

# REGULARITY THROUGH REASON: A FOUNDATION OF VIRTUE FOR INTERNATIONAL ARBITRATION

*James D. Fry*<sup>\*</sup>

## ABSTRACT

*This Article has two purposes. First, this Article explores the ambiguity of the term “precedent” and its associated principle “stare decisis” in the context of international arbitration to better understand the potential source of confusion over precedent’s role in international arbitration, and continues on to a detailed analysis of the many international arbitral decisions that grapple with the role of precedent in reaching a conclusion. With a clear understanding of the magnitude of the confusion over the role of precedent in international arbitration, the stage is set for the next part of the Article to introduce consistency of reasoning and other underlying principles as an alternative paradigm to precedent, as well as some of the risks involved with a focus on consistency. Such a paradigm shift is similar to that proposed by Sir Edward Coke in the early 17th century, which added considerable unity to the common-law system by placing consistency of reasoning at the heart of the common-law system, as opposed to precedent, which often had led to fragmentation in the past. By focusing on*

---

<sup>\*</sup> Assistant Professor of Law & Deputy Director of Mixed Degrees, University of Hong Kong; The author thanks Shahla Ali, Douglas Arner, David Bishop, David Fry, Weixia Gu, Jeffrey Kovar, Katherine Lynch and anonymous reviewers for their encouragement and comments on earlier drafts of this Article. The author also thanks his research assistants Ernest Ng, Yvonne Ngai and Denise Souza. The author acknowledges the generous financial support of the Seed Funding Programme for Basic Research (Project Code 201011159089) of the University of Hong Kong, which made this research possible. The author can be reached at jamesfry@hku.hk.

*consistency through reason, the international arbitration regime will be a healthier system in terms of rendering reliable decisions.*

**KEYWORDS:** *international arbitration, consistency, reason, reliable dispute settlement*