Controversy over Holmes' language apparently led Justice Black in *Reid v. Covert* [364] to deny that the difference in language of the Supremacy Clause with regard to statutes and with regard to treaties was relevant to the status of treaties as inferior to the Constitution. "There is nothing in this language which intimates that treaties do not have to comply with the provisions of the Constitution. Nor is there anything in the debates which accompanied the drafting and ratification of the Constitution which even suggests such a result. These debates as well as the history that surrounds the adoption of the treaty provision in Article VI make it clear that the reason treaties were not limited to those made in 'pursuance' of the Constitution was so that agreements made by the United States under the Articles of Confederation, including the important treaties which concluded the Revolutionary War, would remain in effect. It would be manifestly contrary to the objectives of those who created the Constitution, as well as those who were responsible for the Bill of Rights—let alone alien to our entire constitutional history and tradition—to construe Article VI as permitting the United States to exercise power under an international agreement without observing constitutional prohibitions. In effect, such construction would permit amendment of that document in a manner not sanctioned by Article V." [365]

Establishment of the general principle, however, is but the beginning; there is no readily agreed-upon standard for determining what the limitations are. The most persistently urged proposition in limitation has been that the treaty power must not invade the reserved powers of the states. In view of the sweeping language of the Supremacy Clause, it is hardly surprising that this argument has not prevailed.[366] Nevertheless, the issue, in the context of Congress's power under the Necessary and Proper Clause to effectuate a treaty dealing with a subject arguably within the domain of the

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[364] 354 U.S. 1 (1957) (plurality opinion).

[365] 354 U.S. at 16–17. For discussions of the issue, *see* Restatement, Foreign Relations, § 302; Nowak & Rotunda, *A Comment on the Creation and Resolution of a "Non-Problem": Dames & Moore v. Regan, the Foreign Affairs Power, and the Role of the Courts*, 29 UCLA L. REV. 1129 (1982); L. Henkin, supra, at 137–156.

[366] Ware v. Hylton, 3 U.S. (3 Dall.) 199 (1796); Fairfax's Devisee v. Hunter's Lessee, 11 U.S. (7 Cr.) 603 (1813); Chirac v. Chirac, 15 U.S. (2 Wheat.) 259 (1817); Hauenstein v. Lynham, 100 U.S. 483 (1880). Jefferson, in his list of exceptions to the treaty power, thought the Constitution "must have meant to except out of these the rights reserved to the States, for surely the President and Senate cannot do by treaty what the whole Government is interdicted from doing in any way." Jefferson's Manual of Parliamentary Practice, § 594, reprinted in THE RULES AND MANUAL OF THE HOUSE OF REPRESENTATIVES, H. Doc. 102–405, 102d Congress, 2d Sess. (1993), 298–299. But this view has always been the minority one. Q. Wright, supra, at 92 n.97. The nearest the Court ever came to supporting this argument appears to be Frederickson v. Louisiana, 64 U.S. (23 How.) 445, 448 (1860).