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Judicial Lawmaking at the WTO: Discursive, Constitutional, and Political Constraints

Richard H. Steinberg

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Judicial lawmaking in the WTO is marked by elastic interpretive discourse and constitutional rules that do not serve as a meaningful restraint. Politics, however, constrains both discursive and constitutional latitude, which should alleviate concerns that WTO judicial lawmaking is so expansive as to undermine the sovereignty of powerful states, create a serious democratic deficit for their citizens, or catalyze withdrawal of their support for the organization.

Common but Differentiated Responsibilities in International Law

Christopher D. Stone

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Multinational agreements are increasingly adopting “common but differentiated responsibilities” that impose obligations more heavily on some nations—typically the Rich—than on others—most often the Poor. While the notion of a “differential” obligation remains ill-defined, there are many reasons for negotiators to offer heterogeneous terms as a way of attracting heterogeneous parties. The author explores the circumstances under which various sorts of differentiation are desirable.

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