

# The Evolution Of International Arbitration Judicialization Governance Legitimacy

International arbitration has emerged as an essential method for resolving disputes between states, businesses, and individuals across borders. It offers a flexible and neutral platform for settling conflicts outside traditional court systems. Over the years, international arbitration has evolved and witnessed a process of judicialization where it adopts characteristics resembling those of traditional judicial proceedings. This article explores the evolution of international arbitration, focusing on the concepts of judicialization, governance, and legitimacy.

## Understanding International Arbitration

International arbitration is a method of dispute resolution that involves parties agreeing to submit their conflicts to a neutral third party, known as an arbitrator or arbitration panel. This voluntary process allows parties to avoid the formalities and rigidities of national court systems and instead rely on an arbitrator's expertise in resolving disputes fairly.

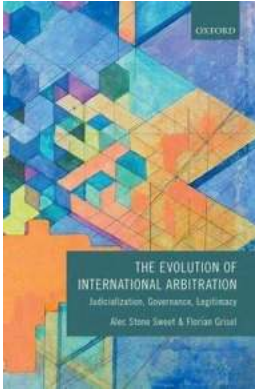
In its early days, international arbitration resembled more of a negotiation process rather than a judicial proceeding. The outcomes were largely based on compromises and settlements, often guided by fairness and equity principles. However, as international commerce grew more complex and diverse, a need arose for a more structured and standardized approach to dispute resolution.

### **The Evolution of International Arbitration: Judicialization, Governance, Legitimacy**

by Alec Stone Sweet (Illustrated Edition, Kindle Edition)

★★★★★ 5 out of 5

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## **Judicialization of International Arbitration**

The judicialization of international arbitration refers to the adoption of characteristics resembling traditional court proceedings. Over time, international arbitral tribunals have embraced principles such as formal evidentiary rules, cross-examination, oral hearings, and written judgments. These developments have led to a more judicialized arbitration process, blurring the lines between international arbitration and national court proceedings.

The judicialization of international arbitration can be attributed to various factors, such as the increasing complexity of disputes, the demand for enforceable awards, and the need for transparency and legitimacy. By adopting judicial-like features, international arbitration has gained recognition as a reliable and effective means of resolving international disputes.

## **Governance in International Arbitration**

Governance in international arbitration refers to the rules, procedures, and institutions that oversee the arbitration process. It involves ensuring fairness, impartiality, and adherence to agreed-upon principles. The governance

framework of international arbitration includes international conventions, institutional rules, codes of conduct, and ethical guidelines.

As international arbitration has become increasingly judicialized, the governance frameworks have also evolved accordingly. Institutions such as the International Chamber of Commerce (ICC), the International Centre for Settlement of Investment Disputes (ICSID), and the Permanent Court of Arbitration (PCA) play a crucial role in setting standards, appointing arbitrators, and administering arbitral proceedings.

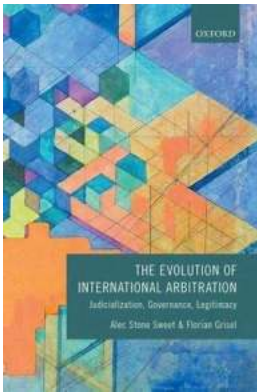
## **Legitimacy of International Arbitration**

The legitimacy of international arbitration relates to the acceptance and recognition of arbitration as a valid and authoritative mechanism for resolving disputes. Legitimacy encompasses both internal and external aspects. Internally, arbitration must embody procedural fairness, due process, and the rule of law. Externally, it requires acceptance and enforcement of arbitral awards by states and other judicial bodies.

The evolution of international arbitration toward judicialization has significantly enhanced its legitimacy. The adoption of formal rules, transparency, reasoned awards, and the establishment of appellate mechanisms contribute to the perceived legitimacy of international arbitration. This, in turn, encourages parties to choose arbitration as a preferred method of dispute resolution.

The evolution of international arbitration towards judicialization, governance, and legitimacy has transformed it into a highly regarded method for resolving international disputes. By adopting characteristics reminiscent of traditional court proceedings, international arbitration has gained acceptance, trust, and recognition from businesses, states, and individuals alike.

The ongoing advancements in governance mechanisms and the focus on procedural fairness further strengthen the legitimacy of international arbitration. As international commerce continues to grow and disputes become increasingly complex, the importance of a reliable and efficient dispute resolution mechanism like international arbitration cannot be overstated.



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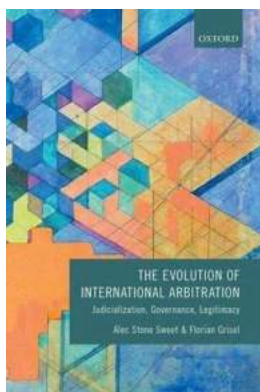


The development of international arbitration as an autonomous legal order comprises one of the most remarkable stories of institution building at the global level over the past century. Today, transnational firms and states settle their most important commercial and investment disputes not in courts, but in arbitral centres, a tightly networked set of organizations that compete with one another for docket, resources, and influence.

In this book, Alec Stone Sweet and Florian Grisel show that international arbitration has undergone a self-sustaining process of institutional evolution that has steadily enhanced arbitral authority. This judicialization process was sustained by the explosion of trade and investment, which generated a steady

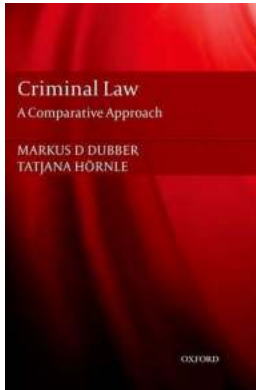
stream of high stakes disputes, and the efforts of elite arbitrators and the major centres to construct arbitration as a viable substitute for litigation in domestic courts. For their part, state officials (as legislators and treaty makers), and national judges (as enforcers of arbitral awards), have not just adapted to the expansion of arbitration; they have heavily invested in it, extending the arbitral order's reach and effectiveness. Arbitration's very success has, nonetheless, raised serious questions about its legitimacy as a mode of transnational governance.

The book provides a clear causal theory of judicialization, original data collection and analysis, and a broad, relatively non-technical overview of the evolution of the arbitral order. Each chapter compares international commercial and investor-state arbitration, across clearly specified measures of judicialization and governance. Topics include: the evolution of procedures; the development of precedent and the demand for appeal; balancing in the public interest; legitimacy debates and proposals for systemic reform. This book is a timely assessment of how arbitration has risen to become a key component of international economic law and why its future is far from settled.



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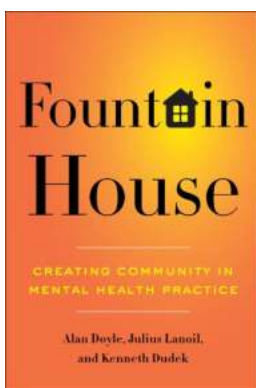
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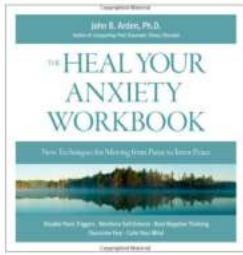
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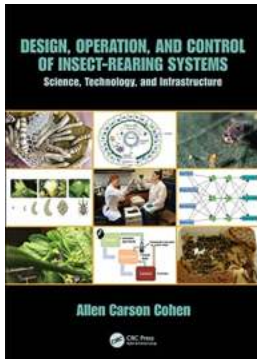
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