leaves little room for the notion of a limited treaty-making power with regard to the reserved rights of the states or in regard to the choice of matters concerning which the Federal Government may treat with other nations; protected individual rights appear to be sheltered by specific constitutional guarantees from the domestic effects of treaties, and the separation of powers at the federal level may require legislative action to give municipal effect to international agreements.

Interpretation and Termination of Treaties as International Compacts

The repeal by Congress of the "self-executing" clauses of a treaty as "law of the land" does not of itself terminate the treaty as an international contract, although it may very well provoke the other party to the treaty to do so. Hence, the questions arise where the Constitution lodges this power and where it lodges the power to interpret the contractual provisions of treaties. The first case of outright abrogation of a treaty by the United States occurred in 1798, when Congress by the Act of July 7 of that year, pronounced the United States freed and exonerated from the stipulations of the Treaties of 1778 with France.[378] This act was followed two days later by one authorizing limited hostilities against the same country; in *Bas v. Tingy*,[379] the Supreme Court treated the act of abrogation as simply one of a bundle of acts declaring "public war" upon the French Republic.

Termination of Treaties by Notice.—Typically, a treaty provides for its termination by notice of one of the parties, usually after a prescribed time from the date of notice. Of course, treaties may also be terminated by agreement of the parties, or by breach by one of the parties, or by some other means. But it is in the instance of termination by notice that the issue has frequently been raised: where in the Government of the United States does the Constitution lodge the power to unmake treaties?[380] Reasonable argu-

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[378] 1 Stat. 578 (1798).

[379] 4 U.S. (4 Dall.) 37 (1800). *See also* Gray v. United States, 21 Ct. Cl. 340 (1886), with respect to claims arising out of this situation.

[380] The matter was most extensively canvassed in the debate with respect to President Carter's termination of the Mutual Defense Treaty of 1954 with the Republic of China (Taiwan). *See, e.g.*, the various views argued in *Treaty Termination: Hearings Before the Senate Committee on Foreign Relations*, 96th Congress, 1st Sess. (1979). On the issue generally, *see* Restatement, Foreign Relations, § 339; CRS Study, supra, 158–167; L. Henkin, supra, at 167–171; Bestor, *Respective Roles of Senate and President in the Making and Abrogation of Treaties: The Original Intent of the Framers of the Constitution Historically Examined*, 55 WASH. L. REV. 1 (1979); Berger, *The President's Unilateral Termination of the Taiwan Treaty*, 75 NW. U. L. REV. 577 (1980).