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LETTER TO THE EDITOR

## Just the Facts

Jon Kyl, Douglas J. Feith, and John Fonte

Harold Koh and Michael Doyle, in their response to our article “The War of Law” (“The Case for International Law,” November/December 2013), have responded to arguments that aren’t ours. We did not make them and do not subscribe to them.

We never said that transnationalists are undermining American principles “by promoting U.S. compliance with international law.” We never opposed “due respect to the laws that [govern] peaceable relations among sovereign states.” We never contended that constitutional values “are threatened by adherence to international law.” Our imaginations are not titillated by the “pipe dream of an autonomous nation that could ignore international law.”

We did say that “Americans can benefit from international cooperation that is rooted in countries’ widespread acceptance of useful rules of the road. But U.S. officials should adopt such rules, as they do with domestic legislation, through democratic processes.” We do believe that in determining which international laws are applicable to the United States, Americans should use the normal processes of American liberal democracy rather than follow the transnational legal process and its interpretive communities, as described by Koh.

Scholarly argument over the so-called new international law has raged ever since the legal scholars Jack Goldsmith and Curtis Bradley published an influential article on the topic in 1997. International law is different in important ways from domestic law. Its meaning is frequently contested, yet there is often no way to resolve disputes definitively.

We argued against new approaches to international law that aim to put legislative power in the hands of people who are not accountable to American voters, whether those people are U.S. officials in the executive branch, judges, officials of foreign governments, or leaders of multinational organizations. Our argument was for constitutional democracy. And that should be easily understood by anyone who reads our article without preconceptions.

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