

The Business of American Courts in *Kiobel v. Royal Dutch Petroleum*

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JURIST Guest Columnists Michael Hausfeld and Kristen Ward Broz of Hausfeld argue that the jurisdiction of US courts should apply to any entity that has a presence within the US.

Addressing Petitioners' oral argument before the US Supreme Court in *Kiobel v. Royal Dutch Petroleum (Shell)* [PDF], Justice Samuel Alito said:

What business does a case [alleging that a Dutch oil company aided and abetted human rights violations committed against Nigerian citizens by the Abacha dictatorship in Nigeria] have in the courts of the United States? ... There's no connection to the United States whatsoever.

The answer to this question could profoundly change the identity of the nation and its pledge of "justice for all." The underlying premise of Shell's position would foreclose US courts from adjudicating claims against inhumane acts occurring outside the US. This foreclosure would extend not only to claims by foreign citizens against foreign governments or officials for atrocities committed on foreign soil, but also to acts of US citizens or corporations who knowingly commit or participate in those acts. In short, the US would become a legal sanctuary for what the US Court of Appeals for the Second Circuit termed in *Filartiga v. Pena-Irala* as the "enem[ies] of [] mankind." Such a result cannot be reconciled with the principles under which this nation declared its independence.

In stating our right to be a nation, we "held" certain "truths to be self-evident." Among these truths was the principle that all people were "endowed" with "certain inalienable" rights to "Life, Liberty and the Pursuit of Happiness." At the time, this was a heretical statement defying the supremacy of sovereigns in both fact and law. The force of authority for these principles was the unwritten precept that no king or queen had incontestable dominion over his or her subjects and no government could take away or infringe rights basic to fundamental human dignity. These were not merely the inviolate rights of American colonists who sought only freedom from "taxation without representation." These were rights belonging to all people which existed and persisted throughout the "course of human events." The "self-evident truths" that forged our union were reduced to writing to which our nation swore our allegiance. Ours was the first among nations to so break the yoke of colonial rule. It was our mark of distinction, the symbol of our uniqueness" [PDF].

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