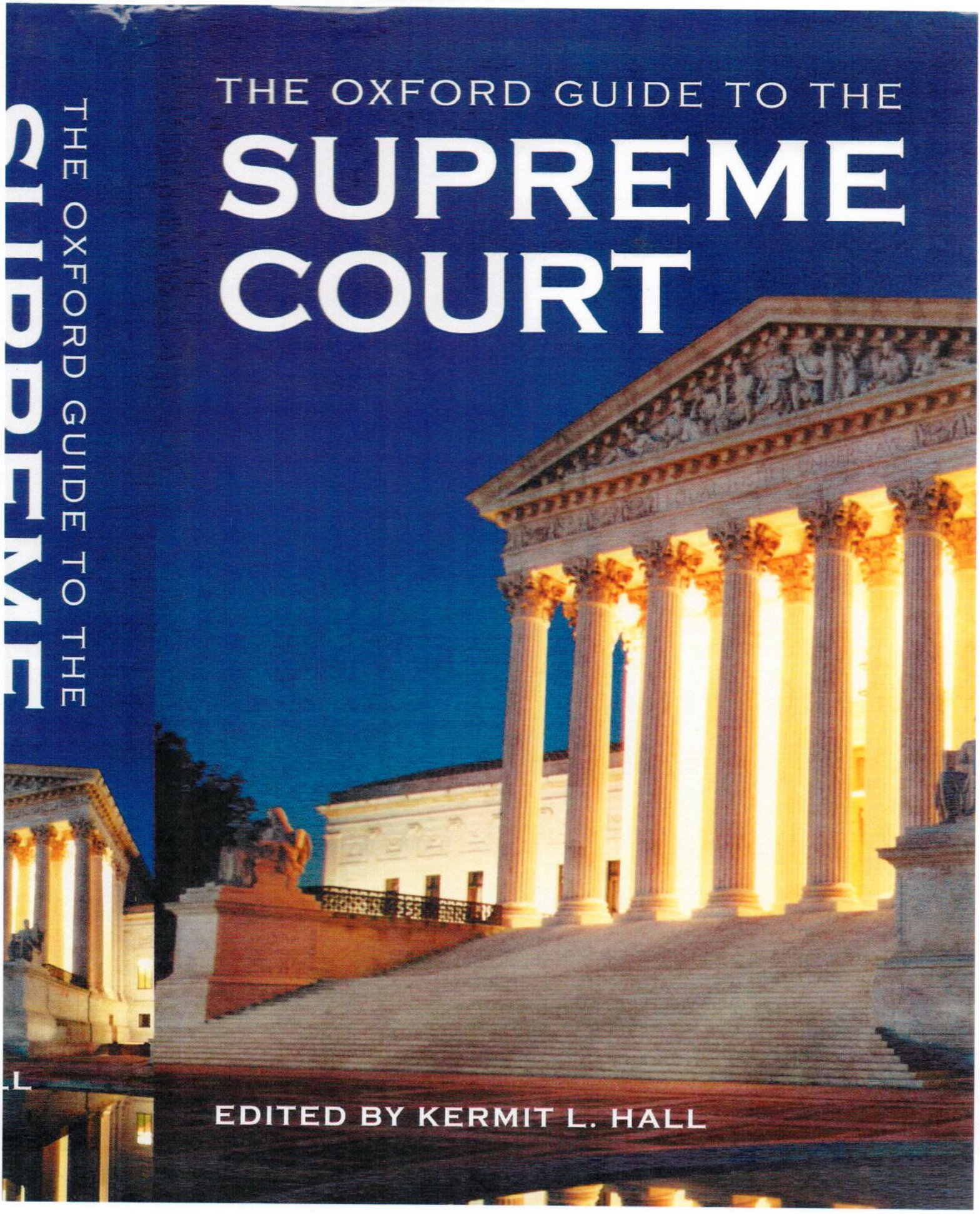
THE OXFORD GUIDE TO THE SUPREME COURT
EDITED BY KERMIT L. HALL
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*privacy, holding that state tort law may violate constitutional protections of free *speech. Moreover, the Court has considered several attempts to establish constitutional limits on the award of punitive damages. In another area, the Supreme Court frequently concludes that federal environmental statutes preempt state *common-law actions for nuisance (see ENVIRONMENT).

The Court also applies state tort law in federal cases. For example, state tort law is followed in diversity of citizenship cases and in suits brought against the United States under the *Federal Tort Claims Act.

In a few cases, the Supreme Court finds the creation of a federal tort authorized, expressly or implicitly, by statute or under the Constitution. Civil damage remedies for violations of constitutional rights are recognized both under section 1983 of the *Civil Rights Act of 1964 and under a cause of action implied in the Constitution.

DONALD G. GIFFORD

TRAVEL, RIGHT TO. The right freely to leave the political and geographic entity in which one resides as well as to move about within its internal borders has deep historical roots. When Moses entreated Pharaoh to "let my people go," he was invoking the right to travel. Article 42 of the Magna Carta (1215) recognized a right to foreign travel. The concept was implicitly considered a right during the founding and settling of the American colonies and later during the westward expansion. Although the Constitution does not explicitly acknowledge a right to travel, it is assumed to reside in Article IV, section 2, which guarantees that "the Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States." Furthermore, Article IV, section 2 contains explicit restrictions on the right to travel by providing that a criminal suspect who flees to another state shall be returned to the state having jurisdiction of the crime and also that persons "held to Service or Labour" (the Constitution's euphemism for *slavery) who escape to another state shall be returned by that state's authorities to the persons "to whom such Service or Labour may be due," that is, the slaveowners (see FUGITIVE SLAVES).

For much of American history, issues surrounding the right to travel were linked with oppression of African-Americans. Before the *Civil War, slaveowners claimed the right to travel with their slaves to states and territories where slavery was prohibited and yet retain full title to their slaves. This was upheld in the infamous *Dred Scott* decision in 1857. White citizens could obtain passports for foreign travel, but African-Americans ordinarily could not. In 1875, Congress enacted legislation prohibiting racial discrimination in public accommodations, including modes of transportation. This was declared unconstitutional by the Supreme Court in the *Civil Rights Cases* (1883). Subsequently, southern and border states enacted laws requiring the separation of the races in all aspects of life, including public transportation. The Supreme Court in *Plessy* v. *Ferguson* (1896) upheld racial segregation in a case concerning railroad travel (see SEPARATE BUT EQUAL DOCTRINE). As the Court was to recognize some sixty-eight years later, in a decision upholding the public accommodations provision of the *Civil Rights Act of 1964 (*Heart of Atlanta Motel* v. *United States*, 1964), segregated public accommodations and transportation greatly impeded the right of black Americans to travel.

The right to travel abroad is dependent upon obtaining a passport. The State Department in 1948 began refusing to issue passports to communists and others for their political beliefs and associations (see COMMUNISM AND COLD WAR). This was challenged in the courts, and in 1955 a *lower federal court recognized the right to travel as "a natural right" protected by the *Due Process Clause of the *Fifth Amendment. The Supreme Court, in *Kent* v. *Dulles* (1958), came to the same conclusion and invalidated the State Department restrictions. Legislation forbidding members of a communist organization who were ordered to register with the Subversive Activities Control Board from applying for or using passports was invalidated in *Aptheker* v. *Secretary of State* (1964). The right to travel abroad, however, is subject to some restrictions. Passports can be (and are) required. In *Regan* v. *Wald* (1984), the Court upheld the president's restriction on tourist travel to Cuba as a reasonable exercise of presidential power under statutory law.

The right to travel within the United States was first acknowledged in the 1868 decision of *Crandall* v. *Nevada*, which struck down a Nevada tax on every person leaving the state by public transportation. The Court ruled that the right to travel from state to state was a right of national *citizenship. This right was strengthened by the *privileges and immunities guarantee of the *Fourteenth Amendment and reaffirmed in the *Slaughterhouse Cases* (1873). In the twentieth century, the right to domestic travel was furthered by the invalidation (albeit under the Commerce Clause) of a California law aimed at keeping nonresident poor people from entering the state (*Edwards* v. *California*, 1941). In later years the Court has struck down as impediments to the right to travel durational residency requirements for governmental services (e.g., *Shapiro* v. *Thompson*, 1969) and voting (e.g., *Dunn* v. *Blumstein*, 1972), and residency as a requirement for the practice of

law (e.g., *Supreme Court of New Hampshire* v. *Piper*, 1985; and *Barnard* v. *Thorstenn*, 1989). However, some durational residency requirements have been allowed (as in *Vlandis* v. *Kline*, 1973; and *Sosna* v. *Iowa*, 1975).

The concept of a constitutional right to travel is recognized as a *fundamental right deeply embedded in American constitutional law.

SHELDON GOLDMAN

TREATIES AND TREATY POWER. In one sense, the Supreme Court has played a minor role in charting the contours of the treaty power and in interpreting treaty terms. No part of any treaty has been held unconstitutional by the Supreme Court, and only a few have been subject to constitutional attack before the Court. Moreover, through its reluctance to become involved in disputes between the political branches concerning the treaty power, the Court has nurtured the understanding that the political branches should shape the nation's foreign policy largely free from judicial supervision (see FOREIGN AFFAIRS AND FOREIGN POLICY). This reticence has contributed to the growth of presidential power over foreign affairs, but the federal judiciary has contributed to the evolution of the treaty power. On a few important occasions, the Court has determined the place of treaties in the hierarchy of federal and state law, and it has ruled that treaties are, like other exercises of federal power, subject to constitutional limitations.

The framers of the Constitution required that the president make treaties, but only with the advice and consent of the Senate. It forbade treaty making by the states and declared in the Supremacy Clause of Article VI that treaties, like the Constitution and laws of the United States, shall be the supreme law of the land and therefore binding on the states. While it is clear that there must be joint participation in treaty making, the framers did not otherwise prescribe limits on treaties or offer a rule for deciding a conflict between treaties and the Constitution or the laws.

Before *World War I, the major debates about the treaty power concerned the supremacy of treaties to state law. The framers had required that those who made treaties—the president (elected by state electors) and the Senate—be especially representative of state interests (see STATE SOVEREIGNTY AND STATES' RIGHTS). Nonetheless, states often contended that treaties could not deal with matters reserved to them by the *Tenth Amendment. Although the Court early held that treaties override inconsistent state law, not until 1920 did the Supreme Court definitely establish the scope of the treaty power relative to the states.

Missouri v. *Holland* (1920) involved the validity of a Canadian-American treaty regulating the hunting of migratory birds. The state of Missouri, locus of a principal midcontinent flyway of migrating waterfowl, challenged the treaty as an invasion of powers reserved to the states by the Tenth Amendment. In rejecting Missouri's challenge, the Court, speaking through Justice Oliver Wendell *Holmes, said in *obiter dictum, "There may be matters of the sharpest exigency for the national well being that an act of Congress could not deal with but that a treaty followed by such an act could" (p. 433). Holmes seemed to suggest that the constitutional restraints on the treaty power were feebler than those on the other enumerated powers of Congress. But state power is not an inherent limitation on the treaty power.

The language of the Supremacy Clause of Article VI, which identifies treaties together with the Constitution and the laws of the United States as "the supreme Law of the Land," was held to mean in *Foster* v. *Neilson* (1829) that a treaty must "be regarded in courts . . . as equivalent to an act of the legislature" (p. 254) and thus that a treaty is not valid if it contravenes the Constitution. The controversy engendered by the Bricker Amendment in the early 1950s resurrected fears generated by *Missouri* v. *Holland* that the treaty power might somehow be superior to constitutional restraint. In *Reid* v. *Covert* (1957), the Court held that civilian dependents of American military personnel overseas are entitled to a civilian trial, notwithstanding a contrary statute, and a plurality stated that no treaty or executive agreement "can confer power on the Congress, or on any other branch of Government, which is free from the restraints of the Constitution" (p. 16).

The Supremacy Clause has had an additional effect on the status and consequences of treaties. As the supreme law of the land, equivalent to an act of Congress, a treaty "operates of itself without the aid of any legislative provision [unless] the terms of the stipulation import a contract [in which case] the legislature must execute the contract before it can become a rule for the Court" (p. 254). On the other hand, if a treaty and a law of Congress are inconsistent, the Court has held that the most recent prevails. Viewing the text of the Supremacy Clause, the Court's is one reasonable interpretation of the relationship between treaties and statutes, but it is not necessarily the one that was in the minds of the framers. The Supremacy Clause says that treaties and statutes are supreme over state law, not that they are equal to each other. The Court's interpretation is nonetheless well settled and has rendered academic all arguments that Congress or the treaty makers should prevail where there is a conflict.

The Court has had little to say about the process of making, interpreting, or terminating treaties, but its silence has had important ramifications. In