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THE LEGAL FOUNDATIONS OF THE LEGITIMACY OF ARBITRATOR SELECTION

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Abstract. This article examines the legal foundations of legitimacy in arbitrator selection within international commercial arbitration, focusing on the relationship between party autonomy, procedural fairness, independence, impartiality, and transparency. Drawing primarily on the Arbitration Act 1996, as amended by the Arbitration Act 2025, the UNCITRAL Model Law, and leading institutional arbitration rules, the study analyses the legal principles governing the constitution of arbitral tribunals. Particular attention is given to the distinction between formal procedural rights and the practical ability of parties to make informed decisions when selecting arbitrators. The article explores how information asymmetry, professional networks, reputation, and repeat appointments influence candidate assessment and accessibility. It argues that although existing legal frameworks provide essential safeguards for legitimate tribunal constitution, they do not necessarily ensure equal access to reliable information about prospective arbitrators. The findings suggest that the legitimacy of arbitrator selection depends not only on compliance with applicable legal requirements but also on the meaningful exercise of party autonomy within a sufficiently transparent and impartial procedure. The article concludes that improving access to reliable candidate information may strengthen the practical effectiveness of arbitrator selection without undermining established legal principles or the value of professional expertise.

Key words. International Commercial Arbitration; Arbitrator Selection; Legitimacy of Arbitral Tribunals; Party Autonomy; Independence and Impartiality; Procedural Fairness; Transparency; Information Asymmetry; Repeat Appointments; Professional Networks.

Annotatsiya. Ushbu maqolada xalqaro tijorat arbitrajida arbitrlarni tanlash jarayonining legitimligini ta'minlovchi huquqiy asoslar, xususan, taraflar avtonomiyasi, protsessual adolatlilik, arbitrlarning mustaqilligi va xolisligi hamda shaffoflik tamoyillari o'rtasidagi o'zaro bog'liqlik tadqiq etiladi. Tadqiqotda 1996-yildagi Angliya Arbitraj to'g'risidagi qonuni va unga 2025-yilda kiritilgan o'zgartirishlar, YUNSITRALning Xalqaro tijorat arbitraji to'g'risidagi Namunaviy qonuni hamda yetakchi arbitraj institutlarining reglamentlari asosida arbitraj tribunalini shakllantirishning huquqiy mexanizmlari tahlil qilinadi. Taraflarning arbitrlarni tanlashdagi protsessual huquqlari va ushbu huquqlardan amalda ongli ravishda foydalanish imkoniyatlari o'rtasidagi farqlarga alohida e'tibor qaratiladi. Shuningdek, axborot assimetriyasi, professional aloqalar, arbitrlarning obro'-e'tibori va takroriy tayinlovlarning nomzodlarni baholash jarayoniga ta'siri o'rganiladi. Tadqiqot natijalari

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amaldagi huquqiy mexanizmlar arbitraj tribunalining legitimligini ta’minlash uchun muhim kafolatlarni nazarda tutsa-da, potensial arbitrlar to‘g‘risidagi ishonchli ma’lumotlardan teng foydalanish imkoniyatini har doim ham kafolatlamasligini ko‘rsatadi. Maqolada arbitrlarni tanlash jarayonining legitimligi nafaqat amaldagi huquqiy talablarga rioya etilishiga, balki taraflar avtonomiyasining shaffof va xolis protseduralar doirasida samarali amalga oshirilishiga ham bog‘liq ekanligi asoslanadi. Xulosa sifatida, arbitrlar haqidagi ishonchli axborotdan foydalanish imkoniyatlarini kengaytirish professional tajribaning ahamiyatini va mavjud huquqiy tamoyillarni saqlab qolgan holda arbitrlarni tanlash jarayonining amaliy samaradorligini oshirishi mumkinligi ta’kidlanadi.

Kalit so’zlar. Xalqaro tijorat arbitraji, arbitrlarni tanlash, arbitraj tribunalining legitimligi, taraflar avtonomiyasi, arbitrlarning mustaqilligi va xolisligi, protsessual adolatlilik, shaffoflik, axborot assimetriyasi, takroriy tayinlovlar, professional aloqalar.

Аннотация. В статье исследуются правовые основы легитимности процедуры выбора арбитров в международном коммерческом арбитраже с особым акцентом на взаимосвязь автономии воли сторон, процессуальной справедливости, независимости и беспристрастности арбитров, а также принципа прозрачности. На основе анализа Закона Англии об арбитраже 1996 года с изменениями, внесёнными Законом об арбитраже 2025 года, Типового закона ЮНСИТРАЛ о международном торговом арбитраже и регламентов ведущих арбитражных институтов рассматриваются правовые механизмы формирования состава арбитражного трибунала. Особое внимание уделяется разграничению формальных процессуальных прав сторон и их фактических возможностей принимать обоснованные решения при выборе арбитров. Анализируется влияние информационной асимметрии, профессиональных связей, репутации и повторных назначений на оценку и доступность кандидатур арбитров. Результаты исследования показывают, что, несмотря на наличие в действующем правовом регулировании необходимых гарантий легитимного формирования арбитражного трибунала, равный доступ сторон к достоверной информации о потенциальных арбитрах не всегда обеспечивается. Обосновывается положение о том, что легитимность выбора арбитров определяется не только соблюдением применимых правовых требований, но и возможностью эффективной реализации автономии воли сторон в рамках достаточно прозрачной и беспристрастной процедуры. В заключение отмечается, что расширение доступа к достоверной информации о кандидатах может способствовать повышению практической эффективности выбора арбитров без ущерба для существующих правовых принципов и значимости профессионального опыта.

Ключевые слова. Международный коммерческий арбитраж, выбор арбитров, легитимность арбитражного трибунала, автономия воли сторон, независимость и беспристрастность арбитров, процессуальная справедливость, прозрачность, информационная асимметрия, повторные назначения, профессиональные связи.

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Introduction. Arbitrator selection is governed by several interacting legal and procedural sources. This dissertation uses arbitration seated in England and Wales as its principal national point of reference, while the UNCITRAL Model Law and leading institutional rules provide a transnational comparative framework. The starting point is lex arbitri. For an arbitration seated in England and Wales, the principal statutory framework is Part I of the Arbitration Act 1996 (AA 1996),[1] as amended by the Arbitration Act 2025 (AA 2025).

Within that framework, the parties' agreement is the primary source for determining how the tribunal is to be constituted. The parties may agree on the number of arbitrators, relevant qualifications and the method of selection or appointment. Where institutional arbitration is chosen, the applicable institutional rules supplement that agreement and allocate appointment functions between the parties and the institution. If the agreed procedure is incomplete or fails to operate, the lex arbitri provides default mechanisms. Under English law, sections 15–19 of the AA 1996 address the number and appointment of arbitrators and the consequences of a failure of the agreed appointment procedure.[2] Party agreement, institutional rules and the law of the seat therefore operate as interconnected rather than equivalent sources.

Analysis of literature. The sources used in this dissertation perform different functions. The UNCITRAL Model Law on ICA is used as a transnational legislative benchmark, including its recognition of party autonomy over appointment procedure.[3] The ICC and LCIA Rules provide institutional models of tribunal constitution. They are particularly useful for comparison because the ICC framework gives an important role to party nomination, whereas under the LCIA Rules formal appointment rests with the LCIA Court. The NYC 1958 performs a different function: although it does not generally regulate initial arbitrator selection, defects in tribunal composition may become relevant at the recognition and enforcement stage.[4]

The English framework must also be read in light of the AA 2025. Among its relevant reforms, the Act introduced a statutory rule concerning the law applicable to arbitration agreements and codified an arbitrator's duty of disclosure.[5] These changes are relevant to the legal framework within which prospective arbitrators are considered and appointed. Since the principal reforms came into force in 2025, this dissertation distinguishes, where necessary, between authorities governed by the previous legal position and the current framework.

Legitimacy and the Constitution of the Arbitral Tribunal. International commercial arbitration derives its adjudicative authority from the parties' consent. Consent to arbitrate, however,

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[1] Arbitration Act 1996, pt I.

[2] Arbitration Act 1996, ss 15-19.

[3] UNCITRAL Model Law (n 11), art 11.

[4] New York Convention (n 14) art V(1)(d).

[5] Arbitration Act 1996, ss 6A, 23A.

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does not by itself determine who will exercise that authority. A further process is required to constitute the tribunal. The selection process therefore performs an important legal and procedural function: it translates the parties' agreement to arbitrate into an authorised decision-making body.[6]

The term 'legitimacy' is used in this dissertation in a narrow legal and procedural sense. In the context of arbitrator selection, it refers to whether the constitution of the tribunal can be recognised as an authorised and procedurally acceptable exercise of adjudicative authority.[7] This depends on conformity with the parties' agreement and the applicable legal framework, including safeguards of independence, impartiality, procedural fairness, disclosure and effective challenge.[8]

The practical importance of selection is reflected in the factors considered when choosing an arbitrator. Moses identifies matters including knowledge, experience, language, availability and reputation as relevant to candidate selection.[9] It determines both the identity and relevant qualities of the person who will exercise adjudicative authority.

Research methodology. The legal framework also regulates the constitution of the tribunal as significant. Art.11 of the UNCITRAL Model Law allows the parties to agree on a procedure for appointing arbitrators and provides a default mechanism where the agreed appointment procedure fails.[10] Section 16 of the AA 1996 follows a comparable approach by giving effect to agreed appointment procedures while providing statutory rules in their absence.[11] The Model Law further recognises, at the post-award stage, that a tribunal constituted otherwise than in accordance with the parties' agreement or applicable law may provide a basis for setting aside or refusing recognition of an award.[12] The significance of these provisions should not be overstated: an appointment defect does not necessarily invalidate every arbitration or award, and not every irregularity will meet the threshold for setting aside or refusal of enforcement. They nevertheless demonstrate that tribunal constitutions are capable of producing legal consequences and that compliance with the applicable procedural requirements forms part of the framework through which arbitral authority is recognised.

This does not mean that each party must directly select an arbitrator. Institutions, co-arbitrators and domestic courts may validly perform the selecting function. Under the LCIA Rules, the parties may nominate arbitrators, but only the LCIA Court is empowered to appoint arbitrators to the

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[6] Mark Mangan, Lucy Reed and John Choong, A Guide to the SIAC Arbitration Rules (OUP 2018) 44.

[7] Stefan Mandelbaum, 'The Legitimacy of Arbitral Reasoning: On Authority and Authorisation in International Investment Dispute Settlement' (2020) 10 Czech and Central European Yearbook of Arbitration 113, 123–125; Yarik Kryvoi, 'Private or Public Adjudication? Procedure, Substance and Legitimacy' (2021) 34 Leiden Journal of International Law 683.

[8] Stefanie Schacherer, 'Independence and Impartiality of Arbitrators: A Rule of Law Analysis' 2018, 4–5, 21–22.

[9] Margaret L Moses, *The Principles and Practice of International Commercial Arbitration* (4th edn, CUP 2024) ch 6, 123–27.

[10] UNCITRAL Model Law (n 11) art 11(2)–(4).

[11] Arbitration Act 1996, s 16.

[12] UNCITRAL Model Law (n 11) arts 34(2)(a)(iv), 36(1)(a)(iv).

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tribunal.[13] Institutional appointment is therefore not necessarily inconsistent with party autonomy. Where parties have chosen institutional arbitration, their autonomy may operate through prior acceptance of the institution's selection and appointment procedure.

The relevant principle is consequently narrower than an absolute right of personal nomination. Tribunal constitution derives legitimacy from a selection process that is authorised by the parties' agreement and the applicable legal framework. Party participation remains important, but it operates within a regulated procedure.

Party Autonomy and the Legal Limits of Arbitrator Selection. Party autonomy is a central feature of arbitrator selection because parties may determine, within the limits of the applicable law and institutional rules, how their tribunal is to be constituted. Article 11(2) of the Model Law expressly permits parties to agree on an appointment procedure.[14] These arrangements demonstrate that autonomy concerns the parties' legally recognised influence over the constitution process rather than an unrestricted entitlement to control every appointment decision directly.

Autonomy is nevertheless not the only value governing tribunal constitution. Article 12 of the Model Law requires disclosure of circumstances likely to give rise to justifiable doubts about an arbitrator's impartiality or independence and permits challenge where the relevant standard is met.[15] While party autonomy governs tribunal constitution under the UNCITRAL Model Law, it is constrained by the requirement of an independent and impartial tribunal.[16] Unilateral appointment clauses, which grant one party dominant control over selecting arbitrators, compromise this fundamental balance.[17] Furthermore, the statutory standard of disclosure under Article 12(1) of the Model Law is strictly objective. Unlike the subjective "eyes of the parties" standard under the IBA Guidelines, the statutory duty arises only if circumstances objectively create justifiable doubts as to the arbitrator's impartiality.[18] In Aroma Franchise, the Court of Appeal for Ontario confirmed that an arbitrator's duty to disclose does not extend to the parties' uncommunicated subjective expectations, as repeat appointments by experienced counsel in unrelated matters reflect normal practice rather than bias.[19]

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[13] LCIA Arbitration Rules (n 15), arts 5.7–5.8.

[14] UNCITRAL Model Law (n 11) art 11(2).

[15] UNCITRAL Model Law (n 11) art 12(1)–(2).

[16] Ilias Bantekas and others, 'Article 12: Grounds for Challenge' in Ilias Bantekas and others, UNCITRAL Model Law on International Commercial Arbitration: A Commentary (Cambridge University Press 2020) 206.

[17] M S Sahoo, 'Party Autonomy: The Soul of Arbitration' (Vidyashilp University, 2025) https://vidyashilp.edu.in/party-autonomy/.

[18] International Bar Association, IBA Guidelines on Conflicts of Interest in International Arbitration (approved 25 May 2024) Introduction, para 2 (p 4); Part I, General Standard 3(a) (p 7).

[19] *Aroma Franchise Company, Inc v Aroma Espresso* Bar Canada Inc 2024 ONCA 839.

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The relationship between these principles is cumulative. Autonomy explains why the parties may influence the composition of the tribunal. Independence and impartiality protect the neutrality of the decision-maker. Disclosure provides information necessary to assess potential conflicts, arising from an arbitrator's professional, financial, personal, or other relevant relationships with the parties, counsel, or the dispute, while challenge mechanisms allow legally relevant concerns to be tested. Equality and procedural fairness limit the extent to which control over procedure may be exercised to the material disadvantage of the opposing party.

These rules support a broader normative benchmark of procedural legitimacy. This benchmark does not suggest that positive arbitration law expressly requires parties to possess identical information or to make objectively optimal appointment decisions. Meaningful participation refers to a party's practical ability to exercise the procedural rights available to it in tribunal constitution, including the ability to make an informed nomination or selection where such a choice is available and to assess information relevant to independence and impartiality. It does not imply a legal entitlement to complete or identical information about every potential arbitrator. Rather, it treats legitimate selection as a process that should remain authorised, meaningfully participatory, impartial, sufficiently transparent for relevant rights to be exercised, and capable of challenge where legally material concerns arise. The rules discussed above perform different legal functions: party autonomy confers procedural freedom on the parties, independence and impartiality impose requirements on arbitrators, disclosure constitutes an obligation on the arbitrator, and challenge mechanisms provide parties with procedural rights through which relevant concerns may be raised.[20] This distinction between direct legal obligations and the broader normative benchmark is important when assessing new forms of technological assistance.

Transparency, Information and Meaningful Party Choice.

The effectiveness of party autonomy depends in part on the information available when candidates are assessed. Arbitrator suitability cannot normally be reduced to formal qualifications alone. Parties may consider expertise, language, availability, previous professional experience and reputation, among other factors. Moses' discussion of arbitrator qualifications illustrates the multidimensional character of that assessment.[21]

Arbitration law addresses one important part of the information problem through disclosure. The arbitrator's disclosure obligation under Article 12 of the Model Law is directed primarily towards circumstances relevant to independence and impartiality.[22] It does not purport to create a comprehensive information regime concerning all matters that parties might consider when selecting

[20] Samuel Ross Luttrell, Bias Challenges in International Commercial Arbitration: The Need for a 'Real Danger' Test (Kluwer Law International 2008) 25.

[21] Moses (n 30) 124–27.

[22] UNCITRAL Model Law (n 11) art 12(1).

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an arbitrator. Information relevant to professional suitability may therefore remain dispersed across public profiles, institutional knowledge, counsel experience and professional networks.

Transparency in this context must therefore be defined carefully. It does not require unrestricted publication of arbitral information, nor does it require the disclosure of confidential material merely because that information might assist candidate comparison. Instead, two narrower dimensions are relevant. The first is access to sufficiently reliable information about matters material to candidate assessment. The second is procedural transparency sufficient to enable the parties to understand and, where legally appropriate, contest material aspects of the appointment process.

The traditional system may provide these conditions unevenly. Ten Cate describes international arbitration as a specialised environment in which outsider parties may face disadvantages arising from inexperience, opacity and differences in resources.[23] She further identifies asymmetrical situations in which a party familiar with the selection process, or represented by counsel experienced in arbitrator appointment, may be better placed to navigate it.[24] This supports a relatively modest proposition: formally equivalent appointment rights do not necessarily give parties equivalent practical capacity to assess candidates.

That conclusion should not be confused with a finding of legal inequality. Commercial parties frequently possess different levels of resources, experience and legal advice, and arbitration law does not ordinarily require those differences to be eliminated. Information asymmetry therefore does not, by itself, establish a violation of due process or invalidate an appointment. Its significance for this dissertation is narrower. As the applicable law does not guarantee equal access to information on potential arbitrators, party autonomy may remain legally intact even where relevant information is difficult for a party to obtain or verify.

Research result and discussion. Experienced counsel and arbitral institutions can substantially reduce this problem. Their accumulated knowledge may provide context that public profiles cannot, for example through prior experience of an arbitrator's case management, procedural approach, availability, sector-specific expertise, and previous interactions with parties or counsel. This is an important strength of the traditional model. Yet it does not entirely answer the concern. Access to specialist advice may itself vary, and recommendations based on professional knowledge may not always be independently verifiable by the party receiving them. The relevant weakness is therefore not the absence of formal choice but the possibility that the practical quality of that choice depends heavily upon access to specialised information.

Transparency should not be understood as a right to access every piece of information that may be relevant to the selection of an arbitrator. It is better understood functionally: parties require enough reliable and relevant information to exercise the rights that the appointment framework gives them,

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[23] Irene M Ten Cate, 'Arbitrator Selection Default Rules' (2025) 75 *American University Law Review* 461, 465.

[24] ibid 466.

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while confidentiality and legitimate professional discretion remain protected. In this context, confidentiality refers to the protection of non-public information obtained through arbitral proceedings or professional relationships,[25] while professional discretion refers to the legitimate scope for parties, counsel and arbitral institutions to evaluate and discuss potential arbitrators without being required to disclose every consideration, internal assessment or deliberation underlying the selection or appointment.

Professional Networks, Repeat Appointments and Candidate Visibility. The fragmented nature of information helps explain why professional networks (professional relationships through which parties and counsel obtain knowledge or recommendations about potential arbitrators),[26] reputation and previous appointments play an important role in arbitrator selection. These mechanisms have substantial legitimate value. Recommendations from experienced practitioners may reveal qualities that are difficult to capture through formal credentials, including procedural efficiency and familiarity with particular forms of dispute. Previous appointments may likewise provide evidence of relevant experience. Reliance on reputation or prior appointment should therefore not be treated as inherently problematic.[27]

Repeat appointments are a recognised feature of party-appointed arbitration. Gómez-Acebo devotes specific analysis to repeat appointments, demonstrating their significance within the practice of arbitrator selection.[28] Their existence does not establish bias, lack of independence or defective selection. A candidate may be repeatedly appointed precisely because previous experience provides evidence of competence and reliability.

The more limited concern is whether previous visibility can sometimes become a substitute for a fuller assessment of comparative suitability. Ten Cate's analysis of insider and outsider advantages suggests that selection processes may favour actors who are already familiar with the relevant professional environment.[29] She also observes that parties facing high-stakes disputes may rationally prefer familiar or perceived "safe" choices, with consequences for efforts to broaden representation.[30]

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[25] Andreas Respondek and Stefan Abels, 'Confidentiality in Arbitration Proceedings' (The Singapore Law Gazette, September 2025) 'Confidentiality in Arbitration Proceedings', https://lawgazette.com.sg/practice/practice-matters/confidentiality-in-arbitration-proceedings/

[26] Doak Bishop and Lucy Reed, 'Practical Guidelines for Interviewing, Selecting and Challenging Party-Appointed Arbitrators in International Commercial Arbitration' (1998) 14(4) Arbitration International 395, 412.

[27] ibid, 419.

[28] Alfonso Gómez-Acebo, *Party-Appointed Arbitrators in International Commercial Arbitration* (Kluwer Law International 2016) 5.04, 113.

[29] Olle ten Cate and H Carrie Chen, 'The ingredients of a rich entrustment decision' (2020) 42(12) Medical Teacher 1413, 1414.

[30] Ten Cate (n 47) 467, 510-511.

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This produces a possible feedback effect. Prior selection can increase professional visibility. Greater visibility makes a candidate easier to assess through existing networks.[31] That ease of assessment may, in turn, make subsequent selection more likely. Candidates with less exposure may therefore lack the track record through which established candidates are evaluated. This does not prove that the resulting appointments are unmeritorious, nor does it demonstrate that less visible candidates are necessarily equally qualified. It does, however, show why selection frequency should not automatically be equated with comparative merit.

The strongest counterargument to concerns about reliance on prior visibility and previous appointments is practical. International arbitration often involves substantial financial and legal risk, and parties have legitimate reasons to prefer candidates whose performance can be assessed through previous experience. Broader candidate searches may increase uncertainty rather than improve selection. That objection has considerable force, because previous experience with an arbitrator may provide parties and counsel with relevant information about the candidate's case-management abilities, procedural judgment and suitability for the particular dispute, thereby reducing uncertainty in a decision that may have significant consequences for the conduct of the arbitration.[32] The objective is not to replace experience with novelty or to require parties to disregard proven expertise. The narrower proposition is that prior visibility is best treated as relevant evidence of suitability rather than as a conclusive proxy for it.

The same reasoning clarifies the relationship between candidate visibility and diversity. Diversity refers to the inclusion within the pool of potential arbitrators of candidates of different genders, nationalities, cultural backgrounds and professional backgrounds, rather than merely an increase in the number of candidates with visible profiles. The concern is instead that qualified candidates outside established professional, linguistic or institutional networks may be less likely to enter the comparison at all.[33] Where broader and reliable information makes additional qualified candidates assessable, expanding the field of consideration can complement rather than weaken merit-based selection.

Professional networks should therefore be understood as both a strength and a limitation of the traditional model. They reduce uncertainty for parties and counsel when assessing potential arbitrators and preserve valuable contextual judgment, but reliance upon them may also concentrate information and reinforce existing patterns of visibility. The appropriate response is not necessarily to displace those networks, but to examine whether they can be supplemented by more accessible and verifiable sources of candidate information.

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[31] Mathias Czaika and Sorana Toma, 'International academic mobility across space and time: The case of Indian academics' (2017) 23(8) Population, Space and Place e2069, 3.

[32] Daniel Hochstrasser, The Ins and Outs of Arbitrator Selection in SCCL Publications, Chapter 3, p. 31, 43–45.

[33] Trond Petersen, Ishak Saporta and Marc-David L Seidel, 'Offering a Job: Meritocracy and Social Networks' (2000) 106(3) American Journal of Sociology 763.

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Conclusion. This chapter has established the legal benchmark against which AI-assisted arbitrator selection will later be assessed. The legitimacy of tribunal constitution does not depend upon an absolute right of each party personally to appoint an arbitrator. It rests more broadly on an appointment procedure authorised by the parties' agreement and the applicable legal framework. Party autonomy operates within safeguards relating to equality and procedural fairness, independence and impartiality, disclosure and effective challenge.

The chapter has also distinguished those legal requirements from the broader question of how effectively party autonomy operates in practice. The existing legal framework does not guarantee identical access to information about prospective arbitrators, nor does unequal information automatically amount to a breach of due process. Nevertheless, the literature indicates that relevant knowledge may be unevenly distributed and that less experienced parties may depend more heavily on intermediaries, reputation and established professional networks.

The resulting problem should therefore be stated cautiously. The traditional appointment model is not shown to be doctrinally defective or illegitimate. Rather, its practical operation contains an informational vulnerability: meaningful candidate assessment may depend on information that is incomplete, dispersed or unevenly accessible. This creates a plausible case for examining mechanisms capable of improving access to relevant information, but it does not establish that technological selection is superior to human judgment.

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