Courts

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THE SOCIAL ORGANIZATION OF JUSTICE — A COMPARATIVE STRUCTURAL ANALYSIS OF LEGAL INSTITUTIONS OF A STATE

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Grant No. 72-NI-99-1070

In accordance with Section 14 (Reports), the following acknowledgement is made:

"The material in this project was prepared under Grant No.72 NI 99 107 from the Manpower Development Assistance Division, Office of Criminal Justice Assistance, Law Enforcement Assistance Administration, U.S. Department of Justice. Researchers undertaking such projects under Government sponsorship are encouraged to express freely their professional judgment. Therefore, points of view or opinions stated in this document do not necessarily represent the official position or policy of the U.S. Department of Justice."

The original proposal submitted called for an analysis of judicial behavior entitled: "Judicial Dilemma: Professionalization vs. Bureaucratization". The intent was to determine the effects of increasing bureaucratization of the courts on the professional commitment of the Judiciary at the Common Pleas level in Pennsylvania. I was specifically interested in answering the question: what is there in the social structure that can explain both the processes and their effects on the behavior of the Judiciary. Being an exploratory study, I conceived the most important outcome of the research as a "firm theoretical and substantive foundation on which to build future research".

Although the title and method of research were changed, the basic contributions have been achieved, and will be forthcoming in the completed dissertation some time in August. The reasons for the change were both academic and professional. The problem had to be reformulated in more theoretically relevant terms to satisfy the requirements of my department, but in addition, preliminary fieldwork and a review of the literature made me cognizant of several facts:

1. Since the social processes being investigated (professionalization and bureaucratization) are both socially organized phenomena, it seemed more appropriate to use a group level analysis. This is not to condemn the social-psychological approach, but if we are to have a well rounded understanding of the behavior of legal personnel, we need to supplement the overly psychologized view Americans tend to hold.

2. The Judicial office could not be examined alone. Initial observation made very obvious the interdependency of all legal institutions

on the county level. Any change in one part of the system was bound to cause change in other parts as well. In other words, I realized that a description of the court system as a whole must precede any worthwhile analysis of the Judicial office, and indeed was essential to place the nature and function of the Judiciary in proper context. One of the main inaccuracies in some criticisms leveled at this office has been that Judicial behavior is treated as if it existed in a vacuum. This is most emphatically incorrect and can only lead to poorly formulated policies.

3. The initial research further convinced me that each of the legal institutions in the counties was also being effected by the same push toward bureaucratization. At the same time, it became evident that "professionalization" and "bureaucratization" were social forms that were subsumed by more abstract and theoretically more powerful concepts.[1] These concepts were further enhanced by the increased practicality they offered for use in future research both historical and cross-cultural, of court systems. Culture content varies through time as well as across social systems. There is much greater value to be obtained if dimensions used are couched in terms broad enough to express and incorporate the diverse methods humans have chosen to organize and institutionalize their dispute settlement procedures. Structural Differentiation and Structural Rigidity satisfy these requirements.

The paradigm chosen to guide this research is that used by Frank and Ruth Young and their students.[2] The paradigm has proved to be eminently successful in describing and analyzing development and modernization patterns in rural Mexico,[3] protest demonstrations in the U.S.,[4] predicting outbreaks of guerilla warfare[5] as well as the distribution of land credit agencies in the Phillipines[6] and

the location of social welfare programs in Puerto Rico.

Their emphasis on a sociogenic explanation (as opposed to the psychogenic) of institutionalized behavior leads them to utilize group level data, i.e., evidence produced by the interactions of humans rather than personality or attitudinal data. Records, documents, aerial photographs, telephone books, grave markers and newspapers constitute some of the sources of data they have used. It is the relations of men, not the individual's inner dynamic that is the basis of sociological analysis, and they have taken this mandate seriously. This aspect of the paradigm, then, satisfies criteria number one.

Because the unit of analysis they employ is a structural whole; communities, societies, villages, families, street demonstrations, criteria number two is also satisfied.

In order to include the two aspects of the differentiation process, structural growth and articulation of subsystems with the national level, the Youngs defined both variables in information terms: Differentiation is defined asthe degree to which separate sectors of the structure of meanings maintained by the community are institutionalized and made visible by symbol or artifact. Rigidity is defined as the degree to which the system inhibits the development of open communication structures, i.e. easy and frequent interaction between groups. This level of conceptualization satisfies criteria three.

DESCRIPTION OF THE RESEARCH:

The counties and their courts were assumed to exhibit varying degrees of differentiation, and to maintain the characteristics of an open, flexible system also in varying degrees. Guttman scales of Differentiation and Rigidity were constructed and were correlated with indices assumed to be related to the "rationality" of the sys-

tem; in particular,[10] those elements of "justice" which have been documented as the primary goals of state and national groups. It was assumed that the state and national agencies responsible for establishing policy for, and direction to, the local groups will be more highly developed than county agencies, since by the very nature of their status, they will have had to attend to, or consider more diverse phenomena than the local units. This does not mean that these goals can be equated with "justice", but the assumption is that they are at least consonant with it, will include more kinds of interests, and that these interests will be more likely to achieve a more equal status at this level. "Justice" being a moral phenomena, cannot be measured directly. The approach used here is one alternative.

By ordering the counties along dimensions of Differentiation and Rigidity, we were able to obtain, not only a systemmatic description of their structural complexity, but also more informed knowledge of the types of factors that must be considered by policy makers who wish to know the probability of success of various programs. As the Youngs point out, social planners need to be able to judge which areas are most fruitful for their focus of attention, in which sectors attempted change will provide the best "payoff" and which may be "wasted effort".[7] One of the chief advantages of the Young paradigm is the promise it holds for policy makers interested in the measuring and continued evaluation of programs. Because it makes use of available data, it is more economical. In addition, the factors chosen for analysis are those of concern to system members. The researcher does not impose his concepts or models. He uses data which is naturally produced by the organization. The

indicators, therefore, should be readily understood by institutional participants. Somewhat parenthetically, I have found that one of the barriers to change is the increasingly technical vocabulary and obtuse reporting used by social scientists in their communications to laymen, albeit these may be judges or attorneys who are experts in their own field. At one seminar, a judge who was particularly interested in the report a psychiatrist had just given on a methodologically excellent and practically successful treatment program for convicted rapists. However, the judge, puzzled by the welter of data and scientific jargon, asked if I would please translate the report for him. Complaints that judges refuse to use innovative sentencing practises are valueless if the judiciary does not "receive" the information the social scientists are producing. Interdisciplinary seminars are a waste if "loss of information" of this type is not kept to a minimum. Fruitful exchange need not include "talking down" to the layman, but it should be recognized that different audiences have not only varying skills but also different needs in interpreting sometimes sophisticated material.

Another advantage of this type of monitoring, is that it allows for the indirect observation of other attributes of the system. Occasional or direct measurement may create political havoc. An example of this occured in Pennsylvania when two state officials spent considerable time and effort in conducting a survey of particular type of legal service in the state, only to have the final report buried forever by adverse criticism of several county commissioners who feared the publication of the results. If regular-

ly collected data had been utilized, the state level office could have evaluated the work of the county offices as a routine matter. A series of reccomendations will be included in the dissertation.

Each county varied in characteristics at least to the extent that its "presentation of justice" as embodied in the legal institutions differed from the "presentation of justice" in other counties. The effort to enforce the criminal code or adjudicate civil conflicts is a production of each county, which can be viewed as distinct, semi-autonomous communities. Political parties and voting apparatus are structured on the county level; some taxes are levied here, welfare programs and school systems, as well as some highways, parks and other services. Equally important is the fact that the county provides a means of identification for increasing numbers of people emigrating from large cities. Although it may eventually become obsolete as a unit of government, with increasing regionalization, the county as community is still a viable sociological concept.

County "judicial units" were chosen as the unit of analysis primarily because they form a natural social unit that allows for comparison within a single state. Although preferable, comparison across the United States at this level of jurisdiction is not justified given our present state of knowledge. Variations do exist, however, within the states and are sufficient for comparison. County legal institutions frequently have sharply contrasting structures resulting from their own historicalprocesses, form of local government type of power structure, procedural rules and customs, the nature of the recruitment base of the bar and so on.

The second and most powerful reason for choosing the county unit is that throughout the history of Anglo-American law, the county has been the prime source of legal services. Indeed, courts have been organized on the county level since the Norman Conquest. To this day, deeds, wills, liens, judgements and most criminal actions are filed in the county offices. The cases are processed by county offices; Prothonotary, Sheriff, District Attorney, Probation and Parole. Except for the city of Philadelphia, which has encompassed the entire county of Philadelphia for many years, police in Pennsylvania are organized on the Township, Borough, City or State level. For this report, therefore, they were not included.

An additional reason for selecting this level of jurisdiction is that the courts of Common Pleas have long been known as the "work horse" of the judicial system. Most cases brought to suit end here.

I have chosen to use the term "judicial unit" to draw attention to the fact that I am including offices which may not immediately come to mind if the term "court" was used; e.g., Warden County Detectives, Coroner, Bar Association. I have included all those offices whose work is most directly concerned with the administration of justice on the county level. These cannot accurately be called the "court". First of all, this latter term has traditionally been reserved to the judiciary alone. Secondly, those offices involved in administering the law on the county level comprise only a rather loose federation. They present a unique model for students of complex organizations. Some are elected officials, (Judges, District

Attorneys, Clerk of Court, Sheriff, Prothonotary, Recorder of Deeds, and Register of Wills). Others are appointed,(Public Defender, Warden, Court Administrator - each by a different body). Still others are hired, (private counsel, probation officers, bailiffs, tipstaves). Some have duties fixed by law; others are more autonomous. Some are state funded, i.e., the Judges;;others are paid by the county: District Attorney, Public Defender; still others by fee: private counsel, and in some counties, the Sheriff, Prothonotary, and Clerk of Court. Some have a major impact on the outcome of a case, others have a more peripheral effect. There is no central body to whom all must respond; nor are they responsible to each other. Ultimately, one might say they all must answer to the public in some fashion, but clients, peers and political officials intervene in varying degrees.

Despite this amalgam, however, no analysis of the social organization of legal institutions will be meaningful if these disparate offices are not considered together. Each office contributes in some way to the "fate" of all cases entering the system; it is only by viewing them as an interdependent system that we can understand the resultant legal products.

Although the use of Differentiation in this paper connotes institutionalization of functions, it was defined at another level: the cognitive. On the operational level, what was searched for were configurations of interactions which had developed to the point that different, named functions had been assigned to new individuals and groups; specialization had occured which tended to orient the individual so assigned toward a new perspective and toward the use of new types of information. The definition chosen specifies clearly the

meaning of a differentiated structure: it is capable of retreiving and generating information that is distinct from that normally retrieved and generated by other structures.

An example of a differentiated structure in the courts can be seen in the role of the Court Administrator. Prior to 1960, the making of a court calendar, listing of cases for trial, hiring personnel, making a budget, purchasing supplies or equipment, were among the non-legal tasks of judges in Pennsylvania. Since that time, one court after the other, established the position of Court Administrator to handle management duties until the number of administrators is now over 30. Use of people designated as Administrator varies; some are actually only judge's secretaries, given minimum responsibility and frequently having minimum commitment to the development of their functions in this area. Some are part-time administrators, others are full-time, highly complex offices with extensive responsibilities, large staff, and several deputies. A Pennsylvania State Court Administrators' organization has been formed, several of these men have aatended training sessions at the Institute for Court Management. Discussion of recruitment standards and the proper function of the Administrator has been part of the agenda for Judicial and Bar conferences for the last several years.

Examples of other legal functions which have displayed varying degrees of differentiation are as follows:

1. Representation of individuals has expanded from hired counsel who handle all types of cases and all types of clients to specializa- by area of law; e.g. taxspecialists, criminal lawyers, decedents estates men, and specialization by type of client; e.g., house counsel,

counsel for indigent clients, corporate counsel and some attorneys are so specialized that they represent only franchisees. Counties vary in the amount of specialization occuring among the Bar. All counties provide for representation of clients who can pay the attorney's full and regular fee, most provide service for the indigent through Public Defender and Legal Aid offices, and a few counties attend to clients who earn too high an income to be eligible for indigent status, but not enough to pay the "going rate". The latter are serviced by private attorneys who volunteer to represent them at lower than their normal fees, or by the availability of a form of legal "insurance".

2. Correctional agencies range from the presence of a county jail only, which cares for all types of prisoners and is under the supervision of the Sheriff who handles this work in addition to his other assignments; to the establishment of separate facilities for adults juveniles and detainees, with the jail itself directed by a court-appointed warden, to detention centers, halfway houses, to the creation of a Department of Corrections. Responsibility and attention to probation and parole and juvenile services varies similarly but has not reached such a high level of complexity.

In each of these cases, it is evident that specialization of office facilitates the recognition by that unit of distinctions that can be made between types of clients or types of legal problems. This allows, by implication, the use of more information about the phenomena being handled by the judicial unit. People and problems are less likely to be stereotyped, less likely to be treated in an inappropriate manner.

The whole history of Anglo-American law could be viewed as the process of elaboration of elementary structures of "mediation" (using Simmel's term for this particular social "form"). The basic unit consists of the mediator and the parties in dispute. In the earliest records, the community en masse often assumed the combined role of adjudicative, investigative, enforcing and sanctioning unit. Specialization, separation, and institutionalization of the various elements of the process of meting out "justice" occured over time. "Sheriff", "Coroner", "Clerk of Court" are residual titles of offices whose functions have evolved into far different form than that held in the 11th Century when a coherent system of law began to take shape in England. Some offices have maintained a greater similarity to their original function, while other, entirely new ones have appeared. Judge and jury would be an example of the former, while the public prosecutor (the District Attorney in the U.S.) and the police system are new. More recently, the kinds of elaboration which have occured in the U.S., in addition to those already discussed are County Crime Laboratories, County Detectives, Bar Associations, and volunteer citizens groups involved in prisoner rehabilitation or probation programs.

As the various offices and functions of the judicial unit tend toward increasing complexity, another aspect of the developmental process may be seen at work. Simultaneous pressures toward the segregation of the specialized offices as well as integration of the unit as a whole, occur which can be measured on the dimension the Young's have termed Rigidity. As each of the functions becomes differentiated, i.e., increases the diversity and complexity of the informa- available, tendencies toward both the development of a focused defini-

tion of the situation by each of the offices and toward articulation with the structure of meanings of the system as a whole are present in varying degrees. Needless to add, these are not always congruent, so that barriers between groups within the system and between the system itself and the larger society may develop. It is the development of these barriers that the variable Rigidity measures. The interest in "open" communication structures between the unit and its environment or any of the sub-systems with other parts of the system, is in the free flow of information, a condition under which the most rapid change may occur. It is under such conditions that the interests of various elements in the system have the greatest opportunity of being incorporated into the system. By preventing the monopolization of information, or allowing access to groups or their meanings structures on bases that are not determined by social class, prestige, or power, for example, more information that is being generated and retrieved by the differentiated structures is put to use by the system. "Open" structures in MacCannell's terms increase the "capacity of the system to turn diverse outcomes of interaction and communication back into coherent situational focus, growth and development." [8]

Flexible (the obverse of Rigid) communication structures can also be viewed as allowing for frequent interaction or exchange of information without the restrictions of bias: indigent defendants would receive the services of an attorney at preliminary hearings as often as paying defendants; without the abuse of power: inquiries or requests for services by an attorney would receive the same attention and care by the Clerk of Court or Prothonotary's office, rather than good services only to those who pay a "little something" to receive such care.

Rules of Discovery, for example, might be used in a study of this type across states, as an indicator of Rigidity. Pennsylvania has limited pre-trial discovery in criminal cases. Other states Other states have less restricted rules. Vermont has almost unlimited discovery. We would say then, that Vermont has a less rigid legal structure than Pennsylvanvania, to the extent that pre-trial discovery can be viewed as: 1.) Supporting the principle that the duty of the District Attorney is NOT to "Convict at all costs", but instead to present the facts and let the facts determine the outcome of a case. Keeping evidence and witnesses secret until trial constitutes "surprise" and a disadvantage to defense counsel, and thereby weakens the defencase. 2.) Any exchange of information of this type by BOTH defense and District Attorney prior to trial can be held to eliminate weak points on both sides, or narrow the specific areas in which argument between the two parties can take place; in other words, it allows for simplification of the eventual trial and concentration on more purely legal issues.

An instance in which Rigidity can be observed in county judicial units, is the control of the "trial list" by the prosecutor's office. In this example, the kind of power he exerts by virtue of his status in the system, is used to block or shield the kind of information needed from reaching the judge or court administrator.. In some cases, it may be the quality of the work, or organization, of the various offices: Public Defender, District Attorney, Police Departments, etc. Or it might prevent recognition of the influx of increasing numbers of new types of legal problems. The prosecutor can be viewed as a kind of "gate-keeper" who determines which cases will receive what kinds of treatment. At the same time there is no monitoring mechanism in the system to make certain this office is

treating all of the same kinds of cases equally.

In such counties, the District Attorney is able to decide which cases from those listed as "ready" by the Clerk of Court, will be heard that day or that trial term. He schedules his good cases, postpones the cases he is likely to lose. He does this in spite of the fact that this procedure often operates to the disadvantage of defense counsel to have cases heard out of the order in which they were listed. In these events, the Public Defender (more often than private counsel) will be in an unequal position. The Public Defender does not have the recognition or prestige of the District Attorney's office. For this reason, he does not have the type of staff or resources available to him that the prosecutor has: e.g. special relationship with District Justices (who often use the prosecutor's office as their source of legal "news"), easy access to police files or data, detectives, the F.B.I., crime labs, etc. The Public Defender, then, is unable to both present or utilize the kind of information he might consider important.

Rigidity, however, is not necessarily to be considered as irrational behavior, or a delict of the system. As MacCannell has demonstrated, it is a positive, independently operating dimension of social structure.[9] Barth [10] has shown that boundary maintainance (which is one aspect of Rigidity) by ethnic groups provides identity and continuity for these groups. It does this partially by determining which social facts will be made relevant in any particular interaction with members of outside groups. It is a form of assurance that interaction with dominant groups in Barth's illustration, will proceed with relative stability. If, however, structures should make use of "non-social" factors such as power or prestige, then constraints

will have been placed on the realization of structural tendencies. This is an inhibiting of natural growth and utilization of information that may be vitally needed by the institution, information that may be essential if the institution is to adapt to its social environment without the threat of eventual and potentially serious disruption.

It is also true that some parts of the system may need to be shielded or insulated from "confrontation or modification".[11] Judges legislators, leaders of various organizations cannot be so open to the public or to particular kinds of information, that they become subject to every whim and pressure of the citizenry, or as in the case of Watergate, to pressures of one area of responsiblity to the exclusion of all others. If this insulation is too general, or based on non-social factors, a rigid structure results.

Although it might be the preferred strategy in a comparison across states; in this study, Rules of Court could not be used as indicators of planned, intentional, "canalizing" of communication structures. All counties have adopted the Pennsylvania Supreme Court Rules with few and very minor variations. Supreme Court rules are not so finely drawn, however, and counties have some leeway in methods they choose to implement the procedures set down by the higher court. The specific variations in procedures used by the local courts are not set down in printed form, but it was possible to order counties by noting the presence or absence of various "rigid" structures.

Although other measures were used, two structures which should be examined in future research for these tendencies are: 1.) Political monopoly of jobs obtained anywhere in the judicial unit by any one political party, as well as the proportion of young

attorneys in the Bar. In these cases, if information that is favorable to the policies of only one party or one age group is allowed to penetrate the system to the exclusion of the other, information that is contrary to, or critical of, current policies cannot be "received" by the system.

2.) The type of form, or method used to notify concerned individuals of upcoming legal proceedings needs investigation. Courts vary in type of notification systems that are utilized. Some use methods that convey minimum information, it is ambiguous or it is not sent to all parties needing the information. In cases of this type, there is greater likelihood that some person essential to the proceedings will not be present, or in some cases, the wrong proceedings will be scheduled, e.g., a hearing instead of a trial, with each side anticipating different occurences on the date specified.

METHOD

Rather than sample counties, each of the 67 were included in the research. It was felt that the variation thus obtained might have been crucial to the analysis, in addition to the basic premise of this paradigm that the whole of the community, or society must be considered.

A combination of techniques were utilized to obtain data. Although participant observation and in-depth interviews were used, non-reactive measures were preferred data: records, reports, documents. Participant observation included attendance at judicial and bar seminars, accompanying various legal personnel through portions of their day, as well as observations in the courtroom. In some cases, one or two page questionnaires were sent to key informants to obtain data not available elsewhere: Secretaries of the Bar Associations of the Counties, the District Attorneys and Public Defenders as well as to each of the Judges.

The data thus obtained was used to construct twelve Guttman sub-scales of Differentiation (8) and Rigidity (4). Guttman scaling was chosen for several reasons. As Young and Mac Cannell point out, "the development of an adequate approach to structural differentiation has been tied quite closely to Guttman scaling".[12] Freeman and Winch,[13] Hassenger,[14] Schwartz and Miller,[15] among others have used it. The two most important features of this methodological technique are: 1.) It allows for the most direct measurement of social organization and 2.) it assures us of the unidimensionality of the variable chosen. In this case, the judicial units are a new area for research and it is particularly important that the researcher limit the number of assumptions and preconceptions he may be tempted to borrow from other intitutional or organizational analyses.

Schlegel[16] gives a most succinct description:

> "Guttman scaling is a means of transforming qualitative data into an ordinal numerical scale. Although not restricted to dichotomous (two-category) items, these are the most commonly used in practise, and attention here will be restricted to them. In more formal terms, a Guttman scale is a method for testing whether a series of qualitative items belong to a single dimension. A perfect scale yields a rank ordering of cases (individuals, counties, nations or whatever the units of analysis) on the basis of their possession of attributes or institutions which are themselves ranged from "low' to 'high', or from less to more 'extreme' on a presumed underlying continuum. The presumption of unidimensionality derives from the cumulative nature of the arrangement of items. (See Table 1) That is, a higher scale score implies not only that the case in question possesses more of the scale attributes than cases ranking below it; in addition, it indicates that cases with higher scores possess all the attributes of cases with lower scores, and one or more in addition. In the perfect case, al illustrated in Table 1, the score alone tells us not only how many of the items are present for a given case, but also exactly which ones."

Table 1. The Perfect Guttman Scale

Case ID	Items A	B	C	D	E	F	Scores
	1						
1	1	1	1	1	1	1	6
2	1	1	1	1	1	0	5
3	1	1	1	1	0	0	4
4	1	1	1	0	0	0	3
5	1	1	0	0	0	0	2
6	1	0	0	0	0	0	1
7	0	0	0	0	0	0	0

By allowing the treatment of essentially qualitative data, as ordinal, we avoid less satisfactory alternatives. A typology could be constructed but would be less precise and give less information about the system. It also avoids the necessity of utilizing only interval data, and thereby limiting the results; or possibly forcing the assignment of potentially spurious numerical values to non-quantitative data.

The offices and institutions about whom this data was organized were: the Judiciary, District Attorney's office, Court Administrator, Law Library, County Jail, Bar Association, Legal Services to the Indigent, and the Political Competitiveness of the two major parties. Coefficients of Scalability ranged from .74 to .97, which puts them well within the range of acceptibility, i.e. they fill the criterion of approaching the ideal pattern.

The intercorrelation matrices in Table 2 and 3 shows the relatively high intercorrelations among the scales, thereby supplying evidence that we are indeed dealing with a single dimension, as well as incidentally demonstrating that the various sub-systems in the judicial unit do indeed exhibit the properties of a system.

Table 2: Matrix of Tau Correlations Between the Sub-scales of Differentiation

	1.	2.	3.	4	5.	6.
1. Law Library	x	.46	.64	.39	.55	.72
2. County Jail		x	.63	.44	.59	.58
3. Bar Association			x	.46	.63	.69
4. Legal Services				x	.49	.46
5. District Attorney					x	.74
6. Judicial Office						x

Table 3: Matrix of Tau Correlations Between the Sub-scales of Flexibility-Rigidity

	1.	2.	3.
1. Judicial Flexibility	x	.60	.16
2. Bar Association Flexibility		x	.32
3. Political Competition			x

Court Administrator Flexibility Scale was eliminated since it was based on only the 25 counties having Court Administrators.

From the pool of items used to construct the sub-scales, two general scales, one of Differentiation and one of Rigidity were constructed. They correlate at .70 tau.

Table 4: General Differentiation Scale

STEPS	ITEMS	ERRORS	PERCENT DISCRIMINATION
1.	Bar Association is active: i.e., general membership meetings are held regularly.	0	.92
2.	Single County Court; i.e., County does not share Court with another county.	1	.89
3.	Law Librarian present; i.e., individual named to care for Law Library	1	.77
4.	Legal Aid Committee established by County Bar Association.	7	.65
5.	Court Administrator present; i.e. Judge is not the Court Administrator.	5	.47
6.	Separate facilities provided for Juvenile Detention.	2	.34
7.	Legal Secretaries Association active in County.	1	.14
8.	Crime Lab maintained by County.	3	.07

Coefficient of Scalability =

Table 5: General Scale of Flexibility-Rigidity

STEPS	ITEMS	ERRORS	PERCENT DISCRIMINAT
1.	Unlimited number of visits permitted in County Jail.		
2.	Both parties field Judicial candidates in most elections since 1939; i.e. voters are given a real choice of candidates since there is no cross-filing in these elections.		
3.	Probation Office receives Grant-in-aid from State for improvement of office.		
4.	Public Defender determines criteria for recipients of services.		
5.	County jail keeps a Social History of inmates.		
6.	Court Administrator prepares Civil Trial List.		
7.	Minority party wins District Attorney's office.		
8.	Bench and Bar Conferences are held in County.		

Coefficient of Scalability = .

FINDINGS

The intercorrelation of the two general scales is higher than had been anticipated, but an examination of the positions of the counties when ranked in order from High Differentiation /High Rigidity, Low Differentiation/Low Rigidity, or Middle ranks of both Differentiation and Rigidity shows that most counties fall in the midddle ranges. Only 16 are either High/High or Low/Low, and only

one had High Differentiation/Low Rigidity. This was Lancaster County which is highly agricultural and heavily populated with Amish folk.

Despite the fact that the nature of the two variables assumes some minimum correlation, the high regularity present in Pennsylvania legal institutions deserves some explanation.

1.) The structure of the law lends itself to orderly, very gradual change. Supreme Court decisions, Bar Association activities on both the state and national level ensure both consisten and continuous monitoring of the system for flagrant episodes of lagging, at the very least. We would of course, have to compare Pennsylvania with other states to determine its relative level in regard to national trends. However, it can be assumed that since Pennsylvania legal systems have traditionally been in the forefront regarding innovations, it probably has not strayed too far from the national norm (norm, i.e., in the sense of expected, prescribed behavior; not the statistically average). It may very well be that other institutions in Pennsylvania would not exhibit this regularity, but those questions are beyond the purvue of this paper.

2.) The nature of legal work itself would also encourage the level of communications to "keep up" with the systems' differentiations. The very role of lawyer, as the interpretor of a complex code for the layman, depends on the amount of information to which he has access. As counties become more differentiated, crimes increase, more types of business activity are found, governmental structure itself becomes more complex. To handle the increase in both volume and complexity of legal issues, the bar of a county must become attentive

to greater numbers of statutes, court policies, precedents, and trends in the law than was necessary when the county was less differentiated. In order to fulfill their functions, attorneys must have not only greater access to the information itself, but also to other subsystems which either control "news"(the Judge, Court Administrator or County Detective, e.g.) or which facilitate the broadcasting of news (the Law Library, Bar Association continuing education programs, e.g.)

3.) Despite its alsmost stagnant economy and "old" settlement pattern, the level of differentiation of Pennsylvania legal institutions may be raised as a result of the state's geographical position on the East Coast of the United States; situated as it is between Washington and New York, one the headquarters of governmental agencies, the other the most complex metropolitan area on the continent. "Spillovers of populations, market accessibility as well as a high number of long established institutional networks which were part of earlier growth when this area was developing at a faster rate, all are factors which created a fairly high initial level of differentiation.

4.) In addition to the fact that the structure of law encourages some minimal level of Flexibility, the events of the 1960's have probably made their impact felt in Pennsylvania by 1971 (the year for which data was collected). The "civil rights revolution" of the Warren Court, the fear of riots and increasing violent crime undoubtedly convinced many governmental systems (at all levels) that more attention was due the courts. Not only were grants from Washington made available to local groups, but even county commissioners and controllers were forced to finance new programs from county funds. Recognizing that they faced potential lawsuits by the U. S. Govern-

ment, newly "conscious" publics, or the courts themselves, the money for Public Defenders, computerized information systems, legal aid clinics, etc., was quickly found, albeit frequently reluctantly.

When the two general scales were correlated with a series of indices obtained from the U.S. Census Bureau, the F.B.I. Uniform Crime Reports, and the Pennsylvania Governor's Justice Commission, some interesting patterns emerged. Although the dissertation will cover the patterns of predictions in great detail, this report will merely indicate by several examples the type of explanation and analysis generated by this type of research.

Differentiation, or the capacity of the system to process information, predicts, among other things, the lapse of time from arrest to sentencing (for convictions). A correlation of .35 tau, diminishes somewhat, to .25 tau, when controlled for Flexibility, but still remains a viable figure. The correlation is positive, meaning that the more differentiated the county, the longer the process from arrest to sentence. This finding makes sense when we recognize that differentiated systems are receiving more information in regard to each case, probably in the form of more frequent preliminary motions, on the part of defense counsel and relatively more time spent investigating cases by both defense and prosecution. In less differentiated counties, both District Attorneys and Public Defenders (as well as private counsel) more frequently run one-man offices, thus requiring them to handle all trials, hearings, grand jury presentments and the investigation of cases. This leaves less time for in depth attention to any specifc case other than politically charged cases

or especially newsworth crimes. It is also a fact that less differentiated counties depend on more informal means of settling legal issues which would be presented in the form of preliminary hearings in more differentiated counties.

On the other hand, it may be that the differentiated system is also receiving more information than it needs about counsel, which also leads to delay. Relatively few private attorneys handle the bulk of criminal cases in highly differentiated counties. It has been estimated that over 50% of all criminal cases in Philadelphia are handled by 15 attorneys. The number of hours one man can physically spend in the courtroom are limited so that their preoccupation with earlier trials delays new cases, mostly through the use of continuances. This fact apparantly reached its zenith in Philadelphia in 1973, when the court was forced to assign the use of an entire courtroom and the service of several District Attorneys to the trials of one attorney's overwhelming backlog, for several months. At the outset of the program, he had over 100 felony trials listed as well as numerous smaller matters, and several appeals to superior courts. Although this is admittedly an extreme instance, many delays are occasioned by the inept scheduling of overburdened criminal lawyers. Perhaps the tactic employed in the Ontario Province Courts is worth consideration. If counsel is too busy to handle his cases with dispatch (which includes prompt return of client's phone calls as well as not requesting unjustified continuances), the rules of court specify that he may not take a new case until those he currently has, are completed.

The rate at which Juveniles are processed, and at which adults are sentenced to either state or county prisons rather than given probation, suspended sentence or fined, is also predicted by Differentiation. There is no theoretical reason to believe that more differentiated communities react more sensitively to injuries done by criminals thereby necessitating more severe sanctions. In fact, the recent publication on Unreported Crime indicates that Philadelphia as well as many other large cities have fairly high rates of cri[illegible] which are never brought to the attention of the police, indicating a rather inured attitude. However, it could be the case that while more differentiated areas are not more sensitive to each particular offense, they are more frightened by the sheer numbers of crimes reported daily in the press, on radio and T.V. This coverage is reinforced by the rhetoric of politicians seeking office on the premise that their party will "rid the streets of crime".

Another factor to be considered here, is the possibility that with increased investigation, combined with the huge backlogs of the courts, District Attorneys will only process those cases which they feel more certain will eventuate in jail sentences, thereby lowering the risk of "wasted" time and energy for his office. This would then inflate the percentages in differenttiated counties in comparison with the less populated, less complex counties.

In addition to predicting various county characteristics (% of population over 65, % of population which is foreign born, Number of Colleges, % of families on Public Assistance e.g.) the Flexibility-Rigidity variable also predicted the % of Guilty Pleas

by all defendants processed, the number of convictions per 100,000, the number of decisions which are reversed, as well as many other variables of interest to those in the administration of justice.

That Flexibility-Rigidity should be related to the percentages of all defendants who plead guilty, should come as no surprise, (Correlation is -.32 tau). There is no correlation, however, with differentiation (-.02, with controls for Flexibility). It would seem that the extent of specialization (i.e. a greater likelihood of criminal law specialists, County Detectives, a Crime Lab) in the sense that more specific information is being gathered, and processed, does not effect the number of times or the percentages of individuals who choose to plead guilty. The two factors, differentiation and percentage pleading guilty, are independent of each other. Neither the availability of more information, or its lack, will effect the pleading of guilty, whereas the openness of the structure to alternative ideas or arguments does. Apparantly, the more flexible the county, the more likely the individual will seek some form of community decision regarding his guilt. He will not waive a trial either by Judge or jury or admit to some or all of the charges. This woul seem to indicate that counties with more open communications structures are more likely to allow the various factors that impinge on any individual's guilt to be aired, to be weighed in some fashion. It hardly seems possible that less flexible counties have more defendants who feel guilty and thus plead so. It may be that defendants and their counsel are also able to read better, the cues given by the various sub-sectors as to their reaction to defense tactics or position. This aids in making a more correct decision regarding the advisability

of risking a trial. There is evidence from interviews with attorneys in some counties that Judges will suggest in various ways that if the defendant is willing to save the county the expense (in time and money) of a trial, he is less likely to receive the maximum sentence. On the other hand, should the defendant choose a trial but be found guilty, the Judge will show no mercy in sentencing. Although this practise is contrary to legal rules as well as judicial ethics, it seems to happen with some regularity. It would be this type of practise, then, that we would expect to find more frequently in less flexible counties.

The higher number of reversals on appeals to the superior courts of Pennsylvania, in less flexible counties (.40 tau), further demonstrates that Flexibility-Rigidity variable is indeed dealing with intercommunication of systems as well as individuals. As a policy, most superior courts in the U.S. prefer to leave the decision of the lower court undisturbed if at all possible. However, state appeals courts must also respond to statewide as well as Federal or U.S. Supreme Court rulings. If the Court of Common Pleas had been demonstrably negligent of these standards or has chosen to accept ineffective (from the superior court's point of view) arguments of counsel which are counter to precedent, the appeals courts are forced to reverse. Courts whose personnel do not stay current with their reading of recent superior court decisions at all levels, or who have allowed standards of conduct in the courtroom to stray too far from state or national guidelines will be reversed. This applies to counsel as well as judges. They would be those members of the system who have attended to other features of their office to the

neglect of these links with the rest of the social milieu in which their court exists.

SUMMARY:

Conclusions and pratical reccomendations will be included in the dissertation. Any specific suggestions made at this moment would be tentative and should await final analysis of the data.

It should be noted however, that use of this research model allows for the measurement, summarization, and detailed analysis of many features of the Judicial system which have previously been thought to be unmeasurable, or which have been blamed on personality faults or ideological positions of individuals in the system. These may very well be factors needing investigation, but to neglect the purely social, i.e. structural effects, is both wasteful and dangerous to future policies. As this research shows, the paradigm allows systemazation of myriad types of information, much of it qualitative that the legal systems regularly produce for their own use. With a minimum of additional information and systematic collection in a convenient central location of reams of other data sitting unorganized, and unanalyzed in county courthouses throughout the state, much more precise instruments can be constructed on a routine basis by members of the legal institutions themselves. With a minimum of explanation, policy makers on the local level can be taught to utilize the classifications and statistics resulting from the research to guage their own county's position vis-a-vis local goals as well as state or national standards. The point is, there is no need for expensive or elaborate information retrieval systems to be installed statewide. [This of course is not to say that metropolitan courts do not need new and specialized methods of communication between segments of the court.

What I am suggesting is that the development of law and legal institutions can be monitored adequately with the information already on hand, and much more efficiently with only slight modifications or additions.

There are of course, many research projects suggested by the successful completion of this one. The first, a detailed analysis of the Judicial office, can be completed with little additional research because of the volume of information collected in connection with this study. One other important project is a comparison of county units across the 50 states, using Rules of Court as additional sources of data.

CORRELATES OF FLEXIBILITY-RIGIDITY

	X Differentiation with Flexibility controlled	X Flexibility with Differentiation controlled	Differentiation (no controls)	Flexibility (no controls)
1. % of population which is over 65 years	-.06	-.17	-.23	-.22
2. % of population which is foreign born	.20	.35	.42	.50
3. Number of colleges	.00	.39	.54	.42
4. % Families on Public Assistance	.10	.21	.26	.33
5. Number of Convictions per 100,000	-.03	-.24	-.10	-.28
6. % of all defendants who plead guilty	-.02	-.32	-.22	-.41
7. Number of Juveniles processed unofficially	-.10	.24	.16	.26
8. Average maximum sentence to state facilities	.00	.24	.29	.24
9. Average maximum sentence to County facilities	-.15	.23	.04	.20
10. Number of criminal jury decisions	.30	.36	.56	.55
11. Number of decisions which are reversed by Appeals Courts	.09	.40	.48	.51
12 Number of murders as compared to total crimes against the person	.03	-.26	-.36	-.20
13. Number of guilty pleas by private counsel	.33	.37	.62	.61
14. Length of time Public Defender has held office	.28	.25	.37	.41
15. Criminal Inventory (backlog) per Judge	.01	.32	.39	.19

CORRELATES OF DIFFERENTIATION

	X Differentiation with Flexibility controlled	X Flexibility with Differentiation controlled	Differentiation (no controls)	Flexibility (no controls)
1. Population Size	.59	.35	.76	.60
2. % Unemployed	-.21	.00	-.23	-.10
3. Total Revenue collected at County level, per capita	.29	.11	.29	.42
4. Total number of cases of all kinds processed thru Court system	.53	.28	.64	.55
5. % of all Juveniles processed thru Court system	.55	.20	.70	.56
6. Rate of Prisoners sentenced to State facility	.11	.00	.14	.08
7. Rate of Prisoners sentenced to County facility	.36	-.02	.39	.22
8. %of all crime = crimes against property	-.33	-.18	-.48	-.36
9. Length of time D.A. has held office	.21	.11	.41	.28
10. Civil cases disposed	.50	.28	.60	.54
11. Criminal Inventory (i.e. backlog)	.55	.21	.66	.48
12. Rate of trials as compared to the total number of cases entering the system	.17	.02	.19	.24
13. Number of Civil Jury trials as compared to all Civil cases praeciped	-.23	-.00	-.15	-.27
14. Guilty Pleas by Public Defenders as compared to all Guilty Pleas	.18	.09	.24	.29
15. Number of Arbitrations as compared to Number of trials	.27	.00	.10	.26
16. Average time lapse between arrest and sentence (for convictions	.25	.17	.35	.27

Notes and Bibliography

1. Lest it be feared there is an over-emphasis on theoretical impact, the words of Daniel Bell can hardly be improved upon:

> "Knowledge has be necessary for the existence of any society. But what is distinctive and new about the post-industrial society is the change in the character of knowledge itself. What has now become decisive for the organization of decisions and the control of change is the centrality of theoretical knowledge - the primacy of the theory over empiricism, and the codification of knowledge into abstract systems of symbols that can be utilized to illuminate many different and varied circumstances.
>
> Every modern society now lives by innovation and growth and by seeking to anticipate the future and to plan ahead. It is this commitment to growth that introduces the need for planning and forecasting into society; and it is the altered awareness of the nature of innovation that makes theoretical knowledge so central. One can see this, first in the changed relationship of science to technology. In the 19th and earyly 20th centuries, the great inventions and the industries that derived from them - steel, electric power, telegraph, telephone and automobiles - were the work of inspired and talented tinkerers, most of whom were indifferent to the fundamental laws underlying their investigations. In this sense, chemistry is the first 'modern' industry, in that its inventions, the chemically created synthetics are based on the theoretical properties of of the macromolecules which are manipulated to achieve the planned creation of new materials." (Emphasis added)

Daniel Bell; "The Measurement of Knowledge and Technology" pp.155-57 in Indicators of Social Change, ed. Eleanor B. Sheldon and Wilbert E. Moore; Russell Sage Foundation, New York, 1968

2. The work of the Youngs (Frank W. and Ruth C.) has extended over the past twenty years. They have been highly active not only in the analysis of data, but also in the development of models and protocols for the generation of basic research. Their primary interest has been in the area of social change and in the measurement of "level of living" which more recent literature has termed "quality of life". Journals as varied as the American Journal of Sociology, American Sociological Review, Rural Sociology, Human Organization, American Journal of Clinical Nutrition, Ethnology, United Nations Bulletin, Economic Development and Cultural Change, and the Journal of Marriage and the Family, have carried reports of their research.

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