

Beyond *Kiobel*: Human Rights and Corporate Liability in the 21st Century

Robert L. Bernstein International Human Rights Symposium

Yale Law School

April 11-12, 2013

Since their inception, international human rights laws have aimed to hold state actors accountable for the abuses they perpetrate. In the 21st century, however, the face of the perpetrators has changed. Today, it is not just governments, but also corporations — and, often, complicated unions of the two — that wield abusive power. This change has frustrated traditional mechanisms of accountability and, in doing so, has raised the question of how to hold corporations liable for their role in human rights violations. In *Kiobel v. Dutch Royal Petroleum Co.*, the Supreme Court of the United States is grappling with this issue through the specific prism of the Alien Tort Statute (ATS), a law that allows U.S. federal courts to assess civil liabilities for human rights abuses against aliens, including abuses that occur abroad. *Kiobel* presents many questions, one of which is whether ATS liability extends to actions brought against corporate defendants. Not surprisingly, *Kiobel* has inspired upwards of 100 *amicus* briefs: Behind its technical veneer, the case poses rich questions about the roles that corporations play in today's world, how international human rights laws make sense of these roles, and whether civil liability can be an effective means of holding corporations accountable for abuses committed abroad.

This year's Bernstein Symposium, *Beyond Kiobel: Human Rights and Corporate Liability in the 21st Century*, will address these issues from conceptual, historical and strategic perspectives. Individual panels of distinguished scholars and advocates will discuss the status of the modern corporation in international law, the history of corporate liability for human rights violations, and avenues for holding corporations accountable after *Kiobel*. The symposium is open to the public.

Thursday, April 11

2:00 – 3:45 Current Bernstein and Robina Fellows Discuss Their Work (Faculty Lounge)

Bernstein Fellows: **Efrén Olivares** ('08) is working at the Inter-American Commission on Human Rights in Washington, D.C., focusing on the rights of indigenous peoples in the context of large infrastructure projects affecting their territories. **Katie Reisner** ('11) is working with the Iraqi Refugee Assistance Project (IRAP) in New York, pursuing legal and policy initiatives to improve the procedural protections afforded to refugees in overseas refugee proceedings. **Rupali Sharma** ('12) is working at the Center for Reproductive Rights, where she is using international, regional, and domestic law to help expand access to reproductive health care in Central and Eastern Europe.

Robina Fellows: **Colleen Gilg** ('08) is working for the Prosecution Coordinator and the Appeals Section in the Office of the Prosecutor of the International Criminal Court in the Hague. **Josiah Pertz** ('12) is working as a clerk in the chambers of Judge Andrés Sajó of the European Court of Human Rights in Strasbourg.

4:15 – 5:45 Robert L. Bernstein Lecture (Room 127)

Michael Posner, Professor, Business and Society Program, Stern School of Business, New York University; and Former Assistant Secretary of State, Bureau of Democracy, Human Rights, and Labor, U.S. Department of State

Friday, April 12

10:30 – 12:15 Between State and Individual: The Corporate Personality in the 21st Century (Room 127)

A multi-decade swell of privatization has left many functions traditionally associated with the state — prison administration, war-making, campaign finance — in corporate hands. This transformation has conferred more power on corporations than ever before. It has also made it more difficult to hold corporations accountable. Their role as “surrogate states” raises complicated questions about the types of liability that attach to corporate action. Are corporations more like private actors or public actors? As “legal persons,” should corporations be held liable in the same manner as actual persons? What is at stake, practically speaking, in these questions?

- **David Hunter**, Professor of Law and Director, International Legal Studies Program, Washington College of Law, American University
- **Christopher L. Kutz**, '97, Professor of Law and Director, Kadish Center for Morality, Law and Public Affairs, University of California, Berkeley School of Law
- **Thomas Pogge**, Leitner Professor of Philosophy and International Affairs and Director, Global Justice Program, Yale University, and Research Director, Centre for the Study of Mind in Nature, University of Oslo
- **Kiel Brennan-Marquez**, '11, Schell Center Visiting Human Rights Fellow, Yale Law School (moderator)

12:15-1:15 Lunch (Room 122)

1:15 – 3:00 The Evolution of Corporate Accountability from Nuremberg to *Kiobel* (Room 127)

Corporate accountability has a contested legacy in international law. One of the central questions of *Kiobel* is whether Nuremberg contemplated the possibility of criminal suits against corporate defendants. Different viewpoints have emerged. Some parties and *amici* argued that corporations, as legal persons, are liable for international norm violations just as a natural person would be; others argued that *despite* being legal persons, corporations are not legal subjects under international law; still others suggested that corporate liability under international law turns on the extent to which a corporate entity is integrated into a rights-violating regime. The purpose of this panel is to get a handle on the evolving shape of corporate accountability since Nuremberg. Where did it begin, how has it changed, and how have those changes reflected and responded to the larger social and geopolitical context?

- **Leora Bilsky**, JSD '95, Professor of Law, Tel Aviv University
- **Elizabeth Borgwardt**, Associate Professor of History, Associate Professor of Law (by courtesy), Washington University in Saint Louis
- **Paul Kahn**, Robert W. Winner Professor of Law and the Humanities, Yale Law School (moderator)

3:15 – 5:00 Corporate Accountability Inside and Outside of the Courtroom (Room 127)

After *Kiobel*, what role will extraterritorial and universal jurisdiction statutes play in corporate accountability for human rights abuses? Should we expect such statutes to remain an effective tool of advocacy? And if not, will international judicial bodies fill the void? What are the comparative benefits of national vis-à-vis international venues for enforcing corporate accountability norms? There is also an important dimension of corporate accountability — arguably, a far *more* important one — outside of the courtroom. Can activist consumers and non-governmental organizations effectively monitor compliance measures? If so, what are the best strategies for doing so? Are there ways to re-imagine the basic incentive structure of corporations in a manner conducive to more responsible behavior? If so, what form might this take?

- **Rachel Davis**, Managing Director, Shift
- **Paul Hoffman**, Partner, Schonbrun, De Simone, Seplow, Harris, Hoffman & Harrison, LLP
- **Judge Pierre N. Leval**, United States Court of Appeals for the Second Circuit
- **Marco Simons**, '01, Legal Director, EarthRights International, and Bernstein Fellow (moderator)

**5:00 Reception and Introduction of 2013-2014 Bernstein and Robina Human Rights Fellows
Alumni Reading Room**