

Article

The Ontology of Blocking Law: From Regulatory History to Conceptual Return

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Abstract: Against the background of the expansion of extraterritorial jurisdiction, this paper points out that blocking law should not be reduced solely to the binary narrative of "extraterritorial foreign legislation infringing national interests – domestic defense of national interests." Its institutional evolution has progressed from blocking evidence discovery and the enforcement of foreign judgments in the competition-law context to a comprehensive framework under restrictive measures law encompassing "prohibition of compliance – shielding against foreign judgments – damages relief – reporting and exemption." At the level of international law, extraterritorial legislation merely extends the scope of application of the norm and does not necessarily project state power; the legitimacy of blocking law is therefore better explained as the use of domestic private international law tools to uphold reasonable nexus, international comity, and the avoidance of inconsistent obligations. At the level of domestic law, restrictive measures law pierces foreign property rights, corporate governance, and freedom of contract by relying on financial infrastructure and compliance deterrence; blocking law, by amending choice-of-law references, restricting the recognition and enforcement of foreign judgments, and supplementing these with prohibition of compliance and civil relief, achieves a "corrective realignment" of the domestic private-law order. Blocking law is thus an instrument combining unilateral countermeasure and order-repair: it denies the effect of foreign public law within the forum state, while returning private-law relations to domestic law.

Keywords: extraterritorial jurisdiction; blocking law; national interests; private-law order; corrective realignment

1. Introduction

Globalization makes cross-border spillover of state regulation in international trade and finance inevitable. When some countries extend domestic law extraterritorially, extraterritorial jurisdiction has become the norm, expanding mainly through competition law and sanctions law. In competition law, US antitrust law's extraterritorial application developed after the 1945 *Alcoa* case established the "effects doctrine", which together with US civil procedure discovery system allows courts to force foreign parties to provide information, bringing procedural and substantive pressure to other countries. The UK thus enacted the 1980 Protection of Trading Interests Act to build a comprehensive countermeasure system, making early blocking law a practical response to cross-border enforcement conflicts. In the economic sanctions field, US economic sanctions expand extraterritorially through expanding primary sanction connection points and coercing third parties via secondary sanctions, forcing foreign enterprises into a compliance dilemma. The EU issued the 1996 Blocking Regulation as an institutional countermeasure to neutralize the spillover effect of US secondary sanctions.

However, there are still unanswered core questions about the nature, normative basis and institutional design of blocking law, which are key to its understanding and application. This article analyzes from three levels: first, it sorts out the historical origin of blocking law and compares the UK and EU typical models; second, it explores the

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international law basis of blocking law from the perspective of jurisdictional structure and reasonable connection principle; third, it analyzes at the domestic level how extraterritorial sanctions penetrate other countries' private law orders, and defines blocking law as a corrective institutional arrangement by adjusting conflict of laws and judgment recognition rules. This article holds that while blocking law is unilateral and confrontational, it can also create bargaining space for international coordination and promote the formation of a more predictable, comity-based cross-border regulatory coordination mechanism.

2. The Blocking Method in the Field of Competition Law

2.1. Two Lines of Development in the Genesis of Blocking Law

Contemporary extraterritorial jurisdiction appears mainly in two forms: competition law and sanctions law. U.S. competition-law extraterritoriality formalizes jurisdiction over foreign conduct that produces direct, substantial, and foreseeable effects on the U.S. market [1]. Economic sanctions, by contrast, are "trade controls for political purposes" and substitutes for force, aimed at changing the target state's conduct.

Blocking law in legal history divides accordingly into two types: statutes barring compliance with foreign discovery orders, and statutes preventing foreign public law from taking effect or being enforced in the forum state.

The United States was once restrained on territorial sovereignty. In *The Apollon* (1824), the Supreme Court held that domestic law has no jurisdictional effect over another state's rights, because enforcement power is territorial [2]. In *American Banana Co. v. United Fruit Co.* (1909), the Court added the comity caveat: the legality of an act is governed by the state where it occurred, and one court should not review another sovereign's conduct [3].

This territorial restraint shifted with the effects doctrine. The older Chinese term for "extraterritoriality" is misleading here; modern extraterritorial jurisdiction means legislative jurisdiction over foreign persons or conduct, not the colonial privilege of exempting nationals abroad.

From *United States v. Alcoa* (1945), U.S. courts imported the effects principle into antitrust, claiming jurisdiction where foreign conduct bore directly on the U.S. market [4, 5]. Because the targeted firms were often foreign pillar industries, the doctrine gave the United States substantive reach abroad. The relevant statutory base included the Sherman Act, Clayton Act, Trading with the Enemy Act, and later export-control authorities [6].

The effects doctrine also provoked procedural overreach. U.S. courts issued extraterritorial discovery demands under domestic civil procedure, often bypassing the Hague Evidence Convention [7-9]. Thus, alongside substantive jurisdiction, the United States triggered foreign states' anxiety over trade and financial information [10]. Later endorsed by the Restatement (Third), the doctrine spread beyond antitrust and turned extraterritoriality from exception into routine [11].

2.2. The Development of U.K. Blocking Legislation

Britain rejected the U.S. approach. It treated only territorial and personal principles as valid for trade regulation, viewed U.S. jurisdiction as unlawful and comity-blind, and refused to enforce U.S. treble-damage awards [12]. The private right of action under § 4 of the Clayton Act, backed by treble damages, was the sharper irritant [13].

The first legislative answer was the Shipping Contracts and Commercial Documents Act 1964. It targeted U.S. antitrust discovery demands against shipping operators: the transport authority could require reports and enjoin compliance, and the Secretary of State could restrict production of "commercial documents" where U.K. jurisdiction was infringed [14]. Breach drew a £1,000 fine. Confined to shipping and weakly enforced, it gave only limited protection.

The 1970 Westinghouse uranium litigation forced a stronger response. Westinghouse sued foreign producers for price-fixing; they declined to appear, and U.S. default

judgments exposed them to massive treble damages [15]. Britain, after failed diplomacy, enacted the Protection of Trading Interests Act 1980.

The 1980 Act kept the 1964 discovery-blocking structure but added an offensive edge [16]. Three mechanisms matter: First, the Secretary of State may prohibit compliance with foreign requests for documents or information where foreign trade measures prejudice U.K. trading interests [17]. Second, U.K. courts will not enforce specified foreign judgments-especially multiple-damages antitrust judgments-on the view that treble damages are penal [18]. Third, the Act created a clawback action: a defendant may recover the punitive portion of treble damages already paid. This was the 1980 Act's core innovation and the main U.S. objection [19].

In the U.K. order, the statute is protective legislation-unilateralism met with unilateralism, exercised through ministerial discretion. It gave British defendants a defense against U.S. treble-damage exposure; the dispute ran beyond law into politics and commerce [20].

Australia followed the same pattern. The Foreign Proceedings (Prohibition of Certain Evidence) Act 1976 blocked uranium-era document demands [21], and the Foreign Antitrust Judgments (Restriction of Enforcement) Act 1979 blocked enforcement [22]. In 1981 Australia went further, borrowing the U.K. clawback but allowing recovery of the entire judgment amount. Canada, the Netherlands, France, and others refined similar statutes in the same period [23].

2.3. Lessons from U.K. Blocking Legislation

First, the twentieth-century blocking wave arose from opposition to U.S. competition-law extraterritoriality and was technical from the start. Shipping, a sensitive sector, made the need acute. Blocking law evolved from procedural resistance to discovery orders into substantive clawback litigation, adapting continuously to extraterritorial expansion.

Second, blocking law and the foreign law it blocks are spear and shield. The U.K. extension of clawback standing to foreign plaintiffs provoked fresh Anglo-American dispute [24]. Just as the United States invokes the effects doctrine to legitimize reach, the blocking state roots its statute in domestic law; its legitimacy is therefore unilateral unless anchored in international-law principles such as sovereign equality and non-interference.

Finally, blocking law does more than shield nationals. By intervening "procedurally rather than substantively," it pressures both states toward deeper agreement on competition-policy basics. Its intent was often bargaining leverage-forcing the United States to take sovereign concerns seriously and pushing toward evidence or judgment treaties-not total non-compliance [25]. Blocking law is thus both adversarial tool and diplomatic instrument: it stabilizes the domestic legal order while keeping jurisdictional conflict open to negotiation.

3. Blocking Measures in the Field of Economic Sanctions: expansion of U.S. Sanctions Law and the EU "Blocking Regulation"

3.1. Primary Sanctions and Secondary Sanctions

The extraterritorial expansion of U.S. sanctions law can be seen from primary and secondary sanctions. Legally, the expansion of U.S. primary sanctions is essentially an interpretation method of the "nationality" legal concept. First, through an expansive interpretation of the nationality principle, U.S. sanctions law extended its jurisdiction from U.S.-organized parent companies' subsidiaries to U.S. parent companies' subsidiaries [26], that is, beyond U.S. citizens and U.S.-incorporated entities, to companies owned or controlled by U.S. persons, or foreign-incorporated companies with U.S. shareholding as low as 15%. This method breaks the common law principle of independent corporate personality between parent and subsidiary [27] companies. Second, the U.S. extended the nationality concept, which originally applies to legal persons, to "U.S. goods" and "U.S. technology", claiming jurisdiction over foreign companies that use U.S.-origin goods or technology, even if these goods are legally

transferred and the foreign company has no formal connection with the U.S [28]. Through these two interpretation methods, the U.S. controls the re-export of U.S. products and technology by foreign entities to achieve its foreign policy goals. In addition, the 1979 U.S. Export Administration Act required foreign companies purchasing U.S. technology to add "commitment clauses" in contracts to promise not to use the technology in violation of U.S. law [29]. Because U.S. policy is retroactive, technology use that was legal at the time can be defined as illegal later.

The unpredictability's serious consequences were shown in the Siberian pipeline dispute. In 1982, Reagan banned U.S. companies from exporting and foreign companies from re-exporting U.S. technology and oil-gas equipment for the Soviet gas pipeline to Europe, in response to Poland's martial law and imprisonment of Solidarity leaders. Bidding companies could not foresee the U.S. would use extraterritorial sanctions to block the project, and this extended primary boycott was actually retroactive legislation to enforce U.S. policy. Secondary sanctions bring third-state actors under U.S. sanctions law, prohibiting third-country individuals and entities from trading with the target state and its related parties. For example, the 1996 Helms-Burton Act allowed U.S. citizens whose property was expropriated after the Cuban revolution to sue foreign persons involved in transactions related to that property in U.S. courts, and banned those connected to such transactions from entering the U.S [30]. This act tightened Cuba sanctions and extended application to foreign companies trading with Cuba, so its unilateral secondary sanctions have extraterritorial effect [31].

The Iran and Libya Sanctions Act of the same year (the D'Amato Act) required sanctions against third-country companies and their subsidiaries, prohibiting them from making relevant investments in the Iranian and Libyan petroleum sectors, and from certain other investments and transactions with Libya [32]. U.S. secondary sanctions later expanded further: the 2006 Iran Sanctions Act gave the U.S. Treasury authority to compel U.S. banks to terminate transactions involving sanctioned Iranian persons and entities participated in by any non-U.S. bank; the 2011 Reducing Iranian Threats and Syria Human Rights Act further broadened the scope and intensity of sanctions; and subsequent measures-the National Defense Authorization Act for Fiscal Year 2012, the Iran Freedom and Counter-Proliferation Act of 2013, and a series of Obama-administration executive orders-extended secondary sanctions from the petroleum sector to finance and services [33].

The history of economic sanctions in this period shows continuous evolution. First, the concept of sanctions has gradually become clearer and more systematic. Smart sanctions realized the transformation from general embargo to targeted measures, starting from arms export bans, then to service bans, and finally developing into smart sanctions targeting specific individuals and enterprises [34]. Central bank sanctions have become an important type of contemporary economic sanctions [35]. Modern economic sanctions focus on influencing foreign political leaders or specific economic sectors, while avoiding harm to ordinary people; meanwhile, due to their preventive nature, they are associated with countermeasures and other concepts. Second, the expanded interpretation of primary sanctions and the application of secondary sanctions have further expanded the extraterritorial application of sanction laws. Primary sanctions are measures taken against countries and individuals that have committed improper behaviors requiring correction, and are informally defined in US law as having jurisdiction over activities with "US connection" [36]. Secondary sanctions are measures against third parties that have not committed improper behaviors but have transactions with persons subject to primary sanctions, aiming to prevent these third parties from circumventing primary sanctions. As a flexible political tool, secondary sanctions bring entities that have no connection with the United States at all under the scope of US sanction laws [37]. Therefore, the boundaries between primary sanctions, secondary sanctions and extraterritorial sanctions are often blurred in both theory and practice [38].

Third, unilateral sanctions account for the overwhelming majority of international sanctions. Collective sanctions are based on the UN Charter and authorized by the UN

Security Council; yet UN-authorized sanctions form only a small fraction of the total. In most instances, non-UN sanctions-especially those imposed by the United States and the EU-were already in place before any UN sanctions [39]. Contemporary sanctions practice thus appears as a coexistence of UN sanctions and non-UN sanctions.

3.2. The EU Blocking Regulation

Council Regulation (EC) No. 2271/96 of 22 November 1996, "on protection against the extraterritorial application of third-country legislation" (the Blocking Regulation), sought to counteract the extraterritorial effects of U.S. secondary sanctions by prohibiting EU entities from complying with them [40]. Compared with the UK Protection of Trading Interests Act, the Blocking Regulation expanded the scheme: in addition to clawback actions and prohibitions on compliance with U.S. economic sanctions law.

First, it introduced a reporting system: Member States must inform the European Commission within 30 days of the adverse effects of designated foreign laws on their economic activities, and the Commission is obligated to keep such information confidential; the Commission may also itself obtain information from individuals and entities regarding the effects of the above extraterritorial measures, and those individuals and entities bear a duty to notify.

Second, it added an exemption mechanism: the Blocking Regulation created a system of authorized exemptions for EU enterprises suffering significant loss, with the Commission-assisted by the Committee on Extraterritorial Legislation-examining exemption requests and deciding upon them [41].

The adoption of the Helms-Burton Act by the U.S. Congress in 1996, and the Community's response in the same year, directly altered the concept of blocking law in U.S. scholarship. Before that, the term "blocking law" was used to denote laws prohibiting or impeding investigations abroad; [42] afterwards, in the United States it came to denote domestic laws aimed at neutralizing the extraterritorial effects of U.S. law [43].

3.3. Lessons from the EU Blocking Regulation

First, the enactment of blocking law marks the formal elevation of countermeasures to an adversarial contest at the level of sovereignty and law, directly implicating the effect of foreign public law within the (member) state or region. Through the Blocking Regulation, the EU expressly prohibits persons and entities within its territory from complying with U.S. sanctions having extraterritorial effect, and refuses recognition and enforcement of foreign judgments rendered under such laws [44]. This is not only a direct challenge to U.S. extraterritorial jurisdiction, but also a legal declaration by the EU in defense of its judicial sovereignty and economic autonomy. Blocking law is essentially a kind of "conflict-of-laws rule for public law": its core lies in denying, through domestic legislation, the applicability of foreign public law within the region, thereby erecting a legal shield [45].

Second, within the EU, blocking law is not used in isolation, but forms part of a comprehensive counter-strategy, proceeding alongside multilateral and bilateral instruments such as WTO dispute settlement and political negotiation. When promulgating the Blocking Regulation, the EU simultaneously initiated WTO dispute-settlement proceedings against the United States over the Helms-Burton Act, and secured temporary exemptions through political negotiation, effectively relieving the sanctioning pressure [46]. This combination of "law + diplomacy + multilateral mechanism" enhances both the legitimacy and the effectiveness of the countermeasure.

Third, in implementing blocking law, the EU has actively sought at the international level to reduce dependence on the dollar system, so as to weaken the practical effect of U.S. financial sanctions. Through the establishment of the Instrument in Support of Trade Exchanges (INSTEX) and the promotion of euro internationalization-encouraging euro-denominated energy settlements and exploring alternative financial infrastructure such as a digital euro-the EU has pursued strategic mitigation [47]. Although these measures face practical challenges, their strategic direction indicates that only by gradually freeing

themselves from dependence on the dollar clearing system and U.S. financial technology can the systemic risks posed by U.S. extraterritorial sanctions be fundamentally alleviated.

4. The International-Law Rationale of Blocking Law: Sovereignty, Jurisdiction, and Legitimacy

4.1. State Jurisdiction under the Sovereign Order

The Peace of Westphalia of 1648, while ending decades of war in Europe, introduced and established the coexistent condition of internal sovereignty and external sovereignty among states, a condition that endures to this day. The concept of territorial sovereignty means that, within a given geographical space, supreme authority and ultimate power belong to a political community with defined territorial boundaries [48].

State sovereignty within its territory may be bifurcated at the normative and empirical levels: the normative element of sovereignty points to the state's supreme authority, conferring binding force upon rules; the empirical element is manifested in its ultimate power, ensuring that norms are implemented within its territory [49]. Supreme authority means that the state enacts laws of ought validity within its territory, while ultimate power realizes in fact the obligations that the ought imposes upon its nationals—that is, bringing the normative proposition and the factual state into alignment through enforcement and sanction. The combination of supreme authority and ultimate power within a state's territory is directly manifested in the state's making its own laws, applying them through courts and other state institutions, and executing them through administrative power [50].

The U.S. Restatement (Fourth) of Foreign Relations Law, which divides state jurisdiction into jurisdiction to prescribe, jurisdiction to adjudicate, and jurisdiction to enforce, is the most forceful corroboration of this [51]. Corresponding to internal sovereignty—the state's autonomous shaping of social order within its territory—external sovereignty is manifested in the state's right to coordinate its relations with other states according to its own will. Internal and external sovereignty are interdependent and, except for international law, are bound by no other legal order [52].

Sovereignty, as a component of customary international law and a general principle of international law, excludes interference by other states. But in discussing the allocation of state jurisdiction under the sovereign order, one must first distinguish "the prohibition on exercising state power outside territory" from "the permission to exercise state power over foreign-related matters within territory"—a distinction traceable to The Lotus case.

The Lotus case clarified two aspects of territorial jurisdiction: first, the primary limit of international law on the exercise of jurisdiction, namely that a state may not exercise power in any form within the territory of another state; second, jurisdiction with a foreign element—international law does not ipso jure prohibit a state from exercising jurisdiction over foreign-related cases within its own territory, unless there exists a clear general prohibition under international law against such exercise. Current international law not only fails to establish a general rule forbidding states from extending their laws and judicial jurisdiction to foreign persons, property, and conduct; it affords states broad discretion in this field. Therefore, when legislation with extraterritorial effect is applied outside a state's territory, the territorial reach of the "jurisdiction" exercised by its courts—as an expression of internal sovereignty—remains within its territory [53].

4.2. Scope of Sovereign Validity and Scope of Application

Another metaphor of The Lotus lies in the distinction between the scope of sovereign validity and the scope of application. The former denotes the physical boundary of a state's sovereign power; because a state's actual enforcement capacity exists only within this range, it coincides with territory—hence the scope of sovereign validity is identical with the state's "area of enforcement." [54] The latter merely describes the factual category a state's legislation seeks to regulate; when this category exceeds the scope of sovereign validity—which coincides with territory—the concept of extraterritorial application arises.

This distinction is structurally parallel to the Permanent Court's exposition on territorial jurisdiction in *The Lotus*. On one hand, the primary limit of international law bears directly upon jurisdiction to enforce: the territorial reach of a state's supreme authority and sovereign power is bounded by territory-this is state jurisdiction at the level of sovereign validity. On the other hand, a state is free to enact laws with extraterritorial effect, bearing directly upon jurisdiction to prescribe: the scope of application of a state's domestic law is for the enacting state to decide-this is state jurisdiction in the sense of the rule's scope of application. The American Law Institute's view that the scope of a state's legislative jurisdiction may exceed its enforcement jurisdiction fits precisely with this distinction.

4.3. The Nature of Interstate Conflicts over Extraterritorial Jurisdiction

As to the relationship among conflict of laws, extraterritorial prescriptive jurisdiction, and international law, the "supranational perspective" held by nineteenth-century continental scholars in effect subsumed conflict of laws under international law [55]. On this view, conflict rules performed an international-law function of delimiting the spatial reach of state law and defining the boundaries of prescriptive jurisdiction among states; and because the exercise of extraterritorial prescriptive jurisdiction equated to the projection of sovereign power beyond territory, a state's application of foreign law within its own territory should be explained as respect for another state's sovereign power. Notably, this view has been abandoned by contemporary state practice.

Under the modern international-law system, the choice of law by a state's judicial organs falls within the domain of internal affairs; each state enjoys full autonomy as to whether and how its courts apply foreign law. Conflict-of-laws rules belong to the domestic legal order. The relation between conflict of laws and international law in the contemporary system is no different from that between any other domestic law and international law: a state may, because of a treaty it has joined or other international-law obligations, adjust its private-international-law rules, but such regulation arises from the domestic application of international law-a matter of transformation-not from the direct operation of conflict rules under supranationalism.

Contrary to the hypothesis of the Permanent Court in *The Lotus*, the international community no longer adheres to the principle that a state may "freely adopt whatever it regards as best," but has replaced it with the requirement that "the matter sought to be regulated must have a sufficient connection, in fact or conduct, with the prescribing state." [56] Further, following the ICJ's judgment in the *Barcelona Traction* case, a general principle of restraint and limitation on extraterritorial legislation is widely accepted, and it is recognized that no rule confers upon any state a preferential right to regulate a given class of matters or conduct.

All international-law rules concerning state extraterritorial prescriptive jurisdiction need not exist independently by invocation of the sovereignty principle. Sovereignty is an important topic in international law, but the relations of international law go beyond it-one such concern being to avoid a situation in which a legal person may be forced to perform conflicting or overlapping obligations owed to several states across borders. The international principle requiring a reasonable nexus for extraterritorial legislation alleviates this problem at least in part. The domestic canon of construction that a legislature is presumed not to intend extraterritorial effect (applied in case of doubt) serves the same end.

In sum, although much commentary explains blocking law as a response to foreign extraterritorial application infringing another state's sovereignty-and there are indeed cases of extraterritorial jurisdiction so infringing-the formula "infringement of another state's sovereignty" cannot explain all cases of blocking legislation.

4.4. The International-Law Rationale of Blocking Law

The international-law impetus behind blocking law is rooted in the character of international law itself. On one hand, the rules allocating and bounding state prescriptive jurisdiction remain unclear. Modern international law requires that domestic legislation

with extraterritorial effect have a sufficient connection with foreign persons, conduct, or matters; on this basis rest the territorial principle, the active and passive personality principles, universal jurisdiction, and the still-contested effects doctrine and protective principle [57]. The fundamental aim of allocating prescriptive jurisdiction among states is to avoid interstate conflict, but this has in fact been overtaken by the practice of modern states expanding extraterritorial jurisdiction.

Where a state's extraterritorial legislation cannot be justified by these international-law rules, it assuredly violates international law. Affected states often protest in the language of "sovereignty violated." The question, however, is: what is the international-law import of state extraterritorial prescriptive jurisdiction? Is it merely a technical norm positively delimiting the field of a state's extraterritorial legislation, or does it furnish a justification for extraterritorial legislation that infringes another state's sovereignty?

In fact, no proposition yet equates a state's legislation violating the international law of extraterritorial prescriptive jurisdiction with an infringement of another state's sovereignty. On one hand, the concept of prescriptive jurisdiction overlaps with that of sovereignty, but the purpose of international law is not limited to protecting sovereignty; a state may well breach international law without touching another's sovereignty. Moreover, the international-law rules on jurisdiction have themselves become quite broad through the doctrinal and practical development of the effects doctrine and the protective principle. In state practice, a state often alleges that another's extraterritorial legislation violates international law, while "infringement of sovereignty" is frequently no more than a declaratory slogan.

On the other hand, the prescribing state cannot effectively enforce its extraterritorial norm in foreign territory. First, extraterritorial legislation is not, in its nature, equivalent to the cross-border extension of sovereign power, and therefore does not substantively infringe another state's sovereignty. Even where the rule-effect of a given extraterritorial law transcends the prescribing state's territorial boundary, its sovereign validity remains territorial; the extraterritorial law has no coercive effect abroad. The affected state is under no obligation to comply with the foreign law applied extraterritorially, nor compelled to execute the foreign decision. Of course, a state may freely choose to apply the foreign extraterritorial law or recognize the foreign judgment-but this in fact manifests its internal sovereignty, since it is then giving effect to the autonomy principle in conflict of laws.

Second, the "chilling effect" produced by extraterritorial legislation does not amount to an infringement of sovereignty; it is an inherent phenomenon in transnational legal order. Although the prescribing state lacks enforcement power abroad, such chilling effect may still constrain the affected state's freedom to shape its own socio-economic order, thereby impairing its internal sovereignty. Only when a legal person voluntarily places itself under the foreign legislator's ultimate authority-e.g., by doing business across borders or incorporating a subsidiary abroad-does it bear the risk of being covered by that state's extraterritorial legislation. A foreign enterprise's voluntary entry into U.S. capital markets, access to the dollar clearing system, or sale of goods to U.S. consumers may itself be viewed as acceptance of U.S. regulatory rules by way of "consent to regulation" through conduct.

Finally, although extraterritorial legislation does not per se infringe sovereignty, where it lacks the sufficient nexus required by international law it may still violate international law; meanwhile, the phenomenon of hegemonic states pushing extraterritorial norms through economic and political pressure is indeed a proper concern, but it should be met through international-law compliance analysis and instruments such as blocking legislation, not through the claim of violated sovereignty.

4.5. Blocking Law under the State Sovereign Order

On one hand, at the level of a state's internal sovereignty, blocking law serves to obstruct the application of foreign law within the state. Since the exercise of sovereign power presupposes supreme authority and ultimate power within territorial bounds, sovereign power can operate only within the law's scope of sovereign validity.

Extraterritorial legislation merely extends the law's scope of application; its scope of sovereign validity remains territorial. Therefore, extraterritorial legislation represents only the domestic state's exercise of power directed at foreign facts, and does not disturb another state's sovereignty. This conclusion holds even where the blocked law violates generally accepted international principles on extraterritorial legislation, for those principles aim at interstate coordination, not at protecting sovereignty. Since blocking statutes chiefly maintain the international principles of extraterritorial legislation by restricting the conflict-rules' reference to the blocked foreign law, their existence is justified without invoking the sovereignty principle.

On the other hand, at the international level of external sovereignty, a state's blocking law functions to implement international law. To block sanctions that violate the extraterritoriality principle is to discharge an international obligation by domestic means. In addition, blocking law mitigates the multiple-regulatory-conflict faced by the state's own subjects, reducing their compliance costs of owing inconsistent obligations to several states at once.

5. The Domestic-Law Rationale of Blocking Law: Private-Law Order and Corrective Realignment

5.1. The Private-Law Order under the Public/Private Law Dichotomy

The division between public law and private law started in ancient Rome, and was later adopted by civil-law states to build legal systems. Traditionally, public law targets state regulation and governs the vertical relationship between the state and private individuals, while private law governs horizontal relations between equal private persons and takes private autonomy as its core value. From the domestic perspective of civil-law norms, private autonomy and freedom of contract are the core values of commodity economy, public law and private law are clearly distinct, each regulating social relations in its own field, and acting as the logical starting point for legal system construction.

The public-private division developed from a simple conceptual tool into the logical foundation of the legal system. At first, it was a conceptual tool in Roman law to distinguish legally protected interests: public law served public interests involving religious affairs and the overall affairs of the Roman state, while private law served private interests and regulated private relations among Roman citizens [58]. This division was initially value-neutral and only divided legal relations. But with the development of Roman commodity economy and changes to the imperial structure, private law gradually became the focus of legal research.

Public law once rose above private law. In the medieval period, affected by canon law and the disappearance of commodity economy, all social relations were included in the scope of public law. After centralized states formed in the 16th century, public law gained political and systematic significance. Driven by the developed commodity economy in the mid and late 18th century, civil society separated from the sovereign state in civil law, which gave birth to the modern division of public and private law. Public law took on the legal task of protecting private rights and restricting public power, and public and private law officially became opposing legal concepts.

The opposition between public and private law directly leads to the separation of public law methods and private law methods. Public law constructs its normative logic through the "command-obedience" model, and regulates legal relations with state interests as the highest value. When private individuals are involved, a vertical top-down relationship is formed between public norms and private parties. On the one hand, the "command-obedience" model of public law comes from the institutional arrangement of state power, which essentially reflects the operation mode of legal-rational authority [59]. Kelsen's normative hierarchy theory further built a pyramidal validity system for public law, which is a vertical network from the constitution down to specific administrative rules. On the other hand, public law norms take protecting state interests and public interests as their value orientation, so when dealing with relations involving private

subjects, public law imposes unilateral and asymmetric obligations as a public law method, and is supported by public law sanctions for breaches.

Private law takes free will as its highest value, freedom of contract as its methodological basis, and regulates relations among equal private subjects. After civil society was separated from the political state at the legal level, private transactional relations got rid of the vertical hierarchical structure and unilateral domination of public law relations. Based on equality of private parties, no private subject can impose its will on another, and interaction norms between subjects must be formed through consent. The French Civil Code stipulates that a contract between parties has the force of law between them, which fully reflects that private law norms elevate party consent to the legal normative level. Contemporary private law has systemic self-referentiality and closure. On the one hand, contract law, as part of private law, clarifies rules for contract negotiation, conclusion, performance and the legal consequences of breach, interprets external rules with its own terminology and adjusts contract matters according to its own operation logic. On the other hand, contract as a legal act establishes an independent communication system among private subjects; parties usually exclude external regulatory intervention in contract matters, and contract law evaluates contracts according to strict relevance standards. When this independent and closed private law system operates fully, the normative standards of private and public regulation are strictly distinguished, and private law is called "autonomous law".

5.2. The Infiltration of Public Law into Private Law at the Domestic Level

In the process of legal modernization, with state public power increasingly entering the private sphere, private law has shown a "publicization" trend, forming an interlocking public-private legal order that has shifted from initial macro division to micro orientation. The infiltration of public law into private relations reflects the dynamic balance of power and rights in the private law order; its essence is state power intervening in private transactions to coordinate state, social and private interests.

Public law infiltrates private relations in six main forms: first, public law rules directly embedded in private law, such as non-excludable mandatory norms in the Civil Code; second, administrative power setting pre or post rules for private relations, such as registration requirements for real right transfer; third, intervening in the validity of private legal acts through judicial procedures; fourth, public interest litigation, where public authority subjects directly intervene as claimants; fifth, economic law rules infiltrating the market competition field, such as anti-monopoly prohibitions on abusing dominant market positions; sixth, intervention from social protection legislation, such as labor law mandatory rules on minimum wage and maximum working hours.

The common feature of these infiltrations is that public law maintains necessary restraint when entering the private law order. Private law takes party autonomy as the core principle, and its closed autonomous structure resists public law intrusion. Therefore, public law regulation must adhere to the principles of proportionality and subsidiarity on the premise of respecting the spirit of private law, and only intervene when a pure private law order causes systemic risks or damages the interests of the state, society or third parties.

5.3. The Infiltration of Foreign Private Relations under Extraterritorial Sanctions Law

Positive Conflict of Laws and the Alienation of the Private-Law Order: The extraterritorial application of sanctions law in fact creates a positive conflict of laws at the substantive level in other states' domestic law. A positive conflict of laws occurs where multiple legal norms compete to apply to the same facts and respectively impose contradictory demands to act or refrain, or where a permissive norm is substantively negated by another norm.

When a state's sanctions law crosses its own border and directly regulates foreign private subjects, its extraterritorial application alienates the private-law order of other states:

First, sanctions law adjusts foreign private subjects through direct public-law means. Taking the U.S. International Emergency Economic Powers Act (IEEPA) as an example, where a foreign person's commercial activity abroad violates the Act, the entity may face a fine of USD 250,000 plus twice the value of the relevant economic activity, and its managers may face imprisonment of up to 20 years [60]. In 2019, the U.S. government imposed penalties totaling USD 1.289 billion in 26 IEEPA violation cases. Therefore, if the blocking law's penalty standard is relatively light, private subjects may choose to keep complying with U.S. law so as to avoid the heavier sanction.

Second, the effect of sanctions law is reinforced through soft auxiliary devices such as compliance recommendations. In 2019, the U.S. Treasury Department's Office of Foreign Assets Control (OFAC) issued the "A Framework for OFAC Compliance Commitments," providing systematic advice for corporate compliance with the U.S. sanctions system [61]. Although this framework is not legally binding, enterprises treat it as an important guide for managing their operations. At the same time, some enterprises insert "sanctions clauses" into commercial contracts involving U.S. economic sanctions, turning compliance with U.S. law from a legal obligation into a contractual one.

By piercing traditional sovereign boundaries and applying to commercial transactions within other states' jurisdiction, economic sanctions strike at foreign private-law orders to produce effect; their essence is the state reshaping foreign private-law order through law.

Piercing of Property Rights, Corporate Governance, and Freedom of Contract. The extraterritorial application of sanctions law strikes at the security of property in foreign private-law orders. A state's private-law order takes absoluteness of ownership as a core principle [62]. Through public-law measures such as asset freezing and confiscation, sanctions law directly intervenes in private property rights. For instance, EU Regulation No. 269/2014 requires member states to freeze the assets of Russian nationals in the EU; [63] likewise, OFAC, under the Global Magnitsky Act, froze the overseas accounts of Venezuelan government-affiliated enterprises [64]. The essence of such sanctions is the direct intervention of public power into another state's property order. Moreover, the extraterritorial application of foreign sanctions law directly affects the governance structure of foreign companies and other entities. A state's company law follows the principle of private autonomy, allowing shareholders freely to design the company's governance structure. The extraterritorial application of another state's sanctions law directly forces a domestic enterprise to restructure its organizational framework. For example, in 2023, Shell was compelled by U.S.–EU Russia sanctions to exit the Sakhalin-2 project, and its subsidiary equity was forcibly transferred by the Russian government; similarly, Huawei, barred from chip sales under the U.S. Export Administration Regulations, was forced to split its HiSilicon semiconductor department to evade the technology blockade. Foreign sanctions law, in the form of public-law norms, coerces domestic companies into altering equity structures and restricting commercial decisions, compressing the space for corporate autonomy.

The extraterritorial application of sanctions law strikes at freedom of contract in foreign private-law orders. In the contractual sphere, economic sanctions directly subvert the principle of freedom of contract. First, economic sanctions directly affect contract validity-parties, compelled by sanctions, insert "sanctions exit clauses" providing that the contract automatically terminates once either party is listed, reducing private consent to an appendage of public-law policy. Second, sanctions directly create obstacles to performance; for instance, IEEPA authorizes the President to block the assets of specified state entities, directly causing contracts involving sanctioned persons to fall into factual impossibility and triggering massive reliance on UNIDROIT force majeure clauses [65]. Finally, economic sanctions alienate specific institutions of foreign contract law-the traditional force majeure clause is transformed from a risk-allocation mechanism into a referral clause for public-law intervention in private law.

5.4. The Adjustive Method of Blocking Law at the Domestic Level: Corrective Realignment

The relation between blocking law and the blocked law is sometimes viewed as a direct conflict between internationally mandatory norms [66]. This view obscures the substance of blocking law. The normative relation between blocking law and the blocked law appears on the surface as a conflict of mandatory norms at the level of international public law, but its essence is a corrective realignment of the domestic private-law order.

First, in the initial state before the foreign sanctions law is applied extraterritorially, the transaction between the sanctioned party and the addressee of the sanctions law should fall under the forum state's legal order. Even where the transaction has foreign elements, it should follow the framework of party-autonomy limits and public-order reservation in the forum state's law of foreign-related civil relations. The public-law norms touching the transaction include only such privatized public norms as public morality, and such administrative-law norms as export-control rules directly bearing on transactional legality; the evaluation of the specific transaction should be based on the forum's private-law order, and then ask whether a domestic public-law restriction exists. Thus, before the extraterritorial application of foreign sanctions law, the forum's private and public law is the sole legal basis for evaluating the transaction's legality.

Second, after the foreign sanctions law is enacted, the alienated bipolarity of legal evaluation arises. Where the forum legal order has already given a legality evaluation to a specific transaction, that transaction is negatively evaluated by the foreign state through criminal or administrative penalties for violating the foreign sanctions law. The real legal state then is: the specific transaction is doubly evaluated by the domestic private-law order and the foreign public-law prohibition. This normative conflict is in substance the erosion of the domestic private-law order by foreign public law-domestic entities, to avoid penalties under the foreign sanctions law, follow it, and the property arrangements, corporate decisions, and contractual terms in the domestic private-law order are rewritten by external public-law policy.

Third, blocking law in the forum state should be seen as a corrective mechanism of the legal order. The domestic public-law prohibition on complying with the foreign blocked law, together with the private-law recourse right, jointly performs the function of blocking the undue extraterritorial application of foreign sanctions law [67]. This adjustive method formally produces a "domestic blocking law vs. foreign sanctions law" direct conflict, but in substance it is "the correction of the domestic private-law order by the domestic blocking law"-that is, returning the legal application of the specific transaction to the normal private-law order. Hence blocking law is not aimed at directly creating conflict to institute a new order; rather, it realigns the private-law order distorted by foreign sanctions law back to the pre-enactment initial state. In legal dogma, it should be characterized as a repair mechanism of the forum's internal legal order.

This requires further clarification of the normative attribute of blocking law: it does not substitute the blocked foreign public law by a direct substantive mandatory norm, but operates mainly through the conflict-of-laws path. Based on the principle of state autonomy in applying foreign law, blocking statutes work by amending the forum's conflict rules, excluding the reference to and application of the blocked foreign law, while also restricting recognition and enforcement of judgments rendered under that foreign law. Although blocking statutes may carry mandatory force on public-interest grounds, their core function still operates at the level of choice of law, not by substantively re-prescribing the rights and duties of the transacting parties. A state's freedom-under international-law constraints-whether and how to apply another state's domestic law means that blocking law, as between states, is in truth a conflict rule blocking foreign public law.

Upon application of the blocking statute, the reference to the blocked foreign law is removed from the relevant domestic conflict rules; this means that, apart from the blocked foreign public law, other foreign applicable-law rules may still apply. Similarly, the blocking statute amends the rules on recognition and enforcement of foreign judgments, expressly prohibiting recognition and enforcement of foreign judgments aimed at executing the blocked law. Precisely for this reason, although blocking law often wears

the appearance of "public law against public law," its internal structure is closer to: conflict-law amendment as the skeleton, with prohibition of compliance, reporting, exemption, and civil relief as auxiliary devices, so that the domestic private-law order is not pierced by foreign sanctions law.

An objection should also be addressed here: it is argued that blocking law is not pure conflict law, because it simultaneously provides reporting duties, non-compliance duties, clawback rights, exemption applications, and other substantive rights and obligations, and plainly carries a public-policy stance, unlike the neutrality of conflict norms. This critique is correct at the level of functional description-blocking law is indeed not neutral and does contain substantive obligations-but it conflates "the blocking statute as a whole" with "the core amendatory mechanism of blocking law." Reporting, exemption, and clawback are executory-layer tools; the conflict-law amendment is the structural pivot that makes the foreign public law "deemed not to exist" in the forum. In *Bank Melli Iran v. Telekom Deutschland*, what the CJEU meant by U.S. sanctions being deemed non-existent within the EU legal order was achieved by cutting the chain of choice of law and the chain of judgment enforcement, not by the court imposing a separate set of substitute substantive rules [68].

Thus the domestic-law blocking law can be distilled into three layers: first, it is a "non-application declaration" against the extraterritorial application of foreign public law, excluding reference through conflict rules; second, it is a "non-recognition declaration" against foreign judgments, shielding extraterritorial public-law effects through the rules on recognition and enforcement; third, it is "corrective protection" of private subjects, relieving the compliance rupture of domestic transactional relations distorted by foreign sanctions law through prohibition of compliance, clawback, and exemption. These three layers together constitute "corrective realignment": not turning foreign law into domestic law, nor turning public-law conflict into private-law freedom, but re-isolating the public-law coercion that has been diverted into private-law relations, so that contract, property, and corporate autonomy return within the usual boundaries of the forum's law.

6. Conclusion

The institutional history of blocking law shows that it is not a spontaneous "sovereign proclamation", but a realistic response to the escalating extraterritorial jurisdiction conflict. In competition law, it developed from a procedural blocking discovery tool into substantive countermeasures; in sanctions law, it was further institutionalized into a complete framework. Its evolutionary path shows that the more normalized extraterritorial application of law is, the more complete the corresponding countermeasure mechanism needs to be.

In terms of international law, the legitimacy of blocking law should not be summarized into a simple binary narrative. A more reasonable view is that modern international law has not established a clear system to resolve extraterritorial legislation conflicts. When extraterritorial legislation lacks sufficient connection and brings high costs, the affected country uses domestic legislation to refuse to recognize the effect of relevant foreign public law, which is essentially safeguarding the basic objectives of international law through domestic means. Blocking law is not only a tool for safeguarding national interests, but also an institutional manifestation of international law repairing order under a decentralized structure. It does not need to be always explained by violated sovereignty. What it really repairs is the consistency of legal evaluation within a country's territory.

In terms of domestic law, the impact of extraterritorial application of sanctions on the domestic private law order does not lie in the expansion of its norms, but in that it uses various means to force foreign private transactions to serve its own public policy, thus reshaping the operation logic of related systems. For this reason, blocking law is more appropriately positioned as correcting the domestic private law order distorted by foreign public law. Through various measures, it brings the evaluation of relevant transactions back to the normal legal and risk allocation framework of the country.

Of course, blocking law is not a "universal shield". Its effect is restricted by many factors, and it will also bring many costs. In practice, blocking law lacking matching mechanisms can hardly play a real role. The long-term limited application of the EU Blocking Regulation is a typical example because it is more of a bargaining chip than a daily tool.

Therefore, the more sustainable approach is the combination of "blocking law + diplomatic negotiation + multilateral mechanism". Use blocking law as a tool to stabilize domestic expectations when necessary, and solve the root of cross-border regulatory conflicts through other ways. For China, the role of blocking law should not be limited to countering US law. It should also improve related systems to make it a tool compatible with domestic application and private law.

The ultimate value of blocking law is not to create permanent confrontation, but to promote extraterritorial regulation back to the track of international rule of law. It is both a unilateral tool and an order repair mechanism. It denies the effect of foreign public law in the country and returns domestic private legal relations to domestic law. This dual structure of "denying foreign effect" and "restoring internal order" constitutes the core identity of blocking law.

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