# An examination of the legal perspective of public policy implementation on construction projects arbitration

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## Abstract

This study undertakes an in-depth exploration of the legal perspective of public policy implementation as relates to construction projects. In particular, we examine how enabling frameworks such as arbitration, serve as a suitable project governance mechanism for public policy-driven projects. Using oath taking as an authoritative context for exploring public policy implementation, the study surfaces important controversies associated with the intractable nature of public policy by drawing upon data obtained from the case review of a seminal arbitration dispute heard in the United Arab Emirates. The originality of the paper is threefold. First, we espouse an alternative *legal* as against *administrative sciences* perspective of public policy. Second, our study opens a new area of debate in relation to the legal perspective of public policy

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implementation within construction projects. Third, the study raises questions on the appropriate use of projects and project management practice to implement public policy.

***Keywords***: Public policy, Infrastructure projects; Construction; Disputes; Legal perspectives; Arbitration

## Introduction

### *Public sector project management*

The literature suggests that project management is not only deeply immersed within public sector management; it is also highly developed within the public infrastructure sector (Sanderson and Winch, 2017). Public sector infrastructure projects serve a primary role in that they are utilised to implement public policy (Chou et al., 2016; AlRaeesi and Ojiako, 2020). They also serve to organise the relationship between the public (the society) and the government serving as an agent of the state (Chan and Rosenbloom, 1994; Ojiako et al., 2015, 2016).

Increasingly, there is evidence that public sector infrastructure projects are being subjected to '*Rule of law'* and '*Justice'* assessments. In particular, these tests are being undertaken where there are concerns about the social implications of projects. More specifically, we are aware that some public sector infrastructure projects (particularly those in the energy sector) have led to the creation and distribution of benefits among various facets of the society in a manner that is not equitable (Siciliano and Urban, 2017). In other cases, these projects have facilitated increases in unequal wealth distribution across the society (Chatterjee and Turnovsky, 2012). In other instances, they have enhanced economic development (at the national level), but this has come at the expense of society members who are more directly negatively impacted by the projects in question (Marques et al., 2015).

Under these circumstances, a '*Rule of law'* test will focus on ensuring that the procurement, implementation, delivery and commissioning of specific public sector infrastructure projects are not undertaken in a manner that interferes with individual rights (Ojiako et al., 2018). An example is a possibility that the project may encroach on sacred indigenous land or, for example, lead to the destruction of property of vulnerable groups. On the other hand, a '*Justice'* test will focus on the need for projects to be delivered in a manner that is fair and equitable (Ojiako et al., 2018). Thus, the absence of either or both a '*Rule of law'* test and '*Justice'* considerations is a key reason why potential users of major public sector infrastructure projects may reject a project (Liljenfeldt and Pettersson, 2017). As is elaborated later, both the '*Rule of law'* (Hopkins, 1971) and '*Justice'* (Craig et al., 2008) have public policy implications. An example of a project with both '*Rule of law'* test and '*Justice'* considerations is the Three Gorges Dam project in China, which resulted in the resettlement of approximately 1.13 million people.

***Making the connection***

Despite both '*Rule of law'* and '*Justice'* implications for public sector infrastructure projects, there remains considerable paucity in terms of studies explicitly focused on articulating the relationship between public policy and project management. This paucity exists in both practitioner and scholarly circles. For example, in terms of practitioner awareness, public policy is not a term that appears in a host of project management bodies of knowledge such as the 2017 PMI Body of Knowledge. It does however appear (once) in the 2006 PMI Government Extension to the PMBOK, although not defined in any helpful manner. Conversely, the same applies in terms of academic scholarship in the project management field. Here, what we have as

available academic literature on the explicit relationship between public policy and project management is limited (see Winch and Sanderson, 2015; Sanderson and Winch, 2017). Despite this, exploring the interface between public policy and project management is of great value to practitioners and academics alike (AlRaeesi and Ojiako, 2020).

***The need for a project management understanding of public policy***

Despite developments in the literature exploring the interface between project management and public policy, it is difficult to claim with certainty that (i) public sector infrastructure projects are being commissioned in a manner that is competently aligned to public policy and that (ii) in the process, much desired societal benefits (such as social cohesion) are being attained. There are three reasons why this is the case. *First*, the meanings of '*policy'* (Fimyar, 2014) and '*public policy'* (Hollander, 2016) have historically (Paulsen and Sovern, 1956) been, and continue to remain, ambiguous (Yelpaala, 1989; Hollander, 2016; Tokar and Swink, 2019). This is a point observed by a number of leading authorities. These include, for example, *Richardson v Mellish* heard by the Courts of Common Pleas (England and Wales), *Safeway Stores v Retail Clerks International Association* heard by the California Supreme Court (United States) and *Murlidhar Aggarwal v State of Uttar Pradesh* decided by the Supreme Court of India. *Second*, the appropriate framing of the relationship between stakeholders in public sector infrastructure projects has remained unsettled due to considerable political considerations that manifest in the operating environment of such projects (Crawford and Helm, 2009). More specifically, there are suggestions that engagement with the 'public' as part of consultation before public sector infrastructure projects are inaugurated and construction begins is very limited (Burroughs, 2019). In fact, in a good number of projects, the public rarely has *any* direct contact with the project (as

an entity). Instead, any contact that does take place is either (i) through the agency or private party responsible or (ii) through interaction or experience with the products and services that emanate from these projects. *Third*, the increasing use of arbitration to resolve public-private disputes raises questions about whether private proceedings that are not conducted under public scrutiny represents a suitable means of resolving disputes that have public policy implications (Brekoulakis and Devaney, 2017).

### *Aim and our contribution*

Because public policy is framed as an obdurate concept in this context, the resulting dilemma that this study addresses is what a legal perspective of public policy implementation on construction projects actually is. Broadly speaking, the dilemma revolves around (i) the use of public policy as a justification for commissioning specific infrastructure projects, (ii) the appropriateness in using infrastructure projects to implement public policy, and (iii) the existence of suitable project governance mechanisms for public policy-driven projects. In particular (as relates to these governance mechanisms), we focus on the enabling frameworks (in this instance, arbitration legislation) and authoritative context (oath taking in arbitration hearings) required for such projects. This is our primary contribution to the project management body of knowledge.

## Policy and public policy

### *Articulation*

The primary function of 'policy' is to articulate the *social actions* that governments are to adopt and pursue (Wedel et al., 2005). Policy can be developed and enacted both *privately* and *publicly.* Private policy focuses on matters of exclusive interest to the individual. These matters

will generally have limited or no wider societal impact (Rosenau, 2000). Public forms of policy focus on matters of public interest (Rosenau, 2000). Despite these distinctions, though, there are those who question whether there is actually a distinction between the *public* policy and the *private* policy. This is because policies may overlap and, over time, their categories may change as they respond to broader social, political and economic changes (Seeleib-Kaiser, 2008). Public policy has generated more interest than any other legal concept for two key reasons (Yelpaala, 1989); the *first* is the ambiguity associated with the true meaning of 'policy' (Fimyar, 2014) and the *second* is the highly contested nature of the distinction between the concepts of '*public policy'* and '*public order'*. Understanding the nature of their distinction and similarities is important to our study because, despite our use of the term '*Public policy'*, this study is contextualised within the United Arab Emirates (UAE) where its laws (Article 3 of Federal Law 11 of 1992) make reference to '*public order'* and not '*public policy'*.

***Public policy and public order***

Public policy is a concept applicable in common law jurisdictions (such as the United States, the United Kingdom and New Zealand), which is generally focused on fundamental societal values (Hollander, 2016). On the other hand, public order is a concept applicable to civil law jurisdictions (such as France and Egypt). Its foci are generally economic, political and moral regulations (Wedel et al., 2005). The focus of public order is generally on the positive laws of the state, which allow the judiciary limited discretion to nullify private agreements deemed as threats to social order or public security.

There are two perspectives of public order. One perspective suggests that the courts will not enforce private contractual agreements drawn up for individual interests which are (i) likely

to be construed as pernicious or repugnant or (ii) likely to override public interest, social norms, customs and institutions and also the organisation and functioning of the state (Bernier, 1929). Nor will the courts seek to enforce private contractual agreements that are likely to override or offend public interest. Conversely, as Bewes (1921) further notes, one characteristic of the public order notion is that its breach is generally not tolerated by the state for the simple reason that the state construes the maintenance of public order as one of its core functions.

Despite the distinction between *public policy and public order,* both concepts also share largely similar ethos. For example, academic literature recognises that both concepts are dynamic and constantly evolving (see Enonchong, 1993). This position is also shared in judicial findings such as the earlier-cited *Richardson v Mellish*. In addition, both concepts serve as justifications, which national courts may cite as a reason to refuse the enforcement of a contract (Murphy, 1981). In sum, a number of scholars and commentators including, most recently, Kanakri and Massey (2016) have concluded that the notion of public order *can* be equated to public policy, a position that is supported in judicial findings. For example, in *Evanturel v Evanturel*, the courts opined that they: "…*will treat 'public order' as identical with what in this country is termed 'public policy', although the latter is perhaps the larger of the two terms*".

In the United Arab Emirates, public policy is defined in Article 3 of Federal Law 11 of 1992 as matters "…*relating to personal status such as marriage, inheritance, and lineage, and matters relating to systems of government, freedom of trade, the circulation of wealth, rules of individuals ownership and the other rules and foundations upon which society is based, in such a manner as not to conflict with the definitive provisions and fundamental principles of the Islamic sharia*". The literature suggests that public policy in the United Arab Emirates is very broadly construed (Ojiako, 2019; AlRaeesi and Ojiako, 2020). This is because Article 3 of Federal Law

11 of 1992 is interpreted to include any matter related to the free movement of goods and services (Kanakri and Massey, 2016) and property ownership. From a project perspective, this may include, for example, the purchase and sale of off-plan properties, property mortgages and registration.

## Public policy and projects

### *Perspectives of public policy*

There are a number of different perspectives of public policy. These include (i) administrative sciences (Howlett, 2018), (ii) economic and political (Chetty, 2015), (iii) sociological (Burstein, 1998) and (iv) legal perspectives (Kreis and Christensen, 2013). In this stud, we focus on the *administrative sciences* and *legal* perspectives of public policy.

The *administrative sciences* perspective of public policy focuses on legislative provisions that exist to provide the necessary governance to societal work. It is this perspective of public policy that provides the basis for published guidance on how policy options may be assessed for infrastructure projects and the required managerial capabilities required for such assessment (see for example, OECD, 2016).

The *legal* perspective of public policy sets out the legal foundation for regulating the relationship between project stakeholders (in effect, governance structures). Essentially, it provides for the enabling frameworks and authoritative context required by public sector infrastructure projects for their successful utilisation as policy implementation tools.

We opine that the *legal* perspective provides the necessary *complementarity*, which will empower how the *administrative sciences* perspective enhances the delivery of public policy through public sector infrastructure projects (Cooper, 2017). In effect, the *simultaneous*

compounded engagement in these two perspectives of public policy is required to enhance the delivery of public policy through public projects. Since legal issues are recognised as one of the key topics of interest to project management scholars (Crawford et al., 2006; Bredillet, 2008), exploring the *legal* perspective of public policy is of relevance to project management.

***Alignment to project organising***

Both the *administrative sciences* and the *legal* perspectives of public policy can be aligned to different facets of project organising. However, while a comprehensive understanding of public policy requires that both perspectives need to be explored simultaneously, it will appear that studies that have explored the interface between project management and public policy (see Winch and Sanderson, 2015; Sanderson and Winch, 2017) have focused predominantly on the *administrative sciences* perspective of policy at the expense of its *legal* perspective.

The *administrative sciences* perspective emerges from the idea that policy is, in its own right, an arm of socio-political action capable of altering critical elements of administration (see Moynihan and Soss, 2014). This perspective serves a number of functions in project management. For example, it provides insights into the role of politics in infrastructure projects (Revellino and Mouritsen, 2017). It also helps articulate how processes, routines and organisational structures serve to guide government policy decisions (Fimyar, 2014). An example of project-related studies in this area is Teo and Bridge (2017).

The *legal* perspective of public policy is particularly interested in understanding how socially framed policies, which are in reality discretionary, can be validated utilising instruments of the law (Kreis and Christensen, 2013). In the absence of the law, public policy cannot be actualised (Cooper, 2017). Instead, public policy must be enshrined in law in order to be

actionable and operationalised (Goodin et al., 2011). The concept of public policy (or public order) is to be found in virtually all areas of law (Stigler, 1972), legal systems and jurisdictions (Ghodoosi, 2015).

The law is pronounced through legislation, procedures and rules of the courts. It serves as a stable framework for reducing the uncertainties associated with the unruly nature of public policy. The *legal* perspective of policy serves three functions. *First*, although projects are temporal in nature, the *legal* perspective emphasises that projects are legal entities not only in their own right (Bredillet, 2008), but also by virtue of their use of legally binding documents to govern the relationship between project stakeholders (Bredillet, 2010). Projects are usually commissioned within a tangled web of national laws and regulatory frameworks. *Second*, the *legal* perspective provides the necessary foundations (legitimisation) for public policy implementation through projects (Wright, 2011). In effect, it is the *legal* perspective that provides the authoritative context for the use of public sector infrastructure projects as a tool for policy implementation. *Third*, the *legal* perspective of policy provides the necessary governance framework and analytical tools required to effectively articulate not only the nature of the relationship between project stakeholders but also how these relationships can be regulated and enforced (Chan and Rosenbloom, 1994). The *legal* perspective of public policy also provides the necessary framework for accountability (clarity in terms of responsibilities and roles) of the public service bureaucracy (Hood, 1995) while also ensuring that such frameworks are legitimately established and can be enforced to ensure effective project functioning. In effect, drawing from Ibanez (2001), the *legal* perspective ensures that the key regulatory and procedural principles of the rule of law guide public sector infrastructure project development and implementation. The focus of the *legal* perspective is on the legitimisation of power and the

articulation of legal authority. Acknowledging that it is very difficult to avoid disputes in public sector infrastructure projects (Chou et al., 2016), this legal authority can manifest in a number of ways including institutional mechanisms that support disputing resolution (Lascoumes and Le Galès, 2007). One such mechanism is arbitration. In the UAE, an example of a relevant enabling framework (legislation) for regulating the relationship between project stakeholders is Federal Law 6 of 2018 on Arbitration. This legislative framework was enacted as a stand-alone arbitration law in July 2018, repealing prior arbitration laws scattered around various provisions contained within Federal Law 11 of 1992.

## Arbitration

### *What is arbitration?*

Arbitration is a *quasi*-legal (Cooley, 1986) dispute resolution mechanism (see Ojiako, 2017, 2019; Besaiso et al., 2018; Ojiako et al., 2018). It represents an attractive alternative to and substitute for court-based litigation (Drahozal and Hylton, 2003). Although it typically engages *private* disputing parties, there is now recognition that it can also engage both *private* and *public* disputants. In fact, scholars claim that, increasingly, we are seeing more and more arbitration proceedings involving private and public entities or proceedings that have implications for public interest (Brekoulakis, 2019). For these reasons, arbitration is increasingly subject to public policy considerations.

### *Arbitration as an instrument of public policy implementation*

Although the remit of arbitration has traditionally been as a privately construed form of dispute resolution between private individuals (Mustill, 1989), there is evidence that the scope of

arbitration has expanded significantly (Brekoulakis, 2019). Arbitration is now being utilised to adjudicate disputes that engage public policy concerns (Brekoulakis and Devaney, 2017). There is also evidence that arbitration is being increasingly employed to implement public policy in diverse areas such as tax and securities transactions (Brekoulakis, 2019). The use of arbitration to implement public policy is particularly pronounced in investment law where a substantial number of treaties and trade agreements (which have a direct impact on regulatory sovereignty) utilise arbitration as their preferred dispute resolution mechanism. This perspective of arbitration suggests that it can complement and serve as an ancillary to the machinery of the courts (Brekoulakis, 2019). Due to its emphasis on consensus and quick dispute resolution, arbitration will therefore enhance business efficiencies. Drawing from Ojiako (2017, 2019) and Ojiako et al. (2018), we posit that there are four main ways by which we can employ arbitration as a project governance mechanism as an instrument of choice to implement public policy. These are now briefly discussed.

The *first*, which we term its *distributive* use, embodies the state's interest in using arbitration to settle disputes emanating from public sector infrastructure projects in a manner that entails fairness and open decision making (Katok and Pavlov, 2013; Scheffler, 2015). Arbitration may be utilised to implement distributive public policy by ensuring that public sector infrastructure project disputes are adjudicated in a manner that ensures the equitable (fair and positive) and equitable distribution of responsibilities, obligations and risks between project stakeholders. The use of arbitration to in a manner consistent with distributive justice will imply the inclination of the courts to enforce arbitral awards that ensure that risks from implementation and delivery contracts are allocated fairly and equitably.

The *second*, which we refer to as *informational* focuses on ensuring that there are provisions for disputing parties in a public sector infrastructure project to be accorded the necessary platform to adequately share and disseminate social accounts of their social interactions (Katok and Pavlov, 2013). The informational use of arbitration to implement public policy (alongside interactional/interpersonal justice) largely revolves around the availability of forums to support the sharing of information.

The *third*, which we refer to as *interactional* or *interpersonal*, focuses on the standard of the interpersonal interactions and exchanges between the parties involved in a dispute (Bies and Shapiro, 1987). There are two components of this form of arbitration use. The first, social explanation, suggests that as a condition of interactional or interpersonal use prior to, during and after the arbitration proceedings, disputants in a public sector infrastructure project will be provided with a meaningful explanation for any decision that is not favourable to them. The second component of interactional or interpersonal use is interpersonal sensitivity, which suggests that arbitration will be used as a medium of implementing policies that ensure that disputants are treated not only politely but also with respect, honesty and dignity (see Luo, 2007).

The *fourth* manner in which arbitration may be utilised to implement public policy is through its *procedural* use (Folger and Cropanzano 1998). Here, public policy will be particularly interested not only in (i) the fairness of the processes, procedures, policies and practices or arbitration proceedings themselves (Meyerson, 2015), but also whether (ii) arbitration awards do encourage the employment of fair processes, procedures, policies and practices during project implementation of public sector infrastructure projects. Procedural use of arbitration to implement public policy will entail consideration of the broad context of a dispute

that is subject to arbitration. Thus, for example, under Article 2 of Federal Law 6 of 2018 on Arbitration (UAE), arbitration proceedings cannot be in conflict with UAE public policy, one such public policy being the administration of oaths.

## Oaths

### *Manner and form*

An oath is a solemn attested warranty of truth supported with wordings that invoke a witness that is divine. Oaths are different from vows in that oaths – while also invoking a divine witness – entail a statement of promise by an individual that they will either undertake or not undertake a specific future action (Blidstein, 2017). Oaths are perceived as one of the most effective and widespread means of stimulating trust (Ibrahim, 2009). Oaths come in two different forms, '*affirmations'* and '*pledges'* (Price, 1929). In an affirmation, an individual, calling upon a divine being as witness, makes an assertion that the words he or she has spoken represent the truth. On the other hand, pledges deal with a solemn promise, commitment or vow as relates to future action.

Oaths are not simply about wordings as they come in two distinct parts. The first part of an oath is usually the statement. The second part of the oath is the empowering or verifying part (Blidstein, 2017). It is the empowering or verifying part that will involve divine invocation to witness the statement.

Oaths also involve specific rituals in the form of gestures (Blidstein, 2017), such as the raising of a hand or the placement of a hand over one's chest or on a holy book. When considered together, the two distinct parts of an oath – the statement and its verification – represent powerful and useful tools for social control (Silving, 1959). Thus, oaths are a means by

which an individual demonstrates willingness for matters of private conscience related to public values (Rutgers, 2010) because oaths serve as the "…*highest possible security which men in general can give for the truth of their statements*" (Whitcombe, 1824). As a tool for trust, they serve as a means of connecting the oath taker and the public both socially and morally[1]. The literature acknowledges that trust is an essential element of not only project activity (Pinto et al., 2009) but also wider economic activity (Korczynski, 2000).

***Oaths in litigation and arbitration***

The importance of oaths is significantly different in litigation and arbitration proceedings. In court (litigation) proceedings, oaths are required before any form of evidence of testimony can be admissible as evidence (Bierce, 1977). Generally, as statements of truth, oaths are important because, in most civil procedure rules, if a witness procures a written submission or statement that is to be used at trial and it is found that such a statement is false, it is not deemed to be perjury on the ground that the statement in question was procured prior to the hearing. In such circumstances, the only sanction available when a witness signs a statement known to be false and misleading is a contempt of court sanction. In arbitration proceedings, disputants and witnesses testifying may only be *obliged* (but not necessarily *compelled*) to be under oath and only so if explicitly requested by the other party or if required by national law (Cooley, 1986) or public policy. This means that some national laws and procedural rules on arbitration have left matters concerning the taking of oral evidence from witnesses to the discretion of arbitrators. It is likely that the differences in terms of how litigation and arbitration perceive oaths is driven by whether these two proceedings perceive the oath as either/or a social, personal, legal (for example, the risk of perjury) or simply archaic act (Knudsen, 2016). As Ziade and De Taffin

(2010) opine, as arbitration is a *quasi*-legal dispute resolution mechanism, the ultimate decision on whether evidence during arbitration proceedings should be under oath is generally the arbitrators' prerogative[2]. Participants and witnesses actually retain the right *not* to submit to oath taking although they are still under an obligation to render *truthful* evidence.

A review of international case law suggests that domestic law and public policy in numerous jurisdictions is quite different as relates to whether witnesses during arbitration proceedings should be subject to oaths. As we show, in some jurisdictions, witnesses are as a matter of law subject to oaths while in others, witnesses may be subject to oaths at the discretion of the arbitrator or where an opposing party has requested that such oaths are administered. In other jurisdictions, the administering of oaths prior to witness testimony is deemed improper. Leading authorities, for example, *Wakefield v Ilaneily Rly and Dock Co* and also *Biggs v Hansell* and legislation (specifically, section 38 (5), Arbitration Act, 1996) suggest that, under English law, the rendering of oaths by witnesses is a matter of procedural routine during arbitration hearings[3]. However, in civil law jurisdictions in Europe[4], it will appear that oaths are construed as inconsistent with the arbitration. In these jurisdictions, an arbitral panel may seek the assistance of the court to examine a witness under oath (Roth, 1997). The question that then arises is what remedies are available to a disgruntled party to an arbitration hearing who cites false testimony as the reason for an unfavourable award? In *Waterside Ocean Navigation v International Navigation Ltd*, the United States Court of Appeals, Second Circuit opined [at II], that when seeking to balance inconsistencies in witness statements against the expediency offered by arbitration, focusing on such inconsistencies "…*would render the allegedly simple and speedy remedy of arbitration a mockery"*[5]. Most importantly, the court refused to vacate the

arbitration award on the basis that in the specific instance, inconsistent testimony was not found to be in violation of justice expectations[6].

***Oaths and project management***

A review of management (Jacquemet et al., 2018) and project management literature (McKevitt et al., 2017) suggests that oaths do have particular significance to management and, more specifically, to project management practice. Alongside codes of ethics and codes of conduct, professional oaths are instruments of choice that are utilised to instil a range of self-regulatory professional behaviours. Professional oaths primarily focus on accountability, integrity, ethics and responsibility; thus their contribution to business success (Blok, 2013). Conversely, oaths are important to project management practice in that they can be used as an instrument (i) to enhance professional identify and professionalism (McKevitt et al., 2017), (ii) to facilitate moral deliberation (Jacquemet et al., 2018) and, perhaps most importantly, (iii) to enhance various compliance and governance requirements (Zhai et al., 2017). More specifically, in terms of professionalism, oaths suggest an individual's subscription to stated values of a profession – such as honesty (Stevens et al., 2013). In terms of enhancing compliance, oaths are likely to demonstrate commitment, resulting in trust. Where trust exists, the need for excessive stakeholder monitoring in projects is greatly reduced (de Oliveira et al., 2019). With trust, instead of expending considerable effort on monitoring, project stakeholders are much more likely to direct their resources to elements of the project that require more attention. For example, Zhai et al. (2017) report that in the countdown to the commencement of the EXPO 2010 project held in Shanghai (China), all project practitioners involved in the project participated in an oath-taking ceremony as a means of pledging their commitment to the success

of the project. Therefore, the use of oaths in project management practice can have a direct influence on project success. As "…*oath operates in a public context, in which it has to be understood by the public*" (Blok, 2013), in the context of public sector infrastructure projects, the use of oaths as either professional or compliance instruments will have public policy implications. An example of a project management oath is contained in the PMI Code of Ethics and Professional Conduct (PMI, 2019). Gray (2005) suggests that the oath contained within this code of ethics takes a two-dimensional form; one part focused on *virtues* (desired character traits of the project manager) and the other part focused on *acts* (adherence to specific professional project management principles).

**Methods**

Our study method involved a case review (case study). This approach is recognised as a viable means of undertaking legal research (White, 2013; Argyrou, 2017). In particular, it enables scholars to "…*us[e]ing facts we know to learn-about facts we do not know*" (Epstein and King, 2002). An advantage in undertaking single cases in legal research is that it allows for rigorous critique of specific legal principles. Furthermore, single case studies allow for the examining of elaborate accounts of the dispute and legal principles.

In legal studies, case studies can be particularly useful to provide understanding of the manner in which the law operates; a concept Argyrou (2017) refers to as the '*essence of law*'. According to Webley (2016), case study research in legal studies is particularly useful as it focuses on "…*help[ing] to understand how laws are understood, and how and why they are applied and misapplied, subverted, complied with or rejected*". Case-based research allows

researchers to focus on a single event or set of events with the questions of '*why'* and '*how'* being of critical importance (White, 2013).

We employed the 'I-R-A-C' (Issue, Rule, Analysis, and Conclusion) analytical approach as our analytical framework, a well-recognised and popular analytical framework generally employed for undertaking legal analysis (Bittner, 1990; Burton, 2017). The 'I-R-A-C' framework requires those engaged in legal analysis to follow a fact pattern in legal reasoning that focuses on (i) ascertaining the legal issue at hand, (ii) questioning existing law/legal rules surrounding the specific issues, (iii) applying the law/legal rules to the facts of the case under exploration, and (iv) drawing relevant and applicable lessons.

***The case***

The case that we utilise to espouse the legal perspective of public policy implementation as relates to construction projects is the case law of the United Arab Emirates that decided the 2002 dispute between International Bechtel Company Limited (henceforth the '*Bechtel'*) and the Department of Civil Aviation of the Government of Dubai (henceforth the '*DCA'*). The two specific cases of interest are *International Bechtel Co. Ltd v Department of Civil Aviation of the Government of Dubai*, case No. 288/2002 heard by the Court of First Instance and *International Bechtel Co. Ltd v Department of Civil Aviation of the Government of Dubai*, case No. 503/2003 heard by the Dubai Court of Cassation.

***Case summary***

The dispute between International Bechtel Co. Ltd and the Department of Civil Aviation of the Government of Dubai arose in relation to a contract (with an extensive arbitration clause) for the

planning, design and delivery of a major infrastructure development consisting of a theme park and adjoining residential and commercial units in Dubai.

On 30 March 1999, a dispute arose between the two parties with Bechtel claiming that the DCA had failed to advance payments contractually owned. Bechtel submitted claims to the DCA for non-payment while the DCA filed subsequent counterclaims for non-performance and payment restitution.

Arbitration proceedings commenced before a single arbitrator on 26 July 2000. On 20 February 2002, following written findings to the two parties, the arbitrator made an award of approximately US$25.4 million to Bechtel. The award encompassed not only damages but also costs and legal fees. In the process, he dismissed in its entirety the counterclaim (valued at approximately US$42 million) made by the DCA.

**Analysis**

***Ascertaining the legal issue at hand (the decision of the UAE courts)***

Following guidance (Bittner, 1990; Burton, 2017), ascertaining the legal issue at hand will require focusing on the primary legal question that, if addressed, will serve to determine the outcome of the dispute.

With the DCA failing to comply with the award, on 7 April 2002 – noting that the United Arab Emirates is a 'double *exequatur'* jurisdiction which means that disputants who obtain an award from an arbitrator are still required to affirm the award in the national courts – Bechtel made submissions to the Dubai Court of First Instance on 7 April 2002 to obtain an enforcement order against the DCA. However, the DCA responded with a counter suit (on 22 April 2002) seeking to nullify the arbitrator's award. On 16 November 2002, in *International Bechtel Co.*

*Ltd v Department of Civil Aviation of the Government of Dubai (case No. 288/2002)*, the Dubai Court of First Instance, despite having rejected five of the six arguments put forward by the DCA, declined Bechtel's application for the enforcement order and instead nullified the arbitrators' award. The Dubai Court of First Instance decided *International Bechtel Co. Ltd v Department of Civil Aviation of the Government of Dubai (case No. 288/2002)* on the basis that witnesses called to proceedings during the original arbitration had not administered oaths in the form and manner prescribed by the laws of the United Arab Emirates.

Following nullification of the award by the Dubai Court of First Instance, on 14 December 2002, Bechtel filed an appeal with the Dubai Court of Appeal seeking to (i) overturn the decision of the Dubai Court of First Instance nullifying the award and (ii) affirm/ratify the original arbitration award. The Dubai Court of Appeal rejected Bechtel's appeal on 8 June 2003, following which Bechtel made a final appeal to the Dubai Court of Cassation. On 15 May 2005, in a decision that attracted considerable scholarly attention (see, for example, Polkinghorne, 2008; Blanke and Corm-Bakhos, 2017), the Dubai Court of Cassation in *International Bechtel Co. Ltd v Department of Civil Aviation of the Government of Dubai (case No. 503/2003)* ratified the earlier decisions of both the Dubai Court of First Instance and the Dubai Court of Appeal, confirming the nullification of the arbitrators' award in its entirety.

***The existing law/legal rules surrounding the specific issues***

In the United Arab Emirates, the laws pertaining to the presentation of evidence in civil and commercial proceedings are covered by Federal Law No. 10 of 1992 on Evidence in Civil and Commercial Transactions (United Arab Emirates). There are 92 different Articles within this specific legislative provision categorised against different chapters and 'titles', each covering a

different range of rules of civil procedure employed by federal courts in the UAE. Title 3 which runs from Article 35 to Article 47 deals with witness testimony and evidence. More specifically, Article 41 (2) states that, "*The witness will take the following oath: "I swear by the Mighty God to say all the truth and nothing but the truth". The oath will, upon his request, be according to his religious creed*".

The current enabling framework for arbitration in the United Arab Emirates comes in the form of the Federal Law 6 of 2018 on Arbitration. This new law replaces the previous Arbitration law stipulated in Articles 203 to 218, Articles 235 to 238 and Articles 239 to 243 of Federal Law 11 of 1992 of the Civil Procedures Code ('CPC') which was in operation at the time of the Bechtel dispute. The CPC governs the procedure for civil cases that come before federal courts. Federal Law 6 of 2018 on Arbitration was promulgated on 3 May 2018 (appearing in the official gazette in June 2018 before taking effect in July 2018). At the time of writing, we are only aware of one case (Commercial Cassation Case No. 364 of 2019 which was heard by the Dubai Court of Cassation on 19 May 2019) that engages public policy based on the new Federal Law No. 6 of 2018 on Arbitration. However, as this case has attracted very limited scholarly attention, we chose to undertake our analysis of the failure to administer oaths in arbitration proceedings as an instrument of choice to implement public policy using the 2002 dispute between Bechtel and the DCA. Of particular interest is that the DCA is an organ of state bringing it into the sphere of public-private disputes as described by Brekoulakis and Devaney (2017).

***Application of the law/legal rules to the facts of the case***

The main ground for invalidating the arbitrator's award by the Dubai Court of First Instance (which was confirmed at all stages of appeal through the Dubai Court of Appeal and the Dubai

Court of Cassation in *International Bechtel Co. Ltd v Department of Civil Aviation of the Government of Dubai (case No. 503/2003)*), is that arbitration proceedings were also bound by the provisions of Federal Law No. 10 of 1992 on Evidence in Civil and Commercial Transactions (United Arab Emirates). The main rationale for the court's judgement is that by subjecting witnesses during arbitration proceedings to oaths, oral evidence provided during such proceedings are able to serve as a decisive form of evidence. Thus, witness evidence in the absence of oaths cannot be relied upon as a basis for any award conferred by an arbitrator. The absence of an appropriate oath by witnesses, as the court opined, voided the arbitration proceedings and the award that flowed from such proceedings of which nullification was the only available avenue to the court to implement public policy.

***Drawing relevant and applicable lessons***

The Dubai courts justified their decision to nullify the arbitration award made in favour of Bechtel on the ground of public policy.

The Dubai courts further rejected arguments put forward by Bechtel that the DCA had not objected to witnesses giving evidence during the arbitration proceedings without being under oath, and had in fact waived any objections to this during the arbitration proceedings. In terms of its ratification of the earlier decisions of both the Dubai Court of First Instance and the Dubai Court of Appeal, the Dubai Court of Cassation found that, under the laws of Dubai, rendering of oaths was a matter of public policy that could not be waived, and that the stipulated court procedures were clear as relates to the proper manner and form of swearing-in of witnesses during civil proceedings. Furthermore, the courts stated that the arbitrator had only issued

warnings to the witnesses on their need to be truthful when rendering testimony and that this did not amount to oaths (Robertson, 2005).

The solemn nature of oaths represents a covenant operating in the public space. For this reason, it is deemed subject to public policy (see Price, 1929). For these reasons, in a number of communities, breaking an oath, refusing to be subject to oaths, or not being subject to oaths are considered to have serious implications in that these can be a threat to social harmony (Lee, 2007).

Oaths are therefore a matter of public policy in most countries (Arab et al. 2019). Furthermore, most religions such as Islam, which, by virtue of Article 7 of the United Arab Emirates Constitution 1971 (with amendments up to 2014), is the official religion of the United Arab Emirates, either mandate or implore their adherents not to break any given oaths as these inevitably establish that an individual recognises their wider duty to the community. For example, in Islam, Ibrahim (2009) notes that "…*the Qur'ān has used oaths frequently with a view to appeal to its target audience*".

Oaths are usually a prerequisite of a number of functions, including litigants, experts and witnesses in litigation, which are conducted publicly under the auspices of national courts. Increasingly, the administration of oaths is also mandated for disputants, experts and witnesses in arbitration proceedings. For example, in the UAE, Article 33(7) of Federal Law 6 of 2018 on Arbitration only goes as far as stipulating that "…*unless otherwise agreed by the parties, hearing the statements of the witnesses, including the experts, shall be carried out as per the effective laws of the State*". In the United Kingdom, section 38(5) of the Arbitration Act 1996 empowers an arbitration tribunal to direct disputing parties or witnesses to examination under oath (or an affirmation). More specific to project management, oaths serve a role in project governance in

that they may be utilised to implement both interactional- (interpersonal-) and/or procedural-focused public policy. For example, in terms of its procedural use, societal values expect that only when statements are given under oath during should they represent decisive evidence (which then has interactional implications).

## Discussion

### *Assessment of the courts' attitude towards oaths during arbitration proceedings*

The reliance on public policy to nullify arbitration awards engages the view that a failure of the court to enforce public policy will mean that the interest of the public remains unprotected. For that reason, public policy entails that the courts should nullify arbitration awards deemed to contravene dominant, well-established and clearly defined societal norms, values, priorities and aspirations[7]. Conversely, the courts should decline any invitation to ratify an award that they interpret as counter to dominant, well-established and clearly defined societal norms, values, priorities and aspirations (Hodges, 2000). It is inevitable that during the delivery of public sector infrastructure projects, disputes will arise between any of the plethora of project stakeholders. The interest of the state in ensuring social harmony (a public policy objective) requires that mechanisms to resolve these disputes amicably should be in place (Mann, 1985). This is particularly the case when the dispute involves a private sector entity engaged in the provision of public services. The literature (see specifically Polkinghorne, 2008) perhaps best elaborates the likely emphasis of the Dubai Court of Cassation on the significance of oaths in arbitration proceedings, that being that the country's societal expectations and value systems which expect that statements given under oath will be truthful. Oaths are neither matters of insignificance nor superficiality in Arab culture. In fact, within this cultural space, they are construed as

instruments of guarantee and therefore regarded as important legal principles (Ab Rahman, 2008).

***The public policy question (choice of instrument)***

To examine what made the Bechtel judgement controversial from a public policy perspective, we refer to our earlier discussions where we had explored the consequences for practice of the absence of a project management understanding of public policy. In that earlier discussion, we identified three dilemmas (we have addressed the first). We now address the second and third controversies (consequence).

In terms of choice of instrument, as in the case of Bechtel and the DCA, it is now common practice to incorporate alternative dispute resolution (typically arbitration) clauses into the standard forms of contract used in public sector infrastructure projects. However, despite its potential, the use of arbitration as a public sector public policy implementation tool raises conceptual problems. For example, arbitration proceedings and awards are generally not in the public domain (Abraham and Montgomery, 2003). More specifically, neither is arbitration a process characterised by the level of accountability and openness that meets the public policy threshold. In fact, as a rule, arbitration does not necessarily allow for public scrutiny to which matters of public interest must be subject. Resnik (2015) discusses this in more detail, pointing out that public rights are susceptible to being eroded (and by implication, public policy contravened) in arbitration as against litigation. This is because the focus of arbitration is on consensus. Litigation on the other hand emphasises the enforcement of legal rights. In court-based litigation (at least in certain non-criminal matters), the process is entirely open to the casual observer and therefore open to public scrutiny, hence Susskind's (2008) claim that the

courts are representative of "*...a huge information system- an entity that receives, processes, stores, creates, monitors, and disseminates large quantities of documents and information*". Arbitration on the other hand is a private process, which flows from contract (unless court mandated). Therefore, in most if not all cases, it is not subject to public scrutiny. Thus, a conceptual problem with arbitration is the realistic possibility (as in the Bechtel case) that, arguably, arbitration is to be utilised by a private entity to impinge on the ability of the organ of state to exercise its inherent discretion on which projects to pursue.

***The public policy question (extent of use)***

In terms of extent of use, the Bechtel judgement represented a case where the governance mechanism of a public sector infrastructure project (in the form of arbitration proceedings and the award that flowed from that process) was employed as an instrument of choice to implement public policy. Bechtel raised a key controversy (concerning domestic public policy implications and international public policy implications) which raises the question as to whether and to what extent the 'unruly', fluid and multifaceted nature of domestic public policy served to *hinder* as against *facilitate* any delivery of public policy through public sector infrastructure projects. Evidence of the intractable nature of domestic public policy can be found in the recent Commercial Cassation Case No. 364 of 2019, which was heard by the Dubai Court of Cassation on 19 May 2019 in a case that bears much similarity to the Bechtel dispute. What is however of interest is that the Dubai Court of Cassation reiterated that, under the country's laws, the administering of oaths during arbitration hearings was part of public policy and, for this reason, could not be derogated from. However, in a marked departure from Bechtel, it declined to nullify the arbitrator's award on the basis that witness statements did not form the core element of the

reason for the arbitrator's award. More so, the court ruled that arbitrators were empowered to establish their own processes and procedures pertaining to, for example, the production of evidence. On the other hand, as relates to international public policy, the case raised specific questions relating to how national rules are applied to arbitration awards procured from foreign arbitral proceeding (Miranda and de Oliveira, 2013). For example, at one point, the Bechtel dispute was simultaneously before the courts in three different countries – United States (New York), United Arab Emirates (Dubai) and France (Paris). However, while the view of the courts in the UAE was that the Bechtel dispute was purely a domestic matter, by relying upon international public policy, Bechtel was able to take steps to obtain orders of enforcement of the original award through the courts in the United States (United States District Court for the District of Columbia, 2005) and France (Paris Court of Appeal, Chamber 1C, 2005)

**Conclusions**

In exploring the *legal* perspective of public policy implementation on construction projects, this study sets the scene for scholarly dialogue on the interface between project management and public policy.

While providing complementarity, which empowers the administrative sciences perspective of public policy, the *legal* perspective performs a critical role in public policy in that it articulates the enabling frameworks and authoritative context required for public sector infrastructure project implementation and delivery. Utilising the seminal Bechtel dispute decided by the Dubai Court of Cassation, we showed how specific controversies associated with the intractable nature of public policy (in this particular case, oaths) impacted successful project implementation. Figure 1 (below) is an illustration of the study and its findings.

As a critical step towards understanding the concept of public policy within project management, the Bechtel judgement is characteristic of current practice where public policy is articulated in highly abstract terms with legal frameworks being fashioned and bolted on later as part of court decisions. The Bechtel judgement also appears to suggest the use of public policy (in this case, oaths) in infrastructure project delivery as a tool for social control of dispute resolution mechanisms, albeit one framed at a very high level that accentuates uncertainty over the purpose of such public policy. This suggests that, to enhance in-depth understanding of the *legal* perspective of public policy implementation on construction projects, what is actually required is not more legislation but clearer guidance (perhaps couched in project-friendly terms) that explicitly details the what, purpose and scope of public policy. More laws are unlikely to resolve the intractable nature of public policy. Even when strictly adhered to, the law is unlikely to encourage individuals and parties who have differing and constant shifting interests to behave in different ways (Roots, 2004). Furthermore, laws (legislation) are usually drawn up in a very narrow and precise manner that is unlikely to accommodate the heterogeneity of public policy objectives that public sector infrastructure projects are being commissioned to deliver.

Although our study was specifically framed to the UAE context, there is potential to generalise our findings. For example, in terms of the appropriateness in using infrastructure projects to implement public policy, projects – such as the Ajaokuta steel complex in Nigeria – ended up only supplying the potential for benefits rather than public policy benefits themselves. In fact, arguably, public policy projects do not provide benefit directly but merely facilitate and require others to reap the benefits. One example would be the planned High Speed 2 (HS2) railway project in the United Kingdom. While it is unlikely that this project will rejuvenate the

North of England, it is expected to facilitate such development. From the perspective of international commercial arbitration, the Bechtel case raises important questions on the extent to which the exercise of arbitrator discretion may be deemed to represent a manifest disregard (or mistake) in the law that is so serious that the state may justify its interference with the finality of the arbitrator's award. Here, drawing on Poser (1998), '*manifest'* will suggest something that is both clearly apparent and obvious, while '*disregard'* will infer not only ignoring a matter that is brought to the attention of someone, but also an absence of thoughtful consideration of that matter. From historical case law in England, there is evidence to suggest that the courts have been more than willing to interfere with the finality of arbitration awards that were made based on obvious mistakes, an example of such seminal cases being *Hodgkinson v Fernie* and *Fuller v Fenwick*. The problem, however, in vacating arbitration awards on this ground is that it raises questions as to whether there is an obligation (and the extent of such an obligation) among arbitrators (particularly those conducting proceedings outside their 'home' jurisdictions) to correctly ascertain the extent of the intersection between domestic law and domestic public policy.

**Data Availability Statement**

No data, models, or codes were generated or used during the study.

**References**

**List of Cases**

Biggs v Hansell (1855) 16 CB 562, 25 LT(OS) 130

Chantiers de l'Atlantique SA v Gaztransport & Technigaz SAS [2011] EWHC 383 (Comm.).

Commercial Cassation Case No. 364 of 2019, Dubai Court of Cassation

Evanturel v Evanturel (1874) The Law Reports (Privy Council Appeals) 6 PC 1

Fuller v Fenwick, (1846) 136 Eng. Rep. 282 (L.R.C.P) 282–85

Hodgkinson v Fernie, (1857) 140 Eng. Rep. 712 (L.R.C.P)

International Bechtel Co. Ltd v Department of Civil Aviation of the Government of Dubai, case No. 503/2003 [Court of Cassation]

International Bechtel Co. Ltd v Department of Civil Aviation of the Government of Dubai, case No. 288/2002 [Court of First Instance]

Murlidhar Aggarwal v State of Uttar Pradesh (1975) 1 S.C.R. 575 (India)

Oleificio Zucchi SpAv. Northern Sales Ltd. [1965] 2 Lloyd's Rep. 469

R v Hayes (Geoffrey) [1977] 1 WLR 234, 237

Richardson v Mellish, [1824-34] All ER Rep. 258 (1824)

Safeway Stores v Retail Clerks International Association, 41 Cal. 2d 567, 575, 261 P.2d 721, 726 (1953)

Tersons Ltd v Stevenage Development Corpn [1963] 2 Lloyd's Rep. 333

Wakefield v Ilaneily Rly and Dock Co. (1864) 34 Beav 245

Waterside Ocean Navigation v International Navigation Ltd, 737 F.2d 150, 152-53 (2d Cir. 1984)

**List of Acts and Statutes**

Arbitration Act, 1996 (United Kingdom)

Belgium Judicial Code, as amended in 2013

Federal Act on Private International Arbitration (Switzerland) 1987

Federal Law No. 10 of 1992 on Evidence in Civil and Commercial Transactions (United Arab Emirates)

Federal Law 11 of 1992 (United Arab Emirates)

Federal Law No. 6 of 2018 on Arbitration (United Arab Emirates)

United Arab Emirates Constitution 1971 (with amendments up to 2014)

**Endnotes**

[1] The relationship between oaths, truth and trust is quite complex and outside the remit of this present study. However, the courts in England and Wales have long recognised that the administration of oaths has not necessarily prevented widespread perjury during litigation. More specifically, in *R v Hayes (Geoffrey)*, the courts opined that "*It is unrealistic not to recognise that, in the present state of society, amongst the adult population the divine sanction of an oath is probably not generally recognised".*

[2] This position is supported by legislative provisions. For example, section 38 (5) of The Arbitration Act 1996 (United Kingdom) states that the tribunal "…*may direct that a party or witness shall be examined on oath or affirmation, and may for that purpose administer any necessary oath or take any necessary affirmation*".

[3] Despite case law and legislative provisions, Sheppard (2016), suggests that in England and Wales, it is becoming increasingly uncommon for arbitrators to administer oaths to witnesses before oral evidence.

[4] See for example, Article 184 (section 2), Federal Act on Private International Arbitration (Switzerland) 1987; Article 1700(3), Belgium Judicial Code, as amended in 2013.

[5] *Waterside Ocean Navigation v International Navigation Ltd* must be understood within the context that the appellant did not allege that the witness statement was marred by perjury.

[6] Thus, it is our expectation that a party to an arbitration dispute is likely to successfully apply for the setting aside of an arbitration award if the primary justification of the award rests on witness testimony found to be deliberately defective or false. This is because such deliberate action will represent gross irregularity that could be set aside under section 68 of the Arbitration Act 1996. However, case law is not settled on this matter. For example, it has been observed in cases such as *Tersons Ltd v Stevenage Development Corpn* and *Oleificio Zucchi SpA v Northern Sales Ltd* that false witness testimony rendered during arbitration proceedings does not constitute a viable ground for setting aside an arbitration award if such testimony was not influenced by a disputant. However, in *Chantiers de l'Atlantique SA v Gaztransport & Technigaz SAS*, the High Court (England and Wales) opined that where either a disputing party or a witness for one of the disputants deliberately provided misleading evidence during arbitration proceedings, it was construable as fraud and therefore, under section 68(2)(g) of The Arbitration Act 1996 (United Kingdom), the award could be set aside by the courts.

[7] The reliance on public policy generally flows from the notion that the courts will not enforce a contract that contravenes dominant, well-established and clearly defined societal norms, values, priorities and aspirations.

**Works Cited**

Ab Rahman, S. 2008. The Influence of Classical Interpretation on the Law of Guarantees in the United Arab Emirates. *Arab Law Quarterly*, 22 (4), 335-358.

Abraham, K. and Montgomery, J. 2003. The Lawlessness of Arbitration. *Connecticut Insurance Law Journal*, 9 (2), 355-370.

AlRaeesi, E., and Ojiako, U. 2020. Public policy and projects: making connections and continuing the conversation, Proceedings of the International Conference on Industrial Engineering and Operations Management, Dubai, UAE, March 10-12, 2020.

Arab, H., Koleilat-Aranjo, S. and Darwish, M. 2019. The Dubai Court of Cassation Rules on the Effect of the Failure to Administer an Oath in Arbitral Proceedings, Al Tamimi & Company: Lexology, https://www.lexology.com/library/detail.aspx?g=f6ce1c1b-1a48-453f-a075-3e80fbca60de, accessed 07/07/20.

Argyrou, A. 2017. Making the case for case studies in empirical legal research. *Utrecht Law Review*, 13 (3), 95-113

Bernier, J. 1929. Droit Public and Ordre Public. *Transactions of the Grotius Society*, 15, 83-92.

Besaiso, H., Fenn, P. and Emsley, M. 2018. Evolution of construction arbitration. *ASCE Journal of Legal Affairs and Dispute Resolution in Engineering and Construction*, 10(2), p.04518001.

Bewes, W. 1921. Public Order (Ordre Public). *Law Quarterly Review*, 37 (3), 315-322.

Bierce, A. 1977. A Reconsideration of the Sworn Testimony Requirement: Securing Truth in the Twentieth Century. *Michigan Law Review*, 75 (8), 1681-1707

Bies, R. and Shapiro, D. 1987. Interactional fairness judgments: The influence of causal accounts. *Social Justice Research*, 1(2), 199-218.

Bittner, M. 1990. The IRAC method of case study analysis: A legal model for the social studies. *The Social Studies*, 81(5), 227-230.

Blanke, G and Corm-Bakhos, S. 2017. The Enforcement of International Commercial and Investment Arbitration Awards in the MENA Region, *Arbitration*, 1 (2017), 71-81.

Blidstein, M. 2017. Swearing by the Book: Oaths and the Rise of Scripture in the Roman Empire. *Revue Genevoise d'Anthropologie et d'Histoire des Religions*, 12 (2017), 53-72.

Blok, V. 2013. The power of speech acts: Reflections on a performative concept of ethical oaths in economics and business. *Review of Social Economy*, 71(2), 187-208.

Bredillet, C. 2008. Exploring research in project management: Nine schools of project management research (part 4). *Project Management Journal*, 39(1), 2-6.

Bredillet, C. 2010. Blowing hot and cold on project management. *Project Management Journal*, 41(3), 4-20.

Brekoulakis, S. 2019. The Historical Treatment of Arbitration under English Law and the Development of the Policy Favouring Arbitration. *Oxford Journal of Legal Studies*, 39(1), 124-150.

Brekoulakis, S. and Devaney, M. 2017. Public-Private Arbitration and the Public Interest under English Law. *Modern Law Review*, 80(1), 22-56.

Burroughs, D. 2019. Public consultation key to infrastructure development. *International Railway Journal*, https://www.railjournal.com/in_depth/public-consultation-key-infrastructure-development, accessed 06/07/20

Burstein, P. 1998. Bringing the public back in: should sociologists consider the impact of public opinion on public policy?. *Social Forces*, 77(1), 27-62.

Burton, K. 2017. "Think Like a Lawyer" Using a Legal Reasoning Grid and Criterion-Referenced Assessment Rubric on IRAC (Issue, Rule, Application, Conclusion). *Journal of Learning Design*, 10(2), 57-68.

Chan, H. and Rosenbloom, D. 1994. Legal control of public administration: a principal-agent perspective. *International Review of Administrative Sciences*, 60(4), 559-574.

Chatterjee, S. and Turnovsky, S. 2012. Infrastructure and inequality. *European Economic Review*, 56, 1730-1745.

Chetty, R. 2015. Behavioral economics and public policy: A pragmatic perspective. *American Economic Review*, 105(5), 1-33

Chou, J., Hsu, S., Lin, C. and Chang, Y. 2016. Classifying Influential Information to Discover Rule Sets for Project Disputes and Possible Resolutions. *International Journal of Project Management*, 34(8), 1706-1716.

Cooley, J. 1986. Arbitration vs. Mediation - Explaining the Differences. *Judicature*, 69 (5), 263-269.

Cooper, P. 2017. Without Which Nothing: Public Law as the Sine Qua Non of Public Administration. *Administration & Society*, 49(5), 634-657.

Craig, G., Burchardt, T., and Gordon, D. (Eds.). 2008. *Social justice and public policy: Seeking fairness in diverse societies*. Bristol: Bristol University Press.

Crawford, L. and Helm, J. 2009. Government and governance: The value of project management in the public sector. *Project Management Journal*, 40(1), 73-87.

Crawford, L., Pollack, J. and England, D. 2006. Uncovering the trends in project management: Journal emphases over the last 10 years. *International Journal of Project Management*, 24(2), 175-184.

de Oliveira, G. and Rabechini Jr, R. 2019. Stakeholder management influence on trust in a project: a quantitative study. *International Journal of Project Management,* 37(1), 131-144.

Drahozal, C. and Hylton, K. 2003. The economics of litigation and arbitration: An application to franchise contracts. *Journal of Legal Studies*, 32(2), 549-584;

Enonchong, N. 1993. Public Policy and Ordre Public: The Exclusion of Customary Law in Cameroon. *African Journal of International and Comparative Law*, 5 (3), 503-524.

Epstein, L. and King, G., 2002. The rules of inference. *University of Chicago Law Review*, 69 (1), 1-134.

Fearnside, P. 2016. Environmental and social impacts of hydroelectric dams in Brazilian Amazonia: Implications for the aluminium industry. *World Development*, 77, 48-65.

Fimyar, O. 2014. What is policy? In search of frameworks and definitions for non-Western contexts. *Educate*, 14(3), 6-21.

Folger, R. and Cropanzano, R. 1998. *Organizational justice and human resource management*. Thousand Oaks, Sage.

Ghodoosi, F. 2015. The Concept of Public Policy in Law: Revisiting the Role of the Public Policy Doctrine in the Enforcement of Private Legal Arrangements. *Nebraska Law Review*, 94 (3), 685-736.

Gray, E. 2005. Utilizing the ethics of project management in the healthcare field. *Project Management Journal*, 36(4), 61-65.

Hansen, S. 2019. Challenging arbitral awards in the construction industry: Case study of infrastructure disputes. *ASCE Journal of Legal Affairs and Dispute Resolution in Engineering and Construction*, 11(1), p.06518004.

Hodges, A. 2000. Judicial Review of Arbitration Awards on Public Policy Grounds: Lessons from the Case Law. *Ohio State Journal on Dispute Resolution,* 16 (1), 91-164.

Hollander, P. 2016. Report on the Public Policy Exception in the New York Convention. *Dispute Resolution International*, 10, 35-50

Hood, C. 1995. Emerging issues in public administration. *Public Administration*, 73(1), 165-183.

Hopkins, J. 1971. Public Policy and the Formation of a Rule of Law. *Brooklyn Law Review*, 37 (2), 323-336

Howlett, M. 1991. Policy instruments, policy styles, and policy implementation: National approaches to theories of instrument choice. *Policy Studies Journal*, 19(2), 1-21.

Ibanez, A. 2001. *European Administrative Law and Public Management: Mutual Exclusion or Mutual Learning?* In George, A., Machado, P., and Ziller, J. (eds) European University Institute Working Paper LAW No. 2001/12 Law and Public Management: Starting to Talk Workshop held at the European University Institute (Part I), pp. 15-34.

Ibrahim, M. 2009. Oaths in the Qur'ān: Bint al-Shāṭi"s Literary Contribution. *Islamic Studies*, 48 (4), 475-498.

Jacquemet, N., Luchini, S., Rosaz, J. and Shogren, J. 2018. Truth telling under oath. *Management Science,* 65(1), 426-438.

Kanakri, C. and Massey, A. 2016. Comparison of UAE and DIFC-seated arbitrations. Global Arbitration News. Available from: https://globalarbitrationnews.com/comparison-uae-difc-seated-arbitrations-20161012/, accessed 07/02/18.

Katok, E. and Pavlov, V. 2013. Fairness in supply chain contracts: A laboratory study. *Journal of Operations Management,* 31(3), 129-137.

Knudsen, K. 2016. The juror's sacred oath: Is there constitutional right to properly sworn jury. *Touro Law Review*, 32(3), 489-534.

Korczynski, M. 2000. The political economy of trust. *Journal of Management Studies*, 37(1), 1-21.

Kreis, A. and Christensen, R. 2013. Law and public policy. *Policy Studies Journal*, 41, S38-S52.

Lascoumes, P. and Le Galès, P. 2007. Introduction: understanding public policy through its instruments -from the nature of instruments to the sociology of public policy instrumentation. *Governance*, 20(1), 1-21.

Lee, J. 2007. 'Ye shall disturbe noe mans right': oath-taking and oath-breaking in late medieval and early modern Bristol. *Urban History*, 34(1), 27-38.

Liljenfeldt, J. and Pettersson, O. 2017. Distributional justice in Swedish wind power development–an odds ratio analysis of windmill localization and local residents' socio-economic characteristics. *Energy Policy*, 105, 648-657.

Luo, Y. 2007. The independent and interactive roles of procedural, distributive, and interactional justice in strategic alliances. *Academy of Management Journal*, 50 (3), 644 - 664.

Mann, F. 1985. Private Arbitration and Public Policy. *Holdsworth Law Review*, 10 (1), 11-21.

Marques, S., Lima, M.L., Moreira, S. and Reis, J. 2015. Local identity as an amplifier: Procedural justice, local identity and attitudes towards new dam projects. *Journal of Environmental Psychology*, 44, 63-73.

McKevitt, D., Carbery, R. and Lyons, A. 2017. A profession but not a career? Work identity and career satisfaction in project management. *International Journal of Project Management*, 35(8), 1673-1682.

Meyerson, D. 2015. The Moral Justification for the Right to Make Full Answer and Defence. *Oxford Journal of Legal Studies*, 35 (2), 237-265.

Miranda, I., and de Oliveira, L. 2013. International Public Policy and Recognition and Enforcement of Foreign Arbitral Awards in Brazil. *Journal of International Arbitration*, 30 (1), 49 – 70.

Moynihan, D. and Soss, J. 2014. Policy feedback and the politics of administration. *Public Administration Review*, 74(3), 320-332.

Murphy, K. 1981. The Traditional View of Public Policy and Ordre Public in Private International Law, *Georgia Journal of International and Comparative Law*, 11 (3), 591-616.

Mustill, M. 1989. Arbitration: history and background. *Journal of International Arbitration*, 6 (2), 43-56.

Ojiako, U., Papadopoulos, T., Stamati, T., Anagnostopoulos, D., and Marshall, A. 2015. Collaborative governance in Greek infrastructure projects. Proceedings of the Institution of Civil Engineers: Management, Procurement and Law, 168 (3), 135-145.

Ojiako, U., Manville, G., Zouk, N. and Chipulu, M. 2016. Social cohesion and interpersonal conflicts in projects. Proceedings of the Institution of Civil Engineers: Management, Procurement and Law, 169 (2), 77-84.

Ojiako, U. 2017. *Using Online Dispute Resolution Platforms to Resolve Small and Low-Valued Construction Project Claims Disputes: An Examination of the Rule of Law and Justice Implications*. Unpublished LLB Thesis, University of London.

Ojiako, U., Chipulu, M., Marshall, A., and Williams, T. 2018. An examination of the 'Rule of law' and 'Justice' implications in Online Dispute Resolution in the Construction Industry, *International Journal of Project Management*, 36 (2), 301-316.

Ojiako, U. 2019. *Public policy as a ground for challenging and vacating domestic arbitral awards in the United Arab Emirates*. Unpublished MPhil (Law) Thesis, Aberystwyth University.

Organisation for Economic Co-operation and Development (OECD). 2016. *Getting Infrastructure Right*, https://www.oecd.org/gov/getting-infrastructure-right.pdf, accessed 12/08/19.

Osborne, D. and Gaebler, T. 1992. *Reinventing government: How the entrepreneurial spirit is transforming the public section*. New York: Addison-Wesley.

Paulsen, M. and Sovern, M. 1956. Public Policy in the Conflict of Laws. *Columbia Law Review*, 56 (7), 969-1016.

Pinto, J., Slevin, D., and English, B. 2009. Trust in projects: An empirical assessment of owner/contractor relationships. *International Journal of Project Management*, 27(6), 638-648.

Polkinghorne, M. 2008. Enforcement of annulled awards in France: the sting in the tail. *International Construction Law Review*, 25(1), 48-56.

Poser, N. 1998. Judicial Review of Arbitration Awards: Manifest Disregard of the Law. *Brooklyn Law Review*, 64 (2), 471-518.

Price, I. 1929. The Oath in Court Procedure in Early Baby-Lonia and the Old Testament. *Journal of the American Oriental Society*, 49, 22-29.

Resnik, J. 2015. Diffusing Disputes: The Public in the Private of Arbitration, the Private in Courts, and the Erasure of Rights. *Yale Law Journal*, 124 (8), 2804-2939.

Revellino, S. and Mouritsen, J. 2017. Knotting the net: From ‘design by deception’ to an object oriented politics. *International Journal of Project Management*, 35(3), 296-306.

Robertson, J. 2005. *Arbitration Between International Bechtel Co. and Department of Civil Aviation of Government of Dubai*, 360 F.Supp.2d 136 (2005), United States District Court, District of Columbia.

Rosenau, P. 2000. *The strengths and weaknesses of public-private policy partnerships*, MIT Press, Cambridge, MA. The Politics of Self-Governance.

Roth, M. 1997. Consequences and Prevention of False Evidence Under the English Arbitration Act 1996: A Comparative Perspective. *Arbitration International,* 13(4), 391-398.

Rutgers, M. 2010. The oath of office as public value guardian, *American Review of Public Administration*, 40, 428 - 444.

Sanderson, J. and Winch, G. 2017. Public policy and projects: making connections and starting conversations. *International Journal of Project Management*, 35 (3), 221-223.

Scheffler, S. 2015. Distributive Justice, the Basic Structure and the Place of Private Law. *Oxford Journal of Legal Studies*, 35 (2), 213-235.

Seeleib-Kaiser, M. 2008. *Welfare state transformations in comparative perspective: shifting boundaries of 'public'and 'private'social policy?.* In Welfare state transformations (1-13). Palgrave Macmillan, London.

Sheppard, A. 2016. *Part VII Witnesses and Perjury, 20 Oaths and Perjury*, In Defining Issues in International Arbitration: Celebrating 100 Years of the Chartered Institute of Arbitrators, Betancourt, J-C (Eds), Open University Press.

Siciliano, G. and Urban, F. 2017. Equity-based natural resource allocation for infrastructure development: Evidence from large hydropower dams in Africa and Asia. *Ecological Economics*, 134, 130-139.

Silving, H. 1959. The Oath: I, *Yale Law Journal*, 68(7), 1329-1390.

Stępień, M. 2019. Using Case Studies for Research on Judicial Opinions: Some Preliminary Insights. Law and Method. http://www.lawandmethod.nl/tijdschrift/lawandmethod/2019/11/lawandmethod-D-19-00004.pdf, DOI: 10.5553/REM/.000045, accessed 11/04/20.

Stevens, T., Tabatabaei, M. and Lass, D. 2013. Oaths and hypothetical bias. *Journal of Environmental Management*, 127, 135-141.

Stigler, G. 1972. The law and economics of public policy: A plea to the scholars. *The Journal of Legal Studies*, 1(1), 1-12.

Susskind, R. 2008. *The End of Lawyers?: Rethinking the nature of legal services*. Oxford University Press.

Teo, P. and Bridge, A. 2017. Crafting an efficient bundle of property rights to determine the suitability of a Public-Private Partnership: A new theoretical framework. *International Journal of Project Management,* 35(3), 269-279.

Tokar, T. and Swink, M. 2019. Public policy and supply chain management: Using shared foundational principles to improve formulation, implementation, and evaluation. *Journal of Supply Chain Management,* 55(2), 68-79.

Webley, L. 2016. Stumbling Blocks in Empirical Legal Research: Case Study Research, *Law and Method*, 3, doi: 10.5553/REM/.000020.

Wedel, J., Shore, C., Feldman, G. and Lathrop, S. 2005. Toward an anthropology of public policy. *Annals of the American Academy of Political and Social Science,* 600(1), 30-51.

Whitcombe, R. 1824. *An enquiry into some of the rules of evidence relating to the incompetency of witnesses*. Pub. Butterworth, London.

White, H. 2013. Conducting case study research. Technical Services Law Librarian, 39(2), 20-21.

Winch, G., and Sanderson, J. 2015. Call for Papers - Public policy and projects, *International Journal of Project Management*, 33 (2), 249-250

Wright, B. 2011. Public administration as an interdisciplinary field: Assessing its relationship with the fields of law, management, and political science. *Public Administration Review*, 71(1), 96-101.

Yelpaala, K. 1989. Restraining the Unruly Horse: The Use of Public Policy in Arbitration, Interstate and International Conflict of Laws in California. *Journal of Transnational Law*, 2 (2), 379-494.

Zhai, Z., Ahola, T., Le, Y. and Xie, J. 2017. Governmental governance of megaprojects: The case of EXPO 2010 Shanghai. *Project Management Journal*, 48(1), 37-50.

Ziade, R. and De Taffin, C-H. 2010. Fact Witness in International Arbitration. *International Business Law Journal*, 2, 115-134.