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The Local Government Boundary Problem in Metropolitan Areas

Richard Briffault*

Local government boundaries play an important role in the governance of metropolitan areas by defining local electorates and tax bases and the scope of local regulatory powers and service responsibilities. Yet, the close association of local powers with local boundaries generates spillovers, fiscal disparities, and interlocal conflicts. Real local autonomy is constrained but the local government system fails to provide a means for addressing regional problems. Public choice theorists and political decentralizationists oppose regional governments because of the threat to local autonomy that would result from removing powers from local hands. Richard Briffault's solution to the metropolitan governance problem is a "mixed strategy" that would both reduce the significance of existing local boundaries and create elected regionally bounded governments to address matters of regional significance. In his regime, small local governments would remain units for local decisionmaking. But regional political institutions, with regional land use and fiscal powers, would provide an opportunity for regionwide deliberation, popular participation in decisions of regional significance, and the framing and implementation of policies addressed to the needs of the region as a whole.

I. INTRODUCTION: THE METROPOLITAN AREA GOVERNANCE PROBLEM

The governance of metropolitan areas is the central problem for local government law today. Local government law has traditionally been associated with the organization and powers of discrete localities. Such localities, typically, are relatively small in both population and area, with densely populated cores bounded by lightly populated fringes that set them off from other, similar localities. Residents of particular discrete localities have relatively high levels of interaction with each other and much less intense interactions with residents of other localities. Local government law enables the people who live within these discrete areas to organize themselves into distinct political units and gives those units power to make decisions with respect to a range of public policies and services. Although the extent of power granted to localities varies considerably from state to state—and often from locality to locality within a particular state—the essence of local autonomy is the ability of people within distinct small areas to decide for themselves by democratic means the matters that fall within the competence of local authority.

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As the twentieth century draws to a close, however, most Americans live not in discrete, compact localities, but rather in sprawling metropolitan areas. In 1990, 193 million people, or 78 percent of the total population of the United States, lived in metropolitan areas, as defined by the Census Bureau.¹ The twenty-one most populous metropolitan areas (those with two million people or more) included 101 million people, or 40 percent of the population.² Slightly more than half of all Americans lived in the thirty-nine major metropolitan areas that contain one million people or more.³

Major metropolitan areas are far larger in population and territory than the localities that have traditionally been the subject of local government law. The San Francisco Bay Area contains six million people—a population greater than that of forty states—and seven thousand square miles—almost the size of Massachusetts.⁴ Metropolitan Houston consists of 3.7 million people spread over an even more capacious 7151 square miles.⁵ Nearly 2.6 million people live in the almost six thousand square miles that make up greater Seattle.⁶

Metropolitanization has also transformed the localities within metropolitan areas. The defining features of traditional localities—intensity of interaction within the locality and separation of that locality from others—are increasingly absent in the metropolitan setting. Metropolitan area residents do not concentrate their activities within their home locality, nor do metropolitan area businesses typically draw most of their workers or customers from their home localities. Metropolitan localities frequently lack internal focal points, such as a downtown, village commons, park, community facility, or other place for

1. BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, STATE AND METROPOLITAN AREA DATA BOOK 1991, at 205 (1991). According to the Census Bureau:

The general concept of a metropolitan area (MA) is that of a geographic area consisting of a large population nucleus together with adjacent communities which have a high degree of economic and social integration with that nucleus. . . .

. . . [A]n area qualifies for recognition as an MA in one of two ways: (1) if it includes a city of at least 50,000 or more inhabitants, or (2) if it includes a Census-Bureau defined urbanized area of at least 50,000 inhabitants with a total MA population of at [least] 100,000 (75,000 in New England). In addition to the county containing the main city or urbanized area, an MA may include additional outlying counties that meet specified requirements of commuting to work and of metropolitan character (such as population density and percent urban). A metropolitan area may contain more than one city of 50,000 population and may cross State lines.

Id. at 353.

2. Eli Ginzberg, *The Changing Urban Scene: 1960-1990 and Beyond*, in *INTERWOVEN DESTINIES: CITIES AND THE NATION* 33, 35 (Henry G. Cisneros ed., 1993) [hereinafter *DESTINIES*].

3. NEAL R. PEIRCE, *CITISTATES: HOW URBAN AMERICA CAN PROSPER IN A COMPETITIVE WORLD* 4 (1993).

4. Victor Jones & Donald N. Rothblatt, *Governance of the San Francisco Bay Area*, in *METROPOLITAN GOVERNANCE: AMERICAN/CANADIAN INTERGOVERNMENTAL PERSPECTIVES* 375, 377 (Donald N. Rothblatt & Andrew Sancton eds., 1993) [hereinafter *METROPOLITAN GOVERNANCE*].

5. Robert D. Thomas, *Urban Growth Decision Making in the Houston Area*, in *METROPOLITAN GOVERNANCE*, *supra* note 4, at 283, 285.

6. PEIRCE, *supra* note 3, at 81. Contemporary metropolitan regions are far larger than the metropolitan cities of the start of this century. As Robert Fishman points out: "Where the leading metropolises of the early 20th century—New York, London, or Berlin—covered perhaps 100 square miles, the new city [or the metropolitan region] routinely encompasses two to three thousand square miles. Within such 'urban regions,' each element is correspondingly enlarged." Robert Fishman, *Megalopolis Unbound*, *WILSON Q.*, Winter 1990, at 25, 28.

casual socializing.⁷ Such localities remain the physical settings for residences, enterprises, and other organizations within their borders, but they are certainly not "communities" in the traditional warm and fuzzy sense of the term.⁸

How are metropolitan areas to be governed? Not one major metropolitan area is governed by a single all-encompassing general purpose local government.⁹ Some metropolitan areas have special-purpose regional governmental entities. These bodies, however, are sometimes limited in territorial scope to just a portion of the metropolitan area. They are typically governed by appointed rather than elected officials. Most importantly, they nearly always lack the plenary taxing, regulatory, and service-delivery authority characteristic of general purpose municipal governments.

The dearth of metropolitan area governments is not for lack of ideas, advocates, or struggles to create them. Since the late nineteenth century good government groups, political scientists, and central city business and political leaders have urged the creation of general-purpose governments with boundaries coextensive with metropolitan areas.¹⁰ Such governments could be produced through annexations by the largest city in the region or by the consolidation of the existing local governments and unincorporated land into one large unit. Occasionally, as with the 1898 consolidation of the cities, counties, and towns on the New York State side of New York Harbor into Greater New York, these efforts were crowned with success¹¹—although even in New York success was ultimately undone by the expansion of the metropolitan area beyond the boundaries of the consolidated city. More commonly, from Bos-

7. PEIRCE, *supra* note 3, at 306; Fishman, *supra* note 6, at 38.

8. On the loss of community in metropolitan areas, see KENNETH T. JACKSON, CRABGRASS FRONTIER: THE SUBURBANIZATION OF THE UNITED STATES 272-82 (1985).

Raymond Williams notes that although "community" has many definitions, the term "seems never to be used unfavourably, and never to be given any positive opposing or distinguishing term." RAYMOND WILLIAMS, KEYWORDS: A VOCABULARY OF CULTURE AND SOCIETY 66 (rev. ed. 1983). Albert Hunter points out that social scientists tend to view, "community as an unqualified good. The positive connotations of friendliness, warmth, and support are seldom countered with the accompanying characteristics of constraint and conformity, and the loss of privacy, individualism, and freedom." Albert Hunter, *Persistence of Local Sentiments in Mass Society*, in HANDBOOK OF CONTEMPORARY URBAN LIFE: AN EXAMINATION OF URBANIZATION, SOCIAL ORGANIZATION, AND METROPOLITAN POLITICS 133, 134-35 (David Street & Assocs. eds., 1978).

9. David Rusk points out that there are 48 metropolitan areas in which 60% or more of the population falls within the jurisdiction of a single general purpose government. In 32 of those areas, the so-called metropolitan government has jurisdiction over less than 75% of the area's population. Another 15 areas have governments that cover at least 75% but less than all of the metropolitan area population. These tend to be areas with relatively small populations—their average population is about 150,000. Only one metropolitan area (with a population of about 226,000) has a government with jurisdiction over the entire area. DAVID RUSK, CITIES WITHOUT SUBURBS 89, 95-96 (1993).

10. See e.g., VICTOR JONES, METROPOLITAN GOVERNMENT 85-154 (1942) (summarizing proposals for integrating the local government of metropolitan areas); PAUL STUDENSKI, NATIONAL MUN. LEAGUE, THE GOVERNMENT OF METROPOLITAN AREAS IN THE UNITED STATES 41-42 (1930) (discussing various methods of metropolitan integration); Chester C. Maxey, *The Political Integration of Metropolitan Communities*, 11 NAT'L MUN. REV. 229, 230-51 (1922) (summarizing early efforts at political unification of metropolitan areas).

11. Expansion of the metropolitan area beyond the consolidated city ultimately undid this victory. See generally, Richard Briffault, *Voting Rights, Home Rule, and Metropolitan Governance: The Secession of Staten Island as a Case Study in the Dilemmas of Local Self-Determination*, 92 COLUM. L. REV. 775 (1992) (describing the consolidation of greater New York).

ton¹² to San Francisco,¹³ metropolitan government campaigns ended in failure—either shot down by voters when submitted to referendum or blocked by local opposition from even getting before the electorate at all. Most urbanists would probably agree that centralized metropolitan government is today “not politically viable.”¹⁴

As political opposition repeatedly doomed proposals for centralized metropolitan governments, reformers developed ideas for “two-tier” or “federative” plans that would move only some municipal functions to a metropolitan level government, while leaving the rest to local governments.¹⁵ These plans involved superimposing new regional structures over existing local governments, or, in metropolitan areas consisting of one county, taking advantage of the existing structure by shifting powers and responsibilities traditionally wielded by municipalities to the county.

Two-tier plans and federative schemes have dominated the metropolitan government reform agenda since the 1950s.¹⁶ Several major areas adopted two-tiered systems in the 1950s and 1960s, including Miami-Dade County, Nashville-Davidson County, Jacksonville-Duval County, and Indianapolis-Marion County.¹⁷ Other areas, including metropolitan Seattle,¹⁸ greater Port-

12. See Mark I. Gelfand, *Development Policy in Metropolitan Boston*, in METROPOLITAN GOVERNANCE, *supra* note 4, at 13, 23-29 (attributing the rejection of “[t]hree different plans for reorganizing local and regional government [to a] combination of seventeenth century Puritan theology, eighteenth century Republican political theory, and nineteenth and twentieth century sociology”).

13. Kenneth A. Brunetti, Note, *It's Time to Create a Bay Area Regional Government*, 42 HASTINGS L.J. 1103, 1108-16 (1991) (discussing past efforts at creating regional governments).

14. Peter D. Salins, *Metropolitan Areas: Cities, Suburbs, and the Ties that Bind*, in DESTINIES, *supra* note 2, at 147, 164; see also ANTHONY DOWNS, *NEW VISIONS FOR METROPOLITAN AMERICA* 170 (1994) (“Metropolitan government has almost no political support.”).

15. See, e.g., COMMITTEE FOR ECON. DEV., *RESHAPING GOVERNMENT IN METROPOLITAN AREAS* 44-46 (1970) (recommending a two-level system of government consisting of an areawide government and a local government).

16. For a recent call for “some form of regional planning and decision-making structure,” see PEIRCE, *supra* note 3, at 316-22. Contemporary advocacy of metropolitan government is not entirely limited to calls for the two-tier variation. David Rusk argues that “a true metro government must be a general purpose local government. It must have all of the powers of a municipality under applicable state law.” RUSK, *supra* note 9, at 89. Rusk would centralize metropolitan governments by, *inter alia*, empowering urban counties, abolishing municipal governments, consolidating cities and counties into central regional governments, and facilitating annexation by central cities. *Id.* at 91-119.

17. JOHN J. HARRIGAN, *POLITICAL CHANGE IN THE METROPOLIS* 313-20 (4th ed. 1989); Allan D. Wallis, *Inventing Regionalism: The First Two Waves*, 83 NAT'L CIVIC REV. 159, 163 (1994). For a brief criticism of Miami-Dade County, see John Kincaid, *Regulatory Regionalism in Metropolitan Areas: Voter Resistance and Reform Persistence*, 13 PACE L. REV. 449, 465-66 (1993). For more favorable evaluations of the Indianapolis-Marion County, Nashville-Davidson County, and Jacksonville-Duval County experiments, see RUSK, *supra* note 9, at 93-94; H. V. Savitch, Daniel Sanders & David Collins, *The Regional City and Public Partnerships*, in IN THE NATIONAL INTEREST: THE 1990 URBAN SUMMIT: WITH RELATED ANALYSES, TRANSCRIPT, AND PAPERS 65, 70-72 (Ronald Berkman, Joyce F. Brown, Beverly Goldberg & Tod Mijanovich eds., 1992) [hereinafter NATIONAL INTEREST].

18. In 1957, concerned about pollution of Lake Washington on the eastern edge of Seattle, the state of Washington authorized the creation of the Municipality of Metropolitan Seattle (“Metro”) and vested it with the power to administer sewer and garbage services, transportation, planning, parks, and water supply in the greater Seattle area, subject to the approval of the voters. Area voters initially limited Metro’s authority to sewage services. *Municipality of Metro, Seattle v. City of Seattle*, 357 P.2d 863, 866 (Wash. 1960). In 1971, Metro’s boundaries were enlarged to coincide with those of King County, the county in which Seattle is located. In 1972, after two earlier rejections, voters approved

land,¹⁹ and the Twin Cities region,²⁰ continue to experiment with regional structures authorized to set some aspects of metropolitan area policy without wielding the full powers of a general purpose local government.

On balance, the push for two-tier governments has not been much more successful than the earlier campaign for centralized metropolitan governments.²¹ Many metropolitan areas created, or accepted state creation of, regional entities empowered to provide physical infrastructure services, such as waste disposal or mass transit, or to operate amenities that serve a regionwide constituency, such as a park or a zoo. But there are very few metropolitan areas in which regional entities are authorized to engage in the kind of policy making, regulation, and revenue raising characteristically entrusted to municipi-

Metro's takeover of public transit responsibilities. Metro was both a planning and an operating agency, financed by a combination of fees, taxes, grants, and bonds.

In 1990, a federal district court held that Metro's governance structure, in which elected officials of Metro's component municipalities served either ex officio or by appointment of other elected officials, violated the one-person, one-vote requirement. *Cunningham v. Municipality of Metro*, Seattle, 751 F. Supp. 885, 895 (W.D. Wash. 1990). In 1992, voters approved the merger of Metro with King County, effective 1994. In 1993, King and adjacent Pierce and Snohomish counties agreed to form a regional transit authority. *35-Year-Old Government Did Much More than Clean Lake Washington*, SEATTLE TIMES, Dec. 17, 1993, at B10.

19. Approved by voters in the three counties of the greater Portland area in 1970, the Portland Metropolitan Service District ("MSD") focused initially on solid waste disposal and administering the Portland Zoo. In 1978, the MSD was strengthened and given substantial regional planning responsibilities. Its enabling legislation also authorized the MSD to run the regional transportation agency and to assume responsibility for a range of functions, subject to voter approval. The district now manages the performing arts and convention centers and recently took over one county's parks.

Unusual among multiservice regional agencies, the MSD has had, since 1978, an elected governing board. In 1992, area voters further strengthened the MSD by approving a "home rule" charter for the district, confirming its role in regulating the urban growth boundary that determines sites for future land development in the region, and authorizing it to levy up to \$12.5 million in sales taxes. See Gordon Oliver, *Metro: A Governmental Ghost Gathers Substance*, PORTLAND OREGONIAN, Feb. 20, 1994, at C1, C4.

20. Minnesota created the Twin Cities Metropolitan Council in 1967 to address a water pollution crisis. The state authorized the Council to coordinate long-term plans for the metropolitan area, to recommend policies to local governments, and to review proposed projects or activities that have metropolitan significance. But even though it reviewed the budgets of the Metropolitan Transit Authority, the Metropolitan Waste Control, the Metropolitan Airports Commission, and other single purpose regional agencies, the Council had very little operating authority. See Judith Martin, *In Fits and Starts: The Twin Cities Metropolitan Framework*, in METROPOLITAN GOVERNANCE, *supra* note 4, at 205, 214-15. In 1994, the Minnesota legislature voted to merge the regional waste control and transit authorities into the Council, but rejected a proposal to make the Council an elective body. Dane Smith, *Legislators Push to Wrap Up Key Bills: Metro Government Measure: Transit Service Turned Over to Met Council*, STAR TRIB., May 6, 1994, at 1B.

The Council is also authorized to administer Minnesota's Fiscal Disparities Act, which provides for depositing a portion of the growth in tax base resulting from commercial and industrial development into a regional pool and distributing the increased revenues among the localities in the Twin Cities area according to their fiscal capacity. See Martin, *supra* at 228.

21. See, e.g., Frank Bowers & Kathy A. Bolten, *Commonwealth Plan Voted Down in Polk: "Grassroots Politics" Outguns the Financial Backing of Charter's Supporters*, DES MOINES REG., Nov. 9, 1994, at 1 (discussing voters' rejection of a plan to strengthen the Polk County, Iowa government at the expense of its constituent cities); Gary Craig, *Regionalizing Rochester*, EMPIRE ST. REP., Aug. 1995, at 40, 42 (detailing defeat of efforts to create a countywide police force and public opposition to the creation of a countywide school district in Monroe County (Rochester) New York). For details of the Polk County plan, see *Polk County Bd. of Supervisors v. Polk Commonwealth Charter Comm'n*, 522 N.W.2d 783, 786-95 (Iowa 1994).

palities—the general purpose local governments principally responsible for the provision of local services in metropolitan areas.

Although there are few local governments of metropolitan scope, the major metropolitan areas are hardly without local governments. In 1987, the typical metropolitan area had 113 local governments, including forty-seven general purpose governments, such as a county or a municipality.²² The profusion of governments is even greater in larger metropolitan areas. There are over 1250 local governments in the Chicago area, including six counties and 261 municipalities;²³ nearly 300 local governments in the Pittsburgh area, including more than 100 municipalities;²⁴ more than 300 governments in greater Seattle, including three counties and sixty-five cities and towns;²⁵ and approximately 350 governments, including 168 cities and towns, in metropolitan Baltimore.²⁶ Even in the Sunbelt, which tends to have fewer localities per metropolitan area, greater Phoenix has 138 governments, including twenty-one municipalities,²⁷ while Hampton Roads, Virginia, the nation's twenty-seventh largest metropolitan area, has at least seventy-five units of government.²⁸

The lack of an overarching government for a metropolitan area, and the existence instead of a multiplicity of small, abutting, and sometimes overlapping local governments is not necessarily a problem. Indeed, the public choice school celebrates this governance structure, claiming it creates a metropolitan "market place" that expands the range of public policy choices available to residents, increases their satisfaction with local government services and decisions, and improves the responsiveness of local government to citizen preferences.²⁹ Public choice scholars oppose the creation of general purpose regional governments. They contend that the public benefits from the current mix of interlocal competition and voluntary interlocal agreements, supplemented by special purpose regional bodies to take advantage of regional economies of scale in provision of capital-intensive physical infrastructure, are significant.

Exponents of decentralized politics, like law professors Richard Thompson Ford and Jerry Frug, are more critical of the metropolitan governance status

22. Donald N. Rothblatt, *Summary and Conclusions*, in METROPOLITAN GOVERNANCE, *supra* note 4, at 433, 452.

23. George C. Hemmens & Janet McBride, *Planning and Development Decision Making in the Chicago Region*, in METROPOLITAN GOVERNANCE, *supra* note 4, at 111, 117.

24. PEIRCE, *supra* note 3, at 34.

25. *Id.* at 81.

26. *Id.* at 123.

27. *Id.* at 39.

28. *Id.* at 33.

29. See ROBERT L. BISH, *THE PUBLIC ECONOMY OF METROPOLITAN AREAS 2* (Julius Margolis & Aaron Wildavsky eds., 1971) (defending multiple government structure as economically viable and healthy); Roger B. Parks & Ronald J. Oakerson, *Metropolitan Organization and Governance: A Local Public Economy Approach*, 25 URB. AFF. Q. 18, 20 (1989) ("[M]ore fragmented metropolitan areas tend to be more efficient."); cf. Richard E. Wagner & Warren E. Weber, *Competition, Monopoly, and the Organization of Government in Metropolitan Areas*, 18 J.L. & ECON. 661, 684 (1975) (fragmented governments are more desirable if it is "preferable to have governments act more like competitive suppliers of public output than like monopolistic suppliers"); Robert Warren, *A Municipal Services Market Model of Metropolitan Organization*, 30 J. AM. INST. PLANNERS 193, 199-201 (1964) ("[T]he viability of decentralized governmental systems has been greatly underestimated."). See generally VINCENT OSTROM, ROBERT BISH & ELINOR OSTROM, *LOCAL GOVERNMENT IN THE UNITED STATES* (1988).

quo, but they also oppose strong metropolitan area regional governments. Professor Ford would reduce the "parochialism and insularity" that current arrangements have produced, but he rules out establishing a "centralized regional authority" that might threaten local participatory politics or community autonomy.³⁰ Professor Frug suggests creating regional legislatures but urges that any such legislature "be structured to encourage its members not to exercise power themselves but to turn the legislature into a forum for inter-local negotiations about how to decentralize power."³¹ Professors Ford and Frug both propose legal rules making local boundaries more "permeable"; in particular, they discuss extending the franchise in municipal elections to voters who live beyond the locality's borders. This, they contend, would improve metropolitan area governance without creating undesirable regional institutions or shifting local power to higher levels of government.³²

This article examines metropolitan governance through the prism of local government boundaries. Part II considers the role of boundaries in the theory and law of local government. Boundaries are crucial to the interwoven set of political and economic arguments for local autonomy by helping to make local governments appropriate settings for political participation, for organizing the efficient provision of public goods and services, and for community self-government. Boundaries also affect both the principal powers and duties of local governments and the relationship between local governments and their people. Yet, boundaries can also be the Achilles' heel of local government law, subverting local autonomy even as they support its values. The problem of local government boundaries nicely mirrors a central dilemma of local autonomy: the absence of any obvious metric for determining what constitutes a proper unit for the exercise of local autonomy. Economic and social patterns and the governance structures of contemporary metropolitan areas compound this dilemma.

The traditional metropolitan reform strategy assumes that only a government of regional scope can efficiently and democratically handle regional problems. Public choice and political decentralizationists, however, argue that by taking power out of local hands regional governments threaten the core value of local autonomy. In Part III, I suggest that their proposals for reducing the significance of existing local boundaries without creating new regionally-bounded local governments cannot address contemporary metropolitan problems effectively.

Public choice theory relies entirely on self-interested local action—either competition or voluntary interlocal cooperation. The only change in the legal background rules that this approach may require is an expansion of local governments' power to contract with each other for the provision of government

30. Richard Thompson Ford, *The Boundaries of Race: Political Geography in Legal Analysis*, 107 HARV. L. REV. 1841, 1908-09 (1994).

31. Jerry Frug, *Decentering Decentralization*, 60 U. CHI. L. REV. 253, 297 (1993).

32. Ford, *supra* note 30, at 1909-10 & n.221; Frug, *supra* note 31, at 324-25, 329-30.

services.³³ But this approach leaves the decision whether to reduce the barriers posed by local boundaries entirely up to local self-interest. Such interlocal agreements are less likely when they require the cooperation of several localities scattered across a metropolitan region, or when the benefits are long-term and diffuse while the costs, in terms of loss of local regulatory or fiscal autonomy, are immediate and concrete. As a result, interlocal agreements are unlikely to affect local exclusionary land use practices or the current immunity of the local tax base from the revenue needs of other localities.

Advocates of political decentralization purport to address land use regulation and interlocal wealth and service disparities without taking power out of local hands. But their proposals compromise the local-level decisionmaking they claim to protect. Mandating interlocal negotiations concerning the scope of local power necessarily entails shifting power up and out to a government of more extended boundaries—whether a regional government or the state—because only such a government can limit local power to act in the absence of interlocal agreement. Similarly, cross-border voting necessarily transfers power from localities to the region as a whole. Moreover, by loosening ties between a local government and its residents, cross-border voting may threaten to undermine the collective self-government at the heart of local government law. Decentralization proposals will likely either have no effect on current metropolitan problems or have an impact only by covertly stripping powers from some localities or local people.

In Part IV, I conclude by suggesting that a solution to the metropolitan governance problem requires a mixed strategy, combining two types of boundary reform: more permeable local boundaries *and* regionally bounded local governments. Small local governments should remain units for local collective decisionmaking; indeed, larger cities should create smaller units empowered to address neighborhood-level problems. As Professors Frug and Ford contend, in light of the intertwined relationships of local areas in metropolitan regions, we should redefine the scope of local autonomy and revise local regulatory and fiscal powers. But local governments are unlikely to become more sensitive to the regional implications of their actions without regional institutions empowered to enforce regional duties, to monitor local actions with regional consequences, and to promote cooperation that serves the collective long-term interests of the region.

This two-part boundary reform admittedly resembles the two-tier or federative structures that have so far largely failed the test of political viability. It may be a paradox of metropolitan governance that structures that now exist or are likely to be adopted will not actually work to solve regional problems, and those with a better chance of working will not be adopted. The allure of political decentralization remains strong in both law and politics. Creating entities with regional boundaries and increasing the permeability of local boundaries

33. By 1990, interlocal service agreements were authorized by the state constitutions or general laws of 42 states. U.S. ADVISORY COMM'N ON INTERGOVERNMENTAL REL., *STATE LAWS GOVERNING LOCAL GOVERNMENT STRUCTURE AND ADMINISTRATION* 26-27 (1993).

will both result in a loss of power at the local level. As a result, neither is likely to win easy acceptance. But a broad decentralization of power to the local level is simply not possible in the major metropolitan areas in which most Americans live. Indeed, the current highly decentralized governance structure actually hampers the ability of metropolitan area residents to address the many issues of regional scope that directly affect their localities. We need to acknowledge the failure of metropolitan decentralization strategies and to consider new regional structures that accept some loss of formal legal autonomy but enhance the capacity of metropolitan area residents to address regional problems.

II. LOCAL AUTONOMY, LOCAL BOUNDARIES, AND METROPOLITAN AREAS

A. *Local Autonomy and Local Boundaries*

Advocates of local autonomy argue that it promotes democratic citizenship,³⁴ allocational efficiency in the provision of public services,³⁵ and the collective self-determination of territorial communities.³⁶ As I shall indicate, boundaries are critical to the advancement of each of the values that support the case for local autonomy.

1. *Democracy.*

Local governments have long been celebrated for their role as incubators of democracy. As John Stuart Mill wrote, participation at the local level is the "practical part of the political education of a free people."³⁷ Alexis de Tocqueville also turned to the metaphor of education in describing the role of local government in American democracy: "Town meetings are to liberty what primary schools are to science; they bring it within the people's reach, they teach men how to use and how to enjoy it."³⁸ Popular participation in political activity is said to equip people with the "individual attitudes and psychological qualities" that make self-government possible while providing an opportunity for "practice in democratic skills and procedures."³⁹ All other things being equal, active political participation is more likely to take place in smaller polities than in larger ones.

The costs of participation in terms of the time, energy, and money needed to reach out, engage, and persuade other members of the polity are likely to be lower in smaller units than in larger ones.⁴⁰ Moreover, smaller political units enhance the benefits of participation by increasing the likelihood that a citi-

34. For the leading modern scholarly work advancing the link between political participation and local government, see Gerald E. Frug, *The City as a Legal Concept*, 93 HARV. L. REV. 1057 (1980).

35. For the seminal work in the economic theory of local government, see Charles M. Tiebout, *A Pure Theory of Local Expenditures*, 64 J. POL. ECON. 416 (1956).

36. See, e.g., *Schad v. Borough of Mount Ephraim*, 452 U.S. 61, 85-87 (1981) (Burger, C.J., dissenting) (defending a community's decision to ban nude dancing and stating that citizens should be able to shape their community to embody their conception of decency).

37. JOHN STUART MILL, *ON LIBERTY AND OTHER ESSAYS* 121-22 (John Gray ed., 1991).

38. ALEXIS DE TOCQUEVILLE, *1 DEMOCRACY IN AMERICA* 61 (Phillips Bradley ed., 1945).

39. CAROLE PATEMAN, *PARTICIPATION AND DEMOCRATIC THEORY* 42 (1970).

40. See, e.g., ROBERT A. DAHL & EDWARD R. TUFTE, *SIZE AND DEMOCRACY* 41-42 (1973).

zen's "action will make a significant difference in the outcome, that is, that he will be effective"⁴¹ in determining policy or winning office or, at least, in being heard. This results in an increased sense of "citizen effectiveness,"⁴² which, by rewarding participation, is likely to result in further participation.⁴³

Boundaries are part of what makes it possible for localities to serve as schools of democracy since boundaries are what make small units small. Boundaries mark off the smaller units from the larger polities, creating "little republics"⁴⁴ in the midst of the surrounding greater republic.

Moreover, boundaries define and delimit the political community, confining to those within the boundaries the right to participate in its decisions. This reduces the number of fellow citizens whom the would-be participant needs to contact, communicate with, argue with, and ultimately persuade in the course of local political debate. By shrinking the population denominator, boundaries give those remaining in the numerator that greater share of power and influence in the polity seen as crucial in increasing the propensity to participate. Boundaries, in other words, are what make possible the enhanced sense of citizen-effectiveness so essential for participation.

2. *Efficiency.*

The second principal argument for local autonomy is that it promotes the efficient provision of public goods and services. This occurs in three ways. First, local autonomy permits public policy decisions to match distinctive local conditions and preferences. If all political decisions were taken at a highly centralized level, it would be difficult to vary policies in light of the diverse circumstances and preferences that might exist throughout the larger society. Centrally determined policies may leave large numbers of people subject to policies they oppose. Decentralization allows local bodies to tailor services, regulation, and taxation to the needs and desires of their particular constituents. To the extent that differences in preferences concerning public action correlate with residence in particular localities, local autonomy can increase the ability of government to respond to those preferences.

Second, in Charles Tiebout's model, if there are large numbers of localities in a given area, and people are free to relocate from one locality to another, individuals will be able to select among localities, each offering its particular package of taxes, services, and regulation. The multiplicity of localities permits a range of choices and increases the ease of movement among them, enhancing the likelihood that one locality will approximate the mobile "consumer-voter's" preferences.⁴⁵ People can sort themselves out by moving,

41. *Id.* at 41.

42. *Id.*

43. Although there is not much connection between size of a polity and voter turnout, *id.* at 44, evidence suggests that citizens do have a "greater sense of competence and effectiveness" in smaller units. *Id.* at 60.

44. Letter from Thomas Jefferson to John Adams (Oct. 28, 1813), in 13 THE WRITINGS OF THOMAS JEFFERSON 394, 400 (Andrew A. Lipscomb & Albert Ellery Bergh eds., 1903) (describing a proposal to divide counties into "wards . . . of self-government" that would act as "little republics").

45. Tiebout, *supra* note 35, at 417.

with those having similar preferences for local public goods, services, and taxes settling in the same localities and apart from people with different preferences.

Third, the existence of a large number of localities limits the monopolistic tendencies of government. Instead of one government providing public services on a take-it-or-leave-it basis, the multiplicity of local governments gives a citizen options. The citizen may leave the locality whose tax, regulatory, or service decisions are unresponsive to her preferences. Coupled with the political value of small local size, which enables people to voice their policy preferences to local decisionmakers more effectively, the opportunity to exit to an adjacent locality means that people are not constrained to accept local government policies. The possibility of taxpayer exit and, conversely, the possibility of drawing in new taxpayers from other localities provide incentives for local government actions, leading them to vie with each other to retain their taxpayers and attract new ones, just as firms compete for customers.

The existence of several nearby local governments enables people to gather information concerning the comparative efficiency and quality of their own governments: "In a more competitive and more information-rich environment, communities can more easily monitor their bureaucrats and test the veracity of bureaucratic claims about the costs of supplying public goods and services."⁴⁶ The combination of government fear of taxpayer exit, interlocal competition for new taxpayers, and enhanced resident oversight of their own local governments constrain local government deviation from the preferences of local residents. In general, interlocal competition checks local taxing, spending, and administrative inefficiency.

Although efficiency is difficult to measure, evidence supports the public choice claim that a multiplicity of local governments in metropolitan areas holds down the cost of local government. In his cross-regional statistical analysis of local finances, Mark Schneider found that the number of localities bordering a municipality has a significant negative correlation to that municipality's expenditures.⁴⁷ Schneider also concluded that "[i]n regions where there is more variation in tax bills across communities, [local] expenditures are lower . . . as variation in tax costs . . . limit the expansionary demands of bureaucrats and keep expenditures more in line with objective local need."⁴⁸

Boundaries underlie much of the argument for the efficiency of the local government system. First, boundaries demarcate the multiple local governments that constitute the metropolitan market place in municipal services, thereby creating multiple units in which differing decisions concerning taxation, regulation, and services are reached.

Second, by making the units of taxation, service provision, and regulation congruent with each other and with the unit in which the decisions concerning these local policy matters are reached, boundaries make possible the internal-

46. MARK SCHNEIDER, *THE COMPETITIVE CITY: THE POLITICAL ECONOMY OF SUBURBIA* 69 (1989).

47. *Id.* at 63-65.

48. *Id.* at 69.

ization of the costs and benefits of local decisions essential for local actions to be efficient.⁴⁹

Third, by providing an outer limit to the revenue-raising and regulatory reach of a locality, boundaries make possible taxpayer exit from the locality—just as by providing jurisdictional borders in which adjacent localities may make policy decisions, boundaries provide a potential exit with a destination.

3. *Territorial community.*

Localities are not simply arbitrary collections of small groups of people that provide citizens with the opportunity to engage in collective deliberation or offer random “consumer-voters” a place to shop for local public services. Local governments are geographic units tied to specific places. Moreover, localities are frequently assumed to be *communities*—groups of people with shared concerns and values, distinct from those of the surrounding world, and tied up with the history and circumstances of the particular places in which those groups are located and in which the people who compose them interact with each other.

Local governments, in short, are place-based polities organized on the principle of residency. People live in localities, raise their children there, and share many interests related to their homes, families, and immediate neighborhoods. Much of the power of the idea of local autonomy in our legal and political culture grows out of just this connection of government with place-based residential association.

The significance of territorial community is not often spelled out by the advocates of local autonomy,⁵⁰ but to a considerable extent, it is implicit in the arguments from participation and efficiency.

Localities traditionally consist of people who interact with each other across a range of activities—work, church, school, shopping, fraternal organization—or run into each other casually on a regular basis simply because they live near each other.⁵¹ As Nancy Schwartz observed in explaining the significance of the local ward in the governance of medieval Florence, “the wards became and remained the locus of that ‘veritable trilogy’ of associations—*parenti, vicini e amici*—kinsmen, neighbors, and friends.”⁵²

Participation may be more likely to occur in just such territorial communities. From proximity and frequent interaction, people come to know each other better, learn how to cooperate, and develop ties of mutual obligation and re-

49. See Tiebout, *supra* note 35, at 418-19 (arguing that local governments will be efficient providers of public services only when they “exhibit no external economies or diseconomies between communities”).

50. But see, Frug, *supra* note 31, at 266-67 (offering the “concept of community” as an explanation of the “judicial and legislative defense of localism”).

51. See, e.g., DAVID J. ELKINS, *BEYOND SOVEREIGNTY: TERRITORY AND POLITICAL ECONOMY IN THE TWENTY-FIRST CENTURY* 189-90 (1995) (describing the “old-fashioned township” as a “place of congruence” where an individual usually held many statuses, all of which were linked with or recognized by the rest of the community).

52. NANCY L. SCHWARTZ, *THE BLUE GUITAR: POLITICAL REPRESENTATION AND COMMUNITY* 119 (1988).

spect. The frequent face-to-face interaction characteristic of the traditional territorial community is said to promote "empathy and commitment to the common good."⁵³ Thus territorial community may reduce the costs of participation. Furthermore, the common ties and shared interests of community members enhance the likelihood that local decisions will produce outcomes generally acceptable within the community. As a result, the rewards of participation invite residents to play a larger role in local government.

Similarly, the assumption that localities are territorial communities is implicit in the argument that local autonomy promotes efficiency. Because of the thick overlap of activities tied to residence, people in localities may share interests and concerns—particularly the sort of interests and concerns relevant to local governance. Many of the most important interests and concerns that people have relate to their homes, their neighbors, and their immediate geographic environment. The use of territorial units for local governance increases the likelihood that government can effectively attend to such place-based interests. Moreover, neighbors may have more than their place-based interests in common. People may choose to settle in areas in which they believe they share a way of life or views across a broad spectrum of issues and concerns with members of the existing community. Neighbors may have common values or experiences that contribute to a common perspective on public affairs and political values.

In other words, the use of territorial units for the provision of public goods and services may provide a framework for the formation and maintenance of communities of interest concerning a variety of political questions. The potential for homogeneity that grows out of common territory reduces the "political externality" costs to individuals displeased with government decisions.⁵⁴ Territoriality, thus, joins the small size and large numbers of local units in making the case for the efficiency of decentralized government.

Beyond these more specific linkages to participation and efficiency, "community" may be a value in its own right, which local autonomy advances. In this more romantic vision, localities are not just places where some people happen to live at a particular moment in time. Rather, the use of the term "community" conjures up the notion of a locality as a place with a distinctive history, identifiable characteristics, and a unique identity.⁵⁵ Localities are "valued not as temporary nodes in a continual migratory process, but as 'life spaces,' rich with personal and cultural meaning."⁵⁶ The community is a form of association, composed of and valuable to its residents, but with an existence and significance apart from the particular people who happen to live there at a

53. JANE J. MANSBRIDGE, *BEYOND ADVERSARY DEMOCRACY* 275 (1980); *see also* ROBERT C. WOOD, *SUBURBIA: ITS PEOPLE AND THEIR POLITICS* 266-67 (1959) ("The bonds of fellowship that propinquity and interdependence encourage seem further strengthened by the common goals and common values inherent in the equality of a small town.").

54. BISH, *supra* note 29, at 51.

55. SCHWARTZ, *supra* note 52, at 129 (arguing that "having set boundaries to a district . . . defines a relevant constituency not just by one aspect of its life at a moment in time but rather by the totality of its political life over the years").

56. NICHOLAS K. BLOMLEY, *LAW, SPACE, AND THE GEOGRAPHIES OF POWER* 193 (1994).

particular time.⁵⁷ Local citizenship can be seen, not simply as a matter of residence, but as "primarily a relation of membership" in an on-going entity.⁵⁸ Local autonomy enables such communities to govern themselves.

Boundaries are essential to the definition of territorial community. The extent or composition of a particular territorial community is rarely self-evident. Place is an informal concept. People may share a sense of place in general but disagree on the spatial distinctiveness of areas. By circumscribing discrete bits of territory, boundaries describe particular place-based communities. They thereby bring "clarity" to the definition of place and "provide a basis for thinking of places as different from one another."⁵⁹ In a world of multiple places, boundaries bound places off from each other, telling us where one place ends, another begins, and which particular territorial spots constitute which particular places. This is pivotal if places are to be the basis for government organization—that is, if territorial communities are to become local governments. Boundaries determine the territorial contours of territorial communities. In so doing they bring about the wedding of "geographic expanses to political authority" essential to the operation of local government.⁶⁰

B. *Boundaries and the Powers and Duties of Local Governments*

The centrality of boundaries to local autonomy is repeatedly demonstrated by the basic tenets of local government law. Only rarely the subject of litigation, the connection between boundaries and the structure of local governments is virtually axiomatic: Boundaries typically determine such crucial issues as the electorate for local elections, the extent of local revenue-raising authority, the ambit of local services, and the scope of local regulatory power.

The right to vote in local elections is nearly always limited to people physically resident within local boundaries. In *Holt Civic Club v. City of Tuscaloosa*,⁶¹ the Supreme Court sustained a state law limiting the local franchise to residents of the local jurisdiction, determining that a "government unit may legitimately restrict the right to participate in its political processes to those who reside within its borders."⁶² The Court has also observed that such residency requirements are "necessary to preserve the basic conception of a political community."⁶³

57. See MAX WEBER, *THE CITY* 80-89 (Don Martindale & Gertrud Neuwerth eds. & trans., 1958) (describing historical characteristics of "urban communities").

58. SCHWARTZ, *supra* note 52, at 72; see also ROSEMARIE ZAGARRI, *THE POLITICS OF SIZE: REPRESENTATION IN THE UNITED STATES, 1776-1850*, at 37-38 (1987) ("Before the [American] Revolution, no American colony systematically based its representation on population. . . . Each geographic unit was [instead] thought to be an organic, cohesive community . . .")

59. GREGORY R. WEIHER, *THE FRACTURED METROPOLIS: POLITICAL FRAGMENTATION AND METROPOLITAN SEGREGATION* 40-41 (1991).

60. *Id.* at 33-34.

61. 439 U.S. 60 (1978).

62. *Id.* at 68-69.

63. *Dunn v. Blumstein*, 405 U.S. 330, 344 (1972). This does not necessarily mean that states or localities cannot expand the franchise to nonresidents with some ties to the community. See *Duncan v. Coffee County*, 69 F.3d 88, 94-98 (6th Cir. 1995) (upholding inclusion of city residents, who are also county residents, in electorate for county school district even though city residents generally attend city

Local boundaries are central to the raising and spending of local revenue. Local governments receive most of their revenue from local sources rather than from higher levels of government. The principal source of locally-raised revenue for municipalities is the property tax.⁶⁴ As municipalities are generally unable to tax property outside their corporate limits,⁶⁵ their revenue-raising capacity is largely determined by the value of property within their boundaries. Other sources of local taxation are similarly bounded. Local sales taxes are limited to transactions within local boundaries. Local income taxes are, as a rule, doubly limited by local boundaries—they are usually limited to incomes earned *within* the taxing locality by residents *of* the taxing locality. Only a tiny number of cities is authorized to tax local earnings of nonresidents or outside earnings of local residents.⁶⁶

Beyond limiting the scope of taxing authority, boundaries enable local governments to restrict the application of local tax revenue to uses within their borders and to prevent redistribution to other localities. Indeed, several state courts interpret their constitutions to enable local governments to keep locally raised property tax revenues within local borders. The Wisconsin Supreme Court found that the state constitution's requirement of uniform taxation prohibits the state from forcing a local school district to contribute its property tax revenue to other districts.⁶⁷ Similarly, the Texas Supreme Court recently held that their state constitution's reservation of the property tax to local governments precludes the state from redistributing property taxes raised in one locality to another locality.⁶⁸

schools and county school district primarily served rural areas; although state could exclude city residents from county district elections, the decision to enfranchise "out-of-district" voters passed rational basis test because they "have a substantial interest in the operation of the . . . school district"; *Glisson v. Mayor of Savannah Beach*, 346 F.2d 135, 136-37 (5th Cir. 1965) (permitting enfranchisement of nonresidents who own property in the jurisdiction); *Brown v. Board of Comm'rs of Chattanooga*, 722 F. Supp. 380, 400 (E.D. Tenn. 1989) (upholding statute authorizing municipalities to permit nonresidents to vote); *Snead v. City of Albuquerque*, 663 F. Supp. 1084, 1087-89 (D.N.M. 1987) (upholding requirement that, in order to vote in municipal elections, nonresident property owners must have paid property taxes in that municipality); *Bjornestad v. Hulse*, 281 Cal. Rptr. 548, 563-64 (Cal. Ct. App. 1991) (upholding enfranchisement of nonresident landowners). *But see Locklear v. North Carolina State Bd. of Elections*, 514 F.2d 1152, 1155 (1975) (holding that state statutes allowing city residents to vote in county school board elections unconstitutionally diluted the votes of the county electorate). These extensions of the franchise are often challenged as dilutions of residents' voting rights. Generally, courts find that a state may extend the local franchise to nonresidents if it made a reasonable determination that those nonresidents have an interest in the operation of the local government. *See, e.g., Glisson*, 346 F.2d at 137. The courts have not approved all such enfranchisements. For example, in *Brown*, the court held that enfranchising nonresidents who own "trivial" amounts of local property would unconstitutionally dilute residents' votes. 722 F. Supp. at 399.

64. *See generally* Dick Netzer, *Property Taxes: Their Past, Present, and Future Place in Government Finance*, in *URBAN FINANCE UNDER SIEGE* 51, 51-63 (Thomas R. Swartz & Frank J. Bonello eds., 1993) (stating that the property tax provides about one-fourth of all the revenue for American local governments, with the balance supplied by state and federal governments).

65. 16 EUGENE MCQUILLIN, *THE LAW OF MUNICIPAL CORPORATIONS* § 44.91 (Dennis Jensen & Gail A. O'Grady eds., 3d ed. 1994).

66. *See* HELEN F. LADD & JOHN YINGER, *AMERICA'S AILING CITIES: FISCAL HEALTH AND THE DESIGN OF URBAN POLICY* 132-34 (1989).

67. *Buse v. Smith*, 247 N.W.2d 141, 155 (Wis. 1976).

68. *Edgewood Indep. Sch. Dist. v. Kirby*, 804 S.W.2d 491, 499-500 (Tex. 1991).

Local boundaries frequently determine the scope of local services. The Supreme Court has indicated that a local government's decision to prefer local residents over nonresidents in the provision of local services is subject only to a rational basis test.⁶⁹ Moreover, localities are rarely obligated to provide services beyond their borders. Indeed, in many states, localities actually lack the authority to provide extralocal services and require a special legislative grant of power before they are permitted to project their services across the local boundary line.⁷⁰ Even when a locality has been granted such authority, it is not required to exercise it.⁷¹ Furthermore, if a locality chooses to provide a service to nonresidents, it may "discriminate, in respect to rates, between consumers within and those outside" local borders.⁷²

Pursuant to state authorization, many localities provide services, especially utility services, beyond their borders. But in most states, the relationship of a local government that provides service to a nonresident is akin to that of a "business enterprise" to a consumer,⁷³ rather than that of a city to its citizen. This arrangement sometimes results in state oversight of the locality similar to state regulation of privately owned public utilities.⁷⁴ More commonly, this approach grants local governments the autonomy normally accorded private firms and absolves localities of all but their private contractual obligations to service recipients and potential service recipients, outside local borders.

Finally, local regulatory authority is generally confined within local borders. Unless the right to exercise a power outside its boundaries has been expressly delegated to a municipality, "the general rule is that the powers of a municipal corporation are limited by its boundaries and cannot be exercised outside them."⁷⁵ Municipal home rule powers, for example, typically do not include any extraterritorial regulatory authority.

Many states have adopted legislation expressly granting municipalities limited powers in discrete zones of unincorporated territory immediately outside

69. *County Bd. of Arlington v. Richards*, 434 U.S. 5, 7 (1977) (per curiam) (holding that zoning ordinance prohibiting commuters from parking in designated residential neighborhoods and providing for free parking permits for residents of those neighborhoods does not violate the Equal Protection Clause under a rational basis test).

70. CLAYTON P. GILLETTE, *LOCAL GOVERNMENT LAW* 936 (1994).

71. *Id.*

72. *Bleick v. City of Papillion*, 365 N.W.2d 405, 407 (Neb. 1985); *see also* *Board of County Comm'rs of Arapahoe v. Denver Bd. of Water Comm'rs*, 718 P.2d 235, 245 (Colo. 1986) (holding that "it is the public policy of this state that municipal utilities have total authority over the provision of water service to users inside and outside municipal boundaries"). *But see* *City of Texarkana v. Wiggins*, 246 S.W.2d 622, 627-28 (Tex. 1952) (holding that the city may not unreasonably discriminate between residents and nonresidents when fixing utility rates).

73. *See Bleick*, 365 N.W.2d at 407 (holding that a city furnishing utility services to persons outside city limits is engaged in a business enterprise and may charge nonresidents a higher rate for those services); *see also* *City of Texarkana v. Wiggins*, 246 S.W.2d at 625 (stating that "the municipality-owned utility is no different from the privately-owned utility [because] . . . the economic nature of the business has not changed").

74. *See City of Texarkana v. Wiggins*, 246 S.W.2d at 625-27 (holding that city ordinance regarding utility rates is subject to state common law duty of reasonableness).

75. 2 EUGENE MCQUILLIN, *THE LAW OF MUNICIPAL CORPORATIONS* § 10.07 (Charles R.P. Keating & Stephen M. Flanagan eds., 3d ed. 1988); *see also* 2 MICHAEL E. LIBONATI & JOHN MARTINEZ, *LOCAL GOVERNMENT LAW* § 13.10 (1993).

municipal borders. These powers may include zoning, prohibiting nuisances, licensing and regulation of businesses, criminal law enforcement, and general health and safety regulation.⁷⁶ The grant of such extraterritorial authority typically reflects state policies designed to control development on the urban fringe or to provide basic regulation and services to fringe areas without the population or services to support their own municipal governments.⁷⁷ Extraterritorial regulatory authority is also sometimes associated with municipal expansion, with the municipal exercise of extraterritorial authority serving as a halfway step towards ultimate absorption of the extraterritorial zone.

Extraterritorial regulation, like extraterritorial service provision, is a reminder of the multiple concepts of local government extant in our legal culture. Much of contemporary legal scholarship emphasizes the view of local governments as miniature polities. Indeed, the Supreme Court's determination that the franchise rules that are constitutive of democratic representative governments must also apply to local governments reflects this vision.⁷⁸ Yet, our legal system has long emphasized two other attributes of local governments: their role as quasi-firms providing proprietary services to "consumers" (not "citizens") and their formal legal status as arms of the state carrying out state policies and performing state functions locally.⁷⁹ When acting as business enterprises providing proprietary services—such as water, electricity, and other utility services often produced by private firms—local governments are not necessarily limited by local boundaries. Similarly, local governments are not necessarily limited by local boundaries when acting as instruments of the state. When a state designates one local government to regulate an area outside the local government's borders, the locality functions as an arm of the state rather than as a locally accountable democratic government.

Extraterritorial service provision and regulation raise questions about the accountability of the local government to the people receiving such services or subject to such regulation, since the franchise usually does not accompany extraterritorial authority. Recipients of extralocal service provision may exert some control through the standard technique that the market accords consumers: "exit" by choosing to purchase the service from another provider.⁸⁰ If the locality is the only available provider, the state may protect the extraterritorial consumer through regulation in the same manner that it protects customers of

76. See generally 1 CHESTER JAMES ANTIEAU, *ANTIEAU'S LOCAL GOVERNMENT LAW: MUNICIPAL CORPORATION LAW* § 5.12 (1994) (reviewing various grants of extraterritorial police powers); FRANK S. SENGSTOCK, *EXTRATERRITORIAL POWERS IN THE METROPOLITAN AREA* (1962) (analyzing a range of extraterritorial powers).

77. See Richard Briffault, *Who Rules at Home?: One Person/One Vote and Local Governments*, 60 U. CHI. L. REV. 339, 385-86 (1993).

78. See notes 61-63 *supra* and accompanying text.

79. See e.g., *Hunter v. City of Pittsburgh*, 207 U.S. 161, 178 (1907) ("Municipal corporations are political subdivisions of the State, created as convenient agencies for exercising such of the governmental powers of the State as may be entrusted to them.").

80. See generally ALBERT O. HIRSCHMAN, *EXIT, VOICE, AND LOYALTY: RESPONSES TO DECLINE IN FIRMS, ORGANIZATIONS, AND STATES* 21-29 (1970) (describing how consumers exercise the exit option).

monopolistic privately owned public utilities.⁸¹ For extraterritorial regulation, the regulatee's only formal protection may be through political participation at a higher level of government, typically the state.⁸² Insofar as our understanding of local autonomy assumes the opportunity of people to take part in the local decisions that affect them, however, this remedy denies regulatees local autonomy.

Extraterritorial service provision and extraterritorial regulation serve to loosen the otherwise tight association of local government with local boundaries. Yet, by the same token, they underscore the close connection of local boundaries with the role of local governments as decentralized democracies. Boundaries play a weaker role when a locality acts as a quasi-proprietary service provider or as an arm of the state. Conversely, boundaries are critical when a local government is viewed as a locally elected and locally accountable mechanism for self-governance.

By generally linking voting, taxation, public services, and regulation to local boundaries, local government law attempts to square local governance with the values that provide the normative underpinning for local autonomy. Thus these legal rules seek to secure political participation for those who are affected by local government decisionmaking, to assure the internalization of the costs and benefits of local government action that is a precondition for efficiency, and to provide for self-governance by distinctive local communities.

However, both boundaries and the legal rules that give them such enormous significance in local governance will promote the values that drive the case for local autonomy only when local boundaries are congruent with the scope of the impact of a local government's decision. As a matter of democratic theory, "[e]veryone who is affected by the decisions of a government should have the right to participate in that government."⁸³ When, as is frequently the case in metropolitan areas, local governments have impacts on the interests of nonresidents, the association of boundaries with local autonomy becomes problematic.

C. *The Local Government Boundary Problem in Metropolitan Areas*

1. *Boundaries and spillovers.*

Boundaries are essential to the case for local autonomy, but they can also be its Achilles' heel. Boundaries exclude people who may be interested in or affected by the decisions made within the boundaries. As then-Justice Rehnquist observed, "[t]he imaginary line defining a city's corporate limits cannot corral the influence of municipal actions. A city's decisions inescapably affect indi-

81. *City of Texarkana v. Wiggins*, 246 S.W.2d 622, 625 (Tex. 1952) (holding a municipally-owned utility to the same common law standards as a privately-owned utility when both are monopolies).

82. *Holt Civic Club v. City of Tuscaloosa*, 439 U.S. 60, 76 (1978) (Stevens, J., concurring) (noting that the extraterritorial regulation challenged by the extraterritorial residents was the result of a statute adopted by "[t]he Alabama Legislature, which is elected by all of the citizens of the State including the individual appellants").

83. ROBERT A. DAHL, *AFTER THE REVOLUTION?: AUTHORITY IN A GOOD SOCIETY* 64 (1970).

viduals living immediately outside its borders.”⁸⁴ Such cross-border effects undermine the democratic and efficiency arguments for local autonomy, since both arguments assume that the consequences of local actions are borne primarily within the acting locality.

Local borders probably always generated some spillovers, but in the past, when local governments were set farther apart by unincorporated land, and people focused more of their activities within the territorial limits of their particular locality, the spillovers may have been relatively slight compared to the benefits of limiting the determination of local matters to people within a discrete locality. The spillover problem is more acute today because local borders frequently abut one another, and people range widely in their daily activities across multiple local boundaries. In contemporary metropolitan areas, local governments are sure to generate externalities and area residents are sure to be excluded from participating in the decisions of many localities that have direct implications for their lives.

Cross-border effects are a form of extraterritorial regulation, and like extraterritorial regulation, they are difficult to square with the model of local government as local democracy. These extraterritorial effects can be controlled either by (a) action at a higher level of government, (b) exit from the affected area, or (c) extension of the locality's borders to include all those affected within the boundaries of the community.

The first option conflicts with the values inherent in decentralized decision-making. The second option is difficult in contemporary metropolitan areas because the entire metropolitan area is often the affected extraterritorial area. Exit from a region is far costlier and thus far less available than the easy migration to an adjacent locality that the public choice model assumes. The third option—extending local borders to include all persons affected by local actions—would internalize the consequences of local decisions but would also produce a much larger government unit, which is in tension with the participation values underlying the political case for local government. Similarly, wider borders would lead to the amalgamation of many smaller localities into a few larger ones, thereby eroding the multiplicity of localities and the opportunities for easy exit that make the market model work.

2. *Aggregate regional consequences of locally bounded regulation.*

Local land use regulation and the costs of sprawl. The spillover metaphor and the analogy to formal extraterritorial regulation suggest that the spillover problem arises when one municipality takes action with an immediate effect on people just across the border. But in contemporary metropolitan areas, the most significant externalities may not involve the impact of one particular locality on its neighbor but may instead be a consequence of the aggregate of local policies across the region.

84. *Holt Civic Club*, 439 U.S. at 69.

Local governments are largely dependent on their own resources to fund their own services. Conversely, local governments can reserve their local tax base for local purposes and protect it from the claim of other localities. Each locality, thus, has "natural economic interests"⁸⁵ in using its revenue-raising and land use regulatory powers to attract new residents and firms that add more to the per capita tax base than they will cost in local services. They similarly have an incentive to exclude new residents and activities that cost more in services or loss of local amenities than they contribute in tax base.⁸⁶ Local land use regulations can be used to drive up the cost of housing in a locality and to exclude other locally undesirable land uses, thereby creating a de facto price of entry that serves to exclude those residents, firms, and land uses that do not add to net local wealth.⁸⁷

A locality's action excluding particular land uses or driving up the cost of land in the community can displace activity to other localities. Although an individual locality is typically not big enough by itself to affect the regional housing market or the siting of locally undesirable but regionally necessary land uses, local land use controls can have a ripple effect across the region. When one locality acts to exclude a use, its neighbors may feel compelled to adopt comparable regulations to protect themselves from the growth they fear will be diverted to them by the initial locality's regulation. As a result, exclusionary regulation can spread throughout a region.

By increasing housing costs in more developed parts of the metropolitan area, local land use regulation can force new households to exurban and rural communities at the perimeter of the metropolitan area.⁸⁸ Metropolitan transportation networks permit people to commute over considerable distances and, in effect, help create regional housing and labor markets of considerable territorial scope. Indeed, many metropolitan areas have experienced far greater territorial expansion than population growth. Over the last quarter-century, the population of the New York metropolitan area grew 5 percent, but the developed land in the area increased by 61 percent;⁸⁹ similarly, in the 1970s and 1980s, metropolitan Chicago's population grew 4 percent, while its territory expanded 46 percent.⁹⁰ Some of this territorial growth is due to exclusionary land use regulation by central suburbs, which forces new development to outly-

85. Werner Z. Hirsch & Joel G. Hirsch, *Exclusionary Zoning: Local Property Taxation and the Unique-Ubiquitous Resource Distinction*, 52 S. CAL. L. REV. 1671, 1724 (1979).

86. "[T]he poor usually cost more in local services than they contribute in [local] taxes." SCHNEIDER, *supra* note 46, at 126; *see also* DOWNS, *supra* note 14, at 23 (observing that competition to attract new residents and businesses means that local leaders and government officials "strongly desire to minimize the number of low-income residents within their communities' boundaries"); LADD & YINGER, *supra* note 66, at 85-86 (arguing that higher concentrations of low-income residents increase the costs of general governmental services, police service, and fire service).

87. Localities can also use targeted tax cuts, service provision, eminent domain, or land use regulations to attract residents and firms that will add to the local tax base.

88. *See, e.g.*, Lawrence Katz & Kenneth T. Rosen, *The Interjurisdictional Effects of Growth Controls on Housing Prices*, 30 J.L. & ECON. 149, 150 (1987) (describing the inflationary effect of local land use controls on land development).

89. PEIRCE, *supra* note 3, at 28.

90. *Id.*

ing areas where land prices tend to be lower and "the political climate, at least initially, is more favorable to development."⁹¹ People can move to outlying areas while continuing to work in more central locations. Similarly, firms can relocate to outlying sites while continuing to draw workers from the rest of the region.

This "leapfrog" pattern of development,⁹² in which local land use regulation drives households and firms to move to less restrictive outlying areas, has considerable costs. The extension of metropolitan areas consumes open space and environmentally sensitive areas, displacing land uses that contribute to the regional quality of life. Spreading metropolitan areas create a demand for expensive new infrastructure—streets, sewers, fire stations, schools—in growing communities on the urban fringe.⁹³ Workers forced by land use restrictions to live on the edge of a metropolitan area will commute more, "which reduces their real incomes unless they enjoy commuting."⁹⁴ As a result of the sprawling nature of development in most metropolitan areas, people must travel longer distances to work, shop, or play than if growth were more concentrated.⁹⁵ The dispersed pattern of regional development effectively precludes the use of mass transit, which requires that most journeys be concentrated in a limited number of destinations.⁹⁶ As a result, metropolitan area populations increasingly depend on the automobile, leading to increased traffic congestion,⁹⁷ air pollution, and highway construction.

Local regulations that drive up the price of housing, reduce population density, and push new development to the metropolitan periphery affect the structure of the regional transportation network and impose costs on households throughout the region. The deconcentration of metropolitan areas is not solely or even primarily attributable to local regulation. New developments in transportation and improved communications technologies have reduced the benefits of central location, while the increased role of information rather than physical inputs in production has loosened the ties of particular firms to particular places, freeing them to relocate to cheaper locations on the metropolitan periphery. Federal subsidies for highways and federal tax benefits and mortgage

91. WILLIAM A. FISCHEL, *DO GROWTH CONTROLS MATTER?: A REVIEW OF EMPIRICAL EVIDENCE ON THE EFFECTIVENESS AND EFFICIENCY OF LOCAL GOVERNMENT LAND USE REGULATION* 55 (1990).

92. See, e.g., Terry D. Morgan, *Joint Planning in Arizona*, in *STATE & REGIONAL COMPREHENSIVE PLANNING: IMPLEMENTING NEW METHODS FOR GROWTH MANAGEMENT* 216, 217 (Peter A. Buchsbaum & Larry J. Smith eds., 1993).

93. See, e.g., PEIRCE, *supra* note 3, at 132 (noting the "immense public cost" of duplicative infrastructure on the metropolitan fringe).

94. FISCHEL, *supra* note 91, at 56.

95. If jobs were dispersed as much as housing, commuting time and distances might not be significantly affected by the dispersed pattern of metropolitan development. While jobs and workplaces have spread through the metropolitan area, they are still not as deconcentrated as housing: Time lost to commuting has therefore increased. See DOWNS, *supra* note 14, at 7-9.

96. See DOWNS, *supra* note 14, at 8. As a result, low-density metropolitan areas "cannot efficiently support mass transit." *Id.*; see also Elliot D. Sclar & Walter Hook, *The Importance of Cities to the National Economy*, in *DESTINIES*, *supra* note 2, at 48, 57 (arguing that "low density suburbanization has undermined the viability of . . . public transportation").

97. For a discussion of the impact of "[t]he growing traffic congestion associated with the U.S. metropolitan development pattern" on the economy, see Sclar & Hook, *supra* note 96, at 57-59.

guarantees favoring new single-family homes have further encouraged the deconcentration of residents. Cultural preferences for detached housing over multi-family dwellings and for single-driver automotive commuting over mass transit have played a role in the low-density pattern of metropolitan development. But the decentralized local government system—which encourages individual localities to use land use policy to pursue local fiscal goals—has had an impact.⁹⁸ More importantly, the local government system makes it difficult for localities to take action to control sprawl.

The fundamental feature of contemporary metropolitan governance is the operation of locally bounded fiscal and regulatory autonomy in regions where economic and social activity transcends local boundaries. Each local government has an economic incentive to pursue its own local goal of attracting new tax base contributors while excluding net service cost demanders. As Mark Schneider has observed, “[t]he importance of the service/tax ratio is built into the very structure of local government.”⁹⁹ A locality that did not act to maximize its per capita tax base—that is, one wealthy enough or attractive enough to lure new residents or firms but that did not restrict land uses to exclude those in-migrants who did not contribute to local net wealth—would presumably, sustain an influx of residents or activities that would lower the per capita tax base or, due to congestion and increased use of local services, increase the ratio of service costs to tax base.

Interlocal competition may operate to hold down taxes and service costs within local boundaries. But when locally self-interested regulation causes regionwide exclusionary land use policies, competition between locally bounded governments can produce results that are costly to the people of the region as a whole.

Interlocal fiscal disparities and the metropolitan economy. Boundaries, as they are currently used in the local government system, reflect and reinforce inequalities in the cost and quality of local services. Local public services are funded primarily by the local tax base, much as localities can reserve their tax bases for their own uses and protect them from the claims of other localities. As a result, a locality with a more ample per capita tax base can provide better services at a lower tax rate without having to support services in other localities, while poorer localities have to tax themselves at higher rates but generate revenues sufficient only to fund relatively inferior local services.

More affluent localities can also use their regulatory authority to maintain their preferred fiscal position. To the extent that more affluent localities are able to deploy exclusionary zoning techniques as an informal wealth test that keeps out newcomers who bring less to the locality in tax base than they cost in local services, these localities can continue to offer better services and/or hold down their taxes. Less affluent localities are nominally free to compete for more affluent residents and new residents, but if they start out having less to offer in terms of high quality services or low taxes there is, in practice, rela-

98. See, e.g., Fishman, *supra* note 6, at 36.

99. SCHNEIDER, *supra* note 46, at 210.

tively little they can do to attract the affluent or increase their per capita tax base.¹⁰⁰ The combination of local control over land use within local borders and local fiscal autonomy, thus, sustains a hierarchy of wealth and reinforces the differences in tax burdens and local service quality among localities in most metropolitan areas.

The consequences of the local tax base-service-regulation nexus are compounded by the concentration of poor people in poorer localities.¹⁰¹ Poverty in metropolitan areas is increasingly concentrated in the older, so-called central city and in older suburbs.¹⁰² These localities typically suffer disproportionately from higher crime, deteriorated structures, aging infrastructure, greater congestion, and a range of social ills. The presence of poor people in a locality tends to drive up the per capita cost of local services.¹⁰³ These areas, thus, have greater spending needs but less revenue-raising capacity than more affluent localities. Taxpayers in localities with large concentrations of the poor are likely to be subject to higher tax rates, to receive lower quality basic services, and to have a greater incentive to exit—which places an even greater tax burden on those who are left behind.

The interlocal inequalities due to local fiscal autonomy and interlocal competition for tax base are evident; what is probably less clearly appreciated is how this system may damage the well-being of entire metropolitan regions. More affluent parts of metropolitan regions do not necessarily gain at the expense of the more fiscally straitened localities. Rather, the opposite is often true: When a lack of local resources to fund local services contributes to the economic decline of poorer localities that may ultimately hurt more affluent areas, too.

Metropolitan areas often function as interdependent economic regions. A number of studies have found close relationships between the economic health of the central city and that of the surrounding area.¹⁰⁴ In general, as the disparity in per capita income between the central city and its suburbs rises, the overall economic health of the metropolitan region declines.¹⁰⁵ A 1992 National League of Cities study of the eighty-five largest metropolitan areas between 1988 and 1991 found that in metropolitan areas where the disparity in per cap-

100. *Id.* at 130-38; see also Downs, *supra* note 14, at 22 (noting that suburbs tend to be segregated by income group, which reinforces the difficulties of the poor in trying to escape poverty).

101. See, e.g., Richard Child Hill, *Separate and Unequal: Government Inequality in the Metropolis*, 68 AM. POL. SCI. REV. 1557, 1560 (1974) (stating that "the concentration of low-income working class and the unemployed in the center city and inner ring suburbs has increased").

102. In 1960, the per capita income in the central cities was 5% greater than the per capita income of metropolitan area suburbs. In 1973, central city per capita income had dropped to 96% of suburban incomes. By 1980, this ratio was 89%. By 1990, central city incomes per capita were just 84% of suburban incomes. LARRY C. LEDEBUR & WILLIAM R. BARNES, NATIONAL LEAGUE OF CITIES, CITY DISTRESS, METROPOLITAN DISPARITIES AND ECONOMIC GROWTH 1-2 (1992). Similarly, in 1979, the percentage of central city residents below the poverty line was 15.6%—compared to 7.1% for the rest of metropolitan areas. In 1989, the central city poverty rate was 18.1%—compared to 8% for the rest of the metropolitan area. *Id.* at 6, fig. 5.

103. LADD & YINGER, *supra* note 66, at 199.

104. See, e.g., H. V. Savitch, David Collins, Daniel Sanders & John P. Markham, *Ties That Bind: Central Cities, Suburbs, and the New Metropolitan Region*, 7 Econ. Dev. Q. 341, 342 (1993).

105. Savitch et al., *supra* note 17, at 67-69.

ita incomes between the central city and the rest of the metropolitan area was greater than average, the metropolitan areas sustained a net decline in employment growth. By contrast, those areas where the income disparity was less than average had modest employment growth. Areas with near parity in per capita income or in which the city had higher per capita income showed even greater employment growth.¹⁰⁶

A second National League of Cities study of seventy-eight major metropolitan areas found a strong linkage between changes in central city incomes and changes in suburban incomes in the 1980s.¹⁰⁷ No metropolitan area studied experienced high suburban income growth without some significant city income growth as well. Conversely, in most of the metropolitan areas where per capita central city incomes declined, per capita suburban incomes also fell. Indeed, in 82 percent of the regions, city and suburban incomes moved in the same direction. Overall, city income growth lagged behind suburban growth, but the most robust suburban growth was generally associated with growing city economies. Another study, limited to twenty-eight metropolitan areas in the Northeast and North Central regions, confirmed that "it is unlikely that a metropolitan area's suburban economic performance, as measured by income growth, is strong relative to other suburban areas if the metropolitan area has declining central city incomes."¹⁰⁸

The study of Northeast and North Central metropolitan areas also found that while there was no connection between city and suburban population growth in the 1960s, there was a close connection between city and suburban population growth and city and suburban employment growth in the 1970s and 1980s. In the 1960s suburban growth apparently substituted for city growth: People left declining cities for suburbs in the same region. But in the 1970s and 1980s, in metropolitan areas marked by low city growth or outright city decline, the suburbs experienced decline or only sluggish growth as well. Suburbs grew only in metropolitan areas with growing cities.¹⁰⁹ In the Northeast and North Central metropolitan areas, at least, "[c]ontinued suburban growth has become increasingly dependent on the overall desirability of the region."¹¹⁰ When a central city experiences severe decline, its more mobile residents and firms apparently leave the metropolitan region rather than merely fleeing to the suburbs.

The "high correlation between city and suburban growth in employment, income, and population"¹¹¹ suggests that the metropolitan area is "an economically and socially integrated urban identity"¹¹² whose various component local

106. LEDEBUR & BARNES, *supra* note 102, at 14-16.

107. LARRY C. LEDEBUR & WILLIAM R. BARNES, NATIONAL LEAGUE OF CITIES, "ALL IN IT TOGETHER": CITIES, SUBURBS AND LOCAL ECONOMIC REGIONS I (1993).

108. Richard Voith, *City and Suburban Growth: Substitutes or Complements?*, FED. RESERVE BANK PHILA. BUS. REV., Sept.-Oct. 1992, at 21, 29.

109. *Id.* at 25-26. Thus, it is "uncommon to find suburbs that are experiencing robust growth while the central city is in severe decline." *Id.* at 30.

110. *Id.* at 27.

111. *Id.*

112. Salins, *supra* note 14, at 149.

parts tend to rise or fall together. The central city typically shapes outsiders' images of the region and thereby determines the region's capacity to attract firms, high-skilled workers, and tourists and conventioners.¹¹³ Notwithstanding the relative deconcentration of urban living today compared to the immediate postWar period, central cities still play critical roles in metropolitan economies. Even as new manufacturing, corporate services, commercial activity, and employment migrate to suburban nodes and peripheral "edge cities,"¹¹⁴ central cities remain focal points for economic production, higher education, health care, and entertainment.¹¹⁵ Nearly half of suburban households have at least one family member who works in the central city.¹¹⁶ Consequently, it is not surprising that suburban housing prices are affected by employment growth in the central city.¹¹⁷ Most suburban residents depend on the city for major medical services, and nearly half have household members who either currently attend an institution of higher education based in the city or intend to do so within five years.¹¹⁸

Central cities continue to be the setting of many specialized activities, business services, and cultural amenities that serve the surrounding metropolitan region.¹¹⁹ Because of this cultural and commercial preeminence, central cities provide the best opportunity for the economically and politically valuable face-to-face interactions of regional political, business, media, labor, education, and other leaders.¹²⁰ "Although a few suburban edge cities also have large agglom-

113. See, e.g., PEIRCE, *supra* note 3, at 131 (stating that "a region is known first and foremost by the physical image, the character and success of its center city").

114. Joel Garreau has dubbed the new urban centers springing out of suburbs and farmland "edge cities." See generally JOEL GARREAU, *EDGE CITY: LIFE ON THE NEW FRONTIER* (1991); see also Fishman, *supra* note 6, at 27-28 (detailing the growth of "new cities" in former suburban enclaves). Community patterns have changed along with job markets. See Downs, *supra* note 14, at 46-47. A study of the 60 largest metropolitan areas found that the central city share of metropolitan area jobs declined from 52% in 1976 to 47% in 1986. *Id.* Two-thirds of all new jobs in these metropolitan areas were located outside the central cities. *Id.* at 47.

In the 1980s the movement of jobs out of the central cities may have abated. See Sclar & Hook, *supra* note 96, at 49-50. Central city jobs are higher paying in most metropolitan areas. "Wages of central city jobs are on average 20 percent higher than suburban jobs, and this earnings gap has been widening in many metropolitan areas, though many of these jobs are held by suburban residents." *Id.* at 50.

115. Downs, *supra* note 14, at 54-55.

116. Arthur S. Goldberg, *Americans and Their Cities: Solicitude and Support*, in NATIONAL INTEREST, *supra* note 17, at 37, 45.

117. See Richard Voith, *A Clear Link: Central City Employment Growth and Suburban House Values*, FED. RESERVE BANK PHILA. BUS. REV., Sept.-Oct. 1992, at 32, 32-33; see also Goldberg, *supra* note 116, at 45 (in a survey of a sample of the 22% of Americans who do not live in one of the nation's largest cities but live within 20 miles of such a city, 46% of suburban home owners believed that "a long-term economic decline in the city would reduce the market value of their homes").

118. Goldberg, *supra* note 116, at 45.

119. As Anthony Downs points out:

High-fashion retail outlets, major medical centers, operas and other cultural activities, and specialized wholesale suppliers serving a thin but widely spread market need the combination of one location accessible to the entire metropolitan area and the area's large market to thrive.

Central cities or sites near them remain the most effective locations for such activities.

Downs, *supra* note 14, at 53; see also Voith, *supra* note 108, at 24 (noting the benefits of placing businesses near each other and in close proximity to a large labor force).

120. See, e.g., William K. Tabb, *What are the Limits of Government? What are its Obligations?*, in URBAN FINANCE UNDER SIEGE, *supra* note 64, at 139, 141.

erations of facilities, only one spot within each region can be the habitual gathering place of most movers and shakers."¹²¹

The economically intertwined nature of localities within metropolitan areas extends beyond central cities and suburbs. Although firms may no longer be concentrated in the old central cities, most regional workplaces are concentrated in "commercial nodes of one kind or another—in either downtowns, or at select locales (airports, freeway interchanges), or along specific highway strips. So-called edge cities are not isolated or scattered pieces of development, but compact commercial districts."¹²² The firms in these districts draw their workers from throughout the metropolitan area and depend on other localities to educate the next generation of workers and to provide basic public services and amenities to workers and their families. To the extent that the more fiscally straitened localities of residence are unable to provide proper education, policing, sanitation, parks, and the like to their residents, the firms that need those workers, and the residents of the more affluent localities who depend upon those firms, will bear a part of the cost. Thus the consequences of inadequate local schools, unsafe local streets and homes, unaffordable local housing, and unreliable local transportation networks in some localities may be borne by all localities throughout the region, including those localities providing high-quality services to their own residents.

In the short run, residents of more affluent localities may benefit, in terms of lower taxes and higher quality services, from the local-boundary-based structure of metropolitan areas. In the long run, however, interlocal competition, interlocal wealth disparities, and the resulting inferior services and infrastructure in central cities can bring down the economic base of the region as a whole, making affluent areas as well as poorer ones less well-off than they might have been had the region as a whole invested more in poorer localities.

The local government system is clearly not the only cause of the difficulties many local governments face in providing basic public services to their residents. The costs of public services may be driven up by excessive bureaucracy, poor management, costly union contracts, wasteful programs, and the limitations on citizens' ability to monitor big city government. For the most part, however, local fiscal health depends primarily on the health of the regional economy and on social conditions within the locality, which are largely beyond the power of localities, particularly poorer localities, to control.¹²³ Although localities compete vigorously for economic development, local policies have relatively weak effects on the locations of new firms.¹²⁴ Similarly, municipalities' efforts to attract wealthy families are often ineffectual: Families tend to locate in communities whose socioeconomic characteristics are consistent with

121. Downs, *supra* note 14, at 52; see also Fishman, *supra* note 6, at 42 (describing how the "skyscraper cores" of many central cities are still the focal point for "high status," "high rents," and "power lunches"). Downs acknowledges that "advances in communications have diminished the importance of face-to-face contacts," but nevertheless contends that electronic contacts cannot "convey the same completeness of meaning as face-to-face contacts." Downs, *supra* note 14, at 52.

122. Savitch et al., *supra* note 104, at 346.

123. LADD & YINGER, *supra* note 66, at 289-93.

124. See SCHNEIDER, *supra* note 46, at 147-63.

their own.¹²⁵ Macroeconomic factors, broader social and cultural trends, federal and state welfare policies, and regional economic conditions all have a far greater effect on the rates of employment, poverty, and crime than do the decisions of the local governments themselves. The structure of the local government system, however, does affect the quantity and quality of the local public services provided.

By dividing the metropolitan area tax base and limiting spending to the fiscal responsibilities within local borders, boundaries permit residents and firms in affluent localities to avoid the costs of providing services in poorer localities. Indeed, many people choose to settle in more affluent localities—or to incorporate their localities in the first place—just to insulate themselves from the fiscal needs of the rest of the region. Yet, the inability of poorer localities to educate their children, to control crime, and to provide basic infrastructure services may have destabilizing regionwide consequences. Due to these pervasive externalities, the “metropolitan market place” may also generate a prisoner’s dilemma in which interlocal competition caused by local fiscal and regulatory authority, the multiplicity of local boundaries, and the ease of movement across them ultimately harms both affluent and poor localities.

3. *Local boundaries and the metropolitan community.*

Boundaries determine a community’s territorial dimensions, electorate, revenue base, service responsibilities, and regulatory authority. Only a bounded locality can become a political “self” capable of self-government. But boundaries do not simply mark off or identify existing communities: Rather to a considerable extent, boundaries create communities. Boundaries may even come before the people,¹²⁶ and they certainly precede the shared history and dense web of interpersonal interactions that give meaning to the notion of community. As Nancy Schwartz noted in her discussion of Florentine government, wards were “[n]eighborhoods [n]ot [n]atural [b]ut [c]reated.”¹²⁷ Wards became neighborhoods in part because they were officially bounded, were used as political units, and thus, became a focus of obligation, sentiment, and identity.¹²⁸

The role of boundaries in creating self-governing politico-territorial local units is particularly important in American metropolitan areas. Local boundary

125. See *id.* at 138-44.

126. See, e.g., *In re Incorporation of New Morgan*, 590 A.2d 274, 278 (Pa. 1991) (upholding incorporation of borough in order to develop the land and create a mixed-use commercial/residential community). At the time of incorporation, there were only six occupied homes in the proposed borough. *Id.* at 276.

127. SCHWARTZ, *supra* note 52, at 113.

128. *Id.* at 113-15; see also William S. Livingston, *A Note on the Nature of Federalism*, in AMERICAN FEDERALISM IN PERSPECTIVE 33, 46 (Aaron Wildavsky ed., 1967) (At the time of admission to the union, the nonoriginal states “may not have been sufficiently diversified to justify” treatment as distinct communities, but “they rapidly acquired . . . consciousness of individuality.”); cf. Russell Kirk, *The Prospects for Territorial Democracy in America*, in A NATION OF STATES: ESSAYS ON THE AMERICAN FEDERAL SYSTEM 42, 43 & n.2 (Robert A. Goldwin ed., 1963) (when first organized, most western states “were mere parallelograms of prairie and desert and forest”; over time, though, the “institution and practice” of self-government gave individual states “some distinct and peculiar character as political territories, by fixing loyalties and forming an enduring structure of political administration”).

lines have often been drawn in order to take advantage of the opportunity local government law provides incorporated communities to control local land use and to escape from the fiscal burdens of the surrounding metropolitan region.¹²⁹ In her study of the politics of municipal incorporation, Nancy Burns described a process of boundary formation driven by profit and perhaps race. Firms rather than residents often took the initiative in seeking formal local boundaries—manufacturers sought tax havens or developers sought the regulatory authority necessary to make their developments attractive to potential buyers.¹³⁰ The benefits of incorporation were often so great that the firms were willing to assume the costs of an incorporation campaign.¹³¹ The willingness of local residents to vote for incorporation, however, was strongly influenced by the politics of race. Newly incorporated towns often had significantly lower concentrations of African-American residents than did the counties from which they were carved.¹³² Whites saw incorporation as a means for separating themselves from African Americans.¹³³

Not only do boundaries create self-governing political units where no distinct community previously existed, but boundaries can shape the future of the new community. Once bounded and incorporated, the locality has the power to regulate land use and to design a mix of taxes and services that attracts settlers the locality desires. Moreover, boundaries themselves—apart from the local public policies of incorporated communities—can mold the demographic development of the locality. As Gregory Weiher has pointed out, formal boundaries clarify a place's "social and economic identity."¹³⁴ Local boundary lines provide potential settlers with critical information about the conditions that may be relevant in deciding where to settle.¹³⁵ To the extent that local racial or class characteristics matter when people decide where to live, formal boundary lines may make an area's ethnic composition or social status more evident, thereby directly facilitating an interjurisdictional sorting by race or class.¹³⁶

Moreover, by creating local politico-territorial communities, local boundaries may obscure recognition of the broader metropolitan community. The localities within major metropolitan areas are not "communities" within the traditional sense of the term. They are not the focal points for most of the activities of their residents—the place where residence, business, friendship, family, and social activities converge. Rather, residents typically live, work, shop, and go to school in different communities. Most metropolitan localities

129. See generally GARY J. MILLER, *CITIES BY CONTRACT: THE POLITICS OF MUNICIPAL INCORPORATION* (1981) (describing the migration of the middle-class to small-scale, low-taxation cities and the use of municipal incorporation to maximize resources per capita).

130. NANCY BURNS, *THE FORMATION OF AMERICAN LOCAL GOVERNMENTS: PRIVATE VALUES IN PUBLIC INSTITUTIONS* 23-24 (1994).

131. *Id.* at 98-108.

132. *Id.* at 89-91.

133. *Id.* at 83-91.

134. WEIHER, *supra* note 59, at 35.

135. *Id.* at 59-60.

136. See *id.* at 87-143.

lack their own distinctive local economies¹³⁷ and town centers¹³⁸ much as their residents lack "geographic rootedness"¹³⁹ and the sense of shared history and tradition that are part of the romance of community.

Only the metropolitan area is expansive enough to include most of the daily activities and social and economic concerns of the residents of metropolitan area localities. Yet it is difficult for most area residents to conceive of the metropolitan area as a community. With millions of people scattered across a sprawling network of localities, the contemporary metropolitan area typically "lacks any definable borders, a center or a periphery."¹⁴⁰ The economic and cultural relations that bind a region together are largely invisible to most residents, who are likely to view their home locality as their community and to view the metropolitan area as little more than a Census designation.¹⁴¹

Local boundaries compound the difficulty of creating a sense of metropolitan community. By tying political participation, services, taxes, and regulation together, local boundaries tend to make localities the focus of their residents' loyalties, concerns, and identities. With local borders narrowing their range of vision, residents of one locality may not recognize that they are affected by the actions of other local governments or have a stake in the well-being of residents of other localities in the metropolitan area.¹⁴²

Instead, local boundaries often become the basis of interlocal conflicts.¹⁴³ To the extent that boundaries affect land use regulation and fiscal disparities and, thereby, contribute to the class and racial differentiation of localities within the metropolitan area, they create a psychological separation among metropolitan localities far more difficult to bridge than physical distance alone. Local boundaries, thus, can exacerbate divisions within the metropolitan area

137. See JAMES HOWARD KUNSTLER, *THE GEOGRAPHY OF NOWHERE: THE RISE AND DECLINE OF AMERICA'S MAN-MADE LANDSCAPE* 186 (1993).

138. Peirce notes that post World War II suburbs, where an increasing portion of metropolitan area residents live, are "typically places that are physically spread out and lacking town centers." PEIRCE, *supra* note 3, at 306.

139. *Id.*

140. Fishman, *supra* note 6, at 37.

141. See, e.g., Gelfand, *supra* note 12, at 19 ("[T]he Boston metropolitan area remains more an artificial statistical and cartographic construct than a popularly perceived economic, social, and political entity.").

142. See, e.g., Elizabeth Kolbert, *Region Around New York Sees Ties to City Faltering*, N.Y. TIMES, Dec. 1, 1991, at A1 (noting that "half of all regional residents say events in New York City have 'hardly any impact' at all in their lives"); Peter Kerr, *Camden Forces Its Suburbs to Ask, What If a City Dies?*, N.Y. TIMES, Sept. 7, 1989, at A1 (describing stark cultural and economic distinctions between Camden and its suburbs); see also JACKSON, *supra* note 8, at 272-74 (describing how suburbs increasingly stress their distinctions from, rather than their connection to, the central city).

143. Alan Ehrenhalt describes the relationships among the localities of the Monongahela Valley, just east of Pittsburgh—an area hit hard by the departure of the steel industry and the consequent loss of jobs and tax base. Although many of the municipalities were "essentially bankrupt" they found it difficult to cooperate with each other and reach agreements to cut the costs of local services: "[T]he Mon Valley communities had deep-seated emotional rivalries with each other, built on subtle shadings of ethnicity and deepened by blood-and-guts athletic competition that turned residents of one borough into life-long antagonists of the one next door. . . . 'Within the town, people cooperated. . . . They did not cooperate across the town line.'" Alan Ehrenhalt, *Cooperate or Die*, GOVERNING, Sept. 1995, at 28, 30 (quoting a local minister).

and make it even more difficult for area residents to recognize their shared interests or their membership in a metropolitan community.

III. LOCAL BOUNDARIES AND METROPOLITAN GOVERNANCE

A. *Public Choice and Voluntary Cooperation*

The public choice school is comfortable with both the emergence of metropolitan areas and the role of local boundaries in them. For public choice theory, the metropolitan area solves a major problem of governance by providing an efficient mechanism for matching public goods and services to citizen preferences and for enhancing citizens' capacity to monitor government performance. Indeed, the allocative efficiency that public choice finds in the local government system is actually contingent on metropolitanization because only metropolitan areas have both a large number of small localities in close proximity to each other and a general separation of work from residence, so that households can move relatively easily from one locality to another without changing jobs.

Public choice theorists also recognize that general purpose regional governments are not necessary to achieve economies of scale in the provision of metropolitan area infrastructure. The traditional argument for a unified metropolitan government assumed that only such a regional government could have the institutional capacity and fiscal resources necessary for capital-intensive public works that promote regional development, such as water supply, waste water treatment, solid waste disposal, airports, highways, and mass transit.¹⁴⁴ But, as public choice scholars point out, the scale economy problem can be solved without centralized regional governments. Instead, local governments can purchase services from each other, enter into joint agreements for planning, financing, and delivery of services, and create or seek state creation of special limited-purpose districts to supply capital-intensive services on a regional basis.¹⁴⁵ All of these devices are in common use today.¹⁴⁶ They enable local residents and firms to retain control of most regulatory and service-provision decisions and to defend their property tax bases from external demands, while reducing the costs of obtaining modern physical infrastructure.

By enabling localities to pool their resources and provide or receive services beyond their borders, interlocal agreements and joint ventures reduce the significance of local boundaries.¹⁴⁷ Local political autonomy does not require

144. See, e.g., LUTHER HALSEY GULICK, *THE METROPOLITAN PROBLEM AND AMERICAN IDEAS* 24 (1962) (arguing that "area-wide problems" can only be solved in their entirety, rather than piece by piece).

145. See ROBERT L. BISH & VINCENT OSTROM, *UNDERSTANDING URBAN GOVERNMENT: METROPOLITAN REFORM RECONSIDERED* 59-69 (1973). For a specific example of a small locality that lowered its property taxes by purchasing all of its public services from outside sources, see BISH, *supra* note 29, 85-91 (describing the incorporation of Lakewood, California).

146. See, e.g., DAVID B. WALKER, *THE REBIRTH OF FEDERALISM: SLOUCHING TOWARD WASHINGTON* 272-73, 277-78 (1995).

147. Typically, a local government may not enter a joint services agreement unless it is authorized to provide that service itself. See, e.g., *Goreham v. Des Moines Metro. Area Solid Waste Agency*, 179 N.W.2d 449, 455 (Iowa 1970).

economic autarky. From the public choice perspective, the key function of local government is not the production of local public services, but rather the articulation of demand for those services—that is, the determination of the quantity and quality of public services that will be provided to, and paid for by, the residents of the locality. The locality can contract with other governments or private firms for the actual production of those services.¹⁴⁸

Because individual localities themselves decide whether to enter into interlocal service agreements and joint ventures, these arrangements depart only slightly from the traditional association of local autonomy with local boundaries. As long as each local government ultimately decides which services to provide at what cost,¹⁴⁹ local residents remain capable, through their oversight and control of their local government, of determining basic features of the service, even if the service is produced beyond local borders.¹⁵⁰

Special districts are an alternative approach to the boundary problem. Rather than lower the interlocal boundary walls, special districts create a new regionally bounded entity with a limited mandate to provide a service that would benefit from regional economies of scale. But special district boundaries are less significant than other local government boundaries: Special districts are limited purpose governments, superimposed over the multiplicity of municipalities in a metropolitan area, but without general governmental authority over the territory or its residents. Localities are not merged; rather, they retain their distinctive decisionmaking authority over most local matters.

Although special districts entail the transfer of some power from the local level to the regional body, their impact on local autonomy is limited in practice. First, most regional special districts focus on the financing, construction, operation, and maintenance of physical infrastructure. Special districts generally supply engineering solutions to technical problems; they do not, as a rule, directly engage in areawide social or economic regulation. In Oliver Williams' terminology, they perform "system-maintenance functions" without impinging on local autonomy over "life-style services," such as housing, police, or schools.¹⁵¹

Second, most regional special districts are limited to performing a single function, typically providing a quasi-proprietary service. They are generally incapable of making broad regional policy determinations or reconciling con-

148. Parks and Oakerson characterize the *provision* of public services as resulting from collective public choice processes to determine how much of each service to provide and how to pay for it, while the *production* of public services refers to "the technical processes of combining resources to . . . render a service." Parks & Oakerson, *supra* note 29, at 21.

149. Cf. Vermont Dep't of Pub. Serv. v. Massachusetts Mun. Wholesale Elec. Co., 558 A.2d 215, 219-25 (Vt. 1988) (invalidating a service purchase agreement as an unlawful delegation of local power because the agreement vested the service provider with the authority both to subject the purchasing localities to debt and to determine the basic features of the service provided).

150. Moreover, the link between local borders and service-provision traditionally has been weaker than other aspects of local autonomy because service-provision has been associated with the quasi-proprietary model of local government. See text accompanying notes 45-48 *supra*.

151. Oliver P. Williams, *Life Style Values and Political Decentralization in Metropolitan Areas*, 48 Sw. Soc. Sci. Q. 299, 305-07 (1967).

flicting regional needs.¹⁵² Special districts, for example, may be authorized to impose user charges for the services they provide and to issue bonds backed by the service charges, but they typically lack authority to levy taxes. As a result, special districts seem less than truly governmental¹⁵³ and certainly do not create regional governmental focal points that might threaten local autonomy.

Third, most regional special districts are run not by regionally elected officials but by appointees who are named to their positions either by locally elected officials or by the state. Because appointed officials are not directly accountable to the public, the public is likely to be less able to influence their decisionmaking and less aware of their deliberations and activities. An appointed body is probably less capable than an elected body of building a sense of regional community among area residents or of treating a region as a local unit appropriate for self-government.¹⁵⁴ An appointed regional board is also likely to have less power over the component local governments than an elective body would. An appointed board lacks the legitimacy that comes from popular election, and when appointed by local elected officials, regional board members are unlikely to take positions at odds with those who named them to the board in the first place.

As a result, limited purpose special districts are not much of a threat to local autonomy: They allow people within metropolitan regions to obtain desired physical infrastructure and related services at reasonable costs "without submitting to more comprehensive forms of governance."¹⁵⁵

To be sure, the use of interlocal agreements and special districts may result in a loss of some of the efficiency benefits of interlocal competition. Interlocal agreements may shift critical decisions concerning service production and delivery out of the community.¹⁵⁶ If a joint service arrangement spans many localities, then the residents of any particular locality may have difficulty monitoring service performance and gathering information concerning the costs and quality of alternative service provision mechanisms. Special districts operating at the regional level are particularly inconvenient to monitor. A special district

152. See PEIRCE, *supra* note 3, at 318.

153. The Supreme Court has indicated that where a special district has a limited purpose and discharges solely proprietary functions rather than a "traditional element of governmental sovereignty," the special district voting scheme is not subject to the one-person, one-vote requirement. *Ball v. James*, 451 U.S. 355, 368-70 (1981); see also *Southern California Rapid Transit Dist. v. Bolen*, 822 P.2d 875, 880-88 (Cal. 1992) (holding that a special benefit assessment district created to finance metropolitan transit system is not subject to one-person, one-vote requirement).

154. But see JOHN J. HARRIGAN & WILLIAM C. JOHNSON, *GOVERNING THE TWIN CITIES REGION: THE METROPOLITAN COUNCIL IN COMPARATIVE PERSPECTIVE* 135-37 (1978) (outlining several reasons why an appointed Council might be more accountable to the public).

155. Wallis, *supra* note 17, at 162.

156. As a result, some interlocal service agreements have been challenged as unlawful delegations of municipal power. Furthermore, some agreements requiring one locality to make payments to another have been challenged as violations of state constitutional rules prohibiting one governmental unit from lending its credit to another. State courts have generally rejected these challenges. See, e.g., *State ex rel. Grimes County Taxpayers Ass'n v. Texas Mun. Power Agency*, 565 S.W.2d 258, 270 (Tex. Civ. App. 1978) (upholding as constitutional the joint creation by several cities of an agency to provide power to the cities); *Frank v. City of Cody*, 572 P.2d 1106, 1112 (Wyo. 1977) (same); see also DANIEL R. MANDELKER, *DAWN CLARK NETSCH, PETER W. SALSICH, JR. & JUDITH WELCH WEGNER, STATE AND LOCAL GOVERNMENT IN A FEDERAL SYSTEM* 179-80 (1990).

limited to the provision of a single or a very small number of services is only rarely salient to area residents as a government. With boundaries drawn to deal with a quasi-technological problem, special district borders often do not map on to the borders of the local units—cities and counties—with which area residents are more familiar. Many localities fall within the jurisdiction of multiple, overlapping districts and residents may have “difficulty . . . even locating the boundaries of special districts.”¹⁵⁷ Moreover, with each district devoted to a specific function, residents can “find it extremely difficult to keep track of what is going on.”¹⁵⁸ As a result, participation in special district elections is extremely low—far lower than in elections for general purpose local governments.¹⁵⁹ Of course, in the many districts administered by appointed officers, the question of voter turnout does not even arise.

The central flaw in the public choice approach, however, is not the loss of local control, but rather, the inability of metropolitan area localities to come to grips with the regional prisoners’ dilemma caused by local land use decision making, local fiscal autonomy, and local responsibility for the costs of local public services. Localities acting in their own self-interest will fail to make optimal decisions because, in failing to take account of how their decisions affect the welfare of the region as a whole, they may ultimately damage their own well-being.

Local control over land use is a major source of metropolitan regional externalities, but there are few, if any, voluntary interlocal agreements concerning land use, zoning, planning, or housing. Localities simply do not enter into cooperative arrangements under which some localities accept regionally necessary but locally undesirable land uses. Similarly, localities rarely, if ever, agree to desist from competing for development against other localities in the same metropolitan area.¹⁶⁰ And regional special districts rarely constrain or displace

157. BURNS, *supra* note 130, at 12.

158. BISH, *supra* note 29, at 52; cf. DAHL & TUFTE, *supra* note 40, at 141 (“Just as a central nervous system would quickly become overloaded by a proliferation of specialized organs . . . so the costs of communication and information, and therefore of control, would become overwhelming if citizens were confronted with an indefinite number of changing units.”). For an instance of multiple, overlapping limited-purpose special districts in a region, see Jones & Rothblatt, *supra* note 4, at 399-400 (listing 20 of the “most important” regional and multicounty bodies in the Bay Area).

159. See Burns, *supra* note 130, at 12 (noting that a 2-5% rate of voter participation in post formation elections is unusually high).

160. To be sure, municipalities in New Jersey regularly enter into regional cooperation agreements under which a developing suburb makes payments to an older city to fund the construction or rehabilitation of low and moderate income housing in the city. N.J. STAT. ANN. § 52:27D-312(a) (West 1986). But these agreements do not exist because of the suburbs’ voluntary and unprompted recognition that their exclusionary practices impose costs on nonresidents or other localities in the region—or that they, too, will ultimately suffer when other communities decline. Rather, these agreements are the product of New Jersey’s *Mount Laurel* litigation, *Southern Burlington County NAACP v. Township of Mount Laurel* (Mount Laurel I), 336 A.2d 713 (N.J.), cert. denied, 423 U.S. 808 (1975); *Southern Burlington County NAACP v. Township of Mount Laurel* (Mount Laurel II), 456 A.2d 390 (N.J. 1983), where the state supreme court determined that New Jersey municipalities have a duty to provide for their fair share of the regional need for low- and moderate-income housing. This decision eventually required the state legislature to provide regional cooperation agreements as an alternative to increasing the amount of affordable housing in the suburbs. For a detailed description of the *Mount Laurel* litigation, see Richard Briffault, *Our Localism: Part I—The Structure of Local Government Law*, 90 COLUM. L. REV. 1, 48-56 (1990). New Jersey’s regional fair share housing requirement appears unique. See Geor-

local governments' authority to use their zoning, subdivision, or other land use regulatory powers to affect the cost of housing within local borders¹⁶¹ or to compete against other localities in the region for new economic development.¹⁶²

The rise and fall of federally inspired regional planning councils demonstrates the lack of interest in voluntary interlocal cooperation on land use questions. In the 1960s and 1970s, many federal housing, mass transit, and urban development programs required some comprehensive regional review and comment process to determine the allocation of federal grants and loans for projects in metropolitan areas. This regional review power was frequently vested in councils of government ("COGs") that had been separately organized under state legislation or created by voluntary interlocal agreement. Because of their role as metropolitan planning organizations to review federal grant applications, COGs began to take on a regional planning function. In the 1980s, however, President Reagan abandoned regional review requirements and ultimately eliminated most of the federally funded programs for which regional planning had been required.¹⁶³ Without their role as federal grant clearinghouses, the regional COGs ceased to have an important planning function. Today they provide information and services to their affiliated local governments "on such matters as local government payroll management, landfills, police firing ranges, fingerprint and ID systems, street maintenance, purchase and operation of snow-removal equipment, counseling services, and emergency communications," but they lack "any significant authority" over land use decisions within their regions.¹⁶⁴

Like land use regulation, little voluntary interlocal cooperation addresses the consequences of interlocal fiscal disparities. There are few reported instances of voluntary payments by one locality to another to support public services in the poorer locality. And notwithstanding the regional nature of economic activity, voluntary interlocal agreements to distribute some of the increase in local tax revenue attributable to regional economic growth are only slightly less rare.¹⁶⁵

gette C. Poindexter, *Towards a Legal Framework for Regional Redistribution of Poverty-Related Expenses*, 47 WASH. U. J. URB. & CONTEMP. L. 3, 43-44 (1995) (noting that no other state's low-income housing plan is as "widescale" as New Jersey's).

161. For prominent exceptions to this rule, see KUNSTLER, *supra* note 137, at 204-06 (describing Oregon's Metropolitan Service District); Daniel J. Curtin, Jr. & Ann R. Danforth, *Looking Beyond the City Limits: Regional Approaches to the Growth Crisis*, 22 URB. LAW. 701, 707-08 (1990) (same); Martin, *supra* note 20, at 229-31 (describing Twin Cities Metropolitan Council); see also Rusk, *supra* note 9, at 64-65 (describing Montgomery County, Maryland's countywide Moderately Priced Dwelling Unit Ordinance).

162. Strikingly, even the Twin Cities Metropolitan Council has played a minimal role in regulating the interlocal competitions for a new football/baseball stadium, a convention center, and a megamall. See Martin, *supra* note 20, at 232-36.

163. See WALKER, *supra* note 146, at 8, 274-75.

164. Kincaid, *supra* note 17, at 472-73; see also WALKER, *supra* note 146, at 274-75.

165. There appear to be two instances of voluntary interlocal tax base sharing: Louisville, Kentucky and surrounding Jefferson County agreed to share tax bases for a period of twelve years starting in 1986, Savitch, et al., *supra* note 17, at 73 (noting that \$4.3 million transferred from the county to the city during the first five years of the agreement), and the communities in Montgomery County, Ohio (greater

The lack of interlocal agreements on land use and local service funding is not surprising. As long as cooperation is voluntary, no locality will cooperate with another unless it sees that it will benefit from such cooperation. The benefits of cooperation are most apparent in cases of physical infrastructure and "systems-maintenance" activities. The residents of smaller localities may realize that their own communities cannot provide an airport, waste treatment plant, or pollution control facility at reasonable cost and that they would benefit directly from sharing the costs of these facilities with other communities across the region. Similarly, residents of localities may recognize their stake in, and may be willing to support, metropolitan amenities located outside their particular locality.¹⁶⁶

The benefits of ceding local control over local land use regulation or tax revenues are likely to be far less obvious. Control of local land use and tax base are central purposes of local government. People incorporate local governments in order to reap the benefits of local fiscal and regulatory autonomy. People move to high tax base localities to enjoy better local services, just as they rely upon local zoning to protect their homes, families, and immediate neighborhoods from undesirable land uses.¹⁶⁷ Thus the loss of zoning autonomy and tax base immunity would be a major departure from current practice and would require a major effort to persuade local residents of the benefits of interlocal cooperation in these areas.

The large number of local governments in most metropolitan areas can create a "tragedy" of the regional "commons." Residents of a particular locality may not believe that their local zoning decisions contribute significantly to regional sprawl, traffic congestion, and air pollution, or that their agreement to refrain from exclusionary zoning would have regional benefits. Similarly, they might not see that they have a stake in the quality of the services in another locality or that their particular fiscal contribution to schools or to public safety in another locality would generate much benefit for them.

Interlocal economic interdependency is probably not obvious to local residents. The increasing deconcentration of the major metropolitan areas has attenuated the connection among particular localities, especially the ties between the former central city and its suburbs. More and more metropolitan residents live far from the central city (and from declining inner suburbs) and have little

Dayton) have agreed to use part of the increase in property tax revenues attributable to economic development to fund new economic development programs, Allan D. Wallis, *The Third Wave: Current Trends in Regional Governance*, 83 NAT'L CIVIC REV. 290, 297-98 (1994) (describing the Economic Development Equity Fund).

The most celebrated instance of metropolitan interlocal tax base sharing is Minnesota's Metropolitan Fiscal Disparities Act, which imposed a tax base sharing requirement on the municipalities in the Twin Cities area. MINN. STAT. ANN. § 473F.01-.13 (West 1994 & Supp. 1996). See *Village of Burnsville v. Onischuk*, 222 N.W.2d 523, 532-33 (Minn. 1974) (holding that the Act's revenue sharing scheme satisfied the Minnesota constitution's requirement that taxes be uniform upon the same class of subjects).

166. For example, the voters in the six-county Denver metropolitan area approved special levies to support museums, the zoo, botanical gardens, a performing arts center, and a baseball stadium. They perceived the facilities to be of regional significance. Wallis, *supra* note 165, at 305-06.

167. See text accompanying notes 61-83 *supra*.

contact with the city during their daily activities. Moreover, as the income gap between rich and poor localities within a metropolitan region widens, the residents of prosperous localities are more likely to notice their own prosperity, notwithstanding the poorer localities' decline, rather than see that they are doing less well than suburbanites in regions marked by less severe interlocal fiscal disparities.¹⁶⁸ People in more affluent communities may not realize that in the long run they will suffer from the deterioration of public education or public safety in the poorer localities. In the short run, interlocal payments to support public services in poorer localities entail measurable costs without apparent gain. Under those circumstances, interlocal cooperation is unlikely to occur.¹⁶⁹

Moreover, even if residents of more affluent localities understand the negative regional externalities of locally self-interested regulatory and fiscal strategies, it is doubtful that they could deal with the logistics of handling problems such as sprawling development and interlocal fiscal disparities on a cooperative basis. Cooperation is more likely to occur between adjacent municipalities with direct stakes in each other's well-being or when the consequences of one municipality's action are borne directly by the other. In the metropolitan setting, the consequences of local land use regulation or of underinvestment in basic public services are often borne not only by nearby localities but by localities throughout the region. Moreover, the metropolitan consequences of local action arise not from the decisions of particular localities but from the aggregate of local decisions affecting education, housing, safety, and environmental quality. Given the lack of a direct nexus between a particular locality's workplaces and another's school system or zoning ordinance, it might not be rational for one to provide direct assistance to the other. Enlightened self-interest might lead some localities to see the benefits of cooperation, but the limited capacity of any one locality to resolve regional problems may discourage even the enlightened locality from cooperating unless it was assured that other localities would participate in a regionwide cooperative scheme. But in most metropolitan areas, the large number of localities, the concentration of costs in the particular localities agreeing to forswear autonomy and contribute funds to other localities or accept undesirable growth, and the diffuse nature of the benefits to those localities that do cooperate are likely to interfere with the necessary regionwide cooperation.

If, as I have suggested, sprawl and interlocal fiscal disparities are problems for the region as a whole, then the public choice approach will not provide an effective solution. The interlocal competition celebrated by public choice aggravates, rather than mitigates, sprawl and fiscal disparities. Interlocal competition could, in theory, reduce disparities if each poorer community could cut its

168. See, e.g., David R. Boldt, *Do We Want to Go the Way of Atlanta? Or Detroit?*, PHILA. INQUIRER, July 14, 1991, at C5 (espousing the view that the suburbs of Detroit "are doing all right despite the city's demise").

169. See, e.g., George Julnes & Wolfgang Pindur, *Determinants of Local Governmental Support for Alternative Forms of Regional Coordination*, 24 AM. REV. PUB. ADMIN. 411, 423-24 (1994) (concluding that problems that impose even short-term costs on some localities "are likely to frustrate regional efforts that lack [sufficient] authority").

tax rate and service costs enough to attract new development, but the low tax bases of poorer localities often compel them to raise rates even as the quality of services declines. Furthermore, many of the costs poorer communities face are determined by economic and social conditions beyond their control.¹⁷⁰ Poorer localities can do little to increase their local tax bases.¹⁷¹ Yet, the structure of interlocal competition can reduce the public investment necessary for future regional growth, with negative consequences for the region as a whole.

By the same token, the voluntary interlocal cooperation that public choice theorists advocate for addressing issues of regional scope is unlikely to mitigate the consequences of local land use regulation and fiscal disparities. The structure of metropolitan areas—the large number of municipalities, the lack of direct connections between particular municipalities, and the absence of a sense of regional consciousness—will likely defeat regionwide cooperation that would impose direct costs on currently privileged localities for the sake of indirect long-term benefits.

B. *Decentralization, Involuntary Cooperation, and Permeable Borders*

Law Professors Jerry Frug and Richard Thompson Ford have recently put forward several new proposals that address the question of metropolitan governance. Unlike the public choice approach, Frug and Ford take seriously the regional consequences of local land use regulation and interlocal fiscal disparities; but, like public choice, they oppose the creation of general purpose regional governments. Although their specific proposals differ, they share two central commitments: preserving and strengthening “[d]ecentralized centers of power”¹⁷² and simultaneously recognizing the pervasiveness of interlocal effects and cross-border activity.¹⁷³ In Professor Frug’s words, they would “situate” the locality in its region,¹⁷⁴ acknowledge “the mutually constitutive nature of municipalities,”¹⁷⁵ and “replace our current legal conception of localities with one that embraces the ageographical city,”¹⁷⁶ that is, the metropolitan region. Yet, they would do so without the creation of “centralized regional authority.”¹⁷⁷

Professors Frug and Ford want to reduce the significance of existing local government boundaries—to make those borders more “permeable” in Professor Ford’s words¹⁷⁸—without creating new strong supralocal institutions. Local

170. See generally, LADD & YINGER, *supra* note 66 (discussing the effects on municipal fiscal health of a variety of broad factors that may lie beyond cities’ control).

171. Despite the often intense competition for new investment, the principal determinants of local fiscal well-being are: regional economic conditions; location within the region, including proximity to markets and other site-specific advantages; and preexisting wealth, which enables a locality to offer high-quality services at a lower cost. See SCHNEIDER, *supra* note 46, at 125-74 (discussing local government approaches to increasing local tax bases and limits to these approaches).

172. Ford, *supra* note 30, at 1908; Frug, *supra* note 31, at 271.

173. Ford, *supra* note 30, at 1909-10; Frug, *supra* note 31, at 294-300.

174. Frug, *supra* note 31, at 294.

175. *Id.* at 279.

176. *Id.* at 323.

177. Ford, *supra* note 30, at 1908; Frug, *supra* note 31, at 286, 336-37.

178. Ford, *supra* note 30, at 1909.

governments would continue to wield power, but the duties and relationships of local governments would no longer be defined by local boundaries. Instead, voting in local elections would be opened to outsiders, localities would have obligations to nonresidents, and the scope of local regulatory authority would be determined through negotiation among local governments. The goal of permeable local boundaries is to maintain political power at the local level while reducing the political autonomy of the group of people that resides within any particular set of local borders.

1. *The regional legislature.*

Professor Frug's principal proposal is the creation of a regional legislature to "organize local institutions, as well as legal doctrine, in terms of inter-local relationships."¹⁷⁹ Professor Frug is critical of local autonomy that enables local governments to use their land use powers and tax base for local purposes in ways that are detrimental to the region as a whole. However, Professor Frug also condemns efforts, like New Jersey's *Mount Laurel* doctrine,¹⁸⁰ that would force localities to consider the regional consequences of their actions. He believes that such policies represent a "central government's attempt" to impose rules on localities.¹⁸¹ Such a top-down effort to force self-interested localities to "behave altruistically . . . would strike the people who benefit from [the status quo] as an astonishing invasion of their personal freedom"¹⁸² and is therefore likely to fail. More philosophically, such state decisions are inconsistent with his vision of local self-government.¹⁸³ Given his own commitment to local government as a "situated subject" whose identity ought to grow out of interaction with other localities, Professor Frug would prefer that localities voluntarily realize their mutual interdependence. Regionally conscious zoning and fiscal policies, for example, ought to be "worked out not centrally or by each municipality alone but through regional negotiations."¹⁸⁴ In other words, like the public choice school, Professor Frug prefers voluntary interlocal agreements to higher level decisionmaking.

Professor Frug's regional legislature would function primarily as a "forum for inter-local negotiations" about the scope of local power.¹⁸⁵ The regional legislature emphatically would "not . . . act as a regional government or ape the powers of the state."¹⁸⁶ The legislature would not itself direct the provision of services, make laws for the region, or regulate public or private bodies. Nor would it oversee local governments or displace local decisions. Indeed, "the legislature should be structured to encourage its members not to exercise power

179. Frug, *supra* note 31, at 294.

180. *Id.* at 286.

181. *Id.* at 285.

182. *Id.*

183. See Gerald E. Frug, *Empowering Cities in a Federal System*, 19 URB. LAW. 553, 560-62, 568 (1987) (arguing that localities must resist "the temptation to seek a solution . . . from a higher authority" and must instead "agree among themselves").

184. Frug, *supra* note 31, at 286.

185. *Id.* at 297.

186. *Id.* at 295.

themselves.”¹⁸⁷ Instead, its “one specific function” would be to define the limits of local power, or as Frug states, to “allocat[e] . . . entitlements to local governments.”¹⁸⁸ The legislature would exercise that function not by imposing its own standards but by providing a setting to “forc[e] each locality to consider the impact of their [sic] actions on the region as a whole”¹⁸⁹ so that “localities, when making their decisions, . . . take the interests of other localities within the region into account.”¹⁹⁰

It is difficult to see how the regional legislature satisfies Professor Frug’s twin goals of regionally conscious local decisionmaking without a higher-level government’s “invasion” of local autonomy. There are two possible readings of the regional legislature proposal. First, on the theory that the purpose of the legislature is to permit more “situated” local decisionmaking without state intervention, the legislature could be simply a forum for interlocal dialogue where a new regional-mindedness might emerge. But a forum would be little more than the formalization of the public choice school’s reliance on voluntary interlocal agreements that, thus far, have played little role in altering land use or fiscal autonomy. Localities might have more regular opportunities to discuss regional matters if there were a regional legislature, and that is, no doubt, desirable. But how would that alter the substance of local decisions? More affluent localities would have no more incentive to modify their zoning to accept a share of regional low- and moderate-income housing or to devote a larger portion of their tax base to the support of schools in other localities. They might have little to gain from any interlocal negotiation and might avoid interlocal discussions altogether. If they participated in regional discussions of land use regulation or the financing of public services, their current legal powers would enable them to bargain from a position of strength and to refuse to make concessions to their less fortunate neighbors.

The formal establishment of the legislature might make it easier to recognize the existence of regionwide problems and to bring together the large number of metropolitan area localities whose agreement would be needed to tackle problems of regionwide scope. But so long as any agreements would be voluntary, it is difficult to see why localities that do well under the existing system would relinquish the power that the rules of local government law currently give them. This type of regional legislature would likely be no more successful in curbing locally self-interested land use regulation or local fiscal autonomy than the existing councils of government. COGs, which also rely on voluntary member cooperation, have had minimal success at making local governments more regionally conscious.¹⁹¹

187. *Id.* at 297.

188. *Id.* at 296.

189. *Id.* at 295.

190. *Id.* at 296.

191. Professor Frug himself draws the analogy between his regional legislature and the role of the COGs during the era in which certain federal grants were conditioned on a regional review. *Id.* at 295-96.

Second, and more plausibly, by authorizing the regional legislature to "allocate entitlements," Professor Frug means to change the dynamics of interlocal bargaining. More affluent localities would no longer be able to rely on their control of their tax base or their power to control local land use within their borders to withhold resources from or concessions to other localities in interlocal negotiations, or to abstain outright from such bargaining. Rather, local government's powers with respect to tax base and zoning would presumably come out of the negotiations. But what happens to the powers over land use, tax base, and services that these localities currently enjoy and which enable some of them to resist cooperation? How do these metropolitan area localities lose their existing entitlements and wind up in a metropolitan "original position" in which they have no legal powers other than those that emerge from negotiations with other local governments? This would occur only if existing entitlements are stripped away from those who currently have them. And there is only one way that can occur: action by *the state* to remove from localities the powers currently vested in them.

Thus, although the purpose of the regional legislature is to avoid higher-level directives, the principal moving part that would enable the legislature to work is action by the state to divest localities of their existing powers. That is at least as much a top-down "invasion" of local autonomy as the *Mount Laurel* doctrine or any other state requirement that localities take regional concerns into account when they exercise their existing powers. The proposal that the state eliminate outright existing local entitlements is likely to encounter at least as much resistance as more limited proposals either to reduce the scope of those powers or to force localities to consider regional concerns in local policymaking. And, as a theoretical matter, despite Professor Frug's commitment to decentralized decisionmaking, his proposal relies entirely on an initial recentralization of power at the state level that is necessary to get interlocal dialogue started and to force localities to come to terms with each other.

Professor Frug suggests that the regional legislature "would be a democratic version of the idea of regional planning embodied in federal legislation of the 1960s and 1970s."¹⁹² The comparison with federally promoted regional planning reveals the extent to which the proposal relies on higher-level power for its effectiveness. As previously noted, the metropolitan planning organizations of the 1960s and 1970s were largely an outgrowth of federal provisions for regional review-and-comment on applications for a range of federal grants. The regional planning role of these organizations rested on federal requirements for regional coordination in the allocation of federal funds, and of course, on the existence of upper-level funding programs. Eliminating the coordination requirement and cutting federal funds caused an immediate decline in the influence of those organizations—suggesting the extent to which regional cooperation was dependent on pressure from above.¹⁹³

192. *Id.* at 295.

193. Two more recent federal laws, the Clean Air Act Amendments of 1990, Pub. L. No. 101-549, 104 Stat. 2399 (codified as amended in scattered sections of 42 U.S.C.) and the Intermodal Surface Transportation Efficiency Act of 1991, Pub. L. No. 102-240, 105 Stat. 1914 (codified as amended in

The regional legislature proposal, thus, relies covertly on a major, and unlikely, exercise of power by the state.¹⁹⁴ Since I believe that the metropolitan governance problem requires some exercise of upper-level power, the implicit shift of power to the state is hardly a fatal objection for me—although it is inconsistent with Professor Frug's goal of having the scope of local powers emerge from interlocal dialogue unmediated by state interference. The real question is whether Frug's conception of a limited regional legislature offers a better means of state intervention than a more powerful regional institution. In other words, following Frug's distinction, is a regional legislature really preferable to a regional government?¹⁹⁵

Even if the principal purpose of a regional governance structure were limited to inducing local governments to consider regional interests—that is, to use Professor Ford's term, to make local borders more permeable—some form of regional government and not just a regional legislature as proposed by Professor Frug would likely be necessary. In Professor Frug's vision, the purpose of the regional legislature is to permit localities to reach interlocal agreements concerning the scope of local powers—not to make rules or wield direct power. But interlocal agreement requires more than just a forum for dialogue. It requires some mechanism to monitor local actions after the agreement, to ensure compliance, to resolve disputes concerning the meaning of the agreement, and, ultimately, to intervene when local governments disregard the terms of the agreement.

Governance arrangements that rely on cooperation are vulnerable to cheating. Unless localities establish effective mechanisms to detect and deter cheating, the temptation to cheat will be great, and cooperation in theory may be nullified in practice. A legislative forum, alone, cannot oversee local decision-making, resolve particular disputes, or enforce compliance with interlocal policy agreements. The large number of localities in the major metropolitan areas makes it difficult for local governments to monitor each other effectively. And to the extent that a local government's "cheating" would benefit its residents, people within localities would lack the incentive to monitor their local government's actions. Interlocal competition is, thus, likely to require some form of regional monitoring.

Similarly, there would probably be a need for procedures to resolve conflicts over the meaning of entitlements and the scope of local authority in individual cases. Without such a mechanism, the legislature's general principles of interlocal cooperation may have little practical application. The legislature might require support by some form of regional administrative body. Of course, the legislature could itself address site-specific zoning disputes, the de-

scattered sections of 5, 15, 16, 23, 26, 33, 40, 42, 45, 49 U.S.C.) represent a modest revival of the general practice of using metropolitan planning organizations to allocate federal funds for local projects.

194. As Professor Frug observes in noting the difficulty of requiring local governments to implement a *Mount Laurel* doctrine imposed from above: "[I]t is unlikely that those who profit from current law will undo it themselves." Frug, *supra* note 31, at 285. Given the influence of suburban localities in state legislatures, it is indeed "unlikely that those who profit from current law will" eliminate local powers.

195. See *id.* at 294-98 (contrasting a "regional legislature" with a "regional government").

tails of the allocation of funds from local taxes to extralocal purposes, or technical aspects of local services, but the more the legislature applies its own rules to concrete disputes, the more it is involved in determining regional policymaking. As a result, the legislature would begin to evolve from a forum into a regional government.

Ultimately, in cases where a locality fails to abide by the interlocal agreement, the legislature will need some power to secure compliance, or the entire process will have little point. The legislature must have the authority to displace inconsistent local government rules, or to litigate regional-local disputes in the state courts under laws that permit regional preemption of some local power. But, again, the power to supersede inconsistent local laws, or to obtain state judicial support for regional legislative decisions, is the hallmark of a government, not a mere forum for interlocal discussion.

The regional legislature proposal relies on the ideal of regional decisions emerging from interlocal interaction—the legislature's role is to remind localities just how "situated" they are among their neighbors. Professor Frug then assumes that localities will take that "situatedness" into account in negotiating the scope of their local powers with neighboring localities. But there is little reason to believe that localities are not already aware of the other localities at their borders. Patterns of local government formation and the deployment of local land use powers demonstrate that people at the local level are quite aware of the existence of other localities—they just want to use local government powers to avoid the implications of "situatedness." Even if the proposed legislature crafts cooperative agreements, their success will depend on the existence of procedures for monitoring, dispute resolution, and enforcement. In order to oversee and effectuate interlocal agreements, the regional legislature will have to become the regional government that Professor Frug is striving to avoid—or have little more effect in dealing with metropolitan problems than a COG.

2. *Cross-border voting.*

Both Professor Ford and Professor Frug propose changes in the rules of local voting to allow nonresidents to vote in local elections. Professor Ford would make local elections "open to all members of a metropolitan region or even to all citizens of a state."¹⁹⁶ All local elections in the region would be held on the same day; voters would receive a number of votes equal to the number of local offices to be filled and could cast them wherever they chose. Under such a system of regionwide cumulative voting for *local* office, "voters would effectively draw their own jurisdictional boundaries, decide which local governments were most important to them, and allocate their votes accordingly."¹⁹⁷ By providing for broader "democratic inclusion,"¹⁹⁸ this electoral reform would ameliorate the "evils of parochialism and insularity."¹⁹⁹ Indeed,

196. Ford, *supra* note 30, at 1909.

197. *Id.*

198. *Id.* at 1910.

199. *Id.* at 1909.

in Ford's view, a regional franchise, along with some form of regional revenue sharing,²⁰⁰ would eliminate the need for upper-level review of exclusionary local regulation or for a more centralized regional government. With political rights decoupled from residency, the need to deny localities the power to engage in locally self-interested or exclusionary regulation disappears.

Professor Frug, similarly, calls for regionwide²⁰¹ cumulative voting. In his plan, "everyone gets five votes that they can cast in whatever local elections they feel affect their interest ('local' still being defined by the traditional territorial boundaries of city, suburb, or neighborhood)."²⁰² Like Ford, Frug believes that no objective link to a particular locality should be required to vote in that locality's elections: People "can define their interests differently in different elections, and any form of connection that they think expresses an aspect of themselves at the moment will be treated as adequate."²⁰³ Regionwide voting also implicates the regional legislature, as each local official in the legislature "would have a constituency made up not only of residents but of workers, shoppers, property owners in neighboring jurisdictions, the homeless, and so forth."²⁰⁴

Although his proposal is similar to Professor Ford's, Professor Frug's emphasis is distinct. Professor Ford sees cross-border voting as a means of rendering local borders more permeable and local polities more democratically inclusive. Professor Frug sees in cross-border voting a means of recognizing and reinforcing the "postmodern subjectivity"²⁰⁵ of the metropolitan area and, in particular, of demolishing the primacy of residency in determining the relationship between people and their local governments. In the contemporary metropolis, people have interests, activities, and concerns in multiple jurisdictions. Conversely, each locality has a constituency of people that works, shops, or uses public facilities within the locality but lives beyond its borders. In such an "ageographical city,"²⁰⁶ boundaries should have no role in defining the scope of political participation. As Frug notes, "[m]ost importantly, such an electoral scheme would radically change the idea of what a neighborhood or suburb or city is—of who is included in a reference to such a locality. The 'self' in the

200. Although Professor Ford links the ideas of cross-border voting and regionalization of tax base, they are actually quite distinct. Cross-border voting is central to his and Professor Frug's visions of permeable local borders and of more regionally conscious local-level decisionmaking without a regional governance structure. As Professor Ford seems to recognize, however, regionalization of tax base requires a more active role for a regional or state government. *Id.* at 1910; see text accompanying notes 218-233 *infra*.

201. Indeed, Professor Frug would not limit the extension of local voting to the metropolitan region, but might permit people from around the country to vote in local elections. See Frug, *supra* note 31, at 329-30 & n.328.

202. *Id.* at 329; see also *id.* at 330 (arguing that "the voting system might also mimic the idea of proportional representation by allowing someone to cast all five votes in one locality if that is where her/his attachments are felt to be").

203. *Id.* at 329.

204. *Id.*

205. *Id.* at 325.

206. *Id.* at 335.

phrase local self-interest would become a gesture toward an unknown and unspecified multiplicity.”²⁰⁷

But cross-border voting is unlikely to provide a decentralized structure for metropolitan governance. The residents of a locality would probably still cast most of the votes in that locality's elections. If, however, the extended franchise takes hold and leads to regional participation in local elections, cross-border voting could, paradoxically, subvert the goal of preserving local level decisionmaking. Indeed, cross-border voting could render local governments incapable of serving the values traditionally vindicated by local autonomy, yet no effective regional polity would be provided to replace them.

As a practical matter, it is unlikely that much cross-border voting would actually take place. There are so many municipalities in a metropolitan area, and the implications of the actions of any one municipality for the residents of any other are, typically, indirect and cumulative, rather than proximate and immediate. Thus most metropolitan area residents are unlikely to have much of an interest in elections outside their home locality.²⁰⁸

The most likely exception to this general rule would be the broad regional interest in the politics of the central city. The central city is, typically, the largest jurisdiction in the metropolitan area. In most areas, the central city remains something of a focal point—for media attention, for employment, for meetings of the regional economic and political leadership, and for recreational and cultural activities. The central city will be the principal jurisdiction in which the residents of many other localities have an interest, and central city elections are likely to get the most media coverage. Thus cross-border voting could become the basis for suburbanite voting in central city elections.

This would certainly be a paradoxical result for those who see in cross-border voting an antidote to the “evils of parochialism and insularity”²⁰⁹ and an opportunity to open up the exclusionary white suburbs to the influence of the central city. Although, in theory, central city voters could easily overwhelm the residents of any particular suburb and thereby force a change in that suburb's land use regulations, in practice, the large number of suburbs, the lack of a direct nexus between a particular residential suburb and a group of central city voters, the lack of major media coverage of suburban politics, and the organizational difficulties inherent in concentrating a sizable block of central city voters on the elections in a particular suburb, would probably frustrate the ability of city residents to use cross-border voting to make suburban politics more responsive to their interests and concerns. Instead, the central city would more likely be the natural focal point of regional politics. Suburban voters would have the incentive and—without great organizational effort—the ability to target central city elections. Thus what is frequently the most racially and economically heterogeneous jurisdiction in the metropolitan area would be

207. *Id.* at 330.

208. As Professor Frug observes, “[p]eople are unlikely to vote in a jurisdiction they do not care about.” *Id.* at 329.

209. Ford, *supra* note 30, at 1909.

opened to voting by residents of the surrounding, relatively homogeneous suburbs. Since the suburban population exceeds the city's in most metropolitan areas, this could lead to a shift in political control of city governments from city residents to suburbanites. Instead of opening up the suburbs, or providing an opportunity for city residents to gain access to the suburbs' resources, cross-border voting could cost city residents control over their own jurisdiction.

More generally, should cross-border voting actually occur, it would be potentially subversive of the values of political participation, economic efficiency, and community self-determination that constitute the heart of the case for local autonomy.

First, cross-border voting would undermine the local conditions conducive to political participation. Decentralization to the local level is said to promote political participation because it vests power in political units that are relatively small in population and territory. But with cross-border voting, localities would cease to be small for electoral purposes. Rather, each locality would have an electorate of metropolitan scope. Local politics would no longer be a matter of deliberation, discussion, and debate at the neighborhood level. Rather, cross-border voting would make the locality *de facto* coterminous with the metropolitan area on election day. A regional electorate would be empowered to elect local officials and determine local policies, even over the opposition of local political majorities.

The prospect of a loss of local control—of political frustration by outsiders—could discourage political participation by local residents. More generally, by dramatically enlarging the electorate for local elections, cross-border voting would concomitantly reduce the political influence of individual voters. Each voter would be less effective at making policy or electing her preferred candidates to office than in a polity with an electorate limited to those within local borders. Thus the expansion of the electorate could wipe out the incentive to, and the reward for, participation that comes from the enhanced sense of individual effectiveness ordinarily associated with politics at the local level.

Indeed, cross-border voting would transform the nature of local elections. Although the popular image of grassroots politics—of challengers campaigning among their neighbors, volunteers leafletting on street corners and ringing doorbells, and community organizations sponsoring candidates' nights in the high school gymnasium—may be more than a little romanticized, it is true that elections in smaller units can place a greater premium on face-to-face contact and personal interaction and require less in the way of money and professional staff. By enlarging the local electorate to include the entire region, cross-border voting could result in the displacement of neighborhood-based, volunteer-organized "retail" campaigns by television advertising, direct mail, focus groups, and the other costly, high-technology, "wholesale" techniques needed to reach the large number of voters that make up an metropolitan-area-wide electorate. The town meeting would be replaced by the regional media buy as the central metaphor of local elections, and the values of small-scale politics would be jeopardized, if not lost.

Second, cross-border voting could potentially limit the efficiency benefits of decentralization to the local level. It might be more difficult to tailor local decisions to the particular preferences of local residents if a regionwide electorate were able to select local officers or vote on local policies. A politically mobilized regional electorate would be able to displace distinct local preferences. The efficiency benefits of local autonomy require both a multiplicity of local governments and the political control of individual local governments by local residents. Multiplicity alone would be of little policymaking significance unless each locality were free to adopt its own policies. By potentially giving every locality in a metropolitan area the same electorate, cross-border voting could deny localities autonomy from each other.

I suspect that in practice cross-border voting would not eliminate interlocal variations in taxes, regulation, and services. For the reasons I develop further below, it is unlikely that even a politically mobilized regional electorate would be able to impose the same local policies on each locality. But a regional electorate could limit the range of interlocal variation, enabling interested outsiders to intervene in order to nullify unusual local policies that have been the focus of regional media coverage—whether or not they have significant extralocal impacts. The point is not that cross-border voting would result in regional uniformity, but, rather, that by providing the means for reducing intraregional variation, it could reduce the ability of local governments to respond to distinctive local preferences or to test out novel approaches to local policy problems.

Finally, cross-border voting would negate community self-determination at the local level. Residents of individual localities could have their votes in local elections diluted, if not overwhelmed, by the votes of outsiders. Decisions would still be made at the local level, but the group making the decision would be the metropolitan electorate. As a result, local people could lose control over local matters. People who live near each other, interact with each other on a daily basis, and share interests and concerns with respect to their immediate physical environment would no longer be able to decide neighborhood issues on their own.

Enabling outsiders to make decisions for local residents, could transform local governments from autonomous polities into administrative arms of the metropolitan electorate. With the loss of political power, local communities could become less salient to their residents and less significant as focal points of obligation, sentiment, or identity. Rather, they could become submerged in the broader metropolitan area. Again, it is unlikely that the regional electorate would consistently displace local preferences. Regional interventions would more likely be episodic rather than systematic, triggered by unusual candidates or atypical policy proposals. Yet, even intermittent regional interference could have an impact on the ability of locally concentrated regional minorities to govern themselves, and the impact on the sense of local self-determination could be severe. Indeed, it is the controversial local measures or candidates that are both emblematic of local distinctiveness and most likely to attract regional media coverage that would draw the greatest cross-border turnout. One can easily imagine a regional electorate—or regional groups organized on an

ideological or special interest basis—drawn to a local election focused on a “hot button” issue, like gay rights, gun control, a distinctive school curriculum, or a left- or right-wing candidate, and, in so doing, displacing local preferences that differ from the regional majority or the organized outsiders. Local self-determination could suffer as much from arbitrary, intermittent, and unpredictable outside interference as from the regular supplanting of local preferences. Either would be a reminder that local people lack the power to make their own policies or elect their own candidates and that any local autonomy would exist only at the sufferance of the regional majority.

Cross-border voting, thus, could undermine political self-determination at the local community level. Yet cross-border voting unaccompanied by the creation of some sort of regional government is unlikely to provide an effective means of addressing metropolitan problems or a basis for self-government for the metropolitan area.

Cross-border voting—as opposed to regional elections to a regional governing body—is inadequate to the job of metropolitan policymaking. To implement metropolitan land development policies that would reduce the costs of sprawl and increase the availability of affordable housing, the metropolitan electorate would have to organize itself and concentrate its votes on one locality after another in successive elections over a period of decades. Policies that require simultaneous, coordinated action across a number of localities might not be feasible, since, given the difficulties of organizing voters to vote outside their home communities, it might not be logistically possible to target the requisite number of communities in the same election. Land development practices that require local policies to be consistent over time would not be viable either, since the metropolitan electorate would find it difficult to exercise sustained control over land use decisions in particular localities. After intervening and setting aside an exclusionary rule in one locality in one election and then moving on to another locality in another election, there would be no ongoing overarching state or metropolitan law that would prevent the first locality from backsliding and reverting to exclusionary practices when the metropolitan electorate is no longer “looking” at it. In short, relying on cross-border voting to reform metropolitan land use practices assumes a degree of political organization and endurance that is more heroic than realistic.

For similar reasons, it is unlikely that cross-border voting would be able to effectuate the redistribution of wealth from affluent to poorer localities. Again, residents of poorer communities would have to organize themselves to target identified affluent jurisdictions, and they would have to do so in election after election. Indeed, regional redistribution might be even more difficult to achieve than regional land use regulation since some issues of land use regulation would be removed from debate once particular developments have taken place. But political organization would be necessary in every election to force redistribution to support the operating expenses of poorer localities.

Nor is it clear that in eroding the significance of local community, cross-border voting would create a sense of metropolitan community. To be sure, by

enabling local residents to vote in elections in other localities in the metropolitan area, cross-border voting could remind them of the connections that link these communities together and could give them more of a stake in the well-being of the region as a whole. Moreover, cross-border voting would probably entail the formal bounding of the metropolitan area in order to determine the territorial scope of the new regional electorate.²¹⁰ Thus the metropolitan area would take on political shape and jurisdictional consequences, further increasing the possibility that cross-border voting could give rise to a regional consciousness. But cross-border voting, as put forward by Professors Ford and Frug, is not the same as regional voting. In particular, it does not entail the election of officials with regional responsibilities. It is unlikely that cross-border voting unaccompanied by regional institutions would become the basis for the construction of a metropolitan political community.

Cross-border voting does not involve the creation of regional institutions or the election of representatives to a regional governing body. Indeed, it has been presented by its proponents as a means of transcending local parochialism without shifting power to regional institutions. Although cross-border voting would provide a vehicle for residents of one locality to indicate their preferences with respect to candidates and policies in another locality, it offers no mechanism to shape issues that cut across local boundaries and directly affect the region as a whole. By failing to create regional political structures or to provide opportunities for the election of regional officials, it minimizes the sense of the metropolitan area as a politico-territorial community. Cross-border voting would encourage local residents to think less in terms of the interests of the region as a whole and more in terms of their private interests in other particular communities. Cross-border voting is a strategy for targeted interventions across the metropolitan area rather than a framework for encouraging metropolitan area residents to think in metropolitan terms. Moreover, by subjecting all localities to ad hoc and potentially random displacement by metropolitan majorities, but not reserving any local policy areas for purely local decisionmaking, cross-border voting could actually increase local resentment against outsiders in the metropolitan area and be a source of regional conflict rather than regional consciousness.

In short, cross-border voting—if it actually took place—might actually produce the worst of both worlds: the loss of the local autonomy that is the justification for decentralization, without the creation of the regional institutions or the regional consciousness that would facilitate the adoption and implementation of policies serving the interests of the metropolitan area as whole. Cross-border voting would have the anomalous effect of creating a metropolitan area-wide electorate that could displace the decisions of local electorates without providing the metropolitan governance structure necessary to create regional self-government.

210. *But see* Frug, *supra* note 31, at 329-30 & n.328 (suggesting that cross-border voting could be extended beyond the region).

3. *The limits of decentralization solutions to metropolitan problems.*

Decentralization has long been a core value in thinking about local government but, as I hope this critique of the Ford and Frug proposals suggests, continued decentralization cannot provide a satisfactory solution to the central problems of contemporary metropolitan governance. Traditional decentralization—the delegation of broad regulatory, service-provision, and revenue-raising powers to local governments acting within local borders, including the power to hold on to locally raised revenues for internal purposes—is a major source of the land use development problems and fiscal disparities that plague many metropolitan areas. Professors Ford and Frug recognize this relationship but would still attempt to save decentralization by transforming the nature of local boundaries and interlocal relations. In their view, “permeable” borders and regional dialogue concerning the nature of local authority would open local governments to regional concerns without shifting power out of local hands. Their proposals would continue to allow “people to form their own communities[;] . . . it’s just that they cannot do so without confronting people in other communities.”²¹¹ This would reduce local detachment and promote local responsiveness to metropolitan interests beyond local borders.²¹² Decentralization would be preserved and, purged of local parochialism and insularity, would provide the basis for locally initiated approaches to regional problems.

But in their efforts to combine local autonomy with regionally sensitive local governance, Professors Ford and Frug would unintentionally undermine the values that local autonomy is intended to serve without actually providing the basis for effective regional governance. To be sure, they are correct in asserting that the significance of local borders needs to be reduced. Local regulatory policies with regional consequences must be subject to regional or state oversight, and regionwide resources ought to be available to meet regional needs.²¹³ But instead of limiting their focus to local decisions that have regional consequences, they would open all local decisionmaking to outside participation. This would undermine the political and economic values of local autonomy and would, indeed, allow a regional electorate to deny local self-determination to metropolitan area localities. By losing the power to reach local decisions free of outside intervention, local communities would cease to be local governments. So, too, forced regional negotiations over the scope of local power would cloak a shift in power from localities to the state.

Yet, neither initiative would provide the basis for building a sense of metropolitan consciousness or empowering a metropolitan community to address problems of regional significance. Professor Frug’s regional legislature would not be authorized to carry out its decisions. Professor Ford’s regional electorate could displace local electorates but would lack the regional political structures necessary to debate, formulate, and carry out regional policies.

211. *Id.* at 337.

212. Ford, *supra* note 30, at 1909; Frug, *supra* note 31, at 329-30.

213. Poindexter, *supra* note 160, at 24-44 (proposing a model for the equitable regional redistribution of poverty-related expenses).

Decentralized but regionally sensitive metropolitan governance is an attractive illusion. Regional structures and institutions are necessary to solve the critical questions of metropolitan area governance.

IV. CONCLUSION: BOUNDING THE METROPOLIS

Metropolitan governance must be reconceived.⁷ The traditional model of decentralization of authority to local governments with broad regulatory, revenue-raising, and service-provision powers within their boundaries but minimal responsibilities to people and localities outside those boundaries is in tension with the basic economic and social structure of contemporary metropolitan areas. Contemporary metropolitan area localities are not freestanding, relatively isolated communities capable of governing themselves without imposing burdens on other localities in the region. Instead, they are often components of economically and socially intertwined regions. Area residents have regular interactions with multiple localities, and a locality's decisions frequently have consequences for other localities and for the region as a whole. As a result, neither the political, the economic, nor the communitarian arguments for local autonomy fully obtain in the metropolitan area. Local autonomy in the metropolitan area limits popular political participation concerning issues of metropolitan significance, fosters interlocal competition rather than the interlocal collaboration that would promote regional well-being, and blocks recognition of the metropolitan area as a politically and economically relevant community. Moreover, in many areas, decentralized governance through existing local governments has generated local policies that promote sprawl, class and racial separation, and enormous disparities in the quality of local services.

Voluntary interlocal cooperation is not an adequate solution. Many of the costs decentralization imposes on metropolitan areas result from the structure of interlocal competition and the aggregate of local decisions, rather than from the consequences of one specific locality's action towards another. Under these circumstances, the incentive for the more favorably situated locality to cooperate would be small. For such a locality, the costs from losing local control, permitting locally undesirable land uses, or paying subsidies to poorer localities would be large and immediate, whereas the benefit from the healthier development of the metropolitan area might be small, attenuated, and in the future. The large number of localities in most metropolitan areas, and the concomitant likelihood of holdouts and free riders, would compound the difficulty of promoting regional approaches to land development or fiscal equalization through voluntary cooperation.

Nor is making local borders more permeable by itself a solution. The notion of permeability is a useful reminder of the cross-border consequences of local actions, and of the stake that those living outside the locality, but within the metropolitan area, have in the locality's decisions. Localities ought to be more open to the interests and concerns of the metropolitan area beyond their borders. But permeability simultaneously goes too far and not far enough. Permeability, conceived as political participation by metropolitan area residents in

all local elections, potentially opens up all local decisions to outside determination. But many local actions have relatively few extralocal consequences. By potentially ousting local residents from control over matters legitimately within the local domain, cross-border voting would undermine the basic values of local autonomy. Permeable borders could diminish the ability of residents of particular localities to govern themselves, yet permeability with continued decentralization to existing local governments would be insufficient to enable the metropolitan area as a whole to govern itself. At the very least some additional layer of government—either a metropolitan government or an empowered state government—would be necessary to enforce local permeability. More importantly, permeability alone would fail to provide an institutional framework for regional deliberations, the development of a regional perspective, or the implementation of solutions to regionwide problems.

Metropolitan governance will require not just a reduction in the significance of existing local boundaries but the creation of new, regional boundaries. The metropolitan area is frequently an economic unit. It needs to become a political unit as well. Bounding the metropolis would bring greater “clarity”²¹⁴ to the notion of the metropolitan area as a distinctive, internally interconnected place, and would thus provide a political basis for enabling residents to conceive of the metropolitan area as a community. More figuratively, bounding the metropolis with regional political institutions could provide the regulatory and administrative capacity to deal with regionwide problems that cannot be addressed by the existing local government structure. It would offer a critical opportunity for regionwide deliberation, popular participation in decisions of regional significance, and the accountability of regional officials to the people who live in the region.

Yet, as the long history of resistance to regional government demonstrates,²¹⁵ in most areas the creation of a metropolitan governance structures will not be easy. Indeed, by reminding us of just how strongly attached many people are to local control and to the merits of small political units, the opposition to regionalism provides a salutary lesson. The strong preference for local government needs to be taken into account in crafting regional structures. As a practical matter, metropolitan governance plans will have to be designed to minimize voter opposition. Moreover, as John Kincaid notes, “voters have spoken rather clearly and consistently on matters of metropolitan regionalism in the twentieth century, and the requisites of democracy require some deference to their preferences.”²¹⁶

Thus the rule of subsidiarity²¹⁷ ought to obtain. Rather than consolidate all local government powers and responsibilities at the regional level, only those

214. See note 59 *supra* and accompanying text.

215. See text accompanying notes 10-21 *supra*.

216. Kincaid, *supra* note 17, at 476.

217. My colleague George Bermann defines subsidiarity as the “notion that action should be taken at the lowest level of government at which particular objectives can adequately be achieved.” George A. Bermann, *Taking Subsidiarity Seriously: Federalism in the European Community and the United States*, 94 COLUM. L. REV. 331, 338 (1994).

functions necessary for metropolitan governance should be shifted to regional institutions. The remaining local government activities—including much local land use regulation, local taxation, and the direct provision of most traditional local services—should remain at the local level. A metropolitan area government must also be democratic. Local residents who fear loss of control to a regional structure must be assured of a voice in its decisionmaking. The metropolitan structure must provide an opportunity for regional deliberations from the bottom up, rather than simply serve as a vehicle for the imposition of technocratic solutions from the top down.

The optimal metropolitan area government needs three crucial powers: to determine land use questions of regional significance; to collect and distribute revenues in order to promote greater equalization of local fiscal capacity and local service quality; and to provide regionwide physical infrastructure. The land use power must include both the authority to adopt regional land use plans that will bind future land development throughout the region and the power to displace local land use actions that have regional significance. Such regionally significant uses include local barriers to regionally necessary, but locally undesirable land uses, and local land use authorizations that impose negative externalities on the rest of the region.

The metropolitan government's fiscal powers must include the power to raise revenues, whether by redistributing tax revenues from one jurisdiction to another or by levying its own taxes,²¹⁸ and the power to distribute the funds to local governments unable to provide an appropriate level of public services out of their local tax bases. Its direct service delivery powers would presumably include those powers currently exercised by regional entities—mass transit, airports, water supply, waste water treatment, etc.

Even though the regional government would have a limited number of functions, it must be elected. Regional elections could help area residents to see the region as an area with shared interests and concerns. Moreover, only an elected regional government would enjoy the legitimacy that would enable it to displace the decisions of component local governments. And only an elected regional government would be able to assure voters they have a voice in policymaking and that regional decisionmaking institutions would ultimately be accountable to area residents.

218. A current, albeit quite limited, instance of metropolitan taxation for metropolitan area purposes is the use of special regional levies to fund mass transit systems. These revenues, however, are limited to a specific service provided by the metropolitan entity and are not used to equalize fiscal disparities among local governments. See Poindexter, *supra* note 160, at 28-29 & n.136.

As part of its school finance reform, the Texas legislature provided for the creation of county education districts ("CEDs") authorized to levy and collect ad valorem property taxes and to distribute the revenue to local school districts. The Texas Supreme Court, however, invalidated the measure for violating a provision of the Texas Constitution barring the imposition of state ad valorem property taxes. Because both the tax rate and the distribution of the proceeds were determined by the state legislature, the Supreme Court determined that the CEDs were "purely ministerial," and, thus, that the tax, although nominally imposed by the CEDs, was actually a proscribed state tax. *Carrollton-Farmers Branch Indep. Sch. Dist. v. Edgewood Indep. Sch. Dist.*, 826 S.W.2d 489, 500-03 (1992). Had the CEDs been given greater autonomy, their regional property tax, intended to equalize the fiscal disparities of local school districts, might have been sustained. *Id.* at 503.

Metropolitan representatives might be elected through existing local units or through newly created regional districts. Alternative voting rules like limited voting, cumulative voting, and preferential voting might be used to facilitate the representation of nonterritorially concentrated groups. Elected officials might be given roles in the regional governance structure, either serving ex officio on the regional governing body, or on councils empowered to consider and advise on proposed regional legislation. But if regional government is to provide a basis for democratically accountable regional decisionmaking, it must have its own elected officials.

An elected metropolitan government focussed tightly on regional concerns might mitigate the intensity of popular opposition. The relative paucity of instances of regional controls over land use and regional fiscal equalization, however, suggests that resistance to the transfer of core aspects of local autonomy to a regional entity is likely to remain quite powerful.²¹⁹ Even if the combination of election and limited powers failed to make metropolitan government more palatable, some form of limited regionalism that preserves local control over a range of fairly broad local matters and leaves most service delivery decisions in local hands would still be preferable to a full consolidation to a metropolitan government so large that it lacks any of the participatory, efficiency, and communitarian benefits of a local government.

Beyond the political resistance to loss of local control over land use and tax base, the creation of a regional government would likely encounter other practical problems. As with all questions of boundary drawing, the determination of the territorial scope of a metropolitan area will often be uncertain, and the placement of the regional government's borders may be a source of conflict.²²⁰ Moreover, if sprawling land development patterns were to continue unchecked, then, unless the metropolitan entity's boundaries included some space for future growth, the metropolitan area might soon expand beyond the bounds of even a regional government.²²¹ In addition, some metropolitan areas, including many of the largest ones, cross state lines.²²² For these areas, a true regional government would require interstate compacts, as well as state legislative action and local voter approval. The cumulative legal and political hurdles to a government spanning the entire metropolitan region might prove insuperable.

219. As one commentator notes, "planning authority with the force of law has been rarely approved." William R. Dodge, *Regional Problem Solving in the 1990s: Experimentation with Local Governance for the 21st Century*, 79 NAT'L CIVIC REV. 354, 361 (1990).

220. See, e.g., Jones & Rothblatt, *supra* note 4, at 378 (discussing the uncertain definition of the territorial scope of the San Francisco Bay Area).

221. See, e.g., Frances Frisken, *Planning and Servicing the Greater Toronto Area: The Interplay of Provincial and Municipal Interests*, in METROPOLITAN GOVERNANCE, *supra* note 4, at 153, 153-54, 157 (noting that the Greater Toronto Area now overflows the boundaries of the Metropolitan Toronto government); Marie-Odile Trépanier, *Metropolitan Government in the Montreal Area*, in METROPOLITAN GOVERNANCE, *supra* note 4, at 53, 104 (most of the growth in the Montreal metropolitan area has been outside the jurisdiction of the Montreal Urban Community—the area's regional government).

222. In 1990, 10 of the 30 most populous metropolitan areas—and five of the top 10 metropolitan areas—crossed state lines. Henry G. Cisneros, *Interwoven Destinies: Cities and the Nation*, in DESTINIES, *supra* note 2, at 17, 23, tbl. 2.

More limited metropolitan structures, focused on governing the portion of the metropolitan area within a particular state, may be necessary.

Indeed, given the political difficulties of creating a metropolitan government, an alternative solution is greater state assumption of responsibility for the well-being of metropolitan areas. The creation of a metropolitan political structure would almost certainly require both state legislation and local voter approval, as well as the resolution of many complex questions concerning the political and administrative powers and territorial scope of the new metropolitan entity. A direct state role in metropolitan issues would obviate both the difficulties of determining those boundary questions and the obstacle of voter approval. Thus, from the practical perspective of addressing metropolitan problems, a case could be made for direct state governance of the metropolitan area. Moreover, given the significance metropolitan areas play in the economy of their states, the states have a considerable stake in the well-being of these regions.

Nevertheless, a metropolitan-level local government remains preferable. Some states have more than one metropolitan area, and most states with metropolitan areas also have significant nonmetropolitan components. Often there will be competition for public resources and private development between these different metropolitan areas and between the metropolitan and nonmetropolitan areas. Moreover, in some states there may be little interaction between the metropolitan and nonmetropolitan areas. Direct state governance could, thus, shift control to those uninterested in, if not hostile to, the metropolitan area. It might be difficult for a metropolitan area to take action on a matter of metropolitan significance if it had to depend on the interest and support of outsiders. Direct state governance would not provide metropolitan area residents the opportunity to voice their concerns on metropolitan questions that elections to a metropolitan government would. And direct state rule would do little to promote the notion of a metropolitan community among area residents.

Metropolitan governance would not by itself be a panacea for metropolitan area problems. Much would depend on the policies pursued by the metropolitan government. A critical evaluation of Toronto's metropolitan government noted that it had "done little to reduce the influence of local governments on the area's physical development."²²³ Without metropolitan land use policies that promote balanced development and fiscal policies that enable poorer localities to provide adequate local public services without straining local tax bases, metropolitan government could fail to ameliorate the sprawling growth and the separation of resources from needs that are the defining features of many metropolitan areas. Regional planning and fiscal equalization are needed, but metropolitan government may not provide them. After all, the voters who currently resist restrictions on local land use and fiscal autonomy would have a significant voice in the election of any metropolitan area government.

Yet, if metropolitan government is not by itself a solution to metropolitan area problems, it is unlikely that the necessary policies would ever be adopted

223. Frisken, *supra* note 221, at 191.

outside of some metropolitan government framework. The current local government structure promotes interlocal competition for land use and tax base and makes it difficult to see, let alone act on, the regional interest. Regional land use planning and regional redistribution are unlikely to occur without some clear sense among area residents of the region as a distinct community with shared interests and a common fate. These policies rely on a mix of regional self-interest and regional equity concerns. As a matter of self-interest, regional development and regional fiscal equalization may improve the overall economic well-being of a metropolitan area, but that argument will have purchase with metropolitan area residents only if they see the metropolitan area as a distinct entity—as a “self” (to which they belong) that has an interest. Similarly, equity arguments for redistribution tend to operate within borders; that is, the notion of a duty to provide support for the needy and afflicted proceeds largely from a sense of membership in a common community. “[I]t is often said that our positive obligations to our fellow citizens are much more substantial than those we have toward ‘strangers.’”²²⁴ Implicit in the very notion of community is the idea of “people who care about or feel responsible for each other’s well-being.”²²⁵ The creation of a metropolitan political unit would provide a framework for the development of a sense of regional community,²²⁶ which is a practical precondition for fiscal redistribution within the metropolitan area.

The paradoxical relationship between metropolitan government and metropolitan community is central to the future of metropolitan areas. Metropolitan areas will require a sense of metropolitan community in order to curtail local land use and fiscal autonomy and promote policies for the overall development of the region. The sense of community will probably require a greater definition of the metropolitan area as a distinct territorial and political unit and some form of popular metropolitan collective action through a metropolitan government. Yet popular resistance to any metropolitan government that would displace or curtail existing local governments is likely to be powerful—and politically decisive—in the absence of an already existing sense of metropolitan community.

This is the “chicken and egg” conundrum at the heart of the metropolitan boundary problem: A metropolitan government is unlikely to be adopted without some prior sense of metropolitan community, but a sense of metropolitan community is unlikely to exist without some prior political definition of the area, that is, some metropolitan government. Most likely, metropolitan community consciousness and metropolitan governance structures will have to de-

224. ALLEN BUCHANAN, *SECESSION: THE MORALITY OF POLITICAL DIVORCE FROM FORT SUMTER TO LITHUANIA AND QUEBEC* 115 (1991).

225. ELKINS, *supra* note 51, at 168.

226. Of course, even a regional governance structure may not be sufficient to create a sense of regional community. As Judith A. Martin noted in her evaluation of metropolitan government in the Twin Cities, “[t]he fragility of the regional relationships that have evolved in the Twin Cities is evident. . . . Despite many years of *de jure* metropolitan cooperation, there is a *de facto* lack of consensus on many issues that have metropolitan significance.” Martin, *supra* note 20, at 240. On the other hand, it should be noted that Twin Cities regional institutions are appointed not elected.

velop in tandem, each reinforcing the other, each making the other more possible. Yet, at present, in most metropolitan areas, there are few regional political institutions—other than special districts and public authorities not intended to provide for popular participation in regional decisions—and little popular support for regionalism.

Some commentators have looked to the development of regional business, citizens' and nonprofit organizations, and cross-sectoral alliances linking these organizations and promoting public-private partnerships with area governments to promote regionwide cooperation and a sense of regional consciousness. The activities of these organizations may constitute a form of civic infrastructure that can provide a foundation for the adoption of more formal regional governance structures.²²⁷ Other writers have urged that federal assistance to states and metropolitan area localities be conditioned on greater interlocal cooperation, including regionwide planning.²²⁸ The Intermodal Surface Transportation Efficiency Act ("ISTEA") of 1991²²⁹ and the Clean Air Act Amendments of 1990²³⁰—which established new metropolitan planning requirements concerning transportation and air pollution—have been heralded as new federal incentives for metropolitan governance.²³¹ In this era of sharply declining federal intergovernmental assistance, however, federal aid programs are likely to be an uncertain lever for promoting metropolitan structures. Moreover, the federal metropolitan planning requirements of the 1960s and 1970s had little effect then, and even less long-term consequence, in promoting regional government.²³²

227. For a highly optimistic vision of the potential of business and nonprofit organizations, cross-sectoral alliances, and public-private partnerships to resolve problems of regional governance, see Wallis, *supra* note 165, at 292-93. Wallis argues that informal networks of private and public-private cooperation alone—without more formal governmental structures—can supply the governance that metropolitan regions need. *Id.* at 309. However, without the quintessentially governmental powers of land use regulation and taxation, Wallis' "third wave" of cooperative has done little to deal with the central problems of regional sprawl and fiscal disparities. Moreover, the alliances that he favors provide little opportunity for direct popular participation. Thus these alliances fail to satisfy regional governance needs, but they can be important in promoting a sense of regional consciousness and in providing crucial political support for more formal regional institutions. *Cf.* PEIRCE, *supra* note 3, at 322-25 (discussing the importance of a "strong citizen organization" to "undergird" governance in metropolitan regions).

228. See, e.g., DOWNS, *supra* note 14, at 175-79 (advocating the creation of a regional allocation agency); RUSK, *supra* note 9, at 102-16 (proposing tax incentives for reinvigorating central cities).

229. Pub. L. No. 102-240, 105 Stat. 1914 (codified as amended in scattered sections of 5, 15, 16, 23, 26, 33, 40, 42, 45, 49 U.S.C.).

230. Pub. L. No. 101-549, 104 Stat. 2399 (codified as amended in scattered sections of 42 U.S.C.).

231. ISTEA requires the designation of a "metropolitan planning organization" in each urbanized area with a population of more than 50,000 and requires that they be given significant authority to plan and allocate the federal highway and transit funds appropriated pursuant to the Act. Pub. L. No. 102-240, title I, § 1024(a), 105 Stat. at 1955 (codified at 23 U.S.C. § 134(b)(1)). The Clean Air Act Amendments' influence on metropolitan governance would be more indirect. By requiring state governments to create plans for meeting air quality standards in metropolitan areas where pollution exceeds acceptable levels, the Amendments could lead to the displacement of land use regulatory powers to the extent that local land use decisions contribute to area air pollution. See DOWNS, *supra* note 14, at 174-75 (discussing effects of "driving and commuting behavior" on air quality); Kincaid, *supra* note 17, at 475 (discussing Clean Air Act Amendments as examples of "regulatory regionalism").

232. See notes 164 & 191 *supra* and accompanying texts. For a critical evaluation of the much-ballyhooed ISTEA, see Jonathan Walters, *The Highway Revolution That Wasn't*, GOVERNING, May 1995, at 30.

Additional research into the apparent economic interdependence of localities within a metropolitan region might play an important role in helping make the case that metropolitan policies are in the self-interest of residents of the affluent localities that currently appear to benefit most from the current system of local control—assuming, of course, that future research confirms the recent studies that make the case for metropolitan interdependence.²³³ So, too, close contextual analysis of those metropolitan areas—such as Seattle, Portland, and the Twin Cities—that have gone furthest in the implementation of regional policies and governance structures may illuminate the political factors most conducive to regionalism. We need to know more about the political, economic, social, geographic or other conditions that contribute to a sense of regional distinctiveness and of regional community prior to the creation of formal regional boundaries and institutions.

There is little reason to be optimistic about the prospects for metropolitan governance. Hostility to metropolitan government is intertwined with a commitment to local autonomy that is deeply rooted in both law and politics. Yet, in most metropolitan areas true autonomy at the local level is illusory. Each locality is affected by the decisions of the other localities in the region, much as the interlocal competition to gain tax base and avoid service costs ineluctably constrains each locality's freedom to make its own decisions concerning taxes, services, and regulation. Even with minimal state intervention, the actions of other localities and the structure of interlocal relations limit the autonomy of any individual locality.

Decentralization, which is intended to promote the political empowerment of individuals and communities, has produced the very structural constraints that serve to limit the ability of metropolitan area localities to respond to the needs of metropolitan area residents. Local boundaries are too narrow to permit effective self-governance for metropolitan area residents. They need to be supplemented by a regionally bounded metropolitan political structure endowed with the regulatory and fiscal capacity to tackle regional problems and the accountability that election by a metropolitan area electorate provides. Indeed, this combination of local and metropolitan political structures can better promote the ultimate goals of decentralization than a decentralization focused on autonomy within existing local boundaries. The future development of metropolitan areas would benefit if decentralization proponents recognized that the values of decentralization would actually be better served by a less decentralized governance structure that enabled the people who live in metropolitan areas to find their common interests and collectively address their common problems.

233. See notes 104-122 *supra* and accompanying text.