

Fordham Urban Law Journal

Volume 29, Number 4

2001

Article 1

THE CENSUS AS A CALL TO ACTION

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Abstract

This article argues that we misinterpret the Census figures showing the continued growth of the suburbs and increase in populations of some cities and not others. While many, including a Harvard economist, contend that this is a purely a result of consumer preference, this article concludes that this pattern is more likely a result of legal rules promoting sprawl which have been unchanged for 50 years. The article states that this new census data should be a wake-up call for state law reform which will no longer constrain and define local government.

KEYWORDS: Property, Land Use

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With the release of the first figures from the 2000 census, we are on the verge of knowing more about where Americans are living these days. But we are also on the verge of misinterpreting why they are living where they are. It is clear that the rush to the suburbs that began in earnest half a century ago continues apace. Now it is the far flung suburbs that are growing most rapidly, as more and more rural areas are becoming suburbanized. Many large cities have also increased their population somewhat, while others have not, and those that are growing have done so mainly as a consequence of immigration from abroad.

What do these developments mean? For some, as a Harvard economist recently told the *New York Times*, "What all this says is that consumer preferences are important."¹ On this view, immigrants move to cities and long-time residents leave them for the far-out suburbs because that is where they have chosen to live. Central cities that want to grow must therefore find a way to sell themselves better to those now moving outside the beltways. They should start by trying to remake themselves in the image of the suburbs that seem to be so popular with today's metropolitan residents. For example, the Harvard economist suggested that to be attractive places to live, cities "need to make streets safe and schools solid."² No doubt, he would add, to keep themselves attractive, suburbs should be sure to continue doing the same thing.

This way of thinking about the census results is a mistake. It is just as likely that the new census data reflect not consumer preferences but the fact that we have done too little in the last half cen-

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1. Eric Schmitt, *Most Cities in U.S. Expanded Rapidly Over Last Decade*, N.Y. TIMES, May 7, 2001, page A1 (quoting Harvard Economist Edward Glaeser). This comment is not an isolated one. It reflects an important and influential way of thinking about the way that our social landscape is produced. See generally VINCENT OSTROM, ROBERT BISH & ELINOR OSTROM, LOCAL GOVERNMENT IN THE UNITED STATES (1988); MARK SCHNEIDER, THE COMPETITIVE CITY: THE POLITICAL ECONOMY OF SUBURBIA (1989); Vincent Ostrom, Charles Tiebout & Robert Warren, *The Organization of Government in Metropolitan Areas: A Theoretical Inquiry*, 55 AM. POLI. SCI. REV. 831, 832 (1961); Charles Tiebout, *A Pure Theory of Local Expenditures*, 64 J. POL. ECON. 416 (1956).

2. Schmitt, *supra* note 1, at A1.

ture to give citizens a meaningful set of choices about where and how to live. That is because we have done virtually nothing to change the legal rules that have promoted unceasing sprawl since the end of the Second World War. These rules establish the framework within which individual choices are made, but they are not natural or inevitable. Even those that were chosen by citizens (rather than by the courts) were often chosen decades ago—so long ago, in fact, that we now take them for granted. If one reads the census results with these legal rules in mind—and if one also keeps in mind that these legal rules can be changed—it will become clear that the picture that some census-readers divine of a well functioning market in which consumer-voters choose where to live misses much of what is really going on.

This is not to deny that some people are choosing some suburbs because they want lower taxes, less crime, and better schools. But those staying behind in central cities and declining suburbs are not doing so because they want higher taxes, more crime, and worse schools. They want the things that the prosperous suburbs have too, but they cannot have them. Why not? The answer is that current legal rules allow some places to have good schools and low crime while paying less in taxes than the places that have bad schools and high crime. These rules include those that allow local governments to engage in exclusionary zoning, that base school financing on local wealth, and that give incentives for economic development to occur farther and farther away from poor people who need the jobs it creates. These rules allow the rich to exclude the poor from their jurisdiction and then to spend the money raised from local taxes on schools that admit only local residents and on crime control techniques that protect these residents from outsiders. In other words, they allow some people to gain privileges by isolating themselves from those across the city line who want the same privileges.

One way to see how local government law enables this to happen is to read the population figures for the multitude of cities that now constitute American metropolitan areas. In Los Angeles County, for example, the city population varies from 91 (Vernon) to 3,694,820 (Los Angeles); in the St. Louis metropolitan region, it varies from 12 (Champ Village) to 348,189 (St. Louis); in the Boston region, it varies from 844 (South Hampton, New Hampshire) to 589,141 (Boston).³ How did this allocation of the regional popu-

3. These statistics and others are available at <http://factfinder.census.gov>.

lation happen? Whose choice was it? The answers to these questions depend on the state law that governs municipal incorporation. If the legal system allows a handful of people (or even a handful of property owners) to incorporate a new town within whatever borders they describe in their petition, it enables the petitioners to isolate themselves at the expense of people whose views are not even being solicited. If, by contrast, the region as a whole could decide how many cities the region should have (and how small they should be allowed to be), the result might also be characterized as the product of choice. Those who would be enabled to choose, however, would represent everyone whose interest is affected by the incorporation, not just those who want to separate from their neighbors.

It would be wrong to think that it is just residents of central cities or declining suburbs whose location cannot be explained by saying they are getting what they want. Those moving to the furthest reaches of suburbia and taking advantage of lax incorporation rules to set up new towns far from more “costly” neighbors, are not getting what they want either. The farther out they move, the more time they spend in their cars. Yet many of them would walk to work if they could, and few of them like to spend an hour in a traffic jam if they could avoid it. Recent polling identified traffic and other concerns related to urban sprawl as the number one local problem, particularly among suburbanites.⁴ How can something that people prefer also be the number one problem that they want to solve?

The answer, once again, can be found in the way state law structures local governmental power. Cities and suburbs do not have the power to make transportation policy. Transportation decisions are largely in the hands of the state and federal governments. Of course, no one thinks that transportation policy can be made by each city and suburb individually. Yet the only collective mechanism localities now have to affect transportation policy—metropol-

4. See Nat'l Survey for the Pew Ctr. for Civic Journalism, *Straight Talk From Americans – 2000*, at www.pewcenter.org (last visited Apr. 12, 2002) (showing that eighteen percent of all respondents identified issues related to sprawl as the top local problem, the same amount as identified crime, and that twenty-six percent of suburban respondents identified sprawl as the number one problem, more than identified any other issue). See also SURFACE TRANSP. POLICY PROJECT, *CHANGING DIRECTION: FEDERAL TRANSPORTATION SPENDING IN THE 1990s*, at 11 (2000) (citing polls from Minneapolis/St. Paul, St. Louis, and the San Francisco Bay Area, among others regions, suggesting overwhelming support for changes in the current car-based transportation policy).

itan planning organizations—have little authority and are not organized to reflect the region's population through democratically-accountable, one-person/one-vote elections. Moreover, these organizations cannot even to begin to address the kinds of inequalities—in school quality, crime control, and the like—that generate the flight to the far-out suburbs and, as a result, transportation problems. Yet only by addressing these issues can central cities attract residents of the far out suburbs back into the center of town where walking to work is possible.

The immigrants now moving to the nation's central cities—and many of its suburbs as well—are also not doing so simply out of choice. Of course, in one sense they are choosing where to live: immigrants often tend to settle, at least initially, where family, friends, people from their home town, or others with whom they share cultural ties already live. But where is that? It cannot be places zoned solely for single-family homes unless the term “family” is given a more extensive definition than usual. It cannot be places zoned to make housing unaffordable to those struggling at the bottom of the economic ladder. It cannot be in jurisdictions—the number of which is rising—that seek to exclude families with children on the ground that children represent undesirable “costs” for taxpayers. The isolation of immigrant groups from much of the population of American metropolitan areas—as well as from each other—will significantly affect the nature of American society for years to come. We would be creating a different country if immigrants could actually choose to live wherever they wanted to.

Instead of being a reflection of choices by well-informed consumers, the census numbers should be a wake-up call that we need legal reform by a newly mobilized citizenry. The rhetoric of consumer preferences, which the new census figures seem to call forth, hides the fact that we need this kind of reform and political action. The consumerist reading of the census preserves the status quo by implicitly endorsing a purpose that cities should serve. So long as the census is understood to mean that consumer preferences are being satisfied, it appears that the burden is on sellers—cities and suburbs alike—to make themselves attractive. Their job is to market a better product. From this perspective, the fact that some cities are rich while others are poor provides no justification for reforming the underlying legal structure. This kind of allocation is just what one should expect to happen in a free market for mobile consumers.

This reading of the census has a certain intuitive appeal. After all, it is not unusual for rich people to be able to have things the poor cannot get. In fact, everyone agrees that it is perfectly acceptable for people with more money to buy a fancier car than is available to those with less money. That's how markets are supposed to work: rich people can buy more goods, and better goods, than poor people. But the intuitive appeal of the consumerist reading is just the problem. It trades on the controversial (but unstated) premise that public schools and safe streets—like public parks and cities themselves—are supposed to be allocated in a way that enables those with more money to enrich themselves at the expense of the poor. It ignores the alternative premise that would open these institutions to everyone regardless of their ability to pay. Rather than being seen as market commodities, public schools and safe streets would be seen as “public”: organized according to democratic principles that treat everyone, rich and poor, equally. The consumerist reading of the census obscures the way that current local government law frustrates this democratic objective, because it (silently) rejects the objective itself.

The second problem with the consumerist reading of the census lies in its implicit picture of the current state of central/local relations. The consumerist reading encourages us to think of each city and suburb as an independent island with the power, on its own, to make itself the kind of place where people might want to live. It leads us, in other words, to picture each local government as a kind of private firm, fully empowered to make its best offer to willing buyers. In this way, the consumerist reading rests on the controversial (but unstated) premise that local governments have the power to control their own futures under the current state legal structure. Indeed, such a premise makes the preservation of local self-government seem to depend on preserving the existing legal structure. Any effort to alter it appears problematic precisely because it would seem to risk denying local governments the home rule that they now enjoy.

Of course, it is not wrong to read the census in a way that encourages city residents to assume some responsibility for improving the places where they reside. Mobilizing local residents to reduce crime, rehabilitate long neglected neighborhoods, and participate in community development is an important part of the solution to what ails local governments today. There is no reason to conclude that local people have no role to play in making things better, and there is nothing attractive about a reform proposal that rests on

such an outlook. But it is wrong to read the new census figures as the inevitable result of a legal system that respects the right to local self-government. Such a reading overlooks the way that the current legal structure itself limits local power and thus the way that changing it could empower local governments to govern in a manner that is not now possible. For example, the consumerist reading of the census all but forces those local governments that currently are “losers” to pursue a narrow agenda: they must resign themselves to the fact that the only path to success is to compete more aggressively against those who have become “winners.” And this means becoming what scholars have termed a “growth machine.”⁵ On this view, in order to succeed, a city must avoid adopting any policy that might frustrate the imperatives of growth (such as a living wage ordinance or an affordable housing mandate) and, at the same time, must be solicitous of any policy that would attract more development (such as a subsidy to an out-of-state company or a proposed bond initiative to build a new stadium). No doubt a city that pursued such an agenda might improve its tax base. But to call it “free” or “self-governing” hardly captures the reality of the constraints that shape the local political climate.

Similarly, the consumerist reading of the census encourages those local governments that are the current “winners” to believe that they are entitled to whatever they have won and that their continuing success depends upon their capacity to protect those gains from competitors hard on their heels. But to think of such present-day winners as masters of their destiny hardly captures the fact that many of today’s suburbs are unable to curb the dangers—environmental as well as economic—that threaten to make them tomorrow’s declining suburbs. These threats to their prosperity—like its creation—are largely in the hands of others.

Once we acknowledge the way that current state law constrains and defines local power, rather than simply protects it, we can begin to see that a more meaningful experience of local self-government might require changing state law significantly. Rules that make it difficult for local governments to resist private developers intent on developing open space in a few months time might suddenly seem to be problematic. So, too, would rules that invalidate local efforts—such as inclusionary zoning measures—to provide af-

5. See generally *THE URBAN GROWTH MACHINE: CRITICAL PERSPECTIVES TWO DECADES LATER* (Andrew E.G. Jonas & David Wilson eds., 1999); see also H. L. Molotch, *The City As a Growth Machine: Toward a Political Economy of Place*, 82 *Am. J. of Sociology* 309-30 (1976).

fordable housing for current residents. And, for that matter, state efforts to promote—and even mandate—regional cooperation might not seem like threats to local freedom. They might instead be seen as a way out of the current set of state law constraints on the capacity of local governments within a shared region to work collectively. In other words, a citizen's reading of the census would suggest that the problems of continuing sprawl and increasing interjurisdictional inequity are not the natural byproducts of respecting home rule. Such a reading would suggest instead that such problems are the consequence of the particular way that state law now chooses to respect it.

Once we begin to look at the new census figures as a call to action, rather than as a proof of a market model, it is clear that there is much to do. State law could promote the development of affordable housing and prohibit zoning practices designed to keep out "costly" residents. State law could allocate tax revenue so that municipalities can work together to direct development of new homes, offices, and stores to the places that would benefit the region generally. State law could empower the region's cities to coordinate transportation planning to promote transit oriented development rather than the roads that spawn housing developments far from jobs. State law could empower the region's cities to work together to allocate resources and decision making authority with the goal of raising the quality of central city schools to be as good as any in the region. That way, those who want to improve central city schools and those who want to keep the far-out suburbs from being overrun by newcomers can further both of their objectives.

All of these ideas can be implemented without a regional government and without giving up on the benefits of decentralization. They simply require revising the state laws that determine how city power is exercised. Some of these revisions might even take the form of express grants to local governments to do things—such as requiring developers to set aside units for low income residents or raising property taxes in excess of existing state law limits to purchase and preserve open space—that state law now prohibits them from doing. Reform, in other words, is not a euphemism for crushing local power. It is a means of directing the exercise of local power along different lines than state law now chooses to direct it.

Many of these kinds of proposals have been around for a long time. Versions of some of them have even been adopted in parts of the country. By and large, however, state legislators have been hesitant to press for these reforms. They too have read the census

data to show that consumer preferences are being satisfied by the current system. They too have read the data as the inevitable consequences of market choices or of a legal system intent on securing home rule. But with the new census showing people fleeing ever farther outward, and the costs of such flight being felt by even the supposed beneficiaries of the system, there is a real chance for change. Central city residents realize that the prosperity of their neighborhoods, like their decline, depends on what happens outside the city line. Those living in what once were the suburbs of choice increasingly see that the current system threatens their prosperity by encouraging new suburbs still farther out. Meanwhile, those in the newest suburbs find themselves living far from the places where they work while, at the same time, fearing that, one day, they will have to move even further away. Everyone sees the environmental damage endless sprawl creates.

These insights should inspire efforts at legal reform. But for people to see how the current legal rules limit their choices about where and how to live, they need to interpret the census data the right way. And that requires looking at it through the eyes of citizens with the power to make changes, and not just through the eyes of consumers choosing among the limited products currently on display.