


Brand on Access to Justice and Due Process

Ronald A. Brand, who is the Chancellor Mark A. Nordenberg University professor at the University of Pittsburgh School of Law, has posted Access-to-Justice Analysis on a Due Process Platform on SSRN. Here is the abstract: 

In their article, Forum Non Conveniens and The Enforcement of Foreign Judgments, Christopher Whytock and Cassandra Burke Robertson provide a wonderful ride through the landscape of the law of both forum non convenience and judgments recognition and enforcement. They explain doctrinal development and current case law clearly and efficiently, in a manner that educates, but does not overburden, the reader. Based upon that explanation, they then provide an analysis of both areas of the law and offer suggestions for change. Those suggestions, they tell us, are necessary to close the “transnational access-to-justice gap” that results from apparent differences between rules applied in a forum non conveniens analysis and rules applied to the question of recognition of foreign judgments. While the analysis is good, it ignores core differences among legal systems, particularly the due process core of U.S. jurisdictional jurisprudence and the “access to justice” approach to jurisdiction, particularly of European civil law systems (from which most other civil law systems draw their origins). This distinction involves a fundamental difference, with U.S. doctrine focusing on the rights of the defendant and the civil law doctrine focusing on the rights of the plaintiff. So long as this difference exists, it will not be possible to wrap the process of declining jurisdiction and the process of recognition of foreign judgments in the same cloak of doctrine in order to provide common or connected analysis.

The paper is forthcoming in the *Columbia Law Review Sidebar*.