

Proportionality and deference in investor-state arbitration : balancing investment protection and regulatory autonomy

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Abstrak

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ABSTRACT

In this study, Caroline Henckels examines how investment tribunals have balanced the competing interests of host states and foreign investors in determining state liability in disputes concerning the exercise of public power. Analyzing the concepts of proportionality and deference in investment tribunals' decision-making in comparative perspective, the book proposes a new methodology for investment tribunals to adopt in regulatory disputes, which combines proportionality analysis with an institutionally sensitive approach to the standard of review. Henckels argues that adopting a modified form of proportionality analysis would provide a means for tribunals to decide cases in a more consistent and coherent manner leading to greater certainty for both states and investors, and that affording due deference to host states in the determination of liability would address the concern that the decisions of investment tribunals unjustifiably impact on the regulatory autonomy of states.