

appropriateness of the New Approach means challenging European integration. The open process, the lack of European standards, the non-existent European state of the art characterize the European legal order as a constitution in process. The democratic deficit of the New Approach should be reduced by enhancing individual and collective rights of all parties concerned against deficient standard setting and against incomplete, unclear and insufficient New Approach-type directives.

University of Bamberg Hans-W. Micklitz

Lillich, Richard B. and Charles N. Brower (eds). *International Arbitration in the 21st Century: Towards 'Judicialisation' and Uniformity?* New York: Transnational Publishers, 1994.

This book deals with the all too classic saga of the ambivalent rapport between arbitration and state adjudication. International commercial arbitration emerged at the beginning of the 20th century as the young and disenfranchised sibling of national courts. Decidedly modern and rebellious, it sailed through the century parading itself as being technically superior to its sovereign relative: cheaper, faster, more confidential and less formal. As the century draws to a close, it turns out that arbitration is taking on its siblings' poor traits. Judicialized and preoccupied with uniformity, arbitration has become expensive, and rampant with pomp and ceremony. This book tells us what we need to know about this story — mostly written in the jubilant tone of a proud mother. It offers a comprehensive overview in ten articles, divided into four sections, where contributors trace the phenomena of 'judicialization' and 'uniformity' in contemporary arbitration practice. The overall picture is seen through the specific lenses of arbitration's procedural aspects, its governing law, and a review of its awards. It is particularly concerned to inform the reader on the extent to which these phenomena have been used and whether they ought to be promoted or restrained. All told, the verdict is overwhelmingly positive: arbi-

tration is becoming more judicialized, and there is no shame in that!

Throughout the book, judicialization manifests itself in two main forms. First, we see it in the shape of an increased judicial intervention in the arbitration process. Most contributors seem to argue that 'intervention' here ought to be experienced more as 'assistance', and should be appreciated as such. Court intervention promotes arbitration by supplying it with a much needed 'control system' when enforcing arbitral agreements, appointing arbitrators, reviewing awards, and so forth. Moreover, exhaustive surveys of transnational practices point towards a uniform global trend of restrained intervention. Second, arbitration is becoming more judicialized in the sense that it is conducted more frequently with the procedural intricacy and formality native to national adjudication. Here, the verdict starts off as rather ambivalent: whereas judicialization has meant greater safeguards to procedural fairness, it has also meant diminished flexibility, expediency and economy. One contributor proposes pre-hearing conferences, and another advocates fast-track arbitration, as ways to restore the balance between flexible procedures and predictable rules. But perhaps this book is at its most informative when mapping the 'creeping unification' that has coupled the judicialization of arbitration practice. Various surveys, some of them quite exhaustive, are presented of national, international and supranational treaties, institutions, court decisions and awards. Convergence is reported in the terminology, proceedings and grounds for enforcing and annulling arbitral awards. The New York Convention and UNCITRAL model-law influence are advanced as the heroes behind this movement. Whereas national variants and alleged redundancies (such as double judicial control) are observed, they are generally dismissed as rather 'academic' concerns of no practical significance. In doing so, I think the editors have performed an excellent job in providing us with quite an extensive overview of recent developments.

Now for the critical input. To indulge again in the 'sibling rivalry' analogy, the impression

this book tries to leave us with is that arbitration, once a rebellious teenager, has now blossomed with enough self-confidence to acknowledge the values of its judicial elder. Thus, several of the contributors state with admirable realism that arbitration is no longer cheaper, faster, or otherwise technically superior to adjudication — instead, its main advantage is that it allows litigants to escape sovereignty. 'Judicialization' then means arbitration plus adjudication's good traits. This realist move is coupled with an anti-romantic twist: contributors consistently dismiss negative assessments of judicialization as sentimental calls for a return to a 'golden age of arbitration', an age, they argue, which wasn't really that golden. As with all family feuds, this is not the whole story. The realist/anti-romantic sensibility that characterizes this book does more than legitimate its jubilant message. A number of points, however, are missing from the above formula.

First, the realist/anti-romantic rhetoric does much to obfuscate the professional stakes involved between two competing traditions of arbitration. It is amazing that the contributors uniformly failed to observe that judicialization largely corresponds, in aesthetic and professional terms, with increased Americanization. By Americanization I refer to a mode of legal production that is specific to the American legal profession, and is best epitomized in the litigation practices of the 'Crauthian' model of New York law firms. Accordingly, it is essential to note that the 'golden age of arbitration' is not merely a romantic image of a 'lost arbitral eden' as the book's conclusion puts it. The golden age is a lost reality of a Continental tradition of arbitration: an informal dispute settlement mechanism conducted by grand old men (mostly academics) in a sanctified setting. Judicialization corresponds to arbitration's technocratic transformation at the transnational hands of American law firms. This book is an uncanny celebration of this transformation. Its tone is jubilant because it is written by the victors.

Second, this book equally celebrates the end of a theoretical debate which has long cap-

tured the Continental imagination. None of the contributors seem to care any longer if arbitrators obtain their authority under a 'jurisdictional theory' or a 'contractual autonomous' theory. Their overwhelming concern is to establish a practical conciliation between courts and arbitration. But here again, what appears to be realism transcending theory is ultimately one tradition of arbitration practice displacing another.

Third, there is almost no mention of Alternative Dispute Resolution (ADR) in this book, an extremely curious lacuna. Throughout this decade, ADR has been perceived as the only real competition to arbitration. The arbitration community responded to this challenge with hundreds of articles, conferences and institutional schemes all striving to introduce ADR mechanisms to the now threatened alternative. This bitter competition and the effects it may have on arbitration's prospects in the 21st century are barely discussed in these pages. For a book that embraces realism as the methodology of choice, one can only imagine what happened to ADR.

Harvard Law School *Amr Shalakany*

Galgano, Francesco and Franco Ferrari.
Atlante di diritto privato comparato
(2nd ed.). Bologna: Zanichelli Editore
S.p.A., 1993. Pp. xiii, 253. Index. ITL
52,000.

The *Atlante di diritto privato comparato* is an original and innovative work, which makes use of geographical maps to illustrate directly and effectively the operative spheres of the different legal systems discussed in its pages. The introductory sections outline the distinctions between common law and civil law, and these distinctions are further examined with reference to the systems inspired by French law and those influenced by the German model.

Although largely realized by Francesco Galgano, this volume also contains the experiences and contributions of other authors. In addition to Galgano, the introductory sections are written by Ugo Mattei and enhanced