

Monitoring the Mayor: Will the New Information Technologies Make Local Officials More Responsible?

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OUR TOPIC—"THE CITY IN THE TWENTY-FIRST CENTURY"—is truly daunting. In preparing my remarks, I took some solace from the realization that a seminar that I have taught several times has forced me to contemplate how municipal affairs evolve over the centuries. I have named the seminar *Urban Legal History: The Development of New Haven*. As this title suggests, its focus is on the regulation of the physical development, since its founding in 1638, of the Connecticut city in which my law school is located. The seminar has proven to be exceedingly popular with law students. It enables them to study legal issues in context. Local libraries, historical societies, and government offices all contain primary materials for the seminar's students to excavate. Facing an audience of law professors who teach courses in urban government, I recommend that each of you consider offering a seminar on the legal history of your law school's municipality. Lynn Baker, for example, could present one on Austin; Bill Buzbee, on Atlanta; and Georgette Poindexter, on Philadelphia. Because New York City is so large, Richard Briffault's ambitions might have to be restricted to Morningside Heights, and Clay Gillette's to Greenwich Village.

Because the title of this panel session invites each of us to be more speculative than academicians usually are, I cannot resist taking a fling in the impossible art of forecasting the future. My topic today is the likely effect of the ongoing digital revolution—of the Internet, interactive television, portable telephones, and so forth—on the quality of

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urban governance. In tackling this topic, like most of the other speakers I generally adopt a “rational choice” perspective on local politics. This theory supposes that voters, elected officials, lobbyists, bureaucrats, and the other players on the municipal stage are inclined to rationally pursue the interests they hold dear, including their own self-interest. According to the rational actor approach, the basic challenge of city governance is to prevent those who govern a city from feathering their own nests. To prevent insider abuse, voters, journalists, and other monitors must have the ability to obtain the information needed to limit official misconduct, have the incentive to gather that information, and have the power to sanction local officials who misbehave.

At first blush, the digital revolution might be predicted to result in better citizen monitoring of local politicians. Internet sites surely could ease a citizen’s burden of gathering information about local government budgets. E-mail could ease the burden of communicating with like-minded neighbors who might be allies in preventing governmental abuses. In addition, the new communications systems, by enabling more people to work at home, may sharpen incentives to monitor the politicians who govern one’s place of residence. Despite these likely positive effects, I speculate—in part to provoke reactions from my commentators—that the digital revolution of the twenty-first century, on balance, actually will worsen the quality of urban government, particularly in central cities.

I. How Cyber-Technology May Weaken Local Governments

Information-age technologies may have at least three baneful consequences for civic life. In brief preview, they may increase the cohesion of special interests, distract citizens from local affairs, and erode local social capital. I contend that these negative effects possibly may outweigh any beneficial effects these same technologies may have on urban governance.

First, the same communications technologies that help voters monitor politicians may also help members of selfish interest groups to mobilize and capture municipal government to the detriment of the general citizenry. In general, members of a concentrated interest group are more likely than diffuse voters to overcome the free-riding problem that threatens to stymie collective action.¹ For example, owners of taxicabs

1. MANCUR OLSON, JR., *THE LOGIC OF COLLECTIVE ACTION: PUBLIC GOODS AND THE THEORY OF GROUPS* 53–65 (1965).

who desire to limit the supply of licensed taxis in a city will find that e-mail and teleconferencing will ease their efforts to lobby for cartelization of their industry. While these same information technologies also would assist organization of a countervailing lobby of riders of taxis, it is plausible that the riding public simply will remain too diffuse to organize an anti-cartel effort.

Second, by aggravating information overload, the cyber-revolution likely will prompt most Americans to pay less and less attention to local affairs. In ancient Greece, the debate at the *agora* over the affairs of the *polis* was the best form of intellectual stimulation available. But when a home computer enables a citizen to listen to any radio station, download any film, watch any sporting event, and participate in any auction, the opportunity costs of attending a municipal hearing will be much higher than previously. The per capita circulation of daily newspapers, a basic source of information about local politics, has been falling for decades.² Twenty-somethings are increasingly likely to learn about events of the day through websites that feature national and international news. When the entire world is at one's fingertips, one's attentiveness to merely local affairs is likely to wane.

Third, the new digital technologies are likely to weaken the local social networks that help sustain effective citizen monitoring of municipal government. A century ago, most of the important persons in an individual's life likely resided within a few blocks, or at most a few miles, from the individual's own residence. Prior to the advent of the long-distance telephone call, the interstate highway, and the inexpensive airplane flight, the costs of maintaining relationships with those at great distance tended to be prohibitive.

Not any more. Assume, for example, that for professors who specialize in urban law, the most important peers are the members of the State and Local Government Law Section of the Association of American Law Schools. With e-mail and websites, Section members now can keep in touch with each other—although admittedly without face-to-face contact—as readily as neighbors who live a half-mile apart. There are limits on the amount of time a person can devote to social engagements. With the advent of new information technologies, an individual is apt to decide to devote more energy to maintaining and deepening social bonds with individuals with whom he already has

2. The per capita circulation of daily newspapers in the United States fell from 0.30 in 1970 to 0.21 in 1998. U.S. CENSUS BUREAU, U.S. DEP'T OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES—1999, at 589.

thick relational bonds—kinfolk, high school and college friends, professional associates, fellow hobbyists—even though many of these individuals might be physically distant. The upshot is that less social energy is likely to be devoted to cementing good relations with neighbors. While neighbors do share concerns about the quality of their immediate physical environment, that common interest by itself is likely to be a relatively slender social bond.

Robert Putnam, a leading scholar of social trends, asserts that social capital in the United States is eroding.³ My prediction is more cabined: as the twenty-first century progresses, social capital will steadily decline among persons *whose sole common tie is the geographic propinquity of their residences*. This trend, if it indeed comes to pass, will bode ill for the quality of local government. Local organizations and social networks are mechanisms that help overcome a citizen's natural tendency to free ride in monitoring against malfeasance at city hall. Where local social capital is abundant, a champion of the public interest can anticipate winning enhanced esteem from peers. Where local social capital is thin, a potential champion of the public may anticipate that good civic deeds will go relatively unnoticed.

II. Why Big Cities May Suffer More than Small Cities

These three baneful consequences, should they indeed come to pass, would not affect all local governments equally. In the interests of brevity, I consider the implications for just two stylized localities: a small suburban municipality and an aging central city.

A bedroom suburb tends to be relatively easy for its residents to monitor. Suburban issues tend to be simple and familiar. Because of both natural clustering and deliberate zoning, suburban voters also tend to be relatively homogeneous, a feature that lubricates their social interactions. "Homevoters," to use William Fischel's neologism,⁴ typically dominate suburban politics. A suburb official would be loath to subordinate their interests to those of rent-seeking special interests. Indeed, the persistent concern is not that a small suburb will be unresponsive to its electorate, but rather that it will be too responsive. Suburban politics are apt to promote the parochial interests of resident

3. See ROBERT D. PUTNAM, *BOWLING ALONE: THE COLLAPSE AND REVIVAL OF AMERICAN COMMUNITY* (2000).

4. William A. Fischel, *The Homevoter Hypothesis: How Home Values Influence Local Government Taxation, School Finance, and Land-Use Policies* (Dec. 28, 1999) (unpublished manuscript, on file with author).

homevoters to the detriment of the regional welfare. The litany of wrongs is familiar—exclusionary zoning, strict growth controls, NIMBYism. There's no reason to suppose that twenty-first century technologies will curb suburban selfishness. Indeed, because transportation improvements are likely to foster ever greater social differentiation among suburbs, tendencies toward local parochialism may well increase in the coming years.

The erosion of local social capital would be particularly damaging in a central city. To underscore this point, I now recap the most dire scenario imaginable for the twenty-first century (one that I dearly hope is overly bleak): As information-age technologies take hold, residents of central cities pay less attention to local politics because they are increasingly distracted by the new forms of electronic diversion and because the thinning of local social capital has lessened informal incentives for civic involvement. The growing inattention to local affairs manifests itself in declining voter turnouts in municipal elections and slumping circulation of local newspapers. At the same time, members of rent-seeking interest groups learn to use the new technologies to enhance their political power. Special interests also are strengthened by the increasing social segregation of metropolitan housing. This pattern fosters the emergence of one-party politics in central cities, thereby eliminating the organized opposition with the greatest incentive to monitor against municipal malfeasance.⁵ With their relative power much enhanced in central cities, special interests use their political leverage to enact new forms of wasteful municipal regulatory and spending programs. These programs serve the interests of their members at the expense of the general citizenry.

To enhance the concreteness and credibility of this dire scenario, I identify some of the special interests that already have gained inordinate power in New Haven, the subject of my seminar. First, there are the unions that represent the employees of the city of New Haven, the Board of Education, the Housing Authority, and the other components of local government. These unions tend to wield their influence on behalf of their leaders and senior members at the expense of public welfare. For instance, in New Haven the current teacher's union contract grants relatively generous salaries to senior teachers, but grants the lowest salaries in the metropolitan region to entry-level teachers.⁶ Standardized-test scores of New Haven students are far below those of

5. One-party politics already is the order of the day both in New Haven and in Washington, D.C., where this program is being convened.

6. See Paul Bass, *Kids First?*, NEW HAVEN ADVOC., Oct. 7, 1999, at 11.

students in suburban school districts.⁷ New Haven pupils likely would benefit greatly from an infusion of energetic new teachers into the system. The union, however, is more interested in rewarding senior teachers (even poorly performing ones) than in attracting fresh talent. Because monitoring by parents and voters has been weak, the teachers' union has had its way.

A second group with its tentacles around New Haven is the public works lobby. In most central cities, some firms in the construction sector specialize in securing public contracts. At the New Haven Board of Education, a main beneficiary of pork barrel politics has been the developer/architect Wendell Harp, whose wife is a state senator. An even more prominent example is the Fusco Corporation, whose involvement with public works contracting in New Haven dates back sixty years to the beginning of the public housing program. Individuals associated with Fusco have been the biggest recent contributors to the campaigns of the current mayor of New Haven, John DeStefano, Jr. For years the mayor has been pushing hard to secure state and local subsidies to help finance the development of a major shopping center in New Haven, to sit near the intersection of two Interstate highways. And—surprise, surprise—the mayor has ensured that the Fusco Corporation will have a large piece of this shopping center deal. For six decades, New Haven has fed its public works lobby a wide variety of projects involving public housing, urban renewal, and “public-private partnerships.” Most of these ventures have turned out to be wasteful drains on the scarce resources of the city.

Another powerful interest group is the “poverty services industry,” whose presence in New Haven is mirrored in most big cities. Because poverty-services specialists typically are flush with good intentions, many of them would detest the label I just have pinned on them. They survive by obtaining grants and contracts from a welter of government and foundation sources. Their funding commonly can be traced to some federal program, for example, to Community Development Block Grants, HOPE VI, or Empowerment Zones. Although the details of local antipoverty programs vary endlessly, few of them have proved to be cost-justified. In New Haven, the Dixwell Community Development Corporation serves as a splendid example. For thirty years this anti-poverty organization squandered most of the city funds it regularly received, but stayed afloat on account of the political contacts of its leader, Pete Gray.⁸

7. See NEW HAVEN REGISTER, Nov. 4, 1999, at A12 (reporting, by school district, the scores of tenth graders on the Connecticut Academic Performance Test).

8. See Angela Carter, *Agency Could Get \$55,000*, NEW HAVEN REGISTER, Mar. 23, 1999, at A3 (noting city administration's support of continued funding of the Dixwell CDC, “which has little to show for more than \$900,000 in grants during this decade”).

Many other examples could be marshaled. Central cities commonly have entrenched “growth machines,” perhaps Chamber of Commerce leaders eager to spend public funds on dubious convention centers, ballparks, and the like. Whatever the particulars, the general point is that residents and landowners in central cities must bear the financial burden of supporting inefficient special-interest programs. The net “taxes” that a central city imposes to feed its municipal unions, public works lobby, poverty industry, and other insiders end up being capitalized into lower property values. In most central cities, a neighborhood that seceded to form its own municipality would immediately experience a surge in housing prices.

III. How to Help the Central City

If the root of central-city problems is capture by interest groups, the basic remedy is shifting decision-making power to participants in institutions that are less vulnerable to private influence. For instance, if the interest groups that thrive at city hall were to be relatively weak at the statehouse, state statutory reforms might free cities from the grip of their captors.⁹

If politically feasible, a basic reform strategy is state legislation that facilitates a city resident’s ability to “exit” (and, just as important, to threaten to exit) from inefficient local public monopolies over municipal services. Three reforms can serve as illustrations. First, a state legislature could reduce the legal impediments to a neighborhood’s secession from its city. Because balkanization can cause new problems, some constraints on secession remain appropriate. In most states today, however, secession is almost impossible. This eliminates an important method of deterring central-city politicians from catering to special interests.

Second, to enable parents of school children to escape local education monopolies, states can enable school choice by means of school vouchers and charter schools. It is baffling that so many observers who wish to alleviate urban poverty nevertheless oppose school choice. Con-

After years of near total dereliction of duty by Gray, political pressure mounted and the city finally terminated financial support to his organization. See Angela Carter, *City Slashes Funding to Developer: Dixwell Nonprofit Has Little Success, Review Discovers*, NEW HAVEN REGISTER, June 24, 1999, at A1. Had Gray been a bit better at going through the motions of delivering services, his organization likely would have continued to receive city funding.

9. State politics themselves hardly are trouble-free. In practice, the interest groups that buzz around statehouses might support initiatives that would aggravate urban problems.

cerns about the policies that alternative schools might pursue can be addressed through standards for school accreditation. If New Haven had a more competitive schooling market, the teachers' union would find it harder to depress the salaries of energetic young hires.

Third, a state legislature can authorize the creation of small special-services districts within cities. A notable example is the business improvement district (BID). The BID is one of the great innovations in local government law in the past several decades.¹⁰ There are now more than a thousand of them in the United States. They appear to have played an important role in the comeback of New York City, where they have engaged in such activities as graffiti removal, sidewalk cleaning, and street decoration.

Building on the idea of the BID, two years ago I urged state legislatures to authorize, on an experimental basis, owners of property within a small residential district of a few adjoining city blocks to create a block improvement district (BLID).¹¹ In essence, a BLID would be a retrofitted residential community association, an institution that has proven to be immensely popular in new residential developments. A BLID would have to be approved by affirmative vote by the owners of a supermajority of the real property within district boundaries. Once in existence, it could impose mandatory assessments on all district property owners and use the proceeds to fund the provision of local public goods, such as a block watch, landscaping, and block parties. While walking in lower Manhattan recently, I observed a placard by a street tree that proclaimed that the tree had been "adopted" by a particular resident. Surely a small BLID would be better able than New York City itself to administer an "adopt a tree" program.

Several features of BIDs and BLIDs are likely to make them more efficient than cities. Their relatively small size helps reduce free riding in monitoring by constituents. More important, the directors of a special district typically are elected by the owners of property within the district. Because the benefits and costs of the special district's activities are mostly capitalized into the value of district real estate, this voting system promotes efficient administration. To illustrate, property owners would favor the planting of cost-justified street trees, even if those trees

10. As far as I know, no law professor had any significant hand in the invention of the BID. We legal academicians at least can take a bit of solace from the fact that panelist Richard Briffault has become a leading authority on these institutions. See Richard Briffault, *A Government for Our Time? Business Improvement Districts and Urban Governance*, 99 COLUM. L. REV. 365 (1999).

11. Robert C. Ellickson, *New Institutions for Old Neighborhoods*, 48 DUKE L.J. 75 (1998).

would take a long time to mature, while short-term tenants residing in a district might oppose the plantings on the rationale that they would never see more than saplings.

Because small special districts such as BIDs and BLIDs are relatively resistant to interest group capture, these micro-territorial institutions are likely to have increasing promise in the decades to come. Moreover, in a more speculative vein, BLIDs might serve to offset some of the likely deleterious effects of the twenty-first century information technologies on the stock of local social capital. Neighbors who meet face-to-face to govern a BLID could use those social contacts as a springboard for joint involvement in civic life beyond the immediate neighborhood. The punch line is this: the quality of life in the twenty-first century will depend in part on the ability of lawyers and legislatures to invent new institutional mechanisms that will serve to repair some of the social damage that the new information technologies are likely to bring in their wake.

IV. Final Thoughts

Because a number of panelists are addressing the issue of “sprawl,” I’ll end by offering a few thoughts on that subject. Most metropolitan areas in the United States undoubtedly are less compact than they would be if optimal governmental policies were in effect. Nevertheless, many critics of “sprawl” misidentify the chief culprits. Critics typically point the finger at counties and municipalities in the urban fringe (the “exurbs”) where local officials are thought to be overly cozy with developers.¹² The critics’ solution: regulate the growth of the exurbs, perhaps through imposition of an urban growth boundary. In contrast, I attribute the pattern of excessive sprawl largely to the failings of governments in both the central city and established suburbs. When a central city is unusually vulnerable to capture by rent-seeking groups, that dysfunction prompts central-city firms and households to migrate to greener pastures in the suburbs. Because many established suburbs practice exclusionary zoning, however, an unnaturally large share of new development is forced out to even more remote sites in the exurbs. If this analysis is correct, the precise policy response to the problem of sprawl is to reform central city and suburban governments, an approach that would reduce development pressure on the exurbs. If we are in a second-best world where reform of neither the dysfunctional central city

12. Many critics of sprawl also argue that there is excessive subsidization of exurban infrastructure.

nor the exclusionary suburb is politically feasible, allowing development to sprawl into the exurbs is a generally desirable policy. To cut off this escape valve likely would create a scarcity in development sites that would increase metropolitan housing prices to the net detriment of the typical household.¹³

13. Most studies have found that growth controls raise housing prices. *See* ROBERT C. ELLICKSON & VICKI L. BEEN, *LAND USE CONTROLS* 995-96 (2d ed. 2000).