states, was presented as recently as 1920, when the Court upheld a treaty and implementing statute providing for the protection of migratory birds.[367] "The treaty in question does not contravene any prohibitory words to be found in the Constitution. The only question is whether it is forbidden by some invisible radiation from the general terms of the Tenth Amendment."[368] The gist of the holding followed. "Here a national interest of very nearly the first magnitude is involved. It can be protected only by national action in concert with that of another power. The subject-matter is only transitorily within the State and has no permanent habitat therein. But for the treaty and the statute there soon might be no birds for any powers to deal with. We see nothing in the Constitution that compels the government to sit by while a food supply is cut off and the protectors of our forests and our crops are destroyed."[369]

The doctrine that seems to follow from this case and others is "that in all that properly relates to matters of international rights and obligations, whether these rights and obligations rest upon the general principles of international law or have been conventionally created by specific treaties, the United States possesses all the powers of a constitutionally centralized sovereign State; and, therefore, that when the necessity from the international standpoint arises the treaty power may be exercised, even though thereby the rights ordinarily reserved to the States are invaded."[370] It is not, in other words, the treaty power that enlarges either the federal power or the congressional power, but the international character of the interest concerned that might be acted upon.

Dicta in some of the cases lend support to the argument that the treaty power is limited by the delegation of powers among the branches of the National Government[371] and especially by the delegated powers of Congress, although it is not clear what the limitation means. If it is meant that no international agreement could be constitutionally entered into by the United States within the sphere of such powers, the practice from the beginning has been to the contrary;[372] if it is meant that treaty provisions dealing with matters delegated to Congress must, in order to become the law of the land,

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[367] Missouri v. Holland, 252 U.S. 416 (1920).

[368] 252 U.S. at 433–34.

[369] 252 U.S. at 435.

[370] 1 W. Willoughby, supra, at 569. *See also* L. Henkin, supra, at 143–148; Restatement, Foreign Relations, § 302, Comment d, & Reporters' Note 3, pp. 154–157.

[371] *E.g.*, Geofroy v. Riggs, 133 U.S. 258, 266–267 (1890); Holden v. Joy, 84 U.S. (17 Wall.) 211, 243 (1872). Jefferson listed as an exception from the treaty power "those subjects of legislation in which [the Constitution] gave a participation to the House of Representatives," although he admitted "that it would leave very little matter for the treaty power to work on." Jefferson's Manual, supra, at 299.

[372] Q. Wright, supra, at 101–103. *See also*, L. Henkin, supra, at 148–151.