

Monads or Triads:  
Conflict and Cooperation  
among Arbitrators

Ugo Draetta

**JURIS**

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## INTRODUCTION— WHY THIS BOOK WAS WRITTEN AND FOR WHOM IT IS INTENDED

The title of this book needs first of all an explanation, as some readers may wonder what the notions of “monads” and “triads” have to do with the world of arbitration.

The notion of “monad,” coming from the Greek word meaning “unit,” belongs also to mathematics and computer science, but I have used it in the sense discussed by the philosopher Gottfried Wilhelm Leibniz (1646-1716) in his *The Monadology*.<sup>1</sup>

In this sense, monads are defined as individual entities with blurred perceptions of one another and basically non-interaction.

The notion of “triad” belongs also to biology, anatomy, music and medicine (and has even been used with reference to organized crime<sup>2</sup>), but I have adopted it in the sense pioneered by Georg Simmel in sociology, i.e.: as a group of three individuals working loyally together in a unitary and complementary way.<sup>3</sup>

It came to mind that the two abovementioned notions are useful because they can be transposed to the world of arbitration to characterize the spectrum of internal relationships which may exist among arbitrators.

At one end of this spectrum, such relationships aim to achieve collegiality, cooperation and loyalty. An arbitral tribunal is

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<sup>1</sup> See D. BURNHAM, *Gottfried Leibniz: Metaphysics*, <http://www.iep.utm.edu/leib-met>, at 19-21.

<sup>2</sup> I cannot resist the temptation to recall, in connection with this reference to organized crime, that some commentators have jokingly referred to the MAFIA as the Mutual Association for International Arbitration. This reference obviously was meant to be what it is – only a joke.

<sup>3</sup> More accurately stated, Georg Simmel did not use the term “triad,” but referred to it by employing the expression “*Verbindung zu dreien*” (“association of three”). Compare G. SIMMEL, *Soziologie. Untersuchung über die Formen der Vergesellschaftung* (1908), Nexx Verlag, 2015, at 99 and G. SIMMEL - K. H. WOLFF, *The Sociology of Georg Simmel*, The Free Press, 1964, at 135-142. In music, the term “triad” is used to express the three common notes – the root, third, and fifth – that, when played together, form a major or minor chord.

a collegial body and not simply the juxtaposition of three self-sufficient and self-referential individual contributors. This means that arbitrators should act indeed as a triad. Actually, the second chapter of this book advocates the need for a continued and effective cooperation among arbitrators from the beginning of, and during the entire arbitration proceedings, to a greater extent than perhaps is at times witnessed.

In describing such continued cooperation during the various phases of the arbitration proceedings I have included, though in a revised and updated form, some of the considerations I had already made in one of my previous works, particularly insofar as the dynamics of the deliberation process are concerned.<sup>4</sup> The reader will excuse me for what, occasionally, may appear as a repetition of arguments and anecdotes already mentioned elsewhere.

At the other end of the spectrum, the first chapter of this book analyses certain situations of conflicts among arbitrators, which are not due to physiological disagreements or mere lack of chemistry among them, but to the perception that an arbitrator might have that another arbitrator is behaving in such a way as to affect the integrity of the arbitral process. These situations often place one arbitrator (who may perceive him/herself as the innocent arbitrator) against another (whom he/she may perceive as the offending arbitrator). The consequence is that the spirit of cooperation and collegiality among arbitrators disappears and the arbitrators end up working on their own as discordant monads, rather than as a triad.

This book, then, is addressed to arbitrators. My hope is that it will, first of all, help to minimize the situations of conflicts among them, while at the same time help to identify the appropriate remedies available in the cases where they believe that misconduct by a fellow arbitrator is likely to jeopardize the integrity of the arbitral process.

Second, my hope is that it may induce arbitrators to work collegially as a true triad from the beginning, and throughout the

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<sup>4</sup> U. DRAETTA, *Behind the Scenes in International Arbitration*, Juris, 2011, particularly at 83 *et seq.*

entire arbitration proceedings and not only when the time comes for a deliberation meeting.

This book is the third of a trilogy.<sup>5</sup> Like the other two books, it is not meant to be an academic one. It focuses on the real practice of international arbitration as I have experienced it and is anecdotic in style. The anecdotes are drawn from my own arbitration practice.

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<sup>5</sup> The other two books are *Behind the Scenes in International Arbitration*, Juris, 2011, and *Counsel as Client's First Enemy in Arbitration?*, Juris, 2014.

