COMMUNITY FOUNDATION

MEMORANDUM # 5

FROM: MILTON KOTLER

SUBJECT: COMMUNITY LAW THROUGH THE COMMUNITY FOUNDATION

This is a brief memo to raise the issue of community law and the possible basis for its regeneration through the structure of the Community Foundation. Let me begin with an illuminating incident that occurred a month ago in New York City.

1. The New York Times reported that Mr. M., an Italian landlord assaulted a local Puerto Rican restaurant owner, Mr. B. The details follow: M owned the only partially restored building on a dilapidated East Side block. He had six tenants and received good rents. To his displeasure the Puerto Rican kids on the street always played in front of his building. M would chase them away, but to no avail. This practice made him unpopular on the block, both among the kids and their parents.

B owned a little restaurant in the neighborhood. He was a leader in the Puerto Rican community and became the center of the neighbors hostility toward M. One day M, as usual, tried to chase the kids away; but then he snapped. He sought out B in his restaurant and assaulted him. As a result B was critically injured and hospitalized; the neighbors fell to fury; and M was arrested. In the midst of these events, all six tenants moved out of M's building. They felt that in view of the neighbor's fury there might be destruction on the building and injury to themselves. Even the Progressive Labor Movement got into the act. They picketed M's building protesting his "white only" policy.

2. The main point of the story is that, in basic form, it happens every day in our cities. There are endless incidents of local irritation which often erupt in assault and violence. And one has only to think of the thousand unresolved occasions of his own irritation which he has restrained and the violent feelings which he has repressed.

Our practice of restraint is strengthened by the common attitude that these local irritations are "petty" issues. So established is this habit of thought that substantive grievances even escape our consciousness; while their specific psychological impacts, nonetheless, strongly effect our emotions and help build the anxieties of urban life.

3. Violence about such matters suggests there are no other "normal" ways to express and settle these local grievances; and that they are indeed powerful enough despite the attitude of "pettiness" to impel expression and demand resolution.

Structurally, this practice of repression is supported by the absence of a local forum of "social authority" for the adjudication of these local grievances. This absence of local forum does not mean that these grievances are not or even should not be felt; but only that their feeling has no legal right or legitimate power. It follows that these feelings had best be repressed for their expression in violence would be outside the alw and culpable.* This wiser course of restraint is not easy. To serve its practice we have developed along with the attitude, a local ethic or liberalism, with its corresponding technique of pettiness, "human relations." Add to this our presuppositions about man's inevitable improvement through education and good temper, and we have the kind of a pill we can swallow. In short, the absence of forum supports the practice of repression; and the practice of repression in turn, denies the role of local forum.

4. It is important to recognize the essentially <u>local</u> nature of "felt" justice. For the average man, "justice" is the right relationship of himself to some person <u>face to face or object, near at hand</u>. As its issue is local, the dynamic structure of "felt" justice is local community. Yet, the denigration of local grievance as a serious issue or rightful cause cannot but adversely effect the citizen's personal relationship to the State, casting it as a psychological instrument rather than an ethical union. Consider his view of the law, expressed in the phrase, "machinery of justice."

5. Let me quickly list a catalog of local grievances that come to mind, which cannot in any effective way be settled by existing legal jurisdictions.

1. Excessive noise from a neighbor's apartment
2. Indiscriminate chopping down of trees and destruction of lawns and landscapes
3. Stores closing too early at night and closed on Sunday
4. Zoning laws that restrict businesses in your vicinity and exclude certain kinds of activity and place from being locally established, for example, outdoor cafes

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* Indeed there are other ways of acting out these grievances through substitutions, for example, scandal mongering, local intimidation, personal sabotage, deceits, etc., which the agrieved victim can return upon the violator. Unfortunately these alternative methods have their own dynamic and are rarely limited to the issue in dispute. They are often pernicious and self-perpetuating substitutes which may adversely affect the style and structure of the neighborhood community.

5. No library within walking distance

6. No public place to meet and talk to the people in the neighborhood.

7. Dirty streets and poor garbage service

8. No free public place in the neighborhood for adult physical exercise

9. No place to walk to, the dullness of the outdoors (Jane Jacobs' point about urban renewal and housing developments)

10. Ridiculous traffic regulations and pointless ticketing (e.g. 20 feet from alley, forty feet from the corner)

11. Cars blocking your driveway; or no way to guarantee your parking space on the public street in front of your house

12. Neighbor's failure to keep up the appearance of his building and property

13. The absence of good entertainment in walking distance

14. Bad transportation from your house to destination, work or play

15. Lack of sufficient safety in the streets

The list could go on indefinitely. My point is that these are all issues and complaints that people <u>feel</u> about. Why should any one of these items be outside of a public forum for expression, argument and settlement? Consider item 11, why isn't the feeling that your parking space should be reserved on the public street in front of your house, a reasonable issue for public argument. After all, there are other instances in which public space is related or privileged, according to private position. Why is it so obvious that the public space in one's own community in which he lives, acts and serves should be no more a right to him than to a stranger from another place? Should public space bare a special status to social community wherein it lies? Or is community to develop from indifferent ground?

6. Because of a fussion of positive and natural law views of sovereignty and liberty, our thought has been geared to the relationship of the individual to the state. Accordingly, the role of associations and the concept of social authority has never gained serious political thought. This, in spite of our pluralistic assumptions, which by now seem clearly to have been only impressionistic phrasing. Our pluralistic rhetoric has referred more to the tune of ethnicity than to an appreciation of the political function of association and community structure, as authoritative bodies of some measure of rule and initiation within the state.

Absence in thought however is not absence in fact. For we have lived with the fundamental role of power played by corporate structures in business and industry. Why have we failed to carry our effective and articulated corporate organization from the realm of private gain into the political realm of community power and public purpose? Can this be due to the effective beginnings of our political form through colonial corporation and the corporate structure of the colonial church. This objective structural foundation for pluralism in our American experience has never been assimilated into one political thought. Theory overlooks what facts make possible.

7. If we look at the New England town, we would still find a political unit that corresponded to community; and whose law or local ordinance expressed the real kinds of community grievances that existed. The kind seriousness of legal attention to the felt justice of local community was reflected in such political roles as that of the elected fence-sitter,--a public official whose job it was to sit upon the fence and watch to see who crossed whose boundary. So whereas at the beginning, law did reflect community, the problem of dicontinuity between community and law came about through population increase, migration, urban concentration, etc.,--and the rigidification of legal jurisdictions at the level of constituted political units.

Even Jefferson began to see the dislocation in the inadequacy of county divisions, as being too big for republican government; and the need to develop the smaller ward republic. Today the smallest unit of political government is the city, even though it may include the 4 million residents of Chicago. Furthermore, since the city exists by charter, its power is often severely limited by state government. Its codes and ordinances (of municipal government) will likely reflect only the "essential" relationships of individuals to the city and the <u>special</u> problems of social relationship only insofar as they effect the municipal organization, rather than as they reflect the diverse social character and relationships of its many inclusive communities.

So it is that existing community does not correspond to any political unit and legal jurisdiction; hence, cannot develop its characteristic civil relations and communal norms. Conversely, local or municipal political government,--its size exceeding community, has become an administrative organization or office for <u>mere</u> service and <u>plain</u> safety. It is no longer political government in any sense of democratic assembly, enriching the citizenry through creative participation in relevant public decisions. Our atrophy of democratic government rests on the absence of local government corresponding to the boundaries of the real community.

As government and law have become alienated from community, civil relations in society have correspondingly deteriorated. Real civility has its foundation in community, and requires for its creation an authoritative forum for definition and a court for enforcement. Real civility is more than the blank indifference of passing strangers; it is fundamentally the impulse of public initiative, responsibility and public identity

toward fellow citizens. Where community has no forum of social authority then the law of general jurisdiction defines only the relationships between strangers (see the law of omission). The effect of our "civility" is to isolate the individual from other's of familiar appearance;* rather than bringing them into relationship. Our "civility" of strangers and its commitment to a concept of liberty based on power and scarcity, and therefore preoccupied with the relationship of individual to the state, is not unrelated to our condition of alienation, -- a condition sociologists must also realize has political roots.

8. What are the effects on personal and public life when law fails to define, express, and support civil relations based on the social realities and issues of particular locality? How does repression and personal irresolution of matters of felt justice affect the social and political structure of local community and its style of activity? Can there be real "community" without community law? (This issue is generally over-looked in community organization and local government studies.) How is the potential and reality of "community" affected by a legal system of general jurisdiction tying the individual to the State, rather than establishing his relation to associations and then associations to the state.** What special interests, e.g., property and national industrial corporation and union organizations, are served by this neglect of community law and a social authority?

9. Community law and jurisdiction is essential for "effective" community, that is, relevant to the actual interests and organization of values and benefits to men. If the community is unable to govern and sanction values, what is the point of its being. It would be no different than a grade school student council.

But from where can community derive authority and power; and thereby, establish law and civil character over its membership? It requires a structural instrument derived right. The failure in the past to conceive of this instrument has been an essential shortcoming of community organization efforts. Incorporation through the Community Foundation is here suggested as that instrument. Operationally, it embodies the convergence of legal capacity, historic precedent of our original political development out of corporate forms or organization, and the pervasive private corporate structure today in business and philanthropy.

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* The real crisis of anomie is the inability, the lack of a basis or common structure for one to meet another, who, by interest in appearance, or word, one wants to meet.

** In the actual practice of national effort and emergency, the community or association is often activated as a unit into the common enterprise, e.g., war, flood, etc., rather than individually. For example, the first soldiers to be shipped overseas during World War II were National Guard units. Mobilization by associations and localities is thought to favor morale.

The industrial corporation has its law over membership by state grant charter, and by-laws. Officers are chosen to govern and decide business policy. Management policy and its profit value controls the action and flow of membership. By its effect on market conditions, it can control the actions of outsiders. The shareholding membership can (theoretically) choose the leadership. And finally, corporate business policy has through its powers wide scope for diversity and initiative. It has wide powers and ambit of policy, even though the state reserves regulatory powers for its control.

Indeed our industrial organization and power owes its life to corporate structure. Could corporate structure do the same for community organization?

10 The incorporation of locality or neighborhood into the Community Foundation around a charter of non-profit public activity and investment into public objects and pruposes can confer upon the community and its member "shareholders," or general body, the saem capacity of derived power and sanction from state law. Notwithstanding the reserved power of the State over the regulation of the Community Foundation its essential power that is, initiative and rule will be left to the Community Foundation "shareholders" with the extended arm of State and federal policy protection and court jurisdiction to secure corporate community government and its decisions and policy. By its charter and by-laws it can make its substantial and distinct government.* That is to say, incorporation rights are sufficiently flexible as to the structure and purpose of the foundation as to permit great variety in constituting and ful-

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* In a subsequent memo, I'll take up the problem of the chartering of the Community Foundation. In this connection we will consider the relevance of America's tradition of association and corporations by covenant, both as expressed in the colonial trading company and the colonial church. What can the Community Foundation gain by its constitution through social compact.

Furthermore, there is no obvious conflict between the positive and natural law foundation of corporations. Granted, the Community Foundation will derive its power and sanction by charter from the State. In exchange the State will reserve specific powers over it. Nonetheless, this still leaves ample and flexible areas for structure, organization, and purpose, out of which it can fashion by compact and assembly (or representative body) a constitution and system of values and rewards in exchange for commitment and obligation to duties and responsibilities designated. This is an appropriate field and subject of compact.

filling distinct community identity.*

11. The power and sanctions of corporate structure relate to their created values which draw man's interest. If for the industrial corporation that value is money profit, what is the value corporately created and controlled by the Community Foundation? It is envisioned that the Community Foundation will be the seat and center of public life in urban neighborhoods or rural communities (its rural application is related to impoverished rural areas, like the Mississippi Delta and other rural Pockets of Poverty). It will build and govern community welfare benefits and salaried activities and operate social and entertainment benefits. It will educate, as its central concern. Its local structure will be a school of tomorrow for all ages. The school will be the center of skill training, intellectual and cultural activity of the community, political education, etc. The school may even be the face-to-face institution of local assembly. It will control through its democratic government the distribution, placement and advancement of salaried positions in its public roles and supporting economic enterprises. Its assembly can develop rules of civility, that is, communal norms as well as liberties. Its courts will define and resolve issues of felt justice, based on actual social relations.

This is a rough sense of the totality of its benefits, values and rewards. With these, the democratic assembly of the Community Foundation can legislate abiding rules and by its community laws and community courts can hear disputes and renter their settlement into law and a community ethic.**

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*As to the structural flexibility and range of corporate forms available around which to organize, there is the possibility of incorporating the Community Foundation in a State other than its state of location. In addition, consider the corporate capacity to conduct its business and enterprise outside its own state, wherever, indeed the non-profit, tax-exempt economic enterprise of the Community Foundation will best carry it. Thus, for example, a Mississippi Delta Community Foundation may establish a small factory for making rope. Paying its citizen-employees salaries and re-investing the profit or putting it into public purpose. The Delta Community Foundation can then set up a distribution outfit in Chicago for its Mississippi manufactured rope. They may employ their own emigrant residents, relatives who have moved to Chicago, etc.

**There is no reason why every Community Foundation has to choose a democratic assembly constitution. Indeed, the flexibility of corporate organization and structure, and the decision of the general body through compact of charter and by-laws can determine and choose its own constitution,--aristocratic, monarchial, mixed constitution, democratic, etc. Local difference should be reflected by constitutional variations.

12. Through community by corporate organization and its derived state power we find the possibility of creating an ample forum local grievances and real civil relations. Through expression, argument and settlement in a community law forum there can be a great step toward the resolution of justice and thereby towards political education and a basis of an ethical order in modern urban life. Irritation will not continue repressed to disease public life by substitute and surrogate expression thereby damaging public structures and public credit.

Law by assembly decree and a judicial action through the community court will raise a code of right public conduct. This will condition disputes and their calm avoidance. Decree and trail will by the power of their norm, define and sanction certain kinds of offensive behaviors (posibly, by the method of fine, which industrial corporations sometimes use). New actions will always emerge, as the Community Foundations takes new shape, new activities and projects, and expands its field. The assembly will always be busy and the court will always meet.

13. As the assembly, or general body's public function is to make the alw, the court's function is to apply its rule to the adjudication of disputes over which its jurisdiction extends. Basically, its effective function will be to determine the contested claims of citizens. Constitutionally such a court can be empowered to interpret the Community Assembly decrees (its legislation); and interpret its constitution or Charter and by-laws (judicial review). Precedent, usage, community tradition, code, etc., may be principles of judgment. In this connection, let me close with a relevant note on the structure of the Athenian courts.

The jurors were elected for a year by proportional representation from each deme, according to its population,--to the number of 6,000 under Cleisthenes. They were paid to serve, and came each day to the court from the countryside. The number needed for the days load were selected <u>by lot,</u> never less than 201 jurymen to sit in a given case. The court would not meet on festivals and on those days when parliament met and their attendance was required.

The point of this description is to indicate the Athenian view that the structure of trial for adjudication must basically oorrespond in organization to the structure of legislation. Otherwise,--and this goes to the heart of Greek justice, --there would be no assurance that the law and decrees were applied in the same meaning and interest by which they were "discovered." The meaning of the "discovered" decree and its application in adjudicating individual disputes must correspond. The same interest must govern and this is only secured by the similar organizational structure of these two functions. Otherwise, there is the danger of corruption,--that decrees of a certain "discovered" meaning will be applied by others for the sake of an entirely different, and possibly selfish interest.

They realized, as none after them, that the best way to maintain this correspondence is by structural continuity of people, roles, and functions. Thus, just as the assembly was large, so too was the court. As political officers were chosen by lot, so too were the juries. As the council was elected for one year, so too the 6,000 jurymen. When the parliament sat, the jurymen were often obliged to join the parliament and postpone court day. So the jurymen during their year continued to be legislators, were paid city officials, representatives of their deme, etc.,--all this at the same time. Only this intermixing, or interpenetration of many political roles can maintain good, sound judgment and wide perspective; and sensitivity to the necessary workings and harmonies of all the parts of the State. It avoids the narrow, special view; and its inherent partiality. Similar structure for different functions means shared judgment, personal wisdom from familiar practice in common method, setting and procedure and continuity and relating of experience into judgment.

Is our own system of an independent judiciary any better suited for wise and honest judgment?* As Alred Zimmern, notes, no charge of jury corruption or bias comes down to us from the records of Athens. Its basic jury and trail system, established by Solon and modified only slightly thereafter, continued to function well and honestly down to Periclec.

I spent this time describing the Athenian jury and system and court, because of my interest in seeing that widely varied court and trail system models be developed in different Community Foundations. With all its capacity for flexible structuring and organization, the testing out of various court and trial models can play an important part in remaking our own present trial structure and jury systems at the level of municipality, State courts, and federal courts.

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* The result is the device of legislative judicial power and the "historic" interests of the courts. Further independent judicial power leads to the centralization of law as its divorce from the social community.