Judges Ballots 2015

Northwestern – Alex Miles & Arjun Vellayappan (Aff) vs Michigan Ellis -Allen & Alex Pappas (Neg) - winner Northwestern

David Heidt

Items unrelated to the Decision

DML

These ballots often begin with a shout-out. Some may find it odd that I chose to start with a student that was not one of the actual participants in the final round. But, having looked at countless cards that read "dml" at the end of the citation, I surmise (from afar) that Dustin Meyers-Levy was a huge contributor this season. He was present on that stage in his own way. And, I think the following anecdotes represent a lot of what's great about the activity. I am hoping no one in Ann Arbor will mind that I start with DML… and a tiny moment at Culver's.

On Sunday night, an MSU team faced Dustin and his partner Tommy in the elim rounds. After the decision, I wanted to congratulate Dustin on a strong season. But, these spots are often awkward. We've all been there – you're affiliated with the other team… and one never knows if the person is "ready" to talk.

… As ever, Dustin was.

In a moment when many could be frustrated or bitter – he shared his appreciation about the season… about the content of the round. He was curious and kind. None of this should surprise anyone.

Fast forward 40 hours. The NDT has ended and MSU Debate is having lunch at a Culver's in the middle of nowhere. I had just voted Affirmative – which meant I had also voted against UMich on a nail-biter 3-2 decision.

Ten minutes into our meal, the University of Michigan's Debate Team rolls into the same restaurant. I shouldn't have been shocked – there are only four places to eat in East Iowa. But – again – you worry that spots like these can be a little awkward. Maybe especially so in this instance.

I don't like it when we lose and I work as hard as I can to minimize it happening. I respect the grind that NU and U Mich put into preparing. That amount of effort only comes from a certain passion. And, passion can go in a lot of directions. Think about it - the stakes at the NDT are so high (maybe too high). And, it's the van ride back from a draining NDT. I think I would empathize with almost any interaction that could have taken place at that Culver's.

I mean what I'm about to type. As the U Mich van pulled into Culver's, my twisted mind actually went to this place:

"I wouldn't be *that* mad if any member of the Umich Debate team walked over to me and dumped a Culver's milkshake on my head…. even Krakoff".

To be clear, I wouldn't appreciate it… and I don't feel like I would deserve it. But - in this narrow instance - I wouldn't have *that* tough of a tough time forgiving it.

Sure enough, DML comes running over to where the MSU team is sitting.

What does he do ?...

With a smile on his face, he enthusiastically opens with "how is your van ride is going"…. He then individually checks in with me… and the MSU Debaters just to see how we are doing. … he does all of this before even ordering – which may partially explain why he ate so many of Tyler's fries.
What can you say ?... I just marvel at someone with such a positive outlook.
A year ago I was at the D5 District Tourney in Ann Arbor. I was asked to cut some Negative against DML's new Aff – which was about clowning. Not *cloning*… but *clowning*……. 12 months later, he's cutting a wreck of policy cards. He's in the elims of the NDT. I admire more than his attitude – I admire his versatility and adjustments.
Thanks for being who you are.
… And - as I type - I am now terrified what Michigan KM will do with this anecdote. I suppose that when UMich KM's "Great Milkshake Episode of 2016" arrives, I have only myself to blame.

David Heidt

The best there ever was.

To Both Programs

Maybe I'm just a dork about the NDT, but I believe there's no good way to re-pay both schools for affording you the honor of judging the Final Round.
… It's just one of those moments in life where you say "thank you"… you exhale because you're glad that you took a nap to be physically prepared… And, then the round begins.
Once it does, there's an overwhelming sense of responsibility. You feel guilty – you wish you double-checked your flow this often during round four of the Wake Forest Tourney. But you admit that this is a little different. You strive to be more thorough than ever. You triple-check.
After it ends, you can't really "make it okay" for the team that you voted against. This ballot won't attempt to do so. All you can do is write a thorough decision and hope it makes sense to four invested and talented seniors.
Three notes about this ballot:
First – I break this down on a more basic level.
That's because things have changed. The round is now watched by more than the handful of people in the ballroom. During the final round I received 107 texts.
… 107!!!
These texts were overwhelmingly from former debaters. And – in absolute fairness – I think like 50 of them were from Kelly Steele alone. I turned the damn phone off before rebuttals began. Sorry Kelly – there's a lot to flow.
…yet all of this speaks to the amazing reach of the live-stream… The four students already know this topic in great depth. So, if this ballot gets too foundational please know that I am attempting to speak to multiple audiences.
Second – I included some cards from the speech docs.
This is something I started doing when writing ballots at Round Robins. I feel it helps me explain my decision. When a card has a line that's germane, I re-highlighted the passage in blue. Blue portions were read in the debate.
Third – the other ballots
The judges did talk briefly after the final round ended. That's a pretty human reaction. I know a little – but only a little – about how they voted.

I decided against reading the ballots of other panelists. I didn't want my decision to "grow" or "react". I felt I owed it to the students to give them the decision that was in my mind on Tuesday morning.
I looked through my flow and the speech docs countless times before I voted – and the unabridged version of all that ran through my mind over those 100+ minutes might turn into a (even worse) novel.
But, on the big questions, this is what I thought on Tuesday morning.

The short-version of the Decision

Thesis

This gets unpacked in greater detail later, but I wanted to lead with a basic summary.
Much of this debate hinges on mechanism/actor questions:

Thumb-nail sketch of the Aff:

The Affirmative has – in short – legalized prostitution (with some specific regulations that ultimately weren't central in this round). For alums that did not watch this year's topic unfold, it should be noted that this was a new Aff. And it had two novel twists:

- It leans on the 50 State Courts as its actor.
- It has these courts cite International Law (specifically a Canadian decision about sex work called Bedford v. Canada – which the Aff claims will help fulfill the Universal Declaration of Human Rights).

The Aff argues that "important human rights issues are not always litigated in the federal courts". While the US has signed International Human Rights Protocols, the Federal-State balance means several issues germane to true US compliance are handled (or fumbled) by State Courts.
The upside to having State Courts "go a little rogue" is that it may grow contagious – cultivating norms that could fill gaps in current US compliance with International Human Rights Laws (even outside the realm of sex work). Filling such gaps would boost US commitment to multilateral engagements. And, the Aff impacts US commitment to multilateralism as quite important.
The Affirmative also advanced a 2nd advantage in the 2AR. Here, they argued the plan's stance on prostitution would build US credibility - translating into improved international family planning and global health norms. This was a very large impact, but not one that wound-up central to my decision. I felt that the counterplan solved it.

Thumb-nail sketch of the Neg:

The Neg approach is savvy, but straightforward. The Neg counter-plan:

- Has the US (federal) Congress legalize prostitution in the same manner.
- Seeks to rob the Aff of its I-Law twists. The counterplan has Congress cite the same International Law as the Affirmative. It then has Congress require the States implement the same prostitution scheme established by the Affirmative.

The 2NR has two offensive arguments. One is a *disad* about NATO. The other is a set of *case turns* that the Aff would actually hurt multilateralism (this wasn't the signature offensive arg in the 2NR – it gets less attention in this ballot).
The *disad* argues that State Courts may misapply International Law. The Neg contends that the US should speak with only one (federal) voice on issues that intersect with international affairs. State Justices may fail to show deference on National Security issues. What if State Justices draw upon International human rights tools to assert jurisdiction in cases involving foreign soldiers ?... The disad expresses specific concern that rulings may complicate US relations with NATO allies.
As the Affirmative did on their multilateralism impact, the Negative aggressively impacts NATO cohesion. The Negative argues such cohesion is key to various impacts involving Russia.

Thumb-nail sketch of the decision:

There are many pieces to the puzzle - but one of the nexus questions was well framed in the opening moments of the 2NR. Is federalism good or bad in this context ?...
To some degree, both sides are correct:

- Sure, a rogue State Justice might use the tool of I-Law to zap a visiting German soldier for violating human rights.
- And, yes, that same rogue Justice might also prudently fill implementation gaps that hamper US multilateral commitments.

But – at least as debated in this round - one of these events was more probable than the other. The Aff showed that spillover to complicating these National Security interests was unlikely – if not inevitable.
The tricky part was the counterplan – as it arguably solved nearly all of the Aff. After a great deal of thought - I concluded:

- The counterplan does place the US in line with emerging global norms over how to handle prostitution policy (thus solving the international link to overpopulation).
- But, the counterplan has a solvency deficit for the multilateralism advantage. The Counterplan certainly gestures towards multilateralism – and thus attains some solvency. But it does not encourage State Justices to advance human rights without reliance upon legislative standards. And, the 2NR is pretty clear that more open-ended State Court flexibility is a bad idea in this context. This was germane because – for me – the Aff's multilateralism advantage was not solely about the immediate effect that prostitution rulings have on US commitments to I-Law (which the counterplan might stand to solve), but was also about inculcating a broader commitment to State and Judicial led compliance with on additional Human Rights issues (beyond the realm of sex work).

In the simplest terms… in the most convenient definitions, I concluded:
The risks of *not* encouraging greater State Court deployments of I-Law were greater than the risks that State-level I-Law would complicate specific US National Security interests.
… on to greater detail.

Why the risk of the disad is low

Opening Thoughts

The Neg did many things well on this disad – sometimes cutting to the chase on a ballot can make it appear as though the judge has only seen one side of things.
By the same token, there are some Aff threads that I won't comment upon. These args did make a difference – but weren't central.
In both instances, my goal is not to be dismissive – it's to avoid a 50 page ballot.
On this disad, I thought there were two problems.
I felt the Neg was a little thin on link/spillover questions (the 1AR read three cards on these threads – though, in fairness, two were read on the permutation debate). And I felt the 2NR was quite thin on the specific Aff arg that "State Court Justices can currently make decisions that are *influenced* by International Human Rights Law reasoning – even if they don't *expressly cite I-Law* (the Slaughter '5 ev).
I'll talk about those two items in greater detail. Then I'll talk a little bit about the impact.

Link and Spillover issues

When the round ended, I anticipated I'd read the Neg's evidence and the disad would be a little more "perception-based".
Let me unpack that.
My instinct was that the evidence would be about fears NATO allies might hold about the Aff – *even if a foreign soldier never stood before a State Court on a human rights charge*. Had the evidence been more "perception based" in this manner, I would have ignored several Aff answers and assigned this disad a greater probability.
However, the Neg ev did seem to be about *practice* (an actual "adverse" ruling) – and not the *theoretical* discretion of a State Court (power to make an "adverse" ruling).
This made the Aff "no spillover" ev more germane. The 1AR developed this thread by reading the cards below. The blue highlighting emphasizes areas where I think the risk of "spillover" to National Security interests is reduced:

History disproves their link

Julian G. Ku 1, Distinguished Professor of Constitutional Law and Faculty Director of International Programs at Hofstra School of Law, "Customary International Law in State Courts," 42 VA. J. INT'L L. 265, http://www.hofstra.edu/pdf/law_ku_customary_international.pdf
One prominent nationalist scholar has argued that, if the revisionist view were accepted, we would face the specter of 50 different parochial interpretations of CIL.340 My study demonstrates that even though key doctrines of CIL were immune from the appellate jurisdiction of the Supreme Court of the United States, serious splits between state court in terpretations of CIL did not occur nearly as frequently as might be expected.¶ Moreover, *state courts were just as likely to protect U.S. foreign relations interests as federal courts*. Finally, there is evidence that state courts would defer to executive suggestions on the proper application of CIL, thereby giving the President effective control over some types of CIL such as sovereign immunity. Therefore, this account shows that the chaos of independent state court interpretation of CIL has been the rule, rather than the exception, for much of American history.

Plan doesn't undermine treaty power

Martha F. Davis 6, Professor at Northeastern University School of Law and Co-Director of the PHRGE, THE SPIRIT OF OUR TIMES: STATE CONSTITUTIONS AND INTERNATIONAL HUMAN RIGHTS, N.Y.U. REVIEW OF LAW & SOCIAL CHANGE [Vol. 30:359, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=908283
Impinging on the Executive's Role¶ The federal constitution grants the executive branch authority over foreign relations.85 This delegation of authority ensures that the United States speaks with one voice when addressing foreign policy issues.86 Given the fact that the American system includes three coordinate branches of government, granting Congress or the Supreme Court the power to independently develop foreign relations principles, to negotiate treaties, or to participate in international fora alongside the executive could have a disastrous impact on foreign relations. For similar reasons, foreign affairs are the province of the national government, as opposed to the fifty states. The Supreme Court has vigorously policed state legislative efforts to engage in foreign policy. For example, the Court struck down the Massachusetts state legislature's attempt to shape the state's policy on Burma, concluding that the state law was preempted by the federal statute governing foreign trade with that country.87 Similarly, the Supreme Court disapproved of California's effort to vindicate Holocaust victims and survivors by requiring that insurance companies doing business in the state disclose information about policies sold in Europe from 1920 to 1945.88 According to the Court, this was a traditional foreign policy matter in which national interests overrode state interests.89¶ In contrast to legislative actions at the federal or state levels, *judicial opinions that cite transnational law have not typically been viewed as transgressing the primacy of the national executive branch in foreign affairs*. Perhaps this is because those domestic courts and judges that have ventured into the international law arena have generally done so in areas involving individual rights that are far from the central concerns of foreign relations, and therefore less likely to overtly interfere (card was marked here – this does go to a paragraph break)

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Even in a world of implicit clash, the 2NR answer to these spillover claims felt scant. I considered the following from the Neg:

- The Neg's "one voice" arg:

The warrant for why "one voice" is important is significantly diminished if voices # 2 thru #51 will defer to federal interests when human rights cases stand to complicate National Security.

- On the perm, the neg says something akin to, "Aff can't argue 'no link' because their thesis is that the Courts will grow to cite I-law more often".

Yes and No. The Neg is correct – the Aff ev does endorse more active State Courts. But, more active human rights courts don't have to ignore deference on National Security issues – much less ignore it when NATO soldiers are involved. Nearly all evidence in this round suggests courts will continue such deference.

- The neg argues that "if State Courts get more power, interested litigants could now assert themselves".

Fair enough. It is true that these Aff deference cards assume the status quo. I gave the Neg something here – although I don't think this "greenlighting" claim is rooted in much of their ev.

The Slaughter 2005 ev

This ev could be better – but I also felt the Neg could have done more here.
In a round with a million args flying about, this was an Aff thread that I always understood quite well. I didn't think the Neg addressed it perfectly in the Block. I felt it received even less attention in the 2NR. I suppose I could succinctly state "I thought this was dropped"… but people conflate "dropped" with "major implication" too often. Not all dropped args do much damage. I felt this one did.
To foreshadow, I did conclude that the probability of the case was also reduced. About 20 minutes before I voted, I reviewed everything. If you were in the room and saw me flailing my arms, I was muttering this to myself:
"I keep coming back to the fact that **if a judge wanted to** they could already made rulings grounded in I-Law, but without citing it…. Judges aren't doing this on National Security issues – and I mostly think it's because they tend to defer. But, I can't wrap my head around why a security-interests-be-damned, human-rights-or-bust Justice couldn't already be making the very rulings that the Neg fears – just without citing I-Law. What is it about *explicitly citing* I-Law that changes current incentive structures ?...
All of this jives with the disad being less perception-oriented than I initially suspected. If the disad's less about NATO's *fear* of deference getting broken, and more about deference *actually being* broken… then I think this Aff twist hurts the disad quite a bit.
I concluded that the probability of the disad was low.

Which Impact has larger magnitude ?..

Magnitude and probability differ.
I usually vote for the team with greater probability – as both sides tend to advance high-magnitude impacts. Due diligence required that I check that the magnitude of the Aff and Neg args were on comparable footing. I thought they were.
While it was not terribly central to my decision, I concluded – to my surprise – that the raw magnitude of the multilateralism impact may have even been larger than the Neg impact.
In some respects, the Neg outdebated the Aff on impact calc. Many of their arguments question whether the Aff can build multilateralism. Those arguments mattered for assigning *probability* to the Aff advantage.
But, in terms of *magnitude*, there was little impact defense against the multilateralism impacts. While imperfect and prone to indicts that it's overtagged, the 1AC impact is tagged "a laundry list of existential threats". It cites disease, climate, cyber-attacks, etc. This laundry list wasn't really countered by Neg evidence and wasn't called-out for being underdeveloped.
The only real impact D from the Neg about the Aff's terminal impact was a brief analytic that:

"… we outweigh their amorphous human rights impacts"

… the Aff de-characterized by saying that "they didn't run human rights impacts". I assessed that this Neg accusation was either under-explained or slightly off the mark. The Aff had some impact D versus Russia. It wasn't very good, but – in a comparative sense – there was more of it.

Thus, I exited the disad thinking that if the probability of the Aff wound-up being comparable, I would lean slightly Aff – due to magnitude.

Things I didn't vote Aff on

The Perm

I wouldn't fault anyone for voting Aff on this, but I did not do so.
I was a little tempted. The 1AR had a nice line about "low risk = no risk" – which can be a powerful premise. When you think about it, that's really the Aff's equivalent of the Neg's refrain that "the cplan is *sufficient* to solve the case". Both say:

"risk may be greater on our side – but that difference isn't meaningful"

The Neg beat the perm because:

- The 2NR evidence was solid. It got at the "low-risk-no risk" claim.
- More importantly – I think this Aff is NOT just about one-shot human rights enforcement on prostitution.

… as stated by both teams – and as deployed vs. the perm in the 2NR – the link isn't solely about "today". If the Aff causes broad enforcement of human rights, the disad can link not just to the immediate legalization of prostitution, but to what State Courts are doing with unrelated human rights law down the road.
The Aff could even be correct – the perm may initially appear as "one voice" (I am not convinced of this by the way), but if the Aff spurs State Courts to fill implementation gaps, the perm's cover won't last long. Multiple voices will eventually appear… and they'll do so on a day when Congress isn't providing cover.

The Aff's implementation refrain

Another Aff refrain is:
"We only fill current treaty gaps – we don't cause State Justices to embrace norms from treaties the US hasn't ratified."
This helps the Aff reduce the disad – but:

- The Aff ev on this could be much stronger
- Nothing proves that current treaty obligations could not be interpreted in a manner that conflicts with National Security interests. I continue to think State Courts will not choose to break deference, but I am less convinced that they couldn't dig it up from somewhere in currently-ratified I-Law. The "current vs. future treaties" twist was not – for me – the reason that deference would persist.

I thought this Aff twist did some damage to the Neg strategy – but not absolute damage.

The Counterplan

Does the c-plan solve the overpopulation/soil erosion adv ?..

Rather obviously.
I could explain this in fancy detail – but here's the germane Aff evidence on the advantage. It does not assume the distinction between the Congress and State Courts.
Sneha Barot 9, Senior Public Policy Associate at the Guttmacher Institute, Reclaiming the Lead: Restoring U.S. Leadership in Global Sexual and Reproductive Health Policy, Guttmacher Policy Review, Winter, Volume 12, Number 1
The world has changed markedly since 1994, when U.S. leadership in global sexual and reproductive health policy was on full display at the historic International Conference on Population and Development (ICPD) in Cairo. The agreements reached at this landmark event—actively supported by the United States—have been largely responsible for shifting the *global discourse on population issues* from one focusing on meeting macro-demographic targets for "population control" to a framework defined by recognizing the reproductive *health and rights of women* as the *best way to promote development.*¶ In the 15 years since the ICPD, even as U.S. policy regressed, the international community continued to move forward, embarking on a new development agenda outlined in the Millennium Development Goals (MDGs). Embraced by donor and developing nations alike (but largely ignored by the Bush administration), the MDGs established ambitious targets and goals related to reducing poverty and furthering development, including addressing women's health and equality.¶ From its first week in office, the Obama administration has strongly signaled its intent to restore the country's reputation and its commitment to a progressive foreign policy that prioritizes development assistance and embraces the MDGs. As expected, President Obama moved quickly to overturn some of the most heinous policies of the previous administration affecting U.S. international family planning and reproductive health assistance. *But to truly demonstrate seriousness and significance* when it comes to sexual and reproductive health and rights, *more must be done*. The United States must reclaim its leadership role in the international arena by fulfilling its commitments to Cairo and the MDGs, and by *forthrightly promoting a global agenda on women's sexual and reproductive health*. It can take the first steps by reprioritizing women's health in its own foreign assistance policy and by negotiating strongly on these issues at a series of upcoming international conferences.¶ The Legacy of the ICPD and MDGs¶ The "Programme of Action" that emerged from Cairo endorsed by 179 countries represented major strides in the area of women's health and rights—gains strongly supported and negotiated by the U.S. delegation, under the chairmanship of Undersecretary of State for Global Affairs Timothy Wirth. At its

heart, the ICPD embodied a breakthrough acknowledgment of the *critical role of women*—including the *achievement of their legal rights and the elevation of their social status*—as necessary and integral to "sustainable development" at the family, community and country level. Meeting women's needs was officially recognized at the global level as the appropriate, *fundamental goal* guiding the formation and implementation of development *and population policy.*¶Thus, after Cairo, it was unacceptable to promote population control as the raison d'etre for environmental sustainability, economic development or family planning programs. Instead, the ICPD affirmed the basic reproductive right of "all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health." To that end, countries committed to achieving universal access to reproductive health care by 2015.The following year, at the 1995 Fourth World Conference on Women in Beijing, the Cairo principles were reaffirmed.¶ Although the Cairo agreement signified important steps forward, the outcomes were by no means perfect. Political compromises over contentious issues such as abortion were necessary. Nonetheless, the consensus reached around even this controversial issue still represented progress. For example, while access to abortion was not recognized as a reproductive right per se, Cairo moved the discussion of abortion to the health impacts of unsafe abortion, which the final document recognizes as a major public health issue. ¶ Six years later, the world's leaders converged again to craft an agenda to end extreme poverty by 2015 outlined in the Millennium Declaration. At the New York headquarters of the United Nations (UN) in 2000, 189 countries pledged to meet eight development goals related to poverty, education, gender equality, maternal and child health, HIV/AIDS and the environment (see box). Attempts to promote an explicit reproductive health and rights agenda within the MDGs, however, were vigorously undercut during negotiations by the Bush administration and its allies within the so-called G77, a coalition of developing countries seeking to enhance their negotiating power within the UN by acting jointly. These deficiencies have been at least partly remedied over time. In the 2005 World Summit Outcome document, world leaders agreed to integrate the ICPD goal of universal access to reproductive health by 2015 into the strategies aimed at achieving the MDGs on maternal and child health, HIV/AIDS, gender equality and poverty. The UN Millennium Project, an independent advisory board commissioned by the UN to develop concrete plans to implement the MDGs, subsequently produced a blueprint endorsing the necessity of sexual and reproductive health to attaining the MDGs and describing interventions to that effect. Now, universal access to reproductive health is listed as a target for the MDG on maternal health, and fulfilling the unmet need for family planning is identified as a strategy for achieving this target.¶ The United States Retreats…¶ Although the ICPD marked the jumping off point for the world to move forward, U.S. policy regressed in the years immediately following. With the takeover of the House of Representatives by a conservative Republican leadership hostile not only to abortion rights but also to family planning programs, U.S. funding levels for international family planning assistance declined from their high-water mark in FY 1995, and by FY 2008, funding had dropped by nearly 40% when accounting for inflation. Policy restrictions subsequently imposed by the Bush administration further undermined U.S. credibility and leadership. From 2001 until President Obama rescinded it in January, the Mexico City policy (otherwise known as the global gag rule) prohibited U.S. funding for family planning to indigenous groups overseas that engaged in any services, dissemination of information or advocacy activities on abortion with other funds. And every year since 2002, President Bush blocked congressionally appropriated funding for the United Nations Population Fund on the basis of unfounded allegations of its complicity with coercive abortion practices in China. ¶ These policies have had repercussions beyond access to sexual and reproductive health services. Because the sexual and reproductive health of a country's women and their partners is so integral to its ability to achieve other development targets, the larger objectives of social and economic development as espoused by the ICPD and the MDGs have also been crippled. Developing countries that do not provide or are impeded from providing adequate access to sexual and reproductive health care can only attain limited economic and social progress. Moreover, the global gag rule obstructed human rights and democratic values that the United States ostensibly cares about, such as civil and political rights related to speech and assembly, which are

constitutionally protected for its own citizens and recognized in international treaties.¶ …But the World Moves Ahead¶ While U.S. policy has been lagging, other countries and regions have been forging ahead in their efforts to promote the sexual and reproductive health and rights of women across the developing world. Countries in Europe especially have moved in to fill the leadership void. Initiatives such as the Safe Abortion Action Fund, established in 2006 by the United Kingdom's Department for International Development, were specifically developed to ameliorate the harmful effects of the global gag rule. European donor countries have also been proactively engaged in pushing progress on more politically sensitive sexual and reproductive health concerns. Indeed, countries such as Norway, Sweden, the Netherlands, the United Kingdom and Denmark have been at the forefront in funding programs in areas such as adolescent reproductive health, safe abortion services, and sexual health and rights. European countries have also been much more eager than the United States to adopt and encourage the language and policy framework of international human rights, as formally delineated by the UN system, in their own programs and policies. ¶ European donor countries are ahead of the United States not only philosophically, but also financially. Although the United States remains the leading donor country in overall amounts for foreign aid, European and other developed countries contribute far more of their gross national income (GNI). (GNI comprises gross domestic product plus net income from abroad.) In 2007, according to the Organisation for Economic Cooperation and Development (OECD), the United States spent less than two-tenths of one percent (0.16%) of its GNI toward official development assistance, placing it last among members of OECD's Development Assistance Committee (see table). Among committee members, only European countries have met the UN target of allocating 0.70% of GNI toward official development assistance.¶ Meanwhile, other progress in promoting a sexual and reproductive health agenda has been occurring at the global, regional and country levels. Although thwarted during high-level international conferences by the United States and other conservative countries, UN bodies and agencies have nonetheless made key advances in securing reproductive rights.The UN treaty monitoring system has developed a body of important jurisprudence through the committees that evaluate countries' compliance with the six major international human rights treaties. For example, the Committee on the Rights of the Child, which monitors compliance with the Convention on the Rights of the Child, has interpreted the treaty to require governments that are a party to the convention to provide adolescents (defined by the UN as 10–19-year-olds) with access to comprehensive sexual and reproductive health information, "including on family planning and contraceptives, the dangers of early pregnancy, the prevention of HIV/AIDS and the prevention and treatment of sexually transmitted diseases," ensuring such access "regardless of their marital status and whether their parents or guardians consent." ¶ Similarly, regional-level bodies have carved out important victories for reproductive rights. Again, Europe is at the forefront, as evidenced by the actions of the Council of Europe and of the European Court of Human Rights. For example, in 2008, the Parliamentary Assembly of the Council of Europe issued a resolution recognizing that the "lawfulness of abortion does not have an effect on a woman's need for an abortion, but only on her access to a safe abortion" and urged restrictive member states to decriminalize abortion within reasonable gestational limits. The European court has also built important precedent for women's reproductive rights. In a historic case against Poland in 2007, the court found that once governments decide to legalize abortion, they must ensure that obstacles do not impede access to the procedure.The African Union has also made progress through its Protocol on the Rights of Women in Africa, which requires states to "ensure that the right to health of women, including sexual and reproductive health, is respected and promoted." It goes even further by being the first international treaty to articulate a woman's right to medical abortion on a number of grounds, including cases of rape, incest, endangerment to the physical or mental health of the mother or when the life of the mother or fetus is threatened.¶ Finally, at the country level, the trend toward recognizing the full range of women's reproductive rights has continued.While the United States has been pushing for greater restrictions on women's reproductive autonomy at the domestic and international levels through all branches of the government, 16 nations have liberalized their abortion laws over the last 10 years, and an additional two have expanded abortion access in certain jurisdictions. Only two countries have moved against the tide by removing all grounds for abortion access (see chart).¶

Forging a New Agenda¶ *Repairing, rethinking and realigning U.S. foreign policies on sexual and reproductive health* will be a formidable task, but President Obama has laid the groundwork. The Obama campaign formally expressed its commitment to the current global development agenda by incorporating the language of the MDGs into its campaign platform and promising to support and achieve the MDGs. With respect to foreign aid, the president has conveyed a willingness to ameliorate the low funding situation for family planning programs; as a senator, Obama endorsed increasing funding for international family planning programs to $1 billion. ¶ However, it is one thing to rejoin the mainstream, but *quite another to be a recognized leader*. There is no doubt that President *Obama* and Secretary of State Hillary Rodham Clinton are committed to sexual and reproductive health and rights, and to placing a high priority on development assistance within U.S. foreign policy. Indeed, Clinton has been a long-standing champion of women's rights in general and of reproductive rights specifically. At the 1995 Beijing conference, as head of the U.S. delegation, she forthrightly proclaimed that women's rights are human rights—a sentiment she reiterated during her Senate confirmation hearing. And she endorsed development assistance—one of the "three legs of American foreign policy"—as "an equal partner, along with defense and diplomacy, in the furtherance of America's national security." The challenge confronting the administration, then, is not one of philosophy, but one of priority. ¶ There are several ways that the administration, assisted by a supportive congressional leadership, can begin to reestablish the country's global leadership. The obvious first step would be to increase foreign aid to international family planning programs. As a donor nation, the United States, along with other donor countries, promised to provide one-third of the total funds needed to meet the ICPD benchmarks (with developing countries themselves supplying the rest); however, the United States has not carried its fair share. Accordingly, U.S. advocates are waging a concerted effort to more than double U.S. family planning assistance to at least $1 billion, based on the targets set at Cairo. Indeed, a recently released report by five former directors of the Population and Reproductive Health Program of the U.S. Agency for International Development (USAID) recommends that FY 2010 funding for USAID's population budget be set at $1.2 billion and raised to $1.5 billion by FY 2014. ¶ Along with bolstering the budget for family planning, and in keeping with the integrated goals of the ICPD and the MDGs, policymakers will need to robustly support other development programs that are crucial to ensuring the promotion of sexual and reproductive health, and vice-versa, such as those addressing girls' and adult women's education, and women's access to vocational training and financial credit.¶ As Congress embarks on a long-term effort to reform and restructure U.S. foreign aid more broadly, policymakers must look comprehensively at the U.S. global health effort, and confront the reality that HIV/AIDS programs currently claim an extremely high proportion of the total resources allocated. Particularly in difficult economic times, it will be a challenge to "gross up" authorization levels for other critical global health portfolios, including but not limited to family planning and reproductive health. That, however, is what will be necessary to ensure that the country has an effective, global health strategy that in turn feeds into a comprehensive effort to combat poverty and promote sustainable development worldwide. ¶ Although the administration has already dealt with some policy modifications such as rescinding the global gag rule, there are long-term restrictions within the 1961 Foreign Assistance Act that prohibit the United States from funding the full range of reproductive health services in its foreign aid. In particular, the 1973 Helms Amendment bans U.S. funding for most abortion services abroad. In fact, given the high toll paid by women in the developing world who obtain unsafe abortions, there is little reason other than politics that the United States should not join other donor countries in supporting the provision of safe abortion services abroad. Yet, even a more progressive Congress is unlikely to repeal the Helms Amendment anytime soon. Meanwhile, however, at least some of its harmful—and unnecessary, if long-standing—effects could be mitigated administratively through revised field guidance highlighting activities that are, in fact, permissible under the law. Such activities would include USAID support for clinical training under certain conditions; provision of neutral, abortion-related information; and funding of abortion services in cases of rape and incest or where the life of the woman is in danger. ¶ Finally, while the administration works with Congress to ensure the appropriate role of sexual and reproductive health within overall U.S. global health and development efforts, it must not neglect the same advocacy at the

international level, where issues of sexual and reproductive health are at risk of being lost among concerns of financial crisis and worsening poverty among both developing and developed countries. It is imperative that the United States reminds others of the integral role of reproductive health in economic development and fights to keep these issues on the world's agenda.¶ The Obama administration will have plenty of opportunities in the coming months and years to demonstrate renewed leadership on the global stage, beginning with the ICPD+15 commemoration this year and the 10-year follow-up to the MDGs in 2010. At a range of important conferences, *advocates will be looking to the United States to take a strong leadership role* in negotiating progressive outcomes for consensus documents, so as to further a progressive and effective policy agenda for population and development. In particular, the world will be watching as the U.S. delegation negotiates a likely MDG+10 outcome document, with advocates *monitoring its commitment to tearing down barriers to the vindication of the sexual and reproductive health and rights* of millions of individuals across this planet.

… because I ultimately determined that the Aff was better for US credibility, I did grant the Aff a very small solvency deficit here. It was extremely marginal.

The Cplan and solving Multilateralism

On that Tuesday morning, I spent about 45 minutes on this question. While I do think the cplan gains some solvency, here were my concerns:

- Neither team has much evidence speaking to the effect Congressional action would have on the willingness of State Courts to fill implementation gaps outside sex work.

At times, the Aff has a simple – if not overly-simplistic - take on this cplan. They argue that the cplan can't solve – as all Aff ev is about State Courts (cross-fertilization of legal reasoning, courts being assertive in filling implementation gaps, etc).

This misses the Neg twist – the cplan may not *start* with State Courts, but that doesn't mean they're never involved. There was a whole debate about The Supremacy Clause that I won't rehash, but the Congress cplan does mean State Courts would enforce newly-legal prostitution. There's no evidence that a legislative-led process would encourage State Courts to think about I-Law more generally… but I cut the Neg some slack here. The cplan creates a legislative standard that cites I-Law. Logically, judicial branches might well think about I-Law when enforcing.

The real question is whether this "State Court follow-on" grows contagious over time. Will the cplan's process inculcate norms that encourage State Courts (or any actor) to fill implementation gaps outside the realm of sex work ?

It might – the 2NR is savvy and argues that the 1AR ev on "judicial cross-fertilization good" could spin Neg. Such fertilization would *certainly* be spurred by the Aff, but *might also* "catch-on" via the cplan's reactive judicial enforcement.

That said, the card that most closely speaks to these solvency questions is the 1AR Davis '14 ev (the next header is all about this card). This card spoke to the value of State Justices proactively advancing human rights *without reliance upon legislative standards for their decisions*.

- Some of the Neg's distinctions between the plan and Cplan *cut both ways*.

Once again, the Aff advantage is about longer-term State-Level enforcement. The Neg effectively used this twist to help vs. the permutation. But, logically, the more the Neg says things like…:

- "Congress should have sole authority to decide what treaties mean".
- "There should be exclusively one Federal voice on these questions"…

…. the tougher it is to conclude there's no solvency deficit.

The Davis '14 card

This card was important. I spent a chunk of time here because I do think it could spin both ways.
The Neg spin is this: Cplan cites I-law. That causes State-level follow-on. That – in turn – means State Courts "become more familiar with human rights law".
The Aff spin is that the plan generates all the same familiarity, but with:

- State Courts more *proactively* leading via creation of "their own human rights jurisprudence"
- a model where State-Courts are more *willing* to "adjudicate a violation of human rights law standing alone, without having to rely on analogous standards in state law for the rules of decision".

Martha F. Davis 14, Professor at Northeastern University School of Law and Co-Director of the PHRGE, with Diego Iniguez-Lopez, Robert L. Carter Fellow at The Opportunity Agenda, and Juhu Thukral, Director of Law and Advocacy at The Opportunity Agenda, "Human Rights in State Courts 2014,"
http://opportunityagenda.org/files/field_file/2014.2.06.HumanRightsinStateCourts.pdf
Courts have been reluctant to view themselves as substantively bound by international human rights principals.749 Nevertheless, they have been much more willing to invoke such principals in interpreting domestic legal norms.750 Thus, as scholars have continuously argued, "[t]his 'indirect incorporation' of international human rights law continues to be a promising approach warranting greater attention and increased use by human rights advocates."751¶ State court litigants should consider incorporating international human rights standards as interpretive guides for state constitutional and statutory guides whenever strategically possible.¶ This approach has several advantages. It insulates decisions from review by the U.S. Supreme Court and protects them from removal to federal court.752 Thus, state courts can safely develop their own international human rights jurisprudence without the possibility of intervention and frustration by federal courts. This "indirect incorporation" approach also allows state courts to circumnavigate the self-execution doctrine and reservations to treaties that otherwise may limit treaties' impact. These limitations are less relevant when state courts are not asked to apply treaties as governing law.¶ Furthermore, *the development of a jurisprudence where human rights plays a subsidiary but important role may encourage state courts,* which have limited familiarity with such law, to *examine international sources of obligation more frequently*. As they *become more familiar* with international human rights law, they *may be more willing to adjudicate a violation of international human rights law standing alone*, without having to rely on analogous standards in state law for the rules of decision. And over time, *as international human rights principles become more integrated into state law*, courts *will define rights more broadly* and *will hold governments accountable for enforcing those rights*, expanding opportunity for all Americans.

This card doesn't really assume Congress-initiated State-Court "follow-on"… In fact, no Negative evidence does.
I thought about this from the Neg's perspective, and the word "sufficiency" rang through my head. But, I didn't jump on the "sufficiency" bandwagon for the perm and I didn't here either. To get a little "inside baseball", I think the Neg might build familiarity, but the Aff does a better job of building both familiarity and proactive willingness.
At a minimum, the Aff is a far safer bet for solving long-term implementation gaps. This – coupled with the "cuts both ways" argument mentioned on the last page – meant there was reasonable solvency deficit in my eyes.

Neg Defense unrelated to the Cplan

The Multilateralism Case Turns

While deciding, I considered the following:
"Maybe the true disad isn't NATO – which is feeling a little improbable.. Maybe it's just the case turn that multiple US voices wreck multilateralism"
The problem for me was uniqueness.
Once the Aff gets a reasonable solvency deficit vs. the cplan, the status quo is ugly for multilateralism. The 1AR and 2AR both question the uniqueness of these "turns case" threads. And, the Aff ev is too strong that US multilateralism is wrecked now because of broader implementation gaps in human rights treaties.
Uniqueness would be irrelevant if the Neg turns accessed an internal link that was more important to multilateralism than long-term implementation gaps.
I won't run through each Negative card – but the best offensive ones were *Posner* ("multiple voices = confusion") and *Parrish* (the one about extra-territorial torts). I felt that neither had as strong of an internal link to multilateralism as the Aff. Some of it is that these cards are a little equivocal. But much of it is that the Aff internal link to multilateralism is quite strong.

Remaining Case Defense

At this stage, the Aff has the following on their side:

- Their signature offensive argument is more probable than the Neg's
- Their signature offensive argument is of slightly greater magnitude
- There's no impact defense vs. "existential" risks that emerge in the world of the Neg ballot

… it's not impossible that I could still vote Neg – but the unassessed Case Defense would need to very, very seriously reduce the probability of the Aff.
I felt it did not.
Here are the major Neg threads:

- The Moravcsik and Somin cards:

Great cards – but I think they get at a different Aff advantage than the one at hand. The question is not really one of modeling or the *human rights benefits* of committing to human rights norms.

- Surveillance Alt cause:

This was extended in the very fleeting moments of the 2NR – maybe even after the timer. It was hard to assign it much weight. And, this is but one implementation gap (one that the Aff could even address in time) - overall the Aff seems a better approach for issues of this sort.

- State Courts can't boost I-Law

The largest reductions came here. The 1AC ev could be better on this. But, as the round progressed, the Aff read ev that State Courts will improve as they start to become more comfortable with I-Law. Many Neg indicts assumed a snapshot of today.

- Multilateralism fails

This does get at the solvency for the "laundry list" scenarios. But the Aff ev defending multilateralism is decent, if not of comparable quality.

Closing Thoughts

Conclusion

Collectively, the combo of the cplan and case args does reduce the probability of the Aff.
But, after much reading, my instinct was that the disad was even less probable than the Aff's somewhat-unlikely multilateralism advantage.
Sequentially, the last thing I did was give the neg's disad a second-look. The re-read confirmed my suspicion – especially in reaction to the spillover and Slaughter args.
I determined that greater risks rested with the Negative option – so I voted Affirmative.
Thank you for the opportunity.

If you (ustedes) have questions…

I am not ecstatic that this ballot made Scott Harris' look concise.
Then again, the Aff handed us a speech doc was 42 page long. The Neg's was 74 pages. Believe it or not, I can think of a dozen things I failed to mention in this ballot.
Thus, I am open to questions posed by anyone.
I will prioritize questions posed from those affiliated with the UMich and Northwestern programs – but I'll gladly answer questions from all parties.

Best,
Will

Paul Elliott Johnson, University of Pittsburgh, pejohnso@pitt.edu

Before I go into my decision, I just want to thank the teams for the opportunity to judge the debate, and also to commend everyone on remarkable debate careers. Arjun, I honestly think winning the Shirley four times might be the most impressive thing anyone in debate has ever done. Miles, I'm very impressed by your flexibility as a debater: few people go from waxing poetically about Wendy Brown to blowing up a technical counterplan. To Ellis and Pappas: what an odd circumstance! I judged you three times this year—and these were the only three times I judged you in college—and each time it was an incredibly high leverage debate against a top level opponent. I don't know how often that happens, but you all were excellent every time. Pappas I thought you were very good in cx every time I saw you. I especially appreciated, Ellis, that you occasionally slow down for a second and try to tell the judges what is going on. That's important.

"The Decision"

I voted **negative in this debate for the University of Michigan**. The negative won some risk of a disad with a pretty substantial impact and I thought that most of the affirmative pirouettes in the debate to both win their case advantage and play link defense to the DA ultimately created what we professionals call a "hoisted on your own petard" type-situation. The quality of the aff debating in one area ultimately doomed them in another.

DA LINK

I think there were three key vectors to resolve in determining whether or not the disadvantage linked: 1) Questions of spillover i.e. are these regimes/areas (soft HR law and formal treaty commitments) distinct and does it make sense to think about them as such, 2) Some version of challenge is coming and these ad hoc challenges will trigger the link, and 3) the question of the permutation and its relationship to the link.

The spillover question I think has the most intuitive power for the affirmative: several times in the debate the affirmative is—appropriately—insistent that the customary international law incorporated by the affirmative in order to fill our treaty gaps is a separate regime from the former bilateral treaty commitments to institutions like the North Atlantic Treaty Organization. Furthermore, there are some pretty strong pieces of AFF evidence that suggest this spillover concern is not much of a worry. The MELISH evidence which suggests that "the law of armed conflict…prevails as *lex specialis* at points of intersection and hence falls outside treaty body jurisdiction" makes clear that the United States is generally capable of sustaining the claim that the LOAC is separate from human rights law. Similarly the 1AR Ku evidence is very persuasive that state courts are as likely as higher courts to "protect U.S. foreign relations." The Kuhener evidence seems to sustain the affirmative's "its not new treaties its *gaps*" argument by suggesting all the aff does is bring us in line with existing obligations rather than create new ones. The Davis evidence is of a kind with the Ku evidence which suggests that lower court adventurism in human rights area's tends to affirm relatively non-controversial individual rights rather than the sort that are likely to interfere with the political branches.

The difficulty for me in resolving this set of—admittedly well evidenced—claims for the affirmative is that they run headlong into the central affirmative claim about what the advantage does, namely that the aff spills-over to resolve general international concern about our multilateral commitments. The 1AC Melish evidence, the evidence the affirmative repeatedly cites as their spillover evidence, certainly suggests that we are dealing with processes and multiple moments of affirmation. Moreover, the framing of the counterplan answers repeatedly uses a language of spillover, suggesting that if I determine that the counterplan doesn't really solve the aff—and ultimately, I do think there is a large solvency deficit to the counterplan—I have to draw that conclusion on the ability of the decision to spillover. This is why ultimately the intuitive "it's a different set of laws" link argument falls flat: Ku, Melish, etc. mostly seem to indicate that the existing separation between the HR law the aff effects and the military law is an *effect of current practices of jurisprudence not some God-given fact about treaty/human rights obligations*. If the affirmative changes the game in terms of empowering the state judiciary to erect a robust bulwark in defense of human rights, one that might differentiate itself from SQ jurisprudence (that's the aff's solvency) in ways that accord our HR interpretation with those of other nations. In order to win these no link arguments I think the aff would have needed to have gone a step further and suggest that there were no *latent tensions* between HR and LOAC law that a more aggressive state judiciary could expose. Ultimately, it was very difficult for me to conclude that if the aff did what it needed to do to solve the advantage that it would not involve lower courts turning a *de facto* separation of two bodies of international law into a *de facto* interaction between the two. Even existing treaty commitments might contravene other existing treaty commitments depending on how they are interpreted.

The "challenges inevitable" question is a little funkier although less complicated because there is considerable less interaction with the case debate. I am sympathetic to the argument that Michigan could have used more work on this in order to neutralize the argument, and as a result engaged in a reading practice that was charitable to the aff Slaughter evidence. Ultimately, I simply could not square this evidence with the bulk of the no link arguments that indicated the citations that would occur in the SQ wouldn't be link triggers. This is a spot where if I had one general point of advice for the aff (or more likely, future debaters reading this ballot having watched a video of the debate) it was the kind of argument that begged for an *ethos* moment to call the judge out of a headspace of furiously writing down arguments without processing them. As it was I think the affirmative's decision to proceed as if this was a dropped and deadly argument was a risky one that didn't work out for me because the quality of all the other evidence in the debate about the *character-not the facts*—of the decisions in the future was very clear.

The permutation was a curious creature in this debate, in that I think the permutation could not really resolve the link unless it also did not spillover. What matters for the aff's ability to get to the multilateralism advantage is whether or not it creates a precedent for states to continue to cite foreign law. I think had I concluded that the counterplan solved the aff, then the permutation probably would have been able to resolve the link because the aff would have retained solvency. But the aff is mostly interested in spinning their perm in terms of shielding which doesn't make sense considering what the link to the disad is about: it's not about preserving the political capital of the state judiciary or some such; it's about whether or not the state courts feel empowered to cite international law more. The simultaneous nature of the permutation suggests an odd Eureka! moment between the feds and states that both come to the same conclusion at the same time. Suspensions of disbelief aside, if the lower courts can cite another country's law in order to solve the advantage then that has to create some kind of precedent. I don't really understand why the perm stops the slide to that, and so I don't think it fixes the DA link. The alternative would be to imagine the perm

means that state courts only cite other nations if the Congress ok's it first, and then the aff has no advantage. The word presumption could have appeared here in the 2AR, perhaps to the affirmative's benefit, if only to make thinkable a world where the perm means the aff has no advantage but there is also no NB.

DA IMPACT

I think this is one of the toughest parts of the debate to parse, and I really don't like being put in the position of reading and sorting cards to determine what happened in the debate. The neg is doing a good job of spinning the impact as being a lot less about NATO's capacity and more about its ability to project a solid, cohesive front in the face of Russian aggression. The aff argument that seems to make the most headway is the 1AR Apps evidence which suggests there is little taste for intervening on the NATO side, which means that escalation would be pretty unlikely. On balance the negative evidence is a lot more qualified than the aff evidence, and I really thought Klion and Daalder were especially excellent. The 2NR also extends the Lucas evidence as a turns case argument: that a Russia running roughshod will ruin human rights. I don't really see this as Russia negating multilateralism so much as denuding the scope of "with whom" we could be multilateral, and so as far as Russia's sphere of influence/conquest expands there we find the limits to our multilateral strategy.

Overall Disad Assessment

I think the negative won a really huge chunk of a DA that has a modest chance to escalate because NATO might lack the stomach for a fight. If it did escalate, it would be a very big problem. If it doesn't escalate, it still probably reduces somewhat the scope of the world that can participate in human rights multilateralism. I don't think the neg winning a huge risk of the DA is a function of the DA's truth but rather a function of how the case defense arguments forced the aff to frame their aff as having a big spillover, thus making irrelevant the majority of their own no link arguments to the DA. I think the affirmative would have been well served to argue that the time-frame to most of their general impacts to multilat could be very long term, but the Russia time frame was very short term, and it would be unlikely that one day after the plan some judge in Missouri wakes up and decides to stick it to NATO. More likely, it would take something like a decade for changes to creep in and up that would challenge our alliance. Just my two cents.

Counterplan

I didn't really think the counterplan solved the aff. The aff evidence is pretty clear on the need for lower courts to be taking the lead here, and while the Neg is right that the Melish evidence does talk more generically about engagement than court engagement, I think there has to be some kind of spillover effect to constitute the broader, more multiple engagements that Melish describes. The Rooney evidence is very generic, and I think Wilkinson doesn't quite come to grips with the dialoguing part of the aff that suggests information would flow in and out of U.S. state courts from the international setting, gradually resolving the lack of 50 state action. The "50 states acting together is a lucky day!" argument in the 2NC and 2NR is clever, but to the extent it raises solvency questions about the aff it would also devastate the DA link. I discussed the permutation above: suffice it to say I was less than convinced about all the time the 2AR invested in it given that shielding is irrelevant to the DA link.

Case
The aff won a strong risk of creating more multilateralism with nations that would be interested in multilateral solutions and engagement and certainly won that multilateralism could address a number of sources of violence and instability, though I really think a 2AR more focused around the terminal impact to multilat and less focused on the permutation would have been better. The 2NR extended three major elements of case defense: 1) nations uninterested in the values of other nations will be recalcitrant (the technical terminology in IR theory is "haters gonna hate,") 2) some thumpers about torture, surveillance, and other U.S. actions, and 3) and a multilat fails argument from Langenhove which was extended on the counterplan flow. I thought the strongest AFF debating was in response to the thumpers, which they mostly threw onto the dustbin of history (albeit to their detriment of their ability to play defense on the DA link). The aff was a lot weaker on the theory of why other, holdout nations would go along: a card from a constructivist or a critical cosmopolitanist who is like "national interests and malleable and in flux" would have been a helpful catch all to deal with something like the Moravchik evidence that says holdouts hold out for their own internal reasons. It's an old card, certainly, but how have nations become less self-interested in the last decade? Over the long haul the aff might fix these problems by having an "outside-in" approach to changing civil societies globally but that is a framing the 2AR needed to adopt. The 2AR also asserts that multilat solves Russian escalation, but: how? The Brimmer evidence comes closest to doing this when it poo-poos hard power, but if Russia isn't one of the holdout nations difficult to influence of the sort discussed by the 2NR, who is? The 2AR's strength ultimately is on proving their aff can create a dialogue and engage other nations, but falls pretty short on convincing robustly that national interests can be rearticulated. Final rebuttal focused too much on the case argument they were really taken to school and less on a more basic, "national interest determines" argument also extended by the 2NR.

I did not understand the decision to talk about soil erosion in the 2AR. These are offshoots of the second part of the advantage the counterplan seems to pretty clearly solve and the 1AR dropped some D on it.
Overall, there is a strong risk of a NATO collapse and Russian adventurism with a modest risk of escalation. The affirmative triggers a more effective version of multilateralism amongst nations already predisposed to a certain set of liberal values. There is a greater depth and specificity to the negative impact scenario, and the 2AR's decision to allocate so much time to winning the permutation and spillover questions leaves them behind on either winning a monster case advantage or that the case advantage is just clearly larger than the DA.

John Turner, Dartmouth

First, I would like to acknowledge the skill, effort, and dedication on display in one of the best debates I have judged in many years. Those of us judging and watching the 2015 NDT finals had the privilege of watching four historically talented and accomplished seniors leave the stage in style – as exemplars in synthesizing high quality research, technical acumen, and strategic decision-making. All of the judges agreed this was an exceptionally high quality as well as close debate.

Ultimately, I decided that the permutation avoids the vast majority of the link to the treaty power disadvantage while preserving a small net benefit in terms of US multilateral credibility and foreign policy leverage. Any residual link to the spillover effects of the plan doesn't have enough of an internal link to the neg's law of armed conflict and foreign policy interference impacts to outweigh increased US leverage/effectiveness that follows from increased compliance with treaty obligations in the health and labor areas of human rights.

I will start with the characterization and application of link arguments to the permutation because it shapes much of my evaluation and comparison of evidence for much of the remainder of the debate. The negative's key link arguments to treaty powers are explained in terms of the different possible institutional arrangements for determining (and then implementing) US human rights treaty obligations. The 2NR's characterization of the disadvantage as asking primarily whether the US should have a federal or sub-federal system for determining those obligations immediately raises the key question of what the permutation means for the relationship between international treaty obligations, state courts, and Congress. In the 2NR's characterization, the permutation would be perceived, at best, as a "lucky day in court" for human rights (in the areas of health and workplace/labor) plaintiffs. Since the actions of the Congress and the state courts would be uncoordinated (the "not follow on" argument from the 2NR), the permutation would not resolve links related to state court encroachment on federal treaty powers. The 2NR phrasing of the either/or on judicial federalism references evidence from Powell. This evidence uses the language of "bypassing the fed" as part of a "revisionist theory" that violates the presumption that "one system – either federal or sub-federal has a predominant voice." The Bradley evidence from the block uses similar language in arguing that the Supremacy clause allocates no responsibility to the states for determining human rights treaty obligations. Secondly, the 2NR frames the permutation as challenging the presumption that only prior signal/authorization from federal political branches permits state courts to act as a forum for complying with obligations (Wu and Christenson). In particular, expanded state court activity in the area will harm what the 2NR describes as the "right to violate."

I found the aff description of the permutation providing a shield from those 2NR link arguments more persuasive because the rhetoric of 1AC evidence supports the distinction between the ruling made by the plan (and its spillover effects) and law of armed conflict. Most importantly, the aff's appropriation of the "unified voice" phrasing of the negative link argument fits with the state courts acting in response to federal signal on the area. It is hard to reconcile the 2NR's characterizations of the permutation as a lucky/random/ad hoc approach to human rights obligations with the aff's evidence that treaty obligations in the area of (human) right to health have traditionally been left to state courts (Davis – 1AC and later cards). In the language of this evidence, "the Supremacy clause requires state courts to consider transnational authority" to avoid an "implementation gap." Furthermore, this is an area "reserved" to the states for assuring compliance. Thus, the strongly worded objection from Bradley that the Supremacy clause doesn't provide any role to the states to determine the scope of compliance doesn't appear to apply to an area where there are already signals from the political branches that the state courts need to step up activity in ensuring compliance. Rather than raising issues of mootness, the permutation ensures that the state courts aid in having the US speak with "one voice" in the area of health (and larger human rights). There is some chance that this supports the 2AR claim that the counterplan represents a more ad hoc approach than the permutation.

However, the net benefit to the permutation, increased activity by the state courts to ensure compliance (and therefore, multilateral credibility/leverage), raises the issue that the 2NR extends on the disadvantage flow: does the spillover of the state courts' newfound willingness to act generate a link precluded by the counterplan's limitation to Congressional assertion of a new model in prostitution? Similarly, the 2NR references the durability of fiat changing the resolution of any challenges to state court (assertion of) authority to magnify this link. A different Bradley card is the best negative evidence on this issue, explaining that human rights treaty obligations are vague, overlapping and thus would require substantial litigation to determine with any precision. However, the 2AR (and earlier cross-ex exchanges) make the threshold for the spillover link arguments very high. In large part because the aff's interpretation of these areas as "compliance gaps" rather than new rights that encourage state judicial activity that interferes with federal responsibilities, the spillover will be in areas where the states need to remedy flaws in human rights implementation (Kuhner). This is unlikely to create areas of substantial conflict/difficult overlap because as Ku describes,

50 state interpretations of US customary obligations are not that likely given that the federal courts have not split substantially over similar issues (contra Wilkinson). The aff's argument that these are not new obligations also shapes my reading of the negative's other spillover link evidence (Sloss) because, in these areas, the state courts would not be changing from a non-self executing to self-executing model (in the case of the permutation especially, given that the counterplan may be added implementing legislation beyond TVPA for the US Palermo obligations – but this is an issue raised mostly in the cross-ex rather than the final rebuttals).

Though the negative wins that there will be an increase in litigation in state courts to determine US obligations, the internal link between that litigation and the impact areas raised by the negative is highly questionable. The distinction between the law of armed conflict, international humanitarian law, and international human rights treaties establishes a difficult burden for the negative. The negative evidence about the proclivity of state courts to venture into these areas does not respond to the aff's cross-ex/evidence that the courts consider LOAC to be an area of "lex specialis" "outside of treaty body jurisdiction" (Melish). Even if the negative has a "judicial federalism bad" disadvantage (2NR), the impact examples all require interference in LOAC or other military issues that seem incredibly unlikely to be the subject of state court intervention. As the aff set up early in cross-ex and thoroughout the debate, it is highly improbable that the negative link evidence about the Bond and Holland decisions (Corn & Brenner-Beck) describes the spillover effects generated by the plan/permutation. There are uniqueness issues with any residual link (and DA turns/accesses case impact claims), especially without a good answer to the aff's Slaughter evidence that courts are increasingly influenced by international norms without citing them.

I have spent the vast majority of this ballot explaining link and internal link issues because they influence my determination that the 2AR's "low risk should be no risk or bad decisions result" fits the circumstances better than the "sufficiency versus necessary" lens provided by the 2NR. I can't explain a chain of events that produces changes in international norms important for NATO's choices vis-à-vis Russia, but I can imagine increased US relevance in multilateral forums. Overpopulation plays no role in this impact calculus because there the sufficiency frame holds. The 2NR case arguments are persuasive as regards human rights treaty compliance (Posner, Somin) but don't address the connection between compliance and foreign policy credibility with allies particularly well (Davis & Melish). The continued application of Parrish as a turns case claim also fails in the face of distinctions made in that article between extraterritorial issues and other areas of human rights adjudication (Parrish 2AC). Substantial inroads against the case aren't sufficient to overcome severe link and internal link problems. The negative emphasis on human rights treaties as a mechanism for norm dispersal rather than compliance as an instrument for improving multilateral credibility (and the inability to make too many arguments about the importance of multilateralism given their NATO internal link) means there is a small solvency differential.

As I hope is evident, all of these issues are decided on small margins given the quality of debating and evidence involved. All of the judges spent a long time deciding. In my case, going back and forth in assessing the residual DA link from the aff's spillover claim versus a much reduced human rights internal link to multilateralism consumed a great deal of time. Careful reading of evidence in an area of law this complex being presented by debaters of this skill level should produce no less.

Thank you for the opportunity to judge such an exciting, interesting, and difficult debate.

James Herndon, Emory University

Congratulations to both teams on fantastic years, and amazing debate careers.
I voted Negative for Michigan AP.

The NDT books won't show it, but Michigan AP won the 2015 National Debate Tournament.

There is little to no solvency deficit to the counterplan.
There is an incredibly small but present risk of the disad.
The impact to the disad undermines the treaty commitment signal of that solvency deficit.
The permutation does not completely shield the risk of the disad.

The Counterplan

The largest point of controversy centers on the solvency deficit question for the counterplan. The aff arguments against it were the following:

First, absent state action, we won't fill gaps in current human rights treaties.
The aff has several solid pieces of evidence that establish the need for a greater role for the state courts in filling the gaps in our treaty obligations – particularly human rights treaties. As I understand it, the plan emboldens courts to fill that gap. Couple of important aff cards that probably enticed the other judges. The first is the Davis 14 card that clearly establishes the need for state activism to overcome status quo gaps.

Important human rights issues are not always litigated in the federal courts, however. Federal constitutional protections tend not to include the economic, social, and cultural rights that are an integral part of the international human rights system. *State courts, by contrast*, often consider such protections and, in interpreting state law, have the *independence to recognize a broader range of rights*. In addition, state courts may be called on to interpret and apply international treaties, including human rights treaties.¶ Recognizing this important aspect of the implementation of human rights law in the U.S., this¶ report details the ways in which state courts have considered and interpreted this body of law. ¶ The report is intended for public interest lawyers, state court litigators, and judges, and also for¶ state and municipal policymakers interested in integrating compliance with international human¶ rights law into their domestic policies.17¶ State courts can draw upon a number of arguments to support their use of international human¶ rights principles in decision-making. Under Article VI, Section 2 of the U.S. Constitution,¶ treaties are the "supreme Law of the Land," binding on the "Judges in every State."18 The United¶ States has signed and ratified the International Covenant on Civil and Political Rights (ICCPR),¶ the International Convention on the Elimination of All Forms of Racial Discrimination, and the¶ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,¶ and is therefore bound by these treaties. Provisions of the UDHR have been recognized as¶ customary international law.19¶ Implementation of these treaties and their principles is the responsibility of federal, state, and¶ local government.20 Under the federal system, states are primarily responsible for regulating many areas of substantive law, including criminal, family, and social welfare law. The¶ reservations the U.S. Senate issued when it ratified the treaties make clear that states are responsible for implementing international human rights law in these areas.21 *Thus, state court incorporation of human rights principles is crucial to ensuring the United States' human rights implementation and compliance.*¶

This card clearly establishes the need for state court activism as well as a lack of it in the status quo. The most strongly worded card is a good part of the 2ar and is the Davis 06 evidence:

If states fail to implement international treaty provisions that address areas traditionally reserved to them, the United States *cannot, as a practical matter, achieve compliance* with the treaty provisions to which it is party.¶ Notably, the United States' treaty obligations may go beyond treaties' substantive focus and may also incorporate their enforcement procedures.12 For example, both the International Covenant on Civil and Political Rights (ICCPR) and the Convention for the Elimination of All Forms of Racial Discrimination (CERD) require the availability of judicial remedies for violations.13 Under federal jurisdictional constraints, however, judicial remedies will sometimes be available only in state courts. This might be true, for example, of cases shielded from federal judicial review under the Pennhurst doctrine, which bars federal court adjudication of state law claims for injunctive relief against the state.14 Likewise, even if plaintiffs are pressing human rights claims that implicate federal obligations under international law, the federal courts may eschew cases arising in the family law or criminal law contexts, at least in the first instance.15 In such situations, unless there is state court participation in the procedural as well as substantive implementation of human rights standards, the United States *will fall short of fulfilling its treaty obligations*.16

I was shocked at the quality of these cards. My initial read through and comparison to the 2ar made me think that I would decide there was a substantial solvency deficit to the counterplan. The Rooney card was by far and away the best card on the question of the solvency deficit though – and was extended at length by the 2nr. Couple of important components of that card. First, Court involvement isn't all that effective – deciding individual cases would take time and would be limited to the facts. So, a particular decision – in this case on prostitution – wouldn't influence other possible decisions. Second, it cites a reluctance of allies to give credence to court decision which creates a credibility gap in how likely the government writ large would be to follow and comply with those decisions. Finally, it prodicts congressional action as likely to send an international signal of the value of IHRL treaty law as well as likely to motivate others to act to create judicial precedents that support the commitment.

The neg had two other arguments on the flow that neither the evidence nor the 2ar/1ar answered for framing the solvency deficit. First, the lack of unified voice on future court rulings. The aff extends the very long Davis 14 piece of evidence to say that, "as international human rights principles become more integrated into state law, courts will define rights more broadly." The problem is that this seems to be a direct effect of the Rooney evidence and the function of the counterplan. Both cite the same ruling and establish the same court precedent. While this argument gave me a good bit of pause. I didn't understand why state courts doing the plan was necessary to build up that position over time. Additionally, the Wilkinson 04 piece of evidence was extended and explained as an indict of both the courts likelihood to adopt the approach we would want them to:

A third set of problems concerns the methodology with which judges approach foreign sources. Which *countries* should judges consider, and which *issues* should judges address in a comparative context? The decision as to the number and type of countries to consider in comparative law decision-making is a complex one. It is particularly troublesome when approaching social issues because of the broad diversity of social practices throughout the world.

As well as continuing to maintain the gaps in international law by picking and choosing countries and laws that best suit their agenda:

Should judges be able simply to highlight examples from those countries that bolster their arguments and yet ignore other nations whose practices contradict their claim? The number and diversity of nations make this dilemma all the more acute. Judges have not sought to consider these questions in a systematic way. To date, the foreign sources that have been cited come largely from Europe. Obviously, our historical connections with our European friends may make reliance on European cases more appealing. But American citizens come from *all* corners of the globe. I worry that judges will appear to indulge an unfortunate Eurocentrism by overlooking the practices of Asian, Middle Eastern, African, and Latin American states. Moreover, the Court's piecemeal approach has done little to illuminate why the experiences of some European countries have been chosen and others omitted.

So, ultimately, while in theory court activism would help bolster the incorporation – I have no reason to believe that that incorporation is more likely by state court initiated momentum OR that it would be uniform enough to appease allies and international groups about our commitment to IHRL.

Second, the neg frames the counterplan as being sufficient to access the internal link of the Melish card even if state court involvement is also sufficient. I felt compelled – by both sides – to read the Melish evidence and establish the threshold for commitment to IHRL. Here is the card:
While realists dominated U.S. human rights policy during the Cold War, 149 and remain highly influential in the foreign policy establishment today, institutionalists have gained increasing prominence over the last two decades with the dramatic proliferation of international institutions and rapid expansion of the international human rights architecture. Within this context, the push-pull dynamic over U.S. human rights policy as a foreign policy objective has shifted determinatively toward institutionalists. For this group, human rights treaty body engagement serves two primary strategic foreign policy goals today: first, renewal of *U.S. moral leadership in multilateral settings* and, second, promotion of human rights and democratic reforms in other countries. Both are directed to furthering national security and global public order objectives, independent of any domestic policy implication. ¶
First, institutionalists appreciate that the international standing of U.S. diplomats and their ability to lead in international processes of global dispute resolution are compromised by the nation's failure to ratify core human rights treaties and engage in their supervisory procedures. This failure, which has left the nation increasingly in the company of rogue or failed states,150 renders it out of step with its democratic partners and subjects it to charges of hypocrisy by less democratic nations where the United States seeks human rights improvements or security safeguards. 151 On a practical level, this *impairs the United States's ability to accomplish its national security* and other *global security priorities within multilateral settings*, at times making disagreement with the United States a "principled" human rights stand in itself for nations.152 In this sense, ratification and engagement serve as tools through which the United States can reseat itself within the "international community," reassert its moral leadership role, and hence better promote its national security agenda in multilateral settings, where most international work gets done. For institutionalists, this has been a particular priority following the widely internationally condemned unilateral actions taken by the United States following the 9/11 terrorist attacks. ¶ The second factor, *most commonly articulated by the U.S. State Department*, involves recognition that full *compliance by the United States with international human rights treaty body procedures* increases the visibility and legitimacy of the procedures themselves, ratcheting up expectation levels for their regular and concerted use, and thereby prodding other states to take the procedures more seriously. Indeed, U.S. executive agencies recognize that human rights treaty bodies—by providing an international spotlight for gross abuses, giving voice to individuals and civil society groups seeking greater human rights protections and transparency at home, and providing legitimacy to domestic human rights and democracy movements—have initiated important conversations and processes in countries around the world, particularly in transitional states.153 They also recognize that while the United States's failure to ratify specific treaties has not likely caused other states to forego ratification, it may embolden some to turn ratification into an empty political act used as a

rhetorical device to claim greater commitment to human rights than the United States without making corresponding changes in their policies and practices at home.154

This card clearly says that the US needs to make meeting our treaty obligations a larger priority and we need to be in compliance if we want to move multilat forward. I agree it is a great card. I also agree with the 2n's discussion of the Rooney card [included above] as being sufficient to accomplish the same attack on hypocrisy that this card calls for. There is nothing about this card that says the states must be the actors for it; and, it makes little logical sense to assert that the commitment of congress and the push to get the states to do it wouldn't accomplish the same thing.

Second, the aff goes for a precedent is necessary argument. I don't know why this doesn't boil down to another reason why courts are necessary because precedent is just what courts do. But, the neg is clearly establishing congress' ability to get the ball rolling. It's also indicted by the Wilkerson card and some cards on case.

Third, the permutation. As a quick aside, I do feel like this is the place where the 2ar had the highest likelihood of winning the debate. A fact that continued to bother me about the strategy is that the link to the disad is based on a solvency deficit existing. The disad assumes state courts get active and involved [more on that later] and the solvency deficit assumes that the counterplan leaves them less involved. The lack of discussion of how to weigh this, who benefits from this, and most importantly, how this impacted the permutation, were why this debate was so difficult to decide.

On the permutation the aff made two arguments; the perm shields the link and it lowers the risk enough to justify aff on presumption. The problem with this is that while I thought the 1ar handled the theoretical components of the permutation, the 2ar did not extend a lot of answers to the perm wall from the block that was well extended in the 2nr. Those included:

Congressional Approval First - Wu 7 – independent enforcement is avoided because the courts wait on the signal from the Senate. And, Christensen 97, which had the phrase that I thought most framed my reading of the permutation:

In an era of world civil society, however, programs encouraging federal judges to use the sources of customary international law (which include writings of academics as well as state practice and decisions of international tribunals) as formal authority for U.S. law, which binds all judges under the supremacy clause of the Constitution without approval first by the appropriate political branches, is likely to encounter profound resistance. More valuable would be a judicial architecture for making decisions in each phase of transnational civil litigation involving foreign and domestic parties whose interests are determined from their international scope and perspectives. 145 Even more important would be a critical analysis of some of the more obvious biases in judicial presumptions and attitudes about the use of international law and treaty interpretation in practical decision-making. 146. 146

It was very difficult for me to ignore the phrase "without approval first by political branches." [I guess it begs the question of my interpretation of fiat. Does the perm have a unified voice, or is it the courts acting independently but at the same time? I'm not sure there is any right or wrong answer to this]. Even if I have a very aff biased – "all together at the same time" – interpretation of fiat it still links to that Christensen card because it isn't waiting to implement. So, that too begs the question of the strength of the link of the disad.

So, for the counterplan – I have a difficult time assigning a solvency deficit that I could explain to the negative. While I understand that state court activism would send a strong signal that would fill the gap in our commitment to international human rights law, the act of congress in the plan does the same – if not a superior – signal. Plus, there were some internal link questions on the case that also minimized that risk.

The Case Debate

I believe that any aff ballot would have to center around the impact calculus done on the multi-lateralism impact. If there was any criticism of an otherwise amazing 2nr, it would be the lack of impact defense extended on that flow. However, the problem of leveling that as a criticism is that it ignores several high quality internal link presses extended and warranted by the 2nr. While I'm not sure that any of them reach to the level of "taking out" the advantage. They all function as shields against a possible solvency deficit to the counterplan. I had four distinct arguments extended.

First, the Posner evidence that establishes the difficulty in interpreting human rights law. My favorite of these cards was the 2nc Posner card:
Human rights law is *too ambitious* — even utopian — and *too ambiguous*: it overwhelms states with obligations they *can't possibly keep* and provides *no method* for evaluating whether governments act reasonably or not. The law *doesn't do much*; we should face that fact and move on.
There are several other cards that make a similar argument that were extended by the 2nc. The problem with the aff's answers is that I think they have plenty of evidence that defends state courts as a spot for activism [an issue the counterplan handles] but I'm not sure the aff even has a compelling card on this question. The closest that they get is the Melish card [a piece of evidence that is just as much, if no more of, a warrant for the counterplan's solvency mechanism]. It just speaks to the gaps as a reason why multilateralism fails but not a warrant for why human rights law writ large would be able to create an effective multilateral regme.

Second, the Moravcsik card is a strong indict of the authors forwarding the value of U.S. human rights. This is extended in the 2nc as an "even-if" statement that filling the gaps of human rights law in the US wouldn't do anything for multilateral norms. This card could be better on the question of the HR spillover. But, I don't really have an answer to the indict of HR norms authors. The aff's answer is largely the "they fail because treaties are ratified not implemented." I'm not really sure how that answers the neg's evidence or gets to the heart of the value of multi-lateralism. If the US does, what is the mechanism for forcing other countries that don't want to – more on that with the next answer.

Third, McGinnis & Somis 07. This is the phrase that stands out the most in my memory. "democratic states won't model non-compliance and authoritarian ones won't model anything." This was a general indict of the effectiveness of multilateralism. To me, it is a major hole in the way the 2ar frames multi-lateralism as a possible solution for all the world's problems and does impact calc.

Fourth, the US will continue to be violators of lots of other treaties for lots of other reasons. The aff's response to this is the spillover claim. Basically, empowering the state courts would lead them to act on all of these issues*

Finally, most of the arguments on the solvency deficit on the counterplan were also applicable to the questions of the solvency internal link for the aff – so if states don't implement well, if they don't fill the gaps, and congress does [all counterplan questions] – it is hard to imagine a re-invigorated multilateralism. There were a couple of aff cards – largely the 1ac evidence – but they are also explained and discussed on the counterplan question. Most of the 2ar was excellent on why states are important and why multilateralism is important. The gap between those two claims is the place where the neg had four compelling arguments to establish a sizable solvency gap between the plan and the multi-laterlism impact.

[* as a lengthy aside, relevant for the disad later, this is both the best possible answer to one solvency question for the aff, but also the link to the otherwise intellectually gap laden LOAC disad. If the state courts are going to be activist on questions like gitmo and torture – examples that the neg gave – then it stands to reason that they would be activist in questioning other military based questions. If there is a solvency deficit to the counterplan then there is a link to the disad – and vice-versa. I struggled with this individual question for at least 45 minutes of the decision – and afterwards heard that several other judges did as well. I evaluated the debate from the perspective of the 2ar, that the aff would cause state court activism into other treaties – as I think the neg agrees with that interpretation.]

While I'm not sure how any of them resolved it, the existence of these other internal links to the advantage, namely that authoritarian states don't care, while having to give the aff this spillover internal link in order to access their advantage made me more likely to assign "a risk of the disad." Because, if I agree with the 2ar that the aff solves "a spillover to other treaties," then it stands to follow that would include the LOAC decisions.

The Disad

The aff pushes back on the disad with four category of arguments. While I didn't find any of them particularly compelling, they did function to decrease the risk of the disad quite a bit. In particular, the argument about the internal link. Those four arguments are below.

First, IHRL is dying now, so the disad impact can't turn the case. The answer the aff is making to the turns case argument presumes that the neg is forwarding an argument about the status quo solving the case. Instead, the argument is quite clearly a link/impact makes it impossible for the aff to solve. The parrish 13 cards are an important framing question for the aff because they answer the only possible solvency deficit the aff could win and apply it to state courts. I'll quote a few lines from those two cards at length here:
Human rights become "universal" not through some sort of predetermined inevitability, but *only through careful building of coalitions* with different groups allied in purpose.139

And then, the first one at more length:
Let me end on a different note. A recent surge of commentary invites the human rights community into a similar, or perhaps greater, folly-to double-down and promote foreign-cubed cases under state law and in *state courts*. 153 With luck, this invitation will be declined. While individual litigants may have few choices, employing a state law strategy is *unlikely to meaningfully advance human rights*. These cases face *tremendous hurdles* to success. 154 While the presumption against extraterritoriality may not apply, courts will rightly be reluctant to adjudicate foreign claims for abuses occurring abroad to which the state has no interest. The same root concerns that motivated the Kiobel court to decide the way it did, will cause *state court judges to decline*

to hear these cases too. The cost of *lost time and energy* to this kind of strategy could be significant. The human rights community has a different option: to re-embrace multilateral engagement. Global human rights challenges are too daunting and complex for any nation, no matter how powerful, to effectively manage on its own. Progress can be made if human rights groups refocus energies to *press the U*nited *S*tates, its citizens, and corporations to respect human rights and the rule of law, and to *promote international agreements* with other nations. That respect includes *avoiding unilateral imposition of* U.S. law (*even* those *laws purporting to incorporate international norms*) on foreigners for conduct occurring abroad.

Both of these cards are based on a reading of the aff that the 2ar seems to agree with. State courts would become individually active in filling gaps. The neg's use of an interpretation of fiat isn't really answered. Yes, the plan is a one time 50 states agree decision. But, the future gap-filling is single state courts acting in ways that are likely to be varied and troublesome for other states and international actors. If the neg made a mistake by not having any clear multilateralism defense warrants extended, this was the mistake of the 1ar and 2ar in this debate and ultimately a framing issue for the disad that made it easier for me to start with "no solvency deficit" while evaluating the disad.

Second, no internal link because LOAC and IHRL are distinct – and State courts are just as likely to protect. I wrote a lengthy aside above about the role of the link vis-à-vis the solvency question for the plan vs the counterplan. What are the "other gaps to be filled"? The neg's suggestion that things like torture decision and detention rulings would thump the aff are answered by the 2ar with a spillover warrant. Yet, the most compelling answer to the disad is a "no spillover" warrant. I wish either side would have debated more on this issue. Instead, it just sort of sat there in my head. When I say that this debate was incredibly close, it is what I do to resolve this particular defining issue that establishes the difficulty in deciding this debate. I could see a ballot that says "well, if there is a link then there is a solvency deficit, so I vote aff." My problem with that ballot is that I think it ignores some other solvency defense and link spin arguments that the neg is making in the debate.

There is an internal link between the plan's state court activism and our LOAC agreements. Though academically I'm not comfortable saying I believe that to be true, for the purposes of evaluating this debate, the neg won that there was a risk of some spillover. First, some great aff evidence, Ku '11 may have won the NDT:
One prominent nationalist scholar has argued that, if the revisionist view were accepted, we would face the specter of 50 different parochial interpretations of CIL.340 My study demonstrates that even though key doctrines of CIL were immune from the appellate jurisdiction of the Supreme Court of the United States, serious splits between state court in terpretations of CIL did not occur nearly as frequently as might be expected.¶ Moreover, *state courts were just as likely to protect U.S. foreign relations interests as federal courts*. Finally, there is evidence that state courts would defer to executive suggestions on the proper application of CIL, thereby giving the President effective control over some types of CIL such as sovereign immunity. Therefore, this account shows that the chaos of independent state court interpretation of CIL has been the rule, rather than the exception, for much of American history.

Both this card, and the Davis card read later, establish my concern about the solvency to the aff vs the link to the disad. If it is true that state courts are deferential to the executive and will not be "rogue" with their interpretations, then I'm not sure what the gap filling mechanism is that the 2ar is talking about for a spillover. I do believe that state courts are likely to rule in favor of the executive though, just based on this reading of the Ku evidence. So, the link is not one where I am concerned about the state courts destroying our LOAC agreements and telling the executive how to fight wars. But, the neg link level was slightly more diverse than just, "courts will create precedents that constrain the executive."

The neg link spin included a fiat argument about the absolute and unified position taking of the state courts. The 2nr spun that this would be perceived by allies as a "durable fiated challenge by the states to supercede federal authority." While I get that the Ku evidence speaks to the likely role of the states, the negative continually spoke about the role of the plan in our allies eyes for interpreting the outcome of the plan.

Additionally, the 1nr and 2nr talk about the Corn evidence as proof that these types of challenges are already present in state courts which means they would be likely to hear them. While the aff's evidence does speak to the likely deference of the state courts, it is compelling that they would be more likely to be pro-international law post plan

Third, state court rulings are inevitable – they just aren't cited. The Slaughter card extended on this is just an interesting FYI for the purposes of evaluating this debate. It just says state courts are citing international law but not in a compelling or forceful way so it isn't establishing precedent or influencing things. This seem to either be a take-out to the aff and the disad or a take-out to neither – I'm not sure how it could be evaluated either way. The neg's spin that the fiat of the plan is unique in that it sends a signal never before seen isn't handled well, if at all, by the affirmative.

Fourth, there are several impact defense arguments extended by the 2ar. I'll go through each of these – though I think the most warranted extension is the no escalation argument.
The Apps 14 card is good – but just says it is unclear how the US would respond since there is no appetite for aggression. The Sindelar card is barely enough to count as evidence. The Hoffman 12 card is about how Russia is more peaceful and accommodating than the old soviet union – a claim and evidence that is easily ignored given the neg evidence.
The card worth considering is the Kaplan 11 evidence. This is one of the better, and more popular for a reason, pieces of evidence about the declining significance of NATO. The problem is that the warrant I have extended in the 2ar never really lined up with that evidence. Instead, the 2ar is talking about escalation being empirically denied and how there is a low likelihood of a short term conflict.

The problem with all of these impact cards, and the 2nr is right on this point, is that it ignores the internal link being a Russian aggression in response to increased US legal ambiguity. So, the cards about the US being unwilling to get involved as well as the evidence that NATO isn't needed anymore, don't really respond to the internal link from 15 about Russia taking the first aggressive step against NATO. Additionally, the Kupchan 13 card is just as good as the best aff card and speaks to the value of NATO for international perception.

All this discussion of the impact is enough to say that I think it is large, but it probably didn't need to be. After slogging through the cards and looking back at my flow, I actually think the risk of the disad is larger overall than it was when I voted neg after finals. I voted neg because the counterplan solved and there were answers to any solvency deficit that I could create extended and warranted in the 2nr. But, the size of the disad was substantial.

Concluding non RFD based thoughts:

1. One of the closest debates I've ever judged. It took me a while because so much of the evidence read by both sides was great. I've had the opportunity to judge all four of these debaters numerous times over the last 7 years of my life. Every single round was a pleasure.

2. If there is a lesson to be learned from them it is to read longer better cards in debate. It wins rounds. As I read through evidence again in the laborious task of writing this ballot, I'm impressed with the quality of evidence and the highlighting of cards. Read longer better more highlighted evidence.

3. I want to revisit the HS Poverty Topic TOC finals for a second. Westminster destroyed St. Marks. Miles read some of the worst highlighted and un-warranted de-dev evidence I have ever read. The world needs to never forget this fact. I am obliged to never let Miles forget it.

4. Let's increase comprehensibility in debates. The counterplans read in the 1nc that were rapid fire and I couldn't tell the difference between them was terrible. I don't want to judge and exist in an activity where I have to read a doc to figure out what the negative position are. I learned what the counterplan were during the 2ac road-map.

5. I call for a return of respect during rounds and in strategizing. The rise in strategic decisions that obfuscate communication as the a priori calculus during the NDT were awful. Debate is a communicative activity. It is two people communicating to a judge why they should win the debate. The only way that works is if teams communicate. Any and all attempts to deny the other team information for strategic purposes is a dis-service to the activity. We have norms for communicating because all we really are is a community with speech times, a resolution, and norms. If those norms are thrown out on the final day of competition for competition sakes then we are doing it wrong. I thought about listing examples, but instead I'll just stop with the norm. Communicate well.

6. What an amazing topic.
Seriously, a topic with disads to each of the areas, great new affs read on the final days of the NDT, and enough good critical literature to keep people engaged. I didn't like the "US" actor question, and I'd have preferred about 3 or 4 more areas to debate, but overall, an enjoyable year of research.

Seth Gannon, Georgetown.

Thanks to the University of Iowa for a great NDT.

My favorite part of these ballots comes before the decision, in saying thank you. If I run long here, please take it as a measure of my admiration for a number of people.

First, Ellis Allen. His speeches flow themselves. No one's debating is as effortlessly enjoyable: smart but clear, smooth but substantive, funny but never distracting, infused throughout with one-of-a-kind easygoing personality. Is anyone surprised that Ellis gave a homerun thank you speech? Of course not. Put him in a 2NC or a wedding toast or an address to Congress, and he'll be the best you've heard.

My judging has matured alongside Ellis's debating (if not so quickly). I judged very little while in college, but I have film-perfect memories of a very young Ellis Allen in elim after elim of the Wake Forest Early Bird. Not too often you find yourself talking about the cross-ex skills of a high school sophomore seven years later, but Ellis was a rare event.

And on the other side of a remarkable career, Ellis is in his second NDT final round as I judge my first. Thank you, buddy. Watching you has been the better deal a million times over, and along the way—when you have certainly disagreed with me or just been debating at a level above my judging—your carefree charm has never slipped. You are the ultimate class act, and judging your last debate, heartbreaking as it was, is as great an honor as I can remember.

Second, Alex Pappas. If Ellis was known to me, Alex these last two or three years was a revelation. He strikes me as the debater every coach wants, a debater who proves all the coaching maxims true: someone smart who knows he needs to work hard anyway, someone driven whose competitive fire never spills into unpleasantness, someone whose technical mastery displays a wonderful, earnest person behind it. I saw online that Alex's lab students, on the eve of his final NDT, compiled a long document on what he means to them. That's special, and no surprise.

There is nothing less enjoyable in debate than deciding the NDT fates of teams who truly deserve to win. If we remember Michigan AP any differently on the basis of one night, one debate, one argument, or one ballot, we have missed the point entirely. There is no meaningful sense in which Alex and Ellis are not champions.

Third, Northwestern MV. They put statistics to shame. They have been so consistent and demonstrated such dedication and personal brilliance that, in their different ways, I feel they were each somehow underrated. The strongest praise I can offer is the same I have for Michigan: had this debate gone the other way, I would think of them just the same.

Fourth, Miranda Ehrlich, whose 2AR in the semis was the most fun I had all week. I'm sure it will be just as good on video, but in that room, in that moment, it was electrifying—a tour de force of a last speech in what ended up being her last debate. Of course Miranda is a stand-in here for so many remarkable seniors: Cody, Jack & Quinn, Marquis, Erica & Maddie (Go Deacs), Osa, Kyle, the Anna-Michael-Brad triumvirate, and others. What an amazing collection of people.

Finally, John Fritch. I have attended ten of his NDTs as Director, and I haven't seen an NDT without him. The two are synonymous in my mind. Since graduating college, it has been an even greater pleasure to learn that the voice of the pairings is one of the best people around—hilarious, self-effacing, generous beyond reason. No one tells better war stories. Thank you, Dr. Fritch, for everything.

DECISION

I vote affirmative for Northwestern.

Heavily influencing my decision is my understanding from the CX to the 2AR (and in the aff's Davis evidence) of the aff's thesis and the action of the plan. My summary:

There are currently gaps in U.S. treaty compliance because federalism places many areas of law, particularly police power, under state control, and—making law under those powers reserved to them—many states fail to comply with the international

obligations of the United States.

The plan establishes state judicial precedents that state law must comply with U.S. commitments under international law. In other words, the plan has states, by way of their courts, bring themselves into compliance with international human rights law.

Although the Congress counterplan's solvency deficit for the multilateralism advantage is small, it is measurable, and I conclude there is no link to the treaty power disad – particularly no link to the NATO impact.

The Treaty Powers Disad

Does the plan give states the power to challenge or violate Status of Forces Agreements critical to NATO? I conclude it doesn't.

The aff's characterization of the neg's cards, that they describe a Bond v. Holland-style federalism challenge, not state incorporation of international obligations, I find accurate.

I read the neg's Brunner-Beck evidence (the link to the disad's NATO impact) many times. It says, as I understand it, that when a Status of Forces Agreement impinges on state powers, the states might challenge that agreement on federalism grounds and undermine the NATO alliance. Interference with powers reserved to the states "could very easily trigger federalism concerns"; state refusal to defer jurisdiction "would … force the U.S. to breach its international obligations"; enforcement of status agreements is "dependent on … state court recognition of … the Supremacy Clause." Similarly, the Corn evidence mentioned in the 2NR describes a "resurgence of federalism concerns" as a threat to the federal treaty power.

Read against the plan, the aff's consistent explanation, and the Davis evidence to which the aff points me, I see the plan as almost the opposite: rather than challenging "international sources of obligation" (Davis's words), state courts bring their governments into line with them.

Put another way, the plan brings states into compliance with obligations *established by the federal treaty power*. It does not claim increased powers for the states nor use those powers to challenge those obligations. As Davis describes it, the "Supremacy Clause requires state courts to consider transnational authority."

I believe the 1AR and 2AR, in saying the neg's cards describe the federalism issues in Bond v. Holland, and the 2NR, in saying this is a "federalism bad disad," are both correct. The plan, however, makes the states more deferential to U.S. treaty commitments, and as challenged by the 2AR, I can't explain why it would spill over to challenge national security agreements.

The other card the 2NR mentions is Powell. Unfortunately, another constant aff refrain—"the plan is about compliance for ratified treaties, not new ones"—fits this card (describing rogue state incorporation of CEDAW) to a T. In the cases we're discussing, the federal government, using its treaty power, has decided that international human rights law is to be implemented. I believe Davis—and the plan—are operating in the "traditional constitutional" model Powell describes.

Finally, I look at the neg Neuman card, which says that judicial implementation of international human rights treaties interrupts "Congress's ultimate control over … implementing—or breaching—a treaty." This seems like a separate concern, or at a minimum doesn't help me clarify the link to this disad.

Even interpreting Powell, Nueman, and the neg's link explanation more generously, however (the plan does necessitate state interpretation of international law and allows states to enforce "flavor of the week" human rights), I fail to connect these link arguments to breaching NATO Status of Forces Agreements.

The Multilateralism Advantage and Congress Counterplan

By legalizing prostitution, I believe the counterplan solves the family planning portions of the case outright.

The aff's other advantage is about achieving U.S. leadership in multilateral settings. Gaps in U.S. implementation of human rights treaties invite charges of hypocrisy, and the plan brings us into greater compliance. The 2NR focuses on the ultimate inefficacy of international human rights law, and I believe the neg is way ahead here. Unfortunately, I understand the plan's human rights compliance as a means to accomplish *other* multilateral goals—concerning climate change, disease, and so on.

Undeniably, the Congress counterplan solves a lot of this multilateral goodwill. As the neg's Rooney card has it, the counterplan "would provide the international community with a long-awaited answer as to whether the U.S. agrees that international … laws are applicable[.]" And the 2NC makes this debate very close by reminding me that the threshold for solvency is the aff's Melish card (the multilateralism internal link), not the aff's state courts solvency evidence.

Unfortunately, I believe the two are interrelated. Melish links U.S. hypocrisy to the "procedures" of human rights treaties and ties "compliance by the U.S. with rights treaty procedures" to legitimacy. While I believe the counterplan sends a strong signal of compliance on prostitution, I am concerned after reading the 1AC and 1AR Davis evidence that state courts will frequently encounter questions governed by international human rights law and that—without a state legal precedent guiding and encouraging their decisions—gaps in compliance will result.

In saying the plan is better, I am hardly convinced that, in one hundred possible futures, it will always be necessary or the counterplan insufficient. But on the debating and evidence, I am simply more concerned about state compliance with international human rights law after the counterplan than I am about state challenges to Status of Forces Agreements after the plan.

SOME THOUGHTS DURING THE DEBATE

A few years ago Will Repko wrote a final round ballot that chronicled his thoughts through the debate. I learned a lot from it. This year he asked if I would join him in doing it again. I said I would love to, and only in retrospect do I realize how uninteresting my prep time thoughts really are:

- Quite honestly judging this round is the most stressful thing I've done in debate since…

- Three of these debaters are in their second NDT final round, all on opposite sides. The fourth has won two Copeland Awards. Stressful as it is, this is a tremendous honor.

- Using CX time for prep: I have no problem with this – I just wish I had known.

- The terrifying thing about a new aff is that 1NC decisions made in a five-minute window of CX and prep time will reverberate hours from now as the judges decide. The 2NC gives them some flexibility, but in practice the neg sets their path right now.

- As the 1NC ends, I have no idea which CP does what, but in a debate of this quality, it's most important just to enter them into the record. Neither side will let the debate go much farther without teaching me. I know what the CPs do collectively: they test the various components of the plan—state, judicial, etc. Even at this level, debate is so much about fundamentals.

- Northwestern used way more 2AC prep than I realized. Wouldn't you love to know what required it? Rebuttal prep is worthless if you don't have the arguments you need in the 2AC.

- 2AC CX. Pappas: "Those are states key arguments – why state *courts*?" Again, fundamentals. A great moment.

- These are the most entertaining thank you speeches I can remember. Miles had the biggest crowd-pleaser, but I didn't see Ellis's Rajesh joke coming at all. Brilliant stuff. If not for pumping myself up to flow and get this right, I would be having a great time.

- Most debaters "sound like debaters." They use the same phrases for the same arguments. Ellis is so much fun minute-to-minute because he's always saying something different, even on familiar arguments: "2NC strategy is based on mishaps," "practical checks" on conditionality, a "wreck of treaties," and on and on.

- After the constructives, I have no idea who is going to win – I love the anticipation. After being tired all day, I'm so wide awake. Flowing a great debate is serious fun, and deciding it is fascinating. It's the "someone loses" part that I'm just not tough enough for.

- A senior 1N's last speech usually slips by unnoticed – love this applause for Alex.

- The 2NR might be the toughest speech in debate, but the 1AR always feels like a turning point: the first opportunity to explain the 2AC answers *and* the only opportunity to answer a pile of neg block material. After 15 minutes from a neg team at the height of its powers, this is a big, big speech.

- I love how big debates narrow down. It's a game with tremendous elegance.

- The final round of the NDT, starting at 11pm after four days of other debates, does not always showcase the remarkable abilities of the four debaters on stage. This is not one of those times.

Thank you for the opportunity to judge a debate befitting your remarkable careers.