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Applying Universal Jurisdiction to Civil Cases: Variations in State Approaches to Monetizing Human Rights Violations

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The principle of universal jurisdiction allows a state to exercise jurisdiction over a category of cases when the state has no connection by territory, nationality, or other interest with the parties. While the concept of universal jurisdiction is not new, it has been almost exclusively applied to criminal matters. There has been relatively little focus on the application of universal jurisdiction in the civil sphere as a means for victims to seek judgments and compensation for serious violations of human rights. This article examines the theoretical distinction made by courts in the application of universal jurisdiction to civil cases and explores why the emerging norm of universal jurisdiction has been focused almost exclusively on criminal matters. The article surveys the status of universal civil jurisdiction in US and European courts, examines how jurisdiction is limited by courts, and assesses the arguments for and against a civil basis of universal jurisdiction. **Keywords:** *universal civil jurisdiction, Alien Tort Statute, universal jurisdiction.*

During the 1990s and into the 2000s, there was a great deal of optimism among human rights advocates that notions of universal jurisdiction would be enforced in national and, eventually, international courts. In 1993, Belgium passed a law on universal jurisdiction that allowed Belgian courts to try individuals accused of crimes including genocide, war crimes, and crimes against humanity. In 2001, four Rwandan citizens were convicted for their actions during the country's genocide.[1] This court victory opened the door to a flood of criminal cases being launched against government officials, including Ariel Sharon, Yasser Arafat, and George H. W. Bush. Confronted by significant pressure from the international community, the Belgian parliament in 2003 amended the law to restrict jurisdiction to only those cases involving Belgian citizens. This retreat should not be surprising as even the often cited Augusto Pinochet case did not reflect a full expression of universal jurisdiction, as the case was brought by a Spanish court on behalf of Spanish nationals who died during the Caravan of Death and subsequent disappearances in the 1970s.[2] Moreover, as Amnesty International notes in its global survey of universal jurisdiction, "the mere existence of universal jurisdiction legislation does not mean that the state can effectively act as an agent of the international community to enforce inter-

national criminal law. All too often, the legislation contains numerous obstacles to the effective use of this tool of international justice."[3]

Ironically while universal *criminal* jurisdiction during the 2000s suffered several setbacks, US cases involving universal *civil* jurisdiction continued unabated. While the US Supreme Court in *Sosa* v. *Alvarez-Machain* developed a test for whether a claim under the Alien Tort Statute (ATS) could be litigated, the issue of whether claims of universal civil jurisdiction could proceed was left unexamined.[4] Therefore, during the 2000s and 2010s large numbers of cases were launched by plaintiffs using the ATS, including such high-profile cases as *Doe* v. *Unocal* and *Wiwa* v. *Shell*. One of the significant differences in the application of universal criminal and civil jurisdiction has been the ability of plaintiffs in civil cases to sue corporations. However, as in the case of the Belgian parliament in 2003, the US Supreme Court in *Kiobel* v. *Royal Dutch Petroleum Co*. (2013) and subsequent rulings, including *Daimler AG* v. *Bauman* (2014), greatly limited the scope of extraterritorial jurisdiction as well as jurisdiction over legal persons so that much of the universality has been lost.[5] These cases have undermined what was an incipient norm in the United States regarding universal jurisdiction over civil suits. Virtually all of the human rights and political science literature examines universal jurisdiction either implicitly or explicitly as criminal in nature. *The Princeton Principles of Universal Jurisdiction* is an excellent case in point. While a number of noted scholars contributed to the volume, there are less than 2 pages in a close to 400-page treatment on universal civil jurisdiction. However, the legal community has engaged in a robust discussion of whether international law provides for universal civil jurisdiction and the various forms that it can take. Why is there this difference in the way in which these communities define and understand universal jurisdiction? Much of the disconnect stems from the fact that, for core crimes, the notion that these crimes could be monetized and viewed essentially as a tort is repugnant to many in the human rights community.[6] However, for over fifty years, the European Court of Human Rights has engaged in this very practice of providing a forum for civil redress for citizens of Council of Europe member states involving allegations of torture and other gross violations of human rights.

In this article, I explore the design and the logic of universal jurisdiction and its criminal and civil application. I begin with a general discussion of the principle of universal jurisdiction, the nature of the crimes, and enforcement issues, focusing on normative developments. Then, I examine the application of criminal and civil universal jurisdiction and pose the question of whether these forms of jurisdiction are part of the same norm just expressed differently or whether norm creation and enforcement are fundamentally different for each of these forms of jurisdiction.[7] In the final part of the article, I compare state approaches to these two forms of jurisdiction and speculate as to the future of universal jurisdiction more broadly.