2002

Facing the Urban Future After September 11, 2001

Richard Briffault
Columbia Law School, brfflt@law.columbia.edu

Facing the Urban Future After September 11, 2001

Richard Briffault

Vice-Dean and Joseph P. Chamberlain Professor
of Legislation, Columbia Law School;
J.D., Harvard University, 1977;
B.A., Columbia University, 1974.

THE TERRORIST ATTACK on the World Trade Center in New York City was surely the most devastating assault by a foreign power on an American city since the British burned Washington in 1814. The terrorist attack caused nearly 3,000 deaths, or nearly five times all the other murders committed in New York City in 2001. The attack destroyed or damaged nearly 30 million square feet of office space, or almost 7 percent of all the office space in Manhattan.[1] The total economic loss to New York has been estimated at $83 billion, including $30 billion in capital losses, $14 billion in cleanup and related costs, and $39 billion in loss of economic output through the end of 2003, as well as the loss of over 125,000 jobs.[2]

September 11 was not just an attack on the United States or on the largest American city. In a sense, it was an attack on urbanism itself. The last decade witnessed a period of modest but real urban revival in which a new appreciation for the urban virtues of population density, concentration of economic activity, openness to newcomers, lively public spaces, unplanned interactions, and social and cultural diversity—as well as concerns about the costs of suburban sprawl—had led to a resurgence in urban life. The 2000 Census disclosed the first decennial increase in New York City's population in a half-century, with the city passing the 8 million mark for the first time in its history. September 11, however, turned many of the urban virtues upside-down. The con-

1. COMPTROLLER ALAN G. HEVESI, CITY OF NEW YORK, PRELIMINARY ESTIMATE: THE IMPACT OF THE SEPTEMBER 11 WTC ATTACK ON NYC'S ECONOMY AND CITY REVENUES 5 (Oct. 4, 2001), *available at* http://www.comptroller.nyc.ny.us/BUREAUS/fiscal/reports/WTC_Attack_Oct_4-final.pdf.

2. NEW YORK CITY PARTNERSHIP AND CHAMBER OF COMMERCE, WORKING TOGETHER TO ACCELERATE NEW YORK'S RECOVERY: ECONOMIC IMPACT OF THE SEPTEMBER 11TH ATTACK ON NEW YORK CITY 7 (Nov. 2001), *available at* http://www.nycp.org/impactstudy/study.htm.

centration of people and structures in downtown New York contributed directly to the devastation, with the crashing of the hijacked airplanes resulting in far greater loss of life and destruction of property at the World Trade Center site than the similar hijack attack on the suburban Pentagon. So, too, the dense transit, utility, and telecommunications infrastructure of lower Manhattan spread the impact of the attack to homes and workplaces far from the Twin Towers. More controversially, for at least some people, the openness and diversity of our cities raise questions about our ability to secure them from future attacks.

September 11 demonstrated the vulnerability of American cities to terrorists, but the attack and its aftermath also illustrated the strength and resilience of our cities. The hours of the attack revealed as never before the heroism of the city's firefighters, public safety officers, and emergency response personnel and the professionalism of the city government. Tens of thousands of people were swiftly evacuated from lower Manhattan, a rescue operation undertaken in the still-smoldering ruins. Before the day was over, work had also begun on restoring the region's shattered electric, telecommunications, and transit systems. The following days and weeks witnessed an unprecedented outpouring of compassion for the survivors and the families of the victims through organized charities and the informal acts of kindness of neighbors, workers, employers, and total strangers. Since then, the clean-up of the World Trade Center site has proceeded at an astonishing pace; what was once anticipated to take up to a year and a half was officially completed on May 30, 2002, less than eight months after the attack.[3] Lower Manhattan's residents who were forced from their homes have returned, and the area's schools have reopened, as have seven of the eleven damaged subway stations. Many stores and offices have also reopened, as have several downtown hotels. A portion of the World Financial Center, right on the edge of Ground Zero, reopened in early February 2002.[4] The developer who had acquired the lease for the World Trade Center site a few months before the attack has announced plans to begin the rebuilding of Seven World Trade Center, the building just north of the Twin Towers.[5] Some of the downtown firms that sent their displaced workers out of the city in the immediate aftermath of

3. Dan Barry, *Where Twin Towers Stood, A Silent Goodbye,* N.Y. TIMES, May 31, 2002, at A1; *Six Months Later,* GOTHAM GAZETTE, Mar. 11, 2002, *at* http://www.gothamgazette.com/iotw/911_sixmonths.

4. Glenn Collins, *World Financial Center Reopens a Bit,* N.Y. TIMES, Feb. 5, 2002, at B3.

5. *See* William Neuman & Maggie Haberman, *Deal Near on a New 7 WTC,* N.Y. POST, March 9, 2002, at 8.

the attack have brought those workers back to New York,[6] and Manhattan's high-end residential real estate market is "rebounding."[7] Nevertheless, even with co-op and condo open houses "full to bursting," subways jammed with residents and workers, new office construction projects underway, and commercial and resident activity continuing, life in New York and other American cities remains shadowed by the events of September 11. Employment remains down.[8] Some firms displaced by the attack have relocated their workers outside,[9] and other firms are hunting for out-of-city locations to provide emergency quarters. Some people have left the city, and others who had previously thought about coming have changed their minds. Downtown residents are apprehensive about their neighborhood's air quality,[10] and businesses and residents throughout the city have to cope with an array of new security measures, as well as our anxieties about the possibilities of new acts of terrorism. City residents continue to worry about the safety of their homes and families. We are all aware of our vulnerability to attack and the devastating consequences such an attack can have.

Our national leaders have suggested that September 11 marks the onset of a new era of world conflict, with terrorists aiming to maximize civilian casualties and psychological impact rather than destroy traditional military goals. America's cities, with their population density and concentration of fragile transportation, telecommunications, electric, and other utility lines, will surely be prime targets for attack—the "front line" as the title of this Symposium issue puts it—of the war on terrorism, or, more accurately, terrorism's war on us. So, too, the crucial roles of physical and social mobility, of open space and open attitudes to newcomers, in contributing to urban life may be both a source of risk in providing opportunities for anti-civilian terrorists and at risk as we pursue new security measures.

September 11 raises critical issues about the future of our cities and the ability of our cities to respond to this new urban challenge. Indeed, as September 11 demonstrated, the ability of cities to prepare for and react to terrorism will be of national significance since local govern-

6. *See* Jayson Blair, *Amex Coming Back to Lower Manhattan,* N.Y. TIMES, Mar. 1, 2002, at B3.

7. *See* Tracie Rozhon, *Real Estate in Manhattan is Rebounding,* N.Y. TIMES, Mar. 13, 2002.

8. Leslie Eaton, *City Is Losing Jobs Despite Signs of a Rebound on the National Level,* N.Y. TIMES, Mar. 22, 2002, at B1.

9. *See* Eric Herman, *More Jobs Headed to Hoboken,* N.Y. DAILY NEWS, Feb. 25, 2002, at 34.

10. *See Six Months Later, supra* note 3.

ments will also be at the front lines of our national response. In our federal system, public safety, maintenance of order, public health, and emergency response to disaster have traditionally been local responsibilities. As a result, terrorism is likely to be a local problem at least as much as a national one—albeit a local problem in which there is an enormous national stake.

In this essay I would like to address briefly four issues of importance to local governments raised by the September 11 attack and its aftermath. These issues are the role of local governments in addressing questions of public safety and preparedness; the relations among local governments within a region in responding to terrorism; the role of the federal government in the local response to terrorism; and the implications of September 11 for the structures and functions of local government. These issues are interconnected. Certainly, an effective local response to the public safety challenge posed by terrorism will require more coordinated interlocal relations and stronger federal support for local government. So, too, the greater burdens on urban governments in the post-September 11 world will put an even greater premium on local democracy, accountability, and attention to local government's public responsibilities. These are issues which have been at the heart of local government law and central to debates over local government for years. After September 11, however, these issues have become even more important than before, and the consequences of mistakes or inaction in addressing these questions are potentially devastating.

I. Public Safety

Public safety has long been a defining issue before cities. Max Weber traced the origins of the city to "the fusion of fortress and market,"[11] in which the castle of a military ruler or a confederation of knights provided a safe haven in which trade and commerce could take place. More recently, Jane Jacobs wrote of the "fundamental" or "bedrock" importance of safe streets, sidewalks, and other public places in making urban life possible.[12] Much as the great wave of street crime that marked the 1980s and early 1990s fed that era's sense that cities faced a grim future, the dramatic improvements in crime prevention in the mid-1990s and after contributed to the greater optimism about urban life in the months and years immediately before September 11.

Cities provide enormous economic agglomeration advantages and

11. MAX WEBER, THE CITY 77 (Free Press 1958).
12. JANE JACOBS, THE DEATH AND LIFE OF GREAT AMERICAN CITIES 29–30 (1961).

cultural benefits for the firms and individuals that do business there and the people who live there, but increasingly, due to advances in information systems, telecommunications, and transportation, many of these benefits are available outside urban areas in places without the crowding, congestion, and other disamenities of urban life. Although cities have continued to retain their appeal, the cost/benefit ratio has been shifting against cities for some time, as the steadily declining city share of our national population and economic output indicates. By raising new concerns about the safety of dense urban areas, the World Trade Center attacks threaten to shift that cost/benefit calculus still further against the cities. Whatever the economic and cultural opportunities of working, living, or doing business in a city, firms, employees, and residents will flee if they are not, and do not feel, secure. Urban public safety departments, particularly those in big cities, will have to give a new and high priority to the deterrence, prevention, and detection of terrorist threats. This new priority will require a variety of responses, ranging from a highly visible police presence, physical barriers, and new threat-detection technologies at vulnerable sites to plain-clothes detective work, street investigations, intelligence-gathering, data collection, and analysis. Detection will be important in learning of, and thus responding to, silent chemical, biological, or radiological attacks. Public health systems, in particular, will need to be strengthened to improve their ability to determine if a bioterrorism attack is underway. Public health systems will almost certainly need more and improved resources for monitoring and analyzing threats, as well as new training in how to quickly and effectively disseminate vital information to healthcare professionals and the public. More generally, local law enforcement agencies will have to learn to work more closely with each other as well as with public health personnel and the private sector—from private security firms to pharmacists reporting a surge in certain medications—in monitoring and responding to potential threats. Coping with the terrorist threat will require training in new investigative techniques, a shift from turf-protection to cooperation, investments in new equipment and technologies, and a commitment to take terrorism seriously. Some commentators, citing the success of the New York Police Department in responding to crime in the 1990s[13] and the development of advanced threat-recognition technologies,[14] are optimistic

13. *See* Heather MacDonald, *Keeping New York Safe From Terrorists,* 11 CITY J. No. 4, Autumn 2001, at 58–68.

14. *See* Peter Huber & Mark P. Mills, *How Technology Will Defeat Terrorism,* 12 CITY J. No. 1, Winter 2002, at 24–33.

about the ability of security forces to respond to the terrorist threat. Let us hope they are right.

In the age of terrorism, public safety will involve more than the prevention and detention of threats. Cities must also be prepared to respond swiftly and professionally if an attack occurs. They will, thus, need to invest in emergency disaster control, rescue, and recovery programs. Like prevention and detention, these initiatives may also require new training, equipment, facilities, public information, and management skills. Public health systems are likely to need special attention. "Over the past decade, health care has become leaner: fewer empty hospital beds, more intensively used equipment, just-in-time restocking of pharmaceuticals and supplies, and tighter medical staffing at all levels. But squeezing the fat out of the health care system has left it with far less residual capacity to respond to disasters and other emergencies."[15] In destroying the Twin Towers, the World Trade Center terrorists killed nearly all their victims. Future attacks, however, could produce thousands of ill or wounded people in need of emergency medical care. Public health systems will have to prepare for that horrifying possibility.

Observers have credited New York City's emergency mobilization system, which was put into place after the 1993 bombing of the World Trade Center, for the city's "exemplary" performance on September 11 and the days after.[16] Other cities will have to develop similar systems. Indeed, even before the September 11 attack, many localities had been improving their emergency response systems and planning the coordination of their police, firefighting, and public health services to deal with disasters. In many places the impetus was not terrorism, but other crises, such as earthquakes, fires, floods, hurricanes, or hazardous material spills.[17] These systems may be adaptable to the terrorist threat, and the experiences gained in interagency cooperation and emergency response in dealing with other disasters may be valuable preparation

15. Arnold Howitt, *New York's Preparedness Should Inspire Other Cities to Act,* BOSTON GLOBE, Sept. 16, 2001, at D8.

16. *See id.* (stating that, A"[f]ew other cities in the United States could have responded to the World Trade Center attack last week as well as New York City has."); Beth Daley, *Personnel's Efficiency Put Them in Death's Path,* BOSTON GLOBE, Sept. 13, 2001, at A6 (stating that, "since the attack, it's become clear no one has been trained like New York's emergency personnel"); Ellen Perlman, *IT in the Ruins,* GOVERNING, Nov. 1, 2001, at 38 (crediting New York City's preparedness planning for the rapid restoration of telecommunications systems damaged or destroyed in the World Trade Center attack).

17. John Buntin, *Disaster Master,* GOVERNING, Dec. 1, 2001, at 34 (discussing the Incident Command Systems in place in many California localities).

for addressing a terrorist incident. Just as importantly, greater preparation to deal with terrorism may improve local governments' ability to cope with other emergencies. Local governments have long been—and are likely to remain—the front lines for dealing with fire, floods, hurricanes, and earthquakes, and they generally need to focus greater attention on dealing with disasters. September 11 could have the effect of making local governments better prepared to deal with emergencies and disasters generally.

Complicating the entire security question is the need to reconcile security with the open and effective operation of cities. It is not simply that the openness and the frequent, easy interactions that define urban life make cities more difficult than other nonurban areas to secure. Rather, openness to new people and ideas, mobility, interchange, and encounters with strangers go to the essence of urbanism. As Weber noted, cities grew out of the fusion of the fortress and the marketplace. Without those markets, those urban settlements would have been merely fortresses or castles, not cities. New security measures will, in the long-run, prove counterproductive if they unduly burden the movement of people, goods, information, and ideas that make our cities thrive. Even if people feel safe in the cities, they may still prefer to live, work, or do business elsewhere if getting around is too difficult, or if security measures make movement too time-consuming. So, too, as Jane Jacobs explained, the lifeblood of a city is its streets, sidewalks, and public places. Even if safer, cities may lose their energy and cultural appeal if their public places are closed off or hemmed in by bunkers and barriers. These problems may be handled by the more sophisticated incorporation of security concerns into urban planning and architectural design, as well as by more technologically advanced security systems. However, the future of the cities turns on the ability of urban leaders to address mobility, openness, and public space concerns in tandem with public safety issues.

II. Regionalism

September 11 demonstrated as never before the regional nature of our cities. The destruction of the World Trade Center was a physical tragedy of regional scope. The Twin Towers may have been located in Manhattan, but they were the hub of an economic region that drew commuters from three states, including at least a dozen counties, who may have traveled as much as seventy-five miles in each direction to get to and from work each day. The poignant newspaper profiles of the missing and the dead were filled with accounts of people who hailed from

Long Island, Westchester County, the Hudson Valley, Connecticut, and much of northern New Jersey, who either worked in the World Trade Center, or served as New York City or Port Authority police officers, firefighters, or rescue workers. Middletown, New Jersey, roughly an hour away from the City, lost 36 residents.[18] Tiny Warwick, New York, a village sixty-five miles from Manhattan and nestled amidst "apples orchards and cornfields, old stone houses, silos, and grazing cows," lost eight residents, including six firefighters.[19] Exurban Orange County lost a total of twenty-four residents, including Warwick's eight victims.

The response to the attacks was regional in scope as well. Walking the streets of Manhattan north of 14th Street on the Wednesday after the attack, I was repeatedly struck by the large number of fire engines, police cars, and EMS vehicles from fire departments, sheriff's offices, and other local government agencies bearing names of the counties, towns, and villages of Long Island, Connecticut, New Jersey, and upstate New York. Although the local governments in the New York area typically engage in a vigorous competition for businesses and investment, with the suburban communities often trying to deny their ties to New York City and their stake in the city's economic and social health,[20] September 11 evoked an unprecedented outbreak of spontaneous interlocal cooperation and support.

Far greater, and far more sustained, regionalism will be necessary if our cities are to meet the challenge of terrorism. Terror targets may include facilities—office towers, airports, power plants, transit systems, and reservoirs—that serve whole regions and require a regional effort at protection. So, too, terrorists may live and operate from any number of localities within a region. Terrorist networks may probe and test potential targets throughout a region. The sharing of police and intelligence information among cities, counties, and the public authorities that typically manage airports, transit systems, ports, and water systems, and other infrastructure is crucial. Moreover, the additional personnel, equipment, and technology necessary to prevent, detect, analyze, and address terrorist threats and respond to emergencies will be costly, and those costs ought to be shared regionally. Certainly, the public health response is likely to require access to regional resources.

18. Dale Russakoff, *N.J. Town Becomes Community of Sorrow; Commuter Haven Took Heavy Hit,* WASH. POST, Sept. 24, 2001, at A1.

19. Ruth Padawer, *Vigil Lights Burning Lower in Village of N.Y. Firemen; Warwick Hit Hard by World Trade Center Tragedy,* BERGEN RECORD, Sept. 30, 2001, at A10.

20. *See, e.g.,* GERALD BENJAMIN & RICHARD P. NATHAN, REGIONALISM AND REALISM: A STUDY OF GOVERNMENTS IN THE NEW YORK METROPOLITAN AREA (2001).

The only way most localities can have the "medical surge capacity"—ambulances, medical personnel, hospital beds, blood, and medication—to deal with the potential for thousands of casualties will be to look to their neighbors.

Effective public safety, public health, and emergency preparedness will require a high degree of continuing interlocal cooperation, with "joint training, joint investment, and coordinated regional [planning]."[21] California's "incident command system," for example, is highly regional in its approach, no doubt reflecting its origins in response to the Southern California wildfires and earthquakes that do not respect city boundary lines.[22] At the very least, the various local police departments, fire companies, and EMS forces need to cooperate on communications infrastructure to make sure that their radios, telephones, and walkie-talkies can communicate with each other. Certainly, regional interoperability standards and equipment are a basic necessity for an effective regional response to a regional attack.

More importantly, metropolitan areas may want to consider the creation of regional security and preparedness structures to deal with terrorism and other disasters of regional scope. Regionalism has long been the unwanted stepchild of local government law. Although metropolitan areas have long functioned as social and economic regions, with residents regularly criss-crossing local borders as they carry on their daily lives, and firms, stores, and entertainment centers drawing their employees and customers from localities across the region, most areas have strenuously avoided regional government, preferring to keep political authority, and regulatory, taxing, and service-delivery authority at the local level.[23] This has had its costs, including sprawling land-use patterns, economic and racial residential segregation, persistent tax and service inequities, and difficulties in creating the infrastructure and engaging in the coordinated strategies necessary for effective interregional competition.[24] Yet, enough people in most regions have, typically, preferred to incur these costs rather than risk the loss of local control that they fear will come with regional governance.

However, although few regions have general purpose regional governments with broad fiscal and regulatory authority, many regions have

21. Neal Peirce, *Regional Anti-Terrorism Plans: Critical to Save Money, Lives,* NATION'S CITIES WEEKLY, Nov. 26, 2001, at 2.

22. *See* Buntin, *supra* note 17.

23. *See generally* Richard Briffault, *The Local Government Boundary Problem in Metropolitan Areas,* 48 STAN. L. REV. 1115 (1996).

24. *See* Richard Briffault, *Localism and Regionalism,* 48 BUFF. L. REV. 1, 7–14 (2000).

created regionwide government institutions to deal with certain matters of regional scope. Typically, these concern matters of physical resources or physical infrastructure—like water supply, flood control, pollution control, or transportation—that can only be addressed on a regional basis and have limited implications for such core local matters as land-use regulation or taxation. Like air, water, and transit, the new post-September 11 security and preparedness questions lend themselves to treatment on a regional scale, with minimal restrictions on local autonomy. Regionalism in security and preparedness is likely to focus on cooperation, coordination, shared training and purchasing, and the mutually agreeable allocation of responsibilities among participating localities. Although some formal structures to organize, sustain, and institutionalize cooperation may be desirable, these structures are likely to focus on the organization of collaboration, rather than top-down command. Coupled with the considerable value added by regional cooperation in public safety and emergency response—and the potentially catastrophic costs in the absence of cooperation—security and preparedness may be prime areas for regional approaches to governance.

Indeed, both the regional ramifications of terrorist attacks and the experience of regional cooperation on security matters could conceivably promote a broader acceptance of regional interests and a greater willingness of cities and suburbs to come together on matters of mutual concern. Self-interest, or, more precisely, the recognition of one locality's interest in the well-being of other localities and of the region as a whole, is critical to any future regional initiatives or regional governance mechanisms, but self-interest is not a purely objective fact. Whatever the economic and social data on the shared fates of cities and suburbs within a region,[25] many local residents are unpersuaded that the well-being of their community is linked to that of its neighbors. Perhaps the regional dimension of September 11, and the benefits of regional cooperation in preventing, preparing for, and responding to disasters in the future, will help persuade more people that they live in a metropolitan regional community, as well as in a particular city, town, or village.

One test of this will be the extent to which localities are willing to share the fiscal costs of security and preparedness. An outstanding example of the unfair and inefficient consequences of our current regional system grows out of the general lack of mechanisms for regional tax-base sharing. New industry, commerce, or residential development can

25. *Id.* at 12–14.

have consequences for an entire metropolitan region, yet under the tax rules in effect in nearly all states today, the property tax benefits of growth accrue only to the particular localities in which property tax growth occurs.[26] Similarly, sales taxes are paid only to the localities where the sales occur, even if purchasers come from throughout the region. Local income taxes are generally paid only to localities where wage-earners live, not to the localities where they work. Other localities—which may bear some of the costs of that growth, or which may provide amenities or services that support that growth—gain no additional revenues from new investment in neighboring jurisdictions. Indeed, localities compete vigorously with their neighbors for corporate headquarters and business locations, offering subsidies, tax credits, and other sweeteners to induce firms to cross local lines. These practices are costly for the localities and produce no gains for the region. These practices illustrate the extent to which New York and most other metropolitan areas are simultaneously both regions for economic purposes and collections of dozens or hundreds of smaller localities for political and tax purposes.

New York City is now in a position where it must offer new subsidies and incentives to persuade skittish firms and residents in lower Manhattan to remain in, or return to, the city. It does so, in significant part, in order to protect its tax base. Indeed, so long as firms that lost offices in September 11 continue to occupy space out of the city, the city will continue to suffer the fiscal consequences of the attack. Yet, from a regional perspective, some moves out of the city to nearby communities might make sense. Certainly, firms may see real benefits in having some offices outside of the congested downtown area and may also desire to have multiple locations to minimize the vulnerability to disaster that could arise from a single site. New York City might also benefit from less strain on its infrastructure. So long as these offices remain within the region—like the many firms that relocated, temporarily or permanently, to Jersey City or Hoboken after September 11—there is little impact on the region's economy. Yet, because of the parochial nature of local taxation—and the heavy dependence of local police, fire, public health, and other vital local spending on the local base—the specific municipalities in which firms locate their offices matters very much to the well-being of individual localities, and to the people who depend on their services.

26. Minnesota's Twin Cities metropolitan area, with its system for sharing the benefits of tax base growth, has long been a distinct exception. *See* Vill. of Burnsville v. Onischuk, 222 N.W.2d 523 (Minn. 1974).

The regional nature of metropolitan economic and social political activity has long been a powerful argument for at least some regional tax base, or tax growth, sharing. The events of September 11 reinforce that argument by underscoring the need for regional spending and investment on security and preparedness, the fiscal vulnerability of central cities in an era in which cities may be seen as targets for future attacks, and the potential value to a region of diversifying the locations of firms. Instead of tax breaks and subsidies to persuade firms to locate in New York City or to persuade individuals to shop or live there, the states and local governments in the New York area should consider making the exact location of firms, residences, or shopping less important and to provide for ways of tapping into the regional tax base, at the very least to support security and preparedness measures, if not to support the region's local governments generally. Indeed, greater regionalization of local finances would be a step forward in nearly all major metropolitan areas.

III. Federalism

September 11 also provided a new illustration of the centrality of federalism to American governance. One hallmark of our federal system has been the crucial role of the states and especially local governments in dealing with issues of safety and security. Although September 11 was an attack on our nation, most of the domestic response involved local governments. Not only was it New York City police, firefighters, and emergency medical personnel who responded to the attacks on the World Trade Center—but it was similar local public health and safety workers from the District of Columbia and various Virginia and Maryland counties who battled the consequences of the terrorist attack on our most important federal military installation, the Pentagon. So, too, in the anthrax attacks of October, much of the response involved state and local doctors and public health personnel. The vast bulk of the public effort to increase the security of public buildings, public spaces, and vulnerable infrastructure facilities has involved state and local security officers, not the federal government. More generally, in detecting and pursuing terrorists and preventing future terrorist attacks, the 600,000 local police officers are likely to play at least as great a role as the FBI and its 11,000 agents.[27] This is not simply a matter of numbers—although the enormous difference in the magnitude of the local

27. *See* Fred Bayles, *Mayors Are Front-line Commanders,* USA TODAY, Nov. 21, 2001, at A3.

versus federal police forces is surely relevant. Local police forces are likely to have far greater knowledge of local conditions and dangers, including access to informants and awareness of unusual or suspicious incidents.

The institutional structure of American governance indicates that state and local governments, with their much larger workforces and their much greater knowledge of local needs and conditions, will play a leading role in addressing safety and preparedness questions. Yet, the federal government surely has a critical role to play in addressing our new urban security needs. The federal government has infinitely better access to international information concerning potential terrorist threats. It also has much greater capacity to gather information from around the country, analyze data pulled together from multiple states and cities, and recognize patterns that suggest potential or actual threats. The federal government can also provide an important role in working with state and local governments to help them to develop their security and intelligence capacities. The federal government can study varying state and local security and preparedness measures and assess how well they work, or see where trouble spots arise. It can set benchmarks for state and local security and preparedness efforts, and can help low-performing governments improve their efforts. Indeed, simply by acting as a clearinghouse, gathering the information on different state and local managerial and institutional responses, exchanging such information, and providing opportunities for state and local officials to meet with each other and with federal officials, the federal government can improve local responses.

Of course, this will require the federal government to work *with* state and local governments; to share information about terrorist threats with governors, mayors, and police chiefs; and to treat state and local governments as partners in the terrorism war, not as pesky subordinates. This may be difficult, psychologically, for federal agencies to do. One commentator has already argued that "[t]he FBI's failure to include local law enforcement in its terrorism efforts is putting the country at risk."[28] An effective response to September 11 will, thus, require the federal government, particularly federal law enforcement, to accept the significant role that states and local governments are going to have to play and to work with them, rather than ignore them.

Most importantly, the federal government has access to a singularly important resource for meeting the terrorist threat—the federal treasury.

28. *See* MacDonald, *supra* note 13, at 60.

Increasing domestic security and preparedness will be expensive. Although much of the expenses will be directly incurred at the state and local level—with new personnel, training, technology, equipment, and supplies—much of the cost should be borne by the federal government. Most local governments are already at their fiscal limits. New public safety and preparedness efforts will either drive up local taxes or lead to cuts in other local programs. The local fiscal vise is likely to be most acute in large cities, which have the greatest safety-related security concerns, as well as the greatest concentrations of poor populations, and the greatest difficulties in adequately funding their basic programs.

Both basic principles of federalism and the greater revenue-raising capacity of the federal government suggest that much of the financial cost of meeting the terrorist threat should be borne by the federal government. Public safety and preparedness are national issues. Terrorist attacks on American cities are attacks on the United States, prompted either by particular American policies, or a general hostility to American politics, economics, and culture. The cities have certainly done nothing to bring on these attacks. The response must be national, and that means adequate national funding. Congress should, thus, consider a program of public safety and preparedness grants to state and local governments to enable them to train their workforces, obtain the necessary equipment, supplies, and technology, and, in general, bear the costs of dealing with the terrorist threat without having to cut into the limited local revenues available for other local programs. In addition, Congress should commit to helping local governments bear the costs of any terrorist attacks that do occur. Federal aid should include the costs of immediate response, clean-up, repair, and restoration of damaged infrastructure. Federal aid also should mitigate, at least for a period of time, the fiscal consequences of terrorist attacks.

Local governments provide local residents with police, firefighting, transit, schools, parks, libraries, sanitation, hospitals, income assistance, and a host of other basic public goods and services. Terrorist attacks that destroy local property, damage the local economy, and impair the ability of local governments to fund their programs hurt all local residents. In large cities, which typically have large concentrations of low-income people who are particularly dependent on local governments for public goods and services, the poor and working people are likely to be especially hard hit when local revenues are lost to terrorist attacks. These cities are also particularly unlikely to be able to make up lost revenues by increasing current tax rates, since that is likely

simply to fuel the willingness of at least some remaining city residents or firms to leave the city.

The loss of revenues due to the destruction of local property or the devastation of local economic activity should be recognized as one of the costs of terrorist attacks for which federal compensation is available. Although the federal government does not ordinarily guarantee local fiscal capacity or insure against the fiscal consequences of disasters, an international terrorist attack should be treated as a special case, as such an attack is really an attack on the United States.

IV. Local Democracy and Local Governmental Functions

Although the September 11 attack demonstrated New York City's resolute and professional response to an unprecedented and devastating challenge, the attack, and some of the developments since then, also underscore some of the structural and functional anomalies that beset governance in New York and other major cities. These include the significant policymaking role of unelected and quasi-autonomous public authorities, and the excessive tendency of many local governments to define economic development in terms of site-specific real estate investments rather than to focus on the more traditional and basic roles of local governments in providing high-quality public services and physical infrastructure. Both the role of public authorities and the undue attention to private-sector-inspired real estate projects over broader urban concerns are well illustrated by the World Trade Center itself.

The World Trade Center was a project of the Port Authority of New York and New Jersey, a bi-state agency originally created to finance and construct improved rail freight connections between Manhattan and New Jersey.[29] The Port Authority never did build the rail freight tunnel that inspired its creation, but the Authority did finance and operate numerous automotive Hudson River crossings as well as the New York area airports.[30] In the 1950s, it became the focus of the efforts of New York's Governor Rockefeller, and of the Governor's brother David Rockefeller, then the head of Chase Manhattan Bank and co-chair of an organization of downtown Manhattan real estate and finance interests, to stimulate economic development in lower Manhattan. Concerned about flagging downtown growth, they proposed a massive trade

29. *See* Michael Tomasky, *The Story Behind the Towers,* N.Y. REV. OF BOOKS, Mar. 14, 2002, at 10 (book review).

30. *See id.*

mart that they believed would stimulate private investment. The Rockefellers turned to the Port Authority to carry out their plans because the Authority "was bursting with money and had the ability to float bonds; it already owned some of the land in the neighborhood; and the governor controlled half the board."[31] The other half of the board was controlled by the governor of New Jersey, who ultimately agreed to the massive real estate development project in exchange for the Authority's takeover of a bankrupt commuter rail line that connected New Jersey with lower Manhattan.[32] The project drew considerable local opposition, primarily from the many neighborhood electronics retail merchants—the area was then known as "Radio Row"[33]—and the city government was lukewarm about a project that would take considerable property off the local tax rolls. Ultimately, the Port Authority condemned 164 buildings for the World Trade Center site,[34] and as many as 30,000 jobs were displaced. Because the governor was able to use the Port Authority to condemn the properties and finance the World Trade Center, the project never had to pass through the city's land-use review process, receive city government approval, or be tailored to city government concerns. An enormous project with significant implications for the future of one of the city's principal business districts was, thus, undertaken by a quasi-autonomous public authority with minimal city government involvement.

Nor is it clear that the World Trade Center was a particularly successful development project. As one critical observer recently noted:

> [w]hen finished, the towers seemed to drain more life out of downtown than they added. When the trade center's initial 10 million square feet of office space first hit the market in the 1970s, the result was such a glut of office space that lower Manhattan real estate values sank at a time when the city was economically struggling and could least afford it. Rather than attracting new firms to New York . . . it drew tenants from other lower Manhattan offices, driving up vacancy rates throughout the area.[35]

For years, the Trade Center was financially dependent on leases from state agencies. Only during the economic boom of the 1990s did the

31. Brian C. Anderson, *The Twin Towers Project: A Cautionary Tale,* 11 CITY J. No. 6, Autumn 2001, at 22, 24.

32. Then known as the Hudson & Manhattan line, or the Hudson Tubes, it is now the Port Authority Trans-Hudson, or PATH, train. *See id.* at 25.

33. See Michael Tomasky, *The World Trade Center: Before, During, and After,* 49 N. Y. REV. OF BOOKS, Mar. 28, 2002, at 17–18 (book review).

34. *See* Nancy Biberman, *Rebuilding Can Become a Lesson in Diversity and Democracy, at* http://www.gothamgazette.com/landuse (last visited May 17, 2002).

35. Anderson, *supra* note 31, at 26.

World Trade Center become truly profitable.[36] Even if the Trade Center did stimulate private investment, the public funds devoted to the center surely could have had at least as great a positive development benefit if they had been spent on New York's fraying physical infrastructure or its public school system. Indeed, some critics argue that the Port Authority's involvement in an enormous real estate project seriously and unfortunately distracted the Authority from its initial and primary mission—the maintenance and expansion of the New York area's strained transportation infrastructure.[37]

The post-September 11 rebuilding process currently underway looks like it will repeat at least the undemocratic structure that marked the transformation of Radio Row into the World Trade Center in the 1960s. Governor Pataki has entrusted the reconstruction and revitalization of lower Manhattan south of Houston Street to an unelected Lower Manhattan Redevelopment Corporation (LMRC). Unlike the Port Authority, which was created by the two state legislatures—and, as a bi-state agency, also required an act of Congress—and whose members are subject to confirmation by their respective state legislatures, creation of the LMRC involved no action by any legislature—city, state, or federal. Rather, it was established as a subsidiary of the Empire State Development Corporation, a public authority controlled by the governor. As a state agency, it has the power to take property by eminent domain, ignore city land-use regulations, and act without city consent. Moreover, even at the state level, as an independent authority it is subject to little legislative oversight. The Corporation's members were appointed directly by the governor, or by former Mayor Giuliani, without any review or action by the state legislature or the city council. Of the Corporation's eleven members, seven have been appointed by the governor, assuring him a dominant role—although the governor has recently stated he will allow Mayor Bloomberg to appoint three members, so that half of the appointments will be made by a New York City mayor, albeit a majority of those by the prior mayor, not the incumbent.[38] Although several members of the board have had experience in city government, the Corporation is composed largely of senior executives from the banking and financial services sectors. Only one member of the new board is a resident of lower Manhattan, and no one

36. Tomasky, *The World Trade Center*, *supra* note 29, at 18.
37. *See id.* at 19, 27.
38. Adam Nagourney, *Pataki Shares Power on Fate of Attack Site with Mayor: Governor to Share Power with Mayor on Rebuilding Authority*, N.Y. TIMES, Mar. 7, 2002, at B3.

represents the workers who lost their jobs due to the attack, small businesses in the area, or the families of people killed during the attack.[39] Although the Corporation has created numerous advisory councils to reach out to these groups, the Corporation has so far done little to create an open and broadly participatory public planning process.[40] Indeed, at least some meetings of the Corporation's advisory committees—the mechanism the Corporation has chosen to channel input from affected groups—have been closed to the public.[41]

The state's use of a fundamentally undemocratic structure to address the rebuilding of local Manhattan is not surprising. Public authorities, independent corporations, and so-called public-private partnerships dominated by corporate business interests have long played the central role in downtown development and redevelopment efforts, and not just in New York. Yet, turning the central role in planning the future of lower Manhattan to such a corporation seems particularly inappropriate. Mayor Giuliani's response to the September 11 attack demonstrated anew the importance of open and accessible government in rallying a city's people in a time of crisis. Open government is equally important in planning for the rebuilding of an area that is home to tens of thousands of people, the workplace of hundreds of thousands of more, an economic hub of the region, and the site of what is now one of the most hallowed places in the United States. The redevelopment of lower Manhattan will involve the resolution of difficult questions, and will raise potential conflicts among the families of the victims, the needs of residents, and the interests of a diverse host of businesses, ranging from the Wall Street financial sector to small dot coms to Chinatown restaurants, as well as the interests of residents and workers from throughout the city and the region. The decisions will also involve a host of physical planning questions, including the size, scale, and location of new office buildings, the opening or closing of streets, and the location and design of possible memorials and public spaces. The decision-making process needs the information, ideas, and participation of all those affected by the rebuilding and should be open and accountable to the public as a whole, if the results are to be truly legitimate.

The September 11 attacks have been characterized as an attack on democracy itself. It would be sadly ironic if the response to that attack

39. Tom Angotti, *The Make-Up of the Lower Manhattan Redevelopment Corporation, at* http://www.gothamgazette.com/landuse/dec.01.shtml (last visited June 8, 2002).

40. *See* Biberman, *supra* note 34.

41. William Neuman, *Developing Crisis: WTC Meet Closed,* N.Y. DAILY NEWS, Mar. 7, 2002.

is itself undemocratic. We can only hope that the LMRC addresses the democracy deficit in its basic structure by being open and accessible to the many groups affected by its determinations, and to the city and the region as a whole. We can also hope that attention to local democracy will be accompanied by a comparable return to the traditional and fundamental concerns of local government—public safety, a professional public workforce, high-quality physical infrastructure, and area-wide planning—rather than site-specific, private-sector-oriented economic development programs.

American cities have long been interested in economic development. In the more distant past, government economic development focused on the construction of public infrastructure—roads, bridges, wharves, streets, transit systems, water supply, waste removal, schools, and utilities—and the protection of property and the maintenance of order.[42] These programs provided public benefits generally, even as they enhanced the ability of a city's businesses to compete with firms elsewhere. Since World War II, however, governments have turned to providing direct assistance to individual firms and to supporting specific private projects. Local governments have used eminent domain to clear and assemble land for developers, helped developers and firms secure a mix of public and private financing for individual projects, and provided tax abatements for certain economic sectors or even particular firms. In effect, the nature of local economic development policy shifted from enhancement of the urban setting generally to targeted assistance intended to retain or recruit individual companies or groups of companies. These programs have been of uncertain benefit in actually promoting the broader economic development of cities, or even of downtown areas, as opposed to aiding particular firms. Moreover, they have often distracted cities from their traditional functions of providing public benefits and attending to the broader public interest.

Much as the World Trade Center demonstrated the uncertain benefits of site-specific economic development, New York City's response to September 11 confirmed anew the importance of the traditional local functions of public safety, public health, transportation, and professional public administration. New York could not have managed on September 11 and the days after without its high-quality police, fire,

42. *See, e.g.*, HENRIK HARTOG, PUBLIC PROPERTY AND PRIVATE POWER: THE CORPORATION OF THE CITY OF NEW YORK IN AMERICAN LAW, 1730–1870 at 153 (G. Edward White ed., 1983) (stating that the city government's "most important function" was to "create a predictable and consistent environment within which th[e] private market economy would flourish").

and EMS forces; its professional managers generally; and its excellent, although severely stressed, public transportation system. Certainly, New York City and other cities learned the significance of the improved performance of traditional urban functions in the 1990s, when improved policing played a role in the drop in crime, which was itself a critical part of the partial urban turnaround in that decade. So, too, business improvement districts have been popular in many urban downtowns and business neighborhoods because of their ability to focus additional resources on such basic urban needs as public safety, cleanliness, and street maintenance and improvements.[43]

The public role in the rebuilding of lower Manhattan ought to be focused on upgrading the area's transportation and utility systems, security issues, and planning broadly for the location of streets, public places, and office, commercial, residential, and other developments, but not in funding or subsidizing development itself. If present and potential firms, residents, and visitors perceive that the area is safe, accessible, attractive, and a good place to live, visit, or do business, then they will remain and return. If not, then highly targeted grants and subsidies are likely to be a waste of money.

More generally, if New York City is to fully recover from September 11, and if other big cities are to meet the challenge to urbanism that September 11 poses, then the cities must focus their attention anew on the fundamental needs of urban governance, particularly education, transportation, water and power needs, well-trained professional public work forces, and now, more than ever, public safety, public health, and emergency preparedness.

The World Trade Center was a towering symbol of New York City, a stunning exemplar of the city's celebrated skyline. But as its brutal destruction showed, the World Trade Center was really only a real estate project. The real New York City consists of the millions of people who live and work here. New York City, and other big cities, will survive if they remain places where people want to live, visit, and do business. The best way for city governments to make that happen is to focus on providing modern physical infrastructure and professional, high-quality services, both the safety and emergency services that made such a difference on September 11 and the ongoing services, like education, that have long been the fundamental responsibilities of local governments.

43. *See* Richard Briffault, *A Government for Our Time? Business Improvement Districts and Urban Governance*, 99 COLUM. L. REV. 365, 369–71 (1999).