DOMESTIC COURTS, GLOBAL CHANGES: INTERNATIONAL INFLUENCES ON THE POST-COLD WAR SUPREME COURT

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This summer, five of the nine current Supreme Court justices spent time overseas teaching law and attending international legal conferences. Although these same individuals continue to clash over the place of foreign law in their decision making – the travelers included both Justice Antonin Scalia, who vehemently opposes its consideration in Supreme Court decision making, and a vocal supporter, Justice Anthony Kennedy – their willingness to travel and interact with the global legal community was not seen as out of the ordinary. Perhaps this is because, as members of the most prominent national judiciary in the world, such interaction is considered a natural part of these justices' job. Indeed, the greater context in which the Court operates has changed in recent decades. Since the end of the Cold War, the American legal system has gained visibility abroad through the United States' involvement in constitution drafting and judicial reform. Although this involvement was originally a minor part of American foreign aid and concentrated primarily on the new democracies of Europe and the former Soviet Union, it has become a primary focus of U.S. democracy assistance across the globe in the past decade as attention has turned to the importance of securing the rule of law in transitional countries (Carothers 2005). As a result, the prominence of our national judicial system has grown and members of foreign and international courts have become more familiar with and likely to consider its decisions (Slaughter 1998). Scholars have also linked the universalization of and widespread international convergence on human rights' protections in recent decades to the active exportation and influence of the U.S. Bill of Rights (Kelemen and Sibbitt 2004).

On a global scale, a rise in both formal and informal interaction between the national judiciaries of the world has also been noted. The development of an active

international community of judges and legal professionals has been part of what some scholars call judicial globalization (Slaughter 2005), a process in which national courts have become increasingly likely to communicate and consider each others' decisions (Slaughter 1997). Transnational legal activism and the involvement of non-domestic actors in domestic legal issues and cases has also become prevalent (Keck and Sikkink 1998). However, when considering the increasingly global network of legal norms and actors, the United States' role is generally considered to be limited to that of an exporter, not an importer.

While the U.S. government's active role in post-Cold War judicial reform has resulted in greater visibility of the Constitution and the Supreme Court's decisions abroad, the question of whether that international activity and new level of prominence have had any effect on the Court itself has remained largely unanswered. There is convincing evidence that international politics and norms have influenced American constitutional interpretation in the past, however. Mary L. Dudziak (2000) argues that international outrage over the treatment of African-Americans in the South during the Cold War resulted in foreign pressure on the United States and led to new executive civil rights commitments. These commitments eventually influenced the Court through appointments to its bench and the Justice Department, ushering in a new era of civil rights protections. While Dudziak's account has generally gained acceptance among political scientists interested in the Court, it has not been applied to other periods. If the Supreme Court responded to international concerns during the Cold War, even indirectly, it might be expected to have done so since. New issues relevant to contemporary American constitutional law have undoubtedly entered the international arena since the

end of the Cold War due to the rise of transnational legal norms and global judicial dialogue mentioned earlier. This dissertation aims to identify what these issues are and assess the extent to and ways in which they and the international actors and institutions interested in them have succeeded in influencing the Supreme Court. As I will argue, scholarly attention to the influence of non-domestic factors on the Court has primarily focused on the responsiveness or resistance of justices to foreign legal decisions and thus fails to provide a complete account of the changes in its broader institutional context and their potential impact at both the individual and institutional level. This project will identify a more complete set of potential international influences on the Supreme Court, look for possible changes in them over the past two decades,[1] and explore the mechanisms through which they might be expected to influence both justices and the Court itself.

Notable Changes: Post-Cold War Judicial Globalization and the Supreme Court

As noted above, existing scholarship cites numerous changes in the types and levels of interaction between international judicial actors, institutions, and norms during the past two decades. But why should we be interested in these changes and their impact on the Supreme Court? In what ways might they be linked? To answer these questions, a description of the factors that suggest the influence of post-Cold War judicial globalization on the Court is first needed.

The most prominent of these factors is a rise in the number of foreign legal citations by justices noted by scholars of the Supreme Court in recent years. As Shawn E.

[1] Herein I refer to the post-Cold War period as "the past two decades" rather than the past 18 years to represent the time between 1990 and 2010, when I intend to finish my dissertation.

Fields notes, “nearly every justice on today’s Court has made use of foreign law in some respect, whether to describe the global context of a legal issue, to assess the rationality of a legal rule, or even to apply as persuasive precedent” (2007: 964). Although citations of foreign law have sporadically appeared in Supreme Court cases since the institution’s inception, those appearances were not widely remarked and were often related to treaties or trade issues with Britain or continental Europe. In the past two decades, however, foreign citations have been frequent and widely noted; several of the justices have referred to foreign law and court decisions when addressing controversial issues such as the death penalty and sexual privacy and their decision to do so has been hotly debated not only amongst themselves in public forums but also by Congress, the press, and legal scholars. But as I will argue in the next section, the rise of foreign legal citations has been considered only at the individual or theoretical level – related work tends to discuss who is or is not doing it, why, and whether that decision is in line with various constitutional theories. More importantly, this work overlooks the possibility that this decision might have a connection to changes in the broader context in which the Court operates, as highlighted by Dudziak (2000), including the involvement of international actors in the domestic legal process. The notion that in choosing to cite foreign law, some U.S. justices might be tuning into the types of global trends described above is considered by many legal scholars, but only normatively. Rather than first consider the extent to or ways in which the members of the Supreme Court have been influenced in their decision-making by international audiences, they tend to focus solely on the benefits or dangers of doing so.

However, the possibility of a link between these trends and individual judicial behavior has been anecdotally observed by Jeffrey Toobin, a news writer and media observer of the Court. In his book "the Nine," he suggests that the decision of particular justices to cite foreign law, such as Justice Kennedy, is directly connected to changes in their worldview resulting from travel abroad (Toobin 2007). He describes Kennedy's experience teaching law over the summers in Salzburg, Austria, through a program of McGeorge Law School, as resulting in "the connection that would transform his judicial career" (Toobin 2007: 183). Furthermore, he links this transformation to the fact that this connection was forged after the end of the Cold War, during a period in which American legal expertise was sought from and exported to emerging democracies around the world and programs like the Central European and Eurasian Law Initiative (CEELI) of the American Bar Association were involved in American democracy promotion efforts abroad. He notes that "most of the justices participated in some of these exchanges, but Kennedy and O'Connor were by far the most active" and notes O'Connor's role in having "helped create" CEELI (184).

Toobin's suggestion that the justices' experience abroad during the 1990s shaped their judicial career merits further attention, especially because it is in line with Slaughter's (2005) account of the impact that increased global judicial dialogue has had on judges in other domestic contexts. Furthermore, there is ample evidence that Washington was both a facilitator of and active participant in this dialogue. From 1995 to 1997, the Federal Judicial Center published a biannual newsletter entitled the International Judicial Observer that was included with issues of its State-Federal Judicial Observer. This newsletter provided a record of travel abroad by federal judges and the

Supreme Court justices, visits by foreign judges, international legal conferences, and developments in American judicial reform efforts abroad. Thus, an increase in these types of exchanges and other forms of personal and professional interaction between the justices and their foreign counterparts is something that I will look for evidence on and consider as a possible influence on the post-Cold War Court.

As these contributions suggest, there is reason to believe that increased interaction between American justices and their foreign counterparts occurred from the 1990s on due to the more active role the U.S. has played in promoting democracy since the end of the Cold War, including its efforts to promote judicial reform abroad. Slaughter (1997) considers such efforts a crucial part of what she calls "judicial foreign policy," which emerged following the Cold War and has resulted in an increasingly global community of judges and legal professionals, of which the U.S. is a primary and active member (186). Carothers (2005) cites further evidence of U.S. membership in this globalized legal community: there has been unprecedented growth in the levels of exchange and communication between members of the legal profession here and abroad (through programs providing legal advice, institutional reform assistance, legal education and professional development such as those of the American Bar Association) and in the world-wide availability of information about legal decisions and courts.

Considered together, these observations suggest that a complete empirical account of the types of activities and interactions between the Court and international actors, institutions, and norms discussed above is needed. I will propose a research design aimed at providing such an account and outline the types of data I will be looking for in a later

section. Also needed, however, is a more thorough examination of the mechanisms through which these factors might be expected to influence judicial decision-making.

Explaining Court Responsiveness and Resistance to International Influences

To Cite or Not to Cite? Individual Choice and the Constitutional Comparativism Debate

The possibility that American justices might be influenced by actors, institutions, and ideas outside the United States' borders has been considered by scholars of the Supreme Court, but within a limited perspective. In determining whether the Supreme Court and its members are responsive to foreign law and courts or should be, legal scholars have focused primarily on whether justices are inclined or opposed to citing them – a practice referred to as constitutional comparativism – and the legal arguments for doing so. Constitutional comparativism has come under scrutiny in recent years following its application in several high profile cases, particularly *Lawrence v. Texas* (2003), in which the Court struck down a ban on homosexual sodomy, and *Roper v. Simmons* (2005), which held that the execution of minors was in violation of the Eighth Amendment. Some current justices have defended the inclusion of international references in Court decisions, primarily those like Justice Kennedy and Justice Breyer, who have done so in their own opinions, while others like Scalia and Thomas have openly denounced the practice. Currently, scholars consider the question of whether or not the Supreme Court might be subject to judicial globalization as completely dependent on who is serving and their inclination toward foreign citations.

A justice's decision to practice or advocate legal comparativism and the scholarly debate surrounding that decision are the only forms of contestation over foreign influence

on the Court considered by existing literature. Because that decision resides at the individual level, it is simply considered another indication of the range of personal preferences and legal principles that can be found among members of the Court. These accounts therefore support an attitudinal model of judicial behavior. Proponents of this model (Segal and Spaeth 1991) would argue that the degree of Court responsiveness to foreign law or actors is ultimately determined by its members' ideological leanings. From this perspective, contestation over foreign influences on the Court is part of the culture war that constantly and inevitably surrounds court decision-making. Justices who advocate legal comparativism, for example, do so because they have a more liberal view of the law than those who oppose it or because they have the expectation that importing foreign law will be supportive to their policy goals. In other words, foreign citations are purely window-dressing for those justices with goals that are compatible with precedents established abroad. Indeed, anecdotal evidence suggests that "on every subject for which the Court has so far cited foreign views, notably gay rights and the death penalty, the Justices in the majority have inclined in the liberal direction" and that "in looking at what other democracies are doing, it would mean looking to the left, not to the right" (Toobin 2005). However, even if Toobin is correct, this explanation is limited. Not only are those citations the only form of international judicial influence taken into account, the extent to which that influence is exercised is only considered at the individual level.

Additional Individual Level Explanations: Relevant Audiences and Party Politics

As the debate on constitutional comparativism shows, the only international influence examined in the context of Supreme Court decision making has been foreign

law; scholars have primarily focused on the compatibility of its use with different legal theories and the question of whether or not individual justices should be doing so. However, the changes noted in the previous section suggest that not only should legal scholars consider more explanations as to why justices might be influenced by foreign law, but they should also take into account other forms of international judicial influence and their impact beyond individual decision-making as well.

However, individual-level analysis is still important for my question. Who is serving on the Supreme Court is undeniably an important factor in determining what influence, domestic or international, it is more or less likely to respond to. Indeed, Anne-Marie Slaughter (2005) acknowledges that contemporary U.S. Supreme Court justices are much more receptive to the idea of exporting advice or ideas than importing them from foreign courts and have thus managed to resist the trend of judicial globalization. However, she argues that even though these exchanges tend to be one-way they have nevertheless had an impact on the Court because they transform the broader context of the institution and the way that American justices view their office. Similarly, Kenneth Anderson (2005) suggests that the more recent appearances of legal comparativism have laid "the groundwork for a globalizing Court" because the presence of justices that are sympathetic to the practice has the potential to transform the institution over time (1). Because justices are part of what he calls a "new global elite", we must consider what "the Court's new globalized sense of itself might mean for the democratic political community of the United States" (Anderson 2005: 12). Both scholars hint at the influence of a feedback effect: justices have been and are likely to continue to be shaped by the post-Cold War context, characterized by new legal norms and transnational dialogue, in

which they operate. Furthermore, their work suggests that we must go beyond the level of individual decision-making when considering Court responsiveness to look at changes in the broader context in which courts operate in and the impact of international influences on the institutional level. However, neither Slaughter nor Anderson looks for evidence of such an impact or identifies possible mechanisms through which a feedback effect might occur. This dissertation aims to do so, suggesting that the aggregate of individual justices' positions on constitutional comparativism or likely response to the global trends described earlier is not the only potential indicator of the degree to which the Court might be impacted by them. Building on this, I propose a simple idea: a Supreme Court justice serving today has a different job than he or she would have had in the 1980s simply because of the new set of priorities and pressures present in the broader political world. And perhaps some justices might even make different decisions because of it. Dudziak (2000) certainly provides support for this argument by suggesting that had the civil rights cases of the 1950s and 1960s not reached the Court during the Cold War and within the context of intense international scrutiny of American racism, they might have had different outcomes.

Looking beyond the attitudinal model, why might justices be expected to respond to the type of changes I will be looking for or be subject to the feedback effect just mentioned? Some scholars argue that the Supreme Court is also influenced by a desire to maintain its legitimacy, as seen through both its attention to public opinion as well as through justices' awareness of a particular set of norms linked to the office that they fill. Thus, the desire for legitimacy within the Court's broader institutional setting constrains judicial behavior and imposes motivations on justices that might not otherwise be there.

Howard Gillman (1999) identifies such a constraint as an institutional mission, or "an identifiable purpose or a shared normative goal that, at a particular historical moment in a particular context, becomes routinized within an identifiable corporate form as the result of the efforts of certain groups of people" (79). He advocates an institutional approach to judicial behavior in order "to determine whether institutional actors are influenced in their attitudes and behavior by their relationship to their institution's mission and to the organizational attributes that have been constructed in service of that mission" (Gillman 1999: 79). His work highlights the importance of examining how justices perceive the role of the Court in explaining their decisions and suggests that the Court is not completely constrained by personal ideology or boundaries set by the actions and preferences of other political actors and public opinion. As Gillman (1999) advises, scholars need to consider "the possibility that the world view of judges is constituted by institutional norms, jurisprudential traditions, and related social structures of power" (86). In other words, changes in the broader context in which the Court operates – including those noted in the previous section like a rise in foreign citations, the involvement of international actors, or new channels of communication with other national courts – may in turn impact the way that those serving on the Court do their job.

The notion that Supreme Court justices are likely to make their decisions based not only on personal preferences, but to maintain legitimacy as well is also explored by Lawrence Baum (2006), who considers the influence of justices' salient audiences on their decision making. He suggests that justices' memberships in personal and professional networks and their desire for acceptance or approval within them may impact their approach to constitutional adjudication, thus providing a psychological

account of why legitimacy may be an important motivation for justices. His account also considers the impact of legitimacy at both the individual and institutional level; at any given time, there is a particular set of audiences – including different segments of the legal profession, policy makers, the media, and the public – tuned in to the activities of the Court. Justices' "interest in what their audiences think of them has fundamental effects on their behavior as decision makers" (Baum 2006: 4). This argument might be viewed as an extension of the attitudinal approach; clearly, conservative justices will be much more likely to respond to the Federalist Society as a relevant audience than liberal justices. However, even though justices will not all respond to or be influenced by the same audiences in the same ways, Baum's contribution implies that they must all contend with the available set of options.

The idea that justices confront and selectively respond to different audiences provides an alternative way of approaching the question of international judicial influence on the Court, including the decision to cite foreign law. Rather than a purely autonomous choice, the decision to support or engage in constitutional comparativism may be viewed as based on a justice's responsiveness to a particular audience with a stance on the issue. In other words, as Chimene Keitner (2007) argues, the decision "depends critically on one's view of what the relevant community is for determining the meaning of concepts such as decency, cruelty, and due process..." (4). An international or internationalist community or audience may be relevant for Justice Kennedy and irrelevant for Justice Scalia. However, regardless of the choice, the justices must still contend with the different options in order to make one. The level of contestation over constitutional comparativism in recent years, among both legal and political actors as

well as the justices themselves, demonstrates that there is indeed a set of multiple, active communities relevant to the issue.[2]

In addition, support for the possibility that the Court may respond to new, more global audiences can be found at the intersection of literature examining the influence of American law abroad through post-Cold War legal diplomacy (Carothers 2005) and the impact of transnational legal norms and networks on domestic law and institutions (Risse and Sikkink 1999, Slaughter 2004). While there is a good deal of literature that looks at the role of economic and political incentives in promoting legal convergence on the American model (Kelemen and Sibbitt 2004), scholars have only recently begun to address the role of legal professional networks in the convergence and globalization of law (Keck and Sikkink 1998, Slaughter 2004) and few have explored the potential impact of these networks on American national courts and judicial decision making. Furthermore, if we accept that judicial systems and constitutions across the globe have been influenced by the exportation of American legal reform advice and the Bill of Rights (Kelemen and Sibbitt 2004), it seems logical to look for evidence of international and transnational influences on domestic law and judicial actors within the American system through justices' relevant audiences, despite the concerns of exceptionalists.

Dudziak (2000) is again one scholar that does so, arguing that the Cold War and related foreign policy pressures provided an impetus for civil rights legislation and Court intervention during the 1950s and 1960s. She describes how the increasingly global reach of media and the coverage given to growing tension over black rights abroad mobilized

[2] Some of the numerous sources that demonstrate this idea of multiple relevant audiences on the issue of international influence and will be noted in my dissertation include the transcript from the debate at Georgetown Law School between Justice Scalia and Justice Breyer on comparativism, records of Congressional Resolutions passed in response to (and generally opposing) the citation of foreign law by the Court, and further debates among legal scholars regarding the practice.

international protest against the American government and would eventually create strains in U.S. foreign relations. These strains, she argues, would play a pivotal role in inducing action on the part of political elites, including legislators and the Supreme Court. Furthermore, the Soviet Union used the American civil rights struggle and the numerous examples of black oppression as a counter to U.S. claims about their own abuses of human rights and political oppression. As Dudziak (2000) notes, "Soviet manipulation of American racial problems ensured that race in America would be an important part of the Cold War narrative" (250). She thus emphasizes the international character of what are often seen as strictly homegrown issues, arguing that we must continue to consider the interplay between transnational networks, foreign relations and policy goals, and the domestic policy agenda. In doing so, she offers a particularly valuable contribution by suggesting that foreign policy concerns may result in pressure on the judiciary by the executive. This highlights how such concerns and larger changes in the priorities of the U.S. government have the potential to impact the Court indirectly, since it can be expected to respond to demands placed by other political actors and the president in particular (McMahon 2000, Whittington 2007).

In addition to providing one account of the type of international influences on the Court that I am looking for, Dudziak's account suggests the potential importance of the post-Cold War context and related foreign policy priorities on judicial decision-making. Assuming that the Supreme Court was influenced by such priorities during the Cold War, the new set of diplomatic commitments that followed it in the 1990s might have also had an effect. Here, I refer back to the previous contributions cited that point out the high level of attention and resources devoted to democracy promotion, especially that aimed at

judicial reform and the rule of law, from the early 1990s through today. The extent to and ways in which foreign policy commitments and priorities of the governing elite during the post-Cold War may have impacted the Court require further examination.

A More Global Court? Looking Beyond Individual Justices to the Institutional Level

Together, these contributions suggest that members of the Court might be expected to take several factors into account when adjudicating: their understanding of the law, personal preferences, the policy priorities of the governing regime, their personal conception of the office, and their relevant audiences. Indeed, Thomas Keck (2004) suggests that "while the Court's rules, norms, and traditions allow (or even require) the justices to act on and respond to political ideas and interests, broadly understood, they generally discourage them from simply manipulating constitutional arguments to achieve their preferred results or advance the policies of the president who appointed them" (9). Ultimately, in his view, "legal and political influences on the Court are mutually constitutive" and are both drawn upon in judicial decision making (Keck 2004: 277). There is reason to believe, I would argue, that all of these factors have been influenced by changes in global context of the Supreme Court over the past two decades, including higher levels of Court prominence abroad, involvement by foreign actors in its cases, and interaction between its members and those of foreign courts. As noted earlier, it seems reasonable to expect that such changes may have occurred during this time period due to the active involvement of the American legal community in post-Cold War U.S. democracy assistance and judicial reform efforts abroad.

But why should we expect these changes to impact the Supreme Court? I had the opportunity to ask Chief Justice John Roberts for his opinion on this issue during his recent visit to Syracuse University, and he acknowledged that although the Court is indeed more active globally, its interaction with international actors only serves to highlight the differences between it and its counterparts. In other words, the strength of American exceptionalism and isolationism makes it impervious to the kinds of global trends that scholars like Anne-Marie Slaughter note. In this view, a justice serving on the Court today will not decide cases any differently than one serving during the Cold War or the Civil War, with the exception of referring to new legal precedent. However, this view is challenged by scholars like Dudziak (2000) who highlight the ways in which both domestic and international politics and policy commitments can pressure judicial decision-making. Furthermore, Slaughter (2005) argues that although scholars have generally found that "American judges defiantly define themselves outside the mainstream of global judicial conversation," in the past decade they have shown increasing awareness of foreign and international law as well as a growing willingness to consider or cite it (277). An important aspect of this shift, Slaughter notes, is psychological; " judicial globalization changes not only what our judges know and need to know, as a practical matter, but also how they think about who they are and what they do" (280). She cites the involvement of the American legal profession in promoting global judicial education and widespread support among judges for it as one indicator of this psychological shift; in encouraging courts across the world to think globally, their own views of law are transformed. This relates back to Baum's (2006) work, emphasizing the link between changes in the global context that the Court is operating in

and the new audiences that it is likely to respond to. It also emphasizes the impact of institutional level changes, such as those in the Court's role, its members' sense of mission or office, and sources of legitimacy.

Based on the literature reviewed here, I suggest that the prominent role that the U.S. has played in post-Cold War judicial reform abroad may have had a feedback effect on its national judiciary, providing a new set of challenges for a static debate on the merits of judicial isolationism versus internationalism. As the number of opportunities for members of the Supreme Court to offer advice to and interact with international legal professionals and other judges, and experience the influence of the institution abroad has grown, so has the potential for cross-dialogue and influence. As Keck notes in a piece on recent Supreme Court cases on affirmative action, "the rise of such litigation has been both a consequence as well as a cause of the Court's decisions" (2006: 415). His notion that a feedback effect from legal activism and litigation sometimes creates new politics seems applicable to a rise in international involvement in domestic cases as well. Not only might such involvement cause some justices to look to international law and norms, but their decisions to do so might encourage more involvement by transnational actors.

Selected Overview of Research Plan

Indicators of Interaction Between International Actors, Institutions, and Norms and the Supreme Court

What evidence might indicate that the increased levels of international interaction, communication, and consideration that scholars have associated with post-Cold War judicial globalization also characterize the operations of the contemporary

Supreme Court? To determine this, I must first identify the kind of cases and issues that international actors might have been interested in over the past two decades, who those actors are, and the different ways in which that interest, and attempts to exert influence over those issues, might have manifested. At this stage, I will focus on the cases that have garnered attention in the constitutional comparativism debate: those in which justices have invoked evolving standards of decency arguments under the Eighth Amendment, including those related to sodomy and the death penalty. However, my universe of cases may expand to include cases with foreign citations in other areas of the law.

The actors that I am interested in are those that have attempted to influence these cases by lobbying the Court or publicly expressed an interest in their outcome. I will therefore look for data related to these specific efforts, particularly amicus curiae briefs filed by or including reference to international actors or institutions. Also important are efforts by domestic political actors to influence the Court that might reflect certain foreign policy commitments. These efforts might be reflected in amicus curiae briefs filed by the Solicitor General to the Court highlighting executive policy goals, the mention of these goals in State of the Union addresses, and hearings and debates in Congress related to the issues being addressed by the Court.

A crucial part of my data collection will also be to look for evidence of more informal interaction between these actors and the Supreme Court justices. This might include travel by justices abroad, participation by the justices in international legal conferences and judicial reform programs such as CEELI, visits to the Court by foreign judges and legal actors, evidence of the Court's influence abroad in the form of the adoption of bill of rights and other U.S. legal institutions and norms. Finally, a full

account of who has cited foreign law and in what cases will indicate individual-level consideration of international legal norms and precedent.

Next, I will look for evidence that these factors have influenced the Court. This involves answering three overarching questions. The first is whether these changes had an impact on Supreme Court decisions. This might be indicated by looking at case outcomes, including an analysis of cases that might plausibly have had a different outcome if they had not taken place in the post-Cold War context. The second question is whether these changes influenced how Supreme Court justices do their job. To try to determine this, I will look for changes in opinion-writing: foreign citations by the Court (who and in what cases) as well as comments by individual justices' reflecting perceptions of mission or office. And the third question is whether these changes influenced how the Court operates as an institution. This might be indicated by changes in the Court's case selection process (including the types and number of cases selected), its budget, and the official duties and schedules of justices.

Data Sources

I anticipate that my data will be collected primarily through 1) existing databases, including those housing Court records, amicus curiae briefs, opinions and proceedings, Solicitor General briefs, and other related information; 2) the archives of relevant organizations and institutions for data not available online or cited in other sources; and 3) interviews of relevant actors, including those involved in foreign or international organizations that lobby the Court, legal aid and judicial reform efforts of the American

legal profession abroad, and perhaps even those affiliated with the Court itself, such as clerks, journalists, or other legal scholars.

Preliminary Hypotheses

In this project, I expect to find that most, if not all, of the indicators outlined above show significant increase in the levels of international judicial involvement from the 1980s to the 1990s. I also expect that these higher levels remain consistent in the 2000s, as international involvement becomes institutionalized. In turn, I expect to find some degree of change in the second set of indicators demonstrating the appearance of new trends in judicial decisions, activity, and operations over the past two decades. Therefore, my primary hypothesis is that the U.S. Supreme Court of 2010 is a different institution than in 1989, in that it reflects engagement with, if not responsiveness to, trends of judicial globalization and active exchange with international actors, institutions, and norms. I also expect to find some connection between the level of responsiveness of justices to these trends in terms of their actual decision-making and the commitments and priorities of dominant foreign policy factions in Congress and the Executive.

Conclusion

By looking for and examining the type of changes noted in this prospectus to determine the extent to which international actors, institutions, and norms have influenced its members and its broader context, I hope to demonstrate that the Supreme Court may be subject to global influences in ways that existing literature, especially that on legal comparativism, has not captured. If institutional factors, not only individual

choice, shape judicial behavior, then they should be taken into account when considering contestation over foreign influence on the Court. This moves us beyond the question of whether justices should or do pay attention to foreign law to consider how they view their place on a Court that is increasingly "global" and whether that might impact their decision-making over time.

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