CLERKS AND CLIENTS: PARAPROFESSIONAL ROLES AND CULTURAL IDENTITIES IN INDIAN LITIGATION*

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Accounts of the legal scene in Asia often refer in passing to the activities of a shadowy set of backstage characters encountered in the peripheries of the law. The assessment of the peripheral figures has varied. Only very recently have they received much direct attention from students of Asian social life and those concerned with planning social change. Earlier accounts came mostly from colonial administrators, law officers and occasionally from the local intelligensia (Morrison, 1972b: 327). These reports were invariably derogatory. They blamed these peripheral figures for a socially and economically destructive proliferation of litigation, and depicted them as swarming at the courts where for ill-gotten personal gain, they encouraged and facilitated lawsuits among the peasantry. But these figures were never described in much detail and their work seems rarely to have been observed at first hand. A variety of European terms were used to characterize them: "sea advocates," "bush lawyers," "touts," and the like. Both lay and semi-official roles seemed to be included.

More recent accounts of these same people and their activities have been somewhat less derogatory. Most of these later accounts have come from Western-trained social scientists. These writers have tended to depict the peripheral specialists as performing normal and useful social functions. They have implied that if there *has* been an actual increase in litigation (and there are doubts about interpreting figures here), then the "peripheralists" are not to be blamed for it. They are seen, on the contrary, as interpreting and mediating between segments of the society

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and levels of the culture that otherwise would remain disparate or mutually unintelligible. The "sea advocates" and others appear, in these accounts, as humble middlemen operating between the modern, alien and forbidding formality of law and government and the norms of the largely rural population. Certainly something can be said for this argument. But, as with the earlier denunciation, it leaves us mostly uninformed about the actual interactions it interprets, and a number of interesting complications are ignored. The "positive social function" view of the "sea advocates" has not been adopted by the formally qualified lawyers who occupy much of the local legal stage in Asia. Among them, the denunciation of these marginal figures continues with increased vehemence; at best, they are regarded as meddlesome and, in general, are thought of as real or potential rivals.

There has recently been a renewed interest in the peripheral specialists of the Asian lawcourts, stimulated in part by analogy with developments in the administration of justice in the West, where attempts to make legal remedies more available to "the poor" have involved proposals for utilizing a wide range of "paraprofessionals." The term "paraprofessional" has some shortcomings in a discussion of Asian bureaucracy. By themselves, the ideas of "professionalism" and particularly of "the professions" are intricately derived from the social history of Western Europe and North America. Their unqualified application outside this region can be misleading. In India, for example, "government service" provides the aura of personal respectability or prestige that Anglo-American culture often attributes to "professional" status. Similarly, Indian professional associations do not have the powerful independence that legal and medical associations have sometimes developed in the West. By the same token, the personnel of Western social welfare agencies, the "paraprofessionals" of our legal aid schemes, can be equated with the Asian peripheral specialists mentioned above only at the risk of considerable distortion. I will continue to use "paraprofessional" here, however, for other terms are likely to be either just as imprecise or insufficiently general.

The shadowiness of the paraprofessionals in the little community of the Indian bureaucratic complex that comprises "the courts" comes largely from their peripheral or marginal status; some of it, however, is from lack of scholarly interest in them.[1]

1. In addition to the other studies of Asian legal paraprofessionals mentioned in this essay, see also the communication by B. M. Hooker in *Journal of Asian Studies* (1973: 661), which comments on my discussion (1972b) of Indian *munshis* and on the parallel example of the Malaysian *"kerani"* (clerk) or "petition writer."

The purpose of this essay is to provide, from a social anthropological point of view, a preliminary and selective guide to some aspects of the provincial Indian legal scene by focussing on two kinds of peripheral specialist—lawyers' clerks and "chronic" litigants—as these were observed at the district courts of the North Indian state of Haryana.

In the following discussion, I use the basic social structural ideas of "person," "group," and "category."[2] "Status" and "role" refer to aspects of "social person." The former indicates a position on the structure of social relationships under discussion, the latter (role) refers to the expected actions that go with a given social status. A role is performed, not just occupied; and there is much variation between the performances of different incumbents of a particular position. Durable social "groups" (in contrast to sets of individuals bound together by some more or less fleeting cirumstance) have determinable membership and their recruitment is limited by explicit criteria or relatively inflexible rules. A district bar association, a particular lineage, a "corporation" of village landowners are examples of social groups in this sense. The "cultural identities" of my title refers to the categories of people who are regarded by their fellows as sharing some attribute or set of characteristics but who are not formally organized, recruited, or corporately identified by themselves. The chronic litigants or *mukadma baz* discussed below are members of such a social category. In part, this essay concerns the way roles associated with one context are sometimes played out in quite other contexts, for it examines the way informal help is given in formal circumstances and how "official" modes and attitudes are sometimes adopted in the milieu of neighbors and kinsmen.

RESEARCH STRATEGY AT THE DISTRICT COURTS

I have discussed in some detail elsewhere (1968) the "atmospherics" of a typical district court in Haryana and forego repetition here. Districts are the major subdivisions of Indian states; there are some four hundred districts in contemporary India. One finds a great variety of roles being enacted at the district court. These roles can be arranged in a series from those performed by the incumbents of predominantly official statuses through those characteristically performed by completely lay figures. At one pole, for instance, we could place the judge or district officer. The nature of the paraprofessional services he per-

2. I am indebted to my colleague, Robert McKinley, for some of the wording of this paragraph.

forms is both limited and enhanced by the visibility and high rank of his office. (Accusations of corruption at this level often revolve around activities that might, for the present purposes, be classed as "paraprofessional" services.) At the other pole, we could place the services of a completely lay counsellor—someone who had no claim to association with officialdom or of formally qualified competence. In the district courts, such services might be provided by a respected neighbor or a senior relative of a litigant who offers not evidence as a witness but advice or moral admonition. Between the professional who can sometimes provide an important "paraprofessional" service (e.g., providing information or introductions) and the laymen who *cannot* by definition provide anything "professional" in nature there are numerous intermediate positions and roles.

Many who work at the district courts are strictly speaking employed in the district administration rather than in the courts proper. This distinction is often of little practical relevance; an understanding of the daily life of the law courts requires some grasp of the district administration, both as a formal system of management and as a cultural system of categories and statuses. These two aspects (the formal and the cultural) are not quite coterminous. The latter includes identities that never occur in office manuals or flow charts of the system (e.g., stamp vendors, letter writers, and various kinds of messenger). Similarly, the Indian bar is formally organized so that a diagram of the bureaucratic community at the district level would have to show the lawyers overlapping both official and public segments. Again, a detailed cultural analysis of that community would have to account for important social differences among lawyers that are not mentioned in official directives.[3]

Several strategies for such a sociological account are possible. One might attempt simply to elicit and list all identities separately and briefly catalog the associated activities. This would be repetitive and "explain" very little. Elsewhere I have suggested that a more promising approach is to group together (on the advice of informants) identities and role activities that overlap or involve manifest interdependence (Morrison 1972b). One can then examine the nature of the relationships within and between such clusterings. In the Indian district courts, for instance, gazetted officers, lawyers, and rural litigants each seem to form nuclear identities in three such role-sets.[4]

3. See Lev (1973).

4. As noted in Morrison (1972b: 311, n.3) I have been helped by Robert Merton's idea of "role-set" in thinking about the relations of clerks, clients, and lawyers.

The undertaking appropriate here is more limited. Where (we might ask) in the complexity sketched above should the indigent and inexperienced seeker-after-justice turn? I am certain that my provincial Haryana informants would, to a man, have replied "Homeward, at once!" (or with words to that effect). Leaving aside such cynicism, the intention of the question could be pursued by asking: in what social contexts is information about the working of the court most regularly yet informally exchanged? More particularly: Who provides such information?

Chief among the self-appointed purveyors of informal expertise at the district courts are the *munshis* and the *mukadma baz*, the lawyers' clerks and the "chronic" litigants themselves. The remainder of the essay concerns these two identities.

LAWYERS' CLERKS AS PARAPROFESSIONALS

The average Indian lawyer's office is far simpler than that of the humblest of his Western counterparts nowadays; his need for personal clerical assistance is correspondingly modest. A lone clerk (*munshi*) and a part-time typist are the usual staff. The *munshi* is frequently either a youth or an old man and typically he has had little more than a year or two of secondary education. He is a low-level generalist whose duties include domestic errand-running and message-carrying, besides the more obviously clerical tasks of record-keeping.

Like domestic peons in India, *munshis* tend to be transient. They move from lawyer to lawyer after a year or two's service for each master. And they drift in and out of the occupation, between it and others of equally marginal nature. The insecurity of the job is related both to the tensions that go with its ambiguous definition and to the less pronounced transience or mobility of the lawyers themselves. Law training in India, as elsewhere in Asia, is usually viewed as a step in the direction of government service. Actual private legal practice is regarded by many (younger lawyers particularly) as merely incidental and temporary, a form of disguised unemployment.

The leaders of the local bar are, by definition, men with bustling practices. They demand more clerical or even outright legal competence of their *munshis*, but they offer them in turn greater prestige and security. Consequently, the occupational style of the leading *munshis* is somewhat more formal than that of the majority of clerks. The leading *munshis* I knew were too busy and too discreet to be found very often engaged in casual

gossip with clients. I would judge they performed fewer ancillary or peripheral services for clients than did the *munshis* of most lawyers. They come in contact with far more clients, however, so what they did of a paraprofessional nature may in the long run have been of greater significance.

I have discussed elsewhere the way *munshis* contribute significantly but informally to the daily organization of a district law practice in India (Morrison 1972b). For instance, enquiries about procedures which a beginner at the bar might not wish or know how to make for himself are typically handled by his *munshi*. Other *munshis*, minor government clerks, police constables and even unsupecting other lawyers can all be quizzed by a young lawyer's *munshi* to the advantage of his master. Established lawyers also find valuable the *munshi's* marginality and ambiguous status, somewhere between trusted confidant and mistrusted domestic drudge. The very transience of *munshis* between lawyers means that *munshis* are often sources of information about the practice of rivals in the bar; conversely, they are forever being accused of treachery by their former masters or suspected of it by their present ones.

Much of this mistrust and suspicion emerges in disputes over the payment of *munshis*. *Munshiana* is a clerk's fee, usually said to be ten percent of the lawyer's fee. It is traditionally received by the *munshi* in each of his master's cases that reach a hearing before a judge. Some lawyers also pay a small salary (averaging about Rs.25 per month in 1970). The larger the practice the smaller the salary since the *munshiana* is proportionately more. A few lawyers claimed to discourage *munshiana* and said they paid their *munshis* larger wages. (An additional tip, called a *shukriana*, is often paid to both lawyers and *munshis* by elated clients after a successful outcome in a case. It is apparently not uncommon for a *shukriana* to be promised by the client and then reneged or evaded.)

Lawyers often told me that they refused to handle the payment of the *munshiana* for their clients. This refusal seemed to be part of a common attitude about clients' money. Many lawyers say they will not handle a client's money during a case (other than direct fees), fearing later accusation of misappropriation. There are, of course, practical as well as moral factors involved: government office and public banking procedures in the developing nations are usually immensely time-consuming. From the lawyers' point of view, it makes sense for the client to do much of his own legwork. The actual settlement of the lawyer's

fee is the subject of subtle bargaining (and sometimes open argument). If the lawyer has kept the *munshi* ignorant of the fee finally settled with the client, there may be disagreement between the latter and the *munshi* over the basis of the *munshiana*. *Munshis* also say that lawyers often defraud their clerks of the fee by claiming that a particular client is a kinsman or from the same village and that no fee is being charged. Then, the *munshis* say, the lawyer takes the *munshiana*. Even when it is known that a reduced fee has been arranged, the *munshi* may argue that he is nevertheless entitled to a larger payment. Conversely, kinsmen and affines, friends and neighbors, *do* number among those to whom a lawyer gives free "legal aid." But he does not always feel he should honor the claim made on him by a client who asserts such a tie. The *munshi* may then be used informally by the lawyer to put pressure on someone who really is a kinsman and whom, for that reason, the lawyer feels diffident about approaching directly concerning fees or necessary expenses in connection with a case.

It is, however, in relationships with the clients that the *munshi* can best be characterized as paraprofessional. He sees as much of the litigant as the lawyer does—more, perhaps for he often sits chatting with him at the lawyer's booth while the latter is in court or on other cases. In this context of informal gossip crucial information may be exchanged. When the lawyer returns, the interaction shifts (slightly perhaps, but perceptibly) to a more guarded and formal mode. With the *munshi*, however, the client often can, if he chooses, "be himself"—professing ignorance of the legal procedures being followed, or admitting curiosity or, if he is experienced and affluent, assuming a patronizing air and attempting to direct the *munshi*'s efforts. In turn, the *munshi's* relations with the client (after the fashion of some doctors' receptionists in the West) are often much more blunt or familiar than those of the lawyer with the client. By the same token, of course, interactions between the clerk and client are often more informative and less evasive in content (here perhaps contrasting with the Western parallel just noted).

Moreover, according to local theory there is likely to be less divergence between the public style of the clerk and the client than between the latter and the lawyer. The bulk of clients at a district court are rural folk. The *munshi*'s occupation is an urban one, part of a bureaucratic system that, perhaps more than anything else in urban provincial India, contrasts with "the village." Obviously no one employs a raw and illiterate villager as a *munshi*. But it would be a mistake to picture *munshis* as

"city slickers" or even as exclusively urbanite. Many of the *munshis* are in fact residents in the periurban fringe of settlements around the district headquarters town; they cycle or walk to work from village homes perhaps as far as ten miles from the town. The majority, however, live in the city either with their families or with relatives or alone in rented rooms. All but the youngest of *munshis* dress much as village shopkeepers do—in *kurta* and *pajama* or even *dhoti*. Lawyers in North India invariably wear some version of an official dress, most usually a black jacket and white shirt and trousers; they are sometimes referred to as "the black-coat people" (*kalikot log*) and are conspicuous in a provincial crowd. In general, there is little in the outward style of life and manner of most *munshis* to differentiate them from the villagers and poor townsmen who made up the bulk of their masters' clientele.

In summary, then, we can note that in dealing with the bureaucracy, the *munshi* and his master present a unified front. Their relationships with one another are, however, often tense and hostile. The financial basis of the lawyer-*munshi* relationship provides the main focus for this tension and for the disputes that erupt between lawyers, clients, and clerks. Suspicion and mistrust pervade the relationships of those who regularly have business at the district courts. Between rival parties in a case, of course, these attitudes are openly expressed. They are common, but more covert, in relations between clients, clerks and lawyers.

CLERKS AS "FIXERS" AND "TOUTS"

The disputes just mentioned also reflect the ambiguity with which the *munshi's* role is defined (both in the organization of the legal system and in the more general social milieu) and the delicate position that the *munshi* occupies between client and lawyer. A *munshi* who thinks of himself as a master of court procedures can begin to feel himself independent of the lawyer who employs him. There are other aspects of the matter, however. Daniel Lev's discussion of lawyers in Indonesia makes the point that when informal or even illegal operations are called for in the course of a case, a more explicit division of labor develops between advocate and client outside the court. While formal legal matters are attended to by the advocate, illegal work is left to the client or his underground counsel, usually a professional or *ad hoc* fixer (Lev 1973).

Much the same analysis could be applied at the Indian district courts. Sometimes it is the *munshi* himself who acts as the un-

derground counsel. *Munshis* are often said to "tutor" or "coach" witnesses in the giving of biased or deliberately fabricated evidence. It is hard to measure how much of this actually occurs. There is no real privacy in district law practice and little if any concern about its absence. Other clients, would-be litigants and mere bystanders openly hear the lawyers and their clerks discussing the details of cases. Possibly some of this "normal" strategy-planning is misconstrued by those who overhear it and perceived as devious manipulation.[5]

A view common among Indian litigants depicts lawyer and clerk as involved hand-in-glove in an unscrupulous alliance to fleece the client. It is in this view of the legal profession that the term "tout" is most often used. In Indian usage, a "tout" is an agent who brings in business to a specialist in return for a commission. It is sometimes said that herbalists and genealogists employ touts. These agents frequent bus and train stations at major regional centers to bring gullible clients to the *pandits* and *vaids* who make a business of maintaining local family records or curing a variety of ailments. The term "tout" is overwhelmingly associated with the legal profession, however, and is one of the derogatory labels used in discussing some of what I here consider "paraprofessional" activity and services.

"Toutism" is undoubtedly one aspect of the *munshi*'s role as it is for other roles enacted at the district courts. But the denunciation of "touts" has often been made as though they were members of a readily isolated and unambiguous category, a despised corps of intermediaries battening on the legal profession.[6] This view takes no account of the fact that intermediation is an important element in Indian social life, where direct confrontation other than among kinsmen is felt to be inappropriate or inauspicious—even when it is otherwise quite possible. "Toutism" in this usage labels only that derogatory view of intermediation which assumes that it is based on pecuniary motives and which ignores such factors as local political patronage or the ordinary utilization of social networks. Most of those who would have dealings with the district courts already have (in the widely ram-

5. The first draft of this essay was written before I had an opportunity to read Robert L. Kidder's excellent discussion of negotiation and litigation at the courts in Bangalore, Mysore (1973). In revising for publication I have made only passing references to his work. Several of our findings, from North and South India respectively, are indeed complementary. Kidder discusses the way in which the managers of procedure, including clerks and peons, control the way in which definitions of reality are introduced into litigation (p. 126).

6. Marc Galanter has drawn my attention to a similarity here with the phenomenon of "ambulance chasing" in American legal lore; see Reichstein (1965).

ified fields of kinship and local community relationship) the necessary initial contacts with the legal profession. Touts, in the sense used by those who denounce them, are hardly necessary at the district level.

Some of the semantic complexity of the situation can be judged from current usage among those who frequent the district courts. There, the meaning of the term "tout" varies with the status of the speaker. Clients tend to locate the tout activities in one part of the social network and lawyers in another. Similarly, both Indian and Western anthropologists (Cohn, 1965; Khare, 1972) have identified as "village sea-lawyers" those knowledgeable and experienced villagers who sometimes accompany their inexperienced neighbors to the courts. The villagers and the anthropologists distinguish the "sea-lawyers" from "touts." District lawyers of my acquaintance in Haryana, however, seemed usually to be thinking of "sea-lawyers" when they denounced "touts," as they often did. Yet at the Hight Court, located in another city, activities that were common enough among district lawyers were described to me by advocates who practiced there as the sort of thing touts did. Finally, when I raised my doubts about touts with a Supreme Court advocate, he explained that touts were to be found mostly at the High Courts.

It seems that as with witches in many societies, touts are more often accused than identified. Put another way, we should perhaps confine future discussions of this aspect of the social organization of law to the role behavior "toutism" rather than to the (largely spurious) social identity of "touts."

CHRONIC LITIGANTS AS PARAPROFESSIONALS

I turn now to the second of the two figures reviewed here, the *mukadma baz* or "chronic litigant." At first glance, the idea of a litigant as a "paraprofessional" seems an odd confusion of consumer and producer roles. Like the *munshi*, however, the *mukadma baz* acts as an unofficial purveyor of informal information about the legal system. To some extent, any litigant becomes an informal source of information about the legal system in his own community; yet not all litigants in rural North India are considered *mukadma baz*. That an indigenous stereotype distinguishes some litigants from others in the continuum of law-court identities seems ample justification for examining the *mukadma baz* in an essay intended to provide a selective guide to

that range of identities.[7] But such an examination is more difficult than it is for the *munshi's* role. No matter how humble and marginal it may be, the *munshi*'s occupational status is clearly recognized and unambiguous. Someone aways should pay the *munshi* for his services—whether these are strictly occupational or informally paraprofessional ones. The cynical at the district courts would say, of course, that litigation *was* an "occupation" with the *mukadma baz*; and often he has his expenses taken care of by others. But this is beside the point here. The term *munshi*, however, denotes a distinct status with more or less definite role associations. *Munshis* may or may not be efficient, experienced, or responsible. But there is rarely much likelihood that the question of whether one is or is not a *munshi* will arise. The term *mukadma baz*, on the other hand, connotes a cultural stereotype open to varying interpretation. Individual characteristics (personality factors, even) may underlie the identity of the *mukadma baz* but not that of the *munshi*. (This does not mean, of course, that a *munshi* may not in his own community be reckoned a *mukadma baz*).

A *mukadma baz* is a litigant who has acquired the reputation of being litigious. He is depicted as being involved in the prosecution of cases as an end in itself. He is sometimes said to be "addicted" to litigation, or is compared to a gambler who cannot resist the temptation of cards. The term *mukadma baz* (one of many phrases used for this cultural identity) denotes one who plays (from *bajna*, to perform) at litigation (*mukadam*). He acquires this reputation in the first place in his own local community and his place in this community is what interests us here. Later, a *mukadma baz* may become well known to the district bar for his persistence, for the complexity of his lawsuits, or for his sequential retention of many lawyers. But his *mukadma baz* identity at the courts may be less pronounced than at home in the rural hinterland. He may speak of himself as "known to everyone" or as "knowing everyone" (and on the latter score he may in fact accumulate a surprising amount of information, a circumstance that can in turn contribute to an accusation of "indulging in toutism"). But individual district lawyers may also be well acquainted with the rural hinterland and their knowledge of a *mukadma baz's* reputation may come more from their

7. I agree with Kidder's (1973: 124) view: "The manipulative attitudes and skills which are learned through involvement in litigation arise not out of exotic Indian values but rather from the pressure and opportunities perceived by initiates as characterizing their particular relationship with the courts." My concern with cultural identities in this essay should not be confused with a concern for "exotic" values.

personal sources of gossip than from his professional contacts with them. The *mukadma baz* I knew best happened to be certain Haryana villagers and it is against a rural background that I consider the identity here.

It is appropriate here to comment on two aspects of litigation in rural India that bear on the identitfy of the *mukadma baz.* These have to do with the pervasiveness of litigation and its overtness.

One kind of explanation for the prevalence of litigation in rural India has developed from the broad cultural anthropological discussion of the quality of peasant social life. A propensity for suspicion and a quarrelsome tendency has often been noted among peasants and has sometimes been contrasted with the state of affairs said to characterize "tribal" society. Another, social structural, set of explanations for the proliferation of litigation in India has turned on historical interpretations. The introduction of an alien legal system in the 18th and 19th centuries is assumed either to have put traditional and "modern" juristic norms in opposition and generated litigation;[8] or the colonial regime is thought to have channeled already existing conflict from a wide variety of regional and local tribunals into a single national system of courts, thereby making contentiousness appear to have increased.[9]

Whatever the explanation, the prevalence of litigation in India seems an inescapable conclusion. First-hand acquaintance with the courts is common among Indian peasants. In the admittedly prosperous states of Punjab and Haryana, one can assume that virtually every landowning family has been involved in litigation or court encounters of some kind (civil or criminal) within living memory. "Landowning" here involves anything from a couple of acres and typically not much more than twenty. All this litigation is not directly "about" the land itself; but a modest economic status is generally a prerequisite for litigation. I think the common view of Indian peasants approaching the courts fearful of their strangeness, totally unfamiliar with their daily working is mistaken. (It is a view sometimes encouraged, I suspect, by lawyers who seek to bolster their own recently acquired urbanite identity.) Also mistaken, though now much less common, is the depiction of villagers as limited by a "village-bound" view of the world. The structurally "closed" nature of North Indian village communities is solely a matter of residence

8. See Kidder (1973) for a criticism of the culture contact explanation of Indian litigation.
9. Cf. Galanter (1972: 54, and n.10).

rights and statuses, not one of local knowledge. A more realistic unit than the village for considering the peasant's social world is, in India at least, the district or even the region comprising parts of two or more districts. In a town, on the other hand, all are to some extent outsiders and a variety of ties are accepted as appropriate bases for neighborly interaction and the exchange of trust.

Let us return now to the *mukadma baz*. He is not simply a person who has been involved in litigation but is perceived by his neighbors as involved with the law in a qualitatively different way. Broad, cross-cultural comparisons about matters like attitudes to litigation must certainly be treated with great skepticism. But it is difficult here to resist the speculation that in this connection the North Indian villagers' attitudes lie midway between those of rural Japanese (among whom it is often said litigation is abhorred and mediation respected) and those of, say Central Africa cultivators. The Basoga of Uganda, the late Professor Fallers once noted (1969:2)

> . . . Go to court readily and frequently; they admire and cultivate the arts of litigation and adjudication and they take great pleasure in discussing legal affairs . . . It is a fact that the Basoga, like the Americans, pour a great deal of their energy and talent into legal activity. Approaching the study of their society and culture, one is quickly drawn into legal concerns; and the study of their courts and law provides a particularly good point of departure for investigating other aspects of their society and culture.

One of the Indian paradoxes is the prevalence of litigation in a culture where the arts of adjudication are not, in themselves, highly prized—although the stereotype of Indian "legalistic" hairsplitting occurs (cf. Tyler 1973:2). Litigation appears to most Indian household heads as a necessary evil, a matter of mechanics rather than principles and nuances. Professor Khare has noted, for instance, that court decisions are characteristically thought (by Indians) to form the basis for further violence, revenge, and perpetuation of injustice and inequality (1972:78):

> Legal fighting is basically immoral because it is always considered to be a display of personal or familial economic pride (*abhiman*) and is a result of 'shortsightedness'. Legal action . . . can be found to be basically dispensible [informants say], 'provided one has patience and control over his temper.' . . . Court law is thus culturally symbolic of many 'voices' ranging from telling a lie and gambling to ruthlessness and individual oppression (Khare 1972:78-9).

I suspect that one reason the *mukadma baz* is regarded by his Indian village neighbors as aberrant is that he appears to get what we might call a "Busoga-like" enjoyment out of the art of litigation. The energy he consumes in this is always seen by

his fellows as "wasted." He is often spoken of as both a meddler and a dupe.

The second point mentioned above, about the overt aspect of rural litigation, may help explain why the *mukadma baz* is seen in this light. Litigation of the kind villagers know most about is necessarily a public and individual undertaking. The *mukadma baz* is viewed scornfully in part because he usually chooses to pose as a man of affairs, a figure of local influence; yet the pose is associated with direct court involvement that isolates him. The "real" men of influence in village political life, on the other hand, work behind the scenes and in alliance with others. The situation has been convincingly analyzed by Professor Anthony T. Carter in an examination of rural politics in Maharashtra. He notes that decision in rural Maharashtra is typically *not* brought to a vote and has at least the appearance of being unamimous. Those who oppose contested decisions remain quiet unless they can mount an effective opposition. Contest to some extent is cloaked from the public eye. Consensus procedures allow the rural political elite to make their decisions in secrecy behind a facade of unanimity . . . If conflicts do arise they are settled in private . . . It is not so much consensus that is sought as unity in the face of potential opposition and defeat (Carter 1972, *passim*). Carter argues that consensus serves the interests of the rural political elite. It allows village and local leaders to monopolize political power and to do so in private, cloaked by unanimity. Embarrassing disclosures are prevented and the elite leaders' freedom of action is preserved. He concludes the consensus, like the idea of a harmony of interests, serves as an ingenious moral device invoked, in perfect sincerity, by privileged groups in order to justify and maintain their dominant position.

In Haryana, the politically dominant village families were often said to harass opponents in the courts, but this was always understood to mean the indirect management of litigation through pawns. Carter's discussion suggests a partial resolution (in a different vein from Khare's) of the Indian paradox noted above by indicating at least one reason why the arts of public adjudication cultivated by the layman in societies like Basoga have little social currency in India: the adversary procedures of litigation, and the inevitability of an outcome in which one party openly loses, contradict a preference for the appearance of unanimity.

I now turn to a more direct examination of the potentially paraprofessional aspects of the *mukadama baz.* In what sense

can he be seen as a purveyor of informal expertise about the legal system? It it helpful at this point to distinguish two kinds of *mukadma baz*. The distinction is not a native one, but it parallels two aspects I discern in the role of the *mukadma baz* as a disseminator of courtroom lore. One kind is the "sea-lawyer." The second is identified not by personal style so much as by association with a particular kind of case. I will deal with this variety first.

Briefly the point is that the layman in provincial India acquires much of his knowledge of law through his familiarity with local *causes célèbres*. At the center of each such case is a *mukadma baz*. In the modern West, cases of note seem celebrated among laymen more for the glimpses of private lives they provide than as pointers about litigation. In provincial India, political privacy, in the sense of "secret scheming," occurs but there are no private lives (Tyler, *ibid.*). In every district, however, almost all adult males know something (often much) about one or two current cases of such magnitude, complexity and duration that they have become local legends while still in progress (Morrison, 1972c:62-3).

Such cases typically go on for years and ramify in many courts. It is likely to be said of them that "every lawyer in the local bar has been engaged" at one point or another—obviously an exaggeration, but a telling one. Elements in such cases may suggest to the Westerner a tale from the Arabian Nights. In two that I knew of, there was evidence about chests of gold coin recovered at night from the bottom of village wells and reburied under walls; there were stories of widow's wills and complicated marriage arrangements involving members of princely families; one case involved the interpretation of a subcaste identity; and in both there were rumors of murder, disguises, escapes and hurried journeys. Each phase of such "legends" is followed by a series of court hearings.

An anthropologist usually finds such cases interesting because they epitomize features of social structure or because they illuminate social change. And no doubt both anthropologist and native enjoy the fantastic elements of the story. I suggest here, however, that for the local population (or at least for the rural litigant public) the cases are also oral textbooks of legal procedure and guides to the local legal profession. The *mukadma baz* central to such cases share in this function. A "one-shot" litigant might attribute his initial defeat to bad luck or clever opposition. The *mukadma baz* in these *causes célèbres* are forever digging out new evidence, thinking up new strategies. And these twists

and turns in time become part of the local lore. It is the *mukadma baz* of these cases rather than their counsel who are the innovators in litigation, at least in the rural hinterland. But it must be noted that such men usually start with greater means than the average litigant; the buried treasure is not always fancy, it seems. And as individuals, they tend to be highly suspicious and evasive of casual contracts.

These *mukadma baz*, the litigants of the *causes célèbres*, differ from the second category of *mukadma baz*, who are often garrulous and gregarious. The latter are those who as mentioned already tend to be denigrated by lawyers at the district courts as "touts." It is this kind of *mukadma baz*, that I think Bernard S. Cohn had in mind when he introduced the term "sea-lawyer" into the Indian ethnographic literature. Under that term he briefly describes the local legal experts of village Senapur in Uttar Pradesh who could quote at length, by section, various of the tenancy acts and who knew the interpretations of the intricacies of these acts and their loopholes and inconsistencies (Cohn 1965:103-15).

We need to draw a minor distinction here between the Indian "sea lawyers" and the "bush lawyers" described by Daniel Lev (1973) in an account of the private legal profession in Indonesia. Indonesian and Indian functionaries have much in common and both are despised by bench and bar alike. The Indonesian "bush lawyer" or *pokrol bambu* (from "procureur," "attorney") is, however, an officially recognized identity for one who does *not* have a law degree but *is* permitted to practice in the courts on behalf of clients. The "sea-lawyer" of rural India has no official recognition, no statutory right to appear in court.

The term "sea-lawyer" has been taken up by R.S. Khare (1972:87), who describes the situation in village Gopalpur in Uttar Pradesh where five litigants of various castes were known to be experienced enough, though not degree-holders, "to trick the city lawyers." Gopalpur's sea-lawyers have certain features in common. They are literate, sometimes college-educated, and have legal, business and kinship contacts in neighboring towns. Either the sea-lawyer himself or his family have litigated in the courts and he has thus been exposed to city legal specialists. He frequently talks of and about lawyers' law and legal organization. The Gopalpur sea-lawyers walked from hamlet to hamlet in the locality to give advice on pending and forthcoming cases. They gathered facts and explicated meanings and always propounded the view that "what a person is called, what a person

is empowered to do, and what he can do if *properly* approached are extremely varied in the lawyer's world." The sea-lawyer, Khare says, always begins as an arbitrator of disputes. If meditation proves unsuccessful, then much time is spent in counseling and conjecturing and a decision "to win at the courts" is reached. "What can be done legally is visualized (even if naively) against the past experience of the parties" (Khare, 1972:88-89).

Khare's account is a good example of the "positive social function" view of legal peripheralists mentioned at the outset of his essay. Several men in the Harynan village I studied qualified as "sea-lawyers" of the sort Khare describes. The place was only of medium size (pop. c. 1,000) but had even produced two qualified lawyers now at practice in the district courts. Yet when the topic of regular, direct contact with the courts came up, when *mukadma baz* were discussed as a type, one man in particular in the village was always mentioned. In a way, he too conformed to the type outlined by Khare. Yet I detected in village references to him and in discussion of his exploits a consistent awareness of "aberrancy." I conclude this essay with a commentary on this man's place in the life of the village and his relevance for a study of the informal aspects of rural Indian litigation. I give the pseudonym, Netaji. For all his personal idiosyncracy and what villagers viewed as his aberrant behavior, Netaji was not unique in their experience; informants sometimes even used him to describe individuals elsewhere in the locality, as when they said of someone else, "He's the Netaji of *that* village." They referred, it seemed to me, both to personal style and *mukadma baz* involvement. There was a continuing contradiction between Netaji's assessment of himself (he certainly would have used the term "paraprofessional" had he known it) and the general village assessment of him and others like him as meddlesome troublemakers.

Netaji was a member of the regionally dominant Jat caste, the main landowners and cultivators of Punjab and Haryana. At first, he and his brothers jointly managed a medium-sized holding in the village. But Netaji did no regular work as a cultivator—something that set him apart from his real brothers and fellow Jats. He blamed poor eyesight for this, but that was not a sufficient explanation for there were others with eyesight as bad; and in the end, Netaji did turn to cultivation. Like other *muskadma baz*, Netaji followed a routine that involved much wandering about in the village and much visiting of other villages in the vicinity. He always had time to attend unexpected events in the locality and he was often the first in the village to

hear about them. Pre-adolescent boys in such villages have free access to all parts of the settlement they grow up in. Adults, however, are expected to be far less uninhibited and more circumspect in moving about the village. An adult village man normally limits himself to the immediate neighborhood of his house and barn. Consequently, Netaji's habit of paying leisurely visits to all parts of the village was subject to criticism.

Given a different life situation, Netaji's personal inclinations might have made him a creditable scholar, a journalist or a professional investigator of some kind. He shared with other *mukadma baz* an intense interest in the ordinary events of everyday life combined with a facility for ordering information about these in relatively unfamiliar idioms. For example, although village cultivators are certainly acquainted with the maps of their fields maintained by the Revenue Department, few if any had seen or could envision a street map of the village settlement. Netaji, however, retired to his quarters for a couple of days and produced a large plan which indicated (using the cartographic conventions I had just shown him) every room, wall, door, courtyard and alley in the village's maze-like dwelling site. (Another *mukadma baz*, a tea-stall proprietor, amazed a local bystander and me by recruiting for us in detail the biographies of almost the whole district bar membership. Eventually my companion exclaimed that he had previously thought such information could be gathered only by government agencies. He was surprised that a private individual should have collected such detailed information in this organized fashion for his own interests. Another informant once said of such men as Netaji and this teashop man, "They are our village newspapers.")

Netaji sometimes spoke of himself as a "leader'; indeed, he was even nicknamed, "Mr. Leader." But it was clear that he had no real, continuous political influence in the village. His activities there were mostly those of a skirmisher in the factional disputes of the Jat community. Unlike the "serious" politicians of the village, he had developed no long-term ambitions of office in the subdivisional or district level councils. These would have required careful alliance-making and support-building for which Netaji seemed disinclined. In the locality, outside the village, he had the reputation of being a police spy. He earned this, I think, more by his habit of hanging about the police station in the nearby market town than through any direct recruitment by the constabulary. Like other *mukadma baz*, he allowed the rumor that he had "connections" with officialdom to go undenied.

Paradoxically, Netaji also depicted himself as a servant of the village. This was an identification that other *mukadma baz* in the locality also sometimes assumed. One of Netaji's self-characterizations was to call himself "a social worker." This was surprising because the only *real* social worker the villagers knew was the poor young Village Level Worker of the government's faltering Community Development Program—to whom no one paid any attention. Apparently, Netaji had in mind when he used the term "social worker" a role as a free-lance investigator and a social critic, a self-appointed community mentor. Unlike that more familiar Indian mentor, the holy-man, the *mukadma baz* does not step aside from daily life to provide the community with an example. Netaji, and others like him, tend to see themselves as very much engaged in daily life and in exposing the weaknesses of the social institutions of their milieu by action in it. They undertake what seems to others in the community a barrage of minor court actions and troublesome complaints to (and about) those in office. In his way, Netaji was an "activist" —but it is important to remember that other villagers often saw such activity as futile rather than exemplary. Moreover, the *mukadma baz's* motives are usually suspect: he neither detaches himself completely from the community nor adheres to the preferences for community consensus discussed above. Unlike the other kind of *mukadma baz* I have identified, litigants like Netaji are not characteristically enmeshed in the ramifications of a single, complicated lawsuit on which depend family fortunes of some magnitude. Rather, they are engaged as dabblers playing at litigation (as the term *mukadma baz* suggests). Netaji attached himself as a "sea-lawyer" to cases arising in the village—but his attention was not usually sought and he could hardly be described as a regular "mediator." He did not limit his actions strictly to law courts but pursued them into all kinds of government offices. And in the courts proper, he was more interested in filing complaints than in winning legal victories. Villagers often commented scornfully that Netaji would even take a complete stranger to law—proof that his energies were misdirected.

Yet his most celebrated action *was* as an intermediary. It was one that did much to validate him in his own eyes. Through contacts he had cultivated at the State capital, Netaji succeeded in getting the Chief Minister (the late Pratap Singh Kairon) to visit the village and intervene in the process of land consolidation. The Minister ordered the Revenue Department to revise the work of allocating field land. The majority of Netaji's cases, however, were quite minor. He sued an insolent bus conductor,

for instance, and carried on a long feud with the village panchayat about the collection of household tax.

All this consumed resources and brought no tangible returns. Finally, Netaji's brothers (who had not approved of most of his lawsuits but had nevertheless supported him) carried out the long threatened partition of the joint family holding. This forced Netaji to take up regular cultivation at last and his colorful career as a leisurely man of affairs and *mukadma baz* ended. When I last saw him, he seemed to have accepted his fate. And at last he seemed to have given some measure of community commendation: "Netaji is cultivating his fields now, like the rest of us." In the course of his "paraprofessional" career, however, he had spread through the village much news and gossip about the courts, about lawyers and officials, and about local litigation.

QUIRKS, PREDICAMENTS AND "LIMINAL PERSONAE"

At the end of the "Introduction" to his study of the law and life of ancient Rome, J.A. Crook remarks that an approach to the relation between law and everyday life that was anecdotal (stressing the piquant, comic and pathetic predicaments of human circumstance) would be in the end (for all its charm in making us feel that other people are "rather like ourselves after all"), both trivial and misleading (1967:34-35). He concludes:

> Of course men of all ages have the same quirks and tend to get into the same scrapes, but it is the differences, not the similarities, between one society and another that call for comment and investigation.

My acquaintances among the villagers of rural North India and among the practitioners at the district courts certainly regarded figures like Netaji as men of "quirks and predicaments." To the extent that I learned to share their attitudes, I too saw them in this light. Yet I was also constantly reminded by Netaji and the other *mukadma baz* I encountered (and by much else in the milieu of the North Indian provincial lawcourts) of characters and scenes from 18th and 19th century European novels, and particularly of the bizarre, tragi-comic world of Dickensian London. But must an account of *munshis* and *mukadma baz* with its inevitable suggestion of trans-cultural similarities therefore be dismissed as trivial and misleading? Even in the relatively microscopic and selective view of the Indian legal system taken in this essay larger comparative issues of trans-cultural differences are not precluded. A few such questions have been implied in the foregoing discussions. For instance: do the cultural values expressed in the political arena by an emphasis on unanimity,

which at first glance seem to deny a place for the *mukadma baz*, actually support the activities of men like Netaji? Or would the latter flourish anyway, always somehow at odds with the local community? Similarly, a great deal in the Indonesian scene described by Lev and mentioned above suggests close parallels with the Indian provincial legal scene discussed here. Yet there are notable differences, not the least being between the legal heritage of the two countries. Again, is the *mukadma baz* a transitory figure thrown up in the process of modernization or does he have a more permanent cultural, perhaps universal, identity?

When seen as part of the legal system, *munshis* and *mukadma baz* are perhaps well enough characterized as "paraprofessionals" (if this term is taken in the somewhat expanded sense I have given it here). And a study of these paraprofessionals is of interest for the light it throws on the profession in whose shadow they occur. Lawyers are sometimes depicted by sociologists as beneficial intermediaries, working in the interstices of society between the informal needs of the client and the formal demands of the state bureaucracy (Parsons, 1954). The paraprofessional functions of the *munshi* and the *mukadma baz* serve to expand that intermediary activity.

But if one shifts the focus on these figures from this analytical view to a focus on their local identification as recognized cultural types, then another comparative possibility suggests itself. In this light, marginal figures can be seen working on their own behalf yet performing an interstitial, intermediary role of a different sort from the paraprofessional one. In this sense, the activities of *mukadma baz* and some *munshis* appear as parodies or even reversals of the very system in which they occur. In the article cited above, Robert Kidder notes (p. 135):

> Much of sociology has been involved in exposing and analysing the ways in which institutional 'dependents'—clients, patients, inmates, workers, students—innovate responses to institutional rigidities, turning them into resources for their own advantage. The judicial system in Bangalore has simply been unable to resist this type of innovative pressure. 'Court birds', who have been most successful at this innovation, have abandoned their naive expectations of 'justice'. But in doing so they neither misunderstand nor devalue that adjudicative ideal. Rather they are acting on the basis of their pragmatic recognition of the threats and opportunities facing them in this institutional setting.

I think that what the *mukadma baz* shared with the fictional characters that I thought they resembled was in some measure the atribute of "liminality" that Professor Victor W. Turner has brought back into anthropological discourse as a descriptive concept (1969, *passim* and Chap 3). The institutional dependants

of Kidder's account (with whom he apparently includes the "court birds" of Bangalore) belongs to the same broad category in which Turner locates his "liminal *personae*" ("threshold people"):

> These persons elude or slip through the network of classifications that normally locate states and positions in cultural space. Liminal entities are neither here nor there; they are betwixt and between the positions assigned and arrayed by law, custom, convention and ceremonial. . . . (p. 95).

This category includes:

> Subjugated autochthones, small nations, court jesters, holy mendicants, good Samaritans, millenarian movements, dharma bums . . . . An ill-assorted bunch of social phenomena! Yet all have this common characteristic: they are persons or principles that (1) fall in the interstices of social structure, (2) are on its margins, or (3) occupy its lowest rungs (p. 125).

We cannot follow Turner all the way, for in his analysis these liminal *personae* have society-wide ritual significance. But I think the posssibility of seeing the *mukadma baz* and the *munshi* as examples of the universal institutional dependants or liminal *personae* who illustrate for their community "how the system works" by parodying or reversing it, is suggestive. If on closer examination this proved a valid comparison, then the way would be open to enquire whether the more strictly defined paraprofessionals of Western legal systems also function in the sort of liminal role discussed by Turner. To explain how they do so would be to make a significant anthropological contribution to the sociology of professions; to explain why they do not would be to undertake a comparative study of the differences between one society and another that scholars of Crook's persuasion would approve.

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