

BOOK ANNOTATIONS

Child Marriage, Rights and Choice: Rethinking Agency in International Human Rights. By Hoko Horii. New York, NY: Routledge, 2022. Pp. xii, 180. \$42.36 (paperback).

REVIEWED BY ELIZABETH HERMAN

In *Child Marriage, Rights and Choice*, Hoko Horii confronts and attempts to reconcile two widely accepted human rights norms: that child marriage should not be permitted under any circumstances and that people should have agency in their own lives. Horii outlines the two main questions of her book as (1) why children marry and (2) how child marriage shapes and is addressed within the normative frameworks affecting it. Her main goal is to deconstruct the child marriage framework and reconstruct it in a more relevant, efficient, and ethical manner.

Horii begins her analysis by looking at the international structures around child marriage. She then moves on to a case study of Indonesian law, addressing the gap between national-level lawmaking and the implementation of that law in the province of West Java. She also interviews individuals who experienced child marriage, their parents, and other community members. In framing child marriage as a construct created by international legal actors, Horii outlines how the experience of childhood varies across cultures and how international paternalism has forbidden marriages between mid-teenage children in cultures in which such unions are acceptable.

Horii's main argument is that anti-child-marriage campaigns' framing of child marriage as inherently wrong is flawed for two interrelated reasons. First, because "child marriage" itself is a construct created by international legal actors rather than communities themselves, the approaches taken by these actors fail to fully account for the phenomenon's sociocultural nuances. Second, because the framing created by international legal actors relies on a false dichotomy between "tradition" and "modernity," bans actually limit children's ability to make their own choices, as the choice to inhabit a cultural norm can be an act of agency in and of itself. Through her work, Horii provides an alternative and persuasive perspective to the typical view on child marriage often propagated by civil society groups and international law.

Horii notes that her findings will benefit the organizations and international legal actors working in the space of child marriage. Ultimately, however, some of these groups may not be receptive to her arguments because they often do not distinguish between different types of child marriage (e.g., marriage between a very young child and an older teen in contrast to that between two older teens). While her arguments in favor of a more nuanced understanding of child marriage are strong, her reluctance to address the harms of child marriage, which are often the focus of advocacy groups, may make it difficult for those groups to see the benefits of Horii's approach. While her push for a broader conception of agency is compelling, many, both in advocacy groups and in the general public, might not see that conception as true agency, particularly when familial and community pressure are involved.

The international community, including both inter-governmental actors like the United Nations (UN) and non-governmental organizations (NGOs), largely supports outright bans on child marriage, deeming it an outdated cultural practice that limits children's opportunities for advancement. Legal instruments, including the Convention on the Rights of the Child (CRC) and the Convention on the Elimination of Discrimination Against Women (CEDAW), contain provisions limiting marriage to individuals above age limits set by states. The committees for those conventions have, however, recommended exceptions if a child seeking to marry is at least sixteen years old and a judge approves the union based on the child's maturity, not cultural or traditional expectations. Accordingly, international actors like the UN Children's Fund (UNICEF) and Girls Not Brides tend to frame children as incapable of consenting to marriage. Horii argues that these conceptions of children and marriage deny children their autonomy and represent a Western, monolithic view of child marriage that ignores historical developments and cultural variations in the understanding and definition of childhood.

An overarching piece of Horii's book is her argument for a broader definition of agency, namely that international legal instruments depict an incomplete understanding of agency. CEDAW and CRC, for example, focus on children having agency uninfluenced by culture or tradition. But a more expansive definition of agency would include acts taken willingly that inhabit cultural or traditional norms and consider those acts

to be acts of free will. Horii argues for this broader understanding of agency as a means of creating a more nuanced international legal order surrounding child marriage.

Horii's answer to the first question posed, asking why children marry, lies primarily in societal norms surrounding the relationship between child marriage, adolescent sexual behavior, and teen pregnancy, although she also addresses cases of "love marriage." In Indonesia, the most common reasons that children get married are parents' fear, and the reality, that teens will have sex and become pregnant out of wedlock. Horii argues that in Indonesian society, a more communal understanding of honor and respect of one's family might prompt children of their own free will to choose to get married. The picture painted here is complex: in some areas, sex before marriage is simultaneously taboo and begrudgingly accepted, while in others, the taboo remains strong. Regardless, shame and lack of knowledge around sex are rampant.

Regarding attitudes toward sex, Horii depicts child marriage not as an independent problem but as a solution to a different problem: a lack of adequate reproductive health access and education. Horii argues that this reasoning behind child marriage contrasts the typical international law understanding that child marriage is solely a harmful traditional practice. While Horii clearly and effectively argues that the practice itself cannot be boiled down to tradition alone, cultural attitudes still clearly play a prominent role in child marriage. But Horii's push to reframe actions taken in accordance with cultural norms as acts of agency sometimes casts aside the possibility that coercion and lack of education might make the inhabitation of those norms involuntary. More directly addressing that possibility might help readers and advocates be more receptive to her pushback to the generally accepted role of tradition.

In response to her second question, which addresses frameworks, Horii sets out various frameworks in which child marriage operates in contrast to the international law framework of child marriage as a harmful traditional practice. Horii argues that the rigidity of the international view violates children's agency rather than protecting them from some evil. A study of international influence on the Indonesian legal framework strongly supports this assertion.

Horii's investigation of the Indonesian framework effectively makes the case for a more nuanced approach to child

marriage restriction by illuminating the importance of child marriage in bestowing full legal rights and legitimacy to children born to teen parents. Individuals in Indonesia can choose to get religiously married, secularly married, or both. Because many rights pass to children patrilineally in Indonesia, the legal registration of marriages between teens is essential not only to their own protection (e.g., getting a divorce is far easier under secular law than under religious law), but also to protection of any children they have. But because of laws against teen marriage influenced by instruments of international law, many teens who have children out of wedlock, especially in Muslim-majority rural areas, only get religiously married, cutting them and their children off from the legal protections provided by marriage. Judges in Indonesia can and regularly do grant exemptions from the laws against child marriage, thereby granting teens and their babies important legal rights such as inheritance, but many families are unaware of those exemptions, leaving teens and their children unprotected. This case study makes clear one instance in which more flexible laws permitting marriage between two teens without restriction might be a better system both for parents and for children. It also supports Horii's arguments that different types of child marriage should be treated differently and that in legally pluralistic societies the typical approach to child marriage is ineffective.

Horii, however, expands her definition of agency even further. She argues that children's inevitable dependence on their parents means that, if children want to act in a certain way, in order to gain parental and community approval, it is difficult to see those actions as being under force. Horii frames this argument cautiously, noting the boundary between empowerment and protection is a thin line, but she still advocates for considering relational and situational elements when contemplating agency. This expansion is one that traditional advocates against child marriage, namely international actors, might be unwilling to accept, as parental and community pressure can be the main motivation behind certain child marriages that the international community is less likely to accept, such as those between children and adults. While, in many spaces, acceptance of different cultural norms is increasingly encouraged, international actors are unlikely to accept a child marriage influenced by parental pressure or community norms because passive acquiescence to norms rather than active decision-making may

seem to many as the epitome of a decision lacking in agency. The difficulty in discerning which marriages are active choices to inhabit norms made by fully-informed older teens and which are choices motivated by a reluctant acceptance of the status quo or desperation will make advocates unwilling to accept acquiescence as an act of agency.

At the end of her book, Horii suggests new practical framings for child marriage under international law that advocates might embrace more readily than some of her more transformational arguments about the child marriage framework. These framings include an empowerment approach encouraging children to actively participate in decision-making, resilience-based support for married children, and a community-based approach engaging community leaders, parents, and children. These all seem like elements that international legal organizations might be willing to incorporate into existing stricter limitations on child marriage, the result of which might still be something Horii would reject.

The most compelling pieces of this book are the case studies of and interviews with individuals who experienced child marriage and young pregnancy, or worked with individuals who did. These case studies illuminate the shortcomings of the Indonesian legal system, examine the different reasons why children get married, and confront common conceptions about the motivation behind child marriage. They help illuminate the on-the-ground realities of child marriage in Indonesia and therefore provide a stronger depiction of children's agency or lack thereof in child marriages.

Nonetheless, questions remain about the scope of Horii's argument and the likelihood that it will change advocates' approaches to child marriage. Horii's work addresses child marriage in a single context (i.e., Indonesian child marriage between two individuals close in age). Applying her findings to other situations and using that application as a justification to relax international legal limitations would be a disservice to younger children and to those forced to marry older adults. Each state has different factors affecting local child marriage rates and different consequences of child marriage. For instance, in Indonesia, where marriage is important for the bestowal of certain legal rights, pregnancy outside of marriage can result in serious societal consequences for the parents. Additionally, as child marriages often occur between two teens close in age,

more exceptions to limits on child marriage may be justified. Meanwhile, in a state where marriage is not necessary for legal rights or where a majority of child marriages happen between individuals with large age gaps, more strict limitations might be a necessary protection.

Horii's book introduces much-needed nuance to the international community's conception of child marriage. Her study of child marriage in Indonesia provides a concrete, well-supported example of a situation in which an outright ban on child marriage is inappropriate and detrimental to children seeking to get married and have their own children. Although it is difficult to confidently say that a more accepting legal landscape for child marriage would be appropriate outside of Indonesia without further study of the landscapes in more individual states, Horii's work provides a starting point for transforming child marriage conversations among international actors, governments, and NGOs.

Transforming World Trade and Investment Law for Sustainable Development. By Ernst-Ulrich Petersmann. Oxford, UK: Oxford University Press, 2022. Pp. xxiii, 330. \$110 (hardcover).

REVIEWED BY HUGH SMACHLO

In *Transforming World Trade and Investment Law for Sustainable Development*, Ernst-Ulrich Petersmann explores how the United Nations (UN) Sustainable Development Agenda prescribes an array of democratic governance and constitutional principles necessary for the governance of the Sustainable Development Goals, but he argues that in practice these constitutional principles have been ignored. Petersmann advances a sweeping argument that legal reforms to international trade and investment law are required to achieve the 17 Sustainable Development Goals agreed upon in the 2023 Agenda for Sustainable Development. Specifically, Petersmann highlights how national governments and the multilevel institutions that govern existing international trade and investment regimes fail to protect human rights and argues that overcoming these regulatory challenges requires more inclusive and participatory global governance, thereby creating avenues for citizen- and non-governmental-organization (NGO)-driven governance of public goods. Petersmann argues

that states must focus on strengthening multilevel judicial protections for the transnational rule of law and human rights and constitutional limitations on foreign policy discretion to depoliticize conflicts among states and protect the common interests of their citizens.

While Petersmann does a masterful job of exploring the political economy of the World Trade Organization (WTO) and international investment regimes, he does not fully consider how critical it is that existing regimes permit vastly different countries and economic systems to coexist. I am also unsure whether further changes to empower citizens and NGOs—implicitly to the detriment of national government—would be feasible.

The book begins by discussing the Sustainable Development Goals and the Paris Agreement and explaining how they cannot be realized without international regulation and multilateral negotiations. Since Sustainable Development Goals are closely related to global public goods, the bottom line is that efforts to pursue these goals' intersection with each other cannot successfully be achieved solely by individual national actions.

Chapter 1 builds on the introduction, providing an overview of the challenges to sustainable development, explaining the interconnectedness of systemic global governance problems, and introducing the governance failures of the UN and WTO law where they are failing to effectively protect sustainable development.

Chapter 2 explains how international economic law is shaped both by politics and civil society struggles for democratic governance and human rights. While all states rely on law to organize civil, political, and economic relations within societies, legal systems vary widely from country to country. Consequently, the UN and the WTO are institutionally rooted in the state-centered Westphalian conception of international law, and subsequently in the structure of international economic law—the public international law of states regulating the economy. This state-centric, neo-liberal conception of institutions also manifests in these organizations as they leave domestic implementation to state governments and consequently fail to protect global public goods. Against this backdrop, implementing the idealistic Sustainable Development Goals will be challenging, given the political realities of the UN and WTO. Chapter 2 also introduces the Geneva Consensus as an

extension of the rights-based, ordo-liberal European Union (EU) common market that provides for more coherent policy by coordinating legally separate institutions in the recognition that trade, investment, human rights, and the environment are intertwined.

Chapter 3 addresses China and the United States, arguing that without new constraints on current power politics, the current member-driven structure of the UN and the WTO will not effectively protect human rights, rule of law, and global public goods such as sustainable development. The recent shift towards conceptualizing economic security as national security coupled with unchecked executive power have led to authoritarian abuses of power. These abuses have led to geopolitical conflict and the Trump administration's destruction of the WTO's appellate body and highly effective dispute settlement system. Notably, the Biden administration has continued to block the appointments necessary to reestablish the appellate body. These types of abuses are made possible by the embedded liberalism that underlies WTO rules. While it is obvious how authoritarian power politics on the UN Security Council constrain effective human rights protections, these blockages are paralleled at the WTO, where regulatory capture of economic regulation requiring consensus decisions leads to market and governance failures.

Chapters 4 and 5 of the book delve into constitutional economics, which explains how legal, institutional, and constitutional rules constrain the choices and activities of economic and political actors and suggests that the successful pursuit of the Sustainable Development Goals requires grappling with the conflicting values underlying neo-liberalism in the US, authoritarian state capitalism in China, and multi-level ordo-liberal constitutionalism in Europe. Constitutional economics explains how legal, institutional, and constitutional rules constrain the choices and activities of economic and political actors. These systems are based on competing visions of economic and trade regulation and reflected in the views espoused by the Office of the United States Trade Representative (USTR) and the European Commission regarding the proper role and function of the WTO. Understanding constitutional economics provides insight into the constraints on both political regulators and private actors in dealing with economic decisions. From this, it is clear that strong legal institutions based on unbiased

third-party adjudication provide the security and predictability needed to reduce transaction costs. Similarly, a strengthened rule of law grounded in independent third-party adjudication can advance the pursuit of Sustainable Development Goals. Chapter 5 elaborates on this discussion to suggest that the common market in Europe and the multilevel governance within the European Economic Area reflect a proven model for containing political problems caused by self-interested actors.

Chapter 6 explores the rule of law and human rights in the WTO, highlighting how historically the dispute settlement system has offered some protection for human rights with limited fragmentation. However, the current system needs to be adapted to address the trends discussed in Chapter 3. While a current lack of consensus among states at the WTO has prevented new agreements, one possible solution to this issue is to try to reduce the disconnect between citizens and WTO law by making trade rules concerning the rights of not only governments, but also of citizens directly, like the guarantees of social rights in EU law, which make it possible for citizens to directly pursue redress when these rights are violated, rather than leaving it up to national governments.

Chapter 7 discusses the evolution of international investment law and investor state arbitration and the proliferation of bilateral investment treaties. Recently, there has been an increase in the number of parties invoking human rights in investor state disputes, but without much impact. Furthermore, efforts to reform investment arbitration are encountering similar roadblocks as efforts to reform the WTO because conflicting political-economic views are unable to find a middle ground.

Lastly, Chapter 8 discusses the current disconnect between individual citizens and WTO governance. The disconnect is grounded in concerns regarding democratic legitimacy and has led to claims of judicial overreach by the WTO and UN. Introducing integrated multilevel legal and judicial remedies can resolve these concerns and increase the capacity of citizens to push for enforcement of environmental and human rights initiatives. Here, the 2019 German Climate Protection Act can serve as a model for this possibility—the Act imposed an obligation of reducing greenhouse gas emissions by 55 percent, and the German Constitutional Court held for the complainants that the current legislation was insufficient, ordering legislators to enact legislation to meet the statutory requirements of the law.

The book concludes by describing how the EU's Green Deal and rights-based, multilevel litigation can serve as examples of improving UN climate governance. Increasing the ability of nongovernment organizations and citizens to participate in the WTO and UN can allow for more citizen-driven initiatives to progress towards achieving the Sustainable Development Goals. Without these democratic, bottom-up reforms, Petersmann asserts, current power politics cannot be overcome. Consequently, modern WTO law must evolve in order to introduce constitutional constraints that take into account human and democratic rights and empower individuals and NGOs within the WTO. This could resemble the Environmental, Social, and Corporate Governance (ESG) initiatives in corporate governance that are considering an increasingly broader set of factors.

Overall, this book does an exceptional job of explaining the institutional economic frameworks that gave rise to the current structure of the WTO and the UN and explaining how these foundations perpetuate the ongoing challenges these institutions face. Petersmann's suggestion of a multilevel structure for the European Economic Area is a compelling alternative to the current international system, but as Petersmann recognizes, one that is unlikely to be feasible on a global scale.

Petersmann's suggestions for reforming the WTO to enable progress towards universally adopted Sustainable Development Goals face several insurmountable hurdles. First, these prescribed policy changes contradict the conception of the WTO as an organization that can accommodate conflicting views of economic regulation. The WTO framework allows neo-liberal democracies in the United States and the United Kingdom to coexist with constitutional ordo-liberal European nations and authoritarian state capitalism. Empowering citizens and NGOs to pursue judicial remedies, while well meaning, may constrain governments by forcing them to respond to particular groups, thereby limiting their ability to balance the competing interest groups they represent. Second, the universal adoption of these goals was premised on the grounds that states would not be held accountable for failing to realize these goals. While there is widespread recognition that sustainable development is a good thing, deep divisions in countries like the United States highlight that not everyone agrees. In other words, progress to further the reach of human rights and the environment into UN and WTO law would either require judicial activism

or some type of previously unrealized willingness to compromise state autonomy. I believe that the political will necessary to enact the changes to the WTO and UN that Petersmann suggests would essentially amount to the same convictions and desire to pursue the Sustainable Development Goals in the current WTO. Therefore, advancing either initiative would require eliminating the same authoritarian tendencies that are preventing changes within the current system.

Moreover, while judicial activism is also undoubtedly a path to realizing development goals, the barrier remains that states are not going to surrender their autonomy easily. I would push back further here since judicial activism is arguably more likely to lead major countries like the United States and China to either leave multilateral institutions entirely, as the Trump administration threatened to do, or to ignore judgments issued by multilateral institutions, as China and the United States have done with regards to their so called "Trade War." While Petersmann suggests that many of issues the United States is causing within the international trade system are the result of industry capture of USTR via Ambassador Lighthizer, this overlooks the strong libertarian views in the United States, where a large portion of the population does not support strengthening multilateral governance. Petersmann makes it seem as though the Trump administration's initiative strictly represented industry capture and downplays that fact that the Administration's policies did reflect the desires of nearly half the country. In a similar vein, I think that, ultimately, local accountability, either through democratic elections or authoritarian patronage systems, will continue to drive short-term national interests. Ceding greater influence to NGOs and citizen activism would constrain activities more than almost any national leader would be willing to do on a global scale.

An alternative vision of changes, such as the one espoused by current U.S. Trade Representative Ambassador Tai, would suggest that giving nations broader policy space to adopt trade measures addressing environmental and human rights concerns might allow for more ad hoc adoption of and experimentation with trade and investment policy in pursuit of these goals. I believe there is a reasonable basis for USTR to criticize the WTO for engaging in judicial overreach, particularly where it has encroached upon member policy space and unduly limited the ability of members to pursue new

regulations and negotiations to meet critical needs. Additionally, while the Trump administration took the wrong approach in shutting down the WTO's Appellate Body, these U.S. grievances with the system began before former President Trump and are continuing under President Biden. They are systemic to American libertarianism and span political parties.

Consequently, I believe that bilateral trade and investment agreements and other regional agreements are more likely to provide a viable path forward. Agreements between like-minded governments would allow for incremental progress and mitigate some of the challenges that prevent broader collective action. While this might lead to some regional economic fragmentation, such agreements would at least represent progress toward the Sustainable Development Targets by 2030. Furthermore, they are likely the best that can be hoped for as geopolitical tensions, security concerns, and nationalistic retrenchment rise around the world. For these agreements to be successful, the WTO will need to provide policy space to its constituent nation-states or risk stifling the novel initiatives needed to successfully combat climate change and meet the Sustainable Development Goals.

The Political Economy of Investment Arbitration. By Zoe Phillips Williams. Oxford, UK: Oxford University Press, 2022. Pp. xi, 186. \$110 (hardcover).

REVIEWED BY JACOB WECHT

In *The Political Economy of Investment Arbitration*, Zoe Phillips Williams conducts a thorough examination of the factors driving the emergence of investor-state disputes. With the ultimate goal of providing guidance to the ongoing reform of the international investment protection regime, Williams analyzes how state actors and institutions cause such disputes to arise. Through original data analysis and case studies, Williams evaluates two seemingly opposing explanations—that investor-state disputes arise out of shifts in state preferences towards foreign direct investment, or that these disputes are the result of the states' incapacity to establish and sustain environments friendly to foreign investors. Williams finds support for both theories, yet she concludes that the roots of investor-state disputes do not

follow one of these two straight paths but rather are complex and intertwined, composed of a combination of changes to host state preferences and host state capacity. Her qualitative coding study notably provides convincing support to her hypotheses that higher governance capacity is correlated to fewer investor-state disputes, and that electoral democracy—"the ability of domestic audiences to hold elected officials accountable for decisions which negatively impact them"—is positively correlated with investor-state disputes. Williams utilizes *Pacific Rim Cayman v. El Salvador*, *Bilcon of Delaware Ltd. v. Canada*, *AES Summit Generation v. Hungary*, and *Electrabel v. Hungary* as case studies that follow the statistical analysis and examine the hypotheses evaluated by such analysis in the context of actual investor-state arbitrations. Williams' book provides a valuable resource to reformers of the investment protection regime by mapping the results of her novel data regressions onto her case studies, laying the groundwork for multiple paths towards remediation of the foundational causes of these disputes. The case studies discussed highlight the intertwined nature of shifting state preferences and state capacity as causes of investor-state disputes. In each case, pressure from the government and private groups contributed to the state's policy choice that resulted in an investor claim. Each of these claims, however, was also triggered by the state's incapacity to predict a claim, inability to regulate an industry, or a lack of foresight regarding the sustainability of long-term agreements at adoption.

While Williams' book contributes valuable insights into the root causes of investor-state disputes, it does not provide comprehensive guidance as to how states can mitigate these compounding factors. In her conclusion, Williams discusses possible reform measures that address the core triggers of investor-state disputes but does not elaborate at length on how these measures would function to counteract the intertwined sources of investor-state disputes. One of the reform measures she discusses is the formation of a standing international investment dispute court. Williams' analysis fails to adequately account for how the structure of the international investment protection regime exacerbates existing capacity and preference shifting issues. Nonetheless, her discussion of the causes of investor-state disputes provides insight into why creation of an international investment court would mitigate investor-state disputes. To build on Williams' findings, this book annotation will discuss

how the formation of a standing international investment dispute court would alleviate some of the root causes of investor-state disputes that Williams dissects in her book.

An international investment dispute court would function similarly to the World Trade Organization, “consist[ing] of judges appointed or elected by states to sit on a permanent basis and potentially allow[ing] the participation of a third party as *amicus curiae*.” This court would preside over investor-state disputes that are currently adjudicated by a wide range of tribunals, usually created on an ad-hoc basis, based on over 3,000 unique bilateral and multilateral investment agreements. Perhaps the most glaring problem with the current system, as Williams elucidates, is that its lack of centralization and the resulting absence of consistency make it more difficult for parties to avoid disputes. The conflicting motivations of states mainly interested in importing capital and states primarily interested in exporting capital lead to disparate and conflicting rulings by investment tribunals. As a result, the international investment dispute resolution system is an unpredictable mosaic of inconsistent precedent, yielding irreconcilable outcomes in nearly identical disputes. This contributes to both of the causation mechanisms outlined in the book—incapacity and shift in preference causation.

Williams’ analysis yields convincing results, which indicate that a state’s incapacity to provide an investor-friendly environment gives rise to investor-state claims. This result is easily rationalized—it can be expected that a state that lacks the resources and ability to effectively carry out international investment transactions will be subject to a higher volume of claims by investors than states which have a greater capacity to uphold their international business commitments. Despite the seemingly logical soundness of this result, a state’s incapacity to offer a robust investment environment cannot be conclusively explained by the indexes used in Williams’ statistical analyses, such as GDP, corruption levels, or strength of bureaucracy. Remedying any or all of such shortcomings would not wholly cure a state’s incapacity such that incapacity would no longer be a causal factor driving investor-state disputes. In its current form, the structure of the international investment protection regime exacerbates existing capacity issues through its inconsistent network of investment tribunals.

Williams' measure of state capacity includes measures that encapsulate the state's "economic resources devoted to the ministries and agencies which are relevant to maintaining a stable and favorable climate for investors"—GDP per capita, strength of bureaucracy and legal counsel, strength of anti-corruption regimes, and previous experience and awareness of the international investment protection regime. A state that may otherwise possess the governmental and administrative capacity to avoid being subject to investor claims (and thus avoid the economic and political costs associated with investor-state disputes) may be rendered incapable of doing so when faced with irreconcilable precedents across an array of bilateral investment tribunals. The lack of centralization across investment arbitration rulings presents an additional strain on a state's ability to foresee potential risks and avoid taking actions that may result in investor claims. Without a uniform adjudicative body to serve as a guide, how are states to know whether their act will cause an investor claim? Moreover, Williams' analysis of the *El Salvador* case study begs the question: how are states to know if they lack the administrative capacity to deliver on their side of an investment agreement? Without clarity on the rules that will govern their investment agreements, states can inadvertently enter into agreements that they lack capacity to perform or can inadvertently act in a way that gives rise to an investor-state claim. Compounding this issue, Williams' data demonstrates that the bulk of investments covered by international investment agreements are made in developing or middle-income countries. Thus, inconsistent investment tribunal rulings cause such states to experience an additional strain on their resources, representing a more dramatic blow to their capacity to maintain investor-friendly environments as compared to high-income states. In this way, inconsistent investment tribunal rulings disproportionately impact the capacity of the majority of states involved in international investment agreements.

A standing international investment court would replace the current international investment protection regime, eliminating the inconsistency across investment tribunals. While the creation of such a court would not level the international investment playing field entirely, it would bolster states' capacity to construct their regulations in a way that avoids investor claims, or even prevent states from entering into untenable agreements altogether. Had the state actors in *Pacific Rim Cayman*

v. El Salvador been aware of a centralized international investment court whose rulings on investment disputes arising out of extraction agreements were clear and consistent, the state could have recognized their inability to meet the demands of the agreement and avoided entering into it in the first place. Similarly, the existence of such a court might have led the state actors in *Bilcon of Delaware Ltd v. Canada* to predict that the investors would pursue an investor-state claim instead of a provincial court action. Lastly, had the state actors in *AES Summit Generation v. Hungary* and *Electrabel v. Hungary* been equipped with prior rulings from a centralized body, they may have had the ability to recognize that their long-term agreements would become untenable and lead to investor-state disputes. Thus, the existence of a standing international investment court could address many aspects of state incapacity that Williams recognizes as a cause of investor-state claims.

In a manner that illustrates the interwovenness of Williams' two causal mechanisms, the creation of an international investment court would also mitigate the impact of shifting state preferences as a compounding factor leading to investor-state disputes. Williams explains that shifts in states preferences toward foreign direct investments are often caused by pressure from domestic groups, steering key decision makers to make political cost-benefit choices that result in investor claims. Under the current international investment protection regime, state actors' cost-benefit analyses are hindered by the lack of a consistency in arbitration decisions and awards. Pressured by domestic groups, state actors often opt to take actions detrimental to foreign investors. These state actors believe the consequences of such choices will be less harmful to their state's interests than maintaining and performing on the investment agreements at issue. Lacking a centralized investment court, these decisions are based on incomplete information and result in investor-state disputes that could be avoided by the guidance of a uniform and reliable set of investment arbitration decisions. Increased predictability in dispute outcomes could also lead to less disputes arising in the first place. State actors could look to prior dispute resolutions by the court to anticipate the likely judicial determinations or potential adverse judgments they could face in a dispute arising from their own investment agreement in order to more accurately weigh the risks of skirting their obligations. Moreover, state actors tend to prioritize

short-term political gains over long-term economic concerns when faced with pressure from domestic interest groups. Without a centralized and uniform enforcement mechanism such as an international investment court, state actors are more willing to risk breaching an agreement with foreign investors and face uncertain legal consequences instead of pushing back against the shifting preferences of their electorate.

In *The Political Economy of Investment Arbitration*, Williams provides a valuable resource to analyze the underlying causes of international investment disputes. While her analysis of these factors will serve as important background on which future reforms to the international investment protection regime can be built, Williams does not attempt to paint a detailed picture of how such reforms will operate in practice. Building upon Williams' framework, establishing a standing centralized international adjudicative body would provide a robust solution to the recurring issues that lead to frequent investor-state conflicts. By providing centralized, consistent rulings, the creation of an international investment court would directly address many of the intertwined causes of incapacity and changing state preferences that give rise to investor-state claims. A centralized international investment court could alleviate some of these issues by providing uniform legal interpretations, establishing consistent precedents, and providing transparency and predictability in the investor-state dispute resolution process.