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The "normative hierarchy theory" argues that states lose jurisdictional immunity when they violate human rights norms because the latter are hierarchically superior. This theory is built on false presumptions. State immunity, a limited exception to state jurisdiction, protects only a core of beneficial state autonomy. A better approach to resolving the human rights litigation problem is for the forum state, under a theory of collective state benefit, to curtail unnecessary state immunity privileges for human rights violations.

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The Westphalian concept of sovereignty, long considered a pillar of the international legal system, has been much criticized of late and even consigned to the dustbin of history by some. Although certain elements of the traditional concept remain important in current global circumstances, a new approach, whose central feature is power allocation analysis, would help policymakers weigh and balance various factors in reaching decisions on issues not resolved by the traditional concept of sovereignty.

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