"Woe unto them that join house to house, that lay field to field, till there be no place, that they may be placed alone in the midst of the earth!"—Isaiah 5: 8

Legal Problems of Planning in Metropolitan Areas

SIDNEY EDELMAN

THE growing prominence of the metropolitan area has become one of the most significant population trends in the United States, and it has led to major and, as yet, largely unsolved problems of government. These unsolved problems involve social, economic, political, and legal factors. While their acceptable solution requires consideration of all these factors, exploration of the legal elements may help to identify the possible alternative choices.

Before taking up the legal aspects, however, a few facts about metropolitan areas should be mentioned.

At the turn of the century about 60 percent of the population lived on farms or in small communities. By 1960 the proportions were reversed: almost two-thirds of the entire population of the United States now lives in 212 standard metropolitan statistical areas. As defined by the Census Statistical Bureau, the standard metropolitan statistical area essentially is a county or group of contiguous counties which contains at least one city of 50,000 inhabitants or more, or twin cities of at least 50,000 (*1*). Of the 113 million metropolitan residents, only about half, 58 million, reside within the central cities.

Mr. Edelman is chief, Environmental Health Branch, Public Health Division, Office of the General Counsel, Department of Health, Education, and Welfare. *The paper is based on an address at the Conference on Urban Planning for Environmental Health, Sanitary Engineering Center, Cincinnati, Ohio, April 5, 1962.*

One hundred thirty-three of the metropolitan areas, with a total population of almost 33 million, are wholly within a single county. More than 80 million people, nearly half of the total population, live in the remaining 79 intercounty areas. Twenty-six intercounty areas include territory in two or more States.

If, as someone has said, regulation is the price of congestion, it is comforting to know that this concentration of metropolitan population does not suffer from a dearth of regulatory authorities. As of 1960, the 212 metropolitan areas had 16,976 local governments, creating an unbelievably complex pattern of authority. How to coordinate or consolidate these local governments is essentially a problem in governmental organization. Let us take a brief look at the existing local government structure.

Structure of Local Government

In our Federal system the State is the fundamental source of power for all local governments, which are subordinate to it. Each State, through its constitution and legislature, establishes the political machinery to carry out administrative and governmental functions within its jurisdiction.

The county, a political subdivision of the State, acts both as an agency of the State and to a greater or lesser extent as a unit of local self-government (*2a*). Ordinarily counties are created by State legislatures, subject to State constitutional limitations.

In establishing the geographic areas of counties, State legislatures considered the limita-

tions of available transportation. A horse and buggy could conveniently make a round trip journey of 20 miles or so over dirt roads to the county seat in a single day, and counties were laid out on that basis (*3a*).

Curiously enough, although counties are as old as our country, their form of government does not fit into the traditional American concept of separate executive, legislative, and judicial branches. In county government, there is generally a union rather than a separation of powers, with no single executive to assume a position of leadership (*3b*).

While there are variations from State to State, counties ordinarily are expected to maintain law and order, keep records, perform certain fiscal duties, grant permits and licenses, operate institutions such as jails and hospitals, direct improvement and maintenance of certain roads, and provide welfare, educational, and health services. In addition, the State judicial system, a part of the State tax structure, and the election setup ordinarily are based on the county unit of government.

In general, the usual county board has a little legislative authority, some executive power, and a considerable amount of administrative responsibility. As one authority has put it, "County boards do not ordinarily possess substantial legislative power and consequently are not known for the statutes or ordinances which they enact" (*3c*).

In recent years, however, there has been an awakening of interest in the scope of county government, and county functions have grown in number, importance, and magnitude. The Commission on Intergovernmental Relations observed in its 1955 report to the President (*4*): "The intermediate position of the county between the State and municipal governments in some areas, and its position as the primary area of local government or administration in others, have steadily enlarged its importance in intergovernmental relationships. . . . County governments have gradually been acquiring functions and powers of a municipal character, some of them transferred from municipalities with inadequate area and resources. The result is that in most States the responsibilities of local government are increasingly being divided between municipalities and counties."

All States except Connecticut, Rhode Island, and Alaska have organized county governments, but the name "parish" is applied to this unit in Louisiana. The county is the chief unit of local government in the south and in the far west. In the eastern and north central States, it shares responsibility for local affairs with the town and township. It is weakest in the New England States.

New England towns perform many of the functions ordinarily performed by counties elsewhere. Typically, they are unincorporated units and embrace both rural and urban areas. The central feature of town government has always been the town meeting in which all eligible inhabitants meet once a year to enact ordinances, approve a program and, more recently, a budget, and to elect their officers. The larger New England towns have a broader range of functions than most incorporated cities of the same size in other States, since they perform both municipal and county functions.

In concluding this brief discussion of the county, I would like to quote a recent statement by Phillips (*5a*).

"The county is an important unit of local government and its importance almost everywhere in America is increasing as time goes on. If its full potentialities are to be realized, some drastic changes in its physical area, its form of government, its methods and techniques of administration, and the quality of its personnel are imperative. More than 90 percent of American counties are committed to spoils politics, some in the very worst sense, and only in rare instances is the quality of county government personnel and services of such a type as to inspire popular confidence and thus facilitate the elimination or consolidation of costly and inefficient units of local government which are found by the hundreds in some of our States even now."

Outside New England the township or unincorporated town was created primarily for purposes of rural local government, although today some are highly urbanized. As a rule, their activities were confined to four basic functions: "Law enforcement and judicial administration, road maintenance, assistance to the poor, and property assessment" (*6*). There has been in recent years a strong movement to abol-

ish these townships as units of government because they are too small in area and have too few inhabitants and too limited resources to perform any one of the four basic functions efficiently and economically (*5b*).

There are estimated to be almost 15,000 nonschool special purpose districts in this country, of which 3,180 are in the standard metropolitan statistical areas (*7*, *8*). These districts have a wide range of functions and are primarily single-purpose districts, such as housing, water, fire protection, recreation, drainage, soil conservation, health, education, and sanitation. The districts are created pursuant to State laws, and their areas in many instances cover segments of, or all of, the territory of other governments. The result is that many types of special districts pile upon one another and other governments in the same area (*9a*). Most special districts are supported by nontax revenues such as service charges, special assessments, rates, and rents. More than one-third of these districts have no taxing authority, and the remainder have only severely limited power to levy taxes on property (*9b*).

As Bollens has pointed out, in a sense, "many special districts are phantom governments. People who receive services from them often do not know that they exist or exactly where they function. Although most districts have definite areas and boundaries, there is seldom visible evidence of these facts. Districts often create a crazy quilt pattern of governmental areas with only very slight public knowledge that they do so" (*9c*).

In 1957 there were approximately 50,000 school districts in the nation, or slightly less than half of all units of local government (*5c*). The 212 SMSA's had more than 6,500 of these school districts (*8a*). Since these districts do not play an important role in environmental health services, we need merely note that in 26 States the pattern of school district organization does not follow local government boundary lines, while in 13 States the county unit system is dominant. In Delaware and Hawaii the entire State is organized as a district, and in the remainder, the boundaries of school districts generally coincide with those of towns and certain other local governments (*5d*).

A municipal corporation or city has been defined as a public corporation created by law which unites people and land within a prescribed boundary into a body corporate and politic for the purpose of acting both as an agency of the State government and as a unit of local government for the satisfaction of local needs (*2b*). In its public character, as an agent of the State, within its boundaries it exercises by delegation a part of the sovereignty of the State. In carrying out its local functions, it has a private character as a "mere legal entity or juristic person" (*10*). This distinction is important primarily in those jurisdictions where the liability of a city for its torts depends on whether the damage was inflicted in the exercise of a sovereign or of a private (proprietary) function.

As in the case of counties and districts, cities are the legal creations of the States. Their very existence as well as their governmental structures and powers depend on the will of the State in which they are located. The term "city" is a legal concept which always refers to a municipal corporation, but it has a wide range in minimum population and procedural requirements for its establishment. For example, in California, communities may be incorporated as cities with only 500 inhabitants, but in New York and Pennsylvania the minimum requirement is 10,000 inhabitants. Boroughs have most of the characteristics of small cities and are found principally in Pennsylvania, New Jersey, and Connecticut. Pennsylvania boroughs range from less than 100 inhabitants to more than 38,000.

Towns and villages are similar to boroughs and are, in general, small municipal corporations with limited financial resources.

The functions which a municipality may perform are specified in its charter. Various State provisions for municipal charters may be grouped in the following categories: (*a*) special, (*b*) general, (*c*) classified, (*d*) home rule, and (*e*) optional. Under the special charter system, the State legislature enacts individual charters for each city. The general charter system provides the same charter for every city regardless of its size or problems. The classified charter system is based on the legislative classification of cities in a number of classes and provides the same charter for all cities in

a single class. Those States which grant home rule authorize the people of a city to frame and adopt their own charter, subject to the constitution and laws of the State. Under the optional charter system, the State legislature adopts a variety of charters which provide for different types of municipal government and the city may select from these (*3d*).

Despite the care with which city charters may be prepared, Pate (*2c*) has noted that the "hazards in exercise of municipal powers are so great that about one-third of the cases in which the city is a party are decided against it." The generally accepted rule is that a city has only those powers granted expressly, "those necessarily or fairly implied in or incident to the powers expressly granted [and] . . . those essential to the accomplishment of the declared objects and purposes of the corporation—not simply convenient but indispensable" (*11*). State courts, of course, vary in their construction of charter provisions and the scope of municipal powers.

The Metropolitan Problem

It was in this framework of local governments that the great population growth and movement to urban areas occurred. The widespread use of automobiles and continued road construction and improvements slashed through the intangible local government boundaries.

This movement of people and industry was not merely a search for living space, but the product of discontent with life in the cities. "Great cities, when badly administered, cannot be sold or abolished; they simply become dirty, unhealthy, unsafe, disgraceful, and expensive" (*12*).

The increasing concentration of population around large cities has created sprawling centers of urban life, encompassing a number of political jurisdictions. This eruption of urban development outside of cities has subjected counties and other local governments to a new demand for local services which they may not be equipped to furnish.

Service and control deficiencies create critical pressures. These deficiencies are numerous because the many governments involved operate only in limited portions of the metropolitan areas and provide varying levels of services and regulation. Although some of these policies affect metropolitan development, they are developed piecemeal to meet each service demand as it arises without serious thought as to how the organization relates to other local services or to the governmental structure of the community as a whole. Frequently, decisions are based on what is advantageous for the restricted segment each government occupies. Moreover, the actions of these governments, at best, are often mainly defensive, haphazard, and localized.

"It is not sufficient that 80 percent of the local governments in a metropolitan area are able to provide adequately for health protection and sewage disposal. The inability of the remaining 20 percent of the local governments to maintain decent standards in these two important functional fields may jeopardize the health and well being of the entire metropolitan area. Poor planning or no planning at all . . . is an obstacle to effective planning by the more efficient units" (*5e*).

In describing the environmental health hazards thus created, Bollens observed (*13a*):

"Shortcomings in sanitation are often critical. Haphazard, uncoordinated methods of disposing of sewage and garbage bring water pollution and affect public health and recreation. In recent years air pollution has become more serious.

"Public health activities to prevent spread of disease are scattered chaotically among many governments in metropolitan areas. Individually their staffs and equipment range greatly in quality. Planning and zoning controls, enacted independently in localities without regard for overall metropolitan development, may result in many ill effects, including substandard housing and blighted, undeveloped land. Numerous other deficiencies often exist. They occur in civil defense, education, libraries, and law enforcement. Still others appear in fire prevention and protection, water supply and distribution drainage, and park and recreation facilities."

Legal Choices in Urban Government

The condition just described is a consequence of outward growth from a central city without

comparable change in the political boundaries of the city, or to put it another way, a demonstration that the integrated problems of a metropolitan community cannot be met by nonintegrated governmental units acting independently.

Is the provision of integrated government which requires the consolidation or abolition of existing local governments legally possible? It is a fundamental principle of American law that the State legislature, in the absence of constitutional restrictions, may divide counties and towns at its pleasure and apportion the common property and the common burdens in such manner as may seem reasonable and equitable to the legislature (*14, 15*). The Supreme Court of the United States declared almost 40 years ago:

"In the absence of State constitutional provisions safeguarding it to them, municipalities have no inherent right of self-government which is beyond the legislative control of the State. . . . The power of the State, unrestrained by the contract clause or by the Fourteenth Amendment, over the rights and property of cities held and used for 'governmental purposes' cannot be questioned" (*16, 17*).

While the authority of the legislature may, in a particular case, be limited by the State constitution, that constitution is subject to change by the people of the State.

Any general statement of authority in this area is, however, subject to question. Fundamental to any comprehensive program for the improvement of government in metropolitan areas is identification of the sources and limitations of legal power. In devising plans which call for significant changes in the status quo, it is imperative to study statutory and constitutional provisions and to analyze judicial decisions construing these provisions. Whenever constitutional, statutory, or charter provisions are found to be inadequate for the proposed governmental action, these provisions must be revised if goals for metropolitan integration or other adjustments in metropolitan government arrangements are to be realized.

With these caveats in mind, let us briefly examine some of the methods which have been employed to coordinate or consolidate local government authority. The six which are most frequently used or advocated are (*a*) annexation, (*b*) city-county consolidation, (*c*) city-county separation, (*d*) federation, (*e*) functional transfers and joint efforts (including interlocal arrangements and the urban county), and (*f*) metropolitan (including interstate) special districts.

Annexation. Annexation is the process whereby one governmental district absorbs, either by agreement or forcibly, part or all of the adjacent territory of another.

Annexation was used extensively throughout the 19th century by municipalities, including many larger cities, to extend their boundaries. From 1900 to about 1945 there were comparatively few such changes. Since 1945, however, there has been an extraordinary resurgence of the annexation movement.

In the period 1946–54 almost half of the central cities in metropolitan areas annexing relatively large amounts of territory were located in Texas and Virginia (*2d*). Texas authorizes cities to annex contiguous unincorporated territory by a simple council ordinance.

In Virginia annexations are determined by a specially constituted annexation court. Annexation may be instituted in one of four ways: ordinance of a city council, petition of 51 percent of voters of the area seeking annexation, action of the governing board of a county in which annexation is sought, and by ordinance of an incorporated town wishing to be annexed.

Three judges sit on the annexation court, one from the areas concerned and two from "remote areas." The courts have not been as impressed by the protest of the inhabitants of the area that the city proposes to annex as they have been by the fact that the consolidation of contiguous areas under one municipal government when appropriate conditions exist should be encouraged. Typical of this attitude is the following statement (*18*):

"Moreover, it is no answer to an annexation proceeding to assert that individual residents of the county do not need or desire the governmental services rendered by the city. A county resident may be willing to take a chance on police, fire, and health protection, and even tolerate the inadequacies of sewage, water, and garbage services. As long as he lives in an isolated situation, his desire for lesser services and cheaper government may be acquiesced in

with complacency, but when the movement of population has made him a part of a compact urban community, his individual preferences can no longer be permitted to prevail. It is not so much that he needs the city government as it is that the area in which he lives needs it."

Yet annexation in Virginia is not easy going. The 1962 session of the Virginia General Assembly was enlivened by a bitter controversy over legislation for the merger of Virginia Beach and Princess Anne County into a city, thus blocking the plans of the city of Norfolk to annex territory in the county.

In 1952, on the lower peninsula of Virginia, Elizabeth County, the small city of Hampton, and the town of Phoebus united to form the city of Hampton, with a population of 65,000 and an area of 60 square miles. The constituents remain as boroughs.

At the same time adjoining Warwick County incorporated as the city of Warwick. Newport News is now boxed in, and it was admitted that the chief purpose of the recent consolidation and incorporation was to prevent future annexations by Newport News (*2e*).

In most States annexation procedures require initiation of annexation proposals by the people of the area to be annexed and approval of majority of voters in the area to be annexed (*5f*). While this is a democratic procedure, annexations are infrequent when suburban areas can prevent them by a vote.

The advantages of annexation are said to be that it is a simple procedure and results in more efficient services. Its major disadvantage is that it is not a long-time solution. An area of rapid growth will require frequent annexations. Moreover, if the metropolitan area is interstate and, in some States, if it lies in another county, annexation is not possible.

City-county consolidation. City-county consolidation is the merger of county government and all municipal governments within its limits. Substantial consolidations have occurred in five instances: New Orleans, Boston, Philadelphia, New York City, and Baton Rouge, but only the merger of Baton Rouge and East Baton Rouge Parish, effective January 1, 1949, occurred in this century (*5g*).

When metropolitan areas coincide with the boundaries of a single county, a merger of the county and city government, resulting in one local government for all purposes, has seemed desirable. Partial consolidation, such as in Baton Rouge, divides the county into rural and urban areas, with separate governments for each which also meet jointly to deal with matters of areawide importance, such as hospitals, health, and sanitation (*2f*).

The obvious advantage of complete consolidation is simplification of government organization. If the metropolitan area covers more than one county, however, only part of the area is included. It has also been contended that merging better governed suburban areas with the county and a big city results in poor services and less efficient government for the suburbs.

City-county separation. Although Baltimore, San Francisco, St. Louis, and Denver are examples of city-county separation which resulted in more efficient governments for the cities concerned, this method is not considered seriously as a proposal for improving metropolitan government.

Separation involves the detachment of a city, in some instances after territorial enlargement, from the rest of the county. In Virginia separation from the county is an automatic process applicable to any city in the State that attains a population of 5,000, and 32 cities have thus been separated.

The major advantage of city-county separation is the financial benefit to the city. However, it leaves the county with reduced resources, and the city may not include the entire metropolitan area. "It cannot be regarded as a generally effective approach to the metropolitan problem" (*13b*).

Federation. The basic element of federation is the division of functions between a metropolitan government and the existing municipalities within its territory. The metropolitan government, generally possessing the same territorial limits as the replaced county government, is assigned metropolitan-type functions. The municipal governments continue in existence and exercise local functions. Local representation on the governing metropolitan body is considered an essential element of the plan.

The first federated metropolitan government was established in Canada. The Toronto Metropolitan Federation composed of 13 munici-

palities came into being on April 15, 1953, under a statute of the Ontario legislature. The governing body of Metropolitan Toronto is a 25-member Metropolitan Council, 12 from the city of Toronto, 1 from each municipality, and 1 elected by council.

The authority of the metropolitan government, whose powers are specifically enumerated in the statute, relates to water supply, sewage disposal, arterial highways, certain health and welfare services, housing and redevelopment, metropolitan parks, and overall planning. Capital improvements are financed by levies against municipalities. In 1956 police administration and licensing functions were shifted to the metropolitan government, and more recently, air pollution control and certain welfare functions were also shifted to the metropolitan government.

A shortcoming that has become evident even in the few years of its existence is that the original federation does not now include a number of new suburban developments within the rapidly expanding metropolitan area (*5h*).

The metropolitan plan for Dade County, Fla., has many basic characteristics of a federal plan. In 1956 the Florida legislature adopted the draft of a constitutional amendment granting home rule to Dade County, which was approved by the electorate on November 6, 1956 (*19*). The charter itself was adopted on May 21, 1957, and established the government of Metropolitan Dade County, popularly referred to as "Metro."

Under the Dade County Charter, the county has areawide functions, such as long-range planning, construction of expressways, provision for air, water, rail, and bus terminal and facilities, uniform fire and police protection, slum clearance, and construction of integrated water, sanitary sewerage, and surface drainage systems.

The charter provides that "this charter and the ordinances adopted hereunder shall in cases of conflict supersede all municipal charters and ordinances except as herein provided" (*20a*). Another section of the charter, however, protects a municipality against being abolished without the approval of a majority of its electors (*20b*).

The independent municipalities of the county continue to perform their strictly local functions, but the county government is empowered to fix reasonable minimum standards for municipal service operations and can take over and provide such services if a municipality fails to meet the standards prescribed.

There is, however, a considerable area of doubt as to the line between metro and local functions. The adoption by the county of a metropolitan traffic code has led to litigation and confusion as well as ill will in municipalities because of different standards of enforcement in the "Metro" courts as well as a loss of part of the revenue accruing from traffic fines. At one point Miami went so far as to release violators rather than permit their trial in the "Metro" court (*21a*).

Metro is the object of widespread criticism and discontent. Proposals to strip it of power have been made and defeated, the most recent in the 1961 election. The 27 municipalities in Dade County apparently have not taken full advantage of the services available from Metro (*22*).

Functional transfers and joint efforts. One drastic but effective method of transferring functions is by State legislative action. The difficulties involved militate against reliance on this approach.

The type of arrangement which is used extensively, however, is the interjurisdictional agreement which may take any one of three main forms.

1. A larger unit agrees to extend services to smaller units for a consideration stipulated in a contract.

2. Two or more units combine to finance sewage disposal, water supply, and similar facilities, agreeing by contract to support a joint commission or other special agency with authority to provide the necessary facilities and services.

3. Informal arrangements such as the exchange of police information.

Despite the ease, flexibility, and advantages of such arrangements, there have not been enough of them yet to make a dent in the hard shell of the metropolitan problem. As Phillips has said (*5i*): "The weakest and most inefficient units of local government are in a position to block the most obviously needed integration

where voluntary agreements are used to achieve such a purpose."

Los Angeles County, however, has used interjurisdictional agreements most effectively and to such an extent that it resembles an urban county. This development has been regarded by local officials as the most significant undertaking involving the voluntary transfer of service functions in the United States (*21b*). Since 1921 California general law has provided that a county might "lease equipment, perform work, or furnish goods for any district or municipal corporation within the county." The county health department is expressly obligated by statute to enforce State health laws free of charge within a city upon its request (*23*).

In 1954 the city of Lakewood incorporated and contracted with Los Angeles County for all necessary urban services, and this arrangement has been called the "Lakewood Plan."

In 1956 the city of Downey incorporated with population of 89,000 and contracted for limited services which included public works, public health, sanitation, and traffic signals. Since 1954, 18 cities have incorporated in Los Angeles County, and of these, 16 have followed the Lakewood pattern of contracting with the county for a substantial portion of their municipal services (*21c*).

The Lakewood Plan presupposes certain conditions: (*a*) the county includes the metropolitan area; (*b*) the county is prepared to provide local services in unincorporated areas; and (*c*) the city is prepared to pay the cost of services above the county level.

The Lakewood Plan does not advance countywide planning for land use and capital improvements. Long-range planning is peculiarly suited to a government of authoritative metropolitan jurisdiction, since the formulation of regional purposes frequently requires the reconciliation of divergent vested interests. Even though a county planning commission may be established and a county master plan developed, the commission's coercive powers in planning and zoning would be limited to unincorporated areas.

Metropolitan special districts. Most metropolitan special districts, like the ordinary special districts, are created to assume responsibilities for one particular function such as sewage disposal, water supply, port management, and flood control. Others are multipurpose, such as the Port of New York Authority, the Orleans Levee District, and the Metropolitan Utilities District of Omaha. The Boston Metropolitan District Commission is an example of the multipurpose district with somewhat flexible boundaries but, as new problems emerged, other districts, the Metropolitan Transit Authority and the Port Authority Agency, were created to handle other functions in the area.

The most recent metropolitan special district is the Municipality of Metropolitan Seattle, established in 1958 and limited to sewage disposal.

Metropolitan special districts have several advantages. The district may be created to meet present needs and may be given future responsibilities. Since they usually conduct a revenue-producing activity, they are self-financing. Their establishment does not affect identity of local governments which retain virtually all their original powers.

An important disadvantage is the tendency to create new districts for each of several major purposes. Also, separate special districts compete for the limited finances of many weak districts, and, as a result, a carefully drafted and well-balanced financial program for each local government is more difficult to achieve. Finally, the creation of a special district solves a single problem or a few at most, but it also generates a complacency which delays and may hinder the development of a comprehensive scheme for more effective government within a metropolitan area (*5j*).

If the metropolitan area is interstate and the exercise of police power is proposed, joint action of the State legislatures and the approval of Congress to an interstate compact is required. A compact, however, enables two States to achieve metropolitan governmental purposes in an interstate area through machinery which would not be available to either of them alone.

An example of interstate action is the Interstate Sanitation Commission (New York, New Jersey, and Connecticut), established as a water pollution control agency pursuant to an interstate compact approved by Congress (Act of August 27, 1935, 49, Stat. 932). Its functions were expanded in 1956 to authorize a

study of air pollution in the New York-New Jersey area (Public Law 946, 84th Congress; 70 Stat. 966) (*24*).

Conclusion

This brief summary indicates the various approaches within legal reach if they can achieve political acceptability. The choice of a specific method to meet the defined needs of any given metropolitan area will not be easy, but this is not so much because of the legal problems as the practical need to find the solution which is legally sound, financially practicable, and politically feasible. Yet this solution must be found if the agencies now exercising fragmented jurisdictions in the metropolitan areas are to be replaced by effective governmental units responsive to and serving the needs of the inhabitants of the area.

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