

To What Extent and in What Ways Should Governmental Bodies Regulate Urban Planning?

A Response to
Charles C. Bohl

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We have in Charles Bohl's response the construction of a straw man. He portrays my argument as thinly veiled apologism for "sprawl"—a charge also levied at a range of authors described as "marketists." The latter term, used in a somewhat derogatory manner, reveals Bohl's communitarian suspicion of the market and his commitment to wholesale regulation in order to protect "American values." Bohl could have saved himself and this author some time and effort if he had made this position immediately apparent rather than to claim the intent to educate "marketist" opinion to the compatibility of New Urbanism with the free economy. I do not intend, in this short response, to defend the other authors whom Bohl puts in the "marketist" camp—they are more than capable of doing that for themselves. I shall focus instead on the deficiencies in Bohl's response and his commitment to political communitarianism.

To Sprawl or Not to Sprawl?

Bohl portrays my position as apologism for "sprawl," arguing that it dismisses empirical evidence showing regulatory bias against high-density development and an unsatisfied consumer demand for New Urbanist designs. These charges are groundless. In my response I note clearly that there is indeed substantial regulatory bias against high-density development via large-lot zoning ordinances, subsidized highways, and so forth. It is precisely this sort of regulation that may have prevented the evolution of mass-produced housing into a

broader variety of forms, including those of the New Urbanism. My point is that these are examples of regulatory or “governmental failure” rather than of “market failure” and would best be dealt with through deregulation, creating an environment indifferent to questions of urban density.

There would be no need to rely on methodologically flawed, environmental evaluation techniques and surveys in order to second-guess consumer preferences if regulatory obstacles to high-density development were removed and people could choose between competing urban forms—a choice that is, indeed, limited by the existing regulatory framework. The reader should note in this light, that my defence of current mass-production methods was offered to balance Bohl’s rather hostile approach to mass-produced suburban housing per se—a hostility that is much less evident in his subsequent response. As a committed “marketist,” I have no doubt that if regulations and subsidies favoring low-density sprawl are removed, the mass market will respond to New Urbanist preferences accordingly. One would have thought that Bohl might support such a view, yet ultimately he is opposed to deregulation for communitarian reasons, to which I will return shortly. I note for the moment, however, that Bohl seems oblivious to the irony of attacking those who “know the price of everything and the value of nothing,” while simultaneously relying on flawed “willingness to pay” surveys and hedonic pricing techniques in order to proselytize for the New Urbanism.

The Imperfect Market Revisited

Bohl contends that his critique of market processes does not rely on the expectation that land markets should approach theoretical perfection, yet, in the quotation from Ewing (1997) cited in his lead essay, this is precisely what is stated. To be fair, he does grant that these imperfections may be exacerbated by governmental interventions but continues to claim that this represents “market failure.” Since when have flawed governmental policies constituted evidence of “market failure”? Presumably, Bohl thinks that massive farm subsidies constitute an example of agricultural “market failure” and that the existence of Bush’s steel tariffs is proof that the steel market is “failing.” The sensible response to each of these “failures” is to remove the source of the problem—that is, inappropriate governmental subsidies and regulations—but Bohl is unwilling to follow such logic.

Bohl contends that I fail to resolve the “bipolar” use of “the market” by those whom I am supposedly defending. Again, the charge is groundless. In my response, I offered a defence of “pro-sprawl marketists” such as Gordon

and Richardson, merely to counter the distorted account of their position presented in Bohl's commentary. I am perfectly happy to accept, however, that there are inconsistencies in some of these authors' arguments, most notable of which is a tendency to defend low-density living rather than to adopt a strictly neutral approach. As is readily apparent from the conclusion to my response, I am not guilty of any such inconsistency. I attack inappropriate planning and governmental regulation across-the-board—irrespective of whether it is “pro” or “anti-sprawl.”

The latter position, however, is one that Bohl rejects, claiming that it reflects “selective Alzheimers.” According to this view, New Deal-style regulation, of which town planning is an integral part, came about precisely because people, especially property owners, were dissatisfied with “letting the market decide.” There is, of course, a grain of truth in this argument insofar as the twentieth century witnessed a widespread ideological movement in favor of big government. For myself and for other classical liberals/libertarians, however, such moves were based on what has proven to be an overly optimistic view of the way that big government and the political process actually operate when compared to the “imperfect” market.

Many interventions have not been a spontaneous response to “market failures” and public goods problems but have arisen out of organized “rent seeking” by special interest groups, all too proficient at cloaking their demands under the banner of the “public interest.” The mere fact that property owners were among those lobbying for zoning is no more justification for the view that intervention was genuinely needed than is evidence of farmers' demanding tariff walls, proof of “market failure.” As Hayek, following Acton put it, “The main task of those who believe in the basic principles of the capitalist system must frequently be to defend this system against the capitalists....”¹

It is precisely the tendency for the political process to be captured by special interest groups—including property owners—that has, in the case of zoning, led to the kinds of “pro-sprawl” regulation that Bohl rightly attacks. Large-lot zoning ordinances, in particular, are often attributable to the actions of “nimbyst” interest groups seeking to inflate property values and to keep out lower-income groups under the pretence of environmental conservation.² Similarly, property developers are often supporters of governmental zoning laws because they afford an opportunity to prevent potential competitors from entering into local markets.³

As the public choice theorists have pointed out, such occurrences are endemic to the kinds of collectivized decision making that Bohl tends to favor. Because the costs of acquiring accurate political information are very high

compared to the minuscule influence that each individual is likely to have on the result of an election, it is rational for voters to remain ignorant of the political process. This rational ignorance stance may account for the failure of many voters to know even the name of their own congressman or senator, let alone the detailed effects of legislation.

Even the ranks of the well-educated are rarely in a position to judge the effects of most governmental policy, given the sheer magnitude of intervention with which the modern State is engaged.⁴ Consumers choosing in the private marketplace, by contrast, have much greater incentive to acquire accurate information because the costs of any purchasing errors will be concentrated on the individuals concerned. It is this propensity toward rational ignorance, when individuals act as voters as opposed to consumers, that frequently allows the political process to be captured by special interests. The democratic “reforms” that Bohl advocates as an alternative to using markets would, at best, constitute a marginal improvement on this situation. It is unlikely that a couple of afternoons spent in attending a citizens’ jury, even for the handful of individuals involved, would do much to overcome a lifetime of rational ignorance. For the vast majority of the population who are left as onlookers meanwhile, the disincentive to acquire information will remain unchanged.

It is as a consequence of such incentive structures that there are strong grounds to believe that “governmental failure” will be more pervasive than “market failure.” The anecdote about Enron, cited by Bohl as proof positive of the evils of unfettered markets, is extremely revealing of the comparative qualities of the market and democratic politics in this regard. After the discovery of executive malfeasance, the stock market effectively eliminated Enron as a working organization within two weeks. The political process, by contrast, has proved singularly ineffective at removing pork barrel corruption in such areas as agriculture and steel for a period of over half a century.

What public choice theory and the record of failed intervention suggest is that we should resort to governmental action only in the limited number of situations where market solutions are simply not viable. In the case of land-use planning, this is manifestly not the case. There are a variety of relatively low transaction cost, property rights approaches that can internalize land-use externalities and public goods problems (including the provision of transport infrastructure) and which can curtail the externalization of costs that has taken place under existing zoning arrangements.⁵

Insofar as there are remaining issues that cannot adequately be dealt with via markets and, in particular, those transboundary goods such as air quality management where prohibitive transaction costs seem likely to be the norm,

then governmental action may be warranted as a last resort. To recognize, however, that we may have to resort to intervention where the conditions for the proper operation of the market are absent, does not mean that we should seek to suppress markets where they can function effectively.

Markets and Community Values

It is evident from Bohl's surresponse that far from restricting the role of the political process to such minimalist functions, he favors constant intervention in land markets in order to protect "community" and "American values." The communitarian flag is hoisted with the claim that, left to their own devices, markets will produce "Privatopia"—a "nightmare vision that would destroy American society, institute severe class divisions and gated enclaves ... that would reshape America in the manner of Latin America," (as if the latter with its penchant for State planning, protectionism and corporatism were a haven of *laissez faire!*).

From Bohl's point of view, only an active, interventionist democracy can protect society from the degraded public sphere that markets are supposed to bring in their wake. It is, however, the obvious failings of this very interventionism that are now encouraging people to seek out private alternatives. Far from resulting in the decline of communal and civic functions, private homeowners associations, condominium developments, and private communities are springing up to rescue the "public sphere" from the chronic deficiencies of the public sector. "Privatopia"—absolutely—"community enhancing" functions such as the maintenance of clean and safe streets that have been so abysmally neglected by the political process are now being performed by private contractual associations, representing a market response to a governmental failure.

It is undoubtedly the case that many people who cannot afford to leave the poor educational systems, and the filthy and crime-ridden streets that characterize many inner urban areas are at present being left behind. This is, however, all the more reason not to introduce further regulations whether they are "pro-" or "anti-sprawl," that erect higher barriers and prevent people from escaping to places with better alternatives. A two-pronged approach is required here, which, on the one hand, increases the potential for people to "exit" from failing public services in the inner city and, on the other hand, changes the institutional incentives facing those who deliver urban services so that they can be encouraged to improve their performance. In the latter case, as Nelson has argued, the task of today's urban policy should be to find ways of estab-

lishing private forms of community management in the poorest urban areas.⁶ Suburban private communities have had marked success in reducing crime and, given that lower crime is perhaps the most significant improvement in quality of life that urban residents seek, ways should be sought to establish private forms of community management in the inner cities—not to mention the extension of private educational opportunities to the urban poor so that they can escape from the miserable performance of urban public schools.

In Bohl's opinion, however, while markets may be trusted with the production of relatively trivial "economic" goods such as shampoo and soft drinks, they cannot be allowed to allocate goods, which reflect people's higher moral values. According to Bohl, the market knows all about prices and nothing about values—it is an amoral vacuum in which the participants are driven by "the price of everything and the value of nothing."

We have, in this line of argument, the grotesque caricature of market processes that finds its voice in communitarian political theory. Like much of that movement's line of thinking, however, it is based on a complete non sequitur. A case can surely be made that it is precisely with regard to the moral ends that people value most highly that they should be required to make a personal sacrifice, including perhaps a material sacrifice rather than to have that responsibility diluted by the political process. As Hayek put it,

If the people who protest against having the higher values of life brought into the cash nexus really mean that we should not be allowed to sacrifice our lesser needs in order to preserve the higher values and that the choice should be made for us, this demand must be regarded as rather peculiar and scarcely testifies to great respect for the dignity of the individual. That life and health, beauty and virtue, honor and peace of mind, can often be preserved only at considerable material cost, and that somebody must take the choice, is as undeniable as that we are all sometimes not prepared to make the material sacrifices necessary to protect those values against all injury.⁷

The price system, therefore, is not an amoral vacuum but is a constant reminder to each of us that other individuals, for moral reasons of their own, place value on the resources that we may require to pursue our own chosen ends. It is the price system that encourages people to be responsible for their actions by making them aware of the sacrifices that must be made. One need only look to the decline of individual responsibility in such fields as housing and education, brought about by the expansion of the modern State, to account for the degradation of the urban public sphere that Bohl laments. The much-touted decline of "social capital" in cities over the last fifty years has corre-

sponded not with the extension of market processes but with the rapid expansion of the welfare state, a process that is only now beginning to be reversed.

The history of urban policy in the United States and in other Western democracies has been one of chronic failure. As control over land use and other urban services has transferred to urban planners and politicians, so the sense of individual responsibility that property rights bring has been eroded. In light of this historical record, the future of urban policy should be concerned with the return of responsibility for the management of communities to individuals and voluntary groups. In land-use planning as elsewhere, the return of community requires a return to the market.

Notes

1. F. A. Hayek, "The Intellectuals and Socialism," in *Studies in Philosophy, Politics, and Economics* (London: Routledge, 1967), 192.
2. See, for example, B. Frieden, *The Environment Protection Hustle* (Cambridge, Mass.: MIT Press, 1979).
3. D. Dowall, *The Suburban Squeeze: Land Conversion and Regulation in the San Francisco Bay Area* (Berkeley: University of California Press, 1984).
4. For empirical evidence on the extent of voter ignorance in a range of countries, see I. Somin, "Voter Ignorance and the Democratic Ideal," *Critical Review* 12, no. 4 (1998): 413–58.
5. See, for example, D. Klein, "Planning and the Two Co-ordinations with Illustration from Urban Transit," *Planning and Markets* 1 (2000): 1–23; and M. Pennington, *Liberating the Land: The Case for Private Land-Use Planning* (London: Institute of Economic Affairs, 2002).
6. R. Nelson, "Privatizing the Neighborhood," in *The Voluntary City*, ed. D. Beito, P. Gordon, and A. Tabarrok (University of Michigan Press/The Independent Institute, 2002).
7. F. A. Hayek, *The Road to Serfdom* (Chicago: University of Chicago Press, 1944), 106–7.