

Kluwer Arbitration Blog

Arbitration in Douglas Johnston's *The Historical Foundations of World Order*

Andrew Newcombe (University of Victoria Faculty of Law) · Tuesday, June 2nd, 2009

Professor Roger Alford's recent posting, "[The Arbitrator as Diplomat](#)", discusses the role of "diplomatic arbitration," a concept with a long historical pedigree. Some of that history (and much more) is contained in the late [Professor Douglas M. Johnston's](#) posthumous opus, [The Historical Foundations of World Order: The Tower and the Arena](#) (2008). The book was awarded the ASIL's 2009 Certificate of Merit for a Preeminent Contribution to Creative Scholarship and was the subject of a panel discussion at the ASIL Annual Meeting in March 2009. It was feted as an extraordinary work of scholarship. As Professor W. Michael Reisman discusses in the book's preface, Professor Johnston's work is "the most detailed account of the history of international law."

Although the treatment of international arbitration in *The Historical Foundations of World Order: The Tower and the Arena* is brief, there are some treasures. Prof. Johnston notes that legend in primitive and classical antiquity suggests that arbitration was favoured by the gods, although the gods retained a "fickle attachment to war as an honorable course of action to settle issues." From arbitration in Sumer, Greece and Rome, Johnston turns to the Jay Treaty of 1794 as "the first early modern experiment in the peaceful settlement of international disputes" and "the modern foundation of the *adjudicative model* of world order." Historical tidbits abound. For instance, when the US House of Representatives demanded access to documents relating to the Jay Treaty negotiations, President Washington asserted "executive privilege," a precedent that "still reverberates within the American constitutional system."

Johnston's discussion of the 1899 Hague Peace Conference exemplifies his approach. As Professor Reisman describes in the preface:

Great history is far more than a chronological narrative. It requires a contextualization of events in their cultural, economic and technological milieu and an appreciation of their contingency. It must account for the impacts of exceptional individuals, without, as Harold Lasswell put it, rendering them taxidermical specimens. Yet it must also account for collective actions and path-driven results, the so-called "great historical forces."

Johnston highlights the efforts of legal internationalists and the European and American peace movements in advocating for the process of international arbitration in the late 19th century. He also details the role of individuals, including Léon Victor Auguste Bourgeois, who presided over the Third Commission (and who later became President of the League of Nations), and state policy resulting in the establishment of the Permanent Court of Arbitration.

Johnston's functionalist, multi-model approach to international law "commits the historian – and his reader – to a long story of slow and uneven human development." At 772 pages this is not a short summer time read. Yet it remains accessible to the general reader and expert alike. It is a richly rewarding discussion of the historical foundations of the international legal system.


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