THE IMPACT OF COURT ORGANIZATION ON LITIGATION

CARROLL SERON

This article examines the ways in which litigation research has taken an insiders' view of the courts and the problematic implications of this position for a more critical analysis of sociolegal institutions. The first part presents a brief overview of the literature, showing the way in which court and judge are often collapsed into one, ahistorical and unchanging actor. Building on this critique, the second part presents a definition of the court as an organization that draws on a historical, comparative, and critical perspective. Finally, part III offers suggestions for expanding and enhancing research on litigation in the future.

Sociolegal scholars have used the study of litigation as a strategy to illuminate the relationship between law and social change. Their approach raises two fundamental issues: the underlying assumption about (1) the construction of the definition of a case to be studied and (2) the construction of the court or relevant legal actors involved in dispute resolution. In both instances, this research by and large has adopted the concepts of "case" and "court" socially constructed by legal practice as the appropriate analytic point of departure. That is, a "case" and a "court" are defined by scholars in much the same way as they are by the inside legal players—lawyers and legal academics.

A number of years ago, Richard Abel (1980: 826) commented:

> Social studies of law have reached a critical point in their development. The original paradigm is exhausted . . . . The source of this paralysis is that sociolegal studies have borrowed most of their research questions from the object of study—the legal system (whose problems are defined by legal officials)—and from those who studied it first—legal scholars (themselves lawyers).

Taking Abel's point seriously, we must reflect critically on the ways in which litigation research has adopted the terms and conditions of the insiders as the appropriate domain for study and, following this, the degree to which this vision may narrow our understanding of the problem. With this in mind, it is the purpose of

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this essay to problematize one of the two basic ingredients of litigation research—the concept of court.

In part I, drawing on my research with Wolf Heydebrand, I discuss how we defined, operationalized, and studied the organizational structure and transformation of federal district courts since 1890. These findings raise important questions for the study of litigation. In part II, I discuss some of the implications of these findings, focusing on the change from traditional-professional to technocratic administration—a development that one may trace from the turn of the century. Finally, in part III, I present some thoughts for using the findings from our study of federal district courts, and the issues raised about organizational practice, for enhancing the analysis of changing patterns of litigation.

I. THE CONCEPT OF LITIGATION IN CONTEMPORARY CASELOAD STUDIES

Generally, studies of the patterns of litigation begin from a common point of departure. Cases—as defined and reported by the court system—are conceived of as the dependent variable of this project. Further, the court itself is assumed, in all relevant respects, to revolve around the judge. This concept of the disputing process—the filing of an individual legal case to be formally resolved by a judge—dovetails perfectly with the legal profession's own view. The analytical construction of the legal process to be studied mirrors the legal profession's construction of a party-controlled case to be filed in court. Review of research on litigation discloses that the organization of the court is equated with the activities of the judge. That is, the judge is viewed as the sole, relevant decisionmaker: The judge is the organization and the organization is the judge.[1]

In a number of studies, researchers, operating on the implicit grounds that the organizational players do not alter the patterns of litigation, have examined case input and case output without any discussion of the court organization's possible impact. If cases are

[1] "Organizational" research on courts has, by and large, merged work from judicial process with that of small-group decisionmaking; the court is often defined as the judge and his/her "team," which may include lawyers and other professional actors of the courtroom. Thus, Jacob has written, "[w]hat the organizational model does best perhaps is to call attention to the interactional elements of trial court proceedings" where he defines trial court as "composed not just of the judge and clerks who are located in the courtroom and its adjacent chambers. Other important members of the work group, especially the attorneys who practice there, move in and out of the courtroom" (1983b: 414). This definition of the court as an organization still reifies a division between legal-judicial, nonjudicial, and management personnel so that those who operate on the legal-judicial side of the fence remain the focus of investigation.

As we document in our work, we take the whole court and its jurisdictional environment as the unit of analysis. For a further discussion, see pp. 1405-8 *infra*.

tried or settled, it is the choice of parties and carried out by judges. An individualistic, voluntaristic model of disputing underlies this research; thus, a possible shift from conflict resolution to routine administration is explained as a function of private choice on the part of the litigants. Given the assumptions about the organization and role of the court, this is the only logical conclusion that can be reached.[2]

In merging the activity of the court into the activity of the judge, all other aspects of the court's organization are treated as unchanging and as therefore having no effect on litigation (but see McIntosh, 1983). Ironically, because the court is thus a static institution, there is a strong ahistorical and atheoretical element to this research tradition. Filing cases, judging disputes, or managing litigants are isolated from a sociopolitical, economic, and changing context. Just as court insiders would lead us to believe that judges work in an organizational cocoon where changes in management ideologies, dispute resolution techniques, and procedural innovations do not affect modes of administration-adjudication, so researchers have tended to adopt a similar analytical point of departure.

II. THE ORGANIZATION OF ADJUDICATION

My research with Wolf Heydebrand[3] on the U.S. federal district courts builds upon two key analytic points: Courts are complex organizations in their own right; yet, courts function as a part of the state. Our project is framed by the hypothesis, drawn from the literature on American political economy, that the American judiciary—and its framework of legitimation, the rule of law—has experienced a fundamental transformation in response to changing and contradictory substantive and practical demands during the past century (i.e., since 1890). Analysis of the scope of this change within the American judiciary requires that we consider its role in the context of larger state activities. This analytic point departs from much research on courts (but see Skowronek, 1982) and warrants some elaboration.

The most analytically powerful work on the state begins with a straightforward proposition: the state's role revolves around two opposing tasks. On the one hand, the state must insure the development of a setting suitable for expansion of a private market economy; this role evolves out of a liberal, or Lockean, tradition.

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[2] For example, Friedman and Percival find that "dispute settlement in the courts is declining" and that "[i]n general, the trial courts today perform routine administration" (1976a: 296). Reflecting on the implications of these findings the authors write: "[a]pparently, litigation is not worthwhile for the potential litigant; it is too costly, in other words" (*ibid.*, p. 298).

[3] The discussion that follows is based on an extensive study undertaken with Wolf Heydebrand the results of which will be published as *Rationalizing Justice: The Political Economy of Federal District Courts* (1990).

On the other hand, the state must insure the legitimacy of an egalitarian polity composed of enfranchised and empowered interest groups; this role evolves out of a democratic-communitarian, or Rousseauian, tradition. Liberal and democratic values shape state activities. Further, these demands are exacerbated as liberal and democratic tensions become more pronounced in response to changing expectations. It is the state's task to balance these problems, to legitimate the social, economic, and political demands generated by contending forces.[4]

On a political level, this contradiction is reflected in the tension between an American tradition of "possessive individualism" (MacPherson, 1962) or classical liberalism (Hartz, 1955) and democratic struggles for political, social, and (albeit faintly) economic equalities. One may argue that rationalization of public services mediates this contradiction.[5] Scholars have argued that the push to rationalize services—to systematize, standardize, and routinize in order to maximize efficiency, productivity, and cost effectiveness—has been one response to structural tensions between opposing interests that demand costly democratic welfare on one side and resist paying for the economic transfers by the state on the other (see, e.g., Block, 1987; Lasch, 1977; Skocpol, 1985; Wiebe, 1967). Translated into judicial politics, this contradiction is embedded in an increase in demand for litigation, generated by new and variable pulls to process expanding types of disputes, without adequate fiscal resources as the government must also balance contending demands from other arenas and groups. Thus, one may trace these consequences back to tensions within liberal legalism between substantive and procedural due process, dispute resolution, and policymaking, or law and order.

We hypothesize that as a result of this dilemma, the district courts rationalized (i.e., simplified, standardized, routinized, systematized) traditional adjudicatory practices. This rationalization is evidenced by shifts toward administrative procedures in the initial management of cases as well as by adoption of new, less formal modes of dispute resolution. It is our contention that the incorporation of administrative strategies reveals one pivotal axis of the courts' response to the contemporary dilemmas of the state.

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[4] Of course, carried to its logical extension, each tradition has the potential to undermine or expose the limitations of the other and thereby reveal, in turn, the limits of the state's legitimacy (Wolfe, 1977).

[5] Some scholars describe this as a politics of bureaucratization; we prefer, however, to distinguish between rationalization and bureaucratization. That is, processes may be rationalized without necessarily being bureaucratized (see Stinchcombe, 1959). The classical definition of bureaucracy is borrowed from Weber (1967), where he defines this type of organization as one that is characterized by impersonality, formal rules, hierarchy, official positions, and expertise; as I will discuss later in this article, courts have become systematized without turning to bureaucratic strategies.

The Concept of a Court as an Organization

In contrast to the "insider's" view that courts are organizationally unique, we believe that it is helpful to relate the activities of courts to practices in other, similar institutional arenas.[6] Thus, in developing a conceptual framework for studying federal district courts, we began by systematically questioning the legalist conception of a court in which the judge or a professional team is viewed as the sole, relevant decisionmaker.[7] In contrast, our concept was constructed step by step from an analysis of the court's identifiable organizational components (for an earlier summary of these points, see Heydebrand, 1977: 765-71):

1. Federal district courts are located within a jurisdiction that is defined statutorily as a fixed geographical unit. As a practical matter, a case is usually filed in the jurisdiction where the dispute is alleged to have taken place. The geographical jurisdiction of the court may also be conceptualized as the interplay of demographic, legal-governmental, and economic activities that take place within that area. We call the group of indicators we used to measure the levels of these activities the *environmental profile* of the particular court.[8] The environmental profile of a court will shape the volume, variability, and complexity of the court's workload—or, to use the language of organizational analysis, the court's *task structure*.[9]

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[6] Methodologically two traditions of organizational analysis guided investigation: interorganizational and comparative analysis of organizations. An interorganizational approach focuses on the examination of an organization's response to various environmental pressures, such as fluctuations in the economy or population shifts. Drawing on our general observation that the courts are caught in a series of structural contradictions, we were especially concerned to embed the place of the third branch in the context of emerging state practices. Yet, we were equally concerned to employ a comparative approach which takes as its starting point the observation that it is helpful to examine work relations across similar types of organizations (e.g., to compare professional organizations such as courts, hospitals, or universities) and asks the researcher to take seriously the possibility that practices are not necessarily unique to the setting under investigation.

[7] We would include work that looks at the judge as the court, as well as more recent work that examines the judge and a "courtroom team." For a further discussion, see note 1 *supra*.

[8] Briefly, we developed indicators of these environmental variables by aggregating data collected by county from the U.S. Bureau of the Census to the level of U.S. federal districts. For example, we selected number of manufacturers with one hundred or more employees as one indicator of economic activity; when aggregated, this indicator reported the number of manufacturers with one hundred or more employees within a U.S. federal district. Further, each cluster of variables is represented by multiple indicators; thus, economic variables included manufacturers, retail and wholesale establishments, retail and wholesale trade, number of mergers (collected from the U.S. Conference Board), and white-collar workers by U.S. federal district. A much more extensive discussion of the methodology is contained in Heydebrand and Seron (1990: Appendix A).

[9] Task structure describes the assignment of responsibilities within a given organization and may generally be measured in terms of volume (sheer number), variability (variation in level of demand for service), and complexity

In developing measures of the court's environmental profile, we were guided by research on state theory which, as discussed earlier, documents an expansion in the governmental-service sector in response to shifting economic and demographic realities (see, e.g., Harvey, 1976). But the decentralized, federalist organization of courts means that demands may vary depending on specific historical circumstances and developments in an area. Thus, the decision to aggregate these variables to conform with the geographical reach of each court was done in order to capture specific dynamics confronting specific courts. Further, one major implication of this approach is that the range of civil cases in a court is assumed to be a function of the activities in the court's environment.[10]

2. Courts are public, heteronomous,[11] professional service organizations. Like other governmental agencies, courts deliver multifaceted services; this includes dispute resolution as well as norm enforcement and policymaking—activities that at times may come into conflict with one another. To the extent that courts do not control their own resources, jurisdiction, and personnel, they may be described as heteronomous organizations whose resources and personnel are overseen and allocated by Congress, as is the case with other government service organizations. Finally, courts, like hospitals, are professional organizations; their core organizational technology relies upon the expertise, autonomy, and control over decisionmaking that judges have historically enjoyed. Thus, judicial autonomy, viewed in comparative and historical perspective, is a relative and not an absolute characteristic of court practice.

3. Courts are relatively passive organizations in a demanding environment (see also Black, 1973; Skowronek, 1982): Others outside the court initiate litigation. Further, both the geographical and substantive boundaries are formally established through acts

(the number of different subtasks and the degree of skill required to execute the task). In this study, the court's caseload is the indicator used to measure the organization's task structure. For a further discussion of the organizational literature, see Hall (1987).

[10] For example, the number and composition of civil cases in the federal system (e.g., U.S. versus private matters, or civil rights versus labor versus personal injury cases) are a function of the expanding demands on the state to regulate populist democratic demands to extend civil rights and civil liberties, as well as more traditional expectations to resolve diversity matters (see, e.g. Friendly, 1973); the impact of these social forces on a specific court may, however, vary considerably.

The logic of this relationship suggests, of course, one major set of hypotheses of this study: that the task structure of the federal district court is a function of the relations of environmental variables. To foreshadow a later point, our findings show that the presence of the governmental sector is the primary variable in an explanation of most categories of civil cases.

[11] Again, *heteronomous* is a term that is relatively common to the organizational literature and describes an organization that is organizationally dependent; in this sense, it may be contrasted with a relatively autonomous organization, such as a business firm which, for example, writes its own budget. For a further discussion, see Heydebrand (1973).

of Congress.[12] Consequently, courts respond to a range of demands that they do not control, and they are without authority to initiate activity.

4. Courts are labor-intensive organizations. Courts' services are provided to individuals under the direct supervision of professional personnel—judges. As noted, the types of cases that courts hear are externally defined, but once a case is within the court, judges have historically enjoyed considerable discretion and professional control over the substance and form of outcomes.[13] Judges are not, however, the only personnel of district courts; in addition to judges' direct support (a secretary and two law clerks), courts employ support personnel in the clerk's office from a wide variety of occupational backgrounds, including management and computers. Thus, in defining the personnel and resources of this organization we include judges, magistrates, judges' support staff, and clerk's office staff.

5. Courts—as distinct from most welfare state organizations—exhibit relatively low levels of bureaucratic formalization and centralization of authority.[14] While it is true that many elements of the clerk's office exhibit bureaucratic features, judicial decision-making is professional and collegial. Traditionally, the organization of the court exhibited a dichotomy between judicial and non-judicial coordination; building on this core, federal courts also have direct relations with such other organizations as the U.S. Attorney's office, FBI, or private practitioners. The constellation of these various sets of relations suggests that it is helpful to think of courts as loosely coupled networks of activities rather than as formally integrated and closed systems.

6. Finally, a key service of courts is the resolution of disputes. Building on an organizational framework, we define the services of courts as all modes of output—trials as well as pretrial and "no ac-

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[12] This includes, of course, the budgets of courts as noted in point 2 above.

[13] The types of cases that enter the court should be distinguished from the court's rules of operation. Since 1934 the Supreme Court has had the authority to write its own rules; while it is a rather common practice for most organizations to prepare their own internal operating procedures, this was a controversial change in the organization of the courts. (For a further discussion of a history of the Rules Enabling Act, see Burbank (1982).) Again, the advantages of a more comparative approach to the study of organizations is illustrated by this point because one is forced, at the very least, to note that the court's attempt to move rulemaking into the judicial branch reflects a general bent toward the rationalization of public services.

[14] In keeping with the tradition of organizational research, we distinguish between a bureaucratic and a professional organization. (For a definition of a bureaucracy, see note 5 *supra*.) To the extent that a bureaucratic organization relies upon expertise (i.e., formally certified knowledge), it is not necessarily incompatible with professional organization (see, e.g., Hall, 1968). It is, however, also the case that there is an inherent tension between management's concern to insure efficiency and professionals' concern to control their own work (see, e.g., Freidson, 1986).

tion" dispositions.[15] Each form of output is treated as an equally important dimension for understanding the operation and function of this organization.

Indeed, the output of courts is the dependent variable of this study—the phenomenon to be explained. In developing a framework to explain the service of federal district courts, we sought to construct a model that takes account of the key elements described above. Specifically, we focused on the organizational factors that explain various modes of output where output is operationalized as trials as well as pretrials and no actions (see Fig. 1). Building from this point, we hypothesized that the forms of output in federal district courts are explained by the court's task structure and resources (both personnel and fiscal). Finally, we reasoned that task structure and resources are related to the demands generated within the jurisdictional environment of the court.

Operationally, we constructed a data set in which the U.S. district court and its jurisdictional environment is the unit of analysis. Figure 1 provides a schematic overview of our model. Each of the four main dimensions—environmental profile, task structure, resources, and output—consists of a set of specific analytic elements. The general causal assumption represented by this diagram is that environmental characteristics of courts are independent variables and that the output characteristics are dependent variables, with task structure and organization of courts as intervening variables. Data were available to examine these sets of relations in the post–World War II period.[16]

The Findings: Rationalization of Court Organization

What can we say about the rationalization of federal district courts? At a general level, changes in organizational structure may be traced to a response to the twin pressures of increasing demand for court services coupled with relatively declining re-

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[15] From the standpoint of litigation strategy one might argue that simply filing a case is a court action, but we are conceptualizing this from the standpoint of the organization of the court. A pretrial disposition is reported when the court intervenes in the case, but the case is concluded short of trial. A no action disposition is reported when the case terminates short of formal court intervention.

[16] To supplement and to enrich this model, we also examined trends in the courts' caseload, resources, and output since the turn of the century. Further, we analyzed systematically the debates over court reform and modernization of the courts beginning in 1789 to contextualize and to specify the meaning and definition of our quantitative variables. Finally, one of the researchers explored the emergence and role of U.S. magistrates through participant observation and extensive open-ended interviews with judicial and court personnel across a variety of courts. Thus, following the methodological concept of triangulation (Denzin, 1970), we have relied on multivariate analysis, content analysis of historical documents, and participant observation of court practices to check, and balance, the shortcomings inherent in each of these methodologies.

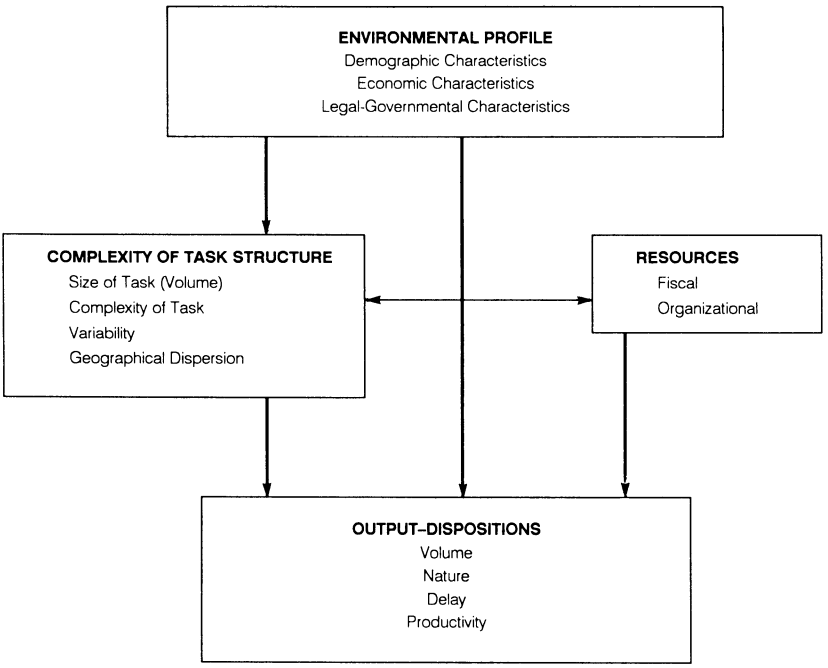

Figure 1: Descriptive model of four basic dimensions of analysis of federal district courts. The arrows indicate the assumed causal direction of influence.

sources. More specifically, our findings document important changes in key organizational factors of federal district courts.

1. The Tasks of Federal District Courts. Examination of the trends in the courts' task structure from 1904 to 1985 discloses both an absolute and relative increase[17] in the size and variability of demand. Further, an increase in these factors coupled with a change in the range of disputes entering the courts suggests that courts confront a more complex set of demands. Of the three clusters of variables (demographic, legal-governmental, and economic) that describe the environmental profile, legal-governmental indicators emerge as the most important set of factors in an explanation of civil case filings. Environmental effects also vary across subcategories of cases (e.g., corporate, labor, civil rights, etc.), underscoring the variable influences on court dockets and the difficulty of imposing uniform procedures in light of uneven demands.[18]

[17] Case filings were standardized using the population aged eighteen years and over. For a further discussion of this decision, see Heydebrand and Seron (1987).

[18] This helps explain why it is so unfeasible for courts to bureaucratize in the classical sense of this term. That is, a necessary precondition for bureaucratization is the routinization of tasks into a set of predictable problems; our findings suggest, however, that federal district courts' tasks do not meet

By itself, however, an increase in demand, whatever its dimensions, does not constitute the basis of a "crisis." Rather, this phase of the analysis only documents one aspect of our argument.[19] To determine whether the change in demand on the courts has posed an intraorganizational dilemma we examined these findings in relationship to the resources and personnel of the federal courts.

2. The Fiscal and Personnel Resources of the Third Branch. Drawing on Schumpeter's insight that the budget of a government is a useful indicator of its political and social priorities, we compared fiscal allocations to the judicial branch with those of the Congress and the Department of Justice from 1910 to 1984 as a way to set the stage for looking at the court's fiscal priorities. These findings show that, compared to either the Department of Justice or Congress, the federal courts have received a relatively smaller portion of the budget since the New Deal period, and in the post–World War II period, budget increases for the courts have been markedly less than those of the other governmental units examined.

Focusing on the court's intraorganizational budget, we compared resources allocated to judicial and nonjudicial support functions from 1950 to 1984. These data document a relative increase in the nonjudicial administrative side of the courts' budget (including research, development, and education, i.e., R&D functions) and a relative decline in the allocations to the judicial side of the court's budget. Together, these allocations make concrete an organizational shift in priorities from adjudicatory to administrative expenses.

Building on this historical overview of the courts' budget, multivariate analysis of the relative effect of environmental and task variables on personnel and resources discloses that (a) legal-governmental indicators have the strongest relative environmental effect and that (b) civil, and particularly government, tasks contribute the main share of the explained variance of indicators of personnel and resources. These developments suggest that the federal courts are increasingly a forum for resolution of public law disputes. Organizationally, these developments have created the conditions of a "crisis" within the federal district courts, due to the

this important precondition. Of course, some categories of cases are more routine (e.g., social security) than others (e.g., new areas of patents or civil rights); but, on balance, nonroutine cases remain an important element of federal district court filings. Thus, courts have become more rational organizations, but the form of this change is *not* bureaucratic (see Stinchcombe, 1959, 1965). See note 5 *supra*.

[19] This point distinguishes our research from much of the work that looks at increases or decreases in disputing as indicative of a crisis. Empirical research to explore the so-called litigation explosion has revealed that when changes in population are taken into account, for state courts at least, on balance there has not been an increase in court filings (see Krislov, 1986). This finding is not true for federal courts.

relative increase in demand coupled with a shift in resource priorities. Next we asked, how have the courts responded to this organizational dilemma?

3. Intraorganizational Responses. In response to this organizational dilemma our findings suggest that there has been a distinctly observable trend toward increased settlement of cases through various pretrial techniques. While a trend toward pretrial settlement of both civil and criminal cases is not new per se, the content, rationale, and ideology of this tendency has changed. One may detect reliance on management language—efficiency, speed—to justify alternatives to trial. Thus, the analysis of the language of settlement increasingly emphasizes the need to manage litigation (see, e.g., changes in Rule 16 of Federal Rules of Civil Procedure) and to introduce substitutes for trial such as court-annexed, nonbinding arbitration. Further, this analysis discloses a push to expand the appropriate arenas and personnel; for example, it is suggested that mediators, neutrals, or arbitrators may oversee dispute resolution in quasi-public and private organizations (e.g., lawyers' offices or the American Arbitration Association offices) with the effect of blurring the traditional distinctions between a public and private activity.

In keeping with these developments, our findings show that judges are by no means the sole decisionmakers of federal district courts. In addition to judges, the presence of magistrates, law clerks, and support staff is associated with and statistically explains the disposition of cases. This set of findings, in conjunction with observational data of court practices, discloses that the traditional dichotomy between judicial and nonjudicial labor (or professional and support) is giving way to a new, emergent organizational model that relies on teamwork (between judge and magistrate, judge and law clerk,[20] and judge, magistrate, and law clerk). This teamwork model evidences interdependence between various tiers of professional and nonprofessional labor. While a teamwork model includes elements of bureaucratization (i.e., hierarchy, management rules, defined tasks) and deprofessionalization (i.e., diminished control and autonomy over work), closer scrutiny suggests that, in conjunction with other organizational developments, it transcends both, again a theme I shall return to in the next section.

When cases are not routed to alternative means, one may trace a trend toward a more activist judicial posture toward management of cases (see also Resnik, 1982). This practice is given support through educational programs (including seminars, videos,

[20] Anecdotal studies of law clerks suggest that their work has changed. Once, it appears, most of their work was limited to the drafting of opinions for review and rewriting by judges. Today, it is not unusual for clerks to screen cases.

and audio cassettes) that teach judges to think of the court as an organizational and coordinated "system" in which they are encouraged to take a proactive posture toward pretrial and to encourage and raise settlement where appropriate (see, e.g., Federal Judicial Center educational materials). Supporting the systemic push in the federal courts, there is an increasing reliance on computerized systems to trace the flow of cases. This development has at least two notable consequences: (a) judicial output and productivity may be intraorganizationally compared to insure that all judges are staying abreast of caseloads and (b) judicial output and productivity can be used by appropriate committees of the House and Senate to determine if additional personnel and resources are justified.

A brief review of our findings thus reveals an important shift in the organizational structure of the federal district courts. The use of less formal, routinized, and simpler pretrial management procedures; the blurring of distinctly private and public arenas for dispute resolution practices; the attempt to manage the work of professionals to insure productivity and efficiency; the introduction of computerized procedures to aid in the tasks of management; and teamwork techniques are themes and variations of modern management discussions. These findings document a trend within federal district courts, similar to trends in many contemporary organizations, from traditional-professional case processing with the focus on adjudication to technocratic case processing with the focus on administration.

III. FROM ADJUDICATION TO TECHNOCRATIC ADMINISTRATION

Traditionally, adjudication of civil cases included resolution of a bipolar dispute initiated and documented by a party and based on a set of self-contained events that happened in the past (see, e.g., Chayes, 1976). In this model of adjudication, the decision of a judge was seen to be the outcome of a reasoned process of umpiring a disagreement about the facts of a case, based on a general acceptance of the validity of substantive and procedural legal rules and the desirability of a just outcome. The normative model of the judge was that of a quintessential "professional"—the objective expert—facing a case to which the special knowledge of the law was to be applied.[21]

In contrast to this model of adjudication, rational administrative decisionmaking implies the routine application of technical rules and precedent to particular problematic situations under conditions of agreement on both the facts and the desired outcome

[21] In developing this picture, I am not suggesting that all cases were, in fact, decided within these guidelines; indeed, the empirical evidence suggests otherwise.

(Thompson and Tuden, 1959). The outcome is usually an unappealable action.[22] Generally, we tend to associate this model of decisionmaking with the development and expansion of the modern welfare state (see, e.g., Skowronek, 1982; Wiebe, 1967).

The history of professions shows a tendency for services to be rendered by one person—be it the doctor, the lawyer, or the judge—who has the authority of expertise to make decisions regarding a particular case. Similarly, the history of bureaucratization so vividly described by Weber reveals the consolidation of decisionmaking into a set of rules overseen by an impersonal official. In both cases, integration of decisionmaking in the hands of a professional or a bureaucrat describes a central theme of contemporary society and captures the essence of a modern trend toward rationalization. While the value rationality of the professional is more "rational" than mere guesswork, tradition, or charismatic vision, it is not as formally rational as the routine decisionmaking of an administrator. And neither the professional nor the administrative decisionmaking process is as technically rational as the output of a computer in which the technical process provides solutions to the substantive problems at hand. If bureaucratic conservatism tends "to turn all problems of politics into problems of administration" (Mannheim, 1936) and if "professionals tend to turn every problem of decision-making into a question of expertise" (Bendix and Roth, 1971: 148), then the technocratic strategy can be said to turn problems of politics, experts, and administrators into strategies of cybernetic systems control.

A trend toward technocratic administration of justice (Heydebrand, 1979) is part of a larger modern trend toward organizational rationalization. But is that all?

In practice, an adjudicatory model is no longer the sole center of federal district court practice. Rather, adjudication is but one *form* of dispute resolution; other forms—mediation, arbitration, private settlement—are viewed as equally acceptable and should be available to insure a "fit" between the scope of the dispute and mode of resolution. Thus, dispute resolution may be carried out privately (in a judge's chamber or outside the court itself) or publicly, formally or informally, flexibly or procedurally—it all depends on the circumstances and demands of the case. Together, these themes point toward the development of a diagnostic model that presents, perhaps not surprisingly, many features of the medical model (Provine, 1985); thus, the judicial role becomes one of determining where to send the case for appropriate treatment. In some instances, it may be "best" for the case to stay on a traditional adjudicatory track in preparation for trial; but in other in-

[22] This development of a more rationalized forms of administration is, of course, brilliantly captured by Weber.

stances, cases may be routed first to alternative means of resolution.

Of course, these developments raise very important political questions that go beyond the scope of this article.[23] But for our purposes it is essential to weigh critically the implications and relevance of these developments for analyzing the meaning of changing patterns of litigation.

IV. IMPLICATIONS FOR THE STUDY OF LITIGATION

In part I, I showed how longitudinal research on courts has incorporated a central political or legal value into the study of litigation—the universality, timelessness, and individualistic framework of adjudication; that is, longitudinal research has borrowed the insider's construction of this institution. For example, shifting patterns of practice (especially the change—or debated change—from trial to settlement of cases) are explained as the result of individual choice.

In parts II and III, I showed that shifting patterns of case filings and case outcomes may be more than the product of an individual's choice. An organizational perspective demands that we weigh, as well, the relative capacity of a court to handle its work; further, where and how efforts are expended to address issues of court capacity reflect political decisions. For example, steps to add managers rather than judges or computers rather than magistrates must, in the final analysis, be analyzed as *political* decisions about how the organizational problem of court capacity will be addressed.[24] Where does this leave students of litigation research? In closing, I would like to speculate on this question.

First, our work demonstrates that organizational practices are historically specific. Since the Progressive Era, in the federal courts at any rate, there has been a strong move to bring the courts into the twentieth century—to make them more efficient, effective organizations by reducing judicial and litigant discretion. Our findings only report developments over an eighty-five year period (1900–1985) for one tier of courts in a multitier and complex process of dispute resolution. In this regard, questions remain to be answered. For example, over the past eighty years has a managerial orientation shaped organizational practice in other tiers of the court system? Prior to the administrative revolution of the twentieth century, what organizational and political practices shaped court practices?

Second, the core practices and procedures identified by the or-

[23] Note that this is not to suggest that the shift to informalism, management, and/or delegation is an inherently negative development. For a further discussion of this point, see Heydebrand and Seron (1990, chs. 1 and 8).

[24] Of course, this push toward rationalization has the potential to backfire—precisely because of the political traditions that are associated with this institution. For a further discussion, see Heydebrand and Seron (1990: ch. 8).

ganization itself do not develop in a vacuum. Like all organizations, courts borrow constructs, adopt managerial practices, and integrate new systems with traditional practices. It follows that a healthy skepticism concerning the insider's presentation of problems must inform the research enterprise. For example, by theoretically and methodologically including nonjudicial resources in the definition of a court, we discovered the sources of developments in adjudication that a narrower definition of the organization of federal district courts would have precluded.

Third, courts are not passive observers of case filings. Neither are they passive observers of how disputes are eventually resolved. Individual choice or motivation of litigants is not the only factor affecting input or outcome. Rather, our findings present persuasive evidence to suggest that it is reasonable to hypothesize that organizational practices will have an impact on which cases enter the system and on the form of resolution, including the push to explore new arenas of dispute resolution. That is, based on our findings it is reasonable to investigate the extent to which court practice is a factor in explaining shifting patterns of litigation in other arenas of the court system.

A broad implication for longitudinal litigation research follows. Studies of litigation should weigh the role of the court. At the same time, however, it is equally important to keep in mind that this is an *empirical* question for investigation. A great deal of thought has been given to refining and clarifying how economic developments may impact case filings (see e.g., Munger, 1988; Stookey, 1990). Clearly, the grand traditions of law and economic development give center stage to this question by focusing on the role of law in the shift from an agrarian to a market economy and all the repercussions that follow. But, in taking on this big question, we should not loose sight of the court. The court is a part of the "environment" of litigation. Thus, it is logical to hypothesize that institutionally, organizationally, and ideologically the court—and its symbols—shapes politics.

With respect to the last point, we may speculate that court practices shape symbolic meanings. A recurring theme of twentieth-century politics has been to cool out conflict by turning charged social problems over to experts who are trusted to manage efficiently, neutrally, and objectively. Indeed, the language of politics and the language of management are often confused. Developments in the federal courts mirror this perplexing theme. The messages of an administrative revolution send conflicting signals about the content and depth of a political commitment to due process and a rule of law. Shifts in organizational practice—often in the name of universal improvement—complicate understanding the balancing of liberal and democratic traditions. Finally, and of perhaps greatest importance, future research should examine the impact of administrative changes on the symbolic role of courts.