



2001

## Civil Rights in the New Decade: The Geography of Opportunity

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31 Cumb. L. Rev. 467-479 (2001)

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# SYMPOSIUM

## CIVIL RIGHTS IN THE NEW DECADE

### CIVIL RIGHTS IN THE NEW DECADE: THE GEOGRAPHY OF OPPORTUNITY

SHERYLL D. CASHIN\*

#### INTRODUCTION

It is truly an honor and a privilege to have been invited to return to my home state of Alabama to talk about the civil rights agenda in the new decade. Lest you think that I lack the appropriate credentials to speak on this issue, I will tell you that I did go to jail for the cause. At the age of four months, I was taken by my mother, Joan Carpenter Cashin, to a sit-in at a lunch counter in Huntsville, Alabama. When my mother was arrested, she insisted on taking me with her to jail. I am very proud of the role that she and my father, Dr. John Cashin, played in helping to bring about the desegregation of public accommodations in Huntsville, two full years before the Civil Rights Act of 1964 was passed.

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This paper presents in written form the essence of a keynote address given on February 16, 2001 to the Conference on Civil Rights in the New Decade. Most of the empirical evidence referred to herein can be found in my prior written works. For a discussion of the impact of homeowners associations and common interest developments on politics and the social contract, see Sheryll D. Cashin, *Privatized Communities and the "Secession of the Successful": Democracy and Fairness Beyond the Gate*, FORDHAM URB. L.J. (forthcoming June 2001). For an analysis of the state of residential integration and the impact of racial segregation on the black middle class, see Sheryll D. Cashin, *Middle-Class Black Suburbs and the State of Integration: A Post-Integrationist Vision for Metropolitan America*, 86 CORNELL L.J. (forthcoming May 2001). For an exploration of the dominance of affluent outer-ring suburbs and the possibilities for a more equitable distribution of benefits and burdens in metropolitan regions, see Sheryll D. Cashin, *Localism, Self-Interest, and the Tyranny of the Favored Quarter: Addressing the Barriers to New Regionalism*, 88 GEO. L.J. 1985 (2000). Finally, for an analysis of voter attitudes toward welfare recipients and redistributive spending and the decisive influence of middle-class suburban voters on state policy decisions, see Sheryll D. Cashin, *Federalism, Welfare Reform and the Minority Poor: Accounting for the Tyranny of State Majorities*, 99 COLUM. L. REV. 552, 583-91 (1999).

I am also proud to be an Alabamian. I am proud of the role that my state played in the civil rights movement of the twentieth century. It is most appropriate that here, in the place where the Second Reconstruction was fought and bled for, the Birmingham Civil Rights Institute and the Cumberland School of Law are attempting to chart the course for the civil rights movement in the new century.

### I. THE GEOGRAPHY OF OPPORTUNITY

I believe that in the new century geography will increasingly determine opportunity in America. When I look at the opportunity structure in the United States, I see both promise and peril. For far too many Americans, their life chances are determined by where they happen to live. Geographic separation of the races and classes threatens to create a structure of permanent inequality: for the one-third of African-Americans that are relegated to high poverty, hypersegregated neighborhoods; for the working and middle class residents of declining older suburbs; for the first Americans living on Indian reservations; for the working poor and those at the moderate or low end of the wage ladder. For all of these groups there is a threat of a permanent divide of opportunity; there is a threat of a permanent class of haves and have nots.

America has prided itself on being the unique place in the world where anyone who works hard and plays by the rules can get ahead and prosper. But growing gaps in educational opportunity, economic opportunity, wealth accumulation, and access to technology threaten to undermine this principle. And geography has a lot to do with it. Let me begin with some observations about where we are and where we have been.

For the past five years I have been doing a great deal of research and writing about demographic trends in American cities and suburbs. Currently, with each passing decade, we as a nation are becoming more segregated by income, even as we make modest improvements in racially integrating neighborhoods. Interestingly, at the dawn of the twentieth century there was a fair amount of economic integration and a striking degree of racial integration in American cities. At least in the cities, laborers of various hues could be found living in close proximity to each other and to more affluent classes.

The racial segregation in housing that has become familiar to many Americans was caused by government policies that

dramatically shaped private choices and opportunities in housing markets. Public policy choices set us on a course toward racial and economic segregation and will only very inventive public policies upset the established trend. You are probably familiar with this shameful history.

*A. The Shameful History: Public Policy Choices That Made Segregation the "Natural" Order*

For four decades, beginning in the 1930s, the Fair Housing Administration ("FHA") was one of the largest insurance operations in the world. In its heyday, about one-third of all new housing construction in the United States was underwritten by the FHA. It institutionalized the private usage of racially restrictive covenants in the transfer of homes because it explicitly instructed lenders and the real estate industry to use such covenants. Even after the FHA ceased endorsing such practices, private actors, particularly banks and insurance companies, continued redlining minority neighborhoods — practices that made the Fair Housing Act of 1968 necessary.

In 1926, the Supreme Court, in the famous case of *Village of Euclid v. Ambler Realty*, upheld the right of local communities to use zoning powers to exclude undesirable, "parasitic" uses of land. The Supreme Court and the City of Euclid, Ohio deemed multifamily housing—apartments—to be parasitic on single family homes. The opportunity to gain control of a community's economic and social destiny through the exercise of local zoning powers has been one of the reasons we have witnessed a proliferation of new suburban localities in the United States.

Even after the Fair Housing Act was passed, its extremely weak enforcement mechanisms greatly constrained the housing options available to minorities, particularly African Americans. The Fair Housing Act Amendments of 1988 remedied this weak enforcement structure. But many people do not realize that the United States has only had a fair housing law with teeth for thirteen years.

As a result of these and other policies, racial and socio-economic segregation, as opposed to integration, is now entrenched as the seemingly natural order. Federal policies, in particular, gave birth to American ghettos. People tend to talk about an "urban underclass." But concentrated minority poverty was by and large a government creation. Under the urban renewal program, the federal government spent about \$3 bil-

lion to remove almost 400,000 units of affordable, minority-occupied housing that was strategically located in downtown centers. The federally-funded public housing program, whether by design or implementation, was largely segregated by race and created pockets of intense minority poverty in American cities. The federally-funded interstate highway program—the largest public works program in the history of the world—dramatically altered the landscape of most American cities. It divided cities by race, often creating a firewall separating “good” white neighborhoods from “bad” black ones. It is no mistake, for example, that most blacks in the Atlanta region live below I-20 and most whites live above it.

The end result of federal, local, and some private policies is that African-American poverty is highly concentrated. Latino poverty less so. And poor whites are fairly evenly dispersed. A poor white person is more likely to live in a middle-class, suburban setting than in an area of concentrated poverty. Meanwhile, one third of all African Americans live in hypersegregated communities that none of us would choose for ourselves—communities where children and adults are frequently terrorized by violence, where schools typically perform far below the standards necessary for participation in the economic and educational mainstream, and often where more men are not working than are working.

The minority poor are not the only ones who are isolated, however. With each passing decade, both the affluent and the poor are becoming more segregated from the rest of society. And generally economic segregation is increasing. Most new residential developments in the United States are highly homogeneous by income.

### *B. Racial Segregation and the Singular Experience of African Americans*

In terms of racial integration of housing markets, depending on your perspective, the glass is either half full or half empty. With each decade we have seen consistent but modest declines in racial segregation in housing. But, in the large metropolitan areas where the vast majority of African Americans live, the majority of blacks live in predominately black neighborhoods. Even African Americans of economic means are singularly segregated compared to other racial and economic groups. For example, affluent blacks are more segregated than poor Lati-

nos.

The black middle class has been suburbanizing rapidly since the 1970s. However, in those metro areas with an appreciable black population, blacks tend to suburbanize in the opposite direction from the areas of highest growth. In the Atlanta region, for example, the black middle class is migrating to the southeast into DeKalb County, while most of that region's economic growth is occurring north of Atlanta. In the Washington, D.C. metropolitan area, more blacks now live in Prince George's County than in the District. In two decades, the county transformed from majority white to majority black while experiencing a simultaneous increase in its education and income levels. Yet the middle class and affluent blacks who are moving to southern Prince George's County are migrating 180 degrees in the opposite direction from the high-tech based, explosive economic growth in northern Virginia.

Social distress tends to follow the black middle class. As blacks of any income level reach a critical mass, whites begin to flee and lower income blacks tend to move in to take advantage of reduced property values. Within as short as a decade, the social distress from which the black middle class sought to escape by moving to the suburbs typically has caught up to them. As a result, majority black communities pay a disproportionate cost in taking on the minority poor.

There are at least two reasons for the high degree of segregation of African Americans. First, they are steered to the least controversial areas by real estate agents and developers. There is still a great deal of discrimination in American housing markets. A study by John Singer conducted in the early 1990s demonstrated that if a black person interacts with one agent in searching for a home, she has a sixty percent chance of being discriminated against. If she interacts with three agents, she has a ninety percent chance of being discriminated against.

Second, the personal preferences of blacks and whites contributes to segregation. According to social survey data, the majority of blacks and whites (and I suspect other races) say they don't mind integration, so long as their own racial group is in the majority. Hence many citizens ultimately are likely to find themselves living in relatively homogenous surroundings. The data also suggests, however, that there is more of demand for racial integration than there are racially integrated neighborhoods to fill that demand.

So if we think about where America is headed in the

twenty-first century, if current trends are any guide it is decidedly not in the direction of mixed-income neighborhoods. And for most Americans, it is not in the direction of mixed-race neighborhoods. An interesting issue to which I would like to devote the remainder of my remarks is the degree to which geographic separation of races and classes influences the public policies of federal, state and local governments. As you will see, this has serious implications for the civil rights agenda in the new decade. As we become more atomized by income, it will become increasingly difficult to reach political consensus on any policy choice that requires shared sacrifice. This challenge will be magnified with increased suburbanization and it will leave the weakest political group, the minority poor, most vulnerable.

## II. THE IMPACT OF GEOGRAPHY ON THE POLITICAL ECONOMY

In my view, racial and economic segregation reinforces and exacerbates social differences, making it more difficult to formulate public policies that address the inequalities that flow from this segregation. Social science research on inter-local cooperation demonstrates, for example, that voluntary agreements between municipalities to share services, such as police and fire protection, tends to happen only between communities with similar racial and economic populations. In addition, in the 1950s and 1960s one of the primary motivations for the formation of new suburban localities was the desire to achieve racial homogeneity. Consciously or unconsciously, today economic homogeneity appears to be an animating force driving the creation of new suburban municipalities. Once homogeneity is achieved, any policy proposal that threatens to undermine that homogeneity—like affordable housing—is likely to meet with virulent resistance. In addition, segregation of the races and classes may reduce the public's capacity for empathy with a racial or economic group that is perceived as "other."

### A. *The State Level*

Empirical research by political scientists and public finance scholars suggests that fragmentation of the polity limits its capacity for shared sacrifice or redistributive spending. For example, at the state level, the outcome of most fiscal debates are determined by suburban, middle class voters. At the state level,

voters exact a high penalty against state elected officials for redistributive spending. In particular, voters in state elections display singular antipathy toward welfare spending. They dislike this type of spending three times more than they dislike any other type of spending.

The dominance of middle class suburban voters can also be seen in education finance debates. For three decades advocates for equal funding in public education have pursued litigation that is typically premised upon state constitution education clauses. To date, about twenty state supreme courts have declared their state's system of school finance unconstitutional and have ordered remedies. A number of state legislatures have also taken on school finance reform, even in the absence of a court mandate. One study comparing the outcomes of court-ordered and voluntary legislative reforms concluded that only when a state court ordered a specific remedy did state legislatures effectively close the gap in funding between poor and affluent school districts. In the absence of a court order, school finance reforms did not equalize funding between such districts and sometimes they actually left poor school districts worse off. Instead, middle class suburban school districts typically benefited most under voluntary school finance reform.

This evidence highlights the structural consequences of political fragmentation for public policy choices made at the state level. Formal segmentation of the polity sets up a horizontal competition for public and private investment, for high-end uses of land, and for high-end tax payers. Many view this horizontal competition as healthy because it enhances the choices available to mobile citizen-voters. The dark side to this fragmentation, however, is that citizens in their individual localities are rationally motivated to maximize benefits for their own community and to limit fiscal burdens by denying access to populations and land uses that they perceive as undesirable. New localities in outer-ring developing suburbs, for example, have historically resisted taking on any form of affordable housing. Those few areas in the country that have meaningful regional fair-share affordable housing requirements have achieved them as a result of a supra-local mandate—a state court order, for example—that was necessary to overcome virulent local resistance.



*B. The National Level*

Suburbanization, and the attendant proliferation of new homogenous localities, has also had consequences for national politics. In the 1992, 1996, and 2000 presidential elections, both major political parties could not avoid the reality that two-thirds of American voters now lived in suburbs. With each of these elections, the nation witnessed increasing political competition for the hearts and minds of suburban voters. One manifestation of this competition, in my view, was the pursuit of punitive policies toward the most disenfranchised. In 1992, then-candidate Bill Clinton established his bona fides with suburban voters, *inter alia*, by supporting the death penalty and promising to "end welfare as we know it." In anticipation of his 1996 bid for re-election, President Clinton signed a welfare reform law that many of his own policy advisors believed was unnecessarily punitive toward the poor. In addition, during his eight years in office, President Clinton oversaw the addition of 50 new death penalties to the federal penal code and the largest expansion of the prison population in American history. While Clinton was touted by Toni Morrison as "the first black President," a disproportionate number of these new prisoners were African Americans.

Without question, the poor and racial minorities benefited from numerous Clinton Administration policies. My point is that Clinton felt compelled to pursue other, more punitive policies that clearly signaled to suburban voters – namely whites – that he was a Democrat who could be trusted to govern. President George W. Bush's pursuit of tax policies that greatly favor affluent voters is less obviously tied to the suburbanization of the electorate. However, ironic evidence of how far the center of gravity in American politics has shifted with decades of suburbanization can be seen when you consider that it was a Republican President, Richard Nixon, who first proposed a national income floor for welfare recipients.

Former Labor Secretary Robert Reich offered a theory for the impact of suburbanization and the new, information economy. He called it "The Secession of the Successful." Other academics and observers of demographic trends have suggested similar ideas. Fannie Mae recently conducted a survey of urban historians, planners, architects, and urban academics, asking them to predict the top ten influences on the American Metropolis in the new century. This group identified growing dis-

parities of wealth as the number one likely influence on America's metropolitan regions. Over the past thirty years, we have witnessed increasing concentrations of income and wealth at the top of the income scale, relative stagnation in the middle, and worsening poverty at the bottom, though there was some lessening of poverty in the 1990s.

The participants in the Fannie Mae survey offered a vision of a great metropolitan divide in which we are likely to see "the winners in our winner take all society isolate themselves in gated communities or other exclusive preserves." They predicted that we are likely to see the wealthy class increasingly using privatization techniques, like private schools and special tax-and-service districts, to insulate themselves from the urban distress around them.

Such privatization has begun to take root. Twenty percent of the United States population currently lives in common interest developments ("CIDs"), which typically require owners to pay monthly or annual fees to a homeowners association that manages common areas, provides desired services, and enforces rules or covenants that apply to all who live in the development. The homeowners associations that facilitate this form of private governance have proliferated, increasing from a mere 500 in 1964 to over 200,000 in 1998. Each year, approximately 10,000 new homeowners associations are created. The danger to society in this movement is that we are creating a class of homeowners who are inclined to believe they are paying twice for services in form of homeowner fees and taxes. Several states now allow individuals to receive tax adjustments for the fees they pay to their homeowners association and in a small number of cases, they can take these deductions even when the roads and amenities they pay for are wholly closed to the public.

A metropolitan divide has also begun with a phenomenon that I have referred to in my writing as "the tyranny of the favored quarter." In most metropolitan areas there is a quadrant where only about twenty-five percent of the regional population lives, but this quadrant garners the majority of public infrastructure investments that fuel growth. In addition, it garners the vast majority of the job growth in the region. But, through the retention of local municipal powers, this favored quarter is able to wall itself off from all of the region's social service burdens. It typically has no affordable housing, few apartment complexes, and very few poor children in its

schools. Sometimes these quadrants refuse or resist participating in metropolitan public transportation. I am sure most of you can figure out where the favored quarter is in the Birmingham metropolitan area.

The disaggregation of wealth and tax base from disadvantaged populations and from more general government service burdens raises certain philosophical and moral questions. The social contract in metropolitan regions is being eroded. We have a segmentation of society where one group gets the best of everything and everyone else—the two-thirds of the regional population that lives in the central city and first ring of older suburbs—is frequently saddled with shrinking tax bases, increasing service demands, underperforming schools, and the like.

### III. THE CIVIL RIGHTS AGENDA

What should be the civil rights agenda in light of these developments? I have a two-pronged response.

#### *A. Vigorous Anti-discrimination Enforcement*

First, we need to recommit ourselves to anti-discrimination laws and values. Enforcement matters. Tone matters! It matters who is head of the Justice Department. During the Carter Administration, the Justice Department brought an average of 32 civil rights cases per year until budget cuts reduced the record to 16 cases per year. By the end of the Carter years, whites and blacks with similar educational levels were beginning to reach parity in wages. During the Reagan era, by contrast, civil rights enforcement essentially shut down. The Reagan Justice Department brought no civil rights cases in its first year and very few in subsequent years, with resulting losses in African American labor-force participation and wages. In sum, private employers and actors took their cues from the national government.

With a vigorous commitment to anti-discrimination enforcement, my hope is that we will continue to have modest declines in racial segregation. As we achieve more racial integration, this will help to reduce the disparities of opportunity that flow from geographic segmentation. But to be able to set a strong enforcement agenda, you have to win elections. In the aftermath of the Florida election debacle, clearly, a top priority

for the civil rights community should be voting rights and voting reform. We cannot begin to tackle the goal of providing equal opportunity in education, housing, jobs, and the like without being able to elect men and women who are sensitive and committed to these issues. And we cannot elect those people if minority voting districts are saddled with the most dysfunctional voting technology.

In sum, there are a number of critical enforcement issues, including voting rights, racial profiling, disparate sentencing in the criminal justice system, persistent housing and lending discrimination, and predatory lending. These are the many fronts on which the Justice Department and civil rights lawyers must continue to fight.

### *B. Regionalist Strategies and Attacking Inequality*

The second prong of my proposed civil rights agenda is counterintuitive. I believe we should accept that a certain degree of racial and economic segregation will persist, even with more vigorous anti-discrimination enforcement. Racial integration is very difficult to sustain, in part because whites typically flee whenever blacks reach a critical mass in their neighborhood. Economic segregation is likely to continue because anti-discrimination laws do not prohibit it and because property owners who benefit from economic segregation typically resist efforts to open their communities to affordable housing.

Thus, the civil rights agenda should focus on attacking the inequalities that flow from racial and economic segregation. This will be very difficult both legally and politically. But there are some examples of public policies that could make a difference.

One example, regionalism, attempts to bring about a more even distribution of benefits and burdens in metropolitan areas. In the Twin Cities area, for example, citizens of the urban core figured out that their representatives formed a majority in the state legislature. Through several years of coalition building, an alliance was formed that gained passage or reauthorization of regional tax base sharing, regional fair-share affordable housing, regional land-use and transportation planning, and regional governance through a metropolitan council that oversees many of these policies. As a result, in the Twin Cities metropolitan area, inter-local disparities of tax base and service burdens have been reduced.

A similar effort could be pursued in other regions throughout the country based upon the organizing principle not just of smart growth but of fair growth. Why, for example, should any public monies be spent in an area that is not assuming its fair share of affordable housing?

It will take a great deal of civic education and engagement, however, for such principles to take root in the American Metropolis. Powerful new coalitions among interests that currently do not see themselves as allies will have to be formed. Reversing regional inequity will take churches, unions, renters, minority groups, environmentalists, city dwellers, commuters disgusted with traffic, and a host of other potential common allies bound together in an effort to pursue enlightened public policies that can benefit the entire metropolitan region. Creation of such coalitions, however, will create a better political climate for pursuing other policies that directly impact the opportunity structure in American society, like ensuring a quality education to every child.

#### CONCLUSION

I have painted a dim picture of our nation's possibilities for the new century. But there is promise as well as peril in current trends. As I have noted, with each passing decade our nation has enjoyed modest increases in housing choice by race. In addition, gentrifying cities and the problems of urban sprawl have made neighborhoods in the urban core more attractive, increasing the range of options available to all citizens of the metropolis. The Fannie Mae survey I mentioned also identified one ray of hope. While the number one likely influence on metropolitan regions in the new century was growing disparities of wealth, the tenth likely influence was encouraging. Some survey participants envisioned increasing racial integration and diversity in cities and suburbs. Neighborhoods such as Adams-Morgan in Washington, D.C., West Mount Airy in Philadelphia, Jackson Heights in Queens, and South Pasadena in Los Angeles, were home to "an exciting . . . bewildering mix of races, languages, cuisines and cultures." The survey participants believed that such neighborhoods could provide grounds for a new, vibrant multicultural identity for the whole country.

The civic engagement and grass roots coalition building around regional equity that I am suggesting should be a focus of the civil rights movement (as well as of the smart growth

and sustainable development movements) would increase the possibilities for such multicultural communities of hope. Economic integration, in my view, is much harder than racial integration because of fear associated with poor communities. But if we hearken back to the 1910s, such integration was natural. With hope, heart, and a great deal of grass roots organization, perhaps one day in the new century we will return to an integrationist order. Until then, we have to roll up our sleeves and get to work on the difficult task of reducing the inequality that flows from segregation. Or, more positively, we have to get to work on creating more opportunity in America.

