INSTITUTIONALIZING NEIGHBORHOOD COURTS: TWO CHILEAN EXPERIENCES

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The convergence of the forces of national competition among ideologically diverse political parties with the development of a squatter settlement movement brought the issue of neighborhood courts to national attention. In the face of Congressional stalemate over a national decentralization, two local experiments emerged, one employing professional judges holding regular informal hearings beyond their normal judicial duties for poor urban residents, the other involving left-organized squatter settlements' establishment of their own "extra-official" court systems using locally elected lay judges. The organizational and political contexts of the two, and their implicit ideological distinctions, led to somewhat different caseloads and distinct dispute processing styles. The professional court tended to routinize disputes, arbitrate, and rely on state police power; the lay court tended to mediate, focus upon sociological and political causes of disputes, and use formal and informal enforcement power. Each encountered severe constraints inhibiting development and institutionalization. These stemmed from lack of organizational resources and clear-cut goals, and the priorities of the organizational contexts in which they attempted to function. These priorities were, in turn, reflected in the class-based conflict encompassing Chilean politics during the Allende period.

I. INTRODUCTION

Two concerns animate interest in decentralizing urban courts or establishing neighborhood courts. Courts of modern urban commercial-industrial centers have highly specialized procedures necessitating professional advocates, and case loads dominated by disputes with high material stakes or involving breaches of the public order. These characteristics bar easy access to judicial services for those with modest resources or burdened with disputes of lesser moment. Deprofessionalization, simplification, and decentralization can be seen as possible means of removing these barriers, though analyses of small claims courts point to limitations in this promise (Yngvesson and Hennessey, 1975). Decentralized courts can also be seen as partial efforts to replace urban anomic social relations with a greater sense of community and

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to establish local-level governing power. They might permit peaceful face-to-face resolution of disputes and discourage damaging, anonymous retribution or lingering irresolution. Such courts might influence or be influenced by community norms and residents.[1]

The Allende period in Chile saw two urban judicial decentralization efforts speaking to these concerns. One emerged from the judiciary, after external political pressure, and was to feature professional judges holding weekly informal court sessions, without lawyers, for residents of working class and poor neighborhoods within their jurisdictions. The other cropped up in a few highly organized, politically left, new squatter settlements (called *campamentos*) surrounding Santiago. There, though judicial structures varied from one settlement to the next, judges were lay people elected from the *campamento*. The following analysis compares an example of each of these two types.

The decentralized professional court and lay courts of one *campamento* generated somewhat different caseloads, employed diverse methods of dispute processing, differed in ideological perspectives and goals (not necessarily articulated), and operated under distinct organizational constraints. Each achieved modest success; both encountered intractable problems hindering institutionalization. The analysis leading to these conclusions rests upon field research consisting largely of interviews with participating and non-participating professional judges, with government and opposition leaders and direct observation of several dozen cases in the professional court, and, for the squatter settlement, extensive interviews with five informants who lived and worked within the squatter settlement.[2]

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[1] For discussion of general urban decentralization strategies, see Kotler (1969); Altshuler (1970); Kristol (1968); O'Brien (1975); Yin and Yates (1975); and Yates (1976).

[2] The analysis also included interviews within a squatter settlement that did not contain its own unofficial court and was not within the jurisdiction of one of the professional Popular Audiences, to attempt to find the kinds of disputes which existed there and whether there was informal, regularized, third-party dispute processing, and interviews in an upper-class neighborhood exploring attitudes toward the idea of neighborhood courts. It has also benefitted greatly from contemporaneous field research on the Popular Audiences by Heleen Iestwaart, and from surveys of squatter attitudes toward the system of justice and the idea of neighborhood courts performed by the Equipo Poblacional of the Centro Interdisciplinario de Desarrollos Urbano y Regional, known as CIDU. See Cheetham, *et. al.* (1972).

Political considerations and issues of local confidentiality prevented direct observation by outsiders, particularly U.S. researchers. Considerable anti-U.S. sentiment pervaded Chile during this period and was naturally strongest

The theoretical framework within which the analysis is developed sees the law—a body of social, economic, cultural, and normative rules within a society—and legal institutions as social products rather than phenomena emanating from God, natural law, or the internal logic of the legal science. Law in a modern, capitalist state reflects the interplay between levels of class conflict and state structures and policies. The policies can serve to defend against increases in class conflict or to mediate intraclass relations, but developments in lawmaking institutions might also be the product of class conflict—in this case, of social protest movements, themselves a result of contradictions within the capitalist economy or created by state policies (Useem, 1974; Epsing-Anderson, Friedland, and Wright, 1976). This framework does not deny the relevance within the traditional field of urban politics of local decisional analysis or analyses of decentralization strategies with local urban environments, but seeks to place decision makers and strategy formation within a broader context.[3] In addition, this framework need not ignore the insights of the relationships of third-party dispute processing styles and institutions to the character of social organization within the relevant community and to the types of disputes litigants choose to bring before them. Those relationships have been portrayed in numerous ethnographic studies usually exploring traditional, stable, self-contained cultures, or cultures gradually adapting to the presence of the legal outposts of a modern state.

But the present study does not see the types of dispute processing institutions and their styles as outcomes only of local social organization and shared local values, or as the result of local residents choosing to take advantage of new options emanating from changing environmental pressures. The new legal institutions are seen as the result of direct challenges to traditional arrangements, which arose from changes in the level of class conflict, affecting the priorities of national political structures, including political parties. The political developments gave rise to what Santos (1977), in his remarkable study of a Brazilian squatter settlement, refers to as legal pluralism,

within left sectors. In addition, one found quite justifiable fears of CIA infiltration, and a particular tradition in Chile of abusive research projects. For an account of the latter see Horowitz (1967). For pertinent observations on non-nationals doing squatter settlement research, see Santos (1977: 8.)

[3] For critiques of the reputational, decisional, and pluralist schools in urban political theory, and developments from those schools, see Katznelson (1976) and Castells (1977: 243-378).

or the presence of legal modes and institutions somewhat independent and distinct from the official dominant legality, though the political conditions in the Chilean case obviously differed and resulted in distinct forms of legal pluralism. Specifically, the Chilean state in the late 60's and early 70's was not fascist, and that period was marked by increasingly high levels of class conflict and political mobilization. Neighborhood courts as a national political issue (among other issues) were spawned by the convergence of two political forces: an urban squatter land invasion movement, itself the product of the state's inability to resolve the inadequacies of the private housing market; and the competition for power and policies among ideologically distinct national political parties, as well as state institutions such as the judiciary.

II. ORIGINS OF THE NEIGHBORHOOD COURTS

For a time in 1971 neighborhood courts became a Chilean political issue capturing national attention. The recently elected Allende *Unidad Popular* (UP) coalition government proposed a law to establish a nationwide system of elected, neighborhood, lay-staffed courts. The bill met such vociferous opposition in the opposition-controlled Congress, that it was withdrawn. In political terms the bill can be seen as part of a UP effort to gain the allegiance of thousands of uncommitted poor and working-class voters living in the many new (and not so new) squatter settlements surrounding Santiago. It was also an ideological attack on the existing judicial structure, which the UP regarded as biased against the working class.

In the previous decade the centrist Christian Democrats (DC), the left Communist Party (CP) and Socialist Party (SP) (the two leading parties of the UP) had vied for the support of residents of poor neighborhoods. After the 1964 defeat of Allende by Eduardo Frei, the DC had the upper hand. Frei, with a more sympathetic Congress than Allende was to have, and with considerable financial support from the U.S. and international lending organizations, was able to launch education and housing programs which intially benefitted, or promised to benefit, poor residents. However, as Frei's six-year term drew to a close, economic bottlenecks and financial problems severely hampered housing programs. Many people who had been promised homes (some of whom had even made payments), or materials for self-constructed homes, failed to get them (Castells, 1974: 263; Pastrana and Threlfall, 1974: 35).

This failure, increasing central city land costs with attendant higher rents, and general economic stagnation in 1968-1970, led to an urban squatter settlement movement of organized land invasions. The CP and SP, and the Left Revolutionary Movement (MIR), a party which viewed the electoral pursuits of socialism as a futile strategy, worked in this movement by helping to organize more invasions. Squatter invasions increased from 11 in 1968 to 58 in 1969, and 323 in 1970 (Castells, 1974: 271; Pastrana and Threlfall, 1974; 71). Frei and his multiclass based party were in a bind. To repress the invasions by police power would weaken DC popularity among this growing and increasingly organized portion of the urban population, but to permit them would damage support among bourgeois classes frightened by this increase in mass illegality and assault on private property. The tide was swinging toward the left, particularly after police killed several people during a March, 1969, squatter invasion in a southern city.

After Allende's victory in 1970, the UP proposed housing, health, and education programs, as well as neighborhood courts with jurisdiction over minor torts, crimes, and contractual disputes. These were aimed at squatter settlements and residentially based constituents. If the courts were to be popular in *campamentos*, the UP would benefit. Also, the DC feared that eligibility for judgeships under the UP bill (previous membership in labor or social institutions) would bias elections in favor of UP neighborhood candidates.[4] The DC's counter proposal sought to cure the access problem and maintain what it saw to be the integrity of the judicial system by greatly expanding the number of professional judges.

The more explosive point of the UP bill centered on its critique of the existing judicial order. The left claimed that most poor people had no access to the judicial system. Some elements of the DC joined in this criticism, but they saw the solution not in lay-staffed courts, but in expanding the number of professional judges. But to the UP (or at least those UP elements most in favor of the bill, the MAPU party and sectors of the SP) such changes would not be sufficient, because the professional judiciary was part of a legal order which systematically discriminated against the poor. "Legal" manipulations enabled rich land owners to absorb reservation lands from Indians in southern Chile, but theft of property by poor people, when apprehended, was sharply penalized (except in some

[4] Interviews with José Viera Gallo, *Subsecretario del Ministerio de Justicia*, and Ricardo Galvez, *Relator de la Corte Suprema*, October, 1971.

cases of squatters, if they were well organized). The financial damage levied on a negligent wealthy auto driver (and almost all car owners in Chile were well-to-do) would be considerably greater if the victim were rich, given relative access to legal help, ability to prove damages, and bargaining power. The UP sought to change this legal order and saw creation of the neighborhood courts as one step in breaking bourgeois domination of judicial institutions (Novoa, 1972, 1964, 1965; *Chile Hoy*, October 6, 1972: 30, 32; de la Fuente Moreno, 1973: 77; Farias, 1972: 92, Cerroni, 1972: 85).

The critique kindled the real heat of the opposition to the proposal. Despite the limited jurisdictional power these courts were to have, the right opposition (centered in the National Party) saw in the proposal partial fulfillment of its prophecy that once in power the left would attempt to destroy the Constitutional order (*El Mercurio*, January 25, 1971: 23; January 27, 1971: 33; March 4, 1971: 3). Residents of upper-class neighborhoods expressed apprehension that, for example, their maids might bring a case against them in a neighborhood court.[5] These objections might have seemed like overreactions, or anti-left propaganda. After all, the UP proposal was to pass through Constitutional procedures, and it was hard to imagine an upper-class neighborhood's court not being controlled by members of that class. But opposition did not stem just from fear of material losses through unsuccessful defenses in neighborhood courts. It came also from a real sense that the UP plan would upset the power balance based on status and deference to status. Allowing working class lay people to be judges would undermine the legitimacy of professional judges. Even one maid forcing an employer to a neighborhood court could become a celebrated case upsetting class-based patterns of deference. Granting institutional judicial power to working class judges to levy even mild punishments would disturb power relations and create an unfortunate, or disastrous, precedent.

Though the bill stalled in Congress, and was later withdrawn by the UP, the debate surrounding it contained some of the same ideological currents as the two courts under study. Though neither court was exactly what DC and UP sponsors had in mind, each can be seen as a product of the class conflict and ideological differences which gave rise to the UP and DC

[5] Interviews with seven families from Las Condes, a very well-to-do neighborhood in Santiago, November, December, 1971.

proposals. The professional court experiment embodied an attempt to extend Chilean law and its institutions to those without access to judicial services. The lay courts rejected the idea of professional judges, were established outside the official legal system, and sought to delegitimize the official judiciary.

III. OPERATION OF THE PROFESSIONAL NEIGHBORHOOD COURT

Judicial Participation

Following the demise of the neighborhood court bill, the Ministry of Justice requested the Supreme Court to order all judges below the Supreme Court to hold regular court sessions without lawyers in poor and working class neighborhoods. Perhaps to avoid a propaganda coup for its left critics, the Supreme Court formally accepted the suggestion and issued instructions to courts to hold Popular Audiences, as they were to be called. But only three or four judges in the Santiago area actively participated in the program. None of them actually left their courts and went out into individual neighborhoods within their jurisdictions. Those who did participate had courts located near working-class neighborhoods. Many Santiago courts were housed in the central business district, with jurisdictions spreading to other areas of the city. Some centrally located judges announced on small signs in court hallways the hours of the Popular Audiences, but this was insufficient to generate a case load. Other judges were candid about their lack of participation, stating that heavy case loads prevented them from allocating time to the new program.[6] They did seem to have full schedules, but this explanation missed the proposal's implication that the judicial system needed to shift priorities away from normal functions.

This low participation reflected low Supreme Court commitment to the program. The Constitution gave considerable power of appointment and promotion to the Supreme Court. Though the President could appoint judges to the Supreme Court and lower courts, he could appoint only from short lists of candidates selected by the Supreme Court for an appellate court, and by an appellate court for lower courts. The Supreme Court had regulatory powers and could dismiss or reprimand judges in cases of malfeasance (Gil, 1966: 125). The widespread lack of compliance with the Supreme Court's Popular Audience

[6] Interviews with three nonparticipating Civil Court judges, November, 1971.

memorandum reflected lack of enthusiasm for the program on the part of most judges, given their normal case loads and given the professional status attached to them, as well as an informal understanding that the Supreme Court, and the appellate courts under its power, also gave it low priority at best.

The historically determined priorities of the judiciary, operating within a capitalist mode of production, gave attention to cases regulating relations between large economic organizations, involving high material stakes at issue between well-to-do individuals, or threatening the social order—particularly the social order of the bourgeoisie. Professional status flowed from these priorities. Despite the best intentions of a few reform-minded judges, a substantial shift in priorities (amounting to one day per week for all judges) was not to be generated without substantial pressure from outside the judiciary. Nonetheless, judges hoping for eventual appointments now had to estimate the effect of blatant nonparticipation on the UP-controlled Ministry of Justice. Putting up signs could give the appearance of participation and foster the argument that residents didn't seem to want the service. Of the three judges actively participating in the program, one expressed high enthusiasm for the program, and was also hoping for an appellate court appointment from the Ministry; another was unenthusiastic, but strictly interpreted the Supreme Court communique as an order to be followed.[7] The last, our main focal point, had some enthusiasm and no directly obvious ambitions for immediate promotion.

Court Resources and Symbolic Access

Judges who did participate were expected to maintain their normal level of performance in their regular jurisdictions. Participation thus strained resources, a theme which pervades our analysis of the Popular Audiences of one court. Located several miles from Santiago's center, this court's district comprised poor and working-class neighborhoods, relatively new *campamentos*, and some neighborhoods of government-financed housing. The population of the area exceeded 100,000. In addition to stenographers and guards, the criminal court judge had an active staff of seven clerks. The clerks were highly skilled paralegal workers. Under Chilean procedure the judge plays a much more active investigatory role than in

[7] This conclusion is drawn from conversations in 1972 with Heleen Iestwaart, who observed Popular Audiences in mid-1972, and from her field notes.

Anglo-Saxon practice. He examines witnesses and the accused, often not even in the presence of the attorney, and he can order the police to bring in more evidence. His clerks also play an active role in this process, taking depositions and formulating questions on behalf of the judge. On one occasion, for example, I observed a particularly incisive clerk reduce a tough-looking accused murderer to tears with her pressing questions.

The judge, however, almost never employed clerks in Popular Audiences. The effects of this sparing use of resources in the initial stages of Popular Audience dispute processing sheds light on the implicit goals and values of the Popular Audiences.

Early in the morning of the day appointed for Popular Audiences, disputants would begin lining up on rude benches in the hallway of the modest, concrete block, five-room court house. (The contrast with the more ornate, cavernous halls of justice in downtown Santiago was striking.) Those at the end of the line of some 20 to 30 people might wait several hours until appearing before the judge's bench, a desk elevated on a small platform at the head of the building's largest room. This room also contained clerks' desks. During Popular Audiences hearings, the clerks would be recording criminal case depositions or filling out forms on their typewriters.[8]

As the hearings unfolded, it became evident that many disputants would wait hours without having their dispute substantially processed. At least half the complainants came to court without the defendant. In these cases the judge could do little but hear the complaint and request that the defendant be brought in the next time, or offer to issue a citation for his/her appearance. In other cases, the matter brought before the court had to be processed elsewhere (divorces, for example). The Popular Audiences could not preempt special jurisdictions of other courts, except that in matters of "lesser import" the Popular Audiences regularly heard matters involving civil or criminal issues, technically within another court's jurisdiction, but not usually taken up by them in the normal course of practice. In cases which had to be dealt with elsewhere, the Popular Audiences provided legal referrals. In over half of the cases, disputants waited considerable time for a five-minute hearing resulting in a citation, often ineffective due to shortages of police services, or a referral.

[8] The analysis of dispute processing in the Popular Audiences is based on observations of over 90 hearings, 15 post-hearing interviews with disputants, and multiple interviews with the judge, December 1971, February, March, April, 1972, supplemental conversations and field notes of some three-dozen hearings recorded by Iestwaart.

The paradox of bureaucratic lines in a reform designed to eliminate bureaucratically formed barriers might be explained by the court's lack of organizational resources. Already stretched to the limit in its normal load of criminal cases, it could not spare skilled clerks to pass through the line at the beginning of the day, quickly discovering the nature of each complaint, steering those with inappropriate business to the correct bureaucracy, and urging those without their opposite contestant to bring in the defendant, perhaps with the assistance of a citation issued by the clerk. However, proceeding as it did, it also wasted the court's resources by requiring the judge to spend additional hours dealing with cases that could not have the dispute joined. Since the judge was the most important figure in the court, it was paradoxical that the time contribution of the judge, as distinct from his staff, was less in criminal cases, regarded as the most important function of the court, than in cases in the Popular Audiences, where he virtually acted alone. Scarce organizational resources do not provide a complete answer for these delays. *Someone* was going to make the referral; it was a question of who should spare the time. It is apparent that having the judge perform this bureaucratic response was a symbolic act—not one of substance.

The goal of the symbolic act was to convince the client that the *judiciary*, in its Popular Audiences, was not unresponsive to his/her needs. No claim or problem was too small to come before the patronal figure of the judge. This does not mean that the Popular Audiences were simply a sham public relations effort. Another subconscious function might have been to convince the judge as well that he was a judge "of the people," and that no problem was too humble to be considered by him.

For this symbolic effort to produce a satisfied client, it was essential that the bureaucracy maintain client ignorance about its functions and respect for its hierarchy. If the client did not know that *anyone* in court could provide a simple referral, she/he would be more likely to be happy with the handling of her/his problem and awed by the judge's knowledge of the law and his "connections," and *less* likely be annoyed about the unnecessary delay.

To be satisfied by the symbolic effort, judges had to disregard efficiency and maintain a superior view of their role *vis-a-vis* clients. In this case, the judge might have viewed himself as giving a "gift" to those without normal access to the judicial system. This need not necessarily imply a condescending *noblesse oblige*, but it did require maintenance of a certain status

hierarchy. The "gifts" were handed "down," from a judge superior in class, income, education and, most important, power, to an inferior disputant. But if the disputant were to be critical of the judge's service, of his style of dispute processing, or of the long delays, the symbolic act would lose its effect, and the service rendered by this official representative of the state would be depreciated.[9]

Popular Audiences Disputes

Over two-thirds of the observed Popular Audiences cases seen by our main court involved disputes between family members or neighbors. Half of the remainder were between people who seemed to have, as the dispute unfolded, ongoing social ties—at work, as friends, or as neighborhood merchant and customer. The rest had, as far as could be determined, social ties related only to the activities leading to the dispute. As a general rule, the disputes between neighbors and within families appeared to have been simmering for some time and seemed, on the basis of permitted testimony, to contain complicated ranges of claim and counter-claim, dispute and subdispute. That this should be true of the neighbor arguments probably reflected the relative lack of mobility and privacy and, at least in some *campamentos*, a more intense level of social interactions than that associated with, say, U.S. car-dominated urban neighborhoods without ethnic ties and with apartment dwellings. Since no ethnographic study was attempted, it is difficult to make these generalizations. Nonetheless, studies of other squatter settlements, as well as my own search for regularized, informal, third-party dispute processing agents in a ten-year-old neighborhood of squatter-settlement origins, suggested social organization involving residentially based (sometimes family-based) multiplex relations which were more extensive than

[9] The Popular Audiences in two other courts seemed to vary in the treatment of complainants without defendants or needing referrals, but in a manner consistent with the interpretation of our main court's symbolic gesture of judicial-patronal attention. Apparently, one court also funneled all cases to the bench and, once there, paid considerably more attention to the complaints of those without defendants or those with referrals, letting the disputant speak at some length about the ins and outs of the dispute even if it was obvious that a referral or a citation was in order. This judge was most impressed with the "unique" role the Popular Audiences played in granting judicial attention to the poor and downcast. Another judge came to use a clerk to sift out disputants needing referrals or citations while the judge heard only joined disputes. This judge was thoroughly unimpressed with the worth of the Popular Audiences, and granted them only because she felt the Supreme Court had so ordered, an interpretation not shared by colleagues. These characteristics emerge from Heleen Iestwaart's field notes.

those suggested by Felstiner (1974) in his model of a technologically complex, rich society and less extensive and frequent than those in his technologically simple, poor society.[10]

Property claims were not infrequent in the Popular Audiences. Separated couples often faced problems of one person holding property claimed by the other. There were observed cases involving real property claims; none involved boundary, foundation, or easement disputes. Claims of broken windows, damage to a house (from rock throwing), or a broken fence appeared, as did a few cases of disputed occupancy or rent payment claims. In almost every case between families and neighbors, property claims were complicated by charges of physical or mental personal injury. These abounded in great variety: pestering, too much noise, slander, contentiousness, ill-behaved children, general gossip, "hanging around," threats of slander, assault, battery, voyeurism, lack of respect. Often these kinds of charges would be the sole basis of the case, without property claims. Cases between acquaintances from work, merchant and customer, or anonymous parties often concerned only property claims involving debts, unpaid rent, evictions, or borrowed or sold damaged goods.

The following examples give a more concrete sense of the variety of cases, and help illustrate the analysis of dispute processing in the Popular Audiences.

Case One

A man and a woman appear before the judge, the man looking somewhat sullen, the woman angry. The judge inquires what the court can do for them. The woman complains that the husband does not provide adequately for herself and their two children, drinks too much, and when drunk is abusive toward the children and herself. On occasion he has struck her and the children. The judge asks the man if he has hit his wife. He admits that he has, but goes on to affirm in increasingly angry tones that he has only struck the children lightly for misbehaving and the wife, not because he was drunk, but because she berated him for not having enough money or called him lazy—things she has said publicly as well. She interjects that this is not so, that she has not ridiculed him publicly; and he heatedly claims he knows she has told her relations of her disappointment in him. At this point the judge interrupts the

[10] The framework for analysis of dispute processing was developed in Spence (1971, 1973) and elaborated in Spence (1978). I owe an intellectual debt to the works of Richard Abel (1972, 1973).

lively argument and inquires, once again, if it is true that the husband has struck his wife. He reprimands the husband, informing him that there is no excuse for striking his wife and that it was a violation of the law. The judge says that if this assault and battery is repeated, he will see to it that the husband is prosecuted under the law. He asks the man if he understands, and the husband nods yes. The judge then urges the couple to try to live in tranquility, and dismisses them.

Case Two

Two women appear before the judge. The first woman claims that the other woman's young children are ruining her property, that she is poor and cannot afford this kind of trouble. She explains that she keeps a few chickens in her yard and charges that the second woman's children have made a practice of letting the chickens out, chasing them, and throwing rocks at them (though she does not claim that they have been injured or lost). Moreover, she says, the children and their mother show her no respect: the children taunt her, and the mother, in addition to not stopping the children, makes fun of her "dirty yard" to neighbors, thereby sowing disrespect for her throughout the neighborhood. The second woman maintains that the woman's yard is dirty and a disgrace to the neighborhood, and, moreover, that the first woman has been spreading slanderous rumors which might threaten her marriage. The first interjects that this is a lie. At this point the judge cuts off testimony and begins to lecture the women on the importance to the country of maintaining neighborly relations. He demands that they stop bothering each other, and suggests that they might best accomplish this by going out of their way to avoid one another.

Case Three

Two men take their turn for a hearing. One states that he had erected a small shack (presumably in a squatter settlement) but, for unstated reasons, had not occupied it. He had permitted the second man and his family to occupy it, charging them a monthly rent. The arrangement had gone on for over a year, but now he wanted to rent the home to his brother and his brother's family. His complaint is that the second man refuses to move his family out. The second man claims that he and his family have no place to go, that they have treated the house well and paid the rent on time, and that this behavior should be enough to allow them to remain. He does not contest

the ownership of the home or suggest that there had been a verbal or written agreement establishing the rental arrangement over a certain period. The judge explains to the second man that he must move out, as the house does not belong to him, that he can stay no longer than a month. But he suggests to the first man that he try to give the second as much time as possible to find another place to live.

Processing of disputes showed similar characteristics across dispute types. There were no formal boundaries to the kinds of claims or counter-claims which could be asserted, though some falling within the formal jurisdicton of another court, as in the case of a request for a divorce, would be referred by the judge. There were no formal rules of evidence; both sides could present hearsay, direct observations, observations of dubious relevance to any of the claims, or conclusory statements without support. Nonetheless, an unstated time limit bounded the hearings. Almost all hearings ranged from five to ten minutes, with a few stretching to 15 minutes (not counting mid-hearing delays and interruptions). This amount of time might have eliminated evidence and tended to limit the scope of the claims. There were no trained third party advocates, though sometimes a disputant would be accompanied by a friend who would help press the claim.

The judge cut off testimony for several reasons. He would seize upon testimony presenting an obvious "legal handle" which could be used as a basis for orders to the disputants. For example, in the argument between husband and wife, with charge and counter-charge, the wife's claim that the husband had beaten her, once admitted, became the main focus for the judge's handling of the case. One could argue that all aspects of the dispute were processed, if not resolved, but a sounder case would state that the boundaries of the processed dispute did not correspond to the real dispute (Santos, 1977: 25). Permitting testimony without recognizing it perhaps served a function to disputants of "blowing off steam," but the brevity of the proceedings limited this option. It was apparent from the focus of the decision that the outcome of the case rested upon the dictates of formal law, and the other claims either went largely unnoticed, were beyond the competence or power of the judge to deal with, or were permitted, up to a certain time limit, for the judge to sift through to see whether other claims presented an issue within the framework of formal Chilean law.

It is less obvious in the landlord-tenant case that testimony had been cut off or that some claims and counter-claims were

being ignored, but the judge did not explore features of the case beyond those pertinent to the outcome he saw dictated by Chilean property law. The arbitrated outcome flows from this adherence to Chilean law, save in the judge's suggestion that the landlord be flexible in exercising the rights ratified by the judge's decision. Unfettered by the substance of Chilean law or time constraints, the judge might have pursued other inquiries which could have led to different equitable solutions. Procedurally, judges in Chile have a tradition of broad investigatory powers, compared to the Anglo-Saxon tradition, and need not rely only on evidence presented by the parties or elicited through cross-examination by attorneys. The judge might have inquired what the exact nature of the "landlord's" claims to the building and property were. Was this a case of a squatter occupying another squatter's property? What were the actual needs and options available to the brother or to the current "tenant," given family size, salary, and employment? These questions are not meant to suggest that the judge's treatment of the case was unfair, but only to indicate the boundaries surrounding the processed dispute, and possible alternative paths to different outcomes.

Two other issues presented themselves in cases involving property claims. In some, though the formal legal issue was clear, the evidence presented was not. Rather than finding what the "truth" was, the judge sometimes divided the contested property (when the stakes were easily divisible). When the evidence clearly favored the plaintiff, the judge might ease the terms of payment of the debt. These were compromise solutions, but they should be distinguished from compromises attained through lengthy mediations resulting in consensual agreements and from efforts to maintain tranquility in a local society with face-to-face relations by "making the balance." Here the dispute was quickly arbitrated, and the process was dictated primarily by the administrative needs of the court. The judge did not have time to pursue more detailed evidence to arrive at the "truth," and the court could not be burdened by plaintiffs returning with further allegations of repeated unpaid claims against the same defendant.

In cases without an obvious "legal handle," the judge cut off disputants if charge and counter-charge threatened to "get out of hand." Otherwise, he would stop them after ten minutes and then, as in our second case, lecture them on proper familial or neighborly behavior. In these he often asserted that patriotic virtue demanded neighborliness, and implored disputants

to behave better or to ignore and avoid one another. Here the time boundaries on the case, and other constraints discussed below, omitted exploration of the roots of the disputes or the details of the multiplex relations which fostered it. A brief period of blowing off steam was permitted, but little effort to mediate was made. The lectures were often a compromise taking neither side in the case, but they were not always neutral. In husband-wife cases, unless the husband charged infidelity, the judge invariably took the side of the wife, and spent more energy imploring the husband to improve his behavior. When employing the "lecture method," the judge attempted to have both parties at least nod agreement to his invocation of harmonious relationships.

In cases without a "legal handle," the judge was presented with a real dilemma. It was difficult to find an arbitrated "legal" outcome; or if a formal legal claim was wrapped up in the flurry of charge and counter-charge (for example, defamation of character), it was difficult to resolve without complicated hearings. Yet the disputes were real, heavily charged with emotions, and often long standing and complicated. The second case could not be mediated in 15 minutes, though the judge's brief effort to get disputants to indicate agreement, while unlikely to restore harmony, was a beginning in that direction.[11] In short, though a hearing had been held and multiple claims presented (other elements of the dispute may well have been omitted entirely), only marginal progress was made toward dispute resolution. In fact, one might argue that though the judge heard the charges, the generality of his comments and decision did not really amount to processing the case.

Structural and ideological considerations defined the approach of the Popular Audiences to dispute processing. Operating within a relatively informal procedural framework

[11] Through communications with Heleen Iestwaart and her field notes I would conclude that two other judges processed claims similarly, though the styles differed somewhat. The "pro-Popular Audience judge" (see footnote 9) seemed to hold looser reins over testimony and held somewhat longer hearings as a result. It was this court's practice in some cases to have one of the clerks draw up an agreement between the two parties, which they would then sign. Though this gave the appearance of mediated consensual agreements, the agreements were fairly standard in content. They gave emphasis to the obligation of the parties to solve their own arguments, or suggested that they avoid each other, and relied upon generally phrased moral and patriotic precepts. The other judge seemed to cut off testimony quickly, complained of the demands on the court's time, and expressed amazement to the disputants (particularly in non-property-based claims) that they could waste so much of their time in foolish bickering.

without lawyers, written petitions, rules of evidence, or professional adversaries, the court's dispute processing was constrained by lack of money and time, great social distance between the highly educated professional judge and disputants, and limited power and authority. Scarcity of organizational resources was graphically evident as testimony was not only cut off after a few minutes, but often smothered by the din of clerk's typewriters, punctuated by interruptions (phone calls to the judge always seemed to receive higher priority, as did conferences with clerks), and shadowed by the judge's constant perusal of documents while the parties presented their cases.

As in the case of other bureaucracies bounded by lack of time and other organizational resources (staff, money), the judge, as a street-level bureaucrat, was led to routinization—a resource-saving practice. In this case it meant allowing roughly equal time periods per dispute, confining the dispute to familiar legal shorthands, and presenting formulistic agreements and standardized lectures on proper behavior (Lipsky, 1976: 202). An argument resting on grounds other than resource saving can be made in favor of routinization. It is the ethos of public bureaucracies not to play favorites, to treat equally clients with similar problems. On the other hand, constricting the confines of the case and applying generally worded directives, by ignoring major aspects of the dispute, resulted in a tendency to treat unequal cases equally.

Social distance between the professional judge and disputants also hampered consensual dispute resolution.[12] Though definitive socioeconomic information on all disputants could not be obtained, large differences between the judge and disputants in dress, manner of speech, levels of education, occupational status and privilege, residential context, and income pervaded the Popular Audiences. The judge underscored these by his difficulty in relating to non-property aspects of disputes which did not have familiar legal remedies. More than once the judge lamented to the observer that he was unable to understand "these people," or mentioned that they "lacked culture." This social distance from disputants stood in sharp contrast to ethnographic studies of third-party dispute practices in which the "judge" is fully integrated into the culture of the disputants. Combined with an apparent lack of training in mediation

[12] For discussions of the importance of the social background of judges, see Schubert (1963); Danelski (1966); Grossman (1966); and Cook (1973).

techniques, the social distance placed the judge at a disadvantage in finding a workable resolution of all apparent aspects of the dispute.

The use of formal law as a guide to dispute outcomes should not be attributed only to the social position of the judge, but is a convenient routinizing tool useful in a structurally determined, time-bounded hearing process. The Popular Audiences program was, after all, an extension of the formal judicial power of the state to people who might not have otherwise had access to it. The judge had more formal authorized power than the *presidente* in the Brazilian squatter settlement Santos (1977) has analyzed, but was constrained by his professional position in the judiciary's career advancement system to keep his decisions within the confines of formal law. This combined with a lack of organizational resources to truncate disputes, to ignore some claims and not explore possible equitable remedies or consensual agreements in other cases.

The impact of a lack of organizational resources was compounded by lack of real power and authority. Though the court demonstrated considerable authority over disputants while in the confines of the courtroom, like other "street level bureaucrats," the judge's ability to influence disputants once outside the court was extremely limited (Lipsky, 1976: 199). The judge's elevated position in the courtroom (he did not go to the neighborhoods), control over testimony, and patterns of speech, as well as the deference accorded him, showed the judge to be in command of the proceedings. Few disputants rebelled against this, though some expressed facial dissatisfaction with the frequent interruptions or with dispositions. To have dispositions obeyed presented a larger dilemma. The court had the threat of police power, but police power was already stretched in the court's normal criminal jurisdiction. The judge could threaten use of this power, but it was more a bluff than a reality. This lack of power also made it difficult to force reluctant defendants into court. Citations were backlogged, and knowledgeable defendants could take their chances on never having them enforced. These limitations in the dispute process within Popular Audiences should not imply criticism of the judge. Indeed, he was to be admired for making a sacrifice to hold the hearings at all, and for conducting them in a reasonable, civil manner, given the structural constraints.

Disputants might have seen the judge as a legitimate authority and would perhaps follow his decision out of respect. Voluntary court appearances, expressions of deference, facial

reactions to outcomes and interviews with a subsample of disputants conducted in the courthouse immediately after the hearings sometimes suggested this respect. In some cases settlements appeared to have been reached. These seemed to occur when material stakes dominated the dispute, particularly in situations unclouded by personal issues. In situations in which both disputants came to the court willingly, there sometimes appeared to have been a pre-hearing attitude disposed toward peace and "letting someone else decide." In these cases it seemed that the disputants would accept the judge's decision and had granted the court some measure of authority on the basis of its place in the Chilean legal structure. Open expressions of dissatisfaction or confusion regarding judicial consideration of only a portion of the dispute or vague dispositions suggested that any authority conferred upon the judge by initially bringing the case to the Audience was not binding and of limited effectiveness.

This is not to suggest that the standard by which the Popular Audiences should be measured would rest upon the degree to which disputes were replaced with harmonious relations. Certain kinds of disputes might not be susceptible to friendly outcomes, even with long hearings by less socially distant judges trained in mediation. Conceptions of justice might demand an outcome leaving one or both disputants displeased. Rather, one might argue (given the context of the judicial access problem agreed upon by the DC and UP) that the Popular Audiences had been a success, generating a steady caseload and offering disputants some chance of having their dispute processed.

However, shortcomings emerge from this "market" standard of meeting a demand for access. Given the size of its jurisdiction, the Popular Audiences heard a very small number of cases. The similarity of case types across three courts and disputes turned up by interviews in a neighborhood without Popular Audiences or an indigenous court suggest that disputes abounded in the jurisdiction.

It might also be claimed that, of this pool of disputes, those heard by the Popular Audiences were the entire subsample of disputants who wanted judicial help. However, the evidence suggests that few people knew of the Popular Audiences. Survey data from a sample of 400 residents of ten Santiago neighborhoods, and my own informal survey of 50 residents of neighborhoods within the court's jurisdiction, found that less than one percent had heard of the Popular Audiences program

(Cheetham, *et. al.*, 1972: 347). The inconveniences experienced in getting a hearing and the lack of useful dispositions would also diminish demand. On the other hand, the interviews from a neighborhood without a regular third-party dispute-processing agent indicated a potential demand if access were easy and the court regarded as fair, effective, and legitimate. Residents testified to disputes degenerating into physical struggles or shouting matches, or simply festering, sometimes without the offending party being aware of any problem.[13]

Low commitment of the judiciary's resources, social distance between judge and disputants, and lack of power and authority hampered dispute resolution and institutionalization of the Popular Audiences. Perhaps its impact would have been greater had it limited itself to disputes within familiar legal categories, but previously excluded because of inadequate material means. It might be argued that other cases should have been left to the disputants to resolve. Such a notion underlay the general DC tendency to want to extend the material and service benefits of the society's institutions to "marginal" sectors of the population, rather than to organize poorer classes so as to transform institutional arrangements to meet their particular needs. However, the notion of the potential impact of decentralized courts being measured solely by the existence of unprocessed, or unnegotiated disputes has limitations. It implies that with more time and better training for the judge, disputants would have flocked to the Popular Audiences. This market analogy ignores aspects of local social organization (Felstiner, 1974) and other political and normative considerations to be explored below.

III. THE SQUATTER SETTLEMENT'S COURTS

Campamento Political Structure and Strategy

During the squatter settlement movement marking the end of Frei's administration the MIR organized several *campamento* invasions. The MIR believed socialist revolution would come through violence and that the left should organize people for militant, extra-parliamentary political participation. Initially pursuing an urban guerrilla strategy, the MIR staged bank robberies and distributed the funds to squatter settlements. By the late sixties it had in the new squatter movement

[13] Interviews with 15 "knowledgeables" selected on a reputational basis in the neighborhood of José Maria Caro, January, February, March, 1972; Cheetham, *et. al.*, 1972: 37.

a chance to expand its political base. By organizing groups of families without homes to invade vacant urban lands, erect temporary houses and establish defenses against police attack, the previously underground party became involved in mass-oriented work and gained territorial bases. Once identified with the MIR, however, these lands were more likely than other left *campamentos* to be targeted for police repression. The MIR's relatively small base, non-competitive electoral position *vis-a-vis* the DC, and farther left political stance made its squatter settlements especially vulnerable. Defense measures had to be prepared to give notice that the settlers aimed to stand their ground. In three of these settlements, the neighborhood court system grew out of these initial security measures (Fiori, 1973: 84-85; Cuellar, *et. al.* 1971: 158-159).

A squatter's militia organized defense tactics, and also performed internal police functions. Maintaining the security of the *campamentos* was its only goal. Militiamen kept an eye out for police infiltrators. They broke up fights and caught petty thieves whose activities not only caused personal losses, but threatened general morale and increased suspicions. In some cases they simply "beat up" the thief, in others tried to fine or expel him. The militia served as police, judge, and jury.

Allende's election removed the external police threat, and general relaxation of militia activity marked the first post-election months. The three *campamentos* moved to a new common land provided by the government. Construction of temporary housing dominated life in the *campamento*, dubbed Nueva Habana.

In early 1971, the *campamento* dissolved the militia in an effort to place judicial and police functions within a newly erected government framework. The political structure rested upon 24 elected block committees (about 64 families per block). The *campamento* formed work fronts, each having specific task areas (Health Front, Sports and Recreation, Construction, Mothers, Culture and Education, Vigilance). Each block and front elected one representative to the Directorate, the main legislative and governing body of the *campamento*. In addition, the *campamento* had a Steering Committee (*Jefatura*) of five, elected at large. The Vigilance Front, taking over the duties of the militia, had one representative selected by each block committee, and other volunteers. Each block committee, in addition to making policy for the block and discussing issues to be decided by the Directorate, also served judicial functions for disputes arising within the block. The Directorate judged more

serious disputes and crimes, and disputes crossing block lines. Thus, block committees and the Directorate had a blend of judicial, legislative and executive functions (Grupo de trabajo, 1972: 48-51).

Compared to other Latin American shanty-town experiences, often with one central committee attempting to establish patron-client relations with the central government, or sometimes with a political boss (*cacique*) style of government, this was a highly elaborate political structure (Cornelius, 1975: Ch. 6; Lutz, 1970: 140; Powell, 1969: 211-212). It reflected an MIR political strategy of encouraging broad-based participation and learning of both political ideas and skills. It aimed to make this a model community of self government, a target which carried with it, as events developed, notions that this unofficial government of Nueva Habana was legitimate—and that Chile's traditional institutional government arrangements, even those executive offices under the control of the UP, were not necessarily legitimate. To the MIR, they had been established by the ruling class, not in the interests of poor and working classes, and their performance under the UP had to be judged by responsiveness to these classes. However, the MIR did not intend to establish an isolated utopian commune, but saw Nueva Habana as part of a larger national effort to revolutionize national politics. The strategy of broad political participation and political learning, its interaction with national political goals, and the way it developed in practice—for the MIR did not control this politically varied community of 9,000 people, though it had a strong influence—greatly affected the manner in which local disputes were processed by the new judicial system and other political bodies.

A brief illustration of two areas of activity will illuminate strategy and practice and set the stage for the analysis of the development of dispute processing. The immediate problem facing the Health Front was to gain quick, tangible results that would hold out the promise of wider solutions to the manifest, typical *campamento* problems of malnutrition, infant mortality, epidemics, and the general debilitation of widespread chronic bad health. The Front gained volunteer doctors and nurses sympathetic to the goals of the *campamento*, and the ranks of the Front grew. But more professionals, supplies, a clinic, training and education were also needed. The Health Front demanded supplies and construction materials from the government and doctors from local hospitals operating within the National Health Service. It also demanded that the National

Health Service provide residents with training in nutrition and relatively easy health skills—giving injections, taking temperatures, bandaging, administering medicine. "Demand" is the key word here, and it was heard through petitions, demonstrations, and sit-ins.

If one of the goals of the process was to improve health, another was to mobilize Front members into political activity: to broaden participation, to have strategy meetings and to have "demand making" be part of a political learning process through which, among other skills, participants would learn the practices and biases of Chilean private and public health care. In practice the goals were interrelated. Participation and political demand making were needed to acquire the resources to improve health care. Success in improving health care encouraged broader participation and political learning. In this Front, however, success had its own dangers. The technical skills associated with health care posed the potential political problem of doctors' expertise becoming dominant in decision making. Recognition of the problem contributed to political learning. To some extent the Front combatted the expertise problem by making doctors equal members of the Front (not "outside consultants") subject to political criticism.

In the Construction Front a different set of problems existed. The *campamento* needed permanent housing and had very high rates of unemployment. In the past, some squatter settlements had been able to gain government recognition of land title, and a few had won pledges for government assistance in home construction. When the government constructed homes, it contracted with private construction companies associated in the Chamber of Chilean Construction. Frei had also attempted a "sweat capital" program in which the government was to provide low-cost materials with which the residents would construct their own homes. The Construction Front also demanded the pledge of homes but insisted that the UP government not hire the private contractors or use "sweat capital." Rather, it should pay residents of the *campamento* to construct the new settlement. It won this demand, and work began. The Front also debated the problem of organizing work structures and established work teams with elected leaders and collective decision making. Some three hundred residents participated in this Front.[14] This brief sketch simplifies a complicated process. Both fronts encountered delays and bottlenecks and protested

[14] Interviews with Nueva Habana informants. See also Grupo de Trabajo (1972).

bad materials and lack of government cooperation. Participation did not continually advance to higher levels. There were successful endeavors, but gains were not easily won.

Other fronts, such as the Recreation Front, were more traditional and less militant in their approach or, as in the case of the Mothers' Front, suffered from lack of clear-cut goals. This latter front did not openly challenge traditional sex-based political oppression, instances of which could be found within the *campamento*. Also, this squatter settlement was exceptional, even among those formed in the militant squatter-settlement movement, for its high levels of sustained participation (Castells, 1977: 369-375). To some extent, the militant demand-making style, sometimes exercised by Nueva Habana and other *campamentos* against the UP, was facilitated by the UP government. The UP was both reluctant and sympathetic—and it did not want to lose political ground to the MIR. A similar style in a Mexican context, for example, might well have resulted in police repression (Cornelius, 1975: 39). Here the relatively open, non-repressive character of the Allende government aided the political participation and learning strategy by yielding encouraging, if grudging, results without repression.

Neighborhood Dispute Processing

A. Criminal Cases

The participation and political learning strategies were reflected in the new dispute processing institutions, but there was less development and more partial institutionalization than in the activities of the Health and Construction Fronts and the Directorate.[15]

Prosecution of criminal suspects and invocation of sanctions by the *campamento* (aside from the initial land invasion) fell outside the bounds of Chilean law. Establishment of "courts" to resolve some kinds of arguments between neighbors arguably was within the legal realm of private ordering, but prosecution of individuals for activities defined as crimes by the Chilean legislature, and the claim of the right to define other activities as punishable crimes, seemed to violate the Constitutional provisions for the establishment of courts (*Constitición Chilena*, arts. 80, 81, 82). The Vigilance Front had primary responsibility for detecting criminal activity. Block committees and the Directorate held trials of criminal cases.

[15] Castells (1977: 365), viewing a number of squatter settlements in Chile, seems to regard the formation of local courts as being the most significant of all their activities.

Reported cases came to the block committee (minor thefts, assaults) or the Directorate (repeat crimes, appeals, serious thefts and assaults) by way of the Vigilance Committee or other residents. In most reported criminal cases little doubt seemed to exist about the facts. Defendants might plead mitigating circumstances, but not innocence. Merely suspicious activities were not prosecuted, or were dealt with informally; the "courts" seemed to hear only cases of those caught, as Chileans say, "with their hands in the dough" (*con las manos en la masa*).

Sanctions initially had traditional overtones—confinement through a form of house arrest, or fines. After a few months block committees criticized those as impractical (house arrest) or unfairly discriminatory against the poor. Fines were replaced by admonishments, and different forms of required activities helpful to the community or victims, and, if possible, related to the crime. For example, a drunk caught urinating in the streets would be admonished and required to spend a day cleaning streets. Someone caught stealing building materials, in addition to giving back the materials, would have to donate several days of labor to the construction projects. The creativity of the sanctions also gave them a certain *ad hoc* quality. The most serious sanction was expulsion from the community, for serious assaults, thefts, or recidivism. By the end of 1972, a half-dozen people had been banished. Given housing shortages, this was a serious sanction. It was also perhaps inconsistent with the goal of trying to create a model community for others to copy, in that it cast its most troublesome cases into other communities.

The Vigilance Front and block committees relied upon the larger community to enforce these sanctions, to keep track of the fulfillment of required activities, to spot banished offenders, and to recognize strangers, particularly after anti-UP economic sabotage escalated in late 1972. Though this cooperation and participation was not rare, we cannot know its precise extent in the community of 9,000. As will be discussed below, the extent of judicial activities varied from block committee to block committee. However, numerous residents testified that collective efforts had greatly reduced, though not eliminated, criminal activity by the end of 1972.[16]

The criminal dispute processing activities of Nueva Habana portrayed political themes important to our consideration.

[16] Interviews and correspondence with Nueva Habana informants. See also Grupo de Trabajo (1972), Fiori (1973), and *Chile Hoy* (February 9, 1973: 32).

Ideologically, they challenged more directly than did other fronts or other areas of dispute processing (save perhaps legislative activities—see below) the legitimacy of constitutionally established Chilean institutions, by trying cases distinctly within the exclusive jurisdiction of the official court system. Second, the conception of crime and early sanctioning practices reflected those of traditional institutions, but later political criticism brought forth sanctioning alternatives. Finally, the settlement attempted to prevent crime and enforce court decisions by organizing its citizens to be vigilant. This effort, and the direct connection between block committees and the Vigilance Front, sought to avoid the development of a separate specialized police force with excessive or arbitrary authority.

B. Legislative Dispute Processing

Two other types of cases initially came before block committees as individual complaints, but eventually were processed as legislative issues covering the entire *campamento*.

Speakeasies (*clandestinos*) presented a problem common to poor neighborhoods. They often poured out raucous noise and drunks at all hours. Several cropped up in the *campamento*, and gave rise to a case against one of them, not calling merely for more quiet and less drunkenness, but asking that the *clandestino* be removed. It is significant that the complaint arose at all, because in other neighborhoods residents testified to being kept from complaining through intimidation by *clandestino* customers. The issue was referred to the Directorate, which decided to convene a Popular Assembly of the entire *campamento* to vote upon the issue. There, some argued in favor of the *clandestino*, noting the inconvenience of having to journey to a distant "real" bar, and the money and red tape it took to gain a license. Others complained of the nuisance, the fighting and insults suffered by residents, and the burden placed upon the Vigilance Front. Still others placed the drinking problem in the broader context of Chile's heavily unemployed lower-class male population, and saw the speakeasies as the center of dead-end escapes from family responsibilities, with politically debilitating effects. The Popular Assembly voted the *clandestinos* out.

The outcome is less noteworthy than the procedure employed. Though the *clandestino* was quite illegal by Chilean law, airing the issue not only avoided the inconvenience of the official Chilean police bureaucracy, but declared independence

from it. The "legality" of *clandestinos* in the squatter settlement was an open issue; that the Assembly decision corresponded to Chilean law did not seem a decisive consideration. The Directorate itself could have "outlawed" speakeasies, or could simply have had the Vigilance Front harrass the *clandestinos* out of the *campamento*. The Popular Assembly provided the fullest forum for discussion of an obviously controversial and pervasive problem, a forum in which it would be educational to analyze widespread drunkenness within a political, anticapitalist framework, encompassing broader issues than speakeasy noisiness. Its decision would carry legitimacy.

A thornier problem involved black marketeering by local merchants. In 1971 Allende's wage-price policies dramatically increased purchasing power by holding down prices of officially regulated basic commodities. But by 1972, increases in production could not keep pace with increased demand, and sabotage and organized hoarding efforts by the opposition exacerbated the problem of increasing shortages. By late 1972, black marketeering had spread to many basic products.

The temptation for the numerous small shops in Nueva Habana to sell goods secretly at prices inflated high above the official level was tremendous. Some citizens issued complaints against individual merchants. Again, black marketeering was illegal by Chilean law, but the Allende administration had insufficient resources to enforce the law. The problem was confronted by the Directorate. Ruling out black marketeering was not an easy solution. The merchants themselves were not well-to-do, rapacious business people gouging their customers, but residents earning small sums from tiny shops. Relations with customers were not anonymous business matters, but part of a social fabric. Moreover, moral issues compounded an already troublesome situation. For all but the wealthy, the heavy temptations created by the black market were humanly understandable, particularly in a cultural context in which gaining resources by "having connections" (in this case to a wholesaler with goods), or through patron-client relationships, was traditional and widespread. By 1972 merchants all over Santiago, and even more customers, were playing the market (DeVylder, 1976: Ch. 5; Stallings, 1978: Ch. 6; Roxborough, *et. al.*, 1977: 115). It is one thing to ask someone to play by the clearly delineated rules of the game; it is different to do so when everybody else is breaking them with abandon.

The Directorate approved severe sanctions against merchants who continued black market activities, not as a

means of striking out against the local "capitalists," but because the very place of the merchants within the community created potential divisiveness. The incentives of the black market asked merchants to play favorites with scarce basic commodities, on the basis of which customers had the most money or closest relationship with them. The black market threatened to rend the collective, egalitarian social fabric of Nueva Habana, and to do so along lines of differential wealth (variations within a generally poor population) and particularistic social connections. The Directorate's proposal was then discussed at the block committee level. There was support for the Directorate, but disturbing questions arose. Wouldn't it be unfair to merchants in Nueva Habana, because residents with more money could simply buy on the black market outside the *campamento*? Merchants, or others able to get goods, might simply choose to market them outside the *campamento*, undetected and unpunished. These objections were overridden, and black marketeering was prohibited. Violators would be banished. But the questions suggested the limits of "neighborhood control" in trying to solve locally, with complete fairness, economic problems of national proportions.

By late 1972, however, as a result of opposition efforts to systematically shut down the economy, the problem of shortages of supplies had gone beyond the issue of black marketeering. The major tasks were to find sufficient food for the *campamento*'s population, to avoid long lines waiting for food, and to ensure that all residents had sufficient clothing and other basic necessities. The *campamento* formed a popular market, centralizing collection of products from state controlled distribution agencies, (the state controlled only 28 percent of distribution) and dispensing basic quantities based on family size. Private merchants were more or less closed out of provisioning unless they worked for the popular market, but even those who did experienced problems getting foods for their shops and were increasingly relying on other sources of income.[17]

[17] The UP government established programs to monitor local market activity through formation of neighborhood price regulation committees. The development of these began in mid 1972, but achieved a high level of activity during the truck owners' strike of October, 1972. In 1973 the government began to provision some neighborhoods and families through a popular market basket program. See *Chile Hoy* (January 13, 1973: 31).

C. Family and Neighbor Disputes

Block committees also processed intra-familial and neighbor disputes similar to those which came before the professional Popular Audiences. They tended to hold longer hearings than the ten-minute ones typical of the Popular Audiences, and sometimes went on for several hours and continued through several sessions. The disputants had more time to air their grievances, and the block committees had more time to search for a solution agreeable to the parties.

In one case a woman complained to her block committee that her husband habitually mistreated their several children by blaming them for everything that went wrong, shouting at them continually and beating them excessively. Two neighbors not only testified to hearing shouting and crying, thus corroborating her story, but had encouraged her to bring the matter to the block committee. The husband agreed to speak to the block committee after two of its members spoke with him privately. It emerged that he had been around the house more frequently after having been laid off from his job in a small factory. As the block committee could discover nothing peculiar about the behavior of the children which would provoke him, it pointed out that his hostility might stem from frustration over his dismissal and subsequent unemployment, neither of which it saw to be his fault, but chronic aspects of the economy. The committee suggested he seek work in the Construction Front, but also admonished him for his abusive behavior.

Here the block committee was intervening in a dispute which might not otherwise have come to the surface and been negotiated by the disputants and would likely not have had another outlet for third-party processing. It entered into the previously private domain of the family. Of course, traditional Chilean law and courts dealt with family issues, and would even have jurisdictional authority in child abuse cases. It is not clear that this behavior crossed the line into the legal area of child abuse, but in practical terms the case would not have come before the courts. It is significant that neighbors not only testified in the case, but had a hand in having it brought to the attention of the block committee. The committee, in turn, took cognizance of the case and brought in the husband, perhaps with considerably more ease and less formal procedures than in the Popular Audiences. One might claim that the committee, like the Popular Audiences did not probe deeply into the complexities of the marriage, but it seems more pertinent to note

that it was the disputants, and not the law, who defined the dispute. Testimony about the marriage did not raise other disputes and did not seem relevant to the treatment of the children. Evidence about employment seemed to be, however, relevant to the dispute. It was used partially as a mitigating circumstance for the husband, but also, more importantly, served as a basis for political education about the social causes of a seemingly private problem. This, in turn, could lead to dispute resolution in other cases, by counseling parties to be less fervent in blame casting. It could also lead to absolution of individual responsibility, but the committee, having taken heed of the husband's problem and suggested a solution to it, nonetheless admonished him.

In another instance, a husband complained that his wife was not fulfilling her obligations to the family because of excessive political participation in the affairs of the *campamento*. It turned out that the wife was an active member of one of the work fronts and therefore was spending much less time in the house than previously had been her practice. She claimed, however, that she kept the house clean, and procured and prepared food for the family. The husband seemed not unsympathetic to the goals of the front or her participation in it, but complained about the extent of her involvement. On the other hand, he was not particularly enthusiastic about it and was not himself an active participant in the affairs of the *campamento*. She was not sympathetic to his complaint, and evidently did not see the problem as compromisable. Additional time to spend with him simply did not exist, and she did not seem particularly enthusiastic about the marriage.

The block committee did not agree with the complaint, but supported the woman's energetic participation. It suggested to the parties that the dispute seemed to go beyond what was expressed—participation vs. family obligations—but did not choose to probe deeply into problems in the marriage, though it did point them out as a possible explanation for the dispute that the parties defined. At the same time, the block committee did not examine the basic "bargain" involved in the case; the traditional obligations of the woman to the family balanced off against her political participation. It also did not suggest that perhaps she would have more time for participation in the front if she did not have sole responsibility for such things as buying food, though apparently the woman herself did not bring up this point.

In yet another case, neighbors complained to a block committee about a drunk's behavior both on the street and inside his home. Their complaint was backed up by a member of the Vigilance Front. Despite the expulsion of the *clandestinos*, the problem of alcoholism had not been eliminated, in part because new taverns had been established outside the campamento. The neighbors claimed that this particular person often behaved lewdly and, in his own house had been loud and raucous in the middle of the night. The defendant did not deny that he had been drinking on occasion, but argued that those who brought the complaint simply did not like him and were using the complaint as a means of harrassing him. He implied, in fact, that one cause of his wanting to drink was the unfriendly feeling directed toward him, an argument which engendered some derision from his adversaries. Additionally, he claimed that he had been a good citizen, dating back to the land invasion, worked hard at a low-paying job to support his family, and needed a chance to relax occasionally with a little wine.

The block committee took a hard line against public drunkenness and strongly admonished the defendant, warning him that it would be more strict in the future. But it also questioned the complainants about their behavior toward the man, and asked the parties how they thought relations might be improved among them. After some discussion the man promised to behave himself, though not to stop drinking entirely, and the parties promised to attempt to be more friendly with the man, after the court suggested gently that they do so.

Here the block committee, though making an order about one aspect of the dispute, the public drunkenness, attempted to get the parties to explore other areas of their relations, to nudge them toward a consensual solution. As in other cases, because of its residential closeness and the encouragement of participation by other members of the block, the committee was in a better position than the Popular Audiences to monitor its dispositions.

These cases should not be taken to mean that the block committee resolved all disputes, or even heard them. They also did not maintain continuous intervention in disputes on the order of, say, a marriage counselor. As will be shown, many block committees did not participate in dispute processing at all. But among those that did, one could detect approaches to dispute processing in family and intra-neighbor cases different in style and context from the Popular Audiences.

D. Leadership Cases

Finally, the *campamento*, on occasion, processed disputes about political participation and leadership. One elected member of a block committee habitually missed meetings, and he was asked to appear before the committee in a judicial proceeding, for failure to fulfill his obligations. No punishment was involved, but he was asked to explain his absences and either fulfill his pledge or relinquish his post of responsibility. Another case involved a well-known leader of the *campamento*. He had been elected to lead a number of residents in a land invasion to establish another campamento. Suddenly, shortly before the invasion was to be launched, the man suddenly lashed out at several of those on the invading committee, cursing and striking at them. The Directorate held a hearing about the matter. No provocation could explain the outbreak, but investigation indicated that the man had been greatly overworked in his political activities and had lost his job some time before, severely straining his ability to provide his family with basic necessities. The Directorate analyzed the attack in terms of this economic and political strain and tied it in to inherent problems created by capitalist labor markets. The man was not punished, though he was removed from leadership of the planned activity.

Development of Neighborhood Courts

Despite innovative excursions into criminal justice, legislative processing of disputes with collective characteristics, subjection of leaders to criticism of their roles, and treatment of family and neighbor disputes, the development of regular judicial procedures and institutions in the *campamento* was uneven. Activities and participation in the Vigilance Front waxed and waned, block committees varied greatly in their attention to judicial issues, most never dealing with cases at all, and others quite irregularly. The Directorate heard cases, primarily criminal matters, but other issues occupied much greater proportions of its agenda. Moreover, the proper forum for criminal matters was never clear. Despite the frequent socio-economic analysis of disputes, the standards by which cases should be judged, or by which cases should or should not be heard, were not commonly agreed upon or understood. At earlier stages complaints could be heard about self-help resolutions or rough summary treatment by some members of the Vigilance Front.[18]

[18] Interviews with Nueva Habana informants, and Fiori (1973).

How can we account for this stunted development? First, the goals were ambitious. The MIR sought to establish an alternative judicial system based on socialist principles. This was to evolve in a newly formed squatter settlement of some 9,000 residents, the great majority of whom were not members of the MIR, though perhaps sympathetic to its activities. This was no small task. Even the MIR did not have a precise sense of how this judicial system should function in this setting.

Second, the neighborhood court was neither a familiar issue nor a particularly salient one for the residents. It was a national issue among national political elites and highly informed citizens. Among squatter settlements, however, it was a new concept. A survey of some 400 residents of ten squatter settlements, including Nueva Habana, taken six months after the demise of the UP Neighborhood Court proposal, indicated that only 33 percent had heard of it (Cheetham, *et. al.*, 1972: 189). In the same survey, *prior* to being asked about the UP plan, respondents were asked general questions about the idea of having neighborhood courts, as well as questions about their attitudes toward the traditional system of justice. They registered considerable alienation from the traditional system (74 percent thought the courts biased in favor of the rich) (Cheetham, *et. al.*, 1972: 91) and notable enthusiasm for the *idea* of neighborhood courts (42 percent unconditionally in favor, 13 percent conditionally in favor) (Cheetham, *et. al.*, 1972: 130). However, in a later section the survey informed respondents of the UP proposal in detail; and, by this time in the survey, a more familiar issue drew extremely high enthusiasm (78 percent unconditionally in favor, 10 percent conditionally in favor (Cheetham, *et. al.*, 1972: 310).

A shift of similar proportions occured in the survey in attitudes toward collectively resolving conflicts previously regarded as private or within the competence of external agencies, after presentation of the UP Neighborhood Tribunal Proposal (Cheetham, *et. al.*, 1972: 116, 118, 119, 180, 301). For example, once the respondents knew about the UP proposal, 79 percent thought residents should bring serious family fights to the new tribunal. Before they had begun to think about neighborhood courts, 37 percent of the respondents would have brought such fights to the attention of the police, 25 percent would have sought help from other neighbors or a neighborhood committee, and 37 percent would have thought it best to do nothing (Cheetham, *et. al.*, 1972: 116). Some of these opinion

shifts could be attributed to the popularity of the UP among respondents, with 74 percent expressing preference for one or another left political grouping (Cheetham, *et. al.*, 1972: 53). However, it seems clear that the survey itself educated respondents about the notion of neighborhood courts. Though enthusiasm was present, the whole idea was new and in Nueva Habana not at all formulated into a well-worked-out plan.

The community within which the neighborhood courts were to function was not one with a pre-set commitment to collective development in all areas. Residents were not a unified band of people so dissatisfied with the society that they had decided to separate and form a utopian socialist commune. This was not a collective enterprise in farming. Most laborers worked outside the settlement in a great many distinct workplaces. Thus, despite its collective land invasion origins, its ties to the MIR, and its support for the left, Nueva Habana was an urban neighborhood of several thousand residents living in single-family dwellings supported by privately earned incomes and, until late 1972, privately consuming goods. Survey evidence suggested that residents, once prodded with the idea of neighborhood courts, would increase enthusiasm for collectively processing some kinds of disputes previously regarded as being in the private domain. But only a handful of Nueva Habana residents had participated in the survey; most remained unaware. Moreover, it is one thing to express preference on a survey and quite another to be the first to take a family quarrel to the local block committee. For example, respondents in the survey, before being presented with the idea of a neighborhood court, were asked what should be done about a noisy *clandestino*. The great majority of the respondents said they would take the issue to one forum or another. If that reflected what would actually happen, there would have been no *clandestino* problem in Santiago (Cheetham, *et. al.*, 1972: 118).

The abstract goals of the neighborhood courts also contrasted sharply with the more concrete and vital nature of housing, work, and health problems. Thus, the Health and Construction Fronts received greater attention and wider participation. The Recreation Front had higher levels of participation than judicial activities, not because it was more important, but because it presented more familiar, concrete organizing problems with more obvious solutions.

Low salience, abstractness, and secondary priorities inhibited development of the neighborhood courts. The newness of collective processes and issues of justice were also difficult.

Collective decision making in hearings or meetings requires time, skill, and patience and can involve one in mysterious, confusing, or intimidating processes. These difficulties become exacerbated when the means and goals of solving the problem are abstract. Lack of understanding and frustration set in, leading to lower participation or "exit" from the process. For both block committees and disputants, cases and problems of community cleanliness and public order were relatively easy to perceive (though finding a "socialist" process and sanctions was more complicated). Bringing previously "private" problems like child abuse or family quarrelling—or new problems, like uncooperative political participation—to a neighborhood court, or processing them in such a way as to convey clear-cut norms exuding fairness to other sectors of the population, presented more intractable problems.

Nonetheless, one might argue that if the need for dispute processing were great, popular demand would have brought more block committees into extensive judicial action. But "market demand," in turn, would partly be a product of political participation and consciousness raising about the community relevance of matters previously perceived as private, and about the ability and legitimacy of the block committees in their judicial function. In other words, the new judicial system depended upon the demands of its potential clients, but demand depended to some extent on political consciousness raising. The course of development of participation and political learning emphasized some issues ahead of others, and the interplay of "demand" for action and participation was more extensive among those activities of higher salience. These priorities were determined by a mix of the concrete needs of the population, the sense of priorities of the political leadership, and the national course of class conflict in the tumultuous years of the Allende government.

National political conditions increasingly inhibited development of the neighborhood's court system. First, Nueva Habana's courts came under outside attack by right-wing newspapers, resulting in an investigation by the official court system. In mid-1972 the community suffered its first really serious crime; a school teacher was raped. The victim and several of her friends in the settlement, said by some to have been members of a Trotskyist faction (Fiori, 1973: 96), called a convening of the Popular Assembly. There they had a trial and called for extreme physical punishment. The crowd agreed, and began searching for the criminal. The political leadership of the

neighborhood steering committee heard about the proceedings and called a second meeting in which cooler heads prevailed. They criticized the first meeting's unofficial status, and called for a deeper exploration of the evidence and a chance for the accused to testify before the Directorate. This was agreed to. However, the man charged with the rape had left the *campamento* and gone to the right-wing media. Seizing on an opportunity to discredit the MIR and the left in general, opposition papers printed sensational stories of this example of "people's justice" and called for an investigation of the "illegal people's courts." (*El Mercurio*, May 3, 1972: 1; May 4, 1972: 3; May 5, 1972: 1; *La Tribuna*, May 3, 1972: 1; *Las Ultimas Noticias*, May 5, 1972: 5; May 10, 1972: 23). Given other *campamento* priorities, the attack and subsequent judicial investigation was sufficient for the *jefatura*, while asserting the right of the residents to resolve some situations of internal order, to downplay the role of the courts and express willingness to cooperate with the official police, without giving them *carte blanche* to sweep through the neighborhood (*El Mercurio*, May 4, 1972: 1, 10). Internally, this resulted in a de-emphasis on development of the neighborhood courts.

In the context of Chilean politics, the courts of Nueva Habana had limited power. A case from the courts of another *campamento* which did not draw the wrath of the opposition press further illustrates this point. A truck from outside the *campamento* struck and killed a resident while in the *campamento*. The *campamento* seized the truck, held a hearing which found the driver at fault, confiscated the truck and gave the sale proceeds to the family of the deceased. It is not clear why the truck owner failed to go to a "real" court to stop the proceedings, but it is clear that if this type of action had become widespread, it would have sooner or later clashed with the official legal system. The outcome of such a clash would have depended upon the broader struggle for power going on in Chile during this period.

Also, as Chilean political conflict became more intense, and as the MIR grew in numbers and influence, it increasingly sent its expanded membership into new areas now open to organizing. This drained leadership from Nueva Habana activities. The disruptive strategy of the right opposition in Chile increasingly created crises of provisioning within the *campamento* and turned Nueva Habana's attention toward erecting common defenses and networks for detecting mass hoarding and acts of sabotage aimed at disrupting the economy. The first

major turning point toward this orientation came in October-November 1972 when truck owners, joined by factory owners and professional associations, closed down their enterprises in an effort to grind the economy to a halt (Stallings, 1978: Ch. 6; Roxborough, *et. al.*, 1977: 116; Boorstein, 1977: 208; Sigmund, 1977: 184; Levenson, 1977: 59). Nueva Habana devoted its full attention to joining in broad-based efforts, in particular the formation of ad hoc coordinating committees of *campamentos*, factories, and farms outlying Santiago, to coordinate production and distribution of vital goods. Economic and political survival was at stake and took precedence over the work of the *campamento*'s neighborhood courts (Grupo de trabajo, 1972: 136).

IV. CONCLUSION

These two judicial experiments bear striking similarities. Each emerged from the convergence of a squatter settlement movement and competition among center and left political parties leading to, among other issues, partial and general critiques of the judicial system. Both suffered from lack of clear, concrete goals, had little anticipation of the nature of the disputes they were to process, and little understanding of the role the courts should play. Their development was held back by a lack of organizational resources and a relatively low priority accorded their activities by the larger organizational context in which they were situated—the Popular Audiences in the traditional hierarchy of the Chilean judiciary, and the neighborhood courts in the political structure of the *campamento*.[19]

It can also be argued that similar legal outcomes sometimes emerged from these dispute resolution processes in the sense that both had similar perceptions of right and wrong activities in some kinds of disputes. Though the Popular Audiences did not formally hear criminal cases, the perception of wrong-doing in the neighborhood courts was similar in many cases to what it would have been within the "legal" judicial system. Thefts were thefts; public drunkenness was frowned upon; wife beating was bad; *clandestinos* were against the law; and, morally speaking, getting along with one's neighbors was a good thing.

Dispute processing in the two experiments was also marked by differences. The Popular Audiences spent a shorter

[19] For an analysis relating demand for judicial services to changes in the political economy of the state resulting in a decline in resources, see Heydebrand (1977).

amount of time on each dispute and tended to circumscribe the dispute within familiar legal categories or, failing that, within the amount of time available. Those neighborhood courts which functioned seemed to give greater amounts of time and freer rein to disputants to define the boundaries of the dispute. They emphasized the element of the societal role in the dispute as a means of political education, while the Popular Audiences judge tended to see the disputes entirely within the realm of the responsibility of the individual disputants. In essence, the Popular Audiences arbitrated, despite use of forms suggesting consensual agreements. They backed arbitration with the relatively weak powers of the judge's accessibility to police power and the limited authority some disputants were willing to grant the judge, as official representative of the state. The neighborhood courts in some cases had a mediational approach and in others relied upon the force of surrounding neighbors to ensure the decision would be carried out. Neither of these concepts was well developed. Given the uneven participation of block committees and the secondary importance of the courts, this reliance, though not without significant effect in criminal matters, had only partial success.

These differences in approach can be partially accounted for by the lay-professional distinction. The professional judges' social distance from disputants, their training in formal law, and the press of their normal duties all are consonant with shorter hearings, a more arbitrational approach, and reliance on formal law and formal enforcement authorities. Closer ties with the community permitted block committees longer mediational approaches, reliance on the community, and less adherence to formal law.

The critical distinction between the two experiments lies in the ideals behind the desired relationships between the courts and their clients, and the courts and the national polity. The judge in the Popular Audiences, and those DC sectors proposing expansion of the judiciary to meet the needs of the poor, wanted the new courts to deliver traditional services to a previously excluded marginal clientele. They had no fundamental objection to the current structural arrangements of Chile, save that a large majority was excluded from participation. A very different outlook lay behind the neighborhood courts. The use of lay judges sprang not only from a notion that peers might be more able than non-resident professionals to process neighborhood disputes, but from a sense that the traditional courts were

illegitimate and that a professional structure violated egalitarian ideals. The purpose of the lay courts was more than just maintaining public order. It was to educate citizens that they had a right to form their own laws, that many disputes were shaped by the economic system, and that citizens should learn to make their own collective decisions, even about matters previously regarded as private. In a sense, the *campamento*'s neighborhood courts are more appropriately compared to other neighborhood institutions in Nueva Habana, than to the Popular Audiences.

Tracing the role of ideology as a variable, clearly separate in time or expression from modes of social organization and economic cooperation, in the formation and development of different modes of dispute processing can be a difficult, controversial task (Shapiro, 1976; Schwartz, 1976). Decisions affecting forms of social organization or the initiation of political structures are often intertwined, explicitly or implicitly, with ideological notions. Ideology is not a variable easy to measure; it does not occur in clearly separable form. Nevertheless, it seems clear that the differences between the Popular Audiences and Neighborhood Courts could not be explained without reference to their distinctive ideological sources.

The decentralization strategies connected to these ideological differences were not developed in detailed form. In the case of the Popular Audiences (and the DC Proposal for neighborhood courts), a pure service delivery strategy of urban decentralization of bureaucracies was taken, on the grounds that the problem to be solved was one of lack of access. But the Popular Audiences did not attempt to meld the service to the particular forms of social organization, or the special kinds of disputes and positive or negative avenues for self help, negotiation, or avoidance which might inhere in the existing forms of social organization (Felstiner, 1974; Galanter, 1976; Danzig and Lowy, 1975). Rather, burdened as it was by lack of support from the judicial hierarchy, and by a shortage of organizational resources, the court fashioned hearings as best it could.

The neighborhood courts of Nueva Habana also did not make a systematic assessment of the social organization which they encountered. Their goals went beyond efficiently resolving disputes and establishing a reputation for fairness. In addition, the courts were to be part of an effort to change the existing form of social organization so that resolution of problems which had previously been regarded as private affairs or matters for the state would be taken up by local collective

means. To do this required encouraging political participation and political education.

The inadequacy of the decentralization strategies and the difficulty encountered in their implementation might be explained by the difficult, abstract, and even controversial nature of the task; by lack of organizational resources; and by lack of training of the innovators (Yates, 1976: 151-158). But these variables are best understood within the broader organizational contexts of the innovations—the judiciary and the squatter settlement, each of which were the products of class conflict and state policies. The judiciary, under pressure from left political parties, themselves pushed by mounting class conflict, grudgingly allowed a minor shift in priorities which would mediate the conflict somewhat, but the effort was so grudging as to be ineffectual. Most judges did not participate. The one we studied participated under heavy constraints. The squatter settlement courts emerged from a popular protest movement, a section of which wanted to go beyond the legal forms of political participation employed by the major left and center electoral political parties. These neighborhood courts represented a conscious attempt to form what Santos (1977) calls legal pluralism, a legality distinct from and partially independent of the dominant and official legality of the state.

In Santos' study, the pluralistic dispute processing institutions were limited to real property disputes and drew heavily upon the official ideology. They gained the compliance of litigants through their expertise in local housing conditions and through *threatening* the use of state police power. The court would not carry through the threat so as not to risk the interference of state institutions which already had been encroaching on local independence. But the court, despite efforts to maintain some independence, was not rebelling against the fascist repressive state of Brazil. Its leaders came from the upper stratum of the squatter settlement's social order and sought upward mobility within the capitalist economic order. Santos sees the limitations of jurisdiction and independence and the lack of ideological rebellion as a reflection of the power of the fascist state and the lack of development of forms of class struggle against these conditions.[20]

[20] Useful comparison might also be made with Collier's reports of her admirably extensive studies in Zinacantan (1973, 1976). In this case of legal pluralism between the traditional legal processes of the Mayan community and the legal processes of the modern Mexican state, the persistence of traditional forms against the efforts of the modern state to eliminate them can be in part explained by the ambitions and brokering of political leaders of the Indian community who have some self interest in maintaining the distinction. This is

The impetus of the Popular Audiences toward extending the traditional legal order, and the explicit declaration of Nueva Habana against traditional institutional arrangements, should be placed against the background of the state's decreasing ability, during the late 60's and early 70's, to maintain a social order safe for capitalism, and of the increasing forms of class struggle seeking to change that order. These interrelated forms led to proposals to ameliorate the conditions leading to the conflict, and the Popular Audiences and proposals of the DC for professional courts can be understood as among these. They created the opening for the formation of rebellious communities like Nueva Habana which explicitly denied the traditional legality. The lack of development of the new forms in Nueva Habana can be attributed to the same factors and to the increasing intensity of the class-based struggle for state power. This permitted the attempt, but prevented the formation and thorough development of new forms of dispute resolution, such as those which have been more highly developed in places where socialists have captured state power (Berman, 1969; Cohen, 1967).

Just as dispute processing differences cannot be attributed only to the lay-professional dichotomy, but to distinct ideologically based goals, similarities in lack of development cannot be reduced to independent variables of organizational resources and secondary organizational priorities. Such an umbrella explanation obscures the differences in the organizational contexts—the historical priorities of the Chilean judiciary formed as a result of class-based economic competition, and the development of political institutions in the brief history of Nueva Habana. Different as they were in many respects, the two experiments share one fundamental attribute. Each unfolded in the same historical space, the turbulent class conflict of Chile in the late 1960's and early 1970's. Each was shaped and ultimately destroyed by the mutations of Chilean society in this period. Increasing numbers of popular mobilizations by urban lower-class groups and the presence within these movements of politically left-wing groups and parties created the conditions making possible and leading to unofficial courts which directly challenged the legitimacy of the traditional judiciary. The judiciary responded with the Popular Audiences in an ef-

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the focus of Collier's 1976 article in this journal, but the problem can also be understood by broader structural economic forces involving the use by agribusiness of the best lands and the Indians as cheap labor, the attempted maintenance by the Indians of their own less fertile land and thus their social order which depended on the land, and the Indian's inability and the state's seeming unwillingness to alter this economic form of production.

fort to quiet criticism and even mediate the growing conflict. Nonetheless, the mobilizations were not able to accomplish the tasks confronting them, and judicial issues received lower priority than the pressing needs of housing, food, and self defense. This mitigated the challenge to the judicary, making it possible for it not to follow through in all its courts with its proposed reform. It also stunted the development of the unofficial neighborhood courts. This is not to suggest that had the mobilizations had more force, all problems encountered in the two experiments would have been solved. Indeed, it has been suggested that the Popular Audiences with professional judges had inherent problems, and that the goals of the neighborhood courts were very large. Nor should it suggest that other forms of neighborhood mediation would not be possible short of the level of popular mobilization found in Chile, but only that such a level of class conflict is a necessary condition for spawning overt challenges to traditional legitimacy or forcing major changes in traditional priorities.

Judicial institutions are a profoundly historical phenomenon. Their developments are interlaced with the surrounding society, with its own particular character and past, and cannot be understood fully in the narrower framework of a few critical explanatory variables without careful examination of myriad related activities and class-based forces involving judges, police, lawmakers, and political parties—not to speak of the many ordinary people whose disputes might provide both a rationale and a force leading to the establishment of new judicial institutions.

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