

Childress on the Alien Tort Statute and the Next Wave of International Litigation

Donald Earl Childress III (Pepperdine University School of Law) has posted *The Alien Tort Statute, Federalism, and the Next Wave of International Law Litigation* on SSRN.

This Article examines the question of what role international law should play in domestic courts through the lens of the Alien Tort Statute (“ATS”) and points to the next battlegrounds for transnational litigation under state and foreign law. The Article provides clarity as to why federal appellate courts have limited ATS cases. In light of federal retrenchment, this Article uniquely explores the potential for a new wave of international law litigation under state and foreign law and the potential for that wave to reach state courts. The Article analyzes forthcoming issues of federalism, choice of law, preemption, and due process that will arise as part of the next wave of international law litigation. After critically evaluating these areas, the Article provides a scholarly agenda for further study related to the question of international law in domestic courts. The Article seeks to apply the rich academic literature produced to date by such eminent scholars as Curtis Bradley, Jack Goldsmith, Harold Koh, and others to this new wave of transnational litigation. In so doing, it creates a new legal and normative framework for further studies regarding the role of international law in U.S. courts. The Article concludes by proposing a congressional fix that uses the Class Action Fairness Act of 2005 as a model for alleviating federalism concerns that exist when international law cases are brought in domestic courts.

The paper is forthcoming in the *Georgetown Law Journal*.