representations of football hooliganism continue to grossly misrepresent the phenomenon. Clearly, any serious attempt to arrive at a more adequate appreciation of the football hooligan "problem" must first chart a steady course between contrasting images of non-violent terrace ritual and that of unbridled bloodshed. The aim of this critical note, therefore, has been to point out that football hooligan violence is neither "something to panic about" nor is it something that doesn't really exist. The football hooligan phenomenon embraces both ritual *and* violent forms. The latter is as integral an element of the phenomenon as the former. Recognition of these issues will move us a good deal closer towards making sense of Saturday afternoons "out with the lads", and Sunday morning headlines.

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SMALL CLAIMS AND PROCEDURAL JUSTICE

Nearly ten years after the publication of *Justice Out of Reach*, the National and Welsh Consumer Councils have completed a second study on the small claims problem.[1] In this latest report several detailed recommendations are put forward regarding the reform of small claims procedures in this country, including a modified version of the suggestion of the earlier Consumer Council concerning the creation of a national network of "genuine people's courts" attached to the County Court system. If less direct and pioneering in spirit than the earlier report, *Simple Justice* is by no means uncritical of the present situation and confirms suspicions that the attempts to reform and simplify County Court procedure have, on the

[1] See Consumer Council, *Justice Out of Reach* (July 1970, H.M.S.O., London); National/ Welsh Consumer Council, *Simple Justice* (September 1979, available from 18 Queen Anne's Gate, London SW1).

whole, failed to provide a satisfactory solution to the problem.[2] The report proposes nothing less than a thorough overhaul of County Courts in England and Wales, all of which "should have a small claims division clearly labelled and recognised as such" and that "the cornerstone of the proposed division... should be a self-contained code of procedure to govern all small claims determined by arbitration".[3]

The fate of such proposals, including that of the National Consumer Council itself, is, if past experience be anything to go by, somewhat uncertain and doubts arise as to whether real progress can be made in the field of small claims during the 1980's.[4] *Simple Justice*, especially if taken together with the recent publication of the *Florence Access to Justice Project Series*, invites comment as both studies can be seen as marking the end of a decade which again brought to light the small claims problem and which has been characterised by intense and widespread research into this and related fields.[5] Although there has been much discussion and experimentation in several countries resulting in a sizeable literature on the subject, a satisfactory nationwide solution in any one of them has yet to be found. My object here will be to discuss the nature and complexity of the problem and

[2] See County Court (New Procedure) Rules 1971, S.I. 1971 No. 2152; County Court Rules, Ord. 21; County Court (Amendment No. 3) Rules 1973, S.I. 1973 No. 1412; County Court (Amendment No. 4) Rules 1977 (pursuant to the Administration of Justice Act 1977, s.15). The rules implemented the following reforms: "pre-trial review", the "no costs rule" and arbitration by Registrars. These reforms, and others, are discussed at length in Applebey, "Small Claims in England and Wales: A Study of Recent Changes in County Courts and the Development of Voluntary Arbitration Schemes" in *Access to Justice* Vol. II, book 2, *infra.*, n.5... *Simple Justice, ibid.*, pp.1,92, "prompted by concern expressed... by advice agencies that procedures in the county court might not be working satisfactorily" concludes "that there are a number of important ways in which the system needs to be improved." Detailed reform proposals and conclusions are laid out in Chap. 12.

[3] *Ibid.*, pp.92–3; National Consumer Council, *Model Code of Procedure for Small Claims Divisions of County Courts* (May, 1980, available from 18 Queen Anne's Gate, London SW1). (Ed's footnote).

[4] In 1970 the old Consumer Council was closed down by the Heath government not long after the publication of *Justice Out of Reach*. Although Mrs. Sally Oppenheim has given assurances on behalf of the present government that the future of the National Consumer Council (and regional councils) is reasonably secure, the fact that the Council is dependent on government funds and is non-statutory means that it is still vulnerable.

[5] Roscoe Pound was one of the first to focus attention on the problem in the United States at the beginning of the century. See Pound, "The Administration of Justice in the Modern City" (1913) 26 *Harvard Law Rev.* 302. See also Yngvesson and Hennessey, "Small Claims, Complex Disputes: A Review of the Small Claims Literature" (1975) 9 *Law and Society Rev.* 219. For a description of the current revival of interest and research into small claims undertaken in Europe see *Simple Justice, supra.*, n.1, Chap. 1. See generally *Access to Justice Project*, funded by the Ford Foundation and Italian Research Council, and based since 1976 at the European University Institute, Florence. The Project has now published its findings in four volumes. (gen. ed. M. Cappelletti, 1979, Leiden and Boston/ Milan: Sijthoff/Giuffrè).

to explore possible approaches that may have escaped reformers more closely involved with the operation of small claims procedures.

The small claims problem

The small claims problem is one that will confront every legal system devised by man, as Lord Devlin once astutely remarked: "The Last Judgement, it seems safe to presume, will contain no order as to costs, while for every step in the human process someone will ultimately have to pay."[6] At a very basic level, the problem can be viewed as the result of "process costs"[7] exceeding the amount in controversy and perceived gains. It is simply uneconomic, not only for individuals but also for society at large, for parties to involve themselves and others in the litigation, adjudication or arbitration of disputes over small amounts of money. The most common response then, is to avoid or endure the grievance which gives rise to the dispute.[8]

At a different level, however, it is now widely appreciated that small claims are not unimportant simply because their objective monetary value is small.[9] Indeed, in a number of respects small claims are in fact large. First, they may be large for private individuals living on a limited income where, in relation to that income, the claim constitutes a significant proportion. Secondly, when aggregated, small claims may account for a large number of actual or potential disputes, and hence may reveal a sizeable fraction of the "conflict iceberg" submerged in society. Finally, because small claims are large in number, they affect many people's perceptions of law and justice, and how they relate to the legal system. The importance of the problem was also recognised by Max Weber who saw the fact that the legal system was for the most part only concerned with the tip of the iceberg and made a connection between this and the direction of capitalistic development: "That capitalism could... make its way so well in England was largely

[6] Justice Report, *Going to Law* (1974) v.

[7] These include not only lawyer's fees, but also expenditure of time, nervous energy and psychic strain involved in litigation and other forms of conflict management, with the possible exception of avoidance. For further discussion of this point see *infra.*, n.8.

[8] See *Simple Justice, supra.*, n.1, p.22 "If [consumers] think, rightly or wrongly, that they have no rights... they are most unlikely to take any action, even to find out whether their belief is right or wrong... [P]eople often do not understand the function of the county courts, and... may be deterred from starting actions because of high costs — even if these fears are groundless — or because they fear complex procedures. The image which the courts project to the public is not good." See debate between Felstiner, "Avoidance as Dispute Processing: An Elaboration" (1975) 9 *Law and Society Rev.* 695 and Danzig and Lowy, "Everyday Disputes and Mediation in the United States: A Reply to Professor Felstiner" (1975) 9 *Law and Society Rev.* 675. See also Merry, "Going to Court: Strategies of Dispute Management in an American Urban Neighborhood" (1979) 13 *Law and Society Rev.* 891, 899–903.

[9] See Ison, "Small Claims" (1972) 35 *Modern Law Rev.* 18, 23–24; Yngvesson and Hennessey, *supra.*, n.5.

because the court system and trial procedure amounted until well in the modern age to a denial of justice to the economically weaker groups."[10] According to Weber this was an important contributory factor which "... influenced the structure of agrarian England in the direction of the accumulation and immobilization of landed property."[11]

The complexity of the small claims problem derives from the attempt to reconcile what appear to be irreconcileable opposites; namely, (a) the citizen's right to have his legitimate grievances heard by some third party such as a judge, and (b) the speedy and efficient functioning of judicial and quasi-judicial bodies whose task would be made difficult or impossible to accomplish if every dispute could be brought before them. Essentially, the problem is one of balancing the need to keep down the costs of administering the legal system imposed by the fiscal economies of the modern state, against the legitimation needs of the system as a whole which dictate that all individual claimants have the right to bring their genuine grievances before a third party and receive a fair hearing. The small claims problem thus exposes a recondite contradiction between the ideology and operation of Dicey's second meaning of the rule of law[12]: at the theoretical level — the law must be equally and easily accessible to all; yet in practice, and as *Simple Justice* confirms, for certain categories of persons with certain categories of claims "justice" in fact remains "out of reach".[13]

Taking a broad view of the response of Common law and, more recently, Civil law jurisdictions to this problem one can discern certain general trends in civil procedure that give an insight as to the direction in which progress might be made during the eighties. As the *Florence Access to Justice Project*

[10] M. Rheinstein (ed.) *Max Weber on Law in Economy and Society* (1954) 353. But cf. p.231, "... England achieved capitalistic supremacy among the nations not because but rather in spite of its judicial system." For further discussion of the "England problem" and Weber's somewhat ambiguous and contradictory approach to this issue see A. Hunt, *The Sociological Movement in Law* (1978) 122–128; and Trubek, "Max Weber on Law and the Rise of Capitalism" (1972) 3 *Wisconsin Law Rev.* 720, 746–748.

[11] *Id.*

[12] Dicey's second meaning refers to "... equality before the law, or the equal subjection of all classes to the ordinary law of the land administered by the ordinary law courts..." A.V. Dicey, *An Introduction to the Study of the Law of the Constitution* (10th ed., 1959) 202. The basic idea of the rule of law also contains several important principles, one of which is that "The courts should be easily accessible." See Raz, "The Rule of Law and Its Virtue" (1977) 93 *Law Q.Rev.* 195, 198–202.

[13] See *Simple Justice, supra.* n.1, p.19. "... when people have a view of the county courts, they see them as places where individual debtors are taken to court, rather than places where individuals pursue their complaints or, as was put to us, 'not as the little man's court but the place where the little man is taken to court'." See also Justice Report, *supra.* n.6, p.67, "... the stakes in these small claims actions are too high in proportion to the possible return. [D]ishonest traders are well aware of this fact and will on occasion laugh in the face of [those] who attempt to get satisfaction on behalf of their clients. In effect, the Rule of Law does not obtain in this field."

has uncovered, there has been an almost universal reaction against the expense and paraphernalia associated with legal formality and ceremony towards the proliferation of informal and simple procedures for resolving disputes, often located in fora outside the parameters of the formal legal system.[14] In country after country one sees a shift away from formal legal rules and values towards alternatives to adjudication such as conciliation, mediation and arbitration.[15] The underlying reasons for this movement, and particularly its widespread occurrence in advanced industrial states during the seventies, have been partially obscured by the widely-held belief that diversion to alternatives outside the courts was the cheap and simple answer to the problem of formal legal systems fast becoming overloaded and expensive to run and use.[16] In fact, the real reasons for the movement probably lie beyond this immediate problem for which it was supposedly created to solve, and are to be found in the origins of the modern welfare state. As Roberto Unger has argued, the inner dynamic of the welfare state had a profound impact on the rule of law in postliberal societies, one consequence being "... the turn from formalistic to purposive or policy-oriented styles of legal reasoning and from concerns with formal justice to an interest in procedural and substantive justice."[17]

If the welfare state was one important factor affecting society's normative order, there were also others that for present purposes can be considered under the heading "alternative ideology". It is too soon to identify clearly the various strands comprising this ideology prevalent during the late sixties and early seventies, but one can see that legal values were not immune from new social, intellectual and academic developments all

[14] See *Access to Justice* Vol. 1, *supra.*, n.5. for a world-wide survey covering 23 countries.

[15] *Id.* See E. Johnson, Jr. *et al., Outside the Courts: A Survey of Diversion Alternatives in Civil Cases* (1977, National Center for State Courts). See also Varano, "Appunti per una riforma della giustizia civile 'minore' " (1976) 3 *Democrazia e Diritto* 693; Kalogeropoulos, "Les Conciliateurs" (1977, unpublished, LEG-WD/30.) Interestingly, China, which has recently enacted new codes of criminal law and criminal procedure, appears to be moving away from legal informality towards a greater degree of legal formality. See *The Times*, 15 January 1980.

In this country the Manchester Arbitration Scheme and the London Small Claims Court illustrate this general trend. These voluntary arbitration schemes are described in *Simple Justice, supra.*, n.1, Chap. 11; see also Chap. 10 for an assessment of the arbitration schemes which are part of the codes of practice negotiated with trade associations by the Office of Fair Trading (s.124(3) Fair Trading Act 1973). The emergence and growth of administrative tribunals is another dimension of the trend towards informal justice. See generally J.A. Farmer, *Tribunals and Government* (1974).

[16] See E. Johnson, Jr. *et al., ibid.* pp. 88–92.

[17] R. Unger, *Law in Modern Society* (1977) 194. See generally, *op.cit.*, pp. 192–200.

moving in the general direction of alternatives, and what was then known as the "counter-culture".[18]

In legal circles, however, interest in alternatives to law was by no means confined to those who held political or romantic beliefs about revolutionary legality or fireside equity; it extended to both liberal and conservative lawyers who expressed concern for the "rule of law" and "fabric of society" if no solution were found to the small claims problem.[19] Another factor contributing to contemporary interest in alternatives might have been the incursions of academic lawyers into other disciplines, particularly sociology and anthropology. These academics played a major role in broadening the sphere of legal thought and action beyond its traditional concern with the formal legal system and the decisions of its superior courts, towards the wider study of conflict resolution in society, and especially the lower half of what I call the "conflict iceberg".[20]

Underpinning this trend towards legal informality was the assumption that conciliation and arbitration outside the formal legal system constituted cheap and viable alternatives to law. This assumption now stands in need of revision as we begin to move beyond the stage of isolated experiments towards a more permanent and nationwide solution. Although it is probable, and indeed desirable, that alternatives will continue to hold the attention of academics and reformers, it can be predicted that the main thrust of reform efforts during the eighties will be redirected towards the

[18] For contemporary "alternative" views of the legal order, see *Law Against the People* (ed. R. Lefcourt, 1971); C. Reich, *The Greening of America* (1970). Weaver argues that this quest for alternatives was a reaction to the sense of crisis pervading modern societies, see "Herbert, Hercules and the Plural Society: A 'Knot' in the Social Bond" (1978) 41 *Modern Law Rev.* 660, 663.

[19] See, e.g., statements by Chief Justice Burger who, after returning from the Soviet Union said, "This Peoples' Court system is very effective... Regarding minor disputes currently handled by the complexities of U.S. courts, it is worthwhile exploring." *International Herald Tribune*, 3–4 September 1977. Earlier, C.J. Burger stated that the most important task facing the legal system was the improvement of the machinery of justice so that the confidence in the courts which is "absolutely imperative to maintain the fabric of ordered liberty for a free people" will not be destroyed by the belief among people "who have long been exploited" that "the courts cannot vindicate their legal rights from fraud and over-reaching in the smaller transactions of daily life." *U.S. News & World Report*, 24 August 1970. Similar fears were expressed by R.H. Smith who in 1919 was worried that unpaid labourers excluded from the legal system would turn into "incipient anarchists". *Justice and the Poor* (1919, Chicago) 11.

[20] See, e.g., Abel, "The Comparative Study of Dispute Institutions in Society" (1974) 8 *Law and Society Rev.* 217–347; Roberts, "Law and the Study of Social Control in Small-Scale Societies" (1976) 39 *Modern Law Rev.* 663, 676–679.

formal legal system.[21] *Simple Justice* supports this contention and itself suggests the beginnings of a counter-trend, at least in England and Wales, towards legal formality and reforming the legal system from within.[22] The question arises as to how one can explain this seemingly endless movement back and forth between legal formality and legal informality.[23]

The Dialectics of Procedural Justice

Before considering possible reform strategies one should dwell on this relationship between formal justice (justice according to law) and informal justice (justice outside the formal legal system). The tendency in the past has been to view each approach as mutually exclusive and to ignore the relationship between them. It is true that the County Court reforms were a step in this direction but, as supporters of the voluntary schemes have consistently argued, they did not go far enough and procedures were still, on the whole, too formal.[24] Not without justification, they have attacked the County Court system which, "notwithstanding the changes made in the law,

[21] It seems highly unlikely that the two existing voluntary arbitration schemes will be extended to give nationwide coverage. The Manchester Arbitration Scheme is closing down because its grant has been halved and it can no longer cope with its caseload (*The Guardian*, 9 May 1980); while the London Small Claims Court has, after a six month closure, once again been given a short-term reprieve with a promise of two years' financial backing from Capitol Radio and Reader's Digest (*The Guardian*, 12 May 1980). The London Small Claims Court no longer takes cases and it appears at the time of writing that it will close down because of financial difficulties. See *LAG Bulletin* (November 1979) 249. Michael Zander has made the point that these alternatives only succeed in avoiding legal costs, "because the burden of helping parties to make their case is borne by the tribunal — either at the expense of the state or through the voluntary efforts of lawyers and other arbitrators." *Legal Services for the Community* (1978) 403. Legal informality thus appears to disguise or transfer costs that are more apparent in the formal legal system, and may give rise to others of a non-monetary nature. In the United States, which is currently experimenting with informal "Neighborhood Justice Centers", doubts have been expressed as to whether these, "may actually represent a new form of State bureaucracy, extending the purview if State authority well beyond that of conventional courts." Hofrichter, "Justice Centers Raise Basic Questions" (1977) 2 *New Directions in Legal Services* 168, 172.

[22] *Supra*, n.1., p.90, "... we would not encourage a proliferation of voluntary schemes — this would be ruled out on cost grounds alone. Instead we would like to ensure that their good points are incorporated into county court procedures."

[23] Roscoe Pound described this fundamental legal antinomy in the following terms, "... there has been a continual movement in legal history back and forth between wide discretion and strict detailed rule, between justice without law, as it were, and justice according to law." *An Introduction to the Philosophy of Law* (1954) 54. See also M. Rheinstein (ed), *supra.*, n.10, Chap. 8 on Weber's distinction between 'formal' and 'substantive' rationalization in law. For a useful explanation of Weber's thinking on this point, see Trubek, *op.cit.*, pp. 727–731, *supra.*, n.10.

[24] *Simple Justice*, *supra.*, n.1., p.55 also expresses concern for "... the way the small claims procedure operates varies from court to court, depending on the attitude of registrars and officials. While in some courts the system might be working reasonably well, in others it clearly is not." See also Applebey, *supra.*, n.2. pp.741–743.

is an organization which deters litigation".[25] The schemes justify their own existence by claiming to satisfy, outside the legal system, an "unmet need" for informality in procedure. Furthermore, by experimenting with innovative techniques for resolving disputes they perform the function of a "legal laboratory" for the formal legal system. Adherents of the existing County Courts have, on the other hand, argued against the financing and extension of the schemes because, apart from the cost involved, they produce "second-class" justice.[26] Each approach, it is submitted, is partially correct but ultimately each must complement the other.

In deciding whether, and to what degree, a dispute is to be resolved by reference to legal norms it can be noted that legal informality in procedure possesses the advantages of being relatively cheap, accessible and simple, and hence easily understandable to the disputants. On the other hand, fundamental principles of procedural natural justice[27] stand in danger of being eroded. Where safeguards derived from legal formality are absent, the weaker party may feel inclined to compromise or settle for something less than he would receive were he to rely on the full enforcement of his legal rights.[28] Conversely, legal formality,[29] although safeguarding these core principles, does so in only a limited number of cases because it is relatively expensive, complex and hence inaccessible. The most promising approach to finding a solution to the small claims problem would appear to lie in a synthesis of both formal and informal justice, which may be termed

[25] Conway, "The London Small Claims Court" (1978) *Justice of the Peace* 442–443. See also Wegg-Prosser, "To help people involved in [small claims] problems there are facilities for arbitration in the county court which I believe work quite well in some places but are little known because as a matter of government policy the service is not advertised." (1978) 75 *Law Society's Gaz.* 822.

[26] The representative of a company recently complained of the rough justice he had received at the London Small Claims Court, "Had there been an appeals procedure, we would have used it in the event, we shall not accept jurisdiction of the Small Claims Court as long as it continues to exist, since the findings of the arbitrator are subjective and ignore objective and factual reports." H. Shepherd, letter to *The Observer*, 28 October 1979. In fact, in a limited sense, the scheme is part of the formal legal system because it operates under the Arbitration Act 1979. This gives parties an automatic right to limited appeal procedures which can only be excluded by written agreement after the commencement of arbitration.

[27] *nemo judex in causa sua; audi alteram partem.*

[28] In the informal setting the notion of "weaker party" need not be confined to the inarticulate poor and, where the forum as an implicit consumerist bias, one should also include firms. See *supra.*, n.26. Even so, most firms would probably, at least in the long-term, still end up as winners. See Galanter, "Why the 'Haves' come out Ahead: Speculations on the Limits of Legal Change" (1974) 9 *Law and Society Rev.* 95–160.

[29] See Kennedy, "Legal Formality" (1973) 2 *J. Legal Studies* 351; Horwitz, "The Rise of Legal Formalism" (1975) 14 *Am.J. Legal History* 251.

postformal justice.[30] One important lesson of the seventies is that we should treat with caution claims that overemphasize the merits of either formal or informal justice; the challenge of the eighties will be to transcend these opposites. As K.C. Davis has observed:

> The prevailing assumption that the only choice is between providing a party the full panoply of procedural rights through a trial-type hearing and providing no procedural safeguards at all should be reexamined. Realization that the choice is not between all and none should open a whole vista for imaginative procedural thinking of the kind that has been almost totally absent.[31]

Strategies and Prospects for Reform

Three possible strategies appear to be open to reformers. The first focuses on changes in substantive law which extend the rights and protection afforded to consumers from dubious trade practices calculated to coerce or deceive.[32] Although important, one should not be too optimistic regarding the results that can be achieved and recent studies suggest that this approach is severely limited in the context of small claims.[33] The second, and more innovative, approach is that of surrogate advocacy, that is, the public enforcement of private rights.[34] But here again comparative research demonstrates that although this strategy is in some countries effective, it too has certain inherent limitations that are rooted in the bureaucratic psychology and hierarchical structures that tend to characterize government agencies and departments; and with surrogate

[30] The term *postformal* justice is derived from Trubek's suggestion that we, "find within the formalist tradition the basis for a critical postformal law". See "Complexity and Contradiction in the Legal Order: Balbus and the Challenge of Critical Social Thought About Law" (1977) 11 *Law and Society Rev.* 529, 563. Trubek recognises the dialectic interplay between legal formality and legal informality: "For legalists... harmony lies in the congruence between the formal legal system and the structure of society. For the informalist, the harmony is latent in an informal normative order that will be revealed once the errors or legalism are abandoned, and we are freed from the straight-jacket of legal formalism." *op.cit.*, pp.554–555. The challenge is to develop a "critical" approach rooted in what he calls the "postformal tradition" that avoids the limitations of the "romantic informalist", on the one hand, and the "liberal legalist" on the other.

[31] K.C. Davis, *Discretionary Justice* (1969) 228.

[32] See Foster, "Problems with Small Claims" (1975) 2 *Brit.J. Law and Society* 75, 76.

[33] See e.g. Beale, "Unfair Contract Terms Act 1977" (1978) 5 *Brit.J. Law and Society* 114, 120; and Galanter, *supra.*, n.28.

[34] There is no established machinery for the public enforcement of private rights in Britain at the moment. However, the Office of Fair Trading does have jurisdiction under the Fair Trading Act 1973, Part III to accept undertakings and to take action against traders who persistently breach the civil or criminal law. For an account of the Office of Fair Trading by its current Director General, see G. Borrie, "The Work of the British Office of Fair Trading" in *Access to Justice* Vol. III *supra.*, n.5. Trading standards officers have the power to seek a compensation order on behalf of the victim of an offence under the Trade Descriptions Act, 1968 or other criminal legislation. The Crown Court and magistrates' courts also have the power to make compensation orders under the Powers of Criminal Courts Act 1973, ss. 35–38 as amended.

advocacy one runs the further risk of creating symbolic legal reforms that may preempt more effective political reform.[35] Moreover, this approach is unlikely to have much success here given the absence of the Class Action. Indeed, it has been business plaintiffs, and not private individuals, who have been able to aggregate successfully their small claims and file actions in the County Courts in order to collect their debts, and this has been the case ever since their creation in 1846.[36] The most promising solution would appear to be the suggestion, made in *Simple Justice*, that a separate Small Claims division be created within the County Court and founded on a "self-contained code of procedure".[37]

An appreciation of the dialectics of procedural justice should deter one from the belief that a simple solution exists and that this solution is a panacea. Nevertheless, the new code of procedure currently being drafted by the National Consumer Council, if implemented, should go some distance towards the ideal of postformal justice. It is to be hoped that the drafters of the new code will draw on the experience derived from the lessons and techniques of the informal experiments in London and Manchester, and also on comparative experience, as revealed by the *Florence Access to Justice Project*. One should note too, the interest of the E.E.C. in these matters and the role it wishes to play in finding a satisfactory solution to the problem.[38]

The most difficult obstacle that reformers are likely to encounter is that of implementing their proposals which at some point will collide with contemporary political and economic realities. Cuts in government spending and the in-built resistance to reform will inevitably lead to compromises when the correct formula stands on the verge of actual implementation.[39] It should be remembered, however, that there are certain principles, such as those of natural justice and of the non-exclusivity of legal representation, that cannot be compromised. Although, as we have seen, there exists a tension between these principles, experience has shown that they may be balanced by radically redefining the role of the third party hearing the dispute, and relying on para-legals in those cases where

[35] See Cappelletti, "Vindicating the Public Interest Through the Courts: A Comparativist's Contribution" in *Access to Justice* Vol. III, 515–564, esp. 529–532, *supra.*, n.5. See also, Trubek, "Public Advocacy: Administrative Government and the Representation of Diffuse Interests" *op.cit.*, pp.447–494.

[36] See Leat, "The Rise and Role of the Poor Man's Lawyer" (1976) 2 *Brit.J. Law and Society* 166, 167. See also *supra.*, n.13.

[37] *Loc.cit.*

[38] See M. Hilkens, *Study of the economic and social committee on the use of judicial and quasi-judicial means of consumer protection in the European Community and their harmonization.* CES 93/79 FTh jc, 1979; Commission E.C. Bull. Supp. 4/79 *Second Community Programme for Consumers.*

[39] See generally Zander, "Promoting Change in the Legal System" (1979) 41 *Modern Law Rev.* 489.

representation is required. But, as one commentator has put it, "If justice is ever to be done in small claims, the approach must be far more iconoclastic."[40]

There is a danger, perhaps an unavoidable one, that history will repeat itself. The seventies have produced several examples of tokenism such as the changes in County Court procedure implemented during the period 1972–3,[41] and, more recently, the Report of the Royal Commission on Legal Services. In the case of the former, these reforms were essentially stopgap measures designed to quell the demand for reform created by *Justice Out of Reach* and the *Small Claims Courts Bill*, 1971,[42] rather than to get to the roots of the small claims problem and find a lasting solution. Will it be different this time?

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[40] Ison, *op.cit.*, p.27. See also Editorial *LAG Bulletin* (1973) 186, "... if arbitration is to be cheap and yet the imbalance between unrepresented parties is to be compensated for, then the arbitrator... will have to cast the adversary system to the winds and even be prepared on occasion to carry out himself or otherwise institute investigations. This approach will call for a bigger revolution in the workings of a busy court and in the attitude of court personnel than it seems has been envisaged."

[41] *Supra.*, n.2.

[42] *Small Claims Courts Bill* [99] (Feb. 1971, H.M.S.O.). This was a private members' Bill introduced by Mr. Michael Meacher under the ten-minute rule. The Bill; if it had become law, would have implemented the proposals of *Justice Out of Reach* and created a system of small claims courts attached to the County Courts.