INTRODUCTION: LITIGATION AND DISPUTE PROCESSING

Every society contains many institutions and processes for handling disputes. Some are governmental; some are located within other institutions and groups in society. Some are adjudicatory, some proceed in other modes—arbitration, mediation, therapy, negotiation and unilateral action of various kinds. The distribution of these processes varies from society to society. There may be some matters that are peculiarly suited to one of these modes and there may be pronounced cultural preferences for one or another mode. But it appears that most (if not all) societies contain examples of many kinds of dispute processing.[1]

This is the first of several special issues on litigation as a component in dispute processing. We hope in these issues to explore some of the data, concepts and techniques that might be useful in mapping the dispute processing complex in a society. The study of litigation, we believe, represents an emerging focus in the study of law and society[2] that lies somewhere between focus on authoritative learning or formal structures and focus on individual choice-making. It looks for the connection between individual choice and institutional structure in the use of the dispute process—by whom, for what purpose, in what modes, with what effects. The everyday operations of dispute institutions occupy center stage; they are not merely a ghostly counterpart to authoritative learning and formal arrangements, nor a mere cumulation of individual choices.

Concern with the *use* of dispute processes may take different forms; it may focus on actors or on institutions; on processes or on roles and structures. It may differ in scale and scope; it may focus on a single unit or be broadly comparative; it may be synchronic or diachronic; it may be microsocial or macrosocial; it may proceed by intensive case study or analysis of aggregate data.

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1. For purposes of comparative mapping of these phenomena, we prefer "dispute" to "law" to frame the subject of discourse, avoiding the ethnocentric and value-laden boundary controversies which attend the latter (see Abel 1974:221) and "processing" to "settlement" or "resolution" to avoid the imputation that the process necessarily leads there.
2. Represented recently in these pages by *inter alia* Richard Abel's theoretical analysis of dispute institutions (Vol. 8, No. 2), by Craig Wanner's survey of patterns of court use (Vol. 8, No. 3), and by June Starr and Jonathan Pool's study of the use and impact of local courts in Turkey (Vol. 8, No. 4).

For a number of reasons we regard a focus on litigation as an appealing route for exploration of the dispute process: it redirects our attention from prominent agencies and great cases to the daily working of institutions; it encourages systematic comparisons between disparate units; it invites us to disaggregate, to see how different sectors of the legal process connect with different institutions and different sections of the population; it suggests possible ways of developing quantitative indices for comparing legal life across time and space. This focus also emphasizes the links between the public and the private sectors in dispute processing. The entwining and inter-dependence of governmental and non-governmental dispute processes make it difficult to understand the latter until we know much more about the presence and operation of unofficial forums.

Having said this, we must concede that most of the papers in these issues deal with government courts. But the authors recognize the co-existence of multiple systems of normative ordering in society and that official agencies and norms do not necessarily stand in a relation of hierarchic control over the unofficial. They do not assume that dispute processing in a society comprises a single integrated system. Instead they posit multiple, overlapping and sometimes competing sets of norms and institutions with sufficient mutual influence that their functioning cannot be understood by studying them in isolation.

Within this broad perspective the contributions in this first issue can be grouped into two sets of approaches. One, represented in the papers by Morrison and Kidder, asks what we can learn about dispute processing from an examination of the careers which develop around it. By studying careers that are marginal (Morrison) and central (Kidder) to formal litigation, we learn about the shadowy theatre of informal dispute processing ancillary to the routines of formal adjudication. The richness of informal process within the social zone of the courts suggests the range of alternatives available to a society's dispute "customers."

The second approach, represented in the papers by Felstiner and Galanter, constructs general models to organize available information about both informal and formal dispute processing systems. Both papers are concerned with structural influences on disputing, but from different perspectives. Felstiner links macro-structural characteristics (of the kind associated with studies of societal development) to patterns of dispute processing. Galanter's paper, on the other hand, offers a typology of litigant

capabilities and relationships, seeking to explain patterns of litigation use and outcome.

The themes which run through these four papers—the systematic differences in the capabilities and experience of litigants, the emergence of distinctive dispute processing careers, the sometimes symbiotic and sometimes competitive relationship of private and public sectors, the dependence of dispute processing patterns on the relationship between the parties, and on the wider matrix of opportunities which frame that relationship—will reappear in the second part of this collection. There these themes will be elaborated in a number of ways including quantitative study of the variation of litigation across space, time and economic position, and consideration of the outcome of litigation and its impact on the litigants. By drawing together these diverse studies in a single collection we hope to point to possible lines of convergence of a wide array of scholarly activities, a convergence that seems to us to hold high promise for development of grounded theory of law in society.

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