

structure of government guaranteed by the Constitution, or convey away the territory of the states.

These arguments were advanced time and time again in the Constitutional Convention, and in the conventions of the various states called to consider the adoption of the Constitution, and there are expressions of the courts to the effect that the treaty making power is limited by these guaranties of the federal Constitution. This, however, is an academic question, because it is not within human probability that there can ever come before the Federal Court the question of the validity of a treaty made by this country by which it surrenders or changes its form of government, or by which any of the prerogatives of the federal government are taken away, or republican form of government destroyed in the states. When the time comes, if ever it shall, that such a demand is made, it will be backed by a military power to enforce it rather than by the untrammelled exercise of the treaty-making power.

Considering the subject, however; from the academic view, certain principles are easily deduced. That the granting or purchase of territory is clearly within the treaty-making power is demonstrated by the law and usage of nations, and by the practice of our own country.²⁷ Undoubtedly it is not within the treaty-making power for the President and Senate to change the form of government, or to stipulate away any of the fundamental prerogatives of the federal government. These are guaranteed by provisions of the federal Constitution co-ordinate with the treaty clause. A treaty abdicating the functions of the Supreme Court of the United States, if the making of such a treaty can be imagined, would undoubtedly be declared unconstitutional because the provisions of the constitution creating the departments of government are of equal force and effect with that conferring the treaty-making power. These questions can only be settled by the arbitrament of war, but the other questions are those pertaining to the administration of the law in the courts of the country. They are likely to arise at any time and disturb the

²⁷ *Am. Ins. Co. vs. Canter*, 1 Peters 542.