

Boston University School of Law

Scholarly Commons at Boston University School of Law

Shorter Faculty Works

Spring 2015

The Health of International Arbitration: Counterpoise and Common Sense

William W. Park

Boston University School of Law, wwpark@bu.edu

Follow this and additional works at: https://scholarship.law.bu.edu/shorter_works



Part of the [Dispute Resolution and Arbitration Commons](#)

Recommended Citation

William W. Park, *The Health of International Arbitration: Counterpoise and Common Sense*, in Lexis Nexis Arbitration 7 (2015).

Available at: https://scholarship.law.bu.edu/shorter_works/7

This Article is brought to you for free and open access by Scholarly Commons at Boston University School of Law. It has been accepted for inclusion in Shorter Faculty Works by an authorized administrator of Scholarly Commons at Boston University School of Law. For more information, please contact lawlessa@bu.edu.



The Health of International Arbitration: Counterpoise and Common Sense

William W. Park



Lexis PSL

Essay for Queen Mary University of London School of International Arbitration's 30th Anniversary

William W. (Rusty) Park, Professor of Law, Boston University; President, London Court of International Arbitration; General Editor, *Arbitration International*. Copyright © 2015 William W. Park

In large measure, the value and health of arbitration depend on a delicate counterpoise among competing goals that include procedural fairness, efficient decision-making, and substantively correct results on the merits of the disputes. The arbitrator seeks to 'get it right' not by an endless search for absolute truth, such as might exist in the eyes of God, but through reaching a reasonable view of what happened, what the contract says, and what the law provides. The decision-making process implicates evaluation of witness testimony, documents and legal authority.

Once an award has been rendered, national courts can play a significant role in reviewing the decisions in order to monitor basic procedural fairness and respect for arbitral jurisdiction. However, the judiciary would not normally second-guess conclusions on the substantive merits of those questions which the parties submitted for determination by the arbitrators.

Debate on the right mix of these objectives often gets derailed by focus on the last disappointing experience of whoever takes the debating floor. Human nature being what it is, a quest for sensible equilibrium does not always present itself with the same rhetorical flourish as more extreme perspectives.

A corporate executive who has just lost a case might lament that 'bad' awards cannot be appealed on their merits. Yet that same business manager, prevailing in a hard-fought arbitration, may feel grievance at the very thought of any ground for reversing his company's victory

through challenge to the arbitrator's decision. Understandably, the executive will focus more on the award's immediate effect on corporate profits, and less on how to articulate general annulment standards that promote an optimal balance among award finality, legal certainty and the integrity of proceedings.

Likewise, one in-house counsel might complain about the cost of discovery in her latest arbitration, while another grumbles that the arbitrator in a different proceeding was too stingy with document production. Each takes a position understandable from the perspective of her litigation strategy. Yet in drafting future agreements, neither may be willing to add contract language to clarify, limit or augment the role of information exchange, from fear of what such provisions would mean for the company's next dispute.

In considering how various practices and policies affect the future of private dispute resolution, common sense and even-handedness normally pay greater dividends than ideology and rhetorical flourish, even if the latter garner greater applause. In this connection, the Queen Mary University School of International Arbitration has played a vital role in bringing together for measured discussion the various stakeholders in the process: scholars, advocates, legislators and judges, all of whom have enhanced arbitration's contribution to aggregate social and economic cooperation.

William W. Park

To find out more about LexisPSL Arbitration, or to have a free trial, visit [lexisnexis.co.uk/Arb30/PSL](https://www.lexisnexis.co.uk/Arb30/PSL)