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
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I. EXTRATERRITORIALITY (OR NON) OF FEDERAL STATUTES

A. Civil RICO and RJR Nabisco

In *RJR Nabisco, Inc. v. European Community*,⁶ the Supreme Court st

presumption against extraterritoriality to the farthest extreme s

requiring courts to apply the presumption separately for *each sec*

statute. This case involved two sections of the Racketeer Influenced and Corrupt

Organizations Act (RICO),⁷ sections 1962 and 1964(c). Section 1962 makes it a

crime to engage, participate in, or profit from, certain racketeering activities

affecting interstate or foreign commerce, while section 1964(c) provides a

private action to persons injured *by the violation of section 1962*. Section 1962

clearly applies extraterritorially because it encompasses certain predicate

crimes committed outside the United States, such as money laundering and

providing material support to foreign terrorist organizations. One would

assume that, since 1962 applies extraterritorially, so would section 1964(c).

This assumption would have been entirely plausible, if not inevitable, until the

Court decided otherwise in *RJR Nabisco*.

The plaintiffs were the European Community (as the EU then was) and twenty

six of its member states. They sued RJR Nabisco, a U.S.-based tobacco

manufacturer, alleging that the defendant engaged in racketeering activities

prohibited by section 1962 and asking for damages for their losses under

section 1964(c). In a four to three opinion authored by Justice Alito,⁸ the Court

agreed that, “based on RICO’s text and context,” the prohibitions of section

1962 applied extraterritorially.⁹ However, the Court continued, just because

“Congress intended the[se] prohibitions . . . to apply extraterritorially”¹⁰ does

not mean that that *same* Congress also intended the civil remedies of section

1964(c) to apply extraterritorially. Instead, the Court posited that one must

“separately apply the presumption against extraterritoriality”¹¹ to section

1964(c). The Court undertook such a separate examination and found that

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cases that meet these parameters, the Survey focuses on those cases that may contribute something new to the development or understanding of conflicts law—and, particularly, choice of law.

The total number of conflicts cases decided in 2016 and posted on Westlaw by January 31, 2017, was 5,324.⁵ Table 1, below, breaks them down into categories. More than seventy percent of these cases have been decided by federal district courts and are not covered by this Survey.

Table 1.

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U.S. Supreme Court	10	Appellate cases covered: 1,515
Federal Courts of Appeals	516	
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Federal district and other federal lower courts	3,809	Not covered
All cases	5,324	

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The following are some of the cases discussed in this year’s Survey:

- Three U.S. Supreme Court decisions, one holding that the civil part of RICO does not apply to foreign injuries, another forging a hybrid compromise in the ongoing sovereign immunity disputes between California and Nevada, and another reminding the Alabama Supreme Court of its elementary obligation to give full faith and credit to sister-state judgments;
- Five important Second Circuit decisions reaching the following results:

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¹ Wu Yaling, 'Chinese Translation of the Social Contract by Jean-Jacques Rousseau and its influences (Lusuo "shehui qiyue lun" de hanyi jiqi yingxiang)' (2009) 104(3) *Modern Philosophy* 84, 86.

² Zhao Xiaobo, 'On the Evolution of the Concept of Civil Rights in Modern China: the Discussion on Conversion from Restoration to Revolution (Jindai Zhongguo "Minquan" Neihan Yanbian Kaolun: Cong Weixin Dao Geming de Huayu Zhuanhuan)' (2015) (2) *The Juris* 140, 140–141.

³ These documents chiefly include the Outline of the Constitution by Imperial Order (Qinding Xianfa Dagang) adopted 27 August 1908; The Provisional Constitution of the Republic of China (Zhonghua Minguo Linshi Yuefa) adopted on March 1912; The 'Temple of Heaven' Draft Constitution (Tiantan Xianfa) adopted on 31 October 1913; The Constitution of the Republic of China (Zhonghua Minguo Xianfa) adopted on 10 October 1923; The Constitution of Republic of China (Zhonghua Minguo Xianfa) adopted on 25 December 1946, and so on.

⁴ Nicolae Pavel, 'Defining the Concept of Human Rights in the Light of Juridical Values Theory' (2012) 4 (1) *Contemporary Readings in Law and Social Justice* 502, 508.

⁵ Guo Daohui and Tao Wei, 'How Could the Exclusion Zone for Human Rights be Broken? On Significant Cases Occurring in the Field of Jurisprudence after the Foundation of the PRC (Renquan Jinqu Shi Zenyang Tupo de: Jianguo Yilai Faxuejie Zhongda Shijian Yanjiu)' (1999) 5 *Law Science* 2, 2.

⁶ In this sense, the CPC's political documents have already stated that, 'we should draw from the quintessence of Chinese legal culture, learn from beneficial experiences in the rule of law abroad, but we can absolutely not indiscriminately copy foreign rule of law concepts and models.' See 'The CCP Central Committee Decision Concerning Some Major Questions in Comprehensively Moving Government of the Country According to the Law Forward (hereinafter abbreviated to CCP-CDC) (Zhonggong Zhongyang Guanyu Quanmian Tuijin Yifa Zhiguo Ruogan Zhongda Wenti De Jueding)' (China Social Science Net, 29 October 2014) <http://www.cssn.cn/fx/fx_ttxw/201410/t20141030_1381703.shtml> accessed 10 February 2016.

⁷ Randall Peerenhoom, 'Assessing Human Rights in China: Why the Double Standard?' (2005) 38 *Cornell International Law Journal* 71, 71.

⁸ Constitution of the People's Republic of China (Zhonghua Renmin Gongheguo Xianfa) 2004.

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Abstract

Although rule of law and human rights have been mentioned in the documents of the Vietnamese Communist Party since 1997 and were adopted in the 1992 constitution (amended 2001) and the new constitution in 2013, it is hard to be optimistic about their practical application. This research explores influences of the rule of law on the protection of human rights in Viet Nam. The article starts by reviewing concepts of the rule of law, mechanisms of protection of human rights, and the impacts of the rule of law on human rights in general. From analysing the current situation of the rule of law and the impacts of the rule of law on the protection of human rights in Viet Nam, this research offers some solutions for improving constitutional mechanisms to protect human rights.

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Abstract

Although rule of law and human rights have been mentioned in the 1997 constitution of Viet Nam, which was adopted in 1992 (amended in 2001), the government has been optimistic about their practical application. This research article examines the current situation of human rights in Viet Nam. The article starts by reviewing the current situation of human rights, and the impacts of the rule of law on human rights in general. From analysing the current situation of the rule of law and the impacts of the rule of law on the protection of human rights in Viet Nam, this research offers some solutions for improving constitutional mechanisms to protect human rights.

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