

FORUM

A Note on the Unionization of Professionals From the Perspective of Organization Theory*

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*In an earlier issue of the Journal, Professor Suntrup criticized the Supreme Court's decision in *NLRB v. Yeshiva University*. Basing his argument on a series of models of educational institution decision making derived from organization theory, Suntrup concluded that the Court ought to establish collective bargaining rights for faculty members at institutions characterized by particular types of decision-making structures. Responding to Suntrup, Professor Mintzberg draws on organization theory to demonstrate that increased faculty unionization would serve only to exacerbate the problems in educational institutions which discouraged faculty members attempt to solve through unionization.*

This note is written by an organization theorist concerned about recent trends toward the unionization of professionals, particularly the faculty of universities.¹ It draws on organization theory to investigate the issue, extending some of the arguments before the United States Supreme Court in *NLRB v. Yeshiva University*,² as well as some that

* The arguments in this paper are based on concepts discussed in the author's book *POWER IN AND AROUND ORGANIZATIONS* (1983). Appreciation is expressed to Francis Bairstow for her comments and to Janet Rose for her help.

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1. The author's university is the only university in Quebec to resist these trends, and has been under considerable pressure as a result. Its faculty association, a loose grouping of most of its professors as well as many of its professional administrators, was recently taken to labor court by the McGill Faculty Union, a small group of professors which has for years been trying unsuccessfully to organize the faculty. The Union contended that administrative involvement in the association—through the posts held by administrators as well as various financial benefits in the form of low rent and mailing privileges, etc.—rendered the association a house union, which is illegal in Quebec. This was rejected by the court on the grounds that the association was not of the type envisaged in the Labor Code. *Fenichel v. McGill Ass'n of University Teachers*, No. 500-28-000462-788 (Tribunal du Travail, District de Montreal, Apr. 27, 1981).

2. 444 U.S. 672 (1980).

have appeared in the recent literature.³ The concern here, however, is not with questions of legality, but with those of effectiveness.

This note advances two points. First, unionization in an organization of professionals typically reflects either administrative excess or professional weakness, or both. Second, such unionization, no matter what the cause, generally serves to reduce the effectiveness of the organization—to hamper its ability to serve its clients. Thus, even when unionization appears to be justified by existing dysfunctions in the professional organization, it serves to intensify those dysfunctions.

DECISION-MAKING IN PROFESSIONAL BUREAUCRACY

For our purposes, a professional is an individual who has mastered a complex but established body of knowledge and/or skills, through extensive formal training typically followed by some form of on-the-job apprenticeship. The complexity of the work, and the resulting difficulty of developing suitable performance measures for it, means that the work can be neither directly supervised by administrators nor effectively regulated by standards designed within the organization's techno-structure or in an outside government agency. If their work is to be effective, the professionals themselves, backed up by professional associations, must exercise the greatest degree of control over their own work.

In a previous publication written to synthesize the research on organizational structure,⁴ the author described two "ideal types" of organizations dependent on professionals to accomplish their missions. In an organization characterized by an overriding need to innovate, the professionals must combine their expertise by working in small groups or project teams. This type of organization was labelled "Adhocracy" and was found to be typical of creative film companies, think-tank consulting firms, and manufacturers of engineering prototypes.⁵ Unionization does not appear to be a major issue in this type of professional organization. Rather, the issue arises in the second type, called "Professional Bureaucracy."

In Professional Bureaucracy, the professionals are oriented less toward innovating than toward applying standard, albeit complex, bodies of skills and knowledge to known contingencies. Social work agencies, educational institutions and, perhaps, hospitals are examples of this. These standard skills and knowledge result from outside professional

3. See e.g., Suntrup, *NLRB v. Yeshiva University and Unionization in Higher Education*, 4 INDUS. REL. L.J. 287 (1981).

4. H. MINTZBERG, *THE STRUCTURING OF ORGANIZATIONS* (1979).

5. *Id.* at 431-65.

training, and enable individual professionals to work largely on their own, free of administrative and, to some extent, peer controls.

There are two reasons for this. First, standardization helps to separate the work of different professionals. By categorizing the needs of each client in terms of given contingencies, the organization can assign clients to individual professionals or sequences of professionals for the application of appropriate programs. Thus, as the student in need of an industrial relations course is assigned to the relevant instructor, so the patient with appendicitis is assigned to the appropriate surgeon.

Second, much of the coordination that remains necessary can be effected directly, through the standardization of skills and knowledge, with professionals responding automatically to each other's actions. Thus, Gosselin observed a five-hour open heart operation in which the surgeon and anesthesiologist exchanged hardly a single word.⁶

In an effectively functioning Professional Bureaucracy, the professionals by working independently exercise a great deal of *individual* control over their own work, over the choice and the application of their particular bodies of skills and knowledge, within the confines of their professional standards. Other types of choices, requiring more extensive forms of coordination, must be made at an administrative level, independently of the conduct of the professional work. These include, for example, the selection of market domains, the allocation of resources, the hiring of new professionals and the promotion of existing ones. But because the control of the former, with which the latter, administrative ones are inextricably linked, rests with individual professionals, and because much of the organization's essential knowledge also rests with these professionals, they cannot be excluded from the administrative decision-making processes.

Their inclusion is usually accomplished in two ways. First, certain administrative decisions are put under the direct control of committees of operating professionals; these professionals are effectively lent to the administrative structure from their operating work for a few hours at a time. Second, administrative posts are filled with professionals, in effect lending them to the administrative structure for years, so that other administrative decisions at least come under the influence of people with requisite knowledge (if not necessarily the requisite administrative skills). Through these two mechanisms, the Professional Bureaucracy achieves what is known as collegiality—"bottom up," or at least consensual, or negotiated decision-making, with a certain integration of effort and thought between those working in the operating core of the

6. R. Gosselin, *A Study of the Interdependence of Medical Specialists in Quebec Teaching Hospitals* (1978) (unpublished Ph.D. thesis, available at McGill University Library).

organization and those serving in its administrative apparatus. Such an integration stands in sharp contrast to the "top down," hierarchical structure of more conventional organizations, which we call "Machine Bureaucracies," organizations traditionally prone to unionize. Here the operating tasks are simple, the knowledge level in the operating core low, the need for very tight integration among the operating tasks paramount (as in the automobile assembly line), and hence the requirement for direct technocratic controls high.⁷

In the most important case to date concerning unionization in Professional Bureaucracy, at least in the private university, the Supreme Court blocked a unionization attempt by the faculty of Yeshiva University.⁸ The Court held that "the faculty [were] endowed with 'managerial status' sufficient to remove them from the coverage of the [National Labor Relations] act."⁹ What the Court meant by "managerial status" was "the extensive control of the faculty over academic and personnel decisions as well as the 'crucial role of the full-time faculty in determining other central policies of the institution.'"¹⁰ The Court's point was that because decisions typically made by administrators (at least in the more conventional Machine Bureaucracy) were here controlled by professionals, the latter had to be viewed in some sense as administrators or managers. Accordingly, the faculty was excluded from the coverage of the National Labor Relations Act.¹¹

This analysis would seem to be accurate only with respect to those decisions made by operating professionals seconded to the administrative apparatus. From the perspective of organization theory, a reverse analysis would be more accurate for other important decisions: many decisions that are administrative in other organizations are operational in the professional organizations, because of the reduced need for central coordination. The workers are able to function largely on their own, with much of the necessary coordination effected through the standardization of their skills and knowledge. While the professionals do sometimes act as administrators, most of the time they act as workers—but workers who must have individual control over their own work. This is a crucial distinction: while the former analysis precluded unionization in *Yeshiva*, it left the door open to unionization in other professional organizations. Indeed, it may have swung it open. It is the second analysis that suggests why that door should be slammed shut.

7. Of course, since many of the support functions in Professional Bureaucracies match these characteristics, they too are administered in this way, giving rise to a separate, top-down hierarchy in sharp contrast to the professional component.

8. NLRB v. Yeshiva Univ., 444 U.S. 672 (1980).

9. *Id.* at 682, quoting Palace Laundry Dry Cleaning Corp., 75 N.L.R.B. 320, 323 n.4 (1947).

10. *Id.* at 679.

11. 29 U.S.C. §§ 151-169 (1976).

PATHOLOGY IN PROFESSIONAL BUREAUCRACY

As decision-making in the ideal type Professional Bureaucracy has just been described, one could interpret the *Yeshiva* decision as holding that the faculty of this university could not unionize because their institution was functioning as a Professional Bureaucracy should. Of course, the justices in the majority did not quite say that; they claimed only that the institution was functioning in a way (namely as a Professional Bureaucracy) that removed it from the coverage of the National Labor Relations Act. Either way, however, an important implication of the decision is that unionization would have been acceptable if the organization had not been functioning as a Professional Bureaucracy, i.e., if the administrators had somehow been able to deny the operating professionals control over the various decisions they did in fact make. In short, the introduction of what we would call dysfunctional administrative procedures would have justified unionization.

The implication has not been lost on those who favor unionization of the universities. Julius Getman, General Counsel for the American Association of University Professors, responded to the ruling by calling for another test case, presenting a situation in which the faculty seeking unionization have little power: "We must establish a body of facts and legal theory to enable the Supreme Court to reconsider the issues in a more *favorable* climate than *Yeshiva*."¹² By a "favorable" climate, Getman means one in which the power of the faculty has been preempted by the administrators. Find some organizational pathology, Getman seems to be saying, and unionization will be secure. "Favorable" for unionization, to be sure. But "favorable" for the faculty or for the students, their clients?

SOURCES OF PATHOLOGY

Unionization means collective exercise of the power of the workers, normally through representatives who negotiate on issues of common interest with representatives of the organization's administration. Professionals seem most often inclined to unionize—as do less highly trained workers—when they feel powerless as individuals vis-a-vis an administration. Thus, Joel Douglas, Director of the National Center for the Study of Collective Bargaining in Higher Education at Baruch College (CUNY), notes that "in those cases where academic senates have been long established and perceived as powerful, . . . the likelihood of a union on campus is diminished."¹³ The justices who dis-

12. Watkins, *Faculty Unions Seek Strategy to Combat Yeshiva Ruling*, THE CHRONICLE OF HIGHER EDUCATION, May 11, 1981, at 7 (emphasis added).

13. Douglas, *The Impact of Collective Bargaining on Governance*, PUBLIC EMPLOYEES RELATIONS SERVICES BULLETIN, January-February 1979, at 3-6.

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sented in *Yeshiva* also associated the trend toward faculty unionization with "the erosion of the faculty's role in the institution's decisionmaking process."¹⁴

My contention is that professionals tend to unionize when their organization is not functioning as a Professional Bureaucracy, and this occurs when a wedge has been driven between the operating core and the administrative apparatus—between the carrying out of the basic work and the control of it. The professionals choose to vent their frustration collectively. They combine forces, across their different bodies of specialization, much as do less skilled workers when they form industrial unions.

Government actions are frequently at the root of such dysfunction. Pressures to economize and to control professional work in public institutions such as schools, universities, social work agencies, etc., bring in technocratic controls—job descriptions, rules and regulations, performance standards and others. These controls remove power over certain aspects of operating as well as administrative work from professionals and put it instead into the hands of administrators, especially analysts—accountants, planners, work study engineers, etc.—whether in the organization's own technostucture or that of the government. That is perhaps why Garbarino finds that "seven of every eight [faculty] persons represented [by a union] are found in public institutions."¹⁵ Of course, the pressures need not come from government. Ambitious administrators who prefer to run things in the ways of conventional bureaucracy can engage in a "top-down" imposition of technocratic standards as well.

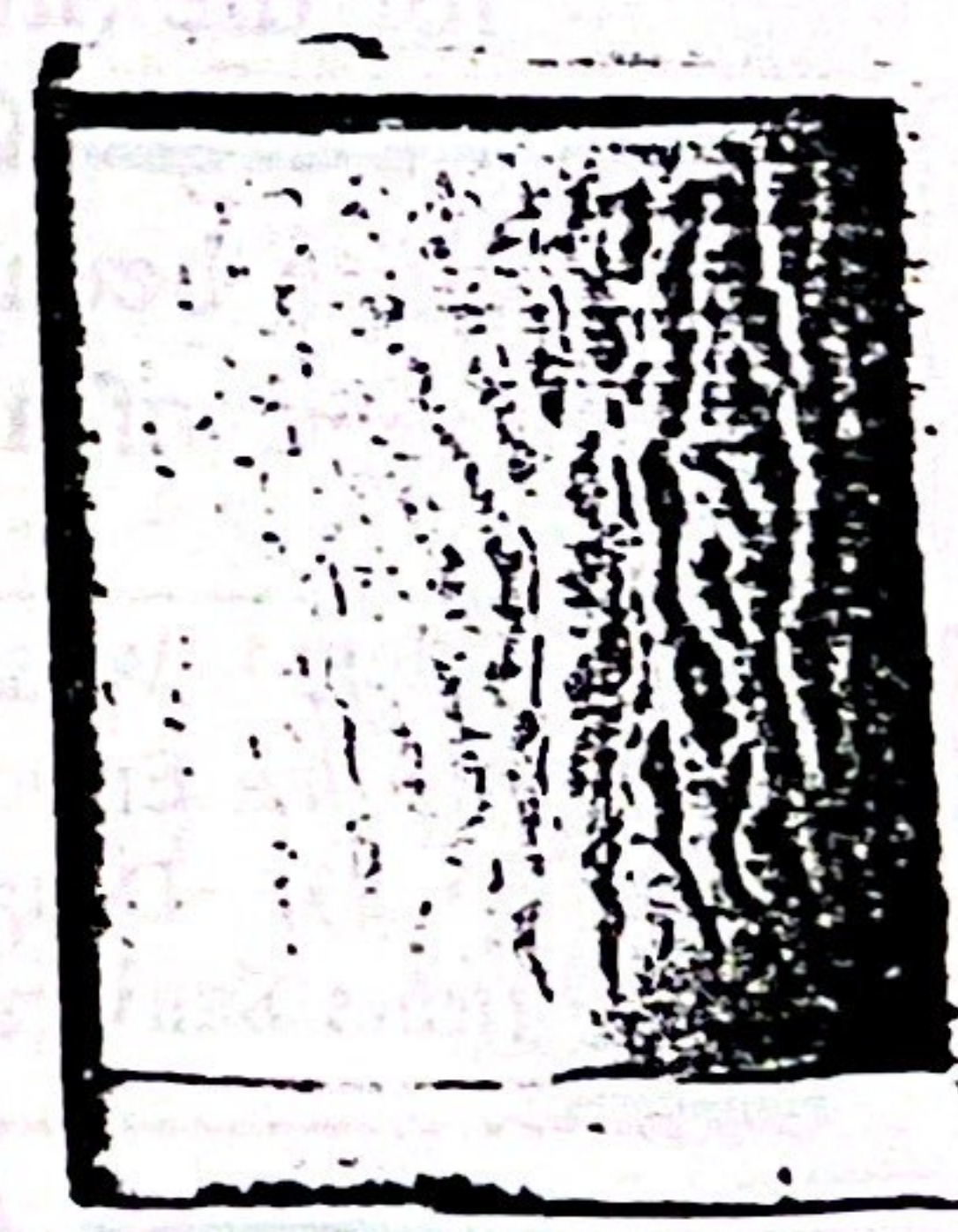
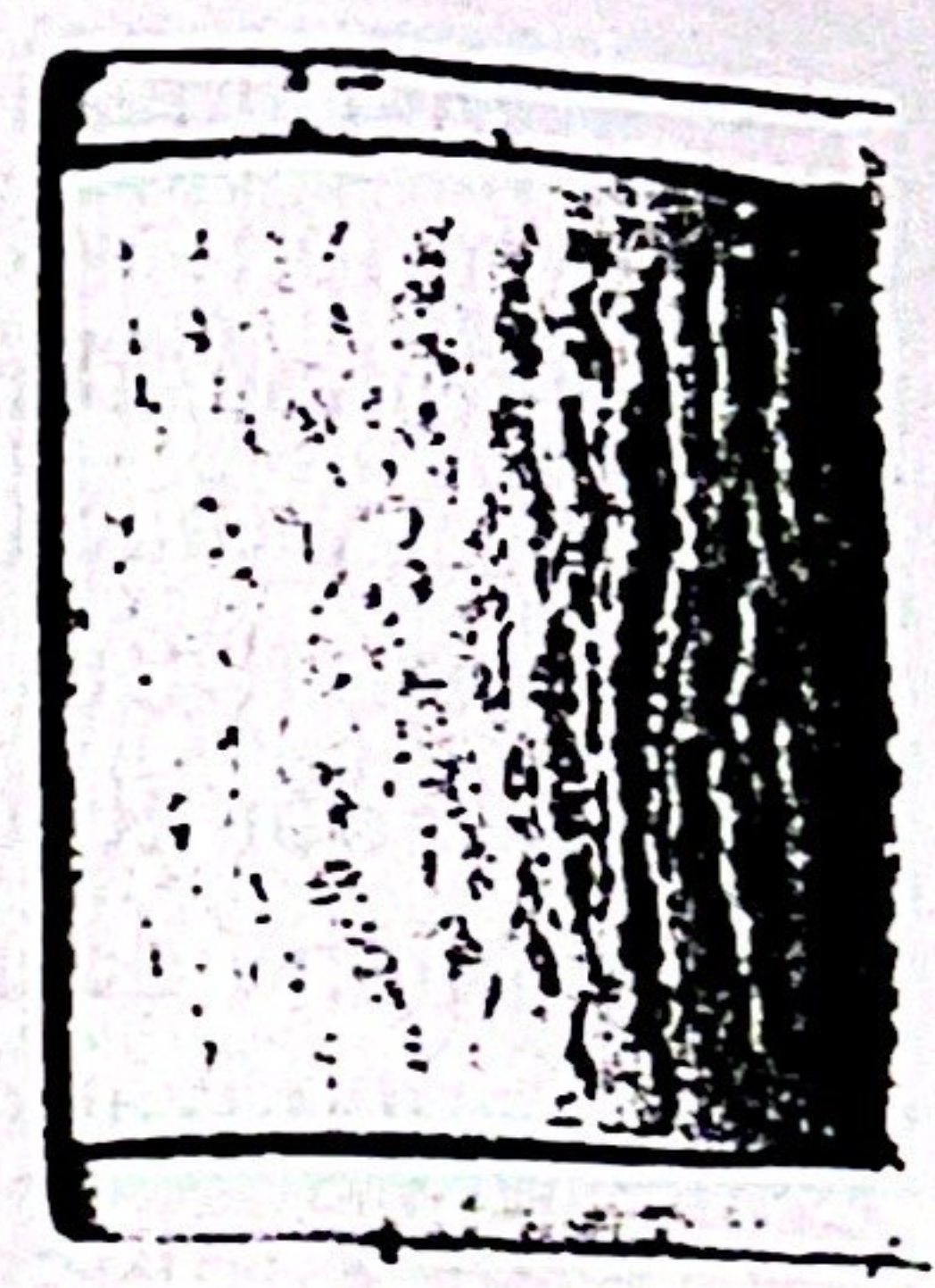
Unionization need not result only from dysfunctional administrative forces at work in the professional organization. It may also arise from weak initial expertise. The strongest professional organizations have not generally been the ones to unionize. "At Ivy League institutions, as well as at other prestigious institutions, collective bargaining has not gained acceptance . . ."¹⁶ Even in those states with laws supporting the unionization of faculty, the few institutions that have not been organized "include most of the largest and most prestigious schools" in those states.¹⁷

14. 444 U.S. at 703 (Brennan, J., dissenting).

15. Garbarino, *Faculty Unionization: The Pre-Yeshiva Years, 1966-1979*, 19 INDUS. REL. at 221, 229 (1980).

16. Douglas, *supra* note 12, at 3. See also Cameron, *The Relationship Between Unionism and Organizational Effectiveness*, 25 ACAD. OF MGMT. J. 6 (1982).

17. Garbarino, *supra* note 14, at 229. Suntrup cites evidence that those few "high quality, research-oriented institutions" that did unionize tended to do so either because of "accidental" factors (because they were branches of state university systems that did) or because collegiality was breaking down, a conclusion discussed by the dissenting justices in *Yeshiva*. Suntrup, *supra* note 3, at 304-05. The latter may have been true of *Yeshiva*, but not to the point of convincing five



At the limit, the weakest professionals may favor unionization to protect themselves from the expectations of not only clients and administrators, but also of their own stronger colleagues. They may try to use collective power to conceal the fact that they cannot justify true professional autonomy or achieve any real form of collegiality. Autonomy and collegiality are based on the ability of the individual professional to handle complex work. In the absence of that ability, there is a tendency to base power on political factors rather than on those of expertise. While the competent professional maintains status by virtue of his or her technical knowledge and skills, the incompetent one tries to hang on to his or her position through the exploitation of contacts and political skill (or collective influence).¹⁸

In fact, in many cases we should expect to find unionization resulting from a vicious circle of administrative excess and professional weakness. Administrative excess reduces professional competence by driving out competent professionals or at least by discouraging the ones who remain. This encourages callousness and political activity on the part of the professionals, which together with reduced competence justifies increased administrative control. The case for such control thus becomes a self-fulfilling one.

This conclusion appears to be supported in the third of Suntrup's three models of university structure in his article analyzing *Yeshiva*.¹⁹ Model I, characteristic of "large, high-quality, research-oriented institutions," seems much like our Professional Bureaucracy ideal type, and is not prone to unionize. Model II, common in "small, teaching-oriented institutions," has firm administrative control and appears to be somewhat akin to what we have called Machine Bureaucracy; it does tend to unionize. Model III, "including many private schools and regional branches of state systems," has a dual system of top-down hierarchical power coupled with bottom-up professional influence and is "characterized by decision-making conflict."²⁰ It also tends to unionize. As I have argued elsewhere,²¹ hybrid configurations of power—in this case of Machine and Professional Bureaucracy, of administrative

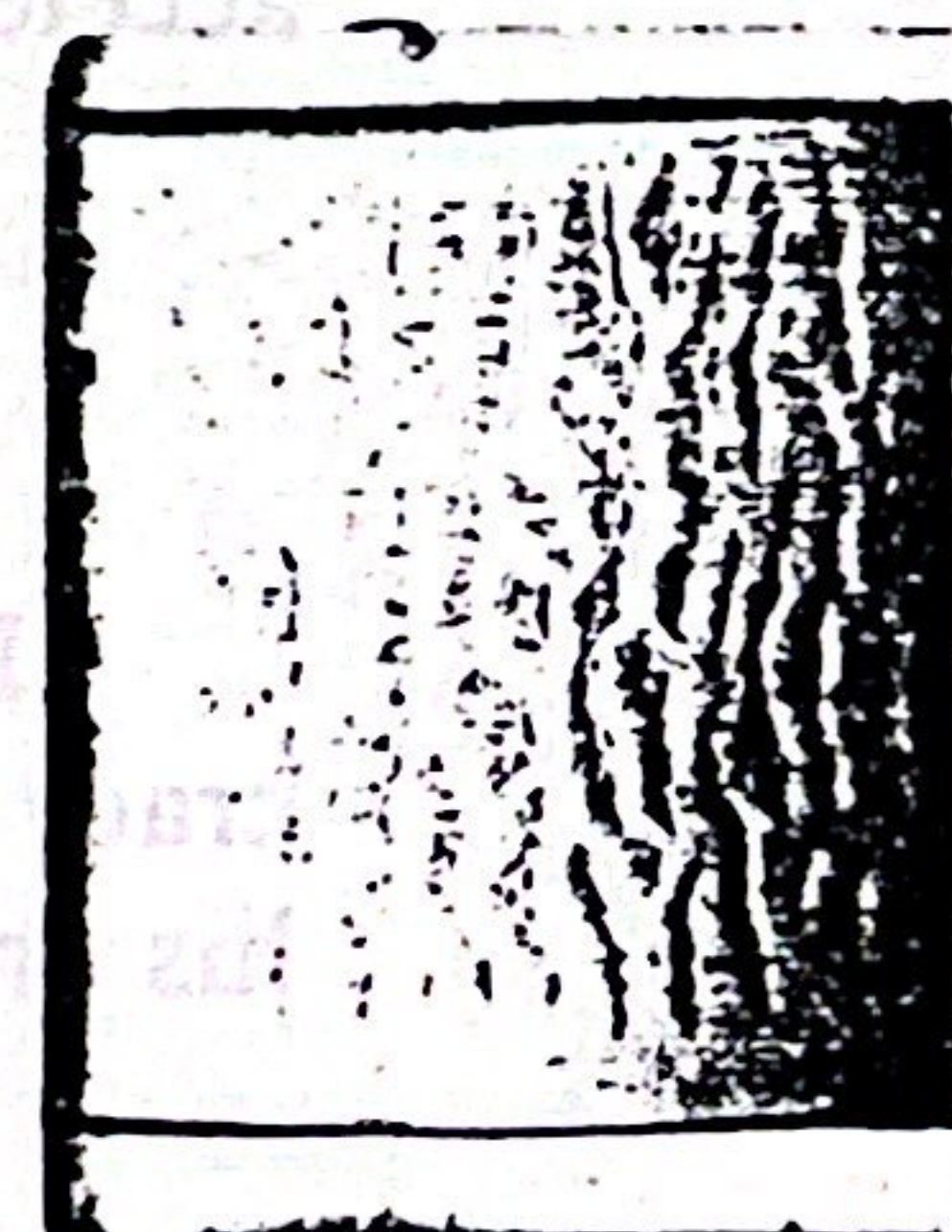
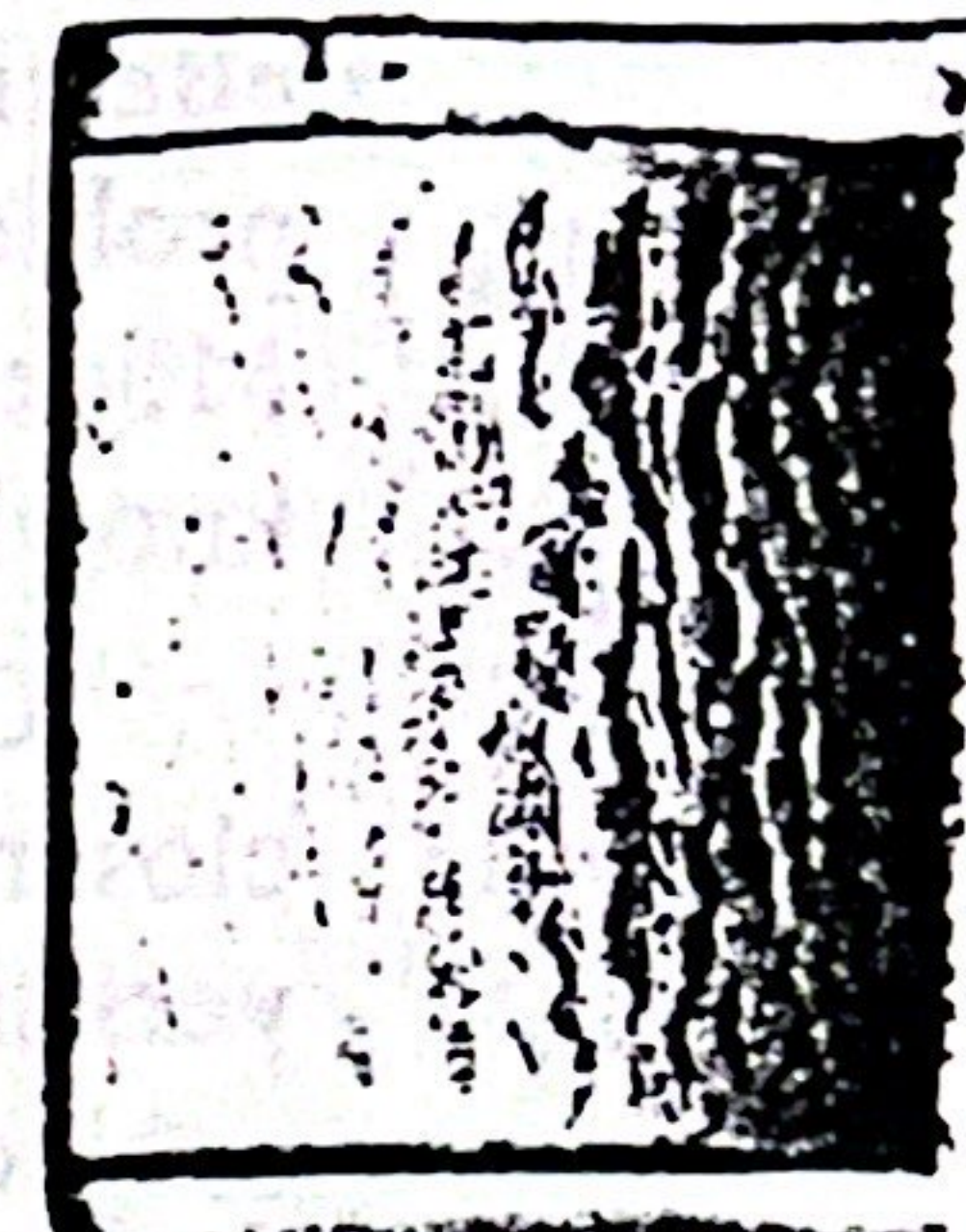
of the nine justices that there was insufficient collegiality in the university. The irony of the *Yeshiva* facts is that they are so atypical—a high quality, collegial institution whose professors wished to unionize. *Yeshiva* sets the precedent which may block unionization in the more typical case of a low quality institution with little collegiality. Had the typical case come up first, the Supreme Court, by its own reasoning, would have had to come to the opposite judgment, and to open the doors directly to the unionization of private universities.

18. It can, of course, also be the case that younger professionals who are competent technically but weak politically may turn to unionization to counter the power of an old guard network of their more established colleagues.

19. Suntrup, *supra* note 3, at 300.

20. *Id.* at 299.

21. H. MINTZBERG, POWER IN AND AROUND ORGANIZATIONS 303-06, 456-59 (1983).



and professional influence—tend to generate greater levels of conflict than ones closer to an ideal type, in which one system of influence dominates. When work is truly professional, neither conflict of this sort nor—for reasons earlier presented—technocratic controls enhance the effectiveness of the operating professionals. They only aggravate the problem. Thus, not only is Model III dysfunctional, but so too is Model II (assuming a certain level of complexity in the requisite knowledge and skills).

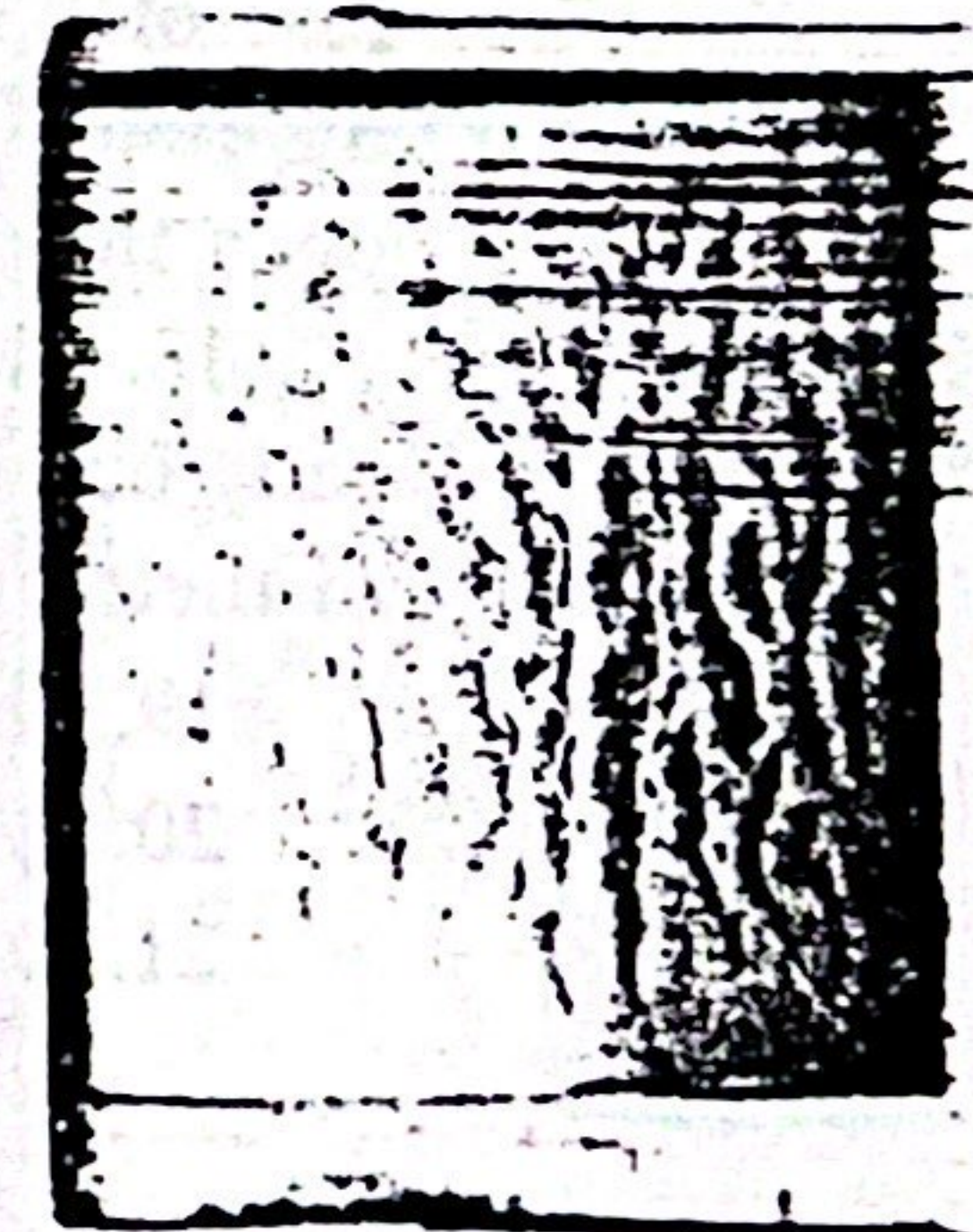
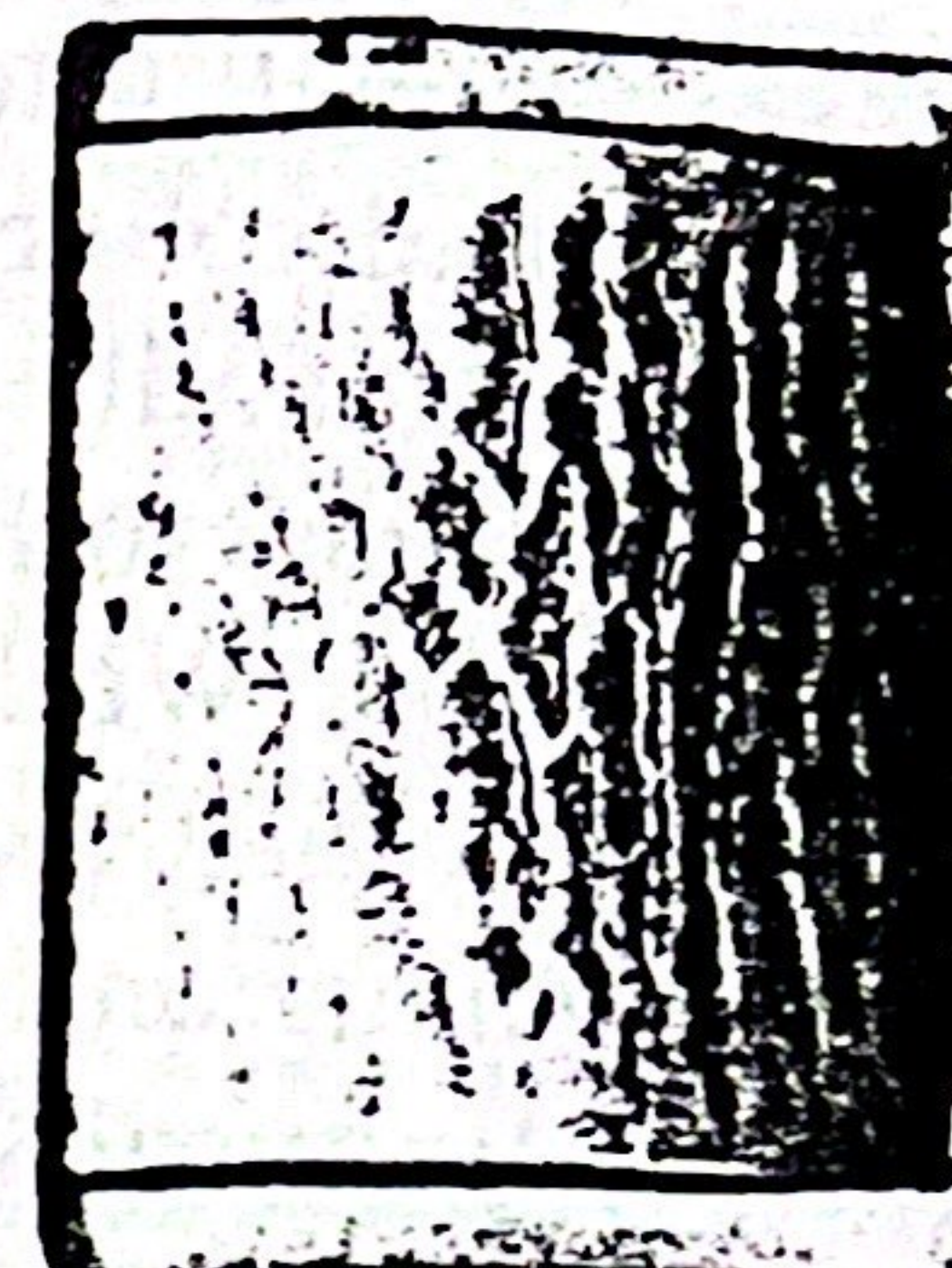
Consider, for example, the case of public school systems, probably closer to Model II than the small, teaching-oriented colleges and universities cited by Suntrup. Probably no group of professionals has been subjected to more technocratic control, nor has any been more prone to unionize. These controls reflect a number of factors—the sensitivity of parents to what their children are taught (especially with regard to political and sexual issues), the high total cost of education, the absence of technical mystique, the zeal of certain politicians, the callousness of certain teachers, perceptions of declining standards of education, and so on. So rules are piled on rules. Yet true education remains, as someone so aptly put it, a teacher and a pupil on a log—the process, when it works well, simply brings a competent professional face-to-face with a receptive client. The quality of the teaching depends on the capability of the professional, which depends primarily on only two factors—native ability and training. It does not depend upon rules, plans or externally imposed standards of any kind. The role of the institution is to facilitate the exchange between professional and client, not to interfere with it. All the standards conceivable cannot make an incompetent teacher competent or a callous one responsible. They, however, discourage the competent, responsible teacher, and turn him or her to unionization.

Thus, we have a vicious circle of dysfunction, whether brought on by government or locally-inspired administrative excess, by professional weakness, or both. Bottom-up, collegial Professional Bureaucracies are progressively transformed through increasing technocratic controls and administrative centralization into top-down, hierarchical Machine Bureaucracies. The response of the professionals is to turn to unionization. Rather than arresting the circle, however, unionization accelerates it.

COLLECTIVE VS. INDIVIDUAL RESPONSIBILITY

The key to the effective functioning of the Professional Bureaucracy is *individual* responsibility—the dedication of the professional to his or her client. Individual responsibility is often based on a personal

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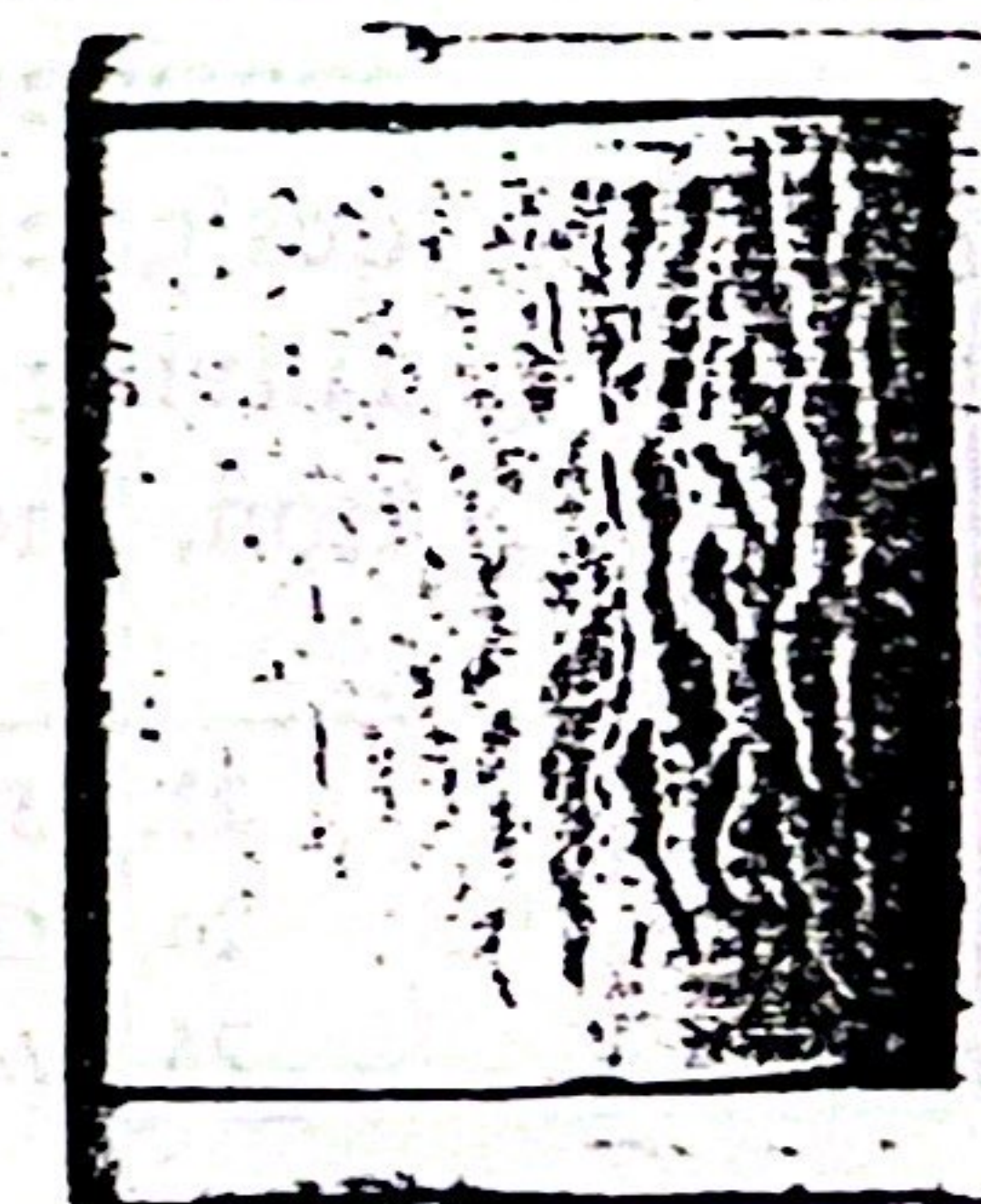
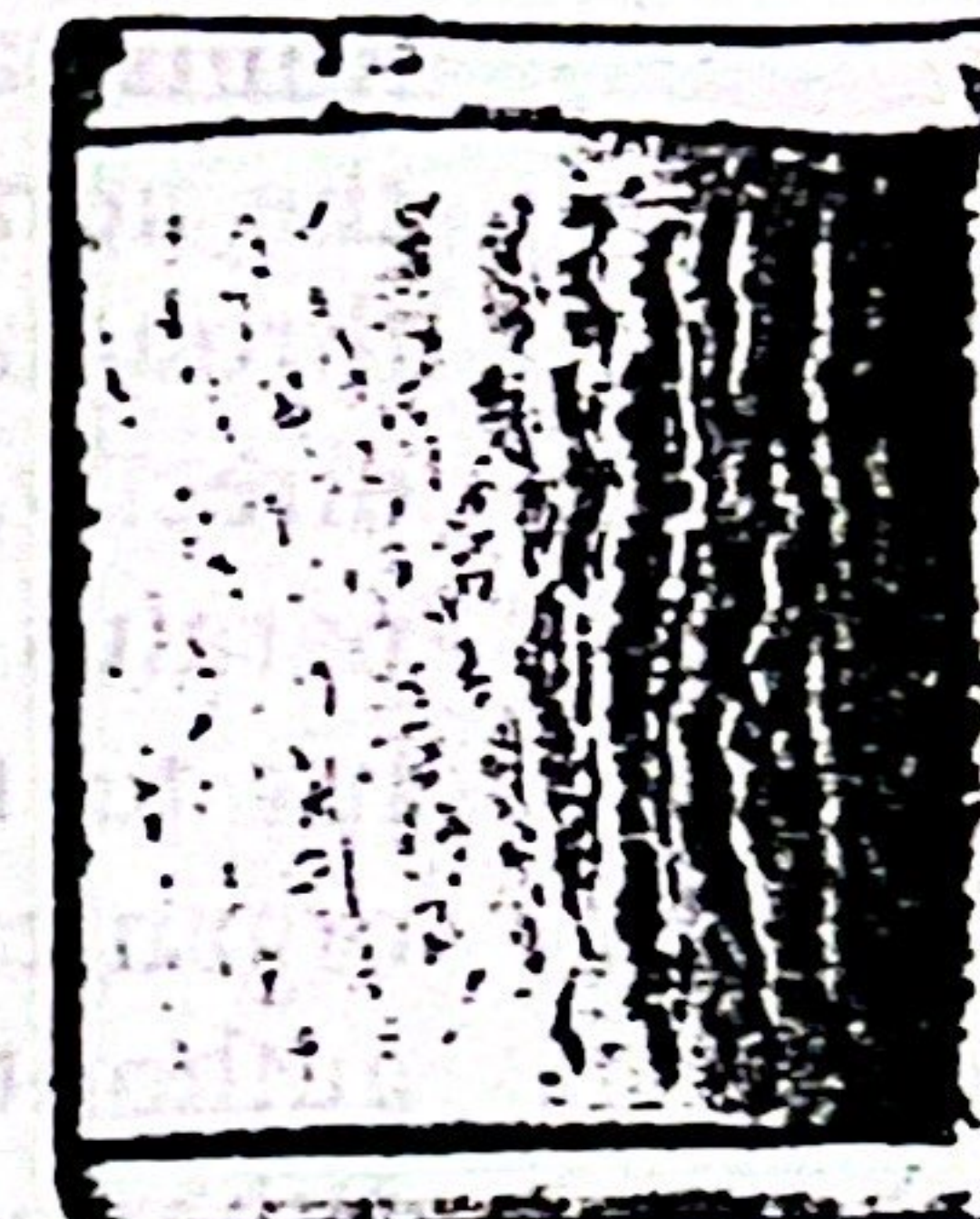
working relationship between the professional and the client; e.g., the teacher with the students, the physician with the patient.

A subtle but crucial point must be stressed here. Professional Bureaucracy is a highly decentralized structure, in which the professionals in the operating core hold a good deal of the power. That power, however, is not dispersed to the collectivity of professionals: they do not make decisions together.²² Instead, power is dispersed primarily to individual professionals, to make specific decisions that concern their own work, and secondarily to small groups and departments of professionals to lobby their colleagues within the administrative structure on broader issues. Thus, while professionals hold the reins of power in a Professional Bureaucracy, they do not do so as a homogeneous collectivity. These organizations typically house all kinds of professionals, each with their own needs and interests, organized into systems of departments. On the operating level, individual professionals are left largely on their own, to apply their basic knowledge and skills with considerable discretion. On the administrative level, they vie with each other—sometimes directly, on committees, sometimes through their administrative representatives—to make decisions. Unlike decision-making at the operating level which, assuming competence, is based on expertise, decision-making at the administrative level is a complex maze of negotiation and persuasion—largely political activity. This is as it should be, since the only real alternative is a top-down hierarchy of authority that imposes decisions on the professionals.

Unionization, by blurring professional and departmental differences, and by its potential to undermine *individual* control of work, can seriously damage professional autonomy and individual responsibility—characteristics essential to the effective functioning of Professional Bureaucracies. Collective responsibility can never replace individual responsibility if a Professional Bureaucracy is to operate effectively.

Unionization can also damage a second characteristic critical to the effective functioning of the Professional Bureaucracy—collegiality, specifically, the integration of the thought and effort of people working in the operating core and those (often the same ones) serving in the administrative apparatus. Unionization assumes a conflict of interest between the two. In taking an us-them attitude, proponents of faculty unionization view administrators as authority figures or “bosses,” instead of as colleagues. The result is that unionization either drives a wedge between operating professionals and administrators or drives an

22. This point is made notwithstanding the conclusion of the dissenting Supreme Court justices that “the faculty’s influence is exercised collectively—and only collectively. . . .” 444 U.S. at 705-06 n.19 (Brennan, J., dissenting).



existing wedge deeper.²³ The organization is driven away from Suntrup's collegial Model I ostensibly toward his conflictive Model III.

Unionization not only drives a wedge between operations and administration, more significantly it takes professional influence out of the administrative structure. Unionized professionals act collectively through their representatives, who negotiate with senior administrators directly, independent of the organization's usual decision-making apparatus. The effect of this, ironically, is to cede control of that apparatus to the senior administrators, thereby centralizing power in the organization. It is thus not the conflictive Model III that results but the authoritarian Model II, not the hybrid but the pure top-down structure. Other administrators, such as department chairs, as well as individual operating professionals—key players when collegiality is strong—are bypassed in the play of power between union representative and senior administrator.

Thus, Garbarino notes that "[t]he Court's account of faculty power at Yeshiva may lead some administrators to conclude that they would prefer to have their faculty unionized than to permit them to exercise the degree of authority claimed for the Yeshiva faculty."²⁴ Combining this with Getman's description of the "favorable" climate for unionization leads to an obvious conclusion. Senior administrators hungry for power and union representatives concerned with support may be inclined to form tacit alliances with each other, against the competent professionals. Once the wedge is driven in and held fast by administrators and union representatives reinforcing their complimentary tendencies through collective bargaining, the likelihood of removing it seems remote: "[t]hus far, [academic] institutions once unionized have maintained their status."²⁵ Hence, unionization contributes to the vicious circle, indeed accelerates it.

Acting externally in this way, the union seeks to impose specific constraints on the organization on behalf of its membership-at-large. These members, however, have few professional needs in common beyond the basic ones that the union cannot meet: individual control of work and the exercise of small group control over many administrative decisions. Aside from these, or more exactly within their context, on most of the issues of greatest concern to professionals, interests vary considerably and are frequently in conflict. The union, however, is not designed to deal with the conflicting interests of the professionals. Having to present a united front in its negotiations with the administration, the union must deny these differences and focus instead on the

23. See Cameron, *supra* note 15, at 13.

24. Garbarino, *supra* note 14, at 228.

25. *Id.* at 224.

uniformities. This tends to result in an emphasis, not on professional issues, but on remuneration in its various forms. Thus, while unionization may sometimes benefit the professionals on this one set of issues, it costs them dearly on many others, such as quality of work and control over it. Moreover, it is the competent and responsible professional who pays most dearly. In short, the assumption of the collective interest of the professionals vis-a-vis the administration, the very basis of unionization, is a fallacy in the Professional Bureaucracy.

Finally, the constraints that the union succeeds in imposing on the administration amount to standards, in the form of rules and regulations for the entire organization. In other words, even though ostensibly imposed on behalf of the professionals, the constraints by their very nature serve to formalize the structure, displacing professional standards by essentially technocratic ones, and loose administrative arrangements by rigid ones.²⁶ Professional expertise is weakened in favor of the formal authority of the administration which, ironically, implements the standards imposed by the union. Formalization coupled with centralization means Machine Bureaucracy. Thus, the direct effect of unionization is to drive whatever is left of Professional Bureaucracy toward Machine Bureaucracy, precisely the trend which the professionals probably sought to resist by organizing. The professionals lose, but perhaps not nearly so much as the clients who face an increasingly dysfunctional organization.

ALTERNATIVES TO UNIONIZATION

What should be the response of professionals faced with administrative excess, or administrators confronted with professional incompetence or callousness? Competent, responsible professionals faced with administrative excess will have to counter it through collegiality—by working bit by bit, individually and in small groups, to resist inappropriate administrative influence and to reinstate professional control over decision-making. It cannot be countered by unionizing.²⁷ The concerned, sympathetic administrator will have to fight professional incompetence and callousness by lobbying to improve the initial selection and training of professionals, to encourage re-training when appropriate, and to play on the responsibility of the professional and the ideology of the profession to ensure effective service to clients and to encourage the censure of incompetent or irresponsible professionals.

26. See Cameron, *supra* note 15, at 13.

27. One is tempted here to make the case for *temporary* unionization as a means to achieve greater collegiality. Unions that would work to open up decision-making procedures and to enhance the influence of the individual professional, and that would self-destruct when the job is done, might be appropriate. My concern, however, is that collective influence tends to be self-perpetuating and is likely ultimately to turn against individual responsibility.

Professional incompetence or callousness cannot be countered via technocratic controls. We have had more than enough of these controls in many of our professional organizations, notably those in the public sector, and more than enough of unionization in response to them. Many of our school systems, to take perhaps the extreme example, have been seriously impaired by dysfunctional controls and the unionization that has followed them.

In other words, as workers, clients, leaders, and citizens, concerned about the declining performance of our professional organizations, we must struggle to reinforce professional competence combined with individual responsibility.

