Studying Disputes by Survey

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The Civil Litigation Research Project (CLRP) is a large-scale, federally funded study of the processing of civil legal disputes in the United States. Compared with research on criminal justice, social science studies of civil justice in the United States are rare. The most coherent body of social science literature on civil justice in and outside courts has been produced by anthropologists studying nonindustrialized societies. Anthropologists have long sought to assess the role of dispute-processing institutions other than courts and to describe the interrelationship between law and other aspects of culture and society (Nader, 1965: 4).

In developing a research strategy, CLRP drew heavily upon the experiences of these anthropologists. In a sense, our project may be viewed as a logical step in a sequence of studies that began with attempts by colonial administrators to understand local law by asking informants to respond to serial hypotheticals. Llewellyn and Hoebel (1941) demonstrated the importance of studying actual trouble-cases. Later studies included longitudinal analyses of single cases and examined the sources and consequences of disputes, as well as their processing (see Gluckman, 1955; Bohannan, 1957; Fallers, 1969; see also Mitchell, 1956; Turner, 1957; Van Velsen, 1964).

CLRP has borrowed the anthropology of law's "case study" approach as well as its interest in the social interaction from which disputes emerge and its attention to the role that expected future relations play in molding behavior. The case approach
selects the dispute as its unit of analysis. One or more disputes are identified for study and data are then collected about these disputes. The data collected may include information on the basis of the case (the issues in the dispute), social and economic characteristics of the participants, their attitudes and behavior in the specific case, and the response of any dispute-processing institutions that become involved. The key feature of the case approach is that all of the data collected relate to understanding what happened in a specific set of cases. The major advantage of this approach is that the "case" can be used as a unit for comparison across participants, institutions, and contexts. Its major difficulty is the need to identify and capture a set of cases for study and to define the universe from which that set of cases is drawn.

There are, of course, other ways to study a civil justice system. One is an "institutional approach," which involves an examination of dispute-processing institutions as institutions. The operation and/or effect of the institutions selected are studied by observing it in action, interviewing its staff and users, and examining its records. While this approach provides an in-depth view of the activities of institutions, and institutions are easier to identify than disputants, access may be more difficult because many institutions are "private" or have norms of confidentiality. Even more important, the institutional approach by definition excludes noninstitutional "bilateral" dispute processing.

Another method might be called the "participant approach." It involves studying actual and potential disputants—individuals, groups, organizations, governments, and representatives of disputants. Focusing on participants usually involves surveys (for example, see Best and Andreasen, 1977; Rosenthal, 1974; Curran, 1977) in which respondents are asked about their disputing experience, both generally and in specific cases. Studies of participants have been used to explain phenomena such as the level of demand for disputing resources, the nature of actual dispute-processing decisions (Rosenthal, 1974; Sarat, 1976), and the frequency of actual disputing experience (Miller and Sarat, forthcoming). The major advantage of the participant approach.
is the case with which "participants" can be identified: Since everyone is a potential disputant, simply survey techniques can be used. But these studies have tended to focus on single types of participants or single types of disputes. Moreover, the participant approach cannot be used effectively for comparisons across disputant types: How does one compare individuals with organizations and government?

To facilitate a comparative analysis, CLRP adopted the case approach, since the "case" can be used as the common denominator. That is, information centered on a case can be collected regardless of whether that case went to court, went to an alternative third party, or was handled "bilaterally," and regardless of whether the participants are individuals, organizations, or governmental units. The information based upon a set of cases can then be used to compare institutions with one another, or to compare individuals as disputants with organizations as disputants, or to compare cases of one type with cases of another type.

There are two ways of viewing a "case-focused" data set of the type CLRP has generated. Ideally, it would comprise a series of case studies in the anthropological tradition. Any existing case file (institutional records produced by the case) would be examined, and all of the "direct" participants, the disputants and their lawyers, would be interviewed. Unfortunately, there are two obstacles to this approach. First, if one were in fact following the anthropological tradition, one would want to go beyond the disputants to interview indirect participants (for example, family members of the actual disputants), "witnesses" to the precipitating events, and observers of and third-party participants in the disputing process (such as the judge, arbitrator, or mediator). Inasmuch as the system that CLRP was intended to analyze was not that of a village or tribe, but of a continental, populous, federally organized state, the number of cases to be studied was well beyond that ever attempted in traditional anthropology.

While one could thus extend the design somewhat, it would always remain substantially incomplete. Second, if one were very successful in contacting the direct participants (let us assume the rate was 80%), one would expect to talk to all direct participants
in only 64% of the cases having only two participants, and 41% of the cases having four participants (the probability of contacting all is the product of the probabilities of contacting each). If the "response rate" were 70%, the corresponding figures would be 49% and 24%, respectively. Assuming a not unreasonable 60% response rate, the rates would be only 36% and 13%.

A more realistic image of the data set is simply that the "case" is the sampling unit and the response unit. It is a common denominator and nothing more; participants and dispute-processing institutions are looked at through the prism of cases.

In implementing the case-focused approach, CLRP sought to ensure that the other primary dimensions—participants and institutions—were systematically included in the sample. Thus, we designed a "sample" of cases to include individual, organizational, and governmental disputants who used a range of dispute-processing forums: courts, noncourt third parties, and bilateral negotiation (dispute processing without the use of third parties). This sample was actually a series of samples. We drew separate samples from each of 12 state and federal courts located in 5 federal judicial districts around the country;¹ the individual samples ranged in size from 30 to 180 cases, totaling 1648 cases. An additional 508 cases were drawn from samples of cases handled by 11 "alternative" dispute-processing institutions;² the individual samples included about 35 cases each. The sampling universe for each institution was cases terminated during calendar year 1978.³ The remaining cases were drawn from screening surveys of households and organizations. Both surveys were conducted by telephone using random digit dialing techniques. Approximately 562 disputes were identified through the household survey (see Miller and Sarat, forthcoming) and 194 disputes between organizations were identified through the organizational survey. The initial overall sample thus included about 2800 cases. All cases were reviewed before we sought to interview the case participants. Some cases were excluded on account of complexity, lack of an actual dispute, and other similar grounds. The review process left 2721 cases; of these, an additional 90 cases were dropped from the data collection effort for financial reasons. In the end, we sought to collect information from participants in 2631 disputes.
How well did the case-focused data collection strategy work? What kind of problems did we encounter? We cannot compute any overall "response rate" for the surveys, because interviews with one respondent could lead to new potential respondents (previously unidentified disputants or lawyers): We do not have any way of knowing the number of potential interview "targets." However, we can report on our ability to collect information about the fundamental case unit since the number of cases was fixed by the sampling design. In addition, we will describe the problems that we met in contacting and interviewing dispute participants. We first discuss some of our general experiences, and then turn to statistics regarding the success of the data collection efforts.

One of the most remarkable aspects of our experience was the generally high level of cooperation we received from the participants we sought to interview, particularly the lawyers that we contacted (see Danet et al., 1980). Only 17.4% of the 3168 private lawyers we contacted refused to be interviewed, and only 1.3% of the 316 government lawyers refused. The refusal rates were somewhat higher for the disputants we contacted, 24.1% for individuals (n = 1166) and 24.6% for organizations (n = 1254). Small numbers of potential respondents claimed to have no memory of the dispute (or to have no access to their file of the case). Because of the length of the interviews (about one hour on average), respondents involved in more than one dispute in our sample were asked to go through the entire interview only once; abbreviated interviews were carried out for the other cases. This problem was most common for laywers; about 25% of the completed lawyer interviews were the abbreviated version; for organizational disputants, only 4% of the interviews were abbreviated for this reason.

We anticipated, and encountered, another problem that led to abbreviated interviews for two types of respondents. For both private and public (governmental) organizations, we expected that many cases would be handled through routinized procedures or that we would be unable to locate any person in the organization who worked on or recalled the particular case. For these situations, we sought to obtain some information about the "typical" case of the general type in our sample. About 26.6% of the
completed organization interviews and 35.8% of the completed
government interviews were of this nature.

The major obstacle we faced was that of locating disputants.Obviously, we had little trouble finding respondents whom we
had initially identified through screening surveys. However, we
found that most of these respondents either would not or could
not identify a potential respondent on the other side of the case.
Frequently, the opposing party was a large, diffuse organization,
and the respondent never knew or could not recall the specific
person who had been contacted inside the organization. On other
occasions, the respondent did not want us to contact the opposing
party, either because of a fear that such a contact might cause
further problems or because of a desire not to “inflict us” upon the
other side.

For disputes identified through institutional records, we en-
countered a different type of problem. The primary contact that
many third-party institutions have with disputants is indirect,
through disputants’ lawyers. The institutional files typically
have good locating information for the lawyers, but often have
no information at all concerning disputants. Thus, while we were
unable to locate only 2% of the lawyers identified as potential
respondents, we found ourselves unable to locate about 55% of
the individual disputants and 20% of the organizational dis-
putants involved in cases sampled through institutional records.
Efforts to use the lawyers to aid us in locating the disputants were
only minimally successful; often the lawyers’ information was out
of date—by the time we conducted the interviews the cases were
typically several years old.

In spite of these problems, we succeeded in completing 3873
interviews with dispute participants as well as 6656 screening
interviews. These 3873 interviews covered 2011 disputes. We
estimate that in only about 5% of these disputes did we collect
data from all of the direct dispute participants, and in half of these
cases at least one of the interviews was abbreviated in form. For
867 disputes we were able to interview at least one participant
from each side of the dispute. One extremely interesting topic for
the sociology of law is the relationship between disputants and
their lawyers; we estimate that included within our data set are
about 600 “lawyer-client” pairs; 370 involve “long” interviews for both the disputant and the lawyer.

The result of this effort may be considered disappointing from an anthropological perspective. We wanted to use surveys of multiple participants in many cases, paying attention to dispute antecedents and consequences, to parallel in a study of an industrial nation the richness and holistic quality of anthropological research on law. The difficulties in finding participants in a mobile and decentralized society, when forced to operate by telephone and mail from a central location, and the problems of interviewing people about events that frequently are not particularly salient in their lives frustrated our efforts to achieve these anthropological goals. We have, however, created a focused, coherent, and versatile data set for examining empirical and theoretical questions concerning the forms, costs, and pace of dispute processing in the United States. This is an achievement that would not have been possible without the case-focused approach that we inherited from the anthropology of law.

NOTES

1. The Project Director is Professor David M. Trubek of the University of Wisconsin. Other principal researchers are Professor Austin Sarat of Amherst College and Professor Joel Grossman of the University of Wisconsin. CLRP was originally funded by the Federal Justice Research Program in the Department of Justice.

2. There are several important reasons for the predominant interest in criminal justice. First, the study of criminal courts has been of timely interest, given the social and political unrest that marked the decade beginning in 1964. Second, the creation of the Law Enforcement Assistance Administration in 1968 made substantial research funding available for the study of criminal courts. Third, there have been interesting theoretical developments in criminal justice that motivated substantial empirical research (for example, labelling theory). Fourth, in the criminal justice area there are available a number of theoretically interesting, easily quantifiable, and readily available indicators of decision making (such as sentencing measures, verdicts, bail, and so on). By contrast, civil justice has had little research support, has been the subject of comparatively little theoretical work, and has much less to offer in the way of easily quantified data.

3. All of the cases in the overall sample were drawn from the districts of New Mexico, South Carolina, eastern Pennsylvania, eastern Wisconsin, and central California.

4. The specific institutions sampled were: American Arbitration Association (all five districts); Equal Rights Division of the Department of Industry, Labor and Human Relations, Green Bay Zoning Board of Appeals, Green Bay Planning Commission
REFERENCES


MILLER, R. E. and A. SARAT (forthcoming) "Grievances, claims and disputes: assessing the adversary culture." Law & Society Rev. 15.


