

Arbitration Law in America

A Critical Assessment

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To Katherine L. Ware

To Sylvia Rebeca Lazos

To Elizabeth West Speidel

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INTRODUCTION

The Federal Arbitration Act (FAA) is now eighty years old. The time is right for a complete reformulation of federal arbitration law, whether that be international or interstate. The old FAA, passed in the Roaring Twenties, is completely outmoded. This eighty-year-old statute has been consistently disregarded by the Supreme Court, which has recast arbitration in an activist set of cases that largely ignore careful legislative history and even the explicit words of the FAA. Most of the authors feel that the Supreme Court has largely failed in this attempt to refine arbitration doctrine through the use of setting forth rules in individual cases. We also regret the failure of Congress to confront the problems that age, fragmentation, and omission have caused for the implementation of federal arbitration law. We prefer a legislative solution in the form of a new and improved FAA.

This book sets forth the principal themes that a new reformed FAA should follow. We here lay out our thoughts on the main parts of an ideal federal arbitration law. This is legal writing that deals with optimal legislation and policies. Our task is not to criticize or analyze past mistakes by the courts in interpreting the old FAA. We collectively have written far too many words critical of the present state of arbitration doctrine. This, instead, is a policy-based effort that focuses on the more difficult task of rebuilding a new FAA.

We have given substantial thought to what topics within the field of arbitration should be emphasized. This book is not a comprehensive arbitration treatise, but, instead, focuses on optimal arbitration policy. Rather than try to cover every conceivable topic in this broad field, we have selected what we think are the most pressing problem areas within American arbitration. These topics include consent to arbitrate, arbitration of consumer and employment disputes, the scope of federal arbitration legislation as compared to state arbitration legislation, federal preemption of state law, the