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Manufacturing Consumer Protection Law: The Private Construction of Public Legal Rights

by

Shahin Ahmadi Talesh

A dissertation submitted in partial satisfaction of the

Requirements for the degree of

Doctor of Philosophy

in

Jurisprudence and Social Policy

in the

Graduate Division

of the

University of California, Berkeley

Committee in charge:

Professor Lauren B. Edelman, Chair

Professor Catherine Albiston

Professor Malcolm Feeley

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Fall, 2011

Manufacturing Consumer Protection Law: The Private Construction of Public Legal Rights

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by

Shahin Ahmadi Talesh

Abstract

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Doctor of Philosophy in Jurisprudence and Social Policy

University of California, Berkeley

Professor Lauren B. Edelman, Chair

The past half-century has seen a surge in consumer protection laws designed to give consumers power versus businesses. This dissertation shows how business organizations, namely, automobile manufacturers, shape the content and meaning of consumer protection laws designed to regulate them in ways that transform and at times weaken the rights of consumers. Through qualitative and quantitative analyses, I analyze the process through which public legal rights are essentially privatized as manufacturers influence the form and content of consumer warranty legislation (“lemon laws”), the nature of administrative regulation, and most importantly, the way in which consumer complaints are adjudicated. This study compares an instance where powerful state consumer protection laws are resolved in third-party dispute resolution forums created by business organizations and approved by the state (California) with one in which consumer disputes are resolved in public alternative dispute resolution processes run and administered by the state (Vermont). After explaining how two states channeled public legal rights into different institutional structures, I show that the form of the organizational dispute resolution structure influences the meaning of lemon laws in different ways based on competing business and consumer logics operating among public and private actors that adjudicate consumer disputes. Thus, the *form* of the dispute resolution structure, and how public and private actors construct what lemon laws mean in these structures, has critical implications for the effectiveness of consumer protection laws for consumers.

This research has important implications for theory, method, and policy. Theoretically, my study draws upon and elaborates new institutional work in organizational sociology (Edelman 1990, 1992; Edelman, Uggen, & Erlanger 1999; Dobbin et al. 1993; Sutton et al. 1994) and analyses of business influence over legislation and regulation by political scientists (Baumgartner & Jones 1993; Ayres & Braithwaite 1991; Stigler 1971; Bernstein 1955) by offering an institutional-political theory of how private organizations shape the content and meaning of public legal rights. It also contributes to law and society scholarship on dispute resolution in organizations (Galanter & Lande 1992; Edelman & Suchman 1999), studies of the law in action (Macaulay 1963), and access to justice (Felstinger, Abel & Sarat 1980-81). In addition to using a wide range of methods (archival analysis, interviewing, participant observation, content analysis, and statistics), I specifically use qualitative methods to examine how law is constructed by an “organizational field,” in this case the field of automobile

manufacturers, an arena that has previously been studied primarily through quantitative analyses. Whereas quantitative analyses illustrate the macro-dynamics of organizational fields and the diffusion of legal innovations, qualitative methods allow me to identify the micro-processes and mechanisms through which organizations construct the meaning of law. From a policy perspective, my work has critical implications for the growing body of legal scholarship on delegated governance. Whereas much of this scholarship advocates deregulation, public-private partnerships, and organizational self-governance in the context of delivery of services and benefits in society, my analysis sounds a note of caution. At least in the context of adjudicating public legal rights, I show the privatization of dispute resolution by business organizations has potential to undermine the rights of social have-nots.

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For the Talesh family—past, present and future.

CHAPTER ONE

INTRODUCTION

For decades, scholars have been studying the relationship between business and legal regulation. Recent studies focus on the rise of governance structures within private organizations and demonstrate that organizations are increasingly operating “private governments” (Macaulay 1986; Selznick 1969) as they internalize a significant amount of legal rule-making, interpretation, application, and sanctioning within their own domains (Edelman & Suchman 1999; Freeman & Minow 2009). Businesses shape their internal environments through the governance structures they create, including but not limited to, disclosure and ethics policies, reporting systems, and governance boards. However, organizational structures do not just influence how private organizations govern themselves. Private organizations are also developing structures and systems to deliver services and benefits traditionally administered by public entities (Macaulay 1986; Braithwaite 1982, 2002; Ayres & Braithwaite 1992; Freeman 1997, 2000; Hacker 2002; Lobel 2004). As public-private partnerships increase, and federal and state governments contract with private organizations to provide public services, the private role in public governance is migrating into the realm of education, health care delivery, prison administration, and regulatory standard-setting, implementation, and enforcement (Braithwaite 1982; Gunningham 1995; Dorf & Sabel 1998; Freeman 2000; Minow 2002; Trubek & Trubek 2004; Lobel 2004; Freeman & Minow 2009).

The rise of organizational governance structures is perhaps best illustrated by the growing use of internal grievance and alternative dispute resolution forums to resolve potential legal disputes outside the court system (Edelman 1990, 1992; Galanter & Lande 1992; Sutton et al. 1994; Edelman & Suchman 1999). In particular, consumers who suffer injuries in their relationships with businesses are increasingly channeled into private dispute resolution structures with the approval and support of legislatures and courts across the United States. The expanding reliance on internal and alternative disputing forums to adjudicate public legal rights potentially has important consequences for the administration of justice and the meaning of law itself. Although it is well-established that consumers and other aggrieved parties such as employees and shareholders are adjudicating public legal rights through internal grievance and alternative dispute resolution forums operated by private actors, legal and social science scholars have devoted little attention to how and under what conditions business organizations channel public legal rights into private settings and the processes and mechanisms through which dispute resolution structures operated by organizations give meaning to law.

This project addresses the dynamic relationship between organizations, organizational fields, and government regulatory regimes. I specifically explore one central question nestled at the intersection of law and organizations: How do private organizations shape the content and meaning of public legal rights? I focus in particular on the capacity of private business to influence where and how disputes over public legal rights are resolved. For purposes of this study, public legal rights include the content and meaning of legislation creating rights, the interpretation of rights through judicial decisions and regulatory rules, and the resolution of rights on the ground, *i.e.*, with individuals and organizations (Macaulay 1963; Selznick 1969; Ewick & Silbey 1998; Seron & Silbey 2004). I challenge the traditional notion that law is a top

down phenomenon developed by core public legal institutions (Williamson 1975; Pfeffer & Salancik 1978; Vaughn 1998).

Instead, I explore how public legal rights are shaped, altered, and privatized by business organizations often with powerful consequences for the societal balance of power between public and private entities. In particular, this dissertation shows how business organizations, namely, automobile manufacturers, shape the content and meaning of consumer protection laws designed to regulate them by creating third-party dispute resolution forums to resolve legal disputes outside courts. Through qualitative and quantitative analyses, I analyze the process through which public legal rights are essentially privatized as manufacturers influence the content of consumer warranty legislation, the nature of administrative regulation, and the way in which consumer complaints are adjudicated. This study compares an instance where powerful state consumer protection laws are resolved in third-party dispute resolution forums created by business organizations and approved by the state (California) with one in which consumer disputes are resolved in public alternative dispute resolution processes run and administered by the state (Vermont). After explaining how two states with similar lemon laws channeled public legal rights into different dispute resolution structures, I show that the form of the organizational dispute resolution structure influences the meaning of lemon laws in different ways based on competing business and consumer logics¹ operating among public and private actors that adjudicate consumer disputes. Thus, the *form* of the dispute resolution structure, and how public and private actors construct what lemon laws mean in these structures, have critical implications for the effectiveness of consumer protection laws for consumers.

Because public legal rights are defined, constructed, and reshaped in both formal legal institutions and among individuals and organizations, exploring how private organizations shape the content and meaning of public legal rights requires analyzing organizational influence on and construction of legal rights among public legal institutions and within “organizational fields.” The construct of an organizational field is well-established in the sociology of organizations and refers to the community of organizations that coexist and interact in some recognized area in institutional life and often share common systems of meaning, values, and norms (DiMaggio & Powell 1983; Edelman 1990, 1992; Dobbin et al. 1993; Sutton et al. 1994). I separate my research question into two sub-questions that explore the relationship between law and organizational fields: (1) How and under what conditions do private organizations, through the fields they operate within, shape the content and meaning of public legal rights among public legal institutions such as legislatures and courts? (2) How and under what conditions do private organizations, through the fields they operate within, shape the meaning of public legal rights in alternative dispute resolution forums they create? The first question primarily focuses on the political and legislative process by which public legal rights are channeled into different alternative disputing forums. The second research question focuses on the micro-processes and mechanisms through which dispute resolution structures institutionalized within organizational fields influence the meaning and implementation of law.

State consumer warranty laws provide an ideal setting to examine these research questions because public legal rights and entitlements have been channeled into several different

¹ The term “logic” refers to the way individuals organize their thoughts and assumptions about meaning, values, schemas, and culture (Friedland & Alford 1991).

dispute resolution structures operating outside the court system. In response to consumer complaints that automobile manufacturers were failing to make safe automobiles and stand behind warranties issued to consumers for products, all fifty states passed consumer warranty protection laws (“lemon laws”) in the 1970s and 1980s that limited manufacturers’ ability to perpetuate social and economic advantage through the manufacturer-consumer relationship (Nowicki 1999). Automobiles are the second most expensive purchase in most American’s lives and surveys repeatedly show that automobile repairs and warranty complaints are the first or second biggest consumer complaint. If manufacturers were unable to make repairs to products sold with express and implied warranties, these laws permitted consumers to seek relief in court and obtain full refund or replacement of the product, attorneys’ fees, and in some states, a civil penalty up to twice the actual damages. Most states (including California) have over time amended their lemon laws and made powerful legal rights and remedies afforded in court contingent upon first using dispute resolution forums funded by automobile manufacturers but operated by external third-party organizations. Unlike courts, these forums do not offer attorneys’ fees and civil penalties. Soft, cursory regulatory oversight by the state has devolved much control over the design and implementation of these private venues to manufacturers’ third-party administrators who train arbitrators on what lemon laws mean and administer these dispute resolution programs.

Unlike California, Vermont (and a small set of states following Vermont’s model) also offer a state-run dispute resolution institution. In particular, consumers can pursue a lemon law claim by choosing between using a manufacturer’s private process or Vermont’s Motor Vehicle Arbitration Board (“Lemon Law Board”). The Lemon Law Board is a five person arbitrator panel appointed by the governor that meets twice a month in a government building. The panel consists of three citizens, an automotive dealer representative, and a technical expert. Unlike the California programs, Vermont’s process is designed, funded, and run by the state government. In sum, although California and Vermont lemon laws are substantively similar in the rights and remedies afforded consumers, they codified into law two different formal models for resolving consumer disputes outside courts.

Existing political science, organizational sociology, and socio-legal analyses emphasize different mechanisms when explaining the relationship between organizations and law. Political scientists focus on how businesses influence core public legal institutions such as legislatures and administrative agencies through interest group politics and capture (Bernstein 1955; Stigler 1971; Quirk 1981; Kingdon 1984; Baumgartner & Jones 1993; Leech et al. 2002; Kamieniecka 2006). Organizational sociologists applying new institutional analysis explain the impact of law on organizational fields. In doing so, they show how policies, procedures, and internal legal structures developed by organizations become institutionalized in organizational fields and how managerialized conceptions of law influence the way in which organizations understand law and compliance (Edelman 1990; 1992; Dobbin et al. 1993; Sutton et al. 1994; Edelman, Fuller, & Mara-Drita 2001; Marshall 2005). More recently, new institutionalists turn the tables, by showing how, at least in the civil rights context, law becomes “endogenous” as courts defer to institutionalized organizational structures and practices as to what law and compliance means (Edelman, Uggen, & Erlanger 1999; Edelman 2007; Edelman et al. forthcoming). Focusing more on the distributive effects of conventional and alternative disputing structures, socio-legal scholars examine the structural advantages and disadvantages repeat players, who are often

organizations, maintain in public and private dispute resolution institutions (Galanter 1974; Albiston 1999; Edelman & Suchman 1999; Kritzer & Silbey 2003). These scholarly communities, however, have not examined the processes and mechanisms through which business organizations shape the content and meaning of public legal rights among public legal institutions *and* within organizations by *creating third-party* dispute resolution forums to adjudicate legal disputes.

In particular, political scientists focus less attention on law within organizational fields and overlook new institutional theories about the importance of private institutional structures as a means of reshaping law among core legal institutions. New institutional sociologists rarely account for how organizations directly interact with the legislature and do not theorize how institutionalized organizational practices within an organizational field affect the meaning of law at the legislative level. They also have not explored whether and how managerial values flow into dispute resolution structures that are run by third-party organizations. Finally, although socio-legal scholars examine the relationship between organizations, dispute resolution structures, and law, they have not sufficiently explored how the meaning and operation of law is constructed through dispute resolution structures. Thus, my dissertation opens a new area of study that focuses on how business organizations shape public legal rights in external third-party dispute resolution forums that enjoy state sanction and approval.

My theoretical framework builds on and integrates political science, new institutional organizational sociology, and socio-legal studies of law and organizations. Far from being mutually exclusive theories for explaining the relationship between organizations and law, these theories work together to explain how private organizations shape the content and meaning of public legal rights.

To answer the research questions that I have identified, my dissertation develops a “multi-level” theory (Goertz 2005). My theory is multi-level because I theorize not just how manufacturers shape the meaning of consumer protection legislation and court decisions in varying degrees in California and Vermont, but also explore the micro-processes and mechanisms through which law is constructed by and through the organizational field’s operation of private and state-run dispute resolution forums. Unlike prior studies that view law as an exogenous, authoritative, coercive and unambiguous force on organizations (Vaughn 1998; Pfeffer & Salancik 1978; Williamson 1975), I suggest, similar to new institutional scholars (Edelman, Uggen, & Erlanger 1999; Edelman 2005, 2007; Edelman et al. forthcoming; Marshall 2005; Albiston 2005), law is a continuously evolving institution that is shaped and given meaning through its interaction with organizations.

To that end, I argue that the way to study how private organizations shape the meaning of public legal rights in society, both among public legal institutions and within organizations, is by using the concept of “fields” developed by organizational sociologists and by analyzing institutional *and* political mechanisms driving institutional change. In addition to examining organizational fields, more recently scholars have begun to conceptualize a “legal field,” *i.e.*, the environment within which legal institutions and legal actors interact and in which conceptions of legality and compliance evolve (Edelman 2007; cf. Bourdieu 1984).

I argue that the interaction and overlap in both actors and institutions between organizational and legal fields provides an arena in which the ideas that became institutionalized in organizational fields as to the meaning of compliance and law flow into the legal field and alter the meaning of law among legislators and courts. In response to powerful but often ambiguous laws, organizations devise strategies to preserve managerial discretion and authority while at the same time maximizing the appearance of compliance with legal principles (Edelman 1992). In this instance, I argue that businesses legalize their environments in part by creating dispute resolution structures that are eventually administered by external third-party organizations. As organizations legalize themselves, they infuse business and managerial values into law, which ultimately reshapes the meaning of law and compliance not just among organizations, but also among public legal institutions. Although business organizations often comply with the letter of the law, business construction of the *meaning* of law and compliance ultimately transforms and at times weakens the impact of law. By comparing two states that developed two different dispute resolution processes with varying degrees of business control and participation in these processes, I show under what conditions business and managerialized conceptions of law reshape the meaning of public legal rights and the conditions under which they do not.

Because I am examining how organizations influence the meaning of public legal rights among public legal institutions *and* organizations, my theoretical framework and the accompanying empirical analysis are divided into two parts. First, to answer how organizations, through the fields they operate within, influence the meaning of law among public legal institutions, I develop an “institutional-political” theory that integrates political science studies of how businesses influence public legal institutions with new institutional studies of how organizational responses to law are shaped by and through organizational fields. I argue organizations’ capacity to shape the content and meaning of law in the legislative context results both when organizations create and institutionalize dispute resolution venues within their organizational field and when organizations directly engage in political mobilization and lobbying tactics. As legal and organizational fields and logics “overlap” (Edelman, Fuller, & Mara-Drita 2001:1627-34), organizational ideas about the meaning of law and compliance flow into legislation and court decisions and reshape law’s meaning.

I draw from a qualitative content analysis and quantitative coding analysis of over thirty years of California and Vermont’s legislative history. I couple this with content analysis of court decisions and interviews with legislative analysts who drafted various lemon laws in the 1970s and 1980s. I define the organizational field as comprising of automobile manufacturers and affiliated entities, including but not limited to, third-party dispute resolution administrators, state dispute resolution administrators, state regulators, private auditors, lawyers, consumer advocacy organizations, private arbitrators, state arbitrators, automobile dealers, automotive mechanical experts, and consumers involved in or concerned with resolving lemon law disputes. For brevity purposes, I refer to this organizational field as the “lemon law field.”

My empirical data reveal how automobile manufacturers, who were initially subject to powerful consumer protection laws, weakened the impact of these laws by *creating* dispute resolution venues. These legalized structures became institutionalized throughout the entire organizational field and eventually came to be run by third-party organizational surrogates for

legitimacy purposes. Advocacy coalitions lobbied the legislature regarding the “legal value” (Edelman, Uggen, & Erlanger 1999:447) of these structures and linked the issue of consumer protection to existing business values such as efficiency, informal resolution of disputes, and customer satisfaction. Legislatures and courts subsequently incorporated institutionalized organizational practices into statutes and legal decisions and made consumer rights contingent on using such structures when equivalent rights and remedies are not available.

Institutionalized logics concerning the value of alternate disputing forums developed in the lemon law field shaped what advocacy coalitions chose to lobby for and ultimately diffused into California and Vermont law. However, the contested and varying political alliances among interest groups in California and Vermont led to different dispute resolution structures being codified into law, one structure run by private organizations and the other by the state. In addition to allowing consumers the option of using manufacturer-sponsored forums, Vermont also took a private dispute resolution forum developed by automobile dealers and adopted the structure into law but made subtle changes. In particular, legislators, in response to interest group concerns, *i.e.*, consumer advocacy organizations and automotive dealers, chose to have the Vermont government administer the lemon law dispute resolution panel to increase transparency and to protect against any appearance of impropriety. New institutional theories explain why dispute resolution structures diffused across both states and in fact all 50 states, while politics explains why the *form* and *control* of each structure was different in California and Vermont. Thus, I blend neo-institutional theory and theories of political mobilization to explain the varying degrees that private organizations influence the meaning of law among public legal institutions.

Given that consumer rights are now adjudicated in alternative disputing forums, the remainder of my empirical analysis explores the processes and mechanisms through which the meaning of law is constructed by different private and state-run dispute resolution processes operating in the lemon law field. Here, my analysis draws from, links, and contributes to new institutional studies of how managerial and business values influence the way organizations understand law and compliance and socio-legal studies of repeat players’ advantages in disputing processes. Although prior studies show how managerial values shape the way organizations and organizational fields understand law and compliance (Edelman, Fuller, & Mara-Drita 2001), I argue organizational fields can have multiple, conflicting field logics operating concerning the meaning of law. The *form* of the dispute resolution structure, and how competing logics are filtered in different ways in private and state dispute resolution structures, shapes the extent to which managerial and business values influence the meaning of law, and consequently, the extent to which repeat players are advantaged.

To explore these issues, I use a variety of qualitative methods to examine how law is constructed by organizational fields, an arena that has previously been studied primarily through quantitative analysis. Whereas quantitative analyses illustrate the macro-dynamics of organizational fields and the diffusion of legal innovations (Edelman, Fuller, & Mara-Drita 2001; Edelman, Uggen, & Erlanger 1999; Dobbin & Sutton 1998; Edelman 1990, 1992), qualitative methods allow me to identify the micro-processes and mechanisms through which organizations construct the meaning of law (Morrill 1995; Marshall 2005). Specifically, I conducted participant observation in lemon law conferences where field actors from across the United States interact, in-depth and ethnographic interviews of field actors in California and Vermont

and across the United States, and participant observation in lemon law dispute resolution training programs that arbitrators undergo in California and Vermont. I also collected and analyzed outcome data on who prevails in lemon law arbitrations over the past 17 years in California and Vermont to evaluate whether different meanings of law are reflected in different outcomes in both states.

In this instance, automobile manufacturers and affiliated entities mediate the meaning of lemon laws through different logics operating in the lemon law field. Despite an overall consensus that consumer cases should be adjudicated in informal dispute resolution forums outside courts and that consumer warranty law is ambiguous, “public” (state regulators, state lemon law administrators, policymakers, state arbitrators) and “private” (automobile manufacturers, dealers, third-party administrators, private auditors, private arbitrators) actors conflict regarding the goals of informal dispute resolution and the purpose and meaning of lemon laws. Private actors that I interviewed across the country view the goals and purposes of lemon laws and dispute resolution through a “business” logic that focuses on efficiency, cost-effectiveness, allowing managerial discretion and control, improved corporate image, productivity (solving problems), and customer retention. Public actors that I interviewed across the country adhere to a “consumer” logic that focuses on protecting consumers, public safety, equal access and resources for consumers and values such as rights, transparency, and following formal law.

I find that different dispute resolution structures operating in California and Vermont filter competing business and consumer logics operating in the lemon law field in different ways. This results in different dispute resolution structures giving different meanings to substantially similar lemon laws operating in both states. Whereas business and managerial values influence the meaning of legislation through institutional and political mechanisms, here, managerial and business values flow into the rules, procedures, and meaning of law operating in California’s dispute resolution structures primarily through a training and socialization process for arbitrators. That is, a main source of this infusion of business values into California’s lemon law is through third-party dispute resolution organizations hired by automobile manufacturers to administer their dispute resolution programs. These organizations teach arbitrators a set of rationales and scripts that emphasize building discretion and flexibility into legal procedures and remedies, recontextualizing legal rules and arbitrator decisionmaking around a set of business values, and omitting portions of legal text. As a result, California arbitrators are taught to adjudicate cases not in the shadow of the lemon law as defined by formal statutes, but rather in the shadow of a new version of warranty law infused with business values and that provides repeat players subtle advantages.

By contrast, Vermont uses a panel of arbitrators that balances interested stakeholders reflecting both business and consumer values in a state funded and designed structure. As a result, Vermont’s dispute resolution structure is far less likely to introduce business values into the meaning and operation of their lemon law and prevents many repeat player advantages enjoyed by manufacturers in California. Thus, in Vermont, the *meaning* of due process values, neutrality, and even legitimacy are shaped not by professional training and socialization, but rather arbitrator panel balance, democratic interest representation, and maintaining transparency.

Consumer outcome data over the past seventeen years from California and Vermont lemon law arbitrations show that these different meanings of law are reflected in who wins in each forum such that businesses prevail far more where their logic dominates the dispute resolution system.

In sum, my analyses illustrate how and under what conditions automobile manufacturers shape the content and meaning of consumer protection laws designed to regulate them in ways that reshape and sometimes weaken the rights of consumers. Despite having similar lemon laws on the books, the law in action in both states is different based on the way business and consumer perspectives are accounted for in the dispute resolution structure. My comparative design reveals that the form of the dispute resolution structure for adjudicating public legal rights can both facilitate and inhibit repeat player advantages.

This dissertation, therefore, has important implications for theory, method, and policy. My approach expands prior analyses of the relationship between organizations and law in several ways. First, this study brings new institutional sociology's emphasis on the importance of private institutional structures into political science studies of the legislative process and regulation. As my dissertation will show, institutional venues for resolving disputes are, especially when deferred to by legislatures and courts, a clear form of political power worthy of closer focus by scholars interested in the relationship between business, law, and politics. Changes to consumer protection laws were not merely the product of interest group lobbying and capture of the legislative and regulatory process. By showing how private dispute resolution venues created and institutionalized within the organizational field ultimately shaped the legislative facet of the legal environment, I demonstrate that the politics of consumer protection policy are, at least partially, institutionally determined and rooted within the logic of organizational fields.

Second, I simultaneously bring the legislature into studies of legal endogeneity by new institutionalists. Whereas prior studies focused on judicial deference to organizational dispute resolution forums (Edelman, Uggen, & Erlanger 1999, Edelman 2002, 2005, 2007), I focus on legislative deference to organizational dispute resolution venues. In the legislative context, the endogenous construction of law operates through constitutive processes such as cultural frames and cognitive schemas but also involves direct political mobilization and lobbying (cf. Edelman & Stryker 2005). By importing political analysis into new institutional studies of law and organizations, I offer a framework for how new institutionalists can examine the legislative (as opposed to judicial) facet of the legal field.

My qualitative fieldwork of the lemon law field also extends and refines new institutional studies of law and organizations several ways. First, although existing studies by organizational scholars demonstrate that organizations follow cultural scripts without deviation (Meyer & Rowan 1977) or that organizational fields are "sites of contestation" ultimately ending in a "settled" or "stabilized" field (Armstrong 2005), my analyses suggest how organizational fields are simultaneously a site of settlement and stability in some areas while continuously contested and in a state of disruption in others. In this instance, arenas of social action or organizational fields are organized around institutionalized or taken for granted sets of rules, *i.e.*, alternative dispute resolution venues are the preferred venue to courts, but public and private actors conflict concerning the purpose and meaning of lemon laws and dispute resolution structures. Second,

contrary to prior studies examining how managerial values become institutionalized in organizational fields (Edelman, Erlanger, & Lande 1993; Edelman, Fuller, & Mara-Drita 2001; Marshall 2005), my empirical data reveals how *multiple* legal logics can emerge and operate in an organizational field regarding what consumer protection law and compliance mean. My comparative research design uncovers the different micro-processes and mechanisms through which business and managerial values can shape the meaning of law and explores the conditions under which that occurs. Managerial values flow into legislation and regulatory rules through a combination of institutional isomorphism and political contestation while primarily flowing into dispute resolution structures through an arbitrator training and socialization process and dispute resolution design. Finally, my study builds upon prior new institutional studies that show how business values influence written policies and *internal* legal structures by showing how business values also flow into dispute resolution structures run by *external third-party* organizations.

This dissertation, however, also expands upon prior analyses of law and society scholarship on dispute resolution in organizations, repeat player advantages in disputing, and studies of the law in action in several ways. First, although my study fits within the long tradition of exploring the “gap” between the law on the books and law in action (Macaulay 1963), it builds on this tradition by examining the *meaning-making activities of organizations* as they adjudicate public legal rights in the alternative third-party forums they create. Whereas previous work emphasizes the gap between the law in action and the law on the books, my study shows how the law in action in essence becomes the law on the books. In doing so, my study answers the call of Galanter, Macaulay, and other socio-legal scholars who argue for more empirical studies of how organizational governance structures operate in action (Macaulay 1986; Galanter & Lande 1992; Edelman & Suchman 1999).

From a policy perspective, this project has critical implications for consumers’ access to justice and more broadly, the civil legal system. Consumer protection laws create rights that, in theory, provide substantive and procedural protections to consumers regardless of race, gender or socioeconomic status. To the extent consumer protection laws are undermined by business values in various private disputing forums deferred to by legal institutions, these policies may be ineffective in ameliorating social and economic disadvantages for consumers. Whereas more recent legal scholarship advocates deregulation, public-private partnerships, and organizational self-governance in the context of delivery of services and benefits in society, my analysis sounds a note of caution. At least in the context of adjudicating public legal rights, I show that the privatization of dispute resolution by business organizations has the potential to undermine the rights of social have-nots. Understanding the processes by which private organizations legalize their environments, operate dispute resolution governance structures, and shape the content and meaning of law will allow more sophisticated policy design and more informed legislative and judicial decisions concerning where the litigation game is played in the 21st century.

Chapter Outline

In the remaining chapters, I examine how private organizations shape the content and meaning of public legal rights. Chapter 2 reviews political science, new institutional organizational sociology, and law and society studies of law and organizations. In particular, I highlight how each literature focuses on a different aspect of the relationship between law and

organizations. After motivating my research question, Chapter 3 draws from all three literatures to articulate a multi-level theory that explains how private organizations shape the content and meaning of public legal rights.

Chapter 4 sets forth my methodology. I study the relationship between organizational fields and law in two methodological phases. The first, which is largely historical, uses archival data collection, content analysis, and interviews to examine how and under what conditions businesses shape the meaning of public legal rights among public legal institutions in California and Vermont. The second phase uses in-depth and ethnographic interviewing, participant observation, content analysis, and statistics to explain how organizational fields shape the meaning of public legal rights in alternative dispute resolution structures. In doing so, I highlight how qualitative fieldwork offers a different pathway into examining the relationship between organizational fields and law.

Chapter 5 is the first of three empirical chapters in this dissertation. In Chapter 5, I demonstrate how and under what conditions the content and meaning of consumer protection laws were shaped by automobile manufacturers, the very group these laws were designed to regulate. Through a qualitative content analysis and quantitative coding analysis of legislative history and court decisions, I show that in the context of public legal institutions, organizational creation and institutionalization of third-party dispute resolution structures in organizational fields to resolve legal disputes eventually penetrates legislative and regulatory lawmaking via political mobilization and lobbying. My analysis highlights the institutional and political mechanisms through which organizations shape the meaning of consumer rights in varying degrees in California and Vermont.

Chapter 6 is the first of two empirical chapters explaining how organizational fields shape the meaning of public legal rights in alternative disputing forums they create. I argue that identifying the field logics operating within the organizational field is first step toward understanding how organizational fields shape the meaning of public legal rights through different dispute resolution structures. To accomplish this task, Chapter 6 draws from participant observation at lemon law conferences and in-depth and ethnographic interviews with field actors from California and Vermont as well as field actors in other states. This chapter's findings highlight how the lemon law field is cohesive in some areas and contested in others. While all field actors share a logic that favors alternative disputing forums, public and private actors mediate the meaning of lemon laws through competing business and consumer logics operating in the organizational field.

Chapter 7 turns away from field logics operating in the lemon law field and more directly examines how private and state-run dispute resolution structures influence the meaning and implementation of law. Through interviews, participant observation in the training programs that dispute resolution arbitrators undergo, and seventeen years of lemon law case outcome data in California and Vermont, Chapter 7 reveals how different dispute resolution structures operating in California and Vermont filter competing business and consumer field logics in different ways in the operation of their institutional structures. This leads to two different meanings of law operating and these different meanings of law are reflected in different consumer outcomes in both states.

The final chapter summarizes the themes of this dissertation and offers some conclusions about the relationship between organizations and law, and in particular, how private organizations shape the content and meaning of public legal rights. I also summarize the study's implications for theory, method, and policy. In addition, I discuss how the findings of this study may apply to other areas where quasi-private and quasi-public disputing structures are being created such as financial institutions, health care organizations, prisons, and police departments. In an era where American consumers are increasingly likely to encounter law in private alternative disputing forums sanctioned by the state, it is particularly important to learn how these structures are created and ultimately deferred to by the state, and what effect these structures have on the meaning of public legal rights. By recognizing how organizational forms of compliance shape the actual meaning of law and compliance such that public legal institutions end up deferring to organizational institutionalized practices, I suggest scholars should begin conceptualizing organizations as not simply repeat players in the legal system, but as surrogates for the legal system able to redefine and control public legal rights through private structures.

CHAPTER TWO

POLITICAL, INSTITUTIONAL, AND SOCIO-LEGAL APPROACHES TO STUDYING ORGANIZATIONS AND LAW

I. Introduction

During the 1970s and 1980s, all fifty states passed consumer warranty lemon laws that afforded consumers powerful rights and remedies if automobile manufacturers failed to make repairs under warranty. However, consumer rights are now largely contingent on first using alternative dispute resolution processes. The vast majority of these dispute resolution processes are funded by private organizations and operated by third-party organizations that manufacturers contract with. Thirteen states also operate a state-run dispute resolution structure with varying levels of state and private involvement. Thus, lemon laws have been privatized in varying degrees through the legislative process in most states. This raises a set of questions at the intersection of organizations and law: How did public legal rights get channeled into alternative dispute resolution forums with varying degrees of business and state involvement? Given that public legal rights are adjudicated in these forums, how do private organizations shape the content and meaning of public legal rights in alternative dispute resolution forums they create? In particular, how do different private and state dispute resolution structures influence the meaning and implementation of law?

Three bodies of social science research offer theoretical guidance for my inquiry into these questions. Political science and organizational sociology studies of law and organizations tend to fall into two categories: (1) political science studies of business influence on legislative outcomes and the regulatory process; and (2) new institutional sociology studies of how organizations shape law within legal and organizational fields. Focusing more directly on the relationship between law, organizations, and dispute resolution structures, socio-legal scholars examine how repeat players—who are often organizations—encounter law in public and private dispute resolution institutions. This chapter explains how each of these distinct areas of study focus on a different aspect of the relationship between organizations and law.

Political scientists primarily examine how businesses directly influence core public legal institutions such as legislatures and regulatory agencies. In doing so, political scientists primarily focus on interest groups' strategic behavior and lobbying tactics. In contrast, new institutionalists focus on how organizations and organizational fields respond to law, often by developing written policies, procedures, and structures that become institutionalized. Socio-legal scholars examine the structural advantages and disadvantages conventional and alternative dispute resolution forums provide repeat players. My analysis specifically highlights the different mechanisms these three scholarly communities use to explain the interaction between organizations and law. However, because public legal rights are defined, constructed, and re-shaped among formal legal institutions *and* among organizations and individuals, I conclude this chapter by arguing these three theoretical frameworks, applied separately, do not comprehensively answer how private organizations shape the content and meaning of public legal rights.

II. Business Influence On Legislative and Regulatory Outcomes

For decades, political scientists have been probing the various ways businesses influence public legal institutions. This section highlights the mechanisms through which businesses actively influence law among legislatures and administrative agencies tasked with enacting, implementing, and enforcing legal rules. In doing so, I highlight how political scientists focus on business' strategic preferences and tend to maintain a view of law as exogenous to organizations even as it is open to organizational influence. I conclude this section by noting that while political scientists have identified the various ways businesses directly influence public legal institutions, there is less focus on how political influence is exerted beyond direct interest group influence. In particular, primary focus on business' strategic responses leaves unexplored to what extent business lobbying and mobilization are driven by institutionalized norms and practices within organizations.

Interest Group Politics

Political scientists typically focus on interest groups' interaction and influence over public legal institutions. Political scientists view interest groups as direct participants in governmental processes such as legislatures and administrative agencies because these are arenas in which interest groups lobby for laws and regulatory rules that serve their interests (Mills 1956; Dahl 1961, 1967; Polsby 1963; Parry 1969; Domhoff 1967; Shapiro 1988). Interest group representation theory argues that, if a level playing field exists, the pressures each interest group exert concerning a regulatory or legislative issue, is proportional to the collective importance various stakeholders in the debate place on the particular issue before the implementing agency (Dahl 1967, 1989). Interest group studies divide into three broad approaches. Those interested in understanding "structural" business power examine how business occupies a "privileged position" in society (Lindblom 1977). Political scientists interested in "instrumental aspects" of business power examine how interest groups form advocacy coalitions that lobby, negotiate for favorable laws, build (or set) an agenda in their strategic favor, or exert direct influence on government decisionmakers through campaign contributions (Kamienieka 2006; Leech et al. 2002; Baumgartner & Jones 1993; Kingdon 1984).² Two major tactics businesses use to influence legislators and public opinion are issue definition and framing (Baumgartner & Jones 1993). Using these tactics, businesses postpone and even defeat policy proposals by amplifying critical beliefs and values and re-defining policy goals (Snow et al. 1986). Businesses are particularly successful when they control the discourse and dominate the rhetoric of the debate (Riker 1996).

Taking a more transactional view of the legislative process, "public choice" theorists apply economic models to legislative and administrative decisionmaking. Under this approach, politicians and the electorate are considered rational utility-maximizers operating in a competitive electoral market. Public choice theory treats the legislative process as a microeconomic system in which "actual political choices are determined by the efforts of individuals and groups to further their own interests" (Becker 1983:371). As interest groups

² Advocacy coalitions consist of interest group leaders, agency officials, legislators, applied researchers, journalists and politicians. Parties within a coalition share a set of causal and normative beliefs and show a degree of coordinated behavior to realize their objectives and policy proposals (Kingdon 1984).

participating in a political market, businesses are “demanders” of legislation that send benefits to legislators who in turn supply them with governmental largesse. Legislators can respond to demands by: (1) refusing to pass a bill, (2) avoiding a clear choice through delegations of broad decisionmaking authority to an agency in the executive branch, or (3) explicitly allocating tangible benefits. “The basic assumption is that taxes, subsidies, regulations, and other political instruments are used to raise the welfare of more influential pressure groups” (Becker 1983:373-74). Interest groups that are formally organized are more effective in demanding legislation. Because large bureaucratic organizations often have more resources, they are more likely to succeed in overcoming hurdles to effective organization than others (Becker 1983; Hayes 1981; Wittman 1995; Wilson 1973; Olson 1965). In sum, while instrumental, structural, and public choice approaches are all different, they each analyze interest groups as rational, strategic actors seeking direct influence over governmental institutions.

Venue Shopping

When direct influence over the legislative process is less likely to be successful, interest groups and policy entrepreneurs often shop for venues and try to move decisionmaking authority into alternative and potentially more favorable policy venues (Baumgartner & Jones 1993). Advocacy groups will “shop” (choose between one venue or another) and more often, shift from one venue into another venue, which offers the best advantage over their opponents. When venue shopping, interest groups often form advocacy coalitions with other like-minded groups and proceed to redefine the problem (Pralle 2003, 2006; Baumgartner & Jones 1993). Venue shopping is successful when interest groups construct a new ‘image’ or redefine a policy issue. Interest groups often attempt to “fuse” the new image with other existing strong symbols such as progress, national identity, economic growth, and efficiency (Baumgartner & Jones 1993:11).

The initial thrust of studies on this subject focused on how venue shopping is strategic, planned, and deliberate (Baumgartner & Jones 1993; Sabatier & Jenkins-Smith 1999). However, more recently, Sarah Pralle (2003) offers a more complex model of venue shopping in practice and focuses on: (1) the limited rationality of political actors; (2) the cultural or ideological constraints on choice of venue; and (3) the possibility that “policy learning” plays a role in venue choice. Pralle argues advocacy groups choose venues not only to advance substantive policy goals but also to serve organizational needs or reinforce organizational identities and reputation. These organizational considerations may also prevent venue shopping even when it may seem rational to do so.

Thus, venue shopping scholars are encouraged to examine an advocacy group’s constraints, both internal (*e.g.*, image, publicity, group perception of institutional opportunities) and external (*e.g.*, rules, procedures, venue barriers, delay) (Pralle 2003, 2006). Similar to new institutionalists, Pralle notes that rational, strategic behavior is shaped and informed by the larger institutional environment:

In this respect. . . ‘a good deal of behavior is goal-oriented or strategic but. . . *the range of options canvassed by a strategic actor is likely to be circumscribed by a culturally specific sense of appropriate action.*’ The decisions that advocacy groups make—

about what venues to target, when to target them, and why—are strategic, but these calculations are informed by information, ideology, organizational contexts, and long-term learning processes (Pralle 2003:256) (emphasis added) (citations omitted).

In sum, existing studies demonstrate venue shopping is most likely successful when interest groups are able to: (1) redefine the issue in the new forum; (2) link the issue with other issues that are germane to the new venue; and (3) lower the internal and external constraints on interest group decisionmaking.

Historical Institutional Analysis of Business Influence over Legislation (Path Dependency, Layering, Drift, Conversion)

In the past two decades, the role of business has become a new theme in historical analysis by American Political Development scholars (Estevez-Abe, Iversen, & Soskice 2001; Gordon 1991, 1994, 1997; Jacoby 1993; Mares 1998; Martin 2000; Martin & Swank 2001; Swenson 1991, 1997). These scholars analyze how businesses shape and change institutions over time without formal revision of rules or attack on statutes (Hacker & Pierson 2002; Hacker 2002; Pierson 2004). Recent approaches draw from the “historical institutionalism” movement that developed in reaction to the behavioral perspectives that were prominent in the 1960s and 1970s.

Historical institutionalists attempt to elucidate the role that institutions play in the determination of the social and political world we live in. They emphasize how institutions emerge from and are embedded in concrete temporal processes. They explain institutional development, stability, *and* change by examining *when* events occur and context (Pierson 2000b, 2004). Instead of focusing on equilibria, they bring questions of timing and temporality into politics and in particular, to the center of the analysis of how institutions matter (Thelan 2004; Pierson 2000b, 2004; Hacker 2004; Schickler 2001). Historical institutionalists emphasize how institutions emerge from particular historical conflicts and stress that many of the contemporary implications of temporal processes are embedded in institutions, whether these are formal rules, policy structures, or norms (Pierson 2004). Rather than conceiving of institutions as ‘holding together’ a particular pattern of politics, historical institutionalists are more likely to reverse the causal arrow and argue that institutions emerge from and are sustained by features of the broader political and social context. Similar to new institutional organizational sociology, historical institutionalists take a dynamic approach to history and acknowledge a wide range of social outcomes are possible.³

³ The causal story in historical institutional accounts take a variety of forms. In particular, some emphasize rational or purposive behavior in the historical account. Those who adopt this approach focus on those aspects of human behavior that are instrumental and based on strategic calculation. They assume that people seek to maximize their attainment of a set of goals given by a specific preference function and therefore, behave strategically. Institutions affect behavior by providing actors greater or lesser degrees of certainty about the future behavior of other actors (Hall & Taylor 1996; Thelan 1999). For example, institutions can provide information relevant to the behavior of others, enforcement mechanisms for agreements, and penalties for noncompliant behavior. Individual action is affected because it alters the expectation an actor has about the actions that others are likely to take in response to a person’s action. Other historical institutionalists emphasize randomness and accidents in history often have powerful consequences. Finally, some emphasize norms and culture as driving mechanisms for how institutions change. While not denying human behavior is rational or purposive, these scholars emphasize the extent to which

Until recently, the primary accounts of institutional and policy development involved theories of “punctuated equilibrium” (Collier & Collier 1991). These theories suggest there are ‘critical junctures’ which lead to new “branching points,” or that “external shocks” produce abrupt shifts that briefly interrupt extended periods of continuity (Katznelson 2003; Weingast 2002; Mahoney 2000; Pempel 1998; Collier & Collier 1991; Krasner 1988). Pierson emphasizes the concept of “path dependencies,” *i.e.*, key decisions made often at critical junctures trigger feedback mechanisms that reinforce the recurrence of a particular pattern in the future. Path dependency does not mean that institutions, government or otherwise, cannot reverse their path, but rather, it is less likely. Earlier decisions in time often change the parameters and the decisionmaking at later points in time (Pierson 2000a; 2000b, 2004).⁴ More recently, political scientists and some political sociologists are focusing more on how institutions change gradually over time and in particular, the ways in which the contradictory forces of institutional change and stability co-exist (Barnes 2007, 2008; Streeck & Thelan 2004; Thelan 2004; Hacker 2002, 2004, 2006; Schickler 2001; Clemens & Cook 1999; Weir 1992). In particular, Pierson emphasizes: (1) specific patterns of timing and sequence matter; (2) a wide range of social outcomes may be possible; (3) large consequences may result from relatively small or contingent events; and (4) particular courses of action, once introduced, can be almost impossible to reverse (Pierson 2000a, 2000b; 2004).

Focusing on United States legislative and social policy, historical institutionalists identify three key modes of institutional change. Instead of attacking laws directly and seeking formal revision through explicit changes in governing rules, powerful interests and political elites adapt existing institutions and policies to new ends (conversion), create new institutions or policies without eliminating existing ones (layering), and change the operation or effect of policies without significant changes in those policies’ structure (drift) (Schickler 2001; Thelan 2004; Streeck & Thelan 2004; Hacker 2004).

Using these concepts, Jacob Hacker (2004) shows that many aspects of the social welfare state such as Medicaid and Medicare have remained intact despite conservative attempts to scale back these entitlements. In particular, corporations adapt many aspects of social welfare laws to curb social benefits and shift the intensity and distribution of risks directly faced by citizens. In the context of health care, individual health care consumers are asked to take on more individual risk (increasing privatization) without the formal privatization of the actual welfare state. As opposed to focusing on critical junctures and major triggering events that cause policy change, this approach offers a “new conceptual lens that lays bare the ‘hidden’ means by which politics can be changed by actors” (Hacker 2004:243). Informal changes, or as Hacker calls, “subterranean means of policy adjustment,” occur without large scale formal policy change.

Drawing on law and society notions regarding the power of informal norms and rules as a way of shaping legal meaning, Jeb Barnes examines the informal adaptation of existing rules and procedures as opposed to the formal revision of rules. Barnes shows how asbestos

individuals turn to established routines or familiar patterns of behavior to attain their purpose. Institutions provide moral or cognitive templates for interpretation and action.

⁴ Past social policy choices create strong vested interests and expectations, which are extremely difficult to undo even in the present era.

manufacturers learn to adapt the tools of bankruptcy laws to shift the cost and risks of liability to consumers and their competitors (Barnes 2007, 2008). The landscape of tort reform can significantly shift even when formal rules stay in place and legislative changes remain out of reach. Thus, by examining processes unfolding over time and in relation to each other, historical institutionalists highlight how business influence occurs *within* existing policy bounds as well as through large scale legislative reform (Barnes 2007, 2008; Hacker 2004).

Regulatory Capture

In addition to influencing legislative outcomes, political scientists, and economists also focus on business influence on regulatory policy (Quirk 1981; Posner 1974; Stigler 1971; Bernstein 1955; Vogel 1989, 1995). These scholars argue that regulation is “acquired by the industry” and designed and operated primarily for its benefit (Stigler 1971:3; Posner 1974; Peltzman 1976; Becker 1983). In order to survive, regulators employ a regulatory strategy that meets industry demands for favorable policy. Political scientists have analyzed how businesses controlled the Federal Trade Commission, Federal Communications Commission, Interstate Commerce Commission and other government agencies through: (1) exerting direct influence on regulatory agencies; (2) inserting people within such agencies who had a sympathetic view toward business (*i.e.*, “revolving door” phenomena); and (3) isolating the regulatory agency and thus making the agency’s survival dependent on the existence of a group that needs continued oversight (Herring 1936; Huntington 1952; Bernstein 1955; Kolko 1965; Sabatier 1975; Gromley 1983).

Consistent with mainstream pluralist political science and client politics (Wilson 1989), capture arguments center around the concept that competing interest groups seek regulation for their own benefit and attempt where possible to exert direct and indirect influence until eventually the regulators adopt the view of the regulated (Shapiro 1988; Huntington 1952). When businesses are able to re-shape a regulatory agency into a friendly protector of private interests rather than an aggressive agent for the public welfare, the regulatory agency “provides the regulated groups with privileged access to government” (Bernstein 1955:266) and regulate the interest of the regulated. Regulatory capture is possible because firms have private information that is difficult for citizens or their political representatives to obtain (information asymmetry). Although capture has been shown to take a variety of forms, typically capture studies focus on business capture of *existing* governmental regulatory agencies. By capturing an existing regulatory body, business is able to capture the output of the agency.

The Move Toward Governance—Collaborative Approaches Toward Business and Legal Institutions

More recently, business’ relationship with regulatory institutions has undergone a dramatic change due to the transformation of the regulatory state over the past twenty-five years. In particular, the location of governmental decisions has shifted away from traditional public governmental institutions. The top-down “command and control” regulation of the 1960s and 1970s spawned heightened capture and interest group pluralist behavior. In response to the backlash and inefficiencies of “big” government and political change at the executive and congressional levels of government, the 1980s and 1990s saw a shift toward de-regulation,

privatization, liberalization (free market capitalism) and devolution to the private sector (Majone 1997; Bignami 2004a, 2004b; Streeck & Thelan 2004). Federal and state governments increasingly contract out government services, streamline government functions, cut the delivery of many services and benefits traditionally run by public institutions, and devolve power to lower levels of government who in turn look to private actors to help execute their new responsibilities (Freeman 2000; Salaman 1995). This restructuring of the relationship between business and government has been guided by both major political parties (Salaman 1995; DiIulio & Nathan 1998; Kennedy 1998; Freeman 2000).

The simultaneous push toward devolution and free market liberalism seeped into administrative and regulatory approaches as well. Specifically, the “new public management,” emphasizes efficient results and treating core government functions with a more market-based, competition driven philosophy (Terry 1998; Peters 1996; Kettl 1997; Freeman 2000). Performance standards emerge whereby regulators specify the outcomes or the desired level of performance while leaving organizations the flexibility and discretion to come up with ways to achieve such ends (Gunningham & Sinclair 2009). Sectors of government espousing a new public management approach steer private actors toward favorable public outcomes while simultaneously de-centering regulation away from the state and into plural networks of regulation (Black 2001; Solomon 2008). Businesses, in turn, are being asked to “responsibly” self-regulate in a manner that achieves public policy goals and values in addition to corporate profitmaking goals (Shamir 2008:379-383).

There has been less discussion concerning how de-regulation and a drive toward free markets has led to a slow re-regulation of free markets in the form of soft-regulation aimed at perfecting market performance (Majone 1997; Schmidt 2004; Levi-Faur 2005). New regulatory models anchored by contractual arrangements, standards, rankings, and monitoring frames are increasingly being used by states (Djelic & Anderson 2006; Hood et al. 1999). “Interestingly, the proliferation and expansion of those new regulatory patterns is both shaped by market logics and has a tendency to introduce and diffuse market principles” (Djelic & Anderson 2006:7). While privatization is the reality, soft regulation, rather than the direct provision of public and private services, is the expanding part of government (Levi-Faur 2005; Schneiberg & Bartley 2008; Vogel 1996). “Hard laws” and directives coming with the coercive backing of the state decline as states move toward a broader conception that establishes legally non-binding “soft” rules such as standards and guidelines (Djelic & Anderson 2006).⁵

This transformation is highlighted by constitutional law, administrative law, jurisprudence and political science scholars’ recent focus on “governance.” “Governance”

⁵ Majone (1997:143) explains the subtle link between privatization, de-regulation, and re-regulation:

The failure of regulation by public ownership explains the shift to an alternative mode of control whereby public utilities and other industries deemed to affect the public interest are left in private hands, but are subject to rules developed and enforced by specialized agencies. Such bodies are usually established by statute as independent administrative authorities—independent in the sense that they are allowed to operate outside the line of hierarchical control by the departments of central government. Thus, the causal link between privatization and statutory regulation provides an important, if partial, explanation of the growth of the regulatory state.

signifies “the range of activities, functions, and exercise of control” by both public and private actors in the promotion of social, political, and economic ends (Lobel 2004:344). Governance models conceptualize a world where boundaries are largely in flux and are being shaped by public and private actors, including states, international organizations, professional associations, expert groups, civil society groups, and business organizations (Braithwaite 2002; Lobel 2004; Freeman 1997, 2000; Sturm 2001; Ansell & Gash 2008; Majone 1997). Broadly, governance models support the replacement of the New Deal’s hierarchy and control with a more participatory and collaborative model, in which government, industry, and society share responsibility for achieving policy goals. Governance models are positioned in between top down “command and control” regulatory models and industry self-regulation.

Regulation is still an important component of governance, but governance goes beyond mere regulation by focusing on the dense organizing, discursive, and monitoring activities that embed, frame, stabilize, and reproduce rules and regulations. Under a new era of public-private partnerships between corporate and state actors, non-governmental actors are taking a more active role in governing themselves and trying to maintain the public good (Ansell & Gash 2008; Majone 1997). In areas relating to the financial industry, health care, policing, criminal justice administration (prisons), education, family, transportation, information technology, privacy, environmental and consumer protection, public agencies are directly engaging non-state actors in collective decisionmaking. These co-regulatory schemes are consensus oriented, deliberative, and aim to allow private industry more direct involvement and control in implementing public policies (Freeman & Minnow 2009; Lobel 2004; Ansell & Gash 2008; Gunningham 1995; Kagan, Gunningham, & Thornton 2003, 2004; Hacker 2002; Braithwaite 1982).

Legal scholars and political scientists articulate a variety of governance theories: “reflexive law” (Febrajo & Teubner 1992), “soft law” (Trubek & Trubek 2004; Jacobsson 2001), “collaborative governance” (Freeman 1997), “democratic experimentalism” (Unger 1998; Dorf & Sabel 1998; Dorf & Sabel 2000; Dorf 2003), “responsive regulation” (Ayres & Braithwaite 1992; Braithwaite 2002), “outsourcing regulation” (O’Rourke 2003), “reconstitutive law” (Stewart 1986), “post-regulatory law” (Teubner 1986), “revitalizing regulation” (Farber 1993), “regulatory pluralism” (Gunningham & Sinclair 1999), “decentering regulation” (Black 2001), “meta-regulation” (Morgan 1999), “contractarian law” (Dana 2000), “communicative governance” (Kooiman 1993), “negotiated governance” (Krawiec 2003), “destabilization rights” (Sabel & Simon 2004), “cooperative implementation” (Michael 1996), “interactive compliance” (Sigler & Murphy 1991, 1988), “public laboratories” (Liebman & Sabel 2003), “deepened democracy and empowered participatory governance” (Fung & Wright 2003), “nonrival partnership” (Minow 2002), “a daring legal system” (Minow 2002), “renew deal governance model” (Lobel 2004), “delegated governance” (Bamberger 2006), and “regulatory capitalism” (Levi-Faur 2005). These theoretical approaches suggest that collaborative governance regulatory approaches are a form of “meta-risk management” (Coglianese & Nash 2006:14). Although not always successful, meta-risk management when working properly shifts risk and responsibility onto businesses in a way that encourages and incentivizes firms to develop models of self-organization that can also achieve “public goods” (Parker 2002; Gunningham & Sinclair 2009).

Political scientists and legal scholars, therefore, have made great strides in explaining the *mechanisms* through which businesses actively influence governmental outputs, whether they are

laws made at the legislative level, or legal rules implemented and enforced at the administrative agency level. Existing studies view business behavior as driven largely by strategic preferences and tend to maintain a view of law as exogenous to organizations even as it is open to organizational influence. In particular, lawmakers consider the views of interest groups but they ultimately retain the power to reject organizational arguments. At each stage, the goal is often the same: obtain favorable results that promote the interest group's self-interest. Politics help explain variation in interest group influence across a variety of settings (Baumgartner & Jones 1993).

Amidst a transforming regulatory state, business influence has also shifted away from simply influencing legislative decisions and capturing core public legal institutions to conducting and making the decisions themselves with soft state oversight. Political science and legal scholars' studies of governance focus primarily on public-private arrangements for the delivery of services and benefits and contracting out of governmental tasks. These scholars have focused less attention on public-private arrangements for the adjudication of public legal rights.⁶ Indeed, although political scientists have highlighted the ways in which businesses strategically influence the legislative and regulatory process, they focus less on how internal and third-party dispute resolution structures created by organizations act as forms of political power. Political scientists focus little attention on law and organizational fields and overlook the importance of new institutional theories about private institutional structures as a means of reshaping law among core legal institutions.

Given that the meaning of law and public legal rights are defined, constructed, and implemented in informal settings and environments as well, the next section turns to new institutional studies of law and organizations. Unlike political scientists, these scholars focus on how organizations influence and shape the meaning of law within organizational fields.

III. The Sociological New Institutional Movement and Overlapping Legal & Organizational Fields

Most social science studies of law and organizations view law as exogenous to organizations, that is, that they assume that law is formulated and defined outside of organizations and prior to reaching organizational domains. This view describes law as determinate and coercive and sees the implementation of law as a top-down regulatory process, which begins with legislation and proceeds through judicial interpretation and administrative enforcement (Vaughn 1998; Pfeffer & Salancik 1978; Williamson 1975; Scott & Davis 2007). The role of organizations is limited to reacting to law often by complying or not complying with laws imposed by public legal institutions. Organizations resist, obey, or avoid law in a way that yields the most rational or favorable cost-benefit outcome (Vaughn 1998; Pfeffer & Salancik

⁶ In fact, while scholars have identified the rise in public-private partnerships and new governance forms, "they have barely begun to analyze systematically... the extent to which new forms actually reshape markets and organizational behavior on the ground" (Schneiberg and Bartley 2008:33; *see also* Gunningham & Sinclair 2009; Coglianese & Nash 2006). The studies that do exist tend to focus on the factors that explain whether business comply or do not comply with law while omitting a conceptualization of organization as "shapers" of the content and meaning of law beyond simply a compliance/noncompliance dichotomy (Kagan, Gunningham, & Thornton 2003, 2004; Coglianese, Howard, & Nash 2008; Gunningham & Sinclair 2009). Also, they have not fully examined how public-private arrangements are established and legitimated by legislative enactment.

1978; Williamson 1975; Scott & Davis 2007). As highlighted in the prior section, the vast majority of political science and economics studies use this approach to address business influence on public legal institutions.

This section examines new institutional organizational sociology studies of how organizations respond to law. These scholars focus on different mechanisms than political scientists when explaining the relationship between organizations and law. I highlight how new institutional studies explain how institutionalized logics and taken for granted norms permeating in organizational fields influence the meaning of law and compliance not just among organizations but public legal institutions such as courts. I conclude by noting that new institutionalists have focused less on how organizations directly interact with the legislature and how organizational field logics affect the meaning of law at the legislative and regulatory levels of government.

Organizational Fields: Sites of Settlement & Contestation

Unlike rational-based approaches, new institutionalists see organizations as complex social actors whose behavior is shaped by their cultural environment (DiMaggio & Powell 1983; Meyer & Rowan 1977; Scott 1983). New institutional scholars are interested in how common systems of meaning, values, and norms develop among the community of organizations that make up the “organizational field” (DiMaggio & Powell 1983; Scott & Meyer 1991; Scott 2002; Scott 2000; Suchman & Edelman 1996; Edelman 2007). An organizational field is the subset of the environment that is most closely relevant to a given organization, including suppliers, customers, competitors, as well as flows of influence, communication, and innovation (DiMaggio & Powell 1983). The process of constructing a coherent inter-organizational environment involves the stabilization of interaction patterns among field actors, the solidification of roles and structures, the articulation and elaboration of shared meanings, and the emergence of common identities within a group of previously isolated actors (DiMaggio & Powell 1983; Van de Ven & Garud 1989; Aldrich & Fiol 1994; Resenkopf & Tushman 1994; Levi Martin 2003). These stable interaction patterns, norms, and rules developed by and through the organizational field evolve from the norms of professionals within and around organizations, institutionalized patterns of organizational behavior, and from public legal institutions (Edelman et al. forthcoming). Courts, legislatures, and administrative agencies, therefore, are relevant elements of organizational fields because they promulgate rules to which organizations within the field must conform. However, public legal institutions’ shadow over organizations is not entirely dominant as organizations generally look first to the actors with whom they interact with, namely, professionals within and around the organization, similar organizations, and business partners concerning legal questions (Edelman, Abraham, & Erlanger 1992; Bisom-Rapp 1996, 1999).

New institutionalists argue that rationality is socially constructed by nonmarket factors such as widely accepted norms and patterns of behavior that become taken for granted and institutionalized within organizational fields (DiMaggio & Powell 1983; Meyer & Rowan 1977; Scott 1983). New institutionalists focus on “cultural” or “cognitive” constructs that engender isomorphic proliferation of homogenous organizational structures and forms, irrespective of those forms’ utility or appropriateness for a particular situation. Organizational fields frequently

feature a set of routinized mechanisms for the reproduction of particular organizational forms and for the suppression of deviant alternatives (DiMaggio & Powell 1983; Meyer & Rowan 1977; Scott 1983; Edelman 2007).

Although early accounts of organizational fields emphasize the uniformity, taken-for-grantedness and institutional isomorphism that results in a dominant or settled logic within a field (Tolbert & Zucker 1983; Edelman 1990), more recently scholars are emphasizing that fields often include multiple and contradictory logics (Friedland & Alford 1991; Stryker 2000; Heimer 1999; Scott 2002; Schneiberg 2002; Lounsbury, Ventresca, & Hirsch 2003; Schneiberg & Soule 2004; Edelman 2007).

Unlike the cultural or cognitive approach, some political sociologists and new institutionalists who study institutional change treat institutions as settlements of conflict among actors with differential power and competing frames (Fligstein 1996; Rao 1998; Roy; 1997; Schneiberg & Bartley 2001). DiMaggio and Powell note “rules are typically constructed by a process of conflict and contestation...the creation and implementation of institutional arrangements are rife with conflict, contradiction, and ambiguity” (DiMaggio & Powell 1983:28). Conflict is typically involved in the process of arriving at new institutional “settlements” or “stabilization” of field rules and cultural norms within a field as a new dominant logic emerges (DiMaggio & Powell 1983; Fligstein & McAdam 1995; DiMaggio & Powell 1991; Rao 1998; McAdam & Scott 2005; Schneiberg & Soule 2004). When an institutional crisis emerges within a field, the process of arriving at a new stable field becomes a political battle because it often involves an intense collective process of clarifying differences, forging agreements, and mobilizing consensus around a position (DiMaggio 1983; Wacquant 1995; Levi-Martin 2003). When field rules are uncertain or ambiguous, field actors tend to be more open to identifying alternatives and evaluating different perspectives.

The process by which a field moves from a state of disorganization (emerging, in crisis, unsettled) to a state of organization (established, settled) is referred to as field structuration, institutionalization or crystallization (DiMaggio & Powell 1983, 1991; Zysman 1994; Armstrong 2005; Swidler 1986; Fligstein 2001; Sewell 1996). When identifying the general factors influencing the form a field takes as it crystallizes (Brint & Karable 1991; Carruthers & Babb 1996; Rao 1998), scholars explain that “when multiple frames and forms vie with each other, why one form is chosen and why other roads are not pursued hinge on larger constellations of power and social structure” (Rao 1998:912). Recent work in this area focuses attention on individuals who transcend or span field boundaries and consequently bring disparate field logics in ways that invite or trigger institutional change (Leblebici & Salancik 1982; Clemens 1993, 1997; Edelman et al. forthcoming).

The Ambiguity of Law

Early on, law played a minor role for new institutionalists. Edelman attempted to bridge the sociology of law with the sociology of organizations in order to correct the flaw of some organizational theories, namely, that laws are merely coercive forces and formal mandates (*i.e.*, studying law as imposed on organizations). To understand the relationship between organizations and law and also how organizations construct what law means, Edelman contends

that law must be understood much more broadly than offered by most organizational sociological accounts. Edelman and others drew on traditional law and society perspectives that distinguish between the law on the books and the law in action. She argues that the meaning of compliance is contested and socially constructed in part because the meaning of compliance is often ambiguous.

For example, although statutes such as Title VII of the Civil Rights Act of 1964 promise broad protection against employment discrimination, the statutory language is in fact quite ambiguous as to what constitutes discrimination (Edelman 1992). Moreover, court decisions meant to interpret ambiguous statutory language are frequently ambiguous, contradictory, and unstable over time. Thus, courts provide little practical guidance on how to translate legal standards into everyday organizational practice. Administrative regulations are similarly ambiguous and often emphasize “good faith efforts” and symbolic indicia for compliance rather than reaching substantive goals (Edelman, Uggen, & Erlanger 1999).

Legalization of Organizational Fields

In these situations, organizations respond by “legalizing” their environments (Selznick 1969).⁷ Organizations adopt many legal practices and structures because their cultural environment constructs adoption as the legitimate or natural thing to do (DiMaggio & Powell 1983; Edelman 1990). With respect to civil rights law, institutional structures and processes have proved quite useful to explain organizations’ increasingly legalized environment (Dobbin et al. 1993; Dobbin & Sutton 1998; Sutton et al. 1994; Edelman 1990, 1992; Edelman, Uggen, & Erlanger 1999). Organizations respond to new laws by creating new offices and developing written rules, procedures, and policies that attempt to achieve legal legitimacy while simultaneously limiting law’s impact on managerial power and unfettered discretion over employment decisions (Edelman 1990, 1992).⁸ In a sample of 346 organizations, Edelman’s studies (1990, 1992) revealed that only 30 organizations maintained anti-discrimination guidelines in 1969. However, 118 organizations instituted such rules in the 1970s and 75 more followed suit in the 1980s. Edelman’s data also revealed a sharp jump in other forms of legalization during the 1970s, including the spread of special offices devoted to civil rights issues and special procedures for processing discrimination complaints (Edelman 1990, 1992; Sutton et al. 1994).

⁷ Organizations’ increasing attention to law and “legality” within organizations is something sociologists have been studying for decades. Since Max Weber (1947), organization theorists note that bureaucratic organization implies formal rule-making and hierarchical authority. However, the specific relation between organizations and legal rules did not attract significant attention until the publication of Philip Selznick’s *Law, Society, & Industrial Justice* (1969). Selznick examined how administrative pressures and daily organizational workplace challenges lead organizations to develop new workplace practices that drew on public legal institutions for models of what constitutes fairness and objectivity. Selznick referred to this internalization of lawlike rule-making by organizations as “legalization.” Selznick was interested in how ideas evolve in organizations and in particular, on the normative and political commitment of individuals. He noted organizational legalization has the power to transform organizations from being structures that only adhere to external official rule-making bodies to being its own normatively constrained governing body that provides citizenship rights to its members.

⁸ Thus, beyond the top-down direct effect of law and legal sanctions, law has an indirect effect on organizational behavior because it influences organizations’ environments.

The increasing legalization within organizations has been empirically studied in response to changes in civil rights law (Dobbin et al. 1993; Dobbin & Sutton 1998; Sutton et al. 1994; Edelman 1990, 1992; Edelman, Uggan, & Erlanger 1999; Marshall 2005; Albiston 2005; Kalev, Dobbin, & Kelly 2006), education (Short 2006), antipollution law (Hawkins 1994), health and safety law (Bardach & Kagan 1982; Heimer 1999) and environmental law (Kagan, Gunningham, & Thornton 2003, 2004). Moreover, organizational fields themselves are becoming more legalized through external forces in the form of industry-specific statutes, regulations, and judicial opinions and internal private governance systems in the form of contracts, associations, joint ventures, and mergers (Edelman & Suchman 1999). As organizational responses to law diffuse among organizations over time through coercive (formal and informal pressures on organizations), mimetic (copying), and normative (often stemming from professionalization) isomorphism (DiMaggio & Powell 1983), they became institutionalized (Edelman 1990, 1992).

Organizational Mediation of Law

Organizations' ability to mediate law's impact can affect the manner in which claims are resolved. Antidiscrimination laws that are ambiguous with respect to the meaning of compliance, constrain the procedures more than substantive outcomes of such procedures, and contain weak enforcement mechanisms create more discretion and flexibility for employers to respond (Edelman 1990, 1992; Edelman, Erlanger, & Lande 1993). Organizations are able to weaken law's impact where states issue ambiguous mandates to organizations, change rules frequently in response to protracted political negotiations and litigation, and enforce rules in fragmented and indecisive ways (Dobbin & Sutton 1998). Under these conditions, organizations devote significant resources toward constructing the meaning of compliance. Further, because state laws create an uncertain legal and organizational environment, organizations develop rationales for those compliance solutions that locate authority in the market. As personnel managers drive employers to establish new departments dedicated to human resources management, equal employment opportunity, and health and safety, they recast these departments in terms of efficiency (Dobbin & Sutton 1998). This recasting is consistent with organizational managers' focus on profit and eagerness to avoid costs associated with legal compliance. The ambiguity of compliance standards, expanding scope of the law, and fragmented administration of law allow organizations to create specialized departments to signal compliance, to "import and invent" compliance strategies, and to "handle federal regulators" (Dobbin & Sutton 1998:470).

Some new institutionalists emphasize that the legalization of organizations through compliance policies and procedures has the potential to undermine and transform legal rights. On the one hand, antidiscrimination rules, civil rights offices, grievance procedures, and other symbolic legal structures serve as visible indicia of attention to law, which offer legitimacy benefits to the organizations that adopt them. However, compliance procedures do not automatically guarantee substantive changes for protected classes of people that anti-discrimination law is designed to protect (Edelman 1990, 1992; Edelman, Erlanger, & Lande 1993). Sometimes, the opposite is the case. Compliance structures may create unwarranted optimism that an employer's internal governance mechanisms are procedurally and substantively fair or primarily concerned with protecting legal rights (Edelman 1990; Edelman, Erlanger, & Lande 1993). These structures allow for compliance in form, without requiring much

substantive change in the workplace environment (Edelman 1990, 1992; Edelman, Abraham, & Erlanger 1992; Edelman, Erlanger, & Lande 1993; Edelman, Uggen, & Erlanger 1999).

Managerialization of Organizational Fields

Whether the increasing legalization of organizational fields achieves the goals of civil rights protections remains an open question. Two empirical studies in the 1990s suggest that structures such as EEO offices and rules have virtually no impact on the workforce representation of women and minorities and some affirmative action plans may even adversely affect women (Baron, Mittman, & Newman 1991; Edelman & Petterson 1999). What is apparent is that as rights are constructed, adjudicated, and resolved by organizational lawlike structures, the *meaning* of compliance with civil rights law becomes “managerialized,” infused with managerial logic (Edelman, Fuller, & Mara-Drita 2001; Kalev, Dobbin, & Kelly 2006; Edelman 2007; Edelman et al. forthcoming).

For example, Edelman, Erlanger and Lande’s (1993) study of internal grievance complaint handlers for ten large organizations revealed that complaint handlers were often unconcerned with actual formal legal rights and outcomes, not fully apprised of the law, and chose not to invoke legal principles when attempting to address employee complaints.⁹ Complaint managers typically choose to remedy employee grievances with managerial solutions such as training programs, transferring the grievant, and providing counseling as opposed to formal recognition of legal rights violations (Edelman, Erlanger, & Lande 1993; Edelman & Cahill 1998; Edelman & Suchman 1999; Albiston 2005).

Edelman, Fuller, & Mara-Drita (2001) show that ideas about civil rights were transformed through managerial rhetoric about diversity. Employers reframe legal values in terms of traditional managerial goals. In particular, managerial rhetoric helped to transform the notion of “diversity” during the 1980s and 1990s. The term “diversity” became disassociated from the legal ideal of equitable racial and gender representation and transformed into a managerial ideal in which varying backgrounds and viewpoints of a workforce could be galvanized for productive purposes (Edelman, Fuller, & Mara-Drita 2001). Managerialization also occurs as organizations build discretion into rules that are designed to implement law (Edelman et al. 1991; Edelman & Suchman 1999), create rules explicitly to evade fulfilling legal mandates (Edelman 1992; Edelman & Suchman 1999; Sutton & Dobbin 1996), or deflect or discourage complaints rather than offer informal resolution (Marshall 2005). Intra-organizational professionals such as in-house lawyers, human resource professionals, and affirmative action and diversity officers help institutionalize managerial logics by claiming that structures like grievance procedures and formal personnel offices could insulate organizations from lawsuits and legal liability (Edelman, Abraham, & Erlanger 1992). Professional journals, websites, and training programs also serve as mechanisms for the diffusion of these logics among organizational actors (Edelman, Abraham, & Erlanger 1992; Bisom-Rapp 1996, 1999). Over time, these structures acquire an institutionalized status as “rational” forms of compliance (Edelman 1992; Edelman & Suchman 1997). Thus, the managerialization of law is both subtle,

⁹ On a positive note, their study revealed that internal complaint handlers generally want to resolve all complaints—even those complaints with little legal basis—so as to maintain good morale and smooth working relations. Thus, employer structures have the potential to widen the net in terms of responding to employer concerns.

as in the case of rhetorical changes in understandings of diversity, or overt, as when organizations rewrite their policies to escape the force of law.

Tension between Organizational, Liberal Legal, and ADR Field Logics

The managerialization of law affects not only the form and content of law in organizational fields but also the construction of law in *legal* fields. Legal fields consist of courts, legislatures, administrative agencies, legal scholars, all legal actors, as well as the various parties that enter into the legal system on an occasional basis (Edelman 2007). While not primarily considered “legal” actors, organizations and organizational actors are considered a part of the legal field due to their constant interaction with primary legal field actors such as public legal institutions and lawyers. Although the legal field is centered around legal institutions and actors, legal fields also include the much broader set of legal ideals and norms, rituals, and symbols that mobilize and enact law (Bourdieu 1987; Edelman, Fuller, & Mara-Drita 2001; Edelman 2007). Thus, professional understandings of law, organizational and corporate rhetoric about law, negotiations in the shadow of law, and symbolic representations of law are all important elements of legal fields (Edelman 2007; Edelman & Stryker 2005).

Edelman and Stryker (2005) note that the concept of a legal field as a unit of analysis is similar to the concept of an organizational field developed by new institutionalists in the 1970s. However, the key distinction is that each field anchors itself around different core logics. Despite the fact that there is often more than one logic within fields and that logics are contested, changing, and complex (Fligstein 1990; Schneiberg 2002; Schneiberg & Soule 2004), the central logics of organizational fields in the United States since the 20th century has been rationality and efficiency (Chandler 1962, 1977; Scott 2007). Corporate governing models emphasizing formalization, rationalization, consistency, productivity, profit, and survival have permeated throughout the United States in the form of administrative hierarchies within organizations (Orloff & Skocpol 1984; Jacoby 1985; Baron, Dobbin, & Jennings 1986; Selznick 1969). With respect to governing employees, the dominant logic of management in the latter half of the 20th century has been rationality, efficiency, managerial discretion and control (Edelman 2007; Jacoby 1985).

Conversely, the core logic of the legal field is anchored around rules and rights. In particular, the “liberal legal model” holds that law is developed through adherence to rational principles that produce a set of rulings that are impartial and just. The impartiality is derived from being free from political, religious, and substantive influence. Thus, due process values recognized by the American legal system develop around the idea of impartiality. Moreover, the “justice” in law is derived from the fact that rules are equally applied to all people and situations. Legislators are seen as creating and making law while courts are seen as passive arbiter institutions that apply determinative rights and principles to a particular set of factual situations but do not actually make law. The formal universality of rights in liberal legal ideology permits individuals to cement their claims in those rights (that can be recognized if necessary using the court system) and in the principles of social justice that underlie them. Rights empower disputants who lack the political clout to be heard in the absence of those rights because the language of rights has a deep appeal for most of the public to which judges, legislators, juries, and lawyers are responsive to at varying degrees (Minow 1987; Williams 1991).

While the liberal legal model is the primary, legitimating, and dominant logic of the American legal system since the latter part of the 19th century, some argue it is more a legitimating ideal than a reality. Rights are ambiguous, indeterminate, and easily manipulated by those with greater resources and social, political, and economic capital (Tushnet 1984; Kennedy 1980; Buimiller 1988; Freeman 1990; Schultz 1990; Edelman 1992). Moreover, rights are easily rendered symbolic through corporate culture and compliance. Those with power use the stratified legal profession to their advantage, try to influence administrative rulings, and attempt to prevent the voicing of legal claims altogether. Despite these problems, the liberal legal logic is important to the foundation of the American legal system. As the primary formal legal process for individual litigants, courts must be attentive to rights because their legitimacy depends on it.

Over the past forty years, a secondary and competing logic arose in the legal field (Morrill unpublished manuscript). The alternative dispute resolution (ADR) movement developed in the 1970s in response to a rejection of the liberal legal model and the formalism of courts. Claims of “a litigation explosion,” (Burger 1970) “too much law” (Galanter 2002), and excessive use of adjudication to solve all problems reached their height in the 1970s and prompted a series of experiments in alternative forums to resolve legal disputes (Lieberman 1983).

The ADR movement began to take hold with a solid base of support when key practitioners, policymakers, and private organizations coalesced around the idea of a “multi-door courthouse” and the notion that alternate forums could alleviate some of the problems of courts (Edelman & Suchman 1999). As ADR rose in the last three decades, organizations embraced these forums for inter and intra organizational disputes (Westin & Feliu 1988). Lipsky and Seeber’s (1998) study showed that 88% of the 1000 largest United States Corporations use mediation or arbitration on a regular basis, especially for employment and commercial disputes. Businesses increasingly note they are satisfied with ADR and prefer ADR to resolving issues in court (Lande 1995). Internal dispute resolution also permeates within organizations namely in the form of employer grievance procedures (Edelman & Suchman 1999). The rise of the ADR logic in the legal field has been coupled with a growing scholarly literature supporting alternative dispute resolution. In particular, this literature suggests that by moving further away from formal procedural rules and the constraints of precedent, informal and alternate forums provide greater access and a disputing process that is faster, less expensive, less adversarial, more empowering, more informal, private, and capable of producing flexible, creative solutions (Fisher & Ury 1981; Menkel-Meadow 1984; Westin & Feliu 1988; Bush & Folger 1994; Bush 1989; Rosenburg 1991; Lande 1998).

Federal laws and policies have reinforced the idea that ADR is a useful tool for organizational related disputes (Lipsky & Seeber 1998). Moreover, the United State Supreme Court has upheld the validity of mandatory arbitration clauses (*Gilmer v. Interstate/Johnson Land Corp.*) and courts themselves are operating ADR programs or requiring litigants use private ADR programs (Rueben 1996, 1997). On expanding the scope of arbitration, the United States Supreme Court noted “the streamline procedures of arbitration do not entail any consequential restrictions on substantive rights” *Shearson/Am Express, Inc. v. McMahan* 482 U.S. 220, 232 (1987).

In sum, the central precept of the ADR movement is that formal adjudication is overly concerned with legal rights and nonresponsive to many social needs. Through mediation, conciliation and even arbitration, proponents contend parties have interests or needs that often differ from the legally articulated claims. Informal dispute resolvers are able to help the parties discover their real interests and empower parties to create their own solutions to problems where possible (Moore 1986; Fisher & Ury 1981; Menkel-Meadow 1984; Lande 1995). Large bureaucratic organizations are consistently using private disputing forums *in lieu of* the court system. Thus, organizations' increasingly legalized environment reflects a belief that rule-compliant fairness should be a component of private organizations and can be achieved without direct involvement from public institutions. The difference is in how liberal legal and ADR logics conceive of the meaning of rule-compliant fairness. Under an ADR logic, formal legal rights, impartiality, justice, transparency, public courts give way to informality, flexibility, solution-oriented autonomy, speed of resolution, and private courts with varying degrees of success (Galanter & Lande 1992).

While ADR has risen in use and support over the past forty years some scholars, policymakers, and practitioners who support a liberal legal model suggest that informal dispute resolution exacerbates the inequities of the formal system by undermining legal rights, discounts and overlooks precedent, privatizes and depoliticizes disputes that address important public values, and allows social biases and power differences to influence outcomes to an greater extent than courts (Abel 1982; Fiss 1984; Delgado et al. 1985; Silbey & Sarat 1989; Hofrichter 1987; Amy 1987; Fineman 1988; Nader 1993a, 1993b; Edelman, Erlanger, & Lande 1993). Thus, legal practitioners, regulators, judges, legislators, organizations, and individuals interact in a legal field with two distinct liberal legal and ADR logics regarding the purpose of law and the use of legal processes.

Overlapping Organizational and Legal Fields: Judicial Deference to Institutionalized Organizational Practices

The overlap in both actors and institutions between organization and legal fields provides an arena in which the ideas that become institutionalized in organizational fields eventually seep into legal fields. In particular, just as organizations exist within organizational fields, courts exist within legal fields (Edelman, Fuller, & Mara-Drita 2001; Edelman 2007). Because organizations and organizational actors are regular participants in the legal process, there is substantial overlap between organizational and legal fields (Edelman & Suchman 1997, 1999). As organizations seek legal advice, enter into litigation, or draw on legal constructs or categories as they devise their own policies and procedures, they come into contact with legal fields. Through this interaction, the boundaries of these fields blur and the logics merge (Edelman, Fuller, & Mara-Drita 2001; Edelman 2007).

More precisely, Edelman notes the tensions between the logics of organizational and legal fields, one anchored around efficiency and rationality, the other around rights and justice (and more recently informality), come into play when organizational and legal actors and institutions interact (Edelman 2007). As organizations increasingly "legalize" themselves through the creation of written policies and procedures and lawlike structures, these structures become a catalyst through which organizational logic is reintroduced into legal fields in a way

that influences core legal actors such as lawyers and judges (Edelman, Fuller, & Mara-Drita 2001; Edelman 2005, 2007).

Law is rendered endogenous as ideas about the meaning of law and compliance, which have been managerialized through organizational fields, shape and eventually become institutionalized within legal fields. That is, law is endogenous when “organizations are both responding to and constructing the law that regulates them” (Edelman, Uggen, & Erlanger 1999:407; Edelman 2002, 2005, 2007). Edelman, Uggen & Erlanger (1999) demonstrate that employment discrimination law is endogenous to the extent that judicial interpretations of anti-discrimination law come to incorporate the presence of institutionalized structures as evidence of fair, non-discriminatory treatment (see also Edelman et al. forthcoming).

As courts increasingly defer to internal grievance structures that place a premium on fair procedure without examining their substantive effect, they weaken the capacity of equal opportunity laws to directly effectuate change (Edelman, Uggen, & Erlanger 1999; Edelman, Fuller, & Mara-Drita 2001). Moreover, ambiguous and vaguely defined legal terms such as “discrimination” become infused with managerial values and principles that equate compliance mechanisms with per se evidence of non-discriminatory treatment. As courts embrace managerial rhetoric and values into law, organizational constructions of law gain not just organizational legitimacy, but legal legitimacy (Edelman, Fuller, & Mara-Drita 2001). The blurring of overlapping legal and organizational field logics, therefore, have powerful consequences for how courts interpret law.

In sum, unlike political scientists’ focus on the direct relationship of business with traditional public legal institutions, recent studies by new institutionalists focus on how organizations and organizational fields respond to law, often by developing lawlike structures that diffuse among organizations and become institutionalized. Thus, new institutionalists have contributed significantly to studies of the relationship between law and organizations by exploring how law “lives” within organizations and is developed by and through organizational fields. Recently Edelman and colleagues have even begun examining how organizational fields influence core legal institutions such as courts. New institutionalists, however, have rarely focused on how organizations directly interact with the legislature and regulatory agencies and do not theorize how organizational field logics affect the meaning of law at the legislative and regulatory levels. Moreover, while new institutionalists have focused on internal disputing structures, procedures, and policies, they have not explored how different dispute resolution structures, especially run by external third-party organizations, influence the meaning and implementation of law and whether and how managerial values flow into these structures.

The next section highlights socio-legal studies of organizations’ interaction with conventional and alternative dispute resolution forums. In particular, I focus more directly on studies that explore the structural advantages and disadvantages public and private dispute resolution forums provide repeat players. These studies, therefore, have implications for understanding not just how organizations can influence public legal rights, but how dispute resolution structures can influence and shape the meaning of law.

IV. Socio-Legal Scholarship on Repeat Players' Advantages in Disputing

Law and society scholars reject legal formalism and in particular, its focus on formal laws and court decisions. Instead, these scholars take a broad view of law that includes codified laws, court decisions, regulatory rules but also the social behaviors that mobilize and enact law and the other symbolic or meaning making elements of law (Seron & Silbey 2004). Law and society scholars focus on legality, *i.e.*, the ambiguous boundaries between the law on the books and the law in action, between formal rules and social norms and context, and the overlapping intersection of legal language and cultural language in society (Macaulay 1963; Selznick 1969; Ewick & Silbey 1998). The concept of legality suggests that formal legal rules on the books (statutes, executive orders, court decisions) are important but cannot be understood separate from their social context. Law includes both formal rules and laws enacted by the state and law-related principles, ideas, ideals, and rituals that permeate in society.

Research in law and society suggests that a vast amount of legal action occurs outside of formal legal settings. For example, early law and society studies show that much economic exchange occurs in the absence of formal contracts and that few conflicts or disputes end up in the courtroom or involving lawyers (Macaulay 1963; Lempert & Sanders 1986). Other early works focused on how local norms matter more than does formal law in guiding individuals with grievances toward solutions (Ellickson 1986; Engel 1998; Merry 1979). Moreover, only a very small portion of persons who believe they have been wronged take any legal action or even recognize they have suffered a legal injury (Miller & Sarat 1980-81; Felstinger, Abel, & Sarat 1980). Those that do take action often resort to informal non-legal methods of dispute resolution such as self-help, gossip, violence, or other forms of retribution (Mnookin & Kornhauser 1979; Erlanger, Chambliss, & Melli 1987; Bumiller 1987, 1988; Miller & Sarat 1980; Saks 1992).

Against this backdrop, socio-legal scholars have over the past forty years dedicated considerable focus to studying public and private legal institutions' effect on legal rights and entitlements. In 1974, Marc Galanter published "Why the 'Haves' Come Out Ahead: Speculations on the Limits of Legal Change," a seminal law and society article that analyzed the distributive effects of legal processes. Although "repeat players"¹⁰ expend resources influencing the construction of relevant rules by such methods as lobbying, Galanter focused on how repeat players play for favorable rules in the litigation "game" itself. Galanter argued that litigants who are repeat players (as opposed to "one-shotters"¹¹) shape the development of law and impede social reform through the legal system by playing for favorable rules, *i.e.*, settling cases likely to produce adverse precedent and litigating cases likely to produce rules that promote their interests (Galanter 1974). By filtering cases in which courts develop law, repeat players secure legal interpretations that favor their interests and impede the ability for one-shotters to achieve significant social reforms through the legal system.

Although Galanter set up a dichotomy between repeat players and one-shotters primarily in structural terms, his description and analysis clearly signal that in modern American society,

¹⁰ Galanter defines a "repeat player" as a person, business, or organizational entity that anticipates having repeated litigation and has the resources to pursue long-term interests (Galanter 1974).

¹¹ A "one-shotter" is a person, business, or organizational entity that deals with the legal system infrequently (Galanter 1974).

the typical repeat players are large bureaucratic organizations. Consistent with Galanter's definition of a repeat player, private organizations enlist specialist attorneys to structure future transactions, routinize their business and legal transactions to exploit economies of scale, have greater access to resources and documentary evidence, and lobby and litigate to secure favorable statutes and precedent (Galanter 1974; Albiston 1999; Edelman & Suchman 1999).

Galanter's framework is important because it highlights how unequal resources and incentives of parties may allow repeat players to control and determine the content of law and develop favorable precedent. The structure and layers of the legal system tend to situate repeat players in a position to come out ahead over the long haul especially when pitted against a one-shotter. Succinctly put, Galanter's article stands for the proposition that the "haves" are able to come out ahead because they are able to influence the public legal order.

By establishing that the "haves" do come out ahead and specifying the source and nature of their structural and legal advantages, Galanter drew a blueprint of the gap between the law on the books and the law in action, a gap that scholars have been exploring, mapping, and debating ever since (Kritzer & Silbey 2003). In particular, scholars explore and debate the limits of the legal system to achieve redistributive outcomes, the advantages and disadvantages of alternative and conventional dispute resolution structures, and law's capacity to produce social change (Kritzer & Silbey 2003; Albiston 1999; Edelman & Suchman 1999; Ewick & Silbey 1998).

Although Galanter's argument mapped the dilemmas of judicially created common-law rules and many have commented on the difficulty of successfully mobilizing legal rights, others have since expanded the analysis to social reform *legislation* designed to address a specific social problem or protect disadvantaged interests (Albiston 1999). In theory, remedial statutes bolster the position of one-shotters versus repeat players by transferring rule advantage to the one-shotter often through fee-shifting, punitive damages, and attainable legal standards that set reachable benchmarks for establishing liability. Legislative changes reflect an attempt to overcome the incremental legal advantages gained by repeat players through strategic settlement.

Albiston (1999) expanded Galanter's analysis by showing how party capacity and rule-making opportunities in the litigation process itself systematically influence and shape outcomes and doctrinal development. Examining the pattern of adjudicated outcomes in published federal court opinions in the first five years following the Family Medical Leave Act's (FMLA) passage,¹² Albiston showed publishable rule-making opportunities in the litigation process occur in dispositive motions such as motions to dismiss and summary judgment motions, which employers typically won in the first five years. Conversely, employees that typically receive favorable relief did so via settlement or trial where rule-making opportunities do not arise. Early published decisions favored employers and impacted the development of law by affecting the parties' estimates of their likely success and decisions to settle or proceed. The power and scope of legislative-created substantive rights depends not just on the statutory language, but on the legal decisions generated by courts involving individual disputes.

¹² Thus, Albiston examined the early years of a social reform statute when one might expect one-shotters to do fairly well against repeat players. She examined Galanter's claims where one "would most expect the law to protect the one-shot player: cases arising under a remedial statute granting individual rights" (Albiston 1999:871).

More recently, scholars recognize that the forums in which rights are contested and adjudicated by one-shotters and repeat players are becoming increasingly privatized. Socio-legal scholars note the increasing interrelationship and interdependence between private associations and public governments (Macaulay 1986), the rising influence of alternative venues for resolving legal conflict (Galanter & Lande 1992), and private organizations' ability to create a private legal order and internalize important elements of the legal system (Edelman & Suchman 1999).¹³

Surprisingly, although Galanter's framework has been studied quite extensively in relation to courts (Wheeler et al. 1987; Songer & Sheehan 1992; McGuire 1995; Albiston 1999; Songer, Sheehan, & Hair 1999; Dotan 1999; Lempert 1999; Seron et al. 2001; Szmer, Johnson, & Sarver 2007) and tribunals (Sandefur 2005), empirical studies of its application in informal dispute resolution forums are relatively scarce. Empirical studies of informal disputing structures using Galanter's framework focus on variation in complainants' success rates (Hanningan 1977; Hirsh 2008), the influence of occupational prestige and experience (Kinsey & Stalan 1999; Hirsh 2008), legal resources (Steele 1974; Burstein 1989; Hirsh 2008) and complaint handlers' decisionmaking (Gilad 2010).

Although socio-legal scholars have recognized the increasing legalization of organizational repeat players through internal and alternative dispute resolution structures, less socio-legal empirical scholarship has been directed at precisely *how* the economic 'haves' utilize and maintain private legal orders and what effect these dispute resolution systems have on public legal rights and the meaning of law itself. In particular, socio-legal scholars' focus has been on internal and alternative dispute resolution processes and less on institution building at the public/private divide, such as "rent-a-judges," "embedded tribunals" (Vermont's Lemon Law approach), "external private tribunals," and "free standing purveyors" (California's Lemon Law approach) (Galanter & Lande 1992:400-11). These processes have been assumed to be at least somewhat independent of direct organizational influence and control, relative to internal grievance procedures.

Law and society scholars have noted the lack of empirical research in these private or quasi-private domains (Macaulay 1986). Noting the dearth of empirical studies on "private courts," Galanter and Lande (1992) call for more studies of private dispute resolution structures, where many individuals increasingly adjudicate public legal rights:

We can, of course, patch together suggestive answers from other things we know about courts, *but we could give better answers if we had more systematic information about these private courts.* Most of the literature to date has been taken up with 'how to do it' and with theoretical polemics about the advantages and disadvantages of various private courts. *This debate needs to be more informed by data about what is actually happening and why.*

¹³ Scholars debate whether alternative disputing processes' emphasis on informality, privacy, problem solving, and speedy resolution of disputes outweighs the traditional liberal legal model's focus on formal legal rights and procedural justice (Fisher & Ury 1981; Menkel-Meadow 1984; Moore 1986; Westin & Feliu 1988; Silbey & Sarat 1989; Edelman, Erlanger, & Lande 1993; Fiss 1984; Delgado et al. 1985; Macaulay 1986).

That data will be available only if researchers have access to private courts. One significant initiative that would enhance the quality of policy-making in this area would be regulation designed to secure public access to information about private judicial proceedings (409) (emphasis added).

More recently, in 1999, Edelman and Suchman focused on how the archetypal repeat player—the large bureaucratic organization—encounters the law (Edelman & Suchman 1999). Drawing on new institutional as well as socio-legal literatures, they hypothesized organizational repeat players no longer simply influence public legal institutions, but internalize many elements of the legal system. However, they indicated that their hypothesis was “necessarily tentative” and “conjectural” and invited socio-legal scholars to empirically explore how organizational governance structures, dispute resolution or otherwise, operate.¹⁴

Thus, although socio-legal scholars identify the structural advantages repeat players maintain in public legal institutions and private organizational forums, less empirical research is directed at how different alternative dispute resolution structures shape the meaning of law and facilitate or inhibit repeat player advantages. Socio-legal scholars have not, through the use of empirical methods, thoroughly explored the link between organizational repeat players influencing the public legal order and creating and operating private legal orders.

V. Remaining Gaps in Understanding How Private Organizations Shape the Meaning of Public Legal Rights

In sum, political scientists, new institutionalists, and socio-legal scholars emphasize different mechanisms and more importantly, each answer different questions concerning the relationship between organizations and law. Political scientists have made great strides in explaining how businesses directly influence public legal institutions. Political scientists focus on the mechanisms through which interest groups influence governmental outputs, whether they are laws made by legislatures or legal rules implemented and enforced by administrative agencies. They view business behavior as driven largely by strategic preferences and tend to maintain a view of law as exogenous to organizations even as it is open to organizational influence.

However, there has been little exploration regarding how political influence is exerted beyond direct interest group influence (Hacker & Pierson 2002). Primary focus on business’ strategic responses leaves unexplored to what extent business lobbying and mobilization are driven by institutionalized norms and practices developed by organizations. For example, political scientists focus less attention on new institutional ideas about the importance of private institutional structures as a means of reshaping the meaning of law among core public legal institutions.

These limitations hinder the application of some political science theories to situations where disputes are increasingly resolved in private dispute resolution venues. For example,

¹⁴ “To date, socio-legal scholarship has rarely examined this internalization of law as a coherent phenomenon, and the available evidence, although suggestive, remains sketchy and disorganized” (Edelman & Suchman 1999:943).

although we know interest groups shop for favorable venues, less is known about what interest groups do when shifting into existing venues is unlikely to lead to favorable outcomes. Although regulatory capture takes various forms, typically capture studies focus on business capture of *existing* governmental regulatory agencies and regulatory enforcement. Capture studies also do not address organizational reshaping of formal legislative content and language once laws are enacted. Similarly, political science studies of governance focus primarily on public-private arrangements for the delivery of services and benefits, not organizational creation and development of private legal adjudicatory regimes amidst a co-regulatory scheme.¹⁵ Moreover, subterranean forms of institutional change that surface via “drift,” “conversion,” and “layering” often emerge from structures embedded *within* organizations.

By contrast, organizational sociologists who study the intersection of organizations and law examine how law is shaped by and through organizational fields. In response to ambiguous laws, organizations develop procedures, policies, and internal legal structures that diffuse among organizations and become institutionalized. New institutionalists explore how institutionalized logics and taken for granted norms permeating in organizational fields influence the meaning of law and compliance among organizations. More recently, Edelman and colleagues are examining how institutionalized practices within organizational fields even influence core legal institutions such as courts.

New institutionalists, however, rarely account for how organizations directly interact with the legislature and do not theorize how organizational field logics affect the meaning of law at the legislative and regulatory levels of government. Anchored primarily in institutionalized logics and cultural scripts, empirical studies of legal endogeneity for the most part have not focused on the political mechanisms potentially in play.¹⁶ An account of legislative and regulatory deference to organizational construction of law during the law and rule-making process needs to account for how organizations directly interact with public actors such as legislators and regulators. In sum, political scientists and new institutionalists focus on different mechanisms when explaining how organizations interact with core public legal institutions.

Similarly, new institutionalists and socio-legal scholars examine different questions when studying organizational governance structures. Existing new institutional research shows how managers, in particular, managerialized conceptions of law operating within organizational fields, influence the way in which organizations understand law and compliance. Less attention, however, is devoted to *how* or the conditions under which managerial values flow into dispute resolution structures that are administered by external third-party organizations. Although existing studies by organizational scholars demonstrate that organizations generally follow cultural scripts with little deviation (Meyer & Rowan 1977) or that organizational fields are “sites of contestation” ultimately ending in a “settled” or “stabilized” field (Armstrong 2005), there has been little if any attention to how organizational fields can: (1) be simultaneously

¹⁵ Governance scholars identify the problems with the current administrative state but have not teased out how institutionalized logics shape organizational behavior.

¹⁶ There are a few empirical studies suggesting politics matter when trying to understand legal endogeneity in other contexts such as securities regulation (Krawiec 2003, 2005; O’Brien 2007) and insurance regulation (Schneiberg 1999, 2005; Schneiberg and Bartley 2001). However, more work is needed by scholars interested in the relation of business and legal regulation.

settled in some areas and contested in others; and (2) have multiple, contested, and competing field logics as to what law and compliance means. Moreover, participant observation is rarely used to examine how law is constructed by and through an organizational field. Although prior quantitative studies highlight the diffusion of legal policies, procedures, and structures and the macro-dynamics of organizational fields, they have not sufficiently explored the micro-processes through which law is constructed by and through organizational fields and how competing legal and organizational logics press and strain against one another.¹⁷

Socio-legal scholars examine the limits of the legal system to achieve redistributive outcomes and the advantages and disadvantages of alternative and conventional dispute resolution structures for repeat players. However, socio-legal scholars have not, through the use of empirical methods, thoroughly explored the link between organizational repeat players influencing the public legal order and creating a private legal order. Private “courts” and private disputing forums are not separate and remote from the public domain, but rather, are confirmed, elaborated, extended, and often legitimated by public legal institutions (Macaulay 1984; Galanter & Lande 1992). In particular, in a world where the boundaries between public and private actors are increasingly blurred via collaborative governing arrangements, law and society scholars have not gained enough empirical leverage on *how* the “haves” maintain private legal orders, construct the meaning of law, and transform public legal rights. To the extent organizational repeat players have moved the “litigation game” outside conventional courts and into institutional venues at the public-private divide, empirical research has not sufficiently followed with an explanation of how the meaning of law is constructed through different organizational dispute resolution structures.

Drawing from political science, new institutional, and socio-legal literatures, the next chapter articulates a multi-level theory that explains how private organizations, through the fields they operate within, shape the content and meaning of public legal rights among public legal institutions *and* in organizations. Drawing from these distinct literatures, I argue that as organizations and organizational fields legalize themselves through the creation of third-party dispute resolution structures, managerial and business values influence the meaning of law among public legal institutions and organizations operating dispute resolution structures through institutional and political mechanisms.

¹⁷ Moreover, while new institutional scholars recognize the existing tension between liberal legal and ADR logics among legal fields, there has yet to be a study to operationalize these tensions within the legal field, especially *vis a vis* organizational logic.

CHAPTER THREE

AN INSTITUTIONAL-POLITICAL THEORY EXPLAINING HOW PRIVATE ORGANIZATIONS SHAPE THE MEANING OF PUBLIC LEGAL RIGHTS

This chapter articulates my theory for how private organizations shape the content and meaning of public legal rights. I draw from and link political science, new institutional organizational sociology, and socio-legal theories to answer my research question. I focus on the capacity of private business to influence where and how disputes over public legal rights are resolved. For purposes of this study, I define public legal rights broadly. Drawing from law and society studies (Seron & Silbey 2004; Macaulay 1963; Selznick 1969; Ewick & Silbey 1998), public legal rights consist of the formal *and* informal stages at which public legal rights are defined, constructed, and reshaped. My definition of public legal rights includes the content and meaning of legislation creating rights, the shaping of rights through judicial decisions and regulatory rules, and the working out of rights on the ground, *i.e.*, with individuals and organizations. Therefore, because public legal rights are defined and reshaped in both formal and informal settings, answering my research question, how private organizations shape the content and meaning of public legal rights, requires analyzing organizational influence on and construction of public legal rights among public legal institutions *and* within organizational fields. I separate my overarching research question into two sub-questions that explore how private organizations shape public legal rights among public legal institutions and by and through organizational fields: (1) How and under what conditions do private organizations, through the fields they operate within, shape the content and meaning of public legal rights among public legal institutions such as legislatures and courts? (2) How and under what conditions do private organizations, through the fields they operate within, shape the meaning of public legal rights in alternative dispute resolution forums they create?

The first question addresses the conditions under which private organizations influence the meaning of public legal rights among public legal institutions such that public legal rights are moved into private and state-run dispute resolution structures. Once public legal rights are channeled into private and state-run dispute resolution structures by legislative codification and judicial doctrine, the second research question explores how public legal rights are shaped by and through logics operating in organizational fields, focusing in particular on how different dispute resolution structures influence the meaning and implementation of law.

Unlike prior studies that view law as exogenous, I follow within the tradition of new institutionalists who suggest law is endogenous. This dissertation highlights how law is a continuously evolving institution that is shaped and given meaning through its interaction with organizations. I argue that the way to study how private organizations shape the meaning of public legal rights in society, both among public legal institutions and within organizations, is to examine the process through which organizational and legal field logics flow across field boundaries and the institutional and political transformation of logics within fields. I anchor my approach around two concepts drawn from new institutional studies that explain how organizations shape the meaning of public legal rights: the legalization of organizations and the managerialization of law. However, unlike prior studies, I highlight the institutional and political

mechanisms through which organizations reshape the meaning of law among public legal institutions while also highlighting the micro-processes through which different dispute resolution structures operating in an organizational field influence the meaning and implementation of law.

In response to powerful but often ambiguous laws, organizations devise strategies to preserve managerial discretion and authority while at the same time maximizing the appearance of compliance with legal principles. In this instance, I argue businesses legalize their environments by creating dispute resolution structures. These structures eventually come to be run by third-party organizations for legitimacy purposes. Once in place, these structures engender struggles over the meaning of law as organizational actors seek to implement law within organizations. Through training, socialization, and experience, organizational actors tend to construct law and the meaning of public legal rights in ways that are consistent with traditional business and managerial logics and goals. As organizations legalize themselves, they infuse business and managerial values into law that ultimately re-shapes the meaning of law and compliance among public legal institutions *and* organizations tasked with adjudicating public legal rights. Although business organizations comply with the letter of the law, business construction of the *meaning* of law and compliance ultimately transforms and at times weakens the impact of law.

In the context of public legal institutions such as legislatures and regulatory agencies, managerial values influence the meaning of law through a combination of institutional isomorphism and political contestation and lobbying. The interaction and overlap in both actors and institutions between organizational and legal fields provides an arena in which the ideas that became institutionalized in organizational fields as to the meaning of law and compliance flow into the legal field's arena through interest group lobbying and alter the meaning of law among public legal institutions. Once public legal rights have been channeled into alternative dispute resolution structures developed by and through organizational fields, the form of the dispute resolution structure, and how organizational field logics are filtered in these structures, shapes the extent to which business and managerial values influence the meaning of law, and consequently, the extent to which repeat players are advantaged. By comparing two states that developed two different institutional processes with varying degrees of business control and participation in the dispute resolution structures, I show under what conditions business and managerialized conceptions of law reshape the meaning of public legal rights and the conditions under which they do not.

Because I am examining how organizations, through the fields they operate within, influence public legal rights among public legal institutions *and* organizations, my theoretical framework divides into two parts. To answer the first question, how and under what conditions business organizations shape the meaning of public legal rights among public legal institutions such as legislatures and courts, I integrate political science accounts of how businesses influence the legislative and regulatory process with new institutional organizational sociology emphasis on organizational fields and legal endogeneity. Rather than privileging social conditions over politics when studying institutional change, or examining institutional change solely within the boundaries of politics and not social conditions, I explore how both institutional and political

mechanisms play a role in shaping the meaning of public legal rights among public legal institutions.

Organizations' capacity to shape the content and meaning of law in the legislative context results both when organizations create and institutionalize dispute resolution venues within their organizational field and when organizations directly engage in political mobilization and lobbying tactics. In particular, law's meaning is reshaped as legal and organizational field logics overlap and strain against one another. I argue the legal field's logic is bifurcated into two distinct logics that are in continual tension: (1) a "liberal legal logic" anchored in the idea of rights, justice, due process, and courts as the primary locale for resolving legal disputes; and (2) an "alternative dispute resolution logic" (ADR) anchored in the idea cost savings, informality, speed of resolution, flexibility, and resolving disputes in private (non-court) forums. Conversely, organizations operate with a "business or managerial logic" that revolves around values such as efficiency, profit, survival, managerial discretion, problem solving, and customer satisfaction. Because legal and organizational fields are structured around different logics and the legal field itself is split into two competing logics, they exert divergent forces upon the construction and implementation of law. The meaning of consumer rights are shaped and transformed as liberal legal, ADR, and business logics are mobilized by various interest groups and advocacy coalitions during the legislative process. As businesses legalize their environments by creating and institutionalizing dispute resolution structures, business logics anchored in efficiency, discretion, problem solving, and informality flow back into core public legal institutions by advocacy coalitions who re-frame the meaning of consumer protection for legislators and regulators. The overlap in both actors and institutions between organizational and legal field actors provides an arena in which the ideas that became institutionalized in organizational fields as to the meaning of compliance and law flow into the legislative, administrative, and judicial arenas in varying degrees.

My theoretical approach modifies both new institutional theories of law and organizations and political science studies of businesses by stressing how institutional processes lead to forms of compliance and construction of legal rules that become institutionalized by organizations while political mobilization, contestation, and varying political alliances determine which legal rules and structures are codified into law. In doing so, I account for the institutional mechanisms that drive legal and institutional change and simultaneously explore how cognitive, strategic, and political elements of action shape public legal rights' meaning in different ways, by different mechanisms, and in different institutional environments.

Given that private organizations shape the meaning of public legal rights by creating alternative dispute resolution forums that are legitimated and approved by states, I then address my second research question, how organizational fields shape the meaning of public legal rights in alternative dispute resolution forums they create? Unlike the first research question, the second research question requires exploring the micro-processes and mechanisms through which law is constructed in alternative forums controlled by organizations and how institutional structures operate in organizational fields. To address this question, I integrate new institutional studies of how managerial values flow into law with law and society studies of repeat players' advantages in disputing processes.

In particular, I use a variety of qualitative methods to explore how law is constructed by and through an organizational field. First, I explore whether field actors adhere to uniform or contested scripts and understandings as to the purpose and meaning of lemon laws and dispute resolution. Contrary to prior organizational sociology studies, I argue organizational fields are simultaneously settled and stable in some areas while continuously contested and in a state of disruption in others. Rather than demonstrating how managerial values influence the meaning of law in organizational fields, I articulate how organizational fields maintain conflicting field logics over the meaning of lemon laws and the purpose of dispute resolution structures. That is, field actors mediate the meaning of lemon laws through *competing* logics operating in the organizational field. Private and state-run dispute resolution structures filter these competing logics in different ways in the operation of their dispute resolution structures. Consistent with prior new institutional studies emphasizing the diffusion of managerial values through professional conferences and training seminars (Edelman, Abraham, & Erlanger 1992; Bisom-Rapp 1996, 1999), I argue whether managerial values flow into the rules, procedures, and meaning of law in private and state-run dispute resolution structures is partially dependent on the absence or presence of an arbitrator training and socialization program. The filtering of competing logics in private and state-run dispute resolution structures results in two different structures giving different meanings to substantially similar lemon laws operating in both states. These different meanings of law are reflected in different outcomes such that businesses prevail more in lemon law arbitration cases where a managerial or business logic dominates the design of the dispute resolution process and implementation of law. Thus, the form of the dispute resolution structure has critical implications for consumers' access to justice.

This dissertation, therefore, offers a theoretical explanation of how public legal rights are continuously evolving and given meaning through its interaction with organizations. I explain how private organizations endogenously shape what public legal rights mean among core public legal institutions such as legislatures, as well as how public legal rights are shaped by and through an organizational field's use of various institutional forums for adjudicating public legal rights. In particular, the meaning of law is shaped over time through a process in which organizations respond to legal ambiguity by creating dispute resolution structures that symbolize attention to law, recontextualize law through the lens of management, and institutionalize managerialized notions of what law means. Managerial values flow into legislation and regulatory rules through institutional isomorphism and political lobbying while primarily flowing into dispute resolution structures through the filtering of field logics that mediate law's meaning in these structures. By comparing two states that developed different private and state-run institutional processes, I am able to show under what conditions private organizations are able to shape the meaning of public legal rights and the conditions under which they do not.

My theoretical framework, therefore, elaborates new institutional work in organizational sociology (Edelman 1990, 1992; Edelman, Uggen, & Erlanger 1999; Dobbin et al. 1993; Sutton et al. 1994) and analyses of business influence over legislation and regulation by political scientists (Baumgartner & Jones 1993; Ayres & Braithwaite 1991; Stigler 1971; Bernstein 1955). I also contribute to law and society scholarship on repeat players' advantages in disputing (Galanter 1974), dispute resolution in organizations (Galanter & Lande 1992; Edelman & Suchman 1999), studies of the law in action (Macaulay 1963), and access to justice (Felstinger, Abel & Sarat 1980-81).

CHAPTER FOUR

STUDYING THE RELATIONSHIP BETWEEN ORGANIZATIONAL FIELDS AND LAW

This chapter sets forth the methodology for the dissertation. In particular, I explain how I study the relationship between organizational fields and law. As a reminder, because public legal rights are shaped in formal and informal institutional settings (Seron & Silbey 2004), I separate my research question—how do private organizations shape the content and meaning of public legal rights—into two sub-questions that explore the relationship between law and organizational fields: (1) How and under what conditions do private organizations, through the fields they operate within, shape the content and meaning of public legal rights among public legal institutions such as legislatures and courts? (2) How and under what conditions do private organizations, through the fields they operate within, shape the meaning of public legal rights in alternative dispute resolution forums they create? I focus on the capacity of private business to influence where and how disputes over public legal rights are resolved.

To address these questions, I conduct a case study of an organizational field. My unit of analysis, therefore, is the organizational field. I define the organizational field as comprising of automobile manufacturers and affiliated entities, including but not limited to, third-party dispute resolution administrators, state dispute resolution administrators, state regulators, private auditors, lawyers, consumer advocacy organizations, private arbitrators, state arbitrators, automobile dealers, automotive mechanical experts, and consumers involved in or concerned with resolving lemon law disputes. For brevity purposes, I refer to this organizational field as the “lemon law field.” Based on my review of prior literature on consumer warranty lemon laws (Nowicki 1999; Travis 1994) and interviews with field actors knowledgeable about lemon laws, I am relatively confident my definition of the lemon law field encompasses the primary actors and stakeholders involved with resolving consumer warranty disputes in the United States.

State consumer warranty lemon laws provide an excellent arena to examine how private organizations shape the meaning of public legal rights through dispute resolution structures because legal rights and entitlements have over time been channeled into several different dispute resolution structures operating outside the court system. Although my unit of analysis is the lemon law field and I draw from data collected across the United States, my primary units of observation to examine the lemon law field are two states with substantially similar formal lemon laws but adjudicate cases in two different adjudicatory forums operating outside the court system. In particular, I chose to compare an instance in which powerful state consumer protection laws are resolved in private dispute resolution forums funded by automobile manufacturers but operated by independent third-party organizations (California) with one in which consumer disputes are resolved in public alternative dispute resolution processes run and administered by the state (Vermont).

To answer my research questions, I draw from multiple sources of data. For the first research question, my data include legislative history, court cases, and interviews. For the second research question, my data include interviews, outcome data from lemon law arbitrations on who wins lemon law disputes, and fieldnotes generated from participation in and observation

of lemon law conferences and arbitrator training processes. I used multiple methods, including archival analysis, content analysis, participant observation, in-depth and ethnographic interviews, and descriptive statistics. The use of multiple methodologies triangulates data sources and offers greater depth and reliability in the results (Lofland & Lofland 1995; Morrill 1995; Snow & Anderson 1993; Snow, Benford, & Anderson 2003). The following explains my site selection, the particular methods used for answering both research questions, the goals in collecting data, why multiple methods were required to understand the processes through which organizational fields generate the meaning of rights, and the limitations of this study.

Site Selection

Amidst the rise of alternative dispute resolution structures beginning in the 1970s (Galanter 2002), all fifty states developed lemon laws in the early 1980s that permit third-party dispute resolution organizations to administer lemon law cases on behalf of automobile manufacturers.¹⁸ Other than California, states do not require manufacturers' dispute resolution program be certified by the state. In California, manufacturers and their third-party administrators jointly design a lemon law dispute resolution program and then apply for state certification. Once certification is granted, third-party dispute resolution organizations hire and train arbitrators on consumer warranty laws and administer lemon law programs on behalf of various manufacturers.

In addition to the private processes operating across all fifty states, thirteen states created state-run dispute resolution structures outside the court system, albeit in varying degrees. Four states directly contract with and oversee a private organization that administers lemon law disputes. Two states use administrative law judges to adjudicate lemon law disputes. Seven states use three-to-five person arbitration panels consisting of various interested stakeholders or representatives from the lemon law field. In 1984, Vermont became the first state to create a state-run dispute resolution structure. Consumers making lemon law claims are allowed to choose between using the dispute resolution structures manufacturers fund *or* Vermont's Motor Vehicle Arbitration Board ("Lemon Law Board"). Unlike the single-arbitrator system in the private programs, the Lemon Law Board in Vermont consists of a five person panel of arbitrators (three citizens, one automotive dealer, and one technical expert) appointed by the governor that hears lemon law cases twice a month in a government building. Table 1 highlights the variation in the four different dispute resolution models.

¹⁸ These laws often make claiming a legal presumption in court contingent on first using these dispute resolution structures. Thirty-three states make invoking the legal presumption in court contingent on first using the manufacturer-sponsored dispute resolution structure if one exists.

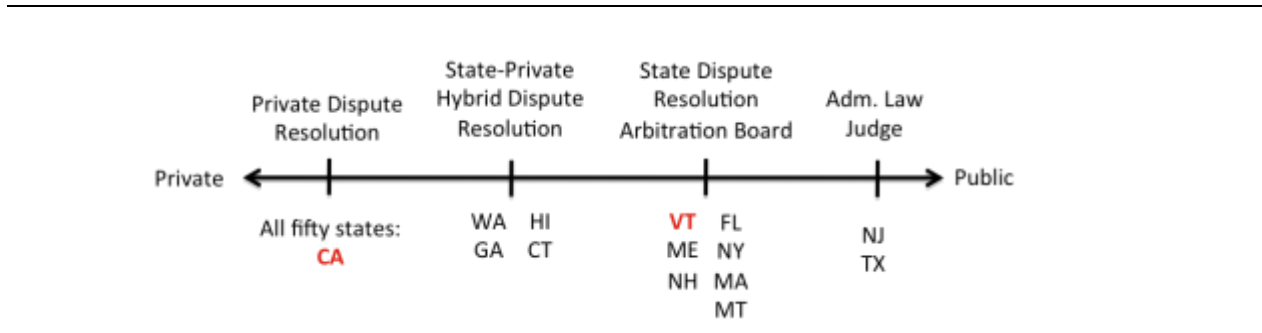
TABLE 1
THE CONTINUUM OF LEMON LAW DISPUTE RESOLUTION STRUCTURES

	Private Dispute Resolution	State-Private Hybrid Dispute Resolution	State Dispute Resolution Arbitration Board	Adm. Law Judge
Location	All 50 States	WA, GA, HI, CT	VT, ME, NH, FL, NY, MT, MA	TX, NJ
Funding of Dispute Resolution Program	Automobile Manufacturers	State	State	State
Program Administrator	Private Third-Party Administrators (contract with manufacturers to run dispute resolution programs)	State contracts with private organization to administer programs	State administrator (one person administers & oversees the operation of arbitration board)	Court Clerk
Arbitrator Recruitment	Word of mouth Mass mailing to lawyers Internet advertising	Dispute resolution organization recruits arbitrators	Governor appoints arbitrators	None
Regulatory Oversight	Minimal to none (Except CA, which certifies third-party administrator programs, monitors arbitrator training and hearings)	State monitors private dispute resolution program	None	None
Adjudicatory Structure	1 Arbitrator	1 to 3 Arbitrators	5 Person panel of Arbitrators (3 Citizens, 1 Automobile Dealer, 1 Technical Expert)	1 ALJ

Although substantively similar in the formal rights and remedies afforded consumers across states, lemon laws across all fifty states have primarily developed two different consumer protection dispute resolution structures and processes for resolving consumer disputes outside courts, one operated by third-party administrators hired by automobile manufacturers and the other administered by states.

My site selection, therefore, was driven by two goals. First, I wanted to compare two states operating dispute resolution systems outside the court system. Second, I wanted to select two states with significant variation along the dimension of public/private control of the dispute resolution structures.

FIGURE 1
CASE SITE SELECTION



Although all fifty states allow third-party administrators to operate lemon law programs on behalf of manufacturers, I chose California because there are more lemon law cases in California than in any other state. Because there is an active docket of lemon law cases, third-party administrators conduct more arbitrator training processes in California than in any other state and consequently provided me more opportunity to collect data. Also, I reside in California, which made my ability to conduct in-depth fieldwork as a graduate student feasible.¹⁹ Of the thirteen state-run dispute resolution programs, I eliminated the two states using administrative law judges because I wanted to avoid a court versus alternative dispute resolution comparison. I also eliminated the four states that contract directly with a private organization because these structures reflect a mixture of public and private control. Of the remaining seven states using arbitration panels, I narrowed the possible states to Vermont, Maine, and New Hampshire because these dispute resolution programs were the most clearly publicly run while the others had elements of the private structure in the early stages (including sometimes mandating consumers use private programs before using state-run structures). Of the remaining three states, Vermont's program coordinator expressed the most willingness to grant access and be studied. Choosing California and Vermont allowed me to explore the variation in how public legal rights were channeled into different dispute resolution processes through the legislative process, while also allowing me to explore the variation in how these two dispute resolution structures construct and implement law on the ground.

Methods for Research Question 1: Archival Analysis of Legislative Records, Content Analysis of Cases, & Interviews

In order to examine research question number one, how and under what conditions automobile manufacturers shape the meaning of legislation and court decisions and determine where public legal rights were adjudicated, I analyzed the legislative history pertaining to California and Vermont's consumer warranty protection laws, respectively. I also conducted interviews with legislative analysts who drafted the California and Vermont Lemon Laws. Finally, I conducted content analysis of lemon law court cases.

¹⁹ I did not compare private dispute resolution programs in Vermont to its state-run dispute resolution program because I would not have been able to collect enough data to make a meaningful comparison. Vermont's private dispute resolution programs typically only hear one to three cases per year. Training programs for the private programs, therefore, occur too infrequently in Vermont for meaningful comparison.

I obtained the legislative history documents from California and Vermont legislative archives, respectively.²⁰ Because the California legislature does not keep transcripts of oral testimony at legislative hearings during the time period I reviewed, my inquiry consisted of written records. In Vermont, I was able to acquire written records as well as cassette tapes of public hearings held during legislative debate concerning the creation of their Lemon Law. These tapes were subsequently transcribed and analyzed. By evaluating the legislative record in both states, I took advantage of situations in which organizations and legislators voluntarily produced information when a variety of statutory provisions and amendments to the Vermont and California Lemon Laws were being created, drafted, and evaluated. With these data, I conducted a qualitative content analysis and quantitative coding analysis of the legislative history that traces how legislators, manufacturers, and other field actors interacted over time and accounted for differences in the legislative process between these states. These data also allowed me to examine how public legal rights were legislatively channeled into a private dispute resolution structure in California and into a state-run structure in Vermont.

Legislative Documents

To develop my initial sampling frame for my coding of the legislative history, I located: (1) all documents relating to the initial creation of the California Song-Beverly Act in 1971, the law that established warranty protection for consumers; (2) all documents relating to the enactment of the California Lemon Law in 1982 or subsequent amendments thereafter until 2006; and (3) all documents relating to the enactment of the Vermont Lemon Law in 1984 or subsequent amendments thereafter until 2006.²¹ This inquiry produced approximately 1,900 pages of legislative history. My dataset constitutes the entire universe of documents available in California and Vermont legislative archives concerning the parameters of my inquiry mentioned above.

The legislative history contained a variety of documents. There were three major categories: letters, legislative documents, and miscellaneous. There were a variety of letters in the legislative history from many different groups, including but not limited to: manufacturers, automobile dealers, private industry advocacy organizations, legislators, governors, plaintiffs and defense lawyers, consumers, consumer advocacy groups, manufacturer associations and manufacturer advocacy groups. These detailed letters provided a timeline and tremendous insight into what each person or group's position was concerning the relevant bill or proposal before the legislature.²² The legislative documents included committee reports, amendments, voting records for some bills, legislative analyst reports, bill summaries, proposals, red-line revisions of statutes, handwritten notes of legislators, and Judicial, Senate, and Legislative Committee analysis. The miscellaneous documents consisted of press releases, newspaper articles, interviews with legislators, reports from the federal government, and other documents

²⁰ After identifying which bill numbers were relevant to my inquiry, I contacted each state legislative archive and requested copies of the available records.

²¹ Vermont's Lemon Law was the first law in Vermont to establish warranty protection for consumers.

²² Many manufacturers also provided their own reports concerning their private dispute resolution venues to assist the legislature. The legislative history included General Motors' position statements, California Manufacturers' issue statement, report, and editorial, California Automobile Dealers Association letters, New Motor Vehicle Board letters, Motor Vehicle Manufacturers Association analysis, Ford Motor Company's release statement in opposition to the Lemon Law, problem papers, appeals board brochures, charts, and proposed amendments.

related to consumer warranty protection. In addition, transcripts of public hearing testimony in Vermont allowed me to explore what each interest group's public position was concerning the Lemon Law.

After my initial collection of all documents, I screened the documents for relevance. Any documents pertaining to the following three categories were considered relevant documents and therefore, included in my study: (1) lemon law field actors' involvement in the creation of the Song-Beverly Act; (2) the creation of the California Lemon Law in 1982 and/or amended provisions relating to either the establishment of a legal presumption or the creation of dispute resolution procedures; or (3) the creation of the Vermont Lemon Law in 1984 and/or amended provisions relating to either the establishment of a legal presumption or the creation of dispute resolution procedures. The Lemon Laws enacted in the 1980s by California and Vermont were specifically enacted to deal with warranty issues for new motor vehicles. My purpose was to identify and closely examine the complete history of the creation and codification of private and state-run dispute resolution procedures into Lemon Laws.²³ I was particularly interested in examining these statutes because they establish a "legal presumption" of what constitutes a "reasonable number of attempts" for automobile manufacturers to fix warrantable defects. Consumers are eager to invoke this statutory provision because it establishes specific conditions under which consumers are entitled to full restitution or replacement of their vehicles. I identified 538 pages of relevant documents.

Once my initial screening of documents was complete, I coded my documents across a series of variables:

- (a) Date of Document;
- (b) State (1=CA; 2=VT);
- (c) Author (1=Legislature; 2=Manufacturer; 3=Auto Dealer; 4=Private industry lobbyist/advocacy org; 5=Consumer; 6=Consumer Advocate; 7=Journalist/Media; and 8=Other);
- (d) Document type (1=Newspaper/Magazine; 2=Letter; 3=Legislative Bill Report/Analysis/Testimony; 4=Legislative Statutory Revisions/Voting Record; 5=Legal Documents such as legal pleadings and copies of published cases; 6=Business Documents; 7=Other);

²³ The analysis in the following sections is derived from my review of the legislative history for the following statutes and amending bills: Cal. Stat. 1970, ch 1333, SB 272; Stat. 1971, ch. 1523, SB 742; Stat. 1972, ch. 1293, SB 685; Stat. 1976, ch. 416, SB 568; Stat. 1978, ch. 991, AB 3374; Stat. 1980, ch. 394, AB 2263; Stat. 1981, ch. 150, SB 282; Stat. 1982, ch. 381, AB 3561; Stat. 1982, ch. 388, AB 1787; Stat. 1986, ch. 547, AB 3835; Stat. 1986, ch. 547, AB 3835; Stat. 1987, ch. 1280, AB 2057; Stat. 1988, ch. 697, AB 4513; Stat. 1989, ch. 193, AB 1104; Stat. 1991, ch. 689, AB 211; Stat. 1992, ch. 1232, SB 1762; Stat. 2002, ch. 306, SB 1765; VT Legislative bills H.0039, H.0537, S.0105, Bill File Copy 1983-84 (H.48). I also reviewed and transcribed the following public hearing testimony provided to me by the Vermont legislative archives: Senate Judiciary April 16, 1999, April 20, 1999, & April 21, 1999, Senate Highways & Traffic Committee transcripts, April 6, 1984, April 9, 1984, April 14, 1984, and April 17, 1984; House Commerce Committee transcripts January 8, 1988, January 28, 1988, February 9, 1988, February 16, 1988.

- (e) Bill number; and
- (f) Summary of the content of document.

I also coded documents to determine the absence or presence of business²⁴, ADR²⁵, and liberal legal²⁶ logics in the legislative discourse. The term “logic” refers to the way organizations and individuals organize their thoughts and assumptions about meaning, values, schemas, and culture (Friedland & Alford 1991). First, I determined whether each document was “relevant.” A relevant document was defined as any document explicitly discussing or mentioning liberal legal, ADR, or business logics (0=No, 1=Yes). These categories were not mutually exclusive. A document could, for example, both reflect ADR and business logics.

To the extent that a document reflected a presence of a liberal legal, ADR, or business logic, I then coded for the absence or presence of subsets within each liberal legal, ADR, or business logic category. As discussed in Chapter 2, subsets within each logic were derived from long-standing literatures examining ADR (Galanter & Lande 1992; Moore 1986; Fisher & Ury 1981; Menkel-Meadow 1984), liberal legal (Minow 1987; Williams 1987; Tushnet 1984; Kennedy 1980; Buimiller 1988; Freeman 1990; Schultz 1990; Edelman 1992), and business logics (Orloff & Skocpol 1984; Jacoby 1985; Baron, Dobbin, & Jennings 1986; Selznick 1969; Edelman 2007).²⁷

For liberal legal logic, I coded for the absence or presence of the following specific logics: (1) protecting formal legal rights for individuals, (2) a desire to adhere to using formal rules of evidence, (3) due process (neutral decisionmaker, notice, opportunity to be heard, right to counsel), (4) a belief using the court system is the most appropriate domain to protect rights, and (5) other.

For alternative dispute resolution logic, I coded for the absence or presence of the following specific logics: (1) quickness (resolving conflicts quickly), (2) informality (resolving legal disputes informally, decreased reliance on formal legal rules of evidence, procedures), (3) privacy (resolving legal disputes outside the court system), (4) saving costs, (5) flexibility (extra-legal remedies, flexibility in legal solutions), and (6) other.

²⁴ A business logic was defined in my codebook as “a statement that reflects core business values and orientations, including profit, efficiency, productivity, customer satisfaction, and managerial discretion.”

²⁵ An alternative dispute resolution logic was defined in my codebook as “a statement that reflects an affirmation and affinity for resolving disputes outside of courts, or reflects a belief in resolving conflicts quickly, informally, privately, saving costs, and often with a flexible, problem-solving orientation that focuses on interests, needs, and problems as opposed to formal legal rights.”

²⁶ A liberal legal logic was defined in my codebook as “a statement reflecting an affirmation and/or affinity for protecting formal legal rights of individuals, equality, justice, and formal rules of evidence and procedure. It also reflects a general belief that using the court (or publicly transparent) system is the most appropriate domain to achieve liberal legal values.”

²⁷ For a more thorough discussion of these literatures, see Chapter 2 of this dissertation. While the majority of specific business values I used were derived from prior literature, “customer satisfaction” was added into the coding scheme after preliminary coding revealed a high level of documents indicating that “customer satisfaction” as a frame being offered by private actors. Thus, customer satisfaction was added into the coding scheme and coded for throughout all documents in the dataset.

For business logic, I coded for the absence or presence of the following specific business logics: (1) profit (an organization’s value and desire to increase revenue), (2) efficiency or efficient management (an organization’s value in keeping costs down), (3) productivity (an organization’s value and desire to be task oriented/get things done, resolve problems), (4) managerial discretion (an organization’s desire to maintain flexibility, control, and authority over decisions affecting the organization), (5) customer satisfaction (an organization’s desire to keep customers happy), and (6) other. These codes were not mutually exclusive. A document, for example, could reflect the presence of multiple ADR logics. Table 2 summarizes the logics that I coded for in the legislative discourse:

Table 2
LOGICS CODED FOR IN LEGISLATIVE DISCOURSE

Liberal Legal Logic	ADR Logic	Business Logic
Protecting Formal Rights	Quickness	Profit
Formal Rules of Evidence	Informality	Efficiency/Efficient Management
Due Process	Privacy	Productivity
Court System as preferred venue	Saving Costs	Managerial Discretion & Control
Other	Flexibility	Customer Satisfaction
	Other	Other

I followed this coding scheme when examining legislative documents in California and Vermont. As I mentioned earlier, I was forced to slightly adjust my coding scheme in Vermont because significant portions of the Vermont legislative record contained transcripts of oral testimony at public hearings before the legislature. In Vermont, I treated each speaker as a “document” for purposes of coding and coded each speaker’s testimony for all the variables in my coding scheme.

Once coding was complete, I evaluated the raw number, percentage, and proportion of representation of values annually and aggregately over the thirty-five year time period. The absence and presence of various liberal legal, ADR, and business logics were evaluated over time by author, document type, bill number, state, relevance, and specific logics invoked. My quantitative coding allowed me to evaluate the change in the legislative discourse over time, the prevalence of logics in legislative discourse, and the variation in which interest groups were mobilizing various logics in California and Vermont. The coding suggests that as legal and organizational fields and logics overlapped, organizational ideas about the meaning of law and compliance flowed into legislatures and reshaped law’s meaning in varying degrees.

In addition to quantitative coding, I also conducted qualitative content analysis of each document. Each document was coded for substantive content. I employed “process tracing” (“PT”) (George & Bennett 2005) methods and carefully analyzed the legislative history. As a “within-case method,” PT allows inferences about causal mechanisms within the confines of a single or few cases (Bennett & Elman 2006). PT is also useful for exploring the under-

appreciated temporal dynamics of institutional change. When using PT, the researcher examines archival documents to determine whether a causal process suggested by a theory is in fact evident in the sequence of events in that case (George & Bennett 2005). This method allowed me to evaluate whether the California and Vermont codification of private and state-run institutional venues could be explained by sociological new institutional theory, interest group politics and lobbying, or by blending insights of both theories. I traced the legislative history with an eye for information that provided context, processes, or mechanisms that contribute distinctive leverage in causal inference (Brady & Collier 2004). By exploring the sequence of events as bills and amendments were proposed and the resulting decisionmaking outcomes of the legislature, I was able to make “causal process observations” (Brady & Collier 2004:252-55). I was also able to evaluate differences in the discourse. PT is considered most persuasive when the researcher is able to trace an account from beginning to end, when there are few breaks in the causal story, when there are multiple consistent within-path inferences related to a centrally important theory are shown to be true, when the quality of the evidence is high, and where some of the evidence is of ‘smoking gun’ quality, *i.e.*, the evidence strongly corroborates the explanation (Bennett & Elman 2006). As I will demonstrate, all these factors were present in my study of California and Vermont.

I compared the content and requirements of proposed laws with what was ultimately enacted into law. I paid particular attention to the written dialogue and struggle that took place among manufacturer and consumer advocacy groups and the legislature. I explored advocacy coalition formation and behavior, issue redefinition, venue creation by manufacturers over time, to uncover the conditions under which consumer warranty protection law became endogenous. In particular, while both states adopted dispute resolution structures into law during the 1980s (consistent with new institutional studies on diffusion and isomorphism), the political alliances and mobilization by particular interest groups were different in each state and affected the form and type of dispute resolution structure ultimately adopted into law. PT allowed me to explain how the different political alliances in both states led to private and state-run dispute resolution structures being adopted into law. Thus, consistent with political scientists who study the subtle ways institutions develop and change over time (Hacker 2002, 2004; Barnes 2007, 2008; Pierson 2000a, 2004), I used the legislative history as a “testing ground for theory and not just the raw material for compelling narrative” (Hacker 2002:65).

Interviews

The quantitative and qualitative analyses were supplemented with in-depth interviews with legislative analysts who were involved in drafting the California and Vermont Lemon Laws. I identified which individuals to interview by making a list of the legislative analysts who appeared in the legislative record as drafters of various bills. Based on the legislative records in both states, there were seven primary drafters of the Song-Beverly Act and California and Vermont Lemon Laws. I invited these individuals to be interview subjects in my study. Four individuals agreed to conduct in-depth interviews. I interviewed one of the people who drafted the Song-Beverly Act in 1971, two individuals involved with drafting the California Lemon Law in 1982, and the legislative analyst who drafted the Vermont Lemon Law in 1984. In-depth interviews with the actual drafters of these Lemon Laws provided another opportunity to understand the processes through which these laws were created and altered over time. I also interviewed a manufacturer representative involved with lobbying legislatures regarding lemon

laws across the United States in the 1980s. Although retrospective interview data about events that took place twenty-five to thirty-five years ago may not be reliable, these laws were clearly salient to lawmakers, who reported that this legislation was among the most meaningful and important work they did. In addition, my interview data were largely corroborated by patterns in the documentary data from both California and Vermont.

The quantitative and qualitative coding of the legislative history and interviews with the drafters of these laws allowed me to evaluate the conditions under which organizations shape the meaning of legislation. Coding for the change in ADR, business, and liberal legal logics in the discourse *and* conducting content analysis illuminated how institutional *and* political mechanisms influenced consumer protection legislation in two states. This research approach, however, suffers from a long-standing limitation to archival research: it is always possible that the legislative archives do not contain all the actual documents pertaining to the creation and development of these lemon laws.²⁸ While it is always possible my data set is missing documents or that other relevant documents exist, I obtained and evaluated every written and audio file made available by California and Vermont's legislative archives from the time period of my study. Moreover, interviews with key actors involved with drafting lemon laws were largely consistent with the legislative record.

Court Cases

In addition, I used Westlaw to search for any published state court decisions that interpreted the California and Vermont Lemon Law dispute resolution procedures, Civil Code section 1793.22(c) and Vermont 9 sections 4170-81.²⁹ This search served two purposes. First, it allowed me to evaluate through content analysis what California and Vermont courts wrote regarding Lemon Law dispute resolution proceedings. Second, it allowed me to determine whether Vermont and California courts referenced private and state-run dispute resolution structures in their opinions and if so, determine whether courts afforded any deference to such procedures. Eight cases fit these criteria, four in each state: *Jernigan v. Ford Motor Co.* (1994), *Suman v. BMW of N. America* (1994), *Kwan v. Mercedes-Benz of N. America* (1994), and *Suman v. Sup. Ct (BMW of N. America)* (1995); *In re Villeneuve* (1998); *Pecor v. General Motors Corporation* (1998); *Cyr v. Subaru of America* (1994); *Muzzy v. Chevrolet Division General Motors* (1989). As I will show in Chapter 5, these cases reveal that courts deferred to the logic of private organizations as to the value of alternative dispute resolution processes.

Methods for Research Question 2: Participant Observation, Interviews, & Statistics

To address the second research question, how do organizations, though the fields they operate within, shape the meaning of public legal rights in alternative disputing forums they create, I primarily used two different qualitative methods: participant observation and

²⁸ Moreover, the archives in California and Vermont did not necessarily have the same types of data. For example, Vermont's archive contained audio transcripts of public testimony at legislative hearings while California did not.

²⁹ Under the California database, my search term on Westlaw was "Song /2 Beverly & dispute /2 resolution & 1793.22." This search produced fourteen cases. Ten of the fourteen cases were excluded because these cases did not interpret the dispute resolution provision in any manner and therefore, did not fit the sampling frame criteria. For Vermont, my search term on Westlaw was "Motor Vehicle Arbitration Board." This search produced four cases.

interviewing. Participant observation involves direct, systematic observations of organizations and people as they go about their daily lives (Douglas 1976; Morrill 1995). This research method also involves participating in the life of the group one is studying (Douglas 1976). Participant observation is a research technique that helps reveal “*how*” the world operates as opposed to “*why*” and opens up research settings and environments, (such as training processes and conferences), that are typically closed to other data gathering techniques (Snow & Anderson 1993). The internal validity of the participant observer’s findings are based on multiple observations and prolonged engagement in the field (Snow, Morrill, & Anderson 2005).

Using qualitative methods to study an organizational field posed a unique challenge: Where does a researcher go to examine how an organizational field shapes the meaning of public legal rights? In particular, there is no one obvious research site to evaluate how an organizational field shapes the meaning of public legal rights. Consistent with prior definitions of organizational fields,³⁰ my research design attempted to account for and evaluate how automobile manufacturers and affiliated entities coexist and interact while also determining whether field actors share common systems of meaning in this instance, concerning the meaning of law.

To explore the multifaceted dimensions through which organizational fields influence the meaning of public legal rights, I was a participant in and observer of multiple sites across the country where field actors convene (Czarniawska 2004). Specifically, I was a participant observer at annual lemon law conferences and meetings. This allowed me to examine the social epicenter of collective life to see where lemon law field actors from across the United States meet, interact, and engage one another (DiMaggio & Powell 1983). I also participated in and observed the training programs California and Vermont arbitrators undergo to understand how public and private organizations socialize and train arbitrators on what lemon laws mean. In addition, I conducted confidential, in-depth interviews where field actors in California and Vermont were emboldened to share their perceptions, attitudes, and opinions about lemon laws, dispute resolution, and other entities. I also conducted in-depth interviews with field actors not located in California and Vermont in order to broaden my analysis of the lemon law field and evaluate whether there was variation in field logics. A central focus of my research was on understanding how the meaning of consumer rights gets constituted, deployed, contested, and perhaps altered by the particular private or state-run dispute resolution process in California and Vermont. Finally, I collected outcome data from lemon law arbitration hearings to evaluate whether the different meanings of law operating in different dispute resolution structures in California and Vermont are reflected in who tends to win consumer disputes. Thus, I used different sources of data from a variety of locations to study the lemon law field.

My research design for studying the lemon law field relied heavily on field actors. Field actors operate within a field and reflect institutionalized modes of thought, schemas, and rituals. The statements of field actors, taken collectively, reflect the logics and institutionalized modes of thought operating in the lemon law field. As a result, I treated field actor statements as representations of the logics operating in the lemon law field. However, it is important to note,

³⁰ New institutionalists often define an organizational field as the community of organizations and affiliates that coexist, including suppliers, customers, and competitors that share common systems of meaning, values, and influence (DiMaggio & Powell 1983; Scott 1983; Edelman 2007).

field actors are not without agency because they talk to and interact with other field actors. Thus, while field actors reflect the logic of fields, field actors in some cases shape the logic of fields.

I separated my study of how organizational fields shape the meaning of public legal rights in alternative disputing forums they create into two sub-parts that focused my inquiry. Consistent with prior studies' focus on field logics operating within organizational fields (Tolbert & Zucker 1983; Friedland & Alford 1991), I began by identifying the field logics operating within the organizational field concerning lemon laws and dispute resolution. Therefore, I sought to answer three questions: (1) How do private and public actors within the lemon law field understand the purpose and meaning of lemon laws?; (2) Do their conceptions cohere or conflict?; and (3) How do public and private actors tasked with resolving lemon law disputes think alternative dispute resolution forums should operate? Through interviews with field actors across the country as well as participant observation at conferences where lemon law field actors come together and interact, I explored the field logics that are operating in the lemon law field, whether field actors adhere to uniform or contested scripts and understandings as to the purpose and meaning of lemon laws and dispute resolution,³¹ and whether, contrary to prior studies, the lemon law field is simultaneously settled in some areas and contested in others. Consistent with grounded theory approaches (Charmaz 2001), I used my qualitative fieldwork to determine the logics that were operating in the lemon law field.

Once I determined what the field logics were and found that public and private field actors interpret the meaning of lemon laws through competing business and consumer logics, I focused more directly on how law is constructed through different dispute resolution structures operating in the lemon law field. I asked three sub-questions: (1) How do private and state dispute resolution structures shape the meaning and implementation of law? (2) How do private and state dispute resolution structures incorporate competing business and consumer logics to different degrees? (3) How do private and state dispute resolution structures relate to who tends to win lemon law cases? I empirically explored the extent to which different dispute resolution structures amplify or suppress competing logics in the operation of their structures and what influence this filtering had on the meaning and implementation of law. The following highlights more concretely how I used participant observation, interviews, and statistical analyses to study the lemon law field.

Participant Observation at Lemon Law Conferences

I attended two International Association of Lemon Law Arbitration ("IALLA") conferences. IALLA conferences are four-day annual conferences that bring together various actors engaged in lemon law dispute resolution to discuss important issues concerning lemon laws. I chose these conferences because informants in the lemon law field indicated that these conferences were where the majority of actors involved in lemon law dispute resolution interact and engage one another. I attended conferences to assess the state of the field. These conferences allowed me to observe the field and to explore how various organizational actors

³¹ This inquiry sought to reveal whether similar to prior studies, managerial or business conceptions of law influence the meaning of law in an organizational field (Edelman, Fuller, & Mara-Drita 2001; Edelman, Erlanger, & Lande 2003; Marshall 2005) or whether there are potentially conflicting meanings of law.

think about lemon laws and dispute resolution, to document what logics or frames were dominating the discourse, and to identify the areas where field logics of various actors diverged or were in agreement.

IALLA conferences were typically held at a hotel. Approximately forty to sixty-five field actors attended these conferences, including but not limited to, automobile manufacturers, automobile dealers, third-party dispute resolution administrators, defense lawyers, state regulators, state lemon law program administrators, and consumer advocates. The attendees consisted of approximately 65% men and 35% women. The vast majority of private industry attendees were white. Conversely, state administrators, state regulators, or consumer advocates had a greater representation of minority persons attending these conferences.

Panel sessions occurred daily and brought attendees together in one conference room.³² Conference rooms were set up much like a classroom with a podium and table for discussants in the front of the room and rows of tables and chairs for audience members to sit and take notes. Because of this arrangement, I was able to blend easily into the audience, to observe audience behavior, and to take notes on panel presentations and question and answer sessions that followed. During panel sessions, I paid particular attention to emerging themes and frames offered by field actors, where actors were seated to see if public and private actors segregated themselves, and what were audience reactions to various questions and responses by field actors. During official break periods, I observed who field actors interacted with and paid particular attention to whether business and state actors engaged one another. At times, I also participated in discussions during official break periods and recruited individuals to be a part of my study.

Panel sessions addressed various issues relating to Lemon Laws, including but not limited to: (1) updates by various states on changes in Lemon Laws; (2) panels on the meaning and interpretation of various legal terms and elements of Lemon Laws; and (3) discussion on how environmental changes and a desire for “green” cars change the state of Lemon Laws. There were also a series of lunches and dinners that allowed for informal networking and dialogue to take place among various actors. Observing field actors in a variety of settings at these conferences allowed me to see how the lemon law field was contested in some areas while cohesive in others.

Participant Observation of Training Processes for California and Vermont’s Dispute Resolution Arbitrators

To more directly address how private and state-run dispute resolution structures influence the meaning and implementation of law, I was a participant in and observer of arbitrator training programs in California and Vermont. Two of the three third-party administrator organizations operating dispute resolution programs on behalf of automobile manufacturers in California (and across the United States) granted me access to not only observe their arbitrator training programs but to participate and become a certified arbitrator. My participation in these programs allowed me to “go deeper into the field” and to gain greater access to more relevant data than I could have with unengaged observations (Snow et al. 1986). Both third-party administrator organizations that I studied were national organizations that specialize in dispute resolution

³² There was never more than one panel session going on at a time.

(mediation and arbitration) of a variety of disputes often involving consumers and businesses. One organization, which I refer to as National Dispute Resolution (“NDR”), only recruits lawyers to be lemon law arbitrators. The other organization, the Bureau of Dispute Resolution (“BDR”), recruits primarily non-lawyers (though lawyers are permitted to join).³³ Both California training programs use non-lawyers to train arbitrators.

Each training program consisted of two-to-three day training sessions run by the respective organization. Training processes in California typically occur one to two times per year. I attended and participated in two NDR training sessions and two BDR training sessions over the course of eighteen months. These sessions took place in conference rooms at various hotels in northern and southern California. I also attended BDR’s one-day refresher training program. I am relatively confident that my representation of how these training processes operate is accurate in part because, consistent with standard procedures and protocols for participant observation fieldwork, I stayed in the field for two as opposed to one “cycle” or “season” and reached saturation, *i.e.*, the observations I was making in training processes were redundant (Morrill 1995; Lofland 1995).

Similar to the lemon law conferences, these training programs occurred in conference rooms in hotels. Because conference rooms were set up much like a classroom with a podium in the front of the room and rows of tables and chairs for trainees to sit and take notes, I was able to blend easily into the audience and take notes while the trainer taught the course. Approximately twenty to forty arbitrators attended an arbitration training course. The arbitrators that participated in the BDR’s program were largely white males. While the participants in the NDR training program were also predominantly white, approximately half of the participants in the NDR’s training program were female. The NDR also had more ethno-racial diversity among its arbitrator population. All training courses began with the trainers introducing themselves and then asking the prospective arbitrators to introduce themselves. Trainers proceeded to primarily conduct the course through a lecture-format style, although questions from students were encouraged. Each training session also contained a role playing component, whereby arbitrators were asked to break out into groups of three and simulate an actual arbitration hearing. Training sessions typically ran all day, starting at 8:00 a.m. and ending at 5:00 p.m. The BDR also provided dinner for participants in the training program.

My primary goal while in the field was to understand how arbitrators are socialized into the field and taught what the lemon law means. In doing so, I evaluated how trainers were amplifying or suppressing competing business or consumer logics that I had identified through participant observation in conferences with field actors and in-depth interviews. Attending training programs allowed me to understand the rules and procedures arbitrators are taught to follow. I also evaluated the extent to which training programs employed formal legal formulas for determining breach of warranty and what if any extralegal criteria trainers used to teach what constitutes a breach of warranty. Because trainers indicated they use the same training curriculum and philosophy in each state minus any variation in state lemon laws, my findings concerning how two of the three third-party administrators socialize and train arbitrators are

³³ As a condition of being granted access, both organizations requested I use pseudonym names in any scholarship produced from my research. Thus, I have replaced the actual names of each organization with the pseudonyms “NDR” and “BDR.”

likely generalizable across the United States. Moreover, the two organizations I studied handle the majority of lemon law cases in the United States.

During my research, I was surprised to learn that unlike California, Vermont does not conduct a formal training program but instead trains new arbitrators on an individual basis. Accordingly, my evaluation of their training program consisted of in-depth interviews with the state program administrator in charge of training, Vermont's legal counsel, and asking all arbitrators I interviewed to explain the training they received. Despite Vermont's lack of a formal training program, I am relatively confident that I captured how Vermont trains its arbitrators because the program administrator and legal counsel spoke in detail about their role in training, the goals and points of emphasis in the training program, and the rationale for having a panel of arbitrators adjudicate cases in a public forum. I also asked arbitrators a standardized series of questions concerning the training they received. The program administrator also provided me with the written training materials that she uses when training arbitrators.

The data for my dissertation include fieldnotes and observations made during training sessions. I was not permitted to tape record any part of the training programs I attended. This limited my ability to obtain many direct quotes from actors. To overcome this obstacle, I took detailed notes during the sessions and drafted my fieldnotes shortly thereafter (Emerson, Fretz, & Shaw 1995). My fieldnotes included notations concerning the physical parameters of the room, where people sat, the ethnicity, race, gender, and approximate age of participants, how law was being taught by trainers, questions students raised, informal conversations between and among individuals I was sitting next to, and any information uncovered in informal interviews that occurred while in the field. My notes were contemporaneous with my observations and reflect events as they occurred given my position in the field as a researcher listening to training sessions and taking notes. I am confident that the data that I collected accurately reflects how these different organizational structures operate and give different meanings to law.

In-Depth & Ethnographic Interviews

I used two different interview methods: in-depth and ethnographic. In-depth interviews are typically semi-structured, recorded interviews that feature questions that elicit open-ended responses from the interviewee. In-depth interviews involve not only asking questions, but the systematic recording and documenting of responses coupled with intense probing for deeper meaning and understanding of the responses (Lofland 1995).

I conducted forty-six in-depth interviews with eleven categories of participants: (1) automobile manufacturers; (2) two separate third-party administrator organizations; (3) California state regulators; (4) California private arbitrators; (5) Vermont state administrators; (6) Vermont arbitrators; (7) state regulators (not in California and Vermont); (8) state administrators (not in California and Vermont); (9) private auditors; (10) automotive dealers; and (11) lawyers. I applied a combination of "purposive" (units, people, observations are selected with pre-established criteria), "niche" (targeting certain groups), and "snowball" (research subjects refer researcher to additional potential subjects) sampling (Lofland 1995). In particular, my observations at the annual lemon law conferences I attended allowed me to identify the primary contact persons for various public and private organizations. Thus, by locating where

field actors came together *i.e.*, conferences, I was able to target field actors and to recruit them to become research subjects for in-depth interviews at a later date. Also, many interviewees recommended other actors with tremendous knowledge, experience, and involvement with lemon law disputes.

In addition to in-depth interviews, I also conducted fifty-seven ethnographic interviews with field actors during my participant observation in lemon law conferences and training processes in both states. Ethnographic interviewing is a type of qualitative research that combines immersive observation and directed one-on-one interviews (Spradley 1979). Because these interviews occur in interviewees' natural settings while they are performing their normal tasks, these interviews are less formal. These interviews varied in length from five to thirty minutes and generally involved eliciting opinions about lemon laws and dispute resolution from California and Vermont arbitrators, administrators, and state regulators. While I focused primarily on California and Vermont, I also conducted ethnographic interviews with field actors in other states, mostly at lemon law conferences.

Table 3 highlights the various types of actors and number of in-depth and ethnographic interviews within each interview category. Of note, eleven of the eighteen manufacturer representatives I invited to participate in my study agreed to interviews.³⁴ As for the two different third-party administrator organizations I studied, I interviewed those in charge of training private arbitrators, designing the dispute resolution programs, and company officials whose job is to interact with manufacturers and state regulators. Table 3 provides the category, type, and number of interviews I conducted for this study.

³⁴ Obviously, these eighteen manufacturers are not the only manufacturers who deal with lemon law claims. However, without access to these large organizations, I faced considerable difficulty identifying who in each organization was the most appropriate person for me to interview. Thus, I took advantage of the annual lemon law conferences to identify potential research subjects. Manufacturer representatives I interviewed indicated they were the most knowledgeable persons in their organizations concerning lemon laws.

TABLE 3
IN-DEPTH & ETHNOGRAPHIC INTERVIEWS OF THE LEMON LAW FIELD

Interview Category	Type of Actors Interviewed	# of Interviews	
		In-Depth	Ethnographic
Automobile Manufacturers	Corporate Executives in charge of Lemon Law Issues	6	5
Third-Party Administrators (2 different organizations)	Head of Arbitration Training Dept. Trainers/Instructors Corporate Executives Corporate Liaison to Manufacturers	8	3
CA Private Arbitrators	Private Arbitrators hired by Third-Party Administrators	3	14
CA State Regulators ³⁵	Director of Regulatory Dept. Lemon Law Certification & Monitoring Regulators	4	4
VT State Administrators	Program Administrator Lemon Law legal counsel Legislative Analyst	3	1
VT Panel Arbitrators	Automotive Dealers (4) Technical Experts (4) Citizen Arbitrators (5)	13	1
State Regulators (not in VT & CA)	Director of Regulatory Dept. Lemon Law Regulators	2	6
State Administrators (not in VT & CA)	State Program Administrators	2	10
Automotive Dealers (across the U.S.)	Automotive Dealer Managers	3	7
Private Auditors	Auditors of Third-Party Administrator Programs	1	1
Lawyers	Plaintiff and Defense lawyers	1	5
TOTAL		46	57

With respect to Vermont’s dispute resolution structure, the program administrator provided me with the contact information for seventeen current or retired arbitrators. I invited

³⁵ Vermont does not have state regulators. In fact, other than California, few states have a regulatory department dedicated to monitoring manufacturers’ dispute resolution programs.

these individuals to participate in the study. Ultimately, I conducted thirteen in-depth interviews with arbitrators. I interviewed arbitrators who presently sit on the Lemon Law Board as well as retired arbitrators. Because arbitrators serve a three-year term on the Lemon Law Board with the opportunity for renewal two times, my data reflects arbitrator perspectives over a period of twenty years. I also interviewed the state administrator responsible for running the program for the last twenty years, the chief legal counsel for the board for the last twenty-two years, and the legislative analyst responsible for drafting the Vermont lemon law.

The majority of in-depth interviews were conducted between May and November of 2009. Most interviews lasted about one hour, with some running as long as ninety minutes. Interviews occurred both in person and over the phone in five different states. All in-depth interviews were digitally recorded and transcribed with the consent of the research subjects. To maximize the candor of the interviews and conform to common procedures for the protection of human subjects, the interviews were confidential. The interviews are identified in my study by type of organization or professional affiliation.

I asked each actor to offer his or her perspective on the purpose of warranties and lemon laws. I also asked about their attitudes and experiences concerning various conventional and alternative dispute resolution forums. I asked all interviewees to characterize the objectives of lemon law dispute resolution structures and their role in such structures, as well as the goals of training programs. This line of questioning was especially useful when interviewing persons involved with designing, training, and implementing California and Vermont's lemon law dispute resolution programs. I also asked trainers whether they rely on legal procedure in their training of arbitrators. Finally, I evaluated how, if at all, business and consumer logics influence instructors' construction of lemon law disputes.

In Vermont, my interviews focused on interviewing the various "interests" represented on the adjudicatory panel (citizens, automotive dealer, technical expert) since there was little to no formal training curriculum. As with the private programs in California, questions related to the history of the dispute resolution program, its creation and evolution, and how the program operates. Interview subjects were also asked to speak generally about its goals and successes as perceived by them.

While I followed a specific interview schedule, there were some differences in the type of follow up questions I pursued in response to interviewee answers. By asking substantially similar questions to all actors in the field, public and private, I was able to chart the field logics that were emanating from the field and identify the areas of consensus and contestation concerning the meaning of lemon laws and dispute resolution. However, consistent with standard in-depth interviewing protocol, I departed from my interview schedule when interview subjects wanted to elaborate a particular topic.

Coding

Following standard procedures and protocols of participant observation fieldwork, data analysis was interrelated with coding (Lofland et al. 2005). However, in order to address the traditional critique that qualitative fieldwork does not sufficiently reveal the analytic coding

process (Fielding 1993), I used qualitative coding software (ATLAS.ti) to code my interview and fieldnote data across a variety of categories. This allowed an additional layer of transparency, systematization, and formality to my coding process.

I began by open coding. Under this coding approach, written data from fieldnotes or transcripts are coded line by line (Charmaz 2001). My coding was designed to systematically denote the actors, activities, and locales that characterize the organizational field, and also to record: (1) how actors within the organizational field understand the purpose and meaning of lemon laws and alternative dispute resolution forums; (2) how various actors invoked consumer, business, ADR, and liberal legal frames in their discourse during training sessions and interviews; and (3) the ways in which the meaning of law was framed and shaped differently in different organizational settings. “Focused” coding (Charmaz 2001) led me to refine my coding into analytic categories and identify the differences in the way law is constructed depending on the institutional setting. In terms of qualitative coding and analysis of the data, 122 textual documents were coded, 967 codes were identified, 7,741 coding entries were made, and 2668 quotations were separated into various categories.

Outcomes

Finally, I was interested in whether the different meanings of law and public legal rights were reflected in lemon law arbitration cases in the two states that I studied. In particular, how do these different dispute resolution structures relate to who tends to win in each forum? Vermont provided all outcome data on who wins from 1996 to 2007 while California provided all data from 1991 to 2007. I calculated the percentage of refund or replacement awards to consumers over time in both states. Because California offers additional remedies, including a repair, reimbursement of an expense, and “other,” I also calculated the percentage consumers were awarded those remedies over time to examine trends over time both within states and across states.

Both states also provided data on the number of lemon law cases that were: filed, dismissed on administrative grounds, withdrawn, settled before hearing, and ultimately adjudicated at the hearing. With these data, I considered selection bias effects that could skew my findings if one state had a disproportionate number of cases falling out prior to hearing. The profiles in the two states were nearly identical: pre-hearing settlements were reached in 28% of Vermont cases and 30% of California cases. Moreover, the annual percentage of cases filed in both states was uniform across the entire time frame.³⁶ Thus, it is unlikely that the variation in number of cases filed is being driven by environmental factors such as lawyers, business and legal culture, or changes in the law.

However, it is possible that the types of cases in each state are different. In an effort to determine whether the case populations in the two states were different, I requested from both California and Vermont’s dispute resolution programs access to written complaints filed by consumers for the past ten years to evaluate what specific type of claims were being made (and

³⁶ Two-thirds of the cases filed for each year across the time period in my sample are within one standard deviation of the average number of cases filed in any given year. All of the remaining cases fall within two standard deviations.

thus, develop a measure for types of cases). I also requested data on which cases ultimately settled prior to a formal ruling. Both dispute resolution programs denied my request due to the undue burden of compiling this data and confidentiality concerns mostly pertaining to settlements. Because I was denied the data needed to control for this potential issue, I am unable to definitively rule out bias due to differences in the types of cases that reach arbitration in the two states. However, both public and private actors indicated in interviews that only the “hard” cases reach an actual arbitration hearing. Evaluating possible qualitative differences among different case populations is always an issue in comparative studies and exceedingly difficult to obtain data about and to evaluate as a practical matter.

The predominately qualitative methods that I relied upon and the small sample size, of course, make it difficult to determine whether differences in consumer win rates could be attributed to characteristics of the dispute resolution structures or were due to other factors. For this reason, I do not make causal claims regarding different dispute resolution structures’ effects on outcomes. Nonetheless, differences between the states in consumer win rates suggest that dispute resolution structures might be important mechanisms through which one party or the other gains advantage. Quantitative research controlling for more variables could provide a more definitive test of this hypothesis.

In sum, participant observation in multiple sites, in-depth and ethnographic interviews, and outcome data were the most appropriate methods to address the question of how organizational fields shape the meaning of public legal rights in alternative dispute resolution forums they create. By drawing from multiple sources of data, I was able to identify the field logics that were operating among public and private actors in the lemon law field, determine whether there were conflicting meanings of law operating in this field, examine how the meaning of law is constructed through different organizational dispute resolution structures, and evaluate how the different meanings of law operating in private and state-run dispute resolution structures are reflected in consumer outcomes. Qualitative methods afforded direct access to events and activities concerning how law is constructed within organizations that otherwise would go undetected or unobserved in large scale quantitative analyses. Sustained participation and immersion in the field provided me with distinctive access to the *micro-processes and mechanisms* through which the meaning of public legal rights are shaped by logics developed by and through the organizational field.

Limitations

While I am relatively confident that my mixed-method approach explains how organizations shape the meaning of public legal rights in alternative dispute resolution forums they create, I acknowledge the limitations of my method. The best participant observers conducting fieldwork can do is approximate the social reality they observe in their findings. There is certainly more work that can be done in the future to expand this analysis.

For example, while I conducted interviews with a wide variety of field actors, I was unable to conduct interviews with consumers because it is difficult to identify consumers who participate in lemon law dispute resolution processes in both states. Although I did not conduct interviews with consumers, I did analyze eight years of consumer satisfaction surveys conducted

by the California Department of Consumer Affairs. These anonymous surveys probe, among many things, consumers' experiences using lemon law dispute resolution processes and satisfaction with arbitrator decisions and remedies provided. Vermont's state administrator indicated they do not conduct surveys of consumers who use the Lemon Law Board. Hopefully, follow up studies will focus more attention on consumers' perspectives and attitudes concerning lemon laws and dispute resolution.

Observing lemon law arbitration hearings in both states would also be useful because it would reveal what are the effects of the different dispute resolution institutions in terms of procedural fairness. Exploring how the strategies and legal frames used during arbitrator training sessions are deployed by arbitrators and how consumers and manufacturers mobilize their rights at hearings would expand this analysis of the relationship between organizational fields and law.

Moreover, because the construct of organizational fields is empirically ambiguous, one could possibly approach this project as having multiple, as opposed to one, lemon law field because of the different institutional environments of both states. I believe, however, that it makes more sense to conceptualize the lemon law field as one field because manufacturers are national companies and indicated in interviews that they approach lemon laws in the same manner across the United States. Also, private third-party administrators indicated their training programs were the same across all fifty states except for any changes in the formal laws. Manufacturers and their private third-party administrators, therefore, operate with field logics that appear uninfluenced by local and cultural norms. Moreover, field actors such as automotive dealers, state regulators, consumer advocacy organizations interviewed in Vermont articulated the same logics as field actors in California. Participant observation and ethnographic interviews at lemon law conferences I attended confirm that state regulators and consumer advocacy organizations across the country operated with the same consumer logic while manufacturers, private third-party administrators, and other private entities operated with a different business logic concerning the goals and purposes of lemon laws and dispute resolution. Thus, the competing field logics as to the meaning of law operating in the lemon law field were reflected in public and private actors across the country regardless of the state. The difference was how these different dispute resolution structures operating in the lemon law field filtered these competing logics in the operation of these structures. In this instance, therefore, it seemed more prudent to treat this social arena as one organizational field rather than two.

In sum, my qualitative fieldwork should be treated as a starting point for evaluating the micro-processes and mechanisms through which organizational fields generate the meaning of public legal rights. Hopefully, future studies will further expand this methodological approach toward understanding the relationship between organizational fields and law. The next three empirical chapters explain how and under what conditions automobile manufacturers shape the content and meaning of consumer lemon laws designed to regulate them.

CHAPTER FIVE

AN INSTITUTIONAL-POLITICAL ANALYSIS OF HOW BUSINESS ORGANIZATIONS INFLUENCE THE MEANING OF PUBLIC LEGAL RIGHTS AMONG LEGAL INSTITUTIONS

I. INTRODUCTION

This chapter demonstrates how and under what conditions the content and meaning of consumer protection laws were shaped by automobile manufacturers, the very group these laws were designed to regulate. Specifically, I examine the following research question: how and under what conditions are business organizations able to shape the meaning of public legal rights among public legal institutions such as legislatures and courts? I focus in particular on the capacity of private business to influence how and where disputes over public legal rights are resolved. Recall that my approach draws on and links two literatures: political science studies of how businesses influence public legal institutions and new institutional organizational sociology studies of how organizations shape law within their organizational field.

By integrating political science and new institutional approaches, I develop an “institutional-political” theory that explains how organizations’ capacity to shape the content and meaning of law in the legislative context results both when organizations create and institutionalize dispute resolution venues within their organizational field *and* when organizations directly engage in political mobilization and lobbying tactics. As legal and organizational fields and logics “overlap” (Edelman et al. 2001:1627-34), organizational ideas about the meaning of law and compliance flow into the legislative and judicial arena and reshape law’s meaning in varying degrees.

Through a quantitative coding analysis and qualitative content analysis of 25 years of legislative history, interviews with legislative analysts, and content analysis of court cases in California and Vermont, this chapter shows how automobile manufacturers, who were initially subject to powerful consumer warranty laws, weakened the impact of these laws by creating dispute resolution venues. As these legalized structures became institutionalized among the organizational field and eventually run by third-party organizational surrogates, manufacturers infused business values into law in varying degrees and reshaped the meaning of law and compliance among not just organizations, but public legal institutions such as legislatures and courts.

Specifically, manufacturers incorporated managerial and business conceptions of the meaning of law and compliance into the California legislative process through political lobbying. In the legislative discourse, business logics such as efficiency and managerial discretion and ADR logics such as informality and flexibility eventually trumped liberal legal logics such as consumer rights, protection, due process, and preserving a court option. Ultimately, the California legislature adopted third-party dispute resolution structures into law and courts began deferring to these structures as well. Consumer rights and remedies were made largely contingent on first using manufacturer-sponsored venues where rights and remedies equivalent to those available in court do not exist.

Consistent with the predictions of new institutional studies on diffusion (Edelman 1990, 1992), institutionalized logics concerning the value of alternate disputing forums shaped what advocacy coalitions chose to lobby for and ultimately diffused into Vermont law as well. However, the contested and varying political alliances in Vermont, as well as a different developmental “path” (cf. Pierson 2004), led to a different dispute resolution structure being codified into law. Unlike California, Vermont did not create a court-based option for consumers in the 1970s. Thus, in the 1980s, Vermont considered all options because it was not on a pre-determined court path. In particular, different interest groups, namely, consumer advocates and automotive dealers, dominated the Vermont legislative process. A political trade off ensued among automotive dealers, manufacturers, consumer advocates, and the state attorney general, whereby a court option was eliminated from consideration in return for permitting the state of Vermont to administer the dispute resolution structure. Vermont adopted a private dispute resolution structure developed by automotive dealers into law but made subtle changes. As was the case in California, the Vermont legislature reached consensus that ADR forums as opposed to courts are the proper place to resolve legal disputes. However, unlike California, a different political compromise took place and led the legislature to alter the institutional design of the dispute resolution structure. Legislators modified the composition of the arbitration panel and most significantly, chose to have the Vermont government administer the lemon law dispute resolution panel to protect against any appearance of impropriety and concerns over transparency.

Far from being mutually exclusive or oppositional theories for explaining the spread and features of these dispute resolution systems, new institutional theory and theories of political action work together to explain the configuration of this organizational field. Institutional understandings explain why structures diffused across both states and in fact all fifty states, while politics explain why the *form* and *control* of each structure was different in California and Vermont.

II. FINDINGS

This section discusses the institutional and political mechanisms through which automobile manufacturers shaped the content and meaning of California and Vermont consumer protection laws. Manufacturers created and institutionalized dispute resolution structures within their organizational field and then used interest group tactics to lobby legislatures to codify such structures into law with varying degrees of success. My comparative analysis of California and Vermont highlights the changes in the legislative discourse and in particular, the changing presence of liberal legal, ADR, and business logics in the legislative discourse.

The Song-Beverly Consumer Warranty Act—Creating a “Legal Weapon” for Consumers

California’s consumer warranty statute was an outgrowth of investigations and public hearings by the California Senate Business and Professions Committee in November, 1969. The committee concluded that aside from automobile repairs, the single largest category of consumer complaints was warranty problems. In addition to warranties being confusing and misleading, consumers complained manufacturers and retailers rarely accepted responsibility for making

repairs under their warranties. The largest number of warranty complaints concerned automobile dealers and manufacturers.

The committee inquiry convinced California State Assembly Senator Alfred Song that consumers “need legal protection” (Song press release, Feb. 2, 1970). As the leading proponent and co-author of the Song-Beverly Consumer Warranty Act (Civil Code §§ 1790 et seq.) (“Song-Beverly Act” or “Act”), Song specifically indicated the purpose of creating a consumer warranty protection law was to establish “legal weapons” for consumers (Song letter, July 2, 1971). The Act intended to eliminate delays and lack of accountability by companies who issue warranties for their products. If manufacturers wanted the advertising and marketing benefits of issuing warranties at the time of sale, manufacturers needed to eliminate the practice of making warranties “little more than sales gimmicks” (Song Letter, Aug. 10, 1970; S.F. Chronicle, June 25, 1970 (quoting Song)). Song specifically targeted manufacturers who were taking advantage of consumers with warranties that provided no substantive relief when consumers experienced problems: “Good companies will not have to worry, for they already back up their products with integrity. These bills are aimed at the chislers and sharpshooters who have plagued California’s marketplace for years” (Senate release, May 22, 1970). The legislative analyst primarily responsible for drafting the Song-Beverly Act describes the desire to create a bill that affords consumers enforceable rights and protections against manufacturers:

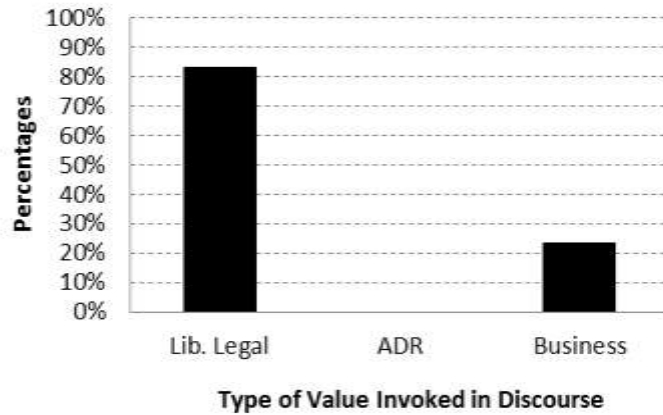
[Alfred Song] was at the time chairman of the Senate Committee on Business and Professions. And that committee held an interim hearing on consumer warranties, and they had a bunch of witnesses come before the committee and testify that they had purchased one product or another with a warranty and then found that there was no way of enforcing the warranty, the conditions were absurd....The warranties were good advertising tools, but in many cases, they were written to make them impossible to enforce.

After this hearing, I decided that we should introduce a bill to make provisions of consumer warranties enforceable. And I looked around and found nothing. I first looked to the federal codes and then other states to see if I could find something to use as a model, and I found nothing....So we started out with a blank sheet of paper, I and an intern in the office, who fortunately knew something about the uniform commercial code, and we said what type of mechanism can we design that would provide some protection for the consumer? And so we came up with the basic structure of the Song Beverly Act... (Legislative Analyst, SR 3020, lines 81-122)

As I mentioned earlier in Chapter 4, I coded for the absence and presence of liberal legal, ADR, and business logics prevalent in approximately thirty years of legislative records in California and Vermont concerning lemon laws. My coding confirms that liberal legal values, and in particular, a rights-based rhetoric, dominated the discourse at the legislative level during the creation of California’s Song-Beverly Act. Figure 1 demonstrates that of the documents

coded as relevant during the creation of the Song-Beverly Act, 83% of the documents had the presence of a liberal legal value:

Figure 1: Presence of Values in Legislative Record during Creation of Song-Beverly Act (1969-71)

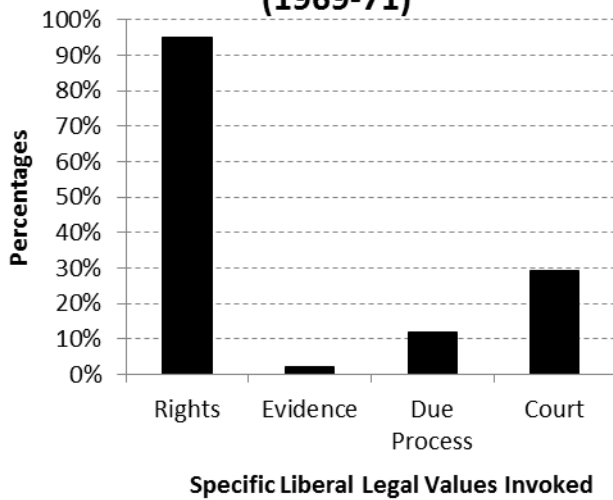


N=123	102	0	29
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Figure 1 highlights, by percentage of documents in the legislative record, the presence of liberal legal, ADR, and business values during the creation of the Song-Beverly Act.

Of note, there was no presence of any discourse concerning ADR in the legislative record from 1969 to 1971. The legislative record also revealed an overwhelming focus on rights-based rhetoric. Figure 2 indicates that of the liberal legal values present in the legislative discourse, “rights” frames were prevalent 95% of the time:

Figure 2: Specific Liberal Legal Values Invoked in the Legislative Discourse (1969-71)



N=102	97	2	12	30
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Figure 2 highlights, by percentage of documents in the legislative record, the presence of specific liberal legal values during the creation of the Song-Beverly Act.

The focus on consumer rights and protection in the legislative discourse is consistent with the interviews I conducted with legislative analysts and consumer advocates involved in the lawmaking process in the late 1960s.

The proposed Act set forth rights, responsibilities, and the legal relationship of buyers and sellers of consumer goods in California. Manufacturers issuing express warranties for consumer goods sold in California that were unable to service or repair consumer goods to conform to the applicable express warranties were required to either replace the goods, reimburse buyers, or face potential lawsuits. The Act initially proposed that if the buyer establishes that a manufacturer’s failure to comply was willful, any subsequent court judgment may include a civil penalty up to three times the actual damages plus attorneys’ fees. If manufacturers issuing warranties chose to continue to ignore their responsibilities, Senator Song wanted the Act to afford consumers legal rights protected by the court system: “There is no effective remedy aside from the courts. Certain private and government agencies collect complaints of shady business dealings, but they will not act to reimburse the customer. . . Filing suit in court is the best alternative for the consumer” (Song press release November, 1969).

By addressing future performance and the responsibility of the warrantor in case of unforeseen failure, the rights and remedies under the Song-Beverly Act went far beyond the California Commercial Code. In particular, the Commercial Code severely limits damages to the cost of repair or diminution in value, provides no potential for civil penalties or attorneys’ fees, and focuses on manufacturer obligations regarding the product at the time of sale.

Not surprisingly, the original Song-Beverly Act had strong public support among California residents.³⁷ Automotive dealers also were allies of the proposed law once since they were not going to be held liable:

We found a common interest here because the retailers were annoyed by the manufacturers' policy on warranties, too, because their customers would purchase products that proved to be defective and take them back to the retailer, saying this was covered by warranty, but the manufacturers weren't reimbursing the retailers (Legislative Analyst, SR 2030, lines 125-38).

Manufacturers, however, opposed the bill, and attempted as best they could to challenge the proposed law. Manufacturers claimed the law was “poorly drafted,” “full of ambiguities making the measure difficult to interpret,” “an unnecessary restriction[] on big business” and “absurd and ridiculous” (Bill Memo., Sept. 11, 1970; Staff Analysis, Aug. 3, 1970; Song letter, May 25, 1970; Speed Queen letter, Feb. 12, 1971; Raypack letter, Aug. 12, 1970; Letter, Aug. 10, 1970). Manufacturers indicated the availability of civil penalties would clog the court system and put them out of business. However, once it became clear the Act was likely to pass despite contentious opposition, those opposing the bill participated in the process. Senator Song's description of his interactions with manufacturers highlights the process whereby business values were injected into the revision process:

Once they realized that I was determined to pass SB 272, they sat down quietly with me and we went over the bill section by section, word by word. They admitted the need to end warranty abuses, and I accepted a series of amendments that, without weakening the bill, brought it more in line with current business practices (Song Senatorial Report).

The legislative history did not indicate precisely what changes or revisions manufacturers requested in order to fall more in line with current business practices. The final bill codified into law, however, reduced recovery for civil penalties from three times actual damages to two. It also indicated that manufacturers and retailers would only be liable under the Act if they had been given a “reasonable number of attempts” to fix defects (Civil Code § 1793.2). This provision, however, was not specifically defined in the Act. Although the California Manufacturers Association maintained the bill was still ambiguous and poorly drafted, they withdrew opposition to the bill. Most other businesses remained opposed despite participating in the process. In August, 1970, the Song-Beverly Act easily passed and went into effect for products bought on or after March 1, 1971.

³⁷ A poll conducted by the California legislature indicated that both Democrats and Republicans favored a stringent consumer protection bill. In fact, many wanted the state to go further to protect consumers: “[e]ighty-eight percent of those responding in the poll, which was sent by mail to all registered voters, indicated the State should have an agency to receive and investigate complaints for fraud of unethical business practices, and eighty-five percent said the agency should have the power to file suit in court to force the seller to make good [on] any injury to the buyer. Seventy percent stated retail stores should be legally responsible to carry out the terms of a manufacturer's warranty or guarantee” (Senate Press Release, April 28, 1970).

Song's achievement was a remarkable one because the Song-Beverly Act was the first consumer warranty law—state or federal—passed in the country. At its inception, the Song-Beverly Act's purpose was to arm consumers with powerful legal weapons attainable through the court system. Rights-based rhetoric dominated the legislative discourse as consumer organizations pressed for strong legislation forcing manufacturers to enforce warranties issued. However, all involved realized ambiguities in the law could create unforeseen challenges. Even Senator Song noted that “like most new pieces of legislation, [the Act had] its share of loopholes and ambiguities” (Song letter, Nov. 5, 1971). In particular, the Act did not define what constitutes a reasonable number of attempts, willful violation, or a civil penalty. We also see, even before the law's passage, early attempts by manufacturers to mediate law's impact.³⁸

Manufacturers' Mediation of California Consumer Rights through Institutional Venue Creation

Despite lofty goals, the Song-Beverly Act was not entirely effective during the 1970s. Testimony at the California State Assembly Committee's hearings in December, 1979, revealed a high level of consumer frustration with new cars and warranty performance. Manufacturers rarely acknowledged that they were given a reasonable number of attempts to fix a defect under warranty, especially since the Song-Beverly Act did not define the term. As a result, full restitution or replacement of new automobiles rarely occurred (Assem. Com. Report, 1980, 1981).

In 1980, California Assemblywoman Sally Tanner decided to clarify and expand the Song-Beverly Act by proposing a specific law, referred to as the California “Lemon Law,” which defined what constitutes a “reasonable number of attempts” for new motor vehicles. Because automobiles were the primary source of complaints from consumers, Tanner felt that it was necessary to add some teeth to legal protections afforded consumers. The bill proposed that a consumer could invoke a “legal presumption” that the automobile manufacturer had been legally given a reasonable number of attempts to repair a nonconformity if: (1) the same nonconformity had been subject to repairs by the manufacturer or its agents four or more times; or (2) the new motor vehicle had been out of service by reason of repair for a cumulative total of 20 days or more.

Because automotive dealers were not liable under the Song-Beverly Act, they remained absent in the lobbying process in the early 1980s. However, manufacturers strongly objected to the Lemon Law and lobbied against the proposal. They alerted Tanner and the rest of the

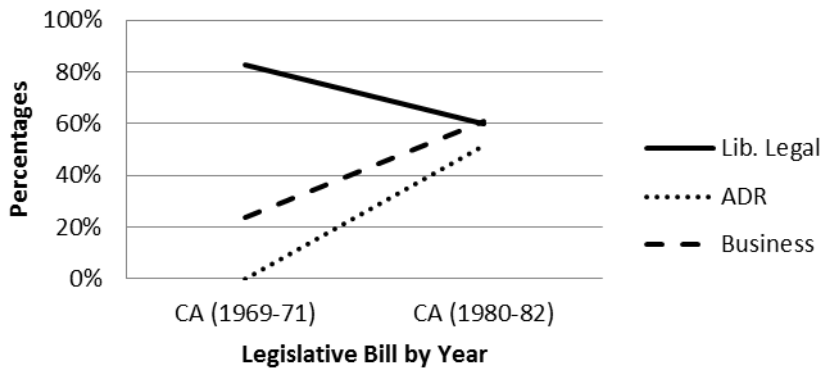
³⁸ The federal government soon followed California's lead as the problem regarding warranties was not limited to California. The federal government's office for consumer affairs noted that they were receiving over 4000 letters a month from consumers across the country in the late 1960s and early 1970s concerning manufacturers' failure to uphold their warranties. Although President Richard Nixon empowered the consumer affairs office to forward letters of consumer complaints to the particular company, the agency had no actual enforcement power. During the late 1960s and early 1970s, multiple attempts to pass a federal warranty protection statute that would set forth minimum federal standards if the manufacturer decides to issue a warranty or guarantee for its product failed in Congress (Stat. 1970, SB 272). Finally, in 1975, the Federal Magnuson-Moss Warranty Act (“Magnuson-Moss Act”) passed setting forth minimum requirements for those who chose to issue full warranties. Specifically, the accompanying FTC regulation Rule 703 largely focused on requiring certain disclosures in full warranties in an effort to make warranties clear and unambiguous to the consumer. Further, if the manufacturer wanted to have the dispute handled by an informal dispute settlement mechanism, such procedure needed to be included in the warranty. Moreover, the Magnuson-Moss Act did not provide for civil penalties or full restitution.

Legislature through letters and detailed memoranda that, in response to the Song-Beverly Act's passage in 1970, automobile manufacturers created internal dispute resolution processes to resolve consumer disputes. In particular, the three major American automobile manufacturers, Ford, General Motors, and Chrysler, submitted reports detailing the goals and structure of their programs to the Legislature. With some variation, these dispute resolution processes consisted of panels of three to five persons, often including manufacturer and dealer representatives, a mechanic, and a consumer advocate.

Consistent with the predictions of new institutional studies (DiMaggio & Powell 1983; Dobbin & Sutton 1998; Edelman 1990, 1992), diffusion of dispute resolution structures among manufacturers and dealers occurred in the 1970s and 1980s. Over 2000 automotive dealers across the United States jointly funded and controlled a third-party dispute resolution process to resolve warranty complaints. Manufacturers often contracted with third-party dispute resolution organizations to administer these programs.

Whereas rights-based claims dominated the discourse during the Song-Beverly Act's creation, Figure 3 shows a convergence in the presence of liberal legal, ADR, and business values in the legislative discourse in the early 1980s:

Figure 3: Convergence in Values in CA Legislative Discourse (1969-1982)



CA 1969-71	N=123	LLV=102	ADR=0	BV=29
CA 1980-82	N=120	LLV=72	ADR=62	BV=73

Figure 3 highlights, by percentage of documents in the legislative record, the change in the legislative discourse from 1969 to 1982.

In particular, manufacturer advocacy to the California legislature was also uniform. Led by Ford, General Motors and Chrysler, manufacturers without exception framed the purpose and benefits of their dispute resolution processes in terms of legitimacy, efficiency, informality, and customer satisfaction as opposed to consumer protection. Manufacturers collectively claimed that their institutional venues were primarily created to benefit consumers and provide less costly, more effective ways of resolving disputes. Unlike the predominantly rights-based rhetoric present in the legislative record in 1971, Figures 4 and 5 reveal a broad cross-section of *multiple* ADR and business values present in the legislative discourse between 1980 and 1982:

Figure 4: Specific ADR Values Invoked in CA Legislative Discourse (1980-1982)

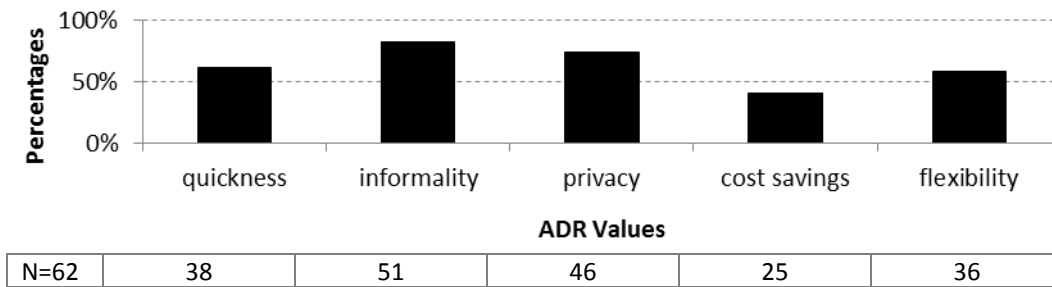
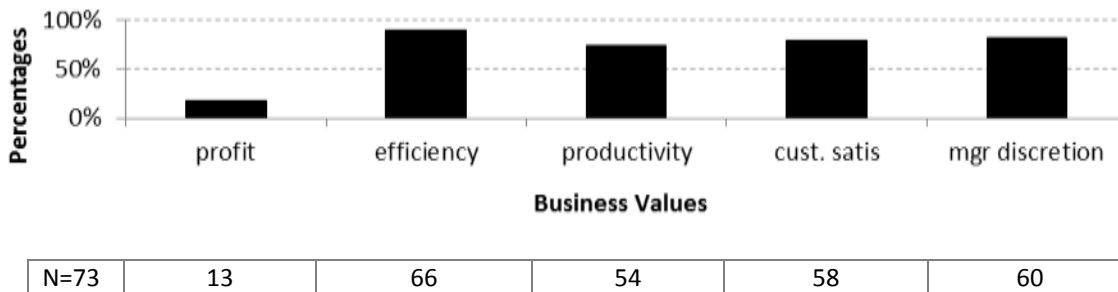


Figure 5: Specific Business Values Invoked in the CA Legislative Discourse (1980-1982)



Figures 4 and 5 highlight, by percentage of documents in the legislative record, the presence of specific ADR and business values invoked during legislative discourse concerning the California Lemon Law.

Manufacturers simultaneously mobilized ADR and business values while lobbying the legislature. Chrysler emphasized to the Senate Judiciary Committee that their grievance procedure offers an efficient, fast, informal way to satisfy concerned customers:

Chrysler can't afford any dissatisfied purchasers, so it has established a procedure of using third parties to resolve, in a matter of weeks instead of years, disputes between the purchaser and the dealer over an unrepaired component of the vehicle during the warranty period....In summary, we believe this Chrysler CSAB program is a far better way, and certainly less costly in time and money to the car owner, to get a satisfactory resolution to the problem of the so-called "Lemon" car than the long, drawn out method embodied in AB 1787 (A.E.D letter, Aug. 7, 1981) (emphasis added).

Two weeks after this letter, Chrysler informed the California Senate that they were incorporating their grievance procedure into their 1982 product warranty due to: “(1) excellent dealer support with 95% participation; (2) positive national and local media coverage; (3) satisfied owners, a majority of whom indicate an intention to again purchase Chrysler products; (4) a growing consumer awareness that Chrysler Corporation and its dealers are concerned about

customer programs; [and] (5) reduced litigation and small claims action[s]” (Chrysler letter, Aug. 19, 1981). Despite not providing consumers with a right to oral presentation, Ford noted the legitimacy such programs provide: “as self-regulating mechanisms. . . . Their very existence means that our dealers and our own personnel are perceived as taking the extra steps required to resolve issues to the satisfaction of customers . . .” (Ford Memo).³⁹ Lobbying by manufacturers, therefore, suggest business values of efficiency, cost-containment, discretion, customer satisfaction, and improved corporate image drove manufacturer expansion of these dispute resolution processes. Full restitution in these processes, however, remained rare.

In sum, as in the employment context (Edelman, Erlanger & Lande 1993), internal dispute resolution processes provided a means through which manufacturers’ values and norms influenced the structure and content of the organizational field far more than did consumers’ interests.⁴⁰ Moreover, as shown in the interest group and venue shopping literatures (Baumgartner & Jones 1993; Pralle 2003, 2006), advocacy coalitions influenced public policy and redefined consumer rights by linking them to other socially recognized values such as informality and efficiency. This resulted in a shift in the discourse about the Song-Beverly Act that reflected the advocacy efforts of business.

The Legislature Codifies Manufacturer Dispute Resolution Processes into the California Lemon Law

After the California Lemon Law was narrowly defeated in 1980 and 1981, the Lemon Law, Civil Code § 1793.22, was enacted in 1982, but with significant changes from the original proposal.⁴¹ In order to pass the bill, the California Legislature deferred to and codified the logic of manufacturers’ valuation of dispute resolution venues without any apparent formal review of these programs. Under the Lemon Law, a consumer was entitled to a “legal presumption” that the manufacturer received a “reasonable number of attempts” if: (1) the same nonconformity had been subject to repair four or more times *within* the first 12,000 miles or 12 months from purchase; or (2) the automobile had been out of service by reason of repair for a cumulative total

³⁹ Similar to Chrysler, Ford framed its program as a “speedy, inexpensive, and fair system to resolve product disputes as an effective alternative to lengthy and costly dependence on the courts” (Ford Release).

⁴⁰ In addition, a pure rational choice account of manufacturers’ response is unlikely to fully explain manufacturers’ actions. The field of manufacturers and dealers developed institutional venues in the 1970s even though manufacturers were *not* excessively at risk of repurchasing cars. Between 1970 and 1980, the legislative history indicates manufacturers rarely repurchased consumers’ automobiles because they claimed they had not been given a reasonable number of attempts and this provision was not defined in the Song-Beverly Act. However, manufacturers created these structures anyway because they were concerned about other business values such as exuding legitimacy, being responsive to consumers, and creating informal forums to resolve problems (cf. Edelman et al. 1992).

⁴¹ In 1981, Tanner withdrew her proposed bill after the Senate Subcommittee approved a proposal by Automobile Importers of America to tie the Lemon Law to manufacturers’ dispute resolution programs. Tanner withdrew the bill because she did not want to require customers to take their grievance to company-sponsored panels, especially since some consumer groups were dissatisfied with these programs. Although with reservations, Tanner ultimately went along with the rest of the California legislature and passed the Lemon Law in 1982. This is consistent with political science studies that interest groups lobbying the legislature often engage in a contested struggle to influence the legislature (Baumgartner & Jones 1993). Although this case study demonstrates that what constitutes compliance with consumer protection law was institutionally derived, lobbying and overt political conflict played a critical role as well. Therefore, integrating political science and sociology theories into an institutional-political framework in this instance allows for a more complete explanation.

of more than 30 (not 20) calendar days *within* the first 12,000 miles or 12 months from purchase. A manufacturer was permitted to rebut the presumption at trial by showing that their actions in a particular case was reasonable.

The most significant changes, however, concerned the codification of manufacturers' dispute resolution processes into the Lemon Law. Specifically, the legal presumption as to what constitutes a "reasonable number of attempts"—the main purpose of the Lemon Law—could not be asserted in court unless the consumer first resorted to the existing "qualified third-party dispute resolution process" to the extent a manufacturer maintained one (Civil Code § 1793.22(c)). Thus, legal protections afforded under the Lemon Law were *contingent* upon using manufacturers' third-party dispute resolution processes if they existed. Dispute resolution processes "qualified" if they met the minimum requirements set forth in the federal warranty law, the Magnuson-Moss Warranty Act, and in particular, Federal Trade Commission Rule 703, for dispute resolution proceedings.⁴² Decisions under dispute resolution processes were binding on manufacturers but not consumers. Moreover, in a display of deference to manufacturer venues, the Lemon Law indicated if the consumer chose to reject the arbitrator's ruling and sue, the arbitrator's findings could be admitted at trial *without* any need for evidentiary foundation. Unlike remedies available in court, the Lemon Law also provided that no civil penalties or attorneys' fees could be recovered in dispute resolution processes unless the manufacturer-run program permits such recovery. Further, unlike the all (restitution, replacement) or nothing (no award) remedies at trial, arbitrators are permitted to award consumers the opportunity to allow manufacturers another repair attempt.

Although manufacturers still publicly opposed passage of the Lemon Law, some recognized the potential for keeping these disputes out of courts. Loren Smith, a lobbyist for the Motor Car Dealers Association, commented after the Lemon Law passed: "[w]e think it's a good start. I look at it as a way to eliminate court cases" (Bakersfield, May 26, 1982) (cf. Edelman, Erlanger & Lande 1999). Thus, the broad, vague mandate of these laws and weak enforcement mechanisms gave wide latitude to manufacturers.

In sum, institutional *and* political theories explain how strong public legal rights were channeled into alternative forums. In 1971, California established a litigation path for resolving consumer disputes by creating a private right of action attainable in court. As was the case for employers in the civil rights context, manufacturers responded both to environmental demands (change in public attitudes and awareness, the law, legal mandates) and to managerial interests (desire for fewer lawsuits, greater efficiency, informality, quick resolution, and no civil penalties or attorney's fees) by developing private dispute resolution venues to satisfy legitimacy and efficiency concerns. Manufacturers eventually contracted with external third-party organizations to administer lemon law programs and train individual arbitrators. When the legislature proposed creating a specific lemon law for automobile warranties in the 1980s, business, ADR,

⁴² The federal Magnuson-Moss Act set forth minimum requirements for manufacturers that chose to issue full warranties. Specifically, the FTC regulation Rule 703 required manufacturers to: (1) notify the buyer about the existence, location, and method for using the dispute resolution program; (2) fund the program; (3) insulate the program from manufacturer influence; (4) make the program free to the consumer; and (5) require the program reach a decision within forty days. The Magnuson-Moss Act did not establish a means of ensuring that these programs operated fairly and impartially. It also did not provide for civil penalties.

and liberal legal frames simultaneously permeated the legislative discourse. Through issue redefinition, framing, and advocacy coalitions, organizations redefined and “converted” (cf. Hacker 2002, 2004; Barnes 2007, 2008) public rights attainable in court into private rights to dispute resolution. The legislature, without ever formally and critically analyzing whether manufacturer institutional venues were procedurally and substantively fair to consumers, instead “layered” manufacturer venues into the Lemon Law (Streeck & Thelan 2004; Barnes 2007; 2008). Thus, the norms regarding compliance that evolved within the organizational field during the 1970s shaped manufacturers’ conceptions of law in their lobbying behavior in the 1980s.

Vermont Develops first State-Run Lemon Law Dispute Resolution Structure

California was the second state to create a warranty law specifically protecting consumers who receive automobile warranties.⁴³ California, however, was not unique. Amidst the rise of alternative dispute resolution structures beginning in the 1970s (Galanter 2002), all fifty states developed lemon laws in the early 1980s that permit third-party dispute resolution organizations to administer lemon law cases on behalf of automobile manufacturers.⁴⁴ However, Vermont was the first of thirteen states to also create a state-run dispute resolution structure. While new institutional understandings of institutional isomorphism and legal endogeneity explain why manufacturers uniformly developed these dispute resolution structures and why all fifty states ultimately adopted them into law, these theories, in this instance, do not explain the variation in the *type* of dispute resolution structure adopted by states.

Although all states deferred to alternative dispute resolution venues, political opportunity and path dependency shape the manner and type of dispute resolution structure adopted into law by Vermont. By the time California developed a specific lemon law dealing with automobile warranties in 1982, California already had a litigation option in place for consumers through the creation of the Song-Beverly Act in 1971. Thus, the legislative debate over California’s Lemon Law in the early 1980s focused not on eliminating the litigation option, but on layering manufacturers’ processes into law and making consumer rights contingent on using such structures (cf. Schickler 2001). Moreover, because automotive dealers were not liable under the Song-Beverly Act, they played little role in the creation of the California Lemon Law in 1982. In fact, automobile dealers authored zero documents during the legislative debate over the California Lemon Law in the early 1980s.

Unlike California, Vermont did not have a litigation option in place when it decided to create a lemon law in the early 1980s. Vermont’s legislature originally proposed a bill similar to the Song-Beverly Act and the original California Lemon Law. Following other states’ lead, Vermont’s bill initially proposed creating a consumer cause of action in court when warranties were breached. The bill also included the potential for civil penalties and attorneys’ fees.

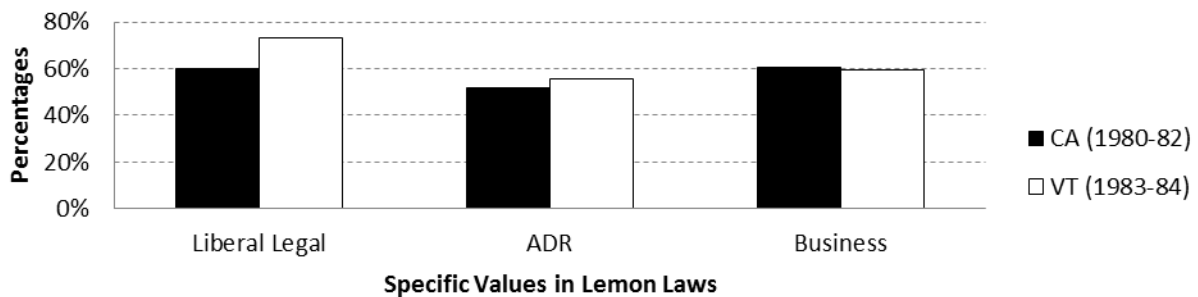
⁴³ While California struggled to pass its Lemon Law, Connecticut became the first state to pass a specific law protecting automobile owners. The passage of Connecticut’s Lemon Law in 1982 was largely modeled after California’s failed bills in 1980 and 1981. Connecticut included a provision that if manufacturers provided for an informal dispute settlement mechanism that complied with the basic requirements of the Magnuson-Moss Act regulations, then the consumer must use that mechanism first. Manufacturers that did not have a dispute resolution process in place moved immediately to create one to comply within the deadline (State Gov. News, Aug. 1982).

⁴⁴ Thirty-three states make invoking the legal presumption in court contingent on first using the manufacturer-sponsored dispute resolution structure if one exists.

However, unlike California, Vermont’s original bill proposed automotive dealers also be made potentially liable. Thus, automotive dealers had different incentives to participate in the legislative process and consequently, were very active in lobbying the Vermont legislature.

In this instance, institutional *and* political mechanisms work together to explain how Vermont ended up with an alternative dispute resolution system that was administered by the state while California ended up with a private dispute resolution process. Figure 6 demonstrates that, consistent with new institutional studies of diffusion, Vermont experienced a similar presence of liberal legal, ADR, and business values in the legislative discourse that California experienced in the early 1980s:

Figure 6: CA & VT Lemon Laws: Similar Presence of Values in Legislative Record (1980-1984)

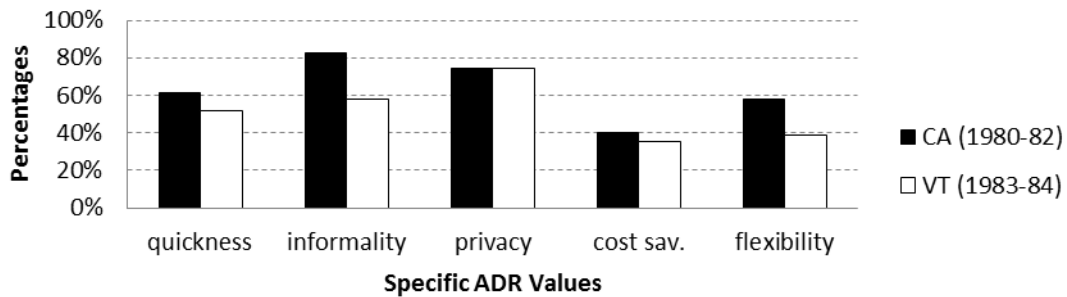


	Liberal Legal	ADR	Business
CA N=120	72	62	73
VT N=56	41	31	38

Figure 6 shows, by percentage of documents and oral testimony in the legislative record, that the presence of business and ADR values was nearly equal during the creation of California and Vermont Lemon Laws. This is consistent with new institutional understandings of diffusion of institutionalized logics in an organizational field. As I mentioned earlier in my methodology chapter, because portions of the Vermont legislative record contained transcripts of oral testimony at public hearings before the legislature, I treated each speaker’s testimony at Vermont hearings as the same as a “document” for purposes of coding and coded each speaker’s testimony for all the variables in my coding scheme.

Testimony by various interest groups during public hearings confirm business and ADR frames permeated the legislative debate over Vermont’s Lemon Law at almost equal amounts to California. Also, Figure 7 shows that, as was the case in California, interest groups in Vermont used a variety of frames when justifying ADR as a preferred venue:

Figure 7: Specific ADR Values in CA & VT Legislative Discourse



CA N=62	38	51	46	25	36
VT N=31	16	18	23	11	12

Figure 7 shows, by percentage of documents and/or oral testimony in the legislative record, the wide variety of ADR values that were collectively invoked during legislative debate on California and Vermont Lemon Laws.

While the logics present in the legislative discourse were largely similar in both states, the actors mobilizing these frames and the political trade-offs available for interest groups were different. Unlike in California, automotive dealers played a formidable role in shaping the legislative process in Vermont. Automotive dealers' aggressive lobbying centered around two issues. First, dealers argued they should not be held liable since they were not the party who issues the warranty to the consumer. Second, in accordance with the proliferation of dispute resolution structures in the automotive industry taking place in the 1970s, dealers suggested expanding their dispute resolution system (called Auto-Cap) to include warranty disputes instead of having these cases sent to court: "We ought to take the auto bill of rights and our Auto-Cap program and expand on that to cover the lemons and it won't cost the taxpayers anything" (Auto. Dealer Testimony, bates label 1144). The Auto-Cap dispute resolution panel consisted of a board of multiple industry representatives, a technical expert, and a consumer advocate. Interviews with manufacturer representatives as well as legislative analysts involved in the lawmaking process at the time confirm that automotive dealers aggressively lobbied the Vermont legislature.

My analysis of the legislative history confirms that automotive dealers, consumers, and consumer advocates had a greater presence in the legislative discourse in Vermont than California. Whereas automotive dealers had zero presence in the legislative record concerning California's Lemon Law, Figure 8 and Table 1 reveal that automobile dealers accounted for one-fifth of the lobbying done at the Vermont legislature during public hearings:

Figure 8: Difference in Presence of Interest Groups in CA & VT

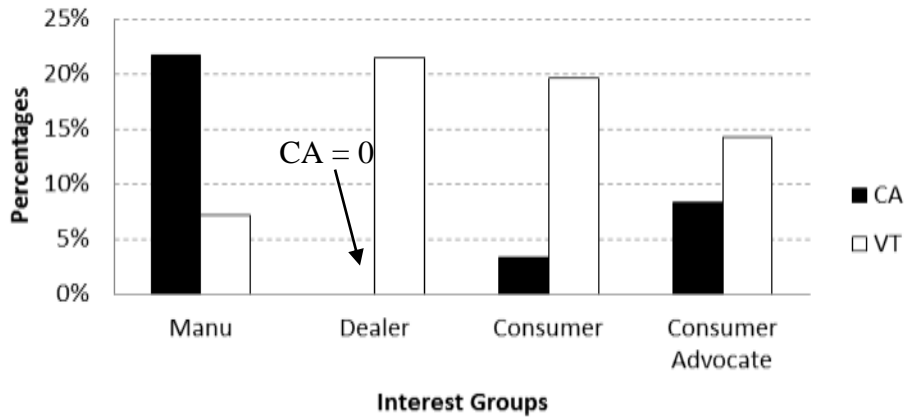


Figure 8 highlights, by percentage of documents and/or oral testimony in the legislative record, the difference in actors involved in the legislative discourse in California and Vermont during the creation of their Lemon Laws. In particular, dealers, consumer advocates, and consumers were far more active in Vermont than California.

Table 1: Interest Group Presence in Legislative Discourse over California & Vermont Lemon Laws

	CA (# of docs. authored) N=120	CA (%)	VT (# of people testifying in public hearings) N=56	VT (%)
Manufacturer	26	22%	4	7%
Dealer	0	0%	12	21%
Private Industry Advocate	17	14%	4	7%
Consumer	4	3%	11	20%
Consumer Advocate	10	8%	8	14%
Journalist ⁴⁵	30	25%	0	0%
Legislator	33	27%	17	30%

(bold means included in Figure 8)

⁴⁵ Unlike California, Vermont legislative history did not include any newspaper or media articles. Therefore, there are no journalistic accounts in the legislative record concerning the Vermont Lemon Law.

Conversely, manufacturer presence in the legislative record is approximately three times less in Vermont than in California. The presence of consumer advocates and consumer voice in the legislative debate was collectively three times higher in Vermont than California.

Legislative hearing debates concerning the Vermont Lemon Law revealed broad consensus among automotive dealers, manufacturers, consumer advocates, and the state attorney general's office for an alternative dispute resolution structure. They collectively argued that the cost, delay, and expense of the civil litigation system was problematic for consumers and that a court option was not necessary. However, while sympathetic to the problems of the court system, consumer advocates, the state attorney general, and many legislators remained skeptical about allowing private dispute resolution systems complete control over adjudicating public legal rights.

The different voices in the legislative debate ultimately led to a different political compromise in Vermont, one that allowed dealer and consumer interests to align around eliminating a court option but using a state-run dispute resolution structure. Legislative representative John Zampieri highlights the political compromise that took place in Vermont:

Zampieri: We had 44 people or thereabouts testify, both manufacturers, dealers, and consumers. After the hearing we decided that the bill that was presented to us had to be rewritten if we were going to do anything on the subject. So, we went to work and what we believe you've got is a pro-dealer, pro-consumer bill and probably somewhat anti-manufacturer in that we believe that this gives the dealer more of a handle in dealing with the manufacturers in the event that they have an automobile that is technically not working very well and they're having problems getting service out of the manufacturer or its designees.

Because what we have done in this bill is that we have taken the Auto-Cap program which is volunteer, we put it into statute form, we created a Vermont motor vehicle arbitration board....

If you go to that board and the decision that's made by that board is on your side, the manufacturer has got to live with it. Or, if the decision comes down against you, you have to live with it. There is no appeal to the superior court unless you can prove that there's been collusion or hanky panky on that board or if the board itself has violated some of the rules that it's supposed to operate under. This will preclude people from getting involved in a lengthy court fight and that decisions will be done immediately after the case is heard before the board....It's a quasi-judicial board" (Rep. John Zampieri Testimony, March 29 1984).

Though manufacturers initially argued that their dispute resolution systems sufficiently address consumer grievances, once the Vermont legislature proposed to keep these disputes

outside courts and in a state-run dispute resolution structure that does not offer consumers to recover attorneys' fees and civil penalties, manufacturers opposed the bill less aggressively: "This is one final decision. [Manufacturers] like this part. Because once the decision is made, they can't be brought into court and have a court case go indefinitely []. The decision is quick and final" (Rep John Zampieri, March 29, 1984). In fact, the head of the Vermont Auto Dealers Association noted manufacturers' absence at multiple legislative hearings in Vermont signaled they did not oppose a state-run dispute resolution system so long as consumers could not go to court:

Let me just say one thing. The manufacturers know about this bill the way it is written and they're not here. They are fully aware of it the way it is written right now. We've sent copies to them. Apparently they're not upset about it the way that it's set up....Well, yes, they went berzerk on the initial draft. They were ready to load bombs in their planes and fly up here....You know, they're the ones who are going to pay the freight (Tom Heilman Testimony, April 4, 1984).

Amidst the political trade-offs between legislators, manufacturers, automotive dealers, consumers, consumer advocates, and the state attorney general, Vermont in 1984 enacted a Lemon Law that grafted automotive dealers' Auto-Cap dispute resolution program into law but made changes to the board composition and who administers the program. Instead of ceding the adjudicatory structure to private organizations, consumers making lemon law claims are allowed to choose between using the dispute resolution structures manufacturers fund *or* the Motor Vehicle Arbitration Board ("Lemon Law Board") designed, funded, and run by the state government. Table 2 highlights the major differences between California and Vermont's dispute resolution models:

TABLE 2
LEMON LAW DISPUTE RESOLUTION STRUCTURES

	Private	State-Run
	Dispute Resolution Funded by Auto Manufacturers	Dispute Resolution Arbitration Board
Location	California	Vermont
Program Administrator	Private Third-Party Administrators contract with manufacturers	State Administrator
Adjudicatory Structure	1 Arbitrator (consisting of lawyers & non-lawyers)	5 person panel of Arbitrators (3 citizens, 1 technical expert, & 1 auto dealer) ⁴⁶
Remedies Available	Full Refund Replacement Car Extra-Legal Awards (repair, reimbursement for expense)	Full Refund Replacement Car
Adjudicatory Authority	Binding if consumer accepts decision, otherwise can sue in court	Binding on both parties (no right to sue in court)

Unlike the single-arbitrator system in California, the Lemon Law Board consists of a five person panel of arbitrators appointed by the governor that hears lemon law cases twice a month in a government building. Unlike Auto-Cap, the Lemon Law Board consists of three citizens, an automotive dealer representative, and a technical expert. The Lemon Law Board hears and decides cases and the court administrator writes the legal decision. Other than appealing for abuse of discretion, there is no right to sue in court. The only remedies the Lemon Law Board may award are restitution, replacement, or denial, *i.e.*, no additional remedies such as repair or reimbursement for expenses. There are also no attorneys' fees or civil penalties in this forum. Thus, the creation of the Vermont Lemon Law Board centered around a collective institutionalized belief that alternative dispute resolution forums are the appropriate forum for these consumer disputes but that the dispute resolution structure should be held in a public forum.

In the lemon law context, new institutional studies and theories of political action together explain how private organizations shaped the meaning of public legal rights in different ways. Consistent with the predictions of new institutional studies, organizational structures that diffused among manufacturers and automotive dealers in the lemon law field were adopted into law in California and Vermont, one run by private organizations and the other run by the state. However, political science theories on path dependency and interest group politics explain why the form of the dispute resolution structure varied. Because California already had established a litigation path in the 1970s, they simply layered an additional structure into law in the 1980s (Pierson 2004). However, Vermont had not already established a litigation path for lemon law disputes. Thus, unlike California, Vermont considered all dispute resolution options, including courts, when establishing its lemon law in 1984. In addition, the legislative record confirms

⁴⁶ Some states have three person as opposed to five person panels.

different voices permeated the legislative debate in Vermont and led to different political trade-offs: automotive dealers yielded on demanding that their dispute resolution process be used provided they were not going to be held liable under the new law; the state attorney general, consumer advocates, and consumers withdrew support for a court option in return for grafting automotive dealer's private Auto-Cap dispute resolution program into a public forum run and administered by the state; and manufacturers withdrew opposition to a dispute resolution forum other than their own in exchange for removing a court option for consumers. Thus, institutional and political mechanisms together explain how and under what conditions private organizations are able to shape the content and meaning of public legal rights.

Tensions Between Symbolic Structures and Substantive Compliance

Other than strengthening administrative rules and procedures, and altering the eligibility, definitions, and statute of limitations, the Vermont legislature has made few changes to the Vermont Lemon Law since its creation. The Vermont legislature is largely content allowing a state-run disputing structure to adjudicate consumer lemon law grievances.

Conversely, there has been much more legislative activity concerning California's Lemon Law. Although the final codified Lemon Law encouraged consumers to use automobile manufacturer-sponsored institutional venues, the Lemon Law did not establish a means of ensuring that these programs operate fairly. Consumers were funneled into these processes by manufacturers claiming they were complying with the minimum requirements under FTC Rule 703. However, consumers had no way to determine whether manufacturer and automotive dealer dispute resolution programs comply with the minimum requirements of the California Lemon Law or FTC Rule 703. Moreover, there was no regulatory or monitoring oversight. Not a single manufacturer formally qualified its program under the Lemon Law after its passage in 1982.

The legislative history indicates that many consumer groups complained to Sally Tanner and the Department of Consumer Affairs in the mid-1980s. Complaints included allegations that: (1) arbitrators often had no legal training, no training in the Lemon Law, and often were not even provided copies of the applicable warranty law; (2) many manufacturer processes did not allow consumers oral presentation at hearings while dealers and manufacturer representatives often participated in the decisionmaking process (Ford & Chrysler) or staffed these panels with their own employees; (3) manufacturer proceedings were taking much longer than 40 days as required by FTC guidelines; and (4) arbitrators relied on expert testimony from mechanics supplied by manufacturers to evaluate automotive defects. Moreover, decisions in favor of consumers often resulted merely in another repair attempt for manufacturers. However, there was often no follow up by arbitrators to determine if repair attempts resolved the problems.

Consumers virtually gave up on manufacturers' dispute resolution processes due to the lack of fairness, loss of time, and safety hazards associated with continuing to drive unsafe vehicles. In a letter to Tanner, the Director of Consumer's Aid of Shasta, Inc. stated:

[s]ince I contacted you a year and half ago—I've given up completely on arbitration either BBB or the Mfgrs. {sic} I've been

referring all the people who contact me—after they establish their complaints with the manufacturer to go directly to a lawyer. Boy this hurts, I believe only as a last resort in lawyers! I guess I'm saying the only way the American made cars, which approximately 85% of our calls have been American made, will listen and improve their crappy quality control is through their pocketbooks! (Clemens letter, July 29, 1987).

In 1987, Tanner developed what she termed a “due process” bill. Tanner proposed: (1) establishing a program in the California Bureau of Automotive Repair to certify manufacturer arbitration programs; and (2) investigating consumer complaints regarding the qualified program’s failure to follow its own written procedures. Although certification was voluntary, Tanner proposed that if a manufacturer did not have a “qualified third-party dispute resolution process” certified by the state and the consumer filed suit and prevailed (*i.e.*, awarded restitution or replacement), the consumer would be automatically entitled to a civil penalty plus attorneys’ fees. No showing of willfulness was required for the civil penalty.

Manufacturers, not surprisingly, were not pleased. Once again, manufacturers deflected the Song-Beverly Act and Lemon Law’s goal of protecting legal rights toward focusing their institutional venues more on fairness and informality (cf. Edelman, Erlanger, & Lande 1993). Automobile manufacturers argued the certification process would overly formalize the process. The Automobile Importers of America indicated the proposal would trade a voluntary, informal, nonlegal and easily understood process for a “bureaucratic certification process” (AIA letter, July 6, 1987; Sen. Comm. Jud. 1987). The following letter sent by General Motors to the California legislature captures the flavor of letters and memorandum sent by the vast majority of manufacturers concerning their collective desire to not formalize private dispute resolution processes:

AB 2057 would create a new certification process for automobile manufacturers’ voluntary arbitration programs. *In so doing, it would formalize the procedure to the point where an arbitrator would be required to be trained in the specifics of the lemon law. . . . General Motors has about 1,000 arbitrators in California. No more than 250 are attorneys.* It seems unreasonable to provide for treble damages based upon the decision of a layman arbitrator, untrained in the law.

The idea of General Motors’ arbitration program, which is voluntary and predates the California’s [1982] lemon law, is that it be informal and non-legal, that the process be easily understood by the consumer, and that a lengthy court setting be avoided. (G.M. letter, July 8, 1987 (emphasis added)).

As was the case during the California Lemon Law’s creation in 1982, Figure 9 and Table 3 show how liberal legal, ADR, and business values simultaneously permeated the legislative discourse at the time these amendments were being debated between 1987 to 1989:

Figure 9: Changes in CA Legislative Discourse from 1969-1989

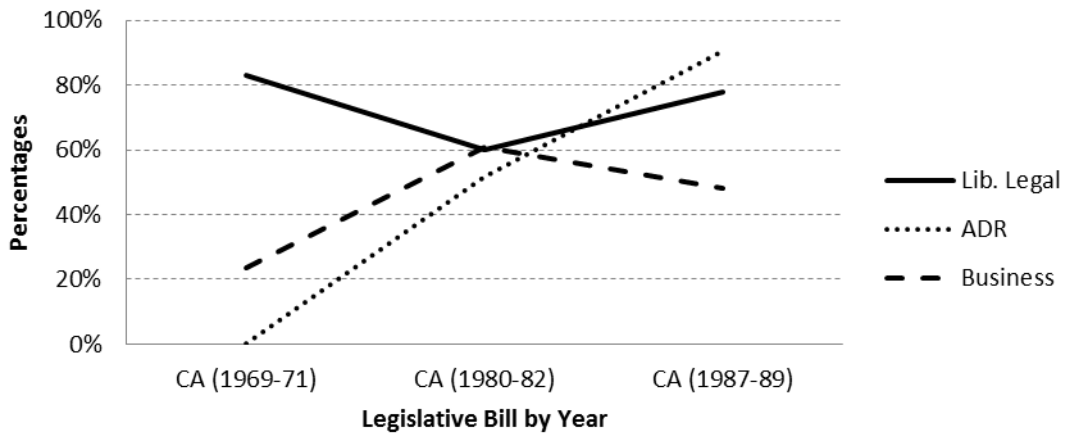


Figure 9 highlights, by percentage of documents in California’s legislative record, the prevalence of business, ADR, and liberal legal logics in the 1980s. From the Song-Beverly Act’s creation in the early 1970s, ADR and business logics have significantly increased in the legislative discourse .

Table 3: Numerical and Percentage Data on Changes in CA Legislative Discourse from 1969-89⁴⁷

	Liberal Legal Value	ADR Value	Business Value
CA Bill 1969-71 (N=123)	83% 102	0% 0	23% 29
CA Bill 1980-82 (N=120)	60% 72	51% 62	61% 73
CA Bill 1987-89 (N=85)	77% 66	91% 77	48% 41

Unlike the Song-Beverly Act’s creation in 1971, the presence of business values in the legislative process more than doubled in the 1980s. Moreover, ADR values were present in 91% of the documents coded in the legislative history by the mid-to-late 1980s.

Although this bill ultimately passed, it was not without significant revisions. Labeled the “Tanner Compromise,” manufacturers agreed to: (1) certify their programs; (2) “take into account” statutory standards; (3) provide dispute resolution panels with copies of the Lemon Law; and (4) require panel familiarity with the law (Collins letter, Jan. 16., 1990). However, arbitrators retained flexibility and final authority regarding the standards, statutory or otherwise, they chose to ultimately apply in particular cases. The finalized statutory language also indicated manufacturers could avoid non-willful civil penalties as long as they substantially complied with certification requirements. Finally, manufacturers who chose not to maintain a dispute resolution process or certify their process under Civil Code § 1793.22(c) were not subject to a mandatory

⁴⁷ Values are not mutually exclusive. A document, for example, may reflect both business and ADR values.

civil penalty if the consumer received full restitution or replacement at trial. Rather, in those situations, the jury has discretion to award a civil penalty up to twice the actual damages.

Thus, due to the lack of enforcement and monitoring mechanisms in the Lemon Law concerning dispute resolution processes, manufacturers initially ignored the minimum procedural requirements and FTC Rule 703 guidelines. In response to consumer outrage from 1982 to 1987, the legislature in 1987 focused its efforts on regulating the certification process, but again, left substantive results to manufacturers and their third-party administrators.⁴⁸

We also see how much relevance and deference manufacturers' dispute resolution proceedings receive (cf. Edelman et al. forthcoming). Just by certifying a dispute resolution process with the state, a manufacturer gains the ability to introduce a favorable ruling into evidence should the consumer decide to sue,⁴⁹ gains the opportunity to resolve the dispute without threat of attorneys' fees, civil penalties and likely restitution, since the arbitrator (unlike a court) can award one final attempt instead of full restitution or replacement. Legal rights, such as the right to civil penalties, have been re-defined as contingent on whether a manufacturer maintains a qualified third-party dispute resolution proceeding. Since 1987, approximately three-fourths of all automobile and motorhome manufacturers participate in California's Arbitration Certification Program. Manufacturers that do not certify their program often maintain some form of uncertified dispute resolution process.

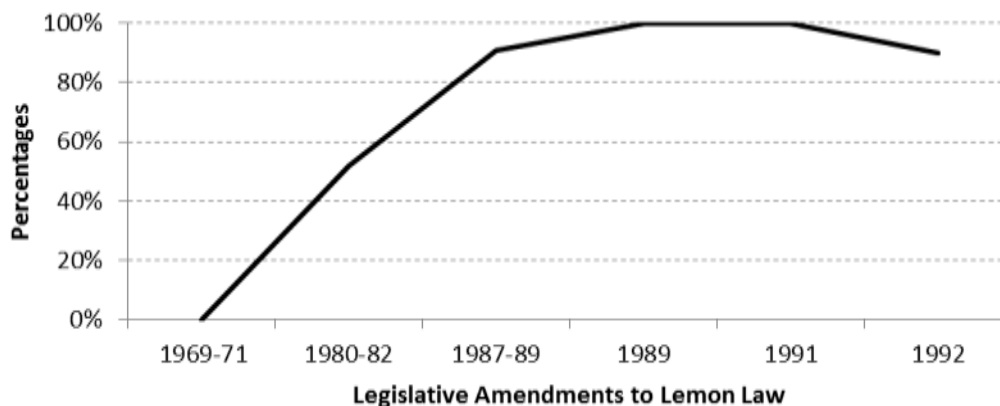
Deference to Dispute Resolution Procedures—Legislative Logic Converges with Manufacturer Logic

Over time, amendments the California Legislature made to the Lemon Law had less to do with protecting consumer rights and more to do with legitimating institutional venues into law and consequently, bolstering the degree to which consumers, manufacturers, legislators and judges defer to institutional venues designed and funded by manufacturers. Core legal ideals about impartiality and protecting formal legal rights blurred with manufacturer logic regarding institutional venues framed as more efficient and informal. Indeed, discussion concerning the value of alternative disputing forums remained dominant in the discourse well after the codification of organizational disputing forums into law in 1982. Figure 10 shows how ADR values remained a dominant frame in the legislative discourse, going from 0% presence in the discourse in 1971 to 100% presence in the discourse at times during the late 1980s and early 1990s:

⁴⁸ Most automobile manufacturers either withdrew their opposition or remained neutral.

⁴⁹ It appears manufacturers were already submitting arbitrator findings during trials since there was no oversight. However, the 1987 Amendment attempted to formalize the process and only allow those dispute resolution programs that had been certified by the state as "qualified" to be submitted in court.

Figure 10: Presence of ADR Values in CA Legislative Discourse



	1969-71	1980-82	1987-89	1989	1991	1992
Relevant Docs	123	120	85	12	25	10
ADR Present	0	62	77	12	25	9

Figure 10 highlights, by percentage of documents in the legislative record that were coded as “relevant,” the presence of ADR values from 1969-1992.

Substantive content analysis of these bills also confirm that the debate over many of these amendments to the California Lemon Law concerned enhancing the degree of deference offered to alternative dispute resolution structures. In 1989, the Lemon Law was amended to clarify the dispute resolution certification process. The amendment established that when a Lemon Law case went to court, only decisions from a qualified third-party dispute resolution process certified by the state were admissible into evidence without further foundation. This bill was unanimously adopted in response to a few rogue manufacturers’ attempts to admit findings from uncertified dispute resolution processes. The Senate Judiciary Committee expressly noted the deference private venues should be afforded in court: “[t]his policy is intended to encourage manufacturers to submit their dispute resolution programs for state certification by giving *extra credence* to the findings and decisions of that body” (Legis. Council, July 19, 1989 (emphasis added)).

In 1991, Sally Tanner, surprisingly, sponsored a bill that proposed precluding consumers from filing lawsuits unless they first participated in the qualified third-party dispute resolution process and received a decision.⁵⁰ Thus, in this proposal, a consumer’s right—not just to raise a legal presumption but to file a lawsuit under the Song-Beverly Act—was predicated on participating in the manufacturers’ dispute resolution process.

California’s leading Plaintiffs’ Lemon Law firm, Kemnitzer, Dickinson, Anderson & Barron (“Kemnitzer”), compiled information from Autoline (a dispute resolution program many manufacturers use to run their programs) and other dispute resolution companies. Kemnitzer reported that consumer awards under Autoline are often far smaller than full restitution consumers can obtain in court. Of the 600 cases in which consumers sought restitution from the

⁵⁰ The Legislative history does not expressly indicate why Tanner sponsored this bill.

manufacturer that Autoline arbitrated in 1990, approximately 25% of consumers received a restitutionary award that they could have received in court while 57% were awarded the opportunity to allow manufacturers another chance to fix the defect—a remedy not available under the Song-Beverly Act or Lemon Law. Of the 250 cases in Northern California that were decided between 1988 and 1991 by Toyota and Hyundai’s dispute resolution program, only 10% (25 cases) received full restitution. Kemnitzer argued that, although private dispute resolution programs had improved, state certified third-party venues sponsored by manufacturers should not be a prerequisite to litigation: “although improved from the days they were a fraud on the consumer, [arbitration programs] have not progressed to the point that they deserve to be a prerequisite to litigation. Unfortunately, the fact that the programs are qualified by the Arbitration Review Board (ARB) is no guarantee that the programs are fair to the consumers” (Anderson letter, Aug. 26, 1991).

The legislative history indicates that although the State Assembly passed this proposal by a vote of 72-0, Tanner ultimately reversed her opinion and succeeded in having the proposal withdrawn by the State Senate on the eve of the final vote after strong opposition from consumer advocates. Nonetheless, the fact this proposal almost passed shows how far the “rationalized myth” (Suchman & Edelman 1996) of manufacturer dispute resolution structures had been inscribed into legislative thinking regarding consumer rights.

Judicial Deference—Organizational Logic Overlaps with Judicial logic

Because many Lemon Law disputes have been channeled into alternative forums, California and Vermont each have only four court cases substantively interpreting manufacturer sponsored dispute resolution processes. However, in California, the four cases exemplify the argument that consumer warranty law is endogenous, *i.e.*, much like legislative enactments, judicial interpretations of consumer warranty violations incorporate the presence of institutionalized dispute resolution venues as evidence of fair treatment and a public policy preference for quick, informal resolution of consumer disputes. Judges, these cases suggest, reflexively interpret consumer warranty protection law not as protecting legal weapons, but as a system for keeping cases out of court in the hope that consumers and manufacturers can work problems out in private dispute resolution venues (cf. Edelman, Uggem, & Erlanger 1999; Edelman 2005, 2007; Edelman et al. forthcoming). With a few exceptions for clear errors of law or violations of due process, Vermont courts, like California courts, also afford considerable deference to the Vermont Lemon Law Board.

In 1994, the California court of appeals in the Second Appellate District issued two decisions within months which clarified that manufacturers with qualified third-party dispute resolution processes are immunized from non-willful civil penalties under Civil Code § 1794(e) but potentially liable for civil penalties for willful misconduct under Civil Code § 1794(c) (*Suman v. BMW of North America* 1994). California courts indicated the Legislature intended to “confer a benefit” to manufacturers who maintained dispute resolution processes by immunizing them from nonwillful civil penalties (*Jernigan v. Ford Motor Co.* 1994). California courts also signaled consumers should accept the success and failure of such privatized processes: “we encourage manufacturers to maintain qualified third-party dispute resolution processes, thereby ensuring that fewer consumers will have to take their problems to court” (*Suman v. BMW of N.*

America 1994:13). The following passage best reflects how, with respect to dispute resolution proceedings, the California courts adopted the logic and preferences of the legislature, which masks the fact the legislature adopted the logic and preferences of manufacturers:

*The overall thrust of subdivision (e) is the Legislature's preference for using alternative forms of dispute resolution when a new motor vehicle buyer has repeated difficulties getting his or her nonconforming vehicle repaired properly. The intent of the Legislature vis-à-vis subdivision (e) is encouragement of both the new motor vehicle manufacturer and the new motor vehicle buyer to work out their problems without resort to court intervention. To that end, subdivision (e) offers manufacturers an incentive ('carrot') for (1) maintaining a dispute resolution process and/or (2) responding promptly to a consumer's demand for replacement or restitution. . . [1794(e) is] a means of encouraging consumers to communicate their troubles to the manufacturer prior to filing a lawsuit. . . Subdivision (e) seeks to ensure that courts of law are used as a last resort by consumers of new motor vehicles (*Suman v. Sup. Ct. (BMW of North America)* 1995:1318) (emphasis added)).*

The judicial and legislative message to consumers is clear: if a dispute resolution process exists, then a consumer should use the private "courthouse" (Edelman & Suchman 1999).

Even for willful civil penalties, dispute resolution procedures constitute a partial defense. When evaluating willful misconduct under § 1794(c), California courts hold that juries should consider the nature of the manufacturer's conduct, including whether they acted reasonably, in "good faith," and maintained written policies and procedures to resolve consumer disputes (*Kwan v. Mercedes-Benz of N. Amer.* 1994:186; *Suman v. Sup. Ct.* 1995:1323). Thus, the judicial component of this journey through California's Lemon Law reflects deference to private dispute resolution venues in a manner consistent with the legislature's codification of manufacturers' preference for informal, private resolution of public rights.

Similarly, Vermont courts also defer when evaluating Lemon Law Board decisions:

The legislative intent is clearly that the standard of review be even narrower than that for arbitration proceedings generally. On top of the limited Arbitration Act grounds to vacate an award, the Legislature has added an elevated burden of proof. Thus, the appealing party must establish the presence of one of the grounds by clear and convincing evidence. . . . If the Legislature is trying to tell us anything by adopting the Arbitration Act review standard in Board proceedings, it is that we must accord great deference to the Board's construction of the Act (*Muzzy v. Chevrolet Division* 1989:186).

Vermont courts consistently indicate that Lemon Law Board decisions are to be affirmed unless the decision was procured by fraud, corruption or other undue means, the Lemon Law Board exceeded its powers, or refused to postpone a hearing. Courts indicate that they “correct an error of law only under extreme circumstances” (*In re Villeneuve* 167 Vt. 450 1998). While adhering to a highly deferential standard, Vermont appellate courts on two occasions reversed the Lemon Law Board when there was a clear error of law or failure to follow due process. In one case, the court remanded the case to the Lemon Law Board because the parties’ due process protections were violated when two Board members who were not present at the hearing attempted to decide the merits of the case based on written transcripts of the hearings (*In re Villeneuve* 167 Vt. 450 1998).

In sum, with some variation, California and Vermont courts adopted the logic of the legislature as to the value of alternative disputing structures and afforded considerable deference to private and state-run dispute resolution structures. This is consistent with the various private and public actors who lobbied the legislature for alternative disputing systems to be put in place in the early 1980s.

The Current State of Lemon Law Dispute Resolution

Since 1992, there has been very little substantive change to the dispute resolution provisions of the California Lemon Law. Over the course of thirty-five years since California’s groundbreaking consumer warranty law, manufacturers have been able to develop and legitimate an alternative dispute resolution system, with the blessing of the state, which largely transforms and privatizes legal rights to a point where manufacturers are, in effect, the legislature and court (Edelman & Suchman 1999). Today, *all* fifty states have consumer warranty laws and also allow manufacturers to fund and sponsor private third-party dispute resolution structures. Many states channel consumers into third-party dispute resolution provisions as a prerequisite to claiming a legal presumption in court. The core provisions of Vermont’s Lemon Law also remain largely untouched. Twelve other states following Vermont’s lead also maintain state-run dispute resolution structures, albeit with varying degrees of state and private involvement.⁵¹

III. Conclusion

This chapter elaborates the literature on organizational responses to law by integrating political science theories of the legislative process with new institutional studies that address the question of how organizations shape the meaning of law. By integrating these approaches, my “institutional-political” framework explains not just how organizations shaped the content and meaning of law, but also how public legal rights created by the legislature were channeled into private and state-run dispute resolution forums. Organizational construction of law in the legislative context results from both institutional legal meaning-making in the organizational field *and* direct political mobilization and lobbying. New institutional understandings of organizations explain why structures diffused across both states and ultimately all fifty states,

⁵¹ Seven states use a three to five person arbitrator panel consisting of various interested representatives from the lemon law field. Four states directly hire and oversee a private organization that administers lemon law disputes and two states use administrative law judges.

while path dependency and politics explain why the *form* and *control* of each structure was different in California and Vermont.

Private institutional venues created within manufacturers' organizational field shaped the meaning of law among public legal institutions such as legislatures and courts. As organizational and legal fields and logics overlapped and blurred, institutionalized organizational ideas and norms about the meaning of consumer rights and what constitutes compliance with consumer protection laws seeped into the logic of the legal field. California's consumer protection laws were intended to limit manufacturers' ability to perpetuate social and economic advantage through the manufacturer-consumer relationship. Although the Song-Beverly Act and the Lemon Law altered the legal environment by changing public perceptions and attitudes about consumer entitlement and rights, the ambiguity of these laws gave manufacturers wide latitude to construct their legal environment. Manufacturers created dispute resolution procedures as evidence of fair treatment, and formed advocacy coalitions that lobbied the legislature about the "legal value" (Edelman, Uggen, & Erlanger 1999:447) of the procedures. Manufacturers, similar to employers, responded in a manner that addressed both environmental demands (public perception, reputation, legitimacy) and organizational business interests (efficiency, fewer lawsuits, informal resolution). As manufacturer-funded dispute resolution venues spread among manufacturers over time, they became institutionalized by organizations and legitimated by legislative codification.

The legislative process became an important domain for importing ideas from the organizational field into the legal field. Amendments to the Lemon Law were less about preserving consumer rights and more about developing ways to legitimate these organizational structures without extensive review and oversight. Courts followed the legislature's lead by indicating that the purpose of the Lemon Law was to assist parties in resolving disputes informally. Thus, courts were relevant only as a last resort even though the Song-Beverly Act and Lemon Law's original purpose was to arm consumers with legal weapons attainable in court. The legislature and courts' perceptions of manufacturer dispute resolution structures as efficient and the proper forum for these conflicts was culturally conditioned around manufacturers' norms and beliefs that private dispute resolution was the appropriate mechanism for conflict resolution. Manufacturers constructed the meaning of laws designed to regulate them and transformed laws intended to provide consumers powerful rights into a codification of industry practices. When the legislature and courts incorporated institutionalized ideas from the organizational field into statutes and case decisions, California consumer warranty laws became endogenous.

Vermont on the other hand took a private dispute resolution forum format developed by automotive dealers and adopted the structure into law but with subtle changes. Although institutionalized logics concerning the value of alternative disputing forums shaped what advocacy coalitions chose to lobby for and ultimately diffused into Vermont law as well, the different political alliances in Vermont led to different institutional structures being codified into law. Unlike California, Vermont had not established a litigation option for consumers in 1971. Thus, Vermont was not wed to establishing a litigation option. In particular, legislators, in response to interest group concerns from consumer advocates and automotive dealers, engaged in a series of political trade-offs (eliminate a court option, but graft a private automotive dealer disputing program into a public forum) that resulted in having the Vermont government

administer the lemon law dispute resolution panel to address concerns over transparency. Vermont highlights the circumstances under which businesses are less successful in shaping the meaning of law among core public legal institutions and in particular, how politics and varying political alliances matter. In sum, institutionalized logics within the lemon law field and political mobilization of these logics led business and state actors to channel public legal rights into state and private-run adjudicatory forums operating outside the court system.

CHAPTER SIX

HOW ORGANIZATIONAL FIELDS MEDIATE THE MEANING OF LEMON LAWS THROUGH COMPETING FIELD LOGICS

I. INTRODUCTION

The next two chapters address the second research question in the dissertation: how do organizations, through the fields they operate within, shape the meaning of public legal rights in alternative disputing forums they create? I explore the micro-processes and mechanisms through which organizations construct their legal environment and implement alternative dispute resolution systems they create. Together, these two chapters explain how organizations shape the meaning of lemon laws in different ways depending on institutional context.

Identifying the field logics operating in the lemon law field is the first step toward understanding how organizational fields shape the meaning of public legal rights in alternative disputing forums they create. This chapter, therefore, answers three necessary pre-requisite questions: (1) How do private and public actors within the organizational field understand the purpose and meaning of lemon laws?; (2) Do their conceptions cohere or conflict?; and (3) How do public and private actors tasked with resolving lemon law disputes think alternative dispute resolution forums should operate? In essence, I empirically explore the extent to which field actors adhere to uniform or contested scripts and understandings as to the purpose and meaning of lemon laws and dispute resolution.⁵² The statements of field actors, taken collectively, reflect the logics and institutionalized modes of thought operating in the lemon law field. Drawing from participant observation at lemon law conferences and in-depth and ethnographic interviews with field actors across the country, my empirical data suggest, contrary to prior studies of organizational fields, that the lemon law field is *simultaneously* settled in some areas while contested in others. Moreover, although prior studies show how managerial values shape the way organizations go about complying with law (Edelman, Fuller, & Mara-Drita 2001; Marshall 2005), my empirical data reveal that there are conflicting field logics over the purpose and *meaning* of lemon laws and the goal of dispute resolution structures.

Field actors from across the United States agree that alternative dispute resolution venues are preferable to courts for resolving lemon law disputes. Thus, field actors appear to share a logic that favors alternative disputing forums. There is also a consensus that lemon laws are ambiguous with respect to their meaning. The ambiguity in law, consequently, leaves much of the interpretation and implementation to field actors who construct the meaning of lemon laws (cf. Edelman 1990, 1992).

In this instance, organizations and affiliated entities mediate the meaning of lemon laws through different logics operating in the lemon law field. In particular, “public” (state regulators, state lemon law administrators, policymakers) and “private” (automobile manufacturers, automobile dealers, third-party administrators, private auditors) actors conflict regarding the

⁵² Unlike Chapter 4 which drew from existing literature to develop a coding scheme for evaluating liberal legal, ADR, and business logics, here, I interviewed field actors and observed conferences to determine the field logics currently operating in the lemon law field.

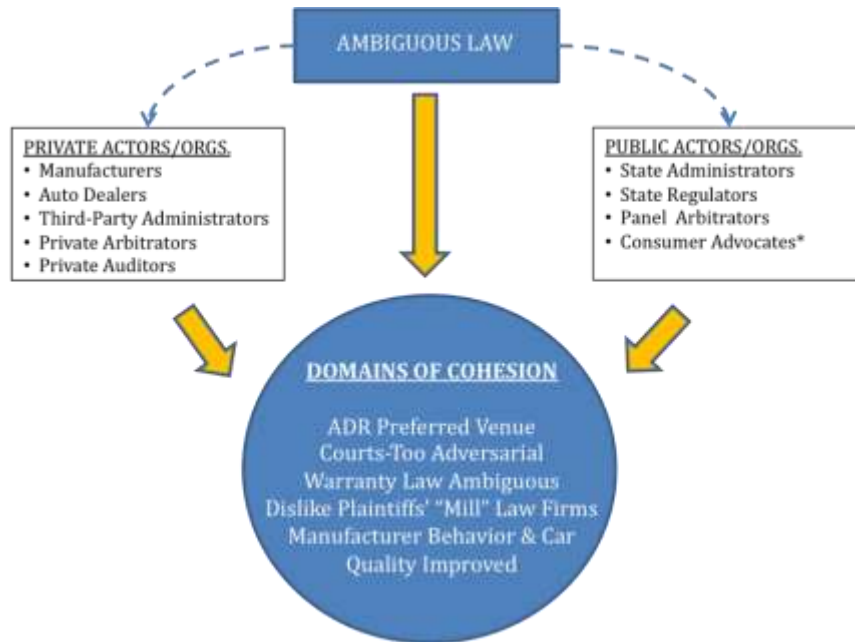
goals of informal dispute resolution and the purpose of lemon laws. Private actors that I interviewed view the goals and purposes of lemon laws and dispute resolution through a “business” or “managerial” logic that focuses on efficiency, cost-effectiveness, allowing managerial discretion and control, improved corporate image, productivity (solving problems), and customer retention. Public actors that I interviewed adhere to a “consumer” logic that focuses on public safety, protection for consumers, equal access and resources for consumers and values such as rights, transparency, and following formal law. Though technically classifiable as private actors, my interviews reveal that consumer advocates also view lemon laws from a “consumer logic” perspective. The contestation in field logics goes beyond the goals and purposes of dispute resolution and lemon laws. Indeed, public and private actors contest the meaning and implementation of lemon laws. Specifically, field actors contest the: (1) the supremacy of substantive provisions of the law; (2) the meaning of a warranty; and (3) what constitutes a fair adjudicatory process. Lemon law conferences and in particular, panel sessions, allow public and private actors to spread and institutionalize these competing logics among other field actors (cf. Edelman, Abraham, & Erlanger 1992; Bisom-Rapp 1996, 1999).

II. FINDINGS

The following highlights the areas of consensus and conflict in the lemon law field. In this instance, arenas of social action or organizational fields are organized around agreed upon sets of rules, *i.e.*, alternative dispute resolution venues are preferred over courts, but public and private actors mediate the substantive meaning of lemon laws through competing field logics.

Figure 1 highlights the consensus in the logics operating among all field actors:

FIGURE 1
SETTLEMENT AND CONSENSUS IN THE ORGANIZATIONAL FIELD



*Figure 1 illustrates the consensus among public and private actors in the lemon law field. While technically private actors, my interviews reveal that consumer advocates adhere to a consumer logic similar to the public actors. Moreover, consumer advocates typically advocate on behalf of a public group or for the public good. For these reasons, I locate consumer advocates in the “public actor” category.

Public and private actors share a logic that favors alternative dispute resolution forums over courts. However, the rationale for favoring alternative dispute resolution forums over courts varies among private and public actors. Manufacturers and third-party administrators believe the court system is inefficient, unpredictable, and too formal:

MANUFACTURER: The court run processes take so much longer. I think when it gets into a court, it’s more structured. There are more requirements. There’s more paperwork. It costs a lot more money. I think it really takes it out of the players’ hands. It’s no longer my case or the consumer’s case. It’s going to be decided by somebody totally different who will have much less knowledge on this type of case than somebody in a state run or a private run program that’s used to dealing with cars and RVs (Manufacturer, DB 6520, lines 379-94).

While consumer advocates and state regulators contend that alternative dispute resolution should never be mandatory and that a person’s right to use the court system should be preserved, they recognize obtaining a lawyer and using the adversarial civil litigation system is not a viable alternative for consumers:

CONSUMER ADV.: I'd obviously like to improve the [dispute resolution] processes, but a lot of consumers are never going to go to court. And they're never going to talk to an attorney. For those consumers who will never use a court process, for whatever reason, valid or not—that's their reality, I'm respecting their reality and saying, we'd like to have another option for them and work on improving that option.

INTERVIEWER: What percentage of consumers that you've met, not just lemon complaints, but other consumer complaints, don't really view filing a lawsuit as an option?

CONSUMER ADV.: Almost all of them (Cons. Adv. SR2020, lines 938-991).

Field actors interviewed across the country, including but not limited to, manufacturers, automotive dealers, third-party administrators, state regulators, state lemon law administrators and consumer advocates, repeatedly indicate that they prefer resolving legal disputes in alternative dispute resolution forums rather than courts.

Consistent with new institutional studies of law and organizations in the employment context (Edelman 1990, 1992), all field actors also share a logic that consumer warranty laws are ambiguous with respect to their meaning and in particular, how organizations are supposed to comply with these laws. Field actors repeatedly note that terms such as “reasonable number of attempts,” “substantial impairment of use, value, or safety,” “repair attempt,” “days out of service,” and “willful,” are “not clearly defined” by statutes (Third-Party Adm., BC8010, line 241). Private third-party administrators and state regulators both indicate that consumer warranty statutes are subject to interpretation by field actors because there is “a lot of grey area” regarding what statutory provisions mean (NDR FN, IR7030, line 857). The ambiguity in law provides an opportunity for field logics emanating from the lemon law field to shape the meaning of lemon laws (cf. Edelman 1990, 1992).

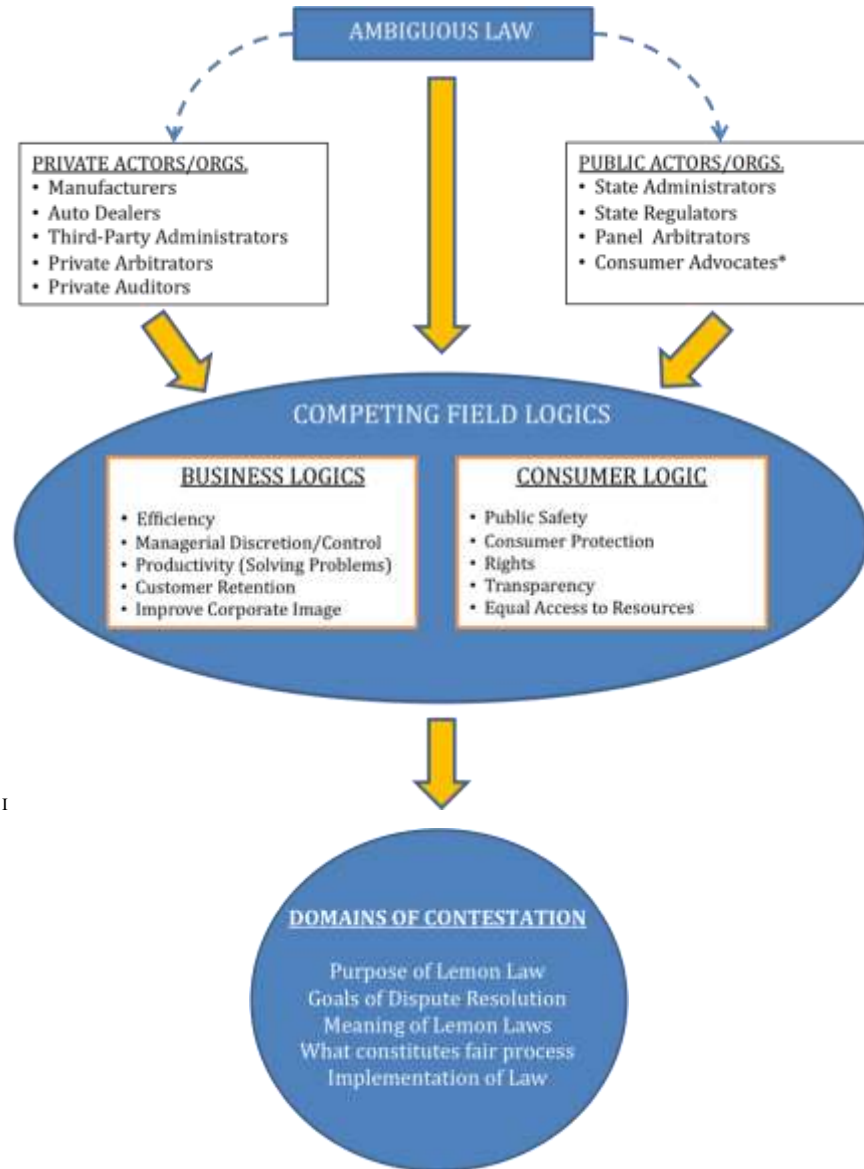
Finally, in addition to sharing a logic that law is ambiguous and alternative dispute resolution forums are the appropriate venue for lemon law claims, all field actors also share a logic that: (1) manufacturers and dealers are more responsive to consumer concerns than before lemon laws were passed; (2) automobile quality and repairs have improved dramatically since lemon laws were passed; and (3) plaintiff ‘mill’ law firms harm consumers and the viability of lemon law dispute resolution programs.⁵³ The lemon law field, therefore, has reached consensus and settlement on these five dimensions.

⁵³ Because my research questions primarily concern how field actors understand the purposes, goals, and meaning of lemon laws and dispute resolution, this chapter does not focus on consensus regarding manufacturers' increased responsiveness, improved car quality and repairs, and plaintiff mill firms. However, I include them as part of my findings in part to note the consensus in the field goes beyond merely that law is ambiguous and all actors prefer alternative dispute resolution to courts.

Contestation and Disruption in the Lemon Law Field

Despite this consensus, there are also competing logics concerning the purposes and goals of lemon laws and dispute resolution operating in this organizational field. As in the employment context (Edelman, Erlanger, & Lande 1993; Edelman, Fuller, & Mara-Drita 2001), managerial and business values shape the way manufacturers, dealers, and third-party administrators think about lemon laws and dispute resolution. Private actors mediate the purpose of lemon laws and the value of informal disputing forums through “business logics” of efficiency, cost-effectiveness, allowing for managerial discretion and control, providing an opportunity to solve problems informally, and retaining customers. Indeed, many of the same business logics and frames used in lobbying during the formal legislative process thirty years ago by manufacturers (as demonstrated in Chapter 5) still dominate the logic and rhetoric of the process. Conversely, despite believing an informal, quick dispute resolution forum is good for consumers with cars that are lemons, state administrators, regulators, policymakers, and consumer advocates anchor their discourse in a consumer logic that emphasizes consumer rights, public safety, consumer protection, equal access and resources for consumers, transparency, and most importantly, following the law. Figure 2 reveals the competing business and consumer logics operating among all field actors:

FIGURE 2
CONTESTATION AND DISRUPTION IN THE ORGANIZATIONAL FIELD



* Figure 2 illustrates the competing business and consumer logics operating among public and private actors in the lemon law field. In particular, public and private actors conflict regarding the purposes and goals of lemon laws and dispute resolution and in particular, the meaning of lemon laws.

The following examines how this organizational field maintains *multiple* logics concerning the purpose of lemon laws and goal of dispute resolution, one anchored around business values and the other around consumer values.

TABLE 1

BUSINESS LOGIC

Efficiency
Customer Retention
Positive Corporate Image
Discretion and Flexibility in Remedies & Control of Forum
Productivity (Solving Problems)
ADR Trumps Substantive Law
Flexible Application of Formal Law

Efficiency

Manufacturers frame the value of institutional dispute resolution forums in terms of “efficiency.” However, manufacturers define efficiency in different ways. Some manufacturers indicate efficiency means having a process that avoids the high cost of using the court system: “obviously, it’s a huge cost savings for us. If we can get someone to go through the National Dispute Resolution (“NDR”), it’s very inexpensive for us. We don’t have to hire more paralegals to handle things that go to court, obviously” (Manufacturer DB6530, lines 340-50). However, manufacturers also view these processes as efficient because they resolve disputes without unnecessary delay and high transaction costs:

THIRD-PARTY ADM.: [Manufacturers] also want to avoid the state programs.

INTERVIEWER: Why is that?

THIRD-PARTY ADM.: [I]n some states they have to be there in person. And today, a lot of the companies do their hearings by telephone. That’s kind of a strong incentive for them not to have to send someone or fly someone in to attend a hearing (Third-party Adm., BC8040, lines 405-17).

Manufacturers evaluate the value of dispute resolution through the lens of efficiency.

Customer Retention & Improved Corporate Image

In addition to viewing these processes as efficient, manufacturers indicate their goal when selling products is customer retention: “You know that’s always the goal, to retain the customer” (Manufacturer, DB6530, lines 948-49), “customer first” (Manufacturer, DB6520, lines 112-16). Unlike during the legislative process where customer satisfaction was paramount, instead, private actors now emphasize customer retention. Manufacturers repeatedly state retaining customers not only improves their profit and solidifies their market share of consumers, but helps their corporate image to the extent their dispute resolution programs are perceived as legitimate. Thus, the value of lemon laws and the accompanying dispute resolution system are

viewed favorably to the extent they help retain customers and improve the corporate image. A manufacturer representative involved in designing manufacturer disputing forums explains how customer retention and exuding legitimacy to the public dominates how manufacturers structure their process:

MANUFACTURER: One of the premises right from the very beginning was that it was cheaper for them as well, and more cost-effective, to retain the customers they already had....

We were looking for a neutral device, [for example] if you have a “Ford” Consumer Appeal Board, then Ford’s going to run it, Ford’s going to make the determination; Ford’s not going to hear my problem—and we didn’t want that perception [with consumers]. What we wanted was a perception that said, these [dispute resolution judges] are all going to be qualified people (Manufacturer, DB6510, lines 300-07, 381-399).

The NDR specifically recruits manufacturers to use their dispute resolution system by marketing the program as capable of helping retain customers while simultaneously exuding legitimacy to state regulatory agencies and the public:

THIRD-PARTY ADM.: [Dispute resolution systems] save the customer. It keeps them in their product. And the cost to acquire a customer versus the cost of saving a customer is much, much less.

And then beyond that, it is a cost management approach for [manufacturers]. When you look at California, the law there, they can avoid some damage issues if they are participating in good faith and participating in the certified process, it can help with that.

And the other part is, if your process is certified by the state agency, that can be helpful in the consumers—from the consumer’s perspective that the process really is going to be a fair process (Third-party Adm., BC8010, lines 496-540).

Private actors believe in part, the value of participating in dispute resolution programs is customer retention and improved corporate image.

Managerial Discretion and Control

Manufacturers and their affiliates also value lemon laws and organizational disputing forums because they provide manufacturers greater discretion and control of the design, remedies, and format for resolving conflicts (cf. Edelman, Erlanger, & Lande 1993). According to manufacturers, discretion and flexibility is paramount when resolving consumer disputes: “I think with anything to do with consumers you have to be very flexible, and that’s why I say, any [dispute resolution] mechanism that has more flexibility in the decision process is better”

(Manufacturer, DB 6510, lines 1030-37) (cf. Edelman, Fuller, & Mara-Drita 2001; Edelman, Erlanger, & Lande 1993).

Third-party administrators repeatedly note that manufacturers enjoy having some voice and discretion in the institutional design of the dispute resolution system:

THIRD-PARTY ADM.: [I]t is by law [manufacturers'] process. So they can have some input as to what can go into it or what can't as far as eligibility.

For instance, vehicles that have been in accidents don't go through this process. They have another firm to hear that. They do have the right to pick and choose up front not after the fact, but up front they can say well, vehicles with these types of warranty problems can come through the process, but we are not going to take bodily injury cases, we are not going to hear cases about sales disputes, those kinds of things (Third-party Adm., BC8000, lines 245-259).

To assist manufacturers, some third-party administrators operate mediation programs as part of their dispute resolution process (Third-party Adm., BC8010, lines 850-900). In particular, the NDR maintains an entire mediation division that attempts to resolve consumer grievances once a lemon law claim is made. Manufacturers value this informal conflict resolution mechanism and seek to move cases into mediation as much as possible:

INTERVIEWER: This facet of [mediating] the dispute prior to the arbitration, have you found in your interaction with manufacturers that this is an aspect of the [disputing] program that they really value?

THIRD-PARTY ADM.: Oh yes. And when one of our major companies came with us about four or five years ago, that was specifically what they came for.....Every month some companies will set a goal based on what percentage they feel is acceptable for their customers. And you know it might vary from company to company.

But they're all very aware of the mediation rates (Third-party Adm., BC8040, lines 287-322).

The goals of lemon laws and dispute resolution are, according to private actors, anchored around allowing sufficient discretion and flexibility in the institutional design, the processing of claims, and the resolution of disputes.

Productivity (solving problems)

Consistent with the findings of prior new institutional studies in the employment context (Edelman, Erlanger, & Lande 1993), my interviews show that private actors transform the

meaning of lemon laws away from rights and protection and toward solving problems and addressing the underlying problem:

THIRD-PARTY ADM.: Is your interest really in \$400 or is your interest in having a reliable means of transportation? People will turn it into a money thing when in fact their real interest is in being able to get to and from work. Their real interest is not breaking down in the middle of the highway with their kid in the back seat.

Those are the interests of the party, so if we can get at their underlying interests, we can take it away from being kind of a money thing.

So I think that's the beauty of dispute resolution, is that you can have these outcomes that, quite frankly, could be anything, as long as they're not illegal. People can agree to anything. In our program customers, staff, manufacturers have all seen [solutions] that they wouldn't have thought about (Third-party Adm., BC8050, lines 825-851).

Private actors across the country routinely emphasize that resolving problems and addressing the underlying interest in a non-adversarial environment are the primary purposes of having an alternative dispute resolution forum.

In sum, like prior new institutional studies (Edelman, Fuller, & Mara-Drita 2001; Edelman, Erlanger, & Lande 1993; Marshall 2005), this study shows that managerial and business values shape the way private actors think about the purpose of lemon laws and goals of dispute resolution. However, the following section shows how, unlike prior new institutional studies, a competing consumer logic influences how public actors conceptualize lemon laws and dispute resolution. In the lemon law context, the meaning of law is mediated through multiple and conflicting logics.

Consumer Logic in the Lemon Law Field

TABLE 2

CONSUMER LOGIC
Public Safety
Consumer Rights
Consumer Protection
Equal Access to Resources for Consumers
Efficiency in the Form of Full Relief Obtained Quickly
Uniform Process & Remedies
Substantive Law Trumps ADR
Follow Formal Law

Public actors view the purpose of lemon laws and goals of informal dispute resolution through a consumer logic. As was the case when employees draw from formal law when faced with managerialized conceptions of law emanating from employers (Edelman, Erlanger, & Lande 1993; Edelman, Abraham, & Erlanger 1992), state administrators, regulators, and consumer advocates draw from liberal legal values and public policy considerations in the face of a competing business logic.

Public Safety and Consumer Protection

Public actors indicate that the purpose of lemon laws is to protect consumers and keep the public safe: “the most important goal is to get unsafe cars off the road,” “the main purpose, definitely, is to protect consumers,” and “the goal is to really get them to make better quality cars. And make them right from the beginning” (Con. Adv. SR2020, lines 191-92, 210-11, 228; State Reg., SR 2010, lines 126-135). In fact, public policy considerations that public actors maintain stem from the fact that many regulators, policymakers, and legislators involved with lemon law legislation and regulation previously worked for consumer advocacy organizations:

LEGISLATIVE ANALYST/STATE REGULATOR: As consumer organizations, we were able to get the ball rolling, and then those of us who moved over to the legislative side were then able to actually do the work to craft the law (SR2050, lines 338-41).

Indeed, the state actors I interviewed that previously worked for consumer advocacy organizations admit they import a consumer perspective that focuses on public safety and consumer protection into the lawmaking and regulatory process (cf. Edelman, Abraham, & Erlanger 1992).

Consumer Rights and Enforceability

As opposed to customer retention and improved corporate image, state regulators, state lemon law administrators, and consumer advocates frame the purpose of lemon laws in terms of “rights” and “enforceability.” Policymakers and regulators indicate that the purpose of lemon laws in part is to provide consumers with a right to enforce warranties:

STATE REGULATOR: Prior to [the lemon law], if you purchased a brand new car and the manufacturer wasn’t willing to work with you, you were basically up a creek (State Reg., SR 2010, lines 126-35).

LEGISLATIVE ANALYST: I decided that we should introduce a bill to make provisions of consumer warranties enforceable (Legis Analyst, SR 2030, lines 78-100).

Public actors also repeatedly note that lemon laws “level the playing field” and allow consumers to voice their concerns and grievances in a neutral forum capable of providing

tangible relief. Thus, the consumer logic is oriented more around consumer rights, enforceability, and voice than retention.

Uniform Process & Remedies

While private actors anchor the value of dispute resolution around having an efficient, flexible, and discretionary process, public actors emphasize uniformity and raise concerns over the discretion in manufacturer-sponsored dispute resolution programs:

CONSUMER ADV.: And it would be uniform. One of the best things that having a state-run program does is that it doesn't matter whose product is. You don't have one process for Ford owners, another one for BMW owners, GM owners. You know, what we have in California is very flawed in that way. Some manufacturers have no process at all...Some have a process that works this way or that way (Cons. Adv. SR2020, lines 729-37).

Moreover, public actors emphasize efficiency much less. Whereas private actors view the process of dispute resolution through a lens of efficiency, according to public actors, concerns over efficiency and speed of the dispute resolution system should not trump due process protections or influence the fact-finding process. Public actors believe a process is efficient if it provides a consumer an accessible forum to obtain full relief: "Efficiency is a code word for it's not going to cost the manufacturers anything. It's the result that counts." (Pl. Att./Con. Adv., PS3020, lines 524-26). In sum, unlike prior new institutional studies that show how a managerial logic pervades an organizational field (Edelman, Fuller, & Mara-Drita 2001), a competing consumer logic anchored in public safety, consumer protection, rights, consumer voice, and uniformity operate among public actors in the lemon law field concerning the goals of lemon laws and value of informal dispute resolution.

Contestation Over the Meaning of Lemon Laws

The contestation in field logics in the lemon law field goes beyond the goals of lemon laws and purposes of dispute resolution. The contestation is most evident in the way field actors mediate the meaning of lemon laws through competing business and consumer logics operating in the lemon law field. The following highlights the conflict over the *meaning* of lemon laws in this organizational field. I focus on three specific areas of contestation over the meaning of lemon laws: (1) the supremacy of substantive provisions of law; (2) the meaning of warranty; and (3) what constitutes a fair adjudicatory process.

Strict versus Flexible Adherence to Substantive Provisions of Formal Law

Public and private actors across the country conflict over how much deference formal law should be afforded in these forums. While public actors believe formal law should govern at all times, private actors believe informality and discretion should trump formal law. Private actors repeatedly stress the importance of due process, in particular, notice of hearing, opportunity to be heard, and the right to representation. However, they do not believe that organizational dispute

resolution forums need to be exclusively anchored in formal law. Private actors reflect a logic that de-emphasizes substantive law:

THIRD-PARTY ADM.: Case law that has set precedent, we don't really make decisions based on precedent. Every case is assessed and weighed on its own merits....

Case law starts to shove legal things into a process that really was intended not to be a legal process completely. I don't see it as having a prominent place in the arbitration format (Third-Party Adm., BC 5050, lines 685-90, 728-34).

Private actors believe rigid adherence to case law compromises the informality, flexibility, and discretion alternative dispute resolution systems provide:

INTERVIEWER: Other than in California, the NDR doesn't put caselaw in their other manuals for the rest of the states, and I'm curious what's the thought process behind sort of leaving out [] appellate court cases?

THIRD-PARTY ADM.: Yeah, the fact that we include them in California has actually always been a source of agitation for me. I don't like that we include it. This is an alternative to litigation. It's an alternative format. And while arbitrators are asked to take into account standards of the law, this program has always been a fairness and equity program, always. And arbitrators are asked to do kind of what's in their gut after they hear all this (Third-party Adm., BC8050, lines 675-683).

Thus, manufacturers as well as third-party administrators tasked with training and administering manufacturers' dispute resolution programs conceptualize the role of formal law as less important.

On the other hand, public actors indicate that formal law should govern the outcome of the dispute despite being in an informal setting. While public actors see the value of a forum that allows for quick disposition and adjudicatory relief, they do not conceptualize those values as trumping formal legal values, especially over an important issue like a car:

CONSUMER ADV.: You need [your car]. It's a necessity of life. And it's such a big financial investment. You know, for that reason alone the stakes are really high. So you have to have an expedited way to get it resolved. And so in that sense ADR was an opportunity for a speedy resolution. A good thing.

But one of the biggest flaws in our dispute resolution process is that to this day they don't have to apply the law in California. They're supposed to apply the law. Here they can ignore it. So you

get these decisions, they're like all over the map. And it's, you know, a law that depends on the kind of training and who the arbitrators are, and a lot of it's subject to abuse...and manipulation and discretion.

And in Washington State they have highly trained arbitrators I believe are either attorneys or like attorneys, you know, in that they're very familiar with that area of law. They're up on the recent case law. And in Washington state you go and they're supposed to apply the law and they do. And the cases can be appealed. They rarely are. And when they have been appealed I believe they've always been upheld on appeal.

So as a result you apply in Washington state for arbitration the results are a foregone conclusion. If you have a lemon they're going to be told to buy it back. So the handwriting's on the wall. (Con. Adv., SR2020, lines 290-327).

Thus, in the face of business and managerial conceptions of law, public actors draw from the liberal legal edict of strict adherence to formal law (cf. Edelman 2007).

Broad versus Narrow Interpretations of the Meaning of a Warranty

Field actors also view the purpose of warranties differently. Manufacturers and third-party administrators frame the purpose of a warranty narrowly, often as a "promise to fix" (Manufacturer DB 6530, Lines 200-53; Third-Party Adm., BC8000, lines 770-785), "if there is a defect in materials or workmanship, [manufacturers] will fix it," (Third-party Adm., BC 8000, lines 765-775), and "a warranty is whatever is represented to you by the manufacturer" (Manufacturer, lines DB 6520, lines 389-395). One manufacturer even noted that warranties were a marketing device in a competitive market: "we need to step back and remember that Warranty {sic} is a Marketing tool, not a requirement other than a moral requirement. It is an attempt at competitive advantage" (Manufacturer, DB 6515 (written statement)). Private actors took exception to consumers' broad conceptualization of a warranty: "[Consumers] got a Wal-Mart mentality. Just bring it back and give me a new one. I will keep bringing it back until I get one I really like" (Third-Party Adm., BC8000, lines 770-785).

Conversely, public actors describe a warranty more broadly as a "guaranty," (Con. Adv. SR2020, lines 191-92, 210-11, 228; Legis Analyst, SR 2040, lines 624-27) "a promise on the overall quality of the product will work," (Con. Adv., PS 3030, lines 88-164), "an assurance that this will work...If it doesn't get fixed, you're going to get another one or they're going to return your money, and that's really the way consumers look at it" (Legis. Analyst, SR 2040, lines 628-41). Field actors indicate broad and narrow interpretations of the meaning of warranty often affect the way warranty disputes are resolved when consumers bring their cars into automotive dealerships for service. One lemon law lawyer describes how different conceptions of the meaning of warranty influence the consumer-manufacturer relationship: "[The consumer thinks] I bought a car with a new engine installed in it, and therefore, I should have my money back. Whereas the manufacturer at that point oftentimes believes that it's a vehicle with a problem that

we've agreed to fix and can fix, and therefore, you should be allowed to fix under the warranty. Those are the two perceptions that sometimes apply" (Lemon Law Attorney, PS 3030, lines 130-64).

Thus, the meaning of a warranty is filtered through competing business and consumer logics operating in the lemon law field, one anchored in the idea that a warranty is "a promise to fix a problem" versus another conception of a warranty as a "guaranty" that the product will work.

What Constitutes a Fair Adjudicatory Process

Private actors believe that an adjudicatory process is fair if the parties are allowed to share their story in a comfortable environment and informal setting, *i.e.*, "[o]ur brand, our, you know, our mission is to create a...forum for disputes to get resolved" (Third-party Adm., BC8020, lines 420-22). Procedural justice and the idea that the participants should feel like they were treated fairly dominate their conception of what constitutes a fair process. In particular, instructors from different third-party administrators articulate similar frames regarding what constitutes a fair process:

THIRD-PARTY ADM (NDR): [L]et the consumer feel like they showed you the problem. That is what is important (Third-party Adm., IR7030, NDR FN, lines 841-43).

THIRD-PARTY ADM. (BDR): One of the things we promise the consumer is, this is your chance to say what you want your own way. . . Tell me about the problem with your car. The only way we control that is through what you do as an arbitrator. You have to sit in that room and make that person feel comfortable sharing what they want to share. And make that person feel they were heard and they were understood and that you're going to take what they have to say into consideration. That's all you can do in any dispute resolution process that's an adversarial process (Third-party Adm., BDR BC8030, lines 710-20).

While state administrators, state regulators, and consumer advocates also emphasize procedural justice, they note a fair adjudicatory process is one that is optional (not mandatory), transparent, "offers equal access and equal resources for manufacturers and consumers" (State Regulator, SR2000, lines 476-77), "user-friendly" (Con. Adv., SR2020, lines 726-27), and uniformly applies legal rules. State regulators in particular conceptualize a fair process as broader than one that is procedurally fair:

INTERVIEWER: What's a fair process?

STATE REG.: Well, one thing is to have equal access and equal resources for the manufacturers and the consumer. I know there is always going to be an advantage towards a manufacturer because that's their business... But allowing the consumer to go online, just

like the manufacturer, to retrieve all the documentation that was submitted by either party. Whatever each party submits to the administrator they should both have equal access to the documents.

INTERVIEWER: And you are saying that doesn't happen all the time?

STATE REG.: It doesn't happen every time (State Regulator, SR 2000, lines 473-80, 581-600).

In sum, although field actors share a logic that alternative dispute resolution is the proper venue, the purpose and *meaning* of lemon laws and goals of using dispute resolution programs are mediated by competing consumer and business logics operating among public and private actors in the lemon law field. This leaves the lemon law field in a continual state of contestation over the meaning of lemon laws.

Contestation of Field Logics and Field Actors at Lemon Law Conferences

The tensions between competing business and consumer field logics manifest themselves when field actors directly interact and engage one another at lemon law conferences. During panel sessions, testimonials, audience participation during panels, dining opportunities, and various informal social activities where individuals conversed, public and private actors in the lemon law field communicate and institutionalize competing business and consumer logics in the lemon law field. Lemon law field actors contest the following issues: (1) the meaning of legal provisions; (2) spatial distance, which refers to the proximity between field actors in public areas; and (3) who is the “true” advocate for the consumer. Thus, field actors maintain cohesive logics among similarly situated organizations in the field (*e.g.*, manufacturers and third-party administrators) and contested logics across competing organizations in the field (*e.g.*, third-party administrators and state regulators).

The Meaning of Legal Terms

As I found in my in-depth interviews with public and private organizational actors, my observations at lemon law conferences also show that public and private actors contest the meaning of consumer warranty law, especially during conference panel sessions. In particular, state regulators rely directly on statutes and case law for legal guidance. Defense lawyers, manufacturers, and third-party administrators view consumer law as open to interpretation and construction.

Whereas new institutional scholars who study the employment context have shown how organizational fields construct what constitutes compliance through professional management literature on employment discrimination and compliance (Edelman, Fuller, & Mara-Drita 2001), I find in the lemon law context that field actors broaden the meaning of legal terms and create discretionary space for *varied and contested* interpretations through conference panels. Because field actors believe lemon laws are ambiguous, private actors during panels spend considerable time constructing the meaning of specific legal terms that carry powerful meaning in lemon laws. For example, during one conference panel, one third-party administrator indicated that what

constitutes a reasonable number of attempts for these cases should be guided by general notions of what is “reasonable” as opposed to statutory standards specifically defining a reasonable number of attempts as thirty days out of service or four repair attempts. He indicated that common sense, rather than lawyers, should govern this standard. This administrator rhetorically asked: “why would we need a lawyer to figure out what a reasonable number of attempts are? There is no need for experts. The parties and the arbitrator need to think about what is ‘reasonable,’ what is a ‘reasonable number of attempts’ to fix the problem” (Conference FN II, IL9010, lines 116-34).

Another panel entitled “What constitutes a lemon law repair attempt?” perhaps best highlights the contestation in field logics concerning lemon laws and how panels serve as domains where field logics are communicated to other field actors. Whether a consumer’s visit to a manufacturer’s authorized repair facility constitutes a “repair attempt” is an important issue for a consumer seeking to establish that she gave a manufacturer a “reasonable number of attempts” as a matter of law. Although courts and legislatures have defined what constitutes a repair attempt as a matter of law, an entire conference panel was devoted to analyzing and constructing what this term means.

In particular, the panel consisted of a state regulator, a defense lawyer, and an expert mechanic. The moderator presented a hypothetical: should each consumer’s visit to an authorized repair facility where the repair facility cannot duplicate the defect count as a separate repair attempt? The state regulator succinctly indicated that, in his state, a defect that cannot be duplicated by the manufacturer automatically counts as a repair attempt as a matter of law. In doing so, he cited the relevant case law supporting his position. For the next 55 minutes, the defense lawyer and the mechanic fielded questions on this issue without the state regulator interjecting a comment. In particular, the defense lawyer dominated the discourse and noted a myriad of additional issues that should be considered when determining whether a repair facility that cannot duplicate an intermittent problem should count as a repair attempt against the manufacturer:

“One needs to look to the evidence itself, look for objective support, for recurring condition, is it in fact a defect or characteristic of the car that is not to the satisfaction of the customer.” [The defense lawyer] noted manufacturers should involve the dealer to see what effort there was to duplicate the problem. For example, one needs to look to see if the mechanic performed a test drive. Or, “have the customer come out and perform a test drive to show the problem.” He noted that “if the customer refuses to come out for a test drive, perhaps the manufacturer should not count it as a repair attempt should the customer ask for a buyback later”.... The defense lawyer indicated that manufacturers should get an expert when they cannot duplicate a problem and road test the car. He also noted that it is hard to defend such a case if the consumer can get an expert....The defense lawyer noted that one of the keys is to “put the burden on

the customer to duplicate the problem in these situations”
(Conference FN IV, IL9030, lines 36-125).

Thus, in educating the audience on the legal meaning of what constitutes a “repair attempt,” the defense lawyer built in additional discretion and re-shaped legal meaning under a hypothetical that many manufacturers at the conference admitted they often experience. In doing so, the defense lawyer conveyed to other field actors in the audience from across the country an interpretation of law as flexible and discretionary. In this instance, field actors at conferences are not just reflecting the logic of fields but are shaping and producing the logic of fields (cf. Edelman 2007; Edelman, Fuller, & Mara-Drita 2001).

Contestation and Cohesion Over Space

The contestation over field logics are reflected not just in the way law is interpreted, but in where field actors sit and who they congregate with throughout conferences. Thus, the manner in which field actors interact with one another is a symbolic indicator of the contestation of field logics. Public and private actors voluntarily segregate themselves during panel sessions. Virtually all the recreational vehicle and automobile manufacturers sat in the rear of the conference room. Defense lawyers also sit toward the rear to be close to their clients. The majority of individuals that sit toward the front of the room are state lemon law regulators, administrators, and consumer advocates. In addition, public and private actors rarely converse with one another during coffee breaks between panels. This spatial segregation reproduces itself during dining sessions. The spacial segregation across many domains (conference room, coffee breaks, dining activities) serves to maintain and reproduce solidarity and cohesion among public and private actors’ respective communities while hardening the contestation between public and private actors. More importantly, it also allows field logics to flow to similarly situated field actors attending these conferences and consequently, solidifies consumer and business logics in the lemon law field.

Contestation and Cohesion Over Who is the “True” Advocate & Cares for the Consumer

The contestation in field logics goes beyond competing understandings of the lemon law, or spatial distance, but also includes a struggle over who is the legitimate protector and advocate for the consumer. Consumer advocacy groups and state regulators are not hesitant to openly claim that manufacturers do not care about consumers (Conference FN I, IL9000, lines 349-361). The keynote speaker of one conference, Brady James, Automotive Reporter, spent a large portion of his thirty minute lecture on how the culture of the three American automotive manufacturers must change, noting repeatedly that they are “arrogant.” James’ answer to an audience question highlights how manufacturers are framed as not caring for consumers:

Upon finishing his talk, Brady opened up the session for questions. A consumer advocate asked the first question: “why does the automotive industry take so much time and effort to weaken the law for consumers?” Brady’s reply, “they don’t get it. There is an arrogance factor here.” (Conference FN II, IL9010, lines 31-42).

During the entire conference, public actors repeatedly frame manufacturers as irresponsible and not having consumers' best interest at heart:

Consumer Advocate: They tried over the years to decimate state Lemon Laws. They tried to at the state level, they tried at the federal law. And in a lot of states they succeeded in really weakening the Lemon Laws....

There are substantive ways they've undermined Lemon Laws and also procedural ways (Cons. Adv., SR2020, lines 456-474).

Conversely, private actors take great exception to being labeled uncaring and use every opportunity to highlight that they care for consumers and view customer retention as a vital business value. A defense lawyer for motorhome manufacturers indicates that manufacturers feel like they deal with consumer complaints successfully 90% of the time and often go above and beyond the warranty. He indicated that consumers arbitrate only a small percentage of cases yet manufacturers feel they "get a bad reputation" at these conferences and are unnecessarily criticized (Conf. FN III, IL9020, lines 142-47). Another manufacturer representative indicated: "I don't think consumers really understand that we are out for their satisfaction...I think that they think we're thinking about money and we're really not. ...Why would any company selling something out in commerce want a bunch of mad customers?" (Manufacturer, DB6520, lines 559-71). This tension reached its climax on the final day of one conference, when manufacturers rebelled against the negative framing and openly proclaimed their affection for consumers during a panel session:

At this point, a representative from a foreign automobile manufacturer, Tony McBriar, grabbed the microphone being circulated among the audience. McBriar indicated that manufacturers also care about consumers and that "everyone is pro-consumer." McBriar stated, "manufacturers do care about consumers." McBriar indicated he manages 13 states for a foreign manufacturer and they spend 2.4 million dollars above warranty to address consumer problems. He indicated that "in this consumerism movement, you are penalized for helping customers especially when you cannot duplicate the problem because it counts as a repair attempt. This makes it easier for the consumer to obtain a buyback. We need to help the consumer but also be fair to the manufacturer." McBriar's angry tone reflected much of the frustration many manufacturers were feeling at the conference but unwilling to speak up. Another manufacturer representative sitting next to McBriar took the microphone next and indicated that he agreed with what McBriar just said (Conference FN IV, IL9030, lines 133-47).

This open contestation was immediately followed by within-group cohesion among manufacturers and their defense lawyers:

Once the session ended and there was an official coffee break. I noticed another manufacturer, Jimmy Turner, approach McBriar, shake his hand and say “thank god somebody stood up and defended the manufacturers.” McBriar nodded his head. Turner continued: “I’m going to propose a new panel next year called, ‘it’s not all our fault.’” The people surrounding McBriar and Turner laughed. I introduced myself to McBriar and he quickly began telling me how “people seem to forget that manufacturers care too.” He indicated that this conference is too slanted and that he buys back cars all the time, they try to help consumers and that “we manufacturers need consumers” (Conference FN IV, IL9030, lines 170-77).

These exchanges reflect the overt within group cohesion among private organizations and affiliated entities (*e.g.*, manufacturers, third-party administrators, defense lawyers) while simultaneously highlighting the contestation across groups (*e.g.*, state regulators and manufacturers). The contestation at conferences also highlights the tension between business and consumer logics in the lemon law field.

III. CONCLUSION

In sum, contrary to prior studies of organizational fields as settled or contested (Levi-Martin 2003), the lemon law field operates in a simultaneous state of disruption and conflict while also maintaining degrees of uniformity and settlement. In this instance, field actors across the country share a logic that alternative structures are the preferred domain to resolve consumer disputes and warranty law is ambiguous. However, because consumer protection law is ambiguous with respect to its meaning of compliance and particular legal terms, it leaves room for competing “business” and “consumer” logics to permeate the lemon law field simultaneously. Manufacturers, dealers, third-party administrators, and private auditors that I interviewed and observed across the country anchor the goals of lemon laws and purposes of dispute resolution around considerations such as efficiency, cost effectiveness, managerial discretion and control, productivity, improved corporate image, and customer retention. State regulators, administrators, policymakers, and consumer advocates that I interviewed and observed frame the purposes of lemon laws and dispute resolution around issues such as public safety, consumer protection, consumer rights, equal access and resources for consumers, and following formal law. In addition to focusing on the plight of consumers, public actors also mobilize formal law and public policy considerations to push against a managerial or business logic operating among private actors in the lemon law field.

Contestation goes beyond the purpose of lemon laws and goals of dispute resolution. Here, the lemon law field mediates the *meaning* of lemon laws through competing business and consumer logics. When field actors interact at conferences, these competing logics manifest themselves in particular domains of contestation over what is the meaning of lemon laws, who “cares” for the consumer, and even spatial distance among public and private actors. Because there is no consensus among field actors concerning the meaning of consumer law in this organizational field, the conditions are ripe for public and private field actors to each construct

and implement an alternate form of consumer law embedded in different logics in various state and private-run dispute resolution systems operating across the country.

CHAPTER SEVEN

HOW ORGANIZATIONS SHAPE THE MEANING OF LAW: A COMPARATIVE ANALYSIS OF DISPUTE RESOLUTION STRUCTURES OPERATING IN THE LEMON LAW FIELD

I. INTRODUCTION

Now that I have identified and analyzed the field logics operating in the lemon law field, this chapter samples two states, California and Vermont, that use private and state-run dispute resolution structures to adjudicate lemon law disputes. My analysis draws from, links, and contributes to two literatures that examine the relationship between organizational governance structures and law: socio-legal studies of repeat players' advantages in disputing and new institutional studies of how managerial and business values influence the way organizations construct law and compliance. Although socio-legal and new institutional scholars have examined the relationships among organizations, dispute resolution structures, and law, they have not sufficiently explored the micro-processes and mechanisms through which the meaning and operation of law are constructed in dispute resolution structures or the way managerial values flow into these structures.

This chapter demonstrates how the structure of dispute resolution in the lemon law field shapes the extent to which managerial and business values influence the meaning and implementation of law, and consequently, the extent to which repeat players are advantaged. Through in-depth interviews and participant observation of the training programs dispute resolution arbitrators undergo in each state, my empirical data reveal that different organizational structures in California and Vermont filter competing business and consumer logics operating among public and private actors in different ways. This results in different dispute resolution structures giving different meanings to substantially similar lemon laws operating in both states. I also quantitatively analyze seventeen years of outcome data from arbitration hearings to show how these different meanings of law are reflected in who wins in each forum. Although my data do not allow me to establish a causal relationship, they strongly suggest that the *form* of the dispute resolution structure, in addition to how business and state actors construct the meaning of lemon laws through these structures, have critical implications for the effectiveness of consumer protection laws for consumers.

Because lemon law disputes across the United States are adjudicated in different structures (see Chapter 5) with public and private actors deploying differing value systems concerning lemon laws and dispute resolution (see Chapter 6), this chapter divides my overarching research question—how organizational fields shape the meaning of public legal rights in alternative disputing forums they create—into three sub-questions: (1) How do private and state dispute resolution structures shape the meaning and implementation of law? (2) How do private and state dispute resolution structures incorporate business and consumer logics to different degrees? (3) How do private and state dispute resolution structures relate to who tends to win lemon law cases? My empirical data suggest business and managerial values influence the meaning of law in some but not all dispute resolution structures.

As has been found by previous new institutional studies (Edelman, Fuller, & Mara-Drita 2001), I find that managerial and business values of efficiency, managerial discretion and

control, productivity, and customer retention flow into the rules, procedures, and meaning of law operating in dispute resolution structures mainly through a training and socialization process for California arbitrators. Third-party administrators hired by automobile manufacturers to run their dispute resolution programs teach a set of rationales and scripts that emphasize eliminating consumer emotion and individual voice from the process and narrowing the fact-finding role of arbitrators. Arbitrator training programs reshape the meaning of law by building discretion and flexibility into legal procedure and remedies, recontextualizing legal rules and arbitrator decision making around a set of business values, and selectively omitting portions of legal text (see Table 1). As a result, California arbitrators are taught to adjudicate cases not in the shadow of the lemon law as defined by formal statutes, but rather in the shadow of a new form of warranty law infused with business values and that provides repeat players subtle advantages.

TABLE 1
MECHANISMS THROUGH WHICH ORGANIZATIONS SHAPE THE MEANING OF LAW IN CALIFORNIA

Mechanism	Definition	Examples
Building Discretion into Legal Rules	Teaching Formal Law as Devalued, Flexible, Optional (creates space for non-legal values to flow into law)	(1) Arbitrator has discretion to award "repair" even when consumer reaches legal presumption & is entitled to refund as a matter of law (1) Arbitrator taught to consider efficiency, time delay, & resource conservation when deciding whether to order independent inspection of vehicle
Recontextualization of Formal Law	Interpreting & Defining Legal Principles & Rules Around a Set of Non-Legal Business Values	(2) Parties must adhere to specific time limits when presenting their cases due to efficiency concerns (3) Training manual includes BDR & NDR interpretations of statutes/cases
Omission of Formal Law	Removal of Selected Portions of Legal Text	(1) Removing "to the buyer" from definition of "substantial impairment" (2) Selectively omitting cases & statutes from arbitrator training manual

By contrast, Vermont uses a panel of arbitrators that balances interested stakeholders reflecting both business and consumer values in a state funded and designed dispute resolution structure. As a result, Vermont's dispute resolution structure is far less likely to introduce business values into the meaning and operation of their lemon law and prevents many repeat player advantages enjoyed by manufacturers in California. To the extent business logics are introduced into the process by the presence of an automotive dealer and technical expert board members, they are balanced with competing consumer logics by the presence of three citizen arbitrators on the Lemon Law Board and a program administrator who oversees the program. In particular, citizen arbitrators balance the fact-finding and deliberation process with a consumer perspective that often allows emotion and individual voice to enter the process. Furthermore, the

technical expert on the Lemon Law Board counterbalances manufacturers' repeat player advantages, *e.g.*, greater knowledge, experience, and ability to offer expert testimony or expert reports. Thus, in Vermont, the *meaning* of due process values, neutrality, and even legitimacy are shaped not by professional training and socialization, but rather arbitrator panel balance, democratic interest representation, and maintaining transparency. Consumer outcome data collected in California and Vermont over the past seventeen years reveals that these different meanings of law are reflected in different outcomes such that consumers win full refund or replacement of their automobiles far more often in Vermont than they do in California.

II. FINDINGS

This section highlights how private and state-run dispute resolution structures influence the meaning and implementation of law in different ways. I focus on five important structural differences that emerge from having one dispute resolution process dominated by business values and the other balanced with consumer and business values: (1) the adjudicative orientation of dispute resolution arbitrators; (2) the fact-finding role of dispute resolution arbitrators; (3) the role of consumer emotion and individual voice in the process; (4) the level of enforcement of legal procedures; and (5) the meaning of legal terms and remedies.

TABLE 2
DIFFERENCES IN CALIFORNIA AND VERMONT DISPUTE RESOLUTION STRUCTURES

	California	Vermont
	Managerial Justice Adjudicatory Model	Collaborative Justice Adjudicatory Model
Education & Training Program	Extensive	Minimal
Socialization Process of Arbitrators	Extensive (conformity, follow organizational script)	Minimal (maintain and value identity as a dealer, technical expert and citizen arbitrator panel member)
Presence of Emotion/Voice in Adjudicatory Process	Ignored and de-valued	Important, provides snapshot of consumer's experience with vehicle
Fact-finding role of Arbitrators	Adversarial Process/Passive Investigator	Inquisitorial Process/Active Investigator
Procedural Rules	Tolerant (e.g., hearsay permitted)	Strict (e.g., hearsay not permitted)
Neutrality & Legitimacy	Based on Professional Training, Education, & Socialization	Based on Transparency and Interest Representation/Balance

Adjudicative Orientation of Dispute Resolution Arbitrators

Consistent with the findings of prior new institutional studies, my findings show that professional training is a key mechanism for the diffusion of organizational constructions of law in manufacturer-sponsored training programs (cf. Edelman, Abraham, & Erlanger 1992; Bisom-Rapp 1996, 1999). The dispute resolution programs in California and Vermont train and socialize their arbitrators in different ways. In California, arbitrators are taught to disregard any

prior knowledge of legal processes and strictly follow what they are taught in the training processes. Trainers emphasize discretion and flexibility with respect to applying formal law in these processes. This philosophical orientation is a key mechanism for explaining how organizations shape the meaning of law.

Conversely, Vermont's panel of arbitrators receives minimal formal training and socialization. The little training they receive largely focuses on assuring that they apply formal law. Vermont arbitrators believe the effectiveness of the Lemon Law Board is contingent on the right mixture of people offering different consumer and business perspectives while still operating within the strictures of formal law. The legitimacy of California's dispute resolution training programs administered by the National Dispute Resolution ("NDR") and Bureau of Dispute Resolution ("BDR") is based on the idea that professional training and socialization produce impartial and neutral decision makers. In Vermont, these same core legal principles rest on interest representation and balancing consumer and business logics in the structure.

Almost immediately after California's dispute resolution training programs begin, arbitrators, the majority of whom are lawyers, are socialized to approach legal decision making from the NDR and BDR's perspectives and follow the script provided to them. Under the "NDR Program Philosophy" segment of training, the trainer immediately admonishes arbitrators that their forum has a different philosophy than the court system: "this is not a court of law, the guidelines for court behavior do not apply. . . change the way you think" (IR7000, NDR Part I, lines 224-27). Instead, trainers instruct arbitrators to follow organizational prerogatives when adjudicating lemon law disputes and writing legal decisions:

THIRD-PARTY ADM. (trainer): I'm like you're going to write this, you're going to say this, you're going to do this because this is our program. It's got all kinds of rules and intricacies.... Just because you're a lawyer, just because you've had X education, just because you've had lots of experience arbitrating doesn't mean anything to me in terms of what I need you to do and how you need to operate in this program. (Third-party Adm., BC8020, lines 374-87).

By deploying a program philosophy that asks arbitrators to not think like lawyers and simply follow what they are taught, California training programs create discretionary space for considering non-legal values when evaluating consumer disputes. For example, although trainers repeatedly stress the importance of due process, business values such as maintaining managerial discretion and flexibility influence the degree to which formal law is applied (cf. Edelman 1992). In order to allow increased adjudicatory discretion in these processes, formal law is expressly devalued in California training programs:

THIRD PARTY ADM. (dir. of consumer relations): Because so and so versus so and so [referring to a case], what does that really have to do with exactly what I'm looking at today, you know? Because an arbitrator, I think they feel like they're judge for the day. And if they feel it rises to the level of substantial impairment [of use, value, or safety], it's going to rise to the level of

substantial impairment whether it's wind, noise or electrical issues. So I think arbitrators enjoy the program because they feel like they have flexibility too (Third-party Adm. lines 1100-1128).

THIRD-PARTY ADM. (head of training dept.): The fact that we include [cases] in California has actually always been a source of agitation for me. It's starting to shove legal things into a process that really was intended not to be a legal process completely. [Legal] decisions can be made and they can be wrong. And this piece of case law can contradict that piece of case law. I don't see it as having a place in the arbitration (Third-party Adm., BC8050, lines 665-734).

California training programs also provide a written training manual that limits the legal principles and reasoning arbitrators are permitted to use when evaluating lemon law cases. Other than what is taught during training sessions and conveyed in the written manual (which omits some statutes and cases while including others), trainers forbid arbitrators from conducting additional legal research. This framework signals to arbitrators that all they need to know about lemon laws is confined to the training manual and two-day training course. However, filtering *selected* legal provisions into a manual creates discretionary space for California training programs to re-contextualize certain legal principles around a set of business values (cf. Mertz 2007). In particular, the training manuals include the NDR and BDR's written interpretations of the meaning of cases and statutes. By controlling the oral and written educational process, the NDR and BDR are able to influence how arbitrators understand lemon laws.

The training curriculum in Vermont is strikingly different from California both in style and substance. First, there is very little formal training of arbitrators on the Vermont Lemon Law Board and no formal training program. Because arbitrators serve three-year terms that can be renewed twice, training occurs on a rolling basis as new members are appointed to the Lemon Law Board by the governor of Vermont. Second, the goals of Vermont's training curriculum reflect more of an orientation toward rights, protection, and following formal law than California's curriculum. Instead of relaxing the degree to which formal law is applied, Vermont's brief training curriculum emphasizes adherence to formal law, patience, and thoroughness when deciding cases:

INTERVIEWER: When you're training a new board member, what values are you hoping to instill in the board members? What are you trying to accomplish?

STATE ADM.: Consistency with application of the law. And they do this, [the panel arbitrators are] very thoughtful in reference to not rushing, like they take it seriously. They're not in a hurry to leave (State Adm., DC4500, lines 700-720).

Third, instead of including only selected provisions of the lemon law, Vermont arbitrators are asked to review a complete copy of the lemon law statute.⁵⁴ Unlike California training programs, Vermont's program administrator does not offer any specific interpretation or guidance regarding what specific statutory provisions mean. Receiving a copy of the actual statute as opposed to an edited version in a manual prevents organizations from filtering business values into what lemon laws mean.

Perhaps most importantly, the legitimacy of Vermont's Lemon Law Board emerges from panel balance and adjudicating cases in a transparent forum.⁵⁵ Vermont's arbitrators believe it is critical to have business *and* consumer perspectives present in the decision-making process because statutory terms such as "substantial impairment of use, value, or safety" and "reasonable number of attempts" are ambiguous with respect to their meaning (cf. Edelman 1990, 1992):

PANEL ARBITRATOR (TECHNICAL EXPERT): But that is where I think the having different people on the board, because what may not be substantial [impairment] to me, may be very substantial to a consumer advocate. And I may lose. That is why it is good to have a representation. [T]hat is what I like about the board, it is diverse....

We have an older gentlemen [citizen board member]--sometimes when he asks a question, I'm like, "Where in the heck is he going with this thing," *because we think differently. He was a legislator for years.* So he asks a question and all of a sudden he enlightens me.

Now the answer he gets out of the consumer or manufacturer, all of a sudden, ooh, I didn't think of that. Then I will make my notes and I might have a follow up question with that, because it takes me on a different path, and all of the sudden something that is not just so much technical, he might trigger something that makes me want to ask another technical question, just because he comes from a different angle at it (Technical Expert Panel Arbitrator, LL4530, lines 590-617, 1035-1043) (emphasis added).

As opposed to forcing arbitrators to conform to one interpretation of lemon laws, Vermont reconciles the inherent ambiguity of law by assuring that business and consumer perspectives are part of the legal decision making process.

Similar to the technical expert and automotive dealer arbitrators, citizen panel arbitrators believe balancing the panel with business and consumer perspectives allows for a form of teaching or educational exchange to take place:

⁵⁴ Panel arbitrators also observe a few hearings prior to sitting on the Lemon Law Board and receive occasional quizzes on various procedural aspects of the lemon law.

⁵⁵ Panel arbitrators are even instructed to introduce themselves to the parties once hearings begin by announcing whether they are a citizen, dealer, or technical expert member of the Lemon Law Board.

PANEL ARBITRATOR (CITIZEN): I wouldn't want to see a board totally citizen. Because I think it would be totally consumer. And I think having a mixture [is healthy]. And I know I have sat there and had one opinion, but when I've been listening to the dealer or the technician, I could see what they were talking about. And probably change my mind. Other times, I would be more convinced that what I was thinking was right. (Citizen Panel Arbitrator, LL4570, lines 429-444)

Thus, the different adjudicative orientations in California and Vermont facilitate and inhibit the conditions under which and the degree to which business values are more or less likely to flow into law. In California, arbitrators are immediately socialized to deemphasize formal law. This philosophical orientation creates space for non-legal values to pour into the meaning of law. In Vermont, arbitrators are part of a structure that relies on balancing the Lemon Law Board with multiple stakeholder perspectives and applying formal law unfiltered by an extensive training curriculum. In this instance, the competing field logics identified in interviews and participant observation at conferences that I highlighted in Chapter 6 are reproduced by California and Vermont's dispute resolution training programs.

The Fact-Finding Role of Dispute Resolution Arbitrators

While both Vermont and California dispute resolution programs emphasize impartiality and neutrality, they construe the *meaning* of these terms differently. The divergent fact-finding approaches arbitrators deploy in both states illustrate the way impartiality and neutrality mean different things. In California, impartiality and neutrality are considered compromised when arbitrators actively investigate facts. In Vermont, actively investigating facts is considered a necessary component for establishing impartiality and neutrality. This distinction is important because passive arbitrators in California provide structural advantages for repeat players whereas the inquisitorial role of arbitrators in Vermont offsets repeat player advantages.

For example, California training programs teach arbitrators to act as passive arbiters and rely solely on parties' production of relevant factual evidence (Fuller 1978). In fact, trainers expressly warn arbitrators that actively investigating facts compromises their neutrality and impartiality: "You are not going to reference a document. You are not going to reference that piece of evidence that in your mind you believe the consumer should be presenting because now that you have said that you have held yourself out as being that consumer's advocate and that destroys the impartiality of the process" (Third-party Adm., BC8000, lines 450-56). For example, trainers indicated the neutrality and impartiality of the process is compromised if an arbitrator asks a consumer how the car defect substantially impairs the use, value, or safety of the vehicle: "I think that would probably be pushing it, yes, I do. If it's raised by one party there's no problem in turning to the other party and saying what is your position. But, I wouldn't go, well how does that affect your use [value, or safety] because then you are feeding them, you are leading their evidence" (Third-party Adm., BC8000 lines 521-566).

In contrast, Vermont arbitrators view their role as inquisitorial. Vermont arbitrators indicate it is their responsibility to actively gather information and facts regardless of whether the

parties offer information on their own. According to Vermont arbitrators, active investigation assures a procedurally fair and neutral process:

INTERVIEWER: Did you feel like [asking many questions] was compromising your neutrality?

PANEL ARBITRATOR (CITIZEN): No. I think we had an obligation to do that....It wasn't our job to try the case, but by the same token, it was our responsibility to get all the facts so we could make a decision (Citizen Panel Arbitrators, LL4540, lines 628-636).

Thus, active fact-finding preserves arbitrator impartiality and neutrality in Vermont whereas active investigation compromises the process in California.

Active investigation also counterbalances any experiential and informational advantage manufacturers maintain such as manufacturers' unilateral access to repair history records, ability to bring experts or expert reports into evidence, and greater knowledge of what legal elements (such as "substantial impairment") must be met to establish a viable cause of action:

PANEL ARBITRATOR (CITIZEN): Sometimes the consumer really didn't know how to present his or her case very well. And by the same token, the manufacturer probably had been in there two or three times and had some experience.

So it behooved the board to lead the consumer to ask questions that the consumer was not aware of. Because the consumer wouldn't know—sometimes the consumer's not very well educated and wouldn't know what substantial impairment of use, value or safety meant. So we would have to say, well, do you think this substantially impairs the car and all that. So we'd have to lead the consumer in that direction, to be fair (Citizen Panel Arbitrators, LL4540, lines 600-628).

Actively investigating facts in Vermont also includes preventing intimidation from repeat players against one-shotters during questioning:

PANEL ARBITRATOR (TECHNICAL EXPERT): So I had to step in because [the manufacturer] basically was trying to sway the board, [] on a technicality or whatever his point was, I would play a devil's advocate and give the consumer the chance to do the same thing, and [the manufacturer] got mad at me and called me out on it. And I said to him, "I am not going to allow you to be a bully at this board. It is as simple as that. If you think that something plays well for your client, we are going to go quid pro quo" (Technical Expert Panel Arbitrators, LL4530, lines 1096-1143).

The inquisitorial role of Vermont arbitrators, therefore, curbs repeat player advantages manufacturers may gain with passive arbiters in California.

Business logics that permeate training processes in California also affect the amount of *independent* expert information offered into evidence concerning automobile defects. For example, California training programs teach arbitrators that they may appoint a technical expert to examine a vehicle and issue an expert report if necessary. However, by focusing on concerns of efficiency, time delay, and resource conservation, trainers strongly dissuade arbitrators from using technical experts:

THIRD-PARTY ADM. (NDR trainer): It is a long process [to hire a technical expert] and you should not waste the time and delay unless it is necessary....They are not the end all be all (IR7010, NDR FN, lines 232-48).

THIRD-PARTY ADM. (BDR trainer): Think about the relevance. Think about why you need it. 90% of things do not require expert inspection. The expert isn't going to analyze the entire car. Think about it. Think about what you are asking. Is it relevant? (ZZ6030, BDR FN, lines 553-574)

By framing technical experts as unnecessary, irrelevant, or an inefficient use of time, California training programs exclude neutral technical experts who have the requisite experience and mechanical equipment to identify vehicle problems and leave evaluation to the lay knowledge of arbitrators, who usually have only manufacturer testimony to rely on. In fact, manufacturers I interviewed indicate that they often bring mechanical experts to hearings.⁵⁶ Under these circumstances, arbitrators are especially captive to manufacturers' technical evaluations and testimony because they are trained to avoid appointing independent experts. In this way, the dispute resolution structure subtly gives repeat players control over the degree and scope of technical information admitted into the hearing. Indeed, California state regulators repeatedly lamented in their interviews how efficiency concerns guide the way facts are offered into evidence and hinder the overall fairness of the NDR and BDR's dispute resolution programs.

In Vermont, arbitrators indicate having a technical expert on the Lemon Law Board prevents parties from misleading the Board regarding technical defects or problems with vehicles, combats information asymmetry between manufacturers and consumers, and leads to better evaluation of the technical issues involved in the case:

PANEL ARBITRATOR (CITIZEN): Well I know on our board, we have had cases [where] the manufacturer has said something and the technician would say no, I don't believe that's quite right. Then they would discuss it and come to find out, the technician would be right.

⁵⁶ State regulators who audit California lemon law hearings also indicate consumers rarely if ever bring a technical expert to hearings.

And the manufacturer, I don't think he was trying to mislead, but I think he was presenting it in a different light than the technician would view it. And I think the technician is there to keep the manufacturer honest for one thing. And I don't mean to say that he would be dishonest. But just to keep all the facts straight.

And on our board, I definitely am glad a technician is there. Because if the manufacturer makes a statement, you can always look at the technician and say is that right. And he'll usually say yes, that's right (Citizen Panel Arbitrator, LL4570, lines 714-745).

Rather than letting efficiency and resource conservation concerns influence whether an independent expert inspection is ordered, vehicles in Vermont Lemon Law cases are test driven and inspected by the Lemon Law Board. Thus, the Lemon Law Board attempts to independently verify the consumer and manufacturers' technical evaluation of allegedly defective vehicles.

Moreover, dealer and technical expert arbitrators whom I interviewed, past and present, repeatedly emphasized the critical role citizen members of the Lemon Law Board play in the fact-finding process:

PANEL ARBITRATOR (DEALER): The citizens.... I think the most important thing is they ask a very different question, sometimes to either party. Where they can ask a question that can garner information that would be germane to the decision that, to be honest with you, the tech individual or the dealer may not ask....

Credibility is more of a key than you may imagine. That's where the citizen members help us the most. They normally have a perspective of a consumer, and there again, tend to ask questions along those lines more so than the other members do (Dealer Panel Arbitrator, LL4590 Lines 252-268, 586-598).

In sum, the rules and procedures California arbitrators are taught to follow when fact-finding are subtly tilted toward manufacturers' interpretations and evidence. Although neutral on their face, trainer concerns over maintaining impartiality and a fast, efficient process when discovering facts allow manufacturers structural advantages (cf. Galanter 1974). Conversely, Vermont arbitrators view active fact-finding as a duty, a mechanism for impeaching the credibility of parties, and a technique for preventing either party from gaining advantages simply because they possess more documents, expertise, or experience.

The Role of Consumer Emotion & Individual Voice in the Process

Public and private actors in Vermont and California both believe their forum creates an informal, flexible adjudicatory environment that still provides due process protections such as the right to an impartial and neutral decision maker, the right to notice and opportunity to be

heard, and the right to present and rebut evidence. However, they conceptualize the *meaning* of due process protections differently.

In California training programs, due process concerns *require* removing consumer emotion and individual voice from all facets of the adjudicatory process. While informal disputing forums are traditionally thought of as domains that value emotion and individual voice (Bush 1989; Bush & Folger 1994), trainers in California admonish arbitrators “don’t feel emotions,” “don’t feel buyer’s remorse,” and “have empathy not sympathy.” Concerns that matter to consumers, especially the emotional impact of the problem, are constructed as irrelevant. Thus, emotion in these processes is omitted from the entire process, regardless of whether such emotions were germane to determining whether a consumer met her burden of establishing a “safety defect” or “substantial impairment of use, value, or safety of the vehicle to the buyer.”

Unlike California, Vermont arbitrators emphasize the importance of emotion and consumer voice when evaluating consumer grievances:

PANEL ARBITRATOR (DEALER): Sometimes some emotion is a good thing...[W]hen consumers are emotional, you see them telling their case. We are here for a hearing for about an hour. We are here for a snapshot of their experience with the car. So when you see emotions, you can sometimes get a quick snapshot and a good feel of their experience and that is really important (Dealer Panel Arbitrator, LL4590, lines 120-125).

Emotion, therefore, offers an important lens into the consumer’s experience with her vehicle.

Consumer emotion is also weighed heavily in Lemon Law Board deliberations. Vermont arbitrators indicate citizen panel arbitrator perceptions of mechanical problems as anxiety provoking and an emotional experience were important issues to consider, especially when evaluating whether a defect “substantially impaired the use, value or safety of the vehicle *to the buyer*”:

PANEL ARBITRATOR (TECHNICAL EXPERT): So if we just had technical people on the board that were all car people, it is not a good representation of what a consumer goes through. Let's say you have a consumer advocate on the board who is a female that has raised children, and the consumer that comes [to the hearing] is primarily a female, and three times her kids were locked in the car at the grocery store because the [car] automatically locked the doors on her. . . . she may look at it and say, you know what, the livelihoods of those kids are jeopardized, she doesn't want to leave her kids, because you are not supposed to leave our kids in the car, somebody might take them or they might get injured, you just don't-- and that is where having somebody that is not in the automobile business, those are the types of questions make me

think, "Yeah, I've never thought of it that way," because I am just thinking technical. I am thinking I know what the car business end of it is like, and it is good to hear what consumers think and how they can relate to the inconvenience factor. (Technical Expert Panel Arbitrator, LL4530, lines 635-710).

In sum, while both California and Vermont dispute resolution programs emphasize due process protections, they conceptualize the meaning of due process differently. California arbitrators are taught to view consumer emotion and voice as compromising due process while Vermont arbitrators view consumer emotion—both at actual hearings and during deliberations—as relevant and fundamental to evaluating the merits of the case and assuring a fair process.

The Enforcement of Legal Procedures

Business and consumer logics are filtered into the procedures used in dispute resolution structures operating in both states in very different ways. Specifically, concerns over efficiency and managerial discretion and control drive the tolerant and relaxed procedural rules operating in California. As a result, manufacturers gain subtle structural advantages even though these procedural rules are facially neutral. Conversely, in Vermont, concerns over transparency, equal access, and consumer protection drive a series of strict procedures implemented by the program administrator overseeing the program. Vermont's structure, therefore, may be more likely to curtail certain repeat player advantages.

While California training programs, run by the NDR and BDR, maintain that they are autonomous organizations uninfluenced by manufacturers and subject to state regulatory oversight, interviews suggest how manufacturers still influence their programs:

THIRD PARTY ADM. (trainer): Manufacturers are too involved in the process, you know, that's a hard one to defend sometimes, quite honestly. From my perspective, it is actually difficult to defend. Because I think there are times when I think we do things that we don't really need to do....[T]o the extent that whatever [the Manufacturer Liaison for the BDR] said, you know, we need to do it this way, it usually wound up we're going to do it that way because that's what the manufacturers want (Third-party Adm., BC8030, lines 564-569, 685-694).

Manufacturer influence is especially evident in the procedures California arbitrators are asked to implement. For example, the NDR strongly advises arbitrators to allow only twenty minutes for parties to present their case-in-chief and five minutes for closing arguments. The following excerpt from my fieldnotes exemplifies how NDR's training program recontextualizes party presentations around a set of business values by imposing time limits:

The NDR indicated that a couple of manufacturers were not happy with "some long-winded consumers," and felt they "heard the arguments too many times." She said that "a few marathon cases" led to phone calls from manufacturers "demanding reform and so

this is the result.” Thus, the NDR decided to offer time limits as guidelines. She noted that “there is constant interaction with manufacturers especially since there is a critical mass of them.” When there are concerns, it “kicks up the food chain” (IR7030, NDR FN lines 584-598).

In this instance, managerial concerns over having an efficient, quick process supersede allowing parties to present their case in the manner that suits their strategic interests.

In order to provide parties as much discretion as possible when presenting their cases, California dispute resolution structures are very flexible about what types of evidence are admissible. Although trainer remarks such as “there are no formal rules of evidence in arbitrations,” “anything goes,” and “all evidence comes in, including hearsay” are seemingly harmless and in theory make it easier for consumers to offer evidence (NDR Part I, lines 140-44; ZZ6040, BDR FN, lines 443-45), repeat players benefit from relaxed evidentiary rules because they have more access to resources, information, warranty records, and invoices (cf. Galanter 1974). Moreover, in this instance, repeat player advantages are even greater because, as I explained in the prior section, arbitrators are instructed to not actively investigate facts and rely solely on the parties’ presentation of evidence. The education and socialization process, therefore, allows legal procedures to be reconstituted and infused with seemingly innocuous business logics of efficiency, informality, discretion, and control. As a result, organizational repeat players are more likely to gain subtle advantages.

In contrast to manufacturer-sponsored programs in California, Vermont arbitrators believe the Lemon Law Board is a legitimate forum because it is funded and run by the government. Concerns over equal treatment before the law and transparency are particularly important for establishing legitimacy and preventing excessive business discretion and influence in the process:

PANEL ARBITRATOR (CITIZEN): Any time the manufacturer is supporting a program, I would look at it twice because the manufacturer and the dealer do not like intervention on their business. They don't like to be told they have to fix a car... When the legislature that is a freeman's body makes a decision to add a program like this, you can rest assured that everybody's treated on an equal basis, and that there's no money coming from anybody to support the program where there would be a chance of influence...I think that a government-run [program] like Vermont is free, it's equal, and people are all treated fairly...(Citizen Panel Arbitrator, LL4560, lines 495-528).

Consistent with the consumer logic operating in the lemon law field, Vermont’s dispute resolution structure adheres to a strict procedural format in part to combat excessive arbitrator discretion and manufacturer informational advantage. Vermont’s structure is different from California’s structures in three important ways. Unlike California, hearsay evidence is not allowed. Second, parties are not given any time restriction when presenting their cases. Finally, the program administrator of the Lemon Law Board actively assures procedural rules are strictly

enforced. As part of her duties, the administrator makes sure arbitrators prevent parties from making arguments that were not made in their written statements, prevents admission of documents that are not filed at least five days in advance of the hearing, may request arbitrators ask a question when discrepancies require clarification, and may personally interject a clarification question during proceedings. Thus, rather than build discretion into legal rules, Vermont uses strict procedures and active oversight by the program administrator to add an additional layer of procedural and substantive protection to the adjudicatory process.⁵⁷

The Meaning of Legal Terms and Remedies

Managerialized and business conceptions of law in California arbitrator training programs do not just alter the fact-finding role of arbitrators, the level of consumer emotion in the process, the meaning of due process, impartiality, and the legal procedures employed, but also change the actual meaning of remedies and statutory legal terms. Although arbitrators are required to apply the formal lemon law on the books, arbitrators, *in action*, apply an altered form of lemon law.

For example, the *meaning* of legal remedies is reshaped in California training programs. According to the California lemon law, a consumer is entitled to full restitution or replacement of her vehicle if she establishes she met the statutory “legal presumption” for providing a manufacturer a “reasonable number of attempts” to fix the automobile. California trainers, however, allow arbitrators the discretion to determine the appropriate remedy for a consumer should she prevail:

INTERVIEWER: So in that situation even if the consumer may have hit the legal presumption, if there’s a sure fix, the arbitrator has—

THIRD-PARTY ADM.: Can still do it. Mm-hmm. He could still award another repair. . . .And I think there’s a little bit more fairness in that, you know, because really, what if you really were just out with a fix? And that happens all the time (Third-party Adm., BC8040, lines 1154-1167).

Thus, even though consumers in California dispute resolution structures are entitled as a matter of law to the choice of full restitution or replacement when they establish the “legal presumption,” California training programs build discretion into the meaning of legal remedies where formal law does not provide such discretion. Business values, namely, managerial discretion and customer retention (by keeping the consumer in her current vehicle with a repair) trump social context, emotion, and frustration that often drive a consumer who has given a manufacturer six chances to fix a defect and wants a full refund regardless of whether the defect can be repaired.

⁵⁷ Although California state regulators regularly monitor third-party administrator training programs, they repeatedly lamented their lack of enforcement powers. On one hand, state regulators encourage manufacturers to voluntarily certify their dispute resolution programs. But on the other hand, California regulators have very little regulatory teeth to force manufacturers to alter the design and operation of private programs.

California private programs also alter the meaning of the legal presumption by reframing the standard. For example, the BDR teaches the legal presumption standard as whether a *manufacturer* has been given a “reasonable number of repairs” as opposed to the statutory language of whether the consumer has provided the manufacturer a “reasonable number of attempts” to repair the defect. The BDR’s recontextualized packaging of the standard suggests that the legal presumption standard is based on the manufacturer actually having the opportunity to make “repairs” whereas California law simply leaves the standard at “attempts,” regardless of whether the manufacturer actually makes a repair (*Oregel v. Isuzu Motors, Inc.*, 90 Cal. App. 4th 1094 (2001)). In fact, whereas formal law indicates that a consumer may count a repair attempt against a manufacturer even if the manufacturer could not duplicate the problem (*Oregel v. Isuzu Motors, Inc.*, 90 Cal. App. 4th 1094, 109 Cal. Rptr. 2d 583 (2001)), the NDR gives arbitrators the discretion to decide whether or not a manufacturer who could not duplicate the alleged defect during a repair visit constitutes a repair attempt. Thus, California’s private programs alter the meaning of both statutory provisions and case law. Similar to what private actors stated at lemon law conference panels (see Chapter 6), third-party administrators in this instance are reproducing and further institutionalizing an expansive interpretation of what constitutes a repair attempt in the lemon law field, one that goes beyond the language of the statute.

The meaning of legal provisions is not just reshaped by recontextualizing legal principles with business values or building discretion into legal rules, but by omitting legal provisions altogether. For example, another critical legal issue in lemon law cases is whether the consumer has a “nonconformity” with her vehicle. A nonconformity under the California Lemon Law is a defect in factory or material workmanship that “substantially impairs the use, value, or safety of the vehicle according to the buyer.”⁵⁸ Although the definition above is the standard that should be applied under California’s lemon law, training programs define nonconformity as “a defect in material or factory workmanship that substantially impairs the use, value or safety” (IR7010, NDR FN, lines 457-61) without mentioning “to the buyer.” This subtle change, according to California state regulators, alters the evaluation of whether a nonconformity exists:

STATE REGULATOR: To the consumer. *And that's what the law says, it is [substantially impairs the] use, safety and value to the consumer. Where a lot of times [third-party administrators] leave that part out, the “to the consumer” part (State regulator, SR2000, lines 1231-1240) (emphasis added).*

By omitting key statutory language “to the buyer” while teaching arbitrators the lemon law, California training programs subtly transform a reasonable person standard—from the perspective of the buyer—into a standard that does not necessarily consider the perspective of the buyer.

In California, the content and meaning of critical statutory terms that determine whether consumers have a viable cause of action such as “reasonable number of attempts,” “substantial impairment,” “legal presumption,” and “nonconformity” are being determined by semi-autonomous third-party organizations hired by automobile manufacturers, the very group that

⁵⁸ Civil Code § 1793.22 (emphasis added).

such laws are designed to regulate (Edelman, Uggen, & Erlanger 1999; Edelman 2005). Unlike prior studies that show how managerial values influence written policies and internal legal structures (Edelman, Erlanger, & Lande 1993; Marshall 2005), here, managerial logics flow into *third-party* organizations that train arbitrators on the meaning of lemon laws. This is a critical and as yet unrecognized way by which the “haves” gain structural advantages through seemingly neutral dispute resolution processes (cf Galanter 1974).

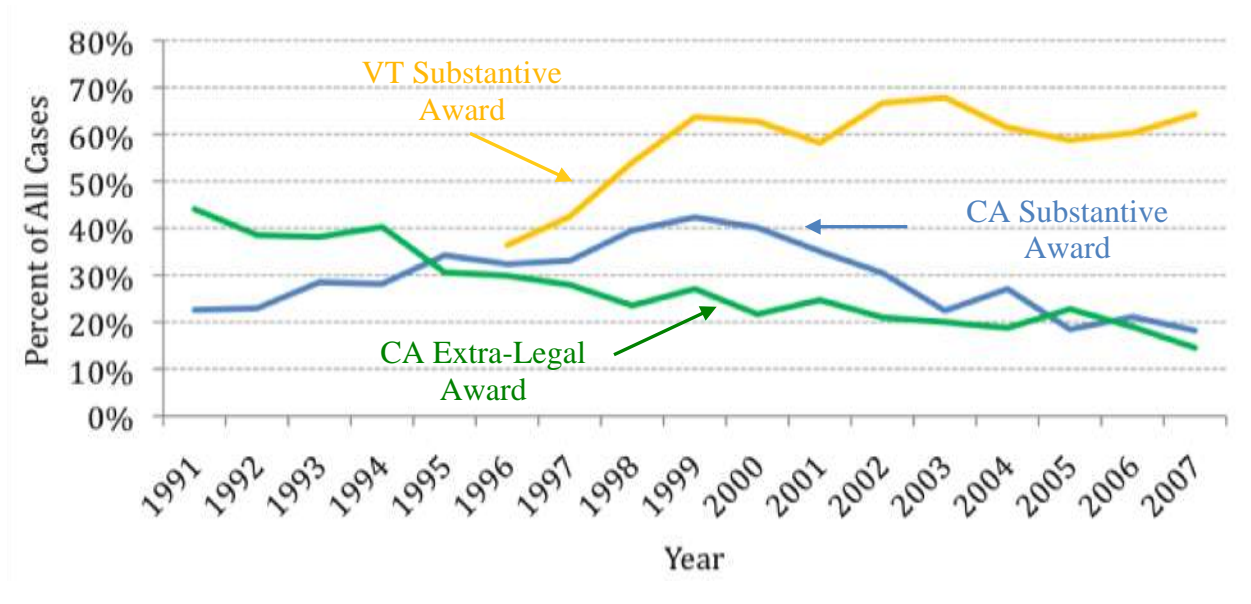
Conversely, because Vermont arbitrators undergo minimal formal training, are provided the lemon law statute unfiltered and without business interpretation, and sit on a panel that balances business and consumer logics in the adjudicatory structure, business logics do not shape the meaning of law as strongly as in California. Although automotive dealers I interviewed in Vermont share the same business values as California automotive dealers and automobile manufacturers across the country, *i.e.*, efficiency, discretion, control, productivity, and customer retention, business actors’ perspectives when deciding lemon law cases are counterbalanced with consumer perspectives on the five person Lemon Law Board. Thus, both business and consumer interpretations of lemon law terms are a part of the decision making process.

The institutional design of dispute resolution, and how field logics are translated by field actors in different dispute resolution systems, leads to two different meanings of law. In California, the meaning of law and compliance are shaped through a process in which organizations respond to legal ambiguity by creating structures that symbolize attention to law, reconceptualize law through the lens of management, and institutionalize managerialized notions of what constitutes compliance through semi-autonomous third-party organizations that administer lemon law training programs on behalf of manufacturers in California and across the United States. Vermont’s vastly different dispute resolution system demonstrates how managerial values need not always seep into law. Vermont’s structure illustrates how participatory representation, an inquisitorial fact-finding approach, and balancing consumer and business perspectives in the decision making process can help curb repeat player advantages.

Outcome Data: Consumers Prevail More Frequently in Vermont than California

I have now documented how two different organizational dispute resolution structures give different meanings to similar lemon laws in two states. The logical question that follows is: How do these structures relate to case outcomes? A definitive answer to a causal inquiry would require a different study design that could control for multiple potential determinants of case outcome. However, outcome data that differs across states is at least consistent with the possibility that the structure of dispute resolution processes may matter quite a bit. In California, where business logics dominate the dispute resolution process, manufacturers prevail much more than in Vermont, where the dispute resolution process reflects both business and consumer logics. Figure 1 shows that, from 1996-2007, consumers obtained refund or replacement far more often in Vermont than in California:

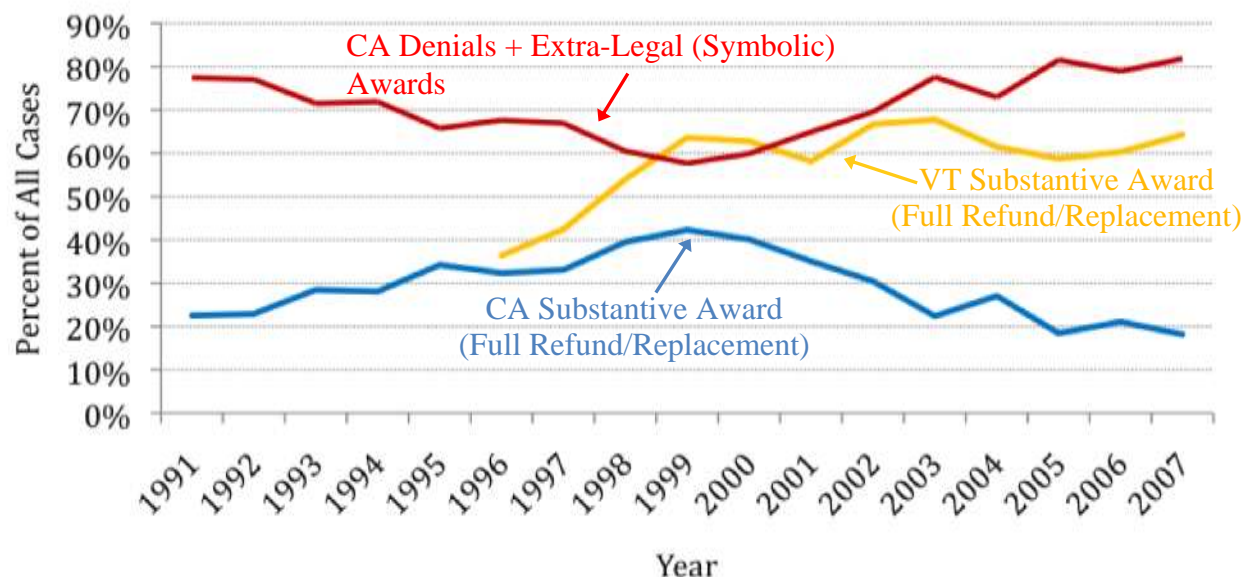
FIGURE 1
CALIFORNIA AND VERMONT CONSUMER OUTCOMES



Even when consumers win in California, they do not always win refund or replacement (the only remedies defined by California’s statute), but rather, approximately half the time consumers win an opportunity to allow manufacturers to repair their automobiles, a reimbursement for a specific expense, or some “other” remedy. I labeled these “extra-legal” remedies because they are not one of the statutory remedies provided in the Song-Beverly Act.

Interviews I conducted with manufacturers, state regulators, and eight years of consumer satisfaction surveys by the California Department of Consumer Affairs all show that consumers, manufacturers, and state regulators agree that a repair award, reimbursement for expense, or other nominal award (*i.e.* extra-legal remedies) does not constitute a consumer “win” even though consumers technically receive a decision indicating they prevailed (CA Dept. Con. Aff. Con. Survey 2002-09). Thus, even when manufacturers lose a case and are ordered to award a repair, all parties believe that the manufacturers actually prevailed. Thus, based on the California Department of Consumer Affairs survey data and my interviews with field actors, the parties themselves seem to believe extra-legal awards are “symbolic” awards (Edelman 1992). Figure 2 shows that, when extra-legal (symbolic) remedies are added to California consumer denials, the disparity between consumer wins and losses in California is even larger.

FIGURE 2
THE PARADOX OF WINNING BY LOSING FOR MANUFACTURERS



Moreover, when compared to Vermont’s win rate over time, Figure 2 shows that consumers are more likely or at least as likely to lose in California as they are to win in Vermont.

The dramatic differences in consumer win rates between California and Vermont are consistent with my qualitative findings showing that California dispute resolution structures are infused with business values whereas Vermont’s dispute resolution structure reflects more balanced values.⁵⁹ As noted earlier, to establish a causal link between the dispute resolution structures and case outcomes would require a sample of more than two states and data that allow controls for a variety of other factors that might explain the differences in case outcomes. For example, it may be that dispute resolution structure and case outcome are both functions of differences in the types of cases or broader environmental, cultural, or ideological factors. Nonetheless, these data suggest at least in a preliminary way an association between the structure of dispute resolution and whether the “haves” come out ahead.

III. CONCLUSION

This chapter elaborates the literature on the relationship between organizations and law by integrating new institutional studies of how managerial values flow into law with socio-legal studies of repeat players’ advantages in disputing. In the lemon law context, the structure of dispute resolution shapes the extent to which managerial and business values influence the practical meaning of law, and consequently, the extent to which repeat players are advantaged.

⁵⁹ Moreover, the national average of consumer awards, denials and extra-legal remedies in cases administered by the same third-party administrators I examined in this study is nearly identical to California. Thus, given third-party administrators indicated they conduct the same training session in every state, these different meanings of law are likely reflective in different outcomes across the lemon law field.

Different organizational structures operating in California and Vermont filter competing business and consumer logics in different ways. This results in different organizational structures giving different meanings to substantially similar lemon laws operating in both states. Consistent with new institutional studies of how managerial conceptions seep into law, managerial and business values flow into law operating in California's private dispute resolution structures primarily through an arbitration training and socialization process conducted by third-party administrators. The institutional context socializes arbitrators to ignore emotion and narrows the fact-finding role of arbitrators to a passive arbiter reliant on parties to present facts. California training programs reshape the meaning of law by building discretion into legal rules and procedures, recontextualizing the meaning of key legal terms around business values, and even omitting portions of legal text. As a result, arbitrators are taught to adjudicate cases not in the shadow of the formal lemon law on the books, but in the shadow of a managerialized lemon law replete with its *own* rules, procedures, and construction of law that changes the meaning of consumer protection. Moreover, as business values flow through the disputing structure, organizational repeat players gain subtle advantages through the operation of California dispute resolution structures.

Unlike California, Vermont's dispute resolution structure is administered by the state and the five person panel of arbitrators receive minimal training and socialization. While the structure also draws from the alternative dispute resolution mantra of being less costly and less adversarial than traditional court litigation, the disputing forum in Vermont has far less tendency than the process in California to only allow business values into the meaning and operation of lemon laws. To the extent business logics are introduced into the process by the presence of dealer and technical expert board members, they are balanced with competing consumer logics by the presence of citizen panel members and a state administrator. When conceptualizing consumer rights, these actors invoke a similar set of liberal legal values that led to the lemon laws' creation in the 1970s and 1980s. Thus, drawing from various interested representatives operating in the lemon law field, consumer justice in Vermont is the product of a collaborative justice model that seeks to account for multiple interests, perspectives, and logics in the adjudicatory structure. This distinction is important because the meaning of due process values, neutrality, and even legitimacy are shaped not by professional training and socialization, but rather panel balance, participatory representation, and maintaining transparency. Together, Chapters 6 and 7 explain how organizations, through the fields they operate within, shape the meaning of public legal rights in alternative dispute resolution systems they create in different ways.

CHAPTER EIGHT

CONCLUSION

I. Theoretical and Methodological Contributions

This dissertation explains how automobile manufacturers shape the content and meaning of public legal rights in ways that transform and at times undermine the rights of consumers. My theoretical framework builds on and integrates political science, new institutional organizational sociology, and socio-legal studies of law and organizations. Using a variety of empirical methods, I illustrate the institutional *and* political mechanisms through which organizations reshape the meaning of law among public legal institutions *while also* highlighting the micro-processes through which different dispute resolution structures operating in an organizational field influence the meaning and implementation of law. In doing so, I articulate the multi-faceted ways that managerial values influence the meaning of public legal rights in organizational and legal fields. Through legal ambiguity, the diffusion of institutionalized ideas about the meaning of law, political mobilization, training, socialization, and experience, organizational actors tend to construct law and the meaning of public legal rights in ways that are consistent with traditional business and managerial logics and goals.

Automobile manufacturers, who were initially subject to powerful consumer protection laws, weakened the impact of these laws by creating dispute resolution venues. These legalized structures became institutionalized throughout the entire lemon law field and eventually came to be run by third-party organizational surrogates for legitimacy purposes. Advocacy coalitions lobbied the legislature regarding the value of these structures and linked the issue of consumer protection to existing business values such as efficiency, informal resolution of disputes, and customer satisfaction. Legislatures and courts subsequently incorporated institutionalized organizational practices into statutes and legal decisions and made consumer rights contingent on using such structures when equivalent rights and remedies are not available. New institutional understandings of organizations explain why alternative dispute resolution structures diffused across California and Vermont and ultimately all fifty states, while path dependency, politics, and differing political alliances explain why the form and control of each structure was different in each state.

Given that consumer rights are now adjudicated in alternative disputing forums, the remainder of my empirical analysis explores the processes and mechanisms through which the meaning of law is constructed by different private and state-run dispute resolution processes operating in the lemon law field. Here, my analysis integrates new institutional studies of how managerial and business values influence the way organizations understand law and compliance and socio-legal studies of repeat players' advantages in disputing processes. My empirical data suggest the lemon law field has multiple, conflicting field logics operating concerning the meaning of law. The *form* of the dispute resolution structure, and how competing logics are filtered in different ways in private and state dispute resolution structures, shapes the extent to which managerial and business values influence the meaning of law, and consequently, the extent to which repeat players are advantaged. Whereas business and managerial values influence the meaning of legislation through institutional and political mechanisms, here,

managerial values in part flow into the rules, procedures, and meaning of law introduced into California's dispute resolution structures mainly through the training and socialization process of arbitrators. Vermont's vastly different dispute resolution system illustrates how participatory representation, an inquisitorial fact-finding approach, and balancing consumer and business perspectives in the decision making process prevents managerial values from dominating the process. By sampling two states from the lemon law field that developed two different institutional processes with varying degrees of business control and participation in the dispute resolution structures, I show under what conditions business and managerialized conceptions of law reshape the meaning of public legal rights and the conditions under which they do not.

My dissertation, therefore, has important implications for theory and method. The institutional-political framework I use to explain how organizational fields shape the meaning of public legal rights among public legal institutions makes multiple contributions to sociology and political science studies of law and organizations. Specifically, I extend new institutional theories of legal endogeneity into the legislative as opposed to judicial facet of the legal environment. In the legislative context, the endogenous construction of law operates through constitutive processes such as cultural frames and cognitive schemas but also involves direct political mobilization and lobbying (cf. Edelman & Stryker 2005). I also show that the politics of consumer protection policy and what manufacturers lobby for are, at least partially, institutionally determined and rooted within the logic of organizational fields. In this instance, manufacturer-sponsored dispute resolution venues are, especially when deferred to by legislatures and courts, a form of political power.

My approach also enhances existing political science literatures concerning business influence over the legislative process. First, my focus on institutional venues augments the theoretical implications of the literature on interest group venue shopping by demonstrating what businesses do when shifting from one venue to another is unlikely to be helpful. Businesses also *create* their own venues to resolve disputes. Second, although the new institutional account has some kinship with the regulatory capture literature, here, manufacturers did not capture existing regulatory institutions, as in the traditional account (Shapiro 1988; Herring 1936; Huntington 1952; Bernstein 1955; Kolko 1965; Sabatier 1975; Gromley 1983). Instead, manufacturers reshaped formal legislative language and created new institutional venues *in lieu of* using public venues where success was less likely. Also, I augment the growing political science literature on institutional change and development by demonstrating the overlapping and blurring of organizational fields and logics act as subtle "mechanisms of change" (Barnes 2008:11). Tracing how consumer protection laws were revised over time reveals that the anchor for institutional change among public legal institutions often lies embedded *inside* business organizations.

My qualitative research of the lemon field also builds on and enhances new institutional studies of law and organizations in several ways. First, interviews with a range of actors across the country and participant observation in lemon law conferences and arbitrator training programs allowed me to examine the micro-processes and mechanisms through which organizations, through the fields they operate within, construct, shape, and contest the meaning of consumer protection law and the purpose of dispute resolution. Indeed, I reveal the mechanisms through which law shapes meaning and practice in these different dispute resolution structures, even as meaning and practice in these structures reshape law. Second, rather than

conceptualizing fields as “forming” and “settling” based on institutional logics and scripts or as “a field of contestation, a battlefield” (Levi-Martin 2003:28), I show how this organizational field is segmented into areas of consensus while other areas are continually contested. In this case, the organizational field is organized around institutionalized sets of rules about the value of alternative dispute resolution forums and the problems with courts. However, public and private field actors mediate the purpose and meaning of lemon laws and dispute resolution through competing business and consumer logics. Thus, consistent with more recent studies (cf. Morrill 2008; Schneiberg & Bartley 2001; Bartley 2007; Clemens & Cook 1999), I illuminate how field actors are embedded in social and organizational contexts that are complex and multi-dimensional. Third, I extend new institutional accounts of organizational fields by qualitatively demonstrating how fields do not have one managerial logic or a common and shared system of legal meaning (Edelman, Erlanger, & Lande 1993; Edelman, Fuller, & Mara-Drita 2001; Marshall 2005), but *multiple* systems of legal meaning. Fourth, I build upon prior new institutional studies that show how business values influence written policies and internal legal structures by showing how business values also flow into dispute resolution structures run by external third-party organizations.

Finally, this dissertation contributes to law and society scholarship on studies of the law in action (Macaulay 1963), dispute resolution in organizations (Galanter & Lande 1992; Edelman & Suchman 1999), repeat players advantages in disputing forums (Galanter 1974), and access to justice (Felstinger, Abel, & Sarat 1980-81). This study fits within the long socio-legal tradition of exploring the gap between the law on the books and law in action but also builds on this tradition by examining the meaning-making activities of organizations as they adjudicate public legal rights in third-party forums they create. In this instance, the law in action becomes and replaces the law on the books in manufacturer-sponsored dispute resolution programs. My study also answers socio-legal scholars, who have for the past two decades, called for more empirical studies of how organizational governance structures operate *in action* (Macaulay 1986; Galanter & Lande 1992; Edelman & Suchman 1999). Also, contrary to most studies that demonstrate how repeat players gain advantages in disputing structures, my comparative design allows me to explore how dispute resolution structures can also inhibit repeat player advantages.

It is important to note that I am not contending that organizations never respond rationally to top-down legal mandates. Rather, because laws are often broad and ambiguous, I argue that they trigger a process through which organizations collectively seek to construct what law and public legal rights mean. Thus, politics and power play an important role as businesses, consumer advocacy organizations, and state actors compete for legal constructions that favor their interests among private organizations, legislatures, regulatory agencies, and courts. However, institutionalized logics and organizational processes (in this instance, dispute resolution structures) developed by and through organizational fields evolve over time and influence legal meaning among not just organizations but public legal institutions. Organizations shape the meaning of lemon laws through the processes of political mobilization *and* institutionalization that take place not just within organizational fields, but at the intersection of organizational and legal fields.

Although this dissertation investigates a context in which private organizations reshape the meaning of public legal rights in ways that tend to favor business over consumers, I do not

mean to suggest that business construction of the meaning of public legal rights is always harmful to individuals who encounter law in organizational domains. Manufacturers' eagerness to privatize the process is not likely driven by wanton disregard for the law or lack of concern over consumer warranty problems. The legislative history and my qualitative research suggest that manufacturers and their third-party administrators believe that these processes are better for consumers because they are more informal and efficient. Manufacturers also believe that these processes free the court system of these cases. However, manufacturers' ability to control consumer warranty rights through private dispute resolution procedures transforms and potentially undermines formal legal rights in several ways.

First, the punitive, compensatory, and deterrence goals of consumer protection laws may remain unfulfilled by these procedures. Manufacturers and their third-party administrators frame a new rights rhetoric geared more around therapeutic healing (letting the consumer air frustrations) and problem solving (giving the manufacturer one final repair attempt) than substantive relief obtainable in the court system (restitution, replacement, attorneys' fees, and civil penalties).⁶⁰ Second, an unfair dispute resolution process together with an unfavorable ruling may convince some consumers that further legal action is unwarranted or futile. Third, manufacturer control transforms legal rights because legislatures and courts view these dispute resolution venues themselves as evidence of good faith on the part of the manufacturer when evaluating whether a manufacturer's failure to repurchase was willful. Fourth, other than attempts by legislators to legitimate these structures by establishing parameters for certification and cursory state regulatory monitoring mechanisms, manufacturers, through their third-party organizational surrogates, in effect deregulate themselves by exiting the courts and implementing their altered version of consumer rights in private venues.⁶¹ Thus, the privatization of legal roles and processes effectively allows private organizations to colonize the formal dispute resolution institutions consumers are likely to encounter.

II. Social Policy Implications for Dispute Resolution, the Civil Legal System, & Consumers' Access to Justice

When evaluated from a social policy standpoint, manufacturers' adoption of institutional venues to resolve disputes is not entirely negative for consumers. At a minimum, institutional venues are symbols that demonstrate commitment to consumer warranty protection. Institutional venues may also provide a significant opportunity for consumers to vent frustrations, resolve disputes, and even punish manufacturers in the form of restitution when consumers are fed up with improper service and a breach of warranty is recognized by the arbitrator. However, the implementation of symbolic policies and procedures does not guarantee substantive change for consumers. Even in the most favorable institutional venues, these procedures do not provide equivalent compensation or public recognition consumers could receive through Lemon Law claims in state-run dispute resolution structures or in court. Manufacturers' adoption of dispute resolution procedures may perhaps represent an improvement in handling consumer warranty disputes, but may also hinder detection of manufacturers not living up to their obligations under warranties.

⁶⁰ At one point, General Motors admitted that only 250 of their 1000 arbitrators were lawyers and they purposely instructed their arbitrators not to rely on law when addressing disputes (G.M. letter, July 8, 1987).

⁶¹ Of course, not all claims by consumers, whether in court or private venues, are necessarily meritorious.

Even in situations where one would most expect law to protect the one-shot player—cases arising under a remedial statute granting individual rights—there are subtle, nuanced ways by which statutes can be weakened (cf. Albiston 1999). Once legislatures and courts codify and defer to institutionalized organizational structures, we see a shift toward more organizational power both to resist rights mandates and to control the enforcement, the dispute resolution process, rules, and most importantly, the *meaning* of consumer rights. Even though Minnesota Attorney General Hubert H. Humphrey in 1989 submitted a letter on behalf of attorney generals in all 50 states proclaiming, “[s]tate new car lemon laws [are] the single most important advance in consumer protection in the last decade,” (CA Lemon Law Report 2002), the law in action suggests these laws are susceptible to organizational transformation and reconstruction in subtle but powerful ways.

Although this study focuses on how business interests and values *vis-à-vis* consumer interests and values are incorporated into law, this study has important implications for the internal grievance and alternative dispute resolution processes that now permeate society, especially since these governance structures are often controlled by businesses. Arbitration and alternative adjudicatory processes are generally a subset of the civil justice system that has been declared a neutral and independent adjudicatory body by legislatures and even by the United States Supreme Court.⁶² The rationale for deferring to organizational dispute resolution forums is not just “let’s trust the regulated,” since regulators recognize that organizations, however altruistic, may have self-interested motives. The legitimacy of arbitration is based on a widely held belief that independent arbitrator training organizations such as the NDR and BDR can teach arbitrators to be impartial and neutral. Moreover, internal grievance and alternative dispute resolution processes generally operate with a “consensus” rather than “adversary” philosophy (Bush 1989; Bush & Folger 1994). As a result, these structures theoretically allow greater opportunity for individual voice in the process, increase access to justice for parties who want to avoid the delay and expense of the court system, and eliminate repeat players’ ability to develop a body of favorable precedent.

But this comparative study highlights the difficulties of contracting out an *interest-neutral activity* such as adjudicating public legal rights to private organizations anchored in a *non-neutral business logic*. My empirical data suggest that these consumer dispute resolution structures differ substantially with respect to: (1) how they filter competing business and consumer logics; and (2) how well they protect and preserve the consensus values of informal dispute resolution. In this instance, the structure of dispute resolution determines whether consumers gain meaningful access to justice outside the court system. Whereas more recent legal scholarship advocates public-private partnerships and organizational self-governance when delivering services and benefits in society (Macaulay 1986; Braithwaite 1982, 2002; Ayres & Braithwaite 1992; Freeman 1997, 2000; Hacker 2002; Lobel 2004), my analysis sounds a note of caution. At least in the context of adjudicating public legal rights, I show that the privatization of dispute resolution by business organizations has the potential to undermine the rights of social have-nots.

⁶² The United States Supreme Court indicates: “The streamlined procedures of arbitration do not entail any consequential restrictions on substantive rights” *Shearson/American Express, Inc. v. McMahon*, 482 U.S. 220, 232 (1987).

More broadly, this study has critical implications for consumers' access to justice and the civil justice system. Consumer rights affect all people in American society. Consumer protection laws attempt to place consumers engaging in business transactions such as purchasing goods, borrowing money, and funding home loans on a more even par with companies that have an unequally powerful bargaining position. To the extent consumer protection laws are undermined by business norms in various private disputing forums, these policies may be ineffective in ameliorating social and economic disadvantages for consumers.

This is especially important because consumers, employees, shareholders, health care patients, and even prisoners are increasingly channeled, with the blessing of legislatures and courts, into dispute resolution structures operating outside formal legal institutions. For example, through legislative codification, states are contracting with private "judging" organizations consisting of a board of medical experts independent of health insurance companies to evaluate patient denials of coverage (Gresenz & Studdert 2005). Financial service firms, through mandatory arbitration clauses, are channeling investors into an industry-supported dispute resolution program with the support of the Financial Regulatory Authority and the United States Supreme Court.⁶³ Employee harassment complaints are often heard in internal grievance and alternative dispute resolution forums with some level of control by employers (Edelman, Erlanger, & Lande 1993; Edelman & Suchman 1999; Sturm 2001). Since the Prison Litigation Reform Act (1996), states are initially channeling prisoner grievances into prison grievance hearing boards. Moreover, *in lieu of* enforcing the exclusionary rule for potential violations of the Fourth Amendment, the United States Supreme Court defers to police administrative discipline hearings. As recently as 2006, the Supreme Court in *Hudson v. Michigan* held that the Fourth Amendment exclusionary rule does not require suppression of evidence seized by law enforcement officers under a search warrant executed without complying with the "knock and announce" rule because police administrative discipline hearings and training programs provide enough deterrence to potential police misconduct. Because the civil, consumer, and criminal rights revolutions of the 1960s have been re-routed into a variety of different organizational governance structures, future studies should examine *variation* in how these structures operate, how these structures give different meanings to law, and what effect different structures have on procedural fairness and substantive justice for parties.⁶⁴

III. Rethinking Organizational Governance in the 21st Century

Although this dissertation focuses on legislative deference to public and private dispute resolution structures in the context of consumer warranty laws, scholars would be well served to examine how organizationally created structures like these that affect consumers, especially in the area of financial and capital markets governance. The global financial crisis highlights the

⁶³ Shearson/American Express v. McMahan, 482 U.S. 220 (1987).

⁶⁴ Congress appears to share my concerns and desire for more empirical research on organizational governance structures. Section 1028 of the recently enacted Dodd-Frank Wall Street Reform and Consumer Protection Act Pub. L. 111-203, H.R. 4173. (2010) requires the new Bureau of Consumer Financial Protection to conduct a study of the use of mandatory pre-dispute arbitration in consumer financial services and provide a report to Congress concerning its use. The Bureau also has the rulemaking authority to "prohibit or impose conditions or limitations on the use of" mandatory arbitration clauses consistent with the study. I am hopeful the Bureau's forthcoming evaluation of arbitration systems in the financial industry will consider some of the mechanisms identified in this study, starting with the type of training and socialization arbitrators receive.

need for more analysis of how businesses construct the meaning of compliance sometimes in ways that undermine legal regulation. Just as managerial and business logics transformed consumer rights in this study, corporate culture and institutionalized practices impacted the regulation of financial and lending institutions in the recent banking crisis. Amidst a push toward collaborative and delegated arrangements between business and government in the past two decades, laws such as the Gramm-Leach-Bliley Act⁶⁵ and the Sarbanes-Oxley Act⁶⁶ rely on and defer to corporations' financial disclosure policies and internal compliance structures. As in the Lemon Law context, legislative and regulatory deference to corporate and financial institution lending practices, disclosure policies, internal compliance structures, auditing, reporting systems failed to sufficiently protect consumers and investors from excessive fiscal risk-taking policies (O'Brien 2007; Krawiec 2003). Although these corporate and lending institution structures and "best practices" may be adopted to signal compliance and ethical conduct by financial institutions and corporations, bottom up constructions of the meaning of compliance may provide little guarantee that financial fraud and abuse will not occur. Therefore, policymakers overlooking business ability to construct the meaning of law and compliance in unfavorable ways could unwittingly be "watering down" law and undermining public policy goals under the guise of collaborative partnership. Because laws regulating organizations are often ambiguous, future studies should focus empirical analysis on how organizational *forms* of compliance can end up constructing the actual *meaning* of compliance in ways that are inconsistent with regulatory goals.

Corporate governance in general, and the corporate board of directors in particular, would be one avenue of fruitful inquiry for understanding the ways in which organizational governance structures affect the meaning of corporate compliance with law. Changes to federal laws and regulations have sparked increased debate regarding how to structure the corporate board in a manner that protects not just "managerial" interests and discretion, but "shareholder" interests and value (Gordon 2007; Zajac & Westphal 2004). Thus, even within the operation of the corporation, there are concerns with balancing business and consumer logics. Moreover, recent legislation recognizes the importance of panel balance within corporate boards and the importance of independent directors. For example, the Sarbanes-Oxley Act requires a public company to disclose that it has at least one "financial expert" on its audit committee (which is similar to the technical expert on Vermont's board), or explain why it does not. Thus, my study may have implications for corporate governance and legal compliance more generally.

Although there are now some empirical studies that explore how private organizations shape the meaning of public legal rights in securities regulation (Reichman 1992; Krawiec 2003, 2005; O'Brien 2007), insurance regulation (Schneiberg 1999; Schneiberg and Bartley 2001) and criminal justice (Grattet and Jenness 2005), more work is needed by scholars interested in the relationship between business and legal regulation. In particular, more research is needed to investigate the multiple ways in which institutional and political mechanisms are at play in shaping the meaning of public legal rights. Such studies will likely move us away from thinking about a model of organizations as simply responding rationally to top-down mandates by complying or not complying, to a model in which business construct the meaning of law and

⁶⁵ Pub. L No. 106-102, 113 Stat. 1338 (1999).

⁶⁶ Pub. L No. 107-204, 116 Stat 745 (2002).

compliance that simultaneously encapsulates the institutional logics and political power of organizations operating in overlapping organizational and legal fields.

How the basic architecture of legal systems—public *and* private—is institutionally structured in ways to privatize law and limit possibilities of using the public system for redistributing change is worthy of future focus by political and socio-legal scholars. Given the current momentum for public-private governing models and the prevalence of pre-dispute mandatory arbitration clauses in consumer and employment contracts, the subtle struggles for legal institutional power and authority in the twenty-first century are not likely only about what the rules are, but rather, about the legitimate supplier of the rules and the legitimate venues for adjudicating public legal rights. Understanding the processes by which private organizations influence governance structures and shape the content and meaning of laws designed to regulate them will allow for more sophisticated policy design and informed legislative and judicial decisions.

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