court said that the plaintiff’s brief in the Fujii case had not been able to cite a single case in which any court in this country had ever overruled a decision upholding alien land laws. The court added that “save for the matters to be hereinafter discussed which are based upon an authority more potent than the Constitution of this state [California] its opinion might well be terminated under the doctrine of stare decisis “since upon constitutional questions we deem ourselves obliged to follow the decisions of the Supreme Court of the United States and of this state.”

Then the court proceeds boldly to hold that by reason of Article VI, Section 2, of the Constitution of the United States, the United Nations Charter, without implementation, has become the supreme law of California. It then quotes several provisions of the Charter, among others, Chapter IX, Article 55, that “The United Nations shall promote universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion,” and Article 56 that “All members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55.” The court then makes reference to the fact that in December, 1948, the General Assembly of the United Nations passed a “Universal Declaration of Human Rights” affirming, among other things, that “All human beings are born free and equal in dignity and rights. They should act toward one another in a spirit of brotherhood (Art. 1). Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status. (Art. 2) Everyone has the right to own property alone as well as in association with others.” (Art. 17) The court then announces that, “This Declaration imple-
ments and emphasizes the purposes and aims of the United Nations and its Charter,” but, of course, this is not implementation by national legislation.

Speaking of the alleged discrimination against Mr. Fujii, a Japanese alien whose country was not even a party to the Charter, the court concludes:

A perusal of the Charter renders it manifest that restrictions contained in the Alien Land Law are in direct conflict with the plain terms of the Charter above quoted and with the purposes announced therein by its framers. It is incompatible with Article 17 of the Declaration of Human Rights which proclaims the right of everyone to own property. Clearly such a discrimination against a people of one race is contrary both to the letter and to the spirit of the Charter which, as a treaty, is paramount to every law of every state in conflict with it. The Alien Land Law must, therefore, yield to the treaty as the superior authority. The restrictions of the statute based on eligibility to citizenship, but which ultimately and actually are referable to race or color must be and are therefore untenable and unenforceable.

Judgment reversed with directions to enter a decree in favor of plaintiff in accord with the prayer of his complaint.

On May 22, 1950, in denying a petition for rehearing, the court distinctly extends the benefits of treaty law to nations not a party to the treaty by saying:

Since the Charter guarantees equal rights to all “without distinction as to race, sex, language, or religion” (Art. 1, Sec. 3), and the members pledge themselves to take joint and separate action for the achievement of the purposes of the Charter, the fact that Japan is not a member of the Organization does not render its nationals ineligible to the guarantees extended to all persons without exception.

This decision opens a Pandora’s box of possibilities. It leaves Russia or Communist China free to furnish their nationals with funds to buy strategic property up and down our Pacific Coast wherever they can find a willing seller. It means more than this. For example, ponder its effect upon our immigration laws and other laws based upon race or nationality. The Fujii decision means that our right to self-government, both state and national, and our right to determine for ourselves what kind of laws we want to live under can be nullified whenever the President and two-thirds of the members of the Senate present at the time approve a treaty on a particular subject.

At this point it should be mentioned that in Perez v. Lappold, 198 Pac. (2d) 17, the Supreme Court of California sitting in banc (Octo-
nullified a California statute of long standing and a series of California decisions against mixed marriages. In this case specific reference was made to the United Nations Charter.

Presently on the agenda of the United States Senate is the so-called Genocide Convention which was approved by the General Assembly of the United Nations in December, 1948. It undertakes to create a whole category of new crimes and provides for the punishment of public officials, as well as private citizens for causing, among other things, "mental harm" to members of a racial group. It also commits the United States to the principle of the trial of its citizens in international penal courts and specifically commits the United States to the submission of disputes "relating to the interpretation, application or fulfillment" of the Convention to the International Court of Justice. It does many other things to affect and encroach upon the rights of Americans to keep their state and federal constitutions inviolate and undistorted by foreign influences and ideas, and to legislate for themselves, and to have their constitutions and laws interpreted and enforced by their own courts.

Moreover, on the way to completion for submission to our Senate, is a Covenant on Human Rights. The program is to have this document ratified as a treaty. It is full of provisions that can and will affect the basic right of Americans to legislate for themselves on matters heretofore of domestic concern. It can and will affect and disturb the intended constitutional relationship between the several states and the federal government. We are told that from time to time there will follow other pacts and conventions, to be ratified as treaties.

This accumulating body of treaty law can result in changing our form of government from a republic to a socialistic and centralized state—with such increase in the power of the federal government at the expense of the states that the doctrine of states rights and local self-government can become as nonexistent in the United States as in the highly centralized governments of Europe and Asia.

All this is being accomplished in the face of a definite provision in the United Nations Charter, without which the Charter itself would not have been ratified by the Senate, to the effect that, "Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state, or shall require the Members to submit such matters to settlement under the present Charter." (Article 2)
It is significant that the California court gave no force and effect to this provision of the Charter—though the President of the United States and the Secretary of State at the time of ratification publicly and solemnly advised the people of the United States that it was to have effect.

The internationalists get around this important provision by saying that once the United Nations undertakes the regulation of a particular matter, it ceases to be a domestic matter. This is the novel doctrine announced by Mr. Moses Moskowitz in the *American Bar Association Journal*, April, 1949, p. 285, where, in connection with the effect of this provision, he says:

Perhaps, the correct position should be that once a matter has become, in one way or another, the subject of regulation by the United Nations, be it by resolution of the General Assembly or by convention between member states at the instance of the United Nations, that subject ceases to be a matter being "essentially within the domestic jurisdiction of the Member States."

The President's Committee on Civil Rights proposes the possibility of relying on this doctrine along with *Missouri v. Holland* to effectuate the President's civil rights program. In its formal report to the President, the Committee suggests that Congress can, by passing legislation under Article 55 of the United Nations Charter, make "civil rights" an international matter rather than a domestic matter and by the treaty route completely void any constitutional objection to such legislation. Under a slight extension of the doctrine of the *Fujii* case, no action by the Congress might be necessary to put the whole of the civil rights program in operation, for if the rights of aliens can be raised by judicial decision to the level of citizens, without implementing legislation, why may not the Supreme Court of the United States in a case raising the issue declare any controversial element of the present civil rights program a part of the racial equality already set forth in the United Nations Charter and thus judicially impose the civil rights program upon the states without action by the Congress?

By and through treaty law-making the federal government can be transformed into a completely socialistic and centralized state. It only requires that the present provisions of the Declaration on Human Rights be incorporated into a treaty, either as an adjunct to the so-called Covenant on Human Rights (which has been suggested) or independently in a separate document.
For Article 22 of the Declaration provides that everyone has “the right to social security”, Article 23—that everyone has the right to “just and favorable conditions of work and to protection against unemployment” and that everyone has the right to “just and favorable remuneration.” Article 24 provides that everyone has the “right to rest and leisure” and “periodic holidays with pay.” Article 25 provides that everyone has “the right to food, clothing, housing, and medical care and necessary social services and the right to security in the event of unemployment, sickness, disability, widowhood, old age.” Article 26 provides that everyone has the right to education and that “education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms.” In other words, that education in the future shall be an instrumentality for propagandizing the citizens of America and of the world toward the promotion of a collectivist society as set forth in the Declaration.

Put these, or similar pronouncements, in treaty form, ratified by the Senate, and you have by a few pages of treaty language transformed the government of the United States into a socialistic state. Hence, the internationalists, if unopposed, cannot only effect through the treaty power a fundamental change in our government, but they can even commit the United States to largely help in financing a collectivist type of government for all the world. Examine the extraordinary over-all commitments in the Declaration (Article 22) to the effect that the “social security” to which everyone in the world is entitled is to be achieved “through national effort and international cooperation and in accordance with the organization and resources of each state.” Such loose and general language may easily be interpreted to mean that through international cooperation by Uncle Sam and in accordance with our greater resources we are to provide, or in a large part provide, social security for all the rest of the world.

An interesting side comment on this whole legal situation is that while most of our constitutional authorities had their “heads in the sand” of their enthusiasm to save the world, it took an English lawyer, Professor Lauterpacht, to make clear anew our constitutional position under Missouri v. Holland. As early as 1944 he pointed out that there was in this country a third body of law of at least equal dignity with our Constitution, and which superseded all state constitutions, decisions, and laws covering the same subject, and was supe-
rior to all prior enacted laws of Congress on the same subject, and which dangerously approached the status of an amendment to our federal Constitution. At the same time he pointed out that in other countries a ratified treaty is not part of municipal law until it has been made so by an express act of the national legislative processes. For example, in Great Britain treaties in any way affecting private rights—and these include most treaties—do not become the law of the land unless they have been made so by special act of Parliament.

Later, Mr. Carl Rix, a former President of the American Bar Association, said in July, 1949: "The effect in the United States of treaty law can be so far-reaching in its consequences that the word 'revolutionary' is not fully descriptive."

Even Mr. James Pomeroy Hendrick, the legal adviser to Mrs. Roosevelt, the Chairman of the Commission on Human Rights, admitted in his Progress Report as early as August 8, 1948 (Department of State Bulletin) that the program of the Commission on Human Rights was "revolutionary." He said:

The theory of the covenant in itself is revolutionary, an undertaking by international treaty to insure certain rights which have traditionally been regarded as being solely of national concern.

The trend, therefore, toward using the treaty-making power to enact new local laws or nullify existing local law and to change the relationship between the states and the federal government and to change even our Constitution and our form of government, constitutes a most serious threat to our American rights and liberties. It is not an overstatement to say that the republic is threatened to its very foundation. Why one should be called an "alarmist" for saying so, when even the proponents admit that their program is "revolutionary," is difficult to understand.

It needs to be pointed out again and again that in every nation of the world except in the United States (and to some extent, France) a treaty through an international agreement between the signatory nations requires implementation before it becomes domestic law. With us, a treaty is not only a treaty, but by virtue of our unique constitutional provision (Article VI), it automatically becomes "the supreme Law of the Land." There is nothing recent in the doctrine of the supremacy of treaty-made law in the United States as is obvious from the long record of judicial decisions which have applied this doctrine in the case of specific treaties carefully negotiated and limited
to special matters and to particular nations. Most practicing lawyers are presumably familiar with the application of the doctrine so limited. However, wholly unmindful of recent international developments and their impact on local law as disclosed in the Fujii case, the voters of this state are being called upon, under a joint legislative resolution at the November election, to approve an amendment, Section 33, Article II, of the state Constitution with respect to the disability of aliens to hold land by removing this disability as "to the citizens of such of the provinces of the Dominion of Canada as do not expressly or by implication prohibit ownership of provincial lands by citizens of this state." In other words, to amend a constitutional provision which in present form is contrary to the treaty provisions of the United Nations Charter and which, if amended as suggested, would be very much more offensive to the provisions of the Charter providing for universal racial equality (Senate Joint Resolution No. 9).

Lawyers and legislators generally are not familiar with the disturbing implications of this treaty supremacy doctrine as applied to present international purposes and procedures. We no longer have expert negotiators appointed for the specific negotiation of a particular treaty. For the first time, we have treaties drawn in the most loose and general language, and world-wide as to parties and as to matters involved. One might properly refer to them as "blank check" treaties, for they are not only couched in general, loose, vague, and undefined terms, but they so cover the whole gamut of so-called human rights and human relations as to make it impossible to ascertain the limits to which their language may commit the United States to a program of revolutionary change in our whole concept and theory of government.

Therefore, when the sponsors of this "blank check" treaty school of internationalists purport to assure the American people that there is no danger in such treaties because they are intended as declarations of ideals and aspirations only, until implemented by domestic legislation, they offer assurances which are totally at variance with our actual constitutional situation, for by virtue of the language of Article VI of the United States Constitution as liberally interpreted by the courts there is little or no distinction left or to be made as to how far a treaty may directly affect domestic law and effect a change in our form of government. A definite exemplification of this fact is found in the Japanese pawn-broker's license case. If anything would seem
to be essentially domestic, it would seem to be the right of the city of Seattle to refuse to grant a pawn-broker's license to an alien Japanese (*Asakura v. Seattle, supra*), and the same may be said of the Washington Inheritance Tax case (*Stixrud v. State, supra*).

It is impossible to foresee what may be effected by the "blank check" form of treaty. For example, our federal Constitution provides that nobody shall be elected to the office of President or Vice-President except a "natural born" citizen of the United States. Already the Declaration of Human Rights (Article 21, Section 2) provides, "Everyone has the right to equal access to public service in his country." Suppose some such loose language is incorporated in a treaty, because the treaty-making powers, namely, the President and the Senate, conclude that our friendly relations with other nations and the cause of world peace will be furthered by a treaty according to the nationals or the naturalized citizens of all countries the privilege of native born citizens to aspire to the office of President or Vice-President of the United States, what would the courts do about this kind of a treaty provided it had a noble preamble that its purpose was said to further race equality and world peace? Again, our Constitution vests full power in Congress to control immigration. By Article 14, Sec. 1, of the Declaration on Human Rights, "Everyone has the right to seek and to enjoy in other countries asylum from persecution." With this incorporated in a treaty the right of asylum would be to all nationals of all nations of the world, and what right then would a mere Congress have, by immigration laws or otherwise, to prevent such persons from entering the United States?

Without going into the matter in further detail, it is easy to see that this new procedure of "blank check" treaty making, whereby a treaty covers all the people in the world and all their manifold social, economic and governmental rights and relationships, may easily result in treaty law superseding and destroying large segments of domestic law and even changing many fundamental features of our form of government.

One of the greatest opportunities the Bar has to serve the American people is to explain this great legal and constitutional issue, for it is the people's right to know where they are being led and to determine whether they wish to follow further the Pied Pipers of internationalism, who are leading them to a complete change in their form of government under such noble phrases as "racial equality," "social jus-
At least the thinking of the lawyers and judges of the United States should be brought back to the position set forth by Chief Justice Hughes in 1929 at the annual meeting of the American Society of International Law, where he observed, inter alia, that when any attempt is made to use the treaty-making power to deal with matters which do not pertain to our external relations and to control matters normally and appropriately within the local jurisdiction of a state, it must be resisted and ground found for effectively limiting the treaty-making power to matters relating to foreign affairs and not allow its use to make laws for the people of the United States in their internal concerns. If our form of government is to be preserved we must at least get back to the doctrine of De-Geofroy v. Riggs—that the treaty-making power does not authorize amending or nullifying a provision of the Constitution nor “authorize a change in the character of the government or a change in the government of the states.”

I hope the American Bar Association, through its Committee on Peace and Law or otherwise, will immediately consider ways and means for making a complete study of this whole problem of “treaty law-making” and the legal and constitutional issues and implications involved therein—to the end that a considered and authoritative report may be published for distribution to the Bar, to the press, and to the public, alerting them to the dangers inherent in this admittedly “revolutionary” use of the treaty-making power to make domestic law and change our form of government. Such a report could be more important to the welfare of the American people than the report of the Hoover Commission. Meanwhile, we should all write our Senators and urge that any action by the United States Senate on the Genocide Convention, or any other similar treaty proposal, be stayed until further and adequate study can be made. It may be that a full and impartial study of the disturbing implications and legal effects of Article VI of our Constitution will indicate the necessity of a Constitutional Amendment in order to place the United States on an equality with the other members of the United Nations with respect to treaties.

Unless the inherent dangers to the rights of individuals and to the rights of the states and to the republic itself, through the expansion of the treaty-making power, are explained and exposed, and unless we take proper steps to guard our basic individual rights and free-
doms and the rights of the states and the integrity of the republic from the dangers implicit in the expansion of the treaty-making power, we will certainly fail in our duty as lawyers and be particeps criminis to "giving America away."