Origin of the Conception.—How did this distinctive feature of the Constitution come about, by virtue of which the treaty-making authority is enabled to stamp upon its promises the quality of municipal law, thereby rendering them enforceable by the courts without further action? The short answer is that Article VI, paragraph 2, makes treaties the supreme law of the land on the same footing with acts of Congress. The clause was a direct result of one of the major weaknesses of the Articles of Confederation. Although the Articles entrusted the treaty-making power to Congress, fulfillment of Congress's promises was dependent on the state legislatures.[295] Particularly with regard to provisions of the Treaty of Peace of 1783,[296] in which Congress stipulated to protect the property rights of British creditors of American citizens and of the former Loyalists,[297] the promises were not only ignored but were deliberately flouted by many legislatures.[298] Upon repeated British protests, John Jay, the Secretary for Foreign Affairs, suggested to Congress that it request state legislatures to repeal all legislation repugnant to the Treaty of Peace and to authorize their courts to carry the treaty into effect.[299] Although seven states did comply to some extent, the impotency of Congress to effectuate its treaty guarantees was obvious to the Framers who devised Article VI, paragraph 2, to take care of the situation.[300]

Treaties and the States.—As it so happened, the first case in which the Supreme Court dealt with the question of the effect of treaties on state laws involved the same issue that had prompted the drafting of Article VI, paragraph 2. During the Revolutionary

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the Framers sought to prevent by enacting the Supremacy Clause." Id. at 1384. On August 5, 2008, the U.S. Supreme Court denied Medellin a stay of execution, Medellin v. Texas, 129 S. Ct. 360 (2008) (Justices Stevens, Souter, Ginsburg, and Breyer dissenting), and Texas executed him the same day.

[295] S. CRANDALL, TREATIES, THEIR MAKING AND ENFORCEMENT ch. 3 (2d ed. 1916).

[296] Id. at 30–32. For the text of the Treaty, *see* 1 *Treaties, Conventions, International Acts, Protocols and Agreements Between the United States of America and Other Powers (1776–1909)*, 586 S. DOC. NO. 357, 61st Congress, 2d Sess. (W. Malloy ed., 1910).

[297] Id. at 588.

[298] R. MORRIS, JOHN JAY, THE NATION, AND THE COURT 73–84 (1967).

[299] S. Crandall, supra, at 36–40.

[300] The Convention at first leaned toward giving Congress a negative over state laws which were contrary to federal statutes or treaties, 1 M. Farrand, supra, at 47, 54, and then adopted the Paterson Plan which made treaties the supreme law of the land, binding on state judges, and authorized the Executive to use force to compel observance when such treaties were resisted. Id. at 245, 316, 2 id. at 27–29. In the draft reported by the Committee on Detail, the language thus adopted was close to the present Supremacy Clause; the draft omitted the authorization of force from the clause, id. at 183, but in another clause the legislative branch was authorized to call out the militia to, inter alia, "enforce treaties." Id. at 182. The two words were struck subsequently "as being superfluous" in view of the Supremacy Clause. Id. at 389–90.