

COMMUNITY FOUNDATION

MEMORANDUM # 3

FROM: MILTON KOTLER

SUBJECT: FROM COLONIAL COMPANY TO COMMUNITY FOUNDATION:
THE CORPORATE BASIS OF GOVERNMENT

A major step in the development of colonial government was the transfer of the corporation charter of the Company of Massachusetts Bay from London to America. This fact brought the government of the company to the body of shareholders holding ultimate authority. This transfer enabled the practical participation of the membership in the government of the company.

While authority to make and establish "all manner of wholesome and reasonable orders and ordinances" was bestowed upon the company, officers of the corporation, -governor, deputy-governor, and 18 assistants, (the president, vice-president, and board of directors in the modern corporation), were assigned the duty of caring for the general interests of the company. Main authority was in the members (shareholders) of the company meeting four times a year in a "general court." At first, the company was governed by the officers, who composed the general court as well. The major break came with the increase in membership. In 1634 certain freemen (non-officer shareholders) who were deputed "to meet and consider of such matters as they were to take order in at the same general court," desired to see the charter. There they found that the laws should be made by the general court, that is, the main body of freemen meeting together.* Later that year the officers and freemen met together in a general court to enact legislation. It was decided thereafter that the general court be composed of "deputies" chosen by the freemen of every plantation. Thus a representative body emerged in this gathering of deputies. The subsequent dispute between the deputy body and the governor and assistants of the corporation, and its institutional accommodation was a major source of the development of the bicameral system.

As early as 1634, the freemen had begun to think of themselves as citizens in a commonwealth; for the enlargement of the company membership and other influences probably marked for

* McLaughlin argues that political liberty must be seen as having its "positive" source in the corporate granting of ultimate authority to the memberships of the company, ie. the freemen. Liberty was a demand for a legal right under the charter of the corporation, fulfilling itself institutionally through a representative system. This historic argument by McLaughlin is an important criticism to the "natural law" basis of liberty.

then, the silent transformation of the technically legal system of the corporation into something more; it marked the fact of the public character of the commonwealth. What began as an economic enterprise became a political government.*

Charles Francis Adams argued this case of transformation in his historical studies seeking to establish the "charter origin of the New England town." Adams contended that the town was essentially indigenous, not a copy of English local system (parish and town) or an inheritance from remote and shadowy ancestors. About the New England town McLaughlin says: "The New England town was a business enterprise, connected of course in some measure with religion; the town-meeting does bear a resemblance to the general court of the corporation; the proprietors, to whom the land was granted by the general court, constituted in miniature, a land company, not dissimilar in its outward seeming to the larger formerly constituted corporation." He says that while these similarities don't prove the charter, or corporation origin of the town, he does insist that our much lauded system of local government shows the influence of corporate forms and practices, and above all, the business character of their undertaking.

From this general review several points should be drawn:

1. After 1634, membership in the colonial company shifted from shareholding to membership in the church. Freemen status rested on church identification and less directly on ownership of shares in economic enterprise. This is natural, since enterprise in becoming private, rather than common profit, required another institutional foundation of community membership. It found it in the church, as taxation or assessment replaced "public profit" as the principal means of repaying corporate investment.

2. McLaughlin makes an interesting point about voting. At the outset, the Massachusetts company did not use the ballot in its elections, but rather "the erection of hands." It was first used in the election of governor in Massachusetts in 1634. The fundamental orders of Connecticut also provided for paper ballots. Nonetheless, with the Virginia exception, the larger trading-

* In this connection, let me jump ahead and relate this transformation to Jefferson's notions of the "elementary republics,"-the necessity of developing the WARD republic as the basic political unit of government in America. His major difficulty in this connection according to Arendt was determining what the specific functions of the ward government could be. Although he suggested that one of the advantages of ward divisions was that it would offer a better way to collect the voice of the people than the mechanics of representative government, his main point about functions was that if one would "begin them (ward governments) only for a single purpose (they would) soon show for what others they (were) the best

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companies used the method of raising hands.*

3. I point to the emergence of deputies representing the freeman; their claimed authority; eventual dispute with the officers of the corporate; institutional accommodation in bicameralism; and their eventual political victory and establishment of election of officers for executive power as well as deputies for legislative power. My interest here is to relate this development to the outline of strategy in Memorandum #1 on the development of the Community Foundation structure. There I saw the possibility of starting out with the "UPO type" representative body of the community organizations, to be followed, on the basis of universal donation, by a citizen group to challenge their power, and the eventual success of the citizen body in gaining the government of the community.

4. I am leaving out reference to McLaughlin's interest in tracing the development of representative government from its corporation courses. At this point the representative function doesn't interest me as much as the possibility of fulfilling in the Urban community, through the Foundation structure as its basis of government, the Jefferson ideal of ward government built on direct assembly rather than representation. But we will discuss this later.**

(continued from page 2.) instruments." More on the concept of the ward system later. The important point here is that both colonial fact and Revolutionary thought agree on transformational and organic possibilities of political organization. The important thing is a functional basis from which it can begin and change and grow.

* Relate this to my comment on the methods of voting in the Community Foundation, and the possibility of voice vote or public vote as possibly fitting. As a corporation system, such viva-voce voting would have a basis in historic corporate practice.

** I admit the conflict in this memo between possibilities of democratic representation and direct assembly in the Community Foundation. I originally thought in terms of representation and its practical structure in the Community. Now I am beginning to think of the more ideal possibility of direct participation in fulfilling the ward ideal.

5. Considering McLaughlin's analysis of the source of bicameralism in the dispute between the deputies and the corporation officers, it is well to consider the possibility of bicameral structure in the community organization, with the agencies and groups, as currently united in UPO constituting one house; and the citizens of the community electing representatives to, or indeed directly constituting, a second house. Final decisions could require concurrence, or some method of agreement between the two houses. My point here is only that bicameralism may be an institutionally adaptive feature of the community foundation in certain urban areas, while not in others,-- just as it did emerge in Massachusetts, but not in Connecticut. Bicameralism, as McLaughlin points out is an adaptive institutional function rather than a theoretical condition of democratic government.

6. The big question here is whether we have reached the point where there is an obvious function and role for "enterprise," public, rather than private, in the neighborhood community. The existence of such enterprise is fundamental to the reasonableness of the corporate organization of the neighborhood as a basis for its development into a political community. It is because the "new enterprise" is public rather than private, that the corporate basis can take the form of the Foundation, rather than the business company or private corporation. That is to say, I speak of Community Foundation in a manner analogous to the Colonial company, or corporation. Returning to the big question, What is the nature of the urban community "enterprise," in which interest the citizens can corporately share? I suspect, by the signs of the generational war now being waged, that this enterprise is the reapproachment of the generations and the enrichment of the young. Its institutional frame work is education.