
Over the years this reviewer has come to treat with a measure of wariness the multivolume offerings of Oceana Publications Inc. Happily, this is not the case with The International Arbitral Process: Public and Private. Here is a first rate achievement in legal scholarship and publishing; one which is marred only by the price which will put it out of reach of all but institutions. Thus, any person seriously interested in arbitration must either beg his library to acquire a copy or borrow elsewhere or — one hesitates in a legal journal to add the third injunction. The reader will find five volumes that need to be dipped into and savoured for the wealth of comment, observation, analysis and original material that they offer on the arbitral process. As a working tool these volumes provide practical information in a number of areas where it is otherwise sadly deficient or difficult to obtain.

Aspects of the arbitral process considered can be seen from an examination of the chapter headings:

Volume I
Chapter I — War or Peace: Public International Law Arbitration.
Chapter II — Arbitration between States and Aliens.

Volume II
Chapter IV — U.S. Arbitration Law in a Nutshell.
Chapter VII — Revision and Reopening.

Volume III
Chapter VIII — The Venezuela-Guyana Boundary Dispute: An In-Depth Documentary Case Study of Nullity of an Arbitral Award.
Chapter IX — Standards of Independence and Impartiality of International Arbitral Tribunals.
Chapter X — East Meets West in Sweden: The US/USSR Optional Clause Agreement.

Volume IV
Chapter XI — Autonomy or Subordination of Arbitral Tribunals: Sweden and England Illustrating a World Dichotomy.
Chapter XII — Arbitration Tribunals and Courts: An Analysis of Cases Decided During a Decade in the Federal Court of Switzerland and in Zurich.
Chapter XIII — National Arbitration Laws.
Chapter XIV — Transnational Arbitration Rules.

Volume V
Chapter XIV — continued.
Chapter XV — Public International Law Arbitration Rules.
Chapter XVI — Multilateral Conventions.
Chapter XVII — Arbitration Clauses.

There are a number of books available on the arbitral process. They deal with it almost exclusively in one of three contexts: interstate relations; international commercial relations, including disputes between States and aliens; municipal relations. The second is in a sense midway between the other two in the milieu in which it operates; the issues it raises. The authors here are more likely to be aware of the differences and similarities in using arbitration in each of the other contexts. Yet none have attempted to do what Dr. J. Gillis Wetter has done, and prepare a work covering all contexts. The word "prepare" is used as this is not a treatise on the subject of arbitration. It is an attempt to show the common essence of arbitration as a process in whatever set of relationships it appears. The author does this by a mixture of commentary and analysis together with a selection of extracts from arbitral awards, court cases, books, articles, official and private correspondence, even tourist guides. Many of these extracts would otherwise be difficult to obtain and some have never before been published. Of particular importance and interest is the "Epilogue" (vol. IV, pp. 283-299) where the author expresses his views on the "quintessence" of the extracts he uses, on what are "the really important principles and issues in the field of arbitration".

That is what these volumes are all about. They are of great value in the advancement of knowledge. Yet, having said that, do they fully achieve what the author set out to do? Ultimately, it is only by this standard that they can be judged.

In a sense the chapters are disjointed and selective, their treatment being only of particular aspects and selected municipal situations. The author argues that this is not a proper appreciation of his approach; that what he has attempted to do is illuminate various facets of arbitration as a total process, whether it is used in the international or municipal sphere. This is central to his whole thesis:

"The international arbitral process is a process that I have seen before my own eyes and with which I work every day . . . in my conception, public and private form a unity, just as the past and the present are inextricably linked with one another" (vol. I, p. xxiv).

and further—

". . . the concept [viz. the 'international arbitral process'], used in its widest sense, clearly is valid and useful. It is one of the few which may bridge East and West — indeed the world at large — in a mean-
有意义的交流，它创造了符合目的的、富有结果的比较法律分析的基础”（卷I，P. xxiii）。


作者声明他的主要目标是：“寻求在尚未成熟的、动态且多样的领域中识别出重大问题和问题” (卷I，P. 485)。考虑到这一声明的自然理解，即在第一个论点中所表达的，可能会期待每个“重大问题和问题”都尽可能地分析为各种可能的背景在仲裁中使用。然而，这并不总是这样。在一些章节中，这是可能的，但在其他情况下，可能会期待它却并没有发生。

让我们以第八章为例，它讨论了在仲裁中决定的正当性或无效性问题。这是一个对任何仲裁——无论是公开的还是私人的——都非常重要的问题。这个决定通过委内瑞拉-圭亚那边界争端得到说明。

该决定在仲裁中没有理由。后来的证据——其中一些首次公开在本书中——表明，该决定是在压力下达成的妥协，目的是实现一致。因此，尽管这是一个国家或公共仲裁，它提出的问题是公共的。仲裁者是否应当根据严格的法律权利，还是应该根据他们认为会获得接受的妥协来作出决定？如果决定没有给出，如何判断仲裁者如何做出决定？这种决定对程序的其他方面有什么影响？作者提出了这样的论点，即委内瑞拉-圭亚那边界争端的仲裁对南美洲的仲裁持有一种态度，这种态度一直保持至今。因此，第八章识别了一个主要问题，并通过引用适当的决定进行说明，得出了对仲裁领域具有重大意义的结论。
and private international arbitration. This is an excellent example of the author's aim to analyse a problem in all the relevant contexts of the arbitral process.

"Buraimi Oasis Case 1955", involving the United Kingdom and Saudi Arabia.

The same can be said of chapter IX dealing with the independence and impartiality of international arbitral tribunals. It discusses the standard of personal conduct that arbitrators should exhibit while the arbitration is in process. The first question raised is that of the arbitrator acting as advocate. The issues here are illustrated by the Buraimi case. The dispute arose over the frontier between Saudi Arabia and Abu Dhabi and sovereignty over the Buraimi zone. The two States agreed that the matter should be arbitrated — each appointing one arbitrator to a five-man tribunal. The arbitration failed following the resignation of the British member over the conduct of the Saudi Arabian member. It was alleged that the latter could not give an impartial decision owing to his official position in the Saudi Arabian Government and that this had been exemplified by his conduct during the proceedings. The Government of Saudi Arabia argued that their appointee's position was well known at all times to all persons involved. An article discussing the issues at stake is reproduced in the chapter following on material from the arbitration itself. The author also refers to various examples of law controlling the arbitrator's conduct in the national law of England, Sweden and the United States. The American Arbitration Association's Code of Ethics for Arbitrators in Commercial Disputes is reproduced. Reference is made to two English cases dealing with the implications of a party to the dispute entertaining an arbitrator.

On the other hand, two chapters — XI and XII — confront the issue of autonomy of the arbitral tribunal before national courts. This is certainly one of the great issues and problems of international private and semi-private arbitration. The laws of Sweden and England are taken as examples; following on an extract from an article discussing the problem. Then, in chapter XII, the author takes issue with the current assessment of Zurich as an undesirable choice for the place or arbitration. That assessment was recently expressed in Sydney in these terms:

"The Court of Arbitration never chooses London, Zurich or Rome as a place of arbitration because of the various restrictions on arbitrations and the experience of interference with arbitrations in the past, particularly in Zurich" ("Presentation of the Court of Arbitration of the International Chamber of Commerce" Address by M. Michel Gaudet, Sydney, March 19, 1979).

By reference to decided cases in the Swiss courts the author concludes:
"Thus, on balance, the critical thesis initially stated in this Chapter which has lately become fashionable in many quarters, viz. that Zurich is an unsuitable locale for international arbitral proceedings, must be considered to have been exposed for what it is: an essentially unfounded opinion disproved by the actual facts available to a dispassionate observer" (vol. IV, p. 278).

These matters, while highly relevant to international private arbitration and international arbitration between States and aliens are of no moment to arbitration between States. The chapters are of interest then in the private and semi-private fields. The situation is similar with chapters IV — "U.S. Arbitration Law in a Nutshell" — and X — "East Meets West in Sweden: the U.S./U.S.S.R. Optional Clause Agreement".

Yet, the issues raised in chapters I, II and V could perhaps have been taken further in pursuit of the principle that arbitration, in all these contexts, is still the same process. This reviewer agrees with and supports the contention that all arbitrations represent one process; that much can be learnt from studying it in different contexts and that it should not be classified as public or private in the sense that "never the twain shall meet". However, it does seem that the material used and the commentary thereon, while throwing up major issues and problems of arbitration, sometimes does not relate it sufficiently to both the public and private aspects. For example, chapter I deals with the impact of arbitration on the issues of war and peace — a public matter. Chapter II analyses arbitration as used for resolving disputes between aliens and States — in terms of arbitral competence to hear the dispute, the law governing proceedings and that governing substance. It would seem appropriate to have added a chapter dealing with the same central issue — the benefit of arbitration — in purely private international commercial disputes. Furthermore, in chapter V, after analysing the major private and semi-public (ICSID) arbitral institutions, it should have been possible to translate the lessons taught by these bodies to the public field of interstate disputes. While some mention is made of the Permanent Court of Arbitration (vol. I, p. 524) and ad hoc arbitration (vol. II, p. 244) this does not relate to the major section where the issue is dealt with.

The argument then is that in light of the author's expressed thesis the aim of the book has not been achieved in all respects. The major issues of arbitration have been exemplified but not in all contexts in such a way as fully to establish the author's thesis.

Be that as it may, the book as a whole is a magnificent achievement. It can of course be read from cover to cover but, more likely, this will be a book that will be dipped into and savoured little by little. It is full of material casting light not only on the arbitration procedure itself but also on the surrounding aspects. For example, there is a
description of the Alabama Hall in the City Hall of Geneva (vol. I, p. 13). This gives a flavour to any reading of the extracts from arbitrations that have been held there — Alabama, Rann of Kutch, Beagle Channel. By way of further example, how many people realize that arbitration is a British invisible export in the sum of £500 million per annum (vol. II, p. 250, fn. 12)? These illustrations add spice to a work of scholarship.

PATRICK J. O'KEEFE*


Ten years ago Sydney legal practitioners would have been unlikely to hear the words “constructive trusts” outside the lecture room. Now they are part of the suburban solicitor’s verbal artillery, and have been accepted into the vocabulary of our accounting and commercial colleagues. One suspects, however, that the words are more often used than understood. Even within the legal profession, there seems occasionally to be an assumption that the law of constructive trusts is a unified doctrine, triggered by a single set of circumstances. It would be astounding, however, if the property transactions of fiduciaries, bankers, purchasers, and criminals could be governed by the same rule. In fact, though these situations have family resemblances, all that can be said about them in general is that the trust which is found to exist in each case is imposed by operation of law, independently of any expressed or presumed intention to create a trust. But the rules which give rise to a constructive trust in each situation are far from identical.

Mr. Oakley’s book gives a sound account of the modern law, and the major controversies which surround it. He begins with trusts imposed as a result of fraudulent, unconscionable or inequitable conduct. There are three fairly clear cases: where a person other than a _bona fide_ purchaser acquires property as a result of undue influence; where a murderer acquires property in consequence of the death of his victim; and where a transferee seeks to set up the absolute character of a transfer in his favour in order to defeat a trust declared orally. More sweepingly, Lord Denning, M.R. has recently held that a “constructive trust of a new model” may be imposed whenever the result would

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*B.A., LL.B. (Qld), M.A. (Business Law) (City of London Polytechnic), LLM. (A.N.U.), Senior Lecturer in Law, University of Sydney.