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EXTENDING THE CANON OF DISPUTE PROCESSING RESEARCH

Frank Munger

INTRODUCTION

I was asked to play the role of commenter at the conclusion of the conference sponsored by Fund for Research on Dispute Resolution (FRDR), at which the papers published in this volume were first delivered. The mission of the conference was to provide a thoughtful assessment of old and new research that could be used to reorient the funding priorities of FRDR. The Fund had already reached the conclusion, shared by many conference participants, that research on disputes had ignored important issues, and that many of these issues concerned disputing from the perspective of disadvantaged groups in our society. One goal of the conference thus became working to get outside what I have come to call the "canon" of theory in dispute processing research—the conventional theory of dispute resolution research that has directed

attention to questions of access, formal structure, party capacity, third party decision making and outcomes of dispute processing—in order to use dispute processing research to address new questions about difference, disadvantage and democratic social change.

The predisposition toward change that I observed among conference participants parallels recent law and society writing, and similar work in other social sciences, that has been critical of research that "privileges" those in power. This criticism is in part directed at the kinds of questions addressed by social science, implicating the theory used to develop questions for research. For example, according to Abel's critical assessment over a decade ago (1980), law and society research has often examined dispute resolution by measuring its capacity to live up to its own ideals, but has much less often employed a perspective other than the formal system's own (see also Sarat 1988; Sarat and Silbey 1988; Trubek 1984; Yngvesson 1988a). The criticism has not been directed toward theory alone, however, and has also had a strong antipositivist and even antiscience theme (the two are sometimes confused), arguing with much force that normal science methodology privileges the views of an academic elite and its audience (see ; Trubek 1984). Writers in this critical tradition have called for a reversal of privilege by adopting research methods and theory that empower the submerged voices in our society.

Viewed through the lens of such criticism, the manifest goal of the conference—breaking free of the theoretical canon—was both timely and difficult, for while demands to answer the call of submerged voices have been persistent, few have attempted to describe methods that will privilege, or theory that will empower, *other* voices. The critics' concerns about science methodology also point to further questions that must be asked about the interests and points of view that will inevitably be represented in any research and about who will ultimately benefit from it.[1]

In this brief paper, I will review what was said during discussion of the conference papers that appear in this volume. The discussion, more clearly perhaps than the papers themselves, concerned movement from incremental extension of existing approaches in dispute processing research toward development of a different perspective grounded in more fundamental questions about power, difference, and conflict viewed from the perspective of those who are disadvantaged.

Each conference session placed dispute resolution in a new setting. The sessions of the conference were titled "Public Bureaucracies," "Privatization," "Ethnic and Racial Conflict," and "Environmental and Community Disputes." I will attempt to describe how discussion in each session led from issues that are part of the canon of dispute processing research to the emergence of new issues that challenged the canon and set a new course for inquiry. In a brief concluding section, I will restate an important theme shared by these

discussions and describe the reorientation of dispute processing research that it suggested to many participants.

Conversations about old and new questions

Public bureaucracies

The conference began with a discussion of "Public Bureaucracies." The policy question articulated at the start of the session was the appropriateness of current dispute-resolution processes within public-welfare bureaucracies. Two theoretical frameworks were presented in opening remarks and papers: a social control framework, in which dispute resolution in welfare bureaucracies was viewed as a process for disempowering and controlling those already disadvantaged by society, and an alternative view in which dispute resolution was more neutrally cast as a potentially appropriate means of adjustment to change within organizations. Thus, the session was initially framed as an exploration of the process leading up to and including the exercise of discretion in disputes between beneficiaries/employees and a welfare bureaucracy/employer.

The conceptual canon in the field of dispute processing research is the dispute pyramid, which provides a longitudinal template for the evolution of grievances into claims and, potentially, into full fledged disputes.[2] This theory describes a "value-added" process, in the sense that earlier stages must be reached for later stages to occur. The processing of disputes may potentially transform both the interaction between the parties (from one- to two- to three-way interaction) and the meaning that is given to events by parties. At the conference, the dispute pyramid offered rich possibilities for the development of either of the proposed theoretical frameworks, suggesting examination of the constraints that an organization places on the definition of a grievance, on the structure of the dispute resolution process, on the rules that are applied by decision makers, and on the complex dual role of decision makers who serve as neutral third parties and are simultaneously organization members.[3] With respect to the last, the dispute-pyramid paradigm also suggested framing questions in terms of the role of decision makers in organizations, who may employ rules governing decisions in a very different way from dispute-resolution professionals who have no connection with either party. Finally, the process emphasis of the dispute paradigm also suggested the importance of the resources that parties bring to the process, including material, social and cultural resources.

Yet, discussion also raised a series of issues about disputing and public bureaucracies that are not easily assimilated by this conceptualization of disputing. For example, one "resource" that welfare participants in bureaucratic decision making bring to a dispute is an identity. The identity of participants is in part a product of the process that created and defined the

purposes of the bureaucracy and the dispute-resolution process. To be a party/welfare recipient is to be both subordinate and required to acknowledge that subordination, as well as poverty, dependence, and other disadvantaging characteristics. This identity has implications beyond the dispute hearing process.

Identity is also shaped by self-awareness derived from other experiences in a welfare recipient's life. This experience may lead a welfare recipient to resist the imposition of the bureaucratically created identity. Therefore, identity itself is the focus of conflict. Identity, both as a welfare recipient and as a person, is also an individual and a collective resource that may play a part in mobilizing members of a particular social group for collective action in conflicts between public bureaucracies and welfare recipients.

Conflict over identity and the meaning of a dispute requires a frame of reference the includes but is not limited to the disputing pyramid. Similarly, a frame of reference outside of the dispute itself is required for a full understanding of the outcome of a dispute. For example, "successful" resolution of a dispute implies goals and values outside the dispute process, which may nonetheless be contested. In brief, the discussion of public bureaucracies began as a conversation about the structure and conditions of dispute resolution, but evolved into a discussion of identity, about group goals, and about disputes as points of contact between bureaucracies and conflict.

Privatization

The second session explored the significance of an important contemporary phenomenon, the increasing reliance on private dispute resolution. Descriptions of the rise of private dispute-resolution often make important assumptions, that the present volume of private dispute-resolution is historically unique, that the rise in private dispute-resolution reflects a shift from public to private dispute-resolution rather than an explosion of the universe and, most fundamentally, that there are critical differences between public and private dispute resolution. As in the previous conference session, the discussion proceeded from refinement of the existing research canon, analysis of competition in the market for dispute resolution, to examination of the validity of the assumptions underlying the market model.

Important descriptive work on adjudication has a long history, employing both qualitative and quantitative indicators of adjudicatory capacity and competence. Conventional indicators which may be employed to compare public and private dispute-resolution include party characteristics (e.g., who uses each type of dispute resolution process and for what), case characteristics (e.g., the type of case, utilization of procedural alternatives such as trial or settlement, outcome), and system characteristics (e.g., volume of throughput, number and qualifications of decision makers, efficiency of the system, delays).

Discussion of privatization in this framework of primarily quantitative measurement was based on the hypothesis that public and private dispute-resolution processes are rivals in a market and that users choose one or the other based on considerations of cost and outcome, and that the alternative processes themselves develop in response to demand but are also responsive to a variety of other internal and external constraints (see Galanter 1990 for a complex view of the demand constraint). Interesting questions were raised about the utilization, structure, and outcome of new private alternatives to public adjudication, for example international arbitration (Garth 1992).

Descriptive data offered about public and private dispute resolution also drew broader issues into discussion. Utilization of both public and private dispute resolution has been rising in recent years, suggesting a that a fundamental change in disputing in the society may have occurred independently of the particular process of dispute resolution employed.

Further, simple measures of who wins, in formal terms, do not appear to be adequate to explain why potential users select a public or a private process or select any process at all. As in the case of welfare adjudication, "success" depends on the perspective taken and the goals sought by means of dispute resolution, perceptions that are influenced by cultural and/or political meanings given to events that result in conflict or disputing. Among other critical differences between dispute-resolution processes is their relative legitimacy, which might be viewed as their power to bestow benefits on "winning" parties. Thus, the success of particular parties in dispute-resolution may depend on the kind of support the community or the state gives to the decisions or outcomes of a particular dispute resolution process. Whether it is the community or the state, or both, that considers an outcome legitimate may make a big difference to particular litigants.

Nor do quantitative measures that compare existing processes explain why we have the present assortment of dispute-resolution processes and not others that may be more accessible to persons currently experiencing conflict but who perceive no appropriate process for conflict resolution or that offer a different range of alternative outcomes. Who or what controls the process creating disputing processes?

Answers to these questions about the value of dispute-resolution to parties and about the interests that are served by particular dispute-resolution processes require expansion of our perspective beyond the quantitative characteristics of alternative forms of adjudication to include the cultural and political context that shapes the meaning of dispute resolution. Among other consequences of this shift, the distinction between public and private has no fixed or fundamental importance because its significance will depend on the values of the parties that such a distinction affects. Thus, the public character of dispute resolution may be particularly important for parties who need the power of the state in order to escape some other power that the parties find

oppressive. On the other hand, private dispute-resolution may be important to parties whose social identity is deeply embedded in a normative order that is distinct from the state's. The choice in some cases may be between private processes for dispute resolution, not between public and private dispute resolution.

Ethnic and Racial Conflict

Continuing the progression from narrower to broader perspectives on disputing, the third session considered racial and ethnic conflict. The emphasis on conflict, rather than on dispute or disputing process, required that attention be redirected from the internal structure of the disputing process to the origins of conflict and formation of social identities that make conflict meaningful. The session explored both the origins of racial and ethnic identity and the interaction of identity and group conflict, topics that have long research traditions. Locating the starting point for discussion outside the canon of dispute processing research created a different challenge for participants in this session, the challenge of linking the concepts of conflict and dispute, and linking the politics of race and ethnicity to the institutional attributes of dispute processing.

The discussion of race and ethnicity pursued two themes, first, how such identifications are made and changed in our own and other cultures, and second, the contemporary role of racial and ethnic identity in group formation and collective action. The origins of race and ethnicity are deeply embedded in the evolution of our economy (Fredrickson 1981) and our science (Greenhouse 1992). The history of racial and ethnic discrimination and oppression in our culture reveals the origin and function of such distinctions in creating advantage and disadvantage for social groups. The historical experience of race and ethnicity has been complex and suggests alternative directions for social science research. Race and ethnic identity are often viewed as fixed attributes. Further, it is often assumed that the remedy for racial or ethnic conflict and for discrimination is elimination of such identifiers. Social science that explores only the role of racial and ethnic identity in oppressing persons of ethnicity or color does not fully capture the personal or political significance of race. Race and ethnicity are bases for identity, and thus are fundamental in group formation, constitute sources of solidarity, and influence the exercise of power. Although racial and ethnic identities may have been created in part to perpetuate disadvantage, they may also be bases for transformative change (Childs 1992).

These points, which occupied much of the third session, take us to the threshold of further theoretical development, as suggested by a question asked by one participant. What links conflict, she asked, as a process fundamental to the creation of social structure and the formation of identity, to disputing?

One approach to answering this question is to invoke the canon of conventional dispute-processing research. In this view, ethnicity or race is an indicator of the impact of conflict on dispute resolution. Being a member of a group involved in social conflict is one kind of attribute or resource brought to a specific dispute. Race and ethnicity (likewise age or gender) are conventional demographic identifiers, and thus may be easily assimilated to conventional dispute-processing paradigms. Just as disputes of different types may be tracked through the dispute processing pyramid, so parties of a particular race, ethnicity, gender, or age may be traced, frequency of appearance determined, rates of diversion from formal adjudication compared with other disputants, and outcomes examined as evidence of special advantages or disadvantages. In its use of racial and ethnic categories to describe dispute processing, conventional research presumes that the categories created from official records, surveys, or observations are meaningful and that they represent fixed rather than contested attributes. The conventional approach does not ask why such categories are meaningful in our culture, nor whether conflict and disputing may reflect contests about their meaning.

A second answer, offered by Carol Greenhouse, reconsiders the terms in which the question is posed, suggesting that dispute and conflict represent fundamentally different perspectives on the same events. Disputes, argued Greenhouse, are an aspect of personhood; they cannot be confined to formally (or informally) recognized events, but are part of the experience that constitutes a person, the interaction defining both the person and the dispute. Conflicts, on the other hand, evoke images of contests among groups with strong identities; racial, ethnic, and gender conflicts are paradigmatic. Thus, a dispute is not a smaller version of a conflict. Nor does dispute refer to experience that is necessarily derived from conflict. Conflicts and disputes refer to different, though closely related, units of analysis, person and group, and each is embedded in processes creating identity and social organization. Analysis of both disputes and conflicts may often involve a bi-level consideration of both individual and group identity and action.

The focus on the formation of group and individual identity moves discussion further beyond the canon of dispute processing research. This provocative shift in perspective suggested placing greater emphasis on the manner in which dispute processing affects, or is affected by, the integration of groups and individuals into their social settings. This new and expanded perspective on dispute processing places the social setting of the group or individual at the center of our field of vision, and in it any process for responding to a dispute or conflict will be just one among many factors that bear on persons, groups, or events.

This session did not discuss antecedents of individual perception or action in disputes, group formation, mobilization, or collective action, questions raised and addressed in the last session.

Environmental and Community Disputes

Session four was about participation in political and administrative decisions at the community level. Prior research has examined, in a variety of settings, the salience of particular issues in the opinions of particular subgroups, voting and the influence of mobilized interest groups, and the characteristics of decision-making structures in bureaucracies. In contrast to racial and ethnic conflict, however, discussion of environmental and community disputes appeared to raise few questions about group identity or deep cultural divisions, but instead raised questions about conventional politics, inviting the application of theories of interest-group activity. These theories may be usefully applied to community conflict and decision making, for example, in environmental controversies under the National Environmental Protection Act.

Conventional interest-group research often assumes the existence of the mobilized interest group. Given the conclusion reached in previous discussion that dispute-resolution research must examine the context in which individuals become aware of disputes and in which groups form, it was apparent that we cannot take the already mobilized interest group as the starting point for understanding the politics of community-dispute resolution. It is essential to understand how individuals identify important issues, choose to form groups, mobilize, and interact with public decision makers. This is particularly so with respect to groups of nonactivists, for example, ad hoc citizens groups. Closer consideration of community disputes reveals similarities to racial and ethnic conflict. For example, identity may be equally important in disputes where race or ethnicity may not be an obvious factor. An individual or group response to disputes involving disposal of toxic waste, a proposal to rezone wetlands, or a plan for airport expansion, can be influenced by values, a sense of efficacy and by a sense of the place of the individual or social group in the community, that is, by one's identity.

While research on community politics employing interest-group theory has often considered the effects of some forms of public participation on outcomes of public decision making, new research must also examine the effects of different decision structures on the mobilization of individuals or groups. First, the existence of a means of participation may be important to interest-group identity and formation, though it may not be the only important antecedent and may not be a necessary one. Second, particular decision-making processes and particular forms of participation may have continuing effects on interest groups, encouraging or discouraging continued participation or shaping their structure, activities and identity over time. Further, the designers of public participation requirements are likely to have taken just such effects on group mobilization into account, making the need for research on the goals and assumptions underlying the structure of

community-conflict resolution and pubic participation in decision making all the more compelling.

Finally, individual and group identity will intersect community politics in complex patterns. For example, group participation in conflicts that do not explicitly raise racial or ethnic issues will, from the nature of economics and politics in our society, often involve a racial or ethnic as well as a class context for group formation and group action. The multiracial nature of some groups with common interests, such as a multiracial work force, may lend moral weight to the group's goals and at the same time make group formation and action more complicated.

THE END OF THE CONVERSATION: REDIRECTING RESEARCH

I have tried to show how, in each session of the conference, participants attempted to connect conflict and dispute resolution with the meaning of difference, the origins and effects of discrimination, and the possibilities for democratic reform. Did the discussion also succeed in shifting the framework for thought about dispute processing in some more systematic way that will help direct future research? And did the discussion suggest means of including the perspectives and even the voices of those affected by dispute processing and conflict resolution?

From Disputes to Conflicts and Back

As my brief summaries show, the discussion in each session either started by examining the context of dispute processing or quickly developed a perspective in which dispute processing was just one element of a larger context for understanding difference and conflict in society. Viewing dispute processing as part of larger patterns creating or maintaining difference and conflict shifted attention to actors and social organizations outside the disputing process. For many participants, this shift seemed particularly significant. Several times the change in perspective was characterized as a shift from *dispute-centered* theory to *conflict-centered* theory. Because this conceptual distinction emerged repeatedly and was viewed as important, it is worthwhile to explore its meaning and what it might offer as a guide to future research.

For many, I think the distinction between dispute and conflict rested on the assumption that a dispute is merely a moment in a larger social conflict.[4] Social conflict depends on the fundamental identities and circumstances of individuals in the society, identities and circumstances that are transformed, distorted, and thus likely to be imperfectly understood when social conflict is reconstructed as a dispute. A dispute, in this sense, is in part a creation of an agency that organizes a means of processing disputes. We might conclude that to better

understand how dispute processing disadvantages some disputants and privileges others, we have to understand disputes as disputants do—as a moment in social conflict and grounded in social difference. Thus, in this view, research on the origins and evolution of social conflict and social difference is an important new starting point for theory and research on dispute processing.

I believe that the distinction between disputes and conflicts attempts to capture an important aspect of the politics of dispute processing. The contrast is intended to make the point that the politics of dispute resolution arises in part from the potential conflict between the perspectives of disputants and those who constitute or maintain a dispute resolution process. Yet, the distinction oversimplifies a more complex reality in which dispute and social conflict represent two interrelated perspectives, both of which are important in understanding difference and disadvantage.[5]

The first perspective views dispute processing from the individual disputant's point of view. In this perspective, the dispute is an irreducible personal experience. Thus, the effect of disputes on personhood, or identity, cannot be ignored as a mere artifact of dispute processing norms. One might go further, arguing that any meaningful analysis of dispute processing must incorporate the participants' view of particular disputes. At the very least, this perspective is necessary to understand why a participant in dispute processing invokes the process to begin with. The knowledge and material resources, as well as the existence of a significant group identity or group support play a role. Meanings attributed to conflict, to particular norms, to third-party interests, or to nonlegal third-party dispute resolvers are equally important. Both resources and meanings link the disputant to social networks, informal or formal groups, and to culture; yet, the experience is individual.

Further, the disputant's perspective is required to understand the full effect that the outcome of dispute processing has on the participants and their continuing relations with others and, perhaps, with each other. For example, from the disputant's perspective, the difference between public and private is less one of abstract normative differences than one of practical effect including "legitimacy," that is, the impact of the outcome on those whose compliance or support is most important to the disputant.

The second, closely related perspective is that of the social group. Social conflict often emerges from the creation and maintenance of differences between groups in society. Group identity may be an important component of individual identity and individual experience, but the social group is just one influence on individual perspectives on contested realities. Further, group identities may lead to another level of social action—collective action by members of the social group. Social conflict can involve social groups in active or passive roles in the creation, maintenance, or contesting of difference, and these group roles may bear a complex relationship to individual behavior.

The distinction between disputes and conflicts may capture an important shift in perspective that emerged during the conference. If so, it represents a complex, dual insight into the interaction between individual lives and dispute resolution on the one hand, and the relationship between social groups and individuals on the other. Most importantly, it suggests that research will be most useful for advancing our understanding of difference and disadvantage if it is centered in the world of the dispute participant. The world of the participant, however, includes both subjective experience and other things that are important but which may or may not be recognized or identified as important by the individual. Thus, the researcher is challenged both to "hear" the voice of the participant, but also to describe, indeed "privilege," that voice appropriately in light of the researcher's knowledge of the construction of disputes, difference and conflict in the larger society.

New Methods, New Voices

With the exception of an excellent comment by Maureen Cain, little attention was paid to research methods that might reveal a new perspective or enhance new voices. Nevertheless, I believe that there were important methodological implications in the shift in perspective that I have just described. My conclusion is reinforced by the number of times I heard conference participants suggest the potential contributions of narratives and case studies. Critics who argue that conventional social science methods privilege the academic researcher's own interests and audience frequently suggest personal narratives as an alternative form of research. The narrative as method (and not as data) cannot be the only method employed by the researcher, although narratives may add one kind of voice that should be heard. Both the experiences of individuals and the actions of social groups can have meaning that is outside an individual's personal experience. Thus, research that is intended to help describe and understand the place and politics of disadvantaged groups must rely on methods that provide access to multiple meanings of events, including the narratives of those who are living them, but also including other meanings that may be uncovered by other methods.

The shift from dispute to social conflict refocuses the research perspective, placing the disputant in a social setting at its center. The importance of identity and meaning in understanding both individual action and the relationship of individual and social group suggests that *case histories*—including narratives by individual actors—will be important for full understanding. An important component of this research may be descriptive, in which the actors tell of their worlds, in their own way. Another component may be theoretical and causal, attempting to understand patterns of meaning and action. In both forms of research, the involvement of the subject with dispute processing will be incidental to a more complete understanding of the person.

Similarly, at another level of analysis, *group histories* may trace the similarities of circumstance, creation of identity, mobilization for collective action, conflict, and contests over the meaning of the group and its role in society. In this context, conflict and conflict resolution may be incidental to the group's primary importance for members—the continuing identity and meaning of the group. Or conflict and contention for power may be the primary purpose of the group and its main source of solidarity. Once again the importance of the unit of analysis and the method is that it shifts focus from the process of conflict to the frame of reference of the group experiencing social conflict. For example, race and ethnicity as a defining criteria in social conflict would be viewed as more than a criterion for defining the target of discrimination or disadvantaged treatment by others. Rather, racial and ethnic identities would be as those identified view them, as potentially both a stigma imposed by others and a source of identity consciously developed and encouraged as a group and individual resource (Greenhouse 1986; Piven and Cloward 1979; Childs 1992; Ross 1992). Research might also focus on *events* involving conflict, tracing participation backwards and forwards in time to discover the origins and effects in a continuing community context (Erikson 1976; Galanter 1985; Cherniak 1986; Yngvesson 1988b).

I am drawn particularly to the potential represented by *combining a group focus and an events focus* for dispute processing research. If conflict or dispute processing interact with the social history of groups, changing both, then both the social history of the group and the institutional history of conflict resolution—and all points of interaction between them—should be included in our history in order to catch the mutual interaction. To draw an example from my own work on court cases arising from strikes by West Virginia miners in 1902 and 1903, neither the full history of the court cases, nor a full history of the miner's mobilization and the outcome of the strikes captures the important story of the place of the strikes and the cases in the interaction between public authority and the working-class population. Other pieces which would be missed in focusing on the event process alone (legal case or strike) or focusing on the group alone (union or miners) include the development of the law of the workplace applied by lawyers on behalf of these same miners, the changing court context in which the strike cases are a mere transitional moment, the organization of law practice under the impact of working-class emergence, the repercussions of strikes and law on coal-industry economics through bankruptcies and mergers, the subsequent reorganization of relations between miners and owners through safety and workmen's compensation legislation, the state's indecisive handling of violence by miners, and possibly even the municipal incorporation of mining towns as a form of pacification. In brief, in this research I accept neither the courts' nor the miners' subjective boundaries for the strike events, but define the relevant events in terms of analytic categories defined by social difference and institutional organization,

so that all antecedents and repercussions of the strikes related to class relations and to public authority become the focus of the research (Munger 1991; Tilly 1964).

While these four different approaches to research on disputes and conflicts may help capture some of what may be missing from the research, one must acknowledge that they impose extraordinary demands on researchers. The effort required to obtain narratives, group histories, event histories, and data for group/event analysis is great, the projects are often long in duration and high in cost, and the data analysis requires patient interpretation rather than quantitative summaries and correlations (although these are useful too).

A FINAL DISCOURAGING REFLECTION ON CHANGE

Tracing the discussion at the conference has seemed important to me because experienced researchers and practitioners in the field were attempting to interpret and redirect their understanding of dispute processing. Their degree of agreement was remarkable on what was previously overlooked by research and who that disadvantaged, on what direction research ought to take in the future, as well as on some of the methods that the research might employ. Neither this agreement, nor the perspectives and methods described earlier, guarantees that new, previously submerged, voices will actually be heard. The critics of conventional social science, while certainly right about the institutional structure of social science and who it serves, are wrong to think that refocusing research on the lives of victims and changing methods, even using narratives, will have any effect on this problem. Narratives, like survey or census data, reveal information to policy makers and police.[6] Though the conference participants might have wished to find a simple answer to questions about the uses of research (see Rule 1978), none is available and this problem will have to wait for another conference on another day.

NOTES

1. Critical social science was not an explicit starting point for the conference. Moreover, not all of the conference participants would have described their purposes in such political terms, and others who accepted such politics would have disagreed with the anti-science theme of some criticisms. Yet, in general, the critical social science perspective seems consistent with the desire of conference planners to better understand and serve the interests of those who have been disadvantaged in our society and to find research methods that permit expression and understanding of the perspective of such groups.

2. I offer no critique here. This is a rich and useful paradigm, though it has led to "linear" thinking about disputes in terms of a rigid step-by-step process, rather than a more general one in which interactions may lead initial events along different paths and may lead to multiple and complex experiences over time (see Emerson 1992; Munger 1990).

3. Many discussions of the disputing process have spoken of the difference between two-party (e.g., negotiation) and three-party (e.g., mediation or trial) dispute resolution. In the context of an extended discussion of welfare hearings and other forms of administrative adjudication, Marc Galanter suggested that hearings conducted by the organization with which one of the parties has a dispute be referred to as a "2 1/2 party process" to emphasize its differences from either a two-party or a neutral third party dispute resolution process.

4. Some time ago Bob Kidder noted that contested meanings pervade all social interaction. Conventional dispute processing research examines only a highly select group of contests, discovered by reading dispute processing norms back into the events described by individuals. Thus, contested aspects of social life, that do not or cannot become part of a disputing process, are overlooked or ignored in dispute processing research. Kidder maintained that dispute processing research should consider the relationship between disputes and social conflict (Kidder 1980-81).

5. I have already acknowledged that Carol Greenhouse is the author of this insight in my description of the conference session on race and ethnicity. This development of her idea draws on the comments of other participants and my own observations.

6. A particularly troubling example is provided by a recent essay based on narratives of persons receiving welfare that was intended to explore the experience of dependence and poverty but which also revealed that on average the welfare recipients' incomes were about 40 percent higher than reported to agencies. It is not hard to imagine who the unintended audience for this essay will be or what they will use it for (see Jencks and Edin 1990).

REFERENCES

Abel, R. 1980. "Redirecting Social Studies of Law." *Law and Society Review* 14: 805-27.

Cherniack, M. 1986. *The Hawk's Nest Incident: America's Worst Industrial Disaster.* New Haven: Yale University Press.

Childs, J.B. 1992. "Constructive Disputing: The Ramifications of African-American Caucus Groups for Today's Organizations." Pp. 00-00 in *Studies in Law, Politics, and Society,* Vol. 12, *Trends and Opportunities in Disputing Research, A Workshop of the Fund for Research on Dispute Resolution,* edited by S.S. Silbey and A. Sarat. Greenwich, CT: JAI Press.

Emerson, R. 1992. "Disputes in Public Bureaucracies." Pp. 00-00 in *Studies in Law, Politics, and Society,* Vol. 12, *Trends and Opportunities in Disputing Research, A Workshop of the Fund for Research on Dispute Resolution,* edited by S.S. Silbey and A. Sarat. Greenwich, CT: JAI Press.

Erikson, K. T. 1976. *Everything In Its Path: Destruction of Community in the Buffalo Creek Flood.* New York: Simon and Schuster.

Fredrickson, G. M. 1981. *White Supremacy: A comparative study in American and South African History.* New York: Oxford University Press.

Galanter, M. 1985. "Legal Torpor: Why so little has happened in India after the Bhopal tragedy." *Texas International Law Journal,* 20: 273-94.

_____. 1990. "Case Congregations and Their Careers." *Law and Society Review* 24: 371-95.

Garth, B. 1992. "Racial and Ethnic Conflicts: A Commentary." Pp. 00-00 in *Studies in Law, Politics, and Society,* Vol. 12, *Trends and Opportunities in Disputing Research, A Workshop of the Fund for Research on Dispute Resolution,* edited by S.S. Silbey and A. Sarat. Greenwich, CT: JAI Press.

Greenhouse, C. 1986. *Praying for Justice: Faith, order, justice in an American community.* Ithaca: Cornell University Press.

_____. 1992. "Racial and Ethnic Conflicts: A Commentary." Pp. 00-00 in *Studies in Law, Politics, and Society,* Vol. 12, *Trends and Opportunities in Disputing Research, A Workshop of the Fund for Research on Dispute Resolution,* edited by S.S. Silbey and A. Sarat. Greenwich, CT: JAI Press.

Jencks, C. and K. Edin. 1990. "The Real Welfare Problem." *The American Prospect* 1: 31-50.

Kidder, R. 1980-81. "The End of the Road? Problems in the Analysis of Disputes." *Law and Society Review* 15: 717-25.

Munger, F. 1990. "Afterword: Studying Litigation and Social Change," *Law and Society Review* 24: 595-615.

_____. 1991. "The Legal Resources of Striking Miners: Notes Toward A Theory of Class Conflict and Law." *Social Science History* 15: 1-33.

Piven, F. F. and R. Cloward. 1979. *Poor People's Movements.* New York: Vintage.

Ross, M.H. 1992. "Ethnic Conflict and Dispute Management: Addressing Identities and Interests." Pp. 00-00 in *Studies in Law, Politics, and Society,* Vol. 12, *Trends and Opportunities in Disputing Research, A Workshop of the Fund for Research on Dispute Resolution,* edited by S.S. Silbey and A. Sarat. Greenwich, CT: JAI Press.

Rule, J. 1978. "Models of Relevance: The Social Effects of Sociology." *American Journal of Sociology* 84: 78-98.

Sarat, A. 1988. "The 'New Formalism' in Disputing and Dispute Processing," *Law and Society Review* 21: 695-715.

Sarat, A. and S. Silbey 1988. "The Pull of the Policy Audience," *Law and Policy* 10: 97-166.

Tilly, C. 1964. *The Vendee.* Cambridge, MA: Harvard University Press.

Trubek, D. M. 1984. "Where the Action Is: Critical Legal Studies and Empiricism," *Stanford Law Review* 36: 575-622.

Yngvesson, B. 1988a. "Disputing Alternatives: Settlement as Science and as Politics." *Law and Social Inquiry* 13: 113-32.

_____. 1988b. "Making Law At the Doorway: The Clerk, the Court, and the Construction of Community in a New England Town." *Law and Society Review* 22: 409-48.