

ARBITRATION AS IUS GENTIUM: A SCHOLASTIC THEORY OF ARBITRATION

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ABSTRACT

This article examines the existing theories regarding arbitrators powers and arbitration in general and sets forth an alternative approach based on the Scholastic school of philosophy. In doing so, it clarifies misconceptions concerning the Scholastic's alleged rejection of private justice, expounds the concept of natural law as understood by Scholastic philosophy and analyses the oft-forgotten cousin of natural law, the Ius Gentium. It then demonstrates how arbitration, and arbitrators powers, flow from the Ius Gentium and thus can only be regulated by States to a limited extent. Specific examples of such regulations and their relations with the restrictions imposed on arbitration by the Ius Gentium are also analysed. This article is unique as it is the first to set out a scholastic theory of arbitration and one of a very few articles which analyses the relationship between arbitration and natural law. It should, therefore, be of use to all those who are interested in natural law, Scholasticism and theories of arbitration, as well as having practical value in explaining the real basis for many of the inherent limitations of arbitration as a consensual form of dispute resolution.

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