

Reviews

Lawyers' Ethics: A Survey of the New York City Bar. By *Jerome E. Carlin.* New York: Russell Sage Foundation, 1966. Pp. 267. \$6.75.

The study of legal ethics involves a number of questions. What should be the precepts of legal ethics? What are in fact the generally accepted norms to which it is agreed that lawyers ought to conform? For what sorts of reasons and by whom are such norms or precepts broken? Professor Carlin,¹ bypassing the first question and relying on the bar itself to answer the second, has produced a detailed study of the third problem among lawyers in New York's First Judicial Department.² The bulk of his book is devoted to an analysis of some eight hundred interviews with lawyers, and its central purpose is to discover such correlations as there may be between the various types of practice and the incidence of unethical legal behavior.

Although Carlin relies upon the Canons of Ethics for the definition and limitation of his subject matter,³ his working definition of "ethical" is derived from six "lawyer-informants," each of whom was asked to rate several of his colleagues as "ethical" or "unethical." Using the lawyers so selected as a test sample, Carlin then devised a questionnaire for use in the main study by correlating responses to test questions with his informants' evaluation of the respondent; those questions which fairly consistently discriminated between the "ethical" and the "unethical" lawyers as defined by the lawyer-informants were retained. Apparently Carlin gave the lawyer-informants no guidance regarding the criteria to be applied in making their evaluations, and none of them articulated his own. The reader is thus left somewhat up in the air regarding the "ethics" which some segments of the bar are found to uphold more than others. Presumably they are somewhat different from those which would have been studied had Carlin used judges,

1. LL.B., 1954, Yale University; Ph.D. (Sociology), University of Chicago. Also author of *LAWYERS ON THEIR OWN: A STUDY OF INDIVIDUAL PRACTITIONERS IN CHICAGO* (1962).

2. The Bronx and Manhattan, or two of New York City's five counties.

3. See, e.g., J. CARLIN, *LAWYERS' ETHICS: A SURVEY OF THE NEW YORK BAR* 65 n.17 (1966).

court clerks, clients, or only lawyers regarded as extremely ethical or extremely unethical as his informants. But since the principal value of the book—especially for lawyers—lies in the questions which it raises rather than those which it answers, this ambiguity must be considered a blemish rather than a major flaw.

As would be true of any sociological study with ambitions beyond the restatement of the obvious, this is a book with which one can quibble. The discussion of formal controls,⁴ for example, dismisses rather too lightly the distress of a lawyer called before the grievance committee of one of the bar associations, even if the complaint is disposed of informally. The gradations of quality of practice are perforce somewhat arbitrary. Members of the many high quality small firms which compete in every way with the giants of the New York bar will be unhappy if not surprised to find the level of their practice downgraded.⁵ Members of the New York County Lawyers' Association may likewise hesitate to accept the assertion that theirs is the city's "non-elite" association as compared to the Association of the Bar of the City of New York.⁶ Most important, it must be doubted whether the principal conclusion—that the low status members of the bar are guilty of significantly more unethical conduct than their elite colleagues—is as shocking as Carlin makes it appear. Of course it is disturbing to be told that any segment of the profession misconducts itself with frequency; yet it would seem that we should cheer the fact—if it be such—that the profession's elite are at least relatively untarnished. On the other hand, it is impossible to find any comfort in his conclusion that in areas of the bar with relatively low ethics, even highly ethical young lawyers tend quickly to be dragged down to the prevailing low level.⁷

As interesting as is Carlin's analysis of the causes of unethical behavior, I suspect that the average practicing attorney will be more concerned with the questions which Carlin raises and ignores regarding the proper definition of "ethical." Although it may have seemed a reasonable working hypothesis for Carlin's purposes, the lawyer examining his profession cannot assume that all who conform to the Canons are ethical, or that all who do not are not.

The Canons and Carlin's informants—perhaps because of their position in the bar—are tolerant of many practices which are arguably

4. *Id.* at 150-64.

5. *Id.* at 22-40.

6. *Id.* at 36.

7. *Id.* at 107-09.

as noxious as the practices they condemn as unethical. The lawyer who gives a case of liquor to a judge or court clerk is justly criticized, but what of the lawyer whose political activities make him a crucial figure in the choice of a dominant political party's candidate for the appellate bench? Charges that lawyers with the right personal or political connections have regularly been appointed special guardians by the New York Surrogates' Courts, and have been awarded excessive fees from the funds of their involuntary clients, have caused a political uproar in the state and led to widespread calls for organizational reforms, but I have yet to see a suggestion from the organized bar's official guardians of purity that these lawyers might be proper subjects of their inquiry.

From the perspective of a layman or even of a concerned lawyer the Canons may well seem to place an undue emphasis on the protection of lawyers from each other. Regardless of the impact of a lawyer's bold-face telephone directory listing or other "advertisements" on the profession's image or on his colleagues' business, it seems ridiculous to tar him with the same brush used for the lawyer who misappropriates his clients' funds.

The marginal practitioner who regularly undercuts his local association's minimum fee is officially condemned, regardless of the quality of his work. The official rationale for this is that low fees may lead to less than first-class work. Low fees may at times have such an effect, but so too may any number of other factors, ranging from excessive use of alcohol to excessive zeal in the pursuit of public affairs at the expense of time and attention devoted to clients. Thus, while low fees are singled out as "unethical" without regard to their actual effect in a particular case, practices equally inimical to high-quality legal work go unexamined.

In some cases, such as the ceilings on contingent fees, the Canons may at once bar perfectly fair arrangements while in effect sanctioning clearly noxious practices. The potential client who cannot afford a retainer, but who has a difficult case which does not hold out the promise of a large monetary recovery, may not be able to find a lawyer willing to take his case, even though he would be quite willing to give the lawyer a contingent fee far greater than the permitted percentage. Such a client would be effectively denied his right to counsel in the name of ethics.⁸ On the other hand, the attorney who regularly presents his

8. It should be noted that the mechanical limitations do not ordinarily apply to contingent fees which are supervised on an *ad hoc* basis by the courts, such as those involved in private antitrust litigation and stockholder derivative suits in which the fees awarded have been known to exceed the recovery.

clients with a printed retainer agreement providing for the maximum permissible contingent fee—even in cases where a large recovery for relatively little effort can be expected—is held above reproach.

The organized bar's insistence on treating the restriction and regulation of competition as a question of ethics, and its relative neglect of other more genuine ethical problems⁹ have consequences reaching far beyond its internal affairs. As Carlin suggests in his conclusion, the trade association activities in which the organized bar indulges in the name of ethics have already compelled intervention by the Supreme Court in order to guarantee even remotely adequate representation for the unsophisticated or unmoneyed members of society.¹⁰ And I would argue that many of the more drastic rules of criminal procedure which the Supreme Court has promulgated in the last several years have been compelled in part by the bar's abdication of responsibility in areas of genuine ethical concern.

The exclusionary rules, after all, require courts to close their eyes to what is often admittedly probative and reliable evidence whenever it has been obtained by forbidden means. Viewed outside the professional setting in which they were made, these rules would be incomprehensible. Ordinarily it is a matter of complete indifference to a trial court whether the defendant before it has himself been the victim of crime. If he has, the state will prosecute the guilty party in a separate trial, and the victim can always pursue whatever civil remedies may be open to him. Meanwhile, the court's business is to ascertain the truth in the case at hand. Why, then, should it be different when the defendant has been victimized by a policeman or a prosecutor? Why in this case must the second crime be prosecuted by hiding evidence of the first?

The answer is of course that the Court has had to intervene in this clumsy way because no one else would police the police. Virtually every state makes it a crime for the police knowingly to violate the civil liberties of the accused. Yet the prosecutions which have been made for such violations could probably be tallied on the ten fingers, and the private civil remedies are notoriously inadequate. Thus, the

9. The ethics committees' preoccupation with the regulation-of-competition aspects of the Canons can be seen from the tabulation of previously unreported decisions of the American Bar Association in H. DRINKER, *LEGAL ETHICS* 283-303 (1953). Drinker lists twelve decisions on the "General Duty of Upright Behavior," *id.* at 284-85 and four on "Fairness to Other Lawyers," *id.* at 295-96, but 214 on the permissible and impermissible ways of competing for clients, *id.* at 285-95.

10. J. CARLIN, *supra* note 3, at 178.

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police who violate the accused's rights go unprosecuted, and without a prosecution the courts are powerless to act against them except by the indirect and inefficient sanction of the exclusionary rules. If prosecutors did their duty, the courts would not be obliged to cripple themselves in doing theirs.

To condone the systematic commission of crimes, by failing to prosecute those who work directly or indirectly on the prosecutor's behalf, must be considered unethical even if no official committee has declared it so. Yet the organized bar does nothing to discipline or even to rebuke the prosecutors who will not prosecute. Perhaps the committees are too busy regulating competition and smoothing over disputes between lawyers and their clients. Or perhaps they are reluctant to enter the "political" thicket. Indeed, in the light of their record in other areas, perhaps they would be poor policemen of the political establishment if they did enter that thicket. Or perhaps they are not concerned with the grievances of the average criminal defendant, who is not much of a potential client anyway. In any case, the fact is they do not act.

Moreover, even if it be deemed inappropriate for the bar to assume disciplinary responsibility over the conduct of a public office, there can be no excuse for its indifference to blatant malfeasance by prosecutors in their role as members of the legal profession. Those relatively few prosecutors who deliberately suppress evidence helpful to the defense or present false or misleading evidence on behalf of the people are guilty of the grossest professional misconduct which a lawyer can commit. Yet a national magazine article on the dishonest prosecutor could conclude that "[n]ot in living memory has any American prosecutor ever been punished in any way for falsifying or misrepresenting evidence."¹¹

Problems such as these indicate inadequacies in the Canon of Ethics as applied which have necessarily been carried over into Professor Carlin's study as well. Carlin has helped to lay them bare, which is all that the bar can ask of any sociologist. A sequel that succeeds in covering the entire ethical field will have to await the results of some real grappling by lawyers with the question with which we began: what should be the precepts of legal ethics?

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11. TIME, Mar. 31, 1967, at 73.

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Lawyers' Ethics: A Survey of the New York City Bar. By *Jerome E. Carlin*. New York: Russell Sage Foundation, 1966. Pp. 267. \$6.75.

All professions have codes of ethics. These codes deal mainly with relations between the professional and the client, the professional and his fellow professionals and the professional and society. Some are concerned with standards of society applicable to everyone; others with standards applicable to the practitioner. These latter grow out of the specific demands of his job and cover a limited area of life.

Lawyers more than any other group are concerned about developing a body of decisions delineating ethical conduct in their profession. Canons of ethics have been detailed by bar associations, committees on professional ethics and state courts. In this way, with the help of students of these decisions, a "common law" for lawyers has developed.¹

In *Lawyers' Ethics*, Jerome E. Carlin, an attorney (LL.B., 1954, Yale Law School) and sociologist (Ph.D., University of Chicago), writes about the ethical standards of the legal profession. He is among the first to concentrate on one aspect of a profession, looking at the legal profession "horizontally" rather than "vertically."² In recent years, interest in lawyers—mainly on the part of sociologists—has produced a welter of books and articles which describe and analyze the various specialties and segments of the legal profession. Material is now available on the solo lawyer,³ the matrimonial lawyer,⁴ the criminal lawyer,⁵ the Negro lawyer,⁶ the Detroit lawyer,⁷ the "Wall Street" lawyer,⁸ the young lawyer⁹ and even the student lawyer.¹⁰ While there are still other segments of the bar to study—the corporate counsel,¹¹ the female lawyer,¹² the government lawyer, the country lawyer, the patent law-

1. *E.g.*, H. DRINKER, *LEGAL ETHICS* (1953).

2. For an earlier "horizontal" study of one aspect of lawyers' behavior, see W. WEY-RAUGH, *THE PERSONALITY OF LAWYERS* (1964).

3. J. CARLIN, *LAWYERS ON THEIR OWN* (1962).

4. H. O'GORMAN, *LAWYERS AND MATRIMONIAL CASES* (1963).

5. A. WOOD, *THE CRIMINAL LAWYER* (to be printed 1967).

6. W. Hale, *The Career Development of the Negro Lawyer*, 1958 (unpublished doctoral dissertation, University of Chicago Library).

7. Ladinsky, *Careers of Lawyers, Law Practice, and Legal Institutions*, 28 *AM. SOC. REV.* 47 (1963).

8. E. SMIGEL, *THE WALL STREET LAWYER* (1964).

9. D. Lortie, *The Striving Young Lawyer: A Study of Early Career Differentiation in the Chicago Bar*, 1958 (unpublished doctoral dissertation, University of Chicago Library).

10. W. Thielen, *Socialization Processes Among Law Students*, 1965 (unpublished doctoral dissertation, Columbia University Library).

11. Studies on the corporate counsel are being conducted by J. Ladinsky, E. Smigel and J. Schram.

12. C. Epstein is currently writing a doctoral dissertation on the female lawyer at Columbia University.

yer, the labor lawyer, and the practitioner who is both lawyer and accountant—much progress has been made in describing the broad outlines of the legal profession.

Carlin in his *Lawyers' Ethics* is concerned primarily with understanding why some lawyers conform to ethical standards and others do not, why the law schools seem to play so small a part in instilling students with ethical norms, and why the disciplinary measures taken by the bar are so ineffective. The book is based on the responses of 801 private lawyers, an 85 per cent return from 247 different office suites located in Manhattan and the Bronx. Each respondent was given a long formal interview schedule. The responses were measured against an Index of Ethical Behavior and were designed to determine ethical responsibility in three main areas: obligations to clients, obligations to colleagues and obligations to the administration of justice. The items in the Index were chosen and validated by asking six lawyer-informants to rate ten to twelve colleagues as ethical or unethical. Fifty-one of the evaluated attorneys were interviewed, and items were retained "if lawyers rated unethical actually reported taking the unethical action more frequently than lawyers rated ethical."¹³

The results of Carlin's study show that the larger the law firm, the more ethical its members; the smaller the firm, the less ethical its members. This difference is explained by pointing to the stratification of the bar. The lower strata are populated by the solo and small firm lawyers who have the poorest clients, with the dirtiest legal work, work which most large law firms will not and can afford not to take. This practice includes criminal, negligence, and divorce law and bill collecting; the income thus generated is both uncertain and unlikely to be large. In his first book, *Lawyers on Their Own*, which supports his present investigation, Carlin found that the solo practitioner "is likely to be a bookkeeper, broker, and/or fixer."¹⁴ He maintains that the pressure of these circumstances and clients force these underprivileged lawyers into unethical behavior if they are to survive.

A contrasting situation exists for the lawyer in the large law firms. My own study of the "Wall Street" lawyer confirms Carlin's findings about the stratification of the bar and the ethics of lawyers in the large offices. The firms I studied, however, were considered large if they were composed of fifty or more lawyers (the largest had 168), while Carlin labels firms with fifteen or more attorneys as large—not a huge

13. J. CARLIN, *LAWYERS' ETHICS: A SURVEY OF THE NEW YORK CITY BAR* 43 (1966).

14. J. CARLIN, *LAWYERS ON THEIR OWN* 209 (1962).

size for New York City. The lawyers in the large firms I studied had a secure practice and a sizable income, practiced in the higher courts, and selected the kinds of work they wanted to do. They generally kept their large corporate clients and consequently did not experience the continuous problem of finding new clients.

There was no question about unethical practices among these large law firm lawyers. The large law firm lawyers not only can afford to be ethical; they cannot afford to be otherwise. Their corporate clients would not tolerate unethical practices if only because of their allergy to negative publicity. Furthermore, the practice of law in a large firm is team practice, making it more difficult for the individual lawyer to be unethical. Still these elite attorneys went out of their way to be ethical. Not only did most of them obey the Canons, and the decisions stemming from them, but they added their own stringent rules to those already in existence and then policed them themselves. It is perhaps also relevant that the original Canons were adopted in 1908 and the last major revision came in 1928. They provide few special guidelines for the practice of law in large partnerships—on the rights and duties of the employee lawyer, or what the corporate lawyer's responsibility is for giving both legal and business advice, or how a partnership should deal with a corporate client, or to whom in the corporation he owes his loyalty.

Carlin poses a number of important problems for both the lawyer and the sociologist. His finding that three years of legal education—whether at the best national law school or the poorest night school—have no effect on the ethical attitudes of the graduates challenges the influence of the law school on the neophyte. An attorney is ethical or not, Carlin claims, because he was brought up that way or because he is under pressure from his clients and his colleagues to be that way. The law school itself is of little consequence.

The challenge to the social scientist is to explain these findings. This is not an easy task because it is difficult to single out all the variables which affect a person. An individual has ethical norms before he attends law school. Does he or does he not learn the specific norms which apply only to lawyers in law school? Is there really no change due to his training after three years of schooling? If there is no change, why is this so? The broader and more difficult question, of course, is to explain when and under what circumstances people do change. At what period of his life, if any, does a lawyer actually take on ethical or unethical norms?

What we are concerned with here is called the socialization process. There are many definitions of socialization but one by Brim seems to satisfy our present need. He defines it simply as "the process by which persons acquire the knowledge, skills, and dispositions that make them more or less able members of their society."¹⁵

There is little work to be found on adult socialization, partly because many psychiatrists and psychologists believe that personality (a partial result of the socialization process) is set at some magic time—such as when a person is six, seven or eight years of age. But there are two other theories that challenge this view. The first proposes that the basic personality is formed when a person is young, but that the more superficial aspects of his behavior and personality can be changed to meet the needs of new social situations. The other alleges that most aspects of personality are formed early in life, but a person continues to be socialized throughout his life.

It is difficult to determine just what Carlin's position is with reference to these theories. He finds that, "[i]nner disposition and external pressures have a combined, cumulative effect on ethical conduct, and are about equally influential."¹⁶ How these forces can be considered equal is not demonstrated. The confusion is heightened by two seemingly contradictory statements found in his concluding chapter. The first reports:

The lawyer's ethical concern is not markedly influenced by his professional training, his status in the bar, or the vicissitudes of his practice. More important is national origin and generation in the United States, which suggests that early family influence may be decisive in the development of ethical concern.¹⁷

Yet one page earlier Carlin claims that it is the type of practice which determines ethicality:

Jewish and Catholic lawyers have a lower ethics rating than Protestant lawyers because they are more likely to be exposed to pressures to violate ethical norms. Under similar conditions of practice, Jewish and Catholic lawyers are no more likely to violate norms than Protestant lawyers.¹⁸

His conclusions regarding the role of the law schools in the professionalization of lawyers are still open to question despite the rigor of

15. O. BRIM & S. WHEELER, *SOCIALIZATION AFTER CHILDHOOD: TWO ESSAYS* 3 (1966).

16. J. CARLIN, *supra* note 13, at 148.

17. *Id.* at 170.

18. *Id.* at 169.

his research and some support for his position.¹⁹ To find the answer to this question it may be necessary to isolate the influence of law school from the influence of other social variables. The best way to investigate this process is to trace it before, during and after formal training, although it will be difficult to completely isolate the key variables. This was not done by Carlin, but it was not the major task he set for himself.

The apparent lack of change in ethical attitudes resulting from law school experience is sometimes attributed to "anticipatory" socialization. Students, it has been reasoned, especially those who go to elite schools, may already know what to expect and take on the appropriate attitudes even before they arrive at these schools. It is difficult for me to accept the findings that law schools or the type of law school a student attends has little bearing on his professionalization. Perhaps the results might have been different if all Harvard or Yale alumni had not been treated together. The facts might point out that the Harvard or Yale law school graduate at the bottom of his class did not learn as much about legal ethics as did his more successful fellow students. By lumping together the best students and the poorest the differences between them may have been hidden. We also do not know what bearing law review training has on ethicality. If the top of the class, and especially the law review members, are sought by and take jobs with large firms, it may be assumed that many at the bottom of the class had to become solo lawyers or take positions with smaller firms. It could be argued that anticipatory socialization was taking place in the law schools and the result would then be reflected on the job—with law review members and others at the top of the class preparing for elite jobs, and the bottom of the class preparing for what was left over.

The situation would have been clarified if it had been possible for Carlin to determine which members of his sample had ethical attitudes before they entered the practice of the law and which had not. Then we could estimate a little more closely what part "background" (basic personality) and what part the pressures of practice (adult socialization) play in determining ethicality. Some studies show that a degree of socialization does take place during the three year experience of law school; Thielen,²⁰ for example, found in his work on the socialization

19. R. Simon, *An Evaluation of the Effectiveness of Curriculum Innovations in Law Schools*, 1965 (mimeographed, National Council Legal Clinics).

20. W. Thielen, *supra* note 10.

of law students that some changes do take place there. An unpublished study of Indiana University law students,²¹ through a series of situational questions on legal ethics, disclosed that a change from a less ethical position to a more ethical position occurred when first year law students were compared with third year law students. However, when practicing lawyers from the same town in which the law school was located were compared with third year law students, it was found that the lawyers' attitudes toward legal ethics were the same as those of the first year students. This information about practicing lawyers supports Carlin's conclusions that the lawyer is socialized on the job. But the entire Indiana survey gives evidence in support of the theory that adult socialization occurs both in law school and after law school.

If Carlin is correct that law schools are not influential in helping students internalize ethical standards, perhaps the schools also fail to teach other pertinent norms of the profession. Perhaps new methods of teaching or a different curriculum are necessary, although Carlin and others²² do not think this will do the trick.

Another problem which Carlin poses is of importance to both lawyers and sociologists; it concerns the value of ethical norms, the policing of these norms, and the punishment for breaking them. He finds that only about 85 lawyers are brought before the various grievance committees in New York City every year, and for the period 1951 to 1962, the Appellate Division only disbarred an average of 10 a year. Others, however, were allowed to resign before their cases were heard. Carlin concludes that the punishment and the policing of norms are ineffective. They are not observed and do not serve as a deterrent. Here, too, one might take issue with him. There is no conclusive finding about the effect of punishment as a deterrent except that it is known that the death penalty for murder is not a deterrent for that crime, at least in the short run. Some experts believe, however, that in certain situations punishment does function as a deterrent. It is important to find out under what circumstances this occurs. Some evidence does exist that laws, in themselves, act as a deterrent even when not enforced because they have a moral force of their own.²³ Perhaps canons of legal ethics possess these properties.

In the legal profession certainly the elite would feel the stigma of

21. E. Smigel, J. Martin & D. Horning, *Legal Ethics and Education*, 1958 (unpublished study in Indiana University Library).

22. R. Simon, *supra* note 19, at 119.

23. Cf. Smigel, *Public Attitudes Toward "Chiseling" with Reference to Unemployment Compensation*, 18 *AM. SOC. REV.* 59, 61-63 (1953).

even having their names placed before the Grievance Committee. Approximately 1,450 complaints are filed in New York City each year. Solo lawyers may not feel this pressure, since many of them do not consider themselves professionals, but rather businessmen. Presumably they are bound not by professional norms but by business norms, which are often quite different.

In fact, it is the elite of every profession that upholds the professional norms and polices them and keeps or changes them. They have more to lose by disobedience; they have more to gain by bettering the image of their profession; they are usually better trained; they often control the associations whose job it is—initially at least—to see that the rules of the profession are obeyed.

Carlin's book *Lawyer's Ethics* is important and challenging. It calls on the legal profession to examine the function and effectiveness of its law schools and its bar associations. It asks lawyers to consider revising the Canons and eliminate the class distinctions which exist in the bar. For sociology, the challenge is also significant because it questions our beliefs about socialization and deterrence, and applies a model which deserves at least consideration in the analysis of deviant behavior.

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Neighborhood Foundations Memoranda. *Institute for Policy Studies*. Washington, D.C., 1965-67.

Genuinely democratic decision-making often seems inconsistent with effective government. Widespread direct participation is possible only in very small political units, but in an urban-industrial society increasing numbers of governmental functions can be performed only for metropolitan or larger areas.

One possible resolution of this apparent conflict is, as G.D.H. Cole has put it, "to create, and to give real power to, both *larger* and *smaller* units of administration."¹ This idea dates back at least to Thomas Jefferson, who wanted to create "ward-republics" as the base of "a gradation of authorities." "[E]very man in the State," he hoped, "would thus become an acting member of the common government,

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1. G. D. H. COLE, *LOCAL AND REGIONAL GOVERNMENT* 260 (1947).

transacting in person a great portion of its rights and duties, subordinate indeed, yet important, and entirely within his competence."²

A number of contemporary writers, including Cole,³ Paul Goodman,⁴ Hannah Arendt,⁵ and Charles Frankel,⁶ have suggested modern adaptations of Jefferson's concept. Goodman, for instance, calls for "a city of federated communities," each exercising "considerable autonomy" over some functions "within a municipal administration that controls . . . whatever is necessarily or conveniently centralized."⁷

The Institute for Policy Studies' Neighborhood Foundations Memoranda discuss a project currently testing some of these ideas.⁸ Milton Kotler, one of the Institute's Resident Fellows, helped fourteen hundred residents of a Columbus, Ohio neighborhood form the East Central Citizens' Organization (ECCO), a non-profit membership corporation which receives federal funds to operate a settlement house and conduct social service programs.⁹ The corporation is governed by

2. Letter to Joseph C. Cabell, Feb. 2, 1816, in *THE LIFE AND SELECTED WRITINGS OF THOMAS JEFFERSON* 660-62 (A. Koch & W. Peden eds. 1944); Letter to Major John Cartwright, June 5, 1824, in *THE COMPLETE JEFFERSON* 293-97 (S. Padover ed. 1943). For an excellent summary of Jefferson's views in this regard, see H. ARENDT, *ON REVOLUTION* 234-59 (1963).

3. *LOCAL AND REGIONAL GOVERNMENT* (1947); *THE FUTURE OF LOCAL GOVERNMENT* (1921).

4. *PEOPLE OR PERSONNEL* (1965); *THE SOCIETY I LIVE IN IS MINE* 127-33 (1962); *UTOPIAN ESSAYS AND PRACTICAL PROPOSALS* 150-52 (1962); *COMMUNITAS* 52-56 (1947) (with Percival Goodman).

5. *ON REVOLUTION* 217-85 (1963).

6. *THE DEMOCRATIC PROSPECT* (1962); *Values for Urban Planning*, *PROC. OF AM. INST. OF PLANNERS CONF.* 21-30 (1963); *A Comment by Charles Frankel*, in *CENTER FOR THE STUDY OF DEMOCRATIC INSTITUTIONS, THE ELITE AND THE ELECTORATE* 8, 10 (1963). Cf. JAYAPRAKASH NARAYAN, *SOCIALISM, SARVODAYA AND DEMOCRACY* 192-238 (1964). See also Flacks, *On the Uses of Participatory Democracy*, 13 *DISSSENT* 701 (1965); Lynd, *The New Radicals and "Participatory Democracy"*, 12 *DISSSENT* 324, 332 (1965).

7. P. GOODMAN, *UTOPIAN ESSAYS AND PRACTICAL PROPOSALS* 151 (1962); P. GOODMAN, *PEOPLE OR PERSONNEL* 15-16 (1965).

8. The Memoranda are on file with the author and available free from the Institute for Policy Studies, 1520 New Hampshire Avenue, N.W., Washington, D.C. 20036. Memoranda Nos. 15 and 16 reprint testimony in *Hearings on the Federal Role in Urban Affairs Before the Subcomm. on Executive Reorganization of the Senate Comm. on Government Operations*, 89th Cong., 2d Sess., pt. 9 (1965).

9. ECCO was officially formed in August 1965, with the help of two Student Non-Violent Coordinating Committee (SNCC) workers. Its articles of incorporation and by-laws are on file and available from the Institute for Policy Studies. It has received grants from the National Council of Churches, the Stern Family Fund, the federal Office of Economic Opportunity, and the U.S. Department of Health, Education and Welfare, among others. Its programs include pre-school, day care, job development and referral, tutoring, emergency food, consumer education, homemaker services, senior citizens' activities, planned parenthood, legal services and a youth civic center. The First English Lutheran Church of Columbus donated the settlement house when it followed its parishioners to suburbia. Church pastor Leopold Bernhard is the author of Memoranda Nos. 10A and 11. Kotler wrote all the other Memoranda except No. 16 written by Mrs. Lawrence Love, Executive Director of ECCO. For further discussion of ECCO, see Ridgeway, *Missionaries in Darkest Ohio*, *THE NEW REPUBLIC*, Feb. 5, 1966, at 9; Note, *Antipoverty Community Corporations*, *COLUM. J. OF LAW & SOC. PROB.*, May 8, 1967, at 10.

a Neighborhood Assembly "conducted in the manner of a town-meeting."¹⁰ Members assemble at least twice annually to make basic policy and elect an Executive Council which makes more specific decisions and employs a full-time staff.¹¹ They also serve on Executive Council committees and participate in the activities of the neighborhood clubs which elect 16 of the 30 Council members.

Influenced by ECCO, Senator Ribicoff recently introduced a "Neighborhood Development Corporation Assistance Act" to authorize federal financial aid to neighborhood corporations.¹² Queens parents as well as civil rights and New Left activists advocate neighborhood control and citizen participation. An experiment in voluntary neighborhood home rule may now be politically possible.

Such an experiment could go beyond Kotler's concept of the neighborhood corporation; it could constitute a new level of government in American cities. Neighborhood residents could be delegated authority, within their territory, over aspects of such important municipal functions as elementary education and land planning and development. The new units would be part of a federal system in which national, state, metropolitan, and municipal government would perform most functions, prescribe minimum standards and general plans, collect and redistribute revenue, and provide central purchasing, audit, research, and other services. These higher levels of government would neither organize or administer the neighborhood governments, but would aid residents of urban neighborhoods who so choose to form self-governing polities and control certain delegable functions.

This new voluntary federal system would be flexible and experimental. Different combinations of neighborhood size, internal government structure, responsibilities, and higher-level support would be tested for widespread participation and effective administration.

10. ECCO By-Laws, art. IV, § 2. The Assembly has authority to remove Council members for cause, approve or terminate programs, amend corporate by-laws, investigate neighborhood problems, and initiate new programs. Special meetings may be called by a majority of the Executive Council or by petition of three Council members and twenty other members.

11. Each Executive Council member serves for one year and for this service receives a stipend of \$1000. At least four of the fourteen at-large members must be "teenagers." ECCO By-Laws, art. V, § 1.

12. S. 1433, 90th Cong., 1st Sess., introduced April 5, 1967 and referred to the Committee on Banking and Currency. The Act would also direct appropriate federal agencies to study and report to the President and Congress on "the most practicable ways to coordinate the activities of neighborhood development corporations with federally assisted programs and activities for improving housing conditions, increasing employment and business opportunities, [and] expanding worker productivity through job training and education." *Id.* § 5(b).

What Is a Neighborhood?

Contemporary urban subdivisions are themselves the size of small cities. The boroughs of London, for instance, average 250,000 people.¹³ New York's community planning districts average about 100,000 (well over that in such areas as Central Harlem and Bedford-Stuyvesant)¹⁴ and its local school boards and proposed local city halls serve more than 200,000 people.¹⁵ The Ribicoff Bill defines "urban neighborhood" to include areas with up to fifty thousand residents.¹⁶ Giving such "districts" real power in large cities would make public officials more responsible to local groups and increase the political influence of residentially-concentrated minority groups, but because of numbers alone most people would still be excluded from actual decision-making, aside from voting and occasional lobbying.

Although no empirical data are available on an optimal size for widespread, active participation, the scale of ECCO (8150 people, of whom about 4200 are 16 and over) and of the neighborhoods Goodman suggests (2000 residents) seems a more fruitful starting point. This, conveniently, is roughly the scale of the city planners' "neighborhood," a few blocks or a long, densely-populated "block-front" (rows of buildings facing each other across a street) which residents perceive as an entity, often because of natural boundaries or unifying institutions such as an elementary school, a community center, or a small shopping area.¹⁷ Tentative boundaries could be mapped on the basis of electoral districts, standards of compactness and contiguity, rough population limits and public hearings and survey research to determine which areas the residents of a city identify as its neighborhoods.¹⁸ Areas desig-

13. CONSERVATIVE POLITICAL CENTRE, GREATER LONDON GOVERNMENT 14 (1964).

14. There are 87 districts in a city of almost 8 million people. See CITIZENS' UNION, COMMUNITY ADMINISTRATION WITHIN NEW YORK CITY 9-11 (1962); Harrington, *One Man's Humanizing Is Another's Anarchy*, Village Voice, June 18, 1964 at 3. See also Dworkis, *A Program for Community Districts in New York City*, 3 PRATT PLANNING PAPERS, Nov. 1964, at 21.

15. New York City has 30 local school districts and plans 27 local city halls. NEW YORK CITY BOARD OF EDUCATION, DIRECTORY 20-49 (1966-67); Samuels, *Council Getting Bill for Little City Halls*, New York World Journal Tribune, Jan. 4, 1967, at 27, cols. 1-2.

16. S. 1433, 90th Cong., 1st Sess. § 3, ¶ 2 (1967).

17. The size suggested here coincides with the lower end of Senator Ribicoff's range of 1500 to 50,000. On the distinction between "district" and "neighborhood," see CITIZENS' UNION, *supra* note 14, at 7; J. JACOBS, THE DEATH AND LIFE OF GREAT AMERICAN CITIES 112-40 (1961); J. CUNNINGHAM, THE RESURGENT NEIGHBORHOOD 23-42 (1965); H. GANS, THE URBAN VILLAGERS 11 (1962). It is neither necessary nor desirable that neighborhoods be self-contained and inward-turned as proposed in Perry, *The Neighborhood Unit*, in 7 REGIONAL SURVEY OF NEW YORK AND ITS ENVIRONS 21 (1929).

18. Census tracts, and the "neighborhood analyses" which municipal planning agencies conduct in order to receive federal urban renewal subsidies, might also provide helpful guides since both are based on population characteristics, living conditions, topographic and man-made barriers, and higher-level administrative districts. In 1 U.S. DEPARTMENT

nated neighborhoods could later adjust common boundaries, subdivide, or annex adjoining "unincorporated" areas whose residents approved.

It might be argued that such neighborhoods would be racially and economically homogeneous, and often dominated by a single ethnic group, and that as a result neighborhood self-government would contribute to parochialism and segregation. But parochialism is based mainly on lack of satisfying relations with diverse types of people and insufficient exposure to varied environments and ideas. Participation in neighborhood governments might considerably expand opportunities for wider contact. The neighborhoods would not be self-contained and inward-turned. Participants in neighborhood government throughout a city or state would probably convene frequently to consider common problems.¹⁹ With the skills and sense of competence they developed through sharing in local government, neighborhood residents might find involvement in the larger society easier and more rewarding. As they became more active outside their neighborhood, they would probably join organizations which cut across neighborhood lines and bridge ethnic, political and class groupings as well.

In any event neighborhood governments would be bound by the equal protection clause and civil rights legislation; they could not deliberately exclude minorities or engage in any other form of discrimination. Beyond these precautions, there is no basis for giving special consideration in administering neighborhood self-government to race, ethnicity, or class. Herbert Gans, a liberal sociologist and plan-

OF COMMERCE, BUREAU OF THE CENSUS, CENSUS OF POPULATION: 1960, pt. A, at xxviii, "census tracts" are defined as

small areas into which large cities and metropolitan areas have been divided for statistical purposes. Tract boundaries were established cooperatively by a local committee and the Bureau of the Census, and were generally designed to achieve some uniformity of population characteristics, economic status, and living conditions. Initially, the average tract had about 4,000 residents. Tract boundaries were established with the intention of being maintained over a long time so that comparisons may be made from census to census.

Neighborhood analyses are one of the seven required components of the *Workable Program for Community Improvement*. The Urban Renewal Administration directs that neighborhood boundaries may be determined in one of three ways:

[1] along traditional lines—similar physical, economic, social or other characteristics which make for a clearly identifiable entity—[2] along lines formed by geographic or natural barriers, such as rivers or an abrupt change in the contour of the land, or by man-made barriers, such as a major thoroughfare or a highway or by a different land use . . . [3] on the basis of an area served by a single public facility such as an elementary school, park, or community center.

U.S. HOUSING AND HOME FINANCE AGENCY, WORKABLE PROGRAM FOR COMMUNITY IMPROVEMENT: ANSWERS ON NEIGHBORHOOD ANALYSES I (1962).

19. To facilitate residents' involvement in higher-level politics, neighborhoods could be identical with, or wholly within, the electoral districts of higher-level governments and elected representatives could be required to meet regularly with neighborhood residents. Cf. G. D. H. COLE, *supra* note 1, at 60.

ner, has argued persuasively for freely chosen "moderate homogeneity" in neighborhood-scale residential groupings on the ground that, without countervailing disadvantages, it greatly enhances community.²⁰ Neighborhood self-government should reduce present disparities in resource allocation and program quality, and to the extent that it increased the overall political influence of minority groups, it could promote stronger government action against discrimination.²¹

Neighborhood Governments

Once neighborhoods were designated, their residents would be free to decide whether or not to form political units, and if so, to determine in large part the government's form and functions.²²

If a neighborhood chose to "incorporate," an elected committee could prepare alternative drafts of a charter and hold local hearings on them. An open assembly would revise the charter committee's drafts and approve a final draft, which might then be placed before neighborhood residents in a referendum.²³

Some charter provisions would have to be required to protect future residents, minorities, and dissenters, and to guarantee ample opportunity for all residents to participate actively. Requiring procedures for reasonably easy charter amendment and periodic charter review would preserve future residents' opportunity to adjust institutions in light of experience under home rule. Latecoming residents and minorities would also be protected by an inclusive definition of neighborhood resident, perhaps as "a person age 18 or over whose regular place of abode is within neighborhood boundaries."²⁴ And of course, the Bill of Rights, the Fourteenth Amendment, and state constitutional restrictions on governmental action would apply to neighborhood govern-

20. Gans, *Planning and Social Life*, 27 J. AM. INST. PLANNERS 134 (1961); Gans, *The Balanced Community*, 27 J. AM. INST. PLANNERS 176 (1961).

21. Cf. Jencks & Kotler, *A Government of the Black, by the Black, and for the Black*, RAMPARTS, July 1966, at 51.

22. This procedure would insure that neighborhood governments were established only where they were wanted, thereby testing popular interest in neighborhood government. It would also prevent the domination by higher-level authorities which often results from top-down organization of supposedly grass-roots groups. For examples of domination and manipulation resulting from such procedures, see P. SELZNICK, *TVA AND THE GRASS ROOTS* 217-46 (1949); Marcuse, *The Anti-Poverty Program: Attack on the Symptoms or Attack on the Source?*, 3 PRATT PLANNING PAPERS, Oct. 1965 at 21, 29-33.

23. Throughout this process professional staff employed by higher-level governments—and in many places independent community organizers as well—would be available to assist and advise neighborhood residents.

24. Any durational residence requirement would discriminate against people who are geographically mobile and would bear little relationship to a person's stake in neighborhood decisions.

ments.²⁵ Some set of specific procedural rules—regarding conduct of meetings and impeachment of officers, for instance—might also be required.

Neighborhood residents would of necessity have to elect some neighborhood officials. Each neighborhood charter would be required, however, to provide for at least an annual assembly in which all residents could participate and vote; the assembly would set general policy, terminate programs initiated by neighborhood officials, and mandate neighborhood officials to execute specified measures. Assembly attendants might be paid, as they were at times in Athens.²⁶ A reasonable quorum requirement would prevent government by a small minority; if a prescribed minimum number of electors did not attend an assembly, the officials would continue to govern until the next assembly or election.

Only the assembly would be required. Although most neighborhoods would probably choose to add traditional institutions (an elected fixed-term representative council, executive officers, and perhaps judicial officials), neighborhoods which so wished would be free to experiment with greater popular participation in decision-making. Some neighborhoods might hold assemblies monthly. As in Athens, officials of some neighborhoods might be selected by lot, from volunteer panels, and permitted only a single term of one or two years; offices might even be filled by new occupants each month, as in some of the community projects that the Students for a Democratic Society has organized in American urban slums.²⁷ Residents with special interests in particular functions (such as the parents of elementary school children) might be appointed as committees of the assembly to oversee their performance.

Neighborhood Powers

Residents of a home rule neighborhood could empower their government to perform a broad range of functions. Any higher-level body could of course delegate portions of its powers to willing neighborhood

25. Participation might well increase residents' commitment to civil liberties. S. STOFFER, *COMMUNISM, CONFORMITY, AND CIVIL LIBERTIES* (1955) found a close correlation between civil libertarian attitudes and leadership in voluntary organizations. Although this is often taken to show that civil libertarians assume leadership more often than non-civil-libertarians, it could also mean that people become more committed to civil liberties when they participate personally in situations in which those liberties are important.

26. These and subsequent references to the Athenian system of direct democracy are based on H. MAYO, *AN INTRODUCTION TO DEMOCRATIC THEORY* 35-41 (1960). A somewhat similar model, the New England town meeting, is described briefly in C. ADRIAN, *GOVERNING URBAN AMERICA* 230-31 (1955).

27. See Kopkind, *Of, by and for the Poor*, *THE NEW REPUBLIC*, June 19, 1965, at 15.

governments. But to ensure that neighborhoods had real power, some important functions would have to be delegable solely at the choice of neighborhood residents. Until we learn more about how neighborhood government works in practice, functions can be classified only tentatively. A neighborhood government would be entitled to only those functions which it could perform without substantial impact on non-residents. Interdependent functions would be delegable only as a group, so that neighborhood residents would have to choose between empowering their government to perform all or none of them.²⁸ Problems which recognize no geographic boundaries (such as pollution, communicable disease, and through traffic) would have to be dealt with by higher levels of government, although higher level bodies might at their discretion delegate to neighborhood governments control over some discrete aspects of these activities.²⁹

Neighborhood governments could control aspects of many other important functions. They could provide, for people of all economic levels, the kinds of services that ECCO and poverty program community action agencies now offer the poor—pre-kindergarten and adult education, day-care centers, credit unions, legal, medical, psychiatric, and job-placement services, and advice and assistance in dealing with private firms and public agencies. They could also develop as neighborhood level public institutions such facilities as newspapers and radio stations, community restaurants, consumer cooperatives, and even cooperatively owned business and industry.³⁰

The ownership of public facilities which are used almost exclusively by the residents of a single neighborhood or a small group of neighborhoods (such as small parks, recreation facilities, elementary school buildings) could be transferred to the neighborhood government. Branch libraries could be turned over to neighborhoods which, while

28. Cf. U.S. ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, *PERFORMANCE OF URBAN FUNCTIONS: LOCAL AND AREAWIDE* 8 (1963).

29. The same procedure would be required for planning, developing, and regulating facilities and institutions which necessarily serve areas larger than neighborhoods or small groups of neighborhoods, such as major industry, mass transit, central business districts, major parks and recreation facilities, hospitals, and universities.

30. The Mississippi Poor Peoples Corporation sponsors a number of successful production cooperatives which might provide useful models. G. D. H. COLE, *supra* note 1, at 52, presents an interesting discussion of the benefits of a community restaurant. A proposal for neighborhood-run radio in Newark, N.J., is set forth in *Prospectus for NCUP Poor People's Radio Station*, NEW LEFT NOTES, March 11, 1966, at 3. A professor of radio and television at the University of Illinois has predicted that "technological breakthroughs" will soon make it possible to "establish small, local, publicly owned radio and television stations" which "could reinstitute the function of the town meeting" by trying to "involve the public as participants instead of audience." H. SKORNIA, *TELEVISION AND SOCIETY* 211-12, 225 (1965).

continuing some central purchasing (based on local selection) and perhaps employing some joint staff, could offer books and audio-visual materials in their town halls and school buildings and perhaps in mobile units. Existing public housing could be owned and operated by neighborhood governments; projects housing several thousand tenants could themselves be designated neighborhoods.

A neighborhood government could regulate within its boundaries the use of public land and streets and the conduct of municipal police and other officials. A neighborhood court whose decisions could be reviewed by higher-level courts (perhaps *de novo*) could be established to enforce local regulations and to provide initial interpretation of the neighborhood's charter and laws.³¹

The most important delegable functions would be elementary education and land planning and development. Neighborhood governments would be empowered to operate public elementary schools, subject to higher-level regulations setting teacher qualifications, requiring the teaching of basic skills and subject matter, and ensuring sufficient uniformity to allow children to change schools without great hardship. Within a framework of metropolitan or municipal plans, neighborhoods (or groups of them) could enact and enforce zoning regulations and plan and develop housing, small commerce and industry, local traffic and neighborhood facilities. They could enforce the municipal housing code (perhaps promulgating some additional requirements subject to municipal review) and act as public housing and urban redevelopment authorities, with powers of eminent domain and bond issuance.

Neighborhood governments performing these functions would be supported by higher-level activities designed to preserve many of the major advantages of centralization. Higher-level standards and plans would provide essential coordination. A centrally-administered audit of each neighborhood's finances would minimize petty corruption, especially if the results were distributed to neighborhood residents. Higher-level research would make new technological developments

31. Other possible neighborhood judicial institutions are suggested in Cahn & Cahn, *What Price Justice: The Civilian Perspective Revisited*, 41 NOTRE DAME LAWYER 927, 950-55 (1966). Neighborhood governments might place residents in training programs for municipal police forces (and other departments of higher-level governments, such as sanitation, fire, and building departments), under a procedure patterned after congressional selection of West Point cadets. A fixed proportion of training places could be set aside for neighborhood nominees who achieve satisfactory scores on standard tests. If there were more neighborhoods with nominees than places for trainees, neighborhoods could nominate in rotation.

available to neighborhood governments. Central purchasing and the sharing of higher-level specialized facilities and staff would effect economies of scale insofar as neighborhood governments chose to use those services.

To supplement residents' first-hand knowledge and rudimentary skills and understanding, neighborhood and higher-level governments would make available intensive, free instruction about delegable functions and urban problems. Political activists would also be free to propagate their views among neighborhood residents. Such education and argument would be made meaningful by the prospect of real power to put lessons into practice.

Experts would continue to be essential. They would be employed by neighborhood governments to provide technical information helpful in setting goals, to recommend means of achieving those goals, and to help implement the neighborhood's decisions. But the neighborhood assembly and elected officials would always determine goals and priorities, subject to minimal higher-level restrictions. And residents would always be able to pick which educators, social workers, and planners worked for them, to reject their recommendations, and ultimately to fire them. They could require experts to present alternatives and explain their likely effects and costs. Especially in developing a physical plan for the neighborhood, and perhaps on other discrete projects, a number of experts could be asked to submit competing proposals. Or residents could design their own homes, schools, and neighborhood, looking to architects, educators, and planners for technical aid rather than fully developed plans.

There are no *a priori* grounds for predicting that neighborhood governments could not perform delegated functions as effectively as higher-level bodies do now. With respect to public programs within their territory, neighborhood residents should be at least as competent as municipal and higher-level officials to guide and supervise the experts who would remain directly responsible for most government action. They would have the advantage of direct knowledge of the performance of the functions they controlled and often could discover and correct mistakes far more quickly than more remote bureaucrats.

The few neighborhoods which tested the limits of direct citizen participation would provide important information on the practical possibilities of separating value judgments from the technical and empirical issues which require expertise. When neighborhood residents erred, only they would suffer, since they would control only functions which they performed for themselves within very limited boundaries. If

they found a particular function too difficult to handle, they could always cede it back to the higher-level body which previously performed it or delegate greater authority to professional staff.

The benefits of widespread participation and successful innovations cannot help but outweigh the possible effects of residents' mistakes. Experts too have been known to fumble and to impose their own values in the name of science. If the present state of urban planning and education even approaches the horrors depicted in recent critiques, it is hard to imagine how control by neighborhood residents could make matters worse.³²

Finances

All self-governing neighborhoods would be empowered to deal directly with state and federal governments as well as private foundations. Alone or in cooperation with a few adjoining neighborhoods, they could receive funds as local planning and redevelopment agencies under urban renewal laws, local housing authorities under federal public housing legislation, community action agencies under the Economic Opportunity Act, and local school districts under state and federal aid-to-education legislation.

Although grants in aid would be an important, perhaps even the largest, source of funds, they could not be the exclusive source if neighborhood governments are to maintain effective political independence. Neighborhood governments would need substantial assured revenues to fulfill their duties.³³ They might be authorized to levy property or income surtaxes within prescribed, low limits, but redistribution of revenues collected by higher-level governments seems preferable,³⁴ be-

32. On planning see, e.g., J. JACOBS, *supra* note 17; Alonso, *Cities, Planners, and Urban Renewal*, in *URBAN RENEWAL* 437 (J. Wilson ed. 1966); Gerckens, *The Planner at the Human Racetrack*, 33 *J. AM. INST. PLANNERS* 112 (1967); H. GANS, *supra* note 17, and Gans, *The Failure of Urban Renewal*, COMMENTARY, April 1965, at 29, reprinted in *URBAN RENEWAL*, *supra*, at 537; C. ABRAMS, *THE CITY IS THE FRONTIER* (1965); Hartman, *The Housing of Relocated Families*, 30 *J. AM. INST. PLANNERS*, 266 (1964) in *URBAN RENEWAL*, *supra*, at 293; Fried, *Grieving for a Lost Home* in *THE URBAN CONDITION* 151 (L. Duhl ed. 1963) and in *URBAN RENEWAL*, *supra*, at 359. On public education see, e.g., E. FRIEDENBERG, *COMING OF AGE IN AMERICA* (1965); P. GOODMAN, *COMPULSORY MIS-EDUCATION* (1964); B. KAUFMAN, *UP THE DOWN STAIRCASE* (1964); P. SEXTON, *EDUCATION AND INCOME* (1961); M. MAYER, *THE SCHOOLS* (1961); Jencks, *Is the Public School Obsolete?*, *THE PUBLIC INTEREST*, Winter, 1966, at 18.

33. Although neighborhood-owned business enterprises might eventually provide these funds for some of the new governments, such enterprises are unlikely to provide a stable financial base for many neighborhoods.

34. To intensify residents' sense of stake in their neighborhood, direct payments to neighborhood governments might be required from each tax-paying resident and then subtracted from his income tax as a credit, and contributions of goods or labor might be allowed as a partial substitute for such direct payments.

cause public revenue structures are already chaotically fragmented and reliance on neighborhood tax powers would penalize poor neighborhoods. Neighborhood independence need not be compromised by grants from above, provided redistribution is unconditional and on the basis of legally enforceable neighborhood entitlement.

The Role of Higher Levels of Government

Higher levels of government would need not only to finance neighborhood self-government, but also to draw neighborhood boundaries, allocate authority, conduct charter committee elections and the various neighborhood referenda, and ensure the presence of required provisions in neighborhood charters.

To protect neighborhood autonomy, these functions should be performed by governmental units higher than the municipal governments which will give up power and revenue. Since the federal government seems too far removed from urban neighborhoods to set and enforce policies of this detail and since local government is traditionally regulated by state governments, the state seems the logical level.

To promote flexibility and expertise a new administrative agency might be established to interpret and apply home rule legislation and to adjudicate conflicts among neighborhoods and between neighborhoods and higher-level governments.³⁵ Such an agency could also sponsor independent research on neighborhood home rule, provide technical assistance to neighborhood governments, and help neighborhoods work together.

Several measures could be employed to protect neighborhood governments against domination from above. Higher-level bodies would of course have to treat neighborhoods equitably, on the basis of reasonable classifications. They could not perform delegated functions without neighborhood permission. In the use of their retained powers they would be prohibited from deliberately or unnecessarily interfering with a neighborhood government's free exercise of its delegated powers.

35. Such a "Commission on Neighborhood Self-Government" should represent neighborhoods and municipalities as well as the general public. The public members could constitute the entire Commission for purposes of drawing initial boundaries and conducting neighborhood referenda on whether or not neighborhoods would become self-governing. Some reasonably short time after the boundaries were set, municipal officials and the neighborhoods which chose home rule would select their members. This full Commission would conduct the remainder of the process, setting charter requirements and allocating powers.

A model neighborhood home rule act establishing such a Commission and making the other proposed changes is available from the author.

They could not, for instance, rezone or redevelop a neighborhood for industrial use, highway construction, or institutional expansion without establishing not only public purpose but also the absence of alternatives not demonstrably inferior which would not destroy the community.³⁶ And to restrict neighborhood elementary education or other social services, a higher-level body would have to demonstrate a social need for a particular uniformity (for example, that reading be taught in elementary schools). A mere disagreement with a neighborhood's judgment (such as over when and how to teach reading) would not be sufficient.³⁷

The Need for a Test

In a world of alienation, participation in neighborhood politics could restore, or create, community. A sense of belonging, power and worth could replace feelings of rootlessness, helplessness, and insignificance.³⁸ Once ordinary people could determine the rate and form of planned change, resistance to social innovation might diminish.³⁹ Although most neighborhoods would probably adopt traditional governmental forms and programs, people with unusual values and tastes could congregate in a few neighborhoods and develop utopian communities without having to withdraw from urban life.

36. They might also be required to compensate the residents for taking their neighborhood.

37. Like the right to rebated revenues, these neighborhood rights would be enforceable in the courts. In the case of neighborhood conflict with a municipal or state agency, they would be enforceable only after an initial decision by the new state administrative agency.

38. Variants of these two propositions are advanced in; R. NISBET, *THE QUEST FOR COMMUNITY* (1953); W. KORNHAUSER, *THE POLITICS OF MASS SOCIETY* (1959); L. HAWORTH, *THE GOOD CITY* (1963); R. DAHL & C. LINDBLOM, *POLITICS, ECONOMICS AND WELFARE* 267-71, 519-21 (1953); H. ARENDT, *supra* note 2, at 283; E. FROMM *THE SANE SOCIETY* (1955); B. BROWNELL, *THE HUMAN COMMUNITY* (1950); Seeley, *Planning Sanity*, 1964 *PLANNING* 161, 167-68; Pilisuk, *The Role of the Poor in the War on Poverty*, *THE CORRESPONDENT*, Spring-Summer 1965, at 107-10.

Participation in neighborhood government could take the place of destructive anti-social behavior. Cf. HARLEM YOUTH OPPORTUNITIES UNLIMITED, INC., *YOUTH IN THE GHETTO* (1964) (especially introduction and ch. 3); Solomon, Walker, O'Connor & Fishman, *Civil Rights Activity and Reduction in Crime Among Negroes*, 12 *ARCHIVES GEN. PSYCHIATRY* 227 (1965); D. MATZA, *DELINQUENCY AND DRIFT* 188-91 (1964); R. CLOWARD & L. OHLIN, *DELINQUENCY AND OPPORTUNITY* (1960).

There is also evidence that what anti-social behavior did arise would be more effectively controlled. Residents who participated in neighborhood government would try harder to exercise control because they would identify more strongly with their community, and their efforts would be more effective because they would be better organized and more respected by their neighbors. See Maccoby, Johnson & Church, *Community Integration and the Social Control of Juvenile Delinquency*, *J. Soc. ISSUES*, July 1958, at 38; Brager, *Organizing the Unaffiliated in a Low-Income Area*, *SOCIAL WORK*, April 1963, at 34; *MOBILIZATION FOR YOUTH, A PROPOSAL FOR THE PREVENTION AND CONTROL OF DELINQUENCY* 126-32 (1961).

39. Cf. A. SCHORR, *SLUMS AND SOCIAL INSECURITY* 68-73 (1963); E. HOFFER, *THE ORDEAL OF CHANGE* (1963).

Successful neighborhood self-government could also deepen democracy. Decisions delegated to neighborhoods could be made with far more participation than is presently possible. Active participants would soon recognize that many of their basic grievances require municipal, state or national change, and would very likely put to use at those levels the skills and organization they had developed at the neighborhood level. They would add a new and important set of forces to the pluralist political process and could form part of the informed and active public necessary for effective representative democracy.⁴⁰

All this rests on the assumption that a large portion of the population would actively participate in neighborhood government. Because opportunities for widespread direct participation do not now exist,⁴¹ we do not know how many people would take part if they had the chance. Admittedly, only a tiny portion of the adult population uses the opportunities now available for political participation. This may indicate that most Americans do not care about public issues, or it may, in large part, reflect the disincentives to active participation which are built into our present institutions of government. Several studies have concluded that a great many people withdraw from politics because they feel that political action is futile and there is no point in trying because their efforts can't make any difference.⁴²

40. The basic statement of the need for such a public and the causal importance of direct participation in smaller units is J. DEWEY, *THE PUBLIC AND ITS PROBLEMS* 110-20 (1927). See also the distinction between "mass" and "public" in C. MILLS, *THE POWER ELITE* 298-324 (1956). Views similar to Dewey's are set forth in: S. WOLIN, *POLITICS AND VISION* 60 (1960); G. D. H. COLE, *supra* note 1, at 60-61; C. FRANKEL, *THE DEMOCRATIC PROSPECT* 63 (1962); J. CUNNINGHAM, *supra* note 17, at 191-204; S. GREER, *THE EMERGING CITY* 86, 97-106, 207-08 (1962).

41. The War on Poverty's "maximum feasible participation," though often justified on these grounds, rarely involves more than a few representatives appointed or elected to governing boards and neighborhood advisory committees of city-wide community action agencies. Elections for such positions do not differ from those for other public offices, except for even smaller turnout and occasional reverse means tests. See Comment, *Participation of the Poor: Section 202(a)(3) Organizations Under the Economic Opportunity Act of 1964*, 75 *YALE L.J.* 599 (1966); Hayden, *A View of the Poverty Program: "When It's Dry you Can't Crack It With A Pick,"* New York University Center for the Study of Unemployed Youth, 1966; Shostak, *Containment, Co-optation, or Co-determination*, *AM. CHILDS*, Nov. 1965, at 15; Cloward, *War on Poverty: Are the Poor Left Out?*, 201 *THE NATION* 55 (1965); Cloward & Elman, *The First Congress of the Poor*, 202 *THE NATION* 148 (1966); M. Avery, *Maximum Feasible Participation: A Case Study*, April 1966 (unpublished senior essay in Yale University Library).

42. See Rosenberg, *Some Determinants of Political Apathy*, 18 *PUB. OPIN. Q.* 349 (1954-55); M. LEVIN, *THE ALIENATED VOTER*, ch. 4 & *passim* (1960) and *THE COMPLETE POLITICIAN* 149-56 (1962); R. DAHL, *WHO GOVERNS?* 286-93 (1961). Other studies are reviewed in Walker, *A Critique of the Elitist Theory of Democracy*, 60 *AM. POL. SCI. REV.* 285 (1966); Campbell, *The Passive Citizen*, in *APPROACHES TO THE STUDY OF POLITICAL PARTICIPATION* (S. Rokkan ed. 1962); L. MILBRATH, *POLITICAL PARTICIPATION* 56-59 (1965); R. LANE, *POLITICAL LIFE* 147-55 (1959).

If this institutional explanation of political apathy is correct, many people might well choose to take part in small neighborhood polities since decision-making there would be comprehensible and accessible and each person's activities could directly affect public actions. An experiment in voluntary neighborhood self-government would test this hypothesis and could substantially increase democracy, dignity, and opportunity for social innovation.

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