
FOREIGN RELATIONS LAW — TREATY REMEDIES — NINTH CIRCUIT HOLDS THAT § 1983 DOES NOT PROVIDE A RIGHT OF ACTION FOR VIOLATIONS OF THE VIENNA CONVENTION ON CONSULAR RELATIONS. — *Cornejo v. County of San Diego*, 504 F.3d 853 (9th Cir. 2007), *reh'g and reh'g en banc denied*, No. 05-56202 (9th Cir. Feb. 4, 2008).

Since World War II, treaties have proliferated to address almost every matter of international concern.¹ However, despite judicial precedent on treaty enforcement extending back to the earliest days of the Republic,² the ability of individuals to enforce treaty-based rights in U.S. courts remains an unsettled question. Recently, in *Cornejo v. County of San Diego*,³ the Ninth Circuit held that 42 U.S.C. § 1983⁴ does not provide a cause of action for violations of the consular notification rights guaranteed by the Vienna Convention on Consular Relations⁵ (VCCR). In so holding, the court split with the Seventh Circuit, which in *Jogi v. Voges*⁶ was the first circuit court to consider the issue and the first to allow any domestic remedy for a VCCR violation.⁷ Although *Cornejo* assumed § 1983 applied to self-executing treaties like the VCCR, it did not follow the § 1983 analysis the Supreme Court has expounded for federal statutory rights. Instead, the court applied a presumption against judicial enforcement of treaty-based rights, an approach that is inconsistent with both the constitutional design of the United States and the structure of international law.

Ezequiel Nunez Cornejo, a Mexican citizen, was arrested in San Diego County on April 8, 2003.⁸ Because Cornejo was a foreign national, Article 36 of the VCCR required the arresting authorities to notify him of his right to contact the Mexican consulate, but they did not do so.⁹ Cornejo subsequently filed suit against the arresting officials,

¹ See LORI FISLER DAMROSCH ET AL., INTERNATIONAL LAW 109–10 (4th ed. 2001).

² See, e.g., *Ware v. Hylton*, 3 U.S. (3 Dall.) 199 (1796).

³ 504 F.3d 853 (9th Cir. 2007), *reh'g and reh'g en banc denied*, No. 05-56202 (9th Cir. Feb. 4, 2008).

⁴ 42 U.S.C. § 1983 (2000) (providing a civil cause of action for any person deprived under color of state law “of any rights, privileges, or immunities secured by the Constitution and laws”).

⁵ Vienna Convention on Consular Relations, Apr. 24, 1963, 21 U.S.T. 77, 596 U.N.T.S. 261 [hereinafter VCCR].

⁶ 480 F.3d 822 (7th Cir. 2007). The Seventh Circuit’s first opinion in that case, 425 F.3d 367 (7th Cir. 2005), which was withdrawn on rehearing, is discussed in Recent Case, 119 HARV. L. REV. 2644 (2006).

⁷ See *Cornejo*, 504 F.3d at 857; *Jogi*, 480 F.3d at 831–32. The Supreme Court has not addressed the issue of whether the VCCR creates individual rights. See *Sanchez-Llamas v. Oregon*, 126 S. Ct. 2669, 2677–78 (2006) (“[W]e assume, without deciding, that Article 36 does grant Bustillo and Sanchez-Llamas such rights.”); *Breard v. Greene*, 523 U.S. 371, 376 (1998) (stating that the VCCR “arguably confers on an individual the right to consular assistance following arrest”).

⁸ *Cornejo*, 504 F.3d at 854–55.

⁹ *Id.*

the county, and several cities within the county, seeking damages and injunctive relief on behalf of himself and other foreign nationals not notified of their rights as required by Article 36.¹⁰ The district court granted the defendants' motions to dismiss.¹¹ Pointing out that Cornejo asserted a novel legal theory, the court held, *inter alia*, that the VCCR did not create a "private right of action in domestic court."¹²

The Ninth Circuit affirmed.¹³ Writing for the panel, Judge Rymer¹⁴ first noted that "[t]here is no question that the Vienna Convention is self-executing. As such, it has the force of domestic law without the need for implementing legislation by Congress."¹⁵ Citing *Maine v. Thiboutot*¹⁶ and *Baldwin v. Franks*,¹⁷ the court also assumed that § 1983 applied to self-executing treaties.¹⁸ Under *Gonzaga University v. Doe*,¹⁹ a treaty or statute must provide an "unambiguously conferred right' phrased in terms of the person benefited" to be enforceable through a § 1983 claim.²⁰ The court noted that although Article 36 refers to a detainee's "rights," it does not discuss how those rights may be invoked.²¹ The majority found that the rights were meant to facilitate the exercise of consular functions by states rather than to protect individuals, and that the signatories did not intend to allow individuals to invoke the rights in court.²² Thus, the VCCR did not "un-

¹⁰ *Id.* at 854.

¹¹ *Cornejo v. County of San Diego*, No. 05-CV-726-H, slip op. at 2 (S.D. Cal. June 14, 2005).

¹² *Id.* at 5-6. The district court also held that Cornejo's claim was barred by *Heck v. Humphrey*, 512 U.S. 477 (1994), which requires the dismissal of § 1983 claims that would imply, if successful, the invalidity of the plaintiff's conviction or sentence. *Cornejo*, No. 05-CV-726-H, slip op. at 3-4. On appeal, however, the Ninth Circuit assumed that *Heck* did not apply because the complaint and record did not discuss a prosecution or conviction. *Cornejo*, 504 F.3d at 855 n.2.

¹³ *Cornejo*, 504 F.3d at 855.

¹⁴ Judge Alarcón joined Judge Rymer's opinion.

¹⁵ *Cornejo*, 504 F.3d at 856.

¹⁶ 448 U.S. 1 (1980). *Thiboutot* held that § 1983 applies to all "laws," including violations of purely statutory rights. *Id.* at 4.

¹⁷ 120 U.S. 678 (1887). *Baldwin* assumed § 1983's criminal counterpart applied to treaties but declined to impose liability on other grounds. *See id.* at 690-92; *see also id.* at 695 (Harlan, J., dissenting) (noting the majority's concession that "in the meaning of that section, a treaty . . . is a 'law' of the United States").

¹⁸ *Cornejo*, 504 F.3d at 858 n.8.

¹⁹ 536 U.S. 273 (2002).

²⁰ *Cornejo*, 504 F.3d at 858 (quoting *Gonzaga*, 536 U.S. at 282).

²¹ *Id.* at 859.

²² *Id.* at 860. To buttress its conclusion, the court noted that the VCCR's Preamble indicates that "the purpose of such privileges is not to benefit individuals," *id.* at 861 (quoting VCCR, *supra* note 5, pmb1.) (internal quotation mark omitted), that the State Department had informed the Senate Foreign Relations Committee that violations would be resolved diplomatically or through the International Court of Justice, *id.* at 862, and that the government asserted that "none of the 170 States parties ha[d] permitted a private tort suit for damages for violation of Article 36," *id.* at 863.

ambiguously give Cornejo a privately enforceable right to be notified”²³ and was not enforceable under § 1983.²⁴

Judge Nelson dissented. She argued that the majority had erroneously applied *Gonzaga* by requiring Cornejo to demonstrate “an intent to create remedies enforceable in American courts through § 1983.”²⁵ Under *Gonzaga*, the establishment of an individual right makes it “presumptively enforceable by § 1983.”²⁶ Thus, Article 36 did not need to specify how the consular notification right may be invoked because the clear language conferring individual rights was sufficient to establish a presumption of enforceability.²⁷ Judge Nelson reasoned that although the Senate likely did not foresee enforcement of the VCCR under § 1983 during ratification, such enforcement was required by post-ratification case law expanding the scope of § 1983.²⁸ Finally, she noted that the VCCR was “silent on private, judicially enforceable remedies for violations of individual rights” and thus did not rebut the presumption that such rights were enforceable under § 1983.²⁹

The Supreme Court has not resolved whether § 1983 — a law passed during Reconstruction to target organized violence by the Ku Klux Klan³⁰ — should apply to violations of rights created by self-executing treaties.³¹ If it does apply, as the Ninth Circuit assumed in *Cornejo* and the Seventh Circuit squarely held in *Jogi*,³² the next question is how § 1983 should be interpreted in the treaty context. The *Cornejo* majority declined to follow the § 1983 analysis the Supreme Court laid out for federal statutes in *Gonzaga* and instead imposed an additional threshold requirement that the treaty-makers — whether the ratifying Congress or the signatory states — intended to allow private judicial enforcement. The *Cornejo* majority’s language suggests that it did not misread *Gonzaga*, but rather that it applied a different analysis because it was interpreting a right created by a self-executing treaty rather than a statute. This two-tiered approach is problematic for two reasons. First, assuming that § 1983 applies to treaties, inter-

²³ *Id.* at 863.

²⁴ *Id.* at 863–64.

²⁵ *Id.* at 864 (Nelson, J., dissenting).

²⁶ *Id.* at 865 (quoting *Gonzaga Univ. v. Doe*, 536 U.S. 273, 284 (2002)) (internal quotation mark omitted).

²⁷ *See id.* at 866, 873.

²⁸ *See id.* at 868–69 (citing *Maine v. Thiboutot*, 448 U.S. 1 (1980)).

²⁹ *Id.* at 873. Judge Nelson also examined the other sources the majority cited and found that none contradicted the conclusion that Article 36 conferred individual rights. *See id.* at 866–72.

³⁰ *See Chapman v. Houston Welfare Rights Org.*, 441 U.S. 600, 608, 610 n.25 (1979).

³¹ Compare John C. Yoo, *Treaties and Public Lawmaking*, 99 COLUM. L. REV. 2218, 2256 n.140 (1999) (arguing that § 1983 does not apply to treaties), with *Jogi v. Voges*, 480 F.3d 822, 827 (7th Cir. 2007) (holding that § 1983 applies to treaties), and Carlos Manuel Vázquez, *Treaty-Based Rights and Remedies of Individuals*, 92 COLUM. L. REV. 1082, 1146–47 (1992) (arguing the same).

³² *Jogi*, 480 F.3d at 827.

preting it to apply differently to a self-executing treaty than to a federal statute is inconsistent with the Supremacy Clause. Second, the requirement that treaty-makers intend domestic judicial enforcement of the rights in question does not make sense given that, under international law, the domestic legal status of treaties is determined by the domestic law of each state. Instead of imposing different requirements for treaties, the Ninth Circuit should have followed the same § 1983 analysis it would have used for a federal statutory right.

Cornejo ignored two aspects of § 1983 jurisprudence that the Supreme Court has emphasized even while narrowing the statute's scope: the presumption of enforceability and the distinction between rights and remedies. Under *Gonzaga*, plaintiffs "*do not have the burden of showing an intent to create a private remedy* because § 1983 generally supplies a remedy for the vindication of rights secured by federal statutes."³³ The defendant bears the burden of rebutting this presumption by demonstrating that Congress "shut the door to private enforcement either expressly, through specific evidence from the statute itself, or impliedly, by creating a comprehensive enforcement scheme that is incompatible with individual enforcement under § 1983."³⁴

The *Cornejo* court never mentioned the presumption of enforceability and instead began by asking "whether Congress, by ratifying the Convention, intended to create private rights *and remedies enforceable in American courts* through § 1983."³⁵ *Cornejo* lost because the evidence did not show that the parties to the VCCR "intended the enforcement of a 'right' to consular notification in the courts of the receiving State."³⁶ As the dissent pointed out, conflating intent to create an individual right with intent to create a private judicial remedy is inconsistent with *Gonzaga*'s presumption of enforceability for individual rights.³⁷ Instead of applying that presumption, the court appears to have imported a different presumption *against* private enforcement of treaties³⁸ that has gained traction in some lower courts.³⁹ The Fifth and Sixth Circuits, for example, have declined to imply remedies for

³³ *Gonzaga Univ. v. Doe*, 536 U.S. 273, 284 (2002) (emphasis added).

³⁴ *Id.* at 284 n.4 (internal citation and quotation marks omitted). The provision of a private judicial remedy in a statute, by contrast, weighs against enforcement under § 1983 because it suggests Congress intended it to be the sole judicial remedy. *City of Rancho Palos Verdes v. Abrams*, 125 S. Ct. 1453, 1458 (2005).

³⁵ *Cornejo*, 504 F.3d at 857 (emphasis added).

³⁶ *Id.* at 863.

³⁷ See *id.* at 864 n.1 (Nelson, J., dissenting).

³⁸ See *id.* at 858–59 (majority opinion). But see *Sanchez-Llamas v. Oregon*, 126 S. Ct. 2669, 2697 (2006) (Breyer, J., dissenting) ("[N]o such presumption exists.").

³⁹ See David Sloss, *When Do Treaties Create Individually Enforceable Rights? The Supreme Court Ducks the Issue in Hamdan and Sanchez-Llamas*, 45 COLUM. J. TRANSNAT'L L. 20, 24, 27 (2006).

Article 36 violations⁴⁰ because “[n]othing in [the] text explicitly provides for judicial enforcement . . . at the behest of private litigants.”⁴¹ No circuit court, however, has applied a presumption *against* private judicial enforcement of treaties in the context of a § 1983 claim.

The *Cornejo* majority explicitly acknowledged that the requirement of intent to create a private judicial remedy was unique to treaty-based rights,⁴² reasoning that “[t]reaties are different from statutes, and come with their own rules of the road.”⁴³ Despite this truism, however, treating treaties differently under § 1983 is inconsistent with the design of the Constitution. The Supremacy Clause declares treaties, along with federal laws and the Constitution, to be the “supreme Law of the Land.”⁴⁴ The national government’s inability to enforce treaties against the states under the Articles of Confederation was a major impetus behind the drafting of the new Constitution, and the Framers specifically intended the Supremacy Clause to remedy this problem by allowing federal courts to enforce treaties on behalf of individuals.⁴⁵ Madison, for example, wrote that “treaties, when formed according to the constitutional mode, are confessedly to have the force and operation of *laws*, and are to be a rule for the courts in controversies between man and man, as much as any *other laws*.”⁴⁶ Although *Foster v. Neilson*⁴⁷ restricted judicial enforcement to self-executing treaties,⁴⁸ the Court has repeatedly held that the Supremacy Clause places self-executing treaties on par with federal statutes for purposes of domestic judicial enforcement.⁴⁹ The Supreme Court has never endorsed a pre-

⁴⁰ See *United States v. Emuegbunam*, 268 F.3d 377, 390–91 (6th Cir. 2001) (denying dismissal of indictment and reversal of conviction); *United States v. Jimenez-Nava*, 243 F.3d 192, 198–99 (5th Cir. 2001) (denying suppression of evidence).

⁴¹ *Jimenez-Nava*, 243 F.3d at 197 (second alteration in original) (quoting *United States v. Li*, 206 F.3d 56, 66 (1st Cir. 2000) (en banc) (Selya & Boudin, JJ., concurring)).

⁴² See *Cornejo*, 504 F.3d at 858 n.9 (“The dissent . . . goes off track by treating this case as if it involved a *statute* instead of a *treaty*. *Gonzaga* does not purport to answer the question before us, which concerns how a treaty is to be interpreted.”).

⁴³ *Id.*

⁴⁴ U.S. CONST. art. VI, cl. 2.

⁴⁵ See Vázquez, *supra* note 31, at 1101–08; see also, e.g., THE FEDERALIST NO. 22, at 146 (Alexander Hamilton) (Clinton Rossiter ed., 1961) (“The treaties of the United States, to have any force at all, must be considered as part of the law of the land. Their true import, as far as respects individuals, must, like all other laws, be ascertained by judicial determinations.”).

⁴⁶ James Madison, *Letters of Helvidius No. 1* (Aug. 24, 1793), reprinted in 6 THE WRITINGS OF JAMES MADISON 138, 148 (Gaillard Hunt ed., 1906).

⁴⁷ 27 U.S. (2 Pet.) 253 (1829).

⁴⁸ *Id.* at 314.

⁴⁹ See, e.g., *Reid v. Covert*, 354 U.S. 1, 18 (1957) (plurality opinion) (“[A]n Act of Congress . . . is on a full parity with a treaty . . .”); *The Head Money Cases*, 112 U.S. 580, 598–99 (1884) (“A treaty, then, is a law of the land as an act of congress is, whenever its provisions prescribe a rule by which the rights of the private citizen or subject may be determined.”); *Foster*, 27 U.S. (2 Pet.) at 314 (holding that a treaty is “to be regarded in courts of justice as equivalent to an act of the legislature, whenever it operates of itself without the aid of any legislative provision”).

sumption against judicial enforcement⁵⁰ and indeed has frequently enforced treaties despite the absence of implementing legislation or explicit evidence that the signatories intended judicial enforcement.⁵¹

While substantial debate continues today over the precise implications of the Supremacy Clause for treaties, most of the controversy focuses on issues not implicated in *Cornejo*: whether there should be presumptions for or against self-execution⁵² and implied private remedies.⁵³ *Cornejo* did not depend on the outcome of these debates because the parties agreed that Article 36 is self-executing and because the plaintiffs relied on a statutory right of action. Even if a presumption against judicial enforcement applies to implied remedies or rights of action,⁵⁴ any such presumption should not trump a statute — here, § 1983 — that itself dictates how an individual right may be enforced. Accordingly, courts should apply the same § 1983 analysis to the VCCR as they would to a federal statute.⁵⁵ Declining to do so places the VCCR and similar treaties in a strange legal limbo. The VCCR, because it is self-executing, would have the status of federal law cognizable by courts; yet courts could not provide remedies for its violation even if § 1983 would *require* a remedy for an identical federal statute.

Cornejo's requirement that signatories intend domestic judicial enforcement also makes little sense because under international law, the status of international law within states is dictated by the domestic law of each state.⁵⁶ Given the great variation in domestic implementation

Despite these holdings, a few scholars have argued that treaties are inferior to federal statutes. See, e.g., Vasan Kesavan, *The Three Tiers of Federal Law*, 100 NW. U. L. REV. 1479 (2006).

⁵⁰ See Sloss, *supra* note 39, at 28.

⁵¹ See *id.* at 57–73, 98–105 (compiling cases).

⁵² Compare John C. Yoo, *Globalism and the Constitution: Treaties, Non-Self-Execution, and the Original Understanding*, 99 COLUM. L. REV. 1955 (1999) (arguing that a presumption against self-execution is consistent with original understanding), with Martin S. Flaherty, *History Right?: Historical Scholarship, Original Understanding, and Treaties as "Supreme Law of the Land,"* 99 COLUM. L. REV. 2095 (1999) (arguing that a presumption of self-execution is more consistent with original understanding).

⁵³ Compare Paul B. Stephan, *Private Remedies for Treaty Violations After Sanchez-Llamas*, 11 LEWIS & CLARK L. REV. 65, 87 (2007) (arguing for a presumption against private judicial enforcement), with Sloss, *supra* note 39, at 110–11 (arguing against such a presumption).

⁵⁴ See, e.g., Curtis A. Bradley, *International Delegations, the Structural Constitution, and Non-Self-Execution*, 55 STAN. L. REV. 1557, 1588–89 (2003) (“[S]cholars are wrong to equate ‘supreme Law of the Land’ with automatic judicial enforceability . . .”); cf. *Sanchez-Llamas v. Oregon*, 126 S. Ct. 2669, 2682 (2006) (holding that suppression of evidence was not an appropriate remedy for violations of the VCCR).

⁵⁵ It is true that treaties create private rights less frequently than do federal statutes. See RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 907 cmt. a (1986). However, once a court finds such a right, it should treat it as equivalent to a statutory right under the Supremacy Clause.

⁵⁶ See DAMROSCH ET AL., *supra* note 1, at 160–61 (“[H]ow a state [carries out its international obligations] is not of concern to international law. . . . States differ as to whether interna-

of treaties among the 170 signatories to the VCCR, it seems unlikely that those signatories had any specific intent as to whether the VCCR would be judicially enforceable.⁵⁷ Instead, U.S. courts must look to domestic law — including the Supremacy Clause and § 1983 — to determine the available remedies. Signatory intent only determines judicial enforceability to the extent that *domestic* law so specifies.

The *Cornejo* court's requirement that signatories intend judicial enforcement reflects a broader conflation of international and domestic remedies. For example, the court cited as evidence that a private remedy does not exist the State Department's contention that remedies under the VCCR "are diplomatic, political, or exist between states under international law."⁵⁸ However, remedies on the international plane are almost always diplomatic, political, or between states.⁵⁹ Such remedies allow states to sanction violations of international law by *other states*. States wishing to comply with their *own* domestic obligations under treaties like the VCCR must still implement them through some domestic means. International remedies thus cannot constitute a "comprehensive enforcement scheme"⁶⁰ incompatible with a domestic § 1983 remedy. For the same reason, the concern that allowing a § 1983 action would impose obligations on the United States without reciprocity from other signatories⁶¹ is misplaced. If the United States uses private judicial enforcement to achieve the same result another nation could achieve by executive decree, it has not done any more vis-à-vis its international obligations than the other nation.

Of course, enforcing treaty rights under § 1983 may also raise domestic constitutional concerns. Allowing judges to enforce treaty rights absent specific implementing legislation may "risk aggrandizing the power of the judiciary" at the expense of the political branches by giving judges excessive discretion.⁶² Far less judicial discretion is in-

tional law is incorporated into domestic law . . ."); Curtis A. Bradley, Breard, *Our Dualist Constitution, and the Internationalist Conception*, 51 STAN. L. REV. 529, 530-31 (1999).

⁵⁷ Unlike in countries like the United Kingdom, in which no treaties are self-executing, see Carlos Manuel Vázquez, *The Four Doctrines of Self-Executing Treaties*, 89 AM. J. INT'L L. 695, 697 (1995), in the United States the Supremacy Clause "effectuate[s] a wholesale incorporation of U.S. treaties into domestic law," *id.* at 699.

⁵⁸ *Cornejo*, 504 F.3d at 862 (quoting *United States v. Emuegbunam*, 268 F.3d 377, 392 (6th Cir. 2001)) (internal quotation mark omitted).

⁵⁹ See DAMROSCH ET AL., *supra* note 1, at 404. However, international law now recognizes some cases of individual criminal responsibility for severe violations of international law. *Id.*

⁶⁰ *Blessing v. Freestone*, 520 U.S. 329, 341 (1997).

⁶¹ See, e.g., Ryan D. Newman, Note, *Treaty Rights and Remedies: The Virtues of a Clear Statement Rule*, 11 TEX. REV. L. & POL. 419, 474 (2007).

⁶² *Emuegbunam*, 268 F.3d at 394. Cf., e.g., Jack L. Goldsmith, *The New Formalism in United States Foreign Relations Law*, 70 U. COLO. L. REV. 1395, 1396 (1999) (arguing that judicial discretion in applying foreign relations doctrines usurps the lawmaking role of the political branches).

involved, however, in directly applying the existing § 1983 standard than in evaluating a vague requirement of intent for judicial enforcement. If § 1983 applies to both treaties and statutes, courts should interpret that provision consistently, because “[t]o give [the] same words a different meaning” in different contexts “would be to invent a statute rather than interpret one.”⁶³

It is likely true that the U.S. ratifiers of the VCCR and the drafters of § 1983 did not specifically intend to create a right of action for damages for violations of Article 36.⁶⁴ This concern, however, is common to many statutory applications of § 1983 and is not a reason to treat treaty-based rights differently. For example, the drafters of § 1983 and the Social Security Act probably did not anticipate that the combination of the two statutes would create a private cause of action for deprivations of welfare benefits, but *Thiboutot* reached that precise result when it held that § 1983 extended to all statutory rights as well as constitutional rights.⁶⁵ *Gonzaga*’s presumption of judicial enforceability requires courts to enforce individual federal rights under § 1983 in the absence of discoverable congressional intent on enforcement. Absent action by Congress,⁶⁶ courts have no reason to reverse this presumption in the treaty context.

Even the most faithful application of *Gonzaga* may not have changed the outcome of *Cornejo* because the case ultimately depended on a difficult question of treaty interpretation. However, because *Cornejo* conflated the existence of an individual right with intent to provide private judicial enforcement, it is impossible to predict how the court would have ruled if it had not taken its flawed approach to treaty-based rights under § 1983. *Cornejo*’s approach is inconsistent with both the Supremacy Clause, which grants self-executing treaties the status of federal law equivalent to that of statutes, and the structure of international law, under which domestic remedies are determined by domestic law in the absence of specific provisions to the contrary. *Cornejo* would stand on far firmer ground if the court had simply applied the same § 1983 analysis to the VCCR that it would have applied to any federal statute.

⁶³ *Clark v. Martinez*, 543 U.S. 371, 378 (2005) (stating that courts should not use the constitutional avoidance canon to interpret the same statutory provision differently in different contexts).

⁶⁴ See *Cornejo*, 504 F.3d at 868 (Nelson, J., dissenting).

⁶⁵ See *Maine v. Thiboutot*, 448 U.S. 1, 4–8 (1980).

⁶⁶ Congress retains the power to change this interpretation through legislation, including an amendment to § 1983 itself, and the Senate can also change this understanding for future treaties by including reservations, understandings, and declarations during the ratification process.