Outsourcing Justice

The Rise of Modern Arbitration

Laws in America

Imre Stephen Szalai

Carolina Academic Press
Durham, North Carolina
For the Millions of Americans Who Are Unjustly Bound by an Arbitration Agreement
Contents

Acknowledgments xi

Chapter 1 · Introduction
  Arbitration 7
  The Rise of Modern Arbitration Laws During the 1920s 9
  Inspiration 12
  Organization 13

Chapter 2 · The Cradle, the Chamber, and the Father: 1700s to 1911 15
  New York and the Birth of the Chamber 16
    The Chamber’s Arbitration Committee 17
    The Chamber’s Court of Arbitration 19
  New York and Its Court System at the Turn of the Twentieth Century: A Hotbed of Commercial Activity and a Burdensome, Complex Legal System 21
  Charles Leopold Bernheimer, the Father of Commercial Arbitration 25
  Pound’s Speech to the American Bar Association 26
  The Panic of 1907 and Bernheimer’s Betrayal and Fascination with Arbitration 27
  Bernheimer’s Exploration and Discovery Period: 1907 through 1911 31
    German Arbitration Law’s Influence on Bernheimer 32
    Bernheimer’s Exploratory Efforts through the Chamber 34
    Re-Establishment of the Chamber’s Committee on Arbitration 37

Chapter 3 · Rebirth, War, and Victory: 1911 to 1920 41
  Julius Henry Cohen, the Chamber’s Counselor 41
  1911: The Rebirth of the Chamber’s Committee on Arbitration 42
  1912–1913 48
    1912: The Committee’s First Formal Arbitration 48
    The Committee’s Early Educational Efforts 50
## CONTENTS

Drafting Model Arbitration Legislation .......................... 51  
Tensions with the Legal Community ............................ 51  
The Committee’s Interest in International Commercial Arbitration ............. 53  
Grand Celebration at the Waldorf-Astoria ......................... 54  

1914–1915  
The New York Bar Establishes a Committee on Prevention of Unnecessary Litigation ......... 56  
The Chamber’s 1914 Draft Legislation .......................... 57  
The First World War ............................................ 58  
The Chamber’s Cooperation with the New York Bar .................. 59  
The New York Constitutional Convention ...................... 60  

1916–1917  
Continued Cooperation Between the Chamber and the New York Bar .......... 62  
The Use of Arbitration in Mobilizing for the War .................. 63  

1918–1919  
Joint Presentation at the Conference of State and Local Bar Associations ...... 65  
Armistice with Germany ......................................... 67  
Contract Cancellations ........................................... 68  
Further Attempts to Lobby the New York Legislature .................. 69  

1920: Victory in New York ........................................ 71  
Bernheimer’s Summer Expeditions ................................ 72  
Bernheimer’s Motivations and Praise for Bernheimer .................. 73  

#### Chapter 4 · The National Campaign During the 1920s  
Nationalization, Industrialization, Urbanization, and Progressivism ............. 75  
Prohibition .......................................................... 76  

1920–1921  
Bernheimer’s Lobbying at the National Level ..................... 78  
The Chamber’s Outreach to the American Bar Association .................. 79  
Legal Developments Regarding the New York Arbitration Statute ............... 80  
Bernheimer’s Continued Lobbying for Federal and State Legislation .......... 81  
Secretary of Commerce Herbert Hoover and His Support of Arbitration ....... 82  

Drafting Model Arbitration Legislation .......................... 85  
Tensions with the Legal Community ............................ 85  
The Committee’s Interest in International Commercial Arbitration ............. 87  
Grand Celebration at the Waldorf-Astoria ......................... 88  

1914–1915  
The New York Bar Establishes a Committee on Prevention of Unnecessary Litigation ......... 90  
The Chamber’s 1914 Draft Legislation .......................... 91  
The First World War ............................................ 92  
The Chamber’s Cooperation with the New York Bar .................. 93  
The New York Constitutional Convention ...................... 94  

1916–1917  
Continued Cooperation Between the Chamber and the New York Bar .......... 96  
The Use of Arbitration in Mobilizing for the War .................. 97  

1918–1919  
Joint Presentation at the Conference of State and Local Bar Associations ...... 99  
Cohen’s Book, “Commercial Arbitration and the Law” .................. 100  
Armistice with Germany ......................................... 101  
Contract Cancellations ........................................... 102  
Further Attempts to Lobby the New York Legislature .................. 103  

1920: Victory in New York ........................................ 105  
Bernheimer’s Summer Expeditions ................................ 106  
Bernheimer’s Motivations and Praise for Bernheimer .................. 107  

#### Chapter 4 · The National Campaign During the 1920s  
Nationalization, Industrialization, Urbanization, and Progressivism ............. 109  
Prohibition .......................................................... 110  

1920–1921  
Bernheimer’s Lobbying at the National Level ..................... 112  
The Chamber’s Outreach to the American Bar Association .................. 113  
Legal Developments Regarding the New York Arbitration Statute ............... 114  
Bernheimer’s Continued Lobbying for Federal and State Legislation .......... 115  
Secretary of Commerce Herbert Hoover and His Support of Arbitration ....... 116
Chapter 5 · Concluding Observations Based on the History of the Reform Movement

- The Federal Arbitration Act as Landmark Legislation
- The Supreme Court Has Erred When Interpreting the Federal Arbitration Act
- Employment Arbitration
- Consumer Arbitration
- A New Age of Reform for America’s Arbitration Laws?

Notes

- Chapter 1
- Chapter 2
- Chapter 3
- Chapter 4
- Chapter 5

Index
Acknowledgments

I owe a special debt of gratitude to Columbia University for permitting access to the New York Chamber of Commerce and Industry collection in Columbia’s Rare Book & Manuscript Library.


I also wish to express my deep appreciation to Loyola University New Orleans College of Law, the late Dean Brian Bromberger, Interim Dean Kathryn Venturatos Lorio, and Dean María Pabón López for their financial support during the writing of this book. I also wish to thank my research assistants, Meagan Conway, Jeffrey Emberton, and Kevin Micale, for all their hard work. I also would like to thank Etheldra Scoggin of Loyola’s Law Library for her invaluable assistance in tracking down sources.

I owe a special debt of gratitude to my sister, Marcella Szalai, Esq., who helped me with her intensive research efforts and painstaking review of the documents of the reformers in New York City.

To my mother, Carmen Szalai, I also owe a tremendous amount of gratitude. She gave up everything to give me a better life, and her patience, gentleness, and love I will never forget.

I also wish to thank my father, Imre Szalai, who is one of my greatest inspirations. He grew up in a communist country and desired freedom so badly that he risked his life and gave up everything to make a dramatic escape to come to America. While I was writing this book, which at times is critical of the Supreme Court of the United States, my father reminded me of the freedoms Americans have.
ACKNOWLEDGMENTS

To my dearest children, Ella, Ethan, and Evan, whom I adore with all my heart, you are the most wonderful children a dad could ever ask for.

To my beautiful wife, Andrea, words cannot express the gratitude I have for you. You hold me together, and with your smile and laugh, you make all worries melt away. Through your selfless love, you constantly inspire me to be a better person, and I cannot imagine my life without you.

Finally, I thank God, who has jurisdiction over all. The love you have shown me has been overwhelming. Ad majorem Dei gloriam.