Rx For Population Deconcentration

Judith T. Younger
Imagine 1300 to 1800 cities centered around one of giant proportions. All are connected by a network of highways and cover about 2,000 square miles. In each there are at least 300,000 individuals. Relations between residents of cities in the complex are friendly; travel for them is free throughout. Visiting strangers, however, are distinctly unwelcome. Struck by the noise and the unfriendly reception, they cut their stays short and soon leave. What is the place and who are the people? Is it metropolitan New York or San Francisco with 540 million residents in the twenty-fifth century? Possibly, if present growth continues. In fact, our example was modelled on a non-human original which contained neither cities nor people. Its residents were red ants living in a federation of crowded nests on a few hectares of land outside Philadelphia. Ants, of course, have very small brains. The results of individual testing, therefore, show them up as quite stupid. Yet the Philadelphia species and some others are capable of acting like humans. They keep cattle, store grain, cultivate fungus, enslave other ants and get drunk. These unusual species have one characteristic in common: highly populated nests clustered together in colonies. The more ants in each nest in the colony, the smarter the whole. Together, myrmecologists suspect, the hundreds of millions of tiny ant brains provide enough nerve endings for one huge intelligence. In this way high population concentrations render stupid ants smart. Can high population concentrations work similar miracles for

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1 The Bureau of the Census reports a 10.8% increase in the last decade for the largest Standard Metropolitan Statistical Areas, those like San Francisco and New York with populations over two million. Those with smaller populations, one to two million, are growing even faster—they registered an increase for the same period of 25.3%. NEWSPAPER ENTERPRISE ASS‘N 1971 WORLD ALMANAC 406.


3 Id. at 195-96. Their standard of performance is about a thousand times poorer than monkeys.

4 Id. at 197.

5 Id. at 195-96, 206-07.

6 Id. at 196, 206.

7 Persons who specialize in that branch of entomology dealing with ants.

8 R. CHAUVIN, supra note 2, at 196-97, 204-05.
people? Some experts think so. They see a correlation between masses of people and efficient production. The agglomerations of population in modern metropolitan areas have thus been praised as "the most efficient producer and consumer units that our society has yet devised" and their very "size, density and congestion" as "precious economic assets."

A more venerable line of thought takes the opposite view. Its followers believe that human settlements have low optimum population limits and that greater growth renders them inefficient and ungovernable. Aristotle, for instance, drew the line at "the largest number which suffices for the purpose of life, and can be taken in at a single view." Plato was more specific: 5,040 citizens were enough. These commentators, of course, never saw the modern metropolitan area. It is pitifully underpopulated compared to the colony of Philadelphia ants but ridiculously overcrowded by ancient Greek standards. In it the purposes of life are becoming more and more difficult to pursue. It fails the "single view" test even from the air and has long surpassed Plato's citizen limit. Still it continues to grow, generating ever more cars, roads, garbage, and crime. Obviously what suits ants in the way of population concentration is disastrous for men. As the metropolis expands, more adherents are swinging over to the Greek view: "A single area can take care of just so many people." The Governor of Oregon (a state with only 2,091,385 people, three metropolitan areas,}
one of the lowest fertility rates in the nation and population growth due largely to immigration)\textsuperscript{19} recently said it this way: “Come and visit us again and again. But for heaven’s sake don’t come here to live.”\textsuperscript{20} The purpose of this article is to explore the possibility of implementing the Governor’s wish. Specifically the question is: Can concentrations of population in metropolitan areas be effectively and constitutionally controlled by (1) limiting the influx of new residents and (2) redistributing the old? To answer it we look first to the metropolitan area to learn its history and vital statistics. Next we examine case histories of others with the same affliction: too many people in the same place. We examine treatments applied in Greece, Rome, England, South Africa, India, Israel and the People’s Republic of China. Finally we choose a cure for the American patient and write out a prescription.

The Metropolitan Area: History and Vital Statistics

Metropolitan living, though “old hat” for ants, is a relatively new way of life for men. Born in America just before the turn of the century,\textsuperscript{21} the metropolitan area, or, as the United States Bureau of the Budget defines it, the “integrated economic and social unit with a large population nucleus”\textsuperscript{22} grew to majority unheralded. In 1910, via the federal census, it made a belated debut.\textsuperscript{23} In that year 25 mother cities of 200,000 or more were linked with their suburban offspring and billed together for the first time as “metropolitan districts.”\textsuperscript{24} Nineteen smaller cities of 100,000 or more and their suburbs were listed together as “cities and adjacent territories.”\textsuperscript{25} The 25 existing, and 19 emerging, metropolitan areas then accounted for 29.4% of the nation’s population,\textsuperscript{26} and .9% of its land;\textsuperscript{27} central
city population outnumbered suburban by almost three to one.28 In the 62 years since 1910, the debutantes have multiplied and spread. There are now 243 standard metropolitan statistical areas (SMSAS) in the United States.29 They were home, in 1970, for more than two-thirds of the nation’s population30 and covered 10.96% of its land.31 The ratio of central city population to suburban was well on the way to reversal: more than 76,000,000 in the suburbs and 64,000,000 in the cities.32 This has been a continuing trend: as the cities decline, the suburbs grow up. Like growing children everywhere they depend less on,33 and deprecate more, the ways of their parents. Dissatisfied with parental performance and early domination, they are taking over city functions34 and forming alliances away from home.35 Normal familial frictions are worsened by other differences between them: in population—increasingly more old, poor and black people live in the city, the suburbs tend to be mostly white and middle class;36 in governmental structure—cities tend to have strong central governments, the suburbs myriads of fiercely independent, often warring ones;37 in the legislature—cities and suburbs are in constant competition for money and other benefits in the form of shared tax revenues, school aid, welfare programs, highways and special legislation.38 Still part of one statistical ent-

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28 Central city population was 19,538,782 and suburban was 7,482,036. Id., table 52 at 77.
30 69%, to be exact. FINAL REPORT, supra note 29, at 3.
32 FINAL REPORT supra note 29, at 3.
33 See note 35 infra.
34 Indeed it has been aptly said that “[t]he largest city in America is now the suburbs of New York.” N.Y. Times, Aug. 16, 1971, at 1, col. 2. People are no longer merely sleeping in their suburbs. They are working, playing, building and spending there too. Some startling statistics gathered by five New York Times correspondents for Baltimore, Cleveland, Los Angeles, Houston, and Atlanta, “five geographically representative areas,” appear in that newspaper. N.Y. Times, May 30, 1971, at 1, col. 2. Similar data for New York appears in another piece in the series along with other evidence of the growing independence of the suburbs. Id., Aug. 16, 1971, at 1, col. 2.
35 E.g., the chief executives of New York State’s 12 largest counties meeting to consider coalition, a so-called “Suburban Union.” Id., June 28, 1971, at 19, col. 2.
37 ADVISORY COMM’N REP’T, supra note 36, at 74; see Herbers, The Outer City: Uneasiness Over Future, N.Y. Times, June 2, 1971, at 1, col. 2., on “balkanization” of the suburbs.
38 Outside this structure they compete too—for industry. N.Y. Times, Aug. 28, 1971, at 53,
ity, still possessed of high population totals, their differences set them apart. The result is a gradual erosion of the metropolitan area as an integrated economic and social unit and an insight into why the much touted notion of metropolitan government has never caught on.

Just what do the country's metropolitan areas look like in terms of government? At last count in 1967, there were a total of 20,703 local governments serving them. The figures ranged from extremes like 1,113 in Chicago to four for Honolulu County, Hawaii. The average per metropolitan area was 91. While other nations have been faced with like areas of high population concentration, none has experienced such governmental fragmentation within them. We go now to their experiences hoping to find something we can use at home.

The Greeks: Theory and Matching Practice

The ancient Greeks, we know, did a lot of talking about the optimum size of their poleis. Did they have practical plans for keeping population down as well? Indeed, yes. As articulated by Plato: "And if after all . . . there be an excess of citizens, owing to the too great love of those who live together, and we are at our wits' end, there is still the old device often mentioned by us of sending out a colony, which will part friends with us, and be composed of suitable persons." Send out colonies is exactly what the Greeks did. Their extent is one of the remarkable facts of history. In the 200 years from 750 to 550 B.C., Greek cities had sprung up "all around the Aegean, . . . in the more reasonable parts of the Black Sea (including the Crimea), along the Libyan coast, in south and west Italy, in Sicily, on the south coast of France and the east coast of Spain. This amazing phenomenon was accomplished without legislation or compulsion. Population pressures and the Delphic Oracle sped it along. The former made young men eager to find land and become renown in the colonies."
latter gave them advice on location, other practical tidbits and its blessing. It was then up to the mother city to organize the expedition, choose its leader and send it forth. The new colony, after its founding, was entirely independent of its parent but mother and child continued friends. When it got around to sending off its own shoots the new colony went home to mother for a leader. Despite colonization, Attica is supposed to have grown to more than 315,000 people and Athens, Syracuse and Acragus to citizenries of more than 20,000. The other poleis apparently managed to keep their numbers down.

**Rome: Citizenship as an Inducement**

The Romans, unlike the Greeks, did not talk of ideal numbers for their cities. The problems of population concentration surely touched them, however, for the reward of continued citizenship was offered for migration to specified places. Noncitizens, by joining new communities on recently won or strategically situated domains, could remain civis Romanus themselves. Similarly, when Rome needed additional citizens, members of the Latin colonies and cities were encouraged to come to it by the offer of special privileges if they did so. After 265 B.C., the attractions of metropolitan Rome proved too alluring, and the colonies became fearful of depopulation. The “come to Rome” policy then required limitation. It was therefore successively restricted, first to those who left a son in the colony and later to those who held office or other distinctions back home. The impact on Rome is hard to measure. It grew in the third century A.D. to 800,000 or 1,200,000 people walled into four square miles. Life within it was far from idyllic; there were many modern urban inconveniences—frequent fires, falling houses, high prices, noise, crowds, thieves, and sudden death.

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48 Krrto, at 82-83; Bury, at 88.
49 Krrto, at 82.
50 Bury, at 87-88.
51 Id. at 88.
53 Kitto, *supra* note 46 at 66.
54 F. Cowell, Cicero and the Roman Republic 21 (Pelican Books ed. 1956).
55 Id. at 24.
56 Id.
57 Id.
58 Id.
59 Id.
60 Id.
62 Id. at 26-29.
63 Id. at 31.
64 Id.
65 Id.
66 Id. at 34.
67 Id. at 32-34.
England: Three Hundred Ninety-Three Years of Trying to Keep London Down

From Rome we move forward in time to sixteenth century England: our focus is London in 1580. We find the city in the midst of a startling growth in population caused by immigration and an enormous expansion of trade. Resulting conditions prompted Queen Elizabeth to issue a proclamation which is the soul of modernity in its attempt to stem the city's growth. It banned all new building in Westminster, London, and within three miles of the city gates. It also limited residential densities to one family per house. Eight years later Parliament added its own measure—a four acre minimum lot requirement for new houses in the suburbs. Neither the Queen's proclamation, nor Parliament's measure, nor later similar proclamations and laws, did much to halt the tide of people who wished to live in or near the great city. Far more effective were two disasters: The Black Death claimed 40,000 Londoners in 1625 and 75,000 more 40 years later. The Great Fire of 1666 helped by demolishing 13,200 houses. The effects of these calamities were only temporary, however. London and its suburbs continued to grow. By 1800 it had become the first or second city in history to pass 1,000,000. By 1939 there were 8.7 million people in the more developed part of the metropolis and another 5.9 million living in the regional ring around it. Together they accounted for a fifth of the country's population. The time seemed ripe for another disaster to slow the city's growth. World War II broke on the scene and the London area, with 2,151,000 houses (one-sixth of the country's stock) taking more than half the bombing damage. In the county of London itself

49 The city was crowded with lodgers, the suburbs marked by haphazard, unregulated growth. Id.
50 Id.
51 Il Tudor Royal Proclamations 466 (P. Hughes and L. Larkin eds. 1964).
52 Id.
53 31 Eliz. c. VII (1588). It did not apply to any "Cittie, Towne Corporate or auncyent Borough or Markett Towne within the Realme."
54 Enacted by Parliament in 1592. 35 Eliz. c. VI.
55 See note 73, supra.
56 RASMUSSEN, supra note 68, supra at 74-75.
58 Id.
59 J. HEARSEY, LONDON AND THE GREAT FIRE 171 (1965). It was directly responsible for only four deaths however. Id.
60 D. FOLEY, CONTROLLING LONDON'S GROWTH: PLANNING THE GREAT WEN 1940-1960 3 (1963). Whether London was first or second depends on the true population of Rome. See text accompanying note 60 supra.
61 Id. at 9.
62 Id.
"only about one house in ten" was uninjured and in one sector nearer the center only four houses in every hundred came through unharmed. The job of reconstruction gave the English a unique opportunity to try again to curb the capital's growth. Town and country planning was the result. In sum it is compulsory planning to restrain industrial employment and population growth, vertical growth by control of residential densities, lateral spreading by means of metropolitan green belts, and to redistribute existing population and employment by overspilling to new towns. Yet their planned metropolitan areas, in terms of landscape and population growth, look much like their unplanned American cousins. "There is a new London rising . . . ." reports a celebrated architectural critic sadly, built not for "the highest standards of art and public purpose" but for "speculative economics." She noted especially a 600 foot, £30,000,000 tower for the National Westminster Bank then in construction a half mile from the overshadowing St. Paul's; a skyscraper headquarters for the International Paper Company, a tropical resort style hotel and "Habitat" housing for an "exotic pudding" on the south bank of the Thames; 29 story Drapers Gardens looming over the Bank of England and the old Stock Exchange; the Centre Point, a 37 story tower in "cartoon modern" allowed in exchange for a road under the building which the municipal government wanted. So much for landscape. As to population, the situation has been neatly summed up by the British government itself: " . . . there has been a decline in the numbers of people living in inner urban areas, balanced or surpassed by the increase of population in and beyond the outer suburban fringes . . . . This applies most strikingly to London."

**South Africa: A Case of Population Paranoia**

In 1970, South Africa's total population was 21.4 million: 3.8 million white, 2 million black, 600,000 Asian and 15 million African. The government...
ment's avowed goal is, and since 1948 has been, so-called "separate development" or Apartheid. In effect it is trying to concentrate 71% of the country's population (all the Africans) into 13% of the land, reserving 87% of it, including all cities and major urban areas, for those who are white. To this end, the Department of Bantu Administration is "engaged in supervising perhaps the largest programme of population removals ever seen in peacetime anywhere." Its methods are the familiar ones of "banning", banishment, mass arrests under the Pass Laws and incarceration of those arrested in resettlement camps where malnutrition and disease abound. Even with these measures and an arsenal of repressive legislation to which it continually adds, the Government is having difficulty in accomplishing its chosen task. Africans are still migrating to the cities. Despite redesignation of formerly white areas as black homelands since 1960, the 1970 census showed 8 million Africans residing in white areas compared to only 6.8 million ten years before. The number is expected to increase still further to 9.3 million in 1980 and 12.9 million in 2,000.

**India: Impossible Numbers**

There are about 550 million Indians. They number more than the entire population of Africa or the Americas or Europe, and more than the United States and Russia together. Their ranks have recently been

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(Legum and Drysdale eds.) [hereinafter cited as ACR].

1. ACR, supra note 89, at B493-94.

2. Id. at B494.

3. In 1970 Pass Law arrests totaled 700,000. Id. "Banning" may be of organizations or individuals. "Banned" individuals are usually restricted to the districts where they live, have to report regularly to the police, may not communicate with one another, speak at public meetings, write to newspapers or publish, enter any educational institution or belong to any political organization. E. Brooks, APARTEID, A DOCUMENTARY STUDY ON MODERN SOUTH AFRICA 204-05 (1968) [hereinafter cited as APARTEID]. "Banishment is almost inevitably to a remote area where the banished man finds himself among an ethnic group different from his own and speaking a different language." Id. at 206.

4. A bird's eye view of these laws is given in APARTEID, supra note 92, through extracts from their provisions. Two more were added in 1970, the Bantu Laws Amendment Bill and the Bantu Homelands Citizenship Bill. ACR, supra note 89, at B497.

5. Id. at B494.

6. Id. at B496.

7. Id.


9. Africa has about 344,623,000 people. NEWSPAPER ENTERPRISE ASS'N 1971 WORLD ALMANAC at 48.

10. North America: 314,267,000 people and South America: 185,370,000. Id.

11. In Europe there are some 459,261,000 people. Id.

swollen by more than 9 million refugees from East Bengal—taking these people in was a luxury which the Indian Government could ill afford. It has made no attempt to shift segments of its huge population from one area to another; in light of the number of Indians such an approach would hardly make sense. The government has relied instead on a nationwide family planning program. Despite 400 million dollars being spent on it in the five year plan started three years ago, the country’s population is increasing at an annual rate of 2.4%. If it continues there will be a billion Indians by the year 2,000, outstripping any projected increases in food, schools, dwellings and jobs. While birth control seems to have caught on in the city, the rural population has, until recently, been out of reach. Government officials think they now have a new weapon in the form of mass vasectomy fairs in densely populated areas. Two of these in crowded Kerala seem to have broken the stalemate. Induced by the offer of the free operation, meals, 100 rupees (about $13.00) and saris for their wives, 78,000 men showed up and submitted to sterilization. This progress, however, is threatened by a recently announced budget cut which will directly affect India’s birth control programs.

Israel and The People’s Republic of China: A Study in Contrast

We can’t leave case histories without a look at little Israel and a glance at the huge People’s Republic of China. The former is slightly larger than New Jersey; the latter is slightly larger than the whole United States. Israel has no written constitution and its government proceeds English style on a course of voluntary socialism without coercion. Since its founding in 1948, the country has absorbed about 1.5 million immigrants of diverse nationalities and backgrounds, thus creating its own population problems. In resettling these people, the government has had to tread a fine path between national needs and individual freedom. The plan since

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104 So Mrs. Gandhi acknowledged in her speech at the National Press Club on Nov. 5, 1971. N.Y. Times, Nov. 6, 1971, at 10, col. 4.
106 Id.
107 Id.
108 Id.
109 Id.
110 Id.
111 The reduction in funding of family planning projects will result in the government spending almost 30 million dollars less in 1973-74 on family planning efforts than it did in the previous year. N.Y. Times, Aug. 6, 1971, at 1, col. 7.
112 Israel’s area is 7,993 square miles. NEWSPAPER ENTERPRISE ASS’N 1971 WORLD ALMANAC at 531. New Jersey’s is 7,532 square miles. Id. at 454.
113 3,746,453 square miles for Red China, Id. at 509, and 3,536,855 square miles for the U. S. U.S. DEP’T OF COMMERCE NEWS, PRESS RELEASE, JUNE 22, 1971.
114 Interview with The Jewish Agency, Nov. 13, 1971, on file at St. John’s Law Review.
1951 has been directed toward a dispersion of the population away from the three great urban centers of Tel Aviv, Haifa and Jerusalem into two new types of development towns; urban-rural centers with populations of 6,000 to 12,000 and middle sized towns, serving as distinct centers with populations of 40,000 to 60,000. To compensate for the more difficult life in development towns, the government has offered a variety of subsidies, lower rents, taxes and higher wages. Resettlement centers help immigrants in new places, giving six months of "sheltered settlement" including Hebrew lessons, help with jobs, housing and general orientation. As of 1970, of a total Jewish population of some 2.5 million (by now approximately 3 million) about a third (compared to 60% in 1948) lived in Israel's three largest cities. One-half lived in 75 smaller cities and the remaining sixth lived in some 700 farming villages founded since statehood. Like the Romans before them, the Israelis sent out people to settle and secure newly acquired domains.

Red China, unlike Israel, did not create its population problems; rather, it inherited them. At first the huge population (now between 740 and 800 million) was hailed as an asset by the Communist regime. When six years of effort to double food production were less than successful it turned to a campaign of family planning instead. Contraceptives were made universally and inexpensively available, as were sterilization and abortion. Party and press came out in support of late marriages—25 to 27 for men and 21 to 23 for women. As part of industrialization the Government launched a program to draw workers into the city. This, unlike efforts with the food supply, proved oversuccessful, and the extra arrivals had to be resiphoned back to the farm. The government's methods could never pass democratic muster. There were forced expulsions and

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114 S. Eisenstadt, Israeli Society 71-72 (1967).
116 Id. at 94.
117 Eisenstadt, supra note 116, at 71.
118 Eckardt & Eckardt, supra note 116, at 96.
119 Id.
120 E.g., in the spring of 1970, the Israeli Government granted permission for the settling of about 1,000 Jews in the City of Hebron on the West Bank of the Jordan River (part of the spoils of the Six Days' War). This policy has often been cited by the Arabs as an obstacle to peace negotiations. Id. at 166.
121 740,000,000 comes from the 1971 World Almanac at 509. The higher figure appears in Terrill, The 800,000,000: Report From China, Atlantic Monthly, Nov., 1971, at 91.
123 Id. at 398-99.
124 Id. at 400.
125 Id.
126 Id. at 401.
127 Id. at 221.
128 Id.
resettlements, reorganization of personnel in the government and party administration with accompanying transfers to rural and frontier areas. Students in primary and middle school for whom there was no room at the next higher level of education were also sent to the country. In 1961 alone between 10 and 20 million people were reported shifted back from the cities and hundreds of county seats to the farms.

**Picking and Choosing for the American Prescription**

We have seen colonization, grants of citizenship, town and country planning, voluntary sterilization with cash and other inducements, compulsory resettlement without compensation, voluntary resettlement with tax and other monetary incentives, "banning", banishment, repression and a kind of murder at work on the problems of population concentration elsewhere. Obviously, America, as a democracy with a written constitution, cannot bandy about citizenship to encourage migration, compel resettlement with compensation, "ban", banish, or murder extra people as a means of controlling its population. This leaves colonization, town and country planning, voluntary sterilization, and voluntary resettlement to choose from. The first seems impractical—there are few places left to go—the moon is not quite ready; the second seems to be failing in England, the third is discussed elsewhere and the fourth is part of our prescription. All the approaches, whatever their merits, represent a concerted effort to deal with a recognized problem. This is infinitely more than we have done here though the tools are right at hand. Zoning, particularly fit for containing growth, and urban renewal, equally fit for disbursing it, once it has occurred, have not been used for these tasks. Instead they have been administered locally and used selectively to prevent entry or speed exit of only limited groups: those considered undesirable, usually the poor and the black. Anyone who could pay taxes was allowed in or permitted to stay. This kind of dealing, as might be expected, has afforded no relief from metropolitan problems. Yet the legislatures persist in continuing it. Basically they view growth, at least of the taxpaying public, as generally good, a sign of a healthy economy. An old gubernatorial message to the

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130 Id.
131 Id.
132 Snow, supra note 122, at 558.
133 See text accompanying notes 84-88 supra.
134 See text accompanying notes 162-164 infra.
135 Reduction of population concentration has long been recognized as well within the legitimate reach of the police power. It is section 3 of the Standard State Zoning Enabling Act, and thus expressly stated in the law of many states. See 1 R. Anderson, American Law of Zoning § 7.06 (1968); Cunningham, Land Use Control - The State and Local Programs, 50 Iowa L. Rev. 967 (1965).
New York Legislature and an implementing, though unintroduced, bill shows what is wrong with the current approach.

On March 28, 1971, Governor Rockefeller announced that he would send to the legislature the next day, a special message on the state’s welfare problems. This message and the bill prepared by his office, contemplated a grant of authority to the State Health Department to declare, after public hearings, housing emergencies in entire communities based on findings of overcrowding in existing housing within them. Once an emergency area was so designated, emigration with intent to reside there was banned unless one had “first obtained adequate sanitary dwelling facilities or had the clear and actual ability (presumably financial) to do so.” Violators could be ordered to leave the area and failure to comply would constitute a misdemeanor. The message sought federal authority for a voluntary resettlement program for those on public assistance. The idea, of course, was to send them elsewhere provided with housing and jobs.

The bill and the message, as usual, are aimed solely at one group of people: those on welfare. The one, was designed to keep new welfare residents from coming in; the other, was aimed at escorting old welfare residents out. The bill never got to the lawmakers’ desks. The Assistant Attorneys General assigned to report on it properly turned it down. The classification it made—poor people on welfare—was invidious; there was no compelling state interest to support it; and the burden it imposed on the constitutional right to travel was therefore unjustifiable. Described in romantic, sometimes flowery language, though without specific constitutional mention, the right to travel is generally assumed to include the


137 Specifically the Governor’s message said: “I am seeking Federal authority for a voluntary resettlement program by which persons already receiving public assistance in New York State could be assisted in relocating elsewhere in the Nation where a job and housing are available. This assistance could include payments for transportation and adjustment allowances.”

138 Kent v. Dulles, 357 U. S. 116, 126 (1958) (“Travel abroad, like travel within the country . . . may be as close to the heart of the individual as the choice of what he eats, or wears, or reads. Freedom of movement is basic in our scheme of values.”); Edwards v. California, 314 U.S. 160, 162 (1941) (part of “the very fabric of national unity”); e.g., The Passenger Cases, 48 U.S. (7 Howard) 282, 492 (1849) (“For all the great purposes for which the Federal government was formed, we are one people, with one common country. We are all citizens of the United States; and, as members of the same community, must have the right to pass and repass through every part of it without interruption, as freely as in our own States.”); Z. Chafee, Three Human Rights in the Constitution of 1787 at 197 (1956) (“Our nation has thrived on the principle that, outside areas of plainly harmful conduct, every American is left to shape his own life as he thinks best, do what he pleases, go where he pleases.”).

139 It has, therefore, been predicted on four different constitutional bases: the privileges and immunities clause of article IV, section 2; the same clause of the fourteenth amendment; the Commerce Clause; and the Due Process Clause of the fifth amendment. See Shapiro v. Thompson, 394 U.S. 618, 630 n.8 (1969).
right to enter and abide in any state in the Union.\textsuperscript{146} The Supreme Court, in \textit{James v. Valtierra},\textsuperscript{141} seems now to have whittled it down. Either it does not include a right in the poor to live in low income housing over the community’s veto, at least in California which has repeatedly used referendums “to give citizens a voice on questions of public policy,”\textsuperscript{142} or the requirement of referendum is a justifiable burden upon it necessary to further a compelling state interest.\textsuperscript{143} Whatever its rationale, the \textit{Valtierra} case may shore up the Rockefeller bill’s shaky constitutional status. Still it was not worth the legislators’ attention. Its base is too narrow. So is its target. The problem it should have been aimed at is more susceptible to federal than state solution.\textsuperscript{144} If we rewrite it, however, we come up with the first part of our American cure.

Let’s expand the basis for action beyond a finding of overcrowded housing. Why not add other indicia of metropolitan sickness which cry out for recognition and treatment? Write in excessive crime, population, garbage, pollution, traffic congestion and shortage of mass transport, water and power supplies as grounds which, if found within a community, could, alone or in combination, also support the exercise of extraordinary powers. Why not face the fact that every person in a crowded metropolitan area adds to its problems, whether he is rich or poor.\textsuperscript{145} Any ban on new residents or a limitation of their numbers must apply to all people; each and every one of them is part of the target. Finally the problem of population concentration clearly transcends state lines. It calls for a uniform, centrally administered solution. Since there are virtually no metropolitan governments in this country,\textsuperscript{146} power to designate emergency areas, ban new residents or limit their numbers should be federal. Congress, riding on the commerce power,\textsuperscript{147} can so act, though its enactment impinges on the right to travel\textsuperscript{148} either as (1) a temporary exercise of emergency powers\textsuperscript{149} or (2) as necessary

\textsuperscript{146} Truax v. Raich, 239 U.S. 33, 39 (1915).
\textsuperscript{141} 402 U.S. 137 (1971).
\textsuperscript{142} See Shapiro v. Thompson, 394 U.S. 618. As to the right to travel in the \textit{Valtierra} case, the Court merely said: “We also find the privileges and immunities argument without merit.” 402 U.S. at 140.
\textsuperscript{144} The rich, at the least, produce more garbage and cars.
\textsuperscript{145} There are just enough exceptions to prove the rule, e.g., Miami-Dade County, Nashville-Davidson County. See Bradley v. Board of Educ., 338 F. Supp. 67, (E.D. Va.), rev’d, 462 F.2d 1058 (1972), aff’d, 41 U.S.L.W. 4685 (U.S. May 21, 1973).
\textsuperscript{146} The exercise of congressional judgment to act in an area now seems to be enough to bring its action within the clause. See Perez v. United States, 402 U.S. 146 (1971).
\textsuperscript{147} The right is also subject to some state limitations as well. New York v. O’Neill, 359 U.S. 1 (1959).
\textsuperscript{148} It is interesting to note Justice Stewart’s comment in Shapiro v. Thompson, 394 U.S. 618, 643 n.4 (1969) (concurring opinion): “The extent of emergency governmental power temporar-
to promote a compelling governmental interest. The emergency is danger to, and the compelling interest is protection of, the health, welfare and safety of people in metropolitan areas. Both are easily spelled out in terms of the toll being exacted from air, water, and noise pollution, automobile accidents, crime, mental breakdown and disease associated with stress. The severity of these metropolitan symptoms increases with numbers of people.

Unfortunately our courts, like our legislatures, have not yet accepted the facts. Too many people in one place are a problem spelling not "good" but "disaster." Attuned to striking down enactments which exclude them, sometimes whether the exclusion is based on discrimination or not, they insist that new people be let in and the community make necessary improvements. The New York Court of Appeals, however, has recently seen some light. On May 3, 1972 it upheld the town of Ramapo in its efforts to freeze development of vacant land until sewers, schools, roads, recreation areas and firehouses could be built to support new residents. In its opinion the Court said:

Ramapo asks not that it be left alone, but only that it be allowed to prevent the kind of deterioration that has transformed well-ordered and thriving residential communities into blighted ghettos with attendant hazards to health, security and social stability—a danger not without substantial basis in fact.

The Ramapo decision is, of course, a step in the right direction. But it offers an essentially local solution—resolution case by case, community by community to prevent or control interstate travel, e.g., to a disaster area, need not be considered in these cases." Surely if Congress could constitutionally pass a prohibition law based on the war power to protect soldiers from alcohol even though the Armistice had been signed, Hamilton v. Kentucky Distilleries & Warehouse Co., 251 U.S. 146 (1919), and could constitutionally relocate American citizens based on the war power and their racial backgrounds, Korematsu v. United States, 323 U.S. 214 (1944), it could constitutionally keep people out of overcrowded, polluted, crime-ridden metropolitan areas. This is, as Korematsu was not, "a case of temporary exclusion of a citizen from an area for his own safety or that of the community" or "a case of offering him an opportunity to go temporarily out of an area where his presence might cause danger to himself or his fellows." Id. at 226 (Roberts, J., dissenting).


107 E.g., Kennedy Park Homes Ass'n v. City of Lackawanna, 436 F.2d 108 (2d Cir. 1970), cert. denied, 401 U.S. 1010 (1971) (racial discrimination); Oakwood at Madison v. Township of Madison, 117 N.J. Super. 11, 283 A.2d 353, 355 (1971) (discrimination or, as the Madison officials described it, merely an attempt by the township which grew in 20 years from a population of 7,000 to one of 50,000 to "catch its breath"). The courts, of course, have had their consciousness raised by a nationwide campaign to open the suburbs. Newsweek, Nov. 15, 1971, at 61.

community, through the courts—to a nationwide problem. Similar defects inhere in solutions proposed to be implemented at state level. Neither litigation in the courts nor state-wide programs can afford the uniform, centrally administered solution which the problem of containment and redistribution of population demands. Any solution will have to be federal and the tools are right at hand. We propose federal legislation encompassing authority based on findings of metropolitan sickness (excessive population, crime, garbage, pollution, traffic congestion, shortage of mass transportation, water and power) to (1) designate emergency zones which may transcend state lines; (2) prohibit new residents from entering such zones; or (3) limiting the number of those who may come in.

So much for keeping new residents out of crowded metropolitan areas. What of the extras already in? Governor Rockefeller’s thought was to get federal help in ushering the poor ones out. They are only part of the problem. Others should and, indeed, would like to go too. Take the State of California for example. After years of economic boom, and high rates of immigration, it is now losing its attractions. “Smog, traffic and overcrowding, oil on the beaches, gashes in the hillsides and crime in the streets” are putting people off. As a result the net migration rate has just broken even: movement in about equals movement out. The New York Times reports that in 1967, 73% of the state’s residents thought California one of the best places to live. In 1971 only 64% had that view—in fact, 29% of the whole population wanted to leave. Of those who had arrived within the last eight years almost half were ready to go somewhere else. Why not help them get out, steering them to smaller cities, new towns and even the country? Relocation could, of course, be made compulsory if

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144 E.g., S. 268, Senator Jackson’s land use bill now the subject of hearings before the Senate Committee on Interior and Insular Affairs, the State Senator Nadao Yoshinaga of Hawaii’s recent proposal to handle the problem by the establishment of commissions: one charged with population stabilization, concentration and distribution and the other charged with traffic control.

155 In the words of the Bureau of the Census, in the last decade California was “[t]he greatest attractor of migrants in the Nation . . . . [B]etween 1960 and 1970 [it] acquired a population of over 2 million as a result of net immigration [sic].” Nearly all this gain was experienced in metropolitan areas, where net immigration [sic] was equivalent to 14 percent of 1960 population.” Final Report, supra note 29, at 11.


157 Id. at 1, col. 3.

158 Id. at 66, col. 1.

159 Id.

160 Id.

161 Id.

compensated, but in terms of both dollars and human costs we know that
kind of program to be expensive.\textsuperscript{163} Voluntary resettlement, like that prac-
ticed with new arrivals in Israel, would be infinitely better. To be effective
such a program would have to be federal. Armed with a nationwide inven-
tory of land and its uses,\textsuperscript{164} existing housing stock and available jobs, resettlement centers could give advice on where to relocate, job placement, housing arrangements and general orientation in the new place. To facili-
tate their operations a national selling effort would be required. Advertis-
ing which so successfully sells Coca Cola, taught the American public to
smoke cigarettes, is now weaning it off them, gets it to buy deodorant and
perfume, and eat 15 million frankfurters a year despite their horrible ingre-
dients,\textsuperscript{165} could surely convince metropolitan residents to move away from
pollution, garbage and traffic.

In short, if we wish to keep metropolitan population concentrations
from skyrocketing to ant city proportions, we had best make a start. First
we must recognize that too many people in one place is a problem. Next
we must take steps to cure it. For at least a beginning prescription we
recommend (1) legislation embodying federal emergency or compelling
governmental interest based metropolitan zoning, including the power to
ban new residents or limit their numbers; and (2) a well advertised volun-
tary federal resettlement program based on a national inventory of land
use, housing stock and job openings.

\textsuperscript{163} Advisory Commission on Intergovernmental Relations, Relocations: Unequal Treat-
ment of People and Businesses Displaced By Governments (1965); Advisory Commission on
Intergovernmental Relations, Urban American and the Federal System 50-51, 57-60 (1969);
at 52-67 (1964).
\textsuperscript{165} N.Y. Times, Nov. 2, 1971, at 21, col. 2. They contain sodium erythorbate, sodium nitrate,
citric acid, ascorbic acid, and glucano delta lactone. The Department of Agriculture is not
above proposing other additives like sodium acid pyrophosphate. All are designed to keep the
frankfurter pink rather than "unappetizing gray." Id.