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Peter Pitegoff
University of Maine School of Law

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EDMUND MUSKIE'S CREATIVE FEDERALISM AND URBAN DEVELOPMENT TODAY

Peter Pitegoff

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*Peter Pitegoff**

How fitting it is to view urban development policy today with reference to Edmund Muskie and his role as U.S. Senator from Maine in the 1966 enactment of the Model Cities Program. The University of Maine School of Law is honored that the *Maine Law Review* 2014 symposium is part of this centennial celebration of Ed Muskie's life and work. His wide-ranging career brought Muskie from Maine—where he served as a state legislator and Governor—to national and global affairs as Senator, Secretary of State, and Vice Presidential nominee, and in other prominent leadership roles.

We are fortunate to welcome Don Nicoll for this discussion, to reflect on his experience working with Senator Muskie for ten years in the 1960s and to provide an inside view of Muskie's legislative savvy in urban development policy. Don Nicoll *was there* at the inception of Model Cities and related policies. Before joining Senator Muskie in Washington D.C., Nicoll was executive secretary of the Maine Democratic Party in the late 1950s where he worked with then Governor Muskie and with then Congressman Frank Coffin.¹ Since then, Nicoll has served as a program and policy planner in higher education, health care, regional planning and transportation, and environmental protection, primarily in Maine.

Don Nicoll recounts the “odd couple partnership” of Senator Muskie and President Lyndon B. Johnson in enacting the Demonstration Cities and Metropolitan Development Act, which gave rise to the Model Cities Program.² He describes Muskie's arrival in the Senate in 1958 and a back-story of early friction with then Senate Majority Leader Lyndon Johnson. He discusses President Johnson's ambitious Model Cities initiative a few years later “developed by a secret task force . . .” in a style at odds with Muskie's inclination for a more inclusive and strategic legislative process. Muskie saw insufficient local participation built into the bill and, according to Nicoll, predicted political reaction against authorizing large grants to selected cities for open-ended programs.³

Nonetheless, with passage of the Model Cities legislation apparently in doubt, the President turned to Muskie in 1966 to manage the legislation in the Senate, due in part to Muskie's record of success in legislative enactment of a range of anti-pollution programs and his ability to build consensus across party lines. This was a different assignment for Muskie, says Nicoll, asking him “to take on a demanding president's creation—one with which he had reservations—and somehow shepherd

* Peter Pitegoff is Dean and Professor at the University of Maine School of Law.

1. Frank Coffin subsequently became an iconic Federal Judge on the First Circuit Court of Appeals, where he served for over four decades.

2. See *infra* Donald E. Nicoll, *Model Cities, Senator Muskie and Creative Federalism*, 67 ME. L. Rev. 255 (2015).

3. See Nicoll, *supra* note 2, at 259.

it through a reluctant Senate and achieve agreement with a recalcitrant House.”⁴ Agreeing with Johnson’s urban revitalization goals, Muskie accepted this responsibility with the understanding that he would work with the White House and the new Department of Housing and Urban Development to revise the legislation and build a respectable level of support in the Senate.⁵

Nicoll provides an inside look at Muskie’s skill in the legislative process, resulting in enactment of a “Model Cities” Act in November 1966 that reflected Muskie’s goals.⁶ The final result included “language to strengthen metropolitan planning and review, emphasize local initiative, and ensure citizen participation,” notwithstanding the top-down hue of a federally driven program.⁷ Nicoll concludes: in urban planning, “Muskie was ahead of his time, but he knew how to persuade his colleagues to move in that direction.”⁸

University of Houston Law Professor Kellen Zale echoes this note of continuity, but also suggests some discontinuity, as she joins our discussion and fast-forwards to the present. Professor Zale is a contemporary scholar and expert in property law, land use, and municipal law. She relates Muskie’s work to recent urban development initiatives and policy.

Professor Zale considers how the legacy of Model Cities “is both a foundation of and a counterpoint to contemporary urban development policies and programs.”⁹ She acknowledges that the Model Cities program foreshadowed elements of today’s local initiatives by involving local leaders. Nonetheless, says Zale, “the Model Cities legislation envisioned a top-down, federally driven, comprehensive approach to urban development.”¹⁰

She posits that local governments today, rather than the federal government, craft many of the most innovative legislative responses to urban challenges. Thus, for example, New York City recently attempted to enact a congestion pricing plan to relieve the overload of cars in lower Manhattan during peak hours and to address concerns about safety, pollution, and quality of life.¹¹ Although New York City obtained a \$350 million commitment from the federal Department of Transportation, contingent upon state approval, the City failed to obtain required approval of the state legislature and governor.

Professor Zale describes other locally driven and targeted programs that, in contrast, were more successful than New York City’s congestion pricing plan. In San Francisco, stakeholders and city officials changed the zoning law to add an urban agriculture zone,¹² facilitating community gardens with stable ownership and lease arrangements and minimizing real estate speculation for these properties. In New Orleans, the city housing authority partnered with state and federal agencies

4. Nicoll, *supra* note 2, at 260.

5. See Nicoll, *supra* note 2, at 259.

6. Demonstration Cities and Metropolitan Development Act of 1966, Pub. L. No. 89-754, 80 Stat. 1255 (codified as amended at 42 U.S.C. § 3331 to § 3339 (2012)).

7. Nicoll, *supra* note 2, at 260.

8. Nicoll, *supra* note 2, at 262.

9. See *infra* Kellen Zale, *Urban Development Legislation For Cities, By Cities*, 67 ME. L. Rev. 265, 266 (2015).

10. Zale, *supra* note 9, at 267.

11. See Zale, *supra* note 9, at 268.

12. See Zale, *supra* note 9, at 268-69.

and with a private developer to redevelop a public housing project, preserve historic buildings, and add market-rate housing and business. This infrastructure project, according to Zale, “echoes Model Cities . . . by involving the coordination of federal, state, and local levels of government.”¹³ Yet, what distinguishes such “contemporary, targeted, locally-driven legislation” is its focus on a concrete neighborhood and narrow redevelopment goals, “rather than trying to be an all-encompassing solution to every problem faced by that neighborhood at once.”¹⁴

This study of contrast gave way in our panel discussion to a thread of continuity. Zale acknowledges that “there is still a very important role for the federal government” to play; yet, she still stresses the “advantages in terms of both efficiency and responsiveness to local governments taking the lead on urban development legislation.”¹⁵

As Don Nicoll suggests, Muskie was ahead of his time in insisting upon meaningful participation by local stakeholders in accessing federal policy and resources for urban development. These values live on in contemporary policies, even as the government moves further in the direction of leveraging private wealth for public purposes and out-sourcing government functions of times past. Federal tax policies in recent decades, for instance, have leveraged private investment in local development, as in creating markets for Low-Income Housing Tax Credits¹⁶ since 1986, and for New Markets Tax Credits¹⁷ since 2000. Economic development policy, at its best, is a constructive combination of local initiative, federal and state support, and innovative finance. Both Nicoll and Zale credit Muskie with foresight in promoting policies that enable local players to drive the substance of urban development while tapping federal resources and support—a “creative federalism” that continues to evolve today.

13. Zale, *supra* note 9, at 269.

14. Zale, *supra* note 9, at 269.

15. Zale, *supra* note 9, at 267, 269.

16. Tax Reform Act of 1986, Pub. L. No. 99-514, § 252(a), 100 Stat. 2189 (codified as amended at 26 U.S.C. § 42 (2012)).

17. New Markets Venture Capital Program Act of 2000, Pub. L. No. 106-554, § 121(a), 114 Stat. 2763 (codified as amended at 26 U.S.C. §§ 45(d)-(e) (2012)).