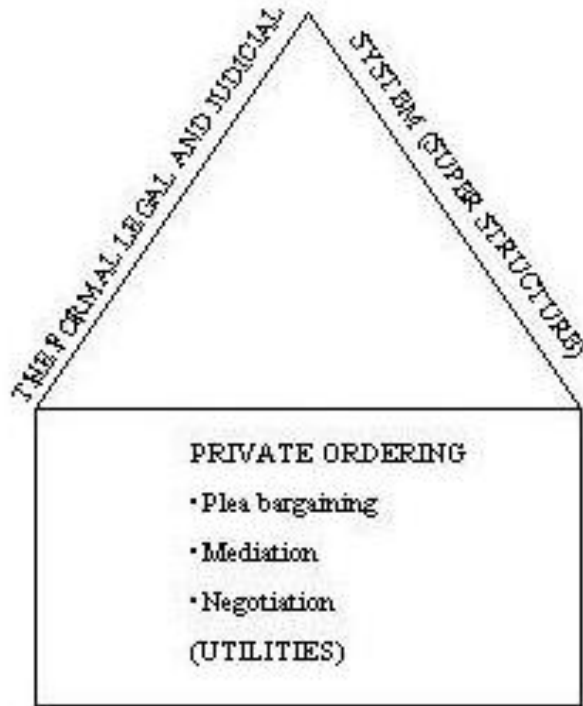


MEDIATION/NEGOTIATION: PRIVATE ORDERING AND THE LEGAL SYSTEM



LEGAL SYSTEM:

Judges interpret, determine and apply the law... they "justicate" disputes...they do not necessarily receive them. The legal system establishes bedrock precedents and legal entitlements; private ordering is difficult without the establishment of such parameters. The formal legal system is the foundation and superstructure of the justice system.

PRIVATE ORDERING:

Private ordering makes the legal system function – makes it *livable*. Most disputes are more likely to be resolved by private means. However, private ordering requires the security of the formal legal system to set parameters and create entitlements.

The formal legal system and the private ordering processes including mediation are symbiotic; neither can function without the other. Therefore, juxtaposing the traditional system against mediation as an either/or proposition is not accurate.

MEDIATION AND SOCIAL JUSTICE: Mediation does not lead to social justice, although it may play an important role in our shift in thinking about problem solving. *Brown vs. Board of Education* or *Roe vs. Wade*, in all likelihood could not have been mediated. The outcomes in mediation are not substantially different from court determinations (See p. 8.10.3).