

Coercive Harmony: the Political Economy of Legal Models¹

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Introduction

Anthropologists have consistently underestimated the role of legal ideologies in the construction or deconstruction of culture writ large. The example I choose to dissect in this paper is the use of the *harmony law model* as a technique of pacification. In what follows I will trace my understanding of harmony ideology and its functioning in three locales: first among the Zapotec and other colonized peoples as an instance of cultural control or pacification at first contact; secondly, in the United States over a 20 year period of incremental change from 1975 to the present—the invention and use of Alternative Dispute Resolution (ADR) or conciliatory styles as a part of pacification policy in response to the 1960s rights movements; and finally to the international arena to which these same ADR techniques have migrated in dealing with international river disputes.

Anthropologists have examined conflict in many settings and indeed developed theories of conflict. However, hardly any full blown theories of the meanings of harmony. Ethnographies have taken harmony for granted while seeking to explain disharmony. Recently, observers of legal anthropology have raised questions about the degree to which, as scientific observers, we have been caught by the thought systems of our own cultures, perhaps not recognizing that disputing styles are a component of political ideologies and often the result of imposition or diffusion. By virtue of entrapment in culturally-constructed and preferred models, it has been difficult for lay persons and social scientists to examine harmony models in a detached manner. Indeed, as is increasingly illustrated, harmony and controversy are part of ideologies on the same continuum, neither necessarily benign nor evil.

The Zapotec and Colonization Techniques

I began fieldwork in the Sierra Madre mountains of Oaxaca, Mexico in 1957 in a village that was still recovering from a clash between a small group of Protestant converts and the majority group of Catholic parishioners. The bitterness was still present when I arrived in 1957; yet upon every occasion I was informed of village unity. The contradiction between real conflict and values of harmony was present from the beginning. A solid front was presented to outsiders, not uncommon for Oaxacan villages embroiled in internal disputes. It remained for me to explain the discrepancy between the data that I collected which was mainly about people in conflict and the Mexican Zapotec characterization of their culture as conciliatory and

harmonizing. Such an ideology was especially important to analyze since harmony ideology turned out to be widely characteristic of anthropological studies of disputing in different parts of the world. Was it because native peoples are inherently more peaceful that they spoke of harmony and preferred compromise solutions? Or was it that anthropologists, as some critics claimed, had accepted the Durkheimian bias on harmony of interests and shared goals?

The Rincon Zapotec mountain villages where I studied were organized in the 16th and 17th centuries by the Spanish Crown to be politically independent, self-reliant, endogamous places which remain free only to the extent to which they manage themselves. Villages with conflict are more vulnerable to state interference, so Zapotec courts are places where images of the external world are built, and where village autonomy is declared. Disputing is not just about solving problems; it is about the formation of ideologies.

In speaking about their courts Zapotec often claim that “a bad agreement is better than a good fight.” At the core, the harmony style and associated ideologies may be seen as internal accommodations to conquest and domination. As I began to trace the concept of harmony and particularly the harmony law model, I concluded that this model might have been introduced by the Crown and its missionaries as a tool of pacification. Then in turn it became for the indigenes a tool of restricting the encroachment of external, superordinate power. In this light, the Zapotec harmony model example would appear as counter-hegemonic, their techniques of controlling the power of the state (Nader 1990).

When theorists speak about hegemony or cultural control they are not usually speaking to all of culture, but rather to that part of culture which is constructed at a point and which moves out as much as colonies of people who move to or settle in distant lands. In 16th century Castile, compromise was the ideal and preferred means for ending disputes. Lawsuits were thought to be at odds with Christian belief. Presumably Spanish missionaries carried this idea to the New World, while according to historians, that same time saw an increase in adversarial behavior in Spain. As part of my Zapotec study, I needed to unpack theories of harmony and controversy to see if, how, and when harmony legal models were used to suppress peoples by socializing them toward conformity in colonial contexts.

I turned my attention to the classic ethnographies on law in the former British colonies of Africa, and to the ethnographies on the Pacific regions of Polynesia and Micronesia, searching for connections between Christian missionizing and law. What I found at the start was indicative of recent observations by anthropologists—first, that missionaries are the most ambitious of colonialists in their desire to penetrate every facet of cultural life; and second, that anthropologists had treated missionaries as part of the setting (like rainfall and elevation), peripheral to their research. The preliminary review was tantalizing.

But it was a legal historian, Martin Chanock, who synthesized the data on the missionary presence in the British African colonies from the 1830's onward, revealing the early connections between local law and Christian missions. Chanock uses the term "missionary justice" to call attention to the fact that from the early 1800s missionaries were heavily involved in the settlement of disputes according to a Victorian interpretation of biblical law which they generally fitted with English procedures as they knew them. According to Chanock, the missionaries were glad to be peacemakers and to hand down Christian judgment. Thus, with colonization these courts evolved into a law emphasizing conciliation and compromise operating on principle of Christian harmony ideology, something anthropologists thought was customary law.

The picture becomes clearer when we examine materials from ethnographies about the Pacific region. Again the missionaries arrived there in the 1820s while the anthropologists arrived much later. However, unlike the situation Chanock describes, recent anthropological research has begun to document the contemporary work of missionaries as they influence the minds and the disputing processes of native peoples. The best materials are from New Guinea, offering insights and specifics on how the introduction of Christian morality—in effect mind colonization—affects the disputing process thereby reconstructing native culture and its organization. Excellent work by Marie Reay (1974) shows how the coercive harmony works to silence the people who speak or act angrily, and she tells us that "[t]he missions had been playing a part in pacifying the warlike clans and prohibiting violence in interpersonal relations."

It is difficult for ethnographers to grasp the concept of mind colonization because it happens slowly and incrementally over many years. A significant exception was Edward Schieffelin's 1981 analysis of evangelical rhetoric as it relates to disputing processes, whereby he emphasizes the function of rhetoric as "the vehicle by which the message is rendered into a social construction upon reality." There are examples even further to the west whereby the "state," in the guise of the British East India Company promoted arbitration and compromise, later to be called *panchayat justice*—now generally conceded as politically intentional pacification, a quieting of the population. I concluded from this comparative work that harmony ideology is most likely a part of the hegemonic control system that spread throughout the world with European colonization and Christian missionizing.

Alternative Dispute Resolution and Nation-State Pacification

In the midst of these studies on other peoples, observers of the US political scene in the late 1970s, 1980s and 1990s noticed that in comparison with the active public political activity of the 1960s and early 1970s Americans were now apathetic and subdued by comparison. I began to study how harmony ideology is constructed in

modern nation-states of the Western democratic sort, and how such ideologies radiate beyond national borders.

The process whereby ideologies that are forces of change are shaped through discourse is an interesting one, and goes far beyond the law to include the links between the law, business, and community constituencies. The 1960s were described as confrontative, a time when many social groups in the United States felt encouraged to come forward with their agendas: civil rights, consumer rights, environmental rights women's rights, Native American rights, etc. It was also a period of sharp critique of law and lawyers in relation to issues of right and remedies. But over a period of 30 years the country moved from a concern with the ethic of right and wrong to an ethic of treatment, from courts to ADR. How did that happen?

Alternative dispute resolution encompasses programs that emphasize the non-judicial means for dispute handling; the focus is usually on mediation and arbitration. It was called "informal justice," a justice that promoted compromise rather than win-or-lose, that replaced confrontation with harmony and consensus, war with peace, win-win solutions. The ADR movement in the United States attracted very strange bedfellows: right-wing politicians concerned with the success of the rights agendas, religious communities, psychotherapy groups, businesses tired of paying so much in lawyers fees, administrators and even 1960s activists.

The "Pound Conference: Perspectives on Justice in the Future," held in Minnesota in 1976, was the turning point, a time when harmony and efficiency models both came to officially replace the litigation, justice mode as ideal. The conference which was organized by the office of the Chief Justice of the United States was to adumbrate a cultural shift that had ramifications far beyond law. A new manner of thinking—about social relations, about the structural problems of inequality, about solutions to these problems by cultural means was dramatized.

The focal concern that emerged was a concern with harmony by means of procedural reform. This was a revolutionary change in thinking about rights and justice, a style that was less confrontative, "softer," less concerned with justice and root causes, and very much concerned with harmony. The production of harmony, the rebellion against law and lawyers—often by lawyers themselves—the movement against the contentious, was a movement to control the disenfranchised (Nader 1988).

The elements of control are far more pervasive than the direct extension of state control. An intolerance for conflict seeped into the culture to prevent, not the causes of discord but the expression of it, and by any means to create consensus, homogeneity, agreement. As in Aldous Huxley's *Brave New World*, the harmony model produces a kind of cultural soma that has a tranquilizing effect. Interestingly, rationalization for how well harmony law models work was sought in the anthropological literature on law mentioned earlier.

The discourse at the Pound Conference was rich with examples of the use of language to select, construct, communicate or obfuscate. The rhetoric extolled the virtues of alternative mechanisms governed by ideologies of harmony: the courts were crowded, American lawyers and the American people were too litigious, they pronounced. Alternatives were described as agencies of settlement or reconciliation and people who stood in the way of such reforms were said to suffer from "status quoism."

In the years following the Pound Conference the public was immersed in ADR rhetoric. The language of this movement followed a restricted and formulaic code, following the pattern of assertive rhetoric by making broad generalizations, being repetitive, invoking authority and danger, presenting values as facts. I began to collect key words: ADR was associated with peace, while judicial dispute resolution was associated with war. One is adversarial, the other non-adversarial. In one there is confrontation, insensitivity, destruction of trust and cooperation and only losers, while in the other there is gentle and sensitive healing of human conflicts producing only winners. Alternatives were associated with being modern: "creating the courthouse of tomorrow today."

The bench and the bar bought the Chief Justice's rhetoric (Nader 1993). Business groups wanted to reduce the millions spent on intercorporate litigation and discovery, and they were searching for new ways to manage disputes with employees; Christian Protestant sects bought into it since they were part of a long tradition that valued harmony over contentiousness. Therapy movements fit right in, and the therapy professionals saw their role in support of the win-win rhetoric, as did many groups concerned with "building community."

Needless to say, the conference rhetoric was challenged by social scientists like Mark Galanter (1993) and others seeking to separate myth from substantial evidence. They found that the United States invests more money in law enforcement than in courts and that litigation as measured by civil findings has remained relatively stable. The assumption of a litigation explosion did not stand up, nor did assertions of an allegedly contentious people although litigation had become a symbolic presence through such product liability cases as those involving the Dalkon Shield contraceptive device and asbestos. But while critics continued to examine ADR, the movement for legal reform proceeded at full speed, relatively untouched by critics and moving into every level of American life, from the schools to the workplace from the home to hospitals and medical centers, from board tables to university dormitories, classrooms and administration.

Environmental conferences met to see if they could shift the emphasis from a win-lose balance to a balance-of-interest approach. Unions were deluged with quality control plans in which both workers and management could cooperate in harmony, a win-win situation. American Indian reservations were being persuaded by negotiators

from Washington to take nuclear waste as a win-win solution—climbing out of their economic misery while contributing to their country. Environmental activist groups are being pressured with consensus meetings, also supposedly win-win. Family problems are mediated, and in California and many other states such mediation is mandatory. In Washington there is a Government Office of Consensus Conference Planning. In “ghetto” schools, “troublemakers” are taught dispute resolution, never mind filling their stomachs with hot breakfasts. And we now have a president who has been dubbed the “Consensus President.” The roots of President Clinton’s position on consensus were documented earlier by anthropologist Carol Greenhouse (1986), who studied a southern Baptist community in Georgia, providing us with the cultural meanings of the ADR explosion. She suggests that the contemporary equation of Christianity and harmony instilled law avoidance, law aversion and the value of consensus—“a strategy that transformed conflict...”

In an effort to quell the rights movement of the 1960s and to subdue Vietnam protesters, harmony became a virtue. The Chief Justice, after all, had argued that to be more “civilized,” Americans had to abandon the centrality of the adversary model. Relationships, not root causes and interpersonal conflict resolution skills, not power inequities or injustice, were and are the crux of the ADR movement. In such a model, civil plaintiffs are regarded as “patients” needing treatment—a pacification scheme. When the masses are perceived of as patients in need of help, public policy is designed for the good of the patient.

As with critics of the assumptions of ADR, critics of ADR in practice speak of consequence and danger. Mandatory mediation in these criticisms is described as control—in defining “the problem,” control of speech and expression, hardly an alternative to an adversarial system that does the same. The same critics describe mediation/negotiation as a destroyer of rights by limiting discussion of the past, by prohibition of anger, and by forced engagement. In sum, mandatory mediation abridges freedom because it is often outside the law, eliminates choice of procedure, removes equal protection before and adversary law, and is generally hidden from view (Grillo 1991). Cases are not usually recorded; there is little regulation and next to no accountability, something like the situation in psychotherapy, for example. The critics of ADR push for prevention and aggregate solutions. Still, however, in spite of criticism and growing awareness of consequences that are anything but benign, ADR marches on and now becomes internationalized.

In the remaining sections, I would like to summarize my preliminary work on ADR hegemonies principally in relation to international river disputes (Nader 1995). What happens when a law reform movement seemingly unfractured by power differences goes international? Let me begin with notions of legal evolution.

Negotiating International River Disputes

Legal anthropologists from early to recent times have scaled dispute resolution forums so that self-help and negotiation are placed at the starting point on an evolutionary continuum toward civilization. With development, societies supposedly move along from these bilateral means to mediation, arbitration and finally to adjudication (Hoebel 1954). These same works consider the presence of courts as a sign of societal complexity, evolution, development, or all of these. In the 1960s social scientists even referred to a “standard sequential order” of legal evolution—each constituting a necessary condition for the next (Schwartz and Miller 1964). During the same era, colonial powers considered the development of courts in Africa as part of their civilizing mission, and the International Court of Justice was the apex of forums for settlement of international disputes by means of adjudication and arbitration—positions ideologically consistent with the works of evolutionary social theorists. Yet by the 1980s and 1990s more civilized processes are the “softer,” non-adversarial means such as mediation or negotiation, similar to the US ADR movement. It appears as if the ranking preference for dispute handling forums changes to mirror the distribution of international power. One international scholar (Gong 1984: 63) puts his finger on the elasticity of notions of civilization:

...the less, ‘civilized’ were doomed to work toward an equality which an elastic standard of ‘civilization’ put forever beyond their reach. Even to attain ‘civilized’ status, as Japan was to discover, was not necessarily to become equal. The civilized had a way of becoming more ‘civilized’ still.

Just as ADR in the United States moved the rhetoric from justice to harmony, so too at the international level the notion of “mature” negotiation has been replacing the World Court as the “standard of civilized behavior.” Why this recent valorizing of negotiation? Edward Said (1978) acknowledges in his notion of “flexible positional superiority” that the valorization of one cultural form over another is frequently linked to imbalances in power. Now that the “primitives” have courts, we move to international negotiations, or ADR.

In the present context, a new standard of international negotiations is being promoted as the older standard of adjudication/arbitration in the World Court has become less useful to the more powerful nations. Since the emergence of new nations, many of them so-called “Third World,” there was a readiness to use the International Court to represent new interests. The influence of the Third World in the Court began to take effect after 1964. A number of decisions ruled in favor of Third World and post-colonial states. In 1966, the Court ruled in favor of Liberian and Ethiopian plaintiffs and against South Africa; in 1974, for New Zealand and Australia and against France; in 1984, Nicaragua filed suit against the United States which withdrew from the case, and shortly thereafter the US withdrew from the agreement to

voluntarily comply with the Court. Both the Soviet Union in the 1960s and the US in the mid-1980s withheld dues thereby evincing a mood of indifference to international law. Some noticed that the Court's clientele was vanishing.

The stimulus for international negotiation teams sprang from ADR. The new professionals came from a variety of fields—the law, economics, social psychology, political science and psychotherapy—few from anthropology. What was new about these negotiators was not that they were practicing mediation or negotiation. After all, such modes of dispute processing had been around for a long time. What they had in common was a distaste for confrontational adversarial processes, for courts as a way to handle the problems of the masses, for justice by any win-lose methods.

Probably the most well-known international negotiator of recent US history is former President Jimmy Carter. Carter published an address on negotiation in a book entitled *Negotiation: The Alternative to Hostility* (1984). He refers to most well known cases: the Panama Canal Treaty, SALT II, peace in the Middle East, relations with China. Jimmy Carter was speaking from practice and an inclination toward peace that may have been based more in his religious beliefs than on his notions of justice in a civil society.

Those who write about an emerging system of international negotiations totally ignore the World Court and focus instead on the functions of a system of negotiations totally designed to contribute to the stability and growth of the system of international relations. For such people, international negotiation is no longer government-to-government activity, but rather an international function of governments, non-governmental organizations, public figures, etc., whose main goal is international stability. While international stability may be a good thing, it can also mean injustice and continuing inequities. The overall implication in much of this literature—most of it emanating from the richer nations of the North—is that anything can be negotiated and should be.

The literature gets truly interesting when the analyst deals with the detail of empirical instances. It is in these specific cases that all the mention of the International Court drops away, to be replaced by phrases like “mutual learning,” “information sharing,” “harmonizing,” and “cooperation.” Zero-sum settlements become “hostile,” information, analysis and solution get in the way of “constructive dialogue.” Under such conditions, mind games become a central component of the ADR negotiation process. We find for example, toxic poisoning referred to as a “perception of toxic poisoning,” and such questions asked as, “how can cultural behavior be used or neutralized?”

A survey of water resource disputes illustrates this transition of dispute resolution forums away from adjudication/arbitration and toward negotiation. This progression is best noted in the case of the Danube River Basin and moves from: (1)

procedures of international adjudication/arbitration to (2) basin-wide planning where river basin commissions deal cooperatively to (3) bilateral agreements resulting from international bargaining to (4) non-governmental organizations operating across political and bureaucratic boundaries. Such transition mirrors the “privatization” of justice through ADR centers in the United States in a striking manner.

Many of the authors writing on international negotiation imply that there exists a “universal diplomatic culture” of negotiators, a common culture of national governmental administrators, the international, “scientific community,” and environmental groups. What they claim to be universal is, I assert, a hegemonic perspective on disputing. The most recent hegemony was developed in the United States during the seventies and has since been exported worldwide, a hegemony that I refer to as harmony ideology. This term denotes, in fact, a coercive harmony whose primary function is pacification. Two international lawyers (Laylin and Bianchi 1959) put it this way:

At a time when the forces of law and order need ever-increasing recognition in the international arena, the notion that states willing to submit international river disputes to adjudication are ill advised has a strange ring indeed... the cry of inadequacy of courts... betrays a nostalgia for a fast-fading conception of international law in which naked power holds greater sway than recognized principles of justice.

When cases that should be adjudicated are negotiated, as illustrated by the 1940s dispute between the United States and Mexico over the Colorado River, the explicit connections between international law and the World Court, water rights, and the advantages of negotiations for the more powerful become obvious.

The tone in which the Danube River Basin was synthesized is in complete contrast. The author of the synthesis on the Danube case (Linnerooth 1990) implies that there is a “universal negotiating culture,” or what she calls a “common culture” composed of national government administrators, international scientific communities, and emerging environmental groups. The language used in describing how conflicting, adversarial interests might be negotiated is revealing of the influence of therapy in ADR ideology: “mutual learning” and “information sharing” sound more like terms from marital therapy, not the unraveling conflicts over river pollution. When therapy talk is strong, there is little consideration given to disputes that *are* in fact zero-sum. Nor is there acknowledgement that bilateral negotiation may give the stronger nation a bargaining advantage *vis-à-vis* the weaker nation. Indeed, in this view anything can be negotiated, even if “perceptions” must first be molded and shifted away from “information, analysis and solution” to providing mechanisms for “constructive dialogue.”

The Danube is one of the most international of all river basins in the world, with eight riparian countries and over 70 million people involved. The rich upper riparians use the Danube primarily for industrial and waste disposal and energy purposes. The lesser developed countries in the lower Danube use the river for drinking water, irrigation, fisheries, tourism, etc. Again the author calls for win-win bargaining by those who share "a certain professional rationality" who will "translate the order, its imagery, and social expectations." In short, the privatizing of international justice.

In case after case that I examined, the weaker party looks for the law while the stronger party prefers to negotiate. The Duoro River (just above the Spanish-Portuguese border) is a case in point (Dellapenna 1992). The proposed nuclear waste facility at Aldeavilla, Spain will be less than one kilometer from Portugal, and any contamination of the Duoro River will end up in Portugal. Seventy percent of Portugal's surface freshwater comes from rivers that rise in Spain, while Spain receives none of its surface freshwater from Portugal. Portugal's weak position would not bode well for a fair bilateral settlement because of the freshwater power differential between the two nations, and especially because Spain is already in clear violation of customary international law.

In the case of the Valle de Mexicali, one of the richest agricultural regions in Mexico, the protest is over an all-American plan to limit ground water leakage that Mexico needs to support its crops. An American who wrote about this case (Hayes 1991) pleads for the use of negotiation so that a win-win solution is possible. The same author chides Mexican officials for threatening international litigation in the World Court, saying that, "such a development goes against the grain of ordered, controlled international management of resources." There is no hint that international tribunals would act rationally, logically and humanely," rather the contempt for the law is total.

The case of the Jordan River in the Middle East, which involves Lebanon, Jordan, Israel and Syria is even more complex and deals with gross inequities in the consumption of water. The situation went from mediated negotiations to unilateral action to violent conflict, without the consideration of an adjudicated settlement or inquiry into human rights violations.

The long standing Ganges River dispute between East Bengal/Bangladesh and India provides a final and clear example of the politics of international negotiation, and the advantages of bilateral negotiation for the stronger party. The Ganges River flows from India into East Bengal and supplies East Bengal/Bangladesh with much of its fresh water. In the early 1950s, the Indian government began unilaterally planning the construction of the Farraka Barrage, a dam which would divert water from the Ganges River. In 1960, India finally agreed to begin bilateral negotiations with Pakistan but by 1961 had already begun construction of the dam. East Bengal during

this period had been marginalized. After a series of failed negotiations the government of Bangladesh tried to bring their case before the U.N. General Assembly. India objected, arguing that the issue of the dam was a “bilateral issue.” India could not get moral support for its unilateral action, while Bangladesh, one of the poorest countries in the world had little clout to use in the international arena.

Each nation had its own preferred solution to the problem. Bangladesh’s solution would involve Nepal’s participation, while India chooses to keep issues of water strictly between itself and a weaker Bangladesh. As described by Khurshida Begum (1988), “peaceful negotiation, strictly bilateral, is a hegemonic tool for India.” Over the course of the negotiations, a series of discrepancies between the facts reported by India and Bangladesh revealed exactly the purpose for which court trials are used—disagreements of fact. Also, the serious effects of water shortage claimed by Bangladesh would seem to put this case on the level of human rights violation. Again we are reminded of the argument for the role of adjudication in international river disputes as a means of balancing power discrepancies, while recognizing that adjudication cannot be simply equated with a better outcome for the weaker party.

In sum, a review of these and other writings about the World Court indicates that the voices against the Court have been strident, particularly among those supporting the policies of the United States in Central America in the 1980s. However, a 1991 newspaper article suggests that the docket of the court is once again indicating use, while at the same time the United Nations Law of the Sea has provision for the formation of a specialized tribunal, the so-called Hamburg Court, basically a duplicative tribunal. The Hamburg Court has strong proponents—the five members of the Security Council who see it as an “alternative solution to existing litigation before the full tribunal of the World Court.” This is hardly reassuring for those who look to the World Court as a power equalizer. In fact, recent journalism speaks about “Governing the World Without Governments,” noting that there is a demand for a new system of governance, as national governments, inter-governmental organizations and the United Nations fail. However, in the literature on modern negotiation there is little to indicate that modern negotiators—the new system of governance—are critically examining their trajectories or assessing the broader significance of their work.

Trade Ideology and Harmony Ideology

Before concluding, I will briefly mention very preliminary work on the relationships or possible congruencies between trade ideology and harmony ideology. Much of the language is similar—negotiate, strike a deal, etc. and we might remember that trade, according to the classical theory of comparative advantage, is a “win-win” situation. The General Agreement on Trade and Tariffs (GATT) is an interesting case to examine.

GATT emerged in the years immediately following World War II. Two schools of thought spearheaded the movement toward a global trade organization (Jackson 1989). First, there were those who thought that such an organization would create economic growth through expanded trade. Secondly, there were those who thought that an international trade organization would promote global stability and prevent war. In 1947, the GATT was drawn up in Geneva, written with the expectation that a formal international trade organization, the International Trade Organization (ITO), would oversee its implementation. Periodically, GATT sponsors "rounds" or major sets of negotiations. Besides tariff questions, more recent rounds have addressed the question of dispute-settlement procedures.

Both the ITO and GATT were conceived during a time in which the rule-of-law was held up as the most highly evolved forum for settling disputes. These were the years of the fledgling United Nations; these too were the years of the newly established International Court of Justice. A number of US officials who were involved in the drafting of the ITO charter and GATT seemed strongly committed to the rule-of-law principle, contemplating effective use of arbitration and even appeal to the World Court in some circumstances. The entrance of dozens of post-colonial nations into GATT in the early 1960s prompted a different attitude toward settlement of disputes, and there are extensive writings on the shift away from legalism and towards pragmatism. Conciliation was the term used to describe GATT activities between 1963 and 1970, when adjudication was dormant, continuing until the 1970s when expert panels increased in popularity. By the late 1980s, most nations seemed to be indicating a preference for more legalistic procedures to be implemented.

Ironically, just as GATT is swinging to a more rules based approach (which could conceivably bode well for the less developed nations), alternative trading arrangements like NAFTA are being formed. At the same time, an international class of negotiators and technocrats is shaping GATT policy for an international class of corporations through international trading arrangements, what some have called the strangulation of national sovereignty by the free reign of multinationals. GATT itself has its own training school in Geneva to teach the international trading culture to prospective negotiators from new member states. Some speak about seriously manufacturing consensus (Ikenberry 1989). Again, anthropological work, such as that by Phillip Gulliver (1979), is invoked as scientific justification.

Concluding Comments: The Political Economy of Legal Models

The oscillations between the harmony model and the conflict model of dispute handling have been described by a number of authors, and it appears that state construction of alternative dispute settlement processes functions to allay fears of class warfare and racial discord. Similarly, international agencies use dispute settlement techniques to promote world order and stability. The point of calling attention to the use of harmony and adversarial models is not so much to describe the

workings of these systems as to understand why fluctuations in legal ideologies associated with a tolerance for controversy or a search for harmony surface from time to time and with what consequence. Certainly the history of exchange of adversarial models for harmony models does not indicate that harmony ideology is benign. On the contrary, the coercive harmony of the last three decades has been a form of powerful control exactly because of the general acceptance of harmony as benign. The history of conditions under which dispute settlement preferences are shifting commitments usually involve imbalances in power.

Ambiguities surrounding the study of the cultural components of law have been plentiful, even among anthropologists in whose discipline culture plays a central role. When the anthropologist of an earlier day set out to write about other cultures, culture was a concept used to describe shared traditions passed from one generation to another. We no longer speak about cultures as if they were isolated and consensual wholes. Today theorists distinguish hegemonic culture, the framing of culture by fundamentally dominant groups. By hegemony, Gramsci meant (Boggs in Greer 1982) "the permeation throughout civil society—including a whole range of structures and activities like trade unions, schools, the churches and the family of an entire system of values, attitudes, beliefs, morality etc. that is in one way or another supportive of the established order, and the class interests that dominate it." Ideas such as harmony, confrontational politics, or efficiency may originate locally and spread, or be imposed, recombined, and used to control or to resist control, and result in distributing power by means of remedies made available.

I have argued in this paper that dispute resolution ideologies are a long-used mechanism for accomplishing the transmission of hegemonic ideas. Disputing processes cannot be explained as a reflection of some predetermined set of social conditions; rather they reflect the processes of cultural construction that may be a response to a demand, a product of ruling interests, or a result of class conflict.

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. Both should be examined in relation to notions of a new world order that we may be able to distinguish a world of justice from that of stability. As the late Roger Keesing (1994:306) observed in one of his last papers:

'Anthropological conceptualizations of culture' have been—shall we say—innocent (in the sense of naiveté, not culpability) in terms of the battle lines of social theory. Our ways of conceptualizing what used to be called the 'primitive' world still embody a set of assumptions deriving from the nineteenth century about the collectiveness and sharedness of 'custom'.

What I hope to have indicated in this analysis is that anthropologists and other social theorists need to use ideas of the cultural adequate to understanding our dynamic and shrinking world, one in which the domain of culture is not a monopoly of anthropology or social theory.

Notes

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