

JUSTICE IN MANY ROOMS: COURTS, PRIVATE ORDERING,
AND INDIGENOUS LAW*

Marc Galanter

The flow of cases into the courts figures prominently in current discussion of the state of American law. Fears of courts being overwhelmed by swollen caseloads are accompanied by distress at disputants' too ready resort to the judicial process and courts' too ready intrusion into unsuitable areas. (Pound Conference 1976; Rosenberg 1972; Barton 1975.) On the other hand there is concern to provide "access to justice" to groups and interests that have found it difficult to obtain a judicial hearing (for an overview, see Cappelletti and Garth 1978). Notwithstanding sharp differences about which cases should be in the courts, these contrasting viewpoints share an emphasis on the centripetal movement of cases into the courts and a tendency to define the problem as one of matching cases and forums: courts should get the number and kind of cases they can handle, and cases should find appropriate forums in which they can be resolved.

This notion of a good match between forum and dispute is set within a framework of presuppositions about disputes and forums. Typically it is assumed that disputes require "access" to a forum external to the original social setting of the dispute, a location at which some specialized learning or expertise will be brought to bear. Remedies will be provided as prescribed in some body of authoritative learning and dispensed by experts who operate under the auspices of the state. The view that the justice to which we seek access is a product that is produced--or at least distributed--exclusively by the state, a view which I shall for convenience label "legal centralism,"¹ is not an uncommon one among legal professionals.

¹ An attempt to explicate the "paradigm" that is here labelled legal centralism is found in Galanter 1974a, 1976; Trubek and Galanter 1974. The label is borrowed from Griffiths (1979), who suggests that the state-centered view of legal phenomena is a kind of legal Ptolmaism. Our habit of describing all legal phenomena in relation to the state Griffiths finds "essentially arbitrary...the state has no more empirical claim to being the center of the universe of legal phenomena than any other element of that whole system does..." (id. at 48).

*© 1981 Marc Galanter. See page 47 below for acknowledgments.

I submit that this legal centralist model is deficient. For the moment, I want to show how several lines of social research on law lead me to question its descriptive adequacy. I will also suggest the implications of abandoning the legal centralist paradigm for policy designed to improve "access to justice."

I. THE CENTRIFUGAL PERSPECTIVE:
BARGAINING AND REGULATION "IN THE SHADOW OF THE LAW"

A convenient place to start is with a crude map of the landscape of dispute processing, a map drawn from several decades of social research on law in the United States. My recklessness in drawing generalizations about the United States is aggravated by implying that this map might be usable in other societies as well. Furthermore, for convenience I shall use the term court to include all official forums, including various bodies that would not be considered courts in local terms.

Most disputes that, under current rules, could be brought to a court are in fact never placed on the agenda of any court.² This includes criminal as well as civil matters. Many of these disputes are "resolved" by resignation, "lumping it," "avoidance," "exit" or "self-help" by one party.³

Of those disputes pursued, a large portion are resolved by negotiation between the parties, or by resort to some "forum" that is part of (and embedded within) the social setting within which the dispute arose, including the school principal, the shop steward, the administrator, etc. Negotiation may range from that which is indistinguishable from the everyday adjustments that constitute the relationship to that which is "bracketed" as a disruption or emergency. Similarly, embedded forums may

² On the contours of inaction see Macaulay (1963); Ennis (1967); Mayhew and Reiss (1969); Hallauer (1972); Best and Andreason (1977); Curran (1977).

³ On these unilateral responses, see Felstiner (1974); Hirschman (1970). Merry (1979) points out that exit and avoidance may be the goal as well as the sanction in the dispute process. A disputant may, for example, threaten resort to a court in order to effectuate a desired exit (1979:894). On the other hand, the presence of exit as a credible sanction may be important to the working of other remedies; that is, the threat of resort to exit may create a "bargaining endowment" (see page 6 below) just as does the threat of resort to adjudication. A remedy for one party may be a sanction to the other, and the threat of sanction may induce remedial action.

range from those which are hardly distinguishable from the everyday decision-making within an institution to those which are specially constituted to handle disputes which cannot be resolved by everyday processes.

Of those disputes taken to a court (official forum), the vast majority are disposed of (by abandonment, withdrawal, or settlement) without full-blown adjudication, and often without any authoritative disposition by the court. (Nims 1950; Zeisel, Kalven and Buchholz 1959; Ross 1970.) Of those cases that do reach full authoritative adjudication by a court, a large portion do not involve a contest. They are uncontested either because the dispute has been resolved (as often in divorce) or because only one party appears. (Cavanagh and Sarat 1980; Friedman and Percival 1976.)

We should not assume that courts are places where cases enter and (subject to attrition) proceed normally and typically to a trial with genuine adversary contest and a decision according to formal rules. Instead we should see courts as arenas in which various kinds of dispute (and non-dispute) processing take place (cf. Mohr 1976). Courts are the site of administrative processing, record-keeping, ceremonial changes of status, settlement negotiations, mediation, arbitration, and "warfare" (the threatening, overpowering and disabling of opponents), as well as of adjudication. Indeed, in most courts most moves into the formal adjudicatory mode are for purposes other than securing an adjudicated outcome. The principle determinants of these processes must be sought in the goals, resources and strategies of the parties (including, for this purpose, the court personnel). This does not mean that the "law" and the courts as institutions are unimportant, for the parties' strategic options and resources (and even goals) are to some extent supplied by the law and the institutions which "apply" it.

To sum up, courts resolve only a small fraction of all disputes that are brought to their attention. These are only a small fraction of the disputes that might conceivably be brought to court and an even smaller fraction of the whole universe of disputes.

What are we to make of this crude map? Should we regard it as an exposure of scandalous deficiencies? Do we wish to have more disputes enter the official system and proceed further toward definitive resolution? Is the utopia of access to justice a condition in which all disputes are fully adjudicated? Surely not, for we know enough of the costs (financial, relational, psychic) of litigation to suspect that such a condition would be monstrous. But are costs the only problem? Suppose we could reduce them to a tolerable level. Are the benefits so appealing to us? Do we want a world in which there is per-

fect penetration of norms downward through the pyramid so that all disputes are resolved by application of the authoritative norms propounded by the courts? We know enough about the work of courts to suspect that such a condition would be monstrous in its own way.

Two recent works dramatize this point forcefully. Noonan (1976) shows how our most esteemed courts and judges failed to be responsive to personal needs or social interests when they allowed "masks" (i.e., formal classificatory concepts) to conceal the complex human and social realities in the cases before them. Analyzing some well-known contracts cases, Danzig (1978) traces the implications of the inevitable shortages of resources, limitations of skill and knowledge, and infirmities in the process of capturing the facts, that attend adjudication even at its best. He depicts even craftsmanlike and thoughtful judges making decisions that fall far short of either the satisfactory resolution of the controversy at hand or the establishment of viable controls over the area of social life in which it arose. Such accounts imply that imperfect joinder between judging and social setting afflicts not only the hidebound or the unimaginative judge, but also the heirs (even the patron saints) of a more expansive style of judging.

In many instances the participants can devise more satisfactory solutions to their disputes than can professionals constrained to apply general rules on the basis of limited knowledge of the dispute. (Cf. Eisenberg 1976:658ff.; Mnookin and Kornhauser 1979:956ff.; Enker 1967; Dunlop 1975.) The variability of preferences and of situations, compared to the small number of things that can be taken into account by formal rules (cf. Kennedy 1973) and the loss of meaning in transforming the dispute into professional categories suggest limits on the desirability of conforming outcomes to authoritative rules.

Apart from these practical objections, the ideal of perfect penetration of official norms is subject to the even more fundamental objection that it is a mirage, a chimera. For it attributes to rules propounded in the lofty setting of the legislature or the appellate court a single determinate meaning when "applied" in a host of particular settings.⁴ But most authoritative norms are ambiguous; variant readings are possible in any complex system of general rules; uniformity of meaning across time and space is

⁴ Feeley 1976:500. Cf. Damaska's (1975:528) observation that "there is a point beyond which increased complexity of law, especially in loosely ordered normative systems, objectively increases rather than decreases the decisionmaker's freedom. Contradictory views can plausibly be held, and support found for almost any position."

an achievement purchased at substantial cost.⁵

A program of subordinating all variation of the "law in action" to the uniformity of formal law is like a program of making all spoken language an exact replica of written language. No one would deny the utility or importance of written language, but it does not invariably afford the best guidance about how to speak. We should be cautioned by the way that our tendency to visualize the "law in action" as a deviant or debased version of the higher law, the "law on the books," parallels folk beliefs about language usage. Ferguson (1971:222-23) observes that:

...writing almost never reflects speech in an exact way, written language frequently develops characteristics not found in the corresponding spoken language.

...the use of writing leads to the folk belief that the written language is the 'real' language and speech a corruption of it. This attitude seems to be nearly universal in communities which have attained the regular use of writing. (Emphasis in original)⁶

⁵ On the presence of variant local versions of a single official law, see e.g., Jacob 1969; Goldstein and Ford 1971; Wilson 1968. On contrasting local legal cultures, see Levin 1977; Church, et. al. 1978. "In seeking legal services, what a person is often buying is sophisticated prediction by a professional concerning how judges in a local jurisdiction will probably apply vague legal standards to the circumstances of the particular case." Mnookin 1979:29-30. For a general discussion, see Galanter (forthcoming).

⁶ Ferguson's conclusions about the effect of this "folk belief" on language policy suggest further parallels with the concentration of law reform energies on improvement of the written law and elimination of the 'gap' between the law on the books and the law in action (id. at 224):

The importance of this folk belief for language development lies in the way it limits the kind of conscious intervention in the form of language planning that the community will conceive of or accept. Much time and effort is often spent on questions of orthography and language reform, in the tacit assumption that changes in the written language will be followed automatically by changes in speech. Some reforming zeal is also expended on bringing pronunciation in line with existing written norms. Insofar as these various efforts are part of a standardization process which responds to the communication needs of the speech

The incommensurability of law in action with the law on the books should not be taken as a condemnation of the status quo. Nor should the observation of the limited role of courts in the decisive resolution of disputes be taken as an assertion that courts are unimportant in social ordering.

The contribution of courts to resolving disputes cannot be equated with their resolution of those disputes that are fully adjudicated.⁷ The principal contribution of courts to dispute resolution is providing a background of norms and procedures against which negotiations and regulation in both private and governmental settings take place. This contribution includes, but is not exhausted by, communication to prospective litigants of what might transpire if one of them sought a judicial resolution. Courts communicate not only the rules that would govern adjudication of the dispute, but possible remedies, and estimates of the difficulty, certainty, and costs of securing particular outcomes.

The courts (and the law they apply) may thus be said to confer on the parties what Mnookin and Kornahuser call a "bargaining endowment," i.e., a set of "counters" to be used in bargaining between disputants. In the case of divorce, for example:

community, they may result in actual change, especially if they do not conflict with the basic phonological and grammatical structure of the language, but often the efforts fail, at least in part because the beliefs do not correspond to the realities of the written-spoken relationship.

⁷ Lempert (1978:99-100) usefully distinguishes various ways in which courts contribute to dispute settlement:

(1) courts define norms that influence or control the private settlement of disputes; (2) courts ratify private settlements, providing guarantees of compliance without which one or both parties might have been unwilling to reach a private settlement; (3) courts enable parties to legitimately escalate the costs of disputing, thereby increasing the likelihood of private dispute settlement; (4) courts provide devices that enable parties to learn about each other's cases, thus increasing the likelihood of private dispute settlement by decreasing mutual uncertainty; (5) court personnel act as mediators to encourage the consensual settlement of disputes; (6) courts resolve certain issues in the case, leading the parties to agree on the others, and (7) courts authoritatively resolve disputes where parties cannot agree on a settlement.

... [t]he legal rules governing alimony, child support, marital property and custody give each parent certain claims based on what each would get if the case went to trial. In other words, the outcome that the law would impose if no agreement is reached gives each parent certain bargaining chips--an endowment of sorts. (1979:968)

Similarly the rules of tort law provide bargaining counters which are used in a process of negotiating settlements. (Ross:1970) The gravitation to negotiated outcomes in criminal cases is well-known. One astute observer concludes that "the actual significance of the sophisticated adversary process before the jury" in American criminal cases is "to set a framework for party negotiations, providing 'bargaining chips.'" (Damaska 1978:240) The negotiating dimension is found in the most complex as well as in the most routine cases; thus in "extended impact" cases, the involvement of the courts supplies standards and the setting for negotiations among the parties. (Cavanagh and Sarat 1980: 405-07; Diver 1979.)

Negotiations may involve protracted and explicit bargaining or tacit reference to established understandings. The terms of trade may be fixed rather than established ad hoc. Thus Feeley (1979:462) observes that

Discussions of plea bargaining often conjure up images of a Middle Eastern bazaar, in which each transaction appears as a new distinct encounter, unencumbered by precedent or past association. Every interchange involves higgling and haggling anew, in an effort to obtain the best possible deal. The reality of American lower courts is different. They are more akin to modern super-markets, in which prices for various commodities have been clearly established and labeled in advance.

And Ryan and Alfini (1979:502) describe a setting in which the expectations of participants are grounded in the known upper and lower limits of the judges.

The bargaining endowment which courts bestow on the parties includes not only the substantive entitlements conferred by legal rules, but also rules that enable those entitlements to be vindicated--for example, rules excluding evidence favorable to the other party or jeopardizing the claim of the other party (e.g., contributory negligence.)⁸ But rules are only one part of the endowment conferred by the forum: the delay, cost and uncertainty of eliciting a favorable determination also con-

fer bargaining counters on the disputants.⁹ The meaning of this endowment, of course, is not fixed and invariable, but depends on the characteristics of the disputants: their preferences,¹⁰ negotiating skill, risk averseness, ability to bear costs and delays, etc. A different mix of disputant capabilities may make a given endowment take on very different significance.

Mnookin and Kornhauser refer to the bargaining between the parties as occurring "in the shadow of the law." But this is not the only kind of "private ordering" that takes place in the law's capacious shadow.¹¹ We can extend the notion of the bargaining endowment to imagine the courts conferring on disputants a "regulatory endowment." That is, what the courts might do (and the difficulty of getting them to do it) clothes with authorizations and immunities the regulatory activities of the school principal, the union officer, the arbitrator, the Commissioner of Baseball and a host of others.

⁸ Of course this is in addition to the other functions of rules--to guide courts in adjudicating cases and to guide parties in planning, in defining their expectations, etc. Qualities that commend a rule for one purpose may make it a disaster for another. Mnookin and Kornhauser (1979:980) give the example of joint custody as a rule that "may have good characteristics as a background rule for private ordering but may nevertheless be unacceptable as a standard for adjudicating disputed cases."

⁹ Delay, cost and uncertainty are partly a product of rules--e.g., a discretionary standard involving balancing of many factors requiring detailed proof is more costly, time consuming and uncertain in application than a mechanical rule. But cost, delay and uncertainty also result from such non-rule factors as the number and organization of courts and lawyers, the variability of judges, etc.

¹⁰ Mnookin and Kornhauser's suggestive analysis is both illuminated and limited by the special characteristics of divorce disputes. For the most part, the disputants display a lack of interest in general effects, such as precedents, new rules, etc. So the "preferences" of the parties lack a dimension that is present in other kinds of disputing by parties who anticipate and plan for a series of comparable disputes over time. (See Galanter 1974b.)

¹¹ An earlier use of the shadow imagery is in Shapiro (1975:329), who refers to "legalized bargaining under the shadow supervision of an available court." And a much earlier use is found in Tocqueville (1953:I,140) who observed in 1838

It is a strange thing, the authority that is accorded to the intervention of a court of justice by the general opinion of mankind! It clings even to the mere formalities of justice, and gives a bodily influence to the mere shadow of the law.

The shadow metaphor is attractive because it captures other

The distinction between negotiation and regulation is a relative one. The continuity between them is displayed, for example, in the continuing relations between a university and its food service contractor, where the process of monitoring performance and negotiating adjustments partakes of (or may be interpreted as) both. (V. Goldberg 1976) Plea bargaining strikes me as another example of the overlap of bargaining and regulation. And of course regulation may involve an important element of bargaining--as in agency "notice and comment" rulemaking or in the relations of guards to prisoners described by Sykes (1958). Perhaps we should think of bargaining and regulation as the ends of a spectrum, along whose length we can find many intermediate (and alternating) instances. (See Eisenberg 1976.)

Courts bestow regulatory endowments in many ways. First, the courts provide models (norms, procedures, structures, rationalizations) for such regulatory activity. Second, there are explicit authorizations and immunities conferred by the courts (and the law) on an immense variety of regulatory settings--the school teacher and principal, the prison warden, the agricultural cooperative, the baseball league, the union leader. Such authorizations may be explicit rulings about the regulatory activity--as in judicial doctrine about the authority of arbitrators, school officials and church bodies.¹² Or it may be implicit in rules of jurisdiction, standing and other procedural doctrine that denies admittance to cases involving certain kinds of regulatory activity.

Finally, there are the implicit authorizations and immunities that flow from the general conditions of overcommitment and

similarities. The shape of shadows bears a lawful relationship to the original, but the proportions are changed and features can be effaced or transformed. And, the object that casts the shadow is not the energizing source of the image.

¹² The most elaborate and self-conscious current discussion of deference to, and control by, private forums is in connection with labor arbitration. See Edwards 1977; Getman 1979. On judicial oversight of the very different institution of commercial arbitration, see G. Goldberg 1977:65ff. On judicial response to church authority, see Wisconsin Law Review 1977:904. On judicial monitoring of the exercise of disciplinary authority by school officials, see Goss v. Lopez, 419 U.S. 565, 95 S.Ct. 729 (1975); Wood v. Strickland, 420 U.S. 308, 95 S. Ct. 992 (1975); Ingraham v. Wright, 430 U.S. 651, 97 S. Ct. 1401 (1977); and the analysis of Kirp 1976. It is not suggested that regulatory activity in these forums corresponds to legal doctrine. See, e.g., Verkuil 1976 on the impact of judicial intervention on informal adjudication by agencies of the United States Government.

passivity. Courts are reactive; they do not acquire cases on their own motion, but only upon the initiative of one of the disputants. Thus there is delegation to the disputants to invoke the intervention of a court. The expense, delay and cumbersomeness of securing such intervention insulates all regulators by raising barriers to challenging them in the courts. Public agencies which might monitor such regulatory activity are typically overcommitted. Like courts, they have more enforcement responsibilities than resources with which to carry them out. So like courts they tend to be reactive, responding only to complaints. And in deploying their scarce resources they understandably tend to be most responsive to the more organized and attentive of their constituents. Thus the regulation exercised by hospitals on patients and their families, by landlords on their tenants, by universities on their students, by unions on their members, by manufacturers on their customers are rarely subject to challenge by public agencies or in public forums. By a kind of legal alchemy, the expense and remoteness of the courts and the overload and lethargy of other agencies are transformed into regulatory authority which can be exercised (sometimes through adjudicatory forms) by a host of institutions. Thus the reactivity and overcommitment of the official legal system maintains and nourishes various kinds of ordering outside its precincts. (These are taken up in part II below.)

The disputes that courts process originate elsewhere and may undergo considerable change in the course of entering and proceeding through the courts. Disputes must be reformulated in applicable legal categories. Such reformulation may entail restriction of their scope: diffuse disputes may become more focussed in time and space, narrowed down to a set of discrete incidents involving specified individuals. Or, conversely, the original dispute may grow, becoming the vehicle for consideration of a larger set of events or relationships. The range of normative claims may be narrowed or expanded; the remedy sought may change. The dispute that emerges in the court process may differ significantly from the dispute that arrived there as well as from disputes in other settings. (Engel 1980:434; Mather and Yngvesson forthcoming.)

The relation of courts (official forums) to disputes is, in short, multidimensional. Decisive resolution, while important, is not the only (nor, I submit, the principal) link of courts and disputes. Disputes may be prevented by what courts do--e.g., by enabling planning to avoid disputes or by normatively disarming a potential disputant. Courts may foment and mobilize disputes, as when their declaration of a right arouses and legitimates expectations about the propriety of pursuing a claim; or changes in rules of standing suggest the possibility of pursuing a claim successfully. Further, courts may displace disputes into various forums and endow these forums with regulatory power.

Finally, courts may transform disputes so that the issues addressed are broader or narrower or different than those initially raised by the disputants. Thus courts not only resolve disputes: they prevent them, mobilize them, displace and transform them.

It follows that the effects of courts (or any forum) on dispute behavior cannot be equated with the dispositions of the cases that come before them.¹³ To appreciate the variety of radiating effects of judicial action (or inaction), it is helpful to distinguish between "special effects" and "general effects." "Special effects" are the effects produced by the impact of the forum's action on the behavior of the specific actors who are the subject (or target) of the application or enforcement of the law. They include not only the effects of sanctions imposed by the court (incapacitation, deterrence, reformation and so forth) but ancillary impacts of court proceedings such as effects on parties' credit rating, insurability, employment, licensing, business reputation and standing in other forums. (Engel and Steele 1979:316.) And of course such effects are produced not only by the decision of the forum, but by the costs (including benefits foregone) and timing of that decision (or its absence).

The work of courts affects not only those immediately subject to it, but others as well. The effects of what courts do ramify in various ways: for example, as others react to the changed behavior of those directly affected, or as the aggregate distributional consequences empower some groups and disable others (cf. Galanter 1975). Many sorts of "general effects"¹⁴ result

¹³Cf. Lempert's (1978:92ff) critical reanalysis of Friedman and Percival's (1976) data, emphasizing the distinction between (a) the functions of courts in the sense of what courts do and (b) their functions in terms of their effects on the larger society.

¹⁴This notion of "general effects" takes off from the very helpful discussion of the general preventive effects of punishment by Gibbs (1975:Chap. 3) as usefully elaborated by Feeley (1976:517ff). It is simply a generalization from the illuminating and now familiar (if not entirely serviceable, as Gibbs points out) distinction between special deterrence and general deterrence introduced by Andenaes (1966). Theory about these general effects is still inchoate. In a review of the now sizeable literature on deterrence, Gibbs (forthcoming:45) observes that since deterrence research has proceeded without controls for other general effects, "all previous reported tests of the deterrence doctrine...were really tests of an implicit theory of general preventive effects; and that will remain the case as long as nondeterrent mechanisms are left uncontrolled."

from the communication of information by/about the forum and its behavior and the response of others to such information. General effects resulting from communication (e.g., general deterrence) need not presume or require any change in the moral assessment of particular sorts of behavior; behavior may be affected simply by the acquisition of more information about the costs and benefits that are likely to attach--information about the certainty, celerity, and severity of sanctions, for example. The actor can hold to Hart's (1961) "external point of view," treating law as a fact to be taken into account rather than as a normative framework that he is committed to uphold or be guided by. The information that induces the changed estimation of costs and benefits need not be accurate: what the court has done may be inaccurately perceived; indeed the court itself may have inaccurately depicted what it has done.

On the other hand, communication of the existence of a law or its application by a court may change the moral evaluation by other actors of a specific item of conduct. There is suggestive evidence to indicate that at least some segments of the population are subject to such effects. (Berkowitz and Walker 1967; Colombatos 1969.)¹⁵ Less dramatically, perceiving the application of law may maintain or intensify existing evaluations of conduct. (See Gibbs 1975.)

Courts also produce facilitative effects: legal applications may be taken neither as facts to be adapted to, nor as norms to be adhered to, but as recipes to be followed. Law may be used as a cookbook from which we can learn how to bring about desired results--disposing of property, forming a partnership, securing a subsidy.

¹⁵ Other studies provide suggestive but contrasting hypotheses about the conditions under which such enculturation takes place and its relation to the coercive aspects of the law. Thus Muir (1967) and Dolbeare and Hammond (1971) both examine the reaction of local school boards to decisions of the United States Supreme Court banning officially-sponsored prayer in classrooms. Muir finds substantial compliance and substantial enculturation associated with low perceived coerciveness of the legal setting; Dolbeare and Hammond, finding little compliance, attribute the dissociation of practice from legal doctrine to the absence of coercive pressure.

Judicial work produces effects at the level of disputing behavior as well as at the level of the underlying transaction or relationship. Thus, litigation may have powerful mobilizational or demobilizational effects. It may provide symbols for rallying a group, broadcasting awareness of grievance and dramatizing challenge to the status quo. On the other hand, concentration on litigation may undermine an organization's ability to employ other political means (Scheingold 1974). Or success in litigation may defuse a drive for wider legislative change.

General effects need not be intended (or perceived) by the forum (or the disputants). Modifications of behavior in response to a perceived pattern of particular instances of forum activity would qualify as a general effect even if the forum did not call attention to that pattern and even if the forum itself did not perceive it. The forum may attempt to enhance certain of its effects by cultivating a particular public persona (e.g., of severity or of evenhandedness) or by deliberately projecting an image of its general patterns of response. Of course, no matter what it tries to project, transmission by the forum is only part of the process. Effects will also depend on the reception side: Who gets what messages? Who can evaluate and process them? Who can use the information?

The impact of courts on disputes is to an important extent accomplished by the dissemination of information. Courts produce not only decisions, but messages. Their product is double: what they do and what they say about what they do. Messages about both are mediated through various channels to different audiences. These messages are resources which parties and others use in envisioning, devising, pursuing, negotiating and vindicating claims (and in avoiding, defending and defeating them). Similarly, courts produce messages which can be used as resources by some actors in order to regulate others (or to resist such regulation). Since courts, like other legal institutions, have far more commitments than resources to carry them out, their capacity to conduct full-blown adjudications is limited to a fraction of the potential cases. The social effects they produce by communication must be far more important than the direct effects of the relatively few decisions they render. Law is more capacious as a system of cultural and symbolic meanings than as a set of operative controls. It affects us primarily through communication of symbols--by providing threats, promises, models, persuasion, legitimacy, stigma, etc.¹⁶

¹⁶ The appreciation of courts as cultural backdrop rather than operating control is connected, I suspect, with the tendency for such institutions to look better from afar. Those who experience courts first-hand tend to be less satisfied with them. Sarat 1977:439, 441 Yankelovitch et. al. (1978:11, 18) found that unfavorable evaluations of state courts increased

Just how potential disputants and regulators will draw on the resources provided by courts is powerfully affected by their culture, their capabilities and their relations with one another. Audiences have different capacities to receive and evaluate messages received from courts.¹⁷ They differ, for example, in their ability to make a sophisticated assessment of what a court really does--i.e., what their bargaining chips really are.¹⁸ Thus while naive amateurs may generalize from one area

with both knowledge about courts and experience with them. Cf. Curran (1977:236) on the more critical assessment by multiple users. Comparable responses have been found in widely different settings. Kidder (1973:134) reports that Indian litigants were disillusioned with the courts they had encountered

[but]...everyone interviewed believed that the courts above those they had directly experienced would be free of the complications they had found in their own experience....This 'grass is greener' phenomenon was as true of recent winners as it was of recent losers and showed up in [experienced] 'courts birds' as predictably as in the newest novice.

The gap between use and estimation appears even in the community-based Social Conciliation Commission described by Kurczewski and Frieske (1978:328) where those who think best of the SCC are higher status groups with little direct experience of their operation.

The SCC's are favored to a much lesser degree, on general criteria, by those who have actually used them as disputants--even though these former SCC users are largely satisfied with, and assess positively, the performance of the SCC in their own particular cases--and these former parties tend to be persons with characteristics of lower status.

¹⁷ Thus Macaulay (1979) found that the organization of legal services was such as to deliver information about their opportunities under consumer legislation to businesses and to wealthy consumers, but not to ordinary consumers. The failure of legal information to filter through to major segments of the population (and the attitudinal obstacles to extraction of bargaining endowments from that information) are helpfully surveyed by Sarat (1977). Cf. Edelman's (1967:Chap. 2) description of the tendency for diffuse remote publics to receive symbolic reassurance while attentive organized groups enjoy access to a flow of tangible benefits.

¹⁸ Cf. Ross's (1970) account of the shift in bargaining stances when the knowledgeable lawyer replaces the inexperienced claimant as the bargaining partner. But the lawyer's sophistication may not always be placed at the disposal of the naive client. Feeley (1979:464-65) describes how criminal defendants

of judicial activity to another, sophisticated professionals who "make relevant distinctions and...put the message into a refined context" will be able to extract more specific and accurate information from the judicial message. (Geerken and Gove 1975:507.) Where courts exert influence through communication, the results will be powerfully influenced by the information-processing capacities of the recipients--and by the disparities in their capacities.¹⁹

When we discussed courts as sources of bargaining (and regulatory) endowments, the point of view was that of the disputants. In talking of general effects our stance is more detached. The time frame shifts from the strategic present to the retrospective or predictive. Calculations are probabilistic rather than prudential. Judgments are aggregate rather than distributive. The point of view is that of the detached observer or the remote manager of the system, not of a participant interested in specific transactions. But both idioms (endowments and effects) project a vision of legal action as a centrifugal flow of symbols, radiating beyond the parties immediately involved. Both lead us to focus on the disputants as receivers of this

receive routine offers made to appear as exceptional deals:

It is the salesman's stock in trade to represent a 'going rate' as if it were a special sale price offered only once. The gap between theoretical exposure and the standard rate allows defense attorneys and prosecutors to function in much the same way. Together, prosecutors and defense attorneys operate like discount stores, pointing to the never used high list price and then marketing the product as a 'special' at what is in fact the standard price.

¹⁹ Cf. Dwyer's (1979) account of systematic differences in the way in which men and women in southern Morocco perceive law and legal practices and extract support in their ongoing struggle over the subordination of women.

Without some knowledge of the (presumably differentiated) reception process, one cannot specify the policy implications of the insight that courts are important symbolic transmitters. For example, Ball (1975) calls for cultivating and cherishing the theatrical "live performance" of courts--as dramatic embodiments or presentations of a normative image of legitimate society--dramatizing the seriousness, importance, dignity, rights and duties of citizens, surrounding them with ceremonious deference. But he neglects to say who these messages are communicated to--do they really reach a wider audience? Does it matter that we have more or fewer trials? Juries? Newspaper coverage? T.V. in courtrooms? Do these effects differ by size of locality, etc.?

symbolic radiation. The patterns of general effects that we attribute to the courts depend on the endowments that actors extract from the messages that radiate from the courts. And the "endowments" that courts confer depend on the capabilities of actors to receive, store and use them, capabilities that reflect their skills, resources and opportunities.

These capabilities are not immutable qualities intrinsic to the actors, marking the irreducible end-points of analysis. Disputant capabilities derive from, and are relative to, structures of communication and structures for organizing action. (Galanter 1974). Capabilities depend, for example, on location on a network that carries information about rights and remedies and on proximity to remedy institutions or "exit" alternatives. The process of distributing and extracting endowments is framed by the larger structures of social life. As these structures undergo change, the character of the centrifugal flow of effects from the courts will change too. For example, changes in political structures and communication systems may bring in their train a shift from reliance on special effects (impinging directly on disputants) to emphasis on general effects (worked by communication about such impingements). Thus Abel (1979:193) suggests that compared to litigation in the tribal setting, modern litigation in Africa involves fewer courts with larger jurisdictions, prosecution of a smaller proportion of wrongs, and imposition of sterner punishments, shifting from the earlier reliance on special deterrence to reliance on general deterrence.²⁰

We might expect the mix and the relative prominence of these radiating effects to vary across space as well as over time. For example, the role of general effects of court action compared with direct effects on the disputants, may be relatively greater in the United States, which maintains a relatively small judicial plant²¹ (see Johnson et. al. 1977; Johnson and Drew 1978) but a very large number of lawyers. More than in many places, law in the United States is a private sector business²² and pri-

²⁰ What Friedman and Percival (1976) label the declining role of two California courts in dispute settlement is interpreted by Lempert (1978) as a decline in direct impositions of resolutions on the parties before them, compatible with an increase in judicial contribution to dispute settlement by other means, both direct and indirect.

²¹ Their small numbers and passive role mean that judges in the United States are management rather than production workers. Cf. Engel and Steel (1979:311ff) on the patterns of delegation and supervision that characterize judicial processing of cases.

²² Cf. Selznick's (1969:229) observations on the pervasive privatization of labor and welfare regulation in the U.S.

vate ordering is a prominent part of the legal universe.

II. THE LAW IN THE SHADOW OF INDIGENOUS ORDERING

We have shifted from the centripetal image (implicit in the idea of "access to justice") of courts as resolvers of those disputes which come before them, to a centrifugal image of courts as one component of a complex system of disputing and regulation. In that system, courts (and other official institutions) are not the only sources of normative messages, just as they are not the only arenas in which controls are directly applied. We must examine the courts in the context of their rivals and companions. To do so we must put aside our habitual perspective of "legal centralism," a picture in which state agencies (and their learning) occupy the center of legal life and stand in a relation of hierarchic control (cf. Mayhew 1971:208) to other, lesser normative orderings such as the family, the corporation, the business network.²³

Just as health is not found primarily in hospitals or knowledge in schools, so justice is not primarily to be found in official justice-dispensing institutions. People experience justice (and injustice) not only (or usually) in forums sponsored by the state but at the primary institutional locations of their activity--home, neighborhood, workplace, business deal and so on (including a variety of specialized remedial settings embedded in these locations).

The enunciation of norms and application of sanctions in these settings may be more or less organized, more or less self-conscious, more or less consensual and so forth. For convenience I shall use the terms "indigenous ordering" and "indigenous law" to refer to social ordering which is indigenous--i.e., familiar to and applied by the participants in the everyday activity that is being regulated.²⁴ By indigenous law I refer not to some diffuse folk consciousness, but to concrete patterns of social ordering to be found in a variety of institutional settings--

²³ See note 1 above.

²⁴ The notion of "indigenous" law as regulation by the participants engaged in an activity invites comparison with a whole battery of kindred notions. Its ancestor is Ehrlich's (1936 [1913]:38 and *passim*) "inner order of the associations." I found suggestive Kidder's (1978) contrast of "external" and "internal" law in India, drawing on Li's (1971) distinction of external and internal models of law in modern China. Moore's (1973) discussion of "semi-autonomous social fields" suggests how this indigenous law is entwined with official law.

in universities, sports leagues, housing developments, hospitals, etc.²⁵ "Legal centralism" has impaired our consciousness of "indigenous law."²⁶

²⁵ The term "indigenous" is used here as a relative one. Since indigenous systems frequently incorporate cultural elements from the official law and since their sanctioning systems are often entwined with the official ones, no dichotomous distinction can be made. (Fuller [1969a] points out the customary element in the working of state legal institutions.) One should imagine a scale with pure types at either end. At the official "exogenous" end might be formal written rules remote from everyday understandings, enunciated by trained specialists, enforced by governmental coercion. At the indigenous end would be simple (?) rules, close to everyday perceptions, applied by non-specialists, internalized by the participants and enforced by diffuse social pressure.

Location on such a scale cannot be ascertained from institutional labels. Consider arbitration in the United States: labor arbitration in a setting of continuing relations and applying "the law of the shop" is closer to the indigenous end than commercial arbitration by *ad hoc* arbitrators from the American Arbitration Association and the latter is closer to indigenous than arbitration of tort cases under the auspices of a court. See Getman 1979.

²⁶ Social life is full of regulation. Indeed it is a vast web of overlapping and reinforcing regulation. How then can we distinguish "indigenous law" from social life generally? Consider for example the kinds of regulatory order that are involved in dating, the exchange of Christmas gifts, behavior in elevators and in classrooms. In each there are shared norms and expectations about proper behavior; violations are visited with sanctions ranging from raised eyebrows to avoidance to assaults, reputational or physical. Clearly there is some sort of regulation going on here. In spite of the continuities, it may be useful to have a cut-off point further "up" the scale to demarcate what we want to describe as "law" of any sort, indigenous or otherwise. (Even though, as Nadel [1953] points out, the operative controls at any point on the scale are likely to be the internalization and reciprocities that characterize the less organized end of the scale.)

The scale that I visualize is one of the organization and differentiation of norms and sanctions. As we move up, we get standards that are more explicit, more deliberation about their application, eventually some kind of procedure for deliberation about norms and their application that can be identified as distinct from the ordinary flow of activity in the field. This procedural separation may range from barely distinguishable bracketing of activity to elaborated provision for tribunals which are separate in time, place, personnel, and formality from the ongoing activity. (Cf. Abel 1974). This separation is associated with the appearance of "extrinsic"

One of the striking features of the modern world has been the emergence of those institutional-intellectual complexes that we identify as national legal systems. Such a system consists of institutions, connected to the state, guided by and propounding a body of normative learning, purporting to encompass and control all the other institutions in the society and to subject them to a regime of general rules (Galanter 1966). These complexes consolidated and displaced the earlier diverse array of normative orderings in society, reducing them to a subordinate and interstitial status. (Cf. Weber 1954:140ff.)

Of course, these other orderings continue to exist. Counterparts or analogs to the institutions, processes and intellectual activities that are located in national legal systems are to be found at many other locations in society. Some of these lesser legal orders are relatively independent, institutionally and intellectually, of the national legal system; others are dependent in various ways. That is, societies contain a multitude of partially self-regulating spheres or sectors,²⁷ organized

controls (i.e., the presence of rewards and punishments apart from those intrinsic to the primary activity) (cf. Spiro 1961). The differentium is the introduction of a second layer of control--of norms about application of norms--along the lines of Hart's (1961) identification of law with the union of primary and secondary rules and Bohannan's (1965) identification of law with the reinstitutionalization of norms. (The present view departs from Bohannan by including as law secondary controls that appear without removal to a separate institutional location.) Although the principle seems to me a coherent one, it does not lead to a specification of what "is" and what is not law, for the features that we refer to exist across a whole spectrum of intermediate cases, like the transition from blue to purple. Just where to draw the line depends on the particular purpose at hand. Because the point in this section is the pervasive presence of formidable controls located within the activity being regulated by the official law, I have used the term indigenous law in a more sweeping fashion than would be appropriate for other purposes.

²⁷ Social research on law contains a number of conceptual formulations which contribute to our ability to visualize the relationship between the public official legal system and the lesser, partially self-regulating orderings. We distinguish law and morals, public and private spheres, formal and informal processes. Each of these formulations illuminates something of this relationship; none is entirely serviceable. The distinction of law from custom or morality carries in its train a history of conceptual struggles over the meaning of law. Discussions of private as opposed to public legal systems (Selznick 1969; Evan 1962) contain valuable insights, but the

along spatial, transactional or ethnic-familial lines ranging from primary groups in which relations are direct, immediate and diffuse to settings (e.g., business networks) in which relations are indirect, mediated and specialized.

The mainstream of legal scholarship has tended to look out from within the official legal order, abetting the pretensions of the official law to stand in a relationship of hierarchic control to other normative orderings in society. Social research on law has been characterized by a repeated rediscovery of the other hemisphere of the legal world.²⁸ This has entailed recurrent rediscovery that law in modern society is plural rather than monolithic,²⁹ that it is private as well as public in character and that the national (public, official) legal system is often a secondary rather than a primary locus of regulation.³⁰ The

public-private distinction invites us to categorize where we need to measure variation. Much of the same may be said of the frequently invoked and rarely defined distinction between formal and informal, which collapses into an amorphous mass a vast and changing array of processual and structural characteristics.

Moore (1973:720) uses the term "semi-autonomous social field," to refer to an area of social life that

can generate rules and customs and systems internally, but that...is also vulnerable to rules and decisions and other forces emanating from the larger world by which it is surrounded. The semi-autonomous social field has rule-making capacities, and the means to induce compliance; but it is simultaneously set in a larger matrix which can, and does, affect and invade, sometimes at the invitation of persons inside it, sometimes at its own instance.

This formulation usefully points to the study of the lesser normative orderings, not as isolated and independent units, but as parts of a larger, complex legal order, with which they interact.

²⁸ This rediscovery is often associated with Ehrlich 1936 [1913]. See also Weber 1954 [1922]:16-20, 140-49.

²⁹ The plural or multiple character of law in a given society has been noted by Fuller (1969b:123ff.) and by Pospisil (1971:343). The latter assumes that legal regulation is isomorphic with group structure. I submit that it is important to regard the relation of groups and legal regulation as problematic.

³⁰ The secondary, derivative "back up" character of law is suggested by Bohannan (1965), but his identification of law with the reinstitutionalization of norms seems to posit a constant relationship between primary and secondary controls. Again, I think it is important to regard the relation between primary and secondary controls as problematic. Cf. H.L.A. Hart's (1961) notion of law as the union of primary and secondary rules.

relations between the big (public, national, official) legal system and the lesser normative orderings in society that I have called "indigenous law" are obscured by the portrayal of the big system as all-encompassing, uniform, exclusive and controlling.³¹ But this notion of official law as a comprehensive monolith--and indeed as a "system"--are not descriptions of it but rather part of its historic ideology. Legal regulation in modern societies, as in others, has a more uneven, patchwork character (cf. Tanner 1970).

The legal centralist disdain of these lesser orderings is matched by the view that they have been so attenuated by the growth of the state and/or the development of capitalism that their presence is vestigial or confined to backwaters.³² But indigenous and official ordering may not be mutually exclusive (or historically serial): modern society proliferates both.³³ Indeed, institutions of official regulation themselves become the site of indigenous ordering--e.g., the informal rules of the government enforcement agencies studied by Blau (1963), which determined which official rules were enforced and to what extent.

³¹ The difficulty of seeing how these parts are related is compounded by our tendency to view them as related in evolutionary sequence. The evolutionary view is that lesser, dispersed and informal regulatory elements are displaced or transformed by the growth and elaboration of the centralized bureaucratic legal system (cf. Parsons 1964). Curiously Diamond's (1971) depiction of state law relentlessly exterminating custom provides a mirror image of the evolutionary view with the value signs reversed.

³² That indigenous law has been effaced and the implications of that for the centrality of official law and the leadership of legal professionals is argued by Sawyer (1965:186).

³³ I find suggestive Stinchcombe's (1969:185ff.) challenge to the intellectual cliché that communal relations deteriorate with the increase of formal, impersonal and technical social regulations. He argues that community (defined in terms of solidarity, socialization and "a tendency to solve disputes within the group by standards of justice and need rather than standards of game theory" [1969:186]) is enhanced rather than undermined by formal organization.

...[T]he solidarity of communal groups is intimately dependent on their degree of formal organization. Formal organizations aid in making the environment of primary groups homogeneous, protect small-group integrity, and aid in preserving their solidarity by normative control of exploitation. They can be agents of the groups as a whole whose fate can be interpreted as group fate, they organize supralocal socialization experiences, and they provide support for cultural elites of the group. (1969:191)

The survival and proliferation of indigenous law in the contemporary United States is attested by a literature that displays the immense profusion and variety of "semi-autonomous social fields" existing within a single society.³⁴ Indigenous law in the contemporary United States remains concealed from those who are looking for an inclusive and self-contained gemeinschaft, unsullied by formal organization, which enfolds individuals and integrates their whole life experience. What we find instead is a multitude of associations and networks, overlapping and interpenetrating, more fragmentary and less inclusive. For the most part they are, as Danzig and Lowy observe (1975:681), "socio-economic networks rather than bounded groups." Such partial communities, linked by informal communications and sometimes by formal communication devices as well, provide much of the texture of our lives in family and kinship, at work and in business dealings, in neighborhood, sports, religion and politics. There are varying degrees of self-conscious regulation, varying degrees of congruity with the official law and varying degrees of reliance on the support provided by official institutions.³⁵ This is a realm of interdependence, regulated by tacit norms of reciprocity and sometimes by more explicit codes. The range of shared meanings is limited but the cost of exit is substantial. If we have lost the experience of an all-encompassing inclusive community, it is not to a world of arms-length dealings with strangers, but in large measure to a world of loosely joined and partly overlapping partial or fragmentary communities. In this sense our exposure to indigenous law has increased at the same time that official regulation has multiplied.

³⁴ The existing literature includes reports on self-regulation in a variety of business settings such as shopping centers (MacCollum 1967); trade associations (Mentschikoff 1961); heavy manufacturing (Macaulay 1963); textiles (Bonn 1972a, 1972b); the garment industry (Moore 1973); movie distribution and exhibition (Randall 1968); autodealers' relations with manufacturers (Macaulay 1966) and with customers (Whitford 1968). In addition, there are reports on self-regulation within religious groups (e.g., Columbia Journal of Law and Social Problems 1970) and ethnic communities (e.g., Doo 1973); intentional communities (e.g., Zablocki 1971); professional associations (e.g., Akers 1968); athletics (e.g., Cross 1973); workplaces (e.g., Blau 1963).

³⁵ See the discussion of "regulatory endowment," p.8 above. Cf. Galanter 1974b:126ff. on the variation of private remedy systems from those "appended" to official institutions to those independent of official law in personnel, location, sanctions, and norms.

Mnookin and Kornhauser's analysis of "bargaining in the shadow of the law" in divorce cases helps us to put aside the centripetal view and to focus on the movement of law out from the forum into the realm of private ordering. The policy lesson they draw is that the "primary function of the legal system should be to facilitate private ordering and dispute resolution." (1979:986) The divorce example imparts a highly individualistic coloring to the analysis: private ordering is equated with the parties "making law for themselves" in the light of their "preferences" and "the law." But our discussion of indigenous law suggests that private ordering may involve more than disputants devising an ad hoc legal regime for themselves. The parties may not constitute an isolated dyad, but be embedded in (or adhere to) a group or network with its own rules and standards. Making claims on the basis of what is acceptable quality in a trade, invoking "academic freedom," or submitting a dispute to an arbitrator, are not comfortably subsumable under the notion of "making law for themselves." Each of these is as much an act of affiliation as of legislation; it is a reference to some existing normative structure, not a proposal to erect a new one. Working out a corpus juris and constituting a legal establishment are relatively infrequent kinds of behavior (and rarely begin from scratch); most of our justice-seeking is by adhesion.

Where bargaining and regulating take place in the settings of patterned norms and sanctions that we have called "indigenous law," we may be inclined to characterize the whole system somewhat differently. Mnookin and Kornhauser's image of "bargaining in the shadow of the law" suggests that the law is there and the disputants meet in a landscape naked of normative habitation (or in which such structures are subsumed into their "preferences"). Instead I visualize a landscape populated by an uneven tangle of indigenous law. In many settings the norms and controls of indigenous ordering are palpably there, the official law is remote and its intervention is problematic and transitory. (E.g., the businessmen described by Macaulay [1963] or a typical dispute within a university.) In such settings the relation might be better depicted as "law in the shadow of indigenous ordering."³⁶

The relation of official law to indigenous ordering is not invariably a matter of mutual exclusion (where the former

³⁶ This indigenous ordering in turn may be a derivative of bargaining. Getman (1979:917) observes that

Collective bargaining shapes labor arbitration and gives it power.... It is only when unions are powerful, well established and responsive to the needs of their members that labor arbitration works successfully.

In this setting we get "law in the shadow of [collective] bargaining."

ousts the latter), nor one of hierarchic control (where the latter is conformed to or aligned with the former). Judicial intervention to apply official standards does not necessarily weaken indigenous controls. For example, Zald and Hair (1972:66) suggest that the judicial erosion of the doctrine of charitable immunity and the exposure of hospitals to liability for negligence provided enlarged "incentives and sanctions...to governmental and private standard-setting bodies such as the Joint Commission [on Accreditation of Hospitals] to induce compliance with standards on the part of hospitals." Similarly Macaulay (1966) shows that official intervention in the relation between automobile manufacturers and their dealers led to a growth of internal regulation rather than its attenuation. Randall's (1968) study of movie censorship reveals how the elaboration of internal controls within the movie industry was a reflex of actual (and potential) control by the official law. Just as the character of indigenous regulation may be affected in unanticipated ways by developments in the official law, so the presence of indigenous regulation may transform the meaning and effect of the official law.

The effects of indigenous tribunals, like those of official courts, are not confined to the cases which they handle. The work of these tribunals may radiate norms, symbols, models, threats and so forth. In indigenous law, too, the shadow reaches further than its source. What kinds of bargaining and regulatory endowments actors extract from the messages depends on their capabilities. Community standing, seniority, reputation for integrity or formidability may confer capability in the indigenous setting that does not translate into capability in the official setting. Indeed, indigenous law may be insulated from external controls precisely by its constituents' lack of capability in the official setting (cf. Doo 1973). Acquisition of such capability may lead to erosion of indigenous law (cf. Galanter 1968). On the other hand, an equalizing of capabilities in the official setting may lead to its abandonment and the development of indigenous tribunals, as in the labor-management field.

The complexity of the interface between external and indigenous controls (cf. Katz 1977) is demonstrated in the observation that the official system is frequently used to induce compliance with a decision in an indigenous forum. Thus Ruffini (1978) describes the use of threats to invoke the official system among Sardinian shepherds to force resort to the indigenous system of settlement and to enforce the terms of such settlements. In the Brazilian squatter settlement described by Santos

The official legal system is presented not as a forum to which a litigant may appeal from an adverse decision under Pasargada law but as a threat aimed at reinforcing

the decision of the RA [Resident's Association] under that law. (Santos 1977:79)

Similar accounts in which the cost, delay, aggravation, and risk of being subjected to the official system becomes a resource of indigenous regulators are found in accounts from India (Meschievitz 1979:46) and Lebanon (Witty 1978).

Courts may also be used directly to secure outcomes in line with indigenous norms, even when these are not officially recognized. Indian villagers found ways of using courts to vindicate claims for caste preference deemed non-justiciable by the Anglo-Indian law. Similarly, Americans have used courts to effectuate widespread norms of divorce for marital incompatibility which were unrecognized in the official law (see Engel 1980). In many ways, then, adjudication in official courts may serve to promote the application of norms that lie outside the official law by which they are guided.

I am not trying to turn legal centralism upside down and place indigenous law in the position of primacy. Instead I suggest that the relation of official and indigenous law is variable and problematic. Nor do I mean to idealize indigenous law as either more virtuous or more efficient than official law. Although by definition indigenous law may have the virtues of being familiar, understandable and independent of professionals, it is not always the expression of harmonious egalitarianism. It often reflects narrow and parochial concerns; it is often based on relations of domination; its coerciveness may be harsh and indiscriminate; protections that are available in public forums may be absent.

The persistence of indigenous law has sometimes been taken as reason to redouble our efforts to project official legality into all corners of social life. But growing awareness of the costs and limitations of such programs of legalization has inspired attempts to replace or supplement official law by (improved or purified) indigenous law. There is an abundance of schemes in both developing and industrialized countries to (re)constitute tribunals that give genuine expression to community values and that operate in a way that is familiar and accessible.

At least some of these schemes turn out to be dismal failures: thus the nyaya panchayats promoted by India in the 1950s and 1960s seem to be moribund (Baxi and Galanter 1979; cf. Meschievitz and Galanter forthcoming). This may be due to problems of design and execution rather than to any defect in the fundamental conception. But the failure of many "alternative" forums to recruit cases (other than by diversion from coercive official agencies) suggests that there may be formidable problems of design-

ing a tribunal that meshes with community needs.³⁷ But rather than dwell on losers, let us consider a success story. The Polish Social Conciliation Commission studied by Kurczewski and Frieske (1978) presents an attractive instance of a tribunal that is used by its constituency, operates without coercion, and gives expression to community values. This example of "self government in justice," as the authors call it, is as good an instance of officially-sponsored "indigenous law" as we are likely to see. But even with the SCC experience in mind, it is evident that indigenous law, like other law, has problems of effectiveness.

Indigenous law, like other law, has the problem of connecting effective sanctions to its determinations. Where coercive powers are renounced (as by the SCC), the indigenous tribunal faces the problem of obtaining leverage over those who are impervious to community opinion, getting them to submit to its jurisdiction or to comply with its decisions. This is compounded where the setting is culturally heterogenous. Those who share a common location or common interests (e.g., as workers or students) may not share a common culture. Ideas about deference, noise, work performance, child rearing and so forth may differ among those who interact frequently. The thrust of community law is limited when moral communities are plural and cross-cutting, not self-contained and reinforcing. And the most crucial disputes may not be within the community, but with entities that are separated not merely by pluralism, but by difference in form and scale. The most significant transactions may be with corporate entities--government departments, corporations--that are not amenable to community persuasion or sanc-

³⁷ Thus the San Jose Neighborhood Small Claims Court, which attempted to reach out by means of attractive hours, location, publicity and informality, produced only 60 filings in a six-month period. (Beresford and Cooper 1977:190). The much-studied Dorchester mediation project produced fewer referrals from all sources than the forty cases per month anticipated by its planners (Snyder 1978:761). Although observers blame the low rate of referrals from official sources on such problems as police fear of losing overtime benefits associated with court appearance (McGillis and Mullen 1977:98), the scanty intake is reminiscent of the disappearing caseload problem that besets other "alternative" tribunals. Thus Baxi and Galanter (1979:368ff.) found that the filings in the nyaya panchayats in Uttar Pradesh fell to a tenth of their original number in the course of twenty years. Bierbrauer, et. al. (1978) depict a similar decline in the civil proceedings heard by the Schiedesmann. Cf. Bloomfield's (1976:57ff.) account of dissatisfaction with an arbitration experiment in Massachusetts in the 1780s. The lessons of shrinkage and desuetude remain to be drawn.

tions.³⁸ Indeed, a defining characteristic of our age is the extent to which transactions and disputes are between units of different scale.³⁹ As the cultural and structural span of indigenous law increases, we might expect that the messages transmitted by indigenous tribunals will increasingly be subject to all the vagaries of communication and of the differential ability to extract endowments which obtain in the case of the courts.

III. EXPLORING THE SHADOWS

In Part I, I argued that the most significant legal traffic was the centrifugal flow of legal messages, rather than a centripetal flow of cases into official forums. In Part II, I argued that these messages radiate into spaces that are not barren of normative ordering; instead the social landscape is covered by layers and centers of indigenous law. What then are the implications for inquiry and action of such a world of centrifugal flows and indigenous orderings?

One implication is that any major advance in our understanding of how official legal regulation works in society depends on knowing more about indigenous law and about its interaction with official law. Our professional habits of mind dis-incline us to take indigenous law seriously.⁴⁰ But the relation of law to other normative orderings has been central to many thoughtful explorations of social order from ancient times to the present. Every legal system has to address the problem of the autonomy and authority of the various other sorts of normative ordering with which it coexists in society. The big legal

³⁸ Eovaldi and Gestrin (1971:306) identify this as the "most serious flaw in the concept of 'informal' dispute-settlement procedures" for consumer grievances.

³⁹ See Coleman 1974; Moore 1978:Chap. 3. On the dominance of official dispute institutions by cases between units of different scale, see Galanter 1975; Wanner 1974. On the effects of this disparity on disputing, see Galanter 1974b; 1975.

⁴⁰ Indeed our habits may prevent us from seeing it all, as Fuller (1969a:540) suggests:

...it is not a question of our being unfamiliar with customary law, but of our being quite unable to draw on our own experience... [i]n part...because we do not know we have it. For it is characteristic of customary rules of action that they disappear from view precisely when they are most effective. When they appear not as rules at all, but simply as apt responses to an immediate reality, as part of "the way things are."

system faces the question of how to recognize or supervise or suppress the little systems. Legal centralism is one style of response to this generic question of legal ordering, and its exhaustion suggests the need for reflection on other models. (Griffiths 1979).

Historical and comparative study can help us to visualize the phenomena in which we are embroiled. Some disparate examples from my own experience suggest themselves. The self-conscious appraisal and design of the relation between competing normative orders is most vividly apparent in the relation of the state to religion, where the law's rival may be a corporate institution with its own learned tradition expounded by its own specialists (and even with its own doctrines about its relationship to state law). In Western tradition, the theme of "church and state" is the locus classicus of thinking about the multiplicity of normative orders. There is an abundance of prescriptive theories about how religious law should be treated by the state's legal system⁴¹ (and vice versa) and a rich literature depicting instances of conflict and co-existence.

Other legal systems have conceived the relationship of their components very differently from the legal centralist conception. Classical Hindu law, to take an example that I happen to have encountered, can be read as a contrasting method of combining the most refined and professional elements with lay and unlettered ones. Not only did the textual law lay down different rules for different kinds of persons, but it incorporated and certified many bodies of rules not found within its pages. Every aggregation of people--corporations of traders, guilds of artisans, castes, families, sects, villages--was entitled to formulate and apply its own customs and conventions. When matters concerning such groups came before the royal courts, they were to be decided in accordance with the usage of the group. (Such custom was not necessarily ancient, nor was it unchangeable. The power of groups to change custom and create new obligatory usage was generally recognized.) The king is advised that in cases of disputes among traders, artisans, husbandmen, sectarians and so forth, it is impossible for outsiders to give correct decisions: those who understand their conventions should be invited to render a decision (Kane 1946:III, 264). Provision is

⁴¹ These range from state suppression of religious law, through various forms of intervention, limitation, recognition, and application, to religious control over state law. An example of contention among these modes in contemporary India, accompanied by a sketch of some of the dimensions involved in creation of such a taxonomy, is found in Galanter 1971.

made for cases to be decided outside the king's court by assemblies of the guild, locality, caste, etc. Each group was entitled to receive royal recognition and enforcement of its usages and the more refined and concededly elevated textual law was applied where disputants were not covered by some common body of customary law. (Kane 1946: III,283).

Hindu rulers traditionally enjoyed and sometimes exercised a general power of supervision over all these lesser tribunals. But there was no systematic imposition of "higher law" on lesser tribunals. There was a general diffusion by filtering down (and occasionally up) of ideas and techniques, and by conscious imitation. The relation of the "highest" and most authoritative (textual and royal) elements of the legal system to the lesser (local and customary) elements was not one of bureaucratic superior to subordinate. It was perhaps closer to the relations that obtain between high fashion designers and American department store fashions or between our most prestigious universities and our smaller colleges than to the hierarchic control we associate with law.⁴²

The example of Hindu law is not invoked to point to some preferred state of affairs but to suggest that not every elevated and complex body of law sees itself as superseding and displacing lesser orderings; styles (and theories) of co-existence vary. Since our tradition has tended to neglect indigenous law, attention to otherwise remote historic and comparative instances may provide useful leads for our understanding and help us to visualize some of the possibilities that surround us. To dispel any sense that the question is esoteric and is not found at the heart of modern law, I want to give a final example from contemporary American commercial law.

The drafting of the Uniform Commercial Code was a self-conscious attempt (by Karl Llewellyn) to synthesize formal law and commercial usage: the formal law would incorporate the best commercial practice and would in turn serve as a model for the refinement and development of that practice.⁴³ The Code's

⁴² Derrett 1968:Chaps. 6, 7; Galanter 1968. On different readings of this Hindu tolerance of the lesser legal orders, see Derrett 1968:Chap. 7 and Lingat 1973:176ff.

⁴³ Thus the Code announces among its underlying purposes: to permit the continued expansion of commercial practices through custom, usage and agreement of the parties [§1-102(2)(b)].

Usage of trade is embraced as a source for interpreting agreements (§1-205) and custom is viewed as supplementing the law rather than derogating from it. See e.g., Comment 4 to Sec. 1-205.

broadly drafted rules would be accessible to businessmen and would provide a framework for self-regulation which would in turn furnish attentive courts with content for the Code's categories. Thus the Code would serve as a vehicle for business communities to evolve law for themselves in dialogue with the courts, operating not as interpreters of imposed law but as articulators and critics of business usage.⁴⁴ There has been no evaluation of the Code's attempt to institute such a synergistic relationship.⁴⁵ (I admit to some skepticism on the ground that this attempt seems based on a misreading of the character of commercial litigation [ignoring, e.g., the extent to which it is shaped by non-rule elements like costs and the relations between the parties] and its relation to business usage.⁴⁶)

The insights afforded by historical and comparative study have to be linked to an enlarged understanding of the working of indigenous regulation in contemporary American society. In spite of a profusion of pertinent studies, the data base is thin and uneven. There is a major problem of comparability among studies done in diverse settings and by diverse methods. This is a problem which flows in part from the immense variety of fields; but it is compounded by the lack of communication and of shared concepts among researchers. Although the literature contains a variety of testable hypotheses, the establishment of

⁴⁴ On the linkage between this and Llewellyn's jurisprudence, see Twining 1973:Chaps. 11-12. Twining notes (1973:312) that "Llewellyn's attitude to commercial usage has echoes in Ehrlich," by whom he had been influenced during his early sojourn in Germany. A fascinating parallel may be found in Llewellyn's contemporaneous (c. 1947) draftsmanship of an even more purely customary code for the Santana Pueblo, reprinted by Twining at 1973:549.

⁴⁵ One attempt by White (1977) to evaluate the working of Art. 2 does not identify this as goal. Although it does not go beyond the reported appellate cases for data on impact, it suggests a profound dissociation of appellate judicial doctrine from business practice. It does present one finding that might be interpreted as an indication of success in these terms: a decrease in appellate litigation in an area where the older law turned on intricate determinations of title that were alien to business understanding and "the drafters of the Code gave legal meaning to the symbols [C.I.F., etc.] routinely used by businessmen." (1977:275) Llewellyn's notions about the relation of decisional styles of courts to commercial practice were explored by Carpenter (1977). An admittedly small and unsystematic sample of appellate cases under the U.C.C. failed to reveal any noticeable shift toward incorporation of merchants' views in judicial doctrine.

⁴⁶ See Macaulay 1963; Friedman 1965; Friedman and Macaulay 1967.

grounded theory awaits the adaptation (or development) of adequate methods for the comparative study of these fields.

Systematic exploration of "indigenous" law requires that we ask under what conditions and in what locations does self-regulation emerge? What are the features that it displays? Is there explication of norms, formality of procedure, broad or narrow participation, etc.? The social settings in which such regulation takes place are not independent self-contained units, but interact with a larger complex legal order. How then is indigenous regulation related to the regulation projected by the big legal system? What is the relationship between official law and the indigenous regulatory activity? Does the latter rely on or borrow from the norms, sanctions and style of the official law? Study of the spheres of indigenous ordering leads to exploration of their interface with official forums. How do courts (and other official agencies) attempt to supervise and control bargaining and regulation in various social settings?

We can thus envision a kind of "impact" research that would depart from the earlier generation of impact research in several important ways.⁴⁷ Traditional impact research starts from the doctrinal pronouncements of appellate courts and asks about congruence between that doctrine and the practices of other agencies (lower courts, school boards, police, etc.) and the behavior of the public. We are interested in the effects not only of doctrinal pronouncements, but of court routines, costs, remedies, delay, uncertainty, legitimation, stigma and all of the other components of the total message transmitted by the courts, including trial courts as well as appellate courts, and including informal mediation and private bargaining as well as adjudication. The product of the court is not doctrine with a mix of impurities, but instead a whole set of messages that can be used as resources in making (or contesting) claims, bargaining (or refusing to bargain) and regulating (or resisting regulation).⁴⁸

⁴⁷ This literature is usefully surveyed in Wasby (1970). On the limitations of this genre, see Feeley 1976:498ff.

⁴⁸ Such impact research would make it possible for courts to educate themselves about the consequences of their patterns--of discovery, settlements, costs, remedies--as well as of their doctrinal production. What are the general effects of court routines as well as the occasional dramatic ruling? Such findings would provide the cognitive underpinning for a deeper, more responsible consequentialism in which courts were supplied with some capacity for systematic monitoring of their effects.

A fascinating example of an attempt at such self-education is found in Renfrew et al. (1977). A federal judge, attuned

Through the wrong end of the telescope, the work of courts is seen not primarily as the resolution of disputes in official settings, but the projection of bargaining and regulatory endowments into a world unevenly occupied by indigenous regulation, a world in which the influences that emanate from courts mingle with those from other sources. This might be thought to imply a centrifugal variant of the legal centralist picture of courts as agencies of hierarchic control, securing the penetration of official norms and the corresponding alignment of social activity-- a variant emphasizing the dissemination of messages rather than the pronouncement of authoritative decisions and the application of sanctions. Such a picture might seem to invite a strategy of control by management of images rather than by determination of cases. From appreciation of the "Potemkin village" aspect of the law it is a short step to devise ways to build more imposing and convincing facades.

For several reasons this model of courts as engineers of control through deliberately projected images is as illusory and partial as that of courts as authoritative resolvers of disputes. First, the contours of interaction between the different sorts of general effects that we have identified remain to be mapped. We might imagine them often to be reinforcing and cumulative, but to some extent they may undercut and undo one another. For example, the coerciveness that promotes deterrence may be incompatible with the sense of volition that promotes enculturation (cf. Muir 1967).

More generally, the messages disseminated by courts do not carry endowments or produce effects except as they are received, interpreted and used by (potential) actors. Therefore the meaning of judicial signals is dependent on the information, experience, skill and resources that disputants bring to them. The ability of courts to calibrate the endowments they distribute

to the primacy of maximizing communication of anti-trust norms to other businessmen, sentenced anti-trust violators to a regimen of giving speeches about their offenses to audiences of their peers. The judge then conducted a survey to gauge the effects.

Of course such judicial messages are only part of the whole complex of messages radiating from official (and other) sources and the context may impart to a judicial message a meaning different from that it appears to carry when considered in isolation. Cf. McCormick's (1977) argument that token enforcement and non-stigmatizing sanctioning of anti-trust violations have neutralized public reaction against these violations and thus helped legitimate "prohibited" business practices.

or the effects they produce is limited by their ability to predict the distribution of capabilities among actual and potential disputants. These capabilities may change due to factors remote from the courts and in ways not readily knowable by courts. For example, those who become sophisticated about crime may read judicial deterrence messages differently; claimants who become organized may find elaborate procedure and the need for expensive experts transformed from liabilities to assets; and so forth.

The indeterminacy of the courts' educational effects is compounded by the fact that the courts (and the official law generally) are not the only source of such messages. All of the lesser normative orderings (family, workgroup, church, and associations and networks of various sorts) disseminate messages about norms, infractions, remedies, etc. The messages of the courts may be amplified, cancelled or transformed by the presence of these indigenous norms and controls in ways that are beyond anticipation or control by the courts.

The variability introduced by disputant capabilities and by indigenous ordering is augmented by some of the characteristics of the overall legal setting. The messages broadcast by the courts do not impinge on potential users by traversing some transparent neutral medium. Typically disputants do not encounter these messages floating freely, but in the context of a local legal culture. By this I refer to the complex of enduring understandings, concerns, and priorities shared by the community of legal actors (and significant audiences) in a given locality. This "culture" prescribes the appropriate content and style of various legal roles and processes: it defines the uses of the preliminary hearing and the pre-trial conference, the role of the judge in plea bargaining and settlement negotiations, the proclivity to resort to the courts and to invoke various procedural rights, the pace of litigation, appropriate dispositions for particular offenses by particular sorts of offenders, etc. Judicial messages are reworked and combined with a whole set of understandings and concerns. The meanings of what courts do and the kinds of endowments that disputants can extract from them vary with these cultures.

Local variation in legal culture is entrenched by the chronic overcommitment of law in the American setting. All legal agencies have more authoritative commitments to do things than resources to carry them out. This overload of commitments results in a massive, covert delegation of power from peak agencies (e.g., legislatures and appellate courts) to agencies and groups below to decide which commitments should be fulfilled and how much to fulfill them. "Selective enforcement" is chronic and pervasive. The abundance of unfilled commitments forms a great reserve pool of claims that could be mobilized. Incumbents, responding to their own evaluations and to their agencies' "system

maintenance" requirements, develop priorities that may diverge from the estimations of concerned (or potentially concerned) publics (cf. Becker 1963:161). Changing conditions and new awareness produce new potential demands. Interest groups, media and individual crusaders may challenge existing patterns of enforcement and interpretation, bringing about new understandings of the meaning of the law promulgated by courts and legislators. (Galanter, et. al. 1979)

The differing effects of local culture and disputant capabilities are amplified by the scale and complexity of the legal system. In a large complex legal system like that of the contemporary United States, the messages broadcast by (and to) courts are less determinate and precise than may at first appear to be the case. There is a lot of law (in the sense of authoritative normative learning)--more than can be encompassed by any single intelligence, no matter how capacious. New law pours forth from legislatures and even more is promulgated by an ever-increasing array of agencies, stimulated by a general climate of regulatory interventionism. The multiplicity of norms of varying levels of authority and of generality; the inevitable ambiguities, overlaps and conflicts among them; the fragmentation of law making and regulatory powers among myriad agencies with overlapping mandates and jurisdictions; the dispersion of powers of innovation and interpretation among weakly co-ordinated agencies with little hierarchic supervision--all of these combine to render the messages of legal authorities indeterminate, often obscure and sometimes malleable. If the stakes warrant and the pocketbook permits, the indeterminate malleable quality can be enhanced by the investment of skill and resources. (As a recent study of lawyers puts it: "the discovery of a unique issue is likely to be a function of the amount of time that lawyers devote to a case and thus of the amount of money that the client spends on lawyers." [Heinz and Laumann 1978:1117])

The notion of comprehensive judicial control through calculated projection of symbols is thus an idle conceit, as is the notion of judicial control by coercive imposition. Courts (and other official agencies) comprise only one hemisphere of the world of regulating and disputing. To understand them we must learn how they interact with the other normative orderings that pervade social life. To fulfill our commitment to enlarge justice requires that we embark on research that will illuminate the complex relations between official forums and indigenous law. Such research cannot answer the intractable questions of doing justice, but without it we are less likely to identify the real problems and the real choices that confront us.

REFERENCES

- Abel, R.L. (1974), "A Comparative Theory of Dispute Institutions in Society," 8 Law & Society Review, 217-347.
- Akers, R.L. (1968), "The Professional Association and the Legal Regulation of Practice," 2 Law & Society Review, 462-482.
- Andenaes, J. (1966), "The General Preventive Effects of Punishment," 114 University of Pennsylvania Law Review, 949-83.
- Aubert, V. (1963), "Competition and Dissensus: Two Types of Conflict Resolution," 7 Journal of Conflict Resolution, 26.
- Ball, M.S. (1975), "The Play's the Thing: An Unscientific Reflection on Courts under the Rubric of Theater," 28 Stanford Law Review, 81-116.
- Barton, J. (1975), "Behind the Legal Explosion," 24 Stanford Law Review, 567.
- Baxi, U. and Galanter, M. (1979), "Panchayat Justice: An Indian Experiment in Legal Access," in M. Cappelletti and B. Garth (eds.), Access to Justice, Vol. III: Emerging Issues and Perspectives, Milan, Giuffre and Alphen aan den Rijn: Sijthoff and Noordhoff, 341-86.
- Becker, H. (1963), Outsiders: Studies in the Sociology of Deviance, New York: Russell Sage Foundation.
- Beresford, R. and Cooper, J. (1977), "A Neighborhood Court for Neighborhood Suits," 61 Judicature, 185-90.
- Berkowitz, L. and Walker, N. (1967), "Laws and Moral Judgments," 30 Sociometry, 410-22.
- Best, A. and Andreasen, A.R. (1977), "Consumer Response in Contract Purchases: A Survey of Perceiving Defects, Voicing Complaints, Obtaining Redress," 11 Law & Society Review, 701-42.
- Bierbrauer, G., Falke, J., and Koch, K.F. (1978), "Conflict and Its Settlement: An Interdisciplinary Study Concerning the Legal Basis, Function and Performances of the Schieds-

- mann," in M. Cappelletti and J. Weisner (eds.), Access to Justice, Vol. II, Promising Institutions, Milan: Giuffre and Alphen aan den Rijn: Sijthoff and Noordhoff, 39-101.
- Blau, P. (1963), The Dynamics of Bureaucracy: A Study of Interpersonal Relations in Two Government Agencies, (rev. ed.), Chicago: University of Chicago Press.
- Bloomfield, M.H. (1976), American Lawyers in a Changing Society: 1776-1876, Cambridge, Mass.: Harvard University Press.
- Bohannon, P. (1965), "The Differing Realms of Law," in L. Nader (ed.), The Ethnography of Law, American Anthropologist Special Publication, Part 2, Vol. 67, No. 26, 33-42. Reprinted in P. Bohannon (ed.), Law and Warfare: Studies in the Anthropology of Conflict. Garden City, N.Y.: The Natural History Press, 1967, 43-56.
- Bonn, R.L. (1972a), "Arbitration: An Alternative System for Handling Contract Related Disputes," 17 Administrative Sciences Quarterly, 254-64.
- (1972b), "The Predictability of Nonlegalistic Adjudication," 6 Law & Society Review, 563-78.
- Cappelletti, M. and Garth, B. (1978), "Access to Justice: The Worldwide Movement to Make Rights Effective/A General Report," in M. Cappelletti and B. Garth (eds.), Access to Justice, Vol. I: A World Survey, Milan: Giuffre and Alphen aan den Rijn: Sijthoff and Noordhoff, 3-124.
- Cavanagh, R. and Sarat, A. (1980), "Thinking about Courts: Toward and Beyond a Jurisprudence of Judicial Competence," 14 Law & Society Review, 371-420.
- Church, R., Jr., Carlson, A., Lee, J.L. and Tan, T. (1978), Justice Delayed: The Pace of Litigation in Urban Trial Courts, Williamsburg, Va.: National Center for State Courts.
- Coleman, J.S. (1974), Power and the Structure of Society, New York: W.W. Norton & Co.
- Colombatos, J. (1969), "Physicians and Medicare: A Before-After Study of the Effects of Legislation on Attitudes," 34 American Sociological Review, 318-34.

- Columbia Journal of Law and Social Problems (1970), "Rabbinical Courts: Modern Day Solomons," 6 Columbia Journal of Law and Social Problems, 49-75.
- Cross, H.M. (1973), "The College Athlete and the Institution," 38 Law and Contemporary Problems, 151-71.
- Curran, B.A. (1977), The Legal Needs of the Public: A Final Report of a National Survey, Chicago: American Bar Foundation.
- Damaska, M. (1975), "Structures of Authority and Comparative Criminal Procedure," 84 Yale Law Journal, 480-544.
- (1978), "A Foreign Perspective on the American Judicial System," in T.J. Fetter (ed.), State Courts: A Blueprint for the Future, Williamsburg: National Center for State Courts, 237-42.
- Danzig, R. (1978), The Capability Problem in Contract Law: Further Readings on Well-Known Cases, Mineola, N.Y.: Foundation Press.
- and Lowy, M.J. "Everyday Disputes and Mediation in the United States: A Reply to Professor Felstiner," 9 Law & Society Review, 675-94.
- Derret, J.D.M. (1968), Religion, Law and the State in India, London: Faber and Faber.
- DeTocqueville, A. (1953), Democracy in America, The Henry Reeve Text as revised by Francis Bowen, New York: Alfred A. Knopf, Vol. 1. (Original, 1838.)
- Diamond, S. (1971), "The Rule of Law Versus the Order of Custom," 38 Social Research, 42-72.
- Diver, C.S. (1979), "The Judge as Political Powerbroker: Superintending Structural Change in Public Institutions," 65 Virginia Law Review, 53-106.
- Dolbeare, K.M. and Hammond, P.E. (1971), The School Prayer Decisions: From Court Policy to Local Practice, Chicago: University of Chicago Press.
- Doo, L.W. (1973), "Dispute Settlement in Chinese-American Communities," 21 American Journal of

Comparative Law, 627-63.

- Dunlop, J. (1975), "The Limits of Legal Compulsion," John Herlings's Labor Letter, Vol. 25, Nos. 48-49.
- Dwyer, D.H. (1979), "Law Actual and Perceived: The Sexual Politics of Law in Morocco," 13 Law & Society Review, 739-56.
- Edelman, M. (1957), The Symbolic Uses of Politics, Urbana: University of Illinois Press.
- Edwards, H.T. (1977), "Labor Arbitration at the Crossroads: The 'Common Law of the Shop' v. External Law," 32 Arbitration Journal, 65-96.
- Ehrlich, E. (1936), Fundamental Principles of the Sociology of Law, New York: Russell & Russell (trans. Moll). (Original, 1913)
- Eisenberg, M.A. (1976), "Private Ordering Through Negotiation: Dispute-Settlement and Rulemaking," 89 Harvard Law Review, 637-81.
- Engel, D.M. (1978), Code and Custom in a Thai Provincial Court: The Interactions of Formal and Informal Systems of Justice, Tucson: University of Arizona Press.
- (1980), "Legal Pluralism in an American Community: Perspectives on a Civil Trial Court," American Bar Foundation Research Journal, 425-54.
- Engel, D.M. and Steele, E.H. (1979), "Civil Cases in Society: Process and Order in the Civil Justice System," American Bar Foundation Research Journal, 295-346.
- Enker, A. (1967), "Perspectives on Plea Bargaining," in President's Commission on Law Enforcement and the Administration of Criminal Justice, Task Force Report: The Courts, Washington, D.C.: U.S. Government Printing Office.
- Ennis, P.H. (1967), Criminal Victimization in the United States: A Report of a National Survey, Washington, D.C.: U.S. Government Printing Office.

- Eovaldi, T. and Gestrin, J.E. (1971), "Justice for Consumers: The Mechanisms of Redress," 66 Northwestern Law Review, 281-325.
- Evan, W. M. (1962), "Public and Private Legal Systems," in Evan (ed.), Law and Sociology, New York: The Free Press of Glencoe, 165-84.
- Feeley, M.M. (1976), "The Concept of Laws in Social Science: A Critique and Notes on an Expanded View," 10 Law & Society Review, 497-523.
- (1979), "Pleading Guilty in Lower Courts," 13 Law & Society Review, 461-66.
- Felstiner, W.L.F. (1974), "Influences of Social Organization on Dispute Processing," 9 Law & Society Review, 63-94.
- Ferguson, C.A. (1971), Language Structure and Language Use: Essays by Charles A. Ferguson, selected and edited by Anwar S. Dill, Stanford: Stanford University Press.
- Friedman, L.M. (1965), Contract Law in America, Madison: University of Wisconsin Press.
- and Macaulay, S. (1967), "Contract Law and Contract Teaching: Past, Present and Future," 1967 Wisconsin Law Review, 805-21.
- and Percival, R.V. (1976), "A Tale of Two Courts: Litigation in Alameda and San Benito Counties," 10 Law & Society Review, 267-301.
- Fuller, L.L. (1969a), "Human Interaction and the Law," 14 The American Journal of Jurisprudence, 1-36.
- (1969b), The Morality of Law (revised ed.), New Haven: Yale University Press.
- (1969c), "The Law's Precarious Hold on Life," 3 Georgia Law Review, 530-45.
- Galanter, M. (1966), "The Modernization of Law," in M. Weiner (ed.), Modernization: The Dynamics of Growth, New York: Basic Books.
- (1968), "The Displacement of Traditional Law in Modern India," 24 Journal of Social Issues, 65-91.

- _____ (1971), "Hinduism, Secularism and the Indian Judiciary," 21 Philosophy East and West, 467-87.
- _____ (1972), "The Aborted Restoration of 'Indigenous' Law in India," 14 Comparative Studies in Society and History, 53-70.
- _____ (1974a), "The Future of Law and Social Sciences Research," 52 North Carolina Law Review, 1060 (presentations at a conference on Developments in Law and Social Sciences Research).
- _____ (1974b), "Why the 'Haves' Come Out Ahead: Speculations on the Limits of Legal Change," 9 Law & Society Review, 95-106.
- _____ (1975), "Afterword: Explaining Litigation," 9 Law & Society Review, 347-368.
- _____ (1976), Excerpts from an unpublished paper entitled "Notes on the Future of Social Research on the Law," in L. Friedman and S. Macaulay (eds.), Law and the Behavioral Sciences (second ed.), Indianapolis: Bobb-Merrill, 18-20.
- _____ (forthcoming), "Adjudication, Litigation and Related Phenomena," in Law and Social Science (provisional title). To be published under the sponsorship of the Social Sciences Research Council.
- Geerken, M. and Gove, W.R. (1975), "Deterrence: Some Theoretical Considerations," 9 Law & Society Review, 497-513.
- Getman, J.G. (1979), "Labor Arbitration and Dispute Resolution," 88 Yale Law Journal, 916-949.
- Gibbs, J.P. (1975), Crime, Punishment and Deterrence, New York: Elsevier Scientific Publishing Co.
- _____ (forthcoming), "Punishment, Deterrence, and Retribution," in Law and the Social Sciences (provisional title). To be published under the sponsorship of the Social Sciences Research Council.
- Goldberg, G. (1977), A Lawyer's Guide to Commercial Arbitration, Philadelphia: American Law Institute-American Bar Association Committee on Continuing Education.

- Goldberg, V.P. (1976), "Regulation and Administered Contracts," 7 The Bell Journal of Economics, 426-448.
- Goldstein, P. and (1971), "The Management of Air Quality: Ford, R. Legal Structures and Official Behavior," 21 Buffalo Law Review, 1-48.
- Griffiths, J. (1979), "The Legal Integration of Minority Groups Set in the Context of Legal Pluralism," unpublished, forthcoming in revised form under the title, "What is Legal Pluralism?"
- Gulliver, P.H. (1973), "Negotiations as a Mode of Dispute Settlement: Towards a General Model," 7 Law & Society Review, 667-691.
- Hallauer, R.P. (1972), "Low Income Laborers as Legal Clients: Use Patterns and Attitudes Toward Lawyers," 49 Denver Law Journal, 169-232.
- Hart, H.L.A. (1961), The Concept of Law, Oxford: Clarendon Press.
- Hirschman, A.C. (1970), Exit, Voice and Loyalty: Responses to Decline in Firms, Organizations and States, Cambridge: Harvard University Press.
- Jacob, H. (1969), Debtors in Court: The Consumption of Government Services, Chicago: Rand-McNally.
- Johnson, E., Jr., (1977), "Comparative Analysis of the Statis- Bloch, S.A., Drew, tical Dimensions of the Justice Systems of A.B., Felstiner, Seven Industrial Democracies," a report sub- W.L.F., Hansen, E. mitted to the National Institute for Law W. and Sabagh, G. Enforcement and Criminal Justice.
- and (1978), "This Nation Has Money for Everything: Drew, A.B. Except Its Courts," 17 Judges Journal, 8.
- Kane, P.V. (1946), History of Dharmasastra: Ancient and Mediaeval Religious and Civil Law, Vol. III, Poona: Bhandarkar Oriental Research Institute.
- Katz, J. (1977), "Cover-up and Collective Integrity: On the Natural Antagonisms of Authority Internal and External to Organizations," 25 Social Problems, 3-17.
- Kennedy, D. (1973), "Legal Formality," 2 Journal of Legal Studies, 351-98.

- Kidder, R. (1973), "Courts and Conflict in an Indian City: A Study in Legal Impact," 11 Journal of Commonwealth Political Studies, 121-39.
- (1974), "Formal Litigation and Professional Insecurity: Legal Entrepreneurship in South India," 9 Law & Society Review, 11-37.
- (1978), "Western Law in India: External Law and Local Response," in H.M. Johnson (ed.), Social System and Legal Process: Theory, Comparative Perspectives, and Special Studies, San Francisco: Jossay-Bass Publishers, 155-80.
- Kirp, D.L. (1976), "Proceduralism and Bureaucracy: Due Process in the School Setting," 28 Stanford Law Review, 841-77.
- Kurczewski, J. and Frieske, K. (1978), "The Social Conciliatory Commissions in Poland: A Case Study of Nonauthoritative and Conciliatory Dispute Resolution as an Approach to Access to Justice," in M. Cappelletti and J. Weisner (eds.), Access to Justice, Vol. II: Promising Institutions, Milan: Giuffre and Alphen aan den Rijn: Sijthoff and Noordhoff, 153-427.
- Lempert, R. (1978), "More Tales of Two Courts: Exploring Changes in the 'Dispute Settlement Function' of Trial Courts," 13 Law & Society Review, 91-138.
- Levin, M.A. (1977), Urban Politics and the Criminal Courts, Chicago: University of Chicago Press.
- Li, V.H. (1971), "The Evolution and Development of the Chinese Legal System," in J.M.H. Lindbeck (ed.), China: Management of a Revolutionary Society, Seattle: University of Washington Press, 221-55.
- Lingat, R. (1973), The Classical Law of India, Berkeley: University of California Press, (trans. by J.D.M. Derrett).
- Macaulay, S. (1963), "Non-Contractual Relations in Business: A Preliminary Study," 28 American Sociological Review, 55-67.
- (1966), Law and the Balance of Power: The Automobile Manufacturers and Their Dealers,

- Mnookin, R.H. and Kornhauser, L. (1979), "Bargaining in the Shadow of the Law: The Case of Divorce," 88 The Yale Law Journal, 950-97.
- Mohr, L.B. (1976), "Organizations, Decisions and Courts," 10 Law & Society Review, 621-42.
- Moore, S.F. (1973), "Law and Social Change: The Semi-Autonomous Social Field as an Appropriate Object of Study," 7 Law & Society Review, 719-46.
- Muir, W.K., Jr. (1967), Prayer in the Public Schools, Chicago: University of Chicago Press.
- Nadel, S.F. (1953), "Social Control and Self-Regulation," 31 Social Forces, 265-73.
- Nims, H.D. (1950), Pre-Trial, New York: Baker, Voorhis & Co.
- Noonan, J.T., Jr. (1976), Persons and Masks of the Law: Cardozo, Holmes, Jefferson, and Wythe as Makers of the Masks, New York: Farrar, Straus, and Giroux, 167 pp.
- Parsons, T. (1974), "Evolutionary Universals in Society," 29 American Sociological Review, 339-57.
- The Pound Conference (1976), 70 Federal Rules Decisions, 79.
- Pospisil, L. (1971), Anthropology of Law: A Comparative Theory, New York: Harper and Row.
- Rnadall, R.S. (1968), Censorship of the Movies: Social and Political Control of a Mass Medium, Madison: University of Wisconsin Press.
- Renfrew, C.B. et al. (1977), "The Paper Label Sentences: An Evaluation," 86 Yale Law Journal, 590-618.
- Rosenberg, M. (1972), "Let's Everybody Litigate?" 50 Texas Law Review, 1349.
- Ross, H.L. (1970), Settled Out of Court: The Social Process of Insurance Claims Adjustment, Chicago: Aldine.
- Ruffini, J.L. (1978), "Disputing Over Livestock in Sardinia," in L. Nader and H. Todd (eds.), The Disputing Process--Law in Ten Societies, New York: Columbia University Press.

New York: Russell Sage Foundation.

- (1979), "Lawyers and Consumer Protection Laws," 14 Law & Society Review, 115-71.
- MacCollum, S. (1967), "Dispute Resolution in an American Supermarket," in P. Bohannon (ed.), Law and Warfare, Garden City, N.Y.: The Natural History Press, 291-99.
- Mather, L. and Yngvesson, B. (forthcoming), "Language, Audience and the Transformation of Disputes," in K. Boyum and L. Mather (eds.), Empirical Theories About Courts, New York: Longmans.
- Mayhew, L.H. (1971), "Stability and Change in Legal Systems," in B. Barber and A. Inkeles (eds.), Stability and Social Change, Boston: Little, Brown, 187-210.
- Mayhew, L.H. and Reiss, A.J. Jr. (1969), "The Social Organization of Legal Contacts," 34 American Sociological Review, 309-18.
- McCormack, A.E., Jr. (1977), "Rule Enforcement and Moral Indignation: Some Observations on the Effects of Criminal Antitrust Convictions upon Societal Reaction Processes," 25 Social Problems, 30-39.
- McGillis, D. and Mullen, J. (1977), Neighborhood Justice Centers: An Analysis of Potential Models, Washington: Department of Justice, Office of Development, Testing and Dissemination, National Institute of Law Enforcement and Criminal Justice, LEAA.
- Mentschikoff, S. (1961), "Commercial Arbitration," 61 Columbia Law Review, 846-69.
- Meschievitz, C.S. (1979), "Whither Nyaya Panchayats" (unpublished paper).
- Meschievitz, C.S. and Galanter, M. (forthcoming), "In Search of Nyaya Panchayats: The Politics of a Moribund Institution," in R. Abel (ed.), The Politics of Informal Justice: Comparative Studies, New York: Academic Press.
- Mnookin, R.H. (1979), "Bargaining in the Shadow of the Law: The Case of Divorce," Working Paper No. 3, Centre for Socio-Legal Studies, Wolfson College, Oxford.

- Ryan, J.P. and Alfini, J.J. (1979), "Trial Judges' Participation in Plea Bargaining: An Empirical Perspective," 13 Law & Society Review, 479-507.
- Santos, B. (1977), "The Law of the Oppressed: The Construction and Reproduction of Legality in Pasarjada," 12 Law & Society Review, 5-126.
- Sarat, A. (1977), "Studying American Legal Culture: An Assessment of Survey Evidence," 11 Law & Society Review, 427-88.
- Sawer, G. (1965), Law in Society, Oxford: Clarendon Press.
- Scheingold, S.A. (1974), The Politics of Rights: Lawyers, Public Policy and Political Change, New Haven: Yale University Press.
- Selznick, P., Nonet, P. and Vollmer, H.M. (1969), Law, Society and Industrial Justice, New York: Russell Sage Foundation.
- Shapiro, M. (1975), "Courts," in N. Polsby and F. Greenstein (eds.), A Handbook of Political Science, Massachusetts: Addison-Wesley Publishing Co., Inc.
- Snyder, F.E. (1978), "Crime and Community Mediation--the Boston Experience: A Preliminary Report on the Dorchester Urban Court Program," 1978 Wisconsin Law Review, 737-95.
- Spiro, M.E. (1961), "Social Systems, Personality, and Functional Analysis," in B. Kaplan (ed.), Studying Personality Cross-Culturally, Evanston: Ros, Peterson & Co., 93-128.
- Stinchombe, A. (1969), "Social Structure and Organization," in J.G. March (ed.), Handbook of Organizations, Chicago: Rand, McNally & Co., Ch. 4, 142-93.
- Sykes, G.M. (1958), The Society of Captives, Princeton: Princeton University Press.
- Tanner, N. (1970), "Disputing and the Genesis of Legal Principles: Examples from Minangkabau," 26 Southwestern Journal of Anthropology, 375-401.

- Trubek, D. and Galanter, M. (1974), "Scholars in Self-Estrangement: Some Reflections on the Crisis in Law and Development Studies in the United States," 1974 Wisconsin Law Review, 1062-1102.
- Twining, W. (1973), Karl Llewellyn and the Realist Movement, London: Weidenfeld and Nicolson.
- Verkuil, P.R. (1976), "A Study of Informal Adjudication Procedures," 43 University of Chicago Law Review, 739-98.
- Wanner, C. (1974), "The Public Ordering of Private Relations: Part 1: Initiating Civil Cases in Urban Trial Courts," 8 Law & Society Review, 421-40.
- Wasby, S.L. (1970), The Impact of the United States Supreme Court: Some Perspectives, Homewood, Illinois: The Dorsey Press.
- Weber, M. (1954), Max Weber on Law in Economy and Society, M. Rheinstein (ed.), Cambridge: Harvard University Press. (Original, 1922).
- White, J.J. (1977), "Evaluating Article 2 of the Uniform Commercial Code: A Preliminary Empirical Expedition," 75 Michigan Law Review, 1262-85.
- Whitford, W.C. (1968), "Law and Consumer Transaction: A Case Study of the Automobile Warranty," 1968 Wisconsin Law Review, 1006-98.
- Wilson, J.Q. (1968), Varieties of Police Behavior: The Management of Law and Order in Eight Communities, Cambridge: Harvard University Press.
- Wisconsin Law Review (1977), Note "The Role of Civil Courts in Church Disputes," 1977 Wisconsin Law Review. 904-27.
- Witty, C.J. (1978), "Disputing Issues in Shehaam, A Multi-Religious Village in Lebanon," in L. Nader and H. Todd (eds.), The Disputing Process-- Law in Ten Societies, New York: Columbia University Press.
- Yankelovich, Skelly and White (1978), The Public Image of Courts, Williamsburg: National Center for State Courts.

- Zablocki, B. (1971), The Joyful Community: An Account of the Bruderhof, A Communal Movement Now in Its Third Generation, Baltimore: Penguin Books.
- Zald, M.N. and Hair, F.D. (1972), "The Social Control of General Hospitals," in B. Georgopoulos (ed.), Organization Research on Health Institutions, Ann Arbor: Institute for Social Research, University of Michigan, 51-87.
- Zeisel, H., Kalven, H., Jr., and Buchholz, B. (1959), Delay in Court, Boston: Little, Brown and Company.

ACKNOWLEDGMENTS

Opportunity to develop some of the ideas in this paper was afforded by the support of National Institute of Law Enforcement and Criminal Justice Grant No. 78-N1-AX-0137 ("The Development of Empirical Theories of Courts"). The contents of this paper are the responsibility of the author alone and do not represent the view of the Institute or of the other investigators on this grant. An earlier version of this paper appeared in M. Cappelletti, Ed., Access to Justice and the Welfare State (Sijthoff, Klett-Cotta, Bruylant & Le Munnier, 1981).

I am grateful to Murray Edelman, John Griffiths, Tom Heeler, Richard Lempert, Stewart Macaulay and David Trubek for helpful responses to earlier drafts. I would also like to thank Joan E.T. Stearns and Laura Woliver for their capable assistance.