

# A LITIGIOUS PEOPLE?

LAURA NADER

Carol J. Greenhouse, *Praying for Justice: Faith, Order, and Community in an American Town*. (Ithaca, N.Y.: Cornell University Press, 1986) 222 pp. Notes, bibliography, index. \$24.95.

The idea that Americans are inherently litigious has for so long been imprinted on the American mind that it has been accepted as conventional wisdom, and observations to the contrary seem counterintuitive. Whether one looks at the contemporary media, insurance copy, American Bar Association literature, or speeches by leading judges or Evangelicals, or academic writings such as those of Kagan (1981) or Auerbach (1983), the generalization is there: Americans are a litigious people, "the most litigious people in the world," according to the many public presentations of the former Chief Justice of the U.S. Supreme Court, Warren Burger. The challenge to the notion that Americans are inherently litigious has come in the form of careful examination of the statistics used to support the increase in litigation theory (Galanter, 1983, 1986), and surveys comparing data from the United States with that of other industrial democracies (Johnson and Drew, 1978). In *Praying for Justice* Greenhouse uses another kind of data, and while her book does not disprove the stereotypical image of the litigious American, at least she offers another picture: of Americans who not only avoid legal action but who have even developed a set of injunctions against conflict and the voicing of interpersonal disputes. Greenhouse's book is part of a growing body of work that finds, contrary to the popular stereotype, Americans seem to prefer avoidance, or negotiation, to other modes of dispute resolution.

Greenhouse's study is ethnographic. The field work for her study was carried out between 1973 and 1975 in "Hopewell," Georgia, a town with a population of four thousand people, ninety-eight percent of whom are white. The book is concerned with people's ideas about conflict rather than with conflict itself, and as the author tells us, is a delineation of the cultural framework within which her informants understand conflict, remedies, and justice. For such a cultural analysis a conventional reliance on the case method approach to law was of little help. Greenhouse focuses instead on the religious doctrine of Hopewell Baptists as a means for understanding their ethic of avoidance. For the people of

LAW & SOCIETY REVIEW, Volume 22, Number 5 (1988)

Hopewell, disputes have relatively little importance; they are not oriented toward public remedy. Greenhouse's intent is to account for the central negative place conflict holds in their culture. She is interested in social ordering, not legal ordering, and as she states her subject is the anthropology of law, but not law. The book is of special interest to those who wish to understand the way in which American Protestant Fundamentalism fits into political and legal reform movements at the national level. There is also the pure interest in figuring out a cultural system that is not of law, but that impacts on law, one that is based on justification rather than command, on participation rather than obedience, a system of handling conflict not requiring the application of human authority.

After some introductory material, which includes a Note to Readers in Hopewell that is a model of explaining to one's informants what the ethnographic endeavor is all about, Greenhouse presents five chapters, each of which is a study in the ideology of a particular ideology of harmony. In her chapter on family and friendship she underscores the idea that all conflict immediately becomes inner conflict. The chapter that follows indicates that the church plays an important part in strengthening people's inner resources, further isolating them from one another while doing so in the name of community. In the chapters that follow Greenhouse explores the concept of conflict as an indicator of one's spirituality or lack of it, and as an axis along which Baptists organize their social universe. She concludes with an examination of the meaning of conflict and its transformation over the previous century and a half.

At the outset the reader is introduced to the people of Hopewell by four portraits of four families as told to the anthropologist by women. The family we learn is the traditional "bulwark of the individual against the state" (p. 50). The man in the family is in charge and no one can tell a man how to run his family. The husband mediates between his family and the outside, the mother between her husband and the children. Family relationships structure relationships well beyond the family. People deal with conflict in these zones by *internalizing* it, and sometimes by *avoiding* the relations of conflict. Remedies are interior and Greenhouse is extremely adept at telling us how remedy works when internalized.

There are three experiences that are central to Baptists: salvation, or the moment of religious acceptance or the conversion experience in the personal life of an individual; witnessing, or the lifelong commitment to evangelizing so that non-Baptists may be saved; and daily, continual study of the Old and New Testaments. Prayer links salvation, Bible study, and witnessing, and functions as social control, social communication, and emotional release. These Baptists describe themselves as having an ability to get along, to preserve harmony, to create harmony because of the Bap-

tist experience with Jesus. Their tolerance for conflict among the unsaved is coupled with intolerance for conflict in their own community, which is harmonious by virtue of having Jesus. For the Baptists a dispute represents a contradiction.

The Baptist theory of conflict locates conflict and disorder among the unsaved since conflict is seen as a rejection of God. All conflict is said to result from self-interest. Thus, conflict is an attribute of a person rather than for example, of a group. The Baptists of Hopewell have developed an elaborate system for avoiding confrontations in which there are winners and losers. The Baptists recognize that there might be conflict among themselves, but not disputes, and resolving conflict without dispute entails verbal remedies: narratives and gossip, joking, dueling with scripture, and prayer. Cases and rules are absent; the adversary model is absent although there are grievances. The important idea is salvation. The only valid remedy is salvation. Damnation is the only valid sanction. And accountability is to Jesus alone, thus a lack of concern with establishing a secular accountability. "Auto accidents, incidents of violence, and debt are explained as simply being an example of "God's will" (p. 115); they define conflict out of their existence. Conflict derives from a person's character, and from a rejection of God. Baptists refuse to concede the adversarial element; the structural alternative to disputing is for them brotherhood, a brotherhood that is anti-authoritarian and egalitarian. In this context censure is implicit and collective, and recognized as "helping" a person improve their spiritual life. But ultimately what holds these Baptists together is their construction of social boundaries that distinguish "Ourselves amongst Others."

Greenhouse makes use of historical materials in addressing the connection between the past and the present creations of images of conflict. She discovers that the greatest silence about the past surrounds the periods of most intense strife involving the Civil War and the period immediately preceding it. She presents an examination of what is remembered and what is forgotten of crucial periods in the town's history—the intensity of regional conflict over the Cherokee Indian missions, the slavery question, and divisions over secession. On all three issues Hopewell's Baptists appear to have been associated with minority positions. The local Baptist associations put pressure on local churches in the direction of eliminating dissent by "withdrawal." In the 1880s and 1890s violence marked the county's political life. While the church managed to control its internal conflicts, it could only deal with external conflicts by withdrawal.

Greenhouse concludes that there is a double principle of selection in Hopewell's knowledge of the past: conflict and its resolution. Conflict that is unresolved is canceled out. When Hopewell's Baptists pray for justice, they are in effect releasing themselves from the burden of keeping unresolved conflicts with them.

Greenhouse argues that the Baptist equation of Christianity and harmony and the rejection of adversarial disputing is a local tradition that developed in the first half of the nineteenth century. The effect of the Civil War, she argues, was to cement the equation between Christianity and silenced conflict; the war accomplished the conclusive bond of harmony, Christianity, and southernness. The struggle for harmony became a sign of their commitment to Jesus. Their prayers for justice require that history remain silent, and for that matter, any conflict that is unmediated by individual relationships with God. Theirs, Greenhouse notes, is a studied harmony.

*Praying for Justice* is very successful in describing a people's aversion to discord by means of cultural analysis based on sensitive use of ethnographic and archival materials. The combination of empathy and the skilled use of ethnographic analysis characterizes the book, but the detail and refinement of the characterization is what will make the book useful far beyond the local scene. For some time now a number of anthropologists have expressed dissatisfaction with the concepts of law and society and with what appears to be an exhaustion of the possibilities of the dispute settlement paradigm. Greenhouse's work makes it abundantly clear that understanding law in Hopewell necessitates an understanding of how religious beliefs and specifically religious beliefs concerning conflict and harmony work to shape the construction and use made of law. Her study is about law, religion, and society. Furthermore, had she attached her questions to a paradigm that would have required analyses of cases, rules, and adversarial behaviors, she might not have been able to understand the culture of harmony. Had she not examined this culture of harmony ethnographically and in its local context, it might not have been clear that harmony culture is as complicated as conflict culture, and probably exhibits as much variety. Harmony as a general conception for life should be scrutinized in relation to the construction of law much as conflict has been scrutinized in relation to the development of law. The Zapotec Indians that I studied in Oaxaca, Mexico, have a conception of harmony that requires them to litigate to find harmony. It is the silencing of disputes that accompanies the Hopewellian model of harmony that needs understanding, and here I am not totally convinced by Greenhouse's historical explanation because harmony culture is found in places that do not share Hopewell's past.

Auerbach quotes a 1640 case from New England (1983: 23-25) in which a Mrs. Hibbens quarreled with a Mr. Crabtree about his fee for carpentry work. The case was extended, but the final disagreement was not over wages, but over the unbrotherly manner in which Mrs. Hibbens pursued her disagreement; it is not well to resolve conflict through law. The Hopewellians go further: conflict must be avoided because it invites human authority, the interven-

tion of a third party. Human authority must necessarily set itself above others and thereby goes against the cultural value placed on equality. As Auerbach has informed us, the threads of Hopewell's Baptists were in New England long before the Civil War. Indeed, the coupling of harmony with Christian beliefs is commonplace, in which case the historical dimension of the county in which Hopewell is located pre- and post-Civil War would not constitute an explanation for the particular construction of harmony. More revealing might have been an analysis of harmony in conjunction with minority/majority politics as reflected by values Greenhouse calls to our attention such as traditional/progressive or poor/rich. Greenhouse presents us with an idiom of personal powerlessness: people cannot do anything; only God can do something about auto accidents, nuclear accidents, poisoned water, and more. As is the case with many of us in anthropology, Greenhouse's ethnographic skill may have caught up with her in the analysis that, because she is not concerned with actual disputing behavior, is, as my students have pointed out, not an analysis based on concepts of class, race, or gender.

As a document that puts together the pieces of a harmony rather than an adversarial approach to conflict, *Praying for Justice* is superlative. The reader can draw his or her own conclusions concerning the significance for American society of such an ideology in the presence of an expanding Protestant fundamentalism, and in the presence of a law reform movement whose concern for harmony may also seek to silence disagreement and cancel out conflict of interest. In the midst of the litany on litigious Americans this book comes as a shocking reminder that soma, as in Aldous Huxley's *Brave New World* (1932), may be a public policy problem that needs to be addressed by the next wave of law-reform-minded lawyers and judges. Harmony Hopewellian style may be good for community but not for national interests.

*Praying for Justice* is a most stimulating book deserving of the widest scientific and public policy attention. Greenhouse has taught us a good deal about why Americans have *No Access to Law* (Nader, 1980) and has as well illuminated the power of cultural analysis to reveal a world view where conflict does not deal with unequal power, public accountability, or diversity of interest, where facts and legal rights are transformed into feelings, relationships, and community writ small.

## REFERENCES

- AUERBACH, Jerold S. (1983) *Justice without Law?* New York: Oxford University Press.
- GALANTER, Marc (1986) "The Day After the Litigation Explosion," 46 *Maryland Law Review* 3.
- (1983) "Reading the Landscape of Disputes: What We Know and Don't

- Know (and Think We Know) About Our Allegedly Contentious and Litigious Society," 31 *UCLA Law Review* 4.
- HUXLEY, Aldous (1932) *Brave New World*. New York: Harper and Row.
- JOHNSON, Earl, Jr., and Ann Barthelms DREW (1978) "This Nation has Money for Everything Except its Courts," 17 *The Judges Journal*.
- KAGAN, Richard L. (1981) *Lawsuits and Litigants in Castile, 1500-1700*. Chapel Hill: University of North Carolina Press.
- NADER, Laura (ed.) (1980) *No Access to Law—Alternatives to the American Judicial System*. New York: Academic Press.