

NATURE IS TO CULTURE AS PRAYING IS TO SING:  
LEGAL PLURALISM IN AN AMERICAN SUBURB<sup>1</sup>

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I. INTRODUCTION

Social scientists interested in the question of disputants' remedial choice-making, and, specifically, their decisions to litigate, often treat the question as a dichotomous one: Do they sue, or don't they? In some contexts, the question is dichotomous in just this way. For example, judicial administrators concerned with heavy docket loads are interested primarily in who is and who is not using the court. Judicial reformers interested in increasing the public's access to the courts are, similarly, concerned with the threshold between litigation and non-litigation.

In terms of the cultural choices involved, court use is not a simple matter of alternatives. Before a person can sue, he must have not only a legally justiciable issue and a legal forum, but also a personal conceptualization of conflict that is adversarial in structure and remedial in orientation. This article focuses on an ideology of conflict that renders all conflict "non-justiciable," i.e., on a group that does not permit its members any overt remedial actions, but which nevertheless manages to survive in secular society. The ethnographic data derive from a suburban community in the United States. The people who are the focus of the study reported here do not consider that they lack access to justice, but their concept of justice specifically excludes recourse to law. In the conclusion, the implications of the findings for the study of litigation and non-litigation in their social-cultural contexts are explored.

II. CULTURE AND COURT USE

Anthropological studies of litigation divide into three major clusters, which consider: (1) the social relationships between

the disputing parties; (2) litigants as constituents of the courts; and (3) court use as a prerogative of an elite.

The relational distance hypothesis proposes that "the greater the relational distance between the parties to a dispute, the more likely is law to be used to settle the dispute" (Black, 1973:134). Ample ethnographic evidence exists to support this hypothesis, and the concept of relational distance can be operationalized in a variety of ways. For instance, a relationship may be measured in terms of residence (Koch, 1974), kinship (Gulliver, 1963), multiplexity (Gluckman, 1955), or the social costs of rupturing it (Felstiner, 1974). In closed, kin-based corporate communities, these four factors merge, but in other contexts they are analytically distinguishable. The usual explanation for the effect of relational distance is in terms of the disruptive or terminal effect of litigation on social relationships (Krige, 1974; Kawashima, 1969:65; Gibbs, 1967:289).<sup>2</sup>

Nader and Todd (1978:17-18) criticize the relational distance hypothesis by suggesting that it is incomplete by itself:

. . . continuing relationships are but part of the picture. It is not enough to state that because litigants wish to continue their relation they will seek negotiated or mediated settlements with compromise outcomes.

While the relational distance hypothesis is intuitively acceptable in many situations, its emphasis on the relationship between the disputants implies some preconditions in the legal and political context in which disputes occur. For example, the relationship of both parties to the court must be relatively equal in terms of access, power, and the justiciability of claims (see Galanter, 1974). A second precondition is equal knowledge and acceptance of the law. These conditions of social and cultural homogeneity certainly can be found, e.g., among businessmen, rival elite groups, and families, and it is precisely such groups who have contributed importantly to the literature on relational distance and avoidance of the law (see Macaulay, 1963).<sup>3</sup> The community discussed in part III is homogeneous in ways that allow the relational distance hypothesis to operate, along with other factors.

While the relational distance hypothesis manipulates the variable of the relationship between the disputants (and their normative understandings), other approaches to court use focus on the relationship of the plaintiff to the court, and in broader

terms, to the state. They treat disputants as actual or potential constituents of the courts' authority to implement social change (either proactively or reactively) and/or to facilitate existing relationships. Anthropologists and others who view the court this way divide over the court's role: in some studies, courts appear as the protectors of the disenfranchised, in others, as the arms of the dominant elite. Both views are relevant in the community described below.

When courts are protective, they legitimize the complaints of otherwise powerless people, and allow them to be heard and resolved. Vines' (1966) discussion of the United States Federal Courts in the South during the 1950s and early 1960s shows that American blacks had no access to effective power except through the courts, and that the courts' legitimation of their grievances made social change possible. Todd's (1978:119) analysis of cases filed by "marginals" in a Bavarian village is parallel:

. . . the case for the litigious marginal is clear. If he is to achieve satisfaction, the social structure of the community effectively forces him to escalate his grievances and conflicts into disputes, and requires him then to take these disputes outside the village.

Collier (1974) and Starr (1978) also show that less powerful disputants sometimes seek the aid of the court in legitimizing their complaints, thus establishing a new basis for their private relationships within their families and communities.

To some extent, the idea of "litigious marginals" is the corollary to that of relational distance: if litigation is largely obviated by the informal resolution of grievances within their community, litigants will be people for whom the social community has failed in that regard. Access to the court is of crucial importance, since, if socially marginal plaintiffs are barred from the court, they are without recourse except for some form of avoidance (Galanter, 1976 and Felstiner, 1974) or self-help (Merry, 1980). Specific conditions enable "marginals" to litigate. First, the political system must be such that low social status does not compromise an individual's access to the services of the court. Second, the court must be physically accessible (some marginal populations are geographically remote from courtrooms). Third, potential plaintiffs must have knowledge of both substantive and procedural aspects of the law, and the material means to initiate (if not win) a lawsuit. Thus, while marginal plaintiffs may be relatively (or even relatively severely) disadvantaged in material and other respects, it is unlikely that

they constitute the bottom stratum of a society's economic scale.<sup>4</sup> Since all of these conditions are satisfied in the case of the American non-litigants discussed in part III, their failure to litigate must be sought elsewhere.

A more common theme in anthropology is of court use by an elite group that dominates the judicial institutions. A classic case of elite domination of a court system is described by Davis, Gardner, and Gardner (1941), who studied the situation of black tenant farmers in the U.S. South during the Depression (an interesting contrast to Vines, who wrote in a later period). They report that southern landowners used the courts effectively as a means of guaranteeing their labor supply: landowners and local retailers effectively prosecuted tenants' defaults on debts with the aim of restricting their mobility. An earlier American example is Baumgartner's (1978) account of law in colonial New Haven (1639-1665) which concludes more broadly that "law varied with social status": "the most frequent complaint involved a high-status complainant and a low-status defendant; the least frequent was the reverse" (172). Baumgartner says that high-status litigants were "socially closer" to the magistrates (164), although she does not link that finding causally to the fate of low-status defendants. This situation has parallels in the modern colonial context, especially where the dominant political group is also culturally dominant.

Historically, the population of the town described in part III was more sharply stratified than it now is; class lines and religious lines appear to have coincided, for reasons that are somewhat obscure. Class differences have been largely effaced over the course of this century, but the religious and ideological differences remain. Thus, the view of litigation that focuses on elites and dominated groups is relevant, but only in a vestigial sense.

In summary, a review of the anthropological literature that considers the question of litigation and access to law through the courts suggests the following themes: First, remedial strategies differ by degree, not by type. For example, the intimacy of the disputants, the authority of the third party, the formality of the process, the accessibility of the forum (and so forth) can be understood as ranging from low to high, with predictable (see Black, 1976) consequences for disputants' remedial choices. Second, all disputants are potential litigants. And third, litigation and remedial choice-making in general are structurally and functionally congruent cross-culturally. The situation discussed in this paper suggests that in some circumstances the choice between litigation and non-litigation can be

a discontinuous one, that litigation and non-litigation are not necessarily complements, and that several cultural conceptions of law can operate simultaneously within a single community so that patterns of law use are not always structurally and functionally congruent.

### III. HISTORY, IDEOLOGY, AND COURT USE IN AN AMERICAN TOWN

The town which this paper considers is slightly over two square miles in area, with a population of 4,000 (U.S. Census, 1970) in a county whose residents number about 100,000. The population of the town is exceptionally homogeneous: it is white (98 percent in 1970), educated, earning an average yearly family income of over \$12,000, and living in privately owned housing. The city was founded in the early 1840s (the exact date is disputed) and named for the surveyor who routed the railroad down its main street. The fact that the town was a railroad stop made it a regional commercial center of some importance during its early history, especially when the nearby metropolis--Atlanta--was still a minor city with few services. The county was rural until well after World War II, when Atlanta's booming growth finally spilled into its periphery. Two-thirds of the local work force now commutes to the city. In 1970, an interstate highway cut through one edge of the county, repeating the effect of the railroad a century before: it brought a wave of businesses and, this time, several tens of thousands of residents. Although the "downtown" retains its rural look, primarily because its main business district is preserved as a national historic landmark, its residential areas are typical of many new American suburbs in appearance. The old residents and the new live intermingled in the new subdivisions. The community is not divided along any visible lines except a racial one: the town's few blacks live primarily in an old section close to the center of town.

The county court sits in the center of town in a Victorian courthouse on Main Street. It is divided into an inferior court and a superior court, each of which handles both civil and criminal complaints. A retired judge sits once a week in special sessions to hear divorce cases. All other cases are heard by one of two other judges. The county has several justices of the peace, who invariably refer their cases to the inferior court after an initial hearing and a processing fee. The court personnel are well-known and well-liked among the long-term residents; the courthouse is centrally located and is frequently visited for conversation in addition to official business. The court clerks are members of old families, and the judges' families, although considered "newcomers" by the long-term residents,

have lived in the town for about sixty years.

The general pattern of court use in this town appears to be simple enough. Virtually no one who is part of the established population (four or more generations of residence) uses the courts. The civil court is, however, crowded with cases, primarily involving businesses and/or individual "newcomers."<sup>5</sup> This general pattern is not surprising in and of itself, since many Americans never consult a lawyer during their lives (Curran and Spalding, 1974:79), let alone litigate. Whatever interest there is in this pattern is in the fact that it is the newcomers who are the constituents of the court, and not the long-term established residents. The relational distance hypothesis would suggest that people who are involved in face-to-face relationships of some depth and extent prefer and have available less formal, more private, and more perfect remedies than the court offers. Newcomers, having fewer inhibitions or alternatives deriving from their social ties, use the court more freely.

But a single hypothesis cannot account for the two types of non-litigants in the town. These subgroups' membership overlap only marginally: (1) The first group uses the court as an integral part of its adversarial strategies, which take place outside the courts. These people are not court-users, but they are certainly law-users, threatening litigation as a prod toward compliance. This group consists of a network of long-term residents and/or prominent local businessmen and their families. (2) The second group uses neither the court nor the law. It consists of devout Baptists, who comprise the town's oldest Baptist congregation, a group of about 1,500. In demographic and socio-economic terms, the two groups are very similar. In terms of their legal ideologies, they are not. In terms of legal ideology, the first group of non-litigants is continuous with litigants, but the Baptists are discontinuous with both of the other two groups. For the non-Baptists, access to justice means access to lawyers. They express both a preference for "getting along" and distaste for the loss of privacy that a lawsuit represents to them. Their view of the court as an institution is not a negative one; they prefer other remedies when circumstances permit, which they usually do. For the Baptists, on the other hand, access to justice means access to God.

As the town's Baptists explained their faith to me, their ideology proscribes litigation and, in fact, any attempts at redress apart from unilateral forgiveness or prayer. They cite the New Testament: Romans 13:18-19 exhorts Christians to "avenge not yourselves. . . : for it is written vengeance is mine, I will repay, saith the Lord." The town's Baptists interpret this

passage as prohibiting remedial initiatives involving any third party but Jesus. To act otherwise is sacrilege, a failure of faith. Furthermore, the Bible preaches forgiveness, sacrifice, and a community built on love. By these things, Christians can distinguish themselves from non-Christians: ". . . Love one another: . . . By this shall all men know that ye are my disciples" (John 13:34-35). Finally, the Baptists' concern with spreading their faith ("witnessing") to non-Baptists inspires them to lead "lives of good witness," i.e., exemplary lives that will attract non-Baptists to the church. These three factors: proscription of secular justice, the ideal of Christian community, and evangelism, justify avoidance of the courts and all other agents of secular law, e.g., lawyers, for purposes of interpersonal disputing. Baptists view the court itself as a profane institution, needed only by non-believers and the unfaithful. Their rejection of the court applies equally to the roles of plaintiff and defendant. They explain that the Bible is quite explicit on the matter of threatened lawsuits (Matthew 6:40): "And if any man will sue thee at the law, and take away thy coat, let him have thy cloak also." Thus, in the local ideology, a devout Baptist settles out of court quickly and fully any demands made against him.

The local Baptists' view of the court does not preclude their suffering from grievances, only from resolving them at law. They do not segregate themselves from the non-Baptist community, and their range of problems is no different from that of other groups. They live in town, and many of them commute daily to jobs in Atlanta. The potential for victimization is obvious; the town's Baptists often refer to themselves as persecuted--but they also note that the moral triumph is theirs.

The remedies that the Baptists do allow themselves are of three sorts: 1) unilateral (avoidance and prayer), 2) bilateral (apology, joking, and prayer with another person), and 3) trilateral (gossip, counseling, and mediation). These three categories apply to distinct social fields within the town. The Baptist concept of community precludes avoidance within the church congregation; avoidance applies only to outsiders. Avoidance is generally glossed as unilateral forgiveness, but such forgiveness does not take place face-to-face. Bilateral and trilateral remedies apply within the church and to an intermediate group known as "prospects," that is, candidates for conversion. The distinction between insiders (including prospects) and outsiders is, for local Baptists, an absolute one. Acceptance of Christ is the crucial index of the Baptists' world: it separates Baptists from the secular and (therefore) profane world. Local Baptists do not accept other Christian sects as authentic; to be a non-Baptist is to be a non-Christian.

Importantly, then, Baptist Christianity implies a social organization of conflict resolution. Because non-Baptists do not belong to the community of God, Baptists believe them to be dangerous, unpredictable, moved by self-interest--in general, only partly socialized. Although actual relations between Baptists and non-Baptists are routine and cordial, they are constrained by distrust on the part of the Baptists. Baptists expect conflict from non-Baptists, and so seek to avoid them. In practice, they cannot avoid them entirely, since, as I have said, they live lives that are thoroughly enmeshed in the non-Baptists' world. Their avoidance is mental only, i.e., an inner aversion. What is important is that Baptists define non-Baptists as the source and embodiment of conflict. By corollary, within their church community, Baptists exclude the possibility of conflict. Disputes are quickly and generally interpreted as a spiritual lapse: the offender is redefined as an outsider to the church social community by virtue of his having caused trouble. Troublemakers are by definition (or by redefinition) outsiders, and vice versa. Disagreements and minor disputes are handled verbally and, significantly, are not defined as conflict by the participants. Within the church community, harmony exists by definition, and verbal remedies (gossip, prayer, joking, and so forth) are referred to simply as "speech." So, conflict and Christianity follow the same boundary, Christians on the one side, conflict on the other.

Because Baptists locate their expectation of conflict not in situations, or in rules of behavior, but in social structure (Baptists/non-Baptists), their concept of conflict is not defined in terms of time and space. Baptists do not conceptualize or discuss conflict in terms of cases, but in terms of salvation, i.e., acceptance of and by Christ. Harmony and love are immanent in Christians; conflict is immanent in non-Christians. Cases and the adversary model of conflict are entirely extraneous to their concept of conflict. Since the distinction between conflict and harmony does not pertain to behavioral rules, but to professed identification with a sacred ideology, the secular courts and the law in general are completely irrelevant as remedial tools. The only remedy for conflict, in the Baptists' eyes, is salvation.

Several questions emerge out of this discussion: First, are there no circumstances under which Baptists use the legal apparatus of the town; i.e., how well does their ideology account for their actual behavior? Second, why is the Baptist/non-Baptist distinction so salient in this community? Third, why is the boundary between the different groups in the town conceptualized by the Baptists in terms of use of law? Finally, does any of this matter to the other people of the town? The answers to these questions are interrelated.



First, to my knowledge, Baptists do not use legal agencies to press personal claims in the context of disputes, although, as noted above, this absence of litigation is difficult to evaluate given the general American pattern of court use. Baptists do pay taxes, write wills, own real estate, call the police to investigate burglaries, register their marriages with the state, and so on. I have no contemporary evidence that would suggest that Baptists' aversion to the law extends beyond trouble in interpersonal relationships. Thus, in their own dealings with Baptists, non-Baptists do encounter them in the legal settings that are associated with the life cycle and to some extent with business. They are less likely to enter into the Baptists' circle of social relations from which adversarial conflict and the law are excluded. Non-Baptists, therefore, are unlikely to find the Baptists' professed law-aversion credible, since they do not appreciate what the differences between these two settings mean in Baptist terms.

This raises the second question, i.e., why the Baptist/non-Baptist distinction is so salient in this community. It is certainly an important distinction to the people themselves. The local Baptists, for example, lump non-Baptists together as unsaved, and use an array of metaphors for them that merges non-believers with "city folk," businessmen, the wealthy, newcomers, and the power elite, although these groups are in actuality not coterminous, nor even exclusively non-Baptist. For non-Baptists, religious identity has less importance than it does among the Baptists, but the Baptists are referred to as a conspicuous social group in terms ranging from jokingly derisive to overtly hostile. It is clear from conversations, public prayer, and church services, that local Baptists believe themselves to be victims of social prejudice. And although so far as I could observe this is not the case, their belief is important in itself. Finally, this group of Baptists, unlike the South's Baptists in general, do not participate in civic affairs, except, I believe, by voting. They do not run for office nor publicly support political candidates. The local Baptists, then, do not match the image of Southern Baptists in general: they do not enjoy the same cultural hegemony by any means. Why not?

Genealogies, old maps, lists of deacons, church registries, diaries, letters, land records, and other sources suggest that the Baptists' sense of isolation has to do with the history of the town at least as much as with contemporary religious values. The town's first settlers were Baptists, establishing a church only three years after the territory was ceded by the Indians in 1821. The early settlers were poor farmers sparsely scattered over what was to become the town and then the county in the 1840s.

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By then, the town was encircled by two "rings" of farms: the more central consisted of large plantations, and the more peripheral of small farms and small manufacturers, e.g., of jugs and millstones. In 1849, the Methodists established a church, and it quickly became the church of the gentry: county officeholders, doctors, lawyers, merchants, bankers, and the wealthiest farmers all appear on its first registry. The Presbyterians were a small minority on the outskirts of town, dominated by one large and solidary landowning family.

The history of local Baptists, then, is, to some extent, the history of the local small farmers. The small farmers of the county rose and fell twice before the ultimate collapse of small farming in the 1950s and 1960s. During the period just after the Civil War, farmers with small holdings were relatively advantaged in comparison with the large plantation owners, since land lost much of its value, while manufacturing provided a cushion against loss. Land sales records for this period suggest that farmers on the periphery were able to buy portions of the former plantations, improving their economic condition, if not their social position, considerably. During the Depression of the 1930s, small farmers again were able to hold onto their land, and as the suburbs and, later the highway, extended to this area after World War II, their less profitable farms were the first to be sold for development as real estate.

Even so, while this brief glimpse of their history helps account for the composition of the membership of the Baptist church, their conviction that they are disadvantaged, and even their somewhat ascetic values, it does not explain why the Baptists' ideology of law does not extend to reject other institutions associated with the power elite--their business, their credit, and their fashions. Put another way, why is it that the court and the law, for local Baptists, are the relevant emblems of religious identity and tradition? Why not, as among the Amish, for example, agriculture and, negatively, television, current dress styles, and business (Hostetler, 1968)?

Some further history helps answer the last question. At the period when the county was being formed, two major conflicts divided the Baptist church in the United States and the South. The first was the issue of slavery: the Southern Baptists formed a separate convention in 1845 over the slavery question. Soon afterward, the Southern Baptists divided over the issue of missions (essentially a question of church expenditures for benevolent associations). The Southern Baptists were officially pro-mission, but a sizable minority--fearing that some "benevolent associations" might be abolitionist groups--was vehemently opposed, and seceded

from the Southern Baptist Convention. These national and regional issues had a major impact on local Baptists. By their sect's identification with slavery, the Baptist church became identified with the state's aristocratic planters, but the aristocrats were only a small minority in this county. Most of the county's voters were in what was then the Clarke party--a populist coalition that was the eager mouthpiece of Andrew Jackson.<sup>6</sup> The county voted for secession in 1861 (fifteen years after the period we are discussing), but on states' rights grounds, not slavery. So, on the slavery question, the local Baptist church became isolated by the contradiction between its sectarian aristocratic associations and its local small-farmer constituency.

Simultaneously, the missions question divided the local church so severely that by 1847 few members remained. During the decade before secession, the church had to rebuild itself or fail. It managed to revive in this era of intense political strife by preaching against politics altogether. Withdrawal from politics and from political institutions was a strategy for religious institutional survival and credibility. Why withdraw from the courts? The judgeships were the first "plums" of any new administration--they were the most important of a new governor's political appointments. The anti-politics strategy was successful in the mid-1800s during the county's early years of strife and it remains effective today, when other conflicts (integration, zoning, and planning, for example) threaten the community. The church today is burgeoning with over 2,300 members, and a growing budget and physical plant.<sup>7</sup>

Few townpeople I met were aware of the early history of the Baptist church in the town, and none--even at the Baptist church--had any interest in such things, except as odd bits of unrelated knowledge. For the Baptists, scripture is an adequate idiom in which to express their position in the town and their behavior in relation to the court and to conflict. The modern Baptists in town merge city people with newcomers, the rich, the wealthy, and the damned because these are all symbols of the profane world in which Baptists refuse to participate and by opposition to which they define themselves. The histories of the Methodist and Presbyterian churches--whose members today comprise the group of non-litigants who are not law-averse--did not take the same course as that of the Baptists. These churches were never so deeply threatened by political conflict. Thus, the answer to the third question--why legal ideology follows religious lines--lies in the relationship of this particular community to the local, regional, and national issues that have shaped its history.

The final question was whether and why the situation of

legal pluralism in this town matters to the people who live there. Clearly, it matters to the Baptists. A person's orientation toward conflict and the law is determined by his orientation toward God, and to a believer this makes all other considerations redundant. To the non-Baptists, though, whose preference for out-of-court settlements is entirely secular, legal pluralism has a different significance. While they know of the Baptists' aversion to using the courts and lawyers, they do not accept the Baptists' explanation of it because it is in terms of a conception of order that non-Baptists do not share. Where Baptists see the world as divided into the saved and the unsaved, non-Baptists see multiple competing social groups. Where Baptists see Jesus as replacing the secular system, the other groups see Jesus as validating the secular system. Where the Baptists see contradiction between heaven and earth, the non-Baptists see authentication. Where the Baptists withdraw to pray, the non-Baptists assume they are forming a cabal. The role of the "moral majority" in the last presidential election was repugnant to the local Baptists as the very antithesis of their ethic; to the non-Baptists, the activities of the moral majority merely confirmed their suspicions that Baptists use their religion to suit their own political ends. When local Baptists and non-Baptists happen to differ over public matters, as in a particularly bitter recent episode involving the destruction of historic buildings to expand the church's parking facilities, factions divide along religious lines that reiterate endlessly. The non-Baptists' consciousness of legal pluralism in their community is in terms of the competition that they feel divides their community. They perceive the Baptists as a large anti-progressive group, held in thrall by a spellbinding preacher (he is in fact effective, but not the hypnotic hellfire sort), which, as the church grows, threatens to obstruct the development of the county. For the non-Baptists, this last is the central political preoccupation.

#### IV. CONCLUSIONS

The Baptists in the community described above adhere to an ideology which in three major respects differs from the assumptions of the anthropological literature on dispute settlement and law generally, discussed at the beginning of this paper. First, their ideology cuts them off from all judicial resources, and they are also precluded from all forms of overt disputing. This is a double problem of containment and effacement of conflict. In effect, Baptists limit their definition of their jural community to a domain in which conflict is not acceptable. God solves this problem for them, in that he is believed to create and fill a normative vacuum simultaneously.

Second, Baptists do not conceptualize conflict in terms of cases, but in terms of social structure. Conflict is not a question of rules or interests but entirely a question of an individual's spiritual state. Adversarial modes of processing conflict, then, are not appropriate, nor is a remedial system that is oriented towards redress. The local Baptists classify the components of their community's social structure in a way that draws the limits of culture short of the limits of society. Their perception of the unsaved as unsocialized refers specifically to what Baptists see as their untamed individuality, untrammled self-interest, and senseless passion for material things. The Baptists' view of human nature is just that: natural, with precisely the connotation that opposes it to culture. Jesus not only saves, he civilizes. Without Jesus, human law is doomed to fail; with Jesus, human law is superfluous.

Third, Baptists do not accept that human authority has any place in private relationships. They resist both human judges and any secularly-based differentiation of their congregation. Wealth, education, power--none of these matter. Authoritative resolution of disputes is rejected so as to protect relationships from the extension of authority into the relationships themselves. Disputing creates winners and losers, and that is intolerable to a group committed to the equality of its members.

These data suggest several conclusions: First, non-litigants are not all alike. There are conditions under which some non-litigants will become litigants, and the fact that this group includes the town's lawyers and judges probably facilitates their out-of-court effectiveness. For the Baptists, on the other hand, there are no conditions under which they can become litigants without leaving the church.

Second, synchronic and diachronic approaches differ considerably in what they reveal about court use as a cultural question. Taken alone, a synchronic approach (religious ideology) at first appears to be sufficient as an explanation of the Baptists' withdrawal from the courts, although the distinctive features of the local ideology remain perplexing. The Baptists themselves examine their attitudes toward the law in purely religious terms. But an historical investigation shows other dynamics at work. The town's Baptists became "more" religious as they became more threatened by the conflicts of their community. Their sense of isolation as a group and their real isolation from the courts are products of the particular cross-currents that shaped the history of the town, the state, and nation.

Third, as the Baptist example shows, court use may be precluded by an ideology of conflict that is averse to the law and its presuppositions about the nature and meaning of conflict. Specifically, the case underscores three cultural prerequisites of litigation and law use in general:

(a) The law is limited to a domain conceived of as cultural. When social classification limits the cultural domain to some social groups and not others, then we can expect that the ideology of law will see the limits of law in the limits of culture, however culture is conceived. This statement might sound ridiculous or obvious, until we remember that children and the insane are for many purposes outside the bounds of ordinary legal rules and that "natural" relationships such as marriage are also excluded from the law for many purposes (e.g. conjugal privilege, intra-family immunity, the law of rape).

In larger social fields, for example, the absence of overt disputes between American blacks and whites in plantation society (see, again, Davis, Gardner, and Gardner, 1941) or between Indians and Ladinos in Zinacantec (see Collier, 1973) does not mean that conflict does not exist between them, but the opposite. In these cases, the conflict is so profound that it is expressed in an imagery that naturalizes the outsiders, placing them beyond the limits of the cultural (and, hence, remedial) system.

(b) The law requires conceptual links between conflict and self-interest, and between self-interest and redress. This requirement is by no means universally met, since concepts of the self, and of interest (a combination of social structural questions and questions about time) vary widely. Litigation in the West implies a concept of time that is linear and infinite: that is the only cosmological framework in which the rewards of litigation are relevant. The Baptists have a linear concept of time, but a finite one. Time ends on Judgment Day. They believe that there are no legitimate human interests, only divine interests, and that earthly remedies are mere conceits.

(c) The law gives authority a place in private relationships and establishes linkages between individual disputants and their wider society. Social groups who refuse or prefer not to litigate are not only making a statement about the way they value their horizontal relationships, but also about the extent to which they accept the vertical relationships their society offers them. When a disputant ultimately decides to sue, his decision may signify a change in his acceptance of authority more than one in his assessment of his relationship with his codisputant.

At the end of The Ages of American Law, Gilmore (1977:111) concludes with the following passage: "In Heaven there will be no law, and the lion will lie down with the lamb. . . . In Hell there will be nothing but law, and due process will be meticulously observed." Gilmore captures here both ends of a continuum of legal culture that anthropologists have made familiar over the forty years since The Cheyenne Way (Llewellyn and Hoebel, 1941). He also, perhaps unwittingly, reveals much of the romance that westerners from self-proclaimed litigious societies bring to the study of order in other places. The implication of Gilmore's statement--which represents a popular view among both the public and social scientists--is that law use varies inversely with social harmony. The case of the Baptists would at first seem to confirm this view: we might easily conclude that they care so deeply about their relationships with each other that the very idea of law is anathema. More accurately, however, the Baptists reject law first because they reject the intervention of human authority in their affairs. Their ideology of law does not specify alternatives to litigation and law use, but it is very specific in its proscription of third parties in dispute settlements. The absence of legal disputes within the group does not necessarily mean that all among them is harmonious and trouble-free; further, their rejection of law bespeaks cleavage between them and what they see as their community and state.

Given the cultural prerequisites of law, it is possible to imagine circumstances under which rising rates of litigation would indicate the increasing integration of society, not the reverse. When law-aversion stems from a rejection of judicial institutions and the state that they represent, rising law use may signal a positive accommodation to or acceptance of the social system. The law is a basis and means of social participation, quite apart from its potential effect of permanently damaging private relationships. When law aversion stems from a negative attitude toward social groups that places them outside the cultural order, then rising litigation and law use might signal a new acceptance of groups formerly thought to be alien. Even if we choose to imagine heaven without law, we cannot conclude that an absence of law brings heaven to earth.

## NOTES

<sup>1</sup>The ethnographic research that is the basis of part III of this article began in 1973 and ended in 1975, with a brief visit of a few weeks in 1980. With one exception which is noted in the text, the town reported is that of 1973-1975.

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<sup>2</sup>Some ethnographers report that tribunals are sensitive to disputants' needs for enduring instrumental relationships (Nader, 1969; Gluckman, 1955; van Velsen, 1964), and others report no divisive after effects (see text for examples).

<sup>3</sup>Under other circumstances, intimate relations give rise to considerable court action. Collier (1974) shows that women in Zinacantan frequently bring complaints against their husbands in court as a way of adjusting their rights within their husbands' families; Zinacantec siblings litigate, especially over inherited land (Collier, 1973:ch. 8). Starr (1978) also shows that intra-family disputes are a major source of litigated disputes in a Turkish village.

Another element implicit in the relational distance hypothesis is the concept of the jural community. A jural community (by definition) shares a single set of jural institutions, and presumably shares a high degree of normative consensus. Within a jural community, then, one would expect low levels of disagreement over norms. In Aubert's (1963) terms, jural communities exhibit competition rather than disagreement over norms. Conflicts of interest can be resolved without adjudication through the services of mediators or through negotiation (Eckhoff, 1966:160)--i.e., litigation rates within jural communities can be expected to be



low. Conflicts over norms, on the other hand, require an affirmative and authoritative, binding decision whose substance does not depend on the consent of the disputing parties (Koch, 1974: 27-29; Nader and Todd, 1978:11). Following this reasoning, intra-community disputes--that is, disputes among people within a jural community, who are intimates in the terms expressed above--are less likely to end in litigation than inter-community disputes. In other words, the idea of a jural community stresses the "distance" in relational distance. The concept of a jural community also underscores the necessity any community has for identifying and resolving conflicts of interest. The community described in part III accomplishes this in various ways. One group uses the court as a threat, to expedite compliance. The other--the Baptists--redefine private interests so that they, and the disputes they engender, are eliminated from their midst.

<sup>4</sup> A population may be marginal in its own view, or in the view of another group, or both; or it may be marginal in the analysis of social scientists. In both Todd's and Vines' cases, marginality is probably relative to the views of the "insiders" (Todd is quite clear on this). Importantly, neither group of marginals was so peripheral that it was outside the legal systems for practical purposes, nor outside the domain of knowledge and resources requisite for litigation. Both groups were able to take advantage of their own consciousness of the law to find protection in the legitimacy of the court. Both were able to conceptualize and express their conflict in terms that were justiciable by the legal system.

<sup>5</sup> The term "newcomer" might mean anyone whose family settled in town in this century. One judge is considered a newcomer, although his parents moved to town just after the first World War. Currently, most judicial personnel are well-respected newcomers.

<sup>6</sup> For a complete discussion of Georgia politics in this period, see Phillips (1967).

<sup>7</sup> Increasing religious participation is not in competition with secular society, but is a function and facilitator of it, now as then. In the same way that the church destructures (or restructures) conflict, it depoliticizes secular life for its congregants by encouraging a devaluation of earthly rewards. Thus, if Baptist workers are upwardly mobile, they express their success in terms of a widening opportunity for service, not in terms of effective competition or increased personal income.

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