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# A History of Alternative Dispute Resolution

Laurence Boulle
*Bond University*, Laurence_Boulle@bond.edu.au

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ADR Bulletin

Book review

# A History of Alternative Dispute Resolution

**Laurence Boulle**

**A History of Alternative Dispute Resolution: The Story of a Political, Cultural and Social Movement**
By Jerome Barrett, with Joseph Barrett, Jossey Bass, US.

In the Kalahari desert in Botswana and Namibia the Bushmen have lived traditional lives for many thousands of years. The lack of technological refinement belies a sophistication in dispute resolution practices which have evolved without courts and a formal state system and are suited to the needs of a collective hunter-gatherer society.

The Bushmen's is not an idyllic existence and disputes occur over food, land and mates. Those in conflict bring other members of the tribe together to hear out both sides. Where passions rise senior tribal members hide the disputants' poisoned hunting arrows to prevent resort to violence. If resolution is not reached in the small group the larger community is brought together where everyone is able to talk through every aspect of the dispute over a number of days until the dispute has been 'talked out'. Economic reality and social dependence preclude the easy resort to violence over individual problems.

While it is culturally narcissistic to refer to these practices as 'ADR' they have obvious analogies with mediation, conciliation and peace-making practices in non-traditional societies and the authors of this book refer to similar traditions among Hawaiian islanders, the Yoruba of Nigeria and the Abkhazian of the Caucuses. Whether we label this a 'history' of ADR or not, it provides an engaging insight into the individual and collective wisdom of societies responding to difficulties caused by the 'selfish gene'.

The 'ADR Timeline' in the early pages of the book begins in 1800 BC when the Mari kingdom (in contemporary Syria) used mediation and arbitration in disputes with other kingdoms and ends with the 21st century use of mediation in the Microsoft monopoly cases. There are references to dispute resolution practices by the Phoenicians, the Greeks, the Indians and the Irish, but one of the shortcomings of the book from the perspective of an Australian reader is that the focus shifts predominantly from the international to the local with the commencement of modern American history. Moreover, while a grand historical sweep always provides useful perspective, it does so at the expense of analytical focus. Thus, the rich traditions of Chinese mediation and Muslim tahkim, different as they are from modern conceptions of ADR, necessarily receive shorter shrift than they deserve.

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Among the intriguing historical illustrations of 'ADR' phenomena are the role of Mohammed in averting war over the reconstruction of Kaaba, the use of symbolic contests to resolve land disputes in West Francia in the middle ages, and the remarkable survival of



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the Irish arbitration legislation enacted in 1698 which remained unchanged for 250 years until its amendment in 1948.

There is a welcome chapter on diplomatic ADR, again with historical insights ranging from ancient Egyptian emissaries to papal peace-makers, focusing on successes and failures in both domestic and international relations. While this is not an area which achieves much attention in the contemporary ADR movement, it is one in which much could be achieved through cross-pollination among the peace-keeping, conflict management and ADR traditions.

Against the background of these historical vignettes the authors deal with the development of ADR (sometimes this term is used anachronistically) in the United States. From the Australian vantage an area of interest is the relatively early development of mediation and conciliation practices in industrial relations and labour law which brought some order to volatile and violence-prone industries such as coal and the railways. While the legislative foundations were provided for exactly these developments in Australia, centralised bargaining and arbitration never led to the same growth here and contemporary ADR has been little influenced by these traditions. However, it may yet be that labour law and industrial relations in this country become infused by the ADR spirit in its next phase of development.

From the 1960s civil rights programs ADR began assuming importance in areas of equal opportunity, anti-discrimination and the environment, to the point where it has become institutionalised, legalised and semi-professional in many different domains, losing its 'alternative' tag on the way. While a lot of this focus of the book is local and specific to American conditions, there are also themes of broader interest in relation to the development of ombudsman institutions and the connection of ADR with peace studies.

There is a final chapter on the 'great expansion' of ADR, but here the authors draw a long bow indeed. In attributing ADR in part to the success of democratic movements in South Africa and Poland there is an air of easy triumphalism which overlooks the protracted and sometimes bloody struggles which occurred in these countries. Moreover the suggestion that it has been an instrument of US foreign policy in China and Eastern Europe overlooks the complex and complicated nature of the super-power's relations with the world – although in fairness the authors do acknowledge the intimidatory American tactics in situations such as Bosnia.

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The work ends on a sombre note with reference to the US administration's recent 'move against ADR' which quickly led to a decline in the progressive labour management relations which had developed in government in the previous era. A similar tendency is at play in the shift from multi-lateralism to uni-lateralism evident in recent years from the US and some of its associates.

Ultimately texts such as these provide a big picture of the emergence and maturity of ADR, with interesting illustrations and anecdotes. This book does not purport to be scholarly or analytical but it constitutes a useful source of reference for anecdotes, essays or presentations on the subject. ●

*Laurence Boulle is Professor of Law at Bond University and can be contacted at laurence_boulle@bond.edu.au.*

# diary and happenings

- The **Australian Commercial Disputes Centre** has released the dates for its forthcoming **training courses** up to June 2005. Training courses to help ADR professionals develop their skills through a series of stages are available, as well as a number of one-day options including two new one-day courses – 'Mediation/Conciliation: Advanced Negotiation Techniques' and 'Concilio-Arbitration and how do you do it'. Visit www.acdcltd.com.au for more information.
- The Victorian Chapter of the **Institute of Arbitrators and Mediators Australia** is seeking expressions of interest in the 5-day mediation training course for the **Practitioner's Certificate in Mediation and Conciliation** to be held in Melbourne on 16, 17, 18, 22 and 23 March 2005. Call (03) 9602 1711 or email vic.chapter@iama.org.au to register. Visit www.iama.org.au for more information.
- **LAWASIAdownunder2005**, an integration of the **XIX Biennial LAWASIA Conference**, the **34th Australian Legal Convention**, the **44th QLS Symposium**, and the **11th Conference of the Chief Justices of Asia Pacific** is being held at the Gold Coast Convention and Exhibition Centre on 20-24 March 2005. The streams to be discussed include Dispute Resolution and Litigation, Criminal Law, Human Rights and Constitutional Law, and Trade and Business Law amongst others. Visit www.lawasiadownunder.com, email lawasia@ccm.com.au or call 07 3368 2544 to register or for more information.
- The **Australian Centre for Peace and Conflict Studies** is holding an international conference on '**Peace, Justice and Reconciliation in the Asia-Pacific Region**' on 1-3 April 2005 in Brisbane. For more information or to register contact n.mizner@uq.edu.au. To register your interest in presenting a paper or facilitating a workshop contact k.clements@uq.edu.au.
- **LEADR** is holding its **8th International Mediation Conference** on 31 August–2 September 2005 at the International College of Tourism and Hotel Management, Sydney. For more information, or to express interest, visit www.leadr.com.au.
- The **World Mediation Forum V Conference**, jointly hosted by the **Institut Universitaire Kurt Bösch** and **World Mediation Forum**, is being held on 9-11 September 2005 at the Congress Centre 'Le Regent', Crans Montana, Switzerland. The Conference, entitled 'Mediation: A New Culture of Change', will bring together mediators, academics, lawyers, psychologists and all who support mediation to resolve conflicts, including former Eastern Europe, Asia-Pacific countries, Africa and South America. The English language program is available in PDF Format at www.mediate.com/world/flyer+grand+anglais20041125c.pdf. For additional information and online registration, see mediation.qualilearning.org and www.mediate.com/world.
- The **Trillium Group** is conducting **4-day ADR Certificate Workshops (Level 1)** and **Advanced ADR Certificate Workshops (Level 2)** in Sydney, Melbourne, Canberra and Townsville throughout 2005. For more information call 1-800-636-869 toll free or 02 9036-0333 or visit www.thetrilliumgroup.com.au.
- The Bond University Dispute Resolution Centre is conducting a **Basic Mediation Workshop** on the Gold Coast on 28-30 July 2005 and an **Advanced Mediation Workshop** at Noosa on 23-25 September. Email drc@bond.edu.au for more information.

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