

ARTICLE

ALLIES AS COLLATERAL: U.S. ECONOMIC WARFARE AND THE EROSION OF ALLIED AUTONOMY

*Julien Chaisse**

ABSTRACT

Law is presumed territorial. The United States has built an exception: a coordinated system of extraterritorial statutes, enforcement actions, financial sanctions, export controls, and surveillance that regulates allies' economic choices. High-profile flare-ups (from tariffs to tech bans) are not aberrations but surface signals of a long-running regime. This article asks how this system works and why allied states largely accept it across international, constitutional, administrative, and business law. The answer lies in infrastructure and dependence: dollar centrality, data and cloud control, compliance architectures, and networked payment rails that translate U.S. law into everyday constraints abroad. Mapping these mechanisms, this article shows how domestic law has become a tool of alliance management and economic governance, narrowing the space for autonomous policy while preserving the form of sovereignty. The payoff is conceptual and practical: it reframes extraterritoriality as a stable method of rule, identifies the channels through which authority travels, and evaluates why resistance is rare and costly. It closes with an agenda (data sovereignty, baseline principles for digital jurisdiction, coordinated digital taxation, and due-process guardrails) to bound unilateral reach and restore contestability without abandoning interdependence.

Keywords: U.S. Law; Extraterritorial Jurisdiction; Foreign Corruption Laws; Sanction Laws; Sovereignty; International Relations; Domestic and International Law Interface

* Mr. Julien Chaisse, Professor & RGC Senior Research Fellow, School of Law, City University of Hong Kong, and President, Asia Pacific FDI Network (Email: julien.chaisse@cityu.edu.hk).

“Bill, suppose I told you that . . . that everything that happened to you there . . . the threats, the girl’s warnings, her last minute intervention, suppose I said that all of that . . . was staged. That it was a kind of charade. That it was fake.”

—Victor Ziegler in *“Eyes Wide Shut,” Stanley Kubrick’s Masterpiece*

I. INTRODUCTION	707
II. EXTRATERRITORIALITY OF U.S. LAW: EMPIRICAL EVIDENCE AND LEGAL IMPLICATIONS	711
A. Scope and Function of Extraterritorial Jurisdiction	712
B. Emblematic Cases: Implications for the U.S. Extraterritorial Application of Law	715
1. The AWB Prosecution: U.S. Overreach and Australian Sovereignty	716
2. The Arrest of Huawei’s CFO: Legal Tensions Between Canada and the United States	718
3. The Hoskins Case: U.S. Prosecution of a French Executive for Conduct in Indonesia	719
C. Legal Hegemony and International Order	722
III. SURVEILLANCE AND CONTROL: INSTRUMENTS OF ECONOMIC WARFARE	724
A. Surveillance Infrastructure and Strategic Leverage: The Role of the NSA	726
B. Technology as a Channel of Control: ITAR and the Restriction of Global Trade	728
C. Financial and Corporate Intrusion: The Global Operation of the U.S. PATRIOT Act	730
D. Extraterritorial Legislation and its Legal Effects	732
IV. INFLUENCE AND CONTROL OVER INTERNATIONAL ECONOMIC ACTIVITIES	735
A. The United States’ Influence on International Financial Transactions and Legal Norms	736
1. Case Study: Iran Sanctions and Its Global Impact	737
2. Case Study: The Nord Stream 2 Project and U.S. Sanctions	738

B. Challenging Sovereignty: The Legal and Economic Implications of U.S. Extraterritorial Actions	739
V. NON-RESPONSIVENESS OF AFFECTED NATIONS AND COST OF RESISTANCE.....	740
A. Patterns of Non-Responsiveness Among U.S. Allies	741
B. The Cost of Resistance: The France-U.S. Digital Services Tax Standoff	747
C. Strategies of Dominance: Legal, Political, and Economic Dimensions of U.S. Global Influence	750
VI. SOVEREIGN RECLAMATION: TOWARD NEW INTERNATIONAL LEGAL NORMS AND PRACTICES...	752
A. Legal Practices and the Degradation of Territorial Authority	752
B. The Imperative of Economic Sovereignty: Defining and Understanding its Scope	754
1. The Case for Strengthening Economic Sovereignty: Global Insights and National Strategies	755
2. Pathways to Reclaiming Economic Sovereignty: Lessons from International Experiences	758
C. Building Legal Defenses: Proposals for Institutional Reform.....	760
1. Enhancing Global Data Sovereignty.....	761
2. Establishing Digital Jurisdiction Principles	762
3. Harmonizing Digital Taxation.....	763
VII. CONCLUSION	764

I. INTRODUCTION

The return of Donald Trump to the U.S. presidency in 2025 has made pressure on allies harder to ignore, but it has not created a new phenomenon. Tariff threats against Canada and Mexico were justified in border-control and drug-enforcement terms rather than ordinary trade logic.¹ European leaders prepared responses

1. See Christine Murray et al., *Donald Trump Pulls US Back from Brink of Trade War with Mexico and Canada*, FIN. TIMES (Feb. 3, 2025), <https://www.ft.com/content/2596b7a2-a130-4754-ab6d-d4cf65a2e19e> [<https://perma.cc/XR2P-DLJM>].

to possible U.S. tariff pressure, highlighting the transatlantic reach of that leverage.² Even the administration's rhetoric about Greenland revealed a willingness to use coercive language toward allied interests.³ What is visible now is a blunter, more public version of a system that has been consolidating for decades.

Yet these high-profile confrontations should not dominate the analysis. They are best understood as the visible surface of a deeper and older structure of control. The ability to extend jurisdiction extraterritorially, channel financial transactions through dollar dependence, and impose regulatory burdens that reshape industries worldwide predates the current administration and will outlast it. What has changed is not the underlying architecture, but the degree to which recent events expose it in blunt and public form.

American legal power reaches well beyond its borders.⁴ Over the past decades, the United States has constructed a legal architecture that projects authority across jurisdictions and shapes the economic conduct of foreign actors through surveillance, regulatory reach, and financial control.⁵ This influence extends beyond traditional diplomatic leverage or market power. It operates through statutes, prosecutions, export controls, sanctions, and compliance regimes that convert domestic law into a transnational mode of economic governance.

The effects are clearest in the treatment of allied states. France's experience in the Alstom affair,⁶ Germany's difficulties

2. See Alyssa Lukpat et al., *Trump Says Colombia Will Accept Deportees, Ending Tariff Standoff*, WALL ST. J. (Jan. 26, 2025), <https://www.wsj.com/world/americas/trump-says-colombia-will-face-25-tariffs-amid-fight-over-deportation-flights-e32dc497> [https://perma.cc/C9VR-XQ2F]; Laura Dubois et al., *EU Leaders Vow to Hit Back If 'Attacked' by Donald Trump Tariffs*, FIN. TIMES (Feb. 3, 2025), <https://www.ft.com/content/e45a5f32-fd35-4da9-b19a-1541cb873dc7> [https://perma.cc/4TXE-4PAP].

3. See Daniel Kiss et al., *See How Russia Is Winning the Race to Dominate the Arctic*, WALL ST. J. (Feb. 3, 2025, at 01:41 ET), <https://www.wsj.com/politics/national-security/russia-china-artic-sea-nato-2ca1ea10> [https://perma.cc/U4E6-2TGE].

4. See Nico Krisch, *International Law in Times of Hegemony: Unequal Power and the Shaping of the International Legal Order*, 16 EUR. J. INT'L L. 369, 403–04 (2005).

5. See Bob Dole, *Shaping America's Global Future*, 98 FOREIGN POL'Y 28, 35 (1995).

6. See *How the American Takeover of a French National Champion Became Intertwined in a Corruption Investigation*, THE ECONOMIST (Jan. 17, 2019), <https://www.economist.com/business/2019/01/17/how-the-american-takeover-of-a-french-national-champion-became-intertwined-in-a-corruption-investigation> [https://perma.cc/8MMR-E3V5]; see also Fred Einbinder, *Corruption Abroad: From Conflict to Co-Operation*:

around Nord Stream 2,⁷ the United Kingdom's continued arms relationship with Saudi Arabia,⁸ and Australian encounters with U.S. enforcement and market regulation⁹ each illuminate a common pattern. Allied firms are investigated with tools originally justified by national-security or anticorruption aims. Allied transactions are monitored through U.S.-linked intermediaries. Allied policy choices are constrained by the extraterritorial application of American law. The result is not simply episodic tension, but a structural condition in which partner states remain formally sovereign while operating within rules set elsewhere.¹⁰

This article argues that the contemporary international economic order contains a form of authority that is neither classical territorial jurisdiction nor ordinary interdependence. U.S. domestic law acquires transnational governing force through control over financial, digital, and regulatory infrastructure, allowing one state to organize the economic choices of others without formal empire or treaty hierarchy. Extraterritorial jurisdiction, surveillance, sanctions, and export controls are therefore best understood not as isolated techniques but as components of a wider mode of rule. Allies provide the clearest vantage point because they reveal how strategic partnership can coexist with legal subordination and how formal sovereign equality can mask material dependence.

The article develops this claim through critical legal analysis, dependency theory,¹¹ and international political economy.¹² These frameworks help explain why sovereignty in the contemporary

A Comparison of French and American Law and Practice, 3 INT'L COMPAR. POL'Y & ETHICS L. REV. 667, 726–28 (2020).

7. See Patrick Wintour, *How Putin's Pipeline Paralysed the West*, THE GUARDIAN (Dec. 23, 2021), <https://www.theguardian.com/world/2021/dec/23/nord-stream-2-how-putins-pipeline-paralysed-the-west> [https://perma.cc/DS62-S242].

8. See LOUISA BROOKE-HOLLAND & BEN SMITH, U.K. ARMS EXPORTS TO SAUDI ARABIA: Q&A 3 (U.K. House of Commons Library, 2021), <https://researchbriefings.files.parliament.uk/documents/CBP-8425/CBP-8425.pdf> [https://perma.cc/6KDF-VKXG].

9. See VIVIEN GOLDWASSER, STOCK MARKET MANIPULATION AND SHORT SELLING 97–98 (1999).

10. See Jeffrey A. Meyer, *Dual Illegality and Geoambiguous Law: A New Rule for Extraterritorial Application of U.S. Law*, 95 MINN. L. REV. 110, 114 (2010).

11. See James A. Caporaso, *Dependency Theory: Continuities and Discontinuities in Development Studies*, 34 INT'L ORG. 605, 614 (1980).

12. See John S. Odell, *Case Study Methods in International Political Economy*, 2 INT'L STUD. PERSPS. 161, 163 (2001).

political economy is increasingly conditional, infrastructural, and mediated rather than simply possessed or lost.¹³ It also draws from legal realism in order to examine law as practiced and enforced.¹⁴ Methodologically, the article uses case studies and comparative analysis to connect doctrine to the material systems through which legal authority travels across sectors and jurisdictions.

The present moment gives the argument unusual clarity but does not define its scope. Recent tariff fights and diplomatic flare-ups matter because they disclose, in unusually blunt form, a deeper legal and institutional architecture through which U.S. power is exercised. The article is therefore not a running account of current events. It is a more fundamental inquiry into how domestic law, when coupled with infrastructural control, becomes a durable mechanism of transnational governance and why resistance by allies remains rare, costly, and often partial.

The discussion proceeds in six parts. It first traces the doctrinal and practical reach of U.S. extraterritorial law. It then examines surveillance and intelligence capacities, strategic technology controls,¹⁵ and the effects of domestic legislation on foreign commercial activity.¹⁶ From there it turns to U.S.

13. The dependency theory refers to the dynamic in which poorer countries supply cheap labor and other resources to richer or more economically developed countries for the production of goods which are then purchased by the poorer countries, instead of the poorer countries using the resources themselves for the purpose of economic development. This cycle leads to a phenomenon where the richer or more economically developed countries form a core, while the poorer countries, dependent on the richer countries for manufactured products, remain outside of this core. IPE refers to the study of the interrelationship between politics and economics, specifically in the areas of finance, trade, money and investment in the global context. See Lynn M. Morgan, *Dependency Theory in the Political Economy of Health: An Anthropological Critique*, 1 MED. ANTHROPOLOGY Q. 131, 134 (1987).

14. See Brian Z. Tamanaha, *Understanding Legal Realism*, 87 TEX. L. REV. 731, 732–33 (2008).

15. Relevant U.S. statutes include, first and foremost, the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), Pub. L. No. 107-56, 115 Stat. 272; the Trading with the Enemy Act of 1917 (TWEA), ch. 106, 40 Stat. 411 (codified as amended at 12 U.S.C. § 95a and 50 U.S.C. § 4301 et seq.); and the International Emergency Economic Powers Act (IEEPA), 50 U.S.C. §§ 1701–1707 (2022).

16. For example, BNP Paribas incurred criminal sanctions (forfeiture of US\$8.83 billion and a fine of US\$140 million) in 2015 as it had allegedly violated U.S. sanctions in Sudan, Cuba and Iran under the TWEA and the IEEPA. However, the French government deemed this to be “an extremely serious problem” because the bank had not violated either EU or French law. See *BNP Paribas to Pay \$9bn to Settle Sanctions Violations*, BBC (July 1, 2014), <https://www.bbc.com/news/business-28099694> [<https://perma.cc/56LQ->

jurisdiction over international financial transactions and to the reasons affected states so often remain non-responsive in the face of external pressure.¹⁷ The article concludes by assessing the implications of these practices for economic sovereignty and by outlining institutional reforms designed to restore contestability without denying the reality of interdependence.

II. EXTRATERRITORIALITY OF U.S. LAW: EMPIRICAL EVIDENCE AND LEGAL IMPLICATIONS

While the sovereignty of nations is a fundamental principle of international law, the extraterritorial application of U.S. laws, particularly in economic matters, presents a dilemma.¹⁸ The application of U.S. domestic law to international law practices raises questions about the potentially undermined sovereignty of nations, the compromised respect for international law, and the economic consequences that ensue. The issue is not simply a matter of law but rather involves a complex interweaving of legal, economic, and political considerations.¹⁹ This article proceeds from the claim that the extraterritorial legal practices of the United States, including surveillance and regulatory enforcement,

RH7A]; Nate Raymond, *BNP Paribas Sentenced in \$8.9 Billion Accord over Sanctions Violations*, REUTERS (May 1, 2015), <https://www.reuters.com/article/idUSKBN0NM41J/> [<https://perma.cc/VY8G-MBJR>]. See also William Julie, Sophie Menegon & Alice Murgier, *United States Extraterritoriality: European Union Sovereignty at Stake*, INT'L BAR ASS'N, https://www.ibanet.org/article/CF85E59E-6564-4AA3-9408-3F47C6449C9D#_edn6 [<https://perma.cc/YF49-BVQQ>] (last visited Feb. 4, 2024) (discussing BNP Paribas and European concerns over the extraterritorial effects of U.S. sanctions enforcement).

17. The TWEA empowers the President to regulate and restrict commerce during times of war, including prohibiting transactions with enemies or their allies. See TWEA § 4303. Similarly, the IEEPA is activated in response to any “unusual and extraordinary threat” to the United States, allowing the President to regulate commerce and impose economic embargoes. See IEEPA §§ 1701–1707.

18. See CURTIS A. BRADLEY, *INTERNATIONAL LAW IN THE U.S. LEGAL SYSTEM* 199 (2d ed. 2015); Mark P. Gibney, *The Extraterritorial Application of U.S. Law: The Perversion of Democratic Governance, the Reversal of Institutional Roles, and the Imperative of Establishing Normative Principles*, 19 B.C. INT'L & COMPAR. L. REV. 297, 298 (1996); Thomas H. Bottini, Reporter, *Extraterritorial Application of U.S. Export Controls—The Siberian Pipeline*, 77 AM. SOC'Y INT'L L. PROC. 241, 243 (1983) (providing a transcript of panel discussion at American Society of International Law meeting).

19. This reframing of sovereignty aligns with recent scholarship that treats sovereignty not as a fixed jurisdictional authority but as a malleable and contested legal condition shaped through institutional entanglement and strategic legal ordering. See Karim El Taki, *The Fall and Rise of Sovereignty*, 27 BRIT. J. POL. & INT'L RELS. 628, 628 (2024).

constitute a sustained exercise of economic pressure. These extraterritorial legal practices are not incidental but rely on designed formal legal instruments to extend U.S. control beyond territorial limits and impose obligations on foreign actors.

The analysis begins with a presentation of the relevant institutional patterns, drawn from selected cases. These patterns illustrate the breadth of application and the modes of enforcement that support extraterritorial reach. The inquiry then turns to international law, not to assert doctrinal breach, but to examine how jurisdictional claims underpinned by extraterritoriality of U.S. law interact with the normative structure of legal authority between states. Particular attention is paid to the cumulative impact of these practices on the legal autonomy of U.S. allies. The argument advanced here claims that legal techniques can be employed to achieve strategic outcomes that undermine the principle of mutual legal respect, disregarding the sovereign autonomy of other states.

A. Scope and Function of Extraterritorial Jurisdiction

In international law, extraterritoriality has profound implications. The term refers to the application of a country's laws beyond its territorial boundaries, a practice that has the potential to disturb the balance of legal jurisdictions between sovereign nations.²⁰ This disruption may lead to a myriad of issues, from economic disputes to diplomatic tensions.²¹

The employment of extraterritorial law by the United States, although not an exclusively U.S. practice, holds a distinct intensity owing to the country's formidable status and sway on the global stage. Indeed, the United States' application of extraterritorial law, as an expression of its hard and soft power, intersects with the primary thesis that portrays such practices as tools of economic

20. See Austen L. Parrish, *Reclaiming International Law from Extraterritoriality*, 93 MINN. L. REV. 815, 818 n.15 (2009) (collecting definitions of extraterritoriality and explaining that the term generally refers to a state's attempt to regulate conduct beyond its borders); see also Evan J. Criddle, *Extraterritoriality's Empire: How Self-Determination Limits Extraterritorial Lawmaking*, 118 AM. J. INT'L L. 607, 608, 657 (2024) (arguing that extraterritorial lawmaking can subject foreign peoples to legal norms they have not freely endorsed and therefore implicates sovereignty and self-determination concerns).

21. See David H. Small, *Managing Extraterritorial Jurisdiction Problems: The United States Government Approach*, 50 LAW & CONTEMP. PROBS. 283, 287 (1987).

warfare capable of undermining the sovereignty of other nations. This form of legal imperialism, while contentious, often goes uncontested due to the inherent power imbalances between the United States and other nations.²² The U.S. legal apparatus extends its reach far and wide, crossing not only geographical boundaries but also penetrating an extensive range of legal domains. Securities law,²³ criminal legislation,²⁴ anti-bribery regulations,²⁵ antitrust legislation,²⁶ IP legislation,²⁷ and sanction regimes²⁸ are all arenas in which U.S. law exhibits its extraterritorial application.

The world of securities law is one such battleground. In *Morrison v. National Australia Bank*,²⁹ the Supreme Court held that § 10(b) does not apply extraterritorially and applies only to transactions in securities listed on domestic exchanges and other

22. See V. Rock Grundman, *The New Imperialism: The Extraterritorial Application of United States Law*, 14 INT'L LAW. 257, 258 (1980).

23. See Erez Reuveni, *Extraterritoriality as Standing: A Standing Theory of the Extraterritorial Application of the Securities Laws*, 43 U.C. DAVIS L. REV. 1071, 1071 (2010); Stephen J. Choi & Andrew T. Guzman, *The Dangerous Extraterritoriality of American Securities Law*, 17 NW. J. INT'L L. & BUS. 207, 208 (1996).

24. The Racketeer Influenced and Corrupt Organizations (RICO) Act prohibits an entity from acquiring or maintaining a company through a pattern of racketeering activity or by collecting illegal debts; violations may incur criminal sanctions. See Racketeer Influenced and Corrupt Organizations Act of 1970, 18 U.S.C. § 1962 (2022). A person injured in business or property may also bring a civil action under the Act. See RICO Act § 1964(c). In *RJR Nabisco, Inc. v. Eur. Cmty.*, the Supreme Court held that § 1962 may apply outside the United States in appropriate circumstances, but that a private civil RICO plaintiff must allege a domestic injury. 579 U.S. 325, 337–39, 354–55 (2016). In *Yegiazaryan v. Smagin*, the Court adopted a context-specific approach to domestic injury, holding that “the inquiry turns on whether the circumstances surrounding the injury sufficiently ground it in the United States.” 599 U.S. 533, 543–45 (2023).

25. See Sarah C. Kaczmarek & Abraham L. Newman, *The Long Arm of the Law: Extraterritoriality and the National Implementation of Foreign Bribery Legislation*, 65 INT'L ORG. 745, 745 (2011).

26. See Roger P. Alford, *The Extraterritorial Application of Antitrust Laws: The United States and European Community Approaches*, 33 VA. J. INT'L L. 1, 2 (1992).

27. The Lanham Act of 1946, 15 U.S.C. § 1051 et seq. (2022), is the principal federal trademark statute. Courts had often treated it as having some extraterritorial reach. In *Abitron Austria GmbH v. Hetronic Int'l, Inc.*, 600 U.S. 412 (2023), however, the Supreme Court held that the inclusion of “foreign commerce” in the Act’s definition of “commerce” does not, by itself, rebut the presumption against extraterritoriality. *Id.* at 415. The Court therefore concluded that the relevant Lanham Act provisions are not extraterritorial and apply only where the alleged infringing “use in commerce” is domestic. See *id.*

28. See Harry L. Clark, *Dealing with U.S. Extraterritorial Sanctions and Foreign Countermeasures*, 25 U. PA. J. INT'L ECON. L. 455, 455 (2004); see also Raj Bhala, *Waves of Russian Sanctions: American and Allied Measures, Indian and Chinese Responses, and Russian Countermeasures*, 14 TRADE L. & DEV. 353, 354 (2022).

29. *Morrison v. Nat'l Austl. Bank Ltd.*, 561 U.S. 247 (2010).

“domestic transactions.”³⁰ This domestic-transaction test renders the impact of U.S. law on global securities operations significantly substantial, potentially tipping the scales of financial power in favor of the United States.

In the fight against bribery, the U.S. Foreign Corrupt Practices Act (FCPA)³¹ serves as a knight in shining armor. However, its extraterritorial reach enables authorities to prosecute foreign entities and individuals for corrupt practices committed beyond U.S. borders.³² This extensive reach of the FCPA is contingent not only on traditional jurisdictional bases, such as nationality or territoriality, but also on a broader notion of jurisdiction involving the mere utilization of U.S.-based communication systems. Antitrust legislation and sanction regimes further illustrate the extraterritorial dimension of U.S. law. In antitrust, U.S. courts have

30. After *Morrison*, Congress enacted the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). Pub. L. No. 111-203, 124 Stat. 1376 (2010). Its extraterritorial sections (e.g., § 722(d)) stipulate that certain regulations may be applied extraterritorially if the activities concerned “(1) have a direct and significant connection with activities in, or effect on, commerce of the United States; or (2) contravene such rules or regulations as the Commission may prescribe or promulgate as are necessary or appropriate to prevent the evasion of any provision of this Act that was enacted by the Wall Street Transparency and Accountability Act of 2010” and confer the SEC and DOJ with the power to apply U.S. securities laws outside of the United States. The Act also amended the Securities Exchange Act and conferred jurisdiction to United States courts to hear proceedings brought by the SEC and DOJ for violations involving “(1) conduct within the United States that constitutes significant steps in furtherance of a violation, even if the securities transaction occurs outside the United States and involves only foreign investors; or (2) conduct occurring outside the United States that has a foreseeable substantial effect within the United States.” See Dodd-Frank Act § 929P. Thus, the Dodd-Frank Act partially displaced *Morrison* for SEC and DOJ enforcement actions. The Supreme Court, in general, deemed that (i) § 10(b) of the Securities Exchange Act of 1934 did not apply extraterritorially and (ii) if a section/statute contains no indication on whether it is to be applied overseas as well, then the presumption against extraterritoriality applies. See *Morrison*, 561 U.S. at 247.

31. Foreign Corrupt Practices Act of 1977 (FCPA), 15 U.S.C. § 78dd-1. The FCPA satisfies the requirements under the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. See Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, pmbl., Dec. 17, 1997, S. Treaty Doc. No. 105-43 (1998) (recognizing that there is a shared responsibility to tackle bribery in international business transactions); see also *id.* art. 1 (obliging the signatories to “take such measures as may be necessary to establish that it is a criminal offence under its law for any person” to bribe a foreign official); Einbinder, *supra* note 6, at 726.

32. See Evan Forbes, *Extraterritorial Enforcement of the Foreign Corrupt Practices Act: Asserting U.S. Interest or Foreign Intrusion?*, 93 S. CAL. L. REV. POSTSCRIPT 109, 114 (2020).

long relied on the judicially developed “effects doctrine” to reach certain foreign conduct with substantial effects in U.S. commerce. Congress later codified a related effects-based threshold for much foreign conduct in the Foreign Trade Antitrust Improvements Act, which refers to conduct having a “direct, substantial, and reasonably foreseeable effect” on U.S. commerce.³³ Sanctions enforcement operates through a different mechanism. It extends U.S. regulatory power outward through control over dollar-denominated transactions and access to U.S.-linked financial infrastructure.³⁴ Together, these mechanisms cast a wide net over cross-border business activity and can constrain other states’ economic sovereignty.

In summary, the extraterritoriality of U.S. law, fueled by the nation’s commanding global influence, is a significant phenomenon that reverberates through various legal and economic sectors. Such extensive application of U.S. law arguably infringes on the principles of legal sovereignty, noninterference, and equality of states, thus necessitating a more detailed examination.

The foregoing overview sets up the analysis that follows by identifying the doctrinal levers and enforcement pathways that enable U.S. extraterritorial reach, thereby supporting the article’s central thesis that these practices function as tools of economic warfare.

B. Emblematic Cases: Implications for the U.S. Extraterritorial Application of Law

The extraterritorial application of U.S. law has become a subject of significant concern in international legal scholarship.³⁵

33. See *Hartford Fire Ins. Co. v. California*, 509 U.S. 764, 796–99 (1993) (applying U.S. antitrust law to foreign conduct alleged to produce substantial intended effects in the United States); 15 U.S.C. § 6a (2022) (providing that the Sherman Act applies to certain foreign conduct where that conduct has a “direct, substantial, and reasonably foreseeable effect” on U.S. domestic, import, or certain export commerce); see also *F. Hoffmann-La Roche Ltd. v. Empagran S.A.*, 542 U.S. 155, 162–65 (2004) (describing the FTAIA as setting forth the Sherman Act’s application to conduct involving foreign commerce and emphasizing the required domestic effect).

34. See *supra* notes 16, 28.

35. See, e.g., *Morrison v. Nat’l Austl. Bank Ltd.*, 561 U.S. 247, 260–62 (2010); *United States v. Vilar*, 729 F.3d 62, 72–73 (2d Cir. 2013); *United States v. Bowman*, 260 U.S. 94, 97–104 (1922) (illustrating the Court’s willingness, in appropriate statutory contexts, to recognize extraterritorial application); *Bersch v. Drexel Firestone, Inc.*, 519 F.2d 974, 993

This article identified and examined three emblematic cases: the *Australian Wheat Board* (AWB) case,³⁶ the arrest of Huawei's Chief Financial Officer Meng Wanzhou in Canada,³⁷ and the *Hoskins* case.³⁸ These cases shed light on the multifaceted dimensions of U.S. extraterritoriality, particularly in relation to national sovereignty and global economic dynamics. Also, these cases highlight the importance of the presumption against extraterritoriality—whether express or implicit—in an attempt to protect national sovereignty and economics. To address this problem effectively, this section provides a descriptive account of the relevant situation in each case study.

1. The AWB Prosecution: U.S. Overreach and Australian Sovereignty

The AWB case is a compelling example of the far-reaching and problematic nature of U.S. extraterritorial law.³⁹ AWB, a prominent wheat exporter from Australia, found itself at the center of a legal

(2d Cir. 1975); *IIT v. Vencap, Ltd.*, 519 F.2d 1001, 1018 (2d Cir. 1975) (stating, in the transnational securities-fraud context, that merely preparatory U.S. activity is insufficient, but that fraudulent acts in the United States directly furthering the scheme may justify application of U.S. law); *SEC v. Kasser*, 548 F.2d 109, 116 (3d Cir. 1977) (reasoning that extraterritorial application may be warranted to prevent the United States from becoming a haven for fraud); *Schoenbaum v. Firstbrook*, 405 F.2d 200, 206–09 (2d Cir. 1968) (developing the “effects test,” focused on substantial effects in the United States or on U.S. investors); *Leasco Data Processing Equip. Corp. v. Maxwell*, 468 F.2d 1326, 1334–37 (2d Cir. 1972) (developing the “conduct test,” focused on substantial fraudulent conduct occurring in the United States).

36. AUSTRALIA, INQUIRY INTO CERTAIN AUSTRALIAN COMPANIES IN RELATION TO THE U.N. OIL-FOR-FOOD PROGRAMME & COMMISSIONER THE HONORABLE TERENCE RH COLE, REPORT OF THE INQUIRY INTO CERTAIN AUSTRALIAN COMPANIES IN RELATION TO THE U.N. OIL-FOR-FOOD PROGRAMME (2006), <https://nla.gov.au/nla.obj-718564166> [<https://perma.cc/VYH9-4HWS>] (providing the core factual narrative of AWB's Oil-for-Food payments that later became the basis for foreign enforcement and litigation narratives); see also Linda C. Botterill, *Doing It For the Growers in Iraq?: The AWB, Oil-for-Food and the Cole Inquiry*, 66 AUSTL. J. PUB. ADMIN. 4 (2007) (providing a concise political-administrative account of the AWB Oil-for-Food scandal and the Cole Inquiry's findings, useful as a general background source on the case).

37. *United States v. Meng*, 2020 BCSC 785, ¶¶ 2, 20, 80–81, 86 (Can.).

38. *United States v. Hoskins* (*Hoskins II*), 44 F.4th 140, 145, 147 (2d Cir. 2022).

39. See *US Attorney Confirms AWB Lawsuit*, ABC NEWS (Dec. 24, 2006), <https://www.abc.net.au/news/2006-12-24/us-attorney-confirms-awb-lawsuit/2160792> [<https://perma.cc/V59T-BJPS>]. Certain arrests in the United States have been made in relation to the scandal; see also Robert McMahon, *The Impact of the UN Oil-for-Food Scandal*, COUNCIL ON FOREIGN RELATIONS (May 11, 2006), <https://www.cfr.org/backgro/under/impact-un-oil-food-scandal> [<https://perma.cc/R5AH-9ETP>].

predicament in the United States, even though its alleged infractions took place outside U.S. jurisdiction and involved no U.S. parties.

The facts of this case revolve around the Foreign Corrupt Practices Act,⁴⁰ a statute designed to prohibit bribery of foreign officials in connection with business and, for issuers, to require accurate books and records and adequate internal controls.⁴¹ The United States Securities and Exchange Commission alleged that AWB violated the FCPA in connection with kickback payments to Iraqi officials under the Oil-for-Food Programme.⁴² Despite these actions taking place outside U.S. borders and not involving U.S. entities, the United States was still able to assert its jurisdiction. The crux of the argument lies in the United States' ability to assert jurisdiction based on the mere use of its financial system, even if tangential. This action stretches the boundaries of traditional jurisdictional norms, further demonstrating the breadth of extraterritorial law in the United States. Moreover, the application of the FCPA to non-U.S. entities engaged in entirely foreign transactions has considerable implications for the sovereignty of other nations.⁴³ The FCPA applies to "issuers" (companies with

40. AWB paid "trucking fees" or kickbacks under the U.N. Oil-for-Food Programme through Jordanian intermediaries, with those payments ultimately benefiting the Iraqi regime, in breach of U.N. sanctions and Australian law. See AUSTL. SENATE, LEGAL & CONST. AFFS. REFERENCES COMM., INQUIRY INTO CERTAIN AUSTRALIAN COMPANIES IN RELATION TO THE U.N. OIL-FOR-FOOD PROGRAMME ch. 3 (2006); see also INDEPENDENT INQUIRY COMM. INTO THE U.N. OIL-FOR-FOOD PROGRAMME, MANIPULATION OF THE OIL-FOR-FOOD PROGRAMME BY THE IRAQI REGIME 302–16 (2005). For the relevant FCPA provisions, see 15 U.S.C. § 78dd-1(a) (2022) (anti-bribery provision applicable to issuers); *id.* § 78m(b)(2)(A)–(B) (books-and-records and internal-controls provisions).

41. *How Was AWB Enmeshed in Iraq's Oil-for-Food Scandal?*, SBS NEWS (Oct. 12, 2015), <https://www.sbs.com.au/news/article/how-was-awb-enmeshed-in-iraqs-oil-for-food-scandal/4gqnoff20> [<https://perma.cc/N3PM-TY9Q>] (summarizing Cole Inquiry findings that AWB funneled about AUS\$300 million in illicit fees to Saddam Hussein's regime via Jordanian front company Alia, in violation of U.N. sanctions); AUSTL. SENATE, LEGAL & CONST. AFFS. REFERENCES COMM., Work Undertaken by the Australian Federal Police's Oil-for-Food Taskforce ch. 2 (Mar. 24, 2015), https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/AFP_Oil/Report/d02 [<https://perma.cc/5N2N-K4T7>].

42. See 15 U.S.C. § 78dd-1(a) (2022) (prohibiting an issuer and certain persons acting on its behalf from corruptly making or authorizing payments or offers of value to foreign officials to obtain or retain business); see also AUSTL. SENATE, LEGAL & CONST. AFFS. REFERENCES COMM., *supra* note 40, ch. 3 (describing allegations that AWB inflated wheat prices and paid kickbacks to the Iraqi regime through the Oil-for-Food Programme).

43. See, e.g., Daniel K. Leibold, *Extraterritorial Application of the FCPA Under International Law*, 51 WILLAMETTE L. REV. 225, 239–40 (2015) (noting that, in practice,

securities listed on U.S. exchanges) and “domestic concerns” (U.S. individuals and businesses),⁴⁴ regardless of where the corrupt activities occurred, as well as to foreign individuals and entities that commit corrupt acts within the territory of the United States.⁴⁵ This practice can be viewed as an encroachment on the economic sovereignty of other nations, positioning U.S. law as an instrument of economic supremacy. In essence, the *AWB* case underlines the extent to which U.S. law can reach beyond its territorial limits to regulate the conduct of foreign entities. This expansive approach has profound implications for international law and global economic dynamics, a theme that we explore throughout our analysis.⁴⁶ This raises questions about the implications of such extraterritoriality for the principles of state sovereignty and noninterference, suggesting a potential reconfiguration of global power dynamics that merits further examination from a legal perspective.

2. The Arrest of Huawei’s CFO: Legal Tensions Between Canada and the United States

The second illustrative case is the arrest of Huawei Technologies’ Chief Financial Officer, Meng Wanzhou, in Canada, demonstrating another significant facet of U.S. extraterritoriality: the enforcement of its sanction laws.⁴⁷ Meng found herself ensnared in a complex legal web spun by accusations of misleading HSBC Holdings (formerly the Hongkong and Shanghai Banking Corporation) about Huawei’s dealings in Iran.⁴⁸ The conduct alleged, which primarily revolved around potential violations of

FCPA jurisdiction may rest on a “mere tangential connection (i.e. a bank wire transfer or an email)” to the United States, including dollar wire transfers between foreign banks routed through U.S. correspondent accounts).

44. U.S. DEP’T OF JUST. & U.S. SEC. & EXCH. COMM’N, A RESOURCE GUIDE TO THE U.S. FOREIGN CORRUPT PRACTICES ACT, 9–10 (2d ed. 2020), https://www.justice.gov/d9/pages/attachments/2020/08/20/fcpa-guide-2020_print-full-downloadable.pdf [<https://perma.cc/ET6K-TX5R>].

45. Michael S. Diamant et al., *FCPA Enforcement Against U.S. and Non-U.S. Companies*, 8 MICH. BUS. & ENTREPRENEURIAL L. REV. 353, 353–54 (2019).

46. Mike Koehler, *The Story of the Foreign Corrupt Practices Act*, 73 OHIO ST. L. REV. 929, 941, 943, 946 (2012).

47. See *United States v. Meng*, 2020 BCSC 785, ¶¶ 13–19, 35–52 (Can.); see also *United States Seeks Extradition of Huawei Official Charged with Violating Sanctions Against Iran*, 113 AM. J. INT’L L. 388, 388–89 (2019).

48. *United States v. Meng*, 2020 BCSC 785, ¶ 9 (Can.).

U.S. sanctions, occurred outside the geographical confines of the United States.⁴⁹ However, this did not deter U.S. authorities from seeking her arrest and subsequent extradition.⁵⁰ The application of U.S. law to conduct wholly beyond the nation's borders demonstrates the United States' readiness to extend its legal reach extraterritorially. In doing so, it strategically projects domestic law onto the international plane, signaling an expansion of its jurisdictional boundaries. The arrest was widely understood to reflect a deteriorating bilateral political climate.⁵¹

This discussion of U.S. sanctions enforcement in the Meng Wanzhou matter moves the article beyond economic regulation and into the overlapping domains of alliance politics, security concerns, and coercive legal diplomacy. This underlines the multifaceted nature of U.S. extraterritoriality, demonstrating the broad spectrum over which it holds sway. Meng Wanzhou's arrest offers more than a narrative of legal overreach. It represents a paradigmatic shift that evidences the United States' determination to apply its laws and enforcement mechanisms on foreign soil and against non-U.S. nationals.

This case not only substantiates this article's main thesis but also amplifies the need for a critical reevaluation of the implications of such extraterritorial legal practices. It calls into question the principles that underpin the international legal order, such as state sovereignty and noninterference, thereby resonating with our theoretical framework.

3. The *Hoskins* Case: U.S. Prosecution of a French Executive for Conduct in Indonesia

A third illustrative case that highlights the extraterritorial application of U.S. law and its potential interference with sovereign interests involves Alstom S.A. (Alstom), a French power and transportation company, and its contract with Indonesia.⁵² While Alstom was indicted for bribery and pled guilty in 2014, the United

49. *Id.* ¶¶ 7–19.

50. *Id.* ¶ 2.

51. *China Arrest Another Sign of Trump's Disjointed Diplomacy*, FRANCE 24 (Dec. 7, 2018), <https://www.france24.com/en/20181207-china-arrest-another-sign-trumps-disjointed-diplomacy> [<https://perma.cc/RR9E-9F92>].

52. *Hoskins II*, 44 F.4th 140, 145–49 (2d Cir. 2022); *see also* Forbes, *supra* note 32, at 117–19.

States claimed jurisdiction over bribery and corruption offenses committed by Alstom's U.S. subsidiary a decade earlier.⁵³ The United States also filed charges against Hoskins, an employee of one of Alstom's subsidiaries, alleging that he was a coconspirator and accomplice.⁵⁴ Notably, Hoskins was neither a U.S. national nor employed by the U.S. subsidiary, and he was not in the United States at the time of the bribery.⁵⁵ Additionally, the United States did not have victim status in this case.⁵⁶ This raises concerns about the extent to which the United States positions itself as a global policeman, intervening in matters that may fall outside its jurisdiction and undermining the sovereign interests of other nations.⁵⁷

The *Hoskins* case illustrates the breadth of U.S. extraterritorial jurisdiction in the economic sphere, extending to conduct connected to a French firm—an ally's flagship industrial actor—and an Indonesian public procurement project. Despite Hoskins's status not falling directly within the scope of the FCPA, the United States asserted its legal authority to pursue legal action against Hoskins. The harder question is what legal theory makes that reach plausible—and what limits, if any, international law and due process impose when the territorial nexus is thin. The exercise of extraterritorial jurisdiction by the United States in cases where its own interests are not directly affected may be legally characterized as interference in the affairs of other nations and encroachment on their economic sovereignty.

Despite the United States' apparent lack of jurisdiction when it decided to prosecute Hoskins, it should be noted that the Department of Justice had opined that (i) Hoskins was one of the people who had approved payments to two consultants, employed by Alstom's U.S. subsidiary to bribe government officials in Indonesia in exchange for securing the US\$118 million power plant contract, and had also been aware that a part of the payments was for the purpose of bribing the Indonesian officials, and that (ii) the

53. *Hoskins II*, 44 F.4th at 145–47.

54. *Id.*

55. *Id.*

56. *Id.*

57. Natasha N. Wilson, *Pushing the Limits of Jurisdiction over Foreign Actors Under the Foreign Corrupt Practices Act*, 91 WASH. INT'L L. REV. 1063, 1078, 1086–87 (2014).

bribery had, in part, occurred within the United States.⁵⁸ Invoking an asserted territorial nexus to the United States, the Department of Justice maintained that established jurisdictional principles supported U.S. jurisdiction, notwithstanding Hoskins's attenuated personal connection to the forum.⁵⁹ Consequently, even though Hoskins was not a U.S. citizen, did not work for a U.S. company or subsidiary, and was not in the country when the malfeasance took place, the United States still asserted jurisdiction over the offense.⁶⁰

Nevertheless, the legal dimension of this case calls for a closer analysis of the compatibility of the United States' actions with international law. It highlights the need to consider the principles of comity, respect for national sovereignty, and fair application of laws across borders. When U.S. interests are not directly implicated, the extraterritorial application of U.S. law raises concerns about how far jurisdictional assertions can go without eroding other states' sovereignty and legal autonomy. The *Hoskins* example further emphasizes the need for a balanced and equitable approach that respects the rights and interests of all nations involved. Such an approach should consider the potential consequences of extraterritorial legal actions on diplomatic relationships, global power dynamics, and the stability of the international legal order.

Together, these cases put pressure on the traditional limits of extraterritorial jurisdiction and highlight the need for clearer

58. United States v. Hoskins (*Hoskins I*), 902 F.3d 69, 72 (2d Cir. 2018).

59. The United States is a signatory to the OECD Convention on Combating Bribery. Under the Convention, signatories are required to criminalize bribery of a foreign official by any persons (art. 1) and if the said bribery had occurred in a country, whether in its entirety or partially, then that country was obliged to implement necessary measures to "establish its jurisdiction" (art. 4). See Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, arts. 1, 4, Dec. 17, 1997, S. Treaty Doc No. 105-43 (1998), 37 I.L.M. 1.

60. It should be noted that concerns were raised when Hoskins was acquitted in 2018. See *Hoskins I*, 902 F.3d 69 (2d Cir. 2018); *Hoskins II*, 44 F.4th 140 (2d Cir. 2022) (affirming acquittal). Particularly, the scope of liability under the FCPA in the context of conspiring to commit bribery was restricted in *Hoskins I*, with the OECD noting that "to the extent that recent U.S. case law developments create a divergence between how U.S. courts apply conspiracy law to those who conspire to bribe domestic and foreign officials, the lead examiners consider that this would violate the Convention." See ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT [OECD], IMPLEMENTING THE OECD ANTI-BRIBERY CONVENTION PHASE 4 REPORT: UNITED STATES 38-39 (2020), <https://www.oecd.org/daf/anti-bribery/United-States-Phase-4-Report-ENG.pdf> [<https://perma.cc/5MKN-WWKP>].

constraints. They are not isolated episodes of U.S. overreach but symptoms of a broader trend.⁶¹ The United States' extension of its legal norms and enforcement mechanisms to foreign territories and non-U.S. entities, as reflected in these cases, underscores our thesis. The central claim of this article is that this trend reflects an emerging form of economic warfare, in which legal mechanisms become instruments of economic dominance and constraint.

C. Legal Hegemony and International Order

Building on the foregoing cases, this section assesses the implications of U.S. extraterritorial enforcement for the principle of noninterference and for the stability of the international legal order.⁶² The United States' extraterritorial application of its laws can be interpreted as infringing upon the noninterference principle in international law. Furthermore, this practice can create legal chaos, as multiple jurisdictions with differing laws and regulations claim authority over the same actions or entities.⁶³ The United States' extensive use of extraterritorial jurisdiction may prompt reciprocal action. This retaliatory cycle, catalyzed by the erosion of respect for state sovereignty, can destabilize the international legal order and intensify geopolitical tensions. Hence, it is crucial to explore potential legal mechanisms or norms that can mitigate such outcomes, including the development of multilateral agreements or the refinement of international jurisdictional principles.

From a theoretical perspective, the United States' expansive use of extraterritorial jurisdiction may also be examined in the context of "legal realism." Legal realism posits that law is not just

61. See Kathleen J. Harris et al., *The Extraterritorial Reach of the FCPA and the UK Bribery Act: Implications for International Business*, ARNOLD & PORTER LLP (Mar. 2012), https://www.arnoldporter.com/-/media/files/perspectives/publications/2012/03/the-extraterritorial-reach-of-the-fcpa-and-the-uk_brib_.pdf?rev=2712d89045eb4834b6e81acb67d6a981&sc_lang=en&hash=E8D97B1F7F06E6D47741403D3215730A [https://perma.cc/4PYX-YRKB].

62. Niki Aloupi, *The Right to Non-intervention and Non-interference*, 4 CAMBRIDGE J. INT'L L. 566, 566, 571–72 (2015).

63. See Henry A. Kissinger, *The Pitfalls of Universal Jurisdiction*, 80 FOREIGN AFF. 86, 92, 96 (2001); see also Adrienne Bernard & Sara L. Seck, *Home State Responsibility and Local Communities: The Case of Global Mining*, 11 YALE HUM. RTS. & DEV. L. J. 177, 186–92 (2008).

an objective set of rules, but is heavily influenced by the social, political, and economic contexts in which it operates.⁶⁴ Therefore, the United States' extraterritorial practices may be driven by its strategic interests and global economic dominance. Meanwhile, the broader implications of the United States' expansive use of extraterritorial jurisdiction for international justice and fairness deserve scrutiny. If powerful states such as the United States can enforce their laws beyond their borders, what space does it leave for weaker states to assert their legal sovereignty? How do these dynamics affect the global balance of legal power and the pursuit of a more equitable international legal order? Addressing these questions can provide deeper insights into the asymmetries of global legal governance, further advancing our understanding of international law.

The application of extensive extraterritorial jurisdiction by the United States undoubtedly triggers significant concern regarding the due process rights for those on the receiving end of these practices.⁶⁵ U.S. courts have generally maintained the legitimacy of applying U.S. law to overseas entities in compliance with the due process clause.⁶⁶ Yet critics argue that the assertion of such expansive jurisdictional claims may indeed imperil the due process rights of individuals who are not U.S. nationals.⁶⁷ They posit that these extraterritorial practices could disregard the

64. Grant Gilmore, *Legal Realism: Its Cause and Cure*, 70 YALE L.J. 1037, 1037–39 (1961).

65. See *United States v. Yousef*, 327 F.3d 56, 111 (2d Cir. 2003) (stating that, for non-citizens acting entirely abroad, due process requires a “sufficient nexus” between the defendant and the United States so that application of U.S. law is not arbitrary or fundamentally unfair); *United States v. Ali*, 718 F.3d 929, 944–45 (D.C. Cir. 2013) (same); Anthony J. Colangelo, *What Is Extraterritorial Jurisdiction?*, 99 CORNELL L. REV. 1303, 1345–46 (2014) (noting that the Due Process Clause is often treated as a constraint on constitutionally excessive extraterritorial application of U.S. law).

66. See, e.g., *United States v. Suerte*, 291 F.3d 366, 376–77 (5th Cir. 2002) (“For certain persons not aboard United States vessels or in United States customs waters, it proscribes drug trafficking only aboard a stateless vessel or, as in the case at hand, a vessel whose flag nation consents to enforcement of United States law. Enforcement of the MDLEA in these circumstances is neither arbitrary nor fundamentally unfair (the due process standard agreed upon by Suerte and the Government).”); *United States v. Davis*, 905 F.2d 245, 248–49 (9th Cir. 1990) (“In order to apply extraterritorially a federal criminal statute to a defendant consistently with due process, there must be a sufficient nexus between the defendant and the United States, so that such application would not be arbitrary or fundamentally unfair.”).

67. See Anthony J. Colangelo, *Universal Jurisdiction as an International “False Conflict” of Laws*, 30 MICH. J. INT’L L. 881, 884 (2009).

fundamental principles of procedural fairness and legality, such as the right to be heard, the right to a fair trial, and the right to judicial review.⁶⁸ These principles are widely recognized in international human rights law and enshrined in multiple international conventions.⁶⁹ Thus, any derogation from these standards raises legal concerns. In addition to due process concerns, the impact of U.S. extraterritorial jurisdiction on international relations and global economic stability must also be considered. The imposition of U.S. laws on foreign entities can exacerbate trade tensions, discourage foreign investment, and contribute to economic uncertainty, particularly in countries that are economically dependent on the United States.

This unabated projection of U.S. laws beyond its borders can be viewed as a form of legal imperialism. The United States' legal system, driven by its economic and political interests, can shape the legal environments of dependent economies, potentially subverting their sovereignty and skewing international legal norms.

III. SURVEILLANCE AND CONTROL: INSTRUMENTS OF ECONOMIC WARFARE

The ever-expanding digital interconnectedness of our world has brought forth a pressing issue at the intersection of law and global economics: surveillance and control—two powerful instruments that have been strategically employed in the field of economic warfare.⁷⁰ Notably, the United States extends its surveillance and control mechanisms beyond its national borders.

68. See, e.g., Danielle Ireland-Piper, *Prosecutions of Extraterritorial Criminal Conduct and the Abuse of Rights Doctrine*, 9 *UTRECHT L. REV.* 68, 88 (2013).

69. See, e.g., International Covenant on Civil and Political Rights art. 14(2), Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR]; G.A. Res. 217 (III) A, Universal Declaration of Human Rights art. 10 (Dec. 10, 1948) [hereinafter UDHR].

70. The global proliferation of digital technology has increased the interconnectedness of our world, consequently amplifying the potential for surveillance and control. In economic warfare, these instruments are often strategically wielded to achieve geopolitical gains. Surveillance capabilities can unearth valuable data, tipping the balance of power, while control over digital infrastructure—like subsea cables—can dictate the flow of information. See Anna Gross et al., *How the US is Pushing China out of the Internet's Plumbing*, *FIN. TIMES* (June 13, 2023), <https://ig.ft.com/subsea-cables/> [<https://perma.cc/8BPC-U7KU>]. The legal and economic implications of these tactics pose new challenges in the digital age, underscoring the urgent need for robust international regulations and agreements.

The extensive control is specifically substantiated by the United States' deployment of surveillance and control measures, such as the global surveillance practices of the National Security Agency (NSA), the International Traffic in Arms Regulations (ITAR) governing strategic technologies, and broad access to corporate information granted by the Patriot Act.⁷¹

The United States utilizes an array of military tools in its pursuit of economic dominance, prominently manifested through its extensive surveillance and intelligence systems. In the aftermath of the 9/11 attack, the United States significantly expanded its listening and intelligence capabilities,⁷² initially aimed at countering terrorist threats. However, these capabilities have also been leveraged to gather information on foreign companies that compete with U.S. interests. This became apparent in 2014 when Edward Snowden's disclosures revealed that the NSA had exploited seventy-five million conversations and emails from French companies.⁷³ Notably, Mr. Pierucci's prosecution in the Alstom matter illustrates the aggressive extraterritorial consequences of U.S. anti-bribery enforcement.⁷⁴ He spent two years in U.S. jails after being apprehended in Manhattan, where prosecutors presented him with more than one million exhibits as

71. See Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), Pub. L. No. 107-56, tit. III, 115 Stat. 272, 296–97 (2001) [hereinafter the Patriot Act].

72. NAT'L COMM'N ON TERRORIST ATTACKS UPON THE U.S., THE 9/11 COMMISSION REPORT 410–12, 434 (2004) (discussing post-9/11 intelligence and surveillance expansion and supporting broader information-sharing and intelligence integration).

73. Margaret Hu, *Taxonomy of the Snowden Disclosures*, 72 WASH. & LEE L. REV. 1679, 1690, 1695 (2015); Seumas Miller & Patrick Walsh, *The NSA Leaks, Edward Snowden, and the Ethics and Accountability of Intelligence Collection*, in ETHICS AND THE FUTURE OF SPYING: TECHNOLOGY, NATIONAL SECURITY AND INTELLIGENCE COLLECTION 193, 200 (Jai Galliot & Warren Reed eds., 2016).

74. *Hoskins II*, 44 F.4th 140, 145–47 (2d Cir. 2022) (describing the Alstom bribery scheme involving a Connecticut-based subsidiary, foreign executives, and Indonesian officials); Superseding Indictment at 1–4, 8–15, *United States v. Frederic Pierucci & William Pomponi*, No. 3:12-cr-238 (D. Conn. Apr. 30, 2013) (charging Pierucci and Pomponi in connection with the Alstom scheme and alleging use of U.S. instrumentalities and meetings in Connecticut); Evan Forbes, *Extraterritorial Enforcement of the Foreign Corrupt Practices Act: Asserting U.S. Interest or Foreign Intrusion?*, 93 S. CAL. L. REV. POSTSCRIPT 109, 113–15, 123–24 (2020) (explaining the 1998 expansion of the FCPA's extraterritorial reach and using *Hoskins II* as a lens for debates over expansive foreign enforcement).

evidence obtained through illegal eavesdropping.⁷⁵ The volume of the emails allegedly gathered against him was so large, according to Pierucci's own account, that effective review by counsel would have taken years.⁷⁶ A critical reading of these disclosures suggests that U.S. mass surveillance and intelligence-gathering practices reveal both the breadth of U.S. reach and the risk of abuse when national-security tools intersect with economic interests.⁷⁷

To address this problem effectively, this section begins by providing a comprehensive account of U.S. surveillance and control practices and elucidating their scale and ramifications. This descriptive phase is followed by an analytical exploration of the underlying causes and justifications of these practices, coupled with an assessment of their legal, political, and economic impacts. Finally, this section advances the argument by undertaking a comprehensive study of potential responses, both at the national and international levels. Through this examination, this section seeks to contribute to a broader understanding of surveillance, control, and economic warfare.

A. Surveillance Infrastructure and Strategic Leverage: The Role of the NSA

The increasing strategic significance of information gives rise to a new form of economic warfare in which surveillance plays a crucial role.⁷⁸ Notably, the NSA has emerged as a pivotal player in

75. FRÉDÉRIC PIERUCCI & MATTHIEU ARON, *THE AMERICAN TRAP: MY BATTLE TO EXPOSE AMERICA'S SECRET ECONOMIC WAR AGAINST THE REST OF THE WORLD* 60, 96–97, 116, 130–31 (2019).

76. *See id.* at 97 (stating that prosecutors presented over one million emails and that it would have taken a lawyer “three years” to read them, making an effective defense impossible).

77. *See* BEN EMMERSON, *TWO YEARS AFTER SNOWDEN: PROTECTING HUMAN RIGHTS IN AN AGE OF MASS SURVEILLANCE* 7–10 (2015) (describing Snowden's disclosures as evidence of global mass-surveillance programs and raising concerns about legality, proportionality, and abuse); *France: Deputy Editor of Le Monde Says the Newspaper Obtained Documents About Large-Scale Spying on French Citizens by the U.S. National Security Agency*, REUTERS (Oct. 21, 2013) (reporting that NSA documents showed surveillance of more than 70 million French communications in a single month); *see also* Samuel J. Rascoff, *The Norm Against Economic Espionage for the Benefit of Private Firms*, 83 U. CHI. L. REV. 249, 250–53, 260–63 (2016) (explaining the longstanding U.S. norm against collecting commercial information to benefit private firms and showing why the boundary between national-security intelligence and economic advantage matters).

78. KIRSTIE BALL & LAUREEN SNIDER, *THE SURVEILLANCE-INDUSTRIAL COMPLEX: A POLITICAL ECONOMY OF SURVEILLANCE* 4–6 (2013).

this arena, often regarded as a central pillar in the United States' strategic economic control.⁷⁹

With its technical capacity and global reach, the NSA's activities have significant transnational ramifications. Under the rubric of national security, the agency has engaged in large-scale collection of communications data across borders.⁸⁰ This information has significant economic value, especially in the context of international trade and investment. The possession of sensitive market information or corporate secrets can provide U.S. firms with an unfair advantage, disrupting the level playing field that is fundamental to free market economics.

Nonetheless, the legal consequences of accessing data without the consent or legal sanction of the concerned states are both far-reaching and significant. The surveillance operations carried out by the NSA, which involve the extraterritorial application of U.S. law, present a fundamental challenge to the customary notion of state sovereignty.⁸¹

This practice effectively amounts to an extension of the U.S. legal reach that contravenes the principles enshrined in the established international legal norms. The situation becomes more complex when considering that these activities often occur without explicit knowledge or authorization of the affected nations.⁸² From a legal standpoint, this calls into question the tenets of international law, particularly the principles of state sovereignty and noninterference as well as the legal doctrine of extraterritoriality.⁸³ The United States' ability to impose its laws beyond its borders challenges these foundational elements of international law, prompting a critical reassessment of their

79. G. Alex Sinha, *NSA Surveillance Since 9/11 and the Human Right to Privacy*, 59 LOY. L. REV. 861, 863, 892 (2013).

80. Peter Margulies, *The NSA in Global Perspective: Surveillance, Human Rights, and International Counterterrorism*, 82 FORDHAM L. REV. 2137, 2137–39 (2014); EMMERSON, *supra* note 77, at 7–10 (describing the Snowden disclosures as evidence of global communications-surveillance programs monitoring vast quantities of data across borders).

81. Tom Lundborg, *What Lies Beyond Lies Within: Global Information Flows and the Politics of the State/Inter-State System*, 36 ALTS.: GLOB., LOC., POL. 103, 104, 109 (2011).

82. David H. Price, *The New Surveillance Normal: NSA and Corporate Surveillance in the Age of Global Capitalism*, 66 MONTHLY REV. 43, 47–48 (2014).

83. International Covenant on Civil and Political Rights art. 17, Dec. 16, 1966, 999 U.N.T.S. 171 (protecting against arbitrary or unlawful interference with privacy and correspondence).

relevance and effectiveness in the contemporary geopolitical environment.

The United States' surveillance, control, and data collection also raise critical questions regarding how local law can safeguard legal rights and provide protection against extraterritorial intrusion. In their quest for economic competitiveness, corporate entities may find themselves disadvantaged due to extraterritorial surveillance. In effect, their economic activities and strategies become vulnerable to foreign interference, highlighting the importance of strengthening local legal protection to preserve corporate entities' competitive positions in the global market.

Furthermore, the NSA's surveillance activities prompted a discussion of the legitimacy of such practices under international law. While states have the sovereign right to protect their national security interests, the means adopted must be within legal boundaries set by international law. Here, the principle of proportionality can serve as a key determinant of legality. In this regard, the question arises as to whether the breadth and depth of NSA surveillance activities are proportional to the threat they aim to counter.⁸⁴

The role of surveillance, as epitomized by the NSA's activities, represents a powerful tool in the United States' arsenal of economic control. It not only blurs the lines between fairly defending national security and grabbing economic advantage at the expense of other nations' economic interests, but it also undermines the notion of state sovereignty, which is the foundation of international law.

*B. Technology as a Channel of Control:
ITAR and the Restriction of Global Trade*

The article's focus now shifts toward strategic technology control exerted through the ITAR,⁸⁵ taking the impact of these regulations on French aircraft exports as a case study. The intersection of technology control and international law brings forth intriguing insights into how legal instruments, such as the ITAR, can profoundly reshape the economic dynamics between

84. Kira Vrist Rønn & Kasper Lippert-Rasmussen, *Out of Proportion? Surveillance and the Proportionality Requirement*, 23 *ETHICAL THEORY & MORAL PRAC.* 181, 181 (2020).

85. 22 U.S.C. § 2778 (2022).

nations and tilt the ground of economic warfare toward the United States.

The ITAR, promulgated by the United States, primarily aims to prevent the uncontrolled export of defense technologies that can potentially harm national security.⁸⁶ However, the pervasive nature of the ITAR extends well beyond U.S. boundaries, ensnaring foreign entities that deal with technologies of U.S. origin.⁸⁷ A vivid illustration of this is observed in the French aerospace industry, where ubiquitous U.S.-sourced components in aircraft manufacturing compelled French exporters to comply with U.S. export control regulations.⁸⁸

Fundamentally, ITAR's application to French aircraft exports extends U.S. jurisdiction into a foreign production and export regime, constraining France's sovereign control over aircraft manufacturing. Because the relevant controlled items are often strategic, defense-linked technologies, control over their transfer becomes geopolitical leverage—an example of U.S. domestic law functioning as an instrument of external economic influence.⁸⁹ This legal scenario unveils a broader picture: one in which domestic law is not merely an instrument of domestic governance but a strategic tool with international reach that influences global economies. The ITAR and its impact on French aircraft exports provide evidence of how U.S. extraterritorial legal practices can skew the balance of power in international economic relations in its own favor.

86. 22 C.F.R. § 120.1(a) (2025) (stating that the ITAR implements the Arms Export Control Act and governs the export and temporary import of defense articles and defense services in furtherance of U.S. national security and foreign policy objectives).

87. Joop Voetelink, *The Extraterritorial Reach of US Export Control Law: The Foreign Direct Product Rules*, 1 J. STRATEGIC TRADE CONTROL 1, 7 (2023).

88. See RONAN LE GLEUT & HÉLÈNE CONWAY-MOURET, SENATE COMMITTEE ON FOREIGN AFFAIRS, DEFENCE AND THE ARMED FORCES, 2040, L'ODYSSÉE DU SCAF: THE FUTURE COMBAT AIR SYSTEM pt. I.B.2 (July 15, 2020), <https://www.senat.fr/rap/r19-642-1/r19-642-13.html> [<https://perma.cc/A44Y-BBCW>] (explaining that “désITARisation” means reducing exposure to ITAR, which permits the United States to block exports of equipment containing U.S. components, and noting that many French systems, particularly aircraft, contain such components and therefore fall under the ITAR regime).

89. Henry Farrell & Abraham L. Newman, *Weaponized Interdependence: How Global Economic Networks Shape State Coercion*, 44 INT'L SEC. 42, 55–56 (2019).

*C. Financial and Corporate Intrusion:
The Global Operation of the U.S. PATRIOT Act*

The international corporate reality has become more complex, warranting a critical analysis of corporate sovereignty from a legal perspective.⁹⁰

A compelling illustration of this complexity lies in the Patriot Act's expansion of disclosure and surveillance powers, which later informed efforts to compel U.S.-based firms to produce data stored abroad.⁹¹ However, this legislation extends beyond U.S. borders and often reaches foreign corporations linked to U.S. entities.⁹² The law allows the U.S. government to access vast amounts of data held by these corporations, eroding their autonomy and right to privacy and challenging the traditional understanding of corporate sovereignty.⁹³

Extending beyond the overt surveillance capabilities it grants to the U.S. government, this legislation underscores and contributes to existing imbalances in international power dynamics, particularly within the sphere of international business operations.⁹⁴ Viewing the Act through a legal lens, it is evident that

90. See Patriot Act, 18 U.S.C. § 2703; *In re Warrant to Search a Certain Email Account Controlled & Maintained by Microsoft Corp.*, 128 HARV. L. REV. 1019, 1024–26 (2015) (explaining that the Patriot Act broadened warrant authority under the Stored Communications Act and that this expanded authority was later used to compel a U.S. provider to produce data stored on foreign servers).

91. Patriot Act, 18 U.S.C. § 2703; *In re Warrant to Search a Certain Email Account Controlled & Maintained by Microsoft Corp.*, 15 F. Supp. 3d 466, 473–79 (S.D.N.Y. 2014), *rev'd*, 829 F.3d 197 (2d Cir. 2016); *In re Warrant to Search a Certain Email Account Controlled & Maintained by Microsoft Corp.*, 128 HARV. L. REV. 1019, 1024–26 (2015) (explaining that the Patriot Act broadened warrant authority under the Stored Communications Act and that the government later relied on that framework in seeking data stored on foreign servers).

92. Pamela Seay, *Practicing Globally: Extraterritorial Implications of the USA Patriot Act's Money-laundering Provisions on the Ethical Requirements of US Lawyers in an International Environment*, 4 S.C.J. INT'L L. & BUS. 29, 57 (2007).

93. See JOSHUA BARKAN, *CORPORATE SOVEREIGNTY: LAW AND GOVERNMENT UNDER CAPITALISM* (2013).

94. See, e.g., Patriot Act § 319(b), 31 U.S.C. § 5318(k) (authorizing U.S. authorities to subpoena records from foreign banks that maintain correspondent accounts in the United States, including records held abroad, and to terminate access to U.S. correspondent banking for non-compliance, thereby illustrating how domestic legislation is used to reach foreign financial institutions and their business records); INSTITUT MONTAIGNE, *US EXTRATERRITORIALITY: THE TRUMP CARD* 5–7 (2019), <https://www.institutmontaigne.org/ressources/pdfs/publications/us-extraterritoriality-trump-card.pdf> [<https://perma.cc/4SVE-2BQJ>] (describing how extraterritorial U.S. financial, sanctions, and data-access

this piece of legislation is not merely a defensive measure in the face of national security threats. Instead, it can be interpreted as an active instrument employed by the U.S. government, which leverages legal authority to achieve a competitive advantage on a global scale.⁹⁵ By potentially facilitating access to sensitive commercial data from foreign corporations linked to U.S. entities, the U.S. Patriot Act provides the United States with an informational edge that can be used strategically in international business negotiations and competition.⁹⁶

The Patriot Act, with its extraterritorial reach, illustrates how domestic legislation can function as a tool to subvert the economic activities of foreign corporations. This in turn raises questions about the extent to which such actions remain compatible with the principles of fair competition and respect for corporate sovereignty—the bedrock of international economic law and governance. Moreover, this practice casts a long, disquieting shadow on the international corporate environment, where foreign corporations may operate under constant surveillance, with their commercially sensitive information at risk of exposure. In this sense, the Patriot Act may be perceived as compromising not only the sovereignty of foreign corporations but also the integrity of the global economic system itself.⁹⁷ As such, the legislation urges a critical reconsideration of the interplay between domestic laws, international business practices, and corporate sovereignty in today's globalized economic world.

The existence of the Patriot Act also prompts us to question the robustness of the current international law frameworks and whether these structures are sufficiently equipped to guard against the extraterritorial reach of domestic laws. Is the extant

laws give Washington structural leverage over foreign firms and can distort competitive conditions in international business).

95. See Patriot Act, Pub. L. No. 107-56, 115 Stat. 272 (2001) (stating that the Act's purpose is to deter and punish terrorism and enhance surveillance and law enforcement powers); see also James M. Byrne, *The Impact of the USA PATRIOT Act of 2001 on Non-U.S. Banks*, in CURRENT DEVELOPMENTS IN MONETARY AND FINANCIAL LAW 343, 356–57 (2003) (explaining how the Act expands U.S. jurisdiction to obtain information and seize assets held in U.S. accounts by non-U.S. persons, thereby giving U.S. authorities unprecedented access to foreign financial institutions' data).

96. USA PATRIOT Improvement and Reauthorization Act of 2005, Pub. L. No. 109-177, 120 Stat. 192 (2006).

97. Ethan Preston, *The USA PATRIOT Act: New Adventures in American Extraterritoriality*, 10 J. FIN. CRIME 104, 104–08 (2003).

international legal architecture capable of providing the necessary bulwark against potential overreaches, or are there inherent deficiencies that need to be addressed? This issue is particularly pertinent given the complex and interconnected nature of modern global business operations, where transactions often involve multiple jurisdictions and the lines between domestic and international are frequently blurred. Furthermore, it questions whether the unchecked reach of domestic laws might contribute to an unlevel playing field, undermining the principles of fairness and competition that underpin the global economic system. The far-reaching implications of the U.S. Patriot Act not only challenge our understanding of corporate sovereignty but also demand a critical review of the international legal framework.⁹⁸

D. Extraterritorial Legislation and its Legal Effects

The various forms of extraterritorial control exercised by the United States, as exemplified by the NSA's surveillance activities,⁹⁹ the application of the ITAR,¹⁰⁰ and the usage of the Patriot Act,¹⁰¹ present distinct and critical challenges to international law. A rigorous evaluation of their impacts and a robust legal assessment are needed to shed light on these challenges and identify potential remedies.

The surveillance practices conducted by the NSA embody an interesting and critical intersection of several potent legal issues including privacy rights, data protection norms, and the inviolability of state sovereignty. The NSA's capacity to reach beyond national borders and penetrate foreign jurisdictions to monitor and gather data represents a profound shift in the conventional understanding of state boundaries and jurisdictional

98. See Seay, *supra* note 92, at 56–57; Sinha, *supra* note 79, at 867; see also ICCPR, *supra* note 69; UDHR, *supra* note 69.

99. FRANCESCA BIGNAMI & GIORGIO RESTA, HUMAN RIGHTS EXTRATERRITORIALITY: THE RIGHT TO PRIVACY AND NATIONAL SECURITY SURVEILLANCE IN COMMUNITY INTERESTS ACROSS INTERNATIONAL LAW 4 (Eyal Benvenisti & Georg Nolte eds., 2018).

100. See 22 U.S.C. § 2778 (2022); 22 C.F.R. §§ 120.1(a), 123.9 (2025); LE GLEUT & CONWAY-MOURET, *supra* note 88, pt. I.B.2 (discussing ITAR constraints on French aerospace and defense export projects).

101. See Patriot Act, Pub. L. No. 107-56, §§ 215, 220, 319(b), 115 Stat. 272, 287–88, 291–92, 314–15 (codified as amended at 18 U.S.C. § 2703 and 31 U.S.C. § 5318(k)); Seay, *supra* note 92, at 56–57.

limits.¹⁰² From the perspective of privacy rights, these practices raise serious questions.¹⁰³ Given that privacy rights are enshrined in numerous international human rights conventions,¹⁰⁴ the NSA's surveillance activities potentially imply a breach of these rights. This potential breach highlights the limitations of existing international law mechanisms for protecting privacy rights when a state unilaterally extends surveillance activities beyond its borders. This situation becomes even more complex in the context of data protection norms.¹⁰⁵ Existing international law on data protection has not been designed with the extraterritorial application of a state's intelligence activities in mind. Therefore, the NSA's actions challenge these norms by accessing data held in foreign jurisdictions without being constrained by local data protection laws.

Finally, from the perspective of sovereignty, the exercise of intelligence powers beyond national borders intrudes upon the authority of other states. When the United States extends its jurisdiction to obtain foreign data, it oversteps the boundaries recognized in international law and undermines the principle of sovereignty. This reveals a gap in international law's ability to shield states from intrusive intelligence practices. Existing mechanisms offer limited protection, and they are often ill suited to address such extraterritorial activity. The result is a pressing need for legal innovation that can strengthen privacy safeguards, reinforce data protection, and preserve respect for sovereignty in a world defined by constant digital interconnection.

Similarly, the application of the ITAR to non-U.S. corporations and individuals, as evidenced in the case of French aircraft exports, extends U.S. jurisdiction beyond its borders, raising questions about economic sovereignty. The implications of such jurisdictional extensions for international law are profound. They

102. Peter Margulies, *Surveillance by Algorithm: The NSA, Computerized Intelligence Collection, and Human Rights*, 68 FLA. L. REV. 1045, 1045 (2016).

103. See Sinha, *supra* note 79, at 866; see also ICCPR, *supra* note 69; UDHR, *supra* note 69.

104. Marko Milanovic, *Human Rights Treaties and Foreign Surveillance: Privacy in the Digital Age*, 56 HARV. INT'L L. REV. 81, 82 (2015).

105. See Patriot Act of 2001, Pub. L. No. 107-56, §§ 215, 220, 319(b), 115 Stat. 272, 287–88, 291–92, 314–15 (codified as amended at 18 U.S.C. § 2703 and 31 U.S.C. § 5318(k)); Seay, *supra* note 92, at 56–57.

implicate key principles of sovereign equality, nonintervention, and self-determination of states in economic matters.

Application of the U.S. Patriot Act,¹⁰⁶ especially its capacity to grant access to sensitive commercial information belonging to foreign corporations, presents a profound legal and ethical conundrum involving the intersection of corporate sovereignty, the sanctity of commercial confidentiality,¹⁰⁷ and the principle of fairness in international business transactions. The issue at hand has global significance when considering corporate sovereignty. Traditionally, corporate sovereignty has been confined within the national borders of a corporation's domicile. However, the reach of the Patriot Act presents a scenario in which domestic legislation has extraterritorial implications, infringing on the sovereignty of foreign corporations. Essentially, the Patriot Act's influence weakens the traditional concept of sovereignty by asserting U.S. legal authority over foreign entities. Next, commercial confidentiality is crucial in maintaining trust and facilitating healthy competition in international business transactions.¹⁰⁸ The Patriot Act can render commercial confidentiality a vacuous concept. This practice places foreign corporations at a disadvantage and disrupts the level playing field, raising serious questions about the fairness of such arrangements. For the global economic system to function effectively, there must be an equitable playing field where no single player has an undue advantage over others. However, the reach of the Patriot Act seems to distort this equilibrium, giving the United States an unfair advantage that other nations do not possess.

106. See Patriot Act §§ 215, 319(b), 18 U.S.C. § 2703, 31 U.S.C. § 5318(k); James M. Byrne, *The Impact of the USA PATRIOT Act of 2001 on Non-U.S. Banks*, in *CURRENT DEVELOPMENTS IN MONETARY AND FINANCIAL LAW* 343, 356–57 (2003) (explaining expanded U.S. access to information and assets held by non-U.S. persons through U.S. accounts); Seay, *supra* note 92, at 56–57.

107. MODEL RULES OF PRO. CONDUCT r. 1.6 (A.B.A. 2006).

108. See Agreement on Trade-Related Aspects of Intellectual Property Rights art. 39, Apr. 15, 1994, 1869 U.N.T.S. 299 (requiring protection of undisclosed information against disclosure, acquisition, or use contrary to honest commercial practices); MODEL RULES OF PRO. CONDUCT r. 1.6 (A.B.A. 2023) (protecting confidentiality of client information in attorney-client relationships).

IV. INFLUENCE AND CONTROL OVER INTERNATIONAL ECONOMIC ACTIVITIES

As the world's largest economy, the United States has the capacity to enact policies and regulations that profoundly impact the economic strategies and structures of other countries, potentially encroaching upon their economic sovereignty. U.S. policies, such as sanctions or financial regulations, might have a direct or indirect influence on global economic transactions, thus affecting the sovereign rights of nations to conduct their economic affairs freely.¹⁰⁹ The question, then, is: how exactly does U.S. policy influence and control international economic activities? What are the legal implications of such controls, and what effects do they have on the economic sovereignty of other nations?

This section adopts a sequential method to examine the legal and institutional dimensions of U.S. influence over international financial activity. It begins with a descriptive account of how U.S. law has been extended into the regulation of cross-border transactions and how these practices have contributed to the diffusion of domestic legal norms into international instruments. The analysis then moves to the structural conditions that have made this diffusion possible. The inquiry focuses on the historical alignments, institutional arrangements, and strategic decisions that have enabled the United States to assert regulatory control across jurisdictions. The aim is not only to identify the mechanisms of transnational enforcement of legal authority but to account for the conditions under which legal authority becomes transnational in effect. Furthermore, specific cases, such as the global impact of Iran sanctions¹¹⁰ and the Nord Stream 2 project,¹¹¹ will be scrutinized, underscoring the United States' willingness to apply its laws extraterritorially to shape global economic activities. Finally, this section explores the legal considerations and

109. Courtney G. Lytle, *A Hegemonic Interpretation of Extraterritorial Jurisdiction in Antitrust: From American Banana to Hartford Fire*, 24 SYRACUSE J. INT'L & COM. 41, 44 (1997).

110. DIANNE E. RENNACK, CONG. RSCH. SERV., R43311, IRAN: U.S. ECONOMIC SANCTIONS AND THE AUTHORITY TO LIFT RESTRICTIONS 1–4 (2019), <https://sgp.fas.org/crs/mideast/R43311.pdf> [<https://perma.cc/38J4-KZDF>].

111. KAI-OLAF LANG & KIRSTEN WESTPHAL, NORD STREAM 2: A POLITICAL AND ECONOMIC CONTEXTUALISATION 5–6, 23–26 (2017), https://www.swp-berlin.org/publications/products/research_papers/2017RP03_lng_wep.pdf [<https://perma.cc/7UAE-PU4R>].

implications of such influence and control over international economic activities.

*A. The United States' Influence on
International Financial Transactions and Legal Norms*

The influence of the United States on international financial transactions and the resulting impact on legal norms cannot be overstated. At the heart of this influence is the preeminence of the U.S. dollar as the world's leading reserve currency and the dominant medium of exchange for international trade and finance. This financial hegemony allows the United States to exercise unprecedented control over global transactions, impacting legal norms in the process.¹¹²

The United States' use of sanctions as a key instrument in its foreign policy arsenal is significant.¹¹³ Traditionally, these sanctions were employed to impose direct trade restrictions, effectively pressuring and coercing nations toward the desired outcomes. However, in contemporary international relations, the nature and scope of U.S. sanctions have dramatically transformed,¹¹⁴ extending far beyond the confines of mere trade embargoes. In this new paradigm, sanctions are built into the very architecture of financial systems and networks. Their reach extends well beyond the states or firms that are named as targets. The United States directs pressure at banks, clearing houses, and payment channels, and in doing so it exerts influence over the movement of money on a global scale. Financial flows can be redirected, slowed, or blocked outright, and this capacity turns ordinary regulatory tools into instruments of geopolitical control. Sanctions, therefore, act as economic weapons that allow Washington to punish adversaries without the use of armed force.

Faced with the threat of being cut off from the U.S. financial system—a prospect tantamount to global banking ostracism—

112. Kalim Siddiqui, *The U.S. and the World Economy: A Critical Review*, 6 *ATHENS J. BUS. & ECON.* 21, 21–24, 31–32 (2020).

113. Ethan Kessler, *How Economic Sanctions Are Used in U.S. Foreign Policy* (Chi. Council on Glob. Affs., Working Paper, 2022), <https://www.jstor.org/stable/resrep42021> [<https://perma.cc/X5AF-8U87>].

114. Erica Moret, *Unilateral and Extraterritorial Sanctions in Crisis: Implications of Their Rising Use and Misuse in Contemporary World Politics*, in *RESEARCH HANDBOOK ON UNILATERAL AND EXTRATERRITORIAL SANCTIONS* 19 (2021).

many foreign institutions find themselves compelled to comply with U.S. sanctions, regardless of their own national legal obligations. The extraterritorial reach of U.S. financial controls creates a unique interplay between law and finance, one that challenges traditional norms and raises questions about the limits of state sovereignty and the balance of power in global finance.

These sanctions are often applied extraterritorially, clashing with the established legal principles of sovereignty and nonintervention. For instance, the United States' imposition of secondary sanctions, which penalize foreign firms for engaging in transactions with sanctioned entities, encroaches upon foreign firms' rights to conduct lawful business within their jurisdiction.

Moreover, this financial dominance has enabled the United States to mold international legal norms to further strengthen its financial advantage. Through bodies such as the Financial Action Task Force, the United States has set global standards for combating money laundering and terrorism financing.¹¹⁵ While these standards are necessary and contribute to global financial security, it is essential to scrutinize the potential for misuse.¹¹⁶ There is a risk that legal compliance requirements become tools to consolidate U.S. financial and economic power. In essence, the United States' financial dominance and its extraterritorial application strengthened and promoted each other.

1. Case Study: Iran Sanctions and Its Global Impact

Through the implementation of extensive sanctions that specifically target crucial sectors such as energy, banking, and shipping,¹¹⁷ the United States expanded its sphere of influence beyond the confines of Iran's economy. As a result, there are

115. Patriot Act, 18 U.S.C. § 2703; FINANCIAL ACTION TASK FORCE, ANTI-MONEY LAUNDERING AND COUNTER-TERRORIST FINANCING MEASURES 5, 17–20 (2016), <https://www.fatf-gafi.org/content/dam/fatf-gafi/mer/MER-United-States-2016.pdf> [<https://perma.cc/6YT2-P2MB>]; Office of Public Affairs, *Financial Action Task Force Report Recognizes U.S. Anti-Money Laundering and Counter-Terrorist Financing Leadership, But Action is Needed on Beneficial Ownership*, U.S. DEP'T OF JUSTICE ARCHIVES (Dec. 1, 2016), <https://www.justice.gov/archives/opa/blog/financial-action-task-force-report-recognizes-us-anti-money-laundering-and-counter> [<https://perma.cc/SYK5-F5K4>].

116. See, e.g., Ishita Chakrabarty, *The Financial Action Task Force Entrapped Within Hypocrisy and Rhetoric: Using India as a Case Study*, 31 ASIA PAC. L. REV. 402, 404 (2023).

117. See generally JOY GORDON, *INVISIBLE WAR: THE UNITED STATES AND THE IRAQ SANCTIONS* (2010).

significant interruptions in international financial activities, and businesses that are not affiliated with the United States are compelled to address legal obstacles. One crucial element is the implementation of secondary sanctions, which exert pressure on international corporations and financial institutions to make a choice between engaging with the Iranian market or maintaining their access to the U.S. markets and financial systems.¹¹⁸ This approach highlights the significant alignment between U.S. law and finance at a worldwide level, while also giving rise to discussions over the extent of U.S. legal jurisdiction outside its borders, the concept of international sovereignty, and the current structure of global legal systems.¹¹⁹

2. Case Study: The Nord Stream 2 Project and U.S. Sanctions

The Nord Stream 2 gas pipeline project between Russia and Germany offers a distinct yet equally impactful illustration of U.S. foreign policy's influence on global legal norms.¹²⁰ Although it was a cross-border project involving Russian and German interests, U.S. sanctions have been imposed on the project,¹²¹ disrupting entities associated with it. This practice challenges established international norms, as U.S. law is wielded to influence matters deemed security risks, even when targeting an ally like Germany. The case reveals the unprecedented capacity of U.S. domestic law to shape international business and politics, highlighting both the

118. Jeffrey A. Meyer, *Second Thoughts on Secondary Sanctions*, 30 U. PA. J. INT'L L. 905, 926 (2009).

119. Patrick C. R. Terry, *Enforcing U.S. Foreign Policy by Imposing Unilateral Secondary Sanctions: Is Might Right in Public International Law?*, 30 WASH. INT'L L.J. 1, 5–8, 38–44 (2020).

120. See Martin Russell, *The Nord Stream 2 Pipeline, Economic, Environmental and Geopolitical Issues*, EUROPEAN PARLIAMENT (July 1, 2021), [https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI\(2021\)690705](https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2021)690705) [https://perma.cc/J5RL-3JGP].

121. Sanctions have been imposed in response to Russia's aggressive actions in Ukraine, notably following its recognition of Donetsk and Luhansk as part of its territory. Additionally, the entity tasked with constructing the gas pipeline operates as a subsidiary of Gazprom, a corporation under Kremlin ownership. Bureau of Energy Resources, *Fact Sheet on U.S. Opposition to Nord Stream 2*, U.S. DEP'T OF STATE (Dec. 27, 2019), <https://2017-2021.state.gov/fact-sheet-on-u-s-opposition-to-nord-stream-2/> [https://perma.cc/Q3X9-8H3K].

efficacy of U.S. bilateral agreements and the ensuing moral and legal dilemmas.

B. Challenging Sovereignty: The Legal and Economic Implications of U.S. Extraterritorial Actions

The implications of U.S. interference in international financial transactions and bilateral agreements, as exemplified by the Iran sanctions and the Nord Stream 2 case, are undeniably far-reaching. Such interference, ostensibly rooted in national security concerns or foreign policy objectives, raises significant legal considerations that require thorough exploration.

A primary consideration is the potential conflict between domestic and international laws. As U.S. legislation increasingly stretches beyond its borders to regulate transactions and business relations that fall within the sovereign jurisdiction of other nations, it inevitably intersects and often clashes with international legal norms. This can result in a complex legal conundrum where domestic legislation can potentially supersede or undermine international law and compromise the legal sovereignty of other nations. The two case instances invite a more fundamental reflection on the nature of sovereignty in the current era.

Building upon the existing analysis, a more granular look at the legal implications reveals lessons. *First*, an examination of the extraterritoriality of U.S. laws offers a striking realization: the very concept of jurisdiction, a cornerstone of legal theory, is facing unprecedented stress in the era of economic globalization and technological advancements. This trend is not limited to the United States; other powerful states can potentially adopt a similar stance, thereby necessitating a critical reflection to redefine jurisdictional boundaries in a manner that respects state sovereignty while addressing global exigencies. *Second*, the influence of U.S. domestic laws on international transactions reveals the genuine power of economic instruments in shaping international legal norms. This reconfirms the concept that law and economics are intertwined, with shifts in economic control potentially precipitating shifts in legal norms. Therefore, legal scholars must delve deeper into the intersection of law and economics to understand and anticipate the evolution of global legal norms. *Third*, the manipulation of financial systems for enforcing sanctions, as witnessed for instance in the Iranian case, unearths the growing significance of “lawfare”—the

use of law as a weapon of warfare.¹²² This not only broadens the scope of legal study but also calls for increased scrutiny of the implications of lawfare for international peace and security. *Finally*, the Nord Stream 2 example elucidates that bilateral or multilateral agreements cannot insulate states or entities from powerful domestic laws. This underscores the importance of understanding the complex web of domestic and international legal obligations before entering into international agreements or business transactions. These lessons are crucial for shaping a resilient international legal system capable of balancing sovereignty, economic interests, security concerns, and the rule of law in a rapidly changing global order and evolving realities.

*V. NON-RESPONSIVENESS OF AFFECTED
NATIONS AND COST OF RESISTANCE*

This section examines the consistent pattern of non-response by allied states in the face of U.S. extraterritorial enforcement of its domestic rules. Power asymmetries have long determined the options available to states within the international legal and political order, and the choices of dominant states, particularly the United States, condition the conduct of others. The concern here is not only the assertion of U.S. authority but also the absence of sustained resistance by affected governments. This silence is treated not as an anomaly but as a structural feature of the international legal and economic order. What emerges is a novel perspective: the reach of U.S. extraterritorial law is reinforced less by formal consent than by patterns of acquiescence that reflect economic dependence and political subordination.

The discussion begins with a descriptive account of non-responsiveness, identifying how allied governments have refrained from contesting U.S. jurisdictional overreach even when sovereignty has appeared to be compromised. It then turns to the costs of resistance and to the structural conditions that reproduce passivity, drawing on critical legal theory and insights from dependency theory and international political economy. The argument advances the broader claim that law does not stand apart from power but operates as one of its instruments, and that

122. See Charles J. Dunlap Jr., *Lawfare Today: A Perspective*, 3 YALE J. INT'L AFFS. 146 (2008).

non-responsiveness is itself a constitutive element of U.S. legal dominance.

A. Patterns of Non-responsiveness Among U.S. Allies

As the influence of the United States has developed, a striking pattern has appeared: a consistent lack of response from its allies to the extraterritorial application of U.S. laws. The examples in Parts II, III, and IV illustrate how U.S. jurisdiction extends beyond its borders, even where U.S. entities are not directly involved. These examples reveal the coercive reach of U.S. law, which can compel compliance from foreign states. Yet further inquiry is required into specific episodes that expose how this non-responsiveness operates in practice, and how the silence or acquiescence of allies enables the unchecked spread of U.S. jurisdiction.

In 2019, the Court of Appeal of England and Wales ruled that British arms sales to Saudi Arabia were unlawful because of human rights violations in Yemen.¹²³ Despite this adverse judgment, both the United States and the United Kingdom continued to supply Saudi Arabia with arms, indicating a divergence between domestic legal mandates and international actions. In this case, the United Kingdom's inaction parallels and appears to coordinate with the United States' foreign policy position. Such mirroring between the United States and United Kingdom's foreign policy stance is unsurprising given the commonalities in a multitude of aspects and the intertwining of the two countries' history. Despite fighting on opposite sides during the U.S. Revolutionary War, since the resumption of bilateral ties in 1815, the United States and the United Kingdom have enjoyed a close relationship with each other, in what has often been described as a "special relationship."¹²⁴

123. *The Queen (on the application of Campaign Against Arms Trade) v. SOS for International Trade and Others* [2019] EWCA (Civ) 1020 (Eng.).

124. Although existing long before its emphasis and subsequent popularization in a speech by then-Prime Minister Winston Churchill on March 5, 1946, the term "special relationship" is used to describe the close ties between the United Kingdom and the United States and has been acknowledged by senior governmental officials and politicians in both countries. See, e.g., Antony J. Blinken, *Secretary Antony J. Blinken and United Kingdom Foreign Secretary David Cameron at a Joint Press Availability*, U.S. DEP'T OF STATE (Dec. 7, 2023), <https://2021-2025.state.gov/secretary-antony-j-blinken-and-united-kingdom-foreign-secretary-david-cameron-at-a-joint-press-availability/> [https://perma.cc/8LF8-2KPY].

Regardless of the change in the governmental administration, heads of state and senior ministers from both the United Kingdom and the United States have acknowledged the importance of the bilateral relationship. For example, despite being on opposite ends of the political spectrum, both President Trump and President Biden have spoken about the United Kingdom's significant contribution toward achieving peace and security.¹²⁵ The fact that President Trump's first meeting with a foreign leader was with then British Prime Minister Theresa May, and that President Biden's first trip abroad was to the 2021 G7 summit in Cornwall, where he met Prime Minister Boris Johnson, also speaks volumes about the importance the United States attaches to its ties with the United Kingdom. British prime ministers have reciprocated.¹²⁶

Furthermore, the United Kingdom and the United States have enjoyed strong bilateral economic ties—both countries are major partners in investment and trade in goods and services with each other. Recent statistics indicated that in 2021, the total bilateral stock of direct investment amounted to more than US\$1.5 trillion.¹²⁷ In 2022, the United States was the United Kingdom's largest trading partner. The United Kingdom was the United States' seventh-largest goods trading partner in 2022 and its largest services trading partner in 2021.¹²⁸

The United Kingdom paralleling the United States in the supply of arms to Saudi Arabia is, however, not an isolated case. For example, the October 2018 killing of Jamal Khashoggi drew swift U.S. and U.K. condemnation. But the episode did not yield

125. See *Remarks by President Trump and Prime Minister May of the United Kingdom in Joint Press Conference*, THE WHITE HOUSE ARCHIVE (July 13, 2018), <https://trumpwhitehouse.archives.gov/briefings-statements/remarks-president-trump-prime-minister-may-united-kingdom-joint-press-conference/> [https://perma.cc/Y79J-RWYV]; *The President's News Conference with Prime Minister Rishi Sunak of the United Kingdom*, THE AMERICAN PRESIDENCY PROJECT (June 8, 2023), <https://www.presidency.ucsb.edu/documents/the-presidents-news-conference-with-prime-minister-rishi-sunak-the-united-kingdom> [https://perma.cc/YM35-A59V].

126. For example, during former Prime Minister Liz Truss' short-lived premiership, the first overseas trip she made was to New York City to attend the 77th United Nations General Assembly, where she met with President Biden, while then Prime Minister Rishi Sunak has met with President Biden twice in the United Kingdom.

127. International Trade Administration, *United Kingdom – Country Commercial Guide*, DEP'T OF COMMERCE (Nov. 3, 2023), <https://www.trade.gov/knowledge-product/united-kingdom-market-overview> [https://perma.cc/DLQ3-PSXC].

128. SHAYERAH I. AKHTAR, CONG. RSCH. SERV., IF11123, U.S.-UK TRADE RELATIONS (2023), <https://sgp.fas.org/crs/row/IF11123.pdf> [https://perma.cc/7YTF-6828].

substantial consequences or meaningful accountability for Crown Prince Mohammed bin Salman or for Saudi Arabia, notwithstanding growing evidence of Saudi involvement.¹²⁹ Another example is the United Kingdom's change in its position on Huawei. In January 2020, a decision was made to permit the use of Huawei equipment in noncritical parts of the United Kingdom's 5G infrastructure. This, at the time, was seen as the country going in the opposite direction of the U.S. policy on the Chinese telecommunications company. However, a few months later, the British government then reversed the decision and barred the use of the company's equipment in its wireless digital networks.¹³⁰ Such an alignment in policy with the United States had come about after the lobbying and advocacy of the U.S. government, which had by then already implemented various restrictions against the company in the country.¹³¹

Recent examples also illustrate the United Kingdom's general reluctance to openly have diplomatic conflicts with the United States. While both nations have been vocal about their support of Ukraine in the Russia-Ukraine war, disagreements over how best to assist the country were reported between the United States and the United Kingdom, particularly concerning the United States' decision to supply cluster bombs to Ukraine. Yet when reiterating the UK's position, the British Prime Minister, Rishi Sunak, was heard avoiding openly confronting and voicing his opposition toward the United States. Rather, he pointed out that the United Kingdom was a signatory to the Convention on Cluster Munitions (to which the United States was not a party) and that the

129. Shane Harris, Greg Miller & Josh Dawsey, *CIA Concludes Saudi Crown Prince Ordered Jamal Khashoggi's Assassination*, WASH. POST (Nov. 16, 2018), https://www.washingtonpost.com/world/national-security/cia-concludes-saudi-crown-prince-ordered-jamal-khashoggis-assassination/2018/11/16/98c89fe6-e9b2-11e8-a939-9469f1166f9d_story.html [https://perma.cc/3AVN-DWLM].

130. Adam Segal, *The United Kingdom Bans Huawei from 5G Networks*, COUNCIL ON FOREIGN RELATIONS (July 14, 2020), <https://www.cfr.org/blog/united-kingdom-bans-huawei-5g-networks-0> [https://perma.cc/G2B7-F4SN].

131. Sean Keane, *Huawei Ban Timeline: Detained CFO Makes Deal with US Justice Department*, CNET (Sep. 30, 2021), <https://www.cnet.com/news/privacy/huawei-ban-timeline-detained-cfo-makes-deal-with-us-justice-department/> [https://perma.cc/VJ5T-S4LB]; *UK Extends Deadline to Remove Huawei Equipment from 5G Network Core*, REUTERS (Oct. 13, 2022), <https://www.reuters.com/business/media-telecom/uk-extends-deadline-remove-huawei-equipment-5g-network-core-2022-10-13/> [https://perma.cc/EE83-TUK9].

Convention had prohibited the production and usage of cluster bombs.¹³²

There have also been instances where the United Kingdom has aligned itself with the United States or acceded to its requests and demands despite holding opposite views. For example, during the 1800s, the United Kingdom was involved in a protracted territory dispute with Venezuela over Guayana Esequiba, where the former was alleged to have expanded the scope of its original territorial claim upon the discovery of gold in the disputed area. After years of failed appeals, Venezuela obtained U.S. intervention in the 1890s, aided by lobbying from former ambassador William Lindsay Scruggs, as Washington invoked the Monroe Doctrine.¹³³ In July 1895, Secretary of State Richard Olney sent a memorandum invoking the Monroe Doctrine and pressing the United Kingdom to arbitrate. Britain responded by denying any U.S. right to intervene and disputing the doctrine's validity and relevance.¹³⁴ This led to the United States establishing a commission to investigate the boundary, in which any British appropriation of land contrary to findings in favor of Venezuela would be met by U.S. resistance by every means.¹³⁵ Ultimately, the United Kingdom acceded to the United States' demands, with the boundary crisis being settled via arbitration.

Finally, it should be noted that in the context of the continuation of arms sales to Saudi Arabia, both the United States and the United Kingdom have long deemed Saudi Arabia to be an important strategic ally in the Middle East, due to its oil reserves,

132. See GUARDIAN NEWS, *UK Discourages Use of Cluster Bombs, Says Rishi Sunak* (YouTube, July 8, 2023), <https://www.youtube.com/watch?v=2o4FPiWUBlg> [<https://perma.cc/R7LM-4KK3>].

133. Under the Monroe Doctrine, it was stipulated that (i) the United States would not be involved in any wars between European powers, (ii) the country would not interfere with existing European colonies located in the Western Hemisphere, (iii) any attempts to recolonize newly-created countries in the region would be opposed and (iv) attempts by European countries to govern and persecute Western Hemisphere countries which had declared independence would be deemed as a sign of hostility to the United States. See Mark T. Gilderhus, *The Monroe Doctrine: Meanings and Implications*, 36 PRESIDENTIAL STUD. Q. 5, 5-16 (2006).

134. 87 BRITISH AND FOREIGN STATE PAPERS 1090-96 (Augustus H. Oakes & Willoughby Maycock eds., 1900).

135. Grover Cleveland, *Message Regarding the Venezuelan-British Dispute*, MILLER CENTER (Dec. 17, 1895), <https://millercenter.org/the-presidency/presidential-speeches/deceMBER-17-1895-message-regarding-venezuelan-british-dispute> [<https://perma.cc/2PL7-C7AY>].

strategic location, and significant role in the region.¹³⁶ In exchange for Saudi oil exports and investments,¹³⁷ the United States and the United Kingdom have often sold military equipment to Saudi Arabia in so-called oil-for-security deals.¹³⁸ Thus, despite the humanitarian crisis in Yemen, it is unsurprising that the United States and the United Kingdom would have continued to supply arms to Saudi Arabia, regardless of the 2019 Court judgment.¹³⁹

France, traditionally seen as a stalwart of sovereignty and a proponent of a multipolar world order, has not remained entirely unscathed from the U.S. extraterritorial application of its laws. BNP Paribas, a leading French bank, serves as a pertinent example. In 2014, BNP Paribas was fined a staggering US\$8.9 billion by U.S. authorities for transactions involving countries that were under U.S. sanctions, including Iran, Sudan, and Cuba.¹⁴⁰ Notably, these transactions did not involve U.S. entities and were not illegal under French or European Union law.¹⁴¹ Nonetheless, the fact that these

136. Bureau of Near Eastern Affairs, *U.S. Relations with Saudi Arabia*, U.S. DEP'T OF STATE (Nov. 1, 2023), <https://2021-2025.state.gov/u-s-relations-with-saudi-arabia/> [https://perma.cc/JF32-WUEP].

137. The lucrativeness of Saudi investments in the United States and the United Kingdom can be seen in Saudi Arabia's Public Investment Fund, which is the world's largest of its kind, acquiring an 80% stake in Newcastle United F.C., a 25% stake in Heathrow airport in London and 7.4 million shares (worth US\$1.06 billion) in the U.S. video game company, Electronic Arts Inc. See Shalini Nagarajan, *Saudi Arabia's \$400 Billion Sovereign Wealth Fund Reveals Billion-dollar Stakes in Video Game Stocks, and Almost Doubled Its Holdings of US Equities in the 4th Quarter*, BUS. INSIDER (Feb. 17, 2021), <https://markets.businessinsider.com/news/stocks/saudi-arabia-sovereign-wealth-fund-electronic-arts-activision-blizzard-q4-2021-2-1030091172> [https://perma.cc/8FWU-E68T]; *Football Attracts Saudi Investment to England's North-East*, THE ECONOMIST (Jan. 22, 2024), <https://www.economist.com/britain/2024/01/22/football-attracts-saudi-investment-to-englands-north-east> [https://perma.cc/37JC-4DF8].

138. JEFF D. COLGAN, *PARTIAL HEGEMONY: OIL POLITICS AND INTERNATIONAL ORDER* 119 (2021).

139. See *Yemen: Biden Temporary Freeze of Arms Sales to Saudi Arabia and UAE Is Welcome*, AMNESTY INT'L (Jan. 28, 2021), <https://www.amnesty.org/en/latest/press-release/2021/01/yemen-biden-temporary-freeze-of-arms-sales-to-saudi-arabia-and-uae-is-welcome/> [https://perma.cc/QV96-APAN] (noting the Biden administration's suspension of certain arms sales to Saudi Arabia and the UAE and calling on the United Kingdom and France to follow); BROOKE-HOLLAND & SMITH, *supra* note 8, at 3–5 (summarizing the Court of Appeal judgment and the later UK licensing position).

140. See *United States v. BNP Paribas S.A.*, No. 14-cr-00460 (LGS) (S.D.N.Y. May 1, 2015); *BNP Paribas Agrees to Plead Guilty and to Pay \$8.9 Billion for Illegally Processing Financial Transactions for Countries Subject to U.S. Economic Sanctions*, U.S. DEP'T OF JUSTICE (June 30, 2014), <https://www.justice.gov/archives/opa/pr/bnp-paribas-agrees-plead-guilty-and-pay-89-billion-illegally-processing-financial> [https://perma.cc/8S6P-HFDW].

141. Julie, Menegon & Murgier, *supra* note 16.

transactions were denominated in U.S. dollars meant that they fell within the purview of U.S. laws and sanctions. Despite initial protests, the French government did not retaliate against this unilateral enforcement of U.S. sanctions. Instead, the hefty penalty served as a stark reminder to French and European firms of the long arm of U.S. jurisdiction underpinned by the United States' predominance in international financial and transaction systems. U.S. jurisdiction is amplified by dollar centrality. When transactions are denominated in dollars and routed through U.S.-connected clearing and correspondent banking networks, foreign firms—and their governments—face strong incentives to comply with U.S. sanctions and regulatory requirements to preserve access to U.S. financial infrastructure and avoid U.S. jurisdictional and regulatory penalties.

These instances collectively underline the broad strokes of non-responsiveness among U.S. allies under the potency of U.S. extraterritorial jurisdiction. This non-responsiveness raises questions about the effectiveness of international legal systems in balancing power dynamics among nations. The analysis of these non-responsiveness patterns reveals the underbelly of international legal norms—norms that are, in theory, equal and universally binding, but in practice, often skewed by power dynamics. It prompts the question: What can be learned from this dichotomy? How can international law be made more equitable and less susceptible to power play?

This pattern also puts the broad contours of legal obligations in the international arena into perspective. One cannot help but wonder: Are U.S. allies, in their silent acquiescence, implicitly accepting the legal authority of the United States beyond its borders? Alternatively, are they merely tolerating this overreach as a strategic compromise, fully aware of the issues involved in legally confronting a superpower?

Finally, non-responsiveness marks an area for future legal research: the connection between law, politics, and economic power in a globalized world. This calls for closer study of how international law is politicized and how contests over economic power set the terms of the legal order. Such inquiry is necessary to explain how legal principles are applied, manipulated, or ignored in a geopolitical environment defined by competing financial interests.

*B. The Cost of Resistance:
The France-U.S. Digital Services Tax Standoff*

Few nations possess political courage and the capacity to defy U.S. dominance. Resistance comes at a high price, which is a luxury only the wealthiest allies can bear. This defiance demands immense political influence that few countries yet possess. However, France has emerged as an exposed outlier willing to resist U.S. dominance. This apparent paradox may be understood by considering France's unique position in relation to the United States. Being the United States' oldest ally, being one of the few states with an effective nuclear-armed military, boasting a robust economy within the rigid but stable EU framework, and having a permanent seat on the United Nations Security Council, France has the political, economic, and cultural potency to maintain a certain level of critique and distance from the United States in contrast to other key U.S. allies, such as Canada,¹⁴² Japan, Germany, or the United Kingdom.¹⁴³

France's stance in the lead-up to the U.S. invasion of Iraq in 2003 offers a compelling illustration. In a watershed moment in international politics, President Jacques Chirac and Foreign Minister Dominique de Villepin led France to oppose the United States' war campaign.¹⁴⁴ Utilizing its veto power as a permanent member of the United Nations Security Council, France put up resistance to U.S. military and legal supremacy.¹⁴⁵ However, this resistance is not without severe consequences. France's principled stance put a strain on its diplomatic relations with the United States, leading to economic repercussions. In response, U.S. officials and legislators encouraged a boycott of French goods, demonstrating how informal economic measures can function as coercive complements to formal legal and trade tools—and contributing to a marked decline in French exports to the United

142. See JOHN HERD THOMPSON & STEPHEN J. RANDALL, CANADA AND THE UNITED STATES: AMBIVALENT ALLIES 1–6 (4th ed. 2008).

143. See NICHOLAS J. SPYKMAN, AMERICA'S STRATEGY IN WORLD POLITICS: THE UNITED STATES AND THE BALANCE OF POWER 3–7, 17–21 (1942).

144. Dominique de Villepin, *The Art of Intervention: Diplomacy and Deployment After Iraq*, FRANCE CHICAGO CENTER (Nov. 14, 2014), <https://fcc.uchicago.edu/the-art-of-intervention-diplomacy-and-deployment-after-iraq/> [<https://perma.cc/6SLB-GF8G>].

145. See ALESSANDRO BROGI, CONFRONTING AMERICA: THE COLD WAR BETWEEN THE UNITED STATES AND THE COMMUNISTS IN FRANCE AND ITALY 3–6, 380–84 (2011).

States.¹⁴⁶ This is a blatant case of economic warfare, in which the United States used its economic power to penalize a dissenting ally. The pressure extended beyond trade measures. French companies were reportedly shut out of major Iraqi reconstruction contracts. By contrast, U.S.-based Bechtel obtained a US\$680 million contract to rebuild infrastructure.¹⁴⁷ France's Iraq stance therefore illustrates the steep political and economic costs that can follow from defying U.S. dominance. It underscores how U.S. laws and policies can be deployed as instruments of economic warfare and highlights the deep-seated ramifications that such defiance can have. Thus, it is critical for nations to carefully consider the potential consequences before taking a stand that contradicts U.S. interests.

Moving beyond the political and military domains, France's recent decision to implement the digital services tax provides a more contemporary and less political example of resistance to U.S. dominance in the legal sphere.¹⁴⁸ France's digital services tax and the ensuing U.S. response provide a concrete example of contestation over economic sovereignty. The episode links domestic tax legislation to international trade retaliation and demonstrates how claims of fiscal autonomy can trigger coercive countermeasures in allied relations.

In 2019, France passed a law imposing a three percent digital services tax on revenues generated by large tech companies in the country, many of which were U.S.-owned.¹⁴⁹ This tax targets digital platforms that earn revenue from online advertising or the sale of user data.¹⁵⁰

146. Bernard Bégaud & Helene Verdoux, *Did the US Boycott of French Products Spread to Include Scientific Output?*, 329 BMJ 1430, 1430–31 (2004).

147. Charles Tiefer, *The Iraq Debacle: The Rise and Fall of Procurement-Aided Unilateralism as a Paradigm of Foreign War*, 29 U. PA. J. INT'L L. 1, 25 n.22 (2007).

148. Laura Kayali, *France's Digital Taxman Goes After Amazon – Again*, POLITICO (Nov. 24, 2022), <https://www.politico.eu/article/france-digital-taxman-amazon-big-tech/> [https://perma.cc/ZG2Q-YTFT].

149. Vijay Govindarajan, Anup Srivastava, Hussein Warsame & Luminita Enache, *The Problem with France's Plan to Tax Digital Companies*, HARV. BUS. REV. (July 17, 2019), <https://hbr.org/2019/07/the-problem-with-frances-plan-to-tax-digital-companies> [https://perma.cc/F97V-NMDS].

150. *France's Digital Tax Bill*, GOV'T OF FRANCE (Mar. 6, 2019), <https://www.gouvernement.fr/sites/default/files/locale/piece-jointe/2020/08/digital-tax.pdf> [https://perma.cc/D7V8-BZGQ].

The United States viewed France's digital services tax as an overt, discriminatory attack on some of its most prosperous and influential companies—the tech behemoths: Google, Amazon, and Facebook.¹⁵¹ Viewing the tax as discriminatory against U.S. firms, the United States moved quickly to deploy trade retaliation as leverage. It threatened tariffs—reported at roughly US\$1.3 billion—on a range of French goods, aiming to pressure France to suspend or revise the tax.¹⁵² This strategic move leveraged potent economic tools within its legal jurisdiction—namely, retaliatory tariffs—as a countermeasure to the perceived discriminatory fiscal policy implemented by France. Thus, this unfolding legal and economic tussle reveals the United States' readiness to utilize its legal mechanisms to safeguard its domestic interests, even when such actions might strain diplomatic ties and destabilize global trade frameworks.

In an act of defiance against U.S. economic dominance, France pursued a policy of tax fairness.¹⁵³ It sought to curtail the vast influence wielded by large tech conglomerates. However, this assertion of fiscal autonomy set the stage for a brewing transatlantic trade dispute, revealing the high stakes of any resistance to U.S. economic and legal influence. This dispute, although initially focused on tax, quickly transcended its origins and began to cast long shadows over a broader spectrum of economic activities. French industries, particularly those known for their global operations, such as cosmetics and luxury handbags, found themselves under a looming tariff threat from the United States. As the United States proposed retaliatory tariffs, these industries faced potential economic fallout, highlighting again the cost of resistance. By asserting its fiscal sovereignty, France triggered an intense economic skirmish that threatened to

151. Neelam Shukla, *Introduction of Digital Service Tax by France Targeting US Digital Companies—Policy Response by United States* (Apr. 2020) (capstone project, Johns Hopkins Univ.), <https://jscholarship.library.jhu.edu/server/api/core/bitstreams/6405c36c-e7ff-4dfc-accf-876ba38ea85a/content> [https://perma.cc/L9T5-S29T].

152. Elke Asen, *Digital Tax Collection Triggers New U.S. Tariffs on France*, TAX FOUND. (Jan. 6, 2021), <https://taxfoundation.org/blog/us-tariffs-on-french-goods-digital-tax-collection/#:~:text=In%20July%202020%2C%20then%2C%20the,taxation%20of%20the%20digital%20economy> [https://perma.cc/89QN-GNAW].

153. Press Release, ÉLYSÉE, *Compte-rendu du Conseil des Ministres du Mercredi 6 Mars 2019* [Minutes of the Council of Ministers of Wednesday March 6, 2019] (Mar. 6, 2019), <https://www.elysee.fr/front/pdf/elysee-module-2573-fr.pdf> [https://perma.cc/5X7L-NW4C].

reverberate through diverse industries. The potential economic fallout serves as a stark reminder of the high cost that countries might pay when they defy the legal and economic hegemony of the United States.

This entanglement between France and the United States provides a snapshot of the turbulent waters of international relations, particularly when they intersect with legal and economic questions. More than a bilateral trade disagreement, the dispute offers a microcosm of the vast complexities that countries face when they attempt to regulate digital economies in a globalized world. The advent of digital technologies and their ensuing economic ecosystems has blurred traditional jurisdictional lines, creating novel issues that existing norms are often ill-equipped to handle. France's attempt to impose a digital services tax also brings to the fore the profound costs that nations may incur when resisting the legal and economic dominance of a superpower.

The U.S. response shows that dominance is not only economic or technological; it also lies in the ability to set regulatory baselines and enforce them extraterritorially through trade and financial leverage. In digital markets and global finance, this makes law a vehicle of economic coercion. France's experience highlights the costs of unilateral domestic regulation under conditions of asymmetric enforcement power and supports the case for a multilateral framework for digital taxation.

*C. Strategies of Dominance: Legal, Political,
and Economic Dimensions of U.S. Global Influence*

First, U.S. global influence is sustained by the interaction of legal tools, political bargaining, and economic leverage. Extraterritorial enforcement operates less as episodic overreach than as a recurring technique for advancing U.S. interests by translating domestic law into external constraints. Because this dominance is produced by overlapping legal, political, and economic mechanisms, meaningful counter-strategies must engage all three.

Second, U.S. dominance is not only a product of its power but also its ability to shape and define the rules of international engagement solely for its national interests at the expense of the erosion of allies' sovereignty. Whether it is the drafting of

international agreements, the setting of global standards, or the definition of norms, the United States' role in these processes often allows it to establish frameworks that inherently serve its interests. Hence, any resistance or challenge to U.S. dominance necessitates engaging with and reshaping these rules and norms.

Third, the United States' strategic use of alliances underscores the importance of diplomatic and political relations in reinforcing legal dominance. Therefore, challenging U.S. dominance is not only a matter of legal contestation but also requires diplomatic maneuvering and the building of new strategic partnerships.

Lastly, resistance against U.S. legal dominance, although fraught with political and economic costs, can lead to meaningful changes. The case of the French digital tax and ensuing trade disputes shows that nations can defy the status quo and stimulate dialogue on critical issues, such as tax fairness and digital economy regulation.

In conclusion, the inquiry shows that U.S. legal authority does not operate in isolation but intertwines with political and economic structures to reinforce a system of dominance over allied states. The significance lies not only in the reach of individual statutes or the weight of particular sanctions, but in the manner in which law becomes an accepted technique of governance beyond U.S. borders. This authority is normalized through silence, compliance, and the institutional routines of global finance and trade. Notably, the absence of resistance by allies functions as a central mechanism of U.S. power, one that transforms extraterritorial law from episodic assertion into a stable ordering principle. The deeper consequence is that sovereignty itself becomes conditional, exercised within parameters set elsewhere.

The record examined in this article suggests that the most pressing task for international law is not simply to catalogue instances of overreach or to repeat calls for reform. It is to understand how the acceptance of external legal authority reconfigures the very meaning of independence. Future work must therefore address how states can build institutional capacity to resist this form of subordination without relying on military confrontation or economic isolation. That inquiry will not be about restoring an ideal of sovereign autonomy untouched by power, but about establishing workable constraints on legal dominance in order to secure space for national decision-making within a global

order. What emerges is a recognition that law is never separate from power, and that the future of sovereignty depends on how states confront or absorb that reality.

*VI. SOVEREIGN RECLAMATION: TOWARD NEW
INTERNATIONAL LEGAL NORMS AND PRACTICES*

The analysis of the extraterritorial application of U.S. laws and their control mechanisms reveals the extent of U.S. influence in the international arena. As this influence has expanded beyond traditional diplomatic avenues to the economic field, it has begun to affect the sovereignty of other nations. From the United States' influence on international financial transactions¹⁵⁴ to its application of the ITAR,¹⁵⁵ its control over strategic technologies,¹⁵⁶ and its surveillance and intelligence-gathering practices,¹⁵⁷ U.S. hegemony has the potential to subvert the economic sovereignty of other nations. Thus, the problem under scrutiny is not just a matter of international relations, but also of economic sovereignty and the maintenance of international legal norms. The inquiry in Parts II, III, and IV traced the techniques through which the United States projects its laws abroad and documented how those measures erode territorial authority in allied states. Building on that foundation, this section defines economic sovereignty, identifies pathways for reclaiming it, and concludes with proposals concerning data sovereignty, digital jurisdiction, and digital taxation.

*A. Legal Practices and the
Degradation of Territorial Authority*

Parts II, III, and IV traced how the United States projects its domestic law abroad through sanctions, prosecutions, and regulatory enforcement. Those sections demonstrated the reach of these measures and their immediate effects on allied states. This

154. Halil Kiyamaz, *Cross-Border Acquisitions of US Financial Institutions: Impact of Macroeconomic Factors*, 28 J. BANKING & FIN. 1413, 1413–15 (2004).

155. See, e.g., 22 U.S.C. § 2778 (2022); PIERUCCI & ARON, *supra* note 75.

156. Joseph Morone, *Strategic Use of Technology*, 31 CAL. MGMT. REV. 91, 91–93 (1989).

157. Diana Lee, Paulina Perlin & Joe Schottenfeld, *Gathering Intelligence: Drifting Meaning and the Modern Surveillance Apparatus*, 10 J. NAT'L SEC. L. & POL'Y 77, 78–82 (2019).

section builds on that account but advances a different claim. The problem is not limited to the frequency of these interventions or their economic costs. The record shows a continuing erosion of territorial authority, in which legal techniques function as instruments of control. The pattern is systematic. Sovereignty is curtailed not through direct annexation or formal treaty limits, but through the steady normalization of external authority in matters of finance, trade, and corporate regulation. The degradation of territorial authority therefore emerges as a structural outcome of U.S. extraterritorial practices, one that secures compliance and reduces the space for independent economic policy among allied governments. The extraterritorial application of U.S. law, notably exemplified by instruments such as the ITAR, the Patriot Act, and international financial sanctions, directly impacts the ability of nations to exercise control over their economic affairs. This imposition of U.S. legal norms and standards, often without regard for the domestic laws of affected countries, infringes on the concept of state sovereignty, a cornerstone of international law.¹⁵⁸

The United States influences global economic governance through the dominant role of the U.S. dollar in international trade and financial transactions.¹⁵⁹ Through this, the United States effectively controls crucial economic arteries, forcing compliance from foreign entities and manipulating economic outcomes in its favor. The implications of these practices are particularly evident in cases such as the Iran sanctions and the Nord Stream 2 project, where U.S. economic and legal clout has resulted in profound global impacts, even impacting countries not directly involved in these disputes. The capabilities of the United States to access and control information across borders, primarily through legal mechanisms such as the Patriot Act, introduce an additional dimension undermining the economic sovereignty of the affected nations. The United States' possession of confidential data and information disrupts the conventional notion of trade balance and economic independence, extending into data governance, digital

158. Alan V. Lowe, *The Problems of Extraterritorial Jurisdiction: Economic Sovereignty and the Search for a Solution*, 34 INT'L & COMP. L.Q. 724, 724–25, 728–30 (1985).

159. Carol C. Bertaut, Bastian von Beschwitz & Stephanie Curcuru, *The International Role of the US Dollar*, FED. RSRV. (Oct. 6, 2021), <https://www.federalreserve.gov/econres/notes/feds-notes/the-international-role-of-the-u-s-dollar-20211006.html> [https://perma.cc/PGB2-UBGD].

rights, and cyber sovereignty. The United States' potential access to vast volumes of data stored in foreign territories, facilitated through its legislative apparatus, has far-reaching implications. It endangers the principles of privacy, data protection, and other values integral to the modern digital world.

However, this also disrupts the conventional understanding of economic sovereignty, extending beyond the physical economy to include the digital sphere. Traditionally, countries exercise control over economic activities within their geographical boundaries, but this paradigm is increasingly being tested. As the digital economy expands, a country's ability to manage and safeguard data within its cyber frontiers becomes a critical facet of economic sovereignty.¹⁶⁰ The United States' extraterritorial reach into this space, enabled by its domestic laws, poses a significant challenge to this emerging form of sovereignty.¹⁶¹ Such practices point to an asymmetry of power in the international digital environment, where certain countries exert disproportionate influence due to their advanced technological capabilities and robust legal frameworks.

*B. The Imperative of Economic Sovereignty:
Defining and Understanding its Scope*

The preceding section demonstrated how U.S. extraterritorial practices degrade the authority of allied states. The inquiry now turns to the concept of economic sovereignty itself. Economic sovereignty refers to the capacity of a state to determine and implement its own financial, trade, and industrial policies without external coercion. It is not an abstract principle but one tested in concrete disputes. The experiences of France, the United Kingdom, Germany, Australia, and Canada reveal the points at which this authority has been compromised. These examples show how decisions on taxation, corporate governance, and financial transactions were conditioned by U.S. enforcement measures. Defining the scope of economic sovereignty through such instances makes clear that it is not simply about formal independence. It is

160. Francesco Crespi et al., *European Technological Sovereignty: An Emerging Framework for Policy Strategy*, 56 *INTERECONOMICS* 348, 349–50 (2021).

161. Joel Slawotsky, *US Extraterritorial Jurisdiction in an Age of International Economic Strategic Competition*, 52 *GEO. J. INT'L L.* 427, 431–35, 462–65 (2021).

about whether a state can sustain autonomous decision-making in the face of extraterritorial intervention. This understanding establishes the foundation for examining the high costs of resistance and the structural forces that sustain passivity in later sections.

1. The Case for Strengthening Economic Sovereignty: Global Insights and National Strategies

Before assessing calls to reclaim economic sovereignty, it is necessary to clarify what “sovereignty” means in this context. In the U.N. Charter framework, sovereignty is reflected in the principles of sovereign equality and non-intervention, and it denotes a State’s authority to govern its territory and make public policy decisions without external coercion by other States.¹⁶² Economic sovereignty is commonly understood as a state’s capacity to control key economic policies—fiscal, monetary, trade, and industrial—without external coercion. For example, Richardson and Stähler defined the concept as “the freedom of territorial-jurisdictional entities with independent powers of making and administering’ laws,”¹⁶³ while March and Schieferdecker understood it as “political sovereignty applied to economic policy.”¹⁶⁴ Similarly, Murray Austin and Kumar further elaborate that in the expansion of the scope of the state sovereign authority principle, the regulation of money supplies and exchange rates in the monetary system, the overseeing of international commerce, and the authorization and administration of domestic economic strategies were essential elements encompassing economic sovereignty.¹⁶⁵ In further elaborating on the elements of “economic sovereignty” and the scope of “economic policy,”

162. See Samantha Besson, *Sovereignty*, in MAX PLANCK ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW ¶¶ 1–6 (Anne Peters & Rüdiger Wolfrum eds., 2011), <https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1472> [<https://perma.cc/2V78-DWSY>]; Robert Jackson, *Sovereignty in World Politics: A Glance at the Conceptual and Historical Landscape*, 47 POL. STUD. 431, 431–33 (1999); see also J. Samuel Barkin & Bruce Cronin, *The State and the Nation: Changing Norms and the Rules of Sovereignty in International Relations*, 48 INT’L ORG. 107, 107–10 (1994).

163. Martin Richardson & Frank Stähler, *International Agreements, Economic Sovereignty and Exit*, 120 EUR. ECON. REV. 1, 2 (2019).

164. Christoph March & Ina Schieferdecker, *Technological Sovereignty as Ability, not Autarky*, 25 INT’L STUD. REV. 1, 6 (2023).

165. C. Murray Austin & Mukesh Kumar, *Sovereignty in the Global Economy: An Evolving Geopolitical Concept*, 18 GEO. RSCH. F. 49, 51 (1998).

Donohoe emphasized the existence of capacity and the need for “unfettered practical independence”¹⁶⁶ when states introduce and implement both fiscal and monetary policies in areas including government spending and the determination of taxation levels and interest rates.¹⁶⁷ Additionally, he pointed out that countries may delegate their economic sovereignty to third bodies and that the existence of internal and external economic sovereignty means that such a distinction is important, as they apply to and concern different economic policies.¹⁶⁸

Multilateralism and international economic law have already diluted states’ economic sovereignty to a certain degree.¹⁶⁹ Thus, for a country, there is a need to maintain and reclaim what remains of its existing economic sovereignty. Not only is it about having overall control over its economic policies and decisions which are made to reflect the country’s best interests and maximize the potential benefits and welfare that are to be gained, but significantly, it is also related to the protection of its sovereignty as a whole. Once a strong country sees that it can interfere with a weaker country’s economic sovereignty, it might take this as a hint that it can also encroach on the latter country’s sovereignty in other areas, thereby severely and adversely affecting its overall sovereignty. Regardless of the existence of an allied partnership or how strong the bilateral ties are, the protection of its economic sovereignty allows a country to send two strong messages to third countries, particularly those with greater economic power. Firstly, the concerned country is not to be easily influenced to the extent where it (and its economic sovereignty) could and would be used as a vehicle to serve the more powerful country’s interests or help achieve its foreign policy objectives. Secondly, the country is not so weak that it would allow its domestic affairs and crucially, its sovereignty, both specifically and generally, to be interfered with.

166. Paschal Donohoe, *Economic Sovereignty and Our National Question*, 102 *STUD.: IRISH Q. REV.* 19, 20 (2013).

167. *See id.* at 20, 22.

168. *See id.* at 22.

169. For example, member states of the World Trade Organization (WTO) have to ensure that any proposed and implemented economic policies comply with the WTO rules. Otherwise, any deviations can potentially lead to countries affected by the measures lodging a complaint at the organization. This is also the case where countries enter into bilateral and plurilateral free trade agreements and trade blocs.

Canada's digital services tax illustrates the pressures surrounding economic sovereignty in an asymmetric alliance. Canada enacted the Digital Services Tax Act in 2024, imposing a three percent tax on certain Canadian digital services revenues and applying the first collection period retroactively to revenue earned from January 1, 2022.¹⁷⁰ The measure was defended as an interim response to delays in multilateral digital-tax negotiations and as a way to address perceived tax-base gaps created by large technology companies operating in Canada.

The episode is significant for two reasons. First, it shows that Canada initially sought to legislate in parallel with multilateral negotiations rather than wait indefinitely for a global agreement. Second, the subsequent U.S. reaction shows the cost of that assertion of fiscal autonomy: the United States treated the measure as discriminatory against U.S. technology firms and warned of possible trade consequences.¹⁷¹

Accordingly, Canada's decision to proceed—despite the risk of retaliatory pressure and strain in U.S.–Canada economic ties—is notable. Canada ultimately reversed course. In June 2025, the Canadian government announced that it would rescind the tax to advance broader trade negotiations with the United States, halted the June 30, 2025 collection, and later completed legislative repeal.¹⁷² The Canadian example therefore no longer supports a simple claim that Canada persisted despite U.S. pressure. It more accurately shows both an initial assertion of fiscal sovereignty and

170. See Digital Services Tax Act, S.C. 2024, c. 15, s. 96 (Can.); Canada Revenue Agency, *Filing a Return—Digital Services Tax*, GOVERNMENT OF CANADA (Apr. 4, 2025), <https://www.canada.ca/en/services/taxes/excise-taxes-duties-and-levies/digital-services-tax/who-file.html> [<https://perma.cc/9GEQ-99SG>] (stating that the first year of application was the 2024 calendar year and that the tax applied to taxable Canadian digital services revenue earned since January 1, 2022).

171. See Canada Revenue Agency, *supra* note 170; Paul Vieira, *U.S. Warns of Trade Fight over Canada's Digital-tax Plan*, WALL ST. J. (Aug. 5, 2023), <https://www.wsj.com/articles/u-s-warns-of-trade-fight-over-canadas-digital-tax-plan-751ffa30> [<https://perma.cc/ES8R-DVUQ>]; *Canada Rescinds Digital Services Tax to Advance Broader Trade Negotiations with the United States*, DEP'T OF FIN. CANADA (June 29, 2025), <https://www.canada.ca/en/departement-finance/news/2025/06/canada-rescinds-digital-services-tax-to-advance-broader-trade-negotiations-with-the-united-states.html> [<https://perma.cc/46K3-FSTX>].

172. *Canada Rescinds Digital Services Tax to Advance Broader Trade Negotiations with the United States*, *supra* note 171; Digital Services Tax Act, S.C. 2024, c. 15, s. 96 (Can.) (repealed 2026); Budget Implementation Act, 2025, No. 1, S.C. 2026, c. 3, s. 126 (Can.) (repealing the Digital Services Tax Act).

the practical limits of that assertion under threat of U.S. trade retaliation.

Such measures could be economically severe for Canada because bilateral trade is highly concentrated: Canada is the United States' third-largest source of imports and its second-largest trading partner overall,¹⁷³ while the United States is Canada's largest trading partner for both exports and imports. Canada's close economic integration with the United States made retaliation particularly costly because the two countries' trade relationship is deeply concentrated and institutionally embedded.¹⁷⁴ The DST episode therefore illustrates how even a wealthy and legally sophisticated ally may abandon a domestic fiscal measure when the anticipated costs of resistance threaten broader economic negotiations.

2. Pathways to Reclaiming Economic Sovereignty: Lessons from International Experiences

Examples ranging from the United Kingdom's continued arms sales to Saudi Arabia despite domestic judicial limits to Canada's experience in the Meng Wanzhou episode show that economic sovereignty can be constrained through multiple channels—judicial override, security-driven enforcement, and extraterritorial legal pressure—with spillover effects across sectors.¹⁷⁵

Several lessons can also be drawn from the case studies considered in the previous sections. France's experience with the digital services tax, as well as Canada's, illuminates the

173. Luis Torres, *Mexico Seeks to Solidify Rank as Top U.S. Trade Partner, Push Further past China*, FED. RES. BANK OF DALLAS (July 11, 2023), <https://www.dallasfed.org/research/economics/2023/0711> [<https://perma.cc/DQ63-XTCJ>]; *Countries & Regions*, OFF. OF THE U. S. TRADE REPRESENTATIVE, <https://ustr.gov/countries-regions> [<https://perma.cc/YZE9-BCB7>] (last visited May 27, 2026).

174. See *Countries & Regions*, *supra* note 173; *Table 1 Merchandise Trade: Canada's 10 Principal Trading Partners—Balance-of-Payments Basis, Seasonally Adjusted, Current Dollars*, GOVERNMENT OF CANADA (Nov. 7, 2023), <https://www150.statcan.gc.ca/n1/daily-quotidien/231107/t001a-eng.htm> [<https://perma.cc/Y45B-WP63>].

175. See *Campaign Against Arms Trade v. Secretary of State for Int'l Trade*, [2019] EWCA Civ 1020 [139]–[145] (U.K.) (holding that the government's decisions to license arms exports to Saudi Arabia without assessing past violations of international humanitarian law were irrational and therefore unlawful); *United States v. Meng*, 2020 BCSC 785, ¶¶ 2, 7–19, 35–52 (Can.) (describing the U.S. request that Canada extradite Huawei's CFO on fraud charges tied to alleged misrepresentations concerning Iran sanctions, and Canada's role in executing that request through its extradition process).

complexities and consequences of challenging economic dominance and enacting domestic legislation that counters the interests of powerful nations.¹⁷⁶ Significantly, in exchange for the United States' withdrawal of its retaliatory tariffs on French imports, the French government announced that collection for digital services tax revenues in 2020 would be suspended until December 2020. However, it also serves as a testament to the potential of resistance and legal innovation. France's stance underlines the necessity for nations to explore novel legislative and regulatory measures to ensure a fair distribution of global wealth and protect their interests in the face of increasing digitalization and globalization.

The United Kingdom's arms sales to Saudi Arabia are another lesson. The United States' application of the ITAR and other legal mechanisms exerted significant pressure on the United Kingdom's defense trade,¹⁷⁷ posing a threat to its economic sovereignty. The legal and economic issues faced by the United Kingdom in this instance underline the need for nations to fortify their norms to safeguard their strategic industries and manage contentious issues of international trade and diplomacy.

Similarly, the experiences of Germany, Australia, and Canada with U.S. surveillance practices and data access laws, such as the Patriot Act, signal the need to bolster data protection laws and digital rights. These cases highlight the need for stronger international legal protection and norms around data sovereignty, a critical facet of economic sovereignty in the digital age.

The broader lesson is that economic sovereignty functions less as a binary status than as a spectrum of decision-making capacity. What varies across states is not whether they possess sovereignty in the abstract, but how much operational room they can secure within networks of finance, data, and supply chains. Reclamation therefore turns on institutional design: diversifying chokepoints, thickening procedural safeguards, and creating

176. Victoria Plekhanova & C. Noonan, *Digital Services Tax: Lessons from the Section 301 Investigation*, 1 BRIT. TAX REV. 83 (2021).

177. See Deborah Cheverton, *Export Controls: A Surprising Key to Strengthening UK-US Military Collaboration*, ATLANTIC COUNCIL (June 7, 2023), <https://www.atlanticcouncil.org/blogs/new-atlanticist/export-controls-a-surprising-key-to-strengthening-uk-us-military-collaboration/> [https://perma.cc/QMN6-DUCL] (estimating that British firms incurred nearly half a billion dollars annually in ITAR compliance costs).

collective mechanisms that make extraterritorial demands harder to impose unilaterally.

*C. Building Legal Defenses:
Proposals for Institutional Reform*

Efforts to reclaim economic sovereignty must begin with an assessment of the structural conditions that allow extraterritorial legal control. Although U.S. authority extends across a wide range of regulatory domains, its effects are most acute in sectors marked by technological interdependence, information asymmetry, and legal ambiguity. This section concentrates on three such areas: data sovereignty, extraterritorial jurisdiction, and digital taxation. These domains illustrate how dependence on shared technological systems, unequal access to information, and the absence of settled international rules create openings for unilateral assertion of power. They are relatively new sectors of economic governance, where regulatory vacuums remain frequent and where U.S. measures set standards that others must accept. Other areas such as sanctions enforcement, export control, and intellectual property regulation also raise serious concerns and merit sustained legal analysis. Yet the three areas discussed here provide a particularly clear window into the ways in which legal authority crosses borders and imposes unilateral obligations.

Data governance is structured through surveillance infrastructure and digital regulatory demands. Jurisdictional extension depends on expansive readings of statutory reach. Digital taxation exposes the fiscal and commercial consequences of unilateral norm setting, and it forms a central element of data sovereignty because taxation regimes determine how value created in the digital sphere is allocated across borders. For example, Canada introduced a digital services tax that would have produced billions in revenue by taxing foreign digital firms based on Canadian users. The United States responded with threats of new tariffs, and Canada rescinded the tax in order to preserve trade relations and sovereign discretion.¹⁷⁸ Another example

178. See Canada Rescinds Digital Services Tax to Advance Broader Trade Negotiations with the United States, *supra* note 171; Digital Services Tax Act, S.C. 2024, c. 15, s. 96 (Can.) (repealed 2026); Budget Implementation Act, 2025, No. 1, S.C. 2026, c. 3, s. 126 (Can.).

involves technology firms in France seeking assurance of data sovereignty. Microsoft admitted in French Senate hearings that it cannot guarantee that customer data remains beyond reach of U.S. legal authority under the Cloud Act, irrespective of server location.¹⁷⁹

Digital governance also exposes the paradox faced by U.S. allies: they seek to uphold formal sovereignty yet remain operationally dependent on the United States because of its technological dominance and the concentration of digital enterprises under U.S. jurisdiction. These sectors generate significant legal friction, which makes them suitable entry points for institutional reform. They also reveal the gap between formal independence and practical dependence that characterizes the position of many U.S. allies. Governments have already begun to respond in these sectors, creating a record of legal experimentation and institutional resistance. The aim here is not to produce a full list of all affected domains but to identify sectors where sovereignty is actively contested and where legal reform is both necessary and possible. The objective is to strengthen the capacity of states to govern cross-border activity without submitting domestic authority to foreign legal demands.

1. Enhancing Global Data Sovereignty

This requirement to bolster data protection and digital rights legislation is increasingly salient given the international inclination toward recognizing data sovereignty—the concept that information is subject to the laws of the country within which it is located.¹⁸⁰ One of the most pertinent lessons from the unfolding dynamics of international relations and legal issues is the necessity for resilient domestic legislation. Robust and comprehensive data protection laws serve as the primary line of defense against infringement of privacy and unwarranted surveillance practices. In the face of ever-advancing technology, such laws should cover both

179. Mark Boost, *Letter: Let's Follow French Lead and Test the US Cloud Act*, FIN. TIMES (July 30, 2025), <https://www.ft.com/content/06df1a3f-2bcc-43ba-8125-5daf24ef5b3c> [https://perma.cc/328Z-JVQB]; Paul Kunert, *Microsoft Admits It "Cannot Guarantee" Data Sovereignty*, THE REGISTER (July 25, 2025), https://www.theregister.com/2025/07/25/microsoft_admits_it_cannot_guarantee/ [https://perma.cc/25AT-GBBC].

180. Patrik Hummel et al., *Data Sovereignty: A Review*, 8 BIG DATA & SOC'Y 1, 1 (2021).

the physical and digital domains, ensuring that personal data are protected, whether stored on servers within the country or hosted in the cloud. Additionally, these laws need to provide clear guidelines on data access, storage, and transfer, while maintaining the balance between individual privacy rights and legitimate national security interests.

Beyond the national scope, there is a pressing need for collective action and legal accord at an international level. Establishing universally accepted regulations governing data access and exchange can potentially dissuade the exploitation of extraterritorial data access by powerful nations. Consensus-based collective actions can ensure a harmonized approach to data protection, providing a level playing field that respects each country's digital rights and economic sovereignty. Moreover, such international legal practices can serve as a deterrent to mass surveillance or data mining activities, especially those that transcend national boundaries. The legal reforms should incorporate the principle of proportionality to ensure that any data collection or surveillance activity is justified, necessary, and proportionate to the aim pursued. This can provide a legally sound structure for international data exchange that respects the sovereign rights of states while ensuring a high level of protection for personal data. In conclusion, the lessons learned from the current international scenario underscore the importance of robust domestic data protection laws coupled with international measures that respect data sovereignty. Such a two-pronged approach can be instrumental in preventing undue surveillance practices and the exploitation of extraterritorial data access, thereby reinforcing the economic sovereignty of nations in the digital age.

2. Establishing Digital Jurisdiction Principles

The development of globally recognized guidelines to regulate the extraterritorial reach of national laws may indeed provide a potential solution to the ongoing threats to economic sovereignty. A critical step toward this goal entails reexamining the traditional principles of international jurisdiction,¹⁸¹ which currently do not

181. Arthur Lenhoff, *International Law and Rules on International Jurisdiction*, 50 CORNELL L.Q. 5, 5 (1964).

sufficiently account for the complexities introduced by globalization and rapid technological advancements.

One striking lesson from the current situation is that traditional legal principles governing jurisdiction often fall short in the face of modern issues. The concept of jurisdiction, as traditionally understood in international law, is based on territory, nationality, or specific circumstances that justify extraterritorial applicability. However, the digital age has blurred these demarcations, necessitating a thorough review and the potential innovation of jurisdictional principles.

One innovative approach can be the development of “digital jurisdictional principles” that respect the sovereignty of states while ensuring the smooth functioning of the global digital economy. These principles can address issues surrounding data location and access as well as the reach of national legislation on digital services provided by foreign entities. In practice, these principles help resolve disputes over where data must be stored and who may access it, and they clarify how far a country’s laws reach when digital services are supplied from abroad. Furthermore, universally recognized guidelines can include stipulations on dispute resolution mechanisms in cases of conflict between domestic and international laws. They may establish processes for negotiations, mediation, or arbitration, providing a structured path to resolve disagreements while preserving the economic and digital sovereignty of nations.

Moreover, the implementation of such guidelines would require international cooperation and agreement between countries. The implementation of innovative digital governance guidelines also requires a common acknowledgment that the issue of extraterritoriality and economic sovereignty is not confined to any single nation but is a collective concern in our interconnected world.

3. Harmonizing Digital Taxation

There are practical and successful examples of nations adopting strategic approaches to reclaiming their economic sovereignty through domestic legislation countering the extraterritorial application of U.S. law. One such example is

France's digital taxation initiative.¹⁸² Although met with contention, France's approach presents a commendable effort to ensure a more equitable distribution of wealth accrued from digital activities within its territory. This innovative domestic legal measure, designed to levy taxes on large tech corporations, attempts to balance the scales of the global digital economy, ensuring that multinational tech giants contribute fairly to the economies in which they generate significant profits. The French case exemplifies how domestic legislation can be crafted thoughtfully to address the economic imbalances caused by global digital operations. However, to truly alleviate the risk of retaliatory measures from countries housing these tech giants, there is a clear need for international collaboration.

Domestic initiatives need to be echoed on the global stage, aligning nations around the common goal of creating a fair digital taxation system. This brings us to the notion of instituting a multinational digital tax, a move that can significantly curb individual states' vulnerability to unilateral retaliatory actions. As in the French example, individual national efforts can prompt pushback from nations seeking to protect their domestic corporations. However, if multiple countries unite to impose a globally agreed-upon digital tax, it becomes less viable for any single country to respond with retaliatory tariffs or similar measures. Legal scholars and policymakers might take inspiration from this approach, viewing it as an innovative pathway to reinforcing national economic sovereignty in the age of digital globalization. The international community can therefore greatly benefit from pursuing a similar path of plurilateral cooperation and mutual agreement, offering a more formidable and unified response to the challenges of global digital economy taxation.

VII. CONCLUSION

This article shows that the extraterritorial projection of U.S. domestic law is not episodic overreach but rather an institutionalized method of governance that organizes economic dependence among allies. Surveillance, export controls, financial sanctions, and enforcement actions operate in tandem to shape choices made in other jurisdictions, narrowing the space for

182. Govindarajan et al., *supra* note 149; Julie, Menegon & Murgier, *supra* note 16.

autonomous economic policy even where formal sovereignty persists. The consequence is a reconfiguration of authority: jurisdiction functions less as a right grounded in mutual consent than as a technique of control embedded in routine legal practice.

The analysis reframes debates about extraterritoriality. Rather than treating headline controversies as aberrations, it traces stable patterns across domains (finance and payments, corporate regulation, technology flows, and intelligence) that together normalize external authority over allied states. The rare public disputes that do arise are best understood against a background of structural acquiescence produced by dollar centrality, technological interdependence, and institutional path dependence. In this environment, legality does not restrain power so much as channel it.

This account advances three contributions. Doctrinally, it clarifies how expansive statutory reach and permissive jurisdictional doctrines convert domestic instruments into transnational regulators. Conceptually, it situates those techniques within legal realism, dependency theory, and international political economy, explaining why allied governments often “choose” compliance under conditions of material constraint. Institutionally, it identifies the mechanisms (financial plumbing, data infrastructures, and compliance architectures) through which extraterritorial authority is reproduced.

The normative stakes are therefore not limited to whether particular statutes apply abroad. What is at issue is whether international law continues to reflect a society of sovereign equals or evolves into a legal order that manages graded dependence. If sovereignty is to remain meaningful as a capacity for autonomous economic decision-making, allied states require tools that re-balance leverage without repudiating interdependence. The aim is not autarky but bounded extraterritoriality—clearer limits on unilateral reach and thicker procedures that make external authority contestable.

The deeper significance of this analysis lies in what it suggests about the changing form of legal authority in the international order. The central issue is no longer only whether one state applies its law beyond its borders. It is whether authority travels through infrastructures that make legal demands routine, enforceable, and difficult to resist without formal subordination or open coercion.

Once viewed in this light, the problem exceeds the familiar language of extraterritoriality alone. What is at stake is a broader transformation in which domestic law, backed by financial, digital, and regulatory infrastructure, acquires transnational governing force while leaving the formal grammar of sovereign equality intact.

Building on the proposals surveyed in this article, a practicable agenda has three pillars: (1) Data sovereignty: domestic and plurilateral rules that condition foreign access to commercially and strategically sensitive information, with proportionality and independent oversight; (2) Digital jurisdiction principles: shared limits on effects-based assertions of authority in the online economy and baseline comity standards for cross-border enforcement; and (3) Coordinated digital taxation: plurilateral arrangements that allocate value from platform activity and reduce exposure to unilateral retaliation. Each pillar targets a site where dependence and legal ambiguity currently invite unilateral control. Together they would not eliminate asymmetry but would constrain how it operates and diversify institutional venues for resistance.

At the level of process, stronger procedural guarantees remain necessary, but procedure alone is not the article's final point. The deeper issue is that contemporary authority increasingly travels through the infrastructures that make legal commands effective: payment systems, cloud architecture, audit trails, compliance software, export-control choke points, and data-routing networks. Once those infrastructures are concentrated in the hands of one state and normalized by allied reliance, sovereignty is no longer simply limited from outside. It is exercised from within conditions set elsewhere.

This article therefore proposes a research agenda rather than a single remedy. Future work should examine how states can diversify those infrastructures, thicken procedural and institutional safeguards, and build reciprocal constraints on unilateral legal reach without abandoning interdependence. Whether international law remains a law of sovereign equals will depend less on abstract reaffirmations of nonintervention than on the design of the systems through which authority is made operative. The central lesson is not merely that U.S. law travels abroad. It is that contemporary global order allows domestic law,

when coupled with infrastructural dominance, to function as a stable mode of rule. That is why the article speaks beyond current controversies, even as present events make its diagnosis harder to ignore.