ORGANIZATIONS, DECISIONS, AND COURTS*

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Courts are supposed in common law countries to operate by adversary adjudication. Until a few years ago I, for one, thought that they did. Apart from radio, TV, and the movies, which reinforce this symbol with all their might, my only exposure to courts was as a juror in a case of the alleged theft of one used automobile battery. We deliberated long and found the defendant (who was surely guilty of something!) to be not guilty. I took for granted that my experience was an example of typical practice. It never occurred to me to reflect upon the size of the taxpayers' bill if there were to be a trial of this sort for every crime of this magnitude. Nor did I suspect that I could be witnessing an exception rather than the rule, the exception being a jury trial, since my only contact with a court was in the capacity of juror.

Lawyers, judges, legal-system personnel, and defendants have known for a long time that departures from adversary adjudication are common. In recent years, however, students of the legal system have recognized that such departures are not only common but firmly entrenched (see especially Heumann, 1976). Alternatives to the textbook method of handling cases are not anomalies; they are institutions in their own right. Studies of criminal courts depict not the adversary-trial institution as it exists in myth and movies, but an arena in which lower-class clients are hustled through the system just as they are in health care, welfare, public housing, and other meeting grounds of poverty with bureaucracy (Skolnick, 1966; Blumberg, 1967; Packer, 1968; Cole, 1973; Mather, 1974; Heumann, 1976; Eisenstein and Jacob, 1977). Defendants are presumed to be guilty, trials are exceptional, personal characteristics of the defendant[1] and

* I am most grateful for comments and criticisms by J. Eisenstein, M. Heumann, H. Jacob, and, particularly, M. Galanter.

1. Hagan (1974) reviewed several empirical studies exploring the relationship between extra-legal characteristics of defendants and the severity of sentences, concluding that such attributes played only a minor role. More research is needed to clarify the findings, as Hagan suggests, but such research is difficult to carry out. For one, it must usually hold constant the charge (rather than the crime), but there is substantial flexibility in assigning charges and that decision itself may be much affected by extra-legal attributes. Second, the extra-legal attributes that Blumberg (1967), Heumann (1976), and others seem to have in mind are such things as devotion to family, regret about the crime, efforts to hold a job, appearance, manner,

political pressures on the judge, prosecutor, and lawyer[2] count more than evidence, and outcomes are decided more by bargaining than battling. Although it is not always explicit, this literature seems motivated by a desire to understand how such departures have taken place and taken hold.

The dominant analytic approach, specifically suggested by Packer (1968:152-153), has been to provide "models" of the criminal process, and in particular to contrast the normative model of adversary adjudication with models representing observed systems of processing. This approach has been illuminating, but it has fallen short of the goal of explanation. It helps us to understand what occurs in a given court, but it is of relatively little assistance in explaining why some courts follow one model and some another.

ORGANIZATIONS

Recently, there has been something of a movement to understand courts as "organizations" (Blumberg, 1967; Feeley, 1973; Barr, 1973; Heumann, 1976; Eisenstein and Jacob, 1977). This is essentially a continuation of earlier modelling attempts, with the bureaucratic organization representing a well defined model that differs in many crucial respects from the normative adversarial trial court. But the analogy appears strained in some respects; it is doubtful that we can gain insight into a given court by applying rigorously the existing body of knowledge known as "organization theory." Furthermore, it is questionable whether organization theory helps us to understand why some courts are different from others.

In 1975, I participated as an organization-theory generalist in a conference on courts as organizations.[3] The contingent to which I belonged was small and advisory; the main burden of the program was carried by legal scholars and social scientists interested in the judicial system *per se*. The experience stimulated me to rethink some former beliefs and to generate some new ones. My conclusions, in brief, are: (1) that the major

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and so forth. These are much more costly to research systematically than race and socio-economic status, the attributes given most attention in the papers reviewed by Hagan.

2. As noted by all of the authors cited above, these pressures come largely from within what Eisenstein and Jacob (1977) call the courtroom "workgroup," essentially the defense attorney, prosecuting attorney, and presiding judge. Most also recognize the importance of external pressures of a political nature.

3. Conference on Organizational Theory and Trial Courts, supported by the National Science Foundation, Palo Alto, California (August, 1975).

emphases in organization theory are of quite limited utility in providing answers to the questions raised by students of courts, but (2) that there are some particular hypotheses and findings in the organizations literature, not yet highly developed, that do illuminate these questions. Further, after having been applied specifically to the courts, these ideas may acquire augmented utility for organization theory more broadly conceived. Specifically, I think it more productive to consider courts as decision-making systems than as organizations. This has led me to realize that it will sometimes be more productive to consider behavior in organizations as being "decisional" rather than "organizational."

Are courts organizations? The technical answer depends upon what we want to call a "court" and what we want to call an "organization." For the former, let us consider courts to constitute a family of passive[4] governmental institutions one of whose prominent functions is the settlement of disputes, distinguished from other governmental institutions by a commitment to decide impartially, after presentation of proofs and arguments by contending parties, and to be able to justify decisions according to preexisting rules. This definition is broad and may conceivably apply to institutions or organizations other than those we commonly call "courts." That will not interfere with our purpose here, since the ultimate aim is to produce hypotheses applicable to an even broader frame—collective decision making in general. The definition and the discussion to follow are meant to include all types of courts, but a great deal of attention will be devoted here to the illuminating example of the criminal trial court. As legally delineated institutions of a particular type and level, such as the Circuit Court of county X, courts will indeed qualify as organizations in the details of case assignment and the management of personnel such as clerks and stenographers—but this perspective is trivial. Our interest instead lies in the proceedings leading to dispositions or settlements, in which the key actors are judges, attorneys and parties. For this purpose the focus of analysis has become *cases*, rather than administrative procedures.

As for defining 'organization,' March and Simon (1958) set the tone many years ago when they wisely concluded on the first page of their influential volume that "it is easier, and probably

4. Courts are "passive" institutions in the sense that (although there are exceptions) they do not take the initiative to settle disputes or promulgate rules, but must rather wait for a matter to be brought before them by an external source.

more useful, to give examples of formal organizations than to define the term." Nevertheless, a few of the more foolhardy among us have ventured into the breach. In an earlier publication (Mohr, 1973:475) I suggested in the course of an analysis of the concept of "organizational goal" that organization be defined as "the collectivity, including human effort and other resources, that is oriented toward producing [an identified product]." Thus, if the disposition of cases is considered as a product, then a court would seem to be an organization in this sense as well.

The crucial question, however, is not whether a court is technically an organization, but whether organization theory can productively be applied to the study of courts. Some of the limitations of application have been noted in the existing literature on courts as organizations. Feeley (1973:422), for example, points to the weakness of compliance systems in courts, making them unlike ordinary organizations: "There are virtually no instruments to supervise practices and secure compliance to the formal goals of the organization." To the organization theorist, this signifies that one prominent hypothesis in the field will simply be irrelevant, namely, the hypothesis that *type* of compliance system is determined by the dominant incentive for members to join (Etzioni, 1961). In the same vein, Eisenstein and Jacob (1977) point to the absence of a hierarchy and a common center of accountability with regard to the conduct of cases. To the organization theorist, this signifies that a cluster of hypotheses at the very core of classical organization theory will be inapplicable. These are the hypotheses of Max Weber (1947:337-341) and early theorists in business and public administration (e.g., Gulick and Urwick, 1937; Fayol, 1949) specifying that organizational effectiveness depends upon the correct manipulation of hierarchy, rules, specialization, spans of control, qualifications for office, and other "bureaucratic" characteristics. Particular combinations of these have come recently to be designated as particular "strategies of control" executed by top management (Child, 1972; Mohr, 1975), but control in this important sense is essentially irrelevant to courts as producers of decisions. The crux of the problem is that courts do not have what organization theorists mean by a "management." In the early years, Luther Gulick (1937:3-45) presented the acronym "POSDCORB" for what he called the "functions of the executive"—Planning, Organizing, Staffing, Delegating, Co-ordinating, Reporting, and Budgeting. Most of mainstream organization theory applies to social units in which these functions are car-

ried out and are important for determining organizational behavior. Courts do not fit easily within this group. Whereas POSDCORB has much to do with the way a car is made in a factory or a patient is treated in a hospital, it is relevant only in minor respects to the way in which a defendant is processed in a court.[5] In short, although they could technically be classified as organizations, courts appear not to be comprehended by the dominant strains of existing organization theory.

On the other hand, there is a relatively recent theme of major importance in organization theory that does appear to be applicable in an interesting way to courts and that therefore deserves mention. This is the movement to consider organizational goals and structure as dependent upon technological and environmental forces rather than as properties to be manipulated at will by management (Burns and Stalker, 1961; Woodward, 1965; Perrow, 1967; Lawrence and Lorsch, 1967; Mohr, 1971, 1975; Duncan, 1972). Management is eliminated from consideration in this theoretical framework (see Child, 1972b, for an important and germane dissent). Courts do have goals that are interesting in organization theory perspective (Mohr, 1973; Baar, 1973) and they also have an organizational structure if this is defined (following Perrow, 1967; 195) as the forms taken by interaction among personnel in the process of getting the work accomplished. Technology, it is true, hardly varies from court to court, and thus would explain little variation in goals or structure, but courts do differ widely and significantly in their environments, both by type of court and by geographic area. I suggest that these two dependent variables (structure and goals) as manifested in courts or organizations are worthy of further research by students both of judicial behavior and of organizations, and that adaptation to the environment presents a promising explanatory paradigm (see Mohr, 1975, for suggested dimensionalizations and hypotheses).

The theoretical possibilities just reviewed, however, probably do not explain in fact why there has been a substantial temptation to consider courts as organizations. Through the eyes of an organization theorist, this temptation probably arises because actors in the judicial bureaucracies depicted by Blumberg, Cole, Eisenstein and Jacob, and Heumann behave in their decision

5. Eisenstein and Jacob (1977) point out that judge, prosecutor and defense attorney represent different organizations working jointly on the same goal, and thus should be comprehended by what in organization theory is called "interorganizational analysis." In principle this is true, but at present the theoretical content of interorganizational analysis is crude, diffuse, and underdeveloped. It offers little systematic help for analyzing behavior in courts (see Mohr, 1975).

making remarkably like actors in *A Behavioral Theory of the Firm* (Cyert and March, 1963). This book is rarely (if ever) cited by observers of the judicial process, but organizations scholars know that the theory is powerfully "true to life." Although highly formal in presentation, it seems to capture behavior in organizations as participants know it to be. When astute observers document behavior that may aptly be characterized by this theory, they are likely to consider it to be typically "organizational," whether or not they are familiar with the work of Cyert and March.

But organizations may be characterized in quite different terms. To Dalton (1959), for example, an organization is a political arena in which actors struggle for advantage covertly with factions, lies, trickery, sabotage and opportunism. To Weber (1947), a bureaucratic organization is a structure in which predetermined rules and programs cover almost all contingencies and behavior is rational and predictable. Cohen, March, and Olsen (1972) talk about "organized anarchies"—loosely coupled organizational structures in which solutions, problems, and decision makers meander from one choice situation to another, joining together here and there in "garbage cans," i.e., collections of decisional elements bearing no compelling relationship to one another. The organizational behavior depicted in these studies may be less distinctive than the "firm" of Cyert and March, but there is substantial agreement, I would say, that these characterizations are also "true to life." In short, all organizations are not alike in organization theory; therefore, it will not help the analysis of court behavior very much to say that courts are "organizations."

We might, however, suggest that *some* courts are "firms." To the extent that they are, organization theory would have been found to supply an excellent model for behavior within the judicial system. Still, this model, like the others mentioned, does not answer what I take to be an important kind of question; it needs to be embedded in a more general theory that provides a means of predicting *when* a court will behave like a firm.

At present, organization theory does not provide a way of predicting when a court might follow one model and when another. (There is, in fact, little recognition within the field that it would be worthwhile to predict when an organization will look most like the model of Cyert and March and when like that of Dalton, or Weber.) There are, however, some good hints. The most prominent one is that the "garbage-can model" offered by

Cohen, March, and Olsen is not offered as a model of organizational structure, but of organizational *choice*. It is presented as a model of choice (or, equivalently, decision-making) behavior that is likely in a certain *context*, viz., the context of an "organized anarchy," where preferences are ill defined, technology is unclear, and participation is fluid. In addition, the literature that links environment and technology with outcomes such as structure and goals constitutes an important precedent for considering the most prominent characteristics of organizations to be influenced by context (Burns and Stalker, 1961; Woodward, 1965; Lawrence and Lorsch, 1967; Perrow, 1967). If we add modes of choice to this list of dependent variables, along with structure and goals, we might then consider all of the organizational models referred to above ("firm," political model, etc.) as different models of *choice* behavior, not of general *organizational* behavior, and look for the kind of context in which each is most likely to occur.

The distinction between these two terms is important for general organization theory as well as for judicial behavior. It suggests that we need not expect all behavior within an organization to conform to a single model—"firm," or garbage can, or politics, or the bureaucratic ideal type. Rather, we may recognize that decision-making groups—even a single decision-making group—within an organization may well be subject to different contexts at different times and may shift, with changes of context, into different modes of choice. Within an "organized anarchy" such as a large university, for example, many decisions follow the highly programmed, rational bureaucratic model; they are not all made out of garbage cans. Similarly, it is doubtless true that much decision making in the industrial firm is political, although much undoubtedly fits the model of Cyert and March. These are not competing hypotheses, in short, but categories of a dependent variable, one whose determinants can be uncovered.

Furthermore, decision-making behavior is a focus of analysis which may well characterize the essence of organizational behavior. This was the contention of Herbert Simon in his landmark book of thirty years ago (1948). The notion is extended here to suggest the desirability of recognizing more than one significant mode of decision making and conceiving of variation in mode as being explained by variation in context.

If the essence of behavior in all organizations is not captured by models of decision making, as Simon proposed, it may well

be at least for courts, especially trial courts. Trial courts are instruments for rendering decisions. Their organizational product is a certain kind of decision. Not all such courts, however, are best characterized by the same model of decision making (cf. Mather, 1974; Eisenstein and Jacob, 1977). They differ among themselves and what is more important, even within themselves. The differences may perhaps be understood in terms of modes of choice and contextual profiles drawn from organization theory.

DECISIONS

The Decision Submodels.

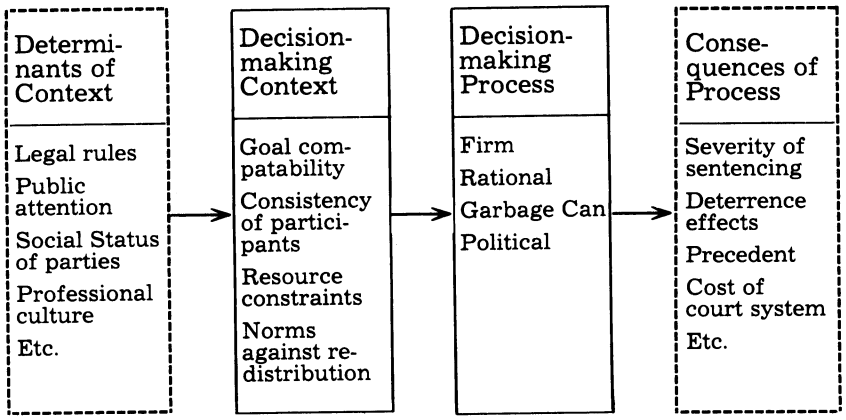
Let us consider four prominent modes of choice as values of a categorical dependent variable and four parameters of the decision context as interacting independent variables. This analytic framework is meant to advance the general hypothesis that *the operative mode of choice, or decision making, is determined by the specific conditions under which the decision is made.* Each mode of choice, or process of decision making, is composed of a choice mechanism, together with the kind of preliminary, instrumental decision behavior that is typical of that mechanism. A "choice mechanism" is defined as a criterion for selecting the levels at which the various goals relevant to a collective decision will be satisfied. For example, one such criterion might be the *maximization* of certain goals agreed upon by the participants. Each of the four modes of choice may be characterized by a submodel of decision making. (The term "submodel" is now employed in preference to "model" merely to emphasize that we are not dealing with four different theories of the way in which all decisions are made, but rather a single theory stipulating that decisions are made in at least four different ways.) In addition, I will refer to the independent variable in the hypothesis, the conditions under which the decision is made, as the "context" of the decision. By this term, I do not mean the environment of the court or other organization as a whole, but rather the set of conditions that may be used as descriptors of a decision process and that may in principle vary from decision to decision within the same organization.[6]

6. The statistical guide to the kind of theory building that is suggested by this hypothesis, as elaborated by the definitions of terms, is discriminant function analysis. The four submodels are classes of decisions, each class containing many empirical examples for analysis. (cf. Rao, 1973:565-582).

In concentrating on the context and the process of decisions, I emphasize two links of a longer causal chain that begins with the determinants of context and ends with the consequences of process. The whole is diagrammed in Figure 1, with some examples of beginning and end points that seem applicable to decision-making in courts.[7]

Figure 1

CAUSES AND EFFECTS OF VARIATION IN DECISION-MAKING PROCESS



The four prominent decision-making submodels are the Firm, the Rational, the Garbage Can, and the Political. One model that will not be considered here is the election. Whether exemplified in Congress, the electorate, or a three-judge panel, voting *per se* is not so much a collective process as an aggregation of individual choices. However, we shall be very much concerned, as a decision process, with the kind of behavior that often leads up to the ballot (e.g., an election campaign, a struggle over Senate legislation). Such behavior may follow any of the decision-making submodels discussed below. Sometimes the group engaged in the preliminary process is also the voting group, sometimes not. In either case, when elections are involved we would concentrate not on the vote but on the preliminary stage as a collective decision-making process—a process which terminates in completion by the participants of the work of providing input for and influencing the final output.

a. The *Firm* submodel. Here, the choice mechanism is *satisficing*, i.e., an alternative is selected such that all goals in the

7. In his elaborate and significant essay on dispute institutions in society, Abel (1974:252, 264-270) advanced a similar hypothesis, namely, that process in a dispute institution is determined by structure, that the structure is influenced by conditions external to the dispute institution, and that the processual nature of dispute institutions has certain impacts upon values and behavior in the surrounding society.

active demand set (Cyert and March, 1963:35, 39) are satisfied at least at minimally acceptable levels (this is opposed, for example, to satisfying some goals maximally and other not at at all. March and Simon, 1958:140-141; Cyert and March, 1963:78-80, 118). Because of the work of Cyert and March (1963) and others, this submodel is the most thoroughly elaborated of the four. It contains within it theories of search, estimation, and learning as well as of choice, but these others need not concern us here. It is worthy of note, however, that in the Firm there is at least a tacit mutual search for a solution that will leave no participant greatly dissatisfied, and the typical mode of interaction among participants—the method by which final and true levels of aspiration in the active demand set are made known—is *bargaining* (Cyert and March, 1963:29-32). Department-store pricing decisions were shown by Cyert and March (1963:128-147) to be characterized by the Firm submodel. Municipal budgeting and Federal budgeting systems also exemplify the Firm in their mode of decision making (Crecine, 1969; Wildavsky, 1964). So, apparently, did national (U.S.) decision making in the Cuban missile crisis (Allison, 1971:67-100, 245-263). A board of directors or similar group is a Firm. In fact, because the profile of conditions determining this submodel is so very common, the Firm is probably the most prevalent mode of group decision making in Western societies. As we will show, many cases in criminal courts that are characterized by plea bargaining and simultaneous satisfaction of multiple competing goals are Firms in their process of decision.

b. The *Rational* submodel. In this case, the choice mechanism is *maximization*, i.e., logic and facts are adduced to discover and select the alternative that best attains a particular goal or weighted goal set. For this submodel to operate, it is not necessary that the decisions that are made actually turn out to be "best," but only that the maximization rule guide the process. Typical instrumental behavior features analysis and persuasion. Financial aid committees are often good examples, as are certain grant committees in Federal agencies.

Juries are often rational systems *par excellence*, with "justice" being the primary goal, although if some jurors are strongly concerned about time constraints, or have divergent values, the rationality thrust can be significantly diluted. The decision stage leading up to submission to judge and jury for verdict must be treated separately. Initially, one would credit the Rational submodel with little if any applicability to this pre-

liminary stage. However, the analysis by Heumann (1976) of the adaptation of prosecutors and defense attorneys to plea bargaining suggests that at times the goals of the two are so completely consistent that the process of arriving jointly at a recommended disposition is Rational.

c. The *Garbage-can* submodel. Here, the choice mechanism is "*strategic agglomeration*," i.e., a decision relative to a goal is rendered only if the latter happens to be under consideration when a choice on some other matter, call it the "central choice," is actually made. Since there are usually too many appended problems to be solved or peripheral goals to be met in the making of the central choice, it is in general made only by "flight" or "oversight" (Cohen, March, and Olsen, 1972)—that is, either most problems leave in search of a choice more likely to made ("flight"), or the central decision is made quickly—before other goals and problems have the opportunity to flock to it ("oversight"). A certain amount of politics, bargaining or rational analysis may take place, but these are not the behaviors with greatest importance for outcomes. Rather, the kinds of behavior that are typical and instrumental in the Garbage-can process of choice are going, coming, and waiting. For example, a new dean is to be selected. In the process, goals having to do with the hiring of women, neglect of the social science departments, antiquated data processing facilities, student rights, pass-fail grading, weak athletic teams, falling enrollments, and interdisciplinary programs become attached to the choice as problems to be resolved. Rational attempts are made, but it is clear that there is not enough energy available to solve all of these problems in the context of this particular choice. Gradually, problems wander off voluntarily in search of other choices. The dean is selected when only a few such problems remain, perhaps none. Cohen, March, and Olsen tell us that the Garbage-can submodel is typical of "organized anarchies," such as universities and other large, loose organizations. This may well be true, but the fact that a university is an organized anarchy does not imply that decisions within it will necessarily be characterized by the Garbage-can submodel. Many other kinds of decisions are taken in universities. The point is that an attribute such as fluid participation is more applicable to some decision-making situations in universities than to others. It may also be applicable more frequently to decisions in universities and similar organizations than to decisions in local welfare departments, small manufacturing firms, or criminal courts. But it is as parameters of a *decision context*, not a whole organization, that such attributes determine

whether or not a process of choice is characterized by the Garbage-can submodel.

This submodel is presented more for its contribution to the broader theoretical framework proposed than for its applicability to courts. Its irrelevance to courts, however, is not a foregone conclusion. It may be pertinent to governmental decision making *about* courts, for example, or to decision making about what to review in appellate courts, or to other judicial activity not necessarily centered around individual cases.

d. The *Political* submodel. I use the term "political" here in a narrow sense that is familiar and comfortable to organization theorists. It is meant to connote contention, struggle, and the attempt to overpower with superior force (whether this be force of money, arms, or argument). In this submodel, the choice mechanism is *domination*, i.e., the goals most satisfied are those most favored by the conqueror. Complete domination is not necessarily the outcome, just as a Rational process does not necessarily yield the most rational decision; stalemate is possible, for example, and selective losses and gains are common (see Kidder, 1974, for an elaboration of such outcomes with specific reference to litigation). Wars are often good examples of the operation of this submodel, as are many typical decision processes in the General Assembly of the United Nations. The Congress of the United States is *not* a good example. The Congress is a complex phenomenon. Like courts, and partly because of the same sort of fragmented accountability, it is not at all well comprehended by organization theory. But the Congress resembles a complex organization in not being characterized by a single decision submodel. Rather, it undoubtedly manifests all of them.

Many court cases are excellent examples of the operation of the Political mode of choice. This is not to suggest that judicial decisions are influenced by the current political regime. To say that what goes on in the courtroom is Political in this sense is essentially to say that normative adversary adjudication obtains with no holds barred (cf. Skolnick, 1967).

Note that the court case may eventually be submitted to a judge or jury for decision and that this latter phase is presumably Rational, not Political. We recall, however, that many choices are constituted in two distinct decision stages. As a first-stage decision process, the Political submodel operates in a court much as it also operates in an election campaign, a formal debate, or a labor dispute before an arbitrator.[8] When the first stage

8. Abel (1974:227) treats a category that he calls "disputes," which

is completed, there has not yet been a formal allocation of values. However, this stage is expected to constitute a substantial or even an exclusive influence upon the allocation that subsequently takes place.

At times, a Political process often does indeed allocate values in court cases, much as does the process of bargaining and satisficing. This occurs through out-of-court negotiation among the adversaries. Thus, many disputes in court resemble certain labor disputes in that the contending parties exercise a *choice* whether or not to confer the power of binding decision on a third party.

For example, although there are many exceptions, the typical civil suit is Political. The goals involved are generally simple. One party wishes to obtain a lot of money (or some other value) and the other wishes to surrender very little. There can be no joint maximization because the goals of prime importance to both sides are on the same dimension with opposite sign. Negotiation takes place and compromise or settlement may be reached before or during the court proceedings, but the negotiation is not of the same type as mutual search for a satisficing solution.[9] Instead, it is essentially a struggle with all feasible weapons in which initial money and power differentials, the uncertainties of a trial, the desire to minimize losses, the facts of the case, and the skill of the lawyers determine the outcome.[10] The suit itself, in fact, may be but a weapon in an underlying political struggle, which could conceivably be settled without reference to governmental authority at all.[11]

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overlaps extensively with the category "decision processes" treated here. He divides disputes into two types: "arguments" or "quarrels," in which one party asserts his claim directly to his opponent, and "cases" or "controversies," in which the disputants submit their claims to a third party (the "intervener"). The parallel with the present discussion is close. Further, it is helpful in emphasizing that in those decision processes that are disputes, the phase prior to submission to an intervener is important and is a unit in itself.

9. This is not to suggest that negotiations in a civil suit are always Political. Galanter (1974:124-135) presents a long discussion and a classification of "alternatives to the official system" in which one readily perceives that various decision-making submodels may obtain both inside and outside of the courtroom. In particular, "Repeat Players" (as opposed to "One-shotters") in the courts may not be primarily interested in the money or other value directly disputed in the case, but in rules and precedents that will help decide similar cases in the future (see Galanter, 1974:98-114). More complex goal configurations of this nature might possibly evoke a bargaining mode in negotiations, for example, rather than a struggle to dominate. I have oversimplified the discussion in the text by employing an ideal type, or classical case, which would appear to be one commonly occurring case, as well.
10. Galanter (1974:97-124) shows that the full range of such weapons, facilities, and risks generally works to the advantage of the "haves" in this struggle and to the disadvantage of the "have nots."
11. The point is emphasized by Kidder (1974:34): ". . . most litigation

The Contextual Variables.

The four submodels discussed in the previous section are utilized as the column headings in Table 1, to which the reader is referred as a schematic rendering of the paradigm which follows. We may now turn to the contextual variables which comprise the row headings and fill in the matrix by specifying the ways in which approximate values of the latter lead toward one or another of the choice mechanisms. As will be noted, the various characteristics of context operate causally by providing incentives to and constraints upon the individual participants in the process of choice. The contextual variables are drawn from organization theory, particularly from Cyert and March (1963), Cohen, March and Olsen (1972), and Dalton (1959). They are not necessarily the only variables that would contribute to an effective discriminant function (see footnote 6, above). Rather, they have been culled from a larger set of possible determinants implicit in the relevant literature and are offered here as parts of an integrated hypothesis. At a minimum, this set conveys the thrust of the paradigm and, as a synthesis of disparate strands of organization theory, represents a viable theoretical start.

Table 1

DECISION SUBMODELS

	Firm	Rational	Garbage Can	Political
Choice Mechanisms:	Satisficing	Maximizing	Strategic agglomeration	Domination
Typical Instrumental Behavior:	Bargaining	Analysis, persuasion	Going, coming, waiting	Contention struggle, force
Contextual Variables				
1. Goal Compatibility	Mod	High	Low	Low
2. Consistency of Participants	High	Low-Mod	Low	Low
3. Resource Constraints	High/Mod	Low	High	Low
4. Norms against Redistribution	High	High	Mod	Low

a. *Goal Compatibility.* Following Cyert and March (1963: 35, 39), we assume a set of latent demands (i.e., ends desired

is better understood as the expression of ongoing conflicts within social groups."

by participants and relevant to the decision, but for various reasons not pressed at a given time) and a set of active demands, or goals, attached to any choice. The active demands of each participant are pegged at specific aspiration levels, although neither the goals themselves nor the aspiration levels need be clearly or openly avowed by their holders at any time during the choice process. Goal compatibility here refers to compatibility of the active demand sets of the various participants.

If goal compatibility is extremely low, then the choice must be made either by the flight of some participants or the domination of some by others—the third or fourth submodels—because the joint satisfaction of a number of mutually inconsistent goals is impossible. If compatibility is high, the tendency is strong to employ a Rational choice process, maximizing all demands in the set. If compatibility is moderate, there is a powerful incentive to bargain and satisfice; the demands are not so inconsistent that it is necessary to fight in order to obtain a favorable outcome, nor are they consistent enough to permit maximizing all simultaneously.

b. *Consistency of Participants.* This contextual variable has two subdimensions that operate multiplicatively (that is, both must be high in order for overall consistency to be high): (1) the extent to which the choice process involves face-to-face interaction (unlike, say, formal debate in a large legislature), and (2) the extent to which the cast of participants recurs in successive instances of choice.

This variable contributes substantially to the demarcation of the Firm submodel from the other three. If consistency is high, there is great pressure to satisfice, at least in Western societies; it is difficult for participants to tolerate repeated loss of face, by oneself or by another, in any long-term face-to-face group. If consistency of participants is low, there are several possibilities. If at the same time the goals are incompatible, then Garbage-can and Political processes will predominate. In other words, when goals seem to be divergent at the outset, and when there are also no personal ties and no possibilities for trading on demands in future choices, the incentives are either to leave or to fight. Low consistency of participants can also lead to Rational decision making, primarily when the goals of participants are compatible, as is the case with a jury. Moderate consistency might also lead to Rational processes, as in a financial aid committee, but whenever the consistency is greater than zero, a strong incentive to bargain is introduced. Even in groups that

might otherwise be Rational, consistency of participants undermines the maximization dynamic by allowing the otherwise latent goals of individuals to creep into the active demand set.

c. *Resource Constraints.* This contextual dimension refers to time, energy, and other resources that may be necessary to support a given decision process (i.e., the transaction costs). Specifically, it is defined as the amount of resources it would take to reach a decision relative to the amount of resources available for the purpose. Thus, we would say that the constraints are high when there are relatively meager resources available.[12]

If the resource constraints are low rather than high, the Rational or Political submodels become more probable, since there is incentive to keep on spending time, energy, money, lives, etc., until a maximizing solution is found, in the former case, or until one side is vanquished, in the latter. If the constraints are high, on the other hand, either the Firm submodel is encouraged, or the Garbage Can, that is, participants would either search for alternatives and bargain on the resources available until a satisficing solution is discovered, or, if this is infeasible, would simply have to give up and leave the field.[13]

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12. There are many different ways in which this dimension could be operationalized. One that suggests itself as particularly productive is, "the resource constraints upon the least constrained participant." The ratio referred to in the text then becomes, for each participant, the resources available to the participant divided by the resources required to reach a total solution which includes maximizing the goals of that participant. In many civil cases the resource constraints vary substantially among participants, so that one of them frequently has a highly favorable ratio and there is strong incentive to attempt to dominate (cf. Galanter, 1974). Studies indicate that in the bulk of criminal cases, the resource constraints are uniformly high on all participants, which encourages bargaining.

13. The choice between bargaining and leaving, given high resource constraints, would depend on goal compatibility—bargaining when there is moderate compatibility and leaving when compatibility is so low that, given the constraints on energy available, there is no hope of fulfilling the goals. In the same way, the choice between the Rational and Political submodels depends on goal compatibility when resource constraints are low—maximization is evoked when the goals are compatible and struggle is selected when they are not. There is, then, an "interaction," to use the statistician's jargon, between contextual variables 1 and 3. Interactive terms are not common in discriminant functions, but there is in principle no reason to exclude them. In the present case, we would add a fifth contextual dimension, which would simply be the first multiplied by the third. The horizontal row in the Table for the new dimension would read, "High, Moderate, Moderate, Low." Thus, the new dimension might not help to discriminate between the Rational and Garbage-can submodels, but it would help to discriminate between these two and the other two, and to distinguish the latter two from one another. A similar dimension might also be usefully constructed out of dimensions 1 and 2 and dimensions 1 and 4. In other words, goal compatibility not only contributes to discriminating among the submodels in and of itself, but also acts as a "weight" variable for each of the other three subdimensions.

d. *Norms against redistribution.* Decisions commonly allocate values. It is entirely possible to reach a decision that leaves one of the participants or constituencies worse off than before (even if only by losing face or reputation or by wasting resources). Choice processes differ importantly from one another in the extent to which they operate under norms that discourage such outcomes, a dimension that is conveyed here by the term "norms against redistribution."

If there are no such norms in operation (denoted by "Low" in Table 1), then the winner-take-all type of Political process is encouraged. If the norms against redistribution are strong, however, participants will be constrained to seek either a maximizing or a satisficing solution. If such norms are only moderately operative, the Garbage-can submodel is strongly suggested, i.e., if there is a bit of risk of losing significant ground in terms of one's goals, than one seriously considers leaving the fray for more likely opportunities, rather than hang around and make oneself perilously obnoxious to other participants by holding up the entire process. Although norms against redistribution might arise in many ways, they would almost always be strong in long-term, face-to-face groups, and this is one reason why consistency of participants leads to satisficing solutions.

COURTS

Having offered a general paradigm for the determination of mode of decision making by conditions of context, it will be useful to conclude with a brief examination of courts in light of the theory presented.

The ordinary felony case that is common in a criminal court is a prototype of the Firm as a decision-making submodel:

Goal compatibility in such cases is moderate. Judges wish to save time, keep things simple, avoid certain undesirable images, and maintain political favor (Blumberg, 1967:120, 127). Prosecutors wish to maximize production, maximize convictions and guilty pleas, avoid over-leniency in the more serious cases, and earn favorable recommendations from superiors (Blumberg, 1967:46; Alschuler, 1968). Defense lawyers wish primarily to earn a fee quickly (since it cannot be large) and keep clients satisfied (Blumberg, 1967:95-116; Alschuler, 1975). The public defender wishes to relieve the time pressure of his caseload, maintain a good reputation for the office, and obtain certain resources (e.g., confidence, prosecutorial information) that are necessary to the job (Alschuler, 1975:1206-1255). Thus, goals are

not highly compatible, in the sense that there is no possible way in which they can be jointly maximized. But they are not highly incompatible, either. Basically, the prosecutors and judges need a certain level of convictions and guilty pleas, but most often it does not matter crucially to what charges, with what sentences, and with what arrangements for bail, probation, etc. Defenders and lawyers need to do well for their clients, but this is measured much more in terms of penalties than in terms of formal outcomes of guilty or not guilty. Compatibility is to be found, therefore, in a plea of guilty to *some* charge and negotiated or tacit arrangements on the rest of the outcomes, especially the sentence, that do not mock the law but that are better for the defendant than he or she, and the family, might otherwise have expected. This is the very definition of plea bargaining (Alschuler, 1975:1180-1181; Heumann, 1976:64).

Consistency of participants, the second contextual variable, is extremely high in this sort of decision. The same few judges, prosecutors, and lawyers or defenders meet each other over and over again.

The *resource constraints* are also extremely high. Often, this is manifested in the pressure of a huge caseload, but I am sympathetic to the arguments of Feeley (1973:417-419) and Heumann, (1976:64-82) that caseload *per se* is not the real villain (see Blumberg, 1967:22 for the pro-caseload argument). Rather, the resource constraints inhere in two inescapable facts. First, neither the society nor the defendant is willing or able to expend nearly as much on minor criminal cases as on major ones, yet the costs of properly gathering information and conducting a trial are nearly as great. Second, the courtroom participants are personally disinclined to devote their energy and creativity to the great bulk of these routine criminal cases, where practically nothing is in dispute (Heumann, 1976). Thus, the resource constraints would remain just as high even if staggering caseloads were moderated, and would not be noticeably eased unless very few crimes were committed in the society.

The *norms against redistribution* are high.[14] The participants all have bargaining advantages and they meet again and

14. It is interesting to note that bargaining toward a satisficing solution and conducting Political negotiations outside of court, instances in which the norms *against* redistribution are quite high and quite low, respectively, are seized upon as alternatives to a process (i.e., adjudication) in which the norms strongly *favor* redistribution. In court, the norms direct the judge and jury to measure the facts against pre-established standards and decide who wins; it is normatively illegitimate for the judge to encourage bargaining, compromise, or "working something out" (see Coons, 1964, and Ross, 1970).

again. To damage the reputation of one participant, to defeat him conspicuously or consistently, would simply lead to retaliation that could not be easily tolerated. Under these circumstances, the norms of playing the game are inevitably and firmly established and new personnel are socialized by the system to observe them scrupulously (Blumberg, 1967:73-94).

Given these characteristics on contextual dimensions, the Firm submodel is clearly suggested; the profile of characteristics just described adheres closely to the profile given by column 1 of the Table.

On the other hand, consider a case that came up in my own town several years ago, in the same court that settles case after case by plea bargaining. A man was accused of murder and was suspected to be the individual responsible for the sexual violation and brutal killing of more than ten young women. First, the lawyer for the defense was not a court regular but someone from out of town who had probably never appeared in our county building before. Thus, consistency of participants was low. The nature of the crime was such that very little flexibility existed in specifying the charges, and in addition, the public, watching attentively, would have been actively incensed if these murders had been labelled anything but murder. Thus, the defense attorney needed a finding of innocent and the prosecutor badly needed either a plea or a verdict of guilty. Compatibility of goals, then, was extremely low. The resource constraints were also low, since the county was obviously willing to spend whatever might be needed to administer justice in this case. The defendant and his family were not rich, but were willing to expend substantial sums for the defense, since the stakes were so very high. Energy resources were also available in abundance from judge, prosecutor and lawyer, since the case was unusual, challenging to all sides, and in the public spotlight. Finally, given the attention and expectations of the community, the norms favored whatever redistribution might result from an intense, all-out battle of evidence and argument. The profile of contextual characteristics therefore closely typifies the Political decision-making submodel and, despite the abundant familiarity of this court with plea bargaining, the case unfolded as a textbook example of adversary justice.[15]

15. So extreme a case as this one is not generally required to "cue in" the Political submodel rather than the Firm. The study by Mather (1974) is most informative in this regard. In the court that she analyzed, 87% of the cases not dismissed were settled either through implicit or explicit plea bargaining. The analysis strongly suggests that, by tradition, *certain types* of cases were expected to be the

Much of the literature on models of criminal justice and courts as organizations has tended to view individual courts as quite homogeneously representing either one or another category (e.g., Aubert, 1963; Nader, 1965; Blumberg, 1967; Baar, 1973; Feeley, 1973). I have argued that the mode of choice pursued not only varies from case to case within a given court, but varies predictably (the studies by Mather, 1974, and Eisenstein and Jacob, 1977, are within this latter spirit). To be sure, some courts do overwhelmingly represent a single submodel. Some, however, clearly represent both the Firm and the Political submodels, intermingled from day to day and from case to case. The clearest documentation of this is the analysis of Baltimore's Criminal Court by Eisenstein and Jacob (1977). Such courts are not confused, nor are they volatile, nor exceptions to some rule. They behave in this fashion simply because submodel of choice depends upon context of decision, and measures on the contextual dimensions may vary appreciably in such courts from case to case. The variation in context is not random, but is composed of events determined by prior causes, as suggested in Figure 1. Some causes are to be found in courtroom structure and tradition itself (see footnote 15, above) and some in the surrounding community (Abel, 1973). Such courts, then, do not follow a model; they follow at least two models.

In general, individuals are motivated by profiles of conditions to adopt different decision-making strategies in different situations. I propose that such strategies tend to be uniform across participants in a given instance or tend to become integrated with one another in such a way that institutions, also, are ever ready to shift gears in response to contextual variation and slip unceremoniously into alternate modes of choice.

In sum, as an organization theorist I feel that although the fit between courts and organizations is not an altogether comfortable one, there are some themes in organization theory that may be helpful in the study of courts. The hypothesis linking struc-

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exceptions—to go to trial. These were the types in which the goals of the prosecutor and the defender would understandably (by all concerned) be least compatible. The prime example is the case that must be considered "serious" and that also contains an element of reasonable doubt as to guilt. Because of local tradition, the resource constraints and the norms against redistribution were also lower than usual in such cases, just as was the compatibility of goals: it appears to have been understood by all major participants that the limited time and energy available for adversary (redistributive) trials would be reserved for *just such cases*. The process of selection of cases for trial was not random, nor arbitrary, nor even, for the most part, unilateral. The same flavor is imparted by many of the examples scattered throughout the studies by Eisenstein and Jacob (1977) and by Heumann (1976).

ture and goals with organizational environment (See page 625 above) is one. When the idea of "interorganizational analysis" is more tightly developed theoretically (see footnote 5, above), it will be another. Most importantly, I suggest, organization theory does have a small but special contribution to make in the area of models of choice; behavior in courts can be illuminated by analysis of processes of choice and contexts of decision. In these terms I have utilized incipient ideas in organization theory to propose a paradigm, patterned on discriminant function analysis. It rests on the assumption that choice behavior varies significantly both within and across individual courts and individual complex organizations and its goals are to classify and to render intelligible the striking behavioral variation in decision making that exists in both milieux.

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