

Folkman on Comity

Theodore J Folkman (Murphy & King, P.C.) has posted Two Modes of Comity on SSRN.

Some have suggested that US courts should not deny recognition and enforcement to foreign judgments on grounds of fraud or a denial of due process in the particular foreign proceeding, as long as the foreign judiciary is systematically adequate. This paper, based on remarks given at the University of Pennsylvania Journal of International Law's Fall 2012 Symposium, evaluates that suggestion by considering the various kinds of comity that US courts accord to one another, in particular, the comity required by the Full Faith and Credit Clause and the comity a federal court gives to a state court in habeas corpus cases. It outlines the ways in which each of these two models of comity can be a model for US treatment of foreign court judgments, and it considers recent decisions in which US courts have shown a tendency to use a more deferential model of comity when considering whether to recognize foreign judgments.