

Coyle on Judgments Reciprocity

John Coyle (University of North Carolina School of Law) has posted Rethinking Judgments Reciprocity on SSRN.

Scholars have long debated the criteria that U.S. courts should use when deciding whether to recognize and enforce money judgments rendered by foreign courts. One of the proposed criteria — reciprocity — would require proof that the rendering court would enforce a U.S. judgment if the situation were reversed. Advocates of reciprocity claim that it is necessary to create incentives for foreign states to recognize and enforce U.S. judgments. Critics argue that a policy of judgments reciprocity is both costly to administer and highly unlikely to bring about any change in foreign state practice.

This Article makes two original contributions to this debate. First, it draws on historical examples of successful reciprocal legislation to construct an analytical framework for determining the conditions under which such legislation is most likely to change foreign state behavior. These examples show that that a particular state's response to such legislation will in many cases be shaped by the reaction of interest groups within that state. Second, the Article seeks to evaluate how interest groups within specific foreign states — those that currently refuse to enforce U.S. judgments — would be likely to react to a new U.S. policy of judgments reciprocity. Drawing upon a hand-collected dataset of reported cases and federal complaints, it argues that judgment creditors in many of these states are likely to suffer few, if any, economic losses as a result of such a policy. In the absence of such losses, the Article concludes that a new U.S. policy of judgments reciprocity is unlikely to prompt foreign states to change their laws and, consequently, is unlikely to achieve its goal of making it easier to enforce U.S. judgments overseas.