The following analysis of the interrelations between social structure, polity, and community as exemplified by American law and court structure was the first section of a lengthy report I submitted on December 22, 1964 to the Center for the Study of Law and Society, University of California, Berkeley. I had written my master's thesis in history at Berkeley and my Ph.D. dissertation under a professor of government at Harvard on the subject of the State Bar of California, an officially sanctioned private government. This case study of the State Bar raised many broader and deeper questions relevant to political and social theory and to history. In the course of my research, I discovered that social differences in spatial reach were reflected in the structure of American civil law and in the structure of the institutions that administered the law. This report amounted to a set of hypotheses intended to be verified or discarded through the process of later, hopefully much more thorough, research.

CHAPTER 17

Adjudicative Structure, Space-Time, and Community

[Section I, Part I omitted.]

Part II. The Changing Structure of Adjudicative Tribunals—An Interpretation in Terms of Space-Time and Community

Definitions

The structure of adjudicative tribunals at different points in history can be explained in terms of **1**) community and subcommunity and **2**) the division of labor in the economic system, with **3**) space-time orientations the significant variable in each case.

Community refers both to ecological community and to political community, to behavioral community and perceptual or referent community, which are related but do not correspond exactly to each other. "A community system may be defined as a number of interacting people whose relations with one another are regulated by common symbols or values resulting from the fact that they share the same geographical area for residential and sustenance activities."[1] "The truly distinguishing feature of a community is a mental attitude, a sense of loyalty and identification directed toward a specific area."[2] Some of the great thinkers of the past have stressed the legal and relational base of community (Aristotle, Cicero); others have stressed the emotional and spiritual base (St. Augustine, Rousseau) or what Grotius called a mutual "mysterious sympathy." Some, such as Edmund Burke, have stressed the organic nature of community. "Only radically individualist and skeptical thinkers have failed to assign to community the kind of position which the space-time continuum occupies in physics—it is the thing within which political events occur—and the kind of position which life occupies in biology—it is the thing upon which all the political goings on depend."[3] Related to political community are **1**) the formal institutions for law applying and **2**) the formal and informal instruments of political partisanship and for cohesion of the whole polity.

Space-time orientations include both actual behavior and perceptions, both travel and communication. Significant are both the overlaps and the variations within each of these two pairs. That is, formerly—much more than now—

travel and communication went together. One had to travel to communicate, or someone had to travel for one. Today, with their greater severance, each has a different time-factor. Communication may be instant, though selective;[4] travel, as yet, takes time. Perception of one's time-space universe may be different from one's behavioral time-space universe, though the two are also related.

Individual wide-space orientation may be manifested in one or more of a variety of ways:

1. Where the person oriented, like some traveling salesmen, medieval merchants, or professional tourists, does not have a fixed base but continually makes the rounds of a territory.
2. Where the person has a home base, but travels out from it over a wide sphere.
3. Where the person remains static, but through communication, agents, or contacts with in-migrants or passers-through, relates to and keeps a working awareness of a wider sphere.
4. Where the person makes a series of territorial moves, over his lifetime, or entertains the active hope of doing so in a specified direction.

Implicit here is a definition of community which presumes social integration through complex and frequent relationships which involve more or less the whole person, or at least the person not severed from daily context, rather than abstracted facets of him, and where only a small part of the relational ties are formal. Specialized wide-space orientation implies less close or complex personal relations among the dispersed parties who share a common space-time plane, with a premium on more verbalized formal connections which can be predicted and relied upon, connections which sustain themselves without constant personal renewal, though some less frequent personal renewal may be required. Thus, the reporting of law cases (the written law), rational statutory law-making, codification, and efforts to render laws uniform among states or nations are undoubtedly all phenomena designed to sustain planes of wide-space orientations for particular groups, as well as to give cohesion to a broadening or emerging political community. Communities do also have space-time orientations; there may be smaller communities within a larger whole (an ethnic community within a city; a city within a nation). The larger community (e.g., the nation) may in fact be held together, rendered cohesive, by the activities and symbols of its wide-space oriented groups, groups of people whose frame of reference transcends or cuts through various geographically fixed communities.

The relationship of wide-space orientation to law, to adjudicative structure and process, and to community varies depending on whether the space encompassed is outside or inside the socio-political community and what part orientation plays in the structuring of the community.

Differing Kinds and Contexts of Wide-Space Orientation

Outsiders

Specialized wide-space orientation related to economic function has existed since before the Middle Ages in Anglo-American history. However, excluding kings and popes, in the early periods those whose economic function required wide-space orientation were not an integral part of the more static and localized social community but were somewhat segregated and tolerated as necessary evils. This was true of the wandering merchant and the international financier in medieval England.[5] It was also true of New England merchants until the end of the seventeenth century.[6] Therefore, as well as for special functional reasons, the special groups developed a law and law-applying institutions of their own (e.g., the law merchant and its piepoudre and maritime courts for land and sea, or the Exchequer of the Jews in England, begun in 1198). In England, it is significant that the gradual merger of the commercial law and the law of negotiable instruments into the common law did not become conspicuous until the 17th century or later, and that admiralty law continued to be separate.[7] In America, too, admiralty and customs law have been isolated from the main body of law, for similar reasons. However, in these cases, the isolation has never been total. There have been some points of connection with more indigenous adjudicative agencies, as the law merchant piepoudre courts had with the English boroughs and their fairs, but it has often been a connection which implied minimal interaction or reciprocal effect.

Constitutional Federalism, Disparity Within Unity

A new stage was reached at the time of the writing of the American federal constitution, for in that document the political institutions for wide-space orientation of some groups were forged with formal, though formally limited, connections with the political institutions for more local community. In the brilliant concept of federalism, the writers of the Constitution provided for differences in spatial orientation which permitted necessary degrees of autonomy between different space-orientation groupings and yet also provided for connections which were more than adventitious—the connections and the parts connected were all intrinsic elements of the conceptual whole. What Charles Beard saw as differences in class interest were differences in class interest, but were differences in space orientation as well.[8]

Two Stages of National Integration: The Conceptual and the Ecological

When the American frontier was being settled, a paradoxical shift occurred. The demise of the clipper ship saw the demise of the ascendancy of those with wide trade-commerce orientations, in the old sense. Wide-space orientations

were now qualities of a class of people formerly local-oriented, namely average farmers with small land-holdings, for these were people who were either actually frequently on the move or who entertained constantly the active possibility of westering. (Their wide-space orientation largely stayed within the political boundaries of the nation or had the motivation of annexing new territory to the nation, rather than focusing upon foreign seas and lands.) In addition, their socioeconomic structure was one of atomistic, isolated individualism; psychologically, they needed to be embraced in sporadic, ephemeral, emotional communities and to be held together by a concept of wholeness, within which they were the parts. When the dirt farmers had settled the land, when they had put down roots, the new groups with wide-space orientation were those who controlled and ran the railroads (those vital nerve paths upon whom most of the rest of the economic system became dependent) and those who controlled, in a centralized manner, finance.

In the "age of the common man" before 1850, national patriotism was accom-panied by stress on localism and local control in adjudication, partly because the federal courts were in the control of partisans of the older wide-space group. In the latter 19th century, railroad powers simply took over all levels of government. Never in American history has the group which had the widest space orientation also been so close to the heart of the whole power-authority system.[9] This was because the wide space encompassed was inside, not outside, the boundaries of the national community. The railroads were not only wide-space oriented; they were oriented to local space and time. Like federalism itself, their structure permitted functioning at every level. They helped to define the shape and focus of local communities, as well as to link the nation together, as waterways once had done.

Emerging Economic Federalism

Over the past century, the dominance of railroad and financial wide-space oriented elites has been superseded by a system of multiple elites. Different parts of the American economic system have become national in scope (rather than local or regional) at widely spaced points on a more-than-a-century time continuum. That is, the railroads spanned the nation shortly after the mid-nineteenth century; cross-country trucking has only recently developed. Bakery and dairy goods continued to be produced and consumed locally long after cars and clothing aimed at national markets. Professional and skilled vocational groups also have varied in their process of achieving national homogeneity and interchangeability and national orientation. For any one of the work groups, the incompleteness of this latter process has often resulted in a national orientation on the part of some (often elites) but not others in the vocation. Spatial orientations, therefore, have varied not only from industry to industry and

group to group, but also within industries and groups. For example, in the 20th century, upper-class lawyers have practiced far more in federal courts and agencies and far less in local courts and agencies than lower-class lawyers, and their national orientation has increased over the years.

When an industry or vocation has been in the process of shifting its orientation from narrower to broader space, often new adjudicative tribunals have been sought at the new space level, as a way of implementing this shifting process, without disturbing the older tribunals which were oriented to sub-communities. Thus, the elite groups (most well established, generally with the widest market area) of an industry were often the ones which sought state or national licensing of the industry. The elite groups of a profession were the ones, generally speaking, who sought to have the profession licensed at the state level; licensing permitted them to make the profession more homogeneous, up to their standard, which in turn permitted a delocalizing of the profession. Its members became more interchangeable parts, capable of operating over wider spheres.

Resort to private adjudication or quasi-public arbitration also might be a stage in the space orientation shifting process.

New Levels of Adjudicative Federalism

In addition to setting up new agencies with new space-stratification orientations, wide-space oriented groups have sought to superimpose upon the sub-community-oriented tribunals sufficient controls so that they could be rendered uniform and predictable in those matters for which the broader space-oriented group required uniformity and predictability, while at the same time leaving some autonomy and room for nonrationalized (often not in writing) mediation or brokerage between officials and clientele at the bottom.

The main thrust in this direction came after 1890 as a stage in the maturation of the whole American industrial-urban system. By approximately 1890, the industrial revolution had reached a plateau. The rudiments of national economic integration had been laid out. Urbanization was at full swell, before the counter-movement of suburbanization had set in. The urban-industrial revolution had created a new middle class, salaried to an increasing degree, ever larger in numbers, non-immigrant and hence primarily of Northern European ancestry and Protestant, comfortable in living style and mild of manner, but becoming more and more acutely aware of the discomforts of the middle position. Where prestige had once meant power in local communities (in the village, from the pulpit), now power in relation to community went more naked, had more foreign ways, rested in other hands.

Between approximately 1890 and World War I, the middle class moved to correct the situation by driving a wedge of rationalized procedures between the old power groups and the political and governmental institutions which gave them

power in the community: through civil service (begun earlier), use of city managers, and the Progressive revolt in politics; through the creation of more effective vocational organizations; through upheavals in the substance and methods of the academic disciplines; and so forth. All of these "reforms" had similar backers, a similar ideology, and similar results. New regulation of "corrupt" public utilities, the administering of new relationships between middle-class labor and their employers, could be handled through newly created (often independent) administrative agencies—because, politically, the Progressives had a better chance of capturing a governorship or of getting the assent of the electorate than of corralling a whole legislature. Also, in many states they managed to make the election of judges non-partisan, through the new open primaries, rather than entirely chosen as before by party conventions and party caucuses.

"Reform" of the courts came last (which is significant in itself, i.e., that reform of the courts should come *last!*). Legal reformers have been the same kind of people—the urban upper middle class, but primarily within the legal profession itself.[10] The watchwords have been the same, too: freedom for the individual (nonpartisanship, due process); efficiency, honesty, rationality, predictability, simplicity, fairness (good sportsmanship), as opposed to the "corruption" imputed to other kinds of power holding and distributing mechanisms; and opposition to such other kinds of power holding and distributing mechanisms (such as the political party). The opponents have also been the same: rural interests, big business (now so nationally integrated that new mechanisms of integration were not needed),[11] lower-class interests (with some exceptions, as in New Jersey, where labor and the Communist party favored reform in 1947 as a way of severing lower courts from the control of the police) and their political spokesmen.

As in civil service reform and the scientific management movement in business, court reform efforts were an expression of the managerial revolution. The goal was to bureaucratize the courts, for bureaucratization, rationalization of the system, put more power in the hands of those who know the rules, who had the skills of verbalization and abstraction. Beyond that, written rules and predictable processes were essential to a system where strangers must deal with each other speedily and the outcome had to be rationally assessed in advance. It was also both a result of and a means toward the growing national integration of middle-class groups, a way of permitting the courts to assist the national integration process without altering altogether their function (which urban Democratic machines and sometimes older elite groups sought to preserve) of helping to provide a different kind of integration for local communities. The connection between the community and the new wide-space orientations and functions of "reformed" court systems had some of the minimal quality of the

connections the law merchant had with the common law and local agencies in pre-seventeenth century England. However, the system at a sub-constitutional, sub-conceptual level was moving toward a kind of functioning federalism partially comparable to formal constitutional federalism, serving both community needs and wide-space orientations through different aspects of the same institution.

The Changing Nature and Scope of Community

Interrelated with the shifting space orientations, related to the division of labor and of function in the economic system, were shifts in the relationships between social and political community. In medieval England, the combination socio-political community was theoretically an organic whole like the kind of non-cerebral organisms where the parts function in relation to each other and the whole but at the same time autonomously without central direction. This was in part because the relationships were from unit to unit, integer to integer, rather than abstractly spatial in the manner of Euclidean geometry. This pluralistic-organic quality was accompanied by a decentralization of law-applying mechanisms and a merger of public and private governmental functions.

An early example of changing (political) community space orientation was illustrated by the gradual transfer of jurisdiction out of old pre-thirteenth century communal English courts into the common law and prerogative courts of the Crown.[12] By the end of the seventeenth century, in law-making, the older organic community was overlayed by the abstract concepts of state citizenship, and by a law-making Parliament. In the courts, the distinction was one between social community and political community, between local and national political community, though differences in structure were not so clearly made. England never had a written constitution, and the right of appeal from lower to higher courts has been more limited in England than in the United States.[13] There was no distinct hierarchy among the English courts until the late eighteenth century and no one highest court until 1873.[14]

The key differences between the American and English systems of appeals today[15] are to a considerable degree traceable to differences in space orientation:

AMERICAN	ENGLISH
limited use of oral argument; stress on written briefs	oral arguments a major factor; seldom written briefs
decisions normally handed down in written form	decisions usually given orally on close of argument
many judges for appeals; high volume	only 21 judges altogether in full-time appellate work (1963); far fewer appeals, per capita
reporting of most cases	only selective reporting

AMERICAN	ENGLISH
appellate process regarded as something quite different and much more important than trial process	appeals simply an extension of trial
more rule-bound	much less rule-bound

Partly the differences are attributable to gross space differences between the two countries (as political unities). The English barristers and judges all know each other and have personally internalized the traditions and precedents of the law. In American courts, laymen or men of less experience are much more prevalent, strangers must deal with each other, and the law must make itself known to other strangers over greater distances. Related to these gross space differences, however, are also differences in the spatial interactions of vocational elite groups. In England, an elite group may form a close-knit community in London. In the United States, its members may be dispersed in cities 3000 mile apart.

Also related are different modes of political cohesion, again traceable to differences in space and dispersal of population. The American court hierarchies have represented different levels of a federal-state system. Hierarchies of appeals in America have been closely related to spatial orientations, and the jurisdictional boundaries of adjudicative tribunals were related to the concept of the State: they invariably followed formal political boundaries (in sharp contrast to the boundaries of school districts, which have frequently been altered to the shape of ecological communities.) This may be why American appellate courts are more inclined to have general jurisdiction, rather than specialized jurisdictions, as do many of the English courts.[16] The American appellate courts are engaged in the process of articulating the consensus of the whole polity.[17] The natural law tradition in America is relevant, too. At the time the American Constitution was written, natural law ideas were widely prevalent. Appellate judges have been, in a sense, tribunes of that natural law, which provided the cement for political communities which were rebelling against the English positive law, but rebelling in a legalistic manner, by appeal to a higher law which could embrace the whole community.[18]

The sharpening of the role of the concept of the State did not come into effect in America until after the adoption of the federal Constitution and new state constitutions in the same period. In the colonial period, American adjudication was pluralistic in the English tradition (guilds and the church shared adjudicative functions with public agencies); and the administrative, executive, and judicial functions were blurred in the traditional English manner. So, too, until the federal period, judges were often laymen. In other words, the adjudicating institutions reflected a state of affairs in which the concept of State and the separation of state and society had not fully matured.

In the evolution of structure of American adjudicative agencies, three factors are interrelated and, in turn, are related to the changing patterns of the industrial revolution and of ecological community. One factor was localism versus non-localism in focus; another was the separation or blurring of judicial, administrative, and sometimes legislative functions; and the third was integration with or separation from partisan political institutions.

In England, both at the local level and at the level of the king, in early institutions the legislative, administrative, and judicial functions had been mixed and blurred together. The English local courts retained their administrative functions for many centuries. Out of the King's Council gradually emerged the legislature and the courts, though the House of Lords had judicial as well as legislative functions and the prerogative courts had administrative as well as judicial functions.[19] The sharp separation of judicial, administrative, and legislative functions written into the American federal constitution did not pertain nearly as much to state and local government. State legislatures retained some judicial functions.[20] Local courts were often also the agencies of general local government.[21] As such, they were the foci of local social community. It was also a characteristic of new administrative tribunals created in the late nineteenth and early twentieth century that, in their early stages, their functions were mixed and blurred, and a sharper separation came only gradually. In neither the case of local courts nor for administrative agencies has the process of separation of functions as yet become wholly complete. The pressure to separate functions has been in part motivated by those who wish to utilize the adjudicative agency for segregated wide-space orientation purposes while not wholly severing its community bonds.

Related to this blurring of functions was the phenomenon of localism. In part, the stress on localistic adjudication is an expression of the community-related function of the courts. For example, in describing the problem of "reforming" the Pennsylvania minor court system, in the 1960s, Schulman wrote:

> The home rule argument is the great shibboleth of opponents of an integrated minor court system. Local townships and boroughs will, in all likelihood, if their districts be abolished or enlarged, object to "foreign" judges interpreting and enforcing their ordinances or dealing with their so-called local problems. If the local Mayor or Burgess is deprived of judicial power as a Justice of the Peace *ex officio,* the situation may seem to them even more acute. The political parties will undoubtedly consider the loss of their "own" judge and the opportunities of political favor a catastrophe of the worst order.
>
> Loss of home rule will, it is claimed, also deprive the community of the valuable insight and understanding of one of their own people. Minor court judges with whom the writer has spoken have argued that the local Justice of

> the Peace is more than a judge; he acts in the role of a father confessor, social worker, arbiter of local disputes between neighbors, and a wide variety of other extra-judicial functions which, it is claimed, can be more effectively rendered by a local lay judge who knows his people than a foreign judge learned in the law and circumscribed by training and experience to approach matters legalistically. Local justice for local people by local judges can, on the other hand, have a prejudicial effect on the administration of justice, since it often makes the minor court judges susceptible to pressures which should have no place in his decision.[22]

The non-local bar, of course, which has to come in to try a case under these circumstances, is less than enthusiastic. To quote Sunderland:

> It has sometimes been urged that there is an advantage in having a local court serve a small enough area so that the judge and even the jurors will have a fairly intimate knowledge of local affairs . . . Questionnaires which have been circulated among lawyers show a wide-spread professional suspicion of this aspect of local courts. It is a common belief among them that too many cases are decided on personal considerations rather than upon the evidence presented. A judge personally acquainted with the circumstances of the litigants is likely to be influenced in his decisions by prejudice and personal opinion rather than by the merits of the cases. Discrimination against non-residents of the locality is frequent. And local contacts too often lead to judicial action based upon personal and political expediency.[23]

This kind of situation which has pertained to local courts within a state has also pertained between states, as California lawyers and litigants know when they have to try a commercial case in the state of Nevada, which resents California carpetbagging.

Pressure to delocalize local adjudication, therefore, comes from those whose wide-space orientation requires that they operate on a broader plane, which necessarily makes them strangers to the various communities which that plane intersects.

Localism is also a factor in class power struggles, though its relationship to socioeconomic class has varied in different periods in history. In the early 19th century, upper-class groups (creditors) tended to be concentrated on the eastern seaboard; debtor groups were dispersed inland. Since the former retained for some time their control over the higher and federal courts, the latter placed considerable stress on locally autonomous courts whose judges would be selected by a local electorate. Some integration with the larger political community was needed, as the advocates of localism knew and keenly felt. To integrate the locality to the needed broader orientation, there was a system of

appeals and trial de novo and the institution of judicial circuit riding (comparable to the circuit riding of preachers on horseback and the itinerant peddlers who were also the communication carriers and symbols of unity for frontier communities). The integration was loose and untidy, but this looseness and untidiness served a useful purpose. It permitted a sustaining of the sub-community, local community, within the wide community in such a way as to prevent the latter from having too much administrative control over the former. Appeal to the tribunals of the wider community was a matter of individual option—that is, responsive to needs articulated out of the local community rather than imposed from the top. This kind of loose integration not only gave debtors some leverage in their struggles with creditors, but also provided a loose enough system that individuals and communities could spread out over the space, settling the great frontiers of the West, without severing altogether their unity with the common political polity, the nation and the state.

In the 20th century, there has been a continuing need for sub-communities, for local orientations within national orientations, and for judicial institutions which reinforce or express the local orientation. Different groups within a community, particularly an urban metropolitan community, have different geographic scope of community orientation. Those whose scope coincides with status quo political (judicial) boundaries resist change in these boundaries. Others tend to leave the old tribunals as is and to set up new ones with broader orientations. In rural areas, pockets of resistance to the web of urban influence have remained strong. In California and other states, in the 1920s and 1930s, it was the lawyers in rural areas as well as non-elite lawyers in the cities who put up a fight against the idea of a state bar (with its implied centralization of control).[24] In the 1960s, more than a decade after a major constitutional revision of California's inferior courts, consolidation of some local justice of the peace courts had to wait until the incumbent judges had died.[25] Local sentiment saw in a venerable local judge a symbol of continuity with the past and of resistance to the urbanization of the future. Also, in Pennsylvania in the 1960s, resistance to the centralization of power implicit in court reorganization was so strong in rural areas that admission to the bar was a local matter. A lawyer admitted to the bar in one area could not practice in other areas until he had been admitted there, too. In this manner, the rural lawyers prevented their local clients from being gobbled up by Philadelphia lawyers; local business interests held the larger city business competitors at bay; and the local community kept the integrity of its localism.[26]

(There is irony in the use of the contemporary justice of the peace as a symbol of localism, since originally in England justices of the peace were appointed by the Crown as a way of centralizing power, of penetrating the power of the Crown into the countryside.)[27]

The effect of localism on court structure within a state may depend on the degree to which class differences coincide with urban-rural differences. For example, both New Jersey and Pennsylvania today have a strong localist tradition. If anything, New Jersey's is the stronger, so that there is no state income tax or sales tax, local governments jealously guard home rule, and the state has the lowest ratio of state employees to population in the country. And yet, New Jersey has the most centralized court administration in the nation while Pennsylvania's system is as described above. The explanation probably is that in New Jersey class differences occur in various localities throughout the state. In Pennsylvania, the upper class is more clearly concentrated in one place.

The push of the 20th century has not been entirely away from localism and toward centralization. The county of Los Angeles illustrates a countertrend the other way, once centralization has been established. The Los Angeles Superior Court (a trial court of general jurisdiction) was one of the earliest in the United States to adopt centralized bureaucratized control over its judges (of whom there were 120, plus 23 quasi-judicial commissioners in 1960–61). Possibly this kind of centralized administration was facilitated by the high rate of internal migration within the county (18.9 per cent of the population moved within the county between March, 1959 and March, 1960, as compared with only 8.4 per cent who moved in New York City).[28] On the other hand, Los Angeles' sprawling population has been quick to establish local community bonds, and the proliferation of local communities within the larger metropolitan area has resulted in pressure to establish branch courts (limited to 11 by a 1959 statute).

This, in turn, has both accompanied and caused the decentralization of many departments of the county government. According to Crouch and Dinerman:

> Ninety-eight per cent of the County Clerk's work is done for the court, in his *ex officio* capacity as Clerk of the Superior Court. Establishment of branches of his office has consistently followed the creation of branch courts in outlying areas. Other county departments serving the court include County Counsel, District Attorney, Public Defender, Probation, and Sheriff. The close working relationships between the court and supporting governmental agencies have important implications for emerging patterns of administrative decentralization. A decision to decentralize courtroom facilities generally precipitates a similar decision by the numerous agencies whose duties are closely allied with court functions.[29]

This localistic trend in turn meets the resistance of more wide-space oriented groups within the county. The California State Legislature's Joint Judiciary Committee on the Administration of Justice found "that the branch courts, whether with one judge or more, were without exception stoutly defended by

the local chamber of commerce and officers of the local bar association." However, superior court judges and attorneys who handled a large number of trial cases throughout the wider metropolitan area were not enthusiastic.[30] As a compromise, a kind of de facto federalism has been appearing within Los Angeles County. That is, increased centralization has not resulted in loss of local power. Rather, the range of activity (the power, if you will) increases at all levels. This same kind of statement can be made about federal-state-local activities in many vocational associations.[31]

The phenomenon of localism resisting or counteracting consolidation or centralization may be seen solely in terms of changing community size and boundaries. It also may be seen in terms of changing loci of political power as a result of changing economic structure and economic vocational stratification patterns. When the railroad interests were ascendant in the latter part of the 19th century, railroad interests had almost a monopoly on wide-space orientations, but they also played a strong power role in local areas. Lower-class people tended to be local in orientation, except where they were transient, though they sometimes turned to a broader sphere of political activity as a way of combining forces to transcend those who sat at the peaks of power hierarchies in local communities. In the 20th century, the single group with wide-space orientation was replaced by multiple interests and groups the elite members of whom had wide-space orientation, though the others might not. In general, elites had power in the socio-economic sphere both at the center and in the locality. In political-consumer spheres, non-elites continued to be powerless locally, except where they were concentrated. They might, however, as a mass make their interests felt at more central political levels, through the Chief Executive and other instruments for centralizing mass opinion.

And this brings us to the question of the role of political parties and other political institutions in the structure of adjudicative tribunals. Political instruments (parties, the Chief Executive, etc.) represent class interests, usually with broader general consensus partly imbedded within the instrument. (That is, the instrument has a dual orientation both to special and more general interests.) Therefore a dual orientation is reflected in the appointment of judges: to concentric spatial orientations related to community and to state and sub-state units embracing community,[32] and to the political party, which is the apparatus through which class interest within consensus[33] (or vice versa) is expressed. Political agencies (either formal or informal) may be channels through which one set of space-stratification orientations may capture the courts and administrative tribunals, but political agencies may also serve as levers or counterforces bringing back into an equalizing (community-related) role a law-applying institution which has veered too far into the camp of one side of the total

system. In administrative tribunals, for example, there is often a cyclical pattern when the original policy (space-stratification) orientation breaks down and gives way to an orientation which is partially turned inward toward the needs of the bureaucrat and partially brings the agency into close collaboration with the clientele being regulated. Then counter-attempts set in to try to restore a policy orientation for neglected competitive interests (and for the whole community through a reassertion of the power of political parties and the Chief Executive and the courts as reviewing agencies).

In the mid-twentieth century, the vocational groups with wide-space orientations, requiring uniformity and predictability of the law and law-applications, who sought centralization of the administration of the courts for limited, not total, purposes, also wanted depoliticization as an anti-localistic measure (since non-elites may gain local control through politics where they are concentrated in sufficient numbers) and as a lever to assure that centralization of the courts would serve their level of the producer system and not be a medium for political cohesion with a more common-denominator class orientation. These trends have also been accompanied by a gradual, but far from total, separation of judicial and non-judicial functions and of the courts from the administrative and legislative branches of local government, a severance which appears to come when social consensus has stabilized in the community.

However, neither depoliticization nor separation of functions is a final or static stage in an institution's development. An administrative adjudicative agency which is relatively free of the control of the Chief Executive may often be an agency to serve the elite of the group being regulated. Political partisanship may be utilized to try to restore to equilibrium (through increased control by the Chief Executive) an agency whose balance has veered too far away from general community interest.[34]

Thus, both the law and law-applying tribunals are actors in the process of space stratification readjustments, but at the same time are to some degree neutral arenas through which the adjustive process flows. There is every indication that depoliticization, severance from political community, is a middle stage in the process of specialization of labor and reintegration of the specialized parts within a broader geographic frame of reference. Once the adjusting process has taken place, once the new space orientation has institutionalized itself, the separated part is rejoined to the community whole, with political partisanship as one of the agents to effect the rejoining. At that point, various planes of space orientation, related to the stratification of the socioeconomic system, become part of the structure of the newly organic, larger-scope community. It may also be that at this point formerly separated judicial, legislative, and executive functions are also rejoined.

A Note About Time

Throughout this discussion, I have referred to space, but not to time, though the latter is an important element of the former. The degree of integration of those with the widest space orientations into the rest of the community has depended not only on whether the wide-space was inside or outside the community or communities affected, and also on the function of the wide-space group vis-à-vis the community (as in the case of railroads), but also, to some extent, of the time it has taken them to reach the ordinary boundaries of the widest space encompassed. If it took a long time, then the group was less apt to be an integral part of the community. When time to traverse wide space became greatly shortened, then those wide-space travelers did not need to sever their other relationships with the more local community. They could carry along two or more orientations simultaneously.

[Section omitted.]

Renewed Efforts for Broader Social Cohesion

Efforts to render the whole social community more cohesive have come periodically, paralleling changes in national integration which have come through changing space-time orientations and their changing modes of reinforcement. Problems of cohesion have seemed particularly acute when the society has been the most egalitarian—either in the atomistic manner of the Jacksonian era or the mass society manner of today.

Two primary areas directly involved with the problem of community and national cohesion are the changing modes of treatment of the consumer and the poor. Since the beginning of the industrial revolution, in a very rough sort of way, there have been three kinds of periods in the evolution of the present American system as it pertains to the poor and the consumer:

1. The first was in the Jacksonian era, when American society was primarily rural and small-town in character, when the bulk of the population lived on comparatively equal farms, as a result of which men had a kind of rough equality in relationship to each other and at the same time individualism. The prevailing ideology was one of individual pursuit of self-interest, but this was unilateral rather than directly competitive, since most farm production was still for self-consumption. Toward such stratification as existed, the mood was one of leveling: through universal suffrage, the spoils system, the minimization of expertise, pressure for free public education. It was thought that consumers could care for themselves, and there was a growing acceptance of the ideology of laissez-faire, but there was some legal community responsibility for the poor and there were drives to abolish slavery and to give women equal rights. Social cohesion, in this era, was primarily a

matter of individual-collective relationships, rather than of relationships between distinct categoric segments of the community, but this was also an era when reform movements were rampant.

2. Second came a period in the post-Civil War 19th century, and again in the 1920s and 1930s, when the emphasis was on gross class struggle (farmers, labor, versus business in the first period; labor versus business in the second) which was really part of the process by which the nation "bureaucratized," a process of differentiation and integration rather than cohesion.

3. Then came the period between the mid-1880s and World War I, and again within the past few years, when the middle class has taken conscious steps to help unify the social community. Curiously, these steps have paralleled drives on the part of the middle class to bureaucratize its relationships to the whole producer system and governmental system relating to that producer system. Both trends have had an impact on the structure of adjudicative agencies and forms of adjudication.

Between about 1890 and 1917, the new urban middle class suddenly abandoned its laissez-faire philosophy and took a new benevolent (paternalistic) attitude toward the urban poor through the social gospel movement in religion, the rise of settlement houses and social work, and a vogue for urban neighborhoods as the arena for reform and the focus of the community.

In the same period came the drive for law reversing the old caveat emptor philosophy: statutory pure food and drug acts, and manufacturers' liability imposed through the courts. In education came the first great drive for compensatory education (special schools for the handicapped), and wholesale adoption of John Dewey's philosophy of education, which stressed the unifying of individuals on a more or less equal basis into a communal whole.

Very recently, these pre-World War I orientations have returned, as evidenced by President Johnson's Anti-Poverty Program, the civil rights revolution, state and national legislative drives for truth in lending and other protection for consumers, and various other similar phenomena, including a renewed emphasis upon public defenders.

We are eyewitnesses to the struggles of Negroes to be totally assimilated into this inchoate mass, and to the enactment of welfare laws and the multiplication of private efforts to pull the lowest class groups up into the general consumer community—because the poor who once were functional to an economic system which relied on their brute labor are now dysfunctional in an economic system which needs them only as consumers. (The poor today are more apt to be people who have been rejected by the economic system rather than, as formerly, necessary though low-cost operatives within the system.) Changing family relationships may also be seen against this backdrop of mass social cohesion.

However, although benevolent gestures toward the poor and efforts to protect or equalize consumers have come in the same eras from the same kinds of people and have some of the same mass society results, these two social movements do in fact have different roots and significantly different consequences. The equalizing of consumption, the drive to protect consumers, is not particularly aimed at the poor but rather at the whole consumer population. In fact, the chief sufferers from current credit practices fall, I suspect, in the middle rather than lower class.

On the other hand, there is a curious and significant ambivalence, both in emotional motivation and in social effect, in middle-class efforts to assist Negroes and the poor. On the one hand, there are efforts to assimilate these groups into the middle class and to apply to them middle-class standards of fairness, middle-class conceptions of rights and obligations, and middle-class procedures for adjudicating disputes. On the other hand, the Negroes and the poor are cherished, emotionally, as such. (Read, for example, Jane Jacobs' *The Death and Life of Great American Cities.*) The implication is that the reformers would be sadly at a loss if these groups ever were totally assimilated. And so, both in the pre-World War I era and, more recently, the reform drive is not truly egalitarian, but rather a partial gesture in the interests of social cohesion and at the same time a way of underlining and sustaining the middle class's middle position. *Some great wise man once said that society needs its criminals; in the same way, a vulnerable middle class needs its poor and under-privileged.* (Note that in the earlier part of the 19th century in England it was the Tories—on the defensive against a thrusting middle class—who cherished and gave comfort to the poor.)

Accompanying the latter point of view is a tendency not to apply middle-class legal standards and procedures to the poor, but instead to propose new social rather than governmental (instrumental rather than sovereign) methods of dealing with the problems of the poor. Thus, in the pre-World War I period, Mary Follett proposed that traditional conceptions of the state, citizenship, and sovereignty be abandoned and that the governing process be rooted in neighborhoods where there was no formal distinction between state and society. Out of neighborhood communities a series of concentric circles of government would expand until eventually the whole nation was embraced.[35] Her ideas had considerable vogue at that time. Something similar seems to be astir today. Notice the emphasis in Jane Jacobs' book on natural communities and informal, rather than formal, legal processes as the best ways of solving problems.

Attitudes toward mental health, alcoholism, drug addiction and other problems are also undergoing alteration. Whereas once the victims of these problems were warehoused in segregated asylums distant from the ongoing community, treatment stresses more and more the leaving of the victim in his natural context or one which is similar, but improved, and treating him there. Also,

increasingly it is recognized that agencies which formerly each went their separate ways in dealing with the client, and which each related separately to the courts which were involved, now must look to coordinated effort, and their coordination with judicial administration also must be much more complete.

Therefore, everything points to a reintegration of judicial functions with other functions, of judicial institutions with administrative institutions, at least for a transition stage when the coordinations are being worked out and prior to the time that the adjudicative function once more may be severed, this time on the basis of the new established rights and relationships.

Thus, in the evolution of community itself, as well as in the evolution of new space-time planes, a cyclical pattern occurs. Each sphere is obviously related to the other; the degree and nature of their relationship at any point in time is a variable of their reciprocally interacting development.

Relevance to Adjudicative Structural and Procedural Reform

Apart from what all of this means in terms of theory, there is the question of what it means for those who must assess and set upon problems of structuring adjudicative tribunals in immediate and practical terms.

The most immediate and apparent implication is that the advocates of adjudicative reform should take more factors into account than they usually do. The criteria of cost, efficiency, due process and fairness, and some aspects of social result all relate to the role of the courts or agencies in maintaining and adjusting different space-time planes. What is expensive or inefficient for the occupiers of one space-time plane may not be so for the occupiers of another plane. With more appropriate analysis, perhaps methods and arrangements can be worked out which provide the maximum yield for each legitimate group. Due process and fairness, as standards for adjudication, must be seen as part of a system of relationships within and between space-time planes. The problems here arise not so much within a space-time group, but when the litigation or adjudication is addressed to relationships between different such groups. The words then take on a different meaning; quite possibly they should have a different content and a different result.

Criteria for reform in terms of definition and maintenance of community should undoubtedly be of quite a different nature from those designed for the definition and adjustment of space-time planes.