

Editorial 91:3: ver 8/8/2025

Culture is a funny thing. Created by the collective unconscious rather than by deliberate choice, culture wields inordinate and often invisible pressure on individual behaviour and beliefs. Culture is particularly important in fields – such as international arbitration – where the rules of appropriate behaviour remain largely unwritten. Some cultural norms are not even recognized as such until the norm is violated, resulting in raised hackles and eyebrows.

The concept of arbitral culture is in ways similar to constitutional conventions in the United Kingdom. Because the UK does not have a written constitution, many constitutional principles exist simply as traditional modes of behaviour. The only way to formally establish such conventions is to bring a litigation to enforce the unwritten norm after it has been breached.

Arbitration is similar. While written rules of procedure exist, many behaviours arise merely as a matter of common expectation. When those behaviours are breached, the injured party brings the matter to the tribunal to resolve.

Of course, these types of disputes are one reason for increasing costs in arbitration. Specialists have long recognized this phenomenon and used it to argue that their insider status places them in the best position to ensure a time – and cost-effective arbitration. Unfortunately, that doesn't stop parties from hiring less-scrupulous or less-knowledgeable counsel who wittingly or unwittingly breach arbitral norms.

What can be done about this? How can cultural knowledge be transmitted across individuals, across firms, and across national borders?

US Magistrate Judge Wayne Brazil has discussed this principle in judicial settings, claiming that 'baby judges' become 'acculturated' to their new positions by observing and working with more experienced judges. While effective, this process is of course fraught with potential risks – for example, new judges can pick up harmful biases and inefficient practices through informal mentorships.

Another method of educating newcomers to a particular field is through writings authored by experienced scholars and practitioners. This technique is particularly useful in fields like international arbitration, where knowledge about cultural norms needs to be conveyed across national borders and embraced by a diverse audience of scholars, practitioners, arbitrators, and judges.

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Fortunately, the current issue of *Arbitration* helps promote cross-border understanding of international arbitration by including several articles touching on that topic. Karl Hennessee kicks off the discussion by looking at arbitral culture from the perspective of arbitral 'ritual' and considering whether and to what extent artificial intelligence (AI) will affect the profession's longstanding cultural norms. In a fascinating piece that incorporates the thinking of John Rawls, Ludwig Wittgenstein, and Clay Christensen, Hennessee offers an entirely new approach to the analysis of AI's role in arbitration. The article is simultaneously practical and theoretical, conceptual and technical, and is a must-read for anyone in our field.

While Nikolaos Voutyrakos's article on public policy does not explicitly invoke culture, public policy – particularly 'international' public policy – is a culturally derived norm. Voutyrakos's contribution is especially important because it discusses public policy in the context of sports arbitration, a particularly niche practice within the world of international dispute resolution.

Fabian Ajogwu and Peace Omotayo Adeleye consider the culture of confidentiality in arbitration in their article on international commercial arbitration involving states as parties. Although the principle of transparency has been well-discussed in the context of investor-state arbitration, those proceedings invoke public considerations that are typically absent in commercial disputes. Ajogwu and Adeleye explore the tension that arises between the culture of confidentiality in international commercial arbitration and the culture of transparency in matters involving states as parties through the lens of the decision in *Federal Republic of Nigeria v. Process and Industrial Developments Limited*, although the principles under discussion have a far wider application.

The issue concludes with three shorter pieces: an update on a previously published article by Gordon Blanke concerning the enforceability of DIFC-LCIA arbitration clauses after the promulgation of Dubai's Decree No. 34/2021; a book review by Graham Morrow concerning extra-contractual recoveries on construction projects; and a book review by Gordon Blanke on construction law. While these contributions have fewer words than their longer counterparts, they are equally insightful.

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