U.S. Supreme Court cases

Re: Determination of the Legal Occupier

The natural result of conquest is to obtain jurisdiction over the territory. The U.S. Supreme Court has recognized that the conqueror/liberator is the (principal) occupying power, and is responsible for conducting the military occupation.

The following decisions are illustrative:

In U.S. v. Wong Kim Ark, 169 U.S. 649 (1898), the Justices held that:

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 . . .

In Dooley v. U.S., 182 U.S. 222 (1901), the Justices held that:

. . . . . The doctrine upon this subject is thus summed up by Halleck in his work on International Law: "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 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. . . . "

In Fleming v. Page, 50 U.S. 603 (1850) , the Justices held that:

. . . . 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.

Again in Fleming v. Page, 50 U.S. 603 (1850) , the Justices held that:

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.

In U S v. Chaves, 159 U.S. 452 (1895) , the Justices held that:

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.

In Dorr v. U S, 195 U.S. 138 (1904) , the Justices held that:

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.

. . . . .

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.

In MaCleod v. U S, 229 U.S. 416 (1913) , the Justices held that:

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.