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Building the Civilization of Arbitration - Introduction

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Symposium

Building the Civilization of Arbitration

Introduction

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This is a time of affirmation and trepidation for the law of arbitration. Last term, the U.S. Supreme Court decided *Hall Street Associates, LLC v. Mattel, Inc.*,[1] holding that contract freedom in arbitration was not absolute and that the grounds in FAA § 10 were "exclusive."[2] This term, the U.S. Supreme Court granted *certiorari* to three arbitration cases.[3] It has rendered two opinions already that signify the Court's continuing support for and approval of arbitration. In *Vaden v. Discover Bank*,[4] the Court resolved a circuit split by endorsing the "look through"[5] approach "to determine whether federal-question jurisdiction exists over the underlying petition."[6] This approach favors

1. 128 S. Ct. 1396 (2008). *See* Thomas E. Carbonneau, Hall Street Associates, LLC v. Mattel, Inc.: *A New Englander's Tale of Statutory Supremacy in Arbitration Law*, [2008] STOCKHOLM REV. INT'L ARB. 19.

2. 128 S. Ct. 1396.

3. Vaden v. Discover Bank, 77 U.S.L.W. 1531 (Mar. 9, 2009); 14 Penn Plaza LLC v. Pyett, 129 S. Ct. 1456 (2009); Arthur Andersen LLP v. Carlisle, 129 S. Ct. 529 (2008).

4. 77 U.S.L.W. 1531 (Mar. 9, 2009).

5. *Id.*

6. *Id.*

the recourse to arbitration and its regulation by federal law. In *14 Penn Plaza v. Pyett*,[7] the Court confirmed the subject-matter arbitrability of discrimination claims that are submitted to arbitration by the parties in a provision of the collective bargaining agreement (CBA). It thereby reduced the precedential significance of *Alexander v. Gardner-Denver*[8] to its "narrow holding."[9] When the arbitration agreement clearly provides for the arbitrability of statutory rights, all such rights are arbitrable under federal law.[10] Accordingly, the Court aligned both forms of workplace arbitration, unionized and nonunionized, to the arbitrability holdings in *Mitsubishi*,[11] *Rodriguez*,[12] and *Gilmer*.[13]

The apprehension surrounding arbitration comes in the form of ever more strident congressional opposition.[14] The latter is long-standing,[15] but it has been endowed with new life from the political reconfiguration of the U.S. Congress and the White House. The last twenty years have seen largely perfunctory legislative attempts to curtail the ascendency of arbitration.[16] Although ineffective, the opposition was meant, ostensibly, to enhance the preemptory standing of civil rights and the guarantee of a civil jury trial.[17] In reality, the anti-arbitration sentiment in the U.S. Congress has been fueled and financed by the American Trial Lawyers' Association (ATLA) and encouraged by other lobbyist groups, like Public Citizen.[18] While all the opponents of arbitration pay reverence to the Constitution and to the sanctity of legal rights, the true concern centers upon the "culture wars"[19] and tried-and-true economic advantage.

The critics of arbitration, in and out of the U.S. Congress,[20] have focused their contempt for the process upon so-called mandatory arbitration,[21] by which they mean adhesionary arbitration. The latter is

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7. 129 S. Ct. 1456 (2009).
8. Alexander v. Gardner-Denver Co., 417 U.S. 36 (1974).
9. 129 S. Ct. at 1469.
10. *Id.* at 1474.
11. Mitsubishi Motor Corp. v. Soler Chrysler-Plymouth, Inc., 473 U.S. 614 (1985).
12. Rodriguez de Quijas v. Shearson/Am. Express, Inc., 490 U.S. 477 (1989).
13. Gilmer v. Interstate/Johnson Lane Corp., 500 U.S. 20 (1991).
14. *See* Arbitration Fairness Act of 2007, S. 1782 and H.R. 3010, 110th Cong. 1st Sess. (2007); *see also* Thomas E. Carbonneau, *"Arbitracide": The Story of Anti-Arbitration Sentiment in the U.S. Congress*, 18 AM. REV. INT'L ARB. 235 (2007) [hereinafter *"Arbitracide"*].
15. *See* Carbonneau, *"Arbitracide"*, *supra* note 14, at 243-46.
16. *See id.*
17. *See id.*
18. *See* Thomas E. Carbonneau, *Arguments in Favor of the Triumph of Arbitration*, CARDOZO J. CONFLICT RES. ___ (2009) (forthcoming).
19. *See, e.g.*, JAMES DAVISON HUNTER, CULTURE WARS: THE STRUGGLE TO DEFINE AMERICA (1992).
20. *See* Carbonneau, *"Arbitracide"*, *supra* note 14, at 239-42.
21. *See* Carbonneau, *supra* note 18.

commonplace in employment relationships and consumer transactions. ATLA's quest to maintain its monopoly on the provision of adjudication services is presented in a proclaimed concern for disadvantaged parties and their plight in society.[22] Plausible deniability notwithstanding, nothing is innocent in politics. The virulence of the critics is motivated by the need to control the measure and implementation of the rule of law; it is not a concern about the rule of law itself. In the final analysis, the interests of the average citizen are irrelevant; what is truly important is who decides how society is governed and who controls the administration of justice.[23] There can be little doubt, despite disingenuous rhetoric of opponents and its own imperfections, that arbitration is ultimately in the best interest of American citizens.[24] It remedies the serious deficiencies of judicial litigation and adversarial legal representation.[25]

The Court's promotion and protection of arbitration began in earnest with the Burger Court.[26] The only persistent hold-out on the Court was Justice William O. Douglas,[27] who nonetheless thought that CBA or labor arbitration was a legitimate, necessary, and useful dispute

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22. *Id.*

23. *See id.*

24. *See* Carbonneau, *"Arbitracide"*, *supra* note 14, at 233-38, nn.1-10.

25. *See* THOMAS E. CARBONNEAU, ALTERNATIVE DISPUTE RESOLUTION: MELTING THE LANCES AND DISMOUNTING THE STEEDS 2, 12-13, 200-14, 265-67 (1989).

26. *See* Barrentine v. Arkansas-Best Freight Sys., Ins., 450 U.S. 728, 746-53 (1981) (Burger, C.J., dissenting); Warren F. Burger, *Agenda for 2000 AD—A Need for Systematic Anticipation*, 70 F.R.D. 83 (1976); Warren F. Burger, *Isn't There a Better Way*, 68 A.B.A. J. 274 (1982); Warren F. Burger, *The State of Justice, Report to the American Bar Association*, Feb. 12, 1984, 70 A.B.A. J. 62 (1984).

27. During his tenure on the Court, Justice Douglas systematically opposed the recourse to arbitration. He voted with the majority in *Wilko v. Swan.* 346 U.S. 427 (1953). There, the Court chose to protect the integrity of the securities laws from intrusion by the public policy supporting arbitration. It did so, in part, upon a narrow and demeaning view of arbitration and its adjudicatory capabilities. Justice Douglas authored the majority opinion in *Bernhardt v. Polygraphic Co. of Am.*, in which the Court privileged the application of state law under *Erie* over the public policy on arbitration, reiterating several of the *Wilko* invectives against arbitration. 350 U.S. 198 (1956). He joined the dissent in *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, the case that began the march to the federalization of U.S. arbitration law. 388 U.S. 395 (1967). Justice Douglas dissented with passion and eloquence in *Scherk v. Alberto-Culver Co.* 417 U.S. 506 (1974). There, he defended the application of the securities laws and congressional power to legislate. Nonetheless, he was persuaded of the benefits and critical function of CBA arbitration. *See, e.g.*, Goodall-Sanford v. Textile Workers of Am., 353 U.S. 550 (1957); Textile Workers Union of Am. v. Lincoln Mills of Ala., 353 U.S. 448 (1957). Moreover, he authored the Court's majority opinions in the *Steelworkers Trilogy. See* United Steelworkers of Am. v. Am. Mfg., Co., 363 U.S. 564 (1960); United Steelworkers of Am. v. Warrior & Gulf Navigation Co., 363 U.S. 574 (1960); United Steelworkers of Am. v. Enterprise Wheel & Car Corp., 363 U.S. 593 (1960).

resolution process. The "emphatic" or "strong" federal policy[28] survived and grew despite variations in the composition of the Court over a forty-year period. In its decisional law, the Court systematically rewrote the U.S. or Federal Arbitration Act (FAA).[29] The FAA was enacted in 1925 as special interest legislation.[30] By the first decade of the 21st Century, it had become a proclamation for a new Bill of Rights in American society.[31] The federal law on arbitration currently declares itself supreme through the application of the federal preemption doctrine;[32] not only validates arbitration contracts but also exempts them from the usual requirements of contract formation;[33] pronounces a rule of nearly

28. *See* Mitsubishi Motor Corp. v. Soler Chrysler-Plymouth, 473 U.S. 614 (1985).

29. The U.S. Supreme Court began its endorsement and promotion of arbitration by proclaiming the existence of "a liberal federal policy favoring arbitration agreements." Moses H. Cone Mem. Hosp. v. Mercury Constr. Co., 460 U.S. 1, 24 (1983). *See also* Gilmer v. Interstate/Johnson Lane Corp., 500 U.S. 20, 26 (1991); Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc., 473 U.S. 614 (1986); Southland Corp. v. Keating, 465 U.S. 1 (1984). It then introduced a qualified sense of contract freedom in arbitration, providing that the contracting parties were free to structure their transactions however they wished as long as they opted for arbitration. *See* Mastrobuono v. Shearson Lehman Hutton, Inc., 514 U.S. 52 (1995). Thereafter, the Court expanded the jurisdiction of arbitration to include statutory disputes. *See* Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc., 473 U.S. 614 (1986). It also increased substantially the decisional sovereignty of the arbitrator. *See* Green Tree Fin. Corp. v. Bazzle, 539 U.S. 444 (2003); Howsam v. Dean Witter Reynolds, Inc., 537 U.S. 79 (2002). The effect of these decisions was to permit arbitration to function with even greater autonomy and, concomitantly, to minimize the role of judicial supervision in the process. They also sought to reduce the volume of litigation pertaining to arbitration. *See* Green Tree Fin. Corp. v. Bazzle, 539 U.S. 444 (2003); First Options of Chi., Inc. v. Kaplan, 514 U.S. 938 (1995). In its decisional law, the Court is bent upon delegating to arbitration as much of the burden of civil litigation as possible. *See* Allied-Bruce Terminix Cos. v. Dobson, 513 U.S. 265 (1995) (O'Connor, J., concurring) ("[O]ver the past decade, the Court has abandoned all pretense of ascertaining congressional intent with respect to the [FAA], building instead, case by case, an edifice of its own creation. . . .").

30. U.S. Arbitration Act, 9 U.S.C. §§ 1-16 (1996). On the FAA and U.S. arbitration law, see Thomas E. Carbonneau, *The Revolution In Law Through Arbitration*, 56 CLEVELAND ST. L. REV. 233, 245 (2008).

31. *See, e.g.*, THOMAS E. CARBONNEAU, THE LAW AND PRACTICE OF ARBITRATION i-xxi (3d ed. 2009) (forthcoming).

32. It is equally significant that the Court expanded the reach of the FAA from what was provided in § 1 of the statute. In *Citizens Bank v. Alafabco*, the Court adopted a very wide view of interstate commerce and thereby extended the FAA's scope of application to encompass almost all commercial transactions in the United States. 539 U.S. 52 (2003). In a series of rulings, it also federalized the law of arbitration and protected it from state law conflicts by elaborating the federal preemption doctrine. *See* Doctor's Associates, Inc. v. Casarotto, 517 U.S. 681 (1996); Allied-Bruce Terminix Cos., Inc. v. Dobson, 513 U.S. 265 (1995); Southland Corp. v. Keating, 465 U.S. 1 (1984); Moses H. Cone Mem. Hosp. v. Mercury Constr., Corp. 460 U.S. 1 (1983); Prima Paint Corp. v. Flood & Conklin Mfg., Co., 388 U.S. 395 (1967).

33. *See, e.g.*, Rodriguez de Quijas v. Shearson/Am. Express, Inc., 490 U.S. 477, 484 (1989) (writing for the majority, Justice Kennedy gave shortshrift to the allegation that

universal arbitrability for statutory rights by stating that arbitration has no impact upon substantive rights because it is a mere form of trial;[34] and provides for extreme judicial deference to arbitrator rulings.[35] High Court decisions have upheld and expanded the jurisdictional authority of arbitrators by allowing them, through party provision, to rule on their

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the arbitration agreement was unenforceable because of its adhesionary character, stating laconically: "Although petitioners suggest that the agreement to arbitrate here was adhesive in nature, the record contains no factual showing sufficient to support that suggestion."). The Court upheld the use of arbitral clauses for mandatory arbitration. *See* Circuit City Stores, Inc. v. Adams, 532 U.S. 105 (2001). *Accord* EEOC v. Waffle House, Inc., 534 U.S. 279 (2002).

Although not a U.S. Supreme Court opinion, *Harris v. Green Tree Fin. Corp.*, a case born from and molded by the Court's strong and emphatic federal policy favoring arbitration, attests to the judicial resistance to declare arbitration agreements unenforceable for reasons of defective contract formation. 183 F.3d 173 (3d. Cir. 1999). In *Harris*, the Third Circuit upheld unqualifiedly an adhesionary arbitral clause that contained a "carve-out" for the economically stronger party. *Id.* at 183. The court emphasized that "inequality in bargaining power, alone, is not a valid basis upon which to invalidate an arbitration agreement." *Id.* Additionally, "carve-outs" could be justified for business or economic reasons, e.g., non-compete clauses. *See* Aames Funding Corp. v. Sharpe, No. Civ.A.04-4337, 2004 WL 2418284 (E.D. Pa. Oct. 28, 2004); Porpora v. Gatliff Bldg. Co., 828 N.E.2d 1081 (2005). Further, the Court, for all practical purposes, eliminated the contract defense language at the end of FAA § 2 by creating a nearly irrebuttable presumption that arbitration agreements were enforceable contracts. *See* Moses H. Cone Mem. Hospital v. Mercury Constr. Co., 460 U.S. 1 (1983). In *Rodriguez v. Shearson/Am. Express, Inc.*, the Court minimized the defense of adhesion and unconscionability. 490 U.S. 477 (1989). *See also* Green Tree Fin. Corp.-Ala. v. Randolph, 531 U.S. 79 (2000) (limiting the impact of cost distribution upon the validity of arbitration agreements). The Court's decisional law is devoid of any case in which it fails to uphold an arbitration agreement. *But see* Bernhardt v. Polygraphic Co., 350 U.S. 198 (1956) (indirectly discredited); Wilko v. Swan, 346 U.S. 427 (1953) (now discredited and reversed).

34. In order to respond to the argument that the reference to arbitration compromised rights that were available under a statutory regime, the Court proclaimed in *Shearson/Am. Express, Inc. v. McMahon*, that arbitration represented a mere choice of trial format that had no impact whatsoever upon substantive statutory rights. 482 U.S. 220 (1987). In a legal system dedicated to the proposition that there are no rights without remedies, such an assertion not only lacks credibility, but it seems to be the height of fantasy. Rights protection is not and cannot be the same in arbitration as in court proceedings, unless the arbitration is judicialized to the point of being a court proceeding. Moreover, with the reversal of *Wilko v. Swan*, in *Rodriguez v. Shearson/Am. Express, Inc.*, the Court instituted a political correctness doctrine in regard to arbitration. 490 U.S. 477 (1989). The only way to perceive arbitration was in positive terms; therefore, arbitration was every bit the adjudicatory process that court litigation was. Statements that arbitrators were mere fact-finders and merchants unschooled in the law, who were unable to interpret or apply legal rules or render a reasoned explanation of their determination, reflected unacceptable and statutorily-outlawed judicial hostility to arbitration. The new orthodoxy demanded allegiance to the integrity and professionalism of arbitration, no matter what the actual reality might be in the particular circumstances.

35. *See* THOMAS E. CARBONNEAU, CASES AND MATERIALS ON ARBITRATION LAW AND PRACTICE 394-459 (4th ed. 2007).

own jurisdiction[36] and to interpret not only the contract, but the arbitral clause as well.[37] The Court's only limited success has been its inability to restrain significantly the litigation about arbitration.[38] Despite the likelihood of failure, attorneys continue to challenge pro-arbitration rulings at the trial and appellate levels.[39] The Court's activist agenda on arbitration has been resisted most effectively in California and the Western United States.[40] Federal preemption doctrine, however, corrected the most deviant results reached on arbitration in those jurisdictions.[41]

Arbitration is a force in American society. Moreover, it is a force for good. It brings civil justice within the grasp of all American citizens. Arbitration is not only instrumental to all forms of commercial activity, but it is indispensable to the legitimacy of American constitutional government. It has progressed far beyond its status in *Wilko v. Swan*[42] as

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36. Further, in *First Options of Chicago, Inc. v. Kaplan*, the Court significantly altered the rule in FAA § 3 that courts decide threshold jurisdictional issues. 514 U.S. 938 (1995). It held that contracting parties could delegate authority to rule on jurisdiction to the arbitrators and thereby remove jurisdictional challenges from the exclusive purview of the courts. The ruling added greater autonomy to the arbitral process by strengthening the arbitrators' authority and reducing the presence of the courts at the threshold of the arbitral process.

37. *See* Green Tree Fin. Corp. v. Bazzle, 539 U.S. 444 (2003); Howsam v. Dean Witter Reynolds, Inc., 537 U.S. 79 (2002).

38. *See Bazzle*, 539 U.S. at 444; *First Options of Chi., Inc.*, 514 U.S. at 938.

39. *Accord* B.L. Harbert Int'l, LLC v. Hercules Steel, Co., 441 F.3d 905 (11th Cir. 2006).

40. *See* Carbonneau, *"Arbitracide"*, *supra* note 14, at 239; *see also* Adler v. Fred Lind Manor, 103 P.3d 773 (Wash. 2004); Higgins v. Sup. Ct. of Los Angeles County., 45 Cal. Rptr. 3d 293 (Cal. Ct. App. 2006); Zuver v. Airtouch Commc'ns, Inc., 103 P.3d 753 (Wash. 2004) (confidentiality agreement in employment arbitration agreement is substantively unconscionable); Chalk v. T-Mobile USA, Inc., 77 U.S.L.W. 1612 (9th Cir. Mar. 27, 2009) (No. 06-35909) (class action waiver substantively unconscionable under Oregon law because it was "inherently one-sided" and "prevent[ed] individuals from vindicating their rights"; severance of the waiver was prohibited by the agreement and, therefore, did not apply).

41. See the progression in the case law from *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395 (1967) (U.S. Supreme Court begins federalization of arbitration law and laids the foundation for the federal preemption doctrine), to *Buckeye Check Cashing, Inc. v. Cardegna*, 126 S. Ct. 1204 (2006) (U.S.S.C. rejects relevance of Florida law on topic of enforcing arbitration agreements and affirms the vitality of the separability doctrine and, concomitantly, the autonomy of arbitration and arbitrators), and *Preston v. Ferrer*, 128 S. Ct. 978 (2008) (U.S. Supreme Court upholds the primacy of the federal law of arbitration, insulating it from state law regulatory "side bars"). *See also* Doctor's Assocs., Inc. v. Casarotto, 517 U.S. 681 (1996) (state laws of contract cannot single out arbitration contracts "for suspect status"; special requirements for their validity cannot be mandated even for purposes of consumer protection); Allied-Bruce Terminix Cos., Inc. v. Dobson, 513 U.S. 265 (1995) (The FAA "does displace state law to the contrary.").

42. 346 U.S. 427 (1953).

an ersatz trial mechanism destined to function in the remote and invisible recesses of society. Arbitrators can entertain a wide range of public and private law claims; they can decide matters of discrimination in addition to issues of contract interpretation, performance, delivery, and conformity to specifications.[43] They can interpret government regulations and enacted legislation, just like they construe the content of private agreements.[44] Although their authority to rule originates from a "one-off" contract, arbitrators, by their number and the frequency of their awards, have an enormous impact upon the character and operation of society.[45] Arbitration rebalances the relationship between fairness and functionality in adjudication. Due process ceases to be a pathology that tears at the flesh of the parties and the integrity of law.[46] It reasserts its standing as a central and workable factor in legal civilization. Legal rights are neither protected nor privileged by an inaccessible and endless

43. In *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, the Court held, in landmark language, that "we find no warrant in the Arbitration Act for implying in every contract within its ken a presumption against arbitration of statutory claims. . . . [T]he Act . . . provides no basis for disfavoring agreements to arbitrate statutory claims by skewing the otherwise hospitable inquiry into arbitrability." 473 U.S. 614, 627 (1985). This holding represents the Court's first step in the direction of eliminating all, or nearly all, subject matter constraints on the arbitrability of disputes. In *Shearson/Am. Express, Inc. v. McMahon*, the Court described the vestiges of subject-matter inarbitrability in U.S. arbitration law when it stated: "The [FAA], standing alone, . . . mandates enforcement of agreements to arbitrate statutory claims. Like any statutory directive, the [FAA]'s mandate may be overridden by a contrary congressional command." 482 U.S. 220, 226 (1987). First, the FAA never addresses, explicitly or implicitly, the arbitrability of statutory rights—the Court just says it does. Second, no "contrary congressional command" has ever been clear or emphatic enough to convince the Court that a federal statute overrides the "prime directive" in FAA § 1. See, for example, the non-waiver provisions in the securities laws in *Rodriguez de Quijas* and *McMahon*. 490 U.S. 477 (1989); 482 U.S. at 220. The "burden" that is placed upon "the party opposing arbitration . . . to show that Congress intended to preclude a waiver of judicial remedies for the statutory rights at issue" has never been satisfied. *See McMahon*, 482 U.S. at 227. It could readily be argued that the antitrust, securities, and civil rights laws contain nonwaiver provisions that mandate judicial recourse. In the Court's view, the nonwaiver "command" applies only to the substantive guarantees of the act not its procedural provisions. *See id.* Syllogistically speaking, because these substantive rights are not diminished in arbitration, the latter can act as a lawful substitute for judicial recourse. Also, as a corollary, arbitrations are "one-off" events that have little or no systemic import. Therefore, the contract can control and parties are free to customize the proceedings. *See id.*

44. *See* Gilmer v. Interstate/Johnson Lane Corp., 500 U.S. 20 (1991); *Mitsubishi Motor Corp.*, 473 U.S. at 614.

45. *See, e.g.*, AAA – Arbitration, Mediation and other forms of Alternative Dispute Resolution (ADR) Home Page, http://www.adr.org; National Arbitration Forum Home Page, http://www.adrforum.com; Judicial Arbitration and Mediation Services Home Page, http://www.jamsadr.com.

46. *See* CARBONNEAU, *supra* note 24.

process of litigation before courts. They are safeguarded only by an adjudicatory process that achieves sound outcomes through operational efficiency.

The U.S. Supreme Court's "work product"[47] has generated a large and growing arbitration bar. It also has finally begun to stimulate a greater volume of academic activity on the topic of arbitration. The work of legal practitioners and academics, along with the courts' decisional law, are "Building a Civilization of Arbitration" that codifies advances and grapples with the controversial aspects of law-in-the-making. The Penn State Dickinson School of Law takes great pride in welcoming a distinguished group of lawyers and law teachers to the pages of its Law Review. They are the leaders in the field of arbitration. Their contributions identify the settled law and evaluate it from a variety of analytical, intellectual, and institutional perspectives.

The lead article addresses the concept of designing arbitrations from the perspective of two mainstays of the U.S. Supreme Court decisional law on arbitration: *Volt Info. Sciences, Inc.*[48] and *Mastrobuono*.[49] The article evaluates the use of contract freedom in the context of the judicial construction of party intent. Beyond this, the symposium investigates a wide variety of cutting-edge topics, ranging from recent landmark cases to investment arbitration and including the reform of the FAA, the concept of private ordering in international commercial arbitration (ICA), empirical developments in consumer arbitration, third-party interests in arbitration, various provocative comparative law developments—the role of courts in national arbitration laws, a lucid evaluation of the Russian Federation's statist concept of arbitration, an equally insightful comparison of Canadian and United States consumer arbitration, and an evaluation of an important recent book on ICA.

The symposium contains more enriching considerations on ICA, including an assessment of the difficulty of balancing the tension between arbitral autonomy and foreign mandatory public law, the impact of arbitration on the Energy Charter Treaty, and different cultural concepts of the utility of arbitration in commercial dispute resolution. Since the end of WWII and the fall of the Berlin Wall in 1989, arbitration has supplied global merchants with a transborder adjudicatory process in the face of uncertainty and the unyielding and capricious principle of sovereignty. In both domestic and international litigation, arbitration is the purveyor of the stability and effectiveness that act as the

47. *Rodriguez de Quijas*, 490 U.S. at 486 (Stevens, J., dissenting).

48. Volt Info. Sciences, Inc. v. Bd. of Trs. of Leland Stanford Junior Univ., 489 U.S. 468 (1989).

49. Mastrobuono v. Shearson Lehman Hutton, Inc., 514 U.S. 52 (1995).

foundation of the rule of law. Finally, the Law Review Symposium contains a well-crafted and conceptually invigorating Reporters' assessment of the projected Restatement, Third, of the U.S. Law of ICA.

It is Penn State Dickinson School of Law's honor to welcome the authors and their contributions to the school's effort to promote excellence in legal scholarship.

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