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The Social Reality And Social Organization Of Natural Decision-Making

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THE SOCIAL REALITY AND SOCIAL ORGANIZATION OF NATURAL DECISION-MAKING

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Introduction

Hawkins presents three pleas in his persuasive attempt to put legal decisions in context. The first is for a critical assessment of the basic concepts which are used in the socio-legal analysis of decisions. The second is for a naturalistic perspective within which to carry forward this critical examination. The third is for additional close institutional analyses using the naturalistic approach to the social organization of decision-making. The overall style of Hawkins' paper is in some sense ironic.[1] He intends by his analysis, conceptual framework, and critique of rationalistic decision-making, to set out an alternative social reality, and to ask as a corollary how such specialized social worlds as are represented in legal institutions are created and maintained. This comment examines the case made by Hawkins which urges the utility of detailed examination of legal decisions and legal decision-making: "[T]here exists only a very imperfect understanding of the ways in which legal discretion is exercised," and claims that a current fundamental requirement is to identify ". . . some of the central concerns which theoretical explorations into decision-making should address."

The aims of these remarks are to describe some aspects of the social world of the law shaping decisions and a natural approach to this social reality. The bulk of the paper is a consideration of three concepts essential to any naturalistic study of the social organization of decision making: decision, decision-field, and the situated relevance of the non-field. A perspective on decision, and semiotics, the science of signs, are presented as preliminary to the analysis, while auxiliary concepts such as frame, sub frame and master frame, decision-field and boundaries are also useful.

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* B.A., M.A., Ph.D.; Professor of Sociology and Psychiatry, Michigan State University; Senior Principal Scientific Officer, Center for Socio-Legal Studies, 1984-86, Wolfson College, Oxford. The proximal stimulus for this essay is Hawkins' lecture to which I was asked to respond. What follows is an elaborated statement of the line of argument which my comments were intended to develop in the event. Many themes in Hawkins' paper cross the fields of law and social science, and it would be importunate to attempt a comprehensive evaluation. The outline of an argument that follows draws primarily upon recent field studies of the police in Britain and America and of the regulation of nuclear safety in which I am currently involved. The analytic perspective adopted is detailed in P. Manning, *Queries Concerning the Decision-Making Approach to Police Research,* in J. SHAPLAND (ed.), DECISION-MAKING IN THE LEGAL SYSTEM 50-60 (1981); P. Manning, *Signwork,* HUMAN RELATIONS 283-308 (Vol. 39 1986); and P. Manning, *Symbolic Communication: Organizing a Police Response* (forthcoming).

1. *See* P. Manning, *Metaphors of the Field,* 24 AD. SCI. Q. 660 (1979); R. BROWN, A POETIC FOR SOCIOLOGY (1977).

The Naturalistic Conceit

In arguing for naturalism,[2] Hawkins asserts his interest in describing decisions in social context, an interest shared with other sociologists,[3] social psychologists,[4] anthropologists,[5] and political scientists.[6] In a somewhat narrower and more restrictive fashion, this interest is shared with operations researchers and students of artificial intelligence and computer science.[7] By describing processes as they occur, indicating individual interests and cliques, social values and beliefs, ignorance and error, Hawkins penetrates the formal facade of the legal institution to display its workings and its various forms and content. Thus he links the social relations that make the law possible with the formal structures within which it operates and the ideologies which justify it. Perhaps this naturalistic approach to the social reality of law could be explicated as an introduction to a conceptual critique of Hawkins' version of natural decision-making.

A naturalistic approach to decision-making in the context of the particular social reality that is associated with legal institutions would attempt to link the types of decisions, their location and form, to the law as a kind of corporate going concern. The aim is to connect decision points, or the contingent conjunction of groups or interests, with the cognitive frames which locate the relevant field defining a particular social reality and internally pattern it.[8] Messages and texts, taken to legitimately represent the mandated outcomes of the application of frames to decision-points within a field, are constituted from signs which have multiple referents.[9] The individual decision-maker is less critical than the social institution within which decision-points, frames, messages and texts (cases) are typically located. It is the social organization of legal institutions, the recognized frames and subframes, the special discourse of law, and the relevant decision-points (e.g., bail, preliminary hearing, trial, sentence, parole as one line of action) which give reality and life to all that is taken to be legal. An outline for a naturalistic study of legal decision-making, which Hawkins has presented,

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2. D. MATZA, BECOMING DEVIANT (1969).

3. J. SKOLNICK, JUSTICE WITHOUT TRIAL (1966); T. SCHEFF, BECOMING MENTALLY ILL (1966); A. CICOUREL, THE SOCIAL ORGANISATION OF JUVENILE JUSTICE (1968); R. EMERSON, JUDGING DELINQUENTS (1969); C. LIDZ, ET AL., INFORMED CONSENT (1984); *cf.* W. Wagel, *infra* note 72.

4. W. EDWARDS & A. TVERSKY (eds.), DECISION MAKING (1967); B. FISCHOFF, ET AL., ACCEPTABLE RISK (1981); S. KONECINI & A. E. BEESON (eds.), THE CRIMINAL JUSTICE SYSTEM (1982); D. KAHNEMAN, SLOVICK & A. TVERSKY, JUDGEMENT UNDER UNCERTAINTY (1982).

5. E. LEACH, POLITICAL SYSTEMS OF HIGHLAND BURMA (1960); M. SWARTZ, LOCAL-LEVEL POLITICS (1968); M. DOUGLAS & A. WILDAVSKY, RISK AND CULTURE (1982).

6. C. LINDBLOM & D. BRAYBROOKE, A STRATEGY OF DECISION (1962); G. ALLISON, ESSENCE OF DECISION (1971); A. WILDAVSKY & J. PRESSMAN, IMPLEMENTATION (1973); P. BRACKEN, THE COMMAND AND CONTROL OF NUCLEAR FORCES (1983).

7. J. MARCH & H. SIMON, ORGANISATIONS (1958); H. SIMON, SCIENCES OF THE ARTIFICIAL (1981).

8. E. GOFFMAN, FRAME ANALYSIS (1974).

9. *See* F. DESAUSSURE, COURSE IN GENERAL LINGUISTICS (1966).

would seek to show initially how such a legal world is created and sustained, as well as to make salient the central concepts which link the processes of decision-making to that special social world.

The Social Reality of the Legal Institution

The social organization of legal decision-making is embedded in an institutional structure; as Hawkins has written elsewhere, social relationships in some sense transcend and shape the law.[10] This institutional structure sustains a social reality[11] and includes patterns of guided interaction, a structure of roles, statuses and information distribution, functions, a ceremonial order, and a mandate expressed in ideological terms. Hawkins has shown that it is only by careful, systematic and detailed observation of legal decision-making *en situ,* that one could demonstrate the special selective, idealized, limited, and constrained character of what is usually described as "legal decision-making." Perhaps as a way of illustrating Hawkins's argument about the ways in which court decisions are seen as a "typical" or representative of legal institutions' decision-making, special reference can be made to the social reality of the courts, bearing in mind that they are special and represent only one locus of legal decisions. A discussion of these five components should also assist us in discerning the special social reality that the legal institution sustains. Let us look at these five components.

1. *Interactions* in court are guided by specialized rules governing the order of speech, turn-taking and topic, the form of speech, its style and prosaic features, its content and even the length of given utterance.[12] These rules governing the structure of talk are complemented by specialist roles and statuses (positions and their functions), authority (especially to decide outcomes), and patterns of information. There are also less clear tacit rules about the assumptions of court order and the relevance of various forms of knowledge to such ordering.[13]

2. The *structure* of the court is based on the existential assumption that "the business of the law is the business of making decisions." This is made manifest by a structure designed to establish operational truth and to validate a version of reality. As Hawkins points out, this may or may not be adversarial, have a binary outcome, and be based on formal legal knowledge. The rulings or decisions taken are believed to be binding on the participants, win or lose. These deliberations are guided by the above rules of interaction, and by those of evidence and proof. The structure intends to protect the

10. K. HAWKINS, ENVIRONMENT AND ENFORCEMENT 7 (1984).

11. P. BERGER & T. LUCKMAN, THE SOCIAL CONSTRUCTION OF REALITY (1966).

12. *See* J.M. ATKINSON & P. DREW, ORDER IN COURT (1979); D. MCBARNET, CONVICTION: THE STATE AND THE CONSTRUCTION OF JUSTICE (1981); W.L. BENNETT & M. FELDMAN, RECONSTRUCTING REALITY IN THE COURTROOM (1981); P. CARLEN, MAGISTRATES' JUSTICE (1976).

13. A. CICOUREL, METHOD AND MEASUREMENT IN SOCIOLOGY (1964); H. Garfinkel, *A Conception of, and Experiments with "Trust" as a Condition of Stable Concerted Actions,* in O.J. HARVEY (ed.), MOTIVATION AND SOCIAL INTERACTION 187-238 (1964).

innocent, omit evidence not crucial to decisions, and provide for self-protection. This may or may not occur in actual court interactions, but the structure is conducive to that.[14] In a social world that is screened for relevance, closed by legal reasoning and conceptual fictions, and displayed in specialized discourse, the interpretation and translation of legal rules takes place.

3. Law ostensibly functions to produce either compliance, sanctioning, or both, using the grand or grounding norm of the monopoly of violence as its ultimate sanction.[15] In this sense, the law purports to do more than the quotation from Raz cited appreciatively by Hawkins. It not only intends, as do other institutions such as medicine, religion, and education, to guide behavior, to intervene in society, to support or reward various normative standards in the society, and to evaluate behavior; it does so in the interests of the state and with the ultimate sanction of violence.[16]

4. Law aims to counterfactually stabilize reality.[17] It sets out norms and standards of behavior said to represent good conduct, and rewards and dramatizes them in spite of the institutional function of processing the various failures, delicts, violations, and conflicts which are deeply characteristic of human society. The sustaining nature of this belief in the singular reality produced and reproduced by legal decisions is such that it survives in spite of evidence of human character displayed in the work of legal institutions.

5. The legal institution is highly ritualized; i.e., it is marked off from everyday life by power and authority and its processes and outcomes reaffirm this. This ritual order is confirmed by symbols and by dramas in public settings where the binding nature of the outcomes is displayed and taken to be definitive. An ideology of justness, fairness and due process sanctions the procedures and the outcomes of institutional decisions; this marks the outcomes and excludes consideration of alternative ideologies.

Three defining elements of the legal institution which can be analytically identified are the *mandate* or legitimate authority to decide; a *moral world* of right and wrong, good and evil, proper and improper, on which such authority rests; and an identifiable legal *consequence* of decisions. The three can be seen to appear separately in the sense that authoritative moral decisions may not have legal consequences, and that legal consequences may result without moral reasoning being brought to bear. In a sense then, "legal" is a gloss for moral actions that have consequences attributed to legal decisions.[18]

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14. D. McBarnet, *supra* note 12.

15. *See* H. KELSEN, THE PURE THEORY OF LAW (M. Knight trans. 1967); J.W. Harris, *Kelsen's Concept of Authority*, 36 CAMBRIDGE L.J. 353 (1977).

16. *See* M. WEBER, THE SOCIOLOGY OF LAW (M. Rheinstein trans. 1960).

17. N. Luhman, *Communication About Law in Interaction Systems,* in K. KNORR-CENTINA & A. CICOUREL (eds.), ADVANCES IN SOCIAL THEORY AND METHODOLOGY 234-256 (1981).

18. Cf. R. Dworkin, TAKING RIGHTS SERIOUSLY (1977).

This sketch of the social reality of legal institutions is of course an ideal-type, selectively patterned and guided by the aim of characterizing the legal institutions, using the courts as a paradigmatic case. It is this model of social reality that has been seen as exhaustive of legal decision-making forms, contents, outcomes, interactions, and settings. However, as Hawkins has pointed out, a variety of types of legal decisions are taken by people individually and in groups, and by people with widely different roles in the system. Different outcomes are possible: not all are public, individual, binary, formalized, and guided by detailed formal rules.

Perhaps most importantly, the general point about the naturalistic approach to legal decision-making is that the elements identified in the social reality of the courtroom can be seen throughout the legal system, and hence pattern the decisions taken in this system at various points. That is, an analytic framework that is suggested by Hawkins includes the guided and structured nature of interactions viewed as legal, and the patterns of authority which shape them; the binding nature of the decisions and the ultimate sanction of state-legitimated violence lying ready to enforce these decisions; the symbolic elevation of legal rules and decisions over the messy character of everyday conduct; the ritualized and ideologically justified nature of the decisions called legal; and the conflation of law, justice, morality and, in extreme, the state itself. These features, implicit in Hawkins's argument, can be seen in varying degrees in the wide variety of decisions taken to be "legal." Thus, although the court provides a dramatically marked and salient example of a context within which legal decisions are taken, it should be seen as exemplifying these features rather than being the sole setting in which they appear. Hawkins suggests that such features of decision-making, further, are not exclusive to the legal system and are found elsewhere; thus, he raises gentle doubts about the special character of legal decisions and, indeed, the special character of the law itself. By juxtaposing the social character of all decisions with the special claims made for legal decisions, Hawkins is engaging in ironic observation.

Hawkins has not simply made legal decision-making ironic; he has also broadened the scope of what should be taken to be "legal" as well as what should be viewed as a "decision." Unfortunately, however, Hawkins has identified "decision" and "decision-making" by means of clarifying what he argues they are not. They are the center of an empty circle, rotating within a surround that includes pressures, factors, forces, values, and perspectives that affect the decision but that may not be a feature of a cognitively isolated idea like "decision." Hawkins instructs us about what a decision is not, given his frame of reference, but does not say very much about what it is.

Decision must be coupled with conceptions of a decision field and decision points within that field. In addition, some conception of forces lying outside the immediate decision-context yet affecting and shaping it is required as well. These might be called *non-field.* Non-field refers to influences such as economic and cultural forces (norms, values, practices, and technologically determined social relations) and to subtle but elusive notions

such as the tacit knowledge that lies just beneath the surface of "rational" decisions.[19] The border between field and non-field is situationally defined. Hawkins details some of the limits or boundaries, cognitive and social, within which decision-processes take place. These are frames or perspectives. A *frame* provides a link between criteria and outcome and an interpretation of those connections; it provides a set of background expectancies or meanings.[20]

The social organization of natural decision-making, encompassing the core ideas of decision, decision-field, surrounding and embedding forces, frames, and boundaries, is the topic of the next three sections of the paper.

Decision

Hawkins distinguishes *decision, decision-making* and a *justification* for a decision. For him, "decision" refers to the outcomes of deciding, based on a choice as to action, whilst "decision-making" speaks to the process of making up a mind. Both decision and decision-making are "constituent parts of a continuous process which seamlessly connects one salient decision-point with the next." The process is elusive, "an almost infinite number of complex decisions of greater or lesser significance about the handling and processing of a case between these salient decision points." Decisions are thus known after the fact in terms of consequences or outcomes, and the making of such is a matter of crystallization or "making up one's mind." The process links one decision to the previous one and forthcoming decision(s). Some decisions are more important, or "primary" whilst others are "secondary." Finally, Hawkins distinguishes "deciding" from "ratifying," a notion similar to "primary" and "secondary" decision, since "deciding" implicitly precedes as well as is primary to a "justification" or ratification.

(a) Semiotics

These definitions contain some muddles that can be perhaps sorted out by adopting linguistic and semiotic approach to decision.[21] An expression (signifier) may be linked to a given content (signified) by several sorts of relationships, metonymy (part for whole; whole for part, as in "Red Steps" as a name for a cottage); metaphor ("the dance of life") or a variety of less common rhetorical links such as the use of irony, oxymorons, hyperbole, meiosis, and personification. Each sign (an expression and content linked within a context) is, in turn, connected to others. Syntactical relations are

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19. M. POLANYI, PERSONAL KNOWLEDGE (1967); R. NEEDHAM, AGAINST THE TRANQUILITY OF AXIOMS (1983).

20. *See* H. GARFINKEL, STUDIES IN ETHNOMETHODOLOGY (1967); A. Cicourel, *supra* note 3.

21. *See* B. JACKSON, SEMIOTICS AND LEGAL THEORY (1985), for a very useful introduction and overview of the semiotic approach to law. Semiotics is summarized in T. HAWKES, STRUCTURALISM AND SEMIOTICS (1977), and J. CULLER, STRUCTURALIST POLITICS (1975), and applied to police communication in my forthcoming SYMBOLIC COMMUNICATION: ORGANISING A POLICE RESPONSE.

also important—syntactical relations such as inversion, antithesis, repetition, as well as more literary constructions, alliteration, rhyme and various forms or genre.[22]

When a set of signs such as a report is read, one is reading a given form or type of ordering and connection of signs, often constrained by a *format,* or a set sequence and required units of data. These formal and syntactical relations are exemplified by assumed functions of given expressions (e.g., a psychiatric use of diagnostic categories, or a prison governor's use of a classification term for security), and are seen as *referential,* having a reality in the person to whom the data refer, as well as having a *synedocheal* relation to the whole person. (An "A" level security risk captures the essential character of the person, not just an organization tag.) It has also a *metaphoric* or analogous meaning: The prisoner is unlike "B," "C," and "D" prisoners in one sense, while like them in another. At a "higher" level, the denotation "A" also refers to the person's being "more dangerous than the general public," and sets him or her aside. Each connection of expression and content, of sign to sign, and of sign to referent as constructed in a given text, report, case, or file, represents the archaeology of and sedimentation of many *decisions.* But the way in which a case may be read or read-off can vary, since a single sign such as a report on conduct or a "ticket," can gloss an entire file and represent perhaps contradictory sets of observations made by various persons.

A case can be seen as an assemblage of signs for which a careful analysis of semiotic patterning is required.[23] If a *sign* is something that stands for something (a signifier) in a context, a decision is an assemblage of signs that may be glossed by a single sign that conflates or condenses the various nuances of a decision. For example, a decision to arrest contains complex facts about the offense, offender, victim (if any), opportunity, and evidential and procedural constraints. All of these are compressed, for example, in an arrest report drawn up by a P.C. An arrest is merely a consequential outcome that glosses previous processes and decisions.[24]

If "decision" refers to such outcomes, denotated and connotated by signs, it is also indicative of *choice* in Hawkins's vocabulary. Inaction is also a form of action. In some sense, however, an identifiable consequence is a

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22. *See* C. GEERTZ, THE INTERPRETATION OF CULTURES 213 (1973).

23. From a methodological point of view, seeing the report or file or case as a whole, something of a gestalt which is "handled" or "decided" or "processed" along with others which are similarly characterized, stands in contrast to a conception of the case or file as an assemblage of signs made meaningful by a variety of cases. U. ECO, A THEORY OF SEMIOTICS (1976). In the former, the logic is one of the repetitive processing of cases (whether by a case-by-case logic or one that chunks and clusters types or groups, or categories handled in similar fashion) whilst in the other, the process is one of examining syntactical and semantic links made between the signifiers and between signifiers and the signifieds. The closer one looks into the constitution of texts, as Hawkins does in the latter part of the paper, the more difficult it is to grasp the processing system or patterns of general disposal.

24. *See, e.g.*, W. LAFAVE, ARREST (1966); J. RUBINSTEIN, CITY POLICE (1972).

signified for which a *signifier* is sought to complete the sign. In theory, the sign is complete insofar as an outcome is already known to have been produced and is indicated—in this example by the arrest report. It may have been seen, or reviewed, in some fashion, so that event, decision and consequence are all represented by a single file, report, or case-record. This is certainly true in the case of the parole decisions described in the latter part of the Hawkins article. However, a text or a report is in fact a set of signs, standing for a number of "decisions." Each text has multiple referential properties or signifiers, each one of which stands in interpretive relationship to the others.[25] Some suggestion of this complex interpretive work concerning the reference of "misconduct(s)" is provided by Hawkins. The work of further linking such signs to broader institutional or juridical concepts is a *recoding* of such meanings, now with reference often to binary outcomes such as release or retention in prison.[26]

Such complex, situated interpretation is reduced to a *file,* to what Goffman terms "paper reality,"[27] which in turn is the basis for largely *analogous* decision processes. Thus, a family of similarities[28] may obtain amongst cases, rather than a single dimension or set of criteria which orders decisions. These analogous connections, Hawkins shows, are often seen as accomplishing stated official aims ("running the joint") and are cast in official discourse. This may obscure or prevent decisions made on the basis of close scrutiny of detailed case-file content. The reflexively attributed coherence granted to case decisions, as Bourdieu points out, is "institutionalized misrecognition" of differences.[29] That is, although a case may be seen as different, the particulars are not seen as relevant to the decision. Rather, what produces the analogous relationship between this case, one of misconduct, and others is the general aim of "running the joint." In this sense, particulars disappear. Similar rules may operate within organizations generally such as screening for burglary cases in which those that report a low value for items lost, those without witnesses or physical evidence, and those more than a few days old are sorted into a pile for routine closure. They are treated in general terms, metaphorically, as low-yield cases.[30] The opposite features characterize high-yield cases. This is in effect an analogous process of decision based on typification of a case which then is seen as being like either high- or low-yield cases. Only those "making the cut" and seen as high-yield will be investigated further.[31]

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25. U. Eco, *supra* note 23.

26. *See* A. Cicourel, *supra* note 13, on this process in juvenile justice.

27. Asylums (1960).

28. L. Wittgenstein, On Certainty (G.E.M. Anscombe and G.H. Von Wright, eds; D. Paul and G.E.M. Anscombe trans. 1969).

29. P. Bourdieu, Outline of a Theory of Practice 171 (1977).

30. R. Ericson, Making Crime (1982).

31. *See, e.g.,* K. Polk, *A Comparative Analysis of Attrition of Rape Cases,* British Journal of Criminology, July 1985, at 280-284, on case loss processes for types of crimes in America.

Decision-making in this sense is not "making up a mind," because there is nothing mentalistic implied by an official description.[32] How can one know if a mind or minds have been "made up" when decisions are known only as a result of observing consequences and inferring a moral context? This conception provides an interpretation of the ostensibly official linkage or process of deciding, but "minds" need not do anything, if indeed they could. It is impossible to disentangle "decision" from observed consequences, and preferred justifications or ratification. All that can be known are various accounts, or explanations provided upon request for a problematic action.[33]

Accounts (and written texts that are a form of account), in turn, are organizationally grounded.[34] That is, the grammar of accounts, their stylistic properties and their credibility, as well as the conditions under which they typically will be expected, are organizationally patterned.[35] Detailed semiotic analysis of organizational discourse[36] reveals these patterns.

A series of points concerning the semiotics of messages, even as quickly rendered as this one, suggests that the close analysis of systems of signs within an organizational context makes problematic many of the individualistic and mentalistic assumptions in the Hawkins essay. For, whilst his analysis places considerable emphasis upon individuals making choices of differential weight and relevance to outcomes, a semiotic analysis would examine the available codes and signs and the ways in which they were organizationally patterned. Such an analysis, although holding to the notion of naturalistic description, would be more inclined to "de-center" attention from individual actors, and place rather more importance on the systems of rules and codes that order communication, and the modes of legal discourse that predominate.[37] It is not unimportant, as Hawkins emphasizes, that in the end many legal decisions are presented in public contexts as binary. It is the dialectic between the formal presentation of outcomes as binary and the decision-process, looked at within the social organization of such decisions, that is significant.

(b) Discretion

Similarly, a linguistic-semiotic perspective would find notions of "discretion" and rule-following rather misleading because they focus on individual choice against a hypothetical background of the assumed relevance of normative standards that act in advance to guide choice. How could one know in advance what the thoughts of decision-makers are? There is a long tradition of assuming that one can; it is manifested in the massive adminis-

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32. L. Wittgenstein, *supra* note 28, at 14-16.

33. S. Lyman & M. Scott, Sociology of the Absurd (1970).

34. R. Ericson, *supra* note 30.

35. *See* P. Manning, Police Work 174-175 (1977).

36. C. Lemert, *Language, Structure and Measurement*, Am. J. of Soc., July 1979, at 929-57; P. Manning, *supra* note *.

37. C. Lemert, *supra* note 36, at 929-57; C. Lemert, The Twilight of Man (1979).

trative-law literature burdened with the problem of "discretion."[38]

Given the nature of the idea of decision advanced here, *discretion* is a term with many referents. There are several reasons for this. The first is that, as Dworkin[39] has noted, discretion makes its appearance under special conditions: when a decision is made subject to standards set by another authority. More precisely, I think what this means operationally is that discretion appears when a review is made by someone in authority of someone else's decision. Everyday decisions are not routinely reviewed, nor confronted with "standards." There are, on the other hand, a variety of socially determined organizational contexts within which decisions are taken and reviewed.[40] These contexts mean discretion varies; discretion is not a single idea.

The second reason is that discretion is seen when power issues are raised (when one is attempting to coerce another to do something, even when it is against his will).[41] This means that when a decision is said to have been made, and standards are brought to it by someone else in authority, then discretion and power both make their appearance. This leads Baldwin and Hawkins[42] to assert that "discretion is really about power." Its connection with the legal surfaces in so far as a decision is *justified* or accounted for with respect to legal rules.

The third reason is that legal literature reifies "case" and "decision" by making them synonymous, and leaving out the social organization of decision. (This is what Hawkins painstakingly builds up in the first half of his essay.) Rarely can any single identified *point* indicate a decision has been taken. Any mythical point would conflate, and carry compressed and collapsed, previously decided matters with others yet to come. There is no such single point; it exists as a *legal fiction,* and is indexed by legal or juridical decisions about cases that are publicly issued, and published in the legal literature.

The fourth is that such logic, as has been explained above, obscures the very complex assemblage of signs that constitute a case. Although writers have suggested the relevance of terms such as the "decisional referents" of a case[43] and the polycentric nature of decisional problems, the very complex and shifting nature of these points is asserted rather than studied by administrative lawyers. How the case is partitioned into *units* (facts or concepts), how these units are *arrayed* in some fashion (as to importance or

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38. H.W.R. WADE, ADMINISTRATIVE LAW (4th ed. 1977); K. DAVIS, DISCRETIONARY JUSTICE (1969).

39. R. DWORKIN, TAKING RIGHTS SERIOUSLY (1977).

40. R. Baldwin & K. Hawkins, *Discretionary Justice: Davis Reconsidered*, PUB. L., Winter 1984.

41. Z. Bankowski & D. Nelken, *Discretion as a Social Problem,* in M. ADLER & M. ASQUITH (eds.), DISCRETION AND WELFARE (1981).

42. C. LEMERT, THE TWILIGHT OF MAN 73.

43. D.J. Gifford, *Decisions, Decisional Referents, and* Administrative *Justice*, 37 LAW AND CONTEMP. PROBS. 3 (1972).

significance to a decision), how *audiences* are taken into account by decision-makers, how the *ideological context* and the *non-field* can alter or change the salience of these units, is nowhere discussed. Decision process is assumed to be the stuff of political decision- making, but only a few works have actually examined it.[44]

(c) Rules

The irony of rules is suggested by Bourdieu.[45] They exist as potential justifications for decisions, and their strength lies in not having to be actually used to bring decision, decision-making, and decision-field publicly into line. Law in this sense is a *power system* that operates to legitimate, to threaten, to potentially sanction, and to justify the myriad of muddles, confusions, conflicts and problems brought to it.[46]

The internal mapping of the decision field is not rule-bound in the usual sense of rules as either guides, limits, or proscribed options. This is implied above in the discussion of the role of rules in "decision." The point here is that rules are second-order justifications for interests and practices.[47] This formulation of the relationship between rules and discretion and their relationship to legal decision(s), suggests that it would be of value, not to examine rules or discretion, but to examine cases, the concept of case, and "caseness" within legal settings.

The notion of "case" is very closely linked with legal decisions. *Case* is the basic unit within a legal system. There are several reasons for this connection. There is an historic link between "victim" or "complainant" and a case in both civil and criminal law. The case may, of course, be constituted of several similarly positioned legal actors such as in a class-action suit; of a corporation or group; or of several offenses or charges attributed to a given offender or suffered by a given victim.[48] The concept as used in social science is borrowed. An analytic definition of case may contrast with a concrete, institutionalized definition or practice. The difference is not well delineated in Hawkins's paper, since his analysis presents vignettes from several different state parole boards and cases. It is very difficult to distinguish "decision-making" in Hawkins's analysis from case-decisions or case-processing. That he does intend a distinction is suggested in the section of his article in which he takes up the definition of "facts."

(d) Facts

The "facts" of a case may be constituted by several different kinds of processes. Some types of "facts" are to be established as relevant, often in

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44. *Cf.* R. WOHLSTETTER, PEARL HARBOR: WARNING AND DECISION (1962); G. ALLISON, ESSENCE OF DECISION (1971); P. BRACKEN, *supra* note 6.

45. P. BORDIEU, *supra* note 29.

46. N. Luhmen, *supra* note 17.

47. P. BORDIEU, *supra* note 29, at 40.

48. D. BLACK, THE BEHAVIOR OF LAW (1980), and MANNERS AND CUSTOMS OF THE POLICE (1983).

American courts by means of preliminary hearings on the admissibility of evidence. Others are merely stipulated; still others are subject to courtroom debate. How such court-validated facts may be used, shared between counsel, or, indeed, further contested when quite different versions of events are contained in affidavits, may also be adjudicated. However, the various features of an offender's social composition may be volatile assemblages not subject to adjudication or binary affirmations of social reality. Hawkins asks: "When officials handle criminal cases and talk of such things as'offense,''record,' and'personality,' to what do these words refer, and what do they mean?" Hawkins argues that the *establishment of facts* precedes but in part is interdigitated with the establishment of a case. It is quite possible to extend this logic. There are quite different sorts of cases, if one looks at them within a natural-history perspective. Consider the police:[49]

A series of decisions are taken at diverse stages in the movement of *communicational units* (I employ this in contrast to "case," for purposes of this analysis) from an *event* that occurs in everyday life, such as a car being recognized as missing or stolen, to a *call* to the police, to a *message* being taken as a result of that call being received and registered by a police operator. Once in the system as a message, it may be transformed into an *incident* to be sent for further consideration by a controller in a police subdivision, and from there may become an *assignment* for an officer, an assigned *task* or job. The results of the disposal of this task may or may not result in a *report* being written and filed. This report, in turn, may be distributed within the police organization in a variety of ways. This may include copies to the criminal investigation division (C.I.D.), community constable or home beat officer, criminal records office, and so on. The case file may, after investigation by C.I.D., or as a result of the charging officer, be sent forward for prosecution.

At each point in this flow, which is discussed below as the decision-making process within the decision-field, logical, cognitive partitioning of the case is being made by participants in legal settings with authority to make legal decisions. Each contains a set of signifiers, but their referents are quite different and the associative context in which the facts or signifiers are assembled varies. The nature of the decisions change from *establishing facts,* to *creating a case,* to *identifying potential* for prosecution.[50] Various subprograms may involve further processes, such as seeking out the offender, fitting the offender and the crime, and ascertaining which offense to use as the basis for a charge. Typically, although such a series of decisions around cases is seen in terms of the ultimate legitimate ends of the institution (e.g., controlling crime and criminals), the logical operations involved are quite different. Aspects of the social organization, the form and structure of these decisions, also vary.

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49. I draw here on P. Manning, *supra* notes * & 35, and NARCS' GAME (1980).

50. K. Hawkins, *Bargain and Bluff: Compliance, Strategy, and Deterrence in the Enforcement of Regulation*, LAW AND POL'Y, January 1983, at 35-73.

The question that arises, given this argument and other research published by Hawkins,[51] is in what sense are these decisions *comparable*?[52] What is being compared when one speaks of cases in the police, in prisons, in parole boards, and in courts?

Decision, it has been argued, is not a point or a thing; it is not logically located in any given spatial-temporal niche. It is an ideal or *concept* to which many ideas and problems are brought. Matters other than the case or the decision are important in shaping outcomes (e.g., the frames used to organize the case, the decision-field in which it is located, or the social forces that periodically impinge upon the social world of the deciding bureaucrat). "Decision" perhaps refers to a family of concepts, tied together or intertwined like the strands that compose a rope, rather than something with one or two invariant and static attributes or essences.[53] Decision is a linguistic term, as rehearsed above, a set of signs variously used to label events within legally stipulated settings—those mandated with authority by law, by authoritative actors. Decisions are generally reviewed by other legally mandated actors, and explained or accounted for with reference to legal rules, precedents, procedures, and instructions to administrators found in the written law and law in practice. "Decision" is used here as a cluster of linguistic signs, an utterance or segment of writing or talk, that is located in a field and process taking place in legal settings.

The Decision Field

If a *decision-point* is a linguistic sign for a cluster of decisions, near decisions, ideas about decision, and matters otherwise seen as choices, it will be *marked* or become focal in some fashion within organizational contexts. For example, the flow of case-files through an organization may be routed according to official lists of bureaucrats meant to see them, and requested relevant actions indicated by check-marks made by those who have read or seen them. The files themselves both stand for the decisions that surround them and point to decisions that have been made. As signs, the case files are reflexive in another fashion, for they anticipate a course of decisions in the future and in the past (as Hawkins indeed notes with respect to decisions themselves and their prospective and/or retrospective orientation). This sort of *connectedness* amongst elements seen to constitute "the decision" is the decision-process. The decision-point is yet another linguistic sign located within a perceived, causally articulated sequence or decision-process.

The integration of these analytic elements is in the first instance produced by the normative surroundings of law as a system producing decisions, constituted by authoritatively legitimated actors in legal settings. Hawkins

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51. *Supra* notes 10 and 50; *Creating Cases in a Regulatory Agency*, URB. LIFE, Jan. 12, 1984, at 371-395.

52. *See* J. Kitsuse & A. Cicourel, A Note on the Uses of Official Statistice, 11 SOC. PROBS. 131 (1963); R. NEEDHAM, *supra* note 19.

53. *Supra* note 28, at 86-87.

develops this point early in the paper. However, the *secondary integration* within legal institutional settings of law is subtle; the internal lines or cognitive divisions are more nuanced than the external boundaries between "legal" and "non-legal" processes. Let us examine some features of the cognitive partitioning of the legal decision field.

(a) Frames

The first matter is Hawkins's definition of "frame":

> . . . the structure of knowledge, experience and values and meanings which the decision-maker shares with others and brings to a choice . . . a master code which shapes, typifies, informs and even confirms the character of the choice. It determines, for instance, what information is to be sought, what is to be used, and what meaning such information conveys, for notions of relevance and significance are incorporated into the concept.

Thus, frame indicates a foreground as well as a set of background expectancies, and it is related to boundaries and games that certain frames may signal.[54] Framing may be explicit or implicit, verbal or non-verbal. It may refer either to the communication as in stress or pitch marking certain words or phrases, or to metalinguistic markers such as explicit statements, "order in the court," "thank you," or "goodbye," which frame what precedes and follows.[55] In Hawkins's essay, frames are metalinguistic (marked phrases or speech such as the indication of medical-psychiatric frame by use of words such as "psychiatric," "depressed," or "in need of counselling") and metacommunicational (such as an explicit announcement of one's perspective or point of view, *e.g.,* concern for prison management as a basis for parole decisions). These interactional or socio-linguistic matters are implied but not specified in Hawkins's discussion of parole. The utility of the idea of frame is unquestioned; it might be better specified.

The idea of frame is used by Hawkins as a very central concept, since it is that which makes meaningful "facts" assembled as a part of the decision-making process, as well as the cases to which it is applied. It is an odd concept, for it defines matters, acts to change their meaning, and defines itself.[56] The internal cognitive processes that define "legal" itself as well as "legal decision" are in part framing matters, and in part matters resulting from the sense of what is going on generally when legal decisions are taken.

To advance this problem a bit further, the broad contours of the legal frame may be known, but the frame may not be constituted as Hawkins argues of "shared knowledge, experience, values and meanings." In the argument made here, in fact, it is the linguistic account of the decision,

54. H. Garfinkel, *supra* note 13.

55. E. Goffman, *supra* note 8; B. Uspensky, A Poetics of Composition (1983).

56. G. Bateson, Steps Toward an Ecology of Mind 177-93 (1972).

including perhaps the explicit or implicit frame, that provides the coherence, not the ostensively shared meanings arising in the event. Erving Goffman, in his little classic, *The Presentation of Self* (1959), shows how the appearance of consensus and agreement is often just that, and furthermore that it is appearance that is sought and nothing more. "Shared consensus" is often an impediment to pragmatic action, as Hawkins certainly suggests.[57]

Thus, an empirical exercise of some importance would be to identify the *number,* kinds of frames employed, and degree of consensus on these frames that obtains in a given legal setting. From these data, one might seek to establish the degree of *coherence* in the frame (how integral and well-defined it is); the *clarity* of its boundaries (overlap amongst frames); the degree of consensus on the *relevance* of given frames to decision-making processes generally (and over the course of a decision-process); the *durability* of frames; and, perhaps, the relative *power* they possess when used to constrain or account for decisions.

Frame is a structural property of legal settings. It may be that frames are related to the degree of routinization of the tasks of the decision-makers, and that the more routine the task (such as a parole decision rather than the decision to charge someone with a crime), the fewer the frames and the greater their power to constrain choice. There are institutional aspects of the frame, *legal* aspects, that might sharpen empirical questions surrounding decisions. Several of these will be discussed.

There is a degree of "institutionalised misrecognition"[58] that denies contradictions *within* the law and maintains the stability of the cognitive processes characteristically found there. In fact, one of the preconditions of entering the legal world is an unwillingness to accept anything other than a decision expressed in terms of winning or losing.[59] The official language of law invests the decision with authority, and this language, as Bourdieu brilliantly asserts,[60] represents participants to themselves and their actions to themselves. It presents as real and constraining the sanctions involved in violating such a representation. (E.g., the law is a means of decision-making; lawyers are decision-makers; law produces clear outcomes.) It marks the dividing line between the "thinkable and the unthinkable."[61]

This "officialisation is only one aspect of the objectifying process through which the group teaches itself and conceals from itself its own truth, inscribing in objectivity its representation of what it is and thus binding itself by this public declaration."[62] Bourdieu sees institutions providing a kind of cognitive inertia and blindness, meaning that rarely are *choices* made in a reflective sense. They are rather a function of the institutional structures

57. *See* P. Rossi & R. Berk, *Varieties of Normative Consensus*, 50 AM. SOC. REV. 333-347 (1985).

58. P. BOURDIEU, *supra* note 29.

59. N. Luhman, *supra* note 17.

60. P. BORDIEU, *supra* note 29, at 21-22, 171ff.

61. *Id.* at 21.

62. *Id.* at 22.

which produce the objective constraints as well as the social representations by which such practices are validated, objectivated, and granted the status of truth.

The guaranteed misrecognition of the contradictions within the law and legal decision-making, such as those between the forms and structures Hawkins describes and the model of discrete choice attributed to judges in public settings, can be made problematic. They are the products of representational tools such as frames. Legal actors may be aware, to various degrees, of potential, implicit, alternative truths in their work. Bourdieu,[63] writing about anthropological models of gift exchange, captures this dualistic awareness:

> If the system is to work, the agents must not be entirely unaware of the truth of their exchanges, which is made explicit in the anthropologist's model, while at the same time they must refuse to know and above all to recognize it. In short, everything takes place as if agents' practice, and in particular their manipulation of *time,* were organized exclusively with a view to concealing from themselves and from others the truth of their practice, which the anthropologist and his models bring to light simply by substituting the timeless model for a scheme which works itself out only in and through time.

This observation is also relevant to the social-science view of actors in the legal system and their decision-making practices. The shifting awareness of participants is accepted. Tensions between consciousness and choice and objective constraints of institutional practices maintain both the notion of contingency and freedom of individual choice *and* acknowledged constraints.

There is some ambiguity in Hawkins' treatment of *strategy* and *tactics,* in particular in his discussion of parole decisions. There is some danger, perhaps as a result of seeing decisions as consequences, in making a teleological connection between a named consequence and some either institutionally described official end (a matter Hawkins quite clearly wishes to avoid) or some motive or aim of "strategizing" groups. Strategy, when seen as official discourse, dominates choices as *inevitable* consequences of organizational interests. As a result, notions that are "fuzzier," such as "dispositions" or one's sense of justice or fairness, become submerged.

The *master frame* is indicated by use of such terms as "legal," "the law," "legal decisions," or, in England, *sub judice.* It may be indicated by physical settings, such as those found in a courtroom, police station, or welfare office; by symbolic indicators regardless of setting, such as costumes, uniforms, or props of various kinds; or by verbal (metacommunicational) marking of settings, props, or relations. These may be in apposite configuration, as when a police officer in uniform appears in court and is shown to provide veridical testimony, or only one may serve as a key in a situation or field.

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63. *Id.* at 6.

The master frame may include in some various ways other frames that cluster or cohere as law-like or quasi-legal in character, such as the "rehabilitative" subframe used in parole decisions described by Hawkins, or the "organisational interests" (e.g., "control of the joint") subframe. These frames may be in conflict, may or may not be shared by participants, may be used, and may explicitly or implicitly be aspects of a strategy (temporal deployment of interests).

The notion of a frame may be either general and institutional or it may be merely a *cognitive device* ordering a given message within an institutional context. Hawkins has provided examples of legal master frames, institutional frames and subframes; it is also possible to see frame as the principles used by an actor to order a given message, separate it from a set of other activities, noise, and equivocation (uncertainty about the validity of a given message), and to identify salient elements within that message.[64] If a police officer is attending an assignment concerning a barking dog at a house and another assignment arrives by radio concerning a violent fight at a nearby pub, the sound of the barking dog, and the complainants' voices will be *noise* and the paperwork involved will become the field. The radio-transmitted assignment describing the pub fight will now become the message. The level of detail required to examine such individual cognitive framing is beyond the scope of a brief paper, but such fundamental discerning processes substructure the use of institutional frames.

Frame is a matter of perspective or *modality,* and thus can change and produce changes in the ordering of processes and their relevances. Uspensky[65] details the difference between an "internal" and an "external" perspective in narrative which parallels legal decisions when one moves from participant in institutional decisions to an object or consequence of others' decisions.

Perhaps Hawkins has not explored sufficiently the relationship between elements of a decision, "facts," and the "background." Just as facts change when frame changes, background and foreground change as well. Hawkins shows that in some cases "individual facts" located in case files are seen as constituting the foreground of decision, *i.e.,* the stated basis for releasing or retaining a prisoner. Institutional considerations such as crowding, discipline, and the morale of staff and administrators, can also be foreground. They can reverse, "background" becoming "foreground," while the former "foreground" becomes "background." The ways in which background and foreground oscillate are very complex, as studies of literary texts show,[66] and perhaps such devices as simplification, reversal, metaphor, displacement, and distortion are part of the framing of a decision and the alternation in relevant frames.[67]

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64. P. Manning, *supra* note *.
65. B. USPENSKY, *supra* note 55, at 137-51.
66. *Id.*; J. Culler, *supra* note 21.
67. E. GOFFMAN, *supra* note 8.

The Situated Relevance of the Non-Field

Either the concepts of decision-point, process, and field have been modified or new definitions advanced for them. Decision-points lie within a decision-process, and the field in which both are located is defined analytically by the existence of master frames, frames, and subframes. The latter provide the internal cognitive substructuring of the legal domain, whilst the master frame denotes legal decisions. Such an expanded conception of decision-making also requires an operative notion about how matters normally seen to exist outside the frame "intrude" or become relevant to decision-making. There is a recognized non-field, excluded by focus upon the field, but nevertheless potentially or occasionally relevant to a decision-process. This non-field is of sporadic importance in any institutional context, as the term *ceteris paribus* suggests in economic analyses. Hawkins's discussion of parole decisions depicts the "normal process" and field without reference to the non-field. This is presumably because the periods described were characterized by fairly routine decision-making. The degree of stability of the field, however, is variable.

Some features of a non-field are important. Field is not defined by exclusion, *e.g.*, "all x that is not y," for definition here is a matter of overlap of concern where the timing and location of the actual overlap is not precisely predictable. If one thinks of a lunar eclipse as an overlap of points of interest (a planet and the moon when viewed from the perspective of earth), and omits the routine predictability of the appearance of the eclipse, then one has an analog of the relevance of the non-field. It is an overlap of interests in a decision-field in which previously, only marginally relevant matters, the penumbra, become salient in the field. The forces or ideas that attain this pertinence are seen in normal periods as outside immediate consideration but of potential concern. They are near forces with a degree of control if carefully maneuvered with and about. These forces are often tacit, or barely acknowledged in the normal course of events; they may be considered in passing or in a hypothetical way.[68] Forces in the penumbra can be differentiated from forces that are known but perceived as uncontrolled. These are matters that, when relevant, are controlling and important, rather than matters that are seen as controlling and more or less outside the control of the institution.

Since they have the character of powerful forces that can alter the course of events they are viewed by bureaucratic decision-makers as matters of "politics," rather than of "administration." In practice, this often means the intrusion, into rule-bound and office-determined practices and procedures, of an element of uncertainty, power, or unexpected room for maneuver.[69] From the perspective of the bureaucrat, even one who exercises influence on matters of work rather broadly, such as a police narcotics

68. M. POLANYI, *supra* note 19.

69. J. Jowell, *The Legal Control of Administrative Discretion*, PUB. LAW 178 (1973).

specialist, these forces interrupt a "normal," case-by-case approach to work tasks, and give it a new texture. It may take on a coloration of crisis, or political intervention, or other more loaded terms such as "scandal." It is precisely when such intrusions are seen to have happened that matters of "policy" become the order of the day. Policy connotes regulation and abstract general rules for the ordering of decisions, and hence provides a shield or protection against the charge of capriciousness or arbitrariness seen as characterizing decision-making in "normal times." The logical strength of the law and legal reasoning is that they serve as a resource for the justification of decisions.[70] The argument about the relevance of the non-field requires further clarification of two types of disruptions in the bureaucratic field:

The first type of disruption is the internally controlled intrusion of "outside" factors as a result of which adjustments are made quietly without public recognition nor claims of governmental or legal error. These are sometimes seen as "cover-ups" if later revealed, or as "managed crises" if unrevealed. Some examples of how the field and non-field overlap, and how the non-field becomes a consideration in decision-making, are seen in Emerson's work.[71] He argues for the effects on allocation of resources when one is working on a case-by-case basis. When resources are scarce and case-workers must be assigned to a case, the marginal effects on case-decisions will be seen when resources are perceived as scarce with respect to this case. This, of course, only occurs when each case requires resource allocation, and screening does not occur prior to this point, such as in detective work.[72] Perhaps more broadly construed forces can come into play. Thus, although a crisis could be anticipated in general as a possible constraint or part of the field, it is "unpredictable" in its precise form and appearance, and is seen as outside normal, judicial, police, and prison decisions until a tipping point is reached.

In the regulatory world, the maintenance schedules for nuclear reactors in the United Kingdom are fixed in the conditions of the license; reactors normally require routine maintenance on a daily, weekly, and monthly basis, and major maintenance (reactor shut down, fuel removed and replaced, reactor re-started) on a one-year rota (one of the two reactors on a site is checked each year, on an alternating basis). The required scheduled maintenance is then described to the Nuclear Installations' Inspectorate as having been carried out. During the miners' strike of 1984-85, the potential shortage of coal meant that government drew on stockpiles, imported more coal, borrowed some electricity from France, and required nuclear power stations' output

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70. E. Bittner, The Police on Skid Row: A Study of Peace-Keeping, 32 AM. SOC. REV. 699 (1967).

71. *Holistic Effects in Social Control Decision-Making*, 17 LAW AND SOC'Y REV. 425-455 (1983).

72. *Cf.* W. Wagel, *Case Routinisation in Investigative Police Work*, 28 SOC. PROBS. 263 (1981); R. ERICSON, *supra* note 30.

rather more than usual. (The normal percentage of all electrical power provided by coal was about 89 and fell to 59, whilst the percentage provided to the grid by nuclear power stations increased from 13 to 34.) Decisions made about routine and yearly maintenance, fueling and refueling, and operative temperature and pressure ranges, were all affected by the government's policy to contain the strike and to avoid any loss of power in the winter. Broader conceptions of forces at work are necessarily a part of any consideration of the social organization of decision-making, because the pattern of intrusion of these forces is known, recognized, and relevant yet unpredictable in appearance and consequence.

A second type of disruption occurs when focused public attention provides a shift in relevance from case-by-case operations into more policy-constrained decisions. This means that routine decision-making is altered. The shift to more policy-oriented actions can occur when a famous case arises on which public opinion has been mobilized. (The case of parole for Sirhan Sirhan, for example, is not treated in the media and in public opinion as are others, and one would assume this has effects on the behavior and field in which the board takes these decisions.) A sudden change in administrators, whether by political means or not, can change the decision field, as occurred when an appointee of President Carter was replaced by a Reagan appointee in O.S.H.A.[73] Such field/non-field dynamics can only be captured in historical studies or time-based studies in which broader ideological, organizational, and political forces can be monitored to discern their effects on a pattern or process of decision-making.

This also alerts one to themes struck in a decision-process; the introduction of values as justifications for decisions that alter the environment in which decisions are taken. These may come from ideological sources, such as the change from rehabilitation to "just deserts" models of punishment, or from administrative reorganization of a department. Typically, the introduction of such spurious precision as is associated with management by objectives, pert charts, systems analysis, and program budgeting changes the rationales for decisions and obscures the nature of the actual field and process.[74]

The "intrusion" of the non-field into the field of decisions, whether it takes the form of political scandals or of revelations; changes in the relevance of political events to routine bureaucratic processing of cases; and public concern about given cases of an exceptional character, alter the field. More detailed case studies will be required to set out the dynamics of such intrusions.

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73. *See* A. Szasz, *Industrial Resistance to Occupational Health and Safety Legislation: 1971-1981*, 32 SOC. PROBS. 103 (1984).

74. *See* I. HOOS, SYSTEM ANALYSIS IN PUBLIC POLICY (1972); A. Wildavsky, *The Political Economy of Efficiency: Cost-Benefit Analysis and Program Budgeting*, 29 PUB. AD. REV. 292-310 (1966).

Conclusion

The concepts of decision, decision-making, and legal decision-making are complemented by the concepts of decision-field and non-field, by frame, sub-frame, and master frame, and by boundaries. It is argued here that the use of semiotics and the study of semiotic patterning will provide a perspective within which traditional case-oriented legal reasoning might be seen. The study of the social organization of decision-making by naturalistic means in legal settings is just beginning.[75]

75. B. JACKSON, *supra* note 21.

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