

# A SYMPOSIUM ON BAKER v. CARR

## URBANIZATION AND REAPPORTIONMENT

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*Baker v. Carr*<sup>1</sup> is best treated as an episode in the urbanization of the American community. The rate and scale of population movements involved in the urbanization of the country have been sufficient to throw the whole political system out of joint. One distinguished student of American politics has gone so far as to refer to the political consequences of the relocation of American population as "cataclysmic."<sup>2</sup>

Urbanization basically involves both the relocation and growth of population. The urban sector of the population, which was four per cent in 1790, now amounts to 70 per cent of the country and is likely to become 85 per cent in a few years.<sup>3</sup> Conversely, farm population is now less than half of what it was in 1936, is declining at the rate of nearly a million a year, and would decrease even more rapidly if very large federal farm subsidies did not slow down the exodus from the land.<sup>4</sup> The nation's farm sector, in fact, has fallen off from one-fourth of the total population to one-twelfth in a single generation.<sup>5</sup> Seventy per cent of the people now live on about one per cent of the land.

Back of the decline of farm population are data such as the following: from 1800 to 1950 the number of man hours required to produce 100 bushels of wheat declined from 373 to 28; the number of man hours required to produce 100 bushels of corn went down from 344 to 39; and the number of man hours required to produce a bale of cotton fell from 601 to 126.<sup>6</sup> One-fifth of the people now move every year.<sup>7</sup> As James Reston wrote recently the "[d]amn people won't stand still."<sup>8</sup> In fact, it is estimated that somewhere between six and eight million persons lost their votes in the 1960 presidential election because they had changed residence shortly before election day.<sup>9</sup>

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1. 369 U.S. 186 (1962).

2. KEY, PARTIES, POLITICS AND PRESSURE GROUPS 272 (4th ed. 1958).

3. WEAVER, THE FUTURE OF THE AMERICAN CITY 4 (1962).

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	<i>Farm Population</i>	
1930	—	30.53 million
1950	—	25.06 "
1957	—	20.40 "
1961	—	14.00 "

U.S. BUREAU OF CENSUS, *Historical Statistics of the United States, Colonial Times to 1957*, 47 (1960) (hereinafter cited as *Historical Statistics*).

5. See Wall Street Journal, Aug. 7, 1962, p. 12, col. 4, for a discussion of the political impact of this development.

6. *Historical Statistics* 281.

7. 31,834,000 changed residence between April 1956 and April 1957 in a population of over 164 million. *Historical Statistics* 47.

8. N.Y. Times, Aug. 15, 1962, p. 30, col. 3.

9. N.Y. Times, Aug. 11, 1962, p. 18, col. 1.

Meanwhile, the population of the country as a whole has increased 32 million since President Eisenhower's first inauguration, slightly more than the population of the whole country at the beginning of the Civil War. Nor is it likely that the growth of American population is about to abate or that the pressure of population against the old geographical pattern of American government is soon to let up. It is estimated that American population in the next fifty years will be:<sup>10</sup>

1970 —	214 million
1980 —	260     "
2010 —	400     "

And most of this newly born population live in the cities. While we are still attempting to accustom ourselves to the image of the modern metropolis sprawling across the countryside and engulfing hundreds of local jurisdictions, we can already discern the emergence of new and larger urban monsters, strip cities, supermetropolitan areas stretching across hundreds of miles and completely disregarding all existing local governmental structures.<sup>11</sup>

The relocation and growth of population has given rise to a political as well as numerical majority, indeed a political majority that appears to be permanent. As a fixed political force, it exerts power over the whole government, a power that can survive delay and defeat, that can move on all fronts, and through all channels that can wait and keep on growing. Urbanization and the revolution in transportation and communications, which is part of the same development, have combined to nationalize politics to a remarkable extent. The reorganization of the community has been so great that it has produced a new kind of politics arising out of new cleavages that have displaced the more traditional conflicts. Everything about urban life—the separation of workers and employers, highly visible differences in wealth and income, the formation of new kinds of associations such as labor unions, the need for a great variety of new public services—makes for a new kind of urban cleavage. The distinguishing characteristic of the new divisions is that they are *national*; urban communities everywhere throughout the country tend to divide the same way. This is producing national political alignments which have largely displaced the older sectional alignments characteristic of an agrarian society. The new urban politics does not align a solid urban vote against an equally solid rural vote. The cleavages exploited in modern politics cut across and divide all local communities. Thus the urban vote is divided; but so is the suburban, small town, and rural vote. And the distribution of the urban vote and the votes of its suburban, small town and rural allies makes possible new national and statewide combinations.

One of the best evidences of the nationalization of politics is the way in which two-party States have begun to displace the old one-party States which

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10. WEAVER, *op. cit. supra* note 3, at 4.

11. WEAVER, *op. cit. supra* note 3, at 5, identifies thirteen such strip cities which now include 119 of the 212 metropolitan areas in the United States and contain half of the population of the country.

a generation ago dominated the political system.<sup>12</sup> The spread of two-party systems has extended the area of party competition greatly. Forty years ago there were only a half dozen or so States in which the parties contested presidential elections evenly; now the area of competition extends to nearly fifty States. Illustrating this tendency is the election of 1960, in which the major party candidates divided the vote remarkably evenly throughout the country in what appears to have been the most national election in American history. The rural stranglehold on the state legislatures is now less effective than it once was because of this new competitiveness of state and national politics.

The first and perhaps the most important consequence of the nationalization of politics has been the capture of the presidency, the greatest prize in American politics, by the new national urban majority. Mr. Roosevelt has been quoted as saying that in 1936 he began to think about American politics in terms of population rather than acreage. By 1944, 63 per cent of his vote was drawn from cities of 100,000 or more.<sup>13</sup> A somewhat similar increase in the importance of the urban vote has appeared in the election of United States Senators and in gubernatorial elections, because statewide contests make possible the new kind of interurban combinations characteristic of the new politics. As a matter of fact, the whole political system works differently under the impact of the new urban pressure because the national urban majority has found the levels at which it can unite most easily. The Republican party, which usually benefits from rural domination of state legislatures outside of the South, cannot afford to jeopardize its chances in presidential and gubernatorial elections, nor can it afford to drop a dozen or two seats in the United States Senate merely to maintain an iron-clad control of the state legislatures. The political situation makes it necessary for the Republican party to compete for national power, and in this competition control of the state legislatures is no more than a secondary objective.

It has not taken the urban voter very long to discover that he is able to participate in the new statewide and national contests much more effectively than he was ever able to participate in the old system. As long as the urban voter was hopelessly submerged in traditional one-party sectional alignments he submitted to malapportionment because he could find no way to make an effective protest. But the shift of party alignments has altered greatly the status of the urban voter. For the first time, the city voter has a chance to outflank legislative "rotten borough" systems. As a result, the federal government now participates extensively in areas of governmental activity, such as welfare, education, housing, health, and highways. Most of these problems are essentially urban in

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12. See graph in KEY, *op. cit. supra* note 2, at 271, showing the increase in the number of States exhibiting two-party voting patterns. Willie Morris in *Texas Politics in Turmoil*, Harper's Magazine, Sept., 1962, p. 87, says that "the trend toward a two-party system has been firmly established in Texas," and attributes the trend to industrialization and urbanization.

13. Eldersveld, *The Influence of Metropolitan Party Pluralities in Presidential Elections Since 1920*, 43 AM. POL. SCI. REV. 1189, 1200, Table 5 (1949).

nature, and the new role of the national government results from urban pressures. Old notions about the separation of national, state, and local functions seem to have been modified almost beyond recognition. The existence of these pressures is in part a response to the stagnant structure of local government and malapportionment. While we have been building the largest concentration of urban population the world has ever seen, the underlying pattern of local government is largely the same as it was a century ago. Evidence that local governments are being swamped by the growth and relocation of population may be seen in the following table:<sup>14</sup>

*Number of Governments in Certain Metropolitan Areas*

New York	—	1,071
Chicago	—	960
Philadelphia	—	702
Pittsburgh	—	616
St. Louis	—	420

Very closely related to the swamping of local authorities is the disruption of the representative system by the wholesale migrations of the American people. The single member district system on which representation in American legislatures is commonly based is as vulnerable to the new mobility as are the local government structures. Arrangements for the reapportionment of representation have simply not kept up with the shifts of population. The results of the breakdown in apportionment are too well known to require extended discussion at this point. If the disarray of the system of representation is considered as an abstract problem in political theory, and nothing more, the discussion might go on forever without injury to anyone. Unfortunately, the problem of reapportionment is integral to the rationalization of urban government, a project that affects the welfare, health, and happiness of nearly three-fourths of the American people.

The growth of the modern city has given rise to new problems of public policy, power, finance, and administration which are not being resolved because the political institutions to cope with them have not been created. Luther Gulick, dean of American students of metropolitan government, thinks that "these amorphous urban complexes" will soon be unfit for human occupancy.<sup>15</sup> Senator Joseph S. Clark of Pennsylvania, formerly mayor of Philadelphia, is even more depressed, saying that "Slums are still spreading faster than they are being cleared" and that all efforts so far have "barely scratched the surface of urban decay."<sup>16</sup> Inaction has not been due to a lack of widespread interest in the new problems of urbanism. Eighty-eight major surveys of metropolitan areas have been made, but the results in terms of reorganization have been

14. BANFIELD & GRODZINS, *GOVERNMENT AND HOUSING IN METROPOLITAN AREAS* 10 (1958).

15. Quoted by Slaughter Lynd in *The New Republic*, April 23, 1962, p. 27.

16. *N.Y. Times*, April 30, 1961, § 6 (Magazine), p. 11.

extremely meager.<sup>17</sup> Nothing happens because of the legislative bottleneck in the state capitals. The root of the problem is that the *power* to rationalize the structure of local government is vested in state legislatures which are out of touch with urban problems and too antiquated to do anything about them. Yet the supervision of local governments is perhaps the greatest of the states' responsibilities. It is the function of the state legislatures to modernize the legal base of local governments to provide them with the powers, jurisdiction, resources, and assistance to cope with their staggering new responsibilities. Unfortunately, the relocation of population has left the state legislatures high and dry as spokesmen for older patterns of population distribution. While the American people have been on the move, the state legislatures have fallen into the hands of the folks they left behind.

Only an urban legislative majority is likely to have the interest and the will to do the things that need to be done.<sup>18</sup> But as long as the frustrations of urban life are treated as if they were purely local, the obstacles to effective urban political action are insurmountable. At this level the urban population is so cut into bits and pieces that every imaginable conflict between the various local political areas is magnified. It is only when the effort is made at the higher levels of government that common interests of the new combination can be exploited successfully. As the political effort is raised from the local level to state and national levels the outcome of politics changes. New alternatives open up, new resources become available; the calculus changes, new combinations and alliances can be made, and dissident minorities in rural areas, small towns, and suburban areas can be mobilized.

In the United States House of Representatives, malapportionment combines with a different factor to produce an anti-urban, even a pro-rural, bias. The internal organization of the House tends to give a great premium to members who acquire seniority because they have very little organized opposition in their "safe" constituencies. Notoriously the seniority rule in the House works to the advantage of (1) members from one-party, rural constituencies in the North and West and (2) members from the states of the old Solid South.

Compared with the state legislatures, the United States House of Representatives does not grossly overrepresent rural population. The House is out of alignment with the rest of the national government because its organization reflects an older pattern of politics. The seniority rule was well suited to the old sectional system of politics in which the bulk of the membership of the House came from safe, one-party districts, but it is not well adapted to the new

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17. BANFIELD & GRODZINS, *op. cit. supra* note 14, at 44, say that in the case of only three of the 88 surveys were the major recommendations adopted. Senator Clark describes the reports of metropolitan surveys "a library of frustration." *Supra* note 16, at 90.

18. "Almost everywhere city officials assert that indifference or ignorance on the part of rural representatives in state legislatures frustrates action on metropolitan problems by withholding essential powers from the cities." BANFIELD & GRODZINS, *op. cit. supra* note 14, at 99. See also statement by Charles S. Rhyne, former president of the American Bar Association, supporting this view. N.Y. Times, Aug. 28, 1962, p. 18, col. 3.

conditions in which a growing number of members come from hazardous, competitive, two-party districts and only a minority from safe districts.

The way the seniority rule now works is well illustrated by a compilation of "unofficial seniority" of House members recently made by the *Congressional Quarterly*.<sup>19</sup> The members having the greatest seniority in this compilation come from places such as Millidgeville, Melvin, Canton (Illinois), Ogelsby, Rensselear (Indiana), Alton, Exira, North Attleboro, Allegan, Tyler, Eisberry, Center Ossipee, Rumson, Malone, Auburn, Lyndhurst, Mahoney City, Lubbock, Texarkana, Bonham, Broad Run, Wenatchee, and Mercer. Only three high seniority members come from large cities.

The anti-urban bias of the southern delegations is a byproduct of the lack of party competition in the South. In this respect the urban voter in many of the southern States is in very much the situation in which urban voters in Pennsylvania found themselves forty years ago, captives of a one-party system in which they had no viable alternatives. Only a bold man would predict that urbanization and industrialization and the movement of population will not break down the old political structure of the Solid South in a decade or two. When that happens, the House of Representatives will take on a strongly urban political complexion.

In *Baker v. Carr*<sup>20</sup> the Supreme Court has done something to facilitate the orderly transition from an old political alignment to a new one. It at least strikes a blow at one of the factors producing the urban crisis both in the state and national legislative bodies—malapportionment.

Since it is extremely probable that population growth and movement are going to continue unabated in the future, this may be a good time to begin to think about better ways of keeping the representative system abreast of relocation of the American people. Our experience with legislative reapportionment by the legislatures themselves proves that it is a little like do-it-yourself surgery, a painful job that is apt to be done badly.

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19. 19 CONG. Q. WEEKLY REP. 16-17 (1961).

20. 369 U.S. 186 (1962).