

Colangelo on Extraterritorial Jurisdiction

Anthony Colangelo (Southern Methodist University – Dedman School of Law) has posted [What is Extraterritorial Jurisdiction?](#) on SSRN.

The phenomenon of extraterritorial jurisdiction, or the exercise of legal power beyond territorial borders, presents lawyers, courts, and scholars with analytical onions comprising layers of national and international legal issues; as each layer peels away, more issues are revealed. U.S. courts, including the Supreme Court, have increasingly been wrestling this conceptual and doctrinal Hydra. Any legal analysis of extraterritorial jurisdiction leans heavily on the answers to two key definitional questions: What do we mean by “extraterritorial”? And, what do we mean by “jurisdiction”? Because the answer to the first question is often conditional on the answer to the second, the questions are probably better addressed in reverse order, that is: What type of “jurisdiction” is at issue? And, is its exercise “extraterritorial”?

*This Article aims to supply legal thinkers, practitioners, and decision-makers with tools to go about answering these increasingly prevalent and multi-layered questions of U.S. law — the answers to which hold potentially massive consequences for a rapidly and diversely growing number of cases and fields, from corporate and securities law, to human rights, to anti-drug trafficking and terrorism. The Article addresses major issues of constitutional law, statutory construction (including the Supreme Court’s most recent decisions in *Morrison v. National Australia Bank* and *Kiobel v. Royal Dutch Petroleum*), and common law choice-of-law methodology.*

The proliferating phenomenon of extraterritoriality across diverse fields has thus far resisted trans-substantive and systematic analysis. Yet the legal and practical stakes of resolving a mounting array of extraterritorial jurisdiction issues have never been higher. This Article seeks to approach extraterritoriality as a fundamentally singular phenomenon with myriad doctrinal manifestations instead of a scattershot smattering of discrete legal issues in isolated areas. My principal aim in doing so is to help legal thinkers and decision makers not only to resolve extraterritoriality issues but also to comprehend how their

resolutions fit within a larger jurisprudence on increasingly important questions of when and how the United States may exercise legal power beyond U.S. borders.

The paper is forthcoming in the *Cornell Law Review*.