EXORBITANT JURISDICTION

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II. FRANCE

Undeniably, France too has sometimes succumbed to parochial impulses in jurisdictional matters. Its courts have read the Civil Code's Article 14 as authorizing territorial jurisdiction over virtually any action brought by a *plaintiff* of French nationality (while reading Article 15 to make excessive any foreign nation's exercise of jurisdiction over an unwilling French *defendant*). Thus, a French person can sue at home on any cause of action, whether or not the events in suit related to France and regardless of the defendant's connections and interests. The forum-shopping potential of this jurisdiction based on the plaintiff's nationality is evident, whether or not that potential is realized in actual practice.

French Article 14 jurisdiction distinguishes itself from the United States' exorbitant bases by overtly emphasizing the Frenchness of the plaintiff. The French are not alone in basing their brand of exorbitant jurisdiction on the plaintiff's nationality. Jurisdiction in the style of Article 14 emigrated with French law to a number of other countries, such as Belgium, Gabon, Greece, Haiti, Luxembourg, the Netherlands, Romania, and Senegal. However, the Belgians abandoned this approach in 1876, the Romanians appear to have abandoned it in 1924, the Greeks and the Dutch abandoned it in the 1940s, and the Senegalese limited its use in 1972.

These countries' specific reasons for surrendering nationality-based jurisdiction were diverse. But generally surrender came when (1) internal and external criticism and pressure, combined with a desire to do the just thing, began to outweigh (2) the benefits derived from doing the exorbitant thing. The first set of factors have tended to increase with passing time, but especially some of the
bigger countries have shown a persistent ability to resist those factors, perhaps because these countries derived more benefits from their exorbitances. The hold-out countries prompt the need not only for academic criticism but also for international retaliation or, better, international agreement. Retaliations attempt to increase the costs of exercising exorbitant jurisdiction, while treaties would try to achieve the benefits of exorbitance through alternate means. That is, a treaty would provide the nation's deserving plaintiffs a reasonable forum, even if not always a home forum, and would ensure them easy enforcement of any resulting judgment.

At any rate, France remains the most significant country still to exert jurisdiction based on the plaintiff's nationality, and so it is the French who bear the brunt of this rule's criticism. Accordingly, U.S. commentators love to use Article 14 as an example of exorbitant jurisdiction, one that illustrates how the law of the international jungle puts U.S. litigants at a disadvantage and creates a need for a jurisdiction-and-judgments treaty. A hypothetical serves to demonstrate the illustrative power of Article 14:

Assume that Emily Sherwin, a New York law professor with property in London, had a car collision in Ithaca, New York, with Xavier Blanc-Jouvan, a law professor visiting from France. Imagine that Professor Blanc-Jouvan sues Professor Sherwin in Paris. This jurisdiction is okay under the French Civil Code's Article 14, being personal jurisdiction based on the plaintiff's French nationality. Moreover, a judgment for Blanc-Jouvan will be entitled under the Brussels Regulation to recognition and enforcement against Sherwin's property in England.

Now assume conversely that the collision was in Paris. Imagine that Sherwin sues Blanc-Jouvan in New York. This jurisdiction isimpermissible under U.S. law. If a default judgment were rendered, neither France nor England (nor any U.S. court) would enforce it, because the lack of personal jurisdiction made the judgment invalid. Even a litigated judgment would enjoy far less than automatic recognition and enforcement abroad.

This hypothetical clearly shows the inequity that can result from exorbitant jurisdiction. In so doing, the hypothetical works to suggest the U.S. motivation for seeking a treaty with the Europeans. In short, U.S. interests are being whipsawed: not only are U.S. citizens still subject in theory to the far-reaching jurisdiction of European courts and the wide recognition and enforceability of the resulting European judgments, but also U.S. judgments tend in practice to receive short shrift in European courts. More broadly, Article 14 works nicely to sketch the legal context in which the current negotiations on a world-wide convention are being carried out at The Hague.

When invoking this illustration, typical U.S. commentators do recognize that French law differs little from what most other nations accomplish through other exorbitant bases of jurisdiction. Moreover, they acknowledge that this illustration is an extreme one, seemingly without much importance in actual practice, because the French do not use or at least do not abuse their nationality-based jurisdiction all that often. Still, as we can personally attest, some French commentators jump to counterattack any U.S. invocation of the illustration, no matter how qualified the invocation. The issue posed by such unpleasant confrontations is this: Even if Article 14 provides a useful illustration, is that nevertheless an unfair illustration? The answer is equivocal: Yes and no—but mainly no.

On the one hand, a close examination of French nationality-based jurisdiction, with comparison to other countries' practices, will make it look less shocking. Anyone who cites it for shock value is in the wrong.

On the other hand, Article 14 exists and, going well beyond any appropriate jurisdiction for special situations, has real and pernicious effects. Like any exorbitant jurisdiction, then, it merits illustrative use in showing the need for international agreement to eliminate it.