Foreign Relations as a Matter of Interpretation: The Use and Abuse of Charming Betsy

Roger P. Alford
Pepperdine University School of Law

Charming Betsy is a canon of construction that construes legislative enactments consistent with the law of nations. This canon promotes the passive virtue of avoiding constitutional problems by eschewing potential international law violations through statutory interpretation, thereby enhancing the United States’ performance in foreign affairs. As a rule of separation of powers, Charming Betsy helps explain how foreign relations concerns clarify the scope of legislative, executive, and judicial authority. But when advocates contend that the Constitution likewise should be read through the lens of Charming Betsy, they abuse the doctrine by ignoring its purpose. While structural guarantees that relate to foreign affairs are animated by a concern for compliance with international law, there is little support for a position that takes foreign relations into account in interpreting the content of individual liberties, so as to harmonize those liberties with international norms. The proper function of foreign relations in construing individual liberties is its traditional one, to justify government authority to curtail constitutional guarantees.