Institutional Change Through Interstitial Emergence:
The Growth of Alternative Dispute Resolution in American Law, 1965-1995*

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In 1970, fewer than a dozen courts in the United States officially offered mediation, negotiation, and other types of informal dispute resolution as "alternatives" to adjudication. By the mid 1990's, court-based alternative dispute resolution (ADR) programs are common: Forty-five states have enacted legislation creating ADR programs.[1] Two-thirds of all states have functioning ADR programs for small claims, superior, domestic relations, and landlord/tenant courts. In thirty-six states, many types of civil disputes are required to be processed through mediation prior to adjudication (Filner, Ostermeyer, and Bethel 1995).

The pervasiveness of ADR in the American legal system is a part of more general changes in the U.S. sociolegal field -- the organizations and institutionalized practices within which legal dispute resolution occurs (see Edelman, this volume). Alternatives to the classic trial-by-jury have been a feature of the sociolegal field since the introduction of commercial arbitration in the 1880's. With the exception of domestic relations ("conciliatory") courts, the adversarial process remained firmly at the center of these earlier alternatives. The ADR of the past three decades, by contrast, features nonadversarial dispute resolution processes.

In this chapter, I investigate the "interstitial emergence" (Mann 1986, p. 16) of American ADR. As I use the concept, interstitial emergence begins with pragmatic innovation of alternative practices among informal networks of players in overlapping organizational fields as they respond to real or perceived institutional failure. I identify four mechanisms of interstitial emergence that facilitate institutional change: critical masses to lead reform efforts, resonant frames for alternative practices, resource mobilization, and professionalization efforts. The emergence of alternative practices into the mainstream can lead to institutional change manifested as new organizational forms, as well as shifts in legitimating ideologies for new and existing formal organizations.

In the ADR case, judges and other players operating in the sociolegal and related fields used mediation and negotiation informally during most of this century (Harrington 1982). Until the 1970's, the majority of the judiciary and the legal profession largely ignored these practices and dismissed them as idiosyncratic departures from adjudication. During the late 1960's and 1970's, informal networks of judges, lawyers, mediators, therapists, social scientists, and social workers attempted to manage a range of legal cases for which adjudication held few answers. These networks coalesced into critical masses around two competing ADR frames: the "community mediation model" and "multidoor courthouse." The multidoor courthouse became the dominant organizational form of ADR as it articulated with public philosophies of state federalism and de-institutionalization during the 1980's and 1990's, thus facilitating the construction of an emergent professional jurisdiction for ADR practitioners. These changes also signal a shift in legitimating legal ideologies and accounts: From "liberal legal ideology," which portrays law as an autonomous, rights-based system where judges are independent triers of fact, to a managerial "harmony ideology" (Nader 1990), which portrays law as a socially embedded system where judges are administrators attempting to keep the peace efficiently (Galanter 1984).

My concentration on interstitial emergence attempts to bridge the divide between the "old" and "new" institutionalisms in organizational analysis. Whereas the old institutionalism demonstrated how the "shadowland of informal interaction" in organizations subverts rationalized formal structures (Selznick 1949, p. 260), the new institutionalism underscores the irrationalities contained within formal structures themselves. Neoinstitutionalists argue that the homogeneity of particular formal structures does not result solely from their success at performing intended functions, but also from the persuasiveness of cultural accounts about them (DiMaggio and

Powell 1991). By focusing on interstitial emergence, I demonstrate how informal interaction across multiple organizational fields can provide cultural accounts for new formal structures.

As I conceptually and empirically investigate informal relations across organizational fields, I also draw on insights from multiple subfields within sociology. Institutional analysis in organizational and legal sociology shared many common practitioners during the early twentieth century, including Max Weber and Emile Durkheim. Since that time, institutional analysis in the two subfields has experienced less integration. Nearly thirty years ago, Philip Selznick (1969) provided a notable exception with his research on the institutionalization of organizational due process. More recently, Lauren Edelman (1990, 1992, this volume) and others have pursued integration of the two fields by investigating cultural, political, and cognitive constructions of legal and extra-legal rule systems in organizations.[2] My analysis furthers the integration between institutional analysis in organizational and legal sociology, but does so by borrowing conceptual leads from collective behavior and social movement theory to elaborate and develop a framework for understanding institutional innovation and change. In doing so, I draw specific attention to issues of agency and emergent signification (see Zald 1992, for an analysis of these issues in social movement research).

I begin with a theoretical discussion of interstitial emergence. The remainder of the paper contains sections that narratively illustrate interstitial emergence and its dimensions using evidence from the American ADR case.[3] I close the chapter by extending the argument beyond ADR to consider recent alternative developments in medicine and implications of this study for institutional analysis.

Unpacking Interstitial Emergence

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Proponents of the new institutionalism recognize that institutions leave opportunities for noninstitutionalized action and change (Powell 1991, 1996; Scott 1991; Jones this volume). Meyer and Rowan (1977), for example, note that social networks of players between and in organizations can alter organizational action, the effects of which can be disaggregated from institutionalization effects. Jepperson (1991) further argues that collective action can constitute a source of extra-institutional change, although activists often draw on institutionalized cultural accounts as rhetorical resources (Meyer, Boli, and Thomas 1987). Despite these observations, the emphasis in the new institutionalism on cultural accounts for formal structures tends to mute conceptual elaboration and empirical analysis of informal, noninstitutionalized sources of formal structures that can flow from informal relations and networks. Interstitial emergence provides an analytic window onto these processes.

In his social history of power, Michael Mann (1986) uses interstitial emergence metaphorically (e.g., human beings create "tunnels" around existing institutions or change occurs through the "pores" of society) and descriptively to label historical change over long periods of time (e.g., the transformation of European feudalism to capitalism), without specifying its components. Further complicating his usage of the concept is that it is simultaneously a location in social space (an *interstice*), a process (of emergence), and an effect (resulting in change).

A useful way to begin disentangling these ideas is to identify the social domains relevant to interstitial emergence.[4] These domains are nested within each other and create multiple levels of analysis, beginning at the supra-organizational level of analysis with the institutional context. The institutional context consists of both material and symbolic elements that enable multiple and sometimes contradictory patterns of human activity to be organized, made sense of, and

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navigated. Among the central institutions in the West are the market, state, bureaucracy, family, liberal democracy, and religion (Friedland and Alford 1991). Subsumed within the institutional context are organizational fields, comprised of aggregates of organizations producing similar services and/or products, their constituencies, their relevant regulatory agencies, and the ties among them (DiMaggio and Powell 1983). The sociolegal field, for example, contains courts, prisons, regulatory agencies, and policing agencies are all part of the state, yet overlap with other organizational fields (Edelman this volume). The institutional context and organizational fields are only disembodied constructs until they manifest themselves in practices by individuals and groups who enter "enter into the character" they "inherit" from these larger domains (Bourdieu 1981, p. 309). Individuals and groups, however, do not slavishly obey unambiguous scripts ("habitus") dictated to them by larger domains. First, multiple logics of practice exist in the institutional context that provide different legitimating narratives for action. For example, "guaranteeing justice" and "maintaining order" often oppose one another as legitimating rationales for the existence of law. At the level of practice, these two rationales translate into political contestation over the multiple meanings and means of crime control and dispute settlement. Second, the differential availability of material resources constrains some lines of action while enabling others. Third, individuals under certain conditions can act pragmatically on their local surroundings to innovate beyond existing institutionalized scripts. Finally, individuals' identification with generalized expectations about their behavior can vary.

   Against this backdrop, I define an <u>interstice</u> as a mesolevel location that forms from overlapping resource networks across multiple organizational fields in which the authority of the dominant resource network does not prevail. Interstices typically arise when problems or issues

persistently spill over from one organizational field to another. An example of an interstice would include the overlaps between practitioners in the fields of medical and therapy organizations, on the one hand, and various folk organizations on the other. It is in this interstice that the authority of orthodox medicine was weakened and alternative practices of healing developed as a way to treat complex, chronic illnesses (Kleinman 1996). Another example is the cross-traffic along networks between the fields of commercial biotechnology and basic biomedical science. In this interstice researchers and organizations linking universities and commercial activities are engaged in practices that fit neither the logics of "basic" or "applied" research (see Powell, this volume).

Many interstices experience a lack of social visibility as they are forming vis-a-vis a majority of players in relevant organizational fields. Because most social attention and authority is concentrated on conventional practices, many people in a given organizational field will tend to be unaware of initial work in the overlaps between fields. Even when interstitial emergence results in reform movements, cognitive, normative, and material elements of existing institutions can mitigate against recognizing the implications that alternative practices carry for conventional practices, even as explicit social control efforts become directed at repressing interstitial emergence.[5]

Interstitial emergence suggests three conceptually distinct, yet empirically interpenetrating historical stages: The first involves <u>innovation</u> when interstitial networks of players experiment with alternative practices to solve problems affecting multiple organizational fields. Such problems can appear initially as minor perturbations, but provide the opportunities for innovation if they persist and if conventional practices have little answer for them - similar to the ways persistent, unexplainable natural occurrences or internal contradictions weaken scientific

paradigms and open up opportunities for innovation (Kuhn 1962).[6] Accompanying the

development of alternative practices are critiques of conventional practices. Such critiques can

take competing forms of broad attacks on institutional underpinnings or as criticisms of particular

practices within organizational fields. During this stage, early innovators begin to label critiques

and alternative practices, thus increasing their rhetorical portability. A second mobilization stage

requires the development of critical masses of supporters and resonant frames for alternative

practices. A third structuration stage occurs to the extent that alternative practitioners are able to

carve out legitimated social spaces for their practices through the establishment of professional

organizations and various symbolic, cultural, and normative boundaries. Structuration ultimately

can modify the institutionalized narratives used to account for formal, organizational practices and

reconfigure the institutional context by creating new organizational fields that compete with and

modify established fields.[7] Taken together, the three stages of interstitial emergence --

innovation, mobilization, and structuration -- operate as a stage model with the accomplishment

of each stage serving as a value-added factor, thus increasing the likelihood of a succeeding stage.

 Below, I elaborate the mechanisms that enable the accomplishment of each stage.

    During the innovative stage of interstitial emergence, alternative practices crop up at various

organizational sites in the overlaps of organizational fields.[8] The heterogeneous nature of

interstices means that they contain multiple (and sometimes contradictory) institutional logics and

organizational archetypes, thus facilitating innovation through recombination and idiosyncratic

interpretations of existing practices (Clemens 1997, pp. 10-13; see Hinnings and Greenwood this

volume).   Heterogeneity itself varies with the diversity and number of organizational fields

involved in the interstice. Thus, the greater the heterogeneity of an interstice, the less likely it is

for players to adopt an existing institutional logic whole cloth. Diffusion of alternative practices initially can occur as local innovators face similar problems and engage in sporadic contact with one another to handle those problems. For the diffusion of alternative practices to "take off," they must be spurred on by "critical masses" of supporters who articulate critiques of conventional practices, identify with alternative practices, and exert interpersonal influence to add alternative practitioners and supporters to the "cause" (Kim and Bearman 1997). Critical masses are also crucial for developing resonant "frames" for alternative practices and mobilizing resources (Snow and Benford 1992).

As used here, an alternative practice frame refers to the interpretive schemata that enable people to "locate, perceive, identify, and label" (Goffman 1974, p. 21) problems and practices that do not fit into conventional lines of action. Frames enable boundaries to be drawn around problematic issues, as well as alternative practices, and thus become a source of critical discourse and potential solutions. In this sense, frames give coherence to problems and practices that increase their likelihood of being included on the agendas of organizational and institutional decision streams (Heimer and Stinchcombe 1999).

An important component of resonance in a frame is legitimacy, for alternative practice frames often suffer from various technical and normative stigmas, each of which suggests compensating strategies that can emerge as frames are promulgated. The first involves "scientific evaluations" and anecdotal testimonials that support the technical superiority of alternative practices relative to conventional practices (Tolbert and Zucker 1983). Stigma is overcome by borrowing from the technical legitimacy of science and substantive findings that support the efficacy of alternative practices. A second strategy addresses normative stigma and can begin as a version of what

Wuthnow (1983) calls "cultural articulation": The balancing act of demonstrating that alternative practices provide non-redundant solutions to extant problems, yet also can be accommodated by conventional practices, institutional logics, and wider political philosophies. Within this strategy, frames take on a kind of "elasticity" as they are stretched to accommodate the interests and perspectives of various constituencies within both conventional and alternative camps. Under extreme conditions of elasticity, frames can lose their distinctiveness and be replaced by other, more distinctive frames. At its most fevered pitch, cultural articulation can be led by critical masses who take the roles of "moral entrepreneurs" (Becker 1963) to legislate jurisdictions for alternative practices at the local and national levels (Abbot 1988). Interstitial emergence can therefore evolve into a "moral crusade" (Gusfield 1963) to which individuals, private and public organizations, and ultimately institutional logics "must" be converted.[9]

Alternative practice frames also aid in the identification of available resources because they create recognizable symbols and organizational templates behind which elites and others can throw their material support. In this way, resonant frames provide the link between groups and successful resource mobilization. Such resources, however, can exert powerful influences on frames, particularly if significant material support originates from those with vested interests in or who closely identify with conventional practices. Under these conditions, cultural articulation will favor less the moral crusade than the accommodative stance, thereby blunting the critical discourses in alternative practice frames.

If critical masses succeed in creating resonant frames and mobilizing resources, alternative practices will further be instantiated through institutional isomorphic processes such as imitation, governmental requirements, or explicit professional standards (DiMaggio and Powell 1983; see

Soule, this volume).[10] Through these mechanisms, emergent alternative practice fields are structurated and eventually can become a jurisdiction replete with normative, cognitive, and material boundaries vis-a-vis existing jurisdictions.

My conceptual model of interstitial emergence is summarized below:

(1) The innovation stage of interstitial emergence begins with pragmatic innovation in overlapping resource networks across organizational fields to solve perceived or real institutional failures.

(2) The mobilization stage is activated through the collective efforts of multiple, sometimes competing critical masses who resonantly frame alternative practices to secure legitimation and resources from key organizational players in existing organizational fields.

(3) The structuration stage occurs to the degree that alternative practitioners are able to form a structurated organizational field, legislatively claim a professional jurisdiction, and modify the institutionalized ideologies used to account for conventional practices and formal structures in relevant fields.

I turn now to a narrative illustration of this model using the case of American ADR.

The Interstitial Emergence of American ADR, 1965-1995

I begin with a brief discussion of the problem of minor disputes that beset American courts in the 1960's. The discussion then shifts to an examination of the innovative emergence of ADR and the critical masses that formed among professional and semi-professionals who processed minor disputes in the interstices between the sociolegal field and other organizational fields.

These critical masses in turn generated resonant frames that contained critical discourses aimed at the courts and provided solutions that claimed technical superiority as they articulated with existing institutionalized accounts and wider ideologies. The ability of these critical masses to attract resources and to professionalize ADR further facilitated its spread through the sociolegal field and other, overlapping organizational fields.

Institutional Failure and the Problem of Minor Disputes

During the late 1950's and 1960's, critiques of American courts frequently prophesied their "doom." Poor service, high costs, and trial delays, so the critiques went, would eventually bankrupt the law as a remedy system for private and public ills. Critics found one source of the law's failure in mismanagement and poorly designed procedures (Frank 1969). Another source resided in so-called "minor disputes" -- commercial conflicts over small amounts of money, domestic disputes (including divorce and child custody), and neighborhood squabbles -- which placed intractable and complex demands on the courts. Yet a third source erupted during the 1970's and was dubbed the "litigation explosion." Here the problem focused on the excessive use of adjudication to solve all manner of problems from complex civil cases to minor disputes (Lieberman 1983). Some scholars question whether a gusher of minor disputes actually flooded the courts during this time period and whether the courts suffered from pervasive mismanagement (Galanter 1983). No one debates the existence of a widespread public discourse that framed one of America's chief social ills as the inability of the courts to meet the demands increasingly placed upon them by minor disputes. The organizational tensions between efficiently processing minor disputes, maintaining order in civil society, and delivering substantive justice to a wide constituency (including minorities, women, and poor people who had limited access to law) left

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many disputants without a sense of having had "their day in court" (McGillis and Mullen 1977).

Whether in small claims court (intended to handle financial disputes of small amounts of money),

conciliatory or family courts (intended to sort out disputes between family members and divorcing

couples), or other lower courts, questions arose about whether adjudication was capable of

sorting out the relational issues implicated in daily conflict (Buckle and Thomas-Buckle 1982).

The legal profession proved no better at servicing these cases. Mayhew and Reiss (1969: 318)

noted that: "the legal profession provides relatively little professional representation and advice in

relation to a broad panoply of problems surrounding...daily matters".

The Innovative Stage

In the 1960's, lawyers, social workers, community organizations therapists, and judges

working for the courts, social work agencies, mental health agencies, and community

organizations (including churches), began to use a variety of so-called "informal" methods for

handling minor disputes that circumvented "formal" adjudication. The nature of minor disputes

meant that disputants often circulated through a variety of organizations searching for resolution,

justice, or therapy to deal with their problems. As a result, personnel from organizations in

different fields often interacted with one another to process minor disputes through multiple

referrals.

Figure 1 illustrates these referral relationships at the level of practice in Phoenix, Arizona

during the late 1960's. This figure derives from interviews I conducted in 1995 with personnel

who had worked for nearly thirty-years in the Phoenix metropolitan area in the sociolegal and

social services fields.[11] The numbered circles consist of occupations and the lines between them

represent the perceptions of my informants of the informal referral flows between occupations.

Single-headed arrows represent asymmetrical referral relationships between occupations; double-headed arrows indicate symmetrical referral relationships between occupations. In Figure 1, judges, social workers, and mental health workers received the most minor dispute referrals (n = 6) and social workers referred the most disputes to other occupations (n = 5). Also illustrated in Figure 1 is the number of referral relationships (n = 9) that crossed the border between the sociolegal and social services fields, thus suggesting a cross-fertilization of knowledge and sometimes frustration about minor dispute handling among incumbents in diverse occupations. Listen to this lower-court judge who remembers his experiences sitting on the bench in the late 1960's handling minor disputes:

> Adjudication couldn't handle these kinds of cases. They were complex with emotional and interpersonal issues. You would need a social worker, a clergyman, or psychologist to help sort it all out so I would end up referring a lot of people out of my court to see someone like that [i.e., a social worker, clergyman, or psychologist]. People would come in [to court] and tell me what a social worker or psychologist tried to do with them and why it didn't work. A lot of times I would just shake my head and do the best I could. I didn't know what to do these cases either. We had so many of these types of cases coming in. It was uncharted water for the courts.

Practitioners in the social services field also found themselves in "uncharted waters" as one social worker noted:

> I used to get cases that I didn't know what to do with -- that a judge should deal with. But they [the judges] didn't know what to do with 'em either, so they send 'em back to me. In the old days you'd go talk to the minister and they'd solve it, but they people didn't do

what the minister told 'em so the minister, he don't know what to do either. I'd send

people [disputants] to a lot of people -- judges, police, psychologists, ministers -- in those

days trying to help 'em solve their disputes. And I would get people coming to me who

had been to the judge or the minister. They would tell me what those people tried to do

for them and why it didn't work. I would try to do is sit down with 'em and try to help 'em

talk it out just like the minister used to do back where I come from in North Carolina. We

had all kinds of community empowerment stuff going on too, so you'd try to get the

people take responsibility for their actions -- in some ways like some types of mediation

today [c. 1995].

Figure 1 About Here

As the social worker's comments underscore, the techniques used to resolve minor

disputes came from many sources. Some techniques traced back to informal methods used by

clergy and town officials in communities through out the U.S.; some derived from the domestic

relations courts; others approximated labor arbitration in the 1930's; others could be traced to

informal methods used in tightly-knit ethnic enclaves (Auerbach 1983); and still others could be

traced to the growth of anti-authoritative strategies of political decision making and community

mobilization of the sixties. Community activists and social workers used therapeutic techniques

and strategies for preserving and strengthening the social bonds of community through open

discussions of conflict (Alinsky 1971). Judges and other magistrates used mediation and

negotiation in small-claims court settings and in conciliatory (divorce) courts to settle cases

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quickly and manage the emotional side of such cases. Some lower-court judges regarded informal

negotiation and mediation in civil cases as akin to pretrial criminal diversion programs that

attempted to route defendants away from the courts to externalize processing costs.[12] Lawyers

used informal negotiation in their offices far more than they went to court, although there was

little formal education in such techniques and practitioners generally learned them on the fly

through experience (Ray 1982a and 1982c). For those few people who called themselves

mediators -- a diverse aggregate of social workers, therapists, and educators -- mediation was

often ancillary to institutionalized practices of conflict resolution drawn from their professions

(Tomasic 1982).

The Mobilization Stage

Two critical masses of supporters arose in the 1970's from the diverse network of

individuals and organizations who had experimented in fragmented ways with alternatives to

adjudication. Social workers, community activists, legal services lawyers, law professors, and

anthropologists formed the first critical mass that framed ADR as "community mediation." These

individuals had worked and studied in the courts, social service agencies, Ford Foundation-funded

community centers, and in Nonwestern settings that used informal dispute resolution. They

criticized the courts for being unable to handle minor disputes in a satisfactory way and for limited

access for less privileged disputants (i.e., poor people, ethnic and religious minorities, women, and

the disabled). Judges, lawyers, and law professors formed a second critical mass that

characterized ADR as a "multidoor courthouse". This group criticized the inefficiency of the

courts, also linking their critiques to the litigation explosion and the influx of minor disputes.

They wished to save adjudication for the most serious cases, leaving ADR to deal with the

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majority of minor disputes.[13]

Community mediation took early shape in 1968 when the Ford Foundation began funding community programs to mediate racial conflicts. The Foundation funded the National Center for Dispute Settlement in 1968 (which later became the Community Dispute Service Center) with organizational support from the American Arbitration Association, and in 1970 funded the Institute for Mediation and Conflict Resolution. Both of these programs trained community "interveners" to mediate intergroup conflict (Harrington 1985: 87-90). While the community interveners worked in the neighborhoods, the community mediation frame (also referred to as the "neighborhood justice model") took shape in a series of articles by anthropologists and law professors. The central ideas in these articles focused on the possibility of transplanting non-Western community "moots" to urban U.S. settings as a means to handle minor disputes (Danzig 1974; Danzig and Lowy 1975; Felstiner 1975; Fisher 1975). Anthropologists had studied indigenous moots in which small groups of community members gathered to facilitate discussion among disputants, to provide therapy via group discussion between victims and offenders, and to reintegrate the principals back into the local community (Lowy 1973). Legal services lawyers interested in access to law had been interested in how poor disputants could solve their conflicts. The two groups formed something of an uneasy and unconventional alliance, meeting under the auspices of newly formed interdisciplinary academic organizations (e.g., the Law & Society Association and the Society for the Study of Social Problems) and in small groups in older organizations (e.g., the American Anthropological Association). Out of these interdisciplinary encounters, the community mediation model received its most widely circulated treatment in a 1974 Stanford Law Review article by Richard Danzig.[14]

According to Danzig, the most appropriate raw materials of community mediation organizations were not the racial conflicts of the community service programs, but those intractable minor disputes that crowded the court dockets, and which were seldomly handled to anyone's satisfaction. The core dispute settlement process would be a "therapeutic" discussion among the principals, facilitated by a third party, and aimed at dealing with underlying issues prompting the conflict in order to arrive at a mutually agreeable solution. Mediation was therefore at the heart of Danzig's community moot. He argued that salaried "counselors" (but not "professionals") should coordinate the scheduling of cases in the community moots, with volunteers and paid staff mediating disputes. Despite the emphasis on nonprofessional staffs, nonadversarial dispute settlement, community control, and volunteer staffing, Danzig argued that his proposal should "complement" the existing legal system. Most of the cases handled by the community centers would be referred by existing legal and social agencies, although he assumed that a vast sea of disaffected disputants existed, which would generate a large voluntary case load as community moots' effectiveness became known. Ultimately, then, the goals of the community mediation model were threefold: unburden the courts with minor disputes, address the underlying causes of disputes (thus preventing future disputes), and empower disputants and the community (Harrington and Merry 1988; Morrill and McKee 1993).

In contrast to the community mediation frame, the multidoor courthouse emerged out of an alliance between high-powered elites: the American Bar Association (ABA) and the U.S. Justice Department (Goldberg, Green and Sander, 1985). For the ABA, ADR appeared to be a means to judicial control and a way to clean up the "nightmare" of minor disputes in the courts. Various ABA planning committees provided the Justice Department's Law Enforcement

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Assistance Administration (LEAA) with early plans for developing linkages between the LEAA's crime control and civil justice programs that would address minor dispute processing (Harrington 1985: 74). In turn, the LEAA funded some of the earliest court-based ADR programs, which typically involved streamlined adjudication (e.g., the Boston Urban Court) or prosecutorial, pre-trial diversion (e.g., the Columbus Night Prosecutor). In 1976, the ABA sponsored the "Popular Dissatisfaction with the Administration of Justice" Conference (referred to as the "Pound Conference"), bringing together judges, attorneys, and mediators to discuss the possibilities of ADR in the U.S. That same year Frank Sander, a Harvard professor of family law and clinical practice, wrote what was to become the most influential, early statement on the multidoor courthouse.[15] The multidoor courthouse converged with the community mediation model in its condemnation of the "over-adjudicated" nature of the legal system and in the idea that not all disputes belonged in the courts.

But in other points, it sharply diverged from community mediation. Table 1 provides a summary of the points of contrast between the two models. The multidoor courthouse's goals were primarily bureaucratic: the efficient disposition of cases. Although the community mediation model claimed it too could unburden the court of minor disputes, the ultimate gains from that model derived more from preventing future conflict than from the quick disposition of cases. The models also diverged in their legitimating ideologies. Whereas the community mediation model was grounded in the obligation to preserve social relationships as a basis for community, the multidoor courthouse was based in the idea that an expanded dispute processing repertoire would ultimately save the courts for cases at the heart of liberal political order, namely, constitutional disputes (Sander 1976: 133). Divergent legitimating ideologies also led to different uses of

coercion in the two models. Danzig argued that moots could refer disputants back to the courts

for adjudication (as an incentive to settle in the moot), but he implied that these measures should

be held in reserve for recalcitrant cases. Community moots are primarily "private [and]

noncoercive" (Danzig 1974: 53). The multidoor courthouse would have the power to mandate

the "best" forum for disputes. As such, the multidoor courthouse presented disputants with the

paradox of mandating participation in dispute settlement processes, which is portrayed as

consensual and voluntary, while also requiring settlement.

Table 1 About Here

Perhaps the greatest differences in the two frames appear in the organizational forms to

which each corresponded. Such differences can be fateful as Mohr (this volume) argues: Socio-

political changes are frequently instantiated in rival organizational forms, and the triumph of a

particular form signals the victory of an underlying frame. Professionals (judges, lawyers, case

workers) would staff the multidoor courthouse financed by municipal and state budgets. By

contrast, the community mediation centers would rely on private grants, federal funding, and

some local governmental funds in return for handling court referrals. The multidoor courthouse

thus articulated with the decentralized state federalism building in the late 1970's, which took full

shape during the Reagan and Bush Administrations in the 1980's. Community mediation

articulated with a fading "Great Society" vision of grass roots activism and federally funded social

programs.

During the late 1970's, ADR appeared headed toward nationwide institutionalization and

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diffusion via comprehensive federal mandates and funding. Although widespread evaluation was sparse, the critical masses pushing for community mediation and the multidoor courthouse claimed efficacy for their models, citing the scientific evaluations and technical performance of early demonstration projects. Indeed, early evaluations of ADR reported satisfaction rates among disputants approaching ninety percent in some programs, although definitive studies of the cost effectiveness and efficiency of ADR, as well as the durability of dispute resolutions reached through ADR, were relatively rare (Morrill and McKee 1993). Nevertheless, community mediation and multidoor court house supporters continued to proclaim how ADR would relieve the courts of minor disputes, uplift communities, and provide disputants with greater satisfaction and more sustainable resolutions than adjudication (Salem 1985). These claims struck a chord with local and national judicial elites, among them Chief Justice Warren Burger, who strongly endorsed ADR, particularly the multidoor courthouse, as a way to move away from sole reliance on adversarial dispute resolution and more efficiently process disputes within state court systems (Burger 1984). The House and Senate passed the Dispute Resolution Act in 1980, which would have established start-up federal funding for multidoor courthouses (to be locally funded in the long-term) and sustained funding for community mediation centers through out the U.S. But the only part of the Act funded by the Reagan Administration was the National Dispute Resolution Center, an information clearing house.

Without comprehensive sponsorship, ADR diffusion moved unevenly through the U.S. The multidoor courthouse received small boosts from the LEAA, which continued to fund limited, court-based ADR programs until its demise as a federal program in the early 1980's. The Ford Foundation, the United Way, and some national religious organizations also continued sporadic

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funding for community mediation centers (Ray 1983). By 1983, seventeen states had passed

various ADR bills to establish informational resource centers, fund court-based initiatives, and

study the possibilities of community mediation centers (Harrington 1985). During this time, the

ABA created a standing committee on minor dispute processing chaired by Larry Ray. Chief

Justice Burger stepped up his calls for the Dispute Resolution Act to be funded. The dispute

processing committee sponsored a series of smaller conferences similar to the Pound conference.

The National Dispute Resolution Center and later the National Institute for Dispute Resolution

(NIDR; also funded by the Ford Foundation) began to dispense ADR information on a national

basis through regular newsletters and conferences.

Although the 1976 ABA Pound Conference brought into light the potential for a "cultural

shift" in dispute settlement from liberal-legal to harmony ideology (Nader 1987), ADR still did not

enjoy institutionalized sponsors who could diffuse it via government requirements,

professionalization, or university-based education (DiMaggio and Powell 1983). The lawyers and

judges who embraced the multidoor courthouse as a solution to the crisis of court capacity

carefully measured their support against their colleagues' suspicions that ADR could impinge

upon their livelihoods or create a second-class system of justice (Ray, 1982a). Clinical law

professors, such as Sander, continued to push for the multidoor courthouse, but encountered

resistance to ADR education in law schools (Sander 1984). Mediators would seem to have been

ripe for a professionalization project because they did not neatly fit into any of the established

professions. The majority of mediators working in the 1970's and early 1980's came from semi-

established professions of education, social work, and counseling (Pipkin and Rifkin 1984). Their

allegiances to their old professions waned, but there was not yet a new, organized jurisdiction of

mediation to which new ties could be developed and that could push ADR as a coherent set of

practices. Moreover, a well-defined setting did not exist within the sociolegal field in which

mediators could apply their wares legitimately. Judges wanted minor disputes out of their

courtrooms, but the minor disputing arena was an ambiguous and lower-status category within

the dispute settlement hierarchy. Organized groups from the lay-public did not clamor for ADR.

Consumer advocacy groups, for example, believed that the Dispute Resolution Act "was trying to

do too much with too few resources...[and that] a program that combines the barking dog with

the broken toaster will ultimately be ineffective in increasing access to justice to either kind of

dispute" (Harrington (1985: 79). As ADR was threatened by conservative, anti-social services

sentiments, one of the "doors" of the multidoor courthouse -- leading to divorce and child custody

mediation -- opened wide enough to provide a huge boost to the entire ADR effort.

Divorce represented a most difficult type of minor dispute: relationally complex,

emotionally charged, and with high stakes for each party, but not, typically, for the court. Popular

perception held that adversarial legal processes were inadequate to handle divorce cases. No-fault

divorce statutes sought to "eliminate the adversarial nature of divorce and thereby reduce the

hostility, acrimony, and trauma characteristic of fault-oriented divorce" (Weitzman, 1985: 15).

No-fault divorce officially changed part of the rules of the game for marriage and family, enabling

either spouse to declare that irreconcilable differences made their marriage untenable. During the

1970's, lawyers and therapists working inside the ABA developed the Uniform Marriage and

Divorce Code (UMDC), which articulated well with the multidoor courthouse frame. Supporters

intended the UMDC to help find the proper forum for divorce and custody disputes within the

courts by creating a series of rationales for mediation and other forms of nonadversarial dispute

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resolution. No-fault divorce spread like "prairie fire" across the U.S., articulating with several social trends, including the increasing economic independence of women, changing normative conceptions of the family, the women's moment, and the civil rights movement (Jacob 1988). By 1981 only South Dakota and Illinois lacked no-fault divorce law on the books and by 1985 thirty states had joint child custody statutes (Weitzman 1985: 438, 430-435).

The divorce/custody arena provided a legitimate pulpit for ADR practitioners to preach the benefits of ADR and reinforced the increasing dominance of the multidoor courthouse. Unlike the ambiguous arena of "minor disputes," domestic relations courts increasingly defined ADR practitioners as "family mediators" and embedded them firmly in the courts. In those states with joint custody statutes, mediators played even more prominent roles in the divorce process because of the opportunities for on-going disputes among parents with joint custody arrangements (Milne and Folger 1988).

The Structuration Stage

If no-fault divorce spurred on ADR's interstitial emergence, it also brought mediators directly into conflict with the legal profession over who would control the disputing process. Lawyers and judges, associated with the adversarial process, now faced professional jurisdictional competition from an emergent group with practices that corresponded with the nonadversarial intentions of no-fault divorce law. ADR practitioners thus rode the wave of the divorce revolution toward organized professionalization and the creation of a protofield for mediation with distinctive technical and normative boundaries. During the late 1970's and early 1980's, family mediators joined with mediators handling other types of minor disputes to begin professionalization activities along four key dimensions: (1) the development of a common body

of knowledge, (2) the founding of professional organizations, (3) the codification of normative

standards, and (4) the development of university-based training (Wilensky 1964; Larson 1977;

DiMaggio 1991).[16]

O. J. Coogler, a family lawyer and marriage counselor, published <u>Structured Mediation in</u>

<u>Divorce Settlement</u> in 1978, which became a central source of knowledge about divorce

mediation. Academic and practitioner journals also appeared and carried the "good word" about

divorce mediation specifically, and mediation and ADR, more generally (e.g., <u>Family Advocate</u>,

<u>Mediation Quarterly</u>, <u>Journal of Conflict Resolution</u>, <u>Negotiation Journal</u>) These venues also

touted other forms of ADR as well, such as arbitration, judicial settlement, and the mini-court.

Family mediators also began founding organizational vehicles to push their collective interests.

They formed committees and interest groups for themselves in established organizations, such as

the ABA, and the Association of Family and Conciliation Courts.[17] As they became more

organizationally invested, family mediators codified a body of normative standards about

mediation: the ABA's "Standards of Practice for Lawyer Mediators in Family Disputes" and the

Association of Family and Conciliation Courts' "Model Standards of Practice for Family and

Divorce Mediation." These standards in turn fed into more general mediation standards

promulgated by NIDR and the Society of Professionals in Dispute Resolution (SPDR) for a wide

range of disputing contexts.

These developments enabled NIDR and SPDR to take the lead in uniform training

curricula for family mediators and mediators working in other areas of the law and the

community. In turn, these curricula laid the groundwork for the first attempts to produce

university trained ADR experts. George Mason University began the Center for Conflict Analysis

and Resolution in 1980 and in 1988 admitted its first class of doctoral students in conflict analysis and resolution (Avruch 1991)   By the mid 1990's over thirty degree granting programs existed in colleges and universities across the U.S.[18]

Following on the heels of these professionalization efforts by family mediators, ADR became increasingly organized on several key dimensions that fostered its diffusion (DiMaggio and Powell 1983). One, NIDR, SPDR, and other national ADR professional organizations increased the flow of information between ADR practitioners, legal officials and other interested parties through news letters, ADR case studies, and instructional videos. Two, involvement in conference presentations and presentations to state bar committees, as well as small demonstration grants made by NIDR increased the density of interorganizational contacts between local courts and ADR professional organizations and programs. Finally, these activities reinforced an emergent collective definition of ADR (which was and continues to be split between mediation and other forms of ADR mentioned above) and its increasingly taken-for-granted place in the American sociolegal field (Scimecca 1991).

As mediators become more legitimized and organized vis-a-vis the courts, judges increased their de facto practice of ADR in the lower courts, particularly small-claims cases (McEwen and Maimen 1984). When they engaged in ADR, judges most commonly engaged in "judicial settlement" in which the judge, rather than simply presiding over litigation, became actively involved in fashioning an agreement between disputants. In 1983, amendments to Rule 16 of the Federal Rules of Civil Procedure gave federal judges the explicit authority to "facilitate settlements" (Goldschmitt 1994: 17-18). Within eighteen months of the amendment's passage, 16 states passed statutes that increased the authority of judges to mandate ADR across several types

of cases.

During the late 1980's and 1990's, the implementation of ADR at the state-level has been spearheaded by various "advisory boards" attached to state supreme courts. On these boards sit a range of interested players, among them judges, professional mediators, lawyers, social workers, therapists, and lay persons. Advisory boards typically pursue multiple goals, including awarding county courts state funds for ADR pilot programs, expanding existing court-based ADR programs, educating the public on the benefits of ADR, setting standards for the delivery of mediation and other ADR practices, and in some instances providing a first cut at regulating court-based ADR. In Arizona, for example, the ADR advisory board wrote a "uniform rule" for ADR that would establish uniform procedures for ADR intervention into legal disputes fees for court-based ADR. At this writing, fourteen states are also implementing professional certification in mediation through state-level ADR professional organizations and bar associations.

All of these processes provide sites for jurisdictional conflicts over ADR. The various interests on advisory boards (typically commissioned by supreme court justices and operated by state court administrative staff) in some ways replicate the specialties and professions that first experimented with ADR in the 1970's. As result, advisory boards are as much about political contestation over the fate and direction of ADR they are about creating a professional jurisdiction and further widening the legitimate niche for ADR in the sociolegal field. State certification efforts, in particular, appear to be headed to pitched jurisdictional battles between mediators who increasing define ADR as mediation and lawyers who view mediation and arbitration as additional, legitimate strategies in their out-of-court settlement repertoires.

Although many state-level and lower-court judges openly supported and participated in

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ADR programs, judges opposed to ADR worry that their direct involvement in settlement processes "tarnish[es] their position and that they were appointed (or elected) to adjudicate, not arbitrate or mediate," that judicial settlement "was overly time consuming," or that it was even "illegal" (Galanter 1985). Nonetheless, ADR techniques have become a central feature of courts at all levels, particularly drawing from the multidoor courthouse imagery funding, professionalization, and court-linkage components. In a recent national survey of "mediation center" program managers, for example, 57% of respondents reported local public moneys as the "primary" source of funding for their center (McKinney, Kimsey, Fuller 1996: 158), nearly 50% reported employing professional staff members (1996: 166), and nearly all respondents reported extensive formal linkages with or being located in courts (based; 1996: 159).[19] Moreover, mediation and other ADR techniques are an increasingly routine practice in law firms and a pervasive form of dispute settlement at the lower levels in private and public organizations (see Edelman, this volume; Sutton, Dobbin, Meyer, and Scott 1994).

Figure 2 dramatically illustrates the changes that have occurred at the level of practice (in Phoenix) between the innovative and structuration stages. In contrast to Figure 1, a number of different kinds of ADR practitioners now straddle and operate between the sociolegal and social services fields. Among the most active ADR practitioners are court-based mediators who have referral relationships with eight other occupations in all three fields. Notice, as well, that elected representatives and community organizers have dropped out of the perceived referral network - at least from the perspective of the informants who generated Figure 1.[20]

Figure 2 About Here

In sum, the professionalization of mediation and the ubiquitous appearance of ADR
statutes and court-based programs in the U.S. capped off three decades of interstitial emergence
during which ADR was transformed from a set of little-noticed techniques used in the shadows of
the sociolegal and other fields to an increasingly conventional set of practices used both by
practitioners within and between established fields.   Although liberal-legal ideology still provides
the institutional underpinnings and adjudication the processual heart of the courts, nonadversarial
ADR challenges conventional ideas about adversarial dispute settlement, rights, and due process.
Moreover, ADR has reconfigured the division of dispute resolution labor to include professional
mediators, and it eventually may form a competing field to adjudication.

Evidence of this last claim is also found in the emergent competition between the
multidoor model and an emergent "private provider" model associated with the market of ADR
professionals (McEwen and Williams 1998). In the private-provider model, courts are required to
maintain rosters of ADR practitioners. If disputants choose to participate in an ADR process,
they can then choose a service provider from the roster and are responsible for paying the
practitioner's fees. The private-provider model thus moves away from the in-house staffing of the
multidoor courthouse to a hybrid logic: ADR personnel drawn from the market and cases drawn
from the court. This private-provider model, should it be widely adopted, will further facilitate
the creation of an ADR field.

Summary and Implications

In this chapter I have provided a conceptual model for analyzing institutional change that
is organized around three stages of interstitial emergence: innovation, mobilization, and

structuration. In doing so, I incorporate some of the insights of the "old" institutionalism --

namely, the importance of informal interpersonal relations and networks for institutional

innovation and change -- into the "new" institutionalism. From this perspective,

institutionalization is a core process that defines and constructs contemporary social life. But it is

not a process that is wholly "top-down," emanating from elite government policies. In the

interstices created by overlapping resource networks across organizational fields, rules, identities,

and conventional practices are loosened from their taken-for-granted moorings and alternative

practices can emerge, particularly in the face of perceived institutional failure. In these contexts,

interstitial emergence occurs via a variety of mechanisms: (1) critical masses' abilities to create

resonant frames, (2) the mobilization of resources, and (3) the carving out of a professional

jurisdiction for alternative practices. The establishment of jurisdictions for formerly alternative

practices also will signal shifts in legitimating ideologies and accounts for existing and new types

of formal organizations.

The liberal-legal ideological underpinnings of adjudication portrays disputes as affairs of

rights and justice, and disputants as rights bearers and users. The harmony ideological

underpinnings of ADR, by contrast, focus on disputes as tears in the fabric of the social order and

disputants as bundles of "needs." Dispute processing becomes less a forum for the expression and

protection of rights than one for the satisfaction of needs through efficient, managed settlement.

These distinctions mean that the interstitial emergence of ADR is redefining the means and

meaning of dispute processing as it reconstitutes the meanings of "disputes" and "disputants"

(Silbey and Sarat 1989). At the same time, mediators as yet have been unable to push their

collective, professional interests to institutional hegemony. In jurisdictional conflicts over ADR,

judges and lawyers may beat emergent ADR professionals to the punch by expanding their

services to include ADR within the mantle of legitimacy afforded them by legal profession. Thus,

changes in the U.S. sociolegal field may not be as straightforward as the simple images - from

adversarial to nonadversarial and from liberal-legal to managerial harmony ideology - suggested at

the outset of this chapter.

My analysis also raises general questions about whether other cases in which alternative

practices have emerged and competed in conventional fields follow the same path as ADR. To

extend the argument, briefly consider the case of "alternative" medicine: acupuncture,

homeopathy, naturopathy, manual therapies, mental therapies, and faith healing.[21] Although these

practices overlap to some degree and have varied applications, they all share a "holistic" approach

to healing by linking physical ailments with psychological, environmental, and spiritual factors.

Alternative medicine thus departs from the biological particularism of conventional medicine. Just

as ADR emerged from the interstices between sociolegal, therapeutic, and community

organizational fields, alternative medicine emerged from the interstices between orthodox

medicine, religious organizations, and a highly differentiated, somewhat unbounded aggregate of

folk and community practices (Frohock 1994).

Like ADR, some components of alternative medicine have existed for thousands of years

and have enjoyed a recent catapult into mainstream, orthodox medical practice. Biofeedback and

 and those elements of homeopathy, naturopathy, and herbalism focused on environment and diet

have made great inroads into mainstream medicine (Wardwell 1994). Although these alternatives

are applied to every malady an individual might experience, they emerged into the light of day

over the past three decades as an answer to orthodox medicine's inability to cure chronic illnesses,

most notably cancer (Weil 1983). The connection of cancer and other chronic illnesses to a burgeoning array of environmental, genetic, psychological, and spiritual sources created the opportunity for practitioners operating at the interstices between numerous fields to recombine a variety of orthodox and alternative techniques. As in ADR, the (re)combination of alternative and conventional practices developed first as a pragmatic innovation among innumerable practitioners faced with similar treatment challenges. Such practices have spread more rapidly through the efforts of critical masses.

One critical mass formed around holistic disease prevention framed as "the healthy lifestyles approach" during the 1970's. Orthodox practitioners preaching such approaches in the 1950's and 1960's were often suspect of prescribing "unproven" or even "unscientific" medical treatments for their patients. Patients who consistently followed this advice were labeled as "health nuts" because they ate "health foods" (e.g., diets high in fiber and low in saturated fats), exercised regularly, and attempted to relieve chronic stress. In the 1970's and 1980's, healthy lifestyles became a part of the conventional health wisdom as a form of self-administered disease prevention. The claims thus articulated with more general cultural shifts toward individual responsibility for health (Cooter 1988) and individualistic market logic solutions for the "enduring crisis" of rising medical costs (Scott, Mendel, and Pollack, this volume).

Yet another critical mass can be found among practitioners who treat chronic illness through a variety of techniques that combine orthodox and alternative regimes emphasizing diet and various forms of meditation. Here again, orthodox practitioners have begun to innovate, combining elements from naturopathy, herbalism, mental therapies, faith healing, and orthodox techniques to treat chronic illness with complex etiologies (Gross, Hitzler, and Honer 1985).

Also similar to ADR, the increasing conventionality of alternative practices has been facilitated by claims to legitimacy based on technical performance. A plethora of scientific studies purport to demonstrate the benefits of healthy lifestyles and various kinds of diets for the prevention, and in some instances, the treatment of chronic illness. Controversy and contradictory findings simultaneously characterize this literature, creating enormous ambiguity about the efficacy of such treatments (Wardwell 1994). Perhaps a more powerful facilitator of the success of alternative medicines is professionalization. Alternative practitioners have developed several professional organizations, evaluative standards in various specialties, professional journals, training centers and medical colleges, and alternative medicine fairs and conferences that increase the density of networks of alternative practitioners and information sharing (Cooter 1988).

Despite the similarities between the emergence of ADR and alternative medicine, there are key differences between the two cases. Unlike the ABA, the American Medical Association (AMA) has engaged in several legal and political jurisdictional disputes with alternative fields of medicine, most notably chiropractics and homeopaths, both of which professionalized early. Homeopaths had the status as something of a pseudo-profession during much of the nineteenth century. Chiropractors professionalized early (relative to many American professions) in the late nineteenth century and developed their own training centers just as orthodox medicine was consolidating its professional hold on medical practice (Wardwell 1994; see also Starr 1982). As such, homeopaths and chiropractors offered readily identifiable targets among alternative medicine practices and continued to do so until homeopathic medicine has nearly ceased to exist in its nineteenth century form. Chiropractors, on the other hand, blended their practices with orthodox practices in neurology and orthopedics until they gained significant strength in the

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1970's to challenge legally their ban by the AMA from hospitals and prescribing drugs. By

contrast, ADR emerged at time when the sociolegal field faced problems for which it had few

answers, but could be posed as a complementary solution to those problems. Most conventional

practitioners either continued to ignore ADR or experimented with it as a nonthreatening practice.

 Only later, as ADR enjoyed an identifiable niche in the sociolegal field, did mediators fight

jurisdictional disputes with judges and lawyers for control of dispute resolution. By this time,

ADR had taken hold in the sociolegal and related fields to resist efforts to prohibit its

practice.

Another difference between the two cases can be found in the role of the general public in

voicing complaints about orthodox practice. As noted earlier in this chapter, ADR has not

enjoyed the status of a "popular" movement with wide-ranging publics clamoring for its existence.

 It is a practitioner led and focused movement, which in some cases has encountered resistance by

the public (namely, consumer advocate and some environmental groups). Alternative medicine,

by contrast, has enjoyed support by various patient advocacy and other formally organized

support groups for patients with chronic illnesses. This divergence has translated into different

relationships between elites and other institutionalized sources of support. Whereas ADR has

pervasive presence in the legal system, has alternately wooed support from highly visible and

influential elites (e.g., Supreme Court Justices), and shows signs of creating an overlapping field

in competition with the sociolegal and social services fields, alternative medicine has found few

elite champions and in 1999 came under attack in an issue of the *New England Journal of*

Medicine devoted to "assessing" alternative medicine ( ). Thus, the two cases share some

similarities in their processes of interstitial innovation, the emergence of critical masses and

resonant frames, but illustrate very different experiences with regards to nonprofessional and elite

support, the consequences of professionalization, and jurisdictional conflict.

Viewed more abstractly, this chapter suggests some amendments to extent studies of

institutional change. First, the picture of institutional change portrayed in this chapter is not one

of simple power or co-cooptation. Previous analyses of legal change involving ADR tend to

focus on the contradictions of governmental authority in "late" capitalism, particularly the

managerial interests of state elites (especially judges; e.g., Abel 1982; Harrington 1985). Social

power has also been used as a key explanatory variable in other institutional accounts of

organizational change, for example, in corporations (Fligstein 1990) and higher education (Brint

and Karabel 1991). To be sure, elite authority and material resources wield by judges and other

professional elites (e.g., lawyers and law professors) played crucial roles in selecting which ADR

model - the multidoor courthouse or the community mediation model - eventually succeeded in

local arenas and at the national level. But ADR's foothold in the sociolegal field is far from a

simple "power wins out" story. ADR exists in a plurality of competing juridical and nonjuridical

forms of dispute processing (Silbey and Sarat 1989, p. 497). The diffusion of ADR and the on-

going social (re)construction of the sociolegal and adjacent fields emerged (and continues to

unfold) from the interplay and sometimes unintended consequences of multiple levels and sources

of social power. Elites often knew little about ADR until they were "educated," so to speak, by

critical masses pushing one or another of the ADR frames. Although elites used ADR for their

own purposes, their conversion to it has not left them or dispute settlement processes unaffected

by ADR. As Clemens (1997, p. 13) argues, "...[political processes] with multiple challengers,

diverse tactics, and poorly understood links between action and outcomes," create difficulties for

answering the question of who ultimately coopts whom. The present analysis therefore underscores the idea of mutual influence as groups with various sources and degrees of symbolic and material power each use the other for their own interests, in the process transforming their own interests and muddying the rules of the game.

Second, the analysis raises methodological issues about the theoretical underpinnings of the levels of analysis used in institutional analysis. DiMaggio (1991:286) has noted that studies of organizational and institutional change tend to concentrate on narrowly delimited local or geographical settings, neglecting the wider environments of which they are a part. His analysis of the development of the U.S. museum system, for example, focuses on the construction and control of a national organizational field which in turn influenced the development of local museums.   Although the categories "local," "national," and "global" make intuitive sense, it is unclear how they map on to theoretically meaningful categories drawn from neoinstitutional theory. Changes in the meaning and guarantee of national sovereignty on the world stage further blurs the distinctions between traditional terms such as "domestic" and "international" (Meyer, Boli, and Thomas 1987; Dezalay and Garth 1996; Soysal 1994). The present study illustrates the use of levels of analysis drawn from neoinstitutional theory: institutional context, organizational field, and practice. These levels could be further elaborated to include organizational subfields and various levels of practice in workplaces. The point is to link theoretical categories in meaningful ways to levels of analysis in order to examine the interplay between levels, rather than to reify levels of analysis into traditional dichotomies.

Finally, the analysis of ADR and its brief comparison to the emergence of alternative medicine suggests that the timing and breadth of professionalization plays critical roles for

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whether an alternative will challenge an institutionalized field, be repressed, or merely forgotten. Neoinstitutionalists have tended to regard professionalization as a unilateral process that facilitates institutionalization. However, the early professionalization of chiropractics led to an opposite effect: Long-term legal repression by orthodox medicine. By contrast, ADR professionalized after it had diffused throughout the sociolegal field thus making it harder to repress. This implies that alternative practitioners that professionalize before they are widely known and have diffused their critiques of conventional practices are likely to face intense and potentially more effective repression. Under these conditions, social control efforts can be directed toward a small, relatively concentrated movement, lengthening its time (and perhaps permanently keeping it) in the interstices of established organizational fields. By contrast, diffusion coupled with structuration (e.g., professionalization and governance mechanisms; see Scott, Mendel, and Pollack this chapter) metaphorically create a many-headed hydra that is difficult to kill and not easily forgotten.

Future studies of institutional change need to address more systematically the interstitial emergence of alternative practices, as well as methods and imageries for handling multiple levels of analysis and the timing of alternative professionalization relative to conventional fields. Insights drawn from the sociology of law, organizational sociology, and social movement theory can be particularly useful in this regard. Attention to these issues and constellations of ideas will yield an initially messier picture of institutional change than currently exists in neoinstitutional analysis, but it will bring us closer to understanding the complexities and possible trajectories of such changes.

Table 1. **Summary Comparison of Community Mediation and the Multidoor Courthouse**

	Community Mediation	Multidoor Courthouse
Goals	Unburden the courts with minor disputes Address underlying causes of conflict Community empowerment	Fit dispute to proper forum Case disposal
Dispute Settlement	Nonadversarial	Nonadversarial and adversarial
Legitimating Ideology	Harmony	Liberal-legal & Harmony
Role of Coercion	None except in recalcitrant cases	Mandated dispute resolution process choice and settlement
Clients	Exclusively community members	Non-exclusive
Organizational Control	Paid staff and volunteer community members	Paid staff
Resource Strategies	Private grants & donations Federal government	City, county, & state
Professionals	Excluded	Included

REFERENCES

Aakster, C. W. 1986. "Concepts in Alternative Medicine." <u>Social Science and Medicine</u> 22:
        265-273.

Abbot, Andrew. 1988. <u>The System of the Professions: An Essay on the Division of Expert
        Labor</u>. Chicago: University of Chicago Press.

Abel, Richard L. 1982. "The Contradictions of Informal Justice." Pp. 267-320 in <u>The Politics
        of Informal Justice, Volume 1: The American Experience</u>, edited by Richard L.
    Abel. NY: Academic Press.

Alinsky, Saul. 1971. <u>Rules for Radicals.</u> NY: Random House.

Auerbach, Jerold S. 1983. <u>Justice Without Law? Resolving Disputes Without Lawyers</u>. NY:
        Oxford University Press.

Avruch, Kevin. 1991. "Introduction: Culture and Conflict Resolution." Pp. 1-18 in <u>Conflict
        Resolution: Cross-Cultural Perspectives</u>, edited by Kevin Avruch, Peter W. Black,
    and Joseph A. Scimecca. NY: Greenwood Press.

Baer, Hans A. 1995. "Medical Pluralism in the United States: A Review." <u>Medical
        Anthropology Quarterly</u> 9: 493-502.

Becker, Howard. 1963. <u>Outsiders: Studies in the Sociology of Deviance</u>. NY: Free Press.

Benford, Robert D. 1993. "Frame Disputes within the Nuclear Disarmament Movement."
        <u>Social Forces</u> 71: 677-701.

Black, Donald and M. P. Baumgartner. 1983. "Toward a Theory of the Third Party." Pp. 84-
        114 in <u>Empirical Theories About Courts</u>, edited by Keith O. Boyum and Lynn
    Mather. NY: Longman.

Bourdieu, Pierre. 1981. "Men and Machines." Pp. 304-318 in <u>Advances in Social Theory and
        Methodology</u>, edited by Karin Knorr-Cetina and Aaron Cicourel. Boston:
    Routledge and Kegan Paul.

Brint, Steven J. and Jerome Karabel. 1991. "Institutional Origins and Transformations: The
        Case of American Community Colleges." Pp. 337-360 in <u>The New
    Institutionalism in Organizational Analysis</u>, edited by Walter W. Powell and Paul J.
    DiMaggio. Chicago: University of Chicago Press.

Buckle, Leonard G. and Suzann R. Thomas-Buckle. 1982. "Doing Unto Others: Dispute and
        Dispute Processing in an Urban American Neighborhood." Pp. 78-90 in
    <u>Neighborhood Justice: Assessment of an Emerging Idea</u>, edited by Roman Tomasic and
    Malcolm M. Feeley. NY: Longman.

Burger, Warren E. 1984. "Annual Message on the Administration of Justice." Mid-year
        Meeting of the American Bar Association.

Clemens, Elisabeth. 1997. <u>The People's Lobby: Organizational Innovation and the Rise of
        Interest Group Politics in the United States, 1890-1925</u>. Chicago: University of
    Chicago Press.

Cohen, Michael D., James G. March, and Johan P. Olsen. 1972. "A Garbage Can Model of
        Organizational Choice." <u>Administrative Science Quarterly</u> 17: 1-25.

Coogler, O. J. 1978. <u>Structured Mediation in Divorce Settlement: A Handbook for Marital
        Mediators</u>. Lexington, MA: Lexington Books.

Cooter, Roger. 1988. "Introduction: The Alternations of Past and Present." Pp. x-xx in <u>Studies
        in the History of Alternative Medicine</u>, edited by Roger Cooter. London:

MacMillan Press.

Danzig, Richard. 1974. "Towards the Creation of a Complimentary, Decentralized System of Criminal Justice." Stanford Law Review 26: 1-54.

Danzig, Richard and Michael J. Lowy. 1975. "Everyday Disputes and Mediation in the U.S.: A Reply to Professor Felstiner." Law & Society Review 9 675-694.

Dezalay, Yves and Bryant Garth. 1996. Dealing in Virtue: International Commercial Arbitration and the Internationalization of Legal Practice. Chicago: University of Chicago Press.

DiMaggio, Paul J. 1988. "Interest and Agency in Institutional Theory." Pp. 3-21 in Institutional Patterns and Organizations: Culture and Environment, edited by Lynn G. Zucker. Cambridge, MA: Ballinger.

_____. 1991. "Constructing an Organizational Field as Professional Project." Pp. 267-292 in The New Institutionalism in Organizational Analysis, edited by Walter W. Powell and Paul J. DiMaggio. Chicago: University of Chicago Press.

DiMaggio, Paul J., and Walter W. Powell. 1983. "The Iron Cage Revisited: Institutional Isomorphism and Collective Rationality in Organizational Fields." Amercian Sociological Review 48: 147-160.

Edelman, Lauren B. 1990. "Legal Environments and Organizational Governance: The Expansion of Due Process in the Workplace." American Journal of Sociology 95: 1401-1440.

_____. 1992. "Legal Ambiguity and Symbolic Structures: Organizational Mediation of Civil Rights Law." American Journal of Sociology 97: 1531-1576.

Emirbayer, Mustafa and Anne Mische. 1998. "What is Agency?" American Journal of Sociology 103: 962-1023.

Felstiner, William L. F. 1975. "Avoidance as Dispute Processing: An Elaboration." Law & Society Review 9: 695-706.

Filner, Judith, Melinda Ostermeyer, and Charles Bethel. 1995. Compendium of State Court Resource Materials. Washington D.C: National Institute for Dispute Resolution.

Fisher, E. A. 1975. "Community Courts: An Alternative to Conventional Adjudication." American University Law Review 24: 1253-1291.

Fligstein, Neil. 1990. The Transformation of Corporate Control. Cambridge, MA: Harvard University Press.

Frank, John. 1969. American Law: The Case for Radical Reform. New York: Macmillan.

Friedland, Roger and Robert R. Alford. 1991. "Bringing Society Back In: Symbols, Practices, and Institutional Contradictions." Pp. 232-262 in The New Institutionalism in Organizational Analysis, edited by Walter W. Powell and Paul J. DiMaggio. Chicago: University of Chicago Press.

Frohock, Fred. 1994. Healing Powers: Alternative Medicine, Spiritual Communities, and the State Chicago: University of Chicago Press.

Fuller, Lon. 1971. "Mediation - It's Forms and Functions." Southern California Law Review 44: 305-339.

Galanter, Mark. 1983. "Reading the Landscape of Disputes: What We Know and Don't Know (and Think We Know) About Our Allegedly Contentious and Litigious Society." UCLA Law Review 31: 4-71.

_____. 1984 "The Emergence of the Judge as Mediator in Civil Cases." Working Papers 1984-85, Disputes Processing Research Program, University of Wisconsin-Madison.

_____. 1985. "A Settlement Judge, Not a Trial Judge: Judicial Mediation in the United States." Journal of Law and Society 12: 1-33.

Goffman, Erving. 1974. Frame Analysis: An Essay on the Organization of Experience. New York: Harper.

Goldberg, Stephen B., Eric D. Green, and Frank E. A. Sander, Eds. 1985. Dispute Resolution. Boston: Little Brown.

Goldschmitt, Jona. 1994. "Bargaining in the Shadow of ADR: Judicial and Attorney Attitudes Toward Settlement Under a Medical Screening Panel System." The Justice System Journal 16: 15-32.

Gross, Peter, Ronald Hitzler, and Anne Honer. 1985. "Two Cultures? Changes in Diagnostic and Therapeutic Competence." Osterreichische Zeitschrift fur Sociologie 10: 146-162.

Gulliver, P. H. 1979. Disputes and Negotiations: A Cross-Cultural Perspective. New York: Academic Press.

Gusfield, Joseph. 1963. Symbolic Crusade. Urbana, IL: University of Illinois Press.

Hannan, Michael T. and John Freeman. 1989. Organizational Ecology. Cambridge, MA: Harvard University Press.

Harrington, Christine B. 1982. "Delegalization Reform Movements: A Historical Analysis." Pp. 35-74 in The Politics of Informal Justice, Volume 1: The American Expericence, edited by Richard L. Abel. NY: Academic Press.

_____. 1985. Shadow Justice: The Ideology and Institutionalization of Alternatives to Court. Westport, CT: Greenwood Press.

Harrington, Christine B. and Sally Engle Merry. 1988. "Ideological Production: The Making of Community Mediation." Law & Society Review 22: 709-738.

Heimer, Carol A. and Arthur L. Stinchcombe. 1999. "Remodeling the Garbage Can: Implications of the Causal Origins of Items in Decision Streams." American Bar Foundation Working Paper #9805. Chicago: American Bar Foundation.

Hunter, James Davison. 1991. Culture Wars: The Struggle to Define America. NY: Basic Books.

Jacob, Herbert. 1988. Silent Revolution: The Transformation of Divorce Law in the United States. Chicago: University of Chicago Press.

Jepperson, Ronald L. 1991. "Institutions, Institutional Effects, and Institutionalism." Pp. 143-163 in The New Institutionalism in Organizational Analysis, edited by Walter W. Powell and Paul J. DiMaggio. Chicago: University of Chicago Press.

Johnson, Earl, Valerie Kantor, and Elizabeth Schwartz. 1977. Outside the Courts: A Survey of Diversion Alternatives in Civil Cases. Williamsburg, VA: National Center for State Courts.

Kim, Hyojoung and Peter S. Bearman. 1997. "The Structure and Dynamics of Movement Participation." American Sociological Review 62: 70-93.

Kleinman, Sherryl. 1996. Opposing Ambitions: Gender and Identity in an Alternative Organization. Chicago: University of Chicago Press.

Kuhn, Thomas. 1962. The Structure of Scientific Paradigms. Chicago: University of Chicago

Press.

Larson, Magali Sarffati. 1977. The Rise of Professionalism: A Sociological Analysis. Berkley: University of California Press.

Liberman, Jethro K. 1981. The Litigious Society. NY: Basic Books.

Lowy, Michael J. 1973. "Modernizing the American Legal System: An Example of the Peaceful Use of Anthropology." Human Organization 32: 205-209.

Mann, Michael. 1986. The Sources of Social Power, Volume 1: A History of Power from the Beginning to A.D. 1760. Cambridge, England: Cambridge University of Press.

McEwen, Craig A., Lynn Mather, and Richard J. Maiman. 1984. "Lawyers, Mediation, and the Management of Divorce Practice." Law & Society Review 28: 149-187.

McEwen, Craig A. and Laura Williams. 1998. "Legal Policy and Access to Justice Through Courts and Mediation." Ohio State Journal of Dispute Resolution 13: 3-xx.

McGillis, Daniel J. 1982. "Minor Dispute Processing: A Review of Recent Developments." Pp. 60-77 in Neighborhood Justice: Assessment of an Emerging Idea, edited by Roman Tomasic and Malcolm M. Feeley. NY: Longman.

McGillis, Daniel J. and Joan Mullen. 1977. Neighborhood Justice Centers: An Analysis of Potential Models. Washington D.C.: U.S. Department of Justice.

McKinney, Bruce C., William D. Kimsey, and Rex M. Fuller. 1996. "Nationwide Survey of Mediation Centers." Mediation Quarterly 14: 155-166.

Meyer, John W., John Boli, and George Thomas. 1987. "Ontology and Rationalization in the Western Cultural Account." Pp. 12-37 in Institutional Structure, edited by George Thomas, et. al. Newbury Park, CA: Sage.

Meyer, John W. and Brian Rowan. 1977. "Institutionalized Organizations: Formal Structure as Myth and Ceremony." American Journal of Sociology 83: 340-363.

Milne, Ann and Jay Folberg. 1988. "The Theory and Practice of Divorce Mediation: An Overview." Pp. 3-26 in Divorce Mediation: Theory and Practice, edited by Jay Folberg and Ann Milne. NY: Guilford Press.

Morrill, Calvin. 1995. The Executive Way: Conflict Management in Corporations. Chicago: University of Chicago Press.

Morrill, Calvin and Cindy McKee. 1993. "Institutional Isomorphism and Informal Social Control: Evidence from a Community Mediation Center." Social Problems 40: 445-463.

Nader, Laura. 1980. No Access: Alternatives to the American Judicial System. NY: Academic Press.

_____. 1987. "Harmony Models and Construction of Law." Pp. 41-60 in Conflict Resolution: Cross-Cultural Perspectives, edited by Kevin Avruch, Peter W. Black, and Joseph A. Scimecca. NY: Greenwood Press.

_____. 1990. Harmony Ideology: Justice and Control in a Zapotec Mountain Village. Stanford, CA: Stanford University Press.

_____. 1995. "Civilization and its Negotiations." Pp. 39-64 in Understanding Disputes: The Politics of Argument, edited by Pat Caplan. Oxford, England: Berg.

Nader, Laura and Harry F. Todd. 1978. "Introduction." Pp. 1-40 in The Disputing Process - Law in Ten Societies, edited by Laura Nader and Harry F. Todd. NY: Columbia University Press.

Packer, Herbert. 1968. The Limits of the Criminal Sanction. Stanford: Stanford University Press.

Palumbo, Dennis J., Michael Musheno, and Michael Hallett. 1994. "The Political Construction of Alternative Dispute Resolution and Alternatives to Incarceration." Evaluation and Program Planning 17: 197-203.

Pipkin, Ronald and Janet Rifkin. 1984. "The Social Organization in Alternative Dispute Resolution: Implications for Professionalization of Mediation." The Justice System Journal 9: 204-227.

Powell, Walter W. 1991. "Expanding the Scope of Institutional Analysis." Pp. 183-203 in The New Institutionalism in Organizational Analysis, edited by Walter W. Powell and Paul J. DiMaggio. Chicago: University of Chicago Press.

_____. 1996. "Fields of Practice: Connections Between Law and Organizations." Law and Social Inquiry 22: 959-966.

Ray, Larry. 1982a. Alternative Dispute Resolution: Bane or Boon to Attorneys? Washington D.C.: American Bar Association.

_____. 1982b. Alternative Dispute Resolution: Who's in Charge of Mediation? Washington D.C.: American Bar Association.

_____. 1982c. Alternative Dispute Resolution: Mediation and the Law: Will Reason Prevail? Washington D.C.: American Bar Association.

_____. 1983. Dispute Resolution Program Directory. Washington D.C.: American Bar Association.

Salem, Richard A. 1985. "The Alternative Dispute Resolution Movement: An Overview." The Arbitration Journal 40: 3-11.

Sander, Frank E. A. 1976. "Varieties of Dispute Processing." Federal Rules Decisions 70: 111-134.

_____. 1984. "Alternative Dispute Resolution in the Law School Curriculum: Opportunities and Obstacles." Journal of Legal Education 34: 229-???

Scimecca, Joseph A. 1991. "Conflict Resolution in the United States: The Emergence of a Profession? Pp. 19-40 in Conflict Resolution: Cross-Cultural Perspectives, edited by Kevin Avruch, Peter W. Black, and Joseph A. Scimecca. NY: Greenwood Press.

Scott, W. Richard. 1991. "Unpacking Institutional Arguments." Pp. 164-182 in The New Institutionalism in Organizational Analysis, edited by Walter W. Powell and Paul J. DiMaggio. Chicago: University of Chicago Press.

Scull, Andrew. 1977. Decarceration: Community Treatment and the Deviant - a Radical View. New Brunswick, NJ: Rutgers University Press.

Selznick, Philip. 1949. TVA and the Grass Roots. Berkeley, CA: University of California Press.

Silbey, Susan and Austin Sarat. 1989. "Dispute Processing in Law and Legal Scholarship: From Institutional Critique to the Reconstruction of the Juridical Subject." Denver University Law Review 66: 437-498.

Snow, David A. and Robert D. Benford. 1992. "Master Frames and Cycles of Protest." Pp. 133-155 in Frontiers in Social Movement Theory, edited by Aldon D. Morris and Carol McClung Mueller. New Haven, CT: Yale University Press.

Soysal, Yasemine Nuhoglu. 1994. Limits of Citizenship: Migrants and Postnational

Membership in Europe. Chicago: University of Chicago Press.

Sperber, Dan. 1996. Explaining Culture. Oxford, England: Basil Blackwell.

Starr, Paul. 1982. The Social Transformation of American Medicine: The Rise of a Sovereign Profession and the Making of a Vast Industry. NY: Basic Books.

Suchman, Mark C. and Laurel B. Edelman. 1996. "Legal Rational Myths: The New Institutionalism and the Law and Society Tradition." Law & Social Inquiry 21: 903-941.

Sutton, John R. 1996. "Rethinking Social Control." Law & Social Inquiry 21: 942-958.

Sutton, John R., Frank Dobbin, John W. Meyer, and W. Richard Scott. 1994. "The Legalization of the Workplace." American Journal of Sociology 99: 944-971.

Tolbert, Pamela S. and Lynn G. Zucker. 1983. "Institutional Sources of Change in the Femoral Structure of Organizations: The Diffusion of Civil Service Reform, 1880-1935. Administrative Science Quarterly 28: 22-39.

Tomasic, Roman. 1982. "Mediation as an Alternative to Adjudication: Rhetoric and Reality in the Neighborhood Justice Movement." Pp. 215-248 in Neighborhood Justice: Assessment of an Emerging Idea, edited by Roman Tomasic and Malcolm M. Feeley. NY: Longman.

Tomasic, Roman and Malcolm M. Feeley. 1982. "Introduction." Pp. ix-xviii in Neighborhood Justice: Assessment of an Emerging Idea, edited by Roman Tomasic and Malcolm M. Feeley. New York: Longman.

Wardwell, Walter I. 1994. "Alternative Medicine in the United States." Social Science and Medicine 38: 1061-1068.

Weil, Andrew. 1983. Health and Healing: Understanding Conventional and Alternative Medicine. Boston: Houghton Mifflin.

Weitzman, Lenore. 1985. The Divorce Revolution: The Unexpected Social and Economic Consequences for Women and Children in America. NY: Free Press.

Wilensky, Harold. 1964. "The Professionalization of Everyone." American Journal of Sociology 70: 137-158.

Wuthnow, Robert. 1987. Communities of Discourse: Ideology and Social Structure in the Reformation, the Enlightenment, and European Socialism. Cambridge, MA: Harvard University Press.

Zald, Mayer N. 1992. "Looking Backward to Look Forward: Reflections on the Past and Future of the Resource Mobilization Research Program." Pp. 326-348 in Frontiers in Social Movement Theory, edited by Aldon D. Morrils and Carol McClurg Mueller. New Haven, CT: Yale University Press.

1. ADR comprises a family of techniques whose practitioners and proponents claim are less formal procedurally than adjudication. Included in these techniques are negotiation, mediation, conciliation, judicial settlement, arbitration, and mini-courts (sometimes called mini-trials). Dispute negotiation refers to a "problem-solving process in which [two or more disputants] attempt to reach a joint decision on matters of common concern in situations where they are in disagreement and conflict" (Gulliver 1979: xiii). Mediation is sometimes called "supervised negotiation" (Fuller 1971) because mediators are typically not empowered to pronounce case outcomes, instead facilitating structured communication among disputants with the intention of reaching a mutually beneficial resolution. Mediation can be court- or organizationally-based and conducted by specially trained personnel or "peers" (as in the burgeoning school-based peer mediation programs). Conciliation is a form of mediation that focuses on disputants' relationships. In some states (e.g., California), if resolution is not reached through mediation, court-based mediators are empowered to engage in arbitration to pronounce a judgement on the case. Judicial settlement mixes conciliation and mediation in an effort to achieve resolution. Arbitration is a structured settlement process in which third-parties can pronounce judgements on cases, but enforcement of the judgement is left to the disputants themselves. Mini-courts are private arbitral forums, typically presided over by a former judge, in which procedures approximate those of a court and judgements are enforced by the disputants. Adjudication differs from arbitration in the complexity of its procedures and that its judgements are enforceable by the state. (For reviews of these dispute settlement practices, see Nader and Todd 1978; Black and Baumgartner 1983; Morrill 1995).

2. Suchman and Edelman (1996), Sutton (1996), and Powell (1996) provide numerous

possibilities for the further reintegration of institutional analysis in organizational sociology and

the sociology of law.

3. Empirical evidence for ADR's interstitial emergence is based on the collection of documents

covering a thirty-year period (1965-1995) from two sources: the American Bar Association

(ABA) and the National Institute of Dispute Resolution (NIDR). ABA subcommittees

participated in the introduction of ADR to the legal profession and elite judges. NIDR (founded

in 1980) is the national clearing house for information about ADR. I also conducted a review of

print media at the national and local levels over the same period for reports on ADR. Publications

reviewed included the New York Times, Los Angeles Times, Washington Post, The Arbitration

Journal, American Lawyer, Arizona Daily Star, Arizona Republic, Arizona Attorney. These

sources were supplemented by two other evidentiary sources: (1) participant observation ADR

organizations (including working as a volunteer mediator at a community mediation center, 1990-

1997, serving on Arizona's ADR advisory/regulatory committee, 1994-1997, and working with

the Arizona Dispute Resolution Association as a volunteer consultant, 1996-1997) and (2)

informal interviews with judges and mediators from Arizona, California, New Mexico, and

Virginia.

4. This typology leaves out the larger sociocultural contexts which are constituted by wider

cultural myths and social structures (e.g., the "Western cultural tradition") and in which

institutional contexts are embedded (Meyer, Boli and Thomas 1987). Also left out of this

typology is the oft-used concept of "organizational population" used by organizational ecologists

(Hannan and Freeman 1989). For ease of presentation and usage in the present analysis, I limit the discussion to three levels of analysis.

5. A notable exception to this trend is the development of the biotechnical field, which seemingly has enjoyed high visibility among practitioners in many contributing organizational fields since its inception (see Powell, this volume).

6. The idea that "problems" in an organizational field precipitate interstitial emergence begs the question of where and why such problems originate. It is beyond the purview of the present study to fully consider this question. Suffice to say that problems arise from a variety of sources including political and economic shocks, mutual influence of organizations and their institutional logics across multiple organizational fields, contradictions between institutional logics that manifest themselves in organizational fields, and demographic and natural environmental changes.

7. Here again, the most "successful" forms of interstitial emergence will move beyond the institutional context to the sociocultural level thereby reconfiguring wider cultural narratives.

8. My perspective on interstitial emergence suggests an "agentic orientation" in that individuals and groups pragmatically attempt to solve problems they encounter by "imagining alternative possibilities" to conventional practices (Emirbayer and Mische 1998; see also DiMaggio 1988). I do not mean to imply that players scan the environment for the most efficient solutions or that the solutions that stick will solve whatever problems are identified. Decision-making at the interstices takes on the characteristics of the classic "garbage can model": Preferences will be problematic,

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relevant technologies will be unclear, and there will be fluid participation in search, choice, and implementation processes (Cohen, March and Olsen 1972). Perhaps such ambiguities encourage incumbents to recombine conventional practices into alternative practices or engage in briccolage whereby ideas from disparate and often far-flung sources are put together in new ways. Claims of efficacy made by advocates of alternative practices typically will be fraught with ambiguity. Although most cases of interstitial emergence occur in response to some problem that already exists, this discussion does not preclude the possibility that as solutions emerge, they can "create" new problems to be solved or that advocates will not "invent" additional problems that their solutions can solve.

`9.` Note that moral entrepreneurs are not necessarily social elites. Interstitial emergence can evolve into a moral crusade that attracts elites as it gains momentum, but less typically involves cohesive elite collective action at the outset of the movement (Kim and Bearman 1997). The point is that interstitial emergence is an ambiguous process in which it is often difficult to discern who is in control of the processes at any one time.

`10.` This discussion could leave the impression that the movement from alternative to conventional is a smooth process without conflict that typically results in institutional change. Many, if not most, alternatives fail to climb out of the interstices to firmer social terrains precisely because of conflict. Conflict can occur over the meanings and logics of new practices relative to the old ones (Haveman and Rao this volume). Conflict and competition can also exist among competing alternative frames, resulting in "frame disputes" (Benford 1993). Frame disputes can evolve into professional "jurisdictional disputes" (Abbott 1988; Mohr, this volume) or "culture

wars" if alternative practices feed into the wider cultural context (Hunter 1991). Other conditions also militate against alternatives becoming conventional, such as the vested power of particular groups in existing practices and the perceived immutability of particular institutions (e.g., Weber's "iron cage" of rationalization).

11. The fields involved have been dichotomized into the "sociolegal field" and the "social services field," following the designations and identifications by informants. Figures 1 and 2 derive from in-depth interviews with long-time informants in 1995 who had least three decades experience in Phoenix in their occupation as of 1995 and similar occupations. Informants for these interviews included: two judges, two police officers, two attorneys, three social workers, three mediators, and two mental health workers. Interviews lasted from 45 minutes to 1 ½ hours. The data used to construct the diagrams were collected by asking the following three questions: 1) To whom did [people in your occupation] typically refer unresolved minor dispute cases during the late 1960's? (in 1995?) 2) Who referred unresolved cases to [people in your occupation] during the late 1960's? (in 1995?) Which of the two fields, the [socio]legal field or the social services field, would you say people in your occupation most identified with during the late 1960's? (in 1995?) Matrices of the perceived referral flows between occupations were then constructed and a sociogram was drawn. Linkages between occupations were established only if two or more informants in the same occupation reported the same referral link.

12. In this way, some of the informal methods used to handle minor disputes linked with other techniques of the "deinstitutionalization" of various forms of state social control that appeared during the 1970's (see generally, Scull 1977; Palumbo, Musheno, and Hallet 1994).

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13. Silbey and Sarat (1989) argue that these three critiques -- legal access, quality, and saving adjudication -- had three critical masses associated with them. My reading of the literature on ADR and in interviews with practitioners at the local and national level suggests that groups producing and using the access and quality critiques typically overlapped both in membership and in solution frames (i.e., they all bought into variants of the community mediation frame). The greater difference exists between the community mediation and multidoor courthouse frames both in problem diagnosis and solutions. Therefore, I treat these two critiques as belonging to the same critical mass and frame.

14. As Danzig (1974: 49-52) wrote: "[A] moot might handle family disputes, some marital issues (e.g., paternity, support, separation), juvenile delinquency, landlord-tenant relations, small torts and breaches of contract involving only community members, and misdemeanors affecting only community members....Typically, moots might function by the counselor asking the complainant to state his grievances and his requested remedies, by having the personal complained about respond, and then by allowing general discussion and questioning between all those present....The usefulness of nonprofessionals assembled through the forum of a moot is suggested by therapeutic practices which secure progress with personal and family problems by building a patterns of supportive conduct among friends and neighbors....The moot as recommended would be unique in prompting community discussion about situations in which community relations are on the verge of breaking down (italics in the original)."

15. Sander (1976: 131-133) summarized the essence of the multidoor courthouse: "What I am thus advocating is a flexible and diverse panoply of dispute resolution processes, with particular

types of cases being assigned to different processes (or combinations of processes....[O]ne might

envision by the year 2000 not simply a court house but a Dispute Resolution Center, where the

grievant would first be channeled through a screening clerk who would then direct him to the

process (or sequence of processes) most appropriate to his type of case. The room director in the

lobby of such a Center might look as follows:

Screening Clerk	Room 1
Mediation	Room 2
Arbitration	Room 3
Fact Finding	Room 4
Malpractice Screening Panel	Room 5
Superior Court	Room 6
Ombudsman	Room 7

16. Here again I draw and slightly diverge from Silbey and Sarat (1989). They view the

emergence of ADR as market phenomena driven by competition over legal services. My

argument is that such competition did not occur until after the innovative moment of interstitial

emergence occurred, critical masses and frames were developed, and ADR professionalization

projects had begun. Thus, we agree on the social, political, and economic processes that defined

the diffusion of ADR in the 1980's and into the 1990's, but not on the initial stages that led to such

processes.

17. In SPDR (founded by therapists, attorneys, and social workers), mediators played increasingly definitive roles in governance and vision for the society. The first national professional organizations solely for mediators appeared during this time as well: the Academy of Family Mediators (1981) and the Family Mediation Association (1982).

18. This figure derives from a report prepared by the University of Arizona Committee on the Conflict Analysis and Resolution Doctoral Minor Program of which the author is a member.

19. McKinney, Kimsey, and Fuller (1996) designed the survey to address staffing, funding, training, and services provided at each center. Survey results derive from two samples. The first sample consisted of a random selection of organizations (n = 150) from the 1993 NIDR membership list. The second sample consisted of all 209 organizations listed on the 1993 National Association for Community Mediation national membership list. The first sample has a 39% response rate; the second, a 56% response rate. Thus, the figures reported in the text must be regarded as tentative given the low response rates.

20. One reason for the exit of community organizers lies in the difference in funding and political opportunities for community organizing from the late 1960's to the mid 1990's. Simply put, community organizing, especially in a politically conservative states like Arizona, has become largely extinct. More puzzling is why elected officials exited the 1995 perceptual referral network for minor disputes, particularly in light of Nader's (1980) observations about how elected officials routinely handle various sorts of minor disputes. One informant offered this folk theory for this

change from 1968 to 1995: "In the last thirty years, the city of Phoenix has gone from medium

sized city to a huge metro area. I think elected officials have just pulled back form dealing with

these kind of issues to the point where the average citizen feels that they're [elected

representatives] are too remote from them to help."

21. Evidence for the alternative medicine subsection derives from secondary sources cited in text

and the author's association with the Arizona Cancer Center as a co-investigator on the "Arizona

5 a Day Project" (a National Cancer Institute funded longitudinal field study of disease prevention

through lifestyle and dietary change). Here I provide brief definitions for the alternative medicinal

practices noted in text (for a full review of these practices, see Aakster 1986; Wardwell 1994).

Acupuncture refers to physical healing by rebalancing bio-energy imbalances in the body through

the insertion of silver needles at strategic points between internal organs. Homeopathy attempts

to restore the self-healing capability of the individual by introducing small doses of disease

symptoms into an individual. This technique also extends symptomology from the body to mental

functioning and environmental conditions. Naturopathy also focuses on the ability of individuals

to heal themselves through regulation of interaction (eating, breathing, relaxing, meditating, etc.)

with natural, physical, social, spiritual, and psychological environments. Herbalism focuses on

physical and mental healing through the ingestion of various herbs, spices, and other plants and

minerals. Manual therapies include osteopathy and chiropractics. They concentrate on relieving

deformations or jammed nerves/arteries in and around the spinal column through physical

manipulation. Mental therapies include bio-energetics, Gestalt therapy, bio-release, rebirthing,

unitive psychology, and autogenetic training. All of these practices eschew the schism between

mind and body assumed by orthodox medicine, approaching healing from the perspective that

mental functions play key roles in healing the body and vice-versa. Faith healing includes

charismatic cures in conventional religions (e.g., the French-Catholic shrine of Lourdes or Oral

Roberts' healing rituals) and nonconventional religions such as Christian Science and Scientology

in which healing occurs through spiritual practices.