

Alien Tort Statute: A Discussion and Analysis of the History, Evolution, and Future

2014

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ALIEN TORT STATUTE: A DISCUSSION AND ANALYSIS OF THE
HISTORY, EVOLUTION, AND FUTURE

by

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A thesis submitted in partial fulfillment of the requirements
for the Honors in the Major Program in Legal Studies
in the College of Health and Public Affairs
and The Burnett Honors College
at the University of Central Florida
Orlando, Florida

Spring 2014

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ABSTRACT

The Alien Tort Statute is a short, thirty-two word section of the United States Code enacted in 1789 as part of the Judiciary Act. The Alien Tort Statute, or ATS, has an uncertain and controversial beginning and remains controversial in current jurisprudence. The ATS reads as follows: "The district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States."

It is my intent for this thesis to be an academic discussion of the mysterious history, intent, and court cases that have evolved the ATS; and the way in which the evolution took place. Having lain dormant for almost two decades, it is important to understand how the ATS was finally utilized and how this affected the statutes ability to become a tool for human rights persecution abroad; until the decision in *Kiobel v. Royal Dutch Petroleum*. Examining the language of two opinions by the District Court of the Second Circuit and the Supreme Court in *Kiobel* we will be able to understand, but reject, the arguments of both these courts.

DEDICATION

For my mother who has given me all I could ever hope for, and more,

For the people in my life who keep me laughing while encouraging me to better myself every
day,

And for the professors at the University of Central Florida who have believed in me and always
put the students before themselves.

ACKNOWLEDGEMENTS

I would like to thank all the people who encouraged, supported, and brainstormed with me throughout the research and writing process of this thesis. I would like to extend a special thank you to Dr. Gina Naccarato-Fromang and Dr. Kathy Cook and the Legal Studies Department at the University of Central Florida. To Dr. Naccarato-Fromang for allowing me constantly speak my mind and communicate ideas. Writing this thesis without your guidance and approach would have been impossible. The person you are has made the experience enjoyable and exciting for me. To Dr. Kathy Cook for being a constant support to me in all my endeavors. Thank you for igniting my desire to become an involved member of the University of Central Florida community. The Legal Studies Department has given me the opportunity to study, work, and learn alongside passionate and intelligent people and for that I will be forever grateful.

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INTRODUCTION

The Alien Tort Statute is a last hope for victims of crimes so heinous they are almost unfathomable by any human, and certainly by any measure of civilized society. The Alien Tort Statute (ATS) is a short, thirty-two word section of the United States Code enacted in 1789 as part of the Judiciary Act. It reads: “The district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States.”¹ This means that individuals who are not citizens of the United States have the right to file a lawsuit in United States District Court for torts committed that violate the law of nations or a treaty signed by the United States. The interpretation of this statute has been very open-ended, as will become apparent throughout this thesis.

In *Filartiga v. Pena-Irala*², a seventeen year old boy was kidnapped and tortured to death by a member of the Paraguayan police for his father’s political activities. In *Kadic v. Karadzic*³, plaintiffs sought justice in U.S. courts for “brutal acts of rape, forced prostitution . . . and summary execution, carried out by Bosnian-Serb military forces. . .”⁴ And, most recently, a group of Nigerian citizens filed suit against Royal Dutch Petroleum for aiding and abetting the Nigerian government in the destruction of Ogoni region villages and brutal beatings of Ogoni’s residents.

Despite the statute’s pithy language, or possibly because of it, the ATS remains a controversial and mysterious piece of legislation whose origin is still unknown. There is

¹ 28 U.S.C. § 1350 (2006).

² *Filartiga v. Pena-Irala*, 630 F.2d 876 (2d Cir. 1980).

³ *Kadic v. Karadzic*, 70 F.3d 232 (2d Cir. 1995).

⁴ *Id.* at 236-237.

speculation as to the reasoning for the enactment of the statute. During the fledgling years of the country, two important incidents occurred in which the United States had very little authority to enforce the “law the nations”. The “law of nations”, as was understood in 1789, was understood to encompass three (3) internationally recognized principles including the rights of ambassadors, the right of safe conduct, and prohibitions of piracy⁵. Gary Clyde Hufbauer and Nicholas K. Mitrokostas theorize that in enacting the ATS, the First Continental Congress sought to show European countries that the United States was taking measures to ensure the safety and security of foreign ambassadors on United States. The inability of the United States federal government to act in matters of international law violations is exemplified in the assault against Charles Julian de Longchamps in 1784.

De Longchamps was a French citizen living in Philadelphia when he assaulted French Consul General and Secretary of Legation, Francis Barbe Marbois, in the streets of Philadelphia. De Longchamps was tried and convicted under the law of nations in the Pennsylvania Supreme Court based on common law because the federal government had no authority. After the trial and conviction of de Longchamps, there was an “international uproar” because the Continental Congress was unable to enforce the law of nations⁶.

Subsequently, in 1787, just over a year before the enactment of the ATS, John Wessel, in his capacity as city constable, went to the residence of Pieter Johan van Berckel, the Dutch

⁵ Hufbauer, Gary C., and Nicholas K. Mitrokostas. "Awakening Monster: The Alien Tort Statute of 1789 3." *Institute for International Economics* (2003): 1-78. *Institute for International Economics*. Web. 31 Jan. 2014.

⁶ Shugart, Brittany J. "Relieving the Vigilant Doorkeeper: Legislative Revision of the Alien Tort Statute in the Wake of Judicial Lawmaking." *WestlawNext*. Thomson Reuters. *Southern California Review of Law & Social Justice*, 2012. Web. 31 Jan. 2014.

minister to the United States, and arrested one of his servants⁷. Again, the state tried and convicted the defendant under state common law because the federal government had no authority.

The international community expressed concern with the United States federal governments' lack of authority because of the unreliability of an individual state to protect a foreign diplomat or ambassador from their respective country. Although precedent would exist vis-a-vis the Pennsylvania Supreme Court ruling in de Longchamps conviction, other judicial jurisdictions are not required to follow this same ruling. In an effort to soothe the collectively concerned minds of European countries, especially after two such incidents, the First Continental Congress may have thought it wise to allow district courts, part of the federal court system, to have "original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States."⁸

A discussion of the ATS would not be complete without introducing United States Attorney General William Bradford's 1795 opinion concerning the United States involvement in an attack by a French fleet on a British colony in Sierra Leone⁹. In July 1795 American citizens trading on the African coast of Sierra Leone, a British controlled colony, "aided and abetted" a French fleet in "attacking a settlement, and plundering or destroying property" of the British subjects on the coast of Sierra Leone¹⁰. In his opinion he delineates between criminal and civil

⁷ Shugart, Brittany J. "Relieving the Vigilant Doorkeeper: Legislative Revision of the Alien Tort Statute in the Wake of Judicial Lawmaking." *WestlawNext*. Thomson Reuters. Southern California Review of Law & Social Justice, 2012. Web. 31 Jan. 2014.

⁸ 28 U.S.C. § 1350 (2006).

⁹ Curtis A. Bradley, Attorney General Bradford's Opinion and the Alien Tort Statute, 106 *American Journal of International Law* 1-22 (2012).

¹⁰ Curtis A. Bradley, Attorney General Bradford's Opinion and the Alien Tort Statute, 106 *American Journal of International Law* 1-22 (2012).

action that may be taken by United States courts for the punishment of the American citizens involved in the attack. Attorney Bradford concluded that United States courts lack jurisdiction to punish the Americans involved criminally because the acts were committed outside the territory of the United States, therefore making the acts “not within the cognizance of [United States] courts. . .”¹¹. However, crimes committed on the high seas are within the United States courts’ jurisdiction under *civil* law. Because crimes on the high sea committed in violation of a treaty of the United States fall under the jurisdiction of United States courts pursuant to the Alien Tort Statute, legal action can be taken in United States courts. Attorney General Bradford’s opinion is one of the first references to the Alien Tort Statute, thus making it a popular point of reference during ATS litigation.

¹¹ Curtis A. Bradley, Attorney General Bradford’s Opinion and the Alien Tort Statute, 106 *American Journal of International Law* 1-22 (2012).

BEGINNING THE EVOLUTIONARY PROCESS

Alien Tort Statute litigation began just six (6) years after the passage of the Judiciary Act of 1789. The first case, *Bolchos v. Darrel*¹² the Honorable Judge Thomas Bee, District Judge of South Carolina was the first judge to interpret the statute. He held some reluctance in doing so. After *Bolchos*, the ATS sat dormant for the better part of 170 years while being used once in 1961 during a custody dispute between an Iraqi mother and Lebanese father. In 1980, the ATS received a breath of life from *Filartiga v. Pena-Irala*, 630 F.2d 876 (2d Cir. 1980), and that is where the evolution of the ATS begins.

Bolchos v. Darrel, 3 F. Cas. 810, (D.S.C 1795)

The first case to be brought under the Alien Tort Statute was *Bolchos v. Darrel*¹³, in 1795 which involved a British subject and a Spanish trader involving the sale of “property”. Unfortunately, the “property” in dispute was slaves, but at this point in American history, slaves were still considered property. Judge Bee wrote the opinion for this case. In his opinion he reveals his reluctance in adjudicating the case because the seizure of the property had occurred on land. Judge Bee concluded the court held jurisdiction because the original cause arose at sea and this falls under the ATS’s authority.

Filartiga v. Pena-Iran, 630 F.2d 876 (2d Cir. 1980)

In the early 1970’s and 1980’s human rights lawyers in the United States began to see the Alien Tort Statute as a way to seek justice for their clients whose rights were violated. In 1978, Attorney Peter Weiss used the statute to bring about the case that will be discussed in this section. Damages for the

¹² *Bolchos v. Darrel*, 3 F. Cas. 810, (D.S.C 1795).

¹³ *Bolchos v. Darrel*, 3 F. Cas. 810, (D.S.C 1795).

plaintiff were awarded at \$10.4 million; and although were never paid “signaled the U.S. courts were open to victims of human rights abuses around the world.”¹⁴

Filartiga v. Pena-Irala revitalized the ATS into the courtroom and into the lives of victimized individuals all over the world. This landmark case was *Filartiga v. Pena-Iran*. *Filartiga* began the evolutionary process of the ATS by allowing jurisdiction over suits involving aliens against individuals committing illegal acts under the law of nations or treaties of the United States, under the color of authority of a sovereign nation. Dr. Joel and Dolly Filartiga brought suit against Americo Norberto Pena-Irala, who was in the United States on a visitor’s visa, for the wrongful death for their son by torture. Appellants alleged their son, Joelito Filartiga, was kidnapped and tortured to death by Pena, who at the time of the kidnapping and torture, was the Inspector General of Police in the area in which the Filartigas lived. It is believed that Joelito was killed in retaliation for his father’s political activities in Paraguay. Following the murder, Dr. Filartiga filed a criminal action in Paraguay. Dr. Filartigas attorney was arrested and threatened to death for his representation of the Filartigas. The Paraguayan lawyer was later disbarred without cause¹⁵.

The Filartigas moved to the United States under a visitor’s visa and filed suit alleging a civil tort action, wrongful death, for the murder of Joelito and sought \$10,000,000.00 in compensatory and punitive damages. The trial court dismissed the case for lack of jurisdiction. Upon appeal, the United States Court of Appeals for the Second Circuit held the court had jurisdiction to hear the case under the Alien Tort Statute. Pena argues that his actions were conducted in his capacity as an agent of the government of Paraguay; therefore barring the suit

¹⁴ Hamilton, Rebecca. "A History of the U.S. Alien Tort Statute." *Reuters*. Thomson Reuters, 30 Sept. 2012. Web. 02 Apr. 2014.

¹⁵ *Id.* at 878.

from being adjudicated because of the Act of State Doctrine. The Act of State Doctrine immunizes sovereign nations from being prosecuted for official State actions. Although this argument was not advanced in the argument, District Judge Irving R. Kaufman suggested that even if Pena was acting under the color of authority, this would not immunize Pena from adjudication in United States courts.

In his opinion on behalf of the court, Judge Kaufman stated “[the judges] believe it is sufficient here to construe the Alien Tort Statute. . . [as] simply opening the federal courts for rights already recognized by international law.”¹⁶ It could be argued that this line in the opinion ignited the spark of progressive legal filings and subsequently, progressive legal opinions by judges in favor of a more expansive view of United States involvement in the policing of the world community. Since *Filartiga*, The Center for Justice and Accountability reports “scores” of ATS having been filed.¹⁷ The line of text implies that the reason for the dormancy of the ATS for so many years was the uncertainty of how to use and apply the statute to present day situations; and in light of *Filartiga*, the use and scope of the ATS has been better defined and easier applied to situations.

The *Filartiga* opinion expanded the rights in which the individuals were protected under the law of nations to “include torture, genocide, and slavery and certain other violations” of international law.¹⁸ The court interpreted the ATS as an evolving statute and not one that is frozen in interpretation to the period in which it was written. A violation of the law of nations in 1789 and a violation of the law of nations in 1980 (the year the *Filartiga* opinion was written)

¹⁶ *Id.* at 887.

¹⁷ "The Alien Tort Statute." *CJA*:. The Center for Justice and Accountability, n.d. Web. 06 Feb. 2014.

¹⁸ Holton, Tracy B. "Cause of Action to Recover Civil Damages Pursuant to the Law of Nations And/or Customary International Law." *WestLaw Next*. Cause of Action Second Series, n.d. Web. 17 Mar. 2014.

has the possibility of remaining similar, while also has the possibility of encompassing additional “wrong[s]” of mutual, global concern.¹⁹ It is important to note, however, that although rape or homicide are recognized as a “wrong” by every civilized nation, these acts are not in violation of international law, if they were committed by private citizens.²⁰ The reason for this is the individual committing the act proscribes to the domestic rule of law under the country in which the act was committed. It is understood that a civilized nation will be able to properly enact legislation and provide punishment for certain crimes in the best way it sees fit for itself and its citizens.

To be considered an act in violation of the law of nations, the act must be universally understood to be a breach of human rights. The “international tort” must be definable and obligatory as to ensure one country does not overreach its authority and force its ideals and values onto another country²¹. This is an example of the very tight rope judges walk when interpreting and applying international law, especially in relation to the ATS. The ATS plunges America and the judicial branch into areas of international law and policy, and practices of other countries around the world in a very unique way, and in a way that is unlike any other piece of domestic legislation.

¹⁹ *Id.* at 888.

²⁰ Holton, Tracy B. "Cause of Action to Recover Civil Damages Pursuant to the Law of Nations And/or Customary International Law." *WestLaw Next*. Cause of Action Second Series, n.d. Web. 17 Mar. 2014.

²¹ *Forti v. Suarez-Mason*, 672 F. Supp. 1531, 1540 (N.D. Cal. 1987), reconsideration granted in part, 694 F. Supp. 707 (N.D. Cal. 1988); Restatement (Third) of the Foreign Relations Law, §§ 102, 103.

CONTINUING EVOLUTION

A natural extension from *Filartiga*, in which the defendant was violating the law of nations under the authority of a nation, is an individual violating the law of nations *not* acting under the authority of a nation.

Kadic v. Karadzic, 70 F.3d 232 (2d Circ. 1995)

Kadic v. Karadzic brought this type of situation before the court. Plaintiff's filed an action against Radovan Karadzic, the self-proclaimed president of the Republic of Srpska (Srpska), which was, and is, an entity that gained independence from Yugoslavia in 1992. In their complaint, plaintiff's alleged rape, forced impregnation, murder, and additional forms of torture. Karadzic simultaneously argued two contradictory positions in which he was both the president of the Srpska and a private individual. In his Motion to Dismiss, Karadzic affirms his position as the President of Srpska; which if recognized by the Executive Branch of the United States, is considered to hold head-of-state immunity. "A head-of-state recognized by the United States government is absolutely immune from personal jurisdiction in the United States."²² However, in a brief filed by Karadzic, he holds that the United States court lacks personal jurisdiction because he is a private individual, and the law of nations does not apply to private individuals. The United States District Court for the Southern District of New York agreed with Karadzic and stated that because he was acting as a private individual, the court lacked personal jurisdiction.

The United States Court of Appeals for the Second Circuit found this contradiction very peculiar and rejected both Karadzic's contentions and the lower court's rulings. The Court of

²² *Lafontant v. Aristide* 844 F.Supp 128 (E.D.N.Y. 1994).

Appeals did not agree with this interpretation of the law of nations and held that some acts are in violation of the law of nations whether committed under the color of authority or by a private individual. Genocide, for example, is considered to be in violation of the Convention on the Prevention and Punishment of the Crime of Genocide, 78 U.N.T.S. 277, which was ratified in the United States in 1989. The Convention defines genocide to include acts committed with the intent to “destroy, in whole or in part, a national, ethnical, racial, or religious group[s].” and makes clear that “persons committing genocide . . . shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals.”²³ The plaintiff’s allegations include Karadzic’s campaign to rid the country of Bosnian Muslims and Bosnian Croats through means of rape, forced impregnation, murder, among other heinous crimes clearly constitutes genocide because of the religious cleansing. As noted previously, genocide violates the law of nations regardless if it is committed by a state actor or a private citizen.

Additionally, plaintiffs contend that the acts committed by Karadzic in his pursuit to religiously cleanse Sprska were war crimes. The law of war has been recognized as falling under international law, and after the Second World War, was codified in the Geneva Convention and ratified by the United States.²⁴ Law of war applies to “armed conflict[s] not of international character” and each party obligates to a set of minimum ideals.²⁵ Unacceptable acts include:

- a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- b) taking of hostages;
- c) outrages upon personal dignity, in particular humiliating and degrading treatment;

²³ U.S. Dept. 345.

²⁴ *Id.* at 242.

²⁵ U.S. Dept. 398-99.

- d) the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court²⁶

These minimum ideals that were codified at the Geneva Convention do not only apply to nations; they also apply to all insurgent groups, guerilla groups, and individuals. The rationale behind codifying the law of war is to be able to hold parties that violate the law of war liable for their crimes. Thus, assuming the allegations in the plaintiff's complaint were accurate, which is what the Court of Appeals assumed, it becomes very obvious Radovan Karadzic and his troops violated international law regardless if Karadzic acted as an individual or a state actor.

Karadzic also asserted that he was the President of Srpska, an oxymoron that was alluded to previously in this section. His assertion that Srpska is a nation, thus protecting him through head-of-state immunity, stems from definition of a state in international law. A state is defined as "an entity that has a defined territory and a permanent population, under the control of its own government, and that engages in, or has the capacity to engage in, formal relations with other such entities"²⁷. The Court of Appeals did not conclude Karadzic's international standing as an individual or as President of Srpska because the facts of the case were not being appealed. The case was appealed by the plaintiff's because the District Court dismissed the case based on lack of jurisdiction; so the Court of Appeals only scope of authority was the jurisdiction the ATS encompassed. Despite not coming to a final decision on the outcome of the case, the dictum of the case is very important in the evolutionary process of the ATS.

²⁶ Geneva Convention Relative to the Treatment of Prisoners of War art. 3, Aug. 12, 1949, 75 U.N.T.S. 135.

²⁷ Restatement (Third) of the Foreign Relations Law, (2013).

Kadic provided the next step from liability of a nation to liability of an individual. As stated, even though the court did not provide a remedy for the plaintiffs' regarding the alleged human rights abuses, the court did support the theory of individual liability in international law.

As a result, the individual liability applicability of the ATS is a necessary evolution of the statute for any continued use and effect. When the ATS was enacted, and for whatever reason it was enacted, individuals, not acting under the authority of a nation, did not commit, generally, large scale acts of violence against a people. Wars and the exploitation of humans were done under the color of the authority of a nation; thus allowing the ATS to be a viable tool for people to access American courts if they believed their rights were violated by an individual under the color of authority.

Needless to say, times have changed. "The behavior of [non-state actors] and their terrorist behaviors ha[s] grown . . . in the late 20th century and beginning of the 21st century".²⁸ A large amount of human rights abuses are still committed by nations, which is terribly unacceptable in such a modern era, but a large amount of human rights abuses are now committed by private individuals and terrorist groups, not working under the authority of any nation, as well. For the ATS to continue to provide a remedy for victims, it had to evolve with the times to include liability for private individuals. This allows members of terror groups and privately funded terror organizations to be liable for the abuses and travesties they commit against humankind.

²⁸ Pourchot, Dr. Georgeta, Dr. Edward Weisband, and Dr. Timothy Luke. "Non-State Actors, Terrorism and the United Nations: A Critical Analysis through Three Case Studies Examining the United Nations' Effectiveness in Addressing the Threat Imposed by Violent Non-State Actors." Thesis. Virginia Polytechnic Institute and State University, 2009. Fitzalan Crowe Gorman. Web. 15 Feb. 2014.

PRESENT DAY LITIGATION

By closely examining two landmark cases, *Filartiga and Kadic*, we have been able to trace the evolution of the Alien Tort Statute. From *Filartiga*, in which the court determined state actors could be sued under the ATS, to *Kadic*, in which the court expanded the jurisdiction of the ATS to include individuals. We now move into the latest litigation of the ATS, *Kiobel v. Royal Dutch Petroleum*, 621 F.3d 111 (2d. Circ. 2010)²⁹, in which the court ruled on applicability of the ATS to “juridical” persons.

Kiobel v. Royal Dutch Petroleum, 621 F.3d 111 (2d. Circ. 2010)

Royal Dutch Petroleum Company (Royal Dutch) is the parent company to hundreds of subsidiaries around the world, including Shell Oil Company in the United States. Royal Dutch is headquartered in The Hague, Netherlands, therefore making it a foreign corporation when considered under United States courts. The petitioners were Nigerian residents who performed oil exploration and production for the Shell Petroleum Development Company of Nigeria, Ltd. (SPDCN); one of Royal Dutch’s subsidiary companies. The Nigerian petitioners alleged SPDCN had aided and abetted the Nigerian government in human rights abuses that were in violation of the law of nations.

The issue before the court is whether the United States District Court had jurisdiction of a foreign corporation under the ATS. As a jurisdictional statute, the ATS grants United States District Courts the authority to hear cases involving violations of the law of nations or any other

²⁹ *Kiobel v. Royal Dutch Petroleum*, 621 F.3d 111 (2d. Circ. 2010).

violation of a treaty to which the United States prescribes. If a court rules that a petitioner does not have jurisdiction under the ATS, the court has no choice but to dismiss the claims.

The United States Court of Appeals for the Second Circuit held that the petitioners did not have jurisdiction to file suit in the United States against a corporation. Although *Kiobel* was granted certiorari by the Supreme Court, for the time being this thesis will focus on the opinion of the Court of Appeals because the Supreme Court balked at the opportunity to consider the issue of corporate liability. Instead, the Supreme Court scheduled a rehearing of oral arguments and instructed the counselors to focus their arguments on extraterritoriality; a topic that will be covered later in this thesis.

The Court of Appeals points to international customary law and prior court opinions in its decision when addressing corporate liability. International customary law relates “those standards, rules or customs (a) affecting the relationship between states or between an individual and a foreign state, and (b) used by those states for their common good and/or dealings inter se.”³⁰ It stands to reason that human rights abuses like rape, murder, forced impregnation perpetrated by a corporation would be considered by all civilized nations to be illegal under their respective *domestic* law. However, under international customary law, this stipulation does not exist.³¹ For a law to be considered a part of international customary law, the law must be expressly transcribed in a treaty, accord, or other internationally binding document. Laws against genocide and war crimes are prior examples used in this thesis of international customary law. International legislation against human rights abuses perpetrated by corporations has not been

³⁰ *IIT v. Vencap, Ltd.*, 519 F.2d 1001, 1015 (2d. Cir. 1975).

³¹ *Id* at 118, 621 F.3d 111.

written, therefore cannot be considered international customary law and thusly bars corporations from falling under the jurisdiction of the ATS.

The court pointed out that corporations are not directly responsible for the abuses or oppressive acts committed to victims; individuals are responsible. A corporation is not capable of pulling a trigger or pillaging a village; only a person is capable of such heinous acts. Although this is true, it is important to consider whether these individuals were acting under orders from the corporation or acting as rogue agents. If it is proven that individuals were acting on orders given by an agent of the corporation then victims need to have recourse under international law. Similarly, if the individuals were rouge actors perpetrating acts of violence not under direction of an agent of the corporation, then they could still be sued as individuals under the ATS in the United States.

It is curious to consider whether the individuals involved in the alleged aiding and abetting of the Nigerian government were acting from orders given by an agent of Royal Dutch Petroleum or SPDCN. The *Kiobel* opinion never addresses this possibility because the petitioners failed to prove jurisdiction under the statute. Since corporate jurisdiction under the ATS is controversial it is questionable as to why the appellants would not also file suit against the individuals as well, in anticipation of the corporate liability being dismissed. The court has previously ruled regarding the matter of individual liability in *Kardic*, and it seems this may have been a better avenue, or at least a fall back opportunity in the event, and eventual actualization, that charges against Royal Dutch Petroleum or SPDCN were dismissed.

A reason for naming Royal Dutch Petroleum and SPDCN as defendants is as follows:
The objective of a lawsuit has always been to right a wrong, or to make whole the injured party.

In a criminal matter, this is achieved through jail time, fines, and probationary periods. In a civil suit, restitution to the injured party is achieved mostly through financial means. Although other methods such as injunctions or equitable remedies are sometimes explored, the vast majority of petitioners seek monetary remedies. The ATS only grants authority to United States Courts for torts; which are civil actions. Thus, the prayer for relief will mostly likely be monetary. A corporation will carry a higher dollar amount of liability insurance than an individual because of the number of employees it employs, the number of different sites the corporation operates, and the large structure and investors it must protect. Being that monetary compensation is the primary goal of a civil lawsuit; the petitioner wants to sue the entity in which it believes will provide the best means for receiving monetary compensation.

This still leaves the question of not naming the individuals as defendants in the case. One theory may be considered. Naming the corporation and the individuals in the lawsuit may have been mutually exclusive. If the plaintiffs tried to recover damages from the individuals, this line of reasoning could have been taken as an omission that the individuals were rogue actors and not acting under orders of an agent of the corporation. This would have left the claim against the corporation, and all of its liability insurance, alienated. As previously stated, petitioners will attempt to file suit against the defendant(s) with the most liability insurance. To render the corporation moot would not be in the best interest of retribution.

Corporate Liability

There is little doubt that ATS corporate liability should be viewed through the international law lens, as was done in *Kiobel*. However, in a concurring opinion, Senior Judge of the United States Court of Appeals, Second Circuit, Pierre N. Leval, reasons differently. He

contends that the liability of a corporation and the damages that may be awarded by the court can be governed by different jurisdictional laws. In respect to *Kiobel*, liability can be found through international law while the award of damages can be governed under United States domestic law. According to Judge Leval, the structure of international law relating to civil liability allows no specific position to be taken; but rather allows each nation to take its own position and apply it accordingly.

The majority opinion reasons that if there is no universally accepted rule that allows for the award of civil damages against corporations, then United States courts are not privy to award damages to corporations. This parallels the argument that if there is no universally accepted rule for awarding damages for the acts committed in violation of the law of nation by individuals, or natural persons, then United States courts are barred from doing this as well. This forces the majority opinion to concede, in Judge Leval's logic, because the United States does award damages for civil liability against a corporation's employees when a corporation violates the law of nations.

Judge Leval contends that each nation has the privilege to take its own position on civil liability. The Second Circuit opined in *Sosa* that "others have for decades awarded damages, and the Supreme Court . . . made it clear that a damage remedy does lie under the ATS."³² A practice that has been used for "decades" and one that is buttressed by the Supreme Court in *Sosa v. Alvarez-Machain*³³, makes this a universally accepted rule if Judge Leval's contention that each nation applies damages as it sees fit is accepted. Therefore, the majority's conclusion that there is not a universally accepted norm in providing civil damages does not follow a logical pattern

³² *Sosa v. Alvarez-Machain*, 124, 153 S.Ct. 2739 (2004).

³³ *Sosa v. Alvarez-Machain*, 124 S.Ct. 2739 (2004).

because of the false parallel argument presented. Since there is a universally accepted rule for awarding damages this leaves the question of civil damages open-ended.

The court in *Kiobel* took the position that because there is no universally accepted rule governing corporate liability it does not have the authority to arbitrate the case. This is an underestimation of the authority of the court and possibly a misinterpretation of *Sosa*. To fall under the jurisdiction of the ATS a plaintiff must show that he/she was the victim of a tort in violation of the law of nations and the court has jurisdiction to hear the case and assess compensatory damages³⁴. Although the court was correct in dismissing the case, it should not have been dismissed because of jurisdictional impediments.

The Complaint that the plaintiff's filed did not meet the standards outlined in *Presbyterian Church of Sudan v. Talisman Energy, Inc.*, 582 F.3d 244 (2d Cir.2009).³⁵ and *Ashcroft v. Iqbal.* 556 U.S. 662, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009)³⁶, which established a requirement for "a complaint to properly allege a defendant's complicity in human rights abuses, . . . it must plead specific facts supporting a reasonable inference that the defendant acted with a purpose of bringing about the abuses."³⁷ This requirement was not met because allegations against the Appellees do not implicate them as direct actors purposefully bringing about the abuses the Appellants alleged.

The dictum of a case is sometimes as important, if not more important, than the decision when it comes to the interpretation and evolution of a particular issue. The majority opinion in *Kiobel* jeopardized the potential for victims of human rights abuses all over the world to seek

³⁴ *Id.*

³⁵ *Presbyterian Church of Sudan v. Talisman Energy, Inc.*, 582 F.3d 244 (2d Cir.2009).

³⁶ *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009).

³⁷ *Id.* at 188, 621 F.3d 111 (2d. Circ. 2010).

retribution. The court effectively ruled that the United States judicial system would stop at the water's edge in relation to corporate liability for violations of the law of nations. The repercussion of this global "announcement" by the court could be understood that as long as an individual is committing an act in violation of the law of nations, under the color of authority of a corporation, the unlawful act is to be treated as an exception under the ATS and in United States courts. However, by opening the proverbial flood gates of the United States court system to all victims of corporate human rights abuses, what consequence will this have on our already overburdened court system and foreign policy initiative?

STATUS QUO OR STATUS MUTATIO

For victims of human rights abuses perpetrated by individuals and individuals under the color of authority of a nation, who have exhausted all other legal options, the Alien Tort Statute is a viable option to gain access to United States courts. The current status quo bars victims of human rights abuses committed by corporate actors from using United States courts to seek retribution. This presents a problem because of the ability of corporations to escape liability for abuses it commits in pursuit of greater financial gain. To many citizens of Western democracies, human rights abuses by corporations may seem like a nonissue and the acts of violence that occurred in *Kiobel*, as an isolated incident. This is not the case. Companies like Nike, Dow Chemical, Nestle, and Chevron are all guilty of human rights abuses.³⁸ The detachment to these human rights abuses that citizens of Western democracies feel may be due to the actual abuses occurring in cultures and countries far removed from daily news and thought. Despite the detachment, these abuses are occurring, and “corporations are working harder than ever to cover abuses...”³⁹

Allowing corporations “immunity” from jurisdiction under the ATS is denying victims all over the world the opportunity to have their rights protected, which are being violated, under the law of nations. The *Kiobel* court penned that corporations are not “immune” from suits under the ATS because this assumes that there was not a “norm imposing liability in the first place.”⁴⁰ What the court does not consider is the fact that there was, and is, a norm for imposing liability.

³⁸ "International Labor Rights Forum." *The 14 Worst Corporate Evildoers*. International Labor Rights Forum, 12 Dec. 2005. Web. 26 Feb. 2014.

³⁹ "Global Exchange Top Ten Corporate Criminals List | Global Exchange." *Global Exchange Top Ten Corporate Criminals List | Global Exchange*. N.p., n.d. Web. 17 Mar. 2014.

⁴⁰ *Id* at 115, 621 F.3d 111 (2d. Circ. 2010).

That norm has been in existence for over 200 years: the Alien Tort Statute. Those who are in violation of the law of nations are liable for their violations and by extending this rule to individuals and individuals under the color of national authority and not to corporations that are committing equally as heinous crimes under the law of nations, is invoking a type of immunity.

The idea that human rights abuses are physically committed by individuals and not corporations appeals to common sense. As pointed out earlier in this thesis, only an individual can kill another individual or pillage a village. However, consider the situation in which the individual committing the abuse is doing so as an agent of a corporation, in which the individual was given orders to perhaps do “what is necessary” to achieve a goal important to the corporation. Although personal responsibility does play into this argument, if the individual decides to follow through with the order, the corporation does have liability in the consequence of the situation. This is because an *agent*, an individual with direction making power on behalf of the corporation, is working on behalf of the corporation, or *principle*. In corporate law, the principle is responsible for the acts of their agents. The same liability applies to an individual who causes a car accident while working as an agent for the principle. The principle is liable for any damage that its agent has caused. Albeit, this parallel example is sharper and is supported by much more case law, the logic and law remains the same.

Despite the moral and ethical yearning for justice in the face of such deplorable acts against humanity, it is imperative to consider the ramifications of opening the American court system to individuals all over the world. The potential influx of cases being filed under the ATS in American courts could be unsettling to an already overburdened system. The list of corporate human rights abuses stated previously is only a small number of corporations that commit these abuses, which leaves the possibility open to many more victims may mobilize to seek the justice

they never thought they would receive; should the courts decide to hear corporate liability cases under the ATS.

Although a valid concern and a logical conclusion, an increase in case filings and further strain on the American court system would be marginal. Since *Kaidc*, in 2011, it is estimated that approximately eighty cases have been filed against transnational corporations, which are corporations operating in multiple countries. *Kadic* was heard in the early 1990's, so that would be approximately four cases filed per year under the ATS. When considered that 278,442 cases were filed in United States District Courts in 2012, it is clear to see ATS case filings would have a minimal effect on the United States court system⁴¹

In addition to the results reported, a moral aspect exists in allowing corporate liability cases to be filed in the United States exists. This would give the United States the opportunity to help those victims that have nowhere else to turn. If any other country wanted to become a safe haven for victims of abuse, their government would have to pass legislation. The United States already has legislation that allows it to be a safe haven for these victims, and has had it for over 200 years. Not taking advantage of such a powerful statute would be irresponsible. Legislation that mimics the ATS would be a hard fought battle in any government today. The fact that the United States has the ATS already in place is a blessing to those who are affected by human rights abuses. However, it is only a blessing if courts allow the ATS to be used for its intended purpose: protecting the rights of those whose rights have been violated.

When conducting a simple read of the statute, the writers, it seems, did not expressly intend to include foreign corporations as possible defendants under the ATS. However, the

⁴¹ "Judicial Caseload Indicators." *United States Courts*. N.p., n.d. Web. 02 Mar. 2014.

existence of corporations in 1789 was not nearly as prevalent as it is today. The corporation was feared because of the power it could conceivably wield. In a letter written to Colonel William F. Elkins in 1864, President Abraham Lincoln wrote “I see in the near future a crisis approaching that unnerves me . . . corporations have been enthroned and an era of corruption in high places will follow. . . .”⁴²

⁴² Lincoln, Abraham. Letter to Colonel William F. Elkins. 21 Dec. 1864. *Global Issues*. Global Issues, 3 Sept. 2001. Web. 25 Mar. 2014.

The Wisdom of Lincoln

When President Lincoln penned those words to Colonel Elkins in 1864 he foresaw the power and influence the corporation could potentially wield. It would take approximately 150 years to reach the point in litigation we saw in *Kiobel*. The Second Circuit ruling in *Kiobel* becomes more harrowing when the evolution of corporate recognition and prominence is considered in this section.

Santa Clara County v. Southern Pacific Railroad Company, 118 U.S. 394 (1886)

An interesting caveat to the decision written by Justice Harlan in *Santa Clara County v. Southern Pacific Railroad Company*, 118 U.S. 394 (1886)⁴³ is the absence of the Fourteenth Amendment and the corporate standing in the United States. Nowhere in the opinion is either of these two topics mentioned; but yet *Santa Clara* is the genesis of the corporate identity. This confusion is alleviated when the “headnote” is discussed. Headnotes precede the official opinions of the Supreme Court in the United States Reports and are “not the work of the Court, but are simply the work of the Reporter, giving his understanding of the decision, prepared for the convenience of the profession.”⁴⁴ Former President of the Newburgh and New York Railway Company, J.C. Bancroft Davis authored the headnote for *Santa Clara*. The headnote delineated the Justices unanimous opinion that “corporations are persons within the meaning of the Fourteenth Amendment to the Constitution. . .”⁴⁵

The Fourteenth Amendment protects all citizens of the United States, regardless of state of occupancy and provides for equal protection from laws which “abridge the privileges or immunities of citizens of the United States” and “deprive any person of life, liberty, or property,

⁴³ *Santa Clara County v. Southern Pacific Railroad Company*, 118 U.S. 394 (1886).

⁴⁴ *United States v. Detroit Timber & Lumber Company*, 200 U.S. 321, 322 (1906), (*Syllabus*).

⁴⁵ *Id.* at 394, 118 U.S. 394 (1886).

without due process of law”.⁴⁶ The position in the Davis’ headnote, that the Fourteenth Amendment applies to corporations, is supported by a letter from Chief Justice Morrison Waite in which Davis inquires about his interpretation of the Justice’s sentiments. Chief Justice Waite leaves the decision to Davis to include the summation of the Justice’s sentiments in the report and believes Davis “expresse[d] with sufficient accuracy what was said [regarding the Fourteenth Amendment’s application to corporations] before the argument began.”⁴⁷

The implication of the applicability of the Fourteenth Amendment to corporations is a Constitutional protection for corporations before the law. Thus, in terms of equal protections and immunities, corporations are equivalent to that of a natural person born in the United States.

New York Central & Hudson River Railroad Company v. United States, 212 U.S. 481 (1909)

Under the “Elkins Act”, the Supreme Court ruled in *New York Central & Hudson River Railroad Company v. United States*, 212 U.S. 481 (1909), that corporations may be held criminally liable for acts of its agents.^{48 49} Agents of the New York Central & Hudson River Railroad Company were convicted of violating a federal law that prohibited the payment of rebates. The Courts reasons that “a corporation cannot be imputed with the knowledge of unlawful conduct by its agents acting within the scope of their designated authority. . . . It is well established that corporations may . . . held responsible for damages in a torts action.”⁵⁰

The opinion in *New York Central* acknowledges the necessity for corporate responsibility of its agents. This strikes to the heart of the current debate of international corporate liability. In

⁴⁶ US Const. amend. XIV. Print.

⁴⁷ Beatty, Jack (2007), *Age of Betrayal: The Triumph of Money in America, 1865–1900*, New York: Alfred A. Knopf, p. 172, ISBN 978-1-4000-4028-5, OCLC 71812875

⁴⁸ 32 Stat. 847

⁴⁹ *New York Central & Hudson River Railroad Company v. United States*, 212 U.S. 481 (1909)

⁵⁰ *Id.*

1909, when Justice Day authored the *New York Central* opinion, it was “well established” that corporations are held liable for damages in tort actions.⁵¹ The spirit of his opinion applied to domestic law, of course, but the principle remains the same. If a corporation is going to profit from the illegal and violations of human rights, as is the situation in ATS litigation, then the corporation has a duty to oversee its agents and ensure international laws, accords, and treaties are not violated. Justice Day summarizes the importance of corporate liability succinctly: “If corporations are permitted to continue with prosecutorial immunity for their actions, it would undermine virtually the only way the government can control and correct its abuses.”⁵²

Citizens Untied v. Federal Election Commission, 558, U.S. 310 (2010)

The Supreme Court further expanded corporation’s rights in its 2010 *Citizens Untied v. Federal Election Commission*, 558, U.S. 310 (2010) decision.⁵³ Citizens United is a conservative nonprofit organization that attempted to air commercials and a documentary about a candidate for President within 30 days of a primary election This is in violation of the Bipartisan Campaign Reform Act (BCRA). Fearing they would be sued, Citizens United filed for injunctive and declaratory relief arguing the unconstitutionality of §§ 201 and 311 of BCRA.

Citizens United was decided by the Supreme Court, in which they ruled that corporations shall be treated as citizens for purposes of political speech. This means that corporations and unions have the power to financially contribute to political campaigns without limit, thus allowing corporations to rule the political arena unfettered. Focusing more narrowly to this thesis, however, the double-standard of corporate responsibly versus corporate rights is blatant. It

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Citizens Untied v. Federal Election Commission*, 558, U.S. 310 (2010).

is acceptable for corporations to be treated like humans for political and financial purposes, but unacceptable for corporations to be held accountable for its actions or actions taken on its behalf.

Status Quo or Status Mutatio (continued)

Viewing the ATS statute through an evolutionary lens and not statically, the ATS would have to adapt to fit the norms of an ever changing society and world order. It seems the most important consideration in 1789 was the protection of ambassadors to the United States. If the protection was intended to end there, the Convention would have been more astute to draft a much more narrow statute than the open-ended ATS. Needless to say, this was not the sole intention of the ATS. An argument could be made that the intent of the ATS was only to extend to those aliens that were injured by American citizens. Again, if that was the intention, why would the Convention not draft a more pointed statute?

This is not base enough to grant the courts authority to hear any case it wishes just because a tort was committed against an alien of the United States; but it does allow for some judicial interpretation to occur when hearing ATS cases. It is necessary for the courts to limit jurisdiction under the ATS for the purpose of judicial economy and foreign policy, but it is important for the spirit of the statute to remain intact. Baring corporate abuse cases is a disservice to the Convention of 1789 and the Alien Tort Statute itself.

Whether it is an individual or government actor or a corporate actor that is committing crime in violation of the law of nations, responsibility lies under the ATS. The idea that corporations are “immune” to liability under the ATS is not plausible. Corporations, just like individuals, have to obey laws that are set in the country, city, or municipality, in which they live or operate. Individuals cannot exterminate entire populations of people, rape and pillage villages,

or murder individuals. If an individual commits these acts, he/she is to be held responsible under the law that is in place. A corporate actor should be no different. If a corporation chooses to conduct itself in violation of the law of nations and profit from deplorable acts that violate the law of nations, then it should be held responsible.

EXTRATERRITORIALITY

Instead of focusing the argument on corporate liability, the Supreme Court focused the argument on extraterritoriality. A possible reason for the switch in argument direction may be in the division of the justices between “pro- and anti-ATS wings.”⁵⁴ Chief Justice John Roberts authored the opinion for the Court on whether the ATS applies to “violations of the law of nations occurring within the territory of a sovereign other than the United States.”⁵⁵ The opinion concluded that the ATS did not authorize extraterritoriality. Relying on *Morrison v. Australian National Bank*, 130 S. Ct. 2869, if extraterritoriality is not authorized by Congress, there is a presumption against extraterritoriality. Chief Justice John Roberts relied on the text, history, and purpose of the ATS to reach his conclusion.

The text of the ATS does not “suggest that Congress intended causes of action recognized under it to have extraterritorial reach.”⁵⁶ The reference to “any civil action’, to international law, and to torts” in the body of the statute was not enough evidence of extraterritorial presumption for the Court.⁵⁷

When considering the history of the ATS, the Court looked to Sir William Blackstone’s Commentaries of the Laws of England, an 18th-century treatise of the common law of England; and to *Sosa* for the three breaches of international law that existed in 1789. *Sosa* set the precedent to include these breaches when considering ATS cases. These breaches are: violations

⁵⁴ Winkler, Matteo M. "What Remains of the Alien Tort Statute After Kiobel?" *WestLaw Next*. North Carolina Journal of International Law and Commercial Regulation, Fall 2013. Web. 13 Mar. 2014.

⁵⁵ *Id.* at 1662, 133 S. Ct., 1659 (2013).

⁵⁶ *Id.* at 1665.

⁵⁷ Winkler, Matteo M. "What Remains of the Alien Tort Statute After Kiobel?" *WestLaw Next*. North Carolina Journal of International Law and Commercial Regulation, Fall 2013. Web. 13 Mar. 2014.

of safe conducts, the breach of rights of ambassadors, and piracy.⁵⁸ The first two violations do not extend themselves to extraterritoriality. Piracy, by definition, occurs on the high seas, where extraterritoriality would logically be assumed, because no one country has authority of the seas. The Court denied the presumption of extraterritoriality, instead submitting that during the late eighteenth century the high seas were the exception to “territorial jurisdiction of each state.”⁵⁹

The purpose for the ATS, as has been pointed out in this thesis, remains uncertain. Chief Justice Roberts acknowledged that there is some indication that original Congressional intent was for the ATS to be a way in which the United States would be able to gain the trust and assurance of other nations; but wholly rejects that hypothesis based on the fact that many countries object to the idea of extraterritoriality applying to their citizens.⁶⁰ These nations include Canada, Germany, South Africa, and Switzerland to name a few. Take notice that all of these countries have a functional government and justice system. The United States would have no need to interfere in their justice system because a petitioner would have access to the judicial system in these countries, before having to resort to a United States court.

That is not the case in less advanced countries like Nigeria and Paraguay. In Nigeria, a functional judicial system is nonexistent. Amnesty International reports the criminal justice system in Nigeria as “a conveyor belt of injustice, from beginning to end.”⁶¹ It would be naïve and almost irresponsible to believe that a petitioner would be able to mount a successful case in a county with such a corrupt judicial system. This problem is further compounded in *Kiobel*, where the petitioners allege the Nigeria government was involved in the human rights abuses.

⁵⁸ *Id.* at 715, 124 S. Ct. 2739 (2004).

⁵⁹ Winkler, Matteo M. "What Remains of the Alien Tort Statute After *Kiobel*?" *WestLaw Next*. North Carolina Journal of International Law and Commercial Regulation, Fall 2013. Web. 13 Mar. 2014.

⁶⁰ *Doe v. Exxon Mobil Corp.*, 654 F.3d 11, 77–78 (C.A.D.C.2011).

⁶¹ "Nigeria: Criminal Justice System Utterly failing Nigerian People; Majority of Inmates Not Convicted of Any Crime." *Amnesty International*. Amnesty International, Feb. 2008. Web. 19 Mar. 2014.

The Paraguayan justice system was compromised in *Filartiga v. Pena-Iran*. The police arrested and shackled the petitioner, Dr. Joel Filartiga's, attorney to a prison wall. He was subsequently disbarred for "no just cause."⁶² In countries like Paraguay and Nigeria that have an oppressive and corrupt justice system, it is fair to say that the just dispersion of legal action is a concern. These same concerns would be extremely minute, or nonexistent, in the countries listed by Chief Justice Roberts in his opinion.

Despite the fallacies used when opining *Kiobel*, there is some room for suits to be brought under the ATS. Most simplistically, the Supreme Court limited the jurisdiction of suits arising when the petitioner is foreign, the defendant is foreign, with no substantial ties to the United States, and the alleged tort was committed on foreign soil.

In his article, *What Remains of the Alien Tort Statute After Kiobel?*, published in the North Carolina Journal of International and Commercial Regulation, Matteo Winkler also outlines the possibility of suits being brought under the ATS where only one of the three foreign elements are present. Despite not alienating all ATS suits, this does create a substantial setback for petitioners like Esther Kiobel, whose husband was a victim of human rights abuses by a foreign corporation that has limited presence in the United States. This allows foreign corporations to commit human rights abuses in third-world countries, or countries where the judicial process is very weak, and escape persecution.

Kiobel was not a total loss, however. The Court shied away from clarifying the question of corporate liability, and instead focused on extraterritoriality. Focusing the argument on extraterritoriality the Court left the possibility for claims that are brought where there is

⁶² *Filartiga v. Pena-Irala*, 630 F.2d 876 (2d Cir. 1980).

substantial United States presence. Although this does not answer the question of corporate liability, and only limits it and makes it more ambiguous, further corporate liability litigation is still possible. The Court did not outline a framework to determine a substantial presence, which leaves District Courts and Appeals courts in a quandary of what exactly that loose term means. Since the Court left the issue of corporate liability in limbo, the dictum of the *Kiobel* Court of Appeals could be cited in future litigation. The precedent that was set by the Appeals court will affect corporate liability in the future by limiting the cases that have jurisdiction in District court.

CONCLUSION

The Alien Tort Statute has the potential to be a powerful tool in the pursuit of justice and global responsibility. The victims of human rights abuses that reside in nations that have a substandard judicial system need a venue in which they can seek retribution for the acts perpetrated upon them. Beginning with *Filartiga*, the ATS jurisdictional breadth has evolved from propounding liability upon an official government individual, to *Kadic*, where jurisdiction was expanded to include private individuals. The Supreme Court frustrated the expansion and evolutionary process of the ATS in *Kiobel*.

Critics of the Alien Tort Statute's jurisdiction look to the 1936 Supreme Court decision in *United States v. Curtiss-Wright Export Corp.*, 299 U.S. 304 (1936), in which Justice Sutherland wrote for the majority opinion that "the President [is] the sole organ of the federal government in the field of international relations. . ."⁶³ This establishment of power creates a conflict for the ATS to be used to its full capacity. Allowing the ATS to include extraterritorial jurisdiction leaves the opportunity open for District Court judges and Supreme Court Justices to opine cases that will inevitably be of international character. This may prove to be more dramatic in theory than in practice. The President acts as the "sole organ", or spokesperson, for the United States' values and ideals as it pertains to the actions of other sovereign governments. Justice Sutherland's opinion, however, did not include corporate policy, but strictly that of the United States' foreign policy. The President may on occasion condemn acts committed by foreign corporations, but he does not have the power to directly punish or prosecute corporations or any individuals. Under the ATS, the court does. These powers, therefore, do not conflict with one another, but merely complement one another where one's power is lacking.

⁶³ *United States v. Curtiss-Wright Export Corp.*, 299 U.S. 304 (1936).

An important opportunity to decide corporate liability that would expand the ATS to protect victims from large companies that use inhumane acts and complacent government systems in the operation of business was lost in the dictum of *Kiobel*. Although the opinion leaves the opportunity open for further litigation, the presumption of corporate liability under the ATS is against petitioners. Admittedly, *Kiobel* was dismissed correctly. However, the Court should have penned an opinion in opposition to the opinion written by the Court of Appeals. Future ATS litigation involving corporations will now need to include arguments for extraterritoriality jurisdiction and corporate liability. This presents an even greater hurdle for attorneys and petitioners in their pursuit of justice.

The ATS started as a mysterious statute, and jurists, like Judge Leval in the *Bolchos* case, were unsure of its applicability and intention. Despite the uncertainty of these factors, some judges viewed the statute as a way for foreign victims of human rights abuses to seek justice in the United States. This is not an overreaching of judicial authority or exaggeration of the statute's text. The statute specifically states which individuals may bring suit in United States District Courts and for what cause. Foreign individuals who are victims of a civil tort in violation of the law of nations or a treaty signed by the United States have the right to file suit in United States District Court. Any other interpretation of the statute is the result of disagreement with the policy itself, and not with the language of the Alien Tort Statute.

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⁴⁶US Const. amend. XIV. Print.

⁴⁷Beatty, Jack (2007), *Age of Betrayal: The Triumph of Money in America, 1865–1900*, New York: Alfred A. Knopf, p. 172, ISBN 978-1-4000-4028-5, OCLC 71812875.

⁴⁸32 Stat. 847.

⁴⁹*New York Central & Hudson River Railroad Company v. United States*, 212 U.S. 481 (1909).

⁵⁰*Id.*

⁵¹*Id.*

⁵²*Id.*

⁵³*Citizens Untied v. Federal Election Commission*, 558, U.S. 310 (2010).

⁵⁴Winkler, Matteo M. "What Remains of the Alien Tort Statute After Kiobel?" *WestLaw Next*.
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⁵⁵*Id.* at 1662, 133 S. Ct., 1659 (2013).

⁵⁶*Id.* at 1665.

⁵⁷Winkler, Matteo M. "What Remains of the Alien Tort Statute After Kiobel?" *WestLaw Next*.
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⁵⁸*Id.* at 715, 124 S. Ct. 2739 (2004).

⁵⁹Winkler, Matteo M. "What Remains of the Alien Tort Statute After Kiobel?" *WestLaw Next*.
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⁶⁰*Doe v. Exxon Mobil Corp.*, 654 F.3d 11, 77–78 (C.A.D.C.2011).

⁶¹"Nigeria: Criminal Justice System Utterly failing Nigerian People; Majority of Inmates Not
Convicted of Any Crime." *Amnesty International*. Amnesty Interntaional, Feb. 2008.
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⁶²*Filartiga v. Pena-Irala*, 630 F.2d 876 (2d Cir. 1980).

⁶³*United States v. Curtiss-Wright Export Corp.*, 299 U.S. 304 (1936).