

# POWER (lessness) AND DISPERSION COMMENTS ON CHESTER McGUIRE'S THE URBAN DEVELOPMENT ACT OF 1974, COMMUNITY DEVELOPMENT FUNDS AND BLACK ECONOMIC PROBLEMS

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Chester McGuire's comprehensive, provocative and good-humored assessment of the Housing and Community Development Act of 1974 (HCDA)<sup>1</sup> suggests both ominous and benign trends in the shift of political power and allocation of material resources in the United States. His tracing of the transfer of the locus of decision-making from city halls to county boards and state houses portends the further erosion of the power of the federal/urban political machines coalition which through the sixties gave such force and influence to Black social, political and economic needs. On the other hand, the Act's policy of dispersion of minority groups,<sup>2</sup> accelerated by the "new" public housing and allied strategies for spreading over a wide geographical area previously urban-concentrated subsidized housing, may in the long run lead to greater affluence for minorities integrated but submerged in white-dominated suburban areas.<sup>3</sup>

First, consider the ominous aspects of McGuire's analysis. As he suggests, the HCDA flows in part out of the discontent and reaction to urban development policies of the sixties. Perhaps Daniel P. Moynihan anticipated the bitterness of the discontent. He termed "community action programs of the war on poverty" as a "debacle" and proclaimed derisively about "the soaring rhetoric, the minimum performance; the feigned constancy, the private betrayal; in the end . . . the sell-out."<sup>4</sup> True, last minute compromis-

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1. Pub. L. No. 93-383, 88 Stat. 633 *et seq.* (1974).

2. See Title I § 101(c)(6), 42 U.S.C. § 5301 (1970). Doubts about the dispersal policy's efficacy were expressed while the ink on President Ford's signature was barely dry. See, for instance, Kristof, *The Housing and Community Development Act of 1974: Prospects and Prognosis*, 27 J. ECON. & BUS. 120 (1975).

3. Dispersion at the very least should enhance employment opportunities since as long ago as 1968 it was clear that "[m]ost new employment opportunities are being created in the suburban portions of our metropolitan areas, not anywhere near central-city ghettos." DOWNS, *ALTERNATIVE FUTURES FOR THE AMERICAN GHETTO* 97 (1968). See also REPORT OF THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS 127 (1968).

4. D. MOYNIHAN, *MAXIMUM FEASIBLE MISUNDERSTANDING* 203 (1969).

es led to an Act which has retained older subsidy strategies (such as Sections 235 and 236 subsidized home-ownership and private rental programs) and led to the delay of such conservative conceptions as the housing allowance program which was kept at experiment scale.<sup>5</sup> But on the whole McGuire is essentially correct: the new Act is in part a post-Nixon era triumph of the forces that led to Nixon's rise to power. These forces must be frankly recognized for what they are: regressive and anti-minority though often masked as fiscally conservative.

Moreover, what is especially troublesome is the fact that for the first time since the Second World War, Black interests may be on the "losing" side of a national movement validated by both historical and contemporary circumstance, a sharp contrast to the civil rights movement which was part of a world-wide post-war struggle against colonialism and racism.<sup>6</sup> Indeed, it was a protest in which "the Black Panther party was the swaggering superstars of the radical movement."<sup>7</sup>

But regionalism, and its concomitant environmentalism, appears as an inexorable response to the forces of growth which menace the rational development of natural and social resources. Thus demands that decisions be made at a regional level in order to enhance coordination and to check the cancer of rampant expansion tend to accelerate the shift of political power from cities to county, or even state-wide structures of decision. Put another way, it is clear that mega-cities (SMSA's in current parlance) and their surrounding dormitories require a comprehensiveness of planning that simply cannot be effectuated alone from the central cities. It is now beyond serious dispute—as the planning literature and legislation of the past ten years affirms—that the viability of critical social and economic decisions depends "upon the accommodation of widely disparate interests for their ultimate resolution. To that end, state-wide or regional control of planning . . . insure[s] that interests broader than that of a municipality underlie various land use policies."<sup>8</sup> So it is that the natural demands of the economic and social order propel decision-making upwards to a level where Blacks rarely participate.

Though McGuire seems to believe the shift to regionalism in decision-making stems from disenchantment with the "parochialism" of local governments, more likely, at least in what he calls "liberal circles," it is the rise of demands for a regional perspective that has legitimated a movement which offers effective and efficient decision-making but is potentially resistant to the gains and aspirations of minority groups. Most Blacks, despite dramatically increasing migration to suburban areas, are still inner-city residents.<sup>9</sup>

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5. See McGee, Book Review, 22 U.C.L.A. L. REV. 734 (1975); and Nenno, *The Housing and Community Development Act of 1974: An Interpretation, Its History*, 8 J. HOUSING 344 (1974).

6. See H. CRUSE, *THE CRISIS OF THE NEGRO INTELLECTUAL* 553 (1967); cf. I. WALTERSTEIN, *AFRICA THE POLITICS OF INDEPENDENCE* 85 *et seq.* (1961).

7. L.A. Times, Sept. 22, 1975, Pt. 1, at 3, col. 6.

8. *Golden v. Planning Bd. of Rampo*, 30 N.Y.2d 359, 285 N.E.2d 291, 300 (1972). See also Hagman, *URBAN PLANNING AND LAND DEVELOPMENT CONTROL LAW* 527-89 (1975).

9. U.S. BUREAU OF THE CENSUS, *THE SOCIAL AND ECONOMIC STATUS OF THE BLACK POPULATION IN THE UNITED STATES, 1973*, at 9 (1974) [hereinafter cited as *BLACK POPULATION REPORT*].

To the extent that decision-making is transferred from the cities to the counties or the states, to that extent are Blacks deprived of real power to shape change. It should also be clear that the conflict is not between Federal and local decision-making, as McGuire's paper runs the danger of suggesting, but between urban power and suburban state/wide power. That is what the Nixon revolution was all about and that in part is what the shift to regionalism is all about. The poverty programs represented an axis between a progressive Federal bureaucracy, a sympathetic Congress and President, and liberal forces in the urban areas.<sup>10</sup> In many cases, of course, as McGuire correctly suggests, these forces were anti-machine and anti-urban political establishments. But the real point is that national resources were directed towards the shame of the cities, the recently exploding ghettos which threatened (if ever so briefly) to shake the Republic to its foundations. Indeed, the poverty programs were local and urban control with a vengeance. Not only were the funds directed at inner-city problems, but the inner-city residents were given the promise of real influence on how those funds were spent. "And a concerned and active Federal judiciary exercised judicial review so as to insure that not only the letter but the spirit of the new policies was implemented."<sup>11</sup>

As McGuire suggests, then, the shift towards regionalism in decision-making and the Block grant strategy in particular, both confirms the hegemony of traditional (read *white*) forces within the city, and reinforces this domination by a similar strategy for allocating resources on a state-wide level. And if the funds have come to the states to use as they please, can the loss of federal control be far behind? Though the HCDA of 1974 was passed with a meaningful federal presence through Federal standards and guidelines, the momentum of Nixon's "New Federalism" may be irreversible. Of course, the power of Federal oversight must not be overemphasized. The Black caucus may be Black, but it is certainly not very large, and with one Senator and relatively low representation at the policy-making levels of the bureaucracy, it is arguable that "Black power" at any level is more mirage than reality. Nonetheless, there are more Black Congressmen and Black city councilmen and Black mayors than Black state legislators or county supervisors.<sup>12</sup>

Thus, no matter the perspective, the new Act paves the way for a defeasance of Black political power, just as it seemed within their grasp. And here McGuire is at his most sociological incisive. For the poverty program was an escape hatch for Black middle class until the sixties trapped an economic and social *cul de sac*. Literally thousands of Black managers and even entrepreneurs were forged in the poverty programs and the social programs of the middle and late sixties. Finally, after decades of visible but often symbolic leadership, Blacks began to develop a leadership infra-structure, so vital to the orchestration of the total development of the Black community's economic development. The current reaction to Black

10. See D. MOYNIHAN, MAXIMUM FEASIBLE MISUNDERSTANDING 75-101 (1969).

11. *Shanon v. HUD*, 436 F.2d 809 (3d Cir. 1970) and *Metropolitan Housing Development Corp. v. Village of Arlington Heights*, — F.2d — (7th Cir. 1975).

12. See BLACK POPULATION REPORT, *supra* note 9, at 124 *et seq.* which indicated 1,360 Black elected officials at the city level as opposed to 17 Blacks in Congress, 239 county and 242 state officials.

progress, of which the shift in political power that regionalism reflects is an emanation, is indeed an ominous overtone of McGuire's analysis, one which, in sum, he avoids and obfuscates in an effort to emphasize the more positive aspects of the new Act.

But as suggested at the beginning of these comments, there is a potentially benign aspect to the Act. As Kenneth Clark has said, the "issue of the rights of the American Negroes will probably not be resolved either by verbal or strategic preoccupation with love or with hatred. The issue may be more realistically resolved by less tenuous emotions, such as enlightened self-interest on the part of Negroes and whites, a shared destiny, and the imperatives of the contemporary threat to the national survival."<sup>13</sup> It can be argued that the Act's dispersal policies embodied in Section 8, and buttressed by HUD "resettlement" policies designed to break up Black inner-city concentrations, speaks to a shared destiny between whites and Blacks and may facilitate increased Black participation in the material resources of the society (though ironically, as McGuire points out about the Post Office, at a time when those resources seem to be shrinking dramatically).

To be sure, Federal dispersal policy did not commence with the 1974 HCDA. As early as the mid-1950's dispersal emerged as an answer to housing segregation. In its 1959 Annual Report, the United States Commission on Civil Rights showed its approval of a dispersal policy by recommending that

". . . The Public Housing Administration take affirmative action to encourage the selection of sites on open land in good areas outside the present centers of racial concentration. PHA should put the local housing authorities on notice that their proposals will be evaluated in this light."<sup>14</sup>

But a more visible affirmation of dispersal was embodied in President Kennedy's 1962 Executive Order 11063 which directed all departments and agencies to take the actions necessary to prevent segregation in housing.<sup>15</sup> The landmark Civil Rights Acts of 1964<sup>16</sup> and 1968<sup>17</sup> also expressed a dispersal philosophy and in 1967, HUD's Low Rent Housing Manual specifically stressed a site selection policy which provided that housing located in areas of racial concentration would be "prima facie unacceptable."<sup>18</sup> In February of 1972, HUD published site selection criteria for Section 235<sup>19</sup> and 236<sup>20</sup> programs which called for a "poor rating" for any proposed project which is likely to cause a substantially racially mixed area to become one of minority concentration.<sup>21</sup>

The scatter-site, dispersed public housing program envisioned by Section 8 may, therefore, impact in a benign fashion on the nation's racial minorities.

13. See K. CLARK, *BLACK GHETTO* 219 (1965).

14. See UNITED STATES COMMISSION ON CIVIL RIGHTS, *ANNUAL REPORT 1970* which refers to the recommendation in the 1959 Report.

15. Exec. Order No. 11063, 27 F.R. 11527.

16. Title VI of Civil Rights Act of 1964, 42 U.S.C. § 2000d (1970).

17. Title VIII of the Civil Rights Act of 1968, 42 U.S.C. § 3601 *et seq.* (1970).

18. Low-Rent Housing Manual § 205.1 ¶ 2 (1968).

19. 12 U.S.C. § 17152 (1970).

20. 12 U.S.C. § 17152z-1 (1970).

21. 24 C.F.R. § 200.700 (1973).

To be sure, dispersal strategy is as much art as policy, forcing its practitioners to insure that racial minorities will not be wholly absorbed but also to assure that the influx does not "tip" the community into a new ghetto. But the advantages of dispersal are substantial. Easier physical access to job opportunities could lead to increased employment opportunities. Just as whites increasingly find it convenient, indeed necessary, to return to the inner city to live near the executive suite, so it is that many Blacks have been excluded from job opportunities from which they are separated largely by a combination of inadequate public transportation and the flight of industry to remote suburbs. Aside from job opportunities, dispersal might enable many to escape the unacceptably poor physical and psychological conditions which still attend living in the inner city. Moreover, educational opportunities might improve and the busing issue defused if Blacks can walk to and are not "forced" to bus their way to undeniably superior suburban schools. At the very least, we would at long last know whether the objection is to "us" or to the "bus".

Finally, dispersal policy might spread the costs of combating poverty. The current concentration of the burden of metropolitan living on those least able to afford it—the economically depressed residents of the city. By fleeing to affluent neighborhoods outside the cities, whites have successfully isolated themselves from problems largely created by their flight.<sup>22</sup> Dispersal could force them finally to confront those they fled in their own backyards. Dispersal raises the question: why flee the city at all if the Blacks you ran from are waiting for you when you return in the evening to the suburbs. Dispersal then may be the last best chance to avoid "two societies, one black, one white—separate and unequal."<sup>23</sup>

It must be made clear, however, that Section 8 is no Alladin's lamp of dispersal. Though the proponents of Section 8's leased housing program urged, as the proponents of the predecessor Section 23 had argued before

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22. It now seems clear that much of New York City's financial crisis stems from its reception of oppressed/dispossessed Blacks and Puerto Ricans and the subsequent out-migration of middle-income whites. See for instance, H. Meyer, *How Government Helped Ruin the South Bronx*, Fortune, November, 1975, at 140, which traces the phenomenon of urban decay in one of New York City's most afflicted boroughs. Of course the New York financial difficulty was predictable on the basis of government studies in the 1960's. For instance the Douglas Commission indicated in 1968:

The lowest income groups are attracted to the inner city slums because that is often where the oldest urban housing is offered at the lowest rents. It needs to be stressed that the weekly rents are often low only because so many people are crowded into such small and poorly equipped space; figured on a per house or per room basis, or as a percentage of investment, the rents received by the owner may be quite high indeed.

The concentration of low-income families places an inordinate burden on each central city to provide welfare services, expanded police protection, and other costly public services. Yet the departure of many middle- and upper-income residents and many industries to the suburbs weakens the central city tax base. The conversion of neighborhoods from middle-income and low-income occupancy, which occurs when slums expand, also reduces the prosperity of retail businesses, thereby further depressing the local tax base. So center cities experience a sharp rise in demand for revenue at the same time that their ability to produce revenue is either static or declining. The result can be, and sometimes is, death for a neighborhood or the slow strangulation of the city itself. REPORT OF THE NATIONAL COMMISSION ON URBAN PROBLEMS TO THE CONGRESS AND TO THE PRESIDENT OF THE UNITED STATES, H.R. DOC. NO. 91-34 (1968).

23. REPORT OF THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS 1 (1968).

them, that leased housing was the solution to the *de facto* and *de jure* segregation that characterized traditional housing projects, the ultimate outcome of the program is in doubt. Though Section 8 promises to mix poor and middle class tenants into one apartment building or house a lower socio-economic household in the middle of a middle class neighborhood, the promise of "economic mix" may well be undercut by both racist and economic forces. As McGuire points out, "the Achilles Heel of the program is the fact that HUD is setting 'fair market rents' too low to accommodate new construction. Due to rampant and sustained inflation in the construction sector the cost of new construction has risen to the point that it is almost impossible to build new units at today's construction cost and interest costs which will rent for less than \$300 per month."<sup>24</sup> "The middle class in this country is very conscious of status and worried about its financial investment in homes, schools and neighborhoods."<sup>25</sup> They may well protect this status by stiffened resistance to residential integration except at the highest (and for Blacks, statistically insignificant)<sup>26</sup> end of the economic spectrum.

In closing, it must be pointed out that dispersal, described here as a benign aspect of the 1974 HCDA, is not without its objectionable features. On a more technical level, it can be argued that an efficient use of dwindling economic resources ordains a concentration of housing resources at low-cost sites near those who need the housing. Concern for integration and dispersal has the danger of obscuring the overriding need for decent shelter. Also, dispersal writ large has proven to be a dead-end in terms of energy policy. Dispersal without public transportation may benefit no one. But more importantly, spreading Blacks out is to spread them thin. The distinctive aspects of Black culture are surely to suffer dilution if dispersal strategies siphon off meaningful numbers of Blacks from their concentration in the city core.

McGuire, however, is essentially correct in his thesis that the HCDA of 1974 has "much to commend it. . ." and Andrew Brimmer may well have stated the emerging lesson of the seventies and of HCDA when he said:

"The economic future of blacks in the United States is bound up with that of the rest of the nation. Programs designed in the future to cope with the problems of the poor and the disadvantaged will also yield benefits to blacks. In contrast, any efforts to treat blacks separately from the rest of the nation are likely to lead to frustrations, heightened racial animosities and a waste of the country's resources."<sup>27</sup>

24. C. McGuire, *The Urban Development Act of 1974*.

25. Friedman & Krier, *A New Lease on Life: Section 23 Housing and the Poor*, 116 PENN. L. REV. 611, 625 (1968).

26. See BLACK POPULATION REPORT, *supra* note 9, at 23 where the following is noted:

Within recent years, it has been noted that significant advances have been made in closing the Black-white income gap by young Black husband-wife families in the North and West. Those Black husband-wife families (head under 35) in which both the husband and wife were earners have actually achieved income parity with their white counterparts. Although these gains have been impressive, these Black families in the North and West continue to comprise a very small proportion—6.2 percent of the 5.3 million Black families in this country in March 1973.

27. Brimmer, *Economic Developments in the Black Community*, 34 PUBLIC INTEREST 146, 163 (1974).