Arbitration and Mediation in Nineteenth-Century England by Francis Calvert Boorman and Rhiannon Markless

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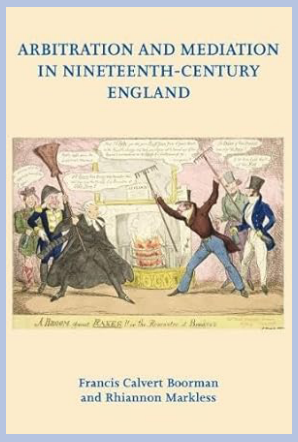

Francis Calvert Boorman and Rhiannon Markless (2024) *Arbitration and Mediation in Nineteenth-Century England*, published by HOLO Books: The Arbitration Press ISBN: 978-1-9196318-3-7.

This book—*Arbitration and Mediation in Nineteenth-Century England* by Francis Calvert Boorman and Rhiannon Markless—provides a comprehensive examination of the evolution and growing significance of arbitration and mediation in 19th-century England. It complements earlier work by Derek Roebuck on the unfolding development of dispute resolution, especially the study by Professor Roebuck and his co-authors (2019)—also Boorman and Markless—on developments in the 18th century[1] and draws to a fitting conclusion Professor Roebuck's multi-volume history.

The study by Boorman and Markless examines the legal landscape of 19th-century England, emphasizing the growth of arbitration and mediation as alternative ways to resolve disputes. The authors offer a detailed look at the manner in which these dispute resolution processes developed, their incorporation into the legal system, and their impact on the handling of both commercial and civil disputes. The book is organized into 19 substantive chapters, each focusing on different aspects of the legal and institutional framework, social attitudes towards arbitration

[1] Other titles are usefully listed at page ii of the book under review here.

and mediation, and so on during that time.[2] Careful attention in given to the historical context and legal framework, with the authors examining the origins of arbitration in English law, tracing its roots to the medieval period while emphasizing significant legislative developments in the 19th century. Notably, the Arbitration Act of 1889 is highlighted as a crucial milestone in the formalization of arbitration practices. The book also gives careful attention to the relationship between the judiciary and arbitration, highlighting the courts' initial hesitance to relinquish control over legal matters to arbitrators. However, as time progressed, the courts increasingly came to see arbitration as a valuable method for alleviating the pressures of growing caseloads. Arbitration emerged as a preferred method for resolving commercial disputes, largely due to its perceived efficiency and flexibility in comparison to the hitherto more orthodox path of court-focused litigation. The authors emphasize that businesses, especially within the rapidly industrializing economy, significantly contributed to the growing demand for arbitration. The book also provides an in-depth analysis of shifts in social attitudes towards dispute resolution, highlighting a significant acceptance of arbitration and mediation as legitimate and effective alternatives to traditional litigation. It examines the growing recognition of these methods as viable options for resolving conflicts in both personal and commercial contexts, making them increasingly popular among commercial actors and also individuals. The study gives attention to the historical influence of prominent legal thinkers, such as Jeremy Bentham, whose insights and advocacy for reform have helped to shape changing perceptions of arbitration. By analyzing such contributions, the book illustrates the manner in which these theoretical frameworks paved the way for a more favorable view of alternative dispute resolution (ADR) in legal practice.

Detailed analyses of significant cases illustrate not only how arbitration was employed in practice but also the sometimes intricate manner in which legal precedents have shaped its evolution over time. Useful insights into the complexities of these cases are offered, highlighting the various factors that influenced their outcomes. The study delves into how these landmark decisions impacted the interpretation and application of arbitration laws, ultimately contributing to the refinement of the arbitration process and its standing within the legal framework.

[2] These chapters examine issues of the institutional framework (higher courts: structure and changes, assizes and county courts, magistrates, summary courts, the Privy Council, and police courts, law reports and key cases, legislation, arbitral procedure), substantive areas of disputes and their "management" (land, transport, local government, business and commerce, debt, reputation religion (Church of England and Quakers in particular), family, labour relations, friendly societies and savings banks, and issues in the abolition of the slave trade), and international dimensions (the Alabama claims and the international peace movement).

By exploring these critical examples, a deeper understanding is offered of the practical implications and theoretical foundations of arbitration as a dispute resolution mechanism.

At the same time, the book does note the challenges faced by, in particular, arbitration as it became incorporated into the judicial system. Increased procedural complexity,[3] the rise of appointment nepotism and costs, and the sporadic nature of legislative reforms that failed to create an efficient arbitration system are noted. The integration with courts diminished the conciliatory dimension in arbitration, while legal community resistance also hindered its development—for example, lawyers in Parliament often opposed the establishment of separate arbitral institutions, preferring to keep arbitration within the purview of the courts. Additionally, some insights are offered into how English arbitration aligned with international trends. Overall, the reforms during this period did not adequately address key issues such as revocability and enforcement.

Religion is also considered, in several dimensions. As the authors state at the beginning of chapter 14, "as well as the natural place of arbitration in the intellectual worldview of people of several religions, particularly various stripes of Nonconformity, it was useful for regulating the organisational disputes of various churches". In this chapter, the authors discuss the intersection of religion and arbitration in 19th-century England, portraying arbitration as an integral part of the religious and social landscape of the 19th century, reflecting a broader trend of seeking peaceful and private resolution to disputes that aligned with religious values. This chapter is one of the most absorbing in the book. More specifically, religious leaders and communities often advocated for arbitration as a method of conflict resolution that aligned with their values of peace and reconciliation. Religious leaders, due to their standing in communities, often acted as effective arbitrators. Support for arbitration and mediation in labour disputes was associated with Nonconformity. Baptist and Methodist writers, for example, hoped for a reconciliation between capital and labour and viewed arbitration as a way to avoid confrontational organization through trade unions. Other religious communities, such as the Quakers and the Sephardi Jewish community, had longstanding arbitration mechanisms, often requiring members to seek permission before turning to secular courts. The Church of England experienced a shift in its relationship with arbitration due to the emancipation of Catholics and Protestant Nonconformists. While

[3] A seminal study of this process of institutionalization is provided in Flood & Caiger (1993).

the Church did not have a doctrinal commitment to arbitration, it was used widely for institutional and private disputes involving clergy. For some groups, like the Quakers, arbitration was a tenet of faith. It was also associated with the ideals of the peacemaker and was valued for its discretion and preservation of reputation (see also O'Connell 2009).

Given the important role of religion, this reviewer would have liked to have seen some comparative analysis in the book and more engagement with ADR literature, especially engagement with Jerold S Auerbach's *Justice without Law?*[4] Auerbach's historical work, a seminal study of dispute resolution developments in the United States, also gives significant attention to the influence of religious values and organizations on the tension in the American legal system between formal institutions and ADR methods. It highlights historical patterns, including the influence of religion where communities sought justice outside formal law. The analysis examines how various communities throughout American history, from religious utopians to immigrant groups, have sought justice through community-based, non-legal means such as mediation and arbitration. He notes that these methods often fostered communal harmony, but society's shift toward legal formalism diminished their effectiveness. Comparative analysis might have helped to identify the elements necessary to securing a balanced approach to justice that integrates both legal and non-legal methods to better serve the public interest.

The book makes a significant contribution to the field of the development of alternative dispute processes, providing as it does a detailed account of how arbitration and mediation were woven into the fabric of 19th-century English society and its legal system. It is an exploration of the dynamic interplay between law, commerce and society, and how ADR mechanisms adapted to meet the needs of a rapidly changing world. The book is an invaluable resource for historians, legal scholars and anyone interested in the history of dispute resolution.

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[4] 1983; see also the analytical review by Nader 1986.

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