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Introduction: Current Socio-Legal Perspectives on Dispute Resolution

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In recent years, there were increasing interests in quantitative survey research on experiences of legal problems and access to justice in an unprecedented number of countries. Such survey research was initially conducted in the U.K. and the U.S. and later in Canada, New Zealand and Australia, countries with the Anglo-American legal tradition. However, a similar survey was recently carried out in the Netherlands, Japan and Hong Kong, countries of the Civil Law tradition, some of them with Asian social background. Now we have fantastic opportunities for comparative studies of civil disputes and dispute handling behavior among countries with different socio-legal backgrounds. Drawing upon these survey data, we discussed on how experiences of legal problems and occurrences of disputes differ among countries, how legal machineries are used or not used to resolve disputes, how levels of satisfaction with outcomes differ, and research designs and quantitative analytical methods for future surveys.

We know that frequencies of problem experiences are very different from one country to another and that which problem types are more experienced than others is also different among countries. We would like to identify basic patterns of the frequencies and the distribution of frequent problem types among countries and to see whether characteristics of the legal system, such as a legal tradition (common law v civil law), a way of legal regulation (judicial supervision v no legal control) and the density of lawyer population, would affect the frequency patterns and the problem distributions. We usually attribute frequency patterns and problem distributions to socio-cultural factors, but we would like to see whether "traditional" sociological explanations are sustainable.

The frequent occurrence of disputes does not always mean that the legal machinery is also frequently used. A typical example is Japan. Though the percentage of Japanese people who experienced legal problems seems to be similar to that of the people in England and Wales, lawyers and court procedures are much less used in Japan than in England and Wales. Are there other countries which have tendencies similar to those in Japan? We would like to identify patterns of the use of lawyers and those of the use of court procedures in comparative perspectives, such as European v. East Asian, common law v. civil law, and a high density of lawyers v. a low density of lawyers. We will further explore socio-legal factors which effectively predict the use of lawyers and that of a court procedure.

We will also compare levels of satisfaction among users and non-users of the legal machinery, which is probably most important for ordinary people and policy makers. Satisfaction does not always reflect the quality of dispute resolution

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service, but can be a function of characteristics of disputes which are brought to legal and non-legal dispute resolution procedures. Channeling of disputes into types of dispute-resolution machineries may be institutionalized in particular ways in different countries, which might affect the levels of satisfaction among disputants. Satisfaction might also be interrelated with cultural preferences of particular types of dispute resolution.

In addition to these substantive topics, we also discuss on methods of data analyses and research designs. Survey research conducted in many countries in recent years can give us data to describe the occurrence and social distribution of legal problem, disputes, the use of lawyers and the use of court procedures. Beyond description, they often, but not always, allow us to analyze relationships between experience and behavior, on one side, and demographic and socio-economic variables, such as age, gender, education, income and occupation, on the other. However, they cannot provide with data on how persons with legal problems perceived and evaluated their problems. As an evaluation of cost and benefit about or/and cultural preference of a particular way of resolving a dispute has a decisive impact on the process of disputing behavior, the lack of the data on these variables significantly limits the scope of our inquiry. However, in order to get data on these variables, we have to conduct research with a cohort, whose cost would be prohibitively high. This indicates the necessity of developing better ways of analyzing data obtained from previous surveys. In general, we need to develop research designs allowing us to analyze causal relationships so that we can broaden the scope of our investigation.

On the qualitative side, the workshop conveners aim at attracting scholars from diverse methodological approaches, in order to outline some of the current trends in dispute studies. These sessions also analyze the problems of disputing in general, and therefore the focus is extended to the problem of negotiation dynamics, biases and barriers. It is clear that different sociological theories give different explanations of the disputing phenomenon. In particular, there is a long standing clash between communitarians and libertarians theories with regard to the role that the state or any public power should play in managing and directing private disputes. A second theoretical perspective to be considered is the "black letter lawyer" and the political philosophers approach to conflict, which cannot be ignored. Doctrinal analysis of rules dealing with how parties must interact in a dispute, is pivotal for understanding conflicts.

Another interesting perspective for the study of conflict comes from the fields of evolutionary analysis of law and psychology of law. After years when every explanation of social behavior taking into account how the human mind works was accused of determinism and social Darwinism, a new balance between nature and nurture seems to be in view. Social scientist tend to recognize now that the evolutionary drive can be a factor in every strategic human decision, and that cognitive biases imposed on us by our biology affect directly the way in which clients, lawyers and judges act. Those biases, such as the so called endowment effect, the anchoring effect and the status quo bias, together with the role played by emotions in a legal setting, have been the focus of much of the psychological research on legal disputing and negotiation.

If we look at the empirical side of qualitative studies, we see many other research canons which are capable of giving a distinct contribution to the field. First of all, the ethnographic approach of observing the dispute in its natural context, which allows the research to gather unique insights for the understanding of conflict rituals and unwritten rules. Secondly, the "discourse analysis" approach, which has thoroughly dissected the processes of communication in disputes and negotiations.

From the two-day workshop, the following three articles appear to crystallize for publication in the first group. We expect further two articles to come in the second group.

The first article of Herbert M. Kritzer, "The Antecedents of Disputes: Complaining and Claiming," focuses on the first stages in the development of a dispute. Miller and Sarat (1980-81, pp. 525-566) presented a developmental model of a dispute: grievance, blaming, claiming, the occurrence of a dispute, the use of a lawyer and the use of the court. The article reviews approaches used in previous empirical research on complaining and claiming and then discusses how variations in complaining and claiming patterns can be explained. Finally, the article identifies questions not yet answered and indicates fields in which little empirical research has been done.

While Kritzer's article relies on the American model of developmental stages of a dispute, the second article of Pascoe Pleasence, Nigel J. Balmer and Stian Reimers "What Really Drives Advice Seeking Behaviour? Looking Beyond the Subject of Legal Disputes," adopt a research scheme of the British tradition which focuses on advice-seeking behavior among those who experienced legal problems. The article presents interesting findings of an Internet survey: the characterization of a problem as legal and the assessment of the severity of a problem both affect the choice of an adviser, and these effects are independent of effects of problem type. Though an Internet survey is not easy to use in a reliable way, this article shows how we could use an Internet survey to produce findings of theoretical significance.

These two articles are products of the first day on the quantitative research, while the following article is a product of the second day on the qualitative research. The first two articles are written by the researchers working on the cutting edge in the field. The third article discusses both theoretically and practically significant topic in our globalizing world: Arbitrators' practice in East Asia and the West.

The article of Shahla Ali, "Facilitating Settlement at the Arbitration Table: Comparing Views on Settlement Practice Among Arbitration Practitioners in East Asia and the West," presents us interesting findings of her comparative research: while arbitrators in East Asia are likely to regard settlement as a goal of arbitration more than those in the West, and while arbitrators in East Asia seem to view arbitration as a facilitator for voluntary settlement and to make greater pre-arbitration efforts for settlement rather than those in the West, the actual settlement rate is not higher in East Asia than in the West. The author attributes this difference between culture and practice to the fact that legal fee for continuing litigation is not as high in East Asia as in the West, it seems to invite further interesting questions, concerning interplays among culture, practice and institution.

We are delighted to have these three papers to be published on Onati on Line. We believe that they make significant contributions to further developments of the quantitative and qualitative research on dispute resolution.

Bibliography

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