The Constitution as Treaty transforms the conceptualization of U.S. constitutional law by exploring the interpretive implications of viewing the U.S. Constitution as a treaty. It argues that federal courts constitute an international tribunal system, and, as such, their jurisdiction is governed by international law enabling them to exercise judicial review authority and undercutting much of the judicial activist critique. The Constitution as Treaty continues with an examination of what international law is and its major interpretive principles in order to set the stage for examining how different sources and principles of international law are intrinsically integrated into U.S. constitutional law and, thereby, are available to federal courts for deciding cases. It addresses the Charming Betsy Rule, the non-self-execution doctrine, the last-in-time rule, and the proper use of customary international law and other international law not mentioned in Article III. The Constitution as Treaty concludes that federal courts generally must construe the United States’ international legal obligations liberally.

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THE CONSTITUTION AS TREATY

THE INTERNATIONAL LEGAL CONSTRUCTIONALIST APPROACH TO THE U.S. CONSTITUTION

FRANCISCO FORREST MARTIN

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The Center for International Human Rights Law, Inc.
This book is dedicated to the memories of William C. Martin and Stanley A. Teitler, and to their grandson, Jacob William Simon Teitler-Martin.

The author wishes to thank Bill Burke-White, James Sofka, Michael Lawrence, and John Berger for their very helpful and detailed comments on this book. The author also wishes to thank Geoffrey Hazard and those at the 2005 International Law Association Annual Weekend Conference who commented on earlier versions of parts of this book.
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In 1789, the First Congress gave custody and charge of the U.S. Constitution to the Department of Foreign Affairs – the predecessor to the State Department. This bit of historical trivia may strike many as being somewhat odd. After all, why would Congress place the Constitution in the custody of a department charged with managing the foreign affairs of our country? Would it not have made more sense to place the Constitution with a department under the supervision of Congress or with the Supreme Court – the branches of our federal government that respectively make and interpret U.S. law? Only that part of U.S. law that concerns other nations – namely, treaties – should have been placed in custody of the Department of Foreign Affairs, and the Constitution is not a treaty. Or, is it?

1 See "An act for establishing an executive department to be denominated the Department of Foreign Affairs," 1 Stat. 29, 1st Cong. 1st Sess., ch. 4, § 4, (July 27, 1789).