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variations in class, series, or kind of stock subsequently issued. It is not suggested that the ability to abolish pre-emptive rights by charter provision be removed from the statute, for the incorporators should have this power. However, the statute should be so worded that when there is an issuance of either previously or presently authorized stock the shareholder will be accorded a pre-emptive right if his voting, dividend, or dissolution interest is affected. If such an interest is not affected there will be no need for protection by pre-emptive right. This change is desirable because it will strengthen pre-emptive rights. As the statute now reads, very little protection is given to shareholders; their rights can be easily avoided. Hence the statute cannot be relied upon to assure stockholders of their relative positions in the corporation. If adequate protection is to be given by the courts the statute should be amended.

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SOME EXPERIMENTAL PARALLELS TO THE DEADLOCKED CLOSE CORPORATION

The arbitration of a deadlock in a close corporation appears to be a promising area for applying some of the experimental findings of the behavioral sciences.

The close corporation, perhaps the most common business entity in the United States,[1] is characterized by owner managership.[2] The small number of persons in control and their typically large private interests in the business are factors that set the stage for violent policy disputes. The solutions commonly suggested for a deadlocked close corporation are (1) a sell-out by one or more of the parties, (2) dissolution, or (3) arbitration. Of these three, only arbitration attempts to heal the corporate entity, neither severing members vital to the corporation as originally conceived nor destroying it in despair. For this reason arbitration promises to become a popular device in this problem area.

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[1]See Scott, *The Close Corporation in Contemporary Business*, 13 BUS. LAW. 741 (1958).

[2]See Barkin, *Deadlock and Dissolution in Florida Closed Corporations*, 13 MIAMI L.Q. 395 (1959); Powers, *Cross Fire on the Close Corporation*, 11 U. FLA. L. REV. 433, 435 (1958).

The experiments of psychologists and sociologists have dealt with decision-making, group problem-solving, the effects of anxiety or stress upon perception and problem-solving, and other factors found in the arbitration process of the deadlocked close corporation. It seems reasonable to assume that the results of these experiments are pertinent to evaluations of arbitration.

WHAT DOES IT MEAN TO BE SCIENTIFIC?

The success of modern science has misled many into misunderstanding its range of effectiveness. Science, like mathematics or any other logic, is a decision tool. Its objectivity lies in its formal consistency, not in the values that underlie and shape scientific research. Its utility lies in the rigor and narrowness that offend so many, and its failures should be assessed against those who form the problems and evaluate the results.

When applied to unstructured observations, that is, informal statements, science provides a means of identifying compatible statements and also the possibility of a consistent conceptual organization. Science is not, despite nineteenth-century enthusiasm, a screen for filtering every error from human experience.[3] Its objective is rather linguistic and experimental consistency, reliability, and recognition of formal identities.[4] It must also be appreciated that the *formalization* of problems is essential to the continued expansion of systematic knowledge.[5]

Much of the difficulty of relating law and science arises from the technical naiveté of scientists and lawyers in each other's field. Legal writers have intermittently been eager to "use" science, but with less understanding of the standards of proof and of scientific notation

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[3]See CRAWSHAY-WILLIAMS, THE COMFORTS OF UNREASON 86 (1947).

[4]Russell, *On the Importance of Logical Form*, in 1 INTERNATIONAL ENCYCLOPEDIA OF UNIFIED SCIENCE 39 (1955): "In the empirical sciences it is not so much in relation to inference that mathematical logic is useful as in relation to analysis and the apprehension of identity and difference of form. Where identity of form is of the traditional mathematical kind, its importance has long been realized. . . . But where identity of form is not of the sort that can be expressed without logical symbols, men of science have been less quick to recognize it; while the general public, through logical incompetence, has been led into grave practical errors."

[5]See Lazarsfeld, *Concluding Remarks to the Symposium*, in MATHEMATICAL MODELS OF HUMAN BEHAVIOR 97, 101 (1955): "Only after problems have been formalized is it really possible to work on cross-discipline approaches and to make mutual contributions from one discipline to another."

than would be desirable. Some legal writers have been hostile to the utilization of scientific evidence on the grounds that it bypasses that laboriously acquired "feel" for the law that lawyers develop;[6] that it uses statistics, formulae, and other signs foreign to the legal mind in lieu of "plain English";[7] that scientific research is really not very "practical";[8] and upon other grounds common in a society that extensively utilizes but largely misunderstands the nature of science.

The growth of an experimentally oriented jurisprudence cannot be accomplished without drawing many tentative parallels between the professional literatures of law and the behavioral sciences.[9] This note indicates some common problems expressed in legal writings on arbitration and the close corporation and in the literature of experimental psychology.

Characteristics of the Close Corporation

The close corporation represents a stage in economic development falling between the partnership and the publicly held corporation, and combines some features of each. Characteristics that appeal to shareholders in a publicly held corporation, such as centralization of management, free transferability of shares, continuity of the corporation after the death or withdrawal of one of the shareholders, and the legal formalities required of corporations by the state, may be objectionable to the close corporation owners.[10] The promoters frequently desire an incorporated partnership instead.[11]

Since the judgment of each owner may be involved in every corporate policy decision, the likelihood of deadlock is great, especially

[6]Cavers, *Science, Research, and the Law*, 10 J. Legal Ed. 162, 185 (1957): "Resourcefulness and knowledgeability in using the information that is at hand, the investigator's perceptivity and sensitivity in evaluating it — including the individual cases that mass statistics would obliterate — may be more productive than the leg work of young men with questionnaires or the digital dexterity of computing-machine operators."

[7]Cavers, *supra* note 6, at 186: "If we can pursue informative studies of law in action without frequent resort to detailed statistical treatment, we may escape another danger: statistics can be too persuasive." The law must outgrow this reluctance to accept new techniques.

[8]Donnelly, *Some Comments upon the Law and Behavioral Science Program at Yale*, 12 J. Legal Ed. 83, 84 (1959).

[9]See Schwartz, *The Law and Behavioral Science Program at Yale*, 12 J. Legal Ed. 91, 98 (1959).

[10]See Powers, *supra* note 2, at 439.

[11]See, *e.g.*, O'Neal, Close Corporations: Law and Practice (1958).

if the ownership is evenly split or if disparate portions of the stock are balanced by minority control devices, such as unanimity or high voting clauses.[12]

Another source of stress in the close corporation is the large number of "family" concerns that assume this form. This means that the officers and directors will frequently be relatives, and that the corporation will be used to provide employment for members of the family. Consequently, a management often emerges that is not strictly competitive with its commercial peers.[13] Furthermore, the promoters of such corporations frequently do not want strangers in the enterprise and will place restrictions upon the transferability of shares.[14] Once so closely bound, the corporation may not be flexible enough to withstand the pressures and stresses of the business community and preserve the harmony essential to the effectiveness of such a tight organization.

CHARACTERISTICS OF ARBITRATION

Arbitration, fundamentally, is the use of an outsider to make decisions that the parties to the dispute will not or cannot make. It has been utilized in a number of commercial situations and has established itself in the legal tradition with distinctive principles.[15]

Arbitration preserves an informal, flexible exchange between the disputants and increases the possibility of their rapidly resuming cooperation.[16] It permits the utilization of experts who understand the particular customs and problems of the business.[17] In comparison with litigation, it is faster, costs less, offers greater privacy, provides solutions tailored to the particular problems under dispute, permits an openness to practical considerations that a court cannot entertain, and provides an opportunity for the decision-making to be done by persons familiar with the standards or technical processes of the corporation's business community.[18] The powers of the arbitrator re-

[12]See Powers, *supra* note 2, at 440-453.

[13]See Kennedy, *Friends or Relations? Organizational Aspects of the Family Managed Business*, 92 EST. & TRUSTS 238 (1953).

[14]See Scott, *supra* note 1, at 744.

[15]See KELLOR, ARBITRATION AND THE LEGAL PROFESSION 21-31.

[16]See Cayton, *Arbitration: Substantial Justice in Private Disputes*, 12 ARB. J. (n.s.) 199 (1957).

[17]See Sayre, *Development of Commercial Arbitration Law*, 37 YALE L.J. 595, 615 (1928).

[18]See O'Neal, *Resolving Disputes in Closely Held Corporations*, 67 HARV. L.

flect the attitude of the business community that developed in arbitration a rapid, non-judicial device for resolving disputes.[19]

The capacity of arbitration to handle complicated fact situations, the opportunity to deal personally with the disputants rather than through counsel or the formal machinery of litigation, and the breadth of the problems to which it has been applied suggest that it provides a flexible, effective tool for resolution of the close corporation deadlock. If, however, the deadlock cannot be resolved and the corporate effectiveness restored by arbitration, it may still be useful in settling controversies raised by dissolution.

FACTORS INVOLVED IN THE ARBITRATION PROCESS

The Effects of Reducing Tension

It is advantageous to the business unit to handle its difficulties privately, if possible. It is frequently assumed that privacy will make the resumption of amicable relations easier.[20] Privacy helps arbitration to eliminate the need for the extreme positions required by our adversarial legal system.[21] Maneuvering within the private, informal arbitration context is easier and more personal than in a judicial forum.

The factor of privacy should tend to reduce the anxiety or tension involved in the dispute. But why should this make it more likely that the disputants could resume amicable business relations? There is experimental evidence that a reduction of tension is followed by a personality "expansiveness," or a relaxation of some defensiveness and critical standards. This suggests that readiness to compromise or adjust one's position is enhanced by the factors tending to relieve tension in the parties involved.

REV. 786, 790 (1954).

[19]See Sayre, *supra* note 17.

[20]See Hornstein, *Arbitration in the "Incorporated Partnership,"* 12 ARB. J. (n.s.) 28, 30 (1957): "The privacy of the arbitration hearing — a sharp contrast to the public feature of a court proceeding — makes it possible for the parties to resume amicable business relations once the immediate dispute is out of the way."

[21]Levitt, *Presenting an Arbitration Case*, 10 ARB. J. (n.s.) 72, 76 (1955): "In common law litigation the case at issue is normally the only case in which the same litigants will ever be involved and every possible effort is exerted to win that particular case. When the case is over, the parties will go their respective ways and they may never meet again. The antagonism, the sharp and angry words engendered by the dispute, the heat of the contest will all go with them."

An experiment that revealed this effect was conducted on Harvard undergraduates, who adjusted a patch of light to match a standard disc model under conditions of no electric shock, mild shock, strong shock, and after a no-shock recovery period. Comparison with control groups not submitted to shock revealed that the shock increased the accuracy of adjustments in relation to the model disc. A decrease in errors from approximately ten per cent to seven per cent, as compared with a decrease from ten to nine per cent in subjects not shocked, was noted. Parties to litigation or other legal conflicts become increasingly sensitive to details as tension mounts. In the experiment, after the shock was discontinued the students' percentage of error leaped from seven to fourteen per cent. The experimenters concluded that "expressive and adaptive movements expand following tension releases; we are apt to magnify the power and importance of hopeful events after release from the tension . . . ."[22] This suggests at least one factor in the arbitration process that would tend to increase the parties' readiness to adjust their differences.

The Effects of Disagreements

A preliminary distinction as to kinds of disagreements is important. When experts are called in to arbitrate they are most successful when the issues are technical.[23] However, policy disputes are frequently mere masks for personality clashes. Arbitration has not been particularly successful in resolving such personal conflicts. Arbitration appears more successful when applied to perception and adaptation problems than to emotional or personality adjustments. This distinction has significant implications for the directions that parallel research in the behavioral sciences and arbitration should take.

Of immediate interest is the problem of cohesion subsequent to arbitration. It has been said that the cohesiveness "of a group will be increased by heightening the awareness of a member (or potential member) that he can fulfill his needs by belonging to the group."[24] The corporation is in a better position to serve its shareholders after

[22]See Bruner & Postman, *Tension and Tension-Release As Organizing Factors in Perception*, in STACEY & DEMARTINO, UNDERSTANDING HUMAN MOTIVATION 310, 316 (1958).

[23]See FRANK, COURTS ON TRIAL, as quoted in Mosk, *Arbitration Versus Litigation*, 7 ARB. J. (n.s.) 218, 221-22 (1953).

[24]CARTWRIGHT & ZANDER, GROUP DYNAMICS 80 (1953).

arbitration than after litigation, primarily because the parties must focus upon solving a technical problem together rather than upon determining adversarial rights.[25]

Experiments with bomber crews in decision-making situations have shown that "a wide range of disagreement at the outset characterizes those crews which effect the best decisions" when, significantly, the disagreement is task centered and not emotion centered.[26]

An experiment conducted at the Harvard Psychological Laboratories compared the effect upon small groups, some composed of close friends and associates and some of strangers, of being assigned insoluble problems.[27] The experimenters found two kinds of group disruptions. The first involved behavior such as blaming others, hostility, personal aggression, disruption, and the like; the second involved a definite split in the group. The first characterized the group that came into the experiment with prior acquaintanceship, while the second characterized a group of strangers organized for the experiment. The average number of interpersonal aggressions was forty-five for the familiar groups and six for the strangers. The frustration and tension were introduced by the experimenters, not the student participants, but considerable intragroup conflict resulted nevertheless. The friends vented their frustration on one another; the strangers tended to withdraw from the problem. This suggests that close corporations are especially susceptible to business disagreements becoming personal ones, and that a principal task of the arbitrator is to keep the business problem, rather than the personality clashes, in the foreground.

If the problem is not an insoluble personality conflict, the arbitration process may remove much of the intracorporation conflict and increase the likelihood of effective cooperation. Disagreement per se is not destructive of group effectiveness.

The Anxiety Factor in Cooperative Enterprise

Laymen are frequently frightened by the formalities of litigation.[28] Much of the writing on arbitration assumes that the informality of

[25]See Sherif, *Experiments in Group Conflict*, 195 Scientific American 54 (Nov. 1956).

[26]See Chorness, *Increasing Creativity in Problem-Solving Groups*, 8 J. COMMUNIC. 16 (1958).

[27]See French, *The Disruption and Cohesion of Groups*, in CARTWRIGHT & ZANDER, GROUP DYNAMICS 121 (1953).

[28]See Cayton, *supra* note 16, at 201.

the proceedings puts the parties at ease and thereby makes them receptive to a re-evaluation of their position. This was dealt with above. Now the converse will be considered — that an increase in fear or anxiety, or even its presence, will reduce the chances of effective reconsideration by the disputants.

Many psychologists believe that rigidity of behavior is a defense mechanism resorted to under anxiety. Hypothesizing that problem-solving rigidity is a function of insecurity experienced in the problem situation, Ainsworth suggests that diffusion and disorganization of responses follow mounting insecurity. Reluctance under stress to shift the approach, although the task may require a change in strategy or attack to complete it, seems to follow.[29] If this may be extended to complex social situations, there is some support for the argument often advanced in legal writings that the informality of the arbitration proceedings makes it possible not only to settle issues but to provide an educational function.[30]

In an experimental variation of the old shell game, Stevenson and Iscoe found that subjects learning to identify clues placed upon the "shells" to indicate where the "pea" (a poker chip) might be found, showed variations in behavior that could be related to their scores upon an anxiety scale.[31] The scores of low anxiety subjects tended to confirm the generally accepted hypothesis that low anxiety results in more efficient learning than high anxiety.

The Effect of "Airing" Complaints

> "[A]rbitration frequently serves as a therapeutic forum for airing various types of complaints. Where the arbitration proceeding has such an objective it plainly would be unwise to impose technical obstacles to the exposition of the complaint. This would merely serve to push the complaint underground and permit it to fester and leave the complainants with the impression that they were not permitted to have 'their day in court' because of unreasonable, technical and legal barriers."[32]

This quotation suggests two leading arguments in personality

[29]Ainsworth, *Rigidity, Insecurity and Stress*, 56 J. ABNORM. & SOC. PSY. 67 (1958).

[30]See Levitt, *supra* note 21, at 74.

[31]Stevenson & Iscoe, *Anxiety and Discriminative Learning*, 69 AMER. J. PSY. 113 (1956).

[32]See Levitt, *supra* note 21, at 74.

theory: (1) inhibition of aggression results in frustration that instigates further aggression; and (2) the expression of aggression reduces the instigation to further acts of aggression – the famous "catharsis hypothesis."[33]

A counter theory suggests that the expression of aggression does not drain off hostility, as though draining a reservoir,[34] but rather begins a circular action that leads to more aggression and hostility.[35]

The application of this controversy to arbitration disturbs the assumption frequently expressed that talking out problems in the informality of the arbitration hearing will result in a more amicable relationship among the parties. Amicability may grow from solutions achieved on the basis of new information, but the value of merely airing complaints is undetermined.

An experiment was made in which students were given bogus intelligence tests. They were then insulted about their performance in order to make them angry.[36] Findings indicated that the catharsis of hostility resulted in learning performances superior to the performances of those in the control groups who were not given an opportunity to express their feelings. But it was concluded:[37]

> "[A]mbiguous and contradictory results concerning the efficacy and the nature of effects of catharsis may be due to the untested assumption that catharsis in whatever form is equally applicable to all kinds of disturbances regardless of the underlying dynamics. It is suggested, however, that catharsis is effective to the extent that it sets up conditions for reducing threat to need-satisfaction patterns."

As to the hypothesis that good feeling is likely to result from catharsis, research has centered on the degree of aggression expressed subsequent to catharsis; but experimentation has failed to confirm or disprove the hypothesis conclusively. Experimenters and theorists

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[33]These ideas were discussed in a famous book: DOLLARD, DOOB, MILLER, MOWRER & SEARS, FRUSTRATION AND AGGRESSION (1939).

[34]Berkowitz, *The Expression and Reduction of Hostility*, 55 PSY. BULL. 257 (1958).

[35]Morlan, *A Note on the Frustration-Aggression Theories of Dollard and His Associates*, in STACEY & DEMARTINO, *op. cit. supra* note 22, at 283.

[36]See Worchel, *Catharsis and the Relief of Hostility*, 55 J. ABNORM. & SOC. PSY. 238 (1957).

[37]*Id.* at 238.

have suggested that the relief effect may be only temporary. If the source of frustration continues, the catharsis effect may be insignificant and overt expressions of aggression may provoke anxiety-producing guilt or fear of retaliation.[38] Nevertheless, the concept of catharsis is prominent in psychotherapeutic theory and practice. The following caution by Morlan seems appropriate:[39]

> "The catharsis theory and the interaction theory are both half truths . . . . The likelihood of a healthful catharsis resulting from the expression of aggression is considerably less under some conditions than under others . . . . The expression of a feeling may serve as a release for the aggressive feeling or may increase it. To achieve a healthful release, aggression must be expressed in a therapeutic situation."

SUMMARY

Legal institutions, accepted pragmatically, may be justified by many rationales. These rationales are important because they largely define extensions or applications of the subject institutions that are likely to be attempted. A poor justification, like any other mislabeling, may encourage misapplication or discourage appropriate utilization.

Effective evaluation of rationales requires the use of some reference system. Precedent is a familiar legal reference. So is economics. The behavioral sciences may become valuable as such a reference, especially since reformalizations of legal problems in behavioral terms permits the exploitation of the literature of behavioral research. This note, drawing tentative parallels between the problems of the deadlocked close corporation and some experiments in modern psychology, takes one of the preliminary steps required for the development of this reference system.

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[38]See Morlan, *supra* note 35, at 291.
[39]*Ibid.*