

BOOK REVIEW

The Golden Age of Arbitration: Dispute Resolution Under Elizabeth I

By Derek Roebuck

Reviewed by Edna Sussman

For those who have been waiting for the revelations about dispute resolution in the next period in history, Derek Roebuck's compendium on dispute resolution during Elizabethan times was published earlier this year. This book covers the reign of Elizabeth I, 1558-1603, and focuses on England with occasional journeys into Wales, the Channel Islands and Ireland. This book is the latest in Mr. Roebuck's series of books about arbitration at different points in history. His prior works include *Ancient Greek Arbitration* (2001), *Roman Arbitration* (2004), the *Charitable Arbitrator: How to Mediate and Arbitrate in Louis XIV's France* (2002), *Early English Arbitration* (2008), *Disputes and Differences: Comparisons in Law Language and History* (2010), and *Mediation and Arbitration in the Middle Ages* (2013).

The author of over forty books on law, legal history and language, Mr. Roebuck is a solicitor who has taught and practiced law in England, New Zealand, Australia, Papua New Guinea and Hong Kong. He served for many years as the editor of *Arbitration*, the journal of the Chartered Institute of Arbitrators, and is a senior research fellow at the University of London's Institute of Advanced Legal Studies.

Mr. Roebuck stated his purpose in embarking on his incredible historical journey on arbitration through the ages in his book on Greek arbitration: "History may be described as the 'intelligent reconstruction of the past' for some present purpose. The purpose of this history of arbitration is straightforward: to increase understanding of present systems of resolving disputes by showing how arbitration and mediation have operated and developed in other times and places. Understanding can be increased by comparing two or more contemporary societies or by comparing the same or different societies at different periods of history.... The study of these differences and similarities may be useful in increasing the understanding of present-day procedures and even in finding solutions to contemporary problems."¹ Indeed, much can be learned from our study of the past and the utilization of different dispute resolution processes in different cultures at different points in history.

As Mr. Roebuck's earlier books report, private arbitration was acknowledged by legal systems from the earliest times. Indeed, arbitration was cited by Demosthenes, the prominent Greek orator and statesman. Mr. Roebuck's books draw through the centuries on references to the law and dispute resolution from diverse sources including, law, history, politics and literature, producing a fascinat-

ing mosaic on the development and recognition of dispute resolution processes outside the courts.

While private arbitration co-existed, relatively little was recorded about how private arbitration was conducted in Elizabethan times. Because those in government at the time of Elizabeth I were diligent in recording almost everything, there is voluminous original archival material available relating to arbitration under Elizabeth I's government upon which Mr. Roebuck draws thoroughly with intelligence and wit in this latest volume. The book explores in depth dispute resolution under Queen Elizabeth I's scheme of public arbitration as recorded by her Privy Council ("Council"). The book is divided into six parts covering the background and sources, public arbitration, procedure, subject matter (commerce, international trade and foreign relations, marine insurance average salvage and prize, land, family and inheritance, and wrongs) and the law in the courts.

A few tidbits from the book to entice you: The word used by the Elizabethans for their process of dispute resolution was "arbitrement" spelled in different ways. This included every procedure or strategy at all stages once the parties had referred their dispute to others. Disputes were often referred by the Council to arbitration, usually in response to one party's petition for such an appointment. Arbitration versus mediation were not distinctly and separately defined and practiced as they are today and arbitrators were expected to "bring them [the parties] to some good composition with the consent of both parties,"² often by accepting a resolution suggested by the arbitrator. If the process failed to produce an agreed negotiated solution, wholly or in part, the arbitrator was usually authorized to continue his or her efforts to end the dispute by making a decision on outstanding issues or report back his or her opinion to the Council for it to take an order, often following the arbitrator's recommendation. Sometimes the Council referred a matter not to include a facilitated negotiation phase and to have the arbitrator act only as the decision maker. Often more than one arbitrator was appointed by the Council to conduct the arbitration.

Yes, you did see the word "her" in the prior paragraph. Mr. Roebuck devotes an entire chapter to the place of women in arbitration in Elizabethan England. He notes that there were occasional mentions of women as parties in private arbitrations, and "once as arbitrator,"³ thus suggesting that women, while not precluded from serving as arbitrators, did not do so frequently. There was nothing in English law to inhibit the appointment of women arbitra-

tors. Mr. Roebuck reports on the choice of Mary Edgerton who was appointed as one of three arbitrators in a dispute among Cheshire landowners about the dower (portion of deceased husband's real property allowed to a widow for her lifetime for support) of one of her relatives, and Jane Mapples is recorded as a mediator in a dispute concerning an accusation of slander.

Many of the procedures reported are echoed today. The Council expected those they commissioned to act as arbitrators to serve with speed and efficiency and understood the importance of a speedy process for those with limited resources and for busy merchants. A month was usually considered ample time to hear the evidence and produce an award. The Council was alert to prevent parties from using delay as a tactic, used to cause the weaker parties with the stronger case to run out of money to pursue their rights. The arbitrators sometimes made orders for costs and could make payment of the expenses of the arbitration part of the award.

In the section on commerce, Mr. Roebuck reports that for those who had business in the major cities disputes were a normal part of the work. Merchants preferred to keep away from litigation which not only cost too much, but was too slow to provide a service. They set up their own arbitrations, but also took advantage of public schemes. The Council routinely commissioned London merchants to serve as arbitrators to assist the parties in achieving a mediated settlement.

The section on international trade and foreign relations suggest a system in which we would find close antecedents to today's process. Queen Elizabeth I's Government was assiduous in its concern for those who brought in trade to England and was happy to provide an attractive institution for dispute resolution.⁴ Thus, if the dispute was between foreign and English parties, the Council would often appoint a mixed tribunal with some English and some foreign members. If the matter concerned a dispute between foreign merchants with no connection to England, while the Council might decide it, the dispute was referred to a foreign power if it were deemed more appropriate to do so. On the other hand, the Council sometimes insisted that English merchants abroad bring their disputes to the courts within Queen Elizabeth I's realm rather than pursue their claims in foreign courts.

While the work will be riveting for some, for others it will not be a beach

read, but for all it will be absolutely fascinating. Just picking the book up and reading a few pages will delight and enrich the reader's day. Even more importantly a careful study of Mr. Roebuck's books may well, as he intended, assist "in finding solutions to contemporary problems" in dispute resolution.

Endnotes

1. Derek Roebuck, *Ancient Greek Arbitration*, p. 3, publ. HOLO Books, Arbitration Press, 2001.
2. *Id.* at 5.
3. *Id.* at 153-154.
4. *Id.* at 202.

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