ARTICLES

CITY SERVICES

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City services are conventionally understood as publicly provided consumer goods, and cities are currently organized under local government law in a way that enables people to shop for these consumer goods by voting with their feet. Metropolitan residents who can afford to do so are therefore able to locate in a city with high quality city services while, simultaneously, limiting the taxes they pay for these services by excluding the poor not only from the city but from eligibility to use the services themselves. In this Article, Professor Frug argues that this privatized conception of city services has become a major ingredient in fostering the division of America's metropolitan areas into neighborhoods of privilege and of want, a division that is all too often marked by lines of race, ethnicity, and class. He calls for replacing the prevailing consumer-oriented vision of city services with an alternative designed to promote what he calls "community building." Focusing specifically on the widespread desire for good schools and the pervasive fear of crime, he proposes that city services become organized not as a means to separate and divide the metropolitan population but as a mechanism for expanding the capacity of metropolitan residents to live in a diverse society. Doing so, he says, involves opening public schools throughout the region to diversity and making prevention, rather than escape, the predominant strategy for dealing with crime.

The services that American cities now provide, such as police, fire, schools, and sanitation, could readily be delivered instead by agencies of the federal or state government or by private corporations. Virtually every traditional city service is already supplied somewhere in the United States by an organization other than a city. The state government runs Hawaii's public schools; thirty-seven percent of America's garbage is picked up by private companies; many city fire departments, originally organized as volunteer organizations, have recently been transferred to the private sector.[1] Moreover, London's police force—the model on which American police departments were originally built—is run by the national government, and private policing, currently growing at a much faster rate than city police depart-

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[1] On Hawaii, see 1-1 Census Bureau, U.S. Dep't of Commerce, 1992 Census of Governments: Government Organization 27 (1994); on sanitation, see Evelina R. Moulder, Public Works: Service Delivery Choices 2 (1994); on fire, see Eric H. Monkkonen, America Becomes Urban: The Development of U.S. Cities & Towns, 1780-1980, at 105-08 (1988) [hereinafter Monkkonen, America Becomes Urban].

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ments, existed before any public entity had hired a police officer.[2] None of these services—and none of the other services cities now offer, including health care, parks, or highway maintenance—has to be provided by cities.

At the same time, cities could engage in a wide range of activities now mainly the province of others. Currently, a city's economic vitality depends largely on private initiative and national and state governmental decisionmaking rather than on city policy. Cities do not ordinarily provide jobs or job training to their unemployed, build housing for those who need it, or provide food in areas that the large private grocery chains have abandoned. Nor are the traumas of family life much affected by city policy. Family problems that cannot be resolved by the affected individuals are in the hands of voluntary organizations or officials (whether local, state, or federal) implementing state or national governmental policies. Even the cultural forms— such as professional sports teams—that give citizens their sense of devotion to the metropolitan area in which they live are largely controlled by private organizations. As a result, the city, defined as an institution or governmental entity (that's how I've used the term in the preceding sentences), has only a very limited impact on the life of the city defined as a place.

What services should cities provide? Indeed, why have cities at all? Why not have all services now supplied by cities delivered instead by a central government or the private sector? This Article addresses these questions. Part I proposes a justification for city services—one that I call "community building"—that I offer as an alternative to the theory of public goods, the standard way of thinking about the issue. Parts II and III then apply this justification to two important city services—education and police protection. By discussing these two examples in some detail, I seek to illustrate the ways in which my conception of city services would transform the manner in which they are currently provided. Finally, Part IV suggests how a commitment to community building might affect the other conventional services

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2 On London's police and the early history of American police, see Les Johnston, The Rebirth of Private Policing 3-23 (1992); Monkkonen, America Becomes Urban, supra note 1, at 98-102; Eric Monkkonen, Police in Urban America 1860-1920, at 30-49 (1981) [hereinafter Monkkonen, Police in Urban America]; on the growth of private policing, see David H. Bayley, Police for the Future 10-11 (1994); on the extent of private policing in America, see Privatizing the United States Justice System: Police, Adjudication, and Corrections Services from the Private Sector (Gary W. Bowman et al. eds., 1992); Clifford D. Shearing, The Relation between Public and Private Policing, in 15 Modern Policing 399 (Michael Tonry & Norval Morris eds., 1992); see also Johnston, supra; Nigel South, Policing for Profit 16-34 (1988) (describing privatization in Britain).

that cities now offer and, equally importantly, stimulate the addition of new services to the conventional list.

I
ALTERNATIVE CONCEPTIONS OF CITY SERVICES

A.   The Theory of Public Goods

These days, the academic literature discusses city services predominantly in the language of economics: whether a city should provide any particular service is thought to turn on analysis of the concept of "public goods."[3] Public goods, according to the standard definition, are either the kind of goods that one person can consume without diminishing anyone else's ability to do so (they are "nonrival") or the kind that cannot easily be allocated solely to those who pay for them (they are "nonexcludable").[4] The examples of public goods regularly referred to in the literature are national defense and lighthouses.[5] People can benefit from services such as these no matter how many other people are also doing so. Moreover, it would be unreasonably expensive to try to stop anyone from taking advantage of them. Thus they are services that the market cannot properly apportion and, consequently, that government can legitimately offer. As the proponents of the theory of public goods recognize, however, American cities do not protect the national defense or build lighthouses. Instead, they provide services—like police, fire, sanitation, and education—that not only can be allocated to some people at the expense of others but often are. As a result, the theory of public goods, when applied to local governments, largely consists of argu-

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[3] See, e.g., Clayton P. Gillette, Local Government Law: Cases and Materials 376 (1994) ("The primary function of localities is to provide local public goods."); Vincent Ostrom et al., The Organization of Government in Metropolitan Areas: A Theoretical Inquiry, 55 Am. Pol. Sci. Rev. 831, 832 (1961) ("We view the 'business' of governments in metropolitan areas as providing 'public goods and services.'"). There are, to be sure, exceptions to this approach. See, e.g., Bryan D. Jones, Service Delivery in the City: Citizen Demand and Bureaucratic Rules 6 (1980) ("Urban public service delivery ought to focus on the connections between the decision-making mechanisms in the organization and the citizens who are the actual and potential recipients of the services provided."); Roland J. Liebert, Disintegration and Political Action: The Changing Functions of City Governments in America 67 (1976) (exploring how variability in scope of major governmental functions affects "the roles that individual municipal governments play as integrative loci for political action").

[4] See Richard A. Musgrave & Peggy B. Musgrave, Public Finance in Theory and Practice 43-44 (5th ed. 1989); Paul A. Samuelson, The Pure Theory of Public Expenditures, 36 Rev. Econ. & Stat. 387, 387 (1954) (describing these as "collective consumption goods").

[5] See Joseph E. Stiglitz, Economics of the Public Sector 102 (1986); Robert Inman, Markets, Governments, and the "New" Political Economy, in 2 Handbook of Public Economics 653 (Alan Auerbach & Martin Feldstein eds., 1987).

ments about whether, and to what extent, it is efficient for cities to supply these kinds of "mixed" or "impure" public goods.[6]

Those engaged in this argument usually take Charles Tiebout's influential article, *A Pure Theory of Local Expenditures*, as a starting point.[7] Tiebout set himself the task of imagining how an efficient market for city services could be created: is there a mechanism comparable to conventional market competition for private goods, he asked, that could allocate local public goods efficiently? The mechanism he identified was mobility. Metropolitan residents, he contended, decide to live in a particular city because it provides the mix of public goods that they are looking for, and cities compete for residents by offering packages of public goods that they think will be attractive. Tiebout's picture of people choosing cities by voting with their feet had immediate intuitive appeal. His article was written in 1956—a time when the suburbanization of America was intensifying—and the idea of mobility fit comfortably with a widespread belief in freedom of choice ("I have a right to live wherever I want"). But to make the argument work for *his* purposes—that is, to create a mechanism that generated an efficient allocation of public goods—Tiebout had to rely on "a set of assumptions so patently unrealistic as to verge on the outrageous."[8] These included assuming that people were fully mobile (he put aside restrictions imposed by jobs by assuming that everyone lived on dividend income), that citizens had full knowledge of the differences between cities, and that the packages of public goods that cities offered imposed no adverse (or benign) impact on neighboring communities. For forty years, Tiebout's successors have devoted themselves to refining his model so that it could be applied to a more realistic version of

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[6] See, e.g., James M. Buchanan, The Demand and Supply of Public Goods 49-74 (1968); Musgrave & Musgrave, supra note 4, at 49-85; William Oakland, Theory of Public Goods, in 2 Handbook of Public Economics, supra note 5, at 485-535. Often, those who write about public goods, rather than requiring that public goods be nonrival or nonexcludable, simply assume that whatever services are delivered by cities are public goods. See, e.g., William W. Bratton & Joseph A. McCahery, The New Economics of Jurisdictional Competition: Devolutionary Federalism in a Second-Best World, 86 Geo. L.J. (forthcoming 1998) (manuscript at 5 n.13, on file with the *New York University Law Review*) ("The term 'public goods' includes (a) goods conventionally supplied by local government in addition to pure public goods, and (b) public services.").

[7] See Charles M. Tiebout, A Pure Theory of Local Expenditures, 64 J. Pol. Econ. 416 (1956).

[8] Wallace E. Oates, On Local Finance and the Tiebout Model, 71 Am. Econ. Rev. Papers & Proc. 93, 93 (1981). The difficulties generated by Tiebout's assumptions are a familiar topic in the literature. See Bratton & McCahery, supra note 6, at 21 n.72 (collecting authorities); Lyke Thompson, Citizen Attitudes About Service Delivery Models, 19 J. Urb. Aff. 291 (1997) (documenting widespread misinformation among citizens regarding who actually delivers city services).

the world in which we live.[9] Abandoning Tiebout's assumptions, how-
ever, has had a significant cost: it has sacrificed the model's intuitive
appeal.

Two examples of post-Tiebout scholarship illustrate this phenom-
enon. In Tiebout's vision, everyone is fully mobile, and everyone can
live wherever they want. In other words, nothing in Tiebout's model
envisions what is now called "fiscal zoning"—zoning adopted by prop-
erty-rich communities designed to prevent poor people from moving
to town and, once there, voting to support public services that the rich
don't need.[10] To those concerned about an influx of poor people into
prosperous communities, Tiebout's model, as Bruce Hamilton puts it,
is "a formula for musical suburbs, with the poor following the rich in a
never-ending quest for a tax base."[11] Like many others, Hamilton
therefore modified Tiebout's model by assuming that localities would
engage in exclusionary zoning.[12] This modification, however, replaced
Tiebout's assumption that everyone is free to move wherever they like
with an explicit bias in favor of the rich, one that rationalizes the crea-
tion in America of separate and unequal communities for the rich and
for the poor. James Buchanan has taken Hamilton one step further.[13]
Unlike many writers in the public goods tradition, Buchanan recog-
nized that a decision by the wealthy to move to an exclusive suburb
has a negative impact on the quality of public services available to the
middle- and low-income people left behind. In other words,
Buchanan did not simply abandon Tiebout's assumption that a city's
decisionmaking about public goods has no impact on outsiders, but
asserted the opposite proposition: mobility itself, if unequally allo-
cated, imposes negative consequences on one's neighbors. Because of
this negative impact, Buchanan argued, it is in the interest of everyone
who lives in a diverse city to make a deal designed to keep the rich

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[9] The literature is immense. See, e.g., Robert L. Bish, The Public Economy of Metro-
politan Areas (1971); Wallace E. Oates, Fiscal Federalism (1972); Daniel Rubinfeld, The
Economics of the Local Public Sector, in 2 Handbook of Public Economics, supra note 5,
at 571; Local Provision of Public Services: The Tiebout Model after Twenty-Five Years
(George Zodrow ed., 1983). For critiques of the Tiebout model, see generally Gary J.
Miller, Cities by Contract: The Politics of Municipal Incorporation (1981); Bratton &
McCahery, supra note 6, at 25; Richard Briffault, Our Localism: Localism and Legal The-
ory, 90 Colum. L. Rev. 346, 415-35 (1990).

[10] See Vicki Been, Comment on Professor Jerry Frug's *The Geography of Community*,
48 Stan. L. Rev. 1109, 1111 n.4 (1996) (collecting authorities).

[11] Bruce W. Hamilton, Zoning and Property Taxation in a System of Local Govern-
ments, 12 Urb. Stud. 205, 205 (1975).

[12] See also Oates, supra note 8, at 96 ("Local zoning regulations can ... serve, if admit-
tedly imperfectly, as a mechanism for controlling the composition of the local population
so as to enhance the quality of local services.").

[13] See James M. Buchanan, Principles of Urban Fiscal Strategy, 11 Pub. Choice 1
(1971).

from moving out of town.[14] Such a deal, he suggested, might include offering them better schools, parks, and police protection than is available to others in town in exchange for their agreement to stay.[15] Buchanan acknowledged that these "bribes," as Clayton Gillette calls them,[16] "may seem to violate traditional equity norms."[17] Nevertheless, under his version of the Tiebout model, it is in the interest of the low and middle class residents to offer them.[18]

I do not rely on the theory of public goods in this Article—and not simply because I find the homogeneous neighborhoods and bribes for the rich found in Hamilton's and Buchanan's more "realistic" versions of Tiebout's model an unacceptable foundation for public policy.[19] The literature as a whole, Tiebout's original article included, is based on two assumptions that I reject—one about the nature of city services and one about the nature of cities. First of all, the public goods tradition treats city services as objects of consumption.[20] Tiebout, for example, portrays people shopping for a city in which to live just like they shop for any other consumer good: they choose a city by determining whether the package of services it provides is worth the price charged for it in taxes. The only difference from private market transactions that Tiebout allows is that consumers make their choice not by handing over a credit card but by moving to the location where they get the best deal. Along with others who work within the public goods tradition, Tiebout also assumes that a city is

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[14] See id. at 13-14.

[15] See id. at 15.

[16] Clayton P. Gillette, Equality and Variety in the Delivery of Municipal Services, 100 Harv. L. Rev. 946, 961 (1987) [hereinafter Gillette, Equality and Variety] (reviewing Charles M. Haar & Daniel W. Fessler, The Wrong Side of the Tracks: A Revolutionary Rediscovery of the Common Law Tradition of Fairness in the Struggle Against Inequality (1986)); Clayton P. Gillette, Opting Out of Public Provision, 73 Denv. U. L. Rev. 1185, 1204 (1996) [hereinafter Gillette, Opting Out].

[17] Buchanan, supra note 13, at 15. For a critique of Hamilton's and Buchanan's positions, see Miller, supra note 9, at 201-02 (criticizing these arguments for their "self-satisfied acquiescence in lower-class isolation, neglect and impotence").

[18] See Buchanan, supra note 13, at 15.

[19] Bruce Hamilton explicitly says that he does not address the normative aspects of his proposal, while James Buchanan is somewhat more ambiguous on the topic. See Hamilton, supra note 11, at 211 ("I am not prepared to argue, on equity grounds, that local public services 'ought' to be distributed in accordance with market criteria."); Buchanan, supra note 13, at 16 (If "[t]he familiar practice of allegedly favored treatment accorded high-income residential property owners . . . may be 'explained' as one part of an optimal strategy . . . the interests of city residents . . . may dictate continuation rather than elimination of the favoritism.").

[20] See, e.g., Samuelson, supra note 4, at 388 (discussing government expenditure on "collective consumption goods"); Tiebout, supra note 7, at 418 (discussing the "consumer-voter" who "pick[s] that community which best satisfies his preference pattern for public goods").

similar to a voluntary association, such as a political organization, church, or chat group.[21] People are seen as choosing a city in which to live in the way they choose a country club: what attracts them is the fact that they share interests in common with others making the same choice. Indeed, this homogeneity is said to promote efficiency; since the rich and poor tend to want different levels of services, both groups are thought to be better off if they move to homogeneous cities.[22] By picturing cities as locations where people share interests or values in common, public goods theorists thus embrace a suburban image of what cities are like. Only the strangers who live within homogeneous suburbs—not those who live in America's central cities—imagine themselves as constituting a coherent group.[23] To be sure, public goods theorists also recognize that cities are governments. In fact, their focus on market failure as the justification for city services generates a public/private distinction that does not distinguish cities from states or the federal government—the word "government" means the same thing no matter which level of government is being considered.[24]

This conception of cities and their services is by no means simply an academic construct. Residents of America's metropolitan areas themselves often consider city services to be consumer goods. They evaluate them by deciding whether they are getting what they pay for and, if they think they aren't, they vote for a more business-like mayor or move to a city that is doing better. Many of them—particularly those who reside in America's most prosperous suburbs—also act as if the cities in which they live are like voluntary associations. They decide where to buy a house by picking a community filled with the kind of people with whom they want to associate. Once there, they support rules of exclusionary zoning that allow the city's residents to keep "undesirable" people from moving to town. To support city services, they pay taxes with the same expectations they have when they pay dues to be a member of a club: taxes are seen as the collective property of city residents, just as a club's dues are the collective property

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[21] For an analysis of Tiebout in terms of the theory of clubs, see Rubinfeld, supra note 9, at 576-81; for the relationship between the theory of clubs and public goods theory in general, see Oakland, supra note 6, at 502-09.

[22] See Rubinfeld, supra note 9, at 582.

[23] See Jerry Frug, The Geography of Community, 48 Stan. L. Rev. 1047, 1048-50 (1996) [hereinafter Frug, The Geography of Community]. For a defense of this conception of cities, see Hadley Arkes, The Philosopher in the City 320-26 (1981).

[24] Public goods theorists suggest that determining whether a city, rather than a central government, should provide a particular service depends on whether its nonrival or nonexclusive character is local rather than statewide or nationwide in scope. See Musgrave & Musgrave, supra note 4, at 445-56. Under this formulation, services could be administered by a local branch of the state or federal government.

of club members. As a result, they think it obvious that the city's tax revenues should be spent only on city residents and that only they should be entitled to use city services. Finally, once this conception of the city is in place, they vigorously defend their city's autonomy by, for example, resisting annexation by neighboring cities. Each of these ingredients of this conception of the city—exclusionary zoning, property taxes, eligibility requirements for public services, and annexation rules—stems from the enactment of state and local laws.[25] Like public goods theorists, therefore, the inhabitants of these cities also understand that, while their cities sometimes feel like voluntary associations, they nevertheless are governments.

The popularity of this conception of cities and of the services they offer explains why the current debate over city services largely focuses on the issue of privatization—that is, on the question whether any particular service, such as schools or sanitation, should be run not by the city but by a private corporation.[26] Once one adopts a consumer-oriented definition of city services and a voluntary association image of cities, transferring public services to the private sector seems easy and uncontroversial. After all, don't private companies offer most consumer goods already? Indeed, once one adopts this understanding, privatization has already largely occurred even if no transfer of city functions to the private sector is made. By this I mean that the current feel of a prosperous suburban high school is more like that of a private school than that of a central city high school. Its "exclusive" quality is simply maintained through zoning rather than an admissions office. Similarly, many suburban police forces perform work more like security guards than that of a major city's police department, and the parks that are found in homogeneous suburbs—if any can be found at all—remind one more of open space in a condominium complex than of Central Park. Admittedly, these schools, police departments, and parks are run by the city. That's why privatization (as the word is usually defined) is the issue being debated. But the debate over privatization is able to concentrate on technical points about how to deliver consumer goods to city residents efficiently because it assumes, as a starting point, a privatized version of what the public sector is and what it can accomplish.

This consumer-oriented vision of city services has significant undesirable consequences. First of all, by definition, it abandons for

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[25] See Gerald Frug, Local Government Law 327, 354, 380, 641 (2d ed. 1994) [hereinafter Frug, Local Government Law].

[26] See, e.g., John D. Donahue, The Privatization Decision: Public Ends, Private Means (1989); E.S. Savas, Privatizing the Public Sector: How to Shrink Government (1982); Ronald A. Cass, Privatization: Politics, Law and Theory, 71 Marq. L. Rev. 449 (1988).

public services the notion of equality traditionally associated with the
public sector, replacing the one-person, one-vote principle associated
with democracy with the one-dollar, one-vote rule of the marketplace.
It thus has a built in bias in favor of the rich.[27] Everyone knows that
those with more money not only can afford more consumer goods
than those with less money but are considered entitled to them. In-
deed, it is because of this inherent bias that market-based allocations
are commonly rejected for the public sphere. It is considered unac-
ceptable, for example, to treat voting rights, jury duty, and military
service as commodities available for sale, just as it is considered unfair
to allocate many city services, such as admission to public schools or
public parks, according to the ability to pay.[28] In fact, it is a crime to
pay a police officer to protect oneself rather than to protect someone
too poor to make such a payment.[29] Moreover, again by definition,
the consumer-oriented vision of city services equates the concept of
freedom of choice with that of freedom of consumer choice. By doing
so, it perpetuates a pervasive, but false, justification for the radical
differences that now exist between the quality of city services avail-
able in different parts of America's metropolitan regions. The public
goods literature is filled with rhetoric about how public services in
America are allocated in accordance with differences in people's
"preferences" or "tastes."[30] And many suburbanites say that they
moved to their particular suburb because they (unlike others?) cared
about the quality of education for their children. Yet it seems odd
indeed to suggest that division of America's metropolitan areas into
areas with good schools and safe neighborhoods and areas with deteri-
orating schools and high crime rates is explicable in terms of people's
differing "tastes." People who live in unsafe neighborhoods or send
their children to inadequate schools don't do so because they have
taste for them. They do so because they feel they have no other
choice.[31] If they had a choice (and I am not using the word to mean
"consumer choice"), they would prefer better schools and less crime.

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[27] See Miller, supra note 9, at 163-202.

[28] See Cass R. Sunstein, Free Markets and Social Justice 75 (1997) (suggesting that
"refusal to allow economic exchanges is often based on familiar notions of equality that
such exchanges would compromise"); Margaret Jane Radin, Contested Commodities 19, 74
(1996) (arguing that honoring notions of personhood prohibits allowing certain things to be
bought and sold).

[29] See, e.g., N.Y. Penal Law §§ 200.30, 200.35 (Consol. 1995).

[30] See, e.g., Clayton P. Gillette, Courts, Covenants and Communities, 61 U. Chi. L.
Rev. 1375 (1994); Gillette, Opting Out, supra note 16. For a critique of the notion of
preferences, see Sunstein, supra note 28, at 13-31; Mark Sagoff, Should Preferences
Count?, 70 Land Econ. 127 (1994).

[31] This lack of choice is not attributable simply to the lack of money. The poor are
more dependent than the rich on neighbors, friends, and family for maintaining a support

These two defects can be understood simply as illustrations of a third, more fundamental, problem with the consumer-oriented vision of city services. Once again by definition, it radically limits the aspect of the self considered relevant in the design and implementation of public services.[32] Consumption is an activity centered on the individual: spurred by their own economic interest, individuals buy consumer goods person by person (or family by family) with little concern about the impact of their purchase on those living nearby. As a result, values commonly associated with democracy—notions of equality, of the importance of collective deliberation and compromise, of the existence of a public interest not reducible to personal economic concerns—are of secondary concern, or no concern at all, to consumers. Yet it is widely recognized, in political theory as well as daily life, that reducing human experience to the act of consumption falsifies it. It is commonly said, for example, that human beings see themselves not simply as consumers but also as citizens—and that they think differently in these two different roles.[33] As Mark Sagoff puts it,

> Last year, I fixed a couple of tickets and was happy to do so since I saved fifty dollars. Yet, at election time, I helped to vote the corrupt judge out of office. I speed on the highway; yet I want the police to enforce laws against speeding. . . . I love my car; I hate the bus. Yet I vote for candidates who promise to tax gasoline to pay for public transportation.[34]

The consumer-oriented understanding of city services makes this distinction disappear by collapsing citizens into "consumer-voters."[35] The impact of this disappearance is not simply on the outcome of government decisionmaking, important as that is. It affects the evolution of American society itself and, thereby, the forces that shape and nur-

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network and, therefore, are less mobile. See John R. Logan & Harvey L. Molotch, Urban Fortunes: The Political Economy of Place 42-43 (1987).

[32] See generally Elizabeth Anderson, Value in Ethics and Economics (1993); Radin, supra note 28; Tracy Elizabeth Clay, On Cities, Consumers, and the Anatomy of Choice (unpublished manuscript). The proposition that human experience is not reducible to the act of consumption is related to—but different from—the critique of the concept of the "rational actor" in economics. For that critique, see generally Steven Kelman, "Public Choice" and Public Spirit, 87 The Pub. Interest 80 (1987); Amartya K. Sen, Rational Fools: A Critique of the Behavioral Foundations of Economic Theory, 6 Phil. and Pub. Aff. 317 (1976).

[33] See, e.g., Radin, supra note 28, at 81; Sunstein, supra note 28, at 44. For a related, but more basic, distinction, see Karl Marx, On the Jewish Question, in The Marx-Engels Reader 24 (R. Tucker ed., 1978). For a critique of the citizen/consumer distinction, see Daphna Lewinsohn-Zamir, Consumer Preferences, Citizen Preferences, and the Provision of Public Goods (unpublished manuscript, on file with author).

[34] Mark Sagoff, At The Shrine of Our Lady of Fatima or Why Political Questions Are Not All Economic, 23 Ariz. L. Rev. 1283, 1286 (1981).

[35] This is Tiebout's term. See Tiebout, supra note 7, at 417.

ture consumer preferences. The consumer-oriented vision of public services strengthens the consumptive aspect of self over alternatives: consumer preferences help generate a social world that, in turn, shapes consumer preferences. By doing so, it narrows the definition of "human flourishing" that city services have the potential to foster.[36]

The public goods theory's definition of a city has equally undesirable consequences—indeed, it has the same undesirable consequences as the adoption of the consumer-oriented understanding of city services. By picturing cities as voluntary associations, public goods theory imagines them as collective versions of the self, and it presents these collective selves as acting, like classically defined autonomous individuals, in a way that maximizes their own self-interest regardless of the impact on their neighbors. This conception of cities enables property rich cities to enrich themselves at the expense of the poor. After all, the reason that prosperous suburbs think it is worthwhile to engage in fiscal zoning—by attracting wealthy residents and excluding the poor—is that it permits them not only to increase their revenue but to spend the money raised only on themselves. Wealthy communities can enrich themselves in this way, however, only if the metropolitan area is fragmented into a multiplicity of separate cities, each of which is empowered to defend its borders through autonomy enhancing local government rules, such as exclusionary zoning, protections against annexation, and the allocation of property tax revenues solely to those who live within the city borders.[37] Public goods theorists defend just this kind of fragmentation. And they do so in the language of consumer choice. Only a fragmented metropolitan area, they contend, can offer consumers a range of choices about packages of public goods from which they might want to select; in fact, the more fragmented the area is, the better their range of choices.[38] Yet this fragmentation has a powerful, negative impact on urban policy. To mention but one example, fragmentation has fueled a competition between cities within a metropolitan region to offer ever greater tax breaks to businesses in neighboring cities in the hopes that jobs and wealth can be attracted across the border, with the poverty left behind becoming "their prob-

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[36] On "human flourishing," see Radin, supra note 28, at 79-101.

[37] See Jerry Frug, Decentering Decentralization, 60 U. Chi. L. Rev. 253, 263-72 (1993) [hereinafter Frug, Decentering Decentralization].

[38] See generally Bish, supra note 9; Robert L. Bish & Vincent Ostrom, Understanding Urban Government: Metropolitan Reform Reconsidered (1973); Ostrom et al., supra note 3, at 838-40; Richard Wagner & Warren Weber, Competition, Monopoly, and The Organization of Government in Metropolitan Areas, 18 J. L. & Econ. 661, 684 (1975).

lem."[39]   More fundamentally, fragmentation—and the autonomy model on which it is based—has fostered for cities, as for their inhabitants, one version of the self at the expense of alternatives. It has undervalued the impact that cities within a single metropolitan area have on each other, as well as the links that metropolitan residents have to cities other than their place of residence. In an earlier article, I proposed that the legal system recognize these interlocal connections as part of its definition of what a city is, either by requiring cities to take regional considerations into account in their decisionmaking or by deemphasizing the importance of the boundary lines that mark the separateness of the cities located within a single metropolitan region.[40] Failure to do so, I argued, not only frustrates regional solutions to metropolitan problems but, like the consumer-oriented version of the self, becomes self-reinforcing: the more a city's sense of self is based on separation from its neighbors, the more important such a separation becomes.[41]

In the next section, I propose an alternative to the public goods conception of city services. Before doing so, I want to emphasize an important feature of both its technical and popular version that is well worth preserving. As most articulately presented by Robert Nozick, the public goods model appeals to a desire for human freedom.[42] Freedom of choice and freedom to move wherever one likes are important aspects of liberty, and critics have far too often responded to them in the language of coercion. As a result, segregation, separation, and suburbanization have become associated with "what people want," while integration, diversity, and city life have been thought possible only if forced on an unwilling populace by government action, most often in the form of a court order. As I hope to demonstrate below, however, a rejection of the public goods model does not entail a limitation on human freedom. Quite the contrary. It expands freedom of choice for most Americans by refusing to define choice solely in terms of consumption. And it supplements the freedom to move with the freedom to stay put—a freedom possible only if fear of violence and concern about bad schools no longer compel people to move, if they can, whether they want to or not. What I envision, in short, is not the replacement of Tiebout's version of freedom with co-

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[39] See generally Peter D. Enrich, Saving the States From Themselves: Commerce Clause Constraints on State Tax Incentives for Business, 110 Harv. L. Rev. 377, 382-89 (1996).

[40] See Frug, Decentering Decentralization, supra note 37, at 279-94, 312-28.

[41] See id. at 323.

[42] See Robert Nozick, Anarchy, State and Utopia 297-334 (1974).

ercion but the substitution of an alternative definition of freedom for the one that he and other public goods theorists have adopted.

B. Community Building

Not all images of cities picture them as competing for wealthy residents by excluding those who demand "too many" services. Consider, for example, the way that the city/suburb distinction is used in everyday speech. When this distinction is invoked, cities (by which people usually mean one of America's central cities) are thought of as places open to anyone who decides to move there. These cities are characterized not by their exclusion of the poor but by the wide variety of different kinds of people who live in them: gay and straight, cosmopolitan and streetwise, elderly and college grad, Latino and Anglo, office employee and service worker. As a result, no one thinks of these cities as being like country clubs, church groups, or other kinds of voluntary associations. Instead, they are an example of what I'll call a fortuitous association—a group of people in which individuals simply find themselves, one that demands an ability to get along with the other members of the group no matter how different they are.

Fortuitous associations, in my view, make an important contribution to human freedom and growth. Of course, voluntary associations make important contributions to these values too. But there are a multitude of entities that foster the benefits offered by voluntary associations: political parties, interest groups, organized religion, clubs of all kinds. The advantage of fortuitous associations as diverse as heterogeneous cities, by contrast, is much harder to come by. Indeed, the value of the experience of living in these cities is so rarely defended that I spelled out at some length in an earlier article, *The Geography of Community*, what I consider that value to be.[43] I shall not repeat that argument here. Suffice it to say, as a quick summary, that diverse cities foster the formation of a multiplicity of groups whose interactions help expand the ways in which one can shape a life; they promote tolerance by expanding the range of people different from oneself that one becomes able to endure, be indifferent to, or learn from; and they provide opportunities for adventure, excitement, mystery, and variety that homogeneous communities eliminate through exclusion. No doubt these advantages come at a cost—ranging from the annoyance that unfamiliar people often generate to the stark fear that they sometimes cause. But costs such as these are imposed by every form of association, including the most important fortuitous association in American life—the family. One does not choose who

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[43] See Frug, The Geography of Community, supra note 23, at 1055-81.

one's parents or children (or in-laws or siblings) are, but they have an ability to provoke both joy and pain in a way quite different from a voluntary association with chosen friends. Of course, the disparate strangers that constitute a big city are nothing like one's family. But that is the point. Heterogeneous cities offer a form of human association, other than the family and voluntary associations, that can help shape who we are. They offer an opportunity to expand our capacity to understand, cope with, and, hopefully, enjoy the variety of people who live in America—capacities that I think are vital if political solutions are to be found for the divisiveness that now characterizes America's metropolitan areas.

In this Article, I embrace this fortuitous association version of cities rather than the voluntary association model assumed by public goods theorists. I recognize, however, that the benefits offered by this kind of association, like the benefits provided by voluntary associations, can be obtained only with conscious effort and nurturing. As in *The Geography of Community,* I call this nurturing process "community building." By using the term "community," I do not seek to invoke the romantic sense of togetherness often generated by the image of cities as voluntary associations. I use the term instead to refer to the experience, characteristic of fortuitous associations, of being part of a group composed of people different from oneself. The goal of community building is not to engender a feeling of oneness with others. The goal is to increase 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. Many people consider such a goal to be utopian. But no one thinks that it is unimportant. One reason that it seems necessary is to decrease the level of tension that the differences between the people who live in America's urban areas now generate. But there is a positive objective as well: heterogeneity stimulates learning, growth, adventure, and fun. Indeed, if one strips public goods theory of its consumer definition of city services and its voluntary association image of cities, community building can be understood as an example of what the economists call a pure "public good." Everyone can benefit from a greater capacity to live in a diverse world without diminishing anyone else's ability to do so, and exclusion of anyone from such a benefit would be very costly indeed.

There is no institution in American life that is now devoted to community building. What kind of institution could do so? The market is not likely to be the most helpful mechanism for addressing the divisions that now fracture American society or for stimulating the ability of metropolitan residents to profit from the diversity of their

region. Cities, by contrast, offer a good deal more promise. The cities that constitute America's metropolitan areas contain within their collective borders all of the distinctions that now characterize American life, whether these distinctions are understood in terms of political beliefs, religion, race, ethnicity, class, sexual orientation, gender, or values. This range of diversity is considerably broader than that offered not only by voluntary associations but also by the other common forms of fortuitous association in America today, such as the workplace or family life. Moreover, despite the contrary assumption by public goods theorists, cities are not simply "governments," indistinguishable from the states and the federal government. Unlike central governments, cities can provide the kind of personal, day-to-day contact among citizens and between citizens and their elected officials that community building requires. Only at the local level can people participate in the fundamental democratic experience of working with strangers—with people with whom one disagrees, with people with whom one feels nothing in common, with people who make one uncomfortable—to find solutions to common problems. I therefore argued in *The Geography of Community* that cities should be organized to take advantage of their capacity to foster the benefits of fortuitous associations by making community building the primary city function. There, I focused on how such an objective would transform cities' land use, zoning, and redevelopment policies.[44] In what follows, I seek to demonstrate that a rejection of the consumer-oriented vision of city services is equally indispensable.

The consumer-oriented vision does more than simply inhibit community building. It strengthens the opposite phenomenon: the separation and division of the people who live in America's metropolitan areas into unequal, even antagonistic, groups. The flight of wealthy Americans to prosperous suburbs in the hopes of establishing a "you-get-what-you-pay-for" environment for city services is only one aspect of this phenomenon. Many of the people they have left behind in the declining, older suburbs have tried to stem the resulting decrease in the quality of their schools and the safety of their streets by fortifying the city borders that separate them from those who are worse off, thereby intensifying the level of suspicion and distrust on both sides of the line. Even America's central cities have become less diverse as more and more middle class people, African American as well as white, think they have no choice, given the quality of the schools and the crime rate, other than to move to the suburbs. Those who leave don't always object to diversity. On the contrary, they often fear that,

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44 See Frug, The Geography of Community, supra note 23, at 1081-1107.

whether or not they stay, the central city will become not diverse but simply the home of the poor. Indeed, there is a widespread feeling of hopelessness when people confront their choice about where to live in a metropolitan area. Sending one's child to the central city's public school or living in a dangerous neighborhood, people worry, threatens to jeopardize the welfare of their family. Moreover, as a consumer, acting alone, a decision to stay in town cannot affect the dynamic that is enriching some parts of the region and impoverishing others.[45] Yet moving out of one's neighborhood means leaving friends and family, lengthening commutes, and substituting isolation for the stimulation of city life. Thus, when people decide to move, it is partly an expression of choice (they don't have to move) and partly an expression of the absence of choice (social forces are larger than they are). If, on the other hand, they stay, they will be required to pay costs that those who leave can avoid. Either way, the consumer-oriented model of city services creates a dynamic that makes it increasingly difficult for anyone who can afford to leave to remain in America's diverse cities. As a result, it makes it increasingly difficult to have diverse cities at all.[46]

But the reason to transform city services into vehicles for community building is not just to reverse this negative impact. Community building requires the widespread support of metropolitan residents, and these days this support is unlikely to be generated simply by an evangelical appeal to the values of diversity and tolerance. Its chances of success are better if community building is seen as a mechanism for solving the problems that metropolitan residents have in common. And many of these problems involve city services. Concerns about the quality of public schools and violent crime cross city boundary lines throughout America's metropolitan regions, as do concerns about commuting and the environmental damage caused by suburban growth. These concerns have the potential of uniting different kinds

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[45] For a compelling, book length analysis of how consumer behavior undermines the long-run interest of the consumers themselves, see Thomas C. Shelling, Micromotives and Macrobehavior (1978).

[46] See Miller, supra note 9, at 197 (arguing that trend toward government fragmentation creates "bias in favor of upper-income groups who move to favorable jurisdictions"); Myron Orfield, Metropolitics: A Regional Agenda for Community and Stability 1-14 (1997); Buchanan, supra note 13, at 16; Richard Thompson Ford, The Boundaries of Race: Political Geography in Legal Analysis, 107 Harv. L. Rev. 1841, 1849-57 (1994); see also Albert O. Hirschman, Exit, Voice, and Loyalty: Responses to Decline in Firms, Organizations, and States 44-54, 101-02 (1970) (analyzing analogous impact of private schools on public schools); Pearl M. Kamer, Crisis in Urban Public Finance: A Case Study of Thirty-Eight Cities 25-30 (1983) (describing impact of flight on central cities); Scott J. South & Kyle D. Crowder, Escaping Distressed Neighborhoods: Individual, Community, and Metropolitan Influences, 102 Am. J. Soc. 1040 (1997) (describing factors that influence flight to suburbs).

of people rather than dividing them if metropolitan residents come to realize that the ever increasing centrifugal dynamic that now affects metropolitan regions throughout the country aggravates urban problems for a majority of Americans, not just the residents of central cities.[47] This does not mean that cities have to abandon totally the consumer-oriented focus adopted by public goods theorists. But it does mean that the conception of city services that stresses self-protection and fragmentation has to be replaced with one that builds on the notion that the ability to live in a diverse society is inextricably dependent on the welfare of others.

Such a basis for city services is not a new idea. As I envision it, community building is a contemporary version of the reason that city services were organized in the first place. It is important to consider for a moment the extraordinary idea, developed in America in the nineteenth century, that cities should provide a wide range of services.[48] Until that time, there were (for example) no city police officers, no city fire departments, no public schools, no city parks, and no forms of public transportation in American cities. Why did nineteenth century thinkers and activists consider it a good idea to create these public services—thereby inventing what Eric Monkkonen calls the "service city"?[49] The answer to this question is too complex to permit a neat summary here. But there is little in the historical account to suggest that city services were designed to fragment American cities into separate, homogenous components, each of which would supply consumer goods on a fee-for-service basis. On the contrary, one important reason for the creation of city services was the recognition by educated, enlightened elites that it was in their own self-interest to improve the circumstances of the immigrants and other poor people who were increasingly populating America's cities. This attitude is perhaps least surprising when one considers the creation of city police. Police historians emphasize that control of the "dangerous" classes—the imposition of a "middle-class sense of order on its citizens"—was an important objective in the creation of city-run po-

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[47] For an analysis of how that majority is constituted, see Peter Calthorpe, The Next American Metropolis: Ecology, Community, and the American Dream 36 (1993) (discussing alliance among environmentalists, developers, and inner city advocates); Orfield, supra note 46, at 104-72 (describing coalition building between central cities and inner suburbs in Minneapolis region and elsewhere); Frug, The Geography of Community, supra note 23, at 1094-1107 (discussing impact of current local government rules on residents of declining suburbs, women, the elderly, and African Americans).

[48] See generally Monkkonen, America Becomes Urban, supra note 1, at 89-110; Jon C. Teaford, The Unheralded Triumph: City Government in America, 1870-1900 (1984).

[49] Monkkonen, America Becomes Urban, supra note 1, at 89.

lice departments.[50] Historians of American education have similarly found that the proponents of public education saw public schools as a way to instill moral values in, and impose order on, the children of the poor. Worried about crime, vice, poverty, disease, and class conflict, advocates considered public education "the most humane form of social control and the safest method of social renewal."[51] Even city parks were seen, in Olmsted's words, as vehicles for elevating the poor "to [the] refinement and taste and the mental & moral capital of gentlemen."[52] The intermingling of the different classes in the common space of parks, it was thought, would help cultivated people demonstrate to the rest of society the kinds of behavior necessary to life in a diverse city.[53]

No doubt, this nineteenth century vision of city services is based on a patrician condescension toward the poor and on a belief in assimilation to universal, middle class values that are offensive to (at least many) modern readers. But if one strips it of its hierarchical overtones, it offers valuable lessons for the contemporary world. The founders' vision and community building share in common the idea that city services should be open to everyone and supported by everyone. Both agree that a consumer's understanding of "what's-in-it-for-me" fails to capture the ways in which city services can promote not just the public interest but individual self-interest as well. And, in both cases, the justification for these positions lies in the recognition

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[50] See Alexander von Hoffman, An Officer of the Neighborhood: A Boston Patrolman On the Beat in 1895, 26 J. Soc. Hist. 309, 317-18 (1992); see also Roger Lane, Policing the City: Boston 1822-1885, at 206-08 (1967); Roger Lane, Urban Police and Crime in Nineteenth-Century America, 2 Crime & Just. 1, 14-21 (1980) [hereinafter Lane, Urban Police]; Monkkonen, Police in Urban America, supra note 2, at 4-15, 30-64. A stronger version of this thesis—that the police were a form of control over the working class—is advanced by Sidney L. Harring, Policing a Class Society: The Experience of American Cities, 1865-1915, at 81-83, 99-106 (1983).

[51] David B. Tyack, The One Best System: A History of American Urban Education 74 (1974). In addition to Tyack's valuable account, see id. at 28-77, other useful sources include Michael B. Katz, The Irony of Early School Reform: Educational Innovation in Mid-Nineteenth Century Massachusetts 163-211 (1968) (discussing education as reform vehicle for juvenile delinquents); Marvin Lazerson, Origins of the Urban School: Public Education in Massachusetts, 1870-1915, at ix-xv (1971) (discussing education as "the basis of social amelioration").

[52] 2 The Papers of Frederick Law Olmsted 235 (Charles E. Beveridge & Charles Capen McLaughlin eds., 1981).

[53] On Olmsted's view of the functions of the park, see Thomas Bender, Toward an Urban Vision: Ideas and Institutions in Nineteenth-Century America 169-81 (1975); Geoffrey Blodgett, Frederick Law Olmsted: Landscape Architecture as Conservative Reform, 62 J. Am. Hist. 869, 876-79 (1976). See generally Galen Cranz, The Politics of Park Design: A History of Urban Parks in America, at x-xii (1982) (discussing role of parks in city life); Roy Rosenzweig & Elizabeth Blackmar, The Park and the People: A History of Central Park 22-30 (1992) (discussing early rationales for construction of New York City parks).

that the behaviors of different groups of people in our society have an impact on each other, whether one likes it or not. To be sure, a community building perspective replaces the founders' emphasis on assimilation and the imposition of a common set of values with one that stresses not merely the acceptance of cultural differences but the importance of increasing everyone's level of comfort when differences are encountered. Indeed, it now seems clear that those who live in prosperous suburbs have more to learn from the rest of society about how to live with different kinds of people than the other way around. Nevertheless, the central point remains: like the nineteenth century thinkers who created America's public services, community building offers an alternative to the privatized conception of what city services are.

At this point, those who adopt the consumer-oriented version of city services might object that it is not appropriate for cities to prefer community building over a voluntary association model as the basis for civic life. Individuals, they might say, should have a choice about whether they want to live in cities organized as voluntary associations or fortuitous associations. Why not let the market decide what kind of association people want rather than have cities organized to prefer one value over another? The answer is that there is no such thing as a free market in the selection of cities. Markets for cities, like other markets, are structured by legal rules, and currently these rules promote the voluntary association conception of cities.[54] Local government law fosters the separation and autonomy of individual cities within the same region through its rules of incorporation, voting rights, exclusionary zoning, and annexation. And it advances the voluntary association conception of city life and the consumer orientation toward city services by empowering these autonomous cities to generate their own revenue, to provide their own services, and to limit the availability of these services to city residents. It is this emphasis on locally generated taxes and resident-only services that has encouraged some cities to increase their tax revenue while excluding those who require the most services, thereby generating for other cities a high demand for services along with insufficient revenue to deliver what

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[54] See Frug, Decentering Decentralization, supra note 37, at 263-73; Briffault, supra note 9, at 382 ("Questions of local power are often resolved by an implicit reliance on the idealized residential suburb as the paradigm locality. In a sense, 'the city as a legal concept,' has become a suburb . . . ."). On the legal construction of markets generally, see Duncan Kennedy, Sexy Dressing Etc. 83-125 (1993).

their citizens need.[55] The national scandal of unequal school funding is only the most well known example of the government generated inequality that has resulted from this legal regime. The task, then, is not to make the law neutral as to the choice between the voluntary and fortuitous association conceptions of cities—that is not possible—but to reverse the current emphasis, substituting community building for fragmentation as the basis of service delivery.

This requires breaking the current link between metropolitan fragmentation and the privatized conception of city services. Despite the widespread agreement that public schools and police protection should not be allocated according to the ability to pay, they are often now allocated on just that basis by allowing separate, autonomous cities to offer them only to city residents. Indeed, one of the reasons people move to a prosperous suburb is that the act of moving eliminates the obligation to pay for city services across the border either directly (through taxes) or indirectly (by admitting outsiders to city facilities). Of course, the services provided by these suburbs remain public in the sense that city residents have to pay taxes that support the other people in town, not just themselves. Nevertheless, city borders, once zoned to segregate people by income level, function like the boundaries of private property: a suggestion that one should pay for services for nonresidents is experienced as a demand for the reallocation of wealth. Moreover, this understanding of city services is not limited to the prosperous suburbs. Residents of retirement communities think that they should not have to pay for schools; people in safe neighborhoods think that they should not have to pay for crime control; people who live in gated communities think that their monthly assessment fees for garbage pickup should be deductible from city taxes raised to pay for sanitation services.[56] This fee-for-service mentality nurtures the idea that defects in the services across the border are no concern to outsiders, notwithstanding the fact that the people voicing this idea expect police protection, fire protection, and emergency health care whenever they cross the city line. Indeed, given this privatized vision of public services, it is not surprising that one public goods theorist has called for research on the question of

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[55] See Steven A. Holmes & Michael Janofsky, Trying to Fix Capital Where 'Everything Is Broken,' N.Y. Times, July 25, 1996, at A1 (discussing disjunction between need for public services and tax revenues in Washington, D.C.).

[56] See, e.g., James M. Poterba, Demographic Structure and the Political Economy of Public Education (National Bureau of Econ. Research Working Paper No. 5677, July 1996) (analyzing resistance of elderly to educational spending); James Brooke, Young Unwelcome in Retirees' Haven, N.Y. Times, Feb. 16, 1997, at A16 (same); N.J. Stat. Ann. § 40:67-23.3 (West 1992) (providing for reimbursement by municipalities of costs incurred by residential communities for street lighting, snow removal, and garbage collection).

"why the revenue of municipal corporations is viewed as a tax at all."[57] Aren't people simply paying for the city services that they themselves have chosen to have?

A vast array of innovations in the way local government law now organizes cities could undermine this conception of city services. One could modify the zoning and redevelopment policies that currently foster the segregation of metropolitan regions by income level.[58] Alternatively, one could create regional entities empowered to provide specific city services. Many city services, such as transportation and water supply, are already delivered by regional authorities in cities across America. Although these regional authorities are now rarely organized democratically, they could be reorganized to transform them into vehicles capable of promoting community building.[59] In the sections that follow, I thus explore only one possible modification of the autonomy model. I shall retain the idea that individual cities supply city services one by one in order to describe how even this fractured model of metropolitan organization can be modified to promote community building. Moreover, I concentrate solely on altering two key ingredients of city autonomy: the manner in which the services are funded and the identity of the people who are entitled to use them. Current law usually allows individual cities to add resources derived from (state authorized) local property-based taxes to their share of state and federal funding of local services. I shall assume below that this system has been replaced by a new institutional mechanism in metropolitan regions across the country, one that requires decisions about the funding of all city services within the region to be made through a negotiation process in which every city in the region participates. I have proposed and discussed this kind of negotiation process at greater length elsewhere.[60] Its purpose is to introduce into

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57 William A. Fischel, Property Taxation and the Tiebout Model: Evidence for the Benefit View from Zoning and Voting, 30 J. Econ. Litig. 171, 176 (1992).

58 See Frug, The Geography of Community, supra note 23, at 1081-89.

59 On public authorities, see Nancy Burns, The Formation of American Local Governments: Private Values in Public Institutions 109-17 (1994); Briffault, supra note 9, at 375-78; see also infra notes 217-20.

60 See Frug, Decentering Decentralization, supra note 37, at 294-303, 328-34. The institutional reform I have in mind does not require the creation of a regional government. The task of the regional negotiation is not to govern the region but, as I argued in *Decentering Decentralization*, to perform one specific function now performed by state legislatures and state courts: the allocation of entitlements to local governments. See id. at 296. One such entitlement is a city's ability, already subject to considerable state control, to generate and distribute revenue. Thus, while my proposal envisions replacing state control over the budget allocation process with an intercity negotiation process—embodied, perhaps, in a regional legislature—it also envisions retaining individualized city decision-making about the administration of public services.

decisionmaking about resource allocation a recognition of the impact that the services provided by the different cities located in the same metropolitan region have on each other. Unequal school funding and underfunding of crime prevention, as I discuss below, have consequences everywhere in the region—not simply on the cities that are most strapped for funds.[61] The second modification that I make in current city entitlements—a change in admission requirements to city services—is based on a rejection of the voluntary association model of service eligibility. That model assumes that a city's citizens are entitled to exclude others from their services because they pay for them.[62] Even now this idea overlooks state and federal funding of local services—as well as the fact that nonresident property owners pay taxes to support city services that they are not entitled to use. Given my change in the method for funding city services, the supposed tie between payment and entitlement to use will simply be weaker still. As readers will no doubt recognize, these two changes undermine city autonomy. That is their objective. Indeed, other modifications might accomplish the same purpose better, and I invite readers to consider what they could be. The central task, in my view, is not to pinpoint the specific institutional form that a revision of the autonomy model should take. The central task is to ensure that community building becomes the basis not only of the relationship between the people who live in the metropolitan region but of the connection between the cities themselves. If this goal is met, city services could be organized in countless ways and, in the best tradition of the decentralization of power, thereby foster local experimentation and innovation.

I concentrate below on the two aspects of city life that are most responsible for the current fragmentation of America's metropolitan areas: the desire for good schools and the fear of crime. By discussing in some detail how these services could be organized as instruments for community building, I hope to demonstrate how such a conception can give meaning to what "public" services are and what they offer city residents. If redefined, public services can change the relationship

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[61] Recognition of this phenomenon has generated some metropolitan reallocation of resources already. See Orfield, supra note 46, at 84-90 (discussing metropolitan property tax base sharing). For additional ideas, see Georgette C. Poindexter, Collective Individualism: Deconstructing the Legal City, 145 U. Pa. L. Rev. 607 (1997); Georgette C. Poindexter, Towards a Legal Framework for Regional Redistribution of Poverty-Related Expenses, 47 Wash. U. J. Urb. & Contemp. L. 3 (1995).

[62] This model is only partly accepted by current law. See, e.g., Fort Gratiot Sanitary Landfill, Inc. v. Michigan Dep't of Natural Resources, 504 U.S. 353, 358-63 (1992) (holding that Commerce Clause prohibits closing of county landfill to outsiders); Borough of Neptune City v. Borough of Avon-by-the-Sea, 294 A.2d 47, 51-56 (N.J. 1972) (finding that "public trust" doctrine precludes limiting city beach to residents).

between the city, understood as a government, and the city, under-
stood as a place. Public services can become the vehicle for building
the infrastructure that—whether we like it or not—shapes the kinds of
human relationships that characterize the places in which we live.

II
EDUCATION

A. *The "Public" Aspect of Education*

"[E]ducation," the Supreme Court declared in *Brown v. Board of
Education,*[63] "is perhaps the most important function of state and lo-
cal governments,"[64] but these days many people find it hard to under-
stand why. The reason is that education is also perhaps the most
important consumer good people ever acquire, not only for them-
selves but also for their children. Education is considered the road to
advancement, for the poor as well as the rich: the better the educa-
tion, the better the job and, as a result, the better the quality of life.
Parents thus think it essential for their children to go to a school that
offers "academic excellence."[65] Many parents shop for such a school
by deciding where to live on the basis of the quality of the public
schools. Others want to go further, arguing there is no justification for
making local governments the primary vehicles for running the
schools. Instead, they say, everyone should have access to academic
excellence wherever it is found, whether in public or private schools,
paid for with vouchers or in some other way.[66] This search for a high
quality education is not surprising given the widespread anxiety about
the kind of competitive world today's children are destined to enter.
The problem with it is not the demand for excellence—itself a worthy
goal—but the fact that it includes no vision of the public nature of
education. Education simply becomes a product everyone acquires
individually, with each family trying to obtain the very best product it
can get.

From its inception, however, public education has not merely
been a market commodity parents provide their children. It has also

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[63] 347 U.S. 483 (1954).

[64] Id. at 493.

[65] I refer here to the popular belief in the importance of education, not the academic
debate about the benefits of a formal education. For the latter, see Ronald G. Ehrenberg
& Robert S. Smith, Modern Labor Economics: Theory and Public Policy 279-312 (5th ed.
1994); Lester C. Thurow, Education and Economic Equality, in Power and Ideology in
Education 325-35 (Jerome Karabel & A.H. Halsey eds., 1977). For an account that makes
"academic excellence" the centerpiece of both governmental policy and popular desire, see
John E. Chubb & Terry M. Moe, Politics, Markets, and America's Schools 6-11, 70-71
(1990).

[66] See infra notes 119-20.

had a social function. In school, as John Dewey put it, "each individual gets an opportunity to escape from the limitations of the social group in which he was born, and to come into living contact with a broader environment."[67] It is there, Dewey continued, that individuals are introduced to a perspective broad enough to encompass the "different races, differing religions, and unlike customs" that constitute American life.[68] This educational experience affects more than the ways that individuals think about the world. It is a primary vehicle for the reproduction of American society itself. Schools, the founders of American public education recognized, are the "public's agencies for creating and re-creating publics."[69] Parents obviously have, and should have, a major influence on their children's education. But everyone else in the community has a stake in the educational process as well.[70] Of course, the idea that education is, in part, a process of socialization by the state has always been controversial. It therefore has traditionally been defended by an appeal to values thought to be above controversy. A common republicanism, a common Protestantism, assimilation to American norms, universal ideas of merit and excellence, consensus values, the need to prepare citizens to engage in democratic decisionmaking—ideas like these have justified, or been used to justify, public education for more than 150 years.[71] These days, however, no rationale for government sponsored socialization seems uncontroversial. As a result, the meaning of the term "public," when used as a modifier to describe the nation's schools, has become hard to decipher.

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[67] John Dewey, Democracy and Education 24 (1916).

[68] Id. at 25.

[69] Lawrence A. Cremin, Traditions of American Education 50 (1977).

[70] See Kramer v. Union Free Sch. Dist., 395 U.S. 621, 630 (1969) (arguing that, in addition to parents and property owners, senior citizens, clergy, military personnel, and boarders and lodgers, among others, have interest in educational system of their school district); Emile Durkheim, Education and Sociology 79 (Sherwood D. Fox trans., Free Press 1956) (1922) ("If, as we have tried to establish, education has a collective function above all, if its object is to adapt the child to the social milieu in which he is destined to live, it is impossible that society should be uninterested in such a procedure.").

[71] On the common republicanism and common Protestantism of the common schools movement, see Cremin, supra note 69, at 39-87; Carl F. Kaestle, Pillars of the Republic: Common Schools and American Society 1780-1860, at 75-81 (1983); David Nasaw, Schooled to Order: A Social History of Public Schooling in the United States 7-84 (1979). On the role of assimilation and ideas of merit and excellence, see Tyack, supra note 51, at 229-55. For a defense of consensus values, see Durkheim, supra note 70, at 81. For an argument that preparation for democratic decisionmaking should be the rationale for public schools, see Amy Gutmann, Democratic Education 48-70, 172-93 (1987); see also Plyler v. Doe, 457 U.S. 202, 222 n.20 (1982) ("[S]chools are an important socializing institution, imparting those shared values through which social order and stability are maintained.").

Community building—the justification I offer for public schools—is controversial as well. Its usefulness lies not in its universal acceptance but in its focus on a central issue: one way or another, the nation's schools prepare children for living in our diverse society. What is controversial is how we should prepare them to do so.[72] As I describe below, the American education system now largely responds to diversity by creating boundaries, intellectual and social as well as geographic, that separate children along lines of race, class, and ethnicity. By relying on school district lines to define school populations and on the tracked curriculum to organize individual schools, it helps divide Americans into groups that are increasingly incomprehensible to each other.[73] Many—although by no means all—school choice proposals would simply intensify this process.[74] A public school system organized to promote community building, by contrast, could have the opposite effect by giving a particular content both to the word "public" and to the word "education." From my perspective, a school is not public simply because it is operated by the government. Even a school run by a city can be organized like a voluntary association, with school district boundaries, rather than admissions officers, defining who fits in. I consider a school public if it is open to the heterogeneity of American life and, as a result, enables its students to engage different types of people not simply in the curriculum but also in the classroom. As so defined, a public school influences the education students receive. Education has always been more than the transfer of nuggets of knowledge from teacher to student. Learning how to get along with one's peers is a central feature of the hidden curriculum of every school system, one as important as excellence in determining how well schools prepare their students for their future

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[72] Schooling—like education in general—never liberates without at the same time limiting. It never empowers without at the same time constraining. It never frees without at the same time socializing. The question is not whether one or the other is occurring in isolation but what the balance is, and to what end, and in light of what alternatives.

Cremin, supra note 69, at 37.

[73] The literature dealing with the history of this divisive organizational structure of American education is substantial. See generally Samuel Bowles & Herbert Gintis, Schooling in Capitalist America: Educational Reform and the Contradictions of Economic Life (1976); Paula S. Fass, Outside In: Minorities and the Transformation of American Education (1989); Michael B. Katz, Reconstructing American Education (1987); Jonathan Kozol, Savage Inequalities: Children in America's Schools (1991); David B. Tyack, Constructing Difference: Historical Reflections on Schooling and Social Diversity, 95 Tchrs. C. Rec. 8 (1993); Tyack, supra note 51, at 104-25, 198-255; see also generally Gregory R. Weiher, The Fractured Metropolis: Political Fragmentation and Metropolitan Segregation (1991).

[74] See infra notes 105-24 and accompanying text.

careers.[75] Yet, when a national commission on education told the country in 1983 that the deteriorating quality of the public education system had put the nation at risk, it focused only on the formal curriculum.[76] In my view, the same should have been said about the national need to improve our individual and collective capacity to get along with, and learn from, the kind of people who populate America's metropolitan areas, whoever they are.

B. Interdistrict Community Building

1. The Historic Background

My conception of community building builds upon, but modifies, the attempts in recent decades to reverse the divisive impact fostered by the predominant organization of American education. Since the 1950s, efforts to integrate the schools and to make school funding more equal have, in fact, become the principal vehicle for governmental efforts to reduce the fragmentation of American society.[77] This oppositional policy, however, has faced two formidable obstacles that it has been unable to overcome. First of all, it has placed on education too great a share of the burden of combating racial and ethnic intolerance. Indeed, its success has been undermined by city, state, and federal policies on other matters that have worked in the opposite direction. For example, racial integration of the public schools has routinely been understood as an attack on the neighborhood school, but the neighborhoods themselves have been organized, through zoning and other government policies, in a way that has divided them into racially identifiable spaces. It is not surprising, therefore, that the adults who lived in areas understood as separate from—even hostile to—outsiders would be opposed to breaking barriers for their children that they were unwilling to break for themselves. The defense of the neighborhood school, after all, has always been a defense of the neigh-

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[75] On the hidden curriculum, see Robert Dreeben, On What Is Learned in School (1968); Mario D. Fantini & Gerald Weinstein, The Disadvantaged: Challenge to Education 41-93 (1968); see also Michael Walzer, Spheres of Justice: A Defense of Pluralism and Equality 215 (1983) ("The content of the curriculum is probably less important than the human environment within which it is taught. . . . [S]o much of what we know we learn from our peers . . . .").

[76] See National Commission on Excellence in Education, A Nation At Risk: The Imperative for Educational Reform: A Report to the Nation and the Secretary of Education 5, 18 (1983). On whether such a crisis actually exists, compare Chubb & Moe, supra note 65, at 1 ("The signs of poor performance were there for all to see . . . ."), with David B. Tyack & Larry Cuban, Tinkering Toward Utopia 38 (1995) ("The public schools . . . remain one of our most stable and effective [public] institutions.").

[77] See Gary Orfield, Metropolitan School Desegregation: Impacts on Metropolitan Society, 80 Minn. L. Rev. 825, 855 (1996) [hereinafter Orfield, Metropolitan School Desegregation].

borhood as well as of the school.[78] The same point can be made about crime policy. Fear of violence is one of the issues much in the minds of parents who are anxious about diversity in the public schools. But, as I argue in the next section, the principal way that parents have dealt with this fear for themselves is to isolate themselves from it. If so, it would be odd indeed if they were willing to expose their children to the kind of violence that they have tried so hard to escape. Education, then, cannot be the central focus for solving urban problems.[79] Community building has to be a strategy for organizing all city functions.

Recent efforts to diversify the public schools have also been hampered by being seen as a form of coercion ("forced busing"). This coercive element has been highlighted by the fact that integration was originally ordered by the courts: without judicial activism, it seemed, children would go to the school they "naturally" would go to—that is, their neighborhood school. These days, however, the school choice movement has made it clear that the neighborhood school itself is a form of coercion. Why should a child be forced to go to a neighborhood school rather than another one that seems better? By capitalizing on Americans' romance with the word "choice," proponents of school choice have made it seem even more natural than a neighborhood. Yet school choice is not natural either. Like the definition of a neighborhood for school attendance purposes, the mechanism that structures how parents' choices are made is a product of the legal system. No one proposes that the legal system treat education like a conventional market good. Defenders of school choice programs do not contend that people are free not to become educated if that's what they'd prefer or free to refuse to pay taxes that support education because they don't believe in it. Although both ideas were controversial at their inception, required consumption and required purchase are part of all principal school choice proposals.[80] School choice ad-

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[78] On the importance of the connection between housing and education, see Gary Orfield & Susan E. Eaton, Dismantling Desegregation: The Quiet Reversal of *Brown v. Board of Education* 291-330 (1996); Orfield, Metropolitan School Desegregation, supra note 77, at 854; Nancy A. Denton, The Persistence of Segregation: Links Between Residential Segregation and School Segregation, 80 Minn. L. Rev. 795, 795-97, 812-24 (1996); Gary Orfield, Housing and the Justification of School Segregation, 143 U. Pa. L. Rev. 1397 (1995) [hereinafter Orfield, Housing and School Segregation]. On the role of governmental housing policy, see Frug, The Geography of Community, supra note 23, at 1048, 1057-75.

[79] Compare Lyndon Johnson, quoted in Tyack & Cuban, supra note 76, at 2 ("The answer to all our national problems comes down to a single word: education."), with Orfield & Eaton, supra note 78, at 291-361 (arguing for importance of integrated approach).

[80] See James Liebman, Voice Not Choice, 101 Yale L.J. 259, 278-80 (1991) (reviewing John E. Chubb & Terry M. Moe, Politics, Markets and America's Schools (1990)). On the

vocates focus only on the selection of the school a child attends. Even on this issue, no proposal actually enables children to attend a school simply because their parents prefer it. Instead, as I discuss below, all of them rely on legal rules to allocate either to admissions officers or to school districts the power to determine the composition of the school population.[81] Because the difference between efforts to promote homogeneity and diversity is produced by alternative structures of legal rules, a decision about which of these objectives to pursue does not require a choice between freedom and coercion. In fact, community building can be built on the very same devices—the organization of school funding and the assignment of students to schools—that are now used to promote metropolitan fragmentation.

Appeals to neighborhood and to choice often do have one thing in common: both are regularly invoked to foster the experience of sameness associated with voluntary associations, not the experience of a fortuitous association. And, many think, what people *want* are legal rules that produce homogeneous schools. But what people want is more complex than this claim suggests. First of all, most Americans support both neighborhood schools and school choice, at least for public schools, and these two starting points for educational policy conflict with each other.[82] If outsiders could enroll in another neighborhood's school if they wanted to, it would no longer simply be a neighborhood school. Indeed, a fully effective school choice program would undermine neighborhood schools more than "forced busing" ever did.[83] Yet if neighborhoods had the power to exclude outsiders from their schools, the outsiders would not be free to choose where to go to school. Not only are these two policies contradictory but the decision parents make about which of them to prefer often turns on an evaluation of comparative educational quality. If parents thought that a diverse school would improve their children's education more than a homogeneous school would, they would want diversity. No doubt many parents now make a link instead between school quality and homogeneity. But this connection, currently under considerable attack in the educational literature, is itself fueled by the legal rules that limit the experience of diversity—in residential and commercial

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history of compulsory education, see Michael Katz, School Reform: Past and Present 65-87 (1971); Tyack, supra note 51, at 68-71. On the controversy over tax supported education, see Kaestle, supra note 71, at 148-51.

[81] See infra notes 119-24.

[82] See Stanley Elam & Lowell Rose, Of the Public's Attitudes Toward the Public Schools, 77 Phi Delta Kappan, Sept. 1995, at 41, 46 (discussing public attitudes toward public school choice); Christine Rossell, Controlled-Choice Desegregation Plans, 31 Urb. Aff. Rev. 43, 53 (1995) (discussing public preference for neighborhood schools).

[83] See infra notes 105-09.

neighborhoods alike—in large parts of America's metropolitan areas.[84] Even now there is considerable support in America for integrated schools, from both whites and blacks, at least in principle. Admittedly, most whites are unwilling to go to schools in which they are a minority, while most blacks are willing to be a minority only if they constitute more than a token presence in the schools. Nevertheless, there is room for compromise and no reason to think that these attitudes cannot be modified through further experience. In the minority of school districts in America with the most widespread and long-standing commitment to integrated education, there is considerable popular support for it.[85]

2. *Changing the Rules Governing School Funding and Student Admissions*

An education policy designed to further community building can be built on altering the legal significance now attributed to the state created boundaries that define America's school districts. As the Connecticut Supreme Court declared in an important recent case, *Sheff v. O'Neill*,[86] state districting statutes are "the single most important factor"[87] that determine the kind of students that attend the nation's public schools. Because they simultaneously define the location of the property that is taxed to support the schools, state districting statutes also are the single most important factor determining the resources available for public education.[88] The most segregated school systems in America are located in those metropolitan areas that contain many small school districts easily distinguishable from each other by the extent of their exclusion of poor African Americans and Latinos—a common occurrence in America, one blessed by Supreme Court decisions from *Milliken v. Bradley*[89] to *Missouri v.*

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[84] See Frug, The Geography of Community, supra note 23, at 1067-75; see also infra notes 126-40 and accompanying text.

[85] On attitudes toward school integration, see Jennifer L. Hochschild, The New American Dilemma: Liberal Democracy and School Desegregation 179-87 (1984); Orfield & Eaton, supra note 78, at 106-12; Orfield, Metropolitan School Desegregation, supra note 77, at 846-48; Gary Orfield, Public Opinion and School Desegregation, 96 Tchrs. C. Rec. 654, 655-68 (1995); see also Douglas S. Massey & Nancy A. Denton, American Apartheid: Segregation and the Making of the Underclass 88-96 (1993) (noting similar attitudes toward housing desegregation).

[86] 678 A.2d 1267 (Conn. 1996).

[87] Id. at 1274 (emphasis omitted).

[88] See, e.g., Edgewood Indep. Sch. Dist. v. Kirby, 777 S.W.2d 391, 392-93, 396-97 (Tex. 1989) (finding that school financing system based on local district financing violates state constitution).

[89] 418 U.S. 717 (1974).

Jenkins.[90] School district boundaries in these metropolitan areas function like city boundaries: they create a self-reinforcing mechanism that allocates school resources and middle class students to some parts of the region rather than others.[91] Real estate advertisements use schools as racial signals (the schools mentioned are always white schools), and these signals affect more than simply those who want to send their children to a racially homogeneous school. They also affect those who, while not opposing integration, do not want to send their children to schools in which they would be a racial minority or that are filled with the social problems commonly associated with poverty. "If white families . . . face a choice between a central city area where all schools have 80 percent black . . . enrollments and dozens of virtually all-white suburban districts," as Gary Orfield puts it, "few will choose the city community."[92] Few will also choose a school populated predominantly by students from poor families. And America's segregated African American and Latino schools are dominated by poor children, while ninety-six percent of white schools have middle class majorities.[93]

In *Sheff v. O'Neill*, the Connecticut Supreme Court became the first court in the nation to hold that a state districting statute—which in Connecticut had led to Hartford schools becoming ninety-two percent black while suburban schools remained less than ten percent

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[90] 515 U.S. 70 (1995). For the comparison between the most segregated states in the nation (Illinois, Michigan, New York, and New Jersey) and the least segregated (those in the South), see Orfield & Eaton, supra note 78, at 57-60. In the Detroit metropolitan area, at issue in *Milliken*, black students are now more segregated than in any other metropolitan area except Chicago, rising from 72% at the time the case was decided to 89% 20 years later. See Orfield & Eaton, supra note 78, at 294, 314-15; cf. Missouri v. Jenkins, 515 U.S. 70, 116 (1995) (Thomas, J., concurring) ("The continuing 'racial isolation' of schools after *de jure* segregation has ended may well reflect voluntary housing choices or other private decisions.").

[91] See Liebman, supra note 80, at 299-300; supra note 46. Albert Hirschman observed decades ago that creating zones to which people with sufficient wealth can escape generates a dynamic that undermines the public educational system throughout the rest of the region. See Hirschman, supra note 46, at 45-54, 100-02. Hirschman analyzed only the impact of private schools on public schools and spoke only of customers leaving the public schools to seek greater educational "quality." But an equivalent dynamic of exit occurs between prosperous suburbs and surrounding communities, and the search for "quality" is often equated with a search for prosperous, homogeneous schools. Indeed, the similarity between the impact of suburbanization and Hirschman's discussion of private schools illustrates the ways in which privileged suburban schools are already privatized. For a discussion of the impact of private schools, see infra notes 114-24 and accompanying text.

[92] Orfield & Eaton, supra note 78, at 309.

[93] See id. at 53; see also Orfield, Metropolitan School Desegregation, supra note 77, at 831. See generally David R. James, City Limits on Racial Equality: The Effects of City-Suburb Boundaries on Public School Desegregation, 1968-1976, 54 Am. Soc. Rev. 963, 963-64, 971, 982-83 (1989).

black—violated a state constitutional prohibition of segregated educa-
tion. The court's analysis of the impact of boundaries on educational
segregation is convincing, but it would be a mistake, it seems to me, to
assume that community building efforts could be built on court cases
of this kind. Decisions like *Sheff v. O'Neill* are unlikely to become
common elsewhere in the country.[94] There is bound to be considera-
ble resistance to integration of the schools unless the problems popu-
larly associated with the public schools in poor neighborhoods—
problems that the flight from these schools has itself helped bring
about—are addressed. And these are not problems conventionally
thought solvable by courts. The majority opinion in *Sheff v. O'Neill*
was silent about the remedy for the constitutional violation it had
found, while the dissenters argued, as do many commentators, that
only a single metropolitan-wide school district would produce an inte-
grated school system.[95] But the creation of such a district, above all if
court ordered, would once again highlight the link between integra-
tion and coercive government action and once again place on educa-
tion the entire burden of confronting racial and ethnic tension.

Overcoming the divisive impact of current school boundary lines
does not require court ordered centralization of metropolitan school
systems. Simply changing the location of school district boundary
lines can open public schools to diversity in some areas of the country.
There is nothing sacrosanct about the current location of these bound-
aries. The number of school districts in America has been declining
for most of the century: from 127,531 in 1932 to 15,834 in 1992.[96]
And, particularly in the suburbs, the boundaries of these school dis-
tricts regularly cross city lines. More than seventy-five percent of
school districts are not contiguous with any other local boundary; only
about one in ten tracks city boundaries.[97] These boundary lines have
long been relied on—and schools have been located—to ensure the
separation of different kinds of students.[98] They could now be

[94] This is due, in part, to the fact that only two other states have, like Connecticut, an
explicit state constitutional prohibition against segregated education. See Sheff v. O'Neill,
678 A.2d 1267, 1281 n.29 (Conn. 1996). In addition, as the dissent points out, the proposi-
tion that even Connecticut's constitutional provision was intended to undo state districting
statutes is by no means obvious. See id. at 1314-27 (Borden, J., dissenting).

[95] See id. at 1330-33 (Borden, J., dissenting); see also Hochschild, supra note 85, at 190-
92; Orfield, Metropolitan School Desegregation, supra note 77, at 844.

[96] See Tyack & Cuban, supra note 76, at 19.

[97] See Census Bureau, supra note 1, at 34-35. The number of school districts has stabi-
lized since 1972. See Orfield, Metropolitan School Desegregation, supra note 77, at 836,
845-46.

[98] Whether a change in this policy would increase the number of students bused to
school depends on local conditions. Sometimes redistricting lowers the distance children
travel. See Hochschild, supra note 85, at 67. In any event, 50% of American schoolchil-

redrawn with the opposite result in mind. To be sure, this technique will by no means work everywhere. In many parts of the country, housing segregation is now so complete that no redrawing of school boundaries, short of centralizing the school system, can open suburban schools to diversity. In these metropolitan areas, however, community building can concentrate not on changing the location of the district lines but on changing the conception of local autonomy they seek to delineate.

Local government law now frustrates community building by providing an entitlement to those who move to prosperous suburbs: buying a house enables them to participate in the collective power to allocate educational resources and define public school admission requirements in a way that excludes the social problems and financial burdens associated with poverty. As I suggested above,[99] this entitlement system analogizes school district boundaries to the boundaries of private property: whatever is located inside the boundary is "our" property and the taxes derived from it can therefore be spent only on "our" children—at the very least, as a resource for supplementing the minimum level of education funded by the state. These references to "our" property and "our" children are references to a group, and the purpose of the regional negotiations over school funding that I envision is to expand the range of people that the group includes.[100] When money is raised from a metropolitan region's property owners—industrial and commercial property owners as well as residential property owners, nonresident property owners as well as homeowners—whose money is it? And whose children should benefit from it? The current legally imposed tie between the resources available to school districts and the value of the property located within their borders empowers some neighborhood schools while disempowering others, as the nationwide litigation challenging the traditional methods of public school funding has made clear.[101] Many states have

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dren are already bused to school, albeit not for purposes of community building. See id. at 62. Moreover, the location of schools—and not just of the houses in which students live—is an important factor in determining whether districting promotes segregation or diversity. On school siting, see Orfield & Eaton, supra note 78, at 328-29; Meyer Weinberg, Race and Place: A Legal History of the Neighborhood School 27-33 (1967).

[99] See supra text accompanying notes 55-56.

[100] In San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1 (1973), Justice Powell's majority opinion contended that, in part, "local control means . . . the freedom to devote more money to the education of one's children." Id. at 49. The term "one's children" was cleverly chosen: it makes the fact that local financing also entails spending money on other people's children disappear.

[101] See Frug, Local Government Law, supra note 25, at 412 n.2 (collecting cases). Tax incentives given businesses to entice them to move to town also have a bizarre effect on metropolitan educational planning. The addition of the new business adds more demands

therefore struggled to improve educational opportunities for those disadvantaged by this system. But even in these states there has been insufficient effort to undermine the privatized idea that the property located within a school district's boundaries is a resource available solely to the people who live within the school district.[102] Rejecting this notion does not necessitate equalized school spending throughout the region. A regional negotiation over school funding can allocate educational resources in countless ways. One possibility, for example, would be to reject the preference now given the localities that most effectively use their boundaries to defend their homogeneity and replace it with one that favors the region's most integrated neighborhoods.[103] The reason for giving these neighborhoods a preference is not simply that they produce schools filled with different kinds of students. The reverse is also true: integrated schools generate support for diverse neighborhoods and, thereby, contribute to the task of community building.[104]

Still, changing the rules that govern the allocation of educational resources is unlikely, standing alone, to produce heterogeneous schools. It is also necessary to revise the current entitlement that now enables school districts to define who is eligible for admission to their schools. One way to do so is through school choice. Consider a system, for example, in which parents could choose to send their child to any public school in their metropolitan area as long as diversity, and not segregation, was promoted by their choice. To ensure that such a plan would produce the greatest possible heterogeneity, admission to every school in the region would be equally open to all metropolitan residents. In other words, no admission preference would be offered to students who lived within a school district's boundaries. Such an open admissions policy would resolve the conflict often asserted between self-interest and the allocation of school funding—why would anyone agree to allocate money to a diverse school rather than the one their own children attended?—by giving every child an equal

on the school system, while the tax breaks produce less money for education. See Tamar Lewin, Tax Breaks Squeeze Schools in Cleveland, N.Y. Times, May 21, 1997, at B8.

[102] See Edgewood Indep. Sch. Dist. v. Kirby, 34 Tex. Sup. Ct. J. 368 (1991) (approving supplementation of state funding by locally raised taxes).

[103] Cities could help make these neighborhoods desirable in many ways, not simply by increasing their school budgets. Low interest mortgage financing could also be offered to families who move to them. See Orfield & Eaton, supra note 78, at 325-27; see also Orfield, Housing and School Segregation, supra note 78, at 1405. And they could also be exempted from metropolitan-wide integration efforts. See id.

[104] See Hochschild, supra note 85, at 65; James Liebman, Desegregating Politics: "All-Out" School Desegregation Explained, 90 Colum. L. Rev. 1463, 1627 (1990) (collecting authorities).

chance of attending the best funded school. It would also alter the structure of a number of current school choice programs, commonly called "controlled choice" plans, in order to make students' chances of being "insiders" and "outsiders" more equal.[105] Under many current plans, such as the one adopted in Cambridge, Massachusetts, parents can choose to send their children to any public school as long their choice promotes diversity.[106] But they are largely limited to sending their children to schools within the school district in which they live because they can send them to another district's school only if there is "room" for them—that is, only if seats remain after all students who live in the district have been admitted—and only if the school district agrees to participate in the admission of outsiders. As a result, only a few "outsiders" are added to a student body predominantly entitled to admission as a matter of right.[107]

A decision to give an admission preference to district residents honors the school choice of some parents over that of others through the adoption of a state policy favoring neighborhood schools. It does not follow, however, that a region-wide school choice plan would establish the opposite policy, destabilizing neighborhood schools by bringing in a flood of outsiders. Its actual effect would depend on the outcome of regional negotiations over school funding because it would bring to the surface the conflict, mentioned earlier, between

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[105] For a discussion of "controlled choice," see Chubb & Moe, supra note 65, at 206-15; Public Schools by Choice: Expanding Opportunities for Parents, Students, and Teachers 253 (Joe Nathan ed., 1989) [hereinafter Expanding Opportunities] (discussing possible future challenges facing school districts and states expanding choice among public schools); Michael J. Alves & Charles V. Willie, Controlled Choice Assignments: A New and More Effective Approach to School Desegregation, 19 Urb. Rev. 67, 74-75 (1987); Angela G. Smith, Public School Choice and Open Enrollment: Implications for Education, Desegregation, and Equity, 74 Neb. L. Rev. 255, 262 (1995). For a state by state survey, see Peter W. Cookson, Jr., School Choice: The Struggle for the Soul of American Education 139-52 (1994). For a critique, see Rossell, supra note 82, at 53.

[106] For a discussion of the Cambridge plan, see Cambridge Public School Department, The Cambridge Controlled Choice School District Desegregation Plan (1992); Expanding Opportunities, supra note 105, at 125-48; see also Chubb & Moe, supra note 65, at 210-12. There are limits to the emphasis on diversity in Cambridge. The Cambridge plan originally gave no preference to children who lived near a school, but it later reestablished such a preference for city residents, thereby increasing the racial imbalance within the city's public schools. See Charles V. Willie et al., Planning Report on Controlled Choice and School Facilities 5, 29-31, 34 (1996). On the importance of eliminating attendance boundaries within Cambridge, see Alves & Willie, supra note 105, at 76, 81-87.

[107] The requirement of having "room" is common in interdistrict plans. See, e.g., Minn. Stat. § 120.062 (1990). Even a recent proposal for Connecticut, which would not allow cities to opt out of participation, would keep the requirement of having "room." See Jonathan Rabinovitz, Report Urges School Choice in Connecticut, N.Y. Times, Jan. 23, 1997, at B1. On interdistrict plans generally, see Abigail Thernstrom, School Choice in Massachusetts 67-93 (1991); Smith, supra note 105, at 273-74.

support for neighborhood schools and school choice. If it turned out that most people in the metropolitan area preferred neighborhood schools, the regional negotiation process would likely focus on making schools comparable enough so that most parents would choose to send their children to neighborhood schools. After all, a school choice program that offered no admission preference to neighborhood residents would undermine neighborhood schools (assuming most people preferred them) only if they substantially varied in quality. If, on the other hand, most people preferred to send their children to the best school in the region wherever it is located, the negotiations might focus instead on the dynamic that now makes residents of poor neighborhoods as reluctant to apply to out-of-district schools as residents of the more prosperous districts have been to receive them.[108]

Chances are, some elements of both of these agendas would be addressed. Many schools would become more integrated because children would no longer be disqualified from attending a school solely on the grounds that their parents cannot afford to buy a house nearby. Some parents would send their children to out-of-district schools either because they thought they were better or because (when a parent worked in the area, for example) they were more convenient. On the other hand, a region-wide school choice program— even if combined with a regional allocation of educational resources— is unlikely to generate many transfers from suburban schools to those of poor African American and Latino neighborhoods. And many residents of these neighborhoods might continue to send their children to neighborhood schools, rather than to a suburban school, because of fear of racial antagonism, of loss of identification with African American or Hispanic culture, or of undermining ties to neighborhood institutions. Indeed, critics have argued that allowing the voluntary transfer of African American and Latino students to privileged white schools would simply lure top students from neighborhood schools and, thereby, intensify the decline of the schools left behind.[109]

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[108] See, e.g., Cookson, supra note 105, at 45; Jonathan Rabinovitz, In Suburbs A Stealthy War Against Infiltrating Students, N.Y. Times, Nov. 6, 1992, at A1. In the 1960s, choice was proposed to retard integration, not to advance it. See Green v. County Sch. Bd., 391 U.S. 430, 441 (1968) (disapproving "freedom of choice" plan that led to perpetuation of dual system). Such a result could occur again unless the rules that structure school choice were designed to prevent such a result. See generally Who Chooses? Who Loses?: Culture, Institutions, and the Unequal Effects of School Choice (Bruce Fuller & Richard F. Elmore eds., 1996) [hereinafter Who Chooses? Who Loses?]. For ideas about making school choice effective for low income, minority students, see id. at 187-200.

[109] See Who Chooses? Who Loses?, supra note 108, at 190-200; Note, The Limits of Choice: School Choice Reform and State Constitutional Guarantees of Educational Equality, 109 Harv. L. Rev. 2002, 2004-09 (1996). Forcing students to attend an inadequate

The community building plan that I've just described is not, therefore, the equivalent of a metropolitan plan for integrating the region's schools. Rather than trying to desegregate the schools overnight, it attempts to avoid the problems that have historically been engendered by the effort to foster integration simply by changing the school system. It concentrates instead on revising local government law. The proposal rejects the current legal rules that rely on school boundary lines to divide the region into unequally funded school districts populated by students readily identifiable in terms of racial and class categories. And it installs in their place a system that makes both educational resources and students the responsibility of the region as a whole. These changes will increase the diversity of many metropolitan schools, but they clearly are only one ingredient in the task of doing so. Equally important community building efforts must be built into other city services. In poor African American and Latino neighborhoods, this includes initiatives such as region-wide efforts to promote economic development and, as described in the next section, effective crime control. In the outer suburbs, it includes organizing a transportation system that promotes the mobility of those who rely on public transportation as well as those who drive.[110] Without a coordinated program of all city services, in my view, a single-minded commitment to school integration—an insistence, for example, that all schools have the same percentage of white and black students without addressing other concerns—could exacerbate, in the black community and white community alike, the very tensions that community building is designed to overcome.

My version of community building also abandons the historic reliance of integration proponents on government orders and court mandates. Instead, it creates an educational system that is no more (or less) coercive than the current system. Under both systems, taxpayers' contributions are allocated to other people's children as well as their own. And in both systems some parents will experience their children's school as chosen, while others will experience it as the only choice they have. To be sure, those who defend the current organization of public education will see my proposal as a scheme to reallocate the wealth and to undermine the ability of many parents to control the nature of their children's education. The element of truth in this reaction lies in the fact that every way of organizing public education af-

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school seems, however, an unacceptable way to preserve neighborhood schools in America's central cities.

[110] The availability of transportation is generally seen as an important ingredient in school choice plans that focus on diversity as a goal. See John Coons & Stephen Sugarman, Education By Choice: The Case for Family Control 162 (1978).

fects the allocation of wealth and the composition of schools in America. The current organization of American education, when combined with other entitlements provided by local government law, such as the power to exclude the poor through zoning and to limit other city services solely to residents, powerfully affects the prosperity and life chances of Americans. Indeed, this combination of entitlements is probably the most important governmental mechanism in the country now fostering the enrichment of the rich and impoverishment of the poor. The attachment to these current entitlements felt by many of those who benefit from them is not surprising. What is remarkable is that these benefits are so often considered to be the equivalent of property rights. There are no such property rights. On the contrary, it has been the fundamental understanding of local government law for almost a century that no one has a private right to benefit from the way America now organizes municipal governments. States are free to reorganize city boundaries and their attendant benefits at will, even if the reorganization makes some people's taxes go up.[111]

Such a reorganization is well worth the effort. Altering the rules that govern school funding and admissions requirements would transform the reference to "our" property and "our" children into a gesture toward a heterogeneous group, and it would assign to an equally heterogeneous group the task of deciding how to strengthen the school system. The process of regional negotiations would itself contribute to the task of community building by focusing everyone in the region on the job of educating all of the region's children rather than on fortifying the barriers that separate them from each other. This region-wide focus is essential. A major ingredient in the powerful, sometimes violent, opposition to integration in the 1960s and 1970s was the fact that suburbanization allowed privileged whites not to participate in the transformation of the public schools. The greatest opposition to integration occurred when, with suburban neighborhoods exempted, integration efforts focused only on white neighborhoods experienced by their residents, because of their proximity to black neighborhoods, as transitional and easily vulnerable to change.[112] The vast majority of people who live in America's metropolitan areas would benefit from eliminating the current government created escape hatch. School funding would become more fairly allocated. All residents of the metropolitan area—not just the most mobile—would

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[111] See Hunter v. Pittsburgh, 207 U.S. 161, 179 (1907) (upholding constitutionality of state law permitting Pittsburgh to annex neighboring municipality without its consent).

[112] See Hochschild, supra note 85, at 57; J. Anthony Lukas, Common Ground: A Turbulent Decade in the Lives of Three American Families (1985).

have a choice about the best school for their children. The concentration of poor children into a limited number of schools would be reduced. All public schools would, once again, be open to everyone regardless of income. And, above all, parents and children from all income, racial, and ethnic categories would be able to develop more of a relationship with people in the region different from themselves and thus benefit from the decrease in tension and increase in opportunities for learning that fortuitous associations offer. Indeed, once school systems became organized as fortuitous associations rather than as a series of separate voluntary associations, educational funding and innovation might even increase (thereby demonstrating the truth in the slogan "green follows white").

The changes in local government law that I have suggested pose no threat to the continued existence of decentralized school systems. Individual public schools organized to foster community building can be as responsive to teachers, students, and parents, and have as much control over curriculum content, as current schools.[113] The identity of the participants may change—as they do already, given the mobility of the American population—but the ties that help make "our" school a quality school can be maintained without a privatized vision of school district boundaries. Of course, my proposal raises a blizzard of unanswered questions. If demand for any particular school is too high to include all those who want to attend, should more schools in that part of the region be built, or should students who do not get their first-choice school be assigned to their second-choice school? Should the effort be made to ensure that neighborhood schools exist everywhere in the region, or should some schools be abandoned in favor of greater openness elsewhere? What priorities should be given to siblings? The purpose of decentralizing educational decisionmaking is to allow these kinds of questions to be answered in many different ways once exclusion and funding inequality are no longer assumed ingredients in public education.

3. *Private Alternatives*

Would the adoption of such a community building plan for public education result in a massive flight from public to private schools? The answer is far from clear. A flight to private schools is already under way in some parts of the country, and a major change in the

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[113] Building a decentralized school system does not depend on knowing in advance the identity of those who are eligible to attend each school. The argument that a truly open school would generate impossible administrative problems—see, e.g., Milliken v. Bradley, 418 U.S. 717, 743 (1974)—is therefore vastly overstated. See generally Frug, Decentering Decentralization, supra note 37, at 328-34.

public education system could well accelerate it.[114] On the other hand, in the areas of the country in which integration has been region-wide and thus worked most successfully—places like Wilmington, Delaware; Louisville, Kentucky; and Charlotte and Raleigh, North Carolina—the enrollment of the public schools is increasing, notwithstanding the existence of a private school alternative.[115] Escaping to a private school is much harder than moving to the suburbs. In the country as a whole, private schools now educate only twelve percent of America's students, and many of them, such as Catholic schools in large central cities, are already quite integrated.[116] Moreover, admission to the most "exclusive" private schools is a very expensive proposition: few people in America can afford to pay for public schools and not use them. Besides, the rules of competition between public and private schools are always subject to change. Some metropolitan regions might decide, for example, to reexamine the continued public subsidization of private schools.[117] Still, it is not the task of community building to make private schools unavailable. There are private alternatives for all city services, from private security to private transportation to private recreation, and it would require a draconian amount of coercion to eliminate them.[118] The reason to organize city services to foster community building is not to abolish these private alternatives but to draw a distinction between them and city services: only public services would have the objective of fostering the capacity

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[114] See Robert Reich, The Secession of the Successful, N.Y. Times, Jan. 20, 1991, at 16.

[115] See Hochschild, supra note 85, at 183-88; Orfield & Eaton, supra note 78, at 111, 179-206, 316-17; Finis Welch & Audrey Light, New Evidence on School Desegregation 6, 59-62 (1987). Overall, there has been no major shift of whites from public to private schools in America, notwithstanding the integration of the public schools. See Orfield & Eaton, supra note 78, at 61-63; Welch & Light, supra, at 4, 13-15.

[116] On private school enrollment, see National Center for Educational Statistics, Private Schools in the United States: A Statistical Profile, with Comparison to Public Schools 33 (1991). Eighty-five percent of private school students attend religious schools, and a majority of these attend Catholic schools. See id. at xiii, 34. On Catholic schools, see Fass, supra note 73, at 189-228; Sol Stern, The Invisible Miracle of Catholic Schools, 6 City J. 14, 15 (1996). On the impact of private schools on school choice, see Cookson, supra note 105, at 95-97; Peter Cookson, United States of America: Contours of Continuity and Controversy in Private Schools, in Private Schools in Ten Countries 57-84 (Geoffrey Walford ed., 1989).

[117] Current government support for private schools includes, for example, their exemption from property and sales taxes and the funding of private school transportation. See Liebman, supra note 80, at 1664. On the impact and culture of elite private schools on their student bodies, see generally Peter Cookson & Caroline Persell, Preparing for Power: America's Elite Boarding Schools (1985).

[118] For an analysis of making attendance at public school compulsory, see Liebman, supra note 80, at 1664; see also Coons & Sugarman, supra note 110, at 209-11. For an account of Oregon's experience in making public schooling compulsory, see David Tyack et al., Law and the Shaping of Public Education, 1785-1954, at 177-92 (1987).

to live in a diverse society. The result of the competition between truly open public schools and private schools, in my view, will ultimately depend on the success of these community building efforts. If a decrease in apprehension about diversity can be combined with an improvement in the quality of the public schools, the temptation to pay both taxes and school tuition might be reduced even for the wealthy.

Some critics adopt a very different stance about the relationship between public and private schools. They argue that public support should be provided so that more people can send their children to private schools. From the perspective of these critics, my community building proposal gives parents too limited a choice: no one is entitled to send a child to a private school or even to an out-of-district school if their child's admission makes the school more homogeneous. Why not, they might ask, give parents an absolutely free choice of schools that their children can attend? No school choice proposal, however, gives parents an absolutely free choice of schools. All of them offer only a "controlled choice," even though the label is now usually applied simply to a subset of school choice plans. The plans are distinguishable from each other only in terms of who exercises control— that is, whether admissions officers or government officials are given power to decide whether the child "fits in" to the school. School choice proponents who seek to limit the government's role in education insist that, while children can apply to any school they like, wherever it is located, they should not get in unless the school officials decide to admit them.[119] Some of these plans even allow a school to deny admission to those who cannot afford to pay the extra amount

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[119] The most influential current proposal along these lines is by Chubb and Moe. They stress the importance of school autonomy, see Chubb & Moe, supra note 65, at 23, and homogeneity, see id. at 62-64. They view heterogeneity with alarm, see id. at 64 ("The nation's large cities are teeming with diverse, conflicting interests . . . ."), and view suburban homogeneity as the product not of government policy but of luck, see id. at 64 ("[S]uburban schools are lucky. They are most likely to be blessed with relatively homogeneous, problem-free environments . . . ."). To protect school autonomy and homogeneity, they consider control by admissions officers critical. According to their proposal:

> Schools will make their own admissions decision, subject only to antidiscrimination requirements. This is absolutely crucial . . . . Schools must be free to admit as many or as few students as they want, based on whatever criteria they think relevant—intelligence, interest, motivation, behavior, special needs—and they must be free to exercise their own, informal judgment about individual applicants.

Id. at 221-22.

They nevertheless label their vision of the schools a "truly public system." Id. at 225 ("[T]hese changes have nothing to do with 'privatizing' the nation's schools."). For critiques of their proposal, see Cookson, supra note 105, at 83-86; Liebman, supra note 104, at 1648. The most influential school choice proposal that rejects allowing schools to set their

the school charges over the amount of public support for education.[120] Of course, admissions officers, as well as local governments, can incorporate diversity rather than homogeneity into their definition of the kind of students they think will fit into their school. And, as we have seen, government policy has long favored homogeneity over diversity. Still, the critical distinction among school choice plans is that advocates who favor allocating power to admissions officers justify doing so on the grounds that it allows individual schools to design their own student population. That way, the argument runs, different kinds of schools, made up of different kinds of students, can compete with each other for customers.

By envisioning each school as a product offered in the market by those who run it, this consumer-oriented version of school choice adopts a privatized vision of educational services, whether or not the proposal includes private schools among those eligible to participate in government funding.[121] Subject only to antidiscrimination laws, schools are encouraged to compete with each other by offering applicants a choice among voluntary associations to which they may apply for inclusion. The problem with this conception of school choice is not that it encourages competition—a metropolitan-wide open admissions policy would permit considerable competition. The problem is that it encourages a competition for exclusivity that separates and divides the population of the metropolitan area. Like the drawing of school district boundaries, and for the same reason, the ability of some schools to design "exclusive" admission standards destabilizes diverse schools throughout the school system.[122] Antidiscrimination laws, which prohibit only "intentional" discrimination, have little impact on the dynamic that now splinters metropolitan school systems into dis-

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own admission standards is by John Coons and Stephen Sugarman. See Coons & Sugarman, supra note 110, at 135-45.

[120] Milton Friedman's original voucher proposal contemplated allowing schools to charge more than the government subsidy. See Milton Friedman, Capitalism and Freedom 89 (1962). While Chubb and Moe reject this option, they do allow school districts to tax their residents to spend more per child than the public subsidy allows, thereby perpetuating the well known inequalities of locally based school financing. See Chubb & Moe, supra note 65, at 220. For an attempt to design a school choice program that would overcome this inequality, see Coons & Sugarman, supra note 110, at 190-211.

[121] Chubb and Moe envision allowing current private schools to be certified as "public," see Chubb & Moe, supra note 65, at 219, while Coons and Sugarman allow private schools, as such, to participate in a school choice program, see Coons & Sugarman, supra note 110, at 153-66. As I see it, however, none of Chubb and Moe's schools, whatever their label, are public schools, while Coons and Sugarman's schools, given their lack of control over school admissions, could all be considered public schools.

[122] See Coons & Sugarman, supra note 110, at 135-45; Hirschman, supra note 46, at 45-54, 100-02.

tinct, even hostile, student bodies.[123] Only a metropolitan-wide com-
mitment to community building can undermine this dynamic. That is
why no public money should be given to a school that is not open to
the entire range of people who live within the metropolitan area.
Openness should be the defining characteristic of all "public
schools"—not just schools to which parents apply under a school
choice plan but neighborhood schools and charter schools as well.[124]

C. Community Building Within the School

Revising the rules governing school funding and admission crite-
ria is essential to educational community building because many cur-
rent schools are not diverse enough for community building efforts
even to get underway. But everyone knows that admitting different
types of students into a school is not enough. Long-standing
prejudices remain unaddressed, stereotypes are reinforced, tensions
arise, cliques are formed. These phenomena now exist in diverse
school systems throughout the country, and, later in life, graduates
replicate them throughout society as a whole.[125] Education is a key
ingredient in the task of dealing with these issues, not just for public
school students but for their parents as well. Designing an educa-
tional process that is effective in doing so is an undertaking of great

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[123] Reliance on antidiscrimination laws is conventional in school choice proposals. See,
e.g., Chubb & Moe, supra note 65, at 211; Cookson, supra note 105, at 134. But the au-
thors rarely take into account the development of discrimination law after Washington v.
Davis, 426 U.S. 229 (1976) (holding that law that has racially disproportionate impact is
unconstitutional only if it has racially discriminatory purpose). For a chilling, yet persua-
sive, account of the current relationship between suburban and central schools, see
Michael Winerip, City-Suburban Tensions in Ohio Show It's Not Just a Game, N.Y. Times,
Mar. 17, 1996, at 22.

[124] From a community building perspective, the critical issue about charter schools—like
that for school choice—is whether these new, innovative "public" schools (and that is what
they are envisioned as being) have open admission requirements. Many state statutes now
require charter schools to have some form of open admission. New Jersey, for example,
prohibits discrimination on the basis of intellectual ability and requires admission by lot-
tery, albeit after giving a preference to residents of the school district in which the school is
located. See N.J. Stat. Ann. §§ 18A:36A-7 to -8 (West 1997). But the arguments for char-
ter schools often take on a consumer-oriented stance. See, e.g., Paul T. Hill, Reinventing
Public Education: The Charter Concept Can Work for Entire School Systems, 8 The New
Democrat 11 (Nov.-Dec. 1996). On charter schools, see generally Michael Mintrom &
Sandra Vegari, Charter Schools as a State Policy Innovation: Assessing Recent Develop-
ments, 29 St. & Loc. Gov't Rev. 43 (Winter 1997); Joe Nathan, Charter Schools: Creating
Hope and Opportunity for American Education (1996); American Federation of Teachers,
Charter Schools: Do They Measure Up? (1996); Rebecca Sullivan, Contracts for Excel-
lence: An Exploration of the Charter School Movement (unpublished manuscript, on file
with author).

[125] For a study of the experience of black students attending white suburban schools, see
Amy Stuart Wells & Robert L. Crain, Stepping Over the Color Line: African American
Students in White Suburban Schools (1997).

complexity. Here, I address only one of its components: confronting the widespread fear that diversity lowers the quality of education. This fear has not simply generated support for homogeneous schools. It also underlies the educational policy of segregating the student body in individual schools no matter how homogeneous or diverse they are.

The most important ingredient in this policy is academic tracking.[126] The division of the student body into fast, average, and slow classes is pervasive in America's public schools—not just for English and math but, frequently, throughout the rest of the curriculum as well.[127] This kind of categorization is based on a series of assumptions that link homogeneity and educational achievement. Students, it is thought, learn better when grouped with those with similar academic abilities. Mixing students of different abilities holds the bright students back while undermining the confidence and learning capacity of the slow students. Therefore, bright students and slow students must be separated from each other, and they can be separated in a fair and reliable way.[128] Every one of these assumptions is now being challenged in the education literature. Jeannie Oakes contends, for example, that there exists "virtually mountains of research evidence indicating that homogeneous grouping doesn't consistently help *anyone* learn better."[129] The highest achieving students, she says, are not held back because, notwithstanding popular assumptions to the contrary, heterogeneous classes are not geared to the lowest common denominator but are designed to expose all students to the highest level of curriculum content.[130] Top students do equally well regardless of the group in which they learn; indeed, a few studies even suggest they do better in heterogeneous settings.[131]

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[126] But it is not the only one. For a discussion of the impact of special education on the goal of inclusive education, see Dorothy Kerzner Lipsky & Alan Gartner, Inclusion, School Restructuring, and the Remaking of American Society, 66 Harv. Educ. Rev. 762, 777-87 (1996).

[127] See Jeannie Oakes, Keeping Track: How Schools Structure Inequality 40-60 (1985) (studying 25 junior high and high schools' tracking systems); see also Arthur G. Powell et al., The Shopping Mall High School: Winners and Losers in the Educational Marketplace (1985).

[128] For an analysis of these assumptions, see Oakes, supra note 127, at 1-14 (disputing assumptions that students learn better in homogeneous groups).

[129] Id. at 7.

[130] On the use of high-level curriculum for heterogeneous groups, see Hugh Mehan et al., Constructing School Success: The Consequences of Untracking Lower Achieving Students (1996); Anne Wheelock, Crossing The Tracks: How "Untracking" Can Save America's Schools 149-90 (1992).

[131] See Oakes, supra note 127, at 7, 194-95 (finding that brightest students do well regardless of group in which they learn); Beyond Tracking: Finding Success in Inclusive Schools 119-40 (Harbison Pool & Jane Page eds., 1995).

Oakes's position about the effect of heterogeneity on the highest achieving students is the subject of considerable controversy.[132] But there is little controversy about the fact that those now placed in lower tracks learn better in heterogeneous classes. Tracking denies those assigned to lower tracks exposure to a vast amount of educational material and creative analytical skills considered indispensable in the modern American economy.[133] It therefore demoralizes lower track students—and reduces their educational potential—considerably more than the interaction with faster learners in heterogeneous classrooms. Equally importantly, it divides white students from students of color and, in racially homogeneous schools, separates students along class lines.[134] Academic tracking is one of the ways Americans first learn that a heterogeneous group should be divided into categories and that these categories should then be separated into different spaces—not just spaces for whites and blacks but for smart and dumb, college bound and vocationally tracked, cool and nerd, blacks who identify with black culture and "brainiacs" who "act white."[135] This process has helped Americans learn an important— and destructive—lesson: being in the same space with different kinds of people not only feels uncomfortable but also impedes personal advancement.[136]

Experiments with heterogeneous classes are now under way throughout the country.[137] Even if advocates' descriptions of these classes are read skeptically, they suggest, at the minimum, that alternatives to homogeneous classrooms need to be seriously evaluated in

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[132] See, e.g., Maureen T. Hallinan, Track Mobility in Secondary School, 74 Soc. Forces 983, 984 (1996) ("Research on the effects of tracking on student achievement is fairly consistent in showing positive effects of tracking on the achievement of high-tracked students, negative effects on low-tracked students, and negligible effects on those assigned to the middle or regular track.").

[133] See Oakes, supra note 127, at 61-113; James E. Rosenbaum, Making Inequality: The Hidden Curriculum of High School Tracking 1-20 (1976) (finding that ability grouping is associated with gains for rapid learners that are offset by losses for slower learners); see also Robert B. Reich, The Work of Nations: Preparing Ourselves for 21st-Century Capitalism 225-40 (1992) (describing education of "symbolic analyst").

[134] See Oakes, supra note 127, at 65-67, 153-67 (analyzing relationship between race and tracking in vocational and academic programs); Rosenbaum, supra note 133, at 154-74 (finding that track system influences differentiation in adolescent society and perpetuates social inequality in adult society).

[135] See generally Signithia Fordham & John U. Ogbu, Black Students' School Success: Coping with the "Burden of 'Acting White,'" 18 Urb. Rev. 176, 186 (1986) (studying high school where black students who pursue academic success are perceived by their peers as "being kind of white"); Tyack, supra note 73.

[136] This is not to suggest that tracking does not have its defenders. For an argument in favor of "aggressive tracking," see Chubb & Moe, supra note 65, at 101-40 (arguing that school organization is one major cause of student achievement).

[137] See Mehan et al., supra note 130; Wheelock, supra note 130.

every region of the country. The purpose of this evaluation is not to re-create the one big classroom of the little red schoolhouse. There are many ways to organize schools so that different kinds of students can encounter one another in the classroom. No doubt innovations in teaching techniques are required. And the transition to heterogeneous classes has to be carefully managed, not only for students but for their parents as well. Indeed, the transition to heterogeneous classrooms has been most successful when it has included parent education as a major component—a process that itself contributes to community building.[138] But experience has shown that, when successful, heterogeneous classrooms have a profound effect on students' learning experience. High achieving students in some heterogeneous classrooms, for example, have been teamed with "slower" classmates, with the joint goal being to raise the overall average of the group.[139] In conventional schools, this kind of team effort is generally limited to participation in sports; only there are students offered the possibility of experiencing someone else's achievement as a victory for themselves. The extension of this kind of experience into the academic setting not only improves attitudes toward teaching and interpersonal skills but helps undercut the idea that educational achievement means celebrating the superiority of one's "A" over a classmate's "C". Of course, as on sports teams, it would be a mistake to romanticize what this group interaction is like. Working with others produces tension, frustration, and disappointment. It would also be a loss for many parents—and many students—not to be able to celebrate a child's achievement of being placed in the track designed only for the most gifted. But heterogeneous classes need not be free of tension or conflict or problems to prefer them to homogeneous classes. It is enough if they can advance the education of the student body while simultaneously lessening the overall level of divisiveness within the school.

An educational system that allocated extra resources to schools with diverse student bodies, that prevented school district boundaries from being used to exclude outsiders because they were different, and that taught students, from an early age, how to work with classmates with disparate talents and capacities would help overturn the divisive structure that now characterizes most of America's metropolitan school systems.[140] Even if such a plan could unequivocally be shown to improve educational quality, however, it would generate opposition. The reason is that homogeneous schools and academic tracking

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[138] See Wheelock, supra note 130, at 65-90.

[139] See id. at 121-48.

[140] For additional ideas that might contribute to community building in the schools, see David Levine et al., Rethinking Schools: An Agenda for Change (1995).

are part of another strategy that affects city services across the board—one that has responded to the widespread fear of violence in America by dividing and separating the metropolitan population. The organization of American education functions as a zoning mechanism for the public schools: it creates a safe space that excludes, at least from the "highest" tracks and the "best" schools, students who are seen not merely as different but as threatening and dangerous. To some extent, the schools themselves can lessen the pervasive fear of violence by taking steps to ensure school safety. But to be successful, these efforts have to be linked with a more ambitious program designed to reduce the level of violence in the society as a whole.

III
POLICE

A. Fear of Crime and Its Response

1. Isolation

A desire for good schools and the fear of crime are both powerful motivating factors leading people to move to, and away from, particular cities or neighborhoods.[141] When education is the issue, the quality of city services significantly influences the decision to relocate ("we've moved here for the schools"). When security is the concern, by contrast, the caliber of the police department is not the focus of attention. Instead, people move (if they can) to a low-crime neighborhood and, once there, construct their houses and businesses to ward off criminals. They thus treat crime as largely beyond the ability of the police to control. And they are not alone. Experts agree that the principal methods that the police now employ—motorized patrolling, responding to emergency calls, and crime investigation—have little effect on the crime rate.[142] "Police," as David Bayley succinctly puts it, "do not prevent crime."[143] Of course, most people nevertheless rely on the police, as well as location, for protection. But they treat the job of the police as not to eradicate crime but to reassure them that, although crime will inevitably take place, it will take place elsewhere. In America, the predominant strategy for dealing with crime is to isolate oneself from it.

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[141] On the effect of crime on intercity mobility, see generally Julie Berry Cullen & Steven D. Levitt, Crime, Urban Flight, and the Consequences for Cities (1996).

[142] See Bayley, supra note 2, at 3-35; Herman Goldstein, Problem-Oriented Policing 5-31 (1990); Jerome H. Skolnick & David H. Bayley, The New Blue Line: Police Innovation in Six American Cities 2-5 (1986); Malcolm K. Sparrow et al., Beyond 911: A New Era for Policing 44-50 (1990).

[143] Bayley, supra note 2, at 3.

The cost of relying on this strategy has been high. The principal cost to the government has taken the form of providing an escape route from crime by funding the highways and sewers and supporting the housing and commercial development that have enabled the creation and growth of America's low-crime suburbs.[144] Those who live in these suburbs have themselves paid for their escape through higher housing prices, the expense and strain of commuting, and the loss of a genuine option to live in large parts of the metropolitan area. Their reliance on avoidance as their principal method of crime control has itself been very expensive. Vastly more is spent in America on private efforts to provide security—through security guards, alarm systems, locks, window bars, surveillance cameras, doormen, armored cars, dogs, metal detectors, mace, homeowners' insurance, and the like— than on city police.[145] There are three times as many private security employees in America than there are city police officers—and the gap is widening.[146] Residential security alone is a five billion dollar business.[147] Still, the greatest cost imposed by the current emphasis on escape as a response to crime has been borne by those who reside or work in America's less privileged suburbs and central city neighborhoods. They have not only had to buy their own security devices but have suffered the consequences of being exposed to the violence that has not been eliminated and that they have been unable to avoid. Whole neighborhoods have experienced an acceleration of social and economic decline; businesses have lost money because people are afraid to shop in them; crime victims have lost not just their property but their lives.[148]

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[144] See Frug, The Geography of Community, supra note 23, at 1067-75, 1081-89.

[145] See William C. Cunningham & Todd H. Taylor, U.S. Dep't of Justice, Crime and Protection in America: A Study of Private Security and Law Enforcement Resources and Relationships 14 (May 1985). For additional security ideas, see Home Automation Systems, Inc. (last modified Oct. 3, 1997) <http://smarthome.com/securmap.html>; Orca Home Security and Crime Prevention Network (visited Oct. 31, 1997) <http://www.orcaweb.com>.

[146] See Bayley, supra note 2, at 10.

[147] See Kate Fitzgerald, Gizmos Turn Home Protection into a Boom, Advertising Age, Jan. 10, 1994, at S-1.

[148] The overall cost of crime—including the cost of maintaining the criminal justice system—has been estimated to be in excess of $400 billion. See The Impact of Crime on Small Business: Joint Hearings Before the Subcomm. on Crime and Criminal Justice of the House Comm. on the Judiciary and the Subcomm. on SBA Legislation and the Gen. Econ. of the House Comm. on Small Bus., 103d Cong. 2 (1994) [hereinafter Hearings] (statement of Rep. John J. LaFalce, Chairman, Subcomm. on SBA Legislation and the Gen. Econ.); Fitzgerald, supra note 147, at S-1. On the cost to victims, see Mark A. Cohen et al., The Costs and Consequences of Violent Behavior in the United States, in 4 Understanding and Preventing Violence 67 (Albert J. Reiss, Jr. & Jeffrey A. Roth eds., 1994); on the cost to business, see Hearings, supra, at 2 (statement of Rep. John J. LaFalce, Chairman, Sub-

Even after paying all of these costs, fear of crime is pervasive in America, and not only in the neighborhoods in which the crime rate is relatively high.[149] Indeed, the true cost of emphasizing isolation as a crime control strategy can best be seen by examining the impact of fear on people's daily lives. Virtually everyone in America organizes his or her life with crime in mind.[150] In middle class and upper middle class neighborhoods, people

> stay off the streets at night and lock their doors. If they go out, they walk only in groups and avoid certain areas of the city. They use taxis or cars to protect themselves from street crime. If they have to drive through high crime-rate areas of the city, they roll up their car windows and lock their doors. To avoid possible victimization, people do not use library and educational facilities at night, they stay away from meetings of social groups and organizations, and they keep out of parks and recreational areas. Some forfeit additional income by refusing overtime work which would force them to go home after dark. Some even carry firearms or knives. Many take security measures to protect their homes—additional locks on doors and bars on windows, brighter lights on porches and in the yards, burglar-alarm systems, and watchdogs.[151]

Yet none of these forms of self-protection relieve—sometimes they increase—anxiety. Everyone feels so vulnerable, so alone. If crime

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comm. on SBA Legislation and the Gen. Econ.); id. at 3-4 (statement of Rep. Charles E. Schumer, Chairman, Subcomm. on Crime and Criminal Justice); Leah Rickard, Fear of Crime has Shoppers Shaking, Advertising Age, May 23, 1994, at 50; on the impact on poor African American neighborhoods, see Randall Kennedy, Race, Crime and the Law 11 (1997) (collecting authorities). In 1991, more than $19 billion was lost by individuals and households due to crime. See Marianne W. Zawitz et al., U.S. Dep't of Justice, Highlights from 20 Years of Surveying Crime Victims: The National Crime Victimization Survey, 1973-92, at 16 (Oct. 1993).

[149] There is controversy over how to measure the fear of crime, but everyone recognizes that it is pervasive. See Kenneth F. Ferraro, Fear of Crime: Interpreting Victimization Risk (1995); Dan A. Lewis & Greta Salem, Fear of Crime: Incivility and the Production of a Social Problem (1986); Terance D. Miethe, Fear and Withdrawal from Urban Life, in Reactions to Crime and Violence, 539 Annals Am. Acad. Pol. & Soc. Sci. 14 (1995); Fitzgerald, supra note 147; Barry Meier, Reality and Anxiety: Crime and the Fear of It, N.Y. Times, Feb. 18, 1993, at A14.

[150] Much of the discussion of the fear of crime, including much of my own in this Article, focuses on the fear of black criminals felt by whites. But it is important to remember that most crime in America is intraracial and, accordingly, that blacks are the primary victims of black crime. See Frug, The Geography of Community, supra note 23, at 1066-67; Craig A. Perkins et al., U.S. Dep't Of Justice, Criminal Victimization in the United States, 1993: A National Crime Victimization Survey Report 23, 26-27 (May 1996) (finding that whites making $75,000 or more were group least victimized by crimes of violence; blacks in that income category were most victimized group).

[151] John E. Conklin, The Impact of Crime 6 (1975).

strikes and the protective barriers don't work, all one can do is call the police. But by the time the police arrive, it will be too late.[152]

This widespread fear of crime is more than simply a reaction to the local crime rate. It is stimulated as well by the media, politicians, and word of mouth. The relentless daily portrayal of crime on television, in the headlines, in the movies, and at the dinner table feeds an anxiety that is disproportionate to the extent of the danger. People are more likely to be injured by cars than they are by criminals, but the threat posed by auto accidents produces relatively little anxiety. On the other hand, one well publicized story, even of an event far away, is likely to generate fear regardless of the amount of local crime: ninety percent of Americans think that crime is rising even though it isn't.[153] Of course, fear of crime is not irrational: in America there is far too much crime everywhere. But crime is not the only problem: fear of crime is as destructive to America's social fabric as crime itself. One reason this fear is so debilitating stems from the pervasive feeling that the people who commit crimes are vicious and uncontrollable—"other" in the strongest sense of the word. When engaged in defensive behavior, individuals and businesses are rarely thinking of white collar crime, of the mafia, of being attacked by friends or acquaintances, even of domestic violence. Especially in the neighborhoods of escape, fear of crime is associated with a burglary, robbery, rape, or assault perpetrated by a stranger.[154] Fear of strangers, in short, helps generate the fear of crime.

And vice versa: fear of crime is a major ingredient fueling the fear of strangers—in fact, it is the language in which that fear is now usually articulated. Ask people why they want to build a wall around their neighborhood, and they'll say, "security." And by "security," they will mean, more often than not, eliminating the danger epito-

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[152] See Skolnick & Bayley, supra note 142, at 5 ("[T]he chances of making an arrest on the spot drop below 10 percent if even one minute elapses from the time the crime is committed.").

[153] The 1992 rates for households victimized by crime were the lowest since the victimization statistics were introduced in 1975 (the decrease was much greater for white than black households). See Zawitz et al., supra note 148, at 8. Yet fear of crime is on the rise. See National Criminal Justice Commission, The Real War on Crime 3 (Steven R. Donziger ed., 1996); Tim Golden, Crime Rates May be Down, but the Problem Stays Hot With Politicians and Voters, N.Y. Times, Sept. 22, 1996, at 26; Meier, supra note 149. On the 90% figure, see Cheryl Russell, True Crime: Demographic Aspects of Crime Statistics, Am. Demographics 22, 24 (Aug. 1995). For a perceptive analysis of the relationship between crime rates and attitudes toward crime, see Allen Silver, The Demand for Order in Civil Society: A Review of Some Themes in the History of Urban Crime, Police, and Riot, in The Police: Six Sociological Essays 1 (David J. Bordua ed., 1967).

[154] See Conklin, supra note 151, at 30-42; Gerald D. Suttles, The Social Construction of Communities 192-93 (1972); U.S. President's Commission on Law Enforcement and Administration of Justice, The Challenge of Crime in a Free Society 52-53 (Feb. 1967).

mized in America today by young black males. Consider this description of how people behave when they see young black men on the street:

> When young black men appear, women (especially white women) sometimes clutch their pocketbooks. They may edge up against their companions or begin to walk stiffly and deliberately. On spotting black males from a distance, other pedestrians often cross the street or give them a wide berth as they pass. . . . Fellow pedestrians . . . avert their eyes from the black males, deferring to figures who are seen as unpredictable, menacing, and not to be provoked—predators.[155]

This description, from Elijah Anderson's *Streetwise*, is not just of white reactions; Anderson is describing the conduct of other blacks as well. And he is describing behavior in a city neighborhood. In many white suburban neighborhoods, the reaction is even more intense. The presence of any black man on the street—let alone a group of young black males—generates alarm: *What is he doing here*? Many people in our society, to quote Anderson again, are "[i]ncapable of making distinctions between law-abiding black males and others . . . [and therefore] they rely for their protection on broad stereotypes based on color or gender, if not outright racism."[156] Many are equally incapable of making distinctions among immigrants, Latinos, even the poor as a whole. This incapacity produces a stark we/ they dichotomy that, in turn, enables people to condemn both criminals and those considered potential criminals with severity. After all, they are not "condemning an important part of their own lives [or] the community in which they live."[157] When combined with the general feeling that crime is out of control, this indiscriminate distrust of large categories of people explains why, after people move out of a diverse and bustling community full of friends and acquaintances into an isolated house or apartment far from their job, they so often breath a sigh of relief ("safe, at last").[158]

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[155] Elijah Anderson, Streetwise: Race, Class, and Change in an Urban Community 164 (1990).

[156] Id. at 165; see also Andrew Hacker, Two Nations: Black and White, Separate, Hostile, Unequal 128 (1992) (making same observation about police).

[157] Conklin, supra note 151, at 33. See generally id. at 15-49.

[158] Some see racial prejudice in the fear of black street crime, see Richard Delgado, Rodrigo's Eighth Chronicle: Black Crime, White Fears—On The Social Construction of Threat, 80 Va. L. Rev. 503, 508-17 (1994), while others emphasize that a disproportionate number of street crimes are in fact committed by blacks and fear of street crime is rational, see Kennedy, supra note 148, at 14, 22-24. Either way, a response to the current fear requires both dealing with the impact of overbroad generalizations and crime prevention. See infra Parts III.B.-C.

2. Getting Tough

No aspect of community building is more important than over-coming this mutual reinforcement between the fear of crime and the fear of strangers. Many current crime prevention strategies, however, do the opposite: they intensify rather than undermine the divisiveness that the widespread fear of crime has generated. "There's no secret to fighting crime," one commentator says, summarizing such a strategy: "hire more police, build more prisons, abolish parole, stop winking at juvenile criminals, severely enforce public-nuisance laws, permit self-defense for the law-abiding and put deliberate murderers to death."[159] This approach to crime imposes no obligations of any kind on law-abiding citizens: their strategy of withdrawal and their fear of stran-gers remain untouched. On the contrary, it pictures the police as the agents of these unreconstructed citizens, with their job being to iden-tify the bad guys and put them in jail. Indeed, nowhere is the sharp-ness of the boundary between "us" and "them" more striking than in the current enthusiasm for building prisons. Once imagined as places of rehabilitation, and even now occasionally thought of as instruments for deterrence, prisons have become the equivalent in the crime con-trol area to the use of exclusionary zoning in allocating the nation's housing: prisons represent an effort to deal with "them" by dividing and separating the metropolitan population. If only enough danger-ous people can be locked up, it is thought, the rest of society will be safe.

The effect of such a "get tough" attitude on the crime rate is a hotly debated issue.[160] But even if the dream of isolating criminals in a fortified ghetto is implemented by imprisoning everyone who satis-fies a minimal test of dangerousness—thereby keeping in prison a substantial number of what "get tough" advocates euphemistically call "false positives"[161]—it will be hard to lock up enough people to di-minish the level of fear. Potentially threatening people will remain on the street. Unsolved crimes are inevitable. Violent offenders who have served their sentences will still have trouble finding a job. So will nonviolent offenders, some of whom will be more dangerous after

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[159] Jeff Jacoby, Crime is Down; So Why Don't We Feel Safer?, Boston Globe, Aug. 17, 1995, at 19.

[160] For a defense of reliance on prisons from this perspective, see generally Richard A. Wright, In Defense of Prisons (1994); John J. Dilulio, Jr., The Question of Black Crime, 117 Public Interest 3, 21-23 (1994). For a critique, see generally John Irwin & James Austin, It's About Time: America's Imprisonment Binge (1994); William L. Selke, Prisons in Crisis (1993). The number of Americans in prisons at the end of 1994—approximately 1.5 million—was three times the number in 1980. See Fox Butterfield, More in U.S. Are in Prisons, Report Says, N.Y. Times, Aug. 10, 1995, at A14.

[161] See Wright, supra note 160, at 123-31.

their release from prison than they were when they entered. Besides, no matter how many people are imprisoned, there will continue to be millions of unfamiliar-looking strangers in America's metropolitan areas who have never committed a crime and more children—including more young black males—becoming teenagers every day. Since a "get tough" strategy makes it no easier to distinguish a dangerous stranger from an innocuous one, building prisons is not likely to dampen the desire to build the opposite kind of walled communities at the same time—communities designed to protect insiders by walling off what frightens them on the outside.

A "get tough" strategy threatens to exacerbate the current level of divisiveness in America in another way as well. It reinforces for all concerned the image of the police as an occupying army responsive to outsiders rather than to community residents. A primary objection voiced by African Americans to current crime control efforts is that every black person, particularly every young black male, is viewed suspiciously by the police.[162] This degree of surveillance has generated an antagonism between African Americans and the police that is much more fundamental than racial prejudice or excessive violence on the part of individual police officers or criminal acts perpetrated by individual African Americans—serious as these problems are. As David Bayley and Harold Mendelsohn put it, "[T]here seems to be a reciprocating engine of resentment at work in the relations between police and minorities."[163] This engine of resentment particularly infects the police-minority relationship in the poor African American neighborhoods most plagued by high crime rates. Residents of these neighborhoods are too familiar with examples of verbal abuse, brutality, and physical assaults to view police officers, in the manner of those who live in low-crime suburbs, as there for their protection. Patrolling in low-crime suburbs may be designed to ward off crime, but in poor African American neighborhoods it too often provides an opportunity for routine harassment. And the reason for this harassment, many feel, is that the police are captured by an "us versus them" attitude—one that combines racial prejudice with an instinct to use excessive force even for a routine arrest.[164] The police, on the other hand, see themselves as doing a tough, dirty job that the public doesn't under-

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[162] See Anderson, supra note 155, at 190-206; David H. Bayley & Harold Mendelsohn, Minorities and the Police: Confrontation in America 109-42 (1969); Kennedy, supra note 148, at 136-63; Charles J. Ogletree, Jr. et al., Beyond the Rodney King Story: An Investigation of Police Conduct in Minority Communities (1995); Jerome H. Skolnick, The Police and the Urban Ghetto (1968).

[163] Bayley & Mendelsohn, supra note 162, at 108.

[164] See supra note 162.

stand or appreciate. They feel constantly threatened by potential vio-
lence and develop in response an omnipresent sense of mistrust. This
mistrust is triggered most intensely in poor African American neigh-
borhoods where, as police officers recognize, residents have a power-
ful suspicion, even hatred, of the police. Moreover, the officers who
work in these neighborhoods see them as filled with criminals and po-
tential criminals who understand only toughness. Consequently, they
define their job as requiring alertness to possible violence and a quick,
authoritative response, rather than politeness or respect. It's not sur-
prising, therefore, that they also come to believe that the only people
they can trust in doing their job are their fellow officers. If so, it be-
comes critical to stand by them—no matter how they behave.[165]

B. Interlocal Community Building

There is a close relationship between the police-citizen antago-
nism in poor African American neighborhoods and the suspicion that
separates residents of high-crime and low-crime areas: each source of
conflict feeds and reinforces the other. As a result, redesigning law
enforcement techniques to promote community building requires ad-
dressing both sources of conflict simultaneously. Reducing the ten-
sion between the police and those who live in high-crime communities
involves substantial changes in the way police services are delivered—
an issue to which I return below. But no matter how dramatic the
changes in police behavior are, the specter of crime will continue to
divide the nation's metropolitan areas unless the connection between
the fear of crime and the fear of strangers is confronted directly. And
this involves a fundamental change in law enforcement policy: crime
prevention, rather than isolation and withdrawal, must become the ba-
sis of America's crime control strategy.

Such a change must be based on a frank admission: in an impor-
tant sense, the withdrawal approach has worked. Low-crime and
high-crime areas within any metropolitan region can be located on a
map, and, usually, the most privileged suburbs are low-crime areas
while poor suburban and central city neighborhoods are high-crime
areas.[166] But, as the previous paragraphs were designed to demon-

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[165] See generally Bayley & Mendelsohn, supra note 162, at 87-108, 143-71; Stan K.
Shernock, An Empirical Examination of the Relationship Between Police Solidarity and
Community Orientation, 16 J. Pol. Sci. & Admin. 182 (1988).

[166] See Keith D. Harries, Serious Violence: Patterns of Homicide and Assault in
America 100-21 (1990); Christopher S. Dunn, Crime Area Research, in Crime: A Spatial
Perspective 5-25 (Daniel Georges-Abeyie & Keith D. Harries eds., 1980); Douglas S.
Massey, Getting Away With Murder: Segregation and Violent Crime in Urban America,
143 U. Pa. L. Rev. 1203, 1210 (1995); William Glaberson, Crime in Region is Dropping,
But Some Pockets Defy Trend, N.Y. Times, Feb. 27, 1997, at A1.

strate, it does not follow from this spatial allocation of crime that those who live in low-crime areas lack an incentive to decrease the crime rate elsewhere.[167] The fear of crime and of high-crime areas touches the lives of everyone in the metropolitan region. This fear thus has the potential of being transformed into something other than an incentive for fortifying the barriers between different types of people. It can provide a basis for collaborative efforts across the region to solve a common problem: the high rate of crime plaguing specific neighborhoods within the metropolitan area. A metropolitan-wide effort to reduce crime in high-crime neighborhoods would do more than improve the lives of the people who live in these neighborhoods. Those who live elsewhere would feel less anxious about burglaries, car-jackings, and robberies whenever they go out. And large sections of the metropolitan area that are now too dangerous for insiders and outsiders alike would be reopened as places to go, even as places to live. The most important lines that currently divide American metropolitan regions—invisible lines that every metropolitan resident can locate—are the ones that mark the areas associated with the threat of violence. African Americans don't enter neighborhoods where they will be harassed or treated as suspicious, and whites don't enter neighborhoods where they feel threatened or where crime rates are high. More than school district lines or any other metropolitan boundary, these lines reduce the opportunity for the kind of stimulation, variety, and growth that metropolitan life can offer in America. Diminishing the power of these lines to exclude outsiders is therefore essential to community building. Doing so requires no analog to the proposal, sketched above, for school choice. No legally created mechanism now closes the border of American cities and neighborhoods to people from elsewhere in the region. What currently prevents freedom of movement is the fear of crime itself.

The vast public and private resources now devoted to helping people flee the residents of high-crime neighborhoods have exacerbated this fear. Isolation has limited the capacity of millions of Americans to develop a sense of personal security not dependent on isolation—a capacity that Richard Sennett calls "ego strength."[168] Ego strength does not require people to learn how to accept the threat of violence. It requires instead building self-confidence and resilience so that one can feel comfortable with a wide variety of different kinds

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[167] Albert Hirschman makes the same argument about the flight from public education. See Hirschman, supra note 46, at 100-02. But see Massey, supra note 166, at 1224-29 (suggesting suburban-urban conflict of interest in central city crime control efforts).

[168] Richard Sennett, The Uses of Disorder: Personal Identity and City Life 117 (1970); see also Frug, The Geography of Community, supra note 23, at 1053.

of strangers. And this, in turn, involves becoming familiar with the range of people who live in the metropolitan area and knowledgeable about how to make distinctions when out on the street. Those who now live in the neighborhoods of escape could learn a great deal about these capacities from current residents of high-crime neighborhoods. They live with more crime than anyone should ever have to endure—vastly more than an effective crime prevention program would tolerate. But although they too lock their doors and are worried about going out at night,[169] unlike their suburban counterparts they have ideas, other than isolation, about how to protect themselves in public places. Residents of poor African American neighborhoods are not afraid of every black person they see. They learn how to identify and deal with potential troublemakers and therefore become more relaxed with a wide range of strangers.[170] Young black males also learn an additional form of behavior in public places—one designed to reassure the people they encounter on the street, above all whites, that they pose no danger to them.[171] To be sure, residents of poor African American neighborhoods are now so segregated that they too have only a limited scope for developing their capacity to deal with diversity—and even less scope for sharing their insights with outsiders. Regional negotiations over the allocation of crime control resources can help diminish this isolation. They can also begin the process of reducing the widespread stereotyping of everyone who lives in high-crime neighborhoods, victim and perpetrator alike, as frightening and dangerous. Outsiders could learn that many of these individuals—including many young black males—are more afraid of crime than they are.[172]

No doubt many suburban residents will consider it a cost to give up the feeling of security that isolation has provided them. They have this feeling not only because they reside in a safe neighborhood but because they organize their lives to avoid places where they are likely to encounter someone radically different from themselves. When they go out, they limit themselves to a mall that feels comfortable, a busi-

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[169] Not surprisingly, residents of high-crime neighborhoods have a more intense fear of crime than those who live elsewhere. See Conklin, supra note 151, at 76-81; Jeffry A. Will & John H. McGrath, Crime, Neighborhood Perceptions, and the Underclass: The Relationship Between Fear of Crime and Class Position, 23 J. Crim. Just. 163 (1995).

[170] See Elijah Anderson, The Code of the Streets, Atlantic Monthly, May 1994, at 81, 82; Anderson, supra note 155, at 164-65.

[171] See Anderson, supra note 155, at 167-68.

[172] On the importance of racial stereotypes, see generally Jon Hurwitz & Mark Peffley, Public Perception of Race and Crime: The Role of Racial Stereotypes, 41 Am. J. Pol. Sci. 375 (1997); on the role of fear of crime in poor African American neighborhoods, see Anderson, supra note 170, at 81-82.

ness district filled with familiar-looking people, or a restaurant in a nice neighborhood. Only the homeless and the occasional street vendor threaten to jar them from the impression of safety they have derived from the purification of their environment.[173] This process of purification, however, has imposed enormous costs on American society: it has enabled fear of crime to "become a self-fulfilling prophecy."[174] The widespread flight from crime has fueled the zoning, highway construction, and business investment decisions that have contributed to the acceleration of the economic decline in high-crime neighborhoods across the country, thereby helping to produce the conditions that have generated so much violence.[175] Indeed, millions of metropolitan residents have moved to the suburbs for the very reason that they thereby escape paying taxes that, among other things, support programs designed to reduce crime in high-crime neighborhoods. And once across the border, they not only devote local resources solely to self-protection but treat crime in other cities as "their problem." Yet it should be clear—regardless of whether one thinks of crime as a rational choice made by desperate people, as a product of social conditions, as a personality disorder, or as a reaction to the inequities of America's social structure[176]—that crime will continue to be a significant problem in America as long as our urban policy is based on isolating the poor into declining neighborhoods stripped of job opportunities while simultaneously fostering economic development elsewhere.[177] If so, the resources now supporting the current crimogenic dynamic of escape should be directed instead to reducing the crime rate.

Crime prevention requires a region-wide focus. Local efforts tend not to eliminate crime but to shift it from neighborhood to neigh-

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[173] For an argument that the environment should be further limited by excluding the homeless from much of public space, see generally Robert C. Ellickson, Controlling Chronic Misconduct in City Spaces: Of Panhandlers, Skid Rows, and Public-Space Zoning, 105 Yale L.J. 1165 (1996).

[174] Conklin, supra note 151, at 145.

[175] See William Julius Wilson, The Truly Disadvantaged: The Inner City, the Underclass, and Public Policy 20-62 (1987).

[176] Compare, e.g., Michael R. Gottfredson & Travis Hirschi, A General Theory of Crime 85-120 (1990) (proposing theory of low self-control), with Anne T. Sulton, Preventing Crime Through Economic Development of Urban Neighborhoods, in African-American Perspectives on Crime Causation, Criminal Justice Administration, and Crime Prevention 201, 209-19 (Anne T. Sulton ed., 1994) (emphasizing social conditions). See generally Cohen, supra note 148, at 101-56 (describing psychosocial, biological, and social perspectives).

[177] See Wilson, supra note 175, at 20-62; Michael Greenberg & Dona Schneider, Violence in American Cities: Young Black Males Is the Answer, but What Is the Question?, 39 Soc. Sci. & Med. 179, 180, 182-86 (1994); Massey, supra note 166, at 1215-16.

borhood.[178] Thus, regional negotiations need to concentrate not only on moving resources from patrolling safe neighborhoods to crime reduction but on moving them from area to area as the need arises. But the justification for metropolitan-wide funding of police services is not simply to put more money into an efficient strategy for fighting crime. Like regional efforts to promote the economic development of poor neighborhoods, effective crime prevention programs can generate support for other attempts to diminish the barriers that now divide America's metropolitan areas into neighborhoods that are prosperous and secure and neighborhoods that are declining and dangerous. A reduction in the crime rate, for example, can help bring about a change in current land use policy, redirecting it from efforts to subsidize suburban sprawl to programs designed to rebuild existing neighborhoods—and build new neighborhoods—that foster interaction with different kinds of people.[179] This change would itself contribute to crime prevention. There are, it is important to recognize, two different ways to construct a "defensible space" to ward off crime. One emphasizes building walls, speed bumps, gates manned by security guards, and alarm systems, thereby epitomizing and reinforcing the fear of outsiders. The alternative emphasizes designing streets that attract pedestrians rather than cul-de-sacs, well located public squares rather than large, empty parking lots, and houses that facilitate "natural surveillance" of nearby areas instead of seclusion.[180] Everyone knows, as Jane Jacobs says, that "[a] well-used city street is apt to be a

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[178] See David Armstrong, Cities' Crime Moves to Suburbs, Boston Globe, May 19, 1997, at A1. Some kinds of crime prevention, however, have less of a negative impact on neighbors than others. See generally Steven E. Landsburg, Property is Theft: When Protecting Your Own Property Is Stealing From Others, Slate (Aug. 2, 1997) <http://www.slate.com/Economics/97-08-02/Economics.asp>.

[179] See Frug, The Geography of Community, supra note 23, at 1089-94.

[180] The first alternative is often associated with the work of Oscar Newman. See Oscar Newman, Defensible Space: Crime Prevention Through Urban Design (1972); Ellis Cose, Drawing Up Safer Cities: How a Community Divided Conquers Crime, Newsweek, July 11, 1994, at 57. The second alternative is associated with Jane Jacobs. See Jane Jacobs, The Death and Life of Great American Cities (1961). But Newman himself can be seen as consistent with—indeed, an attempt to develop—Jacobs's ideas. See, e.g., Newman, supra, at 15 (describing ways that developers might design multifamily housing complexes "to provide inhabitants with continuous natural surveillance of the street"); Oscar Newman, Creating Defensible Space 3, 14-23 (1996) (explaining that defensible space is not about fencing but about reassigning areas and responsibilities so that citizens have more control over their environments); Ralph Taylor et al., The Defensibility of Defensible Space: A Critical Review and a Synthetic Framework for Future Research, in Understanding Crime: Current Theory and Research 53, 54 (Travis Hirschi & Michael Gottfredson eds., 1980) (classifying Newman's defensible space theory as elaboration upon Jacobs's natural surveillance theory).

safe street [while] a deserted city street is apt to be unsafe."[181] These days, however, the level of trust in America is so low that even populated areas feel unsafe. It's hard to be confident that a stranger will help if a crime occurs because his or her own fear of being attacked generates a reluctance to "get involved," even if all that is needed is calling the police. This lack of trust itself facilitates crime: "The more isolated people become and the less they share with others unlike themselves, the more they *do* have to fear."[182]

C. Community Policing

No one thinks that the fear of crime can be lessened without increasing the ability of the police to reduce the crime rate. A substantial literature argues that this requires redirecting police resources away from the traditional reliance on motorized patrolling, response to 911 calls, and crime investigation, and toward what is commonly called "community policing." Community policing programs seek to reinvigorate historical ideas about how city police should operate. At the time city police departments were first created in the United States, in the 1830s and 1840s, the police were not organized as a quasi-military force of trained outsiders designed to bring order to local neighborhoods. They were considered part of, and responsive to, the local community, and, as the visible representative of "the city" on the street, they performed many services not directly related to crime control.[183] At the turn of the twentieth century, however, progressives, motivated in large part by their desire to end the control over police activity wielded by political machines, transformed the police into a "professional" organization—a centrally controlled, bureaucratic entity, specializing in the enforcement of the criminal law and operated in a way that ensured independence from, rather than accommodation to, the diverse population of the city they patrolled.[184] Community policing advocates contend that the distance that this pro-

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[181] Jacobs, supra note 180, at 34. For a critique of this position as understating the importance of the social and cultural factors, see Taylor et al., supra note 180, at 58-60.

[182] Calthorpe, supra note 47, at 37.

[183] See Robert M. Fogelson, Big-City Police 16-17 (1977) (explaining that nineteenth century police departments were best characterized as "catchall health, welfare, and law enforcement agencies"); James F. Richardson, The New York Police: Colonial Times to 1901, at 63, 150, 226 (1970) (cataloging nineteenth century police officer's duties as ranging from criminal law enforcement to health law enforcement, street cleaning, and census taking); Lane, Urban Police, supra note 50, at 4-14 (describing origin and development of police in nineteenth century and noting that criminal law enforcement was only one of average policeman's many duties); von Hoffman, supra note 50, at 309 (noting that crime prevention was only one of several services provided by nineteenth century policeman who "walked his beat alone").

[184] See, e.g., Fogelson, supra note 183, at 136.

fessional model has created between the police and the neighbor-
hoods they patrol has impaired crime prevention efforts in low-crime
and high-crime areas alike.

> According to the Department of Justice, community policing
>
> is, in essence, a collaboration between the police and the commu-
> nity that identifies and solves community problems. With the police
> no longer the sole guardians of law and order, all members of the
> community become active allies in the effort to enhance the safety
> and quality of neighborhoods.[185]

This approach to policing is applicable everywhere: the police regu-
larly need the help of local residents when responding to crime. But
the value of community policing will be tested, above all, by its impact
in poor African American neighborhoods—the communities where,
as we have seen, police-community relations are most in need of re-
pair. The extent of police-community tension in these neighborhoods
makes it clear, however, that the Justice Department's definition of
community policing is far too idealistic. Rather than romanticizing
the police-community relationship as "active allies," a definition of
community policing should acknowledge that the nature of the police-
community collaboration being envisioned is ambiguous and has to be
clarified in the process of implementation.[186] Few people who live in
poor African American neighborhoods will cooperate with the police
as long as they remain a prime exemplar of interracial conflict. And,
unlike 1960s-style proposals for "community control" of the police,
community policing continues to grant the police a considerable de-
gree of decisionmaking autonomy. The proposals offered in the 1960s
attempted to transfer political authority over the police from the city
as a whole to the neighborhood, thereby making the police an agent of
the local community in a way comparable to the "get tough" strategy's
understanding of the police as an agent of law-abiding citizens.[187]
When engaged in community policing, by contrast, the police will re-
main a force of outsiders—indeed, outsiders empowered to use vio-
lence against neighborhood residents.

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[185] Bureau of Justice Assistance, U.S. Dep't of Justice, Understanding Community Polic-
ing: A Framework for Action vii (1994); see also Bayley, supra note 2, at 105 ("Consulta-
tion, adaptation, mobilization and problem solving are what I shall be referring to ... when
I use the phrase 'community policing.'").

[186] See Bayley, supra note 2, at 104-05 (explaining that there is great disagreement
about how to define community policing and that lessons which one derives from its imple-
mentation will depend upon meaning that one gives to term).

[187] See Jerome H. Skolnick, Neighborhood Police, The Nation, Mar. 22, 1971, at 372.

Creating an effective police-community collaboration that is acceptable to both sides is, therefore, a tall order.[188] The likelihood of doing so depends on the ability to forge a new police-community relationship out of the conflicts that now exist both within city police departments and within poor African American neighborhoods. Many police officers, including many current chiefs of police, want to purge their departments of their identification with an attitude of aggressive antagonism toward minority communities. These police officials are more frustrated with the ineffectiveness of current police methods than are their critics, and they have more reason than anyone to create a working environment that is less hostile. But their embrace of community policing is opposed within police departments by those who see their efforts at reform as a mistaken attempt to transform police officers into social workers.[189] At the same time, some residents of poor African American neighborhoods support efforts designed to lock up dangerous criminals. In fact, one common complaint voiced by neighborhood residents is that the police are ineffective when dealing with a crime committed by one resident against another—too often, the police do not take such crimes seriously.[190] Others, however, think that the police should operate in black neighborhoods by settling disputes without making arrests.[191] The existence of these internal conflicts does not suggest that a common vision of the future is shared by reformers on all sides. Quite the contrary. Community policing is a strategy for diminishing police-community antagonism by allowing people with very different views to participate in the effort to formulate crime prevention programs. Like regional negotiations over the allocation of crime control resources, its value lies in the creation of a mechanism for exploring how people can engage in cooperation to reduce the crime rate notwithstanding unresolvable feelings of tension between them.

A major aspect of community policing not yet mentioned—one commonly called "problem-oriented policing"—provides a concrete

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[188] For an analysis of these difficulties, see generally Emily Frug, Walking a New Beat: A Study of the Community Policing Program in New Haven (1996) (on file with author); Goldstein, supra note 142, at 66-79.

[189] See Bayley, supra note 2, at 56-75; Frug, supra note 188, at 56-58; Bruce Shapiro, How the War on Crime Imprisons America, The Nation, Apr. 22, 1996, at 14.

[190] See Kennedy, supra note 148, at 19-21.

[191] See William F. Whyte, Street Corner Society 136 (1943); see also Roger G. Dunham & Geoffrey P. Alpert, Neighborhood Differences in Attitudes Toward Policing: Evidence for a Mixed-Strategy Model of Policing in a Multi-Ethnic Setting, 79 J. Crim. L. & Criminology 504, 515-19 (1988) (reporting findings that blacks supported less discretion in use of police procedures and less active patrol strategies than did residents in both Cuban and white neighborhoods).

illustration of the kind of issue that can profit from this kind of coop-
erative effort.[192] Advocates of problem-oriented policing reject the
traditional police practice of reacting to an endless stream of isolated,
individual complaints, seeking instead to improve crime prevention by
concentrating on clusters of similar or recurring problems associated
with high-crime activity. These problems might be defined in terms of
behavior (auto theft, drugs), locations generating multiple calls for
help (a convenience store, a housing complex), specific kinds of of-
fenders or victims (gangs, the elderly), or time periods (bar closing
time, student housing during vacations).[193] One prominent way to de-
fine community problems, for example, involves identifying the types
of nonviolent disorder that mark a neighborhood as deteriorating and
dangerous.[194] Thus, in New York City, the Mayor and police officials
have singled out peddlers, panhandlers, squeegee cleaners, street
prostitution, boombox cars, public drunkenness, reckless bicyclists,
and graffiti as instances of the nonviolent disorder recognized by law-
abiding citizens as "visible signs of a city out of control."[195] Others,
however, have emphasized different kinds of disorder, such as vandal-
ism, abandoned buildings, and litter and garbage.[196] The first concep-
tion is consistent with, although certainly need not embrace, a
"crackdown" attitude toward neighborhood residents. The second list
of problems, on the other hand, demands much more than the invoca-
tion of the criminal law. The police need to work with other govern-
ment.officials, property owners, and community activists to make any
improvements last. Although the rubric of "community policing" al-

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[192] See Bayley, supra note 2, at 111-15; Goldstein, supra note 142, at 66-79; Wesley G.
Skogan, Disorder and Decline: Crime and the Spiral of Decay in American Neighbor-
hoods 89-93 (1990).

[193] See Goldstein, supra note 142, at 68. Boston's dramatic success in reducing the
homicide rate for young people in high-crime communities, for example, has been achieved
by a combination of increased police surveillance of specific criminal activity, such as mur-
der, by chronic offenders and increased involvement by a wide variety of community activ-
ists with the same people. See generally Kennedy School of Government Case Program, A
Community Responds: Boston Confronts an Upsurge of Youth Violence (1997); David M.
Kennedy, Pulling Levers: Chronic Offenders, High-Crime Settings, and a Theory of Pre-
vention, 31 Val. U. L. Rev. 1 (1997).

[194] See, e.g., Skogan, supra note 192, at 21-34; James Q. Wilson & George L. Kelling,
Broken Windows: The Police and Neighborhood Safety, Atlantic Monthly, Mar. 1982, at
29; James Q. Wilson & George L. Kelling, Making Neighborhoods Safe, Atlantic Monthly,
Feb. 1989, at 46, 48.

[195] New York City Police Department, Police Strategy No. 5: Reclaiming the Public
Spaces of New York 5 (1994); see also Craig Horowitz, The Suddenly Safer City, N.Y.
Mag., Aug. 14, 1995, at 20 (describing reduction in crime under current mayoral
administration).

[196] See Skogan, supra note 192, at 36-46. Skogan distinguishes these forms of physical
disorder from social disorder such as street harassment, drinking, and drugs. See id. at 21-
36.

lows for a wide range of choices from these different lists of problems—and there often is conflict both within the police department and within high-crime neighborhoods about priorities—it is important to recognize that the kinds of disorder that offend the sensitivity of outsiders and the kinds of disorder that worry residents of high-crime communities are not likely to be identical.[197]

Still, the utility of community policing for community building does not depend on the specific problems selected for attention. It depends instead on the creation of a selection process that can both define relevant problems and diminish the hostility between the police and community residents. No problem solving will result in community building unless young residents of high-crime neighborhoods can begin to see the police, along with other city officials, as possible sources of help in their struggle with crime rather than as a source of oppression. Attitudes toward the police help shape the struggle for identity of teenagers who grow up in these neighborhoods. They inescapably form their own reaction to the idea that the way to respond to racism is to embrace the image of the black criminal as a hero.[198] These days cooperation with the police, even for those now tempted to do so, demands a very high cost: the appearance of collaboration with the enemy. Thus, while community policing must do more than simply provide good public relations for the police, good public relations are an important ingredient for its success: police cannot reach out to community residents without changing their reputation.[199]

Will community policing actually reduce the crime rate? The honest answer, David Bayley says, is that we don't know.[200] But the same answer should also be given for every other proposal for reducing the crime rate, including the building of more and more prisons.[201] What distinguishes these strategies is not the certainty of their effectiveness but their impact on the level of divisiveness in American soci-

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[197] See Dunham & Alpert, supra note 191.

[198] See Anderson, supra note 170, at 82; Anderson, supra note 155, at 190-206; Carl H. Nightingale, On the Edge: A History of Poor Black Children and Their American Dreams 166-85 (1993) (discussing portrayals of blacks and violence in mass media); Regina Austin, "The Black Community," Its Lawbreakers, and a Politics of Identification, 65 S. Cal. L. Rev. 1769, 1776 (1992) ("[T]here has historically been a subtle admiration of criminals who are bold and brazen in their defiance of the legal regime of the external enemy.").

[199] See Frug, supra note 188, at 46-59.

[200] See Bayley, supra note 2, at 117.

[201] See id. at 119 ("[T]he public must be told that there are no magic solutions or 'silver bullets' when it comes to preventing crime . . . ."). For a list of alternative crime prevention techniques other than prison building or community policing, see id. at 123-42. For a recommendation of an overall strategy, see generally National Criminal Justice Commission, supra note 153; Committee on Law and Justice, Violence in Urban America: Mobilizing a Response (1994).

ety. It's not just that withdrawal, security devices, and prisons offer little prospect for diminishing the fracturing of the nation's metropolitan areas. The current police-community antagonism epitomizes, as it intensifies, the prevailing city-suburb tension. By contrast, the combination of a regional focus on crime prevention and community policing might generate a very different dynamic. Regional efforts to concentrate crime prevention resources in high-crime communities could give impetus to the process of community policing and thereby increase its prospects for success in reducing the crime rate. And community policing, in turn, could transform the police into a new kind of role model: the police could demonstrate to the public at large how to lower the crime rate by working with people different from oneself.

IV
OTHER CITY SERVICES

A. *Conventional City Services*

It would try readers' patience, not to mention my own, to canvass every city service in the detail just devoted to education and the police. But there is no need to do so. Given the impact of the desire for good schools and the fear of crime on the current fragmentation of American metropolitan areas, it would be surprising indeed if cities committed to community building failed to include education and crime control in their efforts. Education and police protection are the two largest items in municipal budgets.[202] Even those who want to privatize the police have a very limited view of what privatization would entail,[203] and, although the commitment to public education is more controversial, that commitment also seems likely to remain significant for a long time to come. Only three other city services are close to being universal in American cities: fire departments, highway maintenance, and parks and recreation. Five additional functions—sanitation, health and hospitals, sewers, welfare, and courts—com-

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[202] See 4-4 Census Bureau, U.S. Dep't of Commerce, 1992 Census of Governments: Government Finances 2 tbl.1 (1994).

[203] Generally they seek not to end the city's role in crime control but to contract out technical support for police services and to expand the market for security packaged as a consumer good. See Norman R. Cox, Jr. & William E. Osterhoff, The Public-Private Partnership: A Challenge and an Opportunity for Corrections, in Privatizing Correctional Institutions 113, 117-24 (Gary W. Bowman et al. eds., 1993); Todd Mason, For Profit Jails: A Risky Business, in Privatizing Correctional Institutions, supra, at 163, 163-74; H. Laws McCullough & Timothy S. Maguigan, Proving Privatization Works, in Privatizing Correctional Institutions, supra, at 157, 157-61.

plete the standard list of conventional city services.[204] Few cities pro-
vide all of these services now. The critical question here is whether
cities would provide them if they organized their services to promote
community building.

There is no right answer to this question. Any of these conven-
tional services could be organized to contribute to community build-
ing but none of them has to be. Each metropolitan region needs to
decide in its own context which of these services it can most effectively
utilize to nurture the capacity of its residents to live in a diverse soci-
ety. Framing the issue in this way is important because it turns the
conception of city services adopted by public goods theorists upside
down. They treat city services as an option only if there is market
failure: services should be allocated through private market transac-
tions, they think, whenever possible.[205] A community building per-
spective, by contrast, refuses to limit city services to what is left over
once private corporations have marketed whatever they can package
as a consumer good. It gives cities their own mission to accomplish.
Of course, given limited resources, cities cannot do everything neces-
sary to promote community building. Still, the issue facing public
decisionmakers is: in our own metropolitan area, which city services
can best further the objectives that city services are created to
accomplish?

In addressing this issue, cities must decide, first of all, whether to
organize a particular service to foster community building.[206] Con-
sider, for example, sanitation. Plainly one can think of sanitation serv-
ices simply to be the narrow task of picking up consumers' garbage
and sweeping their streets. If so defined, these services could be pro-
vided by private refuse collectors as well as by the city. Indeed, the
choice between these two modes of delivery might be decided solely
by determining which entity can do the job more cheaply.[207] But this

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[204] See Liebert, supra note 3, at 18-22. Cities provide many other services as well. For
example, Boston has a cemetery division, supports libraries, and provides veterans' serv-
ices, see City of Boston, Fiscal Year 1994 Operating Budget tbl.1, and Denver funds an art
museum, a water department, and a human rights commission, see City and County of
Denver, 1996 Budget Summary, at 15.

[205] See supra note 4. Other criteria have also been suggested for the allocation of urban
functions. See Advisory Commission on Intergovernmental Relations, Performance of Ur-
ban Functions: Local and Areawide (1963); Organizing Public Services in Metropolitan
America 191-210 (Thomas P. Murphy & Charles R. Warren eds., 1974).

[206] Such a decision, like resource allocation, could be allocated to a regional legislature
composed of the region's cities. Here again, however, other forms of decisionmaking are
possible as well. See supra note 60.

[207] See Eugene J. Wingerter, Refuse Collection, in Privatization: The Provision of Pub-
lic Services by the Private Sector 193 (Roger L. Kemp ed., 1991) (assessing efficiency of
privatized refuse collection in United States and Canada).

is not the way that those who created America's sanitation depart-
ments thought about what they were doing.[208] They considered mu-
nicipal sanitation to be an ingredient in the creation of America's
public health system and in the collective task of making city living
desirable. As one group of early reformers put it:

> DID YOU EVER STOP TO THINK THAT:
> A clean town means a sanitary and healthful town.
> A clean town means a more beautiful town.
> A clean town means an increase in the value of our property.
> A clean town brings business to our merchants.
> A clean town includes a better class of people to locate here.[209]

Sanitation was thus another example of the patrician understand-
ing that inspired city services generally—the desire to impose a civi-
lized standard of behavior on city residents. If this nineteenth century
vision is, once again, revised to rid it of its hierarchical overtones, it
suggests why a city might decide to organize its sanitation services to
foster community building. Consumers' desires to have their own gar-
bage picked up and their own street swept, after all, do not exhaust
the need for sanitation. Unsanitary conditions elsewhere generate
disease and impair the quality of life for those who live nearby, while
inhibiting the freedom of movement for outsiders. Unclean streets
are regularly seen as a sign of a bad neighborhood and, many scholars
contend, they therefore lower the general level of behavior wherever
they are found. That explains why some argue that improved sanita-
tion contributes to crime prevention.[210] Moreover, preserving a
healthy environment is not simply the responsibility of city employees.
Involving the public at large in the effort to maintain the cleanliness of
city streets not only saves money but helps foster a cooperative spirit
even among strangers ("I won't litter the streets because no one
around here does").[211] Organizing sanitation services to promote
community building might therefore contribute to changing attitudes
toward other environmental threats to the public health as well, such
as the notion that the problems generated by the location of hazard-
ous waste sites and other sources of pollution are solved once they are
put in someone else's neighborhood rather than one's own.

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[208] See Martin V. Melosi, Garbage in the Cities: Refuse, Reform, and the Environment,
1880-1980, at 21-78, 107-08 (1981).

[209] Civic Club of Philadelphia, Civic Club Bull. 5:15 (Oct. 1911), quoted in Melosi, supra
note 208, at 112.

[210] See supra note 194.

[211] On nineteenth century attitudes about the importance of civic involvement, see
Melosi, supra note 208, at 74-76, 105-33; for a modern analysis of the cooperative instinct,
and thus an argument against the notion people are by nature "free riders," see
Lewinsohn-Zamir, supra note 33.

Of course, no matter what purposes sanitation services are designed to accomplish, cities need sanitation workers. Yet, some people argue, it does not follow from the decision to provide a particular city service that cities should deliver it themselves.[212] Having private companies hire and supervise employees might make sense whatever the mission a city service adopts. Indeed, it might. But community building is a consideration when deciding who should perform city services as well as what their objectives should be. This is most obvious when one considers hiring police officers and school teachers: the kind of people who engage in community policing or who teach the area's children significantly affects what community policing and education actually mean. The same can be said about other city services as well. Citizens' attitudes toward all city employees is influenced by who they are. It should not be forgotten that minorities constitute a larger percentage of local government employees in the United States than they do of the private sector, and that the racial and ethnic composition of the city workforce is often taken as a sign of the city's openness to the diversity of its population.[213] Moreover, employees' attitudes toward their jobs depend on how they are defined. It is important to remember, therefore, that those who seek to save money through privatization rely in large part on cheapening the cost of labor.[214] Such a reduction in city workers' standard of living is bound to influence who is willing to work for the city and how they will perform on the job. So will any impact that privatization might have on the efforts of city workers to exercise more control over their own work product. It is not just school teachers and police officers whose status is diminished by low pay and lack of authority to work with others in the community to improve the quality of what they do. Finally, contracting out city services weakens the tie between the city and those who work for it and, with it, the extent of democratic control over city workers.[215] This is not to say that private delivery of city services organized to promote community building is never a good idea. The point, instead, is that lowering the cost of city services is not the only factor when deciding whether it is a good idea.

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[212] See, e.g., Donahue, supra note 26, at 7.

[213] See Robert E. Suggs, Minorities and Privatization: Economic Mobility at Risk (1989); John F. Zipp, Government Employment and Black-White Earnings Inequality, 1980-1990, 41 Soc. Probs. 363, 369 (1994).

[214] See Donahue, supra note 26, at 143-46; James B. Ramsey, Selling the New York City Subway: Wild-Eyed Radicalism or the Only Feasible Solution?, in Prospects for Privatization 93, 95-96 (Steve H. Hanke ed., 1987).

[215] See Jerry Frug, The Choice Between Privatization and Publicazation, 14 Current Mun. Probs. 20, 23-24 (1987). See generally Jerry Frug, Administrative Democracy, 40 U. Toronto L.J. 559 (1990).

Privatization is also not the only alternative to direct delivery by cities. These days many city services are provided by public authorities and special districts—independent agencies, created by the state, designed to take public services "out of politics" and be administered instead by professionals.[216] There are now more districts and authorities in the United States than there are cities, and they deliver a wide range of services, including health care, housing, transportation, and parks. Education is one of the city services dominated by this organizational form; more than ninety percent of America's public schools are run by school districts.[217] Public authorities and special districts merge features associated with the public and private sectors: they are public because they are state agencies, and they are private because they are managed, like business corporations, by "experts." But neither identity has been helpful in promoting community building; on the contrary, these entities have contributed more to the fracturing of metropolitan areas than to their integration.[218] Those with area-wide jurisdiction have generally been limited to a single purpose, such as providing water or managing the airport, and they have dealt with their assigned task by concentrating on technical solutions to technical problems. The decisionmakers themselves are usually appointed officials or elected by property owners, rather than elected by the public at large.[219] As a result, although these regional authorities have had a significant impact on community building concerns, they have not provided a mechanism for addressing them. Moreover, the districts and

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[216] See generally Burns, supra note 59.

[217] See Census Bureau, supra note 1, at 20-21 (listing special district governments by function and state); id. at 27 (listing public school systems by type and state); Burns, supra note 59, at 11 (listing all special districts and authorities). For a history of school districts, see generally Joseph M. Cronin, The Control of Urban Schools: Perspective on the Power of Educational Reformers (1973).

[218] See Burns, supra note 59, at 25-32 (describing how developers of unincorporated areas prefer creation of special districts to annexation to nearby cities as means of funding infrastructure); Briffault, supra note 9, at 375-78 (arguing that limited-purpose districts, once seen as a bridge to consolidated city-suburb government, have instead provided suburbs with alternative to full fledged regional government). For the analogous role that contracting has played for city services, see Miller, supra note 9, at 20 (describing how some Los Angeles suburbs were enabled to engage in exclusionary zoning because they could cheapen cost of incorporating as separate city by contracting with Los Angeles County for relatively inexpensive city services).

[219] When controlled by property owners, their votes are commonly weighted (as in business corporations) according to the assessed valuation of the property. See Ball v. James, 451 U.S. 355, 371 (1981) (holding that water district's voting scheme limiting right to vote to property owners and weighting votes according to number of acres owned does not violate Fourteenth Amendment's one-person, one-vote rule because property owners are disproportionately affected by district's operations). There are exceptions, such as the Bay Area Rapid Transit District Board of Directors, which is elected by the public at large. See Cal. Pub. Util. Code §§ 28745, 28747.2 (Deering 1987).

authorities that have touched most directly on these concerns—such as school districts—are rarely organized on an area-wide basis; more often, as described above, their boundaries have been relied on to separate different types of children.[220] To promote the goals of community building, then, public authorities and special districts either have to be radically restructured or replaced entirely by a more democratic form of organization—such as the cities themselves.

B. New City Services

Cities need not limit themselves to the conventional list of city services when designing community building efforts. Quite the contrary. Reframing the mission of city services in terms of community building is likely to stimulate ideas about new services that cities might provide. One way to think about potential new city services is to enlarge one's vision of the tasks cities already perform. The three city services other than education and police most commonly provided by cities—fire, highway maintenance, and parks and recreation—can serve as illustrations. These days, fire services, along with police services, supply the principal way in which cities present themselves to their residents as the place to call when faced with a crisis.[221] Even now fire departments respond to more than fires. A community building orientation might stimulate the development of other ways in which cities can serve as a fallback mechanism when disaster strikes. Doing so would enable cities to build on the fact that city emergencies make city residents more open to each other: they produce empathy and stimulate conversations with strangers that otherwise would be unusual. Think of snow emergencies (the blizzard of 1978), electricity blackouts (New York, 1977), and natural disasters (floods, tornadoes, hurricanes). Consider as well the astonishing popularity of stories about fires on television. To be sure, events such as these also make people more fearful.[222] Yet this reaction also suggests that expanded city emergency services might promote community building. Such an expansion does not mean that every city has to be able to respond to every possible catastrophe. On the contrary, it might be better if individual cities took on different responsibilities, presenting themselves as willing to come to the aid of (and be funded by) the region as a whole. It is also important to ensure that ordinary citizens, and not just city employees, are involved in the assistance efforts. In this way,

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[220] See supra text accompanying notes 86-93.

[221] See generally Lowell M. Limpus, History of The New York Fire Department (1940).

[222] See, e.g., Jim Dwyer, A Frenzy in Dreadful Darkness, N.Y. Daily News, July 6, 1997, at 2 (describing New York City residents' fears of fires and looting during 1977 blackout).

expanding city emergency services can contribute to improving the at-
mosphere associated with being part of a fortuitous association: they
can help reassure metropolitan residents that it is possible to rely on
strangers, no matter who they are, in a crisis.

Highway maintenance also raises broader issues than the need to
fill potholes. Fixing the streets is simply one of the many direct costs
imposed on cities by America's automobile-based society: cities
spend money policing the streets, sweeping them, installing traffic sig-
nals, and sending the fire department and paramedic services when
accidents occur.[223] And highways are only one ingredient in a trans-
portation system that can either link metropolitan residents together
or divide them from each other. Decisions about the allocation of
funds for highways, mass transit, and bicycle paths have had a major
impact on the design of the area's streets, housing, and commercial
life and, with it, the accessibility of jobs for the poor. Indeed, some
cities and neighborhoods have excluded the region's mass transit sys-
tem to prevent "undesirables" from having easy access to them, and
highways have been located to separate the region into racially identi-
fiable spaces.[224] This history of isolating the poor makes it clear that a
decision to shift resources from highways to a fully accessible mass
transit system would affect the lives of everyone in the region, not just
those who ride the trains.[225] So does a recognition of the effect that
such a shift would have on the extent of car generated pollution
throughout the metropolitan area. Moreover, a reallocation of trans-
portation resources could focus on more than extending the transit
system. It could lure people out of their cars by (for example) radi-
cally reducing the fares and thereby influencing the kind of relation-
ship with strangers that the region fosters.[226] Mass transit and
walkable streets are two of the major sources of public space in

[223] See generally Jane Holtz Kay, Asphalt Nation: How the Automobile Took Over
America, and How We Can Take It Back (1997). On direct city costs, see id. at 126.

[224] On highway placement, see Mike Royko, Boss: Richard J. Daley of Chicago 132-33
(1971) ("Containing the Negro was unspoken city policy. Even expressways were planned
as man-made barriers, the unofficial borders. The Dan Ryan, for instance, was shifted
several blocks during the planning stage to make one of the ghetto walls."). On mass
transit location, consider the Washington Metro's relationship to Georgetown and the Bay
Area Rapid Transit's relationship to Marin County.

[225] For a discussion of the class differences between those who "take the early bus" and
those who drive, see Kay, supra note 223, at 35-53.

[226] See Calthorpe, supra note 47, at 104-07 (discussing various methods for increasing
mass transit ridership); see also Regional Plan Association, A Region at Risk: The Third
Regional Plan for The New York-New Jersey-Connecticut Metropolitan Area 150-80
(Robert D. Yaro & Tony Hiss eds., 1996) (recommending targeted "mobility" spending to
further develop New York City metropolitan area); Cities for People: Car Free Cities (vis-
ited Oct. 29, 1997) <http://www.mokum.com/city/index.html> (proposing free mass transit).
But see Ramsey, supra note 214, at 99-103 (proposing that New York City sell its subway

America: they facilitate the daily experience of crossing paths with different kinds of people. Driving, on the other hand, is a privatized affair: it facilitates focusing on oneself (daydreaming, putting on makeup), interaction with people one knows (car phones, car pools), or, at its most expansive, listening to the radio. Emphasizing alternatives to the car culture could therefore nurture an aspect of fortuitous associations different from the feeling of security I have associated with expanding cities' emergency services. It could foster a reaction that is common among people who live in big cities—and quite different from the feelings of discomfort or alarm so often experienced by suburban residents—when the girl with green hair and multiple piercings, the African American kids blasting hip-hop on a boombox, the gay couple holding hands, the panhandler, and the mentally ill person pushing a shopping cart pass by.[227] That reaction is: "whatever."

City parks are another important source of public space in America—at least to the extent that they have not been replaced by private yards or abandoned by the general public because of criminal activity or drug dealing.[228] Parks, like schools, are supported by local taxes yet, unlike schools, are open to residents and nonresidents alike. Thus, creating and maintaining them, making them easily accessible, and ensuring users' safety are all activities that can contribute to community building. But they will not have this effect unless the parks are genuinely open to everyone. Parks must be inviting places to come to not because they exclude the homeless but because they attract as many people as possible, whether through the creation of empty spaces that invite different kinds of unstructured activity, through the building of playgrounds that invite interaction with strangers, or through the organizing of concerts and "happenings."[229] Moreover, city efforts of this kind need not be located solely in parks. Hundreds of thousands of people congregate along the river in Boston for the Fourth of July celebration, in Atlanta for Freaknik, in New Orleans for Mardi Gras, in Las Vegas, as well as Times Square, on New Year's Eve, and for gay pride parades throughout the country.[230] Some view

system to private companies who would then sell subway rides at market rates, with the city using revenue derived from the private companies to subsidize low income riders).

[227] For an argument that the last two of these individuals should be zoned out of large sections of the metropolitan area, see Ellickson, supra note 173, at 1220.

[228] See generally Cranz, supra note 53 (detailing many roles of parks in public life of cities).

[229] For an account of the happenings organized in Central Park during the Lindsay administration, see Cranz, supra note 53, at 138-42; Rosenzweig & Blackmar, supra note 53, at 489-98.

[230] See Margo Adler, N.Y. vs. Las Vegas, on All Things Considered (National Public Radio broadcast, Dec. 31, 1996), available in LEXIS, Nexis Library, NPR File; Charmagne

these events with apprehension: so much traffic congestion, so many people, so scary. But cities devoted to community building might decide to expand their support for these kinds of activities because they make palpable the experience of living in a world filled with different kinds of people. They therefore promote an aspect of fortuitous associations different from the feeling of security or indifference mentioned above: they help demonstrate that contact with different kinds of people can be fun.

At the beginning of this Article I referred to other ideas for city services: economic development, helping families in need, and running institutions (sports teams, museums, music festivals) that inspire the loyalty of metropolitan residents. Each of these topics is important enough to be the subject of an article-length analysis; I shall not offer a truncated discussion of them here.[231] Enough has been said, it seems to me, to enable readers themselves to generate ideas for city services that might further objectives of this kind. I turn instead to another issue that, I suspect, is more pressing in the reader's mind: *Who is going to pay for all of this?* This, of course, raises the central question of American politics: how much money should we devote to government and its services? Nothing in this Article mandates an increase in the amount cities now spend on city services: a reorientation of these services can be achieved without expanding them. In fact, cities so disposed could allocate more money to some services while contracting out or abandoning those that they decided were not helpful to community building.[232] Admittedly, a metropolitan region that

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Helton, Freaknik '96; It All Started in 1982 as Friendly Little Picnic, Atlanta Const., Apr. 19, 1996, at 4H; Mardi Gras: Tuesday Sin, Lent Repent, Telegraph Herald (Dubuque, Iowa), Feb. 21, 1996, at C6; Diego Ribadeneira, It Was Revelry on the River, Boston Globe, July 5, 1997, at A1; Sydney's Gay and Lesbian Mardi Gras Draws Record-Breaking Crowd, Agence France Presse, Mar. 2, 1997, available in LEXIS, Nexis Library, AFP File (reporting attendance of 700,000 people at gay pride parade).

[231] See, e.g., Gerald E. Frug, Property and Power: Hartog on the Legal History of New York City, 1984 Am. B. Found. Res. J. 673, 687-91 (1984) (proposing ways in which cities could increase democratic power by asserting property rights over important economic institutions); Matthew J. Mitten & Bruce W. Burton, Professional Sports Franchise Relocations from Private Law and Public Law Perspectives: Balancing Market Competition, League Autonomy, and the Need for a Level Playing Field, 56 Md. L. Rev. 57, 141-42 (1997) ("The Green Bay Packers franchise has been publicly owned by citizens of its local community for many years, and forty percent of the Boston Celtics franchise is publicly owned. The Toronto Blue Jays, New York Knicks, and Boston Bruins are publicly owned in whole or in part."); Randy Stoecker, The CDC Model of Urban Redevelopment: A Critique and an Alternative, 19 J. Urb. Aff. 1, 14 (1997) (discussing city sponsored neighborhood planning programs stimulating economic development as alternative to programs sponsored by community development corporations); Michael E. Porter, The Competitive Advantage of the Inner City, Harv. Bus. Rev., May-June 1995, at 67-69 (offering profit-oriented reasons for developing inner cities).

[232] A vast literature suggests candidates for this privatization. See supra note 26.

took community building seriously enough to consider the suggestions made in this section would increase the role of city services in metropolitan life. The important point to emphasize here is that, if they decided to do so, they could. There is enough money in every metropolitan region in the country to support a significant increase in community building efforts. It is not necessary to wait for the federal government to act before changing the nature of America's metropolitan areas. Even if other metropolitan regions maintained the status quo, there is no reason to think that a metropolitan region's decision to promote community building would reduce its economic competitiveness rather than increase it: businesses, like people, are more influenced by the quality of life provided by a metropolitan area than by its tax rate.[233] The barrier standing in the way of community building is not the lack of funds but the fact that these funds are now allocated to fortifying the boundaries that separate prosperity from poverty— even (perhaps especially) when they are walking distance from each other.[234]

The standard understanding of the local role in the economy rejects the possibility of this kind of local initiative. It insists that only the federal government can engage in decisionmaking about the distribution of resources across local boundaries in America. This stance is based on the assumption that decentralization means the defense of local autonomy and, therefore, that the only way to overcome the competition and divisiveness that this autonomy generates is through centralization.[235] A community building perspective embraces neither the notion of local autonomy nor the idea that centralization is the solution to metropolitan conflict. It therefore offers a mechanism for strengthening city services without the necessity of a federal handout. To be sure, the federal government—representing people from every region in the country—can contribute to the community building enterprise. It might, for example, be a vehicle for establishing the defini-

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[233] See Enrich, supra note 39, at 391-93 (arguing that factors like wage levels, skill levels, utility costs, accessibility of raw materials and markets, and regulatory stringency are major determinants of business location decisions). Some scholars argue that a region's cities are highly interdependent and that increasing the welfare of those that are worst off improves the competitiveness of the metropolitan region as a whole. See generally H.V. Savitch et al., Ties That Bind: Central Cities, Suburbs, and the New Metropolitan Region, 7 Econ. Dev. Q. 341 (1993); Richard Voith, City and Suburban Growth: Substitutes or Complements?, Bus. Rev. (Fed. Reserve Bank of Philadelphia) 21 (Sept.-Oct. 1992); Henry Cisneros, U.S. Dep't of Housing & Urban Dev., Essay No. 3, Regionalism: The New Geography of Opportunity (1995) (describing benefits accruing to those metropolitan areas where suburbs participate in finding solutions to inner city problems).

[234] One example is the boundary between Grosse Point and Detroit. There are many others.

[235] See generally Paul Peterson, City Limits (1981).

tion of metropolitan regions.[236] If it undertakes this responsibility, however, it must prevent regional boundaries from reproducing the current effect of city lines on a larger scale. The difficulty of drawing regional boundaries in many parts of the country should be treated as a virtue: from the neighborhood level to the national level, the objective should be to reduce the impact that geographic boundaries have on people's lives.

Even a reader generous enough to follow my argument all the way to this, the final paragraph of a long article, might end up with the following reaction. "Look," he or she might say, "I agree that it is possible to reorient education, police, and other city services toward community building. I even think it would be desirable—in fact, I think that it is in the self-interest of everyone in the region to be in favor of community building if they are reflective about their own future in the long run. But let's face it, it's just not going to happen. People aren't interested in engaging with unfamiliar strangers. They like privatization and the immunity from contact with different kinds of people that city boundaries now provide. And they are going to continue to like these things. The separation of different kinds of people is too well established in American society even to think about turning it around." To those who have this reaction, I respond as follows. Let's assume everything you say is true. Let's even assume that privatization continues to accelerate, so that America will have more and more gated communities, consumer-oriented city services, and isolation from different kinds of people. Perhaps we should even assume what Neil Shouse, in a recent paper, called *The Bifurcation*—the division of America into two separate parts, one consisting of privately owned spaces occupied by those who can afford them and the other consisting of public space where everyone else lives—an event he imagines occurring in America in the year 2007.[237] Most people

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[236] The Census now defines regional areas and is therefore a place to begin. Its definition relies on factors such as community, density, and the percentage of urbanized space. The 1990 Census, however, recognized the complexity of this task by distinguishing between a primary metropolitan statistical area (PMSA) and a consolidated metropolitan statistical area (CMSA)—the latter being an area that includes more than one PMSA. See Census Bureau, U.S. Dep't of Commerce, Metropolitan Areas (last modified May 9, 1997) <http://www.census.gov/population/www/estimates/metrodef.html>. State governments also have a role in the definition of regions because many of them do not cross state lines. Indeed, states may well be the first place to turn—as they have been to date. See, e.g., Or. Rev. Stat. § 268 (1995) (creating Metropolitan Service Districts in Oregon).

[237] See Neil Shouse, The Bifurcation 1 (unpublished manuscript, on file with author). As he describes it, the private sphere in America will have entrance requirements, privatize all city services, and defend its boundaries through the law of private property; after the departure of the wealthy (and the not so wealthy), life for those remaining in the public sphere is pretty grim. See id. at 23 (describing the public sphere post-2007 as a world of

recognize that such a future would raise serious problems not only for American society but for themselves. If so, the critical issue is not whether metropolitan residents want community building or separation from each other. They want (and don't want) both. The issue instead is: What kind of world should city services be organized to promote?

"streets desolated but for frenetically speeding cars and sporadic congregations of young hoods").