

Introduction

No human society is free of disputes. But how will the disputes be addressed? Here we encounter myriad manifestations of human ingenuity and imagination. “Institutionalized responses to interpersonal conflict, for instance, stretch from song duels and witchcraft to moots and mediation to self-conscious therapy and hierarchical, professionalized courts.”¹ We find all these “dispute-ways” and more.² Even apart from what it is they dispute about, and what kinds of claims will be validated by their society, a people must decide how to process those claims and grievances. Will (or must) the parties allow a third person to resolve their quarrel (so-called triadic disputing)? Or will the disputing remain one on one (“dyadic”), to be fought out, negotiated out, or left to fester? If triadic, will the third party be a go-between, a mediator, or an umpire? If the latter, will the umpire’s decision be final, or will it be subject to review? And will the umpire have some kind of official status (including state power to enforce decisions) or will she be more like an arbitrator—a neutral whose power is derived from the consent of the parties? Where will the relevant norms be found? How will the decision maker resolve disputes over facts and decide what “really” happened? A task repeated in societies around the world is to separate truth from falsehood. How? Any society’s approved way of handling disputes is the result of conscious and unconscious choices that are made within the constraints of the knowledge, beliefs, and social structure available to it.

Among the Central African Azande, the *benge* oracle would be consulted. A small portion of poison would be fed to a baby chick as the question was put to the oracle: “If the plaintiff tells the truth, let the chicken die, let the chicken die, let the chicken die . . .” The chick lived (or died). The oracle had spoken.³ In another time and place (the United States) a judge orders that a jury be consulted. A group of strangers is summoned to a special hall, used only for airing disputes. They hear from the plaintiff,

the defendant, and the conflicting witnesses. The strangers retire to a private room and caucus. They return with a verdict.⁴ In yet another time and place (most of Continental Europe and Latin America), the facts are determined by a specially trained judge whose decision is based primarily on documents and who may not even allow contesting parties to testify.⁵ Every one of these methods is defended in the place it is (or was) used as the best way of getting at the truth about an ultimately unknowable past.⁶ Each of the peoples described possess the same innate capacity to reason and observe the world around them. Why have they reached such different conclusions? How do their preferred methods of disputing reflect their worlds? Do their “dispute-ways” in turn affect their beliefs about the world they inhabit?

That so many different societies have found different solutions to the common human goal of handling disputes while maintaining a cohesive collective life argues for the study of disputing in cultural and social context.⁷ In this book I explore the deep and reflexive connection between culture and disputing processes, a connection that is found even in modern states characterized by technical and elaborate rules of process. The recognition and understanding of this relationship will enrich our capacity to evaluate recommendations for change—particularly when they involve borrowing from other societies. After sketching out my core argument in a bit more detail, I will discuss some unavoidable issues of definition and theory. This introduction will close with a road map of subsequent chapters.

Dispute processes are in large part a reflection of the culture in which they are embedded; they are not an autonomous system that is predominantly the product of insulated specialists and experts. More, they are institutions through which social and cultural life is maintained, challenged, and altered, or as the same idea has been expressed, “constituted” or “constructed.” These institutional practices importantly influence a society and its culture—its values, metaphysics, social hierarchies, and symbols—even as those practices themselves reflect the society around them. In adopting the phrase “importantly influence,” I follow Melford Spiro, who uses the same term, opposing it to the stronger claim that some idea or practice is “determined” by cultural heritage.⁸ Culture is so complex that it would be extravagant to hold that any one set of institutional practices can “determine” it. I thus address the old question of how the social conventions and rules that make social life possible are developed and sustained. My enlistment of dispute processes in the service of answering that question fits

comfortably, if not perfectly, within the modern “enterprise of actually tracing the uneasy relationship of law to culture [that] has begun in earnest.”⁹ As I explain later in this chapter, however, my concerns are both broader and narrower than “law”: broader, because there are many societies whose dispute processes do not involve law as we understand it; narrower, precisely because my obsession with process allows me to neglect the substantive norms affecting the dispute. I apply the “constitutive perspective,” so valuable in understanding how “law” is embedded in social life, to the broader range of practices of disputing.¹⁰

Clifford Geertz’s famous metaphor helps us to understand the constitutive perspective. “Man,” he observes, creates governance “by enclosing himself in a set of meaningful forms, ‘webs of signification he himself has spun.’ . . .”¹¹ Because we inhabit a universe devoid of meaning and lacking intrinsic social structure, we must create both. They are a product of mental processes that include observation, calculation, and imagination. The web is spun with our social arrangements, our symbolic systems, our epistemology, our psychology, and our practices. Moreover, each of these informs the others. The web that holds us is composed partly of those institutions that make social life possible and partly of the internally held system of ideas and beliefs that makes the universe tolerable. Each of us must engage this task. But because we are social animals we are neither free to, nor must we, spin each web entirely anew. We are socialized into a web that at least in part has been spun for us and is communicated by parental instruction, by education, by the functioning of institutions, and by drama and ritual. The procedures we use to resolve disputes are both strands of the web and are among the means by which we transmit its outlines to other members of our society.

An understanding of the *meaning* of particular dispute processes for its participants is essential. To get at these meanings we need an interpretive approach. We must use the related tools of thick description and “cultural contextualization of incident.”¹² That is, we must observe the relevant practices closely and must place them within the culture in which they operate. The task of contextualization is dependent on comparison and contrast; we see what is particular to a society by placing it next to those that differ. In developing my arguments I will therefore employ comparative studies of modern legal regimes as well as anthropological descriptions of small-scale societies.

An interpretive approach to disputing practices is both suggested and aided by the rituals they so often employ in the service of legitimacy, cere-

monials that express in lovely (or terrifying) metaphor the longings and passions that are central to the cultures that produce them. Sometimes they bring into sharp relief the psychic needs shared by all humans but expressed in muted, or at least different, ways in other cultures. Because, perhaps, it is so important and yet so difficult, the creation of disputing institutions has often invoked visual artistry. A wonderful example is the mask worn by Benin diviners when announcing a verdict. A photograph appears on the book jacket. The closed eyes suggest dispassion, much like the blindfold traditionally worn by the figure of Justice,¹³ while the beautifully composed face also suggests a sense of the calm confidence that the justice giver wishes to communicate (or that the society wishes to experience).

But interpretive explanation is not sufficient. Disputing is hardly about meaning making alone. Because disputes are found in every society, finding an effective means of handling them is an essential task of social life. We must also explore the way function and cultural representations interpenetrate. A disputing practice will be better understood when we see how it works symbolically *and* functionally. We can understand the American jury, for example, interpretively, as a representation through action of the societal ideal of populist, egalitarian decision making. And we can understand it functionally as a generally accepted way of choosing between contested versions of fact. Either understanding alone would be inadequate.

Power, too, is always at issue when dispute processes are developed, employed, challenged, and reformed. Dispute-ways are never neutral as between competing social groups, even if they are in fact neutral as between the individual disputants. Who gets to decide disputes, and the means they use to decide, will privilege and handicap different sectors of society. We will see when we turn to the Azande of Central Africa how the ritual control of the oracle underpins their critical social distinctions. And is this same dynamic not illustrated as well by ongoing struggles in the American legal system over the ambit of jury power? As Laura Nader argues, elites will endeavor to restrict court access when the courtroom becomes an arena for effective social change.¹⁴

Since culture is nonetheless my main interest, readers familiar with socio-legal studies may locate my claim that disputing processes “reflect” culture in the continuing debate about whether law “mirrors” society. The notion that law roughly but invariably reflects the culture in which it is found, while virtually axiomatic for some observers, does not command unanimity.¹⁵ An extended meaty challenge to the mirror thesis has recently been offered by Brian Z. Tamanaha,¹⁶ who points to the globaliza-

tion of commerce and the transplantation of legal practices and concepts as reasons to doubt the persuasiveness of the thesis. It is only partly accurate to locate my book smack within this debate. As I have noted, “law” is relevant here only because it is a product of and a source of dispute. My claim is not limited to law; it is about official systems of disputing, whether or not they could be identified as “legal.” Nonetheless, as disputing processes often take the form of legal institutions, and as I argue for a close cultural connection, I must take seriously the objections to the mirror thesis. If I am successful, this book will undermine a particular claim of the anti-mirror theorists, i.e., that official institutions for handling disputes are in large part shaped by professional elites acting within a virtually untrammelled range of technicians’ power. While no one argues that these institutions are wholly the product of a professional priesthood totally insulated from the society they inhabit, and while I do not claim that these priests are putty in the hands of “culture,” I do emphasize the cultural side. The metaphysics, values, symbols, and social hierarchy of any collectivity will set the bounds within which it organizes its dispute-handling institutions.

This analysis has implications for the various current projects of procedural reform, especially those emphasizing the harmonization of rules across national boundaries. It is no exaggeration to claim that “[t]he debate on law and culture might seem to hold the key to comparative law’s nature as a scholarly field and also to its potential as a source of practical guidance for legal policy—as, for example, in regard to legal transplants . . . and harmonization of law between legal systems.”¹⁷ As globalization has led to homogenization of substantive law, it is no surprise that a move toward uniformity in dispute processing has followed.¹⁸ My approach shows why the latter move has encountered more difficulties than substantive harmonization—all the more surprising because it has involved “only” process. Finally, the power of dispute-ways to reciprocally influence the culture in which they are embedded raises a concern that must be considered by those engaged in such harmonization efforts. It may argue for conserving a practice like the American civil jury, because of its role in the maintenance of important values, but it may argue as well for breaking new ground. For example, the introduction of the jury in a society in transition from totalitarianism would be profoundly expressive of a new era of popular participation in government. It would symbolize the relocation of authority and could even change the way individuals conceptualize their relationship to authority.

Even those who are not persuaded by my arguments will, I hope, be enriched by the detailed exploration of the connections that are at its heart.

The Issue of “Culture”

My use of culture as an explanatory variable (dispute-ways reflect culture and in turn affect culture) invokes a term that needs defining and some defending as well. “Constructing a definition for anthropology’s core concept has always been difficult, but at no time more so than the present.”¹⁹ The main difficulties spring from the inherent vagueness of the concept, its potentially misleading message of immutability of practice and belief, and its failure to acknowledge individual departures from, and even opposition to, a social orthodoxy.²⁰ These problems must be acknowledged and care taken to avoid their pitfalls, but they do not trump the utility of the concept. I agree with Amsterdam and Bruner: “We seem to need a notion of culture that appreciates its integrity as a composite—as a system in tension unique to a people not in perpetuity but at a time and place.”²¹

For what purpose do we “need” this notion of culture? I suggest that we need it in part because it serves as a short-hand way of referring to commonalities in practices, values, symbols, and beliefs of particularized groups of people. We need “culture” too, for its power to explain why remarkably different institutions arise in different societies to deal with problems that are essentially the same. I embrace a concept of culture that entails commonalities that persist over time but are hardly eternal and that are widely, but not uniformly, shared by a definable collectivity.²² To quote Kroeber and Kluckhohn, “the essential core of culture consists of traditional (i.e., historically derived and selected) ideas and especially their attached values; culture systems may, on the one hand, be considered as products of action, on the other as conditioning elements of further action.”²³

More specifically, the definition of culture used here includes the “traditional ideas, values and norms” that are widely shared in a social group.²⁴ Culture includes propositions of belief that are both normative (“killing is wrong except when authorized by the state”) and cognitive (“the earth is round”).²⁵ Culture also includes the symbols that represent those mentalities for its people (the figure of Justice with her scales; a desktop globe). Does culture properly defined also include the institutions and social arrangements that are particular to a society (law courts; as-

tronomy faculties)? The answer must depend on the purposes of the definition. In the context of this work, disputing practices and institutions are one variable. It is argued that this variable both explains and is explained in part by culture (ideas, values, norms, and symbols). The two therefore cannot be entirely conflated in this enterprise. Disputing institutions are at once a product of, a contributor to, and an aspect of culture. Their form can be evidence of some pervasive quality of a society, but to avoid the trap of tautology, I will support any such claims with other evidence of the same quality elsewhere in the beliefs and practices of the society in question. It is then coherent to argue that dispute-ways are reflexively intertwined with both ideation and practice: “[C]ulture thus consists of meanings, conceptions, and interpretive schemes that are activated, constructed, or brought online through participation in normative social institutions and routine practices. . . .”²⁶ Disputing is one of those “routine practices.”

Anyone who would contrast one culture with another faces the difficult problem of finding boundaries, of identifying the social unit to characterize as a separate culture. With respect to a geographically isolated small-scale society such as the Azande, described in chapter 2, this presents only modest difficulties, especially if the time frame is circumscribed, though even then there may be differences in “culture” among subgroups. Far more troublesome is the ascription of culture to modern peoples whose principal common identity is citizenship in a nation state of many millions of people. At this point I mean only to surface the issue. I will return to it in chapter 4 when I discuss the special case of American “exceptionalism.” As we will see, both interpretive and empirical forms of inquiry support the claim that even this most heterogeneous of nations, the United States, has a particular culture, and that it is deeply connected to its official disputing practices.

The Explanatory Power of Culture

Not only is the invocation of “culture” defensible as a tool for understanding dispute processes; it is also necessary. It fills gaps left open by other studies of the relationship between disputing and society. Simon Roberts, for example, has explored the puzzling variation in the acceptability of violent self-help in different small-scale societies.²⁷ Violent disputing will be found, it is said, where existing social arrangements do not permit or facilitate the emergence of third parties who might mediate or otherwise di-

rect the quarrel away from violence. This may be because living arrangements, kinship groups, and the like do not permit anyone in the group to be neutral when a dispute breaks out. Roberts acknowledges the limited utility of these explanations in explaining the practices of all the societies observed, and he ultimately attributes the degree of violent disputing (or, alternatively, settlement-directed talking) to “the values and beliefs held in the societies concerned.”²⁸

Economic life, i.e., the way a people survives in the world, whether as small bands of hunter-gatherers or as a complex modern state, surely affects disputing, but again cannot explain all of the differences observed.²⁹ Dispersal is a common method of dealing with ongoing disagreements within small bands, but it is less likely to be found where harsh local ecology means that each member’s survival depends on continuing cooperation.³⁰ Yet there are also often differences in dispute-ways among societies with similar economic and social systems. Interesting is Roberts’s report that “[o]ne respect in which societies of hunters and gatherers differ a great deal from each other is in the extent to which fear of supernatural agencies is seen to be important in the prevention and handling of conflict.”³¹ It is these cases that display the deep connection between the symbolic tools of a people and its preferred means of dealing with dispute. I pursue this theme in detail in the next chapter, using the Azande as a case study.

A detailed argument for a relationship between economic organization and forms of disputing is provided by Katherine S. Newman.³² She presents a typology of preindustrial societies based on eight kinds of “legal systems” that she ranks in accordance with their level of “complexity.”³³ The latter is determined by whether one or more of five characteristics of dispute-resolution systems (such as use of a third-party decision maker) is found in the society.³⁴ Newman examined a sample of societies that she constructed from anthropological texts to test her hypotheses.³⁵ She concludes that in precapitalist societies a “materialist approach” is useful “for explaining the distribution of legal institutions. . . .”³⁶ But despite her investment in materialism, Newman recognizes that a full understanding of the disputing processes in a society requires more than an economic dimension: “Indeed, the ‘idiom’ of law, the language in which its concepts and conflicts are expressed, is surely a matter of cultural determination. . . . Many ritual taboos, religious practices, and normative values embodied in legal codes appear to have little connection to economic relations.”³⁷ My interest includes the matters that economic ap-

proaches obscure, matters nicely summed up, in Newman's phrase, as the "idiom" of dispute-ways. This necessarily enlists the concept of culture and demonstrates its enduring utility.

The Boundaries of "Dispute"

My second core concept, dispute, also poses a definitional challenge. Its elasticity stretches across a range of human disagreements, from spousal spats to world wars.³⁸ Disputes can arise from perceived or real acts of wrongdoing or from conflicting claims to desired goods.³⁹ And, of course, the method of disputing can take many forms, from reasoned discourse to armed and fatal combat. Some prescription of scope is desirable in the interest of manageability. Since my goal is to examine the relationship between socially countenanced dispute-ways and the culture in which they are found, I will focus on intragroup disputing. Although the conduct of warfare is itself subject to the regulation of each culture, such rules reflect considerations very different from those applied to disputes within the group. I will try to stick primarily to disputes that are serious enough to occasion the use of what can loosely be called an institutionalized form of disputing. Such self-imposed limitations cannot, however, be absolute because the categories are themselves so porous. The capacity of the official and the informal to bleed into each other is illustrated by the American judiciary's enthusiastic embrace of forms of dispute resolution still called "alternative." This is taken up in chapter 6, "The Rise of ADR in Cultural Context."

In most societies there is more than one approved way to deal with disputes. And some persons may carry on their disputes in socially disapproved but not uncommon means, such as domestic violence in the United States. The method used in a particular situation will depend on the relationship between the parties, the nature of the dispute, and the costs of various possibilities. One may therefore ask how I choose a particular process for comment. Why focus on official processes such as the *benge* oracle or jury trial? I do not contend that study of informal or illegal means of disputing would not provide much of interest to the student of culture, but I argue that the study of the most prominent, public, and official forms of disputing will also express cultural and social themes. And, because of their privileged, not to say sanctified status, they will have the greatest impact on the broader society. Those practices are not only a

means of resolving disputes; they are a means of signaling values, beliefs, and social roles.

To be sure, the risk of focusing on officially constituted institutions and practices is that, as the anti-mirror theorists mentioned above would hold, they are the captives of the political, professional, or economic elites of their societies and for that reason are a poor vehicle for the study of the relation between culture and process. In part, this book is itself an extended effort to refute that approach. In my view, any analysis that totally separates professional elites from the culture in which they are embedded is unrealistic. Even Pierre Bourdieu, who argues that it is in part the ritualized monopolization of tools of language and practice that gives the domain, or “field,” of law and its practitioners the power and privilege that they enjoy, argues as well for the interconnectedness of law (a particular form of dispute practice) and “the social order itself.”⁴⁰

There are two ways in which professionalized dispute-process elites will interconnect with the society in which they operate: in most cases, they will themselves be products of that culture, and will in general share its metaphysics and values. These will inevitably affect their view of what is right and good in choosing among competing methods of identifying true facts and just norms. Second, even if elite organizers of dispute-ways do not themselves actually believe in the validity of broadly held norms and beliefs, there is an incentive to create procedures that resonate effectively with those subject to them, as those are more likely to win acceptance.⁴¹ This requires a cultural connection.

The disputing-culture link is at its most robust in cultures that do not strongly differentiate between dispute practices and everyday life, such as small-scale, technologically simple societies. In technologically complex modern societies, disputing practices are more likely to mirror the broader culture to the degree that the state is a stable democracy. In that case, the ruling elite is likely to emerge from the general public, and therefore to share its values. Its legitimacy, moreover, will be dependent on general satisfaction with the dispute practices it constructs. It is not surprising, contrariwise, that the institutions imposed by colonial governments may differ sharply from the folk practices previously employed. British rule over the Azande was a good example—force of arms enabled the imposition of British-style courts for important matters, though it did not enable internalization by the subjects. Postcolonial elites may, for reasons of their own, maintain imported dispute institutions. Here again, the failure of those institutions to mirror still-pervasive cultural values does not present a

strong challenge to my overall thesis of connectedness. Given enough time, the imposed order and the local culture may reach an accommodation that involves some mutual interpenetration.⁴²

Norms of Behavior or Norms of Process?

In examining dispute-ways transculturally we find variety in norms (rules of proper conduct) as well as in processes (rules for dealing with violations of norms and other disputes). The link between norms of behavior and cultural values has been often noted. I want, as much as possible, to explore instead the processes side. Thus, it is of relatively little importance to my enterprise that the Azande, an African people discussed at length in chapter 2, consider adultery a serious wrong. It is much more interesting and important for this project that they consult oracles to determine whether it has occurred.

The distinction between the two dimensions—norms and processes—is not easy to maintain, in part because the distinction is itself a product of social construction.⁴³ In some small-scale societies there is no explicit category of lawlike norms; they seem rather to be imbedded in custom and invoked implicitly in the way disputes are resolved and life is lived.⁴⁴ Even in technologically sophisticated societies, processes and norms are sometimes inseparable. The elusive nature of the boundary between procedure and substance is thus, to take a close-to-home example, a chestnut of civil procedure in the United States.

The U.S. Supreme Court has occasionally had to explore this boundary because the Court has the statutory power “to prescribe general rules of practice and procedure” for cases in the U.S. courts but cannot promulgate rules or statutes governing substantive law.⁴⁵ Keeping the two separate has proven troublesome.⁴⁶ The Supreme Court acknowledges that a rule that affects important normative rights can still be procedural in nature.⁴⁷ One might have thought, for example, that the power of a court to compel a litigant to undergo an involuntary medical examination would be “substantive,” or a matter of norms, in the sense used here. Notwithstanding the importance of bodily privacy in America, the Court held that the issue could be considered procedural within the context of litigation and thus a legitimate matter for judicial rule making.⁴⁸

The cultural aspect of the norms/processes construct is highlighted by Christopher Stone’s essay, “Should Trees Have Standing? Toward Legal

Rights for Natural Objects.”⁴⁹ “Standing” is one of the doctrines of American law that regulates access to court. An action brought by a party that does not have standing will be dismissed, even if the underlying claim has merit. Since the rules of standing do not purport to turn on the legality of the defendant’s conduct, it is in that sense a rule of process. Stone’s essay, as its provocative title suggests, reconsiders law’s approach to nature. Do natural objects have legal claims apart from their “owners”? To put the issue in terms of standing is intriguing and very helpful to my present point. Even if trees were accorded standing, the question whether they have substantive rights would still be open. Stone notes that “to say that the natural environment should have rights is not to say anything as silly as that no one should be allowed to cut down a tree.”⁵⁰ However, he also recognizes that the procedural decision would signal a profound shift in the relationship between humans and the environment and would have many ramifications for primary conduct, “because until the rightless thing receives its rights, we cannot see it as anything but a *thing* for the use of ‘us’—those who are holding rights at the time.”⁵¹ Thus, a procedural change may have a profound effect on cultural assumptions and even on an understanding of the nature of reality.⁵² The issue of standing for trees at once illustrates the difficulty of keeping a strict divide between norms and processes and suggests something of the deep connection between ideas about process and cultural assumptions.⁵³

This attempt to draw some boundaries between norms and processes invites exploration of how the concept of “law” fits into my argument. Of course, for much of the twenty-first-century world, dispute institutions are embedded in a system usually referred to as the rule of law. But while “law” cannot exist without such formal institutions, dispute-ways are found even where law, as usually defined, is absent.⁵⁴ This distinction is important. Focusing on the practices of disputing, rather than on legal systems created by some societies to handle disputes, expands the space of the inquiry. Whether the disputing methods of technologically simple societies constitute legal systems is not so easy to say. The answer turns as much on one’s definition of law as on careful observation of the people in question. So, with Roberts,⁵⁵ I think it better not to limit the discussion to practices and beliefs properly considered “legal.” I ask, rather, how people dispute, and what their dispute-ways say about them and their constructed world.

Ironically, a catholic approach to disputing means that I cannot avoid the concept of law entirely. Law is too important a concept for the dispute

systems of too many people. Legal systems, too, are socially constructed dispute-ways and in that vein, attention must be paid. To tip my hand a bit, one might say that “law” and “oracles” serve similar functions for different peoples. Law is considered as a cultural construct in chapter 3.

Looking Forward

In this introduction I have given the reader a sense of the purpose and importance of my project. I have sketched the utility—indeed, necessity—of a cultural understanding of dispute processes. And I have dealt with knotty problems of scope and definition. In chapter 2 I use an ethnography of the Azande to show in detail how dispute institutions are culturally imbedded and socially constructed and how dispute institutions themselves play a role in the construction and transmission of social arrangements, belief systems, and values. Far from being an irrelevant piece of exoticism, I think that by plainly revealing the place of dispute procedures in their social life, a study of these people helps us better understand the culture-disputing connection. Attention to the Azande therefore suggests a way of looking at disputing “culturally” in modern societies.

Chapter 3 applies the lesson of the Azande—that dispute practices are both reflective and constructive of culture. I take the difficult step back needed to see the dispute practices that prevail in the developed nations in broader context. For them, as for the Azande, dispute practices are cultural constructs. Processes have been devised that are in part rituals that validate the social transformations that follow their application. These dispute-ways communicate something of what people believe about the universe and about a proper social order. To sharpen the point, I engage in an extended metaphoric analysis of the ways in which law and evidence function like oracles.

Chapter 4 moves from the general features of disputing regimes used in modern states to a comparative and cultural account of the institutionalized disputing practices used in the United States. I focus on the formal rules of American civil procedure and show that they are reflective of deeply held values and beliefs.

Chapter 5 addresses a peculiar aspect of American dispute-ways, the rise of the doctrine of “discretion” in American court procedures, and shows how an interpretive understanding of this doctrine sheds light on its growth as well as on the nature of the system that employs it. This

chapter also considers the interrelationship of the goals and needs of the elites that operate the legal system, and social and cultural developments exogenous to it.

In chapter 6 I examine another puzzling phenomenon, the turn to Alternative Dispute Processing (ADR) in late-twentieth-century America. I present the evidence of the shift away from adjudication as such to alternate forms as arbitration and mediation and sketch out the doctrinal judicial and legislative acts that facilitated it. A review of the history of disputing in the United States shows that the search for alternatives to the courtroom has long been a backdrop to the dominance of litigation, though often within particular subcultures. The vigor with which the search has been pursued of late is traceable to a combination of institutional, political, and cultural forces that are explicated there. Some proponents of mediation have urged that its emphasis on mutuality and relationship building (in place of adversarial litigation) will nurture such angels of being and will improve society as a whole. This intriguing notion implicitly recognizes the constitutive nature of dispute institutions, so I use this chapter to begin an examination of that process.

Chapter 7 explores the role of ritual in disputing. I argue that rituals that evoke other social practices are used to legitimate dispute-ways and are therefore another connection with culture. I also claim that over time disputing practices themselves take on a ritual-like quality that enables them to effect the social transformations that are the end result of the dispute process.

In chapter 8 I turn directly to the constitutive or constructivist claim: the contention that dispute processes are important to the maintenance and creation of culture, broadly understood. I therefore look closely at the psychological and social processes through which belief is collectively and individually internalized.

The conclusion suggests the utility of my cross-cultural observations. I argue that policymakers considering changes in disputing practices should not disregard the capacity of officialized dispute-ways to resonate throughout the broader system of values, symbols, beliefs, and institutions. This is not an argument against reform, but a plea for wisdom in its development.

A brief afterword shares the extraordinary experience I have gained from teaching material that challenges the settled and familiar understandings of students and teacher.

We are now ready to spend some moments with the Azande.