

Chapter 5, Problem II

United States v. Rife, 33 F.4th 838 (2022) involved a U.S. citizen who, while living in Cambodia, sexually assaulted a number of young females. Upon his return, he was convicted of violating 18 U.S.C. Sec. 2423(c), which punishes any U.S. citizen who travels or resides “in a foreign country, and engages in any illicit sexual conduct with another person.” “Illicit sexual conduct” includes sexual acts with persons under 18 years of age. Defendant argued that Congress lacked constitutional authority to punish him for noncommercial sexual acts committed abroad years after his return to the U.S. The government countered that the federal statute was enacted to implement the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography which the United States ratified in 2002.

The majority strongly criticized the notion that “the President and two-thirds of the Senate, by the sole fact of their consent to a treaty, can empower Congress to enact legislation that it otherwise could not enact by the exercise of its enumerated powers in Article I.” Yet the majority found that the issue was foreclosed by the Supreme Court’s “ipse dixit” in *Missouri v. Holland*, that the statute was intended to implement a valid treaty, and that the conviction was valid.

A concurring opinion noted that the treaty requires parties to prohibit the “[o]ffering, obtaining, or procuring or providing a child for child prostitution,” which includes the “use of a child in sexual activities for remuneration or any other form of consideration,” while the federal statute criminalizes *noncommercial* sexual conduct with minors. The concurrence reasoned, however, that the treaty’s goal of eliminating commercial child sex exploitation could be undermined if the government failed to criminalize noncommercial child sex abuse by U.S. citizens overseas. The statute was therefore authorized by the “Necessary and Proper Clause” which “allows Congress to address ‘regulatory gaps’ such as the concern about non-commercial sexual abuse of minors.”

Notes and Questions:

1. Does the reasoning of *Missouri v. Holland* more easily cover the statutory provision at issue in *Bond*, or the statutory provision at issue in *Rife*? Of these three cases, which most strongly supports concerns that the Treaty Power permits Congress to expand its powers beyond those specifically enumerated in Article I of the U.S. Constitution?