CONTENTS

List of Figures page xiv List of Tables xx Foreword by Emmanuel Gaillard xvii Acknowledgments xx

1 General Introduction 1

1.1 Background and Justification 1

- 1.1.1 Setting the Stage: The Current Landscape of International Commercial Arbitration 2
- 1.1.2 Literature Gap and Reassessments 5
- 1.1.3 Reassessing Some Aspects of Dealing in Virtue 9

1.2 Objectives and Arguments 13

- 1.2.1 The Three Ages of International Commercial Arbitration 13
- 1.2.2 The Pendulum Movement between Anxiety and Renewal 15
- 1.2.3 The Ongoing Tension between the State and the Mercatocracy 17
- 1.3 Sources and Caveats 19
 - 1.3.1 Sources 20
 - 1.3.2 Caveats 22

PART I The Age of Aspirations

- 2 Introduction to the Age of Aspirations 31
 - 2.1 Different Ways of Writing a History of International Commercial Arbitration 32
 - 2.2 Methodological Pitfalls in Studying the Ancient Origins of International Arbitration 36

- 2.2.1 Far-Fetched Historical Parallels 38 2.2.2 A Linear History? 39
- 2.3 Conclusion 41
- 3 Genealogy of International Commercial Arbitration 42
 - 3.1 Introduction 42
 - 3.2 Two Threads: Commodity Market Arbitration and State-to-State Arbitration 44
 - 3.2.1 Arbitration within Local Trade Associations 45
 - 3.2.2 Arbitration between States 50
 - 3.3 The Impact of These Mechanisms on Modern Arbitration Practice 57
 - 3.3.1 Developing Key Features of Modern International Arbitration Practice 57
 - 3.3.2 An Arbitral Consciousness 62
 - 3.4 Conclusion 66
- 4 The Arbitration Clause Saga in French Law and the Emergence of a Special Regime for International Commercial Arbitration 67
 - 4.1 Introduction 67
 - 4.2 From Renewal to Anxiety: Changing Attitudes toward Arbitration in Eighteenth- and Nineteenth-Century France 69
 - 4.2.1 The French Revolution's Fervor toward Arbitration 69
 - 4.2.2 The Backlash against Arbitration 71
 - 4.3 From Anxiety to Renewal: Overcoming *Prunier* to Create a Pro-Arbitration Regime 76
 - 4.3.1 Legislative Efforts to Set Aside the Prunier Rule 77
 - 4.3.2 Louis-Dreyfus's "Propaganda" Efforts and the Rise of the Mercatocracy 79
 - 4.3.3 Strengthening the Legal Regime for International Commercial Arbitration 82
 - 4.4 Conclusion 85

	PART II The Age of Institutionalization
5	Introduction to the Age of Institutionalization 89
	5.1 A Gap in the Literature 91
	5.2 Why the Lack of Research? 93
6	The Construction of a Coherent Framework for International Commercial Arbitration 96
	6.1 Introduction 96
	 6.2 The Origins of the International Chamber of Commerce and Its Court of Arbitration 98 6.2.1 The Atlantic City Conference 98 6.2.2 The Founding of the International Chamber of Commerce 105 6.2.3 The Birth of the ICC Court of Arbitration 112
	 6.3 The ICC's Efforts to Build a Coherent Framework for International Commercial Arbitration 116 6.3.1 Territorialism in the Age of Institutionalization: The Geneva Framework 117 6.3.2 From Territorialism to Internationalism: The Genesis of the 1958 New York Convention 124 6.3.3 A New "Internationalist" Legal Consciousness 132
	6.4 Conclusion 140
7	The Development of the ICC Arbitration System 154
	7.1 Introduction 154
	 7.2 Establishment of the ICC Arbitration System 156 7.2.1 Precedents 156 7.2.2 The ICC's Codification Efforts 159
	7.3Evolution of the ICC Arbitration System1727.3.1Changing Trends in Case Characteristics1727.3.2Shift from Conciliation to Arbitration1767.3.3Shift from Equity to Law182
	7.4 Conclusion 188

PART III The Age of Autonomy

- 8 Introduction to the Age of Autonomy 193
 - 8.1 Defining Profession and Professionalization 195
 - 8.2 The Professionalization of International Commercial Arbitration 196
 - 8.2.1 Technical, Specialized Knowledge 196
 - 8.2.2 Training and Professional Associations 197
 - 8.2.3 A Distinct Culture of International Commercial Arbitration 199
 - 8.3 Conclusion 201
- 9 *Lex Mercatoria* and the Birth of the French School of International Arbitration 202
 - 9.1 Introduction 202
 - 9.2 The Intellectual History of *Lex Mercatoria* 204
 - 9.2.1 Clive Schmitthoff's and Berthold Goldman's Inaugural Insights 204
 - 9.2.2 Expanding the Horizon of Lex Mercatoria 215
 - 9.3 The Emergence of the French School of International Arbitration 219
 - 9.3.1 Framing the French School of International Arbitration as a School of Thought 219
 - 9.3.2 Key Features of the French School of International Arbitration 221
 - 9.4 From Renewal to Anxiety: The Quarrels over Lex Mercatoria 227
 - 9.4.1 Ascertaining the Content and Methods of Lex Mercatoria 227
 - 9.4.2 Images of War 230
 - 9.5 Conclusion 232
- 10 The Second Generation of the French School of International Arbitration and the Quarrel over the Arbitral Legal Order 233

10.1 Introduction 233

Legal Order

- 10.2 Renewal in the French School of International Arbitration 234
 10.2.1 From the First to the Second Generation 234
 10.2.2 From Lex Mercatoria to the Quest for an Autonomous
- 10.3 The Debate over the Delocalization of Arbitral Awards 240

237

- 10.3.1 The Fate of Awards Set Aside in the Country of the Seat 241
- 10.3.2 Renewal and Anxiety in the Debate over the Delocalization of Awards 250
- 10.3.3 Salient Features of the Delocalization Controversy 256
- 10.4 The Theorization of and Quarrel over the Arbitral Legal Order 259
 - 10.4.1 The Theorization of the Arbitral Legal Order 259
 - 10.4.2 Critical Examination of the Theory of the Arbitral Legal Order 264
- 10.5 Conclusion 270
- 11 General Conclusion 272
 - 11.1 The Tripartite Division of the Modern History of International Commercial Arbitration 272
 - 11.2 Renewal and Anxiety 275
 - 11.3 The Ongoing Tension between the State and the Mercatocracy 277
 - 11.4 A New "Age of Disruption" in the History of International Commercial Arbitration? 278

Bibliography 281 Index 341