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CIL Bad - Legitimacy

Citing CIL kills the court’s legitimacy – turning case

Sarah H. Cleveland, Marrs McLean Professor in Law, University of Texas School of Law, Winter, 2006 (31 Yale J. Int'l L. 1, “Our International Constitution”, lexis)

Reference to international and foreign sources in constitutional analysis has provoked a sharp backlash from other members of the Court. Justice Scalia condemned the Court's "discussion of ... foreign views" in Lawrence as "dangerous" dicta, n7 and invoked Justice Thomas for the proposition that "this Court ... should not impose foreign moods, fads, or fashions on Americans." n8 Dissenting in Atkins, Chief Justice Rehnquist criticized the majority's invocation of "the views of other countries," emphasizing that under the Eighth Amendment, ""American conceptions of decency ... are dispositive.'" n9 Likewise in Roper, Justice Scalia argued that the majority's assumption "that American law should conform to the law of the rest of the world ... ought to be rejected out of hand." n10 Indeed, in a recent address, Justice Scalia argued that "modern foreign legal material can never be relevant to an interpretation of ... the meaning of ... the U.S. Constitution." n11 [\*4] Academic, n12 press, n13 and particularly congressional n14 criticisms have been equally sharp. One proposed House resolution opposing the use of foreign authority criticized the Lawrence and Atkins majorities for "employing a new technique of interpretation called "transjudicialism.'" n15 Congressman Tom Feeney of Florida, who co-sponsored another proposed resolution, has argued that "the people of the United States have never authorized ... any federal court to use foreign laws to essentially make new law or establish some rights or deny rights here in the United States." n16 At congressional hearings on the issue, witnesses have referred to the judiciary's use of international and foreign sources as impeachable and "subversive." n17 In his recent confirmation hearings, Chief Justice John Roberts condemned the practice for expanding judicial discretion and granting unaccountable foreign judges influence over American lawmaking. n18 And Attorney General Alberto Gonzales contends that "the use of foreign law poses a direct threat to legitimacy, including to the legitimacy of the Court itself." n19

CIL Bad – Democracy (1/2)

International law is un-American and un-democratic

Lee Casey and David B. Rivkin, fellows at Hertiage foundation, 8/18/06 (August 18, 2006, “International Law and the Nation-State at the U.N.: A Guide for U.S. Policymakers”, “Lee A. Casey and David B. Rivkin, Jr.”, http://www.heritage.org/Research/WorldwideFreedom/bg1961.cfm)

The reason is simple enough. A genuine system of international law, comparable to domestic legal systems in its reach and authority, would require a universally accepted institution entitled both to adjudicate the conduct of states and, by extension, their individual officials and citizens and to implement its judgments through compulsory process with or without consent of the states concerned. Such a universal authority, however, would be fundamentally at odds with the founding principles of the American Republic. It would require the American people to accept that there is, in fact, a legal power that has legitimate authority over them but is not accountable to them for its actions. Pending this revolution in American beliefs and principles, U.S. officials and diplomats should recall two basic points in their approach to international law: As an independent sovereign, the United States is fully entitled to interpret international law for itself. The views of international organizations, including the United Nations, other states, and non-governmental organizations (NGOs) may be informative, but they are not legally binding unless, and only to the extent that, the United States agrees to be bound. Any institution or individual invoking international law as the measure of U.S. policy choices is only expounding an opinion of what international law is or should be. That opinion may be well or poorly informed, but it is not and cannot be authoritative. There is no supreme international judicial body with the inherent right to interpret international law for states. In short, the United States, like all other states, is bound by international law; but, like all other states, it is also entitled to interpret international law for itself. Whether the U.S. or any other state has been reasonable in its interpretation is ultimately a political determination.

CIL is comparatively the worst legal basis for democratic accountability

John McGinnis, Professor of law at Northwestern University, and Somin Assistant Professor of Law at the George Manson University School of Law 07 (*Should International Law be Part of Our Law?,* Stanford Law Review, March 2007 59 STAN. L. REV. 1175)

Domestic legislation is enacted by elected officials and is relatively visible to the public through press coverage, thus scoring fairly well on both transparency and accountability. Ratified international law also must be enacted by elected officials, thus leading to high electoral accountability. But it is less transparent than domestic legislation because citizens generally know less about the institutions through which international law is made than the institutions through which domestic law is enacted and find it more difficult to keep track of international than domestic norms.87 Domestic judicial review is undertaken by actors with little or no electoral accountability, but is arguably more transparent than raw international law; judicial confirmations and decisions are often a focus of public attention.88 Finally, raw international law—the main focus of our inquiry—is both nontransparent and created by political actors with little or no electoral accountability. It thus suffers from a greater democracy deficit than any of the other three major sources of legal norms.

CIL Bad – Democracy (2/2)

CIL is vague – means that law proffesors get to effectively create the law, which is undemocratic

Mark Weisburd, Professor of Law at UNC Chapel Hill, 2002, (*American Judges and International Law,* Public Law & Legal Theory Research Paper No. 02-16 http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=338440)

More and more frequently, American courts find themselves dealing with cases that raise issues under public international law. These cases may involve claims against foreign governments,1 claims based on acts by foreign individuals,2 or claims against corporations alleged to have cooperated with foreign governments.3 While such claims may depend substantively on treaties or on federal statutes, very frequently they also rely on customary international law (CIL). And claims so based raise a problem. To understand the difficulty it is helpful to start with the concept of CIL. The Restatement (Third) of Foreign Relations Law (“Restatement”) describes customary international law as resulting “from a general and consistent practice of states followed by them from a sense of legal obligation.”5 [In this article, the term “state” will be applied in the sense in which it is normally employed in international law, that is, as referring to independent countries.] Although this article will take issue with a number of assertions made in the Restatement, this definition raises little controversy. It does, however, illustrate the considerable difficulty facing a court forced to address an issue of CIL. How does the court determine, at the most basic level, what the various governments of the world have done regarding a particular matter? What counts as “practice”? How does one determine whether a practice is “general”? Federal courts have sought to escape this morass by relying primarily on academic writings, the Restatement, and decisions by American and international courts - and herein lies the difficulty. For, with respect to some areas of CIL - particularly the law of human rights, the aspect of CIL most frequently considered in American courts - neither modern academic writing nor the Restatement nor most judicial decisions purport to derive CIL from evidence of what governments actually do. Rather, they rely on other academic writings, other decisions of international courts, non-binding resolutions of international bodies, and hazy notions of natural law to justify their assertions regarding this CIL. This article will seek to demonstrate that the approach the American courts have taken to determining the content of international law is fundamentally flawed. It leads courts to treat as law norms whose legal basis is either more circumscribed than the courts assert or, in some cases, non-existent. More fundamentally, it essentially converts law professors into philosopher kings, imposing their ideas of what the law should be under the guise of describing the law’s content. The discussion which follows will first explain just how strange CIL is when viewed from the perspective of the American legal system, and discuss as well the difficulties of determining the content of CIL. The article will then describe the traditional approach taken by American courts to deal with these difficulties. It will illustrate the contemporary approach to such matters by discussing the treatment of the concept of jus cogens by the federal courts of appeals. As will be shown, these courts have relied on doubtful authorities when forced to deal with this concept, and some doubtful results have, not surprisingly, followed. The final substantive section will suggest an alternative approach for the element of customary international law most frequently before American courts, that is, international human rights law.

CIL Bad - Enviornment

International law leads to a race to the bottom on environmental policy

David Bederman, Professor of Law at the Emory University School of Law, summer 2001 (*National Security: GLobalizaiton, International Law and United States Foreign Policy,,* Emory Law Journal, 50 Emory L.J. 717)

Rationality and cooperation can also come into bitter conflict. Today, at least, the global trade regime has been bitterly criticized by environmental advocates who maintain that it unnecessarily punishes the unilateral acts of environmentally progressive nations. When the United States imposed import restrictions on tuna caught by foreign fishermen with insufficient regard for the safety of dolphins (which swim with tuna and are often killed when nets are thrown), the affected nations sought relief before the institutions of the General Agreement on Tariffs and Trade ("GATT") and, later, the World Trade Organization ("WTO"). In a series of decisions, [n40](http://www.lexisnexis.com/us/lnacademic/frame.do?tokenKey=rsh-20.690212.2127058423&target=results_DocumentContent&reloadEntirePage=true&rand=1249058783794&returnToKey=20_T7070430198&parent=docview" \l "n40) GATT/WTO panels have ruled that nations may not unilaterally impose trade restrictions on tuna caught with dolphin (or shrimp caught with turtles), nor may they unreasonably require heightened environmental protection as a condition for trading in their markets (such as rules against certain fuel additives or hormones in beef). The difficulty with all this is that much recent international environmental lawmaking has been made by progressive states, with the international community following behind. WTO's requirement that environmental restrictions on trade can only be imposed multilaterally may delay some needed innovations. However, it will ensure that, once consensus is reached, effective international enforcement through global trade disciplines will be available. Rationality - as a surrogate for progress in the development of international law norms - can thus be seen to conflict with principles of cooperation, which tend to promote lowest-common-denominator diplomacy and "race to the bottom" economics. The trade/environment conflict is one reflection of this paradox. Likewise, rational outcomes are not necessarily fair ones. So  [\*738]  questions of global distributive justice may well be on a collision course with other international law objectives. Indeed, some U.N. bodies have already observed that treaty protections granted for intellectual property rights (such as patents on seed varietals or copyrights on folklore produced by indigenous peoples) are in direct conflict with human rights to food, health, cultural identity, and scientific progress. [n41](http://www.lexisnexis.com/us/lnacademic/frame.do?tokenKey=rsh-20.690212.2127058423&target=results_DocumentContent&reloadEntirePage=true&rand=1249058783794&returnToKey=20_T7070430198&parent=docview" \l "n41) While certainly generating intellectual curiosity (and a substantial scholarly literature), the conflicts I have so far described tend to implicate either marginal doctrinal concerns or expected value choices. None of these seem to debilitate international law or deny it of any essential vigor. Some of these paradoxes we can readily live with and embrace, just as many other legal systems have accepted similar disparate results in the pursuit of multiple objectives. But some of them push the limits of any system's tolerance for contradiction. These challenges, however, do pose major challenges to U.S. foreign policymakers. Adherence to WTO trade disciplines or North American Free Trade Agreement ("NAFTA") free investment policies can cause inevitable degradations of sovereignty, and these will pose problems for the new Administration. Whether in the form of WTO panels penalizing certain forms of U.S. environmental or labor legislation, or NAFTA Chapter 11 arbitrations finding impermissible regulatory takings of Canadian investments, certain forms of domestic legislative, regulatory and adjudicative authority will be shifting to international institutions. Of course, the same thing will be happen-ing with our trade and investment partners, although to a more extensive degree. Globalization in this sense causes marginal transfers of power to those who stand to benefit by trade and investment liberalization.

Pakistan CP 1NC

CP: The United States congress should ban the use of unmanned aerial vehicles (UAVs) in Pakistan. The United States federal government should provide necessary financial and infrastructure-based aid to Pakistan.

1. Congress is comparatively better than the courts at solving CIL.

Joseph Keller, Associate, O'Melveny & Meyers, New York. B.A. University of Illinois Urbana-Champaign, J.D. University of Michigan. Former clerk for the Eastern District of Virginia, Fall 2005 ("Article: Sovereignty vs. Internationalism and Where United States Courts Should Find International Law", 24 Penn St. Int'l L. Rev. 353, lexis law)

United States courts are currently addressing important questions of international law that should be decided in accordance with the Constitution of the United States and the separation of powers principle. Specifically, the courts must respect the will of Congress when interpreting treaties and the private rights they provide in federal courts. The courts should define customary international law by reference to state practice and in this context must be careful not to give inappropriate weight to the writings of academics. As a further matter, courts should not look to the concept of jus cogens or customary international law generally when defining legal relationships between the United States and its own citizens. In sum, concerns of democratic accountability and respect for the sovereignty of the United States and the constitutionally based separation of powers principle buttress the doctrinal contention that it is the duty of Congress to incorporate international law into federal law through the appropriate democratic processes. The incorporation of international law into U.S. law may be a laudable goal, especially with respect to human rights law, but the ends cannot justify improper means. Judges and law professors wishing for the rule of international law in U.S. courts must respect the Constitution of the United States and await further action by the democratically elected officials in the legislative branch of government.

2. The U.S. Must Abandon Drones in Pakistan in Favor of Intelligence—The U.S. Must Cooperate With and Assist Pakistan to Address Terrorism – their author

Maleeha Lodhi, Former Ambassador of Pakistan to US, April 2009, INSS Special Report, “The Future of Pakistan-U.S. Relations: Opportunities and Challenges,” http://oai.dtic.mil/oai/oai?verb=getRecord&metadataPrefix=html&identifier=ADA497485

An even more significant worry for Islamabad is the military escalation signaled by the focus on rooting out “safe havens” in Pakistan’s border region and redefining the war as a regional conflict. President Obama’s suggestion that if Pakistan did not take action, the United States would step in, implies a widening of the war into western Pakistan even if the President later explained that he would consult Pakistani leaders before terrorist hideouts were pursued. All this has still left open the prospect of increased U.S. Predator strikes against targets in FATA, a risky course since this action will only inflame public opinion in Pakistan and have destabilizing effects. Drone attacks have already evoked condemnation from the National, Frontier, and Balochistan Assemblies. Any policy that is vehemently opposed by the people will ultimately be unsustainable. The tactical gains claimed from these strikes must be set against the costs in terms of undermining strategic goals. Such a perilous approach should be abjured in favor of the only viable one, which is based on the sharing of intelligence and technology, to enable Pakistan and its forces to address the terrorist threat in its own territory. The United States should show strategic patience as well as respect for a sovereign country’s red lines in deeds, and not just in words. Moreover, an approach that attempts to deal with al Qaeda only militarily ignores the fact that the organization has to be defeated in the ideological battle because it is ideology that finds followers who are ever ready to replace those “taken out.” A counter–al Qaeda strategy must attempt to neutralize the network’s ideological appeal in Afghanistan, Pakistan, and other parts of the world where it finds recruits and allies. Al Qaeda is now more of an idea. Terrorist operations are increasingly conducted mostly by self-generated “affiliates” drawn from young men in various countries who have been radicalized by al Qaeda’s ideology. The notion of fighting al Qaeda only militarily will remain only a partial response. Islamabad and Washington will also need to close the gap in their perceptions over how they identify the strategic center of gravity of the threat that has to be addressed. Islamabad has long argued that the core of the problem and its solution lies in Afghanistan while acknowledging that support for the insurgency is provided by fighters using Pakistani soil. In Washington’s view, it is the safe havens in Pakistan that are now the central front of the battle to defeat international terrorism. Islamabad believes that U.S. strategy downplays the fact that the situation in FATA is the consequence of the collapse of security in Afghanistan and not the other way around. Islamabad also finds the notion of treating Pakistan and Afghanistan’s border region as a“single theater of combat” unsettling, not least because the security trajectories, causes, contexts, and capacities are so different and because it would be a grave error to think one size fits both. If the flawed concept of “AfPak” has achieved anything so far, it is to unite the militants on both sides of the border in a new alliance to resist the troop reinforcements in Afghanistan ordered by President Obama. The United States recognizes that the attainment of its redefined goals depends critically on Pakistan’s stability. That is the rationale for the economic and security assistance that President Obama has pledged to give Pakistan. He has urged Congress to pass the bill sponsored by Senators John Kerry and Richard Lugar that authorizes $1.5 billion in nonmilitary aid over the next 5 years. But Islamabad has taken strong exception to the proposed conditions and benchmarking of the aid, linking this to its counterterrorism performance. In stating that Washington will not provide a blank check to Pakistan, President Obama struck a note that is counterproductive. This stance reinforces the transactional nature of the relationship that Pakistanis resent, and it strengthens rather than breaks from the paradigm of treating Pakistan as hired help rather than a valued ally.

Solvency – Courts – ext.

\*\*\*Public debate and elected govenrment is key to widespread adoption of international law standards

Michael Ignatieff, Carr professor of human rights at the Kennedy School of Government, Harvard University, May/June 2002 (“No Exceptions?”, Legal Affairs, http://www.legalaffairs.org/issues/May-June-2002 review\_ignatieff\_mayjun2002.msp)

Views on capital punishment are a good example. In the 1960s, only a minority of Americans supported the death penalty—a 1966 Gallup poll showed 42 percent in favor, a 50-year low—and the number of executions dropped sharply. But a complex set of causes, including sharply rising crime rates, reversed the trend by the end of the decade. Now a moratorium on the death penalty in Illinois, along with rising evidence that capital punishment is sometimes inflicted arbitrarily and with racial bias, may again shift American opinion away from executions. There is an important message here for American human rights activists who are troubled by the hypocrisy of the United States' exceptionalism. Domestic debate and politics, not international pressures, will have much greater impact on America's relationship to international standards. Instead of insisting that the U.S. subscribe to values because most of the world endorses them, human rights activists need to win favor by engaging directly in American politics. They need to focus on the support that America's own traditions about rights lend to the adoption of international standards and to mass that support for the cause of human rights. Just as it was the authentic American language of freedom—civil rights and blacks' religious faith—that struck down Jim Crow in the South, so it will be national discussion of fair process and legal equality that will change America's standards of punishment. Americans will not believe any truths to be self-evident to which their own men and women of greatness haven't committed themselves. International human rights will have its place, as it had in Martin Luther King Jr.'s strikingly international conception of his own struggle, but these rights will become strong in America only when their advocates speak in the American vein

Only Congress has the power - history of the constution proves

Joseph Keller, Associate, O'Melveny & Meyers, New York. B.A. University of Illinois Urbana-Champaign, J.D. University of Michigan. Former clerk for the Eastern District of Virginia, Fall 2005 ("Article: Sovereignty vs. Internationalism and Where United States Courts Should Find International Law", 24 Penn St. Int'l L. Rev. 353, lexis law)

Closer examination of the Constitution casts doubt on the theory that the Judiciary, without authorization from Congress, possesses the power to define and incorporate international law into U.S. law. Article I, Section 8, Clause 10 of the Constitution gives Congress the power to "define and punish ... Offenses against the Law of Nations." Judge Randolph makes a crucial historical observation regarding this clause of the Constitution: "the Framers' original draft merely stated that Congress had the power to punish offenses against the law of nations, but when Gouverneur Morris of Pennsylvania objected that the law of nations was "often too vague and deficient to be a rule,' the clause was amended to its present form." n38 This history of Article I, Section 8, Clause 10 supports the understanding that the Framers changed their original draft in order to provide Congress, not the Judiciary, with the power to define offenses against the law of nations. Under this view, Congress bears the constitutional authority of affirmatively incorporating principles of international law into the laws of the United States. As a necessary corollary of this principle, U.S. courts cannot infer a cause of [363] action based on violations of international law as defined in a non-self-executing treaty or non-binding U.N. resolution.

AT: Perm - do both

1. No net benefit to the perm – the counterplan solves all of case and the perm still links to court-stripping. Any risk of the disad means you vote negative.

2. Perm is a harder link to court-stripping – legislators feel they have to conform legislation to previous court decisions.

Neal Devins, prof of law and govt at College of William and Mary, May, 2k (“COMMENTARIES ON MARK TUSHNET'S TAKING THE CONSTITUTION AWAY FROM THE COURTS: ARTICLE: REANIMATOR: MARK TUSHNET AND THE SECOND COMING OF THE IMPERIAL PRESIDENCY”, 34 U. Rich. L. Rev. 359, lexis law)

Another way in which "judicial overhang distorts what legislators say about the Constitution" is that legislative consideration of constitutional matters is little more than an attempt by lawmakers to fit their statutes into preexisting Supreme Court doctrine. n24 For example, the House and Senate Judiciary Committees are understood to take constitutional interpretation seriously because they are keenly interested in whether the Court will uphold their actions, and are therefore willing to moderate the legislation they produce. n25 In other words, rather than develop their own distinctive interpretive methodologies, lawmakers (when they talk about the Constitution) almost always mimic the Supreme Court. n26 And when Congress does respond to Court decision-making, the cost of ensuring compliance with judicial norms is significant. To "credibly claim" that the federal Flag Protection Act would satisfy the Supreme Court, for example, "the statute had almost nothing to do with what its supporters thought a flag protection law ought to do." n27

And, more pressure by the courts means the legislature is even more angry – our Wilkinson 4 evidence says the court the feels threatened, the more it will lash out.

3. Having a Pakistani drones policy that is divorced from Iraq policy is key to US-Pakistani relations

Maleeha Lodhi, Former Ambassador of Pakistan to US, April 2009, INSS Special Report, “The Future of Pakistan-U.S. Relations: Opportunities and Challenges,” http://oai.dtic.mil/oai/oai?verb=getRecord&metadataPrefix=html&identifier=ADA497485

These mutually negative perceptions can be ascribed in part to the burden of history. This, after all, has been a rollercoaster relationship, characterized by an erratic stop-go pattern in which Pakistan has swung between being America’s most “allied ally” and “most sanctioned friend” to a “disenchanted partner.” Three things stand out about the troubled relationship from a historical perspective. First, relations have lurched between engagement and estrangement in almost predictable cycles. Second, these swings have occurred under both U.S. Republican and Democratic administrations, and on the Pakistani side, under democratic and military governments alike. Third, the episodic nature of ties has reflected Washington’s changing strategic priorities and shifts in global geopolitics, which in turn have reinforced the popular perception in Pakistan that the country is seen from a tactical perspective, and not in terms of its intrinsic importance. When U.S. geostrategic interests so dictated, relations with Pakistan warmed, and aid and support followed. But when U.S. priorities shifted or when Pakistan pursued an independent stance, as, for example, on the nuclear issue, it led to long periods of discriminatory sanctions. This entrenched the view in Pakistan, at both the official and public levels, that Washington has pursued relations with Islamabad on a transactional and not a consistent or predictable basis. The post-9/11 transformation in ties, after over a decade of multiple sanctions, opened up a new chapter of intense engagement and cooperation. But in a repeat of the past pattern, the relationship continued to have a single focus (that is, security). The scope and nature of relations remained narrow. The imperative of building a longer term and broad-based relationship was not addressed. Even though official-speak often referred to the strategic nature of ties, there was a large gap between declaratory statements and operational reality. Window of Opportunity This leads to the present state of PakistanU.S. relations. A new administration in Washington and a democratic government in Islamabad provide a rare and opportune moment to redefine and reset the relationship, learn from past mistakes, and empower the bilateral relationship with the capacity to negotiate common challenges. Changing the terms of the engagement may in fact determine the extent and quality of cooperation that Washington and Islamabad are able to mobilize to address complex regional problems. Relations have a bilateral dimension and a regional dimension that relate to Afghanistan. Both dimensions have to be addressed to recraft and strengthen relations. **There is need for a Pakistan policy that is not just a function of Washington’s Afghanistan policy. Formulating policy only through the prism of Afghanistan ignores the reality that Pakistan is a much bigger and strategically more important country**. President Barack Obama’s enunciation of his administration’s new strategy for Afghanistan and Pakistan after a 2-month interagency review seeks to address both of these dimensions but places greater emphasis on the role that Pakistan is expected to play in eliminating al Qaeda and stabilizing Afghanistan. This urges the need for the two countries to jointly frame common objectives and fashion concrete plans to implement them while launching efforts, in a spirit of candor and openness, to reconcile their differences and remove mutual suspicions. The two countries share a number of common objectives. These include defeating terrorism and eliminating violent extremism from the region, strengthening peace and stability in nuclear South Asia, and promoting the economic and social development of Pakistan to strengthen its long-term stability as a strategic priority.

AT: Congress not modeled internationally

Congressional action is taken as an example by the world

Lynn Woolsey, Representative of 6th Congressional District in California, March 7, 2007 (“Calling for the adoption of a Sensible, Multilateral American Response Terrorism (SMART) security platform for the 21st century”, Committee on Foreign Affairs, http://www.fas.org/asmp/resources/110th/HRES227ih.ht)

(5) pursues to the fullest extent alternatives to war: Now, therefore, be it Resolved, That Congress calls for the adoption of a Sensible, Multilateral American Response to Terrorism (SMART) security platform for the 21st century that-- (1) prevents future acts of terrorism by strengthening international institutions and respect for the rule of law by-- (A) working with the United Nations, the North Atlantic Treaty Organization, other international institutions, and other countries to root out terrorist networks and strengthen international law; (B) strengthening intelligence and law enforcement cooperation, while respecting human and civil rights, aimed at tracking, arresting, and bringing to justice individuals involved in terrorist acts; and (C) enhancing international efforts to cut off financing for terrorist organizations; (2) reduces the threat and stops the spread of weapons of mass destruction and reduces proliferation of conventional weapons by-- (A) adhering to and supporting existing nonproliferation treaties, including the Nuclear Non-Proliferation Treaty (entered into force in 1970), the Biological Weapons Convention (entered into force in 1975), the Comprehensive Test Ban Treaty (signed by the United States in 1996), and the Chemical Weapons Convention (entered into force in 1997); (B) setting an example for the rest of the world by renouncing the development of new nuclear weapons and the testing of nuclear weapons and work toward achieving Ronald Reagan's vision of a world free of nuclear weapons.

AT: Congress = tyrant

1. Their evidence doesn’t apply – it assumes a congress that oversteps its constitutional authority.

Congress has authority over CIL.

Edward Whelan, President of the Ethics and Public Policy Center, former Principal Deputy Assistant Attorney General, 3/7/09 (“Harold Koh’s Transnationalism – CIL as Federal Common Law, http://www.nationalreview.com/bench-memos/50302/harold-kohs-transnationalism-mdash-cil-federal-common-law/ed-whelan)

The Supremacy Clause of the Constitution states that the Constitution itself “and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby.” So while the Constitution specifically addresses the domestic status of treaties (a topic of a post to come), it doesn’t do so for CIL. Indeed, the only provision of the Constitution that addresses CIL is the Article I provision (section 8, clause 10) that states that Congress has the power to “define and punish … Offenses against the Law of Nations.” So that provision invites the sensible reading that it’s up to Congress to decide which rules of CIL to import into domestic law. As law professors Curtis Bradley and Jack Goldsmith explain in their joint law-review article, “Customary International Law as Federal Common Law: A Critique of the Modern Position,” 110 Harv. L. Rev. 815 (1997) (“Bradley & Goldsmith”), CIL was long understood not to have the status of federal law. But, they argue, as “the result of a combination of troubling developments, including mistaken interpretations of history, doctrinal bootstrapping by the Restatement (Third) of Foreign Relations Law, and academic fiat, CIL has since the 1980s come to be regarded as “federal common law.” (Bradley & Goldsmith, at 821.) Bradley and Goldsmith offer an extended critique of this “modern position.”

2. Powerful courts inevitably become tyrants on the bench

Lino A. Graglia, A. Dalton Cross Professor in Law at the University of Texas at Austin, Fall 2k (Harvard Journal of Law & Public Policy, “Revitalizing Democracy,” 24 Harv. J.L. & Pub. Pol'y 165, Lexis)

The most we can or should ask of the Court on the federalism issue is that it cease its pretend review and thus make clear that the responsibility for the growth of federal power lies solely with Congress. Congress will undoubtedly continue to legislate freely on almost all issues, but this shows only that, at least since the New Deal, we have had a true  [\*168]  national government, like a "normal" country - as they say in the Russia that is emerging from the Soviet Union [n8](http://www.lexisnexis.com/us/lnacademic/frame.do?tokenKey=rsh-20.342284.66199546924&target=results_DocumentContent&reloadEntirePage=true&rand=1248388021291&returnToKey=20_T7022914692&parent=docview#n8) - and it seems very clear that, rightly or wrongly, this is what the people want. Decentralization, to repeat, is an aid to democracy and protection against tyranny, but we do not further democracy by having the Supreme Court take the issue out of the political process. Most important, we contradict ourselves when we complain of the Justices' willingness to assume decision-making power on every issue of basic social policy only to turn around and ask them to protect us from our elected representatives in Congress. A Court powerful enough to do that is too powerful to be expected to uphold policies with which it disagrees and too powerful to be left free of electoral accountability. Democracy requires protection only from, not by, the Supreme Court.

Court Stripping 1NC (1/4)

1. The move towards common international law is gradual and sustainable in the status quo

Mark C. Rahdert, Prof. of Law @ Temple University, 2007 [56 Am. U.L. Rev. 553, “Comparative Constitutional Advocacy,” lexis]

The American tradition of legal and constitutional isolation is slowly breaking down and will continue to do so. There are several factors contributing to this development, including the increasing globalization of American law, the interaction and exchange among judicial officials of different nations, the international convergence of constitutional norms, and the increasing sophistication and progressivism of foreign constitutional courts. A. Globalization and its Constitutional Implications. Globalization of the law is eroding American constitutional isolation. n273 Globalization of American law has advanced along many fronts, most notably in areas related to trade and finance, but also in environmental law, intellectual property, and other important domains. n274 Where globalization has occurred, it has introduced into the American judicial process a new need for attention to comparative legal analysis. n275 While most of these developments do not have direct constitutional implications, they carry overtones that can indirectly introduce a comparative element into American constitutional discourse. For example, the United States has agreed to abide by and enforce a variety of international legal principles that constrain domestic discretion both to adopt restrictive policies toward foreign trade and to provide preferential treatment for domestic competitors in global markets. n276 Two prominent examples are U.S. participation in the  [\*603]  World Trade Organization and the North American Free Trade Agreement. Such agreements introduce comparative elements into U.S. judicial decisionmaking. They create the possibility of conflict between their terms and domestic laws, contracts, or other legal arrangements. When that occurs, U.S. courts will be called upon to interpret the language of the multinational agreements, determine the extent (if any) of their legally cognizable conflict with domestic laws or regulations, and decide how the conflict will be resolved. n277 Conflict between international trade arrangements and domestic law has constitutional overtones because, under Article VI's Supremacy Clause, such international free trade obligations become part of the "supreme law of the land" in the United States, binding upon government and private citizens alike. n278 Under the constitutional doctrine of preemption, the international trade obligations adopted at the national level displace conflicting state and local law. n279 They also become judicially binding in domestic as well as international commercial arrangements, for example by rendering certain contractual arrangements illegal or defeating claims based on domestic protective legislation that conflicts with international legal commands. Globalization of this sort obliges greater consideration of transnational and comparative principles and materials in American courts. It not only promotes awareness of international and comparative precedents, but it also creates a pressure for conscious complementarity of decisionmaking between American and foreign tribunals, which in turn requires comparative analysis. In litigation over domestic application, American courts must interpret the international agreements in question. n280 When they do so, they must  [\*604]  be aware that other foreign national tribunals will also interpret the same agreements, and that international tribunals may exist to provide final authoritative interpretation of disputed questions. n281 The U.S. courts thus may well have occasion to consider: (1) how other world tribunals have interpreted the provisions of the international agreement in question; (2) whether similar domestic law conflicts have been detected in other participating nations; and (3) if so, how other court systems have chosen to resolve those conflicts. At a minimum, U.S. courts probably would not want to give the international norms more restrictive effect in the United States than they received abroad. And while the U.S. courts might not be required to interpret the international agreements in the same way as foreign courts, divergent interpretation could trigger various forms of international conflict. This conflict may range from international litigation, to legal and diplomatic responses by other nations (or in some cases even by foreign corporations or citizens) whose interests are harmed by the U.S. interpretation, to economic or legal retaliation by foreign states whose interests are negatively affected by the U.S. decision. n282 Given the prospect for such international consequences, it would behoove American courts to attend carefully to potential interpretative divergences from foreign tribunals. n283 At a minimum, American courts need to know what foreign and international courts have said regarding the trade provisions in question before adopting a different interpretation. Where possible, the American courts should probably harmonize U.S. interpretation with the weight of  [\*605]  interpretation elsewhere; n284 alternatively, they should have good cause, solidly grounded in U.S. law and policy, for adopting any interpretation that is at odds with comparative precedent. n285 In either event, they need to know what comparative law is on the interpretative issues in question in order to make an intelligent decision. They should not depart from comparative precedent lightly, let alone ignorantly or absent-mindedly. Ultimately, of course, authoritative U.S. interpretation of disputed provisions in international trade agreements becomes the responsibility of the U.S. Supreme Court. The Court is most likely to take up this duty where the terms of the agreement are subject to competing plausible interpretations. n286 That possibility could emerge (as with domestic statutory law) through a conflict in interpretation by lower federal courts, or between federal and state tribunals. In the case of international agreements, it could also arise because of a conflict in interpretation between a lower U.S. court and a foreign tribunal.

Court Stripping 1NC (2/4)

<continues, no text omitted>

such a case, the Supreme Court's interpretation will perform the important constitutional function of providing uniformity in federal law. n287 But the Court's choice among competing interpretations of international agreements will carry additional constitutional significance. This occurs both because the choice will affect how the provision in question preempts other American laws, and because the choice will have implications for the exercise of national legislative and executive powers. n288 Although the Court may not be technically  [\*606]  required to consider foreign interpretations of the disputed treaty language, there are powerful constitutional policy reasons for doing so. A decision at odds with international precedent, for example, could affect the President's ability to conduct foreign policy by triggering international litigation, inviting retaliatory measures by other states, or leading to sanctions against the United States in international tribunals. n28. As globalization progresses, and as U.S. participation in international agreements proliferates, the circumstances in which both the Supreme Court and lower federal courts need to be aware of foreign precedents will increase. As they do, judicial demand for information about foreign law will grow, as will the need for both advocates and judges proficient in understanding and utilizing international and foreign precedent. n290 Over time, the inevitable effect will be more extensive knowledge and use of foreign legal decisions in American courts.

2. Relying on CIL for contentious issues causes public backlash against the judiciary

Honorable J. Harbie Wilkinson III, judge for US curiut court, 4th district, Spring 2004 (“THE USE OF INTERNATIONAL LAW IN JUDICIAL DECISIONS”, 27 Harv. J.L. & Pub. Pol'y 423, lexis)

Where courts go too far, in my view, is where they rely upon international (and mostly European) precedents when resolving important and contentious social issues. This "internationalization" of the Constitution on domestic social issues raises three types of problems.The first is that an over-reliance on foreign precedents may serve to compromise judicial decisions in the eyes of the American public. Judges serve as unelected stewards of the Constitution whose power rests in part on their ability to persuade. While majorities may simmer  [\*426]  when judges vindicate the rights of minorities, in the long run judges can promote respect for their decisions by appealing to principles that Americans can relate to as part of an American constitutional tradition. The counter-majoritarian difficulty is thus alleviated when judges draw upon common principles and ideas that form our shared American heritage. But when judges rely on foreign sources, especially for difficult constitutional questions concerning domestic social issues, they move the bases for judicial decision-making even farther from the realm of both democratic accountability and popular acceptance. They aggravate the risks already inherent in having unelected officials overrule popular enactments by creating the perception that foreign sentiment shapes domestic law. To be sure, examples from other countries may be illuminating. But the Court's legitimacy must ultimately rest on reliance and reference to the American Constitution and to American democratic; outcomes, from which their judicial authority springs. By relying on foreign laws and rulings over which the American people have no control -- either directly through the power of election or even indirectly through the process of judicial appointment -- judges risk estranging and disempowering the public. I fear that the internationalization of our constitutional values may thus undermine public acceptance of our judicial system. A closely related danger is that reliance on foreign precedents may stimulate popular perceptions that judges are out of touch with American culture. The risks of a common perception of judicial distance and removal should not be underestimated. The detachment and insulation which an independent judiciary properly enjoys should not be endangered by pronouncements that appear targeted at foreign and domestic elites rather than the American public at large. The power of persuasion which sustains judicial authority must not neglect those very people whose acceptance of judicial decree is most essential. Americans treasure their diversity and their identity. The great Willa Cather novels, My Antonia and O Pioneers!, still play a prevalent role in the American psyche, and the distance from American to European modes of thought remains in some vital particulars more psychological than physical. The distinguished Harvard historian, Bernard Bailyn, has noted that the power of the American Constitution derived from the fact that its framers were proud and stubborn provincials, that they did not accept all the received wisdom of the Continent, and that, for example, the  [\*427]  animating constitutional idea of dual and concurrent sovereignties actually rejected the contrary notions of the French theorist Montesquieu.

Court Stripping 1NC (3/4)

3. Negative public opinion for the courts causes courtstripping

Helen Norton, Professor of Law, University of Maryland School of Law, Winter 2006 (41 Wake Forest L. Rev. 1003, “ARTICLE: RESHAPING FEDERAL JURISDICTION: CONGRESS'S LATEST CHALLENGE TO JUDICIAL REVIEW”, lexis)

Not only are these efforts increasingly successful, they are likely to reemerge in future proposals to shape subject matter jurisdiction and thus the balance of judicial power. The House's passage of two separate court-stripping bills in the same Congress represents a high-water mark in the court-shaping movement, as does its passage of the Pledge Protection Act in successive Congresses. Indeed, some of the dynamics that helped thwart earlier court-stripping measures appear to have diminished or disappeared altogether. [n97](http://www.lexisnexis.com.proxy.uchicago.edu/us/lnacademic/frame.do?reloadEntirePage=true&rand=1280286641118&returnToKey=20_T9826596992&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.261293.45200068233#n97) In the past, for example, the courts - and especially the Supreme Court - may have survived congressional attack due to their comparatively strong public reputation. n98 Shifting perceptions of government institutions may weaken that shield, as one survey found that a majority of respondents agreed "that "judicial activism'  [\*1027]  has reached the crisis stage, and that judges who ignore voters' values should be impeached. Nearly half agreed with a congressman who said judges are "arrogant, out-of-control and unaccountable.'" [n99](http://www.lexisnexis.com.proxy.uchicago.edu/us/lnacademic/frame.do?reloadEntirePage=true&rand=1280286641118&returnToKey=20_T9826596992&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.261293.45200068233#n99) Other recent polls also suggest a drop in public support for the courts, including the Supreme Court, at least in some quarters. [n100](http://www.lexisnexis.com.proxy.uchicago.edu/us/lnacademic/frame.do?reloadEntirePage=true&rand=1280286641118&returnToKey=20_T9826596992&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.261293.45200068233#n100) Changes in public opinion, accompanied by proponents' sheer political power, may encourage further jurisdictional realignment.

4. Court stripping destroys judicial legitimacy and seperation of powers

**Andrew D. Martin,** Prof of Political Science at Washington University **2001**. (Statuatory Battles and Constitutional Wars: Congress and the Supreme Court)

But the large policy payoff in the constitutional cases. What does the ability of the President and Congress to attack through overrides or other means constitutional court decisions imply in terms of the cost of the justices bear? If an attack succeeds and the court does not back down, it effectively removes the court from the policy game and may seriously or, even irrevocably harm its reputation, credibility, and legitimacy. Indeed, such an attack would effectively remove the court from policy making, thus incurring an infinite cost. With no constitutional prescription for judicial review, this power is vulnerable, and would be severely damaged if congress and the president were effective in attack on the Court. But even if the attack is unsuccessful, the integrity of the court may be damaged, for the assault may compromise its ability to make future constitutional decisions and, thus, more long-lasting policy. One does not have to peer as far back as scott v. sandford to find examples; Bush v. Gore (2000, U.S.) may provide one. To be sure, the new President and Congress did not attack the decision, but other memebers of government did of course, unsuccessfully at least in terms of the ruling’s impact. Yet, there seems little doubt that the critics (not to mention the decision itself) caused some major damage to the reputation of the cout, the effects of which the justeces may feel in the not-so-distant future.

Court Stripping 1NC (4/4)

5. Seperation of powers is key to preventing tyranny

Martin H. Redish and Elizabeth J. Cisar, Duke University School of Law, December 1991

(“’If Angels Were to Govern’: The Need for Pragmatic Formalism in Separation of Powers Theory” Duke Law Journal, p. 449-506)

In any event, the political history of which the Framers were aware tends to confirm that quite often concentration of political power ultimately leads to the loss of liberty. Indeed, if we have begun to take the value of separation of powers for granted, we need only look to modern American history to remind ourselves about both the general vulnerability of representative government, and the direct correlation between the concentration of political power and the threat to individual liberty. The widespread violations of individual rights that took place when Pres- ident Lincoln assumed an inordinate level of power, for example, are well documented.128 Arguably as egregious were the threats to basic freedoms that arose during the Nixon administration, when the power of the executive branch reached what are widely deemed to have been intolerable levels.129 Although in neither instance did the executive's usurpations of power ultimately degenerate into complete and irreversible tyranny, the reason for that may well have been the resilience of our political traditions, among the most important of which is separation of powers itself. In any event, it would be political folly to be overly smug about the security of either representative government or individual liberty. Although it would be all but impossible to create an empirical proof to demonstrate that our constitutional tradition of separation of powers has been an essential catalyst in the avoidance of tyranny, common sense should tell us that the simultaneous division of power and the creation of interbranch checking play important roles toward that end. To underscore the point, one need imagine only a limited modification of the actual scenario surrounding the recent Persian Gulf War. In actuality, the war was an extremely popular endeavor, thought by many to be a politically and morally justified exercise. But imagine a situation in which a President, concerned about his failure to resolve significant social and economic problems at home, has callously decided to engage the nation in war, simply to defer public attention from his domestic failures. To be sure, the President was presumably elected by a majority of the electorate, and may have to stand for reelection in the future. However, at this particular point in time, but for the system established by separation of powers, his authority as Commander in Chief 130 to en- gage the nation in war would be effectively dictatorial. Because the Con- stitution reserves to the arguably even more representative and accountable Congress the authority to declare war,131 the Constitution has attempted to prevent such misuses of power by the executive.132 It remains unproven whether any governmental structure other than one based on a system of separation of powers could avoid such harmful results. In summary, no defender of separation of powers can prove with certitude that, but for the existence of separation of powers, tyranny would be the inevitable outcome. But the question is whether we wish to take that risk, given the obvious severity of the harm that might result. Given both the relatively limited cost imposed by use of separation of powers and the great severity of the harm sought to be avoided, one should not demand a great showing of the likelihood that the feared harm would result. For just as in the case of the threat of nuclear war, no one wants to be forced into the position of saying, "I told you so."474 [Vol. 41:449]

6. We must reject tyranny in every instance

Sylvester Petro, Professor of Law @ Wake Forest, 1974 (Sylvester Petro, University of Toledo Law Review, Spring 1974)

However, one may still insist, echoing Ernest Hemingway – “I believe in only one thing: liberty.” And it is always well to beat in mind David Hume’s observation: “It is seldom that liberty of any kind is lost all at once.” Thus, it is unacceptable to say that the invasion of one aspect of freedom is of no import because there have been invasions of so many other aspects. That road leads to chaos, tyranny, despotism, and the end of all human aspiration. Ask Solzhenitsyn. Ask Milovan Djilas. In sum, if one believes in freedom as a supreme value and the proper ordering principle for any society aiming to maximize spiritual and material welfare, then every invasion of freedom must be emphatically identified and resisted with undying spirit.

Link Wall

We’ll isolate 3 distinct internal links to court-stripping.

A is the public backlash link. The public feels that when courts create law based on international sources, the courts are circumventening their elected representatives – that’s our Wilkson 4 evidence. Congress will then pass court-stripping measures to satisfy the public that elected governmental officials still have control – that’s Norton 6.

B is the threat link. Congress will percieve the ruling as threat it its constitutional powers – that’s Wilkinson 4. To strengthen its power, Congress will strip the courts of jurisdiction.

C is the opportunity link. Congress is waiting for any justification to reduce judicial powers – CIL provides the opportunity.

Marc O. DeGirolami, Law Clerk, Hon. Jerome Farris, U.S. Court of Appeals for the Ninth Circuit, JD. @ Boston U, MA @ Harvard, Spring 2005 (“Congressional Threats of Removal Against Federal Judges”, 10 Tex. J. on C.L. & C.R. 111, lexis)

Representative Jerrold Nadler (NY), commenting on Representative Feeney's statements about the "ultimate remedy" for judicial noncompliance with Resolution 568, was more direct: "In other words, we're threatening impeachment if we disagree with the Court. That is the definition of intimidation." n130 I do not wish to confuse the issue of the propriety of citation to foreign legal sources with my principal point - that Congress's interest in limiting such citations is actually driven by a larger, overarching desire to strip away traditionally judicial functions and to gain greater control over the judiciary, and that it will threaten judges with removal to meet those ends. Certainly, there are cogent arguments to be made for and against the use of foreign legal opinion in American caselaw. For example, Professor Harold Koh has suggested that "transnationalist jurisprudence," whose champions on the current Court, he believes, are Justices Ginsburg and Breyer, is a "venerable" judicial approach practiced since the birth of the republic and which "assumes America's political and economic interdependence with other nations operating within the international legal system." n131 Likewise, Professor Daniel Bodansky observes that the knowledge of and respect for international law is a long-standing American tradition and that the Supreme Court historically has often looked to international law in construing the powers of the federal government. n132 "In contrast to today," he writes, "I am not aware that when the Court, in these earlier cases, paid a decent respect to the opinions of mankind, this was criticized [\*138] as illegitimate or otherwise un-American." n133 Others have disagreed, arguing that "including a new source [international law] fundamentally destabilizes the equilibrium of constitutional decision making," n134 or that the selective use of international materials "serves as mere cover for the expansion of selected rights favored by domestic advocacy groups, for reasons having nothing to do with anything international." n135 Judge Posner has recently presented four grounds for his conclusion that citation to foreign sources as persuasive argument should be avoided. n136 At least some of these reasons are, in my view, problematic, n137 but none of these arguments speak directly to a congressionally-imposed, categorical rule disallowing, with sanctioned exceptions, the inclusion of foreign sources in American judicial decisions. The selected statements of the House members provide a better understanding of the motivations undergirding Resolution 568 than do the academic musings about the desirability of using foreign sources. And those legislative expressions demonstrate that Resolution 568 is widely intended merely as one small stage in what many in Congress hope will be a far-ranging program of absorbing judicial power.

Turns Case

1. Court-stripping kills judicial legitmacy, so justicies won’t be able to rule on and enforce future decisions – that’s Norton 4. That means the aff has no lasting solvency.

2. Court stripping destroys precedent and spillover – turning case.

ACLU 01 [UPSETTING CHECKS AND BALANCES:

CONGRESSIONAL HOSTILITY TOWARD THE COURTS IN TIMES OF CRISIS, <http://www.aclu.org/FilesPDFs/ACF47C9.pdf>]

As a practical matter, court-stripping may be self-defeating. Such legislation is typically motivated by congressional anger toward the content of certain court rulings. But removing future jurisdiction over the issue may simply serve to lock in “bad” precedent – a conundrum even some critics of so-called activist judging have acknowledged. Former Judge Bork notes that: Some state courts would inevitably consider themselves bound by the federal precedents; others, no longer subject to review, might not. The best that Congress could hope for would be lack of uniformity. This is a far cry from amending the Constitution or even overruling a case. While it may seem preferable to some to lack uniformity on a particular issue rather than to have a repugnant uniform rule, the government could not easily bear many such cases and certainly could not long endure a complete lack of uniformity in federal law. Thus there are practical limitations on excessive use of the Exceptions Clause.165 More troublesome is that court-stripping defeats the spirit of the Constitution. The Framers took care to create an independent judiciary to safeguard individual liberty. Removing important issues from the purview of the courts, especially those concerning the rights of unpopular minorities, is a direct assault on these constitutional protections. By the same token, Congress does great harm to the integrity of the federal judiciary when it leaves issues before the courts, but attempts to manipulate how judges may remedy violations of constitutional or statutory rights. Even scholars who believe that the Constitution allows significant congressional control of federal jurisdiction generally agree it would be unwise to invoke it over any significant category of federal law or use it to achieve a desired substantive outcome.166 Thus Professor Gerald Gunther, writing at the time Congress was considering court-stripping bills in the early 1980s regarding abortion, busing and school prayer, concluded “I would urge the conscientious legislator to vote against the recent jurisdiction-stripping devices because they are unwise and violate the ‘spirit’ of the Constitution, even though they are, in my view, within the sheer legal authority of Congress.”167 Put another way, “[w]hat may be conceivable in theory would be devastating in practice to the real world system of checks and balances that has enabled our constitutional system to function for 200 years.”168

AT: NU – Court decisions now

1. International law is non-binding in the status quo. The court recognizes international law, and will look to it for guidance, but doesn’t cite it as precedent on key issues – that’s our Rahdert 7 evidence.

2. Courtstripping efforts aren’t passing, but citations aren’t binding now

Jeffrey McDermott, Attorney with the GAO and editorial board for Federal Lawyer, 2004 (The Federal Lawyer, 51.6, “Citation to Foreign Precedent: Congress vs. the Courts,” p. 21-23, Wilson Web paid search service)

The resolution does not appear to be a high priority for the House of Representatives, and no similar resolution has been introduced in the Senate. Furthermore, the resolution may be, in Rep. Nadler's words, "much ado about nothing." The foreign precedents to which the sponsors objected are limited to two citations in Lawrence, a single citation contained within a footnote in Atkins, and a citation in a concurring opinion in Grutter. Even Ramsey, who testified in favor of the resolution, acknowledged that none of the citations had a "substantial role" in any of the decisions. Furthermore, as Jackson pointed out, federal courts frequently cite any number of sources, including state court decisions and law review articles. However, several recent statements by Supreme Court justices suggest that the citation to foreign precedent could become increasingly common. For example, in 2002, in a speech to the American Society of International Law, Justice Sandra Day O'Connor criticized the reluctance of the Supreme Court to look to international and foreign law to interpret the Constitution: The landmark judgments of the Supreme Court of the United States, giving fresh meaning to the principles of the Bill of Rights, are studied with as much attention in New Delhi or Strasbourg as they are in Washington, D.C., or the State of Washington, or Springfield, Ill. This reliance, unfortunately, has not been reciprocal ... While ultimately we must bear responsibility for interpreting our own laws, there is much to be learned from other distinguished jurists who have given thought to the difficult issues we face here. O'Connor endorsed the concept of transjudicialism: "Although international law and the Jaw of other nations are rarely binding upon our decisions, conclusions reached by other countries and by the international community should at times constitute persuasive authority in American courts." Similarly, in his dissent in a 1999 death penalty case (Knight v. Florida), Justice Stephen Breyer wrote: This Court has long considered as relevant and informative the "way in which foreign courts have applied standards roughly comparable to our own constitutional standards in roughly comparable circumstances. In doing so, the Court has found particularly instructive opinions of former [British] Commonwealth nations insofar as those opinions reflect a legal tradition that also underlies our own.... Willingness to consider foreign judicial views in comparable cases is not surprising in a Nation that from its birth has given a "decent respect to the opinions of mankind." In his dissent, Breyer listed a string of Supreme Court decisions that cited foreign precedent dating back to 1881 and noted that foreign precedent is "useful even though not binding." Even Chief Justice Rehnquist has written, "When many new constitutional courts were created after the Second World War, these courts naturally looked to decisions of the Supreme Court of the United States, among other sources, for developing their own law. But now that constitutional law is solidly grounded in so many countries, it is time that the United States courts begin looking to the decisions of other constitutional courts to aid in their own deliberative process." While the justices of the Supreme Court appear ready to increase their citation to foreign and international sources of law, at least 70 members of Congress are seeking to bring this practice to a halt. Although citation to foreign precedent is still quite rare, it remains to be seen whether Congress or the courts will prevail in this emerging controversy.

3. Double bind: Either previous court rulings weren’t important enough to trigger this disad, or they were major decisions, in which case they should have solved the CIL advantage.

AT: NU - Previous treaties

1. Previous treaties the signed on drones were non-self executing – look to their evidence. That means the treaties require Congress to pass legislation to enact them before it becomes active law.
2. A court ruling won’t improve the implementation of previously signed treaties –

Courts can’t enforce their decisions

Gerald N. Rosenburg, University of Chicago political science and law professor, 2008, The Hollow Hope, Can Courts Bring About Social Change, P.15-16

For courts, or any other institution, to effectively produce significant so­cial reform, they must have the ability to develop appropriate policies and the power to implement them. This, in turn, requires a host of tools that courts, according to proponents of the Constrained Court view, lack. In particular, successful implementation requires enforcement powers. Court decisions, re­quiring people to act, are not self-executing. But as Hamilton pointed out two centuries ago in The Federalist Papers (1787—88), courts lack such powers. Indeed, it is for this reason more than any other that Hamilton emphasized the courts’ character as the least dangerous branch. Assuaging fears that the fed­eral courts would be a political threat, Hamilton argued in Federalist 78 that the judiciary “has no influence over either the sword or the purse; no direction either of the strength or of the wealth of the society; and can take no active resolution whatever. It may truly be said to have neither FORCE nor WILL, but merely judgment; and must ultimately depend upon the aid of the execu­tive arm even for the efficacy of its judgments” (The Federalist Papers 1961, 465).Unlike Congress and the executive branch, Hamilton argued, the federal courts were utterly dependent on the support of the other branches and elite actors. In other words, for Court orders to be carried out, political elites, electorally accountable, must support them and act to implement them. Pro­ponents of the Constrained Court view point to historical recognition of this structural “fact” of American political life by early Chief Justices John Jay and John Marshall, both of whom were acutely aware of the Court’s limits.’2 President Jackson recognized these limits, too, when he reputedly remarked about a decision with which he did not agree, “John Marshall has made his decision, now let him enforce it.” 13 More recently, the unwillingness of state authorities to follow court orders, and the need to send federal troops to Little Rock, Arkansas, to carry them out, makes the same point. Without elite sup­port (the federal government in this case), the Court’s orders would have been frustrated. While it is clear that courts can stymie change (Paul 1960), though ultimately not prevent it (Dahi 1957; Nagel 1965; Rosenberg 1985), the Con­stitution, in the eyes of the Constrained Court view, appears to leave the courts few tools to insure that their decisions are carried out.

AT: Decisions not percieved (1/2)

1. Our Wilkinson evidence assumes their evidence. Wilkinson says that decisions normally don’t galvanize the public because people trust that even decisions they disagree with are based on common principles, like those of the constitution. Basing decisions on CIL violates those underlying values, causing backlash.
2. Even if decisions aren’t noticed by the public, Congress percieves that the public notices the decisions, and so will pass legislation accordingly

Lisa Sofio, JD Candidate @ Cal-Hastings, 06 [30 Hastings Int'l & Comp. L. Rev. 131, “Hastings International and Comparative Law Review,”]

While several members of Congress actively opposed utilizing foreign sources during the recent Supreme Court confirmation hearings, none actively took up its defense. This may be a signal that proponents recognize the frivolousness of the issue and choose not to warrant it with a response. Nonetheless, Congress is generally hostile towards comparative analysis. Several senators used the two most recent confirmation hearings of Supreme Court justices to express this hostility and rebuke the judiciary for taking a different position. For example, during the confirmation hearings of Chief Justice [\*134] John Roberts, Senator Mike DeWine (R-Ohio) stated that in addition to worrying about the protection of the disabled and victims of domestic violence, many Americans worry about the Court citing international law. n15 Senator Jeff Sessions (R-Ala.) criticized looking to the standards of foreign nations as "arrogant." n16 Senator Cornyn inquired as to the basis of the legitimacy of "relying" on foreign laws that Americans had not voted on or been aware of in order to overturn Bowers v. Hardwick. n17 Senator Sam Brownback (R-Kan.) included the Court's "interpretation of the American Constitution on the basis of foreign and international law" in his list of examples of the Court's straying beyond its limited role." n18 The confirmation hearings of Justice Alito had a similar tenor. There, Senator Jon Kyl (R-Ariz.) expressed the opinion that using foreign law undermines democratic self-government, is impractical, and is needlessly disrespectful of the American people. n19 Because of the Court's use of foreign law, Senator Sessions commented that millions of Americans believe the Court is losing discipline and not remaining faithful to the Constitution. n20 Senator Tom Coburn (R-Okla.) described the practice as "extremely disturbing to a lot of Americans" and stated that he "strongly and adamantly" believed the practice was an indication of bad behavior. n21 The purpose of a confirmation hearing is not to ascertain Congress's view on matters such as comparative analysis. Perhaps the senators spoke so strongly in order to elicit a response from the nominees and induce them to take a position. However, the legislation described above seems to belie this explanation and confirm that congressional opposition is serious. While the comments made at the hearings are simply opinions, they may cause even greater reverberations throughout the judicial system than the introduced legislation. The legislation may not be enacted, or it may be enacted and subsequently struck down, but the these comments [\*135] have a chilling effect on judges. Congress sent the message that judges who use foreign law will have to answer for themselves later - a message that may silence judges with higher aspirations. But what is Congress so worried about?

3. Decisions are percieved – the public looks to court decisions to crystalize opinions

**Johnson & Martin 98** (Timothy R and Andrew G, professors of political science. Cambridge University Press, “The public's conditional response to Supreme Court decisions,” Jun 1, http://www.accessmylibrary.com/coms2/summary\_0286-389083\_ITM, Accessed 7/6/09 By SA)

We provide an alternative to the positive response hypothesis and an extension of the structural response hypothesis. More specifically, we offer a variation of the social-psychological elaboration likelihood model to explain how the Supreme Court affects public opinion. Our model is based on two different theories. First, because the public generally views the Court as a highly credible institution (Caldeira 1986; Caldeira and Gibson 1992; Hoekstra and Segal 1996), individuals more clearly elaborate their attitudes toward an issue after a ruling (although they do not necessarily agree with the decision). Unlike the positive response hypothesis, however, our account suggests only that the public pays attention to and discusses major decisions because of the Court's high degree of legitimacy. In other words, as a credible source of information, when the Court makes its first major decision on a particular issue, the structure of public opinion changes in a manner consistent with the structural response hypothesis. That is, even if individuals disagree with a particular decision, their opinions on that issue will crystallize (become stronger) for or against the Court's policy choice.(1)

AT: Decisions not percieved (2/2)

4. Even minor public criticisms trigger self-censorship because the courts rely heavily on their credibility to get their decisions enforced

William G. Ross, Professor of Law, Cumberland School of Law of Samford University, Summer, 2003 (38 Wake Forest L. Rev. 733, lexis)

Similarly, one recent empirical study has concluded that "public opinion can and does influence the decisions of individual justices whether by stimulating changes in judicial attitudes or by shaping their subjective norms," n198 and another contends that "it may be that justices, fearful of successful congressional action, act to mollify their congressional opponents by altering their decisions," n199 particularly since the Court relies "on political leaders for the implementation of its decisions." n200 The Court has an institutional stake in remaining attentive to public opinion, particularly congressional opinion, because highly vocal attacks on its powers can diminish the public respect which is so critical to the maintenance of its powers. Even such relatively minor rebukes as congressional overrides of its statutory interpretation decisions "will chip away at its legitimacy ... if only [\*770] marginally." n201 As one study has aptly concluded, "Given that the Justices' ability to achieve their policy goals hinges on their legitimacy, because they lack the power to enforce their decisions, any erosion of the Court's legitimacy is a concern." n202 Court-curbing movements may influence the Court even when they fail in their more specific objectives. Many opponents of judicial nullification of regulatory legislation during the decades preceding 1937 believed that widespread criticism of the Court's nullification of such legislation had made the court more deferential to Congress and the state legislatures in its review of economic legislation. In 1911, Professor Frank J. Goodnow of Columbia wrote that "this severe, persistent, and continuous criticism of the court" may have helped to explain why the Court had been "reasonably responsive to public opinion." n203 As Professor Baker has pointed out, a failed amendment also may influence the Court since "the Supreme Court will benefit from the views of a coordinate branch and may choose to revisit the area on its own. Even bills that fail in Congress provide some modest dialogue appropriate for the Supreme Court to hear, if not to heed." n20

AT: Congress won’t pass stripping

1. Court-stripping will pass – both Congressional republican and dems want to protect their own power.

2. Court-stripping bills don’t have to pass to change judicial decisions – threats are enough.

Helen Norton, Assistant Professor of Law, University of Maryland School of Law, Winter 2006 (“RESHAPING FEDERAL JURISDICTION: CONGRESS'S LATEST CHALLENGE TO JUDICIAL REVIEW” 41 Wake Forest L. Rev. 1003, lexis)

Moreover, even if never enacted into law, the mere threat of jurisdictional change may achieve popular constitutionalism's objectives. Some may hope to change courts' constitutional interpretations not by switching judicial forums but by influencing judges to change their behavior in light of challenges to their authority. n86 Then-House Majority Leader Tom Delay, for example, made this goal clear in explaining his support for the Pledge Protection Act at a time when challenges to the Pledge remained pending in the federal courts: "I think that would be a very good idea to send a message to the judiciary they ought to keep their hands off the Pledge of Allegiance." n87 Under this view, simply proposing jurisdictional change may be a successful popular constitutionalist exercise. History suggests the success of such a strategy, as policymakers' past threats to the courts have triggered changes in judicial outcomes. Recall, for example, President Franklin D. Roosevelt's 1937 Court-packing plan, intended to change the Court's composition after its series of decisions striking down various New Deal legislation. Although Congress rejected the effort, many credit that proposal with inspiring "the switch in time that saved nine" - i.e., the Court's newfound willingness to uphold the constitutionality of Roosevelt's programs. n88 Similarly, although Congress failed to enact the 1957 Jenner-Butler effort to strip the Court of jurisdiction over certain national security matters, n89 that legislative effort was followed shortly by a series of decisions in which the Court softened some of its earlier opinions on those issues. n90 [\*1025] Moreover, by advocating jurisdictional changes as a remedy for specific examples of what they believe to be judicial abuses, proponents signal not only the sorts of decisions but also the sorts of nominees they will embrace or oppose. To the extent that legislators then influence changes in the judiciary's composition, jurisdictional change becomes less necessary. n91 Focusing attention on judicial power may thus be an effective strategy for changing not only the scope of that power but also the personnel who exercise it. n92 Either way, the goals of popular constitutionalism advance

AT: CIL Nevit

This argument is stupid – their Martinez evidence refers to the inevitability of international legal agreements in general. Obviously there will always be treaties and recognition of property rights and things like that. This doesn’t mean the US is necessarily going to use CIL as a binding precedent in the American legal system. Cross-apply Rahdert 7.