

Supreme Court holds U.S. rights legacy in the balance

By **Vincent Warren**, Special to CNN
 updated 2:34 PM EDT, Thu September 27, 2012

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A Supreme Court case will shape the future of the law that lets foreign victims of human rights abuse try cases in U.S. courts.

STORY HIGHLIGHTS

Vince Warren: At its best, U.S. has been key in championing universal human rights

Warren: A longstanding law lets foreign victims of human rights abuse find justice in U.S. courts

Supreme Court to rule in international human rights case whether law will stand, he says

Warren: If court upholds the law, the world will see U.S. still supports human rights for all

Editor's note: Vincent Warren is the executive director of the *Center for Constitutional Rights*, a nonprofit legal and educational organization that works to protect rights guaranteed by the U.S. Constitution and the Universal Declaration of Human Rights.

(CNN) -- An argument before the Supreme Court on October 1 in *Kiobel v. Royal Dutch Petroleum* will have enormous significance. The case concerns the torture of Ogoni leaders in Nigeria, but at stake is the future of the law under which this case was brought, the Alien Tort Statute.

The United States stands at a crossroads. At its best, our nation has played a crucial role in championing human rights throughout the world and pioneering human rights law. At its worst, it has abandoned its lofty ideals in the name of realpolitik and [supported dictators and policies](#) that were responsible for horrible abuses.

Passed in 1789, the Alien Tort Statute was a prescient piece of legislation. It allows foreign victims of human rights abuses in foreign nations to seek civil remedies in U.S. courts, and its animating idea -- that people anywhere should have recourse for violations of the "law of nations" -- was the foundation of our modern understanding of human rights.

In the 1990s, Royal Dutch Petroleum (Shell) had extensive



Vincent Warren

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updated 2:00 PM EDT, Thu October 4, 2012



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oil drilling operations in the Niger Delta in Nigeria, a region long plagued with poverty, human rights violations and environmental disaster. A popular movement of the Ogoni people resisting what they saw as reckless oil development in the region was violently suppressed by Nigeria's military dictatorship.

In the suit, the plaintiffs accuse Royal Dutch Shell of helping the former dictatorship in the arrests on false charges and torture of 12 members of the Ogoni tribe, who sought to peacefully disrupt Shell's operations because of the devastating health and environmental effects of unregulated drilling. All the plaintiffs were themselves tortured except Esther Kiobel, who brought her claims on behalf of her late husband, Barinem Kiobel. Kiobel was executed through a sham trial process in which the plaintiffs believe Shell played a central role.

The Supreme Court court accepted *Kiobel v. Royal Dutch Petroleum* last fall after a federal appeals court ruled that the statute could not be used to sue corporations. The justices indicated in February that they might question not just the application of the statute to corporations but whether and under what circumstances it applies to any human rights violations, even by individuals, that take place outside the United States. They ordered the case to be re-argued on exactly that question.

The case has been brought in the United States because of our nation's historical role in promoting the idea of universal rights and in the development of international human rights law.

From [Franklin D. Roosevelt's Four Freedoms speech](#) and the [Universal Declaration of Human Rights](#) that Eleanor Roosevelt tirelessly worked for, to the stirring oratory of [Robert Jackson at the Nuremberg Tribunal](#), mid-century Americans gave voice and visibility to the idea that all people, everywhere, were entitled to certain fundamental rights. Since 1977, the State Department has annually produced [Country Reports on Human Rights Practices](#).

The international leadership of the past century is a long way from where we find ourselves now. Our own era is defined by a different legacy: one of [waterboarding](#) and "torture memos," extraordinary renditions, indefinite detention at Guantánamo Bay and [targeted killings in countries with which we are not at war](#). "The United States is abandoning its role as the global champion of human rights," [Jimmy Carter wrote bluntly in The New York Times](#) in June.

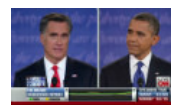
[Shell Oil must aid Nigeria workers who were tortured, abused](#)

On this grim and morally and legally compromised horizon, the Alien Tort Statute is still one bright spot for human rights advocacy. In a groundbreaking case in 1980, the family of a 17-year-old Paraguayan, Joelito Filártiga, who had been tortured and killed by a henchman of Gen. Alfredo Stroessner, brought and won a civil case against his murderer, Americo Peña-Irala. The young man had been [tortured to death because his father opposed the government](#).

The ruling established that the statute could be used to hold modern torturers accountable for their actions, wherever they are committed. In the wake of the case, [Filártiga v. Peña-Irala](#), the Alien Tort Statute developed into a new tool in human rights law. Successful cases were brought against government officials, against non-state actors like Radovan Karadžić in Bosnia-Herzegovina [and against multinational corporations](#) before the Second Circuit ruling in *Kiobel* that disallowed that.

It is this legacy that is at stake in the *Kiobel* case before the Supreme Court.

The immediate questions before the court on October 1 concern the reach of the Alien Tort Statute and whether it will continue to be



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possible for people like the Filártigas and the Kiobels to pursue their tormentors and hold them accountable for their heinous acts, and whether corporations can be held to account.

But the larger question is: Does the U.S. want to be a leader or a laggard in upholding international human rights? If the statute is narrowed and its promise of universal accountability curtailed, it will rightly be perceived as yet another step by the U.S. away from its once leading advocacy for human rights.

If, on the other hand, the Supreme Court upholds the Alien Tort Statute, it will signal to the world that we do still believe that people everywhere are entitled to certain fundamental rights and that we will help enforce those rights.

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want2believe

"The Supreme Court court accepted Kiobel v. Royal Dutch Petroleum last fall after a federal appeals court ruled that the statute could not be used to sue corporations. The justices indicated in February that they might question not just the application of the statute to corporations..."

If corporations are people... how is this not applicable?



Guest

Well if Corporations are people and the court need to overturn that but the court doesn't want

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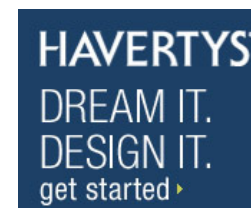
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corporations to be exposed to the law, then this court will seek to invalidate the law since their overriding purpose is to give corporations all sorts of new rights without the consequences.



TwentySe7en

I was wondering the same thing....guess they forgot that citizens united case already...



Hermes96

Mitt Romney should lose..and we should pass a law about super PAC'S...

The writers of our constitution knew all about the power of the British East India Company founded in 1600...They had a monopoly on trade to India and China...and it was the influence of the British East India company on the British Parliament and the British crown that gave them "special rights on taxes on Tea",...This is what caused the Tea Party rebellion...The Special Rights of the top 1% to control the marketplace..

The British East India Company owned Vast tracks of land in Maryland, and Virginia, at the time the US Constitution was written.....The British East India Company had their own army of enforces used around the world..but mostly in India...The Company was own by wealthy British merchants and aristocrats..and could act outside the British Government's control..If they wanted to...

The writers of our constitution did not include any Special Rights for these large Corporation in our Constitution..because they caused the rebellion against Britain in the first place...Taxation without Representation..

rule by the top 1%..not the average people...The only rights granted to any corporations in the constitution was the rights for the Southern States to continue with their ownership of slaves..Why Because the Southern States demanded it..they said they needed the slaves to remain economically competitive in the Cotton industry....The Northern States did not like it, but made that compromise to get a deal...

The Northern states had already learned it is just as good to hire workers and pay them..and not have to support them or provide for them..and they could fire them anytime, and replace them with new workers...

It took 100 years to free the slaves....and another 100 years to give the children of the slaves their civil rights...and we are still dealing with the abusive practices of both the Northern and Southern business models today..Salves or cheap workers, that can be fired and easy to replace...

One thing to note...Salve or hired help..If they are highly skilled and do an important job...are very missed if they are not there and effect the company's bottom line ...well slave or hired worker they get special benefits and are taken well care of...

Some one should tell James Bopp, The Citizen United group, the Supreme Court...That the only Special Rights that corporations were granted in our Constitution were about owning slaves....and we took care

of that mistake 100's of years ago....This country is for the People, By the People..not the kings, the top 1%, or the CEO's and Board of Directors of large corporations to run as they please...

Or the New GOP American Taliban Party that think women and minorities are second class citizens...They have the right to practice their religion, but they do not have the right to make the rest of America live by their religious beliefs....That would make us no different then the Taliban or the people living in Iran...

The Supreme Court should also look at the abusive behavior of our corporations in the past..How is an Oil company abusing the local population like the Southern Plantations abusing the rights of their slaves, as fellow human beings...Profits do not win over the suffering of the people...



Hermes96

Vaccine makers can not be sued...

Monsanto is trying to get wording now to protect them from any lawsuits.. for exposure to Agent Orange and now even Roundup...

Companies that make chemical weapons for the US military say they can not be sued

GWBush made all the known cancer causing chemicals used in Natural Gas Fracking Wells Exempt from Control by the EPA..and the companies that use them say they can not be sued by

people that have toxic ground water now...

Many Corporations already think they are protected from being sued..Doctors and Hospitals have all patents sign release papers before surgery to protect them from being sued..

Even many social networks and blogging websites have anti-lawsuit wording in their user agreements if you read the fine print...



nzgrrj

So lets see how the corporations come out. My guess is by a 5:4 split corporations are people when it comes to any benefits of participation in our society - citizens united, but when it comes to any matter of responsibility, culpability for harm or adherence to law the same 5:4 split will rule - "hey it's just a piece of paper so it couldn't have harmed anyone"



ChuckB64

Corporations are also "people" when it comes to Freedom of the Press. I think that this has been the interpretation since the beginning of time. Maybe it should not be and corporations should not be provided with Freedom of the Press and this should only allow individuals to print papers, pamphlets, etc...



norcalmojo

Today it's "US has a duty to protect us from ourselves"

Tomorrow it'll be "The evil imperialist US is imposing their values on us"



upgdot

I believe that (unless I'm reading it incorrectly) norcalmojo is not trying to point out the US hypocrisy...but that of the rest of the world. We are expected to step in and help at every possible rights violation. But once we do, we are blasted for imposing our values.



TheDarkElf

We can not trust our own government in matters of environment. Most are rich people who will never have any ill effects from pollution. Now they want to control the internet so the average people like us dont get informed



Chris Ghanem

That's American hypocrisy in the work



DarkStarWNY

So, we shouldn't be the world police but we should the the world's courtroom?



Gaabriel Becket

I think so - what if employees of American corporations are torturing and murdering people on the orders of the American executives of those American corporations? Is that really all right with anyone? Will anyone really stand up and say that it's fine with you if employees of American companies kill men, women and children so they can make a little more money? That's certainly not all right with me.



grobinson23

Big business will always obtain cheap labor by any means necessary. This is why it supports dictatorships.



2wentySe7en

If this case goes in favor or shell, they won't even try to keep it a secret anymore.



allmosttoast

America should and does care about Human Rights. Up to a point. We can't get carried away with it. After all we don't want our ideals to stand in the way of making a \$.



DAZYCUTTER4U

Then there is the widow of a Nigerian terrorist. Her human rights will be restored with a few million dollars. The laugh is she wants what Shell wants, somebody elses money.



beertoast

A couple of more Supreme Court rulings and the constitution will apply only to corporations.



allmosttoast

Corporations are people too. (hehehehehehehe)



LtColJesus

Guess it depends on how much Koch paid Scalia and Thomas on this.



BrotherKWS

We have never been the global champion of human rights. We specifically targeted human rights issues in cases where we were at odds with the leadership of specific countries, but primarily to accomplish economic ends, not human rights. We incarcerate more people and kill more people as a percent of our population than any other single country. We, Us, We are the most violent people on earth. You know the soviet union used to tell their people that the soviet union was the peace loving country and we called that propoganda. If you think we are the peace loving human rights defenders, you need to snap out of it, because your falling for the propoganda.



unknown11

Yikes. This is really sticking our noses in someone's business.



stewie47

Give a copy of our Constitution to every country we do business with and say "Follow this or we will take you to court."



stewie47

If the US believes health care is a universal right of its citizens, then shouldn't we believe it is one for all people of the world.....and enforce it by the same courts and laws we are discussing here? Nike and other companies should be forced to provide all foreign workers health care services equal to those in the US. Of course a pair of sneakers will now cost \$400.



waltonsimons

"Of course a pair of sneakers will now cost \$400."

Is this a bad time to point out that Nike already sells a \$300 pair of sneakers?



2wentySe7en

Most other countries have healthcare for their people. You remember how politicians are always pointing out that we will end up like a third world country with healthcare for all? Well it's healthcare for all that they are blaming for those countries' problems,



stewie47

Not the ones I wear. \$59.95



Brunoper

If we are the the champions of Human Rights, why aren't we in Syria? Thousands of children and women have died.



mk1001

We're giving aid to the Syrian opposition and pressuring Russia and China to isolate Assad.

We can be champions of Human Rights without spilling our own citizens' blood in every corner of the world.



snefler

US is just tired of helping people who turn around and curse them.

At any rate, people have to fight for their own freedom since that's the only way they will respect freedom.

Spend more time blaming Russia and China and less time blaming the US.

After the election, Syria may get some more help.



Brunoper

It is not applicable because it is a Oil company. The US married Oil companies, therefore it cant go agaisnt them. EVER!



LittleTroll

Well well well, I don't believe that holding the US in high regards rights respect wise is such a good idea anymore. Just reading through the Universal Declaration of Human Rights I found several articles and subsections for which the US has entire organizations dedicated to violating (see Articles 3, 9, and 17 and compare with what the Transportation "Safety" Administration does) articles. Just a few weeks ago the story broke about TrapWire and the slowly growing national surveillance network. (terrorism? who are they kidding. More likely than not it's a tool that will be abused; I imagine it'll be used to keep an eye on political activists and whoever the minority political party is at the time -like Watergate, except everywhere and considered "legal" by law enforcement-)



TheUnamed1

No it's not the only question, there's also the question if we apply the same idiotic payouts that has come

to define the stupidity of American civil law onto the rest of the world?



ChuckB64

What is disappointing to me about this article is that it is extremely shallow on the constitutional questions at hand. When I read the headline, I was looking for something more scholarly about the constitutional aspects of this. This is primarily a policy article about what the US should be, not what the Constitution allows us to be. Regarding corporations as people, that could be an interesting Constitutional aspects. I think that we have always considered corporations as "people" when it came to Freedom of the Press (same language as Freedom of Speech). SCOTUS recently used that logic to apply to Freedom of Speech. There may be an interesting question as to whether that is a universal application from a Constitutional perspective or not. I wish that had been explored in this article. The other aspect that is interesting is to what extent would our resources (courts) be used for any human right violation any where in the world. What constrains this law?



ChuckB64

Micahel, for context, here is the extent. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances. I am intrigued that your reading would mean the no newspaper run by a corporation would enjoy any protection under the first amendment. And by the way, I do agree that the Justices have been taken over by the devil and thus some type of exorcist would probably be the only remedy. I do love the "other side is evil and corrupt" argument.



Michael Fatten

"I think that we have always considered corporations as "people" when it came to freedom of the press"
That's an amazing bit of revisionism. We have never historically given rights of freedom of the press to corporations. We have historically only given responsibilities regarding press to corporations. They have to abide by rules of truth and verifiability that don't apply to actual people. Their speech is far more regulated in terms of time, place, manner and intended audience than actual people's speech is.

This is because the constitution correctly regards corporations as tirelessly self-interested entities, which are not people, and whose predations must be restrained.

Corporations are not people, and the Justices who have been bought by them will eventually run up against the "good behavior" clause limiting their terms. We can remove Justices under the constitution when they deserve it.



DAZYCUTTER4U

This is a matter for Dutch or Nigerian courts. The U.S. should never have been involved. It is a no win situation for the U.S.. Stop coming to us with your problems, fix it yourselves.



ChuckB64

Agreed.



mhill68123

The Supreme Court is a joke
They should worry about America, not issues outside our jurisdiction



Guest

If you had bothered to read the article, you would know that the Supreme Court accepted the case in order to determine whether US courts could claim jurisdiction in such cases under a law from the 18th century. In addition, the Supreme Court can only rule on the case because it was appealed to them from a federal appellate court. Or, you could make asinine assertions based

on pure fantasy. Guess that's on you

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