

Domestic Courts and Global Governance

Christopher Whytock (Duke University) has posted a very interesting article on SSRN, entitled Domestic Courts and Global Governance. Here's the abstract:

This paper proposes a concept of “transnational judicial governance” that draws attention to the important but widely neglected role of domestic courts in the governance of transnational relations, makes explicit the connections between private international law and global governance, and emphasizes the domestic legal and institutional foundations of transnational activity. Because legal scholars have done little positive theoretical or systematic empirical work on judicial decisionmaking in transnational disputes, and because international relations scholars – even those interested in global governance – generally have paid little attention to domestic courts, we have little knowledge about how domestic courts actually behave as global governors.

This paper, and the broader project on domestic courts and global governance of which it is a part, seeks to help fill that gap. I first present the concept of transnational judicial governance, and clarify its relationship to the concepts of transgovernmental networks and the legalization of world politics. Second, taking an interdisciplinary approach, I situate the concept in relation to private international law scholarship, and international relations scholarship on global governance, international political economy, sovereignty, and the judicialization of politics. Third, I draw on the judicial decisionmaking literature to develop a positive theory of transnational judicial governance. I highlight a key dimension of variation in transnational judicial governance decisionmaking: assertion of domestic governance authority versus deference to foreign governance authority. Then, treating judges as boundedly rational actors, I argue that this variation can be largely explained by the heuristics used by judges to make their decisions. Fourth, I explain the overall research design for the project. I conclude by discussing the broader implications of transnational judicial governance and identifying some of the important empirical and normative questions raised by the role of domestic courts in global governance that can guide future research. Public international law scholars and international relations scholars are increasingly collaborating. This paper is the first in a

series of papers aimed at bringing together private international law and international relations, two disciplines which have for the most part remained separate, but which have the potential for substantial mutual gains.

Comment: The article does not deal with private international law in substantive detail (i.e. it simply provides definitions of phrases such as "choice of forum", "recognition and enforcement", and so on), but that is arguably not within its scope. Regardless, it is certainly a fascinating insight into the potential connections between the conflict of laws and the political sciences.