

to give a skilled helping hand. Anderson drew this assignment, too. It took him only a few days to discover that what McCleary needed most was a common goal.

The logical place to start any process of rehabilitation in any community, the professor knew, was in the hearts and minds of the people. But in this discouraged town he found only large areas of mutual misunderstanding and mistrust. Had as much effort been consumed in solving the community's problems as was wasted in arguing about what those problems were, many of the worst situations would quickly have disappeared.

So at the very beginning, Anderson believed, everyone should have ample chance to be heard, to express his convictions and offer his suggestions. Then all the ideas of all the people should be tossed into a common pot, where good and bad, reasonable and unreasonable theories could stew together, then see which would rise to the top and gain any general support.

"Just what does McCleary have that all of you want to brag about?" he asked a large group of uneasy citizens who gathered for one of the earliest meetings.

A brash teen-ager at the rear of the hall tersely expressed a widespread local complaint. "We have *nothing* here to brag about!" he shouted.

"Then let's find something!" Anderson retorted. "Let's begin by agreeing on some project that needs to be done and then do it together."

After months of thoughtful study and self-examination, the town found that, like Chehalis, it possessed a

surprisingly large supply of willing workers for civic projects. By pooling their efforts, experience and skills they certainly would be able to solve many of the more difficult local problems.

One roadblock to community progress, the first survey showed, was McCleary's need of a bank. Businessmen insisted it was hard to sell cars, washing machines, television sets, even real estate, when credit had to be arranged in some other town. None of the big banks seemed to be interested in opening a branch in McCleary, however.

"Let's organize our own," a committee decided. Two hundred and fifty local people put up the needed \$140,000 capital and elected officers. On September 1, 1960, the McCleary State Bank proudly opened for business. That first day, deposits of more than \$150,000 poured in. Other new structures went up: a spanking hardware store, long needed, and a big supermarket; a \$50,000 library and a city hall. The citizens raised cash to finish a hospital. Parks and playgrounds were built by volunteers with donated materials and a lighted ball park and athletic field.

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The first prospectus of projects named 116 goals toward which McCleary should strive. No one believed that all or even most of these could be accomplished—they were merely bright targets at which to aim. Yet five years after the professor first arrived, the people had reached or passed 90! Dozens of new projects, meanwhile, have been added to the list and the town is plugging away at them, too.

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A Home Rule Puzzle

Metropolitan area functional consolidation calls for modification of established theory.

By KENNETH C. TOLLENAAR*

PERHAPS it was reasonable in 1916 for Howard Lee McBain to describe the city as "a natural economic and sociological unit" and "a perfectly logical governmental unit." By the time of Joseph D. McGoldrick's follow-up home rule study¹ in 1933, however, it was difficult to make such generalizations. "We are concerned," said McGoldrick, "with the development of a municipal home rule broad enough to include not merely the skyscraper that surmounts our modern city but the slums in its shadow and the homes of all those who daily come to work in it."

In a contemporary restatement of the same theme, the Kestnbaum commission observed: "Self-determination in one isolated unit of a large community often restricts the opportunity for genuine home rule in the whole community."

If home rule is to be developed and applied at the metropolitan level, then careful consideration must be given to the present dis-

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¹ McBain, *The Law and the Practice of Municipal Home Rule*; McGoldrick, *Law and Practice of Municipal Home Rule 1916-1930*; Columbia University Press, New York, 1916 and 1933 respectively.

tribution of home rule powers among municipalities and to adjustments in the theory and practice of municipal home rule which will be needed to accommodate the new concept. Not all can rule the home. It may be possible, however, to divide the total package of home rule powers between counties or other area-wide units and the local municipalities in such a way that all will benefit.

Home rule—like "states' rights"—is a difficult doctrine to define. This may be due partly to the fact that, historically, home rule is a negative concept. Its historical purpose was to terminate and prevent legislative involvement in such politically pregnant processes as the control of local police forces, construction of local public works, grant of utility franchises and use of the city payroll as an outlet for party patronage.

A few state constitutions, notably Colorado's, attempt to spell out the scope of municipal home rule powers, but the preferred approach has been to leave the constitutional language broad and general except when dealing with the adjectival process of charter adoption. Thus the job of defining home rule has been left largely to the courts and what has been held to be a home rule power in a given state at a given time may be held a state prerogative in another state or at another time. That it should be

otherwise in a rapidly changing society is not to be expected.

One useful statement of the general subjects to which home rule might extend is that developed by Jefferson B. Fordham in his analysis of the American Municipal Association's *Model Constitutional Provisions for Municipal Home Rule*. Fordham analyzed home rule in three main contexts—substantive powers, governmental organization and administration, and the geographical reach of governmental authority.² These categories are convenient to employ in evaluating the present status of home rule in metropolitan areas and in re-thinking the concept for the future.

Substantive Powers

Even in the simplest governmental structure a municipality does not enjoy full self-determination of its substantive powers. A city "must live in a world in which there are numerous other governments—local, state and national—with which it continually rubs elbows. The powers of each of these governments must necessarily be relative to the powers of the others."³

In the complex governmental environment of metropolitan areas effective municipal home rule is even more narrowly circumscribed. Limitations exist with respect to metropolitan relationships between governmental units which do not overlap the same geographic area as well as between those that do.

² See "Home Rule—AMA Model," *National Municipal Review*, March 1955, page 138.

³ Rodney L. Mott, *Home Rule for America's Cities*, American Municipal Association, Chicago, 1949, page 6.

Non-overlapping units.—Neighboring municipalities in the same metropolitan area cannot be said to enjoy full control over their substantive powers, even though equally endowed with legal home rule authority. The efforts of one suburban city to zone in furtherance of a sound development pattern may be undermined if its neighboring cities fail to do likewise. An ordinance to regulate business operations must take into consideration possible competitive disadvantages to which local firms would be subjected and similar considerations will overshadow the city's self-determination of taxation and revenue sources. Efforts by one municipality to prevent stream pollution may be thwarted by indifference of a sister city and each may be frustrated by the other in any attempt to secure domestic water supplies from wells tapping the same ground sources.

Illustrations of the point could be continued indefinitely. It is clear, however, that a metropolitan municipality will find its range of choice under home rule restricted because it controls fewer of the factors which influence its destiny than it would if it were the only municipality in the area.

Overlapping units.—A city overlapped by a metropolitan park or transit district cannot really be said to enjoy home rule with reference to those functions, even though in the legal sense its powers are unrestricted. Exercise of the home rule power in such a situation is not unknown. Portland, Oregon, has a Commission of Public Docks, created by charter amendment, the powers of which overlap those of

the Port of Portland, a metropolitan district created by a special legislative act. But the relationship between the two agencies is an uneasy one and there are efforts from time to time to consolidate them.

Considerably more unsettling is the prospect of conflict between home rule cities and the county or counties of the metropolitan area, or between the municipalities and general metropolitan governments, particularly when the latter are themselves vested with home rule powers. How can duplication and confusion be avoided when two equally sovereign units proceed to exercise home rule rights to determine their own substantive powers?

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The Dade County (Miami, Florida) charter meets this issue of home rule head on. Although it reserves to the voters of the municipalities the sole right to abolish the municipality, it permits the county to set minimum standards for the performance of any service or function and to "take over and perform" a service within any municipality which fails to meet the standards. Clearly, the Dade charter reduces drastically the amount of legal municipal home rule authority in the area of substantive powers.

Efforts of municipalities to continue their self-determination of substantive powers despite the terms of the Dade County charter have helped to keep the "metro" pot boiling for four years and no one can yet say what the outcome will be. Those contending for the home rule rights of the municipalities as against the home rule rights of Dade

County have carried their fight into the political arena after failing in efforts either to gain voter approval of charter amendments or to win their cases in the courts. The board of Dade County commissioners is now about equally split between those who represent the municipal point of view and those with a county-wide outlook. A change in the county's top management has been made. The voters will go to the polls again this fall to decide on a proposal to repeal the charter.⁴

Except for the Dade County plan, resolution of the conflict between overlapping home rule jurisdictions has been sought in two main ways—division of territory and multiple vote procedures.

The idea that county home rule powers operate only outside city limits has been assumed as the basis of urban county operations in California. Extension of county services inside city limits by the Lakewood plan in Los Angeles County rests on voluntary contracts which do not violate the home rule theory. But the fact that California counties can and do provide many services outside cities which are not extended inside city boundaries has produced some prolonged and bitter battles. It may be questioned, moreover, whether confining the metropolitan county to the role of a suburban government fully realizes the county's potential as a device for reducing metropolitan chaos.

Multiple vote procedures, requiring separate approval by some or all of the existing governmental units affected by any change in substan-

⁴ See page 436, this issue.

tive powers, are common in proposals for county home rule and metropolitan government. They are, in fact, effective devices for preserving the autonomy of home rule municipalities as against the creation of an area-wide government. The Ohio and Texas constitutional county home rule amendments require charter approval by separate majorities in various combinations of central cities, suburban municipalities and unincorporated areas. Most proposals for metropolitan government (with the notable exceptions of the successful Dade County and Baton Rouge plans) have required concurrent approval by the voters of at least the central city and the outside areas.

Both division of territory and multiple vote procedures beg the question of permanently resolving the conflict between overlapping units of equal sovereignty in the self-determination of substantive powers. The Dade County charter clearly subordinates the home rule powers of the municipalities to those of the county. In doing so it steps firmly on the toes of the municipalities but, in the long run, it may avoid resort to even more remote levels of government to meet the inadequacies of unregulated municipal home rule in the metropolis.

Governmental Structure and Administration

Metropolitan municipalities exercise the home rule power to determine their own organization and procedures with little apparent difficulty. One city may adopt the manager plan, for example, without regard to the form of government utilized by

its neighbor or by the county. It may adopt a performance budget, abolish civil service or revise its administrative code without impairing the rights of the other local units.

Nor does the exercise of home rule over structure and administration at the metropolitan level limit or restrict the enjoyment of equivalent authority by the municipalities. The Ohio constitution illustrates this principle by permitting county charter adoption in the larger counties by county-wide vote if only organizational or administrative changes are made but requiring approval by separate majorities in the central cities and the area outside if exclusive exercise of powers is assigned to the county.

The worst that can be said about the exercise of home rule in this context is that it results in a lack of uniformity as between the municipalities in the same metropolitan area. There are those, of course, who find virtue in such uniformity, apparently for its own sake.⁵

The possible convenience of uniformity must be evaluated against the possible merits of experimentation in governmental structure and administration. Such experimentation in metropolitan areas may actually be facilitated by such characteristics as area-wide communications media, civic and fraternal organizations, population mobility and the informal contacts between

⁵ See California Commission on County Home Rule, *County Government in California*, California State Printing Office, Sacramento, 1931, page 86. The specter of nonuniformity is invoked more frequently in considering county home rule than in city home rule.

officials and personnel in the same geographical area.

Governmental Areas

The act of incorporating a municipality may itself be regarded as an exercise of home rule power to determine the geographic reach of governmental authority. Some state constitutions expressly prohibit the legislature from enacting a municipal charter.

Home rule, moreover, involves protection of existing municipal boundaries as against an attempt by the state legislature to change them by special act. It also involves, at least by implication, the insularity of such boundaries against annexation by another home rule municipality.

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Whether home rule should also include the power to extend municipal boundaries by unilateral action is a controversial question. Although McBain himself regarded this idea as "little short of ridiculous," such a doctrine is receiving much attention today, and has been specifically recognized in Texas.

In the metropolitan area situation, this concept would be severely restricted in any event by its inapplicability to territory already incorporated in another home rule municipality, even though one such municipality may be only a small fraction of the size of the other.

In a modification of this idea, North Carolina and other states have provided for self-determination of boundaries when certain specific statutory standards are met. Again, however, the metropolitan situation impedes full enjoyment of this home

rule right, since two or more neighboring municipalities may meet the requirements for annexation of the same area and one or more must forego its expansion in favor of the other.

It goes almost without saying that the adjustment of county boundaries in a metropolitan area is identical to the problem of adjusting the boundaries of contiguous home rule municipalities. In neither case is it possible to exercise a home rule privilege of self-determination.

It is conceivable that a greater degree of over-all home rule as to municipal boundaries could be made available to the citizens of a metropolitan area if there were an area-wide governmental entity to receive and exercise them. The Florida constitution makes such a grant of home rule powers possible by authorizing Dade County to adopt a charter which would permit the county to "change the boundaries of, merge, consolidate and abolish . . . all municipal corporations." The charter actually adopted in 1957, however, did not avail the county of the full scope of this authority, making boundary changes subject to "the approval of the municipal governing bodies concerned."

This analysis suggests that the doctrine of municipal home rule has some characteristics of a myth when it is applied to governmental units in metropolitan areas. Metropolitan conditions tend to limit significantly the amount of true municipal autonomy in the determination of substantive powers and governmental areas.

This is not to deny that home rule in its traditional application—i.e.,

in the relation between cities and the state—has made, and is still making, a valuable contribution to the quality of local government in the United States. The point is merely that the proper limits of home rule in metropolitan areas need to be understood and that, if possible, constitutional provisions and statutes should so qualify home rule powers that they do not impede or prevent area-wide solutions to area-wide problems.

In the one instant attempt to do this directly and forthrightly—the Dade County charter—it is evident that the myth of municipal home rule dies hard even when it is assailed by clear legal authority, the electorate and the courts. It is probable that the officials of metropolitan municipalities will be among the last to acknowledge the need for modifications in the municipal home rule theory.

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The persistence of the myth will prove troublesome even in metropolitan devices which fall far short of unified metropolitan government.

For example, the hypothesis that annexation can solve urban area problems becomes more academic each time a new suburban municipality is incorporated. Indeed, many such incorporations are conceived and carried out with the express purpose of attaining "home rule" protection for municipal boundaries as against the annexation plans of a neighboring municipality. If annexation is to be used at all in efforts to integrate the government of metropolitan

areas, restrictions will have to be placed on the "home rule" right to incorporate. Yet this will not solve the problem as to municipalities which already exist and it is difficult to conceive of any workable scheme whereby the annexation powers of some municipalities could be ranked as superior to those of others.⁶

Voluntary cooperation itself is not immune to the disruptive effects of metropolitan municipal home rule. The effectiveness of a joint study, agency or facility often depends on participation by all municipalities affected, or by certain municipalities which are in a geographically or financially strategic position. The regional councils organized in San Francisco, Detroit, Washington, D. C., New York and Salem, Oregon, might find it profitable to explore the possibility of substituting "majority rule" for "home rule" in their efforts to achieve functional consolidation.

To modify the doctrine of municipal home rule, which many states have embedded securely in constitutional provisions and supreme court decisions, would be a task of mammoth proportions. If real progress is to be made toward a solution of metropolitan governmental problems, however, the effort should be made.

⁶ The idea of "collapsible" municipal corporations has been suggested by Daniel R. Mandelker in "Standards for Municipal Incorporations on the Urban Fringe," *Texas Law Review*, February 1958, page 271. Mandelker's plan would permit the larger of two municipalities to annex the smaller.

Planning—City to Nation

'It is the city planner who will furnish the model of future American national planning.'

By PAUL A. PFRETZSCHNER*

THE chief threat to the effectiveness of any modern, complex institution is its failure to define and comprehend its goals and its inability to permeate its total apparatus with a sense of responsibility for these goals. Planning springs from the necessity of goal determination and goal implementation. This is true whether one refers to the socially accepted concept of city planning, the less frequently understood but far more common corporate or governmental administrative planning, or the currently unfashionable notion of national economic planning. They all have to do with the establishment of goals for highly complex clusters of activity.

Leonard White once said that program planning "begins with the detailed study of the job to be done, leading to the identification of its principal parts and their divisions and subdivisions, the relations between them, the boundaries of each vis-à-vis the others and the types and procedures that will be required."¹

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For a community planning commission, a study of the existing situation, or what White called "the job to be done," normally starts with some attempt to frame the basic purpose or policy of that community. Community planning, as already pointed out, has to do with the ends or goals for the community. John D. Millett has written that "the foundation for most government administrative effort is a set of value judgments about what is desirable for the public good and about an inherent need for effective social action through government."²

In many communities, the questions about goals are, unfortunately, still frequently treated as closed questions, as problems which can easily be answered by doing what others have done, or by consulting "the experts." They are not closed questions. They are among the most important decisions community leaders are called upon to make and ignoring them may lead a planning commission into endless difficulties.

Planning and goal setting is, of course, an ancient and honorable concern in urban communities. Hughes and Lamborn, a brace of venerable English town planners, once wrote that, "A very little study of ancient cities proves that the art of planning cities as harmonious wholes was studied and to some ex-

² *Management in the Public Service*, McGraw-Hill, 1931, p. 11.