INFLUENCES OF SOCIAL ORGANIZATION ON DISPUTE PROCESSING*

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Man is an ingenious social animal. Institutionalized responses to interpersonal conflict, for instance, stretch from song duels and witchcraft to moots and mediation to self-conscious therapy and hierarchical, professionalized courts. The dispute processing practices prevailing in any particular society are a product of its values, its psychological imperatives, its history and its economic, political and social organization.[1] It is unlikely that any general theory encompassing all of these factors will be developed until there have been many piecemeal attempts to understand something of the influence of each.

This paper first outlines several types of social organization and analyzes certain forms of dispute processing. It then suggests that these forms of dispute processing either depend on an availability of resources (such as coercive power or pre-dispute information) which varies with social organization or have different negative consequences in different social contexts. Finally, the paper explores the implications of this linkage be-

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1. This paper reflects a preference for the term "dispute processing" instead of the more common "dispute settlement." My aversion to "dispute settlement" is based on the conviction that a significant amount of dispute processing is not intended to settle disputes, that a greater amount does not do so and that it is often difficult to know whether a dispute which has been processed has been settled, or even what the dispute was about in the first place (*see* Collier, 1973: 169; Gulliver, 1969: 14-15; Gibbs, 1969: 193). These questions persist even when issues in dispute are sharply defined, as by written pleadings. In many such formal cases one or all of the parties seek something other than a resolution, even an advantageous resolution, of the matter in dispute. Such a phenomenon is recognized in the U.S. (Sykes, 1969: 330; Nader, 1965: 19) and is thought to be endemic in India. Litigation is used as a skirmish or an important maneuver in economic and political warfare: the expense, inconvenience and disgrace of court involvement imposed on one's opponent outweigh one's concern about the end result of the ostensible dispute, if ever an end result is intended (Kidder, 1973: 137; Cohn, 1967: 154; Rudolph and Rudolph, 1967: 262). It does not then seem to make sense to talk about a "settlement" process when frequently it is not demonstrable that settlement is the objective of the process, and when it is often impossible to determine what is to be settled or whether that result has been achieved (*see* Van Velsen, 1969: 147). The term "dispute processing" avoids all of these difficulties.

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tween social organization and dispute processing for certain reforms currently advocated in the U.S.

A cautionary word about the proposed level of analysis may be appropriate. An important theme in legal anthropology has been the examination of why disputants choose as they do among several available dispute processing institutions (Pospisil, 1967: 12; Gulliver, 1963: 173-215; Nader and Metzger, 1963; Collier, 1973: 65-74). This paper does not face that question. It attempts the simpler, but generally disregarded (*but see* Nader, 1969: 86-91; 1965: 22), task of describing the social conditions under which several forms of dispute processing are likely to occur. Collier implies that these questions are really a single issue when she suggests that institutions are simply the result of cumulative individual choices (1973: 251). But if the choice of institutions that is made by any particular disputants frequently depends on the relationship between them (Collier, 1973: 49), the choices that *can* be made will depend in important respects on the cumulative relationships between people in that social group. Not all forms of dispute processing exist in all social groups. Resort to the supernatural, for instance, is rare in an American suburb. Cumulative relationships (social organization) must therefore be explored if one's aim is to understand why some institutions do not exist in a particular society as well as why others do exist.

I. IDEAL TYPES OF SOCIAL ORGANIZATION

Social organization in these propositions means any regularities in geographic, economic, kin or other relationships among people within a single society. But in any particular society alternative and competing institutions may organize the same relationships. As a consequence, analysis of the effect of social organization on any social process is extremely complicated. In the same society, for example, families may either be nuclear or cohere on extended lines. Vocations may or may not persist across generations. Neighbors may be friends or strangers. We know very little about the regularity with which these variables associate. Since the effect of social organization on forms of dispute processing cannot be explored using a real empirical base because the data do not exist, insight must come, if at all, through the use of ideal types. Weber's (1968: 497) notion of ideal types includes "one-sided accentuation" of important social characteristics. It is this dimension of ideal types which distinguishes them from empirical generalizations and which insulates them from empirical falsification. The ideal types used in this

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paper incorporate such accentuation (*e.g.*, in one type of society friendships *are* unstable), but they also include many social characteristics which are less than absolute (*e.g.*, adults *infrequently* live in the same neighborhood as their parents). The Weberian accentuation in this paper is mainly constructed by the inclusion in each type of society of components of social organization all of which cut in one direction, that is toward either an atomistic or integrated pattern.

Two ideal types of social organization will be contrasted: a technologically complex rich society (TCRS) and a technologically simple poor society (TSPS). In a TCRS the family unit is nuclear (conjugal) and biological (*see* Nimkoff & Middleton, 1968: 35). Marriage and its functional equivalents are unstable, are not arranged, and constitute a liaison between individuals rather than between family groups. Relationships between extra-nuclear family members are either unimportant—in that they are not a source of companionship, therapy, economic or political support, education, ceremony or self-definition—or they tend to be grounded not upon kinship but upon the same factors which give rise to relationships outside the family. Adults infrequently live in the same neighborhood as their parents, siblings or adult children. Financial assistance in old age is the responsibility not of the family but of the state. Working members of a family do not share work sites or occupations.[2]

2. The controversy over the degree of isolation of nuclear families in America has been summarized almost as frequently as it has been conducted (*see* Leslie, 1967: 332-38; Winch and Blumberg, 1968: 70-71; Turner, 1970: 419-22; Reiss, 1971: 266-78). For the purposes of this paper it is important to note first that the relative isolation stipulated for families in a TCSR is relative not to families in rural areas in the same society, which is what a significant part of the controversy has been about (Wirth, 1938: 12; Burgess, Locke and Thomas, 1963: 62-63; Winch, 1968: 134), but to the family situation in another type of society altogether (*see* Parsons, 1965: 35; Adams, 1971: 287). Second, those researchers who have identified functional relations between nuclear family and other kin have frequently concentrated on tangential or sporadic functions (Axelrod, 1956: 16—getting together; Sharp and Axelrod, 1956: 436-37—babysitting, help when sick, help with housework and financial aid; Bell and Boat, 1957: 396—care when sick; Bell, 1968: 142—emergency help; Winch, 1968: 133—babysitting, borrowing and lending equipment, emergency help). The major difference in kin relations on which this paper focuses is not that of frequency of contact but in the content of contacts, a matter relatively ignored by sociologists of the family in the U.S. Such researchers have also tended to ignore relations other than those between parents and children. Reiss (1962: 335), an exception, reports that less than one-half of siblings interact annually (*see* also Adams, 1971: 291). Young and Willmott, who observed sustained relations between children and parents in East London, found contact with a wider kin network to be generally limited to *rites de passage* (1957: 63-66; *see* Townsend 1957: 115). Third, the proportion of the populations studied who maintain some form of active relations with kin beyond the nuclear family are not unimportant, but they are nevertheless usually in the minority (Winch, 1968: 134—high functionality to familism 40%; one or more family visits

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In a TCRS friendships are unstable; long-term interpersonal relationships are difficult to maintain. Adults do not live where they have lived as children and are schooled in more than one locale. They do not live in one house or neighborhood for an adult life, and they are not employed in one place for a working life. Friendship is geared to rough equivalence in economic status, and individuals do not proceed up or down the economic scale at the same pace as any particular acquaintances. Because of access to convenient transport, social intercourse is little restricted by proximity: friends are not necessarily neighbors and neighbors are not necessarily friends.[3] Especially in urban areas, friendships tend to be routine rather than intimate, reflections of Alexander's autonomy-withdrawal syndrome (1966: 19-33).

Vocational mobility in a TCRS is high, although more from job to job than from occupation to occupation. If the requirement of specialized skills tends to reduce mobility between occupational strata, the labor market has few other structural impediments; group barriers are progressively ineffective and nepotism is unimportant. Only a small proportion of the labor force is self or family employed, working in agriculture or in jobs acutely restricted in locale. Disfavored occupations (manual, farm and domestic labor, food services, low-level factory employment) account for only a small proportion of total employment, and consequently relatively few workers with disfavored jobs are competing for jobs in favored occupations. The work force has received a substantial general education; many opportunities to develop the specialized skills required of a technologically advanced industrial apparatus are available.

Residential mobility also is high in a TCSR. Housing availability rarely inhibits moves. Although the trauma and burdens of moving are worse for women than for men, a move is neither extremely uncomfortable nor administratively difficult. Jobs are not fungible because contacts, customers, seniority and local

per week, Reiss, 1962: 334—9-13%; Litwak, 1960a: 15—34-39%; Axelrod, 1956: 16—49%; Bell and Boat, 1957: 394—30-45%; Greer, 1956: 22—49-55%). For comparative purposes, Townsend (1957:110) reports that in an established section of London 58% of old people saw relatives of the two succeeding generations *nearly every day*. And last, it may be relevant that researchers using survey techniques (and therefore concentrating on frequencies) have tended to find more middle class kin interaction than those who engaged in sustained participant observation (and therefore concentrated on the significance and meaning of rates). Compare Sussman, 1959:333-40 to Seeley, Sim & Loosley, 1956: 160, 183.

3. Above all, one thought
Baffled my understanding, how men lived
Even next-door neighbours, as we say, yet still
Strangers, and knowing not each other's names.
(Wordsworth, 1933: 108)

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custom make each one somewhat singular, but a move generally does not require a change of occupation. Few moves are inhibited by the prospect of disturbing close family relationships because in most instances the family lives somewhere else to begin with. The process of making new familiars out of strangers is not encumbered by differences in language, eating habits, dress or notions of acceptable behavior. A move spells no greater cultural than social sacrifice. Climate is valued over history, and facilities (aesthetic, sport, spectator) over nostalgia. No space-confined relationship with the dead, immediate or long past, exists. Whatever artifacts, religious, educational and child-rearing practices, entertainment, dress or manners are left behind will be found virtually duplicated at the new doorstep. The anxiety of moves is reduced by the experience of earlier non-traumatic moves. Local moves do not mandate a change of job, of friends, of family relations or of cultural context.

A crucial dimension of the social organization of a TCRS is the range and importance of the interaction of individuals with large-scale bureaucratic organizations. Such enterprises dominate relationships which involve employment, credit, consumer purchasing, education, health and welfare services and government.

In a TSPS the family unit is generally extended and frequently includes significant fictive elements. Marriage is either a relationship of restricted contact reflecting purdah considerations or else tends to be unstable.[4] In either case marriages are generally arranged by family elders and constitute relationships between family groups as well as between marriage partners. Family relations beyond husband and wife dominate social organization. Whether it be a matter of clan, lineage, sib, avunculate, *jati*, co-residence or some other extended family or functionally equivalent (*e.g.*, compadre) arrangement, the enlarged family is the basis for economic, political, ceremonial and therapeutic sustenance, general education and companionship. Young people, married or not, tend to be subject to significant older generation control until the older generation dies. Since the old have no savings and no pension, and the state has no resources for them either, they are, by choice or default, dependent on their family. Vocational separation between generations is unusual; farmer begets farmer, weaver begets weaver. In a TSPS, in

4. Marital instability is as characteristic of the one ideal type as of the other. It is therefore ignored in the intertype comparison of the consequences of various forms of dispute processing.

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other words, people tend to be aggregated with their parents, children and other kin in residence, in work and in responsibility.

In a TSPS the geographical range of non-family liaisons is restricted. Friends tend to be neighbors, neighbors tend to rely on each other for economic cooperation and significant public works projects require community cooperation as much as government assistance. Local politics are governed by shifting alignments which reflect personal loyalties and economic opportunities more than ideological or programmatic differences. The full picture of interpersonal relations is a complicated, highly articulated cross-cutting network in which individuals are involved on their own account and as representatives of kin-based groups. It is conventionally contrasted to the nuclear family centered, unconnected, single-stranded organization of societies resembling a TCSR. (P. Cohen, 1968: 152-54; Nader and Yngvesson, 1973: 912).

The contrast in residential mobility between a TCSR and a TSPS is not as stark as the difference in type of family relationships. In a TSPS a move of any distance may be tantamount to exile, an anxious passage to a place where language, food and manners are foreign or distasteful and where cultural artifacts, especially those geared to religious activity (temples, shrines, holy places), may not be easily reproduced. More importantly, moves may eliminate family and extra-family (compadre, age set, faction, clique) support crucial to economic and emotional health. In a TSPS most long distance moves involve country people moving to cities and therefore generally require a change of occupation. On the other hand, a move in a TSPS may be no more than an easy transfer, often made in groups, from a village to an urban neighborhood peopled with acquaintances who have migrated to the city from the same village. Economic and cultural as well as social dislocation may then be tempered by the existence of an island of the familiar and supportive in a sea of the strange and indifferent.[5] Nevertheless, moves in a TSPS are much more dependent upon tying into an existing social network at the destination and involve more economic hardship, social and cultural alienation and emotional trauma than do moves in a TCRS.

Vocational mobility is also lower in a TSPS. Higher unemployment means more competition for jobs when existing employment arrangements are severed. Ascriptive preferences and

5. Litwak's (1960b:386) discussion of how the modified extended family may aid geographical mobility would apply even more strongly to the classical extended family.

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nepotism are commonplace. A significant proportion of the labor force is self or family employed and thus involved in work which is restricted in locale. Social contacts tend to precede rather than follow vocational opportunities.

The crucial role of large-scale organizations in a TCRS is not duplicated in a TSPS. Employment may be with major enterprises, but is generally not; credit is extended by individual money lenders and merchants rather than by commercial banks and large stores; consumer purchasing is carried on in small shops; primary education is provided in small local schools; and health services are indigenous and individualized rather than imported and bureaucratic. Only in the administration of welfare (i.e., public works projects, famine relief) and other government activities does the citizenry of a TSPS confront bureaucracies comparable to those which dominate social life in a TCRS.

II. COMPONENTS OF FORMS OF DISPUTE PROCESSING

The basic question underlying this paper is whether the consequences of, and the availability of resources required by, *any* form of dispute processing vary with social organization. This proposition will be explored through analysis of adjudication, mediation and avoidance as they are applicable to disputes in which individuals or small groups are involved.[6]

Adjudication and mediation are distinguishable from negotiation and self-help by the necessary presence of a third party, someone who is neither asserting nor resisting the assertion of a claim in his own behalf nor is acting as the agent of such a party. Conventionally we label as adjudication that process in which the third party is acknowledged to have the power to stipulate an outcome of the dispute, although in many instances such power will be exercised only when the adjudicator is unable to persuade the disputants to agree to an outcome. In mediation, on the other hand, outcomes[7] are produced by the third party only when he can secure disputant consent to proposals of accommodation[8] (Collier, 1973: 26; Fuller, 1971: 308; Kawashima,

6. For a telling argument that American legal anthropologists should begin to focus on American institutions, see Nader 1972: 284-88. This paper, by concentrating on forms of dispute processing important in the U.S., attempts to provide an analytic framework for such a focus.
7. Disputes have outcomes rather than resolutions for the same reason that they are processed rather than settled.
8. Abel (1974: 221) believes that we unnecessarily distort reality when we dichotomize behavior which is empirically continuous. It is no doubt frequently difficult to determine whether or not a particular third party can produce outcomes without disputant consent. How, for instance, would one classify the village muxtaar described by Rothenberger (1970: 152)?

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1963: 50). By avoidance I mean limiting the relationship with the other disputant sufficiently so that the dispute no longer remains salient. Avoidance resembles Hirschman's (1970) notion of exit. But avoidance, unlike exit behavior, does not necessarily imply a *switch* of relations to a new object, but may simply involve *withdrawal* from or contraction of the dispute-producing relationship.

In adjudication, outcomes may be sensitive to a wide range of extrinsic factors including class membership, political alliances, economic consequences and corruption, but in the main the behavior of the disputants is evaluated by reference to generalized rules of conduct. Most such rules are not immutable, but they are stable. Adjudication as a consequence tends to focus on "what facts" and "which norms" rather than on any need for normative shifts.[9] This concentration on the behavior of the

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> [The muxtaar] does exercise strong executive and particularly judicial influence in the village. He acted as a remedy agent in more disputes than any other remedy agent in or out of the village and was instrumental in settling many disputes. His technique in dispute resolution is to say very little himself, but to be very attentive and noncommittal in hearing all the arguments on all sides and the opinions of others as to how the matter should be solved. Then finally he will usually offer some sort of suggestion which will offer the possibility of solving the question, often with some sort of compromise and usually in line with the consensus of the opinions of the other kibaar who have spoken. The person against whom the combined weight of general opinion and the muxtaar's pressures have gone will usually finally agree by saying, "Whatever you wish," and may invite everyone back to his house for the ceremonial cup of coffee signifying peacemaking.

The key is the behavioral content of "the person . . . will usually finally agree" (*see* Kawashima, 1963: 50-51). If in context he has no practical alternative but to agree, the muxtaar is an adjudicator; if it is feasible for him not to agree, the muxtaar is a powerful mediator, but a mediator nonetheless. But this empirical difficulty should not force us to deny qualitative differences in behavior which, given sufficient information, can be identified. The imposition of a continuum on data which reflect the presence or absence of an observable property would itself distort reality.

But in which mold ought we to consider the adjudicator-mediator distinction? What if a disputant before Rothenberger's muxtaar faces the following situation? If he does not do as the muxtaar suggests he will lose something (*e.g.*, the community's or the muxtaar's esteem or access to some social group), but he is normatively entitled to make that calculation; it is not inappropriate for him to decide to sacrifice those values as he continues to prosecute the dispute. The difficulty in making an operational distinction between adjudication and mediation, then, arises not from an attempt to dichotomize continuous behavior, but because different processes are distinguishable by the attitude of participants to their situation rather than by the behavior in which they engage. Technical considerations of measurement aside, the relevant attitudes are as much empirical data subject to identification as is observable physical behavior.

9. If most adjudication were concerned with the wisdom of rules it would not be nearly as psychologically threatening. A loss then could be rationalized as a difference of opinion about future utilities rather than understood as negative labeling of past behavior.

Aubert (1963: 36-37) has identified some of the psychological

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disputants, rather than on the merits of abstract rules, creates a significant potential for psychological trauma. The effect of losing a dispute is to be told that what you consider as history was either an illusion or a lie, that what you considered normatively appropriate behavior is characterized as anti-social, and that what you consider your property or your prerogative will now, because of your failings, by fiat become your enemy's (Aubert, 1969: 286).[10]

The psychological consequence is frequently to alienate the loser from the adjudicative process. The process is generally endowed with a high degree of legitimacy derived from its ritual and trappings as well as from the participants' prior socialization. The loss of the case puts the loser in an unstable psychological condition. He must change either his attitude toward the process or toward his past behavior. Although some losers may be convinced of their errors by the adjudication, that many will change their attitude toward the process rather than toward their past behavior is suggested by the least effort principle (Abelson, 1968: 115). This "psycho-logical" rule indicates that change will be made in the direction which involves the actor in making the least significant other changes in his cognitive structure. Change in attitude toward past behavior may also involve changes in attitude toward the role and behavior of close associates, toward related behavior, and toward important values and elements of self-definition. It is thus likely to require more effort than a change in attitude toward a rarely encountered and generally alien institution. One would, therefore, expect that loser compliance with adjudicative decisions is produced not by their merits, but by the coercive power which they command. Unconvinced of their original error, losers respond to an adverse decision only because the consequences of not responding would be worse.[11]

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considerations which push adjudication toward evaluating conduct against rules rather than seeking to identify and change the psychological origins of disputes.

10. Some adjudicative processes may avoid these psychological strains. The therapeutic structure of the Kpelle moot (Gibbs, 1967: 284-89) frequently educates the deviant to reinterpret his past behavior so that he views it in the same vein as does the community. Gibbs (1967:284) attributes the re-educative effect of the moot to its incorporation "writ large" of all of the crucial elements of individual or group psychotherapy. But most adjudication, certainly that in government courts, does not allow the permissiveness and denial of reciprocity considered important to therapy by Gibbs. In addition, in most adjudication the evaluation of conduct by rules imposes a narrow range of empirical inquiry; it is unproductive to investigate behavior which is unrelated to the rules, although general expression of thoughts, feelings and other behavior are critical in terms of therapy.

11. One of Nader's reports on Zapotec adjudication (1969: 69, 86-88)

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The predicted association of adjudication and coercive power appears to be borne out empirically. Wimberley's Guttman scale for legal evolution lists twenty-seven societies which use courts (defined as institutions possessing socially recognized authority to make binding decisions). Eighteen of those societies maintained a court-directed police force and five of the remainder used autonomic ordeals (Wimberly, 1973: 81,82), that is compulsion by the will of the gods (Roberts, 1965: 209). And all nine of the court/no police societies had strong corporate kin groupings suggesting an internal coercive potential which does not depend upon specialized functionaries.[12] (For a counter-instance *see* Schlegel, 1970: 171). The variety of coercive power employable by different adjudicative systems is extensive. Mild social ostracism or negative public opinion (Gough, 1955: 50; Mayer, 1960: 264-66; Bohannon, 1957: 68), closed access to marriage partners (Srinivas, 1954: 157), termination of all social intercourse (Hitchcock, 1960: 243; Llewellyn & Hoebel, 1941: 103), banishment (Canter, 1973: 9; Brandt, 1971: 209-10), protected self-help (Pospisil, 1964: 147-48) and police action (Collier, 1973: 103; Gluckman, 1955: 222) are common.

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would critically limit such an analysis to what she considers the zero-sum decision making of formal government courts. Local Zapotec adjudication she characterizes, on the other hand, as "compromise arrived at by adjudication or in some cases, adjudication based on compromise." In either case, the consensual element in the outcome should reduce the psychological dilemma of the participants. The cases Nader presents to illustrate this hybrid process (1969:88) may not, however, support her characterization. In four of the five cases there appears to be a definite winner, someone who is paid money or whose opponent goes to jail or pays a fine. The loser's only solace is that the money he pays goes to the municipality rather than to his opponent. It is not surprising then that even in such a procedure, in which the loser's loss is marginally blunted, the outcome "is backed by coercive force."

12. A sample of adjudication backed by coercive power in the U.S. would include courts, arbitration enforceable in courts, industry umpires, professional sports commissioners, race track stewards, union disciplinary committees, student conduct committees, civil service review boards and the self-government agencies of trade associations, stock and commodity exchanges, athletic associations, fraternal organizations, social clubs, ethnic associations, street gangs, professional associations, political parties and religious groups. Some of these were suggested by and are documented in Galanter, n.d.

    The association of coercion and adjudication may not always be stable. Moore (1970:328) reports that pre-colonial Chagga chiefs did not always enforce their judgments. "If the loser were a rich man with a strong lineage that threatened to emigrate as a body if there were any property confiscated, the chief preferred tactics of persuasion." If the chief would not coerce compliance, the winner could engage in the "risky business" of self-help or swing the cursing pot. Neither always worked.

    Where community cooperation is disintegrating as in social units confronting Siegel and Beals' pervasive factionalism (1960), old adjudicative forms may outlive their coercive powers for a while, but it is doubtful that they would do so indefinitely. Either the community disorganization will be reversed or the adjudication will cease.

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The relationship between social organization and adjudication appears to depend not only on the availability of coercive power, but also on the presence or absence of social groups.[13] Most adjudication systems operate as an aspect of specific groups. Adjudicative entrepreneurs who sell their services to an unassociated set of disputants seeking third party assistance (the American Arbitration Association, for example) are uncommon.[14] Exactly why this is so is not entirely clear. To the extent that dispute processing is politics by another name (Barnes, 1961), it is obvious that political struggles can only have meaning if they take place within the political unit which will feel their consequences. To the extent that adjudication is a process of evaluating behavior in the light of a particular normative system, the norms must originate with and be used by some specific group. To the extent that adverse adjudicated decisions will be ignored unless compliance can be coerced, compliance will depend on the threat of some sanction acceptable to, and generally administered by, a group. To the extent that judicial specialization reflects general social role differentiation (Abel, 1974: 288), many societies are simply not sufficiently differentiated to produce wandering adjudicators. In fact, when one focuses on the normative system used by the AAA and on the coercion available to it, the Association may not really provide any group-unrelated adjudication, but rather may constitute an adjunct to government courts whose substantive rules and police powers it borrows.

Adjudication requires expertise in the social rules governing behavior and, frequently, in the secondary rules governing the conduct of disputes. This expertise is relatively easy to create on a mass basis.[15] The expertise required of a mediator is different. Since successful mediation requires an outcome accept-

13. To paraphrase Nadel (1951: 146), groups are collections of individuals in long-term relationships whose actions toward each other and toward outsiders are importantly influenced by the existence and standards of the group.

14. Even the work of the AAA falls generally into four areas—commercial, labor and international disputes and personal injury claims (Jones, 1964: 676). The inability of the AAA's National Center for Dispute Settlement to develop a program of consumer arbitration in Washington, D.C. (McGonagle, 1972: 72-75) reflects the difficulty of establishing adjudication across groups.

15. The ratio of faculty to students in an American law school tends to be about 1 to 20 (Boyer and Crampton, 1974: 289). Aubert (1969: 301) notes that "in Norway during the last century, three or four professors sufficed to train all the lawyers, and they needed no equipment and no laboratories—only a few books." A tale popular in law and development circles is that President Nasser once told the Dean of the Cairo law school to double the size of the student body virtually overnight by buying a microphone and hiring a bigger hall.

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able to the parties, the mediator cannot rely primarily on rules but must construct an outcome in the light of the social and cultural context of the dispute, the full scope of the relations between the disputants and the perspectives from which they view the dispute. Mediation, then, flourishes where mediators share the social and cultural experience of the disputants they serve, and where they bring to the processing of disputes an intimate and detailed knowledge of the perspectives of the disputants.[16] In the absence of such shared experience and such preprocessing knowledge, the effort a mediator would have to make to fill the gaps would be disproportionate to the social stakes involved in the dispute. Because of these characteristics of mediation, deliberate mass production of mediators is generally infeasible.[17] On the other hand, since the outcomes it produces are consensual and are generally compromises, mediation need not be backed by coercive power.

Why is it important for a mediator who does not know the disputants to acquire insight into their priorities and feelings as a part of the mediation process? Let us assume that mediated outcomes are of two kinds. They may be personality independ-

16. That mediation depends upon understanding the particular perspectives of particular disputants as well as on understanding the context in which they act is an example of the importance of the influence of symbolic interactionism on role theory. Rather than emphasizing the deterministic effect of role expectations (Parsons, 1951: 190-97), symbolic interactionists stress the importance of the interpretation process used by individuals in human encounters (Blumer, 1969: 56). To them a dispute cannot be analyzed as a set confrontation between conflicting role expectations, but rather involves individuals who continually redefine themselves and their situations and realign their behavior accordingly. Thus an understanding of the disputants' perspectives as well as the biography of a dispute is crucial in mediation.

Does the Japanese experience indicate that the text overstates the case? In the early 1920s, the Japanese instituted compulsory mediation by laymen and judge prior to litigation of landlord and tenant, and some debt and domestic relations, cases. This state-provided mediation is considered by Kawashima (1963: 54-55) to have successfully disposed of a significant proportion of such cases. One can quibble with his conclusion. Since the mediation was compulsory it is not surprising that there was quite a bit of it. Since the number of lawsuits in these substantive areas did not decrease (1963: 55), one could say that his aggregate data indicate that the mediation was rather ineffective. Without sampling individual cases it might be difficult to tell what the effect of mediation actually was. In any event, it is also possible that this success in mediation which is not based on anterior knowledge of disputant perspectives arises from the respect owed mediators in Japanese culture in general, so that Japanese mediation takes on some of the coercive attributes of adjudication (*see* Kawashima, 1963: 50-51).

17. Note, for instance, the extent of the efforts made by the Maoist mediator described by Lubman (1967: 1321-22). That such efforts are regularly made in a socialist society is probably a reflection of the degree to which political education has been introduced into ordinary dispute processing. Lubman (1967: 1323) also notes that the Party expects "mediators to know well the people among whom they dwell."

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ent in the sense that the mediator is able to suggest a result which adequately meets the interests of each disputant as those interests would be identified by any persons in their positions. In such situations the mediator's ingenuity is affected only by his understanding of the disputants' manifest interests. It may well be feasible to acquire such information adequately during the mediation.

On the other hand, an outcome may be personality dependent in the sense that an acceptable scheme which sufficiently meets the demands of both disputants must reflect these demands as they idiosyncratically view them. In this case the feelings of the disputants are crucial and the possibility that a mediator will acquire sufficient insight during mediation is more doubtful. The difficulty may arise in part because the disputants are not particularly self-conscious about their own feelings and therefore fail to give the mediator adequate information so that he may understand them. Even when the disputants are conscious of their feelings, they may nevertheless restrict their communications to the mediator to matters they believe will promote their cause on an instrumental, rather than an affective, level or according to motives which they believe it is acceptable for them to maintain rather than expose their real, but embarrassing, needs. In either case the information presented to the mediator is probably not as rich as the more general information available to a mediator who has widely-shared experience with the disputants. It would be imprudent to set theoretical limits to the successes of mediative geniuses, but for the run-of-the-mill mediators upon whom institutionalized mediation must be based long-term and relatively intimate prior association with the disputants may be highly functional in all settings and necessary for reaching personality dependent outcomes[18] (*see* Gulliver, 1969: 40-48).

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18. Labor mediation is probably a special case. It tends to involve a limited set of issues most of which have been confronted in principle before. Most of the participants are professionals, and the outcomes are more affected by economic and political considerations than by personalities. As a consequence, a background in other labor disputes may be more useful to a labor mediator than shared experience with particular bargaining agents. Knowles (1958: 780-3), however, suggests that most issues in labor mediation involve both objective and subjective factors, and that effective labor mediation is a close parallel to effective psychotherapy.

To the extent that disputes which ostensibly involve a few individuals are functionally group controversies, the emphasis in the text on the personalities of the disputants may be misplaced. Although I do not assert with any assurance that group concerns do not underlie many individual disputes, there is considerable evidence that the feelings of specific disputants are relevant in mediation even in highly organized societies (*see, e.g.*, Gulliver, 1969: 47, 60, 65; Collier, 1973: 63).

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Adjudication and mediation are relatively visible processes. They tend to be public to the group in which they take place, notorious within the group and didactic for the group. Avoidance, on the other hand, is more difficult for an outsider to identify and is less frequently reported.[19] Even a recital of a few characteristic avoidance techniques will, however, demonstrate how common it is. Note, for instance, the unexceptional nature in the U.S. of adolescent children limiting contacts with their parents to perfunctory matters because matters of importance have proved to be too contentious, of friends curtailing their relations because of past quarrels, of consumers switching their trade from one retail merchant to another after a dispute, of casual workers (gas station attendants, waitresses, dishwashers, gardeners, housekeepers) quitting jobs because of problems with employers, of children moving out of their parents' houses because of unreconcilable values and of neighbors who visit less because of offensive pets, obstreperous children, loud parties and unseemly yards.

The most important social characteristic of avoidance for dispute processing theory is its variable costs. To understand that variation one has only to focus on Gluckman's (1955: 19) classic distinction between single-interest linkages and multiplex relationships, those which serve many interests. The cost of avoidance is always a reduction in the content of the relationship which has been truncated or terminated. If the relationship was geared to a single interest, only that interest is affected. If the relationship was multiplex, all the interests are affected, even though the cause of the avoidance grew out of only one. The difference, for example, is between losing a sibling only and losing a sibling who is also a neighbor, a companion, a therapist, a political ally, an economic co-adventurer and a ceremonial confederate (*see* Nader and Metzger, 1963: 590-91).

III. THE EFFECT OF SOCIAL ORGANIZATION ON INSTITUTIONALIZING DIFFERENT FORMS OF DISPUTE PROCESSING

For our purposes, then, the key to adjudication is groups and coercion,[20] to mediation is shared experience, and to avoidance

19. Schwartz (1954: 490) provides an early, if marginal, reference to "withdrawal from interaction" as an alternative to legal controls. His provocative analysis of two Israeli communities has been generally overlooked by anthropologists of law, perhaps because it was originally published in a law journal (*see also* Abel, 1974: 229; Fürer-Haimendorf, 1967: 22-23).

20. The asserted correlation between adjudication and coercion should not be understood as an affirmation of Pospisil's notion of "the attribute of authority." To the contrary, I believe that Pospisil can

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is its variable costs. Within any society on an institutional basis, we should expect to find less adjudication where groups are infrequent and the coercive power which can be marshalled is weak, less mediation where shared experience is rare and less avoidance where avoidance costs are high. What insights concerning the distribution of forms of dispute processing might these propositions produce in the ideal type societies de-

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characterize authority as universal only by disregarding empirical evidence at odds with his concepts. Pospisil (1971: 39-40) attempts to define "the attributes of an analytical concept of law . . . that can be applied cross-culturally." One such attribute is the attribute of authority.

> A decision, to be legally relevant, or in other words, to effect social control, must either be accepted as a solution by the parties to a dispute or, if they resist, be forced upon them. Such a decision, of necessity, is passed by an individual, or group of individuals, who can either persuade the litigants to comply or who possess power over enforcement agents or the group membership in general to compel them to execute the verdict, judgement, or informal decision even over protests and resistance of either or both parties to the dispute. Individuals who possess the power to induce or force the majority of the members of their social group to conform to their decisions I shall call the legal authority. Whereas this authority is formalized and specialized on the state level in our own and in other civilizations, in tribal societies and in some of the state's subgroups it often coincides with the leadership of various groups that exercises several functions besides the legal one. (1971: 44).

Pospisil's argument (1971: 44-78) that authority is present in all societies takes the form of demonstrating that it is present in several societies where ethnographers have declared it to be absent. The argument has, I think, two failings. First, Pospisil links leadership (supramodal influence on the behavior of others) and authority (the power to coerce the behavior of others). He then identifies leaders in social units which other characterize as leaderless without pinpointing the leaders' or anyone else's, coercive power. This is the logic of his analysis of Gusinde's work on the Yaghar Indians of Tierra del Fuego (1971: 44-45).

Second, and more important, Pospisil overlooks or misconstrues both classic accounts and recent analyses of dispute processing—namely, Miller (1955) on the Fox, Evans-Pritchard (1940) and Howell (1954) on the Nuer of the Sudan and Gulliver (1963, 1969) on the Arusha and Ndendueli of Tanzania. Gulliver reports that "the solution of a dispute between Arusha does not come from authoritative decision, but through agreement resulting from discussion and negotiation between the parties which are in conflict" (1963: 299) and that settlement of intra-community disputes among the Ndendueli "must be an agreed settlement . . . a principal cannot be compelled to accept an imposed settlement, for there is no means of enforcing it" (1969: 69). Both conclusions are supported by extensive case analyses. Gulliver's Arushan summary may be slightly overstated: he does note rare instances of physical and ritual coercion in cases of extreme obduracy or contempt of process (1963: 275-96). But his characterization is fair for the great preponderance of Arushan disputes and for all Ndendueli behavior.

Nor did observers identify such coercion among the Central Algonkian tribes, especially the Fox. Miller, for instance, notes that although the war-chief role is "the most 'powerful' authority role in Fox society . . . war-party members could act on [his suggestions] or not, as they saw fit" (1955: 283-84). Controversies in less critical circumstances were also processed without compulsion: "no course of action was agreed on by the council unless all members were in accord with the final decision"; no coercion was required to implement decisions since "the act of decision-making itself insured the tribal validation of the decision" (1955: 283-84).

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scribed earlier? In a TSPS either adjudication or mediation will occur at the level of face-to-face groups such as kin units, factions and villages. The coercion necessary for adjudication rests ultimately on the group's power to expel contumacious disputants. Since the group's functions are central to the members' well-being, participation in group adjudication and adherence to adjudicated outcomes are self-generating. The size of such groups and the intensity of relations within them make mediation a realistic alternative to adjudication: the requisite knowledge of dispute context and participant perspective are available without inordinate mediator efforts. Whether groups in any particular society will use both institutionalized adjudication and mediation, or one more than the other, may then be a function of considerations other than social organization. Values and their psychological derivatives may in some contexts be crucial ingredients.[21] The stress on mediation in eastern societies has often been attributed to the importance of Confucian distaste for conflict and self-assertion (J. Cohen, 1967: 60; Hahm, 1969: 20; Kawashima, 1963: 44) while antipathy to self-arrogation and authoritative control has had the same effect in hyper-egalitarian western societies (Evans-Pritchard, 1940: 180-84; Emmett, 1964: 47, 80-89; Miller, 1955: 271-72, 283-86; Yngvesson, 1970: 95-96, 258). On the other hand, despite the con-

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Evans-Pritchard and Howell report that the Nuer do not adjudicate. No one can "compel either party to accept a decision" (Howell, 1954: 255); there was an "absence of any institutionalized body to enforce payment" (Howell, 1954: 224, 226). Later in his book, Pospisil, quoting Evans-Pritchard, notes that "within a village differences between persons are discussed by the elders of the village and agreement is generally and easily reached" (1971: 101). What Pospisil does not point out is that if they could not agree, the only options available to quarreling Nuer were self-help, emigration and avoidance (Howell, 1954: 226-27). Even Greuel (1971: 1120), who believes that Evans-Pritchard has seriously understated the political power of the leopard-skin chief, agrees that the chief cannot enforce his opinions upon disputants.

Of course, the Nuer, Arusha and Ndendueli all inhabit areas now subject to the political and judicial jurisdiction of centralized states and, in that sense, have recourse to compulsive process. But Pospisil's legal attributes are presumably valid over time as well as space.

Lowy (1973: 954) has criticized Pospisil on similar grounds. Pospisil's response (1973: 1170) suggests that the attribute of authority may be satisfied in any society whose leaders' suggestions as to outcomes of disputes are *sometimes* accepted by the disputants. Authority defined as loosely as this may be universal. But so construed it fails to meet the standard set by Pospisil himself for his attributes—that they define "modes of conduct made obligatory" (1971: 40). Nor is such a construction consistent with the language of Pospisil's definition of authority (1971: 42) which seems to say that authority is present only where compulsion is available against those who "resist" persuasion.

21. As other variables which may affect the shape of dispute processing, Nader has suggested government prescriptions, the type of claims, and the personalities of third parties (1969: 90-91). *See also* Aubert, 1963: 33.

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ventional notion that mediated compromises better preserve the continuing relationships characteristic of small communities or multiplex groups (Nader, 1969: 87-88; Nader and Yngvesson, 1973: 912),[22] adjudication is quite common in such situations (see Hitchcock, 1960: 261-64; Srinivas, 1954: 155; Cohn, 1965: 83; Gluckman, 1955: 80-81; Moore, 1970: 331; Gibbs, 1962: 345; Collier, 1973: 36-39; Metzger, 1960: 36). Sometimes institutionalized mediation is available as a step preceeding such adjudication (Hitchcock, 1960: 242; Cohn, 1967: 143; Moore, 1970: 327; Collier, 1973: 26-28), sometimes it is not (Srinivas, 1954: 159; Gibbs, 1967: 380-83; Nader and Metzger, 1963: 586-87), and sometimes one cannot tell (*e.g.*, Gluckman, 1955: 26).

As the size of the groups on which one focuses in a TSPS grows, from village to tribe or from extended family to sub-caste, adjudication will become the dominant form of dispute processing. Mediation is no longer feasible because, whatever the shared general social and cultural experience, no specific mediators nor occupants of specific social positions will possess as a matter of existing experience sufficient information about the particular perspectives and histories of the particular disputants to be able efficiently to suggest acceptable outcomes. Adjudicative expertise in rules, on the other hand, is either widely possessed where the rules are not specialized (in the sense that they are readily available only to professionals) or can be generated on a mass basis where specialization is important.

The frequency of avoidance as a form of dispute processing in a TSPS should be affected by its high costs. These costs would be incurred whether avoidance takes place within the kin group, within a non-family multiplex relationship, or in economic activities. Within the family if disputants terminate or decrease their contacts, relations between groups, which may have political and economic as well as social connotations, are jeopardized as well. Where marriages are arranged, decisions about who marries whom are generally made on prudential grounds, in a corporate process and under the influence of past social relations. As a result, disputes which are processed by avoidance will cast a long shadow, interfering with the future marriage prospects of many group members (*see* Beals, 1961: 33). Use of avoidance as a technique where the disputants, such as parent and grown child

22. Grossman and Sarat attribute informal dispute processing in "simpler societies" in part to a "framework of trust . . . between the disputing individuals" (1973: 3). A substantial volume of ethnographic data contradicts this hypothesis: high levels of hostility and distrust are very frequently observed in ongoing relationships in simpler societies (Foster, 1960: 175-77; Lewis, 1965: 498; Carstairs, 1967: 40-43; Brandt, 1971: 184).

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or siblings or affines, live and work and conduct other important activities together, is logistically difficult and psychologically dangerous—the repressed hostility felt toward the other disputant is likely to be shifted to someone or something else. Even worse, the failure to express or act upon predictable hostility will in many societies lead to accusations of witchcraft against the person who hides his antagonisms (*see* Collier, 1973: 222). Yet physical separation, by moving residence or work, may be socially infeasible, economically disastrous and emotionally traumatic. Since many relationships beyond the family are multiplex, avoidance as a reaction to dispute impairs not only the interest out of which the dispute arose, but all other interests shared by the disputants (*see* Van Velsen, 1969: 138). As Moore (1973: 738) points out for the Chagga, "the continuing control exercised by the lineage neighborhood nexus over its members is illustrated by every dispute it settles. No man can hope to keep his head above water if he does not have the approval and support of his neighbors and kinsmen." This analysis should not be construed to imply that avoidance would never or rarely occur in small communities in technologically simple societies. In fact, in nomadic tribes, where avoidance by physical separation is easy, dispute processing by such tactics is commonplace (Furer-Haimendorf, 1967: 22-23). The point is rather that avoidance has high costs in a TSPS and one would as a result expect significant use of other forms of dispute processing which are more likely to aid the maintenance of threatened, but important, social relationships.

In both a TCRS and a TSPS adjudication is predictable at the level of the state which is a group with an important normative system and substantial coercive power. The degree of use of such adjudicative process will depend upon the extent to which it is viewed as expensive, degrading, alien, slow, time-consuming, ineffective and destructive, upon the available alternatives and their characteristics and upon litigant objectives.[23]

In both types of societies adjudication may also be an important form of dispute processing within large-scale organizations.

23. These qualities are expressed negatively rather than positively (cheap, ennobling, familiar, quick, effective, time saving and constructive) because it is the negative characterizations which populate the literature. *See, e.g.*, Friedman, 1973: 338 (U.S.); *Yale Law Journal*, 1970: 1179 (U.S.); Nader, 1972: 290 (U.S.); Stoltz, 1968: f.n. 14 (U.S.); Wiser and Wiser, 1969: 123-24 (India); Barnes, 1961: 188 (Zambia); Hunt and Hunt, 1969: 137 (Mexico); Emmett, 1964: 89 (Wales); Cohen, 1967: 59, 63-65, 67 (China); Stirling, 1957: 25 (Turkey); Rosenn, 1971: 538-41 (Brazil). Of course, even an ostensibly negative characteristic may have positive functions. Rosenberg, for instance, has analyzed the possible gains from court delays (1965) as has Kidder (1973: 128-30).

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Such organizations must establish a normative system to govern their operations: coercive power is located both in their power to expel constituents and in their power to vary tasks and rewards. Rules and compulsive power may explain why adjudication can work if it is established. But they do not entirely explain why it is established. Making decisions in particular cases is inevitable. Where there are rules and power, the people with the power will enforce some rules. Whether that process is controlled by people who are directly affected by their own decisions or by people who are importantly influenced by considerations of neutrality will depend upon locally prevalent values and on the countervailing power, individual or organized, of those subjected to the rules. If organized political opposition (labor vs. management, students vs. administration) exists within organizations, controversies about past behavior are more likely to be adjudicated by a third party than decided by a participant (*see* Weber, 1967: 335-56). And the more a society values procedural fairness over instrumental efficiency, the more likely it is that the same result will occur. Mediation within organizations may be equally feasible since in the operations of an organization extensive shared social, cultural and personal experience is generated. And adjudicative and mediative institutions may co-exist within an organization (at my university decanal adjudication is paralleled by ombudsman mediation).

Between outsiders who have some contact with a large organization and the organization, a significant amount of dispute processing may be a special form of avoidance termed "lumping it." In lumping it the salience of the dispute is reduced not so much by limiting the contacts between the disputants, but by ignoring the dispute, by declining to take any or much action in response to the controversy. The complaint against the retail merchant or the health insurance company is foregone although the complainant's grievance has not been satisfied, or even acknowledged, and although interaction between the individual and the organization is not altered. It would be uncommon for such grievances to be mediated since there is little incentive for the organization to change its posture. Because of the discrepancy in size and power even the threat of withdrawal by the individual is futile to coerce compromise by the organization. And no adjudication short of the government courts may be possible because no other power exists to coerce decisions against the organization[24] (*see* McGonagle, 1972: 72-75).

24. Friedmann (1973: 64) has recently documented the determination of a large proportion of samples of the populations of Alberta and

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The clearest difference between dispute processing in a TSPS and a TCRS should be located in disputes between individuals or family and social groups. The availability of adjudication and mediation and the high costs of avoidance in a TSPS have been examined. The opposite conditions are predictable for a TCRS: adjudication and mediation of such disputes will be hard to institutionalize and avoidance will carry significantly lower costs. The obstacle to adjudication of interpersonal disputes in a TCRS is the limited coercion available to agencies other than government courts. The forms of coercion available in nongovernment adjudication in a TSPS depend either on membership in groups, especially kin-related groups, or on participation in multiple interest relationships. In a TCRS such groups and associations are either non-existent or weak. One cannot be influenced by public opinion if there is no relevant public, nor exiled from a group to which one does not belong. What sanction in a neighborhood of single interest relationships might a neighborhood adjudicator employ? With what, after childhood, can most parents threaten a child or an uncle a niece? (Turner, 1970: 414).

At the same time structural factors exist in a TCRS which reduce the utility of adjudicating interpersonal disputes in government courts. To the extent that such courts are staffed by specialists, as one would expect them to be in such a society unless it is organized according to a revolutionary socialist ideology, the rules they apply will tend to become specialized, importantly procedural and alien from everyday norms (Abel, 1974: 270-84). Specialized rules will require litigants to hire professional counsel. Professional counsel means added expense, inconvenience and mystification. Government courts frequently process a large volume of routine quasi-administrative matters (foreclosures and evictions, divorce, collections, repossessions and the filing and marshalling of liens). These routine matters, coupled to a high criminal caseload and a sensitivity to the demands of due process and to the autonomy of judges which impedes reforms aimed at efficiency, tax the government courts' capacity to process individual interpersonal cases quickly (Sykes, 1969: 330-37). If court

Britain not to complain about perceived maladministration of public authorities. Can one simply assert that in both ideal types similar disputes will be processed similarly if we define disputes in terms of their gravity? Family disputes are serious in a TSPS and will thus infrequently be ignored. Such disputes are much less grave in a TCRS and therefore will frequently be lumped. But despite their undoubted seriousness, individuals' grievances against large organizations in societies resembling a TCRS cannot easily be adjudicated or mediated.

Some large organizations may, however, establish international adjudicators endowed with coercive power independent of the organization's ordinary chain of command.

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litigation may be fairly characterized as costly, slow and alienating, we can expect relatively little use to be made of it in situations in which, as in most interpersonal disputing, the economic stakes are low (Danzig, 1973: 44), unless, as in divorce and custody cases, a government imprimatur is an absolute necessity.

This analysis is not entirely compatible with Black's (1973: 53) belief that use of government courts is a stage in an evolutionary process reached when sub-government controls are weak or unavailable. First, considerable data points to high simultaneous use of government and sub-government dispute processing. The best documented instance may be colonial India (Rudolph & Rudolph, 1967: 260-62; Galanter, 1968: 69), but there is no evidence that nineteenth century America witnessed proportionately less interpersonal litigation than mid-twentieth century America despite more cohesive kin and residential systems (*see* Friedman, 1973: 338). And second, Black entirely ignores the role of avoidance: he does not consider the possibility that as "communities" and their informal controls disappear, the need for any external civil dispute processing between individuals may also substantially fade.

Institutionalized mediation of interpersonal disputes will also be infrequent in a TCRS. Because of the crucial importance of shared experience in mediation, the less role differentiated a social unit, the more mediators will be available for disputes of varying origin. In the technologically simplest societies all adult members, having generally the same experience, are equipped on that dimension to mediate all disputes. But in a TCRS, where role differentiation is intense, few persons are qualified by experience to mediate any disputes: almost everybody's role set is too specialized to be common to a significant number of potential disputants. It is not true, of course, that in no case will anyone with sufficient common experience with any disputants be available to mediate any disputes. But institutionalized mediation—which involves the regular participation of specific third parties, or the occupants of specific social positions—requires more than an occasional person with the requisite background to mediate a particular dispute in a reasonable time. It requires many such persons, each with sufficient background to mediate a variety of disputes. Where interpersonal social organization is dominated by single interest relationships, such people will not exist in requisite numbers.

The relatively weaker bonds of family, of friendship, of job and of place in a TCRS make institutionalizing adjudication and mediation difficult, but they also reduce the negative conse-

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quences of avoidance. Avoidance behavior between generations within a family, for instance, generally will not seriously threaten either disputants' economic security, political position or ceremonial or therapeutic opportunities. Reducing as well as eliminating contact within a continuing social framework is relatively easy where relations are more formal than functional. Difficult vocational relationships may be terminated with better alternatives than unemployment. New friendships may be struck and old contacts turned sour may be easily avoided. Although the most important cause of voluntary residential moves is probably changing needs produced by the life cycle (Simmons, 1968: 636-37), many moves may be made because of deteriorating interpersonal relations (Rossi, 1955: 142; Greer, 1962: 112) or because of a desire for greater privacy (Lansing and Barth, 1964: 22); that is, to avoid prospective quarrels with neighbors as well as to avoid neighbors with whom one is presently quarreling.

Where there are pockets within a TCRS where social organization is more like that postulated for a TSPS, then one would expect that avoidance, having higher costs, would be less important and that adjudication and mediation, being more feasible, would be more frequently institutionalized.[25] Such pockets are likely to arise where there are unassimilated ethnic minorities with a strong tradition of internal government or where a pattern of social discrimination severely limits the economic, residential and social mobility of distinctive minority groups. This qualification is not meant to imply that every ethnic ghetto will be organized and use the dispute processing machinery of a Punjabi village, but simply that dispute processing will in important respects be a function of social organization. And the social organization which exercises that influence will be the local version, however the dominant majority organizes its affairs.

To summarize this section, adjudication and mediation, on the one hand, and avoidance, on the other, are complementary. Where adjudication and mediation are feasible, avoidance is

25. The opposite should, of course, be equally true. Estimates of the utility of the ideal types described in this paper made by testing any of their constituents against the attributes of real societies, if indeed such a test is a fair measure of the use of ideal types, must be careful to insure that reference is made to the modal condition of the real society, and not to minority instances which are organized on contrasting lines (e.g., Gans, 1962: 50-51, 72; Bott, 1957: 53-54). Doo's study of Chinese-American communities, for instance, indicates that their social organization has until recently been based on Chinese rather than American patterns. He describes dispute processing within these communities as internal adjudication and mediation backed by a powerful ability to ostracize members from the community (1973: 634, 645, 652). Despite the fact that he is describing "American" communities, his analysis supports, rather than challenges, this paper's principal argument.

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costly: where avoidance has tolerable costs, adjudication and mediation are difficult to institutionalize. This complementarity has a logical base. The same set of social circumstances which makes one set of processes available frustrates the other and vice-versa.[26] The predicament of unorganized individuals who have a dispute with large organizations of which they are not members may be an exception: adjudication and mediation are generally unavailable and avoidance costly to the individual. It is this social pathology which has probably led to recent calls for ombudsmen in government, in universities and for public utilities (*see* Gellhorn, 1966: 25, 28-29, 215-17).[27]

IV. IMPLICATIONS OF THE ANALYSIS FOR DISPUTE PROCESSING REFORMS IN THE UNITED STATES

One of the frequently criticized aspects of life in America is the failure of the society's institutions to cope adequately with the people's grievances against each other. Ordinary courts cost money and time, are slow and mystifying, and tilted against the poor, the uninitiated and the occasional user (*e.g.*, Galanter, 1974; Wald and Wald, 1968: 34-37; Carlin and Howard, 1965: 381-429). Small claims courts are alleged to have been transformed by sellers of consumer goods and services into taxpayer supported collection agencies (Small Claims Study Group, 1972: 128; *Calif. Law Rev.*, 1964: 884-90; Bruff, 1973: 12, 13). Although there is an occasional note to the effect that "private-informal dispute settlement . . . is significant in complex societies" (Grossman and Sarat, 1973: 14), the references to non-government institutionalized adjudication or mediation in the United States are very sparse except within organizations, within organized commercial activities and within some minority groups.[28]

26. Reduced to its simplest form, this paper argues that mediation and adjudication will not be institutionalized where they will not work. But what is "work"? The manifest function of these institutions is to bring disputes to an end. But many social institutions, courts among them, may thrive although they do not fulfill their ostensible purpose. The actual function of dispute processing institutions may not be what they do for disputants, but what they do for the third parties by way, for instance, of reinforcing their prestige or political authority. Whether a dispute processing institution will flourish when nurtured primarily by such a latent function should depend on whether disputants themselves seek to end disputes. Where they do, it is difficult to understand why they would activate a process which rarely produced that result. Kidder notes "that everyone interviewed believed that the courts above those that they directly experienced would be free of the complications they had found in their own experience" (1973: 134). But he does not account for such considerable naiveté.

27. The apparent high regard of automobile manufacturers for customer good will makes the administration of automobile warranties an exception in the U.S. (*see* Whitford, 1968: 1023, 1044).

28. It is not possible to tell whether Grossman and Sarat (1973: 12)

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This paper suggests that much of the slack may be absorbed by avoidance. The degree to which avoidance is as much an empirical reality as it is a sociological possibility will need to be determined through field studies. Whatever such studies may reveal, current dissatisfaction is so pervasive that advocacy of consciously engineered reform and creation of dispute processing institutions is hardly likely to abate. The sponsors of neighborhood ghetto courts (Statsky, 1974; Hager, 1972; Cahn and Cahn, 1970: 1019), community moots (Danzig, 1973: 41-48), reoriented small claims courts (Small Claims Study Group 1972: 197-213), clergy dominated dispute processing for religious minorities (Balderman, 1974: 41-42) and mediation systems for public housing, consumer-merchant and private criminal complaints (Abner, 1969: 12-18) will not be convinced by social scientists that avoidance is an adequate substitute for their proposed reforms. But their reforms may perhaps be more effective if they heed the influence of social organization on what they set out to do.[29]

Let us use Danzig's proposed neighborhood moots as an example. He advocates a transplant of the Kpelle (Liberia) moot to American urban neighborhoods. Danzig (1973: 47-48) is alert to the effect of cultural differences and aware that moot success

were attempting to provide a complete catalogue of descriptions of private informal dispute processing in the U.S. Whatever their aim, their references consist only of the involvement in marital disputes of one priest in one parish, the activities of marriage counselors, private police in shoplifting cases and two types of commercial arbitration. There are other descriptions (Yaffe: 1972; Doo: 1973; Grace: 1970; Kaufman: 1971), but they are either ethnically specific or unimportant. Presumably there is more private activity than has been documented. Ironically, we have better data about dispute processing in Indian villages, Mexican towns and east African tribes than we have about that process in American communities.

29. Police family crisis intervention units have been omitted from the list on the assumption that they cannot be viewed as instruments of mediation in an orthodox sense. Their primary objective is to prevent immediate violence between citizens and against themselves, rather than to persuade citizens to new and less contentious relationships (Bard, 1973: 416). Arriving while a quarrel is likely to be in an aggravated phase, they rarely know any history of a dispute and will not spend more than 40 minutes in attendance at it (Liebman and Schwartz, 1973: 437, 447-48). Note how the demands of time shape a crisis intervention trained officer in constructing rules of relevance:

> Now, I find that the wife is running rather rampant about a great many problems. She's beginning to tell me things that happened a week ago, two weeks ago—things that have happened the night before, things that are completely irrelevant to the problem at hand (Toch, 1973: 480).

Having tried to reduce the likelihood of violence, crisis intervention trained police rely on referrals to social agencies (on 75% of calls in New York City) for long term dispute processing (Liebman and Schwartz, 1973: 432, 468-69). If orthodox mediation were attempted by police, the importance of shared experience and intimate knowledge suggests that housing authority police would have more success than the ordinary variety (*see* Liebman and Schwartz, 1973: 459-60).

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may depend on the level of "primary group interaction." But he does not suggest how frequently sufficient primary group interaction occurs in any American neighborhoods. Moreover, Danzig (1973: 46) seems insensitive to the role of the mediator, suggesting only that he be a "salaried counselor." Gibbs (1967: 288-9), on the other hand, pays considerable attention to the importance of the social position of the Kpelle mediator. Selected by the complainant, he is a kinsman and town chief or quarter elder. He can produce a therapeutic effect because he is "a member of two social systems," that of the disputants (kinsman) and of the wider community (elder). In my terms Danzig's mediator is unlikely to be functional unless he shares significant intimate experience with the disputants. If such a criterion is ignored or cannot be met in counselor selection, the Kpelle experience may be impossible to duplicate.[30] The Kpelle moot, moreover, is not really mediation. It decides who is mainly at fault, it imposes sanctions and requires apologies (Gibbs, 1967: 280, 283). It can exercise such coercion because it is an institution of a group—a village quarter composed of several virilocal polygamous families (1967: 279). Gibbs (1967: 287) highlights the crucial role of group approval. In addition, in an earlier article (1962: 341-42) he reports that the Kpelle have internalized a particularly strong respect for authority. A successful transplant of the Kpelle version of a moot thus may require a psychological set and social organization which parallels the Kpelle's as well as counselors with high quotients of shared experience with their clientele.

Religious courts open to secular disputes are not unknown in the U.S. (*Columbia Journal of Law and Soc. Probs.*, 1970: 56-68; Balderman, 1974: 18-20). Their supposed advantages over civil courts are speed, less expense, less specialized procedures, privacy and adjudication by members of the same minority group as the disputants and according to its value system. (*Columbia Journal of Law and Soc. Probs.*, 1970: 68-70). Balderman's (1974: 30, 34) study of Jewish courts in Los Angeles, however, indicates that they are rarely used as alternatives to civil courts. The religious courts are employed rather to hear claims which the civil courts will not (Jewish divorces, conversions) and to define the nature of Jewish religious life.

Advocates of minority group institutions as an alternative to government courts, such as the Bet Tzedek proposal in Los

30. The success of local justice in Britain has been attributed to the fact that magistrates "administer justice amongst people with whom they are acquainted and of whose lives and family history they know something" (Giles, 1949: 34).

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Angeles (Balderman, 1974: 41), ought to face the question of why existing religious courts may have failed to fulfill this function. These institutions are adjudicative. They may compel compliance with their decisions either through resort to government courts based on party execution of irrevocable arbitration agreements or through the persuasive effect of community pressure. As one would predict, the existing Jewish courts in Los Angeles are able to mobilize community coercion when the disputants are members of a functioning, closely-knit group and are unable to do so where they are not. Thus, disputes involving synagogues and synagogue personnel are effectively adjudicated while those between Jews who play no special religious role remain troublesome (Balderman, 1974: 20-30). One might expect that the necessity of hiring a lawyer and of invoking civil court process would make the arbitration agreement rather ineffective. Empirically this seems to have been the case in Los Angeles. Despite the fact that the losing party often fails to obey the Jewish court's decision, the rabbis of that court cannot recall a single instance in the past twenty-five years in which the prevailing party has sought government court coercion through enforcing the obligatory arbitration agreement (Balderman, 1974: 19).

New institutions, then, ought to be adjudicative only when they expect to serve a clientele which is socially organized to coerce its members into compliance with decisions without secondary recourse to government courts. Where dispute processing is to be provided for a different kind of social unit, it would be well to recognize at the outset that only mediation may be effective, and to maximize the use of third parties who are likely to share the social and cultural experience of the disputants and who have some pre-processing information about them as personalities—a neighborhood notable is preferable to a trained social worker or lawyer who is an "outsider" (*see* Yaffe, 1972: 58, 266-67).

Innovative neighborhood "courts" have recently begun to operate in New York City and East Palo Alto, California. (Statsky, 1974; Hager, 1972). In New York, mediation is conducted by non-professional neighborhood residents who secure extensive information about the backgrounds and personalities of juveniles referred to the mediators and of the adults with whom they are quarreling. In East Palo Alto neighborhood judges adjudicate complaints against juveniles and penalize offenders with neighborhood work tasks. Although the behavioral theories implicit in these two approaches are obviously different, each of these

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institutions seems to be more sensitive to the different prerequisites of mediation and adjudication than are the advocates of neighborhood moots and religious arbitration boards.

In any event, the effect of such reforms, even if they were adopted by a single community, is limited. Juvenile problems and problems within families and within religious groups could be processed in a new forum. But neighborhood disputes, work disputes, consumer disputes and citizen-government disputes would be unaffected. For these disputes, either avoidance is adequate or major changes must be made in government courts, particularly in small claims courts. Since the need for such a court reform has been apparent for decades (Smith, 1924: 9; Nelson, 1949: 239; *Stanford Law Review*, 1952: 238), the utility of avoidance must be viewed as a blessing. In a world that is too infrequently symmetrical, our inability to process many disputes by adjudication or mediation may generally be balanced by a lesser need to do so.

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