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IDENTITY, VOTING RIGHTS, AND THE REMAPPING OF POLITICAL
REPRESENTATION: A CASE STUDY OF NEW YORK CITY'S 1991
REDISTRICTING

by

Lorraine Carol Minnite

A dissertation submitted to the Graduate Faculty in
Political Science in partial fulfillment of the requirements
for the degree of Doctor of Philosophy, The City University
of New York

2000

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This manuscript has been read and accepted for the Graduate Faculty in Political Science in satisfaction of the dissertation requirement for the degree of Doctor of Philosophy.

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ABSTRACT

This study addresses questions about the relationship between law and politics, and argues that on matters of political equality the judicial process must be seen as part of the larger political process. After reviewing the historical and legal origins of a theory of political representation in the U.S., the study assesses the intersections of theory and practice in a recent case of local redistricting in New York City. In understanding how historical ideas and legal institutions influence and constrain contemporary politics, the role of the Supreme Court as an innovator of a modern rights-based theory of representation is emphasized. The Court's theory of representation is at the heart of conflict over legislative redistricting.

The New York City case is an excellent one for studying the intersection of law and politics because it squarely places law at the center of what was a highly-charged political event. Moreover, New York, like other complicated and diverse centers of population, challenges the prevailing legal regime's approach to representation. Although

minority representation in the New York City Council expanded overall through redistricting in 1991, the case highlights the limitations of districting solutions to problems of representation. Under the laws controlling reapportionment and districting, especially the mandates of the federal Voting Rights Act, the problem of inter-group conflict among 'protected' classes presents a new dilemma for voting rights doctrine. While the level of minority representation increased, intergroup relations among minorities in New York, especially blacks and Latinos, were strained by the redistricting process. In one case examined in detail, traditional neighborhood boundaries were breached and a multi-racial coalition thwarted by the redistricting process. On the other hand, the New York City case also suggests possible strategies for a way out of the Court's newly restrictive interpretation of voting rights and vote dilution criteria. The ability of the gay and lesbian community in New York to show evidence of community cohesion through means other than "hard" population statistics is a precedent the Court has indicated may satisfy its post-*Shaw* approach.

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CHAPTER 1 INTRODUCTION

This dissertation addresses questions about the relationship between law and politics. The material examined involves a case study of local redistricting in New York City. The findings have both methodological and substantive implications. First, the study suggests the importance of representation and expressive political movements to the study of urban politics. The political economy paradigm excludes such concerns therefore missing the significance of symbolic action and identity issues for urban politics today. Second, the case material and New York City's experience with what is sometimes called "affirmative minority gerrymandering" suggest how the judicial framework structuring the politics of redistricting weakened the discourse on representation and minority 'empowerment' and limited the outcomes.

As Alexis de Tocqueville first observed, "scarcely any political question arises in the United States that is not resolved, sooner or later, into a judicial question (de Tocqueville 1945, 290)." My hypothesis goes further: on

matters of political equality, like those at the heart of legislative redistricting, the law does not stand outside the political process as a neutral set of rules, but rather structures the political process in specific ways. As the legal positivists point out, the law is a system of command and penalty under the control of a sovereign power. But when the law legitimates power or ideology, as the critical legal studies theorists argue, it is also instrumental. The instrumental use of the law is not pre-determined by its character as a system of command and penalty, rather, in constitutional democracies, the instrumental use of the law will be politically contested, and can therefore serve to strengthen or weaken democratic practice.

On questions of political equality, the rule of law, the strategic use of litigation, and the judicial process itself must be seen as part of the larger political process. Moreover, the interconnections between law and politics on matters of political equality function to legitimate both judicial and political institutions. That is to say, the successful use of litigation to pursue equality claims legitimates both the independence of the judiciary as an institution where such claims can be fairly adjudicated, and the political system itself, which absorbs judicial

intervention as a matter of course. Through this kind of legitimation, the appearance of a separation between law and politics is maintained. The appearance of a separation of the law and politics perpetuates the legitimation of the constitutional order.

The complex of rules evolved by the Supreme Court over the last four decades regarding voting apportionment and voting rights is a good example of how this works. The reasoning follows Schattschneider's insight of forty years ago:

In politics as in everything else it makes a great difference whose game we play. The rules of the game determine the requirements for success. Resources sufficient for success in one game may be wholly inadequate in another. These considerations go to the heart of political strategy (Schattschneider 1975, 47-8).

The laws that have evolved to govern the political process are based on an ingrained cultural understanding of the meaning of political representation. This cultural understanding flows from an historical experience of conflict over the meaning of freedom and equality. The legal response to the contested meaning of representation has rooted the legitimacy of our majoritarian, representative electoral system in notions of individual

rights that in some ways contradict the group basis of the electoral system. Developments in the area of voting rights law have exhausted this (il)logic. The Supreme Court's interpretation of the 'right to vote,' to 'have one's vote counted,' and 'the right to fair and effective representation' have become so confused, they render the rhetoric of representation used by the Court meaningless.¹ This dissertation will use case study material to explore the contradictions of the Court's invention of an individual right to vote lodged in the Fourteenth Amendment, with its progression toward a group right to representation following its changing interpretations of the Voting Rights Act.

To examine the hypothesis that laws establishing the rules for access to political equality and fair and effective representation are very much a part of the political process, this dissertation examines in detail the 1991 redistricting of the New York City Council. The case is an excellent one for studying the intersection of law and politics because it squarely places law at the center of what was a highly-charged political event. The unprecedented "open" and public nature of the proceedings

¹This point is further explored in chapter 9.

provide ample material for examining the dynamic relationship between law and politics on the question of political representation, a fundamental question of democratic theory. As the study will suggest, it would be a mistake to conclude that because minority representation in the New York City Council was increased through the process of charter reform, neutral legal principles can be discovered and applied to resolve problems of political equality. In fact, a detailed examination of how the laws came about and how the restructuring of local government to make it more "representative" transpired reveals the symbiotic relationship between law and politics, and how law is used to legitimate political outcomes.

Indeed, as a political event, the redistricting process mandated by the city's new charter and undertaken by the New York City Districting Commission will be evaluated as a 'constructed political spectacle.' Murray Edelman uses the idea of a constructed political spectacle to explore how political news and newsmaking serve a particular legitimization function in politics (Edelman 1988). "Rather than seeing political news as an account of events to which people react," he writes, "I treat political developments as creations of the publics concerned with them. Whether

events are noticed and what they mean depend upon observers' situations and the language that reflects and interprets those situations (Edelman 1988, 2)." He explains,

The spectacle . . . continuously constructs and reconstructs social problems, crises, enemies, and leaders and so creates a succession of threats and reassurances. These constructed problems and personalities . . . play a central role in winning support and opposition for political causes and policies (Edelman 1988, 1).

Edelman rejects the positivists' assumptions that "facts" exist independent of their social construction, and that observed and accumulated, they point the way to enlightenment. "The very concept of 'fact' becomes irrelevant because every meaningful political object and person is an interpretation that reflects and perpetuates an ideology (Edelman 1988, 10)." Because Edelman's approach to the political spectacle is used here to analyze the New York City redistricting case, it is worth quoting him at length. These interpretations, he continues,

. . . comprise a spectacle which varies with the social situation of the spectator and serves as a meaning machine: a generator of points of view and therefore of perceptions, anxieties, aspirations, and strategies. The conventional distinction between procedures and outcomes loses its salience because both are now signifiers, generators of meanings that shape political quiescence, arousal,

and support or opposition to causes. The denotations of key political terms become suspect because leaders are not originators of courses of action, problems are not necessarily undesirable conditions to be solved, and enemies need not do or threaten harm. Instead, the uses of all such terms in specific situations are strategies, deliberate or unrecognized, of strengthening or undermining support for specific courses of action and for particular ideologies (Edelman 1988, 10-11).

In Edelman's view, what makes a problem, leader, or event political is the unresolved controversy over their meaning. Political acts are "discontinuous, sometimes contradictory entities constituted by the signifiers and contexts that give them meaning (Edelman 1988, 10)." They may be discontinuous because of the multiple meanings they radiate, but it is important to stress the material basis for symbolic action, language, or objects. The power to evoke meaning is drawn from the embeddedness of the symbol or spectacle in specific material or social conditions.

In addition to contributing data to our understanding of redistricting politics and the limits and possibilities of majority-minority districting, this study has implications for the study of urban politics. It suggests that questions of representation are central to the study of urban politics today. Moreover, one must choose an analytical framework appropriate to the research questions

being asked about urban politics. The way one studies contemporary urban politics has important implications for the conclusions one is able to draw. Preliminary findings from this dissertation are offered here as a means of demonstrating the point.

The New York City redistricting case was an important event in the local political life of New York City. Why did this conflict take place - if - as some of the prevailing approaches to the study of urban politics might suggest - there was little to be gained from it? What are the implications of the New York City redistricting case for theories of urban politics and political science in general?

From the perspective of some of the traditional urban politics paradigms, in particular the rational choice or "City Limits" argument (Peterson 1981), the structural Marxist approach, and regime theory, local conflicts over political representation are unimportant because the locus of local decision-making is outside any local institutions of representation; the narrowness of the local decision-making space renders local legislative processes trivial and issues of political representation of little consequence.

This dissertation suggests that the question of why a major conflict over inclusion and political representation

took place in New York City can only be answered if we suspend the principal preoccupation of the contemporary urban politics literature with growth politics, land use policy, and the economic and federal constraints on urban policy-making, and substitute instead a different presumption about politics: political struggles are not only about the distribution of material resources. Sometimes they are about the perception of redistributive possibilities. But more importantly, they can also be about what the political theorist Judith Shklar called 'standing' and 'civic dignity,' (Shklar 1991) they can be about inclusion and a desire for representation on the part of the excluded. Representation, in and of itself, is the issue.

This dissertation asks a different kind of question about urban politics from those more often posed in the literature. It asks why representation is important to people who feel and are excluded if it is not strongly related to favorable, manifest policy outcomes, power shifts, or material benefits. The question of representation is an important one not only for the study of contemporary urban politics, but also for the study of politics, generally. That this kind of public debate took place in an urban context is non-trivial because cities are

the most diverse centers of our society. Difference has become concentrated in our cities and as a result, urban politics is not what it used to be: it is more multi-racial and multi-cultural, less structured by party systems, and relies less on the distribution and redistribution of resources as organizing principles. The same can also be said of American politics and the likely future of American politics.

The analytical framework employed here is an institutional approach. The claim is not that we throw out the traditional approaches that have made the study of urban politics so rich. On the contrary, the argument is that the questions those approaches addressed are more complicated now, in part because the traditional analyses of urban politics which underscore the limits of cities to act in the economy or as 'local states' are mostly correct.

To understand why the redistricting controversy examined here happened, we need to analyze the complex convergence of a constellation of forces represented by institutional players who engage in the legal, political, and policy processes at hand. These players brought different interests and different agendas to bear on redistricting. The processes themselves are semi-autonomous

and historically contingent. In other words, we are not looking at a linear function but a more complex set of interactions that transform each other over time. From an abstract perspective, what this study of political conflict over redistricting reveals is a self-changing process in which institutional behavior constrains what is possible. It also generates the bases for new challenges to institutional constraints, which are then changed in new ways by the conflict those challenges engender.

Why was representation important to the minority groups involved in the 1991 redistricting case? If we looked for an answer in the immediate results of redistricting or in policy outcomes, we would find little evidence with which to formulate an answer. In fact, if not for wide public participation in the redistricting process, the question might not be asked at all. To begin to answer it, we need to understand the legal mandates and constraints on drawing minority council districts; we need to understand the history of charter reform and redistricting politics in New York City; and we need to investigate the redistricting policy process itself, beyond the official record of it and press reports. We need an historical analysis of how institutions, especially the law, shaped the possibilities

for minority voting rights claims, limited the outcomes, and laid the foundation for new demands and new possibilities for representation and inclusion.

What follows is a brief description of the case study material used to explore the central hypotheses discussed above.

In 1991, the New York City Council expanded in size. Sixteen council districts were added to the existing 35. The redistricting of the city council was a product of charter reform, and charter reform was the remedy the city pursued to resolve a 1989 Supreme Court ruling that its form of local government violated the Fourteenth Amendment's Equal Protection Clause.

The 1991 redistricting case has some unique features which on their own make it worthy of study. One of the goals of charter reform was to enhance minority representation in local government. The charter provided for the creation of an independent districting commission that would draw new city council districts after the 1990 census. The charter also incorporated a set of ranked criteria for drawing districts and required that the districting commission observe these criteria in order of importance. Foremost among them were rules which combined

federal, local, and other constitutionally permissible standards for drawing districts. The first rule requires population equality across districts. The second stipulates "fair and effective representation" for racial and language minorities protected by the federal Voting Rights Act and its amendments. The third rule is specific to New York City and refers to keeping intact "neighborhoods and communities with established ties of common interest and association, whether historical, racial, economic, ethnic, religious or other." The next four rules incorporate known constitutionally-permissible standards for drawing legislative districts. They require districts be compact, not cross county boundaries, and not be drawn to purposefully separate geographic concentrations of voters enrolled in the same political party.

The second unique feature of the New York City case is the extent of public participation in the redistricting process. The commission went well beyond the charter requirements for public participation. The charter required only seven hearings be held. Over a ten month period in late 1990 through May of 1991, the commission held 27 public hearings across the city at which more than 2,300 people testified; it met and deliberated in public and convened

more than 400 meetings with community groups; it distributed a monthly newsletter in Spanish and English to more than 10,000 people and organizations; mounted a public relations campaign which focused on minority media markets; and set up a "public access terminal" with census data and redistricting software that interested people could use to develop alternative council plans for the commission's consideration.

It is important to know that three of New York City's five counties fall under the jurisdiction of Section 5 of the federal Voting Rights Act. What this means is that any changes to the city's electoral system must first be "precleared" by the U.S. Department of Justice to ensure that the changes do not violate the federal protection of minority voting rights, or dilute minority voting power. The rules of the Voting Rights Act played a very important role in structuring the redistricting policy process.

The commission's final plan was initially rejected by the Justice Department which objected to three of the 51 districts because they discriminated against Latinos. The problem the Justice Department identified was an interesting one and gets at the complexity of the process at hand. The Justice Department objected to the protection of incumbent

minority council members at the expense of minority voters through the practice of "packing" or "overconcentrating" minority voters in the incumbents' districts and siphoning them off from neighboring districts. The commission tinkered with the lines and resubmitted the plan and it was precleared by the Justice Department in time for the 1991 council election calendar to go forward.

The final plan resulted in an increase in minority representation from nine of 35 council members or 26 percent, to 21 of 51 council members or 41 percent, a significant expansion.

And yet, what was really being fought over? There is an old saying about the New York City Council that the difference between the council and a rubber stamp is that a rubber stamp leaves a mark. It is true that until the 1989 charter reform, the council's formal powers were outweighed by the powers of the mayor and New York City's unique governing executive, the Board of Estimate. For example, both the Board and the council reviewed the mayor's expense and capital budgets, but whereas the council could only reduce the mayor's budgets, the Board could make any change it wanted. The Board also exercised powers outside the council's reach, such as control over the acquisition and

disposal of city property and the unchecked granting of city franchises, to name a few. The revised city charter, however, greatly expanded the formal powers of the city council, giving it sole approval of the city's budget, review of most land-use matters, and the power to oversee city agencies to monitor their performance. But old ways die hard. An analysis conducted by the New York Public Interest Research Group (NYPIRG) of legislation passed by the city council in its second legislative session following charter reform (1991) found that a third of the council bills that became law still dealt with street name-changes (Meyer and Hefner 1992). It is interesting to note that this is about the same percentage Sayre and Kaufman found when they studied the council's behavior over the period, 1938 to 1956 (Sayre and Kaufman 1965, 611). Half the council's committees, for which members are paid additional stipends to chair, met less often in 1991 than they did the year before. And dissent remained rare - not one of the 697 votes taken by the whole council overturned what a council committee had recommended, and almost 80 percent of all local laws passed unanimously (Meyer and Hefner 1992, 1).

If we were only to look at the relative ineffectiveness of the city council and how small the pie to be carved up

was, we would have a hard time figuring out why so many people seemed to think it worthwhile to get involved in the redistricting process. In fact, we might simply dismiss the whole event as inconsequential. So we need a different set of questions for urban politics today. We need to ask what the question of representation means for urban politics; we need to examine the ways new groups forge political identities, how they are incorporated into the political system, and how they seek to participate in the political process; we need to evaluate the legal process and how it relates to the political process of incorporation; and we need to understand the contingent relationships between policy, politics, and the law if we want to answer the question of why political representation is important if it does not necessarily lead to an actual redistribution of resources.

As our cities and our nation become more diverse, the question of representation becomes more important because it is part of the front line of the state against which new groups will, nonetheless, struggle for resources whether those resources are objectively there or not. Representation as a form of recognition by the state is the first stage in this process.

With these issues in mind, this dissertation examines the cases of several groups seeking increased representation in the city council through the redistricting process, two groups, Asian Americans and gays, in detail. The study finds the following: Blacks achieved representation at near their proportion in the population at-large. Latinos tripled their representation but still did not achieve representation proportional to their size in the city's population. Asian Americans got a nominal Asian district created for them out of Manhattan's Chinatown, but failed decisively to elect an Asian-American to the council. All of these groups are considered "protected minorities" under the purview of the federal Voting Rights Act and its amendments. Their "fair and effective" representation was the second highest districting criteria incorporated into the city's new charter. Gays and lesbians, whose voting rights are not constitutionally protected by the federal statute, by federal or state case law, or by local law, nevertheless successfully argued that they should have representation in the form of a "gay winnable" district from which an openly gay man was subsequently elected to office.

Blacks achieved representation proportional to their numbers in the city's population in part because as a group

they were already incorporated into city politics. The Voting Rights Act, the touchstone of the black civil rights establishment, was fortified in the city charter and constrained the districting commission in its work. For example, the commission could not proceed entirely in secret. Its adoption of an expansive public participation program was designed to preempt unfavorable Justice Department scrutiny when the plan was submitted for preclearance at the end of the process. The counsel to the commission was a lawyer on leave from the NAACP Legal Defense and Education Fund, and the Mayor's most important appointee to the districting commission was an African-American civil rights lawyer who served as one of the commission's vice chairs. There was little question blacks would quantitatively improve or at the very least maintain their representation in the city council. The conflicts which did occur over the carving of black districts had more to do with the issue of black incumbency and political insurgency than they did over the issue of the number of black districts. In other words, protecting black incumbents by drawing their black opponents out of their districts created the most conflict with respect to the issue of black representation. Here, the traditional civil

rights groups stayed out of the fray. The executive director of the commission has written that beyond an early involvement, both the national and local offices of the NAACP, so influential in redistricting in other jurisdictions, did not play a major role in redistricting in New York (Gartner 1993, 118). In the final plan, the number of black city council members doubled from six to 12, representing 24 percent of the council, about what blacks were in the city's population.

The plight of Latinos was different. Like blacks, Latinos represented nearly a quarter of the city's population. But Latinos are more diverse in terms of national background, and less residentially concentrated than blacks. With lower citizenship and voter registration rates than blacks and more residential dispersion, the commission claimed it was harder to draw Latino districts than it was to draw black districts. Politically, Latinos also had a briefer history of representation in city government. With the notable exception of Herman Badillo, Fernando Ferrer, and Jose Serrano, Latinos had not achieved the level of incorporation in city politics that blacks had. Their influence within the districting commission was weak and Latino advocates were split into factions, with the

Puerto Rican Legal Defense and Education Fund (PRLDEF) playing the most prominent role. PRLDEF became the major opponent of the commission's work, eventually turning to a litigation strategy to influence the Justice Department and stop the implementation of the plan.

Latinos because of their weaker political incorporation and fragmented advocacy were sacrificed to the pressures of incumbent protection which affect all reapportionment efforts. Incumbent protection was not always an unstated goal of the commission, but it could not proceed unimpeded, despite the domination of the Democratic party in New York City politics. The goal of incumbent protection was accommodated to judicial mandates and other political contingencies and clearly pursued by the commission. This left less room to maneuver the creation of Latino districts, especially since it was not always easy to draw them in the first place. With the final plan, the number of Latino council members tripled from three to nine, a substantial increase, but one which Latino advocates and elected officials felt was too low because it was not proportional to the size of the Latino population in the city.

Latino advocates demanded parity with African-Americans and when this did not happen, they blamed the commission for

favoring blacks. The tenuous black/brown coalition that had been forged during the Jesse Jackson Presidential campaign in the city in the 1980s, and had been responsible for the election of David Dinkins as the first black mayor of New York was put under tremendous strain by the conflict over redistricting. This was one of redistricting's worst outcomes: the thwarting of multi-racial or class-based electoral coalitions.

The story of the struggle for Latino empowerment in New York City deserves a fuller analysis than is given it here, although the treatment of Latinos in the districting process is outlined in chapter 7. The focus of the dissertation is on how even newer groups in the city's political culture struggled for representation. What is instructive is how these groups modeled their appeals on what worked for blacks, despite the fact that in terms of their structural position in the political and economic systems of the city and nation, they differed significantly from blacks. The law governing districting and how it has patterned the expansion of rights among the disenfranchised is controlling here. Consider the cases of Asian Americans and gays.

Asian Americans sought the creation of an Asian district by the districting commission. Early on in the

process the commission decided it would commit to the creation of such a district and that the district would most likely be carved in lower Manhattan where the city's oldest (but no longer biggest) Asian American community resides. Here, the executive director of the commission writes that the commission was highly impressed by representatives of a group called Asian Americans for Equality (AAFE) whose careful and comprehensive presentations for how the commission could draw a Chinatown district were persuasive (Gartner 1993, 130).

There were a number of thorny legal and political problems with the Chinatown district. The effort to create an Asian district in Chinatown pitted Asian Americans and Latinos against each other. These groups have shared the neighborhoods of the lower East Side for generations. Chinatown is a densely concentrated residential and commercial core neighborhood on its own. But by the 1990s the traditional boundaries of Chinatown were being breached north and east, pushing into Latino neighborhoods as another wave of immigration from China added thousands of new people to the area. Despite the cultural and language differences of these two groups, they share working class status and face similar problems like the need for bilingual programs

in the public schools, and poor working conditions associated with low wage jobs.

The problem for the districting commission was that Chinatown was too small to be a district by itself. It had to be linked to other neighborhoods to reach the mandatory population threshold of 143,000 people. At the same time, Latinos from the lower East Side demanded that the district drawn there maximize the opportunity to elect a Latino to the city council. Latinos were also not a majority. Here the Voting Rights Act which protects the voting rights of both groups was of no help. The Act, designed initially to address voting discrimination against a black minority by a white majority, provides no guidelines on potential competition between protected groups. For this reason, the federal courts' treatment of voting rights controversies in multi-ethnic settings has been inconsistent and was of little guidance to the districting commission in deciding what it had to do to comply with the Act. On the other hand, the extension of the coverage and protections of the Voting Rights Act to language-group minorities in the 1970s, including Asian Americans and Latinos, has shaped their civil rights organizations in the image of the major black organizations like the NAACP Legal Defense and Education

Fund, and patterned their struggle for "empowerment" through the fulfillment of the promise of full political rights envisioned by the Act.

The political problem with creating a majority-minority district of Asians and Latinos was localized in several city blocks of subsidized, middle income housing on Grand Street, occupied mostly by white residents. This white enclave is the political power base of the current Speaker of the New York State Assembly. To reach the Latinos of the lower East Side, the Chinatown district had to extend east, including the Grand Street co-ops in the district. The favored Asian American candidate feared that to do so would jeopardize her chances for winning election. Instead, Chinatown was fastened to a recently developed even wealthier, mostly white housing complex located in the opposite direction of the Latino neighborhoods of the lower East Side. Asian American advocates of this plan reasoned they had a better chance of electing a "candidate of choice" in a district dominated by wealthy whites who were mostly newcomers to the area and so, it could have been assumed, might not pay attention to city council elections, than in a district that included high voting middle income housing and low income Latinos. They were wrong. The Asian American candidate who

had pushed the commission to draw a politically viable district for her lost to a white female candidate from middle income housing to the west of Chinatown.

Lesbian and gay New Yorkers represent a case in which political organizing proved more important than any legal mandate to enhance electoral opportunities alone. The voting rights of gays are not protected by the federal Voting Rights Act, nor were their rights explicitly incorporated into the city charter. But they evolved the equivalent of protected legal status by organizing politically and innovating a definition for a "community of interest." This is a legal term for a "post-race" concept of group rights the Supreme Court has begun to embrace. The experience of gays and lesbians in New York City's redistricting points the way to possibilities for minority group empowerment strategies in the face of a roll back by the Court on the meaning of the Voting Rights Act.

Advocates of a gay district quickly mobilized around the districting process. The president of the Gay and Lesbian Independent Democrats of Manhattan said to a reporter, "The number one thing is just sheer representation, to have a seat at the table (Browne 1991)." Gary Lawman, a gay man and the president of the Village

Independent Democrats, a reform Democratic Party club in Greenwich Village, testified that the symbolism of representation was very important to the community because it reflected a positive image for at-risk gay youth (Browne 1991). The burden on the advocates was to make the case that 1) they were a community of interest similar to the racial and language-group minorities protected by the Voting Rights Act, and 2) that they were residually concentrated enough to form the core of a district. Advocates were creative in facing both challenges. They pointed out a history of discrimination and the growing violence against gays and lesbians in the city. They compiled data to document the electoral results of previous elections featuring gay and lesbian candidates, the location of institutions of the gay community like book stores, bars, and community centers, and they showed a degree of residential concentration through an analysis of the postal zip codes of contributors to gay and lesbian organizations. Gay leaders tried to build some bridges with leaders of other minority groups and showed sensitivity to the fact that they had to wait in line for their own district behind the protected minority groups. The commission was persuaded to create an explicitly "gay winnable" district abutting the

Asian district in lower Manhattan and a gay candidate was elected to office.

Unlike blacks, Latinos, and Asians working to influence the districting commission, gays were politically unified. But they were also aided in their quest for political representation by complex factors having to do with the commission itself, and with the influence of the outer borough party organizations. Evidence suggests key individuals on the commission staff were personally sympathetic to the idea of a "gay winnable" district. The advocates agenda was quickly adopted and no one on the commission objected because 1) the goal of a gay district could be achieved without upsetting the incumbency protection goals of the city council appointees to the commission; and 2) because the demand for a gay district could be accommodated in Manhattan where the Democratic party organization is the weakest of the five county organizations, and where the incumbents likely to be sacrificed were two liberal white women who often clashed with the Speaker and were not always seen as effective advocates for the Mayor's political agenda.

This dissertation argues that urban politics have become more complicated to analyze as our cities have become

more racially, ethnically, and culturally diverse -- complications exacerbated by the triumph of the "City Limits" theorists who have correctly shown us how fiscally constrained cities have become in the intergovernmental system and the global economy. The case material will demonstrate how complex the processes behind the outcomes were and how the legal, political, and policy domains were contingent upon each other. Within the context of the value our society places on individualism and the notion it promotes of representation as a mirroring process between the individual voter and his or her representative, representation can mean different things to different groups. For the newest groups seeking to incorporate into the political system, however, political representation is mostly a goal in and of itself. The symbolic meaning of representation is important to emergent groups because it helps them build resources by building a group identity that can then lend coherence to a political agenda or a set of issues the group wants addressed.

This dissertation also suggests that an institutional approach to the study of cities is useful and appropriate to studying the complexity of urban politics. By analyzing the role of the legal, political, and policy processes being

brought to bear on the 1991 expansion and redistricting of the New York City Council, the political controversy surrounding the spectacle of reform can be distilled. The institutional factors determining the outcomes are the following: 1) the determining influence of the Voting Rights Act, all of the case law interpreting its meaning, and the use of strategic litigation to open up the political process; 2) the political history of the city and the way in which charter reform, the party system, and past battles over city council redistricting have shaped the 1991 case; and 3) the redistricting policy process itself - the role of public participation, the deal-making and horsetrading that went on within the commission and between the commission and advocates for specific district boundaries. These factors help explain the limited gains made in the 1991 redistricting by groups who feel excluded from the political process. In other locales, the specific factors will differ, but the research questions, and the importance of studying the process to find answers to those questions will remain the same.

To conclude, the question of political representation is so critical to new groups, even if a rational evaluation suggests that representation is no guarantee of

redistributive benefits. In the past, scholars of urban politics have studied the instrumentalism of tribal identities. For example, they have examined the ways in which race and ethnicity, culture and symbols have been cultivated by big city party organizations for partisan advantage. In the absence of the old political structures and in the face of new immigration and growing diversity, identity retains its expressive force and the meaning of representation to new groups becomes more important.

Moreover, the spate of Supreme court rulings on redistricting in the 1990s make an understanding of the importance of representation and participation in defining the political identity of one's group critical to the survival of voting rights as we know them. In *Shaw v. Reno*, 509 U.S. 630 (1993), and its progeny, known together as the 'wrongful districting' cases (Karlan 1997),² the Court threatens to define the political identity of the nation, a wholly inappropriate intervention into the democratic political process. Their vision is one of a "colorblind" society in which identifying oneself in non-white racial or

²Justice Stevens, the leader of the minority on the Court in these cases, has called *Shaw* and its progeny a "mutant" generation of voting rights litigation (*Miller v. Johnson*, 115 S. Ct 2475, 2498).

ethnic terms is potentially constitutionally suspect. What colorblindness means to the current Court is that if you are not white, you are invisible.

An examination of the New York City redistricting case is instructive for several reasons. First, the New York City case happened before the Court ruled in *Shaw*, and for reasons specific to the demographic and political development of the city, it is an example of the fullest development of majority-minority districting under the old rules. As such, it reveals the limitations and possibilities of districting solutions to problems of representation. In a fortuitous development, the New York City case also prophetically suggests possible strategies for a way out of the current debacle of *Shaw*. The ability of the gay and lesbian community in New York to show evidence of community cohesion through means other than "hard" population statistics is a precedent the Court has indicated may satisfy its new vote dilution criteria.

The next five chapters explore the material basis for understanding the 1991 New York City Council redistricting as a constructed political spectacle. The material institutional bases for this spectacle are the following: 1) cultural understanding of political representation which

equates and individualizes the subject and object of representation (chapter 2); 2) a body of law and legal interpretation which incorporates and codifies this specific cultural notion of the meaning of political representation (chapter 3); 3) a local political culture which frames political contests in terms of ethnic group conflict. Chapter 4 provides background and chapter 6 describes the major features of the year-long districting process and its technical outcomes. Chapter 7 analyzes the case of Latinos in the 1991 council redistricting. Chapter 8 explores the politics of redistricting in detail by presenting a case within a case on how the process played out in several Manhattan neighborhoods and communities. This chapter shows how the redistricting event raised more questions than it solved, further implicating and problematizing the notion of law in this area as neutral of political and social reality. The role of law in contributing to the construction of the spectacle will be evident throughout the analysis, but evaluated systematically in light of the evidence in the final chapter (chapter 9) where the findings and conclusions are presented.

CHAPTER 2

THE ORIGIN OF REPRESENTATION IN AMERICAN POLITICAL THEORY

Legislative apportionment controversies are largely fought out in the courts. Plaintiffs - usually an aggrieved group of voters - and defendants - state or local legislatures or their appointed redistricting task forces - ask the courts to decide the legality of district maps based on a now substantial body of case law and judicial precedent. This dissertation argues that apportionment is a legal solution to what is essentially a political problem of determining the identity of the represented subject. Apportionment controversies over the "shape" and composition of political districts obfuscate the deeper conflicts in our liberal political culture over the definition of a constitutional self.

What is meant by a "constitutional self?" Michel Rosenfeld argues that the interplay of identity and difference is behind the construction of all constitutional orders, and that the outcome of that interplay is a constitutional self. He writes that the three general features of constitutionalism - limited government, the rule of law, and the protection of fundamental rights - make

of law, and the protection of fundamental rights - make sense only in a context of partial identity and partial differentiation of the subject and object of governing and control. In the case of limited government the subject is the governed, the object the governors; a commitment to the rule of law requires the differentiation between the agency of law-making, and the application of the laws to particular cases; and with the protection of fundamental rights, the difference implied is between the rights-bearing individual and the ruling majority.¹

A constitutional self is the subject of representation. J. Roland Pennock suggests that theories of representation are normative theories about how elected legislators should act. He argues that the concept of representation itself is difficult to precisely define, but that precise definition is less relevant for normative theories. Rather, he suggests that any theory of representation should address the questions: What is the proper relationship between the representative and those whom he or she represents? And, what is the relationship between the part represented (i.e.,

¹Rosenfeld explores the notion of a constitutional self in detail in the introductory essay of his edited book (Rosenfeld 1994). He argues that the American version of a "constitutional identity" or a unitary constitutional self is a group of morally equal individuals.

the local constituency) and the whole (i.e., the nation) (Pennock 1979)? Hanna Pitkin, whose book, *The Concept of Representation*, remains the definitive exploration of the idea of representation in Anglo-American political theory, says that any theorist of representation asks: What is represented? Is what is to be represented objectively determinable? And, what are the relative capacities of representative and constituent (Pitkin 1967)?

In a constitutional order, conflict expands over the meaning of a constitutional self, the subject of representation. In the American political context, the subject of representation was fundamentally altered from its original Anglo-Saxon political meaning when revolution and independence rooted it in individualism. It took the next 200 years for representation to emerge as a civil right. As a civil right, representation poses thorny questions for the courts and judges who have become the prime innovators of a legal theory of political representation. These questions turn on the paradox of representation as an individual civil right, and as a group right embedded in majority-rule electoral systems.

Simply put, the argument is this: the meaning of representation is imprecise and has changed through

successive periods of political and constitutional crisis. In America, the concept of representation has come to be defined largely in constitutional and procedural terms - it is meant to be a stabilizing mechanism for government, freeing individuals from politics. Therefore, conflicts over representation, in general terms, have been waged indirectly, as part of larger struggles over such related areas as the expansion of the suffrage, and the location of sovereignty in our constitutional order. The legal issue of apportionment, then, is a conflict over the questions raised by representation theory. The answer the resolution of that conflict presents is our constitutional self.

This chapter discusses the emergence of a new idea of the constitutional self in the founding period of the United States. The next chapter shows how the modern courts have captured the meaning of a constitutional self by evolving a rights-based theory of representation that guides political districting today.

Republicanism in the eighteenth century. Thomas Pangle has called Publius, the author of the *Federalist Papers*, the "New" Publius to emphasize the revolutionary character of the American constitution within the tradition of eighteenth century republicanism (Pangle 1988, 43-7). Richard K.

Matthews concludes that the Constitution is revolutionary in a Weberian sense because it provides radical, rational measures to avoid the chaos, anarchy, and disorder of local self-rule perpetrated by the Articles of Confederation, which it replaced (Matthews 1995). Historians do not all agree on the radical character of colonial America's struggle for independence or the revolutionary character of the American Constitution. But there does seem to be a consensus that the Constitution represents innovation in the science of government. At the heart of this innovation is a unique concept of representation, a concept rooted less in a tradition of European metaphysics, with its distinctive belief in nationhood, and more on a dawning notion of the sanctity of the individual person.

A different concept of political representation emerges, then, in the eighteenth century, born of the American struggle for independence. As Gordon Wood writes, "Of all the conceptions of political theory underlying the momentous developments of the American Revolutionary era, none was more important than that of representation . . . Only by profoundly transforming the traditional character of representation could Americans explain the conception of federalism . . . (Wood 1969, 1)." The theory is not wholly

new, but transformative of the prevailing British conception of representation in at least two important ways. First, it reflects an implicit rejection of the theory of "virtual" representation and an embrace of what might be called "actual" representation.² This shift in thinking is significant, however incomplete, as discussed in more detail below.³

The second innovation in the theory of representation produced by the American struggle for independence is a shift away from the centrality of territory, an organizing principle in the British theory of representation, toward a

²Beer uses the term "actual representation" to discuss the colonial American response to the Crown's insistence that although they sent no representatives to Parliament, the colonies were "virtually" represented there as were all British subjects, nine tenths of whom chose no members of Parliament. The actual representation the colonists demanded was of two alternative forms, the first, what Beer labels the "parliamentary option," called for an American presence in the House of Commons and was perhaps most strongly advocated for by James Otis; the second form of actual representation is what Beer calls the "federal option," and describes as those proposals from colonial Americans in the 1760's calling for a constitutionally protected sphere of home rule or a constitutional division of power between Parliament and the colonies (Beer 1993, 163-85).

³Americans in the Revolutionary War period rhetorically rejected the British defense of its system of "virtual" representation as the basis of legitimacy for Parliamentary legislation found obnoxious by American colonists. The growing ideological movement in the colonies and later independent states toward a more democratic form of representative government, however, stopped short of a fuller expression of "actual" representation. In locating the authority to determine voter qualifications in the states, none of which provided for even universal male suffrage, the Constitution shows tacit approval of some form of "virtual" representation for the majority of the adult population - unpropertied men, women, and African slaves - who were disenfranchised by prevailing state laws.

concept based more on the establishment of proper relationships between people engaged in self-government. Writing of the formative period between the Revolutionary War and the ratification of the Constitution, historian Rosemarie Zagarri puts it this way: "If, as I believe, Americans started out thinking about representation primarily in spatial terms, their experience during these decades convinced them to modify, and eventually abandon, this view. They began to think about representation in demographic terms - in terms of population rather than territory. This conception endures to the present day (Zagarri 1987, 4)."

Both of these ideas about representation, introduced to political theory through the experience of eighteenth century Americans, move the concept of representation toward a clearer specification of what is to be represented - people.⁴ Each idea is discussed in more detail below.

"In America, representation was clearly to be of persons. . . ." (Pitkin 1967, 190). While both innovations in the theory of political representation have the same consequences for the development of that theory, they served different strategic and historical goals. The rejection of the Crown's defense of virtual representation became the basis for the rallying cry of the Revolution, "no taxation without representation." The shift to a concept of representation based on demography rather than territory served as the philosophical underpinning of Publius's argument in favor of an extensive republic.

1) *The rejection of virtual representation.* Virtual representation is most famously elaborated by Edmund Burke, though his thought on the matter is inconsistent over time (Pitkin 1967, 168).⁵ Sometimes, Burke condones a elite form of representation with a "natural aristocracy" deciding what is best for the nation as a whole. Here there is no need for accountability to the electorate, or instructions from constituents on how to vote in Parliament; no particularity of interest is relevant. Rather, political representation is the representation of interests but interests which are abstract, singular, objective, and unattached. These interests derive from the fixed, natural divisions of society into broad, largely economically-based categories such as mercantile, agricultural, and professional interests. Elites are selected by a minority of the people and act as their trustees. Because representatives are beholden to no local constituencies and function as legislators in the common good, the disenfranchised, despite the fact that they cannot vote and have no formal connection to their representatives, are "virtually" represented in Parliament.

⁵J.R. Pole argues that the origin of the concept of virtual representation is Locke's theory of "tacit consent." See Pole (1969,

Colonial Americans dramatically and symbolically rejected this moribund theory of representation when they threw English tea into the Boston Harbor. Bernard Bailyn writes that, "The question of representation was the first serious intellectual problem to come between England and the colonies, and. . . received the earliest and most exhaustive examination and underwent a most revealing transformation (Bailyn 1967, 161-2)." Representation as a binding obligation between representative and constituent had its earliest expression in England in the origins of the House of Commons. In the older, medieval forms of elective representation to Parliament, local men acting as "attorneys" for constituents sought redress of grievances from the royal court at Parliament. In return, these attorneys were obligated to secure financial commitments to the Crown from their constituents. Because attorneys were often unwilling to attend Parliament, local communities sought to bind them even tighter to local interests by requiring they live or own land in the constituency, by controlling payments to them for services rendered, by instructing them in great detail regarding the work at hand,

23) .

and by holding them strictly accountable for their actions (Bailyn 1967, 162-3).

The American colonies imported these older notions of "actual" representation. J.R. Pole has shown how colonial government institutions developed under principles of an older English Whig tradition which ironically faded out of view in England itself during the colonization period (Pole 1969). The English Constitution gave authority to Parliament to join the Crown in the joint administration of law-making. But the seventeenth century social and political upheavals - the Civil War, Cromwellian dictatorship, and Restoration of the Monarchy - saw the powers of Parliament expand then contract, only to become the subject of philosophical inquiry and codification in what is known as Old Whig ideology.

It was this Old Whig ideology as expressed by Harrington, Sidney, Locke and others, considered subversive to the state during the lifetimes of these men, that was taken up by the colonists a generation or two later in the creation of the new American state. Old Whig republicanism stressed the idea that the moral sanction of the laws rested with the people as a whole and that rule without the consent of the people was illegitimate. It held that the

legislative power in government was supreme, and for Locke, especially, that the right to originate the legislative power belongs to the majority. The object of this right is the protection of property.

Eighteenth century Americans in the practice of their legislative Assemblies looked backward from their English origins for a justification of their growing resistance to royal prerogative. Thus, as the idiosyncratic Louis Hartz has so brilliantly shown, a branch of English political culture was split off from the tree of history and planted in the soil of America, where under divergent conditions it grew quite differently from the tree that remained in England (Hartz 1955). During this period as the colonial legislatures began to resist English legislation on grounds that they were not effectively represented in Parliament, Parliament, in fact, had been transformed. Bailyn writes:

The restrictions that had been placed upon representatives of the commons to make them attorneys of their constituencies fell away; members came to sit not merely as parochial representatives, but as delegates of all the commons of the land. Symbolically incorporating the state, Parliament in effect had become the nation for purposes of government, and its members virtually if not actually, symbolically if not by sealed orders, spoke for all as well as for the group that had chosen them (Bailyn 1967, 163).

The Americans flatly rejected the English defense of virtual representation in favor of an ideology of "actual" representation.⁶

The attachment to actual representation is widely evident in the new state constitutions adopted after American Independence. Wood has documented how the Revolutionary state constitutions sought to embody an actual representation "as exact miniature," or "an exact epitome of the whole people (Wood 1969)." The new state constitutions affected "a revolutionary transformation of political authority" by putting an expanded concept of representation at the center of their thinking. There are four ways in which the newly independent states sought to redesign the legislative power, having eliminated the threat of ministerial malfeasance.

⁶The colonists were forced to articulate their rejection during the crisis over the Stamp Act. Thomas Whately, at the behest of his superior, Lord Grenville, Chancellor of the Exchequer, wrote a pamphlet acknowledging that Parliament had no authority to levy taxes on English subjects without their consent. But this was not the case, he argued, with the Sugar and Stamp Acts. Though they elected no members of Parliament, the colonists, like the majority of Englishmen who also lacked the franchise, were virtually represented by every member of Parliament whose duty it was to protect the interests of the empire, and not just those of the individual electors who sent them there. In a best selling pamphlet of 1765, Daniel Dulany, a Maryland lawyer, refuted the English defense of the Stamp Act and virtual representation of the American colonists, arguing that the colonists could not be represented in Parliament because their interests were different from those who lived in England (Baillyn 1967, 166-8; Morgan 1977, 14-26; Beer 1993, 172-7).

First, and most importantly for our purposes, all of the new states appropriated power from the colonial magistracies to the legislative assemblies. The assemblies, many of them bicameral, were no longer just checks on magisterial power, but were the government itself. Wood argues that "it would be difficult to exaggerate the importance of this shift in the responsibility of government," because "for centuries the government had been identified with the executive of the Crown." All of the states agreed that "'the Right to legislate is originally in every member of the Community.'" No political conception was more important to Americans in the entire Revolutionary era than representation. The Americans believed that representation, the great English discovery of the age, had become corrupted in England, but restored and reinvigorated in America, it would ensure Americans' preservation of the sacred right of the people to a voice in government (Wood 1969).

Second, legislative assemblies had to be carefully constructed because while they embodied the people and secured their rights, the example of England's Parliament showed they could become corrupted. Americans believed their own colonial legislatures had been corrupted by

ministerial manipulation, but the same degradation could occur in the absence of such abuse if legislatures were not internally designed to check other potentially corrupting forces. To avoid the fate of the English House of Commons which Americans believed had become forever detached from the people, all states except South Carolina provided for the yearly election of their houses of representatives. The Americans concluded that the corruption of England's Parliament was due in part to its long duration and it was widely believed that elections had to be free and frequent to guard against corruption in the assemblies.

Third, nearly all of the new states expanded the size of their legislative bodies and in a more limited sense, the suffrage. In response to the history of royal control of the size of colonial legislatures (culminating in 1767 in the outright prohibition placed on royal governors to agree to any change in legislative representation in the colonies), the new state constitutions enlarged membership in their legislatures by as much as two and three times (Wood 1993, 167). In keeping with traditional Whig ideology, however, they mostly retained property

qualifications for voting.' "[T]he Revolutionary period did see a general reduction in property requirements for voting (Morgan 1977, 92)," with between fifty and eighty percent of adult white males enfranchised (Morris 1987, 163).

The final reform of representation made by several of the newly independent states was a shift toward greater equality of representation proportioned to the number of taxable individuals residing within the state. "None of these electoral safeguards for the representational system . . . was as important to Americans as equality of representation," writes Gordon Wood (1993, 170). Five states - New Jersey, Pennsylvania, New York, Vermont, and South Carolina - wrote into their constitutions specific plans for the periodic adjustment of representation in the legislature. The experience these states wished to avoid was the English system of "rotten boroughs" which perpetuated aristocratic control of Parliament.

2) *The shift from representation based on territory to representation based on demography.* The second major innovation in the concept of representation developed by the

⁷Pennsylvania actually eliminated property qualifications, substituting a one-year residency requirement and the paying of taxes as evidence of a man's independence and stake in the community (Pole 1969, 272).

Americans is the shift away from a notion of representation based on territorially defined relationships between electors and representatives to one based on demography (Zagarri 1987, 84). Like the rejection of virtual representation this shift was achieved by respecifying the meaning of sovereignty in the people and rediscovering an older tradition of republican thought. Americans looked backward in time to the period of the English Civil War and the radical Whig interpretations of the English constitution by the Commonwealthmen of the early eighteenth century to recover a concept of government whose authority rested on the continuous consent of the governed (Bailyn 1967, 22-54; Robbins 1959). Bailyn draws these conclusions:

The view of representation developing in America implied if it did not state that direct consent of the people in government was not restricted, as Locke would have had it, to those climactic moments when government was overthrown by the people in a last final effort to defend their rights, nor even to those repeated, benign moments when a government was peaceably dissolved and another chosen in its place. Where government was such an accurate mirror of the people, sensitively reflecting their desires and feelings, consent was a continuous, everyday process. In effect the people were present through their representatives, and were themselves, step by step and point by point, acting in the conduct of public affairs. No longer merely an ultimate check on government, they were in some sense the government. Government had no separate existence apart from them; it was by the people as well as for

the people; it gained its authority from their continuous consent (emphasis in original) (Bailyn 1967, 173).

The older Whig notions of political or civil liberty as the power of the people to participate in government and to live under laws of their own making had its origins in feudalism.⁹ Americans mined this past and placed at the center of their developing theory of representation those ideas which stressed the secular, temporal and human character of the relations between the people and their chosen rulers. They divorced these older notions of reciprocal obligation and duty, however, from the confinement of territory, feudalism's corporate, unified unit of representation.

The Federalist Papers' "most novel and theoretical teaching" is its rationale for the republican character of

⁹William Appleman Williams defines feudalism as "a political system and philosophy involving an interlocking network of freedoms, duties, and obligations between individuals inhabiting specified areas of land (1988, 57). Williams clearly disputes Hartz's contention that America bypassed any connection with feudalism. He distinguishes between feudalism and manorialism, which he describes as an economic system of organizing agrarian production, and argues that those who believe the United States bypassed a connection with feudalism confuse the two systems. He argues that the principle of feudalism, with its association of reciprocal duties and responsibilities within a proscribed physical territory called a fief, presented a solution to the problem of the small state as the only feasible unit of direct government, and was "the very backbone of England's colonization in North America." Bailyn and Wood also consider the rise of instructions

the Constitution and its application of republican principles to a defense of an extended republic (Diamond 1972). The success of the Federalists' argument for an extended republic is dependent upon an *a priori* liberation of the concept of sovereignty from a feudalistic attachment to territory. In fact, the idea that sovereignty resides solely in the people themselves, not people tied to places, is the sovereignty upon which the American Constitution is founded. The Revolutionary War was fought to defend this idea and once it was secured, Americans used it to turn the feudalistic notion of the superiority of the small state over the large state on its head. We can now turn to a discussion of this and other ideas about representation elaborated by Madison in defense of the Constitution.

Madisonian republicanism. Matthews writes that where Jefferson and Hamilton were driven by a dream of what America could become, Madison was driven by a nightmare. He studied the history of ancient and modern republics and their decline to uncover the laws of government and to learn how to design a republic that would avert a like future of social disorder and political decay. Madison inevitably

in the colonies as a reversion to feudalism, whereas Beer (1993, 167) disagrees.

held a dark view of human nature, linking him as much to Hobbes as to Locke. He believed that mankind was insatiably selfish and acquisitive. And yet, he was as much a child of the Enlightenment as Jefferson.' He believed in the power of Reason and sought to harness his own rational powers to the design of America's government in order to achieve social and political balance for the new nation, and an unprecedented level of freedom for its citizens (Matthews 1995, 7-8; Diggins 1986, 69-99).

To late eighteenth century liberals in America, government was necessary to regulate human relations in the interest of protecting life, liberty, and property. Locke's teachings served as the basis of American constitutionalism, defined as limited government under the rule of law. He used the narrative of a mythical state of nature and an original social compact to dramatize the legitimate foundation of such a constitutional order in consent. He taught that men leave the state of nature where self-preservation is threatened by lawlessness, and consent to live together in a political society under one government

'For an exposition of the important influence of the European Enlightenment on the leaders of the Founding period, see Commager (1975).

formed with the express purpose of protecting the four goals of Locke's original vision of liberalism: civil peace, material prosperity, scientific progress and rational liberty (Smith 1985, 19-35).

Madison, perhaps more than any of the other intellectual leaders of post-Revolutionary America, valued the first two of these goals over all others.¹⁰ He became increasingly alarmed at the economic conditions in the states, where, under the pressures of a severe and prolonged depression during the decade after Independence, "taxes, stay laws, and inflation had been used by virtually every legislative body to confiscate property." Nearly one-third of all white males had incurred debts they were unlikely to repay (Matthews 1995, 131; Wood 1993, 404; McDonald 1985, 156).¹¹ A taxpayers' revolt in Massachusetts called Shays's Rebellion ensued. In the fall of 1786 armed men gathered to prevent the sitting of county courts while others drew up lists of grievances suffered by farmers protesting taxes and the cost of government. A militia of two to three thousand

¹⁰Matthews, writes, "when presented with the choice of a democratic politics reestablishing justice or protecting the institution of property and therein social stability, Madison stood for stability (Matthews 1995, 171)."

¹¹On the economic conditions of the states after Independence, see Morris (1987, 130-61).

lead by a Revolutionary War soldier named Daniel Shays began to organize but were crushed by a volunteer army before they could take action. McDonald writes that this threat of rebellion "helped to make the Constitutional Convention a reality (McDonald 1985, 177-8)."¹²

"The people's will as expressed in their representative legislatures and so much trusted throughout the colonial period suddenly seemed capricious and arbitrary (Wood 1993, 405)." Wood writes that Madison believed it was not anarchy or a lack of law that threatened the new nation, but, too many laws (Wood 1995, 406).¹³ The legislatures of the states were larger, more representative and more powerful than they had ever been, and it was their very representativeness which had to be checked. This situation posed a new problem for traditional Whig republicanism. For Madison, it demonstrated the possibility that legislative

¹²Contemporary accounts of the events in Massachusetts appear to have greatly exaggerated the actual threat of violence, thus stimulating immediate action by Congress and by some of the states to send delegates to the proposed Convention in Philadelphia. Madison's fears are recorded in his correspondence of the time and later. In 1821 he wrote: "The necessity of such a Constitution was enforced by the gross and disreputable inequalities which had been prominent in the internal administrations of most of the States. Nor was the recent and alarming insurrection headed by Shays, in Massachusetts without a very sensible effect on the public mind (quoted in Matthews 1995, 133)."

¹³For evidence, Wood cites Madison's analysis of the period, a memorandum entitled, "Vices of the Political System of the United States."

power could be as despotic as royal prerogative. He wrote to Jefferson:

Wherever the real power in a Government lies, there is the danger of oppression. In our governments the real power lies in the majority of the Community, and the invasion of private rights is chiefly to be apprehended, not from acts of Government contrary to the sense of its constituents, but from acts in which the Government is the mere instrument of the major number of the constituents (quoted in Wood 1995, 410).

It was, then, an admixture of Calvinist gloom and rationalist hope in the perfectibility of republican government which combined in Madison, the chief architect of the U.S. Constitution, to produce a document of remarkable balance. For there was little question that the true principles of republicanism must be retained.¹⁴ Robert Dahl characterizes the 'Madisonian' theory of democracy as a extraordinary attempt at accommodating majority rule and minority rights, a compromise between achieving the greatest political equality of adult (male) citizens and the desire to limit their sovereignty (Dahl 1956, 4). Matthews and

¹⁴In *Federalist* No. 39, Madison, referring to the republican form of government, writes, "It is evident that no other form would be reconcilable with the genius of the people of America; with the fundamental principles of the Revolution; or with that honorable determination which animates every votary of freedom to rest all our political experiments on the capacity of mankind for self-government." (*Federalist* 1961, 240).

many others argue that Madison indeed built his edifice of a republican, national government upon an unabiding fear of the people, but that he feared government as well, so he armed enough of the people with the vote to check the ambitions of the politically powerful (Matthews 1995, 174-5; Diggins 1986, 53).

In the *Federalist Papers*, Madison distinguished between direct democracy and the republican form of democracy and rejected the former because, as the historical record revealed to him, it was prone to majoritarian excess. "The difference most relied on between the American and other republics," writes Madison in *Federalist* No. 63, "consists in the principle of representation, which is the pivot on which the former move, and which is supposed to have been unknown to the latter. . . (*Federalist* 1961, 386)." A republican form of government is one "in which the scheme of representation takes place," it is a government "which derives all its powers directly or indirectly from the great body of the people. . . administered by persons holding their offices during pleasure for a limited period, or during good behavior (*Federalist* 1961, 81, 241)."

Europe discovered representation, "this great mechanical power in government," but America improved on it

through the creation of unmixed government and an extended republic (*The Federalist Papers* 1961, 100-1). Because of the incorporation of a scheme of representation, what might be called the "liberal" republican form of government is superior to direct democracy for Madison in two major ways. First, it serves to filter the mass of people for its leadership. Liberal republicanism is an elite theory of democracy because it relies on representation to produce the most virtuous people as leaders, people who, Madison believes, hold public liberty more dear, who are wiser, more patriotic, and who probably love justice more than the masses. In *Federalist* No. 10 he argues that representation improves direct democracy because it "refine[s] and enlarge[s] the public views by passing them through the medium of a chosen body of citizens, whose wisdom may best discern the interests of their country and whose patriotism and love of justice will be least likely to sacrifice it to temporary or partial considerations (*Federalist* 1961, 82)." ¹⁵

¹⁵Historians have drawn attention to the apparent contradiction between Madison's theory of human nature and his embrace of the mechanics of representation as a cure to "the problem of wresting a virtuous leadership from an aggressive citizenry," which Diggins argues, "remains unresolved in the *Federalist* (Diggins 1986, 52)."

Secondly, the liberal republican form of government through the incorporation of representation is superior to direct democracy because it is best suited to a large territory. Expansion of the nation, for Madison, is the best protection against the "vices" of republicanism which experience showed him threatened to wreck the Union. "The smaller the society," he writes in *Federalist* No. 10,

the fewer probably will be the distinct parties and interests composing it; the fewer the distinct parties and interests, the more frequently will a majority be found of the same party; and the smaller the number of individuals composing a majority, and the smaller the compass within which they are placed, the more easily will they concert and execute their plans of oppression. Extend the sphere and you take in a greater variety of parties and interests; you make it less probable that a majority of the whole will have a common motive to invade the rights of other citizens; or if such a common motive exists, it will be more difficult for all who feel it to discover their own strength and to act in unison with each other (*Federalist* 1961, 83).

Representation is the mechanism which makes possible the compromise of limited government at the heart of the American constitutional system. It does so in the achievement of two contradictory goals - protecting the sovereignty of the people against usurpers, and at the same time protecting individual liberty against the vagaries of a

selfish and acquisitive citizenry. Representation makes this possible because it involves people in the selection and control of their leaders, but it involves them only procedurally through voting, not substantively in the practice of government.¹⁶ Representative government needs people's involvement only in elections where they can exercise their "veto" over government, with ultimate, but only minimal or indirect participation in the administration of governmental affairs. The people select their leaders and their leaders, not the people directly, determine public policy. If the people do not like the policies pursued by their leaders they may exercise their veto and vote those leaders out of office.¹⁷

"The people," then, are at the center of Madison's concept of representation. Their role is limited but their

¹⁶Voting as the most common form of citizen participation in government is defining element of what Michael J. Sandel calls a "procedural republic." America is a procedural republic because our public philosophy places a higher priority on fair procedures than on particular social, or moral ends of government. In *Democracy's Discontent: America in Search of a Public Philosophy*, he explores the consequences of such a philosophy and argues for the revitalization of civic virtue in American life (1996).

¹⁷This was Madison's view, according to Matthews who writes, "Madison's position remained simply to have the people exercise their voting power to pick men of wisdom. He did not want the *demos* intimately involved in politics. They were not to set the agenda or discuss policy choices; they were restricted to kicking the bums out of office when they got out of line (Matthews 1995, 159)."

sovereignty supreme. An abstract notion of a unified constitutional self underlies the meaning of "the people" as the subject of representation. The idea was not new, but it took a new form in shaping the institutions of representative government in America and remains a central idea in American constitutionalism. It is important, however, not to simplify or overstate the argument. The states are and were intended to be important legal and constitutional entities in the framework of American government. They have reserve rights and powers not explicitly granted the federal government and receive equal representation as corporate bodies in the Senate. In *Federalist* No. 39, Madison argues strenuously against claims that the Constitution creates a central government at the expense of the states, claiming for it instead a unique mixed federal and national character. He argues in Nos. 45 and 46 that the states will most likely have "the first and most natural attachment" of the people because the federal government's powers are expressly limited by the Constitution to "external objects," such as war, peace, and foreign commerce, and because the people will reserve their deepest loyalties for the government closest to them (*Federalist* 1961, 294).

How do "the people" emerge as the subject of representation in the Constitution? There are at least two ideas discussed in the *Federalist Papers* which help to define people as a new constitutional identity. First, as Madison points out in *Federalist* No. 14, one of the improvements of the American republic over its historical antecedents is its "unmixed" character. "Unmixed" is meant to distinguish it from Britain's traditional form of government known as "mixed" government where the organic social orders or estates of royalty, nobility, landed gentry and commons were represented directly in the institutions of government. The American Constitution was a rejection of the institutionalized representation of these older forms of social division and hierarchy.

Secondly, people are prior to and separate from their interests. Interests are treated as only elements of people, rather than as substitutes for them in Madisonian theory. Madison understands people to have interests, he does not assume that people are the same as their interests.¹⁸ It is people and their shared, general, not

¹⁸Pitkin labels the form of representation developed under Madisonian liberalism as "the representation of people with interests (1969, 190-208)."

individual, particular, interests who are to be represented in government. Interests emerge as a problem for liberty when people form in groups or "factions" to pursue like, temporal interests at the expense of the broader public good.

The problem of creating an institutionally balanced structure of government becomes more important for Madison than it was for Locke because the social hierarchy of America differed from that of Locke's England. Locke could assume a homogeneity of interests among and within the social orders because the fundamental political division of his time was between the country and the Crown (Pole 1969, 20). This eliminated for Locke one of the major problems for representation, the problem of contending interests among those who are to be represented. Thus, as Locke worked out his response to Filmer in the *Second Treatise on Government*, "effective and systematic political representation was as indispensable to [his] as to any Whig view of government. . . [but] political representation was [only] assumed. . . it was nowhere closely examined (Pole 1969, 18)."

The male Anglo-Saxon world of Madison's America was a more fluid society. The estates, or organic social orders of Crown, nobility, landed gentry and commons are dissolved

in this America, which means, for Madison, that other, less predictable and therefore potentially more dangerous social forces have greater significance. These forces are the unequal distribution of native talent, manifest as the unequal distribution of property, and the easy consolidation of "public opinion" which can rule men's passions and overrule their reason. Madison identifies these forces as the causes of "faction," an underlying threat to social and political stability, and ultimately to individual liberty.

Factions, defined by Madison as,

a number of citizens, whether amounting to a majority or minority of the whole, who are united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community. . .

must be checked (*Federalist* 1961, 78). But the creation of factions cannot be checked in a "free" society because to do so is to destroy the liberty needed to create them ("Liberty is to faction what air is to fire. . . (*Federalist* 1961, 78)"). Because the protection of liberty is the end of government, such a remedy is unacceptable.

If factions are an unintended byproduct of civil liberty, then government should at least control the

consequences of them. Madison feared the power of the majority in a democracy and all elements of his constitutionalism are directed toward the goal of checking the full expression of majoritarianism. To this end, the Constitution provides for: 1) a representative democracy permitting an extended republic where interests will proliferate, making it harder for any one faction or group to dominate all others; 2) functionally divided government where there is a check on the legislature held by both the executive and judicial branches, and a check within the legislature by the upper house on the lower house where the majoritarian will is most likely to be felt; 3) limited suffrage with the power to determine voting qualifications and the composition of the electorate lodged in the fragmented states where it is to be determined not by their legislative assemblies, but by their constitutions; and 4) a federal structure of government where the national government deals with the "great and aggregate" interests of the people (*Federalist* No. 56 defines them as commerce, taxation, and the military), and the state governments provide the arena for deliberating local concerns.

Structural checks on majoritarianism and the idea that factions are dangerous to democracy play into the

individualistic notion of representation that developed in the country until the modern period when new claims to group-based rights problematized the concept. To Pitkin's question, what is represented? the answer is the individual rights-bearing citizen. Is the individual rights-bearing citizen objectively determinable? In the framework of modern civil rights as they have evolved through the intervention of the courts, the answer is not as clear as it appears to be. With respect to representation, for example, what does the rights-bearing citizen have a right to enjoy? Pitkin's last question, what are the relative capacities of representative and constituent? is more complicated. It would seem that the answer to this question can not be found in the a legal theory of representation, and is, in fact, more a matter of politics than it is a matter of law.

The foray of the courts into these issues is the subject of the next chapter. Contrary to its early prognostications, the Supreme Court's path into the "political thicket" of reapportionment has indeed resulted in the promulgation of unmanageable rules for adjudicating gerrymandering cases. The welter of rules the Court has produced and the litigation the rules have spawned grow with

each decennial period of reapportionment.¹⁹ Moreover, as the case study explored in chapter 8 will highlight, the Court's rules for fair representation, which are based on a binary model of majority/minority rights in which the majority population is white and the minority black, are becoming outdated as the populations of states and localities continue to diversify. New definitions of fair representation and new strategies for gaining fair representation for "under-represented" groups are needed. These concerns will be taken up in the conclusions.

¹⁹In comments made at the Lawyer's Committee for Civil Rights Under Law's recent Voting Rights Conference (held in Washington, D.C., November 19-20, 1999), Zita Johnson-Betts, the Deputy Chief of the U.S. Department of Justice's Civil Rights Division Voting Section, estimated that in the wake of *Shaw* and its progeny, there will be a 25 percent increase in the Section's preclearance workload following the 2000 census. Currently, the Section's 30 attorneys and 19 civil rights analysts handle about 4,000 Section 5 preclearance requests annually, resulting in 15,000-18,000 voting changes per year. This view takes its cue from Justice Ginsberg who noted in her dissent in *Miller v. Johnson*, 515 U.S. 900 (1995), that the Court's new standards for triggering strict scrutiny for districting plans 'predominantly motivated' by race was an "invitation to litigate against the State. . ."

CHAPTER 3

THE JURISPRUDENTIAL FRAMEWORK OF A LEGAL THEORY OF POLITICAL REPRESENTATION

The set of cases analyzed here were adjudicated during the period beginning in the mid-1950's just prior to the rise of the Warren Court majority through to the height of its influence in the mid-1960's. During this period the Court established a constitutional framework for deciding reapportionment controversies that remains in place today, despite the apparent reversals of the Rehnquist Court.¹ As Justice Frankfurter astutely observed in his dissenting opinion in the Court's landmark reapportionment decision, *Baker v. Carr*, 369 U.S. 186, 300 (1962), "what is actually asked of the Court in this case is to choose among competing bases of representation - ultimately, really, among competing theories of political philosophy - in order to

¹The mid-1990's Court opinions on redistricting are discussed in chapter 9. Between 1985 and 1998, the Court heard redistricting cases each term, and invalidated seven of seventeen majority-black congressional districts in Texas, Georgia, North Carolina, Florida, and Louisiana. Except for a California case, the Court has struck down every congressional plan that has come before it during this period (*Voting Rights Review* 1996).

establish an appropriate frame of government. . . for all the States in the Union."²

While the Court has consistently avoided any meaningful discussion of the bases of representative government, a partial theory or framework for understanding the Court's basic assumptions about representative government and a constitutional right to vote has emerged. Because the framework for adjudicating reapportionment and other electoral systems controversies has evolved primarily from succeeding interpretations of the Fourteenth Amendment's Equal Protection Clause, it is labeled here *the equal protection theory of representation*.³ This theory is a novel invention of the Court.⁴

²Justice Harlan, also dissenting, agreed: "In the last analysis, what lies at the core of this controversy is a difference of opinion as to the function of representative government (*Baker* 369 U.S. 186, 333)."

³The legal theory of representation emerging by the 1960s out of the application of the equal protection clause to reapportionment controversies is an original development of the Court. One early study of the equal protection clause documented how reluctant the Court was to apply the clause to the protection of the civil rights of the newly freed slaves. The study found that by 1960, out of 554 decisions of the Supreme Court, only 78 or 14 percent dealt with cases of racial discrimination. The vast majority of the decisions (77 percent) were concerned with legislation affecting economic interests. See Harris (1960) cited in Goldwin (1968, 4).

⁴One early study of the Equal Protection Clause documented how reluctant the Court was in the late nineteenth century to apply the clause to the protection of the civil rights of the newly freed slaves. The study found that by 1960, out of 554 decisions of the Court, only 78 or 14 percent dealt with cases of racial discrimination. The vast majority of the decisions (77 percent) were concerned with legislation

The Court's early reasoning on representation and reapportionment is conceptually shallow, particularly, in the way it reduces the notion of fairness in representation to a simple empirical measure of district population equality, expressed by the Court's prevailing "one person, one vote" rule. The literal interpretation of equality to mean mathematical parity in the ratio of representative and citizen is the foundation upon which later theories of fairness are built. Population equality is a fair place to start. The elegance of the formulation and its adaptability to a set of widely accessible rules is part of the appeal and power of the Court's theory. However, the Court's positivism hobbled it when the Voting Rights Act came into play in reapportionment controversies as a statutory extension of the Fourteenth and Fifteenth Amendments. As a result the doctrinal confusion of later voting rights/reapportionment cases created complex conditions for implementation at the local level, and heightened opportunities for partisan capture of the reapportionment process.⁵

affecting economic interests. See Harris (1960) cited in Goldwin (1968, 4).

⁵Pamela Karlan (1993) makes this point with respect to the impact of doctrinal confusion on the lower federal judiciary.

Three core arguments⁶ frame the equal protection theory of representation. These arguments were the outermost boundaries of the debate on fair representation over the ensuing years, even as the voting rights issues brought before the Court grew increasingly complex. The foundational arguments that emerge in the early opinions are the following: first, fair representation is a question of civil rights. This may seem like an obvious assertion of a widely-held idea, but before 1962, it was not a widely-held idea. Today, malapportionment claims⁷ are not "political questions" beyond the reach of judicial review, they are justiciable controversies when they involve claims of rights violations.

Second, the right to vote is an individual and personal right, but it is also significantly group-based. Despite the fact that the right to vote is a personal right, it must mean more than the right to put a ballot in the box; it is

⁶By using the term "argument" instead of principle or rule I mean to emphasize the open rather than closed nature of the ideas. The three arguments discussed were not resolved by the Justices who held differing views on them but became legally controlling ideas only through change in the composition of the Court over time and the establishment of a majority who successfully advanced the arguments.

⁷"Malapportionment" refers to a districting plan whose districts are improperly unequal in population size. A district is labeled "underrepresented" if its population size is greater than the mean population size across districts, and "overrepresented" if it is below the mean. See Lowenstein (1995, 71).

an individual and personal right to an equally effective vote. "Effectiveness" in voting is evaluated by assessing group performance since political representatives represent groups. If the right to vote means more than the privilege of casting a ballot, as the Court has clearly said, then the right to vote, while individually exercised, has a group dimension. The right to vote is also, therefore, a group-based right.

Third, fair representation is equal representation, equal representation for equal numbers of people, without regard to race, sex, economic status, or place of residence.

This chapter examines each of these arguments closely, paying careful attention to what the Justices said. It then discusses the development of the vote dilution concept and outlines the rules the Court evolved to resolve vote dilution claims.

Fair representation as a question of civil rights.

Casting questions about the fairness of political representation schemes as civil rights issues required the Court to first establish the justiciability of controversies over representation. Justiciability is a normative issue about whether the courts should act on a matter. From the inception of the country, the role of the Supreme Court in

the American constitutional system has been mired in cycles of controversy over justiciability, more broadly defined as the problem of judicial review (Bickel 1986; Ely 1980).

During the period of consolidation of the liberal Warren Court majority (1955 - 1963), the debate over the justiciability of malapportioned state legislatures was centered on the same issues as the larger controversy over the Warren Court's "judicial activism." That is to say, the debate over justiciability during this period can be understood as an expression of a deeper conflict between fundamentally opposed philosophies held by the Warren Court Justices on the proper role of the Court in the American system of government. One view was characterized by a tradition-bound functionalism which theorized a narrow role for the Court, primarily as protector of the constitution's separation of powers, and preserver of both state's rights and the states themselves as the custodians of American federalism.⁴ The other view, one deeply personally held by Chief Justice Earl Warren, favored a belief in the Court as enforcer of justice and protector of individual rights.⁵

⁴Views most notably held by Justices Frankfurter and Harlan.

⁵Besides Warren, the "radicals," as some commentators called them, included Justices Black and Douglas, and later, Justice Brennan.

Chief Justice Warren's decidedly non-traditional, moralistic vision of the institution of the Court gave rise under his leadership to a developing jurisprudence of rights based on increasingly inventive interpretations of the Fourteenth Amendment's equal protection clause (Gunther 1972, 8-10). Thus, the debate over the justiciability of malapportionment took the form of an extended argument about the right of the states to regulate their electoral systems against the right of individuals to an equal, if only tentatively defined, right to vote. The debate plays out in judicial opinion of the period in the back-and-forth of Court opinion and dissent exchanged between a soon to be outnumbered old guard, and a growing liberal majority of Justices dominating the Warren Court.

One of the earliest malapportionment cases to reach the Court was *Colegrove v. Green*, 328 U.S. 549 (1946). The controversy involved a claim by voters in Illinois that their rights under Article 1 and the Fourteenth Amendment of the Constitution were being abridged by the state because it created congressional districts which lacked compactness and approximate equality of population. The Court narrowly ruled to affirm the lower court's dismissal of the case as a matter for the state legislature to decide. In *Colegrove*,

Justice Frankfurter began a line of reasoning which he and Justice Harlan further elaborated in several dissenting opinions over the next two decades. He argued that malapportionment controversies were not justiciable because they involved "political questions."¹⁰ Malapportionment presented a political question, according to Frankfurter, because the basis of the suit against state's election officers was not a private wrong, but a wrong suffered by Illinois as a polity. Therefore, the Court was being asked to correct a wrong that the state of Illinois could correct on its own. He argued further that Congress is constitutionally empowered to judge the qualifications of its representatives and is thus the sole judge of fairness in the electoral system. Justice Frankfurter issued a warning that would be repeated over the years by advocates of judicial restraint in the electoral arena: "Courts ought not to enter this political thicket. . . The remedy for unfairness in districting is to secure State legislatures that will apportion properly, or to invoke the ample powers of Congress (*Colegrove*, 328 U.S. 549, 556)."

¹⁰"Political questions" are controversies the Court has historically classified as "non-justiciable," and left for the other "political" branches of government to decide (Strum 1974; Mulhern 1988; Redish 1985).

To support his argument, Justice Frankfurter cited Article 1, Section 4, of the Constitution which provides that, "The Times, Places and Manner of holding elections for. . . Representatives, shall be prescribed in each state by the Legislature thereof; but the Congress may at any time by Law make or alter such regulations. . . ." He gave a brief history of congressional legislation providing for the rules of apportionment for Congress which summarized how the rules had continually changed over the course of time. Justice Frankfurter explained how great diversity characterized districting in the states until 1842 because there were no laws governing federal apportionment until then. Districting was introduced into federal law at that time, but federal requirements were substantially criticized by opponents of the idea throughout the nineteenth century. Districting was dropped in 1850, reaffirmed in 1862 with a statute that required districts be contiguous, and further expanded in 1872 by a law that required districts be of substantial equality in the number of inhabitants. Equality of size was reinforced in 1911 by federal legislation, but dropped again in 1929. Justice Frankfurter concluded that, "Throughout our history, whatever may have been the controlling Apportionment Act, the most glaring disparities

have prevailed as to the contours and the population of districts (*Colegrove*, 328 U.S. 549, 555)."

In contrast to Justice Frankfurter's views on the incompetence of the judiciary to rule on these matters, Justices Black, Douglas and Murphy dissented, arguing that in fact, the case did not involve a political question matter, that what was at issue was a violation of petitioners' Fourteenth Amendment rights to equal protection before the law. Simply put, "Here we have before us," they said, "a state law which abridges the constitutional rights of citizens to cast votes in such a way as to obtain the kind of congressional representation the Constitution guarantees to them (*Colegrove*, 328 U.S. 549, 572)." Since there was no legal remedy for depriving a citizen of his right to vote, they argued, equity can and should grant relief. Their disagreement with the majority was a fundamental one. The issue was the proper role of the Court in disputes over state power to regulate functions granted the states by the Constitution when such regulation impinged on the perceived rights of individuals - in most of these cases - to equal protection of the law. Ultimately, the dissenting view would prevail. But not before the Court plunged into these doctrinal waters in *Brown v. Board of*

Education 347 U.S. 483 (1954), and the civil rights movement began its march.

The next major case taken on by the Court came some fifteen years later. *Baker v. Carr* has been called one of the single most important opinions decided by the Court in the twentieth century (McKay 1963). *Baker* established the foundation upon which the equal protection theory of representation is built. The case involved a malapportionment claim by voters in Tennessee who challenged a 1901 state law governing apportionment of the state's legislature.¹¹ Tennessee had failed to reapportion in the sixty years following the passage of the 1901 law, and appellants claimed that the law thus constituted capricious and arbitrary state action, offensive to the Fourteenth Amendment in its irrational disregard of the standard of apportionment prescribed by the state's own constitution. The resulting gross disproportion of representation in the state legislature denied appellants equal protection of the

¹¹Tennessee's constitution provided for some equality in the apportioning of its General Assembly and Senate, and for an enumeration of qualified voters every ten years after 1871. Appellants claimed the 1901 apportionment act was unconstitutional when it was enacted because it did not follow an enumeration and apportioned legislative seats arbitrarily and unequally as measured by the 1900 federal census (*Baker*, 369 U.S. 186, 186-95).

law, they claimed, because the 1901 statute ultimately "debased" their vote.

In a carefully argued opinion, Justice Brennan, writing for the majority, set forth a defense of judicial intervention in disputes over malapportioned legislatures. He argued that the issue was misunderstood as a political question, defining for the Court the first time, standards for identifying political question matters (McKay 1963, 655). Citing *Nixon v. Herndon*, 273 U.S. 536 (1927), the first of the Court's white primary cases,¹² he pointed out that the mere fact that a suit seeks protection of a political right does not mean that the case presents a political question. Furthermore, Justice Brennan argued, if "discrimination is sufficiently shown, the right to relief under the equal protection clause is not diminished by the

¹²In *Nixon*, a unanimous Supreme Court struck down a Texas law which prohibited blacks from participating in the state's Democratic party primary. Texas passed a new law giving party officials the power to set their own rules in election primaries, which they did, again barring blacks from participating in party primaries. In a 5-4 ruling, the Court found the executive committee of the state party a creation of the state legislature and the prohibition of black voters an unconstitutional state action (*Nixon v. Condon*, 286 U.S. 73 (1932)). When the Texas Democratic party called a state convention and passed a resolution limiting participation in its primaries to "white citizens," the Court first upheld the party's actions as "private" discrimination beyond the reach of the Constitution (*Grove v. Townsend*, 295 U.S. 45 (1935)), then overturned itself in *Smith v. Allwright*, 321 U.S. 649 (1944), upholding a Fifteenth Amendment right to vote in party primaries free of racial discrimination.

fact that the discrimination relates to political rights."¹³ He concluded that political question cases refer almost exclusively to the relationship between the coordinate branches of government, not the federal judiciary and the states.

Justice Brennan focused the opinion on three areas of doctrinal contention dealt with in the lower court's dismissal of the case: standing of appellants to sue;¹⁴ jurisdiction of the courts to decide the matter;¹⁵ and the justiciability of the conflict.¹⁶

He noted that *Colegrove v. Green* held that voters who allege facts showing disadvantage to themselves as individuals have standing to sue. In this case, appellants clearly had standing to sue. He argued with the lower court's adherence to precedent on the issue of jurisdiction

¹³Brennan took this quote from *Snowden v. Hughes*, 321 U.S. 1, 11.

¹⁴"Standing" is one of the doctrines of justiciability derived from the Constitution's "cases and controversies" requirement of Article III. Generally, one has standing to sue only if injured by a government action (Hall 1992, 819-21).

¹⁵Jurisdiction refers to the power of the courts to hear and decide a class of cases (Baum 1995, 7; Brigham 1984, 101-104). In *Aetna Life Insurance Co. v. Haworth*, 300 U.S. 227 (1937), the Supreme Court held that federal courts may take jurisdiction only of "justiciable" matters, matters "appropriate for judicial determination." See note 16, below.

¹⁶"Justiciability" in the context of constitutional law is a determination of the grounds upon which a matter may be subject to judicial review (Hall 1992, 478).

they claimed originated with *Colegrove* because four of the seven justices voting in that case wrote or joined opinions which held the Court indeed had jurisdiction over the subject matter. Finally, Brennan took issue with the lower court's rationale for denying the issue was justiciable. The lower court held that the matter was non-justiciable because it believed the Supreme Court saw all apportionment cases resting on the Guarantee clause.¹⁷ After re-examining the case history in some detail, Brennan first distinguished separate grounds for judging Guarantee Clause claims and matters presenting political questions to counter the reasoning of the lower court. He then concluded that essentially, the lower court missed the point, that appellants' alleged denial of equal protection was the justiciable cause of action upon which they were entitled to a trial and a decision. The right asserted was within the reach of judicial protection under the Fourteenth Amendment.

Justices Frankfurter and Harlan's dissenting opinions in *Baker* are important to our understanding of the equal protection theory of representation because they

¹⁷Article IV, Section 4 says, "The United States shall guarantee every State in this Union a Republican form of Government." The lower court believed the Supreme Court held that complaints based on the Guarantee clause presented political questions that are not justiciable.

fundamentally oppose the theory's rationale and can therefore offer insight into some of its limitations.¹⁸

In a concurring opinion, Justice Clark called Justice Frankfurter's 64 page dissent, an opinion "bursting with words that go through so much and conclude with so little. . . . (*Baker*, 369 U.S. 186, 251)" But Justice Frankfurter was acutely aware of the significance of *Baker*, of the vast changes in the distribution of political power the decision would bring, and was concerned above all with maintaining the Court's fragile power base. Overturning precedent, he argued, risks undermining the Court's authority especially when the issue is in area previously regarded as outside the jurisdiction of the Court.

In the *Baker* dissent, Justice Frankfurter's rhetoric is urgent; he accused the majority of bringing about "a massive repudiation of the experience of our whole past (*Baker*, 369 U.S. 186, 267)." He struck at the heart of the controversy over the equal protection theory of representation when he argued that what the Court was essentially being asked to do in deciding the case was to choose among competing bases of representation. To Justice Frankfurter, this was why

¹⁸Frankfurter and Harlan wrote separately, but joined each others' dissents.

apportionment cases were political question cases and non-justiciable.

Justices Frankfurter and Harlan used case history, the historical record of districting in the states, and an analysis of the Fourteenth Amendment claims made by appellants to challenge the majority opinion. They assembled a contrary collection of cases which widely upheld and applied *Colegrove's* definition of apportionment as a non-justiciable political question. Frankfurter further detailed the contours of the non-justiciability of matters related to the electoral systems of the states by outlining the long history of judicial thought beginning with *Luther v. Borden*, 48 U.S. 1 (1849),¹⁹ which held that the courts lacked the authority to enforce the Guarantee clause. He denied appellants had a Fourteenth Amendment claim, stating,

¹⁹The controversy sprung from the mid-nineteenth century civil strife in the state of Rhode Island known as Dorr's Rebellion (Zinn 1980, 209-11). Frustrated by severe malapportionment and property qualifications to vote which gave power to entrenched rural interests while disenfranchising urban populations, suffrage reformers held an extra-legal constitutional convention, drafted a new state constitution, submitted the document to popular ratification and held elections under it. The charter government refused to recognize the rebel legislators, which included Thomas Wilson Dorr as governor, and declared martial law. Martin Luther, a Dorr supporter, brought suit against a militiaman, Luther Borden, who had entered and searched Luther's home. Chief Justice Taney originated the political questions doctrine with this case when he refused to answer the fundamental question of whether the Supreme Court would determine the substantive meaning of republicanism and representation.

"It is, in effect, a Guarantee Clause claim masquerading under a different label (*Baker*, 369 U.S. 186, 297)." The essential nature of the controversy involves all of the elements of a Guarantee clause case, he reasoned, and unless it can be demonstrated that the Fourteenth Amendment could bring the issues within the purview of judicial power, judicial competence can not be invented by invoking one constitutional clause over another.

Justice Frankfurter rests his denial of a justiciable Fourteenth Amendment claim on appellants' argument that the state has discriminated against them through a "debasing" of their votes. It is worth quoting his criticism of this notion at length:

At first blush, this charge of discrimination based on legislative underrepresentation is given the appearance of a more private, less impersonal claim, than the assertion that the frame of government is askew. Appellants appear as representatives of a class that is prejudiced as a class, in contradistinction to the polity in its entirety. However, the discrimination relied on is the deprivation of what appellants conceive to be their proportionate share of political influence. This, of course, is the practical effect of any allocation of power within the institutions of government (*Baker*, 369 U.S. 186, 298-9).

"Debasing" of one's vote is circular talk, Justice Frankfurter argued, unless the value of a vote can first be

defined. Determining the value or "weight" of a vote requires the Court choose the basis for representation and the appropriate frame of government for the states. And it was this question, Frankfurter argued, that was really at issue in *Baker*.

Moreover, Justice Frankfurter used history to deny the claim that the Fourteenth Amendment protected a standard of political equality that required the imposition of equal population districting. Elaborating on his opinion in *Colegrove*, Justice Frankfurter reviewed the historical record in great detail to show that representation proportioned to the geographic spread of the population was not practiced in the old English system or inherited by the American colonies, it was not chosen as a national system of government by the Constitution, it was not the predominant practice of the states at the time of the ratification of the Fourteenth Amendment, nor was it the prevailing practice in the states by 1960.

Justice Harlan added to Justice Frankfurter's dissent an analysis of the Fourteenth Amendment as the constitutional basis for an equal right to vote. He believed that the state of Tennessee did not violate appellants' federal constitutional rights assured by the

Fourteenth Amendment, and that the Equal Protection Clause did not create a right to an equally weighted vote. How a state resolved "so intimate a concern as the structure of its own legislative branch," should be left up to the states. "The federal courts have not been empowered by the Equal Protection Clause to judge whether this resolution of the State's internal political conflict is desirable or undesirable, wise or unwise." The only constitutional requirement the federal government had was to guarantee every state a "republican" form of government (*Baker*, 369 U.S. 186, 332-4).

A state could not act arbitrarily or capriciously in determining the structure of its government. However, the Fourteenth Amendment permits discrimination by government if that discrimination meets a permissible standard. Justice Harlan felt that that standard was low and that Tennessee's malapportioned state legislature met it for three reasons: 1) the long history in the American states of malapportionment meant Tennessee was not acting irrationally; 2) the demonstrable inequality across Tennessee's legislative districts was not significant;²⁰

²⁰Appellants submitted a table showing that six counties were overrepresented and eleven were underrepresented. But Harlan concluded

and, most interestingly, Harlan argued that it was not necessarily irrational for a state to establish or maintain an electoral imbalance between its urban and rural populations, suggesting that a state may choose to do so in its self interest to protect its agricultural sector from the vagaries of majoritarianism.

Justices Frankfurter and Harlan used history and precedent as the basis of their opinions on the constitutionality of malapportioned state legislature and congressional districts. The prevention of judicial intervention in these matters prevailed until the majority on the Court shifted its philosophical orientation toward a rights-based jurisprudence under Chief Justice Earl Warren. But the arguments themselves were never resolved. The *Baker* dissent was the last opinion Justice Frankfurter wrote before retiring from the Court. His views were defended by Justice Harlan in dissenting opinions in subsequent cases, but they were eventually abandoned as equipopulous districting was universally implemented across the country. Two other important cases, *Wesberry v. Sanders*, 376 U.S. 1 (1964) and *Reynolds v. Sims*, 377 U.S. 533 (1964), rest on

the disparities were *de minimus* because "in the instance of each county it is only one representative who is either lacking or added (*Baker*, 369

and reinforce the Warren Court majority's reasoning in *Baker*, extending the argument for justiciability of malapportionment claims as civil rights violations.

In *Wesberry*, appellants were qualified voters of Georgia's Fifth Congressional District which had a population two to three times greater than other Congressional districts in the state. Appellants claimed "debasing" of their right to vote resulting from a 1931 Georgia apportionment statute and the state's failure to reapportion since the passage of that law. A three-judge District Court relied on Frankfurter's opinion in *Colegrove* to characterize the case as a political question case and therefore dismiss it for "want of equity."

Black wrote for the new majority arguing that *Baker*, not *Colegrove*, set the prevailing precedent by which the lower court should have ruled. The *Wesberry* majority reversed the lower court and remanded the case to the lower court for a ruling on the merits of the claims. The District Court's ruling was careful to point out that precedent for dismissal was not *Colegrove*'s determination of the non-justiciability of a political question, but rather a want of equity when a political question involved coordinate

U.S. 186, 5)."

want of equity when a political question involved coordinate branches of government, or when resolution of the controversy could be made by the state legislature or the Congress. Nevertheless, *Wesberry* is significant to the establishment of justiciability of the malapportionment issue because unlike *Baker*, it involved a case of congressional apportionment. For the Court, this made it a conflict between coordinate branches of the national government, grounds for non-justiciability by *Baker*'s own criteria.²¹ Black ignored this inconsistency, drawing on the case history outlined in *Baker* which separately established a precedent for judicial intervention in state apportionment of congressional districts.²²

²¹The reader will recall that Brennan's analysis of the political question doctrine implied that conflicts between coordinate branches of the national government might be matters unsuitable for judicial review. Brennan sought to discredit the political question defense of non-justiciability by distinguishing between conflicts over the malapportionment of a state's congressional districts from the malapportionment of state legislatures. This was how Brennan distinguished between controversies over the constitutional separation of power within the federal government and issues of federalism taken up in *Baker*. In the first area, the Court did have an undisputed history of non-interference; but on the matter of state violation of constitutionally protected rights, Brennan argued, the courts have a clear obligation to decide cases brought before them.

²²That case history included *Smiley v. Holm*, 285 U.S. 355; *Koenig v. Flynn*, 285 U.S. 375; and *Carroll v. Becker*, 285 U.S. 380; three cases which, according to Brennan (*Baker*, 369 U.S. 186, 232), settled the issue in favor of justiciability of questions of congressional districting.

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malapportionment as a justiciable matter; and, 2) the collateral question of fair representation a civil rights issue. *Reynolds* consolidated the controlling philosophy for a set of malapportionment cases in six states.²³ The case involved an appeal from the state of Alabama whose reapportionment plan a three-judge District Court had found in violation of citizens' Fourteenth Amendment right to equal protection of the laws. Alabama's constitution required the state to decennially reapportion its legislature according to population, but it also fixed a minimum number of seats for the legislature by county.²⁴ Setting the number of legislative seats created gross inequality in population size across the state's districts. Plaintiffs sued and asked the lower court for an injunction against the state's 1962 election cycle; the federal court declined to hold the state's primary at-large, as plaintiffs had asked, before the Alabama legislature had a chance to address the problem -- which it did with the passage of

²³Those states included Alabama, New York, Maryland, Virginia, Delaware, and Colorado. One week after the *Reynolds* decision was handed down, the Court delivered similar rulings in nine other cases.

²⁴Alabama's 1901 constitution set the number of state representatives at 106 and state senators at 35 for the state's 67 counties and senatorial districts. Each county was entitled to at least one representative; each senate district was restricted to one senator;

another redistricting plan. The District Court then found this second reapportionment plan unconstitutional and ordered a temporary reapportionment to correct the inequality, the first judicially-ordered reapportionment in the nation. Alabama appealed arguing that the federal court lacked the jurisdiction to reapportion a state legislature.

Chief Justice Warren wrote the 8-1 decision. For him, the question of justiciability was, in effect, moot. He saw the problem of *Reynolds* and its companion cases as that of determining the basic standards and applicable guidelines for implementing *Baker*. This was because, in Chief Justice Warren's opinion, *Baker* definitively established that under the Equal Protection Clause a claim of debasement of the right to vote through malapportionment was a justiciable controversy.

In sweeping language Chief Justice Warren disposed of twenty years of the now minority view on the non-justiciability of malapportionment. He wrote:

We are told that the matter of apportioning representation in a state legislature is a complex and many-faceted one. We are advised that States can rationally consider factors other than

and no county could be divided between two senate districts (*Reynolds*, 377 U.S. 533).

population in apportioning legislative representation. We are admonished not to restrict the power of the States to impose differing views as to political philosophy on their citizens. We are cautioned about the dangers of entering into political thickets and mathematical quagmires. Our answer is this: a denial of constitutionally protected rights demands judicial protection; our oath and our office require no less of us (*Reynolds*, 377 U.S. 533, 566).

He went on to quote from the unanimous decision in the racial gerrymandering case, *Gomillion v. Lightfoot*, 364 U.S. 339 (1960), decided four years before:

When a State exercises power wholly within the domain of state interest, it is insulated from federal judicial review. But such insulation is not carried over when state power is used as an instrument for circumventing a federally protected right.²⁵

The right to vote. The right to vote is the most elementary form of democratic participation. Though it is not directly enumerated in the Constitution or in the Bill of Rights, a basic right to vote is implied in Article I, Section 2; Article IV, Section 4; and in the Fifteenth,

²⁵*Gomillion* involved a challenge by black residents of Tuskegee, Alabama to an act of the state legislature which changed the boundaries of the City of Tuskegee from a square to a twenty-eight sided figure, cutting out nearly all of the city's black voters from the city limits without eliminating any white voters. The Court struck down the gerrymander as violative of plaintiffs' Fifteenth Amendment right to vote free of racial discrimination.

Seventeenth, Nineteenth, Twenty-fourth, and Twenty-sixth Amendments.²⁶

The Supreme Court has long recognized the importance of the right to vote. Here is a brief summary of the Court's earliest findings:

- 1) All qualified voters have a constitutionally protected right to vote. Article I, Section 2 explicitly grants states the authority to qualify voters, but the right to vote for members of Congress is not owed to state law "in any sense which makes the exercise of the right to depend exclusively on the law of the State (*Ex parte Yarbrough*, 110 U.S. 651 (1884))."
- 2) "The political franchise of voting" is "a fundamental political right, because preservative of all rights (*Yick Wo v. Hopkins*, 118 U.S. 356 (1886))."
- 3) All qualified voters have a constitutionally protected right to vote and to have their vote counted once, correctly counted and reported. It is "as equally unquestionable that the right to have one's vote counted is as open to protection. . . as the right to put a ballot in a box (*United States v. Mosley*, 238 U.S. 383 (1915))."

²⁶Article I, Section 2 concerns the election of members of the House of Representatives "by the people of the several States;" Article IV, Section 4 is otherwise known as the Guarantee clause and discussed in the text above; the Fifteenth Amendment prohibits the denial of the right to vote on account of race, color, or previous condition of servitude; the Seventeenth Amendment establishes the election of Senators from each state "by the people thereof;" the Nineteenth Amendment forbids the denial of the right to vote on account of sex; the Twenty-fourth Amendment eliminates the poll tax as a qualifying condition for voting for federal office; and the Twenty-sixth Amendment prohibits the abridgment of the right to vote of citizens eighteen years or older on account of age.

- 4) The right to vote cannot be denied outright (*Guinn v. United States*, 238 U.S. 347 (1915)).
- 5) One's vote can be protected from the diluting effect of illegal ballots (*Ex parte Siebold*, 100 U.S. 371 (1879); *United States v. Saylor*, 322 U.S. 385 (1944)).
- 6) From the white primary cases - the right to vote in a primary is covered by the Equal Protection Clause of the Fourteenth Amendment (*Nixon v. Herndon*, 273 U.S. 536 (1927)); the right to vote cannot be destroyed by alteration of ballots ("Obviously included within the right to choose, secured by the Constitution, is the right of qualified voters within a state to cast their ballots and have them counted. . . (*United States v. Classic*, 313 U.S. 299 (1941))"); where a party primary election is an integral part of the state election machinery, the right to vote in it is protected by the Fifteenth Amendment (*Smith v. Allwright*, 321 U.S. 649 (1944)).²⁷
- 7) The right to vote assumes a right to vote for something. "Fencing out" particular groups from any given electoral arena may not deprive them of their procedural right to vote, but it does deprive citizens of a right to vote for something where it once had been enjoyed, and is thus unconstitutional (*Gomillion v. Lightfoot*, 321 U.S. 649 (1960)).

Justices Black and Douglas were the most vociferous advocates on the Court for the idea that the right to vote meant more than putting a ballot in the box, though they only partially developed this idea. First, in a series of dissenting opinions, and then later writing for the

²⁷The white primary cases are discussed in note 12.

majority, Justices Black and Douglas asserted that the right to vote was an individual right to an equally effective vote. In *Colegrove v. Green*, for example, Justice Black wrote in his dissent that the Fourteenth Amendment is the standard for judging whether the right to vote is being abridged by state law. The right to vote is unconstitutionally abridged, then, if the state fails to group voters in such a way as to equalize the effect of their votes in the final tally of winners and losers. Justice Douglas agreed with this view in his dissent in a case involving Illinois's party nomination process (*MacDougall v. Green*, 335 U.S. 281 (1948)). In *MacDougall v. Green*, he wrote that, "The theme of the Constitution is equality among citizens in the exercise of their political rights." A vote was effective if it counted equally compared to similarly situated voters in an electoral contest. And in a much quoted dissenting opinion in *South v. Peters*, 339 U.S. 276 (1950), a Georgia weighted voting scheme case, Justice Douglas claimed that the right to vote was more than "the right to mark a piece of paper and drop it in a box or the right to pull a lever in a voting booth," the right to vote was a "personal and individual" right and

it should therefore be accorded the highest constitutional protection.

Justice Douglas wrote the Court's opinion in *Gray v. Sanders*, 372 U.S. 368 (1963), the first case after *Baker* established the justiciability of malapportionment claims to articulate a judicial doctrine by which the courts could recognize a Fourteenth Amendment violation in these cases. Like *South*, *Gray* involved a challenge to Georgia's county-unit electoral system for party primaries. Although Georgia's law establishing weighted voting in party primaries was amended over the years, the state nevertheless had used a version of the county-unit system since the passage of its first state constitution in 1777 (*South v. Peters*, 339 U.S. 276, note 1; Key 1984, 117-24). The county-unit system was a weighted voting scheme for nominating candidates for the U.S. Senate and for statewide office. It gave disproportionate electoral power to rural counties, a rational policy decision according to state officials defending the system.²⁸ The District Court

²⁸The county-unit system allocated unit votes to the counties of the state based on the number of representatives in the lower House of the General Assembly. This number was originally fixed by the Georgia constitution, but later amended to give counties with fewer than 15,000 persons two unit votes, then an additional unit vote for the next 10,000 people, one unit vote each for the next two sets of 15,000 people, and

declared the scheme unconstitutional, but then held that the Constitution might permit weighted voting systems which created no greater disparity against a county as existed against a state (in the conduct of national elections) through the use of the federal electoral college system.

The Supreme Court agreed with the lower court's finding that the county-unit system violated plaintiff's Fourteenth Amendment rights, but it did not agree with its reasoning on the issue of weighted voting. Justice Douglas declared that in matters of representation the only weighting of votes permitted by the Constitution was in the election of U.S. Senators and in the use of the electoral college in the selection of a President. He announced the emerging doctrine of the Court: "The conception of political equality from the Declaration of Independence, to Lincoln's Gettysburg Address, to the Fifteenth, Seventeenth, and Nineteenth Amendments," he wrote, "can mean only thing - one person, one vote." But also,

Once the geographical unit for which a representative is to be chosen is designated, all who participate in the election are to have an equal

finally, two more unit votes for each subsequent increase of 30,000 people in the county. A county's unit vote total went to the candidate in the primary who won the county's popular vote (*Gray v. Sanders*, 372 U.S. 368, 372).

vote. . . This is required by the Equal Protection Clause of the Fourteenth Amendment. . . The concept of "we the people" under the Constitution visualizes no preferred class of voters but equality among those who meet the basic qualifications (*Gray v. Sanders*, 372 U.S. 368, 379-80).

It was critical to establish the right to vote as an individual and personal right in order to devise a measure of discrimination in voting prohibited by the Fourteenth Amendment. Thus, Chief Justice Warren writes in *Reynolds*:

A predominant consideration in determining whether a State's legislative apportionment scheme constitutes an invidious discrimination violative of rights asserted under the Equal Protection Clause is that the rights allegedly impaired are individual and person in nature (*Reynolds v. Sims*, 377 U.S. 533, 561).

Traditionally, the concept of equal protection was understood to require the uniform treatment of persons standing in the same relation to the challenged governmental action. Applied to voting rights and representation, equal protection means that all voters as citizens stand in the same relation to one another, regardless of where they live in a state. Equal protection requires an equal ratio of representatives to citizens across districts in a state. Thus, a districting plan which creates unequal ratios of representatives to citizens impermissibly classifies

citizens with respect to constitutionally protected participation in representative government.

The formulation of the right to vote as both a personal and individual right, and as a right to an equal vote creates a conceptual muddle at the heart of the equal protection theory of representation. The notion of a right to an equal vote ultimately undermines the Court's original notion of an individual right to cast a vote. For votes to be "equal" the value of a vote must be weighed by some standard so that it can be counted and compared to the value of all other votes. This begins to move the Court away from a concern with mere procedural integrity and toward an inquiry into the value of a vote so that the conditions under which a person's individual right to vote may be determined. Once the Court opened up the question of what the value of vote is, it was faced with the problem of the minority voice in a majoritarian electoral system. It would also be confronted with the group nature of political participation, a concept the Court has never wholly embraced. The right to vote may be an individual, personal right to participate in self-government; the right to an equal vote would problematize its protection.

The issues of the "weight" of a vote, and "vote dilution" are concepts which beg an understanding of the group context of voting. As we shall see, it is not just voting that is defined as a civil rights issue in these early cases; the Court also evolved a right to "fair and effective representation" and used it to determine the conditions under which an individual vote counted.

In the opinions under review here, Justices Black and Douglas, and later Justices Brennan and Warren, always mixed together the two notions of a right to vote - as an individual and as a group-based right - in their discovery of a constitutional protection of the right to vote in the Fourteenth Amendment. For example, in his *Colegrove* dissent, Justice Black used rhetoric which consistently linked a right to vote with a right to have one's vote "counted."²⁹ Justice Douglas was of the same mind in *Gray*,

²⁹Examples of this include the following statements: "Article I provides that Congressmen 'shall be. . . chosen. . . by the People of the several States. . .'. It thus gives those qualified a right to vote and a right to have their vote counted." "While the Constitution contains no express provision requiring that congressional election districts established by the States must contain approximately equal populations, the constitutionally guaranteed right to vote and the right to have one's vote counted clearly imply the policy that state election systems, no matter what their form, should be designed to give approximately equal weight to each vote cast." And, "The policy [behind Section 2 of the Fourteenth Amendment] is that which is laid down by all the constitutional provisions regulating the election of members of the House of Representatives, including Article I which guarantees the right

when he stated that all qualified voters have a constitutionally protected right "to cast their ballots and have them counted. . ."

Justices Black and Douglas also use analogies to hypothetical voting schemes in which some voters are given a partial vote, while others are given a full or multiple vote, to unmask the political nature of districting. They tried to show this by equating the first kind of purposefully discriminatory procedure with the actual effect of unequally grouping people across political districts. In *Colegrove*, Justice Black argues that no court would uphold a law which apportioned twenty-five of twenty-six representatives to the smallest county of a state and the remaining representative to the rest of the counties. And yet, that was what he claimed the Illinois law did (*Colegrove v. Green*, 328 U.S. 549, 571). Douglas used the same rhetorical tact in *MacDougall* when he wrote, "None would deny that a state law giving some citizens twice the vote of other citizens. . . would lack that equality which the Fourteenth Amendment guarantees (*MacDougall v. Green*, 335 U.S. 281, 228)."

to vote and to have that vote effectively counted (*Colegrove v. Green*, 328 U.S. 549, 570).

Defining a right to vote and to have one's vote count equally as an extension of the Fourteenth Amendment's guarantee of equal protection of the laws sets up a legal construction for adjudication of claims that those rights are being violated. Foremost, there must be a showing of impermissible discrimination. This is where the concepts of having one's vote "count," a vote's "weight," vote "dilution," and "voting power" play critical roles in defining voting as a group-based activity. These are all terms of relative meaning and an impermissible discrimination in voting and representation under the Equal Protection Clause is defined as a law which treats one group of citizens differently than other groups in the final tally of votes. In *Colegrove*, Justice Black notes that the "voting power" of a person living in a relatively large district is diminished or "less effective" in comparison to the voting power of a person living in a smaller district. He agrees with plaintiffs that the right to have their vote "counted" is abridged unless that vote is given "approximately equal weight" to that of other citizens. In *MacDougall*, Justice Douglas asserts that, "The notion that one group can be granted greater voting strength than

another is hostile to our standards for popular representative government."

Baker fully sanctioned the group-based notion of a right to vote. It did so by granting individuals standing to sue the state for violation of their Fourteenth Amendment rights when the state classifies them into unequally positioned groups vis a viz an electoral contest, by drawing political districts of unequal population. Thus, the basis for determining a constitutionally impermissible discrimination is membership in a state sanctioned group, although the right violated is still understood as a right possessed by the individual. It is still the individual who is granted standing, not the group.

The majority opinion in the *Reynolds* case is the fullest expression of this seeming illogic. Chief Justice Warren boldly asserted that diluting the value of a person's vote through malapportionment is as discriminatory as denying a person's vote outright. He said,

The right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government. And the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise.

For the purposes of defining a Fourteenth Amendment protection, weighting votes differently according to where citizens happen to reside is as invidious a discrimination as discrimination based on race or economic status. Chief Justice Warren pushed on toward a viable judicial standard for assessing discrimination. "The resulting discrimination against those individual voters living in disfavored areas is easily demonstrable mathematically. Their right to vote is simply not the same right to vote as that of those living in a favored part of the State." The *Reynolds* opinion glossed over the problem of defining the right to vote as simultaneously an individual and a group-based right and went even further, defining fair and effective representation as equal representation, the third main idea behind the equal protection theory of representation.

Fair representation is equal representation. Writing now for the majority in *Gray v. Sanders*, Justice Douglas asserted the "one man, one vote" argument or what later become known as the "population principle." Equality of population across districts in a state remains the most important constitutional test of reapportionment, despite

the fact that Gray was not concerned with implementing *Baker v. Carr*, nor was it a reapportionment case.³⁰

In *Wesberry v. Sanders* the following year, Justice Black claimed there was evidence of original intent for equipopulous districting in the historical record of the debates at the Constitutional Convention. Justice Black believed Article I, Section 2, was the proper source of a constitutional protection for equal districting. He noted that the delegates had discussed the evils of the British "rotten borough" system whereby sparsely populated districts were represented in Parliament on par with densely populated cities. The Convention overwhelmingly agreed to a resolution by Randolph to base future apportionment on population and to delete any reference to wealth. Madison agreed, writing in *The Federalist Papers* (No. 54) that "[N]umbers. . . are the only proper scale of representation." State ratifying conventions emphasized the importance of representation by population in the House. Justice Black quotes a speech by Wilson following the ratification of the Constitution in which he proclaimed that

³⁰The reader will remember that *Gray* involved the constitutionality of Georgia's county-unit electoral system for party primaries.

all elections ought to be equal and that equal meant that given number of citizens in one part of a state choose as many representatives as are chosen by the same number of citizens in another part of the state.³¹ Justice Black concludes that the historical record makes at least one fact "abundantly clear:"

[W]hen the delegates agreed that the House should represent 'people' they intended that in allocating Congressmen the number assigned to each State should be determined solely by the number of the State's inhabitants (*Wesberry v. Sanders*, 376 U.S. 1, 13).

Reynolds v. Sims held that "fair and effective representation for all citizens" is "the basic aim of legislative apportionment," and that it can be achieved by using population as "the criterion for judgment in legislative apportionment controversies (*Reynolds v. Sims*, 377 U.S. 533, 565-6)."

In fact, in *Reynolds* we find the narrative of electoral equality that dominated the judicial interpretation of

³¹Shortly after the Constitution was adopted, James Wilson who had been an active member of the Constitutional Convention and was now an Associate Justice of the Supreme Court, gave a lecture in which he said: "[All] election sought to be equal. Elections are equal, when a given number of citizens, in one part of the state, choose as many representatives, as are chosen by the same number of citizens, in any other part of the state. In this manner, the proportion of the

reapportionment controversies until the reversals of *Shaw v. Reno* and its progeny. In order to ground federal intervention into state legislative apportionment practices in the authority of the Constitution, Chief Justice Warren reasoned in the following way:

State legislatures are, historically, the fountainhead of representative government in this country. . . With the birth of our National Government, and the adoption and ratification of the Federal Constitution, state legislatures retained a most important place in our Nation's governmental structure. But representative government is in essence self-government through the medium of elected representatives of the people, and each and every citizen has an inalienable right to full and effective participation in the political processes of his State's legislative bodies. Most citizens can achieve this participation only as qualified voters through the election of legislators to represent them. Full and effective participation by all citizens in state government requires, therefore, that each citizen have an equally effective voice in the election of members of his state legislature (*Reynolds v. Sims*, 377 U.S. 533, 564-5).

The majority noted that neither *Gray* nor *Wesberry* were dispositive or directly controlling in apportionment cases - *Gray* because it was not concerned with specifying the degree to which the Equal Protection Clause restricted state action in the design of legislative districts, and *Wesberry* because

representatives and of the constituents will remain invariably the

it relied on Article I, Section 2 of the Constitution, not the Fourteenth Amendment - but that neither were these cases wholly inapposite. Gray found that voters were being discriminated against on the basis of where they lived, the "weight" of their votes was being "diluted" by the county unit system, and that this discrimination was unconstitutional. Chief Justice Warren argued that "Gray. . . established the basic principle of equality among voters within a State, and held that voters cannot be classified, constitutionally, on the basis of where they live, at least with respect to voting in statewide elections." *Wesberry* determined that the constitutional test for districting was substantial equality of population among districts. Wrote Warren, "*Wesberry* clearly established that the fundamental principle of representative government in this country is one of equal representation for equal numbers of people, without regard to race, sex, economic status, or place of residence within a State."

same." See *Wesberry v. Sanders*, 376 U.S. 1, 17).

CHAPTER 4
BACKGROUND ON THE POLITICS OF LOCAL REDISTRICTING IN NEW
YORK CITY

An institutional framework for analysis. The last two decades in the social sciences has seen the rise of what is called a "new institutionalist" approach to the study of politics and power. New institutionalism is largely a critique of the assumptions and methods of behavioralism.¹ In an article entitled, "The Theoretical Core of the New Institutionalism," Ellen M. Immergut rejects the idea that observed behavior, the datum of behavioralists, is a sufficient basis for explaining, as David Truman once argued, "all of the phenomena of government." Rather, individual preferences and behavior are shaped by institutions, particularly law and customs, and can only be understood by taking into account the context in which they occur. "Institutions do not determine behavior," Immergut writes, "they simply provide a context for action that helps us to understand why actors make the choices that they do (Immergut 1996, 26)."

¹New institutionalism also represents a challenge to social determinist traditions such as Marxism because it rejects the notion that social position, such as one's class or gender, determines objective interests that can be known *a priori* by an analyst.

Whether the "new institutionalism" is new or simply a re-working of an older continental analytic tradition that predates behavioralism is the subject of some debate (Grendstad and Selle 1995). The purpose in introducing the subject is not to engage epistemological controversies in the social sciences, but rather to orient the reader to the analytical framework applied here which borrows from the new institutionalists' emphasis on historical context and the law as critical to an analysis of politics. New institutionalists argue that "true" interests can not be deduced from behavior. True interests are, essentially, impossible to know. To understand political phenomena, the analyst should focus the lens on political processes and procedures, rules, norms, and ideas rather than simply observed behavior for an approximation of interests, however elusive. History is important because institutions, as "enduring regularities of human action in situations structured by rules, norms, and shared strategies (Crawford and Ostrom 1995, 582)," nevertheless evolve. Because institutions are constituted through the actions and beliefs of human beings, they can be reconstituted and transformed by human action, specifically political action. For the analyst, this chain of assumptions creates a semi-autonomous

space where politics and the political construction of interests operate. Political and legal institutions set the context and condition the actor's understanding of what kind of change is possible (Piven and Cloward 1979).

This dissertation is a study of how the legal institutions of civil rights-oriented litigation, judicial mandate, city charter reform, and legislative redistricting, along with the history of city council politics shaped and constitutional the political goals of minority empowerment in early 1990s New York City. Legitimation of the local political system and political culture was served by the 1991 redistricting because the definitions of reform and group or ethnic politics were expanded to absorb political conflict without a serious displacement of group relations or a real redistribution of political power.

Background on local redistricting in New York City.

This chapter describes the historical background of the 1991 redistricting. In 1964, in a decision known as *Reynolds v. Sims*, 377 U.S. 533 (1964), the Supreme Court applied to the states the "one man, one vote" principle established in its landmark decision of two years before, *Baker v. Carr*, 369 U.S. 186 (1962). Its decision in the case threw state and local governments into turmoil as they scrambled to comply

with the new standards for apportioning their legislatures. New York City's local government was not immune from the electoral system changes sweeping the nation. The redistricting history of New York City's council subsequent to *Reynolds* is a tangled one, as evidenced by the fact that no council election held between 1961 and 1982 used the same district lines as the election preceding it (Briffault 1991).² The council's modern redistricting history reveals the complicated interaction of two factors: 1) the imperatives of electoral system legal reforms foisted upon the nation by the civil rights movement's struggle for inclusion; and, 2) the unique configuration of power in New York City politics. This chapter traces the interaction of these factors and the outcomes for enhanced minority political representation in New York.

The civil rights struggles of the 1970s and the 1980s expanded the repertoire of tactics available to those who sought greater representation through the redesign of the 1991 New York City council plan. In the politics of representation and redistricting analyzed here the law was appropriated and deployed as a political weapon by all sides

²Appendix A summarizes how the size of the council changed over this period.

in the struggle. The outcome of decades-long legal assaults on earlier council plans forced structural change on city government and the codification of increasingly detailed rules for districting. These developments further complicated the politics of redistricting and minority empowerment in the 1990s. Ironically, throughout the tumultuous sequence of events in the twenty-five year period prior to 1991, the issues, tensions, and even the political actors in the drama remained remarkably the same. Like many histories of reapportionment reform during this period, New York City's is a history of how traditional concerns for incumbent advantage were balanced in the face of growing political demands and legal mandates to increase minority representation. As a product of New York City's one-party politics, it is a history replete with court interventions, charter reform, cooptation and accommodation. This history can not be neglected in an explanation of redistricting and minority empowerment politics in the early 1990's.

This section traces changes in the legal institutions of representation in New York City -- the city charter, the city council, and permissible redistricting procedures -- over a forty year period beginning in 1949. The mandates of the 1965 Voting Rights Act and its amendments, the

intervention of the federal judiciary, legal challenges to the structure of the entire local government, and successive reforms of the city charter resulted in institutional changes in local government which increased the governmental power and authority of the city council, though not always at the expense of the executive,³ and gave the city rather than the state more control over local redistricting. At the same time, minority empowerment goals of fair and effective representation were incorporated into the body and language of the city charter. The formal, court-ordered restructuring of local government over this period, at least with respect to representation, was aimed at democratizing the representative institutions of government and incorporating the goals of inclusion for traditionally under-represented minority groups. But it was politics, in the end, that determined the less than full meaning of these changes for the city's racial, language and other minorities.

The contemporary period can be divided into three cycles of change and reform. The first period begins in

³The 1989 reform of New York City's tripartite governing structure eliminated the Board of Estimate, a quasi-executive body, redistributing its powers to both the mayor and city council. A discussion of the Board of Estimate and the 1989 charter reform follows below.

1949 when the city ended its twelve year experiment with proportional representation, and extends to 1965, following the *Reynolds* decision when the state first granted New York City the power to redistrict itself for local elections. The second period runs from 1965 to 1981, during which time the federal judiciary redefined voting rights. The decade of the 1980s encompasses the third period of reform, beginning with the 1981 council redistricting and ending in 1989 when New York City voters affirmed the most extensive restructuring of their local government since the consolidation of the city in 1898.

1949 -- 1965. During the first cycle of institutional change, from 1949 to 1965, New York City council members were elected from 25 State Senate districts (Shaw 1968; Sayre and Kaufman 1965, 176, 178). This arrangement was an outgrowth of the interplay between two legal-political factors: incomplete achievement of Progressive era municipal home rule reforms, and the resurgence of the Democratic party machine following the elimination of proportional representation in city council elections in 1947.

To explain how these factors interacted and why local city council seats were tied to state legislative district boundaries, we must go back even further in the history of

New York City politics. The struggle for "home rule," or greater local self-government emerged in the early twentieth century as a defining struggle of the urban Progressive movement. In the late nineteenth century, explosive urbanization and the pressing need to find local solutions to mounting local problems prompted reformers to demand greater autonomy and control over local legislative power. There were, of course, political reasons for urban lawmakers to want to extricate themselves from the control of their state legislatures. As John D. Buenker has so ably demonstrated, the urban political machines of this period were often the strongest force for popular government, especially where state governments were controlled by small-town business interests or opposing political parties and prevented the spoils of government from flowing to their political adversaries in the cities (Buenker 1978).

In New York, the drive for municipal home rule reached its apex in 1913 with the ascendancy of Tammany leader Al Smith as Speaker of the State Assembly, and the rare control of both houses of the state legislature by downstate Tammany politicians. New York City politicians in control of the state house forced through home rule reform. The 1913 Home Rule Act vested power in the city's ward-based Board of

Alderman and empowered them to grant franchises, fix salaries, and oversee the Civil Service and Public Service Commissions, and the Boards of Education and Estimate. Ten years later, the Home Rule Amendment to the state's constitution declared, "Every city shall have the power to adopt and amend local laws not inconsistent with the Constitution and laws of the State relating to its property, affairs or government (quoted in Sayre and Kaufman 1965, 84)."⁴ The Home Rule Law of 1924 implemented the Home Rule Amendment and elaborated how city charters were to be locally framed and adopted. Until this time city charters were merely ordinary state statutes. The new home rule powers allowed cities to convene their own charter commissions, draft charter amendments, and have them adopted by voters in local referenda.

Home rule reforms passed in the Progressive era did not, however, formally extend to reapportionment. Those reforms and formal local control over city council districting would not come for more than a generation. In the meantime, the city's 1938 Charter was the first charter adopted under the new powers of the Home Rule Law. Unlike

⁴Quoted in Sayre and Kaufman (1965, 585).

the earlier period of reform, however, in the 1930s, the power of the Tammany machine was at an all-time low, and party bosses were forced to submit to structural changes aimed at eroding their control over government largesse.⁵ This time, local charter reform, a political strategy for consolidating power devised by Tammany politicians when they were at the height of their power a generation before, was used by the machine's opponents against Tammany at the moment of its gravest decline. The 1938 charter was the outgrowth of a sustained political assault on the Democratic party organization following a series of corruption scandals and the forced resignation of Mayor Jimmy Walker. Accompanying charter reform was a separate referendum on proportional representation (PR) for the city council. PR resulted from a compromise deal among charter reformers who united in their effort to hasten and finalize Tammany's demise. Reformers only agreed to a PR electoral scheme after the council-manager plan popularized by the Progressives had been rejected by charter reform

⁵The new charter enlarged the executive by replacing the 65 member Board of Alderman with a 29 seat city council, transferring several legislative powers to administrative agencies, and strengthening the Board of Estimate by separating it from the Municipal Assembly and making it more a board of directors for the municipal corporation (Shaw 1968, 175-180).

commissioners. To pass the commission, the advocates of PR proposed it as a separate ballot referendum in order to insulate other charter reform proposals from vociferous opposition from other charter reformers. As it happened, PR was popular with the voters; it passed by an overwhelming majority (923,186 to 555,127) (Shaw 1968, 171). Had PR not passed, charter reformers stipulated that council districts were to follow State Senate lines. There were no provisions in the 1938 charter reform for local control of the council district line drawing process.

From 1937 to 1949, New York City council members were elected through the Hare system of proportional representation.⁶ Alternatively known as the "single transferable vote" system (STV), the Hare system ended the 33 year domination of the city council by the Democratic party.

PR served the minor parties well, perhaps too well. In 1945, for example, two Communists, three Republicans, two Liberals, and two members of the American Labor Party were

⁶Under the Hare system, a voter may transfer his or her vote to a second-choice candidate if the voter's first choice has no chance of winning election or already has the requisite number of votes needed to win election (as calculated by dividing the total number of votes cast in the election by the seats, plus one) (Bogdanor 1984).

elected to the city council, along with fourteen Democrats. To gain support for its repeal, the Democrats offered to replace PR with a single-member district system where city council districts were coterminous with state senate districts. Indeed, linking council districts to state senate districts was one of the reasons why the Republican party eventually backed the repeal of PR - against their own interests as they would later realize.⁷ Red-baiting and Republican Party support helped revive the Democratic machine and defeat PR in a local referendum in 1947 by a majority almost as large as the one that adopted it (935,222 to 586,170) (Shaw 1968, 203-9). In 1949, in the first council election after the repeal of PR, 24 of the 25 council seats were won back by the Democrats; they lost a seat in the next election (in 1953), but regained it in

⁷Alarmed by the election of left-wing political radicals, the Republican party agreed to support the Democrats in their effort to eliminate PR. They thought PR's replacement with a state senate district configuration was favorable to them because at the time, in 1947, nearly 50 percent (12 of 25) state senators from New York City were Republicans. Republican party leaders, therefore, did not expect a rout in council elections which used state senate districts and constituencies to elect council members. The party's strategists, however, misjudged their possibilities when they assumed local elections would reproduce state senate constituencies. The party never pulled out its full potential vote in mayoral election (odd-numbered) years when council elections were now scheduled to take place (state law requires local elections be held in non-federal election years). Indeed, Democratic Mayor William O'Dwyer had carried every senate district in the city when he ran in 1945.

1957, and never lost their super-majority status on the city council again.

The state constitution prohibited state senate lines from crossing county boundaries, and as such, the newly state senate-coterminous city council lines fell within county boundaries and did not cross them. Then, in 1964, the Supreme Court ruled in *WMCA, Inc. v. Lomenzo*, 377 U.S. 533 (1964), that the apportionment of New York State's legislature was unconstitutional.⁸ *WMCA* was one of six apportionment cases heard together by the Supreme Court under the lead case's name, *Reynolds v. Sims*, which held that the "Equal Protection Clause of the U.S. Constitution requires that the seats in both houses of a bicameral state legislature must be apportioned on a population basis." This ruling applied only to the state legislature and not the city council, but it had immediate implications for the council.⁹ *WMCA* challenged the state constitutional requirement that state senate lines not cross county boundaries. To comply with the Court's ruling, the state

⁸See Lehne (1971) for a narrative of the events leading up to *WMCA* and following the decision through its implementation in New York State. See also, Lee (1967).

⁹Not until four year later in *Avery v. Midland County*, 390 U.S. 474 (1968), did the Supreme Court extend the "one man, one vote" principle to local governments.

needed to redraw state senate districts, creating new equipopulous districts without respect for county boundaries. The successful challenge to New York's state senate district lines had indirect but serious consequences for New York City. The linking of city council district lines to state senate district lines meant that these new equipopulous senate districts would inevitably result in coterminous city council districts which breached the city limits.

1965 -- 1981. To forestall this untenable outcome, beginning in 1965, and for three consecutive council elections thereafter (1969, 1973, 1974),¹⁰ the city requested and secured temporary authorization under the

¹⁰The one year interval between the council elections of 1973 and 1974 needs to be explained. A successful legal challenge to the city council lines drawn in 1971 led to a federally mandated revision of the council district boundaries and a new election in 1974 to replace the one held in 1973 under the controverted lines. U.S. Representative from the Bronx, Herman Badillo, and Bronx Republican County leader, John Calandra, charged in separate suits that the 1971 plan violated the equal population requirement, constituted a racial gerrymander, and failed to comply with the mandate that districts be of "convenient and contiguous territory in as compact a form as practicable." The suits were consolidated in state supreme court as *Badillo v. Katz*. The court disagreed with the first claim, dismissed the second claim, but invalidated the entire plan because it was found to violate the "convenient and contiguous territory" requirement. Despite the invalidation, the court held that the 1973 city council election could go forward under the invalidated lines (*Badillo v. Katz*, 73 Misc. 2d 836 (Sup. Ct. Bx. Co. 1973).) Subsequent courts upheld the lower court ruling but modified it by limiting the term of office to one year for those elected in 1973, and by requiring new valid lines be in place for an election in 1974 (*Badillo v. Katz*, 41 A.D. 2d 829 (1st Dept. 1973),

state's Home Rule Law for the city council to redistrict itself under local law.¹¹ With temporary power given it by the state in 1961, the city council drafted revisions to the city charter that went into effect in 1963. The 1963 charter increased the size of the council from 25 to 27 members elected from single member districts, and added ten at-large members, two elected from each of the five boroughs. The at-large feature was meant to counter Democratic domination and bolster Republican representation in the council, since no two at-large representatives from a single borough could be elected from the same party (see appendix B, maps B4.1 - B4.5). In 1971, the council was again expanded from 27 to 33 districts (plus the ten at-large members, for a total of 43 seats) (see appendix B, maps B4.6 - B4.10).

and *Badillo v. Katz*, 32 N.Y. 2d 825 (1973). See Briffault (1991, 5-10).

¹¹The ritual of the home rule message was established in 1938 when the state constitution was amended to require a local request in writing by the mayor and council, or two thirds of the council acting alone, before special legislation affecting one city could be passed. This was an attempt by liberal urban reformers to wrest more control over local affairs from the state legislature. Thus, special permission to act on certain matters of local concern must not only be granted by the state, it must first be asked for by the city. As Gerald Benjamin points out, asking and not asking for local control are political strategies used by local politicians to expand or curtail their sphere of influence. See Benjamin (1988, 116-9).

Each authorization from the state to the city permitting the city council to redistrict itself was for one election only, with the 1974 authorization set to expire in 1975. At that time, city council districts were to revert to state senate district boundary lines. Charter reform in 1975, however, prevented this outcome. A state-convened charter reform commission for New York City known as the Goodman Commission proposed, and New York City voters passed legislation that year establishing a "city council districting commission to prepare a draft plan for dividing the city into councilmanic districts. . ."¹² The new charter amendments provided for a local districting commission to consist of nine members appointed by the city council, with whom the commission was to share staff. "It [the local districting commission] shall be nonpartisan and its membership shall reflect the political, geographic and ethnic composition of the city (Reapportionment n.d., 747)." Lastly, the Goodman Commission stipulated that the districting commission was to hold a public hearing on its

¹²The State Charter Revision Commission for New York City was known as the Goodman Commission for its chair, Roy Goodman, Republican state senator from Manhattan. For the quoted material, see chapter 22(g) of the 1975 New York City charter.

proposed reapportionment plan, with final action on the plan left to the city council, authorized to enact it into law.¹³

The newly chartered districting commission's first attempt at redrawing council lines took place two years later in a hasty effort to redistrict in time for the 1977 mayoral election. Only cosmetic changes were made to the court-ordered council lines drawn in 1974 by the city council. With respect to increasing minority representation, the lines drawn by the new "independent and non-partisan" districting commission were no better than those produced previously by the city council itself (New York State 1977, 23) (see appendix B, maps B4.11 - B4.15).

1981 -- 1989. The third period of reform begins in 1981, a mayoral election year, when a new commission was

¹³The full text of Chapter 22(g) said the council shall establish a "city council districting commission to prepare a draft plan for dividing the city into councilmanic districts pursuant to this charter for the election of council members other than council members at large at the general election in 1977 and thereafter. The districting commission shall consist of nine members to be appointed by the council. It shall be nonpartisan and its membership shall reflect the political, geographic and ethnic composition of the city. The council shall provide the necessary staff to the districting Commission and the Commission may call upon the Department of City Planning and other agencies for technical assistance. The districting Commission shall conduct a public hearing on any proposed reapportionment plan prepared by it and shall thereafter submit its proposed plan to the council, which shall take final action on the plan by local law pursuant to this Chapter." On December 30, 1977 this section was amended by local law to specify the establishment of a districting commission and the redistricting of city council districts after every federal decennial

appointed to redistrict the council using population figures from the 1980 census. As will be established, the themes of the 1981 council redistricting would reemerge in 1991, the patterns of political conflict and accommodation remarkably similar, although the time frame between the appointment of the commission and the adoption of a plan was about a third shorter in 1981.

The first conflict of the 1981 redistricting concerned the composition of the districting commission. The appointment of the nine person "citizens" commission rested with the city council itself. Local control over local redistricting exercised by an independent commission was one of the decentralization reform features of the 1975 charter. The Goodman Commission believed that local control over redistricting was necessary to correct the established districting procedures that had failed to achieve equitable representation for the city's minority population. The Goodman Commission's final report noted that of the 43 city council members in 1972, only two were black or Hispanic. In 1975, there were six black and Hispanic council members,

census, and to make the commission members approved rather than appointed by the city council (Reapportionment n.d., 747-8).

in a city where these groups together were over thirty percent of the total population (New York State 1977).

Consensus on the nominees to the districting commission fell apart just before they were to be voted on when the Manhattan council delegation switched one of its two appointees from Sarah Kovner, a Jewish woman, to Virginia Kee, an Asian American woman, after Kovner won most of the support of the Manhattan caucus against another nominee, Georgia McMurray, an African American woman. The delegation switched to Kee to mollify the anger of African American Manhattan council member, Frederick E. Samuel, who complained bitterly to the council leadership about the lack of representation of African Americans from Manhattan on the districting commission.¹⁴ Samuel ultimately prevailed and McMurray was substituted for Kovner onto the commission. Using a representative of one ethnic group to quell conflict between two other ethnic groups was a new form of the ethnic balancing technique long observed in New York City politics (Glazer and Moynihan 1984).¹⁵

¹⁴The other commissioner from Manhattan was a white man. See Carroll (1981e).

¹⁵The character of ethnic politics in New York City is discussed in more detail below.

The second theme of the 1981 council redistricting experience was the use of a strategy of accommodating the dual redistricting agendas of incumbent protection on the one hand, and enhanced minority representation through an expansion in the number of council seats, on the other. The suggestion to expand the number of council districts came from Bronx Democratic party boss, Stanley Friedman. The 1980 census showed devastating population losses in the Bronx. The demographic reality practically guaranteed a redistribution of seats and the loss of a council district in the Bronx. To save the seats of his seven incumbent Democratic council members, Friedman suggested increasing the number of council districts to the council majority leader, Tom Cuite of Brooklyn. Increasing the number of seats would reduce the average size of the districts and permit the Bronx to retain its seven seats (Carroll 1981a). This was a strategy that had been used several times before by Democratic party leaders to diminish the losses of the Democratic party in the state legislature as the state's population suburbanized in the 1960s and '70s.

Despite the fact that New York City lost population overall between 1970 and 1980, the districting commission in 1981 decided to add two districts to the council's existing

33.¹⁶ The new seats were carved out of Queens and Staten Island, the city's whitest boroughs. The rationale for creating two new white seats in a city which had just lost a million and a half white residents over the previous decade rested on the rather optimistic view put forth by the council leadership that the city had also become "pervasively integrated" over the decade. Councilman Theodore Silverman of Brooklyn, for example, argued that "Besides the white flight that the census showed from the city, there was minority flight within the city (Carroll 1981c)." Because minorities were now more dispersed throughout neighborhoods in the city, he said, it was difficult to construct additional minority-majority districts. This claim was empirically unjustifiable, as critics of the council plan easily demonstrated (Dionne 1981b).¹⁷ The same argument would reoccur in 1991 to

¹⁶The city's population decreased from 7,895,563 to 7,071,030 during the decade of the 1970s. Much of the population loss was due to out-migration of whites to the suburbs and the de-population of the South Bronx due to arson and crime. The non-white minority population actually increased by over 400,000, which meant that, combined with the out-migration of whites, the proportion of minorities in the population increased from one third of the city's population in 1970 to just under one half in 1980. Adding two seats to the city council increased the total number of council members from 43 to 45 (including the 10 at-large seats) (U.S. Department of Commerce 1972; 1982).

¹⁷The New York Civil Liberties Union conducted a tract by tract analysis of the city's more than 2,000 census tracts. They found that between 1970 and 1980, the number of census tracts that were between 40

explain why more Latino districts could not be constructed. In 1991, however, the claim had empirical justification. But the districting wars of the 1980s further divided the city administration and minorities against each other and undermined the city's credibility to make the same argument again.

The juggling of lines in 1981 to make way for an additional number of districts hurt Manhattan council members more than incumbents from the other boroughs. At that time, *New York Times* reporter Maurice Carroll quoted the Executive Director of the Districting Commission, Anthony A. Caracciolo, as saying, "The alternative [to carving out two new seats in Queens and Staten Island] was to murder Manhattan (Carroll 1981d)." Carroll went on to add that Caracciolo was basing his statement "on the commonly held theory that Manhattan, with its weak political leadership, would suffer in any realignment of districts to protect incumbents." Other evidence abounds of the weakness of Manhattan incumbents relative to incumbents in the other boroughs who benefited from stronger party leadership and organization. For example, both Ruth Messinger and Carol

percent and 60 percent nonwhite increased only two percentage points, from seven percent to nine percent during the decade (Schanberg 1981).

Greitzer, liberal Democratic councilwomen who represented different parts of the west side of Manhattan, had been lobbying hard to get a new convention center into their districts. The new council line separating them was drawn to split the convention center site through the middle, thus giving neither of them the benefit of having an important economic development project wholly in their district. Miriam Friedlander, a left-of-center Democratic incumbent who for many years represented the multi-racial, low-income neighborhoods of the lower East Side narrowly escaped having her district sliced up and connected to Staten Island, a culturally conservative and overwhelmingly white borough that would have served up sudden electoral death for Friedlander (Carroll 1981c). As chapter 8 describes, Friedlander again was left unprotected in 1991.

Manhattan's council districts in the 1981 plan were on average larger than the districts of the other boroughs, giving Manhattan residents lesser representation per person than other New Yorkers. At the last minute before the new 35 district plan was to be voted on in the city council, a final analysis showed that two districts in Manhattan exceeded the +/- 5 percent differential across the average size of districts, the standard differential in district

population size permitted by the Supreme Court. The council districts of Manhattan incumbents Robert Dryfoos of the Upper East Side, and Carol Greitzer whose district abutted Dryfoos's on its southern border, were too big. To remedy the problem and to save councilman Robert Rodriguez of the Bronx from absorbing a politically unpalatable number of whites from Dryfoos's district into his own, the excess population (about 5,500 people) was shifted south and then west. Rodriguez's district was split between the Bronx and East Harlem in Manhattan. Greitzer, who would be left unprotected and disadvantaged again in the 1991 redistricting, said of the shift of population: "This has been the worst day of my life. In a nutshell, today I gave up Carnegie Hall and acquired Bloomingdale's. I'm not sure it is a fair exchange (Ivins 1981b)." The plan was passed by the city council and signed into law by Mayor Edward I. Koch on June 6, 1981.¹⁸ (see appendix B, maps B4.16 - B4.20)

¹⁸Koch initially had reservations about signing the bill which codified the redistricting plan. He made it known that he would not sign off on the plan unless it had strong minority support. He told the council leadership to find some black leaders who would ask him to sign the bill. At the one public hearing held on the plan before the mayor signed it, a group of prominent black New Yorkers that included U.S. Representative Charles B. Rangel; Harlem psychologist Kenneth Clark, and the Manhattan Democratic party leader, Herman D. Farrell, all spoke for the plan. After the plan came under attack from minority and civil rights groups, Rangel and Clark changed their minds, and Koch tried to

The 1981 redistricting set in motion the avalanche of law suits that would eventually topple New York City's unique tri-partite form of government. In fact, it is interesting to speculate that the Supreme Court might never have ruled New York City's local government unconstitutional had political elites accommodated black and Latino demands for fairer representation in the city council. In a series of dramatic legal maneuvers over the decade, the courts, including the nation's highest court, intervened in the city's political process to delay and cancel elections, invalidate the electoral system used for the city council, strike down the Board of Estimate, and stay and alter the ballot access process in the 1991 elections. These court decisions, some based on principles of higher law, were an integral part of a political strategy to destabilize the political system in New York City. Plaintiffs successfully used the courts to achieve their political equality goals. The courts found a remedy for the equality claims by requiring the restructuring of local government, and those in power showed a remarkable ability to adapt blunting the full impact of imposed structural reforms.

cover himself by saying that the only reason he signed off on the plan was because it had minority support. See (Ivins 1981a; Carroll 1981c).

The litigation began with a challenge to the 1981 plan brought by plaintiffs from Brooklyn. In June, as it was required to do, the city submitted the plan signed by the mayor to the U.S. Department of Justice for preclearance under Section 5 of the federal Voting Rights Act.¹⁹ The Justice Department then requested more information from the city, including information about the old council lines, population data and voting records.²⁰ But the city delayed responding to the Justice Department's request trying to stall the Department's review until after the September primaries. Black and Latino voters sued in federal court to stop the primaries, arguing that the city had failed to gain clearance to proceed from the Justice Department as required by the Voting Rights Act. A special three judge panel empowered to hear Voting Rights complaints agreed, and a day and a half before the primary was to take place, barred the

¹⁹In 1975, following successful litigation brought by the NAACP, three of New York City's five counties (Bronx, Kings, and New York) were added to the Voting Rights Act as "covered" jurisdictions when the Attorney General determined that New York used a literacy test as late as 1968, and that more than half the voting age population of the three counties failed to register or vote in the 1968 Presidential election.

²⁰The Justice Department was pushed to question the city's plan by the Citizen's Union and the New York Civil Liberties Union who had sent the Department evidence that the districting commission and the council could have created at least two and possibly three new minority seats without enlarging the council (Schanberg 1981).

city from holding elections.²¹ The next day, the Supreme Court upheld the order. The federal courts stayed New York City's local elections on procedural grounds; they did not

²¹There were four lawsuits brought in the two and half months before the September 10, 1981 primary was scheduled to take place (Fried 1981; Haberman 1981; Oreskes 1981). The first, *Herron v. Koch*, 523 F. Supp. 167 (E.D. N.Y. 1981), was brought in June and argued that the new council lines discriminated against blacks and Latinos. The suit asked the court for a preliminary injunction against the implementation of the plan. The District Court denied the request as premature because the Justice Department had 60 days to review the city's plan, which had been submitted on June 12. The second lawsuit, *Andrews v. Koch*, 528, F. Supp. 246 (E.D. N.Y. 1981), claimed that the council plan discriminated against groups protected by the Voting Rights Act because these groups would actually lose representation if the plan were implemented - critics of the plan claimed that blacks and Latinos, with eight incumbent representatives out of 43 in the council, would not pick up any additional seats when the new plan expanded the council by two seats. They also charged that the plan had not been precleared by the Justice Department. The third suit, *Gerena-Valentin v. Koch*, 554 F. Supp. 1017 (S.D. N.Y. 1983), commenced eight days before the primary elections were to be held. In this lawsuit, the plaintiffs, a dissident Bronx Democratic council member and a Puerto Rican voter, alleged discrimination against Puerto Ricans and other Latinos on the part of the city's council redistricting plan. Finally, following the expiration of the Justice Department's 60 day review period and the failure of the Department to grant the city preclearance, the plaintiffs of the first lawsuit filed an amended complaint seeking to enjoin the primary elections. This time plaintiffs included a complaint about changes made to 221 election districts which caused the relocation of 37 polling places. Apparently, the Board of Elections had tinkered with the election district boundaries in July and did not tell the mayor, the city council, or the federal government about it. *Herron* charged that the city had failed to secure preclearance for the change in polling sites, putting the other citywide elections in jeopardy. The District Court judge convened a special federal three-judge panel to hear all the complaints. And so it was, that with a minor complaint regarding the failure to preclear alterations in a handful of polling sites, Mr. *Herron* and his co-plaintiffs in the other lawsuits convinced the court to issue a sweeping order prohibiting all New York City primary elections from being held in September 1981. In yet another similarity to events of ten years later, the *Gerena-Valentin* case was argued by the Puerto Rican Legal Defense and Education Fund (PRLDEF) who would sue for relief from a discriminatory redistricting plan and to stop primary elections from taking place in 1991. PRLDEF was less successful in 1991, as chapter 8 describes.

rule on whether the new council plan discriminated against black and Latino voters.

On the 18th of September, the Justice Department approved the changes made to election district boundaries and polling sites and approved elections for all races except council races, including the at-large seats. After the federal court postponed the council elections, the governor called the state legislature into a special session to pass conforming legislation concerning New York City's election calendar. On September 15th, after a bitter debate in which charges of bigotry were hurled between white and black legislators, Governor Carey signed seven bills which would allow New York City voters to cast ballots in any election approved by the Justice Department. Members of the legislature's Black and Puerto Rican caucus had argued that the new council lines discriminated against minorities and that Justice Department approval should be granted before the state legislature rescheduled the elections. The citywide elections were set for September 22, 1981 (Dionne 1981a).

Unclear was the fate of elections for the at-large seats in Queens and Staten Island, the two New York City counties which did not fall under the purview of the Voting

Rights Act Section 5 preclearance requirement. Council candidate Joseph Lisa, a former assemblyman who decided to forgo the assembly and political life in Albany for a seat closer to home in the city council, had planned to run in the new council seat carved out of Queens. After the federal courts stayed the council elections, but before the Justice Department ruled on the new council lines, Lisa tried to force the issue of judicial overreach by arguing in state court that Queens should not be subject to Section 5 preclearance review since the county was not covered by the Voting Rights Act. In another twist to an already chaotic situation, the State Supreme Court in Queens ruled in Lisa's favor; the city appealed and eventually won, finding intent on the part of the Justice Department to treat the city as a whole, not as a collection of counties.

On the morning before the rescheduled citywide elections state courts in Queens and Staten Island ordered the names of candidates for the at-large seats in those counties back on the ballot; by the afternoon, the State Court of Appeals ruled them off again, and the 1981 municipal election proceeded without any council races.

The disruption of the electoral process for the voters was severe. The Board of Elections was not automated and an

egregiously inefficient city agency.²² The more than 5,000 mechanical voting machines still used in New York City elections today had been delivered to the polling sites before the three-judge panel stayed the primaries. Board of Elections workers were working around the clock to furnish the Justice Department with the information it had requested concerning the geography of the new census data. Their task was complicated by the fact that the census and election district geographies are not coterminous, so estimates of the racial composition of election districts had to be calculated manually by overlaying the census maps with transparencies showing the election district boundaries and then estimating the numbers by "eyeballing" the spatial relationships. At 11 A.M. on the morning before the rescheduled elections, when the state courts in Queens and Staten Island ordered the at-large candidates back on the ballot, crews of Board of Elections workers were deployed to adjust the voting machines. Five and a half hours later when the state's highest court at the city's request ruled the candidates off, the Board of Elections had to send the

²²For an analysis of the Board's efficiency in managing election administration and a description of its system of arcane manual procedures during this period, see Hayduk (1996).

workers back to tape over the names they had just put on the ballots. One critic estimated the postponement of the council elections cost the taxpayers an several million dollars above routine election costs (Carroll 1981b; Schanberg 1982).

In what was the first phase of a three-pronged legal assault by minority voters on the structure of city government, the Justice Department resoundingly rejected the city's council redistricting plan as discriminatory of black and Latino New Yorkers' right to vote. The city council decided not to appeal the decision and to redraw the council map to meet the Justice Department's objections. Before it could complete that task, however, the second phase of the legal assault was launched. In November 1981, U.S. District Court Judge Edward R. Neaher ruled in *Andrews v. Koch*, 528 F. Supp. 245 (E.D. N.Y. 1981) that the city's electoral scheme for city council violated the one-person one-vote standard.²³ At question was the at-large system which used a limited nomination, limited voting scheme. Neaher decided that because the boroughs were widely divergent in size, the

²³See Benjamin and Mauro (1989, 1-15), for an account of the events leading up to the 1988 charter revisions. See also, New York City Charter Revision Commission (1990); and Macchiarola and Diaz (1993a).

at-large members held unconstitutionally disproportionate power in the city council.

While the *Andrews* case was on appeal, the Justice Department approved a new map for the city council in June that increased the number of districts from 33 to 35 and kept the at-large seats in place. Council elections were held in September and November with all 35 districts won by the Democrats.²⁴ Critics of the new council plan had worried that the twelve districts where blacks and Latinos made up 65 percent or more of the population would not likely result in twelve minority council members, and they were right.²⁵ Only ten black and Latino council members were elected in the November general.

A month after the *Andrews* ruling, in the third major assault on the structure of the city's representative

²⁴Democrats also won five of the ten at-large seats; three went to Republicans, and one seat each was won by the Conservatives and Liberals (Goodwin 1982b). All ten of the at-large members were white, and only one minority, Carlos Rios of Manhattan, had been elected at-large in the twenty years the at-large seats had existed (Dunlop 1983).

²⁵Robert Rodriguez, a Democratic incumbent from the Bronx, said of the new plan, "Essentially, it will maintain the status quo of the power structure in this town," and charged the plan was part of a "massive resistance" to changing the city council in the face of growth in the city's black and Latino population. Demonstrating the rhetorical flair of a good Baptist minister, Rev. Wendell Foster, a black Democratic council member also from the Bronx, said of the plan, that it was "conceived in hypocrisy, nurtured in deceit, and when we give birth, we will be giving birth to an ugly bastard (Goodwin 1982b)."

government, the New York Civil Liberties Union filed a test case challenging the constitutionality of the Board of Estimate on similar grounds. The Board of Estimate was a quasi-executive body at the heart of New York City's unique form of tripartite government. The three citywide elected officials - the mayor, comptroller, and city council president - each held two votes on the Board of Estimate and the five elected borough presidents held one each. Formally, the Board shared power with both the city council and the mayor; in practice there were almost no local laws the council could pass without the assent of the Board. Sayre and Kaufman characterized the Board of Estimate as equivalent to the upper house in a bicameral city legislature. Both the Board and the council, for example, reviewed the mayor's expense and capital budgets, but whereas the council could only reduce the mayor's budgets, the Board could make any change it wanted. The Board also exercised powers outside the council's reach, such as control over the acquisition and disposal of city property and the unchecked granting of city franchises, to name a few (Sayre and Kaufman 1965, 626-56).

Judge Neaher again heard the case against the Board of Estimate, but this time he initially ruled that because the

Board of Estimate was not a legislative body to which voters elected representatives directly, it was not subject to the one-person, one-vote standard. In March 1983, the U.S. Circuit Court of Appeals reversed Neaher's ruling in a case known as *Morris v. Board of Estimate*, 551 F. Supp. 652 (E.D. N.Y. 1982); 707 F. 2d 686 (2d Cir. 1983), and remanded the case to the lower court instructing it to consider two questions: first, whether and to what extent the six votes cast by the three citywide officials offset the inequality resulting from the single vote given to the Borough Presidents; and second, whether the deviations from the one-person, one-vote standard might be acceptable to the Supreme Court based on existing precedent.

In the meantime, Mayor Koch's Corporation Counsel, Allen G. Schwartz, recommended that the Mayor not appeal the *Andrews* decision because the evidence was incontrovertible. Instead, the Corporation Counsel's office instructed the Mayor to appoint a charter revision commission to propose changes to the city's electoral scheme for local office. Since the early decades of the twentieth century, municipalities in New York were authorized by state law to create charter revision commissions to propose changes to their city's charter, subject to voter approval. A special

state law passed at the behest of Mayor Wagner gave mayors acting alone the power to appoint such commissions. When Mayor Koch appointed a charter revision commission in 1982, he was the first New York City mayor to do so without state enabling legislation. The commission became known as the Sovern Commission for its leader, Michael Sovern, the President of Columbia University.

The Sovern Commission declined to undertake a comprehensive review of the city's charter and governmental structure because significant change had been made by the 1975 charter revision commission. Charter reforms passed in 1975 tinkered with executive power but more importantly, enhanced a sub-borough level of administration in the city's community boards.

Beneath the city's history of charter reform is the contest between "strong" versus "weak" mayoral systems (Savitch 1976; Viteritti 1989). Successive charter reform periods ending in structural changes in government, beginning in 1901 and following in 1936, 1963, and 1975, mark a formal shift in the balance of power between centralized mayoral control and decentralized borough-oriented prerogative. Charter reforms passed in 1975 symbolically moved away from the strong mayor model by

enhancing a sub-borough level of administration in the city's community boards.²⁶ Rather than open up the possibility of major structural reform following so closely on the heels of the 1975 reforms, Mayor Koch, partly in reaction to the on-going conflict over the city's 1981 council redistricting, asked the Sovern Commission to consider just three issues: 1) the problem of the council's at-large seats; 2) the city's redistricting process; and 3) the size of the community boards.²⁷ By November 1983, after the Supreme Court ruled unanimously to deny certiorari to one of the at-large city council members appealing the Andrews decision, the Commission recommended the formal elimination of the at-large council seats, the creation of an independent districting commission appointed by the mayor to redraw the council lines according to specific criteria, and the elimination of the 100,000 person minimum size

²⁶The 1975 charter revisions formalized a measure of administrative decentralization by making municipal services (police, parks, sanitation, and social services) coterminous with the city's existing community planning districts. The resulting 59 community boards are comprised of 50 members appointed by the borough presidents from lists of nominees submitted by the local city council members. The boards have advisory powers over land use issues, budgets, and service delivery.

²⁷The 1975 charter set the minimum population of the new community boards at 100,000 residents, a requirement the 1980 census showed 19 of the 59 boards failed to meet. On the early history of community boards, see Rogers (1990). For an evaluation of the little studied board system, see Pecorella (1989; 1994).

requirement for community boards. On November 11, 1983, the voters approved all three charter amendments in an exceedingly low turnout, off-year election (*New York Times* 1982) .

In August 1984, Judge Neaher ruled that the citywide representatives on the Board of Estimate should not be figured into an assessment of electoral inequality, but, nevertheless, he found the body substantially malapportioned. He gave the city time to articulate a rationale for the Board of Estimate.

Two years later Neaher ruled against the city again and directed it to remedy the unconstitutional composition of the Board of Estimate "with all deliberate speed." This time, Mayor Koch's Corporation Counsel advised him that an appeal might work, but that he should be prepared with an alternative in the event that it failed. The Mayor announced that the city would appeal Neaher's decision, and that he would appoint a second charter revision commission. Richard Ravitch was named the new chair within a week of the Mayor's announcement, and a fifteen-member commission was in place by the end of 1986, with five members appointed by the Mayor, five by the city council leadership, and five selected from a list submitted by the Board of Estimate.

Within a year of the Ravitch Commission's appointment, the U.S. Court of Appeals upheld Judge Neaher's decision, and in April 1988, the Supreme Court agreed to hear the *Morris* case. The Ravitch Commission decided to delay its proposals until the Supreme Court decided in *Morris*. Mayor Koch indicated that he would reappoint the commission after November 1988, when its term was set to expire.

Unlike the Sovern Commission which targeted its mission to resolving the problems created by the *Andrews* decision, the Ravitch Commission opened up an exhaustive study of the city's governmental structure and procedures, as well as a consideration of rules pertaining to voter registration, campaign finance reform, and ethics standards for elected officials. Joseph Viteritti writes, "It would not be exaggeration to claim that, in February 1987, the Ravitch Commission initiated the most comprehensive assessment of New York City government ever to have occurred (Viteritti 1990, 418-9)." The election of November 1988, exhibited unusually high voter turnout and all of the recommendations made by the Ravitch Commission that were placed on the ballot met with voter approval. As he stated he would, Mayor Koch reappointed the charter revision commission, but Richard Ravitch declined reappointment to pursue his bid

against the Mayor for the Democratic Party nomination. Koch then appointed his former corporation counsel, Frederick A.O. Schwarz, Jr., the new chair of the charter revision commission. With three other replacements, the commission continued its work.

In March 1989, the Supreme Court unanimously upheld *Morris*, but reversed Judge Neaher's conclusion that the citywide Board of Estimate members should be excluded in determining compliance with the one-person, one-vote standard.²⁸ The Schwarz Commission intensified its work in order to finish in time for the November elections. The Commission held more than thirty hearings, including two sets of public hearings in each of the five boroughs, and three rounds of intensive mark-up sessions on the recommended charter changes.

The voters of the City of New York approved the most significant changes to the structure of local government since the consolidation of the city in 1898. These changes include the following: 1) the abolition of the Board of Estimate and a reallocation of its powers; 2) the retention

²⁸*Board of Estimate v. Morris* 109 S. Ct. 1433 (1989). For background and analysis on the cases leading up to the Supreme Court decision, see Gelfand and Allbritton (1989).

of a strong-mayor system; 3) the transference of some mayoral power related to the preparation of the budget and city facility site selection decisions to the borough presidents; 4) the strengthening of the city council; 5) the enhancement of representation through the expansion of the number of city council districts; and 6) the limiting of the Comptroller's powers to fiscal matters.

This chapter has chronicled the last forty years of the politics of local redistricting in New York City. It has shown how change in the control and configuration of the New York City Council has been the by-product of a convergence of specific political (power) and legal (justice) factors played out over time. Most notably, these factors include decades of partisan competition within the boundaries of a relatively stable one-party system; Supreme Court rulings on legislative apportionment in the states; rights-oriented litigation strategies borrowed from the southern civil rights movement's experience with the Voting Rights Act; and local government restructuring ordered by the federal courts and then approved by the voters. To understand how these factors have affected changes in the size of the city council we must examine local power struggles and the opportunities presented to local actors by events beyond the

local field of action. For example, one of the unintended consequences of the Supreme Court decision in *Reynolds v. Sims* was the granting of local control over local redistricting by the state legislature to New York City. Local control led to a council redistricting in 1981 that was challenged for violating provisions of the federal Voting Rights Act; the logic of this legal assault on the fairness of the redistricting process and the structure of the city council was then expanded to take in the entire structure of local government. The success of these challenges ultimately dismantled New York City's one hundred year-old local government and led to an extensive reform of the city's charter that included new provisions for how the city council was to be apportioned.

The story becomes clearer in chapter 6 which brings the narrative threads together by describing the process and outcomes of the 1991 redistricting of the city council. Before turning to this event, two more factors contributing to the outcomes must be discussed. The next chapter discusses New York City's culture of political reform and the city's distinctive style of ethnic politics through which both the legal assault on the structure of local government and the resulting institutional changes of the

late 1980s were ultimately filtered. The 1991 redistricting reflects the language and style of the city's traditions of political reform and ethnic politics.

CHAPTER 5
THE CULTURE OF POLITICAL REFORM AND ETHNIC POLITICS IN NEW
YORK CITY

There is a tension in New York City's political history between two cultural traditions. One, the municipal reform tradition, is organized around a class-based struggle for managerial control over the public bureaucracy. Municipal reform movements have taken different forms over the last century and a half, with business interests usually behind the shape and impetus of the movement. Machine politics and machine politicians are the necessary symbolic enemies of reform. There is no old-style municipal reform without the boss or the kind of politics he represents galvanizing public opinion for reform, at least long enough to 'throw the bums out' or change the rules of the game.

The second important tradition in New York City politics is the tradition of ethnic politics and the demand for inclusion in the enjoyment of the benefits of governing New York's huge public bureaucracy. Here, again, the expression of this tradition has varied over time. At times, the political class and structure have expanded enough to avert wholesale restructuring. An example of this is the modest success of the Democratic party in the 1930s

and 1940s in incorporating elements of the new immigration of the time - the Jews and Italians (Gerson 1990). At other times, the system has failed to expand adequately to meet the demands for inclusion, such as those made by blacks for community control of the public schools in the 1960s (Berube and Gittell 1969).

These traditions organize New York's political history in the modern period. The battle over redistricting the city council in 1991, however, represents a partial break with tradition. First, reform of city government was sought by a non-traditional coalition of interests that at first did not include the business class. State government, an important player in past reform movements, was essentially bypassed by the new reform advocates who appealed for fair representation with litigation in the federal courts. So the actors and the goals of reform were different from reform's traditional goals of bureaucratic efficiency and 'good government.'

The tradition of ethnic politics was also transformed in the council redistricting struggle. For most of its modern history, New York has been a multi-racial, multi-ethnic city. The size of the black population is and has been small, though not insignificant, relative to other big

cities. Race has been an important fault line in the city's politics. What is new or at least distinctive in the current period is the proliferation of 'other' identities, some racial, others ethnic, transnational, or sexual in nature. Political identity movements have moved beyond the traditional ethnic model to embrace new self-proclaimed identities, fashioned for politics.

Finally, the analysis of the council redistricting reveals a convergence of the transformed reform and ethnic politics traditions. In redistricting, fair and effective representation was equated with symbolic representation for traditionally excluded or un-represented groups, especially for the newest groups attempting to influence the process, such as Asian Americans, and gays and lesbians. New identities emerging to become new groups in the political process will seek recognition through symbolic representation. In New York, new groups in the political process could draw on the experience and history of older ethnic and racial groups in shaping their demands for inclusion. That is to say, Asian Americans and gays, but also, notably, Dominicans and West Indians, succeeded in part because they spoke the language of ethnicity and because redistricting provided for a gradual expansion of

the system in which the loss or transfer of power by those holding it was minimal and symbolic.

Reform politics in New York City. Throughout its history, New York City's institutions of local government, specifically, its institutions of elected government, were integrated into the city's fragmented party system and therefore sensitive to the changing character of party competition. In the past, the institutions of local elected government, for example, the old Board of Alderman, the Board of Estimate in its various forms, the defunct Municipal Assembly, the city council, and the office of the Mayor, have been routinely restructured to either consolidate the Democrats as the party in power, or to undermine them. New York City's political parties are regulated by state law that organizes them into separate county organizations. There is no formal mechanism for unifying the political parties in the five-county city. Until the 1989 charter reform and the elimination of the Board of Estimate, the county party leaders were able to exert influence on citywide policy through their influence over the five borough presidents who had one vote each on the Board of Estimate and controlled patronage over borough jobs. The demise of the Board of Estimate has further

eroded the power of the county party leaders by reducing their patronage powers. They now preside over an even more fractured local party. Because the Democratic party has long dominated local politics in New York, party competition has largely been driven by intra-party factionalism rather than the traditional two-party style of competition.

In New York City, then, attacking or reforming local government structure is another form of partisan competition. The restructuring of the city council where the Democratic party organization has been especially entrenched provides evidence for this claim. Over the 100 years of the history of the consolidated city, the size, structure and powers of the city council have continuously and dramatically changed (Shaw 1968; Brecher and Horton 1993, 52-5). The council has twice existed as the lower house in a bicameral structure (1898 - 1901, and 1924 - 1938). Its members have been elected from single-member districts, from mixed systems of single-member districts and at-large representatives, and from borough-wide, at-large arrangements during the city's experiment with proportional representation (1938 - 1949). The size of the city council changed twelve times, ranging from 17 to 73 members. The council's powers have gradually expanded over the last

century, but it is only in the present period with the transfer of powers from the defunct Board of Estimate to the city council that the council has had full legislative and oversight authority to function as a check on the Mayor's executive power.

If the party system has been integral to the institutional development of local government, it has also been central to all political reform movements in New York. Revisionist scholars have challenged the older ethnocultural arguments about party machines, focusing instead on the fluidity of urban electoral coalitions and the instrumental adoption of "reform" agendas and rhetoric by the machine's partisan challengers. These scholars have positioned themselves between the older consensus historians of the Hofstadter school, and neo-Marxist interpreters of the 'local state' who emphasize its embeddedness in the capitalist system. From these they argue for a more autonomous role for politics in mediating the structural change of government institutions.

Amy Bridges, for example, examines how the industrial transformation of the city in the 1850's gave rise to the party boss and his nemesis, the reformer (Bridges 1984). According to Bridges, a long-standing alliance between local

plutocrats and career politicians was forged in what political scientists call 'the second American party system' (1828 - 1854), and then broken apart by the changing needs and interests of their constituents during the decade of industrialization and immigration preceding the Civil War. Bridges' work demonstrates the political nature of the earliest urban reform movements. She shows how wealthy men came to support the local Democrats and their nascent political machine, only to gradually lose control over public spending and reemerge as reformers in electoral opposition to their former political allies. The early urban reformers were not simply Anglo-Saxon elites facing a loss of social prestige and status; nor were they only economic elites threatened by the creation of new sources of economic power. Reform movements were also shaped by the need to fashion electoral majorities and by the strategic response of machine politicians to the political challenge reform presented.

Likewise, Alan DiGaetano and Kenneth Finegold, students of Progressive era urban politics, have argued for the central role of politics and the party system in explaining urban reform movements. DiGaetano's position emerged after his research failed to confirm consistent differences over

time between machine and reform interests with respect to structural reform (DiGaetano 1991). Because urban reformers sought to break the political power of the machine, DiGaetano hypothesized a direct relationship between machine decline and the successful structural reform of local government. He examined the timing of machine decline and the adoption of various Progressive era governmental reforms in 33 cities. With respect to his hypothesis, his findings were mixed; in many of the cities he studied, political machines survived or were built through the process of structural reform of government. This evidence led him to reject a straight indirect relationship between the demise of the big city machines and the rise of urban political reform movements. As a consequence, DiGaetano reconsiders the important role regime formation and coalition-building play in mediating urban political conflict and structural change.

Finegold's study of urban politics in New York, Cleveland, and Chicago during the Progressive era finds that the electoral cleavages between the big city party machine and reform movements organized to topple it were fluid (Finegold 1995a). Reform movements opposed to the machine depended upon elite mobilization of broad coalitions within

the electorate. These coalitions often included working class segments of the electorate that were at one time aligned with the machine. Finegold argues that the success and collapse of reform movements in the Progressive era significantly reshaped the dominant urban party organizations. In some cases reform movements strengthened regular party organizations and hastened their return to power, as in the case of the collapse of John Purroy Mitchel's reform coalition in New York. In other cases, reform movements moderated the later appeal of the machine by permanently incorporating parts of their electoral base, as in the case of Tom Johnson's reform (machine) coalition in Cleveland. Finegold's analysis suggests the machine/reform relationship is better characterized as dialectical rather than simply cyclical because of the way in which dominant party organizations, those that survive, are ultimately changed by opposition reform politics. Politics is the means by which party organizations adapt to the structural reform of government institutions won by their opponents, reforms which might otherwise have permanently disabled them.

New York City has a long history of Democratic party domination, and reform-style politics (Buenker 1973; Cerillo

1973; Finegold 1995a; 1995b; Hammack 1987; Henderson 1976; Kessner 1989; Lowi 1964; Morris 1981; Wilson 1966).

Scholars have identified two broad periods before and after World War II when reformers challenged machine control of the local Democratic party. Adler and Blank label the first period which launched the mayoral administrations of Seth Low, John Purroy Mitchel, and Fiorella LaGuardia, "old" reform (Adler and Blank 1975). A period of "new" reform begins in the mid-1950s when idealistic, middle class professionals, mostly in Manhattan, challenged the party system from inside by diminishing Democratic party boss Carmine De Sapio's control of the local organization (Blank 1962; Costikyan 1966; Lekachman 1958; Moynihan 1961; Wakefield 1959; Wilson 1966).

Lowi's work on the first six decades of the city's political history following consolidation in 1898 remains the classic synthesis of the 'old' reform period (Lowi 1964). He originated the idea that New York City's political history was one of reform cycles. Lowi argued that the group nature of social and political organization produced cycles in political and electoral politics characterized by alterations between the traditional machine

style of party organization and the reform system. His major findings are:

- reform is dependent on interest groups who at the onset of reform temporarily reject the traditional system and directly attempt to control the government to bring about "innovation" in policy and administration;
- reform is sporadic and short-lived, a movement to unseat the dominant party; hostility to party organization means that reform will not be institutionalized;
- reform seeks to depoliticize government; it is instrumental and emphasizes structural change as a means of removing corruption and promoting administrative "efficiency";
- reformers believe an over-arching 'public interest' will emerge through elite control of government.

Wilson studied the political reform movements of the 'new' reform period in New York, Los Angeles, and Chicago and found that, more so than in the latter two cities, New York developed what he called "reformism" as a goal unto itself (Wilson 1966). Contrasting reformism with liberalism which he defined broadly as "a related set of substantive goals which include civil rights, government intervention in the economy for welfare purposes, concern for minority groups, and 'internationalism,'" Wilson distinguished

reformism as fully preoccupied with procedural change. The goals of reformism were 1) the democratization of the party machinery; 2) improvement in the caliber of party leaders and candidates; 3) emphasis on program and principle rather than patronage to attract new members. Other than party reform, the only other issue of importance to the reformers was charter reform, which itself was seen as a strategy to further erode party control of the machinery of government.

Wilson's distinction between liberalism and reformism goes too far. The drive to "improve" government by legal means aimed at altering its structure is a traditionally liberal political response to political conflict because it seeks to submerge a political agenda beneath an overarching concern for procedure. The goal can swing from efficiency in management of the public bureaucracy and treasury, to a genuine concern for fairness and inclusion, but the emphasis on the means of achieving these goals is a hallmark of liberal reform.

As it applies to urban politics over the last century, the word 'reform' has taken on special meaning. The paradigmatic reform period is the Progressive era when good government reformers believed that restructuring local government along the principles of efficiency and economy

would displace the power of the party bosses and prevent them from plundering the local treasury. Because of their emphasis on organizational, electoral, and administrative reforms, DiGaetano, following Holli, refers to the Progressive era municipal reformers as structural reformers (DiGaetano 1991; Holli 1969).

The vast literature on the Progressive era shows that from housing and education to the assimilation of immigrant groups and the uplift of the poor, political reformers in cities have taken up a wide range of social issues. They have had different goals in different cities, and their targets have shifted from party bosses to governmental bureaucracies to an apathetic public. They have worked both outside and inside the party and governmental system to affect change, as the social base for reform has varied across time and place and supportive voting constituencies have changed and evolved. We can, however, trace a common thread through what the literature classifies as a tradition of municipal reform from the pre-Progressive era to the present. All of the municipal reform efforts classified by scholars as urban "reform" share two characteristics: 1) they have been deeply connected to conflict and have sought to eliminate the practices of machine politics, especially

the patronage system; and, 2) they are defined and ultimately limited in their impact by a preoccupation with procedural over substantive reform and an unwavering belief in legalistic solutions to political problems.

In this vein, political reform in New York in the 1980s is only narrowly related to either the 'old' or 'new' municipal reform traditions identified by Adler and Blank and in the urban politics literature more broadly . This argument is at odds with the views of Benjamin and Mauro who see urban political reform traditions in New York in terms of a hierarchy of values between goals of democracy and efficiency (Benjamin and Mauro 1989). Referring to the 1980's, they write, "New York City's recent charter-revision efforts reveal that the impulse to improve government through changing structures, so characteristic of the American experience, is very much alive and well. Even the agenda of reform, though in part new, is deeply rooted in the classic municipal-reform tradition (Benjamin and Mauro 1989, 11)." With the permanent demise of machine politics in New York by the early 1980s, the impetus for reform did not come as it did in the past from a galvanizing attack on the Democratic party from outside its ranks, nor did it come from a revolt from within. Reform without an opposition

machine politics is of a different nature. Charter reform in the late 1980s was essentially imposed on the city by the federal judiciary, the impetus for it did not merely come from the world of local political competition. In this sense, 1980s political reform efforts have little in common with reform movements in the city of the past.

It is only in the second characteristic of municipal reform, the preoccupation with procedural reform as a goal, that the 1989 city charter, the culmination of a decade of legal reform efforts, reflects something of a traditional municipal reform heritage. Local legislative redistricting and procedures for broadening public participation in the process were incorporated into the charter revisions adopted by the electorate in 1988 and 1989. Procedures requiring an ethnically, geographically, and politically diverse and independent Districting Commission, public input, and the ranking of criteria by which the commission was required to redraw and expand the city council are explicitly articulated in the charter. These amendments reflect a preoccupation with structural reform aimed at rationalizing the ethnic, racial, and other group conflict that has characterized New York City politics for decades. It is in the context of a legalistic solution to political conflict

that the 1991 redistricting of the New York City council must be understood.

From ethnic politics to identity politics. The 1990 census showed what many observers of New York City's 'post-industrial transformation' already knew: New York City's social landscape had dramatically changed in the 1980s. The 'white flight' to the suburbs and beyond set in motion in the 1960s by the influx of southern-born blacks and Puerto Ricans and catalyzed by the city's fiscal crisis of the 1970s, continued unabated. By 1970, whites were no longer a majority of the city's population; the wave of immigration from the Caribbean, Asia, and Latin America released by the Hart-Cellar Act (1965) gained momentum during the 1980s, adding a bewildering complexity to the city's established racial and ethnic order.

Demographic change and the coloring of the city's population created new cleavages and new opportunities for alliances and coalitions in city politics. Social fragmentation, the growth of new immigrant enclaves, the growing strength of a black/brown coalition in electoral politics, and the politicization of the gay and lesbian movement by the AIDS crisis all contributed to a destabilization of the traditional pattern of ethnic

politics in the city. In the 1980s, identity politics replaced the city's conventional ethnic politics. How did this happen? What is meant by ethnic politics and how does identity politics differ from ethnic politics as it developed in New York City?

Portes and Rumbaut argue, as Glazer did some forty years before them, that the persistence of ethnic identity is a uniquely American phenomenon (Portes and Rumbaut 1996; Glazer 1954). Ethnic identity is a product of the immigrant's reaction to the conditions facing him or her, such as poverty and discrimination upon arrival in the U.S. It is strengthened over time as the second and third generations better understand the English language and the extent of discrimination against their group. Portes and Rumbaut, as did Glazer, see the resiliency of ethnic identity as the result of this process of "reactive formation" whereby national origin becomes the primary basis of group solidarity for the immigrants and their children, overwhelming other competing identifications.

"Ethnicity," they write, "framed by the experiences of the first arrivals rather than class, was to provide the fundamental matrix of American-based politics for subsequent generations (Portes and Rumbaut 1996, 95)." Nowhere was

this observation more true than in New York City in the twentieth century. In *Beyond the Melting Pot*, a defining work of the ethnic pluralist school, Glazer and Moynihan analyzed the role of ethnicity in the culture and politics of the city prior to the 1960s. The first edition of the book was written at the beginning of that decade, and suggested that ethnicity would begin to fade as an organizing principle of city politics as the major ethnic groups assimilated and experienced social mobility. A second edition of the book was issued at the end of the 1960s and here, surveying the vast social changes of the decade, the persistence of ethnic group appeals, and the racialization of political life, Glazer and Moynihan addressed the failure of their earlier prediction. They offered several reasons why ethnicity remained strong in New York City politics, the first and most compelling of which was the continuing tendency to substitute ethnic issues in politics for class issues.

Glazer and Moynihan only hint at the role of structural and legal arrangements in the persistence of an ethnically-organized politics. For example, they suggest that the replacement of an ethnic identity with an "American" one is inhibited by social structure and a system of social group

identification that is enforced by a range of behavior, from brutal and systematic violence to a passive cultural tradition of "naming." What makes *Beyond the Melting Pot* a classic text in the pluralist school, however, is its general denial of structural determinants of observed sociological phenomenon and its insistence that fundamentally structured differences such as social group identity are somehow "chosen" by the putative members of such groups. So, for example, in grappling with whether black Americans are an ethnic or a racial group, a position they waver on, Glazer and Moynihan challenge black nationalists' identification of blacks in America with the globally oppressed or "internally colonized" of the third world. This identification, they argue, is a result of a politics that chiseled the identity of an internally colonized black people out of raw sociological material that could have been carved otherwise. "If one compared it [the experiences of blacks in New York since the great migration of the 1920s] with the first fifty years of the Irish, the Italians, and the Jews, we are convinced there would be enough in that comparison to justify an ethnic rather than a racial or 'internally colonized' self-image (Glazer and Moynihan 1984, xiv)." Being black is one thing - Glazer and

Moynihan see no naturally occurring differences between social groups that are of any import; but imputing an identity to blacks which links those who are black to the 'internally colonized' of the world, to use their example, is another thing, and for Glazer and Moynihan, this kind of social group identity is simply a matter of choice for those in whose name the identity is forged - an identity that can either be embraced or rejected.

The role of law and institutions, and the imperative of a politics of interests fade in the analysis, and choice and free will take their place as determining factors of social identity. As the poststructuralist critique suggests, identity itself is nothing if it is not the working construction of meaning and self, produced both from above through interactions with institutions and from below through communicative practices. The debate with pluralists on the matter of identity, however, turns on whether the construction of identity is freely chosen or socially determined, an act of individual will or a psycho-social and ultimately political by-product of deeper social processes and conflicts. The issue of naturally occurring social group difference is moot. Social group differences simply

do not exist in a (liberal) state of nature, by which is meant a pre-conscious and pre-societal set of conditions.

What is interesting about the ethnic pluralists, and Glazer and Moynihan, in particular, is the special place racial identity holds for them over other identities and the distinction they try to make between racial and ethnic identity. Black identity is a political identity in a way ethnic identity in general is not. Glazer and Moynihan concluded in the second edition of their book that they had earlier misjudged the economic and social trajectory for blacks, one which they thought would look very similar to the trajectories for other "immigrant" groups to New York City, because they mischaracterized blacks as an ethnic group rather than a racial group. They write,

Where the book failed was in determining what *kind* of group Negroes would form. As an ethnic group, they would be one of many. As a racial group, as 'blacks'. . .they would form a unique group in American society. . .In 1963, it looked as if the categories could still be defined as ethnic groups defined by common culture as well as common descent. In 1969, we seem to be moving to a new set of categories, black and white. . . (emphasis in original) (Glazer and Moynihan 1984, x)

The racial conflict of the 1960s becomes for Glazer and Moynihan the engine of a transformation in New York City

politics in the 1960s which replaced traditional issue cleavages and patterns of accommodation with a hyper-ethnicized style of politics. Glazer and Moynihan argue that until the late 1960s, the major issues in city politics were still the traditional ones of reform versus the machine, bureaucratic efficiency, corruption in government, and crime. The party factions which emerged and took institutional shape, though they reflected new ethnic groups, were dominated by these traditional issues of urban governance. According to this view, for the first time in the city's history, a mayoral contest, that between John Lindsay, Mario Procaccino and John Marchi in 1969, was decided principally by the intensity of racial conflict. Politics and political discourse were re-ordered, and group differences were reified and essentially racialized:

The calculations of political leaders, the analyses of journalists, the reporting of the daily papers, all emphasize, perhaps they even overemphasize, the significance of attitudes toward the Negroes, toward policies that are assumed to be designed to help Negroes, and how these attitudes vary depending on whether white voters are Italian or Jewish or Polish, blue-collar or white-collar or professional, high school-educated or college-educated. . . for the first time in New York City's history. . . racial conflict, which can also be viewed as ethnic conflict, became determinative for the city's politics (Glazer and Moynihan 1984, xxvii).

There is a persistent and unfortunate lack of analytical clarity in *Beyond the Melting Pot* when it comes to the difference between an ethnic and racial identity. What is discernible, however, is the distinct problematic of black identity and the direct grounding of black identity as a social phenomenon in political conflict. In the second edition of their book, where Glazer and Moynihan reanalyze and revise their theory of ethnic pluralism to suggest that ethnic identification persists in New York City politics because racial conflict reinforced the basic fault lines of a group-based contest for power, they impart a unique power to race-based distinctions and to black political identity. One can quarrel with which part of the analysis they got wrong, but it remains the case that race and ethnicity are not wholly interchangeable as analytical categories, and that black identity is enmeshed in political meaning in ways ethnic identity is not.

It is this transformation in New York City politics - the transformation from an "ethnic" politics to a politicized group-based, in this case, racial group-based politics - that is of direct consequence for the development of identity politics in the city in the 1980s and 1990s.

Moreover, this dissertation argues that group and identity-based politics are fundamentally structured phenomena, they are not simply matters of choice or political opportunity, though the way in which opportunity is seized by political actors can play a role in determining the outcomes of political conflict and in reshaping identity. To their credit, Glazer and Moynihan argue that the struggle over racial issues in the 1960s in New York became a surrogate struggle for control of the city government and the Democratic party. Something on this order occurred in the struggle over representation and identities in the redistricting politics of the early 1990s. By this time, a historically distinct period of complex demographic change had begun and politics like the city itself was forced to move beyond the dichotomy of black and white that dominated political and social conflict in the 1960s, 1970s, and 1980s. The transformation in politics, however, was only a partial one.

The rise of identity politics in New York City was easily channeled into the symbolic, ordered politics of representation. Identity politics refers to the struggle for recognition and influence in the public sphere by groups demarcated across the political landscape by the shared

personal characteristics of the groups' members. Although identity politics is often associated with fluid social movements for change and multiplicities of meaning, in fact, identity politics work best when group identities are singular and differentiated from one another. This in part is due to the way American politics is organized, and to the way "trenches" were dug by race in past struggles for inclusion (Katznelson 1981). As chapter 1 suggests, in the American context and for historical reasons, people tend to think about representation in literal terms, that is, in terms of a close correspondence in characteristics between the representative and the individual constituent. In Pitkin's words, the representative "stands in" for the constituent and represents individual identities. Identities, however, come from the group or groups to which the individual has membership (either by birth, circumstance, or choice). They are markers for communicating individual positions within the context of social group organization. Identity groups that emphasize singular identities gravitate toward the politics of representation. They are both contained by the political opportunity structure of representation, which de-emphasizes complex and multiple identities in favor of singular ones

(i.e., race, ethnicity, gender, sexual orientation, religion), and potentially empowered by it. If they are willing to accept the rules of the game, namely the reduction of complex identities to simple ones in order to politicize them, they stand to gain. For minority groups, especially emergent minority groups, representation is a means of validating both the group itself and the groups' viability in competition for resources and benefits.

In New York City, redistricting for a new city council in which representation was being "expanded," provided a convenient battlefield for identity politics. The Voting Rights Act and demographics structured the way new groups played the game. The new identity groups borrowed from the large repertoire of tactics blacks and Latinos developed over the years to gain their share of power (however small) in local government, and identity became a political resource in the struggle of excluded groups for recognition and influence over public policy.

CHAPTER 6
THE REDISTRICTING PROCESS AND OUTCOMES: 'A CONSTRUCTED
POLITICAL SPECTACLE'

The Schwarz Charter Reform Commission was committed to the goal of enhancing and expanding minority representation in the city (New York City CRC 1990, 11-13). The question was how to achieve it and at what cost to those already in power. After considerable deliberation, and in the spirit of the sweeping mandate given it by the courts, the commission decided to seek further reform of the institution of the city council by adding two goals in addition to that of increasing minority representation: 1) the increased responsiveness of city council members toward their constituents; and 2) the improved manageability of legislative affairs. These additional goals, in effect, qualified the commitment to increase minority representation. They provided room to maneuver to those charged with reallocating representation and a method for doing so. In the end, the Schwarz Commission said it sought balance across four overarching goals:

- 1) to enhance opportunities for minority voters to elect candidates of their choice;
- 2) to increase the number of minority council members;

3) to maintain a council of manageable size in which all members can meaningfully participate, and;

4) to increase council members' responsiveness by making their constituencies smaller, without making those constituencies so small as to foster parochialism (New York City CRC 1990, 18).

These goals would be balanced by expanding the size of the city council. In the game of resource redistribution, expanding the number of beneficiaries is an effective tactic for holding onto power, even when that power must be more widely shared. It reduces the conflict inherent in reallocating resources. It transforms redistribution from a zero-sum game to one in which new beneficiaries are created to relieve the pressure of taking from one group to give to another because the winners can win more than the losers lose. Gains in representation for an aggrieved minority did not have to be made at the expense of those already elected to office.

Charter reform gave those elected officials holding formal power in New York City the opportunity to increase the pool of political resources available to those outside the electoral system clamoring for inclusion. Indeed, the use of the legal system and the courts to resolve political conflict must be seen for what it is - a political strategy

accessed by elites and non-elites alike when the regular channels for resolving political conflict become blocked or fail to provide an acceptable resolution. Formally expanding the city council through the mechanism of charter reform meant that those already possessing the most formal power (the mayor and the majority and minority party leaders of the city council) would exert considerable control over a kind of electoral patronage for those individuals or forces willing to ally themselves with either the mayor or the council leadership. In this way, institutional expansion created new political opportunities for those in power. They got to manage the expansion of representation to previously under-represented groups by securing the creation of districts that favored their allies.

To make a convincing case for how expansion would increase minority representation, the Schwarz Commission included a hypothetical scenario in its final report, using outdated 1980 census data to develop a 51-seat prototype plan. It then estimated that the expansion of the size of the council by 45 percent would at minimum increase minority representation on the council by 100 percent, from its

current nine members (26 percent) to at least 18 members (35 percent of an expanded 51 seat council).¹

In other words, charter reformers attempted to safeguard the increase in minority representation promised by the new charter. They sought to mandate procedural reforms in the interest of achieving political reform. First, the 1989 charter requires that the commission appointed to redraw council district lines reflect the geographic and political diversity of the city, and include representation of the city's racial and language minorities "in proportion, as close as practicable, to their population in the city."² Where they could not mandate proportional representation of protected minorities in the new city council, they believed it would more likely flow from a districting commission so constructed than from one lacking in diversity.³

¹The Schwarz Commission's final proposal was not without controversy. It weighed several options for council enlargement, including a proposed 59 seat council, and a bicameral council, but rejected both ideas because in its judgment these changes would not maximize the commission's goals of increasing minority representation while maintaining a council of manageable size. For a fuller discussion of balancing the size of the council with the goals of better representation, see the essay written for the Schwarz Commission on the topic by Muzzio and Tompkins (1989).

²Chapter 2-A, Section 50.4.

³This requirement was struck down in federal district court in 1992. The court ruled that the race-conscious measure was justified by

Second, the Schwarz Commission included in their charter revisions explicit criteria to be followed by the Districting Commission in redrawing council lines. The 1989 charter incorporated the federal judiciary's standards of population equality (the "one man, one vote" principle), and fair and effective representation for racial and language minority groups protected by the Voting Rights Act. These standards were to be given the highest priority in redrawing districts. Other criteria requiring districts to be compact and contiguous, and to keep neighborhoods intact were also included and ranked beneath the federal standards in order of importance.

Each of these legal safeguards to enhancing minority representation and the politics of their implementation is discussed in more detail below.

Composition of the Districting Commission. Chapter 2-A of the city charter describes the composition, appointment, terms, and powers of the Districting Commission, and the procedures and criteria for drawing districts that must be

a compelling government interest to remedy past discrimination but that the charter clause was nevertheless unconstitutional because it was not narrowly tailored to meet its goals. The judge ruled that the charter stipulation was too rigid, had no expiration date, and could potentially harm innocent people precluded by race from serving on the Districting Commission. The ruling had no impact on events prior to 1992 analyzed in this dissertation.

followed by the commission. The commission is composed of fifteen members, eight appointed by the city council leadership, and seven appointed by the mayor. Five of the council's commissioners are appointed by the majority party leader (and ratified by that party's council delegation). The other three are appointed by the leader of the council's minority party. The council's appointment power is constrained by geographic representation: no two members of the majority party's five appointments, and no two members of the minority party's three appointments may reside in the same borough. The mayor appoints the remaining seven commissioners; however, the mayor's appointment power is constrained by political party membership. The party enrollment of these commissioners must be such that individuals enrolled in a single political party shall not be a majority of the total number of members of the commission. Furthermore, the commission is to reflect the racial and language minority groups in New York City which are protected by the Voting Rights Act and its amendments. The commissioners elect a chair from among themselves.

The new requirements for selecting districting commissioners were more restrictive than those set out in the 1975 charter and more generous toward council power

versus mayoral power than those recommended by the Sovern Charter Revision Commission. The 1975 Goodman Commission simply said that the districting commission "shall be nonpartisan and its membership shall reflect the political, geographic and ethnic composition of the city (New York State 1977, 11-12)." The Sovern Commission provided that the mayor appoint four people drawn from two lists of ten people each submitted to him by the two political parties receiving the largest number of votes in the most recent mayoral election. He or she then appoints five more people, no more than two of whom shall be enrolled in the same political party. The mayor also designates the chair. The revised specifications of the Schwarz Commission returned control over the appointment of the districting commission to the city council and constrained those powers for both the mayor and council leadership. In the end, however, this did not hamper them from pursuing their own political agendas.⁴ Terry Golway, a political reporter with *The New*

⁴The proposal to transfer the responsibility for redistricting from the council to the mayor was the most controversial of the three Sovern Commission proposals (the *New York Times* strongly recommended voting "no" on it). The idea for mayoral control over redistricting appears to have come from Mayor Koch himself (Lynn 1983). The decision to reduce the power of the mayor to appoint the districting commission may have been affected by the political exigencies of the time. Mayor Koch was a three-term, strong mayor in a strong-mayor system who

York Observer, noted of the 1990 Districting Commission at the time of its appointment, that,

The commission is technically independent, but it is filled with enough politically wired people to cause concern in some circles that the panel's independence goes only so far as the leash that critics say runs from the commission to the firm hands of the council's leadership (Golway 1991c).

The council's majority leader, Peter Vallone, a moderately conservative white Democrat from Astoria, Queens, made a crucial political appointment in the person of Frank J. Macchiarola. Macchiarola was a former chancellor of the public school system, city comptroller candidate, Sovern Charter Revision Commission member, and leader of the New York City Partnership, a powerful business lobby - in short, a shrewd political insider.⁵

Once appointed, Macchiarola acted quickly to get himself elected chair. The mayoral appointees pushed Esmeralda Simmons, an African American Democrat from Brooklyn, to challenge Macchiarola (Purdum 1990); in the end he won an eight to six vote divided straight down mayoral

appeared to be sailing toward an unprecedented fourth term when the Schwarz Commission put forth this proposal.

⁵The role of leaders is more important than the role of particular personalities. Where possible real names are used, but this should not be interpreted as an emphasis on personality in explaining outcomes.

and council appointee lines (Carroll 1990).⁶ As an accommodation to the losing faction, Simmons was made a vice-chair, along with Michael J. Petrides, a conservative Republican from Staten Island, who was put forth and elected in a symbolic show of bi-partisan balance (as if accommodation to party was the same as accommodation to race). Petrides' election was forwarded by the council delegation to neutralize and foil Simmons. Simmons later said the battle for the chair, "was seen as a surrogate-fought battle between Mr. Dinkins and Mr. Vallone for control of the panel (Golway 1991b)."

Macchiarola and Deputy Counsel to the Districting Commission, Joseph P. Diaz, write of the aftermath of this episode:

From that point, part of the Chair's personal authority was at risk, but necessarily so because of the kind of leadership that would be required to accomplish the task. 'Power of the chair' issues arose immediately. Who would be the executive director? Who would be on the staff? (Macchiarola and Diaz 1993b)

⁶There was no transcript made of the May 14, 1990 public meeting at which Macchiarola was elected.

The authors go on to say that Macchiarola, drawing on his recent experience as a member of the Sovern Commission, persuaded the Districting Commission to adopt the model of commission leadership used by the Charter Revision Commission where the chair was vested with the power to make such decisions about staff (Macchiarola and Diaz 1993b). Macchiarola immediately chose Alan Gartner for the position of executive director. Gartner had worked for Macchiarola when Macchiarola was Schools Chancellor. He had also worked as an aide on Mayor David N. Dinkins 1989 campaign committee, but his loyalties were to Macchiarola. The aggressive maneuver by Macchiarola for control of the commission and its staff angered several of the mayoral appointees to the commission. Luther Blake, for example, accused Macchiarola of unfairly closing down the recruitment process before it began and of denying qualified minority candidates the opportunity to interview for top staff positions (City of New York 1991).

Macchiarola's selection was largely due to the influence of Anthony J. Genovesi (Carroll 1991; Glaberson 1991; Gartner 1993). Genovesi was a state assemblyman from Canarsie, Brooklyn, and a leader of the Democratic party in that borough. Although the Brooklyn Democratic party was

split into factions, with the county leader Clarence Norman allied with Genovesi's bitter foe, Brooklyn Borough President, Howard Golden, Genovesi was regarded by many as the most powerful Democrat in Brooklyn, and one of the most powerful Democrats in the state. He lead the Thomas Jefferson Club in Canarsie, an old-style political machine, with enough 'organization' to still be an effective vote gatherer.⁷

Golway assumed that because the council controlled the votes on the commission and because the majority of the council's appointees were picked by the majority leader, the council controlled the outcome of redistricting. Council majority leader Vallone knew Macchiarola but he did not entirely control him. His appointment of Macchiarola was seen as a means of appeasing Genovesi and nullifying a threat to his own leadership position from council member

⁷Genovesi was killed in a car accident in August 1998; despite the loss of their leader, forces loyal to the Genovesi faction of the Brooklyn Democratic party beat back nearly all of the county leader's candidates in September 1998 primaries. See Rieder (1985) for a discussion of the club under its last old-style party boss, Meade Esposito, Genovesi's political mentor. Genovesi's enmity toward Borough President Golden stemmed from Esposito's surprise handing over of power as county leader to Golden at the time of his retirement from politics in 1986. Esposito's retirement was forced by an impending indictment for illegal involvement in a Long Island racetrack deal, and by a widening corruption scandal engulfing his political organization and the Koch administration (Newfield and Barrett 1988, 233-8).

Herbert Berman, Jefferson Club stalwart and law partner to Genovesi (Golway 1991c).

For his part, Macchiarola was tightly tied into the dominant Genovesi faction of the Brooklyn Democratic party organization. William Glaberson of *The New Times* wrote that with his distinguished career in public life, Macchiarola liked to paint himself as a professional public servant,

but inside politics, the lawyer and business-school professor is known for long ties to the Brooklyn Democratic machine once run by...Meade H. Esposito... [In an interview] Mr. Macchiarola said those ties did not carry any obligation. 'I have no obligation. . . except to do the job right.' (Glaberson 1991)"

Glaberson goes on to quote Norman Adler, a political insider himself and veteran New York political consultant: "'He'll say, 'Nobody controls Macchiarola.' But that doesn't mean nobody controls him.'"

It is important to stress the role the chair played in the council redistricting. The opportunity before the commission was unique because expansion of the city council meant that council districting, unlike a typical reapportionment,⁸ was not a zero-sum game. Macchiarola was

⁸The term reapportionment refers to the reallocation of people across a fixed number of districts. The Schwarz Commission consciously chose the name 'Districting Commission' for the agency responsible for

shrewd enough to understand that under such conditions the commission could achieve both its legal mandate to enhance minority representation and its political imperative to do as little harm as possible to incumbents. As he told Sam Roberts of the *New York Times*, "When you scratch a council member, they're not white, they're not black. They're the color of politics. They all want tenure (Roberts 1991)."⁹ Indeed, in terms of Voting Rights Act, Section 2 protection against non-retrogression, there was also a legal justification for protecting black and Latino incumbents. The transcripts of the commission's public hearings show that, the chair, in the person of a skilled leader like Macchiarola, was able to control the discourse on representation and submerge the political goal of incumbent protection (City of New York 1991).¹⁰

redrawing the City council lines because it wanted to emphasize the more comprehensive reordering of the city's single member district electoral system (Gartner 1997, note 2, 69).

⁹Macchiarola has published several scholarly articles based on his experience as the chair of the Districting Commission which belie the view of him as having any special concern with incumbent protection. See, for example, Macchiarola and Diaz (1993a; 1993b; 1993c).

¹⁰The author reviewed transcripts of all of the commission's public meetings of the commission (26 of 27 meetings were transcribed), and all of the testimony given at the commission's 27 public hearings. Approximately 2,300 people testified at the hearings held throughout the City over an eight month period beginning in October 1990.

Macchiarola did this by limiting the discourse on what was possible, a tactic not unlike what Schattschneider, and Bachrach and Baratz recognized as "agenda setting" in the context of policymaking (Schattschneider 1975; Bachrach and Baratz 1962). The chair, through his prerogative to change the order of speakers at the hearings, praise views he favored and limit discussion on views he did not, exerted considerable control over the shape of the public discourse. For example, Macchiarola consistently articulated the view that the commission's job was to create 16 new districts, with the emphasis on adding 16 more minority representatives to the city council. This sounded laudable, given it represented a nearly 50 percent increase in the size of the existing city council. But the charter called for the creation of 51 new city council seats, drawn by following specific rank-ordered criteria that nowhere mentioned the protection of incumbent council members. The view that 16 new seats were to be created rather than 51, of course, implies that the expansion of the city council will not significantly disturb the core boundaries of the 35 existing districts.

Incumbent protection was kept off the agenda of the commission's public hearings. It was not mentioned in the

new city charter as a districting criteria, and yet, not surprisingly, it drove the final outcome of the council plan and shaped and contained the struggle for increased minority representation. It was a legitimate issue,¹¹ but it remained undisclosed, a guarded goal of the (not-so) hidden agenda of most of the commissioners.¹² Indeed, in what could only have been a strategic lapse, the commission's preliminary and revised plans was presented to the public with stars on them indicating the residences of incumbent city council members (see appendix B, maps B6.1 - B6.8). As

¹¹Throughout its involvement in redistricting matters, the Supreme Court has generally avoided questions of partisan gerrymandering. Where it has ruled on the issue, it has said that "preserving cores of prior districts, and avoiding contests between incumbent[s]" might justify minimal deviation from precise mathematical equality between congressional districts (*Karcher v. Daggett* 462 U.S. 725 (1983)). In 1986, the Court held that partisan gerrymandering was justiciable, but only if there was "continual frustration of the will of the majority of the voters" (*Davis v. Bandemer* 478 U.S. 109)."

¹²David I. Wells, one of Mayor Dinkins appointees, articulated a consistently principled position on the issue of incumbent protection. He was against it. He strongly believed that districting should follow neutral rules of compactness and contiguity. Wells was the Associate Director of the Political Department of the International Ladies' Garment Workers Union (now UNITE) and had been closely involved in reapportionment activities for thirty years. His name is associated with a Supreme Court decision, *Wells v. Rockefeller*, 394 U.S. 542 (1968), which struck down New York State's congressional reapportionment plan for violating the equal population principle. The plan had attempted to keep county boundaries as meaningful divisions of the state in the counties around Buffalo and New York City by creating something like super-counties, combinations of counties, circumscribing sets of congressional districts. County boundaries in the less populous areas of the state were ignored. Since political parties are legally organized in the state by county, Wells saw the plan for what it was, a partisan gerrymander. The Supreme Court, however, did not reach that decision and only considered the population deviation complaint, ruling that deviations of +/- 6.5 percent from the mean were unconstitutional.

New York Times reporter, Felicia A. Lee noted, the public outcry was deafening: "The May 1 plan unleashed a torrent of criticism and skepticism from diverse groups hoping for representation - including black and Hispanic people, homosexuals, Republicans and Asian-Americans - and from incumbents fighting to protect their seats (Lee 1991c)."

The politics of controlling the composition of an "independent" redistricting commission yield further evidence of how procedural reform in this area can be undermined. Four of the five appointments made by the council majority leader, including that of Macchiarola, were based on the recommendations of borough council delegations. The fifth, however, was made at the behest of Upper East Side Democratic council member Robert Dryfoos. "The rest of the Manhattan delegation had little voice in the selection of a borough representative [on the commission] (Golway 1991b)." Dryfoos's choice was Herson Cabrerias, a construction company contractor and one of the commission's three Latino appointees.¹³ Originally Dryfoos had proposed his political consultant, Larry Douglas, for the commission

¹³The other two were Mary-Ann Brigantti Hughes, a Democrat from the Bronx appointed by the Mayor, and Camelia A. Rodriguez, a Republican from the Bronx appointed by the council minority leader.

seat. He withdrew the proposal when the Manhattan delegation unanimously balked at that idea. Dryfoos then proposed Cabrerias, Douglas's business partner, instead (Golway 1991a). The Manhattan council delegation did not like Cabrerias either, but Vallone was undeterred in his effort to pay back Bob Dryfoos. And for good reason. Dryfoos helped make Peter Vallone majority leader. In 1986, Dryfoos broke with his council colleagues from Manhattan to cast a lone vote for Peter Vallone for majority leader. Dryfoos's vote was a tie breaker and shocked Vallone's opposition because the Manhattan delegation was otherwise unanimous in its vote against Vallone (O'Brien and Tomasky 1991).

Dryfoos's appointee, Cabrerias, turned out to be a thorn in the side of the council appointees to the commission. He would later bitterly oppose the commission's final plan as unfair to Latinos. He was vocal and persistent in his dissatisfaction with the final plan, gaining legitimacy with some in the city's Latino leadership by attacking the plan and the commission's commitment to incumbent protection. But Cabrerias had his own hidden agenda. His dissatisfaction materialized only when lower Manhattan, where he lived, was carved up in a way which was unfavorable to the council

candidacy of his wife (Golway 1991c). The case of the lower East Side is detailed in chapter 8.

Vallone's decision to support the nominees of the outer borough council delegations while appeasing Dryfoos who was acting independently of his fellow Manhattan council colleagues is revealing of the strength of the party organizations in the outer boroughs relative to Manhattan. This factor played a role in the pattern of incumbency protection followed by the commission. Indeed, "screwing Manhattan was what enabled them [the commissioners] to reach accommodations in other boroughs," said one commissioner to journalist Bob Fitch, writing in the *Village Voice* (Fitch 1991).¹⁴

As for the council minority, it consisted of just one council member, Susan Molinari, the daughter of the Republican borough president of Staten Island. Her crucial appointment was Michael J. Petrides, her father's appointee to the Board of Education, and another shrewd political insider. Mr. Petrides was close to the Republican leadership in the city, particularly state senator and GOP boss in the city, Roy Goodman (of the Goodman Commission

¹⁴The commissioner requested anonymity.

fame). Petrides was also close to Rudolph W. Giuliani, the U.S. Attorney who at the time of the council redistricting was planning his first (failed) campaign for mayor. Petrides later played a leadership role in Giuliani's second (successful) bid for mayor.

The Mayor, David N. Dinkins, the city's first African American mayor, also made some crucial political appointments to the commission, namely Esmeralda Simmons and Dr. Luther Blake. Simmons and Blake had civil rights movement credentials and supported insurgent factions in Brooklyn politics. Blake was a field director for the Student Non-Violent Coordinating Committee (SNCC) in the 1960s and someone who had been involved in redistricting battles in New York city and State for over twenty years. Simmons, a civil rights lawyer, was the director of the Medgar Evers College Center for Law and Social Justice and had long been involved in efforts to challenge the traditional control of the Democratic party in Brooklyn. She was close to U.S. Representative Major Owens, Democrat from Brooklyn, whose Coalition for Community Empowerment regularly ran insurgent candidates against old-guard black city council members who were allied with the council majority leader Vallone and often at odds with Dinkins.

"The reason Esmeralda was appointed," said Dinkins' chief liaison to the Districting Commission,

was because everybody in New York knows that Esmeralda is uncontrollable. And un-influencable. And doesn't particularly like black incumbents. That was Dinkins sending a message that 'I'm not protecting anybody. I'm maximizing the community's interest as I see it. I'm not protecting anybody.' He was pissed off at them [black incumbents] because they were not on his side on some of these budget battles. Picking Esmeralda was a clear message (Interview with Phil Thompson, October 1999).

Districting Criteria. Section 52 of Chapter 2-A of the revised city charter sets out the criteria for drawing city council districts. There are three major sets of criteria. The first is a set of requirements that the commission is instructed to follow "to the maximum extent practicable..." mandating that they be "applied and given priority in the order in which they are listed."¹⁵ These ranked rules for drawing districts combined federal, local, and other constitutionally permissible standards for drawing districts. They are the most important criteria outlined in the charter and are examined in more detail below.

¹⁵While other jurisdictions have established criteria for drawing districts, New York City appears to be unique in ranking them (Gartner 1997, note 26).

The second major criteria require districts to be contiguous and set out how parts of any district separated by water must be connected.¹⁶ Finally, the third major criteria limit the number of bi-county districts to one for each borough.¹⁷

The first set of charter criteria are the most important to understand. Within the set of rank-ordered standards for drawing districts, the first and second rules incorporate federal reapportionment standards into the city charter. The first rule requires population equality across council districts, and the second stipulates "fair and effective representation" for racial and language minorities protected by the Voting Rights Act.¹⁸ The third rule is specific to New York City and refers to keeping intact

¹⁶Chapter 2-A, Section 52(2) says, "Each district shall be contiguous, and whenever a part of a district is separated from the rest of the district by a body of water, there shall be a connection by a bridge, a tunnel, a tramway or by regular ferry service."

¹⁷Chapter 2-A, Section 52(3) says, "If any district includes territory in two boroughs, then no other district may also include territory from the same two boroughs."

¹⁸Chapter 2-A, Section 52(1)(a) reads, "The difference in population between the least populous and the most populous districts shall not exceed ten percentum (10%) of the average population for all districts, according to figures available from the most recent decennial census. Any such differences in population must be justified by the other criteria set forth in this section." Section 52(1)(b) says: "Such districting plan shall be established in a manner that ensures the fair and effective representation of the racial and language minority groups in New York city which are protected by the United States voting rights act of nineteen hundred sixty-five, as amended."

"neighborhoods and communities with established ties of common interest and association, whether historical, racial, economic, ethnic, religious or other."¹⁹ The next four rules incorporate traditional known constitutionally-permissible standards for drawing legislative districts. They require districts be compact²⁰, not cross county boundaries²¹, and not be drawn to purposefully separate geographic concentrations of voters enrolled in the same political party.²²

The Schwarz Charter Reform Commission stipulated and ranked districting criteria to ensure a legal, orderly, and fair process for reallocating representation in the city council. At a May 29, 1990 Districting Commission meeting,

¹⁹Chapter 2-A, Section 52(1)(c).

²⁰See Chapter 2-A, Sections 52(1)(d) - 52(1)(g): "No district shall be twice as long as it is wide..."; and the overall plan shall be drawn in a manner "that minimizes the sum of the length of the boundaries of all of the districts included in the plan." Compactness was once required by federal statute for congressional districting, but this is no longer the case. Federal courts have indicated a preference for compactness in state legislative districting, but have never required it. Twenty-five state, including New York, have compactness provisions in their state constitutions but only two states define the concept. The New York City charter definition is similar to Colorado's; Michigan denies compactness for state senate districts as rectangular in shape, while state assembly districts are to approximate the square (Grofman 1985; Wells 1997, 114).

²¹This criteria aligns local requirements with those found in the New York State constitution.

²²In *Davis v. Bandemer*, 478 U.S. 109 (1986), the Supreme Court ruled political gerrymandering a justiciable issue, but did not clarify the basis for establishing it.

former Schwarz Commission Executive Director Eric Lane briefed the commission on the ranking of districting criteria in the charter:

In these criteria you'll notice under Section 52 in Section I, the most noticeable thing is that the criteria are to be given priority in the order in which they are listed, or in other words that one person, one vote is first, the Voting Rights Act criteria is second, and that as you go down the list the criteria will become important, but no criteria that is lower on the list has a value greater than a criteria higher on the list, or even is of equal value (City of New York 1991).

Outcomes. How did the commission apply the criteria to the expansion of the city council? The leading scholar on districting, Bernard Grofman, writes, "The commonly held view that reliance on formal criteria such as compactness or equal population can prevent gerrymandering is simply wrong (Grofman 1985, 88)." The New York City districting case analyzed here bears this out. It is, however, important to understand why this is so. To begin the analysis, the charter criteria will be evaluated separately.

Criteria #1: equipopulous districting. With respect to the federal standards incorporated into the charter, the commission generally adhered to them. According to the 1990

census, New York City's total population was 7,322,564.²³

The charter permits a +/- five percent deviation in the ideal size of a district which was 143,580; the commission, therefore, was forced to conform to a range of 136,401 to 150,759 people per district. The final plan of the commission created 51 districts where the average size was 143,560, and ranged from the smallest district, District 1 in Manhattan (137,930) to the largest district, District 12 in the Bronx (151,938) (see appendix B, maps B6.9 - B6.13, and appendix C, table C6.1).

Criteria #2: fair and effective representation. The second federal standard, the requirement ensuring the fair and effective representation of minority groups protected by the Voting Rights Act, was also, on its face, achieved. The standard empirical evidence of this is the creation of minority-majority "winnable" districts in rough proportion

²³Adding another wrinkle to redistricting, the final census figure was hotly disputed by the City. Charging a gross undercount of between 500,000 to one million people, the city filed suit against the federal government to force an adjustment. After conducting a post-enumeration survey in the spring of 1991, the U.S. Bureau of the Census estimated it had undercounted the population in New York City by some 230,000 people, but George Bush's Commerce Secretary, Robert Mossburger, swiftly decided not to adjust the final numbers. As a result, several states with large cities whose populations had been undercounted joined the New York initiated federal suit which dragged on for several years before it was dismissed. The drama over the undercount played a role in redistricting because the commission never knew if the numbers it was working with were going to change.

to the size of the minority population, relative to the white population. In addition, there must be no "retrogression" in the representation of these minorities in new plans.²⁴ Under the previous 35-seat plan, among the council members elected in 1989, there were six African Americans, three Latinos, and no Asian Americans elected to the city council. Non-white minorities collectively represented 25.7 percent of the council, where they were 56.8 percent of the population.²⁵ The new 51 seat council district plan drawn by the commission created twelve districts where African-Americans accounted for 50 percent or more of the population, nine districts where Latinos were more than 50 percent of the population, and six districts which had combined minority populations of 50 percent or

²⁴This is the constitutional standard upheld by the Supreme Court, although, as discussed in chapter 3, the phrase "fair and effective representation" has not been fully defined by the Court. Rather, judicial opinion has established grounds for violation of fair and effective representation standards for protected minorities. The non-retrogression standard established in *Beer v. United States*, 425 U.S. 130 (1976) and extended in *United Jewish Organizations v. Carey*, 430 U.S. 144 (1977) is based on Section 2 of the Voting Rights Act.

²⁵According to the 1990 census, New York City's population consists of 3,163,125 (non-Hispanic) whites (43.2 percent), 1,847,049 (non-Hispanic) blacks (25.2 percent), 1,783,511 Hispanics (24.4 percent), and 489,851 (non-Hispanic) Asians (6.7 percent). The remaining number are classified as (non-Hispanic) others (39,028 Native Americans and Pacific Islanders).

more. This meant that 54 percent of the 51 districts were majority-minority districts.

There is a social science literature on the population threshold a district needs to meet in order to give a minority group the best opportunity to elect "candidates of their choice." The general rule of thumb is what is known as "the 65 percent rule" which says that the minority population must be at least 65 percent of a district's population in order to elect its candidate (Brace et al. 1988). Because racial minority groups tend to be younger than whites, they need to be packed into a district at a higher rate in order to ensure their majority status among the voting-age eligible population. The outcomes of the council elections following the council's previous redistricting in 1982 suggested that the appropriate population threshold for New York City was actually higher than 65 percent. At that time, no minority candidate was elected from a district where the minority population was less than 80 percent of the population or where a single minority group did not dominate in a mixed minority-majority situation (Blake 1990). This problem only complicated the commission's work. Among the commissioners there was a vigorous debate over acceptable levels of minority dominance

versus the perception of "packing," an unacceptable districting practice and one the Justice Department would later challenge in the commission's final plan.

In the final outcome, twelve African-Americans, and nine Latinos were elected to the city council, increasing minority representation on the council to 41.2 percent, a 15.5 percentage point increase. Although no Asian American was elected to the council, and Latinos failed to win seats in proportion to their numbers in the general population, the increase in the "descriptive representation" of minorities in the New York City council eventually was seen by many as the fulfillment of the Schwarz Commission's intent to rectify minority underrepresentation through charter reform.

The other five districting standards, the local and other constitutionally permissible rules enumerated in the charter, were less restrictive and more open to creative political interpretation. The commission believed it was less vulnerable to Justice Department rebuke if it violated these other standards than if it violated the first two standards described above. Violations of the charter districting criteria would have been less egregious had not

the commission taken on an additional criteria of its own, incumbency protection.

Incumbency protection made an extremely complex problem even more complicated because it created additional imperatives where there were no legal mandates. As a result, in several cases highlighted below, the charter criteria were ignored or improperly prioritized with respect to charter mandates to accommodate the incumbency protection agenda adopted by many of the commissioners.

Criteria #3: The neighborhood and community standard. This criteria is the most important standard in the city charter after the federal standards of equipopulous districting and fair and effective representation for protected minority groups. The desire for neighborhood integrity was the over-riding theme of the majority of the public testimony given at the Commission's 28 public hearings (City of New York 1991). This standard, however, was repeatedly violated in the final plan.

The case study reported in chapter 8 discusses in detail the ways in which neighborhoods were sacrificed to the politics of redistricting. This chapter also discusses, however, how the idea of a "community of interest" emerged as a possible new standard for districting fair districts.

Criteria #4 and #7: The compactness standard and the minimal boundary standard. These criteria were virtually ignored in the final plan. Compactness issues are usually non-controversial. The advent of computer technology in districting allows for more precise line drawing and encourages non-compactness. As David Wells, the commissioner with the most experience in districting, said when he cast his vote against the final plan, some of the most "grotesquely non-compact" districts "must be seen to be believed (City of New York 1991)." The maps of the plans are self-evident on this point (see appendix B, maps B6.9 - B6.13).

Wells had been a consistent critic of all forms of gerrymandering during the months of hearings and meetings held by the commission. He had a purist's view of the districting process, despite his forty year engagement with reapportionment litigation. He believed the law governing the process was neutral and fair, and had himself been consulted and had his suggestions for ranking districting criteria incorporated into the new city charter. He believed all gerrymandering was wrong and anti-democratic because it was an attempt to predetermine election results on the part of people already in power. When the Commission

issued its initial district plans on May 1, 1991, Wells objected to a substantial number of districts on grounds that they were not compact, nor were the aggregate length of their boundaries minimized.²⁶ At the meeting held two weeks later to adopt the revised plan, Wells continued to push for more compact districts. He told the other commissioners that unless significant changes were made he would vote against the final plan.²⁷ He pointed out that districting criteria could only be violated if the violation was required in order to adhere to a higher ranked criteria. So, for example, a violation of the compactness standard was permitted only if it was necessary in order to meet a higher ranked criteria, such as neighborhood integrity. In district after district Wells detailed the "gross," "grotesque," and "ridiculous" gerrymandering for which he could find no such justification.

In the final meeting of the commission on June 3, 1991, a defeated David Wells called the final plan "nothing more than an old fashioned gerrymander produced with today's highly sophisticated technology (City of New York 1991)."

²⁶Wells objected to districts 2, 4, and 7 in Manhattan; 15, 16, and 17 in Plan A for the Bronx, and 8, 12, 13, 14, 15, 16, and 17 in Plan B; 21, 29, 30, and 32 in Queens; 33, 36, 37, 39, 44, and 50 in Plan A for Brooklyn, and 33, 34, 37, 39, 47, 48, and 49 in Plan B.

He, once again, ran through a litany of districts which he believed stood in clear violation of the city charter. And he spoke out on what he believed had produced this final outcome: first, "an effort to maximize the representation of selected ethnic groups at the expense of all other legitimate districting principles." And second, "an apparent effort to protect or enhance the political fortunes of selected incumbents, selected potential incumbents, selected would be incumbents and selected favored political groups and individuals, again at the expense of legitimate districting principles." The first factor he attributed to a possible misreading of the Voting Rights Act and its incorporation into the city charter. The other, he said, was simply unjustified.

The 38th council district in Brooklyn is the result of a clash of the two factors Wells identified. It was to be one of the "new" minority-majority districts, and as such, is made up of what was left over after the interests of "selected incumbents, selected potential incumbents, selected would be incumbents. . ." were taken into consideration by their friends and allies on the districting

²⁷He still objected to districts 13, 15, 16, and 17 in the Bronx; 33, 39, 41, and 50 in Brooklyn, 2 and 4 in Manhattan, and 29 in Queens.

commission. The district is "grossly" non-compact (see appendix B, map B6.7).

The core of the 38th is the low income neighborhood of Sunset Park, an old industrial neighborhood on the Brooklyn waterfront in transition from a white working class enclave of long shoreman and factory workers to a neighborhood of low income Latino and Asian immigrants (Winnick 1990).

The challenge for the Districting Commission was to maximize the number of minority voters in the district while preserving the electoral base of the area's former council representative, Steven DiBrienza. DiBrienza lived just east of Sunset Park, but his strongest base of support is in the Carroll Gardens neighborhood in the northeastern portion of his former district (see appendix B, map B4.17, district 30). Connecting DiBrienza's residence to his electoral base forced a wedge between Sunset Park and a large mostly black-occupied public housing development near the Gowanus Canal.

The initial and revised plans for the district solved the problem of connecting Gowanus to Sunset Park by denying DiBrienza his base. The final plan, however, returns incumbent protection to top priority for the Districting Commission. It accomplishes the dual goals of incumbent protection and maximizing minority districts by running

around Carroll Gardens to the waterfront, slipping around abandoned piers, traveling down Atlantic Avenue for several blocks and then opening up to swallow in the Gowanus and Wycoff Gardens Houses, giving the 38th an upper crab-like hooked claw.

DiBrienza was not entirely happy with his new district.²⁸ He wanted more of the waterfront but took what he got when it was clear that the favored candidate in the 38th would be an official from the International Longshoremen's Association, Louis Valentino.²⁹ In return for giving up the waterfront DiBrienza got to keep his base and kept the two large public housing projects (Gowanus and Wycoff Gardens) out of his district. Fortunately for him, his strongest competitor, Joan Griffin McCabe, was gerrymandered out of his district, too, and drawn into the 38th.³⁰ McCabe, a white woman, won an upset in the 38th, a

²⁸According to the Mayor's liaison to the Districting Commission, DiBrienza was so upset with the initial plan for his district that he publicly threatened him on the steps of City Hall. (Interview with Phil Thompson, October 1999.)

²⁹McCabe came out of the same reform club movement in central Brooklyn as DiBrienza (Interview with Joan Griffin McCabe, August 1999).

³⁰The state assemblyman for this part of central Brooklyn, an ally of both DiBrienza and McCabe, said in an interview that he asked Tony Genovesi to put McCabe into the 38th for reasons that had to do with his own self-preservation in the state legislature redistricting to take place the following year (Interview with Hon. James Brennan, September 1999).

district identified as minority because it was an "open" seat (no incumbent lived within its bounds) and its population was 54 percent Latino.³¹

Criteria #5: The bi-borough districting standard. This criteria was hard not to abide by because it was straightforward and violations of it were easy to prove. In its final plan the Districting Commission upheld the restriction on the number of districts crossing borough (county) boundaries to one per borough.

The most controversial issue related to the bi-borough restriction occurred over the problem of what to do with the excess population of Staten Island created by the population size requirement for districts. According to the 1990 census, Staten Island is home to 378,977 people. Because the new council districts were limited in size to roughly 143,000 people, Staten Island faced the dilemma of having too many people for two new districts, and too few people for three. Some part of Staten Island would have to be connected to another borough, and because other districting criteria required districts separated by water to be connected by "a bridge, a tunnel, a tramway or regular ferry

³¹The author was McCabe's campaign manager.

service,"³² a third Staten Island district could only be connected to Manhattan or to Brooklyn.

In the early hearings of the commission on this issue, black activists from Staten Island's north shore neighborhoods proposed connecting the northern perimeter of Staten Island to lower Manhattan. There was merit to their argument in that the north shore, where most of Staten Island's small minority population lives, had common interests with the black and Latino residents of the lower East Side of Manhattan.

But the incumbent council woman of the lower East Side, Miriam Friedlander, had seen this plan before in 1981, when the idea was first advanced. At that time, districting Friedlander into Staten Island was a strategy aimed at diluting her political base of support and her influence because it would have connected the very liberal Friedlander to a large portion of Staten Island where the residents are politically and culturally conservative. Again, Friedlander vigorously objected to connecting any part of Manhattan to Staten Island.

Meanwhile, another scenario for the bi-borough Staten Island district developed. Luther Blake proposed connecting

³²Chapter 2-A, Section 52(2).

the African American north shore to Coney Island in Brooklyn. Making that connection would have ruled out maximizing Republican party strength by dismantling the existing cross-borough Staten Island-Brooklyn district that linked the largely white Republican mid-section of Staten Island to conservative Bensonhurst, Brooklyn. The controversy over how to split up Staten Island was the first major conflict for the commission and reflected the political divisions among the commissioners themselves. The issue was whether racial minority voter opportunities would be maximized over political party demands. The interests of Staten Island party leaders were over-represented on the commission. With only 5.2 percent of the total population of the city, Staten Island controlled 4 of the 13 appointments to the districting commission - three were made by the lone city council minority leader, the lone Republican on the council, Susan Molinari, daughter of the Staten Island borough president. A fourth appointment was made by Jerome X. O'Donovan, a Democratic incumbent.

Moreover, politics in the other boroughs of Manhattan and Brooklyn came into play. Keeping Brooklyn whole was of a lower priority than managing the complex identity politics

of Manhattan (Liff 1991c).³³ In the end, Blake's proposal lost: the black community on the north shore remained embedded in a district that was 65 percent white, Republican representation was strengthened, and the Democratic council incumbent kept his base by having his residence drawn into a "pimple" that extended from his old northern district to his new residence south of the Verrazano Bridge (Gartner 1993, 76).

Criteria #6: The partisan gerrymandering standard. The reformers on the Schwarz Charter Revision Commission believed that improving party competition, which meant increasing the ability of New York City's Republican party and its small number of voters to compete with Democrats and to win elections. Because of their rejection of proportional representation, they were hard pressed to devise other legal reforms which would allow Republicans to win in single-member districts, despite the fact that Republicans represented 14 percent of the registered voters. As discussed in chapter 4, the at-large system was created

³³Liff writes: "Commission Director Alan Gartner and technical director Herman Jenkins were asked why the commission did not link Staten Island with lower Manhattan - for example, taking in Battery Park City and about 30,000 people in Tribeca to complete a district. 'The consequence was so problematic in Manhattan,' Jenkins said. 'There was no resonance to that suggestion,' Gartner said. In English, that means

specifically to aid Republicans, and with that system's demise Republicans were effectively shut out of the city council. There are pockets of Republicans in a few scattered neighborhoods in the city, specifically, in the upper east side of Manhattan, the "silk stocking" district of Republican state senator Roy Goodman, and former Republican congressman Bill Green; in Staten Island; in Italian Bay Ridge and Bensenhurst, Brooklyn and in the Italian and Jewish neighborhoods of Queens. For this reason, partisan gerrymandering for the Republican party was encouraged through charter reform language which forbid the carving up of neighborhoods of similarly registered voters.

Public participation in districting. The commission decided early on to mount an extensive campaign aimed at creating a high level of public involvement in the districting process. Its public program consisted of 27 hearings held in all five boroughs; more than 400 meetings between the commission's outreach staff and community groups; public business meetings held across the city; the publication of monthly newsletter in English and Spanish and distributed free to more than 10,000 people and

the commission wants to take care of Manhattan, especially below 14th Street where both Asians and Hispanics have been lobbying for seats."

organizations; a media campaign aimed at the minority community (largely through public announcements, radio ads, and a print media subway campaign); the translation of basic informational publications and pamphlets into four languages (Spanish, Chinese, Korean, and Creole); and the provision of a "public access terminal" in mid-town Manhattan where interested individuals could receive assistance in preparing their own proposals for district maps (Gartner 1993, 109-110; Macchiarola and Diaz 1993a, 1211-1212). The effort created a whirl of activity that brought out over 2,300 people to testify at the public hearings and constantly kept the issue in the city's four daily newspapers. However, given the highly complex game of balancing the kind of competing interests that were at play, individuals and most community organizations had little ability to actually effect their will. Most of the plans submitted by individuals and community groups were for single districts; only one organization, the Community Service Society, offered a 51-district alternative to the commission's plan (Macchiarola and Diaz 1993a, 1214-1218). The commission could and did give consideration to material generated by its public participation program. However, single district plans got little attention because the commission had to

play a different game. It needed from the public a master plan, not the isolation of particular geographies of interest. In an interview, a high-ranking commission staffer admitted that the real purpose of the public participation program was strategic, it was not meant to be an exercise in democratic planning. The purpose of the 'spectacle' of participation was to take away from the Justice Department one possible rationale for rejecting the city's submission - a lack of public participation and input into the commission's work (Interview with Marc Lapidus, February 1999).

Justice Department rejects the plan. The Districting Commission approved the final plan with a vote of 11 to 4.³⁴ Dissenting were two of the eight minority group members, Mary-Ann Brigantti-Hughes and Herson Cabrerias, a council appointee from the Bronx, Benjamin Nolan, and a mayoral appointee, David Wells. The final plan was substantially the same as the revised plan released two weeks before. It included 27 districts in which racial and language minority groups represented 50 percent or more of the total

³⁴The charter requires a supermajority of nine votes on the commission to adopt the final plan. Chairman Macchiarola said he would not be satisfied with anything less than 14 votes in favor, but, in the end, settled for 11.

population in the district. Among these minority-majority districts, 12 were dominated by blacks, 10 by Latinos, and five were mixed minority districts in which no one minority group prevailed, but together formed a majority of the population. In 21 of these 27 districts, the minority population exceeded 80 percent, and one exceeded 75 percent.

The final plan had something for everyone, although, not everyone was a winner. First, most council incumbents were not forced to face off against each other. Only two sets of incumbent council members were drawn into the same districts, Susan Alter and Noach Dear in Brooklyn, and Jerry Crispino and Michael DeMarco in the Bronx. No incumbent minority council member faced another incumbent in his or her district. Sixteen new "open" seats with minority majorities had been created and minority representation on the city council would surely increase under the plan. At least one of those seats would be won by the city's first openly gay council member, another was drawn to help Asians elect their first council member, and an important new immigrant group, Dominicans, succeeded in persuading the commission to draw a district that favored its community in upper Manhattan.

On the other hand, other charter criteria for drawing fair districts - neighborhood integrity, compactness and, some argued, even contiguity - were virtually ignored. The political spectacle elements of the redistricting, primarily its public participation program submerged a blizzard of competing political agendas beneath the rhetorical legality and high principles of charter reform and the Voting Rights Act. As a result, a Brooklyn church was separated from its parish elementary school across the street; the east and west sides of upper Manhattan were put in one district while the interior blocks were included in another; the Park Slope neighborhood in Brooklyn was divided into three different districts; the Baisley housing project in Queens was split down the middle; the Italian neighborhood of Belmont was put into incumbent council member Jose Rivera's district at which point, upon hearing of this news, he ripped up a map at a public hearing complaining that he did not want to represent Belmont; the district of an African American incumbent allied with the council speaker was annexed to the middle class section of Rosedale, a mixed income African American neighborhood in Queens, by traveling down a section of the Belt Parkway to connect it to the district - the rest of Rosedale was in another district; the multiracial, low

income neighborhood of the lower east side was split in half, each half then stitched to separate adjacent upper income white neighborhoods; and in several cases, districts were connected through waterfront piers where nobody lived, sections of highway, and the Verrazano Narrows bridge. The surgical removal of people block by city block, with lines zig zagging across neighborhoods otherwise contained by the rational grid of city streets or other pre-existing physical boundaries is amply self-evident in the commission's final maps. A comparison of the council maps over the last thirty years show how gerrymandering has no doubt increased (see appendix B).

The politics of trading a city block here for a city block there was obvious to even the most casual observer. Against the backdrop of exalted rhetoric about "minority empowerment" and "fair and effective representation" it undermined public confidence in what was supposed to be an important achievement in political reform for the city. One long-time observer of city politics, columnist Jack Newfield, wrote at the time the final plan was approved by the commission,

Each district seems to be the child of a different coalition inside the commission. The supposedly

blue-ribbon, high-minded commission was run like a cheap political convention. The main factions were Brooklyn blacks, Peter Vallone appointees, David Dinkins loyalists, Republicans represented by Michael Petrides and responsive to Roy Goodman, and the Brooklyn Democratic machine. In representing the colonial appetite of the Brooklyn organization, the commission's chairman, Frank Macchiarola, violated his public trust to be impartial. It seems that almost everybody was represented - except objectivity (sic), common sense, Hispanics and the new city charter (Newfield 1991)."

CHAPTER 7

THE CASE OF LATINOS

Latino political leaders and civil rights groups were angry with the outcomes of the 1991 New York City redistricting process because they believed the final plan did not maximize their opportunity to "elect candidates of their choice," robbing the Latino community of fair representation.

New York City's Latino and black communities live in close proximity to one another and are more residentially integrated than either is with whites. They share similarly high rates of poverty, unemployment and job discrimination. Together they comprise the vast majority of the public school population and face similar issues of high drop out rates and an underfunded school system that is failing to educate them. They participated in the same social justice movements of the 1960s for community control of schools, welfare rights, and civilian monitoring of the police department. But they have failed to forge a lasting electoral coalition. Instead, blacks and Latinos have long been subordinated to the regular county party organizations and only intermittently coalesce behind unity candidates for higher office (Mollenkopf 1994, 16-17, 91).

In their struggle over redistricting for fair representation and political empowerment, New York City Latino political leaders faced a different set of conditions than did black leaders. These conditions are demographic and political. First, the Latino population is more culturally heterogeneous and diverse in national origin than the black population. By the 1990s, New York City Latinos were no longer dominated by one group, Puerto Ricans. In 1960, Puerto Ricans comprised 80 percent of the city's Latino population; by 1990 they were barely half and declining in relative size.¹ Increased immigration from the Caribbean and Central and South America since 1965 has diversified and expanded the city's Latino population while the absolute size of the Puerto Rican population has only modestly increased.² The cultural distinctions between the various national groups making up the city's Latino population are not great, however, they contribute to a

¹In 1960, Puerto Ricans were 80.9 percent of all Latinos in New York City. The Puerto Rican share of the Latino population has steadily shrunk over the ensuing decades, to 67.5 percent in 1970, 61.2 percent in 1980, 50.3 percent in 1990, and approximately 44 percent today (New York City DCP 1994; Haslip-Viera 1996; Miranda and Muzzio 1997).

²During the two decades of the 1970's and 1980's, the non-Puerto Rican Latino population increased by 16.9 percent and 62.6 percent, respectively, compared to 6 percent and 4.2 percent for the Puerto Rican population. Authors calculations from New York City DCP (1994), Table 1-2 "Total Hispanics and Puerto Ricans by Borough, New York City, 1970-1990."

growing fractiousness within the Latino community that makes political cohesion more difficult. There are cultural differences within the city's black population, but in contrast, the division between American-born and Caribbean-born blacks is an old and familiar one of compromise and accommodation in the city's political culture (Henry 1977). The divide between American-born and Caribbean-born blacks has never been larger than it was during the heyday of the Garvey movement in the 1920s. Differences and competition between the two groups exist, but they are as much a product of the city's fragmented party structure as they are cultural, with American-born blacks dominating Harlem politics and Caribbean-born blacks concentrated in the Brooklyn Democratic party.³

The second demographic factor is the different patterns of residential settlement of blacks and Latinos in the city. There is considerably less residential segregation from whites among Latinos than there is among black New Yorkers.⁴

³Within the city's black political establishment, a new style of ethnic politics has emerged since the 1980s with the growth of the West Indian community in central Brooklyn (Kasinitz 1992).

⁴According to a report prepared for the districting commission, 69 percent of blacks live in majority-black voter-tabulation districts (geographic units created by combining census blocks and election districts, the smallest units of geography used in the districting

The 1990 census revealed a persistent pattern of stark segregation between whites and blacks, with 53 percent of whites, and 41 percent of blacks living in census tracts that were at least 80 percent white or black, respectively. This compared to only 22 percent of Latinos living in similarly homogeneous census tracts (Liff 1991d). Latinos therefore are less segregated from whites than blacks, and they tend to live in neighborhoods integrated with blacks and other non-white minorities. They are segregated into smaller pockets of housing, such as individual buildings and clusters of buildings, rather than whole neighborhoods. It is not hard to understand how residential dispersion combined with lower rates of voter registration among Latinos overall to make the task of drawing Latino "winnable" districts more complicated than that of drawing black "winnable" districts.

The other factors distinguishing the different abilities of the Latino and black political leaders to take advantage of redistricting opportunities are political ones. Both the black and Latino political leadership are fragmented by geography, political orientation, and intra-

process), compared to only 48 percent of Latinos who live in majority-Latino voter-tabulation districts (City of New York 1991, Appendix I).

party competition. Mollenkopf argues the Puerto Rican leadership today is even more fractured and closely aligned with the regular Democratic party organizations than the black political leadership (Mollenkopf 1994, 91). Owing primarily to differences in the magnitude and pattern of migration to New York City and to an earlier start for blacks, scholars have argued that, historically, there has been a higher level of political development within the city's black community than there has been within the Latino community. Nearly forty years ago, for example, Glazer and Moynihan noted that black New Yorkers were "deeply involved in politics," at a time when peak migration from Puerto Rico in the 1950s was just beginning to be felt (Glazer and Moynihan 1984, 67). Jennings, writing in the late 1970s, documented a higher level of electoral success and penetration of the Democratic party among the city's black political leadership than among its nascent Latino political leadership (Jennings 1977).

In one of the few studies to specifically compare black and Latino politics in New York City, Falcon identified six underlying factors which help explain why the political development within the city's black community supersedes that of the Latino community. These factors include the

evolution of different communal institutions, particularly the black church and its role in political development, in response to different histories of slavery for blacks and colonialism for Latinos; different patterns of class and occupational status, with Latinos occupying more jobs in weaker sectors of the city's economy, specifically manufacturing; the development of national black civil rights organizations and networks with no parallel in the Latino community; different patterns of residential segregation and dispersal undermining the growth of local voting majorities for Latinos (mentioned above); cultural differences, especially important among Latinos where there is a higher proportion of the foreign-born, leading to different views on public policy issues; and different histories of governmental response, with national legislation developing in direct response to black civil rights demands and then being adapted in an indirect fashion to meet the demands of other minority groups, including Latinos as "language" minorities. All of these factors, Falcon concludes, help explain why there is a higher level of political development among the city's black population compared to its Latino population (Falcon 1988).

The relative strength of black electoral politics was evident in 1990 as the city prepared to redraw and expand its city council districts. In 1990, there were a substantial number of blacks elected to public office, and the black community had higher rates of voter registration and participation in elections, and exerted more influence in the state Democratic party than did the Latino community. David Dinkins, the city's first black mayor, elected in 1989, just two years prior to the council redistricting, represented the culmination of decades of black electoral and political party activity. Although Dinkins and his supporters stressed the importance of the "black/brown" coalition that helped Dinkins defeat three term incumbent Ed Koch in the Democratic party primary, and win a razor thin victory over former U.S. Attorney Rudolph Giuliani, Dinkins was, nevertheless, and emblem of black pride in the city.

In a city where registered Democrats outnumber registered Republicans more than four to one,⁵ Democrat David Dinkins won by just 41,262 votes out of 1,896,121 cast (New York City Board of Elections 1989). He received 91

⁵In 1990, of 3,013,830 registered voters in New York City, 2,102,698 were Democrats and 429,136 were Republicans (New York City Board of Elections 1990).

percent of the black vote, 65 percent of the Latino vote, and 27 percent of the white vote (*New York Times* 1989). His victory as the city's first black mayor depended on an uneasy alliance of the city's black and Latino political leaders, coming, as it did, on the heels of a disastrous failure of minority leaders to coalesce around a single mayoral candidate in 1985. At that time, a group of about 40 black elected officials calling themselves the Coalition for a Just New York had rejected an endorsement of perennial mayoral candidate Herman Badillo. Badillo was the most important Latino politician in New York City, having served as Bronx Borough President in the 1960s, and as a four-time U.S. Congressman in the 1970s. Many of those active in the Coalition for a Just New York believed Badillo's previous bid for the Democratic party nomination for mayor in 1977 was damaging to the candidacy of Percy Sutton, a prominent black businessman and former Manhattan Borough President. In 1985, important black leaders held a grudge against Badillo and were not willing to reward him with an endorsement as the unity candidate. For his unwillingness to rally behind Sutton in 1977, Badillo was viewed by some as a Latino politician who put his personal political ambition ahead of the cause of black-Latino unity. For

their part, Latino leaders viewed the rejection of Badillo's candidacy in 1985 as painful evidence of the Latino community's subordination to black political leadership, or even worse, intolerable "disrespect" of the emerging Latino political class (Thompson 1990).

Thus, a pattern of suspicion and distrust between black and Latino political leaders was established in the 1970's and 1980's and persists in New York City's political culture today. The distrust is further rooted in dormant cultural myths available for cultivation and use for political gain. For example, Falcon notes how island-born Latinos differ from American-born blacks in their experience of a less rigid racial order. He argues that this experience and ambiguity toward the question of racial identity it produces fuels a "long-standing suspicion by American blacks that Puerto Ricans and other Latinos really consider themselves to be white (Falcon 1988)." On the other hand, Latino distrust of black political leadership, particularly among Puerto Ricans, stems from a deep-seated belief in black political privilege (Green and Wilson 1992). For some black political leaders, whatever black political privilege exists, it is well-deserved and hard-earned by those who have toiled in the fields of opportunity long before the

first Puerto Rican politician ever stepped ashore in New York City. Despite the commonality of interests among blacks and Latinos in New York City, and the fact that these communities together are very nearly a majority of the city's population, electoral coalitions among the two groups are rare and when they do occur, weak and ripe for exploitation by politicians in pursuit of individual goals.

It is important to point out that the distrust and hard feelings among the city's minority groups are also frequently exploited by the white political establishment that benefits from division among the city's racial minorities, and from the thwarting of a multi-racial class-based electoral politics that might result from political unity. Districting provided ample opportunity for Latino and white political entrepreneurs to widen the divide between Latino and black political interests. Because redistricting took place under the nose of the city's first black mayor, and because the protections of the Voting Rights Act have been developed in the context of black political opportunity, black politicians were more secure in trusting the process to produce favorable outcomes for them. There was little benefit to the mayor in alienating his Latino supporters. In fact, the Mayor's liaison to the

districting commission said in an interview that the Mayor's singular goal was increasing the total number of minority districts. There was a benefit in playing up Latino/black difference, however, to the Mayor's opponents and to individual politicians seeking ways to advance their political careers. Several examples illustrate this point.

As the districting process began, the Latino community's level of participation in the process was low. Latino advocates, however, were well represented in the process by three advocacy groups. The most prominent of these was the Puerto Rican Legal Defense and Education Fund (PRLDEF), a civil rights organization modeled on the NAACP Legal Defense and Education Fund that uses litigation to advance the cause of Latino civil and political rights (Gartner 1993, 124). PRLDEF had worked with the NAACP in the 1970s to get three of New York City's five counties covered by the remedial provisions of the federal Voting Rights Act. It was actively involved in reapportionment in the early 1980s and brought considerable knowledge and expertise to the council districting process. The other groups representing the Latino community in districting were the New York City Latino Voting Rights Network, a coalition of organizations serving Puerto Rican and other Latino

constituencies; and a group of other smaller local community-based organizations in northern Queens and upper Manhattan representing Dominicans and Latinos from Central and South America (Gartner 1993, 124).

To stimulate greater participation and visibility for Latinos in the districting process, news reports and editorials in the Spanish-language press focused on the low attendance of Latinos at the districting commission's early public hearings. They warned that Latino representation would not be maximized in the new council plan without greater Latino visibility at the hearings, adding that as a result, the balance of power in some possible Latino districts could shift to blacks. When black commissioner Luther Blake presented an analysis of previous voting patterns in the city showing how no current minority elected official had been elected from a district with less than 80 percent minority population, certain Latino advocates and journalists interpreted this argument as one meant to advance black political interests over Latino interests. Misreporting Blake's point as an argument for an 80 percent minority threshold for acceptable districts, Jose Arroyo wrote in *Noticias del Mundo*:

The objective of the Afro-American is to get a headstart and take advantage of the redistribution process that will probably favor them when the lines are drawn since these lines can be drawn straight down the middle of huge Latino communities that are bordered by large black communities (Arroyo 1991).

The districting commission's initial plan was roundly criticized by Latino advocates and elected officials as unfair to Latinos. The commission presented one map for Manhattan and one for Queens, and two different maps each for the Bronx, Brooklyn and Staten Island. Altogether, the initial plan provided for only seven or eight majority Latino districts (depending on which map for the Bronx is used to count Latino majority districts). Advocates believed 13 could be drawn and that 13 should be the goal, drawing a line in the sand with the commission. When the Latino Voting Rights Network presented the commission with a plan for 13 Latino districts, David Santiago, one of the Network's spokespersons said, "The Puerto Rican-Latino voter is sick and tired of being disenfranchised (Lombardi 1991)." Thirteen districts represented 25.5 percent of the 51 districts citywide, slightly larger than the relative size of the city's Latino population. Although the Voting Rights Act does not require proportional representation of minority groups, nor has the Supreme Court ever interpreted its

protections in that way, Latino advocates defined the idea of "fair representation" as proportional to the size of the Latino population in the city and as equivalent representation to that which blacks were certain to achieve.

By way of defending the commission's work, the chairman and executive director began stating publicly that Latino input into the process had been inadequate. This idea, unsupported by the public record of the commission's hearing and meetings, became the "spin." Bronx Borough President Ferrer and seven other Latino elected officials began escalating the conflict by sending a letter to the chair and releasing it to the Spanish-language press. The letter put the chair on notice that if Latinos were "disenfranchised" by the redistricting, they, the Latino elected officials would challenge the lines in court. Herson Cabrerias, one of the council majority's appointees to the commission, started speaking openly of what he believed was a conspiracy between the black and white commissioners to divide up the districts in a manner that favored their individual and group political interests at the expense of Latinos. Said Cabrerias, "These maps represent the self-interests of the white and black commissioners. Latinos are not at the negotiating table. They have all the strength while the

Latinos have no political clout (Nieves 1991)." This is a curious statement from one of three Latino commissioners presumably "at the negotiating table." An editorial in the city's largest Spanish-language daily, *el diario*, said that the writers and editors of the paper had been warning the Latino community to get involved for the previous six months and that now, with the release of the commission's initial plan, the community had better "do something fast" because it risked gaining the political representation it deserved. The editorial quotes the commission's executive director, Alan Gartner, as saying, "We did not receive adequate input from the Latino organizations regarding our redistricting plan (*el diario* 1991)." This contradicted earlier statements by Gartner reported in the *New York Times* in which he stated that Dominicans had been among the most vocal advocates of council representation (Lynn 1991).

Meanwhile, representatives of the Dinkins administration pushed the commission to maximize the total number of black and Latino districts. In March 1991, in a move aimed at helping minority insurgents, Mayor Dinkins sent the state legislature a request to lower the number of petition signatures needed to get on the ballot from 1,500 to 750 for the upcoming council elections. He also asked

that petition carriers be allowed to live outside the districts in which they collected signatures, and requested a one-time special exemption of the residency requirement for council candidates, provided that they lived in the borough in which they were running, and that if they won election, they would be required to move into their council districts within one year.

What happened next was a rather elaborate deception on the part of the Bronx regulars to make the council speaker, Peter Vallone, look bad so that they could install a favored councilman from the Bronx county leader's club as council majority leader. The Bronx plan on the table included one of the few cases in which two incumbents might be pitted against each other through the unfortunate circumstance of having their residences drawn into the same district. One of these councilmen was Jerry Crispino, a friend of the Bronx county Democratic party leader, state assemblyman George Friedman; the other was an ardent critic of Vallone's, Michael DeMarco. If the legislature honored Mayor Dinkins' request to waive the residency requirement for the 1991 city council elections, Crispino and DeMarco would not be forced to run against each other and could run against newcomers in neighboring districts. Friedman wanted

to avoid this possibility; he wanted Crispino and DeMarco in the same district as evidence of Vallone's inability to protect incumbents and his weakness as majority leader.

When the state assembly seemed poised to pass a bill waiving the residency requirement, Friedman went to Republican state senator from the Bronx, Guy Vellela, and asked him to block passage in the senate, which he did. Then, Friedman began circulating rumors that Vallone's tenure as council majority leader was in jeopardy. Michael Tomasky, writing in the *Village Voice*, cited unnamed sources who told him, "Vallone just wasn't on top of this." Tomasky continued, "you could scarcely find a person in town outside Vallone's own staff - and even a few inside it - who believed he'd be able to wake up next February and still be running the shop (Tomasky 1991)." This was a far cry from the view expressed by political observer Terry Golway of the *New York Observer* that Vallone controlled the process and that his influence over the districting commission "was of the same magnitude as the sway Edgar Bergen exerted over Charlie McCarthy (Golway 1991b)."

The Dinkins administration's effort to open up the political process was as self-interested as Friedman's maneuver blocking the administration's bill. Open residency

rules established in April or May of an election year would not have leveled the playing field, but they looked good to political reformers. The fact is by early May, prospective challengers were already known to council incumbents. May 10th was the deadline for filing an application for matching funds from the city's Campaign Finance Board. Because the likely boundaries of city council districts would not be known until the commission released its final plan on June 3rd, the Board asked the city council to either change the filing deadline for prospective council candidates until after June 3rd (to June 10th), or to at least give the Board the authority to alter its own program schedule. Both requests were voted down by the city council and on May 10th, the Campaign Finance Board received over 250 applications for public financing. As they filed for the much needed public money, prospective challengers were flushed out of the urban underbrush and made sitting ducks before the commission even released its revised plan in mid-May. Council incumbents had considerable time to size up the opposition and assess their chances for re-election whether the commission delivered them a "safe" seat or not.

In an interview, the mayor's liaison to the districting commission said that the mayor's people and the council

speaker had an informal agreement to respect each other's political agendas: the mayor wanted to increase the total number of black and Latino "winnable" districts from a quarter of the seats, its current throne, to at least half of the seats, commensurate with the relative size of the city's minority population. The speaker wanted to protect as many of his political allies in the council as possible. The liaison spoke of,

. . . a deal where Macchiarola through Gartner basically said they'll do white New York and we [the Dinkins people] can have non-white New York. . . It meant we split the city in half and if we didn't interfere with what they did in white districts they wouldn't interfere with what we did in non-white districts. . . I think that basically was the deal. Vallone was mainly concerned with his incumbents who supported him and really didn't care about the other districts. And Dinkins just really wanted to ensure that the maximum number of minority seats were gained (Interview with Phil Thompson, October 1999).

It seemed reasonable to believe that because the council was expanding in size by 16 seats, both agendas could be accommodated. While Bronx Borough President Ferrer and other Latino elected officials railed against what they perceived was an anti-Latino bias in the commission's plan, behind closed doors these elected officials objected to proposals supported by the Mayor to create four Latino

districts in the Bronx in favor of a plan that would create two or three.⁶ The Democratic party organization in the Bronx wanted to control the expansion of Latino representation and did not want independent elements in the Latino community gaining power. Moreover, Borough President Ferrer had political ambitions for higher office and felt he needed white support in the Bronx more than he needed to expand his Latino base. Gartner writes that PRLDEF knew these officials were duplicitous in their complaints against the commission and their implication of black favoritism by the Mayor. He says that PRLDEF criticized the officials privately, but refused to take a stand in public. He goes on to say,

Moreover, because PRLDEF proposed solely Hispanic districts, accommodating them within the larger fifty-one district plan would have been at the expense of other, usually neighboring and minority, communities. More disturbing were their own proposals for Bronx districts. The ones they drew failed to honor the rules set forth in the Charter, such as the limits on the population range between the city's largest and smallest districts. Also disturbing, if not surprising, was that the proposed districts seemed needlessly (i.e., without benefit

⁶Wayne Barrett of the Village Voice reported this piece of insider information. Writing in the August 6, 1991 edition of the weekly paper, he said, "Ferrer has been a redistricting schizoid - privately urging only three Latino districts in the Bronx as an early accommodation with the machine, and then denouncing a commission plan as discriminatory when it delivered four (Barrett 1991)."

to the Hispanic community) to harm neighboring African-American districts (Gartner 1993, 126-127).

The internecine conflict between black and Latino political leaders only strengthened the hand of outer borough clubhouse politicians whose primary goal in districting was to protect a selected group of council incumbents and control the flow of newcomers as much as they could. The escalating rhetoric and accusations of favoritism toward blacks and the heightened political demands by Latino elected officials for a proportionate number of council districts fed the climate of mistrust among blacks and Latinos and weakened the Mayor's ability to shape districts favorable to his political supporters, whether they were black, Latino, or white. In fact, the Mayor's political agenda had more to do with creating districts that would help insurgent black candidates and hurt black machine politicians like Enoch Williams and Mary Pinkett in Brooklyn who were allied with the council speaker and often voted against the mayor's programs, than it did with favoring black candidates over Latino candidates. The winners in this political bloodbath were selected individual politicians; the losers were those who believed coalition politics would bring political reform. There is no question

Latino representation was compromised in the commission's plans, but this was as much due to the demands of incumbent protection as it was to favor blacks over Latinos.

The commission's revised plan was issued May 16th and created three more majority-minority districts than the initial plan, increasing the number of minority districts from 18 to 21. One of three districts was a new Latino district in Queens that was 55 percent Latino (53 percent of the voting age population). The commission's Plan A in the Bronx with four Latino districts and two black majority districts was adopted as the revised plan for the Bronx. The two Latino districts in Manhattan and the two in Brooklyn were maintained from the initial plan, bringing the total number of Latino districts in the revised plan to nine. Nine Latino districts still fell short of the 13 advocates demanded. Moreover, only one of the nine had a majority of Latino registered voters. Blacks formed a majority of registered voters in 13 districts citywide. Again, as the revised plan was issued, Latino leaders condemned the commission. Ferrer said, "I'm outraged by people pontificating about how this is empowerment for Hispanic people. It's the most outrageous gerrymander I've ever seen (Hernandez 1991)." Referring to one of the four

Latino Bronx districts that looked like a moose's head, Eddie Baca, spokesperson for the Latino Voting Rights Network said, "It's total craziness. Bullwinkle has to go." The district that was the subject of Baca's distaste (district 17) encompassed the Mott Haven/Crotona neighborhoods and, its critics charged, was oddly shaped because it was patched together with pieces of districts incumbents were willing to cede.

The final plan approved by the commission and submitted to the Justice Department straightened out the lines of the "Bullwinkle" district, and increased the number of Latino majority districts by one to a total of ten. Controversy again surrounded the plan and the process by which it was approved. Mary Ann Brigantti-Hughes, one of three Latino commissioners, had planned to vote for the final plan as long as a few minor changes were made. She told the chair her vote for approval was contingent on increasing the Latino majority in a Bronx district (the 15th) to 60 percent, and on moving the Italian neighborhood of Belmont out of incumbent councilman Jose Rivera's district into Jerry Crispino's district. She was told the changes were made and that she could see the plans the next day, a Saturday, before they were printed for the full commission

meeting. She was told to be at the commission's office on Saturday at 11 AM. When she arrived (on time) the maps had already been sent off to the printer. Brigantti told a reporter, "I objected to [Executive Director] Gartner, 'I have a right to see the maps.' He said he was under orders not to show them to any commissioners (Fitch 1991)." The commission's spokesperson denied this was the case and said that Brigantti-Hughes got to the office late. She did not see the maps until the following Monday at 1 PM and when she did, what she saw made her change her mind about voting for the plan. From the revised to the final plan, Latinos had been weakened in the Jackson Heights neighborhood in Queens (district 21), and in Bushwick in Brooklyn (district 37). "The maps I finally did see were not the maps I originally agreed on," she later told a reporter (Carroll 1991). Brigantti-Hughes also objected to the splitting up of Latinos in lower Manhattan, where they comprised 17 percent of the population in district 1 and 25 percent of the population in district 2 (City of New York 1991).

Bronx Borough President Ferrer was not impressed with the final plan: "Hispanics are getting screwed. It's so gross, so absurd, so outrageous, so disingenuous [that] I think we've got to go to the Justice Department (Carroll and

Hernandez 1991)." Before making that trip, however, on June 7th, PRLDEF stopped off in federal court and filed a complaint asking that the pre-election process mandated by state law not go forward until the Justice Department pre-cleared the plan. Should the courts agree with PRLDEF, and the Justice Department take the 60 days it was permitted to review the city's plan, the council primary elections slated for September would need to be rescheduled. Here, things got very complicated, and the chaos of the 1981 redistricting created by having so many overlapping venues of legal authority regulating the political process was repeated.

On June 12th, federal judge I. Leo Glasser issued a temporary restraining order barring the city from starting the petitioning process until a three-judge panel could rule on a request from PRLDEF and other advocates for a preliminary injunction against the final districting plan. A week later the three-judge panel had been convened and vacated Glasser's order, ruling that the petitioning process, which was to have started two days before the panel made its decision, should go forward. The judges said they would take up the matter in the end of July at the conclusion of the petitioning period. On July 23rd, U.S.

District Court Judge Reena Raggi issued another temporary restraining order barring the Board of Elections from processing candidate petitions or accepting formal objections to candidate petitions (Liff 1991b). The three-judge panel was convened again on July 26th, and in an unexpected decision eliminated the requirement that a candidate for city council reside in the district he or she seeks to represent. These changes came at the request of the city's Board of Elections, who also asked that the petitioning period be extended from its original July 22nd deadline to August 7th.⁷ The three-judge panel ruled on 25 state election law requirements and reduced the number of signatures needed to gain ballot access from 900 (they had already been reduced from 1,500) to a mere 180. The U.S. district court judge tried to put it all in perspective from the courts' point of view when he said, "We view what we are doing today is essentially an operation in damage-control." From the perspective of the political process, what the

⁷In announcing the Board's request, Board of Elections spokesperson, Naomi Bernstein, said, "It's open season (Seifman 1991b)." One day later, the Board of Elections mysteriously reversed itself (Seifman 1991a).

judges did was add to the chaos and create an electoral free-for-all.'

Justice Department rejects the plan. On June 17th the districting commission submitted its final plan to the

'The author has an inside view of how the court interference affected a grass-roots candidate's campaign, having worked as the campaign manager for Joan Griffin McCabe, later elected to the council seat in the 38th district in Brooklyn. McCabe announced her candidacy in September 1990, but did not know the boundaries of her district until nine months later when the commission issued its final plan. The campaign spent months preparing for the petitioning drive, recruiting enough volunteers so that we had coverage in as many neighborhoods as might possibly be included in the final lines for the district, since petition carriers must live in the district for which they collect any signatures. Under a cloud of confusion, petitioning started on June 17th, but then was halted by Judge Glasser's ruling two days later. No one knew what was going on or what might happen next. A week later the three-judge panel vacated Glasser's decision and petitioning resumed, but before the petitioning period was over, the Justice Department rejected the plan, sending it back to the city for revision. Again, there was total chaos, no one knew what was happening or what would happen next, whether the city could satisfy the Justice Department's objections with minor changes or whether the whole plan would be thrown out and the commission would have to start over (as some advocates optimistically hoped), how long it would take the city to secure preclearance from the Justice Department which has sixty-day turnaround periods, or whether the election was even going to take place. The campaign machinery sputtered along and McCabe kept knocking on doors. We thought we were home free when the Justice Department surprisingly approved the plan the same day the commission submitted its revisions. But the whole process was thrown into chaos again when the three-judge panel decided to "help" by practically eliminating the petition signature requirement and allowing candidates to run for any district, whether they lived in the district or not. All of the work the campaign had done to organize volunteers, collect signatures and prepare for pulling out the vote was made almost meaningless by the courts' action. McCabe had no influence over the district her house was gerrymandering into. As it was, McCabe, a white lobbyist for public education advocacy organizations, was put into one of the "new" minority-majority districts and had spent nearly the entire year of her campaign knocking on doors and walking every block of what was likely to be the core of her district, the Latino and Asian low income neighborhood of Sunset Park. She might have had more appeal in the whiter and more middle class neighborhoods of Park Slope and Windsor Terrace, where she lived, and where she had long been involved in local Democratic party reform organizations, but she had not campaigned there when the three-judge panel removed the residency requirement in late July.

Justice Department for preclearance and review under the mandates of the Voting Rights Act. U.S. Representative from the Bronx, Jose Serrano, lead a delegation of Latino advocates, including Arthur Baer and Ruben Franco, lawyers for PRLDEF, to meet with Justice Department officials on July 10th. The Latino advocates argued that the plan failed to maximize Latino voting strength by creating only 10 Latino districts. If Latinos were to win 10 seats they would hold only 19.6 percent of the seats in the 51-district council, whereas the 1990 census showed that Latinos were 24.4 percent of the city's population. Moreover, the advocates argued, "at best" only six of the districts had the possibility of electing Latino candidates because of low voter registration and participation rates. Franco and Baer emphasized that all 12 of the black majority districts had black voter registration rates over 62 percent, while only one Latino district had comparable Latino voter registration (Lombardi 1991a).

Following this meeting, a second advocacy organization, the Latino Voting Rights Network met with officials from the Justice Department. They said that their efforts were "complementary" to PRLDEF's, but that they did not want to stop the upcoming elections from going forward. Their

complaint was more narrowly focused on five neighborhoods where they believed the districting commission either discriminated against Latinos, or could have done a better job at drawing lines to create districts more favorable to Latinos. Specifically, they objected to the way lines were drawn in 1) Jackson Heights, Elmhurst and Crotona in Queens where LVRN claimed Latinos were hurt to help the council bid of an African American former Assemblywoman, Helen Marshall; 2) Williamsburg-Bushwick where one Latino district was "packed" with Latinos at the expense of an adjacent Latino district to help the council's only Latino incumbent, Victor Robles; 3) the lower East Side where Latinos were split between two districts to help Asian Americans; 4) East Harlem - connected to a small section of the South Bronx - LVRN thought the Bronx connection was unnecessary and that the proportion of the black population was too high; and 5) Washington Heights, the site of the city's first Dominican district, but one which was weakened when an eastern strip of the neighborhood was removed from the district.

Following these briefings, the Justice Department summoned several of the commissioners to Washington to answer the charges raised by the Latino advocates, particularly the charge that in several specific cases,

Latinos were short-changed to the benefit of blacks. In attendance at the July 19th meeting were commissioners Macchiarola, Simmons, Blake, and Brigantti-Hughes. Macchiarola and Diaz report that the Justice Department took particular interest in the fact that two of the four commissioners who voted against the plan were Latino (Macchiarola and Diaz 1993a). The commission presented a letter to the Justice Department from its counsel stating that the commission's most difficult work was resolving "conflicts between the interests and desires of different minority groups (Pear 1991)."

The commissioners failed to convince the Justice Department that all of its decisions concerning conflicts between groups were the best decisions that could have been made from the point of view of the federal law governing the process. Later that day, the Justice Department rejected the city's plan. Assistant Attorney General for the Civil Rights Division of the Justice Department, John Dunne, said in a four-page letter to the commission's counsel that although the commission "was faced with a job of staggering proportions," and that "most of the districting plan satisfies the preclearance requirement of Section 5 [of the Voting Rights Act]," the Justice Department was "concerned.

. . with choices made throughout the districting process with regard to Hispanic voters (Dunne 1991).” Specifically, the Justice Department objected to the packing of Latinos in district 34 to buffer Latino incumbent councilman Victor Robles at the expense of Latino voters in adjacent district 34; and to the cross-borough district 8 which connected a small portion of the South Bronx to East Harlem. Here, the Justice Department avoided detailing what, exactly, was wrong with the 8th district (“. . . a series of boundary line changes were made over the course of the districting process which ultimately resulted in a district that was purported to be an Hispanic district but which will likely result in a district in which Hispanic voters will not be able to elect a candidate of their choice.”) Presumably, the black population of the East Harlem district was too large.

Another week of the most frantic behavior on the part of the commission, advocates, and incumbent politicians ensued. On July 23rd, the commission held an executive session in which it looked like the whole process was going to unravel. The commissioners were divided on how to change the maps. Some wanted to change only those three districts objected to by the Justice Department (districts 8, 34, and

37); others wanted to throw the entire plan out and to start anew. Commissioner Cabrereras said, "This is not about patching and matching. Obviously, these guys are trying to ramrod something down our throats again. As far as I'm concerned, the whole plan is back on the block (Lee 1991b)." Commissioner Brigantti-Hughes added, "It's obvious to me the process is permeated with fraud and intentional foul play (Seifman 1991a)."

Chairman Macchiarola was determined to get a plan passed as quickly as possible and to keep to the election schedule set out by the state legislature. Limited changes were made - some Latino-occupied blocks in the South Bronx were added to district 8, but Randalls and Wards Islands were dropped from the district resulting in the Latino proportion of the district staying the same, but the black proportion decreasing from 38 to 35 percent. The boundary line between the 34 and 37th districts in Brooklyn was twisted to shift some Latinos into the 37th, increasing the Latino share of the population by five percentage points, from 51 to 56 percent, and decreasing the Latino population from 69 to 64 percent in Victor Robles's district, district 34.

Felicia R. Lee of the *New York Times* reported:

This meeting, which lasted over three hours and was interrupted for a closed door session, was loud and bitter. Commissioners accused each other of being hacks and unprofessional, one man was removed by the police after shouting at a commissioner, and a black woman in the audience shouted that Hispanic people were trying to take over the city...The meeting came at the end of five stormy days during which the commission faced internal dissension on how extensive their amendments to the plan should be, charges from Hispanic advocacy groups that the whole districting process was tainted, and a lawsuit by a Puerto Rican group that tied up challenges to candidate petitions (Lee 1991a).

Just as the commission was about to vote on the revised plan, the city's corporation counsel intervened and said that the changes proposed for district 8 would have a ripple effect in the rest of Manhattan and disturb district lines that the Justice Department had already tacitly approved. He told the commissioners that if they voted for the changes on the table, he, the city's lawyer, would not be able to defend the lines in court. The commission decided to recess and reconvene in the morning to work out the problems.

The commission's staff worked through the night and prepared a new map in time for the commission to vote on it the next morning. Bob Liff, a reporter for *Newsday*, summarized the changes:

First, some East Harlem blacks traded districts with Hispanics in Central Harlem. Then, another 50 Hispanic residents of the South Bronx were moved into the East Harlem district. Finally, the predominantly black Randalls and Wards Islands, which sit beneath the Triborough Bridge, were shifted into a South Bronx district (Liff 1991a).

The new East Harlem/South Bronx district actually decreased the Latino population in the district from 50.76 percent to 50.18 percent, but it removed blacks living in the Schomburg Plaza housing complex, a move seen as helpful to Latino candidates running for the seat.' A black challenger for the East Harlem seat who lives in the Schomburg Plaza building, of course, threatened to sue. Latino advocates threatened to sue. An extremely frustrated Eddie Baca of the Latino Voting Rights Network said, "This has got to be the stupidest commission ever assembled. The only remedy now is to go through the courts (Lee 1991a)." Ruben Franco of PRLDEF said the new plan is a "travesty of justice" because it "does not correct the discrimination. .

'The commission's revisions, attaching Randalls and Wards Islands to a different district in the Bronx than the one attached to East Harlem, created new a violation of the city charter. Since Randalls and Wards Islands are legally part of Manhattan, that borough now contained two districts twice crossing borough boundaries with the same borough, the Bronx. The charter permitted a borough to cross county lines with another borough only once. Commissioner Wells pointed this out, but Chairman Macchiarola called the vote on the new plan, anyway. There are about 2,000 people living on Randalls and Wards Islands. The commission

. In some aspects, it worsens the situation for Latinos." PRLDEF and Latino elected officials urged the Justice Department to again reject the commission's plan.

To add to the now bizarre welter of events, the Justice Department approved the very minor changes made by the commission, turning around their approval in less than one day. Assistant Attorney General John Dunne faxed back the good news to the commission, writing, "It appears that you have addressed our concerns about attempts to disfavor Hispanic voters," and that the changes were "free of a discriminatory purpose or effect (Seifman 1991a; Pear 1991)."

Some commentators and at least one commissioner have suggested that the original objections of the Bush administration Justice Department were a ploy on the part of the national Republican party to curry favor with the Latino community. Ever blunt, Commissioner David Wells, one of two commissioners to vote against the commission's final revised plan (three commissioners were absent at the meeting when the vote was taken), charged publicly that the Justice Department's handling of the plan had been "a cynical

staff eventually connected the islands to Council Speaker Peter Vallone's district in Queens (Liff 1991a).

political ploy by the Republican national administration" to woo Latino voters by pretending to safeguard their interests while "engaging in a meaningless exercise (*Daily News* 1991)." The lightning speed with which the Justice Department approved the commission's tinkering with a couple of boundaries, and the furious reaction to that approval by Latino advocates whose hopes had been raised by the original objection only to be swiftly dashed, suggest that either there was some kind of Republican strategy to pick off Latino elected officials that was then bungled, or, that the goal of pouring gasoline on the smoldering relations between the city's black and Latino communities had been accomplished.

Assistant Attorney General Dunne objected to the idea that there was a larger Republican strategy behind the curious behavior of the Justice Department. But one of the changes proposed as a remedy to the Justice Department's objection to district 8 would have helped a Republican challenger in the adjacent upper East Side district of Democratic incumbent councilwoman Carolyn Maloney. This challenger, David Goldstein, had run against Maloney before and lost because of the votes for Maloney in the heavily Democratic, heavily white, high voting Stanley Isaacs Houses

on the border of the upper East Side and Harlem. The Latino Voting Rights Network favored adding the Stanley Isaacs Houses to district 8 to dilute black voting strength in district 8. The Justice Department approved of this idea, urging the commission on two occasions to move the large apartment complex out of Maloney's district into district 8. In the end, the commission resolved the problem of district 8 without moving the Isaacs Houses. It is probably no coincidence, however, that David Goldstein's political mentor was a former eight-term Republican state senator from Nassau County, now the head of the Justice Department's Civil Rights Division, John Dunne (Barrett 1991).

Macchiarola and Diaz in their long law journal article detailing the districting decisionmaking process dismiss the notion of a broader Republican strategy to capture Latino support (Macchiarola and Diaz 1993a). They point to the fact that before the Justice Department objected to the boundary between the 34th and 37th districts, all of the candidates who had announced for the primaries in both districts were Latino; after the Justice Department approved the plan, a black candidate emerged in district 34 (that candidate ultimately did not run). To Macchiarola and Diaz this is evidence that, in fact, the Justice

Department's influence was politically neutral, opening up the process to more minority participation.

Other indirect evidence suggests otherwise. The fact remains that the Justice Department rejected the city's plan because, it said, the city discriminated against Latino voters. It allowed to stand the implication that this was done at the benefit of blacks, and certainly under the watch of the city's black mayor. The murky details about how much the city discriminated and how little they had to change the plan in order to instantly win approval drop out of view when the larger point is made by Republican partisans to interested Latino leaders, especially those who do not live in New York City.

Second, there was one politically ambitious Republican who may have directly benefited by Republican intervention on the side of the Latino community against the black community. That person was former U.S. Attorney, and mayoral hopeful, Rudolph W. Giuliani. Giuliani wrote to the Justice Department on behalf of Latino advocates and complained that the city's initial redistricting plan was unfair to Latino residents (Gray 1991; Gartner 1993, note 102, 100). He continued to meet with and advise Latino advocates like Ruben Franco throughout the process, and

accompanied several Latino activists on a meeting with the Justice Department in August to ask that the department reopen the case. One Latino community leader who spoke to a reporter on condition of anonymity said about Giuliani, "He is going to get some political mileage out of this (Gray 1991)." Ruben Franco would be later appointed by Mayor Giuliani to head the New York City Housing Authority.

Long-time political reporter Wayne Barrett summarized the most important outcome of this exercise in redistricting (Barrett 1991). He wrote that on the eve of a historic change in the governance structure of New York City's local government, "the minority alliance that elected the city's first African American mayor two years ago, and that could, at least theoretically, elect a speaker next year, is coming apart in a surrealistic wave of internecine rhetoric." He identified part of the cause of this unraveling as the "rush" on the part of the city's Latino political leadership to rally around a "phony" charge of black discrimination against Latinos. Moreover, Barrett argues, the Justice Department's Republican agenda was hardly transparent. Assistant Attorney Dunne seized the opportunity to fuel the fire by promoting the idea of black-on-Latino discrimination as a motivation for the changes it wanted in districts 34

and 37 - where the original "packing" had been done at the behest of a Latino council member, and no blacks had even filed to run.

Barrett's argument is persuasive. There are other examples of how "phony" the charge of black discrimination really was. There is the example of Dinkins administration efforts to create four Latino districts in the Bronx, against the wishes of Bronx Latino elected officials (discussed above). Furthermore, Mayor Dinkins' key appointee to the commission, Vice Chair Esmeralda Simmons, agreed with decisions about the upper Manhattan map which deprived blacks of the possibility of a second black majority seat there, in favor of protecting the opportunity for Dominicans to elect a Dominican candidate, and in restricting the cross-county district that seemed inevitable for Manhattan to East Harlem and the South Bronx. "In effect," writes Gartner, "the commission's choice to create two Hispanic districts in northern Manhattan precluded the creation of a second African-American district there (Gartner 1993, 73-4)." A cross-county district of upper Manhattan and the north Bronx would have allowed for the expansion of a second black district adjacent to the

existing one of Harlem-based council incumbent C. Virginia Fields. Gartner writes that Simmons,

championed the commitment to protecting the two Hispanic districts [in Washington Heights and East Harlem]. Despite this advocacy, for which she was criticized by other African-Americans, she was charged (including by those who understood the sequence of events) with favoring African-American political interests at the expense of Hispanic interests (Gartner 1993, note 83, 74).

CHAPTER 8
THE LIMITS AND POSSIBILITIES OF MAJORITY-MINORITY
DISTRICTING AND THE CASE OF LOWER MANHATTAN

Law's silences. This chapter analyzes the drawing of three individual city council districts in lower Manhattan. The cases are highlighted because they present different problems for what has been termed the voting rights legal regime. Explanations for the outcomes rest on an analysis of how political actors seized new opportunities arising from of their immediate circumstances. The circumstances, however, were produced by the prevailing legal regime - the interaction of local politics with the complex law governing the districting process.

In the cases analyzed here, silences in the law are as important as mandates. Legal mandates can be either sharply defined commands or more general rules open to interpretation. At the very least, they are authoritative directives from the state. Legal silences, on the other hand, create spaces within which conflict unfolds. In lower Manhattan, the law's silence on how to resolve conflicts between 'protected classes' is key because it allowed the 'fair and equal' claims of Asian Americans for representation to supercede those of Latinos as well as

those of a group residents proposing a multi-ethnic district for the area. Legal silence exposed the limits of majority-minority districting in a multi-racial context. On the other hand, with the successful creation of a "gay winnable" district in Manhattan's West Village and Chelsea neighborhoods, the law's silence on the problem of what to do about new groups whose position vis a viz harm and rights claims is identical to that of those explicitly protected by the law, defined new possibilities for a local lesbian and gay empowerment struggle. Here, legal silence permitted a new meaning of the "community of interest" concept to evolve, suggesting a possible way out of the current quagmire surrounding the Supreme Court's new restrictive interpretations of voting rights. Taken together these two cases highlight the dynamic relationship between law as general theory and politics as local practice.

Minority empowerment and legal questions. The struggle for minority empowerment in lower Manhattan represented a unique legal problem for the New York City Districting Commission. Resolving the competing claims of the city's black, Latino, and Asian American communities was the commission's most challenging issue (Reed 1992, 769). The Voting Rights Act, however, provides no guidelines on

potential competition between protected groups. For this reason, the federal courts' treatment of voting rights controversies in multi-ethnic settings has been inconsistent. Some courts have treated the boundaries between protected minority groups as fungible, collapsing different groups into a single voting bloc for purposes of analyzing vote dilution claims. When evaluating the validity of collapsing groups in this way, some courts have required proof of inter-group political cohesion and others have not. Conversely, still other courts have refused to allow groups to be collapsed, recognizing each protected class as separate with separate and equal claims to the group rights set out by the Voting Rights Act.

The problem of inter-group conflict among protected classes presents a new dilemma for voting rights legal doctrine. Nowhere was this new dilemma more apparent than in the case of lower Manhattan. Of the 281,000 people living below 14th Street in 1990, 49 percent were white, 7 percent were black, 21 percent were Latino, and 22 percent were Asian (see appendix C, table C8.1). Whites, however, were concentrated west of the Bowery, in the neighborhoods of Greenwich Village, Tribeca, Soho, and in the Financial district on the southern tip of Manhattan. Within the

boundaries of the traditional lower East Side, whites, Latinos, and Asians made up about a third each of the population.

The increasingly multi-racial character of urban voting jurisdictions has de-stabilized the voting rights legal regime, will force the courts to re-examine three major questions which must be answered in all vote dilution conflicts: 1) the basic theories of liability under the Voting Rights Act; 2) the methods by which challengers must prove governmental liability; and 3) the remedies through which the courts may grant relief (Ancheta and Imahara 1993, 816). In vote dilution cases involving competing claims between protected classes, Ancheta and Imahara suggest that the courts have failed to resolve the following questions:

- 1) Is a redistricting body required to create a majority-minority district wherever possible in order to comply with the Voting Rights Act?
- 2) Does a smaller minority group have any claim under the Voting Rights Act, or is it just filler for the larger minority group?
- 3) Where a redistricting body has split up a minority group too small to be a majority in a district by itself in order to create a combined majority-minority district with another minority group that is kept whole, is the redistricting body liable for intentional discrimination against the smaller minority group?

4) Can the smaller minority group that was divided into more than one district so that a larger minority group could be kept whole state a claim because its ability to influence a district by being split up was diminished?

5) If the redistricting body had not split up the smaller minority group, but, rather, created two separate "influence" districts, would the larger minority group have a claim under the Voting Rights Act?

Background on the neighborhoods of lower Manhattan.

Before examining how some of these problems were addressed in the New York City case, this section presents demographic information and basic background on the neighborhoods of lower Manhattan. Lower Manhattan can be divided into what was once called "the saddle" - the traditionally residential low-rise Greenwich Village and the lower East Side, sweeping from northwest to southeast between the high rise towers of the Financial District and Midtown - and the newer residential neighborhoods of the Financial District, Soho, and Tribeca (see appendix B, map B8.1). The newer neighborhoods are the direct result of three decades of a government-led effort to convert former manufacturing zones and buildings to residential use. They are essentially new state- and market-manufactured living environments, and as such, lack what M. Christine Boyer has called "collective

memory."¹ With respect to their social and political organization, they are less internally complex than the neighborhoods of Greenwich Village or the lower East Side. In sharp contrast to the lower East Side, the residential spaces of the Financial District, Soho, and Tribeca are predominantly upper-income enclaves of white urban professionals.

This section presents a statistical portrait of lower Manhattan. It then briefly describes the newer neighborhoods and pays special attention to the social and political organization of Chinatown and the densely populated areas of the lower East Side where Asians and Latinos are concentrated.

The detail on the demography, and political and social organization of the neighborhoods is important to an understanding of how redistricting politics determined the 'bizarre' council district boundaries of lower Manhattan. Hyper-local conditions must be analyzed as important elements contributing to that outcome. Hyper-local

¹Boyer writes, "Collective memory. . . is a current of continuous thought still moving in the present, still part of a group's active life, and these memories are multiple and dispersed, spectacular and ephemeral, not recollected and written down in one unified story. Instead, collective memories are supported by a group framed in space

conditions reflect both long-standing conflicts and structures and the fluid play of ever-shifting alliances.

At the hyperlocal level, geography matters; in dense, large, complex cities like New York, the pattern of residential settlement affects the local organization of ethnicity and identity, which in turn becomes an expressive resource available for political mobilization by politicians and elites. The reservoir of potential adherents must exist, but it is the 'identity entrepreneurs' who must activate, organize and mobilize these resources into a coherent group identity through which an agenda can be pursued. For these reasons, hyperlocal conditions must be understood in both structural terms (socioeconomic conditions, housing tenure, etc.) and in terms of the fluid politics by which they are characterized.

Statistical portrait of lower Manhattan. Tables C8.2 through C8.6 detail the racial, household, and socioeconomic composition of the neighborhoods of lower Manhattan (see appendix C). The data demonstrate the stark differences between the old and new neighborhoods of this area. Asians are heavily concentrated in the eight census tracts

and time. They are relative to that specific community, not a universal history shared by many disparate groups (Boyer 1996, 67)."

comprising the historic Chinatown core (6, 8, 16, 18, 25, 27, 29, and 41). Latinos are concentrated in "Alphabet City" on the lower East Side - the tracts east of Avenue B to the East River. Latinos and Asians form a mixed majority minority belt all along the border of these two enclaves. Whites, who make up about a third of the traditional lower East Side (Community Board 3 area), dominate the upper western portion of the neighborhood crossing west of the Bowery into Greenwich Village. Although it is one of the older neighborhoods in the study area, Greenwich Village has not had a significant non-white population since the 1880s.² Together with the newer neighborhoods west and south of the Bowery, whites form a 'white belt' that sweeps south from 14th Street to encompass the entire southern tip of Manhattan (see appendix B, map B8.2).

Greenwich Village's socioeconomic profile is more similar to the profile of the new neighborhoods of Tribeca, Soho, and the Financial District. The major difference is in household composition, with nearly three in five

²Nearly one-quarter of all blacks in old New York once lived in the southern portion of what is now Greenwich Village. Ware reports that until the 1890s when Greenwich Village was still mostly farmland this area was called the "Negro Plantations." Italian immigrants rapidly displaced blacks who were forced to migrate north, eventually settling

households in the Village reporting single person status, compared to two in five for these other neighborhoods. What the data do not tell us but other sources do is that Greenwich Village in the center of gay life in the city. This development is explained in more detail below.

The racial sorting of lower Manhattan is associated with significant differences in class composition between the neighborhoods (see appendix C, table C8.7). Employment data tell the story. Nearly one third of residents of the Financial District report employment in FIRE industries (finance, insurance, and real estate) and at the highest occupational levels (executive, administrative, managerial). Nearly half or more of all residents of the white belt work in FIRE or 'professional and related services,' requiring advanced education. Conversely, manufacturing dominates the local economy of Chinatown, with about a third of residents reporting employment in manufacturing industries and two-fifths reporting employment in manufacturing occupations.³ This compares to just over 10 percent of residents citywide

in Harlem, when speculators built tenements to accommodate the flood of immigrants from Europe (Ware 1965, 11-12).

³For a gripping account of the harsh sweatshop conditions of Chinatown's garment industry, see Kwong (1997).

and in Manhattan proper who report employment in the manufacturing sector.

The picture is somewhat mixed in the multi-racial lower East Side. Employment is more diversified here than in Chinatown but still weighted toward the lower-paying occupations of the service economy. Manufacturing is less important and almost one-third of lower East Side residents report employment in professional services, accounting for the impact of a wave of gentrification in the neighborhood in the 1980s.⁴

Data on income, poverty levels, and educational attainment bring the picture into sharper focus. The proportion of persons over the age of 25 lacking a high school diploma exceeds one third on the lower East Side and two thirds in Chinatown. In contrast, more than 85 percent of adult residents of the white belt have completed high school or earned higher degrees. Income levels reflect these differences in education, with mean household income in the Financial District three times household income in Chinatown. Similarly, three times as many persons, and five and six times as many families residing in the lower East

⁴For an account and analysis of gentrification on the Lower East Side, see Smith (1996, 198-209). See also, Abu-Lughod et al. (1994).

Side and in Chinatown live in poverty compared to those living in the white belt.

The next sections provide background on lower Manhattan's neighborhoods, with more detail on the social and political organization of the older neighborhoods because they are more complex. It should be noted that precise boundary lines for most New York City neighborhoods do not exist.⁵ Neighborhoods are not officially territorially sanctioned by the state. Because they exist as powerfully in the minds of their residents as they do in geographical space, their edges are always contested.⁶

*Financial District.*⁷ Once the heart of New Amsterdam and pre-colonial old New York, the Financial District has been devoid of residential population throughout most of the city's history. According to the U.S. Census Bureau only 833 people lived in Manhattan south of Chambers Street in

⁵Neighborhoods can be demarcated through different processes of social differentiation. More often than not, they acquire a name through the speculative practices of real estate brokers interested in capitalizing on some new cultural phenomenon emerging in a specific place that is then appropriated to attract newcomers or enhance property values. This was the case with the invention of the "East Village" in the northern quadrant of the traditional Lower East Side (Abu-Lughod et al. 1994, notes 13 and 14, 14).

⁶For the purposes of this study, neighborhoods will be physically defined as collections of census tracts. I have tried to remain as faithful to traditional neighborhood boundaries as these tract boundaries permit.

1970. That number grew to about 6,000 in 1980, and then more than doubled to 14,000 in 1990. By then, more than 80 percent of the people living in the Financial District were living in 32 buildings constructed over the previous 20 years. The rest lived in 110 older buildings converted from commercial use to apartments (New York City DCP 93-24 1993, 37).

The relatively recent increase in the residential population of the Financial District is due almost entirely to government intervention which has sought to subsidize middle and upper income housing development within walking distance of the city's densely clustered brokerage and financial services houses, banks, and stock exchanges. Half of the residents of the southern tip of Manhattan live in the massive housing complex built on landfill extending into the Hudson River known as Battery Park City (census tract 317.01).⁸

⁷Census tracts 7, 9, 13, 15.01, 15.02, 317.01, 319.

⁸The landfill consisted of debris and rubble from the excavation of the foundation of the nearby World Trade Center towers. For general accounts of the development of Battery Park City, see Gordon (1997); Fainstein 1994, chapter 8); Columbia University Graduate School of Architecture, Planning, and Preservation (1991); Gill (1990, 99-106); Goldberger (1990, 142-8); Ponte (1982 10-5). For a sharp, irreverent analysis of finance capital's protracted struggle to control planning and building in lower Manhattan, see Fitch (1993).

In 1990, Battery Park City, which opened to occupancy in 1982, consisted of 19 apartment buildings ranging in height from nine to 44 stories. A 1991 survey found that the average household size was 1.74 people, the average adult age was 38 years, and the median income was \$89,000, or three times the citywide median. The survey also found that 43 percent of the residents walk to work in the Wall Street area (New York City DCP 93-24 1993, 37-8).

The other major housing development in this area is Southbridge Towers, located just south of the Brooklyn Bridge (census tract 15.01). Completed in 1970, Southbridge Towers is an earlier government effort to populate southern Manhattan, and consists of 1,650 publicly-assisted, Mitchell-Lama housing units where approximately 3,500 people reside.⁹

Government largesse is also responsible for nearly half the conversions of 110 commercial buildings into more than 1,800 housing units. Conversions were abetted by a city tax abatement program begun in 1954 and known by its Administrative Code heading, the "J-51" program. In its

⁹'Mitchell-Lama' refers to the two New York State legislators who sponsored the 1955 Limited Profit Housing Companies Law that enabled the state to provide private developers with low cost financing and property

original form, this program was aimed at small property owners who upgraded apartments they rented out in their own homes, and exempted housing improvements for 14 years from increased property taxes which normally would have accrued (New York City DCP 93-24 1993, 38). The J-51 program was eventually expanded to cover the conversion of non-residential buildings into apartments, but curtailed in 1983 when the program came under public criticism for providing tax subsidies to market-rate housing. As a consequence, there has been virtually no conversion activity in this area since the early 1990s (New York City DCP 93-24 1993, 38-9).¹⁰

*Soho, Tribeca.*¹¹ Sharon Zukins' *Loft Living* is the authoritative account of the development of new residential enclaves in Tribeca and Soho in the 1970s when light manufacturing was permanently dislodged from these areas by artists and other cultural capitalists of the new economy (Zukin 1989). Zukin analyzes how a series of factors - the devaluation of industrial buildings and property in lower

tax abatement benefits for middle income housing development (Wolkoff 1990, 145).

¹⁰The heating up of the Manhattan real estate market in the late 1990s is creating pressure for more conversion activity and several new projects are slated for development.

¹¹Census tracts 21, 31, 33, 39, 43, 45, 47, 49.

Manhattan in the 1960's, the destabilization of manufacturing in the years following, the rise of new middle class values and life styles, and the ascendancy of the American art market - converged to create an expensive local real estate market for loft living. The use of state power through zoning and tax policy facilitated the displacement of industry from these neighborhoods and conferred "rights" on the new residential tenants and owners of lofts. By 1990, "downtown" New York represented a collection of small but firmly established and growing residential enclaves of mostly white, upper income, artists and urban professionals.

*Greenwich Village.*¹² Unlike "downtown," Greenwich Village has a long and resplendent history as a neighborhood and a community and occupies an important place in the cultural memory of the city. A potter's field in the first decades of the nineteenth century, Greenwich Village quickly became New York City's toniest neighborhood when the potter's field was turned into a parade ground and renamed Washington Square. The north side of Washington Square has remained the home of the city's elites, while the south side filled with Italian immigrants by the end of the nineteenth

¹²Census tracts 51, 53, 55.01, 55.02, 57, 59, 61, 63, 65, 67, 69, 71, 73, 75, 77, 79.

century (Ware 1965, 3-44). In the early part of the twentieth century, a new wave of artists, writers, and political radicals were drawn to the Village and gave it the bohemian imprimatur it enjoyed through the 1950s and '60s. As George Chauncey has shown, the Village was also a magnet for gay men and lesbians who "built a gay world in the heart of bohemia" in the years preceding World War I (Chauncey 1993). In the following decades, the Village earned a national reputation as a gay residential neighborhood, attracting thousands of young gay people escaping the narrow and homophobic confines of their home towns. In June 1969, the founding event of the modern gay and lesbian civil rights movement occurred when several nights of rioting followed a routine police raid of the Stonewall Inn on Christopher Street in the West Village (D'Emilio 1998).

Greenwich Village, former potter's field, is famous as another kind of graveyard - the final resting place of machine politics in Manhattan. The South Village was the political base of the last old time Tammany boss, Carmine De Sapio, who was the Democratic party's county leader from 1949 to 1957, and "the strongest Tammany boss since the 1920s (Newfield and Barrett 1988, 108)." As described in chapter 3, during the latter part of this period, Democratic

party insurgents engineered a take-over of the local party apparatus in several key voting constituencies in Manhattan. The reform movement peaked in influence with Mayor Robert F. Wagner' defection from De Sapio-controlled forces within the party and his re-election in 1961 as the reform wing's mayoral candidate.

Former Mayor Edward I. Koch recalls in his book *Politics* how the Village Independent Democrats (VID), the leading reform Democratic party club in Greenwich Village, was formed in 1957 by young supporters like himself of Adlai Stevenson, the Democratic party candidate for President in 1952 and 1956 (Koch 1985, 22-39). Koch and the other "amateur Democrats" were impressed with Stevenson and wanted to emulate his strategy of working for change within the Democratic party. They challenged the machine candidates for party committee and district leader positions and won. For his part, Koch is remembered during this period as the man who drove the final nail in the coffin of the machine by defeating Carmine De Sapio in 1963 (by 41 votes) as district leader from the 1st Assembly district (South).¹³

¹³De Sapio had first been ousted as district leader two years before by VID member Jim Lanigan, who rode the coat-tails of Mayor Wagner's anti-machine re-election campaign. The defeat meant De Sapio could no longer serve as county leader. When he ran again in 1963 against Koch, De Sapio was attempting a political come-back. For

*The lower East Side.*¹⁴ The lower East Side is perhaps the most well-known and most written about of all New York City neighborhoods. A fashionable "silk stocking district" and home to the Vanderbilts and Astors in the early nineteenth century, it became the original big-city ghetto of late nineteenth century industrializing America, condemned by early social reformers, memorialized by the former children of its streets, valorized and dramatized by its artists. The complexity of the social and political organization of the lower East Side is an artifact of over one hundred years of dramatically changing settlement patterns and the contest for power that these changes have engendered.

By most accounts, the lower East Side is said to encompass the area of Manhattan from 14th Street south to Fulton Street below the Brooklyn Bridge, from the East River

somewhat different accounts of the events leading up to the ascendancy of the reform movement and the defeat of Carmine De Sapio and the Tammany machine, see Moscow (1971); Wilson (1974, 40-64); Costikyan (1966, 22-9); Adler and Blank (1975, 22-4); Koch (1985, 22-39); Ware (1985, 47-5)-; and Newfield and Barrett (1988, 108-15).

¹⁴Census tracts 2.01, 2.02, 10.01, 10.02, 12, 14.01, 14.02, 20, 22.01, 22.02, 24, 26.01, 26.02, 28, 30.01, 30.02, 32, 34, 36.01, 36.02, 38, 40, 42. Note that studies of the Lower East Side typically include in their analysis the eight census tracts making up the Chinatown core neighborhood (6, 8, 16, 18, 25, 27, 29, and 41). See, for example, the important analysis of gentrification patterns on the Lower East Side in the 1980s by DeGiovanni (1987), which included seven of the eight Chinatown core tracts (excluding tract 41) in its study domain.

on the east to Broadway on the west (Jackson 1995, 696). It is, however, more often identified by the slightly less expansive boundaries of Community Board 3, which contain most of Chinatown (see appendix B, map B8.1). Because of the historical importance of Chinatown to Chinese Americans and because it remains a highly segregated Asian enclave, Chinatown will be treated separately here as a self-contained neighborhood within the lower East Side.

Janet L. Abu-Lugod accurately describes the composition and distribution of the population in the lower East Side this way:

[The lower East Side] contains a racially and ethnically diversified population. Its relatively small black population is concentrated in public housing projects along the East River. Its larger Latino population is distributed between the housing projects and the older tenements in a zone that was once so specialized that Puerto Ricans called it, in Nuyorican (New York Puerto Rican) Spanish, 'Loisaida' (Lower East Side). Remnants of earlier Italian and eastern European/Jewish waves of immigrants are concentrated on the western edges or in islands of middle-income cooperatives. Its growing Asian population is infiltrating from an expanding Chinatown, while sprinklings of white students, artists, ex-hippies and middle-class professionals liberally dot the zone (Abu-Lughod et al. 1994, note 8, 13).

A recent study of the Community Board 3 area concluded, "Even by New York City standards, the Lower East Side is a

complex community (Zimmerman et al. 1993, 55)." The study cited the extreme diversity in the area's population mix; the continuing influx of new immigrants, many of whom lack basic English-language skills and education needed to find decent employment; the range in income levels and the high rate of poverty; and the toll of unemployment, AIDS, substance abuse, and homelessness on neighborhood residents as factors contributing to the lower East Side's social complexity. In addition, as Sophie Gendrot and Joan Turner found, the neighborhood's long history of middle class reform and settlement house activity, its concentration of socially-engaged religious institutions, and the proliferation of community activist groups formed in response to urban renewal and the expansion of federal funding through the anti-poverty programs of the 1960s further complicate an analysis of political organization on the lower East Side (Gendrot and Turner 1983).

Several studies emphasize the important role of ethnicity in structuring political conflict on the lower East Side. Gendrot and Turner's study, for example, analyzed the 1970s struggle for control over the fourteen block Seward Park Extension urban renewal site and found that political mobilization for both the Orthodox Jewish and

minority communities at odds with each other was dependent on the intertwined relations of ethnicity and class.

Gendrot and Turner argue that the Orthodox Jewish leadership effectively used ethnicity as a vehicle for class formation, and that the material and political resources gained through this process made the difference in the Orthodox community's ability to control development on the site. The nexus of ethnicity and class allowed them to link with broader citywide Jewish religious and fraternal networks that, in Schattschneider's words 'widened the scope of conflict' and broadened the field of support. In addition, the Orthodox community controlled the local Democratic party club (the Truman club), which Gendrot and Turner estimate was responsible for delivering about half of the votes cast in the 63rd assembly district in any given election. Ultimately, the club's influence was an important factor in the defeat of the plan to build a substantial number of low and moderate income housing units in the Seward Park Extension site.

Blacks and Latinos, who stood to benefit the most from the proposed low income housing, lacked the class stratification, resources, and effective internal political organization of the Orthodox Jewish community. Their

marginal position in society, residential dispersion, and internal division along racial lines produced "individualistic patterns of mobility, weak political and class consciousness, a lack of stable and sustained leadership, and most importantly, a lack of social and material resources," contributing to the defeat of their development agenda.

Judith Herbstein's work (Herbstein 1983) suggests that the development of ethnicity as a political and organizational tool was patterned differently for Puerto Ricans than Gendrot and Turner found for Orthodox Jews. Herbstein finds that government policies and state anti-poverty funding transformed the network of Puerto Rican "hometown" associations that existed in the 1960s into a sophisticated, diversified base of grass-roots service and political organizations that in turn fed the development of a consolidated Puerto Rican identity. "This dialectic between official policy and 'grass-roots' adaptive mechanisms," she writes, "underlies the emergence of ethnicity as a potential for collective action among Puerto Ricans in New York City."

*Chinatown*¹⁵ New York City's Chinatown began in the late nineteenth century as an outpost for Chinese male laborers seeking work after the closing of the gold and silver mines in the West and the escalation of racist violence against the Chinese during the depression of the 1870's. In its beginnings and early life, Chinatown was a traditional early twentieth century urban ethnic ghetto shaped by kinship needs and rabid discrimination by the larger society, including discriminatory federal immigration policies. It existed as an insular bachelor society from 1882, when the Chinese Exclusion Act prohibiting almost all immigration from China was passed, until 1943, when the Act was repealed.¹⁶ The post-Second World War War Brides Act permitted Armed Forces personnel to bring spouses into the country and as a result women resided Chinatown for the first time. Significant change in the structure of the community, however, did not occur until the passage of the Hart-Cellars Act of 1965. This legislation liberalized

¹⁵Census tracts 6, 8, 16, 18, 25, 27, 29, and 41. These tracts were identified by Abeles et al. as forming the Chinatown core within the lower East Side and are commonly recognized by community and housing groups within Chinatown as encompassing the historic core of the neighborhood (Schwartz and Abeles 1973).

¹⁶The Chinese have the dubious distinction of being the only national group "specifically named in legislation to be excluded from the United States (Sung 1967)."

American immigration policy, eliminating the system of national origins quotas in place since the 1920's, and replacing it with a flat quota of 20,000 immigrants for every country outside the Western Hemisphere.

As Min Zhou points out, historically, the Chinese have demonstrated a different pattern of residential concentration and dispersion than other ethnic groups on the lower East Side like the Jews and Italians. In 1860, most of the 120 Chinese in New York City counted in the census lived in a three-street area at the heart of the present-day Chinatown core. With the repeal of the Chinese Exclusion Act and the liberalization of immigration laws in the 1960s, the population of Chinatown increased by 73 percent that decade, 111 percent in the 1970s, and 79 percent in the 1980s. New immigrants from China and Hong Kong have poured into the core area over the last twenty years pushing its boundaries out into an ever-widening expanse of what Schwartz and Abeles called "secondary" and "tertiary" areas, and what Zhou has called "extended Chinatown" (census tracts 2.01, 2.02, 10.01, 10.02, 12, 14.02, 15.01, 22.01, 30.01, 31, 36.01, 43, and 45 - all of which remain in what is labeled here the lower East Side). Unlike the pattern observed in other groups, the Chinese have maintained and

expanded their original core settlement in lower Manhattan. Dispersion has taken place in the form of the creation of "satellite" Chinatowns in outlying neighborhoods in Queens and Brooklyn along subway lines serving the Manhattan Chinatown hub. The development of Chinatown satellites has been fostered by the changing regional origin of the new Chinese immigrants to New York City, many of whom do not speak the Cantonese language predominant in Manhattan's Chinatown (Zhou 1992; Chen 1992, 33-9).

Socio-economic and housing conditions. Chinatown today, like the Chinatown of yesterday, is a working class community. Residents have a mean household income of \$24,323, well below the mean household income for Manhattan (\$57,114) and citywide mean (\$41,740). The percentage of people 25 years of age and older lacking a high school diploma is an astounding 64.3%. According to the 1990 census, over a third of residents are not citizens of the U.S., a number which is without a doubt larger due to underreporting. And nearly 60 percent of residents are what the U.S. Census Bureau classifies as "linguistically isolated," meaning no one in the household speaks only English, and of those who also speak English, none speak it "very well." As these indicators might suggest, Chinatown's

residents continue to be employed mainly in low wage, low skilled jobs. Numerous studies have shown that in Chinatown these jobs are found almost exclusively in the garment factories and restaurant and food retailing businesses which give the Chinatown enclave economy its distinguishing features.¹⁷

In the 1980's, New York City's Chinatown was further transformed by two major forces of change underway in the city itself, successive waves of mass immigration and the rapid restructuring of the city's economic base. Before the 1960's, Chinatown encompassed only a six-block area with a population of no more than 15,000. By 1990, population in the Chinatown core had quadrupled and burst through the community's traditional boundaries, spreading people and businesses north, west, and east. "Satellite" Chinese communities formed along the subway lines from Chinatown out to Flushing and Elmhurst Queens, and Sunset Park in Brooklyn (New York City DCP 96-19 1992). Some experts estimated that

¹⁷In 1987, Kwong estimated that there were 500 garment factories in Chinatown employing 20,000 immigrant women and 450 restaurants employing 15,000 workers, mostly men (Kwong 1987). For a discussion of Chinatown as an enclave economy, see Zhou and Logan (1989); Zhou (19). For a different perspective, see Lin (1995). Lin uses a "dual circuit" analogy to explore the conflict in Chinatown between development spurred by the influx of transnational and (Hong Kong) flight capital and the

by the late 1980's, some 1,400 new immigrants were arriving in Chinatown every month.¹⁸

Comparison of the "old" and "new" Chinatown. Wong, Kwong, Kinhead, and other observers have drawn a distinction between the old settlers and new immigrants arriving in Chinatown after 1965 (Wong 1988; Kwong 1987; Kinkaid 1992). The old Chinatown was a closed community of Chinese immigrants mainly from the southern coastal province of Kwangtung. They were a homogenous group with an agrarian, peasant background. The community was dominated by kinship, dialect, and language associations which emerged in all overseas Chinese communities to aid immigrants in their financial, social, and emotional needs.

The new immigrants have transformed Chinatown's economic, social, and political structure in a number of ways. First, they have contributed to a diversification of the population of Chinatown. They come from Taiwan, Hong Kong and Fujian Province and speak Mandarin or Chinese dialects that the old settlers do not understand. They tend to have experience living in urban areas and are a little

needs of the "lower circuit" or enclave economy for affordable housing and low commercial rents.

¹⁸Kwong (1987) citing the Chinatown Planning Council.

better educated than their predecessors. The new immigrants are fleeing oppressive conditions in China and unlike the older generation, mostly intend to stay in the U.S. They learn English and buy homes as soon as they can afford to, and they send their children to American schools.

Leadership styles. There are two different leadership styles in Chinatown's community and political life. The first is the traditional style of the old elite. Bernard Wong, an anthropologist who conducted extensive field work in Chinatown in the 1970s and 1980s, uses the patron-client concept to characterize the power structure of the community as it was primarily before the 1960s disrupted the internal composition and politics of Chinatown (Wong 1977; 1988). The traditional elite of Chinatown, known as the *kiu ling*, were Chinese-born immigrants who spoke Cantonese and held important positions in the more than 60 major family name, dialect and regional associations, and in the Chinese Consolidated Benevolent Association (CCBA). The CCBA is the highest level overall organization of Chinatown and functioned for many years as the community's informal government. It is comprised of many of the older associations, trade groups, regional associations, tongs, and family name organizations. It remains a secret

organization, its inner workings unknown to outsiders. All of the CCBA's proceedings are conducted in Chinese, and its leader is chosen by two Cantonese family associations who no longer represent the majority of Chinese in Chinatown, but retain significant influence in the community.

As the community has grown and changed, a new leadership group has emerged. The *kiu ling* refer to the new immigrant leadership as *chuen ka* short for *She Hui Man Tai Chen Ka*, or "social problem experts". The new elites are often second and third generation Chinese, educated in U.S. universities, and employed in social work, education, law, and other skilled professions. Many were young in the 1960s and radicalized by their participation in the civil rights and anti-war movements. They created new advocacy organizations through the support of federal and state anti-poverty programs in the 1960s.

There is intense competition and conflict between the *kiu ling* and the *chuen ka*. The division is both generational and ideological. The culture of the older elites is apolitical or anti-communist having been shaped in the wake of the communist revolution in China in 1949, and the repressive threat of McCarthyism in the 1950s. The younger leaders were radicalized by the Black Power movement

and by the opposition to the war in Vietnam raging on U.S. college campuses in the 1960s.

Peter Kwong, a community activist in the 1960's, a social scientist and author of three books on Chinatown, is also a member of the *chuen ka*. His view of the old leadership is typical of the *chuen ka*:

...Chinatown is still dominated by a traditional political elite which, despite change, rules with the acquiescence of outside authorities. This structure was transplanted from feudal China during the late nineteenth century. Family, village associations, and secret societies were initially formed to defend immigrants against racial attacks from whites. However, these associations, once established, developed a strength of their own; they came to rule the working people in the communities. Today, this traditional order has been modified, but it continues to exist. It has adapted to modern conditions to serve a new class of owners and landlords in Chinatown (Kwong 1987).

The *kiu ling*, on the other hand, see the *chuen ka* as outsiders. They believe that they the *kiu ling* alone are the legitimate leaders in the community. They believe that Chinatown is a self-sufficient community that can solve all of its problems by itself and that interaction with the larger society should be narrowly channeled through them. The CCBA seeks no state or city funding for its Chinese school and shuns the community organizations of the *chuen ka*

because they are largely funded through public subsidies and social welfare program dollars.

Community organizations. The change in leadership style ushered in by the 1960s lead to the development of new types of voluntary associations in Chinatown. Kuo identifies three major phases of development for Chinatown's community organizations (Kuo 1977). The first phase covers the early period and the traditional, male-dominated kinship, regional, and dialect organizations, the fraternal merchant organizations known as tongs, and the CCBA. These associations functioned in an environment of material scarcity, social isolation, and intense discrimination.

The second and third phases began with the social upheaval of the 1960s, although by that time, the traditional family name organizations had already declined in power and influence. The development of new types of community organizations reflected the growing complexity of the social structure within the Chinatown community and the influence of conflict and change occurring in the larger society. The second phase of development lead to the formation of modern social service organizations which arose to take advantage of funding made available through the federal government's anti-poverty program. The Chinatown

Planning Council was the first voluntary association to mobilize community action, staging early protests against city policies on behalf of welfare mothers. This put the Planning Council in direct conflict with the CCBA who believed they should have a monopoly over caring for the needs of the community. The modern service associations changed the balance of power within Chinatown. They served as a link between the community and the federal, state, and city governments, but their dependence on government funding limited their involvement in local politics and community organizing.¹⁹ That role was taken up by other, more radical members of the *chuen ka* in the third phase of organizational development in Chinatown.

The third phase of development of voluntary associations in Chinatown was influenced by two national movements of the 1960s, the Asian-American student movement and the Tiao Yu Tai, or Unification of China movement active on student campuses. Many radicalized Chinese American student activists wanted to organize politically in their communities following the lead of the Black Panthers and the

¹⁹This pattern characterized the plight of many community organizations in the 1970s and 80s. For an analysis of how an increasing reliance on service delivery functions and government funding

Young Lords. One such organization in Chinatown was Worker's Viewpoint. By the mid-70's, however, Worker's Viewpoint leaders and other radicals from the student movements believed they needed to tone down their revolutionary rhetoric establish better relations with the older leadership in the community. Worker's Viewpoint established a front organization called Asian American's For Equality (AAFE) which would focus on racial oppression as the source of contradiction in the community (Kwong 1987, 164). One of AAFE's first successes was organizing pickets at a federally-funded project site known as Confucius Plaza when the contractor refused to hire Chinese construction workers claiming that they were "too weak" for such work.²⁰

During the 1970s, AAFE and other activist groups indulged in increasingly theoretical and contentious debates over what "line" to adopt to guide their work. They moved to the periphery of community organizations in Chinatown, as people dropped out to form other groups such as the Chinatown Health Clinic, the Asian American Legal Defense

transformed community organizations active in education in the 1970s, see Gittell (1980).

²⁰Meanwhile Worker's Viewpoint evolved into the Communist Workers Party (CWP). When the CWP clashed with the Ku Klux Klan in 1979 at an anti-Klan rally in Greensboro, North Carolina, Margaret Chin, a party spokesperson, held a press conference to denounce the violence.

and Education Fund, and the Chinese Staff and Workers Association. With the rise of the Reaganism and the new right in the 1980s, however, AAFE found new opportunities in the collapsing middle of the Democratic party and threw itself into rainbow politics and Jesse Jackson's presidential bids. They became especially active in state and local Democratic party politics, fielding candidates for party office and participating in campaigns. Margaret Chin, AAFE's former president (she served from 1982 to 1986) was twice elected Democratic state committee woman from the 61st assembly district in Chinatown in 1986 and 1988.

Redistricting: Asian Americans and Latinos. Chinatown civic and civil rights groups were united in making an early demand to the commission that Chinatown not be split into more than one district (*Sing Tao Jih Pao* 1991). At the commission's first public hearing in Manhattan, in November 1990, Chinatown activists warned they would not tolerate a repeat of the previous (1982) redistricting for the state legislature when Chinatown was physically divided into two state assembly districts. Whether it was because of the voice of Chinatown's advocates or for reasons internal to the politics of the commission itself, the commission decided early in the process that in the maps for Manhattan

it would keep Chinatown whole. Indeed, in the rhetoric of the commission's Executive Director and in news reporting on the issue the election of New York City's first Asian American city council member from New York City's first Asian American council district in Manhattan's Chinatown was a *fait accompli*.²¹

The problem in creating that Asian American district was the charter mandated size of the city council districts. The charter required the districting commission to divide the official 1990 Census numbers for the city by 51 to create new Council districts of equal proportion. Relying on a standard upheld in the courts, the charter allowed for a population deviation of plus or minus five percent, which meant that the targeted district size was 143,579, or some number within the range of 136,400 to 150,758.

The 1990 Census revealed that the Chinatown core was home to about 62,000 people, or less than half the number of people needed to make up a city council district. Given the districting commission's early commitment to keep Chinatown whole, the battle for a Chinatown district would not be

²¹At a November 7, 1990 meeting of Manhattan Community Board 7, districting commission Executive Director, Alan Gartner, stated, "One doesn't have to be a mind reader to understand that there will be a

fought over maintaining Chinatown's borders, but over which neighborhoods adjacent to Chinatown would be incorporated into the Chinatown district. In fact, as Bailey points out, "The debate over geography really was over one identity. How did Asian Americans in lower Manhattan wish to be identified, and with whom (Bailey 1999, 233)?"

Asian Americans For Equality (AAFE). The first proposal to the commission for a Chinatown district came from the advocacy organization, Asian Americans for Equality (AAFE). AAFE was behind the candidacy of its former President, Margaret Chin, who believed her best chances for election would be from a district which built out of the Chinatown core to the west and south to take in the upper income and mostly white neighborhoods of Tribeca, Soho, and the Financial District.

This was a contentious plan which split the Asian American community and bitterly divided the leadership over the meaning of Asian American "interests." AAFE's plan, which became known in the Asian American community as Plan A, bisected the traditional boundaries of the lower East Side, the boundaries of Community Board 3, zig zagging

district in lower Manhattan with Chinatown at its heart (quoted in Spritzer (1990))."

across the middle of the Board area to capture census tracts with high concentrations of Asians and avoid census tracts with Latino concentrations (City of New York 1991).

Community Board 3 had been wholly contained within the old city council district 2.

AAFE's plan identified the Chinatown core as the eight census tracts (6, 8, 16, 18, 25, 27, 29, 41) bounded by Rivington Street on the north, Norfolk and Clinton Streets on the east, South Street on the south and Centre Street on the west. These were the Chinatown boundaries identified by the Chinatown Garment Industry Study conducted by Abeles, Schwartz, Haeckel, and Silverblatt for the ILG and the NYS Skirt and Sportswear Association (Schwartz and Abeles 1973). That study found that the Chinese were 60 percent of the population in the Chinatown core. AAFE estimated that seven years later, the Chinese population was closer to 80% of what AAFE estimated was about 94,000 people living in the core.²² The district proposed by AAFE encompassed the Chinatown core, swinging a few blocks north to Houston Street and bounded by Clinton Street on the east, the East

²²When the official census numbers were released in April 1991, they showed AAFE's estimates of the number of people in the core to be inflated by about a third of the number of people actually counted in the census.

River on the south, moving across the span of lower Manhattan to the Hudson River on the west. With the additional 17 census tracts proposed for the district, AAFE estimated the population for the new district to be just under 140,000. The core area represented about two-thirds of the proposed district, and Asians 54% of the population.

At public hearings AAFE quickly emerged as the best organized voice for a Chinatown district. In testimony given to the commission by its President and Executive Director, in written district plans and maps based on research used by AAFE to solicit endorsements and support from various Chinatown business, civic and social service organization leaders, in meetings with the commission's staff, and in editorial space in one of the city's major daily newspapers, AAFE hammered away at the demand for a city council district that kept Chinatown whole and maximized the chances for an Asian American candidate to win.

The executive director of the districting commission lavished praise on AAFE's preparation and argument. At first glance, AAFE did make a strong case for a west and south connection and their organized and methodical presentation at the hearings outshone the average group

giving testimony for a district. Upon closer examination, however, the evidence used to support AAFE's argument is not convincing. For example, AAFE claimed that ". . . Chinatown's boundaries have been rapidly expanding south and westwards as evidenced by the utilization of service providers outside the traditional Chinatown area." But they named only one service provider, St. Margaret's House at 49 Fulton Street, whose clientele was only about one third Asian. Gouveneur Hospital on Madison Street, and Beekman-Downtown Hospital on William Street on the southern border of Chinatown, were cited as providers of health care services to Chinatown residents, but their existing catchment areas would suggest as much.

The southern/westward expansion claim contradicted prevailing wisdom on the matter. John Kifner of the *New York Times* cited city planners who saw the opposite of what AAFE asserted about the direction of the growth of Chinatown. "Chinatown has burst its traditional boundaries," he wrote at the time.

The new Asian community is expanding north and east - along East Broadway glistening with new banks and office towers shielding Hong Kong investments, to Division Street, where immigrants from Fujian province in southeast China are clustered, to Centre Street where the Taiwanese are, to Henry Street,

where the Burmese can be found, and along Canal, where the Vietnamese gangs dominate (Kifner 1991).²³

AAFE claimed that the Chinatown garment industry was expanding its operations into the lofts and warehouses of Soho, but cited only one unnamed supplier who had recently opened up a store on Houston Street as evidence of the expansion of the garment industry into Soho. They argued that, "The winnability of Asian American candidates in Lower Manhattan and where exactly Asian Americans have been successfully elected (*sic*)" must be an overriding principle for determining the boundaries of a Chinatown district. Here, AAFE cited the election of Chin in 1986 and 1988 to the Democratic State Committee, and the 1985 defeat of Virginia Kee, a prominent Chinatown leader, by Miriam Friedlander for the council seat as experiences that should be evaluated to determine Asian voting pockets. Such information could aid the commission in determining Asian political cohesion and might be necessary under a Gingles

²³In their testimony before the districting commission, the Chinese Progressive Association presented zip code data on the number of Asian American immigrants moving into the Chinatown core zip codes (10002 and 10009), as well as the surrounding areas, between 1983 and 1986. As the data showed, "Not only have Asians continued to move into Chinatown, but in such large numbers that the community has been expanding to its north and east where housing is more affordable." (City of New York 1991).

challenge to the commission's work. Doris Koo, AAFE's Executive Director, said that Kee lost her bid for City Council "primarily from a lack of voter support from the communities north and east of the Chinatown boundaries." This was not accurate. An examination of the voting results from that election shows that Kee actually did quite well, receiving 45 percent of the vote, for a first time challenger against Friedlander, a twelve-year incumbent on the council at the time (New York City Board of Elections 1985). In fact, Friedlander lost to Kee in gentrifying areas of the lower East Side and beat Kee on her own turf in parts of Chinatown. Kee was hand picked by Friedlander's political enemies, including Mayor Ed Koch, to run against Friedlander. She was also a founder of the Chinatown Planning Council and powerful member of its board had advocated the building of luxury high rises in Chinatown. Kee was seen as a proponent of gentrification and an advocate for Hong Kong-based real estate interests. She lost to Friedlander with the help of organizations in Chinatown who opposed Kee's vision for the neighborhood, organizations formed explicitly to support Friedlander.²⁴

²⁴Virginia Kee became the first Asian American to serve on a local planning board when Miriam Friedlander first appointed her in the late

This suggests that class issues are as important as identity issues, if not more so, in the Asian American voting population in New York.

The problem for the commission with an argument for the inclusion of voting districts where Asian American candidates have won is two-fold: first, the voter registration rate and therefore the rate of voting in local elections in Chinatown is extremely low. Chinatown has one of the lowest voter registration rates of any neighborhood in New York City. Just over one third (36.7 percent) of adult residents of Chinatown were registered to vote in 1990. Second, the experience of Asian American candidates on the ballot in New York City is practically non-existent. It is limited to Kee's and Chin's runs for Democratic party posts, Kee's bid for a city council seat, and three judicial races which count for little because they are run county-wide, receive little or no publicity and appear to be of little consequence to most voters. Judicial elections in New York are not usually good indicators of voting patterns.

70's. Friedlander saw Kee's candidacy as part of an on-going, undeclared, low-level war against political reform being waged by her political enemies, the regulars on Grand Street (Interview with Miriam Friedlander, August 1999). For her part, Kee believed Friedlander's radical politics isolated her from the spoils of government and therefore hurt the low income communities she was elected to represent (Barbanel 1985).

In the end, there was not much hard evidence that Chinatown and its white, upper income neighbors in Soho, Tribeca, and Battery Park City were a true "community of interest" who belonged together. Chin argued that liberal middle class whites were more likely to support an Asian American candidate than low income Latinos but she had little proof that they had done so in the past. In defense of its plan against growing opposition both within the Asian American civil rights community and activists on the lower East Side, AAFE and Chin pleaded with the commission to minimize the electoral competition facing an Asian American candidate by drawing boundaries that created a "new" City Council seat, meaning a seat which gerrymandered the incumbent, Miriam Friedlander, out of it. They argued that the commission in its work should not "force" Asian American and Latino candidates to run against each other on the lower East Side. AAFE soon heard a Latino voice echo its plea.

The Puerto Rican/Hispanic Political Council. The Puerto Rican/Hispanic Political Council was a hastily organized group pulled together by lower East Side housing developer, Antonio Pagan. Pagan, at first favored a district along the traditional boundaries of the lower East Side and Community Board 3. He presented a plan to the

commission that emphasized the concentration of Latinos in the public housing projects along the East River.

Jere Hester reported that Pagan "made a deal with Chin to draw a Lower East Side district with southern borders where Chin's Lower Manhattan district starts. . .

Pagan. . . says the lines will give both communities a chance to elect their own candidates. 'We both have a chance for separate districts and that would be best for both the Asian and Latino communities,' he says. 'We don't want a situation where Asian and Latino people end up at each other's throats (Hester 1991b) . '

Pagan, like Chin, was an 'identity entrepreneur.' His advocacy for a separate Latino district had more to do with advancing his own political career possibilities than it did with community empowerment. His identity as a Latino was a resource he could draw on in the districting context. By accepting the AAFE-proposed configuration of separate Asian American and Latino "influence" districts over a multi-racial district that cut lower Manhattan from north to south rather than from east to west, Pagan hoped to be able to garner support among Latinos and among white liberals on the lower East Side who could be appealed to for support of the symbolic identity politics of ethnic succession.

In fact, to the surprise of the commission, this is what happened. Friedlander's political enemies, the regular clubhouse interests of Grand Street supported the inclusion of Gramercy Park and lower Midtown Manhattan in the lower East Side district. The traditional northern border of the lower East Side, 14th Street, thus was breached by the new district 2. The regulars and Pagan and convinced a reformer in Gramercy Park, Phil Howard, to run in the new district in the Democratic primary. Howard drained votes from Friedlander and contributed to Pagan's narrow 121 vote victory.

Lower East Siders for A Multi-Racial District (LESMD). Critics of splitting off Chinatown from the rest of the lower East Side organized an ad hoc group of Asian American, Latino, and white advocates of a north-south division of lower Manhattan. Lower East Siders for a Multi-Racial District formed late in the districting process when the conflict within the Asian American community over the vision for a Chinatown district appeared irreconcilable.²⁵

²⁵AALDEF's executive director, Margaret Fung, wrote an op-ed in *Newsday* criticizing Margaret Chin for sacrificing the interests of low income and working class Asians in Chinatown to her own political ambitions. She was the first prominent Asian American to criticize Chin. Jere Hester, writing in the *Downtown Express*, reported, "'Now we can say things against Margaret [Chin] without fear of being called

Gartner suggested that the Asian American Legal Defense and Education Fund could have played more a leadership role in bringing all parties together:

Although initially AALDEF seemed to hang back from the dispute between a Chinatown-anchored district versus a "multi-ethnic" option for lower Manhattan, its supporters soon became prominent champions of the latter option. Its joining in the vitriol of this dispute, fed by decades-long disputes in Chinatown politics (and personalities), eroded the possibility for AALDEF to play a consensus building role in the Chinatown community (Gartner 1993, 129).

Instead, AAFE filled the vacuum with what many saw as a "candidate-centered" proposal calling for a west-east divide of lower Manhattan that separated Asian Americans and Latinos into their own "influence" districts.

By late March 1991, AALDEF had allied itself with LESMD in calling for a multi-racial district. When the initial and revised plans were released, and it became evident that the commission was not interested in this alternative, Fung threatened to file a lawsuit, charging that the commission had sacrificed Asian American empowerment to accommodate gay and Latino voters (the suit was never filed).

racist,' says one white political leader, who, despite his liberation, wished to remain anonymous." (Hester 1991a).

Asian Americans and Latinos separated in lower Manhattan. Ancheta and Imahara raised the issue of whether a larger protected minority group has a claim under the Voting Rights Act when it is not mixed with a smaller protected minority group to create a solid majority-minority district. They pointed out that the courts have not ruled on this problem. The districting commission decided to test the issue when it split Chinatown off of the Latino lower East Side. Macchiarola and Diaz report that, "The decision as to whether to create two districts as opposed to a single district proved a particularly tough one for the members of the commission." (Macchiarola and Diaz 1993a, 1227) The testimony was mixed and the data the commission examined on voting patterns among Asian Americans and Latinos in lower Manhattan was "inconclusive."²⁶

Among groups participating in an effort to shape districts in lower Manhattan, AAFE was first the best organized and presented a plan and agenda the commission understood. They pushed for a Chinatown district that

²⁶The commission adapted the Gingles criteria to the problem of minority/minority political competition. They asked: 1) do Asian Americans support the preferred candidate of Latino voters in local elections in which both groups participate?; 2) do Latinos support the preferred candidate of Asian American voters in the same elections?; 3)

excised the rest of the lower East Side. It was a tactical move predicated on the conviction that an Asian American candidate could not beat incumbent Miriam Friedlander, and would have a hard time against a candidate put up by the regular clubhouse organization in the Grand Street Co-ops. AAFE wanted no serious competition. They knew that most of the eligible voters in Chinatown were not registered to vote, and they wagered a bet that the wealthy white professionals of Battery Park City and Tribeca/Soho would sleep through the off-cycle city council election.

Meanwhile, the influence of the Bronx and Brooklyn party organizations meant that liberal Manhattan incumbents had only slightly more influence than their challengers, especially if the incumbents were female.²⁷ The game of identity politics was played no better anywhere else than in Manhattan. Manhattan provided the spectacle while the party bosses negotiating the lines for the outer boroughs controlled the incorporation of newcomers.

do both groups vote against majority (white) preferred candidates in these elections (Macchiarola and Diaz 1993a, 1227).

²⁷The final plan for Manhattan created less than favorable council districts for four of Manhattan's seven incumbents: Miriam Friedlander in lower Manhattan; Carole Greitzer in Gramercy, Kips Bay, Murray Hill, and the West Village; Carolyn Maloney in the Upper East Side; and C. Virginia Fields in Harlem. Friedlander and Greitzer were the only two incumbents in the city who lost their seats in re-election bids (Tashman 1991).

The leadership of the commission decided early in the districting process that there would be an Asian American district and that it would be in Chinatown. AAFE made it easy on the commission; it made its argument, presented its data and produced its ready-made candidate (Chin). The commission complied, in part, because Chin was a viable candidate and had raised a considerable amount of money by the late fall of 1990. They cut the district to her specifications (see appendix B, map B8.3).

Why did the commission believe that Chinatown, with its low voter registration rate could elect one of its own, regardless of who its incorporated district neighbors were? AAFE argued that the low number of registered voters in Chinatown should not dissuade the commission from creating a Chinatown district because the community was growing and maturing politically and should be given a chance to elect one of its own. As AAFE executive director, Doris Koo, told the commission at one of its first public hearings,

Don't tell us that the numbers aren't there. And don't worry that we might not have the votes. That is our job - our job as organizers, as sons and daughters, grandsons and granddaughters of the disenfranchised...create the opportunity, and you'll see a community mobilized, invigorated and empowered (City of New York 1991).

A north-south boundary down the middle of lower Manhattan would have kept Chinatown connected to its traditional base in the Lower East Side. But a north-south boundary presented big problems for many of the players in districting process. First, for AAFE and Margaret Chin, a north-south boundary could not avoid including in a Chinatown district the white middle income Grand Street Co-ops. While Grand Street was no friend to Friedlander, Chin could not be sure they would not back a candidate of their own. The risks were too high.

Furthermore, a north-south boundary would almost certainly include Friedlander's residence on East 6th Street in the Chinatown district. Despite the fact that Friedlander repeatedly said that she would not run in a minority district that kept Chinatown a part of the lower East Side (City of New York 1991), AAFE and Chin seemed to believe that she would run and Chin would not commit to running if Friedlander was in the race.

A north-south boundary would not have worked for advocates for a gay district on the west side of Manhattan, either. They argued for a district with Chelsea at its core, incorporating the West Village on the south and Clinton, or at least the southern part of Clinton just above

42nd Street, on its northern border. The combination of such a district and a north-south boundary through lower Manhattan would have left too few people south of the Village in Tribeca and Soho for a council district. To create a district from the western portion of lower Manhattan beginning at the southern tip of Manhattan and Battery Park City one would have to go north into Chelsea to hunt for enough people. This would have disturbed plans for a gay district by cutting the available gay residential areas of that district in half.

Chin's labors in the fields of the Democratic party appeared to pay off. She was well-known to the Village Independent Democrats (VID), and a friend to the faction within VID controlled by Deborah Glick. VID's former president and ardent Glick support, Bruce Feffer, was a co-chair of Chin's campaign. Chin and Tom Duane, a Democratic district leader and gay activist from Chelsea with his own plans to run from a newly created west side gay district, supported Glick in her successful 1990 bid for a seat in the state legislature. One local paper reported that Chin negotiated with political leaders maneuvering for their own districts in adjacent neighborhoods to push for an east-west boundary below 14th Street. Jere Hester in the *Downtown*

Express, reported that Chin was cutting "savvy deals with east side Latinos and West Side gays, bettering the chances each group will be able to grab a piece of the Lower Manhattan pie without stepping on the interests of the others (Hester 1991b)." In the short run, the deals succeeded, but they were not deals made with the interests of low income immigrant communities of Chinatown or the lower East Side in mind. In fact, Chin's brokering did not even pay off for her. She lost the election, despite significantly outspending her opponent.²⁸

Redistricting: Lesbians and Gays. Minority status with respect to voting rights is determined by statutory recognition in the 1965 Voting Rights Act, as amended. The Act creates a distinction between racial and language-group minorities explicitly named in the law - the 'protected classes' - and everyone else. In multi-racial/multi-cultural jurisdictions, everyone else is divided into what might be called 'secondary' minority groups for the purpose of districting. Secondary minority groups have the same fundamental rights enjoyed by the protected classes. The

²⁸Chin got 33 percent of the vote in a four-way Democratic primary race. The winner, Kathryn Freed, got 43 percent of the vote (New York City Board of Elections 1991).

difference is that protected classes also receive enforceable statutory protection against the denial of those rights. Moreover, as the history of the extension of the Voting Rights Act from racial to language-group minorities demonstrates, from the perspective of the law, secondary minority groups are latent protected classes.

In densely populated jurisdictions, secondary minority groups which may or may not be as residentially concentrated as protected classes, are nevertheless at the risk of having their group voting power diluted in single-member districts under the rules for protecting racial and language-group minorities of the Voting Rights Act. Lesbians and gays may be considered a secondary minority group in this context.

At the beginning of the formal districting process, by October 1990, advocates in the gay community had their focus elsewhere. As Duncan Osbourne noted in *Outweek* at the time,

With less than a year to complete its work, the municipal body charged with redrawing the city's council districts is moving forward with little representation from the gay community and perhaps even less interest on the part of lesbian and gay men in the redistricting process (Osbourne 1990).

Osbourne suggested that the gay community's focus on direct action in the 1980s drained energy away from traditional

electoral politics in New York, but that things were beginning to change with the election of Eve Preminger to Manhattan Surrogate's Court, and Deborah Glick, the first openly gay person elected to the New York State Assembly.²⁹

Osbourne's point has merit, although electoral activity by openly gay candidates and activists in new York began in the early 1970s and never really subsided. Carol Greitzer, the city council member from Greenwich Village, faced openly gay primary opponents in 1973, 1985, and 1989. In 1977, political scientist Ken Sherrill became the first openly gay elected official in New York City when he won a race for Democratic district leader on Manhattan's Upper West Side. Electoral activity continued simultaneously with the upswing in direct action among gay activists in the 1980s in the wake of the AIDS crisis and growing violence against gays and lesbians. Nevertheless, the well-documented transition of the gay and lesbian sexual liberation movement from an 'identity' movement to an 'ethnic-like' interest group politics (Altman 1982; Epstein 1987; Gamson 1995; Vaid 1995), meant that the gay community was actually well-positioned to pursue voting rights within the rubric of the

²⁹Glick was elected in 1990 from Manhattan's 64th assembly district covering most of Greenwich Village and Chelsea.

Voting Rights Act. As Bernstein suggests, the structure of a group's internal organization, the group's access to the polity, and the type or nature of the opposition to the group's goals determine how identity is used in the struggle toward those goals (Bernstein 1997). As a political strategy identity is used to stress either similarities to or differences from the mainstream culture or political community. In the 1991 redistricting case, gays and lesbians used identity to influence the districting commission to draw a 'gay winnable' district for them.³⁰ They did this by fashioning identity claims that asserted 1) gays and lesbians were a secondary minority group, a "community of interest" 2) similar to the mainstream political community addressed by the Voting Rights Act, the racial and language-group minorities in the city whose rights to representation were being enacted in the districting process.

³⁰Lisa Parrish, acting director of Empire State Pride Agenda, a gay and lesbian advocacy organization, testified that although there were residential clusters of gays and lesbians in neighborhoods across New York City, it would not be possible to devise a council district that was fifty percent gay. She noted that David Rothenberg received 42 percent of the vote in 1985 when he ran in a city council primary against Carol Greitzer; Tom Duane received 45 percent of the vote in 1989 in a primary against Greitzer; and that Deborah Glick won her assembly seat with only 43 percent of the vote. Parrish suggested using the notion of a "gay winnable" district, one in which gays and lesbians

By January 1991, gay advocates had quickly organized to influence the districting process and were urging the commission to come up with at least one 'gay winnable' district, suggesting either the West Village neighborhood in Manhattan or Park Slope in Brooklyn. First gay advocates had to make the case that they were an under-represented minority group with a right to their own district. Although as a group gay people do not qualify as a statutorily protected minority group with a right to representation enshrined in the Voting Rights Act (as amended), they face discrimination in many of the same areas as do blacks and other minorities who do receive statutory protection. With the new city charter, gays gained some traction as a defined "community of interest" protected from vote dilution in districting in Section 52(1)(c) of Chapter 2A of the charter. As noted in chapter 6, that section said that in drawing districts, the districting commission should keep intact "neighborhoods and communities with established ties of common interest and association, whether historical, racial, economic, ethnic, religious or other" (emphasis added).

were concentrated but were still a minority of the voting population (City of New York 1991).

According to advocates and to the former Schwarz commission executive director, Eric Lane, the word other was meant to refer to gays. John Magisano, the president of the Gay and Lesbian Independent Democrats of Manhattan (GLID), said,

When they revised the Charter, they felt it would not be in our interest to have us named in the list of categories because it would get shot down by religious people on the [charter] revision commission. We came out with the category other, which supposedly covers us. Yet there is nothing that says it has to cover us. I would rather that they had discussed and refused it than scheme around and deny me my right to representation without having to say so (Browne 1991).

Lane corroborated this account at one of the districting commission's public meetings. Noting that most of Section 52(1)(c) was in the previous charter, Lane remarked:

Now this standard was part of the previous charter but it was moved up in priority by the charter commission and the phrase "and other" was added by this last charter commission. This addition of the word[s] "and other" was primarily the result of gay and lesbian advocates who argued that the adjectives - historical, racial, economic, ethnic and religious - was limiting in that it did not recognize that communities could be formed on the basis of other interests, their argument being the interests of sexual preference, and other groups I'm sure might find other ones, so that is the background of the

addition of the language "and other" - and that's why it's there (City of New York 1991).³¹

Gartner reports that most commissioners were open to the argument for a gay district but that they needed evidence that gays were a community of interest sufficiently concentrated in parts of the city to form such districts (Gartner 1993, 133). Here several strategies were pursued. Gay advocates and organizations especially the Empire State Pride Agenda (ESPA), a statewide political action committee for gays and lesbians, collated information from many sources to document common issues and problems in the gay community, such as the demand for a domestic partnership program and a lack of commitment of local governmental resources to the AIDS crisis. Matt Foreman, the executive director of the New York City Gay and Lesbian Anti-Violence Project, presented evidence of an increase in bias crimes against gays and testified that "we need someone on the inside, fighting for us, cutting deals for us, pushing for

³¹According to Bailey, the Schwarz Commission hesitated to make explicit reference to gays in the draft city charter with respect to enhanced representation because they had already incorporated two legal protections asked for by advocates of the gay and lesbian community - one, banning discrimination against gays in housing, private sector employment, and government, and the other a guarantee of equal protection required of contractors doing business with the city (Bailey 1999, 226).

us. This record demonstrates why we have to have a gay man or a lesbian in the city council (City of New York 1991)."

Voting patterns in gay communities and elections in which gay candidates ran were analyzed, as were other non-traditional datasets. Sherrill suggests that the number of gay bars per capita is the best single predictor of the passage of gay rights bills in American cities (Sherrill 1996, 472). He argues that gay bars and other meeting places where people can come together to discuss grievances and a shared sense of conditions can serve the development of political consciousness and collective identity. Following innovative methods developed in San Francisco over a decade earlier (Castells and Murphy 1982; Castells 1983), ESPA mapped social services, businesses, and recreational centers serving the gay community, and analyzed fundraising, direct sales, and subscription lists focused on the gay community to establish the existence of gay residential clusters in the city.

The spatial pattern of these sites does not alone prove the existence of a 'community of interest,' but it can imply it. The significance of the method for establishing a gay community of interest used by ESPA and others is its reliance on multiple sources of data to establish a

preponderance of evidence that a community did exist. The flexibility of the method, its incorporations of both "hard" data like the analysis of voting patterns, and "soft" data like the data used to map spatial patterns and what they imply about the relationship of communicative practices and collective identity, allow each group using it to legitimately define their own particular community in their own terms.

The result of this analysis was evidence of gay residential clusters needed to defend against vote dilution litigation. The largest gay neighborhoods were in Manhattan in the West Village/Chelsea, and the Upper West Side. The next largest gay neighborhoods outside Manhattan were in Park Slope in Brooklyn and Jackson Heights, Queens (Bailey 1999, 230-1). Tom Duane quickly emerged as the favored gay candidate from a West Village/Chelsea "gay winnable" district. Duane was along-time tenant activist from Chelsea and Democratic district leader. He was closely allied with Deborah Glick who strongly favored his candidacy and worked with him to promote the idea of a West Village/Chelsea district.

The commission's initial plan for district 3 bisected Christopher Street in the West Village on its southern

border (see appendix B, map B6.5). Christopher Street is considered the Main Street of the gay community in New York. Splitting it between two council districts was completely unacceptable to gay advocates (Osbourne and Miller 1991). They loudly pressed for changes to their district in order to include both sides of Christopher Street in the district, and got them. This incident notwithstanding, there was little controversy over the final lines. Tom Duane who had mobilized support for his candidacy through his participation in the districting process easily beat his opponent, Liz Abzug, daughter of Bella Abzug, the former West Side politician who had represented the neighborhoods of district 3 in Congress.³²

The districting commission's response to Duane, Glick and ESPA's fact-filled and persuasive testimony was similar to its response to Margaret Chin and AAFE's appeal for a Chinatown district. In both cases, for its own internal reasons, the commission was predisposed to the creation of a

³²At the time the Duane-Abzug race was the most expensive city council electoral contest ever run in New York. Abzug's revelation that she was lesbian attracted international media coverage to the race, but was upstaged by Duane's revelation (in a letter to 40,000 voters) that he was HIV-positive. Like the Rothenberg-Greitzer race in 1985, another high-spending contest in which the candidates challenged each other over the number of protest demonstrations they had attended over the previous

gay winnable district, just like it was predisposed to the creation of an Asian American district in Chinatown. The early emergence of strong candidates for the new districts facilitated the commission's work in drawing the lines. Both the final Asian American and gay districts were drawn to the designs of advocates and to the specification of favored likely candidates. Moreover, cooperation between the likely candidates Duane and Chin and their political allies made the job even easier. The thorniest issue was that of Latino empowerment on the lower East Side. Antonio Pagan advocated separate districts for Latinos and Asians but when the final plan for district 1 showed incursions into mixed minority areas on the border of Chinatown to the east for the Chinatown district, Pagan was worried. The census undercount appeared to be especially bad in Chinatown. As a result, the Chinatown district extended further into the lower East Side than proponents of the districts initially expected it would need to go. This configuration forced the commission to spread the lower East Side district, district 2, well above the traditional boundary of the lower East Side, 14th Street. Pagan joined

decade, the Duane-Abzug race had an 'only in New York' quality (Schmalz 1985; Nicholson 1991).

commissioner Cabrereras and critics in the Latino community in condemning the final plan for discriminating against Latino voters.

Indeed, in lower Manhattan, the commission did diminish the priority of Latino voting rights in order to enhance electoral opportunities of Asian Americans and gays and lesbians. Its decision on the lines there were among the most controversial of all of its work and came in for the most criticism. Two of the four dissenting commissioners cited the disenfranchisement of lower Manhattan as part of the reason why they could not vote in favor of the final plan. Latinos on the lower East Side got what was left over after Asian American and gay advocates negotiated a dividing line between their two communities on the west side. The jagged boundary of district 1 on the east reflects the commission's compliance with the Asian American candidate's concern that the district not include the incumbent councilwoman's residence on 6th Street or the largely middle class Jewish housing along Grand Street. On the west, the Chinatown district respects the demands of gay advocates to include all of the West Village in district 3.

Commission staffers did not expect Pagan to beat Friedlander in district 2 (Interview with Marc Lapidus,

February 1999). The irony of Pagan's 121 vote (out of 12,485 votes cast) victory over Friedlander was that 1) Pagan is gay and this part of his identity appeared to play no role in his politics or in his advocacy for a winnable district; and 2) Pagan, a Puerto Rican, won with the white votes from Grand Street.

CHAPTER 9 CONCLUSION

This study has examined the intersection of law and politics on the issue of representation. It has generated the following findings.

The American theory of representation is grounded in individualism. At the time of the founding of the nation, Americans invented a new meaning for representation, one in which it is the person, "not trees or acres. . . [nor] farms or cities or economic interests," (Chief Justice Warren writing in *Reynolds v. Sims*, 377 U.S. 533) who is represented in government. The country's birth in the overthrow of colonial rule and its historical experience of racial conflict has strengthened individualistic notions of self-government in which the representative is defined as an extension of the self. As a consequence of the legislative response to the modern civil rights movement, the Court has partially recognized the group basis of voting by evolving the concept of vote dilution and privileging simple group-based identities in accordance with the law. In the contemporary period, the Supreme Court and lawyers have been the prime innovators of a theory of representation. The Court has evolved an elaborate set of rules that both

strengthen and theoretically undermine the pluralist approach to representation, with its emphasis on voting rights and single-member, winner-take-all districts. As Mark Rush correctly points out, the root of the contradiction lies in the Court's emphasis on the fairness of the process of representation while at the same time its inability to generate general rules governing the justice of the outcomes (Rush 1994).

It is important to understand the role of the Court in developing our notions of representation. Once the Court rejected the view that malapportionment was a 'political question' better left to the legislature to resolve, it entered what Justice Frankfurter famously called a "political thicket" of controversy over the meaning of representation from which it has never emerged. Reapportionment is a political thicket, however, the malapportionment questions before the Court by the early 1960s involved basic questions of fairness and equality and the Court was right to intervene.

Once it did, it set the debate on its present course. Activists have used the law and the courts to generate 1) a constitutionally protected right to vote; 2) a right to an equally effective vote; and 3) a right to fair

representation. Through its interpretation of the Voting Rights Act and its amendments the Court has developed the idea of "vote dilution" as a test of whether these rights are being violated by reapportionment and other electoral schemes. By upholding the right of groups covered in the Act, the 'protected classes' of racial and language-group minorities recognized in the Act, to not have their collective vote diluted, the Court has begun to evolve a notion of voting rights that incorporates the group dimension of representation and voting in pluralist societies.

The case study analyzed here shows the dynamic interplay of this evolving law and theory of representation to politics, and how politics, in its strategic engagement with the law, determines the law's differential outcomes. New York City's 1991 city council redistricting presented unique opportunity to study this process. Moreover, the new York City case provides new data on how redistricting is actually undertaken by independent redistricting commissions, and how the process might be expanded. The New York City districting commission's nearly year-long public campaign involved dozens of public meetings all over the city, public hearings at which over 2,300 testified about

their notions of community and representation, public access to the commission's data and computer mapping programs, and a genuine concerted effort to keep the public informed about the process through a multi-lingual newsletter and outreach campaign. All of this activity produced a wealth of data on a traditional "insider" process that has been little studied by scholars.

It is argued here that the participation of the public in redistricting functioned like Edelman's 'constructed political spectacle.' The process helped legitimate the commission's work, and even the state's intervention in determining the kinds of political communities that emerged and were given recognition in the process. Despite the controversy generated in many communities by the commission's final plan, no law suit was brought challenging the plan following the Justice Department's final preclearance of it.

The innovative public campaign notwithstanding, the districting commission practiced the 'insider' game with aplomb. The commission could do this because of the unique circumstances of the 1991 redistricting following on the heels of a restructuring of city government that expanded the size of the city council from 35 to 51 members, and

brought the council new powers. The structural expansion of the council allowed the commission to pursue dual agendas:

1) to enhance minority representation in the city council by drawing districts which capitalized on the residential segregation of minority groups, thus, giving them better opportunities to elect candidates of their choice; and 2) to carry out the traditional function of legislative reapportionment which is to protect favored incumbent legislators by drawing districts that kept their supportive voters together and fenced out other incumbents or threatening challengers. Enhanced computer technology has allowed political line drawers to both meet the standards of the law - to draw districts of equal size that do not abridge the right to vote of any citizen or dilute the votes of groups protected by the Voting Rights Act - and to pursue a political agenda favoring one candidate over another.¹

As the population diversifies, the limits of single-member districting as a means of guaranteeing 'fair and effective representation' will be further exposed. Lani Guinier's work has explored the limits of districting as a

¹Incumbent protection is not in and of itself precluded by the Voting Rights Act; only when it is tied to racial discrimination does it violate the law.

guarantee of political equality (Guinier 1993a; 1993b; 1991). Guinier argues that single-member districts, winner-take-all electoral schemes, and majority rules inside legislative bodies are unfair because they silence minority views. She has advocated for a new approach to representation and democratic practice, and offered solutions to electoral inequality that emphasize structural reform and alternative voting systems. Her ideas have reinvigorated the debate over representation, especially in the civil rights community among lawyers who must decide whether and how to bring voting rights cases before the court.²

Guinier's work has also stimulated new work on proportional representation and other alternative voting systems. In the end, these solutions may be among the best ones we have for improving self-government through expanded representation, but they appear to be long in coming. In the interim, the Court has begun to roll-back the gains blacks and Latinos have made through the use of what is sometimes called "affirmative racial gerrymandering."³ The

²Unfortunately, Guinier's work appears to have had less of an impact on mainstream political science.

³The round of reapportionment that followed the 1990 census is arguably the most successful reapportionment for minority interests

Rehnquist Court's contested doctrinal interpretation over the meaning of representation has lead it into a quagmire from which it may never emerge.⁴ Naïve notions of "colorblindness" permeate its thinking. Having nowhere to go on matters of first principles, such as the meaning of rights, equality, and justice, in its recent reapportionment decisions the Court resorts to an irrational concern with the shape and appearance of minority electoral districts. In *Shaw v. Reno*, 509 U.S. 630 (1993), the Court explained that "reapportionment is one area in which appearances do matter." In what has become known as a *Shaw* claim, (white) litigants who prove excessive and unjustifiable use of race in redistricting now have protection under the Equal Protection Clause of the Fourteenth Amendment. They, themselves, do not need to demonstrate a harm (nor did they

ever. In 1992, the largest number of black representatives from the South in history were elected to the 103rd Congress; and increases in the number of blacks and Latinos elected to state and local governments took place throughout the country (Carter 1998, 187). Minorities, nevertheless, remain severely underrepresented. Less than 2 percent of all elected officials nationally are black, and most of these are mayors from black-majority towns with populations under 1,000.

'The Court is deeply split in its opinions on the constitutionality of noninvidious racial differentiation. Justice O'Connor, a moderate centrist, is the swing vote in cases involving racial classification and equal protection, and her views appear to be evolving. Justice Stevens and Rehnquist are within years of retirement from the Court; the next appointments, whether they are made by a Democratic or Republican president, will determine how the Court will tilt in its views on these matters.

in any of the litigation filed). *Shaw* has turned the Equal Protection Clause as it is applied to voting rights on its head. Whites who live in majority-minority districts created to comply with the Voting Rights Act have standing to sue for equal protection on grounds that their right to a "colorblind" society has been violated. As Justice Stevens points out, the Court equates an injury it imagines whites suffer under these conditions with that suffered by blacks under segregation. The Court has subsequently tried to modify the appearance of being overly concerned with appearances. In *Miller v. Johnson*, 115 S. Ct. 2475 (1995), the Court minimized the importance of district shape alone as evidence of an impermissible gerrymander by noting that shape took on greater significance if it was accompanied by racial and population density data. The Court also made clear that bizarre shape is not necessary evidence of a *Shaw* claim. However, *Miller* "completely abrogated any right blacks had under the Voting Rights Act to coalesce as a group for political empowerment purposes (Rosenblum 1995)." In *Bush v. Vera*, 116 S. Ct. 1941 (1996), the Court back-pedaled and said that as long as districts were not drawn for impermissible reasons a district could take any shape. It is important to note that since *Shaw* every majority-

minority district brought before the Supreme Court, except for one in California, has been struck down as unconstitutional. The Court has established that the compactness standard for evaluating redistricting applies only to these such districts, leaving majority-white districts free to be "bizarrely" shaped (Carter 1998, 187).

The New York City, one of the most diverse cities in the U.S., suggests further limitations to single-member districting under the Voting Rights Act. A principal concern of the districting commission was how to balance the demands for representation from different minority groups. In lower Manhattan these demands came into conflict as the commission sought to draw its only Asian American-influence district in the multi-racial lower East Side. The Voting Rights Act provides no framework for adjudicating these competing claims and there was no case law to guide the commission. Based on testimony given to the commission and its own appraisal of the likely electoral success of a persistent Asian American candidate, the commission drew a district that it believed maximized the candidate's chances for winning, disrupting the traditional boundaries of the lower East Side community. The decisions the commission made in this district were the most controversial of all;

moreover, the Asian American candidate lost the election. Asian Americans, who make up about 7 percent of the city's population, were left with no symbolic representation on the city council, and an effort to create a multi-racial, low and moderate income district that reflected the lower East Side's vision of itself was thwarted, as was any attempt at cross-racial coalition building.⁵

The New York case also highlights a possible new direction in which advocates for minority voting rights may press their claims within the Supreme Court's new and restricted constitutional framework for reapportionment. According to the new standard, the principal justification for a majority-minority district is whether the communities involved share commonality of interests (Rosenblum 1995). In *Shaw v. Reno*, 509 U.S., 630, 646, the Court said, "When members of a racial group live together in one community, a reapportionment plan that concentrates members of the group in one district and excludes them from others may reflect

⁵Ken Chin, a wealthy developer and the only Asian American on the districting commission, summarized the commission's view on alternative visions of community and their place in districting, when he justified his vote for splitting off Chinatown from its traditional place within the lower East Side and attaching it to surrounding upper income white neighborhoods to its west: he said, "It was the commission's job to protect Asians as a class. Not low-income people. We were not empowered to carry out the class struggle (Fitch 1991)."

wholly legitimate purposes." And in *Miller v. Johnson*, 115 S. Ct. 2470, 2490, the Court said, "A State is free to recognize communities that have a particular racial makeup, provided its action is directed toward some common thread of relevant interests." *Shaw* and its progeny, therefore, do not rule out a consideration of race in drawing legislative districts. Rather, race may not be the only or predominant factor in determining district boundaries. The opening is provided in the Court's rulings that recognizing communities of interest may be a legitimate state interest in districting. Reorganizing identity in this way may allow groups to avoid vote dilution and affirm their voice through representation.

The experience of gays and lesbians in the New York City districting case demonstrate how this might work. The gay and lesbian community in New York, a nascent voting constituency, organized themselves to participate in the districting process. They presented themselves as a politically coherent minority group, sufficiently residentially concentrated and sufficiently large enough to sustain a "gay winnable" district in the West Village/Chelsea neighborhoods of Manhattan. They self-consciously modeled their appeals on the successful past

experiences of blacks and Latinos to gain representation within the rubric of the Voting Rights act. They presented "community data" to document their presence as a community of interest and had it accepted by the districting commission as proper evidence. And, by mobilizing in the exercise of community self-definition required in order to influence the commission, gays and lesbians carried over their organizing work to elect in 1991 the first openly gay man to the New York City Council.

These technical means for overcoming the problems of under-representation remain largely untested in the federal courts. They are not solutions to majority-rule electoral schemes which silence minority voices. However, to the extent that the Court's de-privileging of race serves to reverse the gains minorities have made in achieving elected office, there are indications that some middle-ground or new conception of communities of interest may serve to reconstitute minority voting rights in the current ideological climate. This is especially urgent in view of 1) an imminent round of reapportionment; and 2) the increasing diversification and fragmentation of the population into proliferating identity groups. Which minorities will be heard, which will be represented in

government? It is not the province of the Court to decide. The Court's capture of the debate over representation and its precedent in intervening in such matters means it will continue to play an important role in structuring the politics of redistricting. Within the limits of the voting rights jurisprudence developed by the courts, the experience of the New York City case offers insight into how minority groups can frame the debate, leaving open the possibility of expanding the meaning of representation. As Anita Hodgkiss, the Deputy Assistant Attorney General for Civil Rights, recently remarked, the next wave of litigation might suggest the further evolution of the right to vote from a right to an equally effective vote to a right to be represented by the person you voted for.⁶

⁶Remarks delivered at the Lawyers' Committee for Civil Rights Under Law's Voting Rights Conference, November 11-12, 1999.

APPENDIX A
Summary of Changes in Size of New York City Council
Districts. 1961 -- 1991

City Council Election Year	Action	Total Size of City Council
1961	Charter amended to add 10 new seats, to be elected two per borough, on a borough-wide, at-large basis; each party nominates only one candidate, and each voter votes for only one candidate, with two candidates elected from each borough; changes go into effect in 1963.	35 (25 + 10) 25 elected from single-member state senate districts 10 elected, two from each of the five boroughs using a borough-wide at-large system
1965	Following home rule request from the city, the state amends the city charter for the 1965 election only, to authorize the city council to redistrict itself; charter is amended to increase the size of the council by two seats; apportionment is permitted on the basis of "voter population," the total vote cast in the most recent presidential election.	37 (35 + 2) 27 elected from single-member districts drawn by the city council 10 elected at-large (see above)
1969	Following another home rule request from the city, the state amends the city charter for the 1969 election only, to authorize the city council to redistrict itself; council makes minor changes to 10 districts.	37 Same as above, with minor changes to the 1965 lines made by the city council
1971	To increase minority representation on the council, the city urges the state to amend the charter to increase the size of the council by 11 seats; the state amends the charter to increase the size of the council by six seats, and eliminates the charter amendment from 1965 which permitted apportionment on the basis of "voter population;" (the	43 (37 + 6) 33 elected from single-member districts drawn by the city council 10 elected at-large (see above)

	New York State constitution excludes aliens and Indians, not taxed, from its population count); council passes a new plan over Mayor Lindsey's veto, but the plan is invalidated by state courts in <i>Badillo v. Katz</i> (41 A.D. 2d 829 (1st Dept. 1973), and 32 N.Y. 2d 825 (1973); the 1973 election, however, could and did take place under the invalidated lines with members serving a one-year term and the council ordered by the court to adopt a valid reapportionment plan for a new election in 1974.	
1974	1973 election is re-run under a new set of council district lines substantially similar to the 1971 lines.	43
1977	Charter provision for 33 council districts repealed, with districts to be apportioned equally according to the most recent census and no set number of council districts mandated by law; charter reforms of 1975 establish an independent non-partisan districting commission chosen by the council which drafts a plan for the 1977 election that turns out to be very similar to the one already in place.	43 Same as above, with minor changes to the 1974 lines drawn by a districting commission
1981 - 1982	Independent districting commission draws a new plan on the basis of 1980 population figures, expanding the number of districts from 33 to 35; <i>Herron v. Koch</i> , 523 F. Supp. 167 (E.D.N.Y. 1981), a lawsuit brought under the federal Voting Rights Act, claims city failed to pre-clear its council districting plan with the Justice Department; plaintiffs prevail and council election is postponed until 1982 when a new plan is approved.	45 (43 + 2) 35 elected from single-member districts with new lines drawn by a districting commission 10 elected at-large (see above)
1984	Election is held under the same lines used in 1982; the at-large seats are eliminated by charter amendments passed by the voters in	35 (45 - 10) All elected from single-member districts based on

	1983, following a ruling by the Supreme Court that finds the at-large seats violate the "one man, one vote" principle (<i>Andrews v. Koch</i> , 528 F. Supp. 246 (E.D.N.Y. 1981)).	the 1982 lines
1989	No changes	35
		Same as above, with districts based on the 1982 lines
1991	Charter reform approved by the voters in 1989 expands the size of the city council by 16 seats	51 (35 + 16)
		All elected in special two-year election from single-member districts drawn by a districting commission

APPENDIX B
Map B4.1

City Council Districts, Bronx, 1969

Councilmen-at-large:

Aileen B. Ryan (D)
A. Joseph Ribustello (R-C)

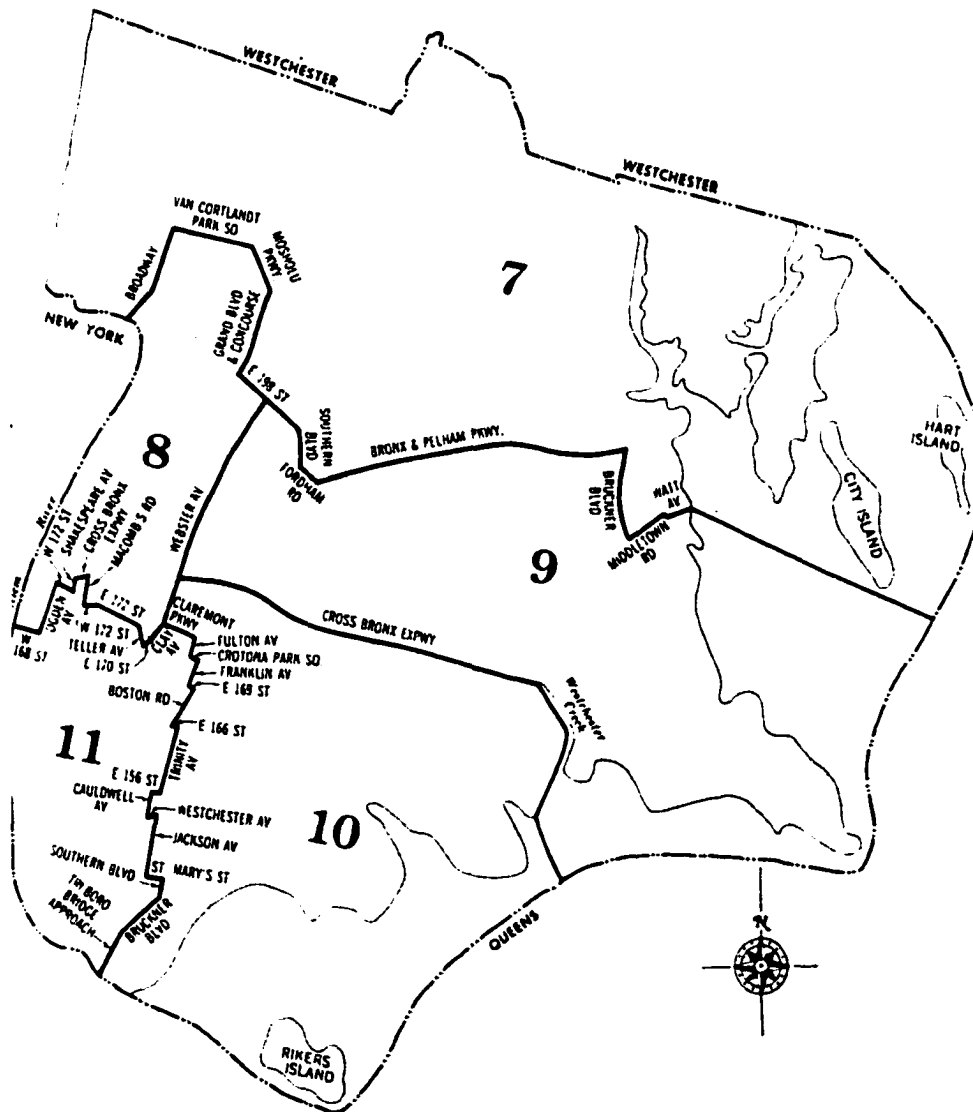
Councilmen

Councilmanic Districts:

7 Mario Merola (D)
8 Bertram R. Gelfand (D)
9 Michael DeMarco (D)
10 Muriel Stromberg (D)
11 Barry Salman (D)

Borough President:

Robert Abrams (D)



Source: League of Women Voters of the City of New York, They Represent You, New York, March 1972.

Map B4.2

City Council Districts, Brooklyn, 1969

Councilmen-at-large:

Ruth Lerner (D)
Kenneth Haber (L)

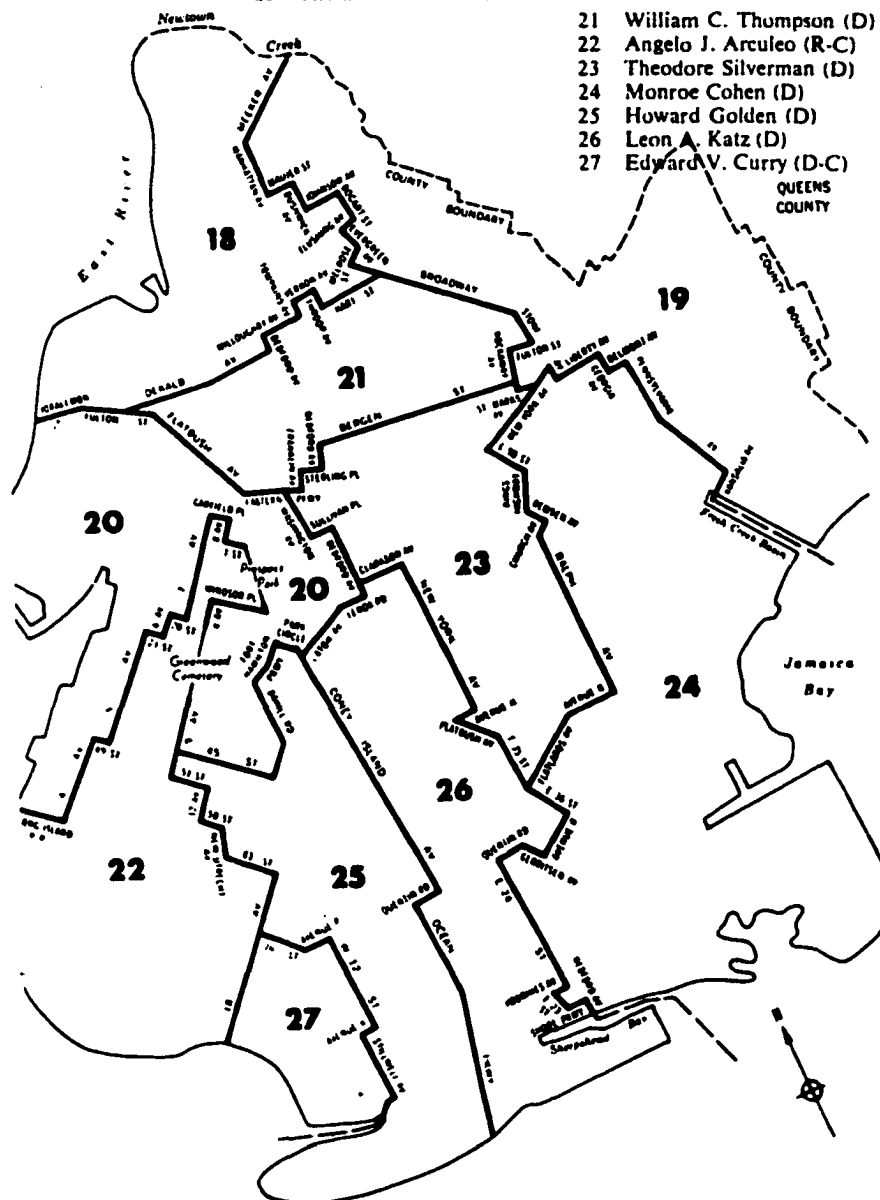
Councilmen

Councilmanic Districts:

18 Leonard Scholnick (D)
19 Rudolph F. Di Blasi (D)
20 Thomas J. Cuite (D)

Borough President:

Sebastian Leone (D)



Source: League of Women Voters of the City of New York, *They Represent You*, New York, March 1972.

Map B4.3

City Council Districts, Manhattan, 1969

Councilmen-at-large:

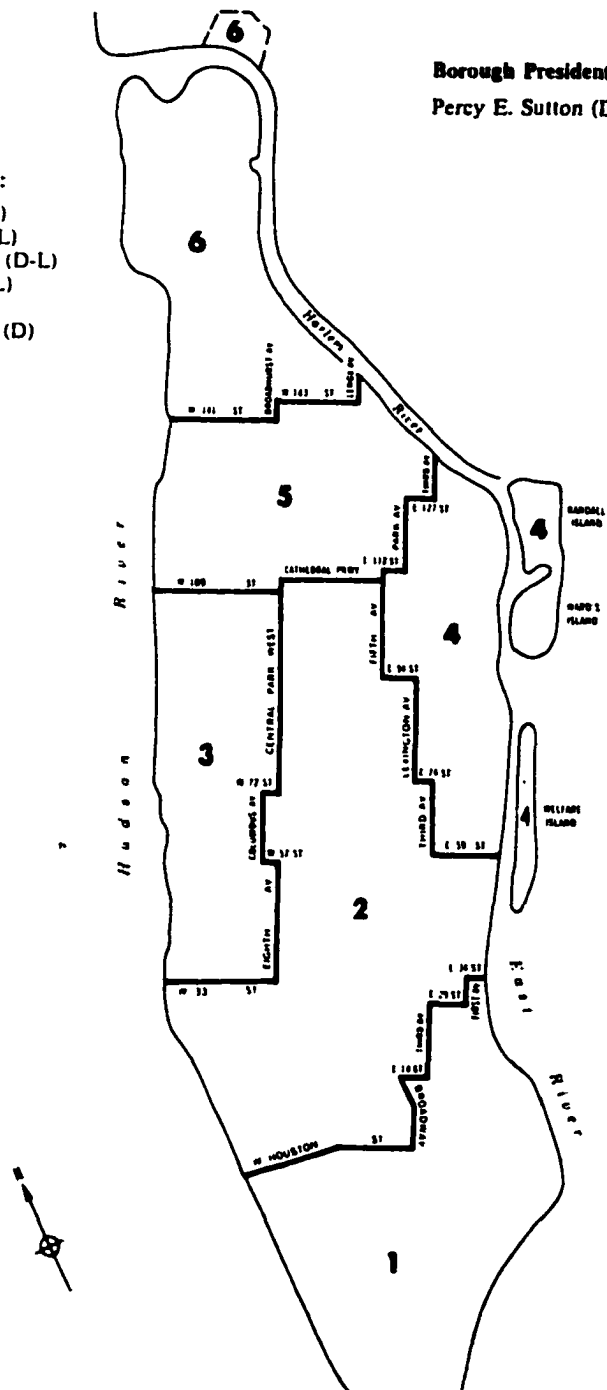
Eldon R. Clingan (L)
Robert I. Postel (D)

Councilmen**Councilmanic Districts:**

- 1 Saul S. Sharison (D)
- 2 Carol Greitzer (D-L)
- 3 Theodore S. Weiss (D-L)
- 4 Carter Burden (D-L)
- 5 Charles Taylor (L)
- 6 David B. Friedland (D)

Borough President:

Percy E. Sutton (D-L)



Source: League of Women Voters of the City of New York, They Represent You, New York, March 1972.

Map B4.4

City Council Districts, Queens, 1969

Councilmen-at-large:

Eugene F. Mastropieri (D)

Alvin Frankenberg (L)

Councilmen

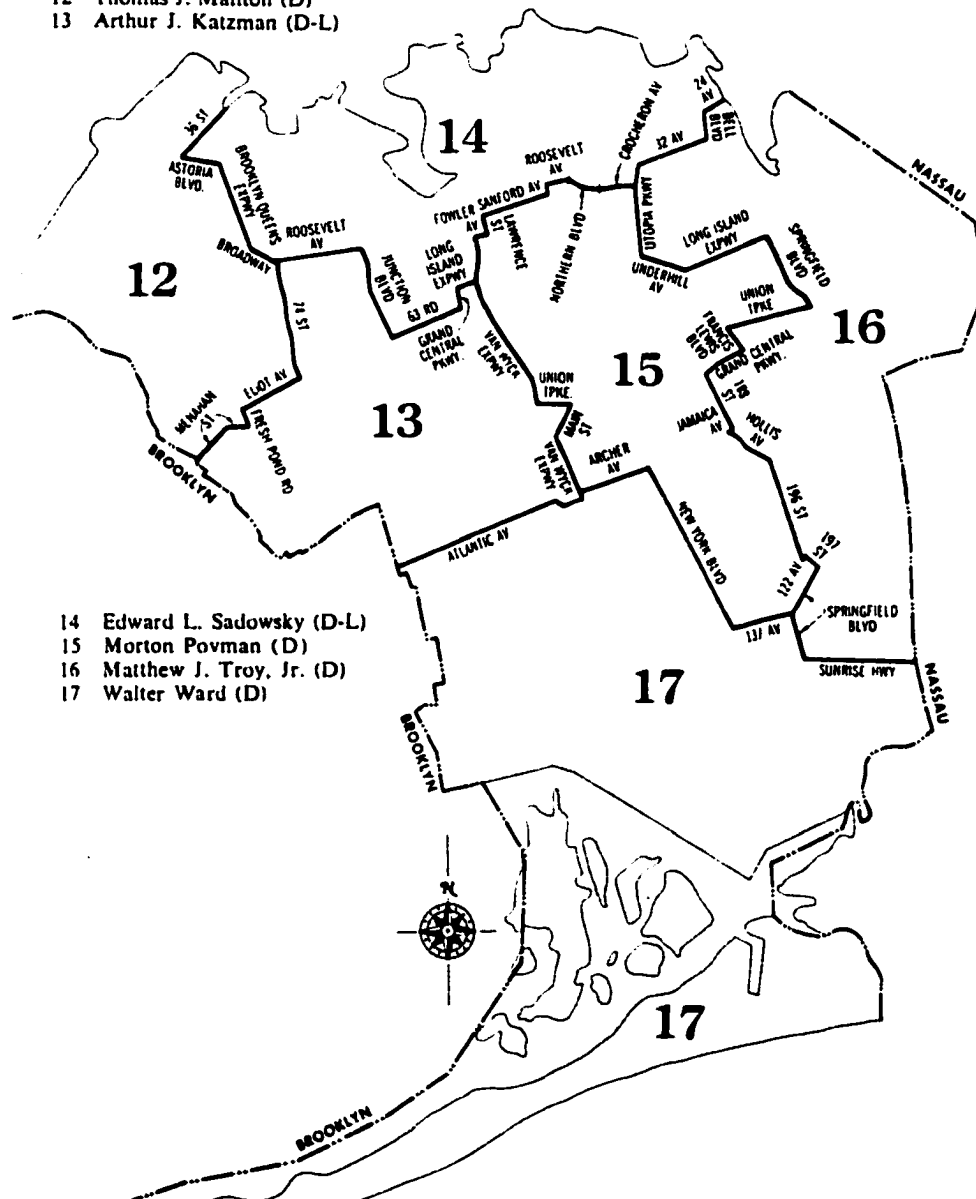
Councilmanic Districts:

12 Thomas J. Manton (D)

13 Arthur J. Katzman (D-L)

Borough President:

Donald R. Manes (D)



14 Edward L. Sadowsky (D-L)

15 Morton Povman (D)

16 Matthew J. Troy, Jr. (D)

17 Walter Ward (D)

Source: League of Women Voters of the City of New York, *They Represent You, New York*, March 1972.

Map B4.5

City Council Districts, Staten Island, 1969

WASHINGTON**U.S. Representative****Congressional District:**

16 John M. Murphy
(D-CSI)
(Also in Queens)
*committees: Interstate
and Foreign Commerce,
Merchant Marine
and Fisheries*

ALBANY**State Senator****State Senatorial District:**

23 John J. Marchi (R-C)
(Also in Brooklyn)

Assemblymen**State Assembly Districts:**

58 Lucio F. Russo (R-C)
59 Edward J. Amann, Jr. (R-C)

NEW YORK CITY**Councilmen-at-large:**

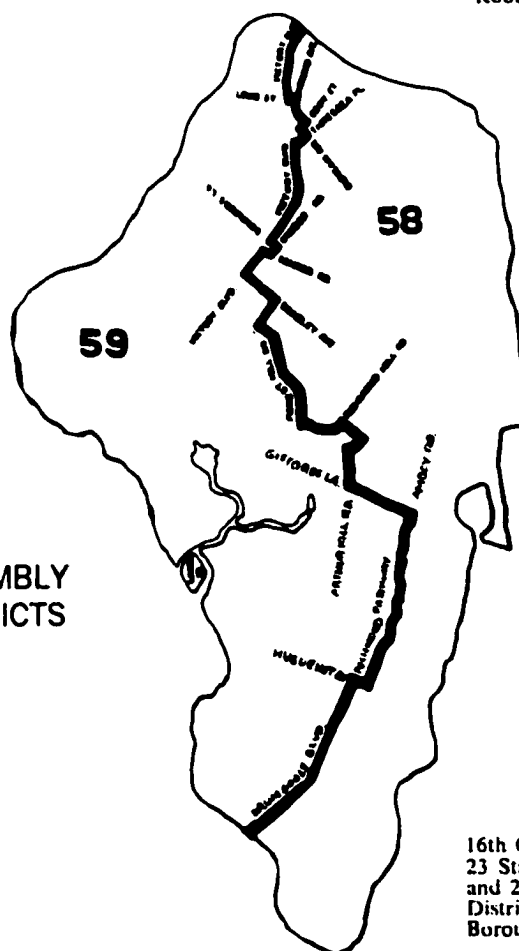
Frank J. Biondolillo (R)
Robert G. Lindsay (D)

Councilman**Councilmanic District:**

27 Edward V. Curry (D-C)

Borough President

Robert T. Connor (R-C)

**ASSEMBLY
DISTRICTS**

16th Congressional District,
23 State Senatorial District,
and 27th Councilmanic
District include the entire
Borough of Richmond.

**Source: League of Women Voters of the City of New York, They
Represent You, New York, March 1972.**

Map B4.6

City Council Districts, Bronx, 1974

Councilmembers-at-large

Aileen B. Ryan (D)

Pasquale E. Mele (R-C)

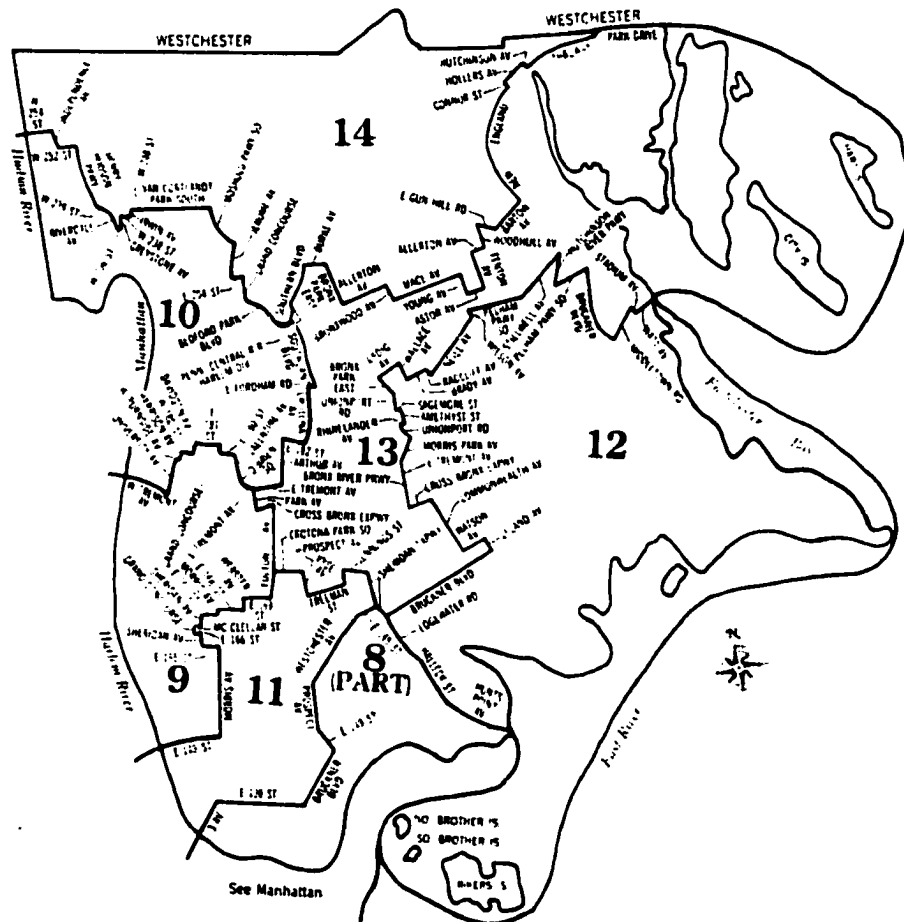
Councilmembers

Council Districts:

- 8 Louis R. Gigante (D)
(Also in Manhattan)
- 9 Barry Salman (D)
- 10 Stanley Simon (D-L)
- 11 Ramon S. Velez (D-L)
- 12 Michael DeMarco (D-C)
- 13 Stephen B. Kaufman (D-L)
- 14 Jerry L. Crispino (D-L)

Borough President:

Robert Abrams (D-L)



Source: League of Women Voters of the City of New York, *They Represent You*, New York, January 1976.

Map B4.7

City Council Districts, Brooklyn, 1974

Councilmembers

Council Districts:

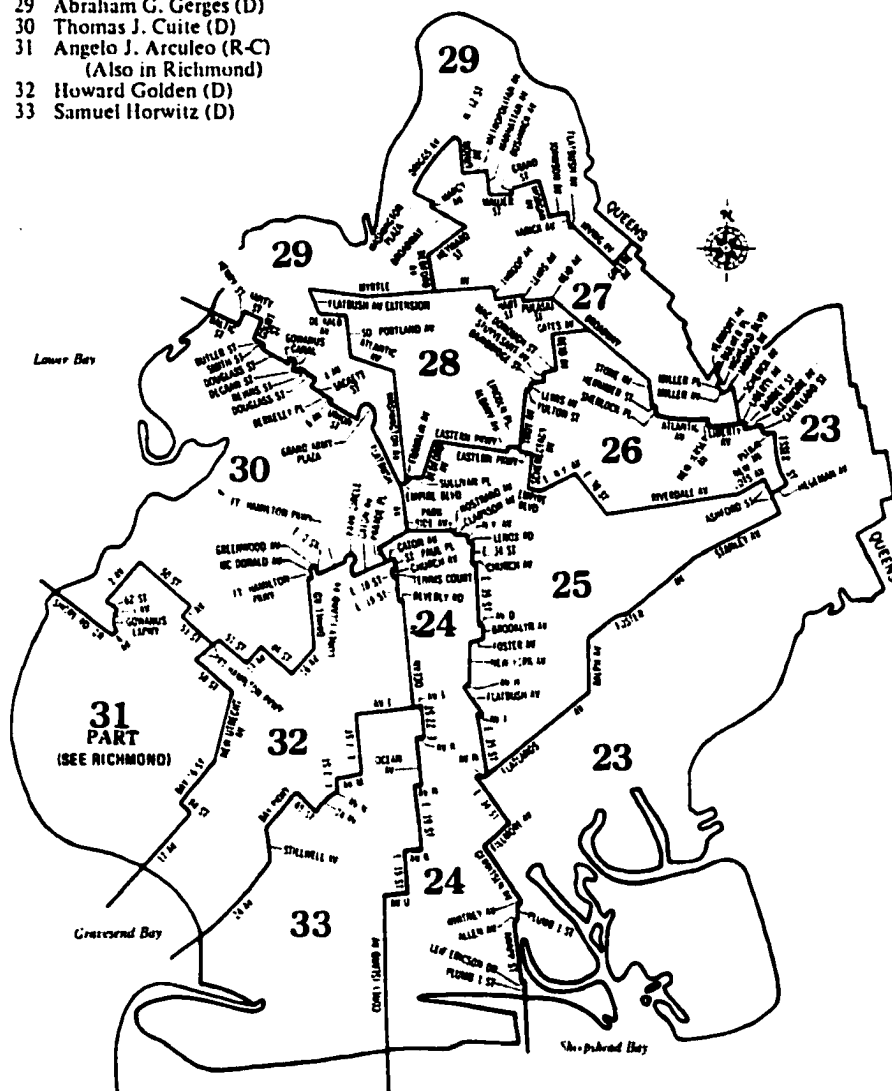
- 23 Herbert E. Berman (D)
- 24 Leon A. Katz (D)
- 25 Theodore Silverman (D)
- 26 Samuel D. Wright (R-D-L)
- 27 Luis A. Olmedo (R-D-L)
- 28 Mary Pinkett (D-L)
- 29 Abraham G. Gerges (D)
- 30 Thomas J. Cuite (D)
- 31 Angelo J. Arculeo (R-C)
(Also in Richmond)
- 32 Howard Golden (D)
- 33 Samuel Horwitz (D)

Councilmembers-at-large:

- Robert S. Steingut (D)
- John F. Gangemi (R)

Borough President:

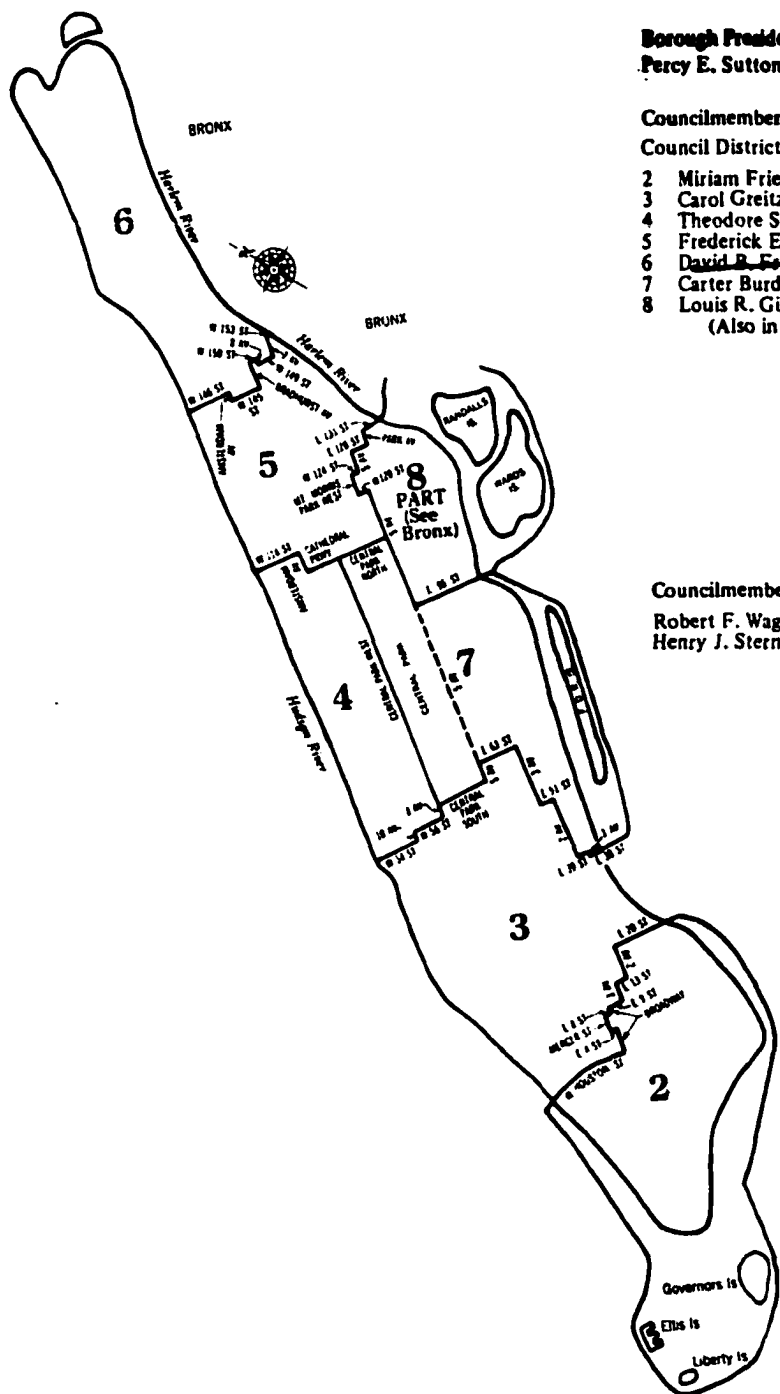
- Sebastian Leone (D)



Source: League of Women Voters of the City of New York, They Represent You, New York, January 1976.

Map B4.8

City Council Districts, Manhattan, 1974



Borough President:
Percy E. Sutton (R-D-L)

Councilmembers
Council Districts:

- 2 Miriam Friedlander (D)
 - 3 Carol Greitzer (D-L)
 - 4 Theodore S. Weiss (D-L)
 - 5 Frederick E. Samuel (D-L)
 - 6 David B. Friedland (D)
 - 7 Carter Burden (D-L)
 - 8 Louis R. Gigante (D)
- (Also in the Bronx)

Councilmembers-at-large:
Robert F. Wagner, Jr. (D)
Henry J. Stern (L)

Source: League of Women Voters of the City of New York, They Represent You, New York, January 1976.

Map B4.9

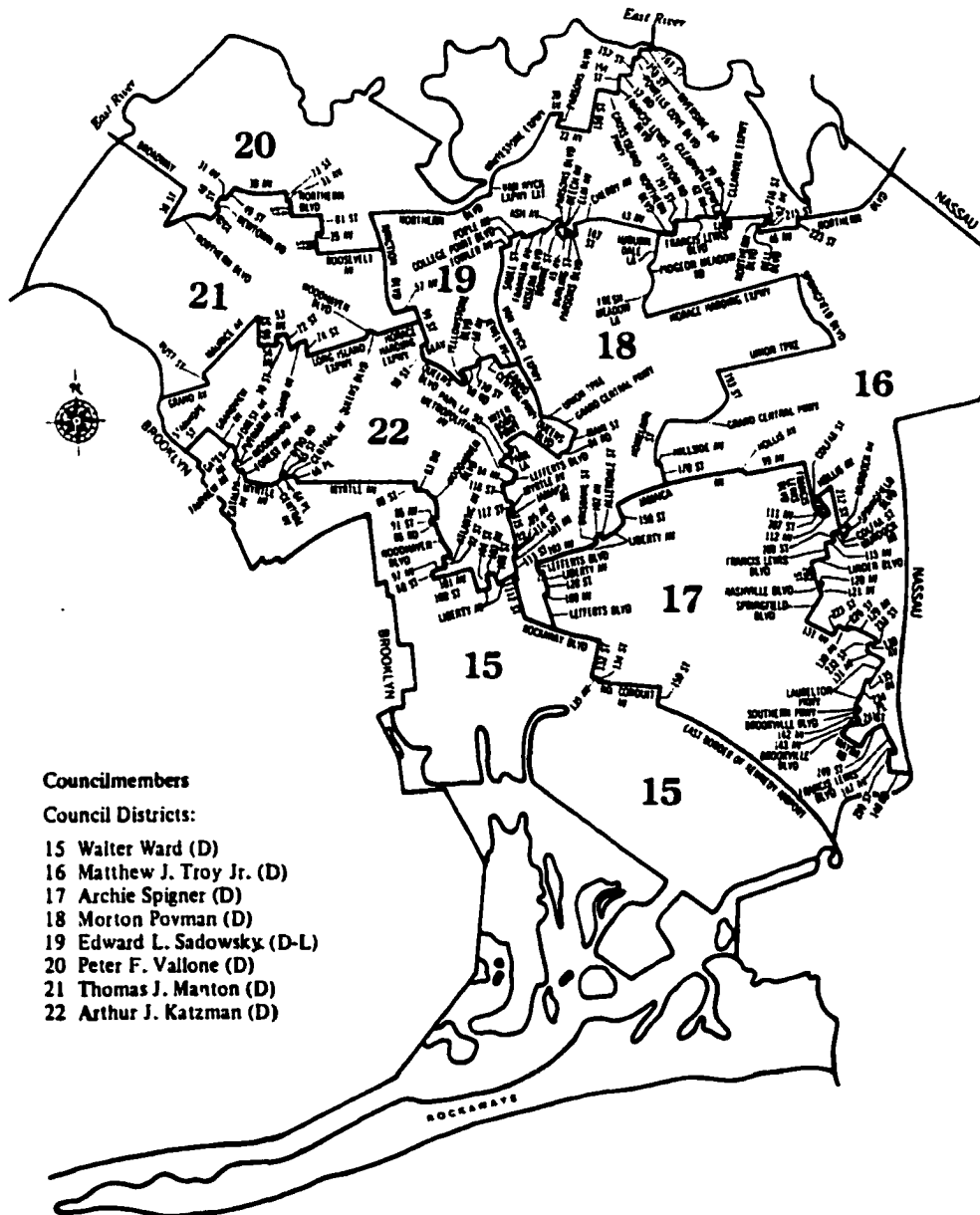
City Council Districts, Queens, 1974

Councilmembers-at-large:

Eugene F. Mastropieri (D)
Jack R. Muratori (R)

Borough President:

Donald R. Manes (R-D)



Councilmembers

Council Districts:

- 15 Walter Ward (D)
- 16 Matthew J. Troy Jr. (D)
- 17 Archie Spigner (D)
- 18 Morton Povman (D)
- 19 Edward L. Sadowsky (D-L)
- 20 Peter F. Vallone (D)
- 21 Thomas J. Manton (D)
- 22 Arthur J. Katzman (D)

Source: League of Women Voters of the City of New York, *They Represent You*, New York, January 1976.

Map B4.10

City Council Districts, Staten Island, 1974

Councilmembers-at-large:

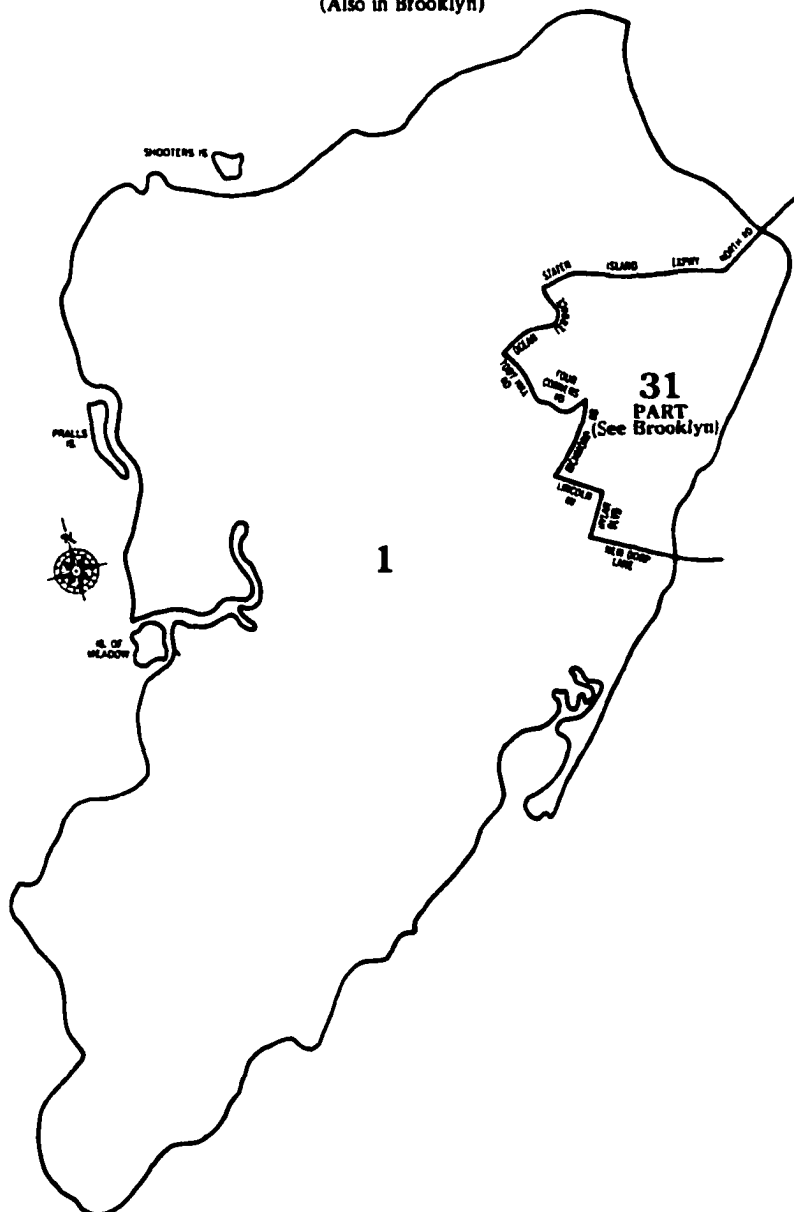
Edward V. Curry (D)
Frank J. Biondillo (R)

Councilmembers**Council Districts:**

1 Anthony R. Gaeta (D-C)
31 Angelo J. Arculeo (R-C)
(Also in Brooklyn)

Borough President:

Robert T. Connor (D-C)



Source: League of Women Voters of the City of New York, They Represent You, New York, January 1976.

Map B4.11

City Council Districts, Bronx, 1977

Councilmembers-at-large:

Aileen B. Ryan (D)
Joseph Savino, Jr. (R)

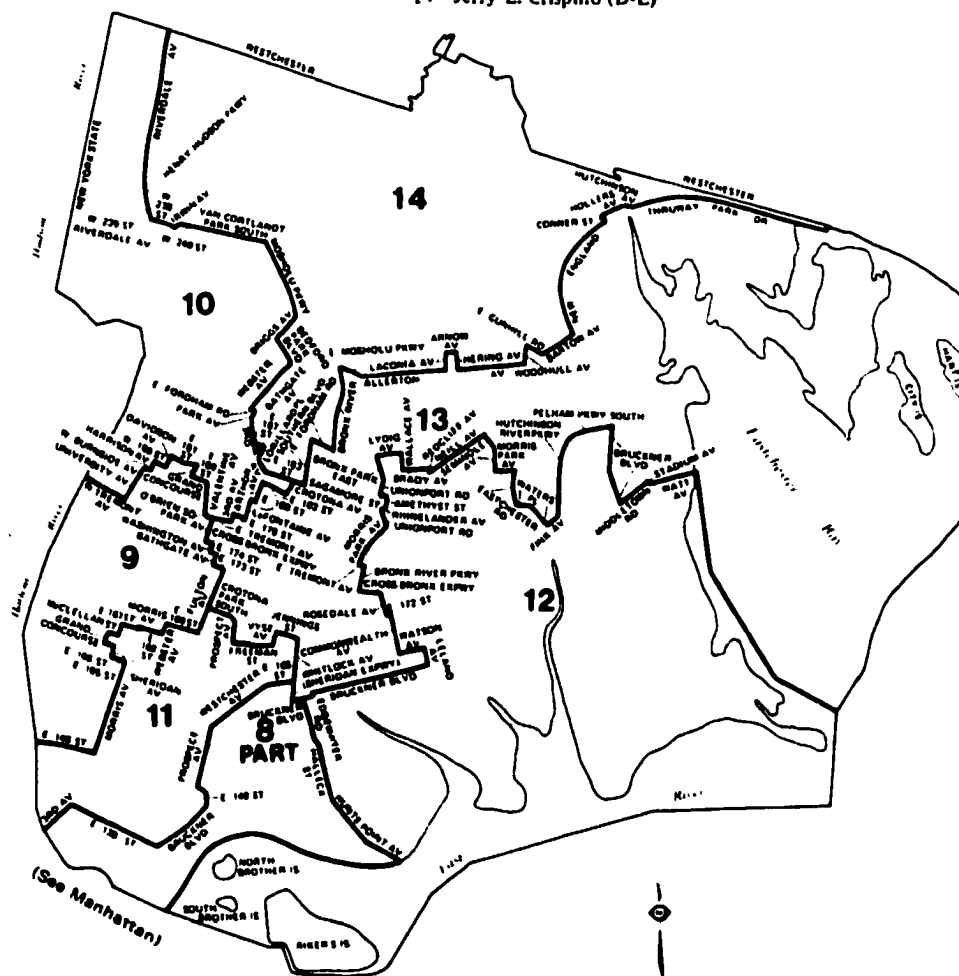
Councilmembers

Council Districts:

- 8 Robert Rodriguez (D)
(Also in Manhattan)
- 9 Wendell Foster (D)
- 10 Stanley Simon (D-L)
- 11 Gilberto Gerana-Valentin (D)
- 12 Michael DeMarco (D-C)
- 13 Stephen B. Kaufman (D)
- 14 Jerry L. Crispino (D-L)

Borough President

Robert Abrams (D-L)



Source: League of Women Voters of the City of New York, *They Represent You*, New York, March 1978.

Map B4.12

City Council Districts, Brooklyn, 1977

Councilmembers

Council Districts:

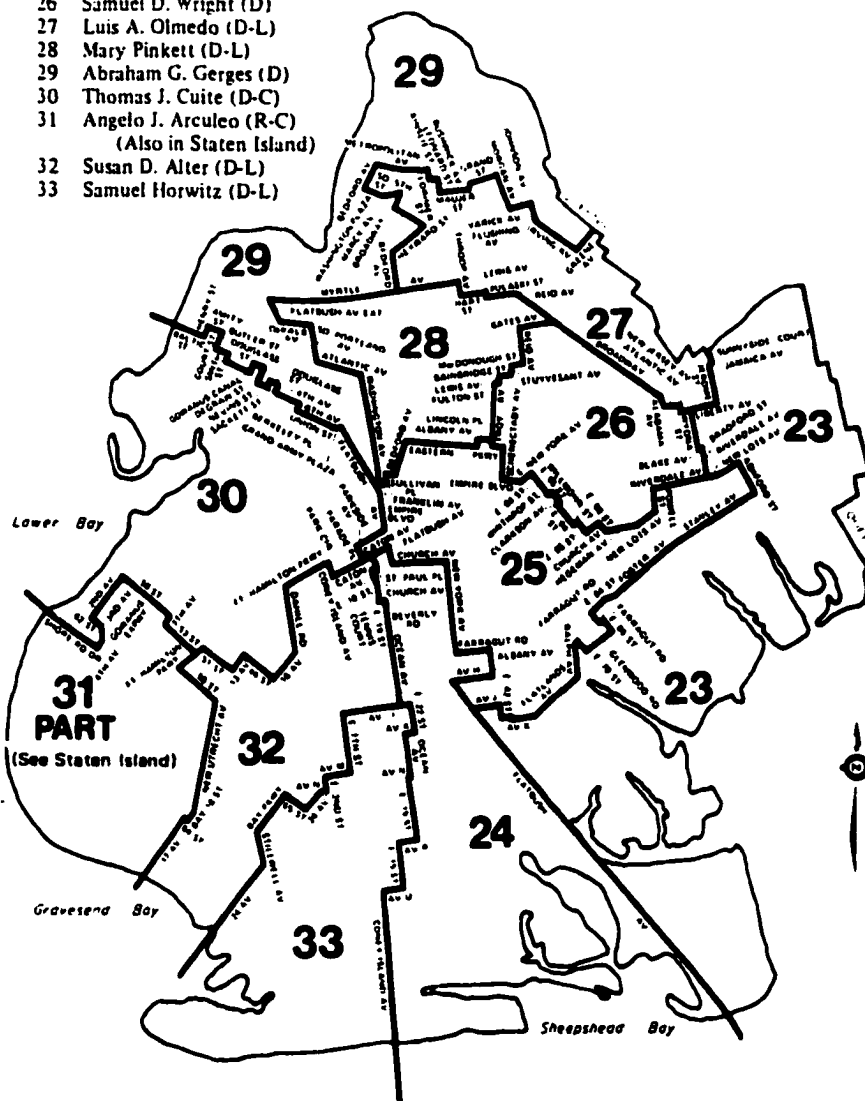
- 23 Herbert E. Berman (D)
- 24 Leon A. Katz (D)
- 25 Thendore Silverman (D)
- 26 Samuel D. Wright (D)
- 27 Luis A. Olmedo (D-L)
- 28 Mary Pinkett (D-L)
- 29 Abraham G. Gerges (D)
- 30 Thomas J. Cuite (D-C)
- 31 Angelo J. Arculeo (R-C)
(Also in Staten Island)
- 32 Susan D. Alter (D-L)
- 33 Samuel Horwitz (D-L)

Councilmembers-at-large

- Robert S. Steingut (D)
- Vincent A. Riccio (C)

Borough President:

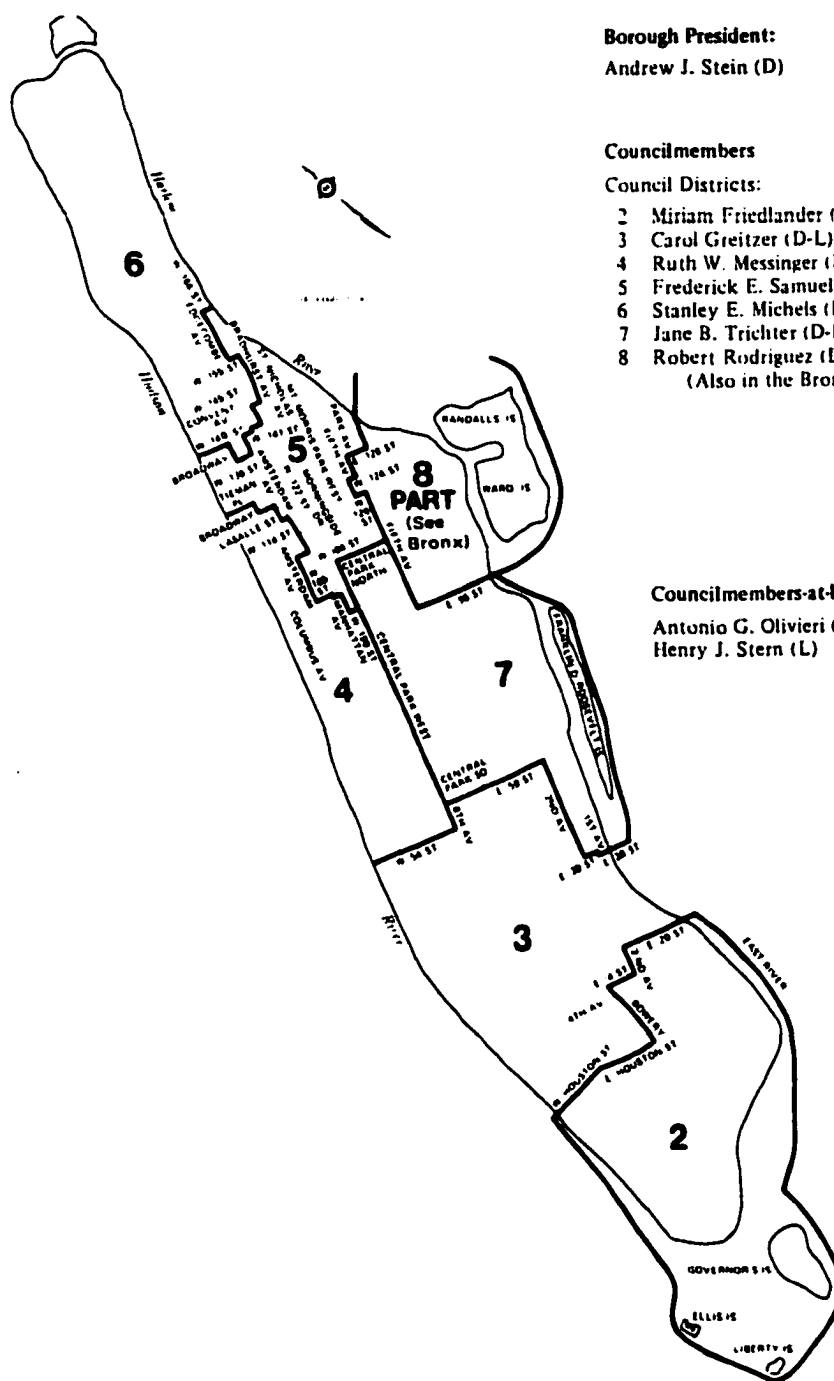
Howard Golden (D)



Source: League of Women Voters of the City of New York, *They Represent You*, New York, March 1978.

Map B4.13

City Council Districts, Manhattan, 1977



Source: League of Women Voters of the City of New York, They Represent You, New York, March 1978.

Map B4.14

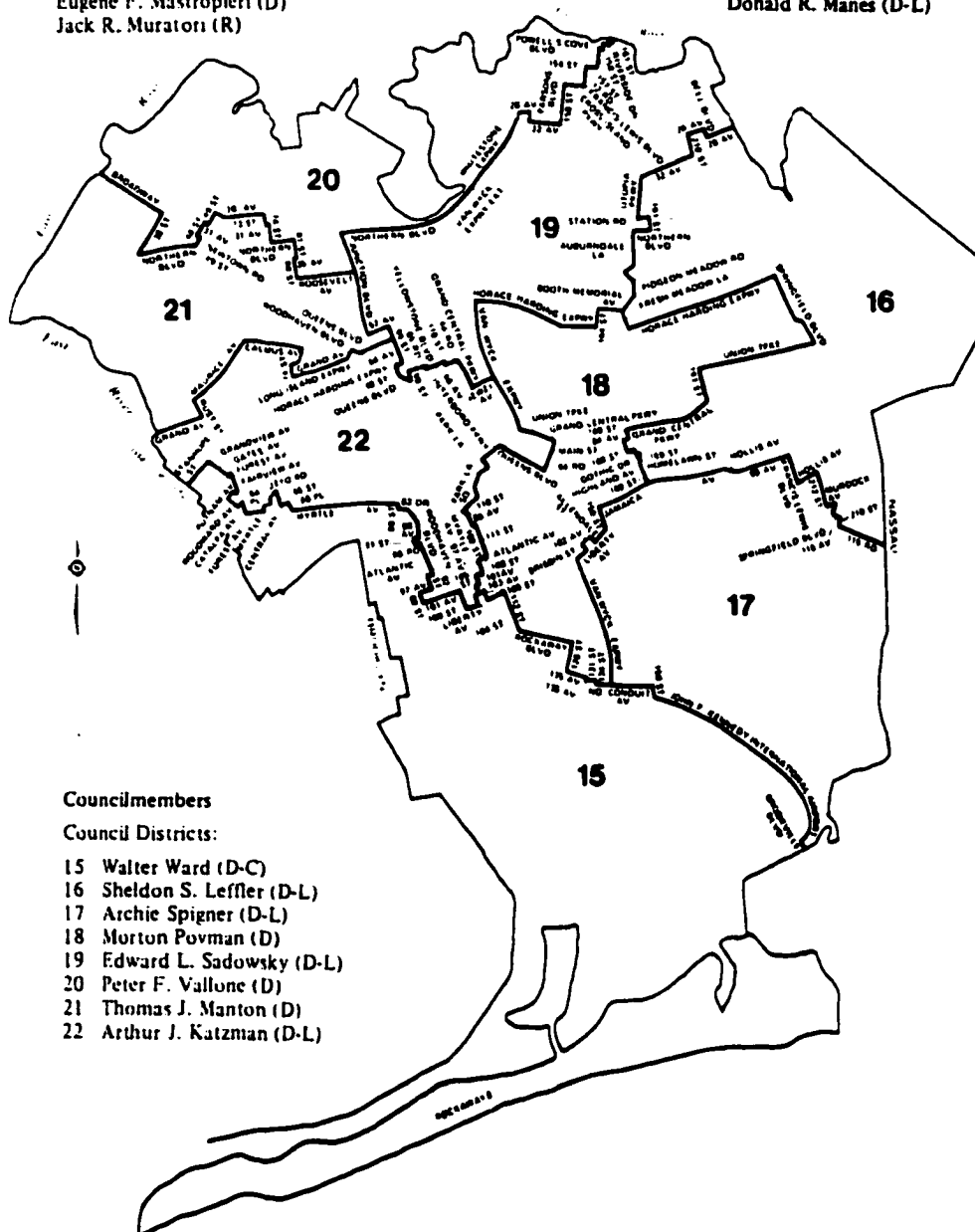
City Council Districts, Queens, 1977

Councilmembers-at-large:

Eugene F. Mastropieri (D)
Jack R. Muratori (R)

Borough President:

Donald R. Manes (D-L)



Councilmembers

Council Districts:

- 15 Walter Ward (D-C)
- 16 Sheldon S. Leffler (D-L)
- 17 Archie Spigner (D-L)
- 18 Morton Povman (D)
- 19 Edward L. Sadowsky (D-L)
- 20 Peter F. Vallone (D)
- 21 Thomas J. Manton (D)
- 22 Arthur J. Katzman (D-L)

Source: League of Women Voters of the City of New York, They Represent You, New York, March 1978.

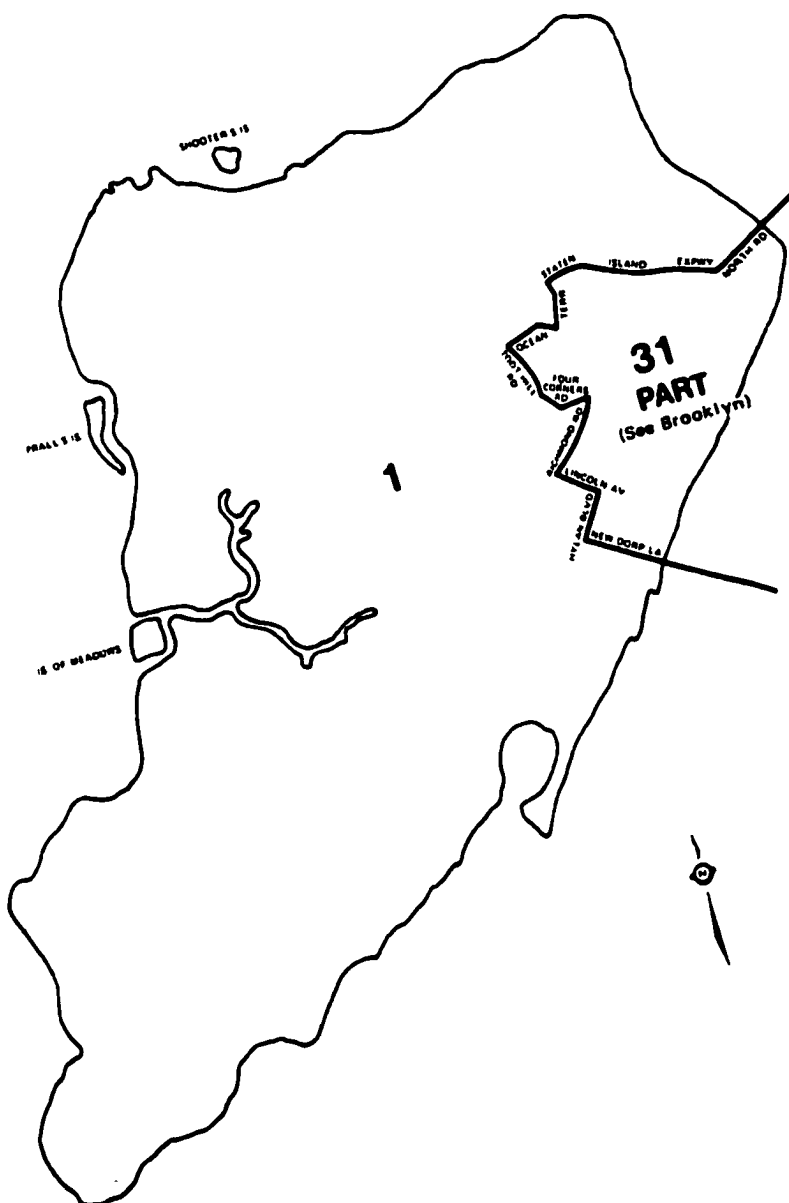
Map B4.15

City Council Districts, Staten Island, 1977

Councilmembers-at-large:
 Mary T. Codd (D-L)
 Anthony I. Giacobbe (R-C)

Councilmembers
Council Districts:
 1 Nicholas La Porte (D)
 31 Angelo J. Arculeo (R-C)
 (Also in Brooklyn)

Borough President:
 Anthony R. Gaeta (D-C)



Source: League of Women Voters of the City of New York, They Represent You, New York, March 1978.

Map B4.16

City Council Districts, Bronx, 1981

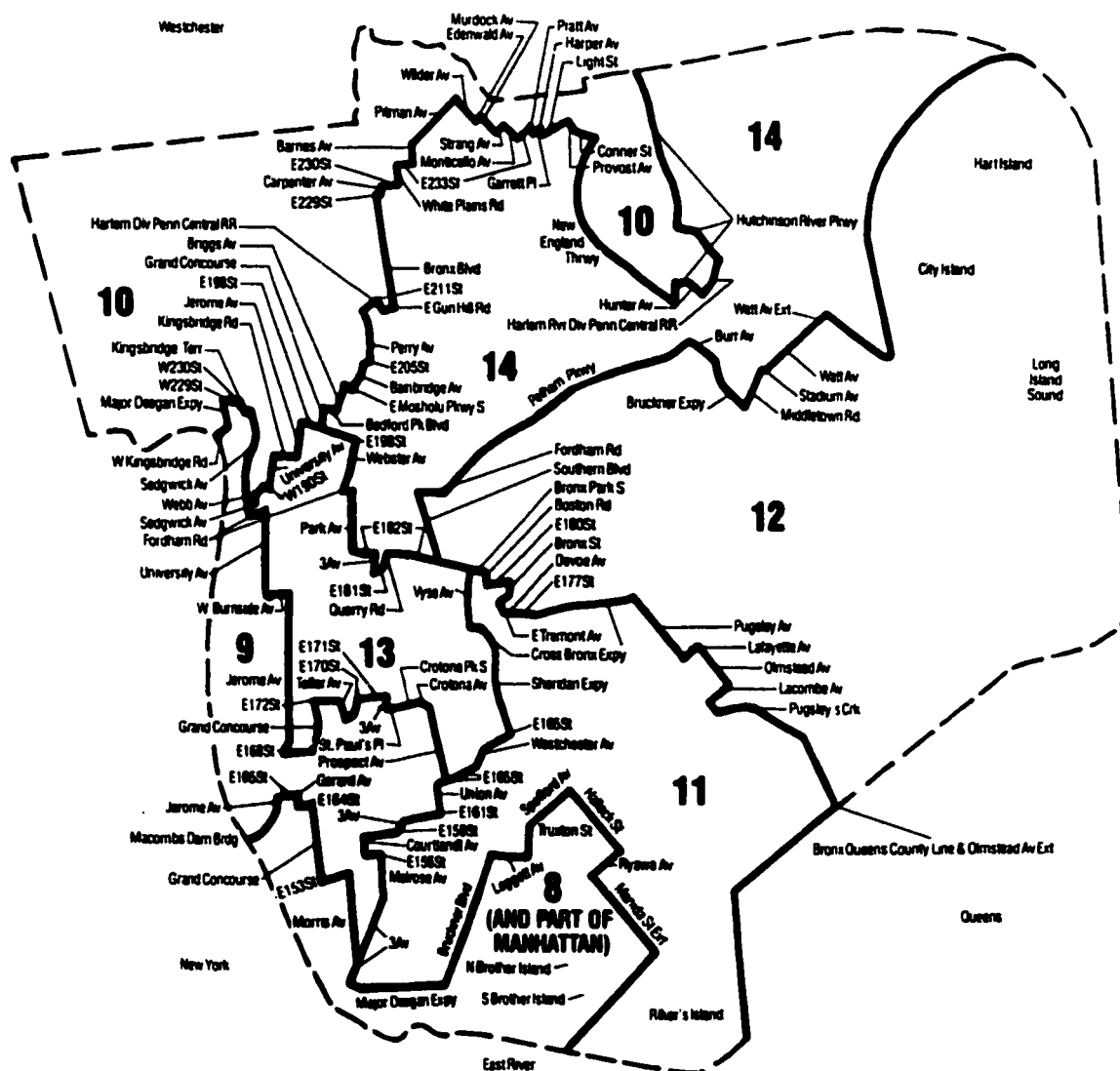
Councilmembers-at-large

Aileen B. Ryan (D)
Joseph Savino Jr. (R)

- 8 Carolyn B. Maloney (D)
(also in Manhattan)
9 Wendell Foster (D)
10 June M. Eisland (D-L)
11 Rafael C. Colon (D-L)
12 Michael DeMarco (D-C)
13 Fernando Ferrer (D-L)
14 Jerry L. Crispino (D-L)

Borough President

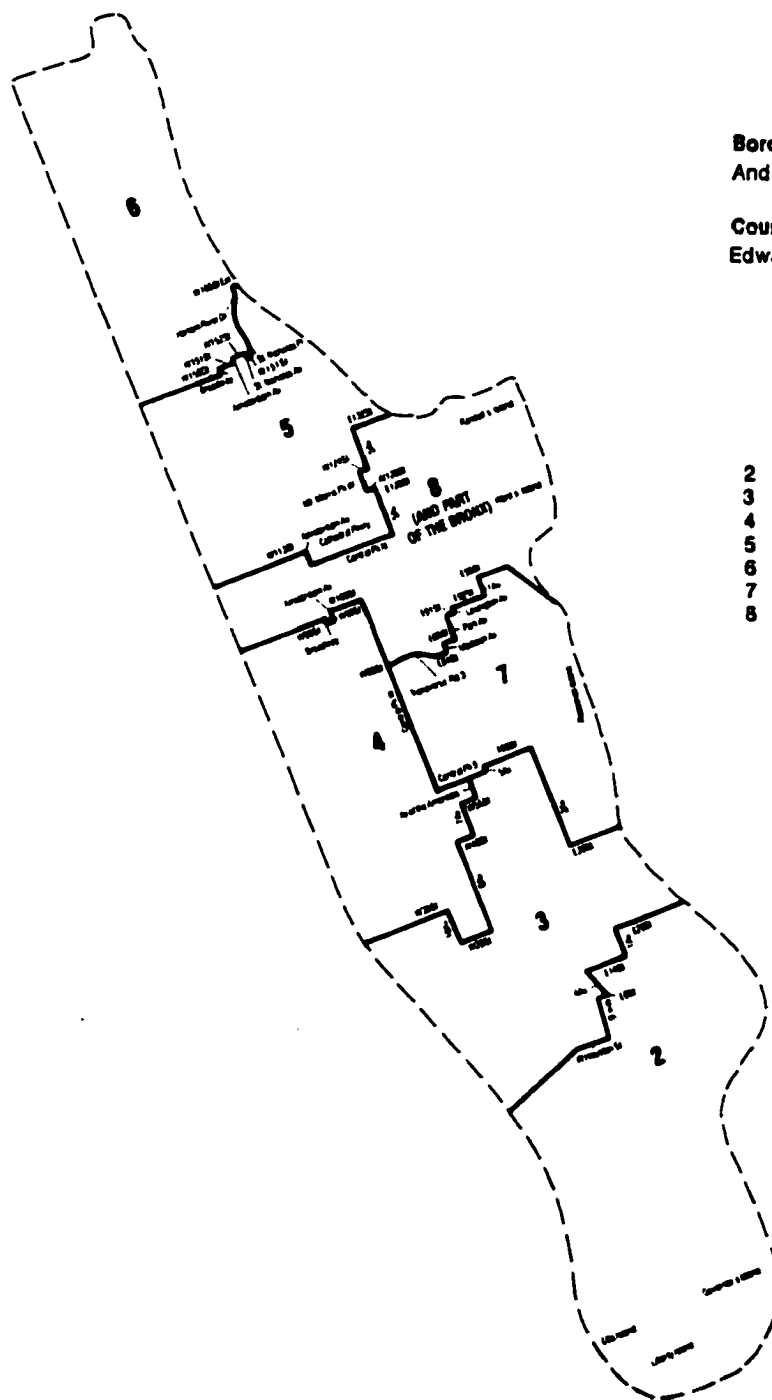
Stanley Simon (D-R)



Source: League of Women Voters of the City of New York
Education Fund, *They Represent You*, New York, March
1983.

Map B4.18

City Council Districts, Manhattan, 1981



Borough President
Andrew J. Stein (D)

Councilmembers-at-large
Edward Wallace (D)

- 2 Miriam Friedlander (D)
- 3 Carol Greitzer (D-L)
- 4 Ruth W. Messinger (D-L)
- 5 Frederick E. Samuel (D-L)
- 6 Stanley E. Michels (D-L)
- 7 Robert J. Dryfoos (D)
- 8 Carolyn B. Maloney (D)
(also in the Bronx)

**Source: League of Women Voters of the City of New York
Education Fund, They Represent You, New York, March
1983.**

Map B4.19

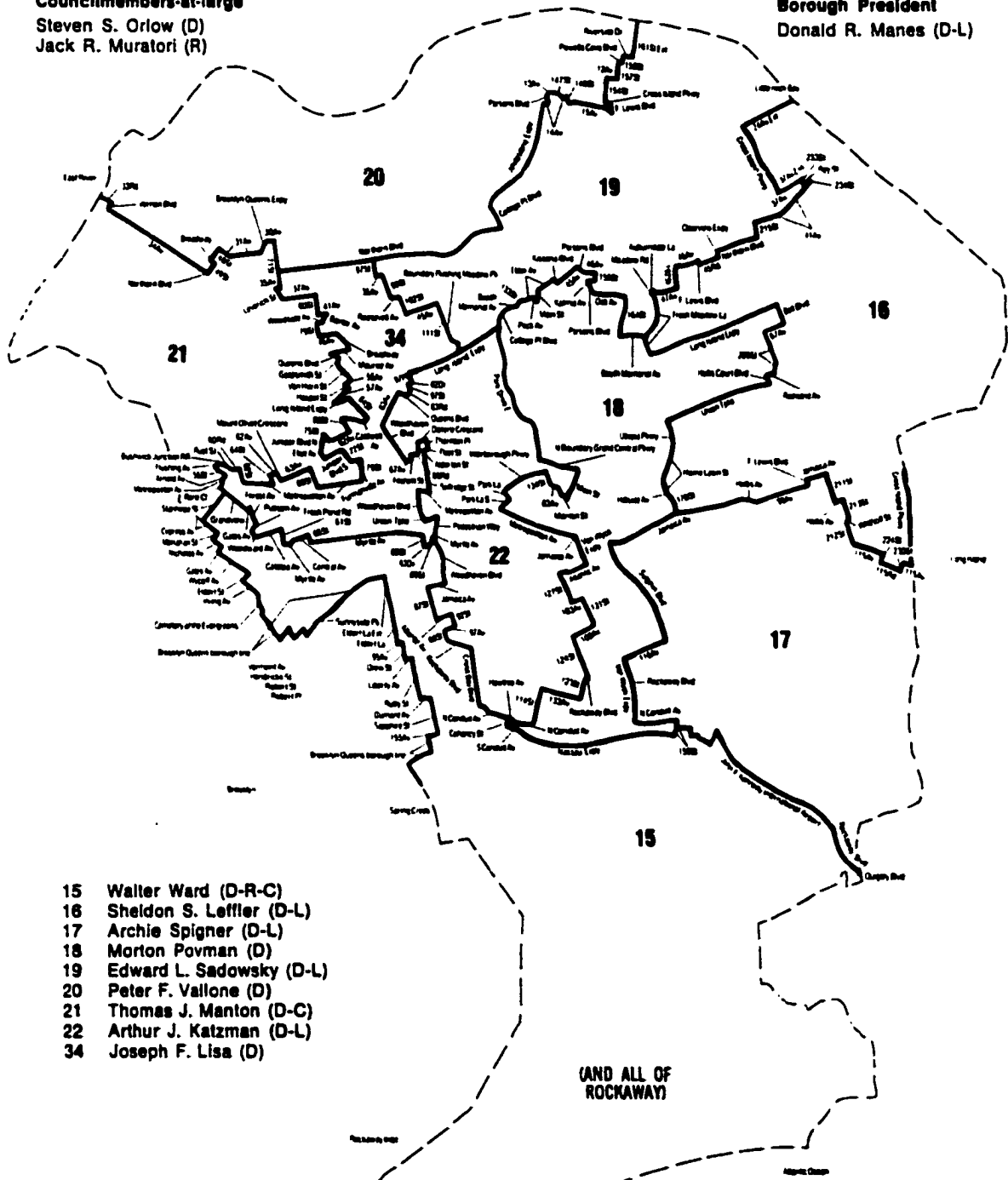
City Council Districts, Queens, 1981

Councilmembers-at-large

Steven S. Orlow (D)
Jack R. Muratori (R)

Borough President

Donald R. Manes (D-L)



Source: League of Women Voters of the City of New York
Education Fund, *They Represent You*, New York, March
1983.

Map B4.20

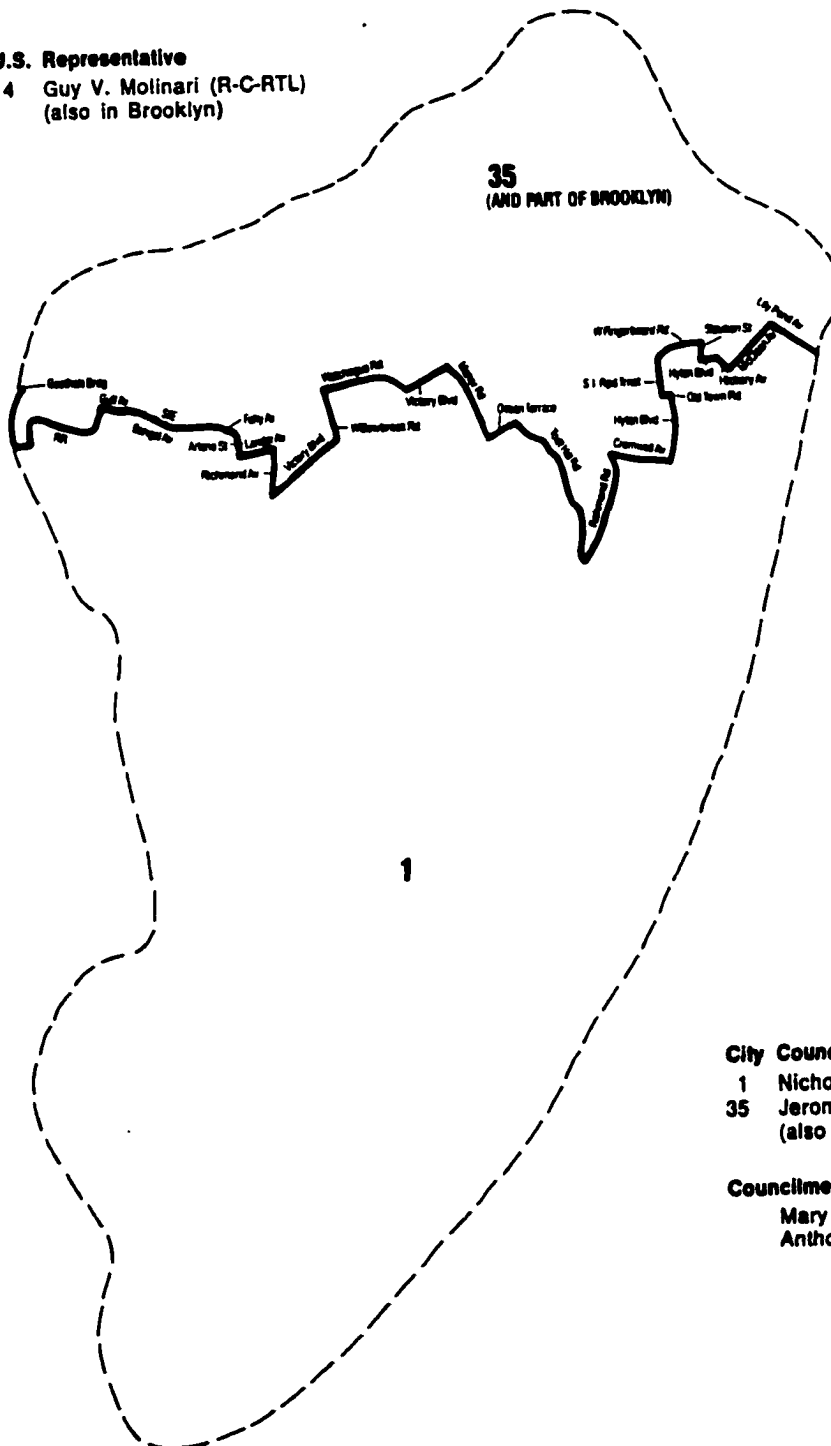
City Council Districts, Staten Island, 1981

U.S. Representative

14 Guy V. Molinari (R-C-RTL)
(also in Brooklyn)

Borough President

Anthony R. Gaeta (D-C)



City Council

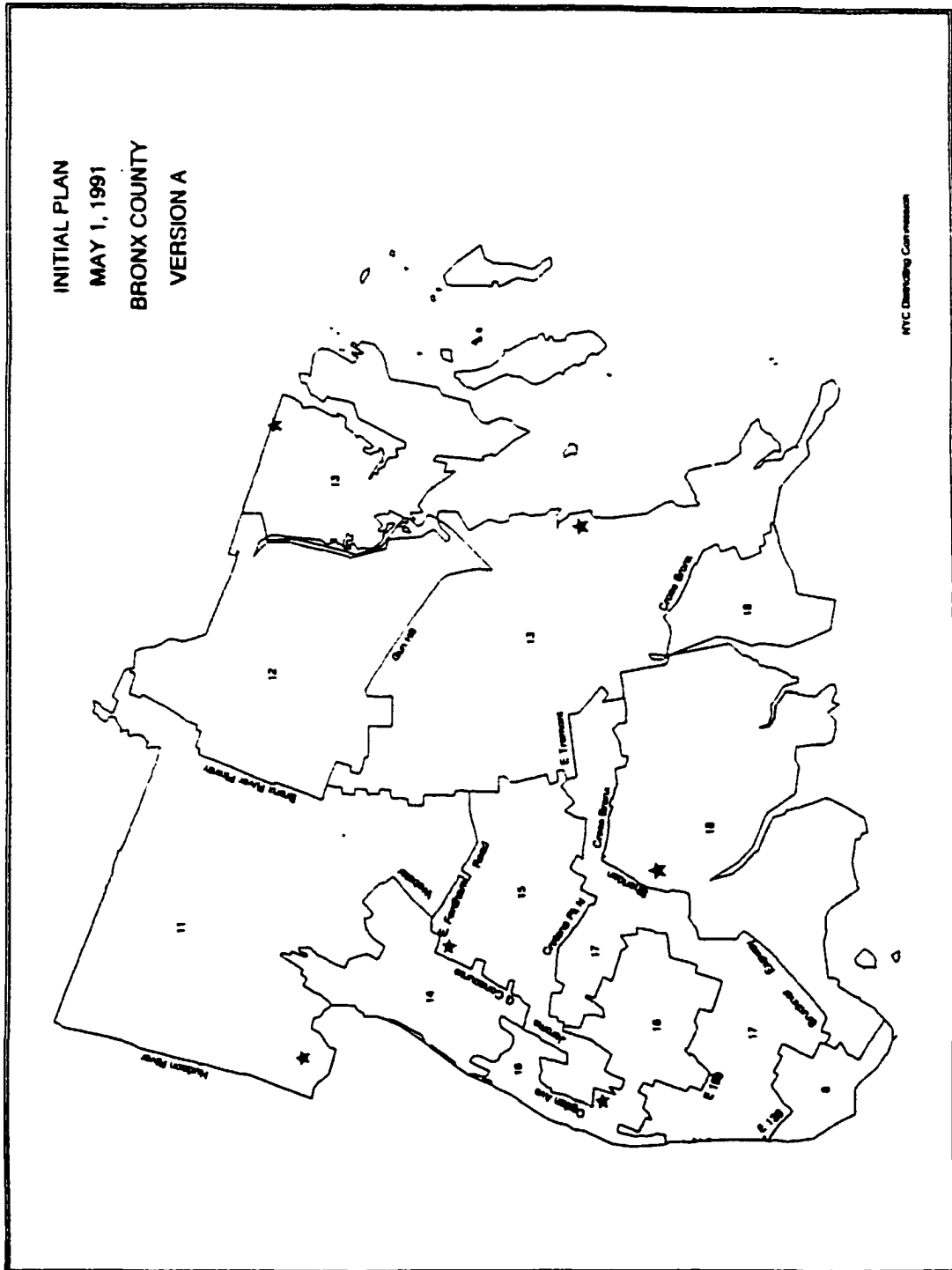
1 Nicholas LaPorte (D-C-RTL)
35 Jerome X. O'Donovan, Jr. (D-C)
(also in Brooklyn)

Councilmembers-at-large

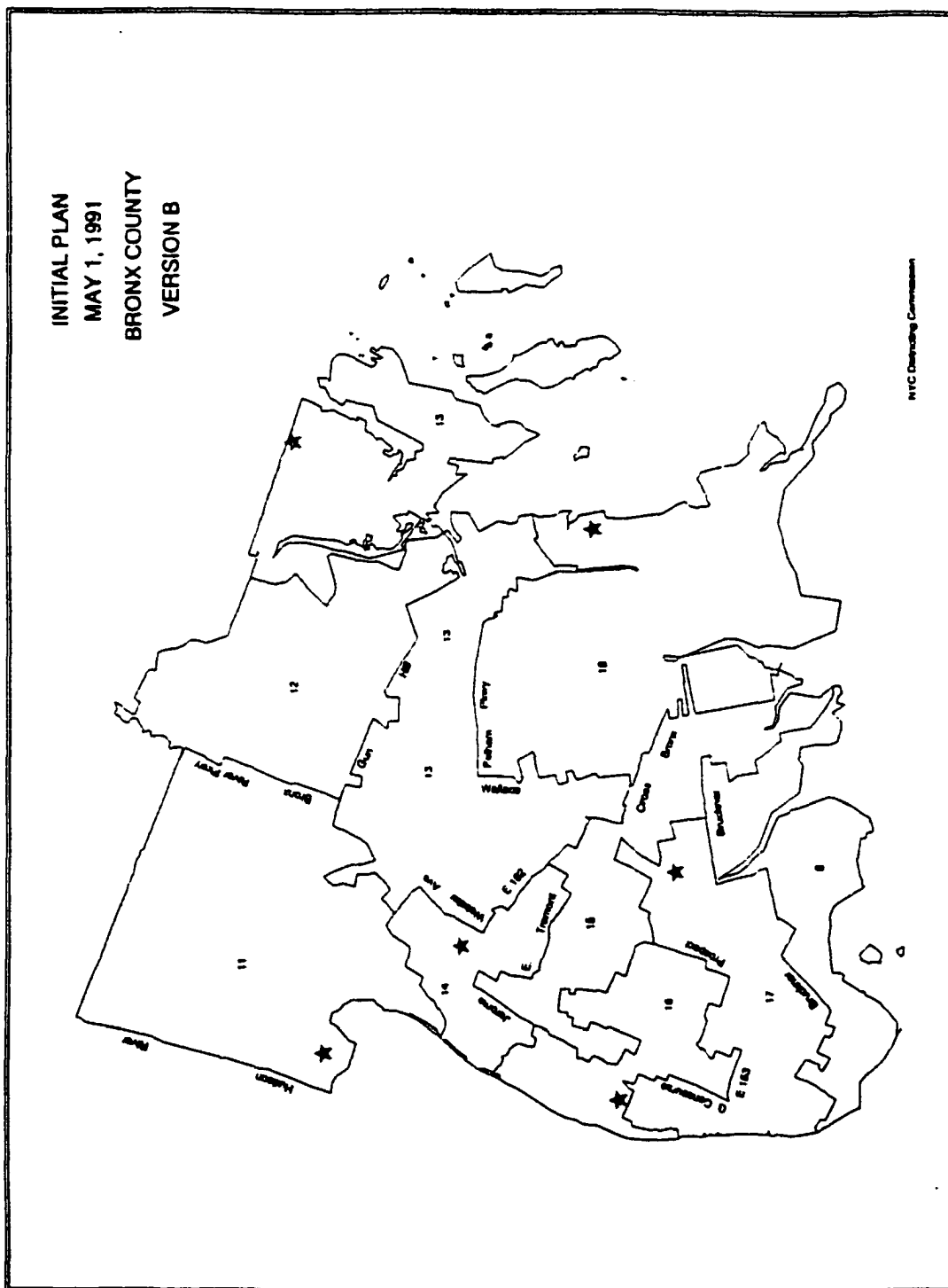
Mary T. Codd (D-L)
Anthony I. Giacobbe (R-C)

Source: League of Women Voters of the City of New York
Education Fund, *They Represent You*, New York, March
1983.

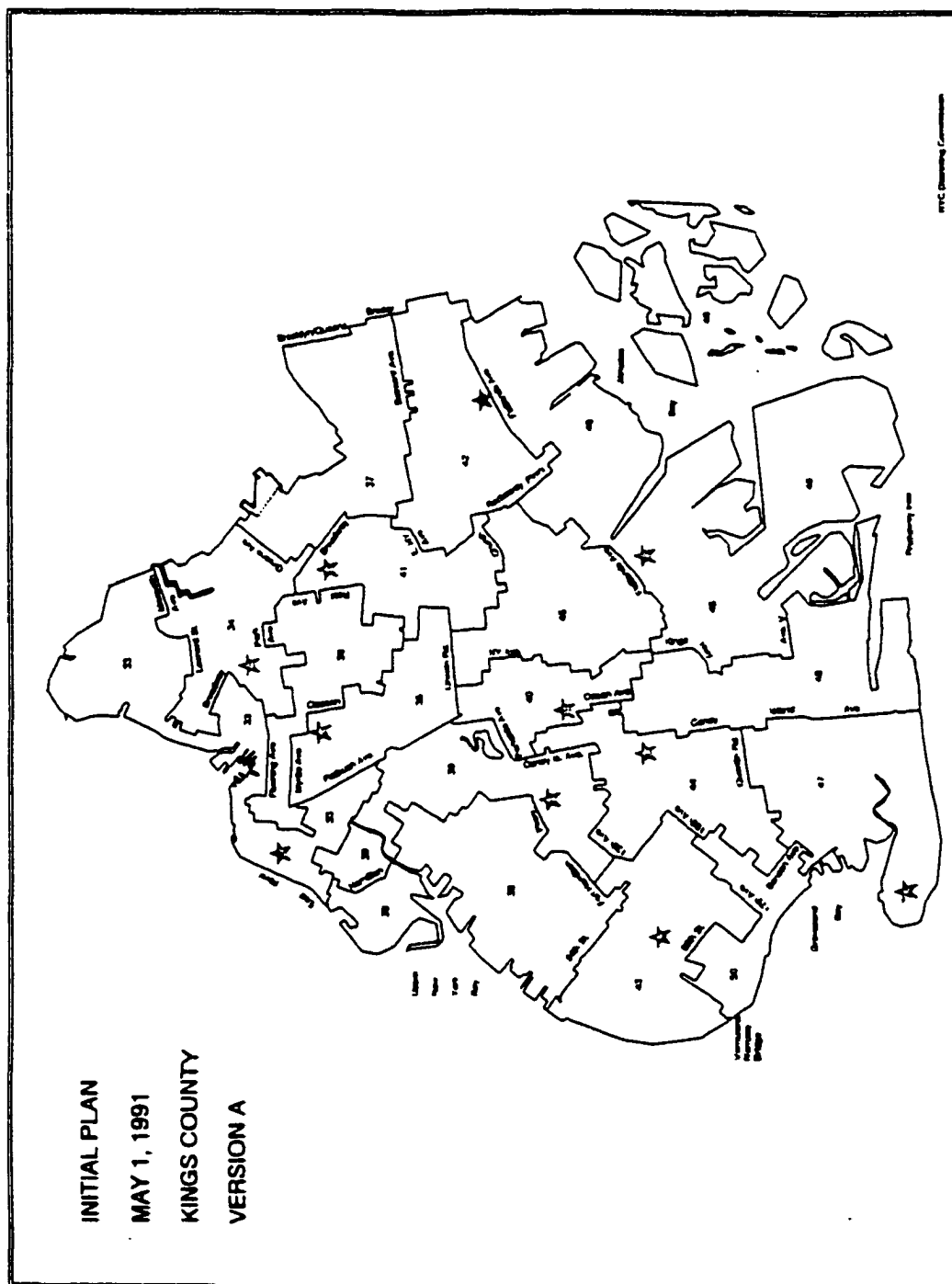
Map B6.1



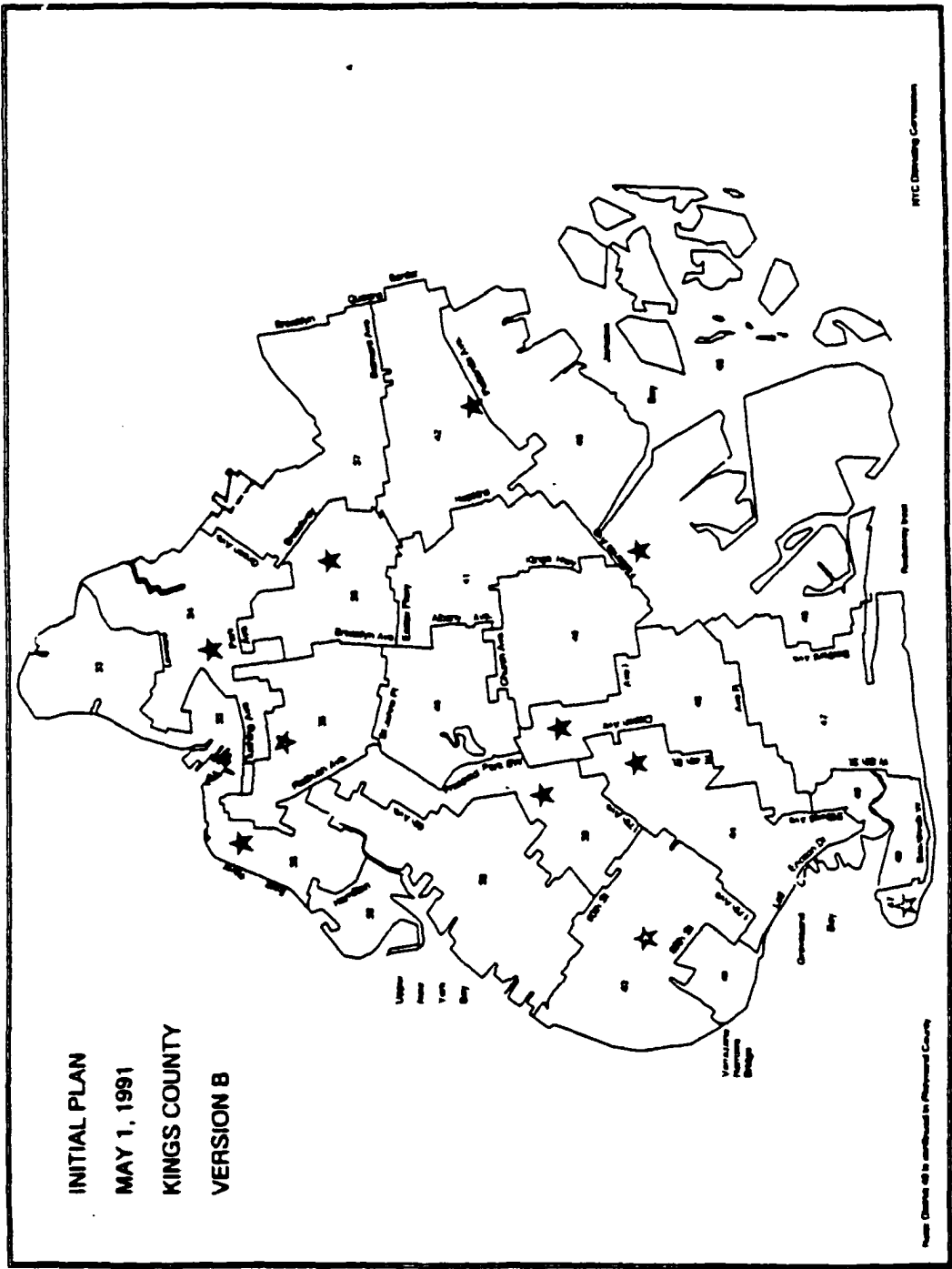
Map B6.2



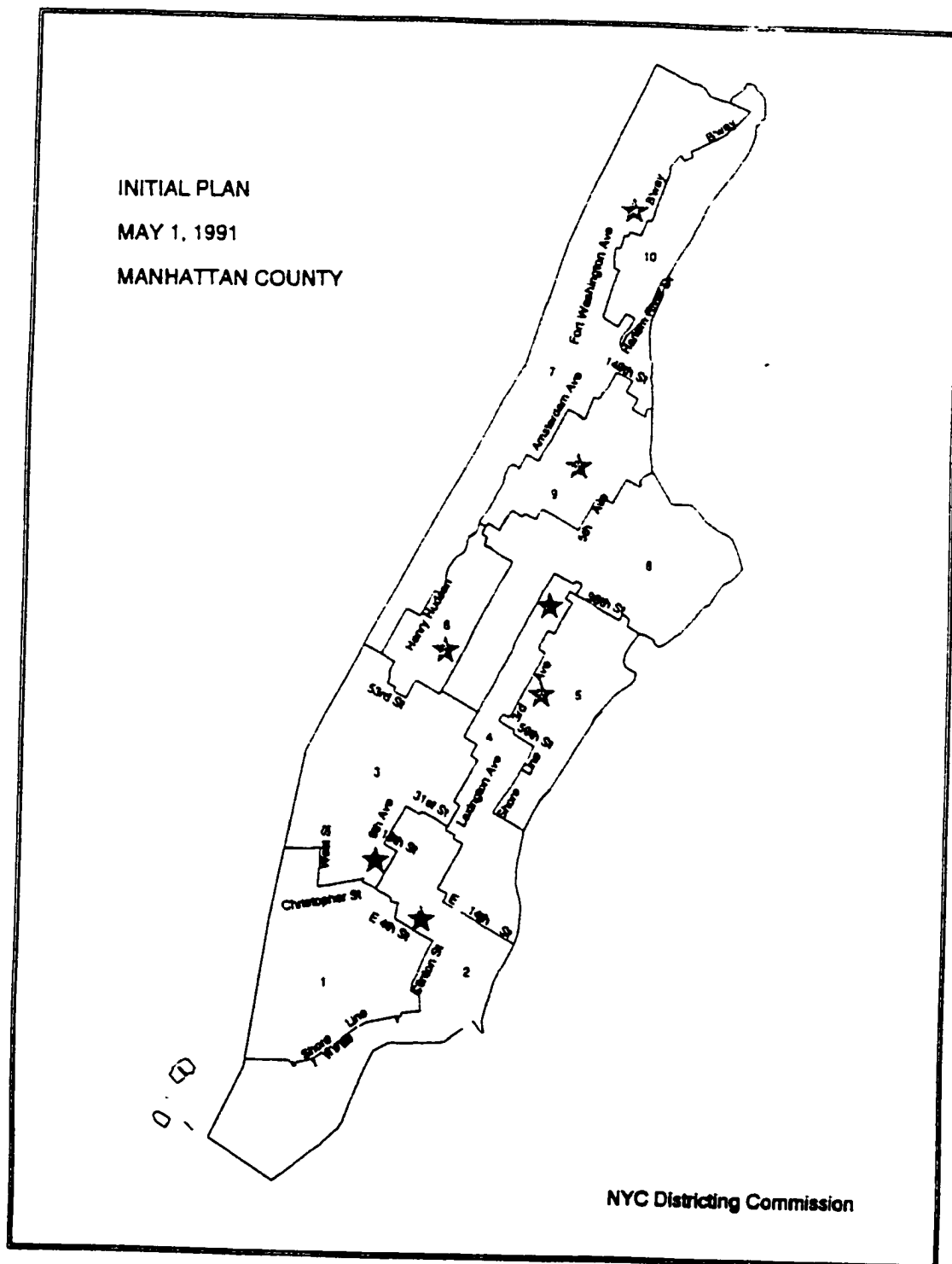
Map B6.3



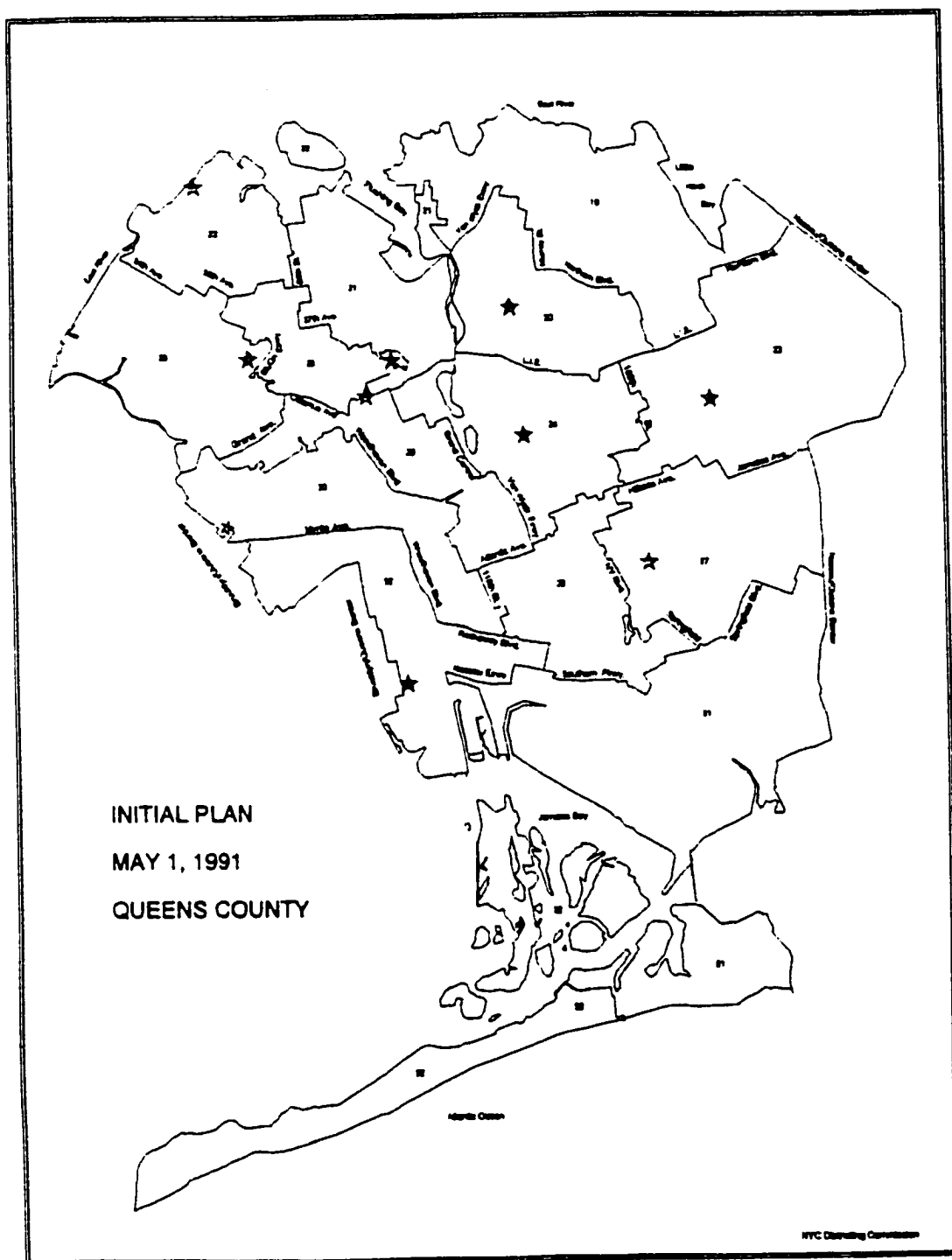
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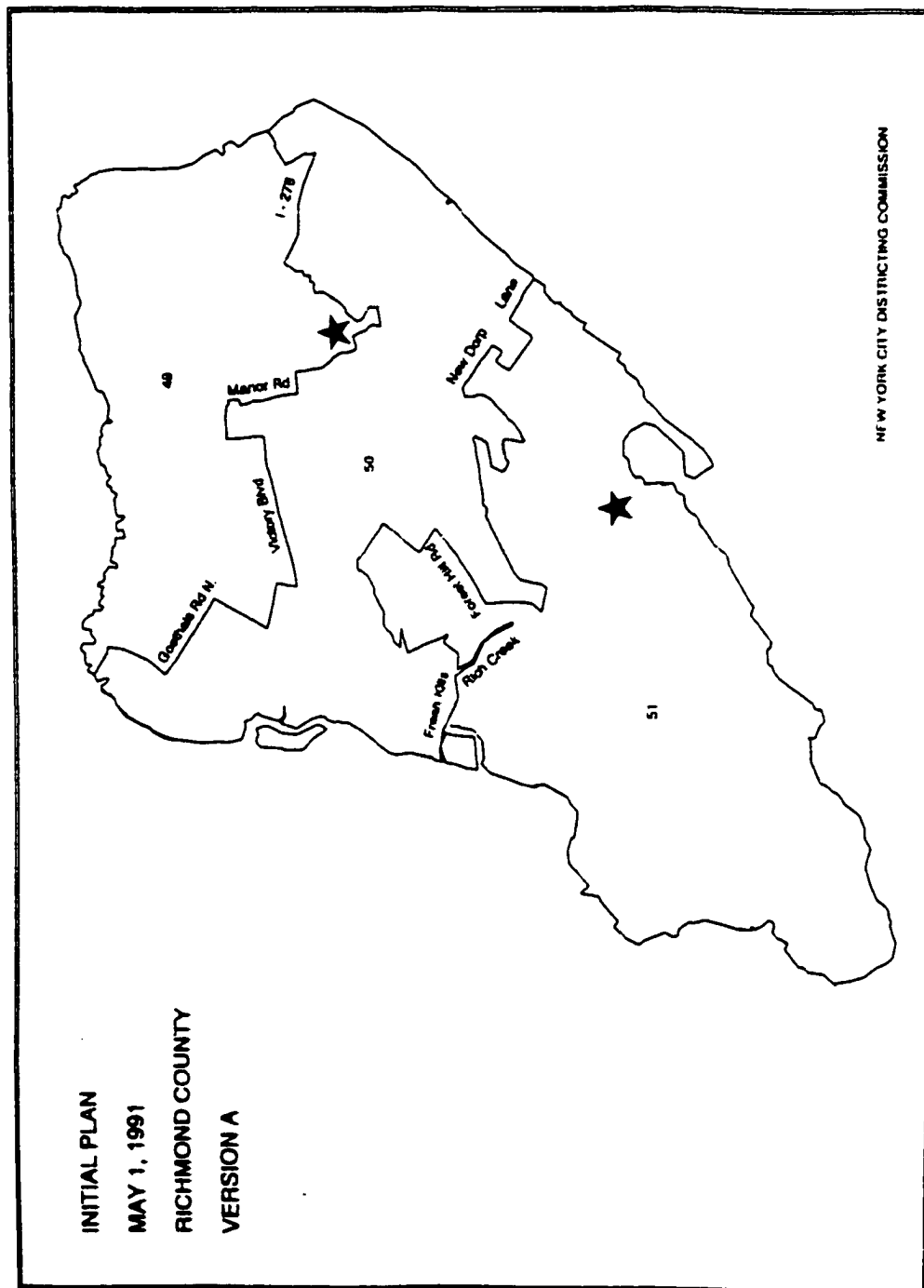
Map B6.5



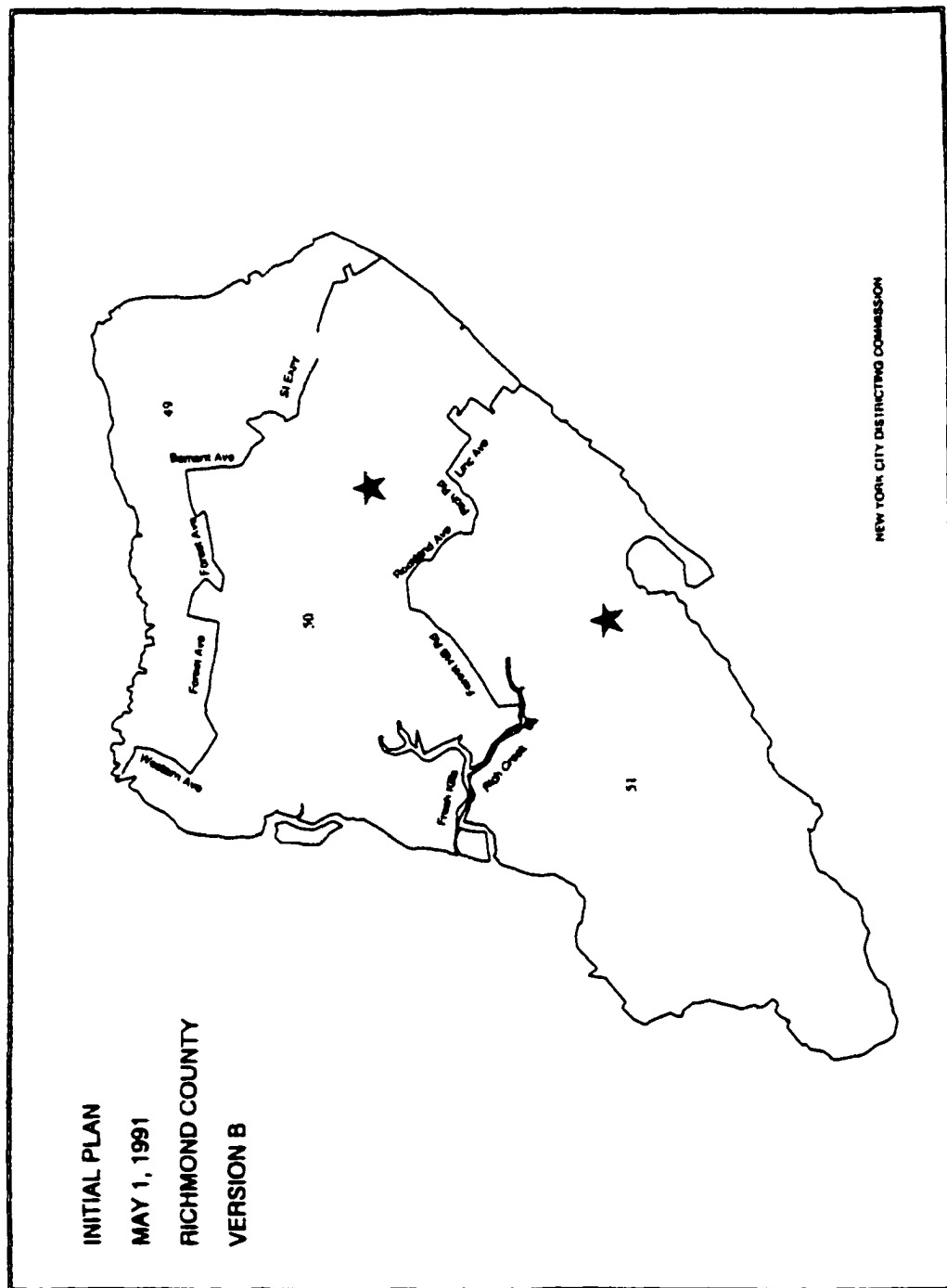
Map B6.6



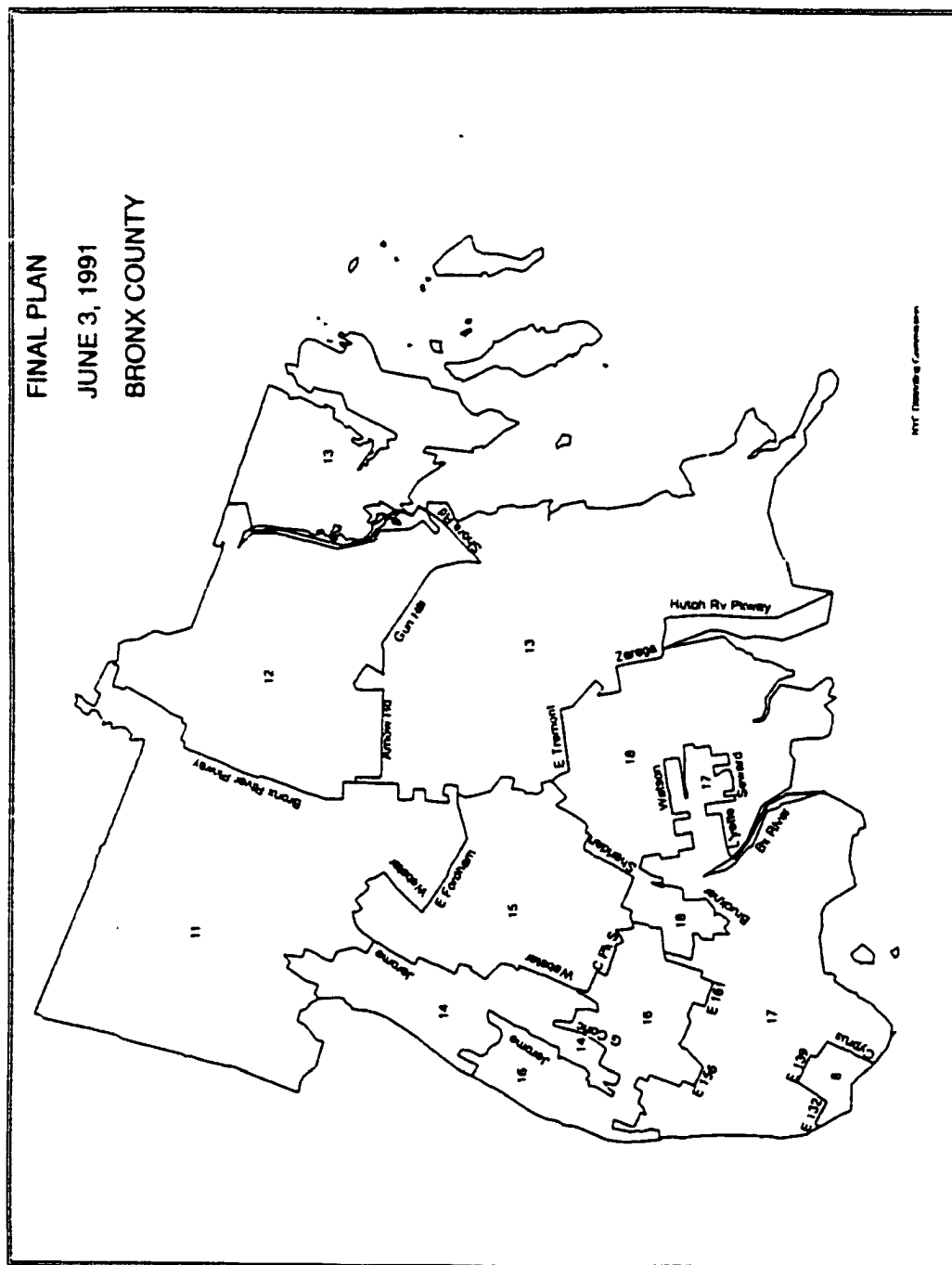
Map B6.7



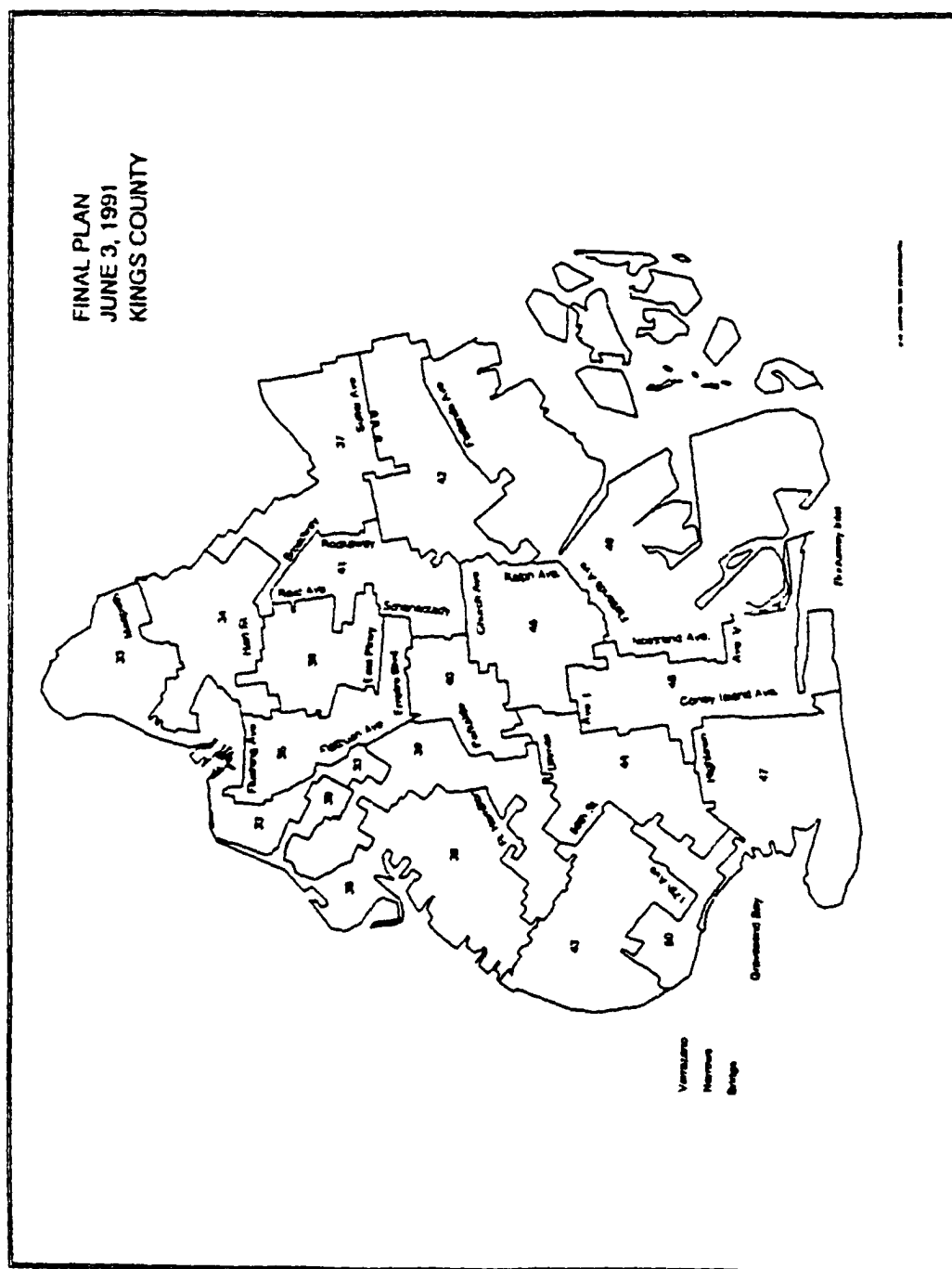
Map B6.8



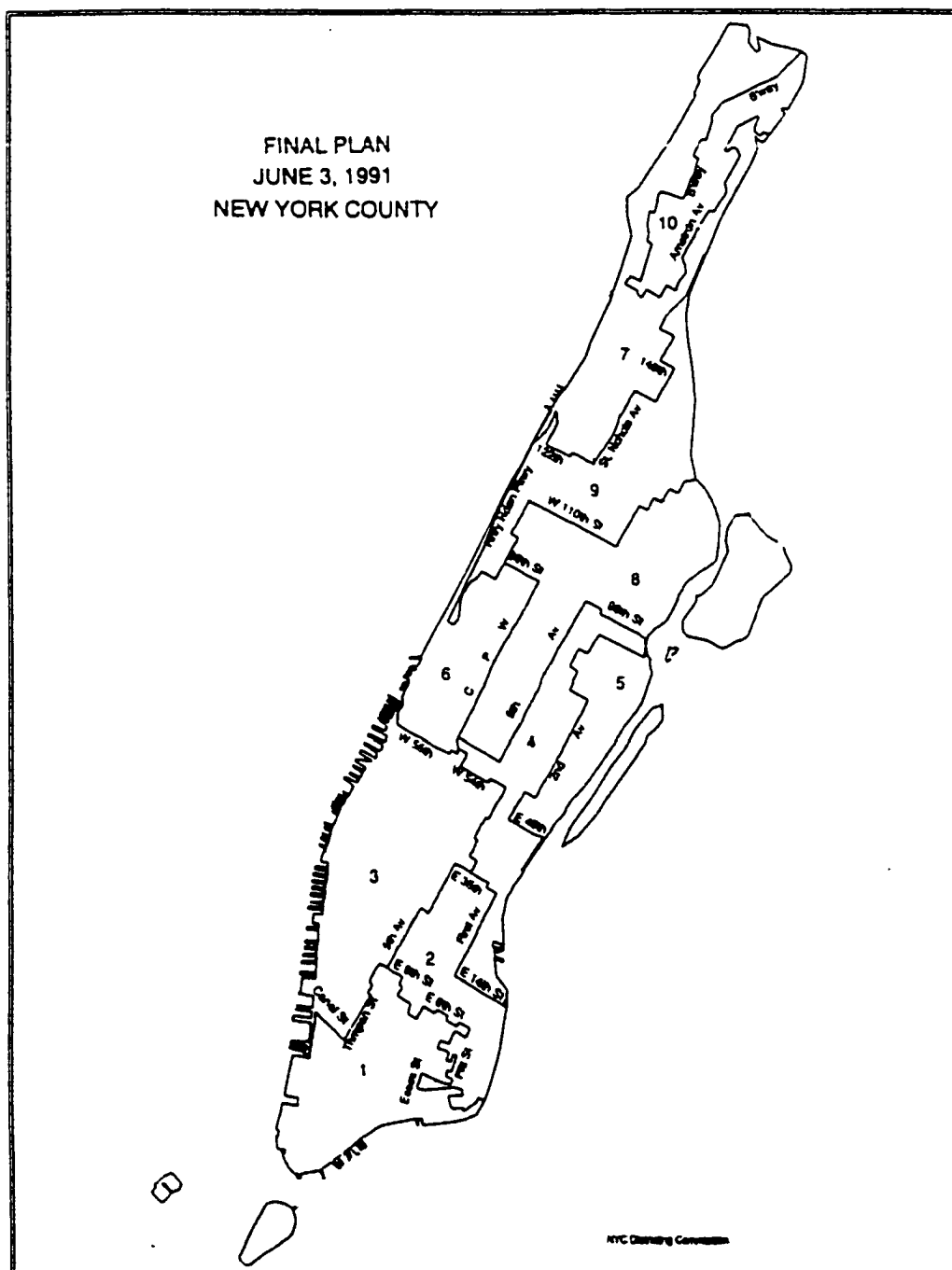
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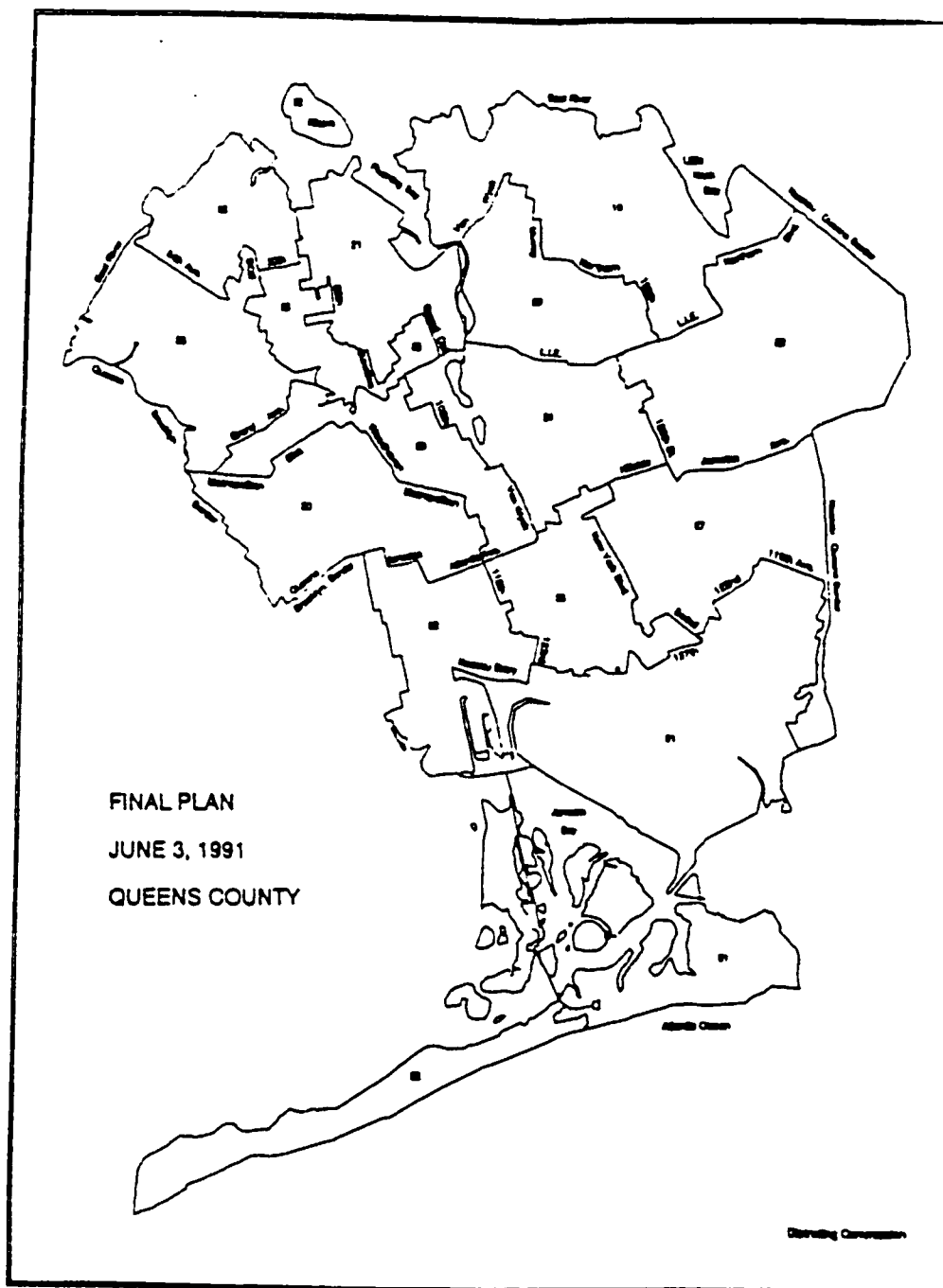
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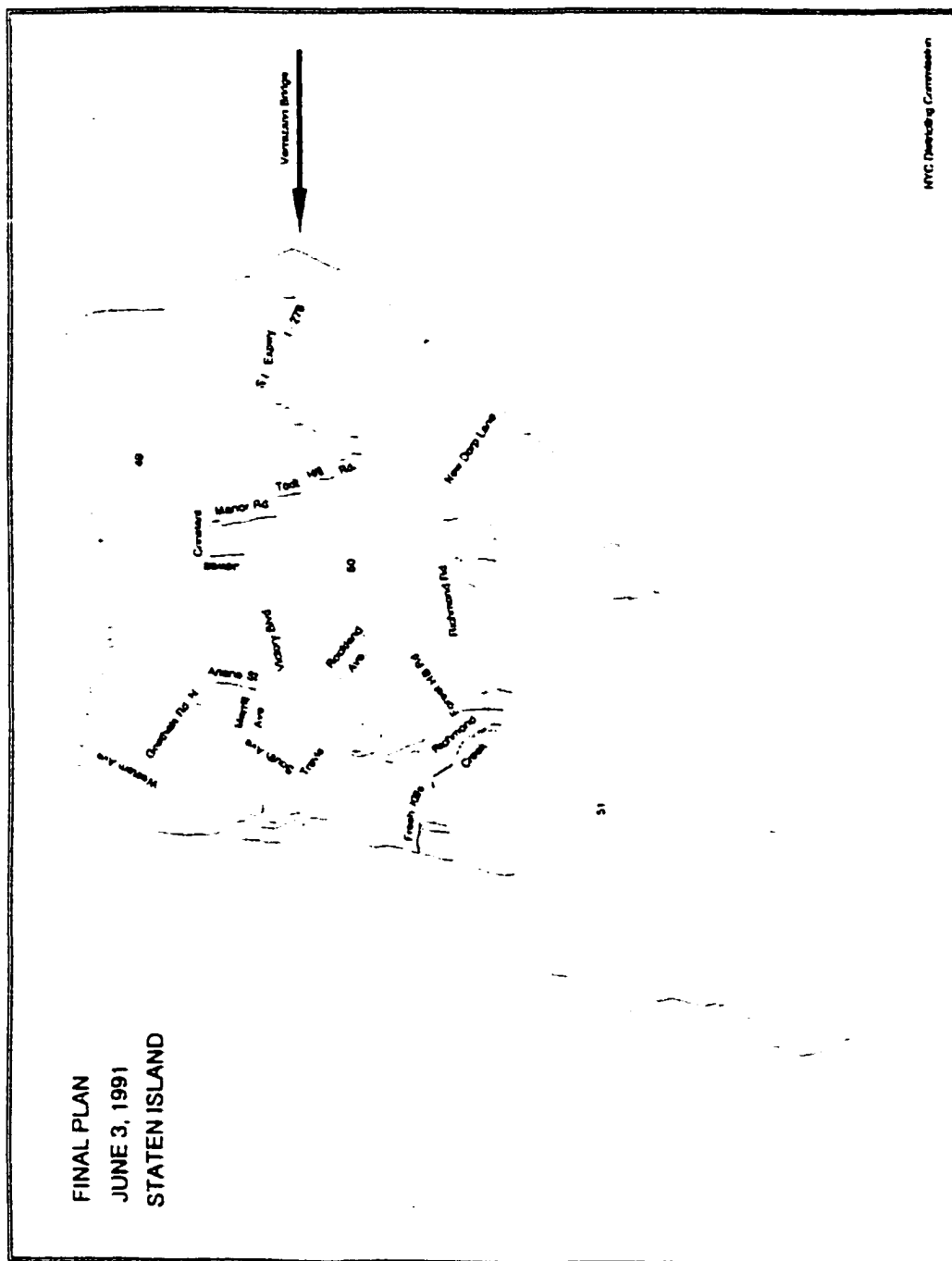
Map B6.11



Map B6.12



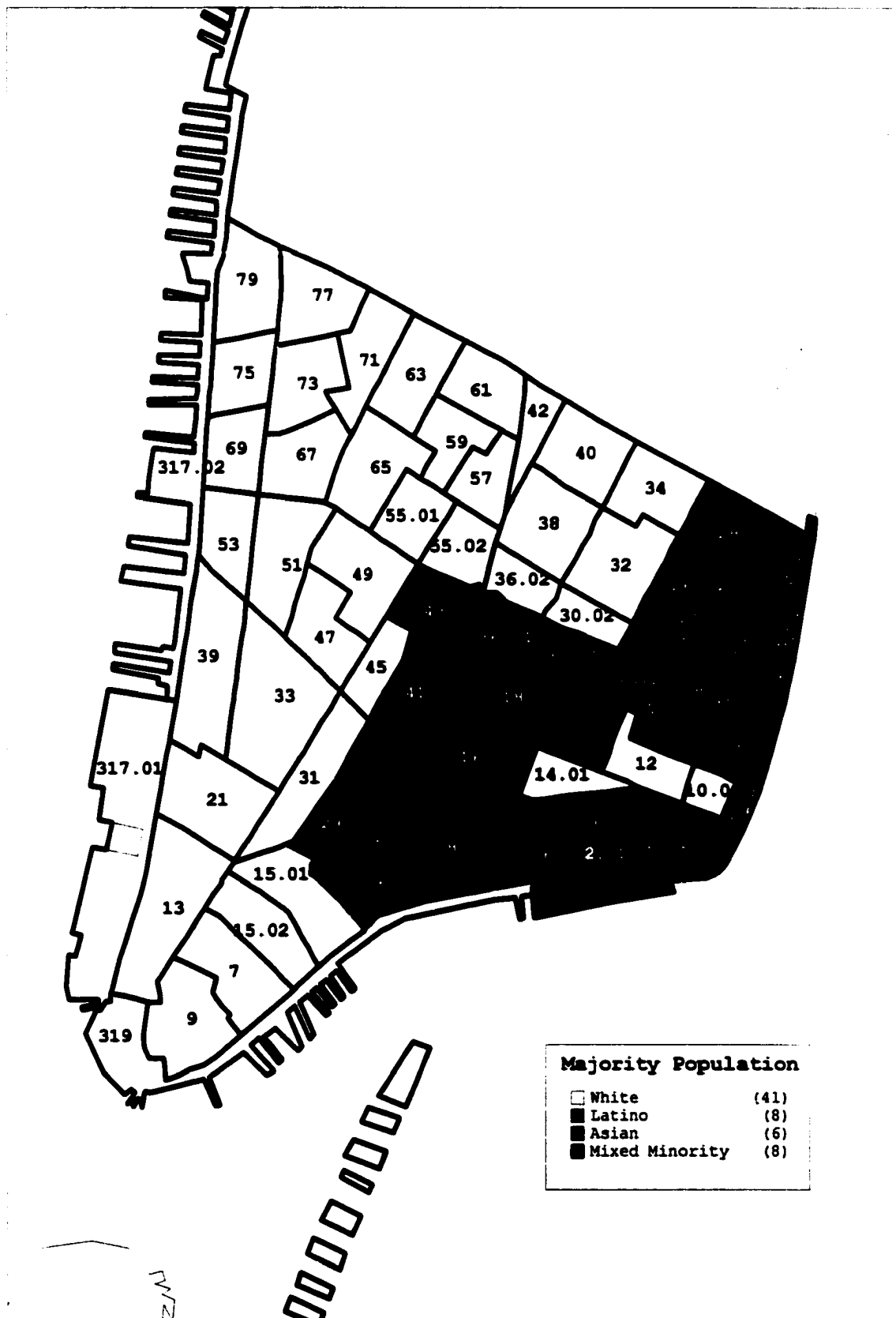
Map B6.13

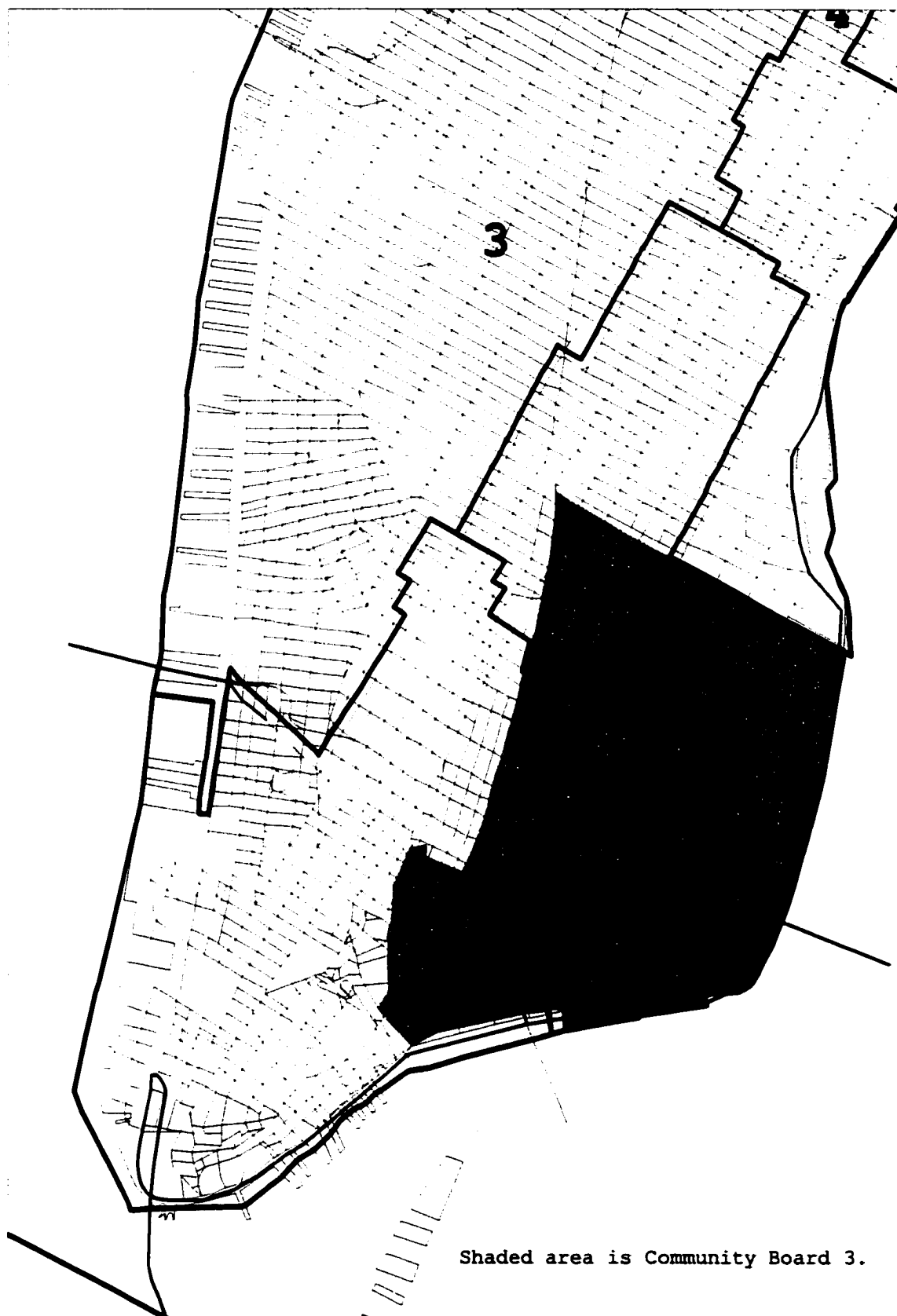


Map B8.1. Lower Manhattan



Map B8.2. Lower Manhattan: Population by Race



Map B8.3. City Council District 1, 1991

Shaded area is Community Board 3.

APPENDIX C

Table C61.1. 1991 Final 51-District City Council Plan: Population by Race and Voting Age

District	Total Population	Total Voting Age		% White VAP	% Black VAP	% Black VAP	% Latino VAP	% Latino VAP	% Asian VAP	% Asian VAP
		Population	% White							
1	137,930	114,207	37.2	40.7	5.8	5.8	17.4	15.3	39.2	37.9
2	151,883	130,993	59.2	64.5	8.0	7.3	25.2	20.8	7.1	7.0
3	151,831	139,461	71.5	73.6	7.1	6.7	16.4	14.7	4.6	4.6
4	151,858	136,793	85.5	86.1	3.3	3.2	5.7	5.4	5.3	5.2
5	151,741	138,213	86.7	87.4	3.0	2.9	5.4	5.1	4.7	4.5
6	151,849	135,748	76.2	77.8	7.1	6.7	12.8	11.6	3.7	3.7
7	151,612	116,185	16.9	19.6	41.7	41.7	38.8	36.1	1.9	2.1
8	151,278	111,973	14.2	17.2	30.1	29.8	53.1	50.2	2.1	2.4
9	148,149	117,393	24.0	27.3	61.3	58.5	10.9	10.1	3.3	3.7
10	149,631	106,456	11.5	13.4	8.6	9.1	77.1	75.0	1.9	2.1
11	151,846	123,531	59.7	64.2	11.6	10.7	22.8	19.7	5.5	5.1
12	151,938	117,350	17.7	21.1	60.5	58.8	19.6	18.1	1.6	1.5
13	151,038	123,289	73.8	76.3	5.5	5.2	17.3	15.4	3.2	2.9
14	144,993	96,308	6.8	8.8	27.9	28.2	60.8	58.4	3.6	3.8
15	146,305	97,344	8.8	11.1	26.9	26.8	60.6	58.3	3.0	3.3
16	144,880	95,329	1.7	2.2	52.9	54.4	44.0	42.1	0.7	0.8
17	138,566	91,781	2.0	2.3	34.1	35.0	62.6	61.4	0.7	0.7
18	149,947	106,961	10.0	12.6	26.8	26.6	59.5	57.3	2.9	2.9
19	143,983	117,314	80.1	82.3	1.8	1.7	8.1	7.3	9.7	8.5
20	139,709	111,873	43.6	46.7	6.1	5.8	18.8	17.6	31.0	29.6
21	139,281	105,993	13.4	15.0	21.7	21.8	51.3	49.6	12.7	12.9
22	149,550	125,128	59.8	61.0	6.9	6.6	24.6	24.1	8.0	7.6
23	142,297	114,709	66.2	69.9	10.6	9.6	11.0	10.0	11.8	10.2
24	138,603	110,862	58.0	60.4	9.5	9.1	15.8	14.9	16.0	15.0
25	138,066	112,504	33.9	36.4	2.7	2.6	33.8	32.2	29.0	28.3
26	138,099	111,905	48.0	51.8	8.5	7.4	27.8	25.9	15.0	14.5
27	141,048	105,868	8.4	9.5	77.8	77.1	9.6	9.1	3.5	3.5
28	138,118	100,332	8.5	9.9	64.0	63.4	20.7	19.9	5.5	5.5
29	140,157	119,232	75.0	77.1	2.8	2.6	12.4	11.3	9.5	8.7
30	138,088	109,754	76.6	79.4	0.8	0.7	16.8	14.4	5.6	5.3

Table C6.1. -- Continued

District	Total Population	Total Voting Age Population	% White	% White VAP	% Black	% Black VAP	% Latino	% Latino VAP	% Asian	% Asian VAP
29	140,157	119,232	75.0	77.1	2.8	2.6	12.4	11.3	9.5	8.7
30	138,088	109,754	76.6	79.4	0.8	0.7	16.8	14.4	5.6	5.3
31	138,851	100,398	17.5	20.6	66.9	64.8	13.4	12.6	1.5	1.5
32	139,798	110,634	76.8	79.2	3.2	2.9	14.1	12.4	5.4	5.0
33	138,118	106,474	72.7	73.5	6.6	6.9	17.4	16.2	2.8	3.0
34	138,468	91,234	6.7	8.3	18.1	18.4	71.6	69.4	2.9	3.3
35	138,766	101,771	14.2	15.0	69.5	69.2	14.3	13.6	1.5	1.7
36	138,760	98,553	1.0	1.2	88.5	89.0	9.7	9.0	0.4	0.5
37	138,296	92,111	6.9	8.7	34.5	34.6	53.2	51.1	4.2	4.6
38	138,131	99,120	26.3	30.3	11.2	10.6	54.1	50.3	7.9	8.3
39	146,146	112,367	70.0	71.3	4.6	4.5	14.9	13.8	10.2	10.0
40	138,066	97,716	6.5	7.8	75.3	74.2	14.0	13.6	3.6	3.9
41	138,514	94,642	1.8	2.0	87.7	87.9	9.6	9.2	0.4	0.5
42	138,610	92,917	4.4	5.7	74.9	74.3	19.2	18.4	1.0	1.1
43	143,932	118,156	85.8	87.1	0.4	0.4	6.5	5.9	7.1	6.5
44	144,536	108,587	78.4	79.0	3.5	3.3	9.2	8.7	8.7	8.7
45	138,077	100,615	13.6	16.0	75.2	72.9	8.6	8.4	2.0	2.1
46	146,927	116,663	83.0	84.6	6.5	5.8	6.4	5.8	4.0	3.7
47	149,826	117,907	66.8	72.0	13.7	11.0	13.0	11.0	6.1	5.7
48	146,595	115,348	81.2	82.4	3.4	3.1	6.7	6.1	8.5	8.2
49	140,283	104,562	64.8	69.4	17.9	15.3	12.5	10.7	4.3	0.0
50	138,002	107,515	84.1	85.6	20.0	2.2	7.0	8.0	6.7	3.7
51	138,588	103,767	90.5	90.9	0.9	1.0	4.8	4.6	3.7	0.0
Tot./Avg.	3,235,535	2,420,043	21.7	22.5	13.5	12.9	8.0	7.5	2.1	1.9

Source: New York City Districting Commission

Table C6.2 1991 Final 51-District City Council Plan: Voter Registration by Race, and 1989 Turnout

District	Total Registered Voters	% VAP Registered to Vote	% Dem.	% Rep.	Estimated White & Reg. Vtrs.	Estimated Black & Reg. Vtrs.	Estimated Latino & Reg. Vtrs.	Estimated Asian & Reg. Vtrs.	% Voted in 1989 General Mayoral
1	49,591	43.4	70.7	10.4	61.5	8.8	15.5	14.2	57.3
2	80,997	61.8	70.7	10.6	71.3	8.1	18.4	2.3	57.5
3	84,795	60.8	69.4	11.3	82.2	7.5	8.7	1.6	58.9
4	81,964	59.9	53.4	24.7	91.9	3.4	3.2	1.6	64.9
5	79,056	57.2	55.9	22.2	92.5	3.0	3.0	1.5	63.2
6	90,388	66.6	69.9	11.2	83.9	7.3	7.5	1.4	62.6
7	66,504	57.2	80.2	6.4	26.4	56.0	16.5	1.1	60.0
8	78,573	70.2	81.0	5.9	21.6	37.5	40.0	0.9	54.5
9	86,983	74.1	81.8	5.4	29.7	63.6	5.3	1.4	54.9
10	39,794	37.4	70.6	11.4	33.7	22.7	42.6	1.0	56.8
11	67,229	54.4	69.4	13.7	73.8	12.3	12.6	1.4	67.3
12	66,878	57.0	80.8	7.3	22.5	62.8	14.1	0.7	68.9
13	66,185	53.7	59.5	23.0	82.6	5.6	10.8	1.0	69.0
14	45,710	47.5	78.6	7.5	12.4	40.0	46.9	0.7	51.4
15	50,984	52.4	80.2	7.1	14.4	34.9	50.2	0.5	50.6
16	56,705	59.5	83.7	5.1	2.7	67.4	29.4	0.5	56.3
17	58,289	63.5	83.4	5.0	2.9	43.6	53.0	0.5	53.9
18	61,415	57.4	77.8	8.8	16.5	34.9	47.8	0.8	58.7
19	68,959	58.8	53.9	25.4	92.0	1.9	3.4	2.7	69.6
20	45,887	41.0	59.4	20.6	75.4	9.4	8.5	6.7	66.7
21	34,382	32.4	70.2	13.4	30.3	44.0	22.3	3.4	62.7
22	49,228	39.3	64.3	17.8	85.1	4.1	9.2	1.7	61.9
23	67,166	58.6	61.7	20.3	81.3	11.2	5.3	2.3	70.7
24	57,748	52.1	66.5	15.3	77.1	11.6	7.4	4.0	67.5
25	36,814	32.7	56.9	22.4	70.3	5.0	17.5	7.3	63.0
26	48,499	43.3	62.6	19.5	73.2	10.5	13.4	2.9	65.7
27	62,523	59.1	81.3	6.4	10.4	84.4	4.4	0.8	66.5
28	51,184	51.0	80.2	7.3	12.2	78.1	9.0	0.7	64.6
29	62,311	52.3	61.5	19.6	89.7	3.0	5.1	2.2	68.7
30	52,143	47.5	49.2	31.2	90.5	0.8	7.8	1.0	66.9

Table C6.2 -- Continued

District	Total Registered Voters	% VAP Registered to Vote	% Dem.	% Rep.	Estimated White % Reg. Vtrs.	Estimated Black % Reg. Vtrs.	Estimated Latino % Reg. Vtrs.	Estimated Asian % Reg. Vtrs.	% Voted in 1989 General Mayoral
36	57,651	58.5	85.8	3.8	1.2	92.1	6.1	0.6	60.2
37	43,405	47.1	78.3	8.2	11.1	44.2	44.2	0.5	49.8
38	49,365	49.8	72.1	12.0	42.8	15.0	40.8	1.4	55.3
39	57,213	50.9	68.9	15.0	82.8	5.2	10.1	1.9	65.6
40	32,761	33.5	80.0	5.9	8.6	81.8	8.3	1.3	64.3
41	48,231	51.0	85.3	3.7	2.1	91.1	6.2	0.6	60.6
42	52,874	56.9	84.2	4.5	6.1	79.9	13.5	0.6	61.0
43	63,144	53.4	50.9	30.2	94.3	0.4	3.7	1.6	69.4
44	51,848	47.7	67.6	16.7	89.8	3.8	4.7	1.8	68.4
45	40,859	40.6	78.8	7.8	16.8	76.7	5.6	1.0	68.2
46	67,741	58.1	67.2	18.2	89.5	6.1	3.4	1.0	70.7
47	59,623	50.6	71.7	15.5	79.5	12.2	7.3	1.0	67.4
48	63,824	55.3	72.4	13.3	91.2	3.5	3.5	1.8	68.7
49	63,804	61.0	57.3	23.9	80.9	17.8	0.1	1.3	67.2
50	60,309	56.1	52.6	29.8	96.8	1.9	0.0	1.3	67.9
51	63,467	61.2	43.0	35.7	97.9	1.0	0.0	1.1	69.1
Tot./Avg.	876,119	16.3	21.9	4.8	17.5	10.4	3.1	0.4	20.3

Source: New York City Districting Commission

Table C8.1. Lower Manhattan: Population by Race by Neighborhood

Census Tract	Community Board	Persons	Whites		Blacks		Latinos		Asians		Other	
			#	%	#	%	#	%	#	%	#	%
Financial District												
(Ellis Island) 1	1											
(Governor's Island) 5	1											
7	1	154	91	59.1	51	33.1	0	0.0	12	7.8	0	0
9	1	424	276	65.1	74	17.5	29	6.8	45	10.6	0	0.0
13	1	363	201	55.4	101	27.8	27	7.4	34	9.4	0	0.0
(Southbridge) 15.01	1	4,067	2,876	70.7	339	8.3	266	6.5	573	14.1	13	0.3
15.02	1	1,241	816	65.8	109	8.8	134	10.8	182	14.7	0	0.0
29 (partial)	1	1,574	361	22.9	593	37.7	522	33.2	86	5.5	12	0.8
(Battery Park City) 317.01	1	5,556	4,295	77.3	189	3.4	223	4.0	846	15.2	3	0.1
319	1	98	53	54.1	23	23.5	22	22.4	0	0.0	0	0.0
Total		13,477	8,969	66.6	1,479	11.0	1,223	9.1	1,778	13.2	28	0.2
Tribeca/Soho												
21	1	1,870	1,478	79.0	76	4.1	53	2.8	246	13.2	17	0.9
31	1	333	255	76.6	43	12.9	35	10.5	0	0.0	0	0.0
33	1	2,438	2,067	84.8	97	4.0	87	3.6	181	7.4	6	0.2
39	1	4,140	3,110	75.1	563	13.6	240	5.8	128	3.1	99	2.4
43	2	4,926	2,342	47.5	41	0.8	939	19.1	1,604	32.6	0	0.0
45	2	856	511	59.7	8	0.9	39	4.6	298	34.8	0	0.0
47	2	2,537	2,186	86.2	0	0.0	110	4.3	241	9.5	0	0.0
49	2	4,913	4,561	92.8	68	1.4	89	1.8	195	4.0	0	0.0
Total		22,013	16,510	75.0	896	4.1	1,592	7.2	2,893	13.1	122	0.6

Table C8.1. -- Continued

Census Tract	Community Board	Persons	Whites # %	Blacks # %	Latinos # %	Asians # %	Other # %
Greenwich Village							
51	2	1,757	1,643 93.5	15 0.9	82 4.7	17 1.0	0 0.0
53	2	320	254 79.4	38 11.9	28 8.8	0 0.0	0 0.0
55.01	2	4,413	3,615 81.9	127 2.9	238 5.4	405 9.2	28 0.6
55.02	2	2,156	1,705 79.1	119 5.5	178 8.3	122 5.7	32 1.5
57	2	2,553	2,420 94.8	48 1.9	19 0.7	66 2.6	0 0.0
59	2	5,964	5,313 89.1	150 2.5	174 2.9	327 5.5	0 0.0
61	2	5,062	4,507 89.0	70 1.4	198 3.9	278 5.5	9 0.2
63	2	6,755	6,168 91.3	123 1.8	204 3.0	203 3.0	57 0.8
65	2	6,966	5,849 84.0	262 3.8	408 5.9	436 6.3	11 0.2
67	2	5,774	5,094 88.2	126 2.2	347 6.0	189 3.3	18 0.3
69	2	2,375	2,000 84.2	112 4.7	145 6.1	98 4.1	20 0.8
71	2	6,241	5,311 85.1	290 4.6	419 6.7	164 2.6	57 0.9
73	2	6,752	5,891 87.2	205 3.0	475 7.0	158 2.3	23 0.3
75	2	4,021	3,441 85.6	176 4.4	286 7.1	108 2.7	10 0.2
77	2	6,343	5,409 85.3	249 3.9	489 7.7	186 2.9	10 0.2
79	2	4,409	3,706 84.1	202 4.6	250 5.7	251 5.7	0 0.0
Total		71,861	62,326 86.7	2,312 3.2	3,940 5.5	3,008 4.2	275 0.4
Chinatown							
6	3	11,996	798 6.7	1,051 8.8	3,188 26.6	6,923 57.7	36 0.3
8	3	9,952	1,731 17.4	30 0.3	286 2.9	7,905 79.4	0 0.0
16	3	8,709	589 6.8	87 1.0	435 5.0	7,598 87.2	0 0.0
18	3	9,247	649 7.0	179 1.9	2,041 22.1	6,378 69.0	0 0.0
25	3	6,070	220 3.6	1,021 16.8	2,691 44.3	2,126 35.0	12 0.2
27	3	1,344	584 43.5	118 8.8	18 1.3	624 46.4	0 0.0
29 (partial)	3	5,484	374 6.8	23 0.4	0 0.0	5,087 92.8	0 0.0
41	2	8,641	1,675 19.4	54 0.6	323 3.7	6,556 75.9	33 0.4
Total		61,443	6,620 10.8	2,563 4.2	8,982 14.6	43,197 70.3	81 0.1

Table C8.1 -- Continued

Census Tract	Community Board	Persons	Whites # %	Blacks # %	Latinos # %	Asians # %	Other # %
Lower East Side							
2.01	3	3,387	187 5.5	312 9.2	1,721 50.8	1,147 33.9	20 0.6
2.02	3	7,915	2,403 30.4	1,025 13.0	3,363 42.5	1,109 14.0	15 0.2
10.01	3	1,940	1,370 70.6	114 5.9	417 21.5	39 2.0	0 0.0
10.02	3	7,706	258 3.3	1,417 18.4	5,758 74.7	223 2.9	50 0.6
12	3	3,511	2,010 57.2	136 3.9	1,079 30.7	258 7.3	28 0.8
14.01	3	3,130	2,703 86.4	78 2.5	303 9.7	36 1.2	10 0.3
14.02	3	2,959	439 14.8	128 4.3	1,545 52.2	836 28.3	11 0.4
20	3	6,110	120 2.0	961 15.7	4,929 80.7	93 1.5	7 0.1
22.01	3	6,602	977 14.8	946 14.3	3,570 54.1	1,038 15.7	71 1.1
22.02	3	1,242	402 32.4	163 13.1	637 51.3	40 3.2	0 0.0
24	3	5,531	162 2.9	1,025 18.5	4,214 76.2	107 1.9	23 0.4
26.01	3	2,634	423 16.1	231 8.8	1,669 63.4	298 11.3	13 0.5
26.02	3	2,868	1,211 42.2	483 16.8	978 34.1	180 6.3	16 0.6
28	3	6,827	1,944 28.5	932 13.7	3,140 46.0	714 10.5	97 1.4
30.01	3	3,906	805 20.6	150 3.8	1,867 47.8	1,053 27.0	31 0.8
30.02	3	2,868	1,653 57.6	195 6.8	732 25.5	269 9.4	19 0.7
32	3	7,832	5,772 73.7	517 6.6	864 11.0	618 7.9	61 0.8
34	3	6,235	3,567 57.2	440 7.1	1,811 29.0	390 6.3	27 0.4
36.01	3	3,761	737 19.6	578 15.4	1,556 41.4	881 23.4	9 0.2
36.02	3	2,449	1,602 65.4	381 15.6	251 10.2	157 6.4	58 2.4
38	3	8,395	5,894 70.2	440 5.2	979 11.7	1,036 12.3	46 0.5
40	3	8,504	6,035 71.0	360 4.2	1,075 12.6	1,001 11.8	33 0.4
42	3	2,657	2,166 81.5	133 5.0	132 5.0	207 7.8	19 0.7
Total		108,969	42,840 39.3	11,145 10.2	42,590 39.1	11,730 10.8	664 0.61
Lower Manhattan		277,763	137,265 49.4	18,395 6.6	58,327 21.0	62,606 22.5	1,170 0.42

Source: U.S. Department of Commerce, Bureau of the Census. STF3A CD-ROM, 1992.

Table C8.2 Financial District: Population by Race

Census Tract	Community Board	Persons		Whites		Blacks		Latinos		Asians		Other	
		#	%	#	%	#	%	#	%	#	%	#	%
Financial District													
1	1												
5	1												
7	1	154	59.1	91	33.1	51	17.5	0	0.0	12	7.8	0	0.0
9	1	424	65.1	276	65.1	74	17.5	29	6.8	45	10.6	0	0.0
13	1	363	55.4	201	55.4	101	27.8	27	7.4	34	9.4	0	0.0
15.01	1	4,067	70.7	2,876	70.7	339	8.3	266	6.5	573	14.1	13	0.3
15.02	1	1,241	65.8	816	65.8	109	8.8	134	10.8	182	14.7	0	0.0
29 (partial)	1	1,574	22.9	361	22.9	593	37.7	522	33.2	86	5.5	12	0.8
317.01	1	5,556	77.3	4,295	77.3	189	3.4	223	4.0	846	15.2	3	0.1
319	1	98	54.1	53	54.1	23	23.5	22	22.4	0	0.0	0	0.0
Total		13,477	66.6	8,969	66.6	1,479	11.0	1,223	9.1	1,778	13.2	28	0.2

Table C8.2 -- Continued -- Selected Household Indicators

Census Tract	Community Board	Total Households	Family Households		% Female-Headed Family Households	% Single Person Households
			#	%		
Financial District						
1	1	1	1	100.0	100.0	0.0
5	1	784	674	86.0	3.9	10.6
7	1	98	27	27.6	7.4	60.2
9	1	242	69	28.5	5.8	57.9
13	1	82	18	22.0	27.8	63.4
15.01	1	2,196	899	40.9	19.1	54.4
15.02	1	583	195	33.4	9.7	46.0
29 (partial)	1	52	37	71.2	21.6	28.8
317.01	1	3,373	1,188	35.2	6.9	50.2
319	1	1	0	0.0	0.0	100.0
Total		7,412	3,108	41.9	10.3	47.3

Table C8.2 -- Continued -- Selected Socioeconomic Indicators

Census Tract	Community Board	Median Household Income	% Foreign Born	% High School Graduates 25 Years and Over	% Below Poverty
Financial District					
1	1	\$0	0.0	0.0	0.0
5	1	\$35,735	8.5	95.8	3.8
7	1	\$41,181	31.8	73.2	14.3
9	1	\$68,844	18.9	85.4	25.5
13	1	\$21,488	21.5	75.5	41.9
15.01	1	\$30,900	18.7	85.5	11.7
15.02	1	\$49,000	18.9	86.9	15.9
29 (partial)	1	\$18,225	68.2	41.5	23.2
317.01	1	\$71,965	27.6	97.0	3.9
319	1	\$0	22.3	100.0	46.8

Source: U.S. Department of Commerce, Bureau of the Census. STF3A CD-ROM.

Table C8.3 Tribeca/Soho: Population by Race

Census Tract	Community Board	Persons		Whites		Blacks		Latinos		Asians		Other	
		#	%	#	%	#	%	#	%	#	%	#	%
Tribeca/Soho													
21	1	1,870	79.0	76	4.1	53	2.8	246	13.2	17	0.9		
31	1	333	76.6	43	12.9	35	10.5	0	0.0	0	0.0		
33	1	2,438	84.8	97	4.0	87	3.6	181	7.4	6	0.2		
39	1	4,140	75.1	563	13.6	240	5.8	128	3.1	99	2.4		
43	2	4,926	47.5	41	0.8	939	19.1	1,604	32.6	0	0.0		
45	2	856	59.7	8	0.9	39	4.6	298	34.8	0	0.0		
47	2	2,537	86.2	0	0.0	110	4.3	241	9.5	0	0.0		
49	2	4,913	92.8	68	1.4	89	1.8	195	4.0	0	0.0		
Total		22,013	75.0	896	4.1	1,592	7.2	2,893	13.1	122	0.6		

Table C8.3 -- Continued -- Selected Household Indicators

Census Tract	Community Board	Total Households	Family Households		% Female-Headed Family Households	% Single Person Households
			#	%		
Tribeca/Soho						
21	1	856	382	44.6	8.1	38.2
31	1	83	35	42.2	8.6	30.1
33	1	1,129	511	45.3	9.2	36.2
39	1	2,096	962	45.9	21.3	43.1
43	2	2,162	975	45.1	18.6	31.7
45	2	408	192	47.1	9.9	43.0
47	2	1,333	492	36.9	16.9	38.5
49	2	2,816	978	34.7	15.1	46.6
Total		10,883	4,527	41.6	15.3	44.4

Table C8.3 -- Continued -- Selected Socioeconomic Indicators

Census Tract	Community Board	Median Household Income 1989	% Foreign Born	% High School Graduates 25 Years and Over	% Below Poverty
Tribeca/Soho					
21	1	\$71,144	21.8	94.8	5.3
31	1	\$54,359	13.2	41.5	41.1
33	1	\$58,831	15.3	78.7	8.4
39	1	\$37,500	9.0	95.2	8.2
43	2	\$21,496	42.1	62.1	29.4
45	2	\$42,500	34.8	70.1	11.3
47	2	\$36,863	26.6	86.0	10.6
49	2	\$37,879	15.3	90.0	10.5

Source: U.S. Department of Commerce, Bureau of the Census. STF3A CD-ROM.

Table C8.4 Greenwich Village: Population by Race

Census Tract	Community Board	Persons	Whites		Blacks		Latinos		Asians		Other		
			#	%	#	%	#	%	#	%	#	%	
Greenwich Village	51	2	1,757	1,643	93.5	15	0.9	82	4.7	17	1.0	0	0.0
	53	2	320	254	79.4	38	11.9	28	8.8	0	0.0	0	0.0
	55.01	2	4,413	3,615	81.9	127	2.9	238	5.4	405	9.2	28	0.6
	55.02	2	2,156	1,705	79.1	119	5.5	178	8.3	122	5.7	32	1.5
	57	2	2,553	2,420	94.8	48	1.9	19	0.7	66	2.6	0	0.0
	59	2	5,964	5,313	89.1	150	2.5	174	2.9	327	5.5	0	0.0
	61	2	5,062	4,507	89.0	70	1.4	198	3.9	278	5.5	9	0.2
	63	2	6,755	6,168	91.3	123	1.8	204	3.0	203	3.0	57	0.8
	65	2	6,966	5,849	84.0	262	3.8	408	5.9	436	6.3	11	0.2
	67	2	5,774	5,094	88.2	126	2.2	347	6.0	189	3.3	18	0.3
	69	2	2,375	2,000	84.2	112	4.7	145	6.1	98	4.1	20	0.8
	71	2	6,241	5,311	85.1	290	4.6	419	6.7	164	2.6	57	0.9
	73	2	6,752	5,891	87.2	205	3.0	475	7.0	158	2.3	23	0.3
75	2	4,021	3,441	85.6	176	4.4	286	7.1	108	2.7	10	0.2	
77	2	6,343	5,409	85.3	249	3.9	489	7.7	186	2.9	10	0.2	
79	2	4,409	3,706	84.1	202	4.6	250	5.7	251	5.7	0	0.0	
Total		71,861	62,326	86.7	2,312	3.2	3,940	5.5	3,008	4.2	275	0.4	

Table C8.4 -- Continued -- Selected Household Indicators

Census Tract	Community Board	Total Households	Family Households		% Female-Headed Family Households	% Single Person Households
			#	%		
Greenwich Village						
51	2	1,092	327	29.9	11.6	58.8
53	2	200	53	26.5	11.3	54.0
55.01	2	2,514	1,017	40.5	11.7	44.9
55.02	2	925	328	35.5	13.4	41.6
57	2	1,457	521	35.8	9.8	50.9
59	2	3,387	1,013	29.0	9.7	60.3
61	2	2,387	652	29.9	7.1	58.2
63	2	4,349	1,182	27.2	12.3	61.9
65	2	3,581	957	26.7	19.5	56.3
67	2	3,786	881	23.3	16.7	61.8
69	2	1,088	391	35.9	9.5	34.8
71	2	3,638	858	23.6	15.5	62.1
73	2	4,582	909	19.8	15.3	64.4
75	2	2,419	617	25.5	11.8	51.9
77	2	4,203	866	20.6	14.1	66.1
79	2	2,592	690	26.6	17.8	57.5
Total		42,200	11,262	26.7	13.4	58.3

Table C8.4 -- Continued -- Selected Socioeconomic Indicators

Census Tract	Community Board	Median Household Income 1989	% Foreign Born	% High School Graduates 25 Years and Over	% Below Poverty
Greenwich Village					
51	2	\$46,687	16.4	89.0	7.2
53	2	\$46,202	29.4	78.3	0.0
55.01	2	\$52,803	25.0	96.9	9.1
55.02	2	\$46,957	24.3	85.2	20.3
57	2	\$56,606	9.8	97.0	7.7
59	2	\$48,134	12.8	96.4	7.9
61	2	\$51,369	13.0	97.6	10.1
63	2	\$49,295	12.5	96.9	6.6
65	2	\$32,765	17.0	89.2	13.8
67	2	\$33,149	15.6	89.9	11.8
69	2	\$78,504	15.7	91.3	11.4
71	2	\$45,470	12.9	92.4	6.7
73	2	\$34,007	11.5	91.8	8.5
75	2	\$55,401	11.0	94.9	5.8
77	2	\$41,135	11.3	93.3	10.8
79	2	\$47,226	17.0	93.4	4.3

Source: U.S. Department of Commerce, Bureau of the Census. STF3A CD-ROM. 1992.

Table C8.5 Lower East Side: Population by Race

Census Tract	Community Board	Persons	Whites		Blacks		Latinos		Asians		Other		
			#	%	#	%	#	%	#	%	#	%	
Lower East Side													
2.01	3	3,387	187	5.5	312	9.2	1,721	50.8	1,147	33.9	20	0.6	
2.02	3	7,915	2,403	30.4	1,025	13.0	3,363	42.5	1,109	14.0	15	0.2	
10.01	3	1,940	1,370	70.6	114	5.9	417	21.5	39	2.0	0	0.0	
10.02	3	7,706	258	3.3	1,417	18.4	5,758	74.7	223	2.9	50	0.6	
12	3	3,511	2,010	57.2	136	3.9	1,079	30.7	258	7.3	28	0.8	
14.01	3	3,130	2,703	86.4	78	2.5	303	9.7	36	1.2	10	0.3	
14.02	3	2,959	439	14.8	128	4.3	1,545	52.2	836	28.3	11	0.4	
20	3	6,110	120	2.0	961	15.7	4,929	80.7	93	1.5	7	0.1	
22.01	3	6,602	977	14.8	946	14.3	3,570	54.1	1,038	15.7	71	1.1	
22.02	3	1,242	402	32.4	163	13.1	637	51.3	40	3.2	0	0.0	
24	3	5,531	162	2.9	1,025	18.5	4,214	76.2	107	1.9	23	0.4	
26.01	3	2,634	423	16.1	231	8.8	1,669	63.4	298	11.3	13	0.5	
26.02	3	2,868	1,211	42.2	483	16.8	978	34.1	180	6.3	16	0.6	
28	3	6,827	1,944	28.5	932	13.7	3,140	46.0	714	10.5	97	1.4	
30.01	3	3,906	805	20.6	150	3.8	1,867	47.8	1,053	27.0	31	0.8	
30.02	3	2,868	1,653	57.6	195	6.8	732	25.5	269	9.4	19	0.7	
32	3	7,832	5,772	73.7	517	6.6	864	11.0	618	7.9	61	0.8	
34	3	6,235	3,567	57.2	440	7.1	1,811	29.0	390	6.3	27	0.4	
36.01	3	3,761	737	19.6	578	15.4	1,556	41.4	881	23.4	9	0.2	
36.02	3	2,449	1,602	65.4	381	15.6	251	10.2	157	6.4	58	2.4	
38	3	8,395	5,894	70.2	440	5.2	979	11.7	1,036	12.3	46	0.5	
40	3	8,504	6,035	71.0	360	4.2	1,075	12.6	1,001	11.8	33	0.4	
42	3	2,657	2,166	81.5	133	5.0	132	5.0	207	7.8	19	0.7	
Total		108,969	42,840	39.3	11,145	10.2	42,590	39.1	11,730	10.8	664	0.61	

Table C8.5 -- Continued -- Selected Household Indicators

Census Tract	Community Board	Total Households	Family Households #	% Family Households	% Female-Headed Family Households	% Single Person Households
Lower East Side						
2.01	3	998	820	82.2	39.1	14.4
2.02	3	3,411	1,978	58.0	36.7	40.1
10.01	3	951	534	56.2	10.5	40.5
10.02	3	2,436	1,811	74.3	38.5	23.6
12	3	1,619	882	54.5	26.2	42.6
14.01	3	1,661	814	49.0	17.6	48.2
14.02	3	1,195	652	54.6	36.2	38.5
20	3	1,866	1,477	79.2	64.9	18.9
22.01	3	2,439	1,551	63.6	37.6	29.6
22.02	3	509	149	29.3	48.3	42.2
24	3	1,796	1,440	80.2	58.0	17.9
26.01	3	1,052	613	58.3	45.4	33.8
26.02	3	1,372	467	34.0	38.5	46.9
28	3	2,880	1,402	48.7	43.4	42.2
30.01	3	1,539	694	45.1	32.0	37.9
30.02	3	1,632	455	27.9	27.9	56.6
32	3	4,448	1,383	31.1	23.0	55.8
34	3	3,482	967	27.8	31.6	55.2
36.01	3	1,046	637	60.9	40.3	29.4
36.02	3	1,093	283	25.9	25.4	55.0
38	3	5,065	1,204	23.8	22.9	59.9
40	3	4,573	1,030	22.5	21.7	59.8
42	3	1,463	334	22.8	13.8	60.6
Total		48,526	21,577	44.5	36.0	44.8

Table C8.5. -- Continued -- Selected Socioeconomic Indicators

Census Tract	Community Board	Median Household Income 1989	% Foreign Born	% High School Graduates 25 Years and Over	% Below Poverty
Lower East Side					
2.01	3	\$14,937	35.3	40.4	38.8
2.02	3	\$15,524	20.1	56.0	27.1
10.01	3	\$28,750	8.7	75.4	16.5
10.02	3	\$11,199	10.4	41.2	41.0
12	3	\$18,047	19.5	61.3	19.2
14.01	3	\$24,892	23.5	69.6	7.6
14.02	3	\$12,310	43.2	36.5	39.0
20	3	\$8,486	11.3	35.4	61.8
22.01	3	\$18,773	32.4	51.3	30.7
22.02	3	\$21,786	23.0	69.5	35.1
24	3	\$12,535	9.0	37.4	40.7
26.01	3	\$15,327	23.9	53.5	36.1
26.02	3	\$20,918	17.6	72.6	31.5
28	3	\$18,527	19.2	54.5	34.9
30.01	3	\$19,052	48.1	52.1	36.8
30.02	3	\$20,827	27.5	59.4	30.8
32	3	\$25,311	24.6	73.3	16.0
34	3	\$24,206	23.1	76.7	25.9
36.01	3	\$18,372	37.2	44.2	46.7
36.02	3	\$25,990	13.5	76.4	21.8
38	3	\$24,663	29.2	80.6	21.6
40	3	\$30,154	22.2	81.4	14.6
42	3	\$41,419	17.5	91.1	7.2

Source: U.S. Department of Commerce, Bureau of the Census. STF3A CD-ROM. 1992

Table C8.6. Chinatown: Population by Race

Community												
Census Tract	Board	Persons	Whites		Blacks		Latinos		Asians		Other	
			#	%	#	%	#	%	#	%	#	%
Chinatown												
6	3	11,996	798	6.7	1,051	8.8	3,188	26.6	6,923	57.7	36	0.3
8	3	9,952	1,731	17.4	30	0.3	286	2.9	7,905	79.4	0	0.0
16	3	8,709	589	6.8	87	1.0	435	5.0	7,598	87.2	0	0.0
18	3	9,247	649	7.0	179	1.9	2,041	22.1	6,378	69.0	0	0.0
25	3	6,070	220	3.6	1,021	16.8	2,691	44.3	2,126	35.0	12	0.2
27	3	1,344	584	43.5	118	8.8	18	1.3	624	46.4	0	0.0
29 (partial)	3	5,484	374	6.8	23	0.4	0	0.0	5,087	92.8	0	0.0
41	2	8,641	1,675	19.4	54	0.6	323	3.7	6,556	75.9	33	0.4
Total		61,443	6,620	10.8	2,563	4.2	8,982	14.6	43,197	70.3	81	0.1

Table C8.6 -- Continued -- Selected Household Indicators

Census Tract	Community Board	Total Households	Family Households		% Female-Headed Family Households	% Single Person Households
			#	%		
Chinatown						
6	3	3,736	2,670	71.5	27.9	24.9
8	3	3,453	2,401	69.5	14.2	27.7
16	3	2,650	1,985	74.9	13.5	20.6
18	3	2,666	1,883	70.6	17.7	23.3
25	3	1,872	1,364	72.9	44.6	26.4
27	3	616	328	53.2	16.8	41.6
29 (partial)	3	2,110	1,342	63.6	15.4	32.1
41	2	3,184	2,002	62.9	14.6	31.7
Total		20,287	13,975	68.9	18.3	22.1

Table C8.6 -- Continued -- Selected Socioeconomic Indicators

Census Tract	Community Board	Median Household Income 1989	% Foreign Born	% High School Graduates 25 Years and Over	% Below Poverty
Chinatown					
6	3	\$14,024	54.6	35.8	32.3
8	3	\$18,851	68.7	37.4	22.4
16	3	\$19,482	71.5	38.8	19.2
18	3	\$19,707	71.2	31.8	25.1
25	3	\$11,546	29.9	30.3	40.9
27	3	\$26,513	40.4	61.8	9.5
29 (partial)	3	\$18,225	68.1	41.6	23.3
41	2	\$16,810	68.5	32.5	24.0

Source: U.S. Department of Commerce, Bureau of the Census. STF3A CD-ROM, 1992.

Table C8.7 Lower Manhattan Neighborhood Profiles

	Financial District	Tribeca/Soho	Greenwich Village	Lower East Side	Chinatown
PERSONS	13,477	19,164	74,710	108,969	61,443
FAMILIES	2,408	3,897	12,107	21,970	13,994
HOUSEHOLDS	6,572	9,976	43,017	48,479	20,237
RACE					
White	66.6	83.8	84.0	39.3	10.8
Black	11.0	4.7	3.1	10.2	4.2
Latino	9.1	4.0	6.4	39.1	14.6
Asian	13.2	6.8	6.2	10.8	70.3
Other	0.1	0.6	0.4	0.6	0.1
LANGUAGE					
Non-English Speaking Persons Age 5 and Over	12.1	7.0	6.4	26.4	58.7
CITIZENSHIP					
Non-citizens	15.3	10.3	9.0	13.0	36.5
INCOME					
Mean Household Income	\$79,304	\$72,806	\$66,758	\$28,193	\$24,232
Households With Public Assistance Income	2.2	2.6	2.2	17.9	14.4
POVERTY					
Persons Below the Poverty Level	10.2	9.3	10.6	30.0	26.1
Families Below the Poverty Level	4.4	2.7	4.8	26.9	22.4
EDUCATION					
Persons Over 25/Less Than High School	12.9	11.3	8.5	37.9	64.3
LABOR FORCE PARTICIPATION					
Male Over/Labor Force Participation Rate	65.3	82.6	80.7	67.2	64.8
Female Over/Labor Force Participation Rate	67.2	74.4	71.2	51.6	53.7
Unemployment Rate	5.9	4.6	5	10.3	7.9
EMPLOYMENT IN SELECTED INDUSTRIES					
Finance, Insurance, Real Estate	29.3	10.2	13.1	9.6	6.7
Professional and Related Services	31.2	36.2	37.6	29.1	12.3
Retail, Entertainment, Recreational Services	3.4	10.9	8.6	8.2	4.1
Manufacturing	6.9	11.0	10.6	14.1	30.9
EMPLOYMENT IN SELECTED OCCUPATIONS					
Executive, Administrative, Managerial	29.9	18.2	20.4	11.4	7.3
Professional Specialty	27.5	46.2	41.5	23.5	7.7
Administrative Support, including Clerical	15.7	10.4	12.2	18.7	12.4
Service	4.5	6.7	6.6	17.1	25.0
Precision Production, Machine Operators, Material Movers, Handlers	3.8	7.1	5.4	17.9	38.1

Source: U.S. Department of Commerce, Bureau of the Census. STF3A CD-ROM. 1992.

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