

## Constitutional Corner – Treaties, International and Shariah Law

### Treaties.

Article 6, Clause 2 of the U.S. Constitution says: “This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.” (Emphasis added)

International treaties become part of the “supreme law of the land;” what does that really mean? Do they trump the Constitution, as some, including our very own [Department of Justice](#),<sup>1</sup> argue? Or what exactly is their status?

In 1952, future Secretary of State John Foster Dulles warned of the power of treaties: “Treaties make international law and also they make domestic law. Under our Constitution, treaties become the supreme law of the land. They are indeed more supreme than ordinary laws, for congressional laws are invalid if they do not conform to the Constitution, whereas treaty laws can override the Constitution... they can cut across the rights given the people by their constitutional Bill of Rights.”<sup>2</sup> Was Dulles right?

Here’s what the Congressional Research Service has to say on this in a report entitled: *International Law and Agreements: Their Effect upon U.S. Law*:<sup>3</sup>

“Self-executing treaties<sup>4</sup> have a status equal to federal statute, superior to U.S. state law, and inferior to the Constitution. Depending upon the nature of executive agreements, they may or may not have a status equal to federal statute. In any case, self-executing executive agreements have a status that is superior to U.S. state law and inferior to the Constitution. Treaties or executive agreements that are not self-executing generally have been understood by the courts to have limited status domestically; rather, the legislation or regulations implementing these agreements are controlling.”

Despite these comforting words, treaties have nevertheless been used to grant power to Congress that the Constitution does not. For instance, the Constitution grants no power to Congress to regulate the hunting of waterfowl. Look for it, it’s not there. That is a power reserved to the states under the 10<sup>th</sup> Amendment, or so it would seem. In 1916, however, the

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<sup>1</sup> <http://www.wnd.com/2013/10/doj-arguing-international-treaty-can-trump-constitution/>.

<sup>2</sup> John Foster Dulles, Speech: "Treaty Making and National Unity," American Bar Association, Louisville, Kentucky; 1952 April 11; John Foster Dulles Papers, Box 306; Public Policy Papers, Department of Rare Books and Special Collections, Princeton University Library, available at: <http://findingaids.princeton.edu/MC016/c9472.pdf>.

<sup>3</sup> <https://fas.org/sgp/crs/misc/RL32528.pdf>.

<sup>4</sup> Self-executing treaties are those with provisions that need no legislative act to become enforceable.

U.S. ratified a treaty with Great Britain called the Migratory Bird Treaty. Two years later Congress passed a Migratory Bird Act to implement the terms of the treaty and ‘voila! federal authority to regulate the hunting of migratory waterfowl! No one seemed to notice that the treaty (with its accompanying legislation) was used to effectively amend the Constitution. There are other examples.

While the CRS believes that treaties remain “inferior” to the Constitution; those intent on establishing one-world government remain focused on implementing international law in the U.S., by hook or by crook. In “The Coming Collision, Global Law vs. U.S. Liberties,” James L. Hirszen, writes: “Most people think that treaties deal exclusively with the relations among nations. Yet the treaties that are being crafted by internationalists deal specifically with some of the most intimate and private details of our existence, including family relationships, public education, and religious beliefs.”<sup>5</sup>

Agreements like the UN Convention on the Rights of the Child, signed in 1989, “set() children’s rights in opposition to those of their parents.”<sup>6</sup> “Nations that ratify this convention are bound to it by international law.”<sup>7</sup> Although the United States played a major role in drafting the convention, no American president has found it prudent to submit the convention to the Senate for ratification, ostensibly because it forbids both the death penalty and life imprisonment for children (in Article 37). Nevertheless, the convention removes any parental authority over the religion of their children, what they must be permitted to read, even their “right” to sexual intimacy decisions. Should the U.S. ratify this convention you will have lost all authority over your children.

“LE BOURGET, France — With the sudden bang of a gavel Saturday night (note: December 12, 2015), representatives of 195 nations reached a landmark accord that will, for the first time, commit nearly every country to lowering planet-warming greenhouse gas emissions to help stave off the most drastic effects of climate change.”<sup>8</sup> Is this climate agreement a treaty requiring Senate ratification? Since President Obama regards tackling climate change a central element of his legacy, there is no doubt that the Obama administration will soon begin to implement the details of the agreement without Congressional sanction or statutory action.

### **The Effect of International Law on U.S. Courts.**

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<sup>5</sup> James L. Hirszen, *The Coming Collision, Global Law vs. U.S. Liberties*, Huntington House Publishers, 1999, p. 9.

<sup>6</sup> *Ibid*, p. 10.

<sup>7</sup> [https://en.wikipedia.org/wiki/Convention\\_on\\_the\\_Rights\\_of\\_the\\_Child#United\\_States](https://en.wikipedia.org/wiki/Convention_on_the_Rights_of_the_Child#United_States).

<sup>8</sup> [http://www.nytimes.com/2015/12/13/world/europe/climate-change-accord-paris.html?\\_r=0](http://www.nytimes.com/2015/12/13/world/europe/climate-change-accord-paris.html?_r=0).

While the influence of treaties and executive agreements on U.S. statutory law is of concern, the influence of foreign and/or international law on the decisions of U.S. Courts is equally so.

In *Knigh v. Florida*, a 1999 death penalty case, Associate Justice Steven Breyer remarked in dissent: "A growing number of courts outside the United States ... have held that lengthy delay in administering a lawful death penalty renders ultimate execution inhuman, degrading, or unusually cruel." Was Breyer right to bring the opinion of foreign courts into U.S. jurisprudence?

In the 2005 case of *Roper v. Simmons*, the majority opinion noted "the overwhelming weight of international opinion against the juvenile death penalty." Justice Kennedy stated that "[t]he opinion of the world community, while not controlling our outcome, does provide respected and significant confirmation for our own conclusions." (Emphasis added) Did Justice Kennedy allow foreign law to inform his opinion?

In *Atkins v. Virginia* (2002), the Court decided that Atkins, the trigger man in a robbery/murder of an Air Force enlisted man, should not be put to death. Atkins' IQ had been measured at 59, and the Court pointed to "growing consensus" that the states were in agreement that the mentally retarded should not be executed for heinous crimes. In dissent, Chief Justice Rehnquist (joined by Justices Scalia and Thomas) criticized the majority opinion for referring to an amicus brief from the European Union. He wrote: "In reaching its conclusion today, the Court does not take notice of the fact that neither petitioner nor his *amici* have adduced any comprehensive statistics that would conclusively prove (or disprove) whether juries routinely consider death a disproportionate punishment for mentally retarded offenders like petitioner. Instead, it adverts to the fact that other countries have disapproved imposition of the death penalty for crimes committed by mentally retarded offenders, see *ante*, at 316-317, n. 21 (citing the Brief for European Union as *Amicus Curiae* 2). I fail to see, however, how the views of other countries regarding the punishment of their citizens provide any support for the Court's ultimate determination." (In an interesting side note, a Virginia Court subsequently discovered that Atkins' IQ had risen to 70 through several years' interaction with his lawyers, making him now eligible to be put to death. His sentence was commuted to life without parole, however, upon further discovery of prosecutorial misconduct. You can't make this stuff up.)

"Historically, U.S. courts have on occasion looked to foreign jurisprudence for persuasive value, particularly when the interpretation of an international agreement is at issue, but foreign jurisprudence never appears to have been treated as binding. Though U.S. courts will likely continue to refer to foreign jurisprudence, where, when, and how significantly they will rely upon it is difficult to predict."

The CRS has apparently never heard of the Lacey Act.

According to Wikipedia: “The Lacey Act of 1900, or simply the Lacey Act (16 U.S.C. §§ 3371–3378) is a conservation law in the United States that prohibits trade in wildlife, fish, and plants that have been illegally taken, possessed, transported, or sold.” (Emphasis added)

What does “illegally taken, possessed, transported, or sold” mean? You would think it means transgressions of U.S. law regarding wildlife, fish and plants. They are, but so are transgressions of all foreign law regarding “wildlife, fish and plants.” Try to bring wildlife, fish or plants into the U.S. that were obtained in violation of some obscure foreign law and you’re going to jail, as many have. Most recently, Lumber Liquidators™ was sentenced to \$13.15 million in penalties, five years of probation, and additional government oversight for taking delivery of hardwood flooring that was not harvested where they were told it had been harvested. “The company accepted one felony charge of importing goods through false statements and four misdemeanors for violating timber laws in a foreign country.”<sup>9</sup> “Sorry, my bad,” said the Chinese supplier as he turned to his other clients.

“International law today is fundamentally different from traditional international law, which took the form of agreements between nations or at least universal rules that had received unanimous consent from all states.... Today, however, an elite group of activists, lawyers and international officials drives international law. They identify policies first, and then seek to pressure [countries] to adopt them.”<sup>10</sup>

Taken together, the increased use of treaties and international law means only one thing: a loss of American sovereignty. That is the central message of “Sovereignty or Submission”<sup>11</sup> by John Fonte, a book every American should read. One need only look at the mess that we call the European Community to see where this is headed: nations forced to bail out debtor nations whose economies are on the brink of failure from irresponsible spending (sound familiar?). If that is what you believe is in America’s best interest, I recommend you go back to watching “Dancing with the Stars” and ignore the threat, perhaps it will go away. Otherwise, we need people to learn more about this issue, speak your concerns to your elected reps and wake up your sleeping neighbors. Enough said?

## **International Law and the Natural Born Citizen Question.**

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<sup>9</sup> <http://www.usatoday.com/story/money/2016/02/01/lumber-liquidators-illegal-timber-sentence/79648394/>.

<sup>10</sup> John R. Bolton & John Yoo, *Sovereignty Assaulted*, National Review Magazine, Vol LXVIII, No. 5, March 28, 2016, pp 25-26.

<sup>11</sup> [http://www.amazon.com/Sovereignty-Submission-Americans-Themselves-Others/dp/1594035296/ref=sr\\_1\\_1?s=books&ie=UTF8&qid=1459210034&sr=1-1&keywords=%E2%80%9CSovereignty+or+Submission%E2%80%9D+by+John+Fonte](http://www.amazon.com/Sovereignty-Submission-Americans-Themselves-Others/dp/1594035296/ref=sr_1_1?s=books&ie=UTF8&qid=1459210034&sr=1-1&keywords=%E2%80%9CSovereignty+or+Submission%E2%80%9D+by+John+Fonte).

The Founders showed a great respect for international law, just as they showed “a decent respect for the opinions of mankind” in declaring “the causes which impel[ed] them to the[ir] separation” from Great Britain. They reportedly had several copies of Vattel’s *Law of Nations* with them at the convention in Philadelphia. Because of this, supporters of Vattel cite his definition of Natural Born Citizen: “*The natives, or natural-born citizens, are those born in the country, of parents who are citizens,*”<sup>12</sup> as the prevailing view of the Framers. There is absolutely no evidence that this was, in fact, the Framers view; and it makes little sense when you step back a bit and look at what the Framers were trying to accomplish.

The qualifications of the new Chief Executive were entirely a matter of national law; there was no compelling reason for the fledgling nation, or any country for that matter, to look to international norms when establishing qualifications for a national office. But since Vattel’s is the most stringent definition available and excludes those individuals born to couples where one or more parent is a foreign citizen or the child was born outside the U.S. (such as three of this year’s republican presidential candidates), and since this definition was at least contemporaneous with the Founders, it continues to retain support among some.

### **Shariah Law:**

National Report.net caused quite a stir two year ago when it published a satire “news report” stating that Dearborn, Michigan had become the first U.S. city to fully adopt Shariah law.<sup>13</sup> Will such a report yet be written, only not as satire next time?

Last November, Hamtramck, Michigan became the first majority-Muslim town in America,<sup>14</sup> and others are headed in that direction.

So, what lies ahead as Muslim immigration, accelerated by the Obama administration, and Muslim birth rates (about 3 children per family vs. 2.1 for white families) continues? What about the influence of Shariah Law in U.S. Courts? Is that becoming a problem?

First, the Koran commands Muslims to change secular laws to conform to sharia or to impose sharia worldwide.<sup>15</sup> Is this, in fact, taking place in America?

“Our findings demonstrate that Shariah has entered into [U.S.] court decisions, in conflict with the Constitution and state public policy. Some commentators have said there are no more than one or two cases of Shariah in U.S. state court cases; yet we found 146 significant cases just from the small sample of published cases. Others opine with certainty that state court judges

<sup>12</sup> The Law of Nations, Book one, Chapter 19, § 212. “Of the citizens and natives.”

<sup>13</sup> <http://nationalreport.net/city-michigan-first-fully-implement-sharia-law/>.

<sup>14</sup> [https://www.washingtonpost.com/national/for-the-first-majority-muslim-us-city-residents-tense-about-its-future/2015/11/21/45d0ea96-8a24-11e5-be39-0034bb576eee\\_story.html](https://www.washingtonpost.com/national/for-the-first-majority-muslim-us-city-residents-tense-about-its-future/2015/11/21/45d0ea96-8a24-11e5-be39-0034bb576eee_story.html).

<sup>15</sup> [http://www.americanthinker.com/articles/2011/11/sharias\\_encroachment\\_into\\_american\\_courts.html](http://www.americanthinker.com/articles/2011/11/sharias_encroachment_into_american_courts.html).

will always reject any foreign law, including Shariah, when it conflicts with the Constitution or state public policy; yet we found 15 trial court decisions, and 12 appellate court opinions, where Shariah was found to be applicable in the case at bar. The facts are the facts: some judges are making decisions deferring to Shariah even when those decisions conflict with Constitutional protections. This is a serious issue and should be a subject of public debate and engagement by policymakers.”<sup>16</sup> If you want more information on this, read [this article](#)<sup>17</sup> in American Thinker.

Who is behind this push for Shariah in America? Several organizations; one example is the Assembly of Muslim Jurists of America (AMJA), a U.S.-based organization committed to the establishment of Shariah, especially for personal status and family law.<sup>18</sup>

Some states are pushing back. Thanks to model legislation provided by the [American Public Policy Alliance](#):<sup>19</sup> “American Laws for American Courts.” So far, Tennessee, Louisiana, Arizona, Kansas and North Carolina have passed such legislation and [other states](#)<sup>20</sup> are considering it. You can download the model legislation yourself, tailor it to your state and present it to your state representative all ready to introduce (hint!).

As I repeatedly tell my listeners: the reason progressives are so successful in pushing the culture in their desired direction is simply because they are willing to fight for this result more than conservatives are willing to fight for the status quo. It’s really that simple.

If you are concerned about the potential influence of treaties, the documented influence of international law and shariah law in U.S. courts, then you best speak up, and soon.

We discussed this issue last week on WFYL Radio. If you want to learn the views of my two co-commentators, please download or listen to the podcast, available [here](#).<sup>21</sup>

“Constitutional Corner” is a project of the Constitution Leadership Initiative, Inc. To unsubscribe from future mailings by Constitution Leadership Initiative, [click here](#).

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<sup>16</sup> “Shariah In American Courts, The Expanding Incursion of Islamic Law in the U. S. Legal System,” published by the Center for Security Policy Press, a division of the Center for Security Policy. 2014. p.16.

<sup>17</sup> [http://www.americanthinker.com/articles/2011/11/sharias\\_encroachment\\_into\\_american\\_courts.html](http://www.americanthinker.com/articles/2011/11/sharias_encroachment_into_american_courts.html).

<sup>18</sup> Shariah In American Courts. p. 50.

<sup>19</sup> <http://publicpolicyalliance.org/legislation/american-laws-for-american-courts/>

<sup>20</sup> <http://digitalcommons.law.lsu.edu/cgi/viewcontent.cgi?article=6405&context=lalrev>

<sup>21</sup> <http://www.1180wfyl.com/podcasts.html>.