"FROM THE TRENCHES AND TOWERS"
Current Illusions and Delusions about Conflict Management—
In Africa and Elsewhere

Editor's Introduction

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In previous Trenches and Towers sections, *Law and Social Inquiry* has presented exchanges focusing on ethics and law—in contexts ranging from plea bargaining to large law firms, from social science fieldwork to the American Law Institute. In addition, Trenches and Towers sections have frequently highlighted the importance of, and need for, empirical research to elucidate pressing issues within law's domain—whether it be affirmative action within our nation's law schools, the formulation of powerful models for law by the ALI, or the ethical dilemmas faced by practicing lawyers (*Law and Social Inquiry* 1994; 1998a, b; 1999; 2000). Through these exchanges has run a dialogue that pushes our understanding of when and how social science can help clarify or provide better information about crucial ethical (and other kinds of) problems facing the legal system and profession—and, conversely, whether and how the legal system should make accommodations to assist social scientists in obtaining that information.

This Trenches and Towers exchange continues to develop these convergent themes centered on law, ethics, and social science. The anchoring article, by anthropologists Laura Nader and Elisabetta Grande, is entitled "Current Illusions and Delusions about Conflict Management—In Africa and Elsewhere." Nader and Grande's focus is the global exportation of U.S. alternative dispute resolution (ADR) approaches such as mediation. Although exponents of ADR typically represent techniques such as mediation as neutral mechanisms for resolving conflict, Nader and Grande argue that the more informal ADR approaches are actually quite political, and can disempower people who are already at a disadvantage. Furthermore, blanket imposition of ADR approaches abroad can result in disregard and disrespect for indigenous systems and people. In response to those who point out that ADR is less costly and antagonistic than formal litigation, Nader and

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Grande reply that there are times when formality, openly adversarial proceedings, and delineation of "rights" are important protections. Their warning mirrors those of legal scholars such as Trina Grillo (1991) and Martha Fineman (1991), who have pointed out the ways in which ADR can disadvantage less powerful litigants even in the United States. Although this kind of critical perspective on informal dispute resolution has gained a great deal of acceptance in some scholarly circles, practitioners of ADR seem generally unaware of the critique—and so it is largely to practitioners that Nader and Grande hope to speak in their essay.

Four commentators have written responses to the essay. Their combined fieldwork experience gives them broad scope for assessing Nader and Grande's assertions across multiple parts of the world. In his essay, "The Globalization of Sympathetic Law and its Consequences," anthropologist (and lawyer) Mark Goodale takes us to Bolivia, drawing on his fieldwork to analyze the political underpinnings of American legal imports. He develops an even broader lens, looking not only at ADR but also at other seemingly sympathetic U.S.-based innovations, such as human rights discourse, nongovernmental organizations (NGOs), and an emphasis on writings in legal proceedings. In some cases, these U.S. imports seem to have had positive impact (for example, use of human rights discourse to help battered women seek protection), while in others they seem to have had quite negative effects (undermining indigenous systems of dispute resolution, or literally ending entire villages). Goodale concludes that careful, contextual analysis of each society and situation is needed in order to assess the relative benefits and detriments of American legal imports. Legal anthropologist Sally Engle Merry echoes this call to carefully examine the "particular structures of power" in specific settings in assessing the effects of ADR and other "appealing" Western ideologies. She also stresses the divergence between ideology and practice, urging further examination of the way well-meaning Western innovations play out on the ground in other societies. Merry underscores the importance of this using studies from Zimbabwe, Nepal, and Bangladesh, as well as her own work in Hawai'i. Across the globe, anthropologists have demonstrated the unfortunate results of attempts to help other societies by using progressive ideologies imported from the United States to aid with development or conflict resolution. Plans designed to benefit the poor have wound up helping private investors, while attempts to empower women have at times increased their dependence on men.

Taking a somewhat different vantage on the problem, law professor and anthropologist Annelise Riles draws on her research in Fiji to question the entire opposition of "formal" to "informal"—or of generalized ADR approaches, on the one hand, to careful contextual analysis, on the other. She sees these apparent polar oppositions as part of the same matrix—as "genres of expertise" or varieties of technology. Riles anticipates that ADR dis-

course will easily subsume or dismiss critiques of the kind offered in this exchange, simply adding "context" or "politics" to its checklist of items to be considered in colonizing new settings. The continuing debate over alternative strategies or technologies between academic and practitioner, she argues, merely contributes to a "liberal fantasy" of "faith in dialogue, in imagining the world of problems and solutions." Instead, she urges "an encounter with the mundane"—with the invisible assumptions shared by practitioner and academic—as "a political strategy of the moment." Political scientist Neal Milner takes issue with Nader and Grande from another angle. He is concerned that the authors have not adequately documented their claim that ADR ideology has "marched on to become institutionalized and internationalized" in widespread and intact fashion. He calls for "more and better research" to give us a broader foundation for understanding how the exportation of ADR is affecting people around the world. Milner also questions whether Nader and Grande paint too rosy a picture of the "formal law" alternative, pointing out the ways in which formal law can often fall short of providing a real alternative to ADR. At the same time, Milner agrees with Nader and Grande that ADR practitioners do not adequately understand the deleterious effects their techniques can have. He appears to hold a somewhat more optimistic opinion than does Riles, however, of the possibilities for overcoming the discursive divide currently separating academics and practitioners in this debate using more standard rhetoric—and ends with some specific proposals for doing so. The exchange concludes with Nader and Grande's response to the commentators.

It is important to note that all the participants in this exchange agree on at least a few core ideas. First, they share the idea that ADR is far more problematic than is currently generally recognized by practitioners, both abroad and at home—and that when it is exported to other parts of the world, it travels under a deceptive "cover" of neutrality that is belied by its sometimes-destructive effects. Thus, these writers voice a strong "caveat emptor" message: The "sympathetic" (Goodale) or "appealing" (Merry) appearance of legal imports from the United States may be deceptive. The contributors also agree on another point: One cannot simply assume that any given technique, including ADR, will be beneficial in all contexts. The specifics of power and culture in individual contexts have strong effects on how the technique winds up being used. (Riles might dissent here as to the efficacy of even pointing this out, however.) A number of writers concede that creative adaptations of ADR or other Western imports might, in particular cases, have positive effects. But most participants would add that we must stop deceptive PR asserting that the results of ADR are uniformly or generally positive. Although more research is clearly needed, early "returns" from fieldwork done to date do not provide evidence for this rosy picture. This conclusion, then, casts a troubling light on the ethics of unreflective

use of ADR by its practitioners, either abroad or closer to home. Another theme arising from the commentaries (articulated most sharply by Milner) is the concern that formal systems are not always a good alternative (Riles might urge that they aren't an alternative at all). On this point, again, there appears to be some fundamental accord despite some differences: In their final reply, Nader and Grande agree that the "rhetoric of the rule of law" can also be illusory and problematic. Finally, the commentators introduce some interesting wrinkles to these overall themes. For example, Goodale and Milner point out the possible utility of hybrids combining formal and informal features. Thus, informal invocation of formal "rights" discourse has sometimes had the effect of empowering marginalized people. Raising another issue, Merry cautions that the effects of Western interventions can change over time: NGOs that began with political agendas may shift to focus on the personal, or create dependency where they began with programs aimed at independence. Taken together, the article, commentaries, and reply raise important and fruitful questions about law, ethics, and social science efforts to understand legal-ethical dilemmas.

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With this Trenches and Towers exchange, I conclude my term as symposium and special features editor for *Law and Social Inquiry (LSI)*. In addition, this marks the end of a lengthy time during which I've been honored to serve on the journal, including stints as associate editor during Terry Halliday's editorship, and then as coeditor. I would like to thank the many wonderful colleagues with whom I've worked at the journal—particularly those who saw *LSI* through some difficult but rewarding earlier transitions as it sought its niche in law-and-society scholarship. For many years, the camaraderie at *LSI* was palpable, and generated truly collaborative interdisciplinary conversations as a welcome by-product of the work. In addition, the journal has had expert oversight from the editors and staff at the University of Chicago Press, from the legendary Bette Sikes, and then from its current manuscript editors, Susan Messer and Sandy Pittman—as well as from the in-house staff at the ABF, including for many years the inimitable Roz Caldwell, as well as Diane Clay, Vikki Webster, and John Atkinson. Throughout these many years, Howie Erlanger has continued to provide the journal with his trademark review essays, which in earlier days wound up filling entire issues when the articles section ran dry. All who know Howie understand why it has been a joy and a privilege to work with him. And, finally, I would like to thank the authors, reviewers, and readers of the journal, from whom I have learned so much; it is thanks to your perspectives and support that the journal continues to grow.

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