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## **Whose Justice? Reconciling Universal Jurisdiction with Democratic Principles**

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For centuries, international law and the practice of states had affirmed a bedrock principle of mutual restraint among nations: courts of one state would not judge the sovereign acts of another. With the arrest of former Chilean President Augusto Pinochet in London's exclusive Marlebone district in October 1998, the law seemed to lunge forward rather than advance at its more usual plodding pace. Defying the predictions of seasoned experts, Pinochet's arrest was upheld by England's highest court.

In brief, the principle of universal jurisdiction allows any state to prosecute certain offenses, even when the prosecuting state has no link to the alleged perpetrator, his victims, or the actual crime. Until recently, states rarely exercised this extraordinary jurisdiction; when they did, the target was usually a suspected Nazi-era war criminal.

The most trenchant challenge to universal jurisdiction—and the subject of this article—has been framed in terms of democratic principles. The central claim of this critique is that, in exercising universal jurisdiction, courts and prosecutors “are completely unaccountable to the citizens of the nation whose fate they are ruling upon.” In consequence, it is said, courts exercising universal jurisdiction “will invariably be less disciplined and prudent than would otherwise be the case.”

Using the *Pinochet* case as an analytic lens, I deepen and refine the conservative critique of universal jurisdiction in Parts II and III of this article. Part II shows how the *Pinochet* case provides some basis for critics' charge that significant ambiguities surround the law of universal jurisdiction. Part III develops the claim that bystander justice challenges democratic principles because a court that exercises universal jurisdiction is not nested in the political and legal culture of the country most directly affected by its rulings, and concludes by identifying three benchmarks for assessing the legitimacy of adjudication by foreign courts, particularly those exercising universal jurisdiction.