

Book: Intolerant Justice: Conflict and Cooperation on Transnational Litigation by Asif Efrat

Summary provided by the author, Asif Efrat

In a globalized world, legal cases that come before domestic courts are often transnational, that is, they involve foreign elements. For example, the case before the court may revolve around events, activities, or situations that occurred in a foreign country, or the case may involve foreign parties or the application of foreign law. Such cases typically present an overlap between the legal authorities of two countries. To handle a transnational case cooperatively, one legal system must cede its authority over the case, in full or in part, to a foreign legal system. This effectively means that a local citizen would be subjected to the laws or jurisdiction of a foreign legal authority, and that raises a host of questions and concerns: Does the foreign legal system abide by the rule of law? Does it guarantee human rights? Will the foreign court grant our citizen the due process and fair treatment they would have enjoyed at home?

The newly published book *Intolerant Justice: Conflict and Cooperation on Transnational Litigation* (Oxford University Press) argues that the human disposition of *ethnocentrism* – the tendency to divide the world into superior in-groups and inferior out-groups – would often lead policymakers to answer these questions negatively. The ethnocentric, who fears anything foreign, will often view the foreign legal system as falling below the home country's standards and, therefore, as unfair or even dangerous. Understandably, such a view would make cooperation more difficult to establish. It would be harder to relinquish the jurisdiction over legal cases to a foreign system if the latter is seen as unfair; extraditing an alleged offender to stand trial abroad would seem unjust; and the local enforcement of foreign judgements could be perceived as an affront to legal sovereignty that contravenes fundamental norms.

This book examines who expresses such ethnocentric views and how they frame them; and, on the other hand, who seeks to dispel these concerns and establish cooperation between legal systems. In other words, the domestic political debate

over transnational litigation stands at the center of this book.

In this debate, the book shows, some domestic actors are particularly likely to oppose cooperation on ethnocentric grounds: the government's political opponents may portray the government's willingness to cooperate as a dangerous surrender to a foreign legal system, which undermines local values and threatens the home country's citizens; NGOs concerned for human rights might fear the human-rights consequences of cooperation with a foreign legal system; and lawyers, steeped in local rules and procedures, may take pride in their legal system and reject foreign rules and procedures as wrong or inferior.

By contrast, actors within the state apparatus typically view cooperation on litigation more favorably. Jurists who belong to the state – such as judges, prosecutors, and the justice-ministry bureaucracy – may support cooperation out of a concern for reciprocity or based on the principled belief that offenders should not escape responsibility by crossing national borders. The ministry of foreign affairs and the ministry of defense may similarly support cooperation on litigation that could yield diplomatic or security benefits. These proponents of cooperation typically argue that legal differences among countries should be respected or that adequate safeguards can guarantee fair treatment by foreign legal authorities. In some cases, these arguments prevail and cooperation on litigation is established; in other cases, the ethnocentric sentiments end up weakening or scuttling the cooperative efforts.

These political controversies are examined through a set of rich case studies, including the Congressional debate over the criminal prosecution of U.S. troops in NATO countries, the British concerns over extradition to the United States and EU members, the dilemma of extradition to China, the wariness toward U.S. civil judgments in European courts, the U.S.-British divide over libel cases, and the concern about returning abducted children to countries with a questionable human rights record.

Overall, this book offers a useful analytical framework for thinking about the tensions arising from transnational litigation and conflict of laws. This book draws our attention to the political arena, where litigation-related statutes and treaties are crafted, oftentimes against fierce resistance. Yet the insights offered here may also be used for analyzing judicial attitudes and decisions in transnational cases. This book will be of interest to anyone seeking to understand the challenges of

establishing cooperation among legal systems.