国际商事争议解决机制
专题研究丛书

A Study Series of Settlement Mechanism
for International Commercial Disputes

丛书主编　黄进

美国商事仲裁制度研究

——以仲裁协议和仲裁裁决为中心

丁颖　著

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序

黄 进

2000年，教育部确定武汉大学国际法研究所为普通高等学校人文社会科学重点研究基地。对武汉大学国际法研究所来说，这不仅是对它成立20年来学术发展的充分肯定，而且是它“而今迈步从头越”的极为重要的发展机遇。

按照教育部当时的设计，进入普通高等学校人文社会科学重点研究基地建设计划的高校研究机构，应当具有“国家级水平”，它们要通过深化科研体制改革、组织重大课题研究和加大科研经费投入等措施，围绕体制改革、科学研究、人才培养、学术交流和咨询服务等任务的落实，打下坚实的科研基础，形成明显的科研优势和特色，而且还要在经过若干年的建设后，使其整体科研水平和参与决策的能力居于国内领先地位，并力争在国际学术界享有较高的学术声誉。

为了实现基地建设的总体目标，并抓住机遇充分发展自己，武汉大学国际法研究所除了在人才培养、学术交流及资料信息建设、咨询服务和体制改革方面始终自强不息、追求卓越外，还在科学研究方面通过组织重大科研项目、产出重大研究成果，不断促进国际法基础研究和应用研究协调发展，构建国际法知识创新体系，提升自己的整体学术水平。“国际商事争议解决机制研究”这一课题就是我们组织的第一批基地重大科研项目之一。

众所周知，在全球化背景下，人、财、物和信息的跨国流动日益频繁，国际商事争议的产生不仅不可避免，而且争议的数量大为增加，争议的类型更加多样化，争议的复杂性也有所发展。所以，建立和健全国际商事争议解决机制对于构建和谐世界日显重要。

目前，国内对国际商事争议解决这个课题的研究，仍然还停留在传统的理论和制度层面，应该说存在一些深层次的问题。首先，原有的研究不

够全面，多注重国际民事诉讼和国际商事仲裁问题的研究，而忽视了和解、调解等选择性争议解决方式（Alternative Dispute Resolution 即 ADR）的研究，没有能够反映制度创新的实际状况。其次，原有的研究具有一定程度的非整合性，一方面，对各种民商事争议解决方式的研究是独立进行的，缺乏深层次的比较研究和整合；另一方面，从国际法治的整体制度架构来看，对各种争议解决制度之间的互动关系没作深入的分析。再次，原有的研究对投资、贸易、海事、知识产权等具体商事领域的争议解决机制缺乏进行分门别类的研究。最后，原有的研究对新出现的商事争议解决方式，如网上仲裁等，也缺乏系统的研究。上述表明，对国际商事争议解决机制进行全面的、综合的、系统的、深入的以及分门别类的研究实属必要。

针对目前国内对该课题研究存在的问题，“国际商事争议解决机制研究”项目设计着重从如下两方面对该课题进行研究：一是对国际商事争议解决机制进行综合研究，从整体上探讨国际商事争议解决机制的各种基本问题，分析和总结国际商事争议解决机制的共性、互动性和整合性；二是对国际商事争议解决机制进行分门别类研究，具体探讨国际投资争议解决机制、国际贸易争议解决机制、国际海事争议解决机制、国际知识产权争议解决机制、国际金融争议解决机制、统一域名争议解决机制、电子商务争议解决机制、国际体育争议解决机制等特别机制的个性和特点。本课题的研究不仅希望在理论上有所突破，有所创新，有所贡献，而且希望在实务方面有助于参与国际商事交往的当事人，特别是我国的当事人，能够深刻认识国际商事争议解决机制及其利弊，善用相关机制，快捷地化解争议，以保证其进行国际商事交易的安全和便利，从而促进建立正常的国际商事交往秩序。同时，也希望我国的立法、行政、司法、仲裁以及其他相关机构能够认同和参考我们的研究，我们的研究成果对其工作有所裨益。

正是基于上述考虑，我们课题组决定编辑《国际商事争议解决机制专题研究丛书》，将本课题项下的部分专题研究成果予以出版，以飨读者。本丛书的顺利出版，离不开武汉大学出版社的大力支持和帮助。借此机会，我们衷心感谢武汉大学出版社对本丛书的厚爱！

2006 年 8 月 20 日于武汉大学国际法研究所

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摘　要

仲裁是司法外解决争议的各种手段中最成熟、使用最广泛的一种方法。美国是仲裁发达国家，是国际商事仲裁中心之一，在支持仲裁政策的指导下，美国的商事仲裁制度在各方面都取得了很大突破，并对其他国家产生了巨大影响。本书对美国商事仲裁制度尤其是有关仲裁协议和仲裁裁决的承认与执行问题进行了详细探讨，以期为我国的相关立法和实践提供一点借鉴。

除引言外，全书共分十章。

引言部分首先阐述了本书的研究目的和意义。之后对本书的研究范围和方法予以了说明。本书的研究重点是美国的国际和州际商事仲裁，主要围绕仲裁协议和仲裁裁决的承认与执行展开。基于美国商事仲裁制度的特色，本书在研究过程中大量采用了判例分析的方法，并主要从美国法院对仲裁的协助、支持和监督的视角展现其对美国仲裁制度的发展。

第一章是对美国商事仲裁制度的总体介绍。美国有关商事仲裁的法律包括联邦成文法（主要是《联邦仲裁法》（FAA））和各州成文法。此外，解释成文法的法院判决也是仲裁法的重要组成部分。就联邦法和州法之间的关系而言，在国际和州际案件中，支持和鼓励仲裁的联邦政策是优先的，而州的仲裁法只有很小的司法或实践影响，除非适用州法能促进或方便仲裁进程。在美国的仲裁实践中，共存在三种形式的仲裁：机构仲裁、临时仲裁和半机构仲裁。不同类型的仲裁组织形式各有利弊，不过在一般情况下，许多有经验的国际从业者还是更倾向于选择机构仲裁。

第二章对执行与解释仲裁协议的基本问题进行了探讨。仲裁协议作为仲裁制度的基石，其重要性不言而喻，特定国家对待仲裁协议的态度往往体现了该国对待仲裁本身的态度。美国法律承认仲裁协议的有效性并且通常尽量允许对仲裁协议的实际执行。为此，其在执行和解释仲裁协议方面确立或接受了一系列有利于仲裁的基本法律原则：仲裁协议独立性原则、管辖权/管辖权原则以及国际仲裁协议法律适用上的有效原则。

第三章主要围绕与仲裁协议强制性有关的一系列问题展开论述。历史

上，普通法并不承认有效的仲裁协议具有强制性，即并不要求对仲裁协议予以特别执行。20 世纪早期，商业界对诉讼的普遍不满导致美国上下一致努力以改革普通法对待仲裁的态度，最终美国国会于 1925 年颁布了 FAA，该法第 2 条对仲裁协议的强制执行力予以了承认。最高法院再三强调，FAA 第 2 条创设了联邦实体法，该联邦法在联邦法院和州法院都是有拘束力的并优先于与之相抵触的州法，从而通过对 FAA 的解释确立了联邦法优先原则。不过，在 FAA 与州法之间的关系问题上，*Volt Information Sciences, Inc. v. Board of Trustees* 一案的判决带来了某些困惑。在该案中，最高法院接受了州法院对当事人法律选择条款的解释，将指定适用州法的条款理解为也选择了州的仲裁法规，并认为此时 FAA 不能优先于州法。但 *Volt* 案判决的适用范围受到了随后最高法院在 *Mastrobuono v. Shearson Lehman Hutton, Inc.* 案和 *Doctor's Associates Inc. v. Cassarotto* 案中所作判决的限制：受 *Volt* 判决支配的州法规则应是支持仲裁的那类规则。本章还对美国法下通常提出的仲裁协议“无效”或“可撤销”的理由逐一进行了探讨和分析。针对仲裁协议的有效性存在两类基本的异议。一类与通常适用的合同法下可以针对任何合同的有效性所提出的异议相似。这些理由包括：仲裁协议未有效订立、欺诈性诱导、欺诈、违法、显失公平或胁迫以及弃权。一类是专门适用于某些种类的仲裁协议的特别异议理由（区别于其他类型的合同），这主要是争议事项不可仲裁。此处讨论的是前者，即所谓实体性抗辩。基于“支持仲裁协议的自由主义的联邦政策”，当事人就仲裁协议的效力所提出的上述抗辩往往很难获得法院的支持。最后，本章对《纽约公约》和《巴拿马公约》中有关仲裁协议的规定在美国法院的适用进行了介绍。

第四章对争议事项的可仲裁性问题进行了讨论。本章所讨论的可仲裁性是指依可适用的法律，争议标的本身是否可以通过仲裁方式解决的问题。美国的成文法很少明确规定不可仲裁性的问题，界定仲裁范围的任务主要留给了法院。近几十年来，美国法院通过一系列判例极大地拓展了可仲裁事项的范围，特别是对某些特殊争议的可仲裁性问题已突破禁区，明确其可交付仲裁解决。通过详细考察，可以发现，美国的成文法通常并未限制哪一类争议特别不适合仲裁方式解决，法院也很少从这个角度来认识这个问题。最初不可仲裁性问题的提出更多的是担心当事人在不知情的情况下放弃有关权利以及经济势力和经验上的悬殊给当事人带来不利影响。但在当事人决定对现有争议进行仲裁的情况下，以上担心通常就不那么明显了，以至于也有美国判例认为，当事人可以订立具有强制性的仲裁现有

争议的协议——即使这些争议一般是不可仲裁的。因此，在美国，所谓可仲裁的争议实际上是就该争议所签订的争议前仲裁协议可获得法院执行的那类争议。而美国法院在可仲裁性问题上的扩张，实际上是随着对仲裁本身认识的发展，逐类将一些通常认为不能在争议发生前约定由仲裁解决的请求“让给”仲裁庭的过程，即允许当事人就前述请求事前签订仲裁协议。这里的关键是保证有关法律的适用，至于是由法院通过诉讼予以适用，还是由仲裁庭通过仲裁过程予以适用，并不重要。

第五章对仲裁协议的解释问题进行了探讨。在对仲裁协议的解释过程中，最重要的问题是确定仲裁协议的范围。在这一问题上，美国法院通常适用的是明确而强有力的“支持仲裁”的联邦普通法合同解释规则。用最高法院的话来说，“解决可仲裁性问题必须充分考虑支持仲裁的联邦政策，（此外）任何有关可仲裁事项的范围的疑问应按支持仲裁的精神解决”。本章还对与仲裁协议的解释有关的其他问题进行了讨论：仲裁究竟是当事人强制的和唯一的救济，还是仅为被许可的救济；当事人约定的是“仲裁”，还是其他争议解决形式；何国法律（以及如适用美国法，是联邦法还是州法）应支配对仲裁条款的解释；法院和仲裁员在解释仲裁协议上各自的作用。

第六章介绍了与执行仲裁协议有关的一系列程序问题。在当事人一方违反仲裁协议的规定或拒绝履行仲裁协议的情况下，另一方当事人若向美国法院申请执行仲裁协议，在程序上主要可以采取以下方式：（1）提起强制仲裁之诉；（2）申请中止诉讼；（3）申请禁止有关外国诉讼。

第七章对承认与执行仲裁裁决的基本问题进行了讨论。在美国法院，执行仲裁裁决或对仲裁裁决提出异议主要是分别通过确认仲裁裁决之诉和撤销仲裁裁决之诉进行的，此外，还存在使仲裁裁决生效的某些其他方法。根据 FAA、《纽约公约》或《巴拿马公约》，应推定仲裁裁决系有效的和可执行的，仅以明确规定的例外为条件。

第八章对拒绝承认与执行仲裁裁决的理由进行了讨论。事实上，美国法院一向主张，应严格限制对仲裁裁决的司法审查，充分尊重仲裁员所作裁决。为此，除对成文法和非成文法上有关仲裁裁决的执行例外予以限制性解释外，美国法院还确立了适用于所有审查根据的一般原则。首先，裁决被推定为是有效的，证明其无效的责任由对裁决提出异议的当事人一方承担。其次，通常对认定事实或适用法律之错误或曲解不予审查。同样，仲裁程序不会因为适用于法院审判的证据或程序规则未获适用而被宣告无效。最后，法院将适用“无害错误”原则来决定是否撤销裁决。因此，

基于支持执行的导向，当事人根据有关理由对仲裁裁决提出的异议往往很难获得成功。

第九章对承认与执行仲裁裁决的特殊问题进行了探讨。实践中一些当事人通过合同对仲裁裁决的司法审查范围予以了变更。在是否允许当事人合意扩大对仲裁裁决的司法审查范围上，美国下级法院存在分歧。而就当事人能否排除或限制法院对仲裁裁决的司法审查，美国法院则一致持否定态度。本书倾向于否认当事人合意变更司法审查范围的权利。传统观点认为，已被仲裁地法院撤销的仲裁裁决在其他国家也不能获得承认与执行。但在 *Chromalloy Gas Turbine Corp. v. Arab. Republic of Egypt* 案中，美国哥伦比亚特区联邦地区法院对一份已被裁决地法院——埃及法院撤销的仲裁裁决予以了承认。本书在综合分析各种观点的基础上，提出了自己的看法：在严格限制的前提下，已撤销的外国仲裁裁决可在内国获得承认与执行。

第十章以前面各章所作讨论为基础，对美国商事仲裁的理念进行了分析。首先对仲裁的性质进行了界定。在评介当前关于仲裁性质的不同观点之后，通过详细分析将仲裁的性质定位在契约性，这也是美国法院和学者的普遍观点。之后进一步分析并得出结论，美国商事仲裁制度的基本原则是契约自由。然后对仲裁的优越性进行了探讨，这是美国在内的仲裁发达国家确立“支持仲裁”政策的基础。而目前仲裁领域出现的诉讼化迹象显然不利于发挥仲裁的优越性，由于美国法院对支持仲裁政策的强调，在美国，仲裁的诉讼化倾向并不明显。接着对契约自由原则与支持仲裁政策之间的关系进行了讨论：通常情况下，贯彻契约自由原则能够最充分地发挥仲裁的优越性，这是在仲裁领域强调契约自由的最根本的原因。但契约自由原则与支持仲裁政策之间也可能存在冲突。此时应如何抉择？在面对相关案件进行抉择的过程中，指导美国法官的是一种体现美国法精神的实用主义进路。这种实用主义思维方式体现在：各种规则的确定更多的是一种政策分析的产物，而不是逻辑推理的产物；奉行灵活的遵循先例原则，而决不因循守旧；以及在对 FAA 进行解释时能够根据时代的发展，现实的需要，以政策判断为指导，不断确立相关规则推动仲裁的发展。总之，尽力对效率与自主的关系予以平衡。与美国法所体现的实用主义思维方法相伴的，是长期以来西方法律文化中平衡性的自我反省对美国仲裁制度的发展所起到的不可忽视的推动作用。

Abstract

Arbitration is the most developed and widely used alternative to litigation in the settlement of disputes. The United States is one of the world's leading arbitral centers, guided by the policy favoring arbitration, whose commercial arbitration system has achieved major breakthroughs in various aspects and inevitably has a great influence on other countries. This book makes a detailed study of commercial arbitration, especially the recognition and enforcement of arbitration agreements and awards in the United States, in order to draw some lessons for the legislation and practice concerned in China.

In addition to Introduction, this book consists of ten Chapters.

Introduction begins with an explanation of the purpose and significance of this study. Then the scope and approach of this study is introduced. This book focuses on international and interstate commercial arbitration in the United States. Moreover, it centers on the recognition and enforcement of arbitration agreements and awards. In view of the features of the U. S. commercial arbitration system, this book largely applies a case-analyzing approach to the study and illustrates how U. S. courts have developed U. S. commercial arbitration system through their assistance, support and supervision directed to arbitration.

Chapter 1 provides a general introduction to U. S commercial arbitration system. Arbitration law in the U. S. is governed by both federal and states statutes. The federal statutory law of arbitration is found mainly in the Federal Arbitration Act ("FAA"). Court decisions interpreting the governing statutes also constitute the important sources of arbitration law. This Chapter then explores the relationship between federal law and state law. In international and interstate cases, the federal policy of favoring and supporting arbitration prevails, and state arbitration laws have very little juridical or practical effect, except where they can be applied to assist or facilitate the arbitral process.

There are three forms of arbitration in the U. S. : administered or institutional arbitration, *ad hoc* arbitration and semi-administered arbitration. Every form has its own advantages and disadvantages. However, in general, many experienced international practitioners prefer institutional arbitration.

Chapter 2 explores basic principles relating to the enforcement and interpretation of arbitration agreements. The foundation for almost every arbitration is an arbitration agreement, whose importance is self-evident. A specific country's attitude toward arbitration agreements often reflects its attitude toward arbitration itself. U. S. law recognizes the validity of arbitration agreements and generally seeks to permit effective enforcement of such agreements. Therefore, it has established or accepted a series of basic legal principles in favor of arbitration governing the enforcement and interpretation of arbitration agreements: the separability doctrine, the Kompetenz-Kompetenz doctrine and validation principle regarding choice of law applicable to international arbitration agreements.

Chapter 3 examines a series of issues relevant to the enforceability of arbitration agreements. Historically, common law didn't recognize a valid arbitration agreement's enforceability, in other words, didn't grant specific enforcement of arbitration agreements. Early in the 20th century, widespread dissatisfaction of the business community with litigation led to concerted efforts in the United States to reform common law attitudes towards arbitration. In the end, Congress enacted the FAA in 1925, whose Section 2 provides that arbitration agreements are enforceable. The Supreme Court has repeatedly held that Section 2 creates substantive federal law and that federal law is binding in both federal and state courts, and it preempts inconsistent state law. Thus, principles of federal preemption under the FAA are established through the interpretation of the FAA. Nonetheless, the reasonably stable understanding of the relationship between the FAA and state law was challenged in *Volt Information Sciences, Inc. v. Board of Trustees.* In *Volt*, the Supreme Court affirmed a state court's decision holding that a routine state choice-of-law clause was a selection of the state's arbitration law; and that the FAA thus didn't preempt the state law. Fortunately, the scope of *Volt* was limited by the Court's subsequent decisions in *Mastrobuono v. Shearson Lehman Hutton, Inc.* and *Doctor's Associates Inc. v. Cassarotto*, which suggest state law rules that are

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subject to *Volt's* analysis are those which are supportive of the arbitral process. This Chapter also examines commonly-raised arguments under U. S. law that an arbitration agreement is either "null and void" or "revocable". There are two basic categories of objections to the validity of arbitration agreements. First, there can be challenges which parallel those which are available under generally-applicable contract law to contest the validity of any contract. These grounds include claim that the arbitration agreement was not validly formed, fraudulent inducement, fraud, illegality, unconscionability or duress, and waiver. Second, special rules of invalidity apply to some categories of arbitration agreements (as distinguished from other types of contracts), which mainly refer to the non-arbitrability doctrine. Here the former category, i. e. substantive defenses, is discussed. Due to "a liberal federal policy favoring arbitration agreements", U. S. courts seldom uphold those defenses against the validity of arbitration agreements raised by parties. Finally, this Chapter addresses the application of the New York and Inter-American Conventions to arbitration agreements in U. S. courts.

Chapter 4 discusses arbitrability of subject matter. Arbitrability mentioned in this Chapter is concerned with the question of whether the subject-matter of the dispute is capable of settlement by arbitration under the applicable law. U. S. statutes have seldom dealt expressly with the subject of non-arbitrability, thus leaving development of the doctrine largely to the courts. The late decades have witnessed a precipitous expansion in arbitrable subject matter through a series of U. S. court decisions. Among other things, arbitrability of some special types of claims has been recognized. Careful study reveals that U. S. statutes haven't specified particular types of disputes which are especially unfit for settlement by arbitration and courts have seldom looked at this issue from that angle. The non-arbitrability doctrine has been closely related to concerns about uninformed waiver and disparities in economic power and sophistication. Those concerns are generally not significantly implicated when parties agree to arbitrate an existing dispute. So some U. S. decisions also suggest that parties may enter into enforceable agreements to arbitrate existing disputes — even if those disputes are ordinarily regarded as non-arbitrable. Therefore, in the U. S., an arbitrable claim is one with respect to which a pre-dispute arbitration agreement will be enforced. And the expansion in arbitrable subject matter by U. S.

courts, in fact, results from their further understanding of arbitration, which led them to leave more and more claims that parties can't usually agree to arbitrate before disputes happen to arbitral tribunal, i. e. to permit parties to conclude agreements to arbitrate the above claims in advance. What matters is that the related statutes can be applied but not who, the courts or the arbitral tribunals, will apply them.

Chapter 5 considers the interpretation of arbitration agreements. The most important issue that arises in the interpretation of arbitration agreements relates to the scope of the agreement. With regard to this issue, U. S. courts have generally applied a federal common law rule of contract interpretation that is expressly and vigorously "pro-arbitration." In the Supreme Court's words, "questions of arbitrability must be addressed with a healthy regard for the federal policy favoring arbitration [and] any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration." This Chapter also discusses other issues of interpretation, including whether arbitration is the parties' mandatory and exclusive remedy, or whether it is only a permissive remedy; whether the parties have agreed to "arbitration," as distinguished from some other form of dispute resolution; what national (or other) law governs the construction of the arbitration clause; the respective roles of courts and arbitrators in interpretation of arbitration agreement.

Chapter 6 examines the procedural avenues that are available in U. S. courts for enforcing arbitration agreements. If one party to an arbitration agreement violates or refuses to honour the agreement, the following procedural mechanisms are available for another who seeks to enforce it in U. S. courts: (1) an action to compel arbitration; (2) an action for a stay of litigation; and (3) an action for injunctions against related foreign litigation.

Chapter 7 examines basic issues of the recognition and enforcement of arbitration awards. Procedures for enforcing or challenging arbitral awards in U. S. courts are primarily actions to confirm or vacate arbitral awards and other avenues for giving effect to arbitral awards. Under the FAA, New York and Inter-American Conventions arbitral awards are presumptively valid and enforceable, subject only to specified exceptions.

Chapter 8 discusses the grounds for refusing to recognize or enforce arbitral awards. In fact, U. S. courts generally narrowly limit judicial review of arbitral

awards and accord awards rendered by arbitrators substantial deference. Thus, in addition to the narrow interpretation of statutory and nonstatutory exceptions to enforcement of arbitral awards, courts have created general principles potentially applicable to all grounds of review. First of all the award is presumed to be valid, and the burden of proving invalidity rests on the party challenging the award. Secondly, there is generally no review for errors or misinterpretation of fact or law. In the same fashion, the arbitration proceeding would not be invalidated if rules of evidence or procedure applicable to trials were not applied. Finally, the court will apply the "harmless error" rule to determine vacatur of the award. Therefore, according to pro-enforcement bias, U. S. courts seldom uphold challenges to arbitral awards raised by parties on the grounds concerned.

Chapter 9 explores special issues of the recognition and enforcement of arbitration awards. In some instances, parties have attempted to contractually alter the scope of judicial review of arbitral awards. Lower U. S. courts divide on whether parties could expand the scope of judicial review, while they have uniformly been much less hospitable to attempts by the parties to eliminate or restrict judicial review. This book inclines to deny parties the rights to contractually modify judicial review of arbitral awards. The traditional idea is that an arbitral award vacated by the court of the country in which that award was made cannot be recognized or enforced in other countries. However, in *Chromalloy Gas Turbine Corp. v. Arab Republic of Egypt*, U. S. District Court for the District of Columbia recognized an arbitral award made in Egypt — notwithstanding the fact that an Egyptian court had subsequently vacated the award. Reviewing various opinions, this book concludes that a foreign arbitral award that has been vacated may be recognized and enforced by domestic courts in limited circumstances.

Chapter 10 makes an analysis of the idea of commercial arbitration in the United States on the basis of discussions in previous Chapters. The Chapter begins with a discussion of the nature of arbitration. After reviewing different views on this issue and a detailed analysis, this book concludes that the contractual nature is the essential nature of arbitration, which is also the general understanding among U. S. courts and scholars. Chapter 10 then makes a further exploration and concludes that the basic principle of U. S. commercial

arbitration system is freedom of contract. Next, the Chapter considers the advantages of arbitration, which is the basic reason why leading arbitration venues including the United States have adopted the policy favoring arbitration, while the judicialization of arbitration at present is obviously unfavorable for keeping those advantages. Due to emphasis on the policy favoring arbitration by U. S. courts, judicialization of arbitration in the United States is less evident. Then the relationship between the principle of freedom of contract and the policy favoring arbitration is examined. In general, insisting on the principle of freedom of contract can develop arbitration's advantages best, which is the fundamental reason why freedom of contract have been emphasized in the field of arbitraion. But it is possible that there might be contradictions between the principle of freedom of contract and the policy favoring arbitration. How should we make a choice in that situation? When making their choices in related cases, U. S. courts follow a pragmatistic approach reflecting the spirit of U. S. law. That pragmatistic mode of thinking is embodied in that establishment of various rules is largely a product of policy-analyzing rather than logical reasoning, applying the principle of following precedents flexibly and not sticking to old ways and that when interpreting FAA, guided by policy-analyzing, U. S. courts can constantly establish new rules to satisfy the practical needs. In a word, U. S. courts have been trying their best to keep balance between efficiency and autonomy. What accompanies the pragmatistic mode of thinking embodied in U. S. law is the longtime balanced self-questioning in the west legal culture that benefits the U. S. arbitration system enormously.

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