

Knox on the Presumption against Extrajurisdictionality

John H. Knox, who is a professor at Wake Forest University Law School, has posted *A Presumption against Extrajurisdictionality* on SSRN.

This article describes the Supreme Court's jurisprudence on the geographic reach of federal statutes. It argues that the Court's decisions are a parade of inconsistencies that fail to give clear guidance to lower courts, the executive branch, and Congress. The result is that no one can know with any certainty whether a statute of general application will be construed to extend to places outside U.S. boundaries but under U.S. control, such as Guantanamo Bay, or to foreign activities with domestic effects, or to foreign ships within U.S. territory.

The article proposes that the Court return its jurisprudence to coherence by adopting a new canon: a presumption against extrajurisdictionality. Under the proposal, the Court would look for guidance to the body of international law that allocates legislative jurisdiction among countries. If that law provides the United States with sole or primary legislative jurisdiction over a situation, the Court would have a green light to construe the statute without any presumption against its application. If the United States has no basis for jurisdiction, the light would be red. There would be a strict presumption against application of the statute, which could be overcome only by a clear statement in the law itself. Finally, situations in neither of these categories would fall under a yellow light: if the United States has some basis for jurisdiction, but not the sole or primary basis, then the Court would employ a soft presumption against application of the statute, which could be overcome by any indication of legislative intent to do so.

The paper is forthcoming in the *American Journal of International Law*.