

Yet very few decisions have denied recognition of foreign judgments based on systemic lack of due process.³

As a case study, this essay considers the recent decisions in
in which the New York Supreme Court refused to recognize a Chinese

ground and the rarity of U.S. decisions relying on it. Part II explains the implications of the case for the recognition of Chinese judgments in the United States and for U.S. judgments in China. Part III considers whether courts should rely on State Department Country Reports to decide if a country lacks impartial tribunals and procedures compatible with due process under the Uniform Acts. Part IV argues that case-specific grounds for non-recognition are sufficient to police foreign judgments, rendering the systemic ground unnecessary. Part V briefly concludes.

I. SYSTEMIC REVIEW IN U.S. LAW AND PRACTICE

courts sitting in diversity had to apply state choice-of-law rules.²⁴ Since then, it has been accepted that state law governs the recognition and enforcement of foreign judgments, including in cases involving federal courts sitting in diversity.²⁵

In 1962, the National Conference of Commissioners on Uniform State Laws (NCCUSL) approved a uniform act that states could adopt to govern the recognition and enforcement of foreign judgments.²⁶ The aim of this act was to facilitate the enforcement of U.S. judgments abroad by providing evidence of reciprocity to civil law countries that required reciprocity and were reluctant to accept anything short of a legislative enactment as sufficient proof.²⁷ The drafters attempted to codify existing law,²⁸ with the .

Uniform Act contrast these case-specific grounds with systemic lack of due process, noting that the new grounds allow a court to deny recognition when bribery of the judge or political bias result in the denial of

sister “could not get due process in Iran” because of political influence and hostility to the Shah’s regime.⁴⁸ As Paul Stephan has noted, “[r]ather than ruling that foreigners faced systemic unfairness in Iran, the court looked at the characteristics of the litigation in question.”⁴⁹

underlying litigation.”⁶¹

reciprocity, which required that the foreign country had in fact previously recognized Chinese judgments.⁷² Because Chinese courts have previously held that the United States satisfied the requirement of reciprocity based in its prior recognition of Chinese judgments,⁷³ there seems little doubt that U.S. judgments will satisfy the more relaxed standard.

But denying recognition of Chinese judgments based on systemic lack of due process would change that.⁷⁴ Maintaining judgment reciprocity with China does not require U.S. courts to recognize every Chinese judgment. U.S. courts have denied recognition on case-specific grounds when the Chinese court lacked personal jurisdiction over the defendant⁷⁵ or the Chinese judgment conflicted with another final judgment.⁷⁶ Denying recognition on the ground that China lacks impartial tribunals or procedures compatible with due process is fundamentally different from using case-specific grounds, however, because it indicates that Chinese judgments will never be recognizable or enforceable.

Whether a New York decision denying recognition of Chinese judgments for systemic lack of due process would have destroyed reciprocity with respect to the entire United States or only with respect to New York is an important question. Technically, each state constitutes its own jurisdiction for purposes of judgment recognition, and (as noted above)

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denying recognition for systemic lack of due process has the potential to

matters.⁸⁵ Section 502B of the Act additionally prohibits security assistance “to any country the government of which engages in a consistent pattern of gross violations of internationally recognized human rights.”⁸⁶ Pursuant to this provision, the State Department must transmit a report with respect to each country for which it proposes security assistance covering various human rights topics.⁸⁷ Because of these statutory mandates, the Country Reports focus on human rights concerns and typically address foreign court systems within that context.⁸⁸ In fact, the country reports caution that “they do not state or reach legal conclusions with respect to domestic or international law.”⁸⁹

Given the Country Reports’ focus on human rights, reliance on the reports to evaluate foreign court systems for other purposes may be misplaced. As Mark Jia has observed, authoritarian legal systems are often “bifurcated.”⁹⁰ “In routine commercial, civil, and even criminal matters,” Jia notes, “bifurcated legal systems will largely conform to modernist principles: the laws will be mostly written, consistent, and clear, and they will be applied by reasonably neutral and competent jurists,” whereas “in matters that are more politically consequential, written laws may yield to secret commands and otherwise autonomous judges may begin to resemble political agents.”⁹¹ Indeed, China’s party officials increasingly expect courts “to resolve a great many of their routine cases in a more consistent and expert fashion.”⁹² As the Appellate Division noted in _____, “the reports, which primarily discuss the lack of judicial independence in proceedings involving politically sensitive matters, do not

utterly refute plaintiff's allegation that the civil law system governing this breach of contract business dispute was fair."⁹³

It is also worth noting the implications of relying on State Department Country Reports to judge the quality of foreign court systems for countries other than China. In *Shanghai Yongrun Inv. Mgmt. Co. v. Maodong Xu*,⁹⁴ the New York Supreme Court focused specifically on statements in the 2018 and 2019 Country Reports for China concerning limitations on judicial independence and corruption.⁹⁴ The 2020 Country Reports, published in March 2021, expressed similar concerns in one or both of these areas for 141 countries apart from China, including several countries that do significant business with the United States and often produce judgments that parties seek to enforce in the United States.⁹⁵ With respect to judicial independence, the 2020 Reports express concerns about 102 countries,⁹⁶ including Mexico,⁹⁷ Brazil,⁹⁸ and Argentina.⁹⁹ With respect to corruption, the 2020 Reports express concerns about 133 countries,¹⁰⁰ including Italy,¹⁰¹ Japan,¹⁰² South Korea,¹⁰³ and

93. *Shanghai Yongrun Inv. Mgmt. Co. v. Maodong Xu*, 203 A.D.3d 495 (N.Y. App. Div. 2022).

94. *Shanghai Yongrun Inv. Mgmt. Co. v. Kashi Galaxy Venture Cap. Co.*, No. 156328/2020, 2021 WL 1716424, at *5 (N.Y. Sup. Ct. Apr. 30, 2021).

95. Baumgartner & Whytock, note 40, at 149, Appendix A, Figure A-1 (compiling states of origin of foreign judgments for which recognition was sought in the United States between 2000 and 2017).

96. Amicus Brief, note 4, Appendix B.

97. U.S. DEP'T OF STATE, 2020 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES: MEXICO 13 (2021), <https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/mexico/> ("Although the constitution and law provide for an independent judiciary, court decisions were susceptible to improper influence by both private and public entities, particularly at the state and local level, as well as by transnational criminal organizations.").

98. U.S. DEP'T OF STATE, 2020 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES: BRAZIL 13 (2021), <https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/brazil/> ("While the justice system provides for an independent civil judiciary, courts were burdened with backlogs and sometimes subject to corruption, political influence, and indirect intimidation.").

99. U.S. DEP'T OF STATE, 2020 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES: ARGENTINA 7 (2021), <https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/argentina/> ("The law provides for an independent judiciary, but government officials at all levels did not always respect judicial independence and impartiality.").

100. Amicus Brief, note 4, Appendix C.

101. U.S. DEP'T OF STATE, 2020 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES: ITALY 12 (2021), <https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/italy/> ("Officials sometimes engaged in corrupt practices with impunity. There were numerous reports of government corruption during the year.").

102. U.S. DEP'T OF STATE, 2020 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES: JAPAN 18 (2021), <https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/japan/> ("Independent academic experts stated that ties among politicians, bureaucra(r)1.9 (t)3.4 (c.4 (d)0.5 (i)17.4 (n)14.5 (c)14,1 Twp007 Tw

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conflict with a dispute resolution clause.¹⁰⁹ In the twenty-nine states that have adopted the 2005 Uniform Act, the case specific grounds also include lack of integrity in the rendering court (corruption) and lack of due process in the particular proceeding.¹¹⁰ Unlike systemic evaluation, this kind of case-specific analysis falls squarely within the competence of the U.S. courts.¹¹¹ It may well be that the case-specific analysis will result in the recognition of fewer judgments from less reliable legal systems.¹¹² But the case-specific approach avoids the over-inclusiveness of denying recognition on systemic grounds when there are no defects in the judgment before the court.

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process remains on the books as a ground for nonrecognition, U.S. courts should give up trying to make such determinations. Indeed, the rarity of U.S. decisions denying recognition on this basis¹¹⁴ indicates that, for the most part, they already have.