
Kluwer Arbitration Blog

Beach Books, for International Arbitration Lawyers...

Gary B. Born (Wilmer Cutler Pickering Hale and Dorr LLP) · Friday, July 26th, 2013 · WilmerHale

For arbitration geeks, the beach is a challenge - How can you indulge your passion for international arbitration, without (further) outing yourself as a work-alcoholic without a life? I probably can't help you much, in that category, but one possibility, with two sub-parts, comes to mind. Arbitration history lets you stay focussed on your one true calling, and avoid repeating the past, while (maybe) not looking too hopeless. And there are two relatively recent publications that can set you apart on the beach, slopes or whatever.

Derek Roebuck, in his latest book *"Mediation and Arbitration in the Middle Ages: England 1154-1558,"* describes how dispute resolution, specifically mediation and arbitration, worked in practice in Medieval England. The book first describes the historical setting, the legal system of the time (including the place of mediation and arbitration within the English legal system) and the sources the book is based on.

In the body of the book, Roebuck colorfully portrays how mediation and arbitration were actually used in different kinds of disputes - including conflicts over land and inheritance, but also crimes such as murder and rape, which would nowadays generally be considered non-arbitrable. He recounts how disputes were resolved between different communities - from king, parliament and council, through great lords and their councils to cities and boroughs, specific communities such as craft and merchant guilds and Jewish communities. He also sheds light on the strikingly important role of women in arbitration in the Middle Ages. Although the focus of the book is on development of arbitration in practice, it also provides a succinct history of the law of arbitration. The journey through this history is vividly painted through cites from the original sources - and as Roebuck quotes "the journey through instruction may be long but by examples it is short and efficient." Indeed, the book is written in a way that is inspiring and engaging, and provides a thorough, yet interesting insight into the development of dispute resolution in in the Middle Ages.

The second book is *"Outsourcing Justice: The Rise of Modern Arbitration Laws in America"* by Imre Szalai, dealing with the opposite side of the Atlantic. And although I agree that a book should not be judged by its cover - one cannot help but feel intrigued by the image of the French Fry carton appearing on the front cover. A closer look reveals a tiny arbitration clause at the bottom of the carton - a neat, if

exaggerated, visual illustration of how arbitration agreements became widespread in American society. As the author explains “I describe how several industries are using arbitration clauses today, including the fast food industry. ... After introducing the current uses of arbitration in the first chapter of my book, the rest of my book focuses on the history of modern arbitration laws and discusses never-before-seen archival material regarding the Federal Arbitration Act. This juxtaposition of the modern uses of arbitration and the history can be very jarring.”

Szalai’s book provides a detailed and provocative examination of the history of (sort of) modern arbitration laws in the United States. In particular, the book offers a careful analysis and description of the legislative history of the FAA, including the support of the business and legal communities for the proposed law. One can readily enjoy this description, without necessarily accepting the author’s conclusion that “this book demonstrates how the U.S. Supreme Court has grossly misconstrued these laws.” A more comprehensive review of his work can be found at <http://www.indisputably.org/?p=4808>.

Both books provide interesting and important additions to our understanding of the rise of arbitration in English-speaking jurisdictions. They will no doubt add to scholarly efforts, as well as holiday enjoyment.

Gary B. Born & Marija Scekic

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