pendently of a treaty Congress could not enact; the only question that can be raised as to such measures is whether they are "necessary and proper" for the carrying of the treaty in question into operation.

The foremost example of this interpretation is *Missouri v. Holland*.[351] There, the United States and Great Britain had entered into a treaty for the protection of migratory birds,[352] and Congress had enacted legislation pursuant to the treaty to effectuate it.[353] Missouri objected that such regulation was reserved to the states by the Tenth Amendment and that the statute infringed on this reservation, pointing to lower court decisions voiding an earlier act not based on a treaty.[354] Noting that treaties "are declared the supreme law of the land," Justice Holmes for the Court said: "If the treaty is valid there can be no dispute about the validity of the statute under Article I, § 8, as a necessary and proper means to execute the powers of the Government."[355] "It is obvious," he continued, "that 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, and it is not lightly to be assumed that, in matters requiring national action, 'a power which must belong to and somewhere reside in every civilized government' is not to be found."[356] Because the treaty and thus the statute dealt with a matter of national and international concern, the treaty was proper and the statute was "necessary and proper" to effectuate the treaty.

Constitutional Limitations on the Treaty Power

A question growing out of the discussion above is whether the treaty power is bounded by constitutional limitations. By the Supremacy Clause, both statutes and treaties "are declared . . . to be the supreme law of the land, and no superior efficacy is given to either over the other."[357] As statutes may be held void because they contravene the Constitution, it should follow that treaties may be

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[351] 252 U.S. 416 (1920).

[352] 39 Stat. 1702 (1916).

[353] 40 Stat. 755 (1918).

[354] United States v. Shauver, 214 F. 154 (E.D. Ark. 1914); United States v. McCullagh, 221 F. 288 (D. Kan. 1915). The Court did not purport to decide whether those cases were correctly decided. Missouri v. Holland, 252 U.S. 416, 433 (1920). Today, there seems no doubt that Congress's power under the commerce clause would be deemed more than adequate, but at that time a majority of the Court had a very restrictive view of the commerce power. *Cf.* Hammer v. Dagenhart, 247 U.S. 251 (1918).

[355] Missouri v. Holland, 252 U.S. 416, 432 (1920).

[356] 252 U.S. at 433. The internal quotation is from Andrews v. Andrews, 188 U.S. 14, 33 (1903).

[357] Whitney v. Robertson, 124 U.S. 190, 194 (1888).