

Legal Procedures

The Disputing Process. Law in Ten Societies. LAURA NADER and HARRY F. TODD, Eds. Columbia University Press, New York, 1978. xx, 372 pp. Cloth, \$20; paper, \$8.50.

Nearly all anthropological studies of political phenomena attempt to deal with one of two fundamental issues: why political structures take the forms they do in specific societies, or how different systems operate. Efforts to deal fully with both issues are not common. The present collection of essays represents one of the few departures from the fragmentary efforts typified by most case studies and from comparative schemes that are often poorly linked to ethnographic reality. The book is the product of the Berkeley Village Law Project, begun in 1964 by Laura Nader. Ten of her students have contributed chapters, each based on field research conducted sometime between 1965 and 1975. The geographic representation is wide. The communities studied comprise one in Indonesian New Guinea, three in Europe (Scandinavia, Bavaria, and Sardinia), two in Africa (Ghana and Zambia), three in the Middle East (two in Lebanon and one in Turkey), and one in Mexico. The book, as well as the project as a whole, attempts to deal with both how particular dispute settlement procedures work and why there should be variation cross-culturally.

The adoption of a common framework for data collection and analysis has greatly enhanced the comparability of the specific cases. Nader, however, allowed her students to make adjustments when the framework was inappropriate, and the reader will note much license with the framework.

The editors identify seven procedures for dealing with grievance, conflict, or dispute: "lumping it," avoidance, and coercion (all based on unilateral action by one of the parties to a dispute); negotiation (a bilateral arrangement whereby the two principal parties attempt to work out a solution themselves); and mediation, arbitration, and adjudication (procedures involving third-party assistance in reaching agreement). The contributors use these categories in describing the specific procedures present in their particular cases.

The focus on procedures as opposed to institutions or agencies (like courts or middlemen) has certain advantages. For one thing, it is a complete break with the work of earlier generations of political and legal anthropologists who debated whether law and government were present in so-called primitive societies. The answers, of course, depended on how the phenomena were defined. Because many of the early efforts either specified criteria restricted to state-level societies or described the phenomena in terms more appropriate to the anthropologists' own cultures, primitive cultures were often found deficient in law, government, or both. Nader and Todd's approach avoids the problem of an ethnocentric perspective. Further, in explaining how dispute procedures work, the collection places heavy emphasis on the views of the persons actually involved. The outside analyst and the inside actor may have quite different views of what a specific behavior means or its consequences, and the best ethnographic research is sensitive to both perspectives. The focus on procedures also links this collection to transactional approaches in anthropology and related disciplines.

Some of the earliest efforts at understanding non-Western legal systems used the method of studying particular cases as a basis for discovering the substance sometimes rather than and sometimes in addition to the procedure of the law. Although this collection recognizes that cultures vary considerably in what behaviors will be sanctioned or disapproved, it is really not concerned with substance. Although the focus on cases is retained, an effort is made to consider each case over as long a time span as possible. Thus three phases of a dispute are recognized: the preconflict (or grievance) stage, the conflict, and the dispute—stages that, though neither neatly distinguishable nor necessarily sequential, guide the data collection and analysis. The attention given to disputes *before* they become public is a welcome departure from much of the earlier work in legal anthropology.

The editors claim that the same basic procedural modes are used worldwide to settle disputes. Why only some exist in a particular society or why individuals

elect to use the particular ones they do among the range available to them is explained by reference to the following variables: the nature of the social relations among persons in a dispute; the potentiality of scarce resources (nonmaterial ones such as honor and prestige as well as material ones) to take precedence over social relationships; the distribution of power and degree of stratification present in the society; specific aims that individuals wish to maximize; the time involved (procedures may be selected because they are speedy *or* because they delay the process); the costs (social, psychological, and economic) involved; the cultural meanings associated with different procedures; and the degree of incorporation into national legal systems.

While informative and useful for generalizing about these ten societies, this set of variables is not yet at the level of highly general theory. It does not yield a unified theory of behavior that applies to legal behavior. There are several reasons for this. First, the limitation of the analysis to dispute settlement procedures precludes a general understanding of dispute in the context of other aspects of the law or of power relations more broadly. Second, the number of cases, though large for so carefully controlled a study, is not large enough to permit separation of the multiple variables the editors have identified as conditioning the sorts of dispute procedures found in particular cases. Third, because the communities included vary considerably in the degree of social and cultural change that has resulted from the impact of national, nonlocal legal systems and institutions on the local communities, it is difficult to separate procedures that have been introduced relatively recently from those that are more "traditional" in some of the communities. Although this separation is not attempted by Nader and Todd, many anthropologists interested in a neo-evolutionary approach to politics and law would consider it essential. Few historical data are available on most of the cases to show how procedures have changed as the communities have become increasingly acculturated through contact with the nation-states within whose borders they lie.

The editors promise a companion volume that will deal with dispute settlement procedures among strangers and thus complement these studies of disputes among persons who are, for the most part, related to or at least acquainted with one another. Future work in comparative legal behavior can profit greatly from these initial collaborative efforts. *The Disputing Process* stands in

interesting contrast to Donald Black's *The Behavior of Law* (1976), in which more general propositions about the operation of law are advanced. It was necessary for Black, however, to rely on data collected by a variety of ethnographers representing many different theoretical approaches. Like many comparative theorists before him, he was unable to exert much control over the data that were available to him. As the comparative study of legal behavior advances in the years ahead, we can hope for a greater synthesis of the comparative and ethnographic approaches. Nader's students have demonstrated the utility of cumulative efforts, of putting similar questions to different societies, of collaboration in preparation, collection, and analysis of data. Yet at the same time the book shows us that we have only begun to move anthropology from its particularistic descriptive efforts (generously called at times "theories of particular societies") to general theory that is firmly grounded on carefully collected, systematic data.

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Children and Ethnographers

Transformations. The Anthropology of Children's Play. HELEN B. SCHWARTZMAN. Plenum, New York, 1978. xviii, 380 pp., illus. \$29.50.

Question: what do children making mud-pies have in common with anthropologists doing ethnographic fieldwork? The answer, according to the author of this book, is that they are playing. If Helen Schwartzman's statement seems a bit strained and far-fetched, that is because we are not supposed to take it literally; we are, however, supposed to take it seriously. Schwartzman is dealing in metaphors, and what she hopes to emphasize with this one is that anthropologist and child alike are engaged in acts of invention and interpretation. Both of them, she says, are "continually constructing and transforming the contexts in which they exist in their efforts to make sense, and sometimes nonsense, of the worlds in which they find themselves" (p. 1). There is nothing either novel or startling about this observation (ethnographers, after all, have understood for quite some time that theirs is an interpretative, and, in this sense, an inventive craft), and I am not persuaded that equating fieldwork with play, even

metaphorically, is an effective way of driving home the point or heightening its impact. But Schwartzman has no such qualms. Indeed, she builds upon her metaphor to make a considerably grander claim. To wit: just as the discipline of anthropology has transformed the study of play, so, too, the study of play can transform the discipline of anthropology.

To support this claim, Schwartzman embarks upon a lengthy survey of studies dealing with children's play. She has two main objectives: to describe in sum-

mary form the research that has already been accomplished, and to illustrate, by means of a historical analysis of this work, the manner in which anthropologists' conceptions of play have been shaped by different theories of culture and cultural development. On both counts, Schwartzman does a thoroughly commendable job. The body of writings on children's play is enormous, and she has organized it (geographically as well as chronologically) extremely well. Similarly, her comments about the effects of



"Children's play, Chicago." [From *Transformations*]



"English children playing fox and chickens." [Photo by A. D. Webb, from I. and P. Opie, *Children's Games in Street and Playground* (Oxford University Press, 1969), reproduced in *Transformations*]