SANCHEZ-LLAMAS *v.* OREGON

US Supreme Court

Argued March 29, 2006--Decided June 28, No. 04-10566. 2006[*]

SUMMARY:

Article 36(1)(b) of the Vienna Convention on Consular Relations provides that if a person detained by a foreign country "so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State" of such detention, and "inform the [detainee] of his rights under this sub-paragraph." Article 36(2) specifies: "The rights referred to in paragraph 1 ... shall be exercised in conformity with the laws and regulations of the receiving State, subject to the proviso ... that the said laws ... must enable full effect to be given to the purposes for which the rights accorded under this Article are intended." Along with the Convention, the United States ratified the Optional Protocol Concerning the Compulsory Settlement of Disputes, which provides: "Disputes arising out of the ... Convention shall lie within the compulsory jurisdiction of the International Court of Justice [(ICJ)]." The United States withdrew from the Protocol on March 7, 2005.

Petitioner in No. 04-10566, Moises Sanchez-Llamas, is a Mexican national. When he was arrested after an exchange of gunfire with police, officers did not inform him that he could ask to have the Mexican Consulate notified of his detention. During interrogation, he made incriminating statements regarding the shootout. Before his trial for attempted murder and other offenses, Sanchez-Llamas moved to suppress those statements on the ground, *inter alia*, that the authorities had failed to comply with Article 36. The state court denied that motion and Sanchez-Llamas was convicted and sentenced to prison, and the Oregon Court of Appeals affirmed. The State Supreme Court also affirmed, concluding that Article 36 does not create rights to consular access or notification that a detained individual can enforce in a judicial proceeding.

Petitioner in No. 05-51, Mario Bustillo, a Honduran national, was arrested and charged with murder, but police never informed him that he could request that the Honduran Consulate be notified of his detention. He was convicted and sentenced to prison, and his conviction and sentence were affirmed on appeal. He then filed a habeas petition in state court arguing, for the first time, that authorities had violated his right to consular notification under Article 36. The court dismissed that claim as procedurally barred because he had failed to raise it at trial or on appeal. The Virginia Supreme Court found no reversible error.

Held: Even assuming without deciding that the Convention creates judicially enforceable rights, suppression is not an appropriate remedy for a violation, and a State may apply its regular procedural default rules to Convention claims. Pp. 7-25.

(a) Because petitioners are not in any event entitled to relief, the Court need not resolve whether the Convention grants individuals enforceable rights, but assumes, without deciding, that Article 36 does so. Pp. 7-8.

(b) Neither the Convention itself nor this Court's precedents applying the exclusionary rule support suppression of a defendant's statements to police as a remedy for an Article 36 violation. …

(c) States may subject Article 36 claims to the same procedural default rules that apply generally to other federal-law claims. …

(d) The Court's holding in no way disparages the Convention's importance. It is no slight to the Convention to deny petitioners' claims under the same principles this Court would apply to claims under an Act of Congress or the Constitution itself. P. 25.

Roberts, C. J., delivered the opinion of the Court, in which *Scalia, Kennedy, Thomas,* and *Alito, JJ.,* joined. *Ginsburg, J.,* filed an opinion concurring in the judgment. *Breyer, J.,* filed a dissenting opinion, in which *Stevens* and *Souter, JJ.,* joined, and in which *Ginsburg, J.,* joined as to Part II.

Chief Justice Roberts delivered the opinion of the Court.

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II

We granted certiorari as to three questions presented in these cases: (1) whether Article 36 of the Vienna Convention grants rights that may be invoked by individuals in a judicial proceeding; (2) whether suppression of evidence is a proper remedy for a violation of Article 36; and (3) whether an Article 36 claim may be deemed forfeited under state procedural rules because a defendant failed to raise the claim at trial.

As a predicate to their claims for relief, Sanchez-Llamas and Bustillo each argue that Article 36 grants them an individually enforceable right to request that their consular officers be notified of their detention, and an accompanying right to be informed by authorities of the availability of consular notification. Respondents and the United States, as *amicus curiae,* strongly dispute this contention. They argue that "there is a presumption that a treaty will be enforced through political and diplomatic channels, rather than through the courts." Brief for United States 11; *ibid.* (quoting *Head Money Cases,* 112 U. S. 580, 598 (1884) (a treaty " 'is primarily a compact between independent nations,' " and " 'depends for the enforcement of its provisions on the interest and the honor of the governments which are parties to it' ")). Because we conclude that Sanchez-Llamas and Bustillo are not in any event entitled to relief on their claims, we find it

unnecessary to resolve the question whether the Vienna Convention grants individuals enforceable rights. Therefore, for purposes of addressing petitioners' claims, we assume, without deciding, that Article 36 does grant Bustillo and Sanchez-Llamas such rights.

A

Sanchez-Llamas argues that the trial court was required to suppress his statements to police because authorities never told him of his rights under Article 36. He refrains, however, from arguing that the Vienna Convention itself mandates suppression. We think this a wise concession. The Convention does not prescribe specific remedies for violations of Article 36. Rather, it expressly leaves the implementation of Article 36 to domestic law: Rights under Article 36 are to "be exercised in conformity with the laws and regulations of the receiving State." Art. 36(2), 21 U. S. T., at 101. As far as the text of the Convention is concerned, the question of the availability of the exclusionary rule for Article 36 violations is a matter of domestic law.

It would be startling if the Convention were read to require suppression. The exclusionary rule as we know it is an entirely American legal creation. See *Bivens* v. *Six Unknown Fed. Narcotics Agents*, 403 U. S. 388, 415 (1971) (Burger, C. J., dissenting) (the exclusionary rule "is unique to American jurisprudence"). More than 40 years after the drafting of the Convention, the automatic exclusionary rule applied in our courts is still "universally rejected" by other countries. Bradley, *Mapp* Goes Abroad, 52 Case W. Res. L. Rev. 375, 399-400 (2001); see also *Zicherman* v. *Korean Air Lines Co.*, 516 U. S. 217, 226 (1996) (postratification understanding "traditionally considered" as an aid to treaty interpretation). It is implausible that other signatories to the Convention thought it to require a remedy that nearly all refuse to recognize as a matter of domestic law. There is no reason to suppose that Sanchez-Llamas would be afforded the relief he seeks here in any of the other 169 countries party to the Vienna Convention.[3]

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To the extent Sanchez-Llamas argues that we should invoke our supervisory authority, the law is clear: "It is beyond dispute that we do not hold a supervisory power over the courts of the several States." *Dickerson* v. *United States*, 530 U. S. 428, 438 (2000); see also *Smith* v. *Phillips*, 455 U. S. 209, 221 (1982) ("Federal courts hold no supervisory authority over state judicial proceedings and may intervene only to correct wrongs of constitutional dimension"). The cases on which Sanchez-Llamas principally relies are inapplicable in light of the limited reach of our supervisory powers. *Mallory* and *McNabb* plainly rest on our supervisory authority. *Mallory*, *supra*, at 453; *McNabb*, *supra*, at 340. And while *Miller* is not clear about its authority for requiring suppression, we have understood it to have a similar basis. See *Ker* v. *California*, 374 U. S. 23, 31 (1963).

We also agree with the State of Oregon and the United States that our authority to create a judicial remedy applicable in state court must lie, if anywhere, in the treaty itself. Under the Constitution, the President has the power, "by and with the Advice and

Consent of the Senate, to make Treaties." Art. II, §2, cl. 2. The United States ratified the Convention with the expectation that it would be interpreted according to its terms. See Restatement (Third) of Foreign Relations Law of the United States §325(1) (1986) ("An international agreement is to be interpreted in good faith in accordance with the ordinary meaning to be given to its terms in their context and in the light of its object and purpose"). If we were to require suppression for Article 36 violations without some authority in the Convention, we would in effect be supplementing those terms by enlarging the obligations of the United States under the Convention. This is entirely inconsistent with the judicial function. Cf. *The Amiable Isabella*, 6 Wheat. 1, 71 (1821) (Story, J.) ("[T]o alter, amend, or add to any treaty, by inserting any clause, whether small or great, important or trivial, would be on our part an usurpation of power, and not an exercise of judicial functions. It would be to make, and not to construe a treaty").

Of course, it is well established that a self-executing treaty binds the States pursuant to the Supremacy Clause, and that the States therefore must recognize the force of the treaty in the course of adjudicating the rights of litigants. See, *e.g.*, *Hauenstein* v. *Lynham*, 100 U. S. 483 (1880). And where a treaty provides for a particular judicial remedy, there is no issue of intruding on the constitutional prerogatives of the States or the other federal branches. Courts must apply the remedy as a requirement of federal law. Cf. 18 U. S. C. §2515; *United States* v. *Giordano*, 416 U. S. 505, 524-525 (1974). But where a treaty does not provide a particular remedy, either expressly or implicitly, it is not for the federal courts to impose one on the States through lawmaking of their own.

Sanchez-Llamas argues that the language of the Convention implicitly requires a judicial remedy because it states that the laws and regulations governing the exercise of Article 36 rights "must enable *full effect* to be given to the purposes for which the rights ... are intended," Art. 36(2), 21 U. S. T., at 101 (emphasis added). In his view, although "full effect" may not automatically require an exclusionary rule, it does require an appropriate judicial remedy of *some* kind. There is reason to doubt this interpretation. In particular, there is little indication that other parties to the Convention have interpreted Article 36 to require a judicial remedy in the context of criminal prosecutions. See Department of State Answers to Questions Posed by the First Circuit in *United States* v. *Nai Fook Li*, No. 97-2034 etc., p. A-9 (Oct. 15, 1999) ("We are unaware of any country party to the [Vienna Convention] that provides remedies for violations of consular notification through its domestic criminal justice system").

Nevertheless, even if Sanchez-Llamas is correct that Article 36 implicitly requires a judicial remedy, the Convention equally states that Article 36 rights "shall be exercised in conformity with the laws and regulations of the receiving State." Art. 36(2), 21 U. S. T., at 101. Under our domestic law, the exclusionary rule is not a remedy we apply lightly. "[O]ur cases have repeatedly emphasized that the rule's 'costly toll' upon truth-seeking and law enforcement objectives presents a high obstacle for those urging application of the rule." *Pennsylvania Bd. of Probation and Parole* v. *Scott*, 524 U. S. 357, 364-365 (1998). Because the rule's social costs are considerable, suppression is warranted only where the rule's " 'remedial objectives are thought most efficaciously served.' " *United*

States v. *Leon*, 468 U. S. 897, 908 (1984) (quoting *United States* v. *Calandra*, 414 U. S. 338, 348 (1974)).

We have applied the exclusionary rule primarily to deter constitutional violations. In particular, we have ruled that the Constitution requires the exclusion of evidence obtained by certain violations of the Fourth Amendment, see *Taylor* v. *Alabama*, 457 U. S. 687, 694 (1982) (arrests in violation of the Fourth Amendment); *Mapp* v. *Ohio*, 367 U. S. 643, 655-657 (1961) (unconstitutional searches and seizures), and confessions exacted by police in violation of the right against compelled self-incrimination or due process, see *Dickerson*, 530 U. S., at 435 (failure to give *Miranda* warnings); *Payne* v. *Arkansas*, 356 U. S. 560, 568 (1958) (involuntary confessions).

The few cases in which we have suppressed evidence for statutory violations do not help Sanchez-Llamas. In those cases, the excluded evidence arose directly out of statutory violations that implicated important Fourth and Fifth Amendment interests. *McNabb*, for example, involved the suppression of incriminating statements obtained during a prolonged detention of the defendants, in violation of a statute requiring persons arrested without a warrant to be promptly presented to a judicial officer. We noted that the statutory right was intended to "avoid all the evil implications of secret interrogation of persons accused of crime," 318 U. S., at 344, and later stated that *McNabb* was "responsive to the same considerations of Fifth Amendment policy that ... face[d] us ... as to the states" in *Miranda*, 384 U. S., at 463. Similarly, in *Miller*, we required suppression of evidence that was the product of a search incident to an unlawful arrest. 357 U. S., at 305; see *California* v. *Hodari D.*, 499 U. S. 621, 624 (1991) ("We have long understood that the Fourth Amendment's protection against 'unreasonable ... seizures' includes seizure of the person").

The violation of the right to consular notification, in contrast, is at best remotely connected to the gathering of evidence. Article 36 has nothing whatsoever to do with searches or interrogations. Indeed, Article 36 does not guarantee defendants *any* assistance at all. The provision secures only a right of foreign nationals to have their consulate *informed* of their arrest or detention--not to have their consulate intervene, or to have law enforcement authorities cease their investigation pending any such notice or intervention. In most circumstances, there is likely to be little connection between an Article 36 violation and evidence or statements obtained by police.

Moreover, the reasons we often require suppression for Fourth and Fifth Amendment violations are entirely absent from the consular notification context. We require exclusion of coerced confessions both because we disapprove of such coercion and because such confessions tend to be unreliable. *Watkins* v. *Sowders*, 449 U. S. 341, 347 (1981). We exclude the fruits of unreasonable searches on the theory that without a strong deterrent, the constraints of the Fourth Amendment might be too easily disregarded by law enforcement. *Elkins* v. *United States*, 364 U. S. 206, 217 (1960). The situation here is quite different. The failure to inform a defendant of his Article 36 rights is unlikely, with any frequency, to produce unreliable confessions. And unlike the search-and-seizure context--where the need to obtain valuable evidence may tempt authorities to transgress

Fourth Amendment limitations--police win little, if any, practical advantage from violating Article 36. Suppression would be a vastly disproportionate remedy for an Article 36 violation.

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B

The Virginia courts denied petitioner Bustillo's Article 36 claim on the ground that he failed to raise it at trial or on direct appeal. The general rule in federal habeas cases is that a defendant who fails to raise a claim on direct appeal is barred from raising the claim on collateral review. See *Massaro* v. *United States,* 538 U. S. 500, 504 (2003); *Bousley* v. *United States,* 523 U. S. 614, 621 (1998). There is an exception if a defendant can demonstrate both "cause" for not raising the claim at trial, and "prejudice" from not having done so. *Massaro, supra,* at 504. Like many States, Virginia applies a similar rule in state postconviction proceedings, and did so here to bar Bustillo's Vienna Convention claim. Normally, in our review of state-court judgments, such rules constitute an adequate and independent state-law ground preventing us from reviewing the federal claim. *Coleman* v. *Thompson,* 501 U. S. 722, 729 (1991). Bustillo contends, however, that state procedural default rules cannot apply to Article 36 claims. He argues that the Convention requires that Article 36 rights be given " 'full effect' " and that Virginia's procedural default rules "prevented any effect (much less 'full effect') from being given to" those rights. Brief for Petitioner in No. 05-51, p. 35.

This is not the first time we have been asked to set aside procedural default rules for a Vienna Convention claim. Respondent Johnson and the United States persuasively argue that this question is controlled by our decision in *Breard* v. *Greene,* 523 U. S. 371 (1998) *(per curiam)*. In *Breard*, the petitioner failed to raise an Article 36 claim in state court--at trial or on collateral review--and then sought to have the claim heard in a subsequent federal habeas proceeding. *Id.,* at 375. He argued that "the Convention is the 'supreme law of the land' and thus trumps the procedural default doctrine." *Ibid*. We rejected this argument as "plainly incorrect," for two reasons. *Ibid.* First, we observed, "it has been recognized in international law that, absent a clear and express statement to the contrary, the procedural rules of the forum State govern the implementation of the treaty in that State." *Ibid*. Furthermore, we reasoned that while treaty protections such as Article 36 may constitute supreme federal law, this is "no less true of provisions of the Constitution itself, to which rules of procedural default apply." *Id.,* at 376. In light of *Breard*'s holding, Bustillo faces an uphill task in arguing that the Convention requires States to set aside their procedural default rules for Article 36 claims.

Bustillo offers two reasons why *Breard* does not control his case. He first argues that *Breard*'s holding concerning procedural default was "unnecessary to the result,"…

Bustillo's second reason is less easily dismissed. He argues that since *Breard,* the ICJ has interpreted the Vienna Convention to preclude the application of procedural default

rules to Article 36 claims. The *LaGrand Case (F. R. G.* v. *U. S.)*, 2001 I. C. J. 466 (Judgment of June 27) *(LaGrand)*, and the *Case Concerning Avena and other Mexican Nationals (Mex.* v. *U. S.)*, 2004 I. C. J. No. 128 (Judgment of Mar. 31) *(Avena)*, were brought before the ICJ by the governments of Germany and Mexico, respectively, on behalf of several of their nationals facing death sentences in the United States. The foreign governments claimed that their nationals had not been informed of their right to consular notification. They further argued that application of the procedural default rule to their nationals' Vienna Convention claims failed to give "full effect" to the purposes of the Convention, as required by Article 36. The ICJ agreed, explaining that the defendants had procedurally defaulted their claims "because of the failure of the American authorities to comply with their obligation under Article 36." *LaGrand*, *supra*, at 497, ¶91; see also *Avena*, *supra*, ¶113. Application of the procedural default rule in such circumstances, the ICJ reasoned, "prevented [courts] from attaching any legal significance" to the fact that the violation of Article 36 kept the foreign governments from assisting in their nationals' defense. *LaGrand*, *supra*, at 497, ¶91; see also *Avena*, *supra*, ¶113.

Bustillo argues that *LaGrand* and *Avena* warrant revisiting the procedural default holding of *Breard*. In a similar vein, several *amici* contend that "the United States is *obligated* to comply with the Convention, *as interpreted by the ICJ*." Brief for ICJ Experts 11 (emphases added). We disagree. Although the ICJ's interpretation deserves "respectful consideration," *Breard*, *supra*, at 375, we conclude that it does not compel us to reconsider our understanding of the Convention in *Breard*.[4]

Under our Constitution, "[t]he judicial Power of the United States" is "vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish." Art. III, §1. That "judicial Power ... extend[s] to ... Treaties." *Id.*, §2. And, as Chief Justice Marshall famously explained, that judicial power includes the duty "to say what the law is." *Marbury* v. *Madison*, 1 Cranch 137, 177 (1803). If treaties are to be given effect as federal law under our legal system, determining their meaning as a matter of federal law "is emphatically the province and duty of the judicial department," headed by the "one supreme Court" established by the Constitution. *Ibid.;* see also *Williams* v. *Taylor*, 529 U. S. 362, 378-379 (2000) (opinion of *Stevens*, J.) ("At the core of [the judicial] power is the federal courts' independent responsibility--independent from its coequal branches in the Federal Government, and independent from the separate authority of the several States--to interpret federal law"). It is against this background that the United States ratified, and the Senate gave its advice and consent to, the various agreements that govern referral of Vienna Convention disputes to the ICJ.

Nothing in the structure or purpose of the ICJ suggests that its interpretations were intended to be conclusive on our courts.[5] The ICJ's decisions have "*no binding force* except between the parties and in respect of that particular case," Statute of the International Court of Justice, Art. 59, 59 Stat. 1062, T. S. No. 993 (1945) (emphasis added). Any interpretation of law the ICJ renders in the course of resolving particular disputes is thus not binding precedent *even as to the ICJ itself;* there is accordingly little reason to think that such interpretations were intended to be controlling on our courts.

The ICJ's principal purpose is to arbitrate particular disputes between national governments. *Id.*, at 1055 (ICJ is "the principal judicial organ of the United Nations"); see also Art. 34, *id.*, at 1059 ("Only states [*i.e.*, countries] may be parties in cases before the Court"). While each member of the United Nations has agreed to comply with decisions of the ICJ "in any case to which it is a party," United Nations Charter, Art. 94(1), 59 Stat. 1051, T. S. No. 933 (1945), the Charter's procedure for noncompliance--referral to the Security Council by the aggrieved state--contemplates quintessentially *international* remedies, Art. 94(2), *ibid.* In addition, "[w]hile courts interpret treaties for themselves, the meaning given them by the departments of government particularly charged with their negotiation and enforcement is given great weight." *Kolovrat* v. *Oregon*, 366 U. S. 187, 194 (1961). Although the United States has agreed to "discharge its international obligations" in having state courts give effect to the decision in *Avena*, it has not taken the view that the ICJ's interpretation of Article 36 is binding on our courts. President Bush, Memorandum for the Attorney General (Feb. 28, 2005), App. to Brief for United States as *Amicus Curiae* in *Medellín* v. *Dretke*, O. T. 2004, No. 04-5928, p. 9a. Moreover, shortly after *Avena*, the United States withdrew from the Optional Protocol concerning Vienna Convention disputes. Whatever the effect of *Avena* and *LaGrand* before this withdrawal, it is doubtful that our courts should give decisive weight to the interpretation of a tribunal whose jurisdiction in this area is no longer recognized by the United States.

LaGrand and *Avena* are therefore entitled only to the "respectful consideration" due an interpretation of an international agreement by an international court. *Breard*, 523 U. S., at 375. Even according such consideration, the ICJ's interpretation cannot overcome the plain import of Article 36. As we explained in *Breard*, the procedural rules of domestic law generally govern the implementation of an international treaty. *Ibid.* In addition, Article 36 makes clear that the rights it provides "shall be exercised in conformity with the laws and regulations of the receiving State" provided that "full effect ... be given to the purposes for which the rights accorded under this Article are intended." Art. 36(2), 21 U. S. T., at 101. In the United States, this means that the rule of procedural default--which applies even to claimed violations of our Constitution, see *Engle* v. *Isaac*, 456 U. S. 107, 129 (1982)--applies also to Vienna Convention claims. Bustillo points to nothing in the drafting history of Article 36 or in the contemporary practice of other signatories that undermines this conclusion.

The ICJ concluded that where a defendant was not notified of his rights under Article 36, application of the procedural default rule failed to give "full effect" to the purposes of Article 36 because it prevented courts from attaching "legal significance" to the Article 36 violation. *LaGrand*, 2001 I. C. J., at 497-498, ¶¶90-91. This reasoning overlooks the importance of procedural default rules in an adversary system, which relies chiefly on the *parties* to raise significant issues and present them to the courts in the appropriate manner at the appropriate time for adjudication. See *Castro* v. *United States*, 540 U. S. 375, 386 (2003) (*Scalia*, J., concurring in part and concurring in judgment) ("Our adversary system is designed around the premise that the parties know what is best for them, and are responsible for advancing the facts and arguments entitling them to relief"). Procedural default rules are designed to encourage parties to raise their claims promptly and to

vindicate "the law's important interest in the finality of judgments." *Massaro,* 538 U. S., at 504. The consequence of failing to raise a claim for adjudication at the proper time is generally forfeiture of that claim. As a result, rules such as procedural default routinely deny "legal significance"--in the *Avena* and *LaGrand* sense--to otherwise viable legal claims.

Procedural default rules generally take on greater importance in an adversary system such as ours than in the sort of magistrate-directed, inquisitorial legal system characteristic of many of the other countries that are signatories to the Vienna Convention. "What makes a system adversarial rather than inquisitorial is ... the presence of a judge who does not (as an inquisitor does) conduct the factual and legal investigation himself, but instead decides on the basis of facts and arguments pro and con adduced by the parties." *McNeil* v. *Wisconsin,* 501 U. S. 171, 181, n. 2 (1991). In an inquisitorial system, the failure to raise a legal error can in part be attributed to the magistrate, and thus to the state itself. In our system, however, the responsibility for failing to raise an issue generally rests with the parties themselves.

The ICJ's interpretation of Article 36 is inconsistent with the basic framework of an adversary system. Under the ICJ's reading of "full effect," Article 36 claims could trump not only procedural default rules, but any number of other rules requiring parties to present their legal claims at the appropriate time for adjudication. If the State's failure to inform the defendant of his Article 36 rights generally excuses the defendant's failure to comply with relevant procedural rules, then presumably rules such as statutes of limitations and prohibitions against filing successive habeas petitions must also yield in the face of Article 36 claims. This sweeps too broadly, for it reads the "full effect" proviso in a way that leaves little room for Article 36's clear instruction that Article 36 rights "shall be exercised in conformity with the laws and regulations of the receiving State." Art. 36(2), 21 U. S. T., at 101.[6]

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Although these cases involve the delicate question of the application of an international treaty, the issues in many ways turn on established principles of domestic law. Our holding in no way disparages the importance of the Vienna Convention. The relief petitioners request is, by any measure, extraordinary. Sanchez-Llamas seeks a suppression remedy for an asserted right with little if any connection to the gathering of evidence; Bustillo requests an exception to procedural rules that is accorded to almost no other right, including many of our most fundamental constitutional protections. It is no slight to the Convention to deny petitioners' claims under the same principles we would apply to an Act of Congress, or to the Constitution itself.

The judgments of the Supreme Court of Oregon and the Supreme Court of Virginia are affirmed. It is so ordered.