

Book Review

SHADOW JUSTICE;
THE IDEOLOGY AND INSTITUTIONALIZATION OF
ALTERNATIVES TO COURT

Reviewed by

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The conflict resolution movement has matured to the stage where incisive, revisionist, analyses can make an important contribution to the field. Shadow Justice: The Ideology and Institutionalization of Alternatives to Court promises to be an important work. It combines a useful review of the theories and goals of informal justice reformers, with provocative data drawn from the Kansas City Neighborhood Justice Center.

Much of the early writings, including my own were impressionistic. These works advocated establishing programs to which people could bring their disputes and participate in a problem solving process rather than a guilt finding. These writings were geared to encourage reformers to experiment with the new concept. Harrington can now challenge and help refine these concepts.

Unfortunately, Harrington's insight is hidden behind a mask of turgid prose. I found myself rereading passages like the following two or three times to get the message.

In this chapter I argue that the degree of institutional coercion over the parties and the level of institutional dependency on the judiciary play a larger role in structuring the relative autonomy of individuals communities in the implementation of this reform than is

recognized by the incentives approach." (106

Harrington traces the roots of alternative dispute resolution programs to two sources. One is the diversion analysis which suggests that due process demands have not been fulfilled by the courts. The other is the dispute processing alternative which suggests the court structure is internally consistent but is unable to handle minor disputes. She argues, however, that alternative dispute resolution amounts to the construction of "a rationality for judicial management of lower court organization and for intervention in everyday conflicts. In effect, she raises the argument revisionists applied to pretrial diversion. That is, ADR increases the net of judicial control of public behavior by providing administrative means of supervising conflicts which formally would not have risen to the attention of the judicial system.

Data

While the theoretical sections of the book left me exhausted just trying to decipher them, I found the data analysis challenging. Perhaps that also reflects my orientation more to hard data than to theory.

In the mid 1970s the federal government established three "pilot" Neighborhood Justice Centers to test out the concepts of alternative dispute resolution. The Kansas City model was most closely allied with the court system. Venice California was an attempt at establishing a community based neighborhood program, and Atlanta was a hybrid. It was sponsored by the court system but with a decentralized facility, community mediators, and some

community participation on advisory board structures. Each model was extensively studied

Harrington chooses to dismiss the community based alternatives from her analysis and asserts that since a majority of mediation programs are court rather than community based one should pay attention to the policy implications of court-based alternatives. She examines the Kansas City model, although one could argue that Atlanta is also court based, has been more influential, and has thrived while the Kansas City one has suffered from difficult reorganizations.

Her data should be read in the context of its source - a highly structured, court based, centralized program which is totally controlled by the criminal justice system. About 85% of the referrals come from criminal justice personnel, prosecutors, police and municipal court judges. Where charges have been filed, they remain outstanding until the program reports back a settlement when the prosecutor recommends dismissal. With this sort of program Harrington's findings affirm the convictions of those of us who argued that conflict resolution programs should be independent of the courts and based in neighborhoods.

She finds that although ADR reformers argued that the ongoing relationships between disputing parties would be the incentive for them to attend hearings and settle, the determining variable was the source of referral. Parties referred by criminal justice officials who held the threat of judicial proceedings in their hands were much more likely to participate in mediation than those referred by sources without this threat.

Clientele in NJC hearings paralleled those handled by the

courts in that they were drawn from the lower classes. Harrington observes, "Prosecutors who have private practices in addition to working for the municipal court say they would never refer their own clients to the Neighborhood Justice Center because of its lower class status." 149)

Since clients are drawn from the same pool as the courts and referred to hearings under threat of court sanctions, it is surprising that a similar percentage fail to appear as do court bound clients. Similarly, the Kansas City model treats conflicts as individual disputes between neighbors, landlords and tenants, rather than attempting to analyze the possible collective nature of the problem.

She draws on some interesting data comparing the stated reasons court personnel use to divert cases and their actual behavior. Prosecutors speak of referring cases of "less worth" or as they referred to them, "garbage" cases to the NJC. A prosecutor said, "Neighborhood Justice is really handy because it is like a garbage dump. (144) He could refer complex multi party cases that the court finds difficult to handle. In fact, Harrington finds in practice that court personnel find it easier to handle these cases than to undertake the complex process of referring them out.

More to the point, although reformers see the courts as "adjudicators" municipal court judges define their role as problem solvers. At a minimum this would create difficulty them in differentiating NJC cases from court ones and could also explain their resistance to referring cases to an apparently

competitive forum. While debunking the stated grounds for referral, Harrington does not enlighten us to why any cases were referred at all.

Looking at the outcome of cases handled by the courts and NJC Harrington has two useful findings. People, particularly assault and harassment cases, seek to avoid future contact with their opponent. In court they obtain a peace bond. In mediation; an agreement to avoid contact. Both results are symbolic sanctions with little real enforcement and in fact rely on the disputants themselves to uphold and enforce them.

She also observes that the largest category of court cases were dismissed for failure to appear. Of those heard, virtually all resulted in dismissals and suspended sentences. Mediated cases were more likely to result in property settlements or money damages. This finding supports her thesis that NJCs expand the net of control.

In short, Harrington's thesis is that alternative dispute resolution programs belie the rhetoric of the original reformers. They increase the extent to which the judicial system controls order maintenance conflicts, and the process mimics the court model which controls it. It is born out by her data from the highly court controlled Kansas City Neighborhood Justice Center model. Readers should be cautious about applying her findings to conflict resolution centers which have less court control, and particularly to community based models.

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