

President's Message

Simplicity and Sophistication (Of Furniture, Nails, Screws and Glue)

Among the many quotes concerning simplicity as a virtue, one of the most famous (and nowadays certainly the most bandied-about) is attributed to Leonardo da Vinci: "*Simplicity is the ultimate sophistication.*" For this President's Message, a lesser-known quote, by Marcus Aurelius, is more apposite:

"Do nothing but what is necessary... By this rule a man has the double pleasure of making his actions good and few into the bargain. For the greater part of what we say and do, being unnecessary, if this were but taken away, we should have both more leisure and less disturbance. And therefore before a man sets forward, he should ask himself this question, 'Am I not upon the verge of something unnecessary?'"

About the sub-title... the idea for this President's Message came to me during ASA's first Arbitration Practice Seminar in Asia, which was recently held in Vietnam. As, I imagine, many first-time visitors to that breathtakingly beautiful land likely do, I reflected *inter alia* on the terrible conflict that befell the country in the 20th century. Among the many things I have read on that subject, the one that resurfaced first was an anecdote told by an American serviceman. While he was rummaging through a village with his comrades, this man noticed that the villagers' furniture was constructed without any nails or screws, not even glue: the absolute perfection of the craftsmanship, the precision of the joints, was enough for the furniture to be just as solid as if it were held together with nails or screws or glue. He made the observation to his comrades, who responded that this was proof of an inferior civilisation. For him, it was the exact opposite: being a cabinet-maker by trade, he realised that, by their simplicity, these objects were the signature of a very high degree of sophistication and civilisation.

Moving to arbitration...

Recently, Swiss government presented to Parliament its Bill for the revision of Chapter 12 of the Swiss Private International Law Act, making public its proposals for the revision of that admirable piece of legislation

thirty years after it first entered into force.¹ The government's proposals were in line with legislative mandate that Parliament gave to the Executive, which was to effect a "touch-up" and not an across-the-board overhaul. This approach was widely commented and applauded in the arbitration community. Indeed, the spirit of Chapter 12, when it was first enacted, was to keep things as simple as possible, to eschew over-regulation and to leave it to the parties, their counsel, to arbitral institutions and to arbitrators, to decide on the details with the broadest degree of autonomy possible. This formula proved to be an historic success, and the wisdom (and basic common sense) behind the oft-quoted piece of popular saying "*you don't fix it if it ain't broken*" has rarely been better illustrated.

Lately, there have been calls to depart from this wisdom.

Referring back to the anecdote about Vietnamese furniture, it would appear that craftsmanship is not enough in legislation; that, where simplicity had proven its worth, the time has supposedly come to add some nails, some screws and some glue.

The nails: in some parts there have been calls for specific rules on consumer protection. Obviously, in cases where there is clearly a "weaker" party requiring the protection of the law, such protection should be extended. However, it would perhaps make sense to examine firstly whether, in *international* arbitration (which, after all, is what Chapter 12 deals with), consumer-related issues actually arise in the real world. The screws: whilst there is *international* arbitration in employment disputes, the underlying contracts are almost always between an employer and a very high-level employee. And here, it would perhaps make sense to analyse whether these employees are treated better or worse by arbitrators than in specialised national labour courts.² The glue: there have also been calls to spell out explicitly each and every sub-rule and nuance that necessarily comes with the general rules, so that, supposedly, users can better understand the law. Perhaps, but an excess of detail generally has exactly the same effect as an excess of glue: it looks terrible (*viz.*, it makes

¹ The revision of Chapter 12 has been the subject of two previous President's Messages, on the "*Cup of the Nineteen Jewels*". See, respectively, 33 ASA Bulletin 1/2015 (March) and 35 ASA Bulletin 3/2017 (September).

² This is very far from self-evident. Labour courts are notoriously less sympathetic to high-value claims made by senior officers than arbitral tribunals are. This may be a personal impression, but it is shared by many, many practitioners. Some kind of statistical research would thus have been appropriate to justify the introduction of sweeping new rules in what, according to the legislative mandate given by Parliament itself, is supposed to be limited "touch-up".

the law *harder*, not easier to read) and does not provide any additional strength.

I could go on like this for a while. I shall not, for the point has been made; and unnecessary repetition is the opposite of simplicity.³

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SAVE THE DATE

ASA General Meeting & Conference 2019, Bern

13 September 2019

ASA Annual Conference & Gala Dinner 2020, Zurich

6 - 7 February 2020

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³ I am an undying admirer of Mozart (to whom I would never compare myself but who is a universal model). Mozart has taken simplicity as sophistication to its most sublime extremes. There are so many examples that one does not know which one to choose. While the *Rondo* for piano K. 511 invariably comes to mind, my favourite is the "*Ave Verum Corpus*" (K. 618), more precisely the indescribably beautiful phrase for the last "*In mortis examine*". On first hearing it, one would expect it to be repeated. It is not.

⁴ For the sake of transparency, it should be disclosed (although this is public knowledge) that the author was one of the experts advising the Swiss government on the revision of Chapter 12.