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Strat Sheet

Plan Text: The Supreme Court of The United States should rule the invasion of Iraq a violation of customary international law and therefore illegal and advise a withdraw with all deliberate speed.

Suggested 1NC:

* Fem IR K
* Court Stripping DA
* Congress CP
* T-Reduce (FX T)
* Case FLs

Case Info:

They have two advantages, preventive war and customary international law (CIL). The preventive war one is silly – it seems unfinished and they have no solvency for it. Beware, though, because they might actually finish before the debates. Right now, it says that invading Iraq without real provocation will set a dangerous precedent that will allow us to invade other countries like Iran. That’s right, invading WILL set a precedent. The cards are pre-invasion, anti-war stuff. The CIL one says that if US courts adopt international laws in the Iraq context, that sets a precedent for the US and countries that model the US adopting other kinds of international laws, like human rights laws. The impact is that the more laws there are, the less countries go to war and commit genocide.

Fem IR

The killer arg: I think the Fem K is going to be your best bet here. It directly adresses their CIL advantage, and probably turns case on their human rights and war for security purposes impact. I have included a few cards that are specific to international law, but you should use the ones from the generic file for the 2NC. There’s only one card on the perm, for instance, so don’t just rely on this file.

Some Fem Links:

\*Their human rights impacts on the CIL advantage ties in with the human rights links and alt in the generic.

\*They have a patronizing attitude towards countries with emerging judicial systems –the American judicial system “knows better” how to solve problems, so other countries need to adopt it, or else risk turning into barbaric places – especially see the language of the Shaw card.

\*This is one case where they are actually trying to perpetuate the international order. They actively promote its expansion, instead of just working within the sytem (which generic k debaters tend to spin as “re-inscribing” the system….). Get them to talk about this in c-x.

Other Args

I have included another counterplan, the “deliberate speed” pic. You’d run the colonialism thing as a net benefit (you can’t run that independently). It’s okay, and sort of an interesting tricky argument, but there’s a reason it isn’t in the suggested 1NC.

There’s also some plan upopular and politics links, but it’s a courts aff, so that’s not great.

You could also read one of the generic iraq strats, with a super generic link (there plan text is equally as generic), but the problem is that the impacts don’t really relate to the case – they could convincingly argue that CIL solves the regional war or whatever impacts that those disads have. An even bigger problem is the counterplans those go with - since these advantages have nothing to do with iraq, the CPs pretty much don’t solve.

T- Reduce (FX)

1. Interp – To reduce is to immediately diminish in size.

Guy, 91 - Circuit Judge (TIM BOETTGER, BECKY BOETTGER, individually and as Next Friend for their Minor Daughter, AMANDA BOETTGER, Plaintiffs-Appellees, v. OTIS R. BOWEN, Secretary of Health and Human Services (89-1832); and C. PATRICK BABCOCK, Director, Michigan Department of Social Services (89-1831), Defendants-Appellants Nos. 89-1831, 89-1832 UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT 923 F.2d 1183; 1991 U.S. App. LEXIS 671)

The district court concluded that the plain meaning of the statutory language does not apply to the termination of employment one obtains on his own. A termination, the court held, is not a refusal to accept employment. In this case, the plain meaning of the various words suggests that "refuse to accept" is not the equivalent of "terminate" and "reduce." As a matter of logic [\*\*18]  and common understanding, one cannot terminate or reduce something that one has not accepted. Acceptance is [\*1189]  a pre-condition to termination or reduction. Thus, a refusal to accept is a precursor to, not the equivalent of, a termination or a reduction. n3 n.3 This distinction is also reflected in the dictionary definitions of the words. "Accept" is defined in anticipatory terms that suggest a precondition ("to undertake the responsibility of"), whereas "terminate" and "reduce" are defined in conclusory terms ("to bring to end, . . . to discontinue"; "to diminish in size, amount, extent, or number."). See Webster's New Collegiate Dictionary (9th ed. 1985).

B. Violation – The aff doesn’t directly reduce military presence – it has the supreme court give advice to do that. That’s effects-t.

C. Standards

1. Limits – Allowing the aff to give advice about withdrawal explodes the topic, as they could fiat anyone – committees, presidential advisors, ranom joe off the street – then read evidence that the person’s advice will be followed.
2. Predictability – No way to know if, when or how the military will follow the court’s advice.
3. Ground – They can spike out of links on core disads like politics and cmr, if the military gets to take charge on withdrawal.

D. T is voter for fairness and setting a precedent

Withdrawal Spec

A. Violation - the aff must specify what they are withdrawing.

B. Voters:

1. Ground – The neg can’t run disads based on simply “withdrawing”. Core neg ground includes disads to specific types of military presence not being in the topic countries.

2. Aff is a Moving Target – They can change what their plan actually does, making it impossible and unfair to debate.

3. Real world – the government doesn’t just withdraw randomly, they have to decide if they are going to just send troops home, or if they are going to dismantle bases, or take back weapons they gave to the Iraqi government.

4. Draw the line here – with only six countries to debate, we have to be able to debate the method of withdrawal to have a diversity of arguments. They create problems for aff ground, too.

CIL FL

1. They have ZERO pieces of advantage solvency – their cards were written pre-iraq invasion and advocate not invading in the first place. We’re too late - there’s no evidence that “un-invading” would change a past violation of CIL. At best, they have no timeframe, since it’s been 7 years since the violation and we still haven’t seen their impacts.

2. Their Kundmueller 2 evidence concedes that courts are begininning to intergrate CIL already.

3. There’s no consensus that the invasion even violated international law – their author

David M. Ackerman (Legislative Attorney American Law Division) 3/17/2003 , CRS Report for Congress Received through the CRS Web Order Code RS21314, “International Law and the Preemptive Use of Force Against Iraq”

Thus, in both theory and practice the preemptive use of force appears to have a home in current international law; but its boundaries are not wholly determinate. Its clearest legal foundation is in Chapter VII of the UN Charter. Under Article 39 the Security Council has the authority to determine the existence not only of breaches of the peace or acts of aggression that have already occurred but also of threats to the peace; and under Article 42 it has the authority to “take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security.” These authorities clearly seem to encompass the possibility of the preemptive use of force. As a consequence, the preemptive use of force by the United States against Iraq or any other sovereign nation pursuant to an appropriate authorization by the Security Council would seem to be consonant with international law. Less clear is whether international law currently allows the preemptive use of force by a nation or group of nations without Security Council authorization. That would seem to be permissible only if Article 51 is not read literally but expansively to preserve as lawful the use of force in self-defense as traditionally allowed in customary international law. As noted, the construction of Article 51 remains a matter of debate. But so construed, Article 51 would not preclude the preemptive use of force by the U.S. against Iraq or other sovereign nations. To be lawful, however, such uses of force would need to meet the traditional requirements of necessity and proportionality

4. Look to the un-underlined portions of IEER 2 and Chayes 6 – they’re not written in the context of the US refusing to agree to CIL, but about the US failing to follow through on already signed treaties. The aff can’t access the card’s predictability internal link.

5. Their impact card is from the Malaysian Medical Association – this is not a reliable source on American legal issues!

6. Their Martinez 3 card only applies to international buisness laws – like recognizing bankruptcy cases that happened in another country, and Martinez concedes we already uphold these.

7. No solvency – countries that commit genocide and go to war are going to do so regardless of whether the law allows it.

8. Using transnational law destroys the constitution and kills democracy and freedom

Jeaneene Nooney, 7/8/10 columnist for Morningstar Publishing Co., (Morningstarhttp://www.morningstarpublishing.com/articles/2010/07/08/leader\_and\_kalkaskian/opinion/doc4c35fd3d60037449480764.txt)

Last week we spoke of freedom; how quickly we are losing it, how costly it is to achieve, and how devotedly it must be maintained. We cannot rest on our Founding Fathers’ laurels — or blood. We must be like sheep dogs after wolves when it comes to sustaining liberty. At the heart of this freedom lies the Constitution of the United States. Personally, I hate conflict. I hate phoning my representatives to voice my views; though it is much easier than I had once thought. But if we are to keep this Republic together, it’s vital that we not allow the wolves to sneak in and swiftly carry off our stock. And by that I mean our future. I promised to explain about a “living constitution” and transnationalism in last week’s column. Much of what is said by proponents of these ideologies is fraught with legalese. I run the risk of oversimplification here, but the attempt to warn is intentional, and my hope is to illumine rather than muddle the reader’s understanding of a very complex issue. Hang in there. I will do my best. In speaking of a “21st century constitution” or “living constitution” during a speech in Washington last February, Michigan Supreme Court Justice Stephan Markman said “Proponents aim to transform our nation’s supreme law beyond recognition — and with a minimum of public attention and debate. Indeed, if there is an overarching theme to what they wish to achieve, it is the diminishment of the democratic and representative processes of American government. “It is the replacement of a system of republican government,” Markman continues, “in which the constitution is largely focused upon the architecture of government in order to minimize the likelihood of abuse of power; with a system of judicial government, in which substantive policy outcomes are increasingly determined by federal judges. Rather than merely defining broad rules of the game for the legislative and executive branches of government, the new constitution would compel specific outcomes.” In other words, an unelected, appointed group of nine would determine law, rather than interpret it from the Constitution. This is in direct opposition to what the Framers of the Constitution set forth as a natural check to laws being enacted by any elite, rather than by the people. Elena Kagan, who might appear as a neutral moderate — though a careful study will reveal her bias — is a proponent of transnationalism. Other proponents are top State Department legal advisor Harold Koh, Justices Marshall and Mikva and Israeli Judge Aharon Barak — all activists, all of whom Kagan has said that she admires. Kagan went so far as to call radical Barak “a hero.” Essentially, transnationalism means that American law can be subject to international law. Transnational law regulates actions or events that go beyond national frontiers. I am not speaking of business dealings here, but something much greater in scope and consequence.

9. Constitutional decline is dehumanizing and allows for nuclear war

Congressman Dennis Kucinich, D-Oh, March, 2002 http://www.downwinders.org/Kucinich\_Peace\_p.html

"Politics ought to stay out of fighting a war," the President has been quoted as saying on March 13th 2002. Yet Article 1, Section 8 of the United States Constitution explicitly requires that Congress take responsibility when it comes to declaring war. This President is very popular, according to the polls. But polls are not a substitute for democratic process. Attributing a negative connotation here to politics or dismissing constitutionally mandated congressional oversight belies reality: Spending $400 billion a year for defense is a political decision. Committing troops abroad is a political decision. War is a political decision. When men and women die on the battlefield that is the result of a political decision. The use of nuclear weapons, which can end the lives of millions, is a profound political decision. In a monarchy there need be no political decisions. In a democracy, all decisions are political, in that they derive from the consent of the governed. In a democracy, budgetary, military and national objectives must be subordinate to the political process. Before we celebrate an imperial presidency, let it be said that the lack of free and open political process, the lack of free and open political debate, and the lack of free and open political dissent can be fatal in a democracy. We have reached a moment in our country's history where it is urgent that people everywhere speak out as president of his or her own life, to protect the peace of the nation and world within and without. We should speak out and caution leaders who generate fear through talk of the endless war or the final conflict. We should appeal to our leaders to consider that their own bellicose thoughts, words and deeds are reshaping consciousness and can have an adverse effect on our nation. Because when one person thinks: fight! he or she finds a fight. One faction thinks: war! and starts a war. One nation thinks: nuclear! and approaches the abyss. And what of one nation which thinks peace, and seeks peace? Neither individuals nor nations exist in a vacuum, which is why we have a serious responsibility for each other in this world. It is also urgent that we find those places of war in our own lives, and begin healing the world through healing ourselves. Each of us is a citizen of a common planet, bound to a common destiny. So connected are we, that each of us has the power to be the eyes of the world, the voice of the world, the conscience of the world, or the end of the world. And as each one of us chooses, so becomes the world. Each of us is architect of this world. Our thoughts, the concepts. Our words, the designs. Our deeds, the bricks and mortar of our daily lives. Which is why we should always take care to regard the power of our thoughts and words, and the commands they send into action through time and space. Some of our leaders have been thinking and talking about nuclear war. Recently there has been much news about a planning document which describes how and when America might wage nuclear war. The Nuclear Posture Review recently released to the media by the government: 1. Assumes that the United States has the right to launch a preemptive nuclear strike. 2. Equates nuclear weapons with conventional weapons. 3. Attempts to minimize the consequences of the use of nuclear weapons. 4. Promotes nuclear response to a chemical or biological attack. Some dismiss this review as routine government planning. But it becomes ominous when taken in the context of a war on terrorism which keeps expanding its boundaries, rhetorically and literally. The President equates the "war on terrorism" with World War II. He expresses a desire to have the nuclear option "on the table." He unilaterally withdraws from the ABM treaty. He seeks $8.9 billion to fund deployment of a missile shield. He institutes, without congressional knowledge, a shadow government in a bunker outside our nation's Capitol. He tries to pass off as arms reduction, the storage of, instead of the elimination of, nuclear weapons. Two generations ago we lived with nuclear nightmares. We feared and hated the Russians who feared and hated us. We feared and hated the "godless, atheistic" communists. In our schools, each of us dutifully put our head between our legs and practiced duck-and-cover drills. In our nightmares, we saw the long, slow arc of a Soviet missile flash into our neighborhood. We got down on our knees and prayed for peace. We surveyed, wide eyed, pictures of the destruction of Nagasaki and Hiroshima. We supported the elimination of all nuclear weapons. We knew that if you "nuked" others you "nuked" yourself. The splitting of the atom for destructive purposes admits a split consciousness, the compartmentalized thinking of Us vs. Them, the dichotomized thinking, which spawns polarity and leads to war. The proposed use of nuclear weapons, pollutes the psyche with the arrogance of infinite power. It creates delusions of domination of matter and space. It is dehumanizing through its calculations of mass casualties. We must overcome doomthinkers and sayers who invite a world descending, disintegrating into a nuclear disaster. With a world at risk, we must find the bombs in our own lives and disarm them. We must listen to that quiet inner voice which counsels that the survival of all is achieved through the unity of all.

Solvency FL

1. Their Sadat 5 card advocates spreading the American legal sytstem to the world – the opposite of integrating CIL into American law.

2. Courts can’t implement 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.

3. Transjudicialism threatens 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

Preventive War FL

1. Their impacts are empirically denied – Currie wrote that if we invaded Iraq, we would invade Syria, Iran and North Korea. It’s been 7 years and we haven’t done that.

2. There evidence only says that Iraq was an example of preventive war, not that “un-invading” would stop the use of that concept.

3. Prevention is limited and is used to stop terrorism – their author

Duncan E. J. Currie LL.B. (Hons.) 5/22/2003 “’Preventive War’ and International Law After Iraq” LL.M.

Thus the statement implied that the United States in this new posture is willing to act beyond the constraints of international law and even beyond limits it has observed in the past.The distinction between ‘preventive war’ and preemption in the new Bush doctrine was described in a Brookings Institute report as follows: “The concept is not limited to the traditional definition of preemption—striking an enemy as it prepares an attack—but also includes prevention—striking an enemy even in the absence of specific evidence of a coming attack. The idea principally appears to be directed at terrorist groups as well as extremist or "rogue" nation states; the two are linked, according to the strategy, by a combination of "radicalism and technology."The Australian government, however, accepted that this doctrine would require an amendment of the Charter. Australian Prime Minister John Howard said that “[w]hen the United Nations Charter was written, the idea of attack was defined by the history that had gone before and that is the idea of an army rolling across the border of a neighbouring country, or in the case of the Japanese in Pearl Harbour, bombing a base. Now that's different now, you don't get that now. What you're getting is this non-state terrorism which is just as devastating and potentially even more so and all I'm saying, I think many people are saying, is that maybe the body of international law has to catch up with that new reality.”Australian Defence Minister Robert Hill similarly called for amendment of Article 51 of the Charter.

4. Obama’s foreign policy is very different from Bush’s. The un-underlined part of the cards call preventive war the Bush Doctrine and were written during the Bush Administration.

CIL Ext. – Squo solves

**International law is used now as only as a non-binding reference – this is preferable**

Duke Law Guide 2006 (The Use of International and Foreign Law in Interpreting the U.S. Constitution http://www.acslaw.org/files/intl%20law%20study%20guide%201-18-06.pdf?PHPSESSID=be927e9735474d1d7fd1a8d91eb487f4, )

In none of the cases discussed above, or indeed in any U.S. constitutional law case, has the Court relied upon international or foreign law as binding authority. This limitation on how international and foreign law is used undercuts criticisms that the citation of such law is undemocratic and undermines American sovereignty. Legal reasoning in the United States is often based on analogies, and as several judges have noted, additional information provides judges and lawyers with means to examine conflicting approaches and sort out what is most relevant and persuasive. In fact, state courts will frequently look to the opinion of other states for guidance without encroaching on state sovereignty or impinging on the democratic rights of its citizens. Federal courts’ voluntary, non-binding consideration of international or foreign law is akin to that practice.

Status quo solves - CIL is being integrated into the US legal system now - especially the human rights laws in the aff’s impact scenarios

Martin S. Flaherty, Prof. Program in Law and Public Affairs @ Princeton, 04 [67 Law & Contemp. Prob. 169, “Case Studies In Conservative And Progressive Legal Orders: The Future And Past Of U.S. Foreign Relations Law,” ln http://www.law.duke.edu/shell/cite.pl?67+Law+&+Contemp.+Probs.+169+%28autumn+2004%29)

As Anne-Marie Slaughter has pointed out, "judicial globalization" marches on in almost the same inexorable fashion as its economic cousin.[17](http://www.law.duke.edu/shell/cite.pl?67+Law+&+Contemp.+Probs.+169+%28autumn+2004%29#F17) This observation holds true in particular regarding judges of one nation making reference to the analogous laws of another, as well as judges of any nation citing relevant international law. So powerful has the tide become that it has recently swept up several justices -- and even an occasional majority -- of the Supreme Court of the United States. This past term provides the latest cases in point. With regard to international law, easily one of the most important decisions handed down was Sosa v. Alvarez-Machain.[18](http://www.law.duke.edu/shell/cite.pl?67+Law+&+Contemp.+Probs.+169+%28autumn+2004%29#F18) Despite an excess of cautionary rhetoric, the Court in essence upheld modern litigation under the Alien Tort Statute (ATS), through which aliens have brought tort suits in federal court for human rights violations under customary international law.[19](http://www.law.duke.edu/shell/cite.pl?67+Law+&+Contemp.+Probs.+169+%28autumn+2004%29#F19) In so doing, the Sosa majority guaranteed that the federal judiciary's duty to engage with international legal standards in ATS suits would continue. Less noted, but perhaps even more significant, was the Court's rejection of Justice Scalia's contention that Erie v. Tompkins in effect deprived the Federal courts of the power to recognize international norms absent further congressional action. To the contrary, Justice Souter's majority opinion indicates that the Court stands by its traditional understanding, as conventionally understood in such cases as The Pacqute Habana,[21](http://www.law.duke.edu/shell/cite.pl?67+Law+&+Contemp.+Probs.+169+%28autumn+2004%29#F21) that customary international law was part of the domestic law of the United States. While this confirmation came in the specific context of considering whether federal judges could identify evolving international norms under the ATS, its import is to confirm that international custom was part of judicially enforceable federal law even in the absence of a statute.[22](http://www.law.duke.edu/shell/cite.pl?67+Law+&+Contemp.+Probs.+169+%28autumn+2004%29#F22) Justice Souter, joined by Justice Ginsburg, likewise displayed an internationalist bent in Hamdi v. Rumsfeld, in which an American citizen seized in Afghanistan and held incommunicado in the United States as an "enemy combatant" sought habeas relief from the federal courts.[23](http://www.law.duke.edu/shell/cite.pl?67+Law+&+Contemp.+Probs.+169+%28autumn+2004%29#F23) Here Justice Souter came closer to the core of judicial globalization in looking to international law to resolve a domestic legal issue. Specifically, the Justice considered the government's contention that the Congressional resolution authorizing military action against al-Qaida and the Taliban authorizes the President, as Commander-in-Chief, to detain enemy belligerents according to the international laws of war. Accordingly, the argument continued, the Resolution author-[\*pg 174] ized detention consistent with 18 U.S.C. § 4001(a), which prohibits detention of citizens except pursuant to an act of Congress. Souter (and Ginsburg) rejected this argument on the grounds that the laws of war as codified in the Third Geneva Convention appeared to require that Hamdi be treated as a prisoner of war, or at least receive a hearing to determine that he is an unlawful combatant. The opinion, in short, concluded that Congress could not have authorized Hamdi's detention as consistent with the laws of war on the assumption that the government was violating exactly those laws.[24](http://www.law.duke.edu/shell/cite.pl?67+Law+&+Contemp.+Probs.+169+%28autumn+2004%29#F24) If anything, the previous term was even more significant. In the widely anticipated University of Michigan affirmative action cases, a 5-4 majority in Grutter v. Bollinger held that "the Equal Protection Clause does not prohibit the [University of Michigan] Law School's narrowly tailored use of race in admissions decisions to further a compelling interest in obtaining the educational benefits that flow from a diverse student body,"[25](http://www.law.duke.edu/shell/cite.pl?67+Law+&+Contemp.+Probs.+169+%28autumn+2004%29#F25) even while the court struck down the more "mechanical" race-conscious scheme in undergraduate admissions in Gratz v. Bollinger.[26](http://www.law.duke.edu/shell/cite.pl?67+Law+&+Contemp.+Probs.+169+%28autumn+2004%29#F26) Likewise anticipated, but far more surprising, another one-vote majority in Lawrence v. Texas[27](http://www.law.duke.edu/shell/cite.pl?67+Law+&+Contemp.+Probs.+169+%28autumn+2004%29#F27) overruled Bowers v. Hardwick[28](http://www.law.duke.edu/shell/cite.pl?67+Law+&+Contemp.+Probs.+169+%28autumn+2004%29#F28) to hold that a state statute criminalizing homosexual sodomy was inconsistent with substantive due process. For all the obvious domestic importance of these rulings, their embrace of international law may prove to be more compelling in the long run. In Grutter, for example, Justice Ginsburg, joined by Justice Breyer, filed a concurring opinion that commences with citations to the International Convention on the Elimination of All Forms of Racial Discrimination (CERD)[29](http://www.law.duke.edu/shell/cite.pl?67+Law+&+Contemp.+Probs.+169+%28autumn+2004%29#F29) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).[30](http://www.law.duke.edu/shell/cite.pl?67+Law+&+Contemp.+Probs.+169+%28autumn+2004%29#F30) The concurrence brings in these standards to argue that although the majority opinion that affirmative action programs must have an end point "accords with the international understanding," the United States has not yet gotten there.[31](http://www.law.duke.edu/shell/cite.pl?67+Law+&+Contemp.+Probs.+169+%28autumn+2004%29#F31) Even more striking was Justice Kennedy's majority opinion in Lawrence, which stressed that Western standards regarding the regulation of homosexual conduct had for all intents and purposes made Bowers an anomaly in most of the industrialized world.[32](http://www.law.duke.edu/shell/cite.pl?67+Law+&+Contemp.+Probs.+169+%28autumn+2004%29#F32) For this proposition, Lawrence relied on a string of decisions issued by the European Court of Human Rights, as well as a brief submitted by former Irish President and UN High Commissioner for Human Rights Mary Robinson, who had liti-[\*pg 175] gated several of these cases while still a law school professor.[33](http://www.law.duke.edu/shell/cite.pl?67+Law+&+Contemp.+Probs.+169+%28autumn+2004%29#F33) These references, moreover, follow on the previous term's Atkins v. Virginia, in which the Court likewise referenced international standards in holding that the execution of the mentally retarded violated the Eighth Amendment.[34](http://www.law.duke.edu/shell/cite.pl?67+Law+&+Contemp.+Probs.+169+%28autumn+2004%29#F34) What makes these references striking is not their content but that they were included at all, especially in such high profile, ostensibly domestic cases. With certain exceptions -- such as Justice Breyer[35](http://www.law.duke.edu/shell/cite.pl?67+Law+&+Contemp.+Probs.+169+%28autumn+2004%29#F35) and Justice Stevens[36](http://www.law.duke.edu/shell/cite.pl?67+Law+&+Contemp.+Probs.+169+%28autumn+2004%29#F36) -- the Justices of the Supreme Court of the United States are notorious for their aversion to referring to legal developments abroad unless absolutely necessary. This aversion has long stood in ironic contrast to courts around the world that regularly examine both international and comparative law, including the jurisprudence of the U.S. Supreme Court.[37](http://www.law.duke.edu/shell/cite.pl?67+Law+&+Contemp.+Probs.+169+%28autumn+2004%29#F37) When the Court has turned to foreign materials in major cases, it has usually been in areas of law where U.S. sources had yet to exist, as in Justice Blackmun's account of the Persian Empire in Roe v. Wade[38](http://www.law.duke.edu/shell/cite.pl?67+Law+&+Contemp.+Probs.+169+%28autumn+2004%29#F38) or Chief Justice Burger's musings on the "Judeo-Christian" heritage in Bowers itself.[39](http://www.law.duke.edu/shell/cite.pl?67+Law+&+Contemp.+Probs.+169+%28autumn+2004%29#F39) By contrast, the decisions of the past term stand out precisely because they go out of their way to consider contemporary international standards -- in particular, international human rights law -- in dealing with fundamental domestic issues.

“Deliberate Speed” CP

CP: The Supreme Court of The United States should rule the invasion of Iraq a violation of customary international law and therefore illegal and advise a withdrawal.

A. Requiring “deliberate speed” allows room for objectors to delay the process – Brown v. Board proves

National Museum of American History, 2004 (“Deliberate Speed”, http://americanhistory.si.edu/brown/history/6-legacy/deliberate-speed.html)

The Brown decision declared the system of legal segregation unconstitutional. But the Court ordered only that the states end segregation with “all deliberate speed.” This vagueness about how to enforce the ruling gave segregationists the opportunity to organize resistance. Although many whites welcomed the *Brown* decision, a large number considered it an assault on their way of life. Segregationists played on the fears and prejudices of their communities and launched a militant campaign of defiance and resistance.

B. Fiat means the counterplan happens immediately.

**Colonialism**

A. A strategy of slow and gradual withdrawal only masks structures of colonialism carried out through the U.S. embassy and military bases

Michael Schwartz, professor of sociology at Stony Brook State University and author of War Without End: The Iraq War in Context. 7-10-09 “Colonizing Iraq: The Obama Doctrine?”

Much of the complicated work of dismantling and removing millions of dollars of equipment from the combat outposts in the city has been done during the dark of night. Gen. Ray Odierno, the overall American commander in Iraq, has ordered that an increasing number of basic operations -- transport and re-supply convoys, for example -- takes place at night, when fewer Iraqis are likely to see that the American withdrawal is not total. Acting in the dark of night, in fact, seems to catch the nature of American plans for Iraq in a particularly striking way. Last week, despite the death of Michael Jackson, Iraq made it back into the TV news as Iraqis celebrated a highly publicized American military withdrawal from their cities. Fireworks went off; some Iraqis gathered to dance and cheer; the first military parade since Saddam Hussein's day took place (in the fortified Green Zone, the country's ordinary streets still being too dangerous for such things); the U.S. handed back many small bases and outposts; and Prime Minister Nouri al-Maliki proclaimed a national holiday -- "sovereignty day," he called it. All of this fit with a script promisingly laid out by President Barack Obama in his 2008 presidential campaign. More recently, in his much praised speech to the students of Egypt's Cairo University, he promised that the U.S. would keep no bases in Iraq, and would indeed withdraw its military forces from the country by the end of 2011. Unfortunately, not just for the Iraqis, but for the American public, it's what's happening in "the dark" -- beyond the glare of lights and TV cameras -- that counts. While many critics of the Iraq War have been willing to cut the Obama administration some slack as its foreign policy team and the U.S. military gear up for that definitive withdrawal, something else -- something more unsettling -- appears to be going on. And it wasn't just the president's hedging over withdrawing American "combat" troops from Iraq – which, in any case, make up as few as one-third of the 130,000 U.S. forces still in the country -- now extended from 16 to 19 months. Nor was it the re-labeling of some of them as "advisors" so they could, in fact, stay in the vacated cities, or the redrawing of the boundary lines of the Iraqi capital, Baghdad, to exclude a couple of key bases the Americans weren't about to give up. After all, there can be no question that the Obama administration's policy is indeed to reduce what the Pentagon might call the U.S. military "footprint" in Iraq. To put it another way, Obama's key officials seem to be opting not for blunt-edged, Bush-style militarism, but for what might be thought of as an administrative push in Iraq, what Vice President Joe Biden has called "a much more aggressive program vis-à-vis the Iraqi government to push it to political reconciliation." An anonymous senior State Department official described this new "dark of night" policy recently to Christian Science Monitor reporter Jane Arraf this way: "One of the challenges of that new relationship is how the U.S. can continue to wield influence on key decisions without being seen to do so." Without being seen to do so. On this General Odierno and the unnamed official are in agreement. And so, it seems, is Washington. As a result, the crucial thing you can say about the Obama administration's military and civilian planning so far is this: ignore the headlines, the fireworks, and the briefly cheering crowds of Iraqis on your TV screen. Put all that talk of withdrawal aside for a moment and -- if you take a closer look, letting your eyes adjust to the darkness -- what is vaguely visible is the silhouette of a new American posture in Iraq. Think of it as the Obama Doctrine. And what it doesn't look like is the posture of an occupying power preparing to close up shop and head for home. As your eyes grow accustomed to the darkness, you begin to identify a deepening effort to ensure that Iraq remains a U.S. client state, or, as General Odierno described it to the press on June 30th, "a long-term partner with the United States in the Middle East." Whether Obama's national security team can succeed in this is certainly an open question, but, on a first hard look, what seems to be coming into focus shouldn't be too unfamiliar to students of history. Once upon a time, it used to have a name: colonialism. Traditional colonialism was characterized by three features: ultimate decision-making rested with the occupying power instead of the indigenous client government; the personnel of the colonial administration were governed by different laws and institutions than the colonial population; and the local political economy was shaped to serve the interests of the occupying power. All the features of classic colonialism took shape in the Bush years in Iraq and are now, as far as we can tell, being continued, in some cases even strengthened, in the early months of the Obama era. The U.S. embassy in Iraq, built by the Bush administration to the tune of $740 million, is by far the largest in the world. It is now populated by more than 1,000 administrators, technicians, and professionals -- diplomatic, military, intelligence, and otherwise -- though all are regularly, if euphemistically, referred to as "diplomats" in official statements and in the media. This level of staffing -- 1,000 administrators for a country of perhaps 30 million -- is well above the classic norm for imperial control. Back in the early twentieth century, for instance, Great Britain utilized fewer officials to rule a population of 300 million in its Indian Raj. Such a concentration of foreign officialdom in such a gigantic regional command center -- and no downsizing or withdrawals are yet apparent there -- certainly signals Washington's larger imperial design: to have sufficient administrative labor power on hand to ensure that American advisors remain significantly embedded in Iraqi political decision-making, in its military, and in the key ministries of its (oil-dominated) economy. From the first moments of the occupation of Iraq, U.S. officials have been sitting in the offices of Iraqi politicians and bureaucrats, providing guidelines, training decision-makers, and brokering domestic disputes. As a consequence, Americans have been involved, directly or indirectly, in virtually all significant government decision-making. In a recent article, for example, the New York Times reported that U.S. officials are "quietly lobbying" to cancel a mandated nationwide referendum on the Status of Forces Agreement (SOFA) negotiated between the United States and Iraq -- a referendum that, if defeated, would at least theoretically force the immediate withdrawal of all U.S. troops from the country. In another article, the Times reported that embassy officials have "sometimes stepped in to broker peace between warring blocs" in the Iraqi Parliament. In yet another, the military newspaper Stars and Stripes mentioned in passing that an embassy official "advises Iraqis running the $100 million airport" just completed in Najaf. And so it goes. Most colonial regimes erect systems in which foreigners involved in occupation duties are served (and disciplined) by an institutional structure separate from the one that governs the indigenous population. In Iraq, the U.S. has been building such a structure since 2003, and the Obama administration shows every sign of extending it. As in all embassies around the world, U.S. embassy officials are not subject to the laws of the host country. The difference is that, in Iraq, they are not simply stamping visas and the like, but engaged in crucial projects involving them in myriad aspects of daily life and governance, although as an essentially separate caste within Iraqi society. Military personnel are part of this segregated structure: the recently signed SOFA insures that American soldiers will remain virtually untouchable by Iraqi law, even if they kill innocent civilians. Versions of this immunity extend to everyone associated with the occupation. Private security, construction, and commercial contractors employed by occupation forces are not protected by the SOFA agreement, but are nonetheless shielded from the laws and regulations that apply to normal Iraqi residents. As an Iraq-based FBI official told the New York Times, the obligations of contractors are defined by "new arrangements between Iraq and the United States governing contractors' legal status." In a recent case in which five employees of one U.S. contractor were charged with killing another contractor, the case was jointly investigated by Iraqi police and "local representatives of the FBI," with ultimate jurisdiction negotiated by Iraqi and U.S. embassy officials. The FBI has established a substantial presence in Iraq to carry out these "new arrangements." This special handling extends to enterprises servicing the billions of dollars spent every month in Iraq on U.S. contracts. A contractor's prime responsibility is to follow "guidelines the U.S. military handed down in 2006." In all this, Iraqi law has a distinctly secondary role. In one apparently typical case, a Kuwaiti contractor hired to feed U.S. soldiers was accused of imprisoning its foreign workers and then, when they protested, sending them home without pay. This case was handled by U.S. officials, not the Iraqi government.

B. **This type of colonialism spills over – the strategy causes conflicts and serves as a launching point for future colonialist policies**

James Petras, a former Professor of Sociology at Binghamton University, New York, 8/21/2009 (“The US War against Iraq: The Destruction of a Civilization” James Petras, a former Professor of Sociology at Binghamton University, New York, owns a 50-year membership in the class struggle, is an adviser to the landless and jobless in Brazil and Argentina, and is co-author of Globalization Unmasked (Zed Books). Petras’ most recent book is Zionism, Militarism and the Decline of US Power, [http://dissidentvoice.org/2009/08/the-us-war-against-iraq/](http://dissidentvoice.org/2009/08/the-us-war-against-iraq/" \t "_blank))

The second powerful political force behind the Iraq War were civilian militarists (like Donald Rumsfeld and Vice President Cheney) who sought to extend US imperial reach in the Persian Gulf and strengthen its geo-political position by eliminating a strong, secular, nationalist backer of Arab anti-imperialist insurgency in the Middle East. The civilian militarists sought to extend the American military base encirclement of Russia and secure control over Iraqi oil reserves as a pressure point against China. The civilian militarists were less moved by Vice President Cheney’s past ties with the oil industry and more interested in his role as CEO of Halliburton’s giant military base contractor subsidiary Kellogg-Brown and Root, which was consolidating the US Empire through worldwide military base expansion. Major US oil companies, who feared losing out to European and Asian competitors, were already eager to deal with Saddam Hussein, and some of the Bush’s supporters in the oil industry had already engaged in illegal trading with the embargoed Iraqi regime. The oil industry was not inclined to promote regional instability with a war. The militarist strategy of conquest and occupation was designed to establish a long-term colonial military presence in the form of strategic military bases with a significant and sustained contingent of colonial military advisors and combat units. The brutal colonial occupation of an independent secular state with a strong nationalist history and an advanced infrastructure with a sophisticated military and police apparatus, extensive public services and wide-spread literacy naturally led to the growth of a wide array of militant and armed anti-occupation movements. In response, US colonial officials, the CIA and the Defense Intelligence Agencies devised a ‘divide and rule’ strategy (the so-called ‘El Salvador solution’ associated with the former ‘hot-spot’ Ambassador and US Director of National Intelligence, John Negroponte) fomenting armed sectarian-based conflicts and promoting inter-religious assassinations to debilitate any effort at a united nationalist anti-imperialist movement. The dismantling of the secular civilian bureaucracy and military was designed by the Zionists in the Bush Administration to enhance Israel’s power in the region and to encourage the rise of militant Islamic groups, which had been repressed by the deposed Baathist regime of Saddam Hussein. Israel had mastered this strategy earlier: It originally sponsored and financed sectarian Islamic militant groups, like Hamas, as an alternative to the secular Palestine Liberation Organization and set the stage for sectarian fighting among the Palestinians. The result of US colonial policies were to fund and multiply a wide range of internal conflicts as mullahs, tribal leaders, political gangsters, warlords, expatriates and death squads proliferated. The ‘war of all against all’ served the interests of the US occupation forces. Iraq became a pool of armed, unemployed young men, from which to recruit a new mercenary army. The ‘civil war’ and ‘ethnic conflict’ provided a pretext for the US and its Iraqi puppets to discharge hundreds of thousands of soldiers, police and functionaries from the previous regime (especially if they were from Sunni, mixed or secular families) and to undermine the basis for civilian employment. Under the cover of generalized ‘war against terror’, US Special Forces and CIA-directed death squads spread terror within Iraqi civil society, targeting anyone suspected of criticizing the puppet government – especially among the educated and professional classes, precisely the Iraqis most capable of re-constructing an independent secular republic. The Iraq war was driven by an influential group of neo-conservative and neo-liberal ideologues with strong ties to Israel. They viewed the success of the Iraq war (by success they meant the total dismemberment of the country) as the first ‘domino’ in a series of war to ‘re-colonize’ the Middle East (in their words: “to re-draw the map”). They disguised their imperial ideology with a thin veneer of rhetoric about ‘promoting democracies’ in the Middle East (excluding, of course, the un-democratic policies of their ‘homeland’ Israel over its subjugated Palestinians). Conflating Israeli regional hegemonic ambitions with the US imperial interests, the neo-conservatives and their neo-liberal fellow travelers in the Democratic Party first backed President Bush and later President Obama in their escalation of the wars against Afghanistan and Pakistan. They unanimously supported Israel’s savage bombing campaign against Lebanon, the land and air assault and massacre of thousands of civilians trapped in Gaza, the bombing of Syrian facilities and the big push (from Israel) for a pre-emptive, full-scale military attack against Iran. The US advocates of sequential and multiple simultaneous wars in the Middle East and South Asia believed that they could only unleash the full strength of their mass destructive power after they had secured total control of their first victim, Iraq. They were confident that Iraqi resistance would collapse rapidly after 13 years of brutal starvation sanctions imposed on the republic by the US and United Nations. In order to consolidate imperial control, American policy-makers decided to permanently silence

all independent Iraqi civilian dissidents. They turned to the financing of Shia clerics and Sunni tribal assassins, and contracting scores of thousands of private mercenaries among the Kurdish Peshmerga warlords to carry out selective assassinations of leaders of civil society movements. The US created and trained a 200,000 member Iraqi colonial puppet army composed almost entirely of Shia gunmen, and excluded experienced Iraqi military men from secular, Sunni or Christian backgrounds. A little known result of this build up of American trained and financed death squads and its puppet ‘Iraqi’ army, was the virtual destruction of the ancient Iraqi Christian population, which was displaced, its churches bombed and its leaders, bishops and intellectuals, academics and scientists assassinated or driven into exile. The US and its Israeli advisers were well aware that Iraqi Christians had played a key role the historic development of the secular, nationalist, anti-British/anti-monarchist movements and their elimination as an influential force during the first years of US occupation was no accident. The result of the US policies were to eliminate most secular democratic anti-imperialist leaders and movements and to present their murderous net-work of ‘ethno-religious’ collaborators as their uncontested ‘partners’ in sustaining the long-term US colonial presence in Iraq. With their puppets in power, Iraq would serve as a launching platform for its strategic pursuit of the other ‘dominoes’ (Syria, Iran, Central Asian Republics…).

Congress CP

CP: Under Article 1, Section 8, Clause 10 of the the US Constitution, Congress should incorporate common international law into federal law. Congress should determine the invasion of Iraq a violation of that law and therefore illegal and advise a withdrawal with all deliberate speed.

The judiciary must wait for Congress to take the lead in incorporatating international law

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.

Congress CP – Ext.

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.

Congress can decide which rules of CIL to incorporate into domestic law

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.”

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.

Court Stripping Ext. – CIL Links

Congresss people will use international law citation to take power from the judiciary

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.

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.

Court Stripping Ext. - Effective

Congress maniuplates the court with jurisdiction-stripping threats

Cross, professor of law @ UT law, Herbert D. Kelleher Centennial Professor of Business Law @ McCombs School of Business @ UT, 03 ("SYMPOSIUM: PERSPECTIVES ON JUDICIAL INDEPENDENCE: Thoughts on Goldilocks and Judicial Independence", 64 Ohio St. L.J. 195, lexis law)

Congress may also influence the federal courts by eliminating their jurisdiction over certain categories of legal issues. While such jurisdiction-stripping is not common, the threat of action may suffice, as in the case of impeachment. There is historical evidence of this effect. In the late 1950s, after Congress responded to Supreme Court decisions restraining investigation and prosecution of Communist activity with jurisdiction-stripping threats, the Court retreated and issued decisions less protective of the civil liberties of subversives. n67 More disciplined empirical research seems to confirm that jurisdiction-stripping efforts provoke the Court to respond to congressional preferences. n68 Congress need not enact restrictions on jurisdiction because "arousing substantial opposition to the Court may be enough to dominate it." n69 Moreover, there are instances where Congress has actually legislated just short of jurisdiction-stripping but nonetheless curbed the Court's powers. n70 Congress may also devote [\*207] certain issues to new non-Article III courts that permit them greater "political control" over judicial decision-making. n71 Impeachment and jurisdiction-stripping threats can be seen as part of a continuing dialogue between the political branches and the courts, in which the legislature sometimes sends signals that it expects the courts to heed.

Threats of jurisdictional stripping change court opinions  
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.

Fem IR – 1NC (1/3)

A. Gendered scripts, taught to us from birth, determine the way we see the world. It is impossible to escape the effect social constructions of gender have on positive statements of the world

Bell Hooks, former Prof of English at Yale, Oberlin, USC, and City College in New York, Ph.D UC Santa Cruz, 7/25/04, “Understanding Patriarchy,” http://arizona.indymedia.org/news/2004/07/20613.php

Patriarchy is the single most life-threatening social disease assaulting the male body and spirit in our nation. Yet most men do not use the word "patriarchy" in everyday life. Most men never think about patriarchy-what it means, how it is created and sustained. Many men in our nation would not be able to spell the word or pronounce it correctly. The word "patriarchy" just is not a part of their normal everyday thought or speech. Men who have heard and know the word usually associate it with women's liber­ation, with feminism, and therefore dismiss it as irrelevant to their own experiences. I have been standing at podiums talking about patriarchy for more than thirty years. It is a word I use daily, and men who hear me use it often ask me what I mean by it. Nothing discounts the old antifeminist projection of men as all-powerful more than their basic ignorance of a major facet of the political system that shapes and informs male identity and sense of self from birth until death. I often use the phrase "imperialist white-supremacist capi­talist patriarchy" to describe the interlocking political sys­tems that are the foundation of our nation's politics. Of these systems the one that we all learn the most about growing up is the system of patriarchy, even if we never know the word, because patriarchal gender roles -are assigned to us as children and we are given continual guid­ance about the ways we can best fulfill these roles. Patriarchy is a political-social system that insists that males are inherently dominating, superior to everything and everyone deemed weak, especially females, and endowed with the right to dominate and rule over the weak and to maintain that dominance through various forms of psychological terrorism and violence. When my older brother and I were born with a year separating us in age, patriarchy determined how we would each be regarded by our parents. Both our parents believed in patriarchy; they had been taught patriarchal thinking through religion. At church they had learned that God created man to rule the world and everything in it and that it was the work of women to help men perform these tasks, to obey, and to always assume a subordinate role in relation to a powerful man. They were taught that God was male. These teachings were reinforced in every institution they encountered--­schools, courthouses, clubs, sports arenas, as well as churches. Embracing patriarchal thinking, like everyone else around them, they taught it to their children because it seemed like a "natural" way to organize life. As their daughter I was taught that it was my role to serve, to be weak, to be free from the burden of thinking, to caretake and nurture others. My brother was taught that it was his role to be served; to provide; to be strong; to think, strategize, and plan; and to refuse to caretake or nurture others. I was taught that it was not proper for a female to be violent, that it was "unnatural." My brother was taught that his value would be determined by his will to do violence (albeit in appropriate settings). He was taught that for a boy, enjoying violence was a good thing (albeit in appropriate settings). He was taught that a boy should not express feelings. I was taught that girls could and should express feelings, or at least some of them. When I responded with rage at being denied a toy, I was taught as a girl in a patriarchal household that rage was not an appropriate feminine feeling, that it should be not only not be expressed but be eradicated. When my brother responded with rage at being denied a toy, he was taught as a boy in a patriar­chal household that his ability to express rage was good but that he had to learn the best setting to unleash his hos­tility. It was not good for him to use his rage to oppose the wishes of his parents, but later, when he grew up, he was taught that rage was permitted and that allowing rage to provoke him to violence would help him protect home and nation. We lived in farm country, isolated from other people. Our sense of gender roles was learned from our parents, from the ways we saw them behave. My brother and I remember our confusion about gender. In reality I was stronger and more violent than my brother, which we learned quickly was bad. And he was a gentle, peaceful boy, which we learned was really bad. Although we were often confused, we knew one fact for certain: we could not be and act the way we wanted to, doing what we felt like. It was clear to us that our behavior had to follow a predetermined, gendered script. We both learned the word "patriarchy" in our adult life, when we learned that the script that had determined what we should be, the identities we should make, was based on patriarchal values and beliefs about gender.

Fem IR – 1NC (2/3)

B. The public/private dichotomy in international law silences the voices of women

Hilary Charlesworth, Professor and Director of the Centre for International and Public Law, Faculty of Law, Australian National University, April, 1999 (93 A.J.I.L. 379, “Feminist Methods in International Law”, lexis)

The operation of public/private distinctions in international law provides an example of the way that the discipline can factor out the realities of women's lives and build its objectivity on a limited base. One such distinction is the line drawn between the "public" world of politics, government and the state and the "private" world of home, hearth and family. Thus, the definition of torture in the Convention against Torture requires the involvement of a public (governmental) official. n14 On this account, sexual violence against women constitutes an abuse of human rights only if it can be connected with the public realm; for example, if a woman is raped by a person holding a public position for some type of public end. The Declaration on the Elimination of Violence against Women, adopted by the General Assembly in 1993, n15 makes violence against women an issue of international concern but refrains from categorizing violence against women as a human rights issue in its operative provisions. The failure to create a nexus between violence against women and human rights was due to a fear that this might dilute the traditional notion of human rights. It was said that the idea of human rights abuses [\*383] required direct state involvement and that extending the concept to cover private behavior would reduce the status of the human rights canon as a whole. n16 This type of public/private distinction in international human rights law is not a neutral or objective qualification. Its consequences are gendered because in all societies men dominate the public sphere of politics and government and women are associated with the private sphere of home and family. Its effect is to blot out the experiences of many women and to silence their voices in international law.

C. The system of patriarchy sanctions and perpetuates war and environmental destruction  
Karen Warren andDuane Cady, Assistant Professors @ Macalester College and Hamline University, 1996, “Bringing peace home: feminism, violence, and nature,” p. 12-13

Operationalized, the evidence of patriarchy as a dysfunctional system is found in the behaviors to which it gives rise, (c) the unmanageability, (d) which results. For example, in the United States, current estimates are that one out of every three or four women will be raped by someone she knows; globally, rape, sexual harassment, spouse-beating, and sado-masochistic pornography are examples of behaviors practices, sanctioned, or tolerated within patriarchy. In the realm of environmentally destructive behaviors, strip-mining, factory farming, and pollution of the air, water, and soil are instances of behaviors maintained and sanctioned within patriarchy. They, too, rest on the faulty beliefs that it is okay to “rape the earth,” that it is “man’s God-given right” to have dominion (that is, domination) over the earth, that nature has only instrumental value, that environmental destruction is the acceptable price we pay for “progress.” And the presumption of warism, that war is a natural, righteous, and ordinary way to impose dominion on a people or nation, goes hand in hand with patriarchy and leads to dysfunctional behaviors of nations and ultimately to international unmanageability. Much of the current “unmanageability” of contemporary life in patriarchal societies, (d), is then viewed as a consequence of a patriarchal preoccupation with activities, events, and experiences that reflect historically male-gender-identified beliefs, values, attitudes, and assumptions. Included among these real-life consequences are precisely those concerns with nuclear proliferation, war, environmental destruction, and violence towards women, which many feminists see as the logical outgrowth of patriarchal thinking. In fact, it is often only through observing these dysfunctional behaviors—the symptoms of dysfunctionality—that one can truly see that and how patriarchy serves to maintain and perpetuate them. When patriarchy is understood as a dysfunctional system, this “unmanageability” can be seen for what it is—as a predictable and thus logical consequence of patriarchy. The theme that global environmental crises, war, and violence generally are predictable and logical consequences of sexism and patriarchal culture is pervasive in ecofeminist literature. Ecofeminist Charlene Spretnak, for instance, argues that “a militarism and warfare are continual features of a patriarchal society because they reflect and instill patriarchal values and fulfill needs of such a system. Acknowledging the context of patriarchal conceptualizations that feed militarism is a first step toward reducing their impact and preserving life on Earth.” Stated in terms of the foregoing model of patriarchy as a dysfunctional social system, the claims by Spretnak and other feminists take on a clearer meaning: Patriarchal conceptual frameworks legitimate impaired thinking (about women, national and regional conflict, the environment) which is manifested in behaviors which, if continued, will make life on earth difficult, if not impossible. It is a stark message, but it is plausible. Its plausibility lies in understanding the conceptual roots of various woman-nature-peace connections in regional, national, and global contexts.

Fem IR – 1NC (3/3)

D The alternative is to reject the affirmative’s use of international law – focusing on gender enables new avenues for promoting the rights of everyone

Brooke A. Ackerly, Associatie Professor of Political Science at Vanderbilt University, 2008, “Universal Human Rights in A World of Difference,” p. 135-36

Generally, curb cut feminists begin with gender analysis of political, social, and economic conditions and processes. These analyses reveal the ways in which political, social, and economic contexts impede, exclude, ignore, or marginalize some women, not all women, and not only women. Curb cut feminist epistemology assumes that 1) the oppression of those “differently” oppressed than the inquirer may not be visible to the inquirer, to the theorist, or to the relatively powerful 2) when the conditions of the “differently” oppressed are identified and analyzed, greater insights than those possible from positions of relative privilege are possible, and 3) identifying the “differently” affected is a political dimension of this methodology that is itself an important subject of critical attention.416 I put “differently” in scare quotes to indicate the problematic character of the term: 1) the perspective not yet imagined is more marginalized that the most marginalized one can imagine, 2) the claim to being “differently” oppressed or marginalized (like the claim to be “most” marginalized417) is a political claim, and 3) the point is not to identify an unprivileged perspective to privilege to but deploy a device that destabilizes the epistemology of the speaker or epistemic community. The point is not to privilege marginalization or oppression but rather to deploy epistemological processes that do not marginalize or at a minimum are self-conscious about the epistemological power exercised through marginalization. Feminist analyses generate empirical and theoretical insights for understanding the struggles and wishes of those disadvantaged by hierarchies that affect political, social, and economic processes, thus enabling all of society to understand these better. In the search for universal human rights, curb cut feminist inquiry assumes that to answer the question “Are there universal human rights?”, we need to know (among other things) women’s experience of human rights and their violation. Women’s experiences and theoretical insights are the starting point of our inquiry, because women’s human rights violations often differ in kind and location from men’s human rights violations. However, when women’s previously invisible human rights violations are revealed, new theoretical and practical avenues for promoting the human rights of all of humanity open up.418 Women and others disadvantaged by exploitable hierarchies experience exclusion and human rights violations even under institutions which include many of the democratic features theorists tell us are important.419 By drawing on women’s experiences, particularly on those of women who are multiply-situated, feminist theorists and activists have drawn our attention to the range of short-comings of human rights theory and human rights regimes in practices.

Fem Links - Binaries

International law reinforces gender binaries

Hilary Charlesworth, Director of the Centre for International and Public Law, Visiting Professor, Global Law Faculty, New York University, Spring, 2002 (“THE HIDDEN GENDER OF INTERNATIONAL LAW”   
16 Temp. Int'l & Comp. L.J. 93, lexis)

How might the language of international law be interrogated from a post-modern feminist perspective? We could start asking what type of language is used. What type of oppositions does international legal language depend on? The fact, for example, that international law depends for its force on a series of binary oppositions: order/chaos, logic/emotion, legal/political, binding/non-binding, and so on. Feminist scholars could draw attention to the gendered coding of some these binary oppositions: the fact that the first and the strongest in the pair are associated with male characteristics and the second [are associated with] female characteristics. This is not to say, of course, that all, or even most, women or men actually possess these contrasting qualities. It is rather that using the vocabulary of objectivity, logic, and order positions a person as being manly, which immediately gives their words a higher value. The use of subjective, emotional, or "disordered' discourse is coded as feminine, and thus devalues a statement or argument.

Third world feminists, in particular, have argued that we must recognize the role of racism and economic exploitation in the position of most of the world's women. They have been concerned with ""multiple, fluid structures of domination, which intersect to locate women differently at particular historical conjunctures" rather than "a notion of universal patriarchy operating in a trans-historical way to subordinate all women." [n3](http://www.lexisnexis.com.proxy.uchicago.edu/us/lnacademic/frame.do?reloadEntirePage=true&rand=1280360042818&returnToKey=20_T9834181649&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.212640.6228421781#n3) So, I think that for post-modern feminists, it might be observed that the very choice and categorization of subject matter deemed appropriate for international regulation reflects western and male priorities. Feminist analysis can indicate the arbitrariness of the traditional categories of analysis that are rarely questioned by international lawyers and can highlight the priority given to economic interests and the little interest in women's lives. For example, I think a feminist lawyer could ask: Why are highly migratory species of sea life regulated by treaty? Why is there a whole series of treaties obsessed with straddling stocks, when the use of breast milk substitutes, which is a major health issue for women in Africa, remains subject to voluntary W.H.O. codes? Why is extra-territorial jurisdiction, traditionally invoked against violations of monopoly and competition law, only rarely used in cases of

trafficking of women and  [\*98]  children? Well, this is just a brief introduction to the type of questions I think can be asked of international law. I think that if my claim that international law as we know and love it has a gender, and that that gender is male, holds any water, it should be able to help us understand in some ways the international reaction to the events of September 11, 2001. What I want to try to suggest is that using the lens of gender allows us a broader perspective on the issues at stake here. I want to start with the observation that the debate over what to do in the wake of September 11th has been highly gendered, although this feature of the debate has not been acknowledged at all. I think that there are two types of questions that can help us see this, and these are an amalgam of the three types of questions I have just sketched. So I am reducing them into two categories. The first set of questions is, "What about women?" The second is, "What work is gender doing?" [n4](http://www.lexisnexis.com.proxy.uchicago.edu/us/lnacademic/frame.do?reloadEntirePage=true&rand=1280360042818&returnToKey=20_T9834181649&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.212640.6228421781#n4)

International law reinforces strict definitions of gender

Brenda Cossman, professor of law @ U of Toronto, July, 2002 (“Gender Performance, Sexual Subjects and International Law”, 15 Can. J.L. & Juris. 281, lexis)

Notwithstanding this more recent rethinking of feminist categories, by and large, the troubling of sex and gender, and crisis of categories that is found in so much contemporary feminist theory has not yet permeated feminist international law scholarship, let alone international law. The traditional relationship between sex and gender has not been troubled in the theatre of international law. Indeed, as gender comes to be instantiated at the international level, its meaning has become rather more rigid and fixed.4. Reperforming Gender as Outlaws. What then, is wrong with such a fixed and rigid deployment of gender, if it allows the problems of women to become visible on the stage of international human rights? (admittedly, no small accomplishment). The problem lies in what this vision of gender naturalizes; in what remains invisible within this vision of gender. A fixed and rigid deployment of gender may allow some subjects to come on stage. But, the multiple other subjectivities constructed in and through gender remain beyond the margins, abject beings who are not yet the subjects of this discourse, who remain relegated to the zones of 'uninhabitability'. A methodological approach to gender as performance that disrupts the traditional relationship between sex and gender, while destabilizing both of these categories can open up a gendered analysis to a much broader array of identities and subjectivities. Gender, as a performance, introduces a range of marginalized subjects, beyond the subject of woman. It will allow us to tell a story of marginality that has not yet been told. It is a kind of space clearing gesture that may help make room at the margins for the fringe dwellers, those whose lives have been lived beyond the margins of the international arena: the queer subject, the drag queen, the bull dyke, the cross dresser, the transsexual, the transgendered, the sex worker, the S/M dominatrix. A methodological approach to gender as performance allows an opening up of the inquiry of gender to include these gender outlaws.

Fem Links – Military

International law’s focus on security and military issues uniquely re-entrenches gender bias

Rachel Saloom, J.D., University of Georgia School of Law, M.A. Middle Eastern Studies University of Chicago, Fall, 2006 (“A Feminist Inquiry Into International Law and International Relations”, 12 Roger Williams U. L. Rev. 159

The language employed by defense intellectuals and military strategists is loaded with sexual connotations. By using this language, feminists argue that women are oppressed and [\*171] objectified. Men exert their power over women through sexual acts, and they equate these acts with the violent acts of the military. Gender critics of the military argue that the military envisions its enemy as women. At once, women play the role of both the conqueror and the conquered. Enloe examines the connection between masculinity and the military: Militaries are composed of males as a result of quite self-conscious political policies, suggesting that state officials, themselves primarily male, create an explicit link between the presumed properties of maleness and the institutional needs of the military as an organization ... yet, as with the elite males who serve as officers, they too are bound together by threads of male camaraderie. n64 Feminists argue that the military has a distinctly masculine identity that marginalizes anything feminine. n65 They argue that camaraderie is an essential theme of the military and the war experience. The camaraderie that forms, however, is an exclusive homosocial camaraderie that is masculinist in nature. The masculinism that is prevalent in military culture locks out the feminine and women. Closely linked to the masculinist nature of the military is the way in which sexuality is embodied in military culture. "Within traditional military culture, women are cast largely as the sexual adversary or target, while men are cast largely as promiscuous sexual hunters." n66 Feminists posit that this dichotomy of the hunter versus the hunted allows for sexual harassment and [\*172] oppression of women in the military. n67 Military women are not seen as equal to men because of the tactics of the masculinist military subculture that teaches sexual domination even at the basic level. n68 Feminists argue that military women are still seen as sexual targets while men are the sexual consumers. n69 These feminist criticisms of the military are intertwined with feminist criticisms of international law and international relations. Gender theorists believe that the fixation of international law and international relations theorists on military concerns privileges certain types of security over others. Military security is the central area of focus, rather than food security or the ability to feel secure from oppression in one's country. Most security-based theories of international law and international relations are gender blind. Specifically, gender is not taken into account when theorizing about security or about international law or international affairs in general. Whitworth argues that "the construction of assumptions around gender is produced as much by what is not said as what is said ... such strategies, and the invisibility which results, can be seen to reproduce unequal relations between women and men." n70 The gender invisibility that exists in theorization is highly problematic for those who want to examine the role that the gender variable plays in the international arena.

Fem – Alt Solvency

We must question gender binaries to eliminate bias in international law

Brenda Cossman, professor of law @ U of Toronto, July, 2002 (“Gender Performance, Sexual Subjects and International Law”, 15 Can. J.L. & Juris. 281, lexis)

The performance of Viola, like Rosalind, then turns out to be farcical, like most silver screen representations of cross-dressing--from Victor/Victoria to Mrs. Doubtfire to Tootsie, the performance of gender never really troubles the categories of sex and sexuality. It does very little as a space clearing gesture for the marginal sexual subject. It is the kind of performance that international law might condone--an amusing aside, with no fundamental challenge to the fixed and rigid concept of gender that is being reluctantly and unevenly acknowledged within international law. What the gender outlaws needs is a more seditious and subversive gender performance. Instead of Viola from Shakespeare in Love, the gender outlaw needs a performance more akin to those of Song Liling and Rene Gallimard in M. Butterfly. [n55](http://www.lexisnexis.com.proxy.uchicago.edu/us/lnacademic/frame.do?reloadEntirePage=true&rand=1280360047588&returnToKey=20_T9834181690&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.386912.638273073#n55) It is a performance within a performance, a performance of gender, culture, nation and theatre. [n56](http://www.lexisnexis.com.proxy.uchicago.edu/us/lnacademic/frame.do?reloadEntirePage=true&rand=1280360047588&returnToKey=20_T9834181690&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.386912.638273073#n56) Song, a star of the Chinese opera, performs as a woman in her 20 year affair with the French diplomat, Gallimard. Gallimard, oblivious to the fact that female roles are played by men in Chinese opera, falls in love with this fantasy, his Butterfly, a fantasy of the East from the eyes of the West, a fantasy of femininity from the eyes of a man. And the performances, simultaneously real and fantastical, bring the categories of gender and culture, sexuality and nation, into crisis. Gender is shown to be as fantastical as the opera roles. As Song Liling asks and answers: "Why, in Peking Opera, are all women's roles played by men?....Because only a man knows how a woman is supposed to act." [n57](http://www.lexisnexis.com.proxy.uchicago.edu/us/lnacademic/frame.do?reloadEntirePage=true&rand=1280360047588&returnToKey=20_T9834181690&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.386912.638273073#n57) And as Gallimard says at the end of the play, "I was a man in love with a woman created by a man, and now everything else simply falls short". The performance of East/West, of Orientalism, and the homogenization and feminization of Asian cultures in the eyes of the West is similarly intended to bring these categories into crisis.  [\*296]  When asked by the French judge how she could have fooled Gallimard for so long, Song Liling replies: "One because when he finally met his fantasy woman he wanted more than anything to believe that she was, in fact, a woman. And second, I am an Oriental. And being an Oriental, I could never be completely a man." In the final scene, yet another gender performance unfolds, as Gallimard transforms himself on stage into the fantasy of Butterfly, dressing in the kimono and wig Song Liling has discarded on stage as she now performs herself as a man. To the music from the Death Scene in Madama Butterfly, Gallimard, now in the role of the Butterfly, commits suicide, while Song Liling watches on, recognizing only at that moment that she/he too has lost. The play is a tale of gender and national treason, of passing and of border crossings. It is a tale in which the categories of male and female, East and West, are called into crisis on multiple levels. And it is a tale that better captures the performative approach to gender that the marginal sexual bodies need to be brought on the international stage. Unlike Shakespeare in Love, the bodies in love are not the 'right bodies' of a heterosexual matrix. Nor do these bodies embody a simply homosexual matrix. These bodies are transformed and transformative, their "real" sex elusive and illusory. In M. Butterfly, gender is not who we are, but what we do. And yet, it is not a tale of sexual self-determination, but rather it is a tragic one, one in which the treason of these bodies is punished. Unlike the happy ever after ending of Shakespeare in Love, it is a tale that warns of the dire consequences for these bodies of a failure to transform the rigidities of gender on the international stage.

Fem - AT: Perm

Simply advocating reform within the existing legal system doesn’t go far enough; the system itself was created by men and operates under parameters controlled by them

Hilary Charlesworth, Director of the Centre for International and Public Law, Visiting Professor, Global Law Faculty, New York University, Spring, 2002 (“THE HIDDEN GENDER OF INTERNATIONAL LAW”   
16 Temp. Int'l & Comp. L.J. 93, lexis)

How does it make sense to argue that international law has a gender? What I want to do is to draw on three different types of arguments to sustain this assertion. Each of these arguments draws on different strands in feminist theory. The first type of question that I want to ask is, "Where are the women in international law?" This type of questioning, this type of investigation, is consistent with what [is] often termed liberal feminism. Liberal feminists typically accept the language and aims of the existing domestic legal order, and they couch many of their arguments in terms of individual rights. Liberal feminists typically insist the law fulfill its objective of impartial regulation to allow principled decision-making. Liberal feminists, you will often find, work for reform of the law, dismantling barriers to women being treated like men in the public sphere, and they criticize any legal recognition of the so-called "natural" differences between women and men. Their primary goal overall is to achieve equality of treatment between women and men in public areas, such as political participation and representation, equal access to paid employment, market services, education, and so on. So, I think a liberal feminist surveying the international legal landscape would note the absence of women in the field. All of the powerful positions in international law are held by men. When we look at the International Court of Justice, the premier judicial body in the international scene, of fifteen elected judges, there is one woman: Dame Rosalyn Higgins of the United Kingdom. The International Law Commission established by the U.N. Charter, a prestigious body of [thirty-four] jurists, [on November 7, 2001], elected the very first woman member: Paula Escarameia of Portugal. The U.N. Secretariat is dominated by men, as are the committees monitoring the human rights treaties of the U.N. There is, by and large, a disproportionate representation of men in the institutions of international law. Now some liberals may argue that as long as there is no actual formal discrimination against women, if women are theoretically capable of holding these positions, there is no problem of justice at stake. Other liberal feminists would go beyond this demand for formal equality and identify their concern primarily with an equality outcome. So, some liberal feminists would accept the need for affirmative action in particular areas as a [\*95] temporary measure to address this imbalance. But the acceptance of affirmative action is only seen as temporary; the idea is that women, given the same opportunities, over some time will always be able to perform exactly like men. Apart from this very limited exception, liberal feminists generally do not regard the legal system itself as contributing to the inferior position of women. They assume that the law is ultimately rational, impartial, and capable of achieving justice. The idea is that bad or inadequate law is the problem - not law as usual. Liberal feminists in the international arena would thus seek to increase women's participation in the making of international law. This "add women and stir" approach was strongly endorsed in the Beijing Platform for Action adopted in 1995 in the Fourth World Conference on Women. I think liberal feminists are making an important point but they are not going far enough. These liberal-feminist approaches, I think, to borrow the words of British feminist lawyer Nicola Lacey, are "inadequate to criticize and transform a world in which the distribution of goods is structured along gender lines." n1 They assume "a world of autonomous individuals starting a race or making free choices [which really has] no cutting edge against the fact that men and women are simply running different races." n2 The promise of equality as "sameness' to men only gives women access to a world already constituted by men and with the parameters determined by them.

Plan = unpopular

Relying on CIL 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.

Repubs oppose

The right strongly opposes the use of international law by American courts

David Kubiak, Project Censored award-winning journalist, 4/3/05 [ZMag, Introducing The Constitution Restoration Act, http://www.zmag.org/content/showarticle.cfm?SectionID=104&ItemID=7569]

In other words, the bill ensures that God's divine word (and our infallible leaders' interpretation thereof) will hereafter trump all our pathetic democratic notions about freedom, law and rights -- and our courts can't say a thing. This, of course, will take "In God We Trust" to an entirely new level, because soon He (and His personally anointed political elite) will be all the legal recourse we have left. This is not a joke, a test, or a fit of libertarian paranoia. The CRA already has 28 sponsors in the House and Senate, and a March 20 call to lead sponsor Sen. Richard Shelby's office assures us that "we have the votes for passage." This is a highly credible projection as Bill Moyers observes in his 3/24/05 "Welcome to Doomsday" piece in the New York Review of Books: "The corporate, political, and religious right's hammerlock... extends to the US Congress. Nearly half of its members before the election-231 legislators in all (more since the election)-are backed by the religious right... Forty-five senators and 186 members of the 108th Congress earned 80 to 100 percent approval ratings from the most influential Christian Right advocacy groups." This stunning bill and the movement behind it deserve immediate crash study on at least 3 different fronts. 1. Its hostile divorce of American jurisprudence from our hard-won secular history and international norms. To again quote the Conservative Caucus: "This important bill will restrict the jurisdiction of the U.S. Supreme Court and all lower federal courts to that permitted by the U.S. Constitution, including on the subject of the acknowledgement of God (as in the Roy Moore 10 Commandments issue); and it also restricts federal courts from recognizing the laws of foreign countries and international law [e.g., against torture, global warming, unjust wars, etc. - ed.] as the supreme law of our land." Re the last point, envision some doddering judges who still revere our Declaration of Independence's "decent respect to the opinions of mankind," and suppose they invoke in their rulings some international precepts from the UN's Universal Declaration of Human Rights, the Covenant on the Elimination of All Forms of Discrimination against Women or, God forbid, the Geneva Conventions. Well, under the CRA that would all be clearly illegal and, thank God, that's the last we'd ever hear from them.

**Congress opposes**

Many senators oppose the court citing international law  
Lisa **Sofio**, J.D. candidate, University of California , Fall, 2006 (“Recent Developments in the Debate Concerning the Use of Foreign Law in Constitutional Interpretation”, 30 Hastings Int'l & Comp. L. Rev. 131, lexis)

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?

Kagan hearings prove

Wall Street Journal 6/30/10 (Nathan Koppel, http://blogs.wsj.com/law/2010/06/30/to-cite-or-not-to-cite-senators-kagan-spar-over-foreign-law/)

One of the raging topics in the Kagan hearings – as it was in the Sotomayor confirmation process – is whether Supreme Court justices should consider foreign law as a guidepost or worse, in some senators’ views, as precedent. At least four senators have grilled Kagan on what role foreign law should play in interpreting the U.S. Constitution. The exchanges at times evoke the McCarthy era, as Kagan has been asked to pledge time and again her independence from foreign influences. Her position is that foreign law can prove informative  — much like a law-review article – but that it should never bind judges. “I’m in favor of good ideas wherever you can get them,” she said yesterday. Although, when it comes to deciding 2nd Amendment law, she said, judges need not even look overseas for guidance. Harvard Law School has even come under scrutiny from some senators because first-year students are required to study international law but not constitutional law. Republican senators Grassley and Sessions were mildly stunned by the fact. “I think that’s odd,” Sessions said this afternoon.

Court links to politics

Congress guaranteed to perceive the plan – the more controversial the plan the harder the link

Danette Brickman 1/3/07 (Danette. "Congressional Reaction to U.S. Supreme Court Decisions: Understanding the Introduction of Legislation to Override" Paper presented at the annual meeting of the Southern Political Science Association, Hotel InterContinental, New Orleans, LA, Jan 03, 2007 <Not Available>. 2009-05-24 <http://www.allacademic.com/meta/p143265\_index.html>

Overrides may also be attempted by a subsequent Congress. The Court may behave strategically, striving to yield policy that would not offend the existing Congress, but the Court cannot anticipate future congressional reaction to their policy. Elections, retirements, death and even committee assignments and reassignments have an impact on the various ranges of congressional preferences. For example, the Republican upset in 1994 drastically changed the composition of Congress, moving congressional preferences from the liberal to the conservative side. Separation of powers theory does not account for changing congressional preferences over time. The assumption that all issues are equally salient must also be relaxed if we are to develop an approach encompassing context. The existing literature (for example, Hall 1996) provides evidence that there are costs involved in passing legislation and that all issues are not equally salient to Congress. We know that the mobilization of interest groups, organizations and even government entities may arouse the interest of Congress. Such activity, therefore, provides us with a means by which to determine the salience of a specific court decision. In addition, the activities of congressional members may increase the salience of the issue to Congress as a whole. We know it can take numerous bill introductions before a bill finally reaches a floor vote (Johnson and Brickman 2001). As a Court decision is discussed on the floor of Congress and bills introduced, awareness may increase. This activity may, in some instances, provoke Congress to expend resources and attempt an override.

Court action is seen as politicized

Lindsay Harrison, Lecturer in Law, and Stephen I. Vladeck, Professors of Law at the University Of Miami School Of Law, is a national expert in national security law and the Detention Power., November 18, 2005 Does the Court Act as "Political Cover" for the Other Branches? legaldebate.blogspot.com

While the Supreme Court may have historically been able to act as political cover for the President and/or Congress, that is not true in a world post-Bush v. Gore. The Court is seen today as a politicized body, and especially now that we are in the era of the Roberts Court, with a Chief Justice hand picked by the President and approved by the Congress, it is highly unlikely that Court action will not, at least to some extent, be blamed on and/or credited to the President and Congress. The Court can still get away with a lot more than the elected branches since people don't understand the technicalities of legal doctrine like they understand the actions of the elected branches; this is, in part, because the media does such a poor job of covering legal news. Nevertheless, it is preposterous to argue that the Court is entirely insulated from politics, and equally preposterous to argue that Bush and the Congress would not receive at least a large portion of the blame for a Court ruling that, for whatever reason, received the attention of the public.

Background on CIL

Wex, Law Dictonary of the Legal Information Institute @ Cornell Law School, 2010 (“Customary International Law”, http://topics.law.cornell.edu/wex/Customary\_international\_law)

Customary international law refers to international obligations arising from established state practice, as opposed to obligations arising from formal written international treaties. According to Article 38(1)(b) of the ICJ Statute, customary international law is one of the sources of international law. Customary international law can be established by showing (1) state practice and (2) opinio juris. Put another way, “customary international law” results from a general and consistent practice of states that they follow from a sense of legal obligation.

Curtis A. Bradley and Jack L. Goldsmith, professors of law @ Duke, 1997 (“Customary international law as federal common law: a critique of the modern position”, Harvard Law Review, lexis)

By way of background, there are two principal sources of international law: treaties and CIL. Treaties are express agreements among nations. CIL, by contrast, is the law of the international community that “results from a general and consistent practice of states followed by them from a snese of legal obligation.” Despite its relatively amorphous nature, CIL has essentially the same binding force under international law as treaty law. Historically, CIL primarily governmed relations among nations, such as the treatment of diplomats and the rules of war. Today, however, CIL also regulates the relationship between a nation and its own citizens, particularly in the are of human rights. The scope of these customary international human rights norms is unclear. There is widespread agreement in the international community that CIL prohibits acts such a st torture, genocide, and slavery. Many commentators argue that it also prohibits certain applications of the death penalty, restrictions on religious freedom, and discrimination based on sexual orientation. Others even contend that CIL confers various economic and social rights, such as the right to form and join trade unions and the right to a free primary education. The list of putative CIL norms keeps growing.