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Domestic Judicial Design by International Human Rights Courts

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The European and inter-American human rights courts are increasingly moving beyond their original mandates and making determinations about the design of national courts. They have judicialized new areas of the law, empowered national courts over other branches of government, and encouraged changes in judicial administration. By empowering domestic judiciaries, these regional human rights courts have also (intentionally or not) empowered themselves.

The Rule of Law Without the Rule of Lawyers? Why Investment Arbitrators Are from Mars, Trade Adjudicators from Venus

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Notwithstanding regime convergence, trade and investment disputes continue to be decided by two strikingly different groups of individuals. The differences between these groups, and the design features that have led to this differentiation, are here examined empirically. The deciders are indeed “faceless diplomats” in the WTO and “elite lawyers” in ICSID. The differences in adjudicators, in turn, have influenced not only the functioning of the trade and investment regimes, but also perceptions of them. Without the rule of private sector lawyers, the WTO has managed to achieve some rule of law; by contrast, investor-state dispute settlement is under fire for rule-of-law deficiencies because of repeated resort to the same highly specialized lawyers.

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