



Lecture 12

Arbitration: History & Legislation

 by Roger Batchelor

From ancient Phoenician merchants to the U.S. Supreme Court – the story of how arbitration became a cornerstone of American dispute resolution.

ALTERNATIVE DISPUTE RESOLUTION

What Does "Binding" Mean?

Definition

A contract, adjudication, or legal relation is "**binding**" so long as it remains in force and continues to impose duties and obligations on the parties involved.

— *Black's Law Dictionary, 6th Ed., West Publishing Co., 1990*

Why It Matters in Arbitration

People often say "**binding arbitration**," but since arbitration is generally binding, the adjective adds little. Historically, however, arbitration was **not necessarily binding** – parties were often permitted to withdraw before a decision was rendered.

Understanding this distinction is key to tracing arbitration's legal evolution in the United States.

Early Hostility Toward Arbitration

American courts early in our nation's history **adopted the English courts' antagonism** toward arbitration. Even when parties submitted to arbitration, they were often permitted to withdraw before a decision was rendered.

The Federal Arbitration Act is widely seen as having reversed "**centuries of judicial hostility toward arbitration agreements.**" The historical basis for this hostility was a belief that arbitration bypassed the jurisdiction of the courts – though this rationale does not hold up under close scrutiny.



Does Arbitration Undermine the Courts?

The Scenario

Bob (a merchant) and Craig (a ship owner) agree to transport goods and resolve any disputes through arbitration. Does this circumvent the courts' ability to render justice?

The Intuition

Bob and Craig are **not at any advantage** over others whose disputes are settled in court. The results of their arbitration should be upheld – and most people agree.

The Conclusion

The reasoning that led courts to feel threatened by arbitration **does not hold water**. Despite judicial distaste, arbitration proceedings were not uncommon even in early American history.

Arbitration Through the Ages

Ancient Phoenicia

Archaeologists discovered evidence of arbitration used as a dispute resolution method by Phoenician merchants.

1

2

Biblical Era

The Biblical stories of King Solomon recount his skills as an arbitrator – one of history's earliest recorded examples.

3

1281 — England

Arbitration was formally recognized in England as part of its judicial system, establishing Anglo-American legal precedent.

4

Colonial America

Arbitration was common among American colonial merchants. George Washington served as an arbiter and included an arbitration provision in his own will.

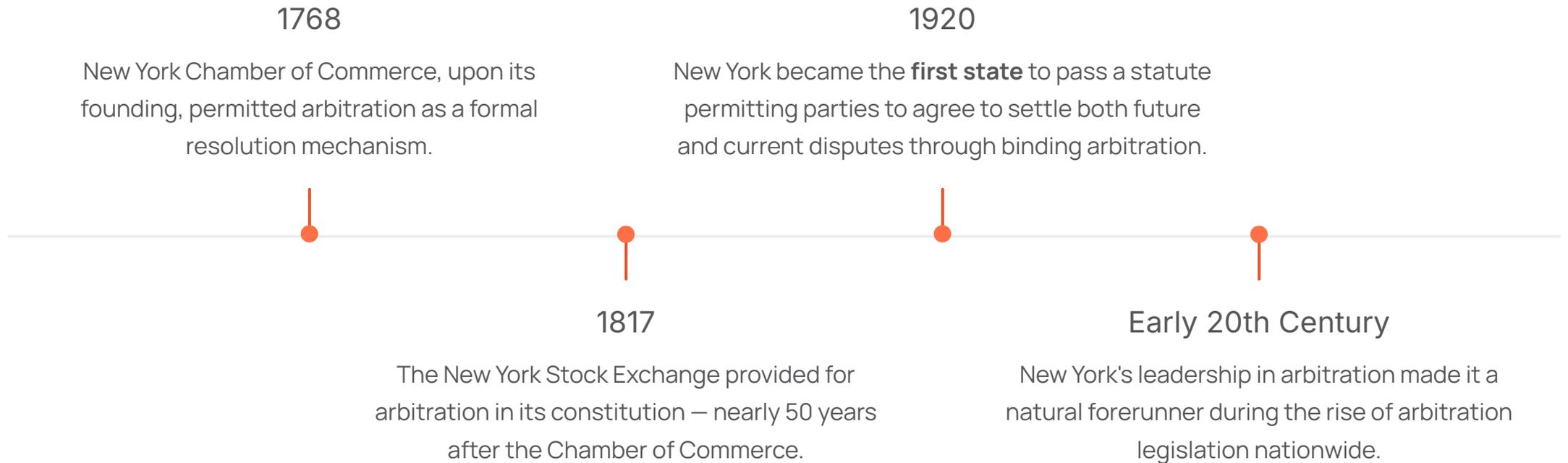
George Washington: America's Founding Arbitrator

George Washington not only "**served as an arbiter of private disputes before the Revolution,**" but even included in his will a provision that any disputes arising under the will should be resolved by a panel of **three arbitrators.**

Despite American courts' general hostility toward arbitration prior to the twentieth century, the practice was embraced by the nation's founders and leading merchants alike.



Early Institutional Acceptance in New York



New York's consistent institutional support for arbitration across 150+ years positioned it as the national leader when formal legislation emerged.



CHAPTER 2

The Rise of Arbitration Legislation

From New York's pioneering 1920 statute to the Federal Arbitration Act and the Uniform Arbitration Act – how America built the legal framework that made arbitration enforceable and permanent.

Key Legal Terms

Subject Matter Jurisdiction

A court's power to hear and decide a case of the type which raises the question at hand. Not every court is empowered to hear every type of case.

Diversity Jurisdiction

A state court case may be removed to federal court if (1) no plaintiff and defendant are from the same state, and (2) enough money is at stake – preventing unfair treatment of out-of-staters.

The Legislative Timeline

1

1920 — New York

First state statute permitting binding arbitration for both future and current disputes.

2

1925 — FAA

Congress passed the Federal Arbitration Act (9 U.S.C. § 1), the foundation of federal arbitration law.

3

~1955 — UAA

The Uniform Arbitration Act, modeled on the New York rule, adopted by many states.

4

Today — RUAA

Every state has enacted legislation based on the UAA or the more recent Revised Uniform Arbitration Act.

In just forty years from the first state act, arbitration became an integral and permanent part of the American legal landscape.

Why Arbitration Was Unenforceable Before the FAA

The Core Problem

Prior to the FAA and state acts modeled on the UAA, arbitration proceedings were **unenforceable** because the binding power of contract was not extended to agreements to arbitrate.

There was **no cause of action** available when a party refused to arbitrate, rendering arbitration clauses useless.

The Craig & Bob Example

Craig gets drunk, neglects Bob's cargo, and refuses to arbitrate: *"Go right ahead – it's just a waste of time, 'cause I ain't showin'."*

Without the FAA, Bob cannot force Craig to arbitrate. He can only sue for breach of contract – more costly and less speedy than arbitration.

FAA Chapter 1, § 2: The Driving Force

"A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction... shall be **valid, irrevocable, and enforceable**, save upon such grounds as exist at law or in equity for the revocation of any contract."

This provision directs courts to treat agreements to arbitrate **just as they would any other contractual agreement** — a landmark shift in American law. The FAA is limited to maritime conflicts and transactions "involving commerce," but it was nonetheless a tremendous step forward.

Federal Policy: Favoring Arbitration — With Limits

What the FAA Favors

The FAA manifests a **liberal federal policy favoring arbitration agreements**. Questions of arbitrability must be addressed with a healthy regard for this federal policy.

What the FAA Does NOT Favor

There is **no federal policy favoring arbitration under a certain set of procedural rules**. The policy is simply to ensure the enforceability of private agreements to arbitrate, according to their terms.

Not a Universal Mandate

The acts go beyond mere authorization — some see them as **encouraging** arbitration. But this is not a simple proclamation that law favors arbitration over litigation in all cases.

— 4 Am Jur 2d Alternative Dispute Resolution § 27

The Supreme Court Seals the Deal

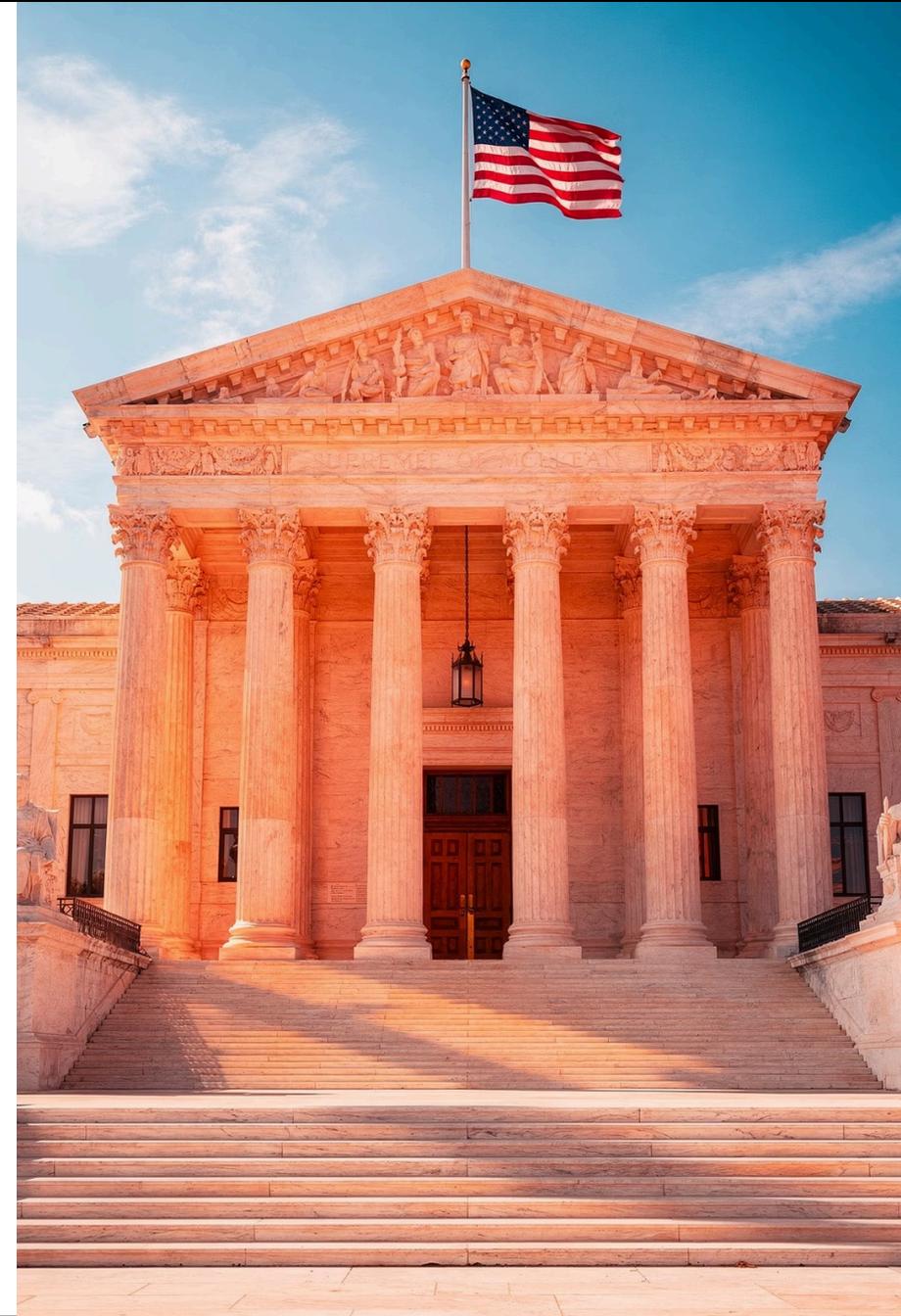
Textile Workers Union v. Lincoln Mills (1957)

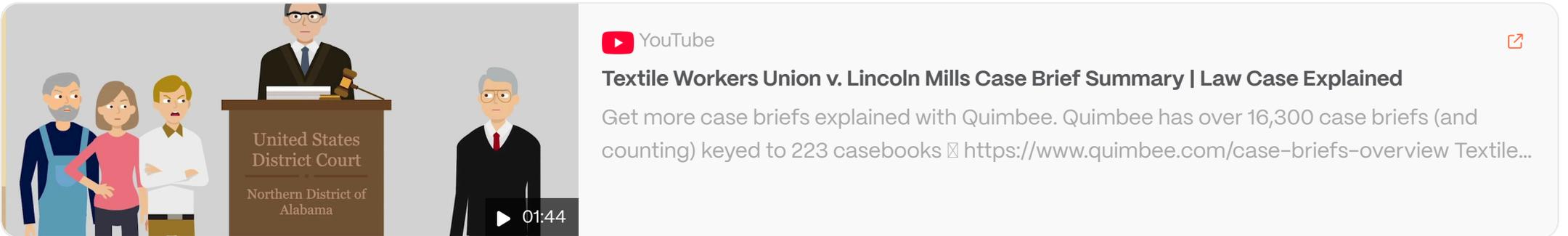
Arbitration was becoming an integral part of the dispute resolution landscape.
353 U.S. 448

The Steelworkers Trilogy (1960)

American Mfg. Co., Warrior & Gulf Navigation Co., and Enterprise Wheel & Car Corp. – three landmark cases cementing arbitration's permanent role. *363 U.S. 564, 574, 593*

Together, these cases gave arbitration both **legislative authority and Supreme Court approval** – making it a permanent fixture of American dispute resolution.





The image shows a YouTube video player interface. On the left is a video thumbnail with a grey background. It features three cartoon characters on the left: a man in a blue shirt and overalls, a woman in a pink shirt, and a man in a white shirt. In the center, a judge in a black robe stands behind a wooden podium. The podium has the text "United States District Court" and "Northern District of Alabama" on it. To the right of the podium is another cartoon character, a man in a black suit and glasses. A play button icon and the duration "01:44" are at the bottom of the thumbnail. To the right of the thumbnail, the YouTube logo and the text "YouTube" are displayed. Below that is the video title "Textile Workers Union v. Lincoln Mills Case Brief Summary | Law Case Explained" in bold. Under the title is a description: "Get more case briefs explained with Quimbee. Quimbee has over 16,300 case briefs (and counting) keyed to 223 casebooks" followed by a link icon and the URL "https://www.quimbee.com/case-briefs-overview Textile...". An orange share icon is in the top right corner of the video player area.

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The "Commerce" Limitation — Broadly Read Today

FAA's Scope

Chapter 1, § 2 gives federal courts **subject matter jurisdiction** over claims involving maritime transactions and "commerce." The commerce limitation is now read **quite broadly**, bringing most disputes under the FAA.

See Citizens Bank v. Alafabco, Inc., 539 U.S. 52 (2003)

When the FAA May Not Apply

In *Bernhardt v. Polygraphic Co. of America, 350 U.S. 198 (1955)*, the Supreme Court found the FAA inapplicable where duties did not affect "commerce."

Example: Frankie, a NY resident working in Vermont for a NY corporation, could revoke his arbitration agreement under Vermont law — because the FAA did not apply to his purely local employment duties.

Citizens Bank v. Alafabco, Inc., 539 U.S. 52 (2003)

a U.S. Supreme Court case affirming that debt restructuring agreements between a bank and a borrower, which involve multi-state economic activity (like interstate loans or projects), fall under the Federal Arbitration Act (FAA) and satisfy the "commerce" requirement for federal jurisdiction.

Case Brief: Citizens Bank v. Alafabco, Inc. (2003)

- **Facts:** Alafabco, an Alabama construction firm, entered into debt restructuring agreements with Citizens Bank. These agreements included arbitration clauses for disputes. Alafabco later sued the bank in state court, alleging breach of contract and fraud. The bank moved to compel arbitration.
- **Procedural History:** The Alabama Supreme Court refused to compel arbitration, arguing that the debt restructuring agreements did not involve sufficient interstate commerce to trigger the Federal Arbitration Act (FAA), despite the underlying loans involving out-of-state resources.
- **Issue:** Did the debt restructuring agreements, which consolidated loans related to various projects, have a sufficient nexus to interstate commerce to trigger the Federal Arbitration Act?
- **Holding:** Yes. The Supreme Court reversed in a *per curiam* opinion, holding that the "commerce in fact" requirement of the FAA was satisfied. The restructuring agreements were not isolated, local transactions but were directly tied to diverse interstate business activities.
- **Reasoning:** The Court noted that the loans involved financing out-of-state materials, and the restructuring was a necessary component of ongoing, interstate business operations. The FAA is designed to cover transactions "involving" commerce, which the Court interpreted broadly.

Significance:

This case solidified a broad interpretation of the FAA's "commerce" requirement, clarifying that commercial loans and debt restructuring by banks—even when localized—often have sufficient interstate impact to require arbitration if agreed upon, reinforcing the federal policy favoring arbitration.

Not Every Arbitration Clause Is Ironclad

1 FAA Inapplicability

If a contract's duties do not affect interstate "commerce," the FAA does not apply – even if the contract attempts to incorporate the FAA.

2 State Law Revocability

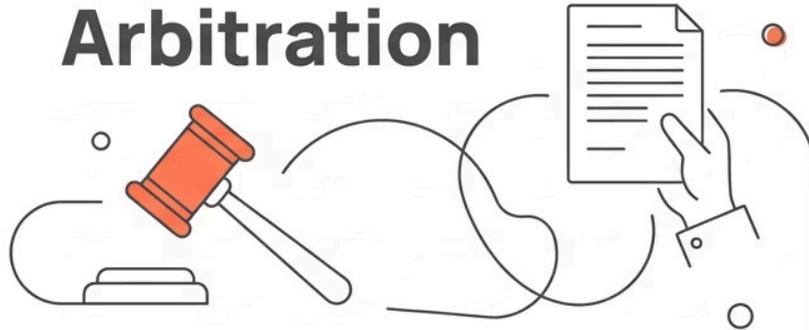
Where the FAA does not apply, state law governs. If state law allows revocation of an arbitration agreement before a decision is rendered, a party may sue in court despite the arbitration clause.

3 General Contract Defenses

Even under the FAA, an arbitration agreement may be revoked on grounds that exist "at law or in equity for the revocation of any contract" – such as fraud or unconscionability.

Arbitration vs. Mediation vs. Litigation

Arbitration



**Formal, Private, Private, Private.
Binding, Binding, Binding, Binding.
Decision made by an arbitrator.
Faster than court. Private. Faster. Binding.**

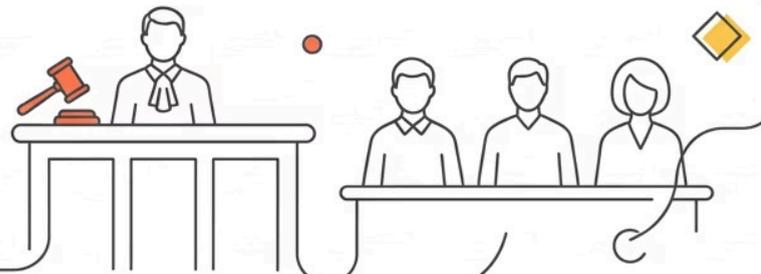
Mediation



**Informal, Informal, Informal, Informal.
Non-binding, Non-binding, Non-binding.
Facilitated negotiation.
Parties control the outcome.**

Litigation

**Formal court process.
Judge or jury decides.
Public. Most costly.
Most time-consuming.**



Understanding how arbitration differs from mediation and litigation is essential for deciding when to offer, accept, or include an arbitration clause in any agreement.

Why Arbitration Matters: Key Takeaways



Ancient Roots

Arbitration dates to Phoenician merchants and King Solomon – it has always been a preferred tool for resolving commercial disputes outside formal courts.



Legislative Foundation

The FAA (1925) and state acts modeled on the UAA transformed arbitration from an unenforceable curiosity into a legally binding, court-supported process.



Supreme Court Approval

The Steelworkers Trilogy (1960) gave arbitration permanent status in American law, backed by both Congress and the Supreme Court.



Practical Importance

Today, enforceability of arbitration agreements is generally without question – making it critical to understand when and how to use arbitration clauses in contracts.



When to Arbitrate vs. Litigate

The presence and proliferation of arbitration in the United States is impossible to ignore. Understanding how arbitration differs from a case decided by a judge in a court of law is **particularly important** in order to decide:

- When to **offer or accept** an offer to arbitrate rather than litigate
- When to **include an arbitration clause** in a contract currently under negotiation
- How to evaluate whether the **FAA or state law** will govern the agreement

Summary: Arbitration's Journey in America

1

Ancient & Colonial Roots

Phoenicians, King Solomon, colonial merchants, and George Washington all embraced arbitration long before it had legal standing.

2

Judicial Hostility

Early American courts adopted English antagonism toward arbitration, allowing parties to withdraw before decisions were rendered.

3

State & Federal Legislation

New York (1920), the FAA (1925), and the UAA gave arbitration enforceable legal status across the nation.

4

Supreme Court Permanence

Lincoln Mills (1957) and the Steelworkers Trilogy (1960) cemented arbitration as a permanent, court-approved dispute resolution method.



 YouTube



Supreme Court's History on Arbitration – 8 Min Crash Course by Professor Myria...

Professor Myriam Gilles of Cardozo Law School is one of the most cited civil procedure scholars in the nation. We found her 8 minute crash course on the Supreme Court cases a...