Individual Differences and the Pursuit of Legal Rights

A Preliminary Inquiry*

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In this article we explore the role of individual differences in the proclivity to pursue legal rights. A series of field surveys and a laboratory experiment indicated that a measure of claim propensity was consistently related to the reporting of "rights" problems, the tendency to make claims in response to these problems, and preferences for styles of conflict resolution. Although the findings leave many unanswered questions that will have to be addressed in future research, the most important contribution of the article, we believe, is that it draws attention to rights, or claims, consciousness as an important phenomenon and demonstrates that it is amenable to empirical investigation.

INTRODUCTION

What causes people to pursue legal rights, and, conversely, what induces them to accept or tolerate perceived injustice? In this article we report a series of empirical studies that explore the role of individual differences in behaviors arising out of transactions that fall within the domain of civil law. The research helps to lay the groundwork for further inquiry into facets of justice research that have previously been neglected.

The Social Psychological Context of Claims Consciousness

Researchers from various disciplines have speculated about the determinants of perceived injustice as well as about the factors that cause people to seek com-

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pensation or restitution. For example, in an important essay on "the idea of right as a social and legal concept" Lawrence Friedman (1972; see also Friedman, 1975: Chaps. 8 and 9) pointed out that the civil law provides private citizens with opportunities to correct perceived injustices, opportunities that we label "rights." Friedman went further to point out that the "consciousness of right" is a product of social experience. Individuals are socialized to "believe they can or cannot avail themselves of various modes of recourse and that they should or should not do so" (Ibid., 191). Whether a person perceives that a right has been violated and whether that person chooses to take some action in regard to it, however, is completely discretionary: the onus is on him or her to make a claim about the violated right. Thus, "rights consciousness" can be seen as the "propensity, greater or less, to avail oneself of one's rights."

Building upon Friedman's work, other writers, preferring the synonyms "claims consciousness" or "claim propensity," have speculated about the psychological and social context in which claims of rights must be exercised (Boyum, 1983; Coates & Penrod, 1981; Felstiner, Abel, & Sarat, 1981; Vidmar, 1981). Claims proceed through various stages that have alternative paths or options. First, a problem may be perceived or not. Once a problem is perceived, blame may be affixed to another party, to oneself, or to fate. If blame is ascribed to another party it becomes a grievance and a claim may be made for rectification, or alternatively, the grievance may just be endured. Finally, if the party against whom a claim is made rejects the claim, the grievant may drop the matter or may take additional action, such as seek third party help. At each of these stages a host of cultural, sociological, social psychological, economic, and institutional factors may activate or inhibit the assertion of rights. For example, defining a matter as a grievance requires that the person translate an experience as negative and as the fault of some person or organization: e.g., a failure to be promoted is seen as the result of sex discrimination, not personal failing. Setting forth a claim may risk the rupture of social relations with the other party, censure for being a "trouble maker," or even retaliation by a counterclaim. And, of course, these problems may expand in magnitude or consequence as a claim progresses to third party intervention. At a minimum, pursuit of the claim requires time and energy, and it may also entail financial risks, such as paying for a lawyer. Ultimately, the propensity to pursue rights may be reduced to a benefit–cost–risk formula involving subjective evaluations of a number of social, economic, and environmental variables. We forego an attempt at a comprehensive model in this article, however, and focus on some selected but important variables.

**Individual Differences in Claim Propensity**

What factors underlie the propensity to perceive situations or events as problems and to make claims? There are, of course, institutional considerations such as the availability of information and channels for complaint. There are also cultural and social forces that encourage or deter the propensity to claim (see generally Tapp & Levine, 1977). Kawashima (1969), for example, developed the thesis that the Japanese often eschew claims of individual rights in deference to