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United States. Court of International Trade

The Rise of Investor-State Arbitration Taylor St John, 2018-03-01 Today, investor-state arbitration embodies the worst fears of those concerned about runaway globalization - a far cry from its framers' intentions. Why did governments create a special legal system in which foreign investors can bring cases directly against states? This book takes readers through the key decisions that created investor-state arbitration, drawing on internal documents from several governments and extensive interviews to illustrate the politics behind this new legal system. The corporations and law firms that dominate investor-state arbitration today were not present at its creation. In fact, there was almost no lobbying from investors. Nor did powerful states have a strong preference for it. Nor was it created because there was evidence that it facilitates investment - there was no such evidence. International officials with peacebuilding and development aims drove the rise of investor-state arbitration. This book puts forward a new historical institutionalist explanation to illuminate how the actions of these officials kicked off a process of gradual institutional development. While these officials anticipated many developments, including an enormous caseload from investment treaties, over time this institutional framework they created has been put to new purposes by different actors. Institutions do not determine the purposes to which they may be put, and this book's analysis illustrates how unintended consequences emerge and why institutions persist regardless.

The Oxford Handbook of International Arbitration Thomas Schultz, Federico Ortino, 2020-09-11 This Handbook brings together many of the key scholars and leading practitioners in international arbitration, to present and examine cutting-edge knowledge in the field. Innovative in its breadth of coverage, chapter-topics range from the practicalities of how arbitration works, to big picture discussions of the actors involved and the values that underpin it. The book includes critical analysis of some of international arbitrations most controversial aspects, whilst providing a nuanced account overall that allows readers to draw their own informed conclusions. The book is divided into six parts, after an introduction discussing the formation of knowledge in the field. Part I provides an overview of the key legal notions needed to understand how international arbitration technically works, such as the relation between arbitration and law, the power of arbitral tribunals to make decisions, the appointment of arbitrators, and the role of public policy. Part II focuses on key actors in international arbitration, such as arbitrators, parties choosing arbitrators, and civil society. Part III examines the central values at stake in the field, including efficiency, legal certainty, and constitutional ideals. Part IV discusses intellectual paradigms structuring the thinking in and about international arbitration, such as the idea of autonomous transnational legal orders and conflicts of law. Part V presents the empirical evidence we currently have about the operations and effects of both commercial and investment arbitration. Finally, Part VI provides different disciplinary perspectives on international arbitration, including historical, sociological, literary, economic, and psychological accounts.

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