THE ANNEXATION OF FRINGE TERRITORY

A RECURRING dilemma for all municipalities is the peopling of the areas just beyond their boundaries. It arises from the legal definition of city boundaries. Walls once were built to protect a city against attack, and the neighborhood and residents outside the walls usually were not considered a part of the city. Cities no longer are defined by walls, but often the legal boundaries are almost as restrictive, for they are established by law, and the city’s jurisdiction does not extend beyond them.

Since the boundaries can be changed only through established legal procedures, cities do not expand automatically to accommodate the development that takes place beyond their limits, although the fringes are economically and sociologically a part of the city around which they have grown, and the entire area constitutes a unit with many common problems.

Yet as long as a city’s legal and actual boundaries are not made to coincide, there are actually a central city and adjacent tracts of semiurban or urban development under one or more different units of local government.

A basic—and obvious—element in the development of communities just outside city limits is growth in population. Another factor is a tendency for people to concentrate in the 212 places that we call standard metropolitan statistical areas. A third is that rapid urbanization requires more space.

The result is that suburban fringes have developed faster than the central cities. Despite annexations by some cities, the satellites grew almost five times faster than the central cities.

Prof. Victor Jones, of the University of California, reported in The Municipal Year Book, 1961, that “If there had been no annexation, the fringe would have grown 41 times as fast as the central cities.”

Two-thirds of the increase in the population of the United States between 1950 and 1960 occurred in the outlying parts of the standard metropolitan statistical areas.

Sooner or later, available land within a city’s legal boundaries is used up, and land must be sought elsewhere. As land becomes scarcer and more
expensive, those who are unable or unwilling to pay the market price for it turn to land beyond the city’s boundaries. Besides, there has developed what appears to be the great American desire for the advantages of both cities and suburbia, without the disadvantages of either, and for owning one’s own home. Dreams of a freer, fuller life have become realities for many, but the dreams failed to include the difficulties that arise when a city’s actual and legal boundaries do not jibe.

You may ask: What difference does it make whether or not a city’s legal boundaries coincide with its sociological or economic boundaries?—after all, the entire area is under some type of government, and that should be sufficient for the situation. Why should a city and the surrounding developments be placed under one governmental unit?

The answers to these questions are not simple.

The disadvantages to the central city as fringe areas develop around it are fairly obvious.

All too often the older residential and business sections within the city fall into general disrepair as residents and business firms seek larger and better sites farther out. Then real estate values decline, and part of the city’s tax base is lost. Stores and businesses transfer their locations outside the taxing jurisdiction of the central city. As the city loses these various sources of revenue, the per capita share of government may increase, and capital outlays for various items may fall more heavily on those who remain within the city’s taxing jurisdiction.

Equally important, the growth of the fringes often deprives the city of strong civic and political leaders and denies the suburbanite a voice in the management of the affairs of the city of which he really is a part and from which his livelihood is drawn.

The effects of fringe developments on the central city would not necessarily mean much if it were not for some other factors.

Foremost among them is the extent to which the central city is expected to provide services and functions for the suburbanite when he is in the city—streets and traffic control to get him in and out of the city, police and fire protection, water supply, and sewage disposal. They cost money, yet the suburbanite, being outside the city’s taxing jurisdiction, does not help pay for them. The central cities consequently take the position that the fringe areas and the central city have a community of interest and therefore should be merged into a single political unit.

But that is not all. It is a truism that new needs arise as people concentrate in an area. Many services that are not urgent or are even unnecessary in the country become critical when population becomes congested. Indeed, the need for them is the very factor that has led to the creation of municipal corporations.

Thus, while a person may settle in what appears to be a semirural environment just outside the corporate limits, the continuing flow of people into that area soon places it beyond the point that the individual can safely do without or make personal provision for many functions required by urban populations. At that point, it no longer is a question of what the individual desires but what is actually required for the existing conditions.

The situation is summarized in a 1941 decision of the Virginia Supreme Court of Appeals:

“A county resident may be willing to take a chance on police, fire and health protection, and even tolerate the inadequacy of sewerage, water and garbage service. As long as he lives in an isolated situation his desire for lesser services and cheaper government may be acquiesced in with complacency, but when the movement of population has made him a part of a compact urban community, his individual preferences can no longer be permitted to prevail. It is not so much
that he needs the city government as it is that the area in which he lives needs it."

While counties can and do provide many of the services required by places that are approaching urban concentration, they frequently are unable or unwilling to provide additional services to the residents of suburbs.

Since community effort, through governmental organization, is required in many functions, the residents of developed areas must look to other sources when the county does not provide the needed services.

If the adjacent city can be prevailed upon to furnish these services, this arrangement may suffice. But cities often are unwilling—and often are unable—to furnish such services. As I noted, cities may take the position that the people in the fringes who want a municipal type of services and functions should come into the city and share in the financial burden.

If the city does not supply services outside its boundaries, the only recourse left to the suburb is to incorporate as a separate municipality or be taken into the city.

For many years the problem of growth on the edges was handled by extending the boundaries of the city so as to absorb this growth, a legal process known as annexation.

Annexation worked quite well until the late years of the 19th century, and many of our large cities thereby gained many square miles of land.

No uniform procedure was followed. Actions were completed through such means as a referendum, a special act of the legislature, general legislative acts that applied to a special class of cities, and a combined vote of the city and of the area to be annexed. Regardless of the method, annexations generally met only token opposition.

Beginning about 1900, however, people's attitudes toward annexation began to change, and many States adopted provisions that made annexation more difficult.

A typical example was the provision included in the Virginia Constitution of 1902 that "The General Assembly shall provide by general laws for the extension and contraction, from time to time, of the corporate limits of cities and towns; and no special act for such purposes shall be valid."

Rhode Island still has a statutory provision that city and town boundaries shall remain "as now fixed."

Annexation, when it was permitted, often was made complicated and difficult. In many States, the residents or the voters in a community were given final say as to whether their community should be annexed. For reasons I cited, the people responsible for the rapid suburbanization usually rejected annexation. Annexations consequently were rather infrequent and were limited mostly to small, unincorporated areas just outside the city's boundaries.

A resurgence in the annexation movement started in 1945 or so. The postwar period saw a tremendous spurt in suburban development. As the accompanying needs and problems became too great to be ignored, more and more attention has been given to the search for a solution that would accommodate the conflicting interests and views reflected in the issue.

Because of a shift in attitudes, today each of the States has constitutional and statutory provisions on annexation. The provisions vary considerably.

I provide only a general review of the major elements of the different types of procedures. Readers interested in complete details should consult the State's constitution, statutes, judicial proceedings, and literature.

Some states—for example, Delaware, Maine, Massachusetts, and Maryland—have no general law provisions on annexation. The cities in those States must depend on the legislature to pass a special act annexing suburban territory to the city. When this procedure is followed, a bill providing for the annexation of fringe
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The annexation of Fringe Territory is introduced by a representative and is considered in the regular procedure for enacting a law, unless special actions for this type of bill have been provided.

Annexation proceedings determined through the legislative process are subject to all the parliamentary maneuverings and the special-interest lobbying normally associated with the legislative process. Annexation then can become a political gambit, in which the outcome may rest on grounds other than the merits of the case. This method often is criticized by both the advocates of a more liberal annexation policy and people who would like to make annexation more difficult or impossible.

The average citizen favors the method of annexation that vests the final decision in the voters.

Many believe that in a democracy each registered voter should have a voice in determining changes in the form of government under which he lives and that annexation proceedings should be determined by a popular referendum. That this view has strong popular support is attested by the number of States in which annexation is determined by a referendum.

The combinations of steps in annexation referendums are legion.

A special legislative act authorizing the referendum may be enacted first, or general statutory provisions may be in existence. A variety of ways are used also for initiating the specific proceedings. The action must be initiated by the city in some instances; in others, the residents of the suburban territory must initiate action. Sometimes either method may be used.

The nature of the final vote also varies. In some jurisdictions, the majority of the total vote cast by voters of the city and the area to be annexed determines the outcome. In other jurisdictions, annexation is permitted only if the question receives an affirmative majority in both the city and the area to be annexed; thereby a veto is given to the voters of the area to be annexed. In a few jurisdictions, participation in the referendum is restricted to voters residing in the area to be annexed.

As I suggested, the determination of annexation proceedings by referendum is considered by many to be the only procedure consistent with democracy. Others are just as strong in their objections. Their view is that a popular referendum usually obscures the merits of the case and that the final decision turns on appeals to the emotions. While neither position is followed consistently, the frequency with which annexation referendums are defeated has caused many to look for different methods of deciding when a city's boundaries should be extended to include the developments beyond its boundaries.

The search for a method to determine annexation proceedings other than by popular referendum has led to the use of the State's courts. In a few instances, the function of the court is to determine whether certain standards laid down by the legislature in the statutes have been met. If these conditions are found to exist, the court enters an order annexing the territory to the adjacent city.

This approach assumes that general standards for annexation can be established in advance by the legislature and that there is merely the need for an agency to determine whether these conditions have been met. As courts are regarded traditionally as impartial tribunals, the determination is left in their hands.

A different situation exists when the court must determine whether to grant or deny annexation, rather than merely determining whether statutory provisions have been met.

Under the Virginia annexation system, annexations are determined in a suit at law between a municipality and the county in which territory sought to be annexed is located. Proceedings may be initiated by a municipality, by 51 percent of the voters of an area who desire to be annexed, by the governing
body of the county, or by the governing body of a town desiring to be annexed by a city.

Irrespective of how proceedings are initiated, the action is filed with the circuit court of the county in which the territory to be annexed is located. Contested proceedings are then heard by a specially constituted annexation court, consisting of the judge from the judicial circuit hearing the case and two judges of judicial circuits remote from the area, who are designated by the Chief Justice of the Virginia Supreme Court of Appeals.

The annexation court must determine the annexation proceedings in the light of a statutory guide, which reads: "The court shall determine the necessity for and expediency of annexation, considering the best interests of the county and the city or town, the best interests, services to be rendered and needs of the area proposed to be annexed, and the best interests of the remaining portion of the county." Even after a number of court decisions, the exact meaning of this legislative guide still escapes many laymen and some lawyers.

In addition to determining whether all, part, or none of the territory involved shall be annexed, the annexation court must determine the terms and conditions upon which annexation is to be granted.

These determinations include: The metes and bounds of the territory to be annexed, the "just proportion" of any "existing debt" of the county to be assumed by the city, the amount the city is to compensate the county for any public improvements annexed to the city, the program of public improvements to be provided by the city in the area annexed, and how much the city shall compensate the county for its loss of tax revenues due to the annexation.

Appeals from the decisions of the local court are taken to the Virginia Supreme Court of Appeals.

The Virginia system of annexation has been roundly praised and roundly condemned. Those who favor the procedure believe that the most important element is the determination of annexation proceedings on grounds other than the narrow, selfish interests of the residents of the territory to be annexed. This position, however, is exactly what many people do not like about the judicial proceeding—it denies to the residents of the territory a vote in the annexation proceeding. That these people individually or collectively have a right to appear in court and defend their interest is not a satisfactory substitute for many.

Fringe territory in some States may be annexed through an ordinance passed by the adjacent city.

For example, in Texas a city of more than 5 thousand by a majority vote may adopt a home-rule charter, which includes provisions for annexing fringe territory. Most of the Texas home-rule cities permit the city to annex contiguous unincorporated territory by simple ordinance of council, with no action whatsoever necessary in the territory to be annexed, but some charters also require approval by the voters in the territory to be annexed.

North Carolina in 1959 adopted a statute that authorizes cities of at least 5 thousand to annex by council ordinance when certain legislatively formulated standards are met and when certain required services can be provided to the areas.

The procedure in North Carolina, which has been sustained by the State's highest court, differs from Texas in that the North Carolina Legislature has established the conditions that must be met, whereas in Texas no legislative standards guide the action.

The North Carolina statute requires that the area be contiguous to the city's boundary for at least one-eighth of the total external boundary of the area to be annexed, in order to prevent strip annexation, and that the area not include part of another incorporated area. Although no popular referendum is provided, many believe that the State
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The standards adequately protect the interests of the residents of the area to be annexed. The entire proceedings may be reviewed in the State’s superior court.

California has a procedure under which either the city council or the property owners in the outlying areas may start annexation proceedings. No referendum is necessary, and the action of the council of the annexing city determines the outcome.

Many persons, searching for a fair method of determining annexation proceedings, have urged the use of a board or a commission for such decisions. Although used in England just after the Second World War, the idea was tried in the United States only recently.

Provision for a local boundary commission was included in the constitution Alaska adopted in 1956. The commission considers all proposed local government boundary changes. All approved changes are presented to the legislature during the first 10 days of any regular session. The proposed change becomes effective 45 days after presentation—or at the end of the session, whichever is earlier—unless disapproved by a resolution concurred in by a majority of the members of each house.

Washington has established a review board to determine the feasibility of all proposed annexations to cities. The board consists of the mayor of the annexing city, the chairman of the county board of commissioners, the director of the State department of commerce and economic development, the chairman of the board of school directors of any or all school districts in the area to be annexed, and a local resident and property owner, who is selected by the others.

The Washington review board must determine within 3 months whether a proposed annexation would be in the public interest. The board studies the future population of the area, the present and anticipated need of the city to expand geographically, the past and future needs for city services in the area to be annexed, and the ability of the area to provide public services. Proposed annexations of very small areas are exempt from these review proceedings if the mayor, county board chairman, and county superintendent of schools agree to dispense with them.

Wisconsin requires a discretionary review by the director of regional planning.

Minnesota has a municipal commission of three members appointed by the Governor, who are joined in some instances by two county officials. Annexation proceedings approved by the commission are not final, however, until local voters sanction them.

In sum, despite many changes in procedures, the issue of annexation is charged with individual emotions and value judgments. In such a climate, attempts to solve the growing pains of many cities will be unpleasant but maybe not fatal.

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For further reading:


