

AVOIDANCE AS DISPUTE PROCESSING: AN ELABORATION

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I have suggested (1974) that in societies such as the United States, where non-governmental institutionalized mediation and adjudication of interpersonal disputes are infrequent, some of the slack may be absorbed by avoidance. I implied that avoidance would generally have lower costs in the United States than in societies where such mediation and adjudication are widely available. Danzig and Lowy (1975: 676-682) argue that I have underestimated the costs of avoidance in the United States. They may be right. In any event, avoidance can be analyzed more precisely than it was in my original paper (see 1974: 70, 76, 79-80, 83-84). This response will try to provide such an analysis, including a more complete breakdown of avoidance costs. It will suggest why I appraise avoidance costs differently than do Danzig and Lowy. It will also re-evaluate some of the variance in avoidance costs between different societies. Finally, it will discuss avoidance and Danzig and Lowy's proposed neighborhood mediation.

Conventionally we have thought of people reacting to disputes through negotiation, self-help, mediation, adjudication, feuds and appeals to the supernatural. These are the categories employed in the classic descriptions provided by legal anthropology. We know from experience that there are other reactions. After disputing for a time, one may choose to ignore the dispute entirely, thus, in a sense, resolving it. We may also sell our share in a dispute. And we may resort to avoidance. The notion of avoidance is that a party may change his behavior on account of the dispute in such a way that his relationship with the other disputant is, at least temporarily, shrunk or terminated. The dispute, although not settled, is thus no longer a matter which the disputant believes he ought to do something about. Avoidance as dispute processing is different from avoidance behavior adopted to prevent disputes from arising in the first instance (see Skinner, 1961: 60), a distinction which a few of my earlier examples failed to make clearly (1974: 76).

The costs of dispute processing by avoidance may be analyzed in terms of disturbances in social relations which are accom-

panied by economic, psychological or social losses. Cutting across the economic, psychological and social dimensions there is also the distinction between costs absorbed by parties who initiate the avoidance behavior (internal) and costs of this avoidance which are borne by others, either the opposing disputant and his allies or strangers to the dispute (external).

Internally, for instance, if a disputant reacts to a dispute with a friend or employer by dampening the friendship or quitting the job, the efforts he must make to find a new friend or to get a new job and the degree to which the substitutes are less satisfactory than the originals are the price he pays for choosing that mode of dispute processing. This price may be social, economic or psychological. *Externally*, the avoider's choice imposes costs on the old friend or employer: they must fill the place left by the avoider or get along with fewer friends or employees. These external costs may also have social, economic or psychological origins and are not only not costs to the avoider, he may even derive psychic benefits from imposing them. But such external costs may lead to a new round of internal costs if the avoided disputant is provoked to retaliate against the avoider. If avoidance is mutual, each disputant's internal costs are likely to be external to the other. As a consequence, neither prospective avoider will sum these costs in deciding whether to resort to avoidance.¹

As Danzig and Lowy note (1975: 679), second source of external cost is that avoidance frequently will not change the pattern of interaction which produced the dispute. Avoidance may thus lead to a change in some of the parties rather than an end to the dispute.² If a householder's offensive pets and obstreperous children cause a neighbor to move, the children and pets will remain to welcome the new occupants of the neighboring house. Or if the pet owning parents are chilled by their neighbors into moving, the children and pets will move with them.

Not all external effects of avoidance are neutral or negative. Avoidance can be viewed as a private sanction employed to

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1. Analyses in behavior exchange assume that people act in response to rational calculations. Whether or not they generally do so, a reward-cost analysis is a convenient way to summarize many complex human operations for "theories derived from [such an assumption] have considerable power in predicting how people in fact behave" (Posner, 1972: 5).
 2. Nor will other forms of dispute processing necessarily affect the level of disputing (see Felstiner, 1974: fn. 1). Much of the literature in the anthropology of law suggests that Bohannon's classic anthology (1967) could have been entitled *Law is Warfare*.

counter another's significant breach of norms.³ As a substitute for a public sanction, avoidance like self-help or direct negotiations eliminates the social cost of the proceedings required by a public judgment or an outcome mediated by publically supported functionaries.

Probably the least explored avoidance costs in dispute processing are psychological. These costs may vary with the importance of the relationship which is affected by the avoidance. The variation is not just due to the simple notion that limiting interaction with a mother may be more painful than with a mother-in-law. More importantly, when one explicitly puts the person who is the natural object of hostility beyond reach, if the hostility does not dissipate it may be re-directed toward an available non-disputant or against oneself. The negative effects of re-directed hostility can constitute both internal and external costs of avoidance. If repressed hostility against a foreman is expressed toward a wife instead, her suffering is an external cost. But avoidance of the dispute with the foreman also leads to an internal psychological cost to the extent that the wife's pain disturbs the husband. Where avoidance is unaccompanied by significant hostility, such displacement or introjection would be unlikely or unimportant and the emotional costs of avoidance would reflect only the importance of the avoided to the avoider.

Avoidance may at times be accompanied by guilt beyond that produced by displacement. If a person reacts to a dispute by limiting a relationship which is socially or personally expected to be intimate or extensive, he may be disturbed by his own breach of social conventions or of his own standards or by his failure to communicate further with a person who has a reasonable expectation that disputes between them will be worked through rather than avoided. If the avoider is conscious of his self-disapproval, his resulting unease would be a cost of that avoidance. If the avoider is unconscious of such disapproval, any self-punitive acts with which he responds (see Redlich and Freedman, 1966: 98) will be an avoidance cost.

The social and economic costs of avoidance vary with the burden imposed upon the avoider in replacing, managing with less of, or doing without whatever of social or material value it was that he had derived from the avoided relationship. There

3. Fear of avoidance rather than fear of a lawsuit is the deterrent that coerces many people who value continuing relations and the reputation necessary to establish them into composing their differences on a two-party basis (see Macaulay, 1963: 63-64).

is thus variation in two dimensions, the amount of loss and the difficulty in making the loss good.⁴ If a sibling is a sibling only, processing a dispute with him by avoidance may impose slight economic or social costs even though securing a substitute is impossible. If a sibling were also "a neighbor, a companion, a therapist, a political ally, an economic co-adventurer and a ceremonial confederate" (Felstiner, 1974: 76), the costs would be high because the functional loss and the difficulty of replacement would both be high. This focus on the cost of shifting to an alternative or doing without must be directed to the incidents as well as the main effect of a loss. The consequences of avoidance by leaving a job, for instance, depend on more than quickly securing a similar job at similar pay for, as Danzig and Lowy note (1975: 681), a job change may also involve the loss of seniority rights, prospective pension benefits and valued companions.

It is not possible to generalize about the economic costs of avoidance in symmetrical relationships. Although neither disputant can engage in avoidance without suffering a comparable loss, the significance of the loss may be different for each of them since it will also depend upon the ease with which the loss can be repaired. In asymmetrical relationships, however, economic costs will generally be higher on the dependency side. This imbalance results from the greater ease with which superordinates can generally secure substitutes than subordinates can secure new superiors, whether they be tribal chief, employing landowner or department chairperson.

Both psychological and economic costs of avoidance may vary with cultural expectations. Different societies have different norms about the assertion of hostility. In some communities people are expected to express or to act upon predictable hostility. In such a context, dispute processing by avoidance, which tends to involve suppressing antagonism, rather than through a public legal proceeding, would invite accusations of witchcraft (Collier, 1973: 122). In societies where the expression of even warranted antagonism is disfavored, however, the consequences of avoidance are less clear. I suspect that in cultures influenced by Confucian ideology avoidance would be less con-

4. Thibaut and Kelley (1959: 100) conceptualize power in a dyad in terms of the superiority of the existing relationship to either party's best available alternative. Power, in other words, is defined in terms of avoidance costs. If net avoidance costs (the costs of altering the relationship less the costs of maintaining it) are higher than the net costs of a successor relationship (the costs of not having such a relationship less the costs of having it), then avoidance will be foregone. Where avoidance is uneconomic, the non-avoider is subject to power held by the other member of the dyad.

demned than invoking a legal proceeding, but less valued than giving up (see Cohen, 1967: 60). On the other hand, there are societies where expression of hostility is foregone because it would be likely to provoke disproportionate retaliation rather than because it is ethically inappropriate (Swartz, 1966: 94-96). In such instances, avoidance costs would be tolerable if limited to forms not likely to give offense (staying away from the antagonist) and would be high if used in unquestionably hostile ways (failing to invite an antagonist to an event to which he is entitled to come). It is in societies between these poles, where an overt reaction to dispute is generally neither expected nor foregone, that the greater frequency of avoidance is predicted.

Danzig and Lowy evaluate avoidance differently than I do because their objective is reform and reform influences their attitude toward both external avoidance costs and the extent to which avoidance produces different costs in different societies. An orthodox anthropological explanation of avoidance, on the other hand, would be geared to the factors which influence the decisions of the people who engage, or decide not to engage, in it. Collier, for instance, has suggested that "the broad patterns of court usage are created by the cumulative choices of individual actors" (1973: 251). Applied to avoidance rather than to courts, this proposition predicts that the degree to which avoidance is used as a reaction to disputes in a society will depend upon how individual disputants evaluate its efficiency relative to other responses. Their evaluation will reflect only *internal* avoidance costs. While an approach to avoidance which seeks to understand its psycho-social origins, form and role will thus focus on internal costs, external costs are important to proponents of social reform, who naturally prefer those patterned responses to dispute which achieve the maximum proportion of benefits to *total* costs. It is at least in part because we approach avoidance from these different perspectives that I estimate avoidance costs differently than do Danzig and Lowy. Because of their paramount interest in reform, they focus on the total costs of alternative strategies to contain disputes. My interest is explanation and I have thus concentrated on those costs which may illuminate current behavior, and have paid less attention to costs which may result from, but do not influence, such behavior.

Danzig and Lowy (1975: 688) and I (1974: 82-83) agree that American equivalents of family elders and village headmen are rare and specialized (family counselors, psychotherapists)⁵ and

5. Kimber (1967: 862-864) reports, for instance, that in 1964 there were

that in the United States government courts are rarely used to process interpersonal disputes. My earlier paper argued that this semi-vacuum is filled in part by the greater availability of avoidance, in the sense that its use carries relatively lower costs. Danzig and Lowy are not concerned with this comparative question. They believe that the need to create mediation services in the United States does not depend upon how much more effective avoidance is in the United States than in societies where mediation of interpersonal disputes is common, but on the absolute quantity of disputes in this country for which no effective response exists. Given their interest, I do not quarrel with their focus. But my concern remains the sociological (or psycho-socio-historical) question of why American institutions beyond avoidance are so few compared to those available in Africa, south Asia, middle America and China.

I had suggested that Americans mediate and adjudicate interpersonal disputes less than others because they can practice avoidance more cheaply. The analysis of psychological costs in this paper applied to American conditions reinforces that proposition. At a psychological level the dynamics involved are direct loss, displacement and guilt. The degree of direct emotional loss from curtailing interaction with a former intimate obviously varies with individuals. Nevertheless, there appears to be some cultural consistency arising from the different bases on which self-images are grounded. Conventionally, the American, especially male, concept of self is thought to be highly associated with material achievements, while in many other societies self-image is more related to the emotional content of interpersonal relations. To the extent that this is so, Americans would generally pay a smaller direct emotional price for avoidance than would members of cultures who define reality more in terms of personal relationships. McGinn, Harburg and Ginsburg (1965) provide some experimental confirmation of this hypothesis. They found that middle class American student subjects were more likely than similar Mexicans to minimize the importance of a friendship, and to report that they would break the friendship, when it encountered important conflict.

Although the process of displacement may not be predictably different from one culture to another, the impact of guilt as a negative consequence of avoidance should vary across societies. Guilt arises when a person behaves in a way which he recognizes,

only 30 marriage counselors practicing under that (unregulated) title in Chicago, 28 in Boston, 15 in St. Louis and 6 in Honolulu.

consciously or unconsciously, as improper or as improper from someone's perspective. Guilt from avoidance will be related to the degree to which the normative context within which a person lives is important and complete and to the number of figures in a person's immediate social scene toward whom he has some prescribed role. With respect to both factors the potential for guilt from avoidance for any individual arises from the likelihood that in the social occasions in which he is involved there is a set of proper, and therefore a set of improper, behaviors. Although there may be considerable variation among sub-groups in the United States, it is nevertheless a society of intermittent and flexible norms with few roles which do not permit alternative performances compared to the tribal or peasant societies of Africa, south Asia and middle America (see Spindler, 1963: 168). As a consequence, fewer instances of avoidance in the United States are likely to be self-appraised as inappropriate, and less guilt will be suffered as a result of such behavior.

In the paper to which Danzig and Lowy are responding I have discussed the difference in the social and economic costs of avoidance between ideal types labeled "technologically complex, rich" and "technologically simple, poor" societies (1974: 79-80, 93-84). I will not repeat that discussion which focused on the effects of arranged marriages, marriage as a union of kin groups rather than individuals, multiplex or single-stranded relationships, extended or nuclear families, the presence or absence of fictional relationships, differences in residential and occupational mobility, and the stability of friendships. Despite Danzig and Lowy's reservations, I am unpersuaded that my original comparative evaluation of occupational mobility was wrong. Danzig and Lowy believe that I have ignored several factors inhibiting job moves in the United States, including seniority rights and non-vested pension benefits.⁶ Seniority rights and pension

6. The other factors they discuss in sufficient detail so that the argument may be understood are arrest records, credit ratings and the developed clientele which tie salespersons and professionals to their existing employment. Based on the figure (several million) which Danzig and Lowy quote (1975: fn. 5), arrest records may be a problem for only a small percentage of the work force. Danzig and Lowy are right, of course, that clients and customers limit job moves. Professionals and salespersons, however, are frequently able to terminate their relationships with particular customers or clients and to re-structure their relationships with co-workers. Credit ratings are said to limit avoidance in two ways. A person will not walk away from a disputed unpaid bill because of its effect on his credit. On the other hand, many disputes with tradesmen do not involve unpaid bills. In the second place, Danzig and Lowy suggest that a person will be careful not to annoy his neighbors by avoidance for fear that their negative opinions of him will prejudice his credit standing. Actually such a fear should, if it existed, persuade a person not to dispute with his neighbors in the first place.

benefits are generally associated in the United States with union membership.⁷ The opportunity to invoke elaborate grievance machinery for work-related disputes, including institutionalized negotiation and adjudication, is also derived from union membership. The availability of adjudication of employee disputes in a context where avoidance in the form of leaving a job would impose high costs on the avoider is an example of the complementarity of adjudication and mediation, on the one hand, and avoidance, on the other. As I previously noted (1974: 84); "Where adjudication and mediation are feasible, avoidance is costly: where avoidance has tolerable costs, adjudication and mediation are difficult to institutionalize. This complementarity has a logical base. The same set of social circumstances which makes one set of processes available frustrates the other and vice-versa."⁸ In this instance, the social circumstance which makes avoidance costly and adjudication possible is group membership: avoidance involves a heavy toll because of the loss of benefits derived from the group while adjudication is possible because of the availability of coercion originating with the group (see Felstiner, 1974: 70-73).⁹

To my suggestion that "our inability to process many [interpersonal] disputes by adjudication and mediation" (1974: 89) may be balanced by our low cost resort to avoidance, Danzig and Lowy respond that whatever the role of avoidance in the United States may be, it is not enough (1975: 682). If they mean that a tragic gap then exists in American techniques to cope with disputes generally, then our intuitions differ. If they mean that more than courts, police and avoidance is needed to respond to the neighborhood and domestic disturbances of the urban poor and that more than divorce courts and reconciliation bureaus is

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7. Government service sometimes involves relatively weak seniority rights and relatively substantial pension benefits. For a general hypothesis of how work-related disputes will be handled within organizations like government, see Felstiner, 1974: 80-81.
 8. Of course, supervisory employees as well as union members receive pension benefits. Although loss of such benefits may inhibit inter-company moves, they do not impede intra-company mobility which, for employees of medium and large-sized concerns, may be the functional equivalent of a new job.
 9. This complementarity proposition was not suggested as a general theory of dispute processing. Social factors, on which it is based, are just one of several sets of influences on forms of dispute processing. Low avoidance costs will not, moreover, explain the absence of third party involvement in disputes in all communities. High avoidance costs are characteristic of small scale cohesive units such as an Israeli kvutza (Schwartz, 1954), a Swedish island fishing community (Yngvesson, 1970), an Algonkian tribe (Miller, 1955) and a north Wales village (Emmett, 1964) which rarely involve third parties in dispute processing. High levels of social, economic and ideological egalitarianism may account for these deviant cases.

required to process disputes within the nuclear family, then we have no quarrel. In any event, the degree to which avoidance is an adequate response to disputes is not a stable matter: it will be influenced by long term economic and cultural trends. If the American economy is less expansive in the next generation than it was in the past, lower occupational and residential mobility which follow will raise avoidance costs, lower avoidance and intensify the need for alternatives. If the cultural drift in the United States continues to reflect an increasing need for affiliation (see DeCharms and Moeller, 1962: 136), then more Americans will pay a higher emotional price for avoidance, engage in it less and require other ways of responding to disputes more.

Whether or not we agree about the location and intensity of the needs, there remains the question whether we differ on how to fill them. Danzig's original description (1973: 47-48) of his proposed moot was long on why people will use it and short on how it was to operate. Parties and their supporters gather, a lot of ventilation and cross-ventilation takes place, "it would be hoped . . . that the counselor might be able to suggest future conduct by both parties to reduce tensions" and then consensual solutions evolve. The mediator's function was to suggest future conduct; that is, to construct an outcome. If my view of mediation overplayed the mediator's connection to outcomes (Danzig and Lowy, 1975: 689), so did Danzig's. Danzig and Lowy's mediator has a different function than Danzig's original mediator. The new mediator is the source of a process rather than of outcomes; he facilitates communication and the disputants and their allies identify the outcomes (1975: 689). A view of mediation which embraces both process and outcome perspectives is an improvement. In a process capacity the mediator also requires special skills and perhaps substantial training. Even if he has primarily a process function, the more the mediator is able to perceive the dispute as the disputants perceive it, the more effective he will be (Walton, 1969: 133). It is not a subtle point and the differences between us concerning mediator characteristics may be more contrived than grand.¹⁰ In fact, the

10. Danzig and Lowy apparently believe that I suggested that an effective mediator need be something of an authority figure (1975:688-689). Presumably, this belief is based on my reference to Gibb's report that the Kpelle have internalized a particularly strong respect for authority. I included that reference (1974: 87) as a way of demonstrating part of the coercive power of the Kpelle moot which I believed to be adjudication rather than mediation. My actual opinion on the matter of authority and mediation for the form of mediation which they advocate is exactly the opposite of their characterization:

basic policy question may not be who mediators should be or what they should do, but whether disputes selected by the accident of having come to public attention (Danzig and Lowy: 1975: 686) are a sensible crisis point at which to intervene with the limited public resources available for counseling.

There may be, in addition, a second problem with Danzig and Lowy's current model of mediation. That model is based on the notion that accommodations between disputants are generally frustrated by the disputants' inability to communicate effectively (1975: 690). Whether disputes in the urban situation for which Danzig and Lowy would provide neighborhood mediation can actually be compromised at all will depend upon what they are about. The more that these disputes concern values and perceptions of reality derived from values and the less that they involve competition over similarly prized objects such as money or other property, the less likely that compromise will be feasible (Aubert, 1963: 30). Unfortunately, many of the conflicts to which Danzig and Lowy would respond with mediation may cut across racial, generational, ethnic, religious and attitudinal lines. To that extent, it is likely that conflicting values and perceptions of reality will be involved rather than who is disturbing the peace or damaging the property or threatening the interests of people that all of the disputants recognize as important. When this is the case, mediation may be futile because people are reluctant to bargain away principles and cannot easily compromise on issues that they cannot cooperatively define. For quarrels which involve members of different segments of heterogeneous communities, in many instances the better prescription may be avoidance where practicable (see Aubert, 1963: 31) and adjudication where continued contact is inescapable (see Black, 1971: 1108; Hoebel, 1967: 329). The alternative of adjudication is not to suggest that the regular courts ought to be used more frequently, but that experimental forms of adjudication ought to parallel, and sometimes substitute for, experimental mediation.

In any event, Danzig and Lowy and I would agree that whatever the void in dispute processing, the void in the data is considerable and distressing. To my knowledge, no anthropologist has studied the dispute processing behavior of any non-ethnic American community with the thoroughness and compre-

that is, I agree with Walton that mediator authority is probably a negative factor because it tends to increase the disputants' "sense of risk in confronting issues candidly and/or is likely to induce them to behave in ways which are calculated to elicit the [mediator's] approval" (1969: 132).

hensive perspective that characterize many studies of Mexican towns, African tribes and Indian villages. As a result we have only sporadic and unrelated information about the dispute processing functions of lawyers, clergy, medical personnel, marriage counselors, psychotherapists, family members, friends, social workers, local notables or gossip in general. We do not know how dispute processing is affected by group cohesion, ethnic differences, economic or educational levels, stages in the life cycle or ideology. We know very little about the forms and frequency of self-help and negotiation. No empirical research has focused on the types, rates and costs of avoidance. We have repeatedly studied small claims courts, but we have failed adequately to evaluate marriage conciliation services, diversion projects or neighborhood courts.¹¹ If we want to get somewhere in responding effectively to disputes, it is critically important that we begin by finding out where we are.

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11. Frequently such projects are not evaluated at all by trained outsiders. When they are studied, the criterion of success which is used may be naive. Marriage conciliation services, for instance, have been judged by the proportion of reconciled couples who are still living together sometime (generally one year) after conciliation ceases (see Elkin, 1974: 231). To understand the consequences of conciliation, however, one needs to know something about the details of "living together." Are the couple together but abusing their children, making each other miserable, coping by means of a set of neurotic responses or are they reasonably satisfied with their situation and behaving constructively in their relations with each other and their children? And how do these adjustments compare with those made by reconciled couples who are no longer living together and with those of couples who were not reconciled in the first instance?

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