

Index

- ABA. See American Bar Association
- Abbott v. Abbott, 142
- abduction, 79, 126
 child, 430–431
 U.S. jurisdiction and, 127–128
- Abebe, Daniel, 138–139
- accommodation, 7–8
- accreditation, 255
- ACHR. See American Convention on Human Rights
- Act of State Doctrine, 59
- ACTA. See Anti-Counterfeiting Trade Agreement
- activity-based jurisdiction, 447
- Adams, John, 17, 292
- Adams, John Quincy, 26
- Agreed Measures for the Conservation of Antarctic Fauna and Flora, 275
- Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), 253, 285, 313
- Agreement on Trade-Related Investment Measures (TRIMs), 312–313
- Agreement with Canada relating to Albacore Tuna Vessels, 269
- Agreement with the Russian Federation on Management of the Alaska-Chukotka Polar Bear Population, 269
- Air France v. Saks, 131–132
- Aircraft Equipment Protocol, 274
- Alberto-Culver v. Scherk, 474, 475
- Algiers Accords, 284, 307
- ALI. See American Law Institute
- Alien Tort Statute, 337–338, 355–356
- Allen, Florence Ellinwood, 47–48
- Amendment to the Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries, 268–269
- American Bar Association (ABA), 46, 56, 198
 Support for private international law treaties, 423
- American Convention on Human Rights (ACHR), 153–154, 463
- American exceptionalism, 91, 199
- American Insurance Association v. Garamendi, 223–224, 325–327
- American Law Institute (ALI), 4–5, 6–7, 66, 83, 90, 199–200
 Foreign Relations Law statements by, 115
 Third Restatement decision by, 62
- American revolutionaries, 15
- American Society of International Law (ASIL), 37, 56, 58–59, 62–63, 418
- amicus briefs, 123, 132
- analogies
 treaty-as-contract, 105–106, 122, 466, 477
 treaty-as-delegation, 94–95, 145
 treaty-as-statute, 106–115, 116, 466
- Anderson, Chandler, 42–43
- Antarctic Conservation Act of 1978, 275
- Antarctic Treaty, 275
- antebellum, 28
- Anti-Counterfeiting Trade Agreement (ACTA), 285, 320–321, 327–328
- anti-federalism, 19, 30–31
- armed conflict
 RCA use during, 374
 suffering in, 358–359
- Arms Control and Disarmament Act of 1961, 301–302, 310

- Arms Control and Inspection in American Law (Henkin), 59
- arms control treaties, 220, 257–259
- by Bush, George W., 323
- by Obama, 314–315
- arms embargo, 44
- Arms Export Control Act, 259
- Arms Trade Treaty, U.N., 314–315
- Army Articles of War, U.S., 386
- Article II treaties, 8, 283
- complaints against, 284
- congressional-executive agreements and, 88
- decline in, 295–296
- implementation of, 472
- importance of, 331, 462
- limits on, 291–292
- power of, 444
- preemption by, 444–445
- prevalence of, 295, 462
- rivals to, 299–300
- Senate approval of, 454
- super-majority protection of, 471–472
- trends in, 329
- Articles of Agreement, 118
- Articles of Confederation, 16, 148
- contradiction in, 185
- period of, 288
- treaties under, 187–188
- Asakura v. City of Seattle, 42–43
- ASIL. See American Society of International Law
- asset-based financing rules, 250–251
- asylum, 365
- Atomic Energy Act of 1954, 301–302
- Auguste v. Ridge, 81
- Authorization for the Use of Military Force (AUMF), 385
- Avena and other Mexican Nationals (Mexico v. United States of America), 167–168
- Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, 270
- B. Altman & Co. v. United States, 298
- Bacon, Selden, 34–35
- Baker v. Carr, 343, 345–347, 356
- multi-factor test of, 350
- prudential factors in, 349
- Bartram case, 50–51
- self-execution determination of, 51
- Basel Accord on Capital Adequacy, 322
- baseline
- protection by, 393
- Third Restatement as, 4, 7
- Baumgartner, Samuel B., 441
- Bederman, David, 1–2, 92
- BG Group v. Republic of Argentina, 142–143, 476, 477
- Bihani v. Obama, 171–172
- bilateral cooperation, 244
- bilateral investment treaties (BITs), 264, 312–313, 476
- bilateral treaties, 236
- bilingualism, 129–130
- Bill of Rights, 180, 184, 400
- binding/nonbinding distinction, 298–299
- Biological Weapons Anti-Terrorism Act of 1989, 258
- Biological Weapons Convention. See Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction
- BITs. See bilateral investment treaties
- Black, Forrest Revere, 197–198
- black letter provisions, 67, 70
- black seamen, 27–28
- Blackstone's Commentaries, 16
- Bond v. United States, 181–182, 360, 410
- consequences of, 405–408
- CWC and, 403–405
- indications from, 402
- results of, 213–214
- Roberts, J. on, 219
- Scalia, J. on, 186–187, 217–218
- Supreme Court decision in, 228
- Thomas, J. on, 217–218
- Borchard, Edwin, 309–310
- Borchers, Patrick, 123, 422–423, 436
- Boumediene v. Bush, 345
- Bradley, Curtis, 87–88, 137–138, 207, 220, 344
- Brand, Ronald, 448
- Brandeis, Louis (justice), 110
- Breard, Angel, 341
- Breard v. Greene, 341
- Brennan, William (justice), 125, 346
- travaux d'elved into by, 130–131
- Breyer, Justice Stephen, 157, 349
- Avena and other Mexican Nationals dissent by, 168
- opinion of, 163–164

- Breyer, Justice Stephen (cont.)
 on *Sanchez-Llamas v. Oregon*, 167
- Bricker, John W., 10–11, 46–47, 155
- Bricker Amendment. See “Proposed Constitutional Amendment Relative to Making of Treaties and Executive Agreements”
- Bricker controversy, 59, 202–203
- British common law, 100
- British creditors, 103
- Brussels Convention, 445, 458
- Buell v. Mitchell, 75, 76
- Burbank, Stephen, 125
 U.S. as “reluctant partner,” 125, 420, 426
- Bureau of Indian Affairs, 137
- Burlingame Treaty, 34
- Burnham v. Superior Court, 444
- Bush, George H. W., 128
- Bush, George W., 140, 236, 247
 arms control by, 323
 executive preemption power expanded by, 326
 Russia response to, 324
 trade agreements of, 318
- CAFTA. See Dominican Republic–Central America Free Trade Agreement
- Cape Town Convention on International Interests in Mobile Equipment, 274
- Cape Town Treaty Implementation Act of 2004, 251, 274
- capital convictions, 224–225
- Capitol Hill, 129
- Carolina Police Law, 28
- Carter, Jimmy, 151, 153–154, 307
- Case Concerning Avena and Other Mexican Nationals, 167–168
- case law, 73
- CAT. See Convention Against Torture
- CCJ. See Conference of Chief Justices
- CEDAW. See Convention on the Elimination of Discrimination against Women
- CFE. See Treaty on Conventional Armed Forces in Europe
- Chaco War, 44
- Charming Betsy canon, 137
- Charter of the Organization of American States, 265–266
- Chase, Samuel, 21–22
- chemical weapons, 217
 control over, 213
 definition of, 404–405
 elimination of, 374
 stockpiles of, 373
- Chemical Weapons Convention (CWC), 213, 220, 311, 373
- Bond v. United States and, 403–405
 controversy of, 363
 Hungary ratification of, 375–376
 nature of, 219
 ratification of, 372, 375, 377–378
 RUDs of, 373–374
 Senate on, 378
- Chevron deference, 9–10, 141, 466
 Bureau of Indian Affairs and, 137
 rationale of, 134
 two-step test for, 136
- Chevron Deference and Foreign Affairs (Bradley), 137–138
- Chevron v. Natural Resources Defense Council, 94, 134, 136, 138
 INS v. Cardoza-Fonseca reliance on, 134–135
 legal scholars on, 138
 refugees impacted by, 135
 treaty interpretation approach of, 146
- Chevronizing Foreign Relations Law (Posner and Sunstein), 138
- child abduction treaty, 254–255, 430–431
- China, 33
- Chinese miners, 33
- choice-of-law treaties, 432
- choice-of-court. See Hague Choice of Court Convention
- choice-of-forum, 431
- CISC. See Convention on the International Sale of Goods, U.N.
- City of Boerne v. Flores, 207–208
- civil justice systems, effectiveness of, 457
- civil rights, 46
- Civil War, 29, 99, 292
 Amendments after, 193–194
 commerce power after, 31
 end of, 296
 slave states before, 47
- Clean Air Act, 267
- clear statement rule, 216–217, 219–220
- Clinton, Bill, 128
 foreign policy concessions by, 375
- Clinton, Hillary, 450–451
 and private international law, 450–451

- CoCC. See Hague Choice of Court Convention
- Cold War
 - isolationist and internationalist parties in, 375
 - security pacts during, 302–303
 - threat from, 363
- comity, 475, 476–477
 - and federalism, 415, 416
 - as traditional U.S. approach to private international law, 416
- Commerce Clause, 10–11, 195–196, 402
- commerce power, 31
- commercial and securities law, 250
- commercial dispute settlement, 255–257
- Commission on International Rules of Judicial Procedure, 426
- Committee of U.S. Citizens Living in Nicaragua v. Reagan, 77–78
- Compacts Clause, 42, 181, 182, 186
 - international norms enforced by, 223
 - prohibition by, 222
 - states unconstrained by, 222
- compliance, 150–151, 158, 168, 181–182, 217–218, 227, 271–277
 - challenged, 263
 - Congress on, 186–187
 - courts on, 280
 - facilitation of, 8, 10, 237, 473
 - guarantee of, 53
 - with human rights treaties, 226
 - with international law, 59–60, 186
 - judiciary branch and, 355
 - Medellin v. Texas and, 465–466
 - monitoring of, 12–13
 - obstacles to, 224–225
 - by Presidents, 345, 466–467
 - ratification and, 18
- comprehensive enactment, 273–274
- Comprehensive Nuclear Test Ban Treaty, 311, 313–314
- Conference of Chief Justices (CCJ), 453
- Congress of United States
 - alternate approval process by, 290
 - approval through, 317
 - Article I powers of, 155
 - broad power of, 192
 - federal crimes defined by, 245
 - implementing legislation by, 153, 159
 - international agreements and, 297
 - LOAC and, 409
 - migratory birds regulated by, 40–41
 - national defense authority by, 301–302
 - Necessary and Proper Clause powers, 186–187, 194
 - “pre-authorized” agreements in, 12
 - ratification by, 18
 - treaty interpretation by, 98
- congressional-executive agreements, 12, 57, 68, 80, 282–283, 328–330
 - Article II treaties and, 88
 - defensive stance of, 318–319
 - on economic matters, 312
 - extradition with, 347
 - and trade agreements, 331
- consensus, 274–275, 468
 - deterioration of, 363
 - on implementing legislation, 468
 - Third Restatement reflection of, 14
 - treaties product of, 121
 - on treaty interpretation, 121
- Constitution, U.S., 2. See also Framers of the U.S. Constitution
 - Article II of, 11–12, 182, 221, 289
 - Article III of, 34–35, 133
 - Article IV of, 95
 - Article VI of, 304
 - attempted amendments to, 199
 - Fourteenth Amendment to, 34
 - international agreement rules in, 287, 309
 - interpretive rules in, 100
 - limitations by, 32, 153, 200
 - non-self-executing doctrine and, 175, 240
 - practical content of, 20
 - self-execution and, 175
 - Tenth Amendment of, 68
 - Third Restatement and, 223
 - treaties and, 117
 - Treaty and Supremacy clauses of, 19
 - treaty power limits by, 189
 - unlimited sovereign power of, 35
- constitutional avoidance principle, 217
- Constitutional Convention, 17, 36
 - debate during, 288
 - impetus behind, 54
 - indirect incorporation rejected by, 49
- constitutional litigation, 95
- Consular Convention, 224–225, 262–263
- Continental Congress, 17, 26
- contracts, 9–10
 - Anglo-American common law on, 100
 - commercial, 105

- contracts (cont.)
 - inconsistent precedents of, 115–116
 - interpretation of, 116–117
 - obligations of, 111
 - private law, 101
 - treaty interpretation model of, 105–106, 122, 466, 477
 - two-party, 112–113
- Controlled Substances Act, 249
- Convention against Corruption, U.N., 247–248
- Convention Against the Taking of Hostages, 246
- Convention Against Torture (CAT), 81, 142, 154–155, 248–249, 311–312
- Convention against Transnational Organized Crime, 248
- Convention for the Conservation of Anadromous Stocks in the North Pacific Ocean, 267
- Convention for the Suppression of Terrorist Bombings, U.N., 246
- Convention for the Suppression of the Financing of Terrorism, U.N., 246
- Convention on Choice of Court Agreements, 273
- Convention on Independent Guarantees and Stand-by Letters of Credit, U.N., 252
- Convention on International Interests in Mobile Equipment, 250–251
- Convention on the Assignment of Receivables in International Trade, U.N., 252
- Convention on the Conservation and Management of High Seas Fisheries Resources in the North Pacific Ocean, 268–269
- Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean, 268–269
- Convention on the Elimination of Discrimination against Women (CEDAW), 153–154, 223, 314–315
- Convention on the International Sale of Goods, U.N. (CISG), 250
- Convention on the Physical Protection of Nuclear Material, 258
- Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, 246
- Convention on the Prevention and Punishment of the Crime of Genocide, 5–6, 45, 154–155, 311–312
- crimes articulated in, 244–245
- efforts toward ratification of, 199
- Holman, Frank opposition to, 46
- implementing legislation for, 245–246
- international consensus reflected by, 274–275
- ratification of, 49–50
- Convention on the Privileges and Immunities of the United Nations, 170
- Convention on the Prohibition of the Development, Production, Stockpiling, and Use of Chemical Weapons and on Their Destruction, 246
- Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction (Biological Weapons Convention), 258
- Convention on the Protection of Migratory Birds, 41
- Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) of 1958, U.N., 255–256
- Convention on the Rights of Persons with Disabilities (CRPD), 155–156, 212–213, 261–262, 314–315
- Convention on the Rights of the Child (CRC), 155–156
- Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, 261
- Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, 261
- Convention on the Settlement of Investment Disputes Between States and Nationals of Other States, 256
- Convention on the Status of Refugees, U.N., 121–122, 128, 262
- Convention on the Use of Electronic Communications in International Contracts, U.N., 251–252
- Convention to Combat Desertification, U.N., 268
- Cook v. United States, 110

- Cooley, Thomas, 31–32
 General Principles of Constitutional Law in
 the United States, 31
 corruption, 247
 Corwin, Edward, 36
 courts, 84
 autonomy of, 70–71
 on compliance, 280
 contract model and, 111
 deference of, 120
 on human rights treaties, 153, 177
 ill-suited foreign policy decisions of, 146
 international agreements and, 97
 presumption by, 166–167
 rule of construction applied by, 124
 self-execution questions of, 384–385
 statutes accustomed to, 107
 travaux use by, 118
 treaties enforced by, 150, 151, 159
 treaty interpretation by, 98–99
 before and after World War II, 335
 Covenant of the League of Nations, 37, 38
 Crandall, Samuel, 239–240
 CRC. See Convention on the Rights of the
 Child
 criminal law treaties, 242–243
 criminal suspects, transnational transfer of,
 127–128
 Crosby v. National Foreign Trade Council, 223
 Croswell, Simon Greenleaf, 34–35
 CRPD. See Convention on the Rights of
 Persons with Disabilities
 Cuba, embargo against, 342–343
 Cuban Missile Crisis, 308
 Curtis, Jerome J. Jr, 422
 custody issues, 431, 433, 434
 CWC. See Chemical Weapons Convention
 CWC Implementing Act, 213–215, 216,
 246–247, 273–274, 378, 404–405

 Dames & Moore v. Regan, 307–308, 321,
 325–327, 332
 De Lima v. Bidwell, 51
 death penalty, 75, 76, 223
 Declaration of Independence, 16
 defeasance power, 210–213
 defense cooperation, 257–259
 Defense Trade Cooperation Treaties, 231, 259
 deference, 94, 119. See also Chevron deference
 of courts, 120
 to Executive Branch, 130–131, 145
 to Executive branch after 9/11, 139–143
 “great weight” doctrine, 119–120
 Hamdan v. Rumsfeld lack of, 142
 Third Restatement on, 133
 Define and Punish Clause, 183–184
 delegations, 129
 treaty-as-delegation model, 94–95, 145
 democratic governance, 209
 Department of Defense, 367–368, 370, 398
 destroyers-for-bases agreement, 305
 Detainee Treatment Act, 142
 Dietary Health Education Act of 1994, 249
 Digital Millennium Copyright Act, 253
 diplomatic activity, 284
 direct legislative incorporation, 256, 273
 discovery, 123
 doctrines, 12–13
 domestic implementation, 162–163, 168,
 468–469, 471
 domestic law, 53–54, 78, 90, 181, 238,
 279–280, 476
 democratic control of, 233
 without implementing legislation, 152
 treaties as, 181
 treaty implementation as, 238
 treaty language in, 220
 of U.S., 464
 domestic penal legislation, 396, 398
 Dominican Republic–Central America Free
 Trade Agreement (CAFTA), 317–318
 double taxation treaties, 125, 269–270
 drafting history, 63
 Dred Scott v. Sanford, 31
 Due Process Clause, 444–445
 Dulles, Secretary of State John Foster, 87–88

 Eastern Airlines v. Floyd, 131–132
 eastern bloc, 364–365
 Eisenhower, Dwight D., 155
 human rights treaties during, 49–50
 world view of, 363
 Elkison v. Deliesseline, 25
 Empresa Cubana del Tabaco v. Culbro Corp.,
 342–343
 environmental treaties, 266–269
 Erie Railroad v. Tomkins, 439–440
 European Court of Justice, 117
 European powers and treaty practices, 16, 144
 European Union
 extradition treaties with, 243–244
 mutual legal assistance treaties with, 244

- exclusivity, presumption against, 126–127
- Executive Agreements, 69–70
- Executive Branch, 9, 33, 93, 230–231
 - adverse interpretation by, 1–2
 - authority of, 132
 - on Convention against Transnational Organized Crime, 248
 - deference to, 130–131, 145
 - Hamdan v. Rumsfeld defeat of, 139
 - interpretation by, 98, 122, 466–467
 - judicial treaty discourse deference to, 94, 119
 - recommendation to, 281
 - reluctance by, 239
 - restraint by, 210
 - treaty interpretations by, 94, 98, 466–467
 - treaty making practices of, 95–96
 - unilateral Presidential authority, 87
 - views of, 117
- Executive Order, 2
- executive preemption power, expansion of, 326
- Experts Group, 455
- extraditable offenses, 126, 249
- extradition treaties
 - bilateral nature of, 243
 - with European Union, 243–244
 - main goal of, 127–128, 243
- extraterritorial discovery, 435
 - Societe Nationale Industrielle Aerospatiale v. U.S. District Court and, 436
 - via Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters, 436
- FARRA. See Foreign Affairs Reform and Restructuring Act
- FCN. See friendship, commerce and navigation
- Federal Arbitration Act, 255–256, 273
- Federal Aviation Administration, 251
- Federal Aviation Administration's Civil Aviation Registry, 274
- Federal Communication Commission, 118
- federal crimes, 245, 246
- Federal Food, Drug, and Cosmetic Act, 249
- federal government
 - enumerated powers of, 35–36
 - separation of powers of, 35, 37
 - standing created by, 334
- federal judiciary, 132–133
- federal power, 29, 41–42, 52–54
- Federal Rules of Civil Procedure, 123, 414, 436, 474
- federalism, 10–11, 13, 53, 179, 459, 468. See also anti-federalism; “new federalism”
 - arguments for, 206–207
 - assimilation of, 211
 - complications for transnational legal problems and, 14, 417, 454
 - consideration of, 245–246
 - decline of, 420–427
 - diminished issues of, 255–256
 - Executive Order 12,612 on, 434
 - Hague Convention on the Civil Aspects of International Child Abduction and, 431–432
 - on ICCPR, 211
 - impact of, 226
 - innovation in, 180–181
 - Jeffersonian concept of, 42
 - legal scholars on, 206
 - limitations of, 155, 195
 - Missouri v. Holland and, 405
 - National Conference of Commissioners on Uniform State Laws, 429, 439–441
 - NATO Status of Forces Treaty and, 407
 - negotiations on, 454
 - new sovereigntists on, 205–206, 208
 - PIL and, 435–438
 - proponents of, 221
 - resurgence in, 412–413, 430–435
 - Second Restatement and, 201, 427–428
 - Supreme Court jurisprudence on, 180–181
 - Third Restatement and, 427–430
 - treaty power and, 400–402
 - uniform state laws and, 419
 - value of, 199
- Federalist 22 (Hamilton), 288–289
- Federalist 45, 401
- Federalist 64, 100, 234
- Federalist 75, 100, 101
- Federalist Papers, 18, 100
- Fifteenth Amendment, 193–194
- Filartiga v. Pena-Irala, 337–338
- Fish, Hamilton, Secretary of State, 417, 433
- Fish and Wildlife Improvement Act of 1978, 268
- Fisheries Act of 1995, 267
- Flaherty, Martin, 364
- Ford, Gerald, 308
- foreign affairs, 60–61
 - Founders assumptions on, 187

- laws on, 318–319
- Foreign Affairs, 38
- Foreign Affairs Reform and Restructuring Act (FARRA), 81
- Foreign Commerce Clause, 183–184
- foreign marriages, 416
- foreign policy, 66–67
 - changes in, 296
 - Clinton, Bill concessions on, 375
 - courts ill-suited for, 146
 - scholarship on, 160
 - undermining of, 181
 - U.S. “one voice” of, 96
- Foreign Relations Committee, 375, 376
- foreign relations law, 145
- forum shopping, 438
- Foster & Elam v. Neilson, 22, 50–52, 103–105
 - non-self-executing treaty doctrine from, 132
 - Supremacy Clause and, 152
 - Supreme Court in, 191
- Founding Fathers, 187, 235
- Fourteenth Amendment, 34, 193–194, 207–208
 - Section 5 of, 180
- Fourth Amendment, 405
- Fourth Restatement of Foreign Relations Law, 6–7, 14, 357
- Framers of the U.S. Constitution, 85
 - Henkin on, 158–159
 - on international agreements, 469
 - paradox grappled by, 461
 - questions by, 17
 - Supreme Court on, 403
 - on treaties, 205, 317
- Framework Convention on Climate Change, U.N., 267
- France, extradition to, 382
- Frankfurter, Felix, 58
- Friendship, Commerce and Navigation (FCN) treaties, 107, 152–153, 242–243, 263–265
- Garcia-Mir v. Meese, 61
- Gas Protocol, 372–373
- GATT. *See* General Agreement on Tariffs and Trade
- Geer v. Connecticut, 39, 40
- General Agreement on Tariffs and Trade (GATT), 299, 302, 307
- Geneva Convention on the Execution of Foreign Arbitral Awards, 414
- Geneva Convention Relative to the Treatment of Prisoners of War (GPW), 386–394
 - article 129 of, 396–397
 - penal provisions in, 395
- Geneva Conventions, 361–362
 - Additional Protocols to, 363, 370, 371–372
 - Common Article 3 of, 13, 140, 473
 - early consideration of, 369
 - Fourth Circuit on, 162
 - Guantanamo Bay and, 380–381
 - humanitarian law of, 140
 - individual invocation of, 384–385
 - negotiation of, 364
 - as non-self-executing, 171–172
 - Reagan Administration on, 369–370
 - self-execution of, 379
 - Third, 364–365, 381–382, 384
 - U.S. values reflected in, 368–369
- Geneva Prisoner of War Convention, 364–365, 371
- genocide, crime of, 245
- Genocide Convention Implementation Act of 1987, 274–275
- Geofroy v. Riggs, 32–33, 36
- Goldsmith, Jack, 352–353
- Goldwater v. Carter, 343–344, 345–347
- Golove, David, 29–30, 31, 186, 209, 300, 316
- good faith principles, 112, 116, 119
- Goodyear Dunlop Tires v. Brown, 444, 457
- GPW. *See* Geneva Convention Relative to the Treatment of Prisoners of War
- Great Depression, 298–299
- Great Lakes, 294
- Griggs, John, 33
- Grotius, Hugo, 100–102
- Guantanamo Bay, 345, 380–381
- habeas corpus, 75, 164, 180
- Hague Choice of Court Convention (CoCC), 114–115, 450, 468
 - Hague Conference Judgments Project, 455
 - State Department White Paper, 451
 - U.S. implementation of, 451–453, 454, 459
- Hague Conference Judgments Project, 114–115, 440
 - Choice of Court Convention alternative to, 455
 - context of, 457
 - current status, 447, 449
 - negotiations in, 443–444, 447–448, 459–460
 - trouble for, 445–446

- Hague Conference member states
 - criticism by, 123
 - U.S. court's assessment by, 125
- Hague Conference on Private International Law, 13–14, 430–431
- U.S. membership in, 413, 414, 428
- Hague Convention, 361–362
 - negotiation of, 436
 - travaux of, 124–125
- Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, 254–255
- Hague Convention on the Civil Aspects of International Child Abduction, 5, 142–143, 146, 254, 355, 430
 - federalism and, 431–432
 - implementing legislation (ICARA) for, 254, 433, 453
 - intrusiveness of, 432–433
- Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance, 255
- Hague Convention on the Law Applicable to Certain Rights in Respect of Securities held with an Intermediary, 251
- Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, 270, 277
- Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters, 3–4, 5, 121, 270, 355
 - central authority mechanism of, 122–123
 - extraterritorial discovery via, 436
 - interpretation of, 436
 - mandatory use of, 438
- Hague Judgments Convention
 - negotiations of, 459–460
 - New York Convention alternative of, 458
- Hague Judgments Interim Draft, 458
- Hague Permanent Bureau, 441, 449–450
- Hague Service Convention, 3–4, 5, 121, 355
 - central authority mechanism of, 124
 - requirements of, 422–423, 431
- Hague tradition, 361–362
- Haiti
 - forcible return to, 128
 - prisons in, 81
- Hamdan, Salim, 391
- Hamdan v. Rumsfeld, 13, 380, 385–394
 - cases subsequent to, 142
 - Executive Branch defeat in, 139
 - lack of deference to Executive Branch in, 142
 - opinions in, 141–142
- Hamilton, Alexander, 288–289
- Hand, Learned, 58
- Harlan, Justice John Marshall, 193
- Hathaway, Oona, 169, 173, 310, 316
- Hausenstein v. Lynham, 36
- Hayden, Joseph Ralston, 29–30
- Headquarters Agreement between the United States and OAS, 265–266
- Helms, Senator Jesse, 375
- Helsinki Final Act, 308
- Henkin, Louis, 53–54, 56, 57–62, 66, 184
 - Foreign Affairs and the Constitution, 60–61, 66, 157
 - on the Framers, 158–159
 - How Nations Behave, 59–60
 - on human rights treaties, 67–68
 - personal views of, 336
 - on self-execution, 154, 157
 - on Supremacy Clause, 201
 - Third Restatement and, 201, 203, 204–206, 336
- Henry, Patrick, 19
- “hierarchy of intrusiveness,” 432
- Hill v. Norton, 136
- Hilton v. Guyot, 415, 440
- Holland, Ray P., 196
- Hollis, Duncan, 210–211, 225, 323
- Holman, Frank, 46, 198
- Holmes, Oliver Wendell, Jr., 8, 184, 401
 - blanket conclusion by, 52
 - on migratory bird treaty and statute, 197
 - on Missouri v. Holland, 38–39, 42, 179–180
 - opinion of, 38–39
 - on Tenth Amendment, 196
- Holocaust survivors, 325
- Holocaust-era insurance claims, 223–224, 325
- Horseshoe Reef, 293–294
- hostage crisis, 307
- Hostage Taking Act, 79
- Hostage Taking Convention, 79
- Houck, John, 56
- Hughes, Chief Justice Charles Evans, 67, 417–418, 433
- Hull, Cordell, 44–45
- Hull-Lothian Agreement, 44–45
- human rights, 5–6
 - disaggregation of enforcement of, 226
 - Geneva Conventions pillars of, 140

Cambridge University Press

978-1-107-06660-1 — Supreme Law of the Land?

Edited by Gregory H. Fox, Paul R. Dubinsky, Brad R. Roth

Index

[More Information](#)

Index

489

- opponents to, 45
- self-execution and, 157
- sovereignty threatened by, 48
- treaty power and, 227
- U.S. record of, 278
- Human Rights Committee, 88–89
- Human Rights Council, U.N., 227
- human rights litigation, 148–149, 159
- human rights treaties, 10–11, 260–262
 - Carter administration and, 151
 - compliance with, 226
 - courts on, 153, 177
 - Eisenhower administration and, 49–50
 - emergence of, 199
 - Henkin on, 67–68
 - non-self-executing, 53
 - political backlash against, 335
 - precursors to, 194
 - ratification of, 153–154
 - RUDs in, 351–352
 - U.S. role in, 206–207, 212
- Hungary, 375–376
- ICARA. *See* International Child Abduction Remedies Act
- ICCPR. *See* International Covenant on Civil and Political Rights
- ICESCR. *See* International Covenant on Economic, Social and Cultural Rights
- ICJ. *See* International Court of Justice
- ICSID. *See* International Center for the Settlement of Investment Disputes
- ICTR. *See* International Criminal Tribunal for Rwanda
- Igartua-de la Rosa v. United States, 75
- ILO. *See* International Labor Organization
- IMET. *See* International Military Education and Training
- Immigration and Nationality Act, 262, 264
- immigration treaties, 33
- implementation. *See* also domestic implementation
 - of Article II treaties, 472
 - of CoCC, 451–453, 454, 459
 - by Congress, 153, 159
 - as domestic law, 238
 - of PIL treaties, 433–434, 451
 - types of, 271–276
- implementing legislation, 11, 190, 220
 - consensus on, 468
 - consistency in, 280
- for Convention on the Prevention and Punishment of the Crime of Genocide, 245–246
- domestic effects of, 394
- domestic law without, 152
- expansion of, 472–473
- lack of need for, 242–243
- legal scholars overlooking of, 229
- for multilateral treaties, 232, 277–278
- passing of, 191
- for Patent Law Treaty, 252–253
- rationale for, 220
- requirement of, 191–192, 229–230
- Senate Foreign Relations Committee
 - specification of, 231
- inconsistent federal law, 65–66, 77–78
- inconsistent state law, 64–65
- Indian nations, 240–241
- indirect incorporation, 49
- individual rights, 43, 45
 - deference to, 120
 - protection of, 96
 - treaties and, 49
- industrial property, 240–241
- INF. *See* Intermediate-Range Nuclear Forces
- INS v. Cardoza-Fonseca, 134–135
- Institute for the Unification of Private Law (UNIDROIT), 113–114
- intellectual property, 252–253, 285
- Inter-American Convention on International Commercial Arbitration, 256
- interchangeability, Third Restatement claim of, 316–317
- Intercountry Adoption Act of 2000, 254–255
- Intercountry Adoption Universal Accreditation Act of 2012, 254–255
- Interior Department U.S., 136
- Intermediate-Range Nuclear Forces (INF), 303
- Internal Revenue Service (IRS), 82
- international agreements, 66–68
 - case-by-case interpretation of, 93
 - Congress and, 297
 - Constitution rules on, 287, 309
 - courts and, 97
 - developments in, 462–463
 - early years of, 282
 - federal authority on, 471
 - Framers on, 469
 - Judges' examination of, 99
 - Presidents making of, 291

- international agreements (cont.)
 - requiring the expenditure of money, 239
 - scope of, 78–79, 87–88
 - structure of, 107
 - Third Restatement and, 201, 330
 - U.S. making, 200, 284–285
 - violations of, 71
- International Center for the Settlement of Investment Disputes (ICSID), 256
- International Child Abduction Remedies Act (ICARA), 254, 433
- international civil litigation, 6, 125
- International Committee of the Red Cross, 370, 387
- “international concern” test
 - requirement of, 72, 428
 - treaty subject matter of, 57, 188–189, 200, 427–428
- International Convention on the Elimination of all Forms of Racial Discrimination (Race Convention), 153–154, 311–312
- International Court of Justice (ICJ), 77–78, 97, 164–165, 220
 - Avena ruling by, 225
 - decisions by, 165
 - Mexico and U.S. case in, 165
 - non enforceable judgment by, 167
- international courts, 1–2
- International Covenant on Civil and Political Rights (ICCPR), 51–52, 53, 75, 76–77, 88–89, 153–154, 260–261, 311–312
 - federalism understanding on, 211
 - RUDs attached to, 212
- International Covenant on Economic, Social and Cultural Rights (ICESCR), 153–154
- international crimes, 159, 208
- International Criminal Court, 208
- international criminal law conventions, 244–245
- International Criminal Tribunal for Rwanda (ICTR), 80, 348
- International Institute for the Unification of Private Law (UNIDROIT), 411
- international institutions after World War I, 194
- International Labor Organization (ILO), 194, 300
- international law, 12. See also private international law
 - in 19th Century, 194
 - ambiguity in, 343
 - compliance with, 59–60, 186
 - deep skepticism of, 205–206
 - foreign relations scholarship critical of, 160
 - guarantees of, 20
 - reception of, 91
 - states making, 222–223
 - treaties limited by, 67
 - after World War II, 43, 45, 235
- International Law and Agreements as Law of the United States, 63–64
- international mail delivery, 293–294
- International Military Education and Training (IMET), 407
- international norms, 223
- international organizations, 265–266
- International Organizations Immunities Act (IOIA), 265–266
- International Trade Organization (ITO), 299, 307, 463
- international treaties, 48
- international tribunals, 93
- internationalists, American, 237, 340, 375, 411
- interpretation. See treaty interpretation
- interstate Commerce Clause, 180
- intrusiveness, hierarchy of, 432
- IOIA. See International Organizations Immunities Act
- Iran, 307, 322–323
- Iredell, James, 21–22, 103
- IRS. See Internal Revenue Service
- ITO. See International Trade Organization
- Jackson, Andrew, 27
- Jackson, Robert, 305, 306–307
- Japan, 36–37, 306
- Japan Whaling Association v. American Cetacean Society, 345
- Jay, John, 16, 17, 26
- Jay Treaty. See Treaty of Amity, Commerce and Navigation, Between His Britannic Majesty and The United States of America
- Jay-Gardoqui negotiations, 289–290
- JCPOA. See Joint Comprehensive Plan of Action
- Jefferson, Thomas, 16, 20, 400
 - federalism, 42
 - First Inaugural Address by, 287–288
 - nullification theory of, 30
- Jessup, Phillip, 48

- Jim Crow legislation, 49
- Johnson, William, 25, 26
- Johnson v. Eisentrager, 387
- Joint Comprehensive Plan of Action (JCPOA), 322–324
- Jordan (Judge), 215–216
- judicial application, 466
- judicial assistance
 - Hague Conference and, 430–431
 - Third Restatement on, 428–429
 - treaties on, 270–271, 414
- judicial barriers, 334
- judicial enterprise, 146
- judicial implementation, 473
- judicial opinions, 98–99, 130
- judicial review, 120
- judicial treaty discourse, 93, 94, 96
- Judiciary Act of 1789, 133, 139
- judiciary branch
 - compliance and, 355
 - final word of, 120
 - preference against self-execution of, 241–242
- jurisprudence, 445
- Justice Department, U.S., 82

- Kappus v. Commissioner of Internal Revenue, 342
- Kazi v. Dubai Petroleum Co., 76–77
- Kearney, Richard, 423
- Kennedy, Justice Anthony, 83
- Kennedy, President John F., 308
- Kent, Chancellor James, Commentaries on American Law, 24–25, 27
- Klaxon Co. v. Stentor Elec. Mfg. Co., 416
- Koh, Harold Hongju, 159, 352–353
- Kolovrat v. Oregon, 119–120
- Korean War, 364, 366–367
- Ku, Julian, 184, 206, 323, 422
- Kyoto Protocol on climate change, 314

- labor regulation, 43
- Lacey Act of 1900, 39, 195–196
- Lanham Act, 342–343
- Lansing-Ishii Agreement, 306
- Lapp, W. C., 41
- last-in-time-rule, 12, 339–343, 356
- law enforcement activities, 110
- law of armed conflict (LOAC), 13, 358, 408–409
 - accountability provisions in, 394–395
 - Congress role in, 409
 - history of, 360–361
 - interpretation of, 385
 - principles diluted in, 371
 - ratification of, 362
- law of nations, 16
- Law of the Sea Convention, 286, 314, 463
- Lawyers Committee for Human Rights, 59–60
- Leadership, U.S. in private international law, 411, 460
- League of Nations, 194, 296
 - Senate rejection of, 300–301
- legal scholars, 92, 175
 - on Chevron, 138
 - on federalism, 206
 - implementing legislation overlooked by, 229
 - on Medellín v. Texas, 169
 - on Third Restatement, 157–160
 - on treaties, 95
- legislation
 - amended legislation and last in time rule, 107
 - for treaty norms, 96
 - in United Kingdom, 17–18
- legislative history, 122, 130–131
- legislative process, 280
- liberal humanistic ideals, 47
- liberal internationalism, 60–61
- limited government, 179
- limited (operational) implementation, 274–275

- LOAC. See law of armed conflict
- local control, 206
- local law, 18
- Lodge, Henry Cabot, 38
- Lone Wolf v. Hitchcock, 109
- Louisiana Purchase Agreement, 20, 239
- Lozano v. Montoya Alvarez, 142–143
- Lujan v. Defenders of Wildlife, 337, 355–356

- Made in the U.S.A. Foundation v. United States, 80, 347, 348
- Madison, James, 288–289, 401
- Mager v. Grima, 30
- mandatory prosecution obligation, 395
- Marbury perspective on treaty interpretation, 138
- Marshall, John, 22–23, 103–104, 132
- Mason, George, 19
- Matter of International Bank for Reconstruction and Development, 118
- MBTA. See Migratory Bird Treaty Act

- MCA. See Military Commissions Act
- McIntyre Machinery Ltd. v. Nicastro, 448–449
- McKesson Corp. v. Islamic Rep. of Iran, 173
- Medellin v. Texas, 10, 11, 71, 104, 177–178
- academic response to, 169
 - aftermath of, 336–337
 - compliance and, 465–466
 - courts after, 170–174
 - courts before, 160–161
 - debate of, 126
 - executive agreements and, 326
 - legal scholars on, 169
 - non-self-execution doctrine expanded by, 465
 - private rights of action effected by, 172
 - self-execution impacted by, 164–168
 - Senate advice after, 174–175
 - Stevens, Justice John Paul on, 168
 - United Nations Charter on, 465
- Mercer, John, 18
- Mexico
- extradition treaties with, 121
 - ICJ case against U.S., 165
 - sole executive agreement with, 303–304
- Migratory Bird Treaty Act (MBTA), 196, 197, 203, 401
- migratory birds, 38–39
- congressional regulation of, 40–41
 - hunting of, 195
 - treaties over, 136
- military, U.S., 399, 473
- military alliances, 333
- Military Commissions Act (MCA), 380–381, 399, 400
- non-self-execution of, 384
 - section five of, 382
- military power, 358, 359
- military students, 407
- Missouri Compromise, 31
- Missouri Territory, 20
- Missouri v. Holland, 8, 10–11, 38, 41, 42–43, 45, 319
- central holding of, 181–182
 - conclusions from, 403–404
 - defeasance power of, 210–213
 - fallout from, 221
 - fears over, 198
 - federalism and, 405
 - history of, 195–197
 - meaning of, 459
 - reasoning in, 214
 - reversal of, 49
 - Section 117 cited to, 200
 - Supreme Court on, 155, 215
 - survival of, 219–221
 - uncertainty resolved by, 401
 - wake of, 197–198
- Mitsubishi Motors v. Soler Chrysler-Plymouth, 474, 477
- Monroe, James, 294, 295
- Montreal Protocol on Substances that Deplete the Ozone Layer, 267, 276–277
- Mora v. New York, 172, 207–208
- multilateral treaties
- increasing complexity of, 228, 233–234, 279
 - legislative implementation of, 232, 277–278
 - Senate Foreign Relations Committee consideration of, 235
 - successes of, 276–277
 - travaux in, 114
 - United Nations Charter as, 265–266
- multinational trusts, 416
- mutual assistance agreements, 333
- mutual intent, 9–10
- mutual legal assistance treaties
- bilateral nature of, 243
 - with European Union, 244
 - primary purpose of, 243
- Nadelmann, Kurt H., 419, 421, 425
- NAFTA. See North American Free Trade Agreement
- National Conference of Commissioners on Uniform State Laws (NCCUSL), 429
- adoption of, 439–440
 - no reciprocity requirement in, 440–441
- national defense, 106, 301–302, 358
- Native American tribes
- disputes with, 107–108
 - treaties with, 108, 109–110
 - treaty interpretation, 136–137
- NATO. See North Atlantic Treaty Organization
- NATO Status of Forces Treaty, 363–364, 369, 406–408
- federalism concerns from, 407
- NATO-Russia Founding Act on Mutual Relations, 322
- NCCUSL. See National Conference of Commissioners on Uniform State Laws
- Necessary and Proper Clause, 42, 52, 79, 182–183

- congressional powers from, 186–187, 194
- implicit limit on, 217
- limitations of, 183–184, 191–192, 197
- Neely v. Henkel, 193
- negotiations, 113, 115, 129
 - of federalism issues, 454
 - of Geneva Conventions, 364
 - of Hague Convention, 436
 - of Hague Judgments Convention, 459–460
 - of HCPIIL Judgments Project, 443–444, 447–448, 459–460
- informal, 297
- by Presidents, 330–331
- Negusie v. Holder, 135
- New Deal initiatives, 46–47
- “new federalism,” 14, 444
 - of Supreme Court, 447
- new federalists, 205–210
- new sovereigntists, 205–210, 470
- New START Treaty, 314–315, 316
- New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 3, 142–143, 255–256
- Article II of, 475
- decisions from, 474
- Direct Legislative Incorporation of, 273
- Hague Judgments Convention alternative to, 458
- path taken by, 450–451
- production of, 419–420
- success of, 277–278
- workable alternative to, 458
- Newcomer, Joshua, 323
- 9/11
 - armed conflict after, 390
 - deference to Executive Branch treaty interpretation after, 139–143
- Nixon, Richard, 308
- non-Article II treaties, 221–222, 283
 - source of authority for, 328
- nonbinding agreements, 332
 - in modern period, 322–324
 - quantification of, 328
- non-exclusivity, 127
- non-race-based conservatism, 46–47
- non-self-executing treaty doctrine, 7–8, 384–385, 461, 464–465, 469–470
 - authority of, 64–65
 - constitutional basis of, 175, 240
 - declarations of, 170, 178
 - determination of, 152–153
 - doctrine of, 50–52
 - Foster & Elam v. Neilson responsible for, 132
 - Geneva Conventions and, 171–172
 - human rights treaties and, 53
 - Louis Henkin against, 154
 - Medellin v. Texas expansion of, 465
 - Military Commissions Act and, 384
 - presumption in favor of, 220
 - rejection of, 61
 - self-execution distinct from, 74, 233, 336
 - Supreme Court on, 167
 - Third Restatement on, 237–238
 - three sub-sets of, 272
- non-treaty agreements, 283–284, 290–291
- Noriega, Manuel, 381–384, 409
- normalization of U.S. foreign relations law, 92, 319, 344
- North American Free Trade Agreement (NAFTA), 80, 88, 284, 296–297, 347
- North Atlantic Treaty Organization (NATO), 266, 302–303
 - establishment of, 363–364
- Ntakirutimana v. Reno, 80, 347–348
- nuclear facilities, 322–323
- nuclear material, 258
- nullification theory, 30
- Obama, President Barack, 236, 285
 - administration of, 251–252
 - arms control policy of, 314–315
 - presidential power of, 327
 - Senate approval sought by, 286
 - sole authority of, 320–321
- O'Connor, Sandra Day, 83, 124, 131–132, 448–449
- Office of Legal Counsel, 223–224
- Oklahoma, 225
- Optional Protocol to the United Nations Convention on the Status of Refugees, 353–354
- Pacific Islands territories, 301
- Panama, 381
- Panamanian Defense Forces, 381, 382
- parallel litigation, 441
- Paris, Treaty of, 16, 102–103
 - property rights after, 29
 - provisions of, 21
 - violations of, 17
- Parliament, 25
- Participation Act, U.N., 265–266

- Patent Law Treaties Implementation Act of 2012 (PLTIA), 253
- Patent Law Treaty, 252–253
- Paust, Jordan, 86, 159
- “peace and friendship” treaties, 108
- peace treaties, 333
- PIL. See private international law
- PLTIA. See Patent Law Treaties Implementation Act of 2012
- political embarrassment, 345–346
- political question doctrine, 120, 343–351
- Posner, Eric, 138
- postal agreements, 293–294
- Postal Service, U.S., 213–214
- Postmaster General, 293–294
- Powell (justice), 346
- POWs. See prisoners of war
- pre-authorized agreements, 12
- preemption
- by Article II treaties, 444–445
 - attention paid to, 433
- pre-implemented treaties, 241, 465–466
- Presidents, 11–12
- authority of, 331–332
 - compliance by, 345, 466–467
 - diplomacy tools of, 327
 - international agreements made by, 291
 - legislative branches support for, 329
 - negotiations by, 330–331
 - powers of, 182, 324
 - ratification by, 22
 - treaty making power of, 289–290
- presumption
- by courts, 166–167
 - against exclusivity, 126–127
 - in favor of non-self-executing doctrine, 220
 - in favor of self-execution, 171
 - against self-execution, 169, 221
 - of Third Restatement, 161–162, 163, 177–178
- Prevost v. Greneaux, 30–31, 32
- Printz v. United States, 207
- prisoners of war (POWs), 364–365, 371
- in eastern bloc, 364–365
 - Noriega as, 381
 - tribunals for, 386
- private international law (PIL), 13, 411–412
- eras of, 458
 - European émigrés and, 425
 - federalism and, 435–438
 - implementation of PIL treaties, 433–434, 451
 - important questions in, 457
 - in Third Restatement, 412
 - treaties in, 416
 - unification of, 411
 - after World War II, 419–420
- private property, 21
- private right of action, 12, 76, 156, 163–164, 334–339
- Medellin v. Texas effects on, 172
 - restrictive standards for, 467
 - self-execution distinct from, 156
 - Supreme Court on, 156–157
 - Third Restatement on, 173–174, 177–178, 478
- private rights of action, 71–72
- procedural law, 460
- procedural safeguard, 190
- property rights, 29, 119–120
- “Proposed Constitutional Amendment
- Relative to Making of Treaties and Executive Agreements” (the Bricker Amendment), 48–50, 52, 59, 87–88, 155
 - defeat of, 363–364
 - failure of, 210–211
 - New Sovereignists presaged by, 470
- Prosecutor v. Tadic, 389
- Protocol on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment, 250–251
- Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, 253
- Protocol Relating to the Status of Refugees, 128
- public interest organizations, 159
- public law litigation, 337
- Puerto Rico, 51
- al Qaeda, 140
- captured operatives from, 388
 - human treatment of, 393
 - non-state nature of, 390
 - ongoing hostilities against, 383, 390
- race, domestic politics of, 9, 36–37
- Race Convention. See International Convention on the Elimination of all Forms of Racial Discrimination
- racial status quo, 46
- ratification, 81–82
- of CAT, 154–155
 - compliance and, 18
 - complications with, 113

- of Convention on the Prevention and Punishment of the Crime of Genocide, 49–50
 - of CWC, 372, 375, 377–378
 - CWC in Hungary, 375–376
 - Department of Defense urging of, 367
 - of human rights treaties, 153–154
 - instruments of, 74
 - international obligations accepted upon, 51–52
 - of LOAC treaties, 362
 - by monarchs, 17
 - of Optional Protocol to the United Nations Convention on the Status of Refugees, 353–354
 - by Presidents, 22
 - record of, 189
 - refusal of, 111
 - Senate consent, 80, 230–231
 - of VCCR, 353–354
- RCA. *See* riot control agents
- Reagan Administration, 248–249, 363
 - on Geneva Convention Additional Protocol I, 369–370
- Reciprocal Trade Agreements Act (RTAA), 298–299
- reciprocal trade legislation, 300, 306
- Reconstruction, post-Civil War, 296
- Refugee Act of 1980, 134–135
- refugees
 - arrival of, 129
 - Chevron impact on, 135
 - persecution fear of, 128
- Rehnquist, Chief Justice William, 126, 127
 - court of, 206–207
 - new federalism of, 207
 - reasoning of, 127–128
- Reid v. Covert, 204–205
- removal statute, 453
- repatriation, 365
- Reporters' Notes
 - on last-in-time rule, 340
 - note 5 to section 111 of, 150, 237, 240–241
 - note 6 of, 240
 - on Third Restatement, section 111, 182–183, 335
 - on Third Restatement, section 302, 180
 - on Third Restatement, section 339, 344–345
 - on self-execution, 150–151
- Reservations, Understandings, and Declarations (RUDs), 51–52, 53–54, 98
 - attachment of, 211
 - of CWC, 373–374
 - development of, 190
 - frequency of, 353
 - in human rights treaties, 351
 - on ICCPR, 212
 - impact of, 353–354
 - obstacles posed by, 226–227
 - provisions on, 69–70
 - role of, 355, 356
 - severability of, 88–89
 - success of, 212–213
 - Third Restatement on, 351
 - treaty rights impeded by, 354
- Third Restatement of Foreign Relations Law of the United States. *See* Third Restatement
- Restatement of the Law (Fourth): The Foreign Relations Law of the United States, 175–176
- Revolutionary War, 17, 148
- Richberg, Donald, 48
- Riesenfeld, Stefan, 84–85, 87, 89
- Riggs, T. Lawrason, 32
- “Right of Aliens to Hold Property” (Wirt), 24
- riot control agents (RCA), 374
 - U.S. military use of, 376–377
- Roberts, John, 10, 104
 - Bond actions downplayed by, 219
 - limited ruling by, 216
 - majority opinion by, 166
 - Supremacy Clause tension with, 169
- Roosevelt, Franklin Delano, 44, 298–299
 - Gentlemen's Agreement by, 305–306
 - Soviet Union negotiation with, 304
- Roosevelt, Theodore, 296
- Root, Elihu, 37, 40
- Rosenkranz, Nicholas, 186–187, 218
- RTAA. *See* Reciprocal Trade Agreements Act
- RUDs. *See* Reservations, Understandings, and Declarations
- rule of construction, 124
- Rush-Bagot Agreement, 294, 295
- Russia
 - nationalization of property in, 43
 - response to Bush, G. W., by, 324
- sale of goods, Convention on the International Sales of Goods, 13–14, 250, 414, 427
- Sale v. Haitian Centers Council, 121–122, 128–130, 133

- SALT I. See Strategic Arms Limitation Treaty
- Samples, George L., 41
- Sanchez-Llamas v. Oregon, 71, 163, 167
- Santo Domingo, 306
- Sawyer (judge), 34
- Scalia, Justice Antonin, 74, 83
on Bond v. United States, 186–187, 217–218
on Burnham v. Superior Court, 444
- search warrants, 373–374
- Second Restatement of Foreign Relations,
57–58, 199–200
federalism and, 201, 427–428
perceived deficiencies in, 91
period before, 428
scope of, 202
Third Restatement contrasted with, 150
treaty subject matter in, 203
- Secretary of State's Advisory Committee on
Private International Law, 451
- sectionalism, 296
- Securities and Exchange Act of 1934, 251
- segregation, 36–37
- Seguros Commercial American v. Hall, 76
- self-execution, 7–8, 12, 46, 464–465, 466
of Bartram case, 51
constitutionality of, 175
courts superseding questions of, 384–385
determination of, 75–76, 96, 162–163, 230
doctrine of, 22
of Geneva Conventions, 379
Henkin on, 157
historical precedent for, 237
human rights cases and, 157
impact of, 276–277
judiciary branch preference against, 241–242
Medellin v. Texas impact on, 164–168
non-self-execution distinction from, 74,
233, 336
presumption against, 169, 221
presumption in favor of, 171
private right of action distinct from, 156
Reporters' Notes on, 150–151
Senate declarations of, 175
Supreme Court on, 148–149, 156–157
Third Restatement on, 63–64, 148–150, 233
times for, 20–21
trends in, 232
two variants of, 272
two-step approach to, 169
U.N. Convention against Corruption as,
247–248
- Senate, U.S., 1
Article II treaties approved by, 454
consent of, 98, 369–370, 372
CWC and, 378
difficulty of, 314–315
League of Nations rejected by, 300–301
non-federalism concerns of, 212
Obama seeking approval by, 286
post-Medellin advice by, 174–175
role of, 292
self-execution declarations by, 175
slave states opposed by, 294
states' rights protected by, 189
treaties blocked by, 318
- Senate Foreign Relations Committee, 114, 115,
154–156, 174
implementing legislation specified
by, 231
multilateral treaties considered by, 235
- separation of powers, 44, 225, 307, 331
- sham treaties, 202–203
- Shanks v. DuPont, 108–109
- Sinai Accords, 308
- Slaughter, Anne-Marie, 315–316
- slave states
before Civil War, 47
Senate opposition to, 294
- slavery, 25–26
abolition of, 194
ending of, 296
white, 110–111
- Sloss, David, 3, 86–87, 158–159, 169
- Smit, Hans, 419, 425
- Social Security Act, Title IV, 255
- Societe Nationale Industrielle Aerospatiale v.
U.S. District Court, 3–4, 121, 122–123,
435, 474
aftermath of, 438
application by lower federal courts and state
courts, 123, 436
extraterritorial discovery and, 436
reasoning in, 474
- SOFAs. See status of forces agreements
- Sohappy v. Hodel, 136–137
- sole executive agreements, 65, 68–69, 282–283,
303, 321, 471
effectiveness of, 345
rise and fall of, 324–328
viability of, 331
- Sosa v. Alvarez-Machain, 338
- South Carolina, 25–27, 28

- South Carolina Negro Seaman Act of 1822, 25–26
- South Pacific Regional Fisheries Management Organization (SPRFMO), 268–269
- Southern Democrats, 46
- sovereignty, 71–72
- advocates of, 208–209
 - debate over, 48
 - human rights and, 48
 - international treaties and, 48
 - surrender of, 45
 - Tenth Amendment on, 184
- Soviet Union
- doctrinal battle with, 368
 - property claims by, 304
 - Roosevelt negotiation with, 304
- Spanish-American War, 296, 303–304
- Spiro, Peter, 315–316
- SPRFMO. *See* South Pacific Regional Fisheries Management Organization
- St. Lawrence Seaway, 301
- Standing doctrine, 334–339
- START Treaty on the reduction and limitation of strategic offensive arms (START I), 257
- State Department, U.S., 5, 398
- on general federal removal statute, 453
 - Internal Organizations Bureau, 58–59
 - Legal Advisor to, 115
 - Office of the Legal Advisor to, 56
 - private international law, positions in negotiations, 412
 - reports by, 329
- state law, 86, 224
- state power, after World War II, 198
- Statement on Forest Principles, 322
- states' rights, 28, 45
- concessions to, 30
 - historical fact of, 37
 - Senate protection of, 189
 - treaties challenging, 46
- status of forces agreements (SOFAs), 405–407
- statutes, 109–110
- analogy to treaties, 106–115, 116, 466
 - conflict in, 341–342
 - courts accustomed to, 107
 - obligations of, 111
 - priority of, 340–341
- Stevens (justice), 128, 129, 435
- majority opinion of, 140–141
 - on *Medellin v. Texas*, 168
 - travaux d'élaboration by, 130–131
- Story, Joseph, 24–25, 108–109
- Commentaries (§1508) by, 32
 - interpretation of Jay's Treaty, 109
 - liberal interpretation by, 108–109
- “Straddling Fish Stocks Agreement,” U.N., 266
- Strategic Arms Limitation Treaty (SALT I), 301–302
- structural safeguards of federalism, 190
- sub-national governmental entities, 223
- Sunstein, Cass, 138
- super-majority, 189–190, 213
- agreements without, 282
 - Article II treaties protection by, 471–472
 - avoiding of, 299–300
- Supremacy Clause, 2, 19, 95, 144, 182, 339, 394
- ambiguity about, 86
 - attacks on, 29
 - challenges to, 464
 - Cooley, Judge Thomas on, 31–32
 - enforcement of, 182–183
 - Foster & Elam v. Neilson*, 152
 - Henkin on, 201
 - provisions of, 148
 - qualifications to, 85
 - reach of, 46
 - Roberts tension with, 169
 - Sloss on, 86–87
 - Tucker on, 36
- Supreme Court, U.S.
- Bond v. United States* decision by, 228
 - on doctrines, 12–13
 - federalism jurisprudence of, 180–181
 - on *Foster & Elam v. Neilson*, 191
 - on Framers, 403
 - hostility toward self-execution of, 148–149
 - jurisprudence of, 65, 445
 - on *Missouri v. Holland*, 155, 215
 - “new federalism,” 447
 - on non-self-executing treaties, 167
 - Schlunk and Aerospatiale* cases in, 3–4
 - on self-execution and private rights, 156–157
 - Third Restatement, section 325 ignored by, 132
 - Third Restatement limitations demonstrated by, 121
 - treaty cases in, 99–100
- sustainable fisheries, 266
- Sutherland, George, 35
- Swaine, Edward, 225–226

- Taft, President and Chief Justice William Howard, 40
- tag jurisdiction, 442–443, 446
- Taiwan, 346
- Take Care Clause, 98
- Taney, Chief Justice Roger, 27, 28–29, 30, 35–36
- Taney Court, 32
- tariffs, 297
- Tax Reform Act of 1986, 269–270
- tax treaties, 269–270
- taxpayer information, 82
- tear gas, 377
- Tenth Amendment, 1, 68, 180, 400
- adoption of, 189
 - on dual sovereignty, 184
 - expansive view of, 215
 - Holmes on, 196
 - limitations of, 195, 204
 - scope of, 193–194
 - treaty power limited by, 467–468
- Territorial Sea Convention, 355
- terrorism, 213–214, 371, 376
- Tex. Civ. Prac. & Remedies Code Sec. 71.031
- (a), 77
- Texas, 294–295
- Texas v. United States, 137
- textualism, 126
- Third Restatement, 4–5, 6, 9–10, 309
- academic commentary during, 340
 - ALI decision on, 62
 - barriers overcome by, 7
 - baseline provided by, 4, 7
 - challenges to, 205–206
 - Comments and Reporters' Notes of, 72–73
 - consensus reflected by, 14
 - constitutional practice since, 223
 - controversial questions faced by, 72
 - criticism of, 178
 - decades since, 276
 - on deference, 133
 - federalism and, 427–430
 - interchangeability claim of, 316–317
 - international agreements and, 201, 330
 - on judicial assistance, 428–429
 - judicial barriers and, 334
 - judicial enterprise codified by, 146
 - lack of influence of, 130
 - last-in-time rule of, 87
 - legacy of, 14
 - legal scholars on, 157–160
 - on legislative implementation, 275
 - on non-self-execution, 237–238
 - Part III of, 344
 - Part III treaty issues of, 66–71
 - period after, 95–96
 - PIL in, 412
 - Preliminary Draft of, 62, 64, 68–69
 - presumptions of, 161–162
 - on private right of action, 173–174, 177–178, 478
 - private rights presumption by, 163, 177–178
 - Reporters' Note 5 to section 111 of, 150, 237
 - Reporters of, 7, 56
 - RUDs in, 351
 - scholarly reception of, 84–85, 90–91
 - Second Restatement contrasted with, 150
 - Section 111 of, 149, 150, 152
 - Section 302, Comment f of, 222
 - Section 325 of, 116–117, 129–130
 - Section 326 of, 120, 344
 - Section 472 of, 429
 - Section 907, comment a, 173–174
 - on self-execution, 63–64, 148–150, 233
 - self-execution addressed by, 148–150, 233
 - Supreme Court disregard for, 132
 - Supreme Court limitations on, 121
 - Tentative Drafts of, 64–65
 - treaties approach of, 7, 73–74, 180
 - treaty interpretation and, 115–120, 477–478
 - treaty issues dispersed among, 63
 - on treaty power, 478
 - treaty provisions of, 57
 - treaty subject matter in, 203–204
 - treaty violations and, 335
- Thirteenth Amendment, 193–194
- Thomas, Justice Clarence, 140–141, 217–218
- petition denied by, 383
 - on treaty power, 218–219
- Tiburcio Parrott, In re, 33
- Tokyo Round, of GATT, 302
- torture, 142
- Tory loyalists, 16
- Trade Act of 1974, 302
- trade agreements
- by Bush, G. W., 318
 - congressional-executive agreements and, 331
 - fast track procedure for, 317–318
- trade secret laws, 252
- translation discrepancies, 105, 112, 125, 128–129
- transnational litigation, 94, 417
- transnational regulatory process, 145

- travaux préparatoires
 - courts use of, 118
 - inquiry into, 122
 - interpretation without reference to, 126
 - investigation into, 110
 - Justices Stevens and Brennan, 130–131
 - of multilateral treaties, 114
 - permissible use of, 121
 - préparatoires, 8
 - United States v. Stuart position on, 125–126
 - for UN-sponsored treaties, 113
- treaties
 - academic discussions of, 34–35
 - under Articles of Confederation, 187–188
 - assessment of, 97–98
 - attitudes towards, 46
 - consensus creation of, 121
 - constitutional quality of, 117
 - courts enforcement of, 150, 151, 159
 - diminishing importance of, 221
 - direct enforcement of, 149–150
 - domestic application of, 464–465
 - domestic implementation of, 162–163, 168, 468–469, 471
 - domestic law limited by, 53–54, 181
 - domestic power of, 54
 - dualist approach to, 228–229
 - during early U.S. history, 234
 - enforcement of, 25
 - form of, 11–12
 - formation of, 111
 - Framers on, 205, 317
 - “golden age” of, 462
 - on human rights, 5–6, 10–11
 - inconsistent federal law and, 77–78
 - inconsistent state law and, 64–65
 - increasing significance, 463
 - individual rights and, 49
 - international law limitations on, 67
 - judicial enforcement of, 333–334
 - legal scholars on, 95
 - in local law, 18
 - Marshall on, 22–23
 - with Native American tribes, 108, 109–110, 136–137
 - neither self or non-self-executing, 241
 - as optional means, 122
 - PIL in, 416
 - political question doctrine in, 350
 - presidential power for, 289–290
 - purposes of, 333
 - scope of, 187
 - Senate blocking of, 318
 - states’ rights challenged by, 46
 - for territories, 20
 - Third Restatement approach to, 7, 63, 73–74
 - Third Restatement provisions of, 57
 - trends in, 92
 - U.S. relationship with, 463–464, 467, 479
 - on war, 362
 - after World War II, 234
 - subject matter of (See also human rights
 - treaties; judicial assistance; law of armed conflict; private international law; trade agreements)
 - arms control, 213, 220, 258–259, 303, 310, 311
 - aviation, 246, 251, 274
 - comparison, U.S. v Great Britain and France, 414
 - diplomatic, 246, 284, 293–294, 305, 333
 - extradition, 121, 126, 152–153, 243–244
 - international concerns of, 57, 188–189, 200, 427–428
 - limitations on, 202
 - peace treaties, 108
 - refugees, 121–122, 128, 134–135, 262, 353–354
 - Second Restatement on, 203
 - slavery, 25–26
 - taxation, 82, 125, 208, 269–270, 333, 462
 - Third Restatement on, 203–204
 - wildlife conservation, 38–39, 40, 134, 266–269, 275
- Treaties’ End (Hathaway), 310, 316
- Treaties of Amity, 264
- Treaty Between the Government of the United States of America and the Government of the Republic of Latvia Concerning the Encouragement and Reciprocal Protection of Investment, 264
- Treaty Between the United States of America and the Russian Federation on Strategic Offensive Reductions, 257
- treaty cases, 99–100
- treaty claims
 - assertion of, 334
 - dismissal of, 2–3
 - enforcement of, 4
- treaty clauses, 19
- treaty disputes, 344

- treaty documentation, 113
- treaty interpretation, 92–93
 - and agency expertise, 94, 96
 - changing nature of, 93, 95, 145
 - Charming Betsy canon, 137
 - Chevron impact on, 134, 146
 - by Congress, 98
 - consensus on, 121
 - contract model of, 105–106, 122, 466, 477
 - exclusivity or non-exclusivity, 126–127
 - by Executive Branch, 94, 98, 466–467
 - fragmentation of, 122
 - inconsistency in Supreme Court jurisprudence, 130
 - lawyerly endeavor of, 113
 - liberal interpretation, 108–109, 110, 144–145
 - limited influence of, 121
 - LOAC, 385
 - multilingualism and, 105, 108
 - mutual intent and, 101
 - Native American treaties, 136–137
 - “reasonable” or “permissible” types of, 96
 - stability of, 99
 - statutory model of, 106–115, 116, 466
 - Third Restatement and, 115–120, 477–478
 - travaux, 126
 - treaty as delegation model of, 94–95, 145
 - unilateralism, 114
- treaty language
 - in domestic law, 220
 - inconsistency in, 278
- treaty norms
 - judicial enforceability of, 157
 - legislation for, 96
- treaty obligations
 - effective enforcement of, 479
 - laws conforming to, 280
 - of U.S., 224, 354, 465–466, 473
- Treaty of Amity, Commerce and Navigation,
 - Between His Britannic Majesty and The United States of America (Jay Treaty), 20, 192–193, 239, 292
- Treaty of Amity between the United States and Iran, 173
- Treaty of Friendship, Commerce and Navigation with Denmark, 264
- Treaty of Friendship and Commerce, 30
- Treaty of Paris. *See* Paris Treaty
- Treaty of Peace, 148
- Treaty of Rome, 117
- Treaty of Versailles, 108
- Treaty on Conventional Armed Forces in Europe (CFE), 258–259, 311
- treaty power
 - conflict in, 184
 - constitutional limitations on, 189
 - debate over, 197–198
 - federalism and, 400–402
 - human rights and, 227
 - limited use of, 459
 - misgivings about, 469
 - nationalizing of, 186
 - obligations created by, 192
 - originalist conceptions of, 209
 - structural limitations on, 197
 - Tenth Amendment limits on, 467–468
 - Third Restatement on, 478
 - Thomas on, 218–219
 - valid exercises of, 202
 - during World War II era, 309–310
- treaty rights, 354
- treaty violations, 14
 - litigation of, 1
 - of Paris Treaty, 17
 - Third Restatement and, 335
- treaty-based rights, 3
- treaty-making eras, 93
- treaty-making power, 470, 471, 476–477
- tribal lands, 109–110
- tribal litigation, 110
- Tribe, Laurence, 315–316
- TRIMs. *See* Agreement on Trade-Related Investment Measures
- TRIPS. *See* Agreement on Trade-Related Aspects of Intellectual Property Rights
- Truman, President Harry S., 155, 299, 301
- Tucker, Henry St. George, 35, 37, 38, 197–198
- TWA v. Franklin Mint, 131–132
- Tyler, President John, 294–295
- UCMJ. *See* Uniform Code of Military Justice
- UIFSA. *See* Uniform Interstate Family Support Act of 1995
- UNCITRAL conventions, 13–14
- UNESCO Convention Against Doping in Sport, 249
- UNIDROIT. *See* Institute for the Unification of Private Law; International Institute for the Unification of Private Law
- Uniform Act, 452, 453–454
- Uniform Code of Military Justice (UCMJ), 13, 140, 393, 473

- Uniform Commercial Code, 250
- Uniform Foreign Money Judgments Recognition Act (UFMJRA), 458
- Uniform Interstate Family Support Act of 1995 (UIFSA), 255
- Uniform Law Commission, 452
- uniform substantive rule of liability, 432
- unilateralism, 458
- United Kingdom, 17–18
- United Nations Charter, 10–11, 117, 302–303
 - Article 94 of, 104, 166
 - early multilateral treaty of, 265–266
 - foundation of, 208
 - on *Medellin v. Texas*, 465
- United Nations Convention Relating to the Status of Refugees, 134–135
 - Protocol Relating to the Status of Refugees, 128
- United Nations Headquarters Agreement, 265–266
- United Nations Legal Department, 58–59
- United States (U.S.)
 - abduction jurisdiction of, 127–128
 - commercial and securities law in, 250
 - democratic order of, 199
 - diplomatic activity by, 284
 - domestic law of, 464
 - domestic political process in, 114
 - early treaties of, 234
 - extradition treaties with, 121
 - foreign entanglements of, 477
 - foundation of, 234
 - Fund and Bank membership of, 118
 - Geneva Conventions reflection of values, 368–369
 - global actions by, 222
 - Hague Conference member states
 - assessments of, 125
 - human rights record of, 278
 - international agreements made by, 200, 284–285
 - international obligations of, 333–334
 - land ceded to, 107–108
 - leadership of, 460
 - legal system of, 92–93
 - manufacturing economy of, 413
 - Mexico ICJ case against, 165
 - military RCA use by, 376–377
 - one voice foreign policy of, 96
 - ongoing obligations on, 329–330
 - policy objectives, 408
 - role in human rights treaties of, 206–207, 212
 - self-conception of, 179
 - statutes, 112–113
 - treaties involving, 93
 - treaties relationship with, 463–464, 467, 479
 - treaty making pace of, 236
 - treaty obligations of, 224, 354, 465–466, 473
 - treaty partners of, 226
 - unilateralism in, 458
 - unilaterally generated documents in, 114
- United States v. Alvarez-Machain*, 121, 126–128
- United States v. Belmont*, 43, 304–305
- United States v. Curtiss-Wright*, 44
- United States v. Lopez*, 207–208, 319
- United States v. Lue*, 78
- United States v. McCullagh*, 40–41
- United States v. Morrison*, 207–208, 319
- United States v. Percheman*, 23
- United States v. Pink*, 304–305
- United States v. Postal*, 150–151
- United States v. Shauver*, 40
- United States v. Stuart*, 74, 82, 121
 - travaux position of, 125–126
- Universal Declaration of Human Rights, 45
- Universal Periodic Reporting Process, 227
- UN-sponsored treaties, 113
- U.S. See United States
- U.S. exceptionalism, 47
- Vagts, Detlev, 83
- “Validity of the South Carolina Police Bill” (Wirt), 24
- Van Alstine, Michael, 151, 157
- Van Valkenburgh (judge), 41
- Vattel, Emerich de, 32–33, 100–102
 - Droit des Gens*, 102
- Vázquez, Carlos, 85–86, 158, 169
- VCCR. See Vienna Convention on Consular Relations
- VCLT. See Vienna Convention on the Law of Treaties
- Vienna Convention on Consular Relations (VCCR), 163, 165, 172, 263
 - Article 36 of, 164
 - Optional Protocol to, 166
 - ratification of, 353–354
- Vienna Convention on the Law of Treaties (VCLT), 8, 62, 70, 94–95, 97, 467
 - Articles 31 and 32 of, 89
 - Comparison to Third Restatement, 70
 - Mortenson, Julian and, 118–119

Cambridge University Press

978-1-107-06660-1 — Supreme Law of the Land?

Edited by Gregory H. Fox, Paul R. Dubinsky, Brad R. Roth

Index

[More Information](#)

502

Index

- Vietnam War, 59, 308
 Volkswagenwerk Aktiengesellschaft v. Schlunk, 3–4, 121, 124–125, 435
 results of, 436–438, 456–457
 von Mehren, Arthur T., 442
- War Crimes Act, 398, 399–400
 war crimes repression, 394
 War of 1812, 294
 Ware v. Hylton, 21, 29, 100, 103–104, 139
 and contract analogy, 103
 opinions since, 144
- wars
 civil, 389
 customary laws of, 384–385
 of national liberation, 370–371
 treaties on, 362
 victims of, 361
- Warsaw Bloc, 373
 Warsaw Convention, 131–132, 276–277, 355
 Warsaw Pact, 258–259
 Warsaw/Montreal Convention, 170
 wartime decisions, 141
 Washington, George, 24–25, 287, 291
 Washington Treaty, 363–364
 weapons conventions, 333
 weapons of mass destruction, 213
 Weeks-McLean Act, 39–41
 Weeks-McLean law of 1913, 195–196
 Wills, treaties and uniform legislation on, 99
 Wilmington Packet, 292
 Wilson, James, 289–290
 Wilson, President Woodrow, 37, 40, 41, 296
- WIPO. See World Intellectual Property Organization
 WIPO Copyright Treaty, 253
 WIPO Performances and Phonograms Treaty, 253
 WIPO Trademark Law Treaty, 253
 Wirt, William M., 24
 women's suffrage, 35
 Worcester v. Georgia, 108
 World Intellectual Property Organization (WIPO), 313
 World Trade Organization (WTO), 284
 World War I
 Allied war debt from, 300
 international institutions after, 194
 World War II, 4, 299
 courts before and after, 335
 devastation of, 363
 international law after, 43, 45, 235
 PIL after, 419–420
 state power after, 198
 treaties after, 234
 treaty power during, 309–310
 WTO. See World Trade Organization
- Yamashita, In re, 385–394
 Yoo, John, 159–160, 315–316
 Youngstown Sheet & Tube Co. v. Sawyer, 306, 332
- Zicherman v. Korean Airlines, 131–132
 Zivotofsky v. Clinton, 348–351, 356