

WHAT DO PLAINTIFFS WANT?  
REEXAMINING THE CONCEPT OF DISPUTE\*

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*The alternative dispute resolution movement has been heavily influenced by a particular vision of conflict, known as the dispute processing paradigm, which describes disputing behavior primarily in terms of instrumental, optimizing decision strategies. An ethnographic study of attitudes and behaviors of disputing in three small American neighborhoods suggests that some categories of conflict are managed within a framework of cultural beliefs about appropriate or virtuous ways of behaving: how to fight or whether to fight, how to respond to insults and grievances, how to live with one's neighbors. Attention to the various forms of social action and its cultural construction helps to explain some of the recurring questions in the implementation of alternative dispute resolution mechanisms, such as the persistent low rate of voluntary usage.*

### Introduction

Despite the multiple goals underlying the dispute resolution movement, the construction of alternative dispute resolution mechanisms (ADRM) has been shaped by a particular vision of conflict and dispute known as the dispute processing paradigm. This paradigm rests on a set of theories and assumptions about the nature of conflict, the motivations and behavior of actors in conflict situations, and the ways to categorize these aspects of the social world for study. Because the dispute processing paradigm has been influential in the development of alternatives to the judicial system, an examination of the current state of alternatives theory and practice should address its conceptual foundations. Such examination can illuminate persisting dilemmas and debate about the effectiveness and consequences of informal techniques of dispute resolution.

A recurring puzzle in the alternatives movement, for example, is the low

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\*This paper was prepared for presentation at the annual meeting of the Law and Society Association, June 1983, Denver, Colorado. The authors are grateful to the National Science Foundation and the National Institute of Justice for support for this research. The Wellesley College Braitmayer Foundation Fund provided additional funding. We are indebted to Sandy Baldwin, Susan Banta, Iphigenia Demetriades, Kinne Hoffman, and Linda Zakas for their work in field interviews and subsequent discussions. We especially appreciate the work of Carol Mazzarella with the data analysis. In addition, we would like to thank Saul Touster, John Brigham and the anonymous reviewers for their comments on an earlier draft.

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rate of voluntary usage (i.e. not referred by the judicial system) of alternatives despite the evidence that disputants who turn to alternatives are generally satisfied. There are reports from several sources that users find the process satisfactory, fair, and that they often experience higher rates of compliance and lower rates of relitigation. A preliminary sample of seventy-three follow-up interviews in our research on two mediation programs handling minor criminal and small claims cases revealed that 75% reported that the agreement was fair, 85% said that they were going along with the agreement, and 92% said that they felt mediation was a good process for resolving conflicts.<sup>1</sup> Another study of a parent/child mediation program<sup>2</sup> found that 63% of the 114 parents and children interviewed one month after they had used the process said it was a good process, 10% said it was bad, and 26% offered mixed assessments. Ninety percent felt that the agreement was fair; 84% said they were glad they had used mediation, and 83% were satisfied with their overall experience in the mediation program. A smaller percentage, 47%, felt that the agreement was working, 11% that it was partly working, and 31% that it was not; 61% said that the agreement helped the overall family situation. In their study of the Maine small claims court mediation process, McEwen and Maiman found that disputants were almost twice as likely to pay the money they owed after a mediated settlement than after an adjudicated one (1983-84).

Nevertheless, despite such evidence that disputants are satisfied with ADRMs, there continue to be relatively few people who seek them out without a justice system referral (Harrington, 1984). A recent comprehensive review of alternative dispute resolution program evaluations emphasizes this anomaly (Pearson, 1982). Pearson suggests three explanations for this pattern: the public does not know about alternative dispute resolution, attorneys steer clients away from alternatives, or communities already contain effective alternatives for resolving disputes such as avoidance or local leaders (1982: 428).

Our data challenge the argument that citizens do not use alternatives because they are unaware of them, at least for interpersonal, neighbor and family disputes. In a three-year study of two alternative dispute resolution programs and the communities in which they are located, we found that grievants who bring disputes to court as well as those who do not are

knowledgeable about using public and private agencies to help with problems. People with problems shopped among a wide range of helping and service agencies. The same problem between neighbors, for example, appeared as a barking dog complaint to the dog officer, an assault charge in court, an anonymous report of child abuse to the government social services agency, and a zoning violation to the town planning board. We observed a readiness to discover various outlets for grievances and the ability to redefine problems in ways that would elicit action from different agencies. Earlier observations in a low-income housing project revealed similar inventiveness among both black and white ethnic populations (Merry, 1981); studies of consumer complaint agencies also report similar resourcefulness (Ladinsky and Susmilch, 1982; Nader, 1980; Silbey, 1984). The argument that after ten years of experimentation and discussion of alternative dispute resolution, citizens do not use alternatives because they are unaware of them, is, therefore, unconvincing.

McEwen and Maiman suggest a different explanation for the paradox of low usage despite reported user satisfaction based on data concerning small claims mediation. They suggest that few disputing parties choose mediation before beginning court proceedings because the filing of charges in court provides the leverage the weaker party needs in order to initiate negotiations (1983-84: 45-46; cf. Sarat, 1976). Thus, they argue, the threat of legal processes helps to mobilize informal consensual justice. Formal and informal justice operate as symbiotic rather than alternative processes.

We would like to suggest a further explanation: citizens do not use alternatives voluntarily to the extent hoped for by proponents of ADRMs because by the time a conflict is serious enough to warrant an outsider's intervention, disputants do not want what alternatives have to offer. At this point, the grievant wants vindication, protection of his or her rights (as he or she perceives them), an advocate to help in the battle, or a third party who will uncover the "truth" and declare the other party wrong. Observations suggest that courts rarely provide this, particularly to plaintiffs in interpersonal cases, but inexperienced plaintiffs do not know this. They go to court for an advocate and to get justice; they do not respond eagerly to the opportunity to take the problem back into their own hands.

Our research in a small American city suggests that most disputants prefer to handle interpersonal problems by themselves, through talk or avoidance. Only when talk or avoidance fails do they turn to an outside agency. At the point at which disputants seek a voluntary and congenial discussion with the other party, they feel that resorting to outside help and

<sup>1</sup>Of the 92% who said that mediation was a good process, 43% qualified their responses with the caveat that mediation is better for problems other than those which brought them to court, because their problem involved persons who were too stubborn or problems that were too intractable for the process.  
<sup>2</sup>Report of the "Children's Hearing Project," Cambridge, Mass., funded by the W. T. Grant Foundation (1984).

uninvolved parties is morally repugnant. Conversely, by the time they are willing to turn to others for help with their problem, the parties no longer wish to settle the dispute by discussion and negotiation. At this point they conceptualize their problem as a principled grievance for which they seek an authoritative and binding solution, not as a conflict of interest in which they have limited and negotiable goals. It is in precisely those cases which have developed to the point where they seem so unavoidable and principled that the grievant can justify going to an outside agency that she/he is least likely to be enthusiastic about the offer of an alternative dispute resolution process which removes the advocate and eliminates the third party who would make a definitive decision about right and wrong.

A reexamination of the dispute processing paradigm can help point out where we may have gone wrong. We have misjudged disputants' attitudes toward alternatives and their willingness to turn voluntarily to informal third party forums because we are using a model of dispute which assumes that many or most interpersonal problems are fundamentally conflicts of interest pursued by rational actors making choices between sets of instrumental goals. This model implies that actors will respond enthusiastically and in large numbers when offered a more efficient forum in which to negotiate these interests. When they do not use it, we assume it must be because they do not know about it and mount public education campaigns.

In fact, the interpersonal disputes we observed cannot be described adequately by a model of instrumental exchange. Moreover, disputants often described them as conflicts of principles and values, shaped by normative and socially derived concerns of morality and virtue. Recourse to outside third parties was, in many cases, a desperate, final effort to secure justice. These observations are provocative, raising important questions for the future of the alternatives movement and the theory of conflict resolution. In order to further our understanding of the relationship between courts and their alternatives, we need to know more about why and when people turn to third parties for help with personal problems.

This article examines the way residents of a few small neighborhoods think and talk about handling conflict suggesting a different conception of dispute that could serve as a basis for dispute resolution research and policy. We report some of the results of a three-year study of family and neighbor disputes as they appeared in community, court and mediation. The study included observations of 125 cases in mediation and court, follow-up interviews with disputants, and ethnography of three small neighborhoods. This latter portion of the research was designed to discover the extent to which problems like those which appeared in court and

mediation were widespread in neighborhoods and what disputants routinely did about them.

This article draws heavily upon the ethnographic portion of the research as well as the results of survey and interview data in three neighborhoods. For one year of the study the researchers engaged in general observation of three small neighborhoods, interviewed in depth, sometimes several times, residents and leaders in these three neighborhoods, and participated for six months in weekly gatherings of several residents in one neighborhood. We followed this with a formal survey of 93 residents in the three neighborhoods. In each neighborhood, a local resident was trained in interviewing techniques. A researcher met with them every two to three weeks for a period of 6 months to discuss the findings and observations. These discussions, which drew on both their interviews and on their own knowledge of their neighborhoods, were extremely productive. In addition, a student researcher lived in one of the neighborhoods for two months, engaged in extensive observation and interviewing; a second student joined the interviewing team for a few months.

Interviews were conducted by delivering a letter of introduction three days to a week before approaching a residence. Refusals were rare in the more affluent and educated neighborhood, but were quite common in the transitional one and slightly less common in the stable, less affluent neighborhood. This is not a random sample of the population in the neighborhoods; the interviewers knocked on every door, spending between 45 and 90 minutes with residents who agreed to be interviewed. The questionnaire consisted of 88 questions about the social organization of the neighborhood, neighborhood problems, the respondents' own problems and the actions taken by them; it included questions about their attitudes toward differences and conflict and appropriate ways to handle them as well as perceptions of official agencies such as police and courts. Finally, the researchers spent two years studying the city of which these neighborhoods are a part, interviewing community leaders, observing the court and mediation sessions, and consulting archival and government sources about the social composition and history of the town.

### Reexamining the Concept of Dispute

Alternative dispute resolution mechanisms derive from a model of disputing as a form of rational optimizing behavior most prominently, but not exclusively, associated with economic transactions. We suggest a revised notion of dispute which recognizes that social action is not entirely calculating and instrumental but is also affective, habitual and influenced by

notions of right and justice.

There has been considerable criticism of the concept of dispute in the past few years, leading some to suggest that the concept be abandoned altogether. Some of the major objections are that it lacks a political context, that it has been applied to too many disparate social phenomena, and that it is an atheoretical concept that is not grounded in a theory of society. After attempting to use the concept in this study of family and neighbor conflicts as they appear in communities, in courts, and in mediation programs, we agree that there are problems with the concept as it is currently used. Yet, despite the validity of these criticisms, it would be a mistake to abandon a concept which makes it possible to compare conflict behavior across settings and cultures (see Nader and Todd, 1978). Dispute can be a concept analogous to role or social network: not itself a theory of society but an analytic construct which forms a building block for a theory. Its current use, however, creates problems because it seems to reflect assumptions about society and human behavior that have not been explicitly expressed or examined.

One problem with dispute analysis, which we have argued previously (Silbey and Merry, 1983), is a tendency to view conflict events exclusively in terms of structure and process and to neglect the substance of disputes: what they are about. Menkel-Meadow (1983) suggests that this attention to process ignores outcomes. A second problem, which Cain and Kulcsar (1981-82) have pointed out, is that dispute analysis implies a vision of society as a set of normative, consensually supported patterns. Conflict is then a disruption which must be managed and contained; it implies pathology and deviance (Menkel-Meadow, 1983). A third problem is a focus on individual actors and their behavior in which it is assumed that the aggregate social order can be understood as the sum of individual actions. These points are all worth further consideration. Here, we would like to argue another point: that the concept has acquired an implicit set of assumptions about the nature of disputing as rational, self-interested, choice-making, and fundamentally instrumental behavior.

In much of the recent literature on civil litigation and dispute processing,<sup>3</sup> as in the Civil Litigation Research Project (CLRP),<sup>4</sup> disputants are perceived as making decisions between alternative courses of action on the basis of the stakes, costs, and anticipated outcomes. To some extent, the

focus on economic reasoning is dictated by the nature of the cases being studied. This is not entirely inappropriate where the subject of research is monetary disputes of substantial value. (The CLRP research examined disputes of more than \$1,000.) Moreover, this approach may be dictated by the need to concentrate on variables that can be easily measured in large-scale, quantitative empirical research (See Trubek, 1980-81: 498-9; Trubek *et al.*, 1983). Nonetheless, the result is a characterization of dispute and a model of disputing in terms of instrumental, optimizing decision strategies.

Yet, this model tends to underestimate the role of cultural norms and values for the substance and process of dispute behavior. Such considerations, when discovered, are relegated to significance only in minor or non-material conflicts. For example, research has shown that plaintiffs file suit even though they have no intention of 'going all the way' with a case. Litigation may be used to express feelings or let off steam; it may have psychic and symbolic value (Sarat, 1976: 346). Filing a complaint or initiating litigation may be used to best someone in a situation unrelated to the litigation (Merry, 1979: cf. Engel, 1983). Further, as Silbey (1984) has shown, even consumer disputes may hinge on differences in unstated normative expectations, and, Ladinsky (1983) suggests that cultural values as well as opportunity costs may account for a number of consumers who fail to complain about unsatisfactory consumer transactions. Each of these observations was reported in the context of minor disputes (small claims cases, consumer grievances, and interpersonal conflicts) and is easily disregarded within analytic models of litigation. When acknowledged, however, these non-economic reasons are used to enrich rather than challenge the prevailing dispute model, so that the characterization of disputes and disputing as calculated decisionmaking continues to predominate.

But disputes are cultural events, evolving within a framework of rules about what is worth fighting for, what is the normal or moral way to fight, what kinds of wrongs warrant action, and what kinds of remedies are acceptable. Other work has already pointed to the importance of perception in the creation of a grievance (Felstiner *et al.*, 1980-81); we would like to emphasize that perceptions of disputes and ways of dealing with them derive from habits and customs embedded in social groups and cultures. Ideas about how to respond to grievances are linked with socially constructed definitions of normal behavior, respectability, responsibility and the good person. Moreover, these perceptions and conceptions influence behavior in ways which cannot be described as rational choice-making.

3. For a description of this research, see the *Law and Society Review*, Vol. 15, No. 3-4 (1980-81).

4. See "Civil Litigation Research Project Final Report," by David M. Trubek, Joel D. Grossman, William L. F. Felstiner, Herbert M. Kritzer and Austin Sarat. Madison, Wis: D.P.R.P. (1983).

This does not mean that behavior is irrational but that much human behavior is non-rational. That is, it is not a calculated relationship between means and ends. It is insufficient to describe behavior—here dispute behavior—by simply incorporating non-material considerations—feelings, norms, values and symbols—as elements of choice within dispute strategies.

We are emphasizing that dispute behavior, as is true of much human behavior, is affective and habitual and is not entirely a matter of rational calculation; much behavior is also unconscious and this too may be rational or non-rational. A frequently postulated feature of modernization is the relative rise in rational forms of human behavior at the expense of non-rational forms (Berger *et al.*, 1973), and the overall reduction in the “taken-for-grantedness” of daily life (Gehlen, 1980). With the transition to modernity, ordinary social intercourse becomes decreasingly a matter of habit, convention, or affect. More arenas of social life become consciously manipulated, subject to choice and decision rather than taken for granted. These changes are, of course, associated with increasing freedom. At the same time, some argue that this self-conscious manipulation of social life undermines social stability, while others claim it is necessary to transform society in radical ways.

To describe dispute behavior exclusively in terms of rational, instrumental behavior suggests, however, that the transformation of society is far more complete than this model of modern life has claimed. Dispute behavior, like other aspects of informal social life, contains aspects of both rational and non-rational behavior; it incorporates the dimension of choice as well as habit, convention, and affect. Rational behavior, the self-conscious relationship between means and ends, may well characterize important arenas of organizational and bureaucratic behavior, but it does not describe fully how people actually fight. Our data suggest that much dispute behavior continues to be governed by affect, habit, and conceptions of right, appropriateness, or fittingness that are not subject to rational evaluation but are part of the taken-for-granted quality of daily life in particular communities. We become conscious, if at all, of the patterned nature of the taken-for-granted world including dispute behavior when social scientists attempt to unravel it and analyze its structure.<sup>5</sup> We need a model of disputing that acknowledges and takes account of these non-

rational, perhaps pre-modern, aspects of behavior.

A brief review of the origins of dispute analysis may help suggest how we have come to this singular conception of dispute. Beginning in the 1950s, anthropologists developed and elaborated the concept of the dispute because they were searching for a dynamic and historical (diachronic) way of understanding the role of law in society. Early proponents of the case study approach in anthropology, such as Llewellyn and Hoebel (1941), Gluckman (1955), Turner (1957), Gulliver (1963), and Nader (1965), were rebelling against a static, ahistorical (synchronic), structural-functional paradigm. Analysis of a society consisted of an explication of the normative rules and expectations of that society and the institutional structures by which conformity to these rules was maintained at the moment of examination or inquiry. Very little attention was given to the development of the institutions over time. Moreover, in this paradigm, fundamentally Durkheimian, the basis of social order is consensual and the problem of conflict is one of inducing conformity to accepted normative standards.

It was in reaction to the limitations of anthropologists' use of this model that a generation of scholars began to follow Durkheim's pathbreaking work in crime and deviance (1893) and to examine situations of trouble, of “hitch” (Llewellyn and Hoebel, 1941). Anthropologists moved from a study of the analysis of law as a system of rules to an analysis of law as a process for handling trouble cases. This shift paralleled a more general shift within the field to a more voluntaristic, actor-centered mode of analysis. The description of societies came to focus more on actors' strategies and choices rather than rules of behavior, on fleeting and ephemeral social aggregations such as networks and factions rather than enduring groups such as lineages and clans. In order to escape the notion of society as exclusively patterned by norms and rules, anthropologists moved toward an analysis of the actor operating through and by means of rules, yet constructing a social order on the basis of his own choices. These newer paradigms did not eliminate the larger system from consideration. Individual actions always occurred within the context of a structure of social relationships and normative principles which governed these relationships. The individual is free to exercise choice within the constraints imposed by his culture and social structure. The attention to choice-making and behavioral strategies, however, gained popularity in other disciplines without the parallel concern for the social context.

The conception of social action in terms of strategies bore a close similarity to models in other disciplines and suggested a desired move in the direction of a unified social science with common variables and units of

5. For an interesting discussion of social scientists' attempts to unravel behavioral motivation and the relevance of subject reports of such, see McEwen and Maiman (1984). The authors refer to the role of sociological analysis and the effort to identify the typifications already operating in social situations (Berger and Kellner, 1981:40).

analysis. In legal studies, legal realism and sociological jurisprudence were followed by the development of a sociology of law describing the social construction of legal action and systems. Legal research included more empirical and behaviorally-oriented projects, sometimes involving extensive definitional debate about appropriate concepts to guide this work.

The structural-functional approach influenced research in all social sciences so that general theoretical interest in the functions of social institutions led to a search for the special function(s) of legal institutions. Interdisciplinary and cross-cultural research seemed to reveal that law-like functions were performed in many different ways in many different societies. This observation exacerbated debate about what law is and accelerated the search for a fundamental concept of action to describe the behavior of both institutionalized legal systems and less formal social control systems. The notion of dispute and dispute resolution seemed appropriate as a basic behavioral concept that could be used in a wide variety of situations and which would not carry with it connotations of cultural or institutional bias.

In some sense, the development of the concept of dispute as a primary focus of research is the culmination of a particular moment in the history of ideas in which the model of elementary particles and general theory in physical science fueled the dream of a true social science with fundamental, objective, and verifiable units of analysis. The dispute was for legal studies what "demands" and "support" would be for political science, what "stimulus" and "response" would be for behavioral psychology, what "utility" would be for neo-classical economics, a new paradigm that would advance the 'science' of law. The dispute processing model has continued to move in a direction which suggests unification of social science by exploring the dimensions of choice, derived from economics and political science, and the perspective of the actor, derived from sociology and anthropology. Yet, in so doing, it may have moved too far; it has focused too narrowly on social action as intentional choice-making and neglected the moral, affective and habitual aspects of action. Dispute processing research now focuses too much on strategies to the neglect of the way these are patterned by moral rules and social class. Disputants pursue grievances not only in terms of material interests, but also in terms of norms about integrity, self-image, self-respect, and duties to others which are neither calculated nor subjects of individual choice. An adequate analysis of conflict behavior must include both normative rules and pragmatic strategies.

### Disputing Norms in Three Neighborhoods

In order to discover the normative rules and dispute behavior of various social groups, we studied three small neighborhoods located within a medium-sized northeastern city of 35,000 inhabitants. An old New England mill town, this city has grown from a small core of Yankee artisans and merchants to a heterogeneous manufacturing and service hub for a large suburban district. The transformation from village to modern suburban center followed waves of Irish, French Canadian, Italian and Polish immigration in the nineteenth century and more recent, twentieth century immigration from Puerto Rico and the Dominican Republic. The three neighborhoods, each of which has between 1,000 and 3,000 adult residents, are ethnically and religiously similar but differ in transiency, density and social class (see Table 1).

**Table 1.**  
**Demographic Characteristics of the Three Neighborhoods\***  
**(household structure and ownership, occupation, income, ethnicity, age distribution and education)**

	Oldtowne	Hilltowne	Riverdale+	Total
<b>Percentage of Households</b>				
Which Are Nuclear Families:	37%	63%	71%	59%
	N=751	N=422	N=1204	N=2377
<b>Occupied Housing Units</b>				
<b>By Occupancy Status:</b>				
Renter	69%	48%	38%	49%
Owner	31%	52%	62%	51%
	N=704	N=423	N=1220	N=2347
<b>Mean Value for Specified</b>				
Owner-Occupied Noncondominium Housing Units**	\$55,400	\$43,000	\$56,800	
	\$40,400			
<b>Occupation:</b>				
<b>Managerial and</b>				
Professional Specialty	20%	14%	21%	19%
<b>Technical, Sales, and</b>				
Administrative Support	27%	29%	33%	31%
Service Occupations	16%	16%	14%	15%

Table 1. continued.

	Oldtowne	Hilltowne	Riverdale+	Total
Farming, Forestry, and Fishing	1%	4%	1%	2%
Precision Production, Craft and Repair Operators, Fabricators and Laborers	15%	11%	14%	13%
	21%	26%	17%	20%
	N=882	N=551	N=1826	N=3259
Family Income:***				
Median	\$20,050+	\$20,625	\$23,951	
	\$14,972++			
Mean	\$19,500+	\$20,510	\$24,360	
	\$17,673++			
	+N=171	N=295	N=973	
	++N=261			
Persons by Ancestry:				
Single Ancestry Group:				
English	1%	12%	4%	5%
French	11%	9%	8%	9%
German	1%	1%	1%	1%
Greek	1%	—	1%	1%
Irish	9%	18%	14%	14%
Italian	4%	6%	12%	9%
Polish	22%	6%	4%	9%
Portuguese	—	—	1%	1%
Russian	1%	—	2%	1%
Ukranian	2%	—	1%	1%
Other	7%	6%	8%	7%
Multiple Ancestry Group:	29%	36%	36%	34%
Ancestry Not Specified:				
Other	3%	2%	2%	2%
Not Specified	9%	4%	6%	6%
	N=1669	N=1170	N=3709	N=6548
Persons by Age:				
Under 5 years	4%	8%	6%	6%
5-17 years	13%	19%	27%	22%

	Oldtowne	Hilltowne	Riverdale+	Total
18-59 years	59%	56%	55%	56%
60+ years	24%	17%	12%	16%
	N=1669	N=1170	N=3709	N=6548
Females 16 Years and Over				
With One or More Own Children by Labor Force Participation Status by Presence and Age of Own Children:				
(A) In labor force:				
Children under 6 years	27%	9%	16%	17%
Children 6-17 years only	26%	49%	43%	41%
(B) Not in labor force:				
Children under 6 years	12%	35%	21%	21%
Children 6-17 years only	35%	7%	20%	21%
	N=161	N=151	N=523	N=835
Persons 18 Years Old and Over by Years of School Completed:				
Elementary (0-8 years) through High School				
(1-3 years)	35%	31%	23%	28%
High School (4 years)	34%	48%	43%	41%
College:				
1-3 years	17%	12%	22%	19%
4 years	8%	6%	7%	7%
5+ years	7%	3%	5%	5%
	N=1669	N=1170	N=3709	N=6548

\*All of the information in this table was derived from the *Census of Population and Housing, 1980, Summary Tape File 1A and 3A.*

\*\*Total N sizes were not provided for this characteristic; Oldtowne data included in two sets. \*\*\*Oldtowne data included in two sets.

+ Because the census blocks do not precisely follow the boundaries of the single family home development of Riverdale, there are a few persons included in the table that were not part of the neighborhood under discussion.

All three neighborhoods are white ethnic communities, with slightly varying nationality mixtures. All are predominantly Catholic, primarily Irish, Italian, French, and Polish. Although the occupations and incomes reported in the census indicate that these neighborhoods are roughly similar, the residents of these three neighborhoods perceive a clear class hierarchy between them. Social mobility means moving from the first to the second to the third neighborhood. The greater proportion of owners to renters, higher family incomes, higher property values, higher educational levels and slightly larger numbers of more skilled and professional occupations in the third over the first and second neighborhoods provides some support for these perceptions. However, the differences among these neighborhoods suggest a rather narrow range of variation.

The first neighborhood, which will be called Oldtowne, is a densely populated area of mostly 19th century mill houses with some very small buildings dating from the eighteenth century. During the first half of the twentieth century, it was a Polish ethnic village housing the recently immigrated workers in the textile mills and leather factories. It boasted an active community life, numerous self-help associations, two Polish lawyers, and small family stores on every street corner. The post-war era began a long-term decline in the neighborhood, however, as the more affluent second generation began to move out, leaving a population of elderly, poor, and single mothers who could not afford to leave. A few second and third generation Polish families interested in preserving the old neighborhood chose to stay despite their ability to move out; they have become politically active in collaboration with new residents.

During the 1970s, absentee landlords purchased many of the multi-family dwellings and turned them into apartments for low-income and welfare tenants. By 1980, low-income white tenants constituted a significant minority in the neighborhood. However, in the same period the city government decided to invest substantial resources in renewal of the area, one of considerable historic and tourist interest. The oldest homes became desirable "period houses" for young, moderately wealthy, professional people, but the small size of the houses and the lack of open spaces guaranteed that young professionals would not remain long after their children were born. Typically, they stay for a few years.

By the early 1980s, Oldtowne was an extremely heterogeneous and transient neighborhood. People of varying class backgrounds, lifestyles, and values found themselves squeezed together around limited parking spaces and tiny yards. This density and heterogeneity seems to lead to frequent neighborhood problems, mostly about noise, dogs and harassment. The

thirty-two persons interviewed in this neighborhood reported having an average of 7.8 family or neighborhood problems each, many of which reflect the problems of living in a dense and socially heterogeneous neighborhood (see Table 2). The most common problems reported related to noise and dogs and, as indicated in Table 2, were more common in Oldtowne than in the other neighborhoods. Many of these problems end up in court. Although only one survey respondent said that he/she had been to court as a plaintiff in an interpersonal dispute, an analysis of the applications for complaint in the Clerk's office and the mediation program records for an eighteen-month period indicates that there were over three times as many applications for complaint from Oldtowne as from Riverdale and a few more than from Hilltowne.

Many felt this was a very diverse neighborhood with varying and clashing styles of life, yet one in which offensive or intrusive behavior had to be tolerated. There was a strong sense that, even if one does not like the way his or her neighbors are behaving, there is nothing that one can or ought to do about it; one should learn to put up with it. A sense of resignation is coupled with the feeling that no one has the right to set the standards for neighborhood behavior. A typical comment was, "I don't like the way she acts, but who is to decide what is right?" Another person said, "You just have to accept that for young people; their day is just beginning at ten P.M. when ours is about to end. That's their lifestyle; that's living in a neighborhood—you have to accept different lifestyles." A third commented, "I don't know what would be fair. There are bound to be problems in a neighborhood where lifestyles vary."

Members of all the social groups in this neighborhood recognized that standards of order such as noise levels and quiet times, use of foul language, polite behavior toward adults by children, and ideas about "respect for property" vary. One member of the group of lower income transient families knew that her neighbors disapproved of her and talked about her. She lived with a boyfriend who beat her in the street; her three children fought and swore in the street and in other people's back yards. She acknowledged they were wild, but felt that after the age of twelve, they were beyond her control. She was not particularly concerned about her neighbors' disapproval, feeling that their opinions simply reflected acceptable and varying standards of behavior. Several others in the same population group who liked to have late parties and were free with their language commented on the habits of the "gossipy" older people who watched them all the time. They disliked the gossip, but recognized the tensions inherent in the intersection of such different ways of life.



**Table 2.**  
**Distribution of Persons Reporting a Family or Neighborhood Problem**

	Oldtowne	Hilltowne	Riverdale	Total
<b>Problems:</b>				
Children who are disrespectful or harass you	28%	12%	8%	16%
Vandalism to house or car (including egging)	50%	28%	8%	28%
People using your driveway or yard for turning, parking, playing when you don't want them to	34%	8%	—	14%
Your landlord or tenant	34%	12%	—	15%
Local businesses or stores	66%	20%	8%	31%
Name calling	16%	12%	—	9%
Who should take care of the children	19%	20%	—	12%
Barking dogs	44%	12%	22%	27%
Dogs making messes	53%	40%	19%	37%
Noise from neighbors	69%	28%	17%	38%
Kids who play in the streets	38%	16%	8%	20%
Working hours	25%	4%	—	10%
How to get more money	28%	12%	3%	14%
Fights over parking spaces	25%	20%	—	14%
Fences	14%	4%	8%	9%
Who should do housework	34%	4%	3%	14%
City services	22%	16%	—	12%
No Problems	6%	24%	31%	2%
Total number of persons reporting a problem	32	25	36	93

The second neighborhood, which will be called Hilltowne, is a stable, working class neighborhood, less dense than the first, with a mixture of single-family and duplex homes. Many residents have lived there for more

than twenty-five years, have inherited houses from their families, and continue to live in the neighborhood in order to be near family members. For a large proportion of residents, inheriting the family house is the only way they can become property owners. Older parents try to help their children by allowing them to live in the apartments in their houses during the early years of marriage. Neighbors in Hilltowne know each other and talk about each other's activities, but do not report that gossip is oppressive. They are primarily blue-collar industrial workers and retail-service personnel. The neighborhood is predominantly Irish with a sprinkling of Italian, French and Polish. Although all three neighborhoods are predominantly Catholic, only the residents in this neighborhood reported any substantial amount of church-going or church membership (see Table 3). This neighborhood is generally viewed as "better" than Oldtowne. The residents of this neighborhood report fewer problems than those in Oldtowne. Two of the twenty-five survey respondents said they had been to court as a plaintiff in a family or neighborhood dispute.

**Table 3.**  
**Religious Affiliation and Church Membership of Survey Respondents in the Three Neighborhoods**

	Oldtowne	Hilltowne	Riverdale
Percent Claiming Catholic Religious Affiliation	69%	79%	80%
Percent Claiming to Participate in Religious Activities	4%	48%	9%
	N=32	N=25	N=36

The third neighborhood, which will be called Riverdale, is a middle class development of single family homes completed within the last fifteen years, a suburban enclave within a small city. To date, the average length of residence is ten years. People seem to move here because they like the houses and the neighborhood, not because they had ties to family or friends in the area. When asked why they decided to move to this neighborhood, 97% (34/35) of the respondents in Riverdale said it was because of the area

and the house. The pattern is quite different from Hilltowne and Oldtowne where 52% and 39% respectively mention anything about the house or the location. For most people here, this neighborhood is a social step up from denser and more ethnic neighborhoods. A few moved here from Hilltowne and a few from Oldtowne as their fortunes improved. Although the neighborhood is attractive, it is more dense than many suburban developments, with lots under a quarter of an acre. The city planning department fears that the development will not hold its value in the future, and expects the property to deteriorate.

This is not a neighborhood of intimate relationships. There is little social interaction between neighbors. Over 90% of the households are individual nuclear families. Residents say there is little gossip, and that which occurs focuses on the physical environment: lawns, paint, and shrubbery. As one resident put it, "we only talk about the outsides of houses." This statement is symbolically true as well; the details of family life are, by and large, not known or shared by neighbors. For example, one resident reported that, although a neighbor had been deserted by her husband for several months, the neighbors discovered her separate status only as she moved out. Other neighbors reported frequently hearing a particular family fighting and shouting after the husband's drinking bouts, but they never discussed or shared this observation. However, Riverdale has relatively few problems in comparison to the other two neighborhoods. The thirty-six survey respondents reported an average of 2.0 problems per person in comparison to 7.8 in Oldtowne and 4.1 in Hilltowne (see Table 2). Still, court use is not unknown: two of the thirty-six respondents reported taking family or neighborhood problems to court. Although most people in this neighborhood say that the best way to handle problems is to talk, their most common strategy, according to their own reports, is to ignore and to live with behavior which they do not like.

**Table 4.**  
**Attitudes Toward Handling Problems in**  
**the Three Neighborhoods\***

	Oldtowne	Hilltowne	Riverdale	Total
Talk It Out	81%	74%	94%	85%
Other	19%	26%	6%	15%
	N=31	N=19	N=36	N=86

\*The question asked was, "What is the best way to handle problems?"

In some respects, residents of all three neighborhoods share similar values about managing personal conflicts. In all three, the vast majority of those interviewed (85%) said that the *best* way to handle family and neighbor conflict is to talk it out (see Table 4). Those who did not advocate talking first offered a range of alternative suggestions, such as ignoring things. Only one person said that court is the best first step. Most people mentioned a second step if talking failed: 31% said the next step should be an unofficial third party, 23% said sufferance (ignoring the problem), and 20% mentioned the court or police.

We asked respondents in several ways about how to handle problems and received very consistent responses. For example, when respondents were asked "what SHOULD you do about disagreements?", 82% said that you should talk, 15% said you should ignore and 5% mentioned some other action, none of which constituted by itself 5% of the responses (see Table 5).

**Table 5.**  
**Attitudes Toward Handling Disagreements**  
**in the Three Neighborhoods \***

	Oldtowne	Hilltowne	Riverdale	Total
Talk	80%	70%	89%	82%
Ignore	10%	30%	11%	15%
Other	10%	—	—	3%
	N=31	N=20	N=36	N=87

\*The question asked was, "What should you do about disagreements?"

Attitudes about turning to third parties are contingent on specific situations. When asked if they felt it was a good idea to take interpersonal problems to court, 41% said no, 32% said yes, and 27% answered, it depends (see Table 6). Only three thought that going to court was a good idea, without any qualification whatsoever. Thus, the value of court is situationally determined. It seems to depend on two principles: the nature and seriousness of the problem and the frequency with which it occurs. Most who said going to court was a good idea specified that it was good only for serious problems such as crimes, traffic accidents, or property violations. A few specified that it was acceptable if the issue was a "really legal" one. When a conflict between strangers or the substance concerns property, turning to court seems overall to be more acceptable. Similarly, if a person only goes once in a great while, he is less condemned than if he appears to

be doing this on a habitual basis.

**Table 6.**  
**Attitudes Toward Going to Court**  
**in the Three Neighborhoods\***

	Oldtowne	Hilltowne	Riverdale	Total
A Good Idea	45%	48%	11%	32%
A Bad Idea	48%	30%	43%	41%
It Depends Upon the Situation	7%	22%	46%	27%
	N=27	N=23	N=35	N=85

\*The question asked was, "What do you think about taking problems to court?"

When respondents' reasons were analyzed, a clear dichotomy appeared in the basis for their attitudes toward court use. Respondents thought that taking personal problems to court was either good or bad on the basis of either instrumental or moral evaluations of the action (see Table 7). Statements of instrumental evaluation refer to the effectiveness of the legal system and include comments that the system is fair, gets results or that it is too costly, time-consuming, and a waste of time and money. Statements of moral evaluation include comments that it is good to exercise your rights, that it depends on the situation but that if someone is infringing on your family, it is good, or that it causes more problems with the neighbors, makes for bad feelings, and you should handle such problems on your own. Overall, only 21% of the responses, both in favor of and against using the court, referred to the effectiveness of the judicial system and 79% referred to moral judgments about recourse to court. As indicated in Table 7, Oldtowne residents were least likely to make moral judgments and most likely to respond in terms of the efficacy of going to court.

In order to examine what people actually do about their problems, as well as what they say they ought to do, each respondent who reported having a problem was asked what he or she did about it.<sup>6</sup> Although 361

6. It should be noted, however, that behavior is a product of circumstances and interactions, and therefore rarely determined by an individual's feelings and intentions alone. There is abundant research testifying to the fact that there is often little consistency between the attitudes people report and their actual behavior (e.g., Fishbein and Ajzen, 1975). Coates and Penrod (1980) suggest, however, that people's characterization of events as intentional, stable or unique, caused by others or one's self, may influence significantly the action taken in response. They propose to apply this model (attribution theory) in a study of disputing.

**Table 7.**  
**Reason Given by Respondents in the Three Neighborhoods as to**  
**Why Going to Court Is a Good Idea or a Bad Idea**

	Oldtowne	Hilltowne	Riverdale	Total
Effectiveness of Legal System	41%	8%	14%	21%
Moral Evaluation	59%	92%	86%	79%
	N=29	N=24	N=36	N=89

**Table 8.**  
**Action Taken on Reported Problems by Respondents**  
**in the Three Neighborhoods**

	Oldtowne	Hilltowne	Riverdale	Total
Nothing; Ignored;				
Ended Relations	16%	43%	36%	28%
Talked It Out	33%	24%	28%	30%
Adopted Self-Help Strategies	30%	5%	18%	21%
Third Parties (private and public)	21%	28%	18%	21%
	N=70	N=21	N=71	N=162

problems were reported, respondents could only recall and report actions for 162 of these problems (see Table 8).

Table 8 indicates that residents of all three neighborhoods are almost as likely to ignore problems as they are to talk them over or use self-help.<sup>7</sup> Only a small proportion of problems were taken to third parties such as the

7. We believe that the data may underrepresent, as an artifact of the interviewing process, the frequency with which respondents ignore problems. When residents are asked about their interactions, and then about whether they have had problems with any of their daily affairs such as with family members, dogs, neighbors, noise or whatever, it is more likely that they will remember and report problems where they have taken some more active intervention than those which were ignored or passed over. The memory of the event as a problem may be more likely when the event engendered active response. This phenomenon may be characteristic of most research which attempts to assess what people do about the problems they name. For example, it is a characteristic of research on crime, in which people disproportionately remember those crimes which were frightening or resulted in a serious financial loss (Merry, 1981). These systematic biases are inevitable in any research which asks people to recall their experiences instead of observing those experiences directly.

court, the police, churches, or political leaders. Talking over problems is important in all three neighborhoods, although it is far less pervasive than respondents' statements about how conflict should be handled indicate.

These data provide an essential baseline for questions about the meaning of going to court and the alternatives people use for dealing with similar problems. It suggests that the decision to turn to official third parties is situationally and morally constrained. The person who does take a personal dispute to court is flaunting general standards about virtuous behavior. In fact, those who do go to court over personal problems acquire a reputation for being "court-happy," troublesome, and someone to be avoided. One woman in Riverdale who frequently calls the police, the city government, and goes to court over problems with neighbors is described as a complainer. One of her neighbors observed, "People generally stay away from her. She is nice and friendly, then she turns around and calls the police on you. A lot of neighbors have discovered that over the years and just keep their distance from her." Ten years ago, a neighbor whose yard backs onto that of a couple who fight and yell obscenities called the police about the battle. Enraged, the fighting couple has refused to speak to these neighbors for ten years.

These findings suggest that the notion of Americans as litigious, eager to rush into court with every trivial incident and personal problem, is wrong.<sup>8</sup> These Americans advocate talking directly to each other and managing problems themselves. They seek to avoid court for a variety of reasons from fear of antagonizing the people they live with every day to the loss of control that court entails. When people do bring interpersonal disputes to court, they tend to be complex, intense, and involuted problems in which the moral values at stake appear sufficiently important to outweigh the condemnation of this behavior. Observations we have made of 125 mediation sessions confirm this hypothesis (Silbey and Merry, 1983).

Although there is a general consensus in all three neighborhoods that the best way to handle conflict is by talking it out rather than turning to outside third parties, there are intimations of variation between the neighborhoods with regard to attitudes toward using the police and the courts. A pattern is suggested which might be confirmed by further research with larger samples over a broader range of class variation; the numbers here are very small and not significant. The upwardly mobile suburbanites in Riverdale seem to report more negative attitudes toward

those who call police or turn to the courts with problems. By a margin of almost four to one, these respondents believe it is a bad idea to take problems to court; the residents of Oldtowne seem divided on the issue while the respondents in Hilltowne are more disposed to using official agencies. It is important to note, however, that a large number of Riverdale respondents voice less clear cut opinions, making them more contingent upon the situation than do the respondents in the other neighborhoods, which is consistent with standard analyses of the consequences of education and class. Nevertheless, for all respondents, turning to court and police with problems is a last resort to be used only if "the problems are very serious," "it can't be avoided," "it is absolutely necessary," and "you have tried everything else."

The neighborhoods also seem to vary by the degree to which they report either ignoring problems or adopting self-help strategies. Residents of Oldtowne are most likely to use self-help, such as building fences to deal with rowdy neighbors, and least likely to do nothing. In Hilltowne, the neighborhood of the most longstanding social ties, residents are most likely to do nothing (see Table 8).

The residents of the middle class neighborhood, Riverdale, are least likely to say that going to court with a personal problem is a good idea under most circumstances. They also go to third parties with interpersonal problems less often than the residents of the other two neighborhoods. But the strategies they actually use are not talking directly or seeking out third parties, but ignoring problems and withdrawing from relationships. Typically, neighbor problems are resolved by staying away or by building a fence. Where neither of these strategies works, neighbors put up with unpleasant situations. A few have discussed the problem of the neighbors with the loud, abusive fights every Saturday night, for example, but they have no idea what they can do about it. Because the situation has been tolerated for 10 years already, it seems too late to begin to intervene by calling the police, and clearly, the call ten years ago earned a very negative response.

Riverdale people and residents of Hilltowne typically deal with their conflicts by ignoring or suffering with them. Those who do act are roundly condemned. Typical statements from Riverdale residents during interviews are, for example, "Calling the police is not a good idea. It can get people upset. It scares me. Court is for criminals who have committed a serious crime like murder. There's no need in a person's ordinary life to deal with the court." Another: "The court should be avoided. Problems get blown out of proportion, they get taken out of your hands." One woman said

8. In a recent review of the law and society literature, Galanter points out that the concern with a litigation explosion is not substantiated by research on litigation rates and also argues that it has been exaggerated (1983).

of going to court with such a problem, "It's not in my nature to do that." Another said, "It's not my style to go to court." A third commented, "I deal with problems by ignoring them. I'm easy going, get along with just about anyone. There's nothing worth getting high blood pressure. I don't dwell on anything."

Those who do take their problems to court are considered troublemakers best left alone; this attitude also exists in Hilltowne, but in Riverdale there is a difference. Those who turn to third parties are seen to violate an essential and articulated community consensus on the value of privacy, a consensus they believe governs the neighborhood and for which they moved here. They see their move to Riverdale as a personal achievement which, compared to where they grew up or lived before, brings more than material luxury; it also brings personal independence and freedom. They believe that they are achieving the American Dream with a home and yard of their own for their children to grow up in; they have what everyone wants and thus command higher status than residents in other parts of town.

Indeed, these attitudes among Riverdale residents are considered by residents elsewhere, for example, Hilltowne, and are described as snootiness and 'thinking they are better than we are.' In a recent school conflict where Hilltowne and Riverdale residents were pitted against each other, these attitudes were revealed quite clearly. As a consequence of declining enrollment, the school committee was considering redistricting portions of the town and consolidating the populations in several schools. Residents in Riverdale resisted the effort to place children from Hilltowne in 'their' school. Hilltowne residents explained this resistance in terms of Riverdale's snobbiness and distance from the conventional life in town.

In Oldtowne, the changing neighborhood, attitudes toward taking interpersonal problems to court vary. The oldtimers, the long term Polish and Irish residents, do not approve of taking personal problems to the police or court. One person said, for example, "I don't go to court. I have to live here and see my neighbors every day." Another woman said, "I don't have disagreements; I am not a fighting person. If I had a fight, I would walk away. I would rather stay clear of things than get in a fight." An older man said, "We're so close here it's better not to call the police. You have to see people two or three times a day." Yet another, "You have to get into something really heavy with the neighbors before you should go to court. Here we just live with our problems." The oldtimers say that going to court does not conform to their self-image. One woman said, for example, "I was not raised that way"; another, "I am not that kind of person," after describ-

ing someone who she condemned for turning to 'outsiders' with her problems.

In contrast to the oldtimers here and residents of Riverdale, the young professionals in Oldtowne are more willing to use court, but primarily in situations which they interpret as invasions of their rights. Their forays into court are entirely against members of other social groups, particularly the lower-income residents or landlords who do not subscribe to the lifestyle of the "gentrifying" young professional. One respondent described in elaborate detail his running court battle with his landlord over conditions in his apartment. The respondent proudly displayed his knowledge of the housing codes and rights of tenants while condemning his landlord's actions against the neighborhood. These people are distinctly 'rights-conscious' and resourceful about the means available to shape the community to their liking.

The lower-income and more transient population in Oldtowne take an unambiguous view of recourse to court; they report no reluctance to take their problems to official agencies. One person in this neighborhood, the only one in the entire sample (the woman with the uncontrollable children), said that the best way to resolve family and neighborhood conflicts was to go to court. Another said, "The court is the most logical solution if you've talked and it hasn't worked." A third said, "Sometimes you need to go to court because the situation calls for it. It is all a matter of people's tolerance levels, and some are lower than others." When we look at who uses the court most frequently, from the clerk's and mediation program's files, it is largely this low-income population. In the survey, however, the other groups reported as many if not more grievances.

In Hilltowne, the more close-knit working-class neighborhood, a smaller percentage (30%) said that they thought taking a family or neighborhood problem to court was a bad idea. Although this neighborhood had the largest percentage (48%) saying that it was a good idea, many respondents here, as in the other neighborhoods, said it depended upon whether the problem was serious and then should be used only as a last resort. A few mentioned the neighborhood tensions created by going to court with a problem, and others expressed disdain for those who used the court, particularly for trivial or frequent problems. According to one woman, "People who call the police and go to court are selfish and don't consider other people's weaknesses." She considers herself strong and independent and thinks that people should settle their problems by talking.

Like the oldtimers in Oldtowne, these prescriptions against legal remedies for interpersonal problems seem linked to self-image. In Hilltowne,

going to court with interpersonal problems, those which are not clearly property or stranger disputes, is often associated with the fall from respectability. Studies of working-class communities suggest that there is a fine line between a lifestyle of respectability and stability in work, family, and home ownership and a lifestyle with a more chaotic, unstable personal life. This difference has been described as the distinction between "hard living" and "settled living" families (Howell, 1972; Rubin, 1976). Going to court in Hilltowne over personal problems, particularly if it is done often or for trivial problems, seems to be one of the markers of the hard-living person.

A reluctance to take personal disputes to court is an important ingredient of respectability for working class and middle class families, but not for some segments of the poor. It may be that for those families already involved with welfare and other public agencies, the social meaning of turning to a public remedy agent is quite different. Similarly, tolerance, avoidance, and suffrance—putting up with an unpleasant situation—may have different meanings for different groups.

Clearly, the variation between the neighborhoods is subtle, illuminating the complex web which traces out dispute behavior. Views about managing conflict are related to self-image and self-definition. Ways of handling conflict also reflect moral values and personal ethics. As a Riverdale woman indicated, "Go to court? No, people should act like adults and talk things over." Throughout the discussion of how to deal with conflict and dispute, there seems to be lurking a sense of how good decent people live with their neighbors.

### Conclusion

In sum, the question frequently examined in dispute processing research, how do disputants decide when and how to pursue a grievance, cannot be answered adequately by only comparing the costs and benefits of alternatives. The question suggests that dispute behavior can be understood in terms of a series of strategic decisions which can be unravelled as a complex calculus of social values. Particularly in interpersonal disputes, conflict behavior is hedged with judgments about appropriate or virtuous ways of behaving generally. Rules about how to fight or whether to fight, how to respond to insults and grievances, how to live with one's neighbors, are parts of elaborate and complex belief systems which may vary between social groups, and which are not easily subject to self-conscious analysis and evaluation. In other words, dispute behavior reflects community evaluations, moral codes and cultural notions, learned but not entirely

chosen, of the way people of virtue and integrity live.

If the rational, choice-making, instrumental model of disputing is only a partial picture of disputing, how do we explain its appearance and persistence? We believe that it is itself a cultural construct, a theory about the way people act which justifies and explains our ordinary ways of doing things. It is, in other words, one theory of action which we use to explain ourselves to ourselves. Dispute processing research and programs are grounded in a cultural theory of behavior that has been produced by educated professionals responding to aspirations for general social science; it derives from concerns internal to the development of twentieth century social science but external to the practices, behavior and cultural norms of these working and middle class populations. The concept of dispute reflects the desire for clearly delineated and identifiable common units of analysis but inadvertently incorporates a bias toward secular and rationalist orientations and interpretations of action. Emphasizing free choice, individualism, autonomy, and advantage, and assuming instrumental rather than normative and religious orientations of social action, the concept seems to describe the culture of professional elites rather than the residents of these urban/ethnic neighborhoods. Thus, if dispute resolution programs assume that disputes are compromisable differences of interest that can be handled through negotiation, they will continue to have problems attracting clients who prefer to avoid third party intervention and do so only when confronted by what appear to be irresolvable differences of values and norms that require authoritative determination of right and justice.

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