In this project, conducted jointly with Zoe Phillips Williams (UC Berkeley), Florence Dafe explores the drivers of the rise of third-party funding (TPF) of investor-state arbitration. TPF involves financiers shouldering the legal fees of an investment treaty claim against a sovereign state in exchange for a share of any eventual award. Existing research has highlighted how TPF may exacerbate the inequities inherent in a legal regime that is already weighted in favor of private interests by increasing investors’ access to funding of their legal claims, but the factors which gave rise to TPF are little understood. Dafe and Williams argue that financialization helps to explain both the spread and the characteristics of TPF. The evidence suggests, in particular, that the large supply of investable capital that is searching for profitable investment opportunities helps to account for the rise of TPF. The analysis provides the basis for broader propositions about the ways in which financialization alters the logics of an international legal regime and aligns the interests of different private agents, both of which may change the public-private balance in investor-state arbitration.

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