

January 1935

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### Recommended Citation

J. W. Kelley, *When Black is White*, 12 *Dicta* 169 (1935).

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## When Black is White

## WHEN BLACK IS WHITE

By J. W. KELLEY, of the Denver Bar

**M**R. JUSTICE McREYNOLDS' dignified lament over the ruin of the American Constitution provoked by the recent Gold Decision\* is only one of a long list of similar complaints that have resounded through our history. That decision denied the citizen the right to be paid in gold which the government would immediately take away from him. Frequently in years gone by our cherished traditions have apparently gone to smash and innocent bystanders have concluded the end had come. The constitution had hardly got in working order when Thomas Jefferson purchased the Louisiana Territory. It was believed then in high quarters that the Sage of Monticello had made junk of the solemn guarantees of 1787. James Madison was charged with having wrecked the constitution when he brought on the war of 1812. Andrew Jackson's favorite doctrine in effect was that every official should interpret the constitution to suit himself. Then James K. Polk declared war on the young republic across the Rio Grande, not taking the entire responsibility but shifting the blame onto Mexico. If presidents could do these things, said the descendants of Cassandra, they were kings and our liberties were gone. Secession by the Southern states put another strain on the constitution. Texas had seceded from Mexico a few years before and we had welcomed her with open arms, aiding and abetting the secession and paying a large sum for the privilege. Then we helped West Virginia secede from Virginia in the midst of a war to end secession.

About that time Mexico, owing France, Spain and England a hundred million dollars, defaulted on the annual interest and the three creditors came with warships and seized the custom house at Vera Cruz and put Maximilian in as receiver. Those who loved the Monroe doctrine were inconsolable. The doctrine that no European power should extend its possessions on this continent we had firmly im-

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\*Norman v. B. & O. Ry. Co., 55 S. Ct. 407.

"Loss of reputation for honorable dealing will bring us unending humiliation; the impending legal and moral chaos is appalling."

—*Dissenting opinion.*

bedded in the foundations of our national system; only occasionally ignoring it, as when we allowed Great Britain to acquire a slice of our northern territory under the arrangement known as the northwest boundary treaty.

Among our national crown jewels consistency seems not to be numbered. Justice McReynold's brave warning, like a bugle blown in a sleeping encampment, did not arouse us as it should. We yawned and slept on. It had all happened before. A generation ago we learned we could not take over a few islands in the Pacific without being nagged by those who adored the firm restraints of the constitution. But after each wreck the constitution seemed even better than before: the more liberties we lost the more remained. We have come to believe that Webster's sonorous climax in his reply to Hayne should have been: "Union and Liberty, one and inseparable, adaptable and elastic!"

"Facit ex albo nigrum ex nigro album" is an old law maxim assuring us that under certain circumstances black can legally be white. It was never truer than now.

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## ANNUAL MEETING OF AMERICAN BAR ASSOCIATION

An old carpenter's mallet, glorified beyond its estate with bands of gold and silver, will, for the fifty-seventh year, boom out its command for silence when the American Bar Association members assemble in Los Angeles on July 15 for the opening day of the annual meeting.

Trimmed by the Colorado Bar Association for the second time in 1926 with bands of virgin silver and gold from the Pikes Peak Region, the hickory gavel is in reality an old carpenter's mallet that was purchased for seventeen cents in 1878 when the American Bar Association was founded. Since that date the mallet has made its appearance at every meeting.

Nearly five thousand lawyers will hear its command on July 15 when Scott M. Loftin, president of the association, raps for order. Advance hotel and special train reservations indicate that the national gathering will be well attended.