Introduction

This book explores further ramifications of International Legal Constructionism (ILC), a theory of U.S. constitutional interpretation first presented in the 2004 issue of the *Hastings Constitutional Law Quarterly*.[1] This interpretive theory argues that the U.S. Constitution is a treaty that must be construed in conformity with the United States' international legal obligations. One of ILC's claims is that the U.S. federal court system constitutes an international tribunal system. This book will elaborate on this claim and provide an international legal construction of different aspects of federal court jurisdiction, *viz.*, judicial review authority, the authority to use international law, and the appropriate manner of using such law.

A striking feature about the present international legal order is the great and growing number of international tribunals. Since the beginning of the twentieth century, numerous international tribunals of varying types have been created.[2] Although there were very few international

[1] *See* Francisco Forrest Martin, *Our Constitution as Federal Treaty: A New Theory of United States Constitutional Construction Based on an Originalist Understanding for Addressing a New World*, 31 HASTINGS CONST. L. QUART. 269 (2004) (describing ILC approach) [hereinafter, Martin, *Our Constitution as Federal Treaty*]; *see also* Francisco Forrest Martin, *The Constitution and Human Rights: The International Legal Constructionist Approach to Ensuring the Protection of Human Rights*, 1 FLA. INT'L. U.L. REV. 71 (2005) (same); *cf.* DAVID C. HENDRICKSON, PEACE PACT: THE LOST WORLD OF THE AMERICAN FOUNDING (2003) (arguing that Constitution is treaty from political science perspective); Torkel Opsahl, *An "International Constitutional Law"?* 10 INT'L. & COMP. L.Q. 760, 771 (1961) (arguing that Constitution was a treaty).

[2] *E.g.*, International Court of Justice (ICJ), International Military (Nuremberg) Tribunal (IMT), International Military Tribunal for the Far East (IMT-FE), International Criminal Court (ICC) and Tribunals for the former Yugoslavia (ICTY) and Rwanda (ICTR), UN Human Rights Committee (UNHRC), UN Committee to Eliminate Racial Discrimination

tribunals before the twentieth century,[3] two eighteenth-century international tribunal systems deserve special attention: the federal court systems respectively established under the Articles of Confederation[4] and the U.S. Constitution. Although the case law and academic literature providing an international legal construction of U.S. federal court jurisdiction is scarce,[5] it is not unknown. Indeed, "[f]rom the earliest days of the Republic, American courts and commentators have relied on principles of . . . international law to limit judicial jurisdiction."[6]

(CERD), UN Committee Against Torture (CAT), UN Working Group on Arbitrary Detention, European Court (and former Commission) of Human Rights, European Court of Justice, Inter-American Commission and Court of Human Rights, African Commission and Court of Human and Peoples' Rights, Human Rights Chamber for Bosnia and Herzegovina, International Criminal Tribunal for East Timor, World Trade Organization Panel and Appellate Body, North American Free Trade Agreement (NAFTA) Arbitral Tribunal, NAFTA Dispute Settlement Panels, International Tribunal for Law of the Sea (ITLOS), Benelux Court of Justice, Central American Court of Justice, Permanent Court of Arbitration, and Caribbean Court of Justice.

[3] The earliest example of an international tribunal appears to be one established in 1474 by the Holy Roman Empire for trying Peter von Hagenbach for crimes committed by his troops. Francisco Forrest Martin *et al.*, International Human Rights & Humanitarian Law: Treaties, Cases & Analysis 2 (2006).

[4] July 9, 1778 (entered into force Mar. 1, 1781) [hereinafter Articles of Confederation]. The Articles of Confederation constituted a treaty. Martin, *Our Constitution as Federal Treaty*, *supra* note 1 at 278–79.

[5] *See, e.g.*, Herbert A. Smith, The American Supreme Court as an International Tribunal (1920) (arguing that U.S. Supreme Court is quasi-international court); Thomas H. Lee, *The Supreme Court of the United States as Quasi International Tribunal: Reclaiming the Court's Original and Exclusive Jurisdiction Over Treaty-Based Suits by Foreign States Against States*, 104 Colum. L. Rev. 1765 (2004) (providing international legal discussion of Supreme Court's original jurisdiction); Thomas H. Lee, *Making Sense of the Eleventh Amendment: International Law and State Sovereignty*, 96 Nw. U. L. Rev. 1027 (2001–2002) (providing international legal explanation of the Eleventh Amendment).

[6] Gary B. Born, International Civil Litigation in United States Courts 70 (3d ed. 1997), *citing* Mason v. The Ship Blaireau, 6 U.S. 240 (1804); Rose v. Himely, 8 U.S. 241 (1808); D'Arcy v. Ketchum, 52 U.S. 165 (1850); The Bee, 3 Fed. Cas. 41, No. 1219 (D. Me. 1836); *see* Chisholm v. Georgia, 2 U.S. 419, 449 (1793) (Iredell, J., dissenting) (construction of Article III in conformity with conventional law of nations would be proper). In *Chisholm*, the Supreme Court examined whether Article III's diversity jurisdiction allowed the citizen of one state to sue another state. Iredell in his dissent stated that Article III must be construed in conformity with the conventional law of nations. He concluded that no norm under the conventional law of nations guaranteed the right of a citizen of one state to sue another state. However, in 1793, there was division among international legal

This book will explore the implications of providing an international legal construction to federal judicial power. However, before undertaking this exploration, let us first turn to the constitutional basis of International Legal Constructionism.

What Is Our Constitution?

What is our Constitution? What kind of legal instrument is it? It is not really that helpful to say that it is – well – a "constitution" because there a many different types of constitutions – state constitutions, corporate constitutions, intergovernmental constitutions, high school chess club constitutions. It certainly is not merely a statute. It could be a contract. Indeed, most folks wax theoretically and say that it is a social compact.[7] That's fair enough, but lawyers and judges tend to look for something a little bit less theoretical, and few politicians probably are very familiar with social compact theory. Yet, it's odd, but few judges, lawyers, or political leaders ever address what kind of legal instrument the Constitution represents. It certainly must be the case that determining the kind of legal instrument should be important to how one goes about interpreting it.

Instead, most constitutional interpretation does not begin with this fundamental threshold question but starts with examining only the text and moving outside it when the text is vague requiring the use of extraconstitutional authorities and most often making shortcuts by appealing to judicial precedents. However, the Constitution does not say what kind of extraconstitutional authorities are appropriate for construing it, and precedential shortcuts often beg the question by failing to address why earlier precedents using such extraconstitutional authorities are warranted. Consequently, one often ends up foundering on a Schylla of strict constructionism – desperately holding onto the rocks of a rigid textualism. Or, one descends into a Charibdis of judicial activism – swirled and sucked into the unfathomable depths of arbitrary authorities. One fails to safely navigate a constitutional course that is both loyal to the letter of the law, and responsive to new social and political realities such as globalization. Like the counsel given by Circe, it perhaps is best to

authorities over this issue. *See id.* at 425–26 (argument by U.S. Attorney General Randolph for the plaintiff).

[7] *See, e.g.*, ROBERT H. BORK, THE TEMPTING OF AMERICA: THE POLITICAL SEDUCTION OF THE LAW 19 (1991).

navigate closer to the Schylla of strict constructionism because of the lesser danger that it poses. Constitutional text is limited, extraconstitutional authorities are not, and limited government generally is more protective of individual liberties. However, Circe was no sailor, and we should not be bewitched by such advice. Like a well-helmed ship that sometimes can slingshot itself around a whirlpool and gain greater speed, a loose construction of the Constitution sometimes can increase individual liberty.

But both monsters largely are creations of our own. Both are created by a failure to recognize what kind of legal vessel the Constitution is. Failing to understand what the Constitution is encourages constitutional expositors to become modern-day buccaneers, creating mayhem as they ply the high seas of international relations accountable to none. Like another vessel bearing the same name, the Constitution's mission should be to exterminate piracy – not to be pressed into its service.

Our Constitution Is a Treaty

To properly understand what the Constitution is, it is necessary to see what the Founders thought it was. For them, the Constitution was a treaty between the thirteen states. Mind you, it was a peculiar kind of treaty. It was a sort of *foedus* – a suzerainty-type treaty that created a central government that controlled the international affairs of its states-parties. Indeed, our word "federal" comes from the Latin word "*foedus*," and it is this meaning of "federal" that the Framers had in mind when they used the word.[8] The Framers drafted the Constitution in order to replace the Articles of Confederation and to create a stronger central government that could ensure that the individual states did not violate the United States' international legal obligations – a repeated problem faced by the U.S. government under the Articles of Confederation.[9]

When one looks at the ratification debates during the Constitutional Convention, it is clear that the Framers recognized that the law of nations

[8] *See* SAMUEL H. BEER, TO MAKE A NATION: THE REDISCOVERY OF AMERICAN FEDERALISM 315 (1993) (arguing that when Madison used "foederal" in context of compact federalism, he meant contemporary conventional sense of *foedus*, or treaty).

[9] *See* James Madison, *Vices of the Political System of the United States* [1787], eds. William T. Hutchinson, *et al.*, 9 THE PAPERS OF JAMES MADISON 348–57 (1962–77) [hereinafter Madison, *Vices*] (states violated treaties with Great Britain, France, and Holland).

governing treaties also governed the replacement of the Articles with the Constitution.[10] This was noncontroversial. Indeed, in settling on a nine-state ratification rule for the Constitution, the Framers adopted the same numerical rule for ratifying treaties under the Articles.[11] This only made sense because the Constitution was a treaty.

The use of treaties for uniting states and consolidating peoples was not unusual at the time of the Constitution's drafting. John Jay, Rufus King, and others used the example of the *Treaty of Union* (1707) that united the states of England and Scotland, and consolidated the British people, as an anology to the Constitution uniting the thirteen states and consolidating the American people.[12] As one Anti-Federalist put it, "Who is it that does not know, that by treaties in Europe the succession and constitution of

[10] *See, e.g.*, THE FEDERALIST No. 43 (Madison) at § 9 (1788) (establishment of Constitution governed by law of treaties); 1 THE DEBATES IN THE SEVERAL STATE CONVENTIONS ON THE ADOPTION OF THE FEDERAL CONSTITUTION 424 (Jonathan Elliot ed., 1968) (Madison arguing that "civil law of treaties" governed replacement of Articles of Confederation) [hereinafter ELLIOT'S DEBATES]; 1 THE RECORDS OF THE FEDERAL CONVENTION OF 1787 122–23 (Max Farrand ed., 1937) [hereinafter FARRAND'S RECORDS] (same); Madison, *Vices*, § 8 (same); 1 FARRAND'S RECORDS 122–23, 324–25 (Hamilton recognizing treaty law governed replacement of Articles). This is not to say that those provisions in the Articles that were not covered by the Constitution were eliminated. The Constitution's Supremacy Clause continued to recognize that pre-Constitution treaties were still part of federal law. *See infra* discussion in Subsection 1.1 accompanying notes 40–41.

[11] ARTICLES OF CONFEDERATION, art. IX (nine states needed for ratification of treaties); *see* United States Constitution, Sept. 17, 1787, art. VII (entered into force June 21, 1788) (nine of thirteen states needed for ratification of Constitution) [hereinafter U.S. CONST.]. Although the Articles of Confederation required unanimous state consent for the Articles to be altered, ratification by all thirteen states was not required under the law of treaties for establishing the Constitution because state-party violation of a treaty allowed other states-parties to not observe their treaty obligations in regard to those states violating a treaty. Many of the thirteen states had violated the Articles of Confederation; other states-parties did not have to comply with the Articles' unanimous consent rule. *See* Martin, *Our Constitution as Federal Treaty*, *supra* note 1 at 283–91.

[12] *See* THE FEDERALIST No. 5 (Jay) at ¶ 3 *et passim* (1787); 1 FARRAND'S RECORDS 492–93 ("Mr. King was for preserving the States in a subordinate degree. . . . He did not think a full answer had been given to those who apprehended a dangerous encroachment on their jurisdictions. . . . The articles of Union between Engld. & Scotland furnish an example of such a provision in favor of sundry rights of Scotland.").

many sovereign states, ha[ve] been regulated?"[13] This practice of using a treaty for creating a constitution has continued.[14]

Of course, one could say that the "states" of the United States are different from foreign "states" – such as France or Japan. However, the Framers made no such distinction. They understood the states of the United States to have the same legal status as foreign states. Indeed, James Patterson (the author of the New Jersey Plan) considered using another term – namely, "districts" – but he subsequently rejected this term.[15] The First Congress also shared this conception of the states. For example, the First Congress recognized that those states (*viz.*, North Carolina and Rhode Island) that had not ratified the Constitution were to be considered foreign states.[16] The Founders – being very familiar with the law of nations – knew the international legal significance of using the term "state," and they retained the use of this term in the Constitution.[17]

Most importantly, the Constitution's text discloses its status as a treaty. What is a treaty? The *Vienna Convention on the Law of Treaties* provides the customary definition of a treaty: a treaty is "an international agreement concluded between States in written form and governed by international law."[18] The first requirement is met in that the Constitution is written. The second requirement also is fulfilled in that Article VII of the Constitution says that "the Ratification of the Conventions of nine states,

[13] *See* THE ANTI-FEDERALIST No. 75 (Hampden) at ¶ 2 (1788).

[14] *See, e.g.*, The General Framework Agreement for Peace in Bosnia and Herzegovina ("Dayton Agreement"), initialed Nov. 21, 1995, Annex IV (entered into force Dec. 14, 1995) (treaty establishing constitution for Bosnia and Herzegovina).

[15] "Notes Apparently Used by Patterson in Preparing the New Jersey Plan, June 13–15" in Notes of William Paterson in the Federal Convention of 1787, *available at* http://www.yale.edu/lawweb/avalon/const/patterson.htm (last visited Aug. 27, 2003).

[16] *See* Act of Sept. 16, 1789, 1 Stat. 69 (North Carolina and Rhode Island goods imported into United States considered to be goods imported from foreign state, country, or kingdom).

[17] Although the *Montevideo Convention on the Rights and Duties of States* establishes that a "federal state shall constitute a sole person in the eyes of international law," the states of the United States still meet the definition of states under the Convention in that they individually possess "(a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with the other states." Montevideo Convention on the Rights and Duties of States, Dec. 26, 1933, arts. 1 and 2, 49 Stat. 3097, TS. 81, 165 L.N.TS. 19, 3 Bevans 145 (entered into force Dec. 26, 1934) [hereinafter *Montevideo Convention*].

[18] *See* Vienna Convention on the Law of Treaties, May 23, 1969, art. 2 (1) (a), 1155 U.N.T.S. 331 (entered into force Jan. 27, 1980) [hereinafter *Vienna Convention*].

shall be sufficient for the Establishment of this Constitution between the states so ratifying the same."[19] Note here the use of the word "ratification," which is how treaties come into force, but most importantly, also note that the Constitution is established "between the states" – that is, it is an agreement.

The third requirement for a treaty is that it must be governed by international law. The best way to ensure that a treaty is governed by international law is to incorporate international legal norms into the very treaty itself,[20] and the Constitution does that. For example, the Supremacy Clause ensures that treaties are part of the supreme law of the land,[21] including old treaties entered into by the Articles Congress because international law required the recognition of old treaty obligations by new governments.[22] Also, Article I ensures that Congress can clarify international legal norms.[23] Article IV ensures the observance of the international legal rules of the territorial inviolability of states[24] and state coequality,[25] respectively, by prohibiting annexation of state territory by other

[19] U.S. CONST. art. VII.

[20] *See, e.g.*, Statute of the International Criminal Court, July 17, 1998, art. 21, U.N. Doc. 2187, U.N.T.S. 90 (entered into force July 1, 2002) ("The Court shall apply . . . applicable treaties and the principles and rules of international law. . . . ") [hereinafter *ICC Statute*]; Hague Convention (IV) Respecting the Laws and Customs of War on Land, Oct. 18, 1907, pmbl., T.S. No. 539, 1 Bevans 631, 36 Stat. 2277 (entered into force Jan. 26, 1910) ("Until a more complete code of the laws of war has been issued . . . the inhabitants and the belligerents remain under the protection and the rule of the principles of the law of nations . . . . ").

[21] *See* U.S. CONST. art. VI, § 2 ("all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land").

[22] *Id.* at art. VI, § 2 ("all Treaties *made* . . . shall be the supreme Law of the Land" (emphasis provided)); *see, e.g.*, EMMERICH DE VATTEL, 2 THE LAW OF NATIONS OR PRINCIPLES OF THE LAW OF NATURE APPLIED TO THE CONDUCT AND AFFAIRS OF NATIONS AND SOVEREIGN, § 191 (1758) [hereinafter, VATTEL, LAW OF NATIONS]; SAMUEL PUFENDORF, 8 ON THE LAW OF NATURE AND OF NATIONS, § 8 (1672) (recognizing successor state responsibility for complying with treaties entered into by earlier state).

[23] U.S. CONST. art. I, § 8, cl. 10 (Congress shall have the power "To define and punish . . . Offences against the Law of Nations").

[24] *See, e.g.*, Charter of the United Nations, June 26, 1945, art. 51, 59 Stat. 1031, T.S. 993, 3 Bevans 1153 (entered into force Oct. 24, 1945) ("Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations") [hereinafter *UN Charter*].

[25] *See, e.g.*, VATTEL, THE LAW OF NATIONS, *supra* note 22, *Preliminaries*, at § 18 ("small republic is no less a sovereign state than the most powerful kingdom"); *UN Charter*, art. 2 (1) (recognizing sovereign equality of states).

states[26] and guaranteeing full faith and credit between states.[27] Article I also guaranteed that states retain their international legal personality and sovereignty by being able to enter into agreements with each other and with foreign nations (of course, subject to congressional approval *per* the "foederal" approach).[28] Even when the Constitution did not explicitly incorporate an international legal rule, the Framers recognized that the law of nations governed the Constitution's construction, as when there was no objection to Edmund Randolph's argument during the Virginia Constitutional Convention that Congress could not violate the law of nations governing navigational rights on the Mississippi – even if there was no explicit prohibition in the Constitution.[29]

It just was common sense to the Founders that a constitution governing a nation must itself be governed by the law of nations. James Madison,[30] John Jay,[31] Alexander Hamilton,[32] Edmund Randolph,[33] William Davie,[34] and others all recognized that the Constitution could not be interpreted to violate the United States' international legal obligations because of the Constitution's status as a treaty.

[26] *See* U.S. Const. art. IV, § 3 ("[N]o new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.").

[27] *See id.* at art. IV, § 1 ("Full faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State.").

[28] *Id.* at art. I, § 10, cl. 3 ("No State shall, without the consent of Congress, . . . enter into any Agreement or Compact with another State, or with a foreign Power . . . ."); *see Vienna Convention*, art. 6 ("Every State possesses the capacity to conclude treaties.").

[29] 3 Elliot's Debates 362.

[30] *See, e.g.*, The Federalist No. 43 (Madison) at § 9 (1788) (establishment of Constitution governed by law of treaties); 1 Elliot's Debates 424 (Madison arguing that "civil law of treaties" governed replacement of Articles of Confederation); 1 Farrand's Records 122–23 (same); James Madison, *Vices*, § 8 (same).

[31] *See* The Federalist No. 64 (Jay) at ¶ 12 (1788) (constitutional authority of Congress to make laws does not extend to breaking treaties).

[32] *See* 1 Farrand's Records 324–25 (establishment of Constitution governed by treaty law).

[33] *See* 3 Elliot's Debates 362 (congressional authority to control navigation on Mississippi River cannot violate law of nations).

[34] *See* 4 *ibid.* 119 (congressional authority to make laws does not extend to violating law of nations).

Therefore, even though most national constitutions are not treaties, both the text and original public understanding of the Constitution discloses the Constitution's legal status as a treaty.

Constitutional Canards

However, there are a number of old canards rejecting the idea that the Constitution is a treaty that have become embedded in our constitutional culture. For example, some folks argue that the Constitution is not a treaty because it was "ordain[ed] and establish[ed]" by the people, as its Preamble says.[35] This conclusion is incorrect. The Constitution was ratified by individual state conventions – not by the American people as a whole in a single convention. Indeed, the fact that the Constitution says that it is ordained and established by the people reconfirms its status as a treaty because the law of nations itself recognized in the eighteenth century that the original locus of sovereignty resided in the people – not states.[36]

Another myth is that James Madison – the "father of the Constitution" – stated that the Constitution was not a treaty. Actually, what Madison stated a couple of times is that our constitutional *system* was not a "mere league or treaty."[37] Madison was using the term "treaty" in its somewhat arcane

[35] U.S. Const. pmbl.

[36] *See, e.g.*, J.J. Burlamaqui, 2 The Principles of Natural and Politic Law, pt. II, ch. VI, § VI (1748) ("sovereignty resides originally in the people"); Francisco de Vitoria, On the Law of War (1557); *see* Ruben C. Alvarado, *Fountainhead of Liberalism*, 10 Common L. Rev. (1994), *available at* http://www.wordbridge.net/ccsp/cm10_font.html (last visited Feb. 15, 2003) (sovereignty resides in peoples (*i.e.*, nations) – not states – under international law).

[37] 2 Farrand's Records 93 (Madison "considered the difference between a system founded on the Legislatures only, and one founded on the people, to be the true difference between a league or treaty, and a Constitution."); James Madison to Daniel Webster (Mar. 15, 1833), *in* 1 The Founders' Constitution, ch. 3, doc. 14 (ed. Philip B. Kurland & Ralph Lerner), *available at* http://press-pubs.uchicago.edu/founders/documents/v1ch3s14.html (last visited Feb. 15, 2003) ("[T]he Constitution was made by the people, but as imbodied into the several states, who were parties to it and therefore made by the States in their highest authoritative capacity. They [*i.e.*, the states] might, by the same authority & by the same process have converted the Confederacy into a mere league or treaty; or continued it with enlarged or abridged powers; or have imbodied the people of their respective States into one people, nation or sovereignty; or as they did by a mixed form make them one people, nation, or sovereignty, for certain purposes, and not so for others.").

sense of "league." And, he was right. Our constitutional system was not merely a league, which lacks a central government. He did not mean to say that the Constitution was not a treaty in sense of being a legal instrument. Indeed, during the Constitutional Convention, Madison recognized that the international law governing treaties also governed the establishment of the Constitution.

The claim that the Constitution was not a treaty received quite a bit of exposure in the early nineteenth century during the states' rights and federal law nullification controversy. The nationalists – such as John Marshall, Daniel Webster, and Joseph Story – argued that the Constitution was not a treaty on a number of grounds, all false. Webster and Story argued that the Constitution was not a treaty because a treaty allowed its individual states-parties unilaterally to construe the treaty that could lead to another state-party claiming a treaty violation and the latter's lawful withdrawal from the treaty.[38] However, this was not true. Treaties – such as the Articles of Confederation, the *Jay Treaty* (1794), and the *Treaty of Ghent* (1814) – had provisions, respectively, providing for the establishment of international courts and/or boards of commissioners to resolve treaty disputes between states-parties.[39] Indeed, under the Articles of Confederation, states repeatedly used federal courts to adjudicate disputes.[40] The

[38] *See* Daniel Webster, *Speech to Congress* (Jan. 26, 1830), *in* EDWIN P. WHIPPLE, THE SPEECHES AND ORATIONS OF DANIEL WEBSTER, WITH AN ESSAY ON DANIEL WEBSTER AS A MASTER OF ENGLISH STYLE (1879) (states are "own judges" in construing treaty because of absence of "superior" authority); JOSEPH STORY, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES, bk. 3, ch. 3, § 321 *et passim* (1833) (each state allowed to construe treaty because of absence of "common arbiter").

[39] ARTICLES OF CONFEDERATION, art. IX (providing for court and boards of commissioners); Jay Treaty, Nov. 19, 1794, art. 6 (entered into force Oct. 28, 1795), *available at* http://www.yale.edu/lawweb/avalon/diplomacy/britian/jay.htm (last visited Oct. 5, 2003) (providing for board of commissioners); Treaty of Ghent, Dec. 28, 1814, art. 4, (entered into force Feb. 17, 1815), *available at* http://www.yale.edu/lawweb/avalon/diplomacy/britian/ghent.htm (last visited Oct. 5, 2003) (providing for board of commissioners).

[40] Connecticut v. Pennsylvania, 23 JOURNALS OF THE CONTINENTAL CONGRESS 1774–1789 6–32 (Worthington C. Ford *et al.*, eds., 1912) (1783 dispute over Wyoming Valley adjudicated by federal court established under Articles of Confederation); Massachusetts v. New York, 33 *ibid.* 617–29 (territorial dispute adjudicated by federal court established under the Articles and subsequently settled); Georgia v. South Carolina, 31 *ibid.* 651 (congressional resolution approving establishment of federal court for resolving territorial dispute).