1

General Introduction

This book is an exploration of the history of international commercial arbitration – the mechanism by which parties' mutual rights and liabilities are determined with binding effect by a third person, the arbitrator, instead of by a court of law.[1] It divides the history of international commercial arbitration into three broad waves or periods, which I call the Age of Aspirations, the Age of Institutionalization, and the Age of Autonomy. I argue that this history oscillates between moments of renewal and moments of anxiety. During periods of renewal, new instruments, devices, and institutions were created to carry international commercial arbitration forward. These initiatives were then reined in during periods of anxiety, seemingly out of fear that international commercial arbitration might go too far (e.g., by encroaching on state sovereignty). The resulting tension or pendulum-like movement – from renewal to anxiety and from anxiety to renewal – is a key feature of the history of international commercial arbitration and helps explain the course of its development.

In this chapter, I explain the general background and justification of the study (Section 1.1) and its objectives and arguments (Section 1.2). I also describe the sources used and make a few caveats (Section 1.3).

1.1 Background and Justification

This study is based on a startling paradox: despite the ever-growing importance of international commercial arbitration in today's world (Section 1.1.1), relatively little scholarly attention has been devoted to its modern history and evolution (Section 1.1.2).

[1] See, generally, Emmanuel Gaillard and John Savage (eds.), *Fouchard, Gaillard, Goldman on International Commercial Arbitration* (The Hague: Kluwer Law International, 1999), chapter 1. For an approach to delineating the notion of arbitration, see Charles Jarrosson, *La notion d'arbitrage* (Paris: LGDJ, 1987); Jarrosson, "Les frontières de l'arbitrage," *Revue de l'arbitrage*, 2001, 5–41.

1.1.1 *Setting the Stage: The Current Landscape of International Commercial Arbitration*

It has become customary to describe international commercial arbitration as the preferred method for resolving business disputes between parties from different countries.[2] The data made available by the International Chamber of Commerce (ICC) show that since its creation in 1923, the International Court of Arbitration (hereinafter the "ICC Court") has administered 25,000 cases.[3] While the first 3,000 cases were filed over a period of 53 years, the next 3,000 cases took only 11 years to arrive.[4] During the first eighteen months of its existence, the ICC Court received sixty-eight cases from seventeen countries.[5] In 2019, it recorded 851 new cases, involving 2,498 parties from 147 countries and independent territories.[6] These figures testify to the "explosive" growth[7] and "meteoric rise"[8] of international commercial arbitration.

Although no exhaustive study has yet been made of this sector's weight in the global economy,[9] it is clear that the economic implications of international arbitration are enormous. The surveys conducted by the Queen Mary School of International Arbitration in London have repeatedly shown that international arbitration plays a key role in today's business world.[10] It has been found that membership of the 1958 New York Convention, the leading treaty in the field, leads to an increase

[2] See, for example, Gaillard and Savage, *Fouchard, Gaillard, Goldman*, 1; Gary Born, *International Commercial Arbitration* (The Hague: Kluwer Law International, 2014), 1.

[3] International Chamber of Commerce, "ICC Celebrates Case Milestone, Announces Record Figures for 2019" (January 9, 2020), https://iccwbo.org/media-wall/news-speeches/icc-celebrates-25000th-case-milestone-and-announces-record-figures-for-2019/.

[4] Laurence Craig, William Park, and Jan Paulsson, *International Chamber of Commerce Arbitration* (New York: Oceana Publications, 1990), 4.

[5] International Chamber of Commerce, *Arbitration Report No. 3* (July 1924), 1.

[6] International Chamber of Commerce, "2019 ICC Dispute Resolution Statistics," *ICC Dispute Resolution Bulletin*, 2020, no. 2, 20.

[7] Charles Brower, "The Global Court: The Internationalization of Commercial Adjudication and Arbitration," *University of Baltimore Law Review*, 26, no. 3 (1996), 10.

[8] Stavros Brekoulakis, "International Arbitration Scholarship and the Concept of Arbitration Law," *Fordham International Law Journal*, 36 (2013), 745.

[9] Emmanuel Gaillard, "L'apport de la pensée juridique française à l'arbitrage international," *Journal du droit international*, 2017, 531.

[10] In the 2015 survey, 90 percent of participants named international arbitration as their preferred dispute resolution mechanism. *2015 International Arbitration Survey: Improvements and Innovations in International Arbitration*, 5. That figure reached 97 percent in the 2018 survey. *2018 International Arbitration Survey: The Evolution of International Arbitration*, 5.

in bilateral trade.[11] Furthermore, the amounts in dispute keep reaching new heights. The most striking and highly publicized example is the *Yukos* saga. In July 2014, an arbitral tribunal sitting in The Hague under the auspices of the Permanent Court of Arbitration ordered the Russian Federation to pay more than USD 50 billion in damages to the former majority shareholders of Yukos Oil Company.[12] While most international commercial arbitration cases do not compare with "mammoth arbitrations"[13] of this kind, they typically involve large amounts. As the ICC has reported, the aggregate value of all pending disputes before the ICC Court at the end of 2019 was USD 230 billion, with an average value of USD 140 million and a median value of USD 10 million.[14]

Not only has the market *for* arbitration grown exponentially, so too has the market *in* arbitration. Law firms, counsel, arbitrators, arbitral institutions and centers, and even international arbitration journals[15] compete for power, influence, and prestige.[16] As Oppetit wrote in 1998, not without some dismay at the path arbitration was taking, "highly valued both by governments and in economic circles, much in favor with the judiciary, arbitration has become a key part of merchant society institutions: there now exists a true arbitration *market* in every sense of the word."[17] In fact, arbitration has become the daily business of several hundreds, if not thousands, of practitioners around the world.

International commercial arbitration has also been embraced with enthusiasm in academic circles and is now a vibrant area of study and research. As recalled by a leading US arbitration lawyer, "[i]n 1960,

[11] Thomas Hale, *Between Interests and Law: The Politics of Transnational Commercial Disputes* (Cambridge: Cambridge University Press, 2015), 46. See also Thomas Hale, "What Is the Effect of Commercial Arbitration on Trade?," in Walter Mattli and Thomas Dietz (eds.), *International Arbitration and Global Governance: Contending Theories and Evidence* (Oxford: Oxford University Press, 2014).

[12] *Yukos Universal Limited (Isle of Man)* v. *Russian Federation*, PCA Case No. AA 227, Final Award (July 18, 2014).

[13] Ibid., ¶ 4.

[14] International Chamber of Commerce, "2019 ICC Dispute Resolution Statistics," 26.

[15] Jacques Werner, "Editorial: Competition within the Arbitration Industry," *Journal of International Arbitration*, 2, no. 2 (1985), 5. See also Philippe Fouchard, "Où va l'arbitrage international?," *McGill Law Journal*, 34 (1989), 439; Michael Mustill, "Is It a Bird . . . ?," in *Liber amicorum Claude Reymond: Autour de l'arbitrage* (Paris: LexisNexis, 2004).

[16] See Joshua Karton, *The Culture of International Arbitration and the Evolution of Contract Law* (Oxford: Oxford University Press, 2013), 56–75; Karton, "International Arbitration as Comparative Law in Action," *Journal of Dispute Resolution*, no. 2 (2020), 317.

[17] Bruno Oppetit, *Théorie de l'arbitrage* (Paris: Presses Universitaires de France, 1998), 10. See also Pierre Lalive, "Sur une 'commercialisation' de l'arbitrage international," in *Liber amicorum Claude Reymond*.

international arbitration was not a familiar subject among US lawyers. There were no law schools in the US teaching the subject" and "no textbook or coursebook to be used."[18] The contrast with today could not be starker. Over the past few decades, we have seen an inexorable rise in the number of schools offering courses and promoting research in international arbitration.[19] There are now countless outlets for research in this area, including peer-reviewed journals, websites, and forums reporting the latest news and trends in the field.

In addition to being a market and a thriving area of study and research, international commercial arbitration can be considered an "international legal field," as defined by Bourdieu.[20] The notion of "an arena where struggle takes place"[21] and a "symbolic terrain with its own networks, hierarchical relationships, and expertise, and more generally its own 'rules of the game'"[22] prompts an analysis of international commercial arbitration in sociological terms. Gaillard, for instance, has identified three categories of actors in the field of international commercial arbitration – "essential actors," "service providers," and "value providers" – and has described the various rituals they perform as part of their activity in the field.[23] Closely

[18] Gerald Aksen, "A Dozen Differences in International Arbitration in the Last Half-Century," in *Liber amicorum en l'honneur de William Laurence Craig* (Paris: LexisNexis, 2016), 3.

[19] Gaillard, "L'apport," 530. See also Mirèze Philippe, "Autant en emporte le vent... de l'arbitrage," in Nassib Ziadé (ed.), *Liber Amicorum Samir Saleh: Reflections on Dispute Resolution with Particular Emphasis on the Arab World* (Alphen aan den Rijn: Wolters Kluwer, 2020), 253.

[20] According to the sociologist, a field is an area of structured activity, characterized by the unequal position of social agents in their competitive struggle to accumulate different sorts of resources or capital (whether economic, cultural, social, or symbolic). See Pierre Bourdieu, "Foreword," in Yves Dezalay and David Sugarman (eds.), *Professional Competition and Professional Power: Lawyers, Accountants and the Social Construction of Markets* (London: Routledge, 1995), xi–xii. See also Bourdieu, "Foreword," in Yves Dezalay and Bryant Garth, *Dealing in Virtue*, vii; Bourdieu, "The Force of Law: Toward a Sociology of the Juridical Field," trans. Richard Terdiman, *Hastings Law Journal*, 38 (1987), 816; and, generally, Pierre Bourdieu and Loïc Wacquant, *An Invitation to Reflexive Sociology* (Chicago: University of Chicago Press, 1992), 97.

[21] Mikael Madsen and Yves Dezalay, "The Power of the Legal Field: Pierre Bourdieu and the Law," in Reza Banakar and Max Travers (eds.), *An Introduction to Law and Social Theory* (Oxford: Hart, 2002), 192.

[22] Yves Dezalay and Bryant Garth, "Merchants of Law as Moral Entrepreneurs: Constructing International Justice from the Competition for Transnational Business Disputes," *Law and Society Review*, 29 (1995), 32.

[23] Emmanuel Gaillard, "Sociology of International Arbitration," *Arbitration International*, 31 (2015), 1. See also Gaillard, "Nouvelles réflexions sur la sociologie de l'arbitrage," *Procédures*, 2 (2020), 35–37.

related to the notion of field is the idea of an "epistemic community" – that is, "a network of professionals with recognized expertise and competence in a particular domain and an authoritative claim to policy-relevant knowledge within that domain or issue-area."[24] People involved in the field of international commercial arbitration have clearly formed an "epistemic community" of professionals who share a set of normative beliefs and values – a distinct legal "culture" specific to international commercial arbitration.[25]

1.1.2 Literature Gap and Reassessments

Despite all the "wealth and legal, economic and sociological complexity"[26] of international commercial arbitration, its history – or, even better, its genealogy[27] – has attracted relatively little scholarly attention. This is not to say that there have been no attempts to retrace or understand its evolution. Roebuck compiled a remarkable bibliography of "sources for the history of arbitration," which filled an entire issue of *Arbitration International*.[28] As will be explained in Chapter 2, numerous studies have appeared on the ancient history of international arbitration, stretching as far back as Mesopotamia and Ancient

[24] Peter Haas, "Epistemic Communities and International Policy Coordination," *International Organization*, 46 (1992), 3. See also Andrea Bianchi, "Epistemic Communities in International Arbitration," in Thomas Schultz and Frederico Ortino (eds.), *The Oxford Handbook of International Arbitration* (Oxford: Oxford University Press, 2020), 569–90; Jean d'Aspremont, *Epistemic Forces in International Law: Foundational Doctrines and Techniques of International Legal Argumentation* (Cheltenham: Edward Elgar, 2015).

[25] Karton, *Culture*, 5. For an early essay on the topic, see Tom Ginsburg, "The Culture of Arbitration," *Vanderbilt Journal of Transnational Law*, 36 (2003), 1335. Won Kidane has authored a book entitled *The Culture of International Arbitration* (New York: Oxford University Press, 2017), but his argument is that the leading theories of international arbitration do not adequately account for the impact of local cultures; as such, he is more interested in the role of cultures *in* arbitration than a single culture *of* arbitration.

[26] Gaillard, "L'apport," 542.

[27] The genealogical method consists in analyzing a modern idea as the confluence of previous, successively transformed ideas. For a prime example, see Duncan Kennedy, "Savigny's Family/Patrimony Distinction and Its Place in the Global Genealogy of Classical Legal Thought," *American Journal of Comparative Law*, 58 (2010), 811, 831–32. The two classic texts are Friedrich Nietzsche, *On the Genealogy of Morality* (1887), ed. Keith Ansell-Pearson, trans. Carol Diethe (Cambridge: Cambridge University Press, 2007); Michel Foucault, "Nietszche, la généalogie, l'histoire" (1971), in Daniel Defert, François Ewald, and Jacques Lagrange (eds.), *Dits et écrits I: 1954–1988* (Paris: Gallimard, 2001).

[28] Derek Roebuck, "Sources for the History of Arbitration: A Bibliographical Introduction," *Arbitration International*, 14 (1998), 237.

Greece.[29] It has indeed become standard practice for textbooks and treatises to begin with references to this distant past. In addition, an increasing number of scholars have analyzed the construction of the contemporary regime of international commercial arbitration.

In France, David, the eminent comparative law scholar, devoted multiple studies, as well as a chapter in his autobiography,[30] to international arbitration, including a historical study of arbitration in the nineteenth and twentieth centuries.[31] Hilaire's work also paved the way for much historical work in the field.[32] Closer to us, Jallamion has studied the practice of arbitration in civil matters from 1650 to 1789, initially focusing on Montpellier[33] and later expanding the scope of her research.[34]

Also in France, Grisel has worked on the application and creation of law in international arbitration;[35] along with Stone Sweet, he has been engaged in a large-scale project on the judicialization of international commercial arbitration, which also draws on archival material to chart the history and evolution of the field.[36] Lemercier and Sgard have been investigating the

[29] For a recent essay dividing the history of interstate arbitration into five "moments" (starting with the "Greek moment"), see Alexis Keller, "Inter-State Arbitration in Historical Perspective," in Thomas Schultz and Frederico Ortino (eds.), *The Oxford Handbook of International Arbitration* (Oxford: Oxford University Press, 2020), 843–73.

[30] René David, *Les avatars d'un comparatiste* (Paris: Economica, 1982), 244–57.

[31] René David, "Arbitrage du XIXe et arbitrage du XXe siècle," in *Mélanges offerts à René Savatier* (Paris: Dalloz, 1965).

[32] Jean Hilaire, "L'arbitrage dans la période moderne (XVIe–XVIIIe siècles)," *Revue de l'arbitrage*, 2000, 187.

[33] Carine Jallamion, "L'arbitrage en matière civile du XVIIe au XIXe siècle: L'exemple de Montpellier" (PhD diss., University of Montpellier 1, 2004).

[34] See, for example, Carine Jallamion, "La jurisprudence française et l'arbitrage de 1843 à 1958: De la défaveur à la faveur jusqu'à l'avènement de l'arbitrage international," *Revue de l'arbitrage*, 2015, 739 (pt. 1), 1037 (pt. 2); Jallamion, "Le juge français au service de l'investissement: Le développement en France de l'arbitrage commercial international (XIXe–XXe siècle)," in Luisa Brunori, Serge Dauchy, Olivier Descamps, and Xavier Prévost (eds.), *Le droit face à l'économie sans travail*, vol. 1, *Sources intellectuelles, acteurs, résolution des conflits* (Paris: Classiques Garnier, 2019); Jallamion and Thomas Clay, "Justice publique et arbitrage: hier et aujourd'hui," in Loïc Cadiet, Serge Dauchy, and Jean-Louis Halpérin (eds.), *Itinéraires d'histoire de la procédure civile* (Paris: IRJS Éditions, 2014).

[35] Florian Grisel, *L'arbitrage international ou le droit contre l'ordre juridique* (Paris: LGDJ, 2011). See also Eduardo Silva Romero, Emmanuel Jolivet, and Florian Grisel, "Aux origines de l'arbitrage commercial contemporain: L'émergence de l'arbitrage CCI (1920–1958)," *Revue de l'arbitrage*, 2016, 403.

[36] Alec Stone Sweet and Florian Grisel, *The Evolution of International Arbitration: Judicialization, Governance, Legitimacy* (Oxford: Oxford University Press, 2017). See also Florian Grisel and Alec Stone Sweet, "L'arbitrage international: Du contrat dyadique au système normatif," *Archives de philosophie du droit*, 52 (2009), 75.

modern history of international commercial arbitration, drawing on a wide range of primary and secondary sources and completing a final report in 2015.[37] Finally, Gaillard's Hague Academy course, though primarily concerned with the "legal theory" of international arbitration, imparts a vision of its overall development – or that of its "mental representations."[38]

In England, Mustill helpfully tried to sketch the history of international commercial arbitration,[39] while Veeder authored numerous studies on famous arbitrations or key episodes in the history of international arbitration.[40] Hale drew on various historical sources when exploring the transnational commercial dispute resolution regime,[41] and Schultz's study of "transnational legality," though a work of legal theory, also contains useful insights into the formation of the current international arbitration regime.[42] A recent collection of essays also

[37] Claire Lemercier and Jérôme Sgard, *Arbitrage privé international et globalisation(s): Rapport final* (March 2015), which followed an initial research report by the same authors in 2013. See also Jérôme Sgard, "A Tale of Three Cities: The Construction of International Commercial Arbitration," in Grégoire Mallard and Jérôme Sgard (eds.), *Contractual Knowledge: One Hundred Years of Legal Experimentation in Global Markets* (Cambridge: Cambridge University Press, 2016).

[38] Emmanuel Gaillard, *Legal Theory of International Arbitration* (Leiden: Martinus Nijhoff, 2010).

[39] Michael Mustill, "Arbitration: History and Background," *Journal of International Arbitration*, 6, no. 2 (1989), 43; Mustill, "The History of International Commercial Arbitration: A Sketch," in Lawrence Newman and Richard Hill (eds.), *The Leading Arbitrators' Guide to International Arbitration*, 3rd ed. (Huntington, NY: Juris, 2014). On English arbitral history, see also Michael Mustill and Stewart Boyd, *Commercial Arbitration*, 2nd ed. (London: Butterworths, 1989), 431–58.

[40] See, for example, V. V. Veeder, "The Tetiube Mining Concession: 1924–1932: A Swiss-Russian Story (Where the Arbitral Dog Did Not Bark)," in *Liber amicorum Claude Reymond*; Veeder, "Lloyd George, Lenin and Cannibals: The Harriman Arbitration; The 1999 Freshfields Lecture," *Arbitration International*, 16 (2000), 115; Veeder, "The Lena Goldfields Arbitration: The Historical Roots of Three Ideas," *International and Comparative Law Quarterly*, 47 (1998), 747; Veeder, "Two Arbitral Butterflies: Bramwell and David," in Martin Hunter, Arthur Marriott, and V. V. Veeder (eds.), *The Internationalisation of International Arbitration: The LCIA Centenary Conference* (London: Graham & Trotman/Martinus Nijhoff, 1995); Veeder and Brian Dye, "Lord Bramwell's Arbitration Code 1884–1889," *Arbitration International*, 8 (1992), 329.

[41] Hale, *Between Interests and Law*. My project and Hale's are distinct in that Hale uses the history of the ICC to address the question of variations in institutional attitudes towards global governance, whereas I explore the modern origins of the international arbitration regime. In other words, Hale uses international arbitration as a laboratory for shifts in global governance, whereas my goal is to retrace the very history of international commercial arbitration.

[42] Thomas Schultz, *Transnational Legality: Stateless Law and International Arbitration* (Oxford: Oxford University Press, 2014).

contains fascinating studies on specific episodes in the history of international adjudication, including international arbitration.[43]

Even though some of these works seem to be part of a broader effort "to write a critical history of international arbitration in commercial and investment matters,"[44] historical scholarship relating to international commercial arbitration is much less developed or comprehensive than that relating to investment treaty arbitration. In fact, recent scholarship has explored the history of investor-state arbitration. For instance, building on earlier work by Anghie and Lipson,[45] Miles has traced the origins of international investment law in the commercial and political expansionism of Western states from the seventeenth to the early twentieth century and cogently argued that "these origins still resonate within its modern principles, structures, agreements, and dispute resolution systems."[46] Yackee has provided a detailed account of "the first investor-state arbitration" – the 1864 dispute between the Suez Canal Company and Egypt, which was arbitrated by a commission headed by Napoleon III.[47] Several recent works have been devoted to the history of the investment treaty regime[48] or have tried to put the investment treaty regime in its historical context.[49] The attempt to understand the roots and causes of the current investment treaty regime is unmatched in the world of international commercial arbitration.

[43] Ignacio de la Rasilla and Jorge Viñuales (eds.), *Experiments in International Adjudication: Historical Accounts* (Cambridge: Cambridge University Press, 2019).

[44] Anne-Charlotte Martineau, "A Forgotten Chapter in the History of International Commercial Arbitration: The Slave Trade's Dispute Settlement System," *Leiden Journal of International Law*, 31 (2018), 219.

[45] Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge: Cambridge University Press, 2004); Charles Lipson, *Standing Guard: Protecting Foreign Investment in the Nineteenth and Twentieth Centuries* (Berkeley: University of California Press, 1985).

[46] Kate Miles, *The Origins of International Investment Law: Empire, Environment, and the Safeguarding of Capital* (Cambridge: Cambridge University Press, 2013), 3.

[47] See Jason Yackee, "The First Investor-State Arbitration? The Suez Canal Dispute of 1864 and Some Reflections on the Historiography of International Investment Law," in Stephan Schill, Christian Tams, and Rainer Hofmann (eds.), *International Investment Law and History* (Cheltenham: Edward Elgar, 2018).

[48] Taylor St. John, *The Rise of Investor-State Arbitration: Politics, Law, and Unintended Consequences* (Oxford: Oxford University Press, 2018); St. John, "The Creation of Investor-State Arbitration," in Thomas Schultz and Frederico Ortino (eds.), *The Oxford Handbook of International Arbitration* (Oxford: Oxford University Press, 2020), 792–814; Schill, Tams, and Hofmann, *International Investment Law*.

[49] See, for example, Jonathan Bonnitcha, Lauge Poulsen, and Michael Waibel, *The Political Economy of the Investment Treaty Regime* (Oxford: Oxford University Press, 2017), chapter 1; Chester Brown and Kate Miles (eds.), *Evolution in Investment Treaty Law and Arbitration* (Cambridge: Cambridge University Press, 2011).

Parra's comprehensive history of the International Centre for Settlement of Investment Disputes (ICSID), now in its second edition,[50] may have filled a "glaringly empty space on the serious bookshelf,"[51] but no similar attempt has been made with regard to the ICC or other leading arbitral institutions. Mustill's statement that "[a]rbitration has a long [p]ast, but scarcely any [h]istory"[52] – though no longer fully accurate – seems to apply to international commercial arbitration more than it does to investment treaty arbitration. One of the aims of this book is to help fill that gap.

1.1.3 *Reassessing Some Aspects of* Dealing in Virtue

Another of the book's goals is to challenge key aspects of one of the most successful and enduring works about the modern evolution of international commercial arbitration, Dezalay and Garth's *Dealing in Virtue*.[53] Published in 1996, this work sought to "trace in the mechanism of this increasingly global private justice the emergence of a transnational legal profession, institutionalized in new kinds of 'courts' – international commercial arbitration – and a special body of 'law' – the so-called *lex mercatoria*."[54] Viewing international commercial arbitration as a "process of social construction,"[55] Dezalay and Garth explained how international arbitrators had succeeded in "gaining enough identification with virtue . . . to be entrusted with and to profit from major business disputes."[56] Relying on Bourdieu's structural analysis, they mapped the field of international commercial arbitration, showing how it "reveals and contributes to the reorganization and reshuffling of hierarchies of positions, modes of legitimate authority, and structures of power."[57]

[50] Antonio Parra, *The History of ICSID*, 2nd ed. (Oxford: Oxford University Press, 2017); Parra, "'Black's Bank' and the Settlement of Investment Disputes," in David Caron, Stephan Schill, Abby Smutny, and Epaminontas Triantafilou (eds.), *Practising Virtue: Inside International Arbitration* (Oxford: Oxford University Press, 2015).
[51] Frank Berman, "Book Report: *The History of ICSID* by Antonio R Parra," *ICSID Review – Foreign Investment Law Journal*, 28 (2013), 144.
[52] Michael Mustill, "Sources for the History of Arbitration," *Arbitration International*, 14 (1998), 235.
[53] Yves Dezalay and Bryant Garth, *Dealing in Virtue: International Commercial Arbitration and the Construction of a Transnational Legal Order* (Chicago: Chicago University Press, 1996).
[54] Ibid., 3.
[55] Ibid., 5.
[56] Bryant Garth, "One Window into the State of Insiders' Arbitration Scholarship," *Journal of World Investment and Trade*, 19 (2018), 155 n1.
[57] Dezalay and Garth, *Dealing in Virtue*, 17, 61.

According to Dezalay and Garth, the contrast between "grand old men" and "young technocrats" was one of the most important divides in the field of international arbitration – a "key source of conflict, and also of transformation."[58] The "grand old men" were part of the pioneering generation of arbitration; they already had legitimacy and "national aura" before starting as arbitrators and saw arbitration as a "duty, not a career."[59] Dezalay and Garth argued that, beginning in the late 1970s and accelerating in the 1980s, a new generation of "young technocrats" used their technical expertise to criticize the "'amateurism' or 'idealism' of their predecessors."[60] This "'generational warfare' between the grand old men and the younger 'arbitration technocrats' – aided by U.S. multinational law firms – transformed an informal justice centered on the European grand professors into a U.S.-style 'offshore litigation.'"[61]

Dezalay and Garth's book was very much a pioneering work, the first full-scale inquiry into the construction of international commercial arbitration from a sociological perspective.[62] It was largely a success, quickly stimulating discussion and earning praise.[63] The book is still often cited and remains one of the most popular works in the field.[64] *Dealing in Virtue* has inspired further studies on the sociology of international arbitration,[65]

[58] Ibid., 34.
[59] Ibid., 34–35.
[60] Ibid., 36–37.
[61] Ibid., 10.
[62] Note, however, an earlier text by Bruno Oppetit, "Eléments pour une sociologie de l'arbitrage," *L'Année sociologique*, 27 (1976), 179, reproduced in *Théorie de l'arbitrage* (Paris: Presses Universitaires de France, 1998).
[63] Yves Dezalay, Didier Bigo, and Antonin Cohen, "Enquêter sur l'internationalisation des noblesses d'État: Retour réflexif sur des stratégies de double jeu; Entretien avec Yves Dezalay," *Cultures et Conflits*, no. 98 (2015), 24.
[64] According to Schultz and Ridi, it is the most cited work in arbitration literature (in English) in absolute terms, with a total of 1,394 cites. See Thomas Schultz and Niccolò Ridi, "Arbitration Literature," in Thomas Schultz and Frederico Ortino (eds.), *The Oxford Handbook of International Arbitration* (Oxford: Oxford University Press, 2020), 5. See also Thomas Schultz, "Celebrating 20 Years of 'Dealing in Virtue.'" *Journal of International Dispute Settlement*, 7 (2016), 531. The book's title is echoed in that of a collection of writings about international commercial arbitration: David Caron, Stephan Schill, Abby Smutny, and Epaminontas Triantafilou (eds.), *Practising Virtue: Inside International Arbitration* (Oxford: Oxford University Press, 2015).
[65] See, for example, Thomas Clay, "Qui sont les arbitres internationaux? Approche sociologique," in Centre français de droit comparé, *Les arbitres internationaux*, vol. 8 (Paris: Editions de la Société de législation comparée, 2005); Jean-Baptiste Racine, "Eléments pour une sociologie de l'arbitrage: Actes de la Journée d'étude du Groupe Sociologie de l'arbitrage du Comité français de l'arbitrage," *Revue de l'arbitrage*, 2012, 709; Sergio Puig, "Social Capital in the Arbitration Market," *European Journal of International Law*, 25