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"A Curious Structure"

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When one looks back on his (or her) career it is not uncommon to consider the influences that might have drawn him to that particular line of work. One of the recollections that I have from my early childhood in Lynchburg, where I lived for most of the first ten years of my life, dates to 1958, when I was five. At that time my family lived in a small house, at "Malvern" on Old Boonsboro Road, which my parents rented from Mrs. Francis Knipp, a long time Spanish teacher in the Lynchburg City Schools system and a much loved third grandmother to the Payne children. While I have many fond memories of that time, there is one event that has remained with me in the subsequent years, perhaps as a harbinger of my interest in local government. One night in 1958 I went to bed a resident of Bedford County and woke up the next morning a resident of the City of Lynchburg. While I really didn't know what it meant, it was a singularly curious event that has stayed with me to this day.

How did it happen that, with such lack of fanfare (at least from my perspective) I had transitioned from being a "county mouse" to a newly designated "city mouse"? My parents must have mentioned it in a way that etched my memory as I wasn't reading the newspaper at that time and I don't recall a television in the house. Furthermore, there had been no fireworks, no trumpet blasts, no parade or any other demonstration significant enough to impress a child who, after all, had more important things to focus on like learning to ride a bike, building a fort, or exploring the neighborhood on increasingly long sorties. I have since learned, however, that there was probably much more to-do about the change than ever reached my ears.

My second experience of a similar nature came only eight years later, in 1966, in Lexington, Virginia. Once again, I went to bed a resident of one type of community only to wake up as a resident of another type, for in that year the "town" of Lexington became the "City of Lexington". I know now that that sort of transition was not as traumatic as a city annexation, but, nevertheless, it was an important moment in the history of Lexington and Rockbridge County. Why this was noteworthy to a thirteen year old (who was riding a bike pretty well by then but was on to other things), I don't know, but the incorporation of Lexington as a city remained a memory that only much later was I to consider significant.

In my local government career, as both a County Administrator and a City Manager, I have experienced two other municipal transitions that, although I

wasn't actually present for the moment of change, still had a major influence on my job. The first of those occurred on January 1, 1984 when, after three years of litigation and negotiation, the City of Fredericksburg annexed 4.7 square miles of Spotsylvania County. I became Assistant Spotsylvania County Administrator in February of 1984 and for the next seventeen years dealt with the aftermath of that event including further litigation, negotiated settlements, water and sewer deals between the city and the county, building regional facilities, discussions about the city reverting to town status, competing for economic development, and, of course, the annual football match-up between Fredericksburg's James Monroe High School Hornets and Spotsylvania High School's Knights.

The other municipal transition of significance, to me at least, occurred well before my arrival in Lynchburg but, based on some of the comments that I have heard and the attitudes exhibited, seems to have happened only yesterday. I am referring to the last annexation of land by the City of Lynchburg from one of its neighbors, Campbell County. One would think that the memories of that 1976 event would have been softened by the intervening period of nearly thirty years.

My topic is the phenomenon of city-county separation in the Commonwealth of Virginia. The title comes from an off-handed comment made by Virginia Commonwealth University political science professor, Dr. Robert D. Holsworth when speaking at the winter meeting of the Virginia Local Government Managers Association in 2003. I choose it because this unique arrangement is foreign to emigrants from other states and its impacts are little understood by Virginians.

When I selected this topic for my inaugural SPHEX paper over two years ago, I had no idea that recent events would make it so timely. I hope that the discussion that follows will provide some context for today's headlines.

My goal in this paper is to explain the history of city-county separation in Virginia and to discuss the consequences of that arrangement to central cities, regions and the Commonwealth. I hope that this will give the audience a better understanding of situation facing local government officials and the decisions that they make.

First, let me define city-county separation and impress upon you its uniqueness. Although there are independent cities scattered across the country, in no other state in the United States is city-county separation a fundamental feature of the structure of local government. Under this structure, "Virginia's cities are autonomous, primary political subdivisions, governmentally independent of the county, or counties, in which they are geographically located."¹ This means that all, or nearly all, of the functions of local government are separate and distinct between the city and county. Among other things, there

¹ June 3, 1998 minutes of the meetings of the Commission on the Condition and Future of Virginia's Cities, and also in Bain, p. 23.

are separate schools systems, separate courts of record, separate human services agencies, separate taxing authority, and, of course, separate bureaucracies and governing bodies. While there has been some regionalization of activities over the years, most notably in corrections (regional jails and juvenile detention centers, for example), the fundamental separation remains.

As already mentioned, this is unlike the arrangement of most other cities in the nation. An example would be the City of Charlotte and Mecklenburg County in North Carolina. Under their arrangement, the county is the fundamental unit of government that encompasses both the city and its surrounding areas. The county provides certain baseline services, such as courts of record, public safety, human services, utilities and schools. It taxes both city and county residents in order to provide those services to all area residents. This is an important point that I will come back to later when discussing the Virginia system.

In the interdependent system found in most states, cities are established to provide the higher level of services required by densely settled urban centers. This could include law enforcement, public transit, housing, and various social services considered appropriate by the community. To pay for those services, the city adds an additional tax or taxes on its residents so they are taxed by both the city and the county. The situation is similar to that of towns in the Commonwealth. Residents of towns receive services from both the municipality and the county government of which they remain a citizen.

History of City-County Separation²

How did the unique system of city-county separation come about in the Commonwealth? Perhaps you assume that the concept is well-grounded in the state constitution and statutes. That is not the case. Although the roots of city-county separation can be traced back to the early days of the Virginia Colony, there was no grand plan for the establishment of these units of local government. Here is how it has been described by one author, a former member of the James City County Board of Supervisors and past president of both the Virginia Municipal League and the Virginia Association of Counties:

The relationship between cities and counties in Virginia is not the product of careful thought and planning, converted

² My main reference is a book by Chester W. Bain, who was a professor of political science at the University of South Carolina. Published in 1967 by the Institute of Government of the University of Virginia, *"A Body Incorporate": The Evolution of City-County Separation in Virginia* provides a history of city-county separation and comments on the future prospects of local government structure. It is an interesting perspective from a time before the contentious annexation battles of the 1970's and the subsequent moratorium placed on city expansion that remains in place to this day and probably will never be lifted.

into law at a particular time. Rather, it reflects an evolutionary period in which communities developed. Lawmakers in Virginia did not create the relationship as much as they recognized what had happened over a long period.³

This apparent lack of vision or planning for the function and health of local governments and their relationships both regionally and to the State remains a challenge to this day.

The history of city-county separation is also the history of local municipal government in Virginia. One point that needs to be made is that local governments are the creation of the state. They are tools meant to carry out various functions of state government at a level that best facilitates the effective delivery of services. Every unit of local government in the Commonwealth was created by an act of the General Assembly, sometimes in response to petition by the citizens of a community, but more generally in reaction to a growing population that was steadily moving westward and aggregating into denser settlements. It was a matter of efficiency to create counties, the first units of local government, to extend the authority of the colonial and state government to the settlers, primarily through courts and sheriffs, and to provide for their representation in the government council. In addition to serving as an administrative district of the state, counties also came to perform functions exclusively for the benefit of their local residents.

In 1619, after a period during which the Virginia colony was a joint stock enterprise with a military government, two supreme councils were created for the better government of the colony. One, the "council of state," consisted of the colonial Governor and nineteen other members selected by the Virginia Company. The "council of state" was a subset of a larger council, "The General Assembly", what we know today as the longest sitting deliberative body in North America. The General Assembly, when originally formed, included, in addition to the members of the "council of state", two burgesses selected by the inhabitants of every town, hundred, or other plantation. The first General Assembly met on July 30, 1619 in a church in "James Citty", known today as Jamestown. Twenty-two burgesses from eleven settlements were present to "make, ordain, and enact such general laws and orders, for the behoof of the said colony, and the good government thereof, as shall, from time to time, appear necessary or requisite."⁴

Burgesses were selected for service in the General Assembly from hundreds, plantations and settlements for the next fifteen years. In 1634 a different basis for choosing burgesses was established and the first units of local

³ *Neighbors and Sometimes Friends: Municipal Annexation in Modern Virginia*, Jack D. Edwards, Center for Public Service, University of Virginia, 1992, p.27.

⁴ Quoted from the Hening Statutes in Bain's "A Body Incorporate", p.2.

government were created. The colony was divided into eight "shires", known since as "counties". The names of some of those eight original counties are still familiar today. They were James City, Henrico, Charles City, Elizabeth City, Warwick River, Warrosquoyake, Charles River and Accawmack. The counties were provided with courts and sheriffs but had little independent authority. It was not until 1679 that each parish in a county was allowed to choose two men to meet with the justices of the county courts to make local laws.

The seed for cities was created by a special dispensation provided to James City (i.e. Jamestown; note the two "t's" to distinguish it from James City County). Whereas each county was entitled to select first four and later only two burgesses for the General Assembly, James City, as early as 1645, was allowed to select a burgess for itself in addition to the burgesses provided for the county. A 1660 act provided that, "James City being the metropolis of the country shall have the privilege to elect a Burgesse for themselves and every county that will lay out one hundred acres of land and people itt with one hundred tithables persons, that place shall enjoy the like liberty and privilege."⁵ Even earlier, in 1639, Jamestown had been designated by an act of the General Assembly as the "chief town" and the location of the Governor's residence. Although these acts did not create an incorporated municipality they were the first to make a distinction between the county and a more densely populated settlement that was given special authority.

During the period from 1655 to the Revolution municipal corporations were established in the colony in two distinct ways. The first method, the creation of towns by decree, met with limited success and in 1705 was abandoned for the establishment of towns on an individual basis, a practice that survives more or less today. In 1655 the General Assembly passed an act requiring that one or two places in each county be set aside and that all trade be confined to those places. This failed due to the lack of storage facilities and the difficulties transporting products to and from such places.

The General Assembly tried again in 1680 when it passed an act "for the cohabitation and encouragement of trade and manufacture". Concerned about the tobacco monoculture, the decline of prices for the crop and the lack of adequate storage facilities, the act required that fifty acres of land in a specific location in each county be purchased at a fixed price, laid out in lots, and have a town and storehouses built on them. It also provided incentives for settlement and the construction of warehouses in the town. This act was later suspended by the King-in-Council after finding it "impracticable." Nevertheless two settlements, which later became the cities of Hampton and Norfolk, were established in this manner.

Determined to promote settlement and trade, the General Assembly tried again in 1691 to establish ports and towns at designated locations in each county

⁵ Bain, p. 4.

but this effort lasted less than a year. The final attempt to establish towns by decree occurred in 1705 when the assembly passed an act requiring that a town be established at every port. Special privileges were granted to the residents in terms of tax relief and exemption from "mustering". The towns were to have a market twice a week and a fair once a year, a merchant guild, and the right to elect members of the guild hall and to establish a court of record with jurisdiction within the town limits. Finally, each town was enabled to elect one burgess to the General Assembly. In spite of all of these concessions, no towns were established under the provisions of the 1705 act.

Despite the failure of the 1705 act, it is interesting to note the privileges that were provided to distinguish a town from the surrounding county. Similar distinctions were made later when municipal incorporation finally became practical. There was also an interesting lesson to be learned from the failed efforts to establish towns in the seventeenth century. No act of the General Assembly could overcome the market forces and general disinterest that militated against the creation of towns by decree. Perhaps this is a lesson that resonates today in the reluctance of the General Assembly to develop a vision for the Commonwealth and to consider broad-based land use planning and policy setting.

The second means of creating towns was by special act of the General Assembly. The first two towns created by special act were actually established during the earlier period and both served as the capital of the colony. An act in 1662 provided for the physical layout of James City (somewhere the second "t" was lost) and subsequent acts authorized the adoption of laws for the settlement. As James City petered out, in 1699 the capital was moved to a new town known as the "City of Williamsburg". While the 1699 act did not incorporate the town, it authorized the Governor to do so, and, on July 28, 1722, Governor Alexander Spotswood granted Williamsburg a charter by letters patent thereby incorporating Virginia's first city. The charter created a special status for Williamsburg granting it a mayor, a recorder, six aldermen, and twelve common councilmen. The city could acquire property, sue and be sued and have a seal. It was given other powers to administer the community, including a court of hustings, in a manner similar to more modern city charters.

In 1727 the General Assembly adopted an act "for erecting a town, in each of the Counties of Spotsylvania and King George." One of the towns later became the City of Fredericksburg. A number of other towns were established during this period, however, they were not incorporated and did not serve as governmental units. Many did become cities later, including Richmond, Suffolk, Alexandria, Petersburg, Winchester, Portsmouth, Staunton and Charlottesville.

One other municipality was created before the revolution. The Borough of Norfolk, one of the port towns established after the 1705 act, was chartered in 1736 by Governor William Gooch with confirmation by the General Assembly

shortly afterward. Although there were no fundamental differences in authority between the “city” of Williamsburg and the “borough” of Norfolk (the only borough incorporated in colonial Virginia) it has been speculated that the appellation of “city” was reserved for the capital.

The subsequent history of local governments in Virginia was shaped by five separate constitutions adopted from 1776 to 1902. During that time towns were established and incorporated, some became cities, and the differences between towns and cities were distinguished. Those differences form the basis for the structure of city-county separation under which we operate today.

Between 1776 and 1830 a number of towns which later became cities were established. This included Harrisonburg, Lynchburg in 1786, Martinsville, and Danville. These settlements were towns in name only, they had no separate authority. In the years after the Revolution local government was still relatively unimportant. The Constitution of 1776 only makes reference to municipalities in describing the representation in the General Assembly of the City of Williamsburg and the Borough of Norfolk. The terms “city” and “borough” were not defined and they appeared nowhere else in the constitution.

After the Revolution, however, there was some movement regarding the creation of new municipal corporations. While there was no general law concerning the incorporation of municipalities, the General Assembly initiated a new procedure of incorporating areas that had previously been established as towns through special acts of the legislature. In that manner the towns of Alexandria and Winchester were incorporated in 1779, Fredericksburg was incorporated in 1782, Charlottesville and Staunton in 1801, Lynchburg in 1805, Suffolk in 1808 and Danville in 1830.

Although officially referred to as “towns”, these municipalities had fundamentally the same authority as Williamsburg and Norfolk, including a mayor, a recorder, a board of aldermen, and a common council. The mayor, recorder and aldermen could hold a court of hustings once a month, and, in addition to presiding over certain cases originating in the town, had the power to appoint certain town officers including a sergeant and constables. It should be noted, however, that the court of hustings did not have complete jurisdiction over the town. Certain actions exceeding stated amounts fell under the jurisdiction of the county court.

Another city, Richmond, was incorporated in 1782. The “city” designation was apparently justified because by then Richmond was the state capital. By 1830 the units of municipal government in Virginia were the cities of Williamsburg and Richmond, the borough of Norfolk, incorporated towns and established towns. As yet, there were no legal distinctions between incorporated towns and incorporated cities.

A new constitution in 1830 didn't change the relationships between the different types of municipalities. In 1845 and 1850, however, Norfolk and Petersburg, respectively, were incorporated as cities by special acts of the General Assembly. Recall that both had been previously incorporated, Norfolk as a borough and Petersburg as a town. While they both received new charters, they did not gain new powers and there remained no significant legal difference between incorporated towns and incorporated cities. Chester Bain speculates that one of the reasons for the new charters for Norfolk and Petersburg was that they, like Richmond, each had over ten thousand inhabitants.⁶ After that, the term "borough" disappeared from subsequent constitutions starting with the one adopted in 1851.

After the adoption of Virginia's fourth constitution in 1869 the first distinction between municipalities based on population developed. The constitution provided that for each city or town containing a population of five thousand the General Assembly should elect a "city judge" to oversee the corporation or hustings court. In 1871 an act was adopted requiring that a system of public free schools be established in all the cities and towns of the Commonwealth. Cities and towns with a population of ten thousand and over were designated "cities of the first class" while those with less than ten thousand were designated "cities of the second class." There was no further distinction between cities and towns and, in fact, the Code of 1873 read, "In any chapter under this title, the word 'town' shall include a city as well as any other town."⁷

In the Constitution of 1902, a formal distinction between cities and towns was finally made. The constitution defined two types of "incorporated communities": those with a population of five thousand or more were to be called "cities"; those with a population of less than five thousand were referred to as "towns". This distinction was actually foreshadowed by an 1887 statute that used similar definitions. The 1902 Constitution also classified cities as of the first class (ten thousand and over) and the second class (less than ten thousand population) for purposes related to the organization of the judicial system.

To summarize, after the 1902 Constitution there were four fundamental types of local government in the Commonwealth, counties, cities of the first class, cities of the second class and towns.⁸ That remains the case today. Both counties and cities serve as subordinate political subdivisions of the state. Towns remain subordinate to and under the general jurisdiction of the counties of which they are a part.

The distinction between counties and cities is based on subtle differences in their establishment. Whereas counties were created by the state as a political subdivision of the state, and only later were given authority to provide local

⁶ Bain, p. 16.

⁷ Bain, p. 18.

⁸ Another unit of local government is the special district.

services and functions, cities are created to provide “for the better administration and government of strictly local affairs...to promote their local convenience and private advantage rather than to serve merely as administrative units of the state.”⁹ As has been so well articulated in the infamous Dillon Rule, both entities exercise only those powers delegated to them by the state, through constitutional provision, statute or charter. This is not unlike the situation in other states. Where Virginia is different, however, is that its cities also perform functions normally carried out by counties as administrative arms or districts of the state. This is the basis for city-county separation. Bain says that, in Virginia, the city is effectively both a city and a county, or a “city-county”.¹⁰

At this point, I have discussed the origins of units of local government in Virginia through its various constitutions and have explained their differences. You will note, however, that none of the constitutions, at least through 1902, articulated the principle of city-county separation. So where did this practice originate? It has been suggested by some that it arose from our English heritage and that when the cities of Williamsburg and Norfolk were incorporated they were established like English cities and made separate corporations without reference to counties.

There are two arguments against this explanation. First, neither the charters granted to the cities nor the statutory record indicates that the two cities were to be independent of their surrounding counties. Actually, there is a confusing record of statutes that attempt to resolve conflicts that arose between the two cities and the counties in which they were geographically situated. The prevailing view, however, is that the idea of city-county separation was not a clearly established principle. The second argument against the principle being borrowed from England is the reality that other states with English roots, and particularly West Virginia which separated from the Commonwealth in 1863, do not generally have independent cities. If that argument holds, then the principle of city-county separation must not have achieved formal status until after 1863.

Bain suggests that “city independence did not begin suddenly but evolved gradually and developed through the years until it gained general acceptance. It achieved a formal place in Virginia local government under legislation enacted shortly after the Constitution of 1869 went into effect and has constituted a major feature of Virginia local government since that time.”¹¹ Bain continues:

Although city-county separation is not a firmly established principle, the formal authority for this practice tends to be more implicit than explicit. There is no provision in the present [as of 1967] or past constitutions specifically providing for the independent city. The only legal authority

⁹ Bain, p. 25.

¹⁰ Bain, p. 26. In England the city would be called a “county borough.”

¹¹ Bain, p. 37.

explicitly stating that cities shall be independent of counties is a short phrase buried in a statute establishing county townships originally enacted in 1870 and continued in effect today. Many sections of the constitution, statutory provisions, and judicial decisions clearly reflect an assumption of city independence instead of setting it down explicitly. These reflections taken collectively constitute the legal basis for Virginia's unique practice of statewide, city-county separation.¹²

The 1870 statute Bain referred to was actually meant to create the mechanism of providing for the local governing bodies in counties, now called Boards of Supervisors. The 1869 Constitution had required that each county be divided into three or more townships and that certain officers be elected for each township. The statute adopted in 1870 stipulated "that no part of any town or city having a separate organization or a population of five thousand or more inhabitants, shall be embraced in any of said townships."¹³ Those townships were later renamed to "magisterial districts" and the exclusion of cities became permanent. According to Bain, "This provision constitutes the only explicit, general basis for city-county separation that has been found."¹⁴

Since then, the principle of city-county separation has been re-enforced by constitutional provisions, in statute and through decisions of the Virginia Supreme Court all without specifically providing for the system of independent cities that we have today. They have merely accepted the practice as a given. The 1902 Constitution implicitly recognized the principle of city-county separation through provisions requiring electoral boards, school divisions, and constitutional officers (Treasurer, Sheriff, Commonwealth's Attorney, Clerk of Circuit Court, and Commissioner of the Revenue) for both cities and counties and stipulating that only cities of the first class were allowed to have a circuit court separate from the jurisdiction of the county circuit court.

The General Assembly has never explicitly endorsed city-county separation on a statewide basis. There is one instance, however, where the principle is clearly expressed. It is in the 1916 statute incorporating the City of Hopewell from Prince George County. The act stated, in part, "The said city, from and after the time this act takes effect, shall be and thereafter continue a political entity, *wholly separate from and independent of the remaining portion of the county of Prince George.*"¹⁵

The question of city-county separation has never come directly before the Virginia Supreme Court for adjudication but has been assumed in a number of

¹² Ibid.

¹³ Bain, p. 40.

¹⁴ Ibid.

¹⁵ Va. Acts 1916, ch. 65, p. 93, cited in Bain, p. 42, his emphasis.

cases involving taxation, the proper jurisdiction for criminal prosecution, and issues related to the transition of a town to a city. That the principle is accepted as a given was clearly articulated in a 1951 decision involving the City of Roanoke. The court said:

In Virginia, counties and cities are separate and distinct legal entities. Each is a subordinate agency of the State government, and each is invested by the legislature with subordinate powers of legislation and administration relative to local affairs within a prescribed area. Citizens of the counties have no voice in the enactment of city ordinances and conversely citizens of cities have no say in the enactment of county ordinances.¹⁶

Bain sums up the evolution of city-county separation in Virginia as follows:

This recognition of independence by the constitution, the statutes enacted by the General Assembly, the decisions of the Virginia Supreme Court of Appeals, and a tradition that spreads back in greater or lesser degree for nearly three hundred and fifty years form the basis for the independent city in Virginia. True, with very limited exceptions, most of the basis consists of factors that merely recognize the principle rather than provide explicit authority for its operation. Transplanted to another state, it is very doubtful that many of these authorities would afford an argument for city-county separation in that state. Yet these various "recognitions of the principle" are the bases upon which the Virginia practice rests. Out of them has gradually evolved and developed the idea of city-county separation as we know it today. Despite the fact that it has evolved largely from usage that has its roots deep in the colonial period, the practice is as firmly entrenched in the mores of Virginia local government as if it had been specifically provided for by constitutional or statutory authority. Accordingly, it must be considered within this framework until some action is taken to alter the present condition.¹⁷

Although written in 1967, Chester Bain's words still describe the situation as it exists today, nearly forty years later, with one exception. The current Constitution, adopted in 1971, although never using the term "city-county separation," does formally recognize the independence of cities in its definitions of local government. It defines a "city" as, "an independent incorporated community which became a city as provided by law before noon on the first day

¹⁶ Murray v. City of Roanoke, 192 Va. 321, 64 S.E.2d 804,807 (1951), cited in Bain, p. 50.

¹⁷ Bain, p. 53.

of July, nineteen hundred seventy-one, or which has within defined boundaries a population of 5,000 or more and which has become a city as provided by law.”¹⁸ This is the explicit reference that Bain said was still missing in 1967, and, as far as I know, remains the only one.

Ramifications of City-County Separation in Virginia

In the remainder of this paper I will describe the disparate conditions of cities and counties in the Commonwealth and will discuss what I believe to be the challenges created or exasperated by city-county separation. I will also discuss prospects for dealing with this situation in a manner that might strengthen local governments in Virginia.

By any number of indicators the older core cities in Virginia face greater fiscal challenges than their surrounding suburban counties. This is not unique to the Commonwealth. Core cities across America have been challenged by high demands for services, costly infrastructure and the flight of more affluent residents to the suburbs. Remember, however, that only in Virginia does moving out of the city remove any responsibility of the citizen to support city functions. I suggest that the clear demarcation between cities and counties in Virginia allows residents in the suburbs to ignore the challenges of the metropolitan core as “not our problem.”

Before I explore that further, I want to paint a clearer picture of the disparities between cities and counties in Virginia. Lynchburg is a member of an organization called *Virginia's First Cities*, comprised of fourteen older central cities that have joined together to educate the public and the legislature on their plight and to lobby for both financial support and policy changes to help them survive. The following statistics have come from the work of that group.

- While Virginia's population grew nearly twenty percent (18.6%) in the 1990's, the population of the twelve (12) most highly fiscally stressed cities declined by 1.5%.
- Jobs in Virginia grew by nearly thirty percent (30%) in the 1990's while cities experienced only 1.2% job growth. A report presented to the Commission on the Condition and Future of Virginia's Cities in 1998 advised that, “Virginia's urban economies have under-performed in recent years and, since 1987, have generated jobs at a slower pace than the composite of urban centers of all but one of the other regions of the nation.”¹⁹
- The median household income in Virginia in 2002 was \$42,000 while in cities it was only \$32,500. Lynchburg's median household

¹⁸ Constitution of Virginia, Article VII, Section 1, 1971, as amended.

¹⁹ Minutes of the meeting of the Commission on the Condition and Future of Virginia's Cities, September 16, 1998.

income was \$31,260 while in Campbell County it was \$37,373, in Amherst County it was \$37,501, and in Bedford County it was \$45,724.

- First Cities' residents comprise 17% of the state population but 31.5% of Virginia's poor, 27.9% of students on free or reduced price lunch, and 30% of property and violent crime.
- The 2002 poverty rate in Lynchburg was 18.3% (17th highest out of 134 localities in the state) compared to 11.6% in Amherst County (67th), 10.8% in Campbell County (78th), and 7.3% in Bedford County (104th). The City of Richmond had a poverty rate of over twenty percent compared to less than ten percent in the adjacent counties of Henrico (7.0%), Chesterfield (5.9%) and Hanover (4.6%). In my previous location, Spotsylvania County, the poverty rate was less than half of that in the City of Fredericksburg (5.7% v. 13.7%).
- Nearly fifty percent (49.2%) of the students in Lynchburg City Schools were eligible for free or reduced price lunches in the 2003/2004 school year. Bedford County Schools had nearly half that rate (27.4%). In Richmond, over seventy percent of the students qualify for free or reduced price lunches compared to less than thirty percent in Henrico and Chesterfield Counties (27.9% and 20.9%, respectively), and less than twelve percent (11.9%) in Hanover County.
- In 1999, Virginia's 14 First Cities spent less of their budgets on education, 46.3%, compared to the statewide average of 55.2%. This is the result of having to spend more local revenue on human services, public safety and infrastructure.
- Our cities spend 18.4% more for public safety than the statewide average for localities. While 30% of property and violent crimes occur in our cities, there is a mismatch between where serious crime occurs and where state dollars go because funding is based on population and funds that were once designated to support cities after they lost the right to annex are increasingly split among suburban police departments. As a result, Fairfax County gets more state funding for its police department than does the City of Richmond.
- Finally, Virginia's fourteen First Cities account for twenty-three percent (23%) of all expenditures statewide for health, social services, jails, community service boards, and children at risk.

Again, let me point out that there is no compelling reason why the residents of the surrounding counties should care about these disparities. Their elected officials have their hands full with their own issues and have no legal responsibility for the condition of the core city that may be the region's identity.

This raises, I believe, certain issues of equity. Local legend has it that the population of the City of Lynchburg doubles during the weekday work hours. City infrastructure, roads, water and sewer, and some services such as solid waste management and, in particular, public safety, must be designed to support this great influx of visitors that doubles the population density of the urban area. This isn't all a bad thing because those visitors add value and revenues to the City through sales and meals taxes and the property taxes of the businesses in which they work.

I suggest, however, that the taxes generated by the suburbanites do not pay for the costs of the services that the City provides. This is because the largest source of revenue for every locality in Virginia is property taxes, specifically the real property tax and the personal property tax. In Lynchburg the two property taxes make up nearly 50% of local revenues. On the other hand about 20% of the total assessed value of real property in the City is tax exempt. This includes hospitals, nursing homes, churches, state and federal offices and a variety of non-profit organizations that benefit the greater region. This burden is borne disproportionately by the City. Property taxes generated in the surrounding counties, stay in those counties to support services provided in those communities, primarily public education.

According to a 1988 report of the Local Government Attorneys of Virginia, the concentration of services in the city encourages individuals needing those services to move into the city. The report stated, "Because urban localities offer more intensive human services than their rural counterparts, these services often act as a magnet, drawing in from outlying areas those citizens who need them."²⁰ Citizens in need come into the city for shelter, food, clothing, a variety of human services and a public transit system that moves them from place to place. Once those individuals become city residents, the county has no financial responsibility for them.

Housing is another area where inequities are present. Zoning regulations in counties discourage low to moderate income housing, keeping it in the core cities where it has historically been located. This situation was recently acknowledged by Susan Dewy, the Executive Director of the Virginia Housing and Development Authority, in an email to Secretary of Commerce Michael Schewel responding to concerns raised by a Winchester City Council member regarding a concentration of VHDA financed low income housing in cities and the attendant burden that places on city schools and other services. I will quote almost the entirety of her email because I was so pleased to see a highly placed state official acknowledge one of the ramifications of city-county separation.

Ms. Dewy stated,

²⁰ "The Need to Review Virginia's Local Government Structure," p. 11.

The problem of concentrated multifamily housing in central cities is especially acute in Virginia's small urban areas such as Winchester where zoning and infrastructure to support multifamily housing development is almost exclusively limited to locations within city boundaries. *This is not a problem in other states where small cities are fiscally part of counties.* [Emphasis added.] However, in Virginia, the development patterns found in small urban areas put increased stress on city governments. Unfortunately, this is an issue that VHDA on its own can do little to resolve.²¹

She went on,

The [Section 8] Housing Choice Voucher program presents a different problem. Under the voucher program, VHDA and our local administrative partners cannot choose the location in which tenants reside. Affirmative measures are taken in recruiting landlords and informing low-income participants of housing opportunities outside areas of racial and poverty concentration. However, if available housing within the Fair Market Rents is concentrated in the central city, as it is in many small cities, then, by default, so too will Section 8 participants. In the Winchester area, this problem is exacerbated by the lack of formal participation in the program by Frederick and Clark Counties. While VHDA's program based in Winchester enables participants to use their vouchers in both counties, the lack of formal county support most likely contributes to higher usage in the city....
...As you are aware, there has been longstanding concern both nationally and here in Virginia about the concentration of low-rent multifamily housing in central cities. This is a concern shared by VHDA. We understand the issue cities raise about the social problems and fiscal burdens that concentrated poverty creates. In addition, as a multifamily mortgage lender, we are well aware that concentrated multifamily development in limited locations and, especially, in older lower income residential areas is detrimental to long-term real estate values and portfolio performance.²²

Major ramifications of city-county separation also occur in the realm of regional economic development. This is an issue that strongly resonates today but is not new. The Local Government Attorneys had this to say in 1988,

²¹ Email, Susan Dewy to Michael Schewel, February 9, 2005.

²² Ibid.

Localities have many political incentives to work independently on economic development, but few to work together. Attracting a new industry or shopping center is generally a “winner-take-all” game. The competition for new development actually may lessen the overall return to the region, not only by discouraging potential developers, but also by prompting governments to lower the standards for land use controls that best serve the local citizens. Land use controls may be weakened within the “winning” jurisdiction, thereby adversely affecting both the locality and its neighbors in the long run.²³

It is a truism that businesses considering locating in a community do not understand or care about municipal boundaries and that they base their location decisions on aggregate measurements of labor, telecommunications, transportation and other infrastructure and quality of life. Nevertheless, I assure you that the localities in which a business might ultimately locate are very interested in the actual sites under consideration. I want to develop three points related to this.

The first point relates to how the tax structure in Virginia affects local economic development issues. To a large extent it determines how we measure economic development success, or, if you will, the “winners” and the “losers”. Although there is an inherent understanding that new jobs, especially better paying jobs, improve the economy of the overall community, success is not necessarily measured by job creation because localities do not get any directly measurable share of the income produced by jobs. Those attributes of a business location decision that are the most easily measured relate to the business’s capital investment in land, buildings, vehicles and machinery and tools. All of these are subject to property taxes and all are location specific. With retail development, in addition to the property taxes, there are also the sales and business license taxes produced by the establishment; these are also location specific.

A 2003 report of the Advisory Council on Intergovernmental Relations on *The Condition and Future of Virginia’s Cities* acknowledged this situation and pointed out that State laws and policies discourage regional cooperation. It said:

Under the current tax structure, for example, revenue from a new regional facility such as an office park for a new high-tech industry, goes entirely to the locality in which the plant is located despite the fact that neighboring jurisdictions may have cooperated to help attract the new business to the area or may confront increased costs for housing, public schools, or transportation as a result of its proximity. In such cases,

²³ “The Need to Review Virginia’s Local Government Structure,” p. 11.

the system's intrinsic incentives reward competition among jurisdictions rather than cooperation, impeding greater regional collaboration. Many analysts have characterized Virginia's slow progress at the regional level as a lack of leadership or a lack of "political will"; however, inherent systemic problems appear equally to blame.²⁴

The second point regards the extension of public utilities to support economic development. In the past, cities could justify the extension of water and sewer infrastructure into adjacent counties because they understood the potential to later annex developed land to improve the tax base and better fund services provided in the city. (I won't comment on what that did to the county's tax base except to point out the ability of the county to continue to grow even after an annexation.) Today, the potential of annexation no longer exists. As a result, cities must very carefully consider the extension of public utility services into adjoining counties out of concern that they may be facilitating development in the county that could have occurred in the city or that may relocate from the city to the county. The relocation of a big box retailer from one locality to another could result in a win/loss in annual sales tax alone of \$500,000 to \$1 million.

The last point was alluded to in the report of the Local Government Attorneys and relates to land use management in adjoining localities. Competition for development, especially retail, may tempt adjoining localities to lessen land use controls or development standards designed to promote efficient traffic movement, effective stormwater management, quality design and other aspects of community function and appearance. The situation becomes more problematic when development occurs on or near municipal boundaries and the negative effects of the development, what planners call "externalities", traffic congestion for example, spill over into the adjoining locality without any offsetting revenues. Furthermore, because of city-county separation, there is little incentive for uniform land use development standards across municipal boundaries. Although sprawl often makes the boundaries hard to recognize, in general, cities, because of denser development patterns, will have stricter land use controls than adjacent counties that remain predominantly rural.

A recent editorial in *The Roanoke Times* hit the nail on the head. It was commenting on a \$9 million incentive package (over 15 years) that the City of Roanoke had agreed to provide for a downtown commercial development that will include a Ukrop's grocery store along with other retail and office space. The editorial asked, "Why subsidize a project that promises mostly to reallocate consumer dollars already here [as opposed to a business or industry that exports products or services to other markets and therefore brings dollars in from outside the community]? The editor answered his question as follows:

²⁴ *Final Report of the Advisory Commission on Intergovernmental Relations on the Condition and Future of Virginia's Cities to the Governor and the General Assembly of Virginia*, p. 13.

One reason: Virginia's archaic system of local government...Cities like Roanoke are independent of their surrounding counties and barred from expanding into them; to thrive, they must continually strive to redevelop and fill in the metropolitan core. This, however, conflicts with the interests of the suburban counties; because the counties derive no tax revenues from development within the independent city, they are eager to foster development at the edge or beyond.

The editorial concluded, "Regional collaboration in planning and tax sharing would be a better way to neutralize this recipe for sprawl. As things stand, however, the anti-sprawl answers are more apt to be, like subsidies for retail development, imperfect and ad hoc."²⁵

I want to make one last observation regarding the ramifications of city-county separation and this may be a stretch. I believe that this structure of local government in Virginia may be inherently harmful to our sense of community in the region. I think that it comes from the difference between where you work and where you live. Although some commentators have described the suburbs as merely "dormitories" for core cities²⁶, they are increasingly where people "live", where they raise their families and go about their daily lives. Here's my argument.

County residents who work in the city do not directly pay taxes for the services necessary to accommodate them. And, although it may not be as bad in greater Lynchburg as elsewhere, I fear that those county residents lose a sense of responsibility for addressing the challenges of a diverse community with aging infrastructure and a concentration of persons in need of services. The city becomes a place to come to work, to shop, for a meal, for entertainment and cultural amenities, but for little else. There is little emotional connection.

The main focus for the county dweller may be the ease with which they are able to travel to and from their home when visiting the city. This is seen, for example, in calls for improvements to City roads for the primary purpose of moving traffic more efficiently into and out of the center city. I have often asked myself why the city alone should use its resources to build a road so that city workers would have an easier time relocating to an adjoining county in search of "a little piece of land" and lower taxes. Their search for "the good life" in the country, I fear, lessens their sense of concern about the quality of the built environment in the city. Why should they care about sign ordinances, landscaping requirements, compatible land uses, environmental protection and the quality of the city's schools or its built environment if the city is not the place

²⁵ *The Roanoke Times*, Editorial, November 17, 2004.

²⁶ Harris, p. 60.

where they live, but merely serves utilitarian purposes and is where the quality of service is judged to a large degree by ease of access and the closeness of parking? If these folks have no emotional connection to the City then they probably sense little responsibility for its quality of life or the needs of its less fortunate residents.

This is, of course, a generalization, and I am aware of many county residents who are deeply concerned about the less fortunate in the city and the quality of life here. But, I wonder how many of those still have deep roots in the city because they have only recently moved out and still have emotional ties. I suspect that the attitudes are different among long-term county residents or those who have moved into the county from some other area and therefore have no other connection to the city other than as a reference point when telling others where they live.

Prospects for Change

I am not confident that the situation will change any time soon. With no specific constitutional or statutory provisions for city-county separation it is nearly impossible to eliminate the practice through specific legislative action. Furthermore, custom, practice and tradition are very difficult to overcome. Since the 1960's there been numerous studies on the conditions of cities and the relationships between cities and counties. They include:

- The Metropolitan Areas Study Commission (Hahn Commission, 1966-1967).
- The Commission on Constitutional Revision (1968).
- The Commission on City-County Relationships (Stuart Commission, 1971-1977).
- The Commission on State Aid to Localities and Joint Subcommittee on Annexation (Michie Commission, 1977-1978).
- The Local Government Structures and Relationships Commission (Grayson Commission, 1986-1989).
- The Governor's Advisory Commission on the Dillon Rule and Local Government (1992).
- The Commission on the Condition and Future of Virginia's Cities (1998-2000)
- The ACIR Report on the Condition and Future of Virginia's Cities (2000-2003)

None of the reports have recommended doing away with city-county separation. Instead, they and other commentators on the matter have suggested various mechanisms to strengthen cities and promote greater regional cooperation. This has included proposals such as the creation of planning districts and service districts, a lessening of the distinction between cities and

counties, annexation reform, economic growth sharing agreements, relaxing restrictions on the reversion of cities to towns, providing incentives for consolidation, relaxing the Dillon Rule, changing State aid formulas, and restructuring the tax system. In only a few cases have the recommendations been implemented due to the costs involved, a lack of consensus that action needs to be taken and the parochial focus of legislators.

All of the discussions on the challenges facing cities in the Commonwealth accept city-county separation as a given that will not change. Some have noted the enormous financial, organizational, and political problems that would arise if change was attempted. There are practical problems with school systems, utilities, debt service, voting rights, and taxing authority that would have to be resolved. It was summed up best, perhaps, in a 1990 report from the Grayson Commission:

Redrawing the map of Virginia might be justified on purely technical grounds; however, for political, social, and psychological reasons, most elected officials and average citizens want to retain the community in which they live. When living amid unprecedented change in the state, nation and the world, association with a particular county, city or town enhances one's personal identity, provides a sense of belonging, and furnishes a proximate level of government to which concerns can be addressed.

This argument reminds me of a discussion that I had with the Fredericksburg City Manager some years ago when the potential of that city reverting to a town was under discussion. When talking about the reasons why reversion might not be acceptable to the community he said, "After all, it all goes back to high school football." His point was that after years of gridiron rivalry (and, of course, other rivalries), he didn't see how the residents would consent to becoming a town within the county at the threat of losing their identity.

I don't expect any substantive steps to be taken in the near future to address the problems of city-county separation. Political power in the Commonwealth now rests in the growing suburbs of counties that surround the older central cities. Those localities are also facing fiscal challenges and there is little incentive for them to consider aiding the cities.

While there is frequent mention of how important the central cities are to the economic well being of their regions and to the Commonwealth, I have not yet seen a compelling argument for why that is so. At least, I have not seen an argument compelling enough that I think it would make a suburban legislator support legislation to provide assistance to central cities, especially if it was seen as taking resources away from the suburban jurisdictions. Furthermore, the lack of any overall state policy regarding the economic well being of its localities or

statewide land use and transportation policies hinders an understanding of the interconnectedness of the localities.

It appears that progress will only be made through a sustained effort of education, policy discussion, and, possibly, the fiscal collapse of one of the more stressed core cities. Just as city-county separation evolved over many years, addressing the problems of Virginia's localities will take time. The key is to recognize the challenge and to find the political will to address it.

Outlook

Because I am predominantly an optimist, I want to close by addressing some reasons for hope. I think that the work of the Virginia's First Cities Coalition over the last several years has had some degree of success in raising the consciousness of citizens and policy makers regarding the plight of cities in the Commonwealth. Newspaper stories and editorials on the matter are becoming more frequent. Furthermore, Governor Warner's administration has shown great interest in urban matters, to the point of creating an Urban Policy Task Force whose work should be completed in the next few months.

Perhaps a degree of hope can be taken from the Advisory Commission on Intergovernmental Relations report issued in 2003 on *The Condition and Future of Virginia's Cities*. It stated, "The single most significant finding of the ACIR was the increasing importance of Virginia's metropolitan areas to both the economy and the quality of life of the state and its localities."²⁷

The report went on:

There is widespread agreement among government officials and business leaders that the economic viability and the overall quality of life of Virginia's local governments are critical to the strength of its regions, which in turn are essential to the health and well-being of the Commonwealth as a whole. In effect, then, despite the artificial construct of Virginia's independent-city system, Virginia's localities are fundamentally interdependent. As a result, the long-term prosperity of the Commonwealth depends in large measure on its ability to develop policies and marshal resources that will help local governments solve problems of mutual concern.²⁸

And it also stated:

²⁷ ACIR report, p. i.

²⁸ Ibid, p. 4.

...the ACIR found that any policy it might propose would be effective in addressing well-documented urban problems only to the extent it promoted regional vitality, that is, to the degree it would help all parts of each metropolitan area—the central business district, inner city neighborhoods, first-ring suburbs, outer suburbs, and exurbs—function more effectively as an economic unit and provide high quality of life for all the metropolitan area's residents.²⁹

Finally, with reference to some of the more severely stressed localities in the State, the report warned, "There is ample evidence that the need for change is urgent."³⁰

²⁹ Ibid, p. 5.

³⁰ Ibid, p. 11.

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