

General Principles of Procedural Law and Procedural Jus Cogens

Professor S.I. Strong has just posted a new paper on international procedural law. From the abstract:

General principles of law have long been central to the practice and scholarship of both public and private international law. However, the vast majority of commentary focuses on substantive rather than procedural concerns. This Article reverses that trend through a unique and innovative analysis that provides judges, practitioners and academics from around the world with a new perspective on international procedural law.

The Article begins by considering how general principles of procedural law (international due process) are developed under both contemporary and classic models and evaluates the propriety of relying on materials generated from international arbitration when seeking to identify the nature, scope and content of general principles of procedural law. The analysis adopts both a forward-looking, jurisprudential perspective as well as a backward-looking, content-based one and compares sources and standards generated by international arbitration to those derived from other fields, including transnational litigation, international human rights and the rule of law.

The Article then tackles the novel question of whether general principles of procedural law can be used to develop a procedural form of jus cogens (peremptory norms). Although commentators have hinted at the possible existence of a procedural aspect of jus cogens, no one has yet focused on that precise issue. However, recent events, including those at the International Court of Justice and in various domestic settings, have demonstrated the vital importance of this inquiry.

The Article concludes by considering future developments in international procedural law and identifying the various ways that both international and domestic courts can rely on and apply the principles discussed herein. In so doing, this analysis provides significant practical and theoretical assistance to judges, academics and practitioners in the United States and abroad and offers

ground-breaking insights into the nature of international procedural rights.