No. 12-158

In The
Supreme Court of the United States

CAROL ANNE BOND,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

BRIEF OF *AMICUS CURIAE* HOME SCHOOL LEGAL DEFENSE ASSOCIATION IN SUPPORT OF PETITIONER

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

CASES

CONSTITUTIONAL PROVISIONS

STATUTES

RULE

OTHER AUTHORITIES

INTEREST OF THE *AMICUS CURIAE*[1]

The Home School Legal Defense Association (HSLDA) is a nonprofit advocacy organization established to defend and advance the constitutional right of parents to direct the education of their children and to protect family freedoms. HSLDA represents over 80,000 member families in all 50 states and the District of Columbia.

HSLDA believes that the United States Constitution and longstanding principles of federalism delegate the legislative authority over education and family law to States, not Congress. HSLDA opposes federal efforts to usurp state authority in these areas, and vigorously opposes the adoption of international treaties which would do the same. The present case centrally concerns HSLDA because, absent a limiting principle which recognizes and preserves America's system of federalism, the Third Circuit's reading of *Missouri v. Holland* and the Necessary and Proper Clause opens the door to widespread federal regulation of subject matter rightfully delegated to the States.

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[1] Counsel for each party has consented to the filing of this Brief, as indicated by letters filed with the Clerk of the Court. Pursuant to Rule 37.6, *amicus curiae* states that no counsel for a party authored any part of this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief.

SUMMARY OF THE ARGUMENT

The most important rule in any organization – whether governmental, civic, or business – is the rule which determines who has the power to make the rules. This brief is submitted to illustrate one central idea: it is impossible to fully reconcile the view of the Constitution's Framers with today's internationalist community on the issue of who has the power to make domestic laws for the United States.

Your amicus respectfully suggests that this Court should interpret the scope of domestic legislative authority which is derived from treaty power in light of the fundamental principles of federalism as written into our Constitution, rather than the expansive theories of the international legal community.

The constitutional rule that emerges is this: Congressional authority to enact criminal legislation to implement a ratified treaty necessarily requires an international nexus as an element of the crime. In an age where the scope and application of international law is expanding exponentially, such a rule is the only way to effectively protect a system of meaningful federalism.

ARGUMENT

I

INTERNATIONAL LEGAL THEORY SEEKS TO CONTROL VIRTUALLY EVERY ASPECT OF DOMESTIC LAW.

A. The Scope and Reach of International Law has Expanded Dramatically since *Missouri v. Holland*.

The scope of international law vis-à-vis domestic law has radically changed since World War II. The traditional view was that "International law is a law between sovereign states: municipal law applies within a state and regulates the relations of its citizens with each other and with the executive." IAN BROWNLIE, PRINCIPLES OF INTERNATIONAL LAW 32 (7th ed. 2008).

The growth of the scope of international law can be discerned by comparing the definition of the term in the Second Restatement of the Law of the Foreign Relations of the United States, with that of the Third Edition. The Second Restatement defined "international law" as "those rules of law applicable to a state or international organization that cannot be modified unilaterally by it." RESTATEMENT (SECOND) OF THE LAW OF THE FOREIGN RELATIONS OF THE UNITED STATES § 1 (1965). The Third Restatement, by contrast, defined "international law" as "consist[ing] of rules and principles of general application dealing with the conduct of states and of international organizations and with

their relations inter se, as well as with some of their relations with persons, whether natural or juridical." RESTATEMENT (THIRD) OF THE LAW OF THE FOREIGN RELATIONS OF THE UNITED STATES § 101 (1987). Since the Third Restatement was published, the conception of international law has only broadened, leading one prominent textbook on international law to proclaim that "International law is the world's law." MARY ELLEN O'CONNELL, RICHARD F. SCOTT, AND NAOMI ROHT-ARRIAZA, THE INTERNATIONAL LEGAL SYSTEM: CASES AND MATERIALS 1 (6th ed. 2010).

The expanding conception of the term reflects the expanding reach of the subject-matter of international agreements. Gone are the days when international law was considered to confer *locus standi* only upon nation-states. Now individuals and non-governmental organizations are, in a growing number of situations, considered to have both rights and standing within international law. This is particularly true when it comes to international human rights law. Hersch Lauterpacht, the eminent former member of the International Court of Justice and an early member of the United Nations' International Law Commission, paints a broad role for individuals in international law:

> International law, which has excelled in punctilious insistence on the respect owed by one sovereign State to another, henceforth acknowledges the sovereignty of man. For fundamental human rights are rights superior to the law of the sovereign state… [T]he

> recognition of inalienable human rights and the recognition of the individual as a subject of international law are synonymous.

HERSCH LAUTERPACHT, INTERNATIONAL LAW AND HUMAN RIGHTS 61 (1950).

Modern international treaties are expressly intended to supersede the domestic law of member-states, altering past pronouncements of law while directing future policy. State Parties to the International Covenant on Economic, Social and Cultural Rights (ICESCR) undertake to progressively achieve "the full realization of the rights recognized in the present Covenant by all appropriate means, *including particularly the adoption of legislative measures*."[2] Parties to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) pledge to create "a policy of eliminating discrimination against women," and take "all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination."[3] Similar commitments are made in the International Covenant on Civil and Political Rights (ICCPR),[4] the U.N. Convention on

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[2] Art. 2.1, Dec. 16, 1966, 93 U.N.T.S. 3 [emphasis added].

[3] Art. 2(a), (e), Sept. 3, 1981, 1249 U.N.T.S. 13.

[4] Art. 2(2), Dec. 16, 1966, 999 U.N.T.S. 171 ("[E]ach State Party to the present Covenant undertakes…to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant").

the Rights of the Child (UNCRC),[5] and the U.N. Convention on the Rights of Persons with Disabilities (UNCRPD).[6]

International oversight of domestic political and legal activity is also evident from the official reports of the international agencies that monitor treaty compliance. According to the U.N. Committee for Social, Economic, and Cultural Rights, the ICESCR "entails an obligation for the State party to ensure that all its enactments and policies should provide for all the same level of enjoyment of economic, social and cultural rights."[7] Similarly,

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[5] Art. 4, Nov. 20, 1989, 1577 U.N.T.S. 3) ("States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention").

[6] Art. 4.1, Dec. 13, 2006, 2515 U.N.T.S. 3 ("States Parties undertake to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities," and "to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities").

[7] U.N. Comm. Econ., Soc., & Cultural Rights [UNCESCR], *Report on the Forty-fourth and Forty-fifth Session*, 62 ¶ 304 [Netherlands], E/C.12/2010/3 (Mar. 5, 2011) [hereinafter "Forty-fourth and Forty-fifth Session Report"] . *See also id.* at 81 ¶ 387 [Switzerland] (because "the principal responsibility for Covenant implementation lies with the federal Government of the State party," Switzerland should "agree upon a comprehensive legislation giving effect to all economic, social and cultural rights uniformly between the federal Government and the cantons…."); UNCESCR, *Report on the Forty-sixth and Forty-seventh Session*, 64 ¶ 293 [Cameroon], E/C.12/2011/3 (Mar. 29, 2012) [hereinafter "Forty-sixth and Forthy-seventh Session Report"] (urging Cameroon to "give effect to the

CEDAW "is binding on all branches of Government," requiring the National Parliament "to take the necessary steps with regard to the implementation of the present concluding observations,"[8] and the CRPD requires State Parties to conduct a comprehensive review of their domestic legislation to

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Covenant in the domestic legal system and that it adopt implementing legislation, if necessary"); *id.* at 79 ¶ 370 [Israel] (same).

[8] U.N. Comm. Elimination of Discrimination Against Women [CEDAW], *Concluding Observations of the Committee on the Elimination of Discrimination Against Women: Norway*, 2 ¶ 8, CEDAW/C/NOR/CO/8 (Mar. 23, 2012) [hereinafter "Concluding Observations: Norway"]. *See also* CEDAW, *Concluding Observations of the Committee on the Elimination of Discrimination Against Women: Russian Federation*, 3 ¶ 12-13, CEDAW/C/USR/CO/7 (Aug. 16, 2010) [hereinafter "Concluding Observations: Russian Federation"] (calling on the Russian Federation to develop "a gender equality law in order to fulfil the necessary internal procedures for the implementation of the provisions of the Convention"); CEDAW, *Concluding Observations of the Committee on the Elimination of Discrimination Against Women: Republic of Korea*, 2 ¶ 9, CEDAW/C/KOR/CO/7 (Aug. 2011) [hereinafter "Concluding Observations: Republic of Korea"] (stressing that "the Convention is binding on all branches of Government" and inviting the State Party "to take the necessary steps with regard to the implementation of the present concluding observations"); CEDAW, *Concluding Observations of the Committee on the Elimination of Discrimination Against Women: Brazil*, 2 ¶ 11, CEDAW/C/BRA/CO/7 (Mar. 23, 2012) [hereinafter "Concluding Observations: Brazil"] (same); CEDAW, *Concluding Observations of the Committee on the Elimination of Discrimination Against Women: Australia*, 3 ¶ 15, CEDAW/C/AUL/CO/7 (July 30, 2010) [hereinafter "Concluding Observations: Australia"] (same).

"ensure that it is in full compliance with the Convention…."[9]

B. Modern International Law Purports to Reach all Conduct within a Nation-State, no Matter how Local or Intimate.

It is difficult to conceive of any subject of American law that would not be impacted by the aspirations, or pretensions, of modern international law. Perhaps the most expansive vision for international control of all aspects of life is found in CEDAW, which calls for "the establishment of the new international economic order based on equality and justice" and "general and complete disarmament, in particular nuclear disarmament under strict and effective international control."[10] Not content to govern economics and national defense, the preamble also calls for "a change in the traditional role of men as well as the role of women in society and in the family" and for "upbringing of children" to include shared roles for "men and women and society as a whole."[11]

International human rights treaties are increasingly invoked not only to direct *national*

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[9] U.N. Comm. on the Rights of Persons with Disabilities [UNCRPD], *Concluding observations on the initial report of Hungary*, 2 ¶ 11-12, CRPD/C/HUN/CO/1 (Oct. 22, 2012) [hereinafter "Concluding Observations: Hungary"].

[10] Convention on the Elimination of All Forms of Discrimination Against Women, Preamble, Sept. 3, 1981, 1249 U.N.T.S. 13.

[11] *Id.*

policies – naturalization standards,[12] immigration levels,[13] or bilateral trade agreements[14] – but also domestic laws that are solely of state or local concern. Nations have been directed to implement

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[12] See UNCESCR, *Forty-sixth and Forty-seventh Session Report*, 73 ¶ 335 [Estonia] (recommending that Estonia "intensify its effort to facilitate the acquisition of Estonian citizenship by persons with the status of 'non-citizens,'" to "soften[] the official language qualifications required for those who have long residence in the country," and to grant "citizenship to children born in the families of those persons").

[13] *Id.* at 37 ¶ 163 [Russian Federation] (urging the Russian federation "to undertake effective measures to regularize the situation of illegal immigrants" by "increas[ing] the flexibility of the registration and quota system … [and] increas[ing] the flexibility of access of migrant workers to the system of social benefits of the State party").

[14] *Id.* at 19 ¶ 83 [Germany] (noting "with deep concern the impact of the State party's agriculture and trade policies, which promote the export of subsidized agricultural products to developing countries , on the enjoyment of the right to an adequate standard of living and particularly on the right to food in the receiving countries" and urging Germany "to fully apply a human rights-based approach to its international trade and agriculture policies, including by reviewing the impact of subsidies on the enjoyment of economic, social and cultural rights in importing countries"); UNCESCR, *Forty-fourth and Forty-fifth Session Report*, 85 ¶ 406 [Switzerland] (recommending that Switzerland "comply with its Covenant obligations and take into account its partner countries' obligations when negotiating and concluding trade and investment agreements…. [T]he imposition by the State party of strict intellectual property protection that goes beyond the standards agreed upon in the World Trade Organization can adversely affect access to medicines, thereby compromising the right to health. In addition, the Committee is of the view that the so-called 'TRIPS-plus' provisions…increase food production costs, seriously undermining the realization of the right to food").

specific reforms in their criminal codes, including the reclassification of offenses[15] and the restriction or elimination of the death penalty as a punishment for murder.[16] Under the UNCRPD, the Committee has called for the elimination of any law "whereby persons who have been declared legally incompetent by a court of law are barred from exercising their right to vote,"[17] even though most U.S. States have these limitations.[18] Similarly, these Committees encourage the promotion of gender equality through affirmative action mechanisms, such as quotas, which are not only national in scope,[19] but also

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[15] *Id.* at 22 ¶ 97 [Germany] ("The Committee urges the State party to criminalize domestic violence as a distinct criminal offence").

[16] U.N. Human Rights Comm. [UNHRC], *Concluding Observations of the Human Rights Committee: Japan*, 5 ¶ 16, CCPR/C/JPN/CO/5 (Dec. 18, 2008) [hereinafter "Concluding Observations: Japan"] ("While noting that, in practice, the death penalty is only imposed for offences involving murder, the Committee reiterates its concern that the number of crimes punishable by the death penalty has still not been reduced and that the number of executions has steadily increased in recent years").

[17] UNCRPD, *Concluding observations on the initial report of Argentina*, 8 ¶ 47-48, CRPD/C/ARG/CO/1 (Oct. 8, 2012) [hereinafter "Concluding Observations: Argentina"].

[18] *See*, *e.g.*, FLA. CONST. art. 6, § 4 ("No person…adjudicated in this or any other state to be mentally incompetent, shall be qualified to vote or hold office until restoration of civil rights or removal of disability").

[19] UNCESCR, *Forty-sixth and Forty-seventh Session Report*, 20 ¶ 89 [Germany] (urging Germany "to promote equal representation of men and women in decision-making positions in the public and private sectors…through the adoption of

violate America's understanding of equal protection.[20]

Particularly troubling to your amicus are agency directives pertaining to the decisions of states and localities in the areas of education and family law. We discuss those directives in detail below.

1. National Governments are Obligated to Direct and Control the Duration and Content of Education.

Under modern international treaties, the national government is ultimately responsible for "improv[ing] the quality of education" among children,[21] even if its constitution places authority over education solely within the province of the constituent states.

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quotas in the public sector and effective mechanisms to monitor the compliance by private actors with the State party's equal treatment and anti-discrimination laws"); *id.* at 45 ¶ 200 [Turkey] (urging the national government "to adopt a quota system in various areas to accelerate women's representation in political life and in the labour market"); CEDAW, *Concluding Observations: Republic of Korea*, 7 ¶ 25 (same).

[20] *Grutter v. Bollinger*, 539 U.S. 306, 334 (2003) ("To be narrowly tailored, a race-conscious admissions program cannot use a quota system-it cannot "insulat[e] each category of applicants with certain desired qualifications from competition with all other applicants").

[21] UNCESCR, *Forty-fourth and Forty-fifth Session Report*, 79 ¶ 378 [Sri Lanka].

International agencies have called upon national governments to satisfy international obligations by increasing the length of compulsory education from 8 to 11 years.[22] In the United States, such a call for uniformity would destroy the significant diversity that exists among the States, where the length of compulsory education varies widely among the States, from nine years[23] to as many as thirteen.[24] Moreover, compulsory education can begin as early as age five[25] or as late as age eight,[26] and end as early as age sixteen,[27] or as late as age eighteen.[28] In addition, many states have exemptions for young children,[29] and for students who are still of compulsory attendance age but who

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[22] UNCESCR, *Forty-sixth and Forty-seventh Session Report*, 47 ¶ 211 [Turkey].

[23] *E.g.*, N.C. GEN. STAT. § 115C-378 (2013).

[24] CONN. GEN. STAT. § 10-184 (2013); D.C. CODE § 38-202(a) (2012).

[25] *E.g.*, VA. CODE ANN. § 22.1-254.A (2013).

[26] 24 PA. CONS. STAT. ANN. § 13-1326 (2013); WASH REV. CODE § 28A.225.010(1) (2013).

[27] *E.g.*, N.Y. [EDUCATION] LAW § 3205.1 (2013).

[28] *E.g.*, MICH. COMP. LAWS § 380.1561(1) (2013).

[29] Connecticut requires compulsory attendance from age five to eighteen, but permits exemptions for five and six year old children if the child's parents personally sign an option form at the school district's office. CONN. GEN. STAT. § 10-184 (2013). Thus, although Connecticut technically requires thirteen years of compulsory attendance (from ages five through eighteen), many children are legally exempt until age seven.

are gainfully employed[30] or have already completed their high school graduation requirements.[31]

National governments are also obligated to oversee the quality of education, with primary responsibility for the qualifications and training of teachers[32] and the improvement of school facilities.[33] In this regard, Ethiopia has been criticized for failing to balance its national spending on children's "health and education" against military expenditures.[34]

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[30] *E.g.*, ARIZ. REV. STAT. § 15-802.D.4 (2013) (excusing a child from compulsory attendance if "the child is over fourteen years of age and is employed, with the consent of the person who has custody of him, at some lawful wage earning occupation").

[31] UTAH CODE ANN. § 53A-11-102(1)(a)(ii)(A) (2013) ("[O]n an annual basis, a minor may receive a full release from attending a public, regularly established private, or part-time school or class if … the minor has already completed the work required for graduation from high school, or has demonstrated mastery of required skills and competencies….")

[32] UNCESCR, *Forty-fourth and Forty-fifth Session Report*, 79 ¶ 378 [Sri Lanka] (calling upon the State party "to improve the quality of education by ensuring that teachers are well-trained and fully qualified").

[33] UNCESCR, *Forty-sixth and Forty-seventh Session Report*, 92 ¶ 429 [Turkmenistan] (urging Turkmenistan to "take all necessary measures to improve the quality of education, including by…improving school facilities, textbooks and other supplies, and by investing in the training of teachers").

[34] U.N. Comm. Rights of the Child, *Concluding Observations of the Committee on the Rights of the Child: Ethiopia*, 4 ¶ 16, CRC/C/ETH/CO/3 (2006) [hereinafter "Concluding Observations: Ethiopia"].

Directives on national spending are a necessary by-product of the expansive regime of modern international law. According to the international community, if a nation's legislature fails to adequately spend money to meet its treaty obligations, the oversight committee should exercise supervisory control. Under the law of the UNCRC, Geraldine van Buren, the world's leading authority in the international rights of the child, contends:

> If the Committee on the Rights of the Child were at least to begin examining how scarce resources are to be apportioned in accordance with children's best interests, then it would be undertaking a worthwhile task. To leave apportionment of resources, which in reality will underlie the success of the Convention's implementation, mostly within the discretion of the state is inconsistent with the best interests of the child.

GERALDINE VAN BUREN, THE INTERNATIONAL LAW ON THE RIGHTS OF THE CHILD 48 (1998).

National governments are also obligated to develop national curriculum, textbooks, and other instructional materials.[35] In addition to eradicating "negative" curriculum components, such as cultural

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[35] UNCESCR, *Forty-sixth and Forty-seventh Session Report*, 92 ¶ 429 [Turkmenistan] (urging Turkmenistan to "improve the quality of education, including by improving school curricula with a view to meeting international standards of education…").

stereotypes,[36] the government is obligated to provide students with mandatory human rights instruction,[37] peace education,[38] and sex education.[39]

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[36] CEDAW, *Concluding Observations: Republic of Korea*, 7 ¶ 29 (encouraging the State Party "to institute measures to revise textbooks used at all levels to eliminate gender stereotypes…in an effort to overcome patriarchal attitudes and gender role stereotypes"); CEDAW, *Concluding Observations of the Committee on the Elimination of Discrimination Against Women: Argentina*, 6 ¶ 33-34, CEDAW/C/ARG/CO/6 (July 30, 2010) [hereinafter "Concluding Observations: Argentina"] (recommending that "gender training be mandatory for teachers at all levels of the educational system throughout the country, in all provinces and municipalities, with a view to eradicating gender stereotypes from both official and unofficial curricula").

[37] UNCESCR, *Forty-fourth and Forty-fifth Session Report*, 85 ¶ 403 [Switzerland] (finding that "human rights education is not given sufficient attention" and reminding Switzerland that "human rights education and training is an obligation of [the] State"); *id.* at 69 ¶ 331 [Netherlands] ("The Committee is concerned that the national school curricula of the State party do not provide for adequate human rights education…. The Committee calls on the State party to ensure that human rights education is provided in schools at all levels and universities, and that it covers the economic, social and cultural rights"); UNCESCR, *Forty-sixth and Forty-seventh Session Report*, 24 ¶ 105 [Germany] (calling on Germany "to provide education on human rights, including on economic, social and cultural rights, to students at all levels as appropriate"); *id*. at 49 ¶ 218 [Turkey] (same).

[38] UNCESCR, *Forty-fourth and Forty-fifth Session Report*, 79 ¶ 378 [Sri Lanka] ("The Committee further calls upon the State party to improve the quality of education by ensuring that…human rights and peace education is fully included in school curricula").

[39] CEDAW, *Concluding Observations: Republic of Korea*, 7-8 ¶ 29 (recommending that "the State party establish an

"Opt out" provisions violate the child's right to education.[40]

Notably, the national government is ultimately responsible for the realization of educational treaty obligations, even if domestic law vests the authority over education to the states. Thus, Germany has been urged "to vest more responsibilities in the Federal Government as regards education policies," even though educational policy "ha[s] to date been devolved to the Länders."[41]

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effective monitoring mechanism to ensure that students are provided with the 10-hour compulsory course on sexual education and that it consider introducing a more comprehensive, age-appropriate programme on sexual and reproductive health and rights for both girls and boys as a regular part of the curriculum at the elementary and secondary levels"). *See also* UNCESCR, *Forty-fourth and Forty-fifth Session Report*, 84-85 ¶ 402 [Switzerland] (urging Switzerland to "adopt concrete programmes on sex education as well as on sexual and reproductive health including in school curricula"); *id.* at 79 ¶ 376 [Sri Lanka] (urging Sri Lanka "to set up comprehensive educational programmes on sexual and reproductive health, including…inclusion of appropriate information on sexual and reproductive health in the curricula of the Sri Lankan education system").

[40] U.N. Comm. Rights of the Child, *Concluding Observations: Ireland*, 11 ¶ 52, CRC/C/IRL/CO/2 (Sept. 29, 2006) [hereinafter "Concluding Observations: Ireland"] ("While noting that social, personal and health education is incorporated into the curricula of secondary schools, the Committee is concerned that adolescents have insufficient access to necessary information on reproductive health. The education is optional and parents can exempt their children from such education").

[41] UNCESCR, *Forty-sixth and Forty-seventh Session Report*, 23-24 ¶ 104 [Germany].

Conformity to a treaty, and uniformity within a nation, are far more important to modern international law than the principles of federalism.

2. Modern International Law Touches and Regulates the Most Intimate Associations in Family Law.

As troubling as the effects of international agreements are on education law, their impact on the law of the family is far more significant and pervasive.

International committees have recommended that the national government set a uniform minimum age of 18 years for all marriages,[42] grant partners in "de facto relationships… economic protection equal to married women, in the form of recognizing their rights in the property accumulated during the relationship,"[43] and the elimination of guardianships for disabled adults.[44] Prominent

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[42] *Id.* at 54 ¶ 242 [Yemen] (recommending that Yemen "adopt and implement the Law on the minimum age of marriage and set it at 18 years of age"); CEDAW, *Concluding Observations: Republic of Korea*, 1-2 ¶ 4 (welcoming the adoption of a "the minimum age of marriage at 18 years for both men and women").

[43] CEDAW, *Concluding Observations: Norway*, 10 ¶ 38.

[44] U.N. Comm. Rights of Persons with Disabilities [UNCRPD], *Concluding observations on the initial report of China*, 3-4 ¶ 21-22, CRPD/C/CHN/CO/1 (Oct. 15, 2012) ("The Committee is concerned about the system for establishing legal guardianship…[and] urges the State party to adopt measures to repeal the laws, policies and practices which permit guardianship and trusteeship for adults and take legislative

internationalists even envision a considerable role for the government and society in childrearing itself. Geraldine van Buren contends that:

> [I]nternational law is gradually and reluctantly moving into unfamiliar areas in which the effect of a ruling of a human rights tribunal is tantamount to deciding the role of the family in the upbringing of children…. Hence the family is gradually being recast and the incorporation of 'guidance' as well as 'direction' reinforces the development of the concept of the parent as enabler rather than as sanctioner.

GERALDINE VAN BUREN, THE INTERNATIONAL LAW ON THE RIGHTS OF THE CHILD 72-73 (1998).

Pursuant to this "recasting," international treaties are consistently interpreted to limit the ability of parents to make decisions regarding the needs and welfare of their children. As Van Buren states, "Best interests provides decision and policy makers with the authority to *substitute their own decisions* for either the child's or the parents', providing it is based on considerations of the best interests of the child." *Id.* at 46 [emphasis added]. Practically, this results in directives which are

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action to replace regimes of substituted decision-making by supported decision making"); UNCRPD, *Concluding observations: Argentina*, 4 ¶ 20 (urging Argentina "to launch an immediate review of all current legislation that is based on a substitute decision-making model…[and] to adopt laws and policies that replace the substitute decision-making system with a supported decision-making model").

highly controversial in the United States, such as unrestricted access to contraception,[45] or bans on all corporal parental discipline in the home.[46]

The scope and subject matter of international law has expanded dramatically since *Holland*. Modern treaties and international agreements not only touch on the subject-matter of domestic law, but are intentionally designed to supersede it. Absent a limiting principle of federalism, the scope of permissible national action under these agreements is infinite.

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[45] UNCESCR, *Forty-sixth and Forty-seventh Session Report*, 69 ¶ 313 [Cameroon] (urging Cameroon to "take all necessary measures" to "facilitate the access of women and adolescent girls to sexual and reproductive health services, including family planning and birth control information") ; *Id.* at 40 ¶ 176 [Russian Federation] (urging the Russian Federation to "increase knowledge of and access to affordable contraceptive methods in the State party and to ensure that family-planning information and services are available to everyone"); *id.* at 91 ¶ 426 [Turkmenistan] (urging Turkmenistan "to increase its efforts with a view to providing women and young persons with effective access to services in the area of sexual and reproductive health"); CEDAW, *Concluding Observations: Argentina*, 8 ¶ 37-38; UNCESCR, *Forty-fourth and Forty-fifth Session Report*, 68 ¶ 326 [Netherlands].

[46] *Id*. at 67 ¶ 321 [Netherlands] (urging the Netherlands "to introduce a statutory prohibition of corporal punishment in the home" because "corporal punishment is inconsistent with the fundamental principle of dignity of the individual"); UNCESCR, *Forty-sixth and Forty-seventh Session Report*, 54 ¶ 244 [Yemen] (urging Yemen to "adopt legislation explicitly prohibiting corporal punishment of children in all settings, including…at home").

C. Modern International Agreements Universally Proclaim the Primacy of International Law over Domestic Law, and National Law over State Law.

The rampant intrusions of international law into state and local spheres of authority are certainly troubling, but ultimately, they are merely the symptoms. The root problem is that modern international treaties utterly disregard, and even disdain, the constraints on national power imposed by a federal constitution.

The guiding international principle on the relationship between domestic law and foreign treaties is found in the Vienna Convention on the Law of Treaties, which expressly provides that a party to a treaty "may not invoke the provisions of its internal law as justification for its failure to perform a treaty."[47] Although the United States has not ratified the Vienna convention, it has generally recognized the Convention "as the authoritative guide to current treaty law and practice."[48]

This principle poses special difficulty for State Parties with federal constitutional structures, who are constantly urged to exert national power to unify their domestic law to comply with the treaty. Switzerland has been accused of violating the ICESCR because it contended that "some of those

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[47] Vienna Convention on the Law of Treaties, Art. 27, Jan. 27, 1980, 1155 U.N.T.S. 331.

[48] Letter of Submittal, Vienna Convention on the Law of Treaties, Nov. 22, 1971, Treaty Doc. 92-12.

provisions cannot be given effect in the domestic legal order of the State party and cannot be directly invoked before domestic tribunals and courts of the State party."[49] According to the committee, a federal constitution does not release the national government from its obligation to streamline the laws and policies of their constituent states:

> The Committee reiterates that…the principal responsibility for [ICESCR] implementation lies with the federal Government of the State party. The Committee recommends that the State party: take steps to agree upon a comprehensive legislation giving effect to all economic, social and cultural rights uniformly between the federal Government and the cantons; [and] establish an effective mechanism to ensure the compatibility of domestic law with the Covenant…. The Committee encourages the State party to pursue its efforts of harmonizing cantonal laws and practices to ensure equal enjoyment of Covenant rights throughout the confederation.[50]

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[49] UNCESCR, *Forty-fourth and Forty-fifth Session Report*, 81 ¶ 387 [Switzerland].

[50] *Id.* at 81 ¶ 387 [Switzerland]. *See also id.* at 62 ¶ 305 [Netherlands] ("The Committee reiterates its recommendation that the State party has the obligation to give effect to the rights contained in the Covenant in each territory…. [T]he Committee urges the State party to consider all remedial measures, legislative or otherwise, to ensure that the Covenant

Similarly, national governments are required to ensure that local laws conform to CEDAW. Australia was criticized for a "lack of harmonization or consistency in the way that the Convention is incorporated and implemented across the country, particularly when the primary competence to address a particular issue lies with the individual States and Territories."[51] According to the Committee, the national government bore the responsibility to "promote and guarantee the implementation of the Convention throughout the country, including through its power to legislate for the implementation of treaty obligations in all states and territories."[52]

Argentina has been similarly criticized for failing to meet CEDAW's demands, with the blame laid squarely on its federal system of government:

> While the Committee is cognizant of the complex federal constitutional structures of the State party, it underlines that the federal Government is responsible for ensuring the implementation of the Convention and providing leadership to the provincial and territorial governments in that context. The Committee expresses its concern that the federal Government

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rights are applicable and justiciable in all its constituent countries").

[51] CEDAW, *Concluding Observations: Australia*, 3-4 ¶ 16-17, CEDAW/C/AUL/CO/7 (July 30, 2010).

[52] *Id.*

> lacks an efficient mechanism to ensure that the provincial governments establish legal and other measures to fully implement the Convention in a coherent and consistent manner.[53]

In response to these concerns, the Committee urged Argentina to "establish an effective mechanism aimed at ensuring accountability and the transparent, coherent and consistent implementation of the Convention throughout its territory, in which all levels of government — national, provincial and municipal — participate."[54]

The CEDAW committee has directed other nations that "the decentralization of power does not in any way reduce the direct responsibility of the State party's federal Government to fulfil its obligations,"[55] and that the national government must "ensure that the municipal and regional governments and other autonomous entities establish legal and other measures to fully implement the Convention in a coherent and consistent manner" by using "its leadership and funding power to set standards" to ensure "the transparent, coherent and consistent

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[53] CEDAW, *Concluding Observations: Argentina*, 3 ¶ 11-12.

[54] *Id.*

[55] CEDAW, *Concluding Observations of the Committee on the Elimination of Discrimination Against Women: India*, 2 ¶ 6, CEDAW/C/USR/CO/7 (Nov. 3, 2010).

implementation of the Convention throughout its territory…."[56]

A similar disregard for federal systems is codified in the UNCRPD, which explicitly states that "the provisions of the present Convention shall extend to all parts of federal States without any limitations or exceptions." UNCRPD, Art. 4.5. The CRPD's enforcement committee has specifically identified Argentina's federal structure as a "challenge" to the achievement of the Convention's aims:

> The Committee is also concerned about the challenge posed by the State party's federal structure in terms of the achievement of full accessibility for all persons with disabilities in every province and municipality in its territory. The Committee recommends that the State party establish effective mechanisms for monitoring and evaluating compliance with accessibility laws in the State party and that it take the necessary measures to facilitate the alignment of the relevant federal and provincial legislation with the Convention and the development and implementation of accessibility plans.[57]

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[56] CEDAW, *Concluding Observations: Russian Federation*, 2-3 ¶ 10-11.

[57] UNCRPD, *Concluding observations: Argentina*, 3-4 ¶ 17-18.

The implication of these statements is clear. Under modern international law, constitutional federalism – where states have meaningful freedom to individualize and customize the laws within their own sovereign spheres of authority – is the great challenge and barrier. If such treaties are to be fully realized, federalism must be curtailed, removed or subsumed entirely. There is no place for meaningful federalism in the "world's law."

II

FEDERALISM REQUIRES THAT TREATY-IMPLEMENTING LEGISLATION HAVE A DEMONSTRABLE NEXUS TO THE INTERNATIONAL INTERESTS REPRESENTED IN THE TREATY.

In an age of expansive international treaties, the only way to preserve our constitutional system and the integrity of domestic law is to reaffirm the Founders' view of the Treaty Power: Congress may only enact domestic legislation pursuant to a ratified treaty which requires an international nexus as an element of the crime.

A. The Founders Understood the Treaty Power as Unqualified Within the Realm of Federal Sovereignty.

While considerable debate occurred over the extent of the Treaty Power during the course of the Constitutional Convention and subsequent ratification conventions, the most compelling conclusion is that the Treaty Power was delegated

without qualification to the National Government. James Madison argued,

> The object of treaties is the regulation of intercourse with foreign nations, and is external. I do not think it possible to enumerate all the cases in which such external regulations would be necessary. Would it be right to define all the cases in which Congress could exercise this authority? The definition might and probably would prove defective. They might be restrained by such a definition, from exercising the authority where it would be essential to the interest and safety of the community.

3 JONATHAN ELLIOT, THE DEBATES IN THE SEVERAL STATE CONVENTIONS ON THE ADOPTION OF THE FEDERAL CONSTITUTION 514 (2d ed. 1836).

While there were certainly risks to leaving the Treaty Power unqualified, the risk of unforeseeable exigencies justified the open-ended delegation, in Madison's mind. The absence of qualification, however, by no means implies the absence of limits:

> Does it follow, because this power is given to Congress, that it is absolute and unlimited? I do not conceive that power is given to the President and Senate to dismember the Empire or to alienate any great essential right. I do not think the whole legislative

> authority have this power. The exercise of the power must be consistent with the object of the delegation….

Id.

Madison understood the Treaty Power as limited, the absence of qualifications notwithstanding, because no power delegated by the Constitution could itself transcend the Constitution. The Constitution describes the limits of federal sovereignty. The Treaty Power cannot be used to alter those limits, but is instead constrained by them.

John Calhoun demonstrated a similar understanding. "Calhoun believed that when the country's relation with the world was implicated, 'the states disappear. Divided within, we present the exterior of undivided sovereignty. The wisdom of the constitution, in this, appears conspicuous.'" Ana Maria Merico-Stephens, *Of Federalism, Human Rights, and the Holland Caveat: Congressional Power to Implement Treaties*, 25 MICH. J. INT'L L. 265, 314 (2004). The Treaty Power, according to Calhoun, was entirely contained in the measure of sovereignty delegated to the National Government. Yet, the government could not make a treaty which would allow it "to do that which can only be done by the constitution-making power; or which is inconsistent with the nature and structure of the government, or the objects for which it is formed." 2 THE WORKS OF JOHN C. CALHOUN 132 (Richard K. Cralle ed., 1854).

Joseph Story's oft-cited *Commentaries on the Constitution of the United States* reflect a similar view:

> The power of making treaties is indispensable to the due exercise of national sovereignty, and very important, especially as it relates to war, peace, and commerce. That it should belong to the national government would seem to be irresistibly established by every argument deduced from experience, from public policy, and a close survey of the objects of government. It is difficult to circumscribe the power within any definite limits, applicable to all times and exigencies, without impairing its efficacy, or defeating its purposes.

3 JOSEPH STORY, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES § 1503 (1833) [hereinafter "Story's Commentaries"].

Story understood that "the due exercise of *national sovereignty*" demanded that the Treaty Power be invested in the National Government without dilution. But, like Madison and Calhoun, he believed that such a power without "*definite* limits" was constrained by other principles which applied equally to all parts of the national sovereignty.

> But though the power is thus general and unrestricted, it is not to be so construed, as to destroy the

> fundamental laws of the state. A power given by the constitution cannot be construed to authorize a destruction of other powers given in the same instrument. It must be construed, therefore, in subordination to it; and cannot supersede, or interfere with any other of its fundamental provisions. Each is equally obligatory, and of paramount authority within its scope; and no one embraces a right to annihilate any other. A treaty to change the organization of the government, or annihilate its sovereignty, to overturn its republican form, or to deprive it of its constitutional powers, would be void; because it would destroy, what it was designed merely to fulfil, the will of the people.

Id. at § 1502.

A common thread emerges. Madison, Calhoun, and Story each affirm the Treaty Power as unqualifiedly invested in the federal government, but each identifies similar limits: the Treaty Power itself cannot be used as a mechanism to alter the constitutional allocation of sovereignty, "to do what which can only be done by the constitution-making power." In other words, there are limits that apply to the Treaty Power, but they are not particular qualifications. Rather, the Treaty Power is limited by the doctrine of federalism—the doctrine which operates to constrain *all* uses of federal power. The Treaty Power and the delegated sovereignty of the

National Government are coextensive, with neither being capable of enlarging the other. While the Treaty Power may not be qualified, the sovereignty of the National Government, which contains the Treaty Power, is. Therefore, it is to those qualifications this Court should turn.

B. This Court's Construction of the Treaty Power is Consistent with the Limitation of Federalism the Founders Envisioned.

In *Missouri v. Holland*, 252 U.S. 416 (1920), this Court held that "if a treaty is valid there can be no dispute about the validity of the statute under Article 1, Section 8, as a necessary and proper means to execute the powers of the Government." *Id.* at 432. This holding rests upon the premise that "[t]o answer this question it is not enough to refer to the Tenth Amendment, reserving the powers not delegated to the United States, because by Article 2, Section 2, the power to make treaties is delegated expressly, and by Article 6 treaties [and their implementing legislation]…are declared the supreme law of the land." *Id.*

Speaking strictly of the *use* of the Treaty Power and the Necessary and Proper Clause to pass implementing statutes, "there is little doubt that the Tenth Amendment poses a threat to such legislation." *Id.* The Treaty Power is expressly delegated to the President and the Senate, and Congress is expressly empowered to make laws necessary and proper to carry out its enumerated tasks.

There is more to the Tenth Amendment, however. "The principles of limited national powers and state sovereignty are intertwined. While neither originates in the Tenth Amendment, both are expressed by it." *Bond v. United States*, ___ U.S. ___, 131 S. Ct. 2355, 2366 (2011) [hereinafter "Bond I"]. Or, as the *Holland* Court noted, "We do not mean that there are no qualifications to the treaty-making power; but they must be ascertained in a different way…. The only question is whether [a use of the treaty power] is forbidden by some invisible radiation from the general terms of the Tenth Amendment." *Holland*, 252 U.S. at 433-4. The Tenth Amendment is an express reminder that the federal government is one of delegated sovereignty while the State governments possess residual sovereignty. While the delegation of *powers* to the federal government admits some elasticity via implied powers or the passage of necessary and proper laws, the delegation of *sovereignty* to the government (with the contemporaneous reservation of sovereignty by the States), does not. Thus, treaty-implementation is not limited in scope to the general legislative competency of the federal government,[58] it is limited by the Constitution's arrangement of sovereignty.

Most important in this arrangement is the rule which determines who makes the rules. This Court flatly rejected the notion that treaties could be

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[58] *See Holland*, 252 U.S. at 432 (noting that "An earlier act of Congress that attempted by itself and not in pursuance of a treaty to regulate the killing of migratory birds" had been struck down by a federal court, but that the federal government's general inability to pass domestic laws regulating that subject matter should not "be accepted as a test of the treaty power").

implemented by legislation which serves as a *de facto* constitutional amendment:

> It would be manifestly contrary to the objectives of those who created the Constitution, as well as those who were responsible for the Bill of Rights—let alone alien to our entire constitutional history and tradition—to construe Article VI as permitting the United States to exercise power under an international agreement without observing constitutional prohibitions. In effect, such construction would permit amendment of that document in a manner not sanctioned by Article V. The prohibitions of the Constitution were designed to apply to all branches of the National Government and they cannot be nullified by the Executive or by the Executive and the Senate combined.

Reid v. Covert, 354 U.S. 1, 17 (1957).

This Court's statement in *Reid* is entirely consistent with the position of Madison, Calhoun, and Story. *Reid* also reaffirmed the *Holland* holding: "To the extent that the United States can validly make treaties, the people and the states have delegated their power to the National Government and the Tenth Amendment is no barrier." *Id.* at 18. The operative phrase here, of course, is "to the extent." To say that the proper use of the Treaty Power does not violate the Tenth Amendment is

little more than tautology, for it is only to say that "the proper use of a delegated power is not the improper use of a non-delegated power."

1. This Court's Commerce Clause Jurisprudence is Instructive on the Tenth Amendment's Role in Limiting the Treaty Power.

The potential for treaty-implementing legislation to transgress the general statement of federalism expressed by the Tenth Amendment may be helpfully illustrated by an analogy to the Commerce Clause. Unquestionably, Congress may regulate the transportation of goods across state lines, as this activity is the very definition of interstate commerce. Such regulation could not run afoul of the Tenth Amendment. This Court, however, has repeatedly held that certain activities, even if they are entirely local and not strictly commercial, may still be regulated.[59]

When Congress abandons the strict qualification of the enumerated power, regulating interstate commerce *per se*, in order to regulate that which "substantially affects interstate commerce," *United States v. Lopez*, 514 U.S. 549, 559 (1995), it may run afoul of the limits of federal sovereignty

[59] *See Wickard v. Filburn*, 311 U.S. 111 (1942) (holding that growing wheat for home consumption may be regulated); *Russell v. United States*, 471 U.S. 858 (1985) (holding that renting property for residential purposes constitutes an "activity affecting interstate commerce" within the meaning of federal law); *Gonzales v. Raich*, 545 U.S. 1 (2005) (holding that growing marijuana for personal medicinal use falls within Congressional jurisdiction).

symbolized by the Tenth Amendment. "In *Jones & Laughlin Steel*, the Court warned that the scope of the interstate commerce power 'must be considered in the light of our dual system of government and may not be extended so as to… effectually obliterate the distinction between what is national and what is local and create a completely centralized government.'" *Id.* at 557, quoting *NLRB v. Jones & Laughlin Steel*, 301 U.S. 1, 37 (1937).

Two cases demonstrate that the same concern suggests a limit to the use of treaty-implementing statutes to govern strictly domestic activity, *Jones v. United States*, 529 U.S. 848 (2000), and *United States v. Morrison*, 529 U.S. 598 (2000). The Court held in these cases that the Commerce Clause cannot confer upon Congress a general police power simply because most violent crime, in the aggregate, can be shown to substantially affect interstate commerce. If "gender-motivated crimes of violence" might be regulated under the Commerce Clause, the Court reasoned, "'it is difficult to perceive any limitation on federal power, even in areas such as criminal law enforcement or education where States have historically been sovereign.'" *Morrison*, 529 U.S. at 613, quoting *Lopez*, 514 U.S. at 564. Similarly, the Court held in *Jones* that to read the relevant statute "as encompassing the arson of an owner-occupied private home" would subject the law to "grave and doubtful constitutional questions" because "arson is a paradigmatic common-law state crime." *Jones*, 529 U.S. at 857-8, quoting *United States ex rel. Attorney General v. Delaware & Hudson Co.,* 213 U.S. 366, 408 (1909).

The salient point from these two cases is that the Court did not rely simply on the limits of the Commerce Clause to reach its holdings. Rather, it worked *backwards* from the unacceptable implications for state sovereignty that an overly-broad construction of the Commerce Clause would bear. *Because* arson is a "paradigmatic common-law state crime" and *because* extending the Commerce Clause to gender-motivated violence brings areas "where the states have historically been sovereign" within the ambit of federal power, it *cannot* be that the Commerce Clause implies the ability to pass such regulations. The Court saw the division of sovereignty as an overlay—a means of testing federal authority when it was acting outside of the specifically delineated power by attempting to regulate that which substantially affects interstate commerce rather than interstate commerce itself. This overlay of sovereignty, however, applies with equal force to *all* delegated powers of the federal government:

> The Framers concluded that allocation of powers between the National Government and the States enhances freedom, first by protecting the integrity of the governments themselves, and second by protecting the people, from whom *all governmental powers* are derived…. The allocation of powers in our federal system preserves the integrity, dignity, and residual sovereignty of the States.

Bond I, 131 S. Ct. at 2364 [emphasis added].

The regulation of interstate commerce *per se* is just as immune from Tenth Amendment assault as is the negotiation and ratification of a treaty. Moving from the use of that which was specifically delegated, like regulating purely intrastate activity under the Commerce Clause or purely domestic activity under the Treaty Power, immediately and necessarily brings questions of sovereignty to the fore.

2. <u>If a Treaty-Implementing Statute Regulates Purely Domestic Activity, There Must Be a Clear Nexus Between That Activity and the International Relationship That Underlies the Treaty.</u>

"Treaties are not rules prescribed by the sovereign to his subjects; but agreements between sovereign and sovereign." 3 STORY'S COMMENTARIES § 1513. So, when treaty-implementing legislation, as in this case, becomes a rule "prescribed by the sovereign to his subjects," it is apparent that such legislation should be examined for any inconsistencies with the allocation of sovereignty in the federal system, just as the Court examines laws passed under the auspices of the Commerce Clause which regulate something other than interstate commerce *per se*.

In such instances, this Court requires that "'the purpose [or] design of the statute [have] *an evident commercial nexus*.'" *Jones*, 529 U.S. at 611, quoting *Lopez*, 514 U.S. at 580 [emphasis added]. To prevent the regulation of intrastate activities from

intruding upon state sovereignty, this Court requires that there be at least a nexus between the activity being regulated and the quintessential subject matter of the enumerated authority.

The same rule should apply to treaty-implementing statutes. Absent such a limitation, treaty-implementing legislation which "turns each kitchen cupboard and cleaning cabinet in America into a potential chemical weapons cache," *Bond v. United States*, 681 F.3d 149, 154 n. 7 (3d Cir. 2012), is still constitutional because it bears a "rational relationship" to a treaty that deals with the "quintessentially international" subject matter of chemical weapons. *Id.* at 162. The subject matter limitation on which the Third Circuit relied is manifestly insufficient, as it allows "'pouring a bottle of vinegar in [a] friend's goldfish bowl'… [to constitute] use of a chemical weapon under the Act and expose a person to years in federal prison." *Id.* at 154, quoting Justice Samuel A. Alito, Transcript of Oral Argument at 29, *Bond I*, 131 S. Ct. 2355 (2011).

As we have already discussed, modern international conventions and treaties are intended to produce far-reaching domestic regulation that is irrelevant to the relationship "between sovereign and sovereign" upon which the exercise of the Treaty Power was intended to rest. While this approach may pose no difficulty to nations with centralized governments, it undermines a constitutional order like ours, which relies on a "distinction between what is national and what is local" in order to preserve liberty by preventing "a centralized government" from emerging. *Lopez*, 514 U.S. at 559.

When the National Government ratifies and implements treaties which expect and require the regulation of domestic activity which is "paradigmatic common-law state crime," it has violated the most fundamental rule of our government—the rule which determines who has the power to make the rules—by altering the Constitution's allocation of sovereignty. Such a possibility was long ago anticipated – and rejected – by Justice Story,[60] John Calhoun,[61] and this Court.[62]

The suggestion that treaty-implementing legislation stands alone in its immunity from the doctrine of federalism is nonsensical in comparison to other enumerated powers with implied expansion and manifestly contrary to the incontrovertible intent of the Founders and the holdings of this Court. This Court has already declared that "federalism also protects the liberty of all persons within a State by ensuring that laws enacted in excess of delegated governmental power cannot direct or control their actions…[because by] denying one government complete jurisdiction over all the

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[60] 3 STORY'S COMMENTARIES § 1502 ("A treaty to change the organization of the government, or annihilate its sovereignty, to overturn its republican form, or to deprive it of its constitutional powers, would be void; because it would destroy, what it was designed merely to fulfill, the will of the people").

[61] 2 THE WORKS OF JOHN C. CALHOUN 132 (Richard K. Kralle ed., 1854) (the government cannot do "that which can only be done by the constitution-making power" under the Treaty Power).

[62] *Reid*, 354 U.S. at 17 (1957) ("In effect, such [a broad] construction [of the Treaty Power] would permit amendment of that document in a manner not sanctioned by Article V.")

concerns of public life, federalism protects the liberty of the individual from arbitrary power." *Bond*, 131 S. Ct. at 2364. If federalism is to survive in an increasingly-international legal landscape, this same doctrine must also extend to treaty-implementing statutes. Congress may only regulate domestic activity with the proper nexus to the relevant international interest.

CONCLUSION

This case requires this Court to choose a path. The two paths differ dramatically on the question of "who gets to make the rules." We urge this Court to keep this nation on the path of domestic self-government under our federalist Constitution rather than moving to the path of increasing international control. We urge this Court to reverse the decision of the Third Circuit Court of Appeals.

RESPECTFULLY SUBMITTED this 15th day of May, 2013.

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