

## 21A. 219

### Law and Society

#### Alternatives to Law: Varieties of dispute processing

##### I. Functions of law: the context for considering law and alternatives to law.

Recall the meaning of functions: consequences of patterns of action

intended (manifest functions)

unintended (latent functions)

- a) social control: processes and structures used to (intended to) reduce or prevent deviance. Law is formal or governmental social control.
- b) dispute resolution: there is no society without dispute, difference, conflict and most have violence of some sort. Societies vary (in time and across the globe) in how they manage conflict, differences, disputes.
- c) distribution, innovation, and social change.

##### II. Historical forms of "law"

##### III. Contemporary forms of dispute resolution - processes and their names: varies

##### IV. Mediation, a criticism and a critique

criticism: unmasking, truth telling, holding institutions accountable to self-claims

critique: locates practices within history and social forces; identifies who benefits and who loses by the way things are done; alternatives not pursued

##### A. Claims for mediation:

informal, third party without coercive power

non-binding

faster

cheaper

better solutions, get to heart of problem

##### B. Observations of mediation

routinized rather than responsive and adaptive

mandated by organizations and legal institutions

mediators act with authority

cheaper, faster, not clearly better solutions

differences in practice between law and mediation not as stark as conceptual models

both negotiate settlements

blend formal and informal

develop categories and language of "trouble" and how to respond (typifications)

often involve postponement - time

C. If mediation is not what claims to be, what is it?

history of its rise since 1970s, professional project of legal elites, access to justice proponents,  
progressive community organizers

particular normative conception of conflict : it is bad rather than productive

reconceptualizing the human subject (person) as rights bearer, set of interest, constellation  
of needs

D. End product: a new profession