no constitutional barrier" to such action.[444] However, at least five of the Supreme Court Justices were persuaded to reject at length the contention that such Agreements could sustain, as necessary and proper for their effectuation, implementing legislation subsequently found by the Court to contravene constitutional guaranties set forth in the Bill of Rights.[445]

Executive Agreements on the Sole Constitutional Authority of the President

Many types of executive agreements comprise the ordinary daily grist of the diplomatic mill. Among these are such as apply to minor territorial adjustments, boundary rectifications, the policing of boundaries, the regulation of fishing rights, private pecuniary claims against another government or its nationals, in Story's words, "the mere private rights of sovereignty."[446] Crandall lists scores of such agreements entered into with other governments by the authorization of the President.[447] Such agreements were ordinarily directed to particular and comparatively trivial disputes and by the settlement they effect of these cease *ipso facto* to be operative. Also, there are such time-honored diplomatic devices as the "protocol" which marks a stage in the negotiation of a treaty, and the *modus vivendi*, which is designed to serve as a temporary substitute for one. Executive agreements become of constitutional significance when they constitute a determinative factor of future foreign policy and hence of the country's destiny. In consequence particularly of our participation in World War II and our immersion in the conditions of international tension which prevailed both before and after the war, Presidents have entered into agreements with other governments some of which have approximated temporary alliances. It cannot be justly said, however, that in so doing they have acted without considerable support from precedent.

An early instance of executive treaty-making was the agreement by which President Monroe in 1817 defined the limits of armaments on the Great Lakes. The arrangement was effected by an exchange of notes, which nearly a year later were laid before the Senate with a query as to whether it was within the President's power, or whether advice and consent of the Senate was required. The Senate approved the agreement by the required two-thirds vote, and it was forthwith proclaimed by the President without there hav-

---

[444] Wilson v. Girard, 354 U.S. 524 (1957).

[445] Reid v. Covert, 354 U.S. 1, 16–17 (1957) (plurality opinion); id. at 66 (Justice Harlan concurring).

[446] 3 J. Story, Commentaries on the Constitution of the United States 1397 (1833).

[447] S. Crandall, supra, ch. 8; *see also* W. McClure, supra, chs. 1, 2.