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BUILDING COMMUNITY IN THE TWENTY-FIRST CENTURY: A POST-INTEGRATIONIST VISION FOR THE AMERICAN METROPOLIS

Sheryll D. Cashin*

CITY MAKING: BUILDING COMMUNITIES WITHOUT BUILDING WALLS. By *Gerald E. Frug*. Princeton: Princeton University Press. 1999. Pp. ix, 223. \$35.

"[T]he problem of the Twentieth Century is the problem of the color-line."¹

When W.E.B. DuBois wrote this prophetic statement at the dawn of the twentieth century, the American metropolis did not yet exist. Perhaps DuBois could not have predicted the sprawled, socio-economically fragmented landscape that is so familiar to the majority of Americans who now live and work in metropolitan regions. But his prediction of a "color line" that would sear our consciousness and present the chief social struggle for the new century proved all too correct. As we contemplate the twenty-first century, Gerald Frug's² book, *City Making*, makes clear that the problem of the color line continues in the form of local political borders. Local government borders define who gets what public benefits. They demarcate communities by race and income. They separate good school districts from bad. And, most importantly, they form the geographic boundary for local powers that can be wielded by those living within in ways that can harm those living without.

City Making attacks this problem of borders at its roots. It is an important book that deserves serious consideration by all who care about democracy and race relations in America. Frug analyzes our system of local government law, identifying clearly how the current structure of city power has "segregated metropolitan areas into 'two nations,' rich and poor, white and black, expanding and contracting" (p. 4). Undoubtedly, Frug's analysis will be familiar to those well-

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1. W.E. BURGHARDT DU BOIS, *THE SOULS OF BLACK FOLK* vii (3d ed. 1903).

2. Gerald Frug is the Samuel R. Rosenthal Professor of Law at Harvard University.

acquainted with the legal literature on local governance.³ But in the book, he offers fresh insights in a highly readable format that should be accessible to those unfamiliar with such scholarship.

The problem, as Frug sees it, is that our current legal conception of the city creates a duality of city power and city powerlessness, both of which “undermine the fundamental democratic experience of working with different kinds of people to find solutions to common problems” (p. 8). Affluent suburban localities benefit from a privatized conception of local autonomy because the legal system equates suburban local powers with “the protection of home and family and of private property” (p. 7). By contrast, central cities and older suburbs, saddled with increasing populations of poor people and attendant demands on their tax base, are incapable of using local powers in ways that wall out “undesirables.” Thus, as Richard Briffault has argued, only affluent suburbs are truly free to use local powers in ways that shape their economic destinies.⁴

On the other hand, Frug chafes at the limits states place on city power. Cities, unlike corporations, are powerless to pursue fully the collective vision of their citizen-members. They must rely on enumerated powers conferred by the state, rather than on any inherent authority to define their goals and powers from within (pp. 8-9). It is ironic that Frug is troubled by this subservience of cities to state laws and policies, given the invitation to self-interest wrought by suburban local autonomy. But he believes that only by reconceiving cities in a manner that frees them to negotiate the scope of their powers can the fundamental democratic enterprise for which cities were created be recaptured.

Frug aims to solve the twifold problems of local selfishness (city power) and local subservience (city powerlessness). Proposing “a local government law for the twenty-first century” (p. 5), he seeks “to defend a version of city power that does not rely on the notion of local autonomy” (p. 9). He would reject the vision of cities as something akin to autonomous individuals or sovereign nation-states — “cen-

3. See Gerald E. Frug, *The City as a Legal Concept*, 93 HARV. L. REV. 1057 (1980) [hereinafter Frug, *Legal Concept*]; Jerry Frug, *Decentering Decentralization*, 60 U. CHI. L. REV. 253 (1993); Jerry Frug, *The Geography of Community*, 48 STAN. L. REV. 1047 (1996); Jerry Frug, *City Services*, 73 N.Y.U. L. REV. 23 (1998). See also Richard Briffault, *Our Localism: Part I — The Structure of Local Government Law*, 90 COLUM. L. REV. 1 (1990) [hereinafter Briffault, *Our Localism: Part I*]; Richard Briffault, *Our Localism: Part II — Localism and Legal Theory*, 90 COLUM. L. REV. 346 (1990) [hereinafter Briffault, *Our Localism: Part II*]; Richard Briffault, *The Local Government Boundary Problem in Metropolitan Areas*, 48 STAN. L. REV. 1115 (1996) [hereinafter Briffault, *Local Government Boundary Problem*]; Sheryll D. Cashin, *Localism, Self-Interest, and the Tyranny of the Favored Quarter: Addressing the Barriers to New Regionalism*, 88 GEO. L.J. (forthcoming July 2000, on file with author); Richard Thompson Ford, *The Boundaries of Race: Political Geography in Legal Analysis*, 107 HARV. L. REV. 1841 (1994); Georgette C. Poindexter, *Collective Individualism: Deconstructing the Legal City*, 145 U. PA. L. REV. 607 (1997).

4. See Briffault, *Our Localism: Part II*, *supra* note 3, at 355, 408.

tered subjects" in the vocabulary of the theoretical literature.⁵ Instead, Frug would revolutionize local government law by premising cities on the image of the "situated" or "postmodern" self (pp. 73-89, 92-109). In other words, he would transform the legal definition of a city from one that equates city power with the ability to act like a self-interested individual, in order to account for the fact that no individual locality within a metropolitan region is an island. It is necessarily interconnected, in ways profound and minor, to the myriad of other localities, races, and socio-economic classes that make up the metropolis. By embracing these interlocal connections as part of the definition of what a city is, Frug reasons that local government law would be transformed so as to promote rather than frustrate regional collaboration on metropolitan problems (p. 10).

In transforming the legal definition of the city, Frug argues for "a new role for cities in American life," namely "community building" (p. 10). By "community building" he means "increasing the capacity of all metropolitan residents — African American as well as white, gay as well as fundamentalist, rich as well as poor — to live in a world filled with those they find unfamiliar, strange, even offensive" (p. 11). He offers a number of practical suggestions to facilitate this "being together of strangers" (p. 11). First and foremost, he would create "a wider public . . . that would produce a more meaningful experience of public freedom than is now available in many contemporary suburbs and city neighborhoods" (p. 22). The chief vehicle for realizing this aspiration would be a regional legislature through which representatives from disparate communities would negotiate how power would be exercised by the localities in a given metropolitan region (pp. 86-87, 162-63). Thus, Frug imagines that intercity negotiation and compromise, rather than state control, would best curb local selfishness (p. 63). This reliance on democratic participation and negotiation, rather than on state-level mandates, is crucial, Frug believes, to achieving long-term sustainable change. For only if citizens experience the exercise of city power and the resolution of intercity conflict will they begin to eschew selfishness (pp. 80-81). Thus, for Frug, the route to a more capacious metropolitanism⁶ is more public freedom at the local level, not less.

In addition to these central ideas, Frug offers an extended legal history of cities, underscoring that "a complex transformation occurred over a period of hundreds of years . . . that increasingly narrowed the definition of the city's nature to that of a state subdivision authorized to solve purely local political problems" (p. 52). Frug also

5. See, e.g., *id.* at 444-45 (describing the localist definition of cities as "individuals" with strictly defined boundaries and a limited range of issues that concern them).

6. Throughout this review I use "metropolitanism" to mean an ability of citizens of the metropolis to be with, collaborate with, and support one another.

offers a number of practical suggestions for how city powers and functions might be reconstructed in light of his reformulated definition of the city.⁷ In this review, however, I will focus only on Frug's struggle with the conundrum of city power and powerlessness. In my view, this struggle is critical because it mirrors the real-world tensions that metropolitan America must come to terms with if we are to achieve an equilibrium that bodes well for democracy and race relations in the twenty-first century.

There is much that Frug gets right in this book, particularly his insightful analysis of the impact of our local governance regime in encouraging and rewarding selfish or self-maximizing behavior on the part of localities and neighborhoods. I believe he also is correct to adopt a realistic approach to community building which accepts that the romantic ideal of community or full integration is not likely to be achievable. Finally, Frug is also quite right to acknowledge the sheer difficulty of bringing his vision of a "being together of strangers" to fruition.⁸

That said, I believe Frug's proposed solutions are misguided because they do not account sufficiently for the real-world realities of metropolitan politics. In short, enacting the structural changes he suggests, *ab initio*, would require the type of coalition politics that his proposals are designed to foster. Thus, it is unclear how his proposed reforms would ever come into being. More fundamentally, I believe effective metropolitanism will require strong regional institutions that wield some of the power now vested in cities. We may need to reduce the power of individual cities in order to expand the capacity of metropolitan regions to solve serious problems that transcend local borders.⁹ Finally, although Frug is unclear about the degree of consensus he

7. In the final part of the book, for example, Frug offers an alternative way of understanding and organizing the delivery of city services, including education and police policies, that rejects a "consumer-oriented" model premised on residency and individual tastes. Instead, he offers a number of suggestions "to transform city services into vehicles for community building." P. 175.

8. P. 116 (quoting IRIS MARION YOUNG, *JUSTICE AND THE POLITICS OF DIFFERENCE* 237-38 (1990)).

9. Such regionalist proposals have been suggested by a number of policy writers and advocates. See, e.g., ANTHONY DOWNS, *NEW VISIONS FOR METROPOLITAN AMERICA* (1994) (advocating metropolitan-wide cooperation); MYRON ORFIELD, *METROPOLITICS: A REGIONAL AGENDA FOR COMMUNITY AND STABILITY* 11-12 (1997) (advocating, *inter alia*, regional fair housing, property tax-base sharing, land use planning and growth management, public works and transportation reform, and an elected metropolitan coordinating structure); NEAL R. PEIRCE, *CITISTATES* (1993) (arguing for regional approaches to economic development, environmental concerns, transportation, and other issues); DAVID RUSK, *INSIDE GAME / OUTSIDE GAME: WINNING STRATEGIES FOR SAVING URBAN AMERICA* 147, 327-33 (1999) (advocating regional land use planning, tax-base sharing, and "social housing"); DAVID RUSK, *CITIES WITHOUT SUBURBS* (2d ed. 1995) (advocating annexation and regional governance); Anthony Downs, *Ecosystem: Suburban, Inner City*, J. PROP. MGMT., Nov./Dec. 1997, at 60 (advocating regional governance and tax-base sharing).

would require in order for a regional legislature to effect a change in local governance, I believe affluent suburbs will never be willing to negotiate away the degree of power and influence that they currently wield in metropolitan and state politics.

But the chief value of Frug's book is not in his ultimate proposals. Rather, by struggling mightily to imagine a different legal order from the one so well-entrenched in the American psyche, he illuminates the possibilities. He persuades the reader that the existing fragmented metropolitan landscape is not a pure market phenomenon dictated merely by popular preferences for suburban living. More importantly, he should convince most readers that a change in legal paradigms is necessary if we truly value social cohesion and the long-term stability of metropolitan regions. In my view, there is no more pressing issue for the new millennium. Under the current system, as the United States becomes more diverse, we are likely to see an acceleration of existing trends. Gated communities and homogeneous suburban enclaves that give residents a sense of comfort and control over their social and economic destinies will continue to proliferate. In turn, such balkanization of the metropolitan polity is likely to harden attitudes, entrenching an unfamiliarity and discomfort on the part of all citizens with anyone who can be described as "other." As our collective capacity for empathy with persons who are different subsides, it will become much more difficult to forge coalitions across boundaries of geography, class and race. It will become much more difficult for society to solve problems that may require shared sacrifice. Frug points us in a different direction, offering some hope that we could conceive and pursue a more positive course.

I. THE THEORETICAL ANALYSIS: TRANSFORMING THE LEGAL CONCEPTION OF THE CITY

The starting point for Frug's critique is the legal definition of the city. As he established in his seminal article, *The City as a Legal Concept*,¹⁰ courts struggled for several centuries with the question "whether cities are an exercise of individual freedom or a threat to that freedom" (p. 24). "[T]he general answer developed by the legal system has been to identify the city with the state and to conceive of it as a threat to freedom" (p. 24). Early American cities, like medieval European towns, had been bulwarks against state authority. Like private corporations, they exercised a degree of self-defined authority based upon values of property, freedom of association, and self-government (p. 43). By the late nineteenth century, however, city

10. Frug, *Legal Concept*, *supra* note 3.

powerlessness was crystallized in legal doctrines, like Dillon's Rule,¹¹ that formally rendered cities subject to state authority. As a result, Frug laments, "[c]ities . . . lost their economic strength and their connection with the freedom of association, elements of city life that had formerly enabled cities to play an important part in the development of Western society" (p. 53).

Frug seeks to resurrect an important mission for cities in American society. His aim is to reconceive cities in a manner that reestablishes their importance in the lives of their inhabitants and confers upon them an indispensable place in American society (p. 55). In Frug's view, this venture is worthwhile because cities "offer the possibility of dealing with the problematic nature of group power [in the American metropolis] by reinvigorating the idea of 'the public' " (p. 60). Much of the book — indeed its most interesting aspect — is dedicated to exploring what private individuals will gain from the creation of a broadened public sphere. But a prerequisite to creating this broader public is a transformation of the concept of the city. We must, Frug argues, do away with the privatized conception of local autonomy so dear to many suburbanites. By equating cities with individual, albeit collective, autonomy, the current legal definition of the city encourages inward-looking maximization of self-interest and "fuels a desire to avoid, rather than to engage with, those who live on the other side of the city line" (p. 62). Local government law thus creates a privatized relationship *between* cities: because cities are creatures of the state, their only meaningful intergovernmental relationship is the one they have with the state. And if a city can "seek rents" with the state, what incentive does it have to collaborate with other localities in the metropolitan region (p. 62)?

Indeed, this is the precise dynamic that is fueling the disaggregation of wealth and political power from social service needs in the American metropolis. Frequently, an affluent "favored quarter" garners the vast majority of its region's economic growth. In addition, these high-growth quadrants typically receive the majority of the regional public infrastructure investments — roads, sewers, utility lines, etc. — that fuel economic growth. At the same time, through the retention of local powers, such affluent suburbs can avoid taking on any of the region's social service burdens and can export a substantial portion of the costs of their considerable growth to other, less affluent localities.¹²

11. Seeking to protect private property against abuse by local majorities and against abuse by private economic power, John Dillon, in his 1872 treatise on municipal corporations, advocated strict state control of cities. Pp. 45-46 (citing JOHN DILLON, *TREATISE ON THE LAW OF MUNICIPAL CORPORATIONS* (1st ed. 1872)).

12. For an extensive exploration of the power dynamics and public investment patterns in U.S. metropolitan regions and the manner in which our system of local governance contributes to the phenomenon, see Cashin, *supra* note 3.

Frug offers a counterintuitive solution to this problem of local selfishness. Rather than reduce local powers in a way that curbs the ability of cities to act in selfish ways, his laudatory aspiration is to enhance the ability of all localities, particularly affluent suburbs, to forge intercity alliances. In a context of intercity collaboration, Frug apparently hopes that cities will reach a consensus to define and deploy local powers in a way that does not harm their neighbors. At minimum, he believes that society will be better off if we can increase the capacity of localities "to solve the problems generated by intercity conflict themselves" (p. 63) rather than rely on state mandates.

Frug fully acknowledges the seeming naiveté of his vision (p. 19). In essence, he is asking us to suspend our current conceptions of the limited civic-mindedness of our neighbors and ourselves. He wants to take us on a journey toward the possible, if not the ideal. And I believe it is a trip worth making because so few thinkers are struggling with this question of how to give effect to the ideal of local (read suburban) self-determination while cultivating a sense of collective responsibility for the consequences of our individual choices.

To transform the legal concept of the city in a way that achieves the Herculean feat of promoting intercity collaboration, Frug deploys the theoretical literature on identity and the self. His aim is to create a definition of the city imbued with the idea of connection or reconnection to "other." In practical terms, he ultimately conceives of the city not as an autonomous construct, analogous to a sovereign, but as a public entity embedded in a web of regional interconnections. If such connections are part and parcel of what it means to be a city, then a city's powers should be defined not by the state but by the regional community as a whole. I address Frug's proposal of a regional legislature — the practical consequence of his theoretical critique — in Part II, below. First, however, I will consider Frug's use of the theoretical literature in addressing the difficult conundrum of power dynamics in the metropolis.

Frug's goal is to formulate a definition of the city that will transform the subjectivity of the city and its residents. The current legal definition is premised on collective individualism. Moreover, he asserts, "local government law has endowed these collective individuals with a particular conception of subjectivity, one that is commonly called a centered sense of self" (p. 64). Frug challenges this "centered" subjectivity, with its emphasis on separateness — the distinction of "self" from "other." Local government law has clearly adapted this centered concept of self to cities, encouraging a "localism" in which regulation of land use, schools, and tax policy are determined locally, solely to meet the desires of the residents within a defined

border.¹³ Frug's intellectual project is to endow local government law with a new subjectivity — "one that is decentered [and] . . . that questions the sharp self/other distinction that now dominates legal decision making" (p. 65). Drawing on a well-developed theoretical critique of the idea of the centered self, he underscores that notions of the self are contestable and subject to multiple interpretations. The idea of distinguishing "self" from "other" presupposes that there is an identifiable "self" that is clearly distinguishable from other persons and influences. Yet the literature on the centered subject rejects the notion of a stable identity for the self. In doing so, it offers up other possibilities for the subjectivity of the self. Frug takes this cue, formulating two possible alternatives for "a new subjectivity for localities in local government law": the "situated self" and the "postmodern self" (p. 69).

Canvassing the work of thinkers as disparate as Carol Gilligan,¹⁴ Michael Sandel,¹⁵ and Frank Michelman,¹⁶ Frug finds several sources for the idea of the "situated self." The situated subject, like the person who is born into but does not choose her family, is inextricably bound by a number of involuntary associations. Similarly, like it or not, cities and suburbs are inextricably entangled. A depressed urban core constitutes a drag on the economic vitality of outer-ring suburbs, just as a vital urban core enhances their fiscal health.¹⁷ As Frug suggests, the "self/other" dichotomy simply does not fit the empirical reality of metropolitan economies, which operate as a region-wide system. Thus, local government law errs in retaining an "insider/outsider framework of the centered subject" (p. 79).

Nowhere is this embrace of the centered subject more pronounced than in the law of zoning. A handful of forward-thinking state supreme courts and legislatures have mandated some form of affordable

13. For an eloquent, persuasive treatment on the manner in which local government law doctrine, as developed by courts and legislatures, promotes an "ideology" of localism, see Briffault, *Our Localism: Part I*, *supra* note 3, at 113 ("Local autonomy is to a considerable extent the result of and reinforced by a systemic belief in the social and political value of local decision making."). See generally Briffault, *Our Localism: Part II*, *supra* note 3.

14. See CAROL GILLIGAN, *IN A DIFFERENT VOICE* (1982).

15. See MICHAEL SANDEL, *LIBERALISM AND THE LIMITS OF JUSTICE* (1982).

16. See Frank Michelman, *Law's Republic*, 97 YALE L.J. 1493 (1988); Frank Michelman, *The Supreme Court, 1985 Term Foreword: Traces of Self-Government*, 100 HARV. L. REV. 4 (1986).

17. Cf. LARRY C. LEDEBUR & WILLIAM R. BARNES, NATIONAL LEAGUE OF CITIES, *CITY DISTRESS, METROPOLITAN DISPARITIES AND ECONOMIC GROWTH* 14 (1992) (maintaining that metropolitan areas with greater than average income disparities between central cities and outer suburbs sustained net declines in employment growth, while those with less than average income disparities had modest employment growth); H.V. Savitch et al., *Ties That Bind: Central Cities, Suburbs, and the New Metropolitan Region*, 7 ECON. DEV. Q. 341, 343-44 (1993) (analyzing income data for 59 metropolitan areas and concluding that areas with higher central city income levels have higher suburban income levels).

housing requirement that might be understood to be premised on a regional construction of local identity.¹⁸ But the vast majority of state courts and legislatures have taken their cue from the U.S. Supreme Court, envisioning zoning as a matter of purely local self-determination.¹⁹ Thus, local communities are free to pursue their collective vision of the highest and best use of land, which typically results in the elevation of the single-family home over all other uses.²⁰ By contrast, a transformation of the law of zoning that would give effect to the image of the situated self would require zoning policies to be "worked out not centrally or by each municipality alone but through regional negotiations" (p. 80). Consistent with civic republican thought, this new, situated self would be formed through dialogue. Dialogue is crucial in the republican tradition because it views identity as politically constructed. In the words of de Tocqueville, "[f]eelings and ideas are renewed, the heart enlarged, and understanding developed . . . only by reciprocal action of men one upon another."²¹

While Frug is fierce in his devotion to this functional role of dialogue in altering citizen consciousness, he also recognizes just how difficult it will be to bring about doctrinal changes that reflect a new subjectivity of the situated subject. This is so because:

[c]urrent law not only has fragmented the metropolitan area but [it] is perpetuated by the kind of person this fragmentation has nurtured. The problem with implementing [regional] reforms is the power of this status quo. A central government's attempt to change it would be experienced by the people who benefit from it as an astonishing invasion of their personal freedom. Yet it is unlikely that those who profit from current law will undo it themselves. How, then, can centered subjects ever come to embrace a vision of themselves as decentered, as interdependent? [p. 80]

Frug's hope is that the suburban inclination to self-protection will be broken down by organizing regional negotiations in such a way that there are negative consequences of failing to reach agreement and by exploiting the fact that some suburban sub-groups — for example,

18. See Cashin, *supra* note 3 (manuscript at 45-46 & n.256, on file with author) (citing legislative and judicial examples from New Jersey, New Hampshire, Pennsylvania, and Connecticut).

19. See, e.g., Bernard K. Ham, *Exclusionary Zoning and Racial Segregation: A Reconsideration of the Mount Laurel Doctrine*, 7 SETON HALL CONST. L.J. 577 (1997) (pointing out the historical and current power localities have had over zoning decisions); Shelley Ross Saxer, *Local Autonomy or Regionalism?: Sharing the Benefits and Burdens of Suburban Commercial Development*, 30 IND. L. REV. 659 (1997) (enumerating the problems caused by the great deal of power over zoning that localities in most states possess).

20. See *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 394 (1926) (offering a nuisance rationale for allowing the Village to use local zoning powers to segregate "parasitic" apartment houses from single-family homes).

21. P. 80 (citing ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 515 (George Lawrence trans., Doubleday 1969)).

women, the elderly — may have special positive incentives for forging a regional alliance (pp. 81, 154-61).²²

An alternative subjectivity Frug explores is that of the “postmodern self.” Drawing on literature that extends the critique of the centered self, including postmodernism, feminism, and critical race theory, he defines the “postmodern condition” of the American metropolis. Postmodern subjects experience living in the world without any core sense of self. Unlike situated subjects, who see interconnections as a positive way of defining their identity, postmodern subjects “deny themselves [the solace of interconnectedness], this hope of bringing the mysterious hidden core of the self to the surface and sharing it with others” (p. 94). Thus, for the postmodern subject, “relationship with others — and with the world at large — is an experience not of consensus . . . but of conflicting multiplicities” (p. 94).

A postmodern conception of localities, then, would envision people as being located not on one side or the other of a city/suburban border, but at “nodal points of specific communication circuits spread throughout the [metropolitan] area” (p. 97; citations omitted). Under this vision, the metropolis is “a hodgepodge of elements — shopping/office/hotel complexes, strip shopping malls, industrial parks, office buildings, department stores, neighborhoods, subdivisions, condominium communities — that is ‘impossible to comprehend,’ ‘vertigo-inducing’ ” (p. 99). As they live, work, shop and play, citizens of the metropolis cross local jurisdictional boundaries on a daily basis, often without awareness of such boundaries. To borrow a phrase coined by Michael Sorkin,²³ the postmodern American metropolis is an “‘ageographical city’ ” (p. 100). Best typified by Los Angeles, the ageographical city is a “pastiche of highways, skyscrapers, malls, housing developments, and chain stores . . . [an] ‘endless urban landscape of copies without an original — that constitute the place bites . . . of modern America’ ” (p. 100). In short, it is the urban physical equivalent of the 800-number, an area code that is not tied to any particular place (p. 100).

To adapt local government law to this postmodern subjectivity, Frug argues that we must stop building doctrine on residency and should de-emphasize local jurisdictional boundaries. We must recognize that people are not located solely in one place, but that they move daily through a variety of networks of influence that affect their lives (p. 102). Rather than relying solely upon residency within a city limit

22. Frug argues, for example, that women and the elderly are especially impacted by suburban fragmentation, *inter alia*, because of the isolation, traffic congestion, and limited transportation options wrought by fragmented sprawl. Pp. 154-59.

23. See Michael Sorkin, *Introduction: Variations on a Theme Park in VARIATIONS ON A THEME PARK: THE NEW AMERICAN CITY AND THE END OF PUBLIC SPACE* xi (Michael Sorkin ed., 1992).

to determine a person's legal rights, a postmodern subjectivity would transform local government law. Eligibility for voting and our system of local government financing, for example, would no longer depend on physical residency within a city's limits (p. 102). In particular, Frug argues that the difficult problem of interlocal tax-base inequity — the concentration of tax-base wealth in outer suburbs and of revenue needs in the urban core — would be remedied by a local government law that embraced the postmodern subject (pp. 104-05). This new subjectivity could form the theoretical basis for a regional system of revenue sharing and service entitlement. And, in Frug's view, it offers a "most promising source of ideas for changing the present-day allocation of power in metropolitan areas" (p. 106). One possible avenue to achieving this new subjectivity would be through a revised model of voter representation. Frug suggests, for example, that each citizen of the metropolis be accorded five votes that they can cast in whatever local elections they feel affect their interest.²⁴ In this manner, he reasons, elected representatives would view themselves as having constituents throughout the region (p. 106).

In Part II below, I address some of the practical difficulties of effecting doctrinal changes premised on these alternative subjectivities of the locality. Despite these practical difficulties, Frug's enterprise has value in boldly challenging the dominant thinking on local government organization. Most importantly, he has eloquently sketched possibilities for basing local government law on something other than the freely autonomous individual. He admits that there may be other subjectivities, but he finds the images of the situated and postmodern subjects most attractive and he feels no compulsion to choose between the two. Both visions, he argues, stimulate alternative thinking. They both reject the centered subject's focus on boundaries and seek "to build a form of metropolitan life in which people across the region learn to recognize, and make policy on the basis of, their interactions with each other" (p. 111). The beauty of these constructs is that they negotiate the conundrum of city power and powerlessness without doing violence to the near-sacred value of self-determination. Frug offers a revolutionary vision premised on interconnectedness that leaves individuals with the necessary comfort of a local community, which they can select and shape based upon individual preferences. Those who want to live in communities of like preferences, race, income, etc., may do so (within the limits of anti-discrimination law). But they cannot do so without dealing with people from other com-

24. A similar proposal has been suggested by Richard Ford. *See* Ford, *supra* note 3, at 1909-10 & n.221. *See also* LANI GUINIER, *THE TYRANNY OF THE MAJORITY: FUNDAMENTAL FAIRNESS IN REPUBLICAN DEMOCRACY* 149 (1994) (suggesting a system of "cumulative voting" whereby each person would have a number of votes to distribute among elective candidates and arguing that such a system would give minorities more sway over who is elected, while preserving the overall system of majority rule).

munities. In this sense, both the situated and postmodern subjectivities of local government “are postintegration visions of America: integration remains possible, but is no longer a master goal” (p. 111).

Whether or not you accept the viability of these alternative visions, considering them seriously frees you to imagine possibilities other than the current legal order. They illuminate the ways in which the core incentive structure of the current legal regime — untethered pursuit of social and economic self-interest — might be different. And in doing so, they undermine the logic of the existing system. Frug is right to suggest that we need much more in the way of a public space to discuss these issues if centuries of entrenched popular, legal, and academic thinking are to be reversed. While I am not in agreement with all of his ultimate proposals, I believe he has offered a powerful case for reconceiving the legal system of local governance so as to appeal to the better angels of our nature. In Part III below, I accept Frug’s challenge to imagine a different order, by suggesting an alternative “post-integrationist” vision for metropolitan governance that I believe fits better with the realities of metropolitan power dynamics.

II. FRUG’S PROPOSED SOLUTION — COMMUNITY BUILDING AND THE UNREALITY OF NEGOTIATED COMPROMISE

As noted, Frug’s chief vehicle for realizing his vision of a new, de-centered subjectivity for American localities is a regional legislature. He would shift the power to define the legal authority of cities from the state government to this new regional entity. But he rejects decidedly the idea of a regional government that would exercise supra-local powers. Instead, he proposes a regional, democratically elected body that would take on one specific function now performed by state legislatures and courts: “defining the power — specifying what lawyers call the legal entitlements — of local governments” (p. 86). Examples of the types of entitlements this new legislature might allocate include the extent to which individual localities must accommodate regional affordable housing needs, the portion of local tax revenues that can be used exclusively for local schools, and the incentives a locality will be allowed to offer a business from a neighboring jurisdiction to entice it to move across the border (p. 86). The regional legislature would have the power to determine what entitlement questions it can decide. But this would differ from a regional government because, once an entitlement was defined, the local governments would exercise the resulting authority, not the regional legislature. To enhance the possibility of meaningful interlocal compromise, Frug proposes that representatives be elected at the neighborhood level.²⁵ Thus, the various sub-

25. This neighborhood-based version of representation is offered to give effect to the subjectivity of the “situated self.” Frug would modify the regional legislature proposal to

groups that make up an individual locality would participate in negotiations. Because no city could achieve its specific entitlement goals without convincing fellow legislators of the wisdom of its vision of decentralization, Frug argues, the brute objective of parochial self-interest would necessarily give way to a broader understanding of the purpose of local powers (p. 87).

Frug's central objective of community building would be achieved, he imagines, by giving the metropolis this much-needed regional forum for negotiating how land use and other powers will be exercised. He would enhance the chance for success of such interlocal negotiations by causing failure to agree to result in no local powers on the given issue. In the realm of zoning, for example, "unless an entitlement to do so results from intercity negotiation, no city should have the right to zone in a way that excludes 'undesirables,' or to foster development favoring its residents over outsiders" (p. 163). He acknowledges that interlocal negotiation is not likely to result in a uniform distribution of races and classes of people or of commercial development throughout the metropolitan region. Instead, as in those few places in the United States that have strong regional governance structures,²⁶ a central focus for a regional legislature is likely to be the proper allocation of tax revenues generated by new development, wherever its location. Even if such negotiations fail, as well they might, Frug argues that the process of negotiation would be valuable because "[t]here is little doubt that the retention of existing state-granted entitlements without the establishment of a regional negotiation process will produce more and more fragmentation and dispersal" (p. 164). At minimum, he argues, such negotiations might begin to mount political pressure to reverse federal and state policies that support and encourage metropolitan fragmentation.

While Frug's aspiration to promote community building through the creation of a wider public seems correct, I believe his insistence on intercity negotiation, as opposed to state-created mandates, is misguided. At the outset, one problem with his regional legislature proposal is that the political will to create it does not exist. Such a regional reform, in itself, presupposes the type of coalition politics, or

accommodate the image of the postmodern self by giving individual citizens the opportunity to vote for up to five candidates from any jurisdiction (or nodal point) that reflects their interests. P. 106.

26. The Twin Cities, Minnesota; Portland, Oregon; and Seattle, Washington regions are among the few that have a metropolitan entity that sets the direction for land use, transportation, and other policies for their regions. Regional cooperation in these metropolitan areas has reduced or mitigated interlocal disparities of tax-base and rendered the urban core more viable. See, e.g., Arthur C. Nelson & Jeffrey H. Milgroom, *Regional Growth Management and Central-City Vitality: Comparing Development Patterns in Atlanta, Georgia, and Portland, Oregon*, in *URBAN REVITALIZATION* (Fritz W. Wagner et al. eds., 1995). For an extended survey of existing regional governance arrangements in the United States, see Cashin, *supra* note 3 (manuscript at 42-44 & n.244, 48-49, on file with author).

situated subjectivity, that the regional legislature is designed to engender. In short, in order for Frug's proposal to gain passage in a state legislature, as would be required, a majority of the localities (or their representatives in the state legislature) would have to agree to submit their existing state-created entitlements to the uncertainties of a regional negotiation. This is unlikely to happen because, as Frug admits, the fragmented system wrought by the existing local government regime has nurtured the "centered" citizen. Indeed, socio-economic and racial differentiation, and the desire to escape the tax burdens of the central city were the prime reasons behind the formation of most new suburban localities in the past five decades.²⁷ And the majority of voters now live in and have been shaped by these suburban communities.²⁸

But even assuming that Frug is offering his legislative model merely as an intellectual idea designed to stimulate thinking about how to promote community building, I believe his conceptual theory is also misguided. Frug's fundamental premise appears to be that the "centered" citizen or the "centered" locality cannot be transformed to embrace a broader subjectivity while also experiencing a loss of power. He views city powerlessness — the city's subordination to the state in terms of its legal powers — as antithetical to the creation of a broader public realm that might enhance possibilities for intercity collaboration. In his view, state institutions are too removed from the citizen to enable a meaningful experience of public life, or, to use his words, "public freedom" (p. 22). He has a similar view of regional governments; only when government powers are wielded at the local level does the citizen truly feel empowered to influence government policy (pp. 80-81). And only in this manner can the citizen experience the give-and-take that de Tocqueville and civic republicans view as necessary for expanding the citizen's heart and perspective.²⁹

27. See NANCY BURNS, *THE FORMATION OF AMERICAN LOCAL GOVERNMENTS: PRIVATE VALUES IN PUBLIC INSTITUTIONS* 75-95 (1994); GREGORY R. WEIHER, *THE FRACTURED METROPOLIS* 13-15 (1991).

28. See RUSK, *supra* note 9, at 5. Older, inner-ring suburbs, however, have more in common both economically and demographically with central cities than with outer-ring developing suburbs. See ORFIELD, *supra* note 9, at 4. This fact has been the key to broad intercity coalition-building in the Twin Cities area. See *infra* Part III.

29. See, e.g., TOCQUEVILLE, *supra* note 21, at 515. Several other local government scholars, including Georgette Poindexter and Richard Thompson Ford, also adhere to this logic and hence feel compelled to eschew solutions to metropolitan fragmentation that involve state-imposed mandates. See Ford, *supra* note 3, at 1908-09 (arguing that regional administration makes it difficult for politically engaged communities to form because it alienates citizens from the decisionmaking process); Poindexter, *supra* note 3, at 625; see also Cass R. Sunstein, *Beyond the Republican Revival*, 97 YALE L.J. 1539, 1556 (1988) (stating the civic republican view that deliberation and collective self-determination most naturally occur through small, localized units of government).

But virtually all serious regional reforms that have been undertaken in the United States have been enacted by a state legislature, either as the result of a state court mandate, or a rare political mandate created by a coalition of metropolitan interest groups.³⁰ As Richard Briffault has argued, one will search in vain for examples of significant regional cooperation or burden-sharing that is not state-mandated.³¹ And this is not surprising, as Frug so powerfully underscores, given the centered subjectivity engendered by the current system. However, as I describe below in Part III, I think the possibilities for future, voluntary metropolitan cooperation in those few metropolitan areas that have relied on state processes to create strong regional institutions (at the expense of local powers), has been dramatically enhanced. Indeed, these areas are much farther along than the rest of the country in promoting a regional or “decentered” identity among their citizens.

In sum, relying on interlocal, negotiated compromise to break out of the status quo of entrenched self-interest is likely to be unsuccessful. Yet, the emerging regionalist models in the United States suggest that the ideals Frug strives for can be achieved to some degree. The means to these ends, however, will have to be different. Most importantly, in order to achieve the ideal of community-building — enhancing the ability of the citizens of the metropolis to work with each other across jurisdictional boundaries of race and class — proposals for reform must be informed by the empirical realities of metropolitan politics.

III. AN ALTERNATIVE VISION: REVITALIZED DEMOCRACY AND WARRING FACTIONS IN THE POST-INTEGRATIONIST METROPOLIS

Frug acknowledges that in addition to the “situated” or “postmodern” self, there might be other alternatives to the subjectivity of the “centered” self. Likewise, his reconstructed understanding of the city and its role in promoting community building also has alternatives. Rather than permitting the continuation of fairly homogenous localities while calling upon them to negotiate and compromise via a regional legislature, one could imagine a state-level mandate to *reduce* homogeneity. Of course, this is anathema to the ideal of self-determinative local autonomy or city power. But imagine, for a moment, what the American metropolis would be like if poor people, particularly the minority poor, were more evenly dispersed throughout

30. See generally Cashin, *supra* note 3 (manuscript at 45-46, 48-49, on file with author). The New Jersey Supreme Court's seminal *Mt. Laurel* decision and the Minnesota State legislature's series of regional reforms on behalf of the Twin Cities are the prime examples of state court and legislative mandates respectively. See *id.*

31. See Briffault, *Local Government Boundary Problem*, *supra* note 3, at 1156.

the region.³² By distributing the fiscal obligations attendant to housing the poor more evenly, the urban core would enjoy more of the fruits of their local powers. In other words, they would have a more meaningful opportunity to use their local powers in ways that meet their citizens' preferences because they would be freed, to some degree, from the often extreme economic constraints that come with having a disproportionate share of the region's service burdens. In turn, affluent suburbs would no longer enjoy the extreme comparative advantage of being able to garner much of the region's economic activity and wealth while walling out virtually all of the social costs and burdens that exist in the region. The region as a whole would be put on a more stable economic course.³³ Further, a concrete "being together of strangers" would be achieved because every community would have its share of low-income (and minority) persons.

This vision constitutes an integrationist ideal, which has not been achieved anywhere in the United States, and which is not likely to happen. Even in New Jersey, the state that has most systematically attacked the problem of fair-share affordable housing, the results in terms of integration of low-income and minority persons into suburbs have been disappointing.³⁴ The reason this vision will likely remain a chimera in the United States is complex. At least two oppositional forces are at work. First, there is fierce political opposition from citizens who want to protect property values and fear the economic consequences of living near low-income people. Obviously, racism and classism are also a part of this political opposition.³⁵ But the economic incentives alone would lead many, if not most, persons to oppose economic integration of their neighborhoods. Put in a more positive light, as Frug suggests, there is also a widespread desire among all groups, including minority groups, to live in neighborhoods that create a "we" feeling (pp. 163-64). Second, our nation's sustained ideological com-

32. African-American poverty is more highly concentrated than white and Hispanic poverty. In 1997, 58% of African Americans living in poverty resided within central cities, while 24% lived in suburban areas. See BUREAU OF LABOR STATISTICS AND BUREAU OF THE CENSUS, ANNUAL DEMOGRAPHIC SURVEY, MARCH SUPPLEMENT, TABLE FOUR (1998) (visited March 12, 2000) <http://ferret.bls.census.gov/macro/031998/pov/4_001.htm> (placing the remaining 18% in predominantly rural areas). 56% of Hispanics living in poverty resided in central cities and 33% lived in the suburbs. See *id.* (placing the remaining 11% in rural areas). 35% of non-Hispanic whites living in poverty lived in central cities and 39% lived in the suburbs. See *id.* (placing 26% in rural areas).

33. For an extended explanation of the way in which the current system of local governance weakens the economies of central cities and older suburbs while strengthening the economies of affluent outer-ring suburbs, see Cashin, *supra* note 3.

34. See *id.* (manuscript at 45-46, on file with author) (noting that the largest and most comprehensive study of the impact of the *Mt. Laurel* decision found that the "Mt. Laurel" housing units produced were primarily for moderate, not low-income households, that over 80% of suburban units went to white households, and that over 80% of urban units went to black and Latino households).

35. See *supra* text accompanying note 27.

mitment to local powers has cloaked the idea of local self-determination in the trappings of individual rights. In the mind of a new suburban property owner, there is likely not much difference between the right to exclude undesired persons from her own property and the right of her and her neighbors to collectively determine what kind of community they are going to live in, i.e., who should and should not live there.³⁶

Thus, an integrationist ideal for the American metropolis is a political non-starter.³⁷ That said, I believe there are other alternative models that have a better chance of achieving Frug's vision of a "being together of strangers" than the interlocal negotiation model he offers. In the Twin Cities, for example, a political majority in the state legislature was forged among representatives of the urban core — the central cities and older, inner-ring suburbs. This coalition has succeeded over a period of years in enacting a number of regional reforms that reduce interlocal economic disparities. Their legislative victories include laws mandating regional fair-share affordable housing, regional tax-base sharing, and an enhanced regional governance structure — the Metropolitan Council — which administers a \$600 million budget and sets the direction for land use, transportation and other policies in the Twin Cities area.³⁸ As a result of such reforms, interlocal tax-base disparities in the region have been reduced substantially, and the region has in place an established forum for deliberating on regional issues — i.e., for addressing the negative externalities that result from unchecked, self-interested local decisionmaking.

The primary impetus for the extensive grassroots coalition that has been created in the Twin Cities area is regional inequity. In particular, coalition organizers harnessed the self-interest — the centered subjectivity if you will — of citizens and leaders of the older suburbs, making them realize that they, like the central cities, were also losing in the regional competition for public investments that fuel growth. Once leaders like Jesse Ventura — then the mayor of an older, declining

36. See, e.g., KENNETH T. JACKSON, *CRABGRASS FRONTIER: THE SUBURBANIZATION OF THE UNITED STATES* 241 (1985) (describing "economic and racial homogeneity" as "perhaps [the] most important characteristic of the postwar suburb. . .").

37. I raise the integrationist vision for consideration, however, because I believe it underscores just how much we as a society have lost after over a century of "localism." Notably, American cities were fairly integrated racially and economically at the dawn of the twentieth century. In 1900, African Americans in urban areas generally lived in areas that were 90% white. See Frug, *The Geography of Community*, *supra* note 3, at 1064. I mourn the loss of the integrationist ideal because I believe it represented the best route to equal opportunity and intergroup understanding for our country. I accept, however, the politics that make it fairly unrealistic as an option. But we should continue to be vigorous in fighting discrimination in housing markets and in eliminating barriers to residential mobility for all citizens.

38. See generally Cashin, *supra* note 3 (manuscript at 48-49, on file with author) (describing the Twin Cities' experience in detail).

suburb — realized that an affluent, favored quarter was garnering more than 60% of the region's public infrastructure investments and the urban core was subsidizing the outmigration of people and jobs to this quadrant, they were more than willing to join a coalition for legislative change.

But this is brute politics, not a civic republican ideal. Affluent suburban communities, that were going to be net contributors under tax-base sharing and were going to have to open their communities to affordable housing, were vocal, strenuous, and sometimes ugly in their opposition to such measures.³⁹ In short, democracy was reinvigorated, but, as with all democratic processes, there were dissenting voices that ultimately had some proposals imposed upon them. In this case, however, the political losers were the most privileged and advantaged of communities — communities that had the fewest barriers to effective participation in state and federal political processes and that were benefitting disproportionately from the existing regime of local governance.⁴⁰

There are other avenues to meaningful interlocal coordination and collaboration, if not a fairer distribution of benefits and burdens, in the American metropolis. Recently, the issue of uncontrolled suburban growth and its impact on quality of life has fueled a groundswell of state and local initiatives designed to better manage and coordinate local land use. In the Atlanta metropolitan region, for example, the Georgia state legislature recently created the Georgia Regional Transportation Authority — a new regional entity that will have broad powers “to impose transit systems and highways on local governments, [to] restrict development, and even [to] put pressure on cities and counties to raise taxes.”⁴¹ The new Authority will have effective veto power over any new development proposed by a locality that is in an overly congested area or that does not have adequate transportation routes. The Authority will also have power to withhold certain state funds to any locality that refuses to participate in planned regional transportation projects, like new rail, bus, or carpool lane routes.⁴² This state usurpation of local powers was precipitated by an air pollution and traffic congestion crisis that, in turn, was wrought by fragmented local authority in the 13-county Atlanta area. Because of

39. See generally ORFIELD, *supra* note 9, at 13. In one instance, an angry mob of suburban residents occupied the city council chambers in protest of a planned low-income housing development in their neighborhood. See *id.* at 127-28.

40. See generally Cashin, *supra* note 3 (manuscript at 19-24, on file with author) (citing empirical evidence of the degree of public investment in affluent suburbs and the extent of cross-subsidization from which they benefit).

41. David Firestone, *Georgia Setting Up Tough Anti-Sprawl Agency*, N.Y. TIMES, Mar. 25, 1999, at A20.

42. See *id.*

years of squabbling and competition among scores of local governments for development, the region had never been able to agree on a regional plan for growth and mass transit. Consequently, the region had been rendered ineligible for federal funds because of record violations of federal air pollution standards.⁴³ In addition, the predominantly white outer counties long opposed expansion of MARTA, Atlanta's rail transport system, because of their fear of a connection to the predominantly black central city.⁴⁴

In both the Twin Cities and the Atlanta scenarios, citizens were able to overcome the problem of "centered" subjectivity or parochial self-interest through an education process that formed cross-border political coalitions based upon a more enlightened understanding of their self-interest. A civic dialogue did occur that focused upon objective evidence of fiscal inequities or the negative externalities — air pollution and traffic congestion — wrought by uncoordinated growth. This process harnessed and re-energized region-wide majoritarian politics. But these efforts would not have been successful had the regional majority — the two-thirds of the population that live in the central city and older suburbs⁴⁵ — not had a supra-local forum to go to that could *impose* mandates on dissenting localities.

Hence, under both of these regionalist scenarios, local powers were reduced but the ability of the region to solve difficult problems that transcend local borders was dramatically enhanced. These scenarios demonstrate that we need pressure points beyond mere negotiation to overcome affluent suburban hegemony. The rewards of selfishness are simply too great, at least for some powerful communities.

But this loss of local power, particularly by dissenting localities, does not sacrifice the community-building ideal so dear to Frug and others. My "post-integrationist" vision for the twenty-first century metropolis is premised on a revitalization of grassroots democratic processes. The citizens of the metropolis must collectively decide whether and how they will pursue a regional agenda. In my view, the emerging issues of fiscal inequity and sustainable development will provide an impetus for many to act. Enactment of strong regional reforms, however, will take place only after the creation of a broad coalition of disparate interests that is now all too rare in metropolitan America. Thus, this process of building coalitions for regional reform will necessarily build community.

43. *See id.*

44. *See Urban Sprawl: To Traffic Hell and Back*, THE ECONOMIST, May 8, 1999, at 23.

45. Approximately one-third of the metropolitan population lives in the central city, inner-suburbs and outer suburbs, respectively. *See ORFIELD, supra* note 9, at 12-13. The key to metropolitan coalition building in the next century will be building closer political alliances between the central city and older suburbs. *See id.* at 168-69.

More importantly, if the majority of citizens has coalesced to create new regional institutions with supra-local powers, this does not mean that a "decentered" identity can never be cultivated among dissenting communities. The experience in New Jersey with state mandates of fair-share affordable housing, although not ideal, suggests that recalcitrant communities have adjusted to the mandate.⁴⁶ Just as many segregationists had to be dragged kicking and screaming to the second Reconstruction wrought by *Brown v. Board of Education*,⁴⁷ regionalism may be a movement in the next century that upsets long-settled expectations created by legal doctrine. In the end, my vision is not dissimilar to Frug's. It is, however, less idealistic. It is premised on gritty democratic realities and an understanding of the entrenched attitudes that disenfranchise the urban core under the existing regime of local governance.

CONCLUSION

City Making offers a revolutionary vision for the twenty-first century. If our nation were able to realize it, our society would be much better off because the prospects for social cohesion would be greatly enhanced. The problems with the book stem both from its inattention to real-world realities and its fierce adherence to the values fueling localist ideology. The civic republican ideal — the belief that local institutions best cultivate citizens and community — borders on romanticism when compared to the manner in which fragmented local authority is disenfranchising many citizens of the metropolis. In the absence of strong regional institutions that enable the metropolis to give effect to majoritarian regional consensus, fragmented localities may remain gridlocked and interlocal inequities may persist or accelerate. In such circumstances, it will matter little to a citizen that she might be able to influence her own local government, given that this government will be powerless to address certain issues — like traffic congestion, air pollution, and suburban job access — that greatly impact her life.

In light of this reality, I do not believe Frug makes a persuasive case for why reliance on state institutions to define and perhaps circumscribe local authority is necessarily an inappropriate route to metropolitanism. If revitalized grassroots democracy is the vehicle for achieving changes in state-defined allocations of power, the enhanced

46. See CHARLES M. HAAR, *SUBURBS UNDER SIEGE: RACE, SPACE, AND AUDACIOUS JUDGES* 188-89 (1996) (noting that "almost all localities in New Jersey have institutionalized planning for moderate- and low-income dwelling units" and that the Mount Laurel mandates "make the local process of considering [regional] housing needs a common routine that stands as a new norm in the political . . . process").

47. 347 U.S. 483 (1954).

public realm that is Frug's ultimate goal will have been achieved. Given the often extreme injustices currently being visited upon many citizens of the American metropolis, I believe the end is more important than the means. Yet, Frug has made a powerful case for how we might give effect to the values undergirding local autonomy while pursuing a brave new course for the collective greater good. He has laid down the markers for a debate that will become increasingly central in the next century. So let the new century and the debate begin.